

TAX ALERT

MALAYSIA TRANSFER PRICING GUIDELINES 2024

January 2025



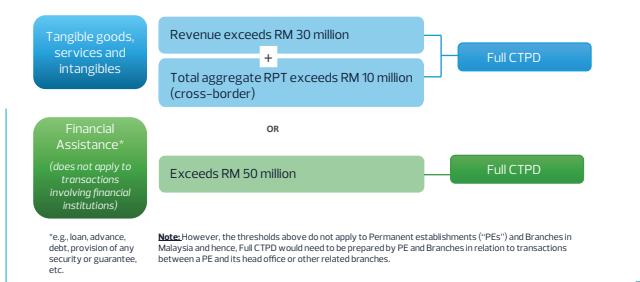
On 24th December 2024, the Inland Revenue Board of Malaysia ("IRB") introduced new Malaysian Transfer Pricing Guidelines ("2024 TP Guidelines"). These guidelines take into effect from Year of Assessment ("YA") 2023 and subsequent years. These guidelines give further clarify to taxpayers following the release of the Income Tax (Transfer Pricing) Rules 2023 ("2023 TP Rules"). Amongst others, the updates establish threshold requirements aimed at reducing administrative burden for certain taxpayers. It has allowed a 5% mark-up to be charged by Malaysian service providers of Low Value-Adding Intra-Group Services ("LVAS"). The following are the key updates:-

Chapter No	Items	Our Views
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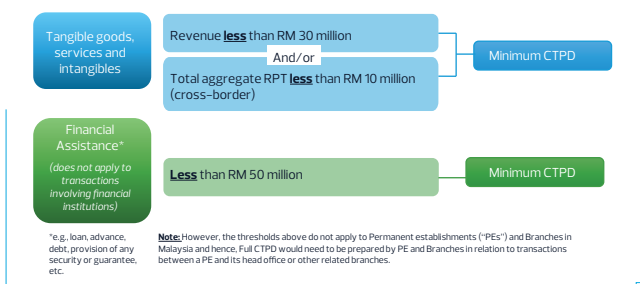
Chapter 1 – Scope and application

Documentation requirements

a. Full Contemporaneous Transfer Pricing Documentation ("CTPD")



b. Minimum CTPD



c. Exemption from preparing CTPD

No	Details	
1.	individuals not carrying on a business;	✓
2.	individuals carrying on a business (including partnerships) who only engage in domestic controlled transactions;	✓
3.	person who entered into controlled transactions with a total amounting to not more than RM1 million; or	✓
4.	person 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.	✓

Exempted from preparation of CTPD based on the 2024 TP Guidelines based on Para 1.5

Not required to prepare CTPD as we strongly encourage to prepare minimum CTPD as Para 1.5 states that satisfied to comply with arm's length standard & to comply with S140A of the Income Tax Act, 1967

Note: Para 1.5– To ease the compliance burden, the following persons are **not required** to prepare a Contemporaneous TPD:-
 (a) individuals not carrying on a business; (b) individuals carrying on a business (including partnerships) who only engage in domestic controlled transactions; (c) person who entered into controlled transactions with a total amounting to not more than RM1 million; OR (d) person 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.

▪ Notwithstanding taxpayers that fall under Para 1.5 are **exempted** from preparing the CTPD, nevertheless taxpayers must still comply with the arm's length principle and ensure all relevant documents are kept to prove the determination of the arm's length price.

▪ As such, we **strongly recommend preparation of a Minimum CTPD** although taxpayers may fulfill the criteria under Para 1.5. Furthermore, this will be in compliance with Section 140A of the Income Tax Act, 1967 ("ITA").



Chapter 2 – The arm's length principle

a. Calculating the arm's length range

Formula	Percentile
Percentile (dataset, 0.625)	62.5 th Percentile (a)
$[(a) + (b)] / 2$	Median
Percentile (dataset, 0.375)	37.5 th Percentile (b)

If a taxpayer's margin falls below the 37.5th Percentile, IRB may adjust its margin towards the median as transfer pricing adjustment to best reflect the arm's length price.

b. Re-characterisation of transactions

Consideration must be given to the actual conduct of the parties instead of solely relying on the terms of the agreement.

There is a possibility of the IRB disregarding and re-characterising the structure of the controlled transactions under the following:-

- The economic substance of the controlled transaction differs from its form.
- The form and substance of the controlled transaction are the same, but the arrangements differ from those of independent persons acting rationally, making it difficult for the IRB to determine an appropriate transfer price.

- Obtaining a good set of comparables is crucial when determining the arm's length range. Where taxpayers earn below the arm's length range, proper justification needs to be incorporated otherwise there will be a risk of adjustment to the median.

- It is essential to ensure that the actual conduct and substance of the transaction align with its functional profile and contractual arrangement.

- Where discrepancy occurs, entities would have to re-look into the intercompany agreement and review their pricing policy to ensure their functions, assets and risk profile aligns with the remuneration earned.

Chapter 3 – Transfer pricing methodologies

Pass-through costs are costs incurred by a person on behalf of group entities while acting as an intermediary where the person does not add value or take on any risks in the transaction. Certain requirements have been set forth by the IRB before it can be construed as pass-through costs.

Additionally, these cost are allowed to be **excluded** in computing the cost based Profit Level Indicator ("PLI") on the basis that:-

- Reliable adjustments can be made to remove the costs
- Available data is obtainable for comparables

- Where entities have incurred third party costs on behalf of group entities, it can consider identifying if it meets the requirements by the IRB and may make an adjustment to the cost base of the PLI in order to accurately reflect the entity's margins.

Chapter 4 – Comparability analysis

a) Fiscal Year-End (“FYE”) adjustment

Comparable period – IRB has allowed fiscal year end adjustment of FYE 6 months prior and 6 months after the tested party's FYE to be considered in addition to the current practice that is applied (i.e., FYE 7 months prior and 5 months after).

b. Losses

Where companies incur losses, taxpayers are expected to include non-transfer pricing factors such as ineffective business strategies, mismanagement, global economic situation and natural disaster that may have contributed to the losses.

Quantitative criteria for potential comparables

The following can be considered:-

- Size criteria in terms of sales, assets, number of employees
- Comparable companies with turnover less than 10% of tested party's revenue will not be a good comparable
- To exclude comparables with high intangibles or R&D activities using ratio of net value of intangibles/ total net assets value or ratio of R&D/ sales
- Criteria on importance of export sales (foreign sales/ total sales), inventories in absolute value, exclude third parties that were start-ups, bankrupted.

Surcharge – As per Section 140A(3C), TP adjustments made by the IRB during TP audit cases that commence on or after 1 January 2021 onwards regardless of the Year of Assessment (“YA”) will result to a surcharge up to 5% of the amount of increase of any income or reduction of any deduction or loss arising from a TP adjustment.

Comparable period

- We will retain our position to apply the 7 months prior and 5 months after of comparable period in line with the OECD TP Guidelines.

Losses

- Loss-making analysis and justifications must be clearly substantiated in the CTPD and supporting documentation must be kept.

Quantitative criteria for potential comparables

- Where information is available, to incorporate these additional quantitative criteria when searching for potential comparables



Chapter 5 – Business restructuring

Applying the arm's length principle

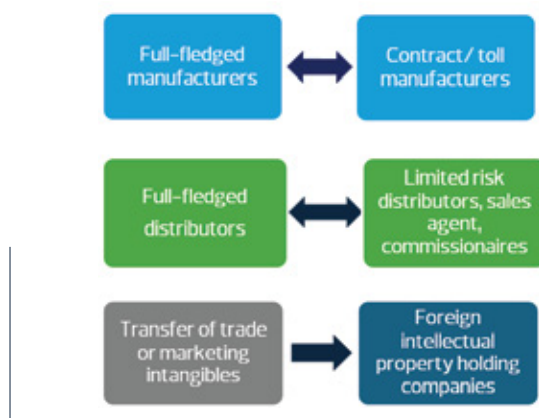
Where business restructuring occurs, arm's length compensation may be required depending on the transactions between the restructured entity and its related parties.

The foundation on delineating restructuring transactions lies in written conditions such as written contractual agreements, correspondence and/or other communications.

The following poses an important process to consider when dealing with business restructuring:-

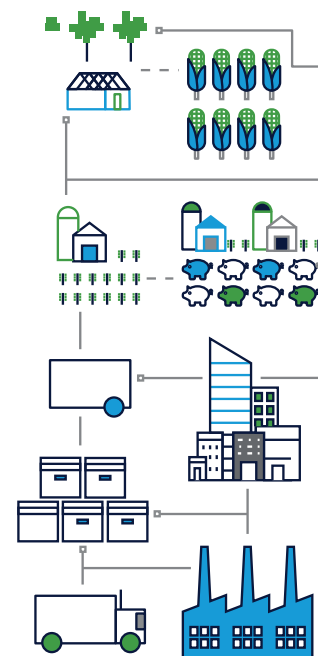
- Identification of the scope, type and economic nature of the arrangement
- Conducting functional analysis prior and after the business restructuring
- Identifying consistency of the contractual terms taking into account legal, economic and tax effects

Common types of business restructuring:-



Businesses may restructure to allocate significant risks to a low-tax entity, presenting it as a "principal" that justifies premium returns. It is crucial to assess if this entity can manage and financially bear these risks. Additionally, restructured entities often have limited functions, assets, and risks, leading to potential lower profit, which must be considered when determining arm's length compensation or indemnifications for asset transfers or arrangement changes.

- Where business restructuring occurs, a detailed analysis must be provided in the CTPD.





Chapter No.

Items

Our Views

Chapter 6 – Intra group services

Low Value Adding Intra-Group Services (“LVAS”)

The simplified approach for determining arm’s length charges for LVAS is now introduced to Malaysian service providers.

Where the taxpayer is a Malaysian service recipient, payments to LVAS providers in other jurisdictions must adhere to the OECD approach, otherwise comparability analysis may be required. LVAS is defined as supportive services that are not part of the main business activities of the group.

Examples of LVAS:–

- Accounting and auditing
- Processing and management of accounts receivable and accounts payable
- Budgeting
- Human resources activities
- Information technology (“IT”) services (where such IT services is not a part of the principal activity of the group)
- Legal services
- Tax obligations
- General obligations

LVAS service provider is allowed to apply a mark-up of **5%** of all relevant costs where the mark-up is **not required** to be justified by a benchmarking study.

- If taxpayers fall under the LVAS category, it is crucial re-look into their pricing policy and determine the appropriateness of the mark-ups.
- Notwithstanding that no benchmarking study is required for LVAS service providers nevertheless all relevant documents on this must be available.

**Chapter 7 –
Cost
Contribution
Arrangement
("CCA")**

CCA and applying the arm's length principle

IRB has provided two (2) main types of CCA that is **Development CCA** and **Services CCA**. To ensure arm's length transaction of the CCA, value of each participant's contribution must be consistent with what independent enterprises would contribute under comparable circumstance, based on expected benefits.

To determine if the CCA meets the requirements of the arm's length arrangements, the following steps below must be taken:-

STEP 1	Determine participants in the CCA
STEP 2	Determine a participant's share of expected benefits from the CCA
STEP 3	Determine the arm's length value of each participant's contribution to the CCA
STEP 4	Determine the allocation of CCA contributions to each participant according to its share of expected benefits

Additionally:-

Buy-in	Participant transfers pre-existing rights of prior CCA to a new participant. Hence existing participant must receive arm's length compensation.
Buy-out	Participant disposing part of all the interest in which should be remunerated with an arm's length payment.
Balancing payment	New participant brings existing intangibles to the CCA, balancing payment may be required from an active CCA from existing participants.

There are key differences between services CCA and intra-group services arrangements hence these must be differentiated to ensure arm's length remuneration.

- CCAs, where applicable to certain taxpayers must be supported by preparing Schedule 3 as per the 2023 TP Rules.

- Taxpayers should also relook into the arrangement to determine if it adheres to the arm's length principle of CCA and prepare an analysis of steps as provided in the 2024 TP Guidelines.



Chapter No.	Items	Our Views
Chapter 9 – Intra-group financial transactions	<p>To ensure arm's length principle on financial transactions, accurate delineation needs to be performed where the following five (5) factor of economically characteristics must be considered:-</p> <ul style="list-style-type: none"> (a) Contractual terms (b) Functional analysis (c) Characteristics of financial instruments (d) Economic circumstances (e) Business strategies 	<ul style="list-style-type: none"> ▪ Financial transactions may be complex, however when determining the commercial rationale of undertaking into such arrangements, it is important to consider if a third party would have agreed to such arrangement in similar situations. ▪ A separate guideline on intra-group financial transactions is expected to be released by the IRB which may provide more detailed guidance on various financing arrangements.
Chapter 11 – Documentation	<p>CTPD</p> <p>Definition of CTPD & duty to prepare CTPD has been aligned to the 2023 TP Rules.</p> <p>The IRB has included guidance to prepare a Minimum CTPD.</p> <p>Additionally, Section 119A states that failure to keep record for seven (7) years will result in a fine between RM300 to RM10,000 or to imprisonment not more than 1 year or both.</p> <p>Legal provision – Section 113B</p> <p>Taxpayers who fail to submit CTPD within fourteen (14) days upon request for any YA shall be guilty of an offense, on conviction, be liable to a fine ranging from RM20,000 to RM100,000 or imprisonment up to six (6) months or both.</p>	<ul style="list-style-type: none"> ▪ Ensure CTPD is completed and dated prior to furnishing the tax return for the YA. ▪ Ensure all supporting documents are kept for seven (7) years (i.e. invoices, agreements, contracts, etc).



NEXT STEPS FOR TAXPAYERS



Ensure that TPDs are prepared and maintained on a contemporaneous basis (i.e., CTPD).



Determine if taxpayers potentially fall under the full or minimum bracket to determine the level of CTPD required going forward on a year-on-year basis.



Taxpayers who are service providers in Malaysia should determine if activities performed relates to LVAS.



For entities that have undergone a business restructuring, taxpayers should ensure that proper analysis is prepared, and the appropriate arm's length principle is applied.



Ensure that the CTPD is robust, dated and prepared based on the required information prior to filing the tax return (i.e., able to furnish the CTPD within 14 days upon request by the IRB).



Ensure record keeping of 7 years is maintained.

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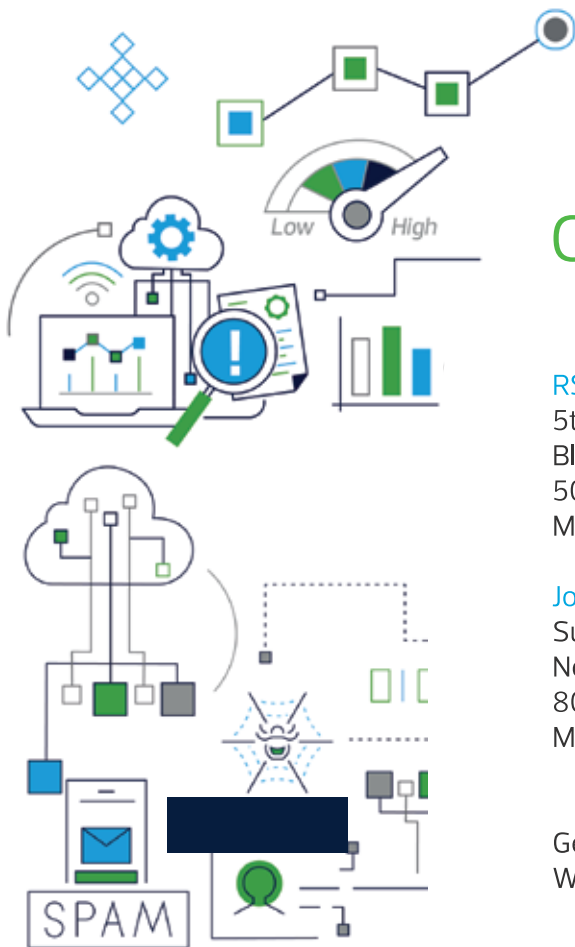
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