



10 CHANGES YOU NEED TO KNOW ABOUT

THE MALAYSIAN TP RULES 2023

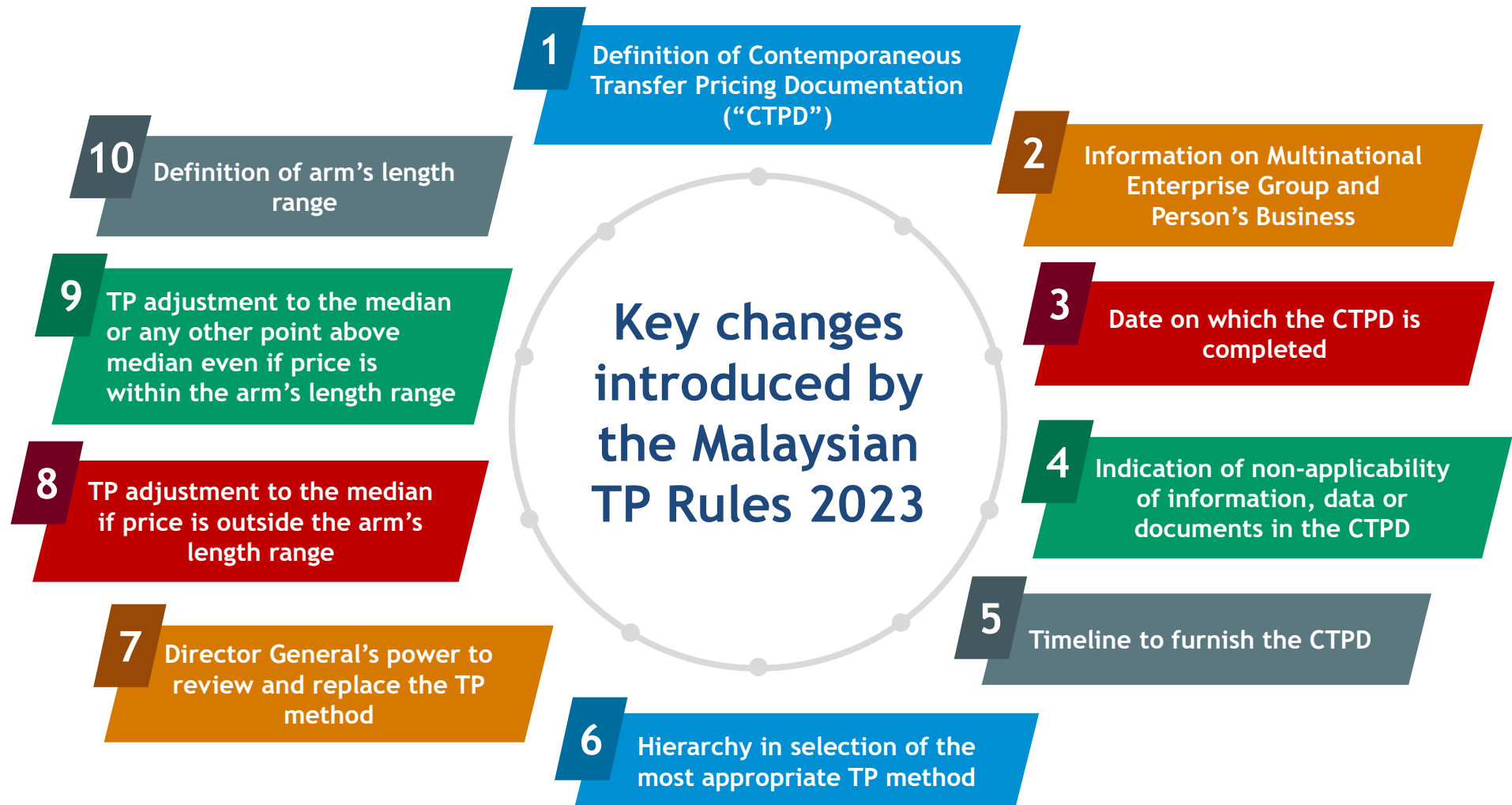
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The Ministry of Finance Malaysia issued the Income Tax (Transfer Pricing) Rules 2023 (“Malaysian TP Rules 2023”) on 29 May 2023 which is effective from year of assessment 2023.

This replaces the Income Tax (Transfer Pricing) Rules 2012 which was issued in May 2012 and deemed to have come into operation on 1 January 2009.

Your trusted BDO Malaysia Transfer Pricing Team has summarised the 10 key changes you need to know about the new Malaysian TP Rules 2023.



1. DEFINITION OF CONTEMPORANEOUS TRANSFER PRICING DOCUMENTATION (“CTPD”)

TP Rules 2012

CTPD means transfer pricing documentation which is brought into existence:

- a) when a person is developing or implementing any controlled transaction; and
- b) where in a basis period for a year of assessment the controlled transaction is reviewed and there are material changes, the documentation shall be updated prior to the due date for furnishing a return for that basis period for that year of assessment.

TP Rules 2023

CTPD means transfer pricing documentation which is brought into existence prior to the due date for furnishing a return in the basis period for a year of assessment in which a controlled transaction is entered into.

2. INFORMATION ON MULTINATIONAL ENTERPRISE GROUP AND PERSON'S BUSINESS

TP Rules 2012	TP Rules 2023
<p>No requirement for CTPD to include information on the Multinational Enterprise Group (“MNE Group”).</p> <p>No detailed guidance on the documentation of taxpayer’s business information as it was contained in Para 11.2.4 of Chapter XI Documentation of the Malaysian TP Guidelines 2012.</p>	<p>CTPD must include information on the Multinational Enterprise Group that are relevant to the taxpayer’s business(es) in Malaysia.</p> <p>The detailed guidance is now inserted into this TP legislation.</p>

3. DATE ON WHICH THE CTPD IS COMPLETED

TP Rules 2012	TP Rules 2023
<p>No requirement to insert date on which the CTPD is completed.</p>	<p>A date on which the CTPD is completed must be inserted to demonstrate the contemporaneous requirement.</p>

4. INDICATION OF NON-APPLICABILITY OF INFORMATION, DATA OR DOCUMENTS IN THE CTPD

TP Rules 2012	TP Rules 2023
No requirement for taxpayers to indicate in the CTPD if any of the information, data or documents, as required in a CTPD, is not applicable.	Taxpayers are now required to indicate in the CTPD which are the information, data or documents as set out in the TP Rules that are not applicable to the taxpayers.

5. TIMELINE TO FURNISH THE CTPD

TP Rules 2012	TP Rules 2023
No timeline was specified for furnishing CTPD upon request by the Malaysian Inland Revenue Board (“MIRB”).	CTPD must be made available within 14 days of a request by the MIRB.



6. HIERARCHY IN SELECTION OF THE MOST APPROPRIATE TP METHOD

TP Rules 2012	TP Rules 2023
<p>MIRB required TP methods to be selected on a hierarchy basis i.e. to assess the applicability and reliability of the traditional method (e.g. Comparable Uncontrolled Price (“CUP”) method) before considering the transactional profit method (e.g. Transactional Net Margin Method (“TNMM”)).</p>	<p>The hierarchy of methods is now removed.</p>

7. DIRECTOR GENERAL’S POWER TO REVIEW AND REPLACE THE TP METHOD

TP Rules 2012	TP Rules 2023
<p>No power was given to the Director General (“DG”) to review and replace any TP method selected by the taxpayer.</p>	<p>MIRB will seek to replace the TP method with the other most appropriate method if the DG has a reason to believe that the taxpayer’s selected method is not the most appropriate method in determining the arm’s length price.</p>

8. TP ADJUSTMENT TO THE MEDIAN IF PRICE IS OUTSIDE THE ARM'S LENGTH RANGE

TP Rules 2012

When a taxpayer's margin is outside the arm's length range, TP rules were silent on which point within the arm's length range can a TP adjustment be made by the MIRB.

TP Rules 2023

The MIRB has now been conferred with a clear power to apply the TP adjustment to the median.

9. TP ADJUSTMENT TO THE MEDIAN OR ANY OTHER POINT ABOVE MEDIAN EVEN IF PRICE IS WITHIN THE ARM'S LENGTH RANGE

TP Rules 2012

Where the TP legislation and guidelines in Malaysia were silent, reference can be made to the OECD TP Guidelines whereby no TP adjustment should be made if a taxpayer's margin falls anywhere within the arm's length range.

TP Rules 2023

New rules increase the ambit of the MIRB's powers whereby TP adjustment to the median or any other point above median (but within the arm's length range) can still be imposed if the DG has a reason to believe that the comparable set has a lesser degree of comparability or some comparability defects may remain that are not quantifiable and therefore not adjusted.

10. DEFINITION OF ARM'S LENGTH RANGE

TP Rules 2012

No definition was given on the arm's length range.

In practice, the MIRB and taxpayers relied on the key principles under OECD TP Guidelines to determine the arm's length range. In an effort to enhance the reliability of the arm's length range, the interquartile range from 25 percentile to 75 percentile was often used.

TP Rules 2023

For the first time, the arm's length range is defined - and it is a very narrow range from 37.5 percentile to 62.5 percentile.

Please also sign up to our complimentary briefing to learn more about BDO's insights to these changes.



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