



TRANSFER PRICING FLASH

15TH JANUARY 2025

Transfer Pricing Tax Audit Framework 2024

The *Transfer Pricing Tax Audit Framework 2024* ["TPTAF 2024" or "the Framework"] has recently been issued on 24th December 2024. The Framework, to be read in conjunction with the Tax Audit Framework 2022 ["TAF 2022"], is now issued to align with the Income Tax (Transfer Pricing) Rules 2023 ["TP Rules 2023"] and the recent release of Malaysia Transfer Pricing Guidelines 2024 ["MTPG"]. Here is an insight of the salient points of the new TPTAF 2024.

When is the TPTAF 2024 effective?

The TPTAF 2024 takes effect from 24th December 2024 and revokes the Transfer Pricing Audit Framework dated 15th December 2019 [hereinafter referred to as "TPAF 2019"].

What are the key changes or add-ons?

1. **Comprehensive TP Tax Audit Examination**

The TPTAF 2024 has removed the 2 different types of TP audit described in the TPAF 2019; namely TP desk audit and TP field audit, and replaces with TP tax audit examination, i.e. a comprehensive audit examination to be conducted on TP related matters.

2. **Selection Criteria for Audit Cases**

The Framework introduces a revised approach to the selection of cases for audit:-

- **TPAF 2019:** The selection was primarily based on the amount of controlled transactions made by the taxpayer, with a focus on the significant amount of controlled transactions, before conducting any detailed risk analysis.
- **TPTAF 2024:** The selection is now guided by a broader and more comprehensive risk assessment, with clear emphasis on identifying red flags, including:-
 - (a) **Risk Assessment Criteria:** Identification of controlled transactions that pose compliance risks;
 - (b) **Restructuring of the Company Group:** Cases involving major changes in group structure or business models; and
 - (c) **Information from Third Parties:** Identification of high risk taxpayers based on information obtained from third parties, including foreign tax authorities.

3. **Reduced Timeline for Submission of Contemporaneous Transfer Pricing Documentation [“CTPD”]**

- **TPAF 2019:** Taxpayers were given 30 days to submit the related documents, including CTPD, from the date of the issuance of *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter) by the Inland Revenue Board [“IRB”].
- **TPTAF 2024:** The CTPD should be made available **within 14 days** upon request by the IRB. This requirement, to be in line with the TP Rules 2023, applies to TP tax audit cases that commenced on or after 1st January 2021.

4. **Duration of the Comprehensive Audit Visit**

The duration of the comprehensive audit visit will be **between 1 to 3 days**. However, this period may be extended depending on specific factors such as the quantum and complexity of transactions, availability of documents and taxpayer’s cooperation.

5. **Audit Settlement**

The TPTAF 2024 stipulates that TP tax audit cases need to be completed **within 450 calendar days** from the commencement date. If the case is unresolved within this timeframe, the taxpayer will be notified by the IRB. This introduces a definitive timeline to improve accountability and reduce audit delays.

Any TP adjustment made by the IRB resulting from a TP tax audit that involves only related companies within Malaysia does not result in an automatic offsetting adjustment for the corresponding related parties. The corresponding related parties must apply for an offsetting adjustment, which will then be subject to audits to ensure compliance with the provisions of the Income Tax Act 1967 [“ITA 1967”].

6. **Business Records Accessibility and Audit Visit of Premises**

Taxpayers must ensure that any records relating to its business in Malaysia, including those are kept abroad by a related company, are kept in Malaysia or readily accessible by the audit officer. Failure to maintain sufficient and complete records constitutes an offence under Section 119A of the ITA 1967. In addition, the IRB may conduct an audit visit to any premises of the taxpayer or those related to the taxpayer with advance notice given. The audit visit may be extended to the related company, if necessary.

7. **Voluntary Disclosure [“VD”]**

The TPTAF 2024 clarifies that VD refers to voluntary declaration made after the deadline for submission of the Return Form but before commencement of the audit. The detailed procedure and the application form for the submission of VD can be found in the TPTAF 2024.

For voluntary disclosures that are submitted in accordance with the requirements laid out in the Framework, the surcharge rate of 0% to 4% under Section 140A(3C) of the ITA 1967 will be imposed.

8. **Revised Structure of Penalty and Surcharge Rate for TP Audit Adjustment**

To align with the imposition of Section 140A(3C) of the ITA 1967 (effective 1st January 2021), the TPTAF 2024 introduces a revised structure for penalty and surcharge for TP audit cases as detailed below.

(a) **Penalty Structure for TP Audit Cases Commencing Prior to 1st January 2021:**

- In the event of an understatement or omission of income is identified through TP audit findings, a penalty may be imposed under Section 113(2) of the ITA 1967. The penalty imposed can be up to 100% of the tax undercharged.

- However, for the purposes of the Framework, penalties are imposed under Section 113(2) of the ITA 1967, with the rates varying as illustrated below:-

Offence	Rate
Penalty for the first offence	15%
Penalty for the second offence	30%
Penalty for the third and subsequent offences	45%

(b) **Imposition of a Surcharge for TP Audit Cases Commencing On or After 1st January 2021:**

- A surcharge rate of up to 5% is imposed on the amount of TP adjustment resulting from a TP tax audit that leads to an increase in income or a reduction of any deduction or loss, irrespective of whether the TP adjustment gives rise to any additional tax payable.

In accordance with Section 124(3) of the ITA 1967, the Director General of Inland Revenue ["DGIR"] has discretion powers to abate or remit any surcharge or penalty that has been imposed under the ITA 1967 except a penalty imposed on conviction.

9. **Penalty Under Section 113B of the ITA 1967**

Penalty will be imposed at the final stage of the TP audit process for each year of assessment ["YA"] involved separately, under the following conditions:-

- (a) CTPD submitted to IRB exceeds the 14 days period from the date of service of the written notice;
or
- (b) CTPD submitted to IRB does not comply with the requirements outlined in the TP Rules 2023 and MTPG 2024.

To align with the imposition of penalty under Section 113B of the ITA 1967, the TPTAF 2024 is now updated to include the penalty, i.e. a fine ranging from RM20,000 to RM100,000 per YA, or imprisonment not exceeding 6 months, or both. The fine imposed will be based on the period of delay in submitting the CTPD as detailed below:-

No.	Period of Delay* (Number of Days)	Penalty Amount - Section 113B (RM)
1.	Up to 7 days	20,000
2.	More than 7 days up to 14 days	40,000
3.	More than 14 days up to 21 days	60,000
4.	More than 21 days up to 28 days	80,000
5.	More than 28 days	100,000

* The period of delay is calculated from the expiration of a 14-day period from the date of service of the written notice until a complete CTPD is submitted to IRB.

Despite the above, a concession for the imposition of penalties under Section 113B of the ITA 1967 may be granted to the taxpayer with an accounting period that commenced prior to 29th May 2023, i.e. the date of gazette of the TP Rules 2023.

The TPTAF 2024 clearly emphasizes that the CTPD is an essential document to demonstrate that the controlled transactions are carried out at arm's length price. In other words, the intercompany agreements and regular accounting records in the absence of a CTPD are not sufficient or may pose a challenge in an audit examination to support and prove the application of arm's length principle as required under Section 140A of the ITA 1967.

For more insights of the Framework, kindly refer to the link above. Stay tuned for our next TP Flash on the MTPG 2024.

Legend

CTPD	=	Contemporaneous Transfer Pricing Documentation
DGIR	=	Director General of Inland Revenue
IRB	=	Inland Revenue Board
ITA 1967	=	Income Tax Act 1967
MTPG	=	Malaysian Transfer Pricing Guidelines 2024
TAF 2022	=	Tax Audit Framework 2022
TP	=	Transfer Pricing
TPAF 2019	=	Transfer Pricing Audit Framework dated 15th December 2019
TPTAF 2024 or the Framework	=	Transfer Pricing Tax Audit Framework dated 24 th December 2024
TP Rules 2023	=	Income Tax (Transfer Pricing) Rules 2023
VD	=	Voluntary Disclosure
YA	=	Year of Assessment

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