

Regional Guide to Transfer Pricing



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Foreword

In today's interconnected global economy, businesses often operate across multiple jurisdictions, engaging in transactions between subsidiaries, affiliates, or related entities. These internal dealings may carry significant tax implications.

This is where transfer pricing comes into play. Transfer pricing refers to the rules and methods for pricing transactions between related parties. At its core, it seeks to ensure that these transactions are conducted at "arm's length" – that is, priced as if they occurred between independent parties.

Why does this matter to companies? The answer lies in compliance and risk management. Regulatory authorities worldwide generally impose documentation requirements and penalties for non-compliance. A failure to comply could lead to disputes with tax authorities and reputational risk.

To promote consistency and fairness, the Organisation for Economic Co-operation and Development ("OECD") has issued the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines"), which serve as the international benchmark. The OECD Guidelines articulate the arm's length principle and provide detailed methodologies for pricing intra-group transactions. They also underpin the Base Erosion and Profit Shifting ("BEPS") initiatives, aimed at curbing tax avoidance and enhancing transparency. Most jurisdictions align their domestic rules with these standards.

In this Guide, we set out the key aspects of transfer pricing in [Cambodia](#), [Indonesia](#), [Malaysia](#), [the Philippines](#), [Singapore](#), [Thailand](#), and [Vietnam](#), covering the following:

1. **General framework:** What is the role of the OECD Guidelines in your jurisdiction's transfer pricing framework? How does domestic legislation or regulations define "related parties"?
2. **Transfer pricing documentation and compliance:** Who must file documentation? When must it be filed?
3. **Permanent establishments:** How does your jurisdiction approach the attribution of profits to permanent establishments?
4. **Dispute resolution and advance pricing agreements:** What mechanisms are available to prevent or resolve transfer pricing disputes?
5. **Safe harbours and simplification measures:** Does your jurisdiction offer any safe harbour rules or simplification measures?

Whether you are a business leader, legal adviser, or simply curious about the mechanics of global commerce, we hope that you will find this Guide useful in scoping out the key points of each jurisdiction's transfer pricing framework.

This publication is up to date as of October 2025.

About RTA Regional Tax Practice Group

Our market-leading Regional Tax Practice Group advises a wide spectrum of clients, from high-growth enterprises and family offices to multinational corporations, global financial institutions, and Fortune 500 companies. With deep expertise across income tax, GST/VAT, stamp duty, property tax, and tax treaty matters, our team delivers strategic, commercially grounded solutions across the full spectrum of domestic and cross-border tax issues.

Operating seamlessly across our offices in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam, our Tax lawyers collaborate as one integrated team. We are regularly engaged on complex tax structuring for cross-border investments, high-value transactions, and regulatory compliance matters, and are trusted by leading law firms, Big 4 accounting firms, and global businesses for our technical precision and commercial acumen.

Our practice is widely recognised for its strength and success. We have represented clients in landmark cases before the Singapore High Court, including precedent-setting GST disputes, and have a proven track record of overturning assessments and resolving multi-million-dollar disputes with tax authorities. Our team is also highly experienced in negotiating with regulators and securing advance tax rulings to clarify treatment of novel or complex transactions.

We offer bespoke advice on transactional tax, transfer pricing, tax liability insurance, and tax-efficient structuring, with expertise in sectors such as banking and finance, shipping, insurance, fund management, healthcare, property development, and media. Our lawyers are adept at navigating evolving global tax frameworks, including BEPS Pillar 2 and the Foreign Account Tax Compliance Act (FATCA), and regularly advise on compliance with international exchange of information regimes.

Our regional footprint and deep local insight across the Rajah & Tann Asia network give clients a distinct advantage in managing tax risks and opportunities across Asia.

Whether advising on strategic tax planning, defending audits, or structuring cross-border deals, our team delivers practical, cost-effective and forward-looking solutions tailored to each client's needs.

Cambodia



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes. This is expressed in Article 18 of the 2023 Cambodia Law on Taxation ("Law on Taxation"), which grants rights to the tax administration (being the General Department of Taxation or "GDT") to distribute gross income, expenses, or other benefits among related parties to prevent tax avoidance or tax evasion or to clearly reflect income among related parties.

Article 18 further states that rules and procedures for income and expense allocation among related parties shall be determined by a Prakas of the Ministry of Economy and Finance ("MEF"). Prakas 574 on rules and procedures for income and expense allocation among related parties was issued by MEF on 19 September 2024 and came into effect from 1 January 2025.

Clause 3 of Prakas 574 stipulates that "arm's length principle" refers to the principle used to determine prices of transactions that have the same or similar conditions conducted between independent parties in order to compare with the transaction price among related parties.

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

It is understood that local transfer pricing rules in Cambodia are broadly based on the OECD Guidelines. However, the GDT does not explicitly endorse the OECD Guidelines.

In practice, the OECD Guidelines are referred to by GDT officials and tax practitioners when interpreting the local transfer pricing rules.

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

The term "related parties" is defined under clauses 3(1) and 3(2) of Prakas 574 which provides that parties are related where one party is:

1. a relative of the taxpayer; or
2. an enterprise which directly or indirectly controls or is controlled by, or is under common control with, the taxpayer, or is the connection between a permanent establishment and a non-resident taxpayer. While Prakas 574 does not elaborate on what this "connection" might entail, it is understood to refer to influence.

"Control" means ownership of 20% or more in the value of the direct equity interest in the enterprise or voting power on the board of directors of the enterprise. Notwithstanding this condition, the GDT may evaluate direct or indirect control based on specific facts of each case to determine whether control exists.

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes.

If yes, describe whether the requirements cover the following areas:

- (a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

Clause 17(2) of Prakas 574 requires taxpayers to prepare annual TPD.

However, there are certain exemptions for the preparation of annual TPD as follows:

1. Under clauses 17(5) and 17(6) of Prakas 574, a resident taxpayer that is not a bank or financial institution shall be exempt from compliance with the arm's length principle for loan transactions from related parties and is not required to prepare supporting loan documentation if the taxpayer meets the following criteria:
 - (a) An enterprise that is incorporated for less than three taxable years from the date of tax registration;
 - (b) A single member private limited company that enters into a loan transaction with a shareholder with a loan balance for any period of less than KHR 3 billion (approximately US\$750,000); or
 - (c) A sole proprietorship with loan transactions from the owner, spouse, or dependent children.
2. Under clauses 17(2) and 17(7) of Prakas 574, a taxpayer is not required to prepare TPD for any taxable year if the taxpayer meets both of the following criteria for that taxable year:
 - (a) An annual turnover of less than KHR 8 billion (approximately US\$2 million) and total assets valued at less than KHR 4 billion (approximately US\$1 million); and
 - (b) There are transactions among related parties with a total value of less than KHR 1 billion (approximately US\$250,000) for goods, assets, services, royalties, and other controlled transactions, excluding loan transactions.

- (b) Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)

TPD is only submitted upon request by GDT officials during tax audits or investigations.

- (c) Language of the TPD

The GDT does not prescribe the language of the TPD. In practice, the GDT accepts TPD in either Cambodian or English.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

Without prejudice to any other criminal violations, failing to comply with Prakas 574 shall, depending on the level of non-compliance, result in:

1. withdrawal or review of the taxpayer's compliance certificate or status;
2. a monetary fine from KHR 5 million (approximately US\$1,250) to KHR 100 million (approximately US\$25,000); and/or
3. imprisonment between one month to one year.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

Clause 18(1) of Prakas 574 provides that where a non-resident taxpayer has a PE in Cambodia, the taxpayer must allocate gross income, expenses, or other benefits in a manner that properly reflects the income between the PE and the non-resident taxpayer.

For the purposes of Clause 18(1), taxable income arising from a PE and a non-resident taxpayer is defined as the taxable income of a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions. It also includes income from the supply of goods or services of the same or similar business activities of the PE, supplied by the non-resident taxpayer in Cambodia.

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

Where double taxation occurs because two or more tax authorities take different positions in determining arm's length prices, the Cambodia resident taxpayer may request that the GDT resolve the double taxation through the Mutual Agreement Procedure ("MAP") provided for under the relevant avoidance of double taxation agreement ("DTA"). MAP is a dispute resolution facility

provided under the MAP Article in Cambodia's DTAs through which GDT and the relevant foreign competent authority resolve disputes regarding the application of the DTA.

Alternatively, a taxpayer may choose to do transfer pricing planning to mitigate the transfer pricing risk in Cambodia.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

Under Cambodian transfer pricing rules, there are no safe harbour rules or simplification measures for transfer pricing.

Indonesia



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes. Indonesian domestic tax law explicitly refers to the Arm's Length Principle ("ALP") as stipulated under Article 18(3) of Law No. 7 of 1983 on Income Tax, as amended most recently by Law No. 7 of 2021 on the Harmonization of Tax Regulations ("Income Tax Law"). This provision authorises the Directorate General of Taxes ("DGT") to re-determine the amount of income and deductions for taxpayers having special relationships, to ensure that such transactions reflect fair values as if conducted between independent parties.

The ALP is further elaborated on in Minister of Finance Regulation No. 172/PMK.03/2023 concerning the Application of the ALP in Transactions Affected by

Special Relationships ("MOF-172"). Article 3(1) to (5) of MOF-172 stipulate that taxpayers must apply the ALP in fulfilling their tax rights and obligations for related party transactions. The ALP is applied to determine an arm's length transfer price by comparing the conditions and price indicators of controlled transactions with those of comparable independent transactions. A transfer price is considered arm's length if the price indicators (such as transaction price, gross profit, or net operating profit, whether in absolute value or in certain ratios) are equivalent to those of comparable independent transactions.

Additionally, Director General of Taxes Regulation No. PER-22/PJ/2013 on Audit Guidelines for Taxpayers Having Special Relationships ("PER-22") provides that transactions between independent parties reflect market forces and adhere to the ALP. Since related party transactions may be used for tax avoidance purposes, the DGT is empowered to assess and re-determine income, deductions, and debt-to-equity classifications to ensure conformity with the ALP.

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

Indonesia is not an OECD Transfer Pricing Guidelines ("OECD") member. However, the OECD Transfer Pricing Guidelines are widely used as supplementary reference material in interpreting and applying the ALP.

Although MOF-172 does not explicitly adopt or refer to the OECD Transfer Pricing Guidelines, the implementation of the ALP under MOF-172 is consistent with the OECD Transfer Pricing Guidelines framework. By enacting MOF-172 on 29 December 2023, the Indonesian government aims to align domestic rules with ongoing developments in the OECD TPG.

In practice, the DGT, taxpayers, and the Tax Court frequently refer to the OECD Transfer Pricing Guidelines as an interpretive guide, provided that such references do not conflict with domestic regulations.

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

The definition of related parties is stipulated under Article 18(4) of the Income Tax Law, which provides that a special relationship exists when:

1. a taxpayer has, directly or indirectly, a minimum of 25% ownership in another taxpayer;
2. two or more taxpayers are owned by the same party (which holds at least 25% ownership of the taxpayers);
3. one taxpayer controls another, or two or more taxpayers are under common control, directly or indirectly; or
4. there is a family relationship, either by blood or marriage, in a direct or lateral line within one degree.

Further, Article 2 of MOF-172 provides a more detailed elaboration that special relationships may arise from dependency or attachment due to ownership, control, or family ties (by blood or marriage).

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes.

If yes, describe whether the requirements cover the following areas:

(a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

Taxpayers are required to prepare TPD if they meet the thresholds stipulated in Article 16(3) to (4) of MOF-172, namely:

1. Annual gross revenue exceeding IDR 50 billion;
2. The total value of related party transactions exceeding:
 - (a) IDR 20 billion for tangible goods transactions;
 - (b) IDR 5 billion for each service, interest payment, or intangible property transaction; or
 - (c) where the related party is located in a jurisdiction with a lower corporate income tax rate than Indonesia; and/or
3. The taxpayer is the parent entity of a business group with consolidated gross revenue of at least IDR 11 trillion in the previous fiscal year.

(b) Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)

Pursuant to Article 18(1) of MOF-172, the TPD must be completed by the time the Annual Corporate Income Tax Return is filed (i.e., within four months after the end of the fiscal year). The TPD does not need to be submitted together with the tax return, but must be made available and submitted upon the DGT's request within one month from the date of request based on Article 34(2) of MOF-172.

(c) Language of the TPD

Under Article 32(1) of MOF-172, the TPD must be prepared in Bahasa Indonesia, unless the taxpayer obtains prior approval from the Minister of Finance to use a foreign language based on Article 32(2) of MOF-172.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

Non-compliance with TPD requirements may lead to administrative sanctions under the Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures, as last amended by Law Number 16 of 2009 on the Enactment of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 on General Provisions and Tax Procedures into Law ("UU KUP"), including:

1. A penalty of IDR 1 million for an Annual Income Tax Return deemed not submitted (Article 7(1), UU KUP);
2. Interest sanctions on underpaid tax assessments determined ex officio by the DGT, calculated using the reference interest rate plus a 15% uplift factor (Article 7(1), UU KUP); and
3. Additional interest sanctions of up to 20% per month on tax underpayments, as regulated under Articles 13(3a) to (3c) of the Income Tax Law.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

Under MOF-172, if a domestic taxpayer engages in a controlled transaction with a foreign related party that constitutes a Permanent Establishment ("PE") in Indonesia, the domestic taxpayer is also deemed to constitute a PE. The PE is treated as a separate and independent entity with its own tax obligations.

As stipulated in Article 15(1) to (3) of MOF-172, the PE must report all data and information relating to transactions conducted by foreign related parties connected to its business activities in Indonesia, in accordance with the relevant provisions of the Income Tax Law, as stipulated in Article 5 of the Income Tax Law.

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

Transfer pricing disputes in Indonesia may be resolved through legal procedures (tax audit, objection, appeal, and judicial review) or through an Advance Pricing Agreement ("APA") mechanism as regulated under Chapter VIII of MOF-172.

The DGT is authorised to enter into APAs with domestic taxpayers or with competent authorities of treaty partner jurisdictions to determine arm's length transfer prices for a specified period. The DGT may delegate this authority internally. APAs may be initiated by the taxpayer (unilateral, bilateral, or multilateral) or upon notification from the DGT regarding a foreign counterpart's request.

An APA may cover all or part of the related party transactions and may include a rollback provision, provided that:

1. the transactions are materially comparable;
2. the statute of limitations has not expired;
3. no tax assessment has been issued; and
4. no tax audit or criminal proceedings are in progress.

The agreement sets forth the criteria and methodologies for determining arm's length prices prospectively and, if applicable, retroactively for the agreed period.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

At present, Indonesia has not adopted any formal or informal safe harbour rules for transfer pricing purposes.

Malaysia



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes. The main provision governing transfer pricing in Malaysia is subsection 140A(2) of the Income Tax Act 1967 ("ITA"), which states as follows:

"(2) Subject to subsection (3), where a person in the basis period for a year of assessment enters into a transaction with an associated person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that person shall determine and apply the arm's length price for such acquisition or supply." [emphasis added]

The following subsidiary legislation also makes express reference to the arm's length principle for transfer pricing, and taxpayers therefore ought to be aware of them:

1. [Income Tax \(Transfer Pricing\) Rules 2023](#) – for any controlled transactions entered into from year of assessment ("YA") 2023.
2. [Income Tax \(Transfer Pricing\) Rules 2012](#) – for any controlled transactions entered into prior to YA 2023.

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

The Malaysia Transfer Pricing Guidelines 2012 and 2024 have largely been prepared based on the OECD Transfer Pricing Guidelines. The information is indicated in the following chapters:

1. [Income Tax \(Transfer Pricing\) Rules 2012](#) – Rule 2.
2. [Malaysia Transfer Pricing Guidelines 2024](#) ("MTPG 2024") – Chapter Introduction and Objective.

It should also be noted that, with effect from 1 January 2024, any guidelines pertaining to tax treatment issued

by the Director General of Inland Revenue ("DG") under section 134A of the Income Tax Act 1967 will be legally binding on both the taxpayers and the Inland Revenue Board of Malaysia ("IRBM") officers. This regulatory change aims to provide clarity and ensure consistency in the application of tax laws, thereby enhancing compliance and reducing disputes.

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

In the context of transfer pricing, "related parties" refer to "associated persons". Therefore, any transaction that a person that engages in with associated persons will be regarded as a controlled transaction and should comply with the arm's length principle.

The primarily applicable provisions used when determining if a person is an "associated person" are sections 139, 140A(5) and (5A) of the ITA, while subsection 2(4) of the ITA is used in making a similar determination for a group of companies. Reference is also made to section 7 of the Companies Act 2016.

Control of a company

Under section 139, a person shall be taken to have control of a company if:

1. If the person exercises, is able to exercise, or is entitled to acquire control (whether directly or indirectly) over the company's affairs. This includes, but is not limited to, possessing or being entitled to acquire the greater part of the share capital or voting power in the company.
2. If the person possesses or is entitled to acquire:
 - (a) The greater part of the issued share capital of the company;
 - (b) If all the company's income were distributed to members: the greater part of the amount distributed; or
 - (c) If the company were wound up: redeemable share capital that would entitle the person to receive the greater part of the assets available for distribution among members.

3. If, in the event of the company being wound up, the person would be entitled to the greater part of the assets available for distribution among members.

Where two or more persons together satisfy any of these conditions in respect of a company, they shall be taken to have control of the company.

If a person (and his associates) have control over one or more companies, the rights and powers of those companies shall be attributed to that person. The definition of associates is set out in section 139(7) of the ITA and includes family members such as spouses, parents, siblings or children, or a trustee of a settlement of which that person was a settlor, among other matters.

When an arm's length price is to be applied

Under section 140A:

1. A person shall be required to apply an arm's length price in respect of transactions with an associated person if the person enters into a transaction with an associated person during the basis period for a YA for the acquisition or supply of property or services. The arm's length price must be determined and applied for all purposes of this Act.
2. The DG may disregard any structure adopted by the person in entering into the transaction if:
 - (a) The economic substance of the transaction differs from its form; or
 - (b) The form and substance are the same, but the overall arrangement, viewed in totality, differs from what independent persons behaving in a commercially rational manner would have adopted, and the structure prevents the DG from determining an appropriate transfer price.
3. The transactions in paragraphs 1 and 2 shall be treated as transactions between:
 - (a) Persons where one has control over the other;
 - (b) Individuals who are relatives of each other; or
 - (c) Persons who are both controlled by the same third person.
4. For the purposes of paragraph 3, "control" is defined in section 140A(5A) as where one person ("first person") owns at least 20% of shares of another person or persons, and:

- (a) The business operations of the latter depend on the proprietary rights provided by the first person;
- (b) The business activities, prices, or conditions of supply of the latter are specified or influenced by the first person; or
- (c) One or more of the directors of the former are appointed by the first person.

Group of companies

Section 2(4) of the ITA sets out when two or more companies will be in the same group of companies. This includes where:

- 1. Two or more companies are related pursuant to section 6 of the Companies Act 1965 (which corresponds to section 7 of the Companies Act 2016). This refers to where (i) a company is either a holding company or subsidiary of another company, or (ii) two companies are subsidiaries of the same holding company;
- 2. A company is related to another company, which is related to a third company;
- 3. The same persons hold more than 50% of the shares in each of two or more companies.

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes.

If yes, describe whether the requirements cover the following areas:

- (a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

Under paragraph 1.7 of the [MTPG 2024](#), a taxpayer shall prepare contemporaneous TPD if they fall within the following:

- 1. Where the taxpayer generates gross business income of more than RM30 million in total and engages in cross-border controlled transactions totalling RM10 million or more annually; or

- 2. Where the taxpayer receives or provides controlled financial assistance of more than RM50 million annually.

Paragraph 1.7 includes a table setting out several scenarios in which the thresholds for being required to prepare TPD are (or are not) met.

However, pursuant to paragraph 1.5 of the MTPG 2024, the following taxpayers are exempted from preparing contemporaneous TPD:

- 1. Individuals not carrying on a business;
- 2. Individuals carrying on a business (including partnerships) who only engage in domestic controlled transactions;
- 3. Persons who enter into controlled transactions totalling not more than RM1 million; or
- 4. Persons who enter solely into domestic controlled transactions with another person where both parties:
 - (a) do not enjoy tax incentives;
 - (b) are taxed at the same headline tax rate; or
 - (c) do not suffer losses for two consecutive years prior to the controlled transactions.

It should be noted that paragraph 1.6 provides that persons exempted by paragraph 1.5 must still comply with the arm's length principle for all controlled transactions entered into. They must also keep all relevant documents that are related to the controlled transactions, including documentation to support and prove the determination of the arm's length price.

Additionally, taxpayers who enter into a controlled transaction but do not fall under paragraph 1.5 or paragraph 1.7 of the MTPG 2024 are eligible to (and may therefore opt to) prepare a minimum contemporaneous TPD, per paragraph 1.8 of the MTPG 2024.

Under paragraph 1.9 of the MTPG 2024, a contemporaneous TPD refers to TPD that is prepared with reduced requirements and should be completed and dated prior to the submission of a return in the basis period for a YA in which a controlled transaction is entered into. In preparing a minimum contemporaneous TPD, a taxpayer is allowed to apply any method allowed by the DG that is able to demonstrate compliance with

the arm's length principle, as long as it results in a better approximation of the arm's length price.

(b) **Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)**

Anyone who enters into a controlled transaction must prepare and complete contemporaneous TPD prior to the due date for furnishing a return in the basis period for a YA in which a controlled transaction is entered into.

(c) **Language of the TPD**

The contemporaneous TPD referred to above should be prepared either in Bahasa Malaysia or in English only. If the supporting documents are in a language other than Bahasa Malaysia or English, a translation should be provided upon submission.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

Yes.

Section 113B of the ITA, which was introduced on 1 January 2021, provides that any taxpayer who fails to furnish the contemporaneous TPD within 14 days from the date of written notice served by IRBM commits a criminal offence and is liable to be prosecuted.

Upon conviction, a taxpayer is liable to a fine not less than RM20,000 and not more than RM100,000, or to imprisonment for a term not exceeding six months, or to both, for each YA of failure.

Even if no prosecution is instituted, subsection 113B(4) of the ITA allows the DG to impose administrative monetary penalties ranging from RM20,000 to RM100,000 for each YA of failure if no prosecution was instituted for the offence of not providing contemporaneous TPD.

Section 113B is effective for YA 2023 and subsequent YAs.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

Malaysia has yet to issue any specific guidance for the attribution of profits to permanent establishments.

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

In Malaysia, taxpayers have recourse to the following mechanisms in transfer pricing disputes:

1. Rulings;
2. Enhanced engagement or cooperative compliance programmes;
3. Advance Pricing Agreements ("APA"), including Unilateral APAs, Bilateral APAs, and Multilateral APAs; and
4. Mutual Agreement Procedures ("MAP").

There is also an initiative by IRBM to give taxpayers the opportunity to resolve an appeal or application for relief without forwarding it to the Special Commissioners of Income Tax for a decision. For IRBM, this process is a platform for an alternative means of dispute resolution whereby the Dispute Resolution Department, IRBM or State Director's Office acts as a neutral party during a discussion or proceeding held with a taxpayer in an effort to reach an out of court settlement.

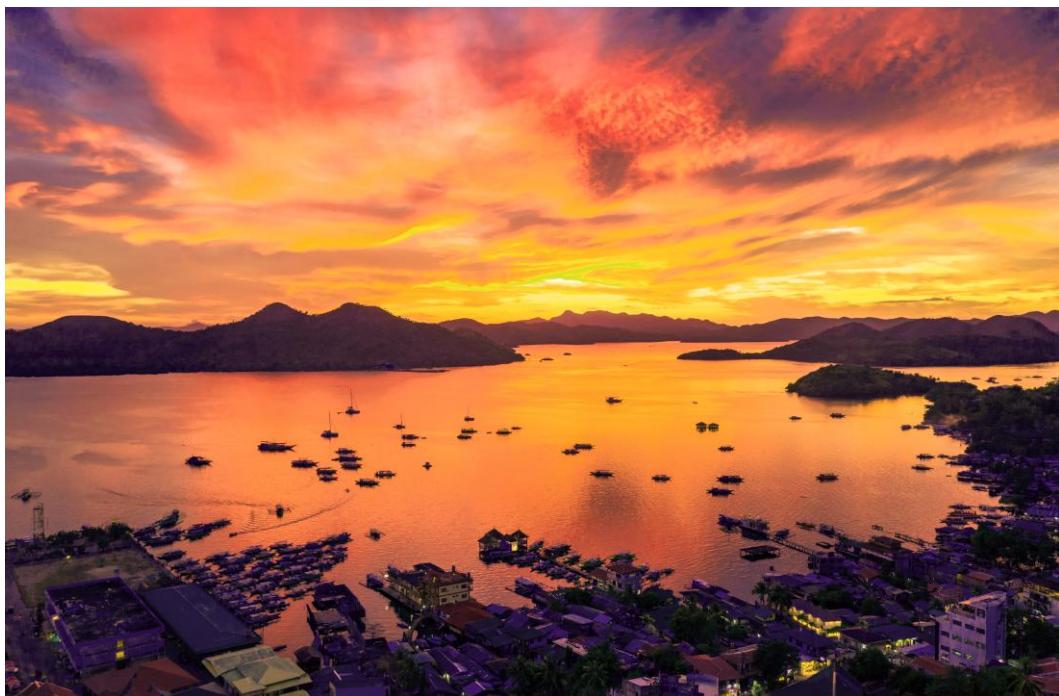
Please refer to the [Malaysia MAP profile](#) for further information.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

Currently, Malaysia only offers simplification measures for low-value intra-group services.

Philippines



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes. The Bureau of Internal Revenue ("BIR"), through its Revenue Regulations ("RR") and other issuances, makes reference to the arm's length principle for transfer pricing.

The use of the arm's length principle for transfer pricing recognised under the Organisation for Economic Cooperation and Development Transfer Pricing Guidelines ("OECD Guidelines") is adopted by the BIR as the appropriate standard to determine transfer prices of related parties through the issuance of RR No. 02-13 (Transfer Pricing Guidelines).

This is expressly provided in section 5 of RR No. 02-13 which states:

"SECTION 5. Arm's Length Principle. — The Bureau of Internal Revenue (the "Bureau") hereby adopts and the use of arm's length principle as the most appropriate standard to determine transfer prices of related parties."

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

The OECD Guidelines serve as a recognised source of interpretative guidance within the Philippines' transfer pricing framework. While not directly incorporated into domestic law, the OECD Guidelines are explicitly acknowledged and referenced in the Philippines' primary transfer pricing regulation.

Section 2 of RR No. 02-13 provides that:

"SECTION 2. Purpose of the Regulations. — ... These guidelines are largely based on the arm's length methodologies as set out under the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines."

Furthermore, Footnote 2 of RR No. 02-13 explicitly states:

"For further guidance and examples, please refer to the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines."

These provisions affirm that while the OECD Guidelines do not have the force of law, they are formally endorsed as supplementary guidance in interpreting and applying the Philippine arm's length principle and related transfer pricing methodologies.

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

In the Philippines, the definition of "related parties" or "associated enterprises" for transfer pricing purposes is established through the following key regulations issued by the BIR.

Section 3 of RR No. 19-20, as amended, provides the following definitions:

1. **"Related Party"** is a person or entity that is related to the reporting entity, i.e., the entity that is preparing its financial statements.
2. **"Related Party Transaction"** refers to the transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

Section 4 of RR No. 19-20, as amended, outlines the rules in determining whether a person or entity is a related party. To briefly summarise:

1. **A person or a close member of that person's family** is related to a reporting entity if that person:
 - (a) has control or joint control of the reporting entity;

(b) has significant influence over the reporting entity; or

(c) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

2. **An entity** is related to a reporting entity if:

- (a) the entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others);
- (b) one entity is an associate or joint venture of the other entity or of a member of a group of which the other entity is a member;
- (c) both entities are joint ventures of the same third party;
- (d) one entity is a joint venture of a third entity, and the other entity is an associate of the third entity;
- (e) the entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or its related entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity;
- (f) the entity is controlled or jointly controlled by a person identified in (1) above;
- (g) a person identified in (1)(a) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity); or
- (h) the entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

Section 4 of RR No. 19-20 also sets out what constitutes a **related party transaction**, including but not limited to:

1. purchases or sales of goods (finished or unfinished), or of property and other assets;
2. rendering or receiving of services;
3. leases;
4. transfers of research and development;
5. transfers under licence agreements;
6. transfers under finance arrangements (including loans and equity contributions in cash or in kind);
7. provision of guarantees or collateral;
8. commitments to do something if a particular event occurs or does not occur in the future, including executory contracts, i.e., contracts under which neither party has performed any of its obligations or

both parties have partially performed their obligations to an equal extent (recognised and unrecognised); and

9. settlement of liabilities on behalf of the entity or by the entity on behalf of that related party.

"Associated enterprises" is defined in section 4 of RR No. 02-13, which provides:

"SECTION 4. Definition of Terms. — As used in these Regulations, the following terms shall have the following meaning:

"Associated enterprises. Two or more enterprises are associated if one participates directly or indirectly in the management, control, or capital of the other; or if the same persons participate directly or indirectly in the management, control, or capital of the enterprises. These are also referred to as related parties.

"Control refers to any kind of control, direct or indirect, whether or not legally enforceable, and however exercisable or exercised. Moreover, control shall be deemed present if income or deductions have been arbitrarily shifted between two or more enterprises."

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes, taxpayers are required to prepare TPD.

If yes, describe whether the requirements cover the following areas:

(a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

Revenue Memorandum Circular ("RMC") No. 54-21 states that a taxpayer is required to accomplish and file **BIR Form No. 1709** if the following conditions are met:

1. It is required to file an Annual Income Tax Return ("AITR");
2. It has transactions with a domestic or foreign related party during the concerned taxable period; and

3. It falls under any of the following categories:
 - (a) Large taxpayers;
 - (b) Taxpayers enjoying tax incentives, i.e., Board of Investments (BOI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate;
 - (c) Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two consecutive taxable years; or
 - (d) A related party that has transactions with (a), (b) or (c).

On the other hand, pursuant to section 3 of RR No. 34-20, the above taxpayer is only required to prepare and submit TPD if any of the following thresholds are met:

1. Annual gross sales/revenue for the subject taxable period exceeding PHP 150 million and the total amount of related party transactions with foreign and domestic related parties exceeds PHP 90 million.

In computing the above threshold, the following items shall be included:

- (a) Amounts received and/or receivable from related parties or paid and/or payable to related parties during the taxable year, but excluding compensation paid to key management personnel, dividends and branch profit remittances; and
- (b) Outstanding balances of loans and non-trade amounts due from/to all related parties.

Related party transactions covered by an Advance Pricing Agreement ("APA") need not be disclosed in the RPT Form but shall nonetheless be included in the computation of the amount of related party transactions following the prescribed formula; or

2. Related party transactions meeting the following materiality threshold:
 - (a) If involving sale of tangible goods in the aggregate amount exceeding PHP 60 million within the taxable year;
 - (b) If involving a service transaction, payment of interest, utilisation of intangible goods or other related party transaction in the aggregate amount exceeding PHP 15 million within the taxable year; or

3. If TPD was required to be prepared during the immediately preceding taxable period for exceeding either (1) or (2) above.

(b) **Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)**

The TPD must be **contemporaneous**. Pursuant to section 12(c) of RR No. 02-13, the TPD is contemporaneous if it exists or is brought into existence at the time the associated enterprises develop or implement any arrangement that might raise transfer pricing issues or review these arrangements when preparing tax returns.

With the exception of taxpayers set out in section 2 of RR No. 34-20 who meet the materiality thresholds provided in section 3 of RR No. 34-20, the TPD and other supporting documents are **not** required to be submitted together with the BIR Form No. 1709. However, they shall be submitted within 30 calendar days upon receipt of request by the Commissioner or his/her duly authorised representatives, pursuant to a duly issued Letter of Authority covering All Internal Revenue Taxes (see section 3 of RR No. 34-20).

(c) **Language of the TPD**

There is nothing in the BIR regulations or other issuances that mandates a particular language for the TPD. However, it is prudent for the documentation to be prepared in English, as the Commissioner or his/her duly authorised representatives have the authority to require the submission of TPDs and other supporting documents for audit purposes.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

Yes, Philippine legislation imposes penalties for non-compliance with TPD requirements.

Section 13 of RR No. 02-13 provides that the "provisions of the Tax Code and other applicable laws regarding the imposition of penalties and other appropriate sanctions shall be applied to any person who fails to comply with or violates the provisions and requirements of these regulations.

Similarly, section 6 of RR No. 34-20, which prescribes the guidelines and procedures for the Submission of BIR Form No. 1709, TPD and other supporting documents, states that any violation of its provisions shall be subject to the penalties provided under sections 250, 266, and other relevant provisions of the Tax Code, as amended.

In particular, RMC No. 076-20 enumerates the specific penalties for non-compliance with TPD requirements, specifically:

- 1. For a failure to file the RPT Form and its attachments due to reasonable cause and not to wilful neglect:** A penalty of PHP 1,000 to PHP 25,000, pursuant to section 50 of the Tax Code. Repeat offences are liable to the maximum penalty of PHP 25,000 pursuant to section 274 of the Tax Code.
- 2. For a failure to produce the attachments after receiving a valid summons:** The partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation shall, upon conviction, be punished by (i) a fine between PHP 5,000 and PHP 10,000; and (ii) imprisonment between one to two years, pursuant to section 266 of the Tax Code.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

The Philippines uses the arm's length principle to determine profits attributable to a PE, consistent with Article 7 (Business Profits) of the OECD Model Tax Convention on Income and on Capital. Similarly, "when attributing the profits to a PE, the permanent establishment should be considered as a distinct and separate enterprise". This is recognised in section 5 of RR No. 02-13 which states:

"SECTION 5. Arm's Length Principle. — The Bureau of Internal Revenue (the "Bureau") hereby adopts the use of arm's length principle as the most appropriate standard to determine transfer prices of related parties. ..."

"Paragraph 2 of Article 7 (Business Profits) of the OECD Model Tax Convention on Income and on Capital specifies that, when attributing the profits to a permanent establishment, the permanent establishment should be considered as 'a distinct and separate enterprise engaged in the same or similar activities and under the same or similar conditions'." [emphasis added]

The above principle is similarly adopted in Article III (2) of RAMO No. 1-19 which states:

"The Guidelines are also applicable by analogy, in relation to transactions between permanent establishment (PE) and its head office or other related branches. For the purpose of the Guidelines, the PE will be treated as a separate and distinct enterprise from its head office or other related branches/subsidiaries for tax purposes." [emphasis added]

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

In the Philippines, there are mechanisms available to prevent or resolve transfer pricing disputes between taxpayers and the BIR recognised under RR No. 02-13. Namely:

1. **APAs:** This is a facility available to taxpayers who are engaged in cross-border transactions. It is an agreement entered into between the taxpayer and the Bureau to determine in advance an appropriate set of criteria (e.g., method, comparables and appropriate adjustments thereto) to ascertain the transfer prices of controlled transactions over a fixed period of time. The purpose of an APA is to reduce the risk of transfer pricing examination and double taxation.

There are two kinds of APAs: (i) a unilateral APA; and (ii) a bilateral or multilateral APA. A unilateral APA is an agreement involving only the taxpayer and BIR, while a bilateral/multilateral APA is an agreement involving Philippines and one or more of its treaty partners. A bilateral or multilateral APA is authorised under the Mutual Agreement Procedure

("MAP") Article of the 37 Philippine tax treaties (see section 11 of RR No. 02-13).

2. **MAP:** This is a process through which tax administrations consult to resolve disputes regarding the application of double tax conventions. This procedure, described in Article 25 of the OECD Model Tax Convention, can be used to eliminate double taxation that could arise from a transfer pricing adjustment (see section 4 of RR No. 02-13).

Further, a taxpayer may challenge an assessment arising from transfer pricing assessment through administrative remedies with the BIR, pursuant to section 228 of the Tax Code and relevant BIR issuances. If unresolved, the taxpayer may resort to judicial remedies.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

As of now, the Philippines does not have formal safe harbour rules or simplification measures for transfer pricing under its existing regulations.

The main regulatory framework — RR No. 02-2013 and RR No. 19-2020 — does not provide any explicit safe harbour thresholds, margins, or exemptions for certain types or sizes of taxpayers. All related party transactions are expected to comply with the arm's length principle, pursuant to relevant BIR issuances on transfer pricing.

Singapore



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes, this is expressed in section 34D(1) of the Income Tax Act 1947 ("ITA"), which lists the conditions for a transfer pricing adjustment to apply. It refers to non-arm's length conditions using the following wording:

"conditions are made or imposed between them in their commercial or financial relations (called in this section actual commercial or financial relations) which differ from conditions which would be made or imposed if they were not related parties and dealing independently with one another in comparable circumstances (called in this section arm's length conditions);"

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

The Inland Revenue Authority of Singapore's ("IRAS") e-Tax Guide entitled "Transfer Pricing Guidelines" (8th Ed) ("IRAS TP Guide") states that IRAS will generally take guidance from the OECD Guidelines.

While IRAS e-Tax Guides are not law, IRAS does not usually depart from them, though they may do so.

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

The term "related parties" is defined under section 2(1) of the ITA which provides:

"in relation to person (A), means any person –

- a. who directly or indirectly controls A;*
- b. who is being controlled directly or indirectly by A;*
or
- c. who, together with A, is directly or indirectly under the control of a common person."*

With respect to the word "control", IRAS has provided guidance in Advance Ruling Summary No.9/2022. Whilst IRAS' interpretation is in the context of section 24 of the ITA, it is still useful given that the same definition is used for the term "related parties". Paragraph 5e(i) of the said ruling states that:

*"The 'control' condition in Section 24 of the ITA is met given that Company X and Y **hold more than 50% of the ordinary shares** in Company A (indirectly via their shareholdings in Company B) and NewCo." [emphasis added.]*

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes.

If yes, describe whether the requirements cover the following areas:

(a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

From and including year of assessment 2019, companies/firms/trusts are required by section 34F of the ITA to, subject to certain exemptions, prepare TPD in the following circumstances (section 34F(2)):

1. if the gross revenue of the company, firm or trust derived from its trade or business for the basis period concerned is more than S\$10 million; or
2. if TPD is required to be prepared for a transaction undertaken by the company, the firm, or the trustee of the trust on its behalf, in the basis period immediately before the basis period concerned.

Additionally, the Income Tax (Transfer Pricing Documentation) Rules 2018 further exempts entities from preparing TPD if the transaction does not exceed a certain value. The threshold sum depends on the category of the transaction.

(b) **Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)**

The TPD must be prepared no later than the time for the making of the return of the income of the company, the firm or the trustee in relation to the trust for the year of assessment.

The Comptroller may, by written notice, require the person to furnish to the Comptroller a copy of any TPD prepared by the person. The person must comply with the requirement within 30 days starting from the date the notice is served on the person.

(c) **Language of the TPD**

The TPD must be in English or, if not in English, translated into English at the request of IRAS.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

A taxpayer shall be liable on conviction to a fine not exceeding S\$10,000 for an offence under the following circumstances:

1. Failing to prepare TPD by the time for the making of the tax return;
2. Failing to prepare TPD with the details and in the form and content as prescribed by the Income Tax (Transfer Pricing Documentation) Rules 2018;
3. Failing to retain the TPD for a period of at least five years from the end of the basis period in which the transaction took place;
4. Failing to submit the TPD within 30 days starting from the date of the written notice served by the Comptroller requiring the taxpayer to submit the TPD; or
5. Providing any documentation that the taxpayer knows to be false or misleading.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

The IRAS TP Guide provides at paragraph 16.3 that there will be no further attribution of profits to the PE, and therefore no additional Singapore tax liability for the foreign related party, if the following conditions are met:

1. The taxpayer receives an arm's length remuneration from its foreign related party that is commensurate with the functions performed, assets used and risks assumed by the taxpayer;
2. The remuneration paid by the foreign related party to the taxpayer is supported by adequate TPD to demonstrate compliance with the arm's length principle; and
3. The foreign related party does not perform any functions, use any assets or assume any risks in Singapore, other than those arising from the activities carried out by the taxpayer for which the taxpayer has received an arm's length remuneration as per the first condition.

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

Where double taxation occurs because two or more tax authorities take different positions in determining arm's length prices, the Singapore resident taxpayer may request that IRAS resolve the double taxation through the Mutual Agreement Procedure ("MAP") provided for under the relevant avoidance of double taxation agreement ("DTA"). MAP is a dispute resolution facility provided under the MAP Article in Singapore's DTAs through which IRAS and the relevant foreign competent authority resolve disputes regarding the application of the DTA.

Alternatively, a taxpayer may choose to prevent transfer pricing disputes by applying for an Advance Pricing Arrangement ("APA") for its related party transactions for future years.

The APA is an arrangement between IRAS and the relevant foreign competent authority or the taxpayer to agree in advance a set of criteria to ascertain the transfer pricing of the taxpayer's related party transactions for a specific period of time.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

Yes. We briefly set out some examples below.

1. **Routine support services:** For certain routine support services, IRAS is prepared to accept the charging of these routine support services at cost plus 5% mark-up, provided that: (i) the routine support services are only provided to related parties; and (ii) all costs relating to the routine support services performed are taken into account in computing the 5% cost mark-up.
2. **Related party domestic loans:** For a related party domestic loan entered into prior to 1 January 2025, if the lender and borrower of that loan are both taxpayers in Singapore and the lender is not in the business of borrowing and lending, IRAS will restrict the interest expense claimed by the lender on the loan as a proxy to the arm's length principle.

For a related party domestic loan entered into on or after 1 January 2025, if the lender and borrower of a related party loan are both taxpayers in Singapore and neither of them is in the business of borrowing and lending, the taxpayers can apply the IRAS indicative margin to derive the interest rate regardless of the amount of the loan.

3. **Strict Pass-through Costs:** Where a taxpayer acts as a paying agent for services provided by a service provider to the taxpayer's related parties and onward charges these costs to its related parties, IRAS may consider these costs as strict pass-through costs and accept no mark-up on the onward charges, provided the following conditions are met:
 - (a) The services provided by the service provider for which the taxpayer passes on the costs are

for the benefit of the related parties (benefits test);

- (b) The service provider charges an arm's length fee for the services provided;
- (c) The taxpayer is merely the paying agent and does not enhance the value of the services provided by the service provider; and
- (d) The related parties are legally or contractually liable for the payment of the costs. This condition can be met even if the taxpayer is legally or contractually liable to pay for services, but has a written agreement or email correspondence with its related parties for the latter to assume the liabilities relating to the services. Do note that invoices from group service providers to related parties are not considered written agreements.

Note that an arm's length mark-up should nevertheless be applied by a taxpayer for its function in arranging and paying for the acquired services on behalf of its related parties.

Thailand



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes. It is stated in section 71 bis, paragraph 1 of the Thai Revenue Code, which authorises an assessment officer to adjust income and expenses arising from related party transactions to arm's length prices:

"In the case where related companies or juristic partnerships that have commercial or financial requirements, which are different to those of companies operating independently, and believed to be for the purpose of transferring profits, the assessment officer shall have the authority to adjust the income and expenses of such companies or juristic partnerships to the amounts that should have been received and paid,

as if the companies or juristic partnerships had operated independently. Such adjusted amounts shall be used in calculating the taxable profit under Section 65, or the assessable taxable income under Section 70 or Section 70 bis, as the case may be, in accordance with the criteria, methods, and conditions prescribed by ministerial regulations."

In addition, sections 65 bis (4) and (7) and 65 ter (15) of the Thai Revenue Code authorise an assessment officer to adjust income and costs to reflect fair market values, or to disallow expenses exceeding normal amounts without reasonable justification. Section 65 bis (4) and (7) states that:

"The calculation of net profit and net loss under this part shall follow the following conditions:

- (4) In the case of transfer of assets, provision of service or lending of money without remuneration, fee or interest, or with remuneration, fee or interest that is lower than the market price without reasonable*

cause, an assessment official shall have the power to assess such remuneration, fee or interest in accordance with the market price on the date of transfer, provision or lending.

...

(7) *In calculating the cost of goods imported from abroad, the assessment official shall have the power to assess by comparing with the cost of the same type and kind of goods imported into other countries."*

Section 65 ter (15) states that:

"The following items shall not be deductible as expenses in the calculation of net profits:

(15) *Cost of purchase of asset and expense related to the purchase or sale of asset, but only the amount in excess of normal cost and expense without reasonable cause."*

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

Thailand's transfer pricing framework aligns with the principles set out in the OECD Guidelines.

According to the Revenue Department's Notification Re: Income Tax (No. 400), the Revenue Department ("RD") recognises several methods for determining arm's length prices, in line with the OECD Guidelines. These methods include the Comparable Uncontrolled Price Method (CUP), Cost Plus Method (CPM), Resale Price Method (RPM), Project Split Method (PSM), and Transactional Net Margin Method (TNMM).

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

Section 71 bis, paragraph 2 of the Thai Revenue Code defines "related companies or juristic partnerships" as

two or more juristic entities that are related to each other in any of the following situations:

1. Where a juristic person (either directly or indirectly) holds shares of at least 50% of the total capital in another juristic person.
2. Where shareholders or partners hold (either directly or indirectly) at least 50% of the total capital in both juristic persons, or

Where juristic persons have relationships in terms of capital, management, or control such that one cannot operate its business independently from the other, as prescribed in the ministerial regulations.

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes.

If yes, describe whether the requirements cover the following areas:

(a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

Related companies or juristic partnerships are required to prepare and submit a report containing information on the related companies or juristic partnerships and the total value of the related party transactions for each accounting period. This report must be submitted to the assessment officer of the RD using a disclosure form prescribed by the Director-General pursuant to section 71 ter, paragraph 1 of the Thai Revenue Code, which provides that:

"A company or a juristic partnership which is related to another in the description of related companies or juristic partnerships under Section 71 bis, paragraph 2, whether such relationships remain throughout the accounting period or have intercompany transactions within the accounting period, shall prepare a report of information concerning the companies or juristic partnerships that have relationships with each other and the total value of intercompany transactions in each accounting period as per the form prescribed by the Director-General, and

submit the same to the assessment officer together with the filing of returns within the period prescribed under Section 69."

Furthermore, section 71 ter, paragraph 3 of the Thai Revenue Code provides that:

"The provisions of this Section shall not apply to company or juristic partnership having incomes from business or derived from business conducted within an accounting period not exceeding the amount, or of any other descriptions, as prescribed in Ministerial Regulations, the amount of income of which must be prescribed at not less than Baht two hundred million."

Accordingly, entities required to file transfer pricing documentation must meet the following criteria:

1. They must be related companies or juristic partnerships, as defined under section 71 bis, paragraph 2 of the Thai Revenue Code (Section 71 ter, paragraph 1); and
2. They must have gross business incomes exceeding THB 200 million in an accounting period (section 71 ter, paragraph 3).

(b) **Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)**

A report must be prepared and submitted together with the annual tax return, within the annual tax return filing deadline (i.e. within 150 days from the end of the financial year).

Furthermore, under section 71 ter, paragraph 2 of the Thai Revenue Code, within five years from the date of filing this report, an assessment officer – with the approval of the Director-General of the RD – may issue a notice to the related companies requiring documents or evidence to support the analysis of the related party transactions.

Upon receiving such notice, the related companies must comply within 60 days of the date of receipt. Where compliance within this period is not possible due to necessity, the Director-General may grant an extension, provided that the total period does not exceed 120 days from the date of receipt of the notice. However, where the notice is received for the first time, the recipient is

allowed 180 days from the date of receipt of the notice to comply.

(c) **Language of the TPD**

The language of a report (disclosure form) must be in Thai.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

Failure to comply with a filing requirement or submitting a report, document or evidence inaccurately or incompletely without justifiable ground, may result in a fine of up to THB 200,000, pursuant to section 35 ter of the Thai Revenue Code.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

Under the Thai Revenue Code, section 66, paragraph 2 and section 76 provide the basis for determining Permanent Establishment ("PE") status in Thailand:

1. Section 66 provides that a foreign company, established under Thai law or foreign law, is subject to Thai corporate income tax if it "carries on business" in Thailand.
2. Section 76 bis provides that a foreign entity established under foreign law is deemed to have a PE in Thailand if it has an employee, representative, or contact person in Thailand conducting business and earning income in Thailand.

When Thailand has a Double Tax Agreement ("DTA") with another country, the DTA generally provides a definition of PE. In case of conflict, the DTA will prevail over the Thai Revenue Code and govern the treatment of profits taxable in Thailand.

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

Based on the Mutual Agreement Procedure guideline publicly available on the RD's website, taxpayers may resolve the transfer pricing issues for cross-border transactions through the Mutual Agreement Procedure ("MAP"), which is a dispute resolution mechanism provided under Thailand's DTAs. Taxpayers can initiate a MAP by submitting a request to the RD, along with detailed information and supporting reasons.

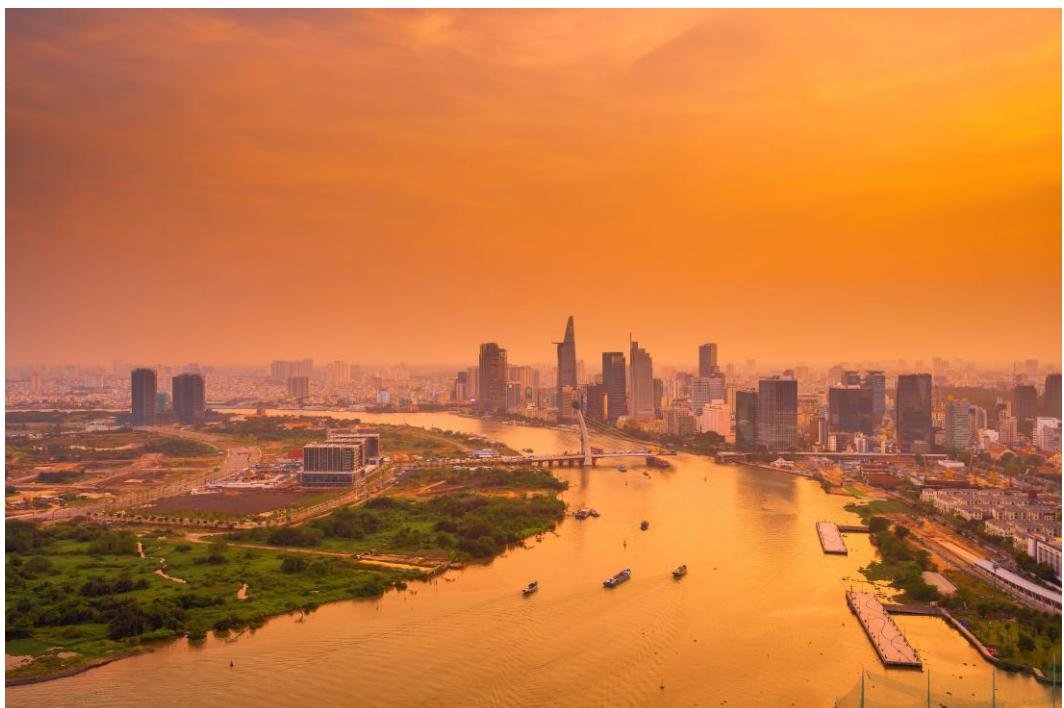
Alternatively, according to the guideline on Advance Pricing Agreement ("APA") process publicly available on the RD's website, an APA can be used to proactively prevent transfer pricing disputes. An APA allows taxpayer to reach an agreement with the RD on the future application of the arm's length principles to intercompany transactions with international related parties. Currently, the bilateral APAs are acceptable to the RD.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

The Thai Revenue Code is silent on safe harbour rules or simplification measures for the transfer pricing.

Vietnam



General Framework

1. Arm's Length Principle: Do your domestic legislation or regulations make explicit reference to the arm's length principle for transfer pricing? If yes, please provide the reference (e.g. the law and section) and a brief description of how it is expressed.

Yes. Vietnam's tax regulations reflect the adoption of the arm's length principle for transfer pricing purposes, which is set out under Articles 3.24 and 42.5 of Law No. 38/2019/QH14 on Tax Administration promulgated by Vietnam National Assembly on 13 June 2019 (Law on Tax Administration 2019, or "LTA"), as follows:

1. Article 3.24: "Principle of independent transactions is applied in the declaration and determination of taxable prices by taxpayers engaged in related-party transactions, with the objective of ensuring that the conditions of such related-party

transactions are equivalent to those that would apply in independent transactions".

2. Article 42.5(a) and (b): Principles for the declaration and determination of taxable prices in related-party transactions:

(a) "Related-party transactions must be declared and determined based on a comparison with independent transactions and the principle that the substance of the activity or transaction determines tax obligations, so as to establish the tax payable as if the transactions were conducted under conditions between independent parties."

(b) "Transfer prices in related-party transactions must be adjusted to align with independent transactions for the purpose of declaring and determining the payable tax amount, in accordance with the principle that taxable income shall not be reduced."

Detailed guidance is provided in Decree 132/2020/NĐ-CP issued by the Government of Vietnam on 5 November 2020, as amended by Decree 20/2025/NĐ-CP issued by the Government of Vietnam on 10 February 2025 (together, "**Decree 132**"), which aligns with OECD standards and requires comprehensive transfer pricing documentation ("**TPD**").

2. OECD Guidelines Usage: What is the role of the OECD Transfer Pricing Guidelines ("OECD Guidelines") in your jurisdiction's transfer pricing framework? For instance, are the OECD Guidelines formally endorsed or used as guidance when interpreting local transfer pricing rules?

The OECD Guidelines are not formally adopted as a binding legal instrument in Vietnam, as Vietnam is not a member of the OECD.

However, Vietnam's transfer pricing framework, primarily under Decree 132, has been heavily influenced by the OECD Guidelines. Key concepts such as the arm's length principle, comparability analysis, transfer pricing methods, and documentation requirements (Local File, Master File, Country-by-Country Report ("**CbCR**")) closely mirror OECD standards.

While the OECD Guidelines may be used as a reference in practice when interpreting and applying domestic transfer pricing principles, there is no official guidance from the General Department of Taxation ("**GDT**") mandating their application. The OECD Guidelines therefore remain a reference source rather than a binding authority within the Vietnamese legal framework.

3. Definition of Related Parties: How does your domestic legislation or regulations define "related parties" or "associated enterprises" for transfer pricing purposes? (Please include the criteria for control or affiliation, and any ownership thresholds if applicable.)

Vietnam defines "related parties" under Article 3.21 of the LTA, which provides:

"Related parties are entities or persons that are directly or indirectly involved in the management, control, or capital contribution of an enterprise; parties that are subject to direct or indirect management or control by the same organisation or individual; parties that share a common organisation or individual participating in their

capital contribution; or enterprises managed or controlled by individuals who have close familial relationships within the same family."

Further guidance is provided in Article 5 of Decree 132, which clarifies that related parties include where:

1. One party directly or indirectly participates in the management, control, capital contribution, or investment of the other; or
2. Both parties are directly or indirectly under the management, control, capital contribution, or investment of another party.

The "related parties" referred to above are specifically defined to include the following:

1. An enterprise that directly or indirectly owns at least 25% of the owner's equity of the other enterprise.
2. Both enterprises have at least 25% of their owner's equity held directly or indirectly by a third party.
3. One enterprise is the largest shareholder in terms of owner's equity, and directly or indirectly holds at least 10% of the total shares of the other enterprise.
4. One enterprise guarantees or lends to another enterprise in any form (including loans from third parties guaranteed by the related party's financial resources and other transactions of similar nature), provided that the total outstanding loan balance between the lending/guaranteeing enterprise and the borrowing enterprise:
 - (a) is at least 25% of the borrower's owner's equity; and
 - (b) accounts for more than 50% of the total medium- and long-term debt of the borrower, with certain exceptions.
5. One enterprise appoints members of the executive management of or holds control over another enterprise, provided that:
 - (a) the number of appointed members accounts for more than 50% of the total executive management members or controlling members of the other enterprise; or
 - (b) an appointed member has the right to decide on the financial or business policies of the other enterprise.

6. Two enterprises have more than 50% of their executive management members, or at least one executive member with decision-making authority over financial or business policies, appointed by the same third party.
7. Two enterprises are managed or controlled in terms of personnel, finance, and business operations by individuals who have any of the following relationships:
 - (a) Spouse;
 - (b) Biological parents, adoptive parents, step-parents, parents-in-law;
 - (c) Biological children, adopted children, stepchildren, sons-in-law, daughters-in-law;
 - (d) Siblings (full, half, or step), brothers-in-law, sisters-in-law;
 - (e) Grandparents, grandchildren; or
 - (f) Uncles, aunts, nephews, nieces.
8. Two business establishments have a head office–permanent establishment ("PE") relationship or are both PEs of a foreign organisation or individual.
9. Enterprises that are under the control of an individual through that individual's capital contribution or direct participation in enterprise management.
10. Other cases where an enterprise (including an independent-accounting branch that declares and pays corporate income tax) is actually managed, controlled, or has its business operations decided by another enterprise.
11. Enterprises engaging in transactions of transfer or acquisition of at least 25% of owner's equity during a tax period; or lending or borrowing at least 10% of owner's equity at the time of transaction during a tax period with individuals managing or controlling the enterprise, or with individuals having one of the family relationships specified in point 7.
12. A credit institution and its subsidiary, controlling company, or affiliated company as defined under the Law on Credit Institutions and its amendments or replacements.

Transfer Pricing Documentation ("TPD") and Compliance

4. Documentation Requirements: Are taxpayers in your jurisdiction required to prepare TPD?

Yes. Taxpayers in Vietnam that engage in related-party transactions are required to prepare and maintain TPD. Such documentation must be available at the time of filing the annual corporate income tax return and provided to the tax authority upon request, as per Article 17.13 of the LTA and Article 18 of Decree 132.

If yes, describe whether the requirements cover the following areas:

- (a) Thresholds or criteria for who must file TPD (e.g. revenue or transaction value thresholds that trigger the requirement)

Under Article 19 of Decree 132, taxpayers are subject to TPD requirements unless they qualify for specific exemptions. The key thresholds and criteria are as follows:

1. Full documentation required (Master File, Local File, and CbCR): Taxpayers engaged in related-party transactions not meeting the exemption conditions (below) must prepare contemporaneous TPD.
2. Exemptions from preparation apply if:
 - (a) Annual revenue ≤ VND 50 billion and total related-party transaction value ≤ VND 30 billion;
 - (b) The taxpayer has an advance pricing agreement ("APA") and submits annual APA report(s);
 - (c) The taxpayer performs routine functions, has no intangible-related transactions, has an annual revenue ≤ VND 200 billion, and achieves minimum operating margins (5% for distributors, 10% for manufacturers, 15% for toll manufacturers); or
 - (d) Transactions only with domestic related parties at the same corporate income tax ("CIT") rate with no tax incentives.

Taxpayer's ultimate parent entity in Vietnam

If the taxpayer's ultimate parent entity resides in Vietnam, the taxpayer is required to prepare a CbCR using the transfer pricing declaration dossier in Appendix IV

attached to Decree 132 if the ultimate parent entity has worldwide consolidated revenues of at least VND 18,000 billion or more in the fiscal year.

Taxpayer's ultimate parent entity outside Vietnam

If the taxpayer's ultimate parent entity resides outside Vietnam, CbCR filing is required if:

1. The jurisdiction of the ultimate parent has a tax treaty with Vietnam but no Competent Authority Agreement ("CAA") in effect by the time the report is due;
2. The jurisdiction of the ultimate parent has a CAA with Vietnam but has suspended the Automatic Exchange of Information ("AEOI") mechanism or fails to automatically provide the CbCR to Vietnam; or
3. The multinational group has more than one constituent entity in Vietnam, and the ultimate parent entity formally designates one entity in Vietnam to submit the CbCR on behalf of the group.

Exemption for CbCR filing

The CbCR filing obligation in Vietnam will be waived if the multinational group's CbCR is properly filed by a designated surrogate entity in a jurisdiction that has an effective CAA and active AEOI relationship with Vietnam, and the Vietnamese taxpayer has duly notified the GDT.

(b) Timing (when must TPD be in place, and does it need to be submitted with the tax return or only upon request?)

Pursuant to Article 18.6 of Decree 132, the TPD must be prepared before the deadline for filing the annual CIT finalisation return. Taxpayers are required to maintain and retain the documentation and submit it only upon request by the tax authorities.

Upon request by the tax authority (e.g., during inspection or audit), the taxpayer must submit the TPD within the time limit prescribed under the Law on Inspection, counted from the date of receipt of the information request.

When requested during pre-audit consultation, the taxpayer must provide the TPD within 30 working days from the date of the written request. If the taxpayer has a valid reason, the deadline may be extended once for no more than 15 additional working days per Article 18.7 of Decree 132.

(c) Language of the TPD

Pursuant to Article 85 of Circular 80/2021/TT-BTC issued by the Ministry of Finance on 29 September 2021, documentation must be prepared in Vietnamese. Supporting documents in foreign languages must be translated into Vietnamese, and the taxpayer is required to sign, affix its seal on the translation, and bear full responsibility for the accuracy and contents of the translated version.

5. Penalties and Compliance Incentives: Does domestic legislation impose penalties for non-compliance with TPD requirements?

Yes. Vietnam imposes penalties for non-compliance with TPD requirements under Decree 125/2020/ND-CP issued by the Government of Vietnam on 19 October 2020:

1. **Failure to submit required appendices (related-party transaction disclosure forms) with the annual CIT return:** Fine between VND 16 million to VND 30 million, per Article 13.4(d).
2. **Incorrect declaration causing tax shortfall or excess exemption/refund in related-party transactions, despite the taxpayer having prepared or submitted required TPD:** Penalty of 20% of the underpaid tax amount or the excess tax benefit, per Article 16.1(d).
3. **Additional consequences:** Late payment interest is due on underpaid tax. In severe cases (e.g., tax evasion), penalties can be up to three times the tax shortfall per Article 7.1(b), and criminal liability may apply.

There are no explicit monetary incentives for compliance, but maintaining proper documentation helps avoid adjustments and the risk of penalties.

Permanent Establishments ("PEs")

6. Profit Attribution to PEs: How does your jurisdiction approach the attribution of profits to PEs (for example, a branch of a foreign company)?

In Vietnam, a PE is defined under Article 2.3 of the Law on Corporate Income Tax No. 67/2025/QH15 promulgated by the Vietnam National Assembly on 14 June 2025 ("Law on CIT") as "a fixed place of business through which a foreign enterprise carries out, in whole or in part, its business or production activities in Vietnam", including:

1. a branch, an operating office, a factory, a workshop, means of transportation, a mine, an oil and gas field, or any other place of exploitation of natural resources in Vietnam;
2. a construction site; a construction, installation, or assembly project;
3. a service establishment, including consultancy services rendered through employees or other organisations or individuals;
4. an agent acting on behalf of the foreign enterprise;
5. a representative in Vietnam who is either authorised to conclude contracts in the name of the foreign enterprise, or regularly performs the delivery of goods or provision of services in Vietnam; and
6. an e-commerce or digital platform through which the foreign enterprise conducts the supply of goods or services in Vietnam.

Foreign enterprises with their PEs in Vietnam shall pay tax on the taxable income earned in Vietnam (irrespective of whether it relates to the PE) and on the taxable income generated out of Vietnam and related to operations of the PEs, per Article 3.3 of the Law on CIT.

Where a treaty on avoidance of double taxation to which Vietnam is a signatory contains different provisions relating to PEs, such treaty shall apply.

Dispute Resolution and Advance Pricing Agreements

7. Dispute Avoidance/Resolution Mechanisms: What mechanisms are available to prevent or resolve transfer pricing disputes in your jurisdiction?

Vietnam provides several mechanisms to prevent or resolve transfer pricing disputes:

Pre-litigation

Pursuant to Decree 126/2020/ND-CP issued by the Government of Vietnam on 19 October 2020 and Circular 45/2021/TT-BTC issued by the Ministry of Finance on 18 June 2021, APAs allow taxpayers to propose and agree on in advance with the tax authority on the application of an APA, such as transfer pricing methods and profit margins to be applied to related-party transactions. APAs may take the form of unilateral, bilateral, or multilateral agreements. Once concluded, they are legally valid and binding on both the tax authority and the taxpayer. The validity period of an APA is up to three tax years, but shall not exceed the actual number of years during which the taxpayer has been operating, filing, and paying CIT in Vietnam.

Litigation

1. **From an international law viewpoint:** Available under Vietnam's Double Taxation Agreements (DTAs). Taxpayers can request to use the Mutual Agreement Procedure (MAP) to resolve double taxation or transfer pricing disputes between Vietnam and treaty partners.
2. **From a domestic law viewpoint:** Taxpayers can lodge a complaint with the tax authority within 90 days of receiving a tax decision. There are two levels of review for these proceedings, first with the issuing authority, then with a higher authority, per Articles 7.1 and 9 of the Law on Complaint No. 02/2011/QH13 promulgated by the Vietnam National Assembly on 11 November 2011.

Taxpayers can also initiate legal proceedings against the tax authority before the Vietnamese court under the Law on Administrative Proceedings No. 93/20155/QH13 promulgated by the Vietnam National Assembly on 25 November 2015. The statute of limitations for initiating such proceedings is one year from the date the taxpayer receives or becomes aware of the administrative decision or act issued by the tax authority. Under Articles 11 and 116.2(a) of the Law on Administrative Proceedings 2015, Vietnam adopts a two-tier judicial system for dispute settlement – first-instance and appellate proceedings.

Safe Harbours and Simplification Measures

8. Safe Harbours: Does your jurisdiction offer any safe harbour rules or simplification measures for transfer pricing (whether formal or informal)?

Vietnam does not prescribe formal pricing safe harbours (e.g., fixed mark-ups for services). Instead, it offers simplification and exemption rules that reduce documentation or disclosure obligations when certain conditions are met. Taxpayers must still comply with the arm's length principle.

1. **Small-scale exemption (documentation relief):** No Local File/Master File required if annual revenue \leq VND 50 billion and total related-party transaction value \leq VND 30 billion in the relevant tax period.
2. **"Routine functions" with minimum margins (documentation relief):** Documentation exemption if the taxpayer performs only simple functions, has no use/exploitation of intangibles, annual revenue \leq VND 200 billion, and achieves at least the following operating margins: 5% (distributors), 10% (manufacturers), 15% (toll manufacturers). These are documentation safe harbours (not pricing safe harbours).
3. **APA coverage (documentation relief):** If an APA is in place and the taxpayer files the annual APA report, transactions covered by an APA are exempt from contemporaneous documentation requirements (other transfer pricing obligations still apply).
4. **Domestic-only transactions at same CIT rate (disclosure/documentation relief):** Where all related-party transactions are domestic, both parties apply the same CIT rate, and no party enjoys incentives, the taxpayer can be exempt from TPD requirements and may also be exempt from disclosing such transactions in the transfer pricing declaration form.

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