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Tax Espresso – Special Alert

MIDA Guideline on Incentive for Intellectual Property Development

The Malaysian Investment Development Authority (MIDA) has uploaded the [Guideline](#) on Incentive for Intellectual Property (IP) Development (dated 1

January 2020) on its website recently. The Guideline states that 100% income tax exemption is given on qualifying IP income for up to 10 years. This exemption is subject to the guidelines on Modified Nexus Approach (MNA) to ensure that only income derived from IP developed in Malaysia is eligible for the incentive, where a formula adopted by the Forum on Harmful Tax Practices (FHTP) would be used to calculate qualifying income based on actual research and development (R&D) expenditure incurred by companies. The guidelines on MNA and details of the formula to calculate the qualifying IP income are still not available.

[The IP exemption incentive was proposed under Budget 2020, see our report thereon in [Tax Espresso \(Special Edition\)](#) – Highlights of Budget 2020: Part I on ‘Tax Incentive for Development of Intellectual Property’, including our commentary on the Modified Nexus Approach.]

The Guideline covers the following:

- a. **Incentive objective** – encourage enterprises to invest in research and knowledge creation to exploit IP through the licensing of patented knowledge, to attract companies to conduct R&D activities in Malaysia and facilitate the commercialisation of IP and to anchor more post-R&D economic activities, thereby creating jobs and new products/services for the economy.
- b. **Eligible applicants** – new/existing companies that own the rights of the qualifying IPs and are receiving income from the qualifying IP activities related to the promoted activities/list prescribed under the Promotion of Investments Act 1986 (PIA) and Income Tax Act 1967 (ITA).
- c. **Qualifying IP asset types** – (i) patent or utility innovation; (ii) copyrighted software; or (iii) family of qualifying IPs.
- d. **Qualifying IP income types** – royalty or licensing fees
- e. **Eligibility criteria** – company must incur adequate amount of operating expenditure annually to support the company in conducting its business operation in Malaysia, in addition to other conditions.
- f. **Qualifying R&D expenditure** – eligible R&D expenditure for MNA calculation will be in line with the types of eligible expenditure under Section 34A of ITA.
- g. **Effective date of incentive / exemption period** - starts from the date of the first IP filed at Intellectual Property Corporation of Malaysia (MyIPO) or any equivalent body outside of Malaysia.
- h. **Effective date of application** - applications received by MIDA from 1 January 2020 until 31 December 2022.
- i. **Mechanism** - subsidiary legislation will be issued on the mechanism of the incentive.
- j. **Withdrawal of incentive**

k. Procedure for application

The Guideline also explains that:

- The incentive is not applicable to companies currently enjoying tax incentives under Section 34A '*Special deduction for research and development expenditure*' or Section 34B '*Special deduction for contribution to an approved research institute or payment for use of services of an approved research institute or company*' of the ITA.
- Only IP filed and first invoice issued on or after 1 July 2018 will be considered for the IP incentive.

Please refer to the [Guideline](#) for full details.

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