

Malaysia's Commitment in International Tax Standard

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MALAYSIA'S PARTICIPATION IN FORUM OF HARMFUL TAX PRACTICES (FHTP) THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) TAXATION INITIATIVES

In order to address the issue of base erosion and profit shifting, the Organization of Economic Cooperation and Development (OECD) and the G20 countries introduced Base Erosion and Profit Shifting (BEPS) Action Plan as international taxation standard. The plan consists of 15 actions to address BEPS issues.

Malaysia in principal has committed to implement and to adhere to this standard. Under this commitment, Malaysia officially joined the OECD Inclusive Framework (IF) on BEPS as Associate Members. The IF emphasizes on the 4 minimum standards, namely:

No	Action Plan	Minimum Standard	Description
1.	Action 5	<i>Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance</i>	Identification of no or low preferential corporate tax rate (preferential regimes) that can be categorised as harmful tax practices. It focuses on improving transparency through the exchange of information on tax matters and requirement of substantial activities for any preferential regimes.
2.	Action 6	<i>Preventing the Granting of Treaty Benefits in Inappropriate Circumstances</i>	Measures to avoid treaty shopping activities to enjoy benefits under the DTAA by taxpayers.
3.	Action 13	<i>Guidance on Transfer Pricing Documentation and Country-by-Country Reporting</i>	Obligation to submit Country-by-Country Reporting by multinational companies with subsidiaries or branches for cross-border transactions.
4.	Action 14	<i>Making Dispute Resolution Mechanisms More Effective</i>	To ensure any tax-related disputes under the DTAA be resolved between treaty partners effectively.

Forum on Harmful Tax Practices (FHTP)

FHTP has identified jurisdictions which provide preferential regimes for mobile geographical services activities related to intellectual property (IP) and non-intellectual property (Non-IP). Malaysian incentives that have been identified for FHTP evaluation are as follows:

A. IP Incentives:

- i. Principal Hub;
- ii. Pioneer Status (High Technology);
- iii. Biotechnology Industry (BioNexus); and
- iv. MSC Malaysia

B. Non - IP Incentives:

- i. Biotechnology Industry (BioNexus);
- ii. MSC Malaysia;
- iii. Principal Hub;
- iv. Pioneer Status (Contract R&D);
- v. Treasury Management Centre;
- vi. Economic Development Regions:
 - Iskandar Malaysia (IM);

- East Coast Economic Region (ECER);
- Sabah Development Corridor (SDC);
- vii. Approved Services Project;
- viii. Green Technology Services;
- ix. Labuan Financial Services;
- x. Labuan Leasing Services;
- xi. Foreign Fund Management;
- xii. Inward re-insurance and offshore insurance; and
- xiii. Malaysian International Trading Company.

Tax incentives are evaluated based on the following criteria:

IP Incentives	Non-IP Incentives
<p>1. Nexus Approach</p> <p>Only R&D expenditures incurred in Malaysia are eligible for Income tax exemption.</p> <p>2. Transparency</p> <p>Incentives that comply with FHTP's requirement must be gazetted by 31st December 2018.</p>	<p>1. Ring Fencing</p> <p>No distinction on tax treatment including transaction and currency restrictions between residents and non-residents.</p> <p>2. Transparency</p> <p>Incentives that comply with FHTP's requirement must be gazetted by 31st December 2018.</p> <p>3. Substantial Activities</p> <p>Substantial activities requirements under FHTP are as follows:</p> <ul style="list-style-type: none"> i. adequate investment amount or annual business operating expenses incurred in Malaysia; and ii. adequate number of full-time job employment in Malaysia.

Timelines for Implementing Tax Incentives Gazette under FHTP

a. IP Incentives

Action	Date
1. Legislation process to amend existing IP incentives.	To be gazetted latest by 31 December 2018.
2. Cut-off date for new entrants to an existing IP incentives.	<p>Effective 1st July 2018, IP incentives are subject to Nexus Approach criteria. No new approval will be granted for existing IP incentives that do not comply with Nexus Approach criteria.</p> <p>Nexus Approach terms of reference can be found through: https://www.oecd-ilibrary.org/docserver/9789264283954-en.pdf?expires=1528445154&id=id&accname=guest&checksum=BCE5668395E0A9DEDA783979F2B4F6AA https://www.oecd-ilibrary.org/docserver/9789264283954-en.pdf?expires=1528445154&id=id&accname=guest&checksum=BCE5668395E0A9DEDA783979F2B4F6AA</p>
3. Cut-off date to enjoy benefits from the existing IP incentives approved on or before 30th June 2018 that do not comply with FHTP criteria (grandfathering).	Grandfathering will be allowed until 30th June 2021 to the existing companies which currently enjoy the existing IP incentives except for IP assets acquired from related parties after 16 October 2017. Tax payers need to distinguish IP assets from related and non-related parties.

b. Non-IP Incentives

Amendments to legislation related to Non-IP incentives are to be gazetted latest by 31st December 2018. Grandfathering will be allowed to the existing companies which currently enjoy Non-IP incentive, as follows:

- i. incentive approved on or before 16th October 2017
 - grandfathering period is up to 30th June 2021;
 - grandfathering is not allowed for new assets and new activities from existing entrants;
- ii. incentive approved after 16th October 2017
 - grandfathering period is up to the date of gazette or 31st December 2018 whichever earlier.

The Ministry of Finance together with Inland Revenue Board of Malaysia and related ministries/agencies are currently reviewing Malaysian tax incentives in order to meet criteria set under FHTP.

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