



Transfer Pricing Documentation Guide 2022

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Transfer Pricing Documentation under the Malaysian Transfer Pricing Guidelines 2012

Companies are required to prepare Transfer Pricing Documentation or TPD when they enter into business transactions with their related parties. According to the Inland Revenue Board's ("IRB") Transfer Pricing Guidelines 2012 ("MTPG"), the extent to which a TPD is to be prepared would depend on a few factors.

According to Paragraph 1.3.1 of the MTPG, companies falling under certain thresholds mentioned below are required to prepare a comprehensive set of TPD, i.e. Full TPD:

- a) *Non-financial transactions:* where a person carrying on a business has an annual **gross income exceeding RM25 million**, and **total amount of related party transactions exceeding RM15 million** per annum; or
- b) *Financial transactions:* where a person provides **financial assistance exceeding RM50 million**.

Paragraph 1.3.2 of the MTPG states that any person falling outside the scope of 1.3.1 may opt to comply with TPD requirements under paragraph 11.2.4 by providing certain information such as (a) Organizational Chart, (c) Controlled Transactions and (d) Pricing Policies only, i.e. Limited TPD.

Further, pursuant to Paragraph 1.3.3 of the MTPG, TPD is not applicable to transactions between persons who are both assessable and chargeable to tax in Malaysia and where it can be proven that any adjustments made under the Guidelines will not alter the total tax payable or suffered by both persons.

Despite the guidelines provided in the MTPG, due to lack of details provided by the IRB, companies are often faced with the dilemma on how best they can meet the TPD requirements under Paragraphs 1.3.1, 1.3.2 or 1.3.3 above, to ensure full compliance with the law vis-à-vis minimizing compliance costs.



What are the latest IRB's guidelines on TPD requirements?

On 2 December 2021, the IRB published a flowchart to provide further guidance and give more details on the compliance requirements under Paragraphs 1.3.1, 1.3.2 and 1.3.3 of the MTPG to help taxpayers with their decision on the level of TPD required under the MTPG.

The IRB's flowchart adopts a decision tree approach to guide taxpayers using a step-by-step process with a view to provide more clarity on the subject matter. At the end of the exercise, taxpayers should be able to arrive at the outcome on whether or not a TPD is required to be prepared, and if so, whether it should be a Full TPD or Limited TPD. In addition, if a TPD is required but the taxpayer fails to meet such requirements, the expected penalties to be suffered are shown.

The IRB's flowchart is reproduced in the following page, together with some additional comments from us:

What are the latest IRB's guidelines on TPD requirements?



A person carrying on a business and having controlled transactions as defined under Section 140A of the Income Tax Act, 1967?



Domestic controlled transactions



Cross-border controlled transactions

Exceeds the thresholds set in the MTPG?

- a. Gross business income >RM25 mil & Total controlled transactions >RM15mil; or
- b. Provision of financial assistance >RM50 mil.

Yes No Yes/No

Both parties are chargeable to tax at the **same rate** / non-chargeable to tax due to the parties enjoying tax incentives or suffering from continual losses, and the effect of that transaction would not result in adjustments that will alter the total tax payable.

No No Yes

Full TPD Limited TPD TPD is not required

Yes No

Full TPD Limited TPD

Are the following penalties applicable?

Section 113B – **Penalty between RM20,000 to RM100,000** for failure to furnish Contemporaneous TPD to the IRB within 14 days upon request

Section 140A(3C) – **Surcharge of not more than 5%** on the TP adjustment

Yes	Yes	No
Yes	Yes	Yes

Yes	Yes
Yes	Yes

What should be included in a Full TPD vs. a Limited TPD?

To guide you on the preparation of Full TPD and Limited TPD, we summarise herewith the suggested contents to be included in the TPD based on the requirements of the MTPG:

Reference in MTPG	Contents of Documentation	Full TPD	Limited TPD
Para 11.2.4 (a)	Organizational Structure	✓	✓
Para 11.2.4 (b)	Nature of the business/ industry and market conditions	✓	✗
Para 11.2.4 (c)	Controlled Transactions	✓	✓ <i>Note: Taxpayers may provide a general business description of all the relevant associated person(s).</i>
Para 11.2.4 (d)	Pricing Policies <ul style="list-style-type: none"> Inclusive of a comparability study to ensure the arm's length price has been adhered to. 	✓	✓ <i>Note: Taxpayers do not have to prepare a complete comparability study and may apply any method other than the five TP methods as described in the MTPG provided it results in, or best approximates, arm's length outcomes. (For example: a taxpayer may use a price list to justify the price used for both controlled and uncontrolled transactions.)</i>
Para 11.2.4 (e)	Assumption, Strategies and Information regarding Factors that Influence the Setting of Pricing Policies	✓	✗
Para 11.2.4 (f)	Comparability, Functional and Risk Analysis	✓	✗
Para 11.2.4 (g)	Selection of the Transfer Pricing Method	✓	✗
Para 11.2.4 (h)	Application of the Transfer Pricing Method	✓	✗
Para 11.2.4 (i)	Financial Information	✓	✗

When to prepare a TPD?

Paragraph 11.2.1 of the MTPG states that a TPD should be prepared contemporaneously and the following circumstances are regarded as contemporaneous:

- At the point when the taxpayer is developing or implementing any arrangement or transfer pricing policy with its associated person; or
- Annual review of the existing TPD prior to the due date for filing of relevant tax return for a year of assessment.

The taxpayer should also be aware that in filing the Company's annual income tax return (i.e. Form C), the Company is required to state if it has been involved in controlled transactions, and if so, whether a TPD is prepared in accordance with the MTPG. The Company needs to ensure that the TPD should stay relevant and be up-to-date. In particular, the financial data and suitability of the comparables should be **reviewed and updated every year** in order to apply the arm's length principle reliably. As a further requirement, a company is required to perform a new set of comparables search through a **benchmarking study every three (3) years**.



Is TPD required for persons engaged in domestic controlled transactions only?

A person is not required to prepare a TPD if it can be proven that any tax and TP adjustments made will not alter the total tax payable or tax suffered by the affected taxpayers. For domestic transactions, it may be argued that TPD is not required to be complied with if the same tax rates apply to the parties to the transactions. However, it is not always possible to know if the parties will have any tax impact at the time when their tax returns are filed with the IRB, should the IRB make a TP adjustment on them in the future.

We set out below some of the examples of companies engaging in domestic controlled transactions and our comments on whether these companies should consider preparing TPDs in view that the tax payable positions of the parties may not be certain at the time of filing of the tax returns:

Company A	Company B	TP adjustment made by the IRB	Recommendation
Non-chargeable to tax (<i>Loss making</i>)	Non-chargeable to tax (<i>Loss making</i>)	It depends on the quantum of tax losses available to the parties. If the tax losses are not sufficient, any TP adjustment made by the IRB on either Company A or Company B will not be fully offset by the tax losses, and hence, may result in additional taxes payable by Company A or Company B.	Yes – To prepare TPD
Taxable	Non-chargeable to tax (<i>Loss making / enjoy tax incentive</i>)	Since one party is taxable and the other party is not, any TP adjustment made by the IRB on Company A will likely result in additional tax payable by Company A.	Yes – To prepare TPD
Taxable*	Taxable*	Company A and Company B are both in a tax payable position. Hence, any TP adjustment on either Company A or Company will result in one company paying additional tax and the other company receiving a corresponding tax reduction i.e. overall tax neutral - no difference in the net tax payable position / no loss of tax revenue to the government.	No TPD is required to be prepared.
Taxable*	Taxable*	If the controlled transaction involves financial assistance arrangements between the parties, any TP adjustment on the interest expenses / interest income may not result in a tax neutral position if the borrower party is subject to the interest restriction rule under Section 33(2) of the ITA where the interest expense of the borrower is not fully deductible.	Yes – If the controlled transaction involves a financing arrangement that is subject to interest restriction rule.

*Note: Assuming Company A and B are subject to the same corporate tax rate.

Conclusion

With the latest clarifications from the IRB using the flowchart approach, taxpayers will now have more information to guide them on compliance with TPD requirements.

Having said this, the IRB's flowchart may not have covered all possible situations faced by the taxpayers. If in doubt, taxpayers are encouraged to seek advice from the IRB, or alternatively, they may choose to put in place the TPD as a prudence measure in order not to be hit by any penalty for non-compliance with the TPD requirements.

For taxpayers who are clearly exempted from the preparation of TPD, they should still observe the arm's length principle in undertaking controlled transactions with their related parties as the IRB may still be able to impose a surcharge of up to 5% on the TP adjustment under Section 140A(3C).



This article was written by **Song Sylvia**, a Tax Executive Director at Crowe Malaysia. Sylvia specialises in Transfer Pricing (TP) and heads the TP division in KL. She services both domestic and multinational clients and manages a portfolio comprising clients in a broad range of industries.



Contact us

Crowe Malaysia PLT
Level 15, Tower C
Megan Avenue 2
12, Jalan Yap Kwan Seng
50450 Kuala Lumpur
Malaysia

Tel. +603 2788 9898

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