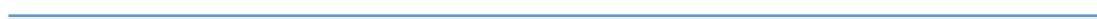




INLAND REVENUE
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IRAS e-Tax Guide

Transfer Pricing Guidelines (Seventh Edition)



Transfer Pricing Guidelines

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Table of Contents

	Page
1 Aim	1
2 At a glance.....	1
3 Glossary	3
PART I – TRANSFER PRICING PRINCIPLES AND FUNDAMENTALS	9
4 Background.....	9
5 The arm’s length principle	11
6 Transfer pricing documentation.....	39
PART II – TRANSFER PRICING COMPLIANCE.....	79
7 Transfer pricing audit by IRAS	79
8 Transfer pricing adjustment by IRAS.....	83
9 Surcharge and penalty	86
PART III – DISPUTE PREVENTION AND RESOLUTION	90
10 Preventing and resolving transfer pricing disputes	90
11 Guidance on MAP process	103
12 Guidance on APA process.....	107
PART IV – OTHER MATTERS	112
13 Adjustments relating to transfer pricing.....	112
14 Related party services.....	117
15 Related party financial transactions	130
16 Attribution of profit to permanent establishment	151
17 Cost contribution arrangements	152
18 Government assistance	166
PART V – MISCELLANEOUS.....	170

19 Other guidance relating to transfer pricing	170
20 Contact information.....	171
21 Updates and amendments	172
ANNEX A – Examples on transfer pricing methodology	175
Example 1: CUP method using internal CUP.....	175
Example 2: CUP method using external CUP	176
Example 3: Resale price method	177
Example 4: Cost plus method.....	178
Example 5: Transactional profit split method (residual analysis approach).....	179
Example 6: Transactional net margin method.....	182
ANNEX B – Samples and guides for MAP and APA process	183
Annex B1: Sample of letter of authorisation	183
Annex B2: Guide on minimum information required for pre-filing meeting for APA request.....	184
Annex B3: Sample of an APA agreement	185
Annex B4: Guide on annual APA compliance report.....	187
ANNEX C – Routine support services commonly provided on an intra- group basis.....	188

1 Aim

1.1 This e-Tax guide¹ helps taxpayers in:

- (a) Applying the arm's length principle when transacting with their related parties;
- (b) Applying the arm's length principle for specific transactions, like related party services and loans;
- (c) Maintaining transfer pricing documentation;
- (d) Applying the facilities provided under the avoidance of double taxation agreements ("DTA") to avoid or resolve transfer pricing disputes; and
- (e) Understanding the implications of non-compliance with transfer pricing requirements.

1.2 It explains IRAS' transfer pricing compliance programme and position regarding various transfer pricing matters.

1.3 It is organised in parts, with Part I being most relevant for taxpayers seeking to understand and comply with transfer pricing requirements.

1.4 This e-Tax guide is relevant to you if you are a business entity incorporated or registered in Singapore or carrying on a business in Singapore and have transactions with your related parties.

2 At a glance

2.1 Transfer pricing concerns the prices charged in transactions between related parties.

2.2 Generally, unrelated parties transact with each other at prices approximating to the market price. This may not necessarily be the case when two related parties transact with each other. It is important to the integrity of the tax system that the price for the transaction between related parties approximates to the market price.

¹ This e-Tax guide is a consolidation of four previous e-Tax guides on:

- (a) Transfer pricing guidelines published on 23 February 2006,
- (b) Transfer pricing consultation published on 30 July 2008,
- (c) Supplementary administrative guidance on advance pricing arrangements published on 20 October 2008, and
- (d) Transfer pricing guidelines for related party loans and related party services published on 23 February 2009.

- 2.3 To prevent price distortion, tax authorities may audit the prices of transactions between related parties to verify if they are reflective of market prices. Such audit can lead to transfer pricing adjustments bringing about double taxation.
- 2.4 To reduce the risk of audits and double taxation, when transacting with their related parties, taxpayers should ensure the transfer price between them is arm's length as if they were unrelated parties negotiating freely. Taxpayers should also maintain proper transfer pricing documentation to demonstrate that the pricing is arm's length.
- 2.5 If taxpayers are faced with double taxation, they may apply for a mutual agreement procedure with their tax authorities under the DTA provisions to eliminate double taxation. They may also apply for an advance pricing arrangement to agree in advance with one or more tax authorities the appropriate transfer pricing for their related party transactions for a period of time.

3 Glossary

3.1 Advance pricing arrangement

This is an arrangement between IRAS and the taxpayer or the relevant foreign competent authority to agree in advance an appropriate set of criteria to ascertain the transfer pricing for a taxpayer's related party transactions for a specific period of time.

3.2 Arm's length principle

The arm's length principle is the international standard to guide transfer pricing. It requires the transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party.

3.3 Arm's length range

A range of prices or margins that is acceptable for establishing that the conditions of a related party transaction are arm's length.

3.4 Comparability analysis

The process of identifying economically relevant characteristics in a related party transaction and comparing such characteristics with those in independent party transactions. This involves an examination of the factors affecting the related party transaction that are non-existent in transactions between independent parties and vice-versa.

3.5 Comparable independent party transaction

A comparable independent party transaction is a transaction between two independent parties that is comparable to the related party transaction under examination. It can be either a comparable transaction between one party which is a party to the related party transaction and an independent party ("internal comparable") or between two independent parties, neither of which is a party to the related party transaction ("external comparable").

3.6 Comparable uncontrolled price ("CUP") method

A transfer pricing method that compares the price for properties or services transferred in a related party transaction to the price charged for properties or services transferred in an independent party transaction in comparable circumstances.

3.7 Competent Authority

This refers to a person or an organisation that has been appointed or delegated to perform a designated function. IRAS is the designated competent authority for matters relating to transfer pricing, which include advance pricing arrangement and mutual agreement procedure.

3.8 Contribution analysis

An analysis used in the transactional profit split method under which the total profit earned by the parties from a related party transaction is divided based on the parties' relative contributions to the earning of that profit.

3.9 Corresponding adjustment

When a tax authority increases a taxpayer's taxable profits as a result of applying the arm's length principle to the taxpayer's transactions with its related party in another jurisdiction, double taxation arises if the same profits have been or will be included in the tax base of the related party.

To eliminate the double taxation, the tax authority in the other jurisdiction may agree to reduce the taxable profits of that related party. Such a downward adjustment to the related party's taxable profit is known as corresponding adjustment.

3.10 Cost plus method

A transfer pricing method where a comparable gross mark up is added to the costs incurred by the supplier of goods or services in a related party transaction to arrive at the arm's length price of that transaction.

3.11 Direct costs

Costs that are incurred specifically for producing a product or providing a service, such as the cost of raw materials.

3.12 Double taxation

Where two or more tax authorities take different positions in determining arm's length prices, double taxation may occur. Double taxation means that the same income is included in the tax base by two or more tax authorities, but this does not always mean that the income will actually be taxed twice.

3.13 DTA (or Avoidance of Double Taxation Agreement)

DTA refers to agreements between governments for the avoidance of double taxation and prevention of fiscal evasion of income taxes or commonly known as tax treaties.

3.14 FAR

FAR refers to **F**unctions performed, **A**ssets used and **R**isks assumed.

3.15 Functional analysis

A functional analysis seeks to identify the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transactions.

3.16 Gross profits

The amount computed by deducting from the gross receipts of a business transaction the allocable purchases or production costs of sales, with due adjustment for increases or decreases in inventory or stock-in-trade, but without taking account of other expenses.

3.17 Independent parties (or unrelated parties)

Two parties are independent (or unrelated) parties with respect to each other if they are not related parties with respect to each other.

3.18 Independent (or unrelated) party transactions

Transactions between independent (or unrelated) parties.

3.19 Indirect costs

Costs of producing a product or service which, although closely related to the production process, may be common to several products or services (for example, the costs of a repair department that services equipment used to produce different products).

3.20 ITA

ITA refers to the Income Tax Act 1947.

3.21 Mutual agreement procedure

This is a facility through which IRAS and the relevant foreign competent authority resolve disputes regarding the application of DTAs.

3.22 Net profit indicator (or profit level indicator)

The ratio of net profit to an appropriate base (for example, costs, sales, assets) as used in the transactional net margin method.

3.23 OECD TPG

OECD TPG refers to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

3.24 Related party

Two persons 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.

The exact wordings of the definition are provided under Section 2 of the ITA.

3.25 Related party transactions

Transactions between related parties.

3.26 Resale price margin

A margin representing the amount out of which a reseller would seek to cover its selling and other operating expenses and, in the light of the functions performed (taking into account assets used and risks assumed), make an appropriate profit.

3.27 Resale price method

A transfer pricing method where the resale price to the independent party is reduced by a comparable resale price margin to arrive at the arm's length price of the product transferred between the related parties.

3.28 Residual analysis

An analysis used in the transactional profit split method under which the total profit earned by the parties from a related party transaction is split in two stages: firstly, by determining the return for readily identifiable functions attributed to each party involved and secondly, by dividing the residual profit.

3.29 Self-initiated retrospective adjustments

Due to subsequent changes in circumstances, some taxpayers may review their past transfer prices relating to the transactions with their related parties. Arising from such review, they may decide to make retrospective upward or downward adjustments for past financial years to arrive at what, in the taxpayers' opinion, would be the arm's length prices. These adjustments are referred to as self-initiated retrospective adjustments.

3.30 Tested party

The use of resale price method, cost plus method or transactional net margin method requires a decision on which party to apply the transfer pricing analysis. This party is known as the tested party. Generally, the tested party is the one where a transfer pricing method can be applied in the most reliable manner and most reliable comparables can be found.

3.31 TP Documentation Rules

TP Documentation Rules refers to the Income Tax (Transfer Pricing Documentation) Rules 2018.

3.32 Traditional transaction methods

Transfer pricing methods that compare the prices of related party transactions with those of transactions between independent parties, namely the comparable uncontrolled price method, the resale price method, and the cost plus method.

3.33 Transactional net margin method ("TNMM")

A transfer pricing method that compares the net profit relative to an appropriate base (for example, costs, sales, assets) that is attained by a taxpayer from a related party transaction to that of comparable independent parties.

3.34 Transactional profit methods

Transfer pricing methods that compare the profits arising from related party transactions with those generated in independent party transactions, such as the transactional net margin method and transactional profit split method.

3.35 Transactional profit split method

A transfer pricing method that is based on the concept of splitting the combined profits of a transaction between related parties in a similar way as how independent parties would under comparable circumstances.

3.36 Transfer pricing adjustment

In the event the related parties do not transact with each other at arm's length prices, tax authorities may for tax purposes, substitute the price of the transaction with one that could have been charged if the parties were unrelated. The adjustment to arrive at that price is known as a transfer pricing adjustment.

3.37 YA

YA refers to year of assessment.

3.38 Year-end adjustments

Adjustments which taxpayers made to their actual results at the year-end closing of their accounts to arrive at what, in the taxpayers' opinion, would be the arm's length prices for their related party transactions as described in their transfer pricing analyses and policies.

PART I – TRANSFER PRICING PRINCIPLES AND FUNDAMENTALS

4 Background

- 4.1 Transfer pricing refers to the rules and methods for pricing transactions between related parties. Such transactions can be sale or purchase of goods, provision of services, borrowing or lending of money, use or transfer of intangibles, etc.
- 4.2 Two persons² are related parties³ 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.
- 4.3 Where a non-resident person carries on a business through a permanent establishment in Singapore, for the purpose of attributing profits to the permanent establishment:
- (a) The permanent establishment in Singapore of that person; and
 - (b) Other permanent establishments outside Singapore of that person
- are treated as separate and distinct persons. They are considered related parties and accordingly the arm's length principle applies to them when attributing profits to the permanent establishment in Singapore.
- 4.4 When related parties transact with each other, their pricing may not reflect market conditions due to a lack of independence in their commercial and financial relations. As a result, their profits and tax liabilities may be distorted, especially when they are located in different jurisdictions with different tax rates. This creates concerns that the related parties may not be paying their fair share of tax and are able to derive a tax advantage as a group.
- 4.5 To ensure taxpayers transact with their related parties at pricing that reflects independent pricing, IRAS applies the internationally endorsed arm's length principle. If taxpayers do not comply with the arm's length principle and have understated their profits, IRAS will adjust their profits upwards as provided in the Income Tax Act 1947 ("ITA")⁴.

² Person is defined under Section 2 of the ITA to include a company, body of persons and a Hindu joint family. Company is defined under Section 2 of the ITA to mean any company incorporated or registered under any law in force in Singapore or elsewhere.

³ Related party is defined under Section 2 of the ITA.

⁴ This is provided under Section 34D of the ITA.

- 4.6 Foreign tax authorities will likewise make upward adjustments when they find the transfer pricing of the cross-border related party transactions is not at arm's length. Such transfer pricing adjustments, by IRAS or the foreign tax authorities, may lead to double taxation.
- 4.7 Thus, it is important that taxpayers comply with the arm's length principle when transacting with their related parties and maintain proper transfer pricing documentation to substantiate their pricing.
- 4.8 IRAS generally takes guidance from the OECD⁵ Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD TPG").

⁵ OECD stands for Organisation for Economic Co-operation and Development.

5 The arm's length principle

Introduction

- 5.1 IRAS endorses the arm's length principle as the standard to guide transfer pricing. IRAS subscribes to the principle that profits should be taxed where the real economic activities generating the profits are performed and where value is created. A proper application of the transfer pricing rules would ensure this outcome.
- 5.2 This section covers the following:
- (a) What the arm's length principle is;
 - (b) Basis for the arm's length principle;
 - (c) Reasons for endorsing the arm's length principle;
 - (d) Guiding principles on applying the arm's length principle; and
 - (e) Three-step approach to apply the arm's length principle.

What the arm's length principle is

- 5.3 The arm's length principle requires a transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party. The premise is that where market forces drive the terms and conditions agreed in an independent party transaction, the pricing of the transaction would reflect the true economic value of the contributions made by each party in that transaction.
- 5.4 Therefore, if two related parties derive profits at levels above or below the comparable market level solely because of their special relationship, the profits will be deemed as non-arm's length. In such a case, IRAS can make necessary adjustments to the taxable profits of the taxpayer in Singapore. This is to reflect the true price that would be derived on an arm's length basis.

Basis for the arm's length principle

- 5.5 Section 34D of the ITA stipulates the use of the arm's length principle for related party transactions, i.e. the conditions made or imposed between related parties with regard to their transaction are those conditions which would be made or imposed if they were not related parties and dealing independently with one another in comparable circumstances ("arm's length conditions").

5.6 The concept or use of the principle is also implied or referred to in various provisions of the ITA, including Sections 32 and 53.

5.7 The arm's length principle is found in all of Singapore's DTAs, typically in:

(a) Paragraph 2 of the Business Profits Article

When attributing profits in a contracting state/ party to a permanent establishment in that state/ party, the permanent establishment should be considered as *"a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions"*.

(b) Paragraph 1 of the Associated Enterprises Article

"Where...conditions are made or imposed between...two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly."

5.8 The DTA requires the application of the arm's length principle not only between associated enterprises but also between a permanent establishment of a person in Singapore and other permanent establishments of that person outside Singapore. The profits attributable to the permanent establishment in Singapore are the profits that the permanent establishment would have derived if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions.

Reasons for endorsing the arm's length principle

5.9 IRAS endorses the use of the arm's length principle for two main reasons:

(a) Market forces of supply and demand are the best way to allocate resources and reward effort. Applying the arm's length principle would result in related and independent party transactions being treated equally for tax purposes.

(b) Most tax jurisdictions adopt the arm's length principle. In doing so, taxpayers and tax authorities will have a common basis to deal with related party transactions. This should reduce the incidence of transfer pricing adjustments and improve the resolution of transfer

pricing disputes. Consequently, the likelihood of double taxation will be reduced.

Guiding principles on applying the arm's length principle

5.10 IRAS recognises that the application of the arm's length principle is not without difficulties. For instance:

- (a) Certain business structures and arrangements are complicated and unique, and may rarely be encountered between independent parties. The lack of comparable conditions established between independent parties makes it difficult to apply the arm's length principle.
- (b) Establishing the arm's length principle may require substantial analysis of large volume of data and information. Some information may not be readily available or may be of a confidential nature that cannot be disclosed without revealing business secrets.
- (c) It may also be costly for taxpayers to perform comprehensive analyses in applying the arm's length principle and prepare sufficient documentation to demonstrate compliance with the arm's length principle.

5.11 Therefore, IRAS adopts the following guiding principles on applying the arm's length principle:

- (a) Transfer pricing is not an exact science. Establishing and demonstrating compliance with the arm's length principle require the exercise of judgment. Hence, a pragmatic approach would be adopted in ascertaining arm's length pricing for related party transactions.
- (b) IRAS does not expect taxpayers to adhere rigidly to a defined set of rules in order to establish arm's length pricing. Depending on the facts and circumstances, i.e. where there is a reasonable basis for doing so, taxpayers may determine and demonstrate arm's length pricing using a different approach from those suggested in this e-Tax guide or complement those approaches suggested in this e-Tax guide.
- (c) Taxpayers would have intimate knowledge of the commercial circumstances that their businesses operate in and the economic relationships between various related parties. This puts them in a better position to perform a robust and comprehensive transfer pricing analysis to determine the arm's length price.

- (d) Taxpayers should exert reasonable efforts to undertake a sound transfer pricing analysis. IRAS will consider the transfer prices determined as, prima facie, arm's length when taxpayers have:
 - Applied the arm's length principle in their analysis; and
 - Exercised reasonable efforts to comply with the arm's length principle, i.e. the transfer prices may reasonably be considered to approximate to arm's length prices.
- (e) IRAS welcomes taxpayers to discuss their concerns and difficulties in applying the arm's length principle. IRAS believes that such consultation and cooperation between taxpayers and IRAS is a mutually beneficial and pragmatic way to assist taxpayers in complying with the arm's length principle.

Three-step approach to apply the arm's length principle

5.12 IRAS recommends that taxpayers adopt the following three-step approach to apply the arm's length principle in their related party transactions:

Step 1 - Conduct comparability analysis

Step 2 - Identify the most appropriate transfer pricing method and tested party

Step 3 - Determine the arm's length results

5.13 Transfer pricing analysis always requires an element of judgment. Ultimately, the main objective in any transfer pricing analysis is to present a logical, coherent and consistent basis to demonstrate that transfer prices set between related parties are at arm's length.

5.14 The recommended three-step approach is neither mandatory nor prescriptive. A taxpayer can modify the recommended approach or adopt an alternative approach if its individual circumstances require such modifications to better arrive at the arm's length result.

Step 1 – Conduct comparability analysis

5.15 Comparability analysis is at the heart of the application of the arm's length principle. This requires:

- (a) Identifying the commercial or financial relations between the related parties and the conditions and economically relevant

circumstances attaching to those relations in order that the transaction between the related parties is accurately delineated.

- (b) Comparing the conditions and the economically relevant circumstances of the related party transaction as accurately delineated with the conditions and the economically relevant circumstances of comparable transactions between independent parties.

5.16 The comparability analysis conducted under Step 1 will have:

- (a) Set out the factual substance of the commercial or financial relations between the related parties and accurately delineated the actual transaction;
- (b) Compared the economically relevant characteristics of the actual related party transaction and independent party transactions;
- (c) Identified the differences (if any) in the economically relevant characteristics between the related party transaction and the independent party transactions that can materially affect the price of the related party transaction; and
- (d) Determined reasonably accurate adjustments that can be made to eliminate the effect of any such differences.

Identifying the actual related party transaction

5.17 The process of identifying the commercial or financial relations between the related parties and the conditions and economically relevant circumstances attaching to those relations requires:

- (a) A broad understanding of the industry sector in which the group operates.
- (b) An analysis of what each party does and their commercial or financial relations as expressed in the transaction or transactions between them.
- (c) The accurate delineation of the actual transaction or transactions between them.

5.18 The accurate delineation of the actual transaction between the related parties requires establishing the economically relevant characteristics of the transaction. Such characteristics consist of the conditions of the transaction and the circumstances in which the transaction takes place. They can be broadly categorised as:

- (a) The contractual terms of the transaction;
- (b) The characteristics of goods sold or purchased, services received or provided, or intangible properties used or transferred;
- (c) The functions performed, assets used and risks assumed by the parties; and
- (d) The commercial and economic circumstances of the parties.

Contractual terms of the transaction

- 5.19 A transaction is the consequence of the commercial or financial relations between the related parties.
- 5.20 Where a transaction has been formalised by the related parties through written contractual agreements, those agreements provide the starting point for delineating the transaction between them, how the transaction is priced and how the responsibilities and risks arising from their interaction are to be divided between them at the time of entering into the agreements.
- 5.21 Written contractual agreements alone may not provide all the information necessary to perform a transfer pricing analysis, or to provide sufficient information regarding the contractual terms.
- 5.22 Further information will be required by taking into consideration the analysis of the other economically relevant characteristics mentioned in paragraphs 5.18(b) to (d). Taken together, the analysis provides evidence of the actual conduct of the related parties with regard to the transaction.
- 5.23 Where conduct is not fully consistent with the contractual terms, further analysis is required to identify the actual transaction.
- 5.24 Where there are material differences between the contractual terms and the actual conduct of the related parties, the actual transaction should be determined from the actual conduct.

Example:

- Parent Co in Country P has a distribution agreement with its subsidiary, Sub Co, in Country S.
- Under the distribution agreement, Sub Co is to distribute Parent Co's products and to conduct marketing activities in Country S.
- Based on an analysis of the other economically relevant characteristics mentioned in paragraphs 5.18(b) to (d), it was determined that:

- All marketing activities are undertaken by Parent Co. i.e. full responsibility lies with Parent Co.
 - Sub Co does not have the capability to perform marketing activities.
 - Sub Co merely distributes the products without performing any marketing activities or incurring any costs relating to such activities.
 - Based on the actual conduct of Parent Co and Sub Co, it can be concluded that the written agreement does not reflect the actual conduct of the parties.
 - Thus, the identification of the actual transaction between Parent Co and Sub Co should not be based solely on the written agreement but should be determined from their actual conduct.
- 5.25 Where there is no written contractual agreement between the related parties, all aspects of the arrangement would need to be deduced from available evidence of the actual conduct of the parties. This includes the functions that are actually performed, the assets that are actually used or contributed and the risks actually assumed by the parties.

Characteristics of goods, services or intangible properties

- 5.26 The specific characteristics of goods, services or intangible properties play a significant part in determining their values in the open market. For instance, a product with better quality and more features would, all other things being equal, fetch a higher selling price. In other words, product or service differentiation affects the price or value of the product or service.
- 5.27 The nature and features of goods, intangible properties or services transacted between related parties and those between independent parties must be examined carefully. Similarities and differences should be identified as these would influence their value.
- 5.28 Important characteristics to be examined include:

Nature of transaction	Possible comparisons
Transfer of goods	• Physical features • Quality and reliability • Availability and volume of supply
Provision of services	Nature and extent of the services
Intangible properties	• Form of transaction • Type and nature of the intangible property • Duration and extent of rights provided by the intangible property

Nature of transaction	Possible comparisons
	Anticipated benefits from the use of the intangible property

5.29 If the comparable uncontrolled price (“CUP”) method is chosen as the most appropriate transfer pricing method (see Step 2 below), ensuring similarities in the actual characteristics of the product, intangible or service would be the most critical when conducting a comparability analysis.

5.30 On the other hand, comparisons of profit margins (as used in transfer pricing methods other than CUP) may be less sensitive to the characteristics of the product or service in question. This is because the margins generally correlate more significantly with the functions performed, assets used and risks assumed by the taxpayer.

Functional analysis on Functions performed, Assets used and Risks assumed (“FAR”)

5.31 In transactions between two independent parties, compensation will usually reflect the functions that each enterprise performs, taking into account assets used and risks assumed. The same principle applies to transactions between related parties. Hence, a crucial step in comparability analysis is to conduct a “functional analysis” to delineate the related party transaction and determine comparability between the related party transaction and the independent party transactions.

5.32 A functional analysis seeks to identify the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transactions.

5.33 The analysis focuses on what the parties actually do and the capabilities they provide. Such activities and capabilities will include decision-making. For example, decisions about business strategy and risks.

5.34 The analysis also considers the type of assets used (such as plant and equipment, valuable intangibles, financial assets, etc.) and the nature of the assets used (such as the age, market value, location, property right protections available, etc.)

5.35 Identifying risks goes hand in hand with identifying functions and assets. Risks are the effect of uncertainty on the objectives of the business. The actual assumption of risks by a taxpayer to a transaction can significantly affect the pricing of that transaction at arm’s length. Thus, when analysing risks, taxpayers should observe:

- (a) The effect of the risks assumed may not be apparent in the financial statements. This does not mean that the risks do not exist but it

can be that the risks have been effectively managed. Therefore, taxpayer should conduct thorough functional analysis to determine what risks have been assumed, what functions are performed that relate to or affect the assumption or impact of these risks and which party or parties to the transaction assume these risks.

- (b) The pricing of the actual transaction should take into account the financial and other consequences of risk assumption and the remuneration for risk management.⁶ A taxpayer who assumes a risk is entitled to the upside benefits and incurs the downside costs. A taxpayer who assumes and mitigates the risk will be entitled to a greater remuneration than a taxpayer who only assumes or only mitigates the risk and does not do both.
- (c) To assume a risk for transfer pricing purposes, the taxpayer needs to control the risk and has the financial capacity to assume the risk.

Examples:

- If taxpayer claims that it assumes credit risk when customers default on payments, it would need to demonstrate that it has:
 - The financial capacity to assume the risk (such as availability of credit lines from banks),
 - The capability and authority to decide to take on, lay off or decline the risk (such as whether or not to sell the product to the customer or whether or not to sell on credit to customer), and
 - The capability and authority to decide whether and how to respond to the risk (such as taking legal action to recover the debt).

Taxpayer may outsource its day-to-day mitigation activities, such as credit risk analysis. However, it has to demonstrate that it has the capability to determine the objective of outsourcing the credit risk analysis, who it wants to hire to perform the credit risk analysis, etc.

- If taxpayer claims that it assumes inventory obsolescence risk, it would need to demonstrate that it has:
 - The financial capacity to assume the risk,

⁶ Chapter I of the OECD TPG provides guidance on risks and defines risk management as comprises:

- (i) The capability to make decisions to take on, lay off, or decline a risk-bearing opportunity, together with the actual performance of that decision-making function,
- (ii) The capability to make decisions on whether and how to respond to the risks associated with the opportunity, together with the actual performance of that decision-making function, and
- (iii) The capability to mitigate risk, that is the capability to take measures that affect risk outcomes, together with the actual performance of such risk mitigation.

- The capability and authority to decide to take on, lay off or decline the risk (such as whether or not to sell a slow moving product), and
- The capability and authority to decide whether and how to respond to the risk (such as conducting marketing campaign to boost ailing sales or employing a diversification strategy).

5.36 Theoretically, the level of return derived by a taxpayer should be directly correlated to the FAR. For instance, a taxpayer selling a product with warranty should earn a higher return compared to another taxpayer selling the same product without the warranty. The difference in margin is due to the additional function performed and risk assumed by the first taxpayer. Likewise, a product with a reputable branding is expected to fetch a higher return compared to that of a similar product without the branding. This is due to the additional asset (in this case, trademark) employed in enhancing the value of the product.

5.37 The example below illustrates that arm's length compensation should reflect the outcome of a functional analysis.

Example:

- Company A is in the business of distributing general household electrical products in the Asia Pacific ("APAC") region. Company A purchases these products from its parent company.
- Company A conducted a thorough functional analysis which revealed:

FAR	Details
Functions	Besides distributing the products in the APAC region, Company A undertakes certain functions for the APAC region which include: • Setting and managing all marketing strategies and campaigns • Conducting market intelligence • Analysing consumer demand and the actions of its competitors • Determining volume to be sold • Setting prices for the products to be sold • Conducting credit analysis of customers
Assets	Company A owns and operates a warehouse to store the products. To ensure orders are processed quickly and to control the inventory level of slow moving products, Company A utilises a self-developed automated inventory management

FAR	Details
	system to track and process inventories and shipping orders for the APAC region.
Risks	Company A demonstrated that it assumes credit risk and inventory obsolescence risk as in the examples in paragraph 5.35(c).

- The arm's length remuneration for Company A should reflect the distribution function as well as the above functions performed, assets used and risks assumed. The level of remuneration for Company A would be higher compared to another company, Company B, that merely distributes products while the above functions, assets and risks remained with Company B's parent company.

Commercial and economic circumstances

- 5.38 Comparability analysis should take into account the commercial and economic circumstances in which the related and independent parties operate.
- 5.39 Prices may vary across different markets even for transactions involving the same property or services. In order to make meaningful comparisons between related party transactions and independent party transactions with regard to their prices or margins, the markets and economic circumstances in which the parties operate or where the transactions are undertaken should be comparable. Such comparisons include:

Circumstances	Possible comparisons
Economic circumstances	• Availability of substitute goods or services • Geographic location • Market size • Extent of competition in the markets • Consumer purchasing power • Level of the market at which the taxpayers operate (for example, wholesale or retail)
Government policies and regulations	• Price controls • National insurance
Business strategies	• Innovation and new product development • Degree of diversification

Circumstances	Possible comparisons
	• Risk aversion • Assessment of political changes • Duration of arrangements • Other factors bearing upon the daily conduct of business

Comparing actual related party transaction with independent party transactions

- 5.40 The economically relevant characteristics of the actual related party transaction have to be compared with those of independent party transactions in order to determine an arm's length price for the related party transaction.
- 5.41 When making the comparison, these other aspects of comparability analysis are relevant:
- (a) Evaluating transactions on a separate or aggregate basis;
 - (b) Using multiple year data;
 - (c) Considering losses; and
 - (d) Selecting comparables.

Evaluating transactions on a separate or aggregate basis

- 5.42 Generally, the arm's length principle should be applied on a transaction-by-transaction basis to obtain the most precise approximation of arm's length conditions.
- 5.43 However, where individual transactions are highly inter-related and it can be demonstrated that independent parties in comparable circumstances would typically price the individual transactions on an aggregate basis, taxpayers may consider evaluating the transactions on an aggregate basis.

Using multiple year data

- 5.44 To enhance the reliability of the comparability analysis, taxpayers should examine multiple year data as opposed to single year data. Multiple year data helps to identify factors that may have influenced or should have influenced transfer prices, such as long term arrangements and business or product life cycles.

Considering losses

- 5.45 Generally, businesses exist with the objective to generate profits. Therefore, a taxpayer transacting with a related party at a loss indicates that the taxpayer may not be compensated at arm's length.
- 5.46 Similar to independent parties, a taxpayer transacting with a related party may sustain genuine losses for various reasons such as heavy start-up costs, unfavourable economic conditions, inefficiencies, market penetration business strategy, etc. If so, the claim should be supported with evidence that an independent party would likewise incur losses for a similar period under similar commercial and economic circumstances.

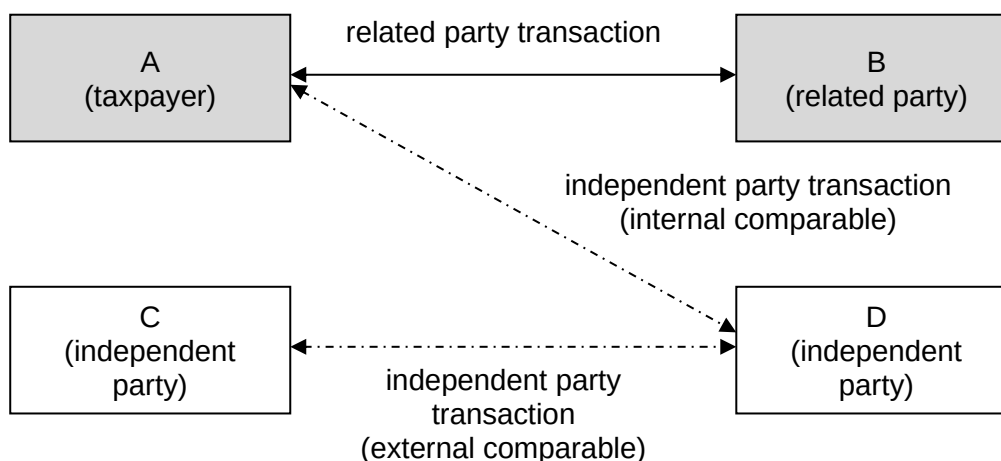
Selecting comparables

- 5.47 A sound comparability analysis requires the selection of reliable comparables. Generally, this is performed prior to or at the time of the related party transactions. These could be either internal or external comparables:

Comparables	Characteristics
Internal	Price or margin in a comparable transaction between one party which is a party to the related party transaction and an independent party.
External	Price or margin in a comparable transaction between two independent parties, neither of which is a party to the related party transaction.

The diagram below illustrates internal and external comparables:

Comparable circumstances



- 5.48 Generally, internal comparables may have a more direct and closer relationship to the transaction under review compared to external comparables. Hence, they are preferred because the financial analysis would typically be based on similar accounting standards and information on the comparable transactions would be readily available and more reliable.
- 5.49 Internal comparables may not always be more comparable than external comparables. For example, a taxpayer may sell a significant volume of products to its foreign related party and a much smaller volume to an independent party. The difference in sales volumes is likely to materially affect the comparability of the two transactions. In this case, it may be necessary to search for external comparables that are more comparable.
- 5.50 When selecting external comparables, taxpayers should consider the following:

(a) Commercial databases

IRAS does not have a preference for any particular commercial database as long as it provides a reliable source of information that assists taxpayers in performing comparability analysis. Whichever database the taxpayer chooses, transfer pricing documentation (refer to section 6) should be maintained to demonstrate the results of its comparability analysis.

(b) Comparables with publicly available information

Taxpayers should only use comparables with publicly available information. Such information can be readily obtained from various sources and verified, making the analyses of these comparables more reliable compared to those based on privately held information.

Between a company that is listed on a stock exchange and one that is not listed, IRAS prefers the former as a comparable because there is generally more information available in the public domain compared to the latter.

(c) Non-local comparables

As far as possible, taxpayers should use local comparables in their comparability analysis. Generally, these comparables have a higher degree of comparability in terms of their market and economic circumstances compared to non-local comparables. When taxpayers are unable to find sufficiently reliable local comparables, they may expand their search to regional comparables.

(d) Loss-generating comparables

In conducting their comparability analysis, taxpayers may come across independent parties which have sustained losses over a period of time. If other independent parties have generated profits for a similar period under similar commercial and economic circumstances, the question arises whether the transactions of the loss-making parties are truly reflective of normal business conditions. The persistently loss-making independent parties are therefore likely to be less reliable comparables. Under such circumstances, taxpayers should exclude as comparables independent parties with the following financial results:

- Weighted average loss for the tested period; or
- Loss incurred for more than half of the tested period.

5.51 Where there are differences between the economically relevant characteristics of the actual related party transaction and independent party transactions, it is important to consider whether there is comparability between the transactions and what adjustments may be necessary to achieve comparability.

Desired outcome of Step 1

5.52 The aim of the comparability analysis is a comprehensive assessment and identification of significant similarities and differences (such as product characteristics, functions performed, etc.) between the taxpayers or transactions in question and those entities or transactions to be benchmarked against.

5.53 Where reasonably accurate adjustments could be made for material differences identified, the method of making or computing such adjustments should be documented.

5.54 A thorough understanding of the level of comparability is necessary in deciding the choice of transfer pricing method and tested party (see Step 2 below).

Step 2 – Identify the most appropriate transfer pricing method and tested party

5.55 There are five internationally accepted methods for evaluating a taxpayer's transfer prices or margins against a benchmark based on the prices or margins adopted by independent parties in similar transactions.

5.56 These five methods can be categorised as follows:

Traditional transaction methods	Transactional profits methods
• CUP method • Resale price method • Cost plus method	• Transactional profit split method • Transactional net margin method ("TNMM")

5.57 Traditional transaction methods compare the price of related party transactions with that of transactions between independent parties. On the other hand, transactional profits methods compare the profit arising from related party transactions with that generated in independent party transactions.

CUP method

5.58 The CUP method compares the following two prices:

- (a) The price charged for properties or services transferred in a related party transaction; and
- (b) The price charged for properties or services transferred in an independent party transaction in comparable circumstances.

5.59 A difference between the two prices above may suggest that the related parties are not dealing at arm's length. Therefore, the price in the related party transaction may need to be substituted with the price in the independent party transaction.

5.60 The price or value of a property or service is very sensitive to differing characteristics, functions performed and market conditions, etc. Hence, the CUP method is reliable only if:

- (a) There is high level of comparability between the related party transaction and the independent party transaction; or
- (b) Reasonably accurate adjustments can be made to eliminate the effects of material differences.

5.61 As the CUP method is the most direct way to determine arm's length price, it should generally be preferred to the other methods. However, a less direct method is necessary if comparable independent party transactions cannot be found or where reasonably accurate adjustments for differences in comparability cannot be made.

5.62 The CUP method is most suitable to evaluate transactions involving products with very similar characteristics (in terms of type, physical

features, quality and quantity transacted, etc.) and undertaken in similar market or economic conditions, such as widely traded commodities. As there should not be much product differentiation for the use of the CUP method, similarities in product characteristics and market or economic conditions are much more significant considerations than the FAR of the taxpayers in determining the suitability of the CUP method.

- 5.63 Taxpayers should rely on internal comparables as far as possible. External comparables may be used if no reliable internal comparable transactions exist. Example 1 and Example 2 in Annex A illustrate the use of an “internal CUP” and an “external CUP” respectively.

Resale price method

- 5.64 The resale price method is applied where a product that has been purchased from a related party is resold to an independent party. Essentially, it values the functions performed by the “reseller” of a product.
- 5.65 In this method, the resale price to the independent party is reduced by a comparable gross margin (the “resale price margin”) to arrive at the arm’s length price of the product transferred between the related parties.
- 5.66 Under arm’s length conditions, the resale price margin should allow the reseller to recover its selling and operating costs, and earn a reasonable profit based on its FAR.
- 5.67 As gross profit margins represent the gross compensation (after cost of sales) for specific FAR, product differences are less critical than under the CUP method. Therefore, where the related and independent party transactions are comparable in all aspects except the product, the resale price method may be more reliable than the CUP method. Nonetheless, the more comparable the products, the more likely the resale price method will produce better results.
- 5.68 If there are material differences that affect the resale price margin earned in the related and independent party transactions, adjustments should be made to eliminate the effects of those differences.
- 5.69 The resale price method is most appropriate where the reseller adds relatively little value to the properties. The more value the reseller adds to the properties (for example, via complicated processing or assembly with other products), the harder it is to apply the resale price method. This is especially so where the reseller contributes significantly to creating or maintaining intangible properties, such as trademarks or trade names, in its activities.
- 5.70 Taxpayers should rely on internal comparables as far as possible. External comparables may be used if no reliable internal comparable

transactions exist. Example 3 in Annex A illustrates the use of the resale price method.

Cost plus method

- 5.71 The cost plus method focuses on the gross mark up obtained by a supplier for property transferred or services provided to a related purchaser. Essentially, it values the functions performed by the supplier of the property or services.
- 5.72 In this method, a comparable gross mark up is added to the costs of the supplier of goods or services ("cost base") in the related party transaction to arrive at the arm's length price of that transaction.
- 5.73 Similar to the resale price method, fewer adjustments may be necessary to account for product differences compared to the CUP method. It may be appropriate to focus on other factors of comparability, such as the FAR and economic circumstances of the tested party and the comparable entities.
- 5.74 Applying the cost plus method requires the comparability of the gross mark up and cost base in the related and independent party transactions. If the related and independent party transactions are not comparable in all aspects and the differences have a material effect on the price or margin, adjustments should be made to eliminate the effects of those differences.
- 5.75 Generally, costs can be classified as follows:

Type of cost	Examples
Direct costs	• Cost of raw materials • Cost of labour
Indirect costs	• Depreciation • Repair and maintenance which may be allocated among several products
Operating expenses	• Marketing • General and administrative

In applying the cost plus method, direct and indirect costs of producing a good or providing a service are normally used to compute the cost base. Such costs are limited to the costs of the supplier of goods or services and should take into account an analysis of the supplier's FAR. The methods of determining the cost base should be consistent over time.

- 5.76 If the supplier of goods or services is the tested party and is a taxpayer in Singapore, the cost base should be determined according to the Singapore Financial Reporting Standards. Where necessary, adjustments will be made to ensure the cost base is arm's length. This means that the cost base may include cost not reflected in the tested party's accounts.

Example:

- Company A provides services to its related party, Company B.
 - Company B bore certain cost of \$100,000 for the benefit of Company A and related to the services provided by A.
 - Company B did not allocate the \$100,000 to Company A.
 - Based on an analysis of FAR of Company A and Company B, the \$100,000 should be allocated to Company A.
 - In determining the cost base for the services provided to Company B, the cost base will be adjusted to include the \$100,000 even though this amount has not been allocated to Company A and is not reflected in its accounts.
- 5.77 Where the independent party adopts a definition of cost base or a method to compute cost that is different from that of the related party, the cost base of the independent party should be adjusted accordingly to ensure comparability.
- 5.78 The cost plus method is most useful where semi-finished goods are sold between related parties or where the related party transaction involves the provision of services.
- 5.79 Taxpayers should rely on internal comparables as far as possible. External comparables may be used if no reliable internal comparable transactions exist. Example 4 in Annex A illustrates the use of the cost plus method.

Transactional profit split method

- 5.80 The transactional profit split method is based on the concept of splitting the combined profits of a transaction between related parties in a similar way as how independent parties would under comparable circumstances. It is particularly useful in the following situations where:
- (a) The parties' contributions to the transactions and their interaction are highly inter-related and integrated. A high degree of integration means that the way in which one party to the transaction performs functions, uses assets and assumes risks is interlinked with, and cannot be reliably evaluated in isolation from the way in which another party to the transaction performs functions, uses assets and assumes risks. If the contribution of at least one party to the transaction can be reliably evaluated by reference to other transfer

pricing methods, the use of transactional profit split method would not be appropriate.

- (b) The parties make unique and valuable contributions to the transaction. Contributions are “unique and valuable” where they are not comparable to contributions made by independent parties in comparable circumstances, and they represent a key source of actual or potential economic benefits in the business operations.
- (c) The existence of unique intangible assets makes it difficult to find reliable comparables.
- (d) Each party shares the assumption of one or more of the economically significant risks in relation to that transaction or the parties assume the economically significant risks separately but those risks are so closely inter-related or correlated that the playing out of the risks of each party cannot reliably be evaluated separately.

5.81 It is important to note that a lack of comparables alone is insufficient to warrant the use of a transactional profit split method. For example, a lack of comparable independent transactions to benchmark an arm’s length return for a party performing the less complex functions should not lead to a conclusion that the transactional profit split method is the most appropriate method. The application of transactional profit split method in such situation would likely bring about a non-arm’s length outcome for the functions performed.

5.82 Generally, the profit to be split is the operating profit, although occasionally, it may be appropriate to carry out a split of the gross profit and then deduct the expenses incurred by or attributable to each relevant party.

5.83 Generally, there are two approaches to applying the transactional profit split method:

- (a) Residual analysis approach; and
- (b) Contribution analysis approach.

Residual analysis approach

5.84 This approach splits the total profit in two stages:

(a) Stage 1: Determining the return for routine contributions

- Each party is allocated an arm’s length remuneration for routine contributions. This is determined using comparable data for the readily identifiable functions (such as

manufacturing, distribution, service provision, etc.) and applying one of the transfer pricing methods.

- This remuneration would generally not account for the return that would be generated by any unique and valuable contributions by the parties.

(b) Stage 2: Dividing the residual profit

- The residual profit (i.e. profit remaining after return for routine contributions in Stage 1 which is attributable to unique and valuable contributions) is then allocated between the parties based on the relative unique contributions of the parties. The contributions are identified by taking into account the FAR of each party, and valuing them as far as possible by reference to independent market data.
- The above allocation takes into consideration how independent parties would have divided such residual profit in similar circumstances.

Contribution analysis approach

- 5.85 Under this approach, the total profit earned by the parties from a related party transaction is divided based on the parties' relative contributions to the earning of that profit. This division can be supported by comparable data if available.
- 5.86 Unlike the residual analysis approach, arm's length remuneration for readily identifiable functions is not allocated to each of the parties before the transactional profit split is made.
- 5.87 Between the two approaches above, IRAS recommends that taxpayers use the residual analysis approach for the following reasons:
- (a) The relative value of the contribution of each party is often more difficult to quantify when one attempts to divide the total profit directly; and
 - (b) The use of comparable data to allocate part of the total profit in the first stage of the residual analysis approach will generally improve the reliability of the transactional profit split method.

Allocation keys (or profit splitting factors)

- 5.88 The division of residual profit in the second stage of the residual analysis approach or total profit under the contribution analysis approach is generally achieved by using one or more allocation keys.

- 5.89 The choice of allocation key(s) depends on the facts and circumstances of the transaction in question. The chosen allocation key(s) should have a strong correlation with the creation of value in the related party transaction.
- 5.90 Example 5 in Annex A illustrates the use of the transactional profit split method (residual analysis approach).

TNMM

- 5.91 The TNMM compares the net profit relative to an appropriate base (such as costs, sales or assets) that is attained by a taxpayer from a related party transaction to that of comparable independent parties. This ratio of net profit and the appropriate base is commonly known as the net profit indicator or profit level indicator.
- 5.92 Like the resale price and cost plus methods, the TNMM is typically applied to only one of the parties involved in the transaction. This similarity means that the TNMM requires a level of comparability in relation to the tested party and the comparable entities that is similar to the two traditional transaction methods.
- 5.93 The main difference between the TNMM and the resale price or cost plus method is that the former focuses on the net margin instead of the gross margin of a transaction.
- 5.94 One of the weaknesses of using net margin as the basis for comparison is that it can be influenced by many factors that either do not have an effect, or have a less substantial or direct effect, on price or gross margins. Examples of such factors include the efficiency of plant and machinery used, management and personnel capabilities, competitive position, etc.
- 5.95 Unless reliable and accurate adjustments can be made to account for these differences, the TNMM may not produce reliable measures of the arm's length net margins.

Choice of net profit indicator or profit level indicator

- 5.96 This depends on the facts and circumstances of the transaction in question. Factors to consider include:
- (a) Strengths and weaknesses of the various possible indicators;
 - (b) Nature of the transaction and the appropriateness of the indicator applied to the transaction;
 - (c) Availability of reliable information needed to apply the TNMM and compute the indicator; and

- (d) Degree of comparability between the related and independent party transactions, and the accuracy with which comparability adjustments can be made to eliminate differences.

5.97 Examples of net profit indicators or profit level indicators that may be used in applying the TNMM are as follows:

Net profit/ Profit level indicator	Numerator	Denominator
Operating profit margin	Operating profit	Sales
Full cost mark up	Operating profit	Total costs including all direct, indirect and operating costs
Value-added cost mark up (see paragraph 5.102)	Operating profit	Operating costs
Return on asset	Operating profit	Operating assets

5.98 In determining the numerator and denominator, taxpayers should bear the following principles in mind:

- (a) Only those items that are directly or indirectly related to the transaction in question, and are of an operating nature should be taken into account; and
- (b) Items that are not similar to the independent party transaction being compared should be excluded.

Berry ratio

5.99 Besides the indicators mentioned in paragraph 5.97, the Berry ratio is sometimes used as an alternative financial indicator to compare the profitability attained by a taxpayer in a related party transaction to that of an independent party transaction. It is defined as the ratio of gross profit to operating expenses. Essentially, the Berry ratio relies on the presumption that the value of the functions performed is proportional to the operating expenses and not to sales.

5.100 Generally, the Berry ratio is sensitive to how costs are classified, whether as operating expenses or not. Using it without caution can result in comparability issues. Therefore, it should only be used in limited cases. For example, the Berry ratio may be used when all of the following circumstances in a particular transaction are present:

- (a) The taxpayer acts as an intermediary purchasing goods from related parties and on-selling them to other related parties;
- (b) The taxpayer does not perform any value-added functions other than distribution relating to the products distributed. An example of such value-added functions is manufacturing;
- (c) The value of the functions performed by the taxpayer is not affected by the value of products distributed, e.g. accounting and billing functions;
- (d) There is a direct link between operating expenses and gross profits; and
- (e) The taxpayer does not employ any intangibles in the particular transaction.

5.101 Where the taxpayer's costs of goods sold are a key driver of its profitability and it has the ability to influence those costs (for example, through freight planning, scheduling and logistics functions or through modifying, altering or bringing the goods to the market), the Berry ratio becomes unreliable as a financial indicator.

Value-added cost mark up

5.102 Like Berry ratio, value-added cost mark-up relies on the presumption that the value of the functions performed is proportional to the operating expenses and not to sales. Thus, the considerations for applying the value-added cost mark-up as profit level indicator will be the same as those for the Berry ratio.

5.103 Example 6 in Annex A illustrates the use of the TNMM.

Choice of the most appropriate transfer pricing method

5.104 Generally, the traditional transaction methods provide for a more direct comparison with independent party transactions. Hence, they would be preferred to transactional profit methods. Ultimately, the choice of the most appropriate transfer pricing method depends on the facts and circumstances of each case. Taxpayers can consider the following:

- (a) Strengths and weaknesses of the five methods above;
- (b) Nature of the transaction and appropriateness of the method applied to the transaction;
- (c) Availability of reliable information needed to apply the method; and

- (d) Degree of comparability between the related and independent party transactions, and the accuracy with which comparability adjustments can be made to eliminate differences. As a rule of thumb, the method that requires the least adjustments will produce the most reliable measure of the arm's length price.

5.105 IRAS does not have a specific preference for any one method. Instead, the method that produces the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments, should be selected.

5.106 Taxpayers may also choose other more appropriate methods or use a combination of various methods to comply with the arm's length principle. Whichever method the taxpayer chooses, transfer pricing documentation (refer to section 6) should be maintained to demonstrate that its transfer prices are established in accordance with the arm's length principle.

Choice of the tested party

5.107 The use of resale price method, cost plus method or TNMM requires a decision on which party to apply the transfer pricing analysis. This party is known as the tested party. Generally, the tested party is the one where:

- (a) A transfer pricing method can be applied in the most reliable manner; and
- (b) Most reliable comparables can be found.

5.108 The party with the smaller scope of functions and less complex operations should be used as the tested party. This is because it would be easier to find more comparable data. The choice of such a party as the tested party would also likely result in the need for fewer comparability adjustments and hence, greater accuracy in the adjustments made.

Desired outcome of Step 2

5.109 At the end of Step 2, the transfer pricing method and tested party that produce the most reliable results should be identified for the arm's length analysis.

Step 3 – Determine the arm's length results

5.110 Once the appropriate transfer pricing method has been identified, the method is applied on the data of comparable independent party transaction(s) to arrive at the arm's length result.

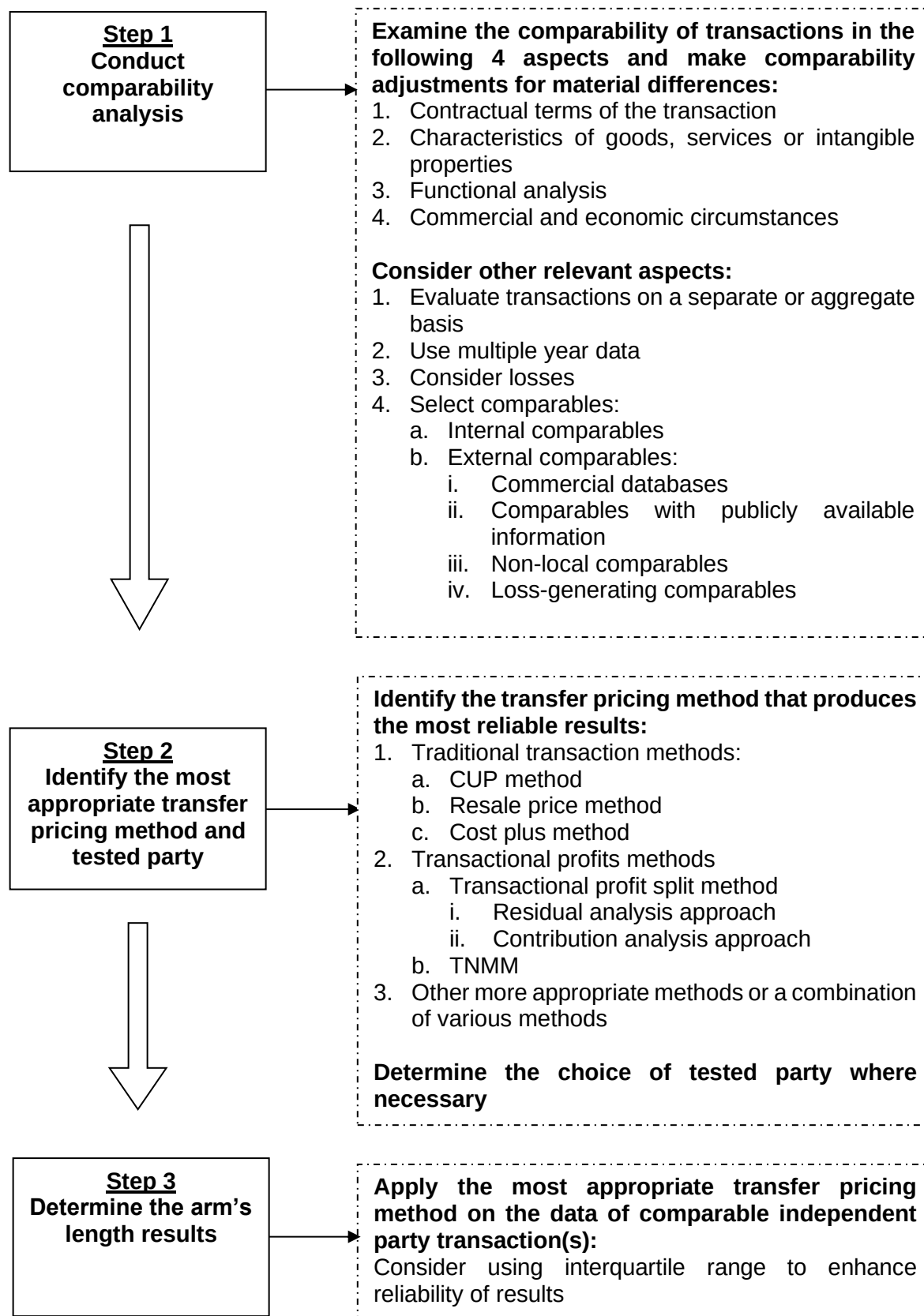
Use of an arm's length range

- 5.111 As transfer pricing is not an exact science, it is generally difficult to arrive at a specific price or margin that is the arm's length price or margin. More likely, the transfer pricing analysis would lead to a range of prices or margins.
- 5.112 A wide range of prices or margins may suggest the existence of comparability issues or defects that cannot be identified and/ or quantified in the comparability analysis and are therefore not adjusted. In such a situation, outliers such as the minimum and maximum data points should be excluded. To enhance the reliability of the comparability analysis, taxpayers could apply the interquartile range to determine the arm's length remuneration.
- 5.113 A full range (i.e. from minimum to maximum) may occasionally be considered as the arm's length price range when all the points in the range can be established to be equally reliable. An example of such a circumstance is where the taxpayer has applied the CUP method and demonstrated that all observations in the full range are equally reliable.

Desired outcome of Step 3

- 5.114 At the end of Step 3, the arm's length results would be determined. These results should then be used to guide or justify taxpayers' transfer pricing for their related party transactions.
- 5.115 Testing is the act of validating the price adopted for the related party transactions with the arm's length results obtained at the end of Step 3. Testing will enable adjustments to the price of related party transactions to be made so as to bring the price to be within the arm's length results.
- 5.116 Taxpayers should test their related party transactions annually against the arm's length results and make appropriate year-end adjustments at year-end closing of accounts (see section 13).
- 5.117 In exceptional circumstances, IRAS may consider the testing of related party transactions over a multiple-year period. An example of such a circumstance is where the transaction life cycle spans more than a year and so an annual testing may result in very volatile results. Taxpayers should consult IRAS before testing related party transactions over a multiple-year period.
- 5.118 The following flowchart summarises the application of the three-step approach to apply the arm's length principle:

Application of three-step approach to apply arm's length principle



Frequently asked questions

5.119 **When should I make working capital adjustment and which interest rate should I use when making such adjustment?**

Working capital adjustment is a type of comparability adjustment to account for differences in levels of working capital between a tested party and comparable independent parties. Generally trade receivables, inventory and trade payables are the three accounts considered.

You may make working capital adjustment when applying TNMM, although it may also be applicable in resale price or cost plus methods. You only need to make working capital adjustment when it improves the reliability of the comparables and it can be made reasonably accurately. You can refer to the Annex to Chapter III of the OECD TPG for guidance on making working capital adjustment.

You should determine the interest rate to use for making working capital by reference to the interest rate applicable to a commercial enterprise operating in the same market as the tested party. In most cases a commercial loan rate will be appropriate. Depending on the facts and circumstances of your situation, here are some examples of interest rate you may use:

- Interest rate actually incurred by the tested party.
- Interest rates from banks, bond yields, industrial yield curves or International Monetary Fund where appropriate.
- Interest rate based on an appropriate base reference rate plus a margin. If you have adopted the IRAS indicative margin to derive the interest rates for your related party loans, you may use such interest rates. (See guidance in section 15.)

If you are not certain if the interest rate that you have selected is one that is applicable to a commercial enterprise operating in the same market as the tested party, you may consider testing the selected rate against the tested party's actual cost of funding.

6 Transfer pricing documentation

Introduction

- 6.1 Taxpayers should prepare and keep records to show that the pricing of their transactions with their related parties is arm's length. Such records are referred to as transfer pricing documentation ("TP documentation").
- 6.2 With effect from the year of assessment ("YA") 2019, taxpayers which meet certain conditions are required to prepare TP documentation under Section 34F of the ITA consistent with the rules prescribed by the Income Tax (Transfer Pricing Documentation) Rules 2018 ("TP Documentation Rules").
- 6.3 This section provides taxpayers with guidance on preparing TP documentation according to the TP Documentation Rules.
- 6.4 To better manage transfer pricing risk, taxpayers which do not have to prepare TP documentation under Section 34F of the ITA are nonetheless encouraged to do so using the TP Documentation Rules and the information in this section as a guide.

At a glance – TP documentation requirements

- 6.5 Table 1 below summarises the requirements for preparing TP documentation under Section 34F of ITA:

Table 1: Summary of TP documentation requirements

Scope	TP documentation requirement
When it takes effect	From YA 2019
Who must prepare	Taxpayers who meet either of the following conditions must prepare TP documentation for their related party transactions undertaken in a basis period: - Gross revenue derived from their trade or business is more than \$10 million for that basis period ⁷; or - TP documentation is required to be prepared for the previous basis period.
What to prepare	The details are prescribed in the TP Documentation Rules.

⁷ Unless specifically mentioned, basis period and financial year are used interchangeably in this section.

Scope	TP documentation requirement
Exemption from preparing	The exemptions from preparing TP documentation are prescribed in the TP Documentation Rules
When to prepare	Not later than the filing due date of the tax return
When to submit	Within 30 days from a request by IRAS to submit the TP documentation to IRAS
When to refresh TP documentation	As long as the details in the TP documentation remain accurate, taxpayers may refresh their TP documentation once every three years. (See guidance on qualifying past TP documentation.)
How long to retain TP documentation	At least 5 years from the end of the basis period in which the transaction took place
Penalty for non-compliance	A fine not exceeding \$10,000 (refer to section 9)

Objectives of preparing TP documentation

6.6 By preparing TP documentation, taxpayers will achieve the following objectives:

- (a) They have conducted a thorough evaluation of their compliance with the transfer pricing rules before or at the time of filing their tax returns;
- (b) They can readily demonstrate that their transfer prices are determined in accordance with the arm's length principle to manage domestic and cross-border transfer pricing risks;
- (c) They are able to defend their transfer prices in the event of a transfer pricing audit by the tax authorities;
- (d) They help tax authorities to resolve transfer pricing issues under the Mutual Agreement Procedure ("MAP");
- (e) They facilitate tax authorities in the discussion and conclusion of Advance Pricing Arrangement ("APA") Agreements; and
- (f) They can avoid penalties for non-compliance.

Contemporaneous TP documentation

- 6.7 TP documentation should be prepared on a contemporaneous basis. This means that the documentation and information relied on by taxpayers to determine the transfer price should exist at the time of the transactions. In other words, contemporaneous TP documentation is not based on hindsight.
- 6.8 In preparing contemporaneous TP documentation, a taxpayer must use the latest available information and data to establish its transfer pricing.

Example:

Company A's financial year end	: 31 December 2020
Latest available set of comparable data used to set prices for the financial year ended 31 December 2020	: Data for 2018
Date on which tax return for YA 2021 is filed	: 30 November 2021
Availability of data for 2020	: 3 months after 30 November 2021

In May 2022, IRAS requests Company A to submit the TP documentation in relation to YA 2021. The TP documentation using the 2018 comparable data is acceptable for the purpose of supporting the transfer prices for the transactions in the financial year ended 31 December 2020. This is notwithstanding that 2020 comparable data has become available in May 2022.

- 6.9 IRAS will also accept TP documentation as contemporaneous when it has been prepared not later than the time for the making of the tax return (i.e. the filing due date) for the YA corresponding to the financial year in which the transaction takes place.

Example 1:

Using the same example in paragraph 6.8, for the subsequent financial year ending 31 December 2021, Company A can update its existing benchmarking study and complete its TP documentation not later than the filing due date for the YA 2022 tax return even though such documentation should ideally be done before the start of the financial year, i.e. prior to 1 January 2021.

Example 2:

- The facts are the same as the example in paragraph 6.8 except that Company A filed the tax return for YA 2021 on 30 September 2021 instead of 30 November 2021.
- The filing due date for a company's tax return for YA 2021 is 30 November 2021.

- Notwithstanding that the tax return was filed earlier, taxpayer has up to 30 November 2021 to complete its TP documentation for the financial year ended 31 December 2020. If applicable, taxpayer has to submit a revised tax computation for YA 2021 to reflect the arm's length results determined in the TP documentation.

TP documentation requirements under Section 34F of ITA

6.10 Unless exemption from TP documentation for specified transactions applies, taxpayers must prepare TP documentation for their related party transactions undertaken in a basis period (referred to in this section as the "basis period concerned") when either of these two conditions is met:

Condition (a): The gross revenue from their trade or business for the basis period concerned is more than S\$10 million.

Condition (b): They were required to prepare TP documentation under Section 34F of the ITA for the basis period immediately before the basis period concerned. In other words, taxpayers who were required to prepare TP documentation for a previous basis period, would continue to be required to do so for the subsequent basis period, and so on.

Application of Condition (a) and Condition (b)

6.11 The following example explains the application of these two conditions.

Example:

Company A receives non-routine services from its cross-border related parties and makes payments for these services in the basis period for each YA. Company A has no other transaction with its related parties. The table below shows Company A's compliance with TP documentation requirements for each YA.

YA	Gross revenue (\$\$ in million)	Service fee paid (\$\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
2018	12	3	Not applicable	Section 34F is only effective from YA 2019.
2019	9	3	No	Both conditions are not met: • Condition (a) is not met as gross revenue is less than S\$10 million. • Condition (b) does not apply as Section 34F is only effective from YA 2019.

YA	Gross revenue (S\$ in million)	Service fee paid (S\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
2020	12	3	Yes	Either of the two conditions is met: - Condition (a) is met as gross revenue is more than S\$10 million. - Condition (b) is not met as TP documentation is not required under Section 34F for the previous basis period (i.e. basis period for YA 2019).
2021	9	3	Yes	Either of the two conditions is met: - Condition (a) is not met as gross revenue is less than \$10 million. - Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2020).

6.12 Gross revenue derived from a trade or business excludes passive source income (for example, dividend income) and capital gains or losses. Thus, a taxpayer that only has passive source income will not come within the TP documentation requirements under Section 34F of the ITA. Whether or not an income is considered passive source is based on tax principles and the facts of each case.

6.13 Condition (b) is put in place to ensure that taxpayers continue to prepare TP documentation once they are required to do so under condition (a). This provides certainty to taxpayers on their compliance effort, especially when the decline in their gross revenue below S\$10 million is temporary. When a taxpayer's gross revenue is consistently below S\$10 million, it will be exempt from TP documentation (see paragraph 6.14). Furthermore, IRAS recognises that in many situations there may not be significant changes in business descriptions, functional analyses, etc. from year to year. Thus, TP documentation prepared for a transaction undertaken in a basis period may still be accurate for subsequent years (see guidance in the later paragraphs on qualifying past TP documentation).

Exemption from TP documentation when gross revenue is consistently below S\$10 million

6.14 Taxpayers are exempt from preparing TP documentation for their related party transactions undertaken in a basis period if their gross revenue is not more than S\$10 million for that basis period and immediate two

preceding basis periods and they were required to prepare TP documentation for the two preceding basis periods.

Example:

Company A receives non-routine services from its cross-border related parties and makes payments for these services in the basis period for each YA. Company A has no other transaction with its related parties. The table below shows Company A's compliance with TP documentation requirements for each YA and the application of the exemption:

YA	Gross revenue (S\$ in million)	Service fee paid (S\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
2019	12	3	Yes	Either of the two conditions is met: - Condition (a) is met as gross revenue is more than S\$10 million. - Condition (b) does not apply as Section 34F is only effective from YA 2019.
2020	9	3	Yes	Either of the two conditions is met: - Condition (a) is not met as gross revenue is less than \$10 million. - Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2019).
2021	9	3	Yes	Either of the two conditions is met: - Condition (a) is not met as gross revenue is less than \$10 million. - Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2020).
2022	9	3	No	Either of the two conditions is met: - Condition (a) is not met as gross revenue is less than \$10 million. - Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2021). Although Company A met either conditions to prepare TP

YA	Gross revenue (\$ in million)	Service fee paid (\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
				documentation for the provision of services, it is exempt from doing so as its gross revenue is not more than \$10 million for the basis period for YA 2022 and two immediate preceding basis periods (i.e. basis periods for YA 2020 and 2021).
2023	9	3	No	Both conditions are not met: • Condition (a) is not met as gross revenue is less than \$10 million. • Condition (b) is not met as TP documentation is not required under Section 34F for the previous basis period (i.e. basis period for YA 2022).

Exemption from TP documentation for specified transactions

6.15 Taxpayers meeting either condition (a) or condition (b) (see paragraph 6.10) are required to prepare TP documentation for their transactions undertaken with their related parties. Taxpayers are however exempt from preparing TP documentation for those transactions that come within the cases specified in the TP Documentation Rules. Guidance is provided in the later paragraphs in this section on the specified transactions qualifying for exemption from TP documentation.

Example 1:

Company A receives non-routine services from its cross-border related parties and makes payments for these services in the basis period for each YA. Company A has no other transaction with its related parties. The table below shows the application of the exemption:

YA	Gross revenue (\$ in million)	Service fee paid (\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
2019	12	0.9	No	Although Company A met condition (a) to prepare TP documentation for the provision of services, it is exempt from doing so as the service fee of \$0.9 million is within the \$1 million threshold for the exemption category, "Provision of service to taxpayer by a related party", in Table 2 below.

YA	Gross revenue (S\$ in million)	Service fee paid (S\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
2020	9	3	No	Company A did not meet either condition (a) or condition (b) to prepare TP documentation.

Example 2:

Company A's gross revenue is from its sale of goods to its cross-border related parties. Company A also receives non-routine services from these related parties and makes payments for these services. Company A has no other transaction with its related parties. The table below shows the application of the exemption:

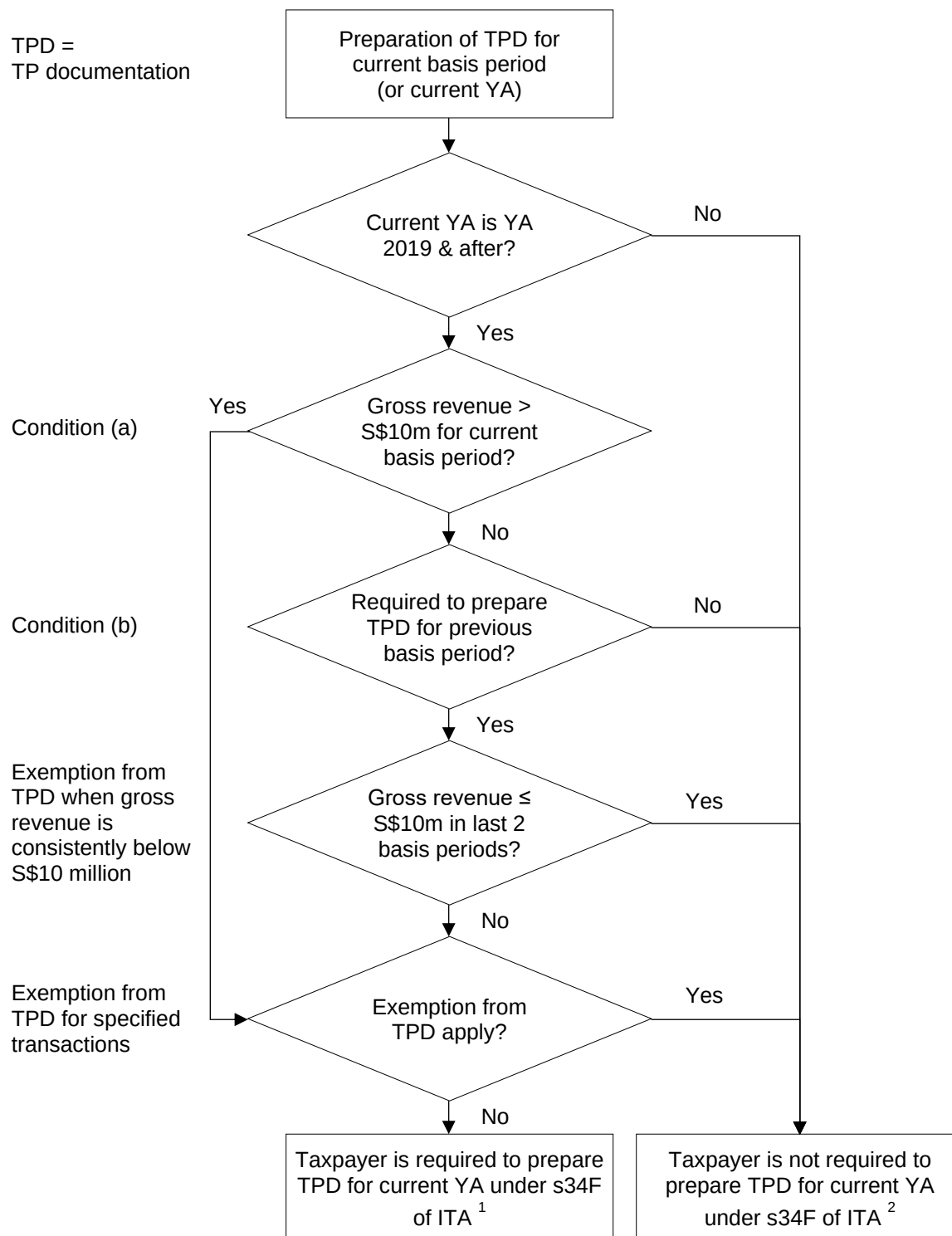
YA	Gross revenue* (S\$ in million)	Service fee paid (S\$ in million)	TP documentation under Section 34F	
			Required to prepare?	Reason (see paragraph 6.10 for conditions (a) and (b))
2019	16 * Sales to related parties	0.9	Yes (For sale of goods) No (For provision of services)	Company A met condition (a) to prepare TP documentation for the sale of goods and provision of services. The sales of \$16 million exceeds the \$15 million threshold for the exemption category, "Sales of goods by taxpayer to a related party", in Table 2 below. Thus, Company A is not exempt from preparing TP documentation for the sale of goods. The service fee of \$0.9 million is within the \$1 million threshold for the exemption category, "Provision of service to taxpayer by a related party", in Table 2 below. Thus, Company A is exempt from preparing TP documentation for the provision of services.

6.16 Appendix A of this section provides more illustrations on the TP documentation requirements.

Summary on TP documentation requirements

6.17 The flowchart here summarises taxpayers' obligations towards preparing TP documentation for their related party transactions:

TP documentation requirements under Section 34F of ITA



Note 1: Taxpayer may consider if the TP documentation prepared for the previous basis period is a qualifying past TP documentation for the purpose of supporting the transfer price in the current basis period (see guidance on qualifying past TP documentation).

Note 2: Despite the exemptions, taxpayer should decide whether TP documentation is necessary for the purpose of complying with different TP documentation rules of other tax authorities.

Specified transactions qualifying for exemption from TP documentation

6.18 Taxpayers are exempt from preparing TP documentation for the transactions undertaken with their related parties in a basis period when those transactions come within any of the cases specified in Rule 4 of the TP Documentation Rules⁸ which are summarised below:

- (a) Related party domestic transaction (other than a loan) subject to same tax rate

Taxpayer transacts with a related party in Singapore and such local transaction (excluding related party loan) is subject to the same Singapore tax rates for both parties or exempt from Singapore tax for both parties;

- (b) Related party domestic loan entered into prior to 1 January 2025

A related party domestic loan (as defined in paragraph 15.6) is provided between the taxpayer and a related party in Singapore prior to 1 January 2025 and the lender is not in the business of borrowing and lending money (as explained in paragraph 15.16);

- (c) Related party domestic loan entered into on or after 1 January 2025

A related party domestic loan (as defined in paragraph 15.6) of any amount is provided between the taxpayer and a related party in Singapore on or after 1 January 2025 where neither the lender nor the borrower is in the business of borrowing and lending money and the indicative margin is applied in accordance with the administrative practice stated in paragraphs 15.60 to 15.69 (as explained in paragraph 15.18);

- (d) Related party loan on which indicative margin is applied

Taxpayer applies the indicative margin for a related party loan not exceeding S\$15 million in accordance with the administrative practice stated in paragraphs 15.60 to 15.69;

- (e) Routine support services on which 5% cost mark-up is applied

Taxpayer applies the 5% cost mark-up for routine support services in accordance with the administrative practice stated in paragraph 14.29;

⁸ Please also refer to the TP Documentation Rules as this guidance may not be updated at the same time as any amendment to the TP Documentation Rules.

(f) Related party transaction covered by APA

The related party transaction is covered by an agreement under an APA. In such a situation, the taxpayer must keep relevant documents for the purpose of preparing the annual APA compliance report to demonstrate compliance with the terms of the agreement and the critical assumptions remain valid; or

(g) Related party transaction not exceeding certain value

The related party transaction comes within a category of transactions under column A of Table 2 below and the total value of all the related party transactions in that category in the basis period (excluding the value or amount in sub-paragraphs (a) to (f) above) does not exceed the value for that category set out in either column B or C, depending on the YA in which the transaction took place (see Illustration 4 in Appendix A).

This means that for the purpose of determining if the threshold under column B or C is met, aggregation should be done for each category of related party transactions⁹. For example, all service fee income received from related parties is to be aggregated to determine if it comes within the S\$1 million or S\$2 million threshold under column B or C respectively for the category of transactions, "Provision of service by taxpayer to a related party".

Table 2 – Threshold for exemption from TP documentation

Category of transactions (A)	Total value ¹⁰ (S\$) YA 2025 and before (B)	Total value ¹⁰ (S\$) YA 2026 and onwards (C)	Meaning of value of transaction (D)
Purchase of goods by the taxpayer ¹¹ from a related party	15 million	15 million	Amount paid or payable by the taxpayer for the goods
Sale of goods by the taxpayer to a related party	15 million	15 million	Gross revenue derived by the taxpayer from the sale

⁹ Strict pass-through costs should be included in the computation to determine if the threshold is met.

¹⁰ The value as disclosed in the financial accounts for the basis period.

¹¹ "Applicable entity" in the TP Documentation Rules is "taxpayer" in Table 2.

Category of transactions (A)	Total value ¹⁰ (S\$) YA 2025 and before (B)	Total value ¹⁰ (S\$) YA 2026 and onwards (C)	Meaning of value of transaction (D)
Loan granted by the taxpayer to a related party	15 million	15 million	Principal amount of the loan
Loan granted to the taxpayer by a related party	15 million	15 million	Principal amount of the loan
Provision of service to the taxpayer by a related party	1 million	2 million	Amount paid or payable by the taxpayer for the provision, i.e. service fee expenses
Provision of service by the taxpayer to a related party	1 million	2 million	Gross revenue derived by the taxpayer from the provision, i.e. service fee income
Grant of a right to use movable property to the taxpayer by a related party	1 million	2 million	Amount paid or payable by the taxpayer for the grant, i.e. royalty expenses
Grant of a right to use movable property by the taxpayer to a related party	1 million	2 million	Gross revenue derived by the taxpayer from the grant, i.e. royalty income
Lease of any property to the taxpayer by a related party	1 million	2 million	Amount paid or payable by the taxpayer for the lease, i.e. rental expenses
Lease of any property by the taxpayer to a related party	1 million	2 million	Gross revenue derived by the taxpayer from the lease, i.e. rental income

Category of transactions (A)	Total value ¹⁰ (S\$) YA 2025 and before (B)	Total value ¹⁰ (S\$) YA 2026 and onwards (C)	Meaning of value of transaction (D)
Grant of a guarantee to the taxpayer by a related party	1 million	2 million	Amount paid or payable by the taxpayer for the grant, i.e. guarantee expenses
Grant of a guarantee by the taxpayer to a related party	1 million	2 million	Gross revenue derived by the taxpayer from the grant, i.e. guarantee income
Any other transaction ¹²	1 million	2 million	Amount paid or payable by the taxpayer to the related party under the transaction, or gross revenue derived by the taxpayer from the related party under the transaction, as the case may be

Example:

A Singapore company ("SingCo") is a re-seller of electrical appliances. It also procures parts and components and assembles them into office equipment for sale. Its accounts for the financial year ending 31 December 2025 (i.e. YA 2026) show the following transactions:

Transactions	S\$ million
Total purchases of goods	165
Total sales of goods	190
Royalty payment to holding company in Country Y for branding of office equipment	1.5
Fees received from related companies for accounting services	6

¹² For the purpose of determining if the threshold is met, the aggregation here will be based on each category of other transactions.

Details of purchases and sales transactions are as follows:

Transactions relating to electrical appliances	S\$ million
Purchases of electrical appliances from related company in Country A (this transaction is covered by an APA agreement between the competent authorities of Country A and Singapore)	85
Purchases of electrical appliances from unrelated parties	25
Sales to a related company in Singapore subject to the same tax rate as SingCo	30
Sales to unrelated parties	90

Transactions relating to office equipment	S\$ million
Purchases of parts and components from unrelated parties	55
Sales of office equipment to a related company in Country B	70

SingCo can consider the need for TP documentation by referring to the thresholds under column C of Table 2 as follows:

(i) Resale of electrical appliances

Transactions	Whether TP documentation required?
Purchases from related company in Country A, covered by an APA agreement between Country A and Singapore	No, as the transaction is covered by an APA agreement falling within sub-paragraph (f). The threshold in Table 2 excludes such transaction. However, SingCo should keep relevant documents for preparing the annual APA compliance report. Please refer to sub-paragraph (f).
Sales to a related company in Singapore subject to the same tax rate as SingCo	No, as the transaction is a local transaction falling within sub-paragraph (a). The threshold in Table 2 excludes such local transaction.

(ii) Office equipment business

Transactions	Whether TP documentation required?
Sales of office equipment to a related company in Country B	Yes, as the transaction does not fall within sub-paragraphs (a) to (f) and the amount exceeds the threshold of S\$15 million stated in Table 2. The TP documentation at Group level and Entity level will include a description of the value chain involving the purchases of parts and components, sales of assembled office equipment and payment of brand royalty.
Royalty payment to holding company in Country Y for branding of office equipment	No. Even though the transaction does not fall within sub-paragraphs (a) to (f), the amount of royalty does not exceed the threshold of S\$2 million stated in Table 2.

(iii) Fees received

Transactions	Whether TP documentation required?
Fees received from related companies for accounting services	No, if SingCo applies the 5% cost mark-up for routine support services in accordance with the administrative practice stated in paragraph 14.29 and therefore, falling within sub-paragraph (e). The threshold in Table 2 excludes such transaction. However, SingCo should keep the usual business records to ascertain the service fee income and allowable deductions for the expenses incurred in producing the service fee income.

Information in TP documentation

6.19 TP documentation is based on a three-tiered structure consisting of:

- (a) Documentation at Group level
At this level, the documentation should provide a good overview of the group's businesses that is relevant to the business operations in Singapore. Relevant information includes an overview of the group's global business, organisation structure, the nature of the global business operations and overall transfer pricing policies.
- (b) Documentation at Entity level
At this level, the documentation should provide sufficient details of the business of the taxpayer in Singapore and its transactions with its related parties. Detailed information includes the business operations and specific related party transactions.
- (c) Country-by-Country Report
If the taxpayer is the ultimate parent entity of a Singapore multinational enterprise ("MNE") group, in addition to the TP documentation at Group level and Entity level, it may be required to file a Country-by-Country Report providing information about the global allocation of the MNE group's revenues, profits, taxes and economic activity. The details are provided in the e-Tax guide on Country-by-Country Reporting.

6.20 This approach to TP documentation will:

- (a) Enable taxpayers to describe their compliance with the arm's length principle for their related party transactions; and
- (b) Provide IRAS with relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis.

6.21 As the requirement for Country-by-Country Reports is separately provided under Part 20B of the ITA, any reference to TP documentation in this e-Tax guide is only in respect of documentation at Group level and Entity level.

Documentation at Group level

6.22 The information to be included in the documentation at Group level is prescribed in the Second Schedule of the TP Documentation Rules and reproduced here¹³:

¹³ "Applicable entity" is "taxpayer" in this section. Please also refer to the TP Documentation Rules as this guidance may not be updated at the same time as any amendment to the TP Documentation Rules.

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 parties, including the names of those related parties 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.

Documentation at Entity level

6.23 The information to be included in the documentation at Entity level is prescribed in the Second Schedule of the TP Documentation Rules and reproduced here¹⁴:

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 —

¹⁴ "Applicable entity" is "taxpayer" in this section. Please also refer to the TP Documentation Rules as this guidance may not be updated at the same time as any amendment to the TP Documentation Rules.

- (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.

Information other than the information prescribed in the TP Documentation Rules

- 6.24 Taxpayers may include any information which is appropriate in their circumstances in addition to those prescribed for the documentation at Group and Entity level.

TP documentation prepared for other tax jurisdictions

- 6.25 If taxpayers have prepared similar TP documentation (for example, OECD master file and local file) for the purpose of complying with the requirements of other tax jurisdictions, such documentation, if relevant to the business operations in Singapore, may form part of the TP documentation for Singapore tax purposes.

Preparation of TP documentation for years of assessment prior to YA 2019

- 6.26 When preparing TP documentation for the years of assessment prior to YA 2019, taxpayers can apply the documentation at Group level and Entity level mentioned in the earlier paragraphs or provided in the IRAS e-Tax guide on Transfer Pricing Guidelines (fourth edition).

Qualifying past TP documentation

- 6.27 Taxpayers should review their TP documentation periodically to ensure that:
- (a) The financial analysis and economic analysis contained in the TP documentation are still accurate;
 - (b) The applied transfer pricing method disclosed in the TP documentation is still relevant; and
 - (c) The transfer price supported by the TP documentation is still at arm's length.
- 6.28 In general, taxpayers are to review and refresh their TP documentation annually. This will result in taxpayers having to prepare a TP documentation for each basis period.
- 6.29 IRAS recognises that the type of transaction for which the TP documentation is prepared, the parties to that transaction, and the business descriptions, functional analyses and descriptions of comparables regarding that transaction and those parties may not change significantly from year to year.
- 6.30 Thus, to reduce taxpayers' compliance burden, IRAS allows taxpayers to use the TP documentation they have prepared previously ("past TP documentation") to support the transfer price in the basis period concerned if that past TP documentation is a qualifying past TP documentation.
- 6.31 Qualifying past TP documentation means:
- (a) Past TP documentation prepared for the first basis period immediately preceding the basis period concerned and which satisfies the conditions in paragraph 6.32; or
 - (b) In the absence of sub-paragraph (a), past TP documentation prepared for the second basis period immediately preceding the basis period concerned and which satisfies the conditions in paragraph 6.32.

Example 1:

If basis period concerned is the basis period for YA 2020:

- First basis period under sub-paragraph (a) is the basis period for YA 2019
- Second basis period under sub-paragraph (b) is the basis period for YA 2018

Example 2:

Company A receives non-routine services from its cross-border related parties and makes payments for these services in the basis period for each YA. Company A has no other transaction with its related parties. The table below shows the application of the qualifying past TP documentation rule.

YA	Gross revenue (\$ in million)	Service fee paid (\$ in million)	TP documentation required?	Application of qualifying past TP documentation
2019	12	3	Yes	Company A has prepared TP documentation as required under Section 34F for the provision of services.
2020	9	3	Yes	• The past TP documentation is the TP documentation prepared for YA 2019. • In this example, it is a qualifying past TP documentation under sub-paragraph (a). • Thus, Company A can use the TP documentation prepared for YA 2019 to support the pricing of the service fee paid to its cross-border related parties in the basis period for YA 2020.
2021	12	3	Yes	• The past TP documentation is the TP documentation prepared for YA 2019. • In this example, it is a qualifying past TP documentation under sub-paragraph (b). • Thus, Company A can use the TP documentation prepared for YA 2019 to support the pricing of the service fee paid to its cross-border related parties in the basis period for YA 2021.

YA	Gross revenue (S\$ in million)	Service fee paid (S\$ in million)	TP documentation required?	Application of qualifying past TP documentation
2022	12	3	Yes	The TP documentation prepared for YA 2019 cannot be treated as a qualifying TP documentation beyond the basis period for YA 2021. Company A is therefore required to prepare a new TP documentation for the provision of services for YA 2022 under Section 34F.

Example 3:

Company A receives non-routine services from its cross-border related parties and makes payments for these services in the basis period for each YA. Company A has no other transaction with its related parties. The table below shows the application of the qualifying past TP documentation rule.

YA	Gross revenue (S\$ in million)	Service fee paid (S\$ in million)	TP documentation required?	Application of qualifying past TP documentation
2019	12	3	Yes	Company A has prepared TP documentation as required under Section 34F for the provision of services.
2020	12	0.9	No	Company A is exempt from preparing TP documentation for the provision of services.
2021	12	3	Yes	- The past TP documentation is the TP documentation prepared for YA 2019. - In this example, it is a qualifying past TP documentation under sub-paragraph (b). - Thus, Company A can use the TP documentation prepared for YA 2019 to support the pricing of the service fee paid to its cross-border related parties in the basis period for YA 2021.

6.32 For past TP documentation to be qualifying past TP documentation, the following conditions must be satisfied:

- (a) The transaction for which the past TP documentation was prepared is of the same type as the transaction undertaken in the basis period concerned;
- (b) The transaction for which the past TP documentation was prepared and the transaction in the basis period concerned are undertaken with the same related parties;
- (c) The past TP documentation must contain documentation at Group level and Entity level as prescribed in the TP Documentation Rules;
- (d) The past TP documentation must comply with the requirements under paragraph 6.40(a) to (c); and
- (e) The information contained in the past TP documentation on the following matters accurately describes the same matters in relation to the transaction in the basis period concerned:
 - The commercial or financial relations between the taxpayers and their related parties;
 - The conditions made or imposed between the taxpayers and their related parties;
 - The transfer pricing method that is used for the transaction; and
 - The arm's length conditions within the meaning of Section 34D and explained in section 5.

Example 1:

Past TP documentation was prepared for the distribution of Product A by taxpayer to its related parties, X and Y. The table below explains if this past TP documentation meets the conditions in sub-paragraphs (a) and (b) under various scenario:

Scenario	Basis period concerned	Explanation
1	Transaction is the distribution of Product A by the taxpayer to its related parties, X and Y	Conditions in sub-paragraphs (a) and (b) are met as the transaction is of the same type and with the same related parties.

Scenario	Basis period concerned	Explanation
2	Transaction is the distribution of Product A by the taxpayer to its related parties, X, Y and Z	Condition in sub-paragraph(a) is met. Condition in sub-paragraph (b) is not met as there is a change in the related parties to the transaction. The change would also affect the condition in sub-paragraph (e). Thus, the past TP documentation cannot be qualifying TP documentation for the basis period concerned.
3	Transaction is the distribution of Product A by the taxpayer to its related party X	Condition in sub-paragraph (b) is met. Condition in sub-paragraph (a) is not met as there is a change in the products distributed. The change would also affect the condition in sub-paragraph (e). Thus, the past TP documentation cannot be qualifying TP documentation for the basis period concerned.
4	Transaction is the distribution of Product A and Product B by the taxpayer to its related parties, X and Y	Condition in sub-paragraph (b) is met. Condition in sub-paragraph (a) is not met as there is a change in the products distributed. The change would also affect the condition in sub-paragraph (e). Thus, the past TP documentation cannot be qualifying TP documentation for the basis period concerned.
5	Transaction is the distribution of Product C by the taxpayer to its related parties, X and Y	Condition in sub-paragraph (b) is met. Condition in sub-paragraph (a) is not met as there is a change in the products distributed. The change would also affect the condition in sub-paragraph (e). Thus, the past TP documentation cannot be qualifying TP documentation for the basis period concerned.

Example 2:

- Company A distributes Product X for its related party, Company B.
- Company A has prepared TP documentation for the distribution function it performs for Company B in financial year (“FY”) 2018.
- In the FY 2018 TP documentation, the functional analysis shows that Company A is a limited risk distributor and has not assumed credit and inventory risk. Based on its benchmarking study, Company A is remunerated with an operating margin (“OM”) of x% to y% using the transactional net margin method (“TNMM”).
- In FY 2019, Company A continues to distribute Product X for Company B as a limited risk distributor without assuming credit and inventory risk as in FY 2018.
- In this example, FY 2018 TP documentation satisfies the conditions of a qualifying past TP documentation. Thus, Company

A can use the FY 2018 TP documentation to support its remuneration of x% to y% OM for FY 2019.

Example 3:

- The facts are the same as in Example 2.
- In FY 2020, Company A continues to distribute Product X for Company B as a limited risk distributor without assuming credit and inventory risk.
- In this example, FY 2018 TP documentation satisfies the conditions of a qualifying past TP documentation. Thus, Company A can use the FY 2018 TP documentation to support its remuneration of x% to y% OM for FY 2020.
- Company A cannot use the FY 2018 TP documentation as qualifying TP documentation beyond FY 2020.

Example 4:

- The facts are the same as in Example 2 except that in FY 2019, while Company A continues to distribute Product X for Company B it also assumes credit and inventory risk.
- As there is a change in the commercial or financial relations and conditions between Company A and Company B, the information in the FY 2018 TP documentation will not accurately describe the transaction undertaken between Company A and Company B in FY 2019.
- Company A has to prepare a new TP documentation for the transaction undertaken between Company A and Company B in FY 2019.

Making use of qualifying past TP documentation

- 6.33 Even if past TP documentation satisfies the conditions to be qualifying past TP documentation, taxpayers have a choice between using it to support the pricing of the related party transaction undertaken in the basis period concerned and preparing a new TP documentation.
- 6.34 To make use of qualifying past TP documentation for a related party transaction undertaken in the basis period concerned, taxpayers need only to prepare simplified TP documentation for that transaction. The simplified TP documentation need only:
- (a) Contain a declaration by the taxpayer that it has prepared qualifying past TP documentation; and
 - (b) Include, by way of an attachment, a copy of the qualifying past TP documentation.

- 6.35 IRAS does not prescribe a fixed format for the declaration. It should at least contain an explanation that the past TP documentation meets the conditions to be qualifying past TP documentation. It is important to note that a simplified TP documentation in essence is a TP documentation prepared under Section 34F of the ITA as prescribed under the TP Documentation Rules. Therefore, the rules and compliance matters explained in this section apply equally to the preparation of both a new TP documentation and a simplified TP documentation. For example, a simplified TP documentation must be prepared on a contemporaneous basis and dated accordingly as proof that the simplified TP documentation has been prepared contemporaneously.

Example:

- The timeline for filing the tax return for YA 2024 is 30 November 2024.
 - Taxpayer prepared a simplified TP documentation for the financial year ended 31 December 2023 on 1 October 2024. The simplified TP documentation contained a declaration made on 1 October 2024 and a copy of the qualifying past TP documentation for the financial year ended 31 December 2022 which was prepared on 15 November 2023.
 - The date, 1 October 2024 (and not 15 November 2023), is the date of completing the simplified TP documentation.
 - Taxpayer should clearly state “1 October 2024” on the declaration which is submitted as part of the simplified TP documentation as proof that it has prepared the simplified TP documentation contemporaneously.
- 6.36 The past TP documentation need not be prepared under Section 34F of the ITA in order to be qualifying past TP documentation.
- 6.37 The simplified TP documentation mentioned in paragraph 6.34 will not qualify as qualifying past TP documentation.

Annual testing of transfer price using qualifying past TP documentation

- 6.38 The annual testing of the actual results will be conducted against the arm's length results in the qualifying past TP documentation.
- 6.39 Using Example 2 and Example 3 in paragraph 6.32, Company A will test its actual OM for FYs 2019 and 2020 against the OM of x% to y% determined in the FY 2018 TP documentation.

Compliance matters relating to TP documentation

6.40 Taxpayers must observe the following compliance matters when preparing TP documentation (including simplified TP documentation):

(a) Contemporaneous TP documentation

The TP documentation must be prepared on a contemporaneous basis, i.e. not later than the time for the making of the tax return for the financial year in which the transaction takes place (see paragraphs 6.7 to 6.9).

(b) Date of completing TP documentation

The date of completing the TP documentation must be indicated on the TP documentation. For simplified TP documentation, the date must be clearly stated in the declaration.

(c) English language for TP documentation

The TP documentation must be in English or, if not in English, translated into English at the request of IRAS.

(d) Submission of TP documentation

IRAS does not require taxpayers to submit TP documentation when they file their tax returns. Taxpayers must keep their TP documentation and submit it to IRAS within 30 days upon request.

(e) Period of retention of TP documentation

Taxpayers must retain TP documentation for at least 5 years from the end of the basis period in which the transaction took place.

IRAS advises taxpayers to retain TP documentation for a longer period if they are involved in an audit or a MAP.

(f) Form of TP documentation

Taxpayers can store TP documentation in any medium, whether in paper, electronic form or any other system. However, they must be able to promptly provide the relevant information to IRAS in hardcopy or softcopy upon request.

Consequences of insufficient TP documentation or not preparing TP documentation

- 6.41 If taxpayers are unable to show with their TP documentation that their transfer prices are at arm's length or they do not have TP documentation to substantiate their transfer prices, they may suffer the following adverse consequences:
- (a) If IRAS establishes that the taxpayers have understated their profits through improper transfer pricing, IRAS will make an upward transfer pricing adjustment under Section 34D of the ITA.
 - (b) If the taxpayers suffer double taxation arising from any transfer pricing audit by IRAS or foreign tax authorities, IRAS may not be able to support the taxpayers in MAP discussions to resolve the double taxation.
 - (c) If the taxpayers apply for an APA agreement, IRAS may not accept the application.
 - (d) If the transfer pricing adjustments made by IRAS are for YA 2019 or a later YA, a surcharge of 5% will be imposed on the adjustments regardless of whether there is tax payable on the adjustments (see section 9).
 - (e) If taxpayers do not comply with TP documentation requirements under Section 34F of the ITA and the TP Documentation Rules, they shall be liable to a fine (see section 9).

Taxpayers which are not required to prepare TP documentation under Section 34F of the ITA

- 6.42 Taxpayers which do not come within both condition (a) and condition (b) in paragraph 6.10 are not required to prepare TP documentation for their related party transactions under Section 34F of the ITA. Nonetheless, to better manage their transfer pricing risk, IRAS encourages taxpayers to prepare TP documentation following the TP Documentation Rules and the guidance provided in this section.
- 6.43 IRAS does not expect taxpayers to incur compliance costs which are disproportionate to the amount of tax revenue at risk or the complexity of their transactions. Taxpayers should assess the adequacy and extent of their TP documentation 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 are able to demonstrate compliance with the arm's length principle to avoid adverse consequences.

Frequently asked questions regarding preparation of TP documentation

- 6.44 In Appendix B of this section, IRAS has compiled the frequently asked questions regarding the preparation of TP documentation and provided guidance to help taxpayers comply with the TP documentation requirements.

Appendix A – Examples to illustrate compliance with TP documentation under Section 34F of ITA

Illustration 1

S Co, a company incorporated in Singapore, is in the business of buying and selling goods which includes buying goods from its cross-border related parties for sale to customers in Singapore. The purchase of goods by S Co from its cross-border related parties is referred to in this example as the purchase transaction. S Co has no other transactions with its related parties.

S Co's gross revenue and purchases from its cross-border related parties for the basis period for each YA is shown in the table below.

Throughout the four YAs mentioned in the table, the purchase transaction, the related parties to the purchase transaction, the functional profile of S Co and the related parties in respect of the purchase transaction, etc. remain the same.

YA	Total gross revenue (\$\$ in million)	Purchase transaction (\$\$ in million)	Is Condition (a) met? *	Is Condition (b) met? *	Does exemption from TPD [^] apply?	Is TPD [^] required under s34F?
2019	20	16	Yes	Not applicable	No	Yes
2020	20	14	Yes	Yes	Yes	No
2021	20	16	Yes	No	No	Yes
2022	20	16	Yes	Yes	No	Yes

* See paragraph 6.10 for conditions (a) and (b)

[^] TPD refers to TP documentation

The above table summarises S Co's obligations to prepare TP documentation for the purchase transaction for each YA. These may be explained as follows:

YA 2019 : Condition (a) is met as S Co's gross revenue for the basis period for YA 2019 is more than \$10 million. Condition (b) is not applicable as Section 34F of the ITA is only effective from YA 2019. As one of the two conditions is met, S Co is required to prepare TP documentation for the purchase transaction unless S Co is exempt from doing so.

The exemption from TP documentation does not apply as the value of the purchase transaction (\$16 million) exceeds the \$15 million threshold for the exemption category, "Sale of goods to taxpayer by a related party", in Table 2 (see paragraph 6.18). Accordingly, S Co

must prepare TP documentation for the purchase transaction not later than the filing due date of the tax return for YA 2019.

Assume that S Co has prepared the TP documentation according to the TP Documentation Rules and the guidance in this e-Tax guide. The functional analysis indicates that S Co is a limited risk distributor for the purchase transaction. Accordingly, based on its benchmarking study, S Co is remunerated with an OM of x% to y% using TNMM.

YA 2020 : Condition (a) is met as S Co's gross revenue for the basis period for YA 2020 is more than \$10 million. Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2019). As both conditions are met, S Co is required to prepare TP documentation for the purchase transaction unless S Co is exempt from doing so.

The exemption from TP documentation applies as the value of the purchase transaction (\$14 million) is within the \$15 million threshold for the exemption category, "Sale of goods to taxpayer by a related party", in Table 2. Accordingly, S Co is exempt from preparing TP documentation for the purchase transaction.

YA 2021 : Condition (a) is met as S Co's gross revenue for the basis period for YA 2021 is more than \$10 million. Condition (b) is not met as TP documentation is not required under Section 34F for the previous basis period (i.e. basis period for YA 2020). As one of the two conditions is met, S Co is required to prepare TP documentation for the purchase transaction unless S Co is exempt from doing so.

The exemption from TP documentation does not apply as the value of the purchase transaction (\$16 million) exceeds the \$15 million threshold for the exemption category, "Sale of goods to taxpayer by a related party", in Table 2. Accordingly, S Co must prepare TP documentation for the purchase transaction not later than the filing due date of the tax return for YA 2021.

S Co determines that the TP documentation prepared for the purchase transaction for YA 2019 meet the conditions to be qualifying past TP documentation. As such, S Co decides to make use of the qualifying past TP documentation to support its remuneration of x% to y% OM for YA 2021. Accordingly, S Co prepares simplified TP documentation for the purchase transaction for YA 2021 that contains:

- A declaration by S Co that it has prepared qualifying past TP documentation; and
- A copy of the qualifying past TP documentation.

YA 2022 : Condition (a) is met as S Co's gross revenue for the basis period for YA 2022 is more than \$10 million. Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2021). As both conditions are met, S Co is required to prepare TP documentation for the purchase transaction unless S Co is exempt from doing so.

The exemption from TP documentation does not apply as the value of the purchase transaction (\$16 million) exceeds the \$15 million threshold for the exemption category, "Sale of goods to taxpayer by a related party", in Table 2. Accordingly, S Co must prepare TP documentation for the purchase transaction.

The TP documentation prepared for the purchase transaction for YA 2019 and the simplified TP documentation prepared for YA 2021 cannot qualify as qualifying past TP documentation.

Illustration 2

Taxpayer's gross revenue for the basis period for each YA is shown in the table below. The gross revenue includes revenue from the sale of goods to its cross-border related parties (referred to in this example as the sale transaction) and revenue from the provision of non-routine services to its cross-border related parties (referred to in this example as the service transaction). Other than these two transactions, there are no other transactions between the taxpayer and its related parties.

YA	Gross revenue (\$\$ in million)		Is Condition (a) met? *	Is Condition (b) met? *	Does exemption from TPD^ apply?	Is TPD^ required under s34F?	
	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 (Sales)	Yes (Service)

* See paragraph 6.10 for conditions (a) and (b)

[^] TPD refers to TP documentation

The above table summarises taxpayer's obligations to prepare TP documentation for the sale transaction and service transaction for each YA. These may be explained as follows:

YA 2019 : Condition (a) is not met as taxpayer's gross revenue for the basis period for YA 2019 is less than \$10 million. Condition (b) is not

applicable as Section 34F of the ITA is only effective from YA 2019. As neither of the two conditions is met, taxpayer is not required to prepare TP documentation for the sale transaction and service transaction.

YA 2020 : Condition (a) is met as taxpayer's gross revenue for the basis period for YA 2020 is more than \$10 million. Condition (b) is not met as TP documentation is not required under Section 34F for the previous basis period (i.e. basis period for YA 2019). As one of the two conditions is met, taxpayer is required to prepare TP documentation for the sale transaction and service transaction unless taxpayer is exempt from doing so.

The exemption from TP documentation does not apply to the sale transaction as the value (\$16 million) exceeds the \$15 million threshold for the exemption category, "Sale of goods by taxpayer to a related party", in Table 2. Accordingly, taxpayer must prepare TP documentation for the sale transaction not later than the filing due date of the tax return for YA 2020.

The exemption from TP documentation applies to the service transaction as the value (\$0.9 million) is within the \$1 million threshold for the exemption category, "Provision of service by taxpayer to a related party", in Table 2. Accordingly, taxpayer is exempt from preparing TP documentation for the service transaction.

YA 2021 : Condition (a) is not met as taxpayer's gross revenue for the basis period for YA 2021 is less than \$10 million. Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2020). As one of the two conditions is met, taxpayer is required to prepare TP documentation for the sale transaction and service transaction unless taxpayer is exempt from doing so.

The exemption from TP documentation applies to the sale transaction as the value (\$8 million) is within the \$15 million threshold for the exemption category, "Sale of goods by taxpayer to a related party", in Table 2. Accordingly, taxpayer is exempt from preparing TP documentation for the sale transaction.

The exemption from TP documentation does not apply to the service transaction as the value (\$1.2 million) exceeds the \$1 million threshold for the exemption category, "Provision of service by taxpayer to a related party", in Table 2. Accordingly, taxpayer must prepare TP documentation for the service transaction not later than the filing due date of the tax return for YA 2021.

Illustration 3

Taxpayer's gross revenue and service fee payments for the basis period for each YA are shown in the table below. The gross revenue includes revenue from the provision of non-routine services to taxpayer's cross-border related parties (referred to in this example as the service income transaction). Taxpayer receives non-routine services from its cross-border related companies and makes payments for these services from YA 2022 (referred to in this example as the service payment transaction). Other than these two transactions, there are no other transactions between the taxpayer and its related parties.

YA	Gross revenue (S\$ in million)		Service payments to related parties (S\$ in million)	Is Condition (a) met? *	Is Condition (b) met? *	Does exemption from TPD [^] apply?	Is TPD [^] required under s34F?
	Total	From related parties					
2019	12	3	0	Yes	Not applicable	No	Yes
2020	9	3	0	No	Yes	No	Yes
2021	9	3	0	No	Yes	No	Yes
2022	9	3	2	No	Yes	Yes	No

* See paragraph 6.10 for conditions (a) and (b)

[^] TPD refers to TP documentation

The above table summarises taxpayer's obligations to prepare TP documentation for the service income transaction and service payment transaction for each YA. These may be explained as follows:

YA 2019 : Condition (a) is met as taxpayer's gross revenue for the basis period for YA 2019 exceeds than \$10 million. Condition (b) is not applicable as Section 34F of the ITA is only effective from YA 2019. As one of the two conditions is met, taxpayer is required to prepare TP documentation for the service income transaction unless it is exempt from doing so.

The exemption from TP documentation does not apply to the service income transaction as the value (\$3 million) exceeds the \$1 million threshold for the exemption category, "Provision of service by taxpayer to a related party", in Table 2. Accordingly, taxpayer must prepare TP documentation for the service income transaction not later than the filing due date of the tax return for YA 2019.

YA 2020 : Condition (a) is not met as taxpayer's gross revenue for the basis period for YA 2020 is less than \$10 million. Condition (b) is met as TP documentation is required under Section 34F for the previous

basis period (i.e. basis period for YA 2019). As one of the two conditions is met, taxpayer is required to prepare TP documentation for the service income transaction unless taxpayer is exempt from doing so.

The exemption from TP documentation does not apply to the service income transaction as the value (\$3 million) exceeds the \$1 million threshold for the exemption category, "Provision of service by taxpayer to a related party", in Table 2. Accordingly, taxpayer must prepare TP documentation for the service income transaction not later than the filing due date of the tax return for YA 2020.

Past TP documentation is the TP documentation prepared for the service income transaction for YA 2019. If it qualifies to be qualifying past TP documentation, taxpayer can make use of the qualifying past TP documentation to support its remuneration for the service income transaction. If taxpayer chooses to do so, it only needs to prepare simplified TP documentation for the service income transaction for YA 2020 that contains:

- A declaration by taxpayer that it has prepared qualifying past TP documentation; and
- A copy of the qualifying past TP documentation.

YA 2021 : The explanation under YA 2020 applies.

YA 2022 : Condition (a) is not met as taxpayer's gross revenue for the basis period for YA 2022 is less than \$10 million. Condition (b) is met as TP documentation is required under Section 34F for the previous basis period (i.e. basis period for YA 2021). As one of the two conditions is met, taxpayer is required to prepare TP documentation for the service income transaction and service payment transaction unless taxpayer is exempt from doing so.

Taxpayer's gross revenue is not more than S\$10 million for the basis period for YA 2022 and the two immediately preceding basis periods, i.e. basis periods for YAs 2020 and 2021. Taxpayer is therefore exempt from preparing TP documentation for the service income transaction and service payment transaction for YA 2022.

Illustration 4

Company A was incorporated on 1 January 2024 and its gross revenue and service fee payments for the basis period for each YA are shown in the table below. Company A's gross revenue includes revenue from the provision of non-routine services to its cross-border related parties (referred to in this example as the service income transaction). Company A receives non-routine services from its cross-border related companies and makes payments for these services (referred to in this example as the service payment transaction). Other than these two transactions, there are no other transactions between Company A and its related parties.

YA	Gross revenue (S\$ in million)		Service payments to related parties (S\$ in million)	Is Condition (a) met? *	Is Condition (b) met? *	Does exemption from TPD [^] apply?	Is TPD [^] required under s34F?
	Total	From related parties					
2025	12	1.8	2	Yes	Not applicable	No	Yes
2026	12	1.8	2	Yes	Yes	Yes	No

* See paragraph 6.10 for conditions (a) and (b)

[^] TPD refers to TP documentation

The application of the thresholds for exemption from TP documentation in column B and column C of Table 2 is explained as follows:

YA 2025 : The exemption from TP documentation does not apply to the service income transaction (S\$1.8 million) and service payment transaction (S\$2 million) as the value of each transaction exceeds the S\$1 million threshold for the respective exemption categories, "Provision of service by taxpayer to a related party" and "Provision of service to the taxpayer by a related party", under column B in Table 2. Accordingly, taxpayer must prepare TP documentation for the service income transaction and service payment transaction not later than the filing due date of the tax return for YA 2025.

YA 2026 : The exemption from TP documentation applies to the service income transaction (S\$1.8 million) and service payment transaction (S\$2 million) as the value of each transaction does not exceed the S\$2 million threshold for the respective exemption categories, "Provision of service by taxpayer to a related party" and "Provision of service to the taxpayer by a related party", under column C in Table 2. Accordingly, taxpayer is exempt from preparing TP documentation for the service income transaction and service payment transaction.

Appendix B – Frequently asked questions regarding preparation of TP documentation

1. Why do I need to indicate the date of completing the TP documentation in the TP documentation?

TP documentation, including simplified TP documentation, must be prepared on a contemporaneous basis. The date of completion of the TP documentation is to substantiate whether you have prepared it on a contemporaneous basis. Therefore, it is important that you clearly state the date of completion in the TP documentation, including in the declaration for simplified TP documentation.

2. How do I present the worldwide organisational structure as required under the documentation at Group level?

The information to be included in the documentation at Group level is stated in paragraph 6.22 (Second Schedule of the TP Documentation Rules, paragraph 1(1)(a)).

You are to show how your business is linked to the other entities within the worldwide organisational structure. For complex organisational structure, you can consider presenting an abbreviated chart showing the location and ownership linkages among all related parties of the group transacting with you.

3. What entity-level information should I include to describe my business?

The description of your business to be provided in the documentation at Entity level is stated in paragraph 6.23 (Second Schedule of the TP Documentation Rules, paragraph 2(1)(c)(i) to (iv)).

You should not merely provide a generic description of your business. Instead, you should give an overview of your business, including the legal and business structure, the business model and strategy, as well as the industry and economic conditions in which your business operates.

It will be useful to describe the value chain, how your business is involved in the value chain and how your business contributes to the value chain.

4. What information should I include to describe the transactions between my business and the related parties?

The description of the transactions between your business and the related parties to be provided in the documentation at Entity level is stated in paragraph 6.23 (Second Schedule of the TP Documentation Rules, paragraph 2(1)(d)(i) to (iv)).

You should provide:

- Details of each related party transaction, including the identity of the related party, location of the related party, relationship with the related party and value of the transaction;
- Information and details on the functions performed, risks assumed (including decision making capability regarding risks assumed and risk control functions) and assets used by each related party; and
- Relevant contractual agreements showing the terms of each related party transaction.

It will be useful to include:

- Reason for entering into the related party transaction; and
- Contributions to the value chain by you and your related parties.

5. What information should I include in the transfer pricing analysis section of the documentation at Entity level?

The information to be included in the TP analysis section of the documentation at Entity level is stated in paragraph 6.23 (Second Schedule of the TP Documentation Rules, paragraph 2(1)(e)(i) to (v)).

Besides stating the selected transfer pricing method, tested party or tested transactions, comparable companies etc., you should provide the reasons and basis for selecting them. Hence, you should ensure that the transfer pricing analysis includes the following:

- Transfer pricing method and if applicable, the profit level indicator selected and reasons and basis for selecting them;
- Tested party or tested transaction and reasons and basis for selecting it;
- List of comparable companies or transactions, basis for selecting them and the financial data of the selected comparable companies;
- Arm's length price and computations of that price; and
- Information to support any adjustments made to achieve comparability between the tested party or tested transaction and the comparable companies or transactions, where applicable.

It will be useful to include documentation of the events that affected your business performance significantly, for example if your business made a loss or suffered a lower profit margin compared to the comparable companies or competitors.

6. Can I make use of the TP documentation prepared for other tax authorities?

You can make use of the TP documentation that you have prepared for other tax authorities to form part of your TP documentation for Singapore tax purposes. This is provided that you have similarly prepared such TP documentation following the IRAS' requirements and it contains information that is relevant to your business operations in Singapore. You should supplement such TP documentation with information required by IRAS at the Group and Entity levels if they have not been covered.

7. Does the requirement to review and refresh TP documentation annually apply to my long term loan with my related party?

The requirement applies to your long term loan with your related party just like any other related party transactions. This is because the facts and circumstances relating to you and your related party in relation to the long term loan may change over time. For example, a change in the economic environment, value of the collateral, borrower's financial status and credit standing, etc. may affect the agreed interest rate, terms and conditions of your long term loan, or the long term loan may evolve to an arrangement more akin to an equity. To ease compliance, you may consider preparing simplified TP documentation if the conditions are met.

8. IRAS is conducting an audit on my transaction with my related party for the financial year ("FY") 2022. I had previously prepared a TP documentation regarding that transaction for FY2022 under Section 34F of the ITA. Will IRAS consider the details and analysis that I submitted in 2024 in response to the audit to supplement that TP documentation as contemporaneous?

IRAS considers the additional details or analysis that you submitted in 2024 to support or further explain the position covered in your TP Documentation for FY 2022 as contemporaneous unless those details are relating to subsequent developments or the analysis is conducted with hindsight. For example:

- Details or analysis based on events that took place in 2022 to support the functions performed or risks assumed in 2022 may not raise contemporaneous issue.
- Details or analysis based on events that took place in 2024 to describe the functions performed or risks assumed in 2022 may raise contemporaneous issue.

PART II – TRANSFER PRICING COMPLIANCE

7 Transfer pricing audit by IRAS

Introduction

- 7.1 IRAS examines taxpayers' transfer pricing compliance through reviewing their tax assessments or conducting audit on their transfer pricing practices. This section explains the Transfer Pricing Audit ("TPA") process carried out by IRAS to review the transfer pricing and TP documentation of taxpayers.

Objectives of TPA

- 7.2 The objectives of TPA are to determine whether taxpayers have complied with the arm's length principle and TP documentation requirements as provided under the ITA and TP Documentation Rules. Where the taxpayers do not comply with the arm's length principle, IRAS will consider making transfer pricing adjustments to increase their profits. IRAS will also advise taxpayers on good practices in transfer pricing, where appropriate.
- 7.3 IRAS engages the taxpayers to review:
- (a) The appropriateness of the taxpayers' transfer pricing methods;
 - (b) The adequacy and timeliness of the taxpayers' TP documentation in accordance with the TP documentation requirements; and
 - (c) The outcome of the taxpayers' transfer pricing studies.

Selection of taxpayers for TPA

- 7.4 IRAS selects taxpayers for TPA based on risk indicators such as:
- (a) The value of related party transactions;
 - (b) The performance of the business over time; and
 - (c) The likelihood that taxable profits may have been understated by inappropriate transfer pricing.
- 7.5 Examples of circumstances in which transfer pricing risks may be considered high are:
- (a) Transactions with cross-border related parties that are of large value relative to the other transactions of the taxpayer;

- (b) Transactions with related parties subject to a more favourable tax treatment;
 - (c) Recurring losses or large swings in operating results which may be unusual given the functions and assets of the taxpayer and the risks it assumed;
 - (d) Operating results that are not in line with businesses in comparable circumstances;
 - (e) Use of intellectual property, proprietary knowledge or other intangibles in the business;
 - (f) Transactions involving R&D or marketing activities which could lead to development or enhancement of intangibles; and
 - (g) Indications (examples, through engagement with tax authorities, jurisdiction's audit focus, etc.) that the transactions are likely to be subject to transfer pricing audit by tax authorities.
- 7.6 If necessary, IRAS may send questionnaires or information requests to obtain more data or information from taxpayers for risk assessment purposes.

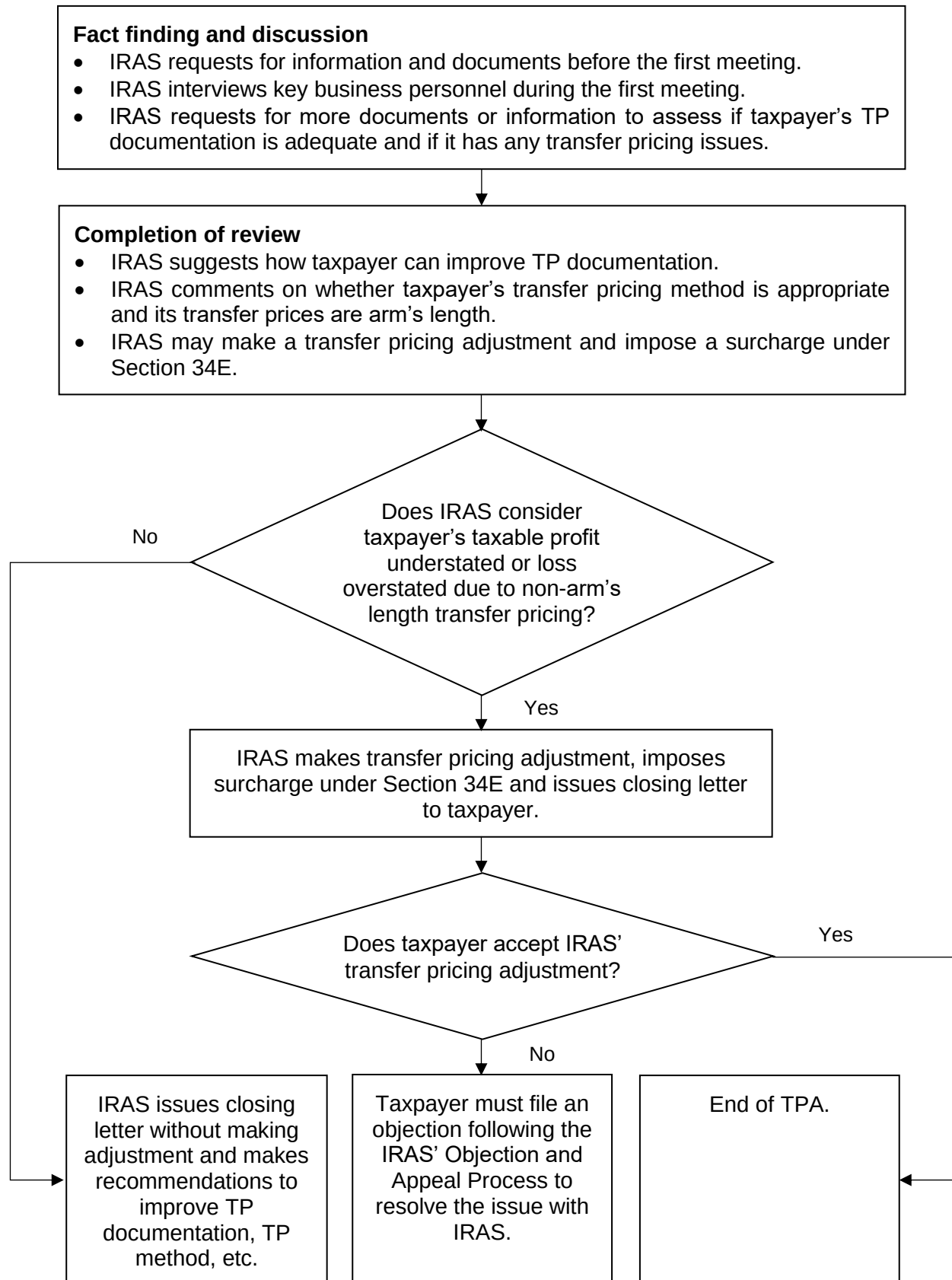
Description of TPA process

- 7.7 If a taxpayer is selected for a TPA, the audit may start with IRAS arranging for a first meeting at the taxpayer's premises and requesting for the submission of information and documents that would be discussed at the meeting.
- 7.8 During the first meeting, IRAS will request the taxpayer to present an overview of the taxpayer's business model and explain the transaction flows, the functional activities of the related parties, the methods of pricing related party transactions and the relevant supporting documentation. IRAS will interview key personnel and review the TP documentation. IRAS will need to understand the business operations and transfer pricing, specifically:
- (a) The business model and strategies;
 - (b) The conditions affecting the industry;
 - (c) The transaction flows among the related parties;
 - (d) The key activities each related party undertakes and the risks borne;

- (e) The assets each related party owns or uses;
 - (f) The pricing of related party transactions; and
 - (g) The process and documentation in place to check that the transfer prices are at arm's length.
- 7.9 After the first meeting, IRAS will request for more information or documents concerning particular issues and may arrange for subsequent meetings with the taxpayer. Based on the information gathered, IRAS will assess if the taxpayer's TP documentation is adequate and if it has any transfer pricing issues.
- 7.10 IRAS will consider making an adjustment under Section 34D of the ITA if the taxpayer's taxable profit is understated or loss is overstated due to non-arm's length related party transactions. Once the adjustment is made, IRAS will impose a surcharge under Section 34E accordingly (refer to Section 9). If the taxpayer does not agree with the IRAS' adjustment and wishes to object to the corresponding notice of assessment, it must follow the IRAS' Objection and Appeal Process¹⁵ to resolve the issue with IRAS.
- 7.11 At the conclusion of the TPA, IRAS will send a closing letter to the taxpayer with comments on the appropriateness of the taxpayer's transfer pricing, the adequacy of the taxpayer's TP documentation and the adjustment made under Section 34D of the ITA, if any. IRAS may also make recommendations on how the taxpayer can improve its TP documentation, its transfer pricing method, etc.
- 7.12 The TPA process is illustrated in this flowchart:

¹⁵ Details are provided in the IRAS e-Tax Guide on Corporate Income Tax – Objection and Appeal Process.

TPA process



8 Transfer pricing adjustment by IRAS

Introduction

- 8.1 This section explains when IRAS will make transfer pricing adjustment or disregard an actual related party transaction.

When IRAS will make transfer pricing adjustment

- 8.2 When taxpayers do not comply with the arm's length principle and have understated their profits (or overstated their losses), IRAS will make transfer pricing adjustment to increase their profits (or reduce their losses).
- 8.3 Profits may be understated if the income of a taxpayer is understated or the deductions of the taxpayer are overstated, including the situation where:
- (a) Such understatement of income or overstatement of deductions (or both) results in a loss instead of a profit; or
 - (b) An overstated loss is greater than the loss that would otherwise be suffered by the taxpayer.
- 8.4 IRAS will make adjustment on the income that is accrued in or is derived from Singapore, or is received in Singapore from outside Singapore. Once an adjustment is made, the amount of income increased is treated as accrued in or derived from Singapore or received in Singapore from outside Singapore. When an adjustment involves reducing a loss, the amount of loss reduced is treated as not having been incurred.

Example:

- Taxpayer received foreign source income of \$100 from a related party outside Singapore in YA 2023
 - Taxpayer remits the income in YA 2024
 - IRAS ascertains the arm's length income to be \$150
 - IRAS will bring the additional income of \$50 to tax in YA 2024 when the income of \$100 is received in Singapore
 - The additional income of \$50 is treated as received in Singapore in YA 2024
- 8.5 Where independent parties would in comparable circumstances enter into substantially different commercial or financial relations than those between the taxpayer and its related party, IRAS would determine the arm's length price for the actual related party transaction based on the commercial or financial relations of the independent parties. See Example 3 in paragraph 15.59 on re-financing.

When IRAS will disregard an actual related party transaction

- 8.6 IRAS recognises that related parties may have the ability to enter into a much greater variety of arrangements than independent parties. Related parties may also conclude transactions of a specific nature that are not encountered, or are only very rarely encountered, between independent parties. They may have done so for sound business reasons.
- 8.7 Thus, where a taxpayer engages in a transaction with its related party that independent parties would not undertake, IRAS would not disregard the transaction merely because the transaction may not be seen between independent parties without considering if the transaction has characteristics of an arm's length arrangement.
- 8.8 IRAS will disregard an actual related party transaction or replace it with an alternative transaction only in exceptional circumstances where:
- (a) The arrangements made in relation to the transaction lack the commercial rationality that would be agreed between independent parties under comparable circumstances; and
 - (b) The arrangements prevent determination of a price that would be acceptable to both of the parties taking into account their respective perspectives and the options realistically available to them at the time of entering into the transaction.

Example:

- Company A, in Country A, entered into a royalty agreement with Company B, in Country B. Both companies are related parties.
- Under the agreement, Company B pays Company A an annual royalty of \$X for using Company A's knowhow.
- The comparability analysis concludes that the knowhow is publicly available and thus independent parties would not have to pay to use such knowhow.
- Company B has entered into a commercially irrational transaction since the knowhow is publicly available and independent parties would not have to pay to use it. Not entering into the agreement would be a more realistic option for Company B.
- Since the transaction is commercially irrational, there is not a price that is acceptable to both Company A and Company B from their individual perspectives.
- If Company A is a taxpayer in Singapore, IRAS will not disregard Company A's royalty income from Company B in the absence of an APA or a MAP with the tax authority of Country B.
- If Company B is a taxpayer in Singapore, IRAS will disregard Company B's transaction with Company A for transfer pricing purpose and treat Company B's royalty payment to Company A as not deductible. IRAS will not replace the transaction between

Company A and Company B with an alternative transaction given that no independent parties would pay to use such knowhow.

- 8.9 When the actual related party transaction is being replaced with an alternative transaction, the replacement structure would be guided by the facts of the actual transaction so as to achieve a commercially rational result that is in accordance with the arm's length principle.

When IRAS will make transfer pricing adjustment relating to capital transactions¹⁶

- 8.10 Unless specifically provided in the ITA, generally any gain, loss or deduction arising from capital transactions is not taxable or deductible under the ITA. Whether such gain, loss or deduction is capital or revenue in nature is based on tax principles and the facts of each case. IRAS will not make any transfer pricing adjustment relating to any gain, loss or deduction arising from capital transactions between related parties as long as such gain, loss or deduction is not taxable or deductible under the ITA. It follows that taxpayers are not required to prepare TP documentation for such capital transactions for Singapore's tax purpose.
- 8.11 Sale or transfer of fixed assets¹⁷ between related parties may not be conducted at arm's length. In situation where such sale or transfer is not conducted at arm's length, while IRAS is not precluded from applying the arm's length principle to determine the allowance and balancing adjustment, IRAS will apply the specific provisions in the ITA¹⁸ on the use of open-market price for the making of:
- (a) Allowance when the capital expenditure incurred in acquiring the fixed assets exceeds the open-market price; and
 - (b) Balancing adjustment when the proceed for the sale, transfer or assignment of the fixed assets is less than the open-market price.

It follows that taxpayers are not required to prepare TP documentation for such fixed assets for Singapore's tax purpose.

¹⁶ Separate guidance will be provided in due course on the application of arm's length principle for capital transactions for purpose of Singapore's Domestic Top-up Tax ("DTT").

¹⁷ Fixed assets as used here refer to intellectual property rights, machinery, plant and indefeasible right of use under Sections 19B, 19D, 19E and 20 of the ITA.

¹⁸ Sections 19B, 19D, 19E and 20 of the ITA.

9 Surcharge and penalty

Introduction

- 9.1 This section explains the surcharge and penalty that the Comptroller will impose from YA 2019 when taxpayers do not comply with the arm's length principle (refer to section 5) and TP documentation requirement (refer to section 6).

Surcharge for non-compliance with the arm's length principle ¹⁹

- 9.2 Once a transfer pricing adjustment is made by IRAS, this adjustment is subject to a surcharge of 5% regardless of whether there is tax payable on the adjustment.

Example:

- Taxpayer distributes the Group's products in Singapore.
 - Based on taxpayer's TP documentation, taxpayer is a limited risk distributor and is remunerated with an operating margin of X% using the transactional net margin method ("TNMM").
 - During the transfer pricing audit, IRAS conducted a comparability analysis which revealed that taxpayer assumes credit risk and inventory risk. Using a set of comparable independent party transactions, IRAS concluded that taxpayer should be remunerated with a higher operating margin of Y% and there should be a transfer pricing adjustment to increase the operating margin from X% to Y% with additional profits of \$10,000.
 - IRAS will issue an assessment for the transfer pricing adjustment of \$10,000 and impose a surcharge of \$500 (i.e. \$10,000 x 5%) even if there is no tax payable on the \$10,000 (for example, due to losses from other segments of taxpayer's business).
- 9.3 Taxpayers may voluntarily make upward adjustments for past financial years on their related party transactions (refer to section 13). Such self-initiated retrospective upward adjustments are similarly subject to a surcharge of 5% regardless of whether there is tax payable on the adjustments, unless remission is granted (refer to paragraphs 9.8 to 9.11).
- 9.4 Notwithstanding that a taxpayer may not agree with the transfer pricing adjustment, IRAS will issue the assessment if it determines that the adjustment is in order. A surcharge will be imposed accordingly once the assessment is issued. The taxpayer can object to the assessment following the IRAS' Objection and Appeal Process.

¹⁹ Section 34E of ITA

9.5 The details of the surcharge are summarised in this table:

Terms	Details
Surcharge rate	5%
How the surcharge is calculated	The 5% surcharge will be applied on the transfer pricing adjustments made by the Comptroller regardless whether the adjustments result in additional tax payable.
How taxpayer is informed of the surcharge	The Comptroller will inform the taxpayer of the surcharge via a written notice.
When the surcharge is payable	Notwithstanding any objection to or an appeal lodged against an assessment on the transfer pricing adjustments, the surcharge must be paid within one month starting from the date of a written notice of the surcharge or such time the Comptroller may extend.
How the surcharge is recoverable	The surcharge is recoverable by the Comptroller from the taxpayer as a debt due to the Government in the same manner as recovery of tax.
Adjustment to the surcharge	Upon an objection or appeal, if the transfer pricing adjustments are varied or removed, the surcharge previously paid will be adjusted accordingly. There will be a refund if the surcharge paid is reduced subsequently.
Comptroller's discretion	The Comptroller may, for any good cause, remit wholly or in part any surcharge.

9.6 The surcharge is not deductible for tax purposes and the refund of the surcharge is not taxable.

Adjustments not subject to the surcharge of 5%

9.7 The following adjustments relating to transfer pricing are not subject to the surcharge of 5%:

- (a) Year-end adjustments at year-end closing of accounts that met the conditions in paragraph 13.8;

- (b) Compensating adjustment made to arrive at the agreed arm's length prices in accordance with the terms in the APA agreements (refer to section 13);
- (c) Corresponding adjustment made to eliminate double taxation in accordance with the outcome of the MAP agreed by IRAS, the relevant foreign tax authority and the taxpayers (refer to section 13); and
- (d) Adjustment made to implement the arbitration decision (refer to paragraphs 10.9 to 10.11).

Remission of surcharge

- 9.8 Transfer pricing adjustments are subject to a surcharge of 5%. However, the Comptroller may, for a good cause, remit the surcharge wholly or in part.
- 9.9 IRAS will only consider partial or full remission of the surcharge for taxpayers that are cooperative during the transfer pricing audit or review and have good compliance records. For that, taxpayers must meet the following three conditions:
- (a) They have been cooperative and have provided responses and required documentation within the timeline set by IRAS;
 - (b) They have maintained proper TP documentation in accordance with Section 34F of the ITA and the TP Documentation Rules; and
 - (c) They have good compliance record for the current YA and immediate two preceding YAs in terms of:
 - Prompt submission of tax returns and payment of taxes by the due dates; and
 - No history of surcharges and penalties being imposed or remitted/compounded.
- 9.10 To encourage voluntary disclosure of non-arm's length related party transactions, a full remission of the surcharge will be granted to taxpayers that made self-initiated retrospective upward adjustments provided:
- (a) Such adjustments are made within two years from the tax return filing due date;
 - (b) Taxpayers have not received any IRAS' query or notification on the commencement of an audit relating to any related party

transactions for the relevant YA, or any IRAS' notification on the commencement of an investigation; and

- (c) Taxpayers have also met the three conditions mentioned in paragraph 9.9.

9.11 If taxpayers do not meet the condition in paragraph 9.10(a), the taxpayers may still be granted a partial remission of the surcharge, provided the conditions in paragraphs 9.10(b) and 9.10(c) are met.

Penalty for non-compliance with TP documentation requirement ²⁰

9.12 Section 6 sets out the circumstances under which a taxpayer is required to prepare TP documentation.

9.13 A taxpayer shall be liable on conviction to a fine not exceeding \$10,000 for an offence under the following circumstances:

- (a) For not preparing TP documentation by the time for the making of the tax return;
- (b) For not preparing TP documentation with the details and in the form and content as prescribed by the TP Documentation Rules;
- (c) For not retaining the TP documentation for a period of at least 5 years from the end of the basis period in which the transaction took place;
- (d) For not submitting the TP documentation within 30 days starting from the date of the written notice served by the Comptroller requiring the taxpayer to submit the TP documentation; or
- (e) For providing any documentation that the taxpayer knows to be false or misleading.

9.14 The Comptroller may offer to compound the offence in lieu of prosecution.

9.15 The penalty is not deductible for tax purposes.

²⁰ Section 34F of ITA

PART III – DISPUTE PREVENTION AND RESOLUTION

10 Preventing and resolving transfer pricing disputes

Introduction

- 10.1 Where two or more tax authorities take different positions in determining arm's length prices, double taxation may occur. Double taxation means that the same income is included in the tax base by two or more tax authorities, but this does not always mean that the income will actually be taxed twice.
- 10.2 When a Singapore tax resident taxpayer suffers double taxation arising from adjustments made by IRAS or a foreign tax authority to the transfer prices of its related party transactions, it can choose to resolve the issue through:
- (a) Taking legal remedies in the jurisdiction in which the transfer pricing adjustments are made; and/ or
 - (b) Requesting IRAS to resolve the double taxation through the Mutual Agreement Procedure ("MAP") provided under the relevant DTA.
- 10.3 Where IRAS and the relevant foreign tax authority are unable to resolve the transfer pricing dispute under a MAP within a certain period of time, the taxpayer may request to resolve the dispute via arbitration if the relevant DTA provides for such recourse.
- 10.4 The taxpayer may also choose to prevent transfer pricing disputes by applying for an Advance Pricing Arrangement ("APA") for its related party transactions for future years.
- 10.5 This section explains MAP and APAs in greater detail and sets out the benefits, expectations and compliance rules. Sections 11 and 12 provide guidance on the processes for MAP and APAs respectively.

At a glance – Dispute prevention and resolution through IRAS

- 10.6 The characteristics of MAP and APAs are summarised in this table:

Characteristics	MAP [^]	APAs	
		Bilateral/ Multilateral	Unilateral
Types - Unilateral agreement between IRAS & taxpayer - Bilateral agreement between IRAS & a foreign competent authority - Multilateral agreement between IRAS & two or more foreign competent authorities	 ✓ ✓	 ✓ ✓	 ✓
Objective - Eliminate double taxation - Prevent double taxation - Provide tax certainty	 ✓ ✓ * Lower level of assurance	 ✓ ✓	 ✓* ✓*
Legal basis - Singapore DTAs - Domestic tax law	✓	✓	✓
Availability - Singapore tax resident taxpayers - Non-Singapore tax resident taxpayers	✓	✓	✓ ✓
Financial year ("FY") - Past FYs - Future FYs	✓	✓ ✓	✓
Filing fee - Free of charge - Fee imposed (only where Singapore does not have a DTA with the foreign jurisdiction)	✓	✓	✓ ✓
[^] Includes arbitration if the relevant DTA provides for such recourse			

What is MAP?

10.7 MAP is a dispute resolution facility provided under the MAP Article in Singapore's DTAs²¹. It is a facility through which IRAS and the relevant foreign competent authority resolve disputes regarding the application of the DTA. Usually, a MAP is entered into between two competent authorities but it is possible for IRAS to enter into a multilateral MAP involving three or more competent authorities.

²¹ Details of Singapore's DTAs and MAP relating to DTA matters are available at www.iras.gov.sg and IRAS e-Tax Guide on Avoidance of Double Taxation Agreements ("DTAs").

- 10.8 MAP provides an amicable way for IRAS and the relevant foreign competent authority to agree on the transfer pricing for their taxpayers' related party transactions for past FYs to eliminate double taxation arising from transfer pricing adjustments. Where the agreed MAP outcome between IRAS and the relevant foreign competent authority is accepted by the relevant taxpayers, it is binding on the relevant parties.

What is arbitration?

- 10.9 Arbitration offers a recourse to resolve issues that have reached stalemate in MAP discussion.²²
- 10.10 Under the arbitration provisions in the relevant DTA, where IRAS and the relevant foreign competent authority are unable to resolve the transfer pricing dispute under a MAP within a stipulated period (generally between two and three years) or a period agreed between the competent authorities, the taxpayer may request in writing for any unresolved issues to be submitted to an arbitration panel.²³
- 10.11 The decision made by the arbitration panel based on the proposals or information provided by IRAS and the relevant foreign competent authority is binding on both competent authorities. Arbitration provides certainty to taxpayers and helps to resolve cross-border disputes in a more timely manner.

What is APA?

- 10.12 An APA is a dispute prevention facility provided under the MAP Article in the Singapore's DTAs and domestic tax law. It is an arrangement between IRAS and the relevant foreign competent authority or the taxpayer to agree in advance a set of criteria to ascertain the transfer pricing of the taxpayer's related party transactions for a specific period of time. It provides taxpayers with certainty on their transfer pricing to prevent double taxation.
- 10.13 There are 3 types of APAs: unilateral, bilateral and multilateral APAs.

²² Singapore opted for the arbitration provisions to be included in the Singapore DTAs when she signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). The arbitration provisions will apply if our DTA partners similarly adopt the same arbitration provisions. Arbitration provisions may also be included in the Singapore DTAs through bilateral discussion with our DTA partners. Details are available at www.iras.gov.sg.

²³ Details are provided in the IRAS e-Tax Guide on Avoidance of Double Taxation Agreements ("DTAs").

Unilateral APA

10.14 This is an agreement between IRAS and a taxpayer. It is suitable for the following circumstances:

- (a) Where the transfer pricing issue does not require the involvement of the foreign competent authority. For example, taxpayer seeks clarification on the domestic tax treatment in Singapore.
- (b) Where the other related party to the transaction is resident in a jurisdiction with which Singapore does not have a DTA.
- (c) Where the Singapore's DTA partner has no APA programme or has prescribed a minimum transaction threshold for an APA application of which the taxpayer's transaction falls short.

10.15 A unilateral APA offers a lower level of assurance against double taxation on the same income than a bilateral or multilateral APA. This is because the APA terms are non-binding on the foreign competent authority which is not a party to the unilateral APA process.

10.16 Taxpayers may suffer double taxation if the foreign competent authority disagrees with the agreement between IRAS and the taxpayer and makes adjustments to the transfer prices. The taxpayer will then have to rely on other remedies to resolve the double taxation. We therefore encourage taxpayers to consider preventive measures such as applying for a bilateral APA, or if this is not possible, to also secure a unilateral APA with the relevant foreign competent authority.

10.17 Information on a cross-border unilateral APA will be exchanged with: ²⁴

- (a) Jurisdictions of residence of all related parties with which the taxpayer enters into transactions that are covered by the unilateral APA; and
- (b) Jurisdictions of residence of the taxpayer's ultimate parent entity and immediate parent entity.

Bilateral APA

10.18 This is an agreement between IRAS and one of its DTA partners. Where the agreed APA outcome between the IRAS and foreign competent authority is accepted by the relevant taxpayers, it is binding on the relevant parties.

²⁴ Details on the spontaneous exchange of information on certain rulings, including information on cross-border unilateral APAs, are available at www.iras.gov.sg.

Multilateral APA

10.19 It is an agreement between IRAS and two or more of its DTA partners. Where the agreed APA outcome between the IRAS and foreign competent authorities is accepted by the relevant taxpayers, it is binding on all the relevant parties.

What are the benefits of seeking MAP and/ or APAs?

10.20 The benefits of seeking MAP and/ or APAs include:

- (a) MAP and APAs may provide an efficient and effective way to resolve transfer pricing issues through inter-government negotiation and cooperation between taxpayers and competent authorities;
- (b) APAs provide certainty through prescribed guidance on the determination of acceptable transfer prices between related parties;
- (c) MAP relieves double taxation occurring in the audited FYs when an agreement on the appropriate transfer pricing adjustments is reached between IRAS and the relevant foreign competent authority;
- (d) Bilateral and multilateral APAs eliminate double taxation risks when taxpayers comply with the APA terms and conditions agreed between IRAS and the relevant foreign competent authorities; and
- (e) APAs help to prevent lengthy transfer pricing audits and penalty payments.

Who can apply for MAP or APAs?

10.21 MAP, bilateral APAs and multilateral APAs are available to:

- (a) Taxpayers that are Singapore tax residents; and
- (b) Taxpayers who are not Singapore tax residents but have a branch in Singapore. However, such applications are to be made by the taxpayers in the jurisdiction in which they are tax residents and with which Singapore has a DTA.

Example:

A foreign company can apply to the competent authority of the jurisdiction in which it is a tax resident for a MAP or APA for its

branch operating in Singapore. The branch has to alert IRAS of the application.

In the case of an overseas branch of a Singapore tax resident company, that Singapore company can apply to IRAS for a MAP or APA concerning its overseas branch's transfer pricing affairs in a DTA jurisdiction.

- 10.22 Unilateral APAs are available to taxpayers regardless of whether they are Singapore tax residents.

When to apply for MAP and/ or APAs?

- 10.23 Taxpayers may apply for MAP to resolve double taxation issues that recur over multiple tax years, subject to the time limits provided in the relevant DTAs. Taxpayers should only initiate a MAP when double taxation has occurred or is certain or highly probable. Double taxation should not be just a possibility, such as the mere occurrence of audit or examinations.

- 10.24 MAP should be initiated within the time limit specified (e.g. three years) in the MAP Article of the relevant DTA. Failure to do so may result in the competent authorities rejecting the MAP request. Depending on the relevant provision in the MAP Article, the time limit is determined with reference to the date of the notice of assessment issued to the taxpayer.

- 10.25 Taxpayers should only apply for APA when:

- (a) There is a genuine motive to obtain certainty to prevent double taxation;
- (b) The request relates to specific current or future transactions that are not hypothetical; and
- (c) It is certain that the cross-border related party transactions will commence or continue to take place throughout the APA covered period.

- 10.26 If taxpayers have applied for MAP to resolve double taxation and to prevent recurrence of similar transfer pricing disputes, taxpayers may choose to concurrently apply for an APA to cover the same related party transactions for the future FYs.

- 10.27 Taxpayers must understand that the MAP and APA process is time-consuming and resource intensive for themselves as well as IRAS. Therefore, taxpayers should evaluate their own situations and apply for MAP and/ or APAs only if:

- (a) The incidence of double taxation is certain or highly probable for the FYs to be covered by MAP and APA;
 - (b) They have a robust basis and TP documentation to justify their transfer pricing methodologies and transfer prices;
 - (c) They have the necessary resources to support the MAP and APA process; and
 - (d) They have evaluated the suitability of MAP and/ or APAs by conducting an in-depth cost-benefit analysis for their tax situations.
- 10.28 Taxpayers would be able to access MAP even if they have accepted/decided to accept a tax settlement with IRAS or a foreign tax authority. That said, taxpayers must also recognise that it could be challenging for IRAS and the foreign competent authority to negotiate and come to an agreement on a position that deviates from the tax settlement outcome that was already accepted by the taxpayer(s) involved.

How to apply for MAP and/ or APAs?

- 10.29 If taxpayers intend to apply for MAP or APAs, they should observe the filing process provided in sections 11 and 12 for MAP and APAs respectively.
- 10.30 Taxpayers' applications for MAP or APA are subject to acceptance by IRAS and/ or the relevant foreign competent authorities.

What is the period covered by an APA?

- 10.31 IRAS will generally accept an APA request to cover three to five future FYs (known as the covered period). However, the duration of the covered period should be based on taxpayers' assessment that there will not be any significant changes during the covered period that may affect the validity of the APA.
- 10.32 IRAS may consider taxpayers' request to extend the APA to prior years (known as the roll-back years) for a bilateral or multilateral APA based on the merits of the request and there is no significant difference in the facts and circumstances for the covered period and for the roll-back years. Relevant documents should be maintained to substantiate this. IRAS will not accept request to extend the APA to prior years for a unilateral APA.
- 10.33 If IRAS accepts taxpayers' request to extend the APA to the prior years for a bilateral or multilateral APA, the number of roll-back years will

generally not exceed two FYs immediately prior to the covered period. Depending on the facts and circumstances of each request, IRAS may exercise its discretion to vary the number of roll-back years.

- 10.34 IRAS' acceptance of taxpayers' request for a covered period and roll-back years (in the case of a bilateral or multilateral APA) is subject to them observing the APA process in section 12. This is illustrated in the examples below:

	Company A	Company B
Period to be covered in the bilateral APA	Company intends to apply for three future FYs starting from 1 January 2022 with 2 roll-back years	Company intends to apply for three future FYs starting from 1 January 2022 with 2 roll-back years
Pre-filing meeting	Company initiated a pre-filing meeting with IRAS before 1 April 2021	Company initiated a pre-filing meeting with IRAS in August 2021

Company A followed the timeline in the APA process in section 12. The three future FYs from 1 January 2022 to 31 December 2024 will be considered the covered period. Based on the facts, circumstances and merits of the request, where IRAS accepts Company A's request for two roll-back years, the roll-back years will be the two FYs prior to the covered period, i.e. 1 January 2020 to 31 December 2021.

Company B did not follow the timeline in the APA process in section 12. As such, the FY starting 1 January 2022 will be excluded from the covered period. The covered period will therefore only be the 2 future FYs from 1 January 2023 to 31 December 2024. Based on the facts, circumstances and merits of the request, where IRAS accepts Company B's request for two roll-back years, the roll-back years will be the two FYs prior to the covered period, i.e. 1 January 2021 to 31 December 2022.

What happens after a MAP or an APA application is submitted?

- 10.35 The acceptance of an APA application is at the discretion of the competent authorities. IRAS will consider taxpayers' application for an APA based on the merits of each case.
- 10.36 IRAS will not accept an APA application where the proposed transaction is not carried out for bona fide commercial reasons or involves a scheme which has, as one of its main purposes, the avoidance or reduction of tax. IRAS may also reject an APA application in certain circumstances, such as the taxpayer has inadequate TP documentation (see paragraph 6.41) or the taxpayer does not comply with the arm's length principle.

IRAS may reject a MAP application in certain circumstances, such as the application is not made within the time limit specified in the MAP Article of the relevant DTA. If the MAP or APA application is rejected, IRAS will explain the reasons to the taxpayer and the taxpayer may seek alternative remedies under the relevant domestic tax law or other options to manage its transfer pricing risks.

- 10.37 Where IRAS has accepted the MAP or APA application, IRAS will engage the relevant foreign competent authorities (if applicable) to conclude the MAP or APA. IRAS will apply its best efforts to bring every case to closure in a prompt, efficient and effective manner. While IRAS endeavours to achieve timely resolution of a MAP or APA case, the complexity of issues involved in each case will determine the actual time needed to resolve the case.

What are the obligations of taxpayers during the MAP and APA process?

- 10.38 The MAP and APA negotiation is between the competent authorities and so, taxpayers do not participate in or attend as observers at the negotiations unless they are called upon to make any clarification.
- 10.39 The success of the MAP and APA process requires cooperation and commitment from taxpayers. Taxpayers should therefore:
- (a) Act in good faith throughout the process;
 - (b) Comply with all the requirements pertaining to pre-filing meetings and application processes;
 - (c) Provide access to all relevant documentation, including TP documentation (refer to section 6);
 - (d) Be forthcoming in providing complete and reliable information and good quality analysis (including actual examples) relating to the MAP and APA applications;
 - (e) Adhere to all the stipulated timelines when providing any clarification, information and analysis that may be requested by IRAS and the relevant foreign competent authorities;
 - (f) Update IRAS on all information that they have provided to or received from the relevant foreign competent authorities on a timely basis; and
 - (g) Provide the same set of information to IRAS and the relevant foreign competent authorities.

10.40 The lack of taxpayers' cooperation may result in:

- (a) Their applications being rejected;
- (b) The MAP and APA processes being discontinued; or
- (c) No consensus being reached between IRAS and the relevant foreign competent authorities.

10.41 The success of the MAP and APA process also depends on IRAS and the relevant foreign competent authorities reaching agreement. Taxpayers should not assume that IRAS would always be able to reach agreement for all MAP and APA cases. There may be valid constraints such as:

- (a) The lack of cooperation from taxpayers as mentioned above;
- (b) The transfer pricing adjustment cannot be varied due to domestic tax law or the adjustment has already been finalised through the domestic tax appeal process or litigation; or
- (c) The lack of suitable data to analyse the transactions for future years.

10.42 Both MAP and APAs do not deprive taxpayers of other remedies available under their respective domestic tax law. Taxpayers should inform IRAS and the relevant foreign competent authorities if the matter is adjudicated through any legal or judicial proceedings while the MAP and APA process is still on-going. The competent authorities will discuss and decide if the MAP and APA process should be continued, ceased or suspended. Where the matter has been subjected to litigation and determination by the Singapore tribunals and courts, IRAS is unlikely to amend the transfer pricing adjustments that depart from the determination by the Singapore tribunals and courts.

10.43 Taxpayers are not obliged to accept the outcome agreed between the competent authorities. They may withdraw the application, terminate the process or reject the agreed outcome. However, as the MAP and APA process may demand substantial investment in time and resources from the taxpayers and competent authorities, taxpayers should not terminate the process unless there are valid reasons for doing so.

When will MAP and APA process be discontinued?

10.44 The lack of cooperation and commitment from taxpayers during any part of the MAP and APA process may result in IRAS discontinuing the MAP and/ or APA process.

10.45 The table below lists some examples where IRAS may discontinue the MAP and/ or APA:

S/No.	Examples	When IRAS will discontinue the MAP or APA
1	<u>Non-submission of MAP or APA application</u> IRAS and the taxpayer agreed at the pre-filing meetings that the taxpayer is to submit the application by the specified date. If the taxpayer fails to submit the application by the specified date, IRAS will consider that the taxpayer is no longer interested in pursuing the application.	When IRAS does not receive any information from the taxpayer regarding its application within 6 months from the date of the last pre-filing meeting.
2	<u>Insufficient support during MAP or APA process</u> IRAS and the taxpayer agreed on the specified timeline by which the taxpayer is to submit the information required by IRAS. If the taxpayer fails to provide the information by the timeline and it remains outstanding for an extended period of time, IRAS will consider that the taxpayer has withdrawn from the MAP or APA process.	When taxpayer fails to provide the information within 3 months after the agreed timeline.
3	<u>Failure to provide complete information</u> The taxpayer should provide any relevant and material information that may affect the outcome of the MAP or APA to IRAS on a timely basis. If the taxpayer fails to provide any material information that could have affected the outcome of the MAP or APA, IRAS will consider discontinuing the MAP or APA process.	When it is found that the taxpayer has not provided such material information.

10.46 Where a MAP or APA process has been discontinued under any of the above situations or has been withdrawn by the taxpayer, and the taxpayer subsequently wishes to resume the MAP or APA process, IRAS will consider the request afresh and assess the merits of the request.

10.47 IRAS may revoke or cancel a MAP or APA agreement in the case of fraud or misrepresentation of information during a MAP or APA process,

or when a taxpayer fails to comply with the terms and conditions of the MAP or APA agreement.

- 10.48 Before IRAS discontinues a MAP or APA process or cancels or revokes a MAP or APA agreement, it will notify the relevant foreign competent authorities of its intention and the reasons for such action.

Other compliance matters

- 10.49 Taxpayers, who have appointed tax agents or other representatives to act on their behalf on matters relating to their MAP or APAs, are required to provide IRAS with a letter of authorisation (“LOA”). The LOA is to enable IRAS to correspond and discuss with the appointed tax agents and representatives on the matters relating to the applications. A sample of the LOA is in Annex B1.
- 10.50 IRAS does not impose any fee for MAP and/ or APAs except for unilateral APAs where the related party transactions involve a jurisdiction with which Singapore does not have a DTA. Such unilateral APAs will be processed under the Advance Ruling System with charges.²⁵
- 10.51 IRAS does not accept tax agents’ requests to initiate MAP or APA discussion for their clients who wish to preserve anonymity.
- 10.52 All information obtained during the MAP and APA process is protected by the confidentiality provisions in the ITA and the relevant DTA.
- 10.53 IRAS is not precluded from conducting an audit on the taxpayer if there is non-compliance with the Singapore tax law.

Frequently asked questions

- 10.54 IRAS is conducting an audit or investigation on my transaction with my related party for a past financial year. Will IRAS accept my request for an APA on the same transaction for the future years?**

IRAS will not accept your request for an APA on your related party transaction as it is under on-going audit or investigation. You may consider applying for the APA after IRAS has completed its audit or investigation. Should you suffer double taxation due to adjustments from IRAS’ audit or investigation, you can seek legal remedies under the domestic tax law or request for MAP under the relevant DTA to resolve the double taxation.

²⁵ Please refer to www.iras.gov.sg for details on applying for income tax advance ruling and the fees payable.

- 10.55 I intend to apply for an APA on my related party transaction for the future years and two roll-back years. The transfer pricing method that I am proposing in my APA request will be different from the method that I had applied prior to the roll-back years. Will IRAS accept my APA request?**

Where there are no significant changes to the facts and circumstances of the related party transaction over the years, IRAS is of the view that the same transfer pricing method should be applied consistently. To consider your APA request, IRAS will seek to understand your rationale for proposing a different transfer pricing method for the APA.

11 Guidance on MAP process

Introduction

- 11.1 This section provides guidance on the MAP process. Please refer to section 10 for MAP details, benefits, expectations and compliance rules.

MAP process

- 11.2 The MAP process consists of four steps as shown in this diagram:

			Step 4
		Step 3	Implementation
Step 1	Step 2	Review & negotiation	
Submission of MAP application	Evaluation		
Taxpayer submits the MAP application to IRAS within the time limit specified in the MAP Article of the DTA.	IRAS evaluates taxpayer's MAP application and may contact taxpayer for more information. Where the application is accepted, IRAS will issue an acceptance letter within 1 month from the date of receipt of all the required information.	IRAS informs taxpayer of the MAP outcome within 1 month from reaching agreement by the competent authorities.	Taxpayer and IRAS implement the MAP outcome.

Step 1 – Submission of MAP application

- 11.3 Once the MAP route is decided on, the taxpayer should proceed to submit its MAP application to IRAS within the time limit specified in the MAP Article of the relevant DTA. If the taxpayer prefers, it can initiate a discussion with IRAS prior to submitting the MAP application.
- 11.4 The taxpayer should also concurrently submit the MAP application to the other foreign competent authority. If the head office of a foreign branch operating in Singapore has made a MAP application in its jurisdiction in relation to the transaction(s) of the foreign branch operating in Singapore, the latter should alert IRAS.

- 11.5 The application should be made in soft copy only.
- 11.6 The application should include all the details and documentation based on the guidance provided under section 6. The taxpayer should also ensure that the following details are provided:
- (a) Letter of authorisation stating the engagement of tax agents or other representatives to act for the taxpayer, if applicable (refer to the sample on a letter of authorisation in Annex B1);
 - (b) Taxpayer's address, tax identification number and contact details;
 - (c) The foreign competent authority;
 - (d) Detailed descriptions on the covered transaction, covered entities, covered period and the transfer pricing methodology and analysis (refer to the sample of an APA agreement in Annex B3 for a brief description on each term);
 - (e) How the covered transaction relates to the overall business activities of the covered entities;
 - (f) How the functions undertaken, assets employed and risks assumed by the covered entities have changed compared to the period prior to the covered period;
 - (g) Whether the taxpayer has pursued domestic remedies such as tax tribunals or courts in the foreign jurisdiction. If yes, a copy of the decision is to be provided;
 - (h) Whether similar issue(s) has been previously dealt with or is currently being considered in an advance ruling, advance pricing arrangement, settlement arrangement or similar proceedings or by any tax tribunal or court. If yes, a copy of these rulings or decisions should be provided where relevant and available;
 - (i) The foreign competent authority's audit position:
 - Transfer pricing methodology and the reasons for its selection;
 - Choice of tested party;
 - Profit level indicator;
 - Audit result;
 - Adjustment made; and
 - Amount of tax involved;
 - (j) Whether the taxpayer has made corresponding adjustments in its Singapore income tax return, and
 - (k) Any other relevant information.

Step 2 – Evaluation

- 11.7 IRAS will review and evaluate the taxpayer's MAP application. IRAS may seek clarification or further information from the taxpayer or hold discussions with the taxpayer.
- 11.8 When IRAS accepts the application, it will issue letters of acceptance to the taxpayer and the relevant foreign competent authority within one month of the receipt of the application. If IRAS rejects the application, it will notify the taxpayer and the relevant foreign competent authority in writing together with the reasons.

Step 3 – Review and negotiation

- 11.9 Upon accepting the application, IRAS may seek clarification or further information from the taxpayer, hold discussions with the taxpayer or conduct site visits to the taxpayer's premises which include interviewing the taxpayer's key personnel.
- 11.10 IRAS will engage the foreign competent authority to resolve the MAP. IRAS will update the taxpayer on the progress and the outcome of the competent authorities' negotiations. In general, IRAS aims to resolve a MAP case within 24 months from receiving the taxpayer's complete application.

Step 4 – Implementation

- 11.11 When an outcome is reached between IRAS and the relevant foreign competent authority, within one month of reaching agreement, IRAS will discuss the details and implementation of the agreement with the taxpayer. The taxpayer will have to decide whether the agreed outcome is acceptable.
- 11.12 When the taxpayer accepts the outcome, IRAS and the relevant foreign competent authority will proceed to:
- (a) Exchange confirmation letters and agreement to conclude the MAP;
 - (b) Give copies of the agreement to their respective taxpayers; and
 - (c) Amend the assessments by making corresponding adjustments and/ or revising the transfer pricing adjustments to relieve the double taxation. This will be done in a timely manner in accordance with domestic procedures. Please refer to paragraphs 13.19 to 13.24 for IRAS' position on corresponding adjustments.
- 11.13 If any interest or penalties have been imposed in a jurisdiction in connection with the taxation imposed that is the subject of the MAP, the

MAP agreement may address whether any refund of such interest or penalties should appropriately be made. When the MAP agreement requires IRAS to reduce the transfer pricing adjustment it made previously and if IRAS has previously imposed a surcharge (see section 9) on the transfer pricing adjustment, IRAS will withdraw the surcharge relating to the amount of adjustment discharged.

12 Guidance on APA process

Introduction

12.1 This section provides guidance on the APA process. Please refer to section 10 for APA details, benefits, expectations and compliance rules.

APA process

12.2 The APA process consists of four steps as shown in the diagram below. Taxpayers should observe the relevant timelines as illustrated in the same diagram (i.e. timeline illustration):

X being the first day of the APA covered period
(e.g. 1 Jan 2022)

Submission of Pre-filing materials	Step 1	Step 2	Step 3	Step 4
	1 st Pre-filing meeting	Submission of APA application	Review & negotiation	Implementation
Taxpayer submits pre- filing materials ≥ 10 months before X (e.g. not later than 1 Mar 2021).	Taxpayer initiates pre- filing meeting ≥ 9 months before X (e.g. not later than 1 Apr 2021).	IRAS indicates ≥ 4 months before X (e.g. not later than 1 Sep 2021) if application can be submitted. Taxpayer submits application within 3 months upon IRAS indicating application can be submitted. IRAS issues acceptance letter within 1 month from receipt of the application.	IRAS informs taxpayer of the APA outcome within 1 month from reaching agreement by the competent authorities.	Taxpayer and IRAS implement the APA agreement.

12.3 The timeline is explained in the following paragraphs.

12.4 The following paragraphs will equally apply to unilateral APAs except that references to relevant foreign competent authorities (“CAs”) are not relevant.

Step 1 – Pre-filing meetings

12.5 A taxpayer intending to file an APA application should initiate pre-filing meeting with IRAS. When initiating the meeting, the taxpayer is to provide the basic information listed under items 2 to 7 of the guide on minimum information required for the pre-filing meeting in Annex B2.

12.6 The first pre-filing meeting should take place at least nine months before the first day of the APA covered period. (In the timeline illustration, as the first day of the APA covered period is 1 January 2022, the first pre-filing meeting should take place no later than 1 April 2021.) This is to allow sufficient time for IRAS to review the information provided and for the taxpayer to follow-up on IRAS’ request for additional information prior to the submission of the application.

12.7 Depending on the complexity of the APA application, it may be necessary to have more than one pre-filing meeting or site visit to the taxpayer’s premises. As such, the taxpayer should plan for ample lead time for these meetings. (In the timeline illustration, the taxpayer should contact IRAS before March 2021 so that the first pre-filing meeting can take place latest by 1 April 2021.)

12.8 To have an effective discussion, IRAS requires:

- (a) The taxpayer to provide the information set out in the guide on minimum information required for pre-filing meeting in Annex B2 at least one month before the meeting. (In the timeline illustration, it will be no later than 1 March 2021.)
- (b) The taxpayer’s representatives who have a good and deep understanding of the business and are responsible for the taxpayer’s tax matters to participate in the pre-filing meeting. The tax agent may also participate in the meeting, if the taxpayer so requests.

12.9 The purpose of the pre-filing meeting is for:

- (a) The taxpayer to explain its APA request and update IRAS on its meetings with the relevant foreign competent authorities;
- (b) IRAS to ascertain the merits of the APA request before the taxpayer undertakes further work on the APA application;

- (c) IRAS and the taxpayer to identify critical and relevant areas of focus and areas where additional information, documentation and analysis are required; and
 - (d) IRAS to ascertain the taxpayer's TP documentation.
- 12.10 IRAS will indicate if it is inclined to accept the APA request at least four months before the first day of the APA covered period. (In the timeline illustration, it will be no later than 1 September 2021.) If IRAS is inclined to accept the request, it will provide guidance on the information to be provided in the formal application as well as the next course of action.
- 12.11 A taxpayer's initiation of pre-filing meetings or APA application does not suspend any audit or enforcement process that IRAS may be conducting on the taxpayer.

Step 2 – Submission of APA application

- 12.12 Unless IRAS or the other relevant foreign competent authority does not agree to the taxpayer's APA request, the taxpayer should proceed to submit its application.
- 12.13 The application should be made in soft copy only.
- 12.14 The application should include all the details and documentation based on the guidance provided under section 6, including the financial forecast for the covered transaction for the covered period, and the jurisdiction of residence, name, address and tax reference number (where available) of the taxpayer's ultimate parent entity, immediate parent entity and related parties to the covered transaction. The taxpayer should ensure that detailed descriptions on the covered transaction, covered entities, covered period and the transfer pricing methodology and analysis are also provided (refer to the brief description on each term in the sample of an APA agreement in Annex B3). Additional information may be included if relevant.
- 12.15 The taxpayer should submit its application to IRAS within three months of IRAS giving its indication that the application can be submitted. Late submission may cause the APA application to be rejected. (In the timeline illustration, if IRAS indicates that it is inclined to accept the APA request on 1 September 2021, the filing deadline is no later than 30 November 2021.)
- 12.16 For bilateral and multilateral APA, the taxpayer should submit the application simultaneously to IRAS and the relevant foreign competent authorities. Where the filing deadline imposed by a foreign competent authority is earlier than IRAS', the taxpayer should observe the earlier filing deadline. This will not affect IRAS' consideration and observation of the timeline under its APA process.

Step 3 – Review and negotiation

- 12.17 If IRAS accepts the application, it will issue letters of acceptance to the taxpayer and the relevant foreign competent authority within one month of the receipt of the application. If IRAS rejects the application, it will notify the taxpayer in writing with reasons.
- 12.18 The acceptance of an APA application does not necessarily mean that IRAS endorses all the proposals in the application. IRAS reserves the right to propose alternatives either on its own or in consultation with the relevant foreign competent authority. These may include a change in transfer pricing methodology or limiting/ expanding the scope of the APA.
- 12.19 Upon accepting the application, IRAS will contact the relevant foreign competent authority to initiate APA discussion. IRAS will formulate its position concerning the APA application. IRAS may seek clarification or further information from the taxpayer (such as segmented financial data), hold discussions with the taxpayer or conduct site visits to the taxpayer's premises which include interviewing the taxpayer's key personnel.
- 12.20 IRAS will indicate the expected timeline and update the taxpayer on the progress and the outcome of the competent authorities' negotiations.

Step 4 – Implementation

- 12.21 When an agreement is reached with the relevant foreign competent authority, within one month of reaching agreement, IRAS will discuss the details and implementation of the agreement with the taxpayer. The taxpayer will have to decide whether the agreed outcome is acceptable.
- 12.22 When the taxpayer accepts the outcome:
- (a) IRAS will proceed to issue the APA agreement to the taxpayer in the case of a unilateral APA.
 - (b) IRAS and the relevant foreign competent authority will proceed to do the following in the case of a bilateral or multilateral APA:
 - Exchange confirmation letters and agreement to conclude the APA;
 - Give copies of the agreement to their respective taxpayers; and
 - Amend the assessments by making compensating adjustments to the roll-back years, if necessary. Please refer to paragraphs 13.11 to 13.14 for IRAS' position on compensating adjustments.

- 12.23 Once an APA agreement becomes effective, the taxpayer is to comply with the APA terms stipulated in the agreement. A sample of the APA agreement is provided in Annex B3.
- 12.24 As long as the taxpayer complies with the terms and conditions of the APA agreement, IRAS will not audit the taxpayer's transfer prices for the covered period.
- 12.25 The taxpayer must file annual APA compliance reports to demonstrate compliance with the terms and conditions of the APA agreement together with its income tax returns. IRAS does not prescribe a fixed format for the annual APA compliance report. However, the taxpayer may refer to Annex B4 for a guide on annual APA compliance reports.
- 12.26 The taxpayer should keep relevant documents for the purpose of preparing the annual APA compliance reports (refer to section 6).
- 12.27 The taxpayer should notify IRAS and the relevant foreign competent authority of any breach of any of the conditions in the APA agreement as early as possible. The taxpayer should also provide an impact analysis and a proposed course of action to facilitate the competent authorities' evaluation and discussion.

Renewal of an APA

- 12.28 The taxpayer may request to renew an existing APA agreement by following the same four-step APA process. The taxpayer should highlight any significant changes to the circumstances prevailing when the existing APA agreement was made.

PART IV – OTHER MATTERS

13 Adjustments relating to transfer pricing

Introduction

13.1 Tax authorities have generally increased their effort in auditing the pricing of related party transactions and increased penalties for filing income tax returns reflecting inaccurate transfer pricing. Consequently, some taxpayers are initiating adjustments on their own and filing amended claims.

13.2 This section sets out IRAS' position on the adjustments made by taxpayers and other tax authorities. Transfer pricing adjustment made by IRAS is covered in sections 7 and 8.

Types of adjustments relating to transfer pricing

13.3 Broadly, taxpayers may make the following adjustments in their tax returns or after the filing of their tax returns:

- (a) Year-end adjustments at year-end closing of accounts;
- (b) Compensating adjustments;
- (c) Self-initiated retrospective adjustments; or
- (d) Corresponding adjustments arising from transfer pricing adjustments by tax authorities.

At a glance – IRAS' position

13.4 IRAS' position on the 4 types of adjustments relating to transfer pricing is summarised in the following table:

Types of adjustments	Adjustments made at/ for		Situations in which adjustments are made				Tax position ²⁶	
	Year-end	Prior years	Closing accounts	APA	MAP	Self-initiated	Tax	Allow
Year-end adjustments at year-end closing of accounts (paragraphs 13.5 to 13.10)	✓		✓				✓	✓
							Conditions met	
							✓	x
							Conditions not met	

²⁶ Tax position refers to the taxing of upward adjustments and/ or the allowing of downward adjustments.

Types of adjustments	Adjustments made at/ for		Situations in which adjustments are made				Tax position ²⁶	
	Year-end	Prior years	Closing accounts	APA	MAP	Self-initiated	Tax	Allow
Compensating adjustments (paragraphs 13.11 to 13.14)	✓			✓			✓	✓
Corresponding adjustments (paragraphs 13.19 to 13.24)	✓	✓			✓		✓	✓
Self-initiated retrospective adjustments (paragraphs 13.15 to 13.18)		✓				✓	✓	x

Year-end adjustments at year-end closing of accounts

- 13.5 Although taxpayers have set up their group transfer pricing analyses and policies, taxpayers may find that their actual results differ from the outcomes determined in their transfer pricing study before or during their year-end closing. This can be due to difficulties in assessing market variables and making market assumptions accurately. Changes in third-party prices can also affect the actual results.
- 13.6 Therefore, taxpayers may make adjustments to their actual results at the year-end closing of their accounts to arrive at what, in the taxpayers' opinion, would be the arm's length prices for their related party transactions as described in their transfer pricing analyses and policies. These adjustments are known as year-end adjustments.
- 13.7 Upon making the adjustments, taxpayers will report the arm's length results for tax purposes even though they differ from the actual results.
- 13.8 As the purpose of the year-end adjustments is to ensure that taxpayers' tax-reported results are consistent with the arm's length prices stated in their transfer pricing analyses and policies, IRAS will accept the year-end adjustments, i.e. adjustments following the financial year end of the taxpayers in Singapore when the following conditions are met:

- (a) Taxpayers must have in place transfer pricing analyses and contemporaneous TP documentation (refer to section 6) to establish the arm's length prices;
- (b) Taxpayers should make the year-end adjustments symmetrically in the accounts of the affected related parties. This is to avoid double taxation or double non taxation; and
- (c) Taxpayers must make the adjustments before filing their tax returns.

Example:

Company A is a distributor for the Group products. It buys the products from its parent company for onward distribution to third party customers in Singapore. Based on the transfer pricing analyses and TP documentation, Company A is to be rewarded with an operating margin (i.e. operating profit over sales) between 3% and 5% for its distribution function.

At the year-end closing of its accounts, Company A's actual results are as follows:

	S\$	
<u>Actual results</u>		
Sales to third party customers	25,000,000	A
Less: Purchases from parent company	<u>17,000,000</u>	
Gross profit	8,000,000	
Less: Operating expenses	<u>6,500,000</u>	
Actual operating profit	<u>1,500,000</u>	B
Actual operating margin (B / A)	6%	

As Company A's actual operating margin is higher than the arm's length operating margin of 5%, Company A makes year-end adjustments as follows:

	S\$	
<u>Arm's length results</u>		
Sales to third party customers	25,000,000	X
Less: Purchases from parent company	<u>17,250,000</u>	
Gross profit	7,750,000	
Less: Operating expenses	<u>6,500,000</u>	
Arm's length operating profit	<u>1,250,000</u>	Y
Arm's length operating margin (Y / X)	5%	

Company A reports the arm's length results for tax purposes even though they differ from the actual results. Parent company's accounts similarly reflects an increase in sales to Company A of S\$250,000 to avoid double non taxation.

On the basis that conditions (a) to (c) are fulfilled, IRAS accepts Company A's year-end adjustments.

- 13.9 By accepting the year-end adjustments, IRAS is not precluded from conducting audits and making transfer pricing adjustments subsequently or entering into mutual agreement procedure with the relevant foreign competent authorities.
- 13.10 If the taxpayers do not meet any of the conditions in paragraph 13.8, IRAS is not precluded from bringing any upward adjustments to tax even if it does not allow the downward adjustments.

Compensating adjustments

- 13.11 Where taxpayers have entered into advance pricing arrangement ("APA") with IRAS, the APA agreements (be it unilateral, bilateral or multilateral) will have stipulated the arm's length prices.
- 13.12 For reasons similar to those for year-end adjustments, taxpayers may find their actual results differing from the agreed arm's length prices provided in the APA agreements.
- 13.13 In such circumstances, taxpayers should make compensating adjustments in accordance with the terms in the APA agreements to arrive at the agreed arm's length prices. Taxpayers should report such arm's length results for tax purposes even though they differ from the actual results.
- 13.14 Please refer to sections 10 and 12 for the guidance on preventing and resolving transfer pricing disputes and the APA process.

Self-initiated retrospective adjustments

- 13.15 Due to subsequent changes in circumstances, some taxpayers may review their past transfer prices relating to the transactions with their related parties. Arising from such review, they may decide to make retrospective upward or downward adjustments for past financial years to arrive at what, in the taxpayers' opinion, would be the arm's length prices. These adjustments are referred to as self-initiated retrospective adjustments.
- 13.16 Taxpayers may review their past transfer prices for various reasons such as:
- (a) To comply with a group global transfer pricing policy which has not been taken into account previously;
 - (b) To reflect revisions in transfer pricing analyses;

- (c) To avoid potential transfer pricing adjustments by a tax authority; or
 - (d) To account for the arm's length charge for a transaction which they have previously overlooked.
- 13.17 IRAS will not allow any retrospective downward adjustments unless the adjustments are due to an error or mistake under Section 93A(1A) of the ITA and supported by contemporaneous TP documentation (refer to section 6).
- 13.18 IRAS is, however, not precluded from bringing any retrospective upward adjustments to tax if doing so would be in accordance with arm's length price.

Corresponding adjustments arising from transfer pricing adjustments by tax authorities

- 13.19 Double taxation arises when the same profits are taxed twice as a result of a foreign tax authority's transfer pricing audit and application of arm's length price.
- 13.20 To eliminate the double taxation, IRAS may agree to reduce the profits of the taxpayer. Such downward adjustment to the taxpayer's profits is known as corresponding adjustment.
- 13.21 When taxpayers suffer double taxation arising from transfer pricing adjustments by a foreign tax authority, they should not on their own accord make any corresponding adjustment in their tax returns or tax computations without informing IRAS.
- 13.22 Taxpayers may seek relief from double taxation through the mutual agreement procedure ("MAP") provided in the DTA. Please refer to sections 10 and 11 for the guidance on preventing and resolving transfer pricing disputes and the MAP process.
- 13.23 IRAS will only consider making corresponding adjustments to eliminate double taxation when:
- (a) There is a DTA between Singapore and the foreign jurisdiction of the tax authority that made the transfer pricing adjustments; and
 - (b) Taxpayers have applied for the MAP provided in that DTA and such application is accepted by IRAS and the foreign tax authority.
- 13.24 IRAS will effect the corresponding adjustments to eliminate double taxation if the outcome of the MAP is accepted by IRAS, the foreign tax authority and the taxpayers.

14 Related party services

Introduction

14.1 Related party or intra-group services refer to activities that are performed by one or more members of a group of companies or businesses for related parties within the same group. Such services may include administrative, technical, financial, commercial, management, coordination and control functions.

14.2 This section covers the following:

- (a) The “benefits test” which is used to determine whether related party services have been provided;
- (b) Application of the arm’s length principle to determine the arm’s length fee for such services; and
- (c) Administrative practices for routine support services.

Using the “benefits test” to determine the provision of related party services

14.3 It is common for a parent company or a designated member within a group to undertake certain activities (e.g. administrative, financial and personnel functions) for the various related parties in the group.

14.4 To determine whether related party services have been provided, taxpayers can apply the “benefits test” to the facts and circumstances pertaining to their activities.

14.5 The “benefits test” requires consideration of the following factors:

- (a) Whether activities are performed for another party which receives, or reasonably expects to receive, benefits from such activities. If so, there is a service provided even if the expected benefits do not eventually materialise;
- (b) Whether objectively there is any commercial or practical necessity for the activities to be performed for the service recipient and an independent party would be willing to pay the service provider for the performance of those activities. If not, the benefit is too remote or incidental and there is no service provided (see example in paragraph 15.55);
- (c) Whether the benefits have economic or commercial value such that an independent party would expect to pay to receive the benefits

or be paid for providing the benefits. If not, there is no service provided; and

- (d) Whether the benefits are identifiable and capable of being valued. Otherwise, there is no service provided.

14.6 A group member (usually the parent company or regional holding company) may perform certain activities relating to other group members in its capacity as the shareholder (referred to as “holding company” for purpose of this paragraph). For example, meetings of shareholders, issuing of shares of parent company, listing on stock exchange, complying with reporting requirements of the parent company, auditing of other group members’ accounts in the interest of the parent company, etc. Such activities are referred to as shareholder activities. While shareholder activities are relating to other group members, they are performed by the holding company because of its ownership interest in those group members. Those group members do not need the activities and would not be willing to pay for them if they were independent parties. Applying the benefit test, shareholder activities would not be considered to be related party services, and thus could not justify a charge to those group members. Costs associated with shareholder activities should only be borne and allocated at shareholder level. There may be instances where the shareholder activities are carried out by a group member on behalf of the holding company. In such instances, the group member is not performing shareholder activities but should be regarded as providing a service to the holding company and thus, should be remunerated at arm’s length by the holding company following the guidance in this section.

14.7 A group member may merely duplicate a service that another group member is performing for itself or receiving from a third party. There is no commercial or practical necessity for such duplicative service and thus, applying the benefit test, no service is considered provided. While generally this is the case, there could be situations where duplication of service is necessary. For example, seeking expert opinion from different parties to facilitate business decision making or performing regulatory control functions locally and on consolidated basis at group level. Any consideration of possible duplication of services needs to determine the nature of the services, reasons for duplicating the services, whether the services are different, additional or complementary to each other, etc.

14.8 Taxpayers may also refer to Chapter VII of the OECD TPG on Special Considerations for Intra-Group Services for further guidance on determining whether related party services have been rendered.

Application of the arm's length principle to determine arm's length fee

14.9 After establishing that a related party service has been provided, taxpayers should determine the appropriate charge for the service provided based on the arm's length principle. This requires a related party transaction to be viewed as having been made under comparable circumstances as a transaction with an independent party.

14.10 To do so, taxpayers can adopt the three-step approach found in section 5. In addition, they may consider the following:

Comparability analysis for related party services

14.11 When performing the comparability analysis for related party services, taxpayers should analyse:

(a) From the perspectives of the service provider

The price it would charge an independent party, taking into account its costs; and

(b) From the perspectives of the recipient

The price it is willing to pay for the services, considering what it would have otherwise paid to independent parties for similar services under similar circumstances.

Choice of most appropriate transfer pricing method

14.12 When deciding on the most appropriate transfer pricing method, taxpayers should remain guided by the considerations in paragraph 5.104.

14.13 The following methods are often the most appropriate choices to determine the arm's length fee for related party services:

(a) CUP method; or

(b) Cost plus method; or

(c) TNMM.

Determination of cost base

14.14 If a cost-based transfer pricing method (CUP or cost plus methods) or profit level indicator (under the TNMM) has been selected to determine the arm's length fee, the next step is to establish the relevant cost base. To do so, taxpayers should consider:

- (a) Whether a direct or indirect charge method is appropriate; and
- (b) Whether the costs are strict pass-through costs.

Direct or indirect charge method

14.15 The direct charge method is applicable for services (e.g. conduct of market survey for a particular new product developed by a related party) where the following are clearly identifiable:

- (a) Actual work done;
- (b) Beneficiary of the services;
- (c) Basis of charge; and
- (d) Costs expended in providing the services.

14.16 This method facilitates review and examination by tax authorities. Therefore, wherever possible, taxpayers should adopt this method in determining the appropriate charges for related party services.

14.17 However, it may not be practical for taxpayers to adopt the direct charge method for all related party services. For instance, a taxpayer may provide accounting services for all members belonging to the same group. It may not be possible for the taxpayer to identify the benefits received by, or the service performed specifically for, individual members.

14.18 In such a case, the taxpayer may have to use an indirect charge method to approximate the charges. Such a method entails the use of an appropriate apportionment basis or allocation key to charge for the service provided. Examples of possible allocation keys include gross sales, income or receipts, loans and deposits, headcount, floor area and asset size.

14.19 The main consideration when using an indirect charge method is the appropriateness of the apportionment basis or allocation key. This would depend on the nature and usage of the service.

- 14.20 Generally, the most appropriate allocation key is one that most accurately reflects the share of benefits received or is expected to be received by the service recipients. This is largely a question of judgment.
- 14.21 Taxpayers should demonstrate that due consideration and analysis have been undertaken in arriving at the choice of allocation key. The allocation key adopted by the taxpayer would be acceptable as long as it is:
- (a) Reasonable;
 - (b) Founded on sound accounting principles; and
 - (c) Consistently applied year to year throughout the group unless there are very good reasons for not doing so.

Strict pass-through costs

- 14.22 Sometimes, a group service provider may arrange and pay for, on behalf of its related parties, services acquired from other service providers (whether independent or related). The group service provider may pass on the costs of the acquired services to its related parties without a mark-up when the following conditions are met ("strict pass-through costs"):
- (a) The acquired services are for the benefit of the related parties;
 - (b) The acquired services have been charged at arm's length;
 - (c) The group service provider is merely the paying agent and does not enhance the value of the acquired services; and
 - (d) The costs of the acquired services are the legal or contractual liabilities of the related parties. This condition can be met even if the group service provider is legally or contractually liable to pay for the acquired services. This is provided that the group service provider has a written agreement with its related parties for the latter to assume the liabilities relating to the acquired services. Such written agreement can include email correspondence between the group service provider and its related parties, be it a single email with all the related parties or separate emails with each related party.
- 14.23 The above treatment is premised on the view that independent parties in comparable situations would agree not to earn a mark-up on the costs incurred.
- 14.24 The group service provider should nonetheless charge an appropriate arm's length mark-up for its function in arranging and paying for the acquired services on behalf of its related parties. The mark-up should:

- (a) Be based on the aggregate costs of its resources in performing the said function; and
- (b) Reflect the nature of its own services and extent of value-add generated for the related parties in the group benefiting from such services.

14.25 Whether a cost can be regarded as strict pass-through cost would depend on the specific facts and circumstances of each case. Below are some examples to illustrate the application of the conditions in paragraph 14.22.

Example 1:

Entity A, a group service provider, uses its own resources to arrange, select and liaise with an independent firm to provide corporate secretariat services for the benefit of its related parties, Entities X, Y and Z. The cost of the corporate secretariat services is to be fully borne by Entities X, Y and Z in accordance with a written agreement between Entity A and Entities X, Y and Z. The cost charged by the independent firm to Entity A for the provision of corporate services will qualify as strict pass-through costs as the conditions in paragraph 14.22 would have been met. Entity A's own costs in arranging, selecting and liaising with the independent firm should be charged to Entities X, Y and Z with an appropriate arm's length mark-up as determined based on the guidance in this section.

Example 2:

Entity A, a group service provider, provides travel-related coordination services, which include the purchase of air tickets and booking of hotel accommodation, for the benefit of its related parties, Entities X, Y and Z. The costs of the air tickets and hotel accommodation are to be fully borne by the Entities X, Y and Z in accordance with a written agreement between Entity A and Entities X, Y and Z. The costs of the air tickets and hotel accommodation, which are acquired services from the airline and hotel, will qualify as strict pass-through costs as the conditions in paragraph 14.22 would have been met. Entity A's own costs in providing the travel-related coordination services should be charged to Entities X, Y and Z with an appropriate arm's length mark-up as determined based on the guidance in this section.

Example 3:

Entity A, a group service provider, procures licences from a third party on behalf of its related parties, Entities X, Y and Z, and re-invoices the licence fees to Entities X, Y and Z. The licence fees are to be fully borne by Entities X, Y and Z in accordance with a written agreement between Entity A and Entities X, Y and Z. Even though this example relates to

licences rather than acquired services, the licence fees will qualify as strict pass-through costs as the conditions in paragraph 14.22 are considered as met:

- The licences are for the benefit of Entities X, Y and Z;
- The licences have been charged at arm's length;
- Entity A is merely the paying agent and does not enhance the value of the licences; and
- There is a written agreement between Entity A and Entities X, Y and Z for the latter to assume the liabilities relating to the licences.

Entity A's own costs in procuring the licences on behalf of Entities X, Y and Z should be charged to Entities X, Y and Z with an appropriate arm's length mark-up as determined based on the guidance in this section.

However, if Entity A procures the licences from a third party for the purposes of Entity A rendering IT services to Entities X, Y and Z, the licence fees will not qualify as strict pass-through costs under paragraph 14.22 since the licence fees will constitute Entity A's cost in providing its IT services to Entities X, Y and Z. The licence fees should be charged to Entities X, Y and Z with an appropriate arm's length mark-up as determined based on the guidance in this section.

Administrative practices for routine support services

Routine support services

14.26 It is common for parent companies or group service companies to provide certain routine services to related parties. These services are usually:

- (a) Related to activities that support the group's main business;
- (b) Different from the main activities from which the group derives its income;
- (c) Not intended to be carried out for profit but may be required for the effective functioning of the group; and
- (d) Centralised within the parent or group service company for business convenience and efficiency reasons.

- 14.27 Annex C shows a list of routine support services that are commonly provided on an intra-group basis across many industries. This list of routine support services is specified in the TP Documentation Rules.²⁷
- 14.28 Strictly, taxpayers should perform a proper transfer pricing analysis to determine the arm's length remuneration for performing such routine support services. However, doing so could greatly increase administrative and compliance burdens for the taxpayers. It would also increase IRAS' administrative costs to evaluate them.

5% cost mark-up for certain routine support services

- 14.29 Typically, routine support services do not have a significant arm's length mark-up. Therefore, as an administrative practice, taxpayers can apply a 5% cost mark-up for certain routine support services as a reasonable arm's length charge when certain conditions are satisfied. This will facilitate their compliance with the arm's length principle and maintain a high level of adherence to the arm's length principle. The conditions are:
- (a) The routine support services fall within Annex C²⁸;
 - (b) The service provider does not offer the same routine support services to an unrelated party; and
 - (c) All costs including direct, indirect and operating costs (see paragraphs 5.75 and 5.76) relating to the routine support services performed are taken into account in computing the 5% cost mark-up.

5% profit mark-up under OECD simplified approach for low value-adding intra-group services

- 14.30 Where taxpayers are unable to apply the 5% cost mark-up because their routine support services do not fall within Annex C (i.e. not meeting condition (a) in the paragraph 14.29), they may consider applying the 5% profit mark-up under the OECD simplified approach for low value-adding

²⁷ The TP Documentation Rules have effect for the basis period for the year of assessment 2019 and subsequent YAs. As the list of routine support services has been in place before the introduction of the TP Documentation Rules, the list is applicable to any provision of routine support service in the basis period prior to the basis period for the year of assessment 2019.

²⁸ Annex C may be modified or expanded upon subsequent review. Taxpayers are welcome to provide their feedback to IRAS on related party services that are in the nature of routine support services but have not been included in Annex C.

Nonetheless, a taxpayer may be of the view that the group services it provides constitute routine support services based on its own facts and circumstances. Even though the services are not specifically listed in Annex C, the taxpayer may request for a confirmation from IRAS.

intra-group services (“OECD simplified approach”)²⁹ when the following conditions are satisfied:

- (a) The routine support services meet the definition of low value-adding intra-group services for the OECD simplified approach;
- (b) The routine support services are not specifically excluded as low value-adding intra-group services for the OECD simplified approach;
- (c) The tax authority of the other party to the routine support services has similarly adopted the OECD simplified approach.³⁰ This is to provide greater certainty to the taxpayer that the price charged will not only be accepted by IRAS but also by that tax authority;
- (d) The service provider does not offer the same routine support services to an unrelated party; and
- (e) All costs including direct, indirect and operating costs (see paragraphs 5.75 and 5.76) relating to the routine support services performed are taken into account in computing the 5% profit mark-up.

Example:

A taxpayer in Singapore, Company A, provides Service X to its related parties, Company B in Country B and Company C in Country C. Service X does not fall within the routine support services in Annex C but meets conditions (a), (b), (d) and (e).

Suppose the tax authority of Country B has adopted the OECD simplified approach but not the tax authority of Country C.

Company A can consider applying the 5% profit mark-up for Service X provided to Company B as condition (c) is met. As condition (c) is not met for Service X provided to Company C, Company A will have to conduct a proper transfer pricing analysis to determine the arm’s length charge for Service X provided to Company C.

- 14.31 When taxpayers apply the OECD simplified approach upon meeting the conditions in paragraph 14.30, the 5% profit mark-up for the routine support services is considered to be in accordance with the arm’s length principle.

²⁹ The specific guidance relating to the OECD simplified approach for low value-adding intra-group services is provided in Chapter VII of the OECD TPG.

³⁰ Domestic tax law, Transfer Pricing Country Profiles published on OECD’s website, etc. may give an indication if a tax authority has adopted the OECD simplified approach.

14.32 Taxpayers which are required to prepare TP documentation are not exempt from preparing TP documentation for routine support services under paragraph 6.18(e) when they apply the OECD simplified approach. In place of the information to be included in the transfer pricing analysis section of the documentation at Entity level (refer to paragraph 6.23), taxpayers are to provide the information and documentation specified in paragraph 7.64 of Chapter VII of the OECD TPG.

Mark-up other than 5%

14.33 Service providers may nonetheless adopt a mark-up that is different from 5%. In doing so, taxpayers should:

- (a) Support their basis with detailed transfer pricing analysis;
- (b) Apply the mark-up consistently year-after-year throughout the group until there are material changes to the circumstances or services provided; and
- (c) Review the mark-up regularly to ensure that it continues to reflect arm's length conditions in their situations.

Routine support services provided on a cost-pooling basis

14.34 This section deals with the intra-group sharing or "pooling" of costs under a cost-pooling contract among members. It does not address Cost Contribution Arrangements or CCAs as referred to in the OECD TPG (Chapter VIII). Unlike cost-pooling contracts, CCAs are often entered into specifically to develop intangible assets. Guidance on CCAs can be found in section 17.

14.35 Members of a corporate group may occasionally enter into a cost-pooling contract among themselves to share the costs of routine support services. This arises from a common need for such services. It also results in mutual benefit, a concept that is fundamental to cost-pooling.

14.36 A party to the cost-pooling contract must:

- (a) Reasonably expect to benefit or actually benefit from the services in respect of which costs are being shared; and
- (b) Contribute at arm's length to the costs of the services. The contribution is in proportion to the nature and extent of expected benefits that it receives. No payment other than the costs allocated to each participant should be made.

No mark-up for payments charged under a cost-pooling arrangement

14.37 As an administrative practice, payments may be charged without mark-up to a related party for its proportionate share of the cost of services in a cost-pooling arrangement on the conditions that:

- (a) Each participant's share of the costs must be borne in the form of cash or other monetary contributions³¹;
- (b) The services are not provided to any unrelated party;
- (c) The provision of the services to the related parties is not the service provider's principal activity. This will depend on the specific facts and circumstances of each case. If the costs of providing the services do not exceed 15%³² of the service provider's total expenses as reflected in its accounts for the financial year concerned, the services are presumed not to be the principal activity of the service provider for that year;
- (d) The services being provided are listed in Annex C; and
- (e) There is sufficient documentation showing that the parties intended to enter into a cost-pooling arrangement before the provision of the services. For example, a cost-pooling arrangement should be supported by a written agreement which, among other things, is duly signed by all related parties involved in the arrangement.

14.38 Taxpayers that meet the conditions to prepare TP documentation and are not exempt from doing so, are required to prepare TP documentation to support the arm's length basis of the allocation of costs under a cost-pooling arrangement. Taxpayers that are not required to prepare TP documentation may still wish to do so to better manage the transfer pricing risk relating to the cost-pooling arrangement. See guidance on TP documentation in section 6. To minimise the risk of double taxation, such documentation should include:

- (a) Description of the types of services provided;
- (b) Reasons for selecting a specific method of allocating costs;
- (c) Contributions by each related party;

³¹ IRAS will monitor the developments in commercial practices and assess if there is a need to include other forms of contributions.

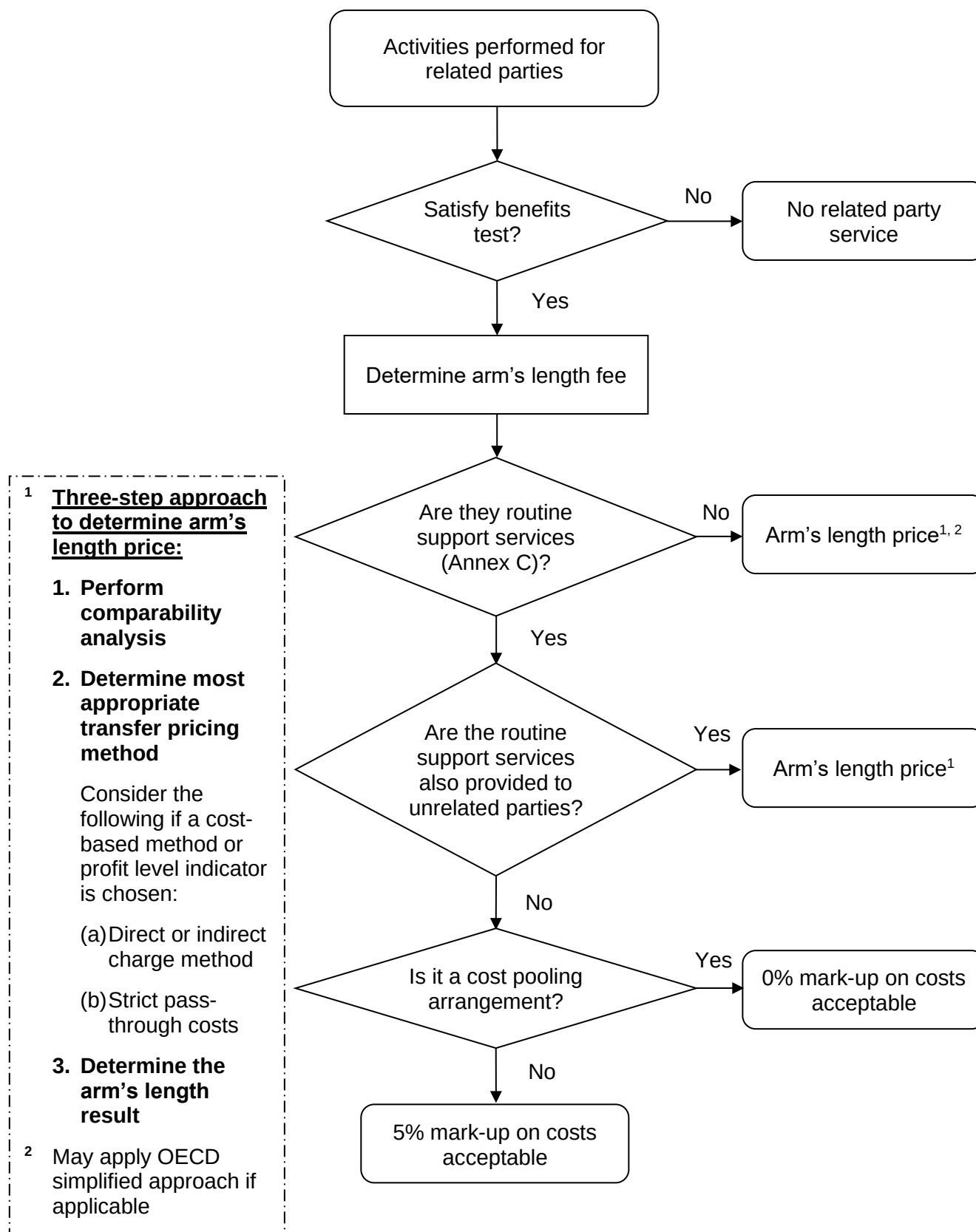
³² In computing the 15% threshold, the numerator should comprise all costs associated with the services provided under various cost pooling arrangements by the service provider. The denominator should include all expenses of the service provider, including expenses that have been netted off in the financial accounts against reimbursements received from related parties under the cost-pooling arrangements. It should however exclude strict pass-through costs.

- (d) Benefits that are anticipated; and
- (e) Details of the calculations used.

Summary on related party services

14.39 The following flowchart summarises the application of the arm's length principle to related party services:

Application of the arm's length principle to related party services



15 Related party financial transactions

Introduction

15.1 When taxpayers conduct financial transactions, such as loans, cash pooling, hedging, financial guarantees and captive insurance, with their related parties, they should adhere to the arm's length principle.

15.2 This section provides guidance on:

- (a) The application of the arm's length principle to related party financial transactions; and
- (b) The determination of the arm's length prices for such transactions.

Application of the arm's length principle to related party financial transactions other than related party loans

15.3 Taxpayers may enter into cash pooling, hedging, financial guarantees or captive insurance arrangement with their related parties. Such financial transactions are briefly described as follows:

- (a) Cash pooling
Cash pooling is the pooling of cash balances, either physically or notionally, of all pool members as part of a short-term liquidity management arrangement. A cash pool can help to reduce reliance on external borrowing, attain enhanced return where there is cash surplus, reduce banking transaction costs, etc.
- (b) Hedging
Hedging involves the use of financial instruments by which risk is transferred within the MNE group. For example, hedging arrangements are frequently used in the ordinary course of business as a means of mitigating exposure to risks such as foreign exchange or commodity price movements.
- (c) Financial guarantees
A financial guarantee provides for the guarantor to meet specified financial obligations in the event of a failure to do so by the guaranteed party. The situation likely to be encountered most frequently in a transfer pricing context is that one party (guarantor) provides a guarantee on a loan taken out by its related party from an unrelated lender. A financial guarantee may enable the guaranteed party to obtain a more favourable interest rate or access a larger amount of funds.

(d) Captive insurance

A captive insurance is an insurance undertaking or entity that primarily insures the risks of the entities of the MNE group to which it belongs. Reasons for an MNE group to use a captive insurance include to stabilise premiums paid by the entities within the MNE group, to gain access to reinsurance markets, to mitigate volatility of market capacity, etc.

A reinsurance captive is a particular type of captive insurance which does not issue policies directly but operates as a reinsurance under an arrangement known as “fronting”. Captive insurance may not be able to underwrite insurance policies in the same way as traditional insurance companies. For instance, certain insurance risks must be placed with regulated insurers as a legal requirement. This may lead to the use of a fronting arrangement in which the first contract of insurance is between the insured member of an MNE group and an unrelated insurer (“the fronter”). The fronter then reinsures with the captive insurance most or all of the risk of the first contract.

- 15.4 As with any related party transactions, it is important to accurately delineate the actual financial transactions and conduct thorough functional analysis following the three-step approach in paragraph 5.12. The arm’s length transfer price or remuneration of each party to the financial transactions will then be determined accordingly.
- 15.5 When applying the three-step approach in paragraph 5.12, taxpayers are to take guidance from Chapter X of the OECD TPG. Chapter X addresses specific issues relating to the pricing of the above financial transactions as well as provides guidance on determining the arm’s length conditions for those financial transactions.

Application of the arm’s length principle to related party loans

Related party loans

- 15.6 A related party loan arises when a taxpayer lends money to or borrows money from a related party. It can be:

Type of loan	Parties to the loan
Related party domestic loan	Where a taxpayer in Singapore lends to or borrows from a related party in Singapore
Related party cross-border loan	Where a taxpayer in Singapore lends to or borrows from a foreign related party

15.7 A loan can be in any form regardless of whether or not it is made through a written agreement. It includes:

- (a) Credit facilities; or
- (b) Intercompany credit balances arising from the normal course of sales and provision of services which are left uncollected over a substantial period of time that is beyond what a third party trade creditor would typically allow.

Whether a purported loan should be regarded as a loan

15.8 The amount of debt to be priced may affect the amount of interest payable by the borrowing entity and subsequently, its profits. Therefore, before determining whether the rate of interest for a related party loan is an arm's length rate, it is important to determine whether the purported loan between the related parties should be regarded as a loan for tax purposes or should be regarded as some other kind of payment, in particular a contribution to equity capital.³³

15.9 To determine whether a purported loan should be respected as a loan, taxpayers are to apply the three-step approach in paragraph 5.12, in particular Step 1. In accurately delineating an advance of funds, the following economically relevant characteristics may be useful indicators:

- (a) Features of the advance of funds. For example:
 - Presence or absence of a fixed repayment date – The advance of funds is more likely to be regarded as a loan in the presence of a fixed repayment date regardless of the business performance of the recipient of the funds. In contrast, it is likely to be regarded as an equity in the absence of fixed repayment and the repayment is conditioned on the financial well-being of the recipient of the funds.
 - Obligation to pay interest – The advance of funds is more likely to be regarded as a loan when the recipient of the funds has an obligation to pay interest as compensation for the use of the funds.
- (b) Ability of the recipient of the funds to obtain loans from unrelated lending institutions and service those loans.

³³ Also see paragraph 3(b) of the Commentary to Article 9 of the 2017 OECD Model Tax Convention.

Example: ³⁴

Company A obtained a loan from its related party, Company B. Based on the facts and circumstances, it is established that Company A is unable to repay the loan it received from Company B and an unrelated party would not be willing to provide such loan. For transfer pricing purposes, the amount of loan from Company B would depend on the maximum amount that an unrelated lender would be willing to lend to Company A and the maximum amount that an unrelated borrower would borrow from Company B under comparable circumstances. The excess of Company A's loan from Company B would not be regarded as a loan for the purposes of determining the arm's length interest.

(c) Rights of the funder. For example:

- Right to enforce payment of principal and interest – If the funder has an unconditional right to enforce the payment of the principal and interest, the purported loan is more likely to be regarded as a loan. In contrast, it is likely to be regarded as an equity if the funder does not have the means to enforce the payment of the principal and interest.
- Level of seniority and subordination – If the right of the funder to repayment of the principal amount is subordinated to that of general creditors, the purported loan is likely to be regarded as equity.

(d) Willingness of an independent party to advance funds under comparable circumstances. See example in sub-paragraph (b) above.

15.10 The above characteristics of a purported loan should not be examined in isolation. For example, while the level of seniority and subordination may suggest the purported loan is an equity, there may be other characteristics such as fixed repayment date, obligation to pay interest, etc. to suggest otherwise. Ultimately, whether a purported loan is to be regarded as a loan or equity should be based on an analysis of all relevant facts and circumstances of the case. Once a purported loan or part of it is regarded as a contribution to equity capital, that portion will not be delineated as a loan for the purposes of determining the arm's length interest and any interest expense relating to that portion will not be a tax-deductible expense.

15.11 Taxpayers can refer to Chapter X of the OECD TPG for further guidance on determining the characterisation of a purported loan. Taxpayers can also refer to the IRAS' e-Tax Guide on Income Tax Treatment of Hybrid

³⁴ Also see example in paragraph 10.13 of Chapter X of the OECD TPG.

Instruments on the factors that are generally used to determine if a hybrid instrument is a debt or equity instrument for tax purposes.

Arm's length principle for related party domestic and cross-border loans

15.12 Once it has been established that a purported related party loan or part of it is to be regarded as a loan following the guidance in the previous paragraphs, the next step is to apply the arm's length principle to that loan.

15.13 When a taxpayer makes a loan to or becomes a creditor of a related party, it should apply the arm's length principle and charge the related party for the use of the funds at an arm's length interest rate. Similarly, a taxpayer should apply the arm's length principle when it receives a loan from or becomes a debtor of a related party.

15.14 The arm's length interest rate is the interest rate which would have been charged between independent parties under similar circumstances at the time the indebtedness arose.

15.15 The application of the arm's length principle to related party loans is as follows:

Type of loans	Status of the parties to the loan	Application of arm's length principle
Related party domestic loans entered into prior to 1 January 2025	Where the lending party is not in the business of borrowing and lending	To restrict interest deduction as a proxy to the arm's length principle (see paragraphs 15.16 and 15.17)
	Where the lending party is in the business of borrowing and lending (e.g. banks or other financial institutions, finance and treasury centres)	To determine the interest rate based on arm's length principle. Where the loan does not exceed S\$15 million, IRAS indicative margin may be applied to derive the interest rate (see paragraphs 15.60 to 15.69).

Type of loans	Status of the parties to the loan	Application of arm's length principle
Related party domestic loans entered into on or after 1 January 2025	Where neither parties are in the business of borrowing and lending	To apply the IRAS indicative margin to derive the interest rate (see paragraphs 15.60 to 15.69) or to determine the interest rate based on arm's length principle if the indicative margin is not applied
	Where either party is in the business of borrowing and lending	To determine the interest rate based on arm's length principle. Where the loan does not exceed S\$15 million, IRAS indicative margin may be applied to derive the interest rate (see paragraphs 15.60 to 15.69).
Related party cross-border loans	Whether or not the parties are in the business of borrowing and lending	To determine the interest rate based on arm's length principle. Where the loan does not exceed S\$15 million, IRAS indicative margin may be applied to derive the interest rate (see paragraphs 15.60 to 15.69).

15.16 In the case of a related party domestic loan provided by a taxpayer which is not in the business of borrowing and lending, IRAS has generally been applying interest restriction in place of the arm's length methodology. This is done by limiting the taxpayer's claim for any interest expense to the interest charged on such loan.

Example:

- Taxpayer A provided a loan to Taxpayer B S\$100,000
- Interest charged by Taxpayer A in 2024 S\$100
- Interest expense incurred by Taxpayer A in providing the loan in 2024 S\$1,000
- Taxpayer A's interest expense claim of S\$1,000 is limited to S\$100

15.17 While the interest restriction does not exactly conform to the arm's length principle, it nonetheless serves as a close proxy to the arm's length principle. This is to facilitate taxpayers' efforts in complying with the arm's length principle for related party domestic loans while keeping compliance cost low.

15.18 Over time, especially with the introduction of the IRAS indicative margin since 2017 (see paragraphs 15.60 to 15.69), the approach described in paragraph 15.16 has become less relevant to achieve arm's length outcome. Thus, IRAS will discontinue this approach for any related party domestic loans entered into on or after 1 January 2025. For any related party domestic loan entered into on or after 1 January 2025, the parties to that loan are considered to have adhered to the arm's length principle when:

- (a) Neither parties are in the business of borrowing and lending; and
- (b) They have chosen to apply the IRAS indicative margin to derive the interest rate. To ease compliance, the threshold of S\$15 million for purpose of the indicative margin does not apply.

If condition (a) is met but the parties choose not to apply the IRAS indicative margin, they will have to apply the arm's length methodology to determine the interest rate as in paragraph 15.19.

15.19 In all other cases, taxpayers should adhere to the arm's length methodology to determine the interest charges. In the event that taxpayers fail to do so:

- (a) IRAS will disregard any interest expense in excess of the arm's length amount determined by IRAS for tax deduction purpose. This is notwithstanding that tax may have been withheld on the full interest payment to the foreign related party.
- (b) IRAS may not support the taxpayers in MAP discussions to resolve any double taxation arising from any transfer pricing adjustments made by IRAS or foreign tax authorities in relation to the interest charges.

15.20 IRAS does not regard interest-free related party loans as arm's length transactions, unless taxpayers have reliable evidence that independent parties under comparable circumstances would similarly provide loans without charging any interest.

Determination of the arm's length interest

15.21 Section 5 provides a framework to guide taxpayers in the application of the arm's length principle. Taxpayers can apply this framework when analysing and determining the arm's length interest charges for related party loans.

Three-step approach to determine the arm's length interest

15.22 The following paragraphs provide guidance on the application of the three-step approach in paragraph 5.12 to determine the arm's length interest charges for related party loans. Taxpayers can refer to Chapter X of the OECD TPG on intra-group loans for further guidance on pricing related party loans.

Step 1 – Conduct a comparability analysis

15.23 In analysing the economically relevant characteristics of the related party loan, both the lender and borrower's perspectives should be taken into account. When deciding whether to make a loan, how much to lend and on what terms, the lender will, for example, evaluate the economic factors affecting both the borrower and itself, other options realistically available for the use of its funds, etc. The borrower will, for example, seek the most cost effective sources of funds for its business, the right funding for its short-term and long-term needs, etc.

15.24 Taxpayers need to consider all the relevant facts and circumstances relating to the loan, including the following comparability factors:

- (a) Nature and purpose of the loan;
- (b) Market conditions at the time the loan is granted;
- (c) Principal amount, duration and terms of the loan;
- (d) Currency in which the loan is denominated;
- (e) Exchange risks borne by the lender or borrower;
- (f) Security offered by the borrower;
- (g) Guarantees involved in the loan;
- (h) Presence or absence of covenants, for example to prohibit certain actions by the borrower without the consent of the lender or to require the borrower to meet certain financial indicators at regular, predetermined intervals during the term of the loan;
- (i) Ranking of the loan (senior or subordinated); and

- (j) Credit standing of the borrower.

15.25 The analysis of risk assumption in paragraph 5.35 is similarly applied to determine whether the lender assumes risks relating to the provision of related party loan.

Example:

Company A, in Country A, and Company B, in Country B, belong to the same MNE group. Company A advanced a loan to Company B. The analysis of risk assumption in paragraph 5.35 indicates that the MNE group's parent company in Country C, and not Company A, exercises control over the risks related to the advance of the loan to Company B and has the financial capacity to assume those risks. As such, the parent company will be allocated those risks and will bear the consequences of the playing out of those risks. Company A will be entitled to no more than a risk-free return for the advance of the loan to Company B, taking into account Company A's costs related to the funding of the loan. Company B will be entitled to a deduction up to the arm's length interest charged on the loan. The difference between these two amounts will be allocated to the parent company for assuming the risks related to the loan.

If Company B is a taxpayer in Singapore, it will have to account for withholding tax, if applicable, on the interest that it is liable to pay under the loan arrangement with Company A.

If Company A is a taxpayer in Singapore, IRAS will not reduce Company A's interest income from Company B to the risk-free return in the absence of an APA or a MAP with the tax authority of Country C.

If the parent company is a taxpayer in Singapore, IRAS will make the adjustment if the interest income is trade source to the parent company. Whether or not the interest income is trade source is based on tax principles and the facts of the case.

Step 2 – Identify the most appropriate transfer pricing method

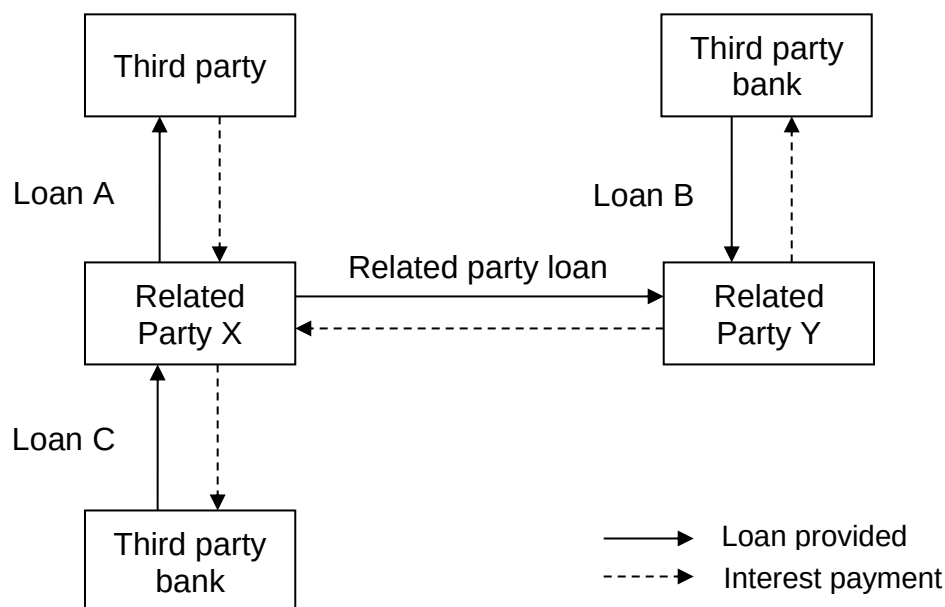
15.26 The CUP method is the preferred method for determining the arm's length pricing for related party loans as it is the most suitable method for loan transactions. This is especially so given the widespread existence of markets for borrowing and lending money, frequency of such transactions between independent borrowers and lenders, and widespread availability of information and analysis of loan markets.

15.27 When using CUP method, the arm's length interest rate for a related party loan can be benchmarked against publicly available data for other borrowers with the same credit rating for comparable loans. It can also be benchmarked against loans between independent parties and the borrower of the related party loan or other members of the MNE group

to which the borrower belongs, provided all economically relevant conditions are sufficiently similar.

15.28 The selection of internal CUP is illustrated with an example as follow:

- (a) In this illustration, X provides a loan to Y. It is assumed that all the loans are comparable based on a comparability analysis.



- (b) If X is a taxpayer in Singapore and is not in the business of borrowing and lending and Y is a foreign related party, the internal CUP that X can use to determine the arm's length interest rate for the loan to Y is:

- Loan A is the preferred internal CUP as X should charge Y the same interest rate that it charges a third party.
- Loan B, if Loan A is not available, is the next internal CUP that X can use as X should charge Y the same interest rate that a third party charges Y.
- Loan C if both Loan A and Loan B are not available and the moneys borrowed by X are on-lent to Y, i.e. X should charge Y the same interest rate that a third party charges X.

- (c) If Y is a taxpayer in Singapore and X is a foreign related party, the internal CUP that Y can use to determine the arm's length interest rate for the loan from X is:

- Loan B is the preferred internal CUP as Y should pay X interest at the same interest rate that it pays a third party.

- Loan A, if Loan B is not available, is the next internal CUP that Y can use as Y should pay X interest at the same interest rate that X charges a third party.
 - Loan C if both Loan A and Loan B are not available and the moneys borrowed by X are on-lent to Y, i.e. Y should pay X interest at the same interest rate that a third party charges X.
- (d) In determining the arm's length interest rate based on the interest rate in Loan C under sub-paragraph (b) and (c), it may be necessary to consider whether to factor in, for example, expenses incurred in arranging and servicing Loan C, risk premium to reflect the various economic factors inherent in the loan to Y, profit margin, etc. When making such adjustments, it is necessary to consider whether the borrower (i.e. Y) would accept such pricing if it could obtain the funding under better conditions by entering into an alternative transaction.
- 15.29 In applying CUP method, arm's length interest rates can also be based on the return of realistic alternative transactions with comparable economic characteristics, such as bond issuances, loans which are uncontrolled transactions, deposits, convertible debentures, commercial papers, etc. Comparability adjustments may be required to eliminate the material effects of differences between the related party loan and the selected alternative transactions in terms of, for instance, liquidity, maturity, existence of collateral or currency.
- 15.30 Besides CUP method, Chapter X of the OECD TPG also provides other approaches to price intra-group loans. If circumstances render these other approaches to be more appropriate, taxpayers can apply them. Taxpayers are to maintain TP documentation to justify applying these other approaches. Taxpayers should take note that generally bank opinions are not regarded as evidence of arm's length terms and conditions as they do not reflect actual transactions or actual offer to lend.

Step 3 – Determine the arm's length results

- 15.31 The arm's length interest rate is usually made up of a base reference rate and an adjustment to account for tenor, credit margin and profit margin, where applicable.
- 15.32 The base reference rate is usually a publicly available rate such as the Singapore Overnight Rate Average ("SORA"), Sterling Overnight Index Average ("SONIA") and Secured Overnight Financing Rate ("SOFR").
- 15.33 The credit margin is mainly to compensate the lender for bearing the credit risk of the borrower defaulting on the loan.

15.34 If CUPs are available to determine the interest rate but they are not entirely comparable to the tested related party loan, comparability adjustments can be made to eliminate the differences. Such comparability adjustments include adjustments to the base reference rate and credit margin.

15.35 Comparability adjustment to the base reference rate may involve selecting and substituting the most appropriate base reference rate based on the currency and tenor of the loan.

Example:

- The tested borrower's related party loan is denominated in S\$ within the Singapore financial and debt market.
- The internal CUP has a base reference rate of US SOFR.
- Assumed all other factors are comparable.
- The comparability adjustment to the internal CUP will be to substitute the US SOFR with S\$ SORA to adjust for the differences in currency.

15.36 Comparability adjustment to the credit margin may involve adjusting the difference in the credit risk profile of the tested borrower and the comparable borrower. For example, comparability adjustment may be made for the differences in credit risk profile between the tested borrower and the comparable borrower. This may be done using credit estimation models.

15.37 If an appropriate CUP is not available, taxpayers can apply the following steps to determine the arm's length interest rate:

- (a) Identify a suitable base reference rate.
- (b) Determine the credit margin for bearing credit risk
As the credit margin compensates the lender for bearing the credit risk of the borrower defaulting on the loan, it can be determined by reference to the credit rating of the borrower. See guidance on credit rating below.
- (c) Determine the arm's length interest rate
The arm's length interest rate is determined by adding the credit margin derived from the borrower's credit rating in sub-paragraph (b) to the base reference rate in sub-paragraph (a). It may be necessary to consider whether to factor in, for example, risk premium to reflect the various economic factors inherent in the loan to the borrower, profit margin, spread adjustment relating to the base reference rate (see guidance below), etc. When making such adjustments, it is necessary to consider whether the borrower would accept such pricing if it could obtain the funding under better conditions by entering into an alternative transaction.

15.38 In instances where a lender advances a related party loan but does not assume risks relating to that loan, it will be entitled to no more than a risk-free return (see example in paragraph 15.25). A risk-free return may be determined by referencing to highly rated government issued securities, interbank rates, interest rate swap rates or repurchase agreements of highly rated government issued securities. When treating the interest rate on certain highly rated government issued securities as reference rate for a risk-free return, the following would need to be considered:

- (a) The reference security would need to be a security issued in the same currency as the lender's cash flows, i.e. its functional currency;
- (b) The reference security should be issued at the time or have a similar remaining maturity as the related party loan;
- (c) The duration of the reference security should match the duration of the related party loan since the duration will usually affect the price; and
- (d) When there are multiple comparable reference securities, the reference point for the risk-free rate of return would be the security with the lowest rate of return as any difference in rate could be due to differences in risk between the issuers.

Taxpayers can refer to the OECD TPG for further guidance on determining risk-free rates of return.³⁵

15.39 In some instances, a taxpayer's activities in raising and providing funds to other members of the same MNE group may be more for managing the MNE group liquidity, coordinating external borrowing and making such external funds available within the MNE group, administering a cash pooling arrangement for the MNE group, etc. In such circumstances, the functional analysis should consider the applicability of the guidance on related party services in section 14 and cash pooling in paragraphs 15.3 to 15.5. Depending on the facts and circumstances of each case, the arm's length remuneration for such activities may be determined according to those guidance instead of the guidance on pricing related party loans as set out in this section.

Base reference rates

15.40 In identifying a suitable base reference rate, taxpayers need to consider the economically relevant characteristics of the related party loan.

³⁵ The OECD's guidance on how to determine risk-free and risk-adjusted rates of return is provided in Section D.1.2.2 in Chapter I of the OECD TPG.

- 15.41 Previously, base reference rates were mainly interbank offered rates (“IBORs”), such as LIBOR (London IBOR). Arising from the global IBOR reform, IBORs have been replaced by alternative near risk-free rates (“RFRs”). For example, SOFR for USD LIBOR, SONIA for GBP LIBOR and SORA for SGD Swap Offer Rate (“SOR”) and SIBOR (Singapore IBOR). Existing products/contracts that reference IBORs have to be transitioned to reference their corresponding RFRs.³⁶
- 15.42 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. 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 & SIBOR Transition to SORA (“SC-STS”), the Association of Banks in Singapore and the Monetary Authority of Singapore.³⁷
- 15.43 When taxpayers made changes to their existing related party IBOR-based loans in response to the IBOR reform and in accordance with the relevant guidance, IRAS will consider such changes as arm’s length. However, where the changes went beyond those expected under the IBOR reform and the relevant guidance, IRAS may consider if any re-financing is involved such that a new loan has been issued (see paragraph 15.59).
- 15.44 RFRs are not economically the same as IBORs. RFRs are overnight rates while IBORs are term rates. Furthermore, RFRs, being overnight rates, are nearly free of credit risk while IBORs incorporate interbank credit risk. Therefore, a RFR tends to be lower than its corresponding IBOR.
- 15.45 When providing a related party loan with a suitable RFR as the base reference rate, taxpayers may consider if spread adjustment is necessary to account for the economic difference between the RFR and the corresponding IBOR.

Example:

- Company A obtained a SIBOR-based loan from a bank with interest rate at 3-month SIBOR + X% customer’s margin.
- The SIBOR-based loan was transitioned to a SORA-based loan with revised interest rate at 3-month SORA + X% customer’s margin + Y% spreading adjustment.

³⁶ Guidance on tax implications arising from IBOR reform is available at www.iras.gov.sg.

³⁷ Such guidance includes the Report on Recommendation for Transition of Legacy SOR Contracts and the Report on Final Transition Approach for SIBOR Loans to SORA issued by the SC-STS on 29 July 2021 and 30 Jun 2023 respectively.

- Supposed Company A lends the funds to its related party, Company B, with interest rate at 3-month SORA + Z% credit margin (for bearing the credit risk of lending to Company B).
- A spread adjustment to account for the economic difference between SIBOR or SOR and SORA for the related party loan between Company A and Company B may be necessary, i.e. 3-month SORA + Z% credit margin + spread adjustment. Otherwise, the interest rate may be understated and not in line with market practice as compared to the loan Company A has obtained from the bank.

15.46 To decide if spread adjustment is necessary and to determine the amount of spread adjustment, taxpayers should consider the guidance issued by the relevant governing bodies for the relevant IBOR/RFR pairs³⁸, market practice and market comparables.

Example 1:

- Taxpayer intends to provide a loan to its related party with interest at selected RFR + margin.
- Using the CUP method, taxpayer identified several RFR-based comparables following the guidance in this section. Based on the margins in these comparables, taxpayer derived a margin of X%.
- Taxpayer determines the interest rate for the related party loan to be at selected RFR + X%.
- In this case, spread adjustment is not necessary as the margin derived from the RFR-based comparables would have accounted for spread adjustment, if any.

Example 2:

- Taxpayer intends to provide a loan to its related party with interest at a specific rate.
- Using the CUP method, taxpayer identified several comparables following the guidance in this section. Based on the interest rates in these comparables, taxpayer derived an interest rate of Y%.
- Taxpayer determines the interest rate for the related party loan to be at Y%.
- In this case, spread adjustment is not necessary as the interest rate derived from the comparables would have accounted for spread adjustment, if any.

15.47 In the absence of market comparables, taxpayers may use economic models based on market data to determine the amount of spread adjustment, if any. Over time, the need for spread adjustment may be

³⁸ Taxpayers may also refer to the SORA Market Compendium: Transition from SOR to SORA published by the SC-STS for guidance on indicative terms for SORA corporate loans.

less when more RFR-based comparables and data are available in the market for purpose of benchmarking analysis.

Credit rating of the borrower

- 15.48 The creditworthiness of the borrower is one of the main factors to take into account in determining an interest rate. Credit ratings can serve as a useful measure of creditworthiness and therefore help to identify potential comparables or to apply economic models. Generally, a borrower with a lower credit rating will indicate a greater risk of default which means a higher rate of return is expected for the lender.
- 15.49 Where the borrower has a publicly available credit rating published by an independent credit rating agency, that rating may be informative for the arm's length analysis of the related party loan.
- 15.50 Where the credit rating of the borrower is not publicly available, taxpayers can apply quantitative and qualitative analyses of the individual characteristics of the borrower using publicly available financial tools or independent credit rating agencies' methodologies to determine the credit rating of the borrower. For example, the credit rating of the borrower can be estimated using commercial credit scoring software provided by credit rating agencies. Such quantitative and qualitative analyses should take into account the effect of the borrower's group membership (see guidance below) and information available at the time the related party loan is provided.
- 15.51 IRAS prefers evaluating the credit rating of the borrower on a standalone basis. However, IRAS may consider a credit rating of the borrower based on the overall group credit rating³⁹ if:
- (a) The credit rating of the borrower cannot be determined reliably due to, for example, difficulties in implicit support analysis (see paragraphs 15.52 to 15.55), difficulties in accounting for related party transactions reliably, etc.;
 - (b) The group credit rating is determined to be the most reliable indicator of the borrower's credit rating in light of all the facts and circumstances. For example, where the borrower's indicators of creditworthiness do not differ significantly from those of the group (see paragraph 15.53); and
 - (c) Independent lender will similarly accept such group credit rating.

³⁹ The definition of group credit rating follows the definition provided in footnote 4 of Chapter X of the OECD TPG – "The credit rating of an MNE group is intended to refer to the credit rating of the ultimate parent entity of the MNE group calculated on consolidated financial statements."

Effect of group membership

- 15.52 A borrower may receive support from the group to meet its financial obligations in the event that it gets into financial difficulty. This incidental benefit that the borrower may receive solely by virtue of group affiliation (i.e. passive association) is referred to as implicit support. Such implicit support may affect the credit rating of the borrower.
- 15.53 The relative importance of the borrower to the group as a whole and its linkages with the rest of the group may help determine what impact that implicit support has on its credit rating.⁴⁰ For example, the borrower is more likely to be supported by other group members and consequently has a credit rating more closely linked to that of the group if it has stronger links, is integral to the group's identity or important to group's future strategy, and operates in the group's core business. In contrast, the borrower is likely to receive limited support from the rest of the group where it does not show those same linkages or they are weaker. Where there is evidence that no support would be provided by the group, it may be appropriate to consider the borrower on the basis of its own stand-alone credit rating only.
- 15.54 Other considerations to assess the relative importance of the borrower to the group include strategic importance, operational integration and significance, shared name, potential reputational impacts, negative effects on the overall group, etc.
- 15.55 The effect of implicit support on the borrower's credit rating, its ability to borrow or the interest rate it paid on its borrowings would not require any payment or comparability adjustment.

Example:

The parent company of an MNE group maintains an AA credit rating on the strength of the group's consolidated balance sheet. Company X is a member of the MNE group and has a stand-alone credit rating of BBB.

Company X obtains a loan from an independent lender. The independent lender is willing to lend at interest rate based on an A credit rating without any formal guarantee because of Company X's membership in the MNE group. If the parent company guarantees the loan, the independent lender is willing to lend at interest rate based on the parent company's AA credit rating.

Under these circumstances:

- The enhancement of Company X's credit standing from BBB to A is attributable to the implicit support derived purely from passive

⁴⁰ Taxpayers can refer to the guidance provided by credit rating agencies on ascertaining linkages and their effect on credit rating, if applicable.

association in the MNE group for which the parent company need not be compensated.

- The enhancement of Company X's credit standing from A to AA is attributable to a deliberate concerted action, namely the provision of the guarantee by the parent company. As such, Company X is required to pay an arm's length guarantee fee to the parent company reflecting the benefit of raising Company X's credit standing from A to AA. (Refer to paragraphs 15.3 to 15.5 for guidance on determining arm's length guarantee fee.)

Interest rate on aggregate basis

15.56 As every related party loan can be different, taxpayers are to determine the arm's length interest rate for each loan individually. However, to reduce the compliance burden for taxpayers with multiple related party loans, taxpayers can choose to determine the arm's length interest rate for comparable loans on an aggregate basis using the comparability factors listed in paragraph 15.24 as a guide.

TP documentation

15.57 Taxpayers that meet the conditions to prepare TP documentation and are not exempt from doing so, are required to prepare TP documentation to substantiate that the pricing for their related party financial transactions is arm's length, taking guidance from this section. Taxpayers that are not required to prepare TP documentation may wish to do so to better manage the transfer pricing risk relating to their related party financial transactions. See guidance on TP documentation in section 6.

15.58 The TP documentation should include:

- (a) For transitioning of existing related party IBOR-based loans (refer to paragraphs 15.42 and 15.43), the basis of the changes and explanation on how those changes are consistent with the IBOR reform, relevant guidance and arm's length principle.
- (b) For related party loans adopting RFRs as base reference rates (refer to paragraphs 15.45 to 15.47), explanation on whether spread adjustment is necessary and the basis of determining the spread adjustment.

Application of arm's length principle to re-financing

15.59 A taxpayer may obtain a loan from a related party to repay an existing loan ("re-financing"), extend the tenor of an existing related party loan or significantly change the terms and conditions of an existing related party loan (for example, when transitioning a related party IBOR-based loan, taxpayers made changes that are beyond those expected under the IBOR reform and the relevant guidance – see paragraph 15.43). In such situations, IRAS will consider that a new loan has been obtained. The taxpayer is therefore required to establish the arm's length terms and interest rate for the new loan following the guidance provided in the previous paragraphs and prepare TP documentation accordingly.

Example 1:

- Taxpayer has a 10-year loan with an annual interest of X% from a related party, Lender A ("existing loan").
- The existing loan matures on 31 January 2024.
- Taxpayer and Lender A agreed on 15 January 2024 to extend the existing loan for another 10 years from 1 February 2024.
- Taxpayer is required to determine an arm's length interest rate as at 15 January 2024 for the new loan.

Example 2:

- Taxpayer has a 10-year loan with an annual interest of X% from a related party, Lender B ("existing loan"), which will mature some years later.
- Taxpayer obtained another loan from a related party, Lender C, on 31 December 2024 to repay the existing loan.
- Taxpayer is required to determine an arm's length interest rate as at 31 December 2024 for the new loan.

Example 3:

- Taxpayer's re-financing involves obtaining an unsecured loan from a related party to repay an existing secured bank loan.
- Taxpayer should explain in the TP documentation the commercial basis for re-financing using an unsecured loan, especially if the assets previously held as collateral by the bank are now available as collateral for the related party loan.
- If IRAS determines that under comparable circumstances, independent parties would re-finance using a secured loan rather than an unsecured loan, IRAS may adjust taxpayer's interest expense based on an arm's length interest rate applicable to a secured loan.

Administrative practice for indicative margins on related party loans

- 15.60 To facilitate compliance with the arm's length principle and maintain a high level of adherence to the arm's length principle, IRAS has put in place an indicative margin which taxpayers can apply on their related party loans obtained or provided from 1 January 2017.
- 15.61 The indicative margin is published on IRAS' website and will be updated at the beginning of each year.
- 15.62 The indicative margin is not mandatory. Taxpayers may adopt a margin that is different from the indicative margin provided that this is consistent with the guidance provided in this section to determine the arm's length interest rates.

Application of the indicative margin

- 15.63 Taxpayers can choose to apply the indicative margin to each related party loan that does not exceed S\$15 million at the time the loan is obtained or provided. This threshold of S\$15 million does not apply to a related party domestic loan entered into or after 1 January 2025 where neither parties to the loan are in the business of borrowing and lending (see paragraph 15.18).
- 15.64 The threshold of S\$15 million is based on the loan committed and not the loan utilised. For example, taxpayer obtained a loan facility of S\$20 million from a related party. Taxpayer cannot apply the indicative margin notwithstanding that the amount utilised or intended to be utilised is less than S\$15 million.
- 15.65 The indicative margin is applicable to both Singapore-dollar denominated and foreign currency denominated related party loans. For related party loans denominated in foreign currencies, the prevailing exchange rates at the time those loans are obtained or provided will be used to determine if those loans are within the threshold of S\$15 million.

Example:

- Taxpayer provided a loan (i.e. Loan A) to a related party
 - Loan committed under Loan A is US\$14 million
 - Suppose the exchange rate at the time Loan A is provided is US\$1: S\$1.42
 - S\$ equivalent of Loan A is S\$19.88 million
 - Taxpayer cannot apply the indicative margin for Loan A as it exceeds the threshold of S\$15 million
- 15.66 Taxpayers would decide the appropriate base reference rate on which to apply the indicative margin.

Example:

- Taxpayer provided a floating rate loan of S\$10 million to its related party on 1 January 2024
- Taxpayer used SORA as the base reference rate for the related party loan
- Taxpayer chose to apply the indicative margin
- The indicative margin for 2024 as published on IRAS' website is 2.20%
- The interest rate for the related party loan would be at an appropriate SORA + 2.20%

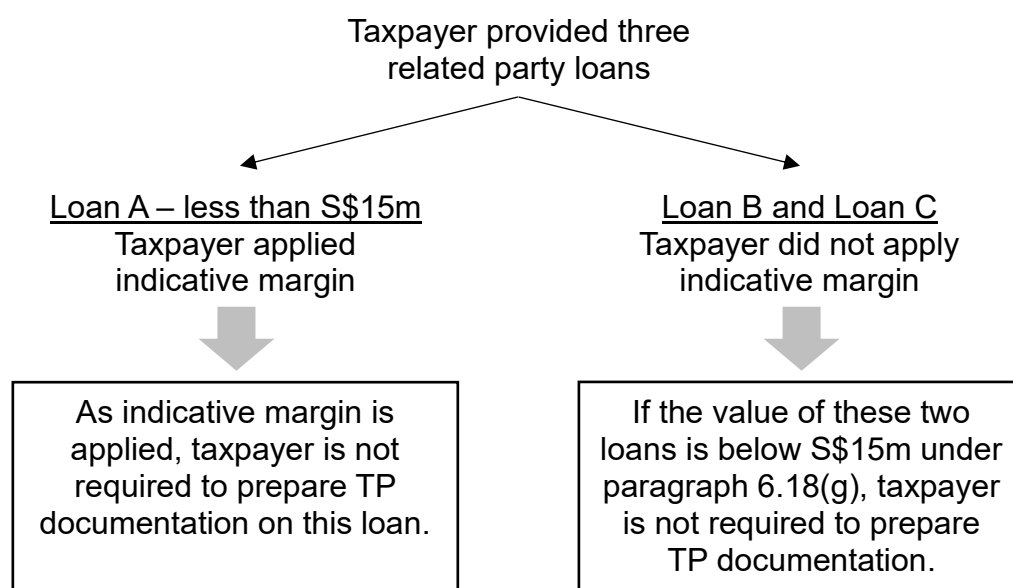
15.67 For fixed rate related party loans, taxpayers can apply an appropriate swap rate as the base reference rate. For fixed rate related party loans denominated in Singapore dollars, besides an appropriate Singapore-dollar swap rate, taxpayers can consider applying an appropriate Singapore Government Securities ("SGS") yield⁴¹ as the base reference rate.

15.68 For floating rate loans, some examples of base reference rates include the SORA, SONIA and SOFR.

TP documentation

15.69 If taxpayers choose to apply the indicative margin for their related party loans, they are not required to prepare TP documentation for such loans (see paragraphs 6.18(c) and 6.18(d)). Such loans will also be excluded from the loan threshold of S\$15 million in Table 2 under paragraph 6.18(g).

Example:



⁴¹ SGS yield is available at www.mas.gov.sg

16 Attribution of profit to permanent establishment

Introduction

- 16.1 This section explains that no further attribution of profits to the permanent establishment is required when certain conditions are met.

Attribution of profit to permanent establishment (“PE”)

- 16.2 At times, the activities performed by a taxpayer for its foreign related party create for the foreign related party a PE in Singapore. As such, profits that are attributable to the PE will be liable to tax in Singapore.
- 16.3 However, if the following conditions are met, there will be no further attribution of profits to the PE and thus, there will be no additional Singapore tax liability for the foreign related party:
- (a) The taxpayer receives an arm’s length remuneration from its foreign related party that is commensurate with the functions performed, assets used and risks assumed by the taxpayer;
 - (b) The remuneration paid by the foreign related party to the taxpayer is supported by adequate TP documentation to demonstrate compliance with the arm’s length principle; and
 - (c) The foreign related party does not perform any functions, use any assets or assume any risks in Singapore, other than those arising from the activities carried out by the taxpayer.

17 Cost contribution arrangements

Introduction

- 17.1 In place of multiple intra-group arrangements, members of a group may enter into a cost contribution arrangement (“CCA”) to share the development of intangibles or tangible assets or to obtain services from each other.
- 17.2 This section provides guidance for determining whether the conditions established by related parties in respect of a CCA are consistent with the arm’s length principle.
- 17.3 The ITA allows deduction for certain research and development (“R&D”) expenditure incurred under a cost-sharing agreement (“CSA”). The ITA defines a CSA to mean “any agreement or arrangement made by 2 or more persons to share the expenditure of research and development activities to be carried out under the agreement or arrangement”.⁴²
- 17.4 For the purpose of applying the arm’s length principle covered in this section, a CSA has the same meaning as a CCA. Therefore, the guidance in this section is equally applicable to a CSA.

What is a CCA?

- 17.5 Paragraph 8.3 of Chapter VIII of the OECD TPG defines a CCA as “a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for the individual businesses of each of the participants”.
- 17.6 The definition highlights several key features of a CCA:
- (a) A CCA is a contractual arrangement and not an entity or fixed place of business of the participants to the CCA. Participants do not need to combine their operations in order to exploit their interest in the outcome of the CCA. They can do so through their individual businesses.
 - (b) The concept of mutual benefit is fundamental to a CCA, i.e. there is always an expected benefit that each participant seeks from its contribution, including the attendant rights to have the CCA properly administered.

⁴² The provisions are in Section 14C and Section 14D of the ITA.

- (c) All participants share in the overall contributions to a CCA.
 - (d) All participants share in the risks, i.e. share the upside and downside consequences of risks associated with achieving the anticipated outcomes of a CCA.
 - (e) All participants exploit their interest in the outcomes of a CCA through their individual businesses.
- 17.7 CCAs can provide helpful simplification of multiple transactions among group members.

Example 1:

Companies X, Y and Z are members of the same group. They perform services to each other and simultaneously benefit from the services performed by each of them. Instead of having multiple related party services agreements with separate receipts and payments among themselves, companies X, Y and Z enter into a CCA. The CCA provides them with a mechanism for replacing a web of separate intra-group payments with a more streamlined system of netted payments, based on aggregated benefits and aggregated contributions associated with the services covered in the CCA.

Example 2:

Companies X, Y and Z are members of the same group. They enter into a CCA to pool resources and skill in the development of certain intangibles. Since each company is granted the rights to the outcomes of the CCA, the CCA eliminates the need for cross-licensing arrangements that may result in the absence of a CCA where each company individually developed the intangibles and granted rights to one another. The CCA replaces the cross-licensing arrangements with a more streamlined sharing of contributions and risks, with ownership interests of the resulting intangibles shared in accordance with the terms of the CCA.

What are the common types of CCAs?

- 17.8 There are commonly two types of CCAs – development CCA and services CCA. The table below compares the key differences between these two types of CCAs:

Development CCA	Services CCA
It is established for joint development, production or the obtaining of intangibles or tangible assets.	It is established for obtaining services.

Development CCA	Services CCA
• It is expected to create ongoing and future benefits for participants. It may also not be successful. • It often involves significant risks associated with what may be uncertain and distant benefits, particularly for intangibles. • Ownership interest in any intangibles or tangible assets resulting from the activity of the CCA, or rights to use or exploit those intangibles or tangible assets, is contractually provided for each participant. • Participants exploit the interest, rights or entitlement without paying additional consideration (such as royalty) other than the contributions and balancing payments (if applicable).	• It usually creates current benefits for participants. • It often offers more certain and less risky benefits compared to development CCA. • Each participant is contractually entitled to receive services resulting from the activity of the CCA. • Participants benefit from the activity of the CCA without paying additional consideration other than the contributions and balancing payments (if applicable).

17.9 The analysis of a CCA should not be limited to the distinctions described in the above table but should cover all the facts and circumstances of the case.

How to apply the arm's length principle to a CCA?

17.10 It is important to note that the streamlining of flows that results from the adoption of a CCA (as illustrated in the examples in paragraph 17.7) does not affect the appropriate valuation of the separate contributions of the parties. The guidance on transfer pricing analysis in section 5 is equally applicable to CCAs as to any other kind of contractual arrangements. Parties performing activities under arrangements with similar economic characteristics should receive similar returns, regardless whether the contractual arrangement in a particular case is termed a CCA. Using the same Example 1 in paragraph 17.7, companies X, Y and Z should be remunerated no differently whether they perform the services under a CCA or individual related party services agreements.

17.11 For the conditions of a CCA to satisfy the arm's length principle,

- (a) All the participants must share the upside and downside consequences of risks associated with achieving the anticipated CCA outcomes;
- (b) The value of the participants' contributions to the CCA must be consistent with what independent parties would have agreed to contribute under comparable circumstances given their proportionate share of the total anticipated benefits; and
- (c) Each participant's share of the actual overall contributions to a CCA must be proportionate to its share of the overall expected benefits to be received under the CCA.

17.12 To apply the arm's length principle to a CCA, taxpayers are to follow these steps:

Step 1 : Determine participants in the CCA

Step 2 : Determine a participant's share of expected benefits from the CCA

Step 3 : Determine the arm's length value of each participant's contribution to the CCA

Step 4 : Determine the allocation of CCA contributions to each participant according to its share of expected benefits.

Step 1: Determine participants in the CCA

17.13 Because the concept of mutual benefit is fundamental to a CCA, for a party to be considered a participant in a CCA, it must have:

- (a) An assigned interest or rights in the intangibles, tangible assets or services that are the subject of the CCA; and
- (b) A reasonable expectation of being able to benefit from that interest or those rights.

17.14 A party that solely performs the activity in the CCA but does not receive an interest in the output of the CCA, would not be considered a participant in the CCA. Using Example 1 in paragraph 17.7, suppose Company X performs services to companies Y and Z but does not receives services from them under the CCA, it will not be considered a participant to the CCA.

- 17.15 Similarly, if a party is not capable of exploiting the output of a CCA in its own individual business, it would not be considered a participant in the CCA.
- 17.16 A party would also not be considered a participant in a CCA if it does not exercise control over its specific risks under the CCA and does not have the financial capacity to assume those risks. This is on the basis that a party that does not share in the assumption of risks associated with the CCA would not be entitled to a share in the output of the CCA. The analysis of risk assumption in paragraph 5.35 is similarly applicable to determine whether a party assumes risks associated with a CCA.
- 17.17 A party who performs activity or renders other contributions to a CCA but is not considered a participant to the CCA for reasons mentioned above, should be compensated on an arm's length basis external to the CCA. In the example in paragraph 17.14, Company X is expected to be remunerated appropriately for the services it performed to companies Y and Z following the guidance in section 5.

Step 2: Determine a participant's share of expected benefits from the CCA

- 17.18 The relative shares of expected benefits may be estimated based on the anticipated additional income generated, costs saved or other benefits received by each participant as a result of the CCA. For example, in a services CCA, the participants' contributions to the CCA may give rise to benefits in the form of cost savings. In this case, there may not be any income generated directly by the CCA activity.
- 17.19 An approach that is frequently used, most typically for services CCAs, would be to reflect the participants' proportionate shares of expected benefits using a relevant allocation key. Possible allocation keys include sales, profits, number of employees, units used, produced or sold, etc. Where a CCA involves multiple activities, it may be necessary to use more than one allocation key. The guidance in paragraphs 14.18 to 14.21 on the use of indirect method is applicable here to identify an appropriate allocation key.
- 17.20 Where a material part or all of the benefits of a CCA activity are expected to be realised in the future and not solely in the year the costs are incurred, it may be necessary to project the participants' shares of the benefits. This approach is most typically for development CCAs. The use of projections may raise problems, such as validity of the assumptions on which the projections have been made, marked difference between projections and actual results, etc. One way to address such problems is to provide for possible adjustments to the proportionate shares of contributions over the term of the CCA on a prospective basis to reflect changes in relevant circumstances affecting the relative shares of benefits.

- 17.21 Whether a particular approach or allocation key is appropriate to determine a participant's share of expected benefits will depend on the nature of the activity or activities covered in the CCA and the relationship between that approach or allocation key and the expected benefits from the CCA. There should be periodic review to ensure the approach or allocation key used remains relevant.

Step 3: Determine the arm's length value of each participant's contribution to the CCA

- 17.22 Like any other contractual arrangements, each participant's contribution to a CCA should be assessed at value (i.e. based on arm's length prices) in order to produce results that are consistent with the arm's length principle. This means that the value of each participant's contribution must be consistent with the value that independent parties in comparable circumstances would have assigned to that contribution. The guidance in section 5 should be followed in determining the value of contributions.
- 17.23 In valuing contributions, distinction should be made between contributions of pre-existing value and current contributions. For services CCAs, contributions primarily consist of the performance of services which would constitute current contributions. For development CCAs, the performance of development activities (such as R&D, marketing) would constitute current contributions while contribution of pre-existing tangible assets or intangibles would reflect a contribution of pre-existing value.
- 17.24 The value of current contributions is not based on the potential value of further application of the technology, but on the value of the functions performed. The potential value of further application of the technology is taken into account through the value of pre-existing contributions and through the sharing of the development risk in proportion to the expected share of benefits by the CCA participants.
- 17.25 When evaluating participants' contributions, it is important to recognise all contributions made by the participants to the CCA.
- 17.26 An example on measuring contributions at value and the implication for not doing so is provided in Illustration 1 in Appendix A of this section.
- 17.27 In situation where it is more administrable for taxpayers to pay current contributions at cost, a two-step method may be applied to achieve the same result as measuring current contributions at value. The two-step method provides for a sharing of current contributions at cost plus a separate and additional payment to a participant for its additional contribution of value to the CCA or for the opportunity cost of its commitment to contribute resources to the CCA. Such additional contribution of value or commitment of resources is considered as pre-existing contributions. The two-step method may be more useful for

development CCAs. An example on the application of the two-step method is provided in Illustration 2 in Appendix A of this section.

17.28 While all contributions to CCAs should be measured at value, IRAS may consider measuring contributions at cost in some circumstances, such as:

- (a) For practical reasons, current contributions of a similar nature may be measured at cost when the difference between the value and costs is relatively insignificant.
- (b) Independent parties in comparable arrangements measured their contributions at cost.

Step 4: Determine the allocation of CCA contributions to each participant according to its share of expected benefits

17.29 Having established the participants to a CCA under Step 1, determined their share of expected benefits from the CCA under Step 2 and measured their contributions to the CCA at value under Step 3, Step 4 is to ensure that the value of each participant's proportionate share of the overall contributions to the CCA is consistent with its share of the overall expected benefits to be received under the CCA.

17.30 Where the value of a participant's proportionate share of the overall contributions to the CCA is lower than its share of the overall expected benefits under the CCA, its contributions will be inadequate while the other participants' contributions will be excessive. Conversely, where the value of a participant's proportionate share of the overall contributions to the CCA is higher than its share of the overall expected benefits under the CCA, its contributions will be excessive while the other participants' contributions will be inadequate. In such situations, the arm's length principle requires an adjustment to the contributions through making or imputing a balancing payment. Balancing payment made by a participant with inadequate contributions (i.e. payor) to the other participants with excessive contributions (i.e. payees) will have the effect of:

- (a) Increasing the value of the contributions of the payor to be consistent with its share of the overall expected benefits to be received under the CCA, and
- (b) Decreasing the value of the contributions of the payees to be consistent with their share of the overall expected benefits to be received under the CCA.

17.31 Illustration 1 [part (i)] in Appendix A of this section illustrates the allocation of the overall contributions to each participant in proportion to their expected benefits and the making of a balancing payment.

What is the arm's length requirement for entry and withdrawal of participants and termination of a CCA?

Entry into a new CCA

17.32 When related parties enter into a CCA, separate arm's length balancing payments may be necessary for pre-existing contributions.

Example:

A Co and B Co are members of the same group and enter into a CCA. A Co and B Co expect to benefit from the CCA in the ratio 60:40. The value of A Co and B Co's pre-existing contributions is \$10m and \$5m respectively.

B Co is required to make a balancing payment of \$1m to A Co to increase its contributions from \$5m to \$6m and to reduce A Co's contributions from \$10m to \$9m as shown in this table:

	Pre-existing contributions by		Total
	A Co	B Co	
Value of pre-existing contributions	10m	5m	15m
Share of expected benefit			
• A Co	60%	60%	
• B Co	40%	40%	
Share of pre-existing contributions			
• A Co (60% of 10m and 5m)	6m	3m	9m
• B Co (40% of 10m and 5m)	4m	2m	6m
Balancing payment from B Co to A Co (6m – 5m)			1m

Entry and withdrawal of participants of an existing CCA

17.33 A change in the participation of a CCA will trigger a reassessment of the proportionate shares of participants' contributions and expected benefits.

17.34 A change in the participation of a CCA may also trigger the payments described in the table below. Under the arm's length principle, such payments are necessary as consideration for acquiring or disposing of the interest in the results of the prior CCA activity when a party becomes a participant in an existing active CCA or a participant leaves an existing active CCA. However, such payments may not be required in situation where the CCA is for the sharing of certain activities, such as administrative services, that only produce current benefits.

Types of payment	Description
Buy-in payment	Compensation to the existing participants of an active CCA by a new participant to the CCA for acquiring an interest in the results of the prior CCA activity.
Balancing payment	Compensation from the existing participants of an active CCA to a new participant to the CCA for bringing existing intangibles or tangible assets to the CCA.
Buy-out payment	Compensation from the existing participants of an active CCA to the participant that leaves the CCA and disposes of all its interest in the results of the prior CCA activity to the existing participants.

Termination of a CCA

- 17.35 Upon terminating a CCA, the arm's length principle requires that the participants retain their interest in the results of the CCA activity, if any, consistent with their share of contributions to the CCA throughout the term of their participation taking into account any balancing payments actually made or received.
- 17.36 If a participant transfers its interest to other participants, it should be compensated appropriately following the requirements for a buy-out payment set out in paragraph 17.34.

What is the tax treatment for CCA?

- 17.37 Any balancing payment arising from an adjustment to a participant's contribution would be treated as an addition to the contribution of the payor and as a reduction in the contribution of the payee. Any such balancing payments and contributions by a participant to a CCA would be treated in the same manner as if they were made outside a CCA to carry on the activity of the CCA. Their character would depend on the nature of the activity being undertaken in the CCA. Where such contributions and balancing payments are in respect of an R&D CSA under Sections 14C and 14D of ITA, the tax treatment is covered in the IRAS' e-Tax guide on Research and Development Tax Measures.

Example:

This example is based on Illustration 1 [part (i)] in Appendix A of this section. It is assumed that:

- A Co and B Co are taxpayers in Singapore and they undertake R&D activities relating to an R&D project under the CCA.
- The R&D activities met the definition of R&D under section 2 of the ITA.

Following the nature of the R&D activities undertaken in the CCA, the contributions and balancing payments by A Co and B Co are characterised as R&D expenditure. Suppose the R&D expenditure qualifies as payment made under an R&D CSA in Section 14C of the ITA, the tax deduction available to A Co and B Co under Section 14C will be \$3,100 (\$4,000 - \$900) and \$2,900 (\$2,000 + \$900) respectively.

17.38 Balancing payment for pre-existing contributions, buy-in payment and buy-out payment would be treated in the same manner as if the payments were made outside a CCA as consideration for pre-existing contributions, acquisition or disposal of the interest in the results of the prior CCA activity. The deductibility and taxability of such payments will depend on the facts and circumstances of each case. For R&D CSAs under Sections 14C and 14D of the ITA, buy-in payment does not qualify for deduction as qualifying R&D expenditure excludes payment for the right to be a participant to the CSA (see IRAS' e-Tax guide on Research and Development Tax Measures).

17.39 Transfer pricing adjustment may be made by a foreign tax authority when it assesses that the value of a participant's proportionate contributions to a CCA or its proportionate expected benefits from a CCA have been incorrectly determined. Such adjustment may bring about balancing payment between the participants to the CCA resulting in either a reduction or an increase in a taxpayer's claim for deduction for its proportionate contributions made under the CCA. The tax treatment will be as follows:

Where transfer pricing adjustment results in	Tax treatment
Reduction in a taxpayer's claim for deduction for its proportionate contributions	IRAS will bring the reduction in claim to tax on the basis that the original claim is excessive. This is regardless whether there is a MAP application with the relevant foreign tax authority under the relevant DTA.
Increase in a taxpayer's claim for deduction for its proportionate contributions	IRAS will not allow the additional claim in the absence of a MAP application with the relevant foreign tax authority under the relevant DTA.

Where transfer pricing adjustment results in	Tax treatment
Reduction in tax previously withheld under the relevant provisions of the ITA	IRAS will not allow a refund of the tax previously withheld in the absence of (i) A MAP application with the relevant foreign tax authority under the relevant DTA, and (ii) Actual reduction in the taxpayer's liability to make the payment under the CCA.
Additional tax to be withheld under the relevant provisions of the ITA	Taxpayer is to account for additional withholding tax as long as it has actual liability to make the additional payment under the CCA.

Transfer pricing documentation

17.40 Following the guidance in section 6, taxpayers are to properly document all the relevant facts and circumstances relating to their CCAs, including:

- (a) A list of participants to the CCA.
- (b) A list and details of other parties that are not participants to the CCA but are involved in the CCA activity or benefit from the results of the CCA activity.
- (c) Objective, nature, scope and terms and conditions of the CCA.
- (d) Features of the CCA and whether they are consistent with the key features required of a CCA as described in this section.
- (e) Functional analysis of each of the participant to the CCA.
- (f) Application of the arm's length principle taking guidance from this section.
- (g) Details on the various forms of payment between the participants to the CCA, including balancing payment arising from adjustment to current contributions, balancing payment for pre-existing contributions, buy-in payment and buy-out payment.
- (h) Changes to the terms and conditions of the CCA over time and the consequences of those changes.

Appendix A – Examples to illustrate the application of the guidance on CCA

Illustration 1

The purpose of this example is to illustrate the measuring of CCA contributions at value, the implication for not doing so and the allocation of CCA contributions.

In this example, A Co and B Co are members of the same group. A Co performs Activity 1 and B Co performs Activity 2. A Co and B Co perform the activities to each other and simultaneously benefit from the activities performed by each of them. As such, A Co and B Co entered into a CCA. Details of the CCA are as follows:

Cost incurred by A Co in performing Activity 1	\$4,000
Cost incurred by B Co in performing Activity 2	\$2,000
A Co's contributions measured at arm's length value	\$5,000
B Co's contributions measured at arm's length value	\$2,200

(i) Measuring CCA contributions at value and allocating CCA contributions

	Activity 1 by A Co \$	Activity 2 by B Co \$	Total \$	
Cost of performing the activities under the CCA	4,000	2,000	6,000	A
A Co's contributions measured at value B Co's contributions measured at value	5,000	2,200	7200	B
Benefit from the activities - A Co - B Co	60% 40%	50% 50%		C D
Value of share of contributions in proportion to share of benefit - A Co - B Co	3,000 2,000	1,100 1,100	4,100 3,100	E = B x C F = B x D
Balancing payment from B Co to A Co			900	F (3,100) - B (2,200)

The balancing payment of \$900 from B Co to A Co has the effect of increasing B Co's contribution from \$2,200 to \$3,100 and decreasing A Co's contribution from \$5,000 to \$4,100.

(ii) Parity between CCA and other contractual arrangements when contributions are measured at value

If A Co and B Co were to enter into separate related party agreements for Activity 1 and Activity 2 instead of a CCA:

- A Co would pay B Co arm's length charge for Activity 2 (\$2,200 x 50%)	\$1,100
- B Co would pay A Co arm's length charge for Activity 1 (\$5,000 x 40%)	<u>\$2,000</u>
Net result	<u>\$900</u>

By measuring the contributions under a CCA at value (i.e. \$7,200 as shown in part (i) above), the outcome for A Co and B Co under a CCA would be consistent with the outcome if A Co and B Co were to enter into separate related party agreements for Activity 1 and Activity 2.

(iii) Implication if contributions are measured at cost

	Activity 1 by A Co \$	Activity 2 by B Co \$	Total \$	
Cost of providing the activities under the CCA	4,000	2,000	6,000	A
Benefit from the activities - A Co - B Co	60% 40%	50% 50%		B C
Share of contributions measured at cost in proportion to share of benefit - A Co - B Co	2,400 1,600	1,000 1,000	3,400 2,600	D = A x B E = A x C
Balancing payment from B Co to A Co			600	E (2,600) - A (2,000)

By measuring contributions at cost, the balancing payment is understated by \$300 (\$900 - \$600) as compared to if A Co and B Co were to enter into separate related party agreements for Activity 1 and Activity 2. As shown in part (ii) above, the arm's length result is only achieved in respect of the CCA when contributions are measured at value as in part (i) above.

Illustration 2

The purpose of this example is to illustrate the application of the two-step method described in paragraph 17.27.

Using the same example as in Illustration 1:

- Under Step 1 (sharing of contributions measured at cost), B Co would have to make a balancing payment of \$600 to A Co for sharing current contributions measured at cost (see part (iii) in Illustration 1).
- Under Step 2 (accounting for additional contributions of value to the CCA), B Co would have to compensate A Co for the additional value of \$300 that A Co contributes to the CCA. The calculation is as follows:

Value of Activity 1 benefited by B Co [(Value of \$5,000 - Cost of \$4,000) x Benefit of 40%]	\$400
Value of Activity 2 benefited by A Co [(Value of \$2,200 - Cost of \$2,000) x Benefit of 50%]	\$100
Additional value that A Co contributes to the CCA	\$300

- Total balancing payment from B Co to A Co is \$900 (\$600 + \$300). The two-step method is to achieve the same outcome as measuring the current contributions at value (i.e. part (i) in Illustration 1).

18 Government assistance

Introduction

- 18.1 Government assistance to businesses may take a monetary or non-monetary form, where government or a public authority provides a direct or indirect financial benefit to eligible taxpayers in the form of grants, subsidies, forgivable loans, tax deductions or investment allowances. For example, a series of support measures were introduced by the Singapore Government to ease cash flow for taxpayers amidst the protracted economic downturn brought about by the COVID-19 pandemic. These measures include the Jobs Support Scheme (JSS) which is a wage subsidy scheme.
- 18.2 Benefits from government assistance may have transfer pricing implications. Broadly, situations involving government assistance may concern (a) a member of a group receiving government assistance and (b) assistance being availed to independent parties⁴³ within the market where a group operates. When examining the transfer pricing of a group member who receives government assistance, we should consider whether the assistance would have had impact on independent parties within the same market. Where assistance is provided to independent parties within the market where the group operates, we should likewise consider if this form part of the economic context in which the entities operate, and which may have a bearing for transfer pricing analysis in respect of the group of related entities in the same market.
- 18.3 Where the benefits from government assistance are economically relevant (in that the benefits are taken into account by independent parties when evaluating the terms of a comparable transaction under comparable circumstances), such benefits would have to be examined as part of transfer pricing analysis conducted for transactions between related parties.⁴⁴

How benefits from government assistance should be treated for transfer pricing purpose

- 18.4 Generally, government interventions would tend to be regarded as altering the conditions of the market in the particular jurisdiction. The receipt of government assistance may form part of the economic

⁴³ Depending on the nature of the government assistance (such as availability, substance and duration), the assistance given to independent entities may affect the pricing of such 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.

⁴⁴ Taxpayers may also refer to the OECD Guidance on the transfer pricing implications of the COVID-19 pandemic published on 18 December 2020.

circumstances of the parties and be a feature of the market in which they operate.⁴⁵

- 18.5 However, it would be contrary to the arm's length principle to assume that the very receipt of government assistance by one party to a transaction would always affect the price of the accurately delineated related party transaction. The basic transfer pricing analysis would continue to apply, i.e. to examine whether this assistance would have any influence on transactions between independent parties where one party receives a similar assistance. Hence, a comparability analysis (including an analysis of how the receipt of government 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) would need to be undertaken. The potential effect of the receipt 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 occurring under similar circumstances, and the extent to which the assistance is economically relevant.
- 18.6 The receipt of government assistance by a party to a related party transaction would not change the allocation of the risk in that transaction between the two parties to that transaction for transfer pricing purposes, but it may reduce the quantitative negative impact of the materialisation of that risk.

Illustration 1:

Company A (which assumes credit risk) expects to incur losses from a related party transaction due to financial difficulties of its related party, Company B. However, Company B may be able to meet some of its obligations with the receipt of government assistance. In this scenario, the receipt of government assistance by Company B did not change the allocation of credit risk between Companies A and B. The credit risk would continue to be borne by Company A. The receipt of government assistance by Company B reduced the losses which Company A has to bear.

- 18.7 The application of the guidance above is illustrated using a situation where a limited risk distributor within a group receives a wage subsidy from the Singapore Government.

Illustration 2:

- The related party transaction is the sale of goods by the limited risk distributor to other related parties in the group.

⁴⁵ Government official websites / press releases containing eligibility criteria may provide indications of whether a company is entitled to a particular type of government assistance.

- Whether or not the wage subsidy is economically relevant and has a direct impact on the related party transaction would depend on how independent parties would have treated it in comparable transactions.
- Comparable transactions between independent parties would have to be examined to determine if the effect of wage subsidy was passed on to the customers in terms of a lower price. This would be dependent on economic circumstances, level of competition, elasticity of demand and the availability of similar government assistance to competitors within the relevant markets, etc.
- A comparison would need to be made between the accounting treatment for wage subsidy adopted by the tested party (i.e. the limited risk distributor in this illustration) and that of the comparables selected for benchmarking purposes. The accounting treatment of the wage subsidy under different accounting standards may impact different levels of profitability (e.g. gross profit, operating profit, net profit) or may be accounted for in the “other comprehensive income” statement, only being reclassified to the “profit or loss statement” of the entity over time. Comparability adjustments may be required to eliminate any differences in the accounting treatments adopted.

18.8 IRAS recognises the practical challenges that businesses may face in performing the analysis due to the lack of detailed and reliable information, as well as the delay in data availability in the public domain.

18.9 Unless otherwise demonstrated⁴⁶, it is generally expected that an independent party acting in a commercially rational manner would retain the benefits from government assistance. An illustration is provided below:

Illustration 3:

Singco, incorporated in Singapore, is a contract manufacturer of a food product for its overseas related company. In the financial year 2023, Singco incurs gross wages of S\$10,000 and other operating expenses

⁴⁶ There may be circumstances where independent parties may not retain the benefits of government assistance. For example, it may be specifically stated in the government assistance that the benefits have to be passed on to or shared with the recipient's counterparty, or there is reliable evidence showing that third parties would have done so under comparable circumstances. Possible sources of reliable evidence include agreements with third parties used as internal comparables to benchmark related party transactions. The agreements could have specified how benefits from government assistance have been taken into consideration in the computation of the transaction price.

of S\$9,000. Singco receives wage subsidy of S\$5,000 from the government to subsidise its local employees' wages.

An unrelated Singapore manufacturing company (in the food industry that manufactures a similar food product) has been identified as a potential comparable company. The company receives wage subsidy from the government in the financial year 2023. It charges an average mark up of Y% for providing similar contract manufacturing services to several other independent companies.

In the absence of clear information on whether the unrelated Singapore manufacturing company would have passed on the benefits of the wage subsidy to its customers, Singco can take the view that the unrelated manufacturing company would retain the benefits from government assistance and considers Y% as the benchmark.

The transfer price for SingCo's related party transaction is computed as follows:

	S\$
Gross wages	10,000
Add: Other costs	<u>9,000</u>
Total cost base *	<u>19,000</u>
Arm's length mark-up	Y% x 19,000
Transfer price	19,000 + (Y% x 19,000)

* The cost base is not reduced by the wage subsidy for purposes of computing the transfer price. Singco retains the benefits from the wage subsidy unless there is reliable evidence showing that third parties would have behaved differently under comparable circumstances.

Transfer Pricing documentation

18.10 In the context of the guidance in Section 6, taxpayers are to properly document the following information relating to the government assistance that they have received:

- (a) Details relating to the government assistance;
- (b) Accounting treatment of the government assistance; and
- (c) How the receipt of specific government assistance had been taken into consideration in their comparability analysis.

PART V – MISCELLANEOUS

19 Other guidance relating to transfer pricing

Introduction

- 19.1 This section lists down other IRAS' e-Tax guides on transfer pricing that may be relevant to you.

Transfer Pricing Guidelines (Special Topic) – Commodity Marketing and Trading Activities

- 19.2 This e-Tax guide analyses the economic value of taxpayers' commodity marketing and trading activities in Singapore and helps taxpayers to comply with the arm's length principle and TP documentation requirement when such activities are carried out with their related parties.

GST: Transfer Pricing Adjustments

- 19.3 This e-Tax guide explains the GST treatment for adjustments made on the transfer prices of transactions between related parties.

Transfer Pricing Guidelines (Special Topic) – Centralised Activities in Multinational Enterprise Groups

- 19.4 This e-Tax guide discusses the economic value of centralisation of activities in Singapore and its importance to a multinational enterprise group. The e-Tax guide also provides guidance on how to analyse such activities carried out in Singapore between related parties, the factors that may affect the transfer price for these activities and the transfer pricing methods that may be appropriate.

20 Contact information

- 20.1 If you have any enquiries or need clarification on this Guide, please email ct_transfer_pricing@iras.gov.sg.
- 20.2 If you wish to initiate a pre-filing meeting for an APA or MAP request relating to transfer pricing, you can contact IRAS, Transfer Pricing and Dispute Resolution Branch, or submit your request electronically via <https://mytax.iras.gov.sg>.

21 Updates and amendments

21.1 This table summarises the main updates and amendments made to the current edition and the previous edition of this e-Tax guide:

Edition	Date of amendment	Updates and amendments made
6 th edition	10 Aug 2021	Enhanced the guidance on application of Berry ratio and value-added cost mark-up – paragraphs 5.99, 5.101 and 5.102.
		Added frequently asked questions regarding preparation of TP documentation in Appendix B of section 6.
		Re-named Part II from “Transfer pricing administration” to “Transfer pricing compliance” which contains: • Existing section 7 with “transfer pricing consultation” being updated to “transfer pricing audit”, • New section 8 to cover previous paragraphs 5.117 to 5.124 on arm’s length adjustment by IRAS, and • New section 9 to cover previous section 15 on surcharge and penalty with additional guidance on remission of surcharge.
		Inserted a new Part III – Dispute Prevention and Resolution which contains previous sections 8 to 10 now renumbered to sections 10 to 12. Amendment to section 10 includes: • Re-arranging the paragraphs, • Providing additional guidance on arbitration and circumstances under which IRAS will not accept an APA application, and • Providing frequently asked questions regarding APA application.
		Renamed “Part III – Other Issues” to “Part IV – Other Matters” which contains: • Previous sections 11 to 14 now renumbered to sections 13 to 16, and • New section 17 on cost contribution arrangements.

Edition	Date of amendment	Updates and amendments made
		Amended section 14 to include guidance on: • Shareholder activities, • Duplicative service, and • OECD simplified approach for low value-adding intra-group services.
		Amended section 15 to include: • Guidance on pricing related party financial transactions, besides related party loans, and • Additional guidance on pricing related party loans which includes determining whether a purported loan should be regarded as a loan, risk-free return, credit rating of borrower and effect of group membership.
		Inserted a new section 18 to cover other guidance relating to transfer pricing.
7 th edition	14 Jun 2024	Added frequently asked questions (“FAQ”) regarding the making of working capital adjustment in section 5.
		Updated section 6 to include: • New exemption rules for related party domestic loans entered into on or after 1 January 2025 (paragraph 6.18(c)). • Increase in the threshold for exemption from TP documentation for certain transactions from S\$1 million to S\$2 million (sub-paragraph (g), Table 2 and example in paragraph 6.18, and Illustration 4 in Appendix A). • Clarification on stating the date of completing a simplified TP documentation in the declaration (paragraphs 6.35 and 6.40(b) and FAQ 1 in Appendix B). • New FAQ regarding TP documentation for long term loans and provision of information to supplement an existing TP documentation (FAQ 7 and FAQ 8 in Appendix B).
		Updated the TPA process in section 7.

Edition	Date of amendment	Updates and amendments made
		Amended section 8 to: • Enhance the example in paragraph 8.8. • Include guidance on transfer pricing adjustment relating to capital transactions (paragraphs 8.10 and 8.11).
		Updated section 9 regarding the circumstances under which partial or full remission of the surcharge under Section 34E of the ITA will be given (paragraphs 9.9 (c) and 9.10(b)).
		Updated section 11 and Annex B2 to remove the requirement for pre-filing meeting for MAP application.
		Updated the guidance on strict pass-through costs in section 14.
		Updated section 15 to include: • New rules for related party domestic loans entered into on or after 1 January 2025 (paragraphs 15.15, 15.18 and 15.63) • Guidance on base reference rates with IBOR reform (paragraphs 15.40 to 15.47, 15.58 and 15.59).
		Inserted a new section 18 to cover government assistance.

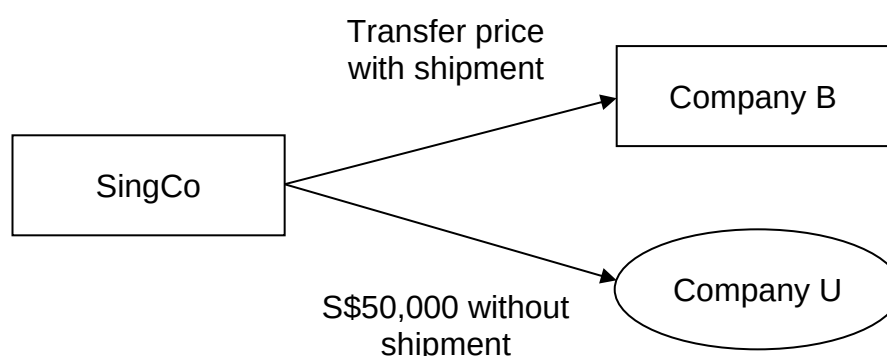
ANNEX A – Examples on transfer pricing methodology

Example 1: CUP method using internal CUP

SingCo, a Singapore company, sells only one type of computer disk drive. The disk drives are sold to two other companies:

- 1) SingCo's overseas subsidiary, Company B, and
- 2) A local unrelated company, Company U.

Under the agreement between SingCo and Company B, SingCo will ship the hard disks to Country B where Company B is located on a CIF basis. On the other hand, Company U takes possession of the hard disks at SingCo's factory.



Assuming that the volume of SingCo's disk drive sales to both parties, and market and economic conditions are similar in any one particular period, the CUP for the disk drives sold to Company B could be computed as follows:

Price of disk drives sold to Company U (per container of goods)	S\$50,000
Add: Adjustment for insurance and freight	<u>S\$ 400</u>
Transfer price (per container of goods) based on CUP	S\$50,400
	=====

Example 2: CUP method using external CUP

SingCo, a Singapore company, sells a commodity product to its overseas subsidiary, Company A, which is located in Country A. This commodity product is widely and competitively traded in Country A. Therefore, the price of the commodity at any point in time is easily available.

In this case, the market price would be the CUP to determine if the transfer price between SingCo and Company A is at arm's length.

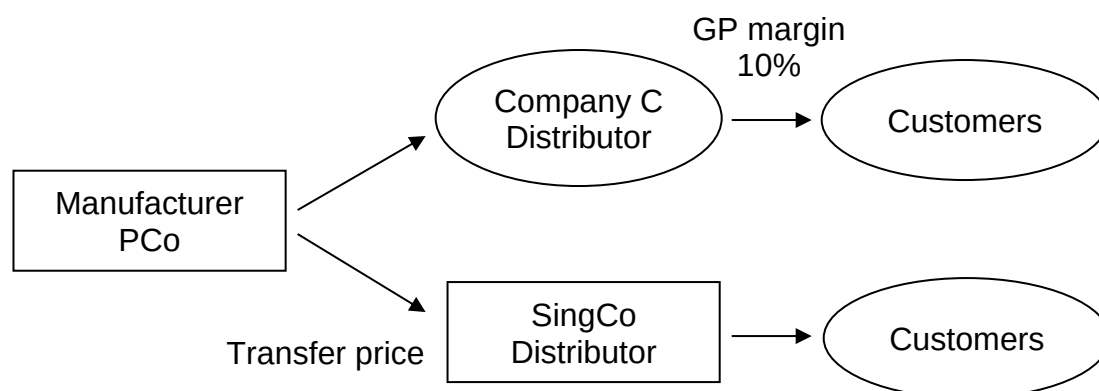
The market price adopted in the above example is commonly termed as "external CUP". Many taxpayers tend to rely on such external data in their attempts to locate comparable independent party transactions.

However, internal comparable transactions (commonly termed as "internal CUP") may have a more direct and closer relationship to the transaction under review as compared to external CUP. As can be seen in the earlier example (Example 1), the internal CUP may arise where the taxpayer buys or sells the particular product, in similar quantities and under similar terms to independent parties in similar markets.

Example 3: Resale price method

SingCo distributes laptop computers in Singapore for its overseas parent company, PCo. Company C, a Singapore company unrelated to PCo, has also been appointed by PCo to distribute desktop computers for it in Singapore.

In this example, it is assumed that the laptop and desktop markets are similar in Singapore. The main difference between the two distributorship agreements is that SingCo performs promotional and marketing functions for PCo whereas Company C does not.



The gross profit margin of Company C from the resale of desktops to consumers was found to be 10%.

The arm's length price for the related party transaction is computed as follows:

SingCo's sales of laptop to unrelated parties	S\$ 3,500
Less: Arm's length resale price margin based on Company C's transactions (10% x S\$3,500)	<u>S\$ 350</u>
	S\$3,150
Less: Arm's length price for promotional and marketing functions performed by SingCo for PCo based on transfer pricing analysis	<u>S\$ 80</u>
Transfer price (based on resale price method)	<u>S\$3,070</u>
	=====

The above example is based on an internal comparable. PCo's transactions with Company C, an independent party, are used to benchmark the transactions with SingCo (a related party).

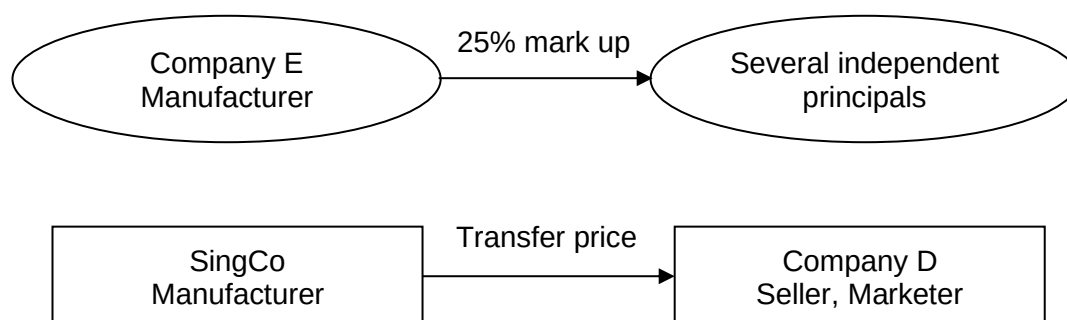
If there are no reliable internal comparables, the same analysis above could be undertaken using external comparables i.e. benchmarking the related party transactions between PCo and SingCo against comparable transactions between an independent manufacturer and an independent distributor.

Example 4: Cost plus method

SingCo is a domestic manufacturer of a specialised drug for its overseas related company, Company D. The MNE group to which SingCo and Company D both belong is the inventor of the drug and the only producer in the world.

Under the agreement, Company D provides all the know-how used in the manufacturing of the drug and undertakes to acquire a fixed output from SingCo every month. Payment is to be made based on the costs incurred by SingCo, along with a mark up to reflect a profit element for SingCo. Based on SingCo's financial statements, the cost incurred to manufacture one unit of the drug is S\$70.

SingCo essentially performs the role of a contract manufacturer. An unrelated Singapore manufacturing company in the pharmaceutical industry that manufactures a different drug, Company E, has been identified as a potential comparable company. Company E charges an average mark up of 25% for providing similar contract manufacturing services to several other independent companies.



The transfer price for the related party transaction is computed as follows:

Direct and indirect cost incurred by SingCo to manufacture one unit of drug	S\$70.00
Arm's length mark up (25% x S\$70.00)	<u>S\$17.50</u>
Transfer price (based on the cost plus method)	<u>S\$87.50</u>
	=====

The above example is based on an external comparable. SingCo's transactions with Company D, a related party, are benchmarked against the transactions between Company E and independent parties.

If reliable internal comparables exist, the same analysis should be undertaken using internal comparables. SingCo's related party transactions with Company D are benchmarked against comparable transactions between SingCo and an independent party

Example 5: Transactional profit split method (residual analysis approach)

SingCo is a Singapore manufacturing and sales company for telecommunication products. It developed an original microprocessor and holds the patent for the manufacturing technology. Company F, an overseas subsidiary of SingCo, develops and manufactures mobile equipment using the new microprocessor as well as technology developed by itself.

Company F is the only manufacturer licensed by SingCo to use the new microprocessor. SingCo purchases all of the mobile equipment manufactured by Company F and sells them to third parties.

Both companies contribute to the success of the mobile equipment through their design of the microprocessor and the equipment. As the nature of the products is very advanced and unique, the group is unable to locate any comparable with similar intangible assets. Therefore, neither the traditional methods nor the TNMM is appropriate in this case.

Nevertheless, the group is able to obtain reliable data on handphone contract manufacturers and equipment wholesalers without unique intangible property in the telecommunication industry. The manufacturers earn a mark up of 10% while the wholesalers derive a 25% margin on sales.

SingCo's and Company F's respective share of profit is determined in two stages using the transactional profit split method (residual analysis approach).

Stage 1 – Determining the return for routine contributions

The simplified accounts of SingCo and Company F are shown below:

	Company F (S\$)	SingCo (S\$)
Sales	100	125
Cost of Goods Sold	(60)	(100)
Gross Margin	40	25
Sales, General & Admin	(5)	(15)
Operating Margin	35	10

The total operating profit for the group is S\$45.

Company F

Cost of goods sold	S\$60
Cost mark up of contract manufacturer (10% x S\$60)	<u>S\$6</u>
Transfer price based on comparables (without intangibles)	<u>S\$66</u>
	====

SingCo

Sales to third party customers	S\$125
Resale margin of wholesalers comparables (without intangibles)	<u>25%</u>
Resale margin (or gross margin)	S\$31.25
	=====

Computation of return for routine contributions based on comparables (without intangibles):

	Company F (S\$)	SingCo (S\$)
Sales	66	
Cost of Goods Sold	(60)	
Gross Margin	6	31.25
Sales, General & Admin	(5)	(15.00)
Routine operating margin	1	16.25

The total operating margin of the group is S\$17.25.

Stage 2: Dividing the residual profit

The residual profit of the group = S\$45 – S\$17.25 = S\$27.75

On further study of the two companies, two particular expense items, research and development (“R&D”) expenses and marketing expenses, are identified as contributing to the key intangibles critical to the success of the mobile equipment. The R&D expenses and marketing expenses incurred by each company are as follows:

SingCo	S\$12 (80%)
Company F	S\$3 (20%)

Assuming that the R&D and marketing expenses are equally significant in contributing to the residual profit, based on the proportionate expenses incurred:

SingCo’s share of residual profit (80% x S\$27.75)	S\$22.20
	=====
Company F’s share of residual profit (20% x S\$27.75)	S\$ 5.55
	=====

Therefore, the adjusted operating profits of each company are as follows:

SingCo	=	S\$22.20 + S\$16.25	=	S\$38.45
Company F	=	S\$5.55 + S\$1	=	S\$6.55

The adjusted tax accounts are as follows:

	Company F (S\$)	SingCo (S\$)
Sales	71.55	125.00
Cost of Goods Sold	(60.00)	(71.55)
Gross Margin	11.55	53.45
Sales, General & Admin	(5.00)	(15.00)
Operating Margin	6.55	38.45

Hence, the transfer price determined using the transactional profit split method (residual analysis approach) should be S\$71.55.

Example 6: Transactional net margin method

SingCo is a Singapore manufacturer of dishwashers. All of SingCo's dishwashers are sold to an overseas related party, Company G, and bear Company G's brand. Company G, a household electrical appliances brand name, sells only dishwashers manufactured by SingCo.

The CUP method is not applied in this case because no reliable adjustments can be made to account for differences with similar products in the market.

After the appropriate functional analysis, SingCo was able to identify a Singapore manufacturer of home electrical appliances, Company H, as a suitable comparable company. However, Company H performs warranty functions for its independent wholesalers, whereas SingCo does not. Company H realises a net mark up or operating margin of 10%.

As the costs pertaining to the warranty functions cannot be separately identified in Company H's accounts and no reliable adjustments can be made to account for the difference in the functions, it may be more reliable to examine the net margins in this case. The transfer price for SingCo's sale of dishwashers to Company G is computed using the TNMM as follows:

SingCo's cost of goods sold	S\$5,000
SingCo's operating expenses	<u>S\$1,500</u>
Total costs	S\$6,500
Add: Net mark up (10% x S\$6,500)	<u>S\$650</u>
Transfer price based on TNMM	S\$7,150
	=====

ANNEX B – Samples and guides for MAP and APA process

Annex B1: Sample of letter of authorisation

Note: The letter is to be printed on the taxpayer's letterhead

[Date]

International Tax and Relations Division
Transfer Pricing and Dispute Resolution Branch
Inland Revenue Authority of Singapore
55 Newton Road
Singapore 307987

Attention: [IRAS Case Officer]

LETTER OF AUTHORITY- APPLICATION FOR *[MUTUAL AGREEMENT PROCEDURE (“MAP”)/ BILATERAL ADVANCE PRICING ARRANGEMENT (“BAPA”)/ UNILATERAL ADVANCE PRICING ARRANGEMENT (“UAPA”)] BY [NAME(S) OF TAXPAYER(S)]

Dear Sir/ Madam,

This is to advise that we have appointed [Tax agent/ representative (Name and contact information)] to represent us on all matters relating to the above application. We authorise IRAS to communicate with them and the parties listed below via letters, phone calls, **[electronic means (e.g. emails)], etc. on all matters relating to the above application.

(i) [Authorised party (Name and contact information)]

(ii) [Authorised party (Name and contact information)]

Yours faithfully,

[Name of signatory]

[Designation of signatory]

Name of taxpayer

* Please delete accordingly.

** Please delete if you do not wish that the electronic mode of communication be used for the above application.

Annex B2: Guide on minimum information required for pre-filing meeting for APA request

S/No.	Minimal Information for pre-filing meeting
1	Letter of authorisation stating the engagement of tax agents or other representatives to act for the taxpayer, if applicable
2	Taxpayer's name, address, tax identification number and contact details
3	Whether request is for unilateral, bilateral or multilateral APA and reasons for the request
4	The foreign competent authority if the request is not relating to unilateral APA
5	Financial years to be covered ("covered period"), including roll-back years, if applicable
6	A brief description of the transactions involved ("covered transactions")
7	The related parties to the transactions ("covered entities")
8	How the covered transactions relate to the overall business activities of the covered entities
9	A detailed organisation chart
10	An overview of the functions undertaken, assets employed and risks assumed by the covered entities during the covered period
11	A highlight of how the functions undertaken, assets employed and risks assumed by the covered entities have changed compared to the period prior to the proposed covered period
12	Based on the preliminary or completed transfer pricing analysis, list down the proposed: (a) tested party; (b) transfer pricing methodology; (c) profit level indicator, if relevant; and (d) arm's length result
13	List of critical assumptions under which the proposed APA will operate
14	Any other information which is of relevance

Annex B3: Sample of an APA agreement

APA Terms	Description and examples
Covered entities	This refers to the related parties to the covered transaction. <u>Example:</u> Singapore entity : ABC Pte Ltd DTA entity : XYZ Ltd
Covered transaction(s)	This refers to the transactions on which an arm's length remuneration is to be agreed. <u>Example:</u> Sales of products from XYZ Ltd to ABC Pte Ltd
Covered period	This refers to the FYs to be covered in the APA. <u>Future FYs</u> Generally up to 5 FYs <u>Roll-back years (if applicable)</u> Generally up to 2 FYs
Transfer pricing method	This is the agreed method on which the arm's length remuneration is to be determined. <u>Example:</u> Tested party is ABC Pte Ltd Transfer pricing method is transactional net margin method ("TNMM") with operating margin ("OM") as the profit level indicator
Arm's length remuneration	This is the agreed arm's length remuneration for the covered transaction. <u>Example:</u> Inter-quartile OM range of D% to E%
Compensating adjustment rules	The rules set out the basis of determining the compensating adjustments. <u>Example:</u> To adjust the actual OM to the nearest edge of inter-quartile OM range if the actual OM is not within the range

APA Terms	Description and examples
	For example, if actual OM is below D%, to adjust the OM up to D%. If actual OM is above E%, to adjust the OM down to E%.
Critical assumptions	<u>Example:</u> No material changes throughout the covered period to the: • economic environment in which the covered entities operate. • functions performed, risk assumed and assets employed by the covered entities with respect to the covered transaction. • accounting methods and business operations of the covered entities with respect to the covered transaction.
Annual APA compliance report	The covered entities are to submit the annual APA compliance report, including computations, to demonstrate compliance with APA terms by the filing due date of covered entities' income tax returns.
Others	Any other terms and conditions

Annex B4: Guide on annual APA compliance report

The following information are to be included in the annual APA compliance report to demonstrate compliance with APA terms and critical assumptions in the APA agreement:

1. An analysis and comparison between the tested party's actual results and the agreed arm's length remuneration in the agreement.
2. A statement on whether the tested party's actual results fall within or outside the arm's length remuneration.
3. An analysis on the factors that cause the tested party's actual results to fall outside the arm's length remuneration as well as calculation of the compensating adjustments.
4. A statement on whether the remaining APA terms have been fully complied.
5. Description of any failure to comply with the remaining APA terms.
6. A statement on whether there are significant changes to any aspects of the taxpayer's business.
7. Description of the significant changes and an analysis of their impact on the APA agreement.
8. A statement on whether any of the critical assumptions may not be valid.
9. Description of the reason why any critical assumptions may not be valid and a proposed course of action.

ANNEX C – Routine support services commonly provided on an intra-group basis

The types of routine support services are specified in the First Schedule of the TP Documentation Rules and are reproduced here: ⁴⁷

	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	Administering 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

⁴⁷ Please also refer to the TP Documentation Rules as this guidance may not be updated at the same time as any amendment to the TP Documentation Rules.

	Service	Description
		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, 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.