Income Tax (Transfer Pricing Documentation) Rules 2018

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No. S 93

INCOME TAX ACT
(CHAPTER 134)

INCOME TAX
(TRANSFER PRICING DOCUMENTATION)
RULES 2018

In exercise of the powers conferred by section 7(1) of the Income Tax Act, the Minister for Finance makes the following Rules:

Citation, commencement and application

1.—(1) These Rules are the Income Tax (Transfer Pricing Documentation) Rules 2018 and come into operation on 23 February 2018.

(2) These Rules have effect for the basis period for the year of assessment 2019 and every subsequent year of assessment.

Definitions

2. In these Rules, unless the context otherwise requires —

"advance pricing arrangement" means an agreement on the transfer pricing criteria to be used in relation to one or more transactions between an applicable entity and one or more related parties of the entity over a specified period, being an agreement —

(*a*) that is made between the Comptroller and an authority of a country outside Singapore, and in accordance with a procedure under an avoidance of double taxation arrangement between the Government and the government of that country; or

(*b*) that is made between the applicable entity and the Comptroller;

"applicable entity" means a company or firm mentioned in section 34F(2) of the Act, or a trustee of a trust that is a trust mentioned in that provision;

"avoidance of double taxation arrangement" means an arrangement having effect under section 49 of the Act;

"group", in relation to an applicable entity, means a group of entities all of which are related parties, that includes —

(*a*) the applicable entity; or

(*b*) if the applicable entity is a partnership, a partner of the partnership;

"indicative margin" means the indicative margin for related party loans published on the Inland Revenue Authority of Singapore's website at http://www.iras.gov.sg;

"IRAS e-tax guide" means the IRAS e-tax guide entitled "Transfer Pricing Guidelines" published on 23 February 2006, as amended from time to time;

"routine support services" means the services specified in the First Schedule;

"transfer pricing method" means a method used to determine arm's length prices between related parties, and further explained in the IRAS e-tax guide.

Form and content of transfer pricing documentation

3.—(1) The transfer pricing documentation required to be prepared under section 34F(3) of the Act for each transaction undertaken by an applicable entity with a

related party in a basis period —

(*a*) must contain the information specified in the Second Schedule in respect of the transaction, the applicable entity and the group of the applicable entity;

(*b*) must specify the date on which the transfer pricing documentation is completed; and

(*c*) must be in English or, if not in English, translated into English on the request of the Comptroller.

(2) Despite paragraph (1), if the applicable entity has prepared a qualifying past transfer pricing documentation, then the transfer pricing documentation in relation to a transaction (called in this rule the subject transaction) must either —

(*a*) satisfy paragraph (1)(*a*), (*b*) and (*c*); or

(*b*) contain a declaration by the applicable entity that it has prepared a qualifying past transfer pricing documentation, and include, by way of an attachment, a copy of the qualifying past transfer pricing documentation.

(3) In this rule, "qualifying past transfer pricing documentation", for a subject transaction undertaken by an applicable entity, means —

(*a*) transfer pricing documentation that —

(i) was prepared for a transaction undertaken by the applicable entity with the same related party in the basis period (called in this rule the previous basis period) that immediately precedes the basis period in which the subject transaction is undertaken; and

(ii) satisfies the conditions in paragraph (4); or

(*b*) in a case where no transfer pricing documentation was prepared for a transaction mentioned in sub-paragraph (*a*) in the previous basis period or such documentation was prepared but did not satisfy any condition in paragraph (4), transfer pricing documentation that —

(i) was prepared for a transaction undertaken by the applicable entity with the same related party in the basis period immediately preceding the previous basis period; and

(ii) satisfies the conditions in paragraph (4).

(4) The transfer pricing documentation mentioned in paragraph (3)(*a*) and (*b*) must satisfy the following conditions:

(*a*) it complies with paragraph (1)(*a*), (*b*) and (*c*);

(*b*) the transaction for which the transfer pricing documentation was prepared is of the same type as the subject transaction;

(*c*) the information it contains on all of the following matters accurately describes the same matters as regards the subject transaction:

(i) the commercial or financial relations between the parties;

(ii) the conditions made or imposed between the parties;

(iii) the transfer pricing method that is used for the transaction;

(iv) the arm's length conditions within the meaning of section 34D(1)(*b*) of the Act.

(5) To avoid doubt, a declaration and accompanying documentation mentioned in paragraph (2)(*b*) is not a qualifying past transfer pricing documentation.

Exemptions

4.—(1) Transfer pricing documentation need not be prepared for a transaction undertaken by an applicable entity with its related party in a basis period in any of the following cases:

(*a*) the transaction is any transaction, where all the following conditions are satisfied:

(i) the gross revenue of the applicable entity for each of the following periods is not more than $10 million:

(A) that basis period;

(B) the basis period immediately preceding the basis period mentioned in sub-paragraph (A) (called in this rule the previous basis period);

(C) the basis period immediately preceding the previous basis period;

(ii) transfer pricing documentation is required to be prepared under section 34F of the Act for a transaction undertaken by the applicable entity in each of the following:

(A) the previous basis period;

(B) the basis period immediately preceding the previous basis period;

(*b*) the transaction is any transaction other than a loan, where all the following conditions are satisfied:

(i) each party to the transaction is either incorporated or registered in Singapore or carries on a trade or business in Singapore;

(ii) income derived by one party from the transaction is subject to tax at a certain rate;

(iii) the amount paid or payable by the other party to the firstmentioned party under the transaction is deductible only against income of that other party which is subject to tax at the same rate as that mentioned in sub-paragraph (ii);

(*c*) the transaction is any transaction other than a loan, where all the following conditions are satisfied:

(i) each party to the transaction is either incorporated or registered in Singapore or carries on a trade or business in Singapore;

(ii) income derived by one party from the transaction is exempt from tax;

(iii) the amount paid or payable by the other party to the firstmentioned party under the transaction is not deductible against any income of that other party, or is to be deducted from the amount of any income of the other party which is exempt from tax;

(*d*) the transaction is a loan of any amount by the applicable entity to a related party, or by a related party to the applicable entity, where all the following conditions are satisfied:

(i) each party to the transaction is either incorporated or registered in Singapore or carries on a trade or business in Singapore;

(ii) the party making the loan is not in the business of borrowing and lending money;

(*e*) the transaction is a loan not exceeding $15 million by the applicable entity to a related party, or by a related party to the applicable entity, where the

parties have agreed to apply the indicative margin for the year in which the loan is obtained or provided;

(*f*) the transaction is the provision of any routine support service, where all the following conditions are satisfied:

(i) a mark-up of 5% is applied to the cost of provision of the service;

(ii) the service is only provided to entities within the group of the applicable entity;

(*g*) an advance pricing arrangement applies to the transaction;

(*h*) the transaction comes within a category of transactions in the first column of the following table, and the total value of all transactions in that category in the basis period between the applicable entity and its related entities (excluding the value of any transaction to which sub-paragraph (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*) applies) does not exceed the amount set out opposite that category in the second column of the table:

	First column	*Second column*
	Category of transactions	*Total value in Singapore dollars*
1.	Purchase of goods by the applicable entity from a related party	$15 million
2.	Sale of goods by the applicable entity to a related party	$15 million
3.	Loan by the applicable entity to a related party	$15 million
4.	Loan to the applicable entity by a related party	$15 million
5.	Provision of service to the applicable entity by a related party	$1 million
6.	Provision of service by the applicable entity to a related party	$1 million
7.	Grant of a right to use movable property to the applicable entity by a related party	$1 million
8.	Grant of a right to use movable property by	$1 million

	the applicable entity to a related party	
9.	Lease of any property to the applicable entity by a related party	$1 million
10.	Lease of any property by the applicable entity to a related party	$1 million
11.	Grant of a guarantee to the applicable entity by a related party	$1 million
12.	Grant of a guarantee by the applicable entity to a related party	$1 million
13.	Any other transaction	$1 million

(2) In this rule, a reference to the value of a transaction mentioned in the first column of the following table is a reference to the amount in Singapore dollars or (if the transaction is in a foreign currency) converted to Singapore dollars, of the matter set out opposite the transaction in the second column of the table:

	First column	*Second column*
	Transaction	*Meaning of value of transaction*
1.	Purchase of goods by the applicable entity from a related party	Amount paid or payable by the applicable entity for the goods.
2.	Sale of goods by the applicable entity to a related party	Gross revenue derived by the applicable entity from the sale.
3.	Loan by the applicable entity to a related party	Principal amount of the loan.
4.	Loan to the applicable entity by a related party	Principal amount of the loan.
5.	Provision of service to the applicable entity by a related party	Amount paid or payable by the applicable entity for the provision.
6.	Provision of service by the applicable entity to a related party	Gross revenue derived by the applicable entity from the provision.
7.	Grant of a right to use movable property to the applicable entity by a	Amount paid or payable by the applicable entity for the grant.

	related party	
8.	Grant of a right to use movable property by the applicable entity to a related party	Gross revenue derived by the applicable entity from the grant.
9.	Lease of any property to the applicable entity by a related party	Amount paid or payable by the applicable entity for the lease.
10.	Lease of any property by the applicable entity to a related party	Gross revenue derived by the applicable entity from the lease.
11.	Grant of a guarantee to the applicable entity by a related party	Amount paid or payable by the applicable entity for the grant.
12.	Grant of a guarantee by the applicable entity to a related party	Gross revenue derived by the applicable entity from the grant.
13.	Any other transaction	Amount paid or payable by the applicable entity to the related party under the transaction, or gross revenue derived by the applicable entity from the related party under the transaction, as the case may be.

FIRST SCHEDULE

Rule 2

ROUTINE SUPPORT SERVICES

	Service	*Description*
1.	Accounting and auditing	Maintaining accounting records, preparing financial statements based on accounting records, reconciling financial data, ensuring authenticity and reliability of accounting records, performing operational and financial internal audits, and performing other services of a similar nature.
2.	Accounts receivable and accounts payable	Collating and verifying data on accounts receivable and accounts payable for the purposes of financial reporting, aging, billing, soliciting payments from customers, payment to vendors, procurement, credit control checking and processing, and other purposes of a similar nature.
3.	Budgeting	Compiling data for the purposes of preparing budget estimates

		and budget reports.
4.	Computer support	Providing technical assistance services in relation to usage of computer hardware and software, maintenance of IT infrastructure, troubleshooting support, and other services of a similar nature.
5.	Database administration	Performing general maintenance of computer databases including data storage, but excluding analytic services performed on stored data.
6.	Employee benefits administration	Administrating employee compensation and benefit plans, including healthcare, life insurance, dental, employee incentive compensation and profit sharing, and coordinating with external parties such as hospitals and insurers to implement such benefit plans.
7.	General administration	Performing clerical and administrative functions such as general purchasing, data entry, photocopying or scanning of materials, scheduling appointments, word processing and maintenance of file registries.
8.	Legal services	Carrying out any of the following activities by an in-house legal counsel: (*a*) drafting and reviewing contracts, agreements and other legal documents; (*b*) performing legal research.
9.	Payroll	Compiling and verifying employees' time worked and claims for reimbursable expenses to compute the salaries, commissions and reimbursements due to employees, preparing pay cheques, and arranging the crediting of such payments into employees' bank accounts, and compiling employees' data to comply with tax requirements.
10.	Corporate communications	Handling internal and external communications relating to corporate policies.
11.	Staffing and recruiting	Managing staffing requirements, performance issues and staff welfare, and implementing recruitment plans such as advertising open positions, and screening of candidates.
12.	Tax	Preparing tax returns and computations and reclaim forms, preparing responses to queries and submitting them to tax authorities, and processing tax payments.
13.	Training and employee development	Managing and implementing training and development programmes for employees.
14.	Management reporting	Compiling data for management purposes.

[S 552/2021 wef 29/07/2021]

SECOND SCHEDULE

Rule 3(1)(*a*)

INFORMATION IN TRANSFER PRICING DOCUMENTATION

Description of information of group

1.—(1) An overview of the businesses of the applicable entity's group that are relevant to the group's business in Singapore in the basis period in which the transaction takes place, including —

(*a*) the group's worldwide organisational structure that shows the location and ownership linkages among all related parties of the group transacting with the applicable entity in that basis period;

(*b*) a description of the group's businesses that are relevant to the business of the applicable entity in that basis period, including —

(i) the group's businesses, products and services, geographic markets and key competitors in that basis period;

(ii) a description of the supply chains of those businesses, products and services;

(iii) the group's business models and strategies in that basis period;

(iv) the business drivers of the group's business profit in that basis period;

(v) the industry, market, regulatory and economic conditions in which the group operates in that basis period;

(vi) the business activities of each entity in the group and the functional analysis describing their contributions, including functions performed, assets used and risks assumed, in that basis period; and

(vii) changes to the group's structure through restructuring, acquisition or divestiture in that basis period.

(*c*) a description of the group's intangible assets that are used in or applied to the business of the applicable entity in Singapore in that basis period, including —

(i) a description of the group's strategy for the development, ownership and exploitation of intangible assets in that basis period, including the location of research and development facilities and the location from which research and development is managed;

(ii) a list of those intangible assets and the names of the entities that have legal ownership of those assets;

(iii) a list of agreements among related parties concerning those intangible assets, including cost contribution arrangements, cost sharing agreements, research service agreements and licence agreements;

(iv) a description of the group's transfer pricing policies relating to research and development and to those intangible assets in that basis period; and

(v) a description of any transfer in that basis period of interests in those intangible assets among related entities, including the names of those entities and the countries they carry on business in, and the amount of compensation involved;

(*d*) a description of the group's financial activities that are connected to the business of the applicable entity in Singapore in that basis period, including —

(i) the group's financial activities in that basis period, including the group's inter-entity financial activities and financing arrangements with lenders who are not related parties;

(ii) identification of any entity of the group that provides a central financing function for the group in that basis period; and

(iii) a description of the group's transfer pricing policies relating to financing arrangements between related parties in that basis period;

(*e*) financial statements of the group relating to the business of the applicable entity in Singapore in that basis period; and

(*f*) a list and a description of the group's unilateral advance pricing arrangements, and other tax rulings that relate to the allocation of the group's income among countries, that are in force.

(2) In sub-paragraph (1)(*f*), a group's unilateral advance pricing arrangement is an agreement on the transfer pricing criteria to be used in relation to one or more transactions between an entity in the group and one or more related parties of the entity over a specified period, being an agreement that is made between —

(*a*) the entity; and

(*b*) the Comptroller or an authority of a country outside Singapore.

Description of information of applicable entity

2.—(1) Information of the applicable entity's business and its transactions with its related parties in the basis period in which the transaction takes place, including —

(*a*) the management structure showing the reporting lines between the related parties and the management staff of the applicable entity in that basis period;

(*b*) the organisational structure of the applicable entity, showing the number of employees in each department, as at the end of that basis period;

(*c*) a description of the applicable entity's business in that basis period, including —

(i) the business, products and services, geographic markets and key competitors in that basis period;

(ii) the industry, market, regulatory and economic conditions in which the applicable entity operates in that basis period;

(iii) the applicable entity's business models and strategies in that basis period; and

(iv) changes to the applicable entity's structure through restructuring, acquisition or divestiture in that basis period;

(*d*) a description of transactions between the applicable entity and its related parties in that basis period, including —

(i) details of each transaction, including the identity of the related party, country in which the related party is incorporated, registered or established, the relationship between the applicable entity and the related party, and the value of the transaction;

(ii) the contract or agreement showing the terms of each transaction;

(iii) a functional analysis describing the functions performed, the assets (including intangible assets) used or contributed, and the risks assumed by each party to each transaction; and

(iv) a copy each of the group's advance pricing arrangements and other tax rulings —

(A) to which the Comptroller is not a party;

(B) that are relevant to each transaction; and

(C) that are in force; and

(*e*) a transfer pricing analysis to ascertain whether the conditions made or imposed between the applicable entity and its related party with respect to the transaction are arm's length conditions within the meaning of section 34D(1)(*b*) of the Act, including —

(i) a comparability analysis to compare the conditions made or imposed between the applicable entity and the related party with respect to the transaction, with those made or imposed between parties dealing independently with one another in comparable circumstances;

(ii) the tested party or tested transaction and the transfer pricing method used, and the basis for their selection;

(iii) a description of the application of that transfer pricing method, including —

(A) a list and description of selected comparable companies or transactions;

(B) the basis for selecting the comparable companies or transactions;

(C) financial data of the comparable companies or transactions;

(D) assumptions made; and

(E) information and documents to support any adjustments made to achieve comparability between the tested party or tested transaction and the comparable companies or transactions (where applicable);

(iv) the arm's length price and the computations made in arriving at that price; and

(v) financial information of the transaction in applying the transfer pricing method and the basis for deriving such financial information (where applicable).

(2) In sub-paragraph (1)(*d*)(iv), a group's advance pricing arrangement is an agreement on the transfer pricing criteria to be used in relation to one or more transactions between an entity in the group and one or more related parties of the entity over a specified period, being an agreement that is made —

(*a*) between 2 or more authorities of countries outside Singapore; or

(*b*) between the entity and an authority of a country outside Singapore.

Definitions

3.—(1) In this Schedule, "arm's length price", "comparability analysis" and "tested party" or "tested transaction" have the meanings given to them, or are explained, in the IRAS e-tax guide.

(2) In this Schedule, the business of a group of an applicable entity is relevant to the business of the group in Singapore, or of the applicable entity, if the latter business is identical or similar in nature to, or is part of, or is otherwise connected to, the former business.

Made on 21 February 2018.

TAN CHING YEE
Permanent Secretary,
Ministry of Finance,
Singapore.

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(To be presented to Parliament under section 7(2) of the Income Tax Act).