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- The text under the headings on the following pages is a sample/guideline as to the sort of information we are looking for. Please replace this text with the information relevant to your country.
- Please be aware that the text you submit will be most likely be exactly as it appears in the e-book, so it should be reviewed thoroughly.
- Please **do not** make edits to the headings which are in purple and have been bolded.
- The below headings should be used to complete your country's transfer pricing eBook submission. If you believe your country requires an additional heading please add it as you see fit. However, we will be limiting country submissions to approximately 4 pages.
- Every section must be completed. If a heading does not apply to your country, then please write '**not applicable**' so that it is clear that the heading has not been overlooked.
- The focus should be on presenting information clearly and concisely.
- Please return your completed submission to **thomas.cursley@gti.gt.com** as soon as possible.
- Please note that it will be the responsibility of the member firm to maintain their country's content in the e-book. Content management guidelines will be distributed separately.

| Background information | |
|------------------------|--|
| Country | <ul style="list-style-type: none"> • Taiwan |
| Date submitted | <ul style="list-style-type: none"> • 2018-01-20 |
| Name of main contact | <ul style="list-style-type: none"> • Jay Lo, jay.lo@tw.gt.com |

[Taiwan]

| | |
|------------------------------|--------------------|
| When did your TP Rules start | 2004 |
| Level of TP | Established regime |
| Return Disclosure | Yes |



| | |
|---------------|---------------------------|
| Documentation | Compulsory with threshold |
| Methods | Best Method Approach |
| Audit Risk | High |
| Penalties | High |
| APA | Available |

Regulatory snapshot

- Taiwan's Regulations Governing Assessment of Profit-seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing have been in effect since 28 December 2004 and are enacted pursuant to the provisions set out in Paragraph 5, Article 80 of the Income Tax Act.
- Profit-seeking enterprises are required to disclose significant related-party transactions in their annual tax returns.
- Transfer pricing (TP) documentation is compulsory within prescribed thresholds.
- Taxpayers meeting certain criteria need to prepare three layers of transfer pricing documentation being as follows:
 - A master file giving an overall perspective on the business
 - A local file containing information for each country
 - A country by country reporting file.
- Taiwan applies the "best method approach" for conducting TP analyses.
- Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, comparable profit, profit split, comparable uncontrolled transaction, and other arm's length methods approved by the Ministry of Finance (MOF). However, some methods may not be accepted for certain types of transactions.
- Profit-seeking enterprises with annual revenue exceeding NTD 300 million and related-party transaction amounts of more than NTD 200 million are required to complete TP reports before filing corporate income tax returns, and to present these reports within one month of their request by a tax officer.
- Failure to present TP documentation when requested by the tax authorities is punishable by a fine ranging from NTD 3,000 to NTD 30,000, with the precise fine amount left to the discretion of the tax officers. Corporate income tax misfiling from failing to follow transfer pricing rules is punishable by a maximum fine of twice the underpaid portion of the corporation's income tax liabilities, as determined by the audit results.
- Advance Pricing Agreement (APA) options are available in Taiwan. Once granted, an APA can be effective for 3 to 5 years from the year of application.

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

Yes, transfer pricing in Taiwan is regulated by the Regulations Governing Assessment of Profit-seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing (TP Audit Regulations). The Ministry of Finance (MOF) has also issued several transfer pricing-related tax rulings over the years.

Effective date of commencement of transfer pricing regulations

The TP Audit Regulations came into effect 28 December 2004. The regulations were enacted pursuant to the provisions set out in Paragraph 5, Article 80 of the Income Tax Act.

Rulings, laws and guidelines

MOF published the TP Audit Regulations in 2004, taking into consideration OECD transfer pricing guidelines and related legislation in other major countries.

Is transfer pricing documentation required? If so, what information should be included?

Where significant related-party transactions occurred during the year, tax payers should prepare TP documentation, including a TP report, and have these documents ready for inspection at the time of the corporate income tax return filing.

Business entities meeting certain criteria can elect to use alternative supporting documents, rather than a full TP report,

to justify their transfer pricing. Alternative supporting documents are generally easier to prepare.

A TP report should include the following contents: background information and industry overview, functional and risk analysis of all transacting parties, evaluation of each controlled transaction based on prescribed rules, selection of comparable parties based on certain criteria, analysis of degrees of comparability, selection of the most appropriate method, disclosure of pricing strategy and other relevant information regarding other participants in the controlled transactions, and determination of whether the controlled transactions are within arm's length range.

Effective from 2017, taxpayers meeting following criteria need to prepare three layers of transfer pricing documentation:

| Type of document | Criteria |
|----------------------------------|--|
| Master File | Annual revenue plus non-operating income for the Taiwan entity exceeds NTD 3 billion, and carried out related-party transactions in excess of NTD 1.5 billion per annum. |
| Local TP file | Same as existing criteria: annual revenue exceeding NTD 300 million and related-party transaction amounts of more than NTD 200 million |
| Country by Country report (CbCR) | Consolidated total group revenue for the prior year is in excess of NTD 27 billion. |

What are the deadlines for documentation preparation?

A business entity must indicate on its corporate income tax return whether a TP report has been prepared at the time of filing. Accordingly, it is recommended that companies have a TP report ready prior to filing their corporate income tax returns.

Deadline for filing Master File and CbCR is end of the following year.

In which language should documentation be filed?

Documentation must be filed in Traditional Chinese.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept for at least seven years (the statute of limitations in Taiwan).

Are intercompany agreements recommended?

Taxpayers are advised to document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

Profit-seeking enterprises are required to disclose significant related-party transactions in prescribed formats on their annual tax returns. A business entity that meets one of the following criteria can be exempt from disclosing related party transactions on its corporate income tax return and, hence, does not need to prepare a TP report:

- Combined operating revenue and non-operating income are less than TWD 30 million for the filing year.
- The corporation has generated total combined operating revenue and non-operating income of less than TWD 300 million per annum while having no related entities outside of Taiwan, not claiming tax credits in excess of TWD 500,000 per annum and not offsetting net operating losses aggregated from the past ten years in excess of TWD 2 million per annum.

Enterprises not meeting the disclosure exemption rules above

When a non-exempt business entity's aggregate transactions with all related enterprises exceed TWD 50 million per annum, or when aggregate transactions with a single related enterprise exceed TWD 12 million, the transactions are deemed significant and must be disclosed accordingly. In the case of a non-exempt business entity carrying out transactions with related persons instead of related enterprises, aggregate transactions with all related persons exceeding TWD 25 million per annum, or with the same related person exceeding TWD 6 million, are regarded as significant and

require disclosure. The definitions of related enterprises and related persons are provided in the TP Audit Regulations.

The regulations do not require taxpayers to obtain special certification related to the disclosed information.

Which transfer pricing methods are acceptable?

Acceptable TP methods include comparable uncontrolled price (CUP), resale price, cost plus, comparable profit, profit split, comparable uncontrolled transaction, and other arm's length methods approved by the Ministry of Finance (MOF). However, some methods may not be accepted for certain types of transactions.

Is there a priority among the acceptable methods?

Taiwan applies the best method approach to transfer pricing analysis. There is no priority among the acceptable methods as long as the method used is the most appropriate arm's length method for the given controlled transaction. In most cases, Taiwan's tax authorities prefer traditional transaction methods over transactional profit methods.

What is the statute of limitations on assessment of transfer pricing adjustments?

Per Article 21 of the Tax Collection Act, the general statute of limitations is five years if a return is filed on time, the tax due is paid in full, and no intent to defraud the tax authorities was identified. If the return is not filed on time or there appears to be intent to defraud the tax authorities, then the statute of limitations extends to seven years.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

If the required TP documentation is not presented when requested by a tax officer, a fine ranging from NTD 3,000 to NTD 30,000 will be assessed. In addition, Article 34 of the TP Audit Regulations asserts that an additional transfer pricing penalty will be assessed if a taxpayer misreports their income tax as a result of not following the transfer pricing rules when filing their tax return. The penalty will be assessed and calculated based on Article 110 of the Income Tax Act which allows a maximum penalty of twice the resulting underpayment of income tax liabilities.

Are there exemptions to Transfer Pricing rules in your country?

A business entity meeting one of the following criteria does not have to disclose related-party transactions on its corporate income tax return, and hence does not need to prepare a TP report:

- Combined operating revenue and non-operating income are less than TWD 30 million for the filing year.
- The business has no related entities outside of Taiwan and has not claimed tax credits in excess of TWD 500,000 per annum, has not offset net operating losses aggregated from the past ten years in excess of TWD 2 million per annum and has generated total combined operating revenue and non-operating income of less than TWD 300 million per annum.

In addition to the disclosure exemption above, MOF tax ruling number 09704555180 stipulates that, in the event that a nonexempt business entity carries out transactions with a state-run enterprise, an agent or a distributor, or a monopolistic enterprise as defined under the Fair Trade Act, the underlined transactions falling under any of the following (as outlined under numbers 3 through 5, item 8, Article 3 of the TP Audit Regulations) are exempt from providing any transfer pricing documentation, though disclosure in the tax return is still required. Given that a non-exempt business entity and the counter party are not in a controlling and subordinate relationship when conducting transactions:

- A non-exempt business entity cannot commence its production and business activities unless the other enterprise provides the patent, trademark, copyright, secret formula, proprietary technology or other relevant intellectual property, and such production and business activities account for 50% or more of the total sales of the nonexempt business entity in the tax year.
- A non-exempt business entity's purchase price and terms of raw materials, components and goods are controlled by the other enterprise, and such purchases account for 50% or more of the total purchases of raw materials, components and goods by the non-exempt business entity in the tax year.
- Sales of a non-exempt business entity are controlled by the other enterprise and the sales account for 50% or more of the non-exempt business entity's total sales in the tax year.

Are advance pricing agreement (APA) options available?



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APA options are available in Taiwan. A profit-seeking enterprise meeting all of the following criteria may apply for an APA before the end of the accounting period in which the transactions occur:

- The applicant's aggregate controlled transaction amount has exceeded NTD 1 billion or its controlled transaction amount for the current tax year exceeds NTD 500 million.
- No significant tax evasion was committed by the applicant in the past three years.
- The applicant properly prepares and submits all documentation required under Article 24 of the TP Audit Regulations, including a TP report.
- The applicant meets all other criteria approved by MOF.

Generally, within one month, applicants receive a written notice stating whether the Taxation Administration has accepted the APA application. If the Taxation Administration accepts the application, the applicant must present required documentation within one month of receipt of the written notice. Applicants unable to present the documentation within one month can file for a maximum one-month extension. Once granted, an APA is effective for 3 to 5 years from the year of application.

Tax audit areas

Taiwan tax officers generally focus on low profit margin transactions, transactions carried out that are not in line with ordinary business arrangements, cross border transactions, surety and loans granted to related parties.