



The 7th Edition of the Singapore Transfer Pricing Guidelines

INTRODUCTION

The Income Tax (Transfer Pricing Documentation) (Amendment) Rules 2024 (“Rules 2024”) became effective on 10 June 2024. Reflecting these changes, the Inland Revenue Authority of Singapore (“IRAS”) issued the 7th edition of the Singapore Transfer Pricing Guidelines (“SGTP Guidelines” or “Revised Guidelines”) on 14 June 2024.¹ The Revised Guidelines provide updates and additional Transfer Pricing (“TP”) guidance in several areas, including increased thresholds for exemption from TP documentation requirements for certain transactions, TP audits, TP adjustments for capital transactions, remission of the surcharge, government assistance, strict pass-through costs, and more.

UPDATES IN THE REVISED GUIDELINES

(A) Working capital adjustments and which interest rate to use for comparability analysis²

The Revised Guidelines clarify that when applying the Transactional Net Margin Method (“TNMM”), taxpayers are allowed to make working capital adjustments (such as trade receivables, trade payables, and inventories) if it improves the reliability of the comparables and can be made reasonably accurately. This applies not only to TNMM but also to resale price or cost-plus methods.

When making such adjustments, the interest rates used should be based on the interest rates applicable to a commercial enterprise operating in the same market. This can include the actual interest rate incurred, commercial lending rates, or the actual cost of funding.

(B) TP Audit process³

The recent updates indicate a move towards enhanced compliance and increased scrutiny. Under the Revised Guidelines, after conducting fact-finding and discussions with the taxpayers and completing the review, the IRAS will assess whether a taxpayer’s TP documentation is adequate and if any TP issues exist. Following this assessment, IRAS will proceed to make a TP adjustment under Section 34D of the Singapore Income Tax Act if the taxpayer’s taxable profit is understated or loss is overstated due to non-arm’s length related party transactions. They may also impose a surcharge under Section 34E and issue a closing letter.

If taxpayers disagree with the IRAS’ adjustment, they must file an objection. Thus, the IRAS has adopted a more assertive stance on TP audits by removing the requirement of consulting with taxpayers before making TP adjustments.

¹ Please refer to our earlier article on “Income Tax (Transfer Pricing Documentation) (Amendment) Rules 2024 (“Rules 2024”) for a summary of amendments under the Rules 2024 and the 7th edition of the Singapore Transfer Pricing Guidelines. <https://www.dfdl.com/insights/content-hub/articles/income-tax-transfer-pricing-documentation-amendment-rules-2024-rules-2024-and-the-7th-edition-singapore-transfer-pricing-guidelines/>.

² Paragraph 5.119 of the 7th edition of the SGTP Guidelines – Frequently Asked Questions.

³ Paragraph 7 of the 7th edition of the SGTP Guidelines.

(C) TP adjustments for capital transactions and surcharge

The IRAS has clarified the following points regarding TP adjustments for capital transactions and surcharges:

1. TP adjustments will not be made to any gain, loss, or deduction arising from capital transactions between related parties that are not taxable or deductible under the Singapore Income Tax Act. Taxpayers are not required to maintain TP documentation for such capital transactions. However, if the sale or transfer of fixed assets is not conducted at arm's length, the IRAS may apply the arm's length principle by following the specific provisions in the Singapore Income Tax Act on the use of open-market price to determine the capital allowance or balancing adjustment.⁴
2. The key conditions for the remission of surcharge remain unchanged, however, the IRAS has introduced additional conditions for surcharge remission. According to this, taxpayers with no history of surcharges or penalties being imposed for the current year of assessment ("YA") and the immediate two preceding YAs are considered for partial or full remission. This indicates the IRAS' intent of requiring high levels of compliance with the arm's length principles, making it imperative for the taxpayers to place continuous focus of appropriate tax compliance and governance.

(D) Mutual Agreement Procedure ("MAP")

The Revised Guidelines have removed the steps related to the pre-filing phase, namely Step 1: Notification of intent and Step 2: Pre-filing meeting.

Taxpayers can still choose to initiate discussions with the IRAS before applying for a MAP.

Now, taxpayers may directly submit applications to the IRAS for evaluation. The date of submission of the MAP application will be considered the notification date for meeting the timeline specified in the relevant tax treaty for a MAP application.

However, there is an additional "evaluation" by IRAS, wherein the IRAS will review and evaluate the MAP application before accepting it. The IRAS may seek additional clarification or information from the taxpayer or hold discussions with them before indicating if the application is accepted. If the IRAS accepts the application, it will issue a letter of acceptance to the taxpayer and the relevant foreign competent authority within one month of receiving the application. If the IRAS rejects the application, they will notify the taxpayer and the foreign competent authority in writing, along with the reasons. This highlights the importance of submitting well-supported MAP applications, as they are accepted at the discretion of IRAS.

⁴ The IRAS has indicated that separate guidance will be provided in due course on the application of arm's length principle for capital transactions for the purpose of Singapore's Domestic Top-Up Tax.

(E) Strict pass-through costs

The Revised Guidelines have provided more clarity on condition (d) of Paragraph 14.22. According to this condition, the group service provider may pass on the costs of the acquired services to its related parties without a mark-up, if there is a “written agreement” with its related parties for the latter to assume the liabilities relating to the acquired services.

The Revised Guidelines now allow email correspondence (be it a single email with all the related parties or separate emails with each related party) to be considered as “written agreements”. IRAS has also introduced examples to illustrate the application of the qualifying conditions. These updates provide practical guidance and reduce the administrative burden on taxpayers.

(F) Transition from Interbank Offered Rates (“IBOR”) to Risk-Free Rates (“RFR”)

When transitioning existing related party IBOR-based loans to RFR-based loans, taxpayers are to apply the guidance issued by the governing bodies for the relevant IBOR/RFR pairs.⁵ The IRAS will consider such changes as arm’s length. However, if the changes go beyond those expected under the IBOR reform and the relevant guidance, the IRAS may assess if there is any refinancing involved resulting in a new loan.

Additionally, as RFRs are not economically equivalent to IBORs, taxpayers with related party loans using RFR as the base rate may need to consider if a spread adjustment is necessary to account for any economic differences between the RFRs and the corresponding IBORs.

Therefore, taxpayers should review their existing related party loans and reassess the arm’s length basis in the case of transitioning from IBOR-based loans.

The IRAS has further clarified⁶ that long term loans with related parties are required to be reviewed annually, similar to other related party transactions. This is necessary because the facts and circumstances surrounding the transaction may change over time, such as the economic environment, value of the collateral, borrower’s financial status and credit standing, etc., which may affect the interest rate agreed at the time when the loan was originally entered into.

However, to ease compliance, the IRAS has allowed taxpayers to prepare simplified transfer pricing documentation for loan transactions, as long as certain conditions⁷ are met.

(G) Simplified TP documentation

For YA 2026 and beyond, simplified TP documentation prepared by an entity confirming that qualifying TP documentation is applicable, must specify the date on which it is made.

⁵ For example, when transitioning an existing related party SOR-based or SIBOR-based loan to a SORA-based loan, the related parties to that loan are to apply the guidance issued by the Singapore Steering Committee for SOR &

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SIBOR Transition to SORA, the Association of Banks in Singapore and the Monetary Authority of Singapore. Appendix B - Frequently Asked Questions. Discussed in point H of this article.

(H) Loans between domestic-related parties

According to the Rules 2018, for domestic related party loans of any amount, TP documentation need not be prepared if:

- (i) The transaction is a loan of any amount between related parties incorporated in Singapore, or carrying on trade or business in Singapore, and
- (ii) The lender is not in the business of borrowing or lending money.

Under Rules 2024, the above conditions apply if the loan agreement is entered into before 1 January 2025. For loan agreements entered into on or after 1 January 2025, all of the following conditions need to be satisfied:

- (i) Each party is either incorporated in Singapore or carries on trade or business in Singapore;
- (ii) Neither party is in the business of borrowing or lending money; and
- (iii) The parties have agreed to apply the indicative margin for the year in which the loan is granted.

IRAS has not made any changes to the pricing of cross-border related party loans. Taxpayers may continue to choose to apply the indicative margin to such loans in case the principal amount does not exceed SGD 15 million. In cases where the taxpayer does not adopt the indicative margin or the principal amount exceeds SGD 15 million, taxpayers need to determine the arm's length interest rates using the existing guidance provided by the IRAS.

(I) Threshold for exemption from TP documentation

Starting from YA 2026, Rules 2024 have updated the threshold for exemption from TP documentation for certain transactions. Specifically, the threshold for the following categories of transactions has been increased from SGD 1 million to SGD 2 million:

- (i) Provision of service to or by an entity by or to a related party;
- (ii) Grant of a right to use movable property to or by an entity by or to a related party;
- (iii) Lease of any property to or by an entity by or to a related party;
- (iv) Grant of a guarantee to or by an entity by or to a related party;
- (v) Any other transaction.

(J) Government assistance⁸

Government assistance has gained prominence, especially after the COVID-19 pandemic, when support measures were provided due to the economic downturn.

The guidance provides that taxpayers identify the type of government assistance they have received. Depending on the nature of the assistance (such as availability, substance, and duration), they need to assess whether it is a feature of the market comparable companies are operating in (i.e., affecting all market participants as a whole) or a specific benefit that a commercially rational entity would have retained for its benefit.⁹

Government assistance tends to be regarded as altering market conditions. However, it would be contrary to the arm's length principle to assume that the receipt of government assistance by one party to a transaction would always affect the price of the accurately delineated related party transaction. Hence, a comparability analysis¹⁰ would need to be undertaken. The potential effect of government assistance on the pricing of a related party transaction will depend on whether a similar effect would have been observed in independent transactions under similar circumstances and the extent to which the assistance is economically relevant.

The IRAS recognises the practical challenges that businesses may face in

performing the analysis due to the lack of detailed and reliable information and the delay in data availability in the public domain. The IRAS further provides that unless otherwise demonstrated, it is generally expected that an independent party acting in a commercially rational manner would retain the benefits from government assistance.¹¹

Taxpayers are advised to document their position, including details of the assistance received, accounting treatment adopted, the impact of the assistance, and how it has been considered in their comparability analysis.

⁸ New Section 18 introduced in the Revised Guidelines discussing the treatment of government assistance for TP purposes.

⁹ Benefits from government assistance may have transfer pricing implications. When examining the transfer pricing of a Group member who receives government assistance, taxpayers should consider whether the assistance would have had impact on independent parties within the same market. Depending on the nature, the assistance may affect the pricing of independent transactions. For example, independent

parties may take into account the benefits of the assistance when determining the terms and pricing of a comparable transaction under comparable circumstances.

¹⁰ This includes an analysis of how the receipt of assistance would affect the price of independent party transactions after taking into consideration the perspectives of both parties to the independent party transaction, if at all.

¹¹ This approach is consistent with the OECD Guidance on TP implications of the COVID-19 pandemic published in 2020.

Conclusion

The Revised Guidelines provide greater clarity on some longstanding issues like working capital adjustments, strict pass-through costs, and government assistance. The IRAS recognizes the practical challenges and compliance burden that taxpayers may face and has provided clarifications throughout the Revised Guidelines to guide the taxpayers in assessing how to comply with the arm's length principle. It is expected that IRAS will be stricter in its examinations around TP documentation adequacy, contemporaneous TP documentation, and TP controversy.

A significant change is the discontinuation of using the interest rate restriction as a proxy to the arm's length principle in the case of domestic-related party loans. Moreover, the Revised Guidelines clarify that long-term loans should undergo annual reviews, which reflect the evolving landscape of loan analysis. This necessitates careful consideration on the part of the taxpayer of how intercompany loans are structured.

The updates to the TP audit process and the tightened MAP evaluation process highlight that the IRAS is prepared to move away from a consultative approach to a more assertive approach, thereby signaling the possibility of greater TP disputes and audits. Failure to comply with the SGTP Guidelines would put taxpayers at risk in terms of TP adjustments and denial of surcharge remissions.

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