

# **IRAS Consultation**

## **Transfer Pricing Documentation**



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# Public Consultation on Transfer Pricing Documentation

## 1 Invitation to comment

- 1.1 We will be updating Section 4 of our Transfer Pricing guidelines on documentation<sup>1</sup> to provide more comprehensive guidance on transfer pricing documentation.
- 1.2 This consultation paper sets out the revised guidance on transfer pricing documentation.
- 1.3 We seek your views and comments on the revised guidance, particularly on the following:
  - (a) What challenges do you anticipate in preparing transfer pricing documentation on a contemporaneous basis?
  - (b) What difficulties would you have in getting the information listed under Annex A?
  - (c) We have included guidance under paragraph 7.3 on situations that are considered low risks such that transfer pricing documentation is not required. In your view, are there other situations that should be added to paragraph 7.3? If so, please provide details of such situations.
  - (d) Frequency of documentation updates.
  - (e) Describe any other areas relating to transfer pricing documentation that are not provided in the revised guidance which you think should be included.

## 2 Submission

- 2.1 To facilitate our review of your views and comments, please submit clear comments, using examples to illustrate your basis and rationale where possible. Please also indicate the specific section to which your views and comments relate. Your response should preferably not be more than four pages long.
- 2.2 We reserve the right to make public all or parts of any written submission made in response to this consultation paper and to disclose the identity of the contributor. We may also contact the contributor if we need further clarification on any views or comments provided. All views and comments received will be considered.

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<sup>1</sup> e-Tax guide on Transfer Pricing guidelines published on 23 February 2006.

- 2.3 The closing date to submit your views and comments is 24 September 2014. Your submission should include your name, the organisation you work for or represent, your email address and telephone number. Please address your submission to:

Comptroller of Income Tax  
Inland Revenue Authority of Singapore  
International Tax Branch  
55 Newton Road  
Singapore 307987

Or Email to: [public\\_consultation@iras.gov.sg](mailto:public_consultation@iras.gov.sg)

### **3 Introduction**

- 3.1 Taxpayers should prepare and keep contemporaneous records to support the pricing of the transactions undertaken with their related parties.
- 3.2 This part of the e-Tax guide provides guidance on:
  - (a) Objectives of preparing TP documentation
  - (b) Contemporaneous TP documentation
  - (c) Types of TP documentation
  - (d) Extent of TP documentation
  - (e) Compliance matters relating to TP documentation

### **4 Objectives of preparing TP documentation**

- 4.1 Taxpayers should prepare records that demonstrate the pricing of the transactions with their related parties is arm's length. Such records are known as transfer pricing documentation ("TP documentation").
- 4.2 The TP documentation should achieve the following objectives:
  - (a) To ensure taxpayers carefully evaluate, at or before the time of filing their tax returns, their compliance with the transfer pricing rules;
  - (b) To ensure taxpayers can readily demonstrate their transfer prices are determined in accordance with the arm's length principle to manage domestic and cross-border transfer pricing risks;
  - (c) To facilitate tax authorities' assessment of taxpayers' transfer pricing risks and identification of cases for transfer pricing audit. In the event a taxpayer is selected for audit, the taxpayer can use its TP documentation to explain its analysis and defend against potential transfer pricing adjustments;
  - (d) To help tax authorities to resolve transfer pricing issues under the Mutual Agreement Procedure ("MAP"); and
  - (e) To facilitate tax authorities in the discussion and conclusion of Advance Pricing Arrangement ("APA") Agreements

### **5 Contemporaneous TP documentation**

- 5.1 Documentation and information that taxpayers have relied upon to determine the transfer price prior to or at the time of undertaking the transactions would be most relevant and important. Such contemporaneous documentation is most useful especially in substantiating the taxpayers' transfer pricing. Hence, taxpayers should

prepare and keep contemporaneous TP documentation. Contemporaneous TP documentation ensures the integrity of taxpayers' transfer pricing positions and prevents taxpayers from justifying their positions after the fact.

- 5.2 IRAS accepts contemporaneous TP documentation as records prepared prior to or at the time of undertaking the transactions, and including up to the time of preparing the relevant tax returns.

## **6 Types of TP documentation**

- 6.1 Taxpayers are to provide documentation of their group and the specific companies involved in the related party transactions. The TP documentation are to be organised as follows:

(a) Group level

At this level, the documentation should provide a good overview of the group's businesses. Relevant information includes an overview of the group's global business, organisation structure, the nature of the global business operations and overall transfer pricing policies.

(b) Entity level

At this level, the documentation should provide sufficient details of the subject taxpayer's business and the transactions with its related parties. Detailed information includes the business operations and specific related party transactions.

- 6.2 Annex A sets out the types of information to be documented. The lists are not exhaustive. Taxpayers may include any other information not stated in Annex A which is appropriate in their circumstances

## **7 Extent of TP documentation**

- 7.1 IRAS is mindful that preparing TP documentation may result in substantial compliance and administrative costs for taxpayers. Generally, IRAS would consider the TP documentation as adequate if it is prepared in a timely manner with sufficient details to demonstrate compliance with the arm's length principle.

- 7.2 To ensure the adequacy and reliability of the TP documentation, reasonable efforts should be made for the following:

- (a) Ascertain the facts and circumstances of the transaction;
- (b) Undertake transfer pricing analysis and apply acceptable transfer price methodology to ascertain the transfer price; and
- (c) Document and maintain relevant documents.

7.3 IRAS does not require taxpayers to prepare TP documentation under these 2 situations:

- (a) Where the taxpayer is an SME<sup>2</sup> and the SME's related party transactions are local transactions subject to the same Singapore tax rates.
- (b) Where the taxpayers apply the Singapore safe harbour mark-up of 5% for routine services<sup>3</sup>.

7.4 Apart from these 2 situations, taxpayers should assess the adequacy and extent of their TP documentation by evaluating the following factors based on the facts and circumstances:

- (a) Whether the transfer pricing risks in respect of their transactions or arrangements are high; and
- (b) Whether not having adequate TP documentation may expose the taxpayer to other adverse consequences.

7.5 Examples of circumstances where transfer pricing risks may be considered high are:

- (a) Use of transfer pricing strategies that are intended to shift profits to other related parties subject to a more favourable tax treatment;
- (b) Transactions with cross-border related parties that are of large value relative to the other transactions of the taxpayer;
- (c) Transactions with related parties in low tax jurisdictions;
- (d) Recurring losses or large swings in operating results which may be unusual given the functions and assets of the taxpayer and the risks it assumed;
- (e) Operating results that are not in line with industry norms;
- (f) Use of intellectual property, proprietary knowledge or other intangibles in the business;
- (g) Transactions involving R&D or marketing activities which could lead to development or enhancement of intangibles; and

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<sup>2</sup> SME is a small and medium enterprise as defined by Spring Singapore and is one with annual sales turnover of not more than S\$100 million or employment size not more than 200 workers.

<sup>3</sup> This is provided in the IRAS' e-Tax guide on the "Transfer pricing guidelines for related party loans and related party services".



- (h) Indications (examples, through engagement with tax authorities, country's audit focus, etc.) that the transactions are likely to be subject to transfer pricing audit by tax authorities.

7.6 Taxpayers are not expected to incur compliance costs which are disproportionate to the amount of tax revenue at risk or complexity of the transactions. However, inadequate TP documentation may lead to adverse consequences, for example:

- (a) In the event that IRAS establishes the taxpayers have understated their profits through improper transfer pricing and there is no adequate TP documentation to prove otherwise, IRAS will make an upward transfer pricing adjustment under section 34D of the Income Tax Act ("ITA").
- (b) In the event that the taxpayers suffer double taxation arising from any transfer pricing audit by IRAS or foreign tax authorities, IRAS may not support the taxpayers in MAP discussions to resolve the double taxation.
- (c) In the event that the taxpayers apply for an APA, IRAS may not accept the application.

## **8 Compliance matters relating to TP documentation**

8.1 Taxpayers should observe the following compliance requirements:

- (a) Contemporaneous TP documentation  
TP documentation should be prepared on a contemporaneous basis.
- (b) Submission of TP documentation  
IRAS does not require taxpayers to submit TP documentation when they file their tax returns. Taxpayers should keep their TP documentation and submit it to IRAS upon request.

In the event the taxpayers are unable to provide adequate TP documentation upon request by IRAS, they may be penalised under Section 94(2) of ITA for not complying with the record keeping requirements under Sections 65, 65A and 65B of ITA.

- (c) Review of TP documentation  
Taxpayers should review their TP documentation periodically to ensure that:
  - The financial and economic analysis contained in the TP documentation are still accurate;
  - The applied transfer pricing method disclosed in the TP documentation is still relevant; and

- The transfer pricing supported by the TP documentation is still at arm's length.
- (d) Period of retention of TP documentation  
Taxpayers should retain the TP documentation for 5 years from the end of the relevant year of assessment, as required in Section 67 of ITA. However, it is prudent to retain the TP documentation for a longer period if the taxpayers are involved in an audit or a MAP.
- (e) Form of TP documentation  
Taxpayers can store the TP documentation in any medium, whether in paper, electronic form or any other system. However, they must be able to promptly provide the relevant information to IRAS in a useful form upon request.
- (f) Translation of TP documentation not in English  
IRAS may request for translation of any TP documentation not written in English.

## **Annex A – Guidance on contents of TP documentation**

### **(1) TP documentation at Group level**

The following information should be included:

#### **(a) General information on the Group**

Details (including a chart) on the worldwide organisational structure, showing the location and ownership linkages among all related parties.

#### **(b) Description of Group's Business**

General description or details relating to:

- The group's lines of business, products and services, geographic markets and key competitors.
- The industry dynamics, market, regulatory and economic conditions in which the group operates.
- The group's business models and strategies, including any important changes in recent years such as restructuring, acquisition or divestiture.
- Important drivers of business profit, including a list of intangibles and the related parties which legally owned them.
- The principal business activities and functions of each party in the group, including charts showing the supply chains of products and services.
- The business relationships (services provided, goods sold, development, ownership or exploitation of intangibles, financing arrangements, etc.) among all related parties.

#### **(c) Group's Transfer Pricing**

General description or details relating to:

- The functional analysis describing the contributions to value creation by each related party within the group, i.e. functions performed, risks assumed and assets (including intangibles) used and/or contributed.
- The group's transfer pricing policies relating to all types of transactions between related parties within the group.

(d) Group's Financial Position

Consolidated financial statements of the group

(2) TP documentation at Entity level

The following information should be included:

(a) General information on the Singapore taxpayer

- Details (including a chart) on the ownership structure, showing the location and ownership linkages of the Singapore taxpayer with its ultimate holding company, intermediate holding companies, immediate holding company and all subsidiaries and associated companies directly and indirectly held by the Singapore taxpayer, if such details are not provided at the Group level.
- Description of the management structure of the Singapore taxpayer, including a description of the individuals to whom the Singapore management reports and the countries in which such individuals maintain their principal offices.
- Organisational chart of the Singapore taxpayer, showing the number of employees in each department.

(b) Description of the Singapore taxpayer's business

General description or details relating to:

- The Singapore taxpayer's lines of business, products and services, geographic markets and key competitors.
- The industry dynamics, market, regulatory and economic conditions in which the Singapore taxpayer operates.
- The Singapore taxpayer's business models and strategies, including any important changes in recent years such as restructuring, acquisition or divestiture involving or affecting the Singapore taxpayer.

(c) Transactions between Singapore taxpayer and all related parties

- Details on all categories of transactions between the Singapore taxpayer and its related parties, including the identities of the related parties, the relationship, amounts and countries involved in each category of transactions.
- Contracts or agreements showing the terms of the transactions.

- A detailed functional analysis (i.e. functions performed, assets (including intangibles) used and/or contributed and risks borne) of the Singapore taxpayer and relevant related parties with respect to each category of related party transactions, including any changes compared to prior years.
- Segmented financial accounts with respect to the transactions, including explanations on the assumptions (if any) used to derive the segmented information.

(d) Transfer pricing analysis / benchmarking

- The choice of the tested party and reasons to support the choice.
- The choice of the transfer pricing method and reasons to substantiate the method is the most appropriate.
- Details on comparables and the screening criteria for choosing the comparables.
- Comparability analysis of the related party transactions / tested party and the comparables.
- Details of (and reasons for) any adjustments made to achieve comparability.
- The arm's length price/margin, showing the detailed computation and explanation of any assumption made.
- If an arm's length range is used, furnish details/reasons to support the determination and use of the range.