

◆ Abstract

Transfer pricing involves setting prices for transactions between related entities. While a standard practice, it becomes abusive when used to shift profits for undue tax advantages. This research utilizes case studies and comparative analysis to identify legal gaps in Malaysia's 2009 transfer pricing framework, specifically regarding the burden of proof, penalties, and guideline validity. The study proposes legislative reforms to strengthen and clarify these laws.

◆ Problem Statement

Three core elements that necessitate a review of Malaysia's legal framework:

- 1. Leakage Risks:** Rising cross-border related-party trades (2016–2020) heighten exposure to tax leakage
- 2. Persistent Non-Compliance:** Audits recovered **MYR 1.82 billion** (2012–2021) in additional taxes and penalties, indicating persistent violations
- 3. Legal Inadequacies:** **MYR 3.7 billion** in disputed tax appeals (2017–2021) reveal critical gaps in framework clarity.

These trends necessitate a review of Malaysia's transfer pricing laws to ensure clarity, completeness, and alignment with revenue law principles.

A structured overview of the study's research questions, methodology, and objectives.

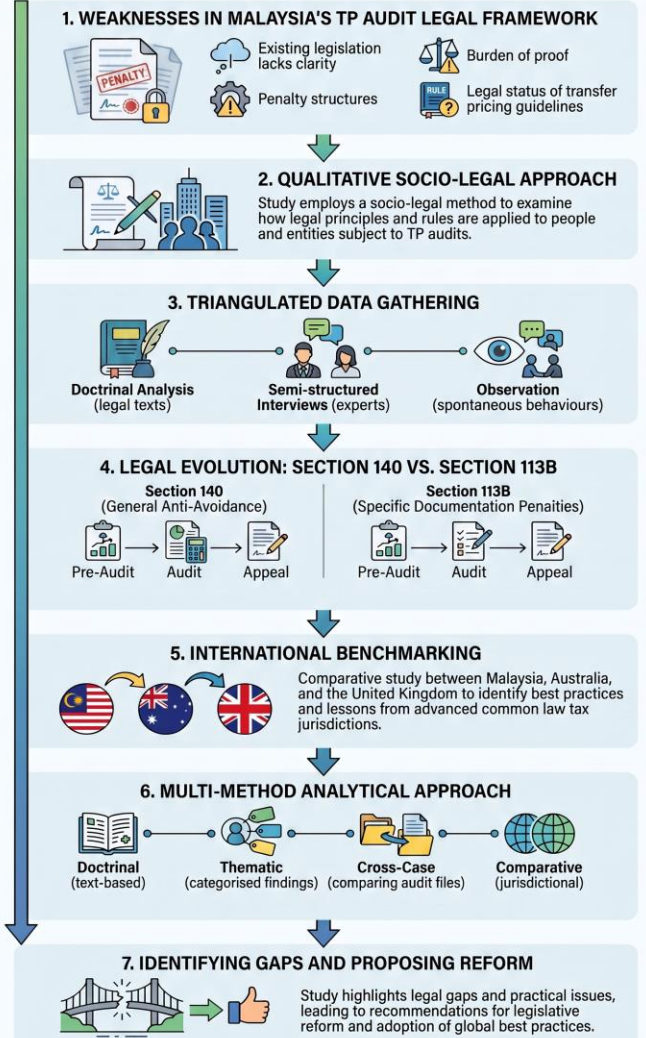
?	Research Question(s)	⚙️	Methodology Used	🎯	Research Objective
📖	RQ1 – What are the TP laws in Malaysia?	⚖️	Socio-legal / doctrinal analysis	🏛️	RO(a) – To study the TP laws in Malaysia
🔍	RQ2, RQ3, RQ4, RQ5 – Legal issues, why they arise, how IRBM deals with them, how to improve the law	🗣️	Qualitative case study (2 audit cases)	📁	RO(b) – To analyse the legal issues in TP laws
🌐	RQ6 – Lessons from Australia/UK	🌐	Comparative legal research	🌐	RO(c) – To comparatively examine TP provisions in UK/Australia
🔄	RQ5 & RQ6 (findings recycled)	🧩	Synthesis of case study + comparative findings	📈	RO(d) – To recommend improvements to TP laws

📋	Overall Research Design Doctrinal analysis + qualitative case study + comparative legal research	💡	Study Contribution Clarifies Malaysia's TP legal framework, identifies legal issues, and proposes reforms based on comparative lessons.
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◆ Methodology

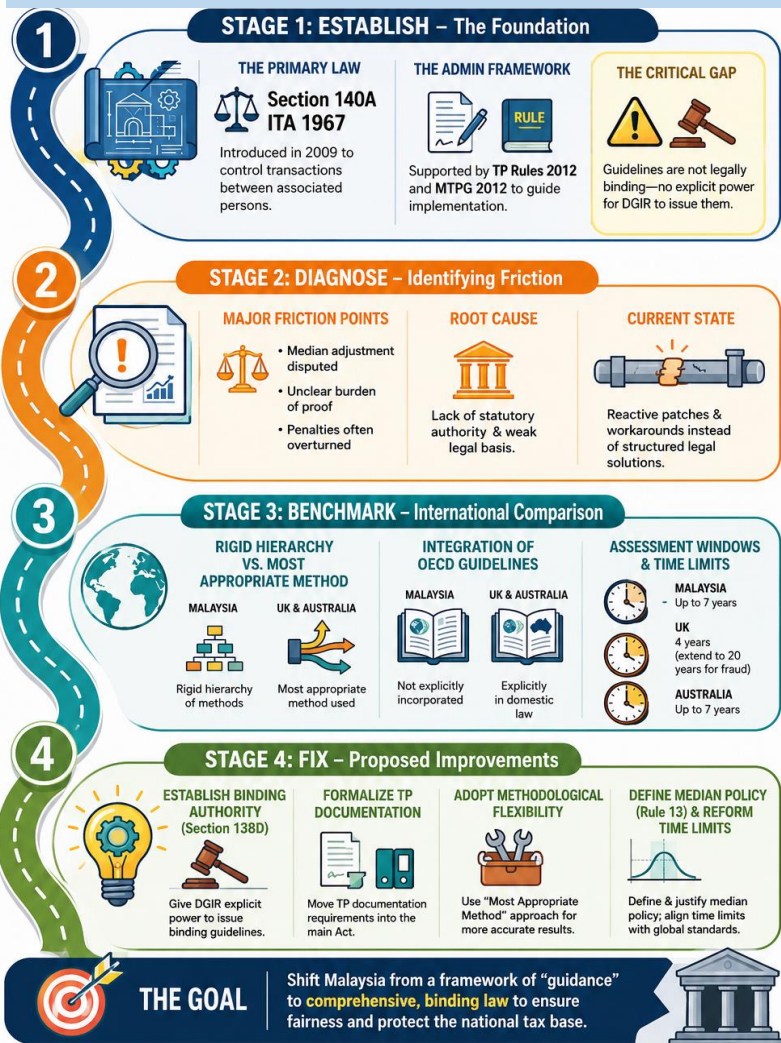
- ❑ **Socio-Legal Approach:** Integrates doctrinal legal research with two qualitative case studies comparing pre-2009 and post-2009 audit frameworks.
- ❑ **Three-Stage Analysis:** Investigates transfer pricing cases through the pre-audit, audit, and post-audit/appeal phases.
- ❑ **Expert Insights:** Utilises data from statutory analysis, court appeals, and interviews/observations with 12 IRBM auditors, legal counsel, and tax experts
- ❑ **International Benchmarking:** Conducts comparative legal analysis against Australia and the UK to identify transferable reforms

Research Framework: Transfer Pricing Law in Malaysia



Findings

The whole thesis as a 4-stage story: **Establish → Diagnose → Benchmark → Fix**, each tagged with its RO/RQ and findings.



STATEMENT OF FINDINGS

LEGAL & PROCEDURAL ISSUES IN MALAYSIA'S TRANSFER PRICING FRAMEWORK

- 1** **LACK OF LEGAL FORCE**
- 2** **INADEQUATE AUTHORITY**
- 3** **ARBITRARY MEDIAN APPLICATION**
- 4** **BURDEN OF PROOF UNCERTAINTY**
- 5** **PROCEDURAL GAPS**
- 6** **RIGID METHODOLOGY**
- 7** **INCONSISTENT PENALTIES**
- 8** **STATUTE OF LIMITATION ISSUES**
- 9** **DOCUMENTATION STANDING**

KEY OVERALL FINDING

Malaysia's transfer pricing framework exhibits **nine major legal and procedural weaknesses** relating to legislative authority, taxpayer rights, procedural fairness, and alignment with international best practices.

Conclusion

- Legal Gaps:** Current guidelines lack statutory force, causing significant uncertainty and multi-billion ringgit disputes.
- Benchmarking:** UK and Australian models highlight the need to explicitly codify international standards into domestic law.
- Key Reform:** The study proposes a new Section 138D to grant the Director General authority to issue legally binding guidelines.
- Strategic Goal:** These reforms seek to protect the national tax base from leakage while safeguarding fundamental taxpayer rights.

Research Gap

- Limited comprehensive analysis of how Malaysia's transfer pricing framework operates in practice.
- Insufficient case law leading to uncertainty in key areas
- Gaps between legislation, guidelines and OECD standards
- Need for clearer dispute resolution mechanisms and greater alignment with international best practices.

Contribution of Study

- Balancing Interests:** The proposed reforms aim to protect the national tax base while maintaining a fair and predictable environment for multinational enterprises (MNEs).
- National Policy Alignment:** The findings directly support Malaysia's fiscal objectives, specifically the 12th Malaysia Plan's revenue expansion targets and the Shared Prosperity Vision 2030's focus on fiscal sustainability.
- Stakeholder Value:** The research provides a roadmap for policymakers, the IRBM, and taxpayers to improve compliance and reduce legal disputes through a more comprehensive and binding legislative framework.

Future Direction

- Broader Empirical Analysis:** Expand beyond the two current case studies to include a larger sample
- Direct Taxpayer Perspectives:** Seek methods to incorporate first-hand insights from taxpayers.
- Case Law Development:** Conduct further research as the body of reported Special Commissioners of Income Tax (SCIT) decisions grows.
- International Benchmarking:** Maintain continuous monitoring of evolving transfer pricing practices in Australia and the United Kingdom to stay aligned with international best practices