

Rödl & Partner

MASTERING  
THE GAME

TRANSFER PRICING SERVICES

in Thailand



# MASTERING THE GAME

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“The dynamic Asian economic region with its unparalleled growth potential offers our clients a cornucopia of opportunities to expand and develop their business activities.

Our experts identify promising potential, weigh up possible risks and provide a well-founded decision basis for the benefit of a strategic and sustainable global growth.”

Rödl & Partner

# Content

One of a Kind	4
Transfer Pricing Regulations	5
Malaysia Transfer Pricing Regulations	6
Transfer Pricing Administration & Enforcement	8
Preparing Transfer Pricing Documentation	9
Transfer Pricing Policy	10
Why is a Transfer Pricing Policy Important?	11
Implementing a Transfer Pricing Policy	12
Our Transfer Pricing Services	14
About us	18
Contact	19

# One of a Kind

## WHAT SETS US APART

Rödl & Partner is not a collection of accountants, auditors, attorneys, management and tax consultants working in parallel. We work together, closely interlinked across all service lines. We think from a market perspective, from a client's perspective, where a project team possesses all the capabilities to be successful and realise our client's goals.

Our interdisciplinary approach is not unique, nor is our global reach or our particularly strong presence among family businesses. It is the combination that cannot be found anywhere else – a firm that is devoted to comprehensively supporting German businesses, wherever in the world they might be.



# Transfer Pricing Regulations

## GENERAL TRANSFER PRICING LANDSCAPE

- Multinational organizations are operating in an increasingly complex environment and presents significant challenges for companies in planning and documenting their intercompany pricing policies.
- Following the Organization of Economic Co-operation and Development (“OECD”) Base Erosion and Profit Shifting (“BEPS”) review, tax authorities worldwide including within the ASEAN region have instituted regulations requiring multinational enterprises to document their intercompany transactions and comply with the arm’s length principle.
- As such, transfer pricing is becoming an increasingly important global tax issue making it imperative for multinational enterprises to ensure they have a sustainable transfer pricing policy and supporting documentation in place.
- Despite these uncertainties, having good transfer pricing practices will provide multinational enterprises a variety of opportunities to optimize profits, increase cash flow and moderate taxes in a supportable manner.
- Our team consists of members from our regional ASEAN transfer pricing excellence team which focuses exclusively on providing transfer pricing and benchmarking services to subsidiaries of European multinational enterprises in the ASEAN region.
- Our ability to provide our clients with commercial and strategic transfer pricing solutions is built on experience and desire to understand the commercial context in which your business operates.



# Thailand Transfer Pricing Regulations

- The Transfer Pricing legislations in Thailand are contained in Section 35ter, Section 71 bis and Section 71 ter of the Revenue Code.
- Preparation of TP Documentation is mandatory from 1 January 2019 for taxpayers with annual revenue exceeding THB 200 million.
- The Country-by-Country (“CbC”) Report is applicable for the accounting period starting on or after 1 January 2021. There are currently no rules relating to Master File.

## Annual Reporting Requirement

TP DOCUMENTATION	
TP FORM	Transfer Pricing Disclosure Form must be prepared and submitted within 150 days from the financial year end if the annual revenue exceeds THB 200 million.
LOCAL FILE	Contains information about the MNE Group and the taxpayer; and must be prepared if the annual revenue exceeds THB 200 million.
MASTER FILE	Currently not legislated. However, in practice the Local File also includes information about the MNE Group.
CBC REPORT	Provides aggregated data on global allocation of income, taxes paid and and certain indicators of economic activity within the group. Required to be filed if the consolidated revenue for the MNE group for the preceding financial year is at least THB 28 billion.



# Transfer Pricing Administration & Enforcement

TRANSFER PRICING AUDIT	TRANSFER PRICING ASSESSMENT	TRANSFER PRICING DISPUTE RESOLUTION
<p>There has been a significant increase in transfer pricing audits conducted by the tax authorities and other governing bodies.</p> <p>THESE TOPICS GENERALLY SURROUND:</p> <ul style="list-style-type: none"> <li>- Significant related party transactions</li> <li>- Consecutive operating losses, and below market average profit margin</li> <li>- Transfer pricing of complex transactions (specifically intragroup services, royalty payments and financial transactions)</li> <li>- Selection of comparable companies</li> <li>- Allocation of risks and profits</li> </ul>	<p>TRANSFER PRICING ASSESSMENTS due to non-compliance with transfer pricing documentation requirements; or reassessment of profits to arm's length pricing;</p> <p>PENALTIES of up to THB 200,000 for failure to submit Disclosure Form or submitting incorrect information; and penalty of 100% - 200% on any tax shortfall;</p> <p>INTEREST on penalties at 1.5% surcharge; capped at 100% of the tax shortfall</p>	<ul style="list-style-type: none"> <li>- Advance pricing arrangement ("APA")</li> <li>- Mutual agreement procedures ("MAP")</li> <li>- Domestic remedies (i.e., appeal)</li> </ul>



# Preparing Transfer Pricing Documentation

Compilation of Documents / Information



Documents to be compiled for the preparation of transfer pricing documentation.

An interview session will be conducted with the objective of collecting the following information:

- functions performed, risks assumed, and assets employed;
- characterization of business; and
- value chain activities.

Field Work



A benchmarking analysis will be conducted encompassing the following processes:

- identify comparable third-party transactions;
- determine profit level indicator;
- perform comparability analysis; and
- comparability adjustment, where necessary.

TP Documentation Preparation



The Transfer Pricing Documentation will be prepared which will include:

- organizational structure;
- nature of business and market conditions;
- controlled transactions;
- pricing policies;
- assumptions, strategies and information regarding factors that influenced the setting of pricing policies;
- comparability, functional and risk analysis;
- selection of transfer pricing method; and
- application of transfer pricing method.

Completion



- Discuss potential issues;
- Obtain feedback.
- Carry out further work required;
- Finalize report.

Updates

Maintaining TP Documentation by updating benchmarking analysis and transfer pricing documentation.

# Transfer Pricing Policy

## WHAT IS A TRANSFER PRICING POLICY?

It is a framework or set of guidelines developed by Multinational Enterprises (MNEs) to determine the appropriate prices for goods, services, or intellectual property transferred between related entities within the Group.

## WHAT IS THE OBJECTIVE OF A TRANSFER PRICING POLICY?

Pricing policies in transfer pricing specifically arise from the need to ensure that intercompany transactions are conducted at arm's length, meaning that the prices charged are comparable to those that would be agreed upon by unrelated parties under similar circumstances.

The arm's length principle is a fundamental concept in transfer pricing, and pricing policies are designed to align with this principle and meet the requirements of transfer pricing regulations.



# Why is a Transfer Pricing policy important?

## THE IMPORTANCE OF A TRANSFER PRICING POLICY

- COMPLIANCE with the arm's length transfer pricing principle
- RISK MANAGEMENT (reduce transfer pricing exposure, reputational risk and the likelihood of disputes)
- CONSISTENCY AND PROPER DOCUMENTATION for compliance purposes and defence in case of tax audits
- TRANSPARENCY AND CREDIBILITY FOR STAKEHOLDERS within the organisation as well as external stakeholders (e.g., investors, business partners)

## KEY RISKS ARISING FROM AN INAPPROPRIATE PRICING POLICY

- TAX AUDIT AND PENALTIES (if the pricing policy is deemed inappropriate or does not meet the arm's length principle, leading to penalties, surcharge etc.)
- DOUBLE TAXATION due to inconsistency in pricing policy applied between jurisdictions
- FINANCIAL STATEMENTS IMPLICATIONS, whereby adjustments made by tax authorities may require restating prior year financial statements, which can affect financial ratios, investor confidence, and compliance with accounting standards
- REPUTATIONAL DAMAGE due to inadequate policy or unfair pricing strategies leading to unfavourable view by stakeholders or investors

# Implementing a Transfer Pricing Policy

## 1 | SCOPE

- Identify key intercompany transactions
- Identify the legal entities to be involved in relevant transactions

## 2 | REVIEW

- Carry out a detailed review of draft TPD, existing ICAs, Group structure charts, legal entities involved, etc.
- Focus on commercial transactions, allocation of economically significant risk and ownership, control of IP, and intended TP models.
- Perform comparability analysis.

## 5 | IMPLEMENT

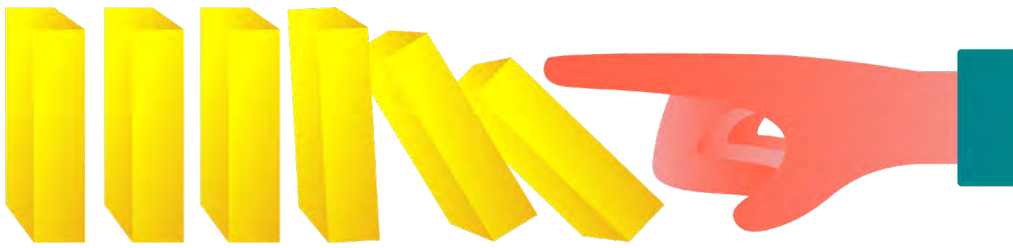
- Prepare ICA for signature
- Prepare all necessary documents and filings
- Maintain the signed copy in the appropriate central repository.
- Regular monitoring (keep up to date, reflect the actual situation)

## 4 | FINALISE

- Review by TP professional and legal professional,
- Review by other key stakeholders before the draft can be finalized.
- Key consideration: Tax, TP, regulatory compliance, IP protection, HR compliance, asset protection.

## 3 | DRAFT

- Prepare draft agreements covering relevant transaction types

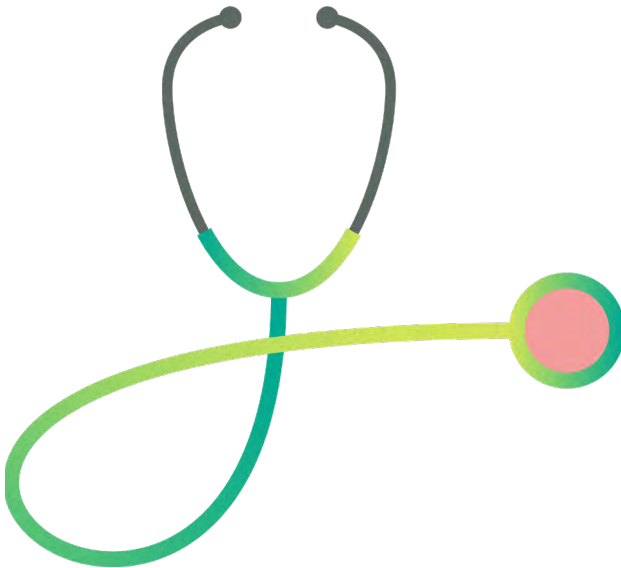










# Our Transfer Pricing Services

Our ASEAN transfer pricing professionals support their international clients worldwide in the individual structuring, documentation and defense of cross-border business relationships within the group of companies.

We work together, closely interlinked across all service lines. We think from a market perspective, with a tax team that possesses the capabilities to realise the client's goals.

Rödl & Partner has many years of experience in supporting multinational enterprise groups in the area of transfer pricing. Together with our colleagues in over 50 countries, we can advise you in these areas, also based on cross-border collaboration, if required.



<p style="text-align: center;"><b>Health Check</b></p> <ul style="list-style-type: none"> <li>- IC Maturity Check</li> <li>- Optimisation potential</li> <li>- Tax risk assessment</li> <li>- System design</li> <li>- Interface design</li> </ul> 	<p style="text-align: center;"><b>Digital Solutions</b></p> <ul style="list-style-type: none"> <li>- Transaction matrix</li> <li>- Segmentation</li> <li>- TP Controlling</li> <li>- Simulation</li> <li>- ERP-Integration</li> <li>- BI / Analytics</li> <li>- Digital agenda</li> </ul> 
<p style="text-align: center;"><b>Documentation</b></p> <ul style="list-style-type: none"> <li>- Master file</li> <li>- Local files</li> <li>- Global coordination</li> <li>- Digital realisation</li> <li>- Management of Due Dates</li> </ul> 	<p style="text-align: center;"><b>CbCR</b></p> <ul style="list-style-type: none"> <li>- Data generation</li> <li>- Data preparation</li> <li>- Report generation</li> <li>- Conversion to XML format</li> <li>- Transfer</li> <li>- CbCR risk analysis</li> </ul> 
<p style="text-align: center;"><b>Arm´ s length comparison</b></p> <ul style="list-style-type: none"> <li>- Selection of the type and scope of arm´ s length transactions</li> <li>- Benchmarking</li> <li>- Rating</li> <li>- Valuation</li> <li>- Adjustment calculations</li> </ul> 	<p style="text-align: center;"><b>Operational TP</b></p> <ul style="list-style-type: none"> <li>- SWOT analysis</li> <li>- Process recording</li> <li>- Roadmap to excellence</li> <li>- Best practise workshops</li> <li>- Coaching</li> </ul> 
<p style="text-align: center;"><b>Defence TP</b></p> <ul style="list-style-type: none"> <li>- Tax audit</li> <li>- Joint audit</li> <li>- Mutual agreement procedure</li> <li>- APA</li> <li>- Objection procedure</li> </ul> 	<p style="text-align: center;"><b>Legal TP</b></p> <ul style="list-style-type: none"> <li>- Procedural law</li> <li>- Duties to cooperate</li> <li>- Reporting requirements</li> <li>- Burden of proof</li> <li>- Usability</li> <li>- Access rights concerning tax audit</li> <li>- Data protection</li> </ul> 

# Our Transfer Pricing Services

Our dedicated tax team at Rödl & Partner can help you develop robust transfer pricing strategies that align with the Malaysia transfer pricing practice, and optimize your tax position while fully maintaining compliance:

## DIAGNOSTICS

- Advice on the transactions/parties subject to TP compliance
- Review existing TP policies, carry out functional analysis, and confirm TP methodology
- Perform TP risk assessment and identify risk and gaps
- Develop action plan to manage TP risks

## PLANNING

- Develop targeted TP operating model/ supply chain, including restructuring and re-allocation of functions, risks and assets
- Undertake TP analytics using various benchmarking tools
- Perform benchmarking analysis to design TP policy
- Align supply chain/business process to the TP policy

## IMPLEMENTATION

- Implement TP policy
- Monitor application of TP policy
- Prepare/amend intercompany agreements to respond to recommended TP set-up



## COMPLIANCE REPORTING & FILING

- Prepare contemporaneous TP documentation (Local File, Master File, and CbC Report)

## CONTROVERSY & DISPUTE RESOLUTION

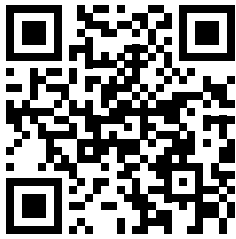
- Address audit readiness
- Defend TP documentation and related issues during audits and disputes
- Formulate audit defense strategies and provide robust economic analysis
- Support with negotiations with the tax authorities during the audit



# About us

Rödl & Partner – The agile caring partner for Mittelstand shaped world market leaders

[www.roedl.com/about-us](http://www.roedl.com/about-us)



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