

**FREQUENTLY ASKED QUESTIONS (FAQ) ON MATTERS ARISING FROM SUBSECTION 140A(3C) OF THE INCOME TAX ACT 1967
LATEST AMENDMENT - 31 JULY 2025**

Topic/ Issues	Questions	Answers
Implementation of surcharge under Subsection 140A(3C)	<p>2) Based on the Finance Act 2020 (Act 831), subsection 140A(3C) is comes into operation from 1 January 2021. Kindly clarify how would the subsection applies in the following scenarios: -</p> <p>a) TP audit commenced after 1 January 2021 for YAs covering prior to financial year 2021</p> <p>b) On-going TP audit initiated prior to 1 January 2021 but concluded on or after 1 January 2021.</p>	<p>The current litigation has prompted a reassessment of our policy regarding the imposition of surcharges based on the commencement date of TP audits.</p> <p>The latest decision is to impose a surcharge solely on TP adjustments arising in any basis period that commences on or after 1 January 2021.</p> <p>For any TP adjustment arising in a basis period that commences before 1 January 2021, penalty subsection 113(2) will be applicable to any tax that has been undercharged.</p>
Factors in determining the surcharge rate	<p>6) Please provide guidance on how the scale of the surcharge of up to 5% under Subsection 140A(3C) of the ITA will be determined. It is suggested that the criteria to be considered include the comprehensiveness and completeness of TP documentation and the degree of deviation from the arm's length range.</p>	<p>The general rate to be applied when imposing the surcharge is 5% on the TP adjustment made under Section 140A of the ITA. There will be no scale available as a reference since the final surcharge rate will vary depending on the merit of each case. However, a lower surcharge rate will be offered for voluntary disclosure cases. Taxpayers may refer to the details in the Transfer Pricing Audit Framework 2025.</p>

**FREQUENTLY ASKED QUESTIONS (FAQ) ON MATTERS ARISING FROM SUBSECTION 140A(3C) OF THE INCOME TAX ACT 1967
LATEST AMENDMENT - 31 JULY 2025**

Topic/ Issues	Questions	Answers
	<p>7) Please confirm that the surcharge will be adjusted in line with any adjustment under a Mutual Agreement Procedure (“MAP”).</p> <p>8) Kindly confirm that the surcharge applies regardless of which IRBM branch is conducting the tax audit. There are cases where the IRBM branch refuses to follow the TP Guidelines because it is not a TP branch but nevertheless makes TP adjustments.</p>	<p>The surcharge rate is imposed on the amount of the TP adjustment. If there is any adjustment to be made under the MAP, the amount of the surcharge for that case will also be adjusted.</p> <p>A surcharge of not more than 5% will be imposed on TP adjustments that arise in any basis period commencing on or after 1 January 2021 regardless of which IRBM branch is conducting the tax audit. Processes and procedures as outlined in the Malaysia Transfer Pricing (MTPGL) and Transfer Pricing Tax Audit Framework 2025 should be followed by all IRBM branches.</p>