



德勤马来西亚中国服务部刊物

马来西亚多媒体超级走廊（MSC）税收优惠更新

前言

作为经济合作与发展组织（OECD）包容性框架的一员，马来西亚承诺遵守税基侵蚀和利润转移（BEPS）的最低标准。

根据上述的规定，负责监管马来西亚MSC倡议的马来西亚数字经济发展局（MDEC）此前曾发布公告，将对在制度下的税收优惠政策进行审查与修订，以符合BEPS行动第五项下的最低标准。

近期发展

在上述审查过后，政府在近期发布了四份与马来西亚 MSC 相关的条例与法令（统称为“法令”）如下：

- a) 于 2018 年 12 月 31 日发布的 2018 年所得税法令（豁免）（第 10 号） [P.U.(A) 389];
- b) 于 2018 年 12 月 31 日发布的 2018 年所得税法令（豁免）（第 2 号） 2015（修订） [P.U.(A) 396];
- c) 于 2018 年 12 月 20 日发布的 2018 年投资促进条例（MSC 地位公司收入除外规定） [P.U.(A) 332];
- d) 于 2018 年 12 月 20 日发布的 2018 年投资促进法令（根据第 29B 条款确定 MSC 地位公司资产）（用于废除原法令） [P.U.(A) 335].

这些法令列出了 MSC 地位公司的受推广活动、MSC 地位公司的知识产权收入除外规定、在税收优惠下符合免征所得税的条件，包括实质和运营要求。这些变化将在下文中进行详细说明，它们不仅会影响那些正在着眼于 MSC 税收优惠的公司，也会影响目前正在享受 MSC 地位税收优惠的公司。

自 2019 年 1 月 1 日起申请的新条件

基于 2019 年 1 月 1 日起生效的 P.U.(A) 389 法令，以下活动为马来西亚 MSC 税收优惠下免征所得税的受推广活动。

2019 年 1 月 1 日前的受推广活动	自 2019 年 1 月 1 日起的受推广活动
<ol style="list-style-type: none"> 1. 信息技术 2. 全球业务服务 3. 创意内容与技术 4. 高等教育学府 (IHLS) 5. 创业公司 6. 企业孵化器 	<ol style="list-style-type: none"> 1. 大数据分析 2. 人工智能 3. 金融科技 4. 物联网 5. 网络安全 (技术/软件/设计及支持) 6. 数据中心与云技术 (技术/软件/设计及支持) 7. 区块链 8. 创意媒体技术 9. 共享经济平台 10. 用户界面与用户体验 11. 集成电路设计与嵌入式软件 12. 3D 打印 (技术/软件/设计及支持) 13. 机器人 (技术/软件/设计) 14. 自主化 (技术/软件/设计及支持) 15. 系统或网络架构设计与支持 16. 全球业务服务或知识流程外包, 除: <ol style="list-style-type: none"> a) 非技术型; b) 低价值电话服务中心; c) 数据录入; 及 d) 招聘流程外包

取决于公司的情况，税收优惠与条件会有所不同，详情如下：

合格公司	第 1 类	第 2 类	第 3 类
开展核心收入活动的地点	在 MSC 数字城市或数字中心内的指定场所	在 MSC 数字城市或数字中心内	不受地点条件影响
所得税免征比例	100%		70%
所得税免征期	5 年		5 年
所得税免征延长期	5 年		如合格公司由第 3 类更改为第 1 或第 2 类，并符合条件，可申请延长免征期。
实质要求:			

全职员工的最低人数	50	30	50	30	30	20
	数据中心: 5					
全职员工每月基本薪资的最低金额 (马币)	5,000	10,000	5,000	10,000	5,000	8,000
	数据中心: 5,000					
年度经营支出和固定资产投资的最底限额 (马币) *	3,500,000				1,000,000	
	数据中心: 10,000,000					

*目前尚不确定上述最低限额是必须每年达到, 或是必须在规定的年限内达到 (根据过去的政策), 还是两者兼有。

对现有公司税收优惠的修订

与此同时, 对于根据 1986 年投资促进法令(PIA)获得新兴工业地位(PS)的现有合格公司, 或根据 2015 年所得税(豁免)(第 2 号)法令免征所得税的现有合格公司(特别是位于指定数字城市或数字中心以外的 MSC 地位公司), 财政部通过 P.U.(A) 332 条例和 P.U.(A) 396 法令, 分别规定了类似有害税收实践论坛 (FHTP)的要求, 概述如下:

标准	1986 年投资促进法令下的新兴工业地位公司	在 2015 年所得税法令下免征所得税公司
1. 实质要求	<ul style="list-style-type: none"> 未在 P.U.(A) 332.条例中提出 	<ul style="list-style-type: none"> 在马来西亚拥有已批准并足够数量的全职员工来进行合格的活动;及 产生已批准并足够数额的年度运营支出以进行合格的活动, 或对在马来西亚固定资产进行已批准且足够的投资, 以进行合格的活动。
2. 专利权/知识产权收入	<ul style="list-style-type: none"> 从 2018 年 7 月 1 日起至 2021 年 7 月 1 日前, 由 MSC 地位公司作为所有方或被许可人获得的专利权收入及其它来自新知识产权 (非现有知识产权) 收入, 将不属于免税范围。 自 2021 年 7 月 1 日起, 由 MSC 地位公司作为所有方或被许可人获得的专利权收入及其它来自所有知识产权收入, 将不属于免税范围。 对处理这类收入提出的关联法(Nexus Approach)在目前阶段还未生效。 	<ul style="list-style-type: none"> 与在 PIA 下新兴工业地位公司相同
3. 祖父条款**	<ul style="list-style-type: none"> 如果 MSC 地位公司在 2017 年 10 月 16 日前获得新兴工业地位: 	<ul style="list-style-type: none"> 如合格公司在 2017 年 10 月 16 日当天或之前获得所得税豁免, 则该公司在 2021

	<p>(i) 在 2021 年 6 月 30 日后获得的非知识产权收入，将不属于免税范围；及</p> <p>(ii) 当 MSC 地位公司将任何 2017 年 10 月 16 日已批准的受推广活动作为其开拓型业务，此公司在 2018 年 12 月 31 日后从此活动中获得的非知识产权收入，将不属于免税范围。</p> <ul style="list-style-type: none"> • 如果 MSC 地位公司在 2017 年 10 月 16 日后获得 	<p>年 6 月 30 日前不需要符合上述的实质要求。</p> <ul style="list-style-type: none"> • 然而，当合格的公司 在 2017 年 10 月 16 日后进行新的受推广活动时，不适用于上述关于实质要求规定的豁免。取而代之的是，新的合格活动将获得到 2018 年 12 月 31 日为止的所得税豁免。 • 如合格的公司 在 2017 年 10 月 16 日后获得所得税豁免，应不需要符合新的实质要求直至 2018 年 12 月 31 日。
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**** P.U.(A) 389 法令中有一项特别规定，部长可向在 2019 年 1 月 1 日前基于 PIA 获得新兴工业地位或在 P.U.(A) 5/2015 下获得免征所得税的现有 MSC 地位公司授予一段时期(或延长一段时期)的所得税豁免。**

投资税收减免(ITA)

随着 P.U.(A) 335 法令的颁布，原本用于确定 PIA 下 MSC 地位公司的 ITA 合格资本支出的 2001 年投资促进法令（根据第 29B 条款确定 MSC 地位公司资产）[P.U.(A) 50/2001]，已在 2019 年 1 月 1 日起被撤销。

然而，P.U.(A) 335 法令规定，在上述撤销生效日期前，根据 PIA 第 29B 条款给予任何 MSC 地位公司的 ITA，应按照 P.U.(A) 50/2001 法令撤销前的规定继续执行。

以上的内容可能表明在 PIA 下新的 MSC 地位公司将不再被授予 ITA。同样，也似乎表明目前享受 ITA 的现有 MSC 地位公司可能不受祖父规则的约束。

接下来

在等待 MSC 修订准则发布的同时，我们预期政府就新马来西亚 MSC 地位的最低申请要求提供进一步指引，并明确马来西亚 MSC 地位下和知识产权制度激励下的投资税收优惠(ITA)的未来方向。

现有 MSC 地位公司的税收优惠期因祖父条款而缩短，这些公司也有可能满足新要求的前提下，延长其税收优惠期。

综上所述，所有公司都应在此时全面检查相关事宜，以确定是否会受到上述更改的影响，同时也应重新检查自身业务模式，以应对接下来的需求



Deloitte Malaysia Chinese Services Group Publication

MSC Malaysia Tax incentive status update

Introduction

As an Associate Member of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS), Malaysia is committed to implementing and adhering to the BEPS Action Plan minimum standards.

In line with the above, the Malaysia Digital Economy Corporation (MDEC) which oversees the MSC Malaysia initiative, had previously issued an announcement that the tax incentives under the regime will be reviewed and amended to align with the minimum standards under Action 5 of the BEPS Action Plan.

Recent developments

Following the review, the Government has recently issued four MSC Malaysia-related regulation and gazette orders (collectively referred to as "the Orders") as follows:

- a) Income Tax (Exemption) (No. 10) Order 2018 dated 31 December 2018 [P.U.(A) 389];
- b) Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 dated 31 December 2018 [P.U.(A) 396];
- c) Promotion of Investments (Exclusion of Income for MSC Status Company) Regulations 2018 dated 20 December 2018 [P.U.(A) 332]; and
- d) Promotion of Investments (Determination of Assets under Section 29B in respect of MSC Status Companies) (Revocation) Order 2018 dated 20 December 2018 [P.U.(A) 335].

The Orders set out, among others, the promoted activities for MSC, exclusion of IP income in respect of MSC status companies, conditions to qualify for income tax exemption under the incentive,

including substance and operational requirements. These changes are detailed below and will not only impact companies looking at the MSC Malaysia incentive, but also companies who are currently enjoying the MSC Malaysia incentive.

New Conditions for Applications made on or after 1 January 2019

Based on P.U.(A) 389 which comes into operation on 1 January 2019, the following activities are promoted activities for income tax exemption purposes under the MSC Malaysia tax incentive.

Promoted Activities Before 1 January 2019	Promoted Activities After 1 January 2019
<ol style="list-style-type: none"> 1. Infotech 2. Global business services 3. Creative content and technology 4. Institute of higher learning (IHLs) 5. Startups 6. Incubators 	<ol style="list-style-type: none"> 1. Big data analytics 2. Artificial intelligence 3. Financial technology 4. Internet of Things 5. Cybersecurity (technology/ software/ design and support) 6. Data centre and cloud (technology/ software/ design and support) 7. Blockchain 8. Creative media technology 9. Sharing economy platform 10. User interface and user experience 11. Integrated circuit design and embedded software 12. 3D printing (technology/ software/ design and support) 13. Robotic (technology/ software/ design) 14. Autonomous (technology/ software/ design and support) 15. Systems or network architecture design and support 16. Global business services or knowledge process outsourcing excluding: <ol style="list-style-type: none"> a) Non-technical; b) Low value call centre; c) Data entry; and d) Recruitment process outsourcing.

Depending on the profile of the company, the incentive and conditions will differ as set out below:

Qualifying company	Category 1	Category 2	Category 3
Location where core income generating activities	Designated premises within MSC cyber city or cyber centre	Within MSC cyber city or cyber centre	Not subjected to location condition

are carried out						
Percentage of income tax exemption	100%				70%	
Exemption period	5 years				5 years	
Extension of exemption period	5 years				May apply for an extension provided that the qualifying company changes from Category 3 to Category 1 or 2, and fulfills the conditions imposed	
Substance Requirements:						
Minimum number of full time employees	50	30	50	30	30	20
	Data Centre: 5					
Minimum amount of monthly base salary for full time employee (RM)	5,000	10,000	5,000	10,000	5,000	8,000
	Data Centre: 5,000					
Minimum amount of annual operating expenditure and investment in fixed asset (RM)*	3,500,000				1,000,000	
	Data Centre: 10,000,000					

** Currently, it is uncertain whether the above minimum amount has to be achieved annually or over a specified number of years (per the past policy), or a combination of both.*

Amendments to tax incentive for existing companies

Meanwhile, for existing qualifying companies which have been granted Pioneer Status (PS) under the Promotion of Investments Act 1986 (PIA) or income tax exemption under Income Tax (Exemption) (No. 2) Order 2015 [P.U.(A) 50/2015] (specifically for MSC status companies located outside of the designated cyber city or cyber centre), the Ministry of Finance has vide P.U.(A) 332 and P.U.(A) 396 respectively imposed similar FHTP requirements which are summarised below:

Criteria	PS under PIA	Tax Exemption under P.U.(A) 50/2015
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1. Substance requirement	<ul style="list-style-type: none"> • Not addressed in P.U.(A) 332. 	<ul style="list-style-type: none"> • Have an approved adequate number of full-time employees in Malaysia to carry on the qualifying activity; and • Incur an approved adequate amount of annual operating expenditure to carry on the qualifying activity or an approved adequate investment in fixed asset in Malaysia to carry on the qualifying activity.
2. Income from royalty / IP right	<ul style="list-style-type: none"> • For the period on or after 1 July 2018 but before 1 July 2021, royalty and other income derived from a new IP right (but not from an existing IP right) of which the MSC status company is the owner or licensee shall be excluded from the tax exemption. • For the period on or after 1 July 2021, royalty and other income derived from all IP rights of which the MSC status company is the owner or licensee shall be excluded from the tax exemption. • The proposed Nexus Approach treatment on such income has not been effected at this stage. 	<ul style="list-style-type: none"> • Same as <i>PS under PIA</i>.
3. Grandfather-ing rules **	<ul style="list-style-type: none"> • If the MSC status company has been granted PS on or before 16 October 2017: <ul style="list-style-type: none"> (iii) Non-IP income derived after 30 June 2021 shall be excluded from the tax exemption; and (iv) Non-IP income derived after 31 December 2018 from any promoted activity approved from 16 	<ul style="list-style-type: none"> • If the qualifying company has been granted an exemption on or before 16 October 2017, it shall be exempted from fulfilling the above substance requirements until 30 June 2021. • However, where the qualifying company carries on a new qualifying activity after 16 October 2017, the

	<p>October 2017 as the pioneer business of the MSC status company shall be excluded from the tax exemption.</p> <ul style="list-style-type: none"> • If the MSC status company has been granted PS after 16 October 2017, non-IP income derived after 31 December 2018 shall be excluded from the tax exemption. 	<p>above exemption from fulfilling substance requirements shall not apply. Instead, the tax exemption in relation to that new qualifying activity shall be granted until 31 December 2018.</p> <ul style="list-style-type: none"> • If the qualifying company has been granted an exemption after 16 October 2017, it shall be exempted from fulfilling the new substance requirements until 31 December 2018.
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*** P.U.(A) 389 has a Special Provision whereby the Minister may grant income tax exemption for a period (or extension period) to be determined by the Minister to existing MSC status companies which were granted PS under PIA or income tax exemption under P.U.(A) 50/2015 before 1 January 2019.*

Investment Tax Allowance (ITA)

With the issuance of P.U.(A) 335, the Promotion of Investments (Determination of Assets under Section 29B in respect of MSC Status Companies) Order 2001 [P.U.(A) 50/2001] which determines the qualifying capital expenditure of MSC status companies for ITA under PIA is revoked effective from 1 January 2019.

However, P.U.(A) 335 provides that any ITA given under Section 29B of PIA to any MSC status companies immediately before the effective date of the above revocation, shall be continued as if P.U.(A) 50/2001 has not been revoked.

The above may be an indication that ITA is no longer granted to new MSC status companies under PIA. Likewise, it does not appear that existing MSC status companies enjoying ITA is subject to grandfathering rules.

Moving forward

Whilst awaiting the amended MSC Guidelines to be issued, we hope that the Government will provide further clarity on the minimum requirements for new MSC Malaysia applications, as well as address the future of Investment Tax Allowance (ITA) granted under MSC Malaysia status and incentive for IP regimes.

It may also be possible for existing MSC status companies whose tax incentive period is shortened due to the grandfathering rules to extend their tax incentive period subject to meeting the new requirements.

In summary, it is timely for all companies to review their affairs to ascertain if they are affected by the changes and to re-examine their business models to align with the requirements moving ahead.

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