

# Transfer Pricing Country Summary Singapore

July 2018

## Legislation

### Existence of Transfer Pricing Laws/Guidelines

Section 34D of the Singapore Income Tax Act (SITA) 2010, is introduced in order to ensure that all related party transactions are conducted in accordance with the arm's length standard. In addition, the arm's length principle is found in all of Singapore's DTAs, under Article 7 – Business Profits and Article 9 – Associated Enterprises.

Since 2006, the Inland Revenue Authority of Singapore (IRAS) has issued guidelines on the interpretation and application of the arm's length principle in Singapore ("TP Guidelines"). The latest update of the guidelines was on 23 February, 2018. That same date Singapore issued subsidiary legislation under the Income Tax Act: Income Transfer Pricing Documentation Rules 2018. The new rules codify TP requirements for the preparation of TP documentation for the financial year of 2018.

### Definition of Related Party

A related party, in relation to a person, means any other person:

- who, directly or indirectly, controls that person;
- who is, directly or indirectly, controlled by that person; or
- where both persons are, directly or indirectly, controlled by a common person

The exact wordings of the definition are provided under Section 13(16) of the SITA.

As provided in the IRAS' recently introduced related party transactions form, the nature of relationship can include:

- Ultimate holding company;
- Intermediate holding company;
- Immediate holding company;
- Subsidiary;
- Associated company.

Other related party (refers to any other person whose transaction with the reporting company is required to be disclosed as a related party transaction in the audited accounts; for example, a joint venture or another company belonging to the same group as the reporting company)

### Transfer Pricing Scrutiny

There is a low – medium risk of transfer pricing audit. The IRAS may review transfer pricing as part of a general tax audit. However, the failure to prepare the transfer pricing documentation will increase the risk of audit.

A transfer pricing consultation process has been introduced to review a taxpayer's related party transactions and assess compliance with transfer pricing guidelines.

## Transfer Pricing Penalties

If taxpayers fail to timely submit adequate documentation upon request by IRAS, they may be penalized 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 six months in lieu of payment.

As part of the changes under the Income Tax (Amendment) Bill 2017, penalties for not preparing contemporaneous TP documentation have been increased to S\$10,000.

In addition to the above penalty which applies to preparation of documentation, there are consequences if taxpayers are unable to substantiate that their transfer pricing is at arm's length

- The IRAS may make an upward transfer pricing adjustment under Section 34D of the SITA;
- The IRAS will not support the tax payer in mutual agreement procedure ("MAP") with the foreign tax authorities should the taxpayer suffer double taxation arising from any transfer pricing audit by the IRAS or foreign tax authorities; and
- The IRAS may not accept the application if the taxpayer apply for an advance pricing agreement ("APA") agreement.

As part of the changes under the Income Tax (Amendment) Bill 2017, a 5% surcharge will be imposed on the amount of TP adjustments made by the IRAS from YA 2017. These surcharges are due within one month to the IRAS from the date of notification from the IRAS.

## Advance Pricing Agreement (APA)

Applications can be made for future transactions on unilateral (between IRAS and the taxpayer), bilateral (between IRAS and a tax treaty partner) or multilateral basis (between IRAS and 2 or more tax treaty partners).

If Singapore does not have a tax treaty with the other tax jurisdictions, the unilateral APA comes under the framework of Singapore's Advance Pricing System and a fee will be charged upon submitting an application of an advance pricing arrangement.

If Singapore has a tax treaty with the other jurisdiction, the unilateral APA will be issued outside of the Advance Ruling System, and no fee will be charged for the unilateral APA.

IRAS will generally accept an APA request to cover three to five future FYs (i.e. covered period). IRAS may consider taxpayers' request to extend the APA to prior years not exceeding two FYs for a bilateral or multilateral APA. The IRAS' acceptance of taxpayers' request for a covered period and rollback years (in the case of a bilateral or multilateral APA) is subject to them observing the APA process.

For more details, including the administrative process of applying for an APA, please refer to Part II, sections 8 and 10 of the TP Guidelines.

## Safe Harbor

According to the Second edition of TPG, the safe harbor is cost plus 5%, which is applicable only to prescribed routine services (the safe harbor cannot be applied to non-routine services). The safe harbor is a useful tool for taxpayers; however, they still have to have methods in place to determine the amount of the charge. The determination of an arm's length mark-up is a relatively small part of the overall exercise.

## Documentation and Disclosure Requirements

### Tax Return Disclosures

The IRAS has introduced a new requirement for disclosing related party transactions (RPT) from YA 2018 (financial year ending 2017).

A taxpayer must complete an RPT Form and submit it together with the corporate income tax return (Form C) if the aggregated value of RPT exceeds S\$15 million for the relevant YA.

### Level of Documentation

The IRAS recommends an adequate level of documentation, leaving taxpayers to use their judgment on the level of detail to be included. Taxpayers are to provide documentation of their group and the specific members of the group with which taxpayers transact. The Transfer pricing documentation needs to be organized at Group level and Entity level.

#### *Group level*

At this level, the documentation should provide a good overview of the group's businesses that is relevant to the business operations in Singapore. Relevant information includes an overview of the group's global business, organization structure, the nature of the global business operations and overall transfer pricing policies.

The following information should be included:

- General information on the Group as at the end of the financial year- including details (including a chart) on the worldwide organizational structure, showing the location and ownership linkages among all related parties transacting with the Singapore taxpayer.

- Description of Group's business relevant to the Singapore taxpayer for the financial year, 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 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 related parties.
- Group's financial position for the financial year including financial statements of the group relating to the lines of business involving the Singapore taxpayer.

#### *Entity level*

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

The following information should be included:

- General information on the Singapore taxpayer as at the end of the financial year, including:
  - the description of the management structure of the Singapore taxpayer, including a description of the related parties to whom the Singapore management reports for its operations;
  - Organizational chart of the Singapore taxpayer, showing the number of employees in each department.
- Description of the Singapore taxpayer's business for the financial year, including a 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.
- Transactions between Singapore taxpayer and related parties subject to TP documentation for the financial year:

- Details on transactions between the Singapore taxpayer and its related parties, including the identities of the related parties, the relationship, amounts and countries involved;
  - 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 the transactions, including any changes compared to prior years.
- Transfer pricing analysis/ benchmarking

## Record Keeping

The IRAS recommends that taxpayers fulfill their record keeping requirements and includes transfer pricing documentation within this.

## Language for Documentation

Documentation should be prepared in English.

## Small and Medium Sized Enterprises (SMEs)

There are no specific transfer pricing rules for SMEs, except that based on the TPG (section 6.19), the IRAS will not expect taxpayers to prepare TP documentation if the value or amount of related party transactions per financial year is below the following quantitative thresholds<sup>1</sup>:

Purchase of goods from all related parties:	SGD 15M
Sale of goods to all related parties:	SGD 15M
Loans owed to all related parties:	SGD 15M
Loans owed by all related parties:	SGD 15M
All other categories of related party Transactions (e.g. service income, service payments, royalty income, royalty expense, rental income, rental expense):	SGD 1M per category of transactions

## Deadline to Prepare Documentation

If TP documentation must be prepared, it is required to be prepared by the time that the annual profits tax return (Form C) is filed. The IRAS recommends that documentation be prepared in a timely manner, particularly to support the transfer pricing position in the event of a future dispute with the IRAS or with overseas tax authorities.

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<sup>1</sup> These thresholds are applicable generally; hence they are not applicable only to SME's.

## Deadline to Submit Documentation

Documentation is only required to be submitted to IRAS following the notification of an IRAS transfer pricing documentation review, which may be part of a general tax audit. Taxpayers are given up to 30 days to provide their documentation.

## Statute Of Limitations

Based on Section 67 of SITA, businesses must keep books and records for up to five years. The statute of limitation for income tax purposes is 4 years after the year of assessment in which the event occurred, which is based on Section 74(1) of SITA. There is no specific statute of limitations for transfer pricing adjustments.

## Transfer Pricing Methods

Methods available for performing transfer pricing and comparability analysis are in line with those contained in the OECD Transfer Pricing Guidelines:

- comparable uncontrolled price method (CUP);
- resale price method (RPM);
- cost plus method (CPM);
- profit split method (PSM); and
- transactional net margin method (TNMM).

The IRAS encourages taxpayers to use the method that produces the most reliable results. However, CUP, CPM and TNM are the most used and often considered the most appropriate according to the Second edition of TPG.

## Comparables

External comparables are preferred over internal comparables as external comparables provide more reliability. When selecting external comparables, the following should be considered:

- Commercial databases:
  - IRAS does not have a preference for any particular commercial database as long as it provides a reliable source of information that assists taxpayers in performing comparability analysis.

- Comparables with publicly available information:
  - Taxpayers should only use comparables with publicly available information;
  - Listed company is preferred over those not listed as listed companies would generally have more extensive information available in the public domain.
- Non-local comparables:
  - As far as possible, taxpayers should use local comparables in their comparability analysis;
  - When taxpayers are unable to find sufficiently reliable local comparables, they may expand their search to regional comparables.
- Loss-generating comparables:
  - Taxpayers should exclude as comparables independent parties with the following financial results;
  - Weighted average loss for the tested period; or
  - Loss incurred for more than half of the tested period.

If other independent parties have generated profits for a similar period under similar commercial and economic circumstances .

**Note:** This document is for informative purposes only.

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