

# Malaysia Transfer Pricing Guide 2024

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# Malaysia

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

A Taxpayer who enters into a controlled transaction shall prepare contemporaneous TP documentation that is brought into existence before the due date for furnishing a return for the respective year.

The TP Documentation is not required to be submitted with the annual Return Forms. However, the documentation should be made available within 14 days upon request by IRBM.

### **Since when does a TP documentation requirement exist in your country?**

2009.

### **Adoption of the OECD or UN legislation in your country?**

OECD.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Yes.

### **Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

Yes, each entity of an MNE is required to prepare a standalone TP report if it has related party transactions.

### **Which TP methods may be applied?**

The IRB accepts the following methods (Comparable Uncontrolled Price ("**CUP**"); Resale

Price method ("**RPM**"); Cost Plus method ("**CPM**"), Profit Split ("**PS**"); and Transaction Net Margin Method ("**TNMM**").

Under the 2023 TP Rules, a Taxpayer shall determine the arm's length price for a controlled transaction by applying the most appropriate method as follows:

- › The traditional transactional method;
- › The transactional profit method; or
- › Any other method allowed by the Director General that provides the highest degree of comparability between the transactions.

Further, the basis for the method selected should be supported by an explanation and reasons that the method selected, and the Profit Level Indicator are appropriate as a better approximation to determine the arm's length price and be based on the facts and circumstances, including the economically relevant characteristics of the controlled transaction that has been accurately delineated.

### **Is there a stated preference for any particular TP methods?**

The IRB may review the method selected and then replace the selected method with the other most appropriate method if IRB has reason to believe that the Taxpayer's selected method is not the most appropriate method in determining the arm's length price.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

The Malaysian TP regulations are largely based on OECD Guidelines. However, with the introduction of the 2023 TP Rules, the disclosures required in Malaysia Local File are

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more detailed and extensive as compared to the BEPS Action 13 requirements for LF.

## **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status.**

Yes. Malaysia adopted and implemented BEPS Action 13 effective from 1 January 2017 for TP documentation in its local regulations.

## **Is there any statute of limitation period?**

There is a seven-year statute of limitations for additional assessments issued according to TP adjustments, and documentation must be kept for seven years. There is no statute of limitations in instances of fraud, wilful default, or negligence.

## **Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Income Tax (Transfer Pricing) Rules 2023 [P.U.(A) 165] (2023 TP Rules), dated 29 May 2023 (effective from FY2023 onward).

Income Tax CbCR Rules 2016 [P.U. (A) 357] (CbCR Rules).

Income Tax (CbCR) (Amendment) Rules 2017 (P.U. [A] 416).

Labuan Business Activity Tax (CbCR) Regulations 2017 (P.U. [A] 409).

Income Tax (Multilateral Competent Authority Agreement on the Exchange of Jurisdiction-by-Jurisdiction Reports Order 2016) (P.U. [A] 358) (Malaysian MCAA).

Transfer Pricing Guidelines 2012 (updated with effect from 15 July 2017).

CbCR Guidelines dated 1 January 2019.

## **2. Master File (MF)**

### **What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

The consolidated revenue threshold for the obligation to prepare a MF in Malaysia is MYR 2,997,791,057.

### **Euro Equivalent**

EUR 589,146,000.

### **From which year does this obligation exist?**

As from the year following the year that the threshold is met.

### **When does the MF need to be available?**

Generally, TP documentation is required to be prepared contemporaneously. Also, at the time a tax return is filed, there is a requirement to declare whether TP documentation was prepared.

### **When does it need to be submitted?**

14 days upon request from IRBM.

### **Does the MF have to be prepared in the relevant local language?**

No. TP documentation is required to be either in the National Language (Bahasa Malaysia) or English.

### **Is documentation in English permissible?**

Yes.

### **What are the possible consequences of not having the MF available?**

#### **Penalties?**

Yes, where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for the year, a fine ranging from RM 20,000 to RM 100,000 may apply.

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## **Imprisonment?**

Yes, imprisonment for a term not exceeding 6 months.

## **Shifting of the burden of proof?**

No.

## **Other?**

Both penalty and imprisonment may apply.

## **To what extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?**

The prescribed information required to be disclosed in the MF and LF is consistent with the BEPS Action 13 requirements.

### **3. Local File (LF)**

#### **What is the threshold requirement for the obligation to prepare a LF?**

No threshold.

The requirement to prepare TP documentation, with information akin to the requirements of the LF, applies to any Taxpayer who enters into a transaction with an associated person.

However, businesses with revenue not exceeding RM 25 million and the total amount of related party transactions not exceeding RM 15 million are allowed to prepare simplified TP documentation.

#### **Euro Equivalent**

Not applicable.

#### **From which year does this obligation exist?**

2017.

#### **When does the LF need to be available?**

TP documentation is required to be prepared contemporaneously. Also, at the time a tax

return is filed, there is a requirement to declare whether TP documentation was prepared.

#### **When does the LF need to be submitted?**

14 days upon request by the IRBM.

#### **Does the LF have to be prepared in the relevant local language?**

No. TP documentation is required to be either in the National Language (Bahasa Malaysia) or English.

#### **Or is documentation in English permissible?**

Yes.

#### **What are the possible consequences of not having the LF available?**

#### **Penalties?**

Yes, where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for the year, the above-mentioned fine ranging from RM 20,000 to RM 100,000 may apply.

#### **Imprisonment?**

Yes, imprisonment for a term not exceeding 6 months.

#### **Shifting of the burden of proof?**

No.

#### **Other?**

Both penalty and imprisonment may apply.

#### **To what extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?**

The prescribed information required to be disclosed in the MF and LF is consistent with the BEPS Action 13 requirements.

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## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

1. Total consolidated group revenue in the financial year preceding the first reporting financial year is at least 3 billion ringgit (RM three Billion); and
2. Any of its constituent entities:
  - a. is an ultimate holding entity that is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 [Act 777], or under any written law and resident in Malaysia;
  - b. is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016, or under any written law or the laws of a territory outside Malaysia and resident in Malaysia;
  - c. is a surrogate holding entity that is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016, or under any written law and resident in Malaysia; or
  - d. is a permanent establishment in Malaysia.

### Euro Equivalent

EUR 750 million.

### From which year does this CbCR obligation exist?

2017.

### Are Taxpayers required to notify of CbCR filing in your country?

Yes.

### If yes, when and how do the tax authorities need to be notified?

Starting YA 2021, constituent entities can now furnish the CbCR notification using Form C.

Constituent entities filing other forms should continue furnishing the notification using the existing method. Notification (except for constituent entities submitting other than Form C) should be made on or before the due date to file Form C.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

Within 12 months after the last day of the financial reporting year.

### Are there any deviating submission deadlines for the secondary mechanism?

No.

### Does your country have a requirement that the financial figures of the group need to be aligned?

No.

### Does your country have a requirement that the financial years of the group need to be aligned?

No.

### Where is the CbCR to be submitted?

To the Director General of Inland Revenue.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

The CbCR must be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE group (e.g., MNE groups with a Fiscal Year ending on 31 December 2021 will be required to file the CbCR by 31 December 2022 at the latest).

### What are the possible consequences of not having the CbCR available?

#### Penalties?

Yes, where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for the

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year, the abovementioned fine ranging from RM20,000 to RM100,000 may apply.

## **Imprisonment?**

Yes, imprisonment for a term not exceeding 6 months.

## **Shifting of the burden of proof?**

No.

## **Other?**

Both penalty and imprisonment may apply.

## **To what extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?**

Consistent with OECD standard and requirements.

## **Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbC MCAA")?**

Yes, from 27 January 2016, with dates of exchange relations became active listed on the OECD website.

## **Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Yes.

## **Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

Yes.

## **5. TP disclosure in the tax return or TP specific returns**

### **Is there a threshold for Related Party Transactions?**

No specific threshold, every Related Party Transaction are required to be filled in the tax return.

## **Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Effective from the year of assessment 2019, Taxpayers are required to disclose the details of their related party transactions on Form C.

## **When a Taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect TP, what could be the legal consequences?**

A surcharge of up to five % of the adjustment to the income is applicable. The surcharge is not on the incremental tax but on the incremental income. Hence, the surcharge also applies in scenarios where the TP adjustment does not result in additional tax payable.

## **What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?**

Any person who assists any other Taxpayer to evade tax is liable to a fine of not less than RM 1,000 and not more than RM 20,000 or to imprisonment not exceeding three years or to both and shall pay a penalty of 300 % of the amount of tax which has been undercharged.

## **Does a Taxpayer need to file TP specific returns?**

No.

## **Please state the filing form number and name.**

In 2014, the IRB introduced a section in Form C, requiring Taxpayers to declare if they have maintained a TP report for the year of assessment they are filing the tax returns. For Taxpayers who do not have a TP report, they must select "No" and disclose via Form C.

The 2023, TP Rules require Taxpayers to state the date on which the contemporaneous TP documentation is completed. The documentation must be brought into existence before the due date for furnishing the tax return.

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Effective from the year of assessment 2019, Taxpayers are required to disclose the details of their related party transactions on Form C.

## **What would be the filing deadline?**

The CIT return has to be filed within 7 months from the end of the relevant Fiscal Year, e.g., 31 December 2021 year ending companies would file the corporate tax return by 31 July 2022.

## **What would be the penalties for non-compliance?**

Where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for a given year or not prepared in accordance with the 2023 TP Rules, a fine ranging from RM 20,000 to RM 100,000 may apply.

## **6. Benchmarking**

### **Is there any local guidance or requirement about the preparation of a benchmark study?**

No. Consistent with OECD standards.

### **Is there any stated preference for local benchmarks?**

In Malaysia, the IRBM gives priority to the availability of sufficient and verifiable information on both tested parties and comparables. As such, IRBM does not accept foreign tested parties where information is neither sufficient nor verifiable.

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Yes. Businesses with revenue not exceeding RM 25 million and the total amount of related party transactions not exceeding RM 15 million are allowed to prepare simplified TP documentation, i.e. without benchmarking study.

However, the TP documentation must detail the pricing policy (along with other required information).

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

There is no secondary adjustment as Malaysia does impose tax on dividend payments.

Since 2023, the corresponding adjustment is possible only via a MAP application.

Year-end true up/true down adjustments are based on the facts of the respective arrangement.

### **Does the Taxpayer have to comply with any specific features or guidance?**

No.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Interest-free financial assistance, management fee charging mechanism, production capacity and utilisation rate, foreign sourced income, R&D functions within the Group, and continuous loss-making.

### **Based on your experience, are joint or multilateral audits initiated and carried out?**

No.

### **Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Yes.

### **Are there any restrictions?**

No.

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