TaXavvy

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Revised Principal Hub guideline

The Malaysian Investment Development Authority (MIDA) has issued a revised guideline dated 7 July 2017 (published on 3 August 2017) for the Principal Hub (PH) incentive which replaces the guideline dated 6 April 2015. The key changes to the general conditions for the incentive are as follows:

- Regional P&L / Business Unit Management from the Strategic Services cluster is now a compulsory qualifying service.
- General Administration and IT Services under the Shared Services cluster is no longer a qualifying service.
- HR training and development plan for Malaysians are no longer compulsory but encouraged.
- The 30:70 income tax exemption threshold for income from inside / outside Malaysia has been removed.
- Annual business spending is now defined as the expenses incurred in carrying out the PH's day-to-day operation which includes spending on rental, freight and storage, transportation, remuneration and all costs which are related directly to the PH qualifying activities.

In addition, MIDA has now clustered the applicants for the incentives into the following categories:

1. New companies
2. Existing approved Operational Headquarters (OHQ) / International Procurement Centre (IPC) / Regional Distribution Centre (RDC)
3. Existing companies

The salient points for each category are as follows:

Category

New companies
New locally incorporated company, with or without existing entity or related entity in Malaysia and must not have undertaken any PH qualifying services in Malaysia.

Type of company

1. Manufacturing & services company, or
2. Commodity based company that integrates the supply chain management for upstream & downstream activities under the PH operation.

Tax incentive

For (1), Tiered income tax rate from 0% to 10% for 5 + 5 years, on trading & services income only.

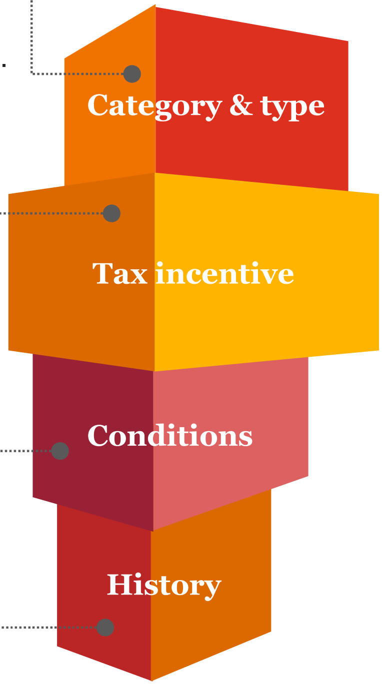
For (2), Tiered income tax rate from 0% to 10% for 5 + 5 years, on services income only.

Conditions

The conditions for each tier remain unchanged as per previous guideline (refer to Appendix A of revised guideline).

History

Previously, these tiered tax rates and conditions applied to all applicants, regardless of sector or new / existing companies. The exception was existing IPC / OHQ / RDC companies with incentives which would qualify for a restricted PH incentive.



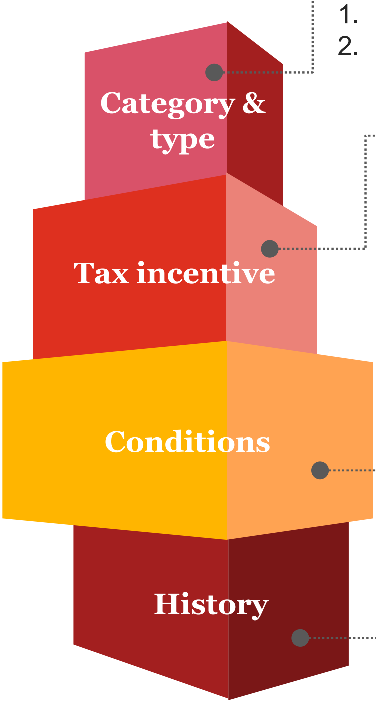
Existing approved OHQ / IPC / RDC
Approved OHQ / IPC / RDC status company, with or without incentive.

Full tax exemption on value added income* for:
(1) Approved OHQ / IPC / RDC without incentive: 5 + 5 years
(2) Approved OHQ / IPC / RDC with incentive: 5 years

* Value added income is the statutory income less base income adjusted by inflation, which is determined by the average statutory income of related companies in Malaysia adjusted for inflation.

The conditions include amongst others, commitment for high value jobs, key positions, percentage of Malaysians employed, and annual business spending. These are set out in Appendix B of the guideline.

Previously, IPC / OHQ / RDC companies which have completed their incentive are subject to Tier 1 conditions with additional commitments, and taxed at 10% for 5 years. The new guideline now provides a restricted tax incentive for all IPC / OHQ / RDC companies, with a set of conditions that differentiate between companies with and without incentives.



Existing companies
1. Existing manufacturing / services company.
2. Commodity based company that integrates the supply chain management for upstream & downstream activities.

Full tax exemption on value added income* for 5 + 5 years on:
- Trading & services income for (1)
- Services income only for (2)

* Value added income is the statutory income less base income adjusted by inflation, which is determined by the average statutory income of related companies in Malaysia adjusted for inflation.

The conditions include amongst others, commitment for high value jobs, key positions, percentage of Malaysians employed, and annual business spending. These are set out in Appendix C of the guideline.

Previously the tiered tax rates and conditions under Appendix A applied to all existing companies. The new guidelines provide that the incentive applies to specific type of income, as stated above, of existing manufacturing, services or commodity based companies.

The tax exemption will be provided under the following sections of the Income Tax Act 1967:

- Section 127(3)(b) for Tier 1 and value added income incentives, via a gazette order.
- Section 127(3A) for Tier 2 & 3, via an approval from the Ministry of Finance.

The revised guideline is available on MIDA's website www.mida.gov.my (Resources > Forms and Guidelines > Incentives Under the 2015 Budget).

Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017

The *Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017* was gazetted on 28 July 2017. This incentive was proposed in the 2016 Budget and is effective for years of assessment (YA) 2016 to 2020. The salient points are:

- It provides a tax deduction to a company resident in Malaysia for expenditure incurred on the issuance or offering of a Sustainable and Responsible Investment (SRI) Sukuk.

- The deduction applies to a SRI Sukuk where 90% of the proceeds raised is used solely for the funding of specified SRI project.

- A company is not eligible for the deduction if it has made a claim for a deduction for expenditure on the issuance or offering of the SRI Sukuk under any Rules made under section 154 of the Income Tax Act 1967.

Public rulings - Income tax treatment of GST (Employee benefits) and Basis period for business source

The Inland Revenue Board has issued the following public rulings:

1) Public Ruling 3/2017 – Income Tax Treatment of GST Part 3 (Employee Benefits – GST Borne by an Employer) ("PR 3/2017"), and

2) Public Ruling 4/2017 – Basis Period for a Business Source for Persons Other than a Company, Limited Liability Partnership, Trust Body and Co-operative Society ("PR 4/2017").

PR 3/2017

PR 3/2017 explains the income tax treatment of the output tax borne by the employer on goods or services given to its employee as a benefit. The salient points are:

- Output tax borne by an employer in respect of any benefits in kind or perquisites are to be included as part of gross employment income of the employee.
- The output tax borne is not tax deductible for the employer.

PR 3/2017 provides examples to illustrate the income tax and reporting treatments.

PR 4/2017

With effect from YA 2004, section 21 of the Income Tax Act 1967 was amended to be in line with the self-assessment system. PR 4/2017 essentially explains the determination of basis period under the new provisions of section 21, effective from YA 2004. The basis period for persons other than a company, limited liability partnership, trust body and co-operative is now based on the calendar year. PR 4/2017 replaces *Public Ruling 6/2001 - Basis period for a Business Source (Individuals & Persons Other than Companies / Co-operatives).*

The PRs are available on the IRB's website www.hasil.gov.my (Internal Link > Public Rulings).

Exemption orders in respect of Waste Eco Park Incentives

The following income tax exemption orders in respect of Waste Eco Park (WEP) incentives were issued on 15 August 2017:

1

Income Tax (Exemption) (No.4) Order 2017 – Investment tax allowance for Operator

Income tax exemption of 100% qualifying capital expenditure (QCE) incurred to be set off against 70% statutory income derived from the qualifying activity, for a period of 5 consecutive YAs commencing from the date of the first QCE incurred as determined by MIDA, but not earlier than 3 years before the application date and 1 December 2015.

'Operator' is a company resident and incorporated in Malaysia undertaking one of the qualifying activities of waste treatment, waste recovery or waste recycling in the WEP, and has incurred QCE on plant and machinery used solely for purposes of carrying on the said activities.

Where the QCE is disposed of within 5 years from date of acquisition of plant or machinery, the exemption in respect of the QCE will be withdrawn.

Effective from YA 2016 for applications received by MIDA from 1 January 2016 to 31 December 2020.

3

Income Tax (Exemption) (No. 6) Order 2017 – Income tax exemption for Manager

Income tax exemption of 70% of statutory income derived from the qualifying activity.

'Manager' is a company resident and incorporated in Malaysia who carries out the following qualifying activity:

- Promoting and advertising the WEP,
- Managing facilities and infrastructure in the WEP,
- Ensuring the supply of types and amount of waste received is according to the capacity of the facility and infrastructure in the WEP, and
- Managing the segregation and separation of the waste for feedstock of the operator.

Effective from YA 2016 to YA 2025 for applications received by MIDA from 1 January 2016 to 31 December 2020.

2

Income Tax (Exemption) (No.5) Order 2017 – Income tax exemption for Operator

Income tax exemption of 100% statutory income derived from the qualifying activity for 5 consecutive YAs commencing from a date as determined by MIDA.

Effective from YA 2016 for applications received by MIDA from 1 January 2016 to 31 December 2020.

4

Income Tax (Exemption) (No.7) Order 2017 – Income tax exemption for Developer

Income tax exemption of 70% of statutory income derived from the qualifying activity.

'Developer' is a company resident and incorporated in Malaysia who developed the WEP and invested in fixed asset, except land, with a minimum value of RM50 million within 3 years from the date of the first capital expenditure made.

The qualifying activity is the rental of building, waste receipt and separation facility and waste water treatment facility in the WEP.

Effective from YA 2016 to YA 2025 for applications received by MIDA from 1 January 2016 to 31 December 2020.

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