



TRANSFER PRICING FLASH

6th April 2022

Looking at Form C with Transfer Pricing [“TP”] Lens

The TP related questions in the 2021 Form C – are they straightforward or tricky? Let’s look at them together.

Part F8 of the Form C: Do you have controlled transactions?

Taxpayers are required to indicate a “Yes or No” to the above question as illustrated in the extract of the Form C below:-

PART F:		PARTICULARS OF COMPANY	
F1 Information for refund: <i>(Info: For refund to a third party account, please submit the application to the branch which handles your income tax file)</i>			
F1a	Method of payment for tax refund	1 = Via own account in Malaysia	2 = Via DuitNow 3 = Via a third party account
F1b	Name of bank		
F1c	Bank account no.	F1d	Bank identification no.
F2	Particulars of company directors <i>(Fill in the required appendix)</i>	F3	Particulars of company’s major shareholders <i>(Fill in the required appendix)</i>
F4	Foreign equity in comparison with paid-up capital		%
F5	Government Linked Company (GLC)	1 = Yes	2 = No
F6	Company listed on Bursa Malaysia	1 = Yes	2 = No
F7	Has holding company	1 = Yes	2 = No <i>(If ‘Yes’, fill in the required appendix)</i>
F8	Carries out controlled transactions under section 139 and 140A	1 = Yes	2 = No <i>(If ‘Yes’, fill in the required appendix)</i>

Answering the question above requires understanding of the said TP provisions of Sections 139 and 140A of the Income Tax Act 1967 [“the Act”]. First, you need to satisfy the “control” test. It is noteworthy that the “control” definition to establish the relationship of the entities for TP purposes differs from that for accounting and indirect tax purposes. Once the entities are regarded to be “associated persons” after the “control” test is fulfilled, also commonly known as “related parties” [“RP”], taxpayers are required to confirm whether there are any controlled transactions, a.k.a related party transactions [“RPT”], for the basis period. These transactions include those recorded in both balance sheet and profit and loss account, as shown on the table next page.

Do you know the implications of your reply to Part F8 of Form C?

- Ticking 'No' – you confirm that you do not carry out any controlled transactions and therefore, the TP provisions would not apply.
- Ticking 'Yes' - would lead to another question in Part F8 Attachment (Information on Controlled Transactions) of the Form C that needs to be completed. Any taxpayer who has controlled transactions is required by law to prepare a Transfer Pricing Documentation ["TPD"], hence the objective of Part A(5) of the said Attachment, as illustrated in the following extract:-

INFORMATION ON CONTROLLED TRANSACTIONS			
PART A: COMPANY INFORMATION			
1. Principal activity <i>(as stated in the Financial Statements & Reports)</i>			
2. a) Business code 1			
b) Business code 2			
3. Ultimate holding company:			
3a. Name			
3b. Country code *		<i>(Use country code)</i>	
4. Immediate holding company:			
4a. Name			
4b. Country code *		<i>(Use country code)</i>	
<small>* Refer to the list of country codes in the Company Return Form Guidebook</small>			
5. Transfer Pricing Documentation prepared		1 = Yes	2 = No

Tick Yes - you are required to disclose relevant information on domestic as well as cross-border controlled transactions in Part B of Part F8 Attachment as shown below.

Tick No – “Redflag” to the IRB implying that you have not prepared a TPD knowing that there are RPT during the basis period.

You are required to prepare TPD and update it yearly. Hence, the question above relates to the specific TPD for the basis period of the year of assessment for which the Form C relates to. Stating 'Yes' means that you have complied with the requirement to prepare or update the TPD that covers the basis period of the YA.

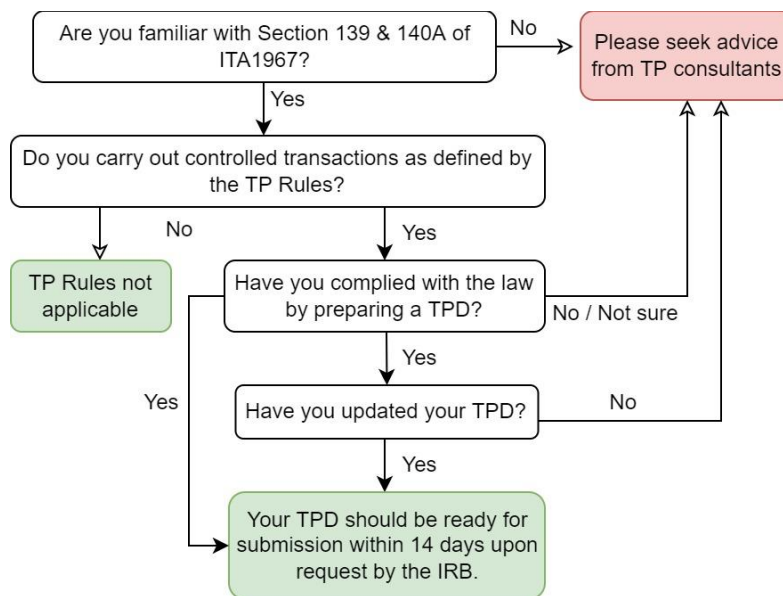
What are the transactions with related parties that must be disclosed in Form C?

A snapshot of Part B of Part F8 Attachment (Information on Controlled Transactions) of the Form C:

PART B: CONTROLLED TRANSACTIONS					
Transaction Type	Item	In Malaysia		Outside Malaysia	
		Sales / Revenue / Assets (RM)	Purchases / Expenditure / Liabilities (RM)	Sales / Revenue / Assets (RM)	Purchases / Expenditure / Liabilities (RM)
B1	Sales				
B2	Purchases				
B3	Other income				
B4	Payment on the use of intangibles:				
	i) Royalties				
	ii) Licence fees				
	iii) Other payments				
B5	Management fees including fees / charges for financial, administrative, marketing and training services				
B6	Research and development				
B7	Advertisement, marketing and promotion (AMP)				
B8	Tangible assets				
B9	Rent / Lease of assets				
B10	Loans to associated person				
B11	Loans from associated person				
B12	Interest to associated person				
B13	Interest from associated person				
B14	Guarantee fee				
B15	Cost contribution arrangement (CCA) amount				
B16	Others not specified above				

Taxpayers need to determine if their RPT comply with the arm's length principle with regards to the acquisition or supply of property or services as stipulated under Section 140A of the Act.

In summary, the flowchart below summarizes the understanding required to complete the critical questions on TP posed in the Form C:-



Critical Information You Should Know.....

➤ **TPD Requirements**

Taxpayers who enter into controlled transactions with RP are required to comply with the arm’s length principle and prepare a TPD of which the contents are set out in the Malaysian Transfer Pricing Guidelines 2012 (revised in 2017) [“MTPG”].

➤ **Thresholds**

The extent of the TPD to be prepared is based on the following thresholds provided in the MTPG:

Type of TPD	Description
Full TPD (Paragraph 1.3.1 of the MTPG)	Taxpayers carrying on businesses with:- a. An annual gross income > RM25 million & total controlled transactions > RM15 million per annum. b. Provision of financial assistance to RP > RM50 million per annum. must prepare a full TPD covering all the information and documents specified under paragraph 11.2.4 of the MTPG.
Simplified TPD (Paragraph 1.3.2 of the MTPG)	Taxpayers outside the above scope 1.3.1 may opt to prepare a simplified TPD covering a limited scope of information, and given the option to apply any method to substantiate the arm’s length price.

➤ **Deadline for submission of TPD to the IRB**

The IRB updated the MTPG on 29th January 2021 that the TPD should be furnished within 14 days (reduced from previous 30 days) upon request by the IRB.

➤ **Frequency of preparation of TPD**

In order to comply with the arm’s length principle, the comparable searches in the TPD should be updated every three years where operational conditions of the business remain unchanged whilst financial data and suitability of the existing comparable should be updated yearly.

Hence, taxpayers are obliged to ensure that the TPD for the relevant YA is available for submission to the IRB when considering ticking 'yes' in Part A(5) of the F8 Attachment of Form C. This similarly applies to each YA where an update of the TPD is required.

➤ **Penalty**

Particulars	Effective 1 January 2021
Penalty for failure to furnish TPD	Taxpayers failing to furnish the TPD upon request by the IRB, within the stipulated timeline, will be penalised under, Section 113B of the Act - Penalty between RM20,000 to RM100,000 or prison term of up to 6 months, or both, upon conviction.

Future of Transfer Pricing in Malaysia and How Moore Advent can help?

With the TP landscape in Malaysia becoming increasingly stringent and the IRB being more vigilant in scrutinising taxation matters, taxpayers would need to ensure that proper measures are taken to ensure compliance with the TP Rules. Knowledge and effort spent on complying with the TP rules and regulations is key to defend your TP position and will certainly enhance your cash position in the long-run.

Whatever concerns you may have, feel free to contact our TP consultants at Moore Advent Malaysia as we offer a wide range of TP services including:-

- TP Advisory - We will assist you to evaluate the potential TP risks present in your organization by performing a high-level TP risk assessment exercise. We adopt a 4-step approach as follows: meet and discuss with your team, collect relevant information, present our findings and propose a plan to address the potential TP risks. The risk assessment exercise will take 2-4 weeks, depending on the number of entities and transactions involved.
- Documentation – preparation of TPD to avoid penalties and ensure compliance with local regulations.
- TP Implementation and compliance management – to ensure that systems and processes are in place to control TP risk and reflect the IRB’s expectations for sound governance frameworks.
- Dispute Resolutions – audit defence, mutual agreement procedures and negotiating outcomes are just a few examples.

Strive to protect your organization’s TP position by being tax compliant. Please feel free to contact us at tax@moore.com.my.

Stay Safe, Stay Compliant.

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