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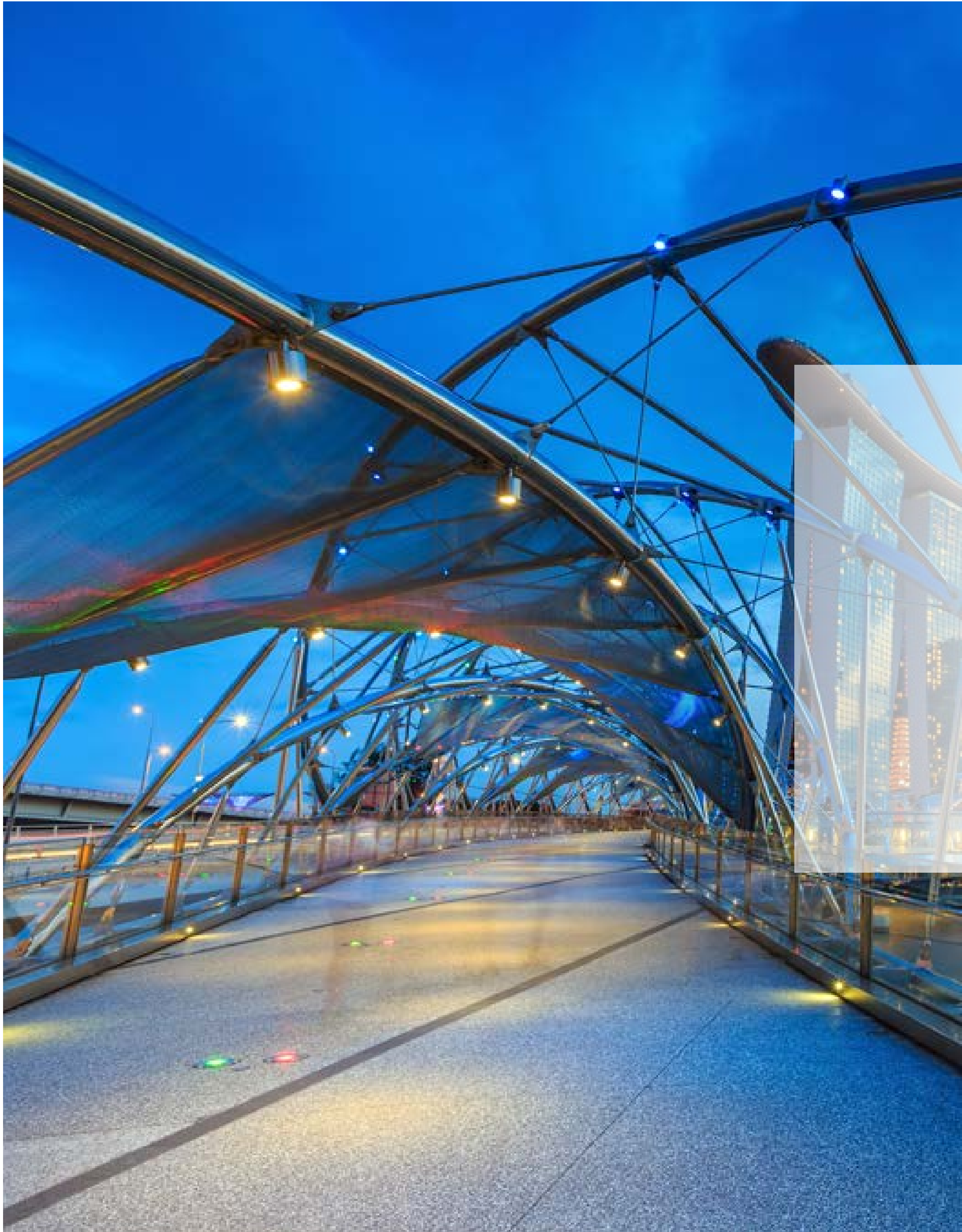
SINGAPORE TRANSFER PRICING REGULATIONS

WHAT'S IN STORE FOR TAXPAYERS?

2020



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INTRODUCTION

The Singapore Transfer Pricing (TP) system has its roots in the year 2006, with the introduction of the first set of TP guidelines. An evolutionary process has followed since then, and one could say that the system has come a long way in aligning itself with the Organization of Economic Co-operation and Development's (OECD) Base Erosion and Profit-Shifting (BEPS) recommendations, especially in relation to the application of the arm's length principle (as covered in Actions 8-10) and the maintenance of TP Documentation (as covered in Action 13).

Following the Inland Revenue Authority of Singapore's (IRAS) amendments to the Singapore Income Tax Act (SITA) in October 2017, and the introduction of the Income Tax (Transfer Pricing Documentation) Rules in 2018 (the TPD Rules), along with the release of the fifth edition of the Singapore Transfer Pricing Guidelines (the Singapore TP Guidelines) in February 2018, the TP Regulations have enforced the mandatory preparation of TP Documentation (TPD) on a 'need to have' basis, as compared to the 'nice to have' basis that had previously been the case. The revised TP Regulations provide dual thresholds when checking the applicability of preparing TPD, as they are intended to cover large taxpayers as well as complex and high-value transactions relating to TP compliance, where the possibility of base erosion and profit-shifting could be substantial.

Even though the revised TP Regulations mandate the preparation of TPD, they also provide certain relief to taxpayers in terms of having to engage in such an activity on a yearly basis if they meet the prescribed conditions.

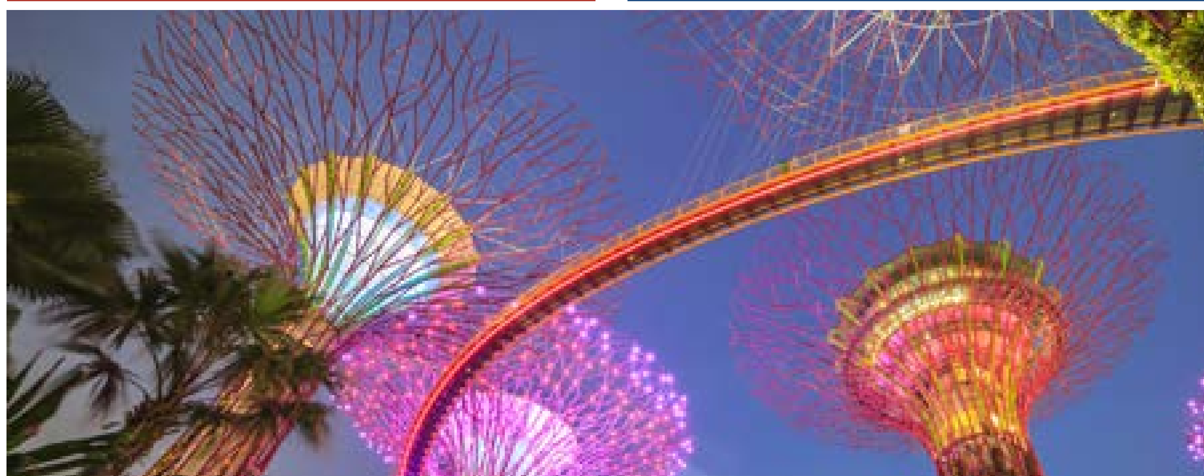
It is a fact that mandatory compliance requirements have been accompanied by stringent penal provisions, such that taxpayers are inclined to adhere to the regulations. The revised TP Regulations have increased the penalty for the non-maintenance of TPD by a factor of ten and, in the event of the Comptroller determining any transfer pricing adjustments , a 5% surcharge is levied on the value of such adjustments, irrespective of any resulting tax liability, which effectively translates to additional tax of approximately 30% (given the tax rate of 17%). Moreover, to even pursue the Mutual Agreement Procedure or Advance Pricing Agreements, having TPD has been considered a sine qua non.

Furthermore, in May 2019, the IRAS released TP guidelines for entities that are engaged in the business of marketing and/or trading in commodities (the CMT Guidelines). These guidelines provide guidance for analyzing related party commodity transactions and the transfer pricing methods that are appropriate for determining the arm's length transfer price. They also provide the TP documentation requirements and guidance for avoiding and resolving transfer pricing disputes.

Thus, it is now essential for MNEs with operations in Singapore to have a basic understanding of the revised TP Regulations. In order to distil the revised TP documentation requirements into bite-size nuggets, we have prepared a dossier of Frequently Asked Questions (FAQs). We hope that the FAQs will address any queries relating to TP compliance requirements under the revised Singapore TP regulations.

We remain available and shall be pleased to address any questions that you may have.

FAQs



1. How have TP regulations evolved in Singapore?

The IRAS issued the first TP guidelines for Singapore in February 2006. These guidelines provided guidance to Singaporean taxpayers regarding the application of the arm's length principle, as well as on documentation matters. Subsequently, the IRAS issued various circulars addressing different aspects of the TP regime. Some of these important circulars have been listed below:

- The Administrative Guidance on Advance Pricing Agreements (APA), in 2008;
- The Administrative Guidance on Transfer Pricing Consultations (TPC), in 2008; and
- The TP Guidelines for Related Party Loans and Services, in 2009.

In 2015, the IRAS consolidated all of its previous guidance and circulars into a single document, and issued its e-Tax Guide, Transfer Pricing Guidelines (2nd Edition) This also introduced the requirement for taxpayers in Singapore to prepare contemporaneous TP documentation.

In January 2016 and January 2017, the prevailing TP guidelines were revised, in order to align them with accepted international tax practices and developments, including those emanating from the OECD's Action Plans for BEPS.

In October 2017, the Government introduced the following TP-related legislative changes to the income tax legislationn:

- A clarification on the types of adjustment that the Comptroller can make in enforcing the arm's length principle;
- The introduction of a 5% surcharge on the amount of the adjustment, with effect from Year of Assessment (YA) 2019; and
- The introduction of a compulsory requirement for contemporaneous TPD for businesses (generally only for businesses with a turnover exceeding S$ 10 million), with effect from YA 2019, under section 34F of SITA. Non-compliance may result in a fine not exceeding $10,000.

In February 2018, the Government released the TPD Rules, which prescribe the required form and content that is to be followed in the preparation of the TPD documentation, as well as the applicable exemptions, from YA 2019. The IRAS also issued some revised TP Guidelines, in order to provide detailed guidance regarding the legislative amendments and compliance requirements.

2. Who are considered related parties under the Singapore TP Regulations?

Two persons[1] are related parties with respect to each other if:

a. Either person, directly or indirectly, controls the other person; or

b. Both persons are, directly or indirectly, controlled by a common person.

3. What is considered arm's length pricing under the Singapore TP Regulations?

The arm's length principle requires a transaction with a related party to be made in conditions and circumstances that are comparable to a transaction with an independent party. The premise is that, given that market forces drive the terms and conditions that are agreed in a transaction with an independent party, the pricing of the transaction reflects the true economic value of the contributions to the transaction that have been made by each party.

Therefore, if two related parties derive profits at levels that are above or below the comparable market level, solely as a consequence of their special relationship, then the profits will be deemed as non-arm's length. In such a case, the IRAS can make the necessary adjustments to the taxable profits of the Singapore taxpayer. This is to reflect the true price that would have been derived from the arm's length basis.

4. Is it mandatory to prepare Transfer Pricing Documentation (TPD) in Singapore?

Under the general record-keeping provisions, taxpayers have been required to prepare and maintain contemporaneous TPD, based on the guidance (e.g. in relation to TPD contents and exemptions) that is provided in the existing TP Guidelines that have been issued by the IRAS.

From YA 2019 onwards, the mandatory TPD requirements are governed under section 34F ('section 34F of the mandatory TPD'), with the rules governing the preparation of the TPD and the applicable exemptions being prescribed in the TPD Rules.

In order to ensure compliance with the TPD regulations, the penalty for the failure to maintain TPD was increased from SGD 1,000 to SGD 10,000, from YA 2019. A 5% surcharge on any TP adjustments that are made by the IRAS will also be levied.

5. What are the criteria for the mandatory preparation of TPD?

From YA 2019, every taxpayer that meets either of the two conditions prescribed below needs to prepare TPD:[2]

a. The gross revenue (excluding passive sources of income and capital gains or losses) that is derived from trading or business exceeds SGD 10 million for the financial period in question (Section 34F(a) of SITA); or

a. Under Section 34F, TPD is required to be prepared for the immediately preceding financial period (Section 34F(b) of SITA).

The newly introduced S$ 10 million turnover criterion (or 'annual turnover exemption') could be seen as an additional safe harbour rule for TPD preparation, as it effectively narrows the field of taxpayers who may be required to prepare TPD. Previously, if taxpayers did not qualify for the transaction-based exemptions for TPD (see Q 6), then they would still be required to prepare TPD, even if their annual turnover was below S$10 million. Now, if taxpayers do not meet the turnover exemptions (i.e. their turnover exceeds S$10 million), then they may still avail the transaction-based exemption thresholds.

6. Are there any transaction-based exemptions for the mandatory preparation of TPD?

The transaction-based exemptions are the same as

[1] A 'person' includes a company, a body of persons, and a Hindu joint family. A 'company' means any company that has been incorporated or registered under any law that is in force in Singapore or elsewhere.

[2] Section 34F(2) of SITA, wef 26.10.2017, and also mentioned in Rule 4(a) of the TPD Rules.

the current exemptions. However, these exemptions have been codified under the TPD Rules.[3] They are as follow:

a. Transactions (excluding loans) with domestic related parties that are subject to the same rate of tax in Singapore;
b. Domestic related party loan transactions, where the lender is not in the business of borrowing and lending;
c. Related party loan transactions (not exceeding SGD 15 mn) to which an indicative margin[4] has been applied;
d. Routine support services that are only provided to related parties, on which a 5% mark-up on cost has been applied;
e. Related party transactions that are covered by an Advance Pricing Arrangement (APA) with the IRAS; and
f. Where the quantum of certain transactions is below the specified thresholds:

7. Is a taxpayer required to prepare TPD if its revenue is consistently below SGD 10 mn?.

Under section 34F(b), as mentioned in Q 5, a taxpayer that was required to prepare TPD in the preceding financial year must also prepare TPD to support the related party transactions that are undertaken in the current basis period.

That said, the IRAS has clarified in the TP Guidelines that taxpayers (that were previously required to prepare TPD under section 34F) whose annual turnover has consistently fallen below S$10 million will be exempted from the preparation of TPD. Specifically, a taxpayer is not covered by section 34F(b) if: (i) its gross revenue is not more than S$10 million for the financial period in question and for the two immediately preceding basis periods; and (ii) the taxpayer has been required to prepare TPD for the two immediately preceding basis periods.[10]

Category of related party transactions	Threshold (SGD) per financial year
Purchase / sale of goods with all[5] related parties *(the limit is separate for purchases vis-a-vis sales[6])*	15 million
Loans to and from all[7] related parties *(Limit is separate for lending and borrowing)*	15 million
All other categories of related party transactions: • *Provision of services;* • *Availing of services;* • *Grant of right to use movable property;* • *Availing of right to use movable property;* • *Income from lease of property;* • *Expense by lease of property;* • *Guarantee provided;[8]* • *Guarantee received;[9] and* • *Any other transaction (newly introduced under the Singapore TP Guidelines and Rules)*	1 million per category of transactions

[3] Rule 4(b) to 4(h) of the TPD Rules.
[4] The indicative margin is published on the IRAS website and is updated at the beginning of each year.
[5] The threshold needs to be checked for cumulative values.
[6] The threshold needs to be checked separately for both purchases and sales.
[7] The threshold needs to be checked for cumulative values.
[8] The gross revenue that is derived by the taxpayer from the grant, i.e. the guarantee fee income.
[9] The amount that is paid or payable by the taxpayer for the grant, i.e. the guarantee expenses.
[10] Para 6.14 of the Singapore TP Guidelines.

8. Are you able to provide some practical scenarios to illustrate how the rules apply in the identification of whether a taxpayer is required to prepare TPD?

In order to better illustrate the application of the annual turnover and transaction-based exemptions for the preparation of TPD, several examples are provided in the Singapore TP Guidelines. We have reproduced one such example – Illustration 2 of Appendix A to the Singapore TP guidelines – below:

The taxpayer's gross revenue for the basis period for each YA is displayed in the table below. YA 2019 is the first year of compliance under Section 34F. The gross revenue includes the revenue from the sale of goods to cross-border related parties (referred to in this example as sales transactions), as well as revenue from the provision of non-routine services to cross-border related parties (referred to in this example as services transactions). Other than these two transactions, there are no other transactions between the taxpayer and its related parties.

YA	Gross Revenue *(S$ in million)*			Is Condition 34F(a) met*?	Is Condition 34F(b) met*?	Does exemption from TPD apply?	Is TPD required under Section 34F?
	Total	From related parties					
		Sale	Service				
2019	9	8	0.8	No	Not applicable	Not applicable	No
2020	17	16	0.9	Yes	No	Yes (Service)	Yes (Sale)
2021	9.5	8	1.2	No	Yes	Yes (Sale)	Yes (Service)

*Please refer to question 5 of these FAQ.

The above table explains the obligation of the taxpayer to prepare TPD for the sales and services transactions for each YA.

2019: The taxpayer does not have to prepare TPD, since it has not crossed the annual turnover threshold (i.e. S$ 10 million). There is no need to review the applicability of the transaction-based exemptions.

2020: The taxpayer meets the condition that is specified under 34F(a) (i.e. its annual turnover exceeds S$10 million), but it does not meet the condition that is specified under 34F(b) (i.e. TPD was not required for the previous year under section 34F). As only one of the conditions under section 34F needs to be satisfied, the taxpayer is required to prepare TPD.

As a next step, the transaction-based exemptions are considered. The exemption relating to the sales transactions does not apply, since the value of the transactions exceeds the S$15 million exemption threshold. However, the exemption relating to the services transactions applies, since the value of the transactions is below the specified threshold of S$1 million. Therefore, the taxpayer only needs to prepare TPD for the sales transactions.

2021: The taxpayer does not meet the condition that is specified under section 34F(a) (i.e. its annual turnover is below S$ 10 million). However, the condition that is specified under section 34F(b) has been met (i.e. the taxpayer was required to prepare TPD under section 34F in previous YA). Therefore, the taxpayer is required to prepare TPD.

As a next step, the transaction-based exemptions are considered. For the sales transactions, the taxpayer is exempted, since it has not crossed the specified threshold (i.e. S$ 15 million), but TPD is required for the services transactions, since the exemption threshold (i.e. S$1 million) has been exceeded.

9. What information needs to be included in the preparation of TPD and by when it must be prepared?

Strictly speaking, for the TPD to be considered as contemporaneous, it should be prepared at the time when the transaction was entered into, and the transfer price should be determined by using the most recent data that was relevant to the basis period and that was available at the time of preparation.

Examples:

Company A's financial year end	31 December 2019
The most recent available set of comparable data that can be used to set the prices for the financial year ended 31 December 2019	The data for 2017
The date on which the tax return for YA 2020 is to be filed	15 December 2020
The availability of data for 2019	Three months after 15 December 2020

In May 2021, the IRAS requests Company A to submit the TPD relating to YA 2020. TPD that uses comparable data for 2017 is acceptable for supporting the transfer prices for the transactions that were conducted in the financial year ended 31 December 2019. This is notwithstanding that the 2019 comparable data will become available in May 2021. As an administrative concession, the IRAS will also understand TPD to be contemporaneous if it has been prepared prior to the filing of a tax return (i.e. prior to 15 December) for the YA corresponding to the financial year in which the transaction takes place (based on the data that was relevant to the corresponding period and that was available at the time of preparation).

For YA 2020, the table below illustrates the due dates and available times applying to the preparation of contemporaneous TPD for taxpayers with different financial year-ends:

Close of Financial Period	Due date for the filing of the return / the preparation of contemporaneous TPD	Time available for the preparation of contemporaneous TPD
31 March 2019	15 December 2020	20 months
30 June 2019	15 December 2020	17 months
31 December 2019	15 December 2020	11 months

10. When is the taxpayer required to submit the TPD?

The regulations do not require taxpayers to submit the TPD when they file their tax returns. The taxpayer is required to submit the TPD within 30 days of a request being made by the IRAS.[11]

11. What are the obligations for entities that are not covered by the mandatory TPD requirements under section 34F?

For taxpayers who are not required to prepare TPD under section 34F, the IRAS encourages them to consider preparing TPD in order to defend the arm's length nature of their related party transactions, and to maintain documentation in accordance with the TPD Rules. This will enable them to better manage any transfer pricing risks.[12] Furthermore, the maintenance of contemporaneous TPD is a precondition to pursuing MAP or APA.[13]

However, the IRAS does not expect taxpayers to incur compliance costs that are disproportionate to the amount of tax revenue that is at risk or the complexity of their transactions. In summary, taxpayers are advised to assess the adequacy and extent of their TPD by evaluating the following factors, based on the facts and circumstances of their situation:

a. Whether the transfer pricing risks in respect of their transactions or arrangements are high; and

b. Whether they can demonstrate compliance with the arm's length principle in order to avoid adverse consequences.

The above considerations are important, given that a surcharge of 5% applies on any TP adjustments that are made by the IRAS, irrespective of whether TPD was mandatory or not.

12. Is it mandatory to prepare and maintain the TPD every year?

Taxpayers are expected to review and refresh their TPD annually. However, TPD prepared for one financial

[11] Point (d) to para 6.40 of the Singapore TP Guidelines.
[12] Para 6.42 of the Singapore TP Guidelines.
[13] Points (b) and (c) of para 6.41 of the Singapore TP Guidelines.
[14] Para 6.43 of the Singapore TP Guidelines.

period could be used as Qualifying Past TPD in two subsequent financial periods to support the transfer prices in those periods if the following conditions are met[15]:

- The underlying transaction(s) in the subsequent financial periods are the same as that for which the TPD was prepared;
- The underlying transaction(s) in the subsequent financial period are with the same related party;
- The TPD (containing Group-level and Entity-level information) is prepared as per the TPD Rules;
- The TPD is prepared in English and duly carries the date of preparation; and
- There are no changes between the taxpayer and the related parties in relation to the following matters:
  - The commercial or financial relations between the related parties and the taxpayers;
  - The conditions that have been created or imposed between the related parties and the taxpayers;
  - The Transfer Pricing methodology; and
  - The arm's length conditions in relation to the meaning of Section 34D.

To make use of an existing TPD as a Qualifying Past TPD for a related party transaction that is undertaken in the financial period in question, taxpayers need only to prepare a Simplified TPD for that transaction. The Simplified TPD shall comprise the following[16]:

a. A declaration by the taxpayer that it has prepared a Qualifying Past TPD; and

b. The inclusion, by way of an attachment, of a copy of the Qualifying Past TPD.

13. For how many years can TPD be considered as "Qualifying Past TPD"?

Generally, for a total of three years, subject to meeting the conditions for Qualifying Past TPD (see Q 12 above). The following illustration will clarify the conditions for a Qualifying Past TPD.

[15]Para 6.32 of the Singapore TP Guidelines.

[16]Para 6.34 of the Singapore TP Guidelines.

Example (continuing from FAQ 6):

YA	Gross Revenue (S$ in million)			Is TPD required under Section 34F?	Application of qualifying past TPD
	Total	From related parties			
		Sale	Service		
2019	9	8	0.8	No	The taxpayer does not have to prepare TPD, since it does not cross the annual turnover and transaction-based thresholds.
2020	17	16	0.9	Yes (Sale)	The taxpayer needs to prepare TPD for the sales transactions, since these meets condition (a) [i.e. the taxpayer does not qualify for an annual turnover exemption] and surpasses the exemption threshold for sales transactions.
2021	9.5	8	1.2	Yes (Service)	The past TPD that was prepared for YA 2020 was for the sales transactions. Therefore, it cannot be used in the preparation of TPD for YA 2020 as a Qualifying Past TPD, in order to support the pricing of the services fees that were paid, since it does not meet the conditions for a Qualifying Past TPD. Therefore, a fresh TPD needs to be prepared for service transactions in YA 2021.
2022	18	15	0.8	Yes (Sale)	The past TPD that was prepared for the sales transactions was for YA 2020 [i.e. within the preceding two financial periods]. Therefore, it can be used as the Qualifying Past TPD for YA 2022, in order to support the pricing of the sales transactions.
2023	16	15	0.7	Yes (Sale)	The past TPD that was prepared for the sales transactions was for YA 2020 [i.e. beyond the preceding two financial periods]. Therefore, it cannot be considered for YA 2023, and a new TPD will need to be prepared for the sales transaction.

14. Which taxpayers are likely to be selected for a Transfer Pricing Consultation?

The IRAS selects taxpayers based on the following risks indicators:[17]

1. The value of the related party transactions;
2. The performance of the businesses over time; and
3. The likelihood that the taxable profits may have been understated as a result of inappropriate TP.

The IRAS also provides the following examples of transfer pricing risks that it considers to be high:[18]

- High-value transactions with cross-border related parties;
- Transactions with related parties that are subject to more favorable tax treatments;
- Recurring losses or large swings in the operating results of the taxpayer;
- Operating results that are not in line with other businesses in comparable circumstances;
- The use of intellectual property, proprietary knowledge, or other intangibles in the business;
- Transactions involving R&D or marketing activities that could result in the development or enhancement of intangibles; or
- Indications – for example, through engagements with tax authorities, the country's audit focus, etc. – that the transactions are likely to be subject to a transfer pricing audit by the tax authorities.

15. What are the powers of the Comptroller if it is observed that the taxpayer has not adhered to the arm's length conditions while dealing with related parties?

In cases where it has been identified that the taxpayer has not adhered to the arm's length conditions when dealing with related parties, the Comptroller has been authorized to: (a) disregard the actual transaction and re-characterize it, as appropriate; and (b) impute TP adjustments.

(a) Disregard the actual transaction and re-characterize it as appropriate[19]

The amendment to Section 34D of SITA emphasized that the identification of arm's length conditions may be disregarded when they are inconsistent with the substance of the transaction. However, the IRAS has clarified that the non-recognition of an actual related party transaction will only occur in exceptional circumstances, where:

- The arrangement made lacks the commercial rationality that would be agreed between independent parties in comparable circumstances; and
- The arrangement prevents the determination of a price that would be acceptable to both parties, considering their respective perspectives and the options that would realistically have been available to them at the time of entering into the transaction.

(b) Impute TP adjustment[20]:

The Comptroller may make TP adjustments in scenarios where the taxpayers have not met the arm's length conditions, either by understating their income and profits or by overstating their expenses or losses, as follows:

- Increasing the amount of the taxpayer's income that is either derived/received from related parties in Singapore or received from related parties outside Singapore;
- Reducing the deductions that have been claimed by the taxpayer; or
- Reducing the losses that have been claimed by the taxpayer.

[17] Para 7.4 of the Singapore TP Guidelines.
[18] Para 7.5 of the Singapore TP Guidelines.
[19] Para 5.121 to 5.124 of the Singapore TP Guidelines.
[20] Para 5.118 & 5.119 of the Singapore TP Guidelines.

In accordance with Singapore's semi-territorial basis of taxation (where foreign-sourced income is taxable upon remittance), any TP adjustments on foreign-sourced income will only be treated as being deemed remitted and subject to tax if part of the foreign-sourced income is remitted during the relevant income year.

16. Are any surcharges prescribed in the event that the Comptroller proposes a TP adjustment?

Yes. Effective from YA 2019, the IRAS will levy a surcharge of 5% on the value of any TP adjustments. It is pertinent to note that the said surcharge needs to be paid within a period of one month, even in the following scenarios:

a. No amount of tax is payable pursuant to TP adjustment, owing to brought-forward losses;[21] and
b. The taxpayer files an appeal against the adjustment that has been made by the Comptroller.[22]

The surcharge is to be treated as a debt that is due to the Government and can accordingly be recovered by the Comptroller. Upon any variation or removal of any transfer pricing adjustments, the surcharge that has previously been paid will be suitably adjusted or refunded.

From a tax perspective, the surcharge is not tax-deductible, and the refund of the surcharge is not chargeable to tax.[23]

17. Are any penalties imposed for the non-maintenance/non-submission of the TPD?

Yes. See Q 4 above. From YA 2019, failure to comply with the mandatory TPD requirements is a punishable offence that can result in a fine not exceeding S$ 10,000 on conviction. Taxpayers may be regarded to have flouted the mandatory TPD requirements under the law in the following circumstances:[24]

a. The taxpayer has not prepared the TPD by the time of the filing of the tax return;
b. The TPD has not been prepared in accordance with the form and content as that is prescribed by the TPD Rules;
c. The TPD is not retained for a period of at least five years from the end of the basis period;
d. The TPD is not furnished within 30 days of a request being made by the Comptroller; or
e. The provision of details/information as part of the TPD that the taxpayer knows to be false or misleading.

18. Has Singapore adopted a three-tier TP documentation structure as prescribed by BEPS Action 13?

Yes. Singapore-based MNCs that meet the relevant conditions (e.g. the Group revenue exceeds S$ 1.125 billion) are required to furnish country-by-country (CbC) reports for the financial year beginning on or after 1 January 2017 in accordance with part XXB of SITA.

The requirement to maintain Group-level and Entity-level information in the TPD, consistent with the OECD's Local File and Master File concepts, is prescribed in the Second Schedule of the TPD Rules (the same requirement had previously been prescribed in the TP Guidelines, from 2015).

19. Is Safe Harbour applicable on any transaction?

As mentioned in Qs 5 and 6, the TP Rules provide for an annual turnover exemption, as well as various transaction-based exemptions for the preparation of contemporaneous TPD.

Safe Harbour margins are provided for the following types of transactions (i.e. TPD is not required for such transactions):-

[21] Para 15.4 of the Singapore TP Guidelines.
[22] Para 15.5 of the Singapore TP Guidelines.
[23] Para 15.6 & 15.7 of the Singapore TP Guidelines.
[24] Para 15.9 of the Singapore TP Guidelines.

a. A 5% mark-up on the cost of certain prescribed routine support services[25] that are provided to Group companies;[26] and

b. Indicative margins (as published on the IRAS website) in relation to a related party loan transaction that does not exceed SGD 15 million.[27]

20. Does the IRAS allow taxpayers to make adjustments relating to TP?

Yes. Taxpayers are allowed to make the following types of TP-related adjustments in their tax returns and/or after the filing of their tax returns, subject to the relevant conditions for each category.

a. Year-end adjustments at the time of closing the year-end account (typically because the actual results differ from the outcomes that had been determined in the TP study);

b. Compensating adjustments in accordance with the terms of the advance pricing arrangements;

c. Self-initiated retrospective adjustments, based on the taxpayer's review of their transfer pricing arrangements; or

d. Any corresponding adjustments arising from any TP adjustments that have been made by other tax authorities

.

21. Are TP regulations applicable to Permanent Establishments in Singapore?

Yes. The IRAS has been following the global principle that a non-resident person and its Permanent Establishment (PE) in Singapore are treated as two separate and distinct persons. As such, the profits that are attributable to such a PE are the profits that it would have derived if it had been a separate and independent enterprise that was engaged in the same or similar activities under the same or similar conditions.

It has now further been clarified in the TP Guidelines that where a non-resident company operates in

[25] The service classifications of the routine support services have been provided in the First Schedule of the TPD Rules.

[26] Point (d) of Para 6.18 of the Singapore TP Guidelines.

[27] Point (c) of Para 6.18 of the Singapore TP Guidelines.

Singapore through a permanent establishment (PE) in Singapore, the Singapore PE and the other overseas PE(s) of the non-resident company will be considered as separate and distinct part(ies) for the purpose of applying the arm's length principle in attributing profits to the Singapore PE.

However, where a PE has been created for a non-resident person as a result of the activities that are performed by a taxpayer in Singapore who is a related party, then, subject to the satisfaction of certain conditions, there will be no attribution of profits to the PE, and, thus, there will be no additional Singapore tax liability for the non-resident person.

22. Are any relaxations prescribed by the IRAS in the event that the Singapore taxpayer is engaged in the provision of 'Routine Support Services'?

In order to ease the compliance burden on taxpayers, the IRAS is prepared to accept a 5% mark-up on the costs of certain routine support services, as a reasonable arm's length charge, subject to the satisfaction of certain conditions.28

23. Are any relaxations prescribed by the IRAS in the event that the Singapore taxpayer is part of a 'cost-pooling arrangement'?

If the routine support services are provided to the related parties under a cost-pooling arrangement, then the IRAS allows taxpayers to charge related parties for their proportionate share of costs, without any mark-up, subject to the satisfaction of certain conditions.

24. How to determine and deal with the 'pass-through costs' that are incurred by the Singapore taxpayer for and on behalf of its related parties?

A Singapore service provider may arrange and pay for, on behalf of its related parties, services that are acquired from other related parties. In such an event, the service provider may pass on the costs to its related parties without a mark-up, with such costs being regarded as 'pass through costs'. The IRAS has also prescribed certain conditions for considering such costs as 'pass through costs'.

25. A Singapore company provides routine support services to its related parties and charges for these services at cost. However, when filing its tax return, the company applies a 5% mark-up on the costs. Will the IRAS now mandate the Singapore company to charge for the services at a mark-up that has been computed via a transfer pricing study instead of applying a 5% mark-up for tax purposes?[30]

No. The IRAS does not mandate a Singapore company to perform a transfer pricing study on its charges for routine support services, as long as this is in line with Part III, section 12, of the Singapore TP Guidelines. The company may continue with its practice of applying a 5% cost mark-up for the routine support services that are provided to its related party as a reasonable arm's length charge. For non-routine services, the company has to determine the arm's length price for tax purposes, as supported by a transfer pricing study.

26. A Singapore company regularly pays an overseas related party for the costs of performing administrative services. What TPD is required for such an arrangement?[31]

The Singapore company should keep records explaining the services that are provided by the

[28]Para 12.26 of the Singapore TP Guidelines.

[29]Paras 12.31 and 12.32 of the Singapore TP Guidelines.

[30]As per the FAQs issued by IRAS.

[31]Point (f) of Para 6.40 of the Singapore TP Guidelines.

overseas related party, the benefits that it received, and the basis that was used in order to compute the billed amount. This is to ensure that there is clarity regarding the services that the Singapore company is paying for and whether the amounts that have been charged are reasonable. The Singapore company should enter into a written contract with the overseas related party, detailing the services that are to be provided and how the value of the service charge is determined. There should also be checks in place to make sure that the terms of the contract have been adhered to before each bill is paid.

27. A Singapore company provides services to its overseas related parties. The remuneration for these services is bundled together with the price of the goods that are supplied by the Singapore company to the overseas related parties. Is such a practice acceptable to the IRAS for TP purposes?[31]

In this case, the IRAS will review whether the price of the goods, as reduced by an arm's length remuneration for the provision of the services, is at arm's length. In other words, there should be evidence to show that there is indeed a component embedded in the price of the goods that are sold that represents the value of the services that have been provided by the Singapore taxpayer to the overseas related party. Alternatively, if similar goods that are bundled with services have been provided by other entities to independent parties under similar circumstances, then the bundled price of the unrelated party transaction may be used for the purposes of comparison.

28. Are there any special arm's length principles for Related Party Loans?

Applying the arm's length principle, related party loans should be charged interest rates that reflect the rates that are charged between unrelated parties in similar circumstances.

If the lender and borrower of the related party loan are both Singapore taxpayers, then the IRAS will limit the interest expenses that can be claimed on such a loan, if it has been provided interest-free or at interest rates that are not supported by transfer pricing analysis. This practice will not apply if the lender is in the business of borrowing and lending funds (for example, banks, other financial institutions, or finance and treasury centres), in which case the arm's length principle should be complied with.[32]

If the related party loan is a cross-border loan, taxpayers should ensure compliance with the arm's length principle.

Indicative margins for related party loans

The IRAS has prescribed indicative margins for each calendar year, which taxpayers can apply to each related party loan not exceeding S$ 15 million.

The indicative margin is not mandatory. It offers taxpayers an alternative to performing a detailed transfer pricing analysis in order to comply with the arm's length principle for their related party loans.

If taxpayers choose not to apply the indicative margin, or if it is not applicable to them, they will have to apply an interest rate that is in line with the arm's length principle and maintain contemporaneous transfer pricing documentation.

29. Has any transaction-specific guidance been issued by IRAS?

In May 2019, the IRAS issued its first TP Guidelines that are specifically for the Commodity Marketing and Trading (CMT) activities that are carried out in Singapore (the CMT Guidelines). The CMT Guidelines analyzes the economic value of CMT activities of taxpayers in Singapore, and helps taxpayers to comply with the arm's length principle as well as the TPD requirements.

The CMT Guidelines clarify that CMT activities include not only the buying and selling of commodities, but also involve a wide spectrum of activities, such as sourcing, collecting real time

[32]Para 13.7 of the Singapore TP Guidelines.

market intelligence, managing logistics, optimizing the physical movements and deliveries of cargoes, determining a commodity placement strategy, sales and marketing, blending, storage, building and maintaining customer relationships, managing risks and cash flows, financial management, etc.

30. What specific guidance has been provided for analyzing the arm's length price of an entity that is engaged in CMT activities?

Depending upon the arrangement between the entity undertaking the commodity / marketing / trading activity and its related party, a related party commodity transaction can take many forms. Thus, it is important to accurately delineate the actual related party commodity transaction, which requires understanding the commodity industry and establishing the economically relevant characteristics of the transaction.[33]

The CMT Guidelines require the following aspects to be considered in order to determine the functional profile of a CMT entity:

- The nature of the activities (taking into account the FAR analysis);
- The capabilities provided by the entity to the related party;
- The nature of the commodity; and
- The market characteristics.

The CMT Guidelines recognize that the functional profile of a CMT entity for a related party commodity transaction is dependent upon the nature of the CMT activities that it performs (taking into account the assets that are used and the risks that are assumed), which in turn define its contribution to the overall value. As such, the CMT Guidelines provide examples[34] of CMT activities that may be undertaken in a related party commodity transaction, and they also describe some of the possible benefits and outcomes resulting from the CMT activities. They also provide examples of risks relating to the CMT activities and some ways to control such risks.[35]

Furthermore, in line with the general TP guidelines in Singapore, the CMT Guidelines allow taxpayers to choose the most appropriate method from the following five methods:

- Traditional transaction methods
  1. Comparable uncontrolled price method;[36]
  2. Resale price method; or[37]
  3. Cost plus method;
- Transactional profit methods
  4. Transactional profit split method;[38] or
  5. Transactional net margin method.

In the event that the transactional net margin method is used, the profit level indicators ('PLI')[39] such as operating profit margin, full cost mark-up, value-added cost mark-up, berry ratio, and return on assets should be selected by considering the functional profile of the taxpayer.

31. What are the other vital points to note in relation to TPD?

1. It has been mandated that the date of the TPD should be mentioned, in order to confirm the contemporaneous nature of the document.[40]
2. The report should be in English. In the event that it is created in any other language, an English translation might be required.[41]

[33]Point 6.5 of the CMT Guidelines.

[34]Point 6.8 of the CMT Guidelines.

[35]Point 6.19 of the CMT Guidelines.

[36]Points 6.34 to 6.48 of the CMT Guidelines.

[37]Points 6.49 to 6.52 of the CMT Guidelines.

[38]Points 6.56 and 6.57 of the CMT Guidelines.

[39]Points 6.58 to 6.68 of the CMT Guidelines.

[40]Point (b) of Para 6.40 of the Singapore TP Guidelines.

[41]Point (c) of Para 6.40 of the Singapore TP Guidelines.

3. The TPD should be maintained for five subsequent financial periods.[42]
4. The TPD that are prepared by taxpayers for other tax jurisdictions could form part of the TPD for Singapore, if they are relevant to the taxpayer's business operations in Singapore.[43]
5. The TPD can be maintained in any form (such as on paper, electronically, or by any other means).[44]

Our observations:

Given the introduction of heftier fines for the non-preparation of the TPD, as well as the surcharge on TP adjustments from YA 2019, it would be prudent for taxpayers to undertake a diagnostic review of their TP arrangements in order to mitigate any TP risks.

[42]Point (e) of Para 6.40 of the Singapore TP Guidelines.

[43]Para 6.25 of the Singapore TP Guidelines.

[44]Point (f) of Para 6.40 of the Singapore TP Guidelines.

WAY FORWARD

With respect to managing the TP risks and uncertain tax positions that may arise as a result of the renewed TP regulations, taxpayers need a clear framework and process for managing TP issues. This needs to have a strong emphasis on the TP policies and the accompanying documentation of the taxpayers. One of the key aspects of managing the TP issue involves the correct interpretation of the exemptions that have been prescribed in the regulations and, if they have been determined to be applicable, the preparation and maintenance of the contemporaneous TPD in order to explain the taxpayer's approach and its consistency with the regulations. As such, a 'five-step process' should be employed by the taxpayer in order to manage the TP risks appropriately.

- **Diagnostic review of existing arrangements**

  The overarching requirement under BEPS is to tax the profits where value is created, thereby encouraging MNEs to undertake delineated transaction-based analysis and create the accompanying documentation. With the new TP regulations now aligning with the recommendations under the BEPS Action Plans, the taxpayer should currently undertake a diagnostic review of its existing inter-company arrangements in order to assess whether any non-arm's length scenarios exist and how they might be effectively addressed.

- **In-house review of available documentation**

  The documentation plays a critical part in defending the inter-company transaction prices, as it is considered to be the principal source of information giving an insight into the transaction. A taxpayer should undertake an holistic review of its existing state of documentation and identify any gaps that need to be addressed in order to comply with the most recent TPD requirements.

- **Creating and maintaining the TP documentation**

  Well-structured TPD that is prepared on a contemporaneous basis goes a long way to serving as an efficient tool for demonstrating the transfer prices that have been applied and their adherence to the arm's length principle. It also helps in defending such prices before the Revenue officers in the event that a TP audit takes place, thereby reducing the potential penalties and exposures. Thus, it is essential for taxpayers to prepare and maintain robust TPD explaining their transfer prices.

  In this regard, an interesting point to note is that the revised TP Regulations exempt taxpayers from having to prepare TPD every year, in the event that the prescribed conditions are met. The taxpayer is only required to update the TPD once every three years. Hence, there exists an opportunity for taxpayers to reduce their compliance costs by preparing robust TPD that can stand the test of time for these three years.

- **Aligning transfer prices with year-end price adjustments or retrospective adjustments**

  The regulations allow taxpayers to carry out year-end price adjustments or retrospective adjustments for prior years, with the objective of aligning the transfer prices with the arm's length prices. Interestingly, the TP Regulations allow for both upward and downward adjustments on fulfilling the prescribed conditions. It is a good opportunity for taxpayers to review their resultant transfer prices during a particular period and accordingly undertake necessary adjustments in order to avoid any potential double taxation that may arise due to inappropriate pricing.

- **TP planning and policy setting**

  Forward-looking MNEs appreciate that well-crafted impact assessments on tax and regulatory changes must be addressed in a manner that enables their transfer pricing policies turn into strategic tools for their business functions and supply chain decisions, as well as be used for efficient tax planning purposes. In effect, the transfer pricing policies need to be crafted in a manner that demonstrates a balance between meeting compliance requirements, providing operational convenience, and fulfilling tax optimization needs. It must also be established that the transfer prices are in line with the Group's business strategies, across the value chain, so that the profits reflect the respective value creation.

OUR VALUE PROPOSITION

Our value proposition stems from the fact that the Singapore TP Regulations allow for the preparation of TPD once every three years. In effect, taxpayers are only required to undertake an exhaustive exercise of preparing the TPD for the first applicable year, i.e. YA 2019. Thereafter, taxpayers can rely on the existing TPD as long as the facts and circumstances surrounding the transaction remain the same and any other conditions that are specified are met.

Although the preparation of the TPD is frequently believed by taxpayers to involve a post-mortem analysis of the transactions that they have undertaken, there still exists sufficient time for taxpayers with financial years ending June 2019 or December 2019 to undertake a diagnostic review of their arrangements and reset their transfer prices, in the event that they are identified as being inconsistent with the arm's length principle. Even taxpayers with financial years ending March 2019 should analyze their arrangements and consider making year-end or retrospective adjustments to their transfer prices so that any surcharges could be mitigated.

Once such a diagnostic review of the existing transactions has been undertaken, and the accompanying TPD has been prepared for the first compliance period, for the next two years taxpayers are only expected to check their transfer prices by using the arm's length price that was determined in the first compliance period, and make the necessary adjustments, if any. Accordingly, only new transactions that are entered into in subsequent periods would warrant an update to the TPD.

Thus, it is ideal for taxpayers to consider a three-year horizon (as illustrated below) when planning their transfer pricing compliance, as they will be able to optimize their resources and build in the necessary cost efficiencies.

3 YEARS COMPLIANCE BLOCK
(assuming no TPD was prepared for YA 2019)

ACTIVITY SCHEDULE	YEAR 1 (YA 2020)	YEAR 2 (YA 2021)	YEAR 3 (YA 2022)
DIAGNOSTIC REVIEW			
Evaluating TPD applicability	✓	✓	✓
Analysing on-going arrangements	✓	×	×
IN-HOUSE DOCUMENTATION REVIEW			
Assessing strength of existing documentation	✓	×	×
Gap analysis & listing additional documents	✓	×	×
PREPARING TP DOCUMENTATION			
Testing the arm's length price	✓	✓	✓
Finalising TP documentation	✓	×	×
Applicability test for ***Qualifying TPD***	✓	✓	✓
YEAR-END / RETROSPECTIVE ADJUSTMENTS			
Computation of possible TP adjustments	✓	✓	✓
Preparing documents to give effect	✓	✓	✓
TP PLANNING & PRICE SETTING			
Review and reset existing transfer prices for future years in line with arm's length principle	✓	×	×

**It is assumed that the nature of the related party transactions will remain constant over the three-year period. Any new related party transactions in Years 2 or 3 will independently proceed through the compliance block, starting from Year 1.*

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Dhruva Advisors Singapore is a part of Dhruva Advisors LLP, a top-tier boutique tax and regulatory services organization. At Dhruva, we work closely with our clients in providing practical solutions to their tax and business issues while managing their end-to-end compliance. Dhruva Advisors LLP is headquartered in Mumbai, India, with offices in pan India and globally, including Dubai and Singapore. Globally, we have a team of over 325 tax professionals comprising of chartered accountants and tax attorneys, led by 16 partners. We are a member firm of WTS Global, a network of selected tax and specialist regulatory organizations that operates in more than 100 countries.

Key differentiators:

- Strategic approach to complex problems
- In-depth, specialised and robust advice
- Strong track record of designing and implementing pioneering solutions
- Trailblazers in tax controversy management
- Long history of involvement in policy reform
- Technical depth and quality

Our professionals leverage their decades of experience in Fortune 500 companies, as well as the Big 4, to provide value-centric advice and seamless implementation. Our team also has deep industry experience across industry sectors. We leverage our industry experience to provide business focused, practical solutions.

Our clients range from across industries including asset management, technology, infrastructure and real Estate, FMCG, trading, and food and beverages.

Our recognitions

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