

Summary of Responses – Public Consultation on Transfer Pricing Documentation

IRAS conducted a public consultation between 1st and 24th September 2014 to seek feedback on the revised guidance on transfer pricing documentation (“TP documentation”).

IRAS received comments from 16 respondents on the public consultation paper during the consultation period. IRAS wishes to thank all respondents for taking the time to provide their comments.

IRAS has considered carefully all the comments received. Based on these comments, IRAS has further improved the guidance on TP documentation. The finalised guidance, Transfer Pricing Guidelines (second edition), has been published on 6th January 2015.

A summary of the key comments received and our responses is provided in the following paragraphs. The summary is confined to comments relating to the guidance on TP documentation, and does not include editorial suggestions to make the guidance clearer.

A. Effective date of the guidance

Comment:

Some respondents requested IRAS to specify the effective date of the guidance and provide taxpayers with adequate time to prepare documentation based on the new standard.

IRAS’ response:

IRAS regularly reviews and updates its e-Tax guides to ensure that the policies, rules and guidelines remain relevant and useful. The guidelines on TP documentation were introduced more than eight years ago (“2006 guidelines”)¹. Since then, business models have evolved and related party transactions have become more complex. Moreover, in recent years, some tax authorities appear to have increased their enforcement activities to ensure that transfer prices have not been set to avoid tax and may have imposed stricter penalties and documentation requirements. Therefore, it was timely for IRAS to review and update its 2006 guidelines to provide more comprehensive guidance.

The updated guidelines for TP documentation under section 6 of the Transfer Pricing Guidelines published on 6th January 2015 (“2015 guidelines”) do not vary significantly from the 2006 guidelines. As such, the 2015 guidelines would not have a significant impact on the taxpayers who have been maintaining TP documentation based on the 2006 guidelines.

As the 2015 guidelines arose from an update of the 2006 guidelines and there is no significant change, it is not necessary to

¹ The first set of transfer pricing guidelines was published on 23 February 2006.

provide an effective date. Neither is it necessary to provide a transitional period for taxpayers to prepare TP documentation.

B. Interaction with OECD's TP documentation (Chapter V of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations)

Comment:

There were requests for IRAS to clarify the interaction between its updated documentation rules and OECD's proposed three-tier documentation approach (particularly with respect to the OECD's country-by-country reporting template).

IRAS' response:

As mentioned in (A) above, the 2015 guidelines arose from IRAS' regular reviews and updates of its e-Tax guides. The guidelines set out the types of TP documentation and compliance matters which IRAS expects its taxpayers to observe. In the meantime, IRAS will continue to monitor the developments on TP documentation internationally.

C. Suggestions to ease compliance costs

Comment:

IRAS received various suggestions to ease compliance costs:

1. To restrict information requests to those which are relevant to the Singapore taxpayers' transactions with their related parties and business activities.
2. To accept TP documentation prepared based on the requirements of the jurisdiction in which the Singapore taxpayers are headquartered.
3. To introduce materiality thresholds so as to exclude immaterial transactions from TP documentation requirement.
4. To exclude non SMEs' domestic transactions subject to the same Singapore tax rates and transactions covered by advance pricing arrangement from TP documentation requirement.
5. To specify the precise time period within which the taxpayers will be expected to submit the TP documentation once IRAS requests it.
6. To provide explicit guidelines on the frequency of the updates of TP documentation. Most respondents suggested a frequency of between one and three years.

IRAS' response:

IRAS has accepted the suggestions and provided additional guidance on these aspects in the 2015 guidelines.

D. Contemporaneous TP documentation

Comment:

IRAS received various comments regarding contemporaneous TP documentation:

1. The definition may be contradictory. While taxpayers should prepare documentation prior to or at the time of the transaction, the guidance also states that this includes “up to the time of preparing the relevant tax returns”. Since tax returns will be submitted after the actual performance of the transactions, any documentation prepared will be “after the fact”.
2. IRAS to provide guidance that information used at the time of setting prices or preparing contemporaneous TP documentation be respected.
3. IRAS to consider TP documentation need not be prepared at the time of tax return but within a reasonable timeframe upon request as the information for testing the pricing (i.e. TP analysis and benchmarking) may not be available at the time the tax return is submitted.
4. IRAS to clarify the expected timeframe that would be considered “prior to” a transaction and “up to the time of preparing the relevant tax returns”.

IRAS' response:

There is no contradiction in the definition of contemporaneous TP documentation. Contemporaneous TP documentation refers to documentation and information that taxpayers have relied upon to determine the transfer price prior to or at the time of undertaking the transactions. However, for ease of compliance, IRAS will also accept as contemporaneous TP documentation any documentation prepared at any time no later than the time of completing and filing the tax return for the financial year in which the transaction takes place.

Taking into account the comments received, IRAS further clarified the definition of contemporaneous TP documentation with two examples in the 2015 guidelines to illustrate:

1. The use of information at the time of setting prices or preparing contemporaneous TP documentation (refer to paragraph 6.7); and

2. The update of documentation at any time no later than the time of completing and filing the tax return (refer to paragraph 6.8).

With the clarification, IRAS believes the concern that there may not be sufficient information available at the time the tax return is filed for testing the pricing will be addressed.

The 2015 guidelines are not intended to be prescriptive. As such, taxpayers are to exercise their best judgment to determine the most appropriate time for preparing TP documentation within the above timeframe.

E. Interest payable/ receivable from an overseas related party

Comment:

Full contemporaneous TP documentation should not be required for transactions pertaining to interest payable to / receivable from an overseas related party. These transactions should be considered low risk transactions because unremitted interest income generally cannot be subject to tax, and the risk pertaining to interest expenses would be hedged by interest adjustment calculations in the tax computations.

IRAS' response:

In the case where the interest payable / receivable involved an overseas related party, taxpayers should be mindful of the transfer pricing risks in other tax jurisdictions. IRAS also requires relevant information to determine taxability of the income has arisen or whether deduction should be given. If taxpayers are unable to substantiate that their interest payable / receivable are at arm's length based on their TP documentation, IRAS may not support the taxpayers in MAP discussions to resolve double taxation arising from any transfer pricing adjustments made by IRAS or foreign tax authorities.