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Revised Guidelines for Principal Hub Incentive

The Malaysia Investment Development Authority ["MIDA"] has issued a revised Guidelines for Principal Hub ["PH"] Incentive dated 7th July 2017 to replace the previous guidelines dated 6th April 2015.

A PH is a locally incorporated company that uses Malaysia as a base for conducting its regional or global businesses and operations to manage, control, and support its key functions including management of risks, decision making, strategic business activities, trading, finance, management and human resource.

An approved PH is eligible to enjoy the following concessionary income tax rates:-

Three (3)-tier Incentive

	Tier 1		Tier 2		Tier 3	
Blocks (years) *	5	+5	5	+5	5	+5
Tax Rate	0%		5%		10%	

* Extension of 5 years subject to certain conditions.

The revised Guidelines for PH Incentives has been issued with some amendments as follows:-

Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)

- [Guidelines for Principal Hub Incentive dated 7th July 2017 \(Revised\)](#)

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- i. Re-categorisation of PH incentive applicants as 'new' or 'existing' companies with differing tax treatments respectively

Previous Guidelines	Revised Guidelines
Three (3)-tiered of concessionary corporate tax rate generally applies to both new and existing companies, depending on the level of commitment.	New companies continue to enjoy a three (3)-tiered of concessionary corporate tax rate, depending on the level of commitment.
Extension of the incentive for another 5 years generally applies to both new and existing companies.	Existing companies will be granted a 100% income tax exemption only on Value Added Income . Extension of the incentive for another 5 years is available, except for existing companies that have obtained approved Operational Headquarters, International Procurement Centre and Regional Distribution Centre status with incentive.

- ii. Introduction of Value Added Income

Formula:-

Value Added Income = Statutory income - Base income adjusted by inflation

PH Operation	Formula
First year of assessment	$A \times (1+B)$
Second and subsequent years of assessment	$C \times (1+B)$

Where:-

A = The average statutory income of the related company/companies in Malaysia (related companies are determined by the MIDA) for up to 3 years prior to the first year of assessment of the PH operation

B = The inflation rate for the base year

C = The inflation adjusted income for the preceding year

- iii. Regional profit and loss / business unit management from the strategic services cluster is now a **mandatory** qualifying service for all the companies applying for the incentives.

Hyperlinks

- iv. General administration and IT services which previously included in the shared services cluster, are no longer qualifying services.
- v. The income tax exemption threshold in respect of services / goods-based company inside and outside of Malaysia based on the ratio of 30:70 has been removed.
- vi. **Annual Business Spending** has been defined as follows:-

An expense 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.

- vii. The requirement for human resources training and development plan for Malaysians is no longer compulsory but encouraged.
- viii. The following incentives under the relevant laws will be accorded as follows:-

	Applicable Laws
<ul style="list-style-type: none"> • Approval for Tier 1 (0% tax rate) and Value Added Income incentives 	Section 127(3)(b) of the Income Tax Act 1967 ["ITA 1967"]
<ul style="list-style-type: none"> • Approval for Tier 2 and Tier 3 (5% and 10% tax rate) 	Section 127(3)(a) of the ITA 1967

New applications must be received by MIDA from 1st May 2015 until 30th April 2018. However, the above incentives will be extended to 31st December 2020 as proposed in Budget 2018.

Note: For further information on the incentive for establishment of Principal Hub under the previous guidelines, kindly refer to our Tax Flash - May 2015 issue.

➤ [Tax Flash – May 2015](#)

GST Guides

The Royal Malaysian Customs Department ["RMCD"] has recently issued the following revised guides on Goods and Services Tax ["GST"] to provide guidance on GST related matters:-

- Industry Guide
 - Warehousing Scheme (revised as at 11.12.2017)
 - Commercial Banking (revised as at 19.12.2017)
 - Fund Management (revised as at 20.12.2017)
 - Tourist Refund Scheme (revised as at 21.12.2017)

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PR No. 3/2017 – Gift Rules

The RMCD has recently issued the Public Ruling [“PR”] No. 3/2017 to clarify the GST treatment in relation to gift rules.

Salient points of the abovementioned PR include:-

Determination of GST treatment on gift under Paragraph 5, First Schedule of the Goods and Services Tax Act [“GSTA”] 2014 are as below:-

- Under Paragraph 5(1), First Schedule of the GSTA 2014, any transfer or disposal of goods which form part of the business assets, whether or not for a consideration, will be treated as supply of goods.
- Under Paragraph 5(2)(a), First Schedule of the GSTA 2014, any transfer or disposal of business assets as gifts (i.e. without consideration) will not be regarded as supply of goods if the total cost of the gifts given to the same person in the same year not exceed RM500.
- Under Paragraph 5(2)(b), First Schedule of the GSTA 2014, any supply of gift of an industrial or commercial sample in the form of not ordinarily available for sale to the public will not be treated as supply of goods.
- Under Paragraph 5(3), First Schedule of the GSTA 2014, goods (other than passenger motor car) held by business which are put to private or non-business use, whether or not for a consideration, will be treated as supply of services.
- Under Paragraph 5(4), First Schedule of the GSTA 2014, gift rules as mentioned in subparagraph (1) and (3) above shall not apply if the supply is not done for a consideration, except that a person who is carrying on a business is entitled to credit under Section 38 of the GSTA 2014 on the supply or importation of the goods.
- Under Paragraph 5(5), First Schedule of the GSTA 2014, the supply of goods in subparagraph (1) or the supply of services in subparagraph (3) is to be treated as made in the course of furtherance of the business, and in the case of a business carried on by an individual:-
 - Subparagraph (1) shall apply to any transfer or disposal of goods in favour of himself personally; and
 - Subparagraph (3) shall apply to goods used or made available for use by himself personally.

The abovementioned PR takes effect from 1st December 2017.

Hyperlinks

PR No. 4/2017 – Issuance and Holding of Securities

The RMCD has recently issued the PR No. 4/2017 to clarify the GST treatment on the issuance and holding of securities.

Salient points of the abovementioned PR include:-

- i. Input tax attributable to the following is claimable provided that the purpose of the issuance and holding thereof is to increase the company's capital and investment for the benefit of its economic activity in general:-
 - Issuance and holding of shares for the purpose of raising capital and investment respectively;
 - Issuance of debt securities for the purpose of raising capital; and
 - "Share buyback programme" or "debt buy back" by a company in respect of its own shares or debts.
- ii. Input tax attributable to the holding of bonds, debentures, notes or other similar instruments is not claimable as it is attributable to an exempt supply.

The abovementioned PR takes effect from 12th December 2017.

Recent Tax Case

Insaf Tegas Sdn Bhd v KPHDN

[Whether the disposal of a parcel of land a disposal of a stock in trade or a disposal of a capital investment]

In the case of *Insaf Tegas Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* ["KPHDN"] [Civil Appeal No. R1-14-14-10/2013], the taxpayer is principally involved in property development (as described in its Memorandum of Association ["M&A"]). On 16th January 1997, the taxpayer purchased 50 acres of land and subsequently disposed of the said land by way of a Deed of Assignment dated 16th April 2004 and 24th May 2004. Upon disposal of the said land, the taxpayer has submitted a real property gains tax ["RPGT"] return to the IRB and subsequently, a certificate of exemption for RPGT was issued to the taxpayer on 9th May 2008. On 26th August 2010, following an audit performed on the taxpayer, the IRB issued a notice of assessment for the YA 2004 under the ITA 1967 to the taxpayer to assess the gain from the disposal of the said land and imposed penalty for incorrect returns pursuant to Section 113(2) of the ITA 1967. The taxpayer appealed to the Special Commissioners of Income Tax ["SCIT"] against the notice of assessment issued by the IRB for which the appeal was dismissed by the SCIT. Dissatisfied with the decision, the taxpayer appealed to the High Court ["HC"].

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The HC took the view that the gain from the disposal of the said land by the taxpayer is assessable to tax under the ITA 1967 on the basis that the taxpayer's intention for the purchase of the said land was to treat it as stock in trade (i.e. not for the purpose of an investment) as proven by the following:-

- The sales and purchase agreement ["SPA"] in respect of the purchase of the said land by the taxpayer contains specific conditions requiring the taxpayer's compliance which is in consistent with the commercial development of the said land
- The taxpayer's M&A described its business activity as property development and allowed the taxpayer to enter into any contract to build buildings and other construction work
- The true intent in the purchase of the land is further evident in the taxpayer's passing two (2) company resolutions prior and consequent to execution of the SPA. The taxpayer further appointed a developer after the execution of the said SPA
- The taxpayer's intention has only changed following unfavourable market condition where the said land was subsequently assigned to a third party (which is also the previously appointed developer) pursuant to the taxpayer's debt settlement exercise

With the above, the HC dismissed the taxpayer's appeal.

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