



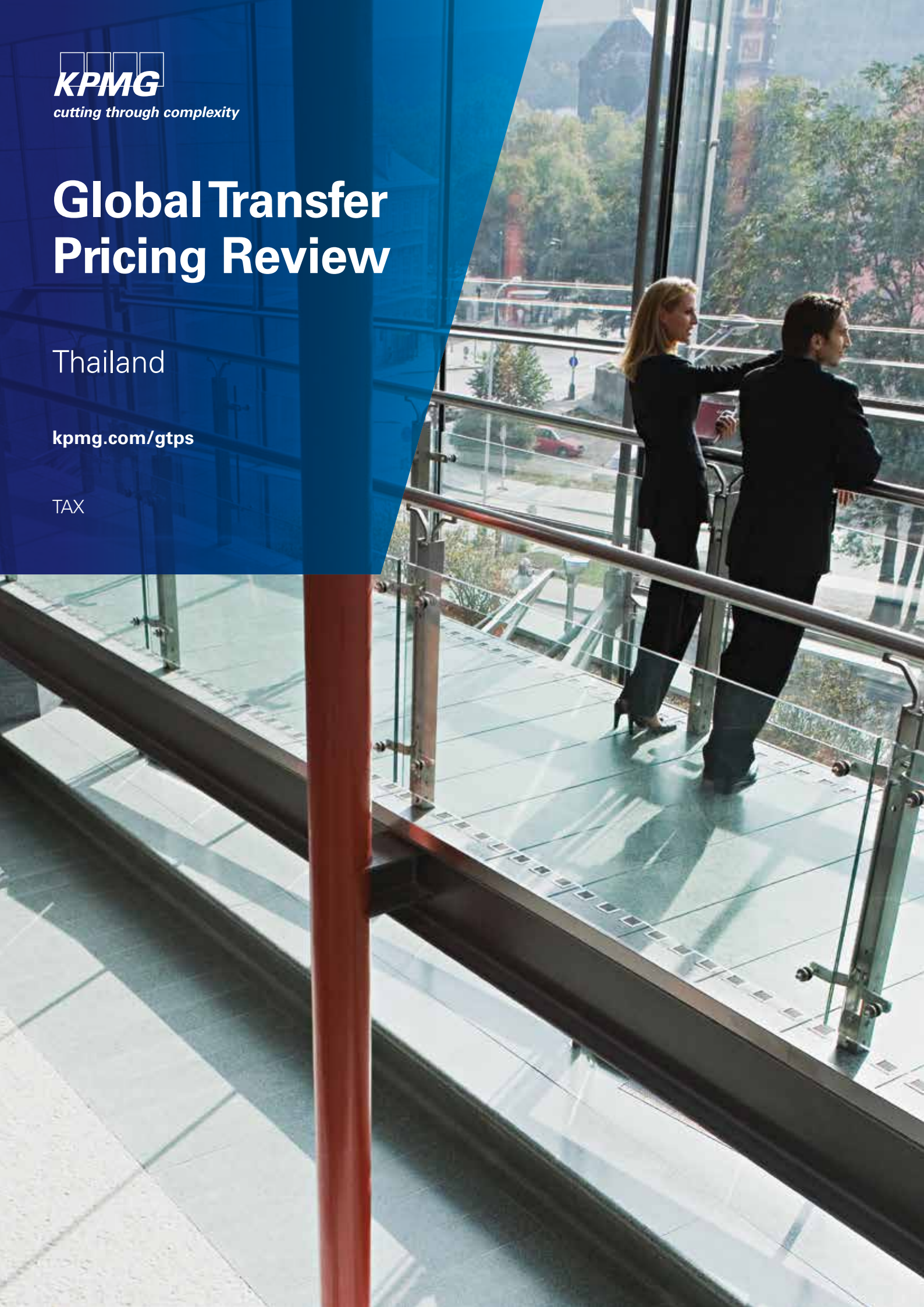
cutting through complexity

Global Transfer Pricing Review

Thailand

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TAX



Thailand



KPMG observation

In May 2015, the Thai cabinet approved a draft Transfer Pricing law that will amend the Revenue Code to prevent tax evasion driven by transfer pricing. The purpose of draft law is to add provisions in the Thailand Revenue Code which will:

- define the criteria for determining pricing that should be applied between related entities
- allow a tax officer to make adjustments to assessable income and allowable deductions; and
- determine the period of eligibility for tax refunds.

One of requirements of the draft law is that entities with related party transactions will have to prepare and submit certain documentation within 150 days of the end of their accounting period. Failure to do so will result in a penalty of up to 400,000 Thai baht (THB) (about 12,000 US dollars (USD)).

The draft law is broad, and it is expected that more details (which may be in form of Departmental Instruction or Notification) will be issued once the law is enacted. Given this new transfer pricing law — specifically, the provision for mandatory transfer pricing documentation, transfer pricing will be one of the most pressing issues in Thailand going forward. A company operating in Thailand, with related party transactions, should be prepared to manage its transfer pricing risk and compliance.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements			●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		

Basic information

Tax authority name

Krom Sumpakorn (Thai Revenue Department (TRD)).

Citation for transfer pricing rules

General laws:

- Sections 65 bis (4), (7)
- Section 65 ter (13), (14), and (15).

Specific rules:

Departmental Instruction Paw 113/2545. The Guidance on the Advance Pricing Agreement (APA) Process (APA Guidance) was issued in April 2010.

Transfer Pricing Law: Cabinet has approved draft law in May 2015. The law has not been enacted.

Effective date of transfer pricing rules

Specific rules issued in May 2002 as guidelines for TRD officers. No legal effect.

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

Direct or indirect relationship with regard to management, control or capital.

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

Five years from due date or filing date. Transfer pricing assessments follow the statute of limitations on income tax return audits, which is five years from due date of tax return, or from filing date if failure to file by due date.

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)?

No. No specific requirement for transfer pricing disclosure. However, there are questions in the annual corporate income tax return (yes or no answers) which the taxpayer is required to answer in relation to transactions departing from market price.

Under the draft transfer pricing law, the taxpayer is required to submit the document required by law within the same deadline of tax return. The level of disclosure has not been available yet.

What types of transfer pricing information must be disclosed?

The questions in the tax return that require the taxpayer's confirmation are:

- has the business sold products, services or property, lent money, or leased out property, without value received or with received value below market price in amounts considered substantial?
- has the business bought assets, or incurred expenses in acquiring such assets, at a value above normal price in an amount considered substantial?

What are the consequences of failure to submit disclosures?

Not applicable (the questions in the annual corporate income tax return, as mentioned, have to be answered as part of the tax return).

Under the draft transfer pricing law, there will be a penalty up to THB400,000 (about

USD 12,000) if the taxpayer does not submit the document as required by law.

Transfer pricing study overview

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

Yes but may be asked to provide Thai translation. English.

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

Yes, for certain transactions. Thailand is not an OECD member. However, Thailand's transfer pricing guidelines follow similar concepts to the OECD.

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.

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, seven 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.

A normal timeline in the tax authorities' requested letter is between 7 and 15 days, but, in practice, a request for an extension is possible.

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

If a conclusion cannot be reached at the documentation review and a notice of assessment is issued, the dispute may be settled by filing a tax appeal within 30 days after receiving the notice of assessment. If the taxpayer fails to obtain a successful resolution at this level, the taxpayer may appeal to the tax court.

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

Yes. General income tax penalties — i.e. a surcharge of 1.5 percent per month of additional tax payable up to the amount of tax will be imposed. Penalties of up to 100 percent of additional tax payable will be added if the adjustment is made as a result of a tax audit summons.

To what extent are transfer pricing penalties enforced?

Always (if the adjustment results in additional tax).

What defenses are available with respect to penalties?

None, if there is tax payable. It is necessary to negotiate with the tax authorities at the documentation review to reduce the assessed tax amount such that the penalties can be reduced accordingly.

What trends are being observed currently?

Tangible property transactions are still the main target but the tax authorities are more and more focused on intragroup services transactions as well. If there are intra-group fees for services or for intangible property, there may be questions about tax deductions. The taxpayers are often required to demonstrate that the services have been received and are relevant to the Thai operations, and that the consideration is not excessive.

Special considerations

Are secret comparables used by tax authorities?

This is possible.

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

Yes. If the taxpayers do not provide a set of local comparable companies during the transfer pricing audits, the transfer pricing audit team will conduct their own search for local comparables and use the local benchmarking results as a starting point to challenge the taxpayers.

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

No requirements, however, the tax authorities use Business Online, a well-known local database.

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.

No.

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

None.

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

Yes, some. Generally, management fees are deductible if the taxpayer can substantiate the expenses incurred for business and the fees are not excessive.

Are management fees subject to withholding?

Yes.

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

Yes. For tax deduction, Thai tax authority would also focus on benefits received by Thailand.

Are royalties subject to withholding?

Yes.

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

Yes. It is strongly recommended that the year-end transfer pricing adjustment should be performed before closing the financial statements for the period. Care must be taken if the transfer pricing adjustment results in reduced profitability in Thailand.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

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

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

Where a client requires double taxation relief, the same can be obtained from the tax authorities prior to paying the tax.

Advance pricing agreements

What APA options are available, if any?

Bilateral.

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. Since the APA guidance has been issued in April 2010, there have been more requests for APAs. With more experience and the requirement to

submit the APA application in both Thai and English, the Thai tax authorities should begin to review and process the APAs faster. The APA working team has been requesting factory tours, in the case of manufacturing subsidiaries in Thailand, in order to obtain more understanding of functional and risk profiles as well as manufacturing process for comparable selection.

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