

MALAYSIA TRANSFER PRICING

Prepared by: HSS Advisory Sdn Bhd

Table of Contents

1	What is Transfer Pricing
2	Background and overview of Malaysia TP Guidelines
3	What is Control in Malaysia TP?
4	Examples of Control and Associate in Malaysia TP
5	Malaysia TP requirements
6	Malaysia specific TP nuances
7	Key TP audit trends (red flags)
8	Latest update on TP

Abbreviation:

TP – Transfer Pricing

IRB – Inland Revenue Board

TPD – Transfer Pricing Documentation

RPT – Related Party Transactions

YA – Year of Assessment

What is Transfer Pricing?

Transfer pricing (TP) is a tax concept where companies operating within a group are required to transact with one another at market prices (also known as arm's length transactions). In short, such transactions should be conducted as if carried out with any independent parties under similar economic circumstances.

Background and overview of Malaysia TP Guidelines

The purpose of the Transfer Pricing Guidelines is to replace the 2003 IRBM Transfer Pricing Guidelines, in line with the introduction of transfer pricing legislation in 2009 under section 140A of the Act, and the **Income Tax (Transfer Pricing) Rules 2023** (hereinafter referred to as the new TP Rules). The Guidelines provide guidance for compliance with the Act's controlled transactions law, including methods, administrative requirements, and documentation.



What is Control in Malaysia TP?

“Para 5.2 of Malaysia TP Guidelines - Two companies are associated companies with respect to each other if one of the companies participates directly or indirectly in the management, control or capital of the other company; or the same persons participate directly or indirectly in the management, control or capital of both companies.”

Further, the above guidelines have to be read with similar provisions under Section 139/140A of the ITA. The control threshold has been revised recently from >50% to >20% with satisfaction of additional conditions.

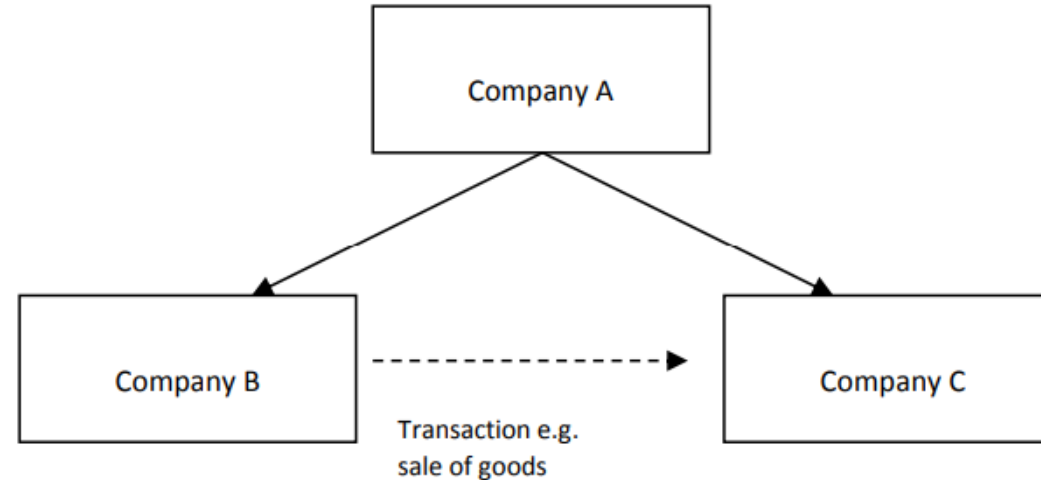


HSS ADVISORY SDN BHD
(722956-M)

Tax & Business Advisors

Examples of Control and Associate in Malaysia TP

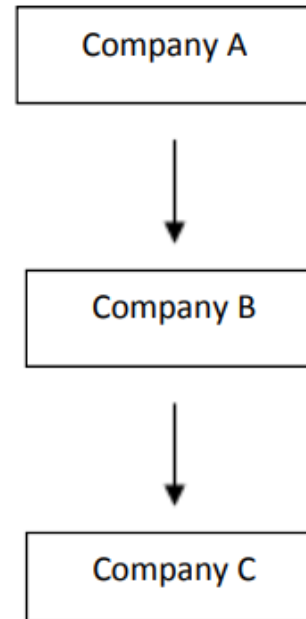
Example 1:



In this example, Company A controls Company B and Company C through share ownership. As Company A controls both Company B and Company C, Companies B and C are associated enterprises. Therefore, transfer pricing laws apply to transactions between the two.

EXAMPLE

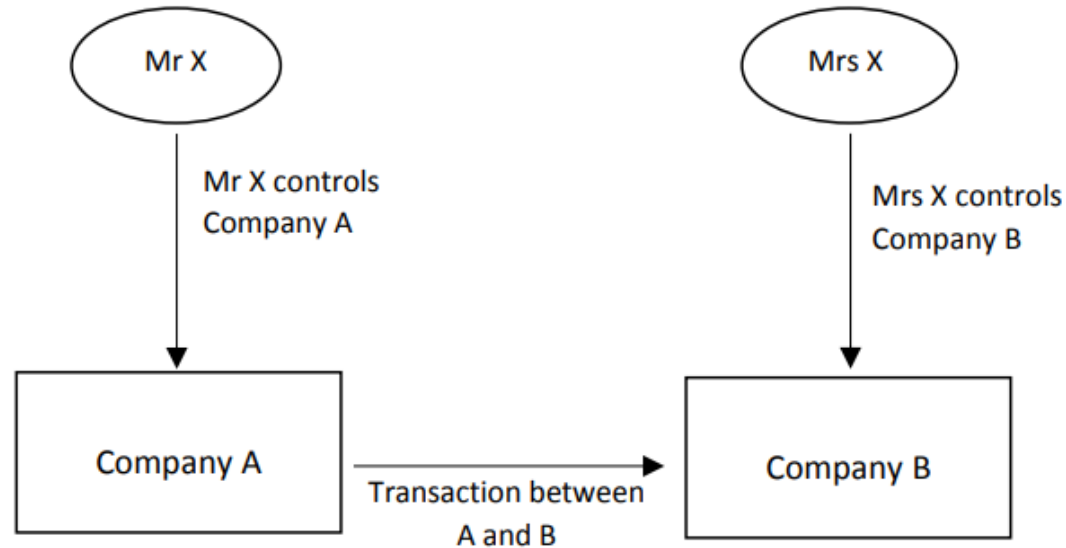
Example 2:



Company A controls Company B, which in turn controls Company C. Company A thus indirectly controls Company C, transfer pricing laws thus apply to transactions between them.

EXAMPLE

Example 3:



The Guidelines provides that transactions between Company A and Company B are deemed controlled transactions due to the relationship between Mr X and Mrs X.



Malaysian TP requirement:

1) Threshold to prepare a full TP Doc:

- a) **Tangible transactions:** Revenue exceeding RM25million and Total related party transactions exceeding RM15million during a year
- b) Intra-group financing exceeding RM50million (**except financial institutions**)

Note:

- If the above conditions are not met, the taxpayer can opt to prepare a Limited Scope TPD (no Schedule 1 (as devised under new TP Rules, industry analysis, and functional analysis is required in the report))
- For a Permanent Establishment (like Branch office), no such exemption and always need to prepare a full TPD



Malaysian TP requirement:

2) Timeline:

TP documentation is not required to be submitted along with the Income Tax return. The TP documentation is only need to be submitted at the time of audit within **14 days upon request by the IRB**. However, there are a few transfer pricing disclosures required to be made in the Income Tax return and date of completion needs to be mentioned to establish that TP documentation has been prepared before the date of filing of Income Tax Return.





Malaysian TP requirement:

3) Penalty:

For failure to prepare contemporaneous TP documentation before return filing / submit the TP documentation upon request by the IRB within 14 days: **fine RM20,000 – RM100,000 per year of assessment and imprisonment of up to to 6 months (upon conviction).**



Malaysia specific TP nuances:

- **Narrower range 37.5 percentile – 62.5 percentile** instead of inter-quartile range
- **1 + 2 Rule:** Benchmarking analysis needs to be **updated every year** and it needs to be **completely refreshed in every three years**. Would require re-look at the benchmarking in between as well, if there are any business changes in between.
- Preference of the IRB for **local comparable companies** instead of regional or foreign comparable companies.
- During the TP audit, IRB recognises:
 - Usage of **single year data** of the comparable companies instead of weighted average results of the prior years
- During the TP audit, **surcharge of 5%** will be applied on any TP adjustments performed by the IRB. The surcharge can be negotiated depending upon the merits of the case and is at the discretion of the IRB.

Key TP audit trends (red flags)

High value of related party transactions and no TP documentation prepared. There are two high risk categories to look out for:

- 1. High risk transactions**
- 2. High risk companies**



Key TP audit trends (red flags)

1. High risk transactions:

- a. Significant pay-outs-royalty
- b. Intragroup services/management fee
- c. Intragroup financing (interest free loan/advances)



Key TP audit trends (red flags)

2. High risk companies:

- a. High value of RPT (>50% of its respective base)
- b. Consecutive loss-making companies, fluctuating profitability
- c. Companies that enjoys tax incentives
- d. Transaction with low tax jurisdictions having effective tax rate less than 15%
- e. Business restructure from full fledge manufacturer to contract manufacturer
- f. Risk arising from CbCR data

Latest Update on TP

- i. **New TP Rules** (introduction of narrower range, additional disclosures in TP documentation, contemporaneous requirements) – **from YA 2023 onwards**
- ii. **Malaysia TP guidelines are expected to updated**
- iii. **Voluntary disclosure 2.0** (TP matters are covered, 0% surcharge, minimal check)
- iv. **Changed in Form C disclosure** (additional disclosure for TP matters)





Tax & Business Advisors
Level13A-03-03A,PJX-HM Shah Tower,
16A,Persiaran Barat,46050 Petaling Jaya,Selangor
Tel: +603-79320501
Website: hssadvisory.com.my
Email: admin@hssadvisory.com.my/
info@hssadvisory.com.my
Facebook: [@hssadvisory](https://www.facebook.com/hssadvisory)
LinkedIn: [@hssadvisory](https://www.linkedin.com/company/hssadvisory)

Please take note that the above information is provided gratuitously and without liability. We shall not be responsible or liable for any claims, loss, damages, costs or expenses arising in any way out of or in connection with any person relying upon such information.