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**TAX
ARTICLE**

**MARCH
2025**

Tax and Transfer Pricing Considerations for Intragroup Services in Thailand

In this article, we will discuss tax and transfer pricing aspects of providing intragroup services to Thai subsidiaries of multinational companies and some practical tips and recommendations for taxpayers to manage the Thai tax risks and related compliance obligations.

1. Tax Aspects of Intragroup Services in Thailand

Services provided by a foreign entity without a Permanent Establishment (PE) in Thailand are subject to taxes in Thailand as follows:

Withholding tax

Thailand imposes withholding taxes on payments made from or within Thailand to foreign service providers, regardless of whether the foreign entity has a taxable presence in Thailand.

The withholding tax rate for services is 15% and applies to services provided onshore. The Thai service recipient must withhold tax from the service fee payment and remit it to the Thailand Revenue Department (TRD) by the 15th day of the month following the payment. This withholding tax may be exempted under double tax treaties

that Thailand has signed with other countries. (Refer to the discussion on tax treaties below.)

Value added tax (VAT)

The provision of services is subject to AT of 7% in Thailand. If the service provider is a foreign entity and the services are utilized wholly or partially within Thailand, the Thai service recipient is required to self-assess and remit the 7% VAT to the TRD.

Stamp duty

Service agreements are subject to stamp duty at a rate of 0.1% on the total value of the agreement. The service provider must pay this stamp duty within 15 days of executing the agreement.

If the agreement is executed offshore, the obligation to pay the stamp duty only arises when the executed agreement is brought into Thailand. The first holder of the agreement is responsible for paying the stamp duty within 30 days from the date the agreement is first brought into the country.



Permanent Establishment

Under Thai tax law, a permanent establishment (PE) is deemed to exist in Thailand if a foreign company provides service through its employees or representatives in Thailand and derives income in Thailand from such activities.¹ Moreover, under Thai domestic law, there is no threshold of physical days for the creation of a permanent establishment.

The Thai Revenue Department has issued rulings regarding foreign companies that have a permanent establishment in Thailand based on the activities of their employees.² For example, in one ruling, a U.S. company sent employees to Thailand to provide IT services to a Thai company. As a result, the foreign company was determined to have a permanent establishment in Thailand and was required to pay corporate income tax (CIT) on the profits derived from the IT services performed in the country.³

Therefore, it is crucial to evaluate whether an offshore service provider has a permanent establishment in Thailand before relying on the withholding tax exemption under an applicable tax treaty.

Tax Treaties

Thailand has concluded tax treaties with 61 jurisdictions.⁴ These treaties generally follow the OECD Model Convention, with some characteristics of the UN Model. According to the business profits article in Thailand's tax treaties, service fee income will not be subject to corporate tax in Thailand unless the foreign

service provider has a permanent establishment in Thailand, as defined by the treaties.

In Thailand, unlike in several other Asian countries, tax treaty relief is granted automatically. This means that taxpayers can automatically apply for tax treaty benefits without the need for advanced approval or notification with a tax authority. However, if there is a tax audit or review, Thai taxpayers must be able to support that the non-resident service provider is a tax resident of their home country and qualifies for benefits under the relevant tax treaty.⁵

2. Specific Thai Tax Considerations for Intragroup Management Services

Multinational companies frequently provide intragroup services, such as management services, between group entities. These intragroup services can also serve as a tax planning tool, allowing MNCs to repatriate profits to their headquarters or low-tax jurisdictions.

Reclassification of Management Fees to Royalty

An issue may arise during a tax audit regarding whether the TRD will classify the provision of management services from a related party as a service or a royalty.

Under the Thai Revenue Code (TRC), the term "royalty" is not explicitly defined. Instead, the interpretation is generally based on other juristic acts or court decisions. Royalties are typically understood to include fees for goodwill, the purchase of copyrights or other rights, annuities,

¹ Section 76 Bis of Thai Revenue Code

² See, Tax ruling no. Gor Kor 0702/2318 dated 28 March 2019 and no. Gor Kor 0702/1739 dated 27 February 2018.

³ Gor Kor 0702/2318 dated 28 March 2019

⁴ Thailand has tax treaties with most major economies and neighboring countries including the United States, China, Japan, Korea, United Kingdom, Singapore, Hong Kong, Vietnam, Australia.

⁵ The TRD may request a Certificate of Residency from the foreign service provider



or annual payments for the use of copyrighted intellectual properties.

There have been several cases where the TRD has argued that payments for management services should be reclassified as royalties rather than service fees.

In rulings issued by the TRD,⁶ it was clarified that payments for management services that are general in nature, such as basic advisory services that are neither complex nor involve high technology, are considered management fees and not royalties.

In another tax ruling,⁷ The Revenue Department provided guidance to a Japanese company stating that if the provision of services involves a transfer of know-how, confidential information, intellectual property, or any agreement requiring confidentiality, the payment for the services should be classified as a "royalty" rather than a service fee. The TRD reached a similar conclusion

for a Belgian company in ruling Gor Kor 0811/15745.

As business models become increasingly digitalized, the distinction between royalties, technical services, and other forms of services is becoming less clear. For example, with Software-as-a-Service (SaaS) companies, questions may arise about whether fees paid for access to software or cloud-based platforms should be treated as payments for services, royalties, or even hybrid transactions. The delivery mechanism—whether through digital access or traditional licensing—can blur the lines, complicating the determination of the appropriate tax and transfer pricing treatment. This evolving dynamic underscores the need for careful analysis of the substance of transactions, considering the current tax regulations, relevant tax treaties, and emerging business models.

⁶ Tax ruling no. Gor Kor 0811/15745 dated 16 November 1998 and tax ruling no. Gor Kor 0706/9352 dated 13 November 2006

⁷ Tax Ruling, Gor Kor 0706/9352

Supporting Documentation for Intragroup Services

In the case of a tax audit, the TRD may request the Thai entity receiving the services to documentation supporting that the services have been rendered. There are no specific regulations or official guidelines indicating what documentation is required for intragroup services. A service agreement is typically requested to show the legal relationship between the parties involved.

In some cases, the TRD may also request additional documentation, such as work deliverables or email correspondence between the parties.

3. Deductibility of Management Fees

To establish the deductibility of related party management fees, companies should be able to justify the deduction by clearly explaining the rationale for intragroup charges. Although the TRC does not specifically provide for an economic benefits test, the TRD may deny the deductibility of these service charges if the Thai entity cannot demonstrate the benefits received from them.

4. Overview of Transfer Pricing Rules in Thailand

Transfer pricing has become one of the most critical and complex challenges for multinational enterprises (MNEs) providing intragroup services to their subsidiaries in Thailand. In recent years, the TRD has increased its scrutiny and enforcement of transfer pricing regulations, putting greater pressure on MNEs to ensure compliance.

The TRD places a significant focus on intragroup services, particularly management services, as these arrangements are often seen as potential avenues for profit remittance to foreign headquarters. Consequently, these arrangements are closely examined to ensure they adhere to the arm's length principle and do not facilitate improper profit shifting out of Thailand.

To mitigate transfer pricing risks and reduce scrutiny regarding intercompany service transactions, MNEs should prioritize the following key areas:

(i) Arm's length principle:

Once it has been established that the Thai subsidiary has received services from its foreign parent or a related party, it is necessary to determine whether the service fee charged adheres to the arm's length principle.⁸

For example, the most used method for pricing intragroup management service fees is the cost-plus methodology. According to internationally accepted transfer pricing principles, low-value-added services, such as routine administrative tasks, typically warrant a 5% markup. In contrast, high-value-added services that require specialized expertise—such as sales and marketing, strategic planning, business development, or professional services provided by regional financial controllers—generally justify a higher markup. Taxpayers must ensure that the arrangements are structured to reflect arm's length conditions.

⁸ The service fee charge by the service provider can either be in the form of a direct charge (where services can be clearly identified solely for the benefit of the Thai taxpayer) or an indirect charge (where services are provided to multiple related parties) using a cost allocation and cost apportionment methodology.

(ii) **Robust supporting documentation:**

Taxpayers are required to prepare and maintain sufficient supporting documents, including agreements, cost allocation schedules, and methodologies.

(iii) **Compliance with local regulations:**

To demonstrate adherence to local regulations and effectively meet the expectations of tax authorities, taxpayers must maintain comprehensive transfer pricing documentation to substantiate the arm's length nature of intragroup transactions.

5. Thai Transfer Pricing Requirements

On 1 January 2019, Thailand implemented transfer pricing rules into law, requiring all inter-company transactions to be conducted at arm's length prices.

Although Thailand is not a member of the Organisation for Economic Co-operation and Development (OECD), it's important to note that in 2017, Thailand joined the OECD's inclusive framework for the global implementation of the Base Erosion and Profit Shifting (BEPS) project. This commitment requires all members to adhere to Action 13, which focuses on Transfer Pricing Documentation and Country-by-Country Reporting. Additionally, most guidelines and regulations related to transfer pricing in Thailand align with the OECD Transfer Pricing Guidelines.

The following sections of the Revenue Code pertain to transfer pricing:

- Section 17 of the Revenue Code
- Section 35 ter of the Revenue Code
- Section 71 bis and Section 71 ter of the Revenue Code

The table below summarizes the evolution of the transfer pricing regime in Thailand.

Announcement Made	Rules / Guidelines	Effective Date	What is it?
November 2018	Revision of TRC - Royal Decree No. 47 ("TRC 47")	On or after 1 Jan 2019	With TRC 47, transfer pricing (TP) rules are now established in law, which strengthens the compliance and enforcement framework of the Thai Revenue Department (TRD) regarding TP matters. TRC 47 outlines the following key points:

Announcement Made	Rules / Guidelines	Effective Date	What is it?
			<ul style="list-style-type: none"> ▪ Companies with an income of 200 million Thai Baht (THB) or more in each accounting period are required to submit an annual transfer pricing disclosure form. ▪ Companies must be ready to provide formal transfer pricing documentation within 60 days of a formal request from the TRD. ▪ The TRD is authorized to make adjustments to related party transactions. ▪ Non-compliance with TP reporting requirements or incorrect disclosures may result in penalties of up to THB 200,000.
November 2020	Ministerial regulation 369		<p>This outlines the rules and conditions that allow the TRD to adjust income and expenses. It also provides guidelines for tax assessment officers when making adjustments to the revenue and expenses of companies or juristic partnerships. These adjustments are particularly relevant when transactions, including commercial and financial arrangements between related parties, are not conducted independently and there are concerns about profit shifting.</p>
November 2020	Ministerial regulation 370 ("MR 370")		<p>The exemption threshold is related to the mandatory requirement for preparing transfer pricing (TP) disclosure forms and documentation. According to MR 370, companies or juristic partnerships with annual revenues not exceeding THB 200 million are exempt from the obligation to submit the annual TP disclosure form and TP documentation as outlined in Section 71 ter of the TRC.</p>

Announcement Made	Rules / Guidelines	Effective Date	What is it?
January 2021	Notification of Director-General of Revenue Department No. 400 ("DGN No. 400")	On or after 1 January 2021.	DGN No. 400 mandates that companies with an income of THB 200 million or more in each accounting period must file their Transfer Pricing (TP) disclosure form online. ⁹ This directive also provides guidance on conducting TP comparability analysis, including considerations regarding comparability factors and the approach for selecting the most appropriate TP method. Additionally, it clarifies the Tax Revenue Department's (TRD) authority to make TP adjustments to bring transactions within the arm's length range.
September 2021	Notification of Director-General of Revenue Department No. 407 ("DGN No. 407")	On or after 1 January 2021.	DGN No. 407 outlines the necessary documents and information required for transfer pricing (TP) analysis, including a list of items needed when preparing a TP Local file, as well as the criteria for exemption from preparing a TP benchmarking study.
September 2021	Notification of Director-General of Revenue Department No. 408 ("DGN No. 408")	Fiscal year on or after 1 January 2021	DGN No. 408 outlines the key requirements for submitting a Thai TP Country-by-Country Report (CbCR) for MNEs that exceed the group revenue threshold of THB 28,000 million.

⁹ Taxpayers subject to these provisions are required to submit their disclosure using Form PND. 50 to the TRD within 150 days from the end of their accounting period. They must also prepare a comprehensive TP documentation report, which must be retained for five years from the date of filing Form PND. 50. The TP documentation report must be submitted to the TRD upon request.

Announcement Made	Rules / Guidelines	Effective Date	What is it?
January 2022	Notification of Director-General of Revenue Department No. 419 (“DGN No. 419”)		DGN No. 419 provides updated guidelines for registering and lodging the CbCR with the TRD’s CbCR online system, building on the provisions in DGN No. 408.
May 2022	PAW 113/2545		The TRD has issued guidance on setting transfer prices based on arm's length principles, including methods for determining transfer prices and the necessary documents to prepare. However, this guidance has not been codified into law.
October 2022			TRD released new guidelines for advance pricing agreements (APAs).

Publicly listed companies in Thailand are required to disclose their related-party transactions in their annual reports and audited financial statements. In contrast, non-listed companies in Thailand have the option to decide whether to disclose these transactions in their audited financial statements.

The Thai Revenue Department (TRD) recognizes the following internationally accepted transfer pricing methodologies, without prioritizing any specific method:

1. Comparable Uncontrolled Price Method
2. Resale Price Method
3. Cost Plus Method
4. Profit Split Method
5. Transactional Net Margin Method

The transfer pricing regulations empower the TRD to adjust a taxpayer's taxable income and assess additional tax liabilities if the pricing of related-party transactions does not adhere to the arm's length principle. Additionally, the TRD may impose penalties and/or surcharges on any underpaid taxes.

6. Concluding Remarks

When providing intragroup services in Thailand, it is essential to consider various tax and transfer pricing implications of the charges, such as the nature of the service, the existence of an applicable tax treaty, and whether the service provider has a Permanent Establishment in Thailand.

For example, a payment for these services provided by an offshore service provider is subject to a 15% withholding tax, however, this tax may be reduced or exempted under the provisions of an applicable tax treaty if the foreign service provider has no Permanent Establishment in Thailand.

The TRD may challenge intragroup service transactions based on their nature, necessity, or genuineness. Taxpayers should ensure that the terms specified in service agreements comply with the arm's length principle as mandated by Thailand's transfer pricing rules, which took

effect on 1 January 2019. These rules have strengthened the TRD's enforcement capabilities, allowing them to adjust related party transactions and impose penalties for non-compliance with transfer pricing reporting requirements or incorrect disclosures.

Compliance is an important step to mitigate the risk of scrutiny and financial penalties. Taxpayers should prepare and maintain transfer pricing documentation and supporting evidence that demonstrates the arm's length nature of their intercompany transactions. Insufficient supporting evidence may result in the TRD denying the deductibility of the service fee.

At DFDL, we have a dedicated tax and transfer pricing team ready to assist your group company with all intragroup transactions, including management service arrangements, to ensure compliance with all tax and transfer pricing requirements in Thailand.



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