



Tax Espresso – Transfer Pricing Alert

New Transfer Pricing Rules & APA Rules 2023

Greetings from Deloitte Malaysia Tax Services,

The Inland Revenue Board of Malaysia (IRBM) on 29 May 2023 has released the new Income Tax (Transfer Pricing) Rules 2023 [[P.U.\(A\) 165/2023](#)] (replacing the previous version of Income Tax (Transfer Pricing) Rules 2012) [[P.U.\(A\) 132/2012](#)]. The Income Tax (Advanced Pricing Arrangement) Rules 2023 [[P.U.\(A\) 166/2023](#)] has also been introduced [replacing Income Tax (Advance

Pricing Arrangement) Rules 2012 [[P.U.\(A\) 133/2012](#)] read with Income Tax (Advance Pricing Arrangement) (Amendment) Rules 2017 [[P.U.\(A\) 449/2017](#)].

The key amendments introduced by these new rules are summarised below. To share more insights into these new rules, and how it will impact specific taxpayer scenarios, Deloitte will be hosting a complimentary webinar, the invitation for which would be sent in due course.

Income Tax (Transfer Pricing) Rules 2023 (TP Rules)

- **Effective from year of assessment (YA) 2023**

The new TP Rules are effective from YA 2023 (i.e. any financial year ending on or after 1 January 2023). The Income Tax (Transfer Pricing) Rules 2012 [[P.U.\(A\) 132/2012](#)] are revoked in parallel.

- **Transfer pricing documentation to be ready by income tax return filing date**

Transfer pricing documentation has to be prepared on a contemporaneous basis (i.e. prior to the due date for furnishing a return in the basis period for a YA in which a controlled transaction is entered into). Reference to the clause for preparation of transfer pricing documentation with an ex-ante approach has been removed.

- **Date of preparation to be mentioned in transfer pricing documentation**

Transfer pricing documentation prepared shall contain the date on which it has been completed. This is to ensure that transfer pricing documentation is prepared on contemporaneous basis (i.e. before the due date for filing return). Previously, the IRBM, through frequently asked questions (FAQs) dated 1 November 2018, had indicated that the date of the comparable search must be stated in the transfer pricing documentation.

- **Significant additional disclosure requirements in transfer pricing documentation**

The new TP Rules have outlined the contents of contemporaneous transfer pricing documentation in the following three schedules –

- **Schedule 1** captures most of the contents of Master File as outlined in Paragraph 11.2.5 of the existing Malaysia TP Guidelines. A taxpayer that is part of a multinational enterprise group which is subject to the requirement of Master File, could potentially make cross-reference to the group Master File to comply with Schedule 1 content requirements.

However, it will be onerous for other taxpayers (especially small and medium enterprises) to compile and present these information.

- **Schedule 2** captures most of the contents outlined in Paragraph 11.2.4 of the existing Malaysia TP Guidelines.
- **Schedule 3** provides the list of information and documents required if the taxpayer is party to a cost contribution arrangement with an associated person.

- **Introduction of a narrow arm's length range and use of median to perform transfer pricing adjustment**

The new TP Rules have defined "*arm's length range*" as a range of figures falling between the value of 37.5 percentile to 62.5 percentile of the comparables data set. If the price used in a controlled transaction is outside this arm's length range, then arm's length price shall be the median, which is defined as the value at the mid-point of the arm's length range.

Further, where the price used in a controlled transaction is within the arm's length range, under specific circumstances (viz. uncontrolled transaction has lesser degree of comparability or comparability defects cannot be quantified/adjusted), the IRBM can make a transfer pricing adjustment to the median or any other point above the median within the arm's length range.

- **Rule enabling offsetting adjustment has been removed**

The previous version of the rules recognised the concept of offsetting adjustment, which has been removed in the new TP Rules. This would impact domestic controlled transactions, wherein, any transfer pricing adjustment made on a taxpayer may not make the counterparty taxpayer eligible for a corresponding relief.

- **Alignment with the revised OECD Transfer Pricing Guidelines**

The new TP Rules have been aligned with the revised OECD Transfer Pricing Guidelines (post BEPS) with respect to certain important aspects, such as accurate delineation of controlled transactions, cost contribution arrangements and entitlement to income attributable to intangibles.

Advanced Pricing Agreement (APA) Rules 2023 (APA Rules)

- If the counterparty jurisdiction is a treaty partner or the Malaysian taxpayer is a permanent establishment, only bilateral/multilateral APA will be

permitted. This is to encourage bilateral certainty and to avoid double taxation.

- Rollback allowed only for bilateral/multilateral APA and subject to certain conditions, for up to three years immediately preceding the covered period.
- Documentation requirements for requesting pre-filing meeting are now largely aligned with Paragraph 11.3 of the existing APA Guidelines 2012, e.g., contemporaneous transfer pricing documentation, description of critical assumptions, etc. need to be furnished together with the request for pre-filing meeting.
- Timeline for submission of application for unilateral/ bilateral/multilateral APA has been extended to six months (instead of two months as per the previous rules). Further, timeline for renewal application has also been defined now to two months.
- A timeline of thirty days has been specified for any request for submission of additional information during the course of APA proceedings, failing which, the application shall be deemed to have been withdrawn by the taxpayer.
- Any transfer pricing arrangement which involves treaty abuse has been listed as one of the circumstances under which, the IRBM may decline an application for an APA. Similarly, failure to disclose any occurrence of voluntary disclosure, investigation, audit or incentive approval may lead to revocation of an APA.
- Certain additional contents have been specified for the APA compliance report.
- Non-refundable APA application fee of:
 - RM 5,000 if taxpayer submits application within two months after receipt of notification from the IRBM;
 - RM 10,000 if taxpayer submits application two months after, but within six months from, receipt of notification from the IRBM; and
 - RM 5,000 for any renewal application.

Takeaways for taxpayers

Taxpayers are required to have robust and contemporaneous transfer pricing documentation as mandated by the new TP Rules. Also, existing transfer pricing policies may need to be revisited to align with the new definition of arm's length range and the endorsement of median.

Taxpayers keen on certainty should opt for APA, taking into consideration the timelines, fees, information requirements and coverage available.

Get in touch

If you would like more information or to discuss the above, please reach out to us.

Name	E-mail	Contact number
Subhabrata Dasgupta (Transfer Pricing Leader)	sudasgupta@deloitte.com	+603 7610 8376
Gagandeep Nagpal (Executive Director)	gnagpal@deloitte.com	+603 7610 8876
Philip Yeoh Keng Jin (Executive Director)	phyeoh@deloitte.com	+603 7610 7375
Vrushang Sheth (Executive Director)	vsheth@deloitte.com	+603 7610 8534
Penang		
Tan Wei Chuan (Executive Director)	wctan@deloitte.com	+604 294 5727
Johor Bharu		
Thean Szu Ping (Executive Director)	spthean@deloitte.com	+607 268 0988
Kuching		
Chai Suk Phin (Director)	spchai@deloitte.com	+608 246 3311



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