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Guidelines on Application for Approval of COVID-19 Relief Fund

The Ministry of Finance [“MOF”] has recently issued the updated *Guidelines on Application for Approval of COVID-19 Relief Fund under Section 44(11C) of the Income Tax Act 1967* [“ITA 1967”] dated 1st April 2022 to provide guidance on the application criteria, types of contribution allowed, qualified recipients of the COVID-19 Relief Fund, dissolution procedure of the COVID-19 Relief Fund and consequences for violation of conditions.

A COVID-19 Relief Fund as defined in the abovementioned Guidelines is a fund approved by the MOF under Section 44(11C) of the ITA 1967 and established solely for the national importance to curb the transmission of COVID-19 in Malaysia which is allowed to carry out donation drives to assist various parties affected by COVID-19 from the medical, social and economical aspects.

Salient points of the abovementioned Guidelines are as follows:-

i. Eligible Applicants

- The applicants who are eligible to apply for the establishment of COVID-19 Relief Fund under Section 44(11C) of the ITA 1967 must be established in Malaysia, not operating for profit seeking purpose and registered as one of the following:-
 - a company limited by guarantee under the Companies Act 2016;
 - a society under the Societies Act 1966; and
 - a body corporate under the Trustees (Incorporation) Act 1952 (Legal Affairs, Prime Minister’s Department).
- Institutes/organisations approved under Section 44(6) of the ITA 1967 are allowed to apply provided that a separate account for receipts and expenses is maintained.
- Similarly, a company registered under the Companies Commission of Malaysia [“CCM”] is allowed to apply provided that it maintains a separate account for receipts and expenses and the objective of the establishment of fund must not be profit-oriented.

ii. Types of Contributions Allowed to be Collected by COVID-19 Relief Fund

- Cash;
- Equipment such as ventilators, patient beds, air-conditioners and air purifier/filtration; and
- Consumables such as face masks, hand sanitizers, gloves, test kits and personal protective equipment.

iii. Contributors of COVID-19 Relief Fund

- Donors of the approved COVID-19 Relief Fund will be allowed to claim a deduction (subject to restriction) under Section 44(11C) of the ITA 1967 on the amount equal to the gift of money or cost of contribution in kind against aggregate income of the relevant year of assessment.
- The founder, board of directors, committees, board of trustees and employees of the entity that established the COVID-19 Relief Fund are not entitled to benefit from the COVID-19 Relief Fund.
- Supporting documents required to be kept by the taxpayer for the purpose of claiming deduction in the income tax return form are as follows:-
 - cash contribution – official receipt stating the following:-
 - name of COVID-19 Relief Fund;
 - serial number of official receipt;
 - date of transaction;
 - name of contributor;
 - identification card number / business registration number of contributor;
 - amount of contribution (RM);

- MOF's approval file reference number; and
- effective date of MOF's approval.
- o contribution in kind – letter of acknowledgement of receipt as per the template provided by MOF together with an official stamp by the COVID-19 Relief Fund.

iv. Eligible Recipients of COVID-19 Relief Fund [“the donees”]

- The donees include:-
 - o government departments/agencies;
 - o non-governmental agencies registered with CCM, Registrar of Societies Malaysia and Legal Affairs Division of the Prime Minister's Department;
 - o public hospitals;
 - o public schools;
 - o orphanages, old folks home and homes for people with disabilities;
 - o the homeless, hardcore poor and refugees; and
 - o animal shelters and zoos.
- Donations must not have profit motive or be politically motivated.
- The donees must have a tax file number (if available) except for the homeless, hardcore poor and refugees.

v. Conditions to Set Up a COVID-19 Relief Fund

- The applicant is required to provide the following information relating to the COVID-19 Relief Fund:-
 - o period of donation drive done / to be done (commencement date and end date);
 - o list of donors (if available);
 - o total targeted contribution (if available); and
 - o the donees and types of contribution received (i.e. cash, consumables or equipments).
- A separate account solely used for the COVID-19 Relief Fund is required to be kept and proof of the bank statement is required to be submitted to MOF for verification.
- The board of directors, committees or board of trustees is required to be appointed to manage the COVID-19 Relief Fund.
 - o More than 50% of those appointed should not have any relationship with the institution/organisation/founder of the COVID-19 Relief Fund by way of and not limited to:-
 - family relationships such as parents, children, siblings including close family relationships;
 - employer-employee relationships; or
 - directors or employees of the same company or group of companies.
- A performance report in respect of the activities performed must be submitted to MOF and Inland Revenue Board [“IRB”] every three (3) months.

vi. Dissolution

- The COVID-19 Relief Fund should be dissolved at the end of the approval period and the following actions must be taken:-
 - o application for dissolution to be made to MOF;
 - o bank account for the purpose of the COVID-19 Relief Fund should be closed immediately. Any balance of unused funds in the account should be handed over to the National Disaster Management Agency [“NADMA”] or Ministry of Health Malaysia [“MOH”]; and
 - o the proof of transfer (if any) to NADMA and/or MOH and bank account closure must be submitted to MOF for verification.

vii. Consequences of Non-compliance

- MOF may withdraw the approval at any time if the conditions of the COVID-19 Relief Fund are not complied with.

- If the COVID-19 Relief Fund, which is dissolved due to the breach of conditions, has any unused funds in the bank account, the following actions must be taken:-
 - the balance of unused funds in the account should be handed over to NADMA or MOH;
 - the bank account for the purpose of the COVID-19 Relief Fund should be zeroed and closed immediately; and
 - the proof of transfer to NADMA and/or MOH and bank account closure to be submitted to MOF for verification.

viii. Period of Application

- Application to set up the COVID-19 Relief Fund must be submitted to MOF from 30th April 2020 to 31st December 2022 or the end date of COVID-19 outbreak as declared by the World Health Organisation [“WHO”], whichever is earlier.

Special Guidelines on Income Tax Deduction for Community/Charitable Projects to Handle COVID-19

The MOF has recently issued the updated *Special Guidelines on Application for Income Tax Deduction for Community/Charitable Projects to Handle COVID-19* dated 1st April 2022 to provide guidance on the application criteria, types of contribution allowed, qualified recipients of the contributions and application procedure.

Salient points of the abovementioned Guidelines are as follows:-

i. Eligible Applicants

- Companies, individuals, partnerships, trust bodies and cooperatives with business income.

ii. Qualifying Community/Charitable Projects

- Projects that directly assist the government in combating COVID-19 during the transition to endemic phase.

iii. Approved Contributions and Eligible Recipients

- Approved contributions for the purpose of claiming a deduction under Section 34(6)(h) of the ITA 1967 include:-
 - equipment such as ventilators, patient beds, air-conditioners and air purifier/filtration; and
 - consumables such as face masks, hand sanitizers, gloves, test kits and personal protective equipment.
- Eligible recipients of the aforementioned contributions include:-
 - government departments/agencies;
 - public hospitals; and
 - public schools.

iv. Procedures to Claim Tax Deduction

- Taxpayers claiming tax deduction under Section 34(6)(h) of the ITA 1967 will need to submit the following documents to MOF:-
 - letter of acknowledgement of receipt (as per *Lampiran 1* of the Guidelines) and duly stamped by the recipient; and
 - in the case of contributions from self-manufactured goods, the declaration of cost of goods and relevant supporting document; or
 - in the case of contributions not from self-manufactured goods, the proof of purchase or proof of payment.

- Income tax deductions for approved donations can be made directly in the income tax return form for the relevant year of assessment.
 - The following original documents should be kept for tax audit purposes by the IRB:-
 - approval letter from MOF; and
 - letter of acknowledgement of receipt by the recipient.
 - Claim for income tax deduction under Section 44(6) of the ITA 1967 cannot be made if a deduction under Section 34(6)(h) has been claimed for the same contribution.
- v. Cash Contribution to Government Department/Agencies
- Cash contribution to government departments, MOH and NADMA is eligible for a claim of deduction under Section 44(6) of the ITA 1967.
 - In this respect, no prior approval is required from MOF and the relevant guidelines issued by the IRB will be applicable.
- vi. Period of Claim
- Tax deductions under Section 34(6)(h) can be claimed in the relevant year of assessment commencing from the year of assessment [“YA”] 2020 for contributions made from February 2020 to 31st December 2022 or the end date of COVID-19 outbreak as declared by WHO, whichever is earlier.

Double Deduction for Expenditure in Relation to Industry4WRD Vendor Development Programme

Following the Budget 2019 announcement, the *Income Tax (Deduction for Expenditure in relation to Industry4WRD Vendor Development Programme) Rules 2022* has been gazetted to allow for double deduction on expenditure incurred by an anchor company to carry out the following activities in relation to the Industry4WRD Vendor Development Programme [“IVDP”] in ascertaining its adjusted income from business:-

- product development i.e. product quality upgrading, product innovation or research and development;
- capability upgrading i.e. certification programme, assessment programme or business process re-engineering; or
- human capital i.e. hard skill training, lean management system, financial management practice or capacity upgrading.

The amount of deductible expenditure is restricted to RM1 million per year and is given for a period of three (3) consecutive years of assessment commencing from the year of assessment in which the first expenditure is incurred. The amount of expenditure as referred to above shall not include any capital expenditure and must be verified by the Ministry of International Trade and Industry [“MITI”].

The IVDP is a programme certified by MITI or agency appointed by MITI, to be implemented by an anchor company in developing a vendor company.

For the above purpose, the anchor company is a company which:-

- is incorporated or deemed to be registered under the Companies Act 2016;
- is resident in Malaysia;
- engages in manufacturing or manufacturing-related services;
- holds a business license issued by the relevant local authority and a manufacturing license issued by MITI, if relevant;
- has been in operation for at least thirty-six months;
- participates in the IVDP;

- signs a memorandum of understanding with MITI under the IVDP from 1st January 2019 to 31st December 2021; and
- fulfills other conditions as specified in the Guidelines for the Implementation of IVDP issued or as revised by MITI and approved by the Minister.

The above Rules are deemed to have effect from YA 2019.

Principal Hub Incentive Scheme

Under the Principal Hub [“PH”] Incentive Scheme, companies carrying on qualifying services are eligible for preferential tax rates ranging from 0% to 10%, depending on the category of the qualifying company. In Budget 2021, it was announced that the PH incentive is to be extended for another 2 years i.e. for applications received by the Malaysian Investment Development Authority [“MIDA”] from 1st January 2021 to 31st December 2022 with some relaxation on the minimum conditions to qualify for renewal of another 5 years incentive period to encourage companies setting up a regional centre in Malaysia.

MIDA has recently issued the Guidelines for PH Incentive 3.0 [“PH 3.0”] setting forth the eligibility criteria and conditions to qualify for the incentive. Following this, the *Income Tax (The PH Incentive Scheme) Rules 2022* has been gazetted to legislate the tax treatment and eligibility criteria for the incentive under PH 3.0 for companies whose applications are received by MIDA between 1st January 2021 to 31st December 2022.

Salient points included in the above Rules are:-

i. Qualifying Activity

The Rules apply to a company carrying on a service activity as specified below:-

Cluster	Qualifying service
Strategic services	Regional profit and loss or business unit management Strategic business planning and corporate development Corporate finance advisory services Brand management Intellectual property management Senior-level talent acquisition and management
Business services	Bid and tender management Treasury and fund management Research, development and innovation Project management Sales and marketing Business development Technical support and consultancy Information management and processing Economic or investment research analysis Strategic sourcing, procurement and distribution Logistics services
Shared services	Corporate training and human resource management Finance and accounting (transactions, internal audit)

ii. Applicable Rate and Period of Incentive

The concessionary tax rates that shall be levied on the chargeable income of a qualifying company carrying on business in respect of a qualifying activity and the period of incentive under the PH Incentive Scheme are as follows:-

Category of qualifying company	Category 1 (new company with no existing entity or related entity in Malaysia prior to the application)	Category 2 (new company with existing entity or related entity in Malaysia which has not carried on a qualifying activity in Malaysia prior to the application)	Category 3 (existing company)
Income tax rate	0%	5%	10%
Incentive period	5 years	5 years	5 years
Extension of incentive period	+ 5 years	+ 5 years	No extension

iii. Conditions for the PH Incentive Scheme and Extension of Incentive Period

The conditions for a qualifying company and extension of the incentive period for a new company under the PH Incentive Scheme are provided in the Schedule 2 and Schedule 3 of the Rules. Other conditions may be imposed as specified in the approval letter and the Guidelines for the PH 3.0 issued or as revised by MIDA.

iv. Exclusion of Intellectual Property ["IP"] Income

In ascertaining the statutory income of a qualifying company, IP income (i.e. royalties or other income from an IP right) derived from the qualifying activity of the qualifying company shall be excluded from the PH Incentive Scheme. Such IP income will be subject to tax at the prevailing corporate income tax rate under the ITA 1967.

For the purpose of the above Rules:-

"new company" means a company:-

- which is incorporated under the Companies Act 2016 and resident in Malaysia;
- which has a paid-up capital of more than RM2.5 million; and
- which is established for the purpose of carrying on a qualifying activity under these Rules:-
 - which does not have an existing entity or related entity in Malaysia prior to the application; or
 - which has an existing entity or related entity in Malaysia which has not carried on a qualifying activity in Malaysia prior to the application.

"existing company" means a company:-

- which is incorporated under the Companies Act 2016 and resident in Malaysia;
- which is already operating in Malaysia and carrying on a manufacturing or services activity other than the qualifying activity prior to the application; and
- which has a paid-up capital of more than RM2.5 million.

“**qualifying company**” means a new company or an existing company that fulfils the eligibility condition imposed by the Minister under the ITA 1967 and these Rules.

“**IP right**” means a right arising from any patent, utility innovation and discovery, copyright, trademark 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.

The above Rules shall have effect from YA 2021.

Note: For further information on the Guidelines for PH Incentive, kindly refer to our [Tax Flash – November 2021](#) issue.

Deferment of Implementation of Imposition of Service Tax on Goods Delivery Services

Based on the 2022 Budget proposals, it was proposed that with effect from 1st July 2022, the service tax be imposed on goods delivery services provided by service providers including e-Commerce platforms (except for food and beverages delivery services as well as logistics services) regardless of whether the service providers are licensed under the Postal Services Act 2012 or not.

However, the Royal Malaysian Customs Department has on 30th June 2022 announced that the [implementation of the imposition of service tax on goods delivery services](#) has been postponed to a date to be announced in a near future.

Note: For further details, kindly refer to item G6 in our [Tax Flash – November 2021 \(Special Edition\)](#) issue.

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