

SINGAPORE

TRANSFER PRICING LANDSCAPE

2006: First time introduction of Transfer Pricing Guidelines by Internal Revenue Authority of Singapore (IRAS).

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

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

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

2016: IRAS issues guidelines with respect to applicability of Country by Country Reporting (CbCR) for Singapore MNE groups

2017: IRAS issues the updated (fourth edition) Transfer Pricing Guidelines



Introduction

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

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

Related party

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

Taxpayers need to maintain contemporaneous documentation wherein documentation or information available prior to or at the time of undertaking related party transactions needs to be considered. The date of creation or update of each document should be stated in the document.

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

Extent of documentation

Taxpayers are typically required to prepare two tier of documentation:

Group level

- General information on the group;
- Description of group's business 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.

Country-by-Country Report

As per the recent guidelines, in relation to a financial year beginning on or after 1 January 2017, in case of taxpayer being the ultimate parent entity of a Singapore multinational enterprise ("MNE") group and the consolidated group revenue of such MNE group was at least SGD 1,125 million in the preceding financial year, then, in addition to the two-tier TP documentation, it would also be required to prepare and file Country-by-country reporting in the prescribed format.

Exemptions and thresholds

Broadly, guidelines provide exemption from documentation requirements in following cases:

- Domestic related party transactions (other than loans) in case where both parties are subject to same Singapore tax rates;
- Domestic related party loan transactions where the lender is not engaged in business of borrowing or lending;
- Taxpayer applies the specified indicative margins for related party loans;
- Routine support services wherein taxpayer chooses to apply cost plus mark up of 5%;
- Transactions covered under advance pricing agreements (APAs);

Further, guidelines provide below 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

Examples:

- Service income
 - Service payment
 - Royalty income
 - Royalty expense
 - Rental income
 - Rental expense
 - Guarantee Income
 - Guarantee Expense
- 1 million per category of transactions

Arm's length principle

Three-step approach

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

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

Selection of comparables

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. Further, IRAS does not give preference to any particular database.

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

Selection of method

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

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

Taxpayer can apply inter-quarter range to increase reliability of the comparability analysis. However, taxpayer may even use full range in case where all the points of dataset are equally reliable.

Certain specific transactions

Intra-group services

Taxpayers need to apply 'Benefit Test' to substantiate that recipient of intra-group services actually receives or expect to receive benefits from such services.

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

Routine support services

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 in this regards.

Further, in case where routine support services are acquired at group level on cost pooling basis then proportionate share may be charged to related parties without any mark up.

Intra-group loans

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

In case of cross border related party loan (other than the specified loans where indicative margins are applied) or domestic related party loan wherein the lender is engaged in business of lending or borrowing, the taxpayers need to prepare detailed transfer pricing documentation and comply with arm's length principle.

In case of related party loans not exceeding SGD 15 million at the time when loan is obtained or provided, and indicative margins as specified are applied to such loans, then the taxpayer can choose to take the benefit of not performing the detailed transfer pricing analysis for such loans.

Attribution of profits to Permanent Establishments

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

Administration

Income tax return

Income tax return needs to be filed by November 30 of the year following the year of closing books.

Submission of documentation

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

Transfer pricing audit/assessment

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

- Value of related party transactions;
- Performance of taxpayer's business over time;
- Likelihood that taxable profits may have been understated by inappropriate transfer pricing.

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

APA and MAP procedures

Taxpayer may apply for unilateral, bilateral or multilateral Advance Pricing Agreement (APA) for a period of 3 to 5 years. Moreover, taxpayer can also apply for rollback provisions for 2 preceding financial years in case of bilateral or multilateral APA.

Taxpayer may also apply for Mutual Agreement Procedure (MAP) within time limit as may be applicable as per relevant tax treaty.

Penalties and other consequences of non-compliance

As of now, no specific penalties have been introduced for transfer pricing. However, new guidelines explicitly states that 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 below general penalties prescribed under Income Tax Act:

Offence	Penalty
Omitting or understating of income	<ul style="list-style-type: none"> Amount of tax adjustment
Omitting or understating of 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 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 documentation requirements will lead to following consequences:

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

BEPS/CbC applicability

In line with the BEPS Action Plan 13, Singapore will be implementing CbCR requirements for Singapore MNE groups from FY 2017 onwards.

Applicability of CbCR, where:

- It is a Singapore MNE group.
- Consolidated group revenue in preceeding FY is atleast S\$1,125 million.
- MNE group has subsidiaries/operations in atleast 1 foreign jurisdiction.

The CbCR report is required to be submitted to the Comptroller within 12 months from the end of that FY.





SUMMARY OF TRANSFER PRICING REQUIREMENTS

Effective from	<ul style="list-style-type: none">• Original transfer pricing guidelines were effective from 23rd February 2006.• Revised comprehensive guidelines are applicable from 6th February 2015, which were further updated in January 2017.
Compliance requirements	<ul style="list-style-type: none">• Arm's length principle applicable in all related party transactions.• Contemporaneous documentation applicable subject to specified threshold limits.
Penalties	No specific penalties for transfer pricing non-compliances. However, penalties under general provisions applicable.
Method and Preference for comparable	<ul style="list-style-type: none">• 5 methods as defined by OECD are applicable without any hierarchy.• Listed company is considered as better comparable than the unlisted one.• Local comparables should be given preference over non-local comparables.
Peculiar features	<ul style="list-style-type: none">• 2 layers of documentation to be prepared i.e. Group level & Entity level• Need to apply 'Benefit Test' with respect to the intra group services• In case of PE, no further attribution of profits is required provided taxpayer receives an arm's length remuneration from its foreign related party
Safe harbour and APA	<ul style="list-style-type: none">• No specific provisions for safe harbour. However, taxpayers can opt to apply cost plus mark up of 5% on specified intra-group routine support services and the specified indicative margins on the related party loans, so as to avoid compliance burden for these transactions.• Taxpayer can apply for unilateral, bilateral or multilateral APA for a period of 3-5 years. Moreover, rollback application can be made upto 2 preceding years in case of bilateral or multilateral APA.
BEPS/CbC applicability	It is applicable from the FY 2017 onwards for Singapore MNE groups having consolidated group turnover in the preceding FY beyond the specified threshold.

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