



Tax Incentives for Economic Development Regions

KPMG in Malaysia

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In the ninth Malaysia plan, Malaysia has established policies for regional development to spur economic growth through the management of state's resources. Over the years, these policies are implemented through the set-up of economic corridors mainly the Iskandar Development Region ("IDR") in Johor, the East Coast Economic Region ("ECER"), the Northern Corridor Economic Region ("NCER"), the Sarawak Corridor for Renewable Energy ("SCORE") and the Sabah Development Corridor ("SDC").

Malaysia is also committed to align themselves to the global standards. This is demonstrated through Malaysia's participation in the Organisation for Economic Co-operation and Development ("OECD"). As part of Malaysia's effort to comply with the requirements provided by the Forum on Harmful Tax Practices ("FHTP"), the Government has put in initiatives for a more effective tax reliefs and incentives.

In December 2018, the Government has gazetted new legislation orders, exemption orders and amendments to the legislation ("Orders") in line with the above initiatives. The key changes are as follows:-

- Distinguish Income from Intellectual Property and Non-Intellectual Property
- Inclusion of "Substantial Activity" into the Definition for "Qualifying Company"
- Real Property Gains Tax Exemption ("RPGT") for Medini in IDR
- Tax Incentive under the SDC

Distinguish Income from Intellectual Property and Non-Intellectual Property

One of the key focuses by the FHTP is preferential tax regimes. In identifying whether a regime is harmful, it ultimately looks at whether the income is derived from geographically mobile activities which include, among others, income from intangibles i.e. intellectual property ("IP"). Hence, the Government has gazetted Orders to distinguish income from IP and non-IP activities.

Exclusion of Intellectual Property Income

Generally, income from IP such as royalty and other income derived as consideration for the use of commercial exploitation of that right should be subject to tax under the Income Tax Act, 1967 ("ITA"). Therefore, an income tax exemption should cover such income.

Moving forward, taxpayers will have to distinguish income from IP and non-IP activities. In ascertaining the statutory exempt income, qualifying companies are required to exclude IP income derived from a qualifying activity.

The exclusion of IP income applies to:

- (i) Royalties and other income derived on or after 1 July 2018 to 30 June 2021 from new intellectual property rights owned by the qualifying company; and
- (ii) Royalties and other income derived on or after 1 July 2021 from all intellectual property rights owned by the qualifying company.

Exclusion of Non-Intellectual Property Income

In addition to the above exclusion of IP income, Multimedia Super Corridor (“MSC”) status company may need to exclude non-IP income in ascertaining the income of an MSC status company in the following situations:

- (i) Pioneer status (“PS”) granted on or before 16 October 2017 with non-IP income derived after 30 June 2021 shall be disregarded;
- (ii) PS granted on or before 16 October 2017 with non-IP income derived after 31 December 2018 from any promoted activity approved after 16 October 2017 as the pioneer business of the MSC status company shall be disregarded; and
- (iii) PS granted after 16 October 2017 with non-IP income derived after 31 December 2018 shall be disregarded.

Application:

Qualifying companies enjoying incentives such as MSC status company granted PS under the Promotion of Investments Act 1986 (“PIA”), IDR status company, qualifying companies operating in the ECER and SDC.

Relevant Orders

- [Income Tax \(Exemption\) \(No. 2\) 2015 \(Amendment\) Order 2018 \[P.U. \(A\) 396/2018\]](#)
- [Income Tax \(Exemption\) \(No. 6\) 2016 \(Amendment\) Order 2018 \[P.U. \(A\) 393/2018\]](#)
- [Income Tax \(Exemption\) \(No. 7\) 2016 \(Amendment\) Order 2018 \[P.U. \(A\) 394/2018\]](#)
- [Income Tax \(Exemption\) \(No. 10\) Order 2018 \[P.U. \(A\) 389/2018\]](#)
- [Income Tax \(Exemption\) \(No. 12\) Order 2018 \[P.U. \(A\) 391/2018\]](#)
- [Income Tax \(Exemption\) \(No. 20\) 2007 \(Amendment\) Order 2018 \[P.U. \(A\) 382/2018\]](#)
- [Promotion of Investments \(Exclusion of Income for MSC Status Company\) Regulations 2018 \[P.U. \(A\) 332/2018\]](#)

Inclusion of “Substantial Activity” into the Definition for “Qualifying Company”

The definition of “qualifying company” has been amended to include conditions for “substantial activity”. As part of the FHTP’s requirement, the regime is deemed to be harmful if it encourages operations or arrangements that are purely tax-driven and involve no substantial activities.

In order to determine whether the qualifying company carries on activities necessary to earn the income and qualify for the incentive, it is required for the company to:

- (i) have an approved adequate number of full time employees in Malaysia to carry on the qualifying activity; and
- (ii) incur an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed asset in Malaysia to carry on the qualifying activity.

In addition to the above, qualifying companies deriving statutory income from core income generating activities (i.e. promoted activities for MSC as approved under the award of MSC status) would need to adhere to the following requirements:

- (i) The qualifying company has not issued any invoice from the core income generating activities in Malaysia on the date the application for the award of the MSC status is made; or
- (ii) The qualifying company has 60 per cent Malaysian equity ownership and has not issued any invoice for the core income generating activities in Malaysia more than 12 months prior to the date of application for the award of the MSC status is made.

Application

This rule shall apply to qualifying companies granted MSC status, IDR status, qualifying companies operating in the ECER and SDC (unless specifically indicated).

Non-application

This rule shall not apply to qualifying companies granted an exemption on or before 16 October 2017.

Relevant Orders

- [Income Tax \(Exemption\) \(No. 6\) 2016 \(Amendment\) Order 2018 \[P.U. \(A\) 393/2018\]](#)
- [Income Tax \(Exemption\) \(No. 7\) 2016 \(Amendment\) Order 2018 \[P.U. \(A\) 394/2018\]](#)
- [Income Tax \(Exemption\) \(No. 12\) Order 2018 \[P.U. \(A\) 391/2018\]](#)
- [Income Tax \(Exemption\) \(No. 10\) Order 2018 \[P.U. \(A\) 389/2018\]](#)
- [Income Tax \(Exemption\) \(No. 20\) 2007 \(Amendment\) Order 2018 \[P.U. \(A\) 382/2018\]](#)
- [Income Tax \(Exemption\) \(No. 2\) 2015 \(Amendment\) Order 2018 \[P.U. \(A\) 396/2018\]](#)

Revocation of Order

Previously, a qualifying company with an MSC status may apply for an investment tax allowance under Section 29B of the PIA pursuant to the Promotion of Investments (Determination of Assets under Section 29B of the PIA in respect of MSC Status Companies) Order 2001. With effect from 1 January 2019, this Order is revoked (*this revocation does not affect MSC status companies enjoying investment tax allowance under Section 29B of the PIA on or before 31 December 2018*).



RPGT Exemption for Medini in IDR

While the tax incentive has been proposed for the approved node (i.e. Medini), the legislation has only come into place recently and one of the highly anticipated incentive was on the RPGT exemption. Effective from 1 January 2010 until 31 December 2020, the Orders provide for an exemption from payment of RPGT on the chargeable gain derived from the disposal of a building or part of a building. This exemption applies to both, individual and IDR status company who acquires the said building directly from the developer and used for commercial or residential purposes.

Relevant Orders

- [Real Property Gains Tax \(Exemption\) Order 2018 \[P.U. \(A\) 368/2018\]](#)
- [Real Property Gains Tax \(Exemption\) \(No. 2\) Order 2018 \[P.U. \(A\) 369/2018\]](#)

Tax Incentive under the SDC

As part of the Government's initiative to turn Sabah into a regional economic powerhouse, Exemption Orders on the SDC were issued to provide exemption of an amount equivalent to:

- the statutory income derived from a qualifying activity; or
- the allowance of 100 per cent of the qualifying capital expenditure incurred by the qualifying company.

Depending on the sector as indicated in the specified Schedule of the respective Orders, the exemption shall be given for a period of 5 or 10 consecutive years.

Where the exemption is given on the statutory income derived from a qualifying activity, the amount of adjusted loss incurred for and during the exemption period can be carried forward and deducted from the statutory income from the qualifying activity in the post-exempt period until they are fully utilised.

On the other hand, if the exemption is given on the allowance based on the qualifying capital expenditure incurred by the qualifying company, and the said company has insufficient statutory income to be exempted, the exemption shall be granted for the first subsequent year the qualifying company has statutory income from the qualifying activity, and for subsequent year(s) until the exemption is granted on the whole statutory income as entitled by the qualifying company.

To qualify for any of these exemptions under SDC, an application needs to be made to the Sabah Economic Development and Investment Authority between the periods of 20 November 2012 to 31 December 2020.

Stamp Duty Exemption on transfer of real property used for qualifying tourism project

Subject to the approval from the Sabah Economic Development and Investment Authority, the instrument of transfer chargeable to ad valorem duty for transfer of real property used for the purpose of carrying on a qualifying tourism project is exempted from stamp duty.

Relevant Orders

- [Income Tax \(Exemption\) \(No. 11\) Order 2018 \[P.U. \(A\) 390/2018\]](#)
- [Income Tax \(Exemption\) \(No. 12\) Order 2018 \[P.U. \(A\) 391/2018\]](#)
- [Stamp Duty \(Exemption\) \(No. 8\) Order 2018 \[P.U. \(A\) 397/2018\]](#)

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