Singapore releases consultation paper on proposed transfer pricing documentation guidance

Executive summary

On 1 September 2014, the Inland Revenue Authority of Singapore (IRAS) released a consultation paper on the proposed revised guidance on transfer pricing documentation. Comments are due by 24 September 2014.

The key points of the consultation paper and proposed guidance are summarized below.

Detailed discussion

Consultation paper overview

As a follow up to the Transfer Pricing Guidelines issued on 23 February 2006, the IRAS intends to update Section 4 of the guideline on documentation to “provide more comprehensive guidance on transfer pricing documentation.” The paper sets out the proposed guidance and invites views and comments on the following areas:

- Challenges anticipated in preparing transfer pricing documentation on a contemporaneous basis
- Difficulties in getting information listed in Annex A
- Low risk situations such that transfer pricing documentation is not required
- Frequency of documentation updates
- Other areas relating to transfer pricing documentation that should be included in the revised guidance

As noted above, the closing date for submission of views and comments is 24 September 2014. Further details on submission of comments are provided in the consultation paper.
 Requirement for contemporaneous documentation
The proposed guidance requires taxpayers to prepare and keep contemporaneous records to support the pricing of the transactions undertaken with their related parties. It requires the transfer pricing documentation to be prepared prior to or at the time of undertaking the transactions, and including up to the time of preparing the relevant tax returns. It does not however require the taxpayer to submit the transfer pricing documentation with the tax returns, but requires that the documentation should be made available upon request.

The paper mentions two clear situations where the taxpayer is not required to prepare transfer pricing documentation. These are:

- Where the taxpayer is a small or medium enterprise (SME) with purely domestic transactions at the same Singapore tax rates
- Where the taxpayer has applied the Singapore safe harbor mark-up of 5% for routine services

Objectives and adequacy of transfer pricing documentation
The proposed guidance sets out the objectives of preparing the transfer pricing documentation which includes ensuring taxpayers have evaluated at or before the time of filing their tax return their compliance with the transfer pricing rules, and their readiness to demonstrate their transfer prices are at arm’s length.

In terms of disclosure, the IRAS’ proposed guidance requires that the transfer pricing documentation identify the group and specific companies involved in the related party transactions. Annex A of the consultation paper is validated as a source of reference for the types of information to be documented.

The current transfer pricing regulations requires taxpayers to balance the compliance and administrative costs of preparing documentation against the substantiality and complexity of the transactions. In this proposed guidance, this approach is tailored to evaluate the adequacy and extent of transfer pricing documentation based on:

- Whether or not the transfer pricing risks in respect of the transactions or arrangements are high
- Whether not having adequate transfer pricing documentation may expose the taxpayer to other adverse consequences

The consultation paper also provides examples of circumstances where the transfer pricing risks may be considered high such as when operating results are not in line with industry norms or where there are recurring losses or large swings in operating results.

This point of balance and adequacy is stressed again in paragraph 7.6 which states that taxpayers are not expected to incur compliance costs which are disproportionate to the amount of tax revenue at risk. The paper then cites examples of adverse consequences for the taxpayer if inadequate transfer pricing documentation is prepared, for example:

- In the event the taxpayer is unable to provide adequate transfer pricing documentation on request by the IRAS. In such a circumstance penalties may apply under Section 94(2) of the Singapore Income Tax Act.
- In the event of an understatement of profits with no adequate documentary support to prove otherwise, allowing IRAS to make an upward adjustment under Section 34D of the Singapore Income Tax Act.
- Allowing IRAS the discretion to not support the taxpayer in a Mutual Agreement Procedure (MAP) nor accept applications for Advanced Pricing Arrangements (APAs).

Review and retention requirements
In terms of on-going review and document retention, the proposed guidance requires taxpayers to review their transfer pricing documentation periodically to ensure it stays relevant and requires that documentation be kept for a period of five years from the end of the relevant year of assessment.
For additional information with respect to this Alert, please contact the following:

**Ernst & Young Solutions LLP, Singapore**

- Luis Coronado  
  +65 6309 8826  
  luis.coronado@sg.ey.com
- Henry Syrett  
  +65 6309 8157  
  henry.syrett@sg.ey.com
- Stephen Bruce  
  +65 6309 8898  
  stephen.bruc@sg.ey.com
- Stephen Lam  
  +65 6309 8305  
  stephen.lam@sg.ey.com
- Senaka Senanayake  
  +65 6309 8040  
  senaka-k.senanayake@sg.ey.com
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2014 EYGM Limited.
All Rights Reserved.

EYG No. CM4701