



# Transfer Pricing **Country Summary**

## **Taiwan**

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## 1. Introduction

The Regulations Governing Assessment of Profit-seeking Enterprise Income Tax on Non-Length Arm's Transfer Pricing govern transfer pricing in Taiwan (TP Audit Regulations). Over the years, the Ministry of Finance (MOF) has also issued a number of transfer pricing-related tax judgements.

In 2004, the MOF issued the TP Audit Regulations, taking into account OECD transfer pricing standards and equivalent laws in other important nations.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

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 Mergers and Acquisitions Law Article 42.

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 28 December 2004.

### b) Definition of Related Party

Related parties are defined as a party with equity ownership, common management, or effective control over another party's finance, personnel, or operations. Additionally, a joint venture agreement with another party is also treated as 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 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 are located outside the territory of Taiwan, its branch office is inside the territory of Taiwan. Or a profit-seeking enterprise and its head office 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.

### c) Nature of Transfer Pricing Documentation

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. According to the new transfer pricing requirements, Taiwan entities have to disclose information regarding the Master file and CbC Report when corporate income tax returns are filled in. This will regard

which entity has the responsibility to fill in the Country-by-Country Report or information on the Ultimate or Surrogate Parent Company.

#### d) Tax Havens & Blacklists

N.A.

#### e) 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 amount. In addition, a company can apply for APA if it does not involve tax evasion in the past three years; and it provides required documents for the APA application within a predefined schedule.

An APA is in force for 3 to 5 years, or during the period which the transfer pricing transactions cover, whichever is shorter, and the application for APA must be submitted within the first year in which the transactions covered in the APA are carried out. There is currently no filing fee is applied for APA.

#### f) Audit Practice

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

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

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

#### b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

#### c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

#### e) Choice of Transfer Pricing Method

The following methods are in use:

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

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

#### f) Economic Analysis – Benchmark Study

According to Article 8 of the Assessment Rules, while establishing the comparability of various transactions, the fundamental economic characteristics of the transaction and the assignment of economic advantages and the following comparability considerations should be taken into account. Foreign comparables are permissible if there are no or insufficient domestic comparables, yet tax authorities may prioritise local enterprises in particular cases. While each transfer pricing professional's database may differ, the most regularly utilised databases are "Osiris" and "OneSource," which have been made public since they are the databases used by the tax authorities. The tax authorities have utilised other databases to generate credit ratings for profit-seeking businesses.

#### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

#### h) Financial Statements

Taxpayers are required to submit their financial statements in their TP documentation.

#### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
<b>Corporate Income Tax</b>	File	Paper	May, 31 <sup>st</sup> .	N/A	N/A	Yes
<b>Master File</b>	File	OECD Guidelines	December, 31 <sup>st</sup> .	N/A	Yes	N/A
<b>Local File</b>	Prepare	OECD Guidelines	May, 31 <sup>st</sup> .	N/A	Yes	Yes
<b>CbCR</b>	File	OECD Guidelines	December, 31 <sup>st</sup> .	Yes	Yes	No
<b>Local Form</b>	File	OECD Guidelines-RPF	May, 31 <sup>st</sup> .	N/A	N/A	Yes
<b>Annual Accounts</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Segmented P/L</b>	N/A	N/A	N/A	N/A	N/A	N/A
* Taiwan has bilateral CbCR exchange agreements with Australia, Japan, and New Zealand as of 2021.						

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

- The annual revenues are at most TWD 300 million.
- The annual revenues are between TWD 300 million and TWD 500 million, and the SME has no transaction with the foreign related party, and the SME makes use of TWD 2 million at most of the 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.

In most cases, profit-seeking Resident or Non-resident companies with a domestic PE of business or business agents must file both a provisional (semi-annual) and a final (annual) return (article 67 of the ITA). Provisional returns are filed between 1 September and 30 September of the tax year. Annual tax returns must be submitted with the tax authorities in the fifth month after the tax year ends. The income tax returns must be submitted on paper using the NTA's forms.

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

The entities must produce a paper copy of the file within one month of receiving a request from the tax authorities. In practice, the tax authorities may occasionally enable the copy to be sent through email.

The statute of limitation is five years of documentation from the tax year.

#### j) Mandatory Language

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.

#### k) Notification Requirement

If the MNE Group referred to in the preceding paragraph appoints one constituent entity to submit the CbC report as a sole substitute for the UPE and is based outside of Chinese Taipei, any profit-seeking entity of the MNE group based in Chinese Taipei is not required to submit a CbCR to the local tax collection authority if the MNE group meets the following conditions.

- the SPE's tax residence jurisdiction requires the filing of CbC reports;
- the jurisdiction in the preceding paragraph has an agreement in effect with Chinese Taipei that requires the exchange of CbC reports by the time specified in the first paragraph for submitting the CbC report, and the tax collection authority can obtain the CbC report in accordance with the agreement; and
- the profit-seeking enterprise has disclosed the relevant information of the UPE.

The notice must be submitted simultaneously as the income tax return (31 May for year-end calendar companies).

#### l) Record Keeping

general ledgers, stock records, and diary journals are all needed to be kept in most cases. Accounting documents such as GUIs or invoices must be maintained for a minimum of 5 years, while accounts and records must be preserved for at least 10 years.

#### m) Penalties and Interest Charges

If transfer prices are adjusted by the National Tax Administration (NTA), a penalty of up to % 300 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. Moreover, a punishment of no less than TWD 3,000 and no more than TWD 30,000 will be assessed if a taxpayer refuses to provide the requisite documentation for tax assessment pursuant to Article 46 of the Tax Collection Act.