



Complete Corporate Services Pte Ltd

A photograph of two small green seedlings growing out of stacks of gold coins. The seedlings are positioned on the left and right sides of the frame. The background is a soft, out-of-focus green. A large, dark blue diagonal stripe runs from the top left towards the bottom right, partially obscuring the image.

SINGAPORE TRANSFER PRICING DEVELOPMENTS





SINGAPORE – MANDATORY TRANSFER PRICING DOCUMENTATION REQUIREMENTS

In February 2018, the Income Tax (Transfer Pricing Documentation) Rules 2018 (“TPD Rules”) were gazetted and the Inland Revenue Authority of Singapore (“IRAS”) subsequently issued the revised 2018 Transfer Pricing Guidelines (“2018 TP Guidelines”) detailing changes to the Income Tax Act (“ITA”) and explaining the TPD Rules. This marks a distinct shift from the current, guidance-based TP regime to a more formal, rule-based regime, where requirements are now codified in tax legislation and rules.

Most notably, unless exempted, failure to prepare the required Transfer Pricing Documentation (“TPD”) constitutes an offence from the basis year for the Year of Assessment (“YA”) 2019, and the non-compliant taxpayer is liable to a fine or penalty. The transfer pricing regime also introduces a new surcharge on any TP adjustment made.

The combined changes are likely to entail an increased compliance burden for many taxpayers and signal the intent of IRAS to continue and make more robust its focus on transfer pricing enforcement. We highlight the key changes below.

Mandatory Transfer Pricing Documentation

From YA 2019, unless certain exemption criteria have been met, Section 34F requires the tax payers to prepare and maintain contemporaneous TPD for each of the related party transaction in accordance to the TPD Rules.

There have been substantial revisions to the TPD requirements in Chapter 6 of the 2018 TP Guidelines, which has been gazetted as a Rule under Section 7(1) of the ITA. Specifically, IRAS has provided clarity on its general exemption conditions for preparation of TPD.

The new exemption comprises of two conditions, and an entity is required to prepare TPD if either of these conditions are met:

- Annual gross revenue from their trade or business for the basis period concerned exceeds S\$10 million; or
- It was required to prepare TPD under Section 34F for the immediate preceding year. In other words, YA 2020 would be the first year that this test will be applicable.



The second condition ensures that taxpayers who were required to prepare TPD for a previous basis period will continue to be required to do so for the subsequent basis period. As explained by the IRAS, this is to provide certainty on taxpayers' compliance effort.

However, where taxpayers who are required to prepare TPD, experience declining revenue such that their gross revenue is consistently below S\$10 million, they will be exempted from preparing TPD for their related party transactions undertaken in a basis period if their gross revenue is not more than S\$10 million for that basis period and the immediate two preceding basis periods and they were required to prepare TPD for the two preceding basis periods.

If a taxpayer is required to prepare TPD under section 34F and the exemption from preparation of the TPD when gross revenue is consistently below S\$10 million is not applicable, the taxpayer would need to assess if it meets specific exemption conditions. The specific exemptions are largely the same as those provided in the previous addition of the Transfer Pricing Guidelines, although now specifically codified under TPD Rules.

The second schedule of TPD Rules, which has been published in the Government Gazette, also codifies the information that should be included in the TPD. For Singapore taxpayers adopting the OECD master file/local file approach, the information contained in their TPD must be consistent with the TPD Rules.

Guidance on Reliance on Past Transfer Pricing Documentation

The IRAS in general expects that taxpayers review and refresh their TPD annually. This will result in taxpayers having to prepare TPD for each basis period. However, considering the compliance burden, the IRAS allows taxpayers to use the TPD that has been prepared previously – i.e., TPD prepared for the past two YAs that immediately precede the year of preparation (for example YA 2017 and YA 2018 documentation for YA 2019 purposes). To be considered as “qualifying past documentation”, the conditions mentioned under TPD Rules have to be met.

Arm's Length Adjustments

Under Section 34D, the Comptroller may make one or more adjustments in the case of understatement of profits or overstatement of deductions and losses. The Comptroller may increase taxpayer's income, reduce the amount of the deduction and/or reduce its losses, if conditions surrounding its related party differ from conditions which would be made or imposed on unrelated party in comparable circumstances. The amendments to the ITA clarify the scope of IRAS' powers to make adjustments to transactions that it deems are not conducted at arm's length. Where such an adjustment results in an increase in the income of a Singapore taxpayer, the additional income is treated as accruing in or derived from Singapore, or received in Singapore from outside Singapore.



Identification of Transaction

Section 34D provides the Comptroller with the power to identify and therefore compute the taxpayer's income upon arm's length condition of comparable transactions based on their commercial and financial relations. The foregoing means that the Comptroller may disregard the taxpayer's related party transaction conditions should it differ from comparable circumstances. The 2018 TP Guidelines significantly expand the existing guidance on comparability analysis and the identification and delineation of related party transactions. This is broadly in line with the BEPS 8-10 framework (now placed within the 2017 OECD Transfer Pricing Guidelines), and is significant as it indicates that IRAS now expects more detailed analysis to substantiate the arm's length nature of taxpayers' related party transactions.

Surcharge

From YA 2019, Section 34E introduces a 5% surcharge upon the amount of TP adjustment made by IRAS. The surcharge will be levied upon the quantum of adjustment regardless of whether there is tax payable on the adjustments. As the surcharge is imposed on the amount adjusted, this results in a higher effective rate of tax for taxpayers. It is therefore imperative for the taxpayers to comply with the arm's length principle.

Penalty for Non-Compliance

From YA 2019, under Section 34F, the taxpayer shall be liable on conviction to a fine not exceeding \$10,000 or an offence under the following circumstances: (1) Failure to prepare TPD by the time for making tax return; (2) Failure to prepare TPD in accordance with the Rules; (3) Failure to retain TPD for a period of at least 5 years from the end of when transaction took place; (4) Failure to submit the TPD within 30 days of written notice by the Comptroller; and (5) for providing any documentation that the taxpayer knows to be false or misleading. This penalty regime represents IRAS' intent to reinforce adherence of the arm's length principle.

Conclusion

Singapore taxpayers should consider the implications of the 2018 TP Guidelines, TPD Rules and changes to the ITA to their specific circumstances and determine whether sufficient transfer pricing analysis and documentation has been prepared in compliance with the new legislative regime. Failure to do so can result in penalties and surcharge as well as an inability to defend a tax position.



YA 2018 - NEW TP REPORTING REQUIREMENTS FOR RELATED PARTY TRANSACTIONS

In a bid to enhance TP risk assessment, enforcement, administration and compliance, the IRAS has imposed a new requirement for taxpayers to report details of related party transactions ("RPT").

What is the requirement?

Effective from YA 2018, each company must complete and submit a Form for Reporting RPT ("RPT Form") to IRAS together with its tax return, if the value of RPT disclosed in audited accounts exceed S\$15 million. The value of RPT is the **aggregate** of:

- All RPT amounts reported in the Income Statement excluding compensation paid to key management personnel and dividend.
- Year-end balances of loans and non-trade amounts due to/from all related parties.

What will the Form contain?

The RPT Form requires companies to disclose detailed information on the type and value of RPT with both domestic and overseas related entities, and, in respect of the latter, further details such as the countries of incorporation of the foreign related entities and their exact relationships with the reporting companies.

What should taxpayers do now?

Companies should ensure that robust and contemporaneous TP documentation are available to provide evidence that the RPT disclosed are in line with the arm's-length principle, as IRAS will likely request for such documentation when reviewing the RPT Form. Penalties may be imposed for failure to submit as well as incorrect submission of the RPT Form.



HOW WE CAN HELP

Our Transfer Pricing professionals provide comprehensive solutions tailored to your business objectives after understanding the exact nature and the extent of the related party transactions undertaken by the Company. We have a specialized Transfer Pricing team that is competent to assist you in the following areas of Transfer Pricing:

⇒ **Transfer Pricing Compliance**

- Prepare TP documentation in accordance with the prevailing TP guidelines.
- Review of RPT Form with effect from YA 2018 and advice on contemporaneous TP documentation requirements thereto.

⇒ **Transfer Pricing Strategy Services**

- Undertaking Transfer Pricing Planning studies for determination of the appropriate Transfer Pricing margin for newly set up companies/new business lines/business units/new transactions or for existing transactions.
- Review of Transfer Pricing policy for assessing possible transfer pricing risks.
- Defend transfer pricing policies against challenge from tax authorities.

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