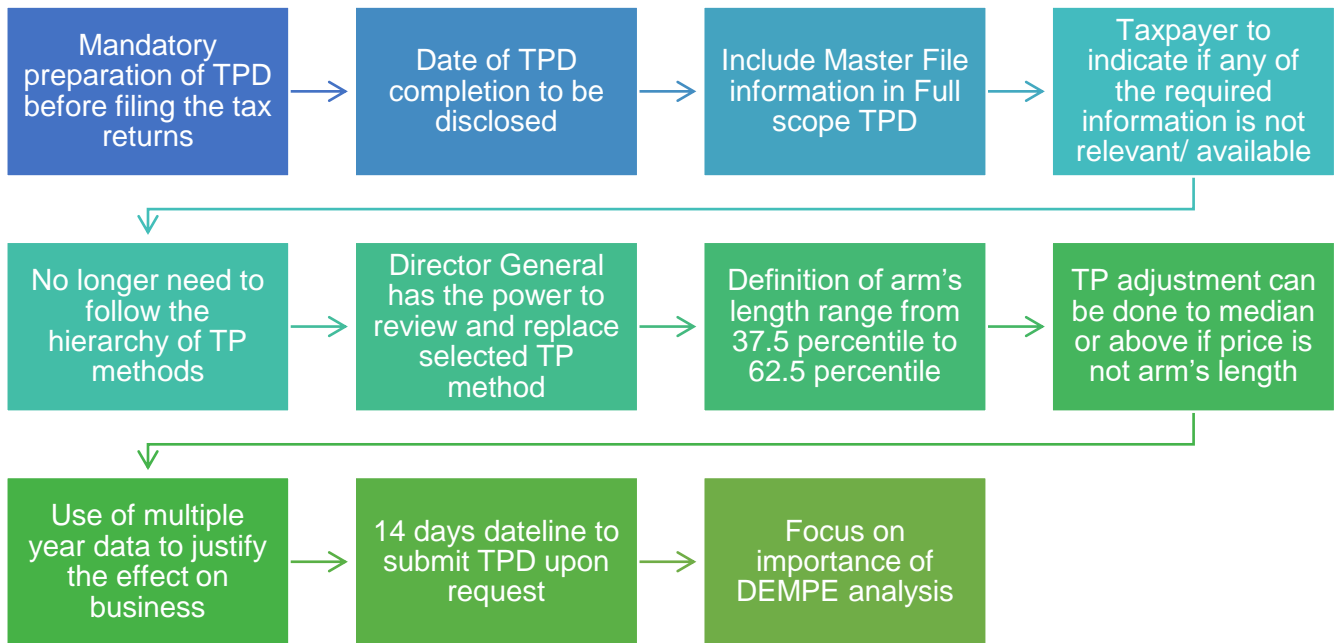


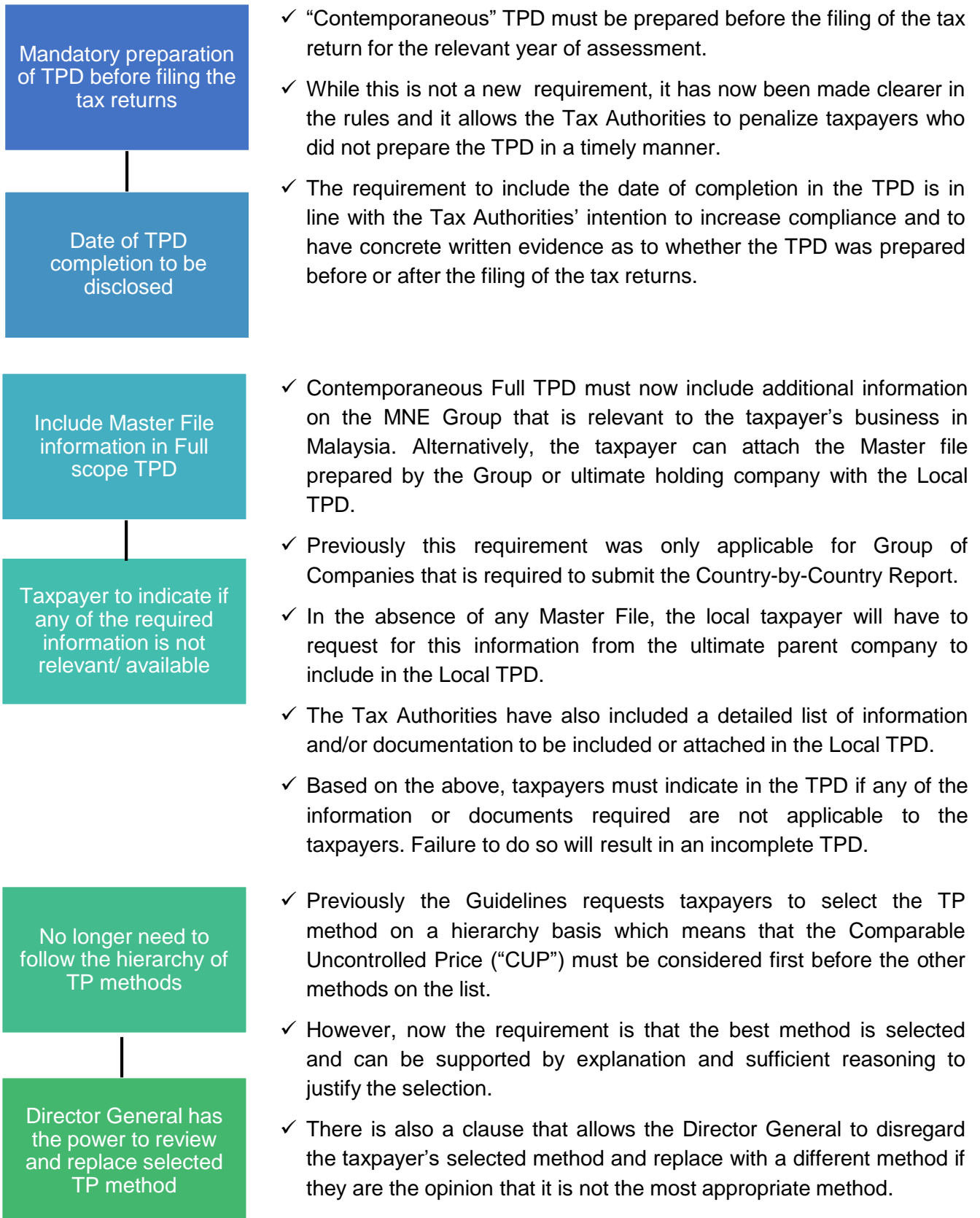
New 2023 Transfer Pricing Rules

TP Rules 2023

The Income Tax (TP) Rules 2023 supersedes the rules that was released in 2012 and is effective from the year of assessment 2023. Significant changes were made with the intention to boost compliance and provide taxpayers with more clarity with regards to TP compliance. Some of the important changes that affect the way TP documentations (“TPD”) will be prepared moving forward is as follows:



TP Rules 2023 – Detailed Description



TP Rules 2023 – Detailed Description

Definition of arm's length range from 37.5 percentile to 62.5 percentile

TP adjustment can be done to median or above if price is not arm's length

Use of multiple year data to justify the effect on business

14 days dateline to submit TPD upon request

Focus on importance of DEMPE analysis

- ✓ The Tax Authorities general practice or expectation previously was for taxpayers to achieve results that is above the median of the benchmarking analysis or to make an adjustment to the median of the benchmarking.
- ✓ The new rules have included a definition for the arm's length range from 37.5 percentile to 62.5 percentile and that Companies' who fall within the range may be regarded as arm's length.
- ✓ However, taxpayers should be aware that the Director General has the power to make any TP adjustment to the median or any other point above median and within the arm's length range if there is reason to believe that the comparable companies selected is not suitable.
- ✓ The Director General may allow for use of data from the review period and prior years if it can be proven that life cycles or business cycles of the property/services are not impacted by the conditions of commercial or financial relations between associated persons.
- ✓ However, this can only be used to assist in the selection of comparable and not for the use of multiple year averages.
- ✓ Previously this dateline was only included in the TP Guidelines. It has not been included in the Rules as well.
- ✓ Failure to submit the TPD within 14 days will result in penalties even if there is no adjustments made or additional taxes payable.
- ✓ Emphasizes the importance of the Development, Enhancement, Maintenance, Protection and Exploitation ("DEMPE") analysis for intangible property
- ✓ Any party that contributes to the functions above should be entitled to an arm's length consideration, regardless of legal ownership



Key Take-aways

- ❑ Burden of proof is on taxpayers to maintain the relevant records, documentation and calculation to justify the arm's length nature of the inter-company transactions
- ❑ Taxpayers need to reassess the completeness and robustness of the TPD prepared previously and make amendments where necessary
- ❑ Even if taxpayer's results fall within the new definition of the arm's length range, taxpayers cannot take it for granted that no adjustments will be made in the event of an audit.
- ❑ Taxpayers must not take lightly the importance of justifying the selected TP method as the best possible method

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- China Desk
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- Migration Advisory
- Offshore Advisory
- Risk, Governance and Sustainability Advisory
- Valuation Advisory

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