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Tax

New transfer pricing guidelines in Singapore

Singapore continues to focus on compliance with the OECD transfer pricing principles and further tightens its rules.

The Inland Revenue Authority of Singapore ("IRAS") released its 5th edition Transfer Pricing Guidelines ("TPG") on 23 February 2018. The revised TPG provides guidance on the implementation of the transfer pricing ("TP") related amendments made to the Income Tax Act ("ITA") on 26 October 2017.

The key changes to the TPG are set out below.

Arm's length adjustment by the IRAS

The IRAS will make TP adjustments if taxpayers do not comply with the arm's length principle. The IRAS will disregard an actual related party transaction or replace it with an alternative transaction only in exceptional circumstances. These are likely to arise when the taxpayer cannot demonstrate that their related party transactions are commercially rational and the TP arrangement made was not an arrangement that would have been made between independent parties.

Revisions to transfer pricing documentation ("TPD") requirements

An entire new section has been added to the new TPG on TPD requirements. Effective year of assessment ("YA") 2019, taxpayers who meet either of the following conditions must prepare a TPD:

1 Gross revenue derived from their trade or business is more than $10 million for that basis period; or

2 TPD is required to be prepared for the previous basis period.

However, the exemptions in the previous versions of the TPG generally still apply.

Clarifications to the frequency of TPD updates

The new TPG provide guidance to:

1 the frequency a TPD needs to be updated;

2 the action required if a TPD is not updated (applicable only if the TPD is considered a "qualifying past TPD"). In general, the TPG states that taxpayers are to review and refresh their TPD annually. However, to reduce taxpayers' compliance burden, provided that the details in the first year when the TPD was prepared remain accurate ("qualifying past TPD"), taxpayers may refresh their TPD once every three years. The new TPG gives further guidance to the conditions required for a TPD to be considered a "qualifying past TPD."

If a taxpayer deems its past TPD to be a qualifying past TPD, taxpayers still need to prepare a simplified TPD. In general, the simplified TPD serves as a declaration that the past TPD is a "qualifying past TPD."

Penalty on TPD non-compliance

Prior to the new TP related changes to the ITA, there were no specific penalties for TPD non-compliance. Rather, the general penalty (of up to $1,000) for non-submission of information to the IRAS could be applied. However, in alignment with the new legislation the new TPG states that, effective YA2019 and after, if taxpayers are considered TPD non-compliant a fine of up to $10,000 can apply.

Taxpayers can be deemed TPD "non-compliant" under the following circumstances:

1 Not preparing a TPD by the time of filing the tax return;

2 Not preparing a TPD with the required details specified in the ITA and TPG;

3 Not retaining the TPD for a period of at least 5 years;

4 Not submitting the TPD within 30 days upon request by the IRAS; or

5 Providing TPD with false or misleading information known by the taxpayer.

Surcharge on TP adjustment

In alignment with the new TP amendments to the ITA, the new TPG also includes a clause on a 5% surcharge on the TP adjustments made by the IRAS regardless of whether there is a tax payable on the adjustments.

What this means to taxpayers in Singapore

The TP related amendments to the ITA and the publication of the new TPG are indications that the IRAS is focusing more forcefully on the enforcement of the arm's length principle.

The revised TPD requirements have become more complex and new TP penalties and surcharge will apply effective YA2019. Taxpayers should ensure they have appropriate TP policies and review their related party transactions carefully to assess their TP compliance requirements to mitigate potential TP risks.

In addition to the above readers are reminded that, effective YA 2018, Singapore has introduced the Related Party Transaction form (RPT) that will need to be submitted with the Corporate Income Tax Return, subject to certain thresholds. Transfer pricing is becoming an increasingly transparent area of focus in Singapore.

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