



## TP Alert 转让定价快讯

### Required Contents for Local TP

### Documentation 本地文档应披露的内容

Thailand's transfer pricing laws require that companies or partnerships with revenues of not less than Thai Baht 200 million prepare documentation to support that their related party transactions are priced on an arm's length basis. This documentation is required to be submitted within a certain period of receiving a notification letter from the tax assessment officer as approved by the Director - General of the Thai Revenue Department. 泰国转让定价法令要求年收入不低于 2 亿泰铢的公司或合伙组织准备转让定价文档，用以说明关联方交易符合独立交易原则。转让定价文档必须在接获税务局通知后的一定期限内提交至税务局。

The Thai Revenue Department has now released Notification of the Director-General of the Revenue Department on Income Tax (No. 407) ("Notification") in relation to the required contents of the local transfer pricing documentation ("Local File") to be submitted. Regulations in relation to Master Files and Country-by-Country reporting are not covered by this Notification and are expected soon. 泰国税务局现已发布

关于所得税的税务局长通知第 407 号(以下简称第 407 号通知)·规定转让定价本地文档(以下简称本地文档)应披露的内容。至于集团主体文档与国别报告的相关规定·则不在第 407 号通知涵盖范围内·但预计近日会有相关公告。

### **Local File Required Contents 本地文档应披露的内容**

A summary of the information required to be included in the Local File by the company or juristic partnership required to submit the documentation (“reporting entity”) is as follows: 根据泰国法令·符合条件应准备转让定价文档的公司或合伙组织(以下简称报告个体)准备的本地文档应涵盖下列内容:

#### **Business Overview 业务总览**

- A description of business operations, value chain including key trading partners, key competitors, business strategies and industry analysis 说明报告个体营运概况和价值链·包括主要交易对象、主要竞争者、商业策略以及产业分析;
- Local organization chart, including the number of employees 本地组织架构图以及员工人数;
- Shareholding structure for the related companies or juristic partnerships that have transactions with the reporting entity 披露报告个体及与其发生关联交易的关联方的所在集团股权架构;
- Description of any business restructuring which took place between the related parties during the accounting period or prior period and the impact on profitability of the restructuring. 说明在本会计年度或前一会计年度是否发生关联企业间的架构重组·以及架构重组是否对报告个体的利润水平造成影响;
- Description of intangible property transfers between related parties and the impact on profitability on the reporting entity. 说明关联企业之间移转无形资产的情形·以及无形资产移转是否影响报告个体的利润水平。

#### **Related Party Transactions and TP analysis 关联方交易与转让定价分析**

- List of related party transactions showing category, counterparty and their country and amount of transaction 关联方交易明细清单·包含交易类型、交易对象、交易对象的所在国家或地区·以及交易金额;
- For the related party transactions listed above, which are considered material, a description of the transactions and pricing policies. 针对以上关联方交易明细清单中的重大交易·说明交易内容以及定价政策;
- List of the all the agreements for the material related party transactions, including summary of the main information and pricing conditions. 重大关联方交易合约清单·包括主要交易信息以及定价条件的摘要说明;

- Analysis of the functions, assets and risks for the reporting entity and related parties in relation to material related party transactions, above, and any differences compared to the prior accounting period. 报告个体在重大关联方交易中的功能、资产及风险分析;以及相较于前一会计年度在类似交易中功能、资产、风险的差异;
- Rationale for the selection of the transfer pricing method(s) for the material related party transactions, including reasons for the rejection of other transfer pricing methods, and identification of the tested party for the purposes of applying the transfer pricing method. 陈述选择合适的转让定价方法分析重大关联方交易的理由,同时须解释不选择其他转让定价方法的原因,并且说明如何选择受测试方;
- Details of the benchmarking analysis to apply the selected transfer pricing method(s), including: 说明转让定价基准分析的细节,包括:
  - Search process and sources for identifying the comparable transactions or companies/partnerships 搜索可比较交易或对象的过程以及数据来源;
  - List of the final set of comparable transactions or companies/partnerships 最终选择的可比较交易或可比公司列表;
  - Arm's length range based on the profit level indicator selected 选用的利润率指标以及独立交易区间;

The financial information for the related party transaction(s) tested should also be included. 转让定价基准分析需包括测试的关联方交易财务信息。

The tax assessment officer may also request other information apart from that listed above for the purposes of the transfer pricing analysis in notification letters approved by the Director-General of the Revenue Department. 除了上述资料之外,税务员可以在获得税务局长核准后,以书面通知函要求企业提交关于转让定价分析的额外信息。

### Consistency with OECD Local File 与经合组织对于本地文档内容披露的一致性

The Notification is generally consistent with the suggested Local File contents provided in the OECD Transfer Pricing Guidelines (2017). Some notable additions to the OECD suggested contents include: 第 407 号通知的内容基本上与经合组织在《转让定价指南 (2017)》中针对本地文档内容的披露要求一致,然而,第 407 号通知有几项额外的内容要求,值得企业注意:

- A value chain analysis 价值链分析;
- Summary of the main provisions of the agreements for material related party transactions – the OECD only suggests that copies of the agreement be provided. 第 407 号通知要求重大关联方交易的合约内容摘要,经合组织仅要求须备妥合约影本;

- In addition to reasons for the selection of the appropriate transfer pricing method(s), it is necessary to also provide reasons for why the other transfer pricing methods were not selected. 除了须说明选用某一转让定价方法之理由，还必须解释不选用其他转让定价方法的原因。

### Materiality 判定重大关联方交易

The Notification requires that only material related party transactions be analysed in detail. As group companies will typically have a number of different types of transactions with multiple related parties, the question of which transactions should be analysed is important in defining the scope of the work to be performed. There are also potential penalties for preparing incomplete Local Files. There is, however, no definition of materiality in the Notification or elsewhere in the transfer pricing laws. It therefore remains to be seen whether the Thai Revenue Department will provide formal guidance on their interpretation of what constitutes materiality. 根据第 407 号通知，企业仅需针对重大关联方交易进行详细的转让定价分析。实务上，集团企业成员间通常存在多种不同类型的关联方交易，转让定价分析重点则是需要判定哪些交易需要分析。若未将应执行分析的交易涵盖在本地文档中，可能被税务局视为未完整准备转让定价文档而受罚。然而，第 407 号通知与现行转让定价法令中并未提供重大"的定义，因此后续仍待税务局发布进一步关于重大性的说明或见解。

### Exemption from benchmarking analysis requirement 豁免执行转让定价基准分析的情形

The Notification provides that a reporting entity may not prepare the benchmarking analysis for companies or juristic partnerships which satisfy the following criteria: 根据第 407 号通知，符合下列条件的报告个体，不须准备转让定价基准分析：

- (a) Their operating revenue for the accounting period does not exceed THB 500 million; 报告个体的年度收入不超过 5 亿泰铢;
- (b) They did not enter into any related party transactions with entities that are subject to different corporate income tax rate(s) compared to the reporting entity; 报告个体并未和本地适用不同企业所得税税率的关联企业发生交易;
- (c) They did not enter into any related party transactions with entities that are incorporated overseas; and 报告个体并未和位于泰国境外的关联企业发生交易;
- (d) They did not have any tax losses incurred in the previous accounting periods which were carried forward as expenses in the calculation of taxable net profits for the purpose of corporate income tax during the reporting accounting period. Further, the related counterparty that entered into such transaction(s) should also not have any tax losses carried forward. 报告个

体在报告会计年度并无以前年度的所得税亏损抵扣，同时，交易对方亦无所得税亏损扣抵。

In brief, therefore, a Thai company which does not have more than THB 500 million operating revenues, has no carry forward tax losses, no cross-border transactions with related parties and transacts with related parties, which are subject to the same corporate tax rate, may choose not to perform benchmarking analysis. They are, however, required to prepare the Local File including the other required information. Interestingly, they are still required to select an appropriate transfer pricing method for their material related party transactions. Given that the process of selecting an appropriate transfer pricing method, itself, technically requires a benchmarking analysis it will be difficult to fully comply with the requirements without the performance of this analysis. 简而言之，当一个泰国公司年度收入不超过 5 亿泰铢且无企业所得税上的亏损扣抵，没有发生跨境的关联方交易，也没有与适用不同企业所得税税率的本地关联企业产生交易时，可以选择不做转让定价基准分析，但还是必须准备本地文档并涵盖其他必要内容。值得注意的是，在本地文档中，报告个体仍须针对重大关联方交易选择适当的转让定价方法，而就转让定价分析程序而言，选择合适的转让定价方法的目的是进行基准分析。若不进行基准分析，可能会导致无法选择适当的转让定价方法，而难以遵循第 407 号通知对本地文档内容的要求。

In addition, care should be taken in arriving at a conclusion that benchmarking analysis is not required based on a one-sided analysis of a domestic related party transaction. There may be situations where one Thai company satisfies the above conditions and does not need to prepare benchmarking analysis, but if the related Thai counterparty does not satisfy the conditions (e.g. greater than THB 500 million operating revenues), then they may need to prepare benchmarking analysis for the transaction(s) between the two entities. For example, if Company A provides management services to its Thai group of companies, including Company B which manufactures for sale to third parties, and Company A has operating revenues of THB 250 million and the other conditions are satisfied, then it does not have to prepare benchmarking analysis for the management services. However, if Company B has operating revenues of THB 600 million and its only related party transaction is the receipt of management services from Company A, then it would need to prepare a benchmarking study to test the management services (assuming the transaction is material). 此外，仅用单一交易方的状况判断可否豁免执行基准分析时必须格外谨慎。位于泰国国内两关联企业间的交易，可能发生其中一方满足前述豁免条件，而另一方却不满足（如年收入大于 5 亿泰铢）的情况，因此必须针对此交易进行基准分析。例如，A 公司向泰国的集团关联企业提供服务，其中包含一个制造公司 B 公司。A 公司年收入为 2.5 亿泰铢且同时满足其他豁免执行基准分析的条件，然而 B 公司年收入为 6 亿泰铢且其唯一的关联方交易即为接受 A 公司的管理服务。因此，必须针对管理服务进行基准分析（假定此交易属于重大关联方交易）。

## APAs 预约定价安排

In addition, entities which have obtained an Advance Pricing Arrangement (APA) between Thailand and other country(ies), will not be required to prepare benchmarking analysis for those related party transactions which are covered under the APA for the same accounting period. However, entities which have obtained an APA will still be required to prepare the Local File with the required information apart from the benchmarking study for the covered transactions. Again, it is questionable whether it should be necessary for the entity to also have to present the transfer pricing method selection for the covered transactions under the APA in the Local File. If an entity which has obtained an APA also has other (material) related party transaction(s), which are not covered under the APA, it will be required to prepare the benchmarking analysis for these transactions for the Local File. 已经获得确认的泰国与其他国家间预约定价安排 ( APA ) 的企业，将不需针对已被涵盖在 APA 范围内的交易准备基准分析。然而，仍需准备本地文档的其他内容。企业是否有必要在本地文档中说明适合 APA 涵盖的关联交易的转让定价方法并未得到确认。

若已获得 APA 的企业同时有其他未涵盖在 APA 范围内的重大关联方交易，则在本地文档中必须针对此类关联交易进行基准分析。

## Language 语言

The Notification requires that the Local File submitted to the Revenue Department be in the Thai language. This will create an additional compliance obligation for foreign MNCs operating in Thailand who will necessarily need to prepare both English and Thai versions of the documentation. 依据第 407 号通知，提交给税务局的本地文档须以泰文编制。此举将使需同时准备英文版本本地文档的跨国企业增加在泰国的法务遵循成本。

## Submission 提交

The Local File will need to be submitted to the tax assessment officer who issued the notification letter at the Large Business Tax Administration Division or Area Revenue Office that the company or juristic partnership is situated. The reporting entity will receive an official receipt number to evidence the submission as complete. 企业收到税务局书面通知后，应将本地文档提交至大型企业税务局或企业所在地的地区税务局，完成提交本地文档后，报告个体将收到官方收据与收件编号作为凭证。

## Effective date 生效日

The Notification is effective for accounting periods beginning on or 1 January 2021. Given that Thailand's transfer pricing laws were effective for periods on or after 1 January 2019, this means that companies would have had to follow the previous TP documentation guidance, Departmental Instruction Paw 113/2001, in preparing the documentation for the 2019 and 2020 years to date. 第 407 号通知

自 2021 年 1 月 1 日起开始的会计年度生效。由于泰国的转让定价法令已于 2019 年 1 月 1 日起的会计年度生效，这意味着企业在准备 2019 与 2020 会计年度的转让定价文档时，应依循部级法规 Paw 113/2001 的规定。

### Final thoughts 总结

After the introduction of the transfer pricing rules in 2019, the release of the Local File requirements to clarify the Thai Revenue Department's position is a welcome step forward. It is important that companies clearly understand the new Local File reporting requirements. Failure to prepare Local Files or preparation of incomplete Local Files may result in the imposition of a fine of up to THB 200,000. In addition, preparation of a Local File which does not contain thorough and supportable transfer pricing analysis may expose the entity to transfer pricing adjustments, which would result in additional tax, penalties and interest surcharges. 自从 2019 年泰国转让定价法颁布之后，税务局终于颁布了对于本地文档的详细指引，企业必须仔细了解本地文档的内容要求，否则可能被税务局视为未提供完整信息而遭受最高 20 万泰铢的罚款。此外，可能会引发税务局进一步的查核而增加补税并加计罚款与滞纳金的风险。

There are still regulations expected soon to address other transfer pricing related matters, including Master Files, Country-by-Country reporting and APAs. We will keep you informed of these developments as they occur. 除了本地文档之外，我们预期税务局近日将陆续发布更多关于转让定价的细节规定，包括集团主体文档、国别报告和预约定价安排等。我们将会实时向您更新后续的发展。

An unofficial English translation of the Notification is attached [here](#).

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