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# Tax Espresso – Special Alert

Malaysia Transfer Pricing Guidelines 2024 and Transfer Pricing Tax Audit Framework

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# Greetings from Deloitte Malaysia Tax Services

## Introduction

In December 2024, the Inland Revenue Board of Malaysia ("IRBM") has published the Malaysia Transfer Pricing Guidelines 2024 ("**MTPG 2024**") and Transfer Pricing Tax Audit Framework ("**TPAF**"). These follow the release of the Income Tax (Transfer Pricing) Rules 2023 [P.U.(A) 165/2023] ("**TP Rules**") and the amendments to the Income Tax Act 1967 (the "**Act**") that introduced section 113B and subsections 140A (3A), (3B), (3C), and (3D).

This alert summarises the key takeaways for taxpayers and highlights certain areas that may require further deliberations with the IRBM.

## Applicability

MTPG 2024 are effective from the year of assessment 2023. This is in line with the application of the TP Rules 2023.

The effective date of TPAF is 24 December 2024.

## Key takeaways from Malaysia Transfer Pricing Guidelines 2024

| Summary and considerations |
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| **Contemporaneous transfer pricing documentation ("CTPD")**<br><br>Definition of CTPD<br><br>CTPD refers to transfer pricing documentation that is:<br><br>a) Prepared in accordance with the TP Rules; and<br><br>b) Brought into existence prior to the due date for furnishing a return in the basis period for a year of assessment in which a controlled transaction is entered into.<br><br>Appendix A of MTPG 2024 prescribe information and documents related to specific controlled transactions that should form part of CTPD, to complement the contents already required under the TP Rules.<br><br>Read with TPAF, it is further clarified now that failure to prepare CTPD or failure to submit CTPD within the stipulated timeframe will both result in an offence under section 113B of the Act, triggering at least the penalty provided therein of RM 20,000 to RM 100,000 for each year of assessment of the offence.<br><br>Exemptions<br><br>Persons not required to prepare CTPD:<br><br>a) Individuals not carrying on a business;<br><br>b) Individuals carrying on a business (including partnerships) engaged solely in domestic controlled transactions;<br><br>c) A person with controlled transactions totalling not more than RM 1 million; or<br><br>d) A person involved solely in domestic controlled transactions with another person where both parties:<br><br>i. Do not enjoy tax incentives; or<br><br>ii. Are taxed at the same headline tax rate; or<br><br>iii. Do not suffer losses for two consecutive years prior to the controlled transactions.<br><br>Acknowledging that the Act and the TP Rules prevail over the guidelines, MTPG 2024 clarify that any person who is exempted from preparing CTPD must still comply with the arm's length principle for all controlled transactions and must maintain documentation to "prove" the determination of arm's length price in such transactions.<br><br>Clarification would be needed from the IRBM whether for (c) above, RM 1 million is computed on a per year of assessment basis. Similarly, clarity is also needed on the definition of "losses" in (d)(iii) above – whether these refer to tax losses or accounting losses, since for transfer pricing purposes, the IRBM generally considers "accounting" losses. |

| Summary and considerations |
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Revisions to thresholds for full CTPD

A person fulfilling the following is required to prepare full CTPD:

a) Gross business income exceeding RM 30 million in total, and cross-border controlled transactions totalling at least RM 10 million annually; or

b) Receives or provides controlled financial assistance exceeding RM 50 million annually.

It is important to note that (b) above, does not distinguish between domestic and cross-border controlled financial assistance. However, an example provided in MTPG 2024 clarify that the exemption from CTPD for solely domestic controlled financial assistance transactions will prevail over this threshold. This is an area, among others, requiring careful deliberation by taxpayers, considering the heightened scrutiny of domestic controlled financial assistance arrangements by the IRBM in recent years. The potential downside implications of availing the exemption may far outweigh the benefits, in the event of a transfer pricing dispute.

Clarification would be needed from the IRBM on the treatment of shorter accounting periods, since the term used is "annually", i.e. whether the IRBM intends this to mean "year of assessment".

Minimum CTPD

A person who does not qualify for exemption from preparation of CTPD and does not fulfil the thresholds for full CTPD, may opt to prepare minimum CTPD that has reduced requirements. The minimum CTPD must be completed and dated similar to full CTPD.

While such minimum CTPD should list all controlled transactions entered into by the person, it is allowed that the detailed information required on controlled transactions and pricing policies be confined to the "key controlled transactions" only, i.e. transactions that are related to the principal activity of that person or constitute at least 20% of the operating revenue of that person for the relevant year of assessment.

On comparability analysis, MTPG 2024 have clarified that this may be requested by the IRBM to justify the transfer prices, if not already included in minimum CTPD.

Permanent establishment

A permanent establishment that has controlled transactions is required to prepare full CTPD regardless of any exemption or thresholds prescribed in the guidelines.

Other prescriptions and considerations

- The guidelines provide an important clarification that only basis periods beginning on or after 1 January 2019 will be subjected to subsection 140A(5A) of the Act (expanded definition of "control"). The guidelines also include some clear examples on the interpretation of the said subsection. However, further deliberation with the IRBM is needed on the determination of the arm's length nature of transactions that are deemed as "controlled transactions" solely due to the application of subsection 140A(5A), although the pricing policies and terms remain the same as prior to the implementation of the said subsection.

| Summary and considerations |
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| • During a tax audit, updating the benchmarking analysis included in the CTPD with the year-on-year financial information on comparables available at that stage will not make the original transfer pricing documentation non-contemporaneous, provided all other requirements of CTPD have been satisfied. However, if the updated benchmarking results in a transfer pricing adjustment, a surcharge may be imposed on that adjustment.<br><br>• Similarly, preparation of comparability analysis only upon request from the IRBM will not make the original minimum CTPD non-contemporaneous, provided the eligibility criteria for minimum CTPD are met.<br><br>• In case of losses, the CTPD should explain non-transfer pricing factors such as ineffective business strategies, mismanagement, global economic situations, and natural disasters that may have contributed to the losses.<br><br>• In case a multinational enterprise group has prepared a master file that includes all the information required, such a file can be submitted as a replacement for Schedule 1 of the said rules. In this context, in-scope multinational enterprise groups should:<br><br>– Exercise caution in using standard OECD Master Files as substitutes for Schedule 1, because the latter requires specific information relevant to the business in Malaysia, which may not be sufficiently elaborated in the former; and<br><br>– Revisit the timing of preparation of master file (generally, within 12 months from the end of the financial year of the ultimate parent entity of the multinational enterprise group), because it is unclear whether the transfer pricing documentation prepared by a person will be deemed non-contemporaneous if the master file that is intended to be submitted as the replacement for Schedule 1 is not ready prior to the due date for lodgment of return of that person for the relevant year of assessment.<br><br>• While the term "multinational enterprise group" is used throughout the guidelines, it is defined differently in the guidelines compared to the TP Rules, requiring clarification from the IRBM on the exact definition to be considered. |
| Pass-through costs<br><br>Definition<br><br>Pass-through costs are third party costs that a person incurs on behalf of its group members or independent customers when performing functions as an intermediary, in respect of which the person neither performs any value-added functions nor assumes any risks.<br><br>Qualifying criteria<br><br>For the cost of services obtained from third parties on behalf of group members to be considered as "pass-through costs", the following requirements apply:<br><br>• Detailed functions, assets and risks analysis must be submitted to the IRBM, to substantiate that the person is acting as an intermediary in relation to such costs; |

Summary and considerations

- Documents that demonstrate the services are for the benefit of the associated service recipient(s) must be submitted to the IRBM;
- The person should neither perform any value-adding functions nor enhancements in respect of the services procured;
- The person should not assume any liability or risks in relation to the costs;
- The associated service recipient(s) must assume the liabilities or risks in relation to the costs of the acquired services;
- The liability associated with the failure of any services provided must remain with the independent service providers; and
- The person must be rewarded for its intermediary functions at arm's length.

While the guidelines confine the prescriptions to "third-party costs" and "cost of services obtained", in reality, pass-through costs are common in various scenarios, and may not be so restricted in occurrence. Some examples include:

- One member of the group (generally the headquarters) procuring ERP or other software licenses on behalf of related parties;
- Local marketing and sales promotion expenses reimbursed to the limited risk distributor by the principal as per the contractual terms;
- Where, for administrative convenience, one member of the group aggregates service charges from several related party shared service entities, and recharges these to the actual service recipients;
- Pass-through costs may also arise in cases where the customer dictates the selection of the supplier and the price of raw materials, regardless of whether the customer and / or the supplier are associated enterprises of or unrelated to the person.

From a transfer pricing perspective, it is important to assess whether the person is performing any value-adding functions with respect to these costs, or merely performing agency / intermediary functions. Whether the IRBM will acknowledge pass-through costs in scenarios beyond the narrow prescription in the guidelines, will only be known during the audit. In the meantime, it is important to reassess existing intragroup arrangements due to the strict qualifying criteria for pass-through costs, especially the contractual requirements.

Treatment of pass-through costs

If pass-through costs are excluded in computing the cost-based profit level indicator of a person, the following need to be demonstrated:

a) Reliable adjustments can be made to remove such pass-through costs from the denominator of the (internal) comparables; or

b) Operating profit of the (external) comparables have excluded similar pass-through costs.

**Summary and considerations**

If (a) and (b) above are not demonstrated, the IRBM may not allow the exclusion of pass-through costs in computing the cost-based profit level indicator of the tested party or the comparables.

For an appropriate application of the arm's length principle, it is important to consider whether an independent party in comparable situations would agree to pay a mark-up on such pass-through costs, which could make the commercial arrangement unviable. The prescription in the guidelines to limit adjustment to the tested party's cost-based profit level indicator computation only in cases where similar adjustments can also be made to external comparables will be a challenge on most occasions given the nature and extent of disclosures in the audited financial statements of local comparables. This would pose a challenge, especially for industries and business models where pass-through costs are common, e.g. logistics and transportation, advertising agency, travel and hospitality, etc. and in instances where the taxpayers have historically relied on external local comparables. Also, it is unclear whether a similar treatment of pass-through costs apply to revenue-based or asset-based profit level indicators.

**Comparability analysis**

Use of foreign tested party and foreign comparables

While continuing to endorse the merits of selecting the less complex entity as the tested party, it is reiterated that the use of foreign tested parties and foreign comparables that do not have sufficient and verifiable information would not be accepted by the IRBM.

The nature and the extent of documentation required from the taxpayer to sustain the use of foreign tested party and/or foreign comparables during an audit, are generally onerous. In the absence of the required documentation, the IRBM can resort to the use of local tested party and local comparables. Previously, it was clarified by the IRBM that the use of foreign comparables without proper justification will be seen as *"lesser degree of comparability"*, a circumstance under which the TP Rules 2023 allow the IRBM to make a transfer pricing adjustment to the median or any point above the median up to the 62.5 percentile, even though the taxpayer's result is within the arm's length range.

Use of single-year data instead of multiple year average

Consistent with the TP Rules, it is reiterated that instead of multiple year averages, the most current reliable data of comparable companies that are readily available should be used for preparing CTPD.

Selection criteria for comparables

If the local tested party performs additional functions or assumes higher risk than the selected comparables, such comparables will be deemed imperfect, with lesser degree of comparability, allowing the use of median or any point above the median up to the 62.5 percentile for transfer pricing adjustment by the IRBM.

Size criteria in terms of sales, assets and number of employees are stressed in applying quantitative filters. Although the guidelines clarify that the choice and application of the selection criteria, as mentioned therein, are neither limitative nor prescriptive, it is emphasised that comparables with a turnover of less than 10% of the tested party's revenue will be deemed to have a "lesser degree of comparability", unless the IRBM accepts such comparables. If the comparables are alleged to have a "lesser degree of comparability", there is risk of a transfer pricing adjustment based on the median or any point above the median up to the 62.5 percentile.

| Summary and considerations |
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| Corresponding adjustment<br><br>While the TP Rules no longer cover “offsetting adjustment”, the guidelines provide clarification that any transfer pricing adjustment made by the IRBM will also be reflected in a corresponding adjustment upon request of the counterparty to the controlled transaction.<br><br>TPAF has emphasised that for transfer pricing adjustments made by the IRBM to domestic controlled transactions, an offsetting adjustment is not automatic. Instead, it is at the discretion of the IRBM and subject to audit of the counterparty requesting for the offset. |
| Low value adding intra-group services (LVAS)<br><br>Simplified approach for LVAS<br><br>a) Taxpayer elective approach.<br><br>b) Does not apply to services that qualify as LVAS but are also provided to unrelated customers. In such cases, reliable internal comparables should be used to determine the arm’s length price.<br><br>c) Applicable to:<br><br>i. Malaysian service providers; and<br><br>ii. Malaysian service recipients, for only payments made to LVAS providers based in jurisdictions that have similarly adopted the OECD simplified approach.<br><br>d) LVAS refer to services that are of a supportive nature and could be the principal business activity of the service provider (e.g., a shared service centre), provided always that the underlying services are not part of the core business of the multinational enterprise group. In addition, for services to qualify as LVAS, they:<br><br>i. Should not require the use of unique and valuable intangibles, or lead to the creation of unique and valuable intangibles; and<br><br>ii. Should not involve the assumption or control of substantial or significant risk by the service provider, or give rise to the creation of significant risk for the service provider.<br><br>e) The guidelines provide a list of services that would not qualify as LVAS, and provide some examples of services that would likely meet the definition of LVAS. Also, a list of information that should form part of CTPD of a person making or receiving payment for LVAS is provided in Appendix A of the guidelines.<br><br>Profit mark-up for LVAS<br><br>A mark-up of 5% can be applied to fully loaded costs (excluding any pass-through costs) of rendering LVAS, and such mark-up need not be justified by a benchmarking study. |

| Summary and considerations |
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| Among others, the following would require deliberation by taxpayers in respect of the new guidance on simplified approach for LVAS:<br><br>• For Malaysian service recipients, benefits test documentation is still required, because the simplified approach relaxes only the need for benchmarking study.<br><br>• Referring to (c)(ii) above, there is no clear definition of "adopted" in the guidelines – countries may follow specific sovereign approach towards incorporation of any OECD guidance, ranging from automatic inclusion in law, through guidelines or rules, through general audit practices only, etc.<br><br>• Malaysian service recipients making payments for LVAS to service providers in multiple jurisdictions, some of which may not have adopted the OECD simplified approach, may not be able to fully benefit from the simplified approach due to consistency considerations.<br><br>• The guidelines do not contain an explicit clarification similar to paragraph 7.48 of the OECD simplified approach. This may elevate the risk of disputes for Malaysian providers of services that do not qualify as LVAS, if such services are now deemed to generate higher than 5% mark-up on relevant total cost, as the default. |
| Special considerations for intangibles, financial transactions and business restructuring<br><br>Intangibles<br><br>MTPG 2024 retain the emphasis on local contribution in the context of R&D functions and marketing activities, which should be given due consideration in determining the arm's length price for controlled transactions. The following are listed as activities performed locally that would be deemed as "economically significant and important" in the context of controlled transactions involving intangibles:<br><br>• R&D activities that lead to the customisation or enhancement of existing or new products;<br><br>• Activities that lead to improvements in manufacturing processes;<br><br>• Advertising, marketing, and promotional activities that lead to the creation or enhancement of marketing intangibles; and<br><br>• Managing customer relationship, localisation of products, advertising, and market survey including the collection of local data.<br><br>Where valuation techniques are used for determining the arm's length price for the transfer of intangibles or rights in intangibles, the guidelines suggest including in CTPD, sensitivity analysis reflecting the change in estimated intangible value produced by the adopted valuation model when alternative assumptions and parameters are used. The guidelines also suggest that, usually, projections prepared for non-tax business planning or investment purposes are more reliable than projections prepared exclusively for tax purposes or exclusively for purposes of a transfer pricing analysis. |

| Summary and considerations |
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| The following would increase the risk of disputes in controlled transactions involving intangibles:<br><br>• A person who has contributed to the enhancement of an intangible, is considered to have "economic ownership" of that intangible. Also, "skilled workforce" is considered an "asset owned". These assertions are deviations from the OECD guidance on intangibles.<br><br>• A very broad definition of activities that would qualify as "economically significant" in the context of DEMPE of intangibles.<br><br>• Enhanced documentation requirement to demonstrate "long" useful economic life of intangibles, to allow royalty payment in the absence of evidence of continuous enhancement or improvement made in such intangibles by the licensor.<br><br>• Situations where there are significant differences between the assumptions relating to discount rates or useful economic life of intangibles, made in the valuation of an intangible for transfer pricing purposes and the one conducted for other purposes.<br><br>Financial transactions<br><br>MTPG 2024 acknowledge that accurate delineation of the actual transaction should precede any pricing attempt, and such accurate delineation should begin with the identification of the economically relevant characteristics of the transaction based on the commercial or financial relations between the parties and the conditions and economically relevant circumstances attaching to those relations. This is a much-needed clarification, and the proper application of this concept in tax audits holds potential for amicable resolution of disputes, especially in debt versus equity contentions.<br><br>It is indicated that separate guidelines will be issued to address specific transfer pricing requirements in relation to intragroup financial transactions, considering the complexity and depth of analysis required for such transactions.<br><br>Appendix A of the guidelines lists the following documentation requirements that require further clarification from the IRBM:<br><br>• Evidence that the person has reviewed existing intragroup financial assistance arrangements on a periodic basis to ensure that all terms and conditions of those arrangements remain arm's length. The frequency of the review is not prescribed in the guidelines.<br><br>• An agreement that contains details of the lender and the borrower, the date of the financing and the amount involved, the interest rate charged, and the basis of charge is deemed as "necessary" in delineating the actual transaction. Based on the remainder of the guidelines, it is possible to delineate the actual transaction based on the conduct of the parties. Financial assistance arrangements formalised without written contracts are common, at least insofar as domestic controlled transactions are concerned. |

**Summary and considerations**

Business restructuring

MTPG 2024 build on the limited guidance in the previous version of the guidelines, with detailed prescriptions around accurate delineation of the restructuring transaction, pre and post restructuring functional analysis of the relevant parties, evaluation of realistic alternatives available including consideration for compensation or indemnification for the restructuring, etc.

The guidelines continue to place emphasis on actual reduction in functions, assets, and risks to justify commensurate reduction in profits, even if the restructuring is driven by tax considerations.

Additional documentation on business restructuring that should form part of CTPD are prescribed in Appendix A of the guidelines.

While business restructurings have always been under the spotlight, with the introduction of specific disclosure requirements in the return effective from year of assessment 2022, tax audits have intensified on business restructurings that reduce the profits attributable to the Malaysian operations of a group, as also reiterated in TPAF. Traditionally, some taxpayers would perform a thorough OECD Chapter IX (Transfer pricing aspects of business restructurings) analysis only upon scrutiny by the IRBM. MTPG 2024 (Chapter 5 and Appendix A) have now reinforced that such analysis should be included in CTPD.

**Other matters**

Transactional profit split method

The guidelines reiterate that the transactional profit split method may be the most appropriate for cases where no comparable transactions between independent parties can be identified. While the previous version of the guidelines identified “highly integrated operations” (in cases for which a one-sided method would not be appropriate) as the instance that could warrant the use of this method, MTPG 2024 go farther to also include situations when both parties to the transaction make unique and valuable contributions. However, these new guidelines do not indicate whether transactions involving the shared assumption of economically significant risks by the parties or the separate assumption of closely related economically significant risks, are suitable for application of this method.

Net profit for purposes of transfer pricing analysis

MTPG 2024 provide important clarifications on the treatment of items, such as foreign exchange gains / losses, start-up costs, terminations costs, gains / losses from disposal of property, plant, and equipment, etc. in determining the net profit for the application of the transactional net margin method. Importantly, the guidelines explain the following:

- Recurring items (e.g., foreign exchange gain / loss and gain / loss from disposal of property, plant and equipment) shall not be considered exceptional or extraordinary items, regardless of their amount.

- If the foreign exchange risk in a controlled transaction is borne by the tested party, the consequent foreign exchange gains or losses should be consistently accounted for, either in the calculation of the net profit indicator or separately.

| Summary and considerations |
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| Commodity transactions<br><br>The guidelines have expanded the prescriptions in the previous version on comparability analysis, with enhanced documentation requirements. Specifically with respect to "pricing date", the following are important considerations:<br><br>• The transfer price used in a controlled commodity transaction with reference to a pricing date agreed between the associated persons will be accepted only if reliable evidence of consistency between such pricing date and the actual conduct of the parties is furnished. If the pricing date agreed between the associated persons is inconsistent with their actual conduct, the IRBM may determine a different pricing date consistent with the evidence provided by the facts.<br><br>• If reliable evidence of the actual pricing date agreed between the associated person is not available, the IRBM may use the "date of shipment" (from the bill of lading or equivalent document) as the pricing date. This means that the price for the commodities being transacted would be determined by reference to the average quoted price on the shipment date, subject to any required comparability adjustments. |

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## Key takeaways from Transfer Pricing Tax Audit Framework

| Summary and considerations |
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| **Years of assessment covered under audit**<br><br>Audit of transfer pricing matters can cover up to 6 open years of assessment, with the possibility of extending the coverage to 7 open years of assessment. This limit does not apply to cases involving fraud, wilful default or negligence, as per subsection 91(3) of the ITA. |
| **Selection of cases**<br><br>Selection of cases for examination of transfer pricing matters is based on:<br><br>• Certain risk assessment criteria for controlled transactions;<br>• Restructuring; and<br>• Information received from third parties, including foreign tax authorities.<br><br>The selection criteria have been updated. As per the previous framework, the amount of the controlled transactions was the main criteria for selection, before any risk analysis is conducted. |
| **Audit process and timelines**<br><br>• A letter requesting documents and information (including TPD) will be issued to the taxpayer. Taxpayer is required to respond within 14 calendar days from the date of this letter. If taxpayer fails to submit TPD within this prescribed time, a written notice under section 113B of the ITA and subrule 5(3) of the TP Rules will be issued to the taxpayer. After the submission of the TPD, within 14 days, the IRBM must notify the taxpayer in writing if the TPD received is incomplete.<br><br>• The taxpayer is responsible for ensuring that all documents related to the transactions of the business in Malaysia that are kept abroad by a related party can be accessed by the IRBM. This is particularly relevant for taxpayers that rely on, for instance, cost allocation data (intragroup service fee payments) and benchmarking studies prepared by the foreign counterparties.<br><br>• An audit visit notification letter will be issued to the taxpayer at least 14 calendar days before the audit visit, or the notification will be communicated (in advance) via phone or email. The audit visit period is now reduced to 1-3 days, which may be extended in specific scenarios. The commencement date of the audit refers to the date of the visit specified in the notification letter or any other date that is agreed upon by both parties. In cases where no audit visit is initiated by the IRBM, a letter determining the commencement date of the audit will be issued to the taxpayer. The audit would be completed within 450 calendar days from the audit commencement date, otherwise the taxpayer will be notified by the IRBM.<br><br>• The business information slides need to be presented during the audit visit, and a copy of these slides must be submitted to the audit officer at least 7 calendar days before the audit visit. |

**Summary and considerations**

**Offsetting adjustment**

Any transfer pricing adjustment made by the IRBM to a domestic controlled transaction will not result in an automatic offsetting adjustment for the counterparty. Instead, such counterparty must apply for the offsetting adjustment, and the IRBM will conduct an audit of that counterparty before the application is progressed.

One of the responsibilities of a taxpayer subject to transfer pricing tax audit is to prepare complete TPD and submit it to the IRBM within the stipulated time. Referring to offsetting adjustment, since the requesting counterparty will be audited by the IRBM (triggering the need to submit complete TPD) to determine if the application may be considered, maintaining robust transfer pricing documentation will be beneficial to the parties to any domestic controlled transactions regardless of the exemption from CTPD that may apply to such persons under MTPG 2024.

**Offence, penalty and surcharge**

- Surcharge under subsection 140A(3C) of the ITA, at a rate of up to 5% on the amount of the transfer pricing adjustment (irrespective of any assessment or additional assessment) will be imposed for audit cases commencing on or after 1 January 2021. The surcharge rate for a voluntary disclosure that complies with TPAF will be up to 4% and could be zero. TPAF does not assert if request for voluntary disclosure by taxpayers will be accepted for cases that have only a surcharge implication and no assessment or additional assessment.

- From the year of assessment 2023, failure to submit CTPD within 14 days from the date of the written notice from the IRBM will be deemed as an offence under subsection 113B(1) of the ITA, which may result in, upon conviction, a fine of RM 20,000 to RM 100,000, or imprisonment for up to 6 months, or both. It is unclear from TPAF if the fine and / or the imprisonment term will apply for each year of assessment of the offence separately.

- If no prosecution is instituted, a penalty of RM 20,000 to RM 100,000 may be imposed for each year of assessment of the offence, separately, at the final stage of the audit process. The amount of the penalty will be contingent on the period of delay in submitting CTPD, as follows:

| Period of delay (Number of days) | Penalty amount |
|---|---|
| Up to 7 days | RM 20,000 |
| More than 7 days up to 14 days | RM 40,000 |
| More than 14 days up to 21 days | RM 60,000 |
| More than 21 days up to 28 days | RM 80,000 |
| More than 28 days | RM 100,000 |

- Considering the TP Rules were gazetted on 29 May 2023, TPAF provides that the IRBM may give a concession for imposition of the penalty under section 113B of the ITA to taxpayers for accounting periods beginning before 29 May 2023. However, clarification is needed from the IRBM whether this concession would be given only to persons that fail to submit TPD within 14 days from the date of the written notice from the IRBM, or only to persons that fail to submit TPD that complies with the TP Rules and MTPG 2024, or to both.

| Summary and considerations |
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| Appeal<br><br>• Any appeal against a notice of assessment (or additional assessment), notification of non-chargeability and / or written notice of imposition of the penalty under subsection 113B(4) of the ITA must be made through a complete Form Q to the respective State IRBM Director / Special Branch Director, except for appeals in relation to a notice of surcharge under subsection 140A(3C) of the ITA. An aggrieved person may apply in writing (other than Form Q) to remit the surcharge imposed to the State IRBM / Special Branch office that issued the notice imposing the surcharge. |

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