Singapore | Tax | 6 January 2016

# Singapore Transfer Pricing Developments
## Singapore releases updates to TP guidelines

### Overview

The Inland Revenue Authority of Singapore (“IRAS”) has on 4 January 2016 released updates to the transfer pricing (“TP”) guidelines. The updated set of guidelines, amended mainly to reflect enhancement to the Advance Pricing Arrangement (“APA”) process, replaces the second edition of the TP guidelines issued on 6 January 2015.

### Key Changes

The key changes in the updated guidelines are summarised as follows:

**Enhancements to the guidance on cost plus method**

The IRAS has clarified that in applying the cost plus method, the direct and indirect costs used to compute the cost base are limited to the costs of the supplier of goods or services and should take into account an analysis of the supplier's functions performed, assets utilised and risks assumed in the provision of the goods or services. The methods of determining the cost base should also be consistent over time.

If the tested party (i.e. the party to which the TP analysis is applied) is the supplier of the goods or service and is a taxpayer in Singapore, the cost base should also be determined according to the Singapore Financial Reporting Standards. Adjustments should be made where necessary to ensure that the cost base is at arm's length. As such, the cost base may be adjusted to include cost not reflected in the accounts of the tested party. The IRAS cited an example of cost that should have been allocated to the tested party but was instead borne by other related parties in the group. Such cost, though not allocated to the tested party and not reflected in its accounts, will be included as the cost base of the tested party.

## Enhancements to the guidance on the APA process

Taxpayers should observe the below timeline for the APA process, and the changes from the previous guidelines are highlighted as follows:

| Step | Timeline | Activity | Changes from previous TP guidelines issued on 6 January 2015 |
|---|---|---|---|
| **0**<br>Submission of pre-filing materials | At least 10 months before the first day of the covered period | Taxpayer submits pre-filing meeting materials | No change |
| **1**<br>1st Pre-filing meeting | At least 9 months before the first day of the covered period | Taxpayer initiates first pre-filing meeting | No change |
| **2**<br>Submission of APA application | At least 4 months before the first day of the covered period | IRAS indicates if APA application can be submitted | **New** |
| | Within 3 months from receipt of IRAS' indication | Taxpayer submits APA application | **Extended** |
| | Within 1 month from receipt of APA application | IRAS issues acceptance letter | No change |

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|---|---|---|---|
| **3** Review and negotiation | Within 1 month from reaching agreement by the Competent Authorities | IRAS informs taxpayer of the APA outcome | No change |
| **4** Implementation | Following Step 3 | Taxpayer and IRAS implements the APA agreement | No change |

IRAS also indicated that its acceptance of the taxpayers' request for an APA period and roll-back years is subject to them observing the APA process as above. Failure to do so may result in a change in the period to be covered in the bilateral APA and the taxpayer may be covered for a reduced number of years than originally intended.

For example, if a company intends to apply for a bilateral APA for three future FYs starting from 1 January 2017 with 2 roll-back years and fails to adhere to the above APA process, the financial year ("FY") starting 1 January 2017 will be excluded from the covered period. The covered period will only be the 2 future FYs from 1 January 2018 to 31 December 2019 and the roll-back years will be the two FYs prior to the covered period, i.e. 1 January 2016 to 31 December 2017.

For bilateral APAs where applications are required to be submitted to IRAS and the relevant foreign competent authority, the IRAS' consideration and observation of the timeline under its APA process should not be affected by the filing deadline imposed by the relevant foreign competent authority.

In the previous TP guidelines, the IRAS stated that the acceptance of a Mutual Agreement Procedure ("MAP") or APA application is at the discretion of the competent authorities. Where IRAS or the relevant foreign competent authority rejects the MAP or APA application, the taxpayers will have to consider other options to manage their transfer pricing risks. In the updated TP guidelines, the IRAS has added on to state that it is also not precluded from conducting an audit on the taxpayer if there is non-compliance with the Singapore tax law.

## Enhancements to the guidance on related party loans

The IRAS has now clarified that, similar to applying the arm's length principle on loans extended by taxpayers to a related party, the arm's length principle should also be applied on loans received by taxpayers from a related party, or taxpayers who become a debtor of a related party.

## Find out more

Please contact the following persons if you require any clarification or assistance in relation to this newsletter.

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*Ms. Lee Siew Ying is a Tax Principal at Deloitte Singapore's transfer pricing practice. She has extensive experience on projects relating to the preparation of master file documentation for group companies, review of intra-group services, including assisting companies with the implementation of the recommended methodology, as well as advising on transfer pricing policies and planning strategies. Siew Ying has also assisted clients to successfully negotiate for APAs with tax offices, and supported clients in their transfer pricing audit defense.*



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