

THAILAND'S EXPERIENCE
ON
TRANSFER PRICING

**ECOSOC Special Meeting on International
Cooperation in Tax Matters**

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Phensuk Sangasubana

Presentation covers ...

1. Transfer Pricing Timeline

2. Legal Framework

3. Challenges

Key TP concerns

Understanding of Business Model

APA

Organisation Structure

4. Conclusion and Future Direction

1. Transfer Pricing Timeline

- 2002 Released Transfer Pricing regulation & guidelines
Departmental Instruction No. 113/2545 subject : Corporate Income Tax - The Determination of Transfer Price based on the Market Price
- 2003 Established Transfer Pricing Division under Bureau of Large Business Tax Administration
- 2005 Established APA Committee and Working Team
- 2006 Commenced competent authority meeting on APA
- 2008 First 2 APA cases reached agreement
- 2010 Released APA Guidelines for taxpayers
- 2012 4 Corresponding adjustment (MAP) cases reached agreement
- 2013 Due to release MAP Guidelines for taxpayers

2. Legal Framework

2.1 The Revenue Code

- **No provision specifically for transfer pricing**

- **Apply provisions that deal with gratuitous transfer or transfer with unreasonably low consideration**
 - **Section 65 bis (4) (7) (13) (14) (15)**
 - **Section 70 ter of the Revenue Code**

2.2 Departmental Instruction No. 113/2545 issued on 16 May 2002

- Market price standard for related transaction**
- Guideline on how to apply the arm's length principle to related transactions between associated enterprises**

Departmental Instruction No. Paw 113/2545 comprises 5 sections as follows:

- 1) Criteria for the Calculation of Net Profits for Income Tax Purposes.
- 2) Assessment of Revenue and Expenses based on the Market Price.
- 3) Methodologies in Determining the Market Price.
- 4) Transfer Pricing Documentation
- 5) Advance Pricing Arrangements (APAs) application

Plans to introduce specific TP legislation

Recommendations made by 2011 RD study

- Arm's length price (including in minor law – TP methodologies, comparability factors, documentation)
- Adjustment procedures (upward and downward adjustment of income and expenses, also covers secondary adjustment and corresponding adjustment)
- Inclusion of safe harbours
- Statute of limitation – 5 years for audit & refund
- Advance Pricing Arrangement (bilateral)

Plans for an overhaul of Thailand's tax system and legal reform package which includes TP and international taxation legislation

3. Challenges

3.1 Key Transfer Pricing Issues

common to all countries

- **Cost Sharing**
- **Intangible asset**
- **Business restructuring**
- **FAR & Comparability analysis**

- **Intangible Asset**

Issues :

- **Recognition and Valuation of intangible asset**
- **Treatment of income under DTA, i.e. Royalties vs. Business Profits**
- **Marketing Intangibles**
 - **How to identify activities or transactions that create marketing intangibles**
 - **How to share benefit/expenses between related parties.**
- **If there is no royalty payment , is royalty included in the price of goods/services.**

- **Business Restructuring**

RD still focuses on BR in risk assessment

Issues :

- **Substance over form - Recognition of the substance of business functions and risks of relevant entities**
- **PE and profits attributed to PE**

3.2 Business model in Thailand

- **Subsidiary & Contract manufacturer model (MNEs) – in general: electronics, electrical goods, automobile parts**
- **Problems with comparability and functional analyses – should be practical and reflect actual business in Thailand**
- **Government policy: Domestic profit shifting due to investment promotion schemes**
- **Residence countries of parent companies seek to shift profits away from Thailand**
- **Understanding of whole value chain**

3.3 Bilateral APA – is Thailand's policy which aims to eliminate international double taxation. However ...

- **It necessitates sharp learning curve**
- **Need to involve accountant/auditor**
- **Negotiations against more skilled and experienced counterparts**
- **Positions often completely diverse due to imperfect information and interpretation of ALP**
- **Bilateral APA is time and resource consuming**
- **Need to clear backlog of APA cases and ensure same information is received by both CAs**

3.4 Organisation structure of the Revenue Department

- **Shortage of skilled personnel – overlap of DTA and TP MAP/APA personnel and TP Audit and TP MAP/APA personnel**
- **TP audit is centralised and focuses on MNEs**
- **no permanent body responsible for TP MAP and APA**
- **APA programme run by APA working team comprising 1. economist & DTA expert 2. lawyer 3. accountant/auditor and approved by APA Committee Board**
- **No hand off to competent authority team (APA & MAP)**

5. Conclusion and future direction

5.1 Amendment of law to include specific TP legislation

5.2 Creation of MAP Office within International Tax Division with full time staff to handle APA cases

5.3 Training and manuals to enhance standard operations

5.4 Decentralising TP audit

4.5 Enhance relationship and partnership with taxpayers and consultant companies as well as foreign tax authorities

THANK YOU