

TRANSFER PRICING SUMMARIES



*A collection of transfer pricing summaries
of countries in the Asia Pacific Region*

2010



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Australia

2010

1. TP legislation/guidelines

Australia Tax Office ("ATO") has issued numerous TP rulings to compliment existing TP legislations.

2. TP documentation required to be filed with tax return

Taxpayers should maintain contemporaneous documentation. However, it is not required to be filed with the tax return.

3. TP audits done by tax authority

ATO is currently extending its focus for TP audits to include audits on small and medium enterprises.

4. Advance Pricing Arrangement

Advance Pricing Arrangements are available.

5. Mutual Agreement Procedures

Australia is part of the Pacific Association of Tax Administrators and Mutual Agreement Procedures are available.

6. Basis to recover intra-group service charges

Where certain conditions are met, the ATO accepts a cost plus mark up of 5% to 7.5% for non-core or routine services. Where costs of all intra-group services (core and non-core) supplied or acquired are not more than AUD\$500,000, the ATO also accepts the above mark up rate.

7. Cross border management fee charges

Taxpayers are allowed deduction for such charges from overseas holding company or head office provided they are charged on arm's length basis that is commensurate with the services provided. If a cost plus methodology is used TP documentation should substantiate the mark up applied. Withholding tax does not apply to such management charges.

8. Inter-company loans

Lender must determine and review the arm's length credit worthiness and financial independence of borrower. Interest expense is deductible provided arm's length and thin capitalization rules are satisfied. TP rules would apply regardless that thin capitalization rules have already been satisfied.

There is a 10% withholding tax on interest payments made to non-residents, subject to treaty provisions.

9. Transfer pricing penalties

General tax penalties will apply. The penalty is 50% of tax avoided if the sole and dominant purpose is to pay no or less tax. This can be reduced to 25% if the taxpayer has a reasonably arguable position. If there is no sole or dominant purpose to pay no or less tax, the penalty will be 25% of the tax avoided. This may be reduced to 10% if voluntary disclosure is made by the taxpayer before an ATO audit.

Transfer pricing adjustments can occur at any time and is not subject to any limitation period.

Updated: June 2010

Information provided by:



Firm: **HALL CHADWICK Chartered Accountants & Business Advisors**
Website: www.hallchadwick.com.au/

Contact person: **Mr David Kenney**
E-mail: DKenney@hallchadwick.com.au

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Hong Kong

2010

1. TP legislation/guidelines

In December 2009, the Inland Revenue Department ("IRD") issued the Departmental Interpretation and Practice Notes ("DIPN") No. 46 "Transfer Pricing Guidelines – Methodologies and Related Issues). In the DIPN No. 46, the Commissioner of the IRD confirms that he would in general seek to apply the principles in OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

2. TP documentation required to be filed with tax return

There is no specific TP documentation requirement, and only limited TP disclosure in profits tax return concerning whether or not there is transaction with a closely connected non-resident person is required. In addition, related party transactions have to be disclosed in audited accounts in accordance with accounting standards.

3. TP audits done by tax authority

No major TP audits have been done by the IRD so far.

4. Advance Pricing Arrangement

No advance pricing arrangement under Hong Kong tax laws. Taxpayer may obtain IRD's interpretation of a specified provision applicable to transfer pricing arrangement under the current advance ruling process.

5. Mutual Agreement Procedures

Provisions for mutual agreement are found in double tax agreements between Hong Kong and other tax jurisdictions.

6. Basis to recover intra-group service charges

There is no specific requirement. Intra-group service charges are subject to the general deduction rules under Hong Kong tax laws. There is no withholding tax imposed on such payment to non-resident.

7. Cross border management fee charges

There is no specific requirement. Management fee charges are subject to the general deduction rules under Hong Kong tax laws. There is no withholding tax imposed on such payment to non-resident.

8. Inter-company loans

No interest rate is specified on inter-company loans. Interest expenses are subject to the general deduction rules under Hong Kong tax laws. There is no thin capitalization rule.

9. Transfer pricing penalties

There is no specific penalty rule for TP arrangements. However, the general penalty rule may apply and penalty of up to three times of tax underpaid may be imposed.

Information provided by:



Firm: Wong Brothers & Co., Hong Kong

Contact person: **Mr Johnny Yuen**

E-mail: wongbros@wongbros.com.hk

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Korea

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1. TP legislation/guidelines

The National Tax Services ("NTS") has a robust TP legislature, rules and guidelines.

2. TP documentation required to be filed with tax return

The taxpayer is required to prepare and maintain transfer pricing contemporaneous documentation. The taxpayer must apply the chosen method to determine its taxable income on its income tax return, and all relevant documents must be maintained on a contemporaneous basis.

3. TP audits done by tax authority

NTS in May 2007 announced that a transfer pricing monitoring system (although the system had been unofficially in place for some time) will be implemented. The system is designed to closely monitor taxpayers' transfer pricing practices across the border on an annual basis, and to determine the need to conduct full-blown transfer pricing investigations. The NTS has detailed internal guidelines on how to select taxpayers and how to assess whether the selected taxpayers meet the arm's length principle. The system is now in full swing.

The monitoring process occurs in sequential order. First, after the annual tax return is filed each year, the national office of the NTS conducts a preliminary assessment of taxpayers' tax return information regarding transactions with overseas related parties. Based on the initial assessment, the NTS selects taxpayers for more detailed information requests. This second phase takes place in December of every calendar year. The regional tax offices across the country then issue information requests to the selected taxpayers.

4. Advance Pricing Arrangement

The APA process in Korea is accessible to all taxpayers. Korea concluded its first APA with the United States in May, 1995. The NTS has so far received a total number of 172 APA requests with 106 cases concluded as of the end of 2008. In recent year, the Korean competent authority has received an increasing number of APA requests year by year. In 2007, the NTS signed its first two APAs for China-based Korean subsidiaries with the Chinese counterpart. Applicants should submit an application form to the International Cooperation Division by the end of the first taxable year of the covered period. The application form should contain information such as suggested APA term, covered transactions, involved parties, and TPM. Taxpayers usually apply for a 5-year term APA. If taxpayers wish to request a rollback for tax years prior to the covered APA, they may apply for a period of 3 to 5 years case by case.

5. Mutual Agreement Procedures

When taxpayers apply for bi-APAs, the NTS progresses the MAP with the relevant foreign competent authorities at the request of taxpayers.

Resolution under the MAP procedure has been increasing in recent years.

6. Basis to recover intra-group service charges

Arm's length pricing is required for intra-group services in particular evidences of actual services being rendered under contract, anticipated benefits existing and documentation requirements being satisfied.

7. Cross border management fee charges

The management services fees should be qualified as deductible expenses resulting from provided actual services, charges being on arm's length basis and documentation being available.

A 20% withholding tax would be imposed on such payment to foreign parent company.

Korea

2010

8. Inter-company loans

If a Korean company borrows from its controlling shareholders overseas(CSO), an amount greater than three times its equity(six times in the case of financial institutions) interest payable on the excess portion of the borrowing are recharacterized as dividends to which the article on dividends in tax treaty applies and therefore are treated as non-deductible in computing taxable income.

Although the ratio of debt owed to a CSO to equity exceeds 3:1, as long as the conditions and the amount of debt owed to a CSO are reasonable compared to the debt from an independent third party, such debt from the CSO will be excluded from the scope of the debt subject to thin capitalization rules. As a result, interest on such debt will be deductible.

9. Transfer pricing penalties

The tax authorities are empowered to request from a taxpayer the data required for an adjustment of the inter-company price. If a taxpayer fails to submit the requested data within 60 days without any justification, the tax authorities may grant an extension of 60 days when the taxpayer appeals with some justification..

Failure to comply with TP compliance requirements may lead to penalty amounting to KRW 30 million.

Information provided by:



Firm: **SEOIL & COMPANY LLP**

Website: www.seoilacc.co.kr

Contact person: **Mr Jin-Hyuk Joo**

E-mail: korea@seoilacc.co.kr

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Malaysia

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1. TP legislation/guidelines

Inland Revenue Board ("IRB") issued TP guidelines on 8 July 2003. A revised version of TP guidelines will be issued soon. Legislation has been introduced effective from 1 Jan 2009.

2. TP documentation required to be filed with tax return

Taxpayer who enters into a controlled transaction is required to prepare and maintain contemporaneous TP documentation. It is mandatory to prepare but not required to be filed together with the tax return.

3. TP audits done by tax authority

IRB issued the Tax Audit Framework (TAF) effective from 1/1/2009. This new TAF replaces the old TAF issued in Jan 2007. Tax audits are carried out under the self-assessment regime. Every company is expected to be subject to a desk or field audit at least once every five years. Every MNC that was audited was queried on their transfer pricing policy. Such audits are typically triggered by indicators of potential non arm's length pricing such as consistent losses or low profits. The focus for the IRB in recent audit has been the manufacturing and trading sectors. Head office charges and management fees, in particular, have been under intense scrutiny.

4. Advance Pricing Arrangement

Taxpayers are allowed to apply for APAs with effect from 1 January 2009.

5. Mutual Agreement Procedures

Malaysia has a wide network of tax treaties under which MAP should be available to affected taxpayers.

6. Basis to recover intra-group service charges

IRB generally accepts a cost plus 5% mark up for routine support services.

7. Cross border management fee charges

Taxpayers are allowed deduction for such charges from overseas holding company or head office provided they are charged on arm's length basis that is commensurate with the services provided. 10% withholding tax would apply if such services are rendered in Malaysia subject to tax treaty provisions.

8. Inter-company loans

IRB has introduced thin capital rules. Lender must determine and charge at arm's length interest rate. Interest expense is deductible provided arm's length and thin capitalization rules are satisfied.

There may be a 5% to 15% withholding tax on interest payments made to non-residents, subject to lower rates applicable under tax treaty provisions.

Nevertheless, the Government has deferred the implementation of thin capital rules until further notice.

9. Transfer pricing penalties

No specific penalty regime. Existing legislation and penalty structure is applicable and can be in the region of 100% - 300% of the tax undercharged. The new TAF effective 1/1/2009, sets out the penalty rates to be imposed. The penalty rate is in the range of 15% to 35% of additional tax payable; the lower range indicative of voluntary disclosure before the case is selected for an audit. Repeated offence(s) will give rise to an additional penalty of 10% on the tax undercharged but limited to a sum not exceeding 100% of the amount of tax undercharged.

Updated: as at 22/5/2010

Information provided by:

Contact person: **Mr Foong Kok Keong**
E-mail: foongkk@gep.com.my

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Singapore

2010

1. TP legislation/guidelines

Inland Authority of Singapore ("IRAS") issued TP guidelines on 23 February 2006, followed by supplementary TP guidelines on related party loans and related party services issued on 23 February 2009. TP legislation has been enacted as part of the Income Tax Act.

2. TP documentation required to be filed with tax return

Taxpayer should maintain TP documentation. However, it is not required to be filed with the tax return.

3. TP audits done by tax authority

IRAS, under the TP consultation process, may target taxpayers with substantial cross border related party transactions as well as taxpayers making continuous losses. IRAS will assess the adequacy of the taxpayer's compliance with the arm's length principles for intra-group transactions and may make adjustments if profits are not at arm's length.

4. Advance Pricing Arrangement

IRAS issued the Supplementary Guidance on Advance Pricing Arrangement ("APA") on 20 Oct 2008. Taxpayers can avail themselves to APA's where appropriate.

5. Mutual Agreement Procedures

Singapore as a treaty partner to more than 60 double tax treaties subscribes to the mutual agreement procedures generally as prescribed under Article 25 of the OECD model tax convention.

6. Basis to recover intra-group service charges

IRAS accepts the cost plus 5% mark up as an arm's length service fee charge for routine support services rendered between intra-group and related companies.

IRAS expects non-routine support services to be charged and recovered on arm's length basis that is commensurate with the industry practice and/or substantiated by proper bench marking studies or analysis.

7. Cross border management fee charges

Taxpayers are allowed deduction for such charges from overseas holding company or head office provided they are charged on arm's length basis that is commensurate with the services provided. There is a 17% withholding tax if such services are rendered in Singapore subject to tax treaty provisions.

8. Inter-company loans

Lenders can extend inter-company loans within Singapore interest free subject to interest restriction on their non-income producing and/or non-trade balances.

However, with effect from 1 January 2011, cross border inter-company loans will be required to be charged an arm's length interest rate. There is a 15% withholding tax on interest payment to non-residents, subject to tax treaty provisions.

There is no thin capital rule.

9. Transfer pricing penalties

There is no specific penalty.

Updated: Feb 2010



Firm: **BSL Tax Services Pte Ltd**

Website: www.bsllts.com.sg

Contact person: **Ms N Vimala Devi**

E-mail: devi.vimala@bsllts.com.sg

Contact person: **Ms Wendy Wong**

Email: wong.wendy@bsllts.com.sg

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