Transfer Pricing in Singapore and Malaysia

Comparison Between Two Neighbours

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KEY TAKEAWAYS

- In determining the arm's length price of a Related-Party Transaction, the Singapore tax authority does not have a specific preference for any one method. Conversely, the Malaysian tax authority has a preference for traditional transactional methods over transactional profit methods.
- Under Malaysia's transfer pricing (TP) regime, all taxpayers that have entered into domestic or international controlled transactions are required to prepare contemporaneous TP documentation, whether full or simplified.
- Singapore provides certain safe harbours for TP, such as the indicative margin which taxpayers can apply on their related party loans under S$15 million. Conversely, there are no such safe harbours in Malaysia.

"Transfer pricing (TP) is like Hainanese chicken rice," explained Adriana Calderon, Director, Transfer Pricing Solutions Asia, and Hong Chuan Tan, Director, Transfer Pricing Solutions Malaysia, in a webinar organised by the Singapore Chartered Tax Professionals.

"While both Singapore and Malaysia adhere to the same arm's length principle, each country has a distinct 'flavour' when it comes to TP. In this regard, taxpayers must be mindful of the nuanced differences, both in terms of the TP regulations as well as the tax authorities' approach and administration.

MALAYSIA

Malaysia has adopted the Organisation for Economic Cooperation and Development (OECD)'s three-tiered standardised approach to TP documentation (TPD) comprising a master file, a local file, and a country-by-country (CbC) report.
Under Malaysia's TP regime, all taxpayers that have entered into domestic or international controlled transactions are required to prepare contemporaneous TPD. TPD is generally accepted as contemporaneous if it has been prepared no later than the filing due date of the tax return.

A full TPD is required in Malaysia if:

a) the annual gross income exceeds RM25 million, and the total controlled transaction value exceeds RM15 million per annum, or
b) the provision of financial assistance exceeds RM50 million for non-financial institutions.

Taxpayers falling outside of the scope above are required to prepare a simplified TPD. It is a common misconception that the Inland Revenue Board of Malaysia (IRB) does not require the testing of transactions or carrying out of benchmarking analysis for simplified TPDs. In practice, taxpayers are expected to test their controlled transactions by applying an appropriate TP method.

In addition to the local file, taxpayers are also required to prepare a master file if their total consolidated group revenue in the financial year (FY) preceding the first reporting FY is more than RM3 billion. *"While the master file provides a useful overview of the multinational enterprise (MNE) group, in our experience, IRB tends to put its attention on the local file as it focuses on controlled transactions of the Malaysian entity,"* clarified Mr Tan.

Taxpayers in Malaysia are required to furnish their TPD within 14 days for TP audit cases commencing on or after 1 January 2021. Given the short timeline (compared to at least 30 days in many countries), taxpayers must ensure the timely preparation of contemporaneous TPD and not wait until the commencement of an audit by IRB.

SINGAPORE

Singapore's TPD requirement is largely similar to the OECD's, covering both group-level information (similar to the master file) and entity-level information (similar to the local file). The group-level information aims to provide an overview of the group's businesses that are relevant to the business operations in Singapore, and the entity-level information aims to provide details of the Singapore taxpayer's business and its related party transactions.

Taxpayers must prepare contemporaneous TPD if the gross revenue derived from their trade or business for the basis period exceeds S$10 million, or if they were required to prepare TP documentation in the previous basis period. Unlike Malaysia, Singapore does not have an option for simplified TPD. However, exemptions are available for specific transactions.

Similar to Malaysia, TPD is generally accepted as contemporaneous in Singapore when it has been prepared no later than the filing due date for the Year of assessment (YA) corresponding to the FY in which the transaction has taken place. Taxpayers are given 30 days to submit their TPD upon the Inland Revenue Authority of Singapore's (IRAS) request.

Preferred TP Method

MALAYSIA

In Malaysia, taxpayers may use one of the five internationally accepted TP methods for their related party transactions based on the specific nature of the transactions and the availability of reliable data. However, in practice, traditional transaction methods (that is, the comparable uncontrolled price (CUP) method, resale price method, and cost-plus method) are generally preferred by IRB over the transactional profit methods (that is, the transactional profit split method and transactional net margin method).

SINGAPORE

Unlike IRB, IRAS does not have a specific preference for any one method and would generally accept the method that produces the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments. The choice of the most appropriate TP method depends on the facts and circumstances of each case.

Taxpayers are expected to consider the strengths and weaknesses of the methods, the nature of the transaction, the availability of reliable information needed to apply the method, as well as the degree of comparability between the related and independent party transactions.

Related Party Domestic Transactions

MALAYSIA

TP is applicable to both cross-border and domestic transactions in Malaysia, with the exception of domestic transactions between taxpayers who are both assessable and chargeable to tax in Malaysia, and that any adjustments made will not alter the total tax payable or suffered by both persons.

SINGAPORE

Similarly, TP applies to both cross-border and domestic transactions in Singapore. Taxpayers are exempt from preparing TPD for domestic transaction between related parties subject to the same tax rate, or for related party domestic loans where the lender is not in the business of borrowing and lending money.

Other Safe Harbours

MALAYSIA

There are no specific safe harbours for TP in Malaysia.

SINGAPORE

To facilitate compliance with the arm's length principle, IRAS has put in place an indicative margin which taxpayers can apply on their related party loans under S$15 million. Where the indicative margin is applied, taxpayers are not required to prepare TPD on the loan.

Taxpayers can also apply a 5% cost mark-up for certain routine support services (such as accounting and auditing, computer support, and payroll services) as a reasonable arm's length charge when certain conditions are satisfied.

Penalties For Non-Compliance with TPD Requirements

MALAYSIA

Since 2021, Malaysia has introduced criminal liability for failure to maintain contemporaneous TPD. Taxpayers who fail to submit contemporaneous TPD upon request by IRB within 14 days will be liable, upon conviction, to a fine of RM20,000 to RM100,000 or to imprisonment for a term not exceeding six months, or both.

SINGAPORE

In Singapore, a fine not exceeding S$10,000 may be imposed for offences such as the failure to prepare TPD in accordance with the prescribed timing or content, or the failure to submit TPD within 30 days from a request by IRAS. A surcharge of 5% will be imposed on TP adjustments, regardless of whether there is any additional tax payable resulting from the TP adjustment (for example, due to losses or tax incentives).

From different thresholds for TPD to the general approach taken by the tax authorities, there are many differences between Singapore and Malaysia's TP regimes. Businesses with operations in both countries should be mindful of the nuanced differences when preparing their TPD, so as to avoid the domino effect of incorrect transfer prices leading to prior years' TP adjustments, incorrect tax returns, and possible indirect tax issues. To minimise their TP risks, taxpayers should ideally prepare TPDs for all their open YAs (that is, five YAs in Singapore and seven YAs in Malaysia) if they have not done so already.

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