

## FREQUENTLY ASKED QUESTIONS (FAQ) ON MATTERS ARISING FROM TRANSFER PRICING 1.0

(Based on frequent questions raised by participants in the Multinational Tax Conference 2024)

NO.	TOPIC/ISSUE	QUESTIONS	ANSWERS
1.	Transfer Pricing Documentation (TPD) – Related Party Transaction (RPT)	If a company does not engage in any RPTs, is it still necessary to prepare TPD?	The necessity of preparing a Transfer Pricing Documentation (TPD) hinges on the existence of Related Party Transactions (RPT(s)) within the basis period of the year of assessment. Therefore, if a company does not engage in any RPTs within a specific year of assessment, there is no requirement to prepare a TPD for that year of assessment.
2.	TPD – Domestic RPT	Is a TPD required for taxpayers with only local RPTs if it can be proven that any adjustments made will not alter the tax payable?	According to paragraph 1.3.3 of the Malaysian Transfer Pricing Guidelines (MTPGL) 2012 (updated 2017), the preparation of a full TPD is not required for transactions between persons who are both assessable and chargeable to tax in Malaysia, provided it can be proven that any adjustments made under the Guidelines will not alter the total tax payable by both parties. These persons are allowed to prepare a minimum TPD.
3.	TPD - Small and Midsize Enterprises (SMEs)	Can SMEs be granted exemptions from having to prepare a TPD if they engage in controlled transactions below a specific threshold?	Currently, an exception from having to prepare a TPD is given only to individuals who are not carrying on a business. Therefore, SMEs engaged in controlled transactions should prepare a full or minimum TPD, depending on the threshold stated in the MTPGL.

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4.	TPD – threshold for full TPD	My company provides management services to our holding company in Australia. We sometimes make payments on their behalf. Do we need to prepare TPD under Minimum TPD reporting if we didn't meet the threshold for full TPD?	<p>A TPD is required to be prepared, as any transactions between related entities are considered controlled transactions and should comply with the arm's length principle. Furthermore, the TPD would serve as a foundation for demonstrating that the controlled transactions undertaken would be adopted by an independent person in similar economic or market conditions.</p> <p>Taxpayers who do not meet the designated threshold are eligible to opt for a minimum TPD instead of a full TPD.</p>
5.	TPD – date of TPD	How does the IRB identify if a taxpayer has backdated a TPD?	IRBM does have its own methods and indicators for identifying TPD that have been backdated. However, those methods and indicators would not be disclosed to the public.
6.	TPD – to request an extension of time	Based on the newly gazetted Income Tax Transfer Pricing Rules 2023 (TP Rules 2023), it requires the taxpayer to state the date on which TPD is completed. The due date for TPD to be completed shall be on the date with the tax return form submission. For my company with 31st December year-end, the submission date is 31st July. Therefore, my company would	There is no extension of time to be given to complete the TPD, as the TP Rules 2023. With regard to your application for an extension of time to prepare the TPD, explicitly stipulates that a TPD must be prepared before the due date for furnishing a return for a year of assessment. Since the TPD completion date coincides with the tax return submission deadline, any grace period provided in the IRBM's filing program or any approval for the extension of time for submission of the tax return, the new extended due date will also be applicable to the completion of the TPD.

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		like to request an extension of time to prepare TPD until 30th September?									
7.	Contemporaneous Transfer Pricing Documentation (CTPD) – extension of time	If the taxpayer has obtained an extension for filing the return, will the extended due date be considered the due date for the TPD and still be considered contemporaneous?	<p>According to subrule 4(1) TP Rules 2023, the contemporaneous TPD (CTPD) must be prepared prior to the due date for furnishing a tax return. If taxpayers have been granted an extension of time to file their tax returns, the new extended due date will apply concurrently with the TPD.</p> <p>For example, for taxpayers with financial year end (FYE) 31 December 2023, the due date for the TPD in each scenario is as follows:</p> <table border="1" data-bbox="1193 724 2018 1034"> <thead> <tr> <th data-bbox="1193 724 1718 778">Description</th> <th data-bbox="1718 724 2018 778">Due date of the TPD</th> </tr> </thead> <tbody> <tr> <td data-bbox="1193 778 1718 863">The filing due date based on the Income Tax Act 1967 (ITA)</td> <td data-bbox="1718 778 2018 863">31 July 2024</td> </tr> <tr> <td data-bbox="1193 863 1718 948">IRBM Filing Program (1-month grace period)</td> <td data-bbox="1718 863 2018 948">31 August 2024</td> </tr> <tr> <td data-bbox="1193 948 1718 1034">Extension of time for the tax return to be filed: until 31 November 2024</td> <td data-bbox="1718 948 2018 1034">31 November 2024</td> </tr> </tbody> </table>	Description	Due date of the TPD	The filing due date based on the Income Tax Act 1967 (ITA)	31 July 2024	IRBM Filing Program (1-month grace period)	31 August 2024	Extension of time for the tax return to be filed: until 31 November 2024	31 November 2024
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8.	Contemporaneous Transfer Pricing Documentation (CTPD)	What is the difference between CTPD and TPD?	A person should determine the arm's length price (ALP) before engaging in controlled transactions. The determination of the ALP should be evidenced with documents that become the foundation and support and were referred to during the development of the transfer pricing analysis. To qualify as CTPD, the TPD should contain all requirements stipulated in subrule 4(2) of the TP								

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			<p>Rules 2023 and be brought into existence prior to the due date for furnishing a return for a year of assessment in which controlled transactions are entered into.</p> <p>If a TPD fails to meet all of the requirements under the TP Rules 2023, it is considered a non-contemporaneous TPD, and the taxpayer may have committed an offence under Section 113B of the Income Tax Act 1967 (ITA) and be subject to a penalty under the same section.</p>
9.	CTPD – TPR 2023	If we relied on the old TP Guidelines to prepare CTPD 2023 based on the new TP Rules 2023, will our CTPD 2023 be considered non-contemporaneous once the new guidelines are updated?	A TPD that is prepared based on TP Rules 2023 is considered contemporaneous as long as it fully complies with all requirements stipulated in the TP Rules 2023. The new guidelines are also designed based on TP Rules 2023, where all significant changes in the TP Rules 2023 are taken into account when drafting the updated MTPGL.
10.	TPD – Schedule 1 – Malaysian parent company	If the parent company is incorporated in Malaysia and the subsidiary is incorporated overseas, is Schedule 1 still required given that Schedule 2, paragraph 1(a) includes a worldwide organizational and ownership structure?	Schedule 1 and Schedule 2 serve different purposes. Schedule 1 requires information on the MNE group itself, while Schedule 2 provides detailed information related to taxpayer's businesses. Thus, both Schedule 1 and Schedule 2 requirements should be met, regardless of whether the parent company is incorporated in Malaysia and the subsidiary is incorporated overseas or vice versa.

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11.	TPD – Schedule 1 – Domestic controlled transactions	If a Malaysian subsidiary of a multinational enterprise (MNE) group is only involved in domestic controlled transactions and is required to prepare a full TPD, does it still required to prepare Schedule 1?	The primary objective of Schedule 1 is to provide an understanding of the ownership and control structure of the group, including its operation. If the MNE group businesses are relevant to business in Malaysia, Schedule 1 should be prepared, even if the taxpayers only engage in domestic controlled transactions. Therefore, taxpayers who are required to prepare a full TPD should include all information under Schedule 1. Otherwise, the TPD will not be considered contemporaneous.
12.	TPD – Schedule 1 – Consolidate Financial Statement	The TP Rules 2023 mention that an MNE is a group that is required to consolidate its financial statements. My group operates in a foreign country but does not consolidate its results. Does the taxpayer still need to prepare Schedule 1?	For purposes of TPD in Malaysia, Schedule 1 applies to MNE groups that have business establishments in two or more jurisdictions, regardless of whether the MNE group has consolidated its financial statements or not. These businesses also include permanent establishments. The TP Rules 2023 will be amended accordingly to address this purpose.
13.	TPD – Schedule 1 – Dormant / inactive / newly incorporated company	If the overseas companies are dormant, inactive, newly incorporated with no revenue, or have no related party transactions with the Malaysian company for the year of assessment, is the Malaysian company still required to prepare Schedule 1?	MNE groups, as defined in the OECD Transfer Pricing Guidelines 2022, refer to business establishments in two or more jurisdictions. These business establishments include, but are not limited to, dormant companies, newly established companies, and inactive companies. Therefore, if the groups fulfil this definition, Schedule 1 is applicable.

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14.	TPD – further revision on benchmarking result	If taxpayer prepared the CTPD in a timely manner, based on information that is available at that point in time, why should there be a need for further revision? This results in extra compliance cost.	TP Rules 2023 allows taxpayers to prepare their TPD based on the most current reliable information reasonably available at the time of preparation. However, to establish the arm's length price, the results of controlled transactions should be compared with those of uncontrolled transactions undertaken during the same basis period to reflect similar economic or market conditions. If a revision is not made, the pricing may not reflect the real arm's length price for the designated timeframe. Therefore, once the current year financial information for the comparable is available, further revisions to the benchmarking result should be made.
15.	Minimum TPD – Group Information	In the Minimal TPD section on Group Information, should we disclose the information of the entire MNE Group or only that of their immediate holding entity and subsidiaries?	The taxpayer is required to disclose the entire MNE Group's information as specified in the template. The disclosure should be based on the Minimum Transfer Pricing Template's explanatory notes, which can be accessed on the Hasil official portal.
16.	New MTPGL	When will the updated Transfer Pricing Guidelines be issued, given that there have been several changes throughout the years (e.g., TP Rules 2023, surcharge and penalty Section 113B of ITA)?	Efforts are being made to finalise the process of updating the Malaysian Transfer Pricing Guidelines (MTPGL) in accordance with TP Rules 2023 and other relevant changes. Since the updated MTPGL requires several steps to be completed before publication, it is not possible to have a set date. We hope the new MTPGL is able to be published by the end of 2024.

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17.	Minimum TPD - Benchmarking	If a taxpayer chooses to prepare a benchmarking (BM) study for the minimum TPD, are they required to update the BM study annually? Can they use the BM to set the TP policy and review it only once in every 3 years?	Taxpayers are allowed to conduct comparable searches in databases for the BM once in every three (3) years, as long as the operational conditions remain unchanged.  However, the financial information and suitability of the chosen comparables should be reviewed on an annual basis.
18.	TP Audit Notification	What is the procedure for notifying a taxpayer about an upcoming TP audit visit?	IRBM will issue a letter to the taxpayer at least fourteen (14) calendar days before the scheduled audit visit. However, if the letter cannot be sent within this timeframe, taxpayers will be informed of the audit visit via phone calls or emails prior to the visit.
19.	TP Audit Settlement	What is the maximum duration for a TP audit to be completed, and what happens if the audit cannot be resolved within this period?	The TP audit should be completed within 450 calendar days from the audit commencement date, where the commencement date refers to audit visit date. If a case cannot be resolved within the specified timeframe, the IRBM will notify the taxpayer in writing.
20.	TP Adjustment – Double taxation	Can you elaborate further on the scenario where the TP adjustment would not impact the group?	If the transfer pricing adjustments involve cross-border transactions, the Malaysian taxpayer may submit a Mutual Agreement Procedure (MAP) request to the Competent Authority (CA) of Malaysia or of the treaty partner to eliminate double taxation. If the MAP outcome is agreeable by both CAs, a corresponding adjustment will be made to the parties involved, preventing economic double taxation that may arise from the adjustments made.

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			<p>If the transfer pricing adjustments are for domestic controlled transactions, a written request for a corresponding adjustment may be submitted, subject to IRBM's approval.</p>
21.	Surcharge - Subsection 140A(3C) Income Tax Act 1967 - Appeal	How can taxpayers appeal a surcharge imposed under Subsection 140A(3C) of the ITA?	<p>Taxpayers who are aggrieved with the surcharge imposed can appeal to the IRBM for a reduction or remission. Subsection 124(3) of the ITA has empowered the DG to abate or remit any surcharge imposed on a case-to-case basis, provided that the taxpayers have submitted reasonable justification for the appeal. Since the appeal processes under Section 99 of the ITA are not applicable to surcharges, taxpayers may make a written appeal application with justification to the IRBM offices handling their tax file.</p> <p>Please refer to this link for further understanding on surcharge matter:</p> <p>Frequently Asked Questions (FAQ) on matters arising from Subsection 140A(3C), ITA 1967 (as at 18/01/2024).</p> <p><a href="https://www.hasil.gov.my/media/w0aq5bsp/faq-on-matters-arising-from-subsection-140a-3c-ita-1967.pdf">https://www.hasil.gov.my/media/w0aq5bsp/faq-on-matters-arising-from-subsection-140a-3c-ita-1967.pdf</a></p>