

# IRAS Releases Transfer Pricing Guidance on COVID-19

September 2020

On 7<sup>th</sup> September 2020, the Inland Revenue Authority of Singapore ("IRAS") released transfer pricing guidance in the form of five questions and answers, as part of its COVID-19 Support Measures and Tax Guidance introduced to help provide certainty and help businesses which are affected by the COVID-19 pandemic. The five questions provide guidance on two key aspects:

- ▶ Transfer pricing analysis and documentation expected for supporting the arm's length nature of COVID-19 impacted transfer pricing outcomes.
- ▶ Defining expectations of taxpayers who wish to rely or are relying on the Advanced Pricing Arrangement ("APA") as a dispute resolution mechanism.

## COVID-19 Transfer Pricing Analysis and Documentation

In addition to IRAS' already prescriptive transfer pricing documentation content requirements, IRAS has set out additional information which might need to be provided by taxpayers whose operations have been severely affected by COVID-19, including:

- ▶ An analysis of how COVID-19 has affected the taxpayer's industry and specifically to the taxpayer;
- ▶ A comparison of the pre- and post-COVID-19 decision-making authority;
- ▶ Functional profile of the transacting related parties before and after COVID-19;
- ▶ Contractual arrangements and details of any changes in obligations or terms and conditions arising from COVID-19;

- ▶ Comparison of budgeted and actual achieved profitability or losses, accompanied by reasons to explain variances and supporting evidence; and
- ▶ Details of COVID-19 specific government assistance/regulations which have impacted the taxpayer's operations.

IRAS has typically preferred annual testing and term testing (a.k.a multi-year testing) is generally only allowed if taxpayers seek advance approval from IRAS. For the Year of Assessment 2021, IRAS is allowing a once-off concession for taxpayers to apply term testing, if the taxpayer views that the outcome of the COVID-19 related annual testing approach results in volatility. Notably, the concession cements IRAS' recognition that COVID-19 is an exceptional event, and IRAS is proactively giving taxpayers the choice to adopt the deviation if needed.

In this connection, IRAS has provided an illustration to demonstrate the application of term testing, whereby under the term testing approach, the resulting transfer pricing adjustment is expected to be less material compared to under the annual testing approach. We can observe through this illustration that the intention of term testing is to expand the parameters accommodating transfer pricing adjustments, thereby easing the burden on taxpayers in meeting their transfer pricing obligations. Importantly, it is evident that IRAS' underlying expectation is for the onus of actively reviewing the arm's length nature of related party transactions to fall on taxpayers.

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### COVID-19 Impact on APA

IRAS notes that the COVID-19 pandemic may significantly impact the business operations and economic performance of taxpayers, jeopardising the spirit of APAs and the attached covenants, which is to provide taxpayers with certainty on transfer pricing arrangements, whether on a unilateral or bilateral/multilateral basis.

In this regard, IRAS provides the following guidance to taxpayers:

- ▶ Taxpayers that are considering an APA or are renewing an APA can do so if they assess that COVID-19 does not significantly impact the company's business operations and economic performance. Otherwise, the company may need to consult with IRAS and potentially put the applications on hold.
- ▶ Similarly, taxpayers with APA applications under review should assess if there are any transfer pricing implications arising from COVID-19 which may impact the APA application.

- ▶ Taxpayers with existing APAs need to review and assess if there is any breach of the critical assumptions and agreed terms and conditions. IRAS will evaluate what is the best possible outcome which may include letting the APA run its usual course, suspending or modifying the APA for the period which is impacted.

IRAS' stance on APA in the context of the COVID-19 pandemic may come across as logical and obvious. However, in the global context where APA cases are significantly of bilateral/ multilateral nature, IRAS' forefront efforts in stating its position and providing taxpayers with certain assurance in the midst of these unpredictable times is commendable.

### Key Takeaways

In an unprecedented fashion, IRAS is taking a very proactive approach as one of the first few tax authorities to issue guidance regarding practice issues for transfer pricing due to the COVID-19 pandemic. Indicatively, this guidance closely trails those issued by the

Australian, Malaysian and New Zealand tax authorities in June and August 2020, and is ahead of OECD's project to produce global guidance, which is anticipated to be published by the end of 2020.

Taxpayers should expect IRAS to initiate appropriate updates to the practice guidance during the periods going forward, and continue to proactively review financial outcomes which may be impacted by COVID-19. The best course of action is for taxpayers to respond to business disruptions in a timely manner and plan ahead to build up a body of robust and contemporaneous evidence which can support their transfer pricing policies applied over the course of the COVID-19 pandemic.

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