TaXavvy

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New Malaysia Transfer Pricing Guidelines and Transfer Pricing Audit Framework

Malaysia Transfer Pricing Guidelines 2024

On 24 December 2024, the Inland Revenue Board of Malaysia (IRBM) published a new set of Malaysian Transfer Pricing Guidelines 2024 ("MTPG 2024") that comes into effect from the year of assessment (YA) 2023.

The MTPG 2024, which is meant to be read in conjunction with the Income Tax Act 1967 (ITA 1967) and the Income Tax (Transfer Pricing) Rules 2023 ("TP Rules"), expands significantly on the previous version updated in 2017 to provide further details and clarifications, as well as some new guidance on taxpayers' requirements to preparing contemporaneous transfer pricing documentation (CTPD) in Malaysia.

Malaysia Transfer Pricing Guidelines 2024

Some key takeaways from the MTPG 2024 are as follows:

Key takeaways	*Elaboration*
Scope and exemptions to prepare CTPD	To ease the compliance burden for taxpayers, the MTPG 2024 has included the following persons[1] to be exempted from the preparation of 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 with a total amounting to not more than MYR1 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.

Comments: *Whilst the above exemptions are provided, the MTPG 2024 still requires exempted persons to comply with the arm's length principle and retain relevant documents relating to the controlled transactions, including documentation to support and prove the determination of the arm's length price (paragraph 1.6 of Chapter 1 of the MTPG 2024). As such, in the event of a transfer pricing (TP) audit, despite the exemption, the onus would be on taxpayers to produce the required information and analysis to support the arm's length position of their controlled transactions.*

Tracking of past years' performances for both parties to the transaction becomes important in the above exemption, primarily for taxpayers with solely domestic transactions.

1. For the purposes of the MTPG 2024, a "person" includes a company, a body of persons, and a corporate sole.

Malaysia Transfer Pricing Guidelines 2024 (cont'd)

Key takeaways	*Elaboration*
Scope and exemptions to prepare CTPD	The MTPG 2024 has also revised the thresholds for persons requiring to prepare full CTPD to taxpayers who fulfil the following: • Generates **gross business income of more than MYR30 million in total** and **engages in cross-border controlled transactions totalling MYR10 million** or more annually; or • Receives or provides controlled **financial assistance of more than MYR50 million** annually. Those that fall below the above thresholds are eligible to prepare a minimum CTPD[2].

Comments: *The change in thresholds and the specification of "cross-border" controlled transactions should warrant taxpayers to reassess their compliance requirements, as those who were previously required to prepare "full" CTPD may now qualify to opt for a 'minimum' CTPD moving forward.*

2. As defined in Chapter 11.12 of the MPTG 2024.

Key takeaways	*Elaboration*
Full and minimum CTPD	All CTPD would need to be prepared before the due date for furnishing a tax return for the YA in which a controlled transaction is entered into. The contents of a "full" CTPD are set out under paragraph 11.7 of Chapter 11 of the MTPG 2024 and remain consistent from that set out in the TP Rules updated in 2023. Taxpayers who qualify to opt to prepare a minimum CTPD would have reduced requirements, and need to only prepare details on: a) Worldwide group structure b) Organisational structure c) Controlled transactions d) Pricing policy Further, items (c) and (d) above are confined to only "key controlled transactions", which is defined as: i. Controlled transactions that are related to the taxpayer's principal activity, ii. Other than (i), constitute 20% or more of the operating revenue of each YA.

Comments: *Whilst there is no explicit requirement to prepare a comparability analysis under the minimum CTPD, paragraph 11.15 of Chapter 11 of the MTPG 2024 also states that the IRBM may still subsequently request taxpayers to prepare one to justify the transfer price. As such, consideration should be given to whether a comparability analysis should, nevertheless, be prepared upfront to ensure there are no surprises in the event of any later TP audits.*

Malaysia Transfer Pricing Guidelines 2024 (cont'd)

Key takeaways	***Elaboration***
Arm's length margin	In line with the update to the TP Rules in 2023, the MTPG 2024 elaborates on the application of the adoption of a range of figures / single figure falling between the value of 37.5% to 62.5% of the data set acceptable by the Director General of Inland Revenue (DGIR) as the arm's length range. However, the DGIR may adjust to the median or any point above the median within the arm's length range if the DGIR has reason to believe that the comparables have a lesser degree of comparability or there are any comparability defects that cannot be identified, quantified, or adjusted accordingly.
Comparability analysis	To reinforce the IRBM's position with respect to local vs foreign comparables, the MTPG 2024 has stated that priority would be given: *"… to the availability of sufficient and verifiable information on both the tested party and comparables… therefore, any selection of foreign tested parties and comparables that do not have sufficient and verifiable information would not be accepted."* Chapter 4 of the MTPG 2024 has also expanded on the technical approaches to comparability analyses including when to use multiple year data, and the introduction of a new quantitative criteria for Malaysian comparables to ideally have turnovers not 10% or less of the tested party's revenue.
Business restructuring	The MTPG 2024 has significantly expanded on Chapter 5 – Business Restructuring, to be more aligned with OECD TP Guidelines. This includes considerations to changes to a business' characterisation, other options realistically available, and the application of the arm's length principle in a business restructuring.

Comments: *Reference is made in this same Chapter to the importance of assessing if under an arm's length condition, a payment is justifiable for the transfer of anything of value or for the termination or substantial renegotiation of business agreements between associated parties.*

Malaysia Transfer Pricing Guidelines 2024 (cont'd)

Key takeaways	***Elaboration***
Intra-group services	An addition to the MTPG 2024's chapter on intra-group services is the introduction of a simplified approach for low value adding intra-group services (LVAS)[3], in line with the OECD TP Guidelines. This approach, applicable only to Malaysian service providers or foreign service providers who have similarly adopted the OECD simplified approach in their jurisdictions, allows taxpayers providing LVAS within its group to apply a 5% mark-up on all relevant costs incurred in the provision of such services, without the need for a comparability analysis. Paragraph 6.26 of Chapter 6 of the MTPG 2024 provides a list of examples of typical services that would fall under the LVAS service categories.
Comments: *Taxpayers, particularly those with centralised shared / management services arrangements, should assess if the nature of their intra-group services would fall under the definition of LVAS to be able to apply the simplified approach.*	
Intra-group financial transactions	The MTPG 2024 has indicated that due to the complexity and depth of analysis required for determining the arm's length price or condition for financial transactions, separate guidelines will be issued to address specific TP requirements in relation to intra-group financial transactions.

3. Definition and examples of LVAS, as well as those that do not constitute LVAS, are set out in Chapter 6 of the MPTG 2024.

In addition to the key takeaways above, the MTPG 2024 includes further details and worked examples for TP analyses which may result in a need for taxpayers to reassess and change the technical approach previously adopted when preparing CTPD. We would recommend that you get in touch with your tax advisors to better understand the impact of these changes on your compliance requirements.

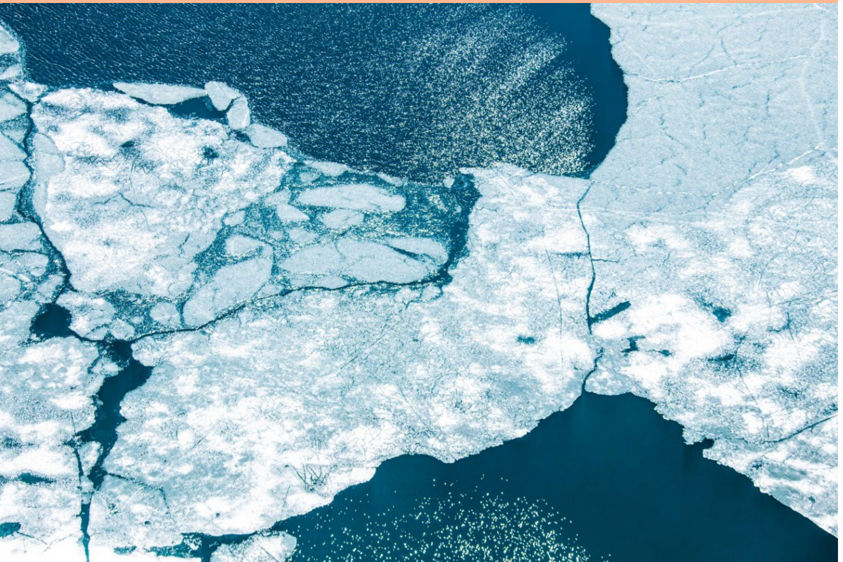
The MTPG 2024 is available on IRB's website www.hasil.gov.my (International > Transfer Pricing).

Transfer Pricing Audit Framework 2024

On 24 December 2024, the IRBM also published the updated Transfer Pricing Audit Framework 2024 (“TPTAF 2024”) which comes into effect on 24 December 2024, replacing the version published on 15 December 2019.

The TPTAF 2024, to be read in conjunction with the 2022 Tax Audit Framework (“2022 TAF”), provides new details and clarifications to the TP audit procedures currently in place.

The TPTAF 2024 is available on IRB’s website www.hasil.gov.my (Legislation > Framework > IRBM Tax Audit Framework).



Transfer Pricing Audit Framework 2024

Building upon the previous version of the TPTAF, some key takeaways from the updated version are as follows:

Key takeaways	Elaboration
A “comprehensive” audit	The TPTAF 2024 now refers to audits as “comprehensive” audits which does not distinguish “field” from “desk” audits. Comprehensive audits would be: • Carried out at the taxpayer’s premises, the IRBM’s office, or any places agreed by both parties, and • Applying the 2022 TAF comprehensive audit examination procedures that involve examination of the taxpayer’s business records. Additional procedures such as submission of business information slides and CTPD before the audit visit are also stipulated with specific timeframes mentioned.
Years of assessment	The IRBM may carry out a comprehensive audit for up to six YAs. However, depending on the audit findings, this may be extended to cover seven prior YAs.
Basis for selection of cases	The TPTAF 2024 has elaborated on the IRBM’s basis for selecting audit cases, which is based on: • Risk assessment criteria for controlled transactions, • Restructuring of the company group, and • Information received from third parties, including foreign tax authorities.

Transfer Pricing Audit Framework 2024 (cont'd)

Key takeaways	*Elaboration*
Audit visits	The IRBM may conduct an audit visit to any of the taxpayer's premises, or those related to the taxpayer by informing the taxpayer in advance. The audit visit may be extended to the related company, if necessary.
Audit settlements	Where there are any TP adjustments made by the IRBM that only involve related companies in Malaysia, the offsetting adjustment for the same amount would not be automatically given to the other related party(ies). The application for an offsetting adjustment must be made by the other related party(ies), and audits will be carried out to ensure that the application may be considered under the provisions of the ITA 1967.
Voluntary disclosure (VD)	The TPTAF 2024 has clarified that VDs may be made after the deadline for submission of the return form but before the audit commences. The information and documentation required, along with the VD form to be submitted is set out and included in the TPTAF 2024. However, if the documents submitted is viewed to be incomplete, the IRBM may perform a further review via an audit visit / letter of enquiry.
Penalty for breaching the 14-day submission deadline	In line with the MTPG 2024, the TPTAF 2024 has been updated to state that failure to submit CTPD within 14 calendar days from the date of the request by the IRBM may be subject to penalty ranging from MYR20,000 to MYR100,000 or to imprisonment for a term not exceeding six months, or to both, for each YA to the offence. The TPTAF 2024 has also provided further clarity on the application of the penalty range, which would be imposed based on the period of delay in submitting the TP documents. The penalty amounts to be applied are as follows:

Period of delay[4]	Penalty Amount[5] (MYR)
Up to 7 days	20,000
More than 7 days, up to 14 days	40,000
More than 14 days, up to 21 days	60,000
More than 21 days, up to 28 days	80,000
More than 28 days	100,000

4. Period of delay is calculated from the expiration of the 14-day period from the date of service of the written notice until complete TP document is submitted to the IRBM [paragraph 10.2(e) of the TPTAF 2024].

5. A concession for the imposition of these penalties may be given to taxpayers who have an accounting period that begins before 29 May 2023, i.e. the date of the gazette of the TP Rules.

Connect with us

Transfer pricing services

Jagdev Singh
Partner
jagdev.singh@pwc.com
+60(3) 2173 1469

Anushia Soosaipillai
Partner
anushia.joan.soosaipillai@pwc.com
+60(3) 2173 1419

Desmond Goh
Partner
desmond.goh.keng.hong@pwc.com
+60(3) 2173 1439

Lim Ying Tian
Partner
ying.tian.lim@pwc.com
+60(3) 2173 1188

Ong Ai Ling
Director
ai.ling.ong@pwc.com
+60(3) 2173 0711

Lilia Edlina Azmi
Director
lilia.edlina.azmi@pwc.com
+60(3) 2173 1498

www.pwc.com/my/tax