

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

2018: IRAS issues the updated (fifth edition) Transfer Pricing Guidelines and Income Tax (Transfer Pricing Documentation) Rules 2018

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 are required to maintain contemporaneous documentation in order to reflect the arm's length nature of the transactions with related parties with effect from YA 2019 (financial year 2018), based on satisfaction of certain criteria. In order to determine the applicability of TP documentation requirements, taxpayers will have to assess, on an annual basis, following factors:

- Whether the gross revenue from their trade or business (excluding passive source income like dividend income and capital gains or losses) for the basis period concerned is more than S\$10 million
- Whether the gross revenue from their trade or business exceeds S\$10 million for any of the preceding two basis periods
- Whether they were required to prepare TP documentation for the basis period immediately before the basis period concerned
- Whether inter-company transactions are exempted from the requirement of TP documentation (as listed in below para)

Irrespective of the applicability based on the above-mentioned factors, to better manage transfer pricing risk, IRAS encourages taxpayers to prepare TP documentation following the TP Documentation Rules.

The date of completing the TP documentation must be indicated on the TP documentation and the taxpayers would be required to maintain TP documentation for a period of 5 years from the end of the basis period in which the transaction took place. The documentation shall be prepared not later than the filing due date of tax return and submitted within 30 days from the request by IRAS.

However, for the ease of compliance the taxpayers may opt to refresh the TP documentation once in every 3 years provided the details in TP documentation are accurate and up to date.

Extent of documentation

Taxpayers are typically required to prepare following 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

In relation to 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 not exceeding S\$15 million;
- Routine support services wherein taxpayer chooses to apply cost plus mark up of 5%;
- Transactions covered under advance pricing agreements (APAs);
- Related party transaction not exceeding certain value:

| Category of transaction | Threshold Limit (SGD) of value of related party transaction | Meaning of value of transaction |
|-------------------------|---|--|
| Purchase of goods | 15 million | Amount paid or payable by the taxpayer for the goods |
| Sale of goods | 15 million | Gross Revenue derived by the taxpayer from the sale |

| | | |
|--------------------------------------|--|--|
| Loans availed | 15 million | Principal amount of the loan |
| Loans provided | 15 million | Principal amount of the loan |
| All other categories of transactions | | |
| Examples: | | |
| • Service income | | |
| • Service payment | | |
| • Royalty income | 1 million per category of transactions | Amount paid or payable/gross revenue derived |
| • Royalty expense | | |
| • Rental income | | |
| • Rental expense | | |
| • Guarantee Income | | |
| • Guarantee Expense | | |

Arm's length principle

The arm's length principle explains that the transaction with related party is entered under the same comparable conditions and circumstances as that with an independent party. Application of arm's length principle expands to permanent establishments also.

Three-step approach

In line with Organization 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 regard 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.

Transfer Pricing Adjustments

IRAS has the power to disregard the form of actual commercial or financial relations between related parties where the substance of the transaction is inconsistent with the form of the transaction which gives rise for an adjustment.

Also, applicable from YA 2019, in case of TP adjustment which results into increase the amount of income/reduce amount of deduction or allowance/reduce the amount of loss, a surcharge equal to 5% of the increase or reduction in deduction, allowance or losses shall be imposed on the amount of the TP adjustments made by IRAS

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, failure of which may result in rejection of the MAP request.

Penalties and other consequences of non-compliance

As per the Income Tax (Transfer Pricing Documentation) Rules 2018 the following failure on account by the taxpayer would be considered as an offence and penalty of S\$10,000 would be imposed.

- Failure to prepare TP documentation by the time of tax return.
- Failure to prepare TP documentation as per the form and content and details specified by the Rules
- Failure to retain TP documentation for at least a period of 5 years from the end of the basis period in which the transaction took place.
- Failure to submit TPD within 30 days of notice
- Submission of false or misleading TPD

Non-compliance with documentation requirements will also 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.
- Irrespective of tax payable on adjustments, a surcharge of 5% shall be charged for transfer pricing adjustments made by IRAS relevant for YA 2019 or later.

BEPS/CbCR 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:

- a. It is a Singapore MNE group.
- b. Consolidated group revenue in preceding FY is at least S\$1,125 million.
- c. MNE group has subsidiaries/operations in at least 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.• Revised guidelines are applicable from the YA 2019 issued on 23rd Feb, 2018. |
| 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 | <ul style="list-style-type: none">• Specific penalties of S\$ 10,000 are applicable for violation of provisions with respect to transfer pricing guidelines.• A surcharge of 5% shall be charged for transfer pricing adjustments made by IRAS from YA 2019 onwards |
| 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">• 3 layers of documentation to be prepared i.e. Group level, Entity level and CbCR Report.• 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. |
| CbCR applicability | <p>It is applicable from the FY 2017 onwards for Singapore MNE groups having consolidated group turnover in the preceding FY beyond the specified threshold.</p> |

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