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Singapore Transfer Pricing Developments

Singapore Releases Proposed New Guidelines on Transfer Pricing Documentation

Overview

Further to our previous alert ([see attached](#)), the Inland Revenue Authority of Singapore ("IRAS") has on 1 September 2014 published a consultation paper which sets out revised guidance on transfer pricing ("TP") documentation ("proposed new guidelines").

The proposed new guidelines are part of IRAS' on-going efforts to require taxpayers to strengthen their due diligence in complying with the arm's length principle.

The consultation paper is released for public consultation and feedback. Taxpayers may submit their comments on the paper to IRAS by 24 September 2014.

Key Takeaways

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

- (a) Objectives of preparing TP documentation
- (b) Contemporaneous TP documentation – when to prepare and what type of details are required
- (c) Compliance consequences for inadequate TP documentation

Some aspects of the new guidelines reaffirm or do not deviate significantly from the key concepts and guiding principles for preparing TP documentation under the existing Singapore transfer pricing guidelines.

However, there are several notable, new developments.

TP 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*”:

- (a) The lack of documentation may increase the chances of TP adjustments made under Section 34D of the Singapore Income Tax Act (“SITA”) during an audit;
- (b) 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 of IRAS declining APA requests made by the taxpayer as well;
- (c) If the taxpayers fail to timely submit adequate documentation upon request by IRAS, they may be penalised under Section 94(2) of the SITA for not complying with the record keeping requirements under Sections 65, 65A and 65B of the SITA. The penalty under Section 94(2) involves a fine not exceeding S\$1,000 or a jail term not exceeding 6 months in lieu of payment.

What constitutes contemporaneous TP 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 of undertaking the transactions, and including up to the time of preparing the relevant tax returns. In other words, IRAS' requirement is that documentation should be prepared no later than the due date for filing of the tax return for the year in question, and this is believed to be in keeping with the "best practice" advocated by OECD in its discussion draft on TP documentation released on 30 January 2014.

The proposed new guidelines ask that taxpayers prepare information concerning the group level as well as entity level. In doing so, IRAS has in principle adopted the two-tier approach recommended by the OECD discussion draft 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 OECD and IRAS' approach to transfer pricing documentation, as further discussed below.

Group Level Documentation

Under the existing Singapore transfer pricing guidelines, only general and brief information on the group, such as its line of business, industry, principal business activities, needs to be provided, and such information are typically incorporated as part of a single transfer pricing documentation of the taxpayer.

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

- A worldwide organisational structure chart, showing the location and ownership linkages among all related parties;
- Description of the group's business, including:
 - 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 recent restructuring, acquisition or divestiture;
 - important drivers of business profits and a list of intangibles and the related parties which legally own them;
 - the principal business activities and functions of each group entity, 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

- Details on the group's transfer pricing, including:
 - a functional analysis describing the contributions to value creation by each group entity, 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.

- Consolidated financial statements of the group

The expanded list of information required at the group level will require significantly more time and effort by the taxpayers 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 of whether IRAS would regard as inadequate documentation situations where the Singapore entity is not provided with a group level documentation by its parent company by the tax return filing date, but a robust entity level documentation has been prepared.

We expect substantial feedback on this point, in particular, the potential difficulties that taxpayers may face in obtaining the information required.

One of the most controversial parts of the OECD discussion draft 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 the 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 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;

- An organisational chart of the Singapore taxpayer, showing the number of employees in each department.

We expect some aspects of these new requirements would be challenging to provide as the Singapore taxpayer may not have full access to the information.

Safeharbour Threshold for TP Documentation Preparation

The proposed new guidelines introduce 2 situations where taxpayers are exempted from preparing transfer pricing documentation:

- (a) Where the taxpayer is an SME 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.

SME refers to 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.

The introduction of the above safeharbour threshold for preparing transfer pricing documentation should serve well to limit the compliance and administrative costs of taxpayers. IRAS is seeking comments on other low risk situations which should also be included under the safeharbour 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 risks 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 earlier mentioned, the proposed new guidelines now require contemporaneous transfer pricing documentation to be prepared no later than the tax return filing date of 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 discussion draft has recommended that searches in databases for comparables supporting the local file be updated every 3 years while the financial data for 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, it is certain that transfer pricing will continue to be a focal point for IRAS. The proposed new guidelines are a continuing indication of IRAS' interest in ensuring that taxpayers maintain sufficient transfer pricing documentation and comply with the arm's length principle.

Until 24 September 2014, the proposed new guidelines remains in draft format and taxpayers are encouraged to take this opportunity to provide feedback to IRAS to ensure that the new guidelines are in line with their needs as well as IRAS'. The IRAS consultation paper may be found at <http://www.iras.gov.sg/irasHome/page03a.aspx?id=8510>

In the meantime, we would advise that each taxpayer should:

- Assess related party transactions to determine if they meet the safeharbour threshold for exemption from preparing transfer pricing documentation, and if not, whether existing documentation is sufficiently contemporaneous in accordance with IRAS' 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 updates to the existing TP guidelines and circulars expected before the end of this year.

Find out more

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Mr. See Jee Chang is a Tax Partner at Deloitte Singapore and leads the transfer pricing practice. He was vitally involved in developing the 2006 Transfer Pricing Guidelines in his former role as the Tax Director of the Tax Policy and International Tax Division of IRAS. During his time at the IRAS, Jee Chang also served as the Competent Authority of Singapore, responsible for transfer pricing and bilateral Advance Pricing Arrangement negotiations.

Ms Lee Siew Ying is a Transfer Pricing Senior Manager at Deloitte Singapore. She has extensive experience on projects relating to the preparation of master file documentation for group companies, review of intra-group services, including assisting companies with the implementation of the recommended methodology, as well as advising on transfer pricing policies and planning strategies. Siew Ying has also assisted clients to successfully negotiate for APAs with tax offices, and supported clients in their transfer pricing audit defense.

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