

CLIENT MEMORANDUM

January 9, 2015

TRANSFER PRICING GUIDELINES – 2nd EDITION

In Singapore, all related party transactions must be carried out on an arm's length basis, i.e. the transfer prices between related parties should be equivalent to prices that unrelated parties would have charged in the same or similar circumstances. This would normally involve the identification of situations or transactions undertaken by unrelated parties that are comparable to the situations or transactions between related parties.

If the pricing of related party transactions is not at arm's length and results in a reduced profit for the Singapore taxpayer, the Inland Revenue Authority of Singapore ("IRAS") may impute a deemed profit based on the shortfall and subject it to tax in the name of the Singapore taxpayer. The above requirement was legislated under Section 34D of the Singapore Income Tax Act in December 2009.

On January 6, 2015, the IRAS published the second edition of Transfer Pricing ("TP") Guidelines.

The new edition basically consolidates the four e-Tax Guides which IRAS had released on TP since 2006. The new edition also provides new sections, updates and more comprehensive guidance on certain aspects of TP.

The Second edition of the e-Tax guide is available at:

[http://www.iras.gov.sg/irasHome/uploadedfiles/e-Tax_Guide/etaxguide_Transfer_Pricing_Guidelines_\(Second_Edition\)_2015_01_06.pdf](http://www.iras.gov.sg/irasHome/uploadedfiles/e-Tax_Guide/etaxguide_Transfer_Pricing_Guidelines_(Second_Edition)_2015_01_06.pdf)

Key updates and amendments in the new edition of TP Guidelines

One of the key updates and amendments relates to TP documentation, which refers to the keeping of records as evidence that the pricing is at arm's length.

Essentially, the IRAS now requires taxpayers to prepare and keep *contemporaneous* TP documentation, i.e. documentation and information that taxpayers have relied upon to determine the transfer price prior to or at the time of undertaking the transactions, and including up to the time of preparing the relevant tax returns. The information and data used must be the latest available in market and the date of creating and updating each TP document should be clearly stated.

Although the IRAS does not require the taxpayer to submit the TP documentation with its tax return, the documentation must be made available to the IRAS within 30 days upon request, failing which penalty may be imposed.

Some of the key salient points on TP documentation include:

1. The types of TP documentation should be organised at Group and Entity levels, with certain compulsory details such as the general information on the Group and Singapore taxpayer as at the financial year-end, Group financial position, description of the Singapore taxpayer's business, transactions between the Singapore taxpayer and related parties and transfer pricing analysis / benchmarking ¹.
2. Taxpayers are not expected to incur TP compliance costs which are disproportionate to the amount of tax revenue at risk or complexity of transactions. The adequacy and extent of TP documentation should be based on the level of TP risks involved and the degree of exposing the taxpayer to adverse consequences.
3. IRAS has specifically exempt the following situations from complying with TP documentation requirements²:
 - a. Where the taxpayer transacts with a Singapore related party whereby such local transactions (excluding related party loans) are subject to same Singapore tax rates;
 - b. Where a related domestic loan is provided between the taxpayer and a Singapore related party, and that the lender is not in the business of borrowing and lending;
 - c. Where the taxpayer applies the 5% cost mark-up for routine related party services in accordance with the IRAS' administrative practice;
 - d. Where the related party transactions are covered by an agreement under an advance pricing arrangement; and
 - e. Where the value or amount of the related party transactions (excluding those covered in the above paragraphs 3a to 3d) disclosed in the current year's financial accounts does not exceed certain prescribed thresholds. Broadly, the threshold for purchase and sale of goods and inter-company loans is S\$15 million per financial year and for all services, the threshold is S\$1 million per category of transactions.
4. Taxpayers may suffer certain adverse consequences if their TP documentation are unable to justify their arm's length basis of transfer prices³.

¹ Paragraphs 6.9 to 6.15 of TP Guidelines.

² Paragraph 6.19 of TP Guidelines.

³ Paragraph 6.21 of TP Guidelines.

5. Other compliance matters on TP documentation include⁴:
 - a. Periodic review / updates of TP documentation to ensure accuracy and relevance, preferably at least once every three years;
 - b. Maintenance of TP documentation for five years from the relevant year of assessment; a longer period if an audit or mutual agreement procedure is involved;
 - c. Ability of providing TP documentation (in any medium) promptly to IRAS in hardcopy or softcopy upon request; and
 - d. Requirement of providing translation of TP documentation to IRAS if not already prepared in English.

Apart from TP documentation, other key updates and amendments in the TP Guidelines include:

1. More guidance on the application of arm's length principle⁵;
2. Updates on TP consultation programme⁶;
3. More guidance on avoiding and resolving TP disputes, mutual agreement procedure and advance pricing arrangement processes⁷;
4. New section on IRAS' position on TP adjustments⁸;
5. Clearer guidance on the application of arm's length principle to related party loans and services⁹;
6. New section on IRAS' position regarding attribution of profit to permanent establishment¹⁰.

If you have any question, or would like to discuss the latest e-Tax guide with us, please let us know.

Further information

Should you have any queries as to how these developments may impact your business, please do not hesitate to get in touch with your usual contact at Pioneer Associates.

⁴ Paragraph 6.22 of TP Guidelines.

⁵ Section 5 of the TP Guidelines.

⁶ Section 7 of the TP Guidelines.

⁷ Sections 8 to 10 of TP Guidelines.

⁸ Section 11 of TP Guidelines.

⁹ Sections 12 and 13 of TP Guidelines.

¹⁰ Section 14 of TP Guidelines.