



TP Alert

Latest update on transfer pricing developments in Thailand

Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA)

On 18th of October 2022, the Thai Cabinet approved in principle for Thailand to join the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (“CbC MCAA”) thereby enhancing the exchange of the Country-by-Country Reports (“CbCR”) to meet the international standards published by the Organisation for Economic Co-operation and Development (“OECD”).

The Thai Revenue Department issued Notification of the Director-General of the Revenue Department on Income Tax (No. 408) in 2021 to set out (CbCR) obligations for multinational enterprise groups (“MNE groups”) headquartered and/or operating in Thailand.

The CbCR provides tax authorities with visibility over how key elements of a MNE group’s financial results break down by tax jurisdiction. The names and main business activities of the group in each jurisdiction are included.

A key mechanism in making the CbCR rules work efficiently and effectively is the ability for the CbCR to be automatically exchanged between tax authorities as opposed to MNE groups filing CbCR with the tax authorities in each country in which they operate.

The CbC MCAA was established to provide rules and procedures to allow countries implementing CbCR to automatically exchange the reports prepared and filed by the reporting entity of an MNE group with the tax authority in its country of tax residence with the tax authorities of all jurisdictions in which the MNE group operates.

With Thailand due to become a signatory of the CbC MCAA a MNE group with the reporting entity (e.g., ultimate parent entity (“UPE”)) located in Thailand will be able to submit a CbCR through the Thai tax authority, which can then be exchanged with tax

authorities in countries in which the MNE group operates. Conversely, Thailand will also be able to receive the CbCR for a MNE Group which carries on business activities in Thailand from the tax authority where the reporting entity of the MNE Group is tax resident. The ability to exchange the CbCR in the above scenarios assumes that the countries are both signatories of the CbC MCAA or have a bilateral agreement. If no exchange relationship exists, then in the case of a MNE Group with a reporting entity outside of Thailand and operations in Thailand, the Thai Revenue Department has the right to request the CbCR from the local operation. The Thai operation has 60 days in which to provide the CbCR following the request.

Some specific illustrations:

- A MNE group's UPE is located in Japan and it has two Thai subsidiaries. Japan and Thailand are signatories of the CbC MCAA. The CbCR for the MNE group will therefore be exchanged with the Thai Revenue Department from Japan under the CbC MCAA. It will not be necessary for either of the Thai subsidiaries to lodge the CbCR with the Thai Revenue Department upon request.
- A MNE group's UPE is located in the U.S.A. and it has a Thai subsidiary. The UPE lodges the CbCR with the U.S. tax authority. The U.S. is not a member of the CbC MCAA and there is currently no bilateral agreement for exchange of CbCR between the U.S. and Thailand. The Thai subsidiary will be required to submit the CbCR to the Thai Revenue Department within 60 days after request by the Thai Revenue Department.

Next, Thailand will sign the CbC MCAA and will start the exchange of information with the affiliated countries for the first time in June 2023. CbCR for the years commencing on or after 1 January 2021 are capable of being exchanged under the CbC MCAA.

Update of Thailand's APA Guidelines

Thailand has had an active Advance Pricing Agreement (APA) program for many years with the first bilateral APAs agreed with Japan in 2005. The legal basis for the bilateral APA is provided under relevant Double Tax Agreement and guidance on the APA application and process is provided in a document found in the Thai Revenue Department website: [Guideline on APA process en.pdf \(rd.go.th\)](#). The Thai Revenue Department has recently updated the APA guidelines on its website. Two major changes were made to the Guidelines are as follows:

- Roll-back period – A taxpayer can now apply for a roll-back period, which cannot be more than 2 accounting periods prior to the start of the period covered under the APA application. This is subject to facts and circumstances of each individual taxpayer. The new guidance requires that the taxpayer who intends to apply for the roll-back period explain their intention together with the reason(s) of necessity at the start of each APA application. The taxpayer should also provide the supporting evidence showing that the facts and circumstances of the requested roll-back period are comparable to the APA period.
- Criteria for rejection of the APA application: The Revenue Department may reject the APA application any time before the Revenue Department and the foreign tax authority conclude the agreement if at least one of the below criteria is met:
 - 1) The taxpayer did not submit sufficient information for APA consideration;
 - 2) The APA application has been rejected by other foreign tax administrations;
 - 3) The taxpayer's business is new and there is insufficient information on the Thai market;
 - 4) There is evidence of or suspicions over tax avoidance or other unusual activities without business reasons;
 - 5) There is evidence of non-compliance regarding the APA arrangement; and
 - 6) Other reasons for which the Revenue Department may reject the APA such as:
 - The taxpayer did not submit an annual compliance report for the APA without reasonable causes;
 - Insignificant business transactions as compared to the taxpayer's business transactions with other countries; and
 - No transfer pricing risks

Notwithstanding the above, the TRD may reject the roll-back period if the facts and circumstances of the taxpayer during the roll-back period are incomparable to the facts and circumstances during the APA arrangement period.

Contacts

- **Stuart Simons**
Partner - Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40135
Email: ssimons@deloitte.com
- **Dr. Kancharat Thaidamri**
Partner - Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40118
Email: kthaidamri@deloitte.com
- **Chairak Trakhulmontri**
Partner - Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40157
Email: ctrakhulmontri@deloitte.com
- **Alisa Arechawapongsawat**
Partner - Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40171
Email: aarechawapongsawat@deloitte.com



Dbriefs

A series of live, on-demand and interactive webcasts focusing on topical tax issues for business executives.



Power of With

Focus on the power humans have with machines.



Tax@hand

Latest global and regional tax news, information, and resources.

Get in touch



Deloitte Thailand | Add as safe sender

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Thailand

In Thailand, services are provided by Deloitte Touche Tohmatsu Jaiyos Co., Ltd. and its subsidiaries and affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organisation”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2022 Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.