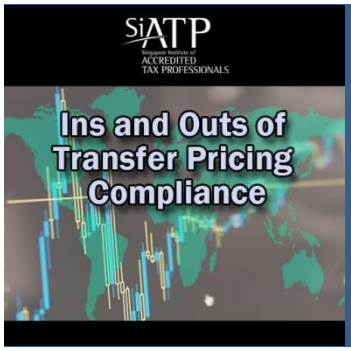

Ins and Outs of Transfer Pricing Compliance

What's Changed? How Does It Affect Me?

15 September 2017, Friday

Facilitated by:
Mr Tang Siau Yan

In 2016, Singapore joined the inclusive framework for the global implementation of the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) project as a BEPS Associate. In keeping with its commitment to implement the four minimum standards under the BEPS project, including Action 13 on transfer pricing (TP) documentation and Country-by-Country (CbC) reporting, Singapore has been actively taking steps to effect relevant changes to its TP regime.

Against this backdrop, Tang Siau Yan, Assistant Commissioner, Tax Policy & International Tax Division, Inland Revenue Authority of Singapore (IRAS), provided a timely update on key TP developments in Singapore and shared his insights on policy considerations behind some of these changes at a recent *Tax Excellence Decoded* session by the Singapore Institute of Accredited Tax Professionals (SIATP).

Country-by-Country Reporting

The OECD recommends the adoption of a three-tiered standardised approach to TP documentation comprising a master file, a local file and a CbC report. The TP documentation requirements in Singapore are largely aligned to the OECD's recommended approach. In addition, Singapore has also committed to implement the CbC reporting, which aims to provide increased transparency to tax authorities in respect of large MNEs.

Revenue Threshold

Singapore-headquartered MNEs whose consolidated group revenue for the preceding financial year (FY) exceeds S$1.125 billion are required to file a CbC report with IRAS. Extraordinary income is excluded from the revenue on the basis that it does not accrue under normal business circumstances.

Filing Requirements

CbC reports are to be filed in the home jurisdiction of the ultimate parent entity of the group. As such, Singapore subsidiaries of foreign MNE groups are not required to file a CbC report in Singapore, although they may still be involved in supporting the filing process internally within their groups.

Singapore has implemented CbC reporting from FY 2017. The earliest filing deadline to IRAS will be on 31 December 2018 (for the FY ending on 31 December 2017[1]). It should be noted that IRAS will only accept CbC reports from Singapore-headquartered MNE groups (Singapore does not provide for surrogate parent filing[2] for foreign MNE groups).

[1] The due date to file a CbC report is within 12 months from the end of the reporting FY.

[2] Under the OECD CbC reporting principles, surrogate parent filing occurs in specific situations where the CbC reporting template is not available for exchange with other tax authorities arising from factors such as (i) the location of the parent entity does not implement CbC reporting rules; (ii) there is a systemic failure by the parent entity jurisdiction to exchange CbC reports with tax authorities under the automatic exchange of information framework, etc.

As some jurisdictions have implemented CbC reporting for FY 2016, there is a "gap year" where a Singapore-headquartered MNE may have a filing requirement in a foreign jurisdiction but is not required to file any CbC report in Singapore. To address this transition issue, the affected Singapore-headquartered MNE may choose to file a CbC report with IRAS for FY 2016 on a voluntary basis.

EXCHANGE AND USE OF INFORMATION

CbC reports submitted to IRAS will be exchanged within six months with tax authorities of jurisdictions with which Singapore has qualifying competent authority agreements for the automatic exchange of CbC reporting information. In the absence of automatic exchange, jurisdictions may impose local filing obligations.

Multilateral Competent Authority Agreement

On 21 June 2017, Singapore signed the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports. The MCAA is a multilateral framework agreement that provides a standardised mechanism to facilitate the automatic exchange of information.

Besides acting as a platform to start the exchange relationship, the MCAA also helps to alleviate confidentiality concerns as all information exchanged is subject to the confidentiality rules and other safeguards provided for in the MCAA.

Tang Siau Yan, Assistant Commissioner, IRAS, dissected recent TP developments.

Related Party Transaction Reporting

With effect from Year of Assessment (YA) 2018, taxpayers must submit a new "Form for Reporting of Related Party Transactions" together with their income tax returns if the value of related party transactions (RPT) in their audited accounts for the FY exceeds S$15 million.

The RPT data will be used by IRAS in assessing TP risks and selecting appropriate cases for TP consultation.

Income Tax (Amendment) Bill 2017

The Income Tax (Amendment) Bill 2017 brought about several important changes to the Singapore TP regime, such as the amendments to section 34D and the insertion of new sections 34E and 34F of the Income Tax Act (ITA).

SECTION 34D

Broadly, the amendments to section 34D seek to provide a clearer legal basis for the Comptroller to enforce the arm's length principle. Emphasis is placed on whether unrelated parties would reasonably enter (or not enter) into similar arrangements as the related parties in comparable circumstances.

The amended section 34D provides the Comptroller with the power to disregard a transaction and if appropriate, replace it with an alternative transaction. In addressing taxpayers' concerns on the extent to which IRAS would exercise the power to recharacterise an RPT, it was clarified that IRAS would generally avoid disregarding the form of actual commercial or financial arrangement between related parties unless the form does not reflect the actual conduct or economic substance of the transaction.

The amended section 34D also allows the Comptroller to make TP adjustments to RPT by increasing the amount of income, reducing the amount of deduction or reducing the amount of loss. For the amount of income to be increased through TP adjustment, it must first be accrued in or derived from Singapore, or received in Singapore from outside Singapore.

Given that Singapore is on a quasi-territorial tax system, concerns were raised that TP adjustments may be made even if the foreign income is not taxable in Singapore. To this, it was clarified that for the Comptroller to make TP adjustments under section 34D to increase the amount of foreign income, the income must first be (partially or fully) received in Singapore from outside Singapore. This is consistent with the scope of taxation under the charging provisions in the ITA.

SECTION 34E

The new section 34E introduces a penalty regime to Singapore's TP legislation. With effect from YA 2019, the Comptroller may apply a surcharge of 5% on the TP adjustment made under section 34D. This is regardless of whether the taxpayer is in a taxable position after the TP adjustment.

Notwithstanding any objection or appeal, the surcharge is payable within one month of the written notice of the surcharge. The Comptroller may extend the time, and may also remit wholly or in part any surcharge.

Topics discussed include the implication of CbCR and the TP related changes in the Income Tax (Amendment) Bill 2017.

SECTION 34F

The new section 34F codifies the requirement for applicable Singapore taxpayers to prepare TP documentation from YA 2019.

Under this new section, a company, the person making a return of the income of the firm (including a partner in the case of a partnership) or the trustee of a trust is required to prepare TP documentation once the gross revenue derived from its trade or business for the basis period exceeds S$10 million. In addition, if the taxpayer were required to prepare TP documentation in the basis period immediately before the current basis period, it will have an obligation to continue doing so in the current basis period (unless it qualifies for exemption). Existing exemptions from the preparation of TP documentation that are stated in IRAS' TP Guidelines continue to apply.

TP documentation is required to be prepared no later than the statutory deadline for the filing of the tax return and must be kept for at least five years from the end of the basis period in which the transaction took place. A person convicted of non-compliance under section 34F will be subject to a fine not exceeding S$10,000. The offence may be compounded by the Comptroller.

It is important to note that the arm's length principle applies to all taxpayers transacting with their related party, regardless of whether they are required to prepare TP documentation. As such, taxpayers who are not required to prepare TP documentation should similarly ensure that their RPT are carried out at arm's length prices.

Having said that, IRAS does not expect taxpayers to incur compliance costs which are disproportionate to the amount of tax revenue at risk or complexity of the transactions. Taxpayers should assess the adequacy and extent of their TP documentation based on the facts and circumstances.

Now more than ever, companies are encouraged to review their modus operandi to ensure that they remain ready to meet all compliance requirements, particularly in the area of TP. As the world continues to move towards greater tax transparency, companies need to recognise the importance of a robust TP policy, supported by contemporaneous TP documentation, in substantiating their RPT.

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This technical event commentary is written by Felix Wong, Head of Tax, and Angelina Tan, Technical Specialist, SIATP. This article is based on SIATP's Tax Excellence Decoded session facilitated by Tang Siau Yan, Assistant Commissioner, Inland Revenue Authority of Singapore.

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