

TAX ALERT

TRANSFER PRICING TAX AUDIT FRAMEWORK

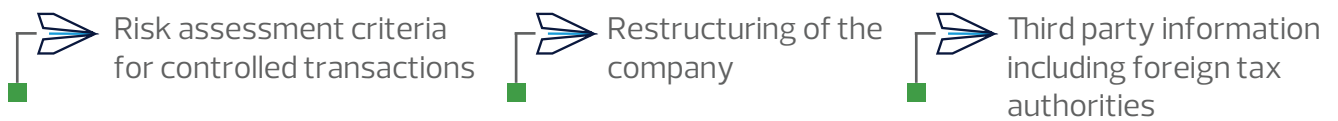
January 2025





The new transfer pricing tax audit framework was released and will be effective as of 24th December 2024. This supersedes the previous transfer pricing audit framework dated 15th December 2019. Under the current framework, a Transfer Pricing (“TP”) audit case can cover up to **6 years** of assessment, with possibility of extension to **7 years**¹ depending on the outcome of the audit findings.

The Inland Revenue Board of Malaysia (“IRB”) states that selection of TP audit cases is based on 3 criteria:-



It is important to note that under the Self-Assessment System (“SAS”) regime in Malaysia, a taxpayer who has been selected for an audit does not necessarily mean that they have committed an offence. Rather it is the IRB’s proactive approach to ensure compliance requirements and arm’s length transactions are adhered to among taxpayers.

A typical process of a TP field audit is initiated by the IRB via an official letter where taxpayers will be given **14 days** to provide the supporting documentation, including the Contemporaneous Transfer Pricing Documentation (“CTPD”). The actual field audit may be conducted at taxpayer’s premise within **1-3 days** depending on the complexity of the business. Furthermore, the IRB has clarified that all TP audit cases are now required to be completed within **450 days**.

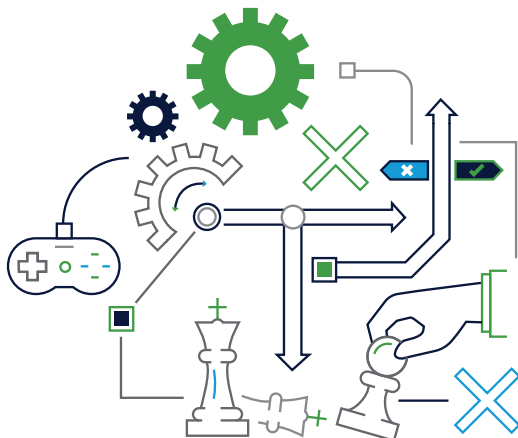
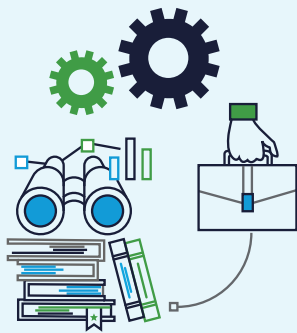


¹Does not apply to TP audit cases involving fraud, willful default or negligence

PENALTY AND SURCHARGE

Below is the summary of penalties and surcharge on TP audit cases commencing 'PRIOR' and 'AFTER' 1 January 2021:-

TP Audit cases commencing PRIOR 1 January 2021	TP Audit cases commencing AFTER 1 January 2021																										
<p>Section 113 (2)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #0070C0; color: white;"> <th>Offence</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>Penalty for 1st offence</td> <td>15%</td> </tr> <tr> <td>Penalty for 2nd offence</td> <td>30%</td> </tr> <tr> <td>Penalty for the 3rd and subsequent offences</td> <td>45%</td> </tr> </tbody> </table>	Offence	Rate	Penalty for 1st offence	15%	Penalty for 2nd offence	30%	Penalty for the 3rd and subsequent offences	45%	<p>Section 140A (3C) Surcharge up to 5% of the amount of increase of any income or reduction of any deduction or loss arising from a transfer pricing adjustment.</p> <p>Section 113B Fine ranging from RM20,000 to RM100,000 and/or to imprisonment up to 6 months or both.</p> <p>Penalty will be imposed at the final stage if:-</p> <ol style="list-style-type: none"> CTPD submitted exceeds 14 days CTPD does not comply with the 2023 TP Rules and TP Guidelines <p>Refer to the table below:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #4CAF50; color: white;"> <th>No.</th> <th>Period of Delay* (Number of days)</th> <th>Penalty Amount (Section 113B)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Up to 7 days</td> <td>RM 20,000.00</td> </tr> <tr> <td>2.</td> <td>More than 7 days up to 14 days</td> <td>RM 40,000.00</td> </tr> <tr> <td>3.</td> <td>More than 14 days up to 21 days</td> <td>RM 60,000.00</td> </tr> <tr> <td>4.</td> <td>More than 21 days up to 28 days</td> <td>RM 80,000.00</td> </tr> <tr> <td>5.</td> <td>More than 28 days</td> <td>RM 100,000.00</td> </tr> </tbody> </table> <p><i>Note: *The period of delay is calculated from the expiration of a 14-day period from the date of service of the written notice until a complete CTPD is submitted to IRB.</i></p>	No.	Period of Delay* (Number of days)	Penalty Amount (Section 113B)	1.	Up to 7 days	RM 20,000.00	2.	More than 7 days up to 14 days	RM 40,000.00	3.	More than 14 days up to 21 days	RM 60,000.00	4.	More than 21 days up to 28 days	RM 80,000.00	5.	More than 28 days	RM 100,000.00
Offence	Rate																										
Penalty for 1st offence	15%																										
Penalty for 2nd offence	30%																										
Penalty for the 3rd and subsequent offences	45%																										
No.	Period of Delay* (Number of days)	Penalty Amount (Section 113B)																									
1.	Up to 7 days	RM 20,000.00																									
2.	More than 7 days up to 14 days	RM 40,000.00																									
3.	More than 14 days up to 21 days	RM 60,000.00																									
4.	More than 21 days up to 28 days	RM 80,000.00																									
5.	More than 28 days	RM 100,000.00																									





CONCESSION ON PENALTIES UNDER SECTION 113B

Recognizing that the 2023 Malaysian Transfer Pricing Rules, released on 29 May 2023, may have impacted taxpayers who had already prepared their FY2023 CTPD based on the previous rules and guidelines, the IRB has introduced a concession on penalties for taxpayers with an accounting period ending before 29 May 2023, as outlined below:-

Financial Year of the TPD	Financial Period of the TPD	Concession of Section 113B penalty applies?
TPD 2023	01/06/2022 until 31/05/2023	Yes
TPD 2023	01/01/2023 until 31/12/2023	Yes
TPD 2024	01/05/2023 until 30/04/2024	Yes

Examples:-

CTPD for FYE 31May 2023	Concession (✓) on penalty under Section 113B
CTPD for FYE 31December 2023	Concession (✓) on penalty under Section 113B
CTPD for FYE 31March 2024	Concession (✓) on penalty under Section 113B
CTPD for FYE 30 April 2024	Concession (✓) on penalty under Section 113B

However, for taxpayers that have a Financial Year Ending ("FYE") 31May 2024 onwards, no concession will be provided under Section 113B.



VOLUNTARY DISCLOSURE ("VD")

Notwithstanding the above, the IRB has always encouraged taxpayers to perform a VD and this can be performed after the deadline for submission of the tax return form but before commencement of the TP audit by filling in a **Voluntary Disclosure Form**. Additionally, taxpayers must prepare the following documents:-



TPD and organizational chart for the Year of Assessment (s)



Audited accounts, tax computation, tax return form and information on incentives (if any)



Computation of comparability analysis and its comparables' audited accounts



Information on omitted income or error in reported income/ claims

The benefit of performing a VD is that the potential surcharge imposed will lie between 0% - 4% instead of the maximum 5% that would have been imposed under a normal TP audit situation.

With the enhanced scrutiny of IRB towards the TP landscape in Malaysia, it is important for taxpayers to ensure that documentation is prepared on a contemporaneous manner, supporting documentation are kept for 7 years period and there are available resources to manage the TP audit.

Should you require any TP audit support or controversy matters, please reach out to the transfer pricing team in RSM Malaysia.

TAX PROFESSIONAL TEAM

Dato' Robert Teo | Head of Tax

T +603 2610 2886

E roberteo@rsmmalaysia.my



CORPORATE TAX COMPLIANCE

Anston Cheah | Executive Director

T +603 2610 2829

E anston.cheah@rsmmalaysia.my

Soong Kim How | Associate Director

T +603 2610 2848

E soongkh@rsmmalaysia.my

Rachel Low | Associate Director

T +603 2610 2988

E lowwl@rsmmalaysia.my

Nicole Chong | Director

T +603 2610 2830

E nicole.chong@rsmmalaysia.my

Nur Afiqah Binti Mohd Razali | Associate Director

T +603 2610 2827

E n.afiqah.razali@rsmmalaysia.my

TAX ADVISORY

Anston Cheah | Executive Director

T +603 2610 2829

E anston.cheah@rsmmalaysia.my

Lee Pei Fern | Manager

T +603 2610 2995

E leepf@rsmmalaysia.my

INDIRECT TAX

Mayadevi Karpayah | Director

T +603 2610 2831

E mayadevi@rsmmalaysia.my

Kalvinder Singh | Senior Manager

T +603 2610 2863

E kalvinders@rsmmalaysia.my

TAX AUDIT AND INVESTIGATION

Anston Cheah | Executive Director

T +603 2610 2829

E anston.cheah@rsmmalaysia.my

Rachel Low | Associate Director

T +603 2610 2988

E lowwl@rsmmalaysia.my

PERSONAL TAX

Mayadevi Karpayah | Director

T +603 2610 2831

E mayadevi@rsmmalaysia.my

Lynda Harun | Senior Manager

T +603 2610 2832

E lynda@rsmmalaysia.my

TRANSFER PRICING

Carolyn Kam | Executive Director

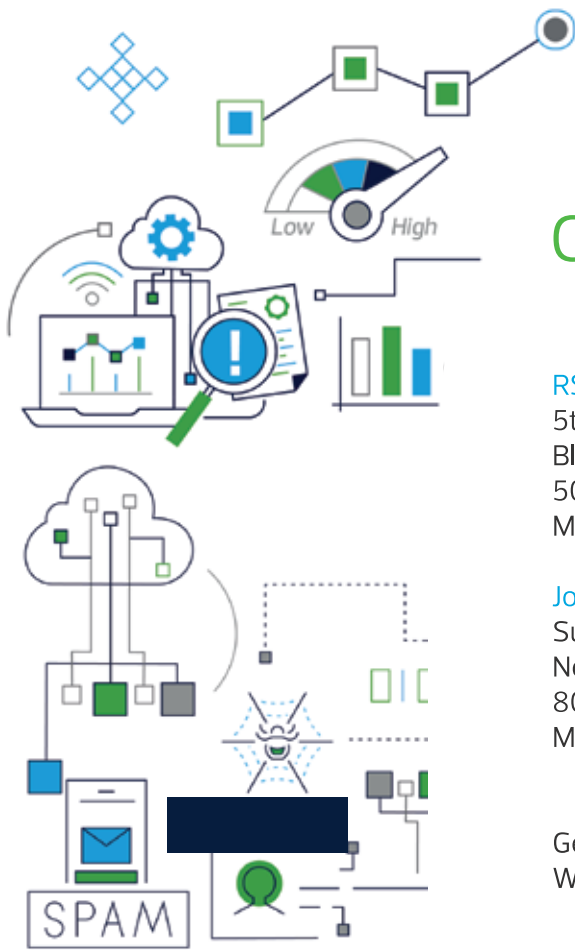
T +603 2610 2996

E carolyn.kam@rsmmalaysia.my

Athirah Mior Shahar | Associate Director

T +603 2610 2997

E athirah.shahar@rsmmalaysia.my



CONTACT US

RSM Tax Consultants (Malaysia) Sdn Bhd

5th Floor, Penthouse, Wisma RKT,
Block A, No.2 Jalan Raja Abdullah Off Jalan Sultan Ismail,
50300 Kuala Lumpur,
Malaysia

Johor Bahru Office

Suite 16-02, Level 16, Menara Landmark,
No. 12, Jalan Ngee Heng,
80000 Johor Bahru,
Malaysia

General Email info@rsmmalaysia.my

Website www.rsmmalaysia.my

RSM Tax Consultants (Malaysia) Sdn Bhd is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and advisory firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London, EC4N 6JJ.

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

This article is not intended to provide specific business or investment advice. No responsibility for any errors or omissions nor loss occasioned to any person or organisation acting or refraining from acting as a result of any material in this website can, however, be accepted by the author(s) or RSM International. You should take specific independent advice before making any business or investment decision.

© 2015–2025 RSM Malaysia PLT 202206000002 (LLP0030276-LCA) & AF 0768.
All rights reserved.