



德勤马来西亚中国服务部刊物

区域中心-所得税法令和修订指南

介绍

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。其中一项标准就是反对 BEPS 行动第五项的有害税收做法。这需要尤其将利润税收与优惠制度的实质内容结合起来。马来西亚受影响的制度之一就是区域中心（PH）税务优惠。因此这项优惠也已经过修订，呈现在 2017 年优惠制度进展报告及 2018 年优惠制度的专家评审结果中。

最近的发展

马来西亚投资发展局（MIDA）最近发布了 2018 年 12 月 31 日更新的区域中心指南，称为“PH 1.0”。它为所有的五类区域中心提供指导，即(i) 新公司，(ii)新的以商品为基础的公司，(iii)现有已经批准的业务总部(OHQ)/国际采购中心(IPC)/区域分配中心(RDC)地位的公司，(iv)现有的制造/服务公司，以及(v) 现有以商品为基础的公司。我们将在下文中比较最新和前一版本的指南：

| 标准 | MIDA 于 2017 年 7 月 7 日发布的指南 | MIDA 于 2018 年 12 月 31 日发布的指南 | 德勤的评论 |
|------------|---|------------------------------|---|
| 1) 区域中心的优惠 | <ul style="list-style-type: none"> 现有公司类别下区域中心的增值收入全面免税。 | | <ul style="list-style-type: none"> 增值收入机制在 2018 年指南下依旧有效。“现有公司类别的区域中心”从 2019 年财政预算案中受益之前，区域中心税 |

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| | | | 务优惠可能会进一步修改；五年内法定收入的所得税税率为10%。 |
| | <ul style="list-style-type: none"> 没有提及知识产权 (IP) 收入被排除在免税之外。 | <ul style="list-style-type: none"> 来自某些知识产权的特许使用费和其他收入不再享受优惠。请参阅下面的知识产权收入的祖父条款章节。 | <ul style="list-style-type: none"> 将知识产权收入排除在免税范围之外，使得区域中心优惠成为一个非知识产权制度。 2018 年指南声明，将被采用的已修改的关联法 (Nexus Approach) 会在适当时候分开讨论。 |
| | <ul style="list-style-type: none"> 新的以商品为基础的公司仅享有服务收入免税。 现有的以商品为基础的公司享有贸易及服务收入的免税。 | <ul style="list-style-type: none"> 新的和现有的以商品为基础的公司仅享有服务收入的免税。 | <ul style="list-style-type: none"> 2018 年指南简化了新的和现有的以商品为基础的公司的豁免范围。 |
| 2) 符合的服务 | <ul style="list-style-type: none"> 符合的服务包括(i)品牌管理 (ii)知识产权管理和 (iii)研发与创新。 | <ul style="list-style-type: none"> 澄清了上述活动仅涵盖管理服务，不包括任何与知识产权相关的收入，如特许权使用费。 | <ul style="list-style-type: none"> 2018 年指南中的澄清与将知识产权收入排除在区域中心优惠范围之外是一致的。 |
| 3) 申请的有效日期 | <ul style="list-style-type: none"> MIDA 接受新申请的截止日期是 2018 年 4 月 30 日。 | <ul style="list-style-type: none"> 截止日期延长至 2020 年 12 月 31 日 | <ul style="list-style-type: none"> 延长符合 2017 年 10 月 27 日公布的 2018 年财政预算案。 |

知识产权收入的祖父条款

特许使用费和其他收入：

- a) 在 2018 年 7 月 1 日或之后，到 2021 年 7 月 1 日之间收到，来源于(i) 2018 年 7 月 1 日或之后，或(ii) 2017 年 10 月 16 日到 2018 年 7 月 1 日之间的区域中心拥有的**新**知识产权；及
- b) 2021 年 7 月 1 日或之后的**所有**知识产权须按现行的税率缴纳企业所得税。

“知识产权”是指任何专利，公用事业创新和发现，版权，商标和服务标志，工业设计，集成电路布图设计，秘密过程或公式和专有技术，和技术诀窍，地理标志和植物品种保护及其他类似权利，无论是否已注册或可注册的产权。

所得税法令

2018年12月31日，财政部颁布了三条与区域中心相关的所得税法令（法令），自2018课税年生效，分别为：

- a) 2018年所得税(豁免)(第6号)法令规管包括现有制造公司/服务公司/以商品为基础公司地位的区域中心；
- b) 2018年所得税(豁免)(第7号)法令规管新公司与新的以商品为基础公司地位的区域中心；
- c) 2018年所得税(豁免)(第8号)法令规管已批准 OHQ/IPC/RDC 公司地位的区域中心。

MIDA 在 2018 年 12 月 31 日发布的指南与法令一致，但有以下例外情况：

| 标准 | MIDA 于 2019 年 12 月 31 日 发布的指南 | 法令 | 德勤的评论 |
|----------------|--|--|---|
| 1) 区域中心定义 | <ul style="list-style-type: none"> • 一家本地注册公司利用马来西亚作为其区域或全球业务运营的基地，以管理、控制和支持其主要职能包括风险管理、决策制定、战略商业活动、贸易、财务、管理及人力资源工作。 • “以商品为基础的公司”在区域中心运营中整合了上下游活动的供应链管理。”是其中一种类型的公司可取得区域中心资格。 | <ul style="list-style-type: none"> • 一家公司/以商品为基础的公司在其区域中心运营中整合了上下游活动的供应链管理。 | <ul style="list-style-type: none"> • 法令中更着重强调在供应链管理。 • 指南中的定义更符合传统意义上的总部制度，即要求纳税人进行集团公司的相关活动。 |
| 2) 区域中心优惠的资格标准 | <ul style="list-style-type: none"> • 具备灵活性，可以在第三年底之前达到高价值工作职位人数与每年业务开销的要求(注)。 | <ul style="list-style-type: none"> • 需在豁免课税年度开始的第三年达到并符合上述要求。 | <ul style="list-style-type: none"> • 我们希望 MIDA 可以澄清法令下的所述的“灵活性”，因为这可能被解读为需要在第三年开始时达到高价值工作职位的最低人数要求。 |

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| | <ul style="list-style-type: none"> 对于没有享受税收优惠的 OHQ/IPC/RDC 公司，高价值工作职位的最低人数要求是“现有承诺+20%” | <ul style="list-style-type: none"> 对于没有享受税收优惠的 OHQ/IPC/RDC 公司，高价值工作职位的最低人数要求是 18 位。 | <ul style="list-style-type: none"> 法令清楚列出了对人数的具体要求，但这没有体现在指南中。 |
| 3) 申请的有效日期 | <ul style="list-style-type: none"> 延长豁免期的申请必须在豁免期期满的六个月前向 MIDA 递交。 | <ul style="list-style-type: none"> 上述的申请应在不迟于豁免期期满 60 天前递交。 | <ul style="list-style-type: none"> 法令给予较晚的递交期限。 |

注：不适用于在之前获得优惠的 OHQ/IPC/RDC 公司。

接下来

我们希望在 2018 年指南和法令之间的分歧可以得到澄清。此外，由于在 2018 年指南中声明，自 2019 年 1 月 1 日起生效的批准将受制于新的 **PH 2.0** 指南，因此区域中心税务优惠可能会有进一步的修改。最后，公司集团应进行健康检查，并重新检验其在马来西亚和其它框架内成员所在国家的商业模式。



Deloitte Malaysia Chinese Services Group Publication

Principal Hub – Income Tax Orders and Revised Guideline

Introduction

As a member of the Organisation of Economic Cooperation and Development (OECD) Inclusive Framework, Malaysia is committed to adhere to the minimum standards of Base Erosion Profit Shifting (BEPS). One of the standards is countering harmful tax practices under BEPS Action 5. This requires, among others, the alignment of taxation of profits with substance for a preferential regime. One of the affected regimes in Malaysia is the Principal Hub (PH) incentive. The incentive has since undergone amendment as reflected in the 2017 Progress Report on Preferential Regimes and 2018 Peer Review Results on Preferential Regimes.

Recent development

The Malaysian Investment Development Authority (MIDA) recently released the updated PH guideline dated 31 December 2018 and dubbed '**PH 1.0**'. It serves as guidance for all five categories of PH, namely (i) new company, (ii) new commodity-based company, (iii) existing company with approved Operation Headquarter (OHQ)/International Procurement Centre (IPC)/Regional Distribution Centre (RDC) status, (iv) existing manufacturing / services company, and (v) existing commodity-based company. We present our comparison between the latest guideline and the immediately preceding version below:

| Criteria | MIDA's Guideline Dated 07.07.2017 | MIDA's Guideline Dated 31.12.2018 | Deloitte's comments |
|----------|-----------------------------------|-----------------------------------|---------------------|
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| 1) Incentives for PH | <ul style="list-style-type: none"> • Full tax exemption on value added income for PH under existing company categories. | <ul style="list-style-type: none"> • The value added income mechanism is still in effect under the 2018 guideline. There may be further revamp to PH incentive before “PH under existing company categories” benefit from the Budget 2019 announcement; 10% income tax rate on the overall statutory income for five years. | |
| | <ul style="list-style-type: none"> • No mention of Intellectual Property (IP) Income being excluded from tax exemption. | <ul style="list-style-type: none"> • Royalties and other income derived from certain IP rights cease to be incentivised . Please refer to the section on Grandfathering of IP Income below. | <ul style="list-style-type: none"> • The exclusion of IP Income from the scope of tax exemption renders the principal hub incentive a non-IP regime. • The 2018 guideline states that the modified nexus approach to be adopted will be addressed separately in due course. |
| | <ul style="list-style-type: none"> • New commodity based companies enjoy tax exemption on services income only. • Existing commodity based companies enjoy tax exemption on trading and services income. | <ul style="list-style-type: none"> • New and existing commodity based companies enjoy tax exemption on services income only. | <ul style="list-style-type: none"> • The 2018 guideline streamlines the scope of exemption enjoyed by new and existing commodity based companies. |
| 2) Qualifying services | <ul style="list-style-type: none"> • Qualifying services include (i) brand management (ii) IP management and (iii) | <ul style="list-style-type: none"> • MIDA clarified that the aforesaid activities merely cover manageme | <ul style="list-style-type: none"> • The clarification in the 2018 guideline is consistent with the exclusion of IP income from the scope of PH incentive. |

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| | research, development and innovation. | nt services which exclude any income related to IP such as royalty. | |
| 3) Effective date of application | <ul style="list-style-type: none"> The deadline for new applications to be received by MIDA is 30 April 2018. | <ul style="list-style-type: none"> The deadline is extended to 31 December 2020. | <ul style="list-style-type: none"> The extension is in line with the announcement made in Budget 2018 unveiled on 27 October 2017. |

Grandfathering of IP Income

Royalties and other income derived:

- a) on or after 1 July 2018 but before 1 July 2021 from **new** IP rights that comes into ownership of the PH (i) on or after 1 July 2018, or (ii) after 16 October 2017 but before 1 July 2018; and
- b) on or after 1 July 2021 from **all** IP rights shall be subject to corporate income tax at the prevailing rate.

"Intellectual property rights" 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.

Income Tax Orders

On 31 December 2018, the Ministry of Finance made three PH-related income tax orders (the Orders) that come into effect from the year of assessment 2018. These are:

- a) Income Tax (Exemption)(No.6) Order 2018 governing PH with existing manufacturing / services company / commodity-based company status;
- b) Income Tax (Exemption)(No.7) Order 2018 governing PH falling under new company and new commodity-based company status; and
- c) Income Tax (Exemption)(No.8) Order 2018 for PH under existing company with approved OHQ / IPC / RDC status.

The provisions of MIDA's guideline dated 31 December 2018 are consistent with the Orders, save for the exceptions below:

| Criteria | MIDA's Guideline Dated 31.12.2018 | The Orders | Deloitte's Comments |
|----------|-----------------------------------|------------|---------------------|
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| <p>1) Definition of PH</p> | <ul style="list-style-type: none"> • 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. • "Commodity based company that integrates the supply chain management for upstream and downstream activities under its PH operation" is merely one type of company that may qualify as a PH. | <ul style="list-style-type: none"> • A company or, a commodity based company that integrates the supply chain management for upstream and downstream activities under its PH operation. | <ul style="list-style-type: none"> • The legislated definition places more emphasis on supply chain management. • The guideline's definition is more in line with a conventional headquarter regime that requires taxpayers to undertake activities to related group companies. |
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| 2) Eligibility criteria for PH incentive | <ul style="list-style-type: none"> Flexibility to achieve the high value jobs and annual business spending requirement by end of Year 3 (Note). | <ul style="list-style-type: none"> The aforesaid requirements are to be complied with beginning from the third year of the exempt year of assessment. | <ul style="list-style-type: none"> We hope MIDA could clarify on the flexibility accorded under the Orders as it may be interpreted as minimum number of jobs must be filled upon commencement of Year 3. |
| | <ul style="list-style-type: none"> The minimum number of high value jobs for approved OHQ / IPC / RDC without incentive is 'existing commitment + 20%'. | <ul style="list-style-type: none"> The minimum number of high value jobs for approved OHQ / IPC / RDC without incentive is 18. | <ul style="list-style-type: none"> The absolute figure under the Order eliminates any potential ambiguity but is not reflected in the guideline. |
| 3) Effective date of application | <ul style="list-style-type: none"> Application for extension of exemption period must be submitted to MIDA six months before the expiry of the initial exempt period (Note). | <ul style="list-style-type: none"> The aforesaid application shall be made not later than 60 days before the expiry of the initial exempt period. | <ul style="list-style-type: none"> The Orders allow a later submission deadline. |

Note: Not applicable to companies previously approved for OHQ / IPC / RDC status with incentive.

Moving forward

We hope the divergence between the 2018 guideline and the Orders are clarified. In addition, the PH incentive may be subject to further revamp as the 2018 guideline stated approvals granted effective from 1 January 2019 are subjected to the new **PH 2.0** guideline. Lastly, it is timely for groups of companies to perform health check and re-examine its business models in Malaysia and other countries that are members of the Inclusive Framework.

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