

Client Alert

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Transfer Pricing Developments in Malaysia

In this current alert, we summarise the key transfer pricing updates and developments in Malaysia in the first quarter of 2018:

First anniversary of appointment of Director General of Inland Revenue

- 2018 tax collection target of RM134.7 billion (approximately USD33.5 billion) to fulfill. Transfer pricing is a key focus area to broaden tax collections.

Country by Country Reporting Rules for Malaysia & Labuan

- Country by country reporting regulations for Malaysia and Labuan have been introduced and implemented.

Increase in Transfer Pricing Audits

- Increased audit focus on multi-national companies with large related party transactions and transactions which result in a transfer of profits to lower tax jurisdictions.

Scrutiny on banking transactions

- 15 banks with Labuan transactions under audit.
- Central Bank of Malaysia directive mandating transfer pricing compliance on related party payments by banks and insurance companies.

First Anniversary of Appointment of Director General of Inland Revenue

Datuk Sabin Samitah celebrates one year in office as the director general of Inland Revenue Board ("IRB") and chief executive officer of the IRB. He is an advocate of the new BEPS regime and is driven to collect more tax for Malaysia than his predecessors.

The amount of tax collected for 2017 under Datuk Sabin's leadership increased by 8.15% compared to tax collected in 2016.





CbCR Rules for Malaysia & Labuan

Subsequent to the introduction of country-by-country reporting rules, an amendment to the Malaysian country by country reporting ("**CbC**") rules has been introduced. The amendment includes revised measures concerning entities with cross-border transactions with other constituent entities.

It should be noted that the information required to be reported in the CbC Report by the reporting entity shall begin on 1 January 2017.

CbC Regulations have also been introduced for Labuan entities. The requirements under the Labuan CbCR Regulations are similar to the requirements in Malaysia. However, only an ultimate holding entity in Labuan will be required to submit a CbC Report. The penalty is a fine of up to RM 1 million, or imprisonment of a term of up to 2 years, or both.

Increase in Transfer Pricing Audits

The IRB has announced that for 2018 its audit focus will be on the bank and insurance companies as well as companies that are involved in aggressive tax planning activities. In particular, companies with large amounts of outbound related party payments and those that transfer profits to lower tax jurisdictions will be under scrutiny. The IRB acknowledges that transfer pricing is a key focus area in broadening their tax collection base.

The increase in audits have resulted also in an increase in tax litigation, the IRB has reported that there are currently over 800 pending court cases - including 6 lined up for hearing before the Federal Court.

Scrutiny on Banking Transactions

In November 2017, the IRB conducted "Operation Mega" which is the largest tax compliance operation to date by the IRB. A number of 15 banks were audited on transfer pricing. It is notable that the Central Bank of Malaysia has also issued a directive to all banks and insurance companies imposing a mandate requiring an external auditor to certify that related party payments are in compliance with Malaysian transfer pricing requirements.

Key Implications for Taxpayers

The focus of the IRB investigations are broad and the IRB can and will use any information they can find that may indicate non-compliance with updated Malaysian tax rules to raise an additional assessment or make an adjustment.

In our experience, the investigations have focused on key areas where the IRB may see the potential to make further tax collections, such as transfer pricing, withholding tax and GST. These areas are targeted as the rules are new, meaning that many taxpayers either are not fully aware of the changes in rules or have not fully updated their policies and documentation to be compliance with the new rules.



How We Can Help

Transfer pricing is an area of importance for tax collection and in this climate, it would be prudent for all taxpayers across all industries to exercise caution and to invest the time in preparing appropriate and contemporaneous proper transfer pricing policies and documentation to ensure defensibility from an audit perspective. In the context of an audit, it is crucial to have in place a robust process for the management of information.

Our dedicated team of transfer pricing focused lawyers and practitioners can help you navigate the complexities of the evolving transfer pricing landscape to stay competitive and compliant. Some of the ways we can support you include:

- (a) **Analyse** the implications and consequences of these new requirements to identify immediate action items;
- (b) **Review existing transfer pricing policy** between related parties to ascertain the level of audit risk and the likelihood of a successful audit and establish an appropriate risk mitigation strategy;
- (c) **Prepare contemporaneous transfer pricing documentation** to reflect the current transactions of an entity and to ensure compliance with the new standards;
- (d) **Strategise and support you**
 - (i) to establish a good process to monitor and review transfer prices in an effort to mitigate against potential adjustment issues;
 - (ii) represent and defend you in an audit to obtain the best results possible;
 - (iii) help with the management of information disclosures with the IRB during an audit.

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