



cutting through complexity

Global Transfer Pricing Review

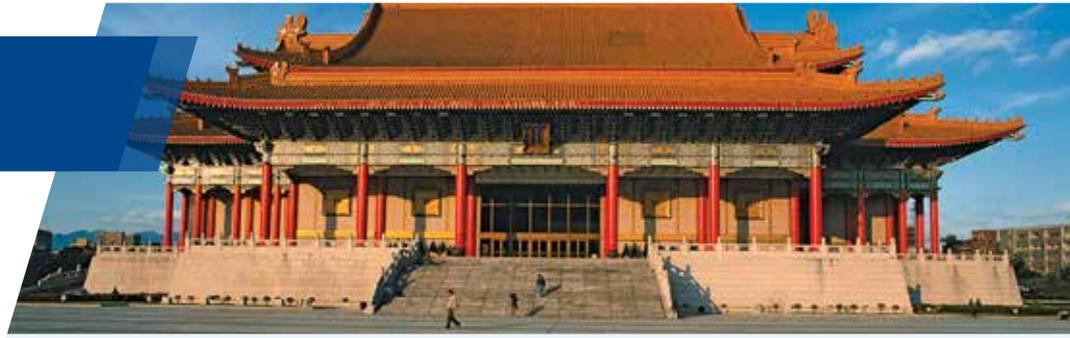
Taiwan

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KPMG observation

The Taiwan Transfer Pricing Regulations came into effect in 2005 and are generally in line with the Organisation for Economic Co-operation and Development (OECD) Guidelines. Transfer pricing has been one of the hottest tax topics since then, and the enforcement of transfer pricing has intensified significantly in recent years. Transfer pricing-focused task force teams have been formed at the regional tax office level, and the number of companies selected as transfer pricing audit targets has continued to multiply. In terms of the types of transactions targeted, the Taiwan tax authorities have focused more and more on transactions involving marketing intangibles, provision of services and intercompany funding arrangements (particularly, intercompany guarantees).

In 2015, the concepts of business restructuring were incorporated into the Transfer Pricing Regulations. Companies that restructure their businesses are required to evaluate the arm's length nature of the restructuring in their transfer pricing reports beginning with tax year 2014. This is expected to result in a significant increase in the compliance burden borne by applicable companies in Taiwan.

The Taiwan tax authorities have been closely monitoring the progress achieved by the Base Erosion and Profit Shifting (BEPS) Action Plan, both the OECD level and in terms its implementation in major economies around the world. It is not clear at this time if the Transfer Pricing Regulations will be amended again to incorporate the recommendations of the BEPS Action Plan. However, it is anticipated that Taiwan will follow a similar approach as countries in the surrounding area and major economies around the world.

The Taiwan tax authorities have started requesting that taxpayers provide information resembling that suggested by the OECD for the Country-by-Country (CbC) report during recent transfer pricing audits. Going forward, in transfer pricing audits, it is likely that the tax authorities will be more and more inclined to invoke the exchange of information procedures provided for under tax treaties to access more information from other countries. Multinational enterprises with corporate residences in tax treaty partner states of Taiwan should seriously consider pursuing bilateral advance pricing agreements (APA) to obtain certainty for transactions with relatively high audit risk.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements	●	●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Ministry of Finance (MOF) and the district offices of the National Tax Administration (NTA).

Citation for transfer pricing rules

Article 43-1 of the Income Tax Act and Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing (Taiwan Transfer Pricing Assessment Rules).

Effective date of transfer pricing rules

28 December 2004.

What is the relationship threshold for transfer pricing rules to apply between parties?

In addition to a 20 percent ownership, the MOF has adopted the 'substantive management and control' and 'material influence' concepts in defining a related party relationship.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from the tax return filing date if the return is filed in a timely fashion. In situations where a taxpayer fails to file the annual tax return within the statutory deadline or is involved in tax fraud or tax avoidance, the statute of limitations will be extended to seven years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. The taxpayer must disclose information about controlled transactions on forms filed with income tax returns.

What types of transfer pricing information must be disclosed?

The types of information to be disclosed include, but are not limited to:

- legal structure
- detailed information on related parties
- controlled transaction types and respective amounts

- whether the taxpayer has signed APAs with tax authorities in Taiwan or foreign jurisdictions and the relevant information; and
- whether a transfer pricing study has been prepared.

What are the consequences of failure to submit disclosures?

There is no penalty involved, but if uncovered by the tax offices, it will undermine the credibility of taxpayers.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes. Documentation could be filed in English if prior approval could be obtained from the tax authorities concerned.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

No. Taiwan Transfer Pricing Assessment Rules have listed out the following minimum required items to be included in the transfer pricing study:

- 1) industry and economic condition analysis
- 2) function and risk analysis of each entity engaged in the controlled transactions under review
- 3) the application of arm's length principle
- 4) selection of comparables
- 5) comparability analysis
- 6) selection of the most appropriate method, methods considered and reasons for rejection of specific methods
- 7) pricing method adopted by the counterparty of controlled transactions; and
- 8) evaluation of arm's length nature achieved by the controlled transactions or determination of arm's length result(s).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. With some exceptions. Instead of the transactional net margin method (TNMM), Taiwan Transfer Pricing Assessment Rules adopt the comparable profits method, which is very similar to the TNMM outlined in the OECD Guidelines. Advance approval must be obtained from the MOF for applying unspecified methods.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Upon request, taxpayers are required to submit the documentation within one month from the date of receipt of notification. In special circumstances, taxpayers are also given the option of a one-time extension of an additional month.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Yes, the taxpayer has the option to resolve disputes through the administration remedy or litigation procedure.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. If the transfer pricing audit results in income adjustments and assessments, a penalty of up to 200 percent of the underpaid tax amount (where the

taxpayer has filed their tax returns on time) will be imposed under any one of the following situations:

- where the reported controlled transaction prices are 200 percent or more, or 50 percent or less of the arm's length prices as assessed by the tax authority
- where the income adjustment assessed by the tax authority reaches 10 percent of the taxpayer's assessed annual income and 3 percent of the assessed annual net sales
- where the taxpayer fails to provide a transfer pricing study and cannot provide other documentation to prove that its transfer price is at arm's length; and
- other situations where the tax authority finds evidence of underreporting income and the amount underreported is considered significant.

To what extent are transfer pricing penalties enforced?

In practice, penalties are rarely enforced because most audits are settled via negotiation.

What defenses are available with respect to penalties?

There is no defense to any of the penalties, other than to defend against the underlying adjustment.

What trends are being observed currently?

The tax authorities are currently stepping up the pace of transfer pricing audits as a way to actively seek additional tax revenue. As a result, special transfer pricing audit teams have been formed by the tax authorities to conduct more comprehensive and in-depth transfer pricing audits than in the past. The number of cases selected has increased along with the intensity of the tax authorities' review.

We have observed that under audit, the tax authorities tend to question the aggregate testing approach and request separate testing for different controlled transactions. Moreover, the tax authorities have focused more on intangible property and intra-group funding arrangements, especially cash-pooling and intra-group guarantee arrangements.

Special considerations

Are secret comparables used by tax authorities?

Based on our observation of the current practice, secret comparables are not used by tax authorities.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. If the tested party is a company in Taiwan, the tax authorities prefer to apply local comparables. However, foreign comparables are acceptable if insufficient number of local comparables are available.

Do tax authorities have requirements or preferences regarding databases for comparables?

There are no specific requirements regarding which database should be applied.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Analysis based on multiple-year averages preferred.

What level of interaction do tax authorities have with customs authorities?

Currently, low.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. Generally speaking, expenses will be deductible for Taiwan income tax purposes only if they are necessary and relevant to a business' operation. In practice, taxpayers bear a heavy burden of proof to justify to the tax authorities that management fees are necessary and relevant to a business's operation.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Royalties expenses will be deductible for Taiwan income tax purposes only if they are necessary and relevant to a business' operation.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. In general only adjustments increasing taxable income are allowed. According to the Taiwan Transfer Pricing Assessment Rules, if the results of a controlled transaction fall outside the arm's length range, the current year result shall be adjusted based on the median of the range. Nonetheless, no transfer pricing adjustment is allowed if it results in a decrease in Taiwan tax liability.

The MOF once issued a private ruling to a company allowing it to make a one-time downward transfer pricing adjustment before closing the financial accounts, provided certain conditions were met. Other companies who wish to make downward transfer pricing adjustments should apply for a specific pre-approval ruling with the MOF based on their own facts and circumstances. The application process is expected to be lengthy and extensive supporting information will be required.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Up to the time when this review is updated, Taiwan has concluded and ratified 28 tax treaties.

If extensive, is the competent authority effective in obtaining double tax relief?

To our knowledge, Taiwan has limited experience with competent authority. On the other hand, the information related to the implementation and effectiveness of the competent authority is not available to the public.

When may a taxpayer submit an adjustment to competent authority?

Depends on the mutual agreement procedure provision of each tax treaty.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

No.

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