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CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

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TO ALL MEMBERS

TECHNICAL

Direct Taxation

MALAYSIA'S COMMITMENT ON THE INTERNATIONAL TAX STANDARD

The following document was posted by the Ministry of Finance of Malaysia on its website on 17 August 2018:

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

It states in the preamble –

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 the Base Erosion and Profit Shifting ("BEPS") Action Plan as the 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	Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance	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	Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	Measures to avoid treaty shopping activities to enjoy benefits under the DTAA by taxpayers.
3	Action 13	Guidance on Transfer Pricing Documentation and Country-by-Country Reporting	Obligation to submit Country-by-Country Reporting by multinational companies with subsidiaries or branches for cross- border transactions
4	Action 14	Making Dispute Resolution Mechanisms More Effective	To ensure any tax-related disputes under the DTAA be resolved between treaty partners effectively.

The document lists the following Malaysian tax incentives which have been identified for the Forum on Harmful Tax Practices ("FHTP") evaluation:

Intellectual Property (IP) incentives

i. Principal Hub;

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

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.

The following information is also provided:

- Criteria by which tax incentives are evaluated for:

IP incentives	Non-IP incentives
1. Nexus approach	1. Ring fencing
2. Transparency	2. Transparency
	3. Substantial Activities

- Timelines for implementing tax incentives gazette under FHTP for IP incentives and non-IP incentives.

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

The following can be contacted for enquiries:

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Members may read the document in full at the websites of the Institute and the Ministry of Finance.

Proposals for amendments to existing revenue legislation have been included under the 2019 Budget (under the Finance Bill 2018). The following proposals relate to Labuan entities:

LBATA = Labuan Business Activity Tax Act 1990
ITA = Income Tax Act 1967

Act	Section amended	Change/ Compliance with FHTP requirements
LBATA	2(1)	Amends the definition of "Labuan business activity" to provide that Labuan business activity means a Labuan trading or a Labuan non-trading activity which is carried on in, from or through Labuan. The proposed amendment is to allow the Labuan entity to deal with resident and in ringgit.
	2A	Deletes the provision with regards to the Minister's power to approve transactions between a Labuan entity and a resident in ringgit.
	2B	Provides that a Labuan entity must not only be an entity specified in the Schedule but must also fulfill the requirements in relation to the number of full time employees and the annual operational expenses in Malaysia.
	4	Clarifies that the net profit chargeable to tax under LBATA shall not include income derived from intellectual property rights, and that any income derived from intellectual property rights is subject to tax under the ITA.
	S7 (deleted)	The Labuan entity no longer has the option to elect to pay tax of twenty thousand ringgit. (The tax rate of 3% is applicable.)
ITA	New S.39(1)(r)	Limits deduction of expenses incurred in respect of any payment made by a person who is a resident to any Labuan company to 3% only.

Other amendments found in the Finance Bill 2018 that are made in line with the FHTP requirements are:

- Changes to the tax rate for re-insurance and re-takaful (standardized to 8% w.e.f. YA 2019).
- Abolishment of preferential tax rate for offshore insurance/ offshore takaful (w.e.f. YA 2019) and Foreign Fund Management Companies (w.e.f. YA 2021). (Tax rate under Schedule 1, Part IX of the ITA, for Foreign Fund Management Companies, to increase to 24% w.e.f. YA 2021).
- Changes relating to taxation of contract Research and Development (R&D) (Amendments to be made in the ITA and Promotion of Investments Act 1986.