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Malaysian developments

- Relocation of manufacturing business incentive scheme
- Principal Hub incentive 2.0
- Guideline and procedures for the application of the tax incentive for the manufacturing of electric vehicle charging equipment
- Updated guidelines and Frequently Asked Questions (FAQs) for the Special Voluntary Disclosure Programme (SVDP) 2.0
- Other operational matters

Overseas developments

- Hong Kong tax authority updates proposed asset disposal gain regimes
- New Zealand's Inland Revenue Department announces 2022 tax governance work results, and further program expansion

Malaysian developments

Relocation of manufacturing business incentive scheme

In the retabled Budget 2023, it was proposed that the special tax incentives for manufacturing companies that relocate their manufacturing operations to Malaysia be extended to 2024. This includes the special tax rate of 15% for non-Malaysian individuals holding key or C-suite positions in the companies relocating their operations to Malaysia.

The following have been published to legislate the proposals and provide guidance to interested investors:

a) Income Tax (Exemption) Order 2023 [P.U.(A) 240][1] – for existing companies

[1] Gazetted on 15 August 2023

b) Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023 [P.U.(A) 241][1] – for new companies
c) Income Tax (For an Individual Resident Who is Not A Citizen and Holds C Suite Position in an Approved Company) Rules 2023 [P.U.(A) 242[1]
d) Malaysian Investment Development Authority (MIDA) guidelines and procedures for the application of the special tax incentive (relocation) for the manufacturing sector, dated 14 August 2023 (Guideline) – available on this link

The Rules are effective from the year of assessment (YA) 2021.

Special tax incentive for companies

The following incentives will apply to companies that relocate their manufacturing operations to Malaysia:

Incentive	Incentive period	Capital investment (excluding land)
New company		
0% special tax rate	10 YAs	Between RM300 million and RM500 million
0% special tax rate	15 YAs	Above RM500 million

Incentive	Incentive period	Capital investment (excluding land)
Existing company		
100% investment tax allowance on the qualifying capital investment (excluding land). The allowance can be offset against 100% of statutory income of the qualifying activity.[Note]	Five consecutive years	Above RM300 million
Note: A related company of an existing company which qualifies for the relocation tax incentive will not be entitled to the same incentive on the same qualifying activity.		

Some of the key incentive conditions are outlined below:

a) The company must be a Malaysian-resident company which is incorporated under the Companies Act 2016, and fulfils the definition of a "new company" or "existing company".

New company

- does not have an existing manufacturing operation in Malaysia; and
- relocates its manufacturing facility for a qualifying activity into Malaysia or establishes new operations to carry on a qualifying activity in Malaysia

Existing company

- has an existing manufacturing operation in Malaysia; and
- relocates its manufacturing operations to Malaysia for a new business where the product from the new business is not an expansion project for the existing product

b) The company undertakes manufacturing activities, other than the manufacturing activities listed in the Schedule of P.U.(A) 240/2023 and P.U.(A) 241/2023.

c) The company must incur capital investment:

New company

- The minimum qualifying capital expenditure (QCE) (i.e., the fixed asset investment, excluding land) must be incurred within three years from the date of the first QCE is incurred.

  Minimum QCE
  - RM300 million for approval of ten YAs
  - Above RM500 million for approval of 15 YAs

- The Guideline clarifies that the first QCE must be incurred within one year from the date of the approval letter. The capital expenditures incurred before the date of approval letter will not be included as the qualifying minimum capital investment.

Existing company

- The minimum QCE* of RM300 million must be incurred within three years from the date of the first QCE is incurred.

  * "QCE" refers to the cost of the factory, machinery or plant used in Malaysia solely for the purposes of carrying on the qualifying activity, excluding the building used as living accommodations and the machinery or plant provided wholly or partly for the use of a director or individual, who is a member of the management or administration or clerical staff.

- The first QCE made must not be earlier than 1 July 2020.

- The Guideline clarifies that the first QCE made can be backdated up to three years.

d) The company must hire at least 80% full-time Malaysian employees on or before the third year from the date the first invoice (in relation to the qualifying activity) is issued, until the end of the specified YAs.

e) Applications for the incentive must be received by the Minister through MIDA, from 1 July 2020 until 31 December 2024.

Other important notes that are provided in the Guideline are:

a) The company is required to have paid-up capital of RM2.5 million or above.

b) Determination of the effective date
   - **New company**
     - Based on the YA the company commences operation of the approved products/activities. The commencement of operation is defined as when the first sales invoice is issued by the company.
     - Application for the determination of the effective date must be submitted within 36 months from the date of the approval letter.

   - **Existing company**
     - Based on the first QCE incurred for the approved products/activities
     - Application for the determination of the effective date must be submitted within 24

months from the date of the approval letter.

c) The company must provide the annual compliance report within six months from the end of the company's YAs.

d) The company must comply with the stipulated conditions throughout the incentive period.

Special tax incentive for individuals

A flat tax rate of 15% will apply for five consecutive YAs on the chargeable income of a non-citizen holding a C-Suite position in a company that has been approved for the special tax incentive for the relocation of its manufacturing operations to Malaysia (this includes the previous incentive provided under the Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 [P.U.(A) 398] – see *Tax Alert No. 1/2023*). The incentive is limited to five individuals per company.

The chargeable income of the qualifying individual for a YA is determined as follows:

$$\frac{A}{B} \times C$$

A Statutory income from employment with the approved company during the specified YAs (i.e., during five consecutive YAs)

B Aggregate income during the specified YAs from all sources, including the income from wife or husband (where there is a combined assessment pursuant to Section 45(2) of the Income Tax Act 1967 (ITA))

C Chargeable income during the specified YAs

The remaining balance of the chargeable income of the qualifying individual will be taxed at the prevailing tax rates under Part I of Schedule 1 of the ITA.

"C-Suite position" means the position of a top senior executive which relies on functional know-how and technical skills such as the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Chief Information Officer. The Guideline further provides that C-Suite executives are responsible for setting the business strategy and making decisions for the business operations.

To qualify for the incentive, the individual must:

a) Be a Malaysian-tax resident for each YA throughout the five consecutive YAs; and
b) Receive a basic monthly salary of at least RM25,000

Applications for the incentive must be received by the Minister through MIDA:

- From 7 November 2020 until 31 December 2024
  - For individuals employed by companies granted an incentive under P.U.(A) 240/2023 and P.U.(A) 241/2023

- From 7 November 2020 until 31 December 2022
  - For individuals employed by companies granted an incentive under P.U.(A) 398/2022

Principal Hub incentive 2.0

In Budget 2015, the Principal Hub (PH) incentive was proposed to encourage multinational companies to establish regional or global operational centres in Malaysia. The PH incentive was revised after receiving the evaluation from the Forum of Harmful Tax Practices (FHTP) of the Organisation for Economic Cooperation and Development (OECD).MIDA had issued the Guidelines for Principal Hub Incentive 2.0 (PH 2.0 Guidelines), which were effective for applications received from **1 January**

2019 to 31 December 2020 (see *Tax Alert No. 20/2019*).

To legislate the above, the following Exemption Orders were gazetted on 23 August 2023:

a) Income Tax (Exemption) (No. 2) Order 2023 [P.U.(A) 251] – for existing companies
b) Income Tax (Exemption) (No. 3) Order 2023 [P.U.(A) 252] – for new companies

Commentary: As the PH 2.0 incentive is now legislated, taxpayers who had been granted the incentive may consider revising their income tax return form (ITRF) for the relevant YAs to claim the income tax exemption.

The PH incentive was extended until 31 December 2022. Please refer to the following for further details:

a) MIDA Guidelines for Principal Hub Incentive 3.0 (see *Tax Alert No. 20/2021*)
b) Income Tax (The Principal Hub Incentive Scheme) Rules 2022 [P.U.(A) 164] (see *Tax Alert No. 11/2022*)

Income Tax (Exemption) (No. 2) Order 2023

The Exemption Order provides that a PH which carries on core income generating activities under the PH 2.0 Incentive will be eligible for a concessionary tax rate of 10% on statutory income (excluding intellectual property income) derived from core generating activities for a period of five consecutive YAs, commencing from the YA as determined by the Minister.

A PH referred to under this Exemption Order is a company which:

- is a Malaysian-resident company which is incorporated under the Companies Act 2016
- has a paid-up capital of more than RM2.5 million
- is already operating in Malaysia which:
  a) Does not have an operational headquarters (OHQs), international procurement centre (IPC) or regional distribution centre (RDC) status ("regional operations")
  b) Has been approved as having regional operations
    - With approved incentive
    - Without approved incentive

The PH must comply with the conditions stipulated in Appendix 1 of this Alert and other conditions imposed by the Minister in the approval letter.

Any unabsorbed losses or current year losses incurred of a PH from the qualifying services or trading activities are not allowed to be utilized for set-off against income from the same source or other businesses during the tax exemption period. Such losses also cannot be carried forward to the post-tax exempt period.

Income Tax (Exemption) (No. 3) Order 2023

The Exemption Order provides that a PH which carries on core income generating activities under the PH 2.0 Incentive will be eligible for a concessionary tax rate of either 0% or 5% on the statutory income (excluding the intellectual property income) derived from the core generating activities for a period of five consecutive YAs, commencing from the YA as determined by the Minister. The tax exemption on statutory income will be based on the level of commitment of the company.

The PH 2.0 incentive may be extended for another five YAs, subject to the PH fulfilling the specified conditions (see Appendix 2 of this Alert). The application of the extension of the incentive must be submitted to the Minister, through MIDA, not later than 60 days before the expiry of the exempt YAs.

A PH referred to under this Exemption Order is a new company which:

- is a Malaysian-resident company which is incorporated under the Companies Act 2016
- has paid-up capital of more than RM2.5 million
- does not have an existing entity or related entity in Malaysia which carries on any qualifying services in Malaysia

The PH must comply with the conditions stipulated in Appendix 2 of this Alert and other conditions imposed by the Minister in the approval letter.

Any unabsorbed losses or current year losses incurred by a PH from the qualifying services or trading activities are not allowed to be utilized for set-off against income from the same source or other businesses during the tax exemption period. Such losses also cannot be carried forward to the post-tax exempt period.

The following terms are defined in both the Exemption Orders above:

a) **Core income generating activities**
   Activities taken by a PH in relation to the qualifying services or qualifying trading activities.

b) **Qualifying services**
   Services specified in Schedule 1 of the Exemption Order.

c) **Qualifying trading activities**
   Activities undertaken by a PH in respect of the procurement and sale of raw materials, components and finished products from the PH to a network company within or outside Malaysia.

d) **Network company**
   - A related company;
   - An entity within the same group of companies as the PH including a subsidiary, branch, joint venture or franchise; or
   - A company which has a contractual agreement with the PH or the PH's ultimate holding company which relates to the PH's supply chain and business for at least three years

Guideline and procedures for the application of the tax incentive for the manufacturing of electric vehicle charging equipment

In the retabled Budget 2023, it was proposed that the manufacturer of electric vehicle (EV) charging equipment be exempted from tax. Applications must be received by MIDA between 25 February 2023 and 31 December 2025 (see *Take 5: Retabling of Malaysia Budget 2023*).

Following the above, MIDA has published on its website the guidelines (dated 14 August 2023) on the above-mentioned proposal – available via this link. Some of the salient points are outlined below.

Types of incentive

A new company or existing company undertaking expansion and/or diversification activity for the manufacturing of EV charging equipment will be eligible for:

a) **100% income tax exemption on the statutory income**
   - The incentive is given for a period of ten YAs, from YA 2023 to YA 2032

     Note: Companies that make investments after YA 2023 will only enjoy the incentive on the remaining exemption period, up until YA 2032.

   - Any unabsorbed losses can be carried forward for seven consecutive YAs (it is interesting to note that this is not in line with the general ten-year carry-forward period for losses and it

is not known if this point will be updated in the guidelines in due course).

- The incentive will be provided under the Income Tax (Exemption) (No. 11) Order 2006 [P.U.(A) 112].

b) **100% investment tax allowance on the QCE. The allowance can be offset against 100% of statutory income of the qualifying business activity.**

- The allowance is given to the QCE incurred for a period of five years.
- Any unabsorbed investment tax allowances can be carried forward until fully utilized.
- The incentive will be provided under the Income Tax (Exemption) (No. 12) Order 2006 [P.U.(A) 113]

"Expansion activity" refers to a company in the similar sector which expand its current products into the manufacturing of EV charging equipment. The EV charging equipment manufacturing activity must not be similar to the company's existing product.

Eligibility criteria

To qualify for the incentives, the manufacturing company must:

a) Be incorporated under the Companies Act 2016

b) Have a Manufacturing Licence from the Ministry of Investment, Trade and Industry (MITI) or a Confirmation Letter of Exemption from Manufacturing Licence from MIDA (whichever applicable).

c) Incur an adequate investment level and operating business expenditures for the proposed project.

d) Have full-time employees (FTEs) comprising at least 80% Malaysians.

e) The value add for company's product(s) must be at least 20%

f) Science and technical staff index must be at least 15% of the company's full-time workforce

g) Nurture/collaborate with local vendors in the sector in terms of technologies, capabilities, certification, human capital development, etc.

h) Provide an adequate number of Malaysian internships at the technical and vocational education and training (TVET) level or at least at diploma level; or collaborate with TVET institutions/institutions of higher learning in relevant fields, as proposed.

Updated guidelines and Frequently Asked Questions (FAQs) for the Special Voluntary Disclosure Programme (SVDP) 2.0

In Budget 2023, it was announced that the Inland Revenue Board (IRB) and Royal Malaysian Customs Department (RMCD) would be launching new SVDPs. Following this, the IRB published the Operational Guidelines No. 2/2023 – SVDP 2.0 and the FAQs to outline the details for SVDP 2.0 (see *Tax Alert No. 9/2023* and *Take 5: Reintroduction of Voluntary Disclosure Programmes, Malaysia*). The Programme is effective from 6 June 2023 to 31 May 2024.

On 25 August 2023, the IRB announced on its website that the Operational Guidelines No. 2/2023 – SVDP 2.0 and the FAQs have been updated. One key change, as set out in Paragraph 5.10(a) of the Operational Guidelines, is that:

- Audit/investigation action can be taken on transfer pricing (TP) issues if the voluntary disclosure is made on non-TP issues only.
- Audit/investigation action can be taken on issues other than TP if the voluntary disclosure is made on TP issues only.

Previously, it was indicated that an audit/investigation would be carried out only if the

tax payment on the voluntary disclosure was not made within the stipulated time period.

Please refer to Appendix 3 of this Alert to see the changes made to the FAQs.

Other operational matters

Discontinuance of the use of adhesive stamps (revenue stamps) and postal franking machines from 1 January 2024

On 21 August 2023, the IRB announced that the use of adhesive stamps (revenue stamps) and postal franking machines as a method of stamping documents or agreements will be discontinued from 1 January 2024. Applications for the stamping and payment of stamp duty can be made through the Stamp Duty Assessment and Payment System (STAMPS) portal.

Duty payers are advised to use up their remaining revenue stamps by 31 December 2023, as no refunds will be provided for any unused stamps.

Mandatory use of e-Services

On 22 August 2023, the IRB announced that the use of e-Services through the MyTax portal will be made compulsory in stages, from 1 September 2023. The use of the e-Services is expected to be fully implemented by 1 January 2024. A list of the e-Services provided by the IRB is available via this link.

Overseas developments

Hong Kong tax authority updates proposed asset disposal gain regimes

In recent stakeholder engagement sessions, the Hong Kong tax authority communicated several updates to previously proposed safe harbor rules for onshore equity disposal gains, in addition to updates that would revise the proposed foreign-sourced income exemption (FSIE) regime regarding disposal gains. The tax reforms are expected to be completed by the end of 2023 for implementation from January 2024.

Detailed discussion

Tax certainty for onshore equity disposal gains
Hong Kong had proposed a safe harbor rule in May 2023 under which onshore disposal gains on equity interests will be considered nontaxable capital gains in Hong Kong if at least 15% of the total equity interest in the investee entity has been held for a continuous period of at least 24 months prior to the disposal.

The Hong Kong tax authority now proposes the following updates to the safe harbor rule:

- The 15% holding percentage threshold will be determined on a group basis; however, trading stock will be excluded.
- Disposals in tranches are allowed, provided subsequent disposals are made within 24 months after the first disposal.
- Although the safe harbor rules will not apply to investee entities engaging in property-related businesses, several of the definitions will be relaxed to allow certain exceptions if other conditions are met. However, an investor will not qualify for the safe harbor if the property development undertaken by an investee company has not been completed.

- When the equity interest changes from trading stock to capital asset, the safe harbor rules will apply if the interest is reflected at market value on the date of change and the conditions are met after the date of change.

Refined FSIE regime

Hong Kong had announced that it will further revise its FSIE regime, as requested by the European Union (EU), to extend the scope of foreign-sourced disposal gains beyond shares or equity interest, for which a consultation paper was issued in April. Following negotiations with the EU, it is now confirmed that a non-exhaustive list of assets will be incorporated.

The exemptions for regulated financial entities and taxpayers benefitting from preferential regimes will remain available. The proposed carve-out for the disposal gains of traders and intra-group relief outlined in the consultation paper will be introduced, subject to the EU's formal agreement. However, the intra-group relief will have safeguards requiring that (i) the Hong Kong profits tax should be chargeable to both the transferor and transferee for six years and (ii) the parties must remain associated with one another for two years after the transfer. Meanwhile, the EU rejected a proposed rebasing arrangement, transitional taper relief and reduced tax rate for pre-commencement gains.

New Zealand's Inland Revenue Department announces 2022 tax governance work results, and further program expansion

During a 31 July 2023 webinar for members of the tax profession, New Zealand's Inland Revenue (IR) provided an update on its tax governance program of work. During the webinar, the IR described results of its 2021 and 2022 work on tax governance with some of New Zealand's larger companies and shared plans on how it will expand its program of work in 2023 and 2024.

Background

The IR collected data on the overall state of tax governance in New Zealand by sampling large taxpayers from two groups in 2021 and 2022, asking them to complete a tax governance questionnaire:

- **Members of the "Top 50" program**: Members of the Top 50 program are taxpayers who paid the highest amount of income tax in New Zealand each year, excluding tax loss-making companies. The Top 50 companies each have a dedicated IR Compliance Manager who assesses the level of tax risk posed on an annual basis. This assessment includes a review of the taxpayer's tax governance approach.

- **Significant Enterprises (SEs):** An SE may be either an inbound company with annual turnover of more than NZ$30 million or an outbound company with annual turnover of more than NZ$80 million. In 2022 there were 1,200 SEs. More than 700 are foreign-owned multinationals, contributing approximately NZ$4.4 billion in corporate tax, a significant part of New Zealand's corporate tax base.

The IR's tax governance questionnaire is made up of 10 simple Yes/No questions, plus one free text box that was used to collect any other contextual information. Unlike detailed questionnaires used by tax authorities in many other countries, the IR's tax governance questionnaire does not ask a series of questions on how a company manages each tax type. The 10 questions asked in the questionnaire are as follows:

1. Does the company have a well-documented, overarching tax strategy?
2. Does the chief financial officer or tax manager formally confirm, at least once annually, that this strategy has been regularly reviewed, updated where necessary and is followed in practice?
3. Does the company have an effective tax control framework to manage day-to-day tax risks?

4. Has the operation of the tax control framework been tested independently in the last three years?
5. In the last three years, have any tax control deficiencies been identified?
6. If you answered yes to 5(a), have any follow-up actions been taken to remediate those deficiencies?
7. Are key internal policies, procedures and controls covering the data collection, analysis, calculation, recording and reporting for tax filing and other tax compliance requirements, documented and available for examination if required?
8. Does a review take place at least annually for changes to accounting policies upon which group financial statements are prepared and all items examined where tax treatment may differ materially from financial accounting treatment?
9. Is there a robust process in place for the finance and/or tax teams to stay on top of all relevant changes in tax law and related Inland Revenue guidance?
10. Is a process in place to identify significant transactions (including those which need to be reported to the board or relevant board sub-committees) in respect of which external advice and/or binding rulings may be required?
11. Does senior management report regularly to the board or relevant board subcommittees on potentially material tax issues or risks?

Upon completion and prior to submission to the IR, the questionnaire had to be signed by the company's Chief Financial Officer (CFO) or most senior tax manager, demonstrating the IR's expectation that company management takes responsibility for tax governance implementation.

Detailed discussion

Results of the 2022 questionnaire process

Introducing results of its 2022 questionnaire process, the IR noted that the topic of tax governance is trending upward internationally and that its preference is to foster an environment of mutual trust and cooperation on the topic. A broader aim of the IR, it noted, has been to raise visibility, at the executive level within companies, of the importance of tax governance, ensuring attention is paid to the topic and thus raising the overall standard of tax governance in New Zealand.

Regarding the results of the 2022 questionnaire process, the IR remarked that in 2022 the questionnaire was sent to 279 SEs (approximately 25% of the total SE population), up from 143 in 2021, a 95% increase.
To provide companies with some form of benchmark and evolutionary model within which they can measure progress, the IR also provides a maturity model against which they map the 2022 results. The four stages of the maturity model are:

a) **Emerging:** Certain processes have been used to develop some capabilities, but they continue to be ad hoc and hence need further significant improvement.
b) **Progressing:** Certain process improvements have been initiated but are not yet systematically implemented and institutionalized.
c) **Established:** Robust processes have been put in place, resulting in a high degree of capability and they are institutionalized. (The IR notes that, on average, they expect SEs to cluster around this level.)
d) **Aspirational:** Processes have been optimized resulting in a paradigm shift, with use of new or innovative tools or technology and transparent reporting.

Overall, said the IR, the results in 2022 were broadly similar to those achieved in 2021:

- "No further action" letters were issued to 108 taxpayers.
- "Watchlist" letters were issued to 160 taxpayers, noting the need for follow-up action by the taxpayer.
- "Unsatisfactory" letters were issued to 11 taxpayers, requiring follow-up compliance action

by the IR as significant improvements by the taxpayers were identified as necessary.

Providing more context around each category of letter, the IR noted that taxpayers to whom "No further action" letters were issued tended to have robust documented processes in place that are kept current, and board-level engagement/reporting also tends to be the norm. Respondents assessed as being at this stage totaled 39% — in effect, meeting the "established" level of the IR maturity model.

Where "Watchlist" letters where issued, the IR noted that most responses demonstrated some good practices, but these were not yet systematically implemented and institutionalized. In these cases, SEs generally acknowledged that some improvements were needed. These SEs have been required to prove to the IR, under a defined timeline, that their governance processes have been improved. Common areas requiring improvement (which the IR refers to as "work-ons") include better documentation of tax strategy and tax control frameworks, more regular testing and updating of tax controls, and more reporting to company boards. The companies on the watch-list must provide a copy of their Tax Strategy and Tax Control Framework to IR, before receiving a closure letter from IR.

The actions to be taken by the IR in regard to the "Unsatisfactory" letters issued to 11 taxpayers were not discussed but are likely to include further review or audit and a more detailed set of required actions around improving tax governance that the taxpayer(s) will be required to carry out.
Over both the 2021 and 2022 questionnaire campaigns, the majority (57%) of respondents were assessed at the "Watchlist" level, which equates to meeting the "Progressing" step of the tax governance maturity model, says the IR. Applying the maturity model, the overall current state of SE tax governance sits between the "progressing" and "established" steps, according to the IR.

Expansion of the tax governance program of work in 2023 and 2024

During the webinar, the IR noted that it had very recently written to all SEs not covered to date, setting out its continuing expectations regarding tax governance and including a copy of the questionnaire. This brings the total number of SEs covered to around 1,200, up from 143 since 2021. Importantly, this questionnaire was sent to the remaining SEs on a voluntary basis, and the remaining SE population is under no legal obligation to return it to the IR. The same process will apply in 2024, notes the IR.

While the IR recognizes that developing a full tax governance process takes time (the IR uses the figure of six months), the scrutiny of tax strategy and tax control frameworks will become a common practice in future SE compliance reviews and audits, starting in 2024. If deficiencies are identified through these reviews, taxpayers should expect to experience more serious consequences because they have already been alerted that this is a key IR focus area. Conversely, if adjustments arise as a result of future IR compliance activities, the adequacy of tax governance will feature in penalty considerations.

The IR suggests that all SEs conduct a self-assessment of their current state of tax governance using the questionnaire to inform next steps.

Implications

New Zealand's growing efforts on tax governance are indicative of a wider push by tax authorities around the world to increase their focus on tax governance. Many national tax authorities are now introducing new tax governance programs, while other countries are expanding the scope of existing programs. Generally speaking, these programs have two aims. The first is to encourage companies to adopt more robust tax governance approaches; the second is to allow tax authorities to more accurately rate companies in low- and not-low categories of tax risk, allocating their tax audit and review resources accordingly.

With so many national tax authorities now embracing the testing of tax governance, multinational companies should make a global assessment of existing programs in the markets in which they operate. They should then develop a global tax governance strategy, defining how they will meet each mandatory program, as well as identifying the voluntary programs in which they may plan to participate. That strategy should include prioritizing an order for participation and establishing a plan for localizing any necessary roles, policies, procedures and controls. Further, companies should consider using platform-based technology tools for the central management of tax controls, including their periodic testing, remediation and documentation.

<table>
<tr><th colspan="4">Appendix 1 – Eligibility criteria for PH 2.0 for an existing company
(Concessionary tax rate of 10%)</th></tr>
<tr><th rowspan="2"></th><th rowspan="2">A PH which does not have a regional operation which carries on core income generating activities</th><th colspan="2">A PH that has been approved as a regional operation which carries on core income generating activities</th></tr>
<tr><th>With approved incentive for regional operations which carries on core income generating activities</th><th>Without approved incentive for regional operations which carries on core income generating activities</th></tr>
<tr><td>Minimum number of new FTEs in Malaysia with:

‣ Minimum salary = RM5,000 per month
‣ Minimum Malaysian employees – 50%</td><td>a) 30 persons; or
b) Existing number of FTEs +30%

whichever is higher</td><td>a) 60 persons; or
b) Existing number of FTEs +20%

whichever is higher</td><td>Existing number of FTEs +30%</td></tr>
<tr><td>Minimum number of new FTEs in Malaysia with:

‣ Minimum salary = RM25,000 per month</td><td colspan="3">Five persons</td></tr>
<tr><td>Minimum number of annual operating expenditure (OPEX) in Malaysia</td><td>A. RM10 million; or
B. Average OPEX for the three YAs immediately preceding the exempt YAs +30%

whichever is higher</td><td>A. RM13 million; or
B. Average OPEX for the three YAs immediately preceding the exempt YAs +20%

whichever is higher</td><td>a) RM10 million; or
b) Average OPEX for the three YAs immediately preceding the exempt YAs +30%

whichever is higher</td></tr>
<tr><td>Minimum number of qualifying services</td><td colspan="3">Four, including two qualifying services from strategic services for:

‣ Regional profit and loss or business unit management
‣ Strategic business planning and corporate development</td></tr>
</table>

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<tr><th>With approved incentive for regional operations which carries on core income generating activities</th><th>Without approved incentive for regional operations which carries on core income generating activities</th></tr>
<tr><td>Minimum amount of annual value of sales

(Additional conditions for a PH which carries on qualifying trading activities)</td><td colspan="3">a) RM500 million; or
b) Average annual value of sales for the three YAs immediately preceding the exempt YAs

whichever is higher</td></tr>
</table>

Note: Please refer to the PH 2.0 Guidelines for additional compliance requirements.

<table>
<tr><th colspan="5">Appendix 2 – Eligibility criteria for PH 2.0 for a new company
(Concessionary tax rate of 0% or 5%)</th></tr>
<tr><th rowspan="2"></th><th colspan="2">A PH which does not have an existing entity or related entity in Malaysia which carries on any qualifying services in Malaysia

(Concessionary tax rate = 0%)</th><th colspan="2">A PH which has an existing entity or related entity in Malaysia which has not carried on any qualifying services in Malaysia

(Concessionary tax rate = 5%)</th></tr>
<tr><th>5 YAs</th><th>+5 YAs</th><th>5 YAs</th><th>+5 YAs</th></tr>
<tr><td>Minimum number of FTEs in Malaysia with:

▸ Minimum salary = RM5,000 per month
▸ Minimum Malaysian employees – 50%</td><td>50 persons</td><td>PH base commitment (i.e. commitment from end of Year 5) +20%</td><td>30 persons</td><td>PH base commitment (i.e. commitment from end of Year 5) +20%</td></tr>
<tr><td>Minimum number of new FTEs in Malaysia with:

▸ Minimum salary = RM25,000 per month</td><td colspan="2">5 persons</td><td colspan="2">4 persons</td></tr>
<tr><td>Minimum number of annual OPEX in Malaysia</td><td>RM10 million</td><td>PH base commitment (i.e. commitment from end of Year 5) +30%</td><td>RM5 million</td><td>PH base commitment (i.e. commitment from end of Year 5) +30%</td></tr>
<tr><td>Minimum number of qualifying services</td><td colspan="4">Four, including two qualifying services from strategic services for:

▸ Regional profit and loss or business unit management
▸ Strategic business planning and corporate development</td></tr>
<tr><td>Minimum amount of annual value of sales

(Additional conditions for a PH which carries on qualifying trading activities)</td><td colspan="4">RM500 million</td></tr>
</table>

Note: Please refer to the PH 2.0 Guidelines for additional compliance requirements.

Appendix 3 – Updates on the FAQs for SVDP 2.0

A. Introduction/purpose		
4. (New)	Does SVDP 2.0 apply to voluntary disclosure made on incorrect tax rates?	Tax rate amendment is not part of the income/expenses that can be reported/claimed in SVDP 2.0. The scope of SVDP 2.0 covers: a. Declaration of undeclared/under-declared income, overclaimed/disallowed expenses/ claims, overclaimed relief/deductions/ rebates and overclaimed capital allowances/ incentives; b. Declaration of asset disposal; and c. Stamping of documents/agreements that are not stamped within the stipulated time.
B. Category of taxpayers		
7. (Updated)	What does "new taxpayer" mean?	The new taxpayers referred to under SVDP 2.0 are as follows: a. Taxpayers who have yet to obtain or have obtained Tax Identification Number (TIN); b. Taxpayers who do not have any tax transaction in IRB's records (taxpayers are deemed to have tax transactions if an estimated assessment has been raised/has made a Monthly Tax Deduction (MTD) in which taxpayer is regarded to have opted not to submit ITRF and the MTD is regarded as final tax; and/or c. Taxpayers who have declared income to the IRB for the first time.
E. Voluntary disclosure procedure		
23. (New)	Will IRB issue a SVDP 2.0 letter based on the voluntary disclosure made for ITRF/Real Property Gains Tax Return Form (RPGTRF) via e-Filing?	IRB will issue a Special Voluntary Disclosure Programme 2.0 Letter to taxpayers who meet the eligibility requirements of SVDP 2.0. For taxpayers who have submitted a voluntary disclosure through ITRF/RPGTRF via e-Filing and meet the eligibility requirements, taxpayers can contact the nearest State IRB/Special Branch to obtain the Special Voluntary Disclosure Programme 2.0 Letter.

Appendix 3 – Updates on the FAQs for SVDP 2.0		
24. (New)	How does a tax agent submit voluntary disclosure for taxpayer?	Voluntary disclosures should be made through the following methods: a. For new taxpayers: Tax agent must submit ITRF through the Tax Agent e-Filing (TAeF) System. b. For existing taxpayers: i. Have not submitted ITRF/RPGTRF. Tax agent must submit ITRF through the TAeF System. ii. Has submitted ITRF but there is undeclared income. Tax agent needs to log in to MyTax Portal to submit the SVDP 2.0 Additional Income Reporting Form and tax computation by using individual ID and choose Tax Agent Category. Tax agent needs to enter the taxpayer's information by ensuring that the taxpayer's information is accurate and then upload the SVDP 2.0 Additional Income Reporting Form and tax computation. The tax computation should only be submitted by taxpayer with company, business and partnership file category.
25. (New)	Can tax agent submit voluntary disclosure through the MyTax Portal in bulk?	Voluntary disclosure made through the MyTax Portal cannot be submitted in bulk and must be made individually for each taxpayer’s voluntary disclosure.
29. (New)	If I have made voluntary disclosure under this SVDP 2.0, will I be subject to audit/investigation action?	Audit/investigation action will not be carried out in the future for the YA in which the voluntary disclosure is made. However, audit / investigation action can be taken for the year of assessment involved for the following circumstances: a. If voluntary disclosure is made on non-TP issues only and it is found that there is a risk on TP issues, audit/investigation action can be taken on the TP issues and if voluntary disclosure is made on TP issues only, audit and investigation can be taken on issues other than TP. b. Tax payment on the voluntary disclosure has been failed to be made within the stipulated time period.

<table>
<tr><th colspan="3">Appendix 3 – Updates on the FAQs for SVDP 2.0</th></tr>
<tr><td colspan="3">I. Transfer Pricing</td></tr>
<tr><td>40.
(New)</td><td>If the surcharge offered under this SVDP 2.0 is 0%, what does it mean by the statement “Any TP adjustment arising from the voluntary disclosure under SVDP 2.0 can be subjected to a surcharge under subsection 140A(3C) of the ITA, even if no additional assessment is raised”? as stated in paragraph 5.5.6 of Operational Guidelines No. 2/2023.</td><td>The paragraph means voluntary disclosures will be accepted for TP issues involving upward TP adjustments regardless whether it resulted in assessment or not.

For applications involving downward TP adjustments, only taxpayers engaged in domestic controlled transactions and have a positive net tax effect are eligible to make voluntary disclosure on condition that both parties make voluntary disclosure on TP.</td></tr>
<tr><td>41.
(Updated)</td><td>Who is eligible for the benefits offered under the SVDP 2.0 that involve TP issues?</td><td>Taxpayers who carry out controlled transactions with related companies are eligible for voluntary disclosure for TP issues except:

i. For taxpayers who carry out domestic controlled transactions; and
ii. Any adjustments made under the current TP Guidelines will not alter the amount of tax payable or incurred by both parties.</td></tr>
<tr><td>42.
(New)</td><td>In accordance with the response to question 40, does this mean that if there is no change to the overall tax position, IRB will not accept the participation in SVDP2.0 for such cases?</td><td>If there is no change to the net impact of the tax position, both parties are not eligible under the SVDP 2.0. The example is as follows:

<table>
<tr><th>Description</th><th>Co. A
(RM)</th><th>Co. B
(RM)</th></tr>
<tr><td>Profit from business</td><td>4,500,000</td><td>7,000,000</td></tr>
<tr><td>(+) Additional TP adjustment (SVDP 2.0)</td><td>900,000</td><td>(900,000)</td></tr>
<tr><td>Adjusted income</td><td>5,400,000</td><td>6,100,000</td></tr>
<tr><td>(-) Capital allowance</td><td>(800,000)</td><td>(500,000)</td></tr>
<tr><td>Aggregate statutory income from business</td><td>4,600,000</td><td>5,600,000</td></tr>
<tr><td>Tax rate</td><td>24%</td><td>24%</td></tr>
<tr><td>Tax impact</td><td>216,000</td><td>(216,000)</td></tr>
<tr><td>Net tax impact</td><td colspan="2">NIL</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th colspan="3">Appendix 3 – Updates on the FAQs for SVDP 2.0</th></tr>
<tr><td>43.
(New)</td><td>Is a taxpayer eligible to participate in SVDP 2.0 if one of the related companies benefits from a tax incentive or has carried forward losses, and the TP adjustment would result in a change in the overall tax position?</td><td>If one of the related parties in that transaction have tax incentives/losses carried forward or huge unabsorbed capital allowance:

i. Those with only domestic controlled transactions; and
ii. TP adjustment will result in positive net tax impact

will be eligible for the SVDP 2.0.

For example, the TP adjustment has resulted to an additional tax assessment of RM200,000 for Co. A and reduced tax assessment of RM150,000 for Co. B. In this situation, both Co. A and Co. B are eligible for SVDP since there is positive net tax impact of RM50,000 from the voluntary disclosure.

Illustrative example is as follows:

<table>
<tr><th>Description</th><th>Co. A
(RM)</th><th>Co. B
(RM)</th></tr>
<tr><td>Tax rate</td><td>24%</td><td>24%</td></tr>
<tr><td>Tax payable</td><td>200,000</td><td>(150,000)</td></tr>
<tr><td>Net tax impact</td><td colspan="2">50,000</td></tr>
</table>

However, if the TP adjustment results in an additional assessment of RM70,000 for Co. A and reduced assessment amounting to RM100,000, both Co. A and Co. B are not eligible since the net tax impact of RM30,000 is negative. The illustration is as follows:

<table>
<tr><th>Description</th><th>Co. A
(RM)</th><th>Co. B
(RM)</th></tr>
<tr><td>Tax rate</td><td>24%</td><td>24%</td></tr>
<tr><td>Tax payable</td><td>70,000</td><td>(100,000)</td></tr>
<tr><td>Net tax impact</td><td colspan="2">(30,000)</td></tr>
</table>
</td></tr>
<tr><td>46.
(New)</td><td>Taxpayers have made voluntary declarations for the TP issue for the assessment years 2020 and 2021. Will there be no audit/investigation action taken against the taxpayers for the YAs involved?</td><td>Audit/investigation will not be carried out on the YA in which the voluntary disclosure is made pertaining to TP issues.

However, an audit/investigation can still be conducted for any non-TP issues for that YA.</td></tr>
</table>

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Important dates

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

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