



TaxSnaps[®]

Update on Transfer Pricing Guidelines 2024

The Inland Revenue Board of Malaysia (“IRBM”) has issued the updated Transfer Pricing Guidelines 2024 on 24 December 2024, in connection with the amendments made to Section 140A, the introduction of Section 113B of the Income Tax Act (“ITA”) and the amendments made to the Transfer Pricing Rules 2023.

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1. Contemporaneous transfer pricing documentation (“CTPD”)

Definition of CTPD

CTPD refers to transfer pricing documentation that is:

- Prepared in accordance with the TP Rules; and
- **Prepared prior to the due date for furnishing a return in the basis period** for a year of assessment in which the controlled transaction is entered into.

Scope and exemptions to prepare CTPD

The following persons **are not required** to prepare a CTPD:

- Individuals not carrying on a business;
- Individuals carrying on a business (including partnerships) who only engage in domestic controlled transactions;
- Person who entered into controlled transactions with a total amounting to not more than RM1 million; or
- Person who entered solely into domestic controlled transactions with another person where both parties –
 - (i) do not enjoy tax incentives;
 - (ii) are taxed at the same headline tax rate; or
 - (iii) do not suffer losses for two consecutive years prior to the controlled transactions.

The MTPG 2024 has also revised the thresholds for persons requiring to prepare full TPD to taxpayers who fulfil the following:

- Generates **gross business income** of **more than RM30 million** in total and engages in **cross-border controlled transactions** totaling **RM10 million or more annually**; or
- Receives or provides controlled **financial assistance** of **more than RM50 million annually**.

Those that fall below the thresholds are eligible to prepare a minimum CTPD.

Comments:

Whilst the exemption and revised scope are provided, the MTPG 2024 **still requires** taxpayers to comply with the arm's length principle and retain relevant documents related to the controlled transactions, including documentation to support and prove the determination of the arm's length price.

Contents of Simplified CTPD

Paragraph 11.7, Chapter 11 of the MTPG 2024 sets out a full CTPD's content which remain consistent with that set out in the TP Rules 2023. Taxpayers who qualify to opt with the preparation of a simplified CTPD would need to disclose the following information:

- Worldwide group structure
- Organisational structure
- Controlled transactions
- Pricing policy

Further, item (c) and (d) are confined to only “key controlled transactions”, which are defined as:

- Controlled transactions that are related to the taxpayer's principal activity,
- Other than (i), constitute 20% or more of the operating revenue of each YA.

Comments:

Whilst there are no explicit requirement to prepare a comparability analysis under the simplified CTPD, Paragraph 11.15 of MTPG 2024 stated that taxpayers would still need to justify the transfer price.

2. Low Value Adding Intragroup Services (“LVAS”)

Definition of LVAS

The MTPG 2024 has introduced a simplified approach for LVAS, in line with the OECD TP Guidelines. For the purpose of this simplified approach, LVAS are defined as follow:

- are of a supportive nature;
- are not part of the core business of the MNE Group;
- do not require the use of unique and valuable intangibles and do not lead to the creation of unique and valuable intangibles; and
- do not involve the assumption or control of substantial or significant risk by the service provider and do not give rise to the creation of significant risk for the service provider.

Paragraph 6.26 of Chapter 6 of the MTPG 2024 provides a list of examples of typical services that would fall under the LVAS service categories.

In determining the arm's length charge for the LVAS, the provider of services shall apply a profit mark-up of **5%** to all costs in the pool except for any pass-through costs. Furthermore, the mark-up under the simplified approach does not need to be justified by a benchmarking study, but the taxpayer should prepare all relevant document on this simplified approach.

Comments:

The introduction of a simplified approach for LVAS aligns with the OECD TP Guidelines. The safe-harbour provisions allows for a standard 5% mark-up on costs and ease the burden of a taxpayers in conducting exhaustive benchmarking studies for LVAS.

Nonetheless, taxpayers should reassess if the nature of their intra-group services would fall under the definition of LVAS to be able to apply the simplified approach.

3. Comparability Analysis

Usage of Foreign Tested Party and Foreign Comparables

It is reiterated that the **use of foreign tested parties and foreign comparables** would not be accepted by the IRBM as the information in their view would be insufficient and unverifiable.

Comments:

- To reinforce the IRB's position with respect to local vs foreign comparables, the Transfer Pricing Guidelines 2024 has stated that priority would be given to the availability of sufficient and verifiable information on both the tested party and comparables.

Hence, any selection of foreign tested parties and comparables that do not have sufficient and verifiable information would not be accepted by the IRB.

- Chapter 4 of the Transfer Pricing Guidelines 2024 has also expanded on the technical approaches to comparability analysis, including when to use multiple year data, and the introduction of a new quantitative criteria for Malaysian comparables to ideally have turnovers not less than 10% of the tested party's revenue.

3. Comparability Analysis (continued)

Application of Arm's Length Range

In line with the TP Rules 2023, the MTPG 2024 elaborates further on the application of the adoption of a range of data set that is acceptable by the DGIR as the arm's length range.

Comments:

The Transfer Pricing Guidelines 2024 elaborates on the application of the adoption of a range figures falling between the value of 37.5% to 62.5% of the data set acceptable by the Director General of Inland Revenue ("DGIR") as the arm's length range, which is in line with the Transfer Pricing Rules 2023.

However, the DGIR may make an adjustment to the median or any point above the median up to the 62.5%, even though the taxpayer's result is within the arm's length range, should the DGIR have reason to believe that the comparables have a lesser degree of comparability.

4. Business Restructuring

Emphasis on Business Restructuring

The MTPG 2024 has further expanded on Chapter 5 (Business restructuring), to be more aligned with the OECD TP Guidelines. This includes considerations in respect of :

- Changes to a business' characterization
- Other options that are realistically available
- The application of the arm's length principle in a business restructuring

The MTPG 2024 emphasis on actual reduction in functions, assets and risks in ensuring the compensation accurately or comprehensively captures the actual commercial or financial relations between the parties.

Comments:

While business restructuring have always been under the spotlight, with the introduction of specific disclosure requirements in the return effective from Year of Assessment 2022, it is worth noting the importance of assessing that the arm's length condition is met; whether a payment is justifiable for the transfer of anything of value or for the termination or substantial renegotiation of business agreements between associated parties.

5. Intra-group Financial Transactions

Guidelines on Intra-group Financial Transactions

As mentioned in the TP Rules 2023 and MTPG 2024, financial assistance refers to any type of monetary help or aid that a person provides or receives. This includes loans, interest-bearing trade credits, advance or debt or the provision of any security or guarantee.

Accurate delineation of the actual controlled financial transactions needs to be undertaken to ensure comparability of those controlled financial transactions with the ones undertaken by an independent person in comparable circumstances.

Comments:

The Transfer Pricing Guidelines 2024 has indicated that due to the complexity and depth of analysis required for determining the arm's length price or condition for financial transactions, a separate guideline will be issued to address specific transfer pricing requirements in relation to intra-group financial transactions.

Contact Our Experts

Mr Anand Chelliah

Managing Partner
Tax Services
E: anand.chelliah@bakertilly.my

Mr Yohan Francis Xavier

Executive Director,
International Tax & Transfer Pricing Services
E: yohan.xavier@bakertilly.my

Mr Marcus Tan

Executive Director
Tax Advisory Services
E: marcus.tan@bakertilly.my

Mr Murugan Anbanantham

Director
Technical & Tax Compliance
E: murugan.anbanantham@bakertilly.my

Ms Tay Siew Chu

Director
Tax Compliance
E: siewchu.tay@bakertilly.my

Mr Justin Ong

Director, Tax Services
Tax Compliance, Tax Advisory & Indirect Tax Services
E: justin.ong@bakertilly.my

Our Experts - Regional

Mr Huang Shze Jiun

Managing Partner
Johor Bahru
E: sj.huang@bakertilly.my

Ms Joanne Khor

Tax Director
Penang
E: joanne.khor@bakertilly.my

Mr Ni Chen Chuen

Tax Director
Sabah
E: chenchuen.ni@bakertilly.my

Ms Khoo Shaw Cbyn

Senior Managing Consultant,
Tax Services, Batu Pahat
E: shawcbyn.khoo@bakertilly.my

Ms Wong Poh Ling

Senior Managing Consultant
Tax Services, Seremban
E: pohling.wong@bakertilly.my

Our Offices

Kuala Lumpur Head Office

Baker Tilly Tower
Level 10 Tower 1 Avenue 5
Bangsar South City
59200 Kuala Lumpur

T: +603 2297 1000
F: +603 2282 9980

www.bakertilly.my

Penang

9-2, 9th Floor, Wisma Penang Garden 42,
Jalan Sultan Ahmad Shah
10050 Georgetown

T: +604 227 9258
F: +604 227 5258

Johor Bahru

38-2, Jalan Sri Pelangi 4
Taman Pelangi
80400 Johor Bahru

T: +607 332 6925 / 6926
F: +607 332 6988

Kota Kinabalu

1-3-1A, 3rd Floor
Block B, Kolam Centre Phase II
Jalan Lintas, Luyang
88300 Kota Kinabalu

T: +60 88 233 791
F: +60 88 249 691

Melaka

2, Ground Floor, Jalan PS 3
Plaza Semabok
Semabok
75050 Melaka

T: +606 282 6422
F: +606 283 7280

Batu Pahat

33, Jalan Penjaja 3,
Ground Floor
Kim's Park Business Centre
83000 Batu Pahat

T: +607 431 5403
F: +607 431 4840

Seremban

Level 2, Wisma Sim Du
37, Jalan Dato' Bandar Tunggal
70000 Seremban

T: +606 762 2518 / 763 8936
F: +606 763 6950

Segamat

125, Jalan Susur Pemuda 2
85000 Segamat

T: +607 932 1125
F: +607 931 1125

Labuan

1st Floor, U0509
Lazenda Commercial Centre Phase 11,
Jalan Tun Mustapha
87000 Labuan

T: +608 744 0800

Phnom Penh (Cambodia)

B3-071 & B3-072, Borey Elysee
Koh Pich City
Sangkat Tonle Bassac
Khan Chamkarmon
Phnom Penh, Cambodia

T: +855 2398 7100
F: +855 2398 7388