

SINGAPORE

TRANSFER PRICING LANDSCAPE

2006: Introduction of Transfer Pricing Guidelines by the Internal Revenue Authority of Singapore (IRAS).

2008: IRAS releases a circular for Transfer Pricing Consultation (TPC) and guidelines on Advance Pricing Agreement (APA).

2009: Issuance of guidelines on related party loans and services. In addition, a new section 34D was enacted under the Income Tax Act for tax related party transactions.

January 2015: IRAS issues revised Transfer Pricing Guidelines, 2015 which replaces all previous guidelines and circulars.



Introduction

The IRAS applies the internationally endorsed 'arm's length principle'. If taxpayers do not comply with the arm's length principle in their related party transactions and have understated their profits, the IRAS will adjust their profits upwards as provided in section 34D of the Income Tax Act.

Furthermore, in cases where a person carries on business through a permanent establishment (PE), the legislation requires such a PE to be regarded as a separate distinct person.

Related party

The definition of related party covers one person controlled directly/indirectly by another person or vice versa, or where both of them are controlled directly/indirectly by a common person.

Transfer pricing documentation

Contemporaneous documentation

The new guidelines mandate preparation of contemporaneous transfer pricing documentation, wherein information available prior to or at the time of undertaking related party transactions need to be considered. Furthermore, the date of creation or updating each document needs to be stated on the respective document.

However, for the ease of compliance, the guidelines provide that the IRAS will also accept documentation prepared at any time before the due date of filing returns, as contemporaneous documentation.

Extent of documentation

The taxpayers are required to prepare two kinds of documentation:

Group level

- General information on the group
- Description of the group's business, as relevant to the taxpayer
- Group's financial position

Entity level

- General information on the taxpayer
- Description of the taxpayer's business
- Details of related party transactions
- Transfer pricing analysis/benchmarking for the related party transactions.

Exemptions and thresholds

Broadly, the new guidelines provide exemptions from documentation requirements in the following cases:

- Domestic related party transactions (other than loans) in cases where both parties are subject to the same tax rates in Singapore.
- Domestic related party loan transactions where the lender is not engaged in the business of borrowing or lending
- Routine support services wherein the taxpayer chooses to apply a cost plus mark up of 5%
- Transactions covered under APAs

Furthermore, the guidelines provide the following threshold limits for documentation requirements:

Category of transaction	Threshold Limit (SGD)
Purchase of goods	15 million
Sale of goods	15 million
Loans availed	15 million
Loans provided	15 million
All other categories of transactions	1 million per category of transactions
Examples:	
• Service income	
• Service payment	
• Royalty income	
• Royalty expense	
• Rental income	
• Rental expense	

Arm's length principle

Three-step approach

In line with the Organisation of Economic Co-operation and Development's (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines), the IRAS endorses arm's length principle as a standard to guide transfer pricing. The guidelines recommend the following three-step approach to apply arm's length principle:

Step 1: Conduct comparability analysis

Step 2: Identify the most appropriate transfer pricing method and tested party

Step 3: Determine the arm's length results.

Usage of multiple year data

In order to enhance the reliability of the comparability analysis, taxpayers need to examine multiple year data as opposed to a single year data, in order to evaluate factors that influence transfer prices, such as long-term arrangements, business/product life cycles, etc.

Selection of comparables

The IRAS recommends taxpayers to use comparables with publicly available information whereby such information can be readily obtained from various sources and verified and reliable analyses may be conducted. Furthermore, the IRAS does not give preference to any particular database.

A company that is listed on a stock exchange is considered as better comparable than one that is not listed. Moreover, local comparables must to be given preference over non-local comparables. However, in cases where sufficiently reliable local comparables are not available, the search may be extended to regional comparables.

Selection of method

The guidelines recognise five internationally accepted benchmarking methods for evaluating transfer prices. The IRAS does not give preference to any specific method or methods and the taxpayers are independent to choose the most appropriate method based on the facts and circumstances of each case.

The taxpayers may also choose other more appropriate methods or use a combination of various methods to comply with the arm's length principle.

Inter-quartile range

The taxpayer can apply an inter-quarterile range to increase reliability of the comparability analysis. However, a taxpayer may even use the full range in cases where all the points of dataset are equally reliable.

Certain specific transactions

Intra-group services

The taxpayers need to apply the 'Benefit Test' to substantiate that the recipient of intra-group services actually receives or expects to receive benefits from such services.

Furthermore, the guidelines provide that, a strict pass through costs of services may be charged to related parties without any mark-up. However, the service provider should charge an appropriate arm's length mark-up for its function in arranging and paying for such pass through costs.

Routine support services

The taxpayer can opt to apply a cost plus mark-up of 5% on certain specified routine support, intra-group services so as to avoid a compliance burden with respect to these services.

Furthermore, in cases where routine support services are acquired at a group level on a cost pooling basis, the proportionate share may be charged to related parties without any mark-up.

Intra-group loans

For domestic related party loans provided by taxpayers not engaged in the business of lending or borrowing, the guidelines mandate the taxpayer to restrict interest deduction as a proxy to the ALP. In such cases, the taxpayer cannot claim a deduction for interest at a rate higher than the rate at which it has granted the loan to a related party.

In the case of a cross-border related party loan or a domestic related party loan wherein the lender is not engaged in the business of lending or borrowing, the taxpayers must carry out detailed transfer pricing analysis and comply with the arm's length principle.

Attribution of profits to Permanent Establishments

The guidelines provide that no further attribution of profits to the permanent establishment is required provided the taxpayer receives an arm's length remuneration from its foreign related party and other conditions in this regard are fulfilled.

Administration

Income tax return

Income tax return needs to be filed by 30 November of the year following the year in which books were closed.

Submission of documentation

Taxpayers are not required to submit documentation on an annual basis. However, it needs to be submitted to the IRAS within 30 days of the request.

Transfer pricing audit/assessment

The IRAS selects taxpayers for consultation (audit) based on risk indicators, such as:

- Value of related party transactions;
- Performance of the taxpayer's business over time;
- The probability of taxable profits being understated by an inappropriate transfer pricing.

During consultation, the IRAS may require the taxpayer to provide transfer pricing documentation and additional information or documents.

APA and MAP procedures

Taxpayers may apply for unilateral, bilateral or multilateral Advance Pricing Agreement (APA) for a period of three to five years. Taxpayers can also apply for rollback provisions for two preceding financial years in case of bilateral or multilateral APAs.

Taxpayers may also apply for a Mutual Agreement Procedure (MAP) within the applicable time limit prescribed in the relevant tax treaty.

Penalties and other consequences of non-compliance

Currently, no specific penalties have been introduced for transfer pricing. However, the new guidelines explicitly state that the IRAS is monitoring the compliance level and may, if necessary, consider more stringent measures including specific record-keeping regulations for transfer pricing.

In case of contravention, authorities may levy the following general penalties prescribed under the Income Tax Act:

Offence	Penalty
Omitting or understating of income	<ul style="list-style-type: none">• Amount of tax adjustment
Omitting or understating income without reasonable cause or through negligence	<ul style="list-style-type: none">• Two times the amount of tax adjustment; and• Fine upto SGD 5,000 or imprisonment upto three years or both.
Omitting income with willful intent to evade tax	<ul style="list-style-type: none">• Two times the amount of tax adjustment; and• Fine upto SGD 10,000 or imprisonment upto three years or both.
Preparation or maintenance of false books/records; or any other fraud to evade tax	<ul style="list-style-type: none">• Four times the amount of tax adjustment; and• Fine upto SGD 50,000 or imprisonment upto five years or both.
Any other offence under the Income Tax Act for which no specific penalty is provided	<ul style="list-style-type: none">• Fine upto SGD 1,000;• In case of default in the payment of fine, imprisonment upto six months.

Non-compliance with transfer pricing documentation requirements will also lead to the following adverse consequences:

- IRAS will not accept year end adjustments by the taxpayer in transfer prices
- Increased possibility of IRAS declining APA requests in future
- also, the IRAS may not support the taxpayer for MAP to resolve double taxation.

BEPS/CbC applicability

Singapore has yet not formally accepted recommendations of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project. However, new guidelines have introduced two-tiered transfer pricing documentation requirements i.e. at group level and entity level.

Although Singapore has not yet implemented Country-by-Country (CbC) reporting requirements, companies headquartered in Singapore with a presence in nations where the BEPS project recommendations are accepted, may be required to file CbC report in those nations.





SUMMARY OF TRANSFER PRICING REQUIREMENTS

Effective from	23 February 2006
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Compliance requirements	<ul style="list-style-type: none">• Taxpayers are required to prepare two kinds of documentation, group level and entity level.• Certain exemptions and thresholds limits available• Income tax return needs to be filed by 30 November of the year following the year of closing books and documentation to be submitted as and when required.
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Penalties	No specific penalties under transfer pricing, although the new guidelines explicitly mention that the compliances are being monitored and strict penalties may be levied if necessary.
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Method and Preference for comparable	5 methods as defined by OECD without any hierarchy. For comparable selection, preference to local companies is given although in case of insufficiency of data regional comparables may be used.
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Peculiar features	Taxpayer can opt to apply cost plus mark-up of 5% on certain specified routine support intra-group services so as to avoid compliance burden with respect to these services.
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Safe harbour and APA	Taxpayers may opt for unilateral, bilateral or multilateral APAs along with applicability of roll back provisions.
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BEPS/CbC applicability	No formally accepted recommendations of OECD / G20 BEPS Project. However, new guidelines have introduced a two-tiered TP documentation requirements i.e. at group level and entity level.
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