

## Malaysia News:

Transfer pricing documentation requirements in Malaysia

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# Transfer pricing documentation requirements in Malaysia

Malaysia first published Transfer Pricing Documentation Guidelines in 2012 (the “**Guidelines**”). The Guidelines were amended in 2017 to reflect the outcome of the OECD Base Erosion and Profit Shifting project .

In the past, the Malaysian Inland Revenue Board (the “**IRB**”) did not place emphasis on transfer pricing and transfer pricing documentation (“**TP documentation**”) for small and medium-sized enterprises (“**SME**”). In contrast, transfer prices were examined in more detail when auditing large multinationals active in Malaysia.

Nevertheless, this approach has changed in recent years. We have seen an increased focus from the IRB on transfer pricing in tax audits when auditing SMEs, and the IRB has acted aggressively in these audits.

In March 2019, we had one of the first rulings from the Special Commissioners of Income Tax (the “**SCIT**”) on transfer pricing questions. The SCIT ruling concerned a limited risk distributor (the “**Company**”) purchasing products from a related party from outside Malaysia and distributing the products to customers in Malaysia. The prices on the sale of the goods to the Company were set in a way that guaranteed the Company an arm’s length margin that independent distributors would also earn.

The IRB challenged the characterisation of the Company as a limited risk distributor and thus argued that the margin earned was too low. In addition, the IRB refused to accept the comparable companies used by the Company to determine that the margin was at arm’s length and selected other companies as comparables.

The Company challenged the adjustments made by the IRB. The SCIT’s decision was in favour of the Company, allowing the appeal in full. The consequence of the decision is that it limits the IRB’s power to adjust transfer prices agreed between related parties.

Due to the increased focus of the IRB on transfer pricing questions, we strongly recommend that all taxpayers comply with the current TP documentation rules in Malaysia. Based on the Guidelines, the current rules are as follows:

## Who has to prepare TP documentation?

The Guidelines contain *de minimis* rules and exemptions which allow taxpayers to opt for minimal TP documentation if –

- Their gross income is below MYR 25 million; and
- The total amount of related party transactions does not exceed MYR 15 million.

Any person below the above thresholds may opt to either prepare contemporaneous TP documentation or to prepare only limited TP documentation.

## What does TP documentation have to contain?

Contemporaneous TP documentation should contain the following:

- Information on organisational structure (worldwide organisation and local management structure);
- The nature of the business/industry and market conditions;
- An overview of all controlled transactions;
- The applied pricing policy for controlled transactions;
- The assumptions, strategies and information that influence price setting;
- Comparability, functional and risk analyses;
- The selection of the transfer pricing method;
- The application of the transfer pricing method; and
- Financial information.

A taxpayer who opts for limited TP documentation as he is below the abovementioned thresholds has to prepare TP documentation that contains information on the following:

- Organisational structure;
- Controlled transactions; and
- Pricing policies.

## Does a Masterfile have to be submitted?

Taxpayers that are obliged under the Income Tax (Country-by-Country Reporting) Rules 2016 (the “**CbCR Rules**”) to prepare a Country-by-Country-Report (“**CbCR**”) shall prepare a Masterfile and submit it together with TP documentation.

## Does a CbCR have to be submitted?

The CbCR Rules came into force on 1 January 2017. The CbCR Rules apply for multinational companies with cross-border related-party transactions and group consolidated revenue of at least MYR 3 billion in the preceding reporting period.

## When does TP documentation have to be prepared?

TP documentation must be finalised by the time the tax return needs to be filed. The tax return has to be filed within 7 months of the end of the financial year.

## Does TP documentation have to be submitted to the IRB?

TP documentation has to be submitted to the IRB upon request only. If the taxpayer receives a request to submit TP documentation, he has a period of 30 days for the submission of TP documentation.

## Are penalties applicable if no TP documentation is filed?

Malaysia does not impose penalties if a taxpayer fails to prepare and file TP documentation. Penalties will only be imposed if the IRB makes transfer pricing adjustments. In such a case, the following penalties apply:

- If the taxpayer has not prepared contemporaneous TP documentation when he is required to do so, a penalty of 35% of the tax adjustment may be imposed;
- If the taxpayer has prepared TP documentation but did not do so according to the Guidelines, a penalty of 25% of the tax adjustment may be imposed.

## How often does TP documentation have to be prepared?

According to the Guidelines, taxpayers are obliged to prepare TP documentation on a yearly basis.

## What to do?

We recommend ensuring that you comply with the transfer pricing rules in Malaysia. As the IRB is focusing more and more on this matter, the likelihood that prices on related party transactions are challenged in a tax audit increases significantly.

From a practical perspective, it is recommended that you have TP documentation ready, because if the IRB starts an audit, the submission of TP documentation can help avoid challenges on the price setting for related party transactions.

## How can we help?

We are happy to assist you with the preparation of TP documentation that complies with the Guidelines. We can also assist you in the preparation of a local benchmark study to determine and defend the prices applied on your related party transactions.

## Your Contacts



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