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Malaysia News:

Malaysia Transfer Pricing Profile

Published By The OECD

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Following the revision of the Transfer Pricing Guidelines published by the OECD resulting from the Base Erosion Profit Shifting – “Beps” – Project, many countries have reflected the new changes in their respective domestic laws.

The OECD has conducted a survey of the changes among 31 countries by way of a questionnaire. Participant countries have filled out the questionnaire on a voluntarily basis and returned it to the OECD for publication.

Based on it, the OECD has published a per-country profile reflecting the current countries’ domestic legislation regarding transfer pricing.

We have reproduced hereafter the transfer pricing profile of Malaysia as published in October 2017 by the OECD¹.

¹ Source: OECD Website (<http://www.OECD.org/tax/transfer-pricing/transfer-pricing-country-profiles.htm>)

The Arm's Length Principle

1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subsection 140A(2), Ita1967 “(2) Subject to subsections (3) and (4), where a person in the basis period for a year of assessment enters into a transaction with an associated person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that person shall determine and apply the arm's length price for such acquisition or supply.” Rule 2(2), Income Tax (Transfer Pricing) Rules 2012 “For the purposes of sub-rule (1), a person shall determine and apply the arm's length price for the acquisition or supply of property or services in accordance with the method and manner provided for in these Rules.”
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	“These Transfer Pricing Guidelines (hereinafter referred to as the Guidelines) are largely based on the governing standard for transfer pricing which is the arm's length principle as set out under the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines”.
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subsection 2(4), Ita1967 “Where- (a) two or more companies are related within the meaning of section 6 of the Companies Act 1965; (b) a company is so related to another company which is itself so related to a third company; (c) the same persons hold more than fifty per cent of the shares in each of two or more companies; or (d) each of two or more companies is so related to at least one of two or more companies to which paragraph (c) applies, all the companies in question are in the same group for the purposes of this Act.” Section 7, Companies Act 2016 “7. When corporations deemed to be related to each other. Where a corporation – (a) is the holding company of another corporation; (b) is a subsidiary of another corporation; or (c) is a subsidiary of the holding company of another corporation,”

Transfer Pricing Method

4	Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1"> <thead> <tr> <th>Cup</th><th>Resale Price</th><th>Cost Plus</th><th>Tnmm</th><th>Profit Split</th><th>Other (If so, please describe)</th></tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td></tr> </tbody> </table> <p>(1) A person shall apply the traditional transactional methods to determine the arm's length price of a controlled transaction. (2) Where the traditional transactional methods cannot be reliably applied or cannot be applied at all, the person shall then apply the transactional profit methods. (3) Where both the traditional transactional method and transactional profit method cannot be applied at all, the Director General may allow the application of other methods which provides the highest degree of comparability between the transactions</p> <p>"The following methodologies can be used in determining arm's length price:</p> <ul style="list-style-type: none"> ■ Comparable uncontrolled price method ■ Resale price method Malaysia Updated October 2017 ■ Cost plus method ■ Profit split method ■ Transactional net margin method" <p>Rule 5(3), Income Tax (Transfer Pricing) Rules 2012 "Where both the traditional transactional method and transactional profit method cannot be applied at all, the Director General may allow the application of other methods provided the prices arrived at is in accordance with the arm's length principle".</p>	Cup	Resale Price	Cost Plus	Tnmm	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Cup	Resale Price	Cost Plus	Tnmm	Profit Split	Other (If so, please describe)									
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>									
5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	<p>Please check all that apply:</p> <p><input checked="" type="checkbox"/> Hierarchy of methods <input type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (if so, please explain)</p> <p>"The first three methods are commonly known as "traditional transactional methods". Although the taxpayer is given the right to choose any method, the emphasis should be on arriving at an arm's length price. It is advised that methods (iv) and (v), commonly referred to as "transactional profit methods", be used only when traditional transactional methods cannot be reliably applied or exceptionally cannot be applied at all. This will depend heavily on the availability of comparable data. The method that requires the fewest adjustments and provides the most reliable measure of an arm's length result is preferred by the Irbm as this will reduce the scope and nature of future disputes."</p>												
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the Tpg is followed. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain) <input type="checkbox"/> Other (if so, please explain)</p>												

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter Iii of the Tpg?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No In the Malaysian scenario, the Irbm gives priority to the availability of sufficient and verifiable information on comparables' financial information. Thus, domestic comparables are preferred.
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No An arm's length range refers to a range of figures that are acceptable in establishing the arm's length nature of a controlled transaction. The range is derived from applying the same transfer pricing method to multiple comparable data. The facts and circumstances of a case are therefore important in determining a range, or the point in a range, that is the most reliable estimate of an arm's length price or allocation. If every effort has been made to exclude data that have a lesser degree of comparability, but some comparability defects remain and cannot be adjusted, it may be appropriate to make transfer pricing adjustments to a value that best reflects the facts and circumstances of transactions between associated persons. This value may be derived from utilising statistical tools depending on the specific characteristic of the data set.
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Comparability adjustments are allowed when it is applied appropriately, enhances the accuracy and reliability of comparison. Differences between the transaction of the comparables and that of the tested party must be identified and adjusted for, in order for the comparables to be useful as basis for determining the arm's length price.

Intangible Properties

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No In Tp Rules 2012, Rule 11(6) “A person shall be deemed to be an owner of an intangible property and is entitled to any income attributable to that property if the expenses and risks associated with the development of the intangible property are borne by that person.” The guidance for Intangibles covers issued as followed: <ul style="list-style-type: none"> ■ Identifying intangibles ■ Ownership Of Intangibles And Analyzing Transactions Involving Dempe ■ Transactions Involving The Use Or Transfer Of Intangibles ■ Supplemental Guidance For Determining Arm’s Length Conditions In Cases Involving Intangibles
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (Htvi)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Although there are no specific rules pertaining to tax treatment of transactions involving intangibles, definition on royalty has been explained in Section 2, Ita1967.

Intra-Group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No A controlled transaction should apply the methods in accordance with Rule 5, Tp Rules 2012 to determine the arm’s length transfer price for intra-group services. The method should demonstrate that the intra-group services have been rendered, the provision of such services has conferred an economic benefit or commercial value to his business and the charge for the intra-group services is justified.
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Although there are no specific rules pertaining to tax treatment of transactions involving services, Section 4A Ita1967 has addressed the issue of income received from services rendered by a non-resident person.

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>A person entering a cost contribution arrangement should determine the allocation of costs for such arrangement in accordance with the allocation that would have been undertaken by an independent person dealing with each other at arm's length in a similar arrangement. Any payment made to a person in respect of such entry, withdrawal or termination shall be determined in accordance with the payment that would have been made by an independent person dealing with each other at arm's length.</p>
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Transfer Pricing Documentation

19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>If affirmative, please check all that apply:</p> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the Tpg <input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the Tpg <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the Tpg <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify):
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>(1) General record keeping obligations are provided for under Section 82 and 82A Income Tax Act 1967.</p> <p>'Records' under subsection 82(9) include books of accounts, invoices, vouchers, receipts and other documents necessary to verify entries in any books of accounts. 'Documents' under subsection 82A(5) include statement of income and expenditure, and invoices, vouchers, receipts and such other documents as are necessary to verify the particulars in a return.</p> <p>(2) Malaysia – Income Tax (Transfer Pricing) Rules 2012, Rule 4 – requires “a person who enters into a controlled transaction shall prepare a contemporaneous transfer pricing documentation”.</p> <p>(3) Chapter Xi of New Updated Tpg (with effect from 15.07.2017), paragraph 11.2 provide details on Transfer Pricing Documentation including a list of information required.</p> <p>The Malaysian Income Tax (Country-by-Country Reporting) Rules 2016 (The Rules) P.U.(A) 357/2016 has been gazetted on 23 December 2016. The Rules applies to Multinational headquartered in Malaysia, having total group revenue of more than Rm3 billion in the year 2016 in which they are required to furnish their aggregate tax jurisdiction-wide information relating to the global allocation of the income, taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the multinational company group operates. The information to be furnished is pertaining to the financial information of 2017 onwards.</p> <p>The Ultimate Holding entity of the multinational company group headquartered here is responsible to prepare and file the CbCR to Irbm within one year from the end of their financial year.</p> <p>Malaysian taxpayer who is part of the multinational company group that is subject to prepare CbCR in another country, will need to notify us of their reporting entity and its residency, before the end of their financial year.</p>

21	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No There are no specific provisions in the Income Tax Act 1967 for transfer pricing penalties. General penalty provisions under subsection 113(2) will be applied on transfer pricing cases. The penalty rates based on certain conditions has been mentioned in the Irbm Transfer Pricing Audit Framework 2013.
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	To ease compliance burden, persons referred to (in this guidelines) do not include individuals not carrying on a business, further- (a) for a person carrying on a business, the Guidelines apply wholly to a business with gross income exceeding Rm25 million, and the total amount of related party transactions exceeding Rm15 million. (b) where a person provides financial assistance, the guidelines on financial assistance are only applicable if that financial assistance exceeds Rm50 million. The Guidelines do not apply to transactions involving financial institutions. Any person which falls outside the scope above, they may opt to fully apply all relevant guidance as well as fulfil all Transfer Pricing Documentation requirements in the Guidelines; or alternatively may opt to comply with Transfer Pricing Documentation requirements under paragraph 11.2.4 (a), (c) and (d) of Chapter Xi.

Administrative Approaches To Avoiding And Resolving Disputes

23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input checked="" type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (Apa) <input checked="" type="checkbox"/> Unilateral Apas <input checked="" type="checkbox"/> Bilateral Apas <input checked="" type="checkbox"/> Multilateral Apas <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (please specify):
24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No.

Other Legislative Aspects Or Administrative Procedures

26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
27	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing	N/A
29	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)	<p>Specific provisions for transfer pricing and Apa - S 140A and S 138C are effective from 1 January 2009.</p> <p>The Income Tax (Transfer Pricing) Rules 2012 and Income Tax (Advance Pricing Arrangement) Rules 2012 issued on 11 May 2012 are deemed to have come into operation on 1 January 2009</p> <p>Malaysian Transfer Pricing Guidelines 2012 (Tpg2012) were issued on July 2012. Apa Guidelines were issued on July 2012. On 15.07.2017, there are 4 new updated chapters in Tpg and uploaded into the website:</p> <ul style="list-style-type: none"> - Chapter Ii – The Arm's Length Principle - Chapter Viii – Intangibles - Chapter X – Commodity Transactions - Chapter Xi – Documentations <p>Other chapters in Tpg2012 are being review to align it with recommendations from Beps 8-10 Reports.</p>

For further guidance, information and assistance please feel free to contact us anytime.



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