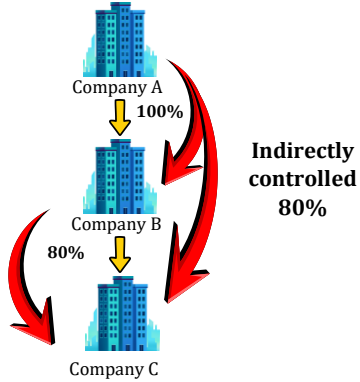


**FREQUENTLY ASKED QUESTIONS (FAQ) MALAYSIA TRANSFER PRICING GUIDELINES (MTPG) 2024:
CHAPTER 1 - SCOPE AND APPLICATION**

TOPIC/ISSUE	NO	QUESTIONS	ANSWERS
Paragraph 1.2 Definition of Business and Determination of Control (Section 139 and Subsection 140A(5A))	1.	How is the term ' carrying on a business ' applicable for transfer pricing purposes? Does it extend beyond sole proprietorship?	Under the Income Tax Act 1967 (ITA), ' business ' includes any profession, vocation and trade and every manufacture, adventure, or concern in the nature of trade but excludes employment . Conducting business is not limited to sole proprietorship but it also covers companies and partnerships involved in such activities.
	2.	For the purposes of Transfer Pricing, how is control be determined under the ITA?	For the purposes of Transfer Pricing, control is defined under section 139, subsection 140A(5) and subsection 140A(5A) of the ITA. The primary test for control is governed by section 139 of the ITA. Under this section, control is established where there is direct or indirect shareholding of more than 50% of the ordinary share capital or voting power by one company in another, or by the same person in both entities. Where this condition is fulfilled, the entities are considered related parties, and any transactions between them constitute controlled transactions.

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			<p><u>Determination of control under Section 139</u></p>  <p>If the conditions under Section 139 are not satisfied, a further control test may be applied based on subsection 140A(5A) specifically for transfer pricing purposes. Under this subsection, control is deemed to exist if:</p> <ol style="list-style-type: none"> 1. A person holds at least 20% direct shareholding in another person; and 2. At least one of the following conditions is met: <ol style="list-style-type: none"> i. the business operations of that person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks, or copyrights, provided by the other person or a third person; ii. the business activities, such as purchases, sales, receipt of services, provision of services, of that person are

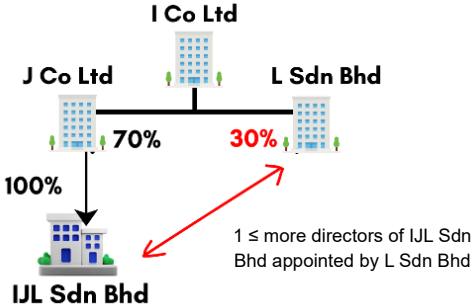
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TOPIC/ISSUE	NO	QUESTIONS	ANSWERS
			<p>specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or</p> <p>iii. where one or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.</p> <p>Paragraph 1.16 elaborates on how control is determined under subsection 140A(5A), where additional indicators of control are applied, particularly in situations where the shareholding is less than 50% but at least 20% or more.</p> <p>In such cases, control may still be considered present if any of the conditions specified under paragraphs 140A(5A)(a), (b), or (c) are fulfilled.</p> <p>Please refer to the examples below:</p> <p>1. <u>Determination of control under paragraph 140A(5A)(a)</u></p> <div data-bbox="1384 1034 1814 1300" data-label="Diagram"> <pre> graph TD A[A Co Ltd] -- 80% --> AB[AB Sdn Bhd] B[B Co Ltd] -- 20% --> AB B -.-> Use of proprietary rights AB </pre> </div> <p>Although B Co Ltd only holds 20% share of AB Sdn Bhd, the transactions between the two are considered controlled transactions</p>

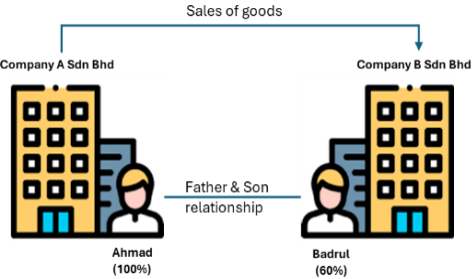
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TOPIC/ISSUE	NO	QUESTIONS	ANSWERS
			<p>because AB Sdn Bhd depends on B Co's proprietary rights for its manufacturing operations.</p> <p>2. <u>Determination of control under paragraph 140A(5A)(b)</u></p> <div data-bbox="1400 518 1780 805" data-label="Diagram"> <pre> graph TD F[F Sdn Bhd] -- 10% --> FG[FG H Sdn Bhd] G[G Co Ltd] -- 45% --> FG H[H Bhd] -- 45% --> FG </pre> </div> <p>Based on the business records, it has been determined that G Co. Ltd. has directed FG H Sdn Bhd to obtain 70% of its raw materials from them. Although G Co. Ltd. owns less than 50% of the shares in FG H Sdn Bhd, the transactions between the two companies are regarded as controlled transactions due to G Co. Ltd.'s influence over FG H Sdn Bhd's business activities and the shareholding of G Co Ltd in FG H Sdn Bhd is more than 20%.</p>

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			<p>3. <u>Determination of control under paragraph 140A(5A)(c)</u></p>  <p>The minutes of the meeting indicate that L Sdn Bhd has appointed 2 out of 5 directors at IJL Sdn Bhd. Despite owning only 30% of the shares, L Sdn Bhd has the authority to appoint directors at IJL Sdn Bhd. Therefore, any transactions between the two companies are regarded as controlled transactions under paragraph 140A(5A)(c).</p>
	3.	<p>How is control determined in situations involving family relationships?</p> <p>Scenario:</p> <p>Mr. Ahmad owns 100% of Company A Sdn. Bhd. His son, Badrul, owns 60% of Company B Sdn. Bhd. Both Company A and B enter into transactions during the financial year.</p>	<p>A mere family relationship can evolve into a control relationship if transactions occur between family members who each own more than 50% of the shares in the companies or if the transactions take place directly between the family members themselves.</p> <p>In this scenario, the transactions are between family members that hold more than 50% of company shares. Therefore, the sales of goods between Company A Sdn Bhd and Company B Sdn Bhd are regarded as controlled transactions.</p> <p>In cases where one family member directly engages in transactions involving the acquisition or supply of property or services, including</p>

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		 <p>The diagram illustrates a family relationship and a business transaction. On the left, a building icon represents 'Company A Sdn Bhd'. Below it is a person icon labeled 'Ahmad (100%)'. On the right, another building icon represents 'Company B Sdn Bhd'. Below it is a person icon labeled 'Badrut (60%)'. A horizontal line connects the two person icons, labeled 'Father & Son relationship'. A blue arrow points from Company A Sdn Bhd to Company B Sdn Bhd, labeled 'Sales of goods'.</p>	<p>financial assistance, with another family member, such transactions are also classified as controlled transactions for transfer pricing purposes.</p>
<p>Paragraph 1.6 Exempted persons are still required to comply with the arm's length principle (ALP).</p>	<p>4.</p>	<p>Paragraph 1.6 indicates that the taxpayers who are exempted from preparing CTPD are still required to comply with the ALP for controlled transactions they entered into and keep all relevant documents to support and prove the arm's length compliance.</p> <p>What is meant by 'keeping relevant documents' to support and demonstrate compliance with the ALP, and what level of documentation or supporting evidence is expected to be maintained?</p>	<p>Subsection 140A(2) of the ITA mandates that all controlled transactions must comply with the ALP. Therefore, while taxpayers are exempt from preparing a CTPD, they are still obligated to ensure that any controlled transaction they engage in adheres to the ALP.</p> <p>Taxpayers who fall under paragraph 1.5 may use any documentation that best supports their compliance with the ALP, including benchmarking analyses. It is essential that such documentation is both valid and reliable for it to be accepted by the IRBM.</p> <p>Taxpayers who do not prepare a benchmarking analysis may be required to do so during an audit if there is evidence indicating that this analysis is the most appropriate method to demonstrate an arm's-length price.</p> <p>If the taxpayer chooses to use a benchmarking analysis to establish compliance with the ALP, the analysis must adhere to the benchmarking requirements outlined in the Transfer Pricing Rules (TPR) 2023 and Chapter 2 of the MTPG 2024.</p>

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		Would the benchmarking studies be necessary to demonstrate compliance with ALP?	The obligation to maintain relevant documentation involves keeping any supporting documents necessary to demonstrate compliance with the ALP. This may include agreements, invoices, minutes of meetings, director's resolutions, internal analyses, and, where applicable, benchmarking analyses.
Paragraph 1.7 Threshold in determining	5.	<p>Could you clarify the meaning of 'annually' in the paragraph and confirm whether the RM30 million gross income threshold includes both domestic and cross-border income.</p> <p>What should be included in the computation of controlled transactions for the purposes of threshold?</p>	<p>1. Definitions of 'Annually' and Gross Business Income</p> <p>The term 'annually' refers to a basis period for a year of assessment (YA). This reference applies regardless of whether a taxpayer operates for a complete 12-month period or for a shorter or longer duration.</p> <p>For further clarification on how the basis period is determined, reference should be made to Public Ruling No. 8/2014 "Basis Period of a Company, Limited Liability Partnership, Trust Body, and Co-operative Society". The gross business income mentioned in Paragraph 1.7(a) refers to the total business turnover generated from both domestic and cross-border taxpayers' business activities.</p> <p>2. Controlled Transactions</p> <p>In determining the threshold for controlled transactions in Paragraph 1.7(a), the calculation will include sales, purchases, services income, expenses, the transfer of intangibles, and the purchase or sale of fixed assets. However, the calculation of the threshold excludes the following items:</p>

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TOPIC/ISSUE	NO	QUESTIONS	ANSWERS									
			<table border="1"> <thead> <tr> <th data-bbox="1151 400 1435 475">Items</th> <th data-bbox="1435 400 2038 475">Explanation for exclusion</th> </tr> </thead> <tbody> <tr> <td data-bbox="1151 475 1435 608">Dividends</td> <td data-bbox="1435 475 2038 608">Represent profit distributions rather than commercial transactions; they do not require disclosure in the TPD</td> </tr> <tr> <td data-bbox="1151 608 1435 703">Interest Income/ Expense</td> <td data-bbox="1435 608 2038 703">Interest is tied directly to the underlying financial assistance</td> </tr> <tr> <td data-bbox="1151 703 1435 799">Financial Assistance</td> <td data-bbox="1435 703 2038 799">The amount is assessed under the RM50 million threshold under Paragraph 1.7(b)</td> </tr> </tbody> </table>		Items	Explanation for exclusion	Dividends	Represent profit distributions rather than commercial transactions; they do not require disclosure in the TPD	Interest Income/ Expense	Interest is tied directly to the underlying financial assistance	Financial Assistance	The amount is assessed under the RM50 million threshold under Paragraph 1.7(b)
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Financial Assistance	The amount is assessed under the RM50 million threshold under Paragraph 1.7(b)											
	6.	<p>Could you please provide more details about how the threshold specified in Paragraph 1.7(b) is determined?</p>	<p>Under Paragraph 1.7(b), a person is required to prepare a full CTPD if they receive or provide controlled financial assistance amounting to more than RM50 million annually.</p> <p>The threshold is calculated based on the total aggregated financial assistance received or provided during the relevant basis period of the YA.</p> <p>It is important to note that the aggregated calculation should exclude interest expenses or income, as well as the opening and closing balances, including any repayments.</p> <p>The examples provided below demonstrate the determination of the RM50 million threshold under various scenarios, based on the assumption that the taxpayers do not qualify for the exemption outlined in Paragraph 1.5.</p>									

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			<table border="1"> <thead> <tr> <th data-bbox="1149 400 1585 475">Scenario</th> <th data-bbox="1585 400 2040 475">CTPD Requirements</th> </tr> </thead> <tbody> <tr> <td data-bbox="1149 475 1585 1139"> <p>Scenario A (Repayment within the same YA)</p> <p>If Company A provides loans totalling RM55 million to Company B in YA 2025, but the entire balance is fully settled prior to the end of that YA, is the preparation of a full CTPD still required?</p> </td> <td data-bbox="1585 475 2040 1139"> <p>Company A and Company B are required to prepare a full CTPD, as the total aggregated controlled financial assistance provided or received within the basis period exceeds the threshold.</p> <p>The obligation to prepare a full CTPD remains in effect notwithstanding the full settlement of the loan prior to the end of the basis period.</p> </td> </tr> <tr> <td data-bbox="1149 1139 1585 1414"> <p>Scenario B (No new Financial Assistance)</p> <p>If an intragroup loan of RM55 million was provided in prior</p> </td> <td data-bbox="1585 1139 2040 1414"> <p>Taxpayers are not required to prepare a CTPD for YA 2025, as there was no controlled financial</p> </td> </tr> </tbody> </table>		Scenario	CTPD Requirements	<p>Scenario A (Repayment within the same YA)</p> <p>If Company A provides loans totalling RM55 million to Company B in YA 2025, but the entire balance is fully settled prior to the end of that YA, is the preparation of a full CTPD still required?</p>	<p>Company A and Company B are required to prepare a full CTPD, as the total aggregated controlled financial assistance provided or received within the basis period exceeds the threshold.</p> <p>The obligation to prepare a full CTPD remains in effect notwithstanding the full settlement of the loan prior to the end of the basis period.</p>	<p>Scenario B (No new Financial Assistance)</p> <p>If an intragroup loan of RM55 million was provided in prior</p>	<p>Taxpayers are not required to prepare a CTPD for YA 2025, as there was no controlled financial</p>
Scenario	CTPD Requirements									
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			<p>years but the same balance remains outstanding in YA 2025 with no new financial assistance from related party in YA 2025, is a full CTPD required for YA 2025 for both companies? No other controlled transactions engaged by both companies.</p>	<p>assistance engaged in. However, they must provide evidence that the interest charges are at arm's length rates.</p>
			<p>Scenario C (Fluctuating balances)</p> <p>If the aggregate gross amount of loans advanced by Company A to Company B during the basis period exceeds RM55 million, yet the year-end balance is RM45 million due to partial repayments, does the requirement to prepare CTPD still apply to both companies?</p>	<p>Similar to Scenario A, both Company A and Company B are required to prepare a full CTPD, as the total aggregated amount of controlled financial assistance provided during the basis period exceeds RM50 million. The year-end outstanding balance is no longer relevant.</p>

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			<p>Scenario D (Simultaneous receiving and providing of financial assistance)</p> <p>Company A receives financial assistance of RM30 million from an associated Company B and, in the same basis period, Company A provides a loan of RM25 million to another associated company, Company C.</p> <p>For the purposes of threshold calculation, the amounts of financial assistance received or provided should not be set off or netted against each other. Instead, they must be collectively cumulated to determine the total amount.</p> <p>For instance, if a taxpayer receives controlled financial assistance amounting to RM30 million and also provides controlled financial assistance amounting to RM25 million during the same basis period, the total aggregated amount of controlled financial transactions would be RM55 million. As the total aggregated amount surpasses the RM50 million threshold, the</p>

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			<table border="1"> <tr> <td data-bbox="1149 344 1585 456"></td> <td data-bbox="1585 344 2040 456">taxpayer is required to prepare a full CTPD for that relevant YA.</td> </tr> </table>		taxpayer is required to prepare a full CTPD for that relevant YA.
	taxpayer is required to prepare a full CTPD for that relevant YA.				
Paragraphs 1.8 – 1.10 Minimum Transfer Pricing Documentation	7.	For a minimum CTPD, could taxpayers apply a transfer pricing method other than the five transfer pricing methods?	<p>Paragraph 1.10 indicates that taxpayers are allowed to apply a transfer pricing method apart from the five specified methods, provided that they can substantiate that their selected method is the most appropriate for demonstrating compliance with the ALP and that it is acceptable to the IRBM.</p> <p>However, if the DG has reasonable grounds to believe that one of the five specified transfer pricing methods is more appropriate than the method applied by the taxpayer, the DG may require the taxpayer to adopt that method.</p>		