

Revised Transfer Pricing Guidelines



Overview

In October 2017, legislative requirements concerning transfer pricing were strengthened and expanded in Section 34 of the Singapore Income Tax Act (SITA).

Following closely behind were the introduction of the Income Tax (Transfer Pricing Documentation) Rules 2018 (Rules) and the fifth edition of the IRAS e-tax guide on transfer pricing guidelines (TPG5) which were released in February this year.

This KPMG Tax Alert focuses on the changes concerning TPG5 and should be read in conjunction with [KPMG's Tax Alert on Section 34 and the Rules](#) as published on 26 February 2018.

Alignment with Section 34 and Rules

The key changes in TPG5 seek to align the guidance with the expanded Section 34 and the recently introduced Rules, as well as to provide explanation of the legislative changes by using examples.

We have summarized some of the key changes below:

- TPG5 makes reference to arm's-length conditions as defined in expanded Section 34D. In considering arm's-length conditions, taxpayers are required to analyze the totality of arrangements made between related parties.

In addition to pricing, this also includes the underlying commercial purpose of the transaction and whether unrelated parties would have structured the transaction in a similar way.

- TPG5 enhances the guidance on conducting a comparability analysis. In particular, taxpayers are required to analyze the form and substance of their related-party transactions and whether they align.

If there are material differences, the transaction would need to be analyzed based on its substance, which is derived from the actual conduct of the transacting parties.

- TPG5 highlights that IRAS can impose transfer pricing adjustments for transactions that are not arm's length in accordance with Section 34D, with a number of examples provided.
- TPG5 elaborates on IRAS' powers to recharacterize transactions. Given the broad nature of such powers, IRAS emphasized that it would apply these powers only in exceptional circumstances, for instance where the arrangements between related parties lack commercial rationale.
- The section on transfer pricing documentation requirements was re-written entirely in TPG5. Along with some changes in the documentation content requirements, the requirement to prepare transfer pricing documentation under Section 34F and the Rules, as well as the potential applicability of exemptions are illustrated in more detail under different scenarios.
- Guidance on surcharges and penalties for non-compliance is provided, in alignment with Section 34E and 34F.

Other changes

Other than the above, through TPG5, IRAS has provided further clarity on its position in the following areas:

- Transfer pricing for permanent establishments is aligned with the authorized OECD approach to attributing profits to permanent establishments as separate and independent enterprises.
- Singapore taxpayers may still have access to the Mutual Agreement Procedure (MAP) when a settlement has been reached with a foreign tax authority. IRAS has nevertheless reiterated that resolution would be challenging under these circumstances.
- The transactional profit split method should not be applied where the contribution of at least one party to the transaction can reliably be evaluated through another transfer pricing method.
- Re-financing arrangements should be considered as new loans and the terms and interest rates should be determined based on the arm's-length considerations at the time of the re-financing arrangement.

KPMG observation

Given the recent significant changes in SITA and the Rules, the modifications to TPG5 focus on alignment with the expanded transfer pricing legislation.

Nevertheless, incorporating the concept of arm's-length conditions in TPG5 represents a significant shift in how IRAS might evaluate and enforce the arm's-length principle in practice.

In the past, the form and structure of related-party transactions has been mostly accepted at face value with the key transfer pricing focus area being the pricing itself.

Going forward, IRAS might apply a more holistic perspective and seek to understand the commercial purpose of the transaction. The foregoing might be particularly relevant for financing arrangements where the terms and conditions agreed can significantly impact the interest rate, as well as complex supply chain structures.

Based on the guidance provided in TPG5, IRAS may also exercise the recharacterization provisions under Section 34D in exceptional cases.

With the various legislative changes and substantial revisions to the transfer pricing guidance in TPG5, it is now more important than ever that taxpayers proactively prepare contemporaneous transfer pricing documentation, giving due consideration to the commerciality of their related-party transactions.

How we can help

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

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