

What's New?

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Transfer Pricing In Malaysia



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What is Transfer Pricing?

“Transfer pricing” is the general term for the pricing of cross-border and domestic, intragroup transactions between connected parties, involving the transfer of goods, services or intangibles.

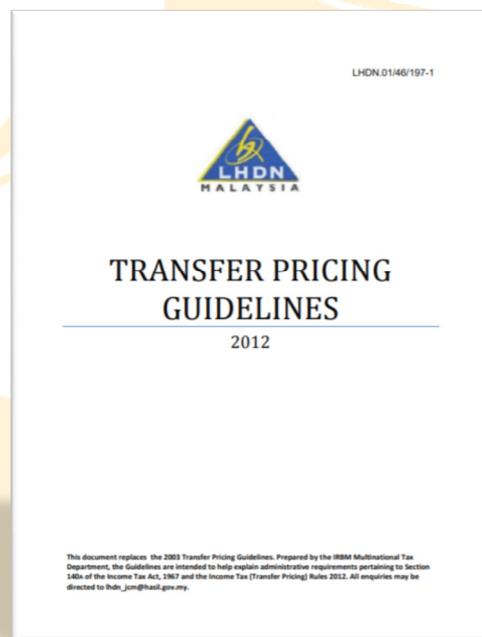
Transfer pricing manipulation is otherwise called: “mispricing” “incorrect pricing” “unjustified pricing”, or “non-arm’s length pricing” which results in tax avoidance or evasion.

Legislation

With effect from 2009, Section 140A was introduced to the Income Tax Act 1967 (“ITA”) to specifically address transfer pricing issues, requiring taxpayers to determine and apply the arm’s length price on controlled transactions.

Under Section 140A of the ITA, the DGIR is empowered to make adjustments on controlled transactions of goods, services or financial assistance based on the arm’s length principle.

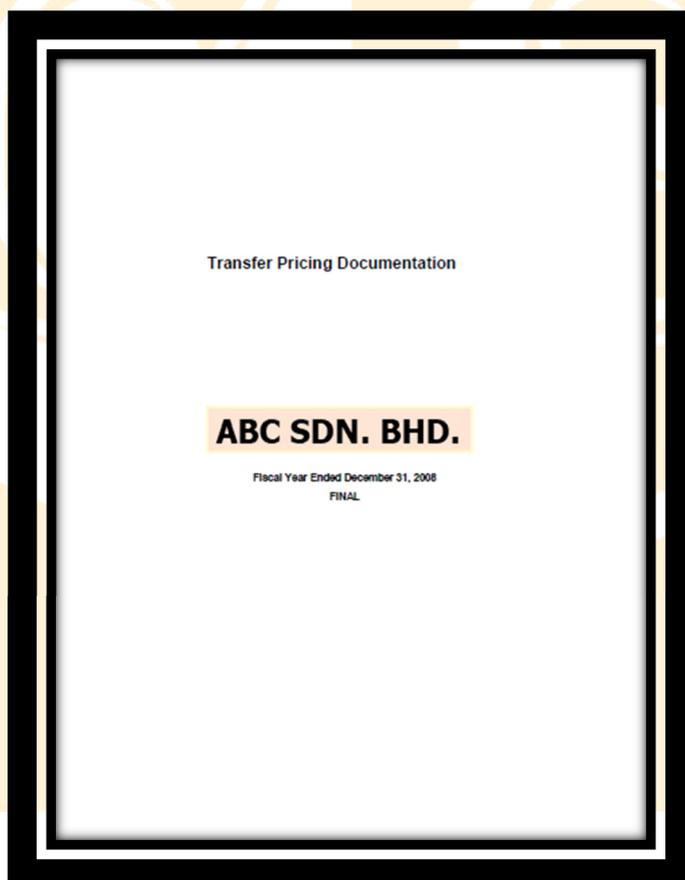
The Malaysian Inland Revenue Board’s (IRB) Transfer Pricing Guidelines 2012 which introduced in July 2012 explain the administrative requirements of the application of Section 140A of the ITA and the Income Tax (Transfer Pricing) Rules 2012. The Guidelines follow closely and leverage from the OECD Guidelines.



Simply put, taxpayers are required to demonstrate that the related party transactions are carried out in an arms-length manner i.e. comparable to third party transactions and to demonstrate this, transfer pricing documentation is to be prepared accordingly.



Therefore, with effective from the 2014 year of assessment, it became mandatory for all companies to confirm their transfer pricing documentation availability to support any related party transactions that were needed. This meant that all taxpayers who had any related party transactions were required to prepare and update their transfer pricing documentation on an annual basis in compliance with the tax return filing deadline.



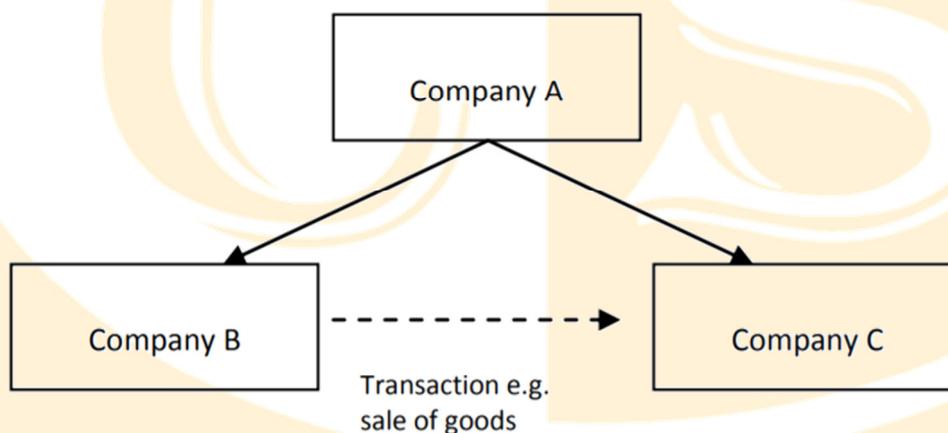
With effect from 1 January 2019, the definition of 'control' is revised under Section 140A (5A) of the ITA to:

- common shareholding of 20% of shareholding or more; and
- the operations of the affiliate depend on the proprietary rights of the shareholder of 20%, or its affiliate; or
- the shareholder / affiliate is able to influence decisions relating to the business activities of the company, including the receipt of services, and the pricing of the acquisition of such services; or
- one or more of the directors or members of the board of directors of a person are appointed by the shareholder / affiliate.

Associated persons

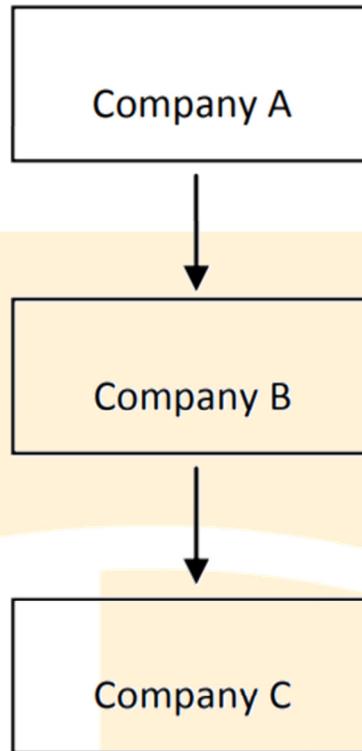
Examples of control and associated persons:

Example 1



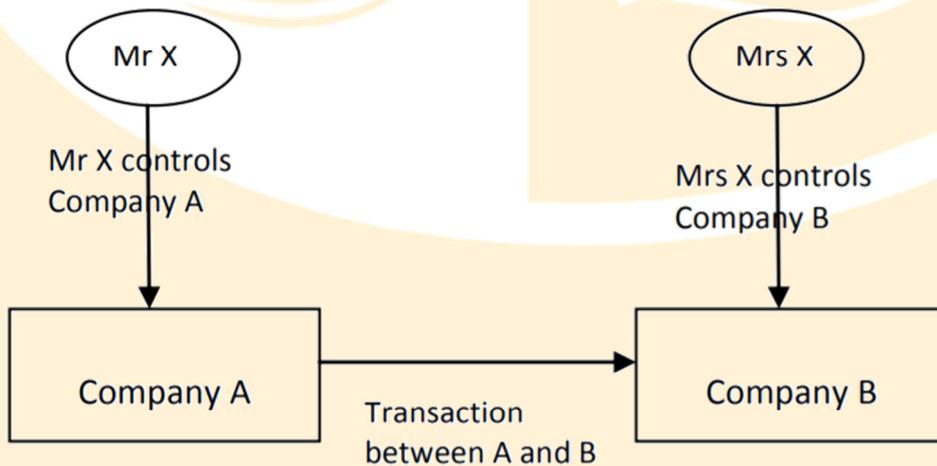
In this example, Company A controls Company B and Company C through share ownership. As Company A controls both Company B and Company C, Companies B and C are associated enterprises. Therefore, transfer pricing laws apply to transactions between the two.

Example 2



Company A controls Company B, which in turn controls Company C. Company A thus indirectly controls Company C, transfer pricing laws thus apply to transactions between them.

Example 3

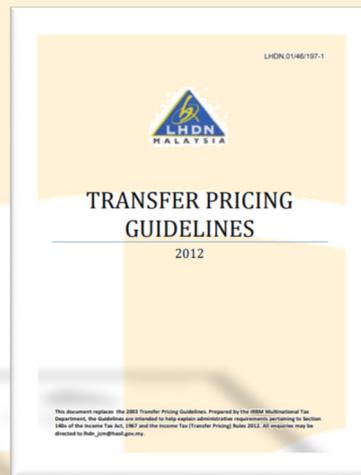


The Act provides that transactions between Company A and Company B are deemed controlled transactions due to the relationship between Mr. X and Mrs. X.

Tax Audit Frameworks

On 15 December 2019, the Malaysian Inland Revenue Board (“IRB”) issued the updated Tax Audit Frameworks including Transfer Pricing (“TP”) Audit Framework 2019. The updated tax audit frameworks take effect from 15 December 2019.

The 2019 TP Audit Framework introduced several key changes that can impact taxpayers and increase the total value of a transfer pricing adjustment significantly.



Finance Act 2020

The Act amended certain transfer pricing (TP) provisions of the ITA.

Effective from Jan 1, 2021:

- Taxpayers that fail to submit the contemporaneous TP documentation within 30 days upon request by the IRB can be fined between RM20,000 and RM100,000 and/or to imprisonment for a term not exceeding six months.
- The Director General is empowered to impose a surcharge of 5% on companies that are loss-making or enjoying tax incentives if it is found that the related party transactions are not conducted at arms-length.
- The Director General is empowered to disregard and re-characterise the structure in a controlled transaction where:
 - The economic substance differs from form; or
 - The arrangement lacks commercial rationale.

All the above have been enacted under the Finance Act 2020 and Gazetted on 31 December 2020.

When are you at risk?

The way the IRD focuses on transfer pricing in Malaysia means that every Company especially MNE with controlled transactions is at risk of transfer pricing scrutiny. Transfer pricing guidelines are applicable when at least one party is assessable or chargeable to tax in Malaysia.

All Companies run extra risk of an audit if one of the following situations applies:

- Repeating low margins or losses
- Many high value transactions
- Large deviations in profit and loss histories
- Reporting a low EBIT compared to the industry's average
- Reporting a low EBIT compared to comparable enterprises

What are your transfer obligations in Malaysia?

Based on the existing transfer pricing guidelines, taxpayers with gross income exceeding RM25mil where their related party transactions exceed RM15mil are required to prepare complete and detailed transfer pricing documentation.

It is highly recommended that at the very least the simplified [limited] version as per the guidelines is kept on file for taxpayers whose gross income and related party transaction values do not exceed RM25mil and RM15mil respectively.

General Documentation requirements

Malaysia has well-defined and extensive transfer pricing documentation requirements. Transfer pricing documentation should include records and documents describing:

- The organizational structure, including an organization chart covering persons involved in a controlled transaction.
- The nature of the business or industry and market conditions.
- Details of the related party transaction.
- Strategies, assumptions and information regarding factors that influenced the setting of any pricing policies.
- Comparability, functional and risk analysis.
- Selection of the transfer pricing method.
- Application of the transfer pricing method.
- Documents used in developing the transfer pricing analysis.
- Index to documents.
- Any other information, data or document considered relevant by the person to determine an arm's-length price.

All relevant documentation must be provided in Bahasa Malaysia or English.

For simplified [limited] version, Transfer pricing documentation should include records and documents describing:

- The organizational structure, including an organization chart covering persons involved in a controlled transaction.
- Details of the related party transaction.
- Strategies, assumptions and information regarding factors that influenced the setting of any pricing policies.

Do you want to be sure about your transfer pricing in Malaysia?

Does your Company has controlled transactions, and do you want to be sure you charge the right prices?

To avoid the risks that come with failing to comply with the Transfer Pricing Guidelines in Malaysia, it is imperative to enlist the services of an experience professional agency who will be able to guide you through all the regulatory requirements efficiently.

The transfer pricing documentation can be prepared in the Master file and Local file format in accordance with the OECD BEPS Action 13 requirements.



We provide a fee quote upon request and based on information received. We price our transfer pricing documentation services based on estimated work and time required to provide the highest quality service and also in view of building the long term client relationship. We believe that our pricing is fair and competitive.

Please contact us for more details and a fee quote.

**For further consultation, please
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