Singapore | Tax | 16 January 2017

Singapore Transfer Pricing Developments

Singapore releases updates to Singapore TP guidelines

Overview

The Inland Revenue Authority of Singapore (“IRAS”) has, on 12 January 2017, released updates to the Singapore transfer pricing (“TP”) guidelines. The updated set of guidelines, amended mainly to reflect Singapore’s adoption of the minimum standards under Actions 5 and 8-10 of the Base Erosion and Profit Shifting (“BEPS”) project and to introduce an indicative margin for related party loans, replaces the third edition of the TP guidelines issued on 4 January 2016.

Key changes

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

Adoption of BEPS Action 5 (Standards on countering harmful tax practices) and BEPS Action 8-10 (Transfer pricing)

The IRAS has enhanced the guidance on MAP and APA in its commitment to BEPS Action 5. The IRAS will spontaneously exchange information on cross-border unilateral APAs under tax treaty or exchange of information instrument, subject to certain conditions, with:

a. Jurisdictions of residence of all related parties with whom the taxpayer enters into transactions that are covered by the unilateral APAs; and
b. Jurisdictions of residence of the taxpayer’s ultimate parent entity and the immediate parent entity.

Generally, information relating to unilateral APAs issued before 1 April 2017 will be exchanged by December 2017. Those issued after 1 April 2017 will be exchanged within three months after the date of agreement.

In addition, reflecting Singapore’s commitment to BEPS Actions 8-10, the IRAS has now clarified that the interpretation and application of the arm’s length principle should be consistent with that under Actions 8-10, namely, that profits should be aligned to value creation, and where the real economic activities are located. Accordingly, the determination of risk for transfer pricing analysis purposes is also aligned to that under Actions 8-10.

The alignment to the BEPS Actions came as no surprise, as Singapore has publicly committed itself to the BEPS minimum standards. Taxpayers seeking unilateral APAs should now be aware that such agreements would be shared.

Businesses should also review their existing transfer pricing policies, structures as well as documentation to ensure that the arm’s length principle have been applied according to the guidance under Actions 8-10, and not for instance, based purely on contractual arrangements.

Introduction of indicative margin for related party loans

To facilitate compliance with and adherence to the arm’s length principle, the IRAS has put in place an indicative margin which taxpayers may apply on an appropriate base reference rate (e.g. LIBOR) to price the interest on their related party loans obtained or provided from 1 January 2017. The application of the indicative margin is not mandatory – it provides a straightforward way to price the interest, in lieu of a detailed transfer pricing analysis. The intent is to provide administrative ease to businesses with relatively small amount of inter-company borrowing and lending, from needing to develop and prepare a detailed transfer pricing analysis.

The indicative margin will be published on the IRAS’ website and will be updated at the beginning of each year, and is applicable to each Singapore-dollar or foreign currency denominated related party loan that does not exceed S$15 million at the time the loan is obtained or provided. This amount is based on the loan committed and not the amount utilised.

If taxpayers choose to apply the indicative margin for their related party loans, they are not expected to prepare TP documentation for these loans, and such loans will also be excluded when determining the safe harbour loan threshold of S$15 million under paragraph 6.19(f) of the Guidelines.

The introduction of the indicative margin for related party loans offers an alternative to detailed transfer pricing documentation for small loan amounts, and is a welcome move for businesses with small amount of inter-company borrowing and lending. However, the application of an indicative margin is a "one-size-fits-all" approach, and it would be necessary to consider if the results of such approach would still be considered arm's length from the perspective of the related counter-party of the loan, to avoid dispute and potentially double taxation on the interest amount.

Find out more

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

Name	Contact Number	Email
See Jee Chang	+65 6216 3181	jcsee@deloitte.com
Lee Siew Ying	+65 6216 3120	sylee@deloitte.com

Mr See Jee Chang is a Tax Partner at Deloitte Singapore and leads the transfer pricing practice. He was vitally involved in developing the 2006 Transfer Pricing Guidelines in his former role as the Tax Director of the Tax Policy and International Tax Division of IRAS. During his time at the IRAS, Jee Chang also served as the Competent Authority of Singapore, responsible for transfer pricing and bilateral Advance Pricing Arrangement negotiations.

Ms Lee Siew Ying is a Tax Partner 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.