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Malaysia Transfer Pricing Guidelines 2024 and Transfer Pricing Tax Audit Framework 2024

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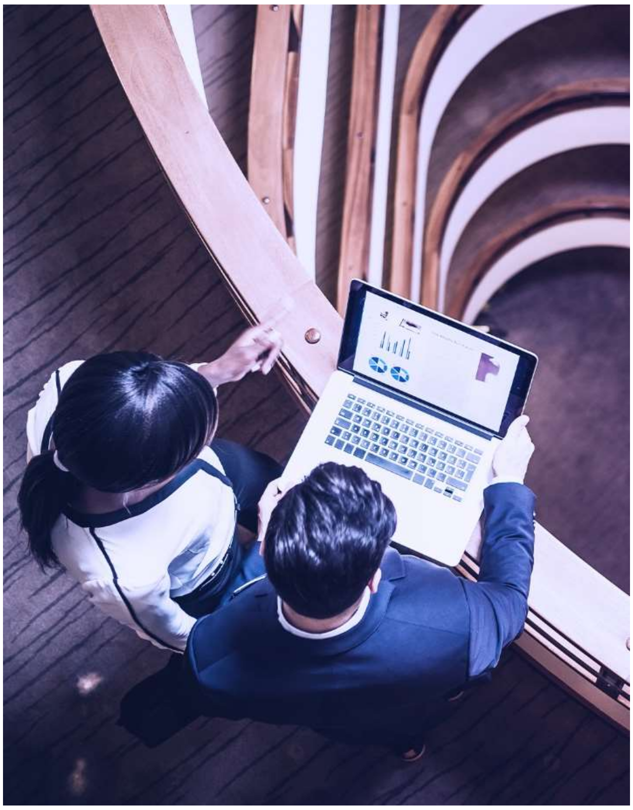
KPMG in Malaysia

Malaysia Transfer Pricing Guidelines 2024

The Malaysian Inland Revenue Board ("MIRB") has issued the Malaysia Transfer Pricing Guidelines 2024 (“MTPG 2024”) on 24 December 2024.



The MTPG 2024 is effective from year of assessment (“YA”) 2023 onwards. Some notable changes are outlined below:

Scope and application

The thresholds to prepare a full contemporaneous transfer pricing documentation (“CTPD”) have been revised. Firstly, to recap, a TPD is considered contemporaneous if it is completed prior to the due date for furnishing a tax return for the particular YA. The CTPD needs to be dated to indicate the completion date and contains all the requirements as prescribed in the Income Tax (Transfer Pricing) Rules 2023 (“TP Rules 2023”).

To ease compliance burden, the following persons are not required to prepare a CTPD:

(a) Individuals not carrying on a business;

(b) Individuals carrying on a business (including partnerships) who only engage in domestic controlled transactions;

(c) Persons who entered into controlled transactions amounting to not more than RM1 million; or

(d) Persons who entered solely into domestic controlled transactions with another person where both parties –

  (i) do not enjoy tax incentives;

  (ii) are taxed at the same headline tax rate; or

  (iii) do not suffer losses for two consecutive years prior to the controlled transactions.

  Based on our understanding, taxpayers are required to fulfil all of the 3 conditions under (i) to (iii) above in order to qualify for the exemption.

Despite the concession, this group of taxpayers must still comply with the arm's length principle for all controlled transactions entered into and keep all the relevant documentation that support and prove the determination of the arm's length price. It is important to take note that all taxpayers engaged in controlled transactions could be subject to a TP tax audit and a surcharge may be applied where a TP adjustment is made on non-arm's length controlled transactions.

MTPG 2024 has now revised the thresholds for the preparation of a full CTPD. A person shall prepare a full CTPD if the following are fulfilled:

(a) Generates gross business income of more than RM30 million in total and engaged in cross-border controlled transactions totaling RM10 million or more annually; or

(b) Receives or provides controlled financial assistance of more than RM50 million annually.

Taxpayers falling outside these thresholds are eligible to prepare a minimum CTPD. A minimum CTPD refers to a TPD that is prepared with reduced requirements.

Contemporaneous transfer pricing documentation

For a full CTPD, the contents are set out under paragraph 11.7 of the MTPG 2024 and are aligned with the documentation requirements outlined under subrule 4(2) of the TP Rules 2023.

If a taxpayer is eligible to prepare a minimum CTPD, the person is allowed to prepare the CTPD with reduced requirements which only needs to contain:

(a) Worldwide group structure;

(b) Organisational structure;

(c) Controlled transactions; and

(d) Pricing policy.

Information required on controlled transactions and pricing policy is confined to the key controlled transactions that are defined as:

(i) Controlled transactions that are related to the taxpayer's principal activity, such as the acquisition or supply of raw materials for manufacturing activity.

(ii) Controlled transactions other than those in (i), that constitute 20% or more of the operating revenue in each YA.

However, taxpayers preparing a minimum CTPD are still required to list all controlled transactions entered into, regardless of whether the transaction is a key controlled transaction or not.

Intra-group services

For intra-group services, the MIRB has adopted a simplified approach for low value-adding intra-group services (“LVAS”). LVAS refers to the supportive nature of such services, which are not part of the core business of the Multinational Enterprise Group. The nature and the type of services that would or would not qualify as LVAS are further explained in the MTPG 2024.

This simplified approach is only applicable to a Malaysian service provider. As for Malaysian service recipients, this approach will only be considered if the payment is made to LVAS service providers that have similarly adopted the OECD simplified approach in their jurisdictions.

In determining the arm's length charge for LVAS, the service provider shall apply a profit mark-up of 5% to all costs in the pool (except for any pass-through costs). The mark-up under the simplified approach does not need to be justified by a benchmarking study, but the taxpayer should prepare all relevant document on this simplified approach.

Transfer Pricing Tax Audit Framework 2024

The MIRB has also issued the Transfer Pricing Tax Audit Framework ("TPAF 2024") on 24 December 2024.

The TPAF 2024 is effective from 24 December 2024. The TPAF 2024 provides explanation and guidance in relation to the handling and management of TP tax audit cases for domestic as well as cross-border controlled transactions.

Some of the salient features of the TPAF 2024 are:

The MIRB has provided that the basis used in the selection of TP tax audit cases is based on:

(a) Selection through risk assessment criteria for controlled transactions;

(b) Restructuring of the company group; and

(c) Information received from third parties including foreign tax authorities.

For an audit case where TP adjustment is ascertained on the non-arm's length price, a surcharge may be imposed at a rate of up to 5% on the amount of the adjustment. Whereas for a voluntary disclosure case that complies with the TPAF, the rate would range from 0% to 4%.

During the initial stage of an audit, the MIRB will issue a letter to the taxpayer to request for a copy of the TPD to be submitted within 14 calendar days from the date of the letter. If the taxpayer fails to submit the TPD within the prescribed time, a written notice under Section 113B of the ITA and subrule 5(3) of the TP Rules 2023 will be issued to the taxpayer.

A penalty will be imposed at the final stage of the audit process for each YA involved separately if:

(i) The TPD submitted to MIRB exceeds the 14 days period from the date of service of the written notice; or

(ii) The TPD submitted to MIRB does not comply with the requirements under the TP Rules 2023 and MTPG 2024 which are currently in force.

The amount of penalty that will be imposed based on the period of delay in submitting the TPD is as follows:

No.	Period of Delay* (Number of days)	Penalty Amount Section 113B
1	Up to 7 days	RM 20,000.00
2	More than 7 days up to 14 days	RM 40,000.00
3	More than 14 days up to 21 days	RM 60,000.00
4	More than 21 days up to 28 days	RM 80,000.00
5	More than 28 days	RM 100,000.00

*Note: *The period of delay is calculated from the expiration of a 14-day period from the date of service of the written notice until a complete TPD is submitted to MIRB.*

A concession for the imposition of penalties under section 113B of the ITA may be given to a taxpayer who has an accounting period that begins before 29th May 2023, which is the gazette date of the TP Rules 2023.

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