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Key tax developments in 2025 – Tax Audit & Transfer Pricing

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Agenda

1. What's new in Transfer Pricing?

Latest rules and guidelines – the new norm

2. What's the risk? Navigating Transfer Pricing audits

From selection to tax and penalty exposure – what you need to know

3. FAQ posted to IRB during TP & TCG Seminar 2025

Q&A which may interest you

4. What to do?

Key takeaways

What's new in Transfer Pricing?

Evolution of Malaysia's transfer pricing landscape

2003

Transfer Pricing Guidelines ("TPG")

Issued on 2 July 2003

2009

Section 140A of the Income Tax Act ("ITA"), 1967

Effective 1 Jan 2009

2012

Income Tax (Transfer Pricing) Rules 2012

Issued on 11 May 2012

TPG 2012

Issued on 20 July 2012 and updated in 2017 and 2021

2013

Transfer Pricing Audit Framework ("TPAF")

Incorporated into the 2013 IRBM Audit Framework

2019

TPAF 2019

Effective from 15 Dec 2019

2021

Section 113B and subsection 140A(3C) of the ITA, 1967

Penalty and surcharge

2022

Minimum transfer pricing documentation ("MTPD") template

Introduced to ease compliance burden

2023

Income Tax (Transfer Pricing) Rules 2023 ("TP Rules 2023")

Issued on 29 May 2023

2024

Malaysia Transfer Pricing Guidelines 2024 ("MTPG 2024")

Issued on 24 December 2024, effective from YA 2023

2025

TPAF 2025

Issued on 31 July 2025

What's new in the TP Rules 2023?

Definition of contemporaneous transfer pricing documentation

01 **Brought into existence prior to the due date for furnishing a return**

02 **Contain the complete information required**

- Schedules 1, 2, 3
- Index
- Completion date
- Documents relevant to the TP analysis
- Information to determine the arm's length price
- Indication of any non-applicability of the information

03 **Furnished to the IRB within 14 days from date of service**

What's new in the TP Rules 2023?

Interquartile range

25th percentile

75th percentile

Minimum

Median = 50th percentile

Maximum

Before YA 2023

Arm's length range

From YA 2023

TP Rules 2023 arm's length range ("ALR")

37.5th percentile

62.5th percentile

Minimum

Median = midpoint of the ALR

Maximum

Arm's length range - Illustration

Set of comparable companies:

Operating Margin ("OM")	Company A	Company B	Company C	Company D	Company E	Company F
	4.42%	7.23%	4.63%	3.79%	18.27%	13.38%

Range of results:

Prior to YA 2023

Inter-quartile range: 25th percentile to 75th percentile

Range	OM
Minimum	3.79%
25th percentile	4.47%
Median	5.93%
75th percentile	11.84%
Maximum	18.27%

YA 2023 onwards

Arm's length range: 37.5th percentile to 62.5th percentile

Range	OM
Minimum	3.79%
37.5th percentile	4.60%
Median	6.30%
62.5th percentile	8.00%
Maximum	18.27%

What's new in the TP Guidelines 2024?

Types of contemporaneous transfer pricing documentation

01

- Not required to prepare a contemporaneous transfer pricing documentation ("CTPD")

02

- Full CTPD

03

- Minimum CTPD

Types of CTPD

Persons who are exempted must still comply with the arm's length principle and must ensure to keep all relevant documents.

Not required to prepare CTPD

- Individuals not carrying on a business
- Individuals/partnerships carrying on a business who only engage in domestic controlled transactions
- Total controlled transactions ≤ RM1mil
- Solely domestic controlled transactions where both parties –
  - do not enjoy tax incentives;
  - are taxed at the same headline tax rate; or (and)
  - do not suffer losses for two consecutive years prior to the controlled transactions.

Full CTPD

- Gross business income > RM30mil and total cross-border controlled transactions ≥ RM10mil annually
- Receives or provides controlled financial assistance of > RM50mil annually

Minimum CTPD

- A person who enters into controlled transaction but does not fall under paragraph 1.5 (not required to prepare CTPD) or paragraph 1.7 (required to prepare full CTPD) of the Guidelines

Disclosure changes in Form C

Information on controlled transactions

YA 2024

Item F9 (Attachment)

Part A: Company information

1. Is the company required to prepare a Transfer Pricing Documentation?

☐	1 = Yes
☐	2 = No

YA 2025

Item G12 (Attachment)

Part A: Company information

1. Is the company required to prepare a Contemporaneous Transfer Pricing Documentation?

☐	1 = Exempted
☐	2 = Minimum Contemporaneous Transfer Pricing Documentation
☐	3 = Full Contemporaneous Transfer Pricing Documentation

Penalties and surcharge

Failure to furnish CTPD

S113B (1)

On conviction

- RM20,000 ≤ Fine ≤ RM100,000; and/or
- Imprisonment ≤ 6 months

S113B (4)

If no prosecution

- RM20,000 ≤ Penalty ≤ RM100,000

Applicable for each YA from YA 2023

TP adjustment

S113 (2)

Basis period commencing before 1 Jan 2021

- Penalty ≤ 100% of undercharged tax

1st offence	15%
2nd offence	30%
≥ 3rd offences	45%

S140A (3C)

Basis period commencing on/after 1 Jan 2021

- Surcharge ≤ 5% of TP adjustment

Why comply?

01 It is the right thing to do

02 Transfer pricing documentation is the first line of defence during tax audits

03 Penalties for failure to furnish CTPD

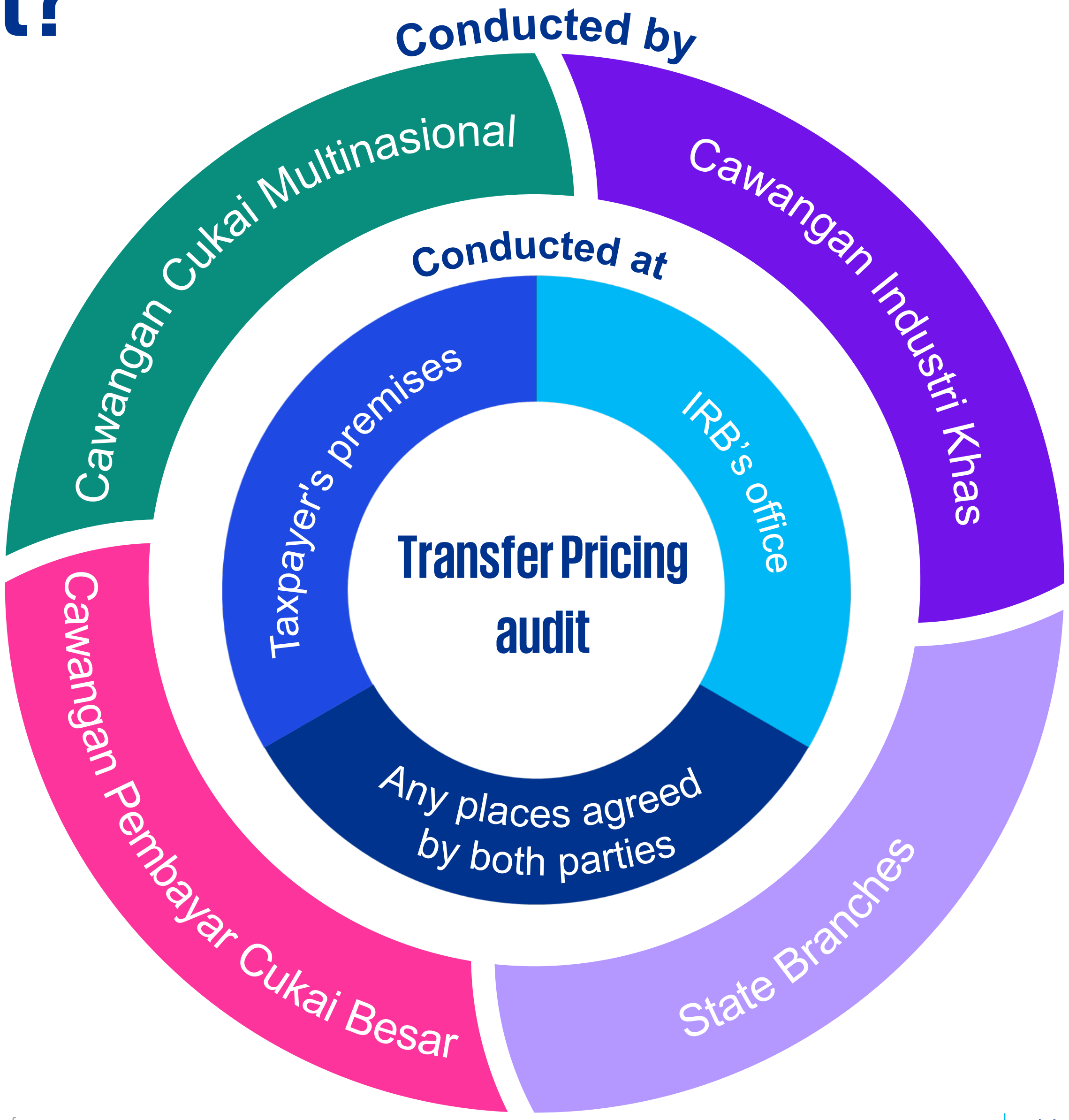
04 Appeal for lower surcharge on TP adjustment

What's the risk? Navigating Transfer Pricing audits

What is a Transfer Pricing audit?

A **comprehensive audit examination** of a taxpayer's business records and financial affairs to ensure that the controlled transactions carried out are in accordance with the arm's length principle.

The TP documentation is an essential document to demonstrate that controlled transactions have been carried out at arm's length.



Main objectives of TP audits

To ascertain that the income reported is correct and in an orderly manner, and that the tax paid is accurately determined in accordance with the tax laws and regulations.

Main objectives

01

Ensure compliance with the arm's length principle in a controlled transaction

02

Ensure compliance with Malaysian tax laws as well as other regulations issued by IRB

03

Ensure voluntary compliance with the tax laws and regulations so that tax compliance can be achieved under the self-assessment system

TP audit process

Voluntary disclosure allowed before the audit commences with surcharge rate ≤ 4%

Selection of taxpayer

IRB requests for information & documents

*via Surat Memohon Dokumen dan Maklumat (SMDM)**

IRB reviews / analyses information submitted

Notification of field audit visit

Audit visit to examine documents and interview key personnel

Presentation by taxpayer

IRB issues initial audit findings

Discussion and negotiation between taxpayer and IRB

IRB issues additional assessment / clearance

*Taxpayer required to feedback within 14 days

Basis in the selection of TP tax audit cases

Selection of cases

Risk assessment

Selection through risk assessment criteria for controlled transactions

Restructuring

Restructuring of the company group

Third party information

Information received from third parties including foreign tax authorities

Potential TP audit triggers

- Persistent losses, low profitability
- Fluctuating profitability
- Significant level of related party transactions
- Fall in profits after tax incentive period
- Payment of various intra-group services fees
- Transactions with tax havens

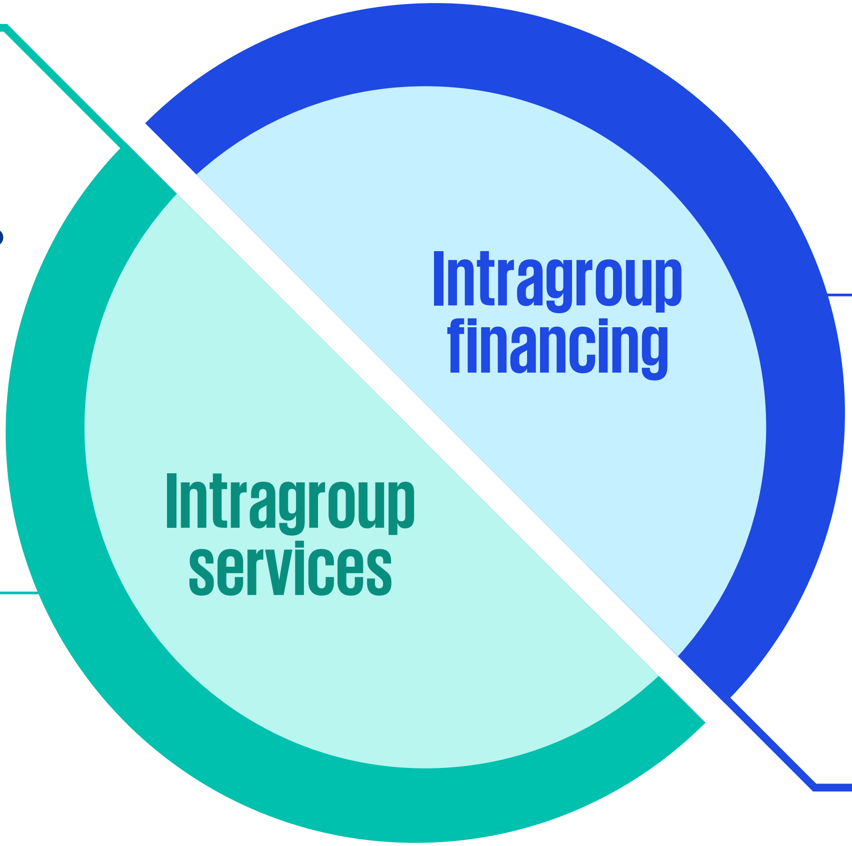
TP audit focus areas

Benefit test

- Have services been rendered?
- What are the economic benefits received?
- Documentation to substantiate

Arm’s length charge

- Is the charge at arm’s length?
- Cost base and allocation key
- Mark-up applied



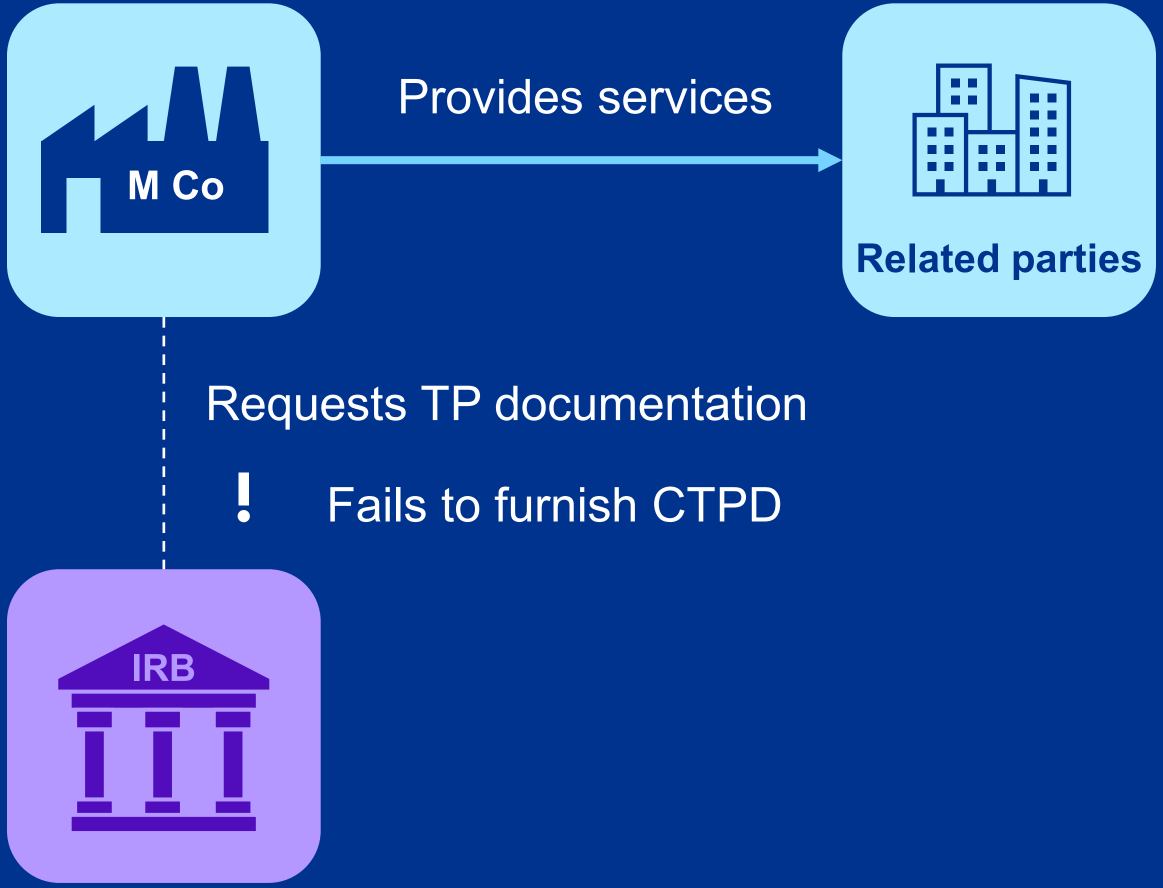
Accurate delineation

- Is the financial assistance debt or capital?

Arm’s length interest

- Should interest be charged?
- Is the interest rate at arm’s length?

Case study 1



- Company M ("M Co") is a shared service centre for the group.
- M Co did not prepare a TP documentation nor transfer pricing analysis to defend the arm's length nature of its related party transactions.
- IRB conducted an audit on M Co for the YA 2021 to YA 2023.
- IRB proposed a local benchmarking analysis using the transactional net margin method ("TNMM") to review whether M Co's related party transactions comply with the arm's length principle.

Case study 1

- M Co prepared the requested local benchmarking analysis and submitted it within 14 days.
- The range of net cost plus margin ("NCPM") results is compared with M Co's profitability.

	YA 2021	YA 2022		YA 2023
M Co (Tested party)	4.50%	5.57%		1.87%
Interquartile range			**Arm's length range**	
25^{th} percentile	0.46%	1.53%	37.5^{th} percentile	2.06%
Median (50^{th} percentile)	3.21%	4.80%	Median	5.22%
75^{th} percentile	6.57%	7.08%	62.5^{th} percentile	8.37%

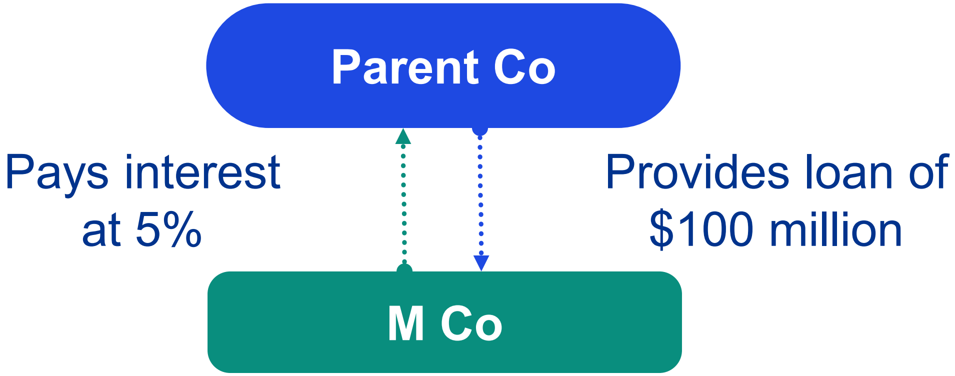
Case study 1

Calculation of TP adjustment for YA 2023		
M Co		1.87%
Median		5.22%
Difference	[A]	3.35%
Total cost of M Co	[B]	100,000,000
TP adjustment	**[C] = [A] x [B]**	**3,350,000**

Calculation of additional tax, surcharge and penalty		
TP surcharge (up to 5% on TP adjustment)	[C] x 5%	167,500
Additional tax payable[1]	[C] x 24%	804,000
Penalty for failure to furnish CTPD for each year of assessment **Depends on period of delay*		300,000
Total additional tax, surcharge and penalty		**1,271,500**

[1]Simplified calculation for illustration purposes only

Case study 2



- Company M ("M Co") is a wholly owned subsidiary of Parent Co.
- Parent Co provided a loan to M Co.
- Loan features:
  - Loan amount $100 million
  - 5% fixed interest rate
  - 10-year tenure

Arm's length considerations

1. Is this loan in fact a loan?
2. If it is a loan, what is the arm's length interest rate?

Case study 2

IRB's Guidelines on Tax Treatment of Hybrid Instrument

Order of priority

01

Source & priority of payment / repayment

- Dependent on retained earning?
- Expected to bear potential losses?
- Order of repayment in case of liquidation / dissolution

02

Right to enforce payment / repayment

- Authority to demand payment

03

In the event of default

- Right to recover principal or accumulated distributions / profits

04

Maturity date of instrument

- Presence of fixed repayment date

05

The ability of the issuer to obtain loan and make payment in an arm's length transaction

- Can the issuer secure loan from a third party?
- Ratio analysis & issuer's financial position

06

Involvement in the management

- Voting rights and other factors

07

Benefit to the instrument holder

- Long-term capital appreciation vs. steady stream of recurring income regardless of profitability

A single factor is insufficient to determine equity or debt.

FAQ posted to IRB during TP & TCG Seminar 2025

FAQ posted to IRB during TP & TCG Seminar 2025

Financial assistance threshold

How do I calculate financial assistance to assess if it exceeds the full CTPD threshold?

- ✓ Total controlled financial assistance (principal amount) provided / received during YA
- ✓ Domestic & cross border
- × Year-end balances / outstanding amounts
- × Repayments
- × Net off between loans provided and received
- × Interest income / expense

Completion due date of CTPD

When is the due date for CTPD completion?

- ✓ Tax return filing due date
- ✓ Grace period under IRB's filing programme
- ✓ Extension of time granted to file the tax return

S113B & minimum CTPD

Given that a minimum TPD is prepared with reduced documentation requirements, what are the consequences of not preparing a minimum TPD?

From YA 2023, failure to submit CTPD within 14 days of IRB notice may lead to S113B penalty or prosecution. Applies to both minimum and full TPD.

Disclosure changes in Form C

Information on controlled transactions

Item F9 (Attachment) — YA 2024

Part B: Controlled transactions

Item	Subject	Explanation
B10	Loans to associated person	Brought forward balance of loan amount plus total amount of loans given, excludes any payment received within the year
B11	Loans from associated person	Brought forward balance of loan amount plus total amount of loans received, excludes any payment made within the year

Item G12 (Attachment) — YA 2025

Part B: Controlled transactions

Item	Subject	Explanation
B10	Loans to associated person	~~Brought forward balance of loan amount plus~~ total of loan provided during the basis period without regards to any repayment received for the loan.
B11	Loans from associated person	~~Brought forward balance of loan amount plus~~ total of loan received during the basis period without regards to any repayment of the loan.

What to do?

Key takeaways

Understand

Understand and familiarise with local transfer pricing requirements to ensure the company's policies comply with laws and regulations.

Document

Ensure a robust first line of defence with contemporaneous transfer pricing documentation and relevant supporting documents.

Review

Identify potential risks and take mitigation actions before an audit.

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