



TRANSFER PRICING AUDIT FRAMEWORK

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INLAND REVENUE BOARD OF MALAYSIA

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1. INTRODUCTION

- 1.1 A fair, transparent and equitable tax administration system will enhance the public's confidence in the tax system. Adherence to tax law should be strictly enforced and taxation offences such as non-compliance and tax evasion should be penalised in accordance with the provisions of the Income Tax Act 1967 (ITA).
- 1.2 Under the Self-Assessment System (SAS), a tax audit is the main activity of the Inland Revenue Board of Malaysia (IRBM) to enhance voluntary tax compliance. A taxpayer may be selected for audit at any time. However, if the taxpayer has been selected for audit it does not mean that the taxpayer has committed an offence.
- 1.3 This Transfer Pricing Audit Framework (TPAF) is issued by IRBM to ensure that the transfer pricing audit is carried out in a fair, transparent and impartial manner. This TPAF outlines the rights and responsibilities of audit officers, taxpayers and tax agents in respect of a transfer pricing audit. Generally, this framework aims to:
- 1.3.1 assist audit officer to perform his duties more efficiently and effectively; and
 - 1.3.2 assist taxpayer to fulfil his responsibilities.

2. STATUTORY PROVISIONS

- 2.1 The legal provisions under the ITA which are applicable to tax audit in general are:
- a. Subsection 39(1A) : Deduction is not allowed if information required by the Director General of Inland Revenue (DGIR) through a notice under section 81 of the ITA is not provided within the time specified
 - b. Section 78 : Power to call for specific returns and production of books
 - c. Section 79 : Power to call for statement of bank accounts, etc
 - d. Section 80 : Power of access to buildings and documents, etc
 - e. Section 81 : Power to call for information

- f. Section 82 : Duty to keep records and give receipts
- g. Section 82A : Duty to keep documents for ascertaining of chargeable income and tax payable
- h. Subsection 97A(2) & Section 99 : Rights of appeal
- i. Section 100 : Extension of time for appeal
- j. Section 101 : Review by Director General
- k. Section 102 : Disposal of appeals
- l. Section 112 : Failure to furnish Income Tax Return Form (ITRF)
- m. Section 113 : Incorrect returns
- n. Section 116 : Obstruction of officers
- o. Section 119A : Failure to keep records
- p. Section 120 : Other offences
- q. Section 138 : Certain material to be treated as confidential
- r. Section 138A : Public ruling
- s. Section 140 : Power to disregard certain transactions
- t. Section 141 : Powers regarding certain transactions by non-residents

2.2 Apart from provisions stated in the ITA as above, other provisions from the ITA that are applicable in a transfer pricing audit include:

- a. Section 132 : Double Taxation Agreements
- b. Section 139 : Controlled Companies
- c. Section 140A : Power to substitute the price on certain transactions

- 2.3 Income Tax Rules specifically on transfer pricing audit which is the Income Tax (Transfer Pricing) Rules 2012 [P.U. (A) 132/2012].
- 2.4 Transfer Pricing Guidelines 2012 (including updated chapters with effect from 15 July 2017) which are currently in effect.
- 2.5 Statutory provisions relating to transfer pricing audit are not limited to the provisions cited above. Statutory provisions also include the ITA as a whole, Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Labuan Business Activity Tax Act 1990 and other acts administered by IRBM.

3. WHAT IS A TRANSFER PRICING AUDIT?

- 3.1 A transfer pricing audit is a review of taxpayer's business records and financial affairs to ascertain the application of the rules on controlled transactions. The examination is to ensure that transfer pricing rules are being applied in accordance with the methods and manners provided in the P.U. (A) 132/2012 and the Transfer Pricing Guidelines 2012, as well as to comply with the IRBM's administrative requirements on the types of records and documentations to be maintained. It also serves to ensure that the arm's length principle is being adopted, and the fair share of tax is being reported, calculated and paid in accordance with the tax laws and regulations. IRBM carries out two (2) types of transfer pricing audits, namely transfer pricing desk audit and transfer pricing field audit.
 - a. Transfer Pricing Desk Audit
 - i. A desk audit is conducted at the IRBM's office. It involves enforcement of compliance on transfer pricing issues or adjustments in income and taxes that can be resolved by correspondence. Taxpayer may be called for an interview at the IRBM's office if further information is needed.
 - ii. In general, a desk audit involves a review / examination of all income and expenditure information as well as the various types of claims which are made by taxpayer in his income tax return form (ITRF).
 - iii. In certain circumstances, a desk audit case may be referred for a field audit. Under such circumstances, the taxpayer will be informed through

a field audit notification letter as part of the normal process of commencing the field audit.

b. Transfer Pricing Field Audit

A field audit is carried out either at the taxpayer's premises, the IRBM's office or any places the taxpayer and IRBM have agreed upon. It applies the normal audit procedure involving the examination of the taxpayer's business records with additional processes to ensure that the controlled transactions are carried out in accordance with the arm's length principle.

3.2 In general, this Transfer Pricing Audit Framework is applicable to both types of audits, which are desk audit and field audit.

3.3 Transfer Pricing Documentation (TPD) are essential document required to determine the arm's length nature of controlled transactions. Therefore, taxpayers and tax agents who have prepared the documentation must ensure that the documentation are prepared in accordance with the provisions of the ITA as well as the relevant rules and guidelines.

4. OBJECTIVES OF A TRANSFER PRICING AUDIT

4.1 The main objective of a transfer pricing audit is to ensure that the arm's length principle is complied with in a controlled transaction and also to ensure compliance with Malaysian tax laws as well as administrative requirements of the IRBM. A transfer pricing audit also serves to fulfil the normal tax audit objectives which are to encourage voluntary compliance with the tax laws and regulations and to ensure that compliance rate is achieved under the Self-Assessment System. As such, the audit officer is required to ascertain that the right income has been reported and the tax has been paid by the taxpayer is in compliance with the tax laws and regulations.

4.2 A transfer pricing audit is an approach by the IRBM to educate as well as to provide exposure to the taxpayer on his duties and responsibilities in accordance with the provision of the ITA.

5. YEARS OF ASSESSMENT COVERED

- 5.1 A tax audit is carried out comprehensively covering between three (3) to six (6) years of assessment depending on the transfer pricing issues which have been determined.
- 5.2 However, the years of assessment covered to raise the assessment may be extended to seven (7) prior years of assessment depending on the audit issues found. The limit for this coverage period does not apply to audit cases involving fraud, wilful default or negligence as provided under subsection 91 (3) of the ITA.

6. SELECTION OF CASES

- 6.1 The primary basis for a transfer pricing audit case selection is based on the amount of controlled transactions made by the company with the significant transaction value before any other risk analysis is performed.
- 6.2 Selection of cases will be approved by appointed committee members.

7. TRANSFER PRICING AUDIT IMPLEMENTATION

7.1 Initial Audit Action

7.1.1 The commencement date of a transfer pricing audit refers to:

- a. for field audit cases, the date when the *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) / *Surat Penentuan Permulaan Tempoh Penyelesaian Kes* (Determination of Commencement of Case Settlement Period Letter) is issued to the taxpayer.
- b. for desk audit cases, the date when the *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter) is issued to the taxpayer.

7.1.2 Letters as stated in paragraph 7.1.1 will be issued to the taxpayer by official e-mail, fax or mail.

7.1.3 In cases where the taxpayer is required to submit documents and information, the taxpayer is required to provide feedback within 14 calendar days from the date of the *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter). If the

taxpayer fails to provide feedback within the time specified, the audit action will be resumed using method or approach deemed appropriate by the IRBM.

- 7.1.4 In the case of a field audit, a *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) will be issued to the taxpayer at least 14 calendar days prior to the date of visit. However, if the notification letter is not issued within 14 calendar days, confirmation of the visit may be notified in advance by phone or e-mail.
- 7.1.5 If a *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) has been issued, the taxpayer may apply to postpone the date of the audit visit on reasonable grounds and unavoidable circumstances.
- 7.1.6 Other than the intended date of visit, the *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) will indicate the records that should be made available by the taxpayer for the audit, the years of assessment to be audited, as well as the names of the audit officers who will conduct the audit and the duration of the audit visit.
- 7.1.7 Prior to a transfer pricing audit visit, the taxpayer will be requested to submit related documents which include TPD as outlined in the Transfer Pricing Guidelines 2012, within 30 calendar days from the date the *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter) is issued.
- 7.1.8 The taxpayer is responsible to make a record of the printed or digital copy of documents that have been selected by the audit officer as well as to provide computer facilities and access to the system for audit review of documents that are only available in the form of digital copies.
- 7.1.9 If it is found that the documents required in relation to business transactions in Malaysia are being kept outside of Malaysia by a related company, it is the responsibility of the taxpayer to prepare those documents before the audit visit.
- 7.1.10 The taxpayer will need to prepare presentation slides regarding the business of the taxpayer which will be presented during the audit visit explaining the background of the company, the business and global operations, the complete management structure and functions, accounting and record-keeping system focusing on controlled

transactions between related companies. A copy of the slides must be submitted to the audit officer at least seven (7) calendar days prior to the audit visit.

7.1.11 The taxpayer may contact the Audit Manager or the relevant IRBM Branch Director for the purpose of confirming the audit visit.

7.1.12 The IRBM may visit any of the taxpayer's premises or related premises by notifying the taxpayer in advance.

7.1.13 An audit examination with due notice may be extended to related companies / businesses controlled by the taxpayer.

7.1.14 In the absence of an audit visit, a *Surat Penentuan Permulaan Tempoh Penyelesaian Kes* (Determination of Commencement of Case Settlement Period Letter) will be issued to the taxpayer to inform the commencement date for field audit without an audit visit.

7.2 Audit Visit

7.2.1 An audit visit is only applicable to a field audit activity. The audit examination can be conducted in the following places:

- a. business premises of the taxpayer / tax agent;
- b. office of the IRBM; or
- c. other appropriate places as agreed upon by both parties.

7.2.2 During the audit visit, the audit officer will:

- a. introduce himself and produce an authority card bearing the name and photograph of the officer or an authority letter issued by the IRBM;
- b. inform the taxpayer on the purpose of the visit at the beginning of the visit;
- c. notify the taxpayer / tax agent that under section 80 of the ITA, the officer at all times has full and free access to:

- i. enter and inspect all lands, buildings and places; and
 - ii. view all books, documents, objects, articles, materials and things and examine, retrieve, make copies or extracts of any document without any payment charges.
- d. inform the scope and duration required for the audit to review / examine documents;
 - e. inform the names, telephone numbers of the office and senior officer in charge of the audit;
 - f. notify the taxpayer's rights and responsibilities during the audit;
 - g. conduct document review / examination at the places visited;
 - h. access, download and retrieve relevant information from any electronic media equipment; and
 - i. interview the taxpayer and key personnel from departments / sections / units that are relevant as well as any personnel deemed necessary at the premise visited.

7.2.3 In addition to the location where records are kept, the audit officer may also visit other selected locations, for example, the manufacturing plant of the taxpayer.

7.2.4 In certain circumstances, an audit visit will not be made at the taxpayer's premises and document review is only performed at the IRBM's office.

7.3 Duration of Field Audit Visit

The time required to carry out an audit visit is between four (4) to five (5) days. However, the period may be extended depending on the following factors:

- a. the size and the complexity of business transactions which are carried out;
- b. the form in which records are kept; or
- c. the extent of co-operation from the taxpayer.

7.4 Record Review / Examination

- 7.4.1 During the audit process, the audit officer should be allowed to review all business records including a physical examination of stock and business equipment to verify claims made by the taxpayer.
- 7.4.2 Under section 80 of the ITA, the audit officer is allowed to have full access to the taxpayer's records. Where necessary, the audit officer should be allowed to make copies of the relevant records and documents.
- 7.4.3 If there is a need for the collection of the taxpayer's original documents and records by the audit officer, the audit officer shall provide a list and an acknowledgement of the receipt of the documents and records and the list shall be signed by the audit officer and the taxpayer or tax agent. The taxpayer can review the documents and records and make copies of the lists (if necessary).
- 7.4.4 If accounting books and records are stored electronically, the audit officer is allowed to access computer systems, servers or gadgets and to download accounting data into a compact disc, pen drive, portable hard disk or any other storage media.
- 7.4.5 The audit officer will review all relevant documents and records to determine that the correct amount of income has been reported as well as to ascertain that the arm's length principle is adopted. The records generally are as follows:

- a. Business Records

Taxpayer can obtain guidance on record-keeping from the guidebooks as well as the Public Rulings issued by the IRBM.

Pursuant to Section 138A of the ITA, the DGIR is empowered to issue public rulings on the interpretation of any provisions of the ITA.

Public Rulings and guidebooks regarding record-keeping have been issued as follows:

- i. IRBM Public Ruling No. 4/2000: Keeping Sufficient Records (Companies & Co-operatives) (Revised);

- ii. IRBM Public Rulings No.6 / 2000: Keeping Sufficient Records (Person Other than Companies & Co-operatives) (Revised).

b. Records Other Than Business Records

The audit officer should review records other than business records such as:

- i. all agreements, contracts and other binding documents concerning business activities with related companies or third parties as required in the Transfer Pricing Guidelines 2012.
- ii. documentation on specific transactions as required under the Transfer Pricing Guidelines 2012;
- iii. records relating to the ownership of properties;
- iv. other statements as required under section 79 of the ITA.

7.4.6 Sections 82 and 82A of the ITA require the taxpayer to maintain sufficient and complete records to enable the income or loss of the business to be determined. Records and documents may be in manual or electronic form and include:

- a. books of account which record receipts and payments or income and expenditure;
- b. financial statement;
- c. invoices, vouchers, receipts and such other documents as are necessary to verify any of the items recorded in the account book;
- d. documents, objects, materials, articles and objects which are handled and stored in any form of the electronic medium; and
- e. any other records as may be specified by the DGIR.

7.4.7 Failure to comply with subsections 82 (1), 82 (3) and 82 (5) of the ITA to maintain a sufficient and complete record is an offence under section 119A of the ITA.

7.4.8 If the taxpayer fails to maintain a sufficient and complete record, the audit officer will use the best method or approach to determine whether the income has been properly reported.

7.5 Transfer Pricing Desk Audit

7.5.1 Generally, a desk audit involves checking information on controlled transactions, comprising of:

- a. reviewing the accounts or financial statement;
- b. reviewing and analyzing the TPD;
- c. auditing non-transfer pricing issues; or
- d. reviewing settled audit cases to ensure compliance with audit findings for subsequent years and to ensure updating of comparable companies based on the financial year which is the same as the year when the review was done.

7.5.2 In certain circumstances, an audit visit may be performed for the purpose of verifying a certain issue.

7.6 Audit Settlement

7.6.1 Taxpayer may be called to the IRBM's office to discuss audit findings issues.

7.6.2 In addition, the taxpayers himself may be present at the IRBM's office to seek clarification on the progress of the audit process or to provide further information to expedite the settlement of the audit.

7.6.3 The taxpayer shall be notified in writing through the *Surat Penemuan Semakan Kes* (Case Review Findings Letter) covering the following matters:

- a. the audit issues raised; and
- b. the reasons and rationale of the issues raised.

- 7.6.4 The taxpayer will be given the opportunity to provide feedback and clarification regarding the audit findings.
- 7.6.5 If the taxpayer is dissatisfied with the audit findings which are issued, the taxpayer may formally make an objection within 18 calendar days from the date of the *Surat Penemuan Semakan Kes* (Case Review Findings Letter) by submitting additional information and supporting evidence to support his objection.
- 7.6.6 The taxpayer's objections will be reviewed and the taxpayer will be informed accordingly of the final audit findings.
- 7.6.7 If no objection is received within 18 calendar days from the date of the *Surat Penemuan Semakan Kes* (Case Review Findings Letter), the taxpayer is deemed to have agreed to the audit findings.
- 7.6.8 Amount of income, tax and penalty adjustments (if any) and the years of assessment involved shall be notified by the *Surat Penyelesaian Kes* (Case Settlement Letter). Subsequently, Notice of Assessment or Notification of Non-chargeability will be issued.
- 7.6.9 If no adjustment is made, a letter notifying of an audit settlement without adjustment will be issued.
- 7.6.10 Completed audit cases will not be re-audited for the same year of assessment and issue. However, in the event other issues or new information are received for the respective year of assessment, a re-audit may be carried out.

7.7 Voluntary Disclosure

- 7.7.1 A written voluntary disclosure with relevant documents on the transfer pricing case must be submitted to the respective IRBM Branch Director.
- 7.7.2 Taxpayer is advised to discuss with the respective Branch Director regarding the voluntary disclosure that will be made.
- 7.7.3 Taxpayer who wish to make a voluntary disclosure must fill up the Voluntary Disclosure Form for Transfer Pricing Case as in **Attachment 1** of the Transfer Pricing Audit Framework which can also be downloaded from the IRBM website.
- 7.7.4 Taxpayer is also required to submit the following documents together with the voluntary disclosure:

- a. TPD and organisational chart for the relevant years;
 - b. audited accounts, tax computation, a copy of income Tax Return Form and information of incentives for relevant years;
 - c. computation of comparability analysis and audited accounts of comparable companies for relevant years of assessment; and
 - d. information on omitted income or error in reported income / claims with supporting documents.
- 7.7.5 A letter acknowledging receipt of the voluntary disclosure will be issued to the taxpayer by the respective IRBM Branch within 5 working days.
- 7.7.6 IRBM will review the documents received and will request for additional information if needed, or request for the tax payer to come forward to the IRBM office for further explanation if necessary.
- 7.7.7 A taxpayer who fails to submit the complete documents as stated in 7.7.4 without any substantial reasons is considered to have not complied with the requirements of voluntary disclosure and the voluntary disclosure will not be accepted.
- 7.7.8 If the documents are complete and the comparable analysis is accepted, the voluntary disclosure is considered final and the taxpayer will then be notified before the assessment is raised. If complete documents are submitted but adjustments have to be made to the comparable analysis, the adjustment will be made and the taxpayer will be notified before the tax computation is finalised.
- 7.7.9 If documents as stated in 7.7.4, are submitted by the taxpayer but are incomplete, a field audit or query letter will be issued to the taxpayer. Further review will be carried out on additional information based on the field audit. If the comparable analysis is accepted, the voluntary disclosure will be finalised but if adjustments have to be made, such adjustments will be made and the taxpayer will be notified before the tax computation is finalised.
- 7.7.10 Persons who are allowed to make a voluntary disclosure on behalf of the taxpayer are persons stated under subsection 75(1) ITA.

8 RIGHTS AND RESPONSIBILITIES**8.1 IRBM**

8.1.1 The audit officer is required to adhere to the rules and code of ethics set forth by the IRBM in performing his duties:

- a. professional, well mannered, trustworthy, honest and with integrity;
- b. always ready to give explanations on the objectives of the tax audit and the rights and responsibilities of the taxpayer;
- c. knowledgeable and fair in administering tax laws;
- d. co-operative and is always ready to give advice and guidance to the taxpayer;
- e. ensure that the audit is carried out smoothly with minimal disruption to the taxpayer;
- f. request for documents, books of accounts and information that are relevant to the audit only;
- g. explain the proposed tax adjustments and provide reasonable time for the taxpayer to give responses on issues raised; and
- h. ensure the rights and interest of taxpayer and tax agent, as well as documents of taxpayer, are safeguarded.

8.1.2 Identification of an audit officer:

- a. each audit officer is given an authority card bearing his name and photograph. This card also contains a statement that the officer is authorised to review the book of accounts, documents and records at the taxpayer's premises;
- b. taxpayer is advised to check the authority card in order to verify the authenticity of the audit officer's identity; and
- c. taxpayer is advised to check with the IRBM Branch Director if there are any doubts on the authenticity of the audit officer.

8.1.3 An audit officer is prohibited from:

- a. having any personal or financial interest in the business of a taxpayer being audited;
- b. recommending to the taxpayer to appoint a particular tax agent for the audit case; and
- c. abusing his position or power in carrying out his duties as provided under section 118 of the ITA.

8.2 Taxpayer

8.2.1 Taxpayer Responsibilities:

- a. give co-operation, courteousness, fairness, honesty and integrity;
- b. provide reasonable facilities and assistance to enable the audit officer to carry out his duties as outlined in Public Ruling No. 7/2000 which includes the following:
 - i. provide access to business premises to the audit officer, provide information and make available documents and records required for examination;
 - ii. allow the audit officer to interview the company personnel;
 - iii. provide explanation regarding the business, the accounting and information systems;
 - iv. allow examination and copying of records, documents and books of accounts whether in the physical and/ or electronic medium;
 - v. assist in the provision of / or provide access to records, documents and books of account in the physical and / or electronic medium;
 - vi. allow the use of copiers, telephone or other communication devices, electrical equipment, office space, furniture and electronic copy system facilities such as compact discs, pen drives, portable hard disks or any other storage media; and

- vii. prepare business documents which are located overseas before the audit visit is carried out.
- c. Co-operate in providing complete responses to all queries:
 - i. If the question posed is unclear, the taxpayer may request further clarification from the audit officer.
 - ii. The taxpayer is requested to use the service of a translator during the interview session or discussions if the taxpayer is unable to converse in Bahasa Malaysia or English.
 - iii. The taxpayer will be considered to have committed of an offence under the ITA provisions if he fails to co-operate in providing the required information.
 - iv. If additional information is required during / after the transfer pricing audit visit, the taxpayer is required to provide the additional information within the time specified.

8.2.2 The taxpayer is prohibited from:

- a. giving any form of gifts to the audit officer and transacting any business with the audit officer during the audit process;
- b. making any form of payments to the audit officer; and
- c. obstructing the audit officer from exercising his functions. Such obstruction is an offence under section 116 of the ITA. Obstruction includes the following:
 - i. obstructing or refusing to allow an audit officer from entering lands, buildings, places and premises to perform his duties in accordance with section 80 of the ITA;
 - ii. obstructing an audit officer from performing his functions and duties under the provisions of the ITA;
 - iii. refusing to provide books of accounts, or other documents in the custody of or under his control when required by the audit officer;
 - iv. failing to provide reasonable assistance to the audit officer in carrying out his duties; or
 - v. refusing to answer or give responses to questions raised during the course of an audit.

8.3 Approved Tax Agent

8.3.1 Taxpayer must submit a letter of appointment of an approved tax agent who is representing him. Taxpayer may request the tax agent to be present during the interview session. Taxpayer is also allowed to use the services of an interpreter during an interview or discussion session if the taxpayer is not fluent in Bahasa Malaysia or English.

8.3.2 Approved tax agent is subjected to the code of conduct issued by the IRBM based on principles related to integrity, accountability, transparency and social responsibility.

8.3.3 In performing duties, the approved tax agent must:

- a. act with integrity, high professionalism and knowledge of tax law and tax practice including what is related to transfer pricing;
- b. be honest, trustworthy, transparent and always give full co-operation to taxpayer and IRBM, such as notifying termination of service as tax agent and adhering to the procedures and guidelines set by IRBM;
- c. refrain from misusing information acquired or refrain from abusing position as a tax agent for personal gain;
- d. always provide accurate feedback on the progress of the audit process and advise the taxpayer based on accurate and correct facts; and
- e. safeguard the confidentiality of all information and ensure that the information is not disclosed to any unauthorised party (subsection 138 (1) of the ITA).

8.3.4 Approved tax agent is prohibited from:

- a. giving wrong advice and working with taxpayer to reduce the amount of tax due;
- b. delaying the process of completing a tax audit or giving up entrusted responsibility; and
- c. offering any form of gift to the audit officer including on behalf of the taxpayer.

9. CONFIDENTIALITY OF INFORMATION

IRBM will ensure that all information obtained from the taxpayer whether through interviews, discussions, correspondence or examination of records and documents are confidential and being used for income tax purposes only.

10. OFFENCES AND PENALTIES

10.1 In the event of an understatement or omission of any income as a result of the audit findings, penalty may be imposed under subsection 113 (2) of the ITA equivalent to the undercharged tax amount (100%). However, the DGIR may exercise his discretion in accordance with subsection 124(3) of the ITA to reduce or eliminate the penalties imposed.

10.2 For audit cases that involve voluntary disclosure on unreported income or under-reported income for non-transfer pricing issues, the penalty rate is according to the Tax Audit Framework which is in effect.

10.3 The penalty rates under subsection 113(2) ITA for audit cases involving transfer pricing issues are as follows:

No.	Situation	Penalty Rate (Transfer Pricing Issue)	
		Audit Case	Voluntary Disclosure Case
1	Taxpayer ⁽¹⁾ did not prepare Transfer Pricing Documentation.	50%	<i>Not Applicable</i>
2	Taxpayer prepared Transfer Pricing Documentation and submitted the documentation (together with voluntary disclosure) but did not fully comply with the Transfer Pricing Guidelines; Or Taxpayer prepared a comprehensive and quality Transfer Pricing Documentation but failed to submit the documentation within 30 days from the date of the <i>Surat Memohon Dokumen dan Maklumat</i> (Request for Documents and Information Letter) issued by IRBM	30%	20%

No.	Situation	Penalty Rate (Transfer Pricing Issue)	
		Audit Case	Voluntary Disclosure Case
3	Taxpayer prepared comprehensive and quality Transfer Pricing Documentation according to Transfer Pricing Guidelines and submitted the documentation within 30 days from the date of <i>Surat Memohon Dokumen dan Maklumat</i> (Request for Documents and Information Letter) issued by IRBM (for voluntary disclosure cases, it is submitted when the voluntary disclosure is made)	0%	0%

(1) For category of taxpayer who is required to prepare TPD in accordance with the Transfer Pricing Guidelines 2012.

10.4 The TPD must be submitted within 30 days from the date of *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter) is issued by the IRBM. If there is an application for an extension of time and it is approved, the submission of the TPD is still considered late due to submission out of the 30 days' time specified.

11. COMPLAINTS

11.1 Taxpayer may complain if he is dissatisfied with the attitude of the audit officer or the manner in which the tax audit is being carried out to the Branch Director / State Director / Director of the Tax Compliance Department / Deputy Director General / Director General of Inland Revenue.

11.2 The IRBM will take decisive, fair and just action in handling complaints received.

11.3 The IRBM will not entertain any complaint which is found to have no basis and not made in good faith.

11.4 The IRBM will lodge a complaint against a tax agent or its representative who is uncooperative or acting unprofessionally and contrary to the code of ethics to the relevant authorities such as the Ministry of Finance Malaysia / Chartered Tax Institute of Malaysia / Malaysian Institute of Accountants / Malaysian Institute of

Certified Public Accountants / Malaysian Association of Tax Accountants / Bar Council.

12. PAYMENT PROCEDURES

- 12.1 If there are any tax and penalties arising from the audit adjustments, payments shall be made through the designated agent or IRBM Payment Counter.
- 12.2 The taxpayer is required to make full payment of the tax imposed and the penalties arising from the audit adjustments.
- 12.3 The IRBM may consider the taxpayer's application for payment of additional tax and penalties through instalments for a specified period.
- 12.4 Application for instalments scheme must be submitted to the IRBM Multinational Branch Director for approval.
- 12.5 If the taxpayer fails to make the payment within the period allowed or the agreed instalments period, a tax increase will be imposed on the unpaid tax balance.

13. APPEALS

- 13.1 Subsection 97A (2) and section 99 to 102 of the ITA lay down the ground rules for appeals relating to assessment raised by the IRBM.
- 13.2 Taxpayer who is dissatisfied with the Notice of Assessment / Notification of Non-chargeability, may submit an appeal to the Special Commissioner of Income Tax within 30 days after service of the Notice of Assessment / Notification of Non-chargeability.
- 13.3 All appeals against the assessment shall be made through a complete Form Q to the respective Branch Director.
- 13.4 Taxpayer who is resident in Malaysia can request for assistance from the competent authority in Malaysia through Mutual Agreement Procedures (MAP) resulting from transfer pricing audit adjustments that involve cross border transactions with related parties in a foreign country. If the taxpayer has made both applications for Mutual Agreement Procedure as well an appeal by way of a Form Q, therefore no appeal will be submitted to the Special Commissioner of Income Tax until the decision for the Mutual Agreement Procedure is obtained.

Please refer to the Mutual Agreement Procedure Guidelines 2017 that can be accessed through the IRBM website.

14. EFFECTIVE DATE AND CANCELLATION

This Transfer Pricing Audit Framework is effective from 15 December 2019 and revokes the Transfer Pricing Audit Framework dated 1 April 2013.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

15 December 2019

