



## TRANSFER PRICING DEVELOPMENTS IN MALAYSIA - SURCHARGE ON TRANSFER PRICING ADJUSTMENT

When a taxpayer is subject to transfer pricing audit and the tax authority makes a transfer pricing adjustment on the taxpayer, the taxpayer will be subjected to a penalty under Section 113(2) of the Income Tax Act 1967 ("the Act") of up to 100% of tax undercharged or a lower penalty of between 30% to 50% of the tax undercharged (based on the Transfer Pricing Audit Framework).

For non-taxable cases, there was no legislative provision to empower the tax authority to impose any penalty on such transfer pricing adjustment.

Effective 1 January 2021, new sections have been added to the Act for the tax authority to impose a surcharge of up to 5% on the amount of transfer pricing adjustment irrespective whether the adjustment results in additional tax payable or reduction of any deduction or loss.

On the question of whether the 5% surcharge is in addition to the penalty for incorrect returns under Section 113(2) of the Act, taxpayers are still awaiting further guidance from the tax authority.