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Greetings from your Tax & Legal team at Deloitte Singapore

We are pleased to update you on the following:

### **Economic Expansion Incentives (Relief from Income Tax) (EEIA) (Amendment) Bill No. 33/2023—Approved Royalties Incentive (ARI)**

On 3 October 2023, the Ministry of Finance (MoF) introduced the EEIA (Amendment) Bill in Parliament for [First Reading](#). This Bill includes changes to the ARI scheme and has a targeted gazette date in December 2023.

We would like to highlight on the changes to the ARI scheme which may require action(s) on your part.

#### **Background**

The ARI is designed to encourage Singapore-based companies to access cutting-edge technology and know-how in Singapore by awarding withholding tax exemption or concessionary withholding tax rates for payments made to a non-resident on approved royalties, technical assistance fees or contributions to Research and Development (R&D) costs for substantive Singapore activities. Approval for the ARI is currently granted through an agreement-based approach, whereby any amendments or variations to the agreements under the ARI will require the approval from the Singapore Economic Development Board (EDB) for the recipient of the ARI to continue to claim the said agreement under the ARI.

Following the Finance Minister's Budget 2022 announcement, in addition to extending the sunset date of the ARI from 31 December 2023 to 31 December 2028, the ARI was simplified from the existing agreement-based approach to

cover classes of royalty agreements based on an activity-set approach. Under the new activity-set approach, incentive recipients will not require approval from EDB for the amendments or variations in the agreements to continue claiming the agreements under the ARI.

The current agreement-based ARI approach will sunset after 31 March 2023, and activity-based ARI introduced for approvals from 1 April 2023 for all new and extension awards, with the inclusion of the **headline tax rate** condition. No new or extension awards, or inclusion of additional agreements/arrangements under existing awards, may be granted on an agreement-based approach.

We summarised the details of the 2 approaches as follows:

- **Agreement-based approach (to be phased out)**  
EDB's approval required for each agreement/arrangement and variation to each agreement/arrangement. This agreement-based approach will sunset after 31 March 2023.
- **Activity-based approach [action(s) required\*]**  
Activity-based ARI is introduced for approvals from 1 April 2023 for all new and extension awards, with the inclusion of the **headline tax rate** condition from the date of change. With this, EDB's approval is no longer required for each agreement/arrangement and variation to each agreement/arrangement, thus reducing administrative burden.

Activity-based ARI awards will require that, at the time the item of relevant royalties, fees or contributions is payable to a related party (as per Section 2 of the Income Tax Act [ITA] 1947) non-resident person, the highest rate of tax of a similar character to income tax imposed by the ITA 1947 that is levied must be more than 0%.

#### **Headline tax rate condition**

The key to note is that the headline tax rate refers to the highest tax rate levied under the law of the territory that the non-resident is a tax resident in, on any gains or profits from any trade or business carried on by the non-resident person in that territory at that time.

This headline tax rate condition would be legislated and is not applicable to royalty payments made to non-related non-resident person.

### **Action(s) required**

#### **1. Consent Form**

The existing ARI award recipient should consider if the change from the agreement-based approach to the activity-set approach will be beneficial, considering the administration aspect, the headline tax rate condition and other relevant concerns.

To continue enjoying the ARI beyond the transition scenarios described below, the existing ARI award recipient must decide to **change** its existing ARI to the activity-set based ARI by providing a **one-time irrevocable** consent to the termination of the existing agreement-based ARI award and to the award of an activity-based ARI award with all applicable terms and conditions (i.e., the **change**). The irrevocable consent needs to be given through a Consent Form issued by EDB by **30 November 2023**.

EDB will not entertain requests for deadline extension and failure to provide consent by the stipulated deadline would result in the lapse of the option to change. If the existing ARI award recipient decides not to provide consent, the existing ARI award will continue under the agreement-based approach, including requirements to seek relevant approvals such as variations, and no approvals can be granted for any additional agreement/arrangement whereby the effective inclusion date is on or after 1 April 2023.

## 2. Income Tax Reporting requirements under the activity-based approach

The ARI award recipient is required to self-evaluate whether the **headline tax rate** condition is met when assessing whether any item of relevant royalties, fees or contributions is covered under the ARI. They are then required to provide confirmation (as the case may be) in their submitted tax computation to IRAS with the following details:

- Name of recipient;
- Date and quantum of relevant royalties, fees or contributions paid/payable to each non-resident person;
- Whether the ARI payments enjoy reduced withholding tax or exempt withholding tax (duly completed withholding tax forms are to be submitted/e-filed to IRAS notwithstanding that withholding tax may be exempt under the ARI).
- Approved activity/activities to which the relevant royalties, fees or contributions paid/payable relate;
- ARI Letter of Award reference number;
- Tax residence jurisdiction of the recipient to which relevant royalties, fees or contributions are paid/payable; and
- Headline tax rate of the jurisdiction.

Whilst there is no formal requirement to substantiate the incentivised rate enjoyed, the ARI award recipient is to retain these supporting documents when called for by IRAS.

## 3. Transition scenarios requiring negotiations with EDB

There are 3 scenarios where a separate discussion with EDB will be required:

- The amended law will nullify the ARI benefits for the period on/after 1 April 2023 for any royalty agreements approval between 1 April 2023 and gazette date under agreement-based ARI awards. As such, should the Company have any inclusion of royalties agreements approved by EDB between 1 April 2023 and gazette date, the Company should submit the Consent Form to EDB to apply for the activity-based ARI to cover the period when the agreement-based ARI benefits are nullified if the Company is agreeable to the **change**. Otherwise, a negotiation with EDB will be required on the best way forward.
- The Company has requests to include royalty agreements whereby the effective date of inclusion is before 1 April 2023.
- The Company has amendment requests to existing agreement-based ARI awards that it wishes to seek approval for.

## Contacts

Should you require any assistance with transition scenarios or clarification, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).



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