Transfer Pricing Rules and Practices in the Greater China Region

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KUNDA
China
Transfer Pricing

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Preface

Transfer pricing has significant tax planning implications for multinational companies and there has been a tendency towards more aggressive transfer pricing audits over the past decade in the globe. The administration of a transfer pricing system is becoming more complicated, as tax authorities are intensifying their surveillance and investigation of transfer prices. It can be anticipated that multinational companies may face more transfer pricing challenges from the tax authorities worldwide in the future.

The Greater China region (Mainland China, Hong Kong, and Taiwan) is certainly no exception to this trend. All three tax jurisdictions in the region follow OECD action plan on BEPS to enforce the transfer pricing documentation requirements. They have adopted a three-tiered standardized approach for transfer pricing documentation, namely Master File, Local File and Country-by-Country Report (CbCR). This standardized approach requires a multinational company to provide a comprehensive and consistent transfer pricing documentation for tax authorities to assess transfer pricing risks. Taxpayers should act now to examine their operations and potential transfer pricing exposures in a proactive and comprehensive manner.

In the Transfer Pricing Brochure, we review and compare the latest development of transfer pricing rules and compliance requirements in the three tax jurisdictions, and present a case study to demonstrate how to effectively manage transfer pricing risks and document transfer pricing policies for multinational companies operating in the region. To avoid potential tax audit risks, it is advisable that taxpayers take positive and proactive steps to address the practical issues relating to the actual operation of the transfer pricing legislation, and to manage their transfer pricing documentation obligations and audit risks in the Greater China business environment.

Contents

A Summary of the Great China Region Transfer Pricing

Transfer Pricing Regulations
Mainland China
• The Corporate Income Tax Law of the People's Republic of China. • The Implementation Regulations of the Corporate Income Tax Law of the People's Republic of China. • The Tax Administration Law of the People's Republic of China. • The Implementation Regulations of the Tax Administration Law of the People's Republic of China. • Announcement of the State Administration of Taxation on Matters Relating to Improved Administration of Related Party Declarations and Contemporaneous Documentation. • Announcement on Special Tax Investigations, Adjustments and Mutual Agreement Procedures.
Hong Kong
• The Inland Revenue (Amendment) (No 6) Ordinance 2018 (IRO). • DIPN 45 – Relief from double taxation due to transfer pricing or profit reallocation adjustments; • DIPN 46 – Interpretation of methodologies and related issues. • DIPN 58 – Instructions on the preparation of transfer pricing documentation and country-by-country reports. • DIPN 59 – Interpretation of the arm's length principle, its application and certain exemptions; services and intangible dealings. • DIPN 60 – Interpretation of the concept of "Permanent Established (PE)" in Hong Kong and the methodology for attributing profits to Hong Kong PEs.
Taiwan
• Income Tax Act 1971 (ITA), Article 43-1. • Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing 2004, as amended (Taiwan TP Assessment Regs). • Regulations Governing the Assessment of Interest Expenditure on the Debts Owed by a Profit-Seeking Enterprise to a Related Party in Accordance with the Condition that the Related Payments Shall Not be Considered as Expenses or Losses 2011 (Thin Capitalization Rules).

Definition of Related Party
Mainland China
• One party directly or indirectly owns more than 25% of the shares of the other party; or a common third party directly or indirectly owns more than 25% of the shares of both parties. • If one party owns the shares of the other party, or a common third party owns the shares of both parties, but the percentage of shares held in either situation is less than the percentage as specified in paragraph one, however the debt between both parties account for more than 50% of either party's total paid-up capital, or more than 10% of one party's total debt is guaranteed by the other party. • If one party owns the shares of the other party, or a common third party owns the shares of both parties, but the percentage of shares held in either situation is less than the percentage as specified in paragraph one, however the business operations (Patent Rights, Non-patent technology, Trademark Rights, Copyrights) of one party depend on the proprietary right provided by the other party. • If one party owns the shares of the other party, or a common third party owns the shares of both parties, but the percentage of shares held in either situation is less than the percentage as specified in paragraph one, however the business activities (Purchase, Sale, Labour Acceptation, Labour Providing) of one party are effectively controlled by the other party. • More than half of the directors or the high level management (Secretary of the board of directors of listed corporations, Manager, Deputy manager, CFO of the listed Company and other personnel listed by the corporation) of one party are appointed or assigned by the other party, or simultaneously hold position as the directors or the high level management of the other party; or more than half of the directors or the high-level management of both parties are assigned by a third party. • Two individuals in an affinity relationship, consanguinity relationship, collateral relationship or other supporting relationships respectively having a relationship with one party and the other party as specified in any of paragraph 1 to 5. • Two Parties substantially have common interests in other ways.
Hong Kong
• One of the affected persons was participating in the management, control or capital of the other affected person; or • The same person or persons was or were participating in the management, or control or capital of each of the affected persons. The participating person can be a corporation, partnership, trustee, body of persons or individual whereas the controlled person can only be corporation, partnership, trustee, body of persons.

Taiwan

- A profit-seeking enterprise directly or indirectly holds 20% or more of the total outstanding voting shares or capital stock in another profit-seeking enterprise.
- 20% or more of the total outstanding voting shares or capital stock in a profit-seeking enterprise and another profit-seeking enterprise are directly or indirectly owned or controlled by the same person.
- A profit-seeking enterprise holds the highest percentage of the total outstanding voting shares or capital stock in another profit-seeking enterprise and this percentage is 10% or more.
- One half or more of the executive shareholders or directors of a profit-seeking enterprise and those of another enterprise are the same.
- The aggregate number of directors appointed by one profit-seeking enterprise and the number of directors appointed by the other enterprise(s) in which it directly or indirectly holds 50% or more of the total outstanding voting shares or capital stock in another profit-seeking enterprise is one half or more of the total number of directors of the latter.
- The chairman, general manager or equivalent or superior of one profit-seeking enterprise is that of another enterprise or has the relation of a spouse or blood relation within the second degree with that of another profit-seeking enterprise.
- Where the head office of a profit-seeking enterprise is located outside Taiwan, its branch office in Taiwan and its head office or branch offices outside Taiwan. Where the head office of a profit-seeking enterprise is in Taiwan, the head office or branch office in Taiwan and its branch offices outside Taiwan.
- A profit-seeking enterprise directly or indirectly controls the personnel, finance, or business operation of another profit-seeking enterprise.
- A profit-seeking enterprise and another one have entered into a joint venture agreement or an agreement to conduct business jointly.
- Other circumstances whereby a profit-seeking enterprise has control or major influence over personnel, finance, business operation or management decisions of another profit-seeking enterprise.

Tax Return Disclosures/Country-by-Country Reporting (CbCR)

Mainland China

The new Related Party Transaction Forms consist of 22 forms in total including the Country-by-Country Reporting (CbCR).

Tax resident enterprises that fall into any of the following categories shall file the CbCR:

- The resident enterprise is the ultimate holding company of a multinational group having total consolidated group revenue of more than RMB 5.5 billion in the preceding year;
- The resident enterprise that has been appointed by the multinational group to file the CbCR.

The CbCR filing requirement mainly applies to the ultimate parent companies in China. However, a foreign subsidiary of multinational company in China may also be required to submit CbCR in a transfer pricing investigation if its overseas ultimate holding Company should prepare the CbCR according to the regulation of the jurisdiction it resides. The forms require all taxpayers with related party transactions to provide considerably detailed information regarding those transactions to the SAT on a yearly basis.

Hong Kong
An entity is obligate to file CbC reports in Hong Kong if it is any of the following: • The ultimate parent entity, being a resident for tax purposes in Hong Kong, of a group with annual consolidated revenue over HKD 6.8 billion in the preceding year; • The surrogate parent entity, being a resident for tax purposes in Hong Kong, of a group with annual consolidated revenue over EUR 750 million or local equivalent, in the preceding year. A Hong Kong entity of a reportable group which meets certain criteria must file a CbC reporting notification with the IRD within three months after the end of the reportable group's accounting period for the IRD to determine the obligation for filing a CbC report.
Taiwan
A Taiwanese entity, which is the ultimate parent entity of a multinational group, is required to file the CbC report within 12 months from the last day of its fiscal year when the total consolidated group revenue is above the threshold.

Level of Documentation	
Mainland China	
Master File	Companies meeting either of the following criteria shall prepare the Master File: • Have cross-border related party transactions and the ultimate holding enterprise (The ultimate holding corporation that consolidated the financial statements of the Company) has already prepared the Master File in this year, or • The total amount of related party transactions exceeds RMB 1 billion in this year.
Local File	Companies whose amount of yearly related party transactions satisfy any one of the following criteria shall prepare Local File: • The amount of transfer of ownership of tangible assets (Processing business services which are calculated by using the import and export declaration prices in this year) exceeds RMB 200 million; • The amount of transfer of financial assets exceeds RMB 100 million; • The amount of transfer of ownership of intangible assets exceeds RMB 100 million; • The total amount of other related party transactions exceeds RMB 40 million.
Special Issue File	The special issue file includes the cost sharing agreement special issues document and the thin capital special issues document. • If a corporation signs or implements a cost-sharing agreement, it should prepare the cost sharing agreement special issues document; or • Where the related party debt equity ratio of the corporation exceeds the standard ratio and it is required to prepare the thin capital special issues document.

Hong Kong

Exemption based on the size of business

A Hong Kong entity of a group will not be required to prepare both Master File and Local File if they meet any two of the following exemption thresholds:

- The total amount of the entity's revenue for the accounting period, as reflected in the entity's financial statements for the accounting period, does not exceed HKD 400 million;
- The total value of the entity's assets at the end of the accounting period, as reflected in the entity's financial statements for the accounting period, does not exceed HKD 300 million;
- The average number of the entity's employees during the accounting period does not exceed 100.

Exemption based on the amount of controlled transactions

A Hong Kong entity will not be required to prepare a Local File for a particular type of controlled transactions if the amount of that type of controlled transactions does not exceed the following threshold:

- Transfers of properties (whether moveable or immoveable but excluding financial assets and intangibles) HKD 220 million;
- Transactions in respect of financial assets HKD 110 million;
- Transfers of intangibles HKD 110 million;
- Other transactions HKD 44 million.

A Hong Kong entity that is fully exempted from preparing a Local File is also not required to prepare a Master File.

Taiwan	
Master File	The Master File requirements apply to MNE groups with an entity resident in Taiwan with an annual revenue of NTD 300 million or more, and cross-border related party transactions of NTD 1.5 billion or more.
Local File:	A taxpayer is exempted from having to prepare a transfer pricing report if any one of the following criteria is satisfied: • The total annual revenue does not exceed NTD 300 million; or • The total annual revenue is between NTD 300 million and NTD 5 billion; and - The taxpayer utilizes tax credits of less than NTD 2 million or losses carried forward of the past five years of less than USD 8 million; and - The taxpayer has no overseas related parties; or • The total annual controlled transactions amount to less than NTD 200 million.

Language for documentation
Mainland China
Documentation to be submitted to the tax authority should be in Chinese.
Hong Kong
Transfer pricing documentation when prepared should be in English or Chinese.
Taiwan
Documents should be prepared and submitted in Chinese. English language documentation may be acceptable if approved by the Ministry of Finance.
Deadline to Prepare Documentation
Mainland China
The Master File should be completed within 12 months after the fiscal year-end of the group's ultimate holding company, while the Local File and Special Issue File should be completed by 30 June of the year following the year in which the related party transactions occur.
Hong Kong
The Master File and Local File must be prepared within 9 months after the end of each accounting period of the Hong Kong entity. While a Local File should be prepared in respect of the Hong Kong entity's accounting period, the Master File should be prepared in respect of the corresponding accounting period of the consolidated financial statements.
Taiwan
The Master File should be prepared when filing the annual income tax return. The Local File should be prepared at the latest when the income tax settlement or final account of the transaction year is included in the profit-making business of the controlled transaction.
Deadline to Submit Documentation
Mainland China
The transfer pricing documentation should be submitted within 30 days upon the tax authorities' request.
Hong Kong
Documentation should be submitted upon request within the time specified in the Assessor's notice. The filing deadline for a CBC report is generally 12 months after the end of the accounting period. A Hong Kong entity of a reportable group must file a CbC notification with the IRD within 3 months after the year-end of the reportable group.

Taiwan

The Master File shall be submitted to the tax authorities within 12 months from the last day of its fiscal year. Documentation must be submitted within one month upon request. With the approval of the NTA, the submission deadline can be extended for one month under special circumstances.

Statute of Limitations

Mainland China

The statute of limitations for transfer pricing adjustments is 10 years.

Hong Kong

7 years from the end of the year of assessment to which the transfer pricing issue relates. However, in cases of fraud or tax evasion, there is no time limit.

Taiwan

5 years from the latter of filing of return or the original due date of return, rising to 7 years if the tax return is not filed on time, or the Company is involved in tax fraud or tax avoidance.

Transfer Pricing Methods

Mainland China

A reasonable method should be selected. The CUP, resale price, cost plus methods, profit split and TNMM should be considered. A “deemed profit rate” may be used in case the taxpayer is unable to effectively document its transfer pricing position.

Hong Kong

If a traditional transaction method and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferred to the transactional profit method.

Taiwan

- Transfer and use of tangible assets: 1) Comparable Uncontrolled Price Method; 2) Resale Price Method; 3) Cost Plus Method; 4) Comparable Profit Method; 5) Profit Split Method and 6) Other conventional transaction methods approved by the Ministry of Finance.
- Transfer and use of intangible assets: 1) Comparable Uncontrolled Transaction Method; 2) Comparable Profit Method; 3) Profit Split Method; and 4) Other conventional transaction methods approved by the Ministry of Finance.
- Provision of services: 1) Comparable Uncontrolled Price Method; 2) Cost Plus Method; 3) Comparable Profit Method; 4) Profit Split Method; and 5) Other conventional transaction methods approved by the Ministry of Finance.
- Use of funds: 1) Comparable Uncontrolled Price Method; 2) Cost Plus Method; and 3) Other conventional transaction methods approved by the Ministry of Finance.

Comparables
Mainland China
The tax authorities may use public information or non-public information in analysing and evaluating whether the enterprise's related party transactions comply with the arm's length principle. However, the SAT has acquired regional and global databases, including Bureau van Dijk products, to improve the quality of searches undertaken.
Hong Kong
Search for comparables should start from the market served by the tested party. If the potential comparables are not suitable then the search can be expended to other jurisdictions. However, the [preference should be given to tax jurisdictions that have proximity to Hong Kong in terms of demographics, size of the economy, and stage of economic development. Comparable should generally be selected from the database (such as OSIRIS and ORBIS) which the IRD has subscribed.
Taiwan
Where the tested party is located in Taiwan, there is a preference for Taiwanese comparables.

The Great China Region Transfer Pricing Documentation Content Requirements

Master File	
Mainland China	
Organisation structure	An organizational chart for the Company to illustrate the global organisation structure and equity structure of the enterprise group and geographical distribution of all the member entities.
Business of an enterprise group	A description of the global group's business, including important profit divers, supply chain and geographical markets of the top five products or services, important services rendered by related parties, other than R&D services, a brief functional and risks analysis for group entities as well as business restructurings during the fiscal year.
Intangible assets	A description of the global group's intangibles such as overall strategies for development and application of intangibles and determination of ownership of intangibles, important agreements on intangibles, the group's transfer pricing policies for R&D and intangibles.
Financing activities	Information on the global group's financing arrangements with both related and unrelated parties, member entities performing centralised financing function, overall transfer pricing policy for financing arrangements.
Financial and tax situation	Information on the global group's financial and tax position, containing consolidated financial statements, APAs, other tax rulings on income allocation as well as the entity submitting the CBC report.
Hong Kong	
Organisation structure	• The group's legal and ownership structure; and • The geographical location of constituent entities of the group.

Group's business	• Important drivers of business profits; • The supply chains; • Important service arrangements; • The main geographic markets; • Functional analysis describing the principal contributions to value creation; and • Important business restructuring transactions.
Intangible assets	• The group's intangibles; • The group's overall strategy for the development, ownership, and exploitation of intangibles; • A list of intangibles; • Important inter-Company agreements related to intangibles; • The group's transfer pricing policies related to R&D and intangibles; and • Important transfers of intangibles.
Financing activities	• The groups' important financing arrangements; • The entity providing a central financing function for the group; and • The group's transfer pricing policies related to financing arrangements.
Group's financial and tax positions	• The group's consolidated financial statements; and • The group's existing unilateral advance pricing agreements and arrangements.
Taiwan	
The group's organizational structure, and the relationship between subordinate and controlled entities (as well as their geographical location).	
An overview of the group's business	• Important factors affecting operating profit; • The supply chain and key markets for the group's top five products or services by sales, or amounting to more than 5% of the group's sales; • A list and description of important service arrangements between group entities (but excluding research and development (R&D) services), including principal locations providing important services, the sharing of service costs, and transfer pricing policies for determining prices paid for intragroup services; • Functional analysis of the main contributions to value creation by individual group entities (including key executive functions, risks assumed, and assets used); and • Major business restructuring transactions, mergers, acquisitions and divestitures occurring during the fiscal year concerned.

Intangible assets of the MNE group	• An overview of the group's overall strategy for the development, ownership, and use of intangibles, including the location of main R&D facilities and location of R&D management Intangible assets that are important for transfer pricing purposes, and the group entities that legally own them; • The relevant significant agreements or contracts between MNE group members, including cost contribution arrangements, principal research service agreements, and licensing contracts; • An overview of the group's transfer pricing policies related to R&D and intangibles; and • A summary of significant transfers of interest in intangibles among group members during the fiscal year concerned, including the entities, countries, and remuneration involved.
Intragroup financing activities	The identification, location, and place of effective management of any group entity that provides a core financing function for the group, and a description of the group's general transfer pricing policy for intragroup financing arrangements.
Financial and tax positions	The annual consolidated financial statement for the fiscal year concerned, and a list of existing advance pricing agreements and other tax rulings relating to income allocation among countries.
Local File	
Mainland China	
Overview of local enterprise	1) Organisation structure; 2) Management structure; 3) Business description; 4) Business strategies; 5) Financial data for each business; and 6) Information on restructuring or transfer of intangibles.
Related party relationships	1) Information on related parties involved; 2) Information on the income taxes of each related party; and 3) Changes in the enterprise's related party relationships.
Related party transactions	1) Overview of related party transactions; 2) Value chain analysis; 3) Outbound investments; 4) Related party equity transfer; 5) Related party services; and 6) APAs and tax rulings related to related party transactions.

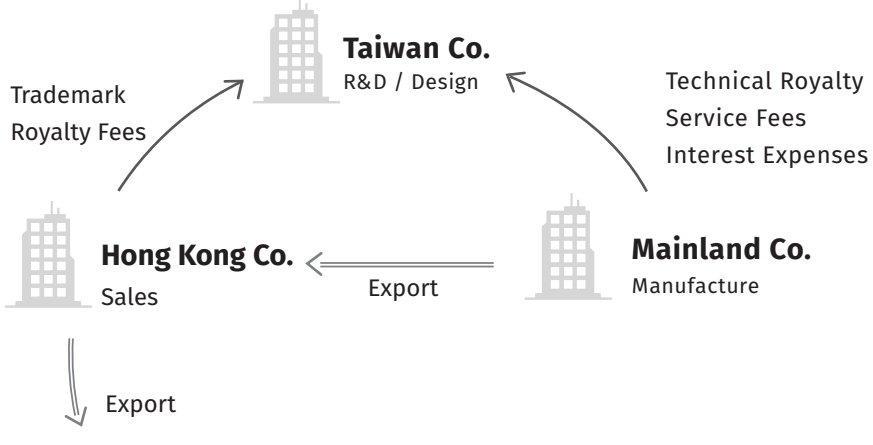
Comparability analysis	1) Factors taken into consideration in comparability analysis; 2) Information on functions performed, risks borne, and assets used by comparable companies; 3) Selection criteria and rationale for accepted comparable information; 4) Information on internal or external comparable uncontrolled transactions and financial information of comparables; and 5) Comparable adjustments and the underlying reason.
Selection and application of transfer pricing method	• Selection of tested party and the underlying reason; • Selection of transfer pricing method and the underlying reason, the enterprise's contribution to the group's overall profit or residual profit; • Assumptions and judgment made in establishing an arm's length prices or profit; • Application of transfer pricing method and comparability analysis results. • Any other materials supporting the selected transfer pricing method; and • Analysis and conclusion of whether the transfer pricing policy is of arm's length nature.
Hong Kong	
Description of local entity	• Management structure; • Organization chart; • Business and business strategy; and • Key competitors.
Controlled transactions	• The material-controlled transactions; • Associated entities; • Copies of all material inter-Company agreements; • Comparability and functional analysis; • The most appropriate transfer pricing method; • The selected tested party; • A summary of the important assumptions; • Multi-year analysis; • The selected comparable uncontrolled transactions; • Comparability adjustments; • Conclusions; • Financial information used in applying the transfer pricing methodology; and • A copy of existing APAs.
Financial information	• Audited financial statements; • Financial data used in applying the transfer pricing method; and • Financial data relating to the comparables used.

Taiwan	
An overview of the entity	Its operating history, business activities, and business strategies adopted (including industry and economy analysis, main competitors, economic, legal and other factors affecting transfer pricing, and whether the entity has been involved in a business restructuring or transfers of intangible assets in the present or immediately previous year.
Organization structure and management structure	An organization chart and a description of individuals to whom local management reports and the countries in which they maintain their principal offices.
Summary information on the controlled transactions	• A description of the main types of controlled transactions (e.g., process, date, subject matter, quantity, price, and contract terms, and the purpose for which the underlying asset or services is traded (including its sale or use and its narrative benefits); • The participants and their relationship with each type of controlled transaction; • The amount of the transaction set out separately for the countries or regions in which the trader of each type of controlled transaction belongs; and • The principal agreements signed within the group.
Comparability and functional analysis	Detailed comparability and functional analysis of controlled transactions.
The transfer pricing method	The most appropriate transfer pricing method selected and the reasons for selection.
The multi-year analysis	If relevant, an explanation of the reasons for performing a multi-year analysis.
Unilateral advance pricing agreements	Unilateral advance pricing agreements related to controlled transactions.

Special Tax Issues
Mainland China
Special Issue File includes special issue file for cost-sharing agreements and special issue file for thin capitalisation. Special issue files for a cost-sharing agreement shall include: • Copy of the cost sharing agreement; • Other agreements among participants for the implementation of the cost sharing agreement; • Use of the results of the agreement by non-participants, the amount and form of payment, and allocation method of the payment among the participants; • Changes to the participants under the cost sharing agreement in the year; • Descriptions of amendments to or termination of the cost sharing agreement; • Total cost incurred under the cost sharing agreement during the year and the cost structure; • Cost allocation among participants during the year; • Comparison of actual benefits in the year with the anticipated benefits under the agreement, and the adjustments made accordingly; and • Calculation of the anticipated benefits including the selection of parameters, calculation method and reason of change. Special issue files for thin capitalisation shall include: • Analysis of the enterprise's repayment capacity and borrowing capacity; • Analysis of the group's borrowing capacity and financing structure; • Description of changes to equity investment of the enterprise; • Nature and objectives of debt investment from related parties and the market conditions at the time the debt investment was obtained; • Currency, amount, interest rate, term and financing terms of debt investment from related parties; • Whether an independent enterprise is capable and willing to accept the aforementioned financing terms, amount and interest rate; • Collaterals provided by the enterprise in order to obtain the debt investment together with the relevant terms; • Details of the guarantor and the terms of guarantee; • Interest rate and financing terms of similar loans contemporaneous to the debt investment from related parties; • Terms of conversion of convertible bonds; and • Other information that can support the conformity with the arm's length principle.

Case Studies

A Taiwanese Company designs and manufactures semiconductors. The Company set up a sales company in Hong Kong and then authorized the Hong Kong Company to register a manufacturing Company in Mainland China. The Hong Kong Company contracts its Mainland subsidiary to manufacture memory chips, which are designed by the research and development department of the Taiwanese Company. Production and sales decisions are ultimately determined by the Taiwanese Company. The Taiwanese Company provides staff training and key production techniques to the Mainland Company for processing into finished goods. The Taiwanese Company also provides loans to the latter. The Hong Kong Company pays trademark royalty fees to the Taiwanese Company. The Mainland Company pays technical royalty and service fees as well as interest on loans to the Taiwanese Company. 100% of the Mainland Company's products are exported to the Company in Hong Kong, which in turn sells them to the overseas markets.



The Mainland Company
The Taiwanese Company performs personnel support activities such as staff training to the Mainland manufacturer. Key production techniques are provided by the Taiwanese Company as well. With a verification report from a professional organisation, these activities should justify the payments of technical royalty, service fees and interest expenses to the Taiwanese Company. As a contract manufacturer, the Mainland Company does not develop its own product lines but offers labour with proper training in performing manufacturing functions only. For the provision of contract manufacturing services, the Mainland Company is operating as a Cost Centre. The Cost-Plus Method is the preferred method for determining the transfer pricing involved. The Cost-Plus method is also used to confirm the arm's length nature of the royalty and service fee payable, by testing the arm's length nature of the net returns of the Company after payment of the royalty and service fees. The benchmarking will be performed using one of the most internationally recognised electronically-published company databases, Bureau van Dijk's (BvD). Many tax practitioners and tax authorities use BvD's electronically-published database for its search function and ease by which benchmark results may be verified. The use of BvD databases is specifically recommended by the SAT in the circular Guo Shui Han [2005] No 239.
The Hong Kong Company
For the provision of sales services, the Hong Kong Sales Company is predominantly acting as a Revenue Centre. The Hong Kong Company is remunerated for its sales services based upon its sales levels. The resale price method is selected as the preferred method for determining the transfer pricing involved. For the payment of the trademark royalty fee to the Taiwanese Company, the Hong Kong Company should be prepared to not only justify the arm's length nature of the transaction but also to demonstrate the benefits derived from the usage of the trademark/brand after the sales in the market. DIPN 59 also clarifies that the arm's length principle must be considered first before the source of profit can be determined. Thus, royalties paid to the Taiwanese Company for the licensing of trademarks, are deductible provided they are charged at normal market rates. If the royalties charged by the Taiwanese Company are not of an arm's length nature, the IRD may adjust the amount of royalties claimed by the Hong Kong Company for tax purposes.
The Taiwanese Company
As the headquarters for the Group, the Taiwanese Company is responsible for the Group's strategic management, investment decisions, and product and process research and development. The Taiwanese Company acts as an investment/profit centre. For the royalty and interest charges, the comparable uncontrolled price (CUP) method shall be used to test the royalty rate and interest rate on loans. The service charges for providing training and technical services to the Mainland Company shall be decided on the basis of an hourly rate or the cost-plus mark-up.

Questions arising from the case
• Is transfer pricing documentation needed for the three entities? • What is the classification and risk profile of the three entities? • What methodology is appropriate to benchmark the profitability of the three entities? • What is an arm's length rate of the profit profile of the three entities? • Can you envisage how transfer pricing in the three tax jurisdictions can be taken advantage of? • Do Mainland China, Hong Kong and Taiwan have anything in common regarding transfer pricing? • Do you have any comment to make for the main factors which the Taiwan Company are reported as having for determining the transfer pricing policy? • What is most likely to attract the attention of tax authorities in China to the Mainland Company? • Name the most significant risk factors to an investigation in Taiwan. • Name as many anticipated changes to current practice over transfer pricing in Hong Kong.
Recommendations
To carry out economic analyses to identify transfer pricing risks, prepare transfer pricing documentation of prior year positions, and then design and amended transfer pricing model to ensure minimisation of transfer pricing risks in the future, in a commercially realistic and administratively convenient manner. The new model designed with full supporting economic analysis, preparation of supporting legal documentation and production of an internal transfer pricing manual is to ensure operational heads in the business could understand and implement the new system.
Results
The new transfer pricing system has reduced the group's transfer pricing risks throughout the Greater China region, while also reducing the overall effective rate of tax, and streamlined the production of annual transfer pricing documentation in compliance with local country regulations.

China Transfer Pricing

坤达税务咨询（上海）有限公司作为一家专业税务咨询公司为在华开展业务的跨国公司以及中国“走出去”企业提供转让定价及国际税务咨询服务。我们能够对全国所有城市和省份的跨国公司提供转让定价和国际税务咨询服务。我们的行业经验丰富，能够有效地协助在华所有跨国公司 达到转让定价合规要求。

李俭博士是坤达税务咨询（上海）有限公司的高级合伙人，李俭博士拥有超过 15 年的转让定价咨询服务经验。作为知名中国转让定价专家，李俭博士以中英文为跨国公司提供转让定价税收筹划和系统设计、关联交易同期资料准备、转让定价风险评估和抗辩服务。

Kunda Tax Consulting (Shanghai) Limited is a tax consulting firm that specializes in providing transfer pricing and international tax services to Multinational Enterprises operating in China as well as Chinese Outbound Companies operating abroad. We work across all cities and provinces and have in- depth experience in a wide range of industries, making us ideally placed to assist all multinationals in China to meet their transfer pricing needs. We have alliance partners in many cities in China and in major countries around the world.

For more information about us, please visit our website at www.kundachina.com.

Dr Jian Li is a senior partner of Kunda Tax Consulting (Shanghai) Limited. He has been advising multinationals in the area of transfer pricing for more than 15 years. As a well- known China transfer pricing expert, he has provided transfer pricing design, documentation and dispute resolution services to multinationals over the past years.

李 俭

坤达税务咨询（上海）有限公司

手机：+86 13918155492
邮箱：J.li@kundachina.com

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王韬先生现任毕威迪大中华区副总监，在商业数据研究、数据需求分析和大数据应用的理论和实践工作方面拥有 20 年的经验。作为一名专家，他为政府、金融服务、企业和咨询公司的客户项目提供顾问服务。在转让定价领域，王韬先生常年与国家总局及各省市国际税收部门保持密切沟通，围绕国际税收的全球发展趋势，研究国际税收中的数据应用。

Bureau van Dijk is a Moody's Analytics company and is the global leading resource of corporate information and business intelligence, which provides data analysis support for various business applications by including enterprise information, financial information, equity structure, risk rating and other information. Its transfer pricing solution is widely accepted and used by customs and taxation authorities in over 50 countries around the world.

Mr. Tao Wang is Associate Director at Bureau van Dijk Greater China. He has 20 years' experience in theoretical and practical work of business data research, data demand analysis and application. He acts as a specialist advising on customer projects in government, financial services, corporations and consulting companies. In Transfer pricing, Mr. Wang Tao maintains close communication with China's General Administration and the international tax administrations of various provinces and cities all year round, and researches the application of data in international taxation around the global trend of international taxation.

王 韬
毕威迪信息咨询服务（北京）有限公司
手机：+86 13816129197
邮箱：Tao.wang@bvdinfo.com

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特约评论

特约知名业内人士及时围绕热点财税政策和决策从不同视角进行深入评论，大量独家和首发评论文章为专业人士的职场决策提供可靠依据。

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威科集团 2019 年营业收入达 46.12 亿欧元，全球拥有约 19,000 名员工，在欧洲、北美、亚太和拉美地区运营，服务于全球客户。威科集团总部位于荷兰阿尔芬，是泛欧交易所上市公司，同时也是荷兰 AEX 指数和欧洲 100 指数的成分股。

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