



TAX FLASH

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Updated Operational Guidelines and FAQ on Special Voluntary Disclosure Programme 2.0

The Inland Revenue Board ["IRB"] has recently issued the updated Operational Guidelines No.2/2023 – Special Voluntary Disclosure Programme ["SVDP"] 2.0 dated 22nd August 2023 ["updated Guidelines"] and Frequently Asked Questions ["FAQ"] – SVDP 2.0 (updated on 22nd August 2023) ["updated FAQ"] to provide further clarifications on issues relating to SVDP 2.0.

The salient amendments included in the updated Guidelines and FAQ are as follows:-

i. Updated Guidelines

- Paragraph 5.10 of the Operational Guidelines No. 2/2023 states that audit/investigation will not be carried out in the future for the year of assessment in which the voluntary disclosure is made. This has been updated to specify that audit and investigation action on transfer pricing ["TP"] issues can be taken if there is a risk on TP issues even if voluntary disclosure has been made on non-TP issues only and vice versa.

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

ii. Updated FAQ

- The definition of “new taxpayer” is expanded to include taxpayers who do not have any tax transactions in the IRB’s record. A taxpayer is deemed to have tax transactions if:-
 - an estimated assessment has been raised by the IRB; or
 - monthly tax deductions [“MTD”] have been made in respect of the taxpayer in which the taxpayer is regarded to have opted not to submit an income tax return form i.e. to deem the MTD as final tax.
- SVDP 2.0 does not apply to changes made due to incorrect tax rate.
- Paragraph 5.5.6 of the Operational Guidelines No. 2/2023 states that:-

“If the surcharge offered under this SVDP 2.0 is 0%, what does it mean by the statement “Any TP adjustment arising from the voluntary disclosure under SVDP 2.0 can be subjected to a surcharge under Section 140A(3C), Income Tax Act 1967 [“ITA 1967”], even if no additional assessment is raised?”

The FAQ has been updated to clarify that:-

- Voluntary disclosure will be accepted for TP issues involving upward TP adjustments regardless whether it resulted in adjustment or not; and
- For TP voluntary disclosure applications involving downward TP adjustments, it will only be available for taxpayers that:-
 - engage in domestic controlled transaction;
 - have a positive net tax impact; and
 - both parties must make the voluntary disclosure on TP.

The updated FAQ has included various examples to illustrate the above.

- Item 29 of the updated FAQ has been amended accordingly to take into account the changes made to Paragraph 5.10 of the Operational Guidelines No.2/2023 as mentioned in (i) above.

Note: For further details on the Operational Guidelines NO. 2/2023 and FAQ issued by the IRB previously, kindly refer to our [Tax Flash – June 2023 \(Special Edition No.1\)](#) issue.

Tax Incentives for Relocating Manufacturing Activities to Malaysia

Under the Short-Term Economy Recovery Plan [“PENJANA”], the government has announced several tax incentives in the effort of attracting foreign companies to relocate their operations of manufacturing business to Malaysia. In the Budget 2023 (retabled), the period of application for the incentives has been extended until 31st December 2024 for submission to the Malaysian Investment Development Authority [“MIDA”]. The relevant tax incentives are summarised in the table below:-

Categories	Tax Incentives
Existing Companies	For existing companies in Malaysia relocating their overseas facilities to Malaysia with capital investment above RM300 million, a 100% investment tax allowance [“ITA”] for 5 years shall be given.
New Companies	a. Tax rate at 0% for 10 years be applied to new investment by foreign companies in manufacturing sector with capital investment between RM300 million to RM500 million; or b. Tax rate at 0% for 15 years be applied to new investment by foreign companies in manufacturing sector with capital investment above RM500 million.
Non-Resident Individuals Holding Key Positions in Companies Granted Incentives for Relocation of Manufacturing Activities to Malaysia	Tax rate at a flat rate of 15% for a period of 5 consecutive years.

Following the above, the following gazette Orders have been issued to provide for the above tax incentives available to a qualifying company or qualifying individual:-

- *Income Tax (Exemption) Order 2023;*
- *Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023;* and
- *Income Tax (For an Individual Resident Who is Not A Citizen and Holds C Suite Position in an Approved Company) Rules 2023.*

The following are the salient points of the gazette Orders:-

i. Income Tax (Exemption) Order 2023

- Tax exemption is given to an existing company in respect of statutory income derived from a qualifying activity, equivalent to the amount of the qualifying capital expenditure ["QCE"] incurred in the basis period for a year of assessment.
- The exemption shall be for a period of 5 consecutive years commencing from the date of the first QCE incurred by the company, as determined by MIDA which shall not be earlier than 1st July 2020.
- Where the existing company has been granted the aforesaid tax exemption, any related company to the company shall not be entitled to the aforesaid tax exemption in respect of the same qualifying activity. Any allowance that cannot be set-off due to insufficiency of statutory income shall be carried forward until it is fully utilised.
- The existing company shall need to comply with the following conditions to be eligible for the tax incentive:-
 - incurs the minimum amount of more than RM300 million in fixed asset (excluding land) within 3 years of the first QCE made; and
 - employs at least 80% of full-time Malaysian employees on or before the 3rd year from the date of the first invoice in relation to the qualifying activity issued by the company until the end of the exemption period.
- Application for the above tax exemption must be received by MIDA from 1st July 2020 until 31st December 2024.
- The above exemption shall not be applicable to a company which (among others) has made a claim for certain incentives such as reinvestment allowance ["RA"] or Investment Allowance ["IA"] for service sector or has been granted any incentives under the Promotion of Investments Act 1986 ["PIA 1986"] / exemption under Section 127(3)(b) or 127(3A) of the ITA 1967 for the same qualifying project.

For the purpose of the above Order: -

"qualifying activity" means a new manufacturing activity undertaken by a qualifying company but does not include any activity as specified in the Schedule.

"existing company" means a company which:-

- is incorporated under the Companies Act 2016 ["CA 2016"] and resident in Malaysia;
- has an existing manufacturing operation in Malaysia; and
- relocate its manufacturing operations to Malaysia for a new business where the product from the new business is not an expansion project for the existing product.

ii. Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023

- 0% income tax rate on the chargeable income of a new company that carries on business in respect of a qualifying activity under the Relocation of Manufacturing Business Incentive Scheme for a specified period:-
 - 10 years of assessment [with investment in fixed asset (excluding land) of RM300 million to RM500 million]; or

- 15 years of assessment [with investment in fixed asset (excluding land) of more than RM500 million].
- The new company shall need to comply with the following conditions to be eligible for the tax incentive:-
 - incurs the minimum of RM300,000,000 in fixed asset (excluding land) within 3 years from the date of the first QCE for approval of 10 years of assessment;
 - incurs the minimum of RM500,000,000 in fixed asset (excluding land) within 3 years from the date of the first QCE for the approval of 15 years of assessment; and
 - employ at least 80% full-time Malaysian employees on or before the 3rd year from the first invoice of the qualifying activity until the end of the incentive period.
- Application for the above tax exemption must be received by MIDA from 1st July 2020 until 31st December 2024.
- The above exemption shall not be applicable to a company which (among others) has made a claim for RA/IA for service sector or has been granted any incentives under the PIA 1986 / exemption under Section 127(3)(b) or 127(3A) of the ITA 1967.

For the purpose of the above Rules:-

“qualifying activity” means a manufacturing activity undertaken by the new company but does not include any activity specified in the Schedule;

“new company” means a company which:-

- is incorporated under the CA 2016 and resident in Malaysia;
- does not have existing manufacturing operations in Malaysia; and
- relocate manufacturing facility for a qualifying activity into Malaysia or establish new operation to carry on a qualifying activity in Malaysia.

iii. Income Tax (For an Individual Resident Who Is Not a Citizen and Holds C Suite Position In An Approved Company) Rules 2023

- A qualifying individual having and exercising employment in an approved company shall be subject to tax at the rate of 15% on chargeable income for 5 consecutive years of assessment.
- A qualifying individual is an individual resident who is not a citizen employed by an approved company and holding the C-Suite positions in an approved company that has been granted incentives for relocation of manufacturing activities to Malaysia.
- A qualifying individual would be eligible for the incentive under the above Rules on the condition that the application shall be made by an approved company to MIDA as follows:-
 - on or after 7th November 2020 but not later 31st December 2024 for approved companies under the Income Tax (Exemption) Order 2023 and the Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023; or
 - on or after 7th November 2020 but not later 31st December 2022 for an approved company under Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022.
- The individual must:-
 - be resident in Malaysia for each year of assessment;
 - receives income from an employment with an approved company;
 - holds C-Suite position in the approved company; and
 - receives a minimum basic salary of RM25,000 per month.

For the purpose of the above Rules, **“C-Suite position”** means the position of top senior executives which relies on functional know-how and technical skills such as Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and chief Information Officer.

The above Order/Rules are deemed to have effect from the year of assessment [“YA”] 2021.

Deduction for Expenses in Relation to Listing on Main Market, ACE Market or LEAP Market of Bursa Malaysia

Following the announcement of Budget 2023 (retabled), the *Income Tax (Deduction for Expenses in Relation to Listing on Main Market, Access, Certainty, Efficiency [“ACE”] Market or Leading Entrepreneur Accelerator Platform [“LEAP”] Market of Bursa Malaysia Securities Berhad) Rules 2023* has been gazetted to allow a deduction for the expenditures incurred by a technology-based company in relation to listing on the Main Market, ACE Market or LEAP Market.

The salient points included in the above Rules are:-

- i. The amount allowed for deduction shall be equivalent to:-
 - payment of fees to Bursa Malaysia Securities Berhad and Securities Commission Malaysia as the authorities;
 - payment of the following professional fees:-
 - advisory fee to the principal adviser for listing on the Main Market, the sponsor, being the main adviser for listing on the ACE Market, and approved adviser, being the main adviser for listing on the LEAP Market; and
 - in relation to the listing exercise, fees to the solicitor, company secretary, tax adviser, reporting accountant, auditor, valuer, independent market researcher, issuing house and share registrar; and
 - payment of fees for underwriting, placement and brokerage services.
- ii. The total amount of the deduction allowed for the above expenditure is limited to RM1.5 million which shall only be claimed by the technology-based company for the basis period in a year of assessment when it is listed on the Main Market, ACE market or LEAP market.
- iii. The amount of deduction must not exceed the adjusted income of the technology-based company for the basis period in that year of assessment and any amount exceeding the adjusted income shall not be carried forward to the subsequent year of assessment.

For the purpose of the above Rules, a technology-based company is a company:-

- which is involved in the design, development and manufacture, production or application in any of the field and activities:-
 - as specified in the Schedule; and
 - which has been certified by the Bursa Malaysia Securities Berhad as the principal business activity of the technology-based company; and
- which has applied for listing on the Main Market, ACE Market or LEAP Market.

The above Rules shall have effect from YA 2023 until YA 2025.

Tax Incentive for Principal Hub 2.0 – Existing Companies

Following the issuance of the Guidelines for Principal Hub [“PH”] Incentive dated 8th October 2019 [“PH 2.0”], the *Income Tax (Exemption) (No. 2) Order 2023* has been gazetted to provide tax exemption to a PH (existing company) in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from core income generating activities (determined based on a prescribed formula) for a period of 5 consecutive years of assessment.

The above Order is applicable to existing companies where:-

- A PH has been defined as a company which:-
 - is incorporated under the CA 2016 and resident in Malaysia;
 - is already operating in Malaysia which:-

- does not have an operational headquarters, international procurement centre or regional distribution centre status as per Schedule 2 of the Order ["Category A"]; or
 - has been approved by the Minister as having an operational headquarters, international procurement centre or regional distribution centre status; and
 - has been approved incentive for operational headquarters, international procurement centre or regional distribution centre as per Schedule 3 of the Order ["Category B"]; or
 - has not been approved incentive for operational headquarters, international procurement centre or regional distribution centre as per Schedule 3 of the Order ["Category C"]; and
 - has a paid-up capital of more than RM2.5 million.
- Application for exemption has been made in writing by a PH and received by the Minister through MIDA on or after 1st January 2019 but not later than 31st December 2020 and comply with the conditions imposed by the Minister.

Salient points included in the above Order are:-

i. Requirements for Various Categories of PH

The conditions for the various categories of PH as specified in Schedule 2 and Schedule 3 of the above Order are summarised below:-

Conditions	Categories of PH		
	Category A	Category B	Category C
Minimum number of full-time new employees in Malaysia with a minimum salary of RM5,000 per month and at least 50% of that new employees are Malaysians	(a) 30 persons; or (b) existing number of full-time employees + 30%, whichever is higher	(a) 60 persons; or (b) existing number of full-time employees + 20%, whichever is higher	Existing number of full-time employees + 30%
Minimum number of full-time new employees in Malaysia with a minimum salary of RM25,000 per month	5 persons		
Minimum amount of annual operating expenditure in Malaysia	(a) RM10 million; or	(a) RM13 million; or	(a) RM10 million; or
	average operating expenditure for the 3 years of assessment immediately preceding the exempt years of assessment		
	+ 30%, whichever is higher	+ 20%, whichever is higher	+ 30%, whichever is higher
Minimum number of qualifying services	4 (including two qualifying services i.e. regional profit and loss or business unit management as well as strategic business planning and corporate development)		
Minimum amount of annual value of sales (additional condition for a PH which carries on qualifying trading activities)	(a) RM500 million; or (b) average annual value of sales for the 3 years of assessment immediately preceding the exempt years of assessment, whichever is higher		

ii. Exclusion of Intellectual Property [“IP”] Income

- In ascertaining the statutory income of a PH, the following IP income (i.e. royalties or other income) derived from core income generating activities of the PH shall be excluded:-
 - IP income derived on or after 1st July 2018 but before 1st July 2021 from new IP rights that is owned by the PH; and
 - IP income derived on or after 1st July 2021 from all IP rights that the PH owns.
- Such IP income will be subject to tax at the prevailing corporate income tax rates under the ITA 1967.

iii. Tax Treatment for Losses Suffered by the PH

- For adjusted losses ascertained by the PH in respect of a business source consisting of qualifying services or qualifying trading activities for a basis period for a year of assessment during the exempted years of assessment, it shall be disregarded for the purpose of the ITA 1967.

iv. Separate Source and Separate Account

- Where a PH carries on qualifying services, qualifying trading activities or activity other than core income generating activities, each activity shall be treated as a separate and distinct source of activity of the PH.

For the purpose of the above Order:-

“**core income generating activities**” means activities undertaken by a PH in relation to the qualifying services or qualifying trading activities.

“**qualifying services**” means services specified in Schedule 1 of the Order.

“**qualifying trading activities**” means activities undertaken by a PH in respect of procurement and sale of raw materials, components and finished products from the PH to a network company within or outside Malaysia.

“**network company**” means:-

- a related company;
- an entity within the same group of company of the PH including a subsidiary, branch, joint venture or franchise; or
- a company which has a contractual agreement with the PH or the PH's ultimate holding company which relates to the PH's supply chain and business for at least three years.

“**IP right**” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety and other like rights, whether or not registered or registrable.

“**new IP right**” means an IP right in relation to the core income generating activities of the PH that comes into the ownership of the PH:-

- on or after 1st July 2018; or
- after 16th October 2017 but before 1st July 2018 as a result of an acquisition by the PH, directly or indirectly from a related company.

The above Order shall have effect from the YA 2019.

Note: For further information relating to the PH incentives 2.0, kindly refer to our [Tax Flash – November 2019](#) issue.

Tax Incentive for Principal Hub 2.0 – New Companies

Following the issuance of the Guidelines for PH 2.0, the *Income Tax (Exemption) (No. 3) Order 2023* has been gazetted to provide tax exemption to a PH (new company) in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from core income generating activities (determined based on a prescribed formula) for a period of 5 consecutive years of assessment.

The above Order is applicable to new companies where:-

- A PH has been defined as a new company which:-
 - is incorporated under the CA 2016 and resident in Malaysia;
 - prior to the application for exemption being made:-
 - does not have an existing entity or related entity in Malaysia which carries on any qualifying services in Malaysia ["Category 1"]; or
 - has an existing entity or related entity in Malaysia which has not carried on qualifying services in Malaysia ["Category 2"]; and
 - has a paid-up capital of more than RM2.5 million.
- Application for exemption has been made in writing by a PH and received by the Minister through the MIDA on or after 1st January 2019 but not later than 31st December 2020 and comply with the conditions imposed by the Minister.

Salient points included in the above Order are:-

i. Requirements for Various Categories of PH

The conditions for the various categories of PH as specified in Schedule 2 of the above Order are summarised below:-

Conditions	Categories of PH	
	Category 1	Category 2
Minimum number of full-time new employees in Malaysia with a minimum salary of RM5,000 per month and at least 50% of that new employees are Malaysians	50 persons	30 persons
Minimum number of full-time new employees in Malaysia with a minimum salary of RM25,000 per month	5 persons	4 persons
Minimum amount of annual operating expenditure in Malaysia	RM10 million	RM5 million
Minimum number of qualifying services	4 (including two qualifying services i.e. regional profit and loss or business unit management as well as strategic business planning and corporate development)	
Minimum amount of annual value of sales (additional condition for a PH which carries on qualifying trading activities)	RM500 million	

ii. Exclusion of IP Income

- In ascertaining the statutory income of a PH, the following IP income (i.e. royalties or other income) derived from core income generating activities of the PH shall be excluded:-
 - IP income derived on or after 1st July 2018 but before 1st July 2021 from new IP rights that is owned by the PH; and
 - IP income derived on or after 1st July 2021 from all IP rights that the PH owns.
- Such IP income will be subject to tax at the prevailing corporate income tax rates under the ITA 1967.

iii. Tax Treatment for Losses Suffered by the PH

- For adjusted losses ascertained by the PH in respect of a business source consisting of qualifying services or qualifying trading activities for a basis period for a year of assessment during the exempted years of assessment, it shall be disregarded for the purpose of the ITA 1967.

iv. Extension of Exemption Period

- The period of exemption may be extended for another 5 years of assessment subject to the PH fulfilling the following requirements:-
 - total number of new employees in Malaysia with a minimum monthly salary of RM5,000 exceeds 20% of the total number of its full-time employees in Malaysia at the final year of the exempted years of assessment; and
 - total amount of annual operating expenditure exceeds 30% of the total amount of its annual operating expenditure at the final year of the exempted years of assessment.
- Application for extension of the incentive period is to be made in writing by the PH to the MIDA at least 60 days before the expiry of the exempted years of assessment. The extension will begin from the subsequent year of assessment after the initial period of exemption has expired.

v. Separate Source and Separate Account

Where a PH carries on qualifying services, qualifying trading activities or activity other than core income generating activities, each activity shall be treated as a separate and distinct source of activity of the PH.

For the purpose of the above Order:-

“core income generating activities” means activities undertaken by a PH in relation to the qualifying services or qualifying trading activities.

“qualifying services” means services specified in Schedule 1 of the Order.

“qualifying trading activities” means activities undertaken by a PH in respect of procurement and sale of raw materials, components and finished products from the PH to a network company within or outside Malaysia.

“network company” means:-

- a related company;
- an entity within the same group of company of the PH including a subsidiary, branch, joint venture or franchise; or
- a company which has a contractual agreement with the PH or the PH's ultimate holding company which relates to the PH's supply chain and business for at least three years.

“IP right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety and other like rights, whether or not registered or registrable.

“**new IP right**” means an IP right in relation to the core income generating activities of the PH that comes into the ownership of the PH:-

- on or after 1st July 2018; or
- after 16th October 2017 but before 1st July 2018 as a result of an acquisition by the PH, directly or indirectly from a related company.

The above Order shall have effect from the YA 2019.

Note: For further information relating to the PH incentives 2.0, kindly refer to our [Tax Flash – November 2019](#) issue.

Sales Tax and Service Tax Forms

Royal Malaysian Customs Department has introduced revisions to specific forms related to Sales Tax and Service Tax voluntary disclosures and they were rolled out on MySST Portal on 1st August 2023:-

- [Form SST-ADM](#)
 - [Appendix 1 – Declaration Form for Breach of Exemption Conditions under the Sales Tax \(Persons Exempted from Payment of Tax\) Order 2018](#)
 - [Appendix 2 – Statement on Disposal of Taxable Goods Acquired under the Sales Tax \(Persons Exempted from Payment of Tax\) Order 2018](#)
- [Form SST-ADM 2](#)

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