

Global Transfer Pricing Landscape

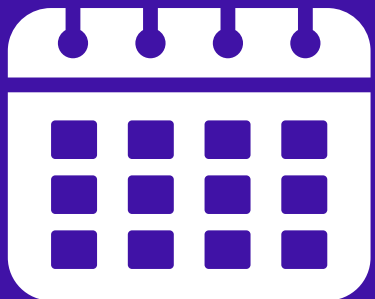
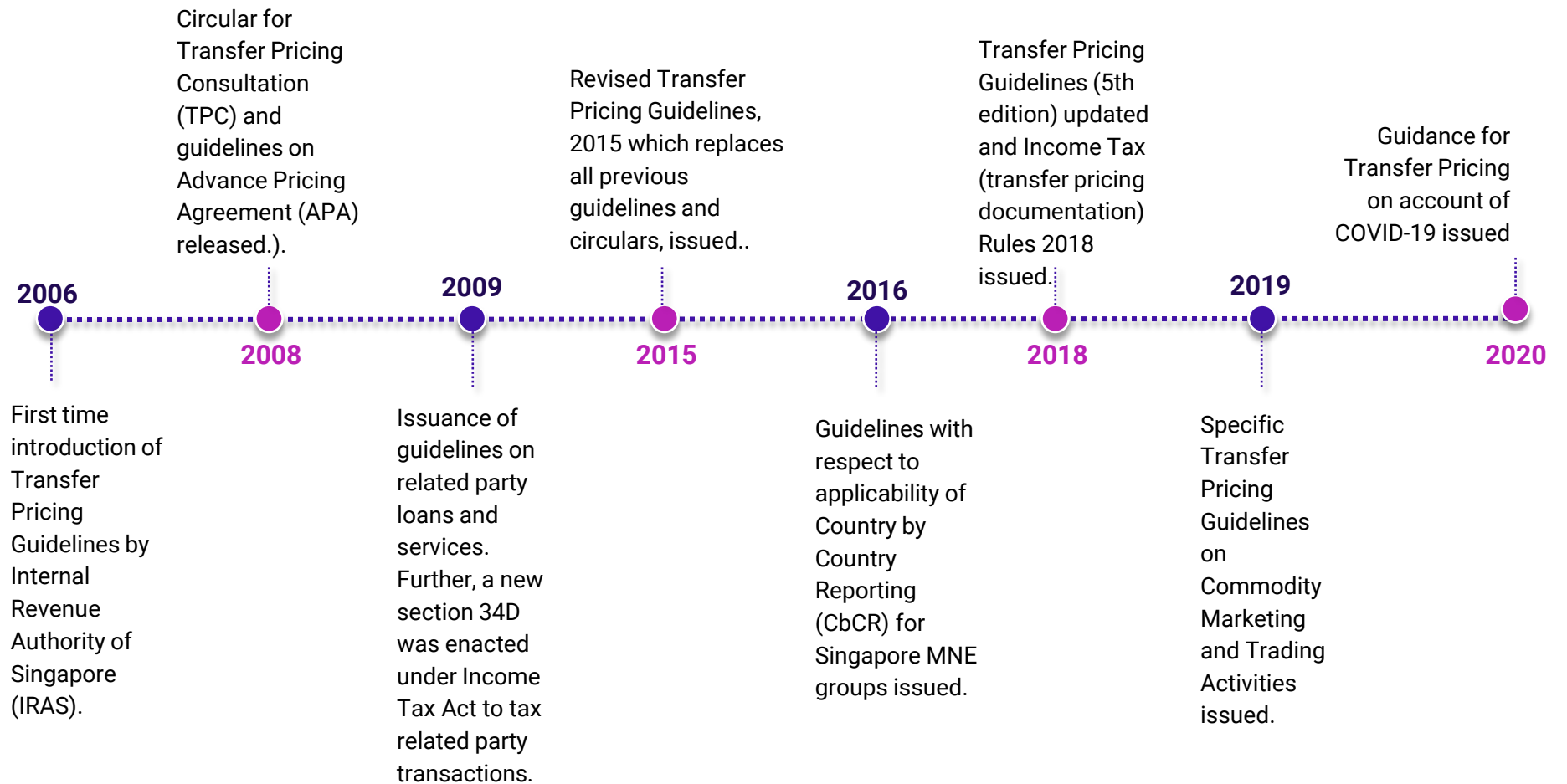
Singapore

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Highlights



Introduction

IRAS applies the internationally endorsed arm's length principle. If taxpayers do not comply with the arm's length principle and have understated their profits, IRAS will adjust their profits upwards as provided in section 34D of the Income Tax Act.

Further, in a case a person carries on business through a Permanent Establishment (PE), the legislation requires such PE to be regarded as a distinct person.

Related Party

Definition of related party covers one person controlled directly/indirectly by another person or vice-versa, or where both of them are controlled directly/indirectly by a common person.

Transfer Pricing Documentation

Contemporaneous documentation

Taxpayers are required to maintain contemporaneous documentation in order to reflect the arm's length nature of the transactions with related parties with effect from YA 2019 (financial year 2018), based on satisfaction of certain criteria. To determine the applicability of transfer pricing documentation requirements, taxpayers will have to assess the following factors on an annual basis:

- Is the gross revenue from their trade or business (excluding passive source

income like dividend income and capital gains or losses) for the basis period concerned is more than SGD 10 million;

- Is the gross revenue from their trade or business exceeds SGD 10 million for any of the preceding two basis periods;
- Were they were required to prepare transfer pricing documentation for the basis period immediately;
- Are inter-company transactions exempted from the requirement of transfer pricing documentation (as listed in below para)

Irrespective of the applicability based on the above- mentioned factors, to better manage transfer pricing risk, IRAS encourages taxpayers to prepare transfer pricing documentation following the transfer pricing documentation rules.

The date of completing the transfer pricing documentation must be indicated on the transfer pricing documentation. The taxpayers would be required to maintain it for five years from the end of the basis period in which the transaction took place. The documentation shall be prepared not later than the filing due date of the tax return and submitted within 30 days from IRAS's request.

However, for the ease of compliance, the taxpayers may opt to refresh the transfer pricing documentation once every three years, provided the details in transfer pricing documentation are accurate and up to date.

Extent of documentation

Taxpayers are typically required to prepare following documentation:

Group level

- General information on the group;
- Description of group's business relevant to the taxpayer;
- Group's financial position.

Entity level

- General information on the taxpayer;
- Description of the taxpayer's business;
- Details of related party transactions;
- Transfer pricing analysis / benchmarking.

Country by Country Report(CbCR)

In relation to the financial year beginning on or after 1 January 2017, a taxpayer being the ultimate parent entity of a Singapore multinational enterprise (MNE) group and the consolidated group revenue this group was at least SGD 1,125 million in the preceding financial year, then, in addition to the two-tier transfer pricing documentation, it would also be required to prepare and file the CbCR in the prescribed format.

Exemptions and thresholds

Broadly, guidelines provide exemption from documentation requirements in following cases:

- Domestic related party transactions (other than loans) in case where both parties are subject to same Singapore tax rates;
- Domestic related party loan transactions where the lender is not engaged in business of borrowing or lending;
- Taxpayer applies the specified indicative margins for related party loans not exceeding S\$15 million;
- Routine support services wherein taxpayer chooses to apply cost plus mark up of 5%;
- Transactions covered under advance pricing agreements (APAs);
- Related party transaction not exceeding certain value:

Category of transaction	Threshold Limit (SGD) of value of related party transaction	Meaning of value of transaction
Purchase of goods	15 million	Amount paid or payable by the taxpayer for the goods
Sale of goods	15 million	Gross Revenue derived by the taxpayer from the sale
Loans availed	15 million	Principal amount of the loan
Loans provided	15 million	Principal amount of the loan
All other categories of transactions Examples: <ul style="list-style-type: none"> • Service income • Service payment • Royalty income • Royalty expense • Rental income • Rental expense • Guarantee Income • Guarantee Expense 	1 million per category of transactions	Amount paid or payable/gross revenue derived

Qualifying past transfer pricing documentation and simplified documentation

IRAS recognizes that transactional, functional, and economic analysis of the controlled transaction may not change significantly from year to year. Thus, to reduce taxpayers' compliance burden, IRAS allows taxpayers to use a qualifying past transfer pricing documentation to support the transfer price in the basis period. Qualifying past transfer pricing documentation means transfer pricing documentation prepared for the preceding year or second preceding year prior to the basis period that satisfies all of the conditions vis-a-vis the basis period. The conditions include similarity in transaction, related party, commercial relation and transfer pricing methodology.

To use the qualifying past transfer pricing documentation, the taxpayer needs to prepare a 'simplified transfer pricing documentation' for the basis period declaring that it has prepared a qualifying past transfer pricing documentation that satisfies the aforementioned conditions.

Arm's Length Principle

The arm's length principle explains that the transaction with the related party is entered under the same comparable conditions and circumstances as that with an independent party. Application of arm's length principle expands to PEs also.

Three-step approach

In line with the Organization of Economic Co-operation and Development's (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax

Administrations (OECD Guidelines), IRAS endorses the arm's length principle as a standard to guide transfer pricing. In this regards, the guidelines recommend the below-mentioned three-step approach to apply arm's length principle:

Step 1: Conduct comparability analysis

Step 2: Identify the most appropriate transfer pricing method and tested party

Step 3: Determine the arm's length results.

Usage of multiple year data

The taxpayers need to examine the multiple year data to strengthen the reliability of the comparability analysis as opposed to a single year data and evaluate factors that influence transfer prices, such as long term arrangements, business/product life cycles, etc.

Selection of comparables

IRAS recommends taxpayers to use comparables with publicly available information whereby such information can be readily obtained from various sources and verified reliable analyses may be conducted. Further, IRAS does not give preference to any particular database.

In this regard, a company that is listed on a stock exchange is considered as better comparable than the one not listed. Moreover, local comparables are required to be given preference over non-local comparables. If reliable local comparables are not available, the search may be extended to regional comparables.

Selection of method

Guidelines recognize five internationally accepted benchmarking methods for evaluating transfer prices. Further, IRAS does not give any preference to specific method or methods, and the taxpayers are independent to choose the most appropriate method based on facts and circumstances of each case.

Taxpayers may also choose other appropriate methods or use a combination of methods to comply with the arm's length principle.

Inter-quartile range

The taxpayer can apply for inter-quarter range to increase the reliability of comparability analysis. The taxpayer may even use full range if all the points of the dataset are equally reliable.

Certain Specific Transactions

Intra-group services

Taxpayers need to apply the 'Benefit Test' to substantiate that the recipient of intra-group services receives or expects to receive benefits from such services.

The guidelines provide that strict pass-through costs of services may be charged to related parties without any markup. However, the service provider should ensure to charge appropriate arm's length markup for its function in arranging and paying for such pass-through services.

Routine support services

The taxpayer can opt to apply cost plus mark up of 5% on certain specified routine support intra-group services to avoid compliance burden. Further, if routine support services are acquired at a group level on a cost pooling basis, then a proportionate share may be charged to related parties without any markup.

Intra-group loans

In the case of domestic-related party loan provided by a taxpayer who is not engaged in the business of lending or borrowing, the taxpayer has to restrict interest deduction as a proxy to ALP as per the guidelines. Here, he cannot claim a deduction for interest at a rate higher than the rate at which he has granted a loan.

In case of cross border related party loan (other than the specified loans where indicative margins are applied) or domestic related party loan wherein the lender is engaged in the business of lending or borrowing, the taxpayers need to prepare detailed transfer pricing documentation and comply with the arm's length principle.

If related party loans not exceeding SGD 15 million at the time of loan obtainment, and indicative margins are applied as specified, then the taxpayer can choose to take the benefit of not performing the detailed transfer pricing analysis for such loans.

Attribution of profits to PEs

Guidelines provide that no further attribution of profits to the PE is required if the

taxpayer receives an arm's length remuneration from its foreign related party and other conditions are fulfilled..

Commodity Marketing and trading activities

Guidelines have been issued for taxpayers engaged in commodity marketing/trading entities with an aim to analyze the economic value of the activities in Singapore. The guidance provides a specific approach for functional analysis and a preferred approach in the adoption of the Comparable Uncontrolled Price Method for comparability. The IRAS have acknowledged that the operations could be undertaken through different business models. Illustrative examples have also been provided in the guidelines.

Administration

Income tax return

The income tax return needs to be filed by 30 November of the year following the closing of the book's year. In the case of e-filing, the due date is 15 December. This includes a form for reporting the related party transactions.

Submission of documentation

Taxpayers are not required to submit documentation on an annual basis. However, the same needs to be submitted to IRAS within 30 days of the request.

Transfer pricing audit/assessment

IRAS selects taxpayers for consultation (audit) based on risk indicators, such as:

- Value of related party transactions;

- Performance of taxpayer's business over time;
- Likelihood that taxable profits may have been understated by inappropriate transfer pricing.

During the consultation, IRAS may require the taxpayer to provide transfer pricing documentation and additional information or documents.

Transfer Pricing Adjustments

IRAS has the power to disregard the form of actual commercial or financial relations between related parties where the transaction elements are inconsistent and result in an adjustment.

Also, applicable from YA 2019, in case of transfer pricing adjustment which increases the amount of income, reduces the amount of deduction or allowance/reduce the amount of loss, a surcharge equal to 5% of the increase or reduction in deduction, allowance or losses shall be imposed on the amount of the transfer pricing adjustments made by IRAS.

APA and MAP Procedures

The taxpayer may apply for unilateral, bilateral or multilateral Advance Pricing Agreement (APA) for a period of three to five years. Moreover, the taxpayer can also apply for rollback provisions for two preceding financial years in case of bilateral or multilateral APA.

The taxpayer may also apply for Mutual Agreement Procedure (MAP) within the time limit relevant to the tax treaty, failing to which may result in rejection of the MAP request.

Penalties and other consequences of non-compliance

As per the Income Tax (transfer pricing documentation) Rules 2018, the following failure on account by the taxpayer would be considered as an offense and a penalty of SGD 10,000 would be imposed:

- Failure to prepare transfer pricing documentation by the time of tax return;
- Failure to prepare transfer pricing documentation as per the form and content and details specified by the Rules;
- Failure to retain transfer pricing documentation for at least a period of five years from the time of the transaction;
- Failure to submit transfer pricing documentation within 30 days of notice;
- Submission of false or misleading transfer pricing documentation ;

Non-compliance with documentation requirements will also lead to the following consequences:

- IRAS will not accept year-end adjustments by the taxpayer in transfer prices;
- Increased possibility of IRAS declining APA request in future;

- IRAS may also not support taxpayers for MAP to resolve double taxation.
- Irrespective of tax payable on adjustments, a surcharge of 5% shall be charged for transfer pricing adjustments made by IRAS relevant for YA 2019 or later.

BEPS/CbCR Applicability

In line with the BEPS Action Plan 13, Singapore will be implementing CbCR requirements for Singapore MNE groups from FY 2017 onwards.

Applicability of CbCR, where:

- a. It is a Singapore MNE group;
- b. Consolidated group revenue in the preceding FY is at least SGD 1,125 million;
- c. MNE group has subsidiaries/operations in at least 1 foreign jurisdiction.

The CbCR is required to be submitted to the Comptroller within 12 months from the end of that FY.

Guidance for Transfer Pricing on Account of COVID-19

Transfer pricing documentation

In light of the potential COVID-19 impact, companies are advised to provide additional qualitative information in their transfer pricing documentation to

substantiate the arm's length nature of their transfer pricing outcome. The list of additional qualitative details include:

- Effect of COVID-19 on the industry and the impact on the taxpayer;
- Decision-making authority for the management of risks related to COVID-19;
- Comparative functional analysis of before and after COVID-19;
- Highlight whether related-party arrangements have been modified in light of COVID-19;
- Comparison of budgeted results versus actual results and an explanation of any key variances due to COVID-19 (with supporting evidence);
- Justification of the negative impact of COVID-19 on the profitability with explanations and evidence;
- Specify if any government assistance is received or any impact of government regulations on the operations.

Term Testing

Taxpayers were required to consult the IRAS before applying term testing (combining multiple-year financial results against annual results). Taxpayers are advised not to consult the IRAS for application of term testing if the annual testing may result in volatile results due to the impact of COVID-19. It has been suggested with the following key points-

- The rationale for using term testing is to be substantiated with evidence that would complement the other documentation, according to the transfer pricing documentation.
- Clear explanation of how the term-testing was applied.
- Highlight that this is a one-off event for the Year of Assessment 2021.
- Consider the corresponding impact of this approach on related parties in other jurisdictions.

Summary of Transfer Pricing Requirements

Effective from

- Original transfer pricing guidelines were effective from 23rd February 2006.
- Revised comprehensive guidelines are applicable from 6th February 2015, which were further updated in January 2017.
- Revised guidelines are applicable from the YA 2019 issued on 23rd Feb, 2018.

Compliance Requirements

- Arm's length principle applicable in all related party transactions.
- Contemporaneous documentation applicable subject to specified threshold limits.

Penalties

- Specific penalties of S\$ 10,000 are applicable for violation of provisions with respect to transfer pricing guidelines.
- A surcharge of 5% shall be charged for transfer pricing adjustments made by IRAS from YA 2019 onwards

Method and Preference for Comparable

- Five methods as defined by OECD are applicable without any hierarchy.
- Listed company is considered as better comparable than the unlisted one.

- Local comparables should be given preference over non-local comparables.

Peculiar Features

- Three layers of documentation to be prepared i.e. Group level, Entity level and CbCR.
- Apply 'Benefit Test' with respect to the intra-group services.
- In the case of PE, no further attribution of profits is required if the taxpayer receives an arm's length remuneration from its foreign party.

Safe Harbour and APA

No specific provisions for safe harbor. However, taxpayers can opt to apply a cost plus mark up of 5% on specified intra-group routine support services and the specified indicative margins on the related party loans to avoid compliance burden for these transactions.

The taxpayer can apply for unilateral, bilateral, or multilateral APA for three to five years. Moreover, rollback application can be made for two preceding years in case of bilateral or multilateral APA.

CbCR applicability

It is applicable from the FY 2017 for Singapore MNE groups that have a consolidated group turnover in the preceding FY beyond the specified threshold.

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Our team provides you with solutions for tomorrow; we help you *Think Next*.

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