We would like to bring your attention to the announcement by the Government of Malaysia on 12 June 2018 which can be accessed in here regarding Malaysia’s participation in the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) taxation initiatives.

In order to address the issue of base erosion and profit shifting, the OECD and the G20 countries have introduced the BEPS Action Plan as international taxation standards. Malaysia in principal has committed to implement the aforesaid international standards. Under this commitment, Malaysia has joined the OECD Inclusive Framework on BEPS as an associate member for the global implementation of the aforesaid international standards. Pursuant thereto, the Government of Malaysia will be taking the necessary steps to streamline all relevant tax incentives of Malaysia to be consistent with the minimum standards under the BEPS Action 5.

Accordingly, the tax incentives granted under MSC Malaysia Bill of Guarantee No. 5 (BOG 5) will be amended to incorporate the minimum standards under the BEPS Action 5.

MSC Malaysia tax incentives currently exempt income deriving from the approved MSC Malaysia Qualifying Activities, which may comprise income deriving from intellectual property (IP income) and/or income deriving from non-intellectual property (non-IP income). Under the aforesaid international standards, a regime exempting IP income will have to adopt the nexus approach and a regime exempting non-IP income will have to adopt the substantial activity requirements.

The new legislation and guidelines for MSC Malaysia tax incentives are currently being reviewed by the Government and MDEC will be releasing further information on the new criteria/conditions in due course.

Moving forward, in order to adhere to the timelines imposed by the aforesaid international standards and to ease transition into the new regime:

1. No new approvals will be granted for applications for MSC Malaysia Status starting from 1 July 2018, including applications for extension of income tax exemption period or applications to add new MSC Malaysia Qualifying Activities.
2. Existing MSC Malaysia Status companies with tax incentives will be given option:
   a. to grandfather i.e. to continue to enjoy the income tax exemption granted for IP income and/or non-IP income under their existing MSC Malaysia Status Conditions of Grant until 30 June 2021; OR
   b. subject to the new legislation and guidelines coming into force, to move into the new regime and to be subjected to the new criteria/conditions.
However, for MSC Malaysia Status companies which have been granted approval on or after 17 October 2017 for non-IP income, if these companies would like to opt for grandfathering, the grandfathering period will end on 31 December 2018.

3. New approvals and extension of the income tax exemption period will only be considered once the new legislation and guidelines come into force, which is targeted to be by 31 December 2018.


MDEC will be providing update on this matter from time to time. Once the new criteria/conditions have been approved by the Government, MDEC will engage the affected companies on the next steps.

ANNOUNCEMENT ON MSC MALAYSIA BOG 5 CHANGES: Q&A

1. WHAT IS THIS ANNOUNCEMENT ABOUT?

This is to notify you on the upcoming changes to the MSC Malaysia Bill of Guarantee No. 5 (BOG5) arising from Malaysia’s participation to implement the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 5.

2. WHAT IS OECD BEPS?

BEPS is a project by OECD to address the worldwide problem of base erosion and profit shifting, i.e. tax avoidance strategies that exploit gaps in tax rules to artificially shift profits to low or no-tax locations. Under the Inclusive Framework of which Malaysia is an associate member, over 100 countries and jurisdictions are collaborating to implement the BEPS measures.

3. WHAT ARE THE CHANGES?

The existing eligibility criteria and conditions for the financial incentives under BOG 5 will be amended to be consistent with the minimum standards of OECD BEPS Action 5. At the same time, the BOG5 will also be strategically revamped in order to bring higher value investment into Malaysia’s digital economy.

4. HOW DOES IT IMPACT MY ORGANIZATION?
If your company is an applicant for MSC Malaysia Status, extension of income tax exemption period or application to add new MSC Malaysia Qualifying Activities, kindly note that no new approvals will be granted starting from 1 July 2018.

If your company is currently enjoying income tax exemption under MSC Malaysia Status, such tax exemption will be impacted due to the changes in the conditions and the requirement to close off the existing BOG5 under the OECD BEPS Action 5, as stated in the announcement. However, your company will have an option of “grandfathering”.

5. WHAT DOES “GRANDFATHERING” MEAN?

Grandfathering in this context means an MSC Malaysia Status company which is currently enjoying income tax exemption can continue to enjoy such income tax exemption under the existing BOG 5, by complying with its existing MSC Malaysia Status Conditions of Grant (COG) and the existing legislations under which the tax exemption is granted, until certain end dates as specified in the announcement. The end dates are in accordance with the grandfathering period allowed under the OECD BEPS Action 5. Upon the expiry of such end dates, the tax exemption will have to cease.

6. WHAT OTHER OPTIONS DO I HAVE?

Subject to the new legislation and guidelines for the new BOG5 coming into force, your company may be able to move into the new regime and to be subjected to the new criteria/conditions and continue to enjoy the tax exemption for the remaining years.

7. WHAT ARE THE NEW CRITERIA/CONDITIONS AND WHEN WILL THE SAME BE ANNOUNCED?


The guidelines on the new criteria/conditions is currently under review by the Government of Malaysia and MDEC will be releasing information on the new criteria/conditions once it receives necessary approvals from the Government of Malaysia.

You may also refer to the announcement made by the Ministry of Finance in this regard [here](#).

8. WHILE WAITING FOR THE NEW CRITERIA/CONDITIONS, DO I NEED TO COMPLY WITH EXISTING MSC MALAYSIA STATUS COG?

Yes. The tax exemption that your company enjoys currently until the expiry of the grandfathering period is subject to the compliance by your company of the existing COG.

9. IF I DO NOT WISH TO GRANDFATHER BUT INSTEAD WISH TO CONTINUE THE INCOME TAX EXEMPTION UNDER THE NEW
CRITERIA/CONDITIONS, DO I NEED TO RE-APPLY FOR MSC MALAYSIA STATUS OR MY APPLICATION WILL BE AUTOMATICALLY CONVERTED ONCE THE NEW GUIDELINES AND LEGISLATION COME INTO FORCE?

At this juncture, since the new criteria/conditions and the new legislation are still under review, we are unable to advise on the implementation details on the migration of existing companies. We hope to release more information about this soon.

10. WHAT HAPPENS TO MY APPLICATION WHICH IS COMPLETED AND SUBMITTED TO MDEC BUT HAS YET TO BE PRESENTED TO AND APPROVED BY THE APPROVAL COMMITTEE?

You may choose to withdraw your company’s application and wait for the new criteria/conditions to be announced.

11. CAN MY COMPANY GET A REFUND OF THE APPLICATION FEE?

Yes.

12. WHAT HAPPENS TO MY APPLICATION IF I DECIDED NOT TO WITHDRAW MY APPLICATION?

Your application will not be processed now and will be re-evaluated later based on the new criteria/conditions.

13. WOULD I BE ABLE TO RETRIEVE OR AMEND THE EXISTING APPLICATION WHILE WAITING FOR THE NEW CRITERIA/CONDITIONS TO BE ANNOUNCED?

You will not be able to access or amend your existing application. The submitted value proposition plan will remain as is in our record.

14. IF MY COMPANY HAS BEEN GRANTED MSC MALAYSIA STATUS AND HAS YET TO ACTIVATE THE INCOME TAX EXEMPTION, CAN I PROCEED TO ACTIVATE THE INCOME TAX EXEMPTION NOW?

Yes, you may proceed to activate the tax exemption now (subject to the compliance by your company of the existing COG and in accordance with the provisions of the existing legislation under which your tax exemption is granted). If you choose to activate the tax exemption now, the tax exemption can only continue until the relevant end date of the grandfathering period. After such period, the tax exemption will be subjected to the new criteria/conditions and the new legislation. You may also choose to not activate and surrender the tax exemption now.

15. IF MY COMPANY IS APPLYING FOR EXTENSION OF INCOME TAX EXEMPTION, DOES MY COMPANY NEED TO PAY TAX DURING THIS WAITING PERIOD?
Yes, since no extension of income tax exemption period has been granted you need to pay tax during this period.

16. CAN MY COMPANY APPLY FOR FOREIGN KNOWLEDGE WORKER (FKW) PASSES FOR NEW ACTIVITIES WHICH HAVE YET TO BE APPROVED AS MSC MALAYSIA QUALIFYING ACTIVITIES?

No, the new activities have to be approved as MSC Malaysia Qualifying Activities first before the benefits under MSC Malaysia BOG2 relating to FKW can be provided to the company.

17. WHAT IS IP INCOME AND NON-IP INCOME?

Generally, IP income is income deriving from exploitation of an intellectual property (IP), of which your company is the owner or the licensee. Examples of IP income are royalty or license fee received as consideration for the exploitation of an IP. Non-IP income is income which is not derived from an IP.

18. WHAT SHOULD I DO NOW?

You may wish to be familiarized with or seek professional advice on the minimum standards of the OECD BEPS Action 5, since the new criteria/conditions of the new BOG5 will be designed based on such standards.