

New Transfer Pricing Regulation released as Guoshuifa [2009] No. 2: Disclosure and documentation obligations

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Tax notes



The long-awaited **Implementation Measures for Special Tax Adjustments (Trial)**, i.e., the new China transfer pricing (TP) regulation, was finally issued by the State Administration of Taxation (the SAT) on Jan 9, 2009, as Guoshuifa [2009] No. 2 (Circular 2).

Circular 2 has a retrospective effective date of **1 January 2008**. With its release, the originally prevailing transfer pricing regulations, i.e., Guoshuifa [1998] No. 59, Guoshuifa [2004] No. 143 and Guoshuifa [2004] No. 118, are annulled.

Circular 2 addresses almost all the aspects of transfer pricing. It contains 13 sections and 118 articles. It covers annual TP filing, contemporaneous documentation, TP audit and adjustment, advance pricing arrangement (APA), cost contribution arrangement (CCA), controlled foreign corporation (CFC), thin capitalisation, general anti tax avoidance and the TP penalty regime.

This issue of Tax notes focuses on **disclosure and documentation obligations** of the new regulation.

Grant Thornton is going to issue forthcoming issues of Tax notes that provide an in-depth introduction of this new regulation on:

- thin capitalisation
- transfer pricing audit in China
- advance pricing arrangement
- CCA, CFC and general anti tax avoidance

Transfer pricing disclosure requirements

All taxpayers in China are required to submit the new **Annual Reporting Forms on Intercompany Transactions (Annual TP Filing Forms)** along with their annual tax filing forms. The new TP Filing Forms contains 9 forms:

- List of related parties
- Transaction summary
- Transaction: purchasing and sales
- Transaction: services
- Transaction: intangible assets
- Transaction: fixed assets
- Transaction: financing
- Annual reporting of overseas investments
- Annual reporting of foreign remittances

In addition to the standard disclosure, the Annual TP Filing Forms also require:

- ✓ an indication of whether contemporaneous documentation is **in place**;
- ✓ an explanation on which **pricing method** has been adopted for related party transactions; and
- ✓ a **comparison** between key¹ overseas related party transactions and third party transactions.

For entities with no intercompany transactions, a **zero declaration** might also be required based on the literal interpretation of Circular 2.

The filing deadline for the Annual TP Filing Forms is **May 31** of the subsequent year, the same as that for annual income tax filing.

Failure to fulfill the TP disclosure obligation is subject to a fine of RMB 2,000 to 10,000.

Contemporaneous documentation requirement

Exemption of documentation obligation

Contemporaneous documentation is now a mandatory obligation for taxpayers in China, based on the China Income Tax Law. To alleviate the overall administrative burden of taxpayers, Circular 2 provides an exemption for non-significant intercompany transactions.

Exemption is granted when a taxpayer meets any of the following three criteria:

- ✓ annual aggregated amount of buy-sell intercompany transactions below RMB 200 million; **AND** non-buy-sell intercompany transactions below RMB 40 million;
- ✓ covered by an effective APA;
- ✓ **pure** domestic intercompany transactions; **AND** is owned less than 50% by foreign investors.

It should be noted, for an import processor (Lai Liao Jia Gong), the export declared price will be used to calculate the intercompany buy-sell amount.

Contents of contemporaneous documentation

Circular 2 specifies a detailed layout and contents of the contemporaneous documentation package. The requirements can be summarised as follows:

- ✓ contemporaneous documentation:
 - organisational structure
 - business and operation
 - related party transactions
 - selection and application of the transfer pricing method
 - comparable analysis
- ✓ Functional and Risk Analysis Form;
- ✓ Financial Analysis Form; and
- ✓ a copy of intercompany agreement(s).

The requirements in Circular 2 are generally in line with the OECD requirements and international norm. The layout reflects the tax authorities' aim to have full knowledge of a taxpayers' background, operation, tax position, related party information, intercompany transactions and TP policy, etc. It should also be noted that comparable analysis is a recognised and required approach in determining whether the intercompany transactions are at arm's length.

Language, deadline and submission

The documentation should be prepared **in Chinese**. It can be kept in-house, but it must be submitted to the authorities within **20 days** upon request.

The deadline for completing contemporaneous documentation is May 31 of the subsequent year, with a special grace period granted for the year 2008, i.e., the deadline for 2008 documentation is extended to 31 December 2009.

Penalty/Benefit

Failure to prepare the documentation is subject to a fine of RMB 10,000 to 50,000, and may directly qualify a taxpayer as a TP audit target.

With a proper documentation study in place, by contrast, the taxpayer can get "penalty protection", i.e. it can avoid the additional 5% penalty on TP adjustment.

Implications for taxpayers

For Annual TP Filing Purpose

The Annual TP Filing Forms are likely to be used by the tax authorities as the starting point of selecting TP audit targets; thus they are worth due attention.

A taxpayer should assess:

- ✓ whether it has a TP Policy **in place** and how to state it;
- ✓ whether the existing TP policy is **in line with the actual results**; and
- ✓ whether it has **TP exposure(s)** and how to defend against that.

For Contemporaneous Documentation Purposes

Enterprises should assess whether they have the documentation obligation based on Circular 2 and prepare it accordingly. In particular, if a group has a large number of subsidiaries in China, the documentation task can be even more time-consuming and burdensome. In this regard, group entities should synchronise their work to achieve synergy and ensure consistency.

How can Grant Thornton help you?

Grant Thornton has a specialised China transfer pricing team that is fully committed to your business needs. Our team consists of seasoned Transfer Pricing advisors. We aim to deliver the most efficient and flexible TP solutions that help you meet the new disclosure and documentation requirements.

We can assist you in the following aspects:

- **annual TP filing:** assist with the Annual TP Filing Forms;
- **contemporaneous documentation:** prepare contemporaneous documentation in accordance with Circular 2;
- **benchmarking:** provide comparable analysis which is an essential item in the documentation study;
- **intercompany agreement:** assist with intercompany agreements that reflect your TP arrangement; and
- **TP training:** provide general or tailor-made training courses to enhance your in-house TP capabilities.

¹ Refers to any transaction whose amount is over 10% of the total transactions by value.

国税发【2009】2号文 — 中国转让定价新法规： 转让定价信息披露与文档准备要求

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税务快讯



被各界所期盼已久的中国转让定价新法规——《特别纳税调整实施办法(试行)》于2009年1月9日被国家税务总局(「国税总局」)正式封发。文号为国税发【2009】2号(「2号文」)。

2号文追溯回2008年1月1日正式生效。随著2号文的生效，中国原先主要的转让定价规程包括国税发【1998】59号、国税发【2004】143号以及国税发【2004】118号正式废止。

2号文几乎涵盖了转让定价的各个方面。2号文共13章118条，对年度关联申报、同期资料、调查与调整、预约定价安排、成本分摊协议、受控外国企业、资本弱化、一般反避税与转让定价处罚等方面做出了详细的法律规定。

本期税务快讯将集中讨论新法规的**信息披露及文档准备**要求。

均富将会推出一系列以转让定价为专题的税务快讯，以对2号文的各个方面进行深度解析，其中包括：

- 资本弱化
- 中国转让定价审计
- 预约定价安排
- 成本分摊协议、受控外国企业及一般反避税

转让定价信息披露要求

实行查账征收的居民企业和在中国境内设立机构、场所并据实申报缴纳企业所得税的非居民企业都需在递送年度所得税申报表时，一并附送《企业年度关联业务往来报告表》。这套表单包含以下九份：

- 关联关系表
- 关联交易汇总表
- 购销表
- 劳务表
- 无形资产表
- 固定资产表
- 融通资金表
- 对外投资情况表
- 对外支付款项情况表

除此之外，纳税人还需在这套表单中注明：

- ✓ 是否**按要求准备**了同期资料；
- ✓ 在关联交易中采用了何种**定价方法**；以及
- ✓ 主要¹境外关联交易与非关联交易的**比对**。

¹ 指金额占同类交易总额10%以上的交易。

按照对2号文的字面理解，企业即使没有关联交易，可能也需要做**零申报**。

关联业务申报截止日为次年的**5月31日**，同年度所得税汇算申报。

企业未要求向税务机关报送上述关联业务年度报告表的，可处以人民币2,000至10,000元的罚款。

同期文档资料准备要求

免于准备同期资料的条件

随著新税法以及2号文的发布，准备转让定价同期文档资料已经成为境内纳税企业的法定义务。但出于减轻纳税人总体行政负担的考虑，2号文允许对金额不是非常重大的关联交易免除文档准备义务。

具体来说，纳税人如果能满足以下条件中的任何一项，就可免于准备同期资料：

- ✓ 年度关联购销金额在人民币2亿元以下，且其他类型关联交易金额在人民币4000万以下；
- ✓ 关联交易属于执行预约定价安排所涉及的范围；
- ✓ 仅有境内关联交易，且外资股份低于50%。

值得注意的是，来料加工业务按年度进出口报关价格计算关联购销金额。

同期文档资料的内容

2号文对同期文档资料的结构和内容提出了非常详细的要求。可以简单归纳如下：

- ✓ 同期资料报告：
 - 组织结构
 - 生产经营情况
 - 关联交易情况
 - 转让定价方法的选择和使用
 - 可比性分析

- ✓ 企业功能风险分析表；
- ✓ 企业年度关联交易财务状况分析表；以及
- ✓ 关联交易合同副本。

2号文的上述规定与国际经合组织转让定价规程的要求大体一致，也符合国际通行的做法。从对文档内容和结构的具体要求中可以看出中国税务机关期望对纳税企业的基本情况、业务状况、纳税情况、关联方信息、关联交易内容、转让定价政策等方面有一个全面的了解。同时值得注意的是：2号文明确提出应该用可比性分析来判定纳税人的关联业务是否符合独立交易原则。

语言、准备截止期和递交

同期文档必须用**中文**准备。准备完毕后自行保存，并于税务机关要求之日起**20日**内递交。

同期资料应于次年的5月31日之前准备完毕，但2008年资料的准备截止日期延长到2009年12月31日。

罚金与罚金保护

不按2号文规定准备同期文档资料的，可处以人民币10,000至50,000元的罚款；此外税务机关可以直接把相关企业列为转让定价审计目标。

而如果企业按规定备妥同期文档资料，哪怕被施以转让定价调整，企业可以获得罚金保护，即免除5%的附加罚金。

对纳税人的影响

年度申报表方面

税务机关一般将纳税人递交的年度申报资料作为筛选审计调查目标的起始点。因此，纳税人在填报表单时应多加注意，特别需要评估以下几个方面：

- ✓ 企业是否有**现存的**转让定价政策，如何相应表述？
- ✓ 企业的**实际利润状况**与现存的定价政策是否相符？
- ✓ 企业是否有**转让定价风险**，如何防御？

同期文档资料方面

境内纳税人应根据2号文的规定评估是否有准备同期文档资料的法定义务；如有，则应相应妥善准备。

特别当集团企业在中国设有多个分支公司时，准备文档会变得愈加费时费力。在这种情况下，这些集团企业更应同步编排工作计划，使得在准备文档的过程中形成合力，并保证信息的一致性。

均富如何帮助您

均富中国拥有一支经验丰富的转让定价专业服务团队，竭诚为您提供优质服务。我们致力于向您提供最有效、最灵活的转让定价方案，帮助您满足中国转让定价申报及文档准备的法定要求。

具体而言，我们可以在以下方面向您提供协助：

- **年度关联申报**：帮助您完成年度关联交易情况报告表；
- **同期文档资料**：为您准备转让定价同期文档资料；
- **可比性分析(基准定位分析)**：为您准备同期资料的核心内容——可比性分析；
- **关联交易合同**：针对您的关联交易合同提供审阅服务和专业建议；
- **转让定价培训**：向您企业内部的财务人员提供转让定价培训，或度身定做相关课程。

About Tax notes

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