

**Transfer Pricing Country Profile**  
(to be posted on the OECD Internet site [www.oecd.org/ctp/tp/countryprofiles](http://www.oecd.org/ctp/tp/countryprofiles))

**Name of Country: MALAYSIA Date of profile: 19 October 2012**

**1. Reference to the Arm's Length Principle**

Income Tax Act 1967, Subsection 140A(2):

“(2) Subject to subsections (3) and (4), where a person in the basis period for a year of assessment enters into a transaction with an associated person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that person shall determine and apply the arm's length price for such acquisition or supply.”

Income Tax (Transfer Pricing) Rules 2012, Rule 2 (2):

“For the purposes of subrule (1), a person shall determine and apply the arm's length price for the acquisition or supply of property or services in accordance with the method and manner provided for in these Rules.”

**2. Reference to the OECD Transfer Pricing Guidelines (if any)**

Malaysia – Transfer Pricing Guidelines (issued on July 2012)

Part I, Paragraph 1:

“These Transfer Pricing Guidelines (hereinafter referred to as the Guidelines) are largely based on the governing standard for transfer pricing which is the arm's length principle as set out under the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines”.

**3. Definition of related parties**

Income Tax Act 1967, Subsection 2(4):

“Where-

(a) two or more companies are related within the meaning of section 6 of the Companies Act 1965;

(b) a company is so related to another company which is itself so related to a third company;

(c) the same persons hold more than fifty per cent of the shares in each of two or more companies; or

(d) each of two or more companies is so related to at least one of two or more companies to which paragraph (c) applies,

all the companies in question are in the same group for the purposes of this Act.”

Companies Act 1965, Section 6:

“6. When corporations deemed to be related to each other.

Where a corporation –

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation; or

(c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.”

#### **4. Transfer pricing methods**

Malaysia – Income Tax (Transfer Pricing) Rules 2012, Rule 5;

(1) A person shall apply the traditional transactional methods to determine the arm's length price of a controlled transaction.

(2) Where the traditional transactional methods cannot be reliably applied or cannot be applied at all, the person shall then apply the transactional profit methods.

(3) Where both the traditional transactional method and transactional profit method cannot be applied at all, the Director General may allow the application of other methods which provides the highest degree of comparability between the transactions.<sup>7</sup>:

Malaysia – Transfer Pricing Guidelines (issued on July 2012), Part III, paragraph 11

“The following methodologies can be used in determining arm's length price:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method”

The Guidelines also indicate” Where both the traditional transactional method and transactional profit method cannot be applied at all, the Director General may allow the application of other methods provided the prices arrived at is in accordance with the arm's length principle”.

#### **5. Transfer pricing documentation requirements**

General record keeping obligations are provided for under Section 82 Income Tax Act 1967.

‘Records’ under subsection 82(9) include books of accounts, invoices, vouchers, receipts and other documents necessary to verify entries in any books of accounts.

Malaysia – Income Tax (Transfer Pricing) Rules 2012, Rule 4 – requires “a person who enters into a controlled transaction shall prepare a contemporaneous transfer pricing documentation”. Transfer Pricing Guidelines (issued on July 2012) Part VII, paragraph 25 provide details on Transfer Pricing Documentation including a list of information required.

#### **6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties**

Specific procedures for transfer pricing audit are contained in a manual for internal use by transfer pricing auditors only.

There are no specific provisions in the Income Tax Act for transfer pricing penalties. General penalty provisions under subsection 113(2) will be applied on transfer pricing cases.

#### **7. Relevant regulations on Advance Pricing Arrangements**

##### **Income Tax Act 1967, Section 138C**

“(1) Subject to this section and any rules prescribed under this Act, on the application made to the Director General by any person who carries out a cross border transaction with an associated person-

(a) the Director General may enter into an advance pricing arrangement with that person; or

(b) in the case where section 132 applies, the competent authorities may enter into an advance pricing arrangement, in order to determine the transfer pricing methodology to be used in any future apportionment or allocation of income or deduction to ensure the arm's length transfer prices in relation to that transaction.”

APAs include unilateral, bilateral and multilateral.  
Section 132 relates to double taxation arrangements

Income Tax (Advance Pricing Arrangement) Rules 2012 and APA Guidelines were issued in May 2012 and July 2012 respectively.

#### **8. Link to relevant Government Internet sites**

<http://www.hasil.gov.my>

#### **9. Other relevant information**

- Specific provisions for transfer pricing and APA - S 140A and S 138C are effective from 1 January 2009.
- The Income Tax (Transfer Pricing) Rules 2012 and Income Tax (Advance Pricing Arrangement) Rules 2012 issued on 11 May 2012 are deemed to have come into operation on 1 January 2009
- New Malaysian Transfer Pricing Guidelines were issued on July 2012 to replace the 2003 Guidelines.
- APA Guidelines were issued on July 2012.
- Both Guidelines are available on the website.

- **Note**

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.