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# EY Tax Alert

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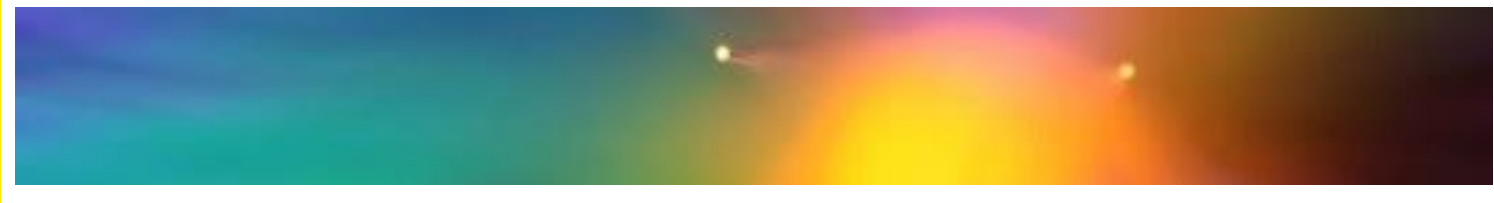
## Malaysian developments

### Guidelines for Principal Hub (PH) incentive 3.0

In Budget 2021, the Government proposed that the application period for the Principal Hub (PH) incentive be extended for two years, until 31 December 2022. It was also proposed that the existing qualifying conditions relating to the number of high value jobs, annual operating expenditure and number of key posts be relaxed for the second five-year period of the incentive (see *Take 5: Malaysia Budget 2021*).

Following the above, the Malaysian Investment Development Authority (MIDA) has recently published on its website the “Guidelines for Principal Hub Incentive 3.0” (PH 3.0 Guidelines), which are effective from 1 January 2021.

A PH is a locally incorporated company that uses Malaysia as a base to conduct its regional or global businesses and operations and to manage, control and support its key functions, including management of risks, decision-making, strategic business activities, finance, management and human resource. Trading activities (which were part of PH 2.0) have been removed from PH 3.0 and are now covered under



the Global Trading Centre (GTC) incentive (refer to the next article).

To qualify for the incentive, the PH must:

- ▶ Be a Malaysian-resident company incorporated under the Companies Act 2016
- ▶ Have paid-up capital of more than RM2.5 million

The PH 3.0 Guidelines stipulate that applications for the incentive must be received by MIDA between 1 January 2021 and 31 December 2022. The applications will be evaluated and approved by the National Committee on Investments (NCI).

An approved PH will be eligible for a concessionary tax rate on its statutory income from qualifying services (outlined in Appendix I to this Alert), depending on its level of commitment. The key details are as outlined in Appendix II to this Alert.

An approved PH must comply with the stipulated conditions throughout the incentive period. In the event the company fails to comply with the conditions in any year of assessment (YA) during the incentive period, the company may not enjoy the tax incentive for that YA.

The PH 3.0 Guidelines also explain the facilities that are accorded to an approved PH, the application process for the incentive as well as the compliance requirements throughout the incentive period.

Further details are available on the MIDA website [[Forms & Guidelines - MIDA | Malaysian Investment Development Authority](#) → Services sector → Regional operations → Principal Hub]

## Guidelines for Global Trading Centre (GTC) incentive

In Budget 2021, to enhance and simplify tax incentives for trading activities, a new tax incentive was proposed in the form of a GTC with a concessionary tax rate of 10% for a period of up to 10 years (made up of an initial five years, extendable for a further five years) (see *Take 5: Malaysia Budget 2021*).

Following the above, MIDA has recently published on its website the “Guidelines on Incentive for Setting up a Global Trading Centre (GTC)” (GTC Guidelines), which are effective from 1 January 2021.

A GTC is a locally incorporated company that uses Malaysia as its international trading base to undertake strategic sourcing and procurement and distribution of raw materials, components and finished products to its related and unrelated companies in Malaysia and abroad. To qualify for the GTC incentive, the company must fulfil the conditions outlined in Appendix III to this Alert.

Similar to the PH 3.0 incentive, the GTC Guidelines stipulate that applications for the incentive must be received by MIDA between 1 January 2021 and 31 December 2022. The applications will also be evaluated and approved by the NCI.

An approved GTC must comply with the stipulated conditions (per Appendix III to this Alert) throughout the incentive period. In the event the company fails to comply with the conditions in any YA during the incentive period, the company may not enjoy the concessionary tax rate for that YA.

The GTC Guidelines also explain the process to apply for the incentive, surrender the incentive and/or apply for an extension of the incentive period. Further details are available on the MIDA website [[Forms & Guidelines - MIDA | Malaysian Investment Development Authority](#) → Services sector → Regional operations → Global Trading Centre (GTC)]

## Guidelines on tax incentive for manufacturers of pharmaceutical products

In Budget 2021, to encourage manufacturers of pharmaceutical products (including vaccines) to invest in Malaysia, the following incentives were proposed (see *Take 5: Malaysia Budget 2021*):

- ▶ 0% to 10% tax rate for the first 10 years
- ▶ 10% tax rate for the next 10 years

Following the above proposal, the MIDA has published on its website the “Guidelines for Incentive for Manufacturers of Pharmaceutical Products Including Vaccines Under the 2021 Budget” (Guidelines) dated 27 August 2021.

The Guidelines stipulate that both new and existing companies are eligible for the above-mentioned incentive. Applications for the incentive must be received by MIDA between 1 January 2021 and 31 December 2022. The incentive will be legislated by way of a subsidiary legislation under the Income Tax Act 1967 (ITA) to be read together with Section 65B of the ITA.

Companies granted the incentive will be required to comply with conditions specified by the Ministry of Finance (MoF). To be eligible for the incentive, the Guidelines indicate that the company must:

- ▶ Be a manufacturing company incorporated under the Companies Act 2016

- ▶ Possess a manufacturing licence (ML) from the Minister of International Trade & Industry (MITI), or a confirmation letter from MIDA providing an exemption from ML requirements
- ▶ Incur its first capital expenditure within one year from the approval date of the incentive, and commit its full capital expenditure as stated in the approval letter within five years from the date the first capital expenditure was incurred
- ▶ Carry out the development of drug formulation and submit its drug formulation registration to the National Pharmaceutical Regulatory Agency (NPRA) in Malaysia within 10 years from the approval date
- ▶ Conduct research and development (R&D) activities, and establish collaborative programs with higher learning institutions on related R&D programmes
- ▶ Carry out manufacturing activities to produce the developed and formulated product in Malaysia. “Fill and finish” activities are not eligible for this incentive.
- ▶ Manufacture products with a value-add of at least 40%
- ▶ Ensure that:
  - 20% of the company’s manpower consists of staff with a diploma or degree, in Science and Technical fields
  - 80% of its full-time employees are Malaysians
  - 15% of its full-time employees are employed with a basic salary of at least RM5,000 per month
- ▶ Participate in internship programmes with local universities and/or polytechnics or industrial training placements by Technical and Vocational Education and Training (TVET) institutions for at least six Malaysian interns per year, with a minimum training period of three months throughout the incentive period
- ▶ Carry out annual corporate social responsibility (CSR) activities with at least one hospital or health institution in Malaysia, which is recognized by the Ministry of Health Malaysia

The Guidelines also explain the application process for the incentive.

Further details are available on the MIDA website [[Forms & Guidelines - MIDA | Malaysian Investment Development Authority](#)] → Manufacturing sector → Application for incentive and/or expatriate posts → Application of incentive for manufacturers of pharmaceutical products including vaccines]

## Tax incentive for the electrical and electronics (E&E) sector

In Budget 2020, it was proposed that companies in the electrical and electronics (E&E) sector, whose reinvestment allowance (RA) period has expired, be eligible to apply for a special investment tax allowance (see *Take 5: Budget 2020 Malaysia and Special Tax Alert: Highlights of Budget 2020*).

Following the proposal, MIDA has published on its website the “Guidelines and procedures for the application of special investment tax allowance for the E&E sector” dated 26 March 2021 (see *Tax Alert No. 8/2021*).

To legislate the above, the Income Tax (Exemption) (No. 10) Order 2021 [P.U.(A) 370] was gazetted on 21 September 2021. The Order provides that a qualifying company is exempted from payment of income tax in respect of statutory income derived from a qualifying project. The amount exempted will be equivalent to an allowance of 50% of the qualifying capital expenditure incurred by the qualifying company, to be set-off against 50% of statutory income for each YA. The exemption is for a period of five consecutive years commencing from the date the qualifying company first incurs qualifying capital expenditure, as determined by the Minister or Minister of International Trade and Industry (MITI), and shall not be earlier than 1 January 2020.

The application for exemption must be submitted to MIDA between 1 January 2020 and 31 December 2021.

The following terms have been defined in the Order:

### (a) Qualifying company

A company which:

- ▶ Is a Malaysian-resident and incorporated or deemed to be registered under the Companies Act 2016
- ▶ Is engaged in manufacturing activities in the E&E sector in compliance with the Industrial Co-ordination Act 1975 (ICA) and intends to reinvest in a qualifying project
- ▶ Holds a business license from the relevant local authority
- ▶ Holds an ML from MITI or a letter from MIDA providing an exemption from ML requirements
- ▶ Has made a claim for the following incentives, where the incentive period ended by YA 2019 in respect of the same qualifying project:
  - RA under Schedule 7A of the ITA
  - Any incentive under the Promotion of Investments Act 1986 (PIA)

### (b) Qualifying project

A project undertaken by a qualifying company to expand, modernize, automate or diversify its business of manufacturing activities in the E&E sector, which is approved by the Minister.

### (c) Qualifying capital expenditure

Capital expenditure incurred by a qualifying company in relation to the cost of:

- Purchasing or constructing a building or factory; and
- Providing a machinery or plant

which is used in Malaysia solely for the purpose of carrying on a qualifying project.

It excludes capital expenditure incurred on:

- Buildings used as living accommodation, or

- Machinery or plant which is provided wholly or partly for the use of a director or individual who is a member of the management or administration, or clerical staff, of the qualifying company

The exemption is subject to the qualifying company complying with the conditions imposed by the Minister, which includes the qualifying company:

- ▶ Investing at least RM1.5 million in the qualifying project within the exemption period
- ▶ Incurring an approved adequate amount of annual operating expenditure in Malaysia to carry on the qualifying project
- ▶ Employing an approved adequate number of full-time employees in Malaysia to carry on the qualifying project
- ▶ Participating in the vendor development programme or human capital development programme

The Order stipulates that the exemption granted does not absolve the qualifying company from any requirement to submit any return, statement of accounts or any other information, as required under the ITA. The qualifying company is also required to maintain a separate account for income derived from qualifying and non-qualifying projects. Qualifying and non-qualifying projects are to be treated as separate and distinct sources of income.

The non-application provisos stipulate that the Order will not apply to a qualifying company for a YA if the qualifying company has:

- (a) Made a claim for allowances under Schedule 7A or 7B of the ITA
- (b) Been granted any incentive under the PIA for the same qualifying project
- (c) Been granted an exemption under Section 127(3)(b) or 127(3A) of the ITA for the same qualifying project
- (d) Made a claim for deduction under any rules made under Section 154 of the ITA except:

- (i) The rules in relation to allowance in Schedule 3 of the ITA
- (ii) The Income Tax (Deduction for Audit Expenditure) Rules 2006, or
- (iii) The Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020

The Order is deemed to have come into operation on 1 January 2020.

### Updated guidelines on application for approval under Section 34(6)(h) of the ITA

The Inland Revenue Board (IRB) has recently published on its website the updated technical guidelines on the application for approval under Section 34(6)(h) of the ITA. The guidelines are in Bahasa Malaysia and are titled “Garis Panduan Memohon Potongan Di Bawah Seksyen 34(6)(h) Akta Cukai Pendapatan 1967 Bagi Maksud Pengiraan Cukai Pendapatan” (Technical Guidelines).

The updated Technical Guidelines are broadly similar to the earlier guidelines and explain the criteria and procedures to apply for a tax deduction under Section 34(6)(h) of the ITA for the provision of services, public amenities and contributions to approved community and charitable projects.

The Technical Guidelines have been updated mainly to reflect the legislative changes to Section 34(6)(h) which were enacted via the Finance Act 2009 and Finance Act 2019, where the tax deduction would also apply to contributions to approved projects related to the conservation or preservation of environment, enhancement of income of the poor and maintenance of a building designated as a heritage site by the Commissioner of Heritage under the National Heritage Act 2005.

The updated Technical Guidelines also stipulate that the applications are to be submitted to:

Setiausaha Bahagian Cukai  
Kementerian Kewangan Malaysia  
Tingkat 6 & 7, Blok Tengah  
Kompleks Kementerian Kewangan  
Presint 2, Pusat Pentadbiran Kerajaan Persekutuan  
62592 Putrajaya

## Updated Frequently Asked Questions on special deduction on rental discounts given to tenants

As highlighted in an earlier tax alert, the following Rules were gazetted on 8 September 2021 to legislate the proposal for a special deduction for property owners who provide at least 30% rental discounts to tenants (see *Tax Alert No. 19/2021*):

- ▶ Income Tax (Special Deduction for Reduction of Rental to a Small and Medium Enterprise) Rules 2021 [P.U.(A) 353/2021]
- ▶ Income Tax (Special Deduction for Reduction of Rental to a Tenant other than a Small and Medium Enterprise) Rules 2021 [P.U.(A) 354/2021]

Following the above, the IRB has published an updated version of the Frequently Asked questions (FAQs) document in Bahasa Malaysia, titled “Potongan Khas Kepada Pembayar Cukai Yang Memberi Pengurangan Sewa Premis Perniagaan Kepada Perusahaan Kecil Dan Sederhana (PKS) Dan Bukan PKS Di Bawah P.U.(A) 353/2021 Dan 354/2021”, dated 23 September 2021.

The key changes are outlined below.

- ▶ In line with P.U.(A) 353/2021, the updated FAQs stipulate that a small and medium enterprise (SME) is defined as a Malaysian-resident and certified as an SME by SME Corporation Malaysia (SME Corp)

- ▶ The FAQs have been updated to reiterate that the certificate issued by SME Corp confirming the status of a tenant as an SME is required only for the period between April 2020 and 31 December 2020. The certificate must be obtained by 31 December 2021.
- ▶ The following worksheets for the special deduction have also been provided in the updated FAQs:
  - HK-C16B: Companies, co-operatives, limited liability partnerships (LLPs) and business trusts
  - HK-4E: Other than companies, co-operatives, LLPs and business trusts

## Audit framework for employers

The IRB has issued on its website a new Audit Framework (Framework) dated 1 October 2021, in Bahasa Malaysia, titled “Rangka Kerja Audit Majikan”. The Framework provides guidance on the IRB’s procedures and practices in conducting audits on employers to ensure that employers are accurately deducting the monthly tax deductions (MTD) from the employment income of their employees and remitting the MTD to the IRB by the stipulated deadlines. The Framework also outlines the rights and responsibilities of the IRB, the employers and tax agents, during an audit.

The 26-page Framework comprises the following paragraphs:

- 1.0 Introduction
- 2.0 Statutory provisions
- 3.0 What is an employers’ audit?
- 4.0 Objectives of the audit
- 5.0 YAs covered
- 6.0 Selection of cases
- 7.0 Implementation of the audit
- 8.0 Rights and responsibilities
- 9.0 Confidentiality of information
- 10.0 Offences and power to compound
- 11.0 Complaints
- 12.0 Compound payment procedures

## 13.0 Effective date

Some of the key points are outlined below.

### Types of audit

The Framework stipulates that the audits will be carried out by way of:

- ▶ Desk audits: Compliance to Section 83 of the ITA
- ▶ Field audits: Compliance to Section 107 of the ITA

### YAs covered

The Framework states that the audit will cover a period of up to two years of remuneration. However, the IRB is given the power to extend the period covered under certain circumstances (e.g., in cases of failure to remit MTDs, underpayment of MTD and repeated offences).

### Selection of cases

The Framework clarifies that cases are selected for audits via a computerized system based on a risk-assessment and/or information received from various sources. Some of the factors taken into consideration include the type of industry, location, specific issues for certain groups of employers and information received from third parties.

### Implementation of the audit

The Framework explains the audit process, including the following:

- ▶ The commencement of the audit, including the method of notification and details of the notification
- ▶ The location where the audit would be carried out

- ▶ The process in the case of a field audit, including the duration of the audit and responsibilities of all parties involved
- ▶ The process for the examination of records, as well as the types of records which may be audited
- ▶ The process for the settlement of the audit, including the process for the employer to file an objection if the employer disagrees with the IRB's audit findings

The Framework also stipulates that voluntary disclosures (if any) will need to be submitted before an audit commences. The Framework clarifies that the audit will be taken to commence on the date the letter requesting documents and information is issued to the employer officially by way of e-mail, fax or post.

### Rights and responsibilities

The Framework outlines the dos and don'ts for the IRB, employers and registered tax agents, to ensure that the audit is carried out professionally and fairly.

### Confidentiality of information

The Framework reiterates that all information obtained from the employers via interviews, discussions, correspondences or examination of records and documents during the course of the audit is confidential and will be used only for the purpose of the audit.

### Offences and power to compound

The Framework explains the compounds and/or penalties that may be imposed for offences (including repeated offences) discovered during an audit.



## Effective date

The Framework is effective from 1 October 2021.

## Public Ruling No. 5/2021 - Taxation of a Resident Individual Part I - Gifts or Contributions and Allowable Deductions

The IRB has issued Public Ruling (PR) No. 5/2021: Taxation of a Resident Individual Part I - Gifts or Contributions and Allowable Deductions, dated 30 September 2021. The PR provides clarification in relation to gifts or contributions made by a resident individual that are allowable in determining the individual's total income for a YA, as well as the tax deductions that are allowable to a resident individual in computing his or her chargeable income for a YA. This new 56-page PR replaces PR No. 8/2020, which was issued on 9 October 2020 (see *Tax Alert No. 18/2020*). The new PR comprises the following sections and sets out 41 examples:

- 1.0 Objective
  - 2.0 Relevant provisions of the law
  - 3.0 Interpretation
  - 4.0 Introduction
  - 5.0 Gifts or contributions
  - 6.0 Allowable deductions
  - 7.0 Updates and amendments
  - 8.0 Disclaimer
- Appendix 1  
Appendix 2

The contents of the new PR are broadly similar to the earlier PR. The PR's contents have, however, been updated mainly to incorporate, explain and provide examples to demonstrate the legislative changes which were enacted via the Finance Act 2020, including the following:

- ▶ Section 46(1)(c) - The increase in tax relief for expenses (medical treatment, special needs and carer expenses) incurred for parents, from RM5,000 to RM8,000. This is effective from YA 2021.
  - ▶ Section 46(1)(f) - The expansion of scope of tax relief for education fees of RM7,000 to include RM1,000 of expenses incurred for upskilling and self-enhancement courses conducted by a body recognized by the Director General of Skills Development under the National Skills Development Act 2006. This applies for YA 2021 and YA 2022.
  - ▶ Section 46(1)(g) - The enhancement of tax relief for medical expenses for self, spouse and child as follows:
    - The increase of total tax relief from RM6,000 to RM8,000
    - The expansion of scope of tax relief to include RM1,000 of expenses incurred for the following vaccinations:
      - Pneumococcal
      - Human Papillomavirus (HPV)
      - Influenza
      - Rotavirus
      - Varicella
      - Meningococcal
      - Combination of tetanus-diphtheria-acellular pertussis (TDAP)
      - COVID-19
- These are effective from YA 2021.
- ▶ Section 46(1)(h) - The increase in tax relief for full medical check-up expenses from RM500 to RM1,000, effective from YA 2021. This amount forms part of the RM8,000 tax relief under Section 46(1)(g) (refer above).
  - ▶ Section 46(1)(k) - The extension of tax relief of RM8,000 for the net annual savings deposited into the National Education Savings Scheme (Skim



Simpanan Pendidikan Nasional - SSPN) up to YA 2022.

- ▶ Section 46(1)(p) - The scope of relief for newspapers expanded to include subscriptions to electronic newspapers. This is effective from YA 2021.
- ▶ Section 46(1)(r) - The increase in tax relief for fees paid to registered childcare centres or kindergartens, from RM2,000 to RM3,000. This applies for YA 2020 and YA 2021.
- ▶ Section 46(1)(s) - The additional tax relief of RM1,000 for the following qualifying domestic travel expenses incurred between 1 March 2020 and 31 December 2021:
  - Accommodation expenses at premises registered with the Ministry of Tourism, Arts and Culture (MOTAC), and
  - Entrance fees to tourist attractions
- ▶ Section 46(1)(t) - The additional tax relief of RM2,500 for the purchase of personal computers, smartphones or tablets from 1 June 2020 to 31 December 2020.
- ▶ Section 46(1)(u) - The additional tax relief of RM500 for sports-related expenses (i.e., purchase of sports equipment, payment of rental or entrance fee to sports facilities, and registration fees for sports competitions). This is effective from YA 2021.
- ▶ Sections 45A(1) and 47(1) - The increase in tax relief for disabled spouse from RM3,000 to RM5,000. This is effective from YA 2021.
- ▶ Section 49(1D) - The extension of tax relief of RM3,000 for contribution to Private Retirement Schemes (PRS) up to YA 2025.

## Overseas developments

### Poland plans to introduce tax on shifted profits

Representatives of the Polish Government, on 8 September 2021, submitted draft legislation to the Polish Parliament on the major tax reform referred to as the "Polish Order." The changes would affect several areas of taxation including Corporate Income Tax (CIT), Personal Income Tax (PIT), and Value Added Tax (VAT). A majority of the provisions are expected to come into force as of 1 January 2022.

One of the significant changes proposed under the Polish Order is imposing additional tax on shifted profits.

For an overview of the other proposed amendments, see EY Global Tax Alert, [Poland: Major tax reform proposal moves to Parliament](#), dated 17 September 2021.

#### Detailed discussion

According to the draft proposal, a new "tax on shifted profits" would be levied on Polish entities as well as entities with a permanent establishment (PE) in Poland. According to the legislative explanation, this proposal intends to eliminate tax schemes aimed at shifting income to jurisdictions with a negligible effective tax rate.

The new tax would amount to 19% of the costs incurred, directly or indirectly, with respect to payments to a related entity if the following conditions jointly exist:

- ▶ The effective CIT paid by this related entity in the country of its tax residence is lower by at least 25% than the hypothetical CIT that would be due on such payments at the standard Polish rate of 19% (i.e. 14.25% CIT or lower)

- ▶ These costs amounted to at least 50% of the revenues earned by this related entity and:
  - Are deductible from revenues, income, a tax base or a tax of this related entity, or
  - Were paid by this related entity in the form of a dividend or other form of participation in profits for a tax year in which the payment was received.

Costs forming a tax base for the purpose of the new tax would include, among others, certain types of payments for: advisory services, marketing, market research, control and management, guarantees, financing costs (including interest and commissions), royalties, licenses, and the transfer of functions, assets and risks; and only if the sum of these costs incurred in a tax year by a Polish CIT payer for the benefit of all recipients (including unrelated entities) amounts to at least 3% of the total sum of tax deductible costs of a given tax year. Certain deductions and exceptions could apply.

The new tax would not be levied on costs connected with payments to a related entity tax resident in a European Union or European Economic Area country if this entity undertakes a significant, real economic activity in this country.

### Next steps

The draft legislation will now be discussed in the Polish Parliament.

Since the potential impact could be very broad, including on payments and arrangements under genuine business operations, it is important to assess the impact on each organisation and undertake relevant mitigating actions.

## Singapore expands transfer pricing guidance

The Inland Revenue Authority of Singapore (IRAS) released the *6th Edition Transfer Pricing Guidelines* (TPG) on 10 August 2021, which provides updates and additional transfer pricing (TP) guidance in a number of areas as compared to the previous (5th) edition of the TPG, published on 23 February 2018.

The 6th Edition TPG does not deviate significantly from the 5th Edition in terms of guidance on the considerations for the application of the arm's-length principle and TP documentation requirements. However, the various updates and guidance in additional areas (including conditions for mitigating a TP surcharge) are reflective of the IRAS' continuing focus on TP matters and enforcement of the arm's-length requirement on taxpayers.

The key updates and additional guidance provided in the 6th Edition TPG are summarized below.

### Detailed discussion

#### Replacement of reference to "TP Consultation" with "TP Audit"

While TP audits are not new in Singapore, this change holds significance as it marks a shift to a more stringent and potentially a more aggressive enforcement approach by the IRAS in ensuring TP compliance.

#### Further guidance on application of the Berry ratio and value-added cost mark-up

The IRAS elaborates on the limited circumstances for the application of alternative profit level indicators such as the Berry ratio and value-added cost mark-up. The IRAS reiterates that the Berry ratio is only appropriate when the value of the functions performed is proportional to operating expenses and

not to sales. Similar principles are to be applied in cases where the value-added cost mark-up is being used. This is consistent with the IRAS' practice, with IRAS commonly challenging taxpayers on the appropriateness of such profit-level indicators.

### **Guidance on remission of TP surcharge**

Taxpayers are liable to a surcharge equal to 5% of TP adjustments (regardless of whether there is tax payable on the adjustments made). The 6th Edition TPG has included a new section (Section 9) to spell out the circumstances under which the IRAS may consider a full or partial remission of the TP surcharge (including where voluntary or self-initiated retrospective adjustments are made), such as cooperative and responsive behavior of taxpayers, maintenance of contemporaneous TP documentation and good tax compliance records.

### **Additional guidance on arbitration and circumstances under which the IRAS will not accept a Mutual Agreement Procedure (MAP) or Advance Pricing Arrangement (APA) application**

The 6th Edition TPG added guidance on the availability of arbitration as a further recourse to resolve issues that have reached a stalemate in a MAP discussion. It also includes the circumstances under which the IRAS will not accept a MAP or APA application after its submission, one of which is where the proposed transaction is not carried out for bona fide commercial reasons or involves a scheme that has, as one of its main purposes, the avoidance or reduction of tax. The IRAS will also not accept an APA request on a related party transaction that is undergoing audit or investigation.

### **Additional guidance on TP aspects of related party services**

The IRAS has now included formal guidance in the 6th Edition TPG on shareholder activities and duplicate services, which are in alignment with the guidance in the Organisation for Economic Co-operation and

Development (OECD)'s TPG as well as the practices currently applied by the IRAS. It has also incorporated guidance on the application of the 5% profit mark-up under the OECD's simplified approach for low value-adding intra-group services, subject to conditions such as meeting the OECD's definition of low value-adding intra-group services.

### **Guidance on TP aspects of cost contribution arrangements (CCAs)**

The 6th Edition TPG has included a new section (Section 17) with guidance to determine whether a CCA satisfies the arm's-length principle. It provides a four-step framework on how to apply the arm's-length principle to a CCA, which is generally aligned with the OECD's TPG and centers around the determination of the participants' share of expected benefits to determine the participants' contribution to the CCA. It also sets out the tax treatment for various payments or adjustments made pursuant to a CCA for TP and income tax purposes, and the types of documentation that should be maintained for a CCA for tax purposes.

### **Additional guidance on TP aspects of financial transactions**

The 6th Edition TPG expanded guidance on: (a) related-party loans and other types of related-party financial transactions (e.g., cash pooling, hedging, financial guarantees and captive insurance); (b) whether a purported loan should be regarded as a loan for tax purposes (or some other kind of payment, e.g., a contribution to equity capital); and (c) the determination of an arm's-length interest rate for related party loans when an appropriate comparable uncontrolled price (CUP) is not available.

The expanded guidance on the TP aspects of related-party financial transactions is largely aligned with the key principles enunciated in similar TP guidance from the OECD.

In addition, the IRAS has now explicitly included a position statement that sets out clearly that it does

not regard interest-free related-party loans as arm's-length transactions, unless taxpayers have reliable evidence that independent parties under comparable circumstances would similarly provide loans without charging any interest. In general, the IRAS expects taxpayers to prepare TP documentation for intercompany loans (where these meet the threshold requirements for the preparation of contemporaneous TP documentation), even if these loans are interest free.

## Implications

Throughout the 6th Edition TPG, the IRAS impresses upon taxpayers the importance of preparing contemporaneous TP documentation, even if they may not be required to do so, to better manage their TP risk. This signals an increased expectation from the IRAS for taxpayers to support their transfer prices, and for this to be done on a timely basis. Taxpayers should consider:

- ▶ TP documentation: Aside from satisfying the minimum legislative requirements, taxpayers should consider performing TP analyses for their key and material intercompany transactions. The IRAS continues to assess adherence to the arm's-length principle for intercompany transactions even when they do not meet the thresholds for preparation of TP documentation. The presence of robust contemporaneous TP documentation significantly underpins how taxpayers will be able to effectively manage their engagement with the IRAS on TP audits or adjustments and APAs or MAPs.
- ▶ Re-examine TP processes: It has been made clear that the IRAS requires adherence to the arm's-length principle on a timely basis. Groups should re-examine their internal processes regarding TP calculations or adjustments to manage their exposure and make timely self-initiated retrospective adjustments where necessary.
- ▶ Intercompany financing: With the alignment of the Singapore TPG with the key principles enunciated in similar TP guidance from the OECD on financial transactions (including the IRAS explicitly specifying its view on interest-free loans in the 6th Edition TPG), this signals the IRAS' intention to step up its administration and enforcement of the TP aspects of intercompany financing transactions. Taxpayers should take the opportunity to review their intercompany financing practices and make refinements to their intercompany financing TP policy where required.

## Qualifying services under PH 3.0

Type of services	Description
<b>Strategic services</b>	<ul style="list-style-type: none"> <li>▶ Regional P&amp;L / business unit management</li> <li>▶ Strategic business planning and corporate development</li> <li>▶ Corporate finance advisory services</li> <li>▶ Brand management*</li> <li>▶ IP management*</li> <li>▶ Senior-level talent acquisition and management</li> </ul>
<b>Business services</b>	<ul style="list-style-type: none"> <li>▶ Bid and tender management</li> <li>▶ Treasury and fund management</li> <li>▶ Research, development and innovation*</li> <li>▶ Project management</li> <li>▶ Sales and marketing</li> <li>▶ Business development</li> <li>▶ Technical support and consultancy</li> <li>▶ Information management and processing</li> <li>▶ Economic or investment research analysis</li> <li>▶ Strategic sourcing, procurement and distribution</li> <li>▶ Logistic services</li> </ul>
<b>Shared services</b>	<ul style="list-style-type: none"> <li>▶ Corporate training and human resource management</li> <li>▶ Finance and accounting (transactions, internal audit)</li> </ul>

\*Service activities which exclude royalties and other income derived from intellectual property rights owned by the company

## Eligibility criteria for PH 3.0

- Category I: New manufacturing or services company

Criteria	Tier 1		Tier 2	
Tax incentive period (years)	5	+5 (extension)	5	+5 (extension)
Concessionary tax rate	0%		5%	
Annual operating expenditure <sup>Note 1</sup>	RM10 million	RM13 million <i>Under PH 2.0, this was the PH Base Commitment (from end of year 5) + 30%</i>	RM5 million	RM7 million <i>Under PH 2.0, this was the PH Base Commitment (from end of year 5) + 30%</i>
Number of high value jobs with a basic salary of at least RM5,000 per month <ul style="list-style-type: none"> <li>▶ Including key positions (refer below)</li> <li>▶ At least 50% of the high value jobs must be occupied by Malaysians</li> </ul>	50	60 <i>Under PH 2.0, PH Base Commitment (from end of year 5) + 20%</i>	30	36 <i>Under PH 2.0, PH Base Commitment (from end of year 5) + 20%</i>
Number of key positions with a basic salary of at least RM25,000 per month	5	5 <i>Under PH 2.0, PH Base Commitment (from end of year 5) + 20%</i>	4	4 <i>Under PH 2.0, PH Base Commitment (from end of year 5) + 20%</i>
Serve and control a minimum number of network companies	10 (including 4 related companies) <i>Under PH 2.0, 15 companies (including 4 related companies)</i>		7 (including 3 related companies) <i>Under PH 2.0, 10 companies (including 3 related companies)</i>	
Qualifying services	Regional P&L / business unit management, strategic business planning and corporate development, and two other qualifying services* under strategic services, business services or shared services			
Use of local ancillary services	Local financial institution services (including finance and treasury), logistics, legal and arbitration services, finance and treasury services			

\*Refer to Appendix I

**Note 1:**

Expenses incurred to carry out day-to-day operations of the PH, excluding cost of goods sold (as indicated in the Guidelines) and/or cost of services and expenses which are not directly related to the core income-generating activities of the PH such as depreciation and interest on borrowings. The amount will be based on the operating expenditure reflected in the company's audited financial statements, excluding interest, depreciation and other expenses which are not incurred for the production of the services income.

## Eligibility criteria for PH 3.0

### - Category II: Existing manufacturing or services company

Criteria	Details
Tax incentive period (years)	5
Concessionary tax rate	10%
Annual operating expenditure <sup>Note 1</sup>	RM10 million <i>Under PH 2.0, this was RM10 million or average operating expenditure for the past 3 years + 30%, whichever is higher</i>
Number of high value jobs with a basic salary of at least RM5,000 per month <ul style="list-style-type: none"> <li>▶ Including key positions (refer below)</li> <li>▶ At least 50% of the high value jobs must be occupied by Malaysians</li> </ul>	30 <i>Under PH 2.0, 30 or existing number of high value jobs + 30%, whichever is higher</i>
Number of key positions with a basic salary of at least RM25,000 per month	5
Serve and control a minimum number of network companies	7 (including 3 related companies) <i>Under PH 2.0, 10 companies (including 5 related companies)</i>
Qualifying services	Regional P&L / business unit management, strategic business planning and corporate development, and two other qualifying services* under strategic services, business services or shared services
Use of local ancillary services	Local financial institution services (including finance and treasury), logistics, legal and arbitration services, finance and treasury services
Structured Internship Programme (SIP) or training scheme introduced by the Government	Conduct SIP or equivalent training schemes to train at least one graduate every year
Structured training programme	At least 10% of local workforce from the entire workforce to undergo structured training programmes to upgrade their skills in related qualifying services

\*Refer to Appendix I



## Eligibility criteria to qualify for the GTC incentive

Criteria	Details
Qualifying company	<ul style="list-style-type: none"> <li>▸ Newly incorporated company under the Companies Act 2016</li> <li>▸ Malaysian-resident company</li> </ul>
Qualifying activity	Uses Malaysia as its international trading base to undertake strategic sourcing, procurement and distribution of raw materials, components and finished products to its related and unrelated companies in Malaysia and abroad
Paid-up capital	RM1 million
Annual sales turnover from qualifying activities	RM300 million
Annual operating expenditure <sup>Note 2</sup> for qualifying activities	RM1.5 million
Number of high value jobs with a basic salary of at least RM5,000 per month <ul style="list-style-type: none"> <li>▸ At least 50% of the high value jobs must be occupied by Malaysians</li> </ul>	15
Location	Must operate in a Licensed Manufacturing Warehouse (LMW), Free Zone (FZ) and/or bonded warehouse
Others	<ul style="list-style-type: none"> <li>▸ Must have usage of Malaysian ports and airports</li> <li>▸ To comply with any other conditions per the approval letter</li> </ul>

**Note 2:**

Expenses incurred to carry out day-to-day operations of the GTC which are related to the core income-generating activities of the GTC. The amount will be based on the operating expenditure reflected in the company's audited financial statements, excluding interest, depreciation and other expenses which are not incurred for the production of income from qualifying activities.

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## Important dates

15 October 2021	Due date for monthly instalments
31 October 2021	6 <sup>th</sup> month revision of tax estimates for companies with April year-end
31 October 2021	9 <sup>th</sup> month revision of tax estimates for companies with January year-end
31 October 2021	Statutory deadline for filing of 2021 tax returns for companies with March year-end. As a concession, this deadline is extended to 31 December 2021 pursuant to the RF Filing Programme (Amendment 4/2021).
15 November 2021	Due date for monthly instalments
30 November 2021	6 <sup>th</sup> month revision of tax estimates for companies with May year-end
30 November 2021	9 <sup>th</sup> month revision of tax estimates for companies with February year-end
30 November 2021	Statutory deadline for filing of 2021 tax returns for companies with April year-end. As a concession, this deadline is extended to 31 January 2022 pursuant to the RF Filing Programme (Amendment 4/2021).

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