



Crowe Transfer Pricing
Wednesday

Transfer Pricing Compliance in Taiwan(ROC)



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Preface

Back in 2004, the Ministry of Finance (“MoF”) in Taiwan enacted the ” **Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s-Length Transfer Pricing**”, in accordance with the relevant provisions of the Income Tax Act. This came in light of many other tax jurisdictions started to establish rules and regulations to tackle transfer pricing issues for multinational corporations operating in their countries.

Over the past 20 years, Taiwan's tax system has undergone various changes and developments. Taking into account the latest trends in international taxation worldwide, efforts have been made to establish a comprehensive and robust audit system.

Relevant laws, regulations, and provisions

A. Provisions related to Income Tax Law and Transfer Pricing

- Article 43-1 (Adjustments to Non-Compliant Operating Income Norms)
A profit-seeking enterprise which has an affiliated relationship with, or is directly or indirectly owned or controlled by another enterprise within or outside the territory of the Republic of China (i.e. Taiwan), whereof, if it is found that arrangement of their mutual income, cost, expense, profit or loss distribution (i.e. controlled transactions) does not conform with regular business practice, and results in tax evasion or reduction, the collection tax authority-in-charge for the purpose of computing the taxable income of the enterprise may, under the approval of the MoF, makes an adjustment to the extent that the controlled transaction conforms with regular business practice.

B. Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s-Length Transfer Pricing

- Article 5 (Applicable Transaction Types)
The types of controlled transactions governed by the Regulations are as follows:
 1. Transfer of tangible assets, including sale, exchange, gift or other arrangements;
 2. Use of tangible assets, including lease, provided as collateral, held, used or occupied by the other party, or other arrangements;
 3. Transfer of intangible assets, including sale, exchange, gift or other arrangements;
 4. Use of intangible assets, including license, sub-license, provided for others’ use or other arrangements;
 5. Rendering of services, including marketing, management, administration, technology, personnel, R&D, information processing, legal, accounting or other services;
 6. Use of funds, including loans, prepayments, temporary payments, guarantees, payment extension or other arrangements; and
 7. Other types of transactions prescribed by the MoF.

Transfer Pricing Documentation (TPD) requirements



Transfer Pricing Report (Article 22)

- Controlled transaction information and its transfer pricing analysis for profit-seeking enterprises.



Master File (Article 21-1)

- Overview of global operations and transfer pricing policies of multinational enterprise groups (MNEs).



Country-by-Country Report (Article 22-1)

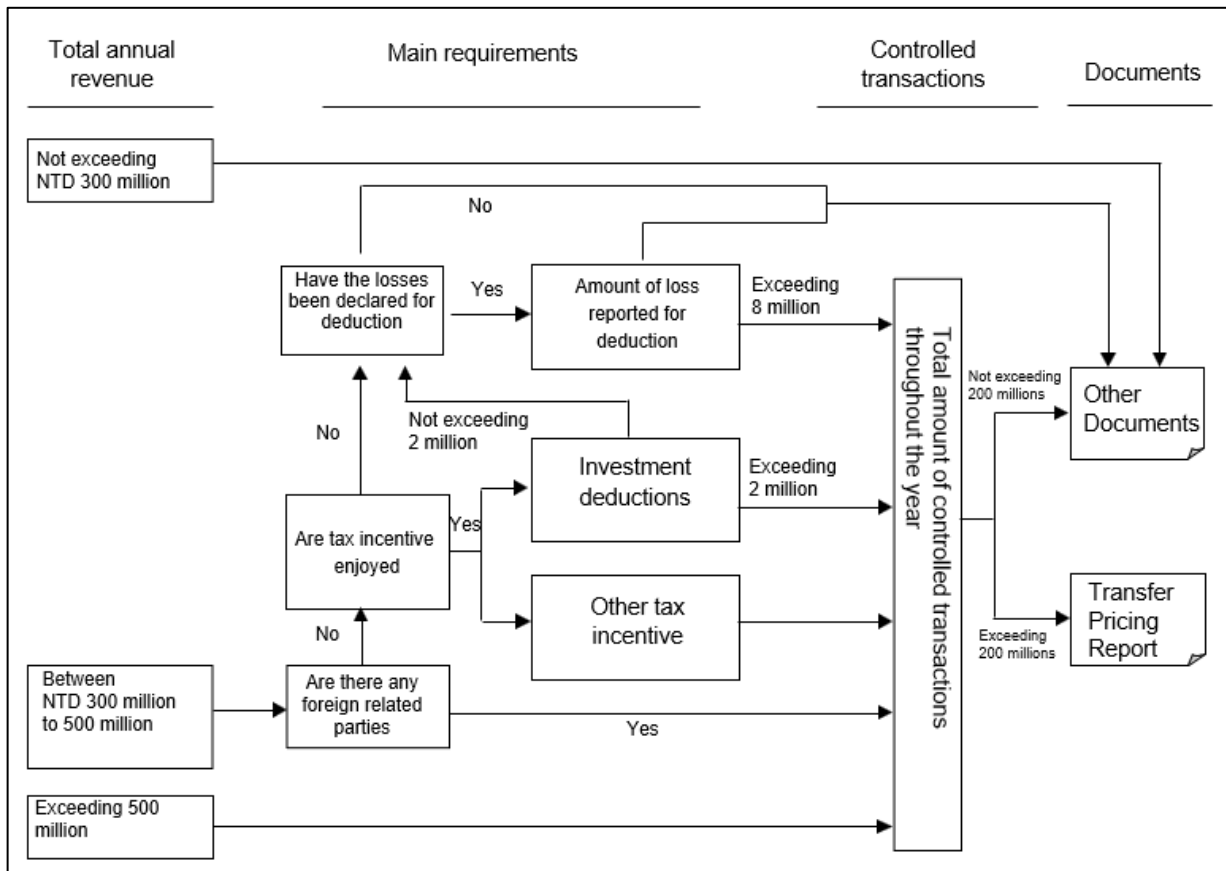
- The global allocation of income, profits, and tax burdens within MNEs, in relation to the operational activities conducted by group members in their respective countries they operate in.

Documents	Submitting Entity	Time	Contents to be included
Transfer Pricing Report	Profit-Making Entities engaging in Controlled Transactions	Preparation of income tax settlement declaration and submission of the TP Report to the tax authority within 1 month from the investigation letter received.	<ol style="list-style-type: none"> A comprehensive business overview. A description of group organization and management structure. Summary of Controlled Transactions. An analysis of the Controlled transactions. Statements and consolidated reports of the Affiliated Enterprises and other materials as required pursuant to Article 369-12 of the Company Law. Other documents in relation to related parties or controlled transactions, which may affect pricing, if any.
Master File	Profit-making entities within Taiwan that are members of MNE Group	To be provided within 1 year after the end of the fiscal year.	<ol style="list-style-type: none"> Organizational structure General description of MNE's businesses MNE Group's Intangible Assets MNE Group's intercompany financial activities MNE Group's financial and tax positions
Country-by-Country Report	Ultimate Parent Entity of an MNE Group	To be provided within 1 year after the end of the fiscal year.	Financial data and operational activities of the MNE Group worldwide.

Exemption from preparation of TPD

1. Total annual revenue not exceeding NTD 300 million.
2. Total annual revenue exceeding NTD 300 million but not reaching NTD 500 million, and meeting the following criteria simultaneously:
 - a. Not eligible for tax incentive and have not declared the offset of losses from the previous ten years in accordance with the law. However, entities that have declared investment deductions not exceeding NTD 2 million or have losses from the previous ten years not exceeding NTD 8 million are not subject to this restriction.
 - b. Profit-making entities that were not engaged in transactions with foreign related enterprises of the Republic of China.
3. Not meeting the above two criteria, but the total amount of controlled transactions throughout the year does not exceed NTD 200 million.

Flowchart on TPD Requirements



Conclusion

Similar to other countries that have implemented transfer pricing rules, the tax measures implemented by the Taiwan MoF are a direct response to the global trend among tax authorities to combat profit shifting activities through non-arm's length transfer pricing approach. The transfer pricing rules in Taiwan align with the international standards and serve as effective measures to prevent tax avoidance. It is anticipated that any development on the global stage will continue to impact the local transfer pricing landscape moving forward. For MNE Groups operating in Taiwan, ensuring full compliance with TPD requirements will be crucial to mitigate potential tax risks.

Contacts Crowe Taiwan

Pin-Yen Lin

Partner

alan.cc.lin@crowe.tw