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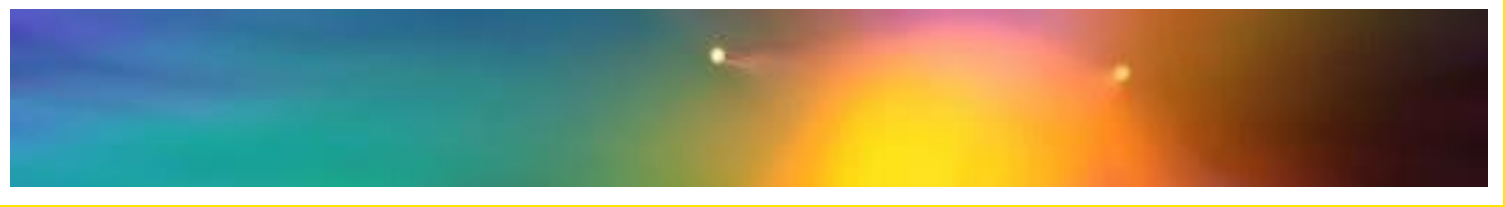
Malaysian developments

Guidelines on Transition of Multimedia Super Corridor (MSC) Malaysia Status Company to Malaysia Digital (MD) Status

On 4 July 2022, the Government launched the MD initiative, which will succeed MSC Malaysia. This new initiative will drive digital transformations in focus areas that present important high-growth potential opportunities. The Government, through the Malaysia Digital Economy Corporation (MDEC) will award the MD Status to eligible companies which participate in and undertake MD activities.

Thereafter, MDEC published on its website the Guidelines on MD Status dated 30 June 2022. These guidelines provide an overview of the MD Status, including the eligibility criteria, conditions, the available benefits and incentives, as well as post-approval considerations (see *Tax Alert No. 14/2022*).

Following the above, MDEC has now published on its website the Guidelines on Transition of MSC Malaysia Status Company to MD Status (Guidelines), dated 29 December 2022. The 13-page Guidelines comprise the following paragraphs:



- 1.0 Introduction
- 2.0 Malaysia Digital
- 3.0 Expansion of location and removal of minimum office space requirement
- 4.0 Compliance to MD Status conditions
- 5.0 Other general conditions
- 6.0 Sustainable development goals
- 7.0 Benefits of MD Status
- 8.0 Post approval matters
- 9.0 Reporting and monitoring
- 10.0 Revocation of status
- 11.0 Surrender of status
- 12.0 Enquiries and support
- 13.0 Effective date

Any variation to the conditions during the tax exemption period is subject to the approval of the National Committee on Investment.

- ▶ The company shall not transfer or assign the status or any benefits, rights and/or obligations thereunder to any third party.
- ▶ The company will continue to enjoy the offerings under the MD Bill of Guarantees (BoG). Existing approvals for the incentives and/or benefits under the BoG will continue to subsist subject to compliance with existing conditions.

Some of the salient points are outlined below.

- ▶ As highlighted in an earlier Alert, under the MD initiative, companies are allowed to operate and undertake their approved activities (per the approval letter) in any location in Malaysia. Companies which used to be subjected to the minimum office requirement will no longer need to adhere to that requirement. The Guidelines stipulate that the above is effective from 25 March 2022.
- ▶ The company is required to continue to adhere to the existing conditions as stated in the approval letter and/or Conditions of Grants issued to the company. The existing conditions may include requirements pertaining to the following:
 - Approved activities undertaken
 - Number and/or percentage of knowledge workers (as defined)
 - Amount of salary
 - Amount of investment
 - Research & development expenditures
 - Paid-up capital

The Guidelines are available at the following link: [Guidelines on Transition of MSC Malaysia Status Company to MD Status](#)

Changes to the Tax Identification Number (TIN) format for most categories of taxpayers

The Inland Revenue Board (IRB) has issued a letter to the professional bodies to inform that the TIN format for all categories of taxpayers, except individuals and employers, has been updated as follows:

	Company, non-company and non-individual	Individual and employer
Previous format	C 50000000XX D 20000000XX	IG 50000000XX0 E 96000000XX
New format	C 50000000XX0 D 20000000XX0	(No changes)

This is effective from 1 January 2023.

Frequently Asked Questions (FAQs) on Mutual Agreement Procedures (MAP)

The MAP article in tax treaties allows designated representatives (the “competent authorities” (CAs)) from the governments of the contracting states to interact, with the intent to resolve international tax disputes. These disputes include cases involving double taxation as well as inconsistencies in the interpretation or application of a treaty.

The IRB has issued the MAP Guidelines to provide guidance on obtaining assistance from the Malaysian CA by persons that fall within the scope of an effective tax treaty that Malaysia has with its treaty partners. The latest MAP Guidelines are dated 19 December 2017.

Following the above, the IRB has recently issued an FAQs document on the MAP. Some of the salient points are outlined below.

- ▶ The time limit for an MAP request depends on the period specified in the tax treaty. Alternatively, if the period is not specified in the treaty, the time limit is within three years from the first notification of action.

The FAQs provide two examples to demonstrate the calculation of the three-year period, as replicated below.

Example 1:

A notice of additional assessment for the year of assessment (YA) 2018 was issued on 1 January 2020 as a result of an audit. That notice is considered as “the first notification”. Hence, the taxpayer has until 31 December 2022 to submit the MAP request.

Example 2:

Same information as Example 1, but the amended Notice of Assessment (partial tax reduction) was

issued on 1 January 2021 based on acceptable new documentation submitted by the taxpayer. In this scenario, the taxpayer still has until 31 December 2022 to submit the MAP request because the “first notification” is the notice dated 1 January 2020.

- ▶ The MAP request must indicate at least one Article from the relevant tax treaty.
- ▶ The taxpayer must demonstrate that the element of double taxation is probable and not just a possibility.
- ▶ Examples of MAP issues include:
 - Allocation and attribution cases (transfer pricing)
 - Residency status
 - Withholding tax
 - Royalties (including the reclassification of business transactions as royalty according to domestic provisions)
- ▶ The taxpayer must clearly indicate the amount of double taxation disputed in the MAP request. The amount should be supported by relevant documents and computations. The FAQs provide an example to demonstrate this.
- ▶ If a taxpayer withdraws an MAP request before obtaining the MAP outcome, the case will be considered closed. In addition, the taxpayer will not be able to submit another MAP on the same issue for the same YA.

The FAQs are available at the following link:
[FAQs on MAP](#)

List of reportable jurisdictions for the Common Reporting Standard (CRS)

Following the enactment of the relevant rules for the Automatic Exchange of Information by the Malaysian Government under the CRS, Malaysian Financial

Institutions (FIs) are required to collect financial account information from all non-residents and report information in relation to “reportable jurisdictions”, to the IRB. The IRB will exchange this information with the relevant foreign tax authorities, from 2018.

The IRB has recently published on its website the updated list of Reportable Jurisdictions dated 13 January 2023, which consists of 78 jurisdictions. The new additions to the list include Ghana, Jamaica, Maldives and Peru. Costa Rica however has been removed from the list. The IRB has also confirmed that the due date for the upcoming CRS reporting is **30 June 2023**.

Please also be reminded that the first US Foreign Account Tax Compliance Act (FATCA) reporting, covering nine reporting years from 2014 to 2022, will also be due on **30 June 2023**. FATCA requires Malaysian FIs to report all financial accounts held by US residents and tax residents to the IRB. The IRB will then transmit the relevant account holder and financial information to the US Inland Revenue Service.

The updated list of Reportable Jurisdictions is available at the following link: [CRS List of Reportable Jurisdictions](#)

Overseas developments

India releases Union Budget 2023

The Finance Minister of India presented the Union Budget 2023 (the Budget) on 1 February 2023. The Budget includes positive proposals such as:

- ▶ The extension of deadlines for tax neutral relocation of funds to an International Financial Service Center (IFSC)
- ▶ The extension of deadlines for the incorporation of start-ups claiming tax holiday benefits

- ▶ Non-applicability of thin capitalization rules to Non-Banking Financial Institutions (NBFC)
- ▶ Rationalizing certain withholding tax provisions
- ▶ Several measures to ease compliance

The key budget proposals are summarized below.

Detailed discussion

Key direct tax proposals

Corporate tax rates

- ▶ No changes are proposed to the tax rates for Indian companies, partnerships (including Limited Liability Partnerships) or non-resident corporate taxpayers.

Tax holiday and exemptions

- ▶ Apart from a “single window information technology system” proposed in the Budget for registrations and approvals under various regulations, the following additional tax incentives are proposed for IFSCs:
 - Extension of the deadline for tax neutral relocations of funds to an IFSC, to 31 March 2025.
 - Exemption for non-residents on income received from offshore derivative instruments issued by IFSC banking units, subject to the fulfillment of prescribed conditions.
- ▶ The deadline for the incorporation of start-ups claiming tax holiday benefits is proposed to be extended by one year, i.e., from 31 March 2023 for to 31 March 2024. Also, an extension of the benefit of the carryforward of losses on the change of shareholding of eligible start-ups from 7 to 10 years from the year of incorporation is proposed.
- ▶ The Budget proposes the introduction of a specific timeframe within which export proceeds are to be realized in convertible foreign exchange by units in Special Economic Zones to avail tax holiday benefits.

Non-resident taxation

- ▶ Investments in shares of a closely held Indian company by non-resident investors are proposed to be subject to premium/angel taxation for the Indian company if the issuance of equity shares is at a value in excess of the fair value.
- ▶ Under existing law, non-resident taxpayers engaged in rendering services/facilities in connection with the extraction or production of mineral oil or in a turnkey power project construction business, are allowed to opt for a presumptive basis of taxation or offer income or claim losses under the regular provisions if the books of accounts are maintained. It is proposed that where presumption taxation is opted, the taxpayer is not eligible to carry forward and set-off past operating losses, including past year depreciation in years when the taxpayer opts for presumption taxation.
- ▶ It is proposed that non-resident taxpayers be able to approach tax authorities for a nil/lower withholding tax certificate for any distribution from a business trust which is otherwise subject to 5% withholding in India.

Capital gains

- ▶ The Budget proposes a nil cost basis for intangible assets or any right, which is acquired without any consideration.
- ▶ Capital gains arising from the transfer, redemption or maturity of market linked listed debentures are proposed to be taxed as short-term capital gains taxable at ordinary rates.

Compliance and audits

- ▶ The Budget proposes the following changes with respect to business reorganizations:
 - The successor entity is now required to file a modified tax return within a specified timeframe to give effect to the business reorganization in the case of insolvency proceedings.
 - The tax authorities can audit and adjust the taxable income of the successor entity to give effect to the business reorganization.

- ▶ Taxpayers shall be required to furnish transfer pricing documentation within 10 days upon request from the authorities.
- ▶ The timeline for completion of audits is proposed to be increased from 9 months to 12 months.
- ▶ The Budget proposes that any refund due to a taxpayer may be withheld by the tax authorities, pending audit proceedings and where the authorities consider that the granting of refund may adversely affect the revenue authorities.

Other direct tax proposals

- ▶ Thin capitalization rules, which were earlier relaxed for certain corporates in the banking and insurance sectors, are proposed to be relaxed for specified NBFCs with respect to interest expense deductions.
- ▶ Vendor payments to micro small and medium enterprises (MSMEs) are proposed to be allowed as a business expenditure on a payment basis or within the timeline specified in MSME regulations.
- ▶ The Budget proposes the tax repayment of debt by a business trust (e.g., Real Estate Infrastructure Trusts and Infrastructure Investment Trusts) to investors as well as income from the redemption of units in business trusts, to be treated as income from other sources.
- ▶ The Budget proposes the introduction of a withholding tax requirement on the payer of income representing winnings from online games, at a rate of 30% of net winnings either at the end of the fiscal year or at the time of withdrawal by the user.

Key indirect tax proposals

- ▶ The Budget proposes to expand the scope of Online Information and Database Access or Retrieval (OIDAR) services under the Goods and Services Tax (GST). The condition of essential automation and involvement of minimal human intervention is proposed to be removed from the definition of OIDAR services. Thus, emphasis will be placed only on the information technology required to provide such service.

- ▶ The definition of a non-taxable online recipient is also proposed to be amended to cover all cases irrespective of business or any other purpose.
- ▶ A penalty will be prescribed for e-commerce operators in the case of the contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.
- ▶ Input Tax Credit will not be available with respect to goods or services which are used or intended to be used for activities relating to corporate social responsibility obligations referred to in section 135 of the *Indian Companies Act, 2013*.

No updates on Pillar Two of the Base Erosion and Profit Shifting (“BEPS”) 2.0 Action Plan

There was an expectation that the Budget would propose a framework for the implementation of Pillar Two. The Budget is presently silent on the above, and it appears that there may be more public consultations before any announcement is made.

OECD/G20 Inclusive Framework releases Administrative Guidance under Pillar Two GloBE rules: First Impressions

On 2 February 2023, the Organisation for Economic Co-operation and Development (OECD) released [Administrative Guidance](#) on the Pillar Two Global Anti-Base Erosion (GloBE) Rules, as approved by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). This document provides additional guidance on a series of issues arising under the GloBE Model Rules and related Commentary. The guidance is in the form of additions and other modifications to the Commentary, which will be incorporated in a revised version of the Commentary to be released later this year.

The GloBE Model Rules and Commentary are intended to be used by jurisdictions in incorporating the Pillar

Two global minimum tax rules into their domestic tax legislation. As noted in the document, the Inclusive Framework member jurisdictions have agreed that jurisdictions will apply the GloBE Rules consistent with agreed administrative guidance, subject to any requirements of domestic law. The document further indicates that the Inclusive Framework will continue to consider administrative guidance priorities on an ongoing basis and will release additional guidance as it is agreed.

An overview of the Administrative Guidance is provided below.

Detailed discussion

Background

The GloBE Model Rules were released on 20 December 2021 and the related Commentary was released on 14 March 2022. On the same date as the release of the Commentary, the OECD announced a public consultation in connection with the work to be undertaken by the Inclusive Framework on the implementation framework for Pillar Two. One focus of discussion during the 25 April 2022 [public consultation](#) meeting was the need for agreed administrative guidance to provide greater clarity on the GloBE Model Rules.

On 20 December 2022, the OECD released three documents providing additional information with respect to Pillar Two. One document, which has been agreed by the Inclusive Framework, provides guidance on safe harbors and penalty relief, including the terms of a transitional country-by-country reporting safe harbor. The other two documents are in the form of public consultation documents, seeking input from stakeholders on areas where work is ongoing in the Inclusive Framework but consensus has not yet been reached: these consultation documents cover the ongoing work on development of a standardized GloBE Information Return and potential dispute prevention and resolution mechanisms to be explored by the Inclusive

Framework to provide tax certainty for the GloBE Rules.

Administrative guidance

The document released on 2 February 2023 contains Administrative Guidance approved by the Inclusive Framework that addresses issues under the GloBE Model Rules and Commentary that the Inclusive Framework identified as most in need of immediate clarification. The guidance is presented in the form of additions and other modifications to the Commentary, which will be incorporated in a revised version of the Commentary to be released later this year. The document further indicates that the Inclusive Framework is continuing to consider issues to be addressed through guidance and that additional administrative guidance will be released as it is agreed.

The Administrative Guidance covers a range of technical issues in the following areas:

- ▶ Scope
- ▶ Income and taxes
- ▶ Application of GloBE Rules to insurance companies
- ▶ Transition
- ▶ Qualified Domestic Minimum Top-up Taxes

With respect to the scope of the GloBE Rules, issues addressed in the Administrative Guidance include technical aspects of the applicable thresholds and clarifications on the deemed consolidation test, which are particularly relevant for identifying the Ultimate Parent Entity and determining the boundaries of the multinational enterprise (MNE) Group.

With respect to GloBE Income or Loss, issues addressed in the Administrative Guidance include the treatment of intra-group transactions recorded at cost, hedges of investments in foreign operations, debt releases and accrued pension expenses. With respect to Adjusted Covered Taxes, matters covered include the introduction of an administrative procedure for a carryforward mechanism in situations

in which a GloBE Loss is incurred or the top-up tax percentage is higher than 15%; one of the effects of this new procedure is that no top-up tax would have to be paid in a year with a net operating loss. The Administrative Guidance also specifically addresses the treatment of the United States Global Intangible Low-Taxed Income (GILTI) rules under the Pillar Two GloBE rules, making clear that GILTI in its current form meets the definition of a controlled foreign company (CFC) tax regime under the GloBE Rules and introducing a simplified allocation approach for taxes under GILTI and other blended CFC tax regimes.

With respect to the GloBE transition rules, the Administrative Guidance includes changes to the existing Commentary that will have immediate implications. It addresses concerns that have been raised regarding the treatment of pre-existing deferred tax assets (DTAs) related to tax credits and adjustments related to temporary differences. It provides a simplified method for recasting DTAs. It also clarifies the concept of "transfer of assets" during the transition period and how to handle a difference between the local tax basis and the accounting value of assets transferred during the transition period.

The Administrative Guidance also provides the first detailed information regarding what qualifies as a Qualified Domestic Minimum Top-up Tax (QDMTT), including specific rules for QDMTT purposes on scope, mechanics for imposition, computation of effective tax rate, calculation of the amount of top-up tax, administration and transition. The Administrative Guidance provides that taxes paid by a Constituent Entity-owner under a CFC tax regime that can be allocated to a domestic Constituent Entity and taxes paid by a Main Entity that are allocable to a Permanent Establishment are not treated as covered taxes for purposes of a QDMTT. In this regard, the Guidance notes that this ordering rule is aimed at assigning primary taxing rights to the jurisdiction applying the QDMTT with respect to its Constituent Entities.

Implications

The Administrative Guidance provides significant additional information relevant to the interpretation and operation of the GloBE Model Rules, making it an essential component of the global minimum tax package. The Administrative Guidance thus requires close attention. In this regard, it is important to note that the Administrative Guidance on transition rules has implications for transactions that take place after 30 November 2021 and before the GloBE Rules take effect.

Jurisdictions are expected to use the GloBE Model Rules and Commentary, including the Administrative Guidance, in incorporating Pillar Two rules into their domestic law, which means it will be important to monitor how these agreed documents are reflected by relevant jurisdictions in the domestic Pillar Two legislation they develop and enact over the coming months.

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Important dates

15 February 2023	Due date for monthly instalments
28 February 2023	6 th month revision of tax estimates for companies with August year-end
28 February 2023	9 th month revision of tax estimates for companies with May year-end
28 February 2023	Statutory deadline for filing of 2022 tax returns for companies with July year-end. A blanket extension of time has been provided until 31 March 2023.
28 February 2023	Extended 2022 tax return filing deadline for companies with June year-end.
15 March 2023	Due date for monthly instalments
31 March 2023	6 th month revision of tax estimates for companies with September year-end
31 March 2023	9 th month revision of tax estimates for companies with June year-end
31 March 2023	Statutory deadline for filing of 2022 tax returns for companies with August year-end. A blanket extension of time has been provided until 30 April 2023.
31 March 2023	Extended 2022 tax return filing deadline for companies with July year-end.

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