Anti-Avoidance Rules: Administrative Issues

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INTRODUCTION

- Current Situation

- Step Forward

No GAAR in Thailand

Revenue Department

Current Situation

- ◉ Current AAR
  - ■ Transfer Pricing
    - ▫ Legislation
      - ▪ Core provisions
      - ▪ Guidelines on determination of market price
    - ▫ **Current Transfer Pricing Audit Practice**
      - ▪ Organization structure
      - ▪ Strengths, weaknesses, and possible solutions
  - ■ Advance Pricing Arrangement
- ◉ Trend and developments in implementing AAR

Transfer Pricing

⊡ **Legislation**

- ■ **Core Provisions**

  S.65 Bis (4) In the case of transfer of assets, provision of service or lending of money without remuneration… or remuneration is lower than the <u>market price</u> without reasonable cause, an assessment official shall have the power to assess such remuneration in accordance with market price…

  S.65 Ter (15) Cost of purchase of asset and expense related to the purchase… in excess of <u>normal cost and expense</u> without reasonable cause *(non-deductible expense)*.

Transfer Pricing (2)

- Guidelines on Determination of Market Price

On 16th May 2002, the Revenue Department issued guidelines on the determination of Market Price (Departmental Instruction No. Paw 113/2545) for the Revenue Department's officers, in order to provide officials with a guideline of market price principles and how to obtain a market price.
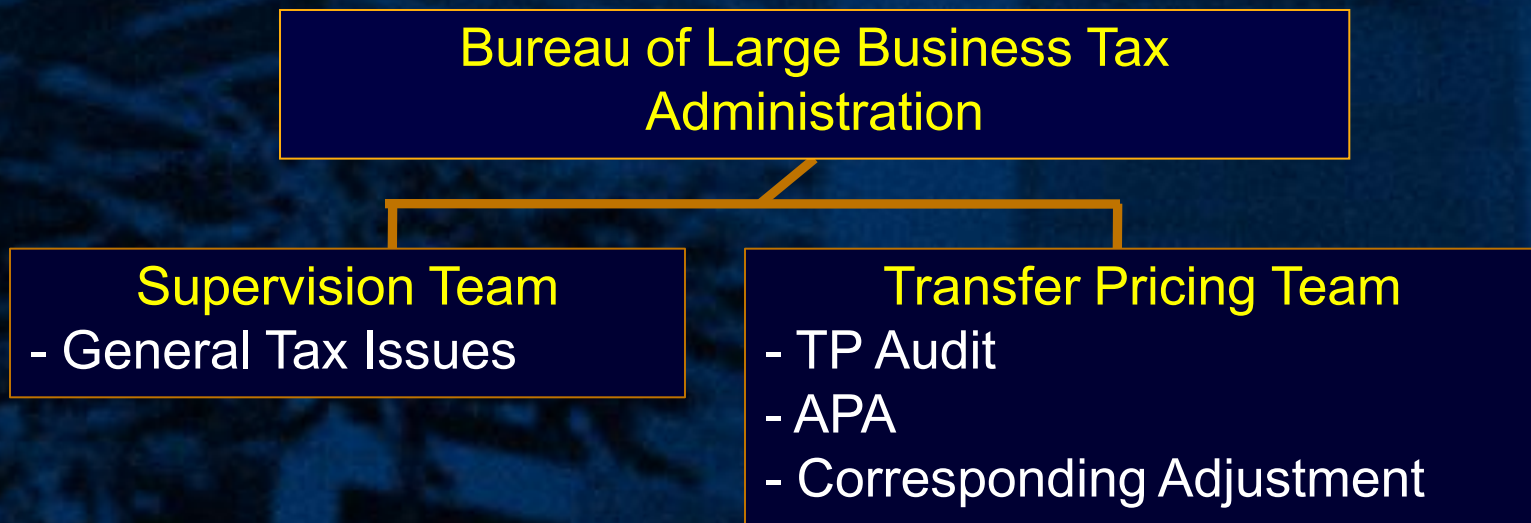
Arm's Length Principle

Transfer Pricing Methods

Transfer Pricing Documentation

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Transfer Pricing (3)

☑ **Current Transfer Pricing Audit Practice**

Organization Structure

Bureau of Large Business Tax Administration

Supervision Team
- General Tax Issues

Transfer Pricing Team
- TP Audit
- APA
- Corresponding Adjustment

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Advanced Pricing Arrangement

Features

- Bilateral APA
- No unilateral or multilateral
- APA period 3–5 years with the possibility of renewal
- No rollback
- No fee for APA application

Advanced Pricing Arrangement (2)

Current APA Procedures

- **APA Committee**
  - Director-General/ Deputy Director-General/Director of Bureaus (Legal/Policy/LTO and etc.)

  Responsibilities: Review RD position prepared by APA working group for CA discussion and approve on agreement between two tax authorities

- **APA Working Group**
  - Director of LTO/ Officers from TP team, policy, and legal

  Responsibilities: Review APA application and prepare RD position for CA discussion

- **Thai APA Guidelines launched April 2010**

Civil and Commercial Act

Section 155: A declaration of intention made with the connivance of the other party which is fictitious is void; bit its invalidity cannot be set up against third persons injured by the fictitious declaration of intention and acting in good faith.

If a declaration of fictitious intention under paragraph one is made to conceal another juristic act, the provisions of law relating to the concealed act shall apply.

Steps Forward

☑ **Possibility of proposing anti-avoidance rules**

- Transfer Pricing
- Thin Capitalization
- Controlled Foreign Company (CFC)
- General Anti-Avoidance Rule (GAAR)

15 June 2012: Press Release

Dr. Satit Rungkasiri, Director-General of the Revenue Department, further stated that, "When Thailand enters AEC in 2015, business operations done by multinational enterprises in Thailand will definitely increase. These enterprises tend to use tax planning techniques in order to save taxes for the group companies. Therefore, the Revenue Department of Thailand is preparing to propose international tax structure reforms in order to confer fiscal immunity for Thailand and to prevent abusive tax planning. These measures include transfer pricing, thin capitalization, control of foreign companies, and the general anti-avoidance rule. However, the measures must not be excessively obstructive to international investment."

Thai Revenue Department's concerns regarding GAAR
- Design of GAAR
    - Broad provision
- Application of GAAR
    - Committee?
    - Subsequent regulation?

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