



## TAX FLASH

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### Revised Guidelines for Principal Hub Incentive

The Malaysian Investment Development Authority ["MIDA"] has issued revised *Guidelines for Principal Hub ["PH"] Incentive* to replace the previous Guidelines dated 7<sup>th</sup> July 2017.

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, marketing and human resource.

The revised Guidelines provide description of the incentives available to PH and eligibility criteria for the following categories of company applying for the PH incentive:-

- New company – manufacturing/services company;
- Existing company with approved Operational Headquarters ["OHQ"], International Procurement Centre ["IPC"] and Regional Distribution Centre ["RDC"] with or without incentive; and
- Existing company – manufacturing/services company.

- [Moore Malaysia](#)
- [Moore Global](#)
- [Inland Revenue Board](#)

Salient points of the revised Guidelines include:-

i. Re-categorisation of PH incentives with differing tax treatments as shown below:-

Previous Guidelines	Revised Guidelines
New companies can enjoy a three (3)-tiered concessionary corporate tax rate [i.e. 0% (Tier 1), 5% (Tier 2) and 10% (Tier 3)], depending on the level of commitment	New companies will be granted a two (2)-tiered concessionary corporate tax rate [i.e. 0% (Tier 1) and 5% (Tier 2)], depending on the level of commitment
Existing companies are granted 100% income tax exemption on Value Added Income	Existing companies will be granted 10% concessionary rate on the total statutory income derived from qualifying PH activities for a period of 5 years of assessment
Extension of the incentive for another 5 years is available, except for existing companies that have obtained approved OHQ/IPC/RDC status with incentive	Extension of the incentive for another 5 years is only available for new companies

ii. Among others, eligibility criteria for PH incentive are as follows:-

- Local incorporation under the Companies Act 2016 and resident in Malaysia.
- Must have paid-up capital of more than RM2.5million.
- Must have minimum annual sales of RM500 million (additional requirement for companies applying for tax exemption on trading income).
- Must serve and control a minimum number of network companies.
- Mandatory qualifying services for all companies applying for the incentives has been redefined to include providing compulsory services activities, regional profit and loss / business unit management and strategic business planning and corporate development as part of the PH's core income generating activities.
- The company must provide jobs that require higher and more diverse set of managerial/technical/professional skills with:-
  - minimum monthly salary for high value jobs of at least RM5,000; or
  - minimum monthly salary of key strategic/management positions of at least RM25,000.
- Must have minimum Annual Operating Expenditure which is defined as expenses incurred in carrying out the PH's day-to-day operation excluding cost of goods sold and expenses that are not directly related to the core income generating activities of a PH such as depreciation and interest on borrowings.
- Companies are now required to undertake structured internship and training programmes approved by Talent Corporation Malaysia as development plan for Malaysians.

The above applies to applications received by MIDA from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020.

**Note:** For further information on PH incentives under previous guidelines, kindly refer to our [Tax Flash – December 2017 issue](#).

## Sales Tax

The [Guide on Sales Tax Exemption under Item 57, Schedule A, Sales Tax \(Persons Exempted from Payment of Tax\) Order 2018](#) as at 30<sup>th</sup> October 2019 was published by Royal Malaysian Customs Department ["RMCD"] on 31<sup>st</sup> October 2019.

## Service Tax

The *Guide on Refund on the Acquisition of Services by Foreign Missions* and International Organisations as at 29<sup>th</sup> October 2019 was published by RMCD on the even date.

### Recent Tax Case

#### TESB v KPHDN

*[Whether payment made to the State Government for the release of Bumiputra quota is tax deductible]*

In the case of *TESB v Ketua Pengarah Hasil Dalam Negeri ["KPHDN"]* (decided by the Special Commissioners of Income Tax ["SCIT"]), the taxpayer had applied to the *Lembaga Perumahan dan Hartanah Selangor* ["LPHS"] for the release of 30% of the Bumiputra Quota imposed on one of its development projects. Upon approval by LPHS on the said application, the taxpayer was required to pay 10% of the sales price as a condition for the release of the Bumiputra quota and a 5% penalty for violating the terms of the Bumiputra quota to the State Government through LPHS.

The Inland Revenue Board ["IRB"] contended that the payment of 10% of the sales price was not wholly and exclusively incurred in the production of gross income but for the production of gross income which is capital in nature. This is on the basis that the said payment was made to enable the taxpayer to sell the units under the Bumiputra quota to non-Bumiputra purchasers at a higher price. As for the 5% penalty paid, the IRB took the stance that the expense was incurred due to non-compliance of the rules and regulations imposed by the State Authority and was not related to the performance of business operation / earning of income. Based on the foregoing, the IRB regarded the said payments as non-allowable expenses for income tax purposes.

The SCIT dismissed the taxpayer's appeal and ruled that the payments made by the taxpayer to LPHS represent penalties paid for the release of Bumiputra quota and hence, not deductible under Section 33(1) of the Income Tax Act 1967.

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