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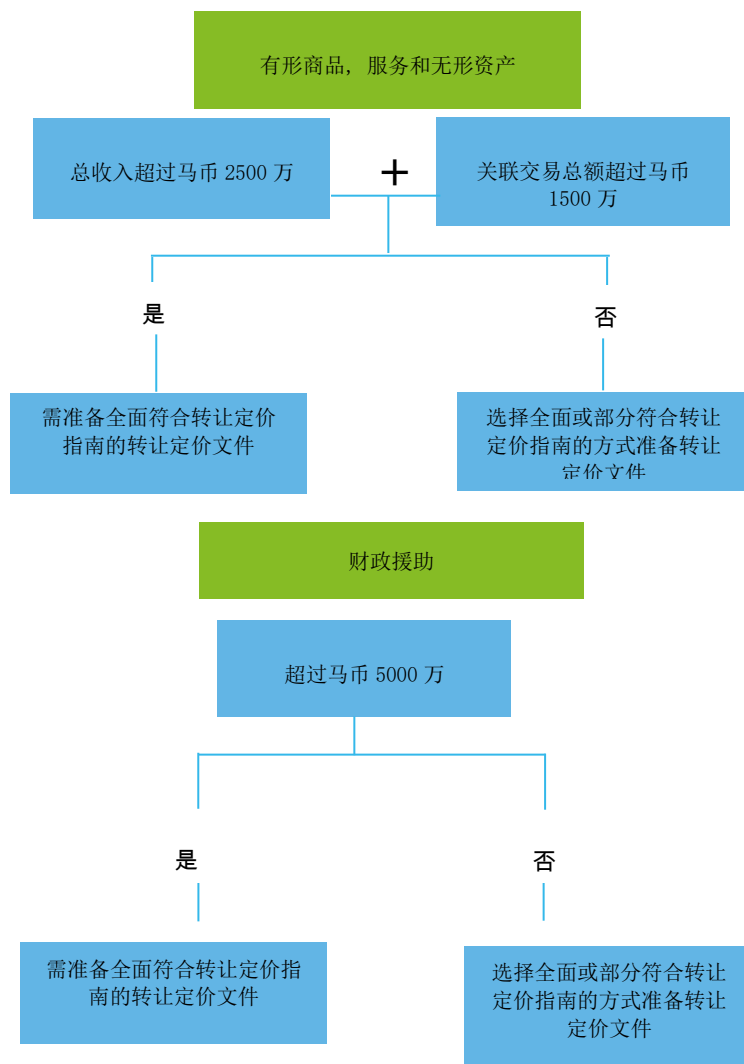
### 马来西亚转让定价-转让定价文件合规的附加指南

#### 简介

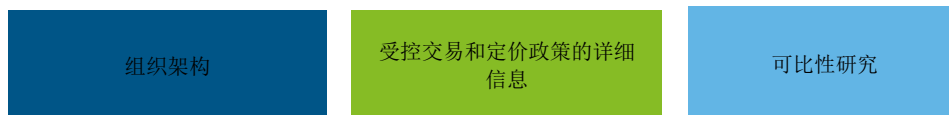
转让定价是指在关联企业之间的转让商品、服务和无形资产的定价安排。在理想情况下，转让价格应该与独立企业之间交易时的市场价格相同。马来西亚内陆税收局发布了对于现行 2012 年马来西亚转让定价指南的修订版，以符合税基侵蚀与利润转移的第 8-10 项和第 13 项行动计划要求。此次修订于 2017 年 7 月生效。

#### 谁需要准备转让定价文件？

包括马来西亚中资企业在内，涉及关联方交易的纳税人均需要准备转让定价文件。请参考以下 2012 年马来西亚转让定价指南规定的标准：



部分转让定价文件至少应包括以下内容：



### 何时需要更新转让定价文件？

尽管马来西亚转让定价指南中的段落 3 已被排除，但经修订的转让定价指南重申了对转让定价同期资料的要求，明确了当纳税人发生对于受控交易存在影响的运营和/或经济状况“实质性变化”时，纳税人都需要更新转让定价文件。

此外，当运营和/或经济状况没有发生“实质性变化”时，可比性研究也需要每三年更新一次。然而，现有可比性研究的财务数据和适用性需要每年审查更新。

附加项目是转让定价文件的一部分（某些部分是基于经济合作与发展组织跨国企业本地转让定价指南的要求），包括管理架构，定价政策的详细信息和职能分析的风险分析框架，本地实体参与商业重组以及无形资产转移的信息，转让定价计算与财务报表之间的调整信息等。

### 转让定价文件的违规处罚？

以下为马来西亚内陆税收局针对转让定价所适用的罚款率：

事项	基于税务审计框架的罚款率
遗漏或低估收入	45%
未准备转让定价文件	35%
已准备转让定价文件，但未完全遵循转让定价指南中的要求	25%
根据现有法规，准备全面、优质的转让定价同期资料	0%

经修订的转让定价指南阐明了罚款规定：

- 当转让定价文件陈述的信息与事实不符时，作为转让定价文件一部分的相关信息将被视为不正确，并且将根据马来西亚所得税法条款 113(2)(b) 受到处罚[相当于未缴税金的 100%]。
- 其它将导致罚款的情况，包括：
  1. 形式和实质存在差别；例如，合同约定和实际执行不一致；
  2. 纳税人采用的可比数据没有满足经济相关性或可比性因素；
  3. 针对功能、资产和风险的说明存在不准确或误导性。

通常在内陆税收局要求提供转让定价文件之日起 30 天内提交，并且文件符合转让定价规则和经修订的转让定价指南的要求时，将不会被处以罚款。

## 结论

对于在马来西亚的中资企业而言，识别任何潜在风险或集团内的定价政策、实际操作及转让定价文件之间的差异，针对未来转让定价审计作出必要改变并准备充分论据是至关重要的。修订的转让定价指南反应了马来西亚内陆税收局现有立场和未来展开的转让定价审计工作的力度。随着对相关要求的明确，马来西亚内陆税收局对转让定价合规执法力度的加强势在必行，这也反映在对于罚款的规定中。

欢迎随时联系我们以获取更多相关信息。



## **Deloitte Malaysia Chinese Services Group Publication**

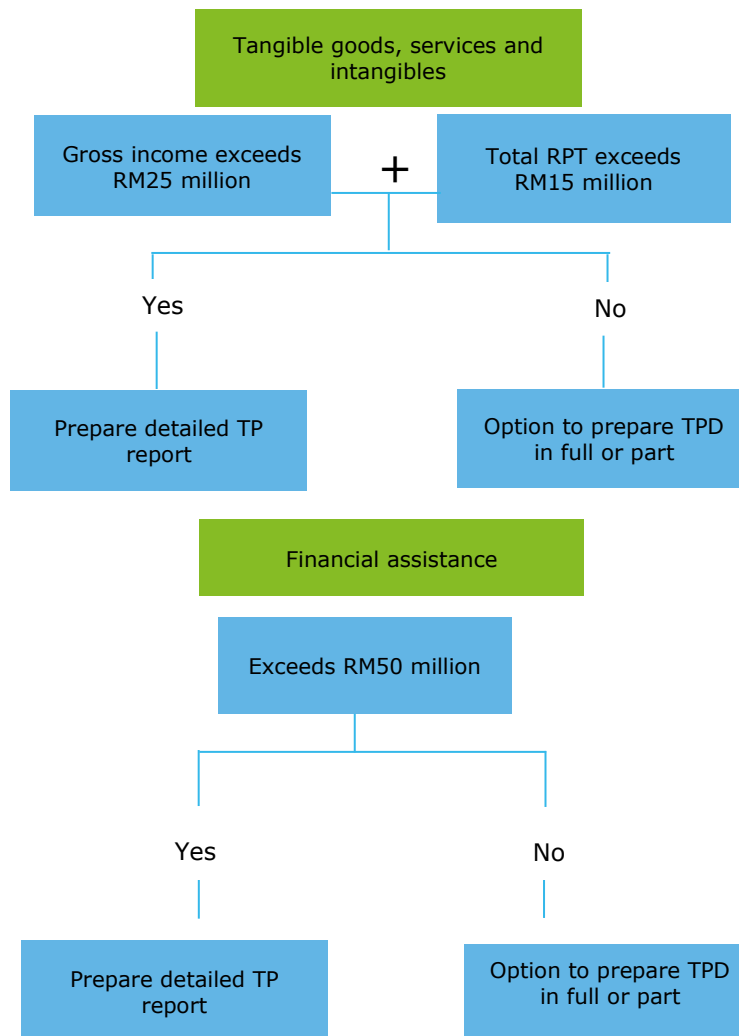
### **Malaysia Transfer Pricing - Additional guidance on compliance of transfer pricing documentation**

#### **Introduction**

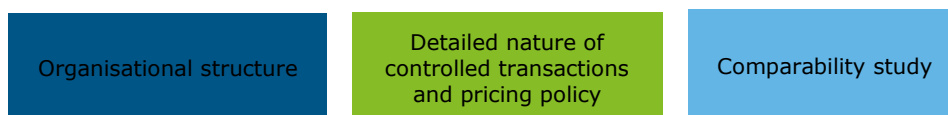
Transfer pricing generally refers to an intercompany pricing arrangements for the transfer of goods, services and intangibles between associated persons. Ideally, the transfer price should not differ from the prevailing market price which would be reflected in a transaction between independent persons. The Inland Revenue Board of Malaysia (IRBM) has released the first set of revisions to the existing Malaysian Transfer Pricing Guidelines 2012, to align with BEPS Actions 8-10 and Action 13 recommendations. The revisions are effective July 2017.

#### **Who needs to prepare the transfer pricing documentation?**

Taxpayers, including Chinese companies in Malaysia who are involved in related party transactions are required to maintain transfer pricing documentation. Please refer to the thresholds prescribed in the Malaysian Transfer Pricing Guidelines 2012 below:



A limited transfer pricing documentation should at least cover the following:



### How often to update the transfer pricing documentation?

The revisions re-affirm the requirement to prepare contemporaneous documentation, notwithstanding the exclusion in Paragraph 3 of the Malaysian transfer pricing guidelines. Under the revised guidelines, taxpayers need to update the transfer pricing documentation whenever there are "material changes" in operational and/or economic conditions that have a bearing on controlled transactions.

Also, the comparable searches must be refreshed every three years, provided operational / economic conditions remain the same. However, financial data and suitability of the existing comparables should be reviewed and updated annually.

Additional items are required as part of transfer pricing documentation (some in line with the OECD local file guidance), such as management structure, detailed information on pricing policies, specific reference to risk analysis framework for functional analysis, information on

involvement of a local entity in business restructuring or intangibles transfer, reconciliation between transfer pricing computations and financial statements, etc.

### **What are the penalties for non-compliance with transfer pricing documentation requirement?**

The following penalty rates would be applied on the transfer pricing adjustment determined by the IRBM.

<b>Particulars</b>	<b>Penalty rate as per audit framework</b>
Understatement or omission of income	45%
Did not prepare TP documentation	35%
Prepared TP documentation but did not fully comply with the requirements under the TP Guidelines	25%
Prepared comprehensive, good quality contemporaneous TP documentation in accordance with existing regulation	0%

The revised guidelines elaborate on the penalty provisions:

- Information provided as a part of the transfer pricing documentation would be considered incorrect and attract a penalty under Section 113(2)(b) of ITA [100 percent of tax undercharged], when the facts presented in documentation are different from actual conduct.
- Other circumstances that may lead to a penalty include:
  1. Differences between form and substance; for instance, if a contract and conduct are different;
  2. Comparables selected by the taxpayer do not meet all of the economically relevant characteristics or comparability factors;
  3. Inaccurate or misleading explanation of function, assets, and risk.

Penalties will generally not be imposed when transfer pricing documentation is submitted within 30 days upon request, and the documentation fulfils the requirements of the transfer pricing rules and the revised transfer pricing guidelines.

### **Conclusion**

It is important for Chinese companies in Malaysia to identify any potential areas of risk or gaps in their intragroup pricing policies, actual practices, and transfer pricing documentation, and make desired changes or build adequate defensible positions for audits. The revisions to the transfer pricing guidelines reflect the IRBM's current stance on transfer pricing enforcement and the approach to be adopted in transfer pricing audits moving forward. With greater clarity on the requirements, it is imperative that the IRBM enforces a

higher degree of compliance as reflected in the penalty elaborations.

Please contact us for further information.

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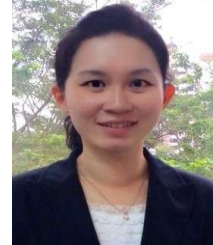


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