

Transfer Pricing Country Summary

Malaysia

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1. Introduction	3
2. Laws & Regulations	3
a) References to OECD/EU/Local Rules	3
b) Definition of Related Party	3
c) Nature of Transfer Pricing Documentation	4
d) Tax Havens & Blacklists	4
e) Advance Pricing Agreement (APA)	4
f) Audit Practice	5
3. Transfer Pricing Documentation.....	5
a) Level of Documentation	5
b) Industry Analysis	6
c) Company Analysis	6
d) Functional Analysis	6
e) Choice of Transfer Pricing Method.....	6
f) Economic Analysis – Benchmark Study.....	7
g) Inter-company (IC) Legal Agreement.....	7
h) Financial Statements.....	7
i) Production Process for TP Relevant Returns, Documents, Forms and Financials	7
j) Mandatory Language	9
k) Notification Requirement	9
l) Record Keeping	10
m) Penalties and Interest Charges	10

1. Introduction

Malaysia is completely committed to implementing the OECD's recommendations contained in Action 13 of the BEPS effort, and new rules have been released as part of this process. The ("MIRB") has stated that the goal of implementing Action 13 is to acquire information on an MNE's global operations from a location other than its headquarters. The MIRB can employ CbC reports, Transfer Pricing Documentation, and TP Disclosure Forms (such as the MNE Form) to analyze transfer pricing risk.¹

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The legal framework for transfer pricing is found in Section 140A, Malaysian Income Tax Act, 1967 ("the Act") and Income Tax (Transfer Pricing) Rules 2012 ("the Rules"). The MIRB issued the Transfer Pricing Guidelines ("the Guidelines") on 20 July 2012, which replaces the one issued on 2 July 2003. Section 140A of the Act requires the application of arm's length principle for controlled transactions between a person with his associated person, including cross-border and domestic transactions.

b) Definition of Related Party

Section 140A (5) explains that a "transaction between associated persons" shall refer as a transaction between:

- (a) Persons one of whom has control over the other;
- (b) Individuals who are relatives of each other; or
- (c) Persons both of whom are controlled by some other persons.

In this regard, a person includes a company and the term "control" has been defined under Section 139 of the Act. With respect to corporations, pursuant to the Guidelines, two companies are associated companies with respect of each other, if:

- (a) one of the companies participates directly or indirectly in the management, control or capital of the other company; or
- (b) the same persons participate directly or indirectly in the management, control or capital of both companies.

The interpretation of related companies or companies in the same group (referred to in the context of holding and subsidiary companies) is provided under Section 2(4) of the Act,

"Where:

- (a) two or more companies are related within the meaning of section 6 of the Companies Act 1965;

¹ [Document - Malaysia - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), p.ara. 13.1.

- (b) a company is so related to another company which is itself so related to a third company;
- (c) the same persons hold more than 50% of the shares in each of two or more companies; or
- (d) each of two or more companies is so related to at least one of two or more companies to which paragraph (c) applies, all the companies in question are in the same group for the purposes of this Act.”

Corporations are deemed to be related to each other if a corporation:

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation, that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.”

c) Nature of Transfer Pricing Documentation

TP is legislated under Section 140A of the Income Tax Act (ITA), 1967 (effective from 1 January 2009) and under Section 17D of the Labuan Business Activity Act 1990 (LABATA) (effective from the year of assessment 2020). The Malaysian Transfer Pricing Rules and Guidelines were introduced in 2012 (effective from 1 January 2009) and updated Malaysian Transfer Pricing Guidelines were released on 15 July 2017 (applicable where TP documentation is prepared after 15 July 2017, for any financial year (FY)).²

d) Tax Havens & Blacklists

N.A.

e) Advance Pricing Agreement (APA)

The MIRB introduced section 138C effective 1 January 2009, where any person carrying out cross-border transactions with an associated person may apply for an APA with the DGIR. Application can be made for future transactions on unilateral, bilateral or multilateral basis for a period of minimum 3 years or maximum 5 years (with a possible renewal). The decision on whether the application is successful for unilateral APA generally takes between 6 to 12 months, whereas an application for bilateral or multilateral APA may take up between 1 to 2 years. Effective 1 January 2018, a non-refundable fee of RM 5,000 will be charged for every application and renewal of APA pursuant to the Income Tax (Advance Pricing Arrangement) (Amendment) Rules 2017.

² [ey-worldwide-transfer-pricing-guide-10-september-2020 \(2\).pdf](#), p. 387.

f) Audit Practice

Transfer pricing inspections are carried out by the Inland Revenue Board of Malaysia (“IRBM”) regularly. The areas of focus include provision of intra-group services, e.g., a management service fee is charged by parent company to its affiliates and cost allocation of the head office. In addition, a company with financial ratios and figures that are outliers to industry average, multinationals that report consistent losses while continue to expand operation can expect to be scrutinized from the tax authority. In addition, intra-group financing arrangements are also being examined. A transfer pricing audit can be conducted up to 7 preceding years.

Although transfer pricing documentations are only required to be submitted to the IRBM when requested, corporate taxpayers are required to disclose in their annual corporate income tax return (“Form C”) whether a transfer pricing documentation has been prepared for that particular year of assessment. The Guidelines set the minimum threshold referenced to the gross income or the amount of intra-group financing for the preparation of a comprehensive set of documentation aimed at reducing administrative burdens on companies, as follows:

- A business with gross income exceeding RM 25 million, and the total value of related-party transactions exceeding RM 15 million;
- Where a person provides financial assistance, the Guidelines on financial assistance are only applicable if the value of the financial assistance exceeds RM 50 million.

Taxpayers who fall outside the above scope may opt to fully apply all relevant guidance as well as fulfil all transfer pricing documentation requirements in the Guidelines; or alternatively may opt to comply with simplified version of the transfer pricing documentation requirements under paragraph 11.2.4(a), (c) and (d) of the Guidelines only.

3. Transfer Pricing Documentation

a) Level of Documentation

The information to be contained in the transfer pricing documentation includes:

1. Organizational structure

Worldwide organisation and ownership structure covering all associated persons whose transactions directly or indirectly affect the pricing of the documented transactions.

2. Company’s organisation chart and a description of management structure. Nature of the business / industry and market conditions
3. Controlled transactions
4. Pricing policies.
5. Assumption, strategies and information regarding factors that influenced the setting of pricing policies

6. Comparability, functional and risk analysis
7. Selection of the transfer pricing method
8. Application of the transfer pricing method
9. Company's financial information (i.e. financial accounts)
10. Taxpayers should keep readily available documents and information that were used in preparing the transfer pricing documentation as they are necessary to support the transfer pricing analysis.

Effective 1 January 2017, Malaysia has introduced specific rules on CbC reporting requirements to facilitate the operation of mutual administrative assistance arrangement globally.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The Malaysian legislation follows the recommendation of the OECD Guidelines. The following methods are acceptable:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method;

- Transactional net margin method.

If none of the above is applicable, the tax payer may apply other methods provided the prices arrived at is in accordance with the arm’s length principle.

f) Economic Analysis – Benchmark Study

Local Malaysian comparables are preferred and IRBM is not prepared to accept foreign comparables, especially where such information is neither sufficient nor verifiable. Currently, foreign comparables do not meet the comparability factors of economic circumstances (i.e. geographic location of market, size of market).

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

h) Financial Statements

Companies registered in Malaysia are required to prepare statutory financial statements in accordance with the approved accounting standards issued by the Malaysian Accounting Standards Board (MASB). Foreign companies listed on a stock exchange in Malaysia may prepare financial statements in accordance with certain internationally recognised accounting standards such as International Financial Reporting Standards (IFRSs).

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If “No”, it can be filed in English)
Corporate Income Tax	File	e-C	It has to be filed within seven	No	No	No

			months from the end of the relevant FY – i.e., 31 December			
Master File	Prepare	OECD Guidelines	Upon request (within 30 days)	No	Yes	No
Local File	Prepare	OECD Guidelines	Upon request (within 30 days)	No	Yes	No
CbCR	File	Electronic format	12 months after the last day of the reporting FY of the MNC group	Before the last day of the FY for which the CbC report has to be filed	Yes	No
Local form: Form MNE [PIN1/20 17]	File	Available on the website of the tax authority	Available upon 14 days after the request by the MIRB	No	No	No
Local form: Form	File	Available on the website of the tax authority	Available upon 14 days after the request	No	No	No

JCK/TP/1 /2011			by the MIRB			
Annual Accounts	File	IFRS	7 months after the financial year end	No	No	No
Segment ed P&L	Prepare	Excel/Othe r	Ready upon filing CIT/TP document ation	No	No	No
* Malaysia has signed the MCAA agreement for the filing of CBCR						
* Malaysia does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

All relevant documentation should be in, or translated into, Malay or English.

k) Notification Requirement

A letter might be used to send the notification. The MIRB posted three sample letters on its website, one for a reporting entity, one for a non-reporting entity that is a constituent entity under a Malaysian reporting entity, and one for a non-reporting entity that is a constituent entity under a reporting entity outside Malaysia. The penalties for failing to notify the MIRB are the same as those for filing CbC reports late, incompletely, or incorrectly. In practice, however, the MIRB has not fined taxpayers in the first year of the rule's adoption.

The MIRB announced on its website on May 25, 2021 that, beginning with the year of assessment 2021, constituent entities could provide the CbC notification in their annual tax return in Form C usually within 7 months of the end of their financial year, rather than by the end of their financial year under the previous notification rules. Constituent entities filing additional forms shall continue to send notification in the same manner as before, by the end of their fiscal year.³

³ [Document - Malaysia - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.2.4.

l) Record Keeping

Taxpayers are required to keep sufficient records for seven years from the end of the tax year to which any income from the business related to enable the tax authority to ascertain the income or loss from that business.

m) Penalties and Interest Charges

As set out in the Guidelines on Transfer Pricing Audit Framework issued by the MIRB, depending on the quality of transfer pricing documentation, the penalty regime for understatement of income arising from transfer pricing arrangements are as follows:

Understatement or omission of income arising from transfer pricing arrangement	Penalty Rate		
	After audit commences	Voluntary disclosure after the case is selected for audit but before audit commences	Voluntary disclosure before selection for audit
Taxpayer did not prepare transfer pricing documentation	35%	30%	15%
Taxpayer prepared transfer pricing documentation but did not fully comply with the requirements under the Guidelines	25%	20%	10%
Taxpayer prepared a comprehensive set of documentation that complies with all the requirements set out in the Guidelines	0%	0%	0%
Non-disclosure (discovery during audit)	100% of tax undercharged		
Repeated offences	Increased by 20% for each repeated offence but not exceeding 100%		