



# Transfer Pricing

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# Changes in TP Guidelines

	YA 2022 & Prior	YA 2023 onwards
<b>Turnover</b>	Exceeding RM25 million	Exceeding RM30 million
<b>Related Party Transactions</b>	Exceeding RM15 million (domestic and cross-border)	Exceeding RM10 million (cross-border)
<b>Financial Assistance</b>	Exceeding RM50 million	Exceeding RM50 million
<b>Disclosure in Minimum TPD</b>	All relevant related party transactions	Only key controlled transactions <sup>Note</sup>

*Note* Key controlled transactions comprised of : -

*a) transactions relating to taxpayer's principal activity; and*

*b) transactions that constitute more than 20% of the operating revenue in each year of assessment.*

# Changes in TP Audit Framework

## TP audit adjustment

Penalty rates on the undercharged tax for audit commenced prior to 1 January 2021: -

1 <sup>st</sup> offence	15%
2 <sup>nd</sup> offence	30%
≥ 3 <sup>rd</sup> offences	45%

For audits commencing on / after 1 January 2021: -

- **Surcharge of not more than 5%** on the amount of adjustment.
- Surcharge of a **voluntary disclosure** is 0% to 4%.

## Surcharge appeal

- Taxpayers may submit an application in writing (other than Form Q) to remit the surcharge imposed to the State IRBM / Special Branch office that issued the notice imposing the surcharge.

## Late payment

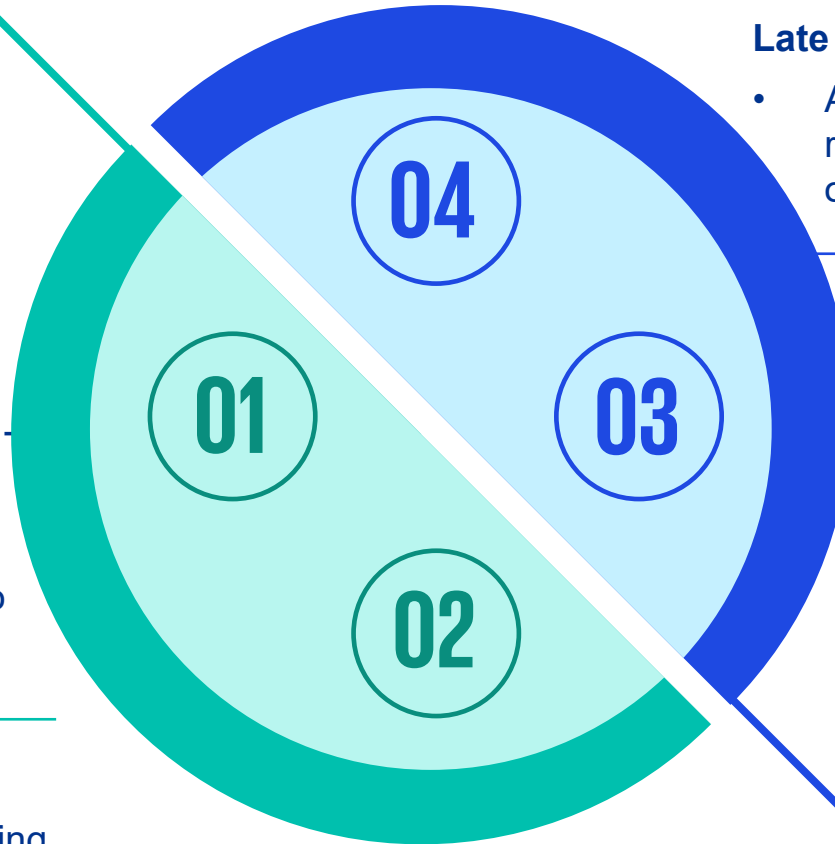
- An increase of 10% will be imposed on the remaining unpaid amount after the stipulated period or agreed upon installments period.

## Failure to submit a TPD

Penalty for each year of assessment: -

Period of delay*	Penalty
≤ 7 days	RM 20,000
7 < days ≤ 14	RM 40,000
14 < days ≤ 21	RM 60,000
21 < days ≤ 28	RM 80,000
> 28 days	RM 100,000

\*From expiration of the 14-day period



# Financial Assistance



Occur in situations where a taxpayer provides **financial assistance** to an associated person with or without consideration, whether directly or indirectly

**Financial assistance** refers to any type of monetary help or aid that a person provides or receives. This include loans, interest-bearing trade credits, advance or debt, or the provision of any security or guarantee



In intra group situation, the interest charged or paid in relation to the intra group financial transactions may not adhere to the arm's length principle. This is due to the flexibility and discretion of the members of an MNE Group to decides the terms and conditions for the **financial assistance** within the group.

# Debt – Equity Analysis

**Question: Is this loan in fact a loan?**

01

Ability of the recipient of the funds to obtain loans from unrelated lending institutions

02

Failure of the purported debtor to repay on the due date or to see a postponement

03

Presence or absence of a fixed repayment date

04

Obligation to pay interest

05

Right to enforce payment of principal and interest

06

Status of the funder in comparison to regular corporate creditors

07

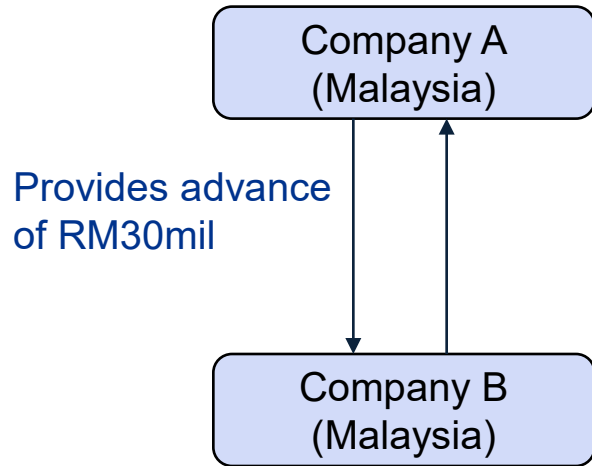
Existence of financial covenants and security

08

Extent to which the advance is used to acquired capital assets

Source: Chapter X of the OECD TP Guidelines 2022.

# Case Study 1



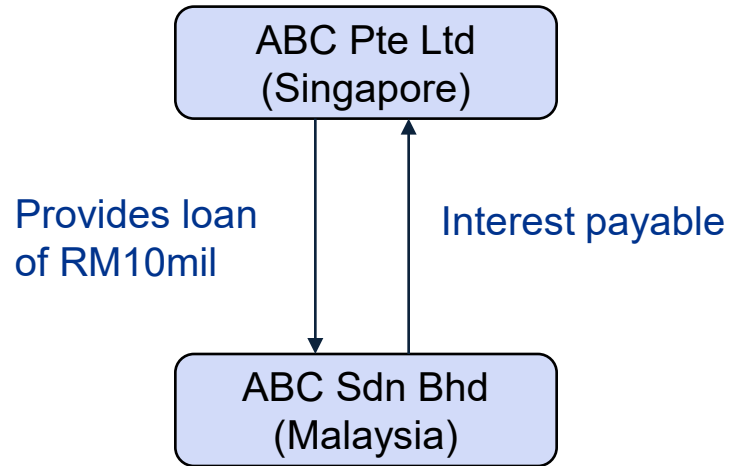
## Background

Company A, the holding company, provides an advance of RM30 million to its subsidiary, Company B to purchase raw materials.

## Key Questions

1. In the absence of formal loan agreement, does this constitute financial assistance?
2. Should interest be charged on this advance?

# Case Study 2



## Background

ABC Pte Ltd (Singapore co.) provides a RM10 million loan to ABC Sdn Bhd (Malaysia co.). Notably, the loan lacks security, covenants, or usage restriction, primarily because ABC Sdn Bhd (Malaysian co.) has weak financial and credit ratings and not able to secure external financing.

As a result, the ABC Pte Ltd imposes a higher interest rate.

## Key Questions

- What is the economic substance of this credit facility?









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