



# Tax Alert

Welcome to Tax Alert, Grant Thornton Malaysia's newsletter on the latest tax updates and information.

**4 February 2020**



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# Transfer Pricing Audit Framework 2019

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The Inland Revenue Board of Malaysia (“IRBM”) has released the latest Transfer Pricing (“TP”) Audit Framework 2019 (effective date 15 December 2019) which replaces the TP Audit Framework dated 1 April 2013.

We highlight below the salient points of the latest TP audit framework:

## Statutory provisions and references



- Section 132: Double taxation agreements
- Section 139: Controlled companies
- Section 140A: Power to substitute the price
- Income Tax (Transfer Pricing) Rules 2012, and
- Transfer Pricing Guidelines 2012 (including updates made which are effective from 15 July 2017)

Powers accorded to IRBM in a TP audit are not limited to the above sections, but the whole of ITA, Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Labuan Business Activity Tax 1990 and other acts administrated by IRBM.

## Year of Assessment Covered

Generally, a TP audit covers three (3) to six (6) years of assessment, depending on issues identified by IRBM. Nevertheless, the audit period can be extended to 7 years of assessment, depending on the audit issues found. However, if the tax audit cases involve fraud, willful default or negligence, the statutory limitation of 7 years shall not be applicable.

## Selection of cases by IRBM

The main basis used to select a taxpayer for TP audit is the significance of the amount of related party transaction(s), before other risk analysis is conducted by IRBM.

Audit cases that have been settled will not be selected for audit again for the same issues and years of assessment. However, if there are other issues or new information received for that year of assessment, the case can be reopened for tax audit by IRBM.

## Submission of Documentations Required by IRBM

A taxpayer is required to respond to IRBM’s request for documents and information within fourteen (14) days from the date of IRBM’s letter. Should the taxpayer fail to respond within the stipulated time, IRBM will proceed with the audit using methods and approaches deemed suitable by IRBM.

As for TP documentation, a taxpayer is given thirty (30) calendar days to submit the documents to IRBM.

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## Documentations required by IRBM prior to a TP Audit Visit

A taxpayer is required to prepare presentation slides in relation to the company's background, business operations and global operations, overall management structure and functions, record keeping and accounting control systems, with emphasis on transactions between related companies. A copy of the slide must be submitted to IRBM at least seven (7) calendar days prior to the audit visit.

The taxpayer is also responsible to prepare all documents in connection with its related party transaction(s) that are kept outside of the country before the audit visit.

## Documentations required by IRBM during a TP Audit Visit

During a TP audit, IRBM will examine all documents and records necessary to ascertain that the arm's length principle is adopted. Basically, the records consist of:

### Business records

- Books of accounts for recording receipts and payments or income and expenditure;
- Financial statement;
- Invoices, vouchers, receipts and other documents that are required to verify entries recorded in the books of accounts;
- Documents, objects, materials, articles and items handled and stored in an electronic medium; and
- Any other record that may be specified by IRBM.

### Other records

- All agreements, contracts and other binding documents concerning business activities with related companies or third parties as required in the TP Guidelines 2012;
- Documentation on specific transactions as required in the TP Guidelines 2012;
- Records relating to the ownership of properties;
- Other statements as required under section 79 of the ITA.

It is also the responsibility of the taxpayer to prepare computer facility and access to its system for IRBM.



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## Shorter Timeline to Respond to TP Audit Findings by IRBM

A taxpayer is given eighteen (18) calendar days (instead of 21 days) to respond to IRBM's audit findings. If no objection is received within eighteen (18) calendar days from the date of IRBM's letter, the taxpayer is deemed to have agreed to the audit findings.

## Voluntary Disclosure

A taxpayer who wishes to apply for voluntary disclosure needs to complete the Voluntary Disclosure for Transfer Pricing form as per Appendix 1 of the TP Audit Framework 2019, which can be downloaded at IRBM's website.

The taxpayer is also required to submit the following documents together with the completed form:

- TP documentation and organisation chart for the relevant year(s);
- Audited accounts, tax computation, a copy of the tax return form and information pertaining to incentives for the relevant year(s);
- Calculation for the comparability analysis together with the audited accounts of the comparable companies for the relevant year(s); and
- Information on income not declared or error in reporting/claim together with supporting documents.



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## Offences and Penalties

The concessionary penalty rates have been revised as follows:

No	Condition	Penalty Rate	
		Audit case	Voluntary Disclosure
1	Taxpayer <sup>(1)</sup> did not prepare TP documentation	50%	Not applicable
2	Taxpayer prepared TP documentation and submitted under voluntary disclosure program but did not fully comply with the requirements of the TP Guidelines; or Taxpayer prepared a comprehensive and good quality TP documentation but failed to submit within 30 days from the date of IRBM's letter.	30%	20%
3	Taxpayer prepared a comprehensive and good quality TP documentation in accordance with the TP Guidelines and submitted within 30 days from the date of IRBM's letter. (For cases under voluntary disclosure, the TP documentation is submitted when the voluntary disclosure is made)	0%	0%

<sup>1</sup> Applicable to taxpayer that is required to prepare TP documentation under the TP Guidelines 2012.



**Link to above framework :**

[Transfer Pricing Audit Framework 2019 \(only available in Bahasa version\)](#)

What Grant Thornton Malaysia can help you with:

- Preparation of TP documentation
- Benchmarking analysis to assess the arm's length range
- Preparation of pricing policy
- Review of inter-company agreements from TP point of view
- TP training
- Mutual Agreement Procedure (MAP) and Advance Pricing Agreement (APA) application
- Managing and handling TP audit cases

# Contact us

Should you have questions about this Tax Alert, please do not hesitate to contact our Tax Team.

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