



## In step with BEPS transfer pricing rules

Thailand is currently going through a period of rapid improvement and development which is creating opportunities and benefits for foreign businesses. Improvements are being made in many areas, including changes to its tax laws to implement certain international tax standards. Notably, Thailand has adopted the OECD's Inclusive Framework on 'Base Erosion and Profit Shifting' (BEPS) and now has Country-by-Country Reporting, exchange of information on request, and the automatic exchange of financial account information (the 'Common Reporting Standards').

Against the background of the OECD BEPS's measures, one of the key areas Thailand has focussed on is the development of its transfer pricing legislation and practices.

- Companies with an annual income of THB 200 million or more (approximately USD 6 million) must file an online transfer pricing 'disclosure form' with their annual corporate income tax return (with penalties resulting from inadequate or inaccurate information).
- The Thailand Revenue Department (TRD) has recently provided its tax assessment officers with detailed guidance on the basis, procedures, rules and conditions to be followed in performing adjustments to the revenue and expenses of companies where transactions, including commercial and financial arrangements between related parties, are not conducted on a third-party arm's length basis and believed to be in the nature of profit shifting.
- A Director-General Notification has now set out the pricing methods acceptable for comparability in determining the arms-length price for benchmarking and respective financial indicators, which are:
  - The price established under the comparable uncontrolled price method (CUP method);
  - The rate of profit from cost plus (for the cost-plus method, CP method);
  - The rate of profit from resale (for the resale price method, RP method);
  - The rate of net profit (for the transactional net margin method, TNMM method);
  - The share of profits from operations (for the transactional profit split method, TPS method); and,
  - Any other appropriate method where the above methods cannot be applied.

For service transactions in particular, it is additionally required to consider and demonstrate the 'need and requirement' for such services in addition to a benchmarking analysis.

- A function, asset and risk analysis is required for transactions associated with intangible assets (with the functional analysis disclosing the responsibilities of each contracting party to the development, enhancement, maintenance, protection, and exploitation (DEMPE analysis) of the intangible asset). Depending on the nature of the transaction(s) additional considerations may be required such as geographical limitations, expected benefits, etc.
- Certain multi-national enterprise (MNE) groups doing business in Thailand now have to submit a Country-By-Country (CBC) transfer pricing report with their annual corporate income tax return for accounting periods beginning on or after 1 January 2021. The report must be in line with the OECD's CBC reporting template and forms part of a three-tier structure, together with a global master file and a local file. As well as other information, it provides the names and main business activities of each group member and key information about the group's financial results and how they break down by tax jurisdiction.

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## PKF Thailand' Tax Letter

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### **PKF Comment:**

The saying '*fail to prepare, prepare to fail*' is very relevant to the increasing transfer pricing requirements and practices in Thailand, not least by ensuring contemporaneous transfer pricing documentation is available. Notably, it is important that the information contained within the CBC report is consistent with the positions and characterisations adopted in the Local File and Master File because the information contained within the report could potentially be used by the Thai Revenue Department (TRD) to assess other BEPS-related risks of the multinational enterprise in Thailand, as well as transfer pricing.

PKF Thailand helps companies meet their Thailand transfer pricing obligations, including responding to TRD correspondence and completing the required annual files and reports. For help and advice on any transfer pricing matter, please contact Philip Bond at [philip.bond@pkf.com](mailto:philip.bond@pkf.com)