

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