

Many countries have introduced new transfer pricing (TP) compliance requirements into their respective domestic legislations in the past few years. Likewise, in Singapore, the requirement for eligible taxpayers to prepare TP documentation has been legislated under Section 34F of the Income Tax Act (ITA) and takes effect from the year of assessment (YA) 2019.

The increasing TP documentation requirements around the globe have been cited by some businesses as the driver behind the obligation to comply with the arm's length principle. "While TP compliance costs have certainly gone up in recent years, it is incorrect to say that the obligation to comply with the arm's length principle has been driven by the increasing TP documentation requirements," explained Adriana Calderon, Director, Transfer Pricing Solutions Asia, shared at a *Tax Excellence Decoded* session organised by the [Singapore Institute of Accredited Tax Professionals \(SIATP\)](#).

"Businesses need to recognise that the arm's length principle applies to any taxpayers that entered into controlled transactions, that is, transactions between two or more associated enterprises, regardless of whether the company is required to prepare TP documentation," she said.

TP COMPLIANCE FRAMEWORK IN THE REGION

TP compliance requirements implemented by regional countries generally comprises tax return forms and TP documentation.

TAX RETURN FORMS

Tax return forms serve to provide basic information on related party transactions to tax authorities. For example, the Malaysia Inland Revenue Board uses Form MNE to collect information from certain taxpayers relating to their cross-border transactions for TP risk assessment purposes. Other regional countries, such as Australia, China and Vietnam, have also adopted tax return forms.

In Singapore, from Year of Assessment (YA) 2018, companies are required to complete a form for the reporting of related party transactions (RPT Form) if the value of related party transactions disclosed in their audited financial statements for the financial period exceed S\$15 million. The RPT Form provides the Inland Revenue Authority of Singapore (IRAS) with relevant information to assess companies' TP risks and enhance IRAS' ability to enforce the arm's length requirement in Singapore.

TP DOCUMENTATION

The Organisation for Economic Co-operation and Development (OECD)'s three-tiered standardised approach to TP documentation consisting of a master file, a local file and a country-by-country (CbC) report is widely adopted in the region. Essentially, the master file provides a high-level overview of a multinational enterprise (MNE) group's global business structure and activities, the local file provides a more detailed overview of the specific taxpayer's business and its transactions with related parties, and the CbC report provides details on large MNEs' global allocation of income, taxes paid, and business activity for each tax jurisdiction of large MNEs.

While the OECD threshold for CbC reporting (consolidated group revenue exceeding €750 million or near equivalent in domestic currency) is generally applied consistently in most countries, it is noted that the threshold to prepare master file and local file tend to vary from country to country. Depending on the country's domestic legislation, other local documents may also be required.

One of the common practical issues that MNEs face is the requirement to prepare TP documentation in local languages in some countries (such as China, Indonesia and Vietnam). To reduce TP risks and ensure consistency between TP documentation filed in each country, MNEs should consider preparing TP documentation in dual languages or alternatively, preparing it in English before translating to local languages.

TP DOCUMENTATION REQUIREMENTS IN SINGAPORE AND THE REGION

SINGAPORE

Singapore's TP documentation requirement is largely similar to the OECD's master file and local file requirements. Specifically, it covers group-level information, entity-level information, industry analysis, overview of the international related party transactions, functional analysis and characterisation of entities, selection of TP methods, and application of the TP methodology. Large MNEs with group revenue exceeding S\$1.125 billion and whose ultimate parent company is located in Singapore are also required to prepare a CbC report.

AUSTRALIA

The preparation of TP documentation is recommended (but not compulsory) in Australia. Taxpayers that do not prepare TP documentation face higher penalties if they receive a TP adjustment that increases their tax liabilities in Australia.

The Australian Taxation Office (ATO) has released a series of Practical Compliance Guideline that sets out its risk assessment framework and outlines its compliance approach to TP issues. MNEs with an Australian presence should go through the guidelines to find out their risk profiles in the eyes of the ATO. MNEs that are identified to be in the amber or red zone (that is, the moderate risk or high-risk zone) would be more likely to be scrutinised and challenged by the ATO.



Adriana Calderon, Director, Transfer Pricing Solutions Asia, provided participants with a snapshot of the transfer pricing documentation requirements in Singapore and the region.

CHINA

Bulletin 42 issued by the China's State Administration of Taxation (SAT) introduces a three-tier documentation framework. While largely based on the OECD's final report on BEPS Action 13, it also includes certain concepts that are familiar to the China market – for example, the impact of location-specific savings on pricing arrangements.

Companies are required to prepare contemporaneous TP documentation annually, including a master file, a local file and a special issue file. Specifically, companies must prepare a local file if their tangible asset transfers exceed RMB200 million, financial asset transfers or intangible asset transfers exceed RMB100 million, or if the aggregate amount of other types of related party transactions exceed RMB40 million.

Comparable searches are expected to be refreshed annually, and the TP documentation is expected to be fully performed every three years. It is a requirement to prepare the TP documentation in Chinese.

Notably, the SAT requires intra-group services to be beneficial in nature; otherwise, the company paying the service fee for the non-beneficial service would not be allowed a deduction from its taxable income. In practice, the SAT may conduct six specific tests to determine if a service is beneficial in nature (namely the benefit test, necessity test, duplication test, value creation test, remuneration test and authenticity test). Any service that fails one of the tests typically cannot be charged among related parties.

INDONESIA

Under Indonesia's new TP reporting compliance requirements (PMK-213), companies are required to prepare contemporaneous TP documentation annually and submit it in Bahasa Indonesia. A fresh benchmarking has to be performed every year.

Indonesia requires the preparation of a master file, a local file and a CbC report. Specifically, companies are required to prepare a master file and local file if they have conducted related party transactions in the current fiscal year, and have in the previous fiscal year:

- gross revenue exceeding IDR50 billion,
- related party transactions for tangible goods exceeding IDR20 billion,
- related party transactions for any class of non-tangible goods (such as interest, royalties or services) exceeding IDR5 billion, or
- related party transactions of any amount with a related party in a jurisdiction which has a corporate tax rate lower than Indonesia's corporate tax rate of 25%.

Effectively, this means that all related party transactions, however small, between Indonesia and countries with a lower headline tax rate (such as Singapore) would trigger a need to prepare TP documentation in Indonesia.

MALAYSIA

Under the Malaysian TP Guidelines, contemporaneous TP documentation must be prepared by companies annually and submitted in Bahasa Malaysia or English. Similar to China, comparable searches should be refreshed annually, and the TP documentation should be fully performed every three years.

Malaysia has adopted the three-tiered approach for TP documentation effective from 1 January 2017. Specifically, companies have to prepare a local file if their gross income exceeds RM25 million and total amount of related party transactions exceeds RM15 million, or if the provision of financial assistance exceeds RM50 million (excluding financial institutions). Companies that fall outside these thresholds may opt to prepare a simplified TP documentation.

In practice, it is noted that the Malaysia tax authority generally requires businesses to use local comparable companies in their benchmarking analyses.

PRACTICAL TIPS ON MANAGING TP RISKS

LACK OF SUBSTANCE

Perhaps one of the biggest challenges that TP practitioners face is to be asked to manage the TP risks of transactions without substance. Businesses must recognise that TP documentation cannot arbitrarily create substance. Instead, TP documentation is to be used to provide evidential support, based on actual facts and circumstances, to assure tax authorities that profits are taxed where value is created and that there is an alignment of substance and form.

RECURRENT LOSS MAKERS

Most tax authorities would generally consider companies that are consistently loss-making to be of high risk. To the extent that such losses were not contributed by the related party transactions, businesses should proactively explain to the tax authorities the genuine business reasons which may have contributed to the losses (for example, an industry-wide cyclical downturn).

COMPARABLES AND ARM'S LENGTH RANGE

Tax authorities generally prefer local comparables over regional comparables in a benchmarking analysis. Where regional comparables are used, businesses should try to demonstrate that no suitable local comparables can be found.

In respect of the arm's length range, tax authorities generally prefer the median point, and deviations from the median should be explained.

In the current environment with heightened TP focus, it is important for MNEs to keep abreast of the TP requirements in all the countries where they operate. While a related party transaction may not trigger TP documentation requirement in Singapore, it may not be the case in the counterparty's home country.



Adriana Calderon (1st from left), Director at Transfer Pricing Solutions Asia, took on questions regarding TP documentation.

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