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Singapore Releases Proposed New Transfer Pricing Documentation Guidelines



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The Inland Revenue Authority of Singapore (IRAS) on 1 September published a consultation paper that sets out revised guidance on transfer pricing documentation. The proposed new guidelines are part of IRAS's ongoing efforts to require taxpayers to strengthen their due diligence in complying with the arm's length principle.

The consultation paper was released for public comment and feedback. Taxpayers were asked to submit their comments on the paper to IRAS by 24 September 2014. The IRAS consultation paper may be found at <http://www.iras.gov.sg/irasHome/page03a.aspx?id=8510>

Key Features

The proposed new guidelines set out to address the following broad aspects of transfer pricing documentation:

- The objectives of preparing transfer pricing documentation;
- Contemporaneous transfer pricing documentation – when to prepare it and what type of details are required; and
- Compliance consequences of inadequate transfer pricing documentation.

Some aspects of the new guidelines reaffirm -- or do not deviate significantly -- from the key concepts and guiding principles for preparing transfer pricing documentation under the existing Singapore transfer pricing guidelines. However, there are several notable new developments.

Transfer Pricing Documentation Requirement

The new guidelines are explicit in requiring taxpayers to "prepare and keep contemporaneous documentation."

In keeping with the existing guidelines, the proposed new guidelines do not impose a specific transfer pricing penalty for the lack or insufficiency of documentation. However, inadequate documentation may lead to the following "adverse consequences":

- The lack of documentation may increase the chances of transfer pricing adjustments under Section 34D of the Singapore Income Tax Act (SITA) during an audit;
- Consistent with the existing guidelines, IRAS may not support a taxpayer's mutual agreement procedure (MAP) application in the event of transfer pricing adjustments made by foreign tax authorities. However, the proposed new

guidelines now highlight the possibility that IRAS may also decline APA applications filed by the taxpayer; and

- If the taxpayer fails to timely submit adequate documentation upon request by IRAS, it may be penalized under Section 94(2) of the SITA for not complying with the record-keeping requirements under SITA Sections 65, 65A, and 65B. The penalty under Section 94(2) involves a fine not exceeding S\$1,000 or a jail term not exceeding six months in lieu of payment.

What constitutes contemporaneous transfer pricing documentation?

Under the existing Singapore transfer pricing guidelines, there is a call for transfer pricing documentation to be prepared in a timely manner, but there is no clear definition of what constitutes contemporaneous documentation.

In the proposed new guidelines, IRAS has indicated that it accepts contemporaneous transfer pricing documentation as records prepared prior to or at the time the transactions were entered into, and including up to the time of preparing the relevant tax returns. In other words, IRAS's requirement is that documentation should be prepared no later than the due date for filing the tax return for the year in question. This is believed to be in keeping with the "best practice" advocated by the OECD in its new guidance on transfer pricing documentation released on 16 September 2014.

The proposed new guidelines ask that taxpayers prepare information concerning the group level as well as the entity level. In doing so, IRAS has in principle adopted the two-tier approach recommended by the OECD guidance, which comprises a master file that calls for new disclosure requirements regarding taxpayers' entire global operations and a local file. However, there are some key differences between the OECD's and IRAS's approach to transfer pricing documentation, as discussed below.

Group Level Documentation

Under Singapore's current transfer pricing guidelines, only general and brief information on the group, such as its line of business, industry, and principal business activities must be provided, and that information is typically incorporated as part of a single taxpayer transfer pricing documentation file.

The proposed new guidelines require substantially more group-level details, which should present "a good overview of the group's businesses." In Annex A to the proposed new guidelines, the following types of information to be included as group-level documentation are listed:

- A worldwide organizational structure chart, showing the location and ownership linkages among all related parties;
- A description of the group's business, including:
 - the group's lines of business, products and services, geographic markets, and key competitors;
 - industry dynamics and market, regulatory, and economic conditions in which the group operates;
 - the group's business models and strategies, including any recent restructuring, acquisition, or divestiture;
 - important drivers of business profits and a list of intangibles and the related parties that legally own them;
 - the principal business activities and functions of each group entity, including charts showing the supply chains of products and services; and
 - the business relationships (services provided, goods sold, development, ownership or exploitation of intangibles, financing arrangements, etc.) among all related parties.
- Details on the group's transfer pricing, including:
 - a functional analysis describing the contributions to value creation by each group entity -- functions performed, risks assumed, and assets (including intangibles) used and/or contributed; and
 - the group's transfer pricing policies relating to all types of transactions between related parties within the group; and

- Consolidated financial statements of the group.

The expanded list of information required at the group level will require significantly more taxpayer time and effort to document. Further, such group level documentation would likely have to be prepared by the parent company of the multinational enterprise (MNE) group and shared with the Singapore entity. This raises the question whether IRAS would regard as inadequate documentation situations whereby the Singapore entity is not provided with group-level documentation by its parent company by the tax return filing date, but robust entity-level documentation has been prepared.

We expect commenters to provide substantial feedback on this point regarding the potential difficulties taxpayers may face in obtaining the information required.

One of the most controversial parts of the OECD guidance is the requirement for detailed country-by-country (CbC) reporting of certain information relating to the global allocation of profits, taxes paid, and certain indicators of the location of economic activity (tangible assets, number of employees, and total employee expense) among countries in which the MNE group operates. Consistent with its previous indications, the IRAS has opted not to include a requirement for a CbC template to be provided as part of the group-level documentation.

Entity-Level Documentation

The proposed new guidelines require entity-level documentation to “provide sufficient details of the subject taxpayer’s business and the transactions with its related parties.” Most of the proposed items required as entity-level documentation are already covered under the existing Singapore transfer pricing guidelines, but there are the following new items to note:

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

Some of this information might be challenging to provide, because the Singapore taxpayer may not have full access to the information.

Safe Harbor Threshold for Transfer Pricing Documentation Preparation

The proposed new guidelines introduce two situations wherein taxpayers are exempted from the obligation to prepare transfer pricing documentation:

- When the taxpayer is a small or medium-sized enterprise (SME) and the SME’s related-party transactions are local transactions subject to the same Singapore tax rates.
- When the taxpayer applies the Singapore safe harbor mark-up of 5 percent for routine services.

SMEs, as defined by Spring Singapore, have annual sales turnover of not more than S\$100 million or fewer than 200 employees.

The introduction of the safe harbor threshold for preparing transfer pricing documentation should serve to limit taxpayers’ compliance and administrative costs. IRAS is seeking comments on other low-risk situations that should also be included under the safe harbor threshold.

The proposed new guidelines also recommend that taxpayers assess the adequacy and extent of their transfer pricing documentation by evaluating the level of transfer pricing risk and the adverse consequences of not having

adequate documentation. The proposed new guidelines further caution that inadequate documentation may lead to upward transfer pricing adjustments and the rejection of MAP and APA applications by IRAS.

Maintenance and Update of Documentation

As mentioned above, the proposed new guidelines require contemporaneous transfer pricing documentation to be prepared no later than the tax return filing date for the fiscal year in question. However, taxpayers are not required to submit their transfer pricing documentation when the tax returns are filed. The documentation should be kept by taxpayers and submitted to IRAS when requested to do so.

The proposed new guidelines also recommend that transfer pricing documentation be reviewed periodically to ensure that the functional and economic analyses are still accurate and valid. The OECD guidance on documentation has recommended that searches in databases for comparables supporting the local file be updated every three years, whereas the financial data of the comparables should be updated every year. IRAS has not specified the frequency for documentation updates in the proposed new guidelines, and is requesting public feedback on this.

Conclusion

With the winds of change in the international tax environment, transfer pricing will continue to be a focal point for IRAS. The proposed new guidelines are a continuing indication of IRAS's interest in ensuring that taxpayers maintain sufficient transfer pricing documentation and comply with the arm's length principle.

Until the proposed guidelines are finalized, taxpayers should:

- Assess their related-party transactions to determine if they meet the safe harbor threshold for exemption from preparing transfer pricing documentation; if they do not, determine whether existing documentation is sufficiently contemporaneous in accordance with IRAS's requirements.
- For high-risk related-party transactions, conduct transfer pricing analyses and prepare supporting documentation before the relevant tax return is filed. Ideally, the transfer pricing analyses should be performed before the year-end so that any transfer pricing adjustments to adjust the prices/margins to reflect arm's length returns can be made before the books are closed. IRAS does not permit transfer pricing adjustments to be made through tax returns.
- Monitor further updates and guidance from IRAS, arising from this ongoing consultation on transfer pricing documentation, as well as the impending update to the existing transfer pricing guidelines and circulars expected before the end of this year.

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