

## Expanded Singapore Legislation on Transfer Pricing



### Overview

In October 2017, legislative requirements concerning transfer pricing were strengthened and expanded in Section 34 of the Singapore Income Tax Act (SITA). These were followed in February 2018 by the introduction of the Income Tax (Transfer Pricing Documentation) Rules 2018 (Rules), under powers conferred by Section 7(1) of the SITA. The fifth edition of the IRAS e-tax guide on transfer pricing guidelines was also released concurrently with the Rules. This KPMG Tax Alert focuses on the recent legislative changes concerning transfer pricing.

### Additions and Expansion to Section 34

In the following paragraphs, we have summarised some of the important transfer pricing concepts embodied in Section 34 of the SITA.

- **Arm's-Length Principle** – Section 34D reiterates Singapore's alignment with the OECD's Arm's-

Length Principle. Under this section, the Comptroller may increase a taxpayer's income, reduce its deduction, and/or reduce its loss, if conditions surrounding its related-party transactions differ from those made by unrelated parties under comparable circumstances.

- **Recharacterisation** – The form of related-party dealings can be disregarded, if it is inconsistent with substance and lacks commercial rationality. Section 34D provides the Comptroller with the power to recharacterise controlled transactions to those consistent with arm's-length dealings, if it is found that unrelated parties would have entered into substantially different arrangements, or would not have entered into similar arrangements. The foregoing means that the Comptroller may compute a taxpayer's income as if an actual related-party transaction had not existed, or should take a different form and/or remuneration.

- **Surcharge** – From YA 2019, Section 34E introduces a five percent surcharge on the amount of the transfer pricing adjustments made by IRAS. The surcharge will be levied on the quantum of the adjustment, rather than the *tax arising* from the adjustment. This means that the surcharge will be payable regardless of whether the taxpayer is in a tax paying position. We note that other penalties, under Section 95 and 96 of the SITA, may continue to be applicable.
- **Transfer Pricing Documentation** – From YA 2019, unless certain exemption criteria are met, Section 34F requires taxpayers to prepare and maintain transfer pricing documentation for *each* related-party transaction. Such documentation must be prepared no later than the filing due date. Documentation must also contain the items specified in the Rules (as discussed in the next section).
- **Fine for Non-Compliance** – Taxpayers are required to maintain and submit documentation to the IRAS, within 30 days of a written notice. Failure to comply with this and various other provisions of Section 34F may attract a fine not exceeding \$10,000.
- Documentation must contain the information items specified in the second schedule of the Rules. In a nutshell, these items are designed to provide an understanding of the parties relevant to the transaction, the flow and nature of the related-party transactions, the responsibilities undertaken by each party in the course of the transaction, and how the transfer price is derived. The foregoing has many consistencies with OECD documentation requirements under BEPS Action 13. The Rules also significantly expand upon past IRAS guidance -- by requiring information in new areas, attachments, as well as more granular details for many items. For example, details on changes to group/entity structure arising from restructuring, acquisition or divestiture are now required.
- The documentation completion date must be specified, thereby reinforcing the requirements of Section 34F(5)(a).
- The various exemption criteria under which detailed transfer pricing documentation is *not* required are provided under the Rules. Most of these relate to gross revenue or related-party transactional volumes that do not exceed low-value thresholds, situations where the risk of tax revenue leakage is relatively small, and/or situations where a safe harbour can be applied.

### Income Tax (Transfer Pricing Documentation) Rules 2018

The Rules are effective from YA 2019 and clarify the form and content of transfer pricing documentation, as well as some exemptions from the foregoing. There are some noteworthy items in the Rules:



## KPMG Observations

In recent years, Singapore has increased its focus on transfer pricing and documentation to ensure that taxpayers' profitability is consistent with the economic activities conducted and value generated in Singapore. The new legislation expands on existing transfer pricing guidance and formalises them into the SITA. To foster adherence and sound transfer pricing practices, a five percent surcharge on adjustments and a \$10,000 fine for non-compliance has been introduced to bolster existing Section 95 and 96 penalties. Taken together with the power to recharacterise transactions, Singapore has become one of the stricter countries globally on transfer pricing enforcement.

Taxpayers will do well to avoid running afoul of the new requirements by having adequate and contemporaneous transfer pricing documentation for each type of related-party transaction.

## How we can help

As a committed tax adviser to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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