



Crowe Transfer Pricing
Wednesday

Malaysia: Key Changes to Transfer Pricing Rules 2023

8 May 2024



Introduction

The Income Tax (Transfer Pricing) Rules 2023 (also known as the "TP Rules 2023") were gazetted on May 29, 2023, by the Inland Revenue Board of Malaysia ("IRBM"). These rules which supersedes the Income Tax (Transfer Pricing) Rules 2012 ("TP Rules 2012"), take effect from the year of assessment ("YA") 2023 and beyond. The TP Rules 2023 introduces new rules aimed at tightening the compliance requirements in Malaysia.

The TP Rules 2023 can be explained in two (2) broad strokes: the arm's length principle and the TP documentation.

Key Changes from YA 2023 onwards

i. Arm's Length Principle

Malaysia follows the arm's length concept, which is supported by the Organization for Economic Co-operation and Development ("OECD"). The aforementioned principle underscores the notion that pricing imposed on transactions between associated persons (or controlled transactions) ought to align with those imposed between independent parties under analogous circumstances (or uncontrolled transactions).

The arm's length price shall be determined in accordance with the acceptable transfer pricing methods by using the most recent, trustworthy, and reasonable information that is available. According to the TP Rules 2023, taxpayers must use single-year data of comparables, not weighted average data, and compare the outcomes of the controlled transaction with those of the uncontrolled transaction for the same basis year for a YA in a comparable market or economic environment.

The IRBM recognizes taxpayers' difficulties in obtaining up-to-date financial data for benchmarking purposes. Therefore, the IRBM now considers allowing taxpayers to utilize the previous year's data set for benchmarking purposes if the taxpayer can demonstrate it has exhausted their means in obtaining the current year data from all available sources when preparing the TPD. For instance, the FY 2022 data of comparable companies may be allowed for FY 2023 comparability analysis. However, the benchmarking data collection must be updated by taxpayers; either during the audit process or when the up-to-date financial data is made public.

Another key change highlighted in the TP Rules 2023 is the redefinition of the arm's length range ("ALR"). The ALR is now defined as a range of figures or a single figure falling between the value of the **37.5 percentile to 62.5 percentile** of the data set. The median is the mid-point of the ALR. The newly prescribed ALR range clearly deviates from the globally acceptable interquartile range (i.e., a point between the 25th percentile and 75th percentile). The narrower ALR may potentially place taxpayers' financials at risk of falling outside the ALR and consequently subjecting them to TP adjustments to the median. Notably, a surcharge of up to 5% may be imposed on the TP adjustments made.

In performing a benchmarking analysis for Malaysian entities, the IRBM has reaffirmed that local comparables should be used instead of overseas comparables when there are available local comparable businesses to serve as the benchmarking data set.

ii. Transfer Pricing Documentation (TPD)

When a taxpayer in Malaysia engages in a controlled transaction, they are required to prepare a set of contemporaneous TPD that demonstrates their adherence to the arm's length principle and supports their transfer pricing. This documentation is crucial for transfer pricing audits.

The Malaysian TP Guidelines prescribe the following financial thresholds for the preparation of a comprehensive set of TPD, i.e. Full TPD:

- Non-financial transactions - Annual gross income exceeding RM25 million, and total related party transactions exceeding RM15 million per annum; or

- Financial transactions - Provision of financial assistance exceeding RM50 million for non-financial institutions.

Otherwise, taxpayers are allowed to prepare documentation that is less extensive, i.e. Minimum TPD.

According to the TP Rules 2023, the IRBM mandates that a contemporaneous TPD be brought into existence prior to the deadline for filing a Corporate Income Tax (“CIT”) return (i.e. 7 months after the financial year end of the companies, or any extended CIT return filing, in a given YA). The completion date of the TPD must be indicated on the TPD and must be provided within 14 days upon request during a tax audit. Failure to comply with this requirement may result in a penalty ranging between RM20,000 and RM100,000 for each YA.

In addition, the TP Rules 2023 also provides a list of mandatory information for Multinational Enterprise (“MNE”) Group and local business entities, as outlined in Schedule 1 and Schedule 2 of the TP Rules 2023. A summary of the information that are required to be disclosed is shown below:

Schedule 1 - MNE Group Information	Schedule 2 - Business Information
<ul style="list-style-type: none"> a) MNE Group’s organizational structure and ownership. b) Description of the MNE Group’s businesses that are relevant to the business in Malaysia in that basis period, including: <ul style="list-style-type: none"> o Products and services; o Geographic markets; o Key competitors; o Supply chains; o Business models and strategies; o Business drivers; o Industry analysis; o Business activities; o Functional analysis; and o Changes to the MNE Group’s structure through restructuring, acquisition or divestiture. c) Description of the MNE Group’s intangible property applied in the business in Malaysia. d) MNE Group’s financial activities connected to the business in Malaysia, including any MNE’s inter-entity financing arrangements. e) Financial and tax position of the MNE Group through annual consolidated financial statements, existing unilateral advance pricing agreements and other tax rulings. 	<ul style="list-style-type: none"> a) Organizational structure including ownership structure, management reporting lines between management of the business and its associated persons as well as a local organization chart. b) Nature of the business, industry and market conditions – this includes business models, strategies and corporate business plans relevant to the business. c) Controlled transactions. d) Details of the pricing policies for each type of controlled transactions. e) Assumption, strategies and information regarding factors that influence the setting of pricing policies. f) Functional, asset and risk analysis including the risk analysis framework. g) Comparability analysis (e.g., description of comparable transactions and details regarding the basis and criteria for selection). h) Selection of the transfer pricing methodologies. i) Application of the transfer pricing methodologies. j) Financial information.

Malaysian entities under the MNE Group that meet the thresholds to prepare a Full TPD in Malaysia are also compelled to prepare a list of additional documents prescribed under *Schedule 1 - MNE Group Information*. This enables the IRBM to gain a deeper comprehension of the MNE Group’s businesses that are operating within and outside Malaysia. Essentially, the requirements outlined in Schedule 1 appear to be broadly similar to information found in a Master File, which may be obtained by the Malaysian entity from its ultimate parent company.

In contrast, the information required by the IRBM in Schedule 2 pertains to the taxpayer’s business in Malaysia. The list of information is similar to the same as required under TP Rules 2012.

As of to-date, the IRBM is revising the Malaysian Transfer Pricing Guidelines (MTPG) to provide further details and guidance that align with the TP Rules 2023.

Changes at a Glance

The table below summarizes the key differences between the TP Rules 2012 and TP Rules 2023, highlighting the changes in timelines, information disclosure and the determination of arm's length prices, among others:

Items	TP Rules 2012	TP Rules 2023
Timeline to prepare TPD	<ul style="list-style-type: none"> No statutory timeline so long as the TPD is made available upon request by the IRB. 	<ul style="list-style-type: none"> TPD must be dated and be ready by the tax return filing deadline.
Information to be disclosed in a TPD	<ul style="list-style-type: none"> Does not include the list of information required in a TPD. Instead, it is covered under MTPG. The list of information under the MTPG is similar to Schedule 2 - Information on Company. 	<ul style="list-style-type: none"> Schedule 1: Information on MNE Group Schedule 2: Information on Company Schedule 3: Information on Cost Contribution Arrangement Any relevant supporting documents Date of completion of the TPD
Furnishing of a contemporaneous TPD	Not applicable	The Director General may, by notice under his hand require any person to furnish the contemporaneous TPD in writing within fourteen (14) days from the date of service.
Determination of arm's length price ("ALP")	Discuss the transfer pricing methods.	A person shall determine an ALP based on the most current reliable information, data or documents that are reasonably available at the time of determination.
Comparability of transactions	The application of data for comparability from other years prior to or after that basis period is allowed if complete and accurate data are available.	The application of data for prior years shall only be used to assist in the selection of the comparable and not for the use of multiple-year averages. This implies that multiple-year averages (weighted average) are no longer applicable.
Definition of ALR	Not included in the TP Rules 2012 but generally applied the OECD Guidelines between the 25th percentile and 75th percentile.	"Arm's Length Range" means a range of figures or a single figure falling between the value of 37.5 percentile to 62.5 percentile of the data set.
Transfer pricing adjustment	Not included in TP Rules 2012. However, in practice, the IRB would adjust the margins that fall below the median to the median of the ALR.	<ul style="list-style-type: none"> Margins that fall outside ALR, will be adjusted to Median. Margins that fall within the ALR would generally be acceptable.

Conclusion

The changes introduced in the TP Rules 2023 have far-reaching implications for taxpayers involved in transfer pricing transactions in Malaysia. These regulatory updates reflect the Malaysian Government's commitment to addressing concerns surrounding base erosion and profit shifting ("BEPS") not only for multinational groups operating within Malaysia but also among domestic companies benefiting from preferential tax incentives. Notably, Malaysia has emerged as the first country in Southeast Asia to formally define our own "arm's length range" that deviates from established international standards as outlined by the Organization for Economic Cooperation and Development ("OECD").

This departure from the OECD standards on transfer pricing necessitates careful planning of transfer pricing practices across the region for multinational corporations. To ensure compliance, companies must now proactively prepare their TPDs on an annual basis, in advance of filing their tax returns. Failure to meet this requirement may expose companies to potential penalties.

The TP Rules 2023 mark a pivotal shift from a "wait and see" approach to transfer pricing compliance in Malaysia. They emphasize the importance of maintaining up-to-date and contemporaneous TPD, making it a vital component of tax compliance for businesses operating in the country. Companies are urged to stay vigilant, adapt their transfer pricing strategies, and align them with the evolving regulatory landscape. By proactively adjusting their practices, companies can navigate the complexities of transfer pricing in Malaysia and mitigate the risk of penalties.

Contacts Crowe Malaysia

Song Sylvia

Executive Director, Transfer Pricing

sylvia.song@crowe.my