The current practice in Thailand is that the Revenue Officers only accept interest rates that:
1. are not below the fixed deposit interest rate in Thailand; **and**
2. are not below the company's own borrowing rate; **and**
3. are not below the market interest rate.

If the interest rate charged between related parties does not comply with the above rules, the Revenue Officers have the power to adjust the interest rate and the respective company's income accordingly.

The Thai Revenue Department has published various tax rulings in the past, but the case law on this matter is limited. A notable judgement was passed by the Thai Supreme Court in 2015: the assessed company borrowed money from its foreign affiliate at the group interest rate of 5% and lent the money to its affiliate in Thailand at the same rate. However, the market interest rate in Thailand at that time was around 8%. Since the funds did not originate from the assessed company's own business operation, the Thai Supreme Court ruled that it cannot use the group rate or fixed deposit rate because these rates are below the market rate.
(Source: Thai Supreme Court judgement no. 7126/2558. https://www.rd.go.th/62688.html)

In summary, companies should set the interest rate for cash pooling as follows:
1. If the funds originate from the company's own business operation, it can use the fixed deposit interest rate.
2. If the funds originate from a third-party loan, the company should use the market interest rate or the group interest rate, whichever is higher.

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Furthermore, it is important to know that companies which grant loans to foreign affiliates require a foreign business license. This makes it quite cumbersome to include Thai foreign-owned entities in a cash pooling concept.

Ukraine

The War is not an excuse to ignore Transfer Pricing Compliance

This autumn has seen hard-fought victories of Ukrainian defenders at the frontline, criminal attacks on Ukrainian critical energy infrastructure, resulting in severe power shortages (which I had the dubious pleasure to experience while writing this note), and...Ukrainian taxpayers' struggling to comply with the Transfer Pricing reporting deadline.

Surprisingly, the Ukrainian government has not eased Transfer Pricing compliance rules, irrespective of the war. Ukrainian taxpayers had to file reports on controlled transactions by October 1 and should be ready to submit Transfer Pricing documentation (Local file in Ukrainian legislation) upon the request of the tax authorities.

The only exception is for taxpayers for whom the war made it impossible for them to comply, and this fact should be supported by evidence. Not many taxpayers have used this opportunity. Therefore, even our clients whose facilities were destroyed or remain on the territories occupied by Russians have decided to file mandatory Transfer Pricing reporting.

The rules are even more stringent compared with 2021. Thus, 2022 is the first year when the tax authorities have the right to request master files from the taxpayers belonging to international groups.
Furthermore, November 3, 2022 saw the Ukrainian State Tax Service announce that it has joined the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports. Entry into force by the set of rules on Country-by-Country Reporting was linked to this event. Hence, in 2022, taxpayers received additional Country-by-Country Reporting compliance obligations. The tax authorities, in turn, obtained new powers in the area of TP control.

Finally, on November 3, Ukrainian Parliament adopted the law by which it lifted the wartime moratorium from the selected types of tax audits. And the Transfer Pricing audits have a prominent place in this list.

The reason for "deblocking" Transfer Pricing audits is obvious. During the drastic fiscal deficit caused by the war, the government considers Transfer Pricing rules as the perfect instrument to fill in "the budget gaps".

The law has been provided to the President for signing and after promulgation it will enter into force. This is expected to happen soon.

Therefore, even if the Transfer Pricing report has been filed on time, Ukrainian taxpayers will not yet be able to breathe a sigh of relief. It is quite likely that a lot of them will soon face tax auditors "on the war path" for extra taxes.

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United Kingdom

Draft Legislation on the UK TP Documentation Requirements

On July 20, 2022, the UK government published a draft legislation with regard to Transfer Pricing documentation requirements which is expected to take effect for accounting periods starting on or after April 1, 2023.

Key changes
The draft legislation provides for regulations to be introduced that would require taxpayers to produce (and provide upon request) TP documentation in a specified format in line with the OECD recommended approach (such as Master file and Local file). In addition, HM Revenue & Customs proposed the introduction of a Summary Audit Trail. The UK had previously implemented the Country-by-Country Reporting requirement.

Since UK taxpayers are already required to keep sufficient records to demonstrate that intercompany transactions have been undertaken using the arm's length principle, it is expected that this change would only affect the format in which these records are kept. However, preparing the Summary Audit Trail might result in an additional burden for taxpayers.

It was initially stated that this legislation would only apply to the largest companies, although the term "largest" was not defined. As it currently reads, the draft legislation does not define a threshold that excludes any taxpayers (other than small and medium