

# Transfer Pricing Country Summary Taiwan

June 2018

## Legislation

### Existence of Transfer Pricing Laws/Guidelines

The legal framework for transfer pricing was introduced in Article 43-1 of the Income Tax Law 1971. Accordingly, transfer prices in business transactions among affiliated parties must reflect market prices, either domestic or foreign transactions. Other rules for transfer pricing in Taiwan are based on the Financial Holding company Law Article 50 and Business Merges and Acquisitions Law Article 42<sup>1</sup>.

The guidelines for transfer pricing rulings are included in the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing, effective on December 28, 2004.

### Definition of Related Party

Related parties are defined as a party that has equity ownership, common management or effective control over finance, personnel, or operations of another party. Additionally, a joint venture agreement with another party is also treated as being a related party. Specifically, the transfer pricing guideline considers the related party if it falls under one or more of the following:

- A profit-seeking company directly or indirectly holds at least 20% of the total outstanding common (voting) shares in another profit-seeking company;
- At least 20% of the common (voting) shares of a profit-seeking company and that of another are held by the same person;
- A profit-seeking company that has the highest ownership in a profit-seeking company. In this case, the ownership percentage must be at least 10%;
- At least 50% of executive shareholders or directors of a profit-seeking company and that of another profit-seeking company are the same;
- The aggregated number of directors of one profit-seeking company and that of another profit-seeking company, in which it directly or indirectly holds at least 50% of the common (voting) shares, reaches a half or more of the total number of directors in the latter profit-seeking company;
- The chairman, general director or equivalent position in one profit-seeking company is that of another profit-seeking company, or has relations with a spouse or blood relative at the second degree at most of that of another profit-seeking company;
- A profit-seeking enterprise and its head office is located outside the territory of Taiwan, its branch office is inside the territory of Taiwan. Or a profit-seeking enterprise and its head office of is located within the territory of Taiwan and the branch office is located outside the territory of Taiwan;
- A profit-seeking company and another one have entered into a joint venture agreement.

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<sup>1</sup> <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=J0080041>

## Transfer Pricing Scrutiny

Transfer pricing inspection is mostly carried out in management serviced fee charged by the parent company to its affiliates and cost allocation of the head office. In addition, company with financial ratios and figures that are outliers to industry average, multinationals that report consistent losses while continue to expand operation can expect to be scrutinized from tax authority.

A company can be audited in terms of transfer pricing if it fails to disclose required and/or related-party transaction documents or does not meet the requirement for transfer pricing filing to the tax authority.

## Transfer Pricing Penalties

In case transfer prices are adjusted by the National Tax Administration (NTA), a penalty of up to 300%<sup>2</sup> of unpaid taxes can be charged under Article 110 of Taiwan's Income Tax Law. This rule is applicable as of the tax year 2005.

## Advance Pricing Agreement (APA)

In March 2015, amendments on transfer pricing guidelines were enacted. The Taiwanese authorities have lowered the threshold to apply APAs. The new threshold is TWD 500 million for the accumulated transaction amount and TWD 200 million for the annual transaction amount. In addition, a company can apply for APA if it does not involve in tax evasion in the past three years; and it provide required documents for the APA application within a predefined time schedule.

An application for APA must be submitted within the first year in which the transactions covered in the APA carried out.

An APA is in force for a period from 3 to 5 years, or during the period which the transfer pricing transactions cover, whichever is shorter.

No filing fee is applied for APA.

## Documentation and Disclosure Requirements

### Tax Return Disclosures

Companies are required to disclose related-party information to the tax authorities. Specifically, investment structure, related parties and related-party transaction value, and transfer pricing method used should be disclosed. Taiwan entities have to disclose information regarding the Master file and

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<sup>2</sup> <https://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=G0340003>

CbC Report according to the new transfer pricing requirements when corporate income tax returns are filled in. This will regard to which entity has the responsibility to fill in the Country-by-Country Report or information on the Ultimate or Surrogate Parent Company.

### Level of Documentation

The required transfer pricing documentations consist of business overview, organization structure, transfer pricing report and transaction summary, relationship with related-party report and related-party consolidated business report, any other relevant documents of related-party transactions.

### Record Keeping

Required and relevant transfer pricing documents for tax purposes are to be held for 10 years as from the tax year.

### Language for Documentation

Documentation for submission to the Taiwanese tax authority should be in Chinese. However, documents in English can also be accepted if approved by the tax authority

### Small and Medium Sized Enterprises (SMEs)

SMEs can apply the safe harbor in which compliance burden is lessened for them. A SME is exempted from filing transfer pricing report if it meets at least one of the following conditions:

- The annual revenues is at most TWD 300 million;
- The annual revenues is between TWD 300 million and TWD 500 million; and the SME has no transaction with foreign related party; and the SME makes use of TWD 2 million at most of tax credit or has losses carried forward at most USD 8 million 5 years backwards;
- The total value of annual controlled transactions is at most TWD 200 million;
- The accumulated value of annual controlled transactions of the same kind is at most TWD 10 million;
- For foreign enterprises with the total value of annual controlled transactions that exceed TWD 10 million, the controlled transaction of the same kind with the same related parties are no more than TWD 5 million.

### Deadline to Prepare Documentation

Transfer pricing reports should be prepared within 5 months as of the tax year ended. In addition, the preparation should be contemporaneous when a company files corporate income tax return.

## Deadline to Submit Documentation

Documents must be submitted within 1 month of request from tax authorities. The deadline can be extended for another month depending on specific situations.

## Statute Of Limitations

Five years of documentation as from the tax year.

## Transfer Pricing Methods

The following methods are in use:

- Comparable uncontrolled price (CUP) method
- Resale price method
- Cost plus method
- Profit spit method
- The comparable profit method

The choice of transfer pricing method depends on specific situation, but generally should be the most appropriate method.

## Comparables

Taiwan has its own database of comparable information. Foreign comparables are also accepted at tax authorities, if the Taiwanese database is not sufficient.