



Transfer Pricing Requirements And New Penalties in Malaysia



Key Takeaway

- ❖ TP Documentation is to be prepared annually
- ❖ Changes in Form C disclosure items for related party transactions, interest expenses paid to related companies and CbyCR notification
- ❖ CbyC Rules are applicable for companies with consolidated revenue of more than RM3 billion
- ❖ New penalty rates have been introduced

This is a summary of the Transfer Pricing Requirements in Malaysia

TP Guidelines (“TPG”)

The 2012 TPG superseded the Guidelines previously issued in year 2003, and was intended to provide detailed guidance to taxpayers on how to comply with the requirements of the law under Section 140A of Income Tax Act 1967 and the TP Rules 2012. The 2012 TPG is applicable to:

- ✓ Controlled transactions between associated persons, where at least one party is assessable or chargeable to tax in Malaysia; and
- ✓ Applies to both cross-border transactions and domestic related party transactions. The TPG need not be applied to domestic controlled transactions if it can be proven that any TP adjustments will not alter the total tax payable by both parties.

The guidelines reinforces that companies involved in related party transactions in Malaysia should prepare a TP documentation for the relevant year of assessment. While the TP documentation has to be prepared, it does not need to be submitted unless requested by the tax authorities. Companies who fall below this threshold may opt to prepare a limited scope TP documentation instead of a full scope TP documentation.

- ✓ Companies with gross income more than RM25 million, and the total amount of related party transactions more than RM15 million;
OR
- ✓ Companies with financial assistance by related parties more than RM50 million.



A full scope report may consists of the following:

- a) Organizational structure
- b) Nature of business/industry and market conditions
- c) Controlled transactions
- d) Pricing policies
- e) Assumption, strategies and information regarding factors that influenced the price setting policies
- f) Comparability, functional and risk analysis
- g) Selection of the transfer pricing method
- h) Application of the transfer pricing method
- i) Financial information
- j) Other relevant/supporting documents

A simplified TP documentation consists of items (a), (c) and (d) as detailed below. Taxpayer is allowed to apply any method other than the five methods described in the TPG provided it results in arm's length outcomes.

(a) Organizational Structure

- (i) the taxpayer's worldwide organizational and ownership structure covering all associated persons whose transactions directly or indirectly affect the pricing of the documented transactions; and
- (ii) a description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

(c) Controlled Transactions

- (i) description of details of the property or services to which transaction relates; any intangible rights or property attached thereto, the participants, the scope, timing, frequency, type and value of the controlled transactions (including all relevant related party dealings in relevant geographic markets);
- (ii) names and addresses of all associated persons, with details of the relationship with each such associated person;
- (iii) the nature, terms (including prices) and conditions of transactions (where applicable) entered into with each associated person and the quantum and value of each transaction;
- (iv) an overview description of the business, as well as a functional analysis of all associated persons with whom the taxpayer has transacted;
- (v) all commercial agreements setting forth the terms and conditions of transactions with associated persons as well as with third parties; and
- (vi) a record of any forecasts, budgets or any other financial estimates prepared by the person for the business as a whole and for each division or product separately.

(d) Pricing Policies

Details of pricing policy for each type of controlled transaction shall include:

- (i) the formula adopted, including anticipated profit margin/mark-up and cost component;
- (ii) how the formula is applied;
- (iii) who determine the pricing policy & how often is the policy being revised;
- (iv) sample of documents to support the pricing policy; and
- (v) comparability study to ensure the arm's length price.



Income Tax (Country-by-Country Reporting) Rules 2016 (“CbyCR Rules”)

In 2017, the tax authorities issued the CbyCR Rules followed by the Labuan CbyCR Regulation, effective from 1 January 2017 and is applicable to MNE Groups with total consolidated group revenue of at least RM 3 billion. The rules state that the ultimate parent (reporting entity) would have to complete the CbyC Report and submit it to the tax authorities on or before 12 months from the last day of the reporting FY (i.e. 31 December 2021 if the tax payer’s year end is 31 December 2020).

Additionally, there is also a requirement for the Malaysian Companies to notify the tax authorities under Subrule 6(1) and 6(2) of the PU (A) 357/2016 either by disclosing the information as part of the tax returns or by submitting the manual notification form.

Malaysian parent entities and subsidiaries submitting the Form C , TR , TA , TC or TN (tax return forms, whichever is applicable) can furnish the notification by way of tax returns while companies filing Form LE & TF are required to furnish the notification using a manual notification form as follows:

Type of entity	Details
Reporting entity [Annex B1]	The reporting entity shall notify the Director General in writing if it is the ultimate holding entity on or before the last day of the reporting FY (i.e. 31 December 2021 if the tax payer’s year end is 31 December 2021). Notification will have to include details of all Malaysian and foreign non-reporting constituent entities (Annex B1)
Non-reporting entity [Annex C1 & C2]	The Malaysian subsidiary does not have to submit the CbyCR but they shall notify the Director General in writing of the identity and tax residence of the reporting entity on or before the last day of the reporting FY (i.e. 31 December 2021 if the tax payer’s year end is 31 December 2021). There are two types of notification for non-reporting entity as follows: a. Notification for non-reporting entities whose reporting entity is in Malaysia b. Notification for non-reporting entities whose reporting entity is outside Malaysia

Tax Return Form

Throughout the year from FY 2014 to FY 2021, the income tax return form has been amended to include additional disclosures as follows:

a) Disclosure on whether tax payers carry out controlled transactions under Section 139 and 140A

Tax payer is to disclose all type of transactions they are involved in with a related party and the amount. Tax payer would also have to declare if TP documentation have been prepared.

b) Disclosure of whether the taxpayer is subject to interest restriction under Section 140C.

Tax authorities introduced Restriction on deductibility of interest under Section 140C of the Income Tax Act 1967, effective 1 July 2019 onwards aimed at restricting the deduction of interest expense in relation to cross border transaction. The Rules are applicable to:

- ✓ companies who have been granted any financial assistance in a controlled transaction;
- ✓ the total amount of any interest expense for all such financial assistance exceeds RM500,000 in the basis period.

The maximum amount of interest that is deductible is 20% of the Tax EBITDA. The balance is allowed to be carried forward.

c) Disclosure on CbyCR

Tax payer is to disclose if CbyCR is relevant for the Group and fill in the relevant information of the reporting entity.



TP Penalties and Power to Disregard Structures

✓ Failure to furnish contemporaneous TP documentation

With the introduction of Section 113B of the ITA, any person who fails to furnishing a contemporaneous TPD shall be liable to the following:

- Fine of not less than RM20,000 and not more than RM100,000; or
- Imprisonment for a term not exceeding six (6) months; or
- Both.

The new section also empowers the Director General to impose a penalty as stated in (a) if taxpayer is not prosecuted for failure to furnish TP contemporaneous documentation. Taxpayers can appeal on the decision with the Special Commissioners of Income Tax but the burden of proof is on the taxpayers.

✓ 5% surcharge on TP adjustments

Under Section 140A (3C), the Director General may impose a surcharge of not more than 5% of the total transfer pricing adjustments regardless if there is any additional taxes payable by the taxpayers. Any surcharge imposed shall be treated as collection tax and would not be treated as a tax payable under any other provision within the ITA.

✓ Power to disregard structure in controlled transactions

Under S140A (3A) and (3B), the Director General will be empowered to disregard any related party transaction structure adopted by the company if he is of the opinion that:

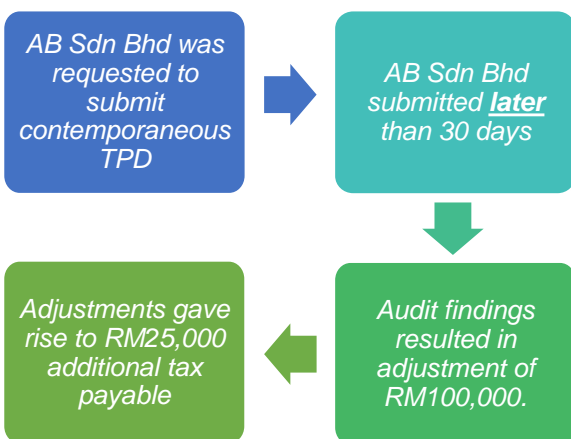
- The economic substance of that transaction differs from its form; or
- The commercial reality of that transaction differs from the arrangement which would have been adopted by an independent party.

In these circumstances, the Director General will be allowed to make adjustments to the structure to reflect the structure that would have been adopted in a third party arrangement.

✓ Failure to comply (after adjustments have ben issued)

Penalties will be imposed under subsection 113(2) and the TP Audit Framework 2019. The rates can range from 30% to 100% depending on whether the TP documentation is prepared contemporaneously in accordance with the requirements and submitted within 14 days.

Illustration on Penalties



	Current penalty regime (RM)	Proposed penalty regime (RM)
Fine between RM20k and RM100k. (assumed at minimum penalty amount)	-	20,000
5% surcharge x 100,000		5,000
Additional tax payable	25,000	25,000
Penalty on additional tax (assumed at 35%)	8,750	8,750
Total (Approximately 75% addition)	33,750	58,750



TP Audit Framework 2019

For Companies who fail to comply, penalties will be imposed under subsection 113(2) of Income Tax Act 1967 (“ITA”) and the TP Audit Framework 2019. The rates from the framework are as follows, divided between normal cases and voluntary disclosure cases (“VD”):

Condition	Penalty rate	
	Normal case	VD
Understatement or omission of income	100%	
Taxpayer did not prepare TP documentation	50%	N/A
Taxpayer has prepared and submitted the TP documentation with the VD but not in accordance to the requirements; OR; Taxpayer has prepared a comprehensive and good quality TP documentation but failed to submit within timeline provided.	30%	20%
Taxpayer has prepared and submitted a comprehensive and good quality TP documentation with the VD in accordance to the requirements; OR; Taxpayer has prepared a comprehensive and good quality TP documentation and submitted within timeline provided.	0%	0%

How We Can Help

Our dedicated team of professionals has experience in various disciplines to respond effectively and efficiently to our clients’ individual requirements. This professional capability allows us to advise and plan strategies critical to our clients’ needs and success within the challenges of the present business environment.

Our service includes a total approach to our clients’ problems and needs. Using a team approach, our services are tailored to meet our clients’ individual requirements. We stress on a high degree of competence, professionalism and commitment among our team members.

We offer the following services with a clear focus on the business issues and regulatory requirements of the client’s industry:

- Audit and Assurance
- Tax & Transfer Pricing Advisory and Compliance
- Business Advisory
- China Belt and Road Desk
- Financial and Transaction Advisory
- Migration Advisory
- Offshore Advisory
- Risk, Governance and Sustainability Advisory
- Valuation Advisory



Click Here to Enquire

Should you have any questions or require any assistance on the above, please do not hesitate to drop us an email or call us.

This publication contains information in summary form and is therefore intended for general guidance only. No person should rely on the contents of the aforesaid publication without first obtaining advice from a qualified professional person. ShineWing TY TE OH is not responsible for the results of any actions taken on the basis of information neither in this publication, nor for any error in or omission from this publication. ShineWing TY TE OH expressly disclaims all and any liability and responsibility to any person, whether a reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication.



WHY ShineWing TY TEOH 为什么选择信永中和迪威？

ShineWing TY TEOH is a leading regional chartered accountants, tax, transfer pricing, valuation and consulting group with office presences in Malaysia to provide a diverse spectrum of business solutions and consulting services to public listed companies, Fortune 500 companies, multi-national corporations, local small and medium companies representing a cross section of major industries.

信永中和迪威是一所领先的区域会计事务所，在马来西亚设有办事处，为上市企业，财富500强企业，跨国企业及中小型企业提供多种业务解决方案与服务包括会计，税务与商业咨询。

+ Registered Auditor of Public Company Accounting Oversight Board (PCAOB), USA

美国上市公司会计监督委员会的注册审计师

+ Approved Auditor of Labuan Financial Services Authority (Labuan FSA), Malaysia

马来西亚纳闽金融服务管理局注册审计师



Member firm of ShineWing International - Top 20 international accounting network and association.
信永中和国际成员所 - 会计公告发布的全球20大国际会计师事务所联盟

www.shinewinginternational.com



Member firm of Praxity - The world's largest alliance of independent accounting firms.

PRAXITY 国际成员所 - 全球最大独立会计师事务所联盟

www.praxity.com

WHAT WE OFFER 我们的专业服务

- + Audit & Assurance + BPO & Business Advisory + China Desk + Digital Transformation and Data Analytic + Family Office & Private Client Services + Financial & Transaction Advisory + Market Entry Advisory + Migration Advisory + Myanmar Desk + Offshore Advisory + Risk & Governance Advisory + Singapore Desk + Tax Advisory + Transfer Pricing Advisory + Valuation Advisory
- + 审计 + 商务外包与咨询 + 中国一带一路咨询 + 数字化转型及数据分析 + 家族办公室及私人客户服务 + 企业融资与并购咨询 + 市场进入咨询 + 移民服务 + 缅甸商业咨询
- + 离岸咨询 + 风险管理及内控咨询 + 新加坡商业咨询 + 税务咨询 + 转让定价咨询
- + 估值咨询

100+ 630+ 42000+

Countries Locations Professionals

Audit | Tax | Advisory | Transfer Pricing | Valuation

www.shinewingtyteoh.com



Kuala Lumpur 吉隆坡	+603 780 55022	Johor Bahru 柔佛	+607 595 2299	Penang 檳城	+604 371 3419 / +604 371 3318
Labuan 纳闽岛	+6087 599 328	Muar 麻坡	+606 952 0205	Sitiawan 实兆远	+605 688 5112
Ipoh 怡保	+605 546 3388				