



Tax and Legal Newsletter

PKF

Country-by-Country Report Requirement in Thailand

According to Section 71 bis and Section 71 ter of the Thai Revenue Code, taxpayers that have related parties and earn annual revenue of at least THB 200 million are required to prepare and submit a Transfer Pricing Disclosure Form within 150 days after the year-end (the same deadline as the Corporate Income Tax return filing). In addition, tax officers may request Transfer Pricing documentation that taxpayers must submit within 60-120 days of the date of request. Taxpayers who fail to comply or submit incomplete or incorrect documentation will be subject to a THB 200,000 fine for each such failure. This fine is separate from and in addition to any Transfer Pricing adjustment, penalty, and surcharges, if any, in case of Transfer Pricing audits by the tax officers.

On 15 Oct 2021, the Thai Revenue Department (TRD) published on its website further details and guidelines concerning the Country-by-Country Report (CbCR) in a Notification of the Director-General of the TRD regarding Corporate Income Tax no. 408 dated 30 Sep 2021 (“the Notification”). We summarise the key points of the Notification as follows.

MNE groups subject to the CbCR requirement

- Any group that operates in more than one country through control based on the accounting principle used in preparation of consolidated financial statements and/or through a permanent establishment(s)
- Total consolidated annual revenue not less than THB 28 billion

Ultimate Parent Entity (UPE)

An UPE is an entity that:

- Owns directly or indirectly equity interests in other enterprises of such MNE group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence, and is not controlled in the same manner by any other entity(ies) in the same MNE group; or
- Has no control relationship according to the above bullet point but carries out business through a permanent establishment in another jurisdiction.

Surrogate Parent Entity (SPE)

An SPE is an enterprise of the MNE group that has been appointed by the UPE to file the CbCR on behalf of the UPE in that enterprise’s jurisdiction of tax residence.



Tax and Legal Newsletter

PKF

If the UPE is incorporated in Thailand

The UPE must submit a CbCR to the TRD within 150 days after the year-end.

If the UPE or SPE is incorporated outside Thailand

A Thai entity of the MNE group will be exempted from CbCR filing requirement in Thailand if all the following conditions are met:

- The country of tax residence of the UPE or SPE has CbCR filing requirements;
- The country of tax residence of the UPE or SPE has an effective Multilateral Competent Authority Agreement (MCAA) with Thailand for the fiscal year concerned; and
- There is no systemic failure of automatic information exchange between the tax authorities of Thailand and the country of tax residence of the UPE or SPE.

However, the Thai entity must notify the TRD of the SPE appointment.

In addition, the Thai entity can be selected as an SPE and file a CbCR to the TRD if the following criteria are satisfied:

- There is no CbCR filing requirement in the UPE's jurisdiction of tax residence;
- The UPE appoints a Thai entity as the SPE and notifies the TRD of such appointment; and
- The fiscal year-end of the UPE is the same as that of the SPE.

CbCR requirement

- The CbCR follows the CbCR template in Annex III to Chapter V (Transfer Pricing Documentation of the OECD Transfer Pricing Guidelines).
- The CbCR must be in English and submitted in the XML Schema format as specified by the OECD.
- The CbCR must be filed with the Corporate Income Tax return filing (PND50).

Effective date

This Notification is to be effective for accounting periods beginning on or after **1 January 2021**.



Tax and Legal Newsletter

PKF

PKF Thailand's observations

In most countries, the CbCR is generally required to be submitted within 12 months after the year-end. However, the due date of CbCR filing in Thailand is only within 5 months after the year-end. We suggest that corporate groups that fall into the category of MNE groups and meet the revenue threshold should proactively review and manage the preparation and submission of CbCR to comply with this Notification. Further guidance from the TRD is required to provide taxpayers with more details on the SPE notification such as items to be notified, format of notification, deadline for such notification, etc.

Please let us know if you have any questions or concerns or if you need any further information. Our Transfer Pricing professionals at PKF Thailand will be happy to assist.

Steve Wilson	Thitayakorn Thirati
International Tax Partner	Associate Director, Transfer Pricing
+66 (0) 88 784 8680	+66 (0) 86 545 2990
steve.wilson@pkf.com	thitayakorn.t@pkf.com