



## TRANSFER PRICING FLASH

6<sup>th</sup> MAY 2020

*Feeling restless being trapped at home for so long? A joke to cheer up...*

The local bar was so sure that its bartender was the strongest man around that they offered a standing \$1,000 bet: The bartender would squeeze a lemon until all the juice ran into a glass, and hand the lemon to a patron. Anyone who could squeeze one more drop of juice out would win the money. Many people had tried over time but nobody could do it.

One day this scrawny little man came into the bar, wearing thick glasses and a polyester suit, and said in a tiny squeaky voice "I'd like to try the bet."

After the laughter had died down, the bartender said OK, grabbed a lemon, and squeezed away. Then he handed the wrinkled remains of the rind to the little man. The crowd's laughter turned to total silence as the man clenched his fist around the lemon and six drops fell into the glass.

As the crowd cheered, the bartender paid the \$1,000, and asked the little man "What do you do for a living? Are you a lumberjack, a weight-lifter, or what?"

The man replied, "I work for the IRS."

To many, even "one drop of lemon juice" could tantamount to a hefty additional tax bill, so "six drops of lemon juice" would probably cause a big hole in the bank account plus a medical bill.

### **DID YOU KNOW...**

How much of "lemon juice" our country taxmen have collected?

Let us show you some numbers which were presented during the National Tax Conference 2018. The table below summarises the number of transfer pricing ["TP"] audit cases resolved by the Inland Revenue Board ["IRB"] and the tax and penalties collected therefrom over the years.

Year	Cases Resolved	Tax & Penalties (RM million)
2017	265	681.94
2016	256	240.44
2015	250	124.87
2014	168	155.94
2013	183	166.00

The above statistics show an upward trend of total tax collected (including penalties) since year 2015 and it is not surprising that the IRB would continue to maintain the momentum. This leads to the need to understand the recent changes in the Transfer Pricing Audit Framework ["TPAF"] 2019, issued in late 2019, which replaces the TPAF 2013.

Three key changes in the TPAF 2019 are listed below:-

## 1. Revised Penalty Rates

The table below summarised the penalty rates as stipulated in the TPAF 2019:

Circumstances	Penalty rate for TP issue*	
	TP Audit case	Voluntary Disclosure ["VD"]
Taxpayer did not prepare TP Documentation	<b>50%</b> (35%)	<b>NA</b> (15%)
TP Documentation prepared not in accordance with the Malaysian Transfer Pricing Guidelines 2012, further revised in 2017 ["MTPG"]; or TP Documentation prepared in accordance with MTPG but not submitted within 30 days from IRB's letter	<b>30%</b> (25%)	<b>20%</b> (10%)
TP Documentation prepared in accordance with MTPG AND submitted within 30 days from IRB's letter	<b>0%</b> (0%)	<b>0%</b> (0%)

\*Penalty rates stated in brackets were the old rates stipulated in the TPAF 2013 which is now superseded.

A few scenarios to illustrate the application of the revised rates:-

- i. The IRB always emphasises on the requirement for contemporaneous documentation and has clarified that TP documentation must be submitted within 30 days from the date of the letter of request for documents issued by the IRB. Where a taxpayer applies for extension of time to submit its TP documentation after it has been requested by the IRB and approval is granted, the submission of the TP documentation would still be considered late as it is submitted after the 30-day timeline stipulated. The revised penalty rate of 30% on TP adjustment would apply.
- ii. Where a taxpayer has prepared a TP documentation which meets the requirement of the MTPG and decides to submit its TP documentation via a VD submission, the taxpayer will not be penalised for any TP adjustment that results in additional tax payable where the submission is done before the commencement of the TP audit.
- iii. Where a taxpayer prepares and submits a limited scope TP documentation, when in fact it should prepare a full scope study as per the threshold of the related party transactions set in the MTPG, it would be penalised with a 30% penalty on top of the additional tax liability arising from the TP adjustment.
- iv. Where a taxpayer prepares a TP documentation that does not sufficiently meet the requirement of MTPG and there is no TP adjustment raised by the IRB at the end of the audit, the taxpayer will not be penalised.

## 2. Voluntary Disclosure

The TPAF 2019 has specific paragraphs prescribing the VD procedures for TP. Taxpayers are advised to discuss with the IRB before submission of the VD and are required to complete and submit a prescribed form along with the following documents:-

- i. TP documentation and organisation chart for the relevant years;
- ii. Audited accounts, income tax computations, return forms and tax incentive information for the relevant years;
- iii. Benchmarking analysis and the audited accounts of the comparable companies for the relevant years; and
- iv. Information on omitted income or error or mistake in reporting or claim with supporting documents.

Taxpayers may utilise the lower rate, as shown in the table above, in computing their additional tax payable in their VD submission to the IRB. The good news about VD is that it would be concluded in a much shorter time compared to a TP field audit.

## 3. Removal of “Repeated Offence” Penalty

There was this clause in the TPAF 2013 which has been removed in the TPAF 2019:-

*“For each repeated offence, the rate of penalty shall be increased by 20% as compared to the last penalty rate imposed for the previous offence, but limited to a sum not exceeding 100% of the total amount of tax undercharged.”*

The removal of this clause does not in any way imply that taxpayers will not be chosen for TP audit for a second time. The second audit will be viewed by the IRB as a fresh audit where the new penalty rates of the TPAF 2019 would apply.

Undeniably, if the IRB continues its pursuit in TP audits aggressively like the years before, with the hike in the penalty rates, it will be able to collect enough “lemon juice” to fill up a well.

Now that you've learned about the latest TPAF 2019, you should review the readiness of your company in the event of a TP audit.

Stay Safe, Stay Compliant

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