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Transfer Pricing breakfast briefing

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See Jee Chang, Tax Partner, Transfer Pricing Leader, Deloitte Singapore

Introduction of new transfer pricing legislations and rules

- Income Tax (Amendment) Act 2017 (Act 40 of 2017) gazette on 26 October 2017.
  - New sections in the Singapore Income Tax Act (SITA) legislating mandatory transfer pricing documentation (TPD) requirement as well as penalties for non-compliance.
  - With effect from Year of Assessment (YA) 2019.
- Income Tax (Transfer Pricing Documentation) Rules 2018 ("the new Rules") were gazetted on 23 February 2018.
- Revised Transfer Pricing Guidelines (5th edition) concurrently issued by IRAS on 23 February 2018.

Introduction of mandatory TPD requirement and penalties for non-compliance

Section 34F (new)

TPD requirements (referred to as "TPD under Section 34F") largely similar to those under current requirements (referred to:

- TPD is required to be prepared no later than the filing deadline of the tax return;
- Submission of TPD to IRAS is required to be made within 30 days of such request; and
- TPD required to be retained for 5 years.

- Introduction of an additional exemption from preparing TPD based on a test of whether entity's annual gross revenue (trade and business) exceeds S$10 million.
- Two conditions under new exemption:
  - Annual gross business for the basis period concerned does not exceed S$10m; and
  - Taxpayer was not required to prepare TPD under Section 34F for the immediate preceding year (if it was, it can still fulfil this condition if for the two preceding years, its annual gross revenue does not exceed S$10m).
- Serves as additional safe-harbour to existing thresholds.

Introduction of mandatory TPD requirement and penalties for non-compliance

Section 34F (new) (cont')

- If taxpayer meets the conditions of the new exemption, it does not need to prepare TPD.
- If taxpayer does not meet the conditions of the new exemption, it would need to prepare TPD but may avail certain specific/transaction exemption thresholds specifically codified as follows:
  - Related party domestic transaction subject to same tax rate;
  - Related party domestic loan;
  - Related party loan where the safe harbour interest margin is applied;
  - Provision of qualifying "routine" support services on which 5% cost mark-up is applied;
  - Related party transaction covered by an APA;
  - Related party transactions not exceeding the following values:

Introduction of mandatory TPD requirement and penalties for non-compliance

Section 34F (new) (cont')

Type of transaction	Value (S$)
Purchase of goods	15 million
Sale of goods	15 million
Loan to related party	15 million
Loan from related party	15 million
Provision of service	1 million
Receipt of service	1 million
Grant of right to use property or lease	1 million
Receipt of right to use property or lease	1 million
Guarantee provided	1 million
Guarantee received	1 million
Any other transaction	1 million

Introduction of mandatory TPD requirement and penalties for non-compliance

Section 34F (new) (cont’)

- A specific fine of up to S$10,000 may be imposed for each of the following legislated offences:
  - Not preparing or maintain TPD based on the requirements under the new Rules;
  - Not preparing TPD by the time for the marking of the tax return;
  - Not retaining the TPD for a period of 5 years;
  - Not submitting the TPD within 30 days from written request by the IRAS; or
  - Providing any documentation or information that the taxpayer knows to be false or misleading.

Updating of TPD

Section 34F and the new Rules (new)

- Current Guidelines states "[t]axpayers should update their TP documentation when there are material changes to the operating conditions that impact their functional analysis or transfer pricing analysis. In any case, IRAS encourages taxpayers to update their TP documentation at least once every three years." The Guidelines also urges taxpayers to review and confirm the relevance of existing TPD for the intervening two years.
- Formal framework for updating of TPD now prescribed under the new Rules—"[t]axpayers are to review and refresh TPD annually, however to reduce compliance burden, taxpayers are allowed to use the TPD prepared previously if that past TPD is a qualifying past TPD".

Updating of TPD

Section 34F and the new Rules (new) (cont')

- A qualifying past TPD is a past TPD prepared in one or two preceding years (i.e., the same 3-year cycle as per current guidelines), provided also that the following specific conditions are met:
  - The transaction documented in the past TPD is the same type as the transaction in the current year;
  - The transaction documented in the past TPD are undertaken with the same related parties;
  - The part TPD was prepared in accordance with the requirements under the Rules, properly dated and prepared in English; and
  - The information contained in the past TPD on the following matters remain relevant in the current year:
    - Commercial or financial relations between the taxpayer and its related parties;
    - Conditions made or imposed between the taxpayer and its related parties;
    - Transfer pricing method used for the transaction; and
    - The arm's length conditions within the meaning of Section 34D, including comparability with the conditions/circumstances observed between independent parties

Updating of TPD

Section 34F and the new Rules (new) (cont')

- To adopt past TPD as a qualifying TPD for Years 2 and 3 (subsequent to the preparation of contemporaneous TPD in Year 1), taxpayers are required to prepare a "simplified TPD" comprising:
  - A declaration, confirming that the conditions/circumstances (in Years 2 and 3) meet the conditions as listed; and
  - The past TPD as an attachment.
- Where taxpayer qualified for "simplified TPD", he nonetheless has the choice not to adopt the simplified TPD but to prepare new TPD.
- Onus is on taxpayers to demonstrate conditions are met to use past TPD, bearing in mind the risk of penalty/fine for wrong determination/reliance (rule-based).

Updating of TPD

Section 34F and the new Rules (new) (cont’)

- For YA 2018 TPD:
  - Many taxpayers have prepared new or undertaken major updates of their TPD for YA 2015, following the release of the mandatory TPD requirements.
  - Major updates for these TPD are required for YA 2018.
  - Past TPD prepared before the enactment of Section 34F (i.e., before YA 2019) can still be considered as qualifying TPD for future years (caters for seamless transition in new Section 34F regime).
- As such, taxpayers should prepare new TPD (or conduct a major update of the TPD prepared in YA 2015) for YA 2018, to ensure meeting the current requirements and the requirements under new Section 34F.
- Such TPD should be used as qualifying TPD (provided that conditions are met) in subsequent YAs.

Introduction of surcharge on TP adjustments

Section 34E (new)

- Surcharge of 5% of the amount of increase in income or reduction in deduction/allowance or loss arising from TP adjustments made by IRAS under Section 34D.
- Surcharge applies whether or not any additional tax is payable arising from the adjustments, and payable within one month starting from the date of notice of surcharge e.g., tax losses, or exempt income.

Others

2018 indicative margin for related party loans

- Reduction in the indicative margin for related party loans not exceeding S$15 million for 2018.

Related party loan not exceeding S$15 million obtained or provided during the period	Indicative margin
1 January 2017 to 31 December 2017	+250 bps (2.50%)
1 January 2018 to 31 December 2018	+175 bps (1.75%)

TP adjustments

- Substantial new guidance on IRAS' approach to making TP adjustments (paragraphs 5.117 to 5.124)—arising from changes to Section 34D, which allows IRAS to assess whether the related party arrangement and conduct are arm's length.

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