

# Transfer Pricing 2014

A collection of transfer pricing summaries  
of countries in the

## Asia Pacific Region

procedure loans  
legislation TAX transfer-pricing  
guidelines  
audit cross-border  
penalties





# Transfer Pricing 2014

## Index

### A

Australia 2

### H

Hong Kong 4

### I

India 6

Indonesia 9

### J

Japan 10

### M

Malaysia 11

### P

Pakistan 13

### S

Singapore 14

### T

Taiwan 15

Thailand 18

“This publication has been prepared for the purpose of quick information dissemination. Its contents should not be used as a basis for advice or formulating decisions under any circumstances.”s

**DISCLAIMER:** The information shown is for information and comparative purposes only. You should seek professional advice before taking any action. All rights reserved. No part of this publication may be reproduced, stored in a retrievable system, be re-sold in any other form of binding or cover or transmitted in any form or by any means, electronic, mechanical, digital, photocopying, recording or otherwise without the prior permission of AGN International Ltd.

# AUSTRALIA

Updated: April 2014

<p><b>1. TP legislation/ guidelines</b></p>	<p>Australia's TP legislation is detailed in Subdivision 815-B, 815-C and 815-D of the Income Tax Assessment Act 1997. The Commissioner of Taxation ("Commissioner") has issued various rulings outlining the policy and practical operation of Australia's TP legislation, specifically TR 94/4, TR 97/20 and TR 98/11. Generally, the Commissioner seeks to apply the Australian legislation in accordance with OECD principles and recent amendments to Australia's transfer pricing rules seek to further align Australia's domestic regime with OECD practices.</p> <p>Those amendments have introduced significant changes, including:</p> <ul style="list-style-type: none"> <li>(a) expressly allowing the use of OECD guidelines (allowing legislation to 'move with the times' without having to formally amend);</li> <li>(b) introducing a self-executing regime (Commissioner no longer required to make a determination before a tax shortfall arises);</li> <li>(c) the Commissioner has reconstruction power to look at economic substance and construct a hypothetical transaction; and</li> <li>(d) without contemporaneous TP documentation supporting methodology used, taxpayers subject to <b>minimum</b> penalties of 25% on any shortfall;</li> </ul>
<p><b>2. TP documentation required to be filed with tax return</b></p>	<p>Taxpayers should maintain contemporaneous documentation supporting the basis for the arm's length price adopted. Documentary requirements for compliance purposes vary depending on the particular taxpayer - larger taxpayers require more detailed and robust TP documentation must be.</p>
<p><b>3. TP audits done by tax authority</b></p>	<p>The Australian Taxation Office ("ATO") regularly conducts compliance activities at all levels in this area and although it has been largely unsuccessful to date, is comfortable pursuing TP matters in the courts.</p>
<p><b>4. Advance Pricing Arrangement (APA)</b></p>	<p>APA's are available in Australia and are governed by Practice Statement Law Administration PSLA 2011/1</p>
<p><b>5. Mutual Agreement Procedures</b></p>	<p>Provisions for mutual agreement are found in double tax agreements between Australia and other tax jurisdictions.</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>Intra-group service charges are subject to the general deduction rules under Australian tax law. Depending on the type of intra-group service charge, withholding tax may be payable on payments to a non-resident (such as intra-group royalties).</p>

<b>7. Cross border management fee charges</b>	Management fees are subject to the general deduction rules under Australian tax law. There is no withholding tax imposed on such payment to non-resident.
<b>8. Inter-company loans</b>	No interest rate is specified on inter-company loans. Interest expenses are subject to the general deduction rules under Australian tax laws, although thin capitalisation rules also apply.
<b>9. Transfer pricing penalties</b>	There are no specific penalty rules for TP arrangements. However, the general penalty rules may apply and penalties of up to 75% of the tax shortfall (and up to 95% for repeat offenders) apply, plus interest.

# HONG KONG

<b>1. TP legislation/ guidelines</b>	<p>In December 2009, the Inland Revenue Department (“IRD”) issued the Departmental Interpretation and Practice Notes (“DIPN”) No. 46 “Transfer Pricing Guidelines – Methodologies and Related Issues). In the DIPN No. 46, the Commissioner of the IRD confirms that they would in general seek to apply the principles in OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.</p>
<b>2. TP documentation required to be filed with tax return</b>	<p>There is no specific TP documentation requirement, and only limited disclosure in profits tax return concerning whether or not there is transaction with a closely connected non-resident person is required. In addition, related party transactions have to be disclosed in audited accounts in accordance with accounting standards.</p>
<b>3. TP audits done by tax authority</b>	<p>No major TP audits have been done by the IRD so far.</p>
<b>4. Advance Pricing Arrangement (APA)</b>	<p>A Departmental Interpretation &amp; Practice Note No. 48 “Advance Pricing Arrangement” was issued by the Hong Kong Tax Department in March 2012 provide guidance to enterprises seeking an Advance Pricing Arrangement (APA). It explains the APA process and the terms and conditions of the APA process prescribed by the Hong Kong Tax Department.</p>
<b>5. Mutual Agreement Procedures (MAP)</b>	<p>Provisions for mutual agreement are found in double tax agreements between Hong Kong and other tax jurisdictions. Request for resolving of the double taxation issues by the tax treaty partners can be made in writing to the “The Hong Kong Competent Authority of 36/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong” or by email at <a href="mailto:taxtt@ird.gov.hk">taxtt@ird.gov.hk</a>. For MAP request made by Hong Kong resident a form IR.1454 should be completed and returned to the “Hong Kong Competent Authority”.</p>
<b>6. Basis to recover intra-group service charges</b>	<p>There is no specific requirement. Intra-group service charges are subject to the general deduction rules under Hong Kong tax laws. There is no withholding tax imposed on such payment to non-resident.</p>
<b>7. Cross border management fee charges</b>	<p>There is no specific requirement. Management fee charges are subject to the general deduction rules under Hong Kong tax laws. There is no withholding tax imposed on such payment to non-resident.</p>
<b>8. Inter-company loans</b>	<p>Interest received / charged on Inter-Company loans are subject to the general tax rules under Hong Kong Tax Law. There is no thin capitalization rule.</p>

**9. Transfer pricing penalties**

There is no specific penalty rule for TP arrangements. However, the general penalty rule may apply and penalty of up to three times of tax underpaid may be imposed on those cases that transfer pricing primarily used in the context of tax avoidance and tax evasion.



## INDIA

Updated: April 2014

**1. TP legislation/  
guidelines**

India's transfer pricing legislation is laid down in the Income Tax Act, 1961 under Chapter X – Special Provisions relating to avoidance of tax, from section 92 to 94A and Income Tax Rules, 1962 from Rule 10 to 10R.

Chapter X-A: General Anti-Avoidance Rule is applicable to all transactions whether domestic or cross-border, which lists out specified transactions which are not permissible and if such transactions are resorted to by the assessee then could result in disregarding the transaction, losing of tax benefit otherwise available under the provisions of law/DTAA, reallocating any receipt/expenditure, etc.,

Transfer pricing legislations are applicable not only to international transactions with associated enterprises but also to specified domestic transactions exceeding INR 50 Million in aggregate.

**2. TP  
documentation  
required to be filed  
with tax return**

Documents to be maintained are prescribed in Rule 10D & 10E of the Income Tax Rules, 1962. Details of the same are provided below:

The following apply to transactions exceeding INR. 1 Crore and has to be maintained for a period of 8 years from the end of the year in which the transaction took place.

- i. Ownership structure of the enterprise
- ii. Profile of the group along with name, address, tax residence, legal status
- iii. Broad description of the business of the enterprise and the industry in which it operates
- iv. Full details of transactions with associated enterprises
- v. Description of functions performed, risks assumed, resources employed etc.,
- vi. Record of economic and market analysis, forecasts, budget, financial estimates for the business as a whole and division/product wise like:
  - a. Official publications, reports, studies from Government Data Bases, market research studies from institutions of national or international repute
  - b. Stock exchange or commodity exchange, etc.,
- vii. Record of uncontrolled transactions for comparability and the record of analysis of comparability of such transactions with the international transactions with associate enterprises including agreements, letters, correspondences, etc.,
- viii. Description of methods used for determining the arm's length price of the transactions with associated enterprises support for most appropriate method
- ix. Assumptions, policies and price negotiations
- x. Details of adjustments made to transfer prices to align them to arm's length price
- xi. Any other relevant information with respect to the international transaction with associated enterprise
- xii. All authentic documents in relation to the international transaction with associated enterprises shall be maintained

<p><b>2. TP documentation required to be filed with tax return (cont)</b></p>	<p>Documents required to be filed with the return of income: Report in Form 3CEB certified by a Chartered Accountant has to be filed along with the return of income by the enterprise. The due date for filing the return of income along with the report is November 30, 2015.</p>
<p><b>3. TP audits done by tax authority</b></p>	<p>The Income Tax Department takes up regular and scrutiny assessments of enterprises with international transactions with associated enterprises. It calls for various documents and information as listed in point no. 2 above. In case the assessing officer is not satisfied with the details provided by the assessee or has reason to believe that the information provided is not complete/authentic and reliable, then he may re-compute the income chargeable to tax from such international transactions with associated enterprises, levy penalty along with interest and also invoke other prosecution provisions.</p>
<p><b>4. Advance Pricing Arrangement</b></p>	<p>Provision for Advance Pricing Agreement is provided under section 92CC &amp; 92CD which state that the Central Board of Direct Taxes may enter into an Advance Pricing Arrangement with any person with the approval of the Central Government for determining arm's length price or manner of determining the arm's length price in relation to an international transaction with associated enterprises which is valid for a period not exceeding 5 consecutive years or change in nature/circumstances of transaction whichever is less.</p>
<p><b>5. Mutual Agreement Procedures</b></p>	<p>Mutual Agreement Procedures are available under various DTAA entered into between India and other Countries (Article 25 of OECD Model Convention) where in the assessee may present his case to the Competent Authority of the State where he is a resident. The Competent Authority in India shall mean an officer authorised by the Central Government for the purpose of discharging such function.</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>There is no specific requirement for intra-group service charges. They are subject to general rules under the Indian Tax Laws and comparison with arm's length value of transaction. Withholding tax provisions apply equally to associated enterprises and international transactions with unrelated parties.</p>
<p><b>7. Cross-border management fee charges</b></p>	<p>There is no specific requirement for cross-border management fee charges. They are subject to general rules under the Indian Tax Laws and comparison with arm's length value of transaction. Withholding tax provisions apply equally to associated enterprises and international transactions with unrelated parties.</p>
<p><b>8. Inter-company loans</b></p>	<p>There is no specific requirement for interest on inter-company loans given or availed by the enterprise. They are subject to general rules under the Indian Tax Laws and comparison with arm's length value of transaction. Withholding tax provisions apply equally to associated enterprises and international transactions with unrelated parties.</p> <p>Thin capitalisation rules which are based on arm's length interest rates and eligibility to avail such funds in open market are applicable to international transactions with associated enterprises.</p>



## 9. Transfer pricing penalties

Penalties and prosecutions are provided under Chapter XXI and XXII respectively along with interest as specified in Chapter XVII. All penalties and prosecutions along with interest are applicable, as the case may be to international transactions as well. Some specific provisions relating to international transactions are listed below:

Offence	Penalty/Prosecution
Failure to maintain documentation, report the transaction or furnishes incorrect information	2% of the value of such transaction
Failure to furnish report by Chartered Accountant	INR 100,000
Failure to furnish information/documentation required by assessing officer	2% of the value of such transaction

**R. BUPATHY & CO.**

Firm: R. Bupathy & Co., Chartered Accountants [www.rbco1976.com](http://www.rbco1976.com)

Contact: CA R.Bupathy [rbco@rbco1976.com](mailto:rbco@rbco1976.com)

# INDONESIA

Updated: April 2014

1. TP legislation/ guidelines	Several regulations have been issued by the Directorate General of Taxes (DGT) and the latest is No. PER 22/PJ/2013 dated 5/30/2013. Also issued by the Ministry of Finance regulation No. 17/PMK.03/2013 dated 1/7/2013 concerning Audit Procedures.
2. TP documentation required to be filed with tax return	No specific TP documents are required to be filed except for attachments related to special relationship transactions and list of investments in affiliated companies and receivables from/payables to shareholders and/or affiliated companies.
3. TP audits done by tax authority	Tax authorities can conduct special audits if there are indications of TP. These special audits will be done based on risk analysis on data and information filed
4. Advance Pricing Arrangement	APA is available as stated in regulation No. PER-69/PJ/2010. DGT is authorized to make arrangements with taxpayers and work together with tax authorities of other countries to determine transaction prices between related parties, which are valid for 2 years, and monitor their implementation and renegotiate after this period expires. APA is not made retrospectively.
5. Mutual Agreement Procedures	MAPs are available as stated in regulation No. PER-48/PJ/2010.
6. Basis to recover intra-group service charges	Allocation of such charges is allowed as long as they are in proportion to the benefits gained and do not represent duplication of expenses. Head office expenses which are allowed to be allocated to subsidiaries do not include interest on funds used by head office, except for banking industry, and royalty/rent on head office assets.
7. Cross border management fee charges	Such charges that are allowed are charges related to operations or permanent establishment activities which amounts are determined by the DGT. These charges are subject to withholding tax of 20% or applicable tax treaty rates
8. Inter-company loans	DGT has the authority to classify such loans as capital paid up to prevent the possibility of payments of capital in disguise. The determination can be done based on indication of unusual ratio of capital to loan as compared capital to loan ratio in the case of arm's length transactions. If this is the case, interest is not allowed to be deducted and will be treated as dividend in disguise. Withholding tax of 20%, or lower rates applicable under tax treaty provisions, is charged on interest payments made to non-residents. There is no thin capitalization rule.
9. Transfer pricing penalties	DGT has the authority to adjust related party transactions in the case of impropriety and/or taxpayers do not adhere to APA. In this case, DGT will recalculate the taxable amounts and/or taxable income already reported and paid, and determines the tax that should be due.

# JAPAN

Updated: April 2014

<b>1. TP legislation/ guidelines</b>	<p>Japanese Tax Bureau has issued TP rulings. They have been in practice since 1986.</p>
<b>2. TP documentation required to be filed with tax return</b>	<p>Not required, but tax payer is obliged to maintain such documents and provide to tax authority when required.</p>
<b>3. TP audits done by tax authority</b>	<p>There is no fixed rule how they decide a tax payer to carry tax audit, but once chosen it may last minimum a year, and put a considerable burden to the company. TP Tax audit used to be for larger companies, but it is getting popular that medium/ smaller sized companies are also scrutinized because they expands to overseas.</p>
<b>4. Advance Pricing Arrangement</b>	<p>Available but have to wait for a long time. Informal consultation with the tax authority is recommended before officially apply for the APA.</p>
<b>5. Mutual Agreement Procedures</b>	<p>Mutual Agreement Procedures are available only with the countries tax treaty has been concluded.</p>
<b>6. Basis to recover intra-group service charges</b>	<p>As a practice, 5% to 7% mark up rate is accepted to intra-group services, especially when Japanese company is a receiving side. When a Japanese company is a paying side, there is no such standard and have to be verified to satisfy the Bureau.</p>
<b>7. Cross border management fee charges</b>	<p>Only on the basis of arm's transaction, the charges are deductible. As Management fee charge arrangement will be investigated in full, not only the documentation, but economic and logical good reason for that need to be substantiated.</p>
<b>8. Inter-company loans</b>	<p>Terms and conditions of the loan have to be commercial and on an arm's length basis. The transaction could be caught by Thin capitalization rule, regardless of the TP rule.</p>
<b>9. Transfer pricing penalties</b>	<p>General tax penalty rule applies, and no extra penalty tax rule exists. Penalty tax rate applicable is either 20% or 40%, of the amended tax liabilities. However, as referred to in 3 above, in general as the investigation may takes years until the end, if there are additional TP tax liabilities, interest penalty at a rate of 14.6% per annum for delayed payment sometimes reaches to an enormous amount.</p>



鳳友グループ  
Hor-U Group

Contact:

Firm: Hor-u Group [www.hor-u.jp](http://www.hor-u.jp)

Fumiaki Masulo [fumi-masuko@hor-u.jp](mailto:fumi-masuko@hor-u.jp)

# MALAYSIA

Updated: April 2014

<p><b>1. TP legislation/ guidelines</b></p>	<p>Inland Revenue Board (“IRB”) issued TP guidelines on 8 July 2003. A revised version of TP guidelines will be issued soon. Legislation has been introduced effective from 1 Jan 2009</p>
<p><b>2. TP documentation required to be filed with tax return</b></p>	<p>Taxpayer who enters into a controlled transaction with related companies is required to prepare and maintain contemporaneous TP documentation. It is mandatory to prepare but not required to be filed together with the tax return.</p>
<p><b>3. TP audit done by tax authority</b></p>	<p>IRB issued the TP Audit Framework (TPAF) with effective from 1/4/2013. TP Audits generally cover a period of 3 to 6 years of assessment depending on the TP Issues. However, with effect from 1 January 2014, the years of assessment to be covered will be restricted up to 5 years assessment. The selection of cases for audit is determined by the significance in amount of controlled transactions between related companies, before a detailed risk analysis is carried out.</p>
<p><b>4. Advance Pricing Arrangement</b></p>	<p>Taxpayers are allowed to apply for APAs with effect from 1 January 2009</p>
<p><b>5. Mutual Agreement Procedures (MAP)</b></p>	<p>Taxpayers residing in Malaysia can apply for assistance from the competent authorities in Malaysia through the MAP, on issues arising from TP audit adjustments affecting cross-border transactions with related companies in any treaty country.</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>Under the TP guidelines, taxpayer must apply arm’s length principle for intra-group services, it is necessary to consider the nature, value, cost and functions of the service from both the provider and recipient of the service.</p>
<p><b>7. Cross border management fee charges</b></p>	<p>Taxpayers are allowed deduction for such charges from overseas holding company or head office provided they are charged on arm’s length basis that is commensurate with the services provided. 10% withholding tax would apply if such services are rendered in Malaysia subject to tax treaty provisions.</p>
<p><b>8. Inter-company loans</b></p>	<p>IRB has introduced thin capital rules. Lender must determine and charge at arm’s length interest rate. Interest expense is deductible provided arm’s length and thin capitalization rules are satisfied.  15% withholding tax applicable on interest payments made to non-residents, subject to lower rates applicable under tax treaty provisions.  Nevertheless, the Government has deferred the implementation of thin capital rules until further notice.</p>

## 9. Transfer pricing penalties

If it is discovered during a TP audit that there has been an understatement or omission of income, a penalty will be imposed equals to the amount of tax undercharged (100%) accordingly..

A concessionary penalty rate may be imposed in a case where the tax payer makes a voluntary disclosure. Upon voluntary disclosure, the tax payer is still required to prepare the TP documentation.

No specific penalty regime. Existing legislation and penalty structure is applicable and can be in the region of 100% - 300% of the tax undercharged. The new TAF effective 1/1/2009, sets out the penalty rates to be imposed. The penalty rate is in the range of 15% to 35% of additional tax payable; the lower range indicative of voluntary disclosure before the case is selected for an audit. Repeated offence(s) will give rise to an additional penalty of 10% on the tax undercharged but limited to a sum not exceeding 100% of the amount of tax undercharged.

**GEP ASSOCIATES**

Firm: GEP Associates [www.gep.com.my](http://www.gep.com.my)

Contact: Foong Kok Keong [foongkk@gep.com](mailto:foongkk@gep.com)

# PAKISTAN

<p><b>1. TP legislation/ guidelines</b></p>	<p>There is no specific TP legislation except section 108 of the Income Tax Ordinance, 2001 which emphasis TP to be on an arm's length basis. The Income Tax rules identify four methods for determining the arm's length transaction viz., Comparable Uncontrolled Price Method; Re-sale Price Method, Cost-Plus Method &amp; Profit Split Method with powers to Commissioner to adopt any method.</p>
<p><b>2. TP documentation required to be filed with tax return</b></p>	<p>The Law in Pakistan does not provide with any specific documents to be filed with tax return related to TP.</p>
<p><b>3. TP audit done by tax authority</b></p>	<p>There is no specific audit requirement. The Commissioner, during the course of regular audit proceedings, has the powers to ask for the TP related transactions.</p>
<p><b>4. Advance Pricing Arrangement</b></p>	<p>Pakistan does not have an advance pricing arrangement regime.</p>
<p><b>5. Mutual Agreement Procedures (MAP)</b></p>	<p>No specific procedure has been defined it depend upon the mutual agreements.</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>There is no specific requirement. Depending on the type of transactions withholding tax provisions apply.</p>
<p><b>7. Cross border management fee charges</b></p>	<p>Cross border management fee are covered under the Double Taxation agreements between Pakistan &amp; other countries</p>
<p><b>8. Inter-company loans</b></p>	<p>Inter-company loans require special approval under section 208 the Companies Ordinance, 1984 and restrict inter-company loans on softer terms.</p>
<p><b>9. Transfer pricing penalties</b></p>	<p>Transfer pricing penalties are not specifically defined under the Income Tax Ordinance, 2001.</p>



# SINGAPORE

Updated: April 2014

<p><b>1. TP legislation/ guidelines</b></p>	<p>Inland Authority of Singapore (“IRAS”) issued TP guidelines on 23 February 2006, followed by supplementary TP guidelines on related party loans and related party services issued on 23 February 2009. Subsequently, section 34D of the Singapore Income Tax Act has been introduced to ensure that related party transactions are conducted on arm’s length basis.</p>
<p><b>2. TP documentation to be filed with tax return</b></p>	<p>Taxpayer should maintain TP documentation. However, it is not required to be filed with the tax return.</p>
<p><b>3. TP audit done by tax authority</b></p>	<p>IRAS, under the TP consultation process, may target taxpayers with substantial cross border related party transactions as well as taxpayers making continues losses. IRAS will assess the adequacy of the taxpayer’s compliance with the arm’s length principles for intra-group transactions and may make adjustments if profits are not at arm’s length.</p>
<p><b>4. Advance pricing arrangement</b></p>	<p>IRAS issued the Supplementary Guidance on Advance Pricing Arrangement (“APA”) on 20 Oct 2008. Taxpayers can avail themselves to APA’s where appropriate.</p>
<p><b>5. Mutual Agreement Procedures (MAP)</b></p>	<p>Singapore as a treaty partner to more than 70 double tax treaties subscribes to the mutual agreement procedures generally as prescribed under Article 25 of the OECD model tax convention.</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>IRAS accepts the cost plus 5% mark up as an arm’s length service fee charge for routine support services rendered between intra-group and related companies. IRAS expects non-routine support services to be charged and recovered on arm’s length basis that is commensurate with the industry practice and/or substantiated by proper bench marking studies or analysis</p>
<p><b>7. Cross border management fee charges</b></p>	<p>Taxpayers are allowed deduction for such charges from overseas holding company or head office provided they are charged on arm’s length basis that is commensurate with the services provided. There is a 17% withholding tax if such services are rendered in Singapore subject to tax treaty provisions.</p>
<p><b>8. Inter-company loans</b></p>	<p>Lenders can extend inter-company loans within Singapore interest free subject to interest restriction on their non-income producing and/or non-trade balances. However, with effect from 1 January 2011, cross border inter-company loans will be required to be charged an arm’s length interest rate. There is a 15% withholding tax on interest payment to non-residents, subject to tax treaty provisions. There is no thin capital rule.</p>
<p><b>9. Transfer pricing penalties</b></p>	<p>The general penalty rules in the Income Tax Legislation will apply</p>



Contact: N Vimala Devi [devi.vimala@bsl.sg](mailto:devi.vimala@bsl.sg)

Firm: BSL Tax Services Pte Ltd [www.bslpac.com.sg](http://www.bslpac.com.sg)

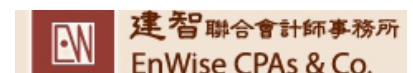
**TAIWAN**

Updated: April 2014

<p><b>1. TP legislation/ guidelines</b></p>	<p>Based on Article 43-1 of Taiwan Income Tax Act (the “ITA”), the Ministry of Finance (the “MOF”) issued “Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s-Length Transfer Pricing (the “TP Guideline”) as the supreme guidance in the field of transfer pricing audit and assessment. The TP Guideline became effective since December 28th, 2004 and is followed by various rulings elaborating the Safe Harbor Rule, calculation of TP adjustment, etc</p>
<p><b>2. TP documentation required to be filed with tax return</b></p>	<p>Tax payers should disclose information regarding related-party transactions in Page 18~21 of income tax return. The information should include a group organization chart, basic financials of related parties, a summary of controlled transactions (by transaction types and by related parties), etc. The tax payers who can meet the Safe Harbor Rules are exempted from the disclosure requirements.</p> <p>Tax payers engaging in related-party transactions should also maintain contemporaneous documentation (“TP Report”). While tax payers file income tax return, TP Report should be completed but needs not to be filed together. Tax payers should provide TP Report within one month upon receiving tax authority’s request. Application for one more month extension may be acceptable. The tax payers who can meet the Safe Harbor Rules are exempted from the preparation of TP Report, but should provide other substitutive documents instead.</p>
<p><b>3. TP audit done by tax authority</b></p>	<p>A routine TP audit is generally performed as part of income tax return audit by tax authorities. Based on TP information disclosed in tax return, tax authorities will request tax payers to submit TP Report or other supporting documents, which is usually one of the many documents requested by the authorities for assessing the tax return.</p> <p>In every year, five National Taxation Bureaus will select specific companies to perform special TP investigation, which is an in-depth and comprehensive audit in every related-party transactions. The special TP audit is performed by a designated team and usually takes at least one year to close the case.</p>
<p><b>4. Advance Pricing Arrangement</b></p>	<p>Qualified tax payers may apply for advance pricing arrangement (“APA”) with tax authorities. Upon receiving the application, the tax authority should complete the evaluation and make conclusion within one year, with a chance for extension up to 12 months. Once the evaluation is concluded, the tax authority should further discuss with the tax payer and seek for signing the APA within 6 months. Once the APA is signed, it shall be valid for 3 ~ 5 years, with a chance of extension for another 5 years at most.</p>



<p><b>5. Mutual Agreement Procedures</b></p>	<p>Mutual agreement procedures (“MAP”) are prescribed in double taxation agreements between Taiwan and other countries. Up to 2013, Taiwan has built up a treaty network with 25 countries, most of which are in Asia and Europe.</p> <p>Settlement of cross boarder TP controversy through MAP is not common in practice. Instead, tax payers (including Taiwan subsidiary or branch office of foreign multinational companies) usually prefer to enter into negotiation with tax authorities and seek for an agreement on taxable income adjustment.</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>Intro-group service charges should be subject to arm’s length principle as prescribed under the TP Guidelines. Basically, intra-group pricing policies should be sustained by a TP analysis. Provided that a TP analysis or documentation cannot be provided, a 5%~10% cost-plus mark up for intra-group services is usually accepted by tax authorities. For R&amp;D related services, the cost-plus rate may be raised to 10% or above.</p>
<p><b>7. Cross border management fee charges</b></p>	<p>The Arm’s length principle under the TP Guidelines should apply to cross border management fees charged between related parties. Management fees paid to foreign related enterprises is usually subject to a 20% withholding tax and full expense deduction is allowed if the tax payer can provide complete supporting documents and the intra-group pricing policy is in arm’s length.</p>
<p><b>8. Inter-company loans</b></p>	<p>An arm’s length interest rate should be charged on inter-company loans. Interest paid to foreign lender is subject to a 20% withholding tax and a reduced rate may apply under tax treaties. Interest expense is fully deductible if the arm’s length principle and the thin capitalization rule are satisfied.</p> <p>Taiwan has introduced the thin-capitalization rule since 2011. Deduction of interest expenses due to inter-company loans should be limited by a 3:1 debt/equity ratio. Interests attributed to the excessive debts will be excluded from deductible expenses.</p>
<p><b>9. Transfer pricing penalties</b></p>	<p>Substantial TP adjustment assessed by tax authorities will result in a penalty up to 200% of underpaid taxes, which is regulated under Article 110 of the ITA. Failure to provide TP Report or other substitutive documents may also trigger the said penalty. Additional interests will be charged on a daily basis.</p>



# THAILAND

Updated: April 2014

<p><b>1. TP legislation/ guidelines</b></p>	<p>Thailand's transfer pricing rules are contained in its Revenue Code, in order to prevent the evasion of taxation caused by manipulated transfer pricing within the MNEs, tax authorities can price goods and services by applying the provisions of Section 65 bis (4) and (7), Section 65 ter, and Section 70 ter under the Revenue Code, Double Tax Agreements between Thailand and other countries, as well as Standard Accounting No. 37 and 47. Moreover, the Revenue Department recently issued Departmental Instruction No. Paw 113/2545, Subject : Corporate Income Tax - The Determination of Transfer Price based on the Market Price, issued on 16th May 2002, which is a guideline on how to Thai taxpayers should apply the arm's length principle.</p>
<p><b>2. TP documentation required to be filed with tax return</b></p>	<p>There is no specific TP documentation requirement.</p>
<p><b>3. TP audit done by tax authority</b></p>	<p>No major TP audits have been done by the TRD.</p>
<p><b>4. Advance Pricing Arrangement</b></p>	<p>According to, Departmental Instruction No. Paw 113/2545 (Clause 5), APAs are available. However, based on current practice, the Thai Revenue Department is not willing to accept applications for unilateral APAs. Bilateral agreements may be applied for under the mutual agreement procedure of treaties. The Thai Revenue Department has issued a booklet including guidance for bilateral APAs</p>
<p><b>5. Mutual Agreement Procedures</b></p>	<p>In order to prevent the evasion of taxation caused by manipulated transfer pricing within the MNEs, it should be followed with the Departmental Instruction No. Paw 113/2545. Basis of calculation income should be market price which acceptable by Revenue Department (See no.6)</p>
<p><b>6. Basis to recover intra-group service charges</b></p>	<p>Market price would be charged between independent parties at the date of transaction for the sale of assets, provision of services or lending of funds under the same circumstances.</p> <p>Pricing methods that the Revenue Department accepts are as follows:</p> <ul style="list-style-type: none"> <li>• Comparable Uncontrolled Price Method</li> <li>• Resale Price Method</li> <li>• Cost Plus Method</li> <li>• Other methods if any of the above methods cannot be applied, including profit based methods adopted by OECD such as profit-split method, transactional net margin method and any other methods that are internationally accepted.</li> </ul>

**7. Cross border management fee charges**

Management fee charges is based on market pricing methods according to No.6, withholding tax related with this charges should be considered to the DTA.

**8. Inter-company loans**

No interest rate is specified on inter-company loans.

**9. Transfer pricing penalties**

There is no specific penalty for transfer pricing assessments. However, the general corporate tax penalty regime applies. A penalty of up to 100 percent of the additional corporate tax and interest surcharges of 1.5 percent per month may apply on outstanding tax.

**THAIAUDIT.CO.TH**

Firm: Thai Consultants Group [www.thiaudit.co.th](http://www.thiaudit.co.th)  
Contact: Kijja Summacarava [kijja@thiaudit.co.th](mailto:kijja@thiaudit.co.th)

