

Practices and Experience in Expediting Transfer Pricing Dispute Resolution

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Businesses today operate in a highly globalized environment where interconnected markets and international trade significantly increase cross-border transactions and activities. This article posits that tax certainty is of paramount importance for businesses. It fosters a stable environment for investment and growth.

Jurisdictions will need to continually assess the relevance and applicability of existing tax rules to keep up with the rapidly evolving business landscape and to address new and more complex business models.

As recognized by G20 Ministers, maintaining and enhancing tax certainty benefits both taxpayers and tax administrations, and is crucial for promoting investment, job creation and economic growth. Enhancing tax certainty is also one of the main priorities of the OECD Forum on Tax Administration. The importance of tax certainty in contributing to a growth-friendly tax environment is also acknowledged by the Belt and Road Initiative Tax Administration Cooperation Mechanism (BRITACOM), where “Raising Tax Certainty” is one of the focus areas under the *Nur-Sultan Action Plan (2022-2024)*, which had been built on the *Wuzhen Action Plan (2019-2021)* Final Reports.

As Singapore is a small and open economy with limited natural resources, the Inland Revenue Authority of Singapore (IRAS) recognizes that a fair and transparent tax system is crucial for fostering economic growth and ensuring that businesses expand and invest in Singapore. IRAS has therefore taken efforts to create an environment that provides tax certainty to businesses both from a domestic and an international tax perspective.

This article will cover IRAS' practices and experience with regard to transfer pricing MAP and provide an overview of alternative dispute resolution mechanisms and dispute prevention mechanisms adopted by IRAS.

Singapore has a comprehensive tax treaty network of around 100 treaty partners. All of Singapore's comprehensive tax treaties contain the MAP article which allows a Singapore resident taxpayer to request for IRAS' assistance to resolve cross-border tax disputes by entering into discussions with a foreign tax authority, or for IRAS to provide advance tax certainty through APA.

In Singapore, MAP is available to:

- Taxpayers who are Singapore tax residents; and
- Taxpayers who are not Singapore tax residents but have a branch in Singapore. However, such applications must be submitted by taxpayers in the jurisdiction where they are tax residents and with which Singapore has a tax treaty.

IRAS has set out the MAP process and timeline for taxpayers to engage IRAS in its electronic tax guide (e-Tax Guide) on transfer pricing guidelines. For each step of IRAS' 4-step transfer pricing MAP process, IRAS has also clarified the expectations and actions required of the taxpayers, as well as the follow-up actions to be undertaken by IRAS.

MAP is an avenue to resolve transfer pricing issues through negotiation and cooperation between competent authorities. Therefore, it is important for IRAS to promote clear and open communication with other competent authorities to identify key issues and address differences quickly.

IRAS has also leveraged digital technologies to improve efficiency of dispute resolution. The silver lining to the COVID-19 pandemic is the accelerated adoption of video conferencing facilities for meetings. As compared with face-to-face meetings, it is easier to organise virtual meetings between competent authorities. Hence, virtual meetings can be held more frequently, thereby expediting dispute resolution. Furthermore, most, if not all, tax authorities are using

emails over traditional mailing options to facilitate more efficient and convenient communication. The same applies to the interactions between IRAS and taxpayers, where virtual meeting tools have resulted in faster communication and clarification with taxpayers.

That said, based on IRAS' experience, face-to-face meetings may be more effective in building trust and closer relationships with fellow competent authorities. In discussing complex cases, a face-to-face meeting with competent authorities may also be more useful in achieving a quicker resolution.

Despite the existing dispute prevention and resolution mechanisms, it is not sufficient for jurisdictions to operate in isolation. Discussions at various international forums are useful for tax authorities to stay informed about the latest trends or developments and ensure that their tax dispute prevention and resolution mechanisms remain robust.

Singapore is an active member of the OECD Forum on Tax Administration–Mutual Agreement Procedures (FTA–MAP forum). In addition to the FTA–MAP forum, Singapore actively participates in and contributes to the FTA Tax Certainty Focus Groups, which relates to APA best practices, multilateral APAs/ MAPs, and benchmarking.

Singapore is also an observer of the BRITACOM and participates in its Raising Tax Certainty Task Force by speaking at seminars, contributing articles to the *Belt and Road Initiative Tax Journal* (BRITJ) and sharing insights on Singapore's practices through questionnaires and surveys. Regionally, Singapore is a member of the Study Group on Asia-Pacific Tax Administration and Research (SGATAR) and ASEAN Forum on Taxation. Through these forums and work groups, Singapore exchanges views and learns from other jurisdictions to promote tax certainty for taxpayers.

Under the MAP process detailed above, jurisdictions may not be able to reach an agreement or achieve full elimination of double taxation for taxpayers, or they may be unable to do so in a timely manner. Arbitration provides an alternative dispute resolution mechanism for taxpayers,

where unresolved issues may be submitted to an arbitration panel for resolution, if the taxpayer requests in writing to do so.

The MAP does not preclude taxpayers of other remedies available under their respective domestic tax law. Businesses retain the option to seek legal remedies in the jurisdiction where the transfer pricing adjustment is made.

When it comes to tax disputes and double taxation, prevention is better than cure. Both taxpayers and tax administrations can save time, effort and resources by preventing tax disputes from arising in the first place. In this regard, to minimize the resources expended on dealing with audit queries and appealing audit adjustments, IRAS encourages taxpayers to apply for APAs to obtain early tax certainty on the pricing of their related party transactions, which will in turn reduce tax disputes.

ICAP is a voluntary risk assessment and assurance programme to provide an efficient, effective and coordinated approach to provide MNE groups with multilateral tax certainty with respect to certain of their activities and transactions, thereby reducing the number of tax disputes.

Singapore is one of the signatories to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended by a Protocol in 2010), which is the multilateral instrument that provides a legal basis for various forms of mutual assistance such as ICAP. Under ICAP, IRAS will work together with MNE groups and other participating tax administrations to reach a mutual understanding of the tax risk present in certain activities and transactions carried out by an MNE group.

IRAS enhances its communication and engagements with taxpayers to engender trust and strengthen compliance. IRAS values an open relationship built on trust and encourages taxpayers to come forward early in partnership with us to discuss new business models or business restructuring activities to avoid future transfer pricing controversies.

Dispute resolution and prevention are essential in preserving taxpayers' trust in the tax system. While Singapore has introduced numerous initiatives and mechanisms to provide tax certainty to taxpayers, IRAS recognizes that the tax landscape is constantly evolving. IRAS will continue its efforts to ensure that its dispute prevention and resolution mechanisms remain effective and efficient in providing tax certainty for taxpayers.

In the light of changing and evolving international tax developments, it is important for all tax administrations to build up their technical and administrative capabilities to address increasingly complex international tax issues and provide tax certainty for taxpayers. Consequently, we believe that tax administrations should continue to engage with their counterparts and share best practices on dispute prevention and resolution mechanisms through bilateral engagements and various international forums, including the BRITACOM.