

# Tax Alert

---

18 June 2020

## TRANSFER PRICING REGULATION

### Executive Summary

The Transfer Pricing Regulations<sup>1</sup> issued by the Maldives Inland Revenue Authority ('MIRA') on 10 June 2020 sets out the rules to be followed by enterprises that are required to maintain Transfer Price Documentation under Section 68(b) of the Income Tax Act<sup>2</sup>. The Regulation also stipulates the criteria which exempt enterprises from maintaining TP Documentation.

### An Overview of the Regulation

**Issued on:** 10 June 2020

**Effective From:** 10 June 2020

**Applicable Tax Year:** 2020 onwards

**Applicable to:** All enterprises that conduct transactions and arrangements with associated enterprises

### The Regulation covers the following areas:

- ◇ Preparation of Transfer Pricing Documentation ('TP Documentation')
- ◇ Qualifying Past Transfer Pricing Documentation ('QPTP Documentation')
- ◇ Exemptions from maintaining TP Documentation

<sup>1</sup> Regulation Number 2020/R-43

<sup>2</sup> Law Number 25/2019

## What are Transfer Pricing Rules?

As Transfer Prices refer to the price for transferring tangible and intangible goods, and the price for provision of services between associated enterprises, transfer pricing rules set out the rules and methods that must be followed to determine the arm's length price of transactions between associated enterprises.

The Regulation does not specify any transfer pricing rules in detail, but does list the transfer pricing methods that are accepted by the MIRA<sup>3</sup> in computing the arm's length price for transactions and arrangements as part of the TP Documentation requirements. The Regulation does not require specific transactions to follow a specified transfer pricing method.

## Purpose of Transfer Pricing Documentation

TP Documentation is prepared so that potential transfer pricing issues may be resolved by depicting that the transfer prices are at arm's length. Without maintenance of such documentation, it may not be possible for taxpayers to substantiate that transfer prices are at arm's length, and therefore fail in dealing with the MIRA's stand on issues of transfer pricing.

## Summary of Transfer Pricing Documentation Requirements

Who must prepare?	All taxpayers except micro, small or medium sized business under the Small and Medium Enterprises Act.
Exempt transactions	<ul style="list-style-type: none"><li>◇ transactions in respect of an income which is exempt under the Income Tax Act;</li><li>◇ transactions which are specifically exempt under the Regulation (see page 6 for details)</li></ul>
Administrative concessions	Transfer pricing documentation can be valid for three years if they comply with certain conditions, so that taxpayers don't have to prepare one report for each financial year.
Documents to prepare	<ol style="list-style-type: none"><li>1. Master file, which includes an overview of the businesses of the applicable entity's group, the group's global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in the accounting period in which the transaction take place,</li><li>2. Local file, which includes information of the applicable entity's business and its transactions with its related parties in the accounting period in which the transaction takes place.</li></ol>
When to prepare documentation?	By the due date for the submission of tax return for the accounting period to which the transaction or arrangement relates.
When to submit?	Taxpayers need not submit the documents when they file their tax returns. However, taxpayers must provide these documents upon request by MIRA.
Language	Dhivehi or English
Period of retention	5 years

<sup>2</sup> Section 8(e) of the Regulation

## Qualifying Past Transfer Pricing Documentation

In general, the Regulation requires taxpayers to review and refresh their TP Documentation annually. However, to ease the administrative and compliance burden taken on by taxpayers, provided that the details in the first year when the TP Documentation was prepared remain accurate ("QPTP Documentation") taxpayers may refresh their TP Documentation once every three years.

Even if a taxpayer deems past TP Documentation to be a QPTP Documentation, they are still required to keep a copy of the QPTP Documentation and include a declaration in them that the past TP Documentation is a QPTP Documentation.

## How this Works

For example, AmazingCo has an arrangement for the purchase of timber (the subject transaction) from ForestryCo, who is a related party of AmazingCo. The terms of the transaction are agreed upon between the two parties, and ForestryCo has prepared TP Documentation which relates to tax year 2020 in accordance with the Regulation. The Regulation now provides that Forestry Co can submit the same TP Documentation to the MIRA for the tax year 2021 and 2022 as well, insofar as the terms of the subject transaction, remain the same, and provided the applicable entity meets other QPTP Documentation requirements under the Regulation.

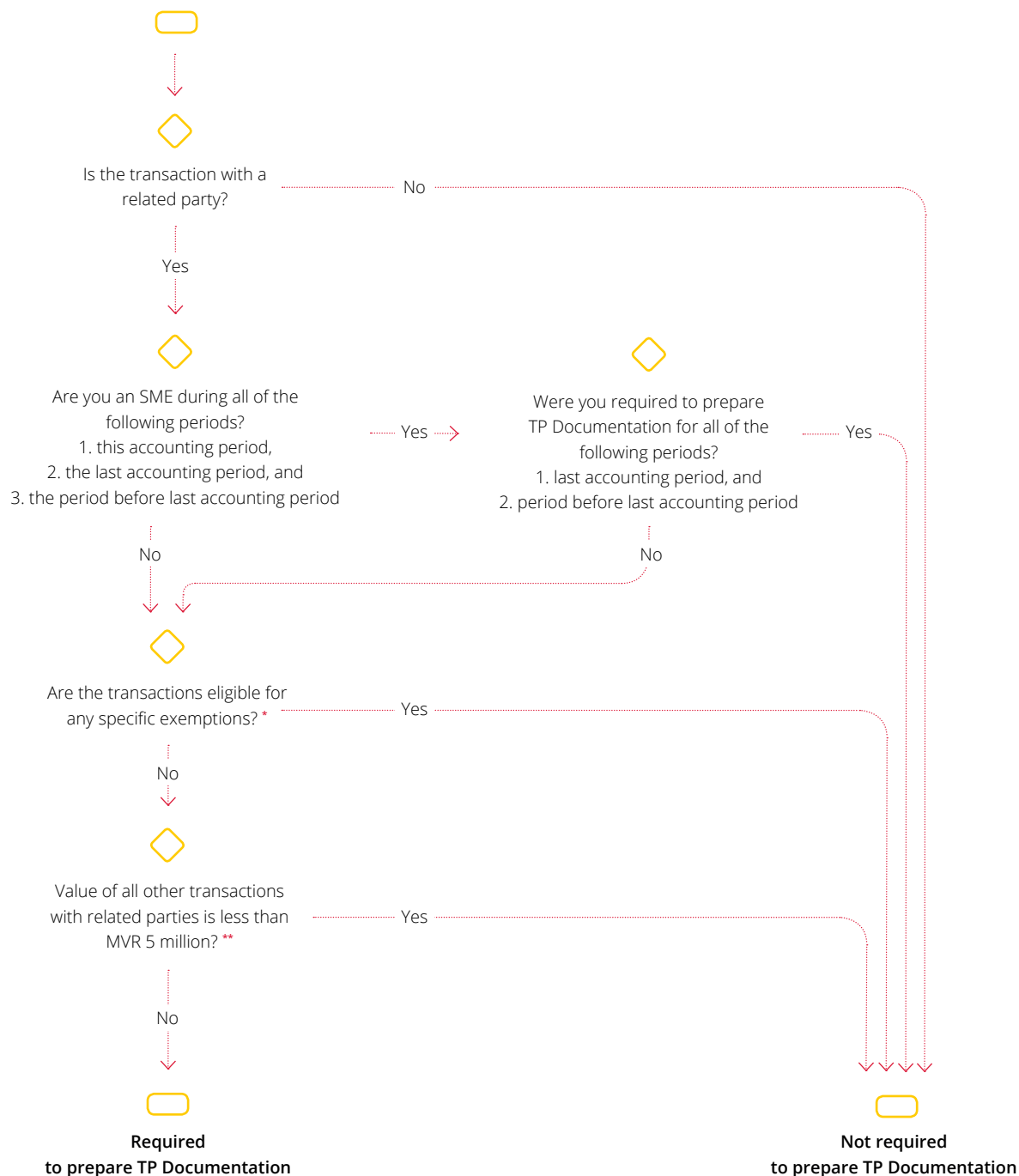
## Qualifying Past Transfer Pricing Documentation Requirements

The following criteria must be fulfilled for TP Documentation to be regarded as QPTP Documentation.

1. They must be prepared in accordance with the rules to be followed when preparing TP Documentation.
2. The transaction with respect to which the TP Documentation was prepared, must be the same type as the subject transaction or arrangement.

## Exemption from Preparing TP Documentation

The following chart summarises the exemptions granted under the Regulation to taxpayers from preparing TP Documentation.



\* See page 6 for details of transaction-specific exemptions.

\*\* The MVR 5 million threshold should be calculated excluding all transactions to which specific exemption apply.

### Example: Exemption applicable to SMEs

As depicted in the flowchart, SMEs are eligible to exemption from preparing TP Documentation provided that they meet two conditions; 1) being an SME for this year and the last 2 years, and 2) having being required to prepare TP Documentation during the last two years.

AmazingCo receives non-routine services from its related parties and makes payments for these services in the years 2020-2025. The size of its business changes from year to year as shown in the table below. The table shows AmazingCo's compliance with TP Documentation requirements for each year.

Year	Condition 1			Condition 2		TP Documentation Exempt for current year?	Explanation
	SME?			TP Documentation Required/Exempt?			
	Current Year	Last Year	Year Before Last Year	Last Year	Year Before Last Year		
2020	SME	N/A	N/A	N/A	N/A	Exempt	<b>Both conditions met.</b> 1. SME during current year, and test for last year and year before last year does not apply as the Regulation is not in force. 2. TP Documentation requirements for last year and year before last year does not apply as the Regulation is not in force.
2021	Large	SME	N/A	Exempt	N/A	Required	<b>Both conditions not met.</b> 1. Not an SME during current year. 2. Exempt from TP Documentation during last year.
2022	SME	Large	SME	Required	Exempt	Required	<b>Both conditions not met.</b> 1. Not an SME during last year. 2. Exempt from TP Documentation during year before last year.
2023	SME	SME	Large	Required	Required	Required	<b>One condition not met:</b> Not an SME during year before last year.
2024	SME	SME	SME	Required	Required	Exempt	<b>Both conditions met.</b> 1. SME during current, last, and year before last year. 2. TP Documentation required for last and year before last year.
2025	SME	SME	SME	Exempt	Required	Required	<b>One condition not met:</b> Exempt from TP Documentation during last year.

## Specified transactions qualifying for exemption from TP Documentation

Certain transactions are granted exemption from the requirements of preparing TP Documentation. These transaction are:

### 1. Domestic transactions (except loans)

Local transactions with a related party doing business in the Maldives and such transaction is subject to tax at the same rate, or is exempt from tax for both parties.

### 2. Domestic loans

Loan transactions with a related party doing business in the Maldives, and the lender is not in the business of borrowing and lending.

### 3. Loans where indicative margin is applied

Loan transactions that do not exceed MVR 15,000,000 and which apply indicative margin as published by the MIRA.

### 4. Routine support services

Routine support services provided only to entities within the group and a mark-up of 5% is applied.

## Penalties for Non-Compliance and Other Matters

The Regulation does not specify penalties with respect to non-compliance, leading to the understanding that an applicable entity that does not prepare TP Documentation as required under this Regulation will be subject to penalties under the Tax Administration Act ('TAA')<sup>4</sup>. However, the TAA does not have a specific provision which deals with failure to maintain documentation.

<sup>4</sup> Law Number 3/2010

## Our Comments

As there were no TP Documentation requirements prior to 2020, this will be the first time that taxpayers will have to comply with a TP Documentation regulation in the Maldives. As such, it may be a huge challenge for many taxpayers to prepare these documents for the first time, especially for those who were not required to meet such a requirement for the purposes of another jurisdiction.

The Regulation stipulates documentation requirements at both Group Level (Master File) and Entity Level (Local File), which is the approach adopted under OECD Transfer Pricing Guidelines. For a starting point, where available, taxpayers may adopt the Master Files prepared by their head offices and incorporate any necessary amendments required under the Maldives TP Documentation requirements. As the Regulation is consistent with the TP Documentation requirement adopted by many other jurisdictions and as recommended by the OECD, compliance will remain fairly less complicated.

Qualifying Past Transfer Pricing Documentation requirements are consistent with the concept implemented by Singapore. This is an administrative relief for taxpayers as it will remove the requirement to prepare documents for every year where the nature of transactions remain materially unchanged.

Although the ITA has granted an exemption from preparing TP Documentation to SMEs and on exempt income, the Regulation has imposed further restrictions and limited the exemption granted by the ITA - the reason of which is unclear. Moreover, given that income tax is applicable at multiple rates to individuals as well as entities, it is unclear on how the exemption requirements such as a transaction being subject to tax at the same rate can be applied in practice. For instance, in a transaction between two companies, the recipient may be paying tax at 15% while the payer may be within the tax-free threshold of MVR 500,000 and thus will not be subject to a deduction on the transaction at the same rate. It is expected that the MIRA would publish some guidance and explanation on its interpretation of these provisions.

It is important to note that although certain taxpayers and qualifying transactions are exempt from TP Documentation requirements, the arm's length principle applies in general to all taxpayers who enter into a controlled transaction.

For additional information with respect to this tax alert, please contact the following members of our team:



**Madeeh Ahmed**

Senior Tax Advisor  
madeeh@ctlstrategies.com



**Husam Shareef**

Senior Tax Advisor  
husam@ctlstrategies.com



**Zaidan Jaleel**

Senior Associate  
zaidan@ctlstrategies.com

### **About us**

CTL Strategies LLP is a multi-disciplinary law firm that provides comprehensive legal solutions to both local businesses operating globally and foreign businesses with interests in the Maldives. Our team is comprised of corporate and tax lawyers, tax advisors and chartered accountants.

We are ranked by Asia Law Profiles as a highly recommended firm in the areas of litigation and disputes.

### **Contact us**

Third Floor, H. Meerubahuruge Aage  
Ameer Ahmed Magu  
Male', Maldives

+960 7956996  
[ask@ctlstrategies.com](mailto:ask@ctlstrategies.com)  
[www.ctlstrategies.com](http://www.ctlstrategies.com)

This publication is intended for informative purposes only, and is designed to give a general overview of the issues discussed. Any information presented or opinion expressed should not be taken as legal or tax advice. Readers are advised to seek professional advice prior to taking any action on issues dealt with in this publication.