

# SINGAPORE ISSUES NEW GUIDANCE ON PREPARATION OF TRANSFER PRICING DOCUMENTATION

March 2018

On 23 February 2018, the Inland Revenue Authority of Singapore ("IRAS") released a fifth edition of the Singapore transfer pricing guidelines ("2018 TPG") along with a set of the Income Tax (Transfer Pricing Documentation) Rules 2018 ("2018 TPD Rules"). The revised edition follows the amendments to mandatory transfer pricing documentation requirements, introduction of penalties for non-compliance and a surcharge on transfer pricing ("TP") adjustments as announced in the Income Tax (Amendment) Bill 2017. The 2018 TPG and the 2018 TPD Rules are effective from Year of Assessment ("YA") 2019.

Within the 2018 TPG, the entire Section 6 which deals with TP documentation has been re-written and a new section which deals with penalty and surcharges has been introduced. In line with Base Erosion and Profit Shifting project, the 2018 TPG draws upon some references from the recently updated 2017 OECD Transfer Pricing Guidelines when stating "that the contractual terms alone may not provide all the information necessary to perform a transfer pricing analysis ... and that the actual transaction should be determined from the actual conduct" – emphasising the importance of substance over form and that the burden of proof is on the taxpayer.

The key changes have been summarised hereunder.

## 1. Transfer pricing documentation

With effect from YA 2019, taxpayers who meet either of the following conditions

must prepare a TP documentation under Section 34F(3) of the Singapore Income tax Act ("SITA") for their related party transactions undertaken in a basis period:

- a) If the gross revenue derived from their trade or business is more than S\$10 million for that basis period; or
- b) TP documentation is required to be prepared for a transaction undertaken by the taxpayer in the basis period immediately before the basis period concerned.

Following from the above, the conditions for preparing a TP documentation has been revised substantially from YA 2019 and onwards. Taxpayers will not be required to consider the existing quantum thresholds (S\$15 million for purchase, sales and loans and S\$1 million for services and other categories) to determine the need for preparing TP documentation. From YA 2019, the conditions would be whether the gross revenue exceeds S\$10 million or whether the taxpayer was required to prepare a TP documentation for the previous basis period. If the taxpayer satisfies any one of these two conditions, then the requirement to prepare TP documentation would be triggered.

It has been clarified that the subject condition (b) will only apply when the taxpayer was required to prepare a TP documentation under Section 34F(3) in the previous basis period. Therefore, YA 2020 will be the first year of its applicability. In other words, if for YA 2020, the gross revenue is below S\$10 million, a TP documentation will still



FOR MORE INFORMATION:

**EVELYN LIM**

+65 6829 9629  
evelynlim@bdo.com.sg

**WONG SOOK LING**

+65 6828 9145  
sookling@bdo.com.sg

**HARSH SHAH**

+65 6828 9180  
harsh@bdo.com.sg

**PRERNA BATHIJA**

+65 6829 9635  
prerna@bdo.com.sg

[www.bdo.com.sg](http://www.bdo.com.sg)

need to be prepared if for YA 2019 a TP documentation was prepared under Section 34F(3).

However, one would then need to refer to the 2018 TPD Rules which provide for the exemptions from preparing a TP documentation (even when the above condition of (a) or (b) is satisfied). If either one of the following conditions is satisfied, the taxpayer will be exempt from preparing a TP documentation.

- a) Taxpayer's gross revenue is not more than S\$10 million for the basis period and two immediately preceding basis periods; and the TP documentation was required to be prepared under Section 34F for the two immediately preceding basis periods;
- b) Related party domestic transactions (excluding loans) are subject to the same tax rate;
- c) Related party domestic loan;
- d) Related party loan on which an indicative margin is applied;
- e) Routine support services on which a 5% cost mark-up is applied;
- f) Related party transaction covered by an advance pricing agreement;
- g) Related party transaction not exceeding S\$15 million for related party purchases, sales and loans respectively and S\$1 million for services, guarantees, lease or any other transaction respectively. In calculating the quantum thresholds, the amount should exclude the value of any transaction to which sub-paragraph (b), (c), (d), (e) or (f) applies as above.



Nonetheless, in cases where transfer pricing risks are high or taxpayers are unable to demonstrate compliance with arm's length principle; IRAS encourages preparation of TP documentation (even when not required to) in order to avoid adverse consequences.

## 2. Qualifying past TP documentation

IRAS requires taxpayers to review and refresh their TP documentation annually. In recognition that the transaction and the related parties to the transaction may not change significantly from year to year, IRAS allows taxpayers to use a past TP documentation to support the transfer prices in the concerned basis period. The usage of past TP documentation is conditioned on it being a "qualifying past TP documentation".

A "qualifying past TP documentation" is a document that was prepared in either of the two immediately preceding years. For example, a TP documentation prepared in either YA 2019 or YA 2018 will qualify as a "qualifying past TP documentation" for the basis period for YA 2020, subject to:

- ▶ Transaction in past TP documentation is of the same type of transaction undertaken in the basis period concerned;
- ▶ Transaction in the basis period concerned is undertaken with the same related parties as documented in past TP documentation; and
- ▶ Past TP documentation includes documentation at Group level and Entity level as prescribed in the 2018 TPD Rules.

It has been clarified that a qualifying past TP documentation cannot be used on a perpetual basis. To that extent, taxpayers will be required to prepare a fresh TP documentation in Year 4 i.e. YA 2021 if the TP documentation was previously prepared for YA 2018.

Once the TP documentation qualifies as a "qualifying past TP documentation", taxpayers have a choice of using it or preparing a new TP documentation. On the consideration that taxpayers opt to use the qualifying past TP documentation then a declaration (in any format) has to be made and the copy of this qualifying past TP documentation should be attached to the declaration (the declaration and the qualifying past TP documentation are referred to as "simplified TP documentation"). Such simplified TP documentation should be submitted to IRAS within 30 days upon request.

### 3. Transfer pricing surcharge

Effective from YA 2019, a 5% surcharge under Section 34E will be levied on TP adjustments which result in an increase of taxpayer's income or reduction of its losses. The 5% surcharge will be applicable independent of whether there is any tax payable arising from the adjustments or not. It is payable within one month from the date of notice specifying the levy of surcharge irrespective of any objection to or an appeal lodged against such assessment. The immediate impact will be on taxpayers cash flow and therefore a robust TP documentation would be necessary to defend or argue against any TP adjustments proposed by IRAS.

### 4. TP penalties

Section 34F introduces transfer pricing specific penalties compared to a generic penalty of S\$1,000 in the past. From YA 2019, on conviction taxpayers will be levied a fine not exceeding S\$10,000 for:

- ▶ Failure to prepare TP documentation by the due date of the filing of the tax return;
- ▶ Failure to prepare TP documentation in accordance with the requirements prescribed by the 2018 TPD Rules;
- ▶ Failure to retain TP documentation for a period of at least five years from the end of the basis period in which the transaction took place;
- ▶ Failure to submit the TP documentation within 30 days of written notice served by the Comptroller; or
- ▶ Submission of false or misleading documentation.

### Key takeaways

The Guidelines set out detailed rules for the preparation of transfer pricing documentation.

Whilst the introduction of gross revenue threshold may relieve small businesses from transfer pricing requirement, the onus lies with the taxpayers to determine whether they qualify for the TP documentation exemption. Failure to properly ascertain such exemption may result in penalty. The operation of the exemption rules is somewhat complex and will require careful analysis of the facts to avoid the imposition of penalties.

With the availability to use past TP documentation, taxpayers would not be required to prepare new TP documentation on the presumption that the past TP documentation contains necessary information as prescribed under the 2018 TPD Rules and is a qualifying past TP documentation. It is therefore important to review the past TP documentation to ensure all the relevant conditions have been met. Again, if past TP documentation has been inappropriately relied upon as current TP documentation, penalty may ensue.

To demonstrate Singapore's commitment to the OECD's BEPS project, information requirements in the Group level documentation on intangibles and financing have been aligned with the OECD's Action 13 requirements. Taxpayers will therefore need to undertake a detailed analysis of the Group's R&D and financing activities to ensure that profits are allocated to jurisdictions where value is created.

All in all, it is recommended that taxpayers perform a detailed assessment of their related party transactions to determine their compliance obligations as any error will result in penalties and surcharges impacting your cash flow. The introduction of TP specific penalty and a surcharge demonstrates that IRAS is adopting a hard line approach to those defaulting on the TP compliance requirements in Singapore.

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO Tax Advisory Pte Ltd to discuss these matters in the context of your particular circumstances. BDO Tax Advisory Pte Ltd, its partners, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO Tax Advisory Pte Ltd (UEN: 200818719H), a Singapore registered company, is a member of BDO International Limited, a UK company limited by guarantee and forms part of the international BDO network of independent member firms. BDO is the brand name for BDO network and for each of the BDO Member Firms.

©2018 BDO Tax Advisory Pte Ltd. All rights reserved.

[www.bdo.com.sg](http://www.bdo.com.sg)