

The Income Tax (Transfer Pricing) Rules 2023 ("TP Rules 2023") have been gazetted on 29 May 2023 and will be effective from the Year of Assessment 2023. The TP Rules 2023 are poised to greatly bolster and fortify the Malaysia Inland Revenue Board's stance on transfer pricing enforcement.

Income Tax (Transfer Pricing) Rules 2023

The key highlights of the TP Rules 2023 which replaced the revoked Income Tax (Transfer Pricing) Rules 2012, are as follows:

Content of contemporaneous transfer pricing documentation ("TPD")

The TP Rules 2023 provide a detailed list of documentation requirements of a Malaysian taxpayer as summarised below:

1. Information of the Multinational Enterprise Group ("MNE Group")
 - a) The MNE Group's worldwide organisational structure;
 - b) Description of the MNE Group's businesses that are relevant to the business of the Malaysian taxpayer;
 - c) Description of the MNE Group's intangible property that are used in or applied in the Malaysian taxpayer's business;
 - d) The MNE Group's financial activities that are connected to the Malaysian taxpayer's business; and
 - e) Financial and tax position of the MNE Group.
2. Business information of the Malaysian taxpayer including its controlled transactions.
 - The list of information in the TP Rules 2023 is broadly similar to the TPD requirements outlined in the existing Malaysian Transfer Pricing Guidelines
3. Date on which the TPD is completed; and
4. Any other relevant information, data or documents used by the Malaysian taxpayer in determining an arm's length price.

Selection of transfer pricing method in determining the arm's length price

The selection of most appropriate transfer pricing method does not need to go through the hierarchy of methods like before. Based on the TP Rules 2023, the best method approach is to be applied when selecting the most appropriate transfer pricing method.

The Malaysian taxpayer must document the explanation and reasons for choosing a particular transfer pricing method and profit level indicator (if the Transactional Net Margin Method is applied) and the selection must be based on facts and circumstances.

Best available data to be used in preparing a TPD

The arm's length price shall be determined based on the most current reliable information, data or documents that are reasonably available at the point of determining the arm's length price.

Arm's length range and arm's length price

It is now made clear in the TP Rules 2023 which defined the arm's length range as a range of figures or a single figure falling between the value of **37.5 percentile** to **62.5 percentile** of the data set.

Where the transfer price of a controlled transaction falls:

- (a) within the arm's length range, such price may be regarded to be the arm's length price; or
- (b) outside the arm's length range, the arm's length price shall be taken to be the median.

