

SINGAPORE

PUBLIC CONSULTATION PAPER ISSUED FOR TRANSFER PRICING DOCUMENTATION

On 1 September 2014, the Inland Revenue Authority of Singapore (IRAS) issued a public consultation paper on transfer pricing documentation ("the Paper"). The Paper paves the way for paradigm shift relating to transfer pricing documentation rules in Singapore, as it seeks to update and tighten the existing documentation requirements of the 2006 Circular¹. The objective of the Paper is to provide more comprehensive guidance on transfer pricing documentation requirements in Singapore.

Overall, the Paper is centred on the objectives of preparing transfer pricing documentation, emphasis on preparing a contemporaneous transfer pricing documentation, the types and extent of documentation, and other compliance matters. One of the most important parts of the Paper relates to safe harbour rules. Under the safe harbour rules, taxpayers are exempted from preparing transfer pricing documentation in certain situations. The Paper also provides a comprehensive list of contents for inclusion in the documentation which serves as a guidance tool for taxpayers, as IRAS notes that "taxpayers are not expected to incur compliance costs which are disproportionate to the amount of tax revenue at risk or complexity of the transactions".

The issue of the Paper around the time the Organisation for Economic Co-operation and Development (OECD) issued its updated documentation guidelines² on 16 September 2014 signals the IRAS's endorsement of OECD's views³ on maintaining robust contemporaneous transfer pricing documentation to readily demonstrate that the transfer prices are indeed determined in accordance with the arm's length principle. Companies will now have to consider the impact of the revised transfer pricing documentation requirements, as the new guidance will facilitate tax authorities' assessment of taxpayers' transfer pricing risks and identification of cases for audit.

The key changes discussed in the Paper are noted below:

Two-tiered approach for transfer pricing documentation

Taxpayers are expected to provide documentation of their group and the specific companies involved in the related party transactions. With this objective, the IRAS requires taxpayers to organise their transfer pricing documentation into:

– Group level documentation

This is expected to provide a good overview of the group's businesses, and should include details on the group's global business, organisation structure, the nature of the global business operations and overall transfer pricing policies. In addition, information on important drivers of business profit, including a list of intangibles and the related parties which legally own them is now required. Charts showing supply chains of products and services, and a functional analysis describing contributions to value creation by each related party within the group, i.e. a functional analysis 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, are now included.

– Entity level documentation

This contains much of the similar information that was required previously, such as the taxpayer's business operations and specific details of transactions with its related parties. Amongst the new additional information required is information relating to 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 taxpayer showing the number of employees in each department, and segmented financial accounts with respect to the transactions, if any.

With these new additions, the level of documentation required will substantially differ from the previous 2006 version, thereby providing a greater level of detail and a good overview to tax authorities in identifying cases for audits. The Paper therefore provides examples of cases where transfer pricing risks may be significant. These examples include the use of transfer pricing strategies to shift profits to more favourable tax jurisdiction, cross-border large value transactions, transactions with related parties in low tax jurisdictions, operating results not in line with industry norms, or transactions involving research and development or marketing activities which could lead to development or enhancement of intangibles.

Contemporaneous transfer pricing documentation

A critical shift from the 2006 documentation guidelines is the requirement to prepare and maintain contemporaneous transfer pricing documentation to substantiate taxpayers' transfer pricing. Contemporaneous transfer pricing documentation is defined as documentation prepared prior to or at the time of undertaking the transaction, including up to the time of preparing the relevant tax returns.

Exemption from transfer pricing documentation

IRAS does not require taxpayers to prepare transfer pricing documentation in the following two situations:

- Where they apply the Singapore safe harbour mark-up of 5% for routine services; or
- Where small and medium enterprises (SMEs) related party transactions are local transactions and subject to the same Singapore income tax rate. A SME is defined as one with annual sales turnover of not more than SGD 100 million, or which employs not more than 200 people.

Compliance matters

Taxpayers are not required to submit transfer pricing documentation with their tax returns, and it is only upon request from IRAS that the documentation should be submitted. However, no specific timeframe is provided in the Paper regarding the number of days or month by when the taxpayer should submit once the documentation is requested by IRAS.

Conclusion

The Paper with revised documentation guidelines indeed places an onerous responsibility on taxpayers. It is therefore imperative that taxpayers take a "second look" at their existing status of related party documentation and take necessary steps for updating or amending that document with a view to defending their transfer prices in the event of an IRAS query. Although the Paper currently serves as a guidance tool, as it is in the form of a guideline, it remains to be seen whether the IRAS will retain it as a guideline or legislate it in the statute, thereby making transfer pricing documentation a mandatory requirement in Singapore.

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¹ IRAS Circular on "Transfer Pricing Guidelines" issued on 23 February 2006

² Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

³ Singapore is not a member of the OECD

