12 July 2017

An Update That Cannot Be Ignored!

Dear Valued Client / Business Associate,

The Malaysian Inland Revenue Board (“MIRB”) had recently announced new updates and changes to the Transfer Pricing Guidelines 2012 (“TPG 2012”). For taxpayers who are engaged in controlled transactions with associated person(s), this updated TPG 2012 has now incorporated far-reaching impact on how taxpayers should manage and document their intercompany transactions.

The updated version of the TPG 2012 (“UTPG 2012”) introduced changes to the following chapters:

- Chapter II – The Arm’s Length Principle (updated)
- Chapter VIII – Intangibles (updated)
- Chapter X – Commodity Transactions (new)
- Chapter XI – Documentation (updated)

The updated chapters of the UTPG 2012 are available on the MIRB’s website. Please click on the relevant chapter above to view the contents.

The UTPG 2012 essentially realigned the existing transfer pricing (“TP”) standards to that of **Actions 8 – 10 Aligning Transfer Pricing Outcomes with Value Creation** and **Action 13 Transfer Pricing Documentation and Country-by-Country Reporting** measures introduced by the Organisation for Economic Co-operation to counter “Base Erosion and Profit Shifting” (“BEPS”) issues.

The release of the UTPG 2012 (by chapters) is another step taken by the MIRB to reinforce TP compliance, following the introduction of the Income Tax (Country-by-Country Reporting) Rules 2016 (“CbyCR Rules”) late last year.

The salient features of the updated chapters are briefly discussed below:

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Chapter II – The Arm's Length Principle:

- The application of the arm's length principle will now focus on achieving TP outcomes that is in line with value creation.
- A Risk Analysis Framework has been introduced to emphasize on the interaction between risks and rewards. It sets out the process of analyzing risks in a controlled transaction.

Chapter VIII – Intangibles:

- This chapter has been revamped with detailed guidance on identification of intangibles and the categories of intangibles.
- It focuses on economic ownership of intangibles and analyzing the entitlement of the arm's length return based on the "DEMPE" concept. DEMPE stands for **D**evelopment, **E**nhancement, **M**aintenance, **P**rotection and **E**xploitation of intangibles.

Chapter X – Commodity Transactions:

- This is a new chapter. It provides taxpayers with guidance on the application of the Comparable Uncontrolled Price ("CUP") method on commodity transactions.

Chapter XI – Documentation:

- To improve the quality of TP documentation, clarity on specific information and pricing analyses are spelt out.
- Master File requirements have now been inserted into this chapter. The list of information is consistent with the Master File's documentation requirement under Annex 1 to Chapter V of the BEPS Action 13.
- A documentation is deemed "contemporaneous" if it is prepared when developing or implementing a transaction with associated person(s), or if there are material changes, the TP documentation should be updated prior to the due date for furnishing a return for that year of assessment.

  Further, the updated chapter provides that as long as the operational conditions remain unchanged, taxpayer should update the financial data every year, but comparable search should be refreshed every three years.
- The penalty section reinforces the arm's length requirement under Section 140A of the Income Tax Act, 1967.

  It further sets the conditions which may lead to a penalty being imposed when an adjustment is made to the reported income and the circumstances where penalty will not be imposed. The penalty rates as listed in the Transfer Pricing Audit Framework 2013 remain relevant.

We would be glad to address your enquiries regarding the above. Please feel free to contact Mr Bob Kee at +603 7721 7029, Ms Chang Mei Seen at +603 7721 7028, or Mr Ivan Goh at +603 7721 7012.

Sincerely

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