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**RE: Transfer Pricing Documentation Consultation
Paper Publicized on 1 September 2014**

Dear Gentlemen:

On 1 September 2014, the Inland Revenue Authority of Singapore (IRAS) released for public comment a consultation paper ("Consultation Paper"), "Transfer Pricing Documentation," which proposes updates to Section 4 of the IRAS E-Tax guide on Transfer Pricing Guidelines, published 23 February 2006 ("2006 Guidelines"), concerning required transfer pricing ("TP") documentation. This Consultation Paper follows indications by the IRAS at a conference on 20 May 2014 that new guidelines on TP documentation would be released in September 2014 for comment with the final guidelines or circulars to be released in December 2014. The intent is to improve documentation compliance, as a significant number of taxpayers have historically not maintained contemporaneous TP documentation based on cases subject to IRAS TP audits and reviews.

The Consultation Paper provides guidance on the preparation and maintenance of TP documentation expected of taxpayers, including, amongst other things:

- (a) maintenance of contemporaneous records by taxpayers to show proper evaluation of TP and compliance with the arm's length principle, as well as to facilitate the IRAS' assessment of taxpayers' TP risks and identification of cases for TP audit;
- (b) articulation of adverse consequences arising from failure to maintain adequate documentation, including upward transfer pricing adjustment under Section 34D of the Income Tax Act, withdrawal of IRAS support in regard to Mutual Agreement Procedure ("MAP") and Advanced Pricing Agreement ("APA");
- (c) introduction of a "Master and Local file" concept in the form of Group and Entity-level documentation requirements with the required information detailed in Annex A to the Consultation Paper;
- (d) retention of TP documents for at least 5 years from the end of the relevant year of assessment (or for a longer period if the taxpayer is involved in an audit or a MAP) and submission to the IRAS upon request; and
- (e) introduction of a new safe-harbor for Small and Medium Sized Enterprises ("SMEs") in addition to the existing 5% safe harbor mark-up for routine services.

The IRAS has also framed 5 specific questions on various aspects of the Consultation Paper. On behalf of Tax Executives Institute, Inc. ("TEI"), I am pleased to respond to the IRAS' request for comments by first addressing the specific questions followed by feedback more generally on other aspects.

The Consultation Paper is a timely update to the existing 2006 Guidelines on TP documentation and provides detailed guidance and helpful direction to taxpayers on how to satisfy IRAS' expectations. The update also coincides with revisions the OECD is making to its TP documentation guidance as part of the Base Erosion and Profit Shifting ("BEPS") project. In general, we believe that some of the stipulations in the Consultation Paper bring Singapore's TP documentation requirements broadly in line with TP regimes in advanced economies and are relatively reasonable in the light of the OECD White Paper on Transfer Pricing Documentation dated 30 July 2013 and the recent Action 13

Guidance on Transfer Pricing Documentation and Country-by-Country Reporting released 16 September 2014.

We are concerned, however, that the Consultation Paper elevates Singapore's TP documentation requirements to a higher level than the existing Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD TP Guidelines") ahead of the final OECD BEPS recommendations on important questions of implementation, including how the Master file should be filed and how transition to the new model will occur. The OECD has indicated that the BEPS Action 13 work would continue until January 2015. Further, Singapore's adoption of higher levels of documentation by December 2014 could be up to two or more years earlier than changes in the rest of the Asia-Pacific region, which is comprised largely of non-OECD member countries, including significantly India, China and Indonesia.

Overall, TEI recommends the IRAS consider a phased approach to implementing the new documentation guidance with the first phase introducing the concept of contemporaneous documentation and Entity-level documentation and a latter phase requiring fulfillment of Group-level documentation. The phases should also be implemented with some lead time before coming into full effect, such as 12 to 18 months, to allow taxpayers to adjust their internal processes, and the second phase should track and be coordinated with upcoming developments in the OECD's BEPS project.

TEI Background

Tax Executives Institute was founded in 1944 by a group of fifteen corporate tax executives intent on creating an organization to exclusively serve the networking, educational and advocacy needs of in-house tax professionals, *i.e.*, professionals who perform the tax work for their business employers. A non-profit organization, which has tax-exempt status under the United States Internal Revenue Code, TEI has grown from its founding to become the preeminent organization of in-house professionals worldwide, comprising 55 chapters and over 7,000 members who work for over 3,000 of the largest corporations in Asia, Europe and North America. TEI is dedicated to promoting sound tax policy, as well as the fair and efficient administration of tax laws, at all levels of government around the world. In 2005, TEI established a chapter in Asia, which currently has over 120 members employed by 51 different companies with significant operations in Singapore and throughout Asia.

TEI Comments

Question 1: What challenges do you anticipate in preparing transfer pricing documentation on a contemporaneous basis?

Given the relatively low threshold for the SME exemption under Paragraph 7.3 and no consolidation tax filing in Singapore, Multi-National Enterprises (“MNEs”) with a number of companies established in Singapore, especially holding companies and special purpose vehicles, will need to prepare multiple TP documentations for routine transactions with low levels of TP risk (e.g., documentations for payments to overseas related parties for routine services, loans, etc.). The resulting increase in the taxpayers’ compliance costs and resources required to prepare and maintain contemporaneous TP documentation may be disproportionate to the level of TP risks associated with such transactions and the overall benefits to IRAS of having the information readily available for examination, particularly if such transactions are domestic transactions (i.e., Singapore entity with Singapore entity) or immaterial to the overall tax position of the MNE.

While many MNEs will work at the time a transaction occurs to ensure that an arm’s length price is implemented, compiling the documentation is very costly due to resource and time constraints and will inevitably require MNEs to pull resources from other projects to complete the task. The TP documentation suggested by IRAS cannot be prepared quickly unless large teams are involved. Companies, particularly Singapore affiliates of foreign headquartered MNEs, do not have dedicated TP resources to operate in this manner and administrative requirements that significantly increase their TP compliance resourcing would further increase the already high cost of operating in Singapore. The BEPS Action 13 guidance will exacerbate this resource shortfall by driving the centralization of TP efforts and resources towards compliance at the foreign corporate headquarters. Having a phased approach to introducing the changes and allowing some lead time as recommended above would provide significant relief to the resource constraints of taxpayers.

Question 2: What difficulties would you have in getting the information listed under Annex A?

Concerning documentation at the Group level, TEI makes the following observations:

The Consultation Paper does not define what constitutes a “Group.” An MNE Group may consist of many different groups of companies engaged in related party transactions outside Singapore that do not involve the Singapore entity. Such transactions may be guided by different transfer pricing policies and practices than those administered in Singapore. Such transfer pricing policies would not be relevant to determining whether related party transactions involving the Singapore entity are at arm’s length. As such, the requirement in Paragraph 1(c) of Annex A to provide a “functional analysis describing the contributions to value creation by **each** related party within the group [*emphasis added*]” and the “group’s transfer pricing policies relating to **all** types of transactions between related parties within the group [*emphasis added*]” appear to significantly exceed what may be needed for risk assessment or audit by the IRAS. Providing general Group information for **all** related parties in the Group is disproportionately burdensome for Singapore entities and is more likely to confuse IRAS officials with complex organizational charts and irrelevant business descriptions than to provide meaningful, relevant information for the related party transaction in which the Singapore entity is engaged.

A separate concern is that such disclosure may result in a breach of confidentiality laws of certain countries or similar provisions in agreements such as an APA or private ruling. As mentioned above, there will also be practical difficulties and resource constraints for a single Singapore entity to pull together the extensive TP information required across a large MNE Group.

To address the foregoing, TEI recommends the following revisions to the Consultation Paper:

A. Proposed Changes to Paragraph 1(a) of Annex A:

General information on the Group should be restricted to that which is relevant to the Singapore entity's business or related party transactions.

B. Proposed Changes to Paragraph 1(b) of Annex A:

Description of the Group's Business should be restricted to those that are relevant to the Singapore entity's business and at a general level of description in line with OECD's recommendation for "high-level" documentation for the Master file.

C. Proposed Changes to Paragraph 1(c) of Annex A:

General description or details relating to the Group should only be required to the extent such information is relevant to the assessment of transfer pricing risk for the Singapore entity. To implement this comment, we recommend the following changes to the bulleted text in Paragraph 1(c) of Annex A (proposed additions to Paragraph 1(c) are marked with an underscore and deletions with a strike-through):

- The functional analysis describing the contributions to value creation by each related party within the group, i.e. functions performed, risks assumed and assets (including intangibles) used and/or contributed, to the extent it is relevant for purposes of assessing the transfer pricing risk for the Singapore entity.
- The group's transfer pricing policies relating to ~~the all~~ types of transactions between related parties within the group that are relevant for purposes of assessing the transfer pricing risk of significant transactions of the Singapore entity that are above the Paragraph 7.3 safe-harbor threshold.*

** Note: The safe-harbor threshold should include the specific transaction-level de minimis thresholds recommended by TEI in response to Question 3, below.*

D. Proposed Changes to Paragraph 1(d) of Annex A:

The consolidated financial statements of the group may not have the appropriate breakdown that enables TP analysis of the tested transaction involving the Singapore entity. To address the foregoing, TEI recommends the following clarification to Paragraph 1(d) of Annex A, which is in line with the OECD BEPS Action 13 recommendations (proposed additions to Paragraph 1(d) are marked with an underscore):

Consolidated financial statements of the group or separate entity accounts of Singapore entities prepared for financial reporting, regulatory, tax, or other purposes that are relevant to the transfer pricing analysis.

E. Proposed Changes to Paragraph 2(a) of Annex A:

The third bullet under Paragraph 2(a) requires the taxpayer to include in its Entity-level documentation an “organisational chart of the Singapore taxpayer, showing the number of employees in each department.” TEI recommends simplifying the requirement to reflect only key functions and departments, as more detailed information will quickly become obsolete because of the frequent staff movements and turnover experienced by MNEs. Further, providing the requested level of detail is far more onerous and time consuming than the benefit to be achieved by assembling and maintaining it. To further reflect the fluid nature of MNE operations, TEI recommends revising this requirement to specify a point in time for depicting this information, such as requiring the charts to reflect the positions at the close of the taxpayer’s financial year.

F. Proposed Changes to Paragraph 2 (c) of Annex A:

In order that taxpayers not incur compliance costs which are disproportionate to the amount of tax revenue at risk or complexity of the transactions articulated in Paragraph 7.6, TEI recommends IRAS to provide a *de minimis* threshold (see below) to exclude immaterial transactions instead of requiring the taxpayer to provide details (including contracts or agreements, segmented financial accounts and detailed functional analysis) of “**all** categories of transactions with **all** related parties [*emphasis added*]”.

Question 3: We have included guidance under Paragraph 7.3 on situations that are considered low risks such that transfer pricing documentation is not required. In your view, are there other situations that should be added to Paragraph 7.3? If so, please provide details of such situations.

In addition to the two situations listed in Paragraph 7.3, TEI recommends the IRAS to consider extending the exemption to include domestic transactions between two related entities in Singapore that are subject to the same corporate tax rates given that they are already within the Singapore tax net and the probability of revenue loss is low.

In line with Paragraph 7.6's desire for taxpayers not to incur compliance and administrative costs that are disproportionate to the amount of tax revenue at risk or complexity of the transactions in issue, TEI recommends the IRAS to establish clear materiality thresholds on related party transactions that do not require TP documentation. An example that is aligned to the OECD TP Guidelines would be to only require disclosure of the five most important business or product lines of the MNE or related party transactions that exceed 5% of the Group turnover of the MNE. An example that is similar to rules adopted in China and Malaysia would be to provide an exemption from the TP documentation requirements if the Singapore taxpayer's aggregate related party transactions do not exceed a threshold amount, say SGD 50 million for sales and purchases of tangible goods and SGD 20 million for other transactions, including services. The IRAS can further ensure that the compliance and administrative costs of MNEs is limited to assembling and maintaining useful, relevant TP documentation by requiring only information that "may **reasonably** be needed to understand the TP of the Singapore entity's related party transactions." Such safe-harbors will significantly alleviate the compliance burden of medium sized enterprises which do not qualify for the SME exemption and allow the subsidiaries of MNEs to focus their documentation efforts on more material transactions.

Finally, it would also be helpful for IRAS to clarify that the TP documentation requirements would not apply to transactions covered by APAs starting from the date the APA is filed with the IRAS.

Question 4: Frequency of documentation updates.

We encourage the IRAS to provide further clarity in its guidance on an acceptable frequency for updating TP documentation and benchmarking studies. In this regard, TEI recommends the following:

- (i) Master File updates be required only when there are relevant and significant changes to the functions, assets or risks; and
- (ii) The benchmarking analysis be refreshed at least once every 3 years, unless there is a significant change to the business model or there is a business restructuring

Question 5: Describe any other areas relating to transfer pricing documentation that are not provided in the revised guidance which you think should be included.

Other Comments – Need for Consistency with Global Documentation Requirements and Access to Competent Authority Relief

As mentioned above, the proposals in the Consultation Paper precede both the final recommendations of the OECD in regard to modus of implementation of the revised Chapter V of the OECD TP Guidelines and actual adoption by countries in the Asia-Pacific region. A further complication in the region is that TP regimes are still in an evolutionary stage (for instance, Malaysia, Philippines and Hong Kong have introduced either new or major updates to their TP regimes in the past two to three years). Hence, the revised OECD guidelines may not be uniformly adopted by significant non-OECD countries in the region, such as India and China, as evidenced by their articulation of differing positions on marketing intangibles, location savings and management or services fees. Consequently, it is important that, as a regional hub for MNEs, Singapore's TP regime develops in as coordinated a manner as possible with internationally accepted norms and in a way that mitigates or does not add to taxpayers' burden in managing differences in TP requirements across the Asia-Pacific region.

Thus, before finalizing the Consultation Paper, TEI recommends that IRAS consider how the Consultation Paper should be revised to ensure, to the fullest extent possible, global consistency in TP documentation requirements, thereby reducing MNEs' compliance costs and not adding to the already high costs of operating in Singapore. This involves elements of both timing and degree. With

respect to timing, we encourage IRAS to implement the new TP documentation requirements in a phased approach with the first phase introducing the concept of contemporaneous documentation and Entity-level documentation and the latter phase requiring fulfillment of Group-level documentation. The phases should also be implemented with some lead time before coming into full effect, such as 12 to 18 months, to allow taxpayers to adjust their internal processes. Implementation of the Group-level documentation phase should track and be coordinated with both the effective date of revisions to Chapter V of the OECD TP Guidelines and actions major countries in Asia take in response to the revised OECD guidelines. With respect to degree, we encourage Singapore to consider TP developments in the Asia-Pacific region and take steps to ensure that Singapore's TP documentation requirements do not impose any further burden on MNEs who use Singapore as a regional hub than that which such MNEs already face in complying with the increased regional demands on documentation. For example, Paragraph 7.3 of the Consultation Paper should include exceptions to Singapore's TP documentation requirements that are comparable to similar exceptions provided by other major countries in the region.

In a similar vein, any uneven adoption of the BEPS recommendations by countries in the Asia-Pacific region and the rising tide of TP enforcement in the region would lead to greater demands for Competent Authority assistance to mitigate double taxation by MNEs that use Singapore as a hub. Therefore, TEI recommends that the IRAS remove the proposed sanction of withdrawing access to the MAP and APA procedures.

Other Comments – Need for Clarity on what constitutes adequate documentation

The Consultation Paper does not explicitly describe what constitutes "adequate" documentation. TEI suggests that the IRAS explicitly allow taxpayers the latitude to adopt their parent or headquarter jurisdiction's standard of TP compliance or compliance to a standard appropriate for their region of operations as satisfaction of what constitutes "adequate" TP documentation. TEI further recommends that the IRAS provide further clarification or examples of what constitutes insufficient documentation that may trigger adverse consequences, as well as examples of adequate documentation.

To provide certainty and global consistency to business, TEI recommends that the IRAS accept that compliance with the final 2015 OECD BEPS

documentation recommendations would automatically constitute a safe-harbor that satisfies the IRAS as adequate documentation.

Other Comments – Deletion of Paragraph 7.5

Paragraph 7.5 provides examples of circumstances in which transfer pricing risks may be considered high and taxpayers ought to take into consideration Paragraph 7.4 in gauging the adequacy of documentation. Although well intentioned, this paragraph is confusing and may prove to be counter-productive. For instance, should these examples be read as circumstances in which the IRAS will focus its TP audit efforts? If so, it is not readily apparent what is meant by “low tax jurisdictions” – does this refer to jurisdictions with headline corporate tax rates lower than a certain percentage or low relative to Singapore’s rates? Further, selecting audit cases based on “operating results that are not in line with industry norms” runs contrary to the OECD recommendation to do a complete comparability analysis before concluding that a taxpayer’s transfer pricing is not at arm’s length. More generally, descriptions of circumstances of high audit risks sit uneasily alongside the clarity of bright-line safe-harbors in Paragraph 7.3 and those proposed by TEI above. As such, TEI recommends deleting Paragraph 7.5. For greater clarity, such descriptions can be articulated in parts of the E-Guide other than in the documentation section, or, in the alternative, reference can be made to the OECD Handbook of TP Risks or Annex D of the OECD Report on Dealing Effectively with the Challenges of Transfer Pricing (2012), which contains a similar list of risk indicators.

Other Comments – Clarify Form of TP documentation

Paragraph 8.1(e) provides compliance requirements for the form of TP documentation. The requirements allow taxpayers to store documentation in any medium, but require taxpayers to provide the relevant information to IRAS in a “useful form” upon request. To avoid disputes, TEI recommends that the IRAS provide examples of what constitutes a “useful form” of documentation.

Other Comments – Provide Channel for Considering Extraneous Circumstances

Situations will inevitably arise where compliance with Singapore’s TP documentation requirements is not possible or may impose undue hardship on taxpayers. This may occur, for example, where disclosure entails violation of

confidentiality clauses in contracts or the laws of another country. Another common situation is where compelling a joint-venture company to disclose Group-wide information could give a joint-venture partner of the other Group entities unintended access to commercially sensitive information it could not otherwise obtain. Since it is not possible to anticipate all extraneous circumstances, TEI recommends that the IRAS provide a channel for considering taxpayers' appeal for exemption from the TP documentation requirements, on a case by case basis.

Other Comments – Data Confidentiality and Exchange of Information

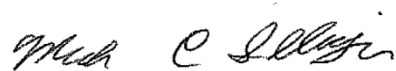
Apart from the need to take into account potential limitations from national data confidentiality laws in gathering the data, it would also be useful for the IRAS to assure taxpayers that the information provided in TP documentation shall remain confidential (this may not be automatically the case for an E-Guide obligation) and shall, following the OECD recommendation, not be disclosed except via a formal bilateral exchange of information treaty obligation with the taxpayer informed.

Conclusion

TEI appreciates the opportunity to comment on the IRAS's Consultation Paper. These comments were respectfully prepared by TEI-Asia Chapter board members and the TEI Asia Tax Committee, whose Chair is Lisa Zheng. If you have any questions about the submission, please contact Ms. Zheng at (65) 8181 4364, zheng.li.3@pg.com, or Patrick Evans of the Institute's legal staff, at +1 (202) 638 5601, pevans@tei.org.

Sincerely yours,

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