

FAQs

1. Why is the need for grandfathering and transition?

In 2018, identified tax incentives in Malaysia, including MSC Malaysia, have been reviewed and revised to be consistent with the international taxation standards set out in the Organisation for Economic Co-operation and Development (OECD) Base Erosion Profit Shifting (BEPS) Action 5.

Pursuant to the aforesaid international taxation standards, existing MSC Malaysia Status companies can only enjoy the income tax exemption under the Existing Regime for the grandfathering period until certain cut-off dates.

For existing companies with services income, the companies have an option to apply to transition into the Revised Regime, known as “MSC Malaysia Status Services Incentive”, in order to enjoy the remaining period of tax exemption (after the grandfathering period) under the Revised Regime, subject to compliance of applicable new conditions and approval.

2. What is the announcement about?

This is to notify that, starting from 1 June 2021, eligible existing MSC Malaysia Status companies can apply to transition from the Existing Regime to the Revised Regime to enjoy the income tax exemption in respect of services income for the remaining exemption period.

Subject to approval, the remaining exemption period will be granted under the Income Tax (Exemption) (No. 10) Order 2018 [P.U.(A) 389/2018].

3. What does Existing Regime and Revised Regime refer to?

Existing Regime means the income tax exemption granted under the Promotion of Investments Act 1986 or Income Tax (Exemption)(No. 2) Order 2015 [P.U.(A) 50/2015].

Revised Regime means the income tax exemption to be granted under the Income Tax (Exemption)(No. 10) Order 2018 [P.U.(A) 389/2018].

4. Who is eligible to apply for the transition?

To be eligible to apply for transition into the Revised Regime, the MSC Malaysia Status company must have been granted with income tax exemption under the Existing Regime, in compliance with the MSC Malaysia Status Conditions of Grant issued, and fulfills the new conditions as set out in the *Guidelines on MSC Malaysia Financial Incentives (Grandfathering and Transition under Services Incentive)* (“Grandfathering and Transition Guidelines”).

Only MSC Malaysia Status companies with income deriving from services activities can apply for transition. The transition does not apply to companies with income deriving from IP.

5. How can the company apply for transition under the Revised Regime?

To apply, applicant must complete an Application Form, Compliance Self Declaration Form (SDF) and submit the relevant supporting documents. These documents must be submitted at <https://msctransitionapp.mdec.com.my/>.

6. Is there any application fee required?

Application fee of RM2,120 (non-refundable) is only applicable to companies applying for second 5-year renewal (i.e. first 5-year of tax exemption is expiring prior to 30 June 2021).

7. How long does it take for the application to be processed?

Upon receiving the complete application, we will conduct preliminary check within 7 working days. Once it passes the preliminary check, the application will be assigned to a Business Analyst for further evaluation. Subject to receiving the complete information required, the evaluation stage will take approximately 20 working days.

Once the evaluation is completed, the application will be presented to the Approval Committee for deliberation.

8. Can the company apply for the transition if the existing income tax exemption is granted for IP income?

Not at the moment. Currently, there is no new MSC Malaysia Status IP Incentive that the company can transition into. MDEC will release further information if a new IP Incentive is approved.

9. Can the company apply for the transition if the income includes both services income and IP income?

Yes, the company may proceed to apply for services income only.

Pursuant to the Promotion of Investments (Exclusion of Income For MSC Status Company) Regulations 2018 [P.U.(A) 332/2018] and Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 [P.U.(A) 396/2018], IP income is defined as royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right. "Intellectual property rights" means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical

indication, the grant of protection of a plant variety, and other like rights, whether registered or registrable.

10. The company's income being exempted under MSC Malaysia Status is an IP income, how does this affect the company?

All IP income will be **excluded** from tax exemption under Existing Regime from 1 July 2021 onwards. This means that the company is required to pay corporate taxes on the statutory income derived from IP from 1 July 2021 onwards.

Please refer to the following legislations on the details of exclusion of IP income:

- (a) Tier 1 and Tier 2 MSC Malaysia Status Companies: Promotion of Investments (Exclusion of Income For MSC Status Company) Regulations 2018 [P.U.(A) 332/2018]; and
- (b) Tier 3 MSC Malaysia Status Companies: Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 [P.U.(A) 396/2018].

11. For companies with IP income, what happens to the tax incentive after 30 June 2021 (since the company is not able to transition into the Revised Regime)?

The company is only allowed to enjoy the tax exemption up until 30 June 2021 subject to compliance with the existing conditions (i.e. the MSC Malaysia Status Conditions of Grant issued to the company) under the Existing Regime.

12. For companies with IP income, the company has to pay tax from 1 July 2021 onwards. Is there anything the company needs to do? Any forms to fill?

There are no forms to be filled. The company is required to pay corporate tax as usual in accordance with the Income Tax Act 1967.

13. What will happen if the company decides not to submit transition application form? Will the MSC Malaysia Status be automatically revoked?

The MSC Malaysia Status will not be revoked, provided that the company is in compliance with the MSC Malaysia Status Conditions of Grant. If no application for transition is submitted, the income tax exemption granted under the Existing Regime will end on the applicable cut-off dates.

14. What is the difference between this transition application compared to the tax renewal application?

For the transition application, companies are required to submit the declaration of compliance of the new conditions under the Revised Regime commencing 1 July 2021.

As for the tax renewal application, companies are required to submit the declaration of compliance of MSC Malaysia Status Conditions of Grant from the date of MSC Malaysia Status approval until the end of the first 5 years of tax exemption.

15. If the company has already submitted the tax renewal application and the application is pending decision, does the company need to submit the transition application?

The company is not required to submit the transition application as the renewal application will be processed together with the transition.

16. Can the company have a grace period for meeting the new conditions?

The company is required to meet the new conditions by 1 July 2021. There is no extension or appeal allowed at the moment.

17. How can the company know if the income being exempted is an IP income or services income?

Pursuant to the Promotion of Investments (Exclusion of Income For MSC Status Company) Regulations 2018 [P.U.(A) 332/2018] and Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 [P.U.(A) 396/2018], IP income is defined as royalty and other income derived from an intellectual property rights if it is receivable as consideration for the commercial exploitation of that right.

Services income is income generated from services provided which does not fall under the definition of IP income (e.g., maintenance fees, services fees, administrative fees, support fees, per man day/hour, cost plus, work for hire, etc).

18. If the company does not meet the new conditions, can the company still maintain the MSC Malaysia Status with no tax incentive?

Yes. However, the company is still required to comply with the existing conditions under the MSC Malaysia Status Conditions of Grant.

19. Is the transition application form in excel format?

The transition application form is an online form. Complete an online Application Form, Compliance Self Declaration Form (SDF) and submit the relevant supporting documents via <https://msctransitionapp.mdec.com.my/>. You need to download and sign before submitting by uploading it to the system together with the rest of the documents.

20. What is meant by application type 1, 2, 3 as stated in <https://msctransitionapp.mdec.com.my/> and why there is a processing fee tied to type 3 only?

- Application Type 1 is for companies which are currently in their first 5 year or second 5 year of tax exemption.
- Application Type 2 is for companies which first 5 year tax exemption will be expiring on 30 June 2021.
- Application Type 3 is for companies which first 5 year tax exemption has expired prior to 30 June 2021.

Processing fee is not required for Type 1 and Type 2 as the companies are transitioning into the Revised Regime. Type 3 application attracts processing fee as it involves tax renewal application as per the standard practice.

21. Can a Tier 1 company transition to Tier 3 for the remainder of the first 5 years renewal, and then move back to Tier 1 for the second 5 year?

The company cannot transition to Tier 3 during the first 5 years of tax exemption period.

22. Can the SDF for transition application be verified electronically by the auditors instead of wet ink signature?

Both the Application Form and SDF can be downloaded by the company from the system, to be completed, signed and rubber stamped by the company and the external auditor, and to be submitted back to MDEC by uploading to the system. The signing can be made via electronic signature.

23. What is the definition of knowledge worker?

"A "Knowledge Worker" is an individual who holds one of the following:

- Tertiary qualification from the institution of higher learning (IHL) (in any field) or
- Diploma in ICT, engineering, technology or specialized certification plus at least 2 years relevant experience in a field that is a heavy user of technology or Professional, executive, management and technical work categories in information technology enabled services e.g., Information technology / IS professionals, Finance / Accounting, Business Administration, Engineering, Medical, Legal,

and also includes:

- foreign workers with knowledge-based skills that are not prevalent in Malaysia and required by MSC Malaysia Status companies
- workers who are utilised for their creative talent to produce value-added creative work for MSC Malaysia Status companies.

24. Who will decide which Tier a company is categorized into?

The Category/Tier is selected by the company during the application for the MSC Malaysia Status. It is the choice of the company.

25. Can the new condition on monthly base salary of RM10k or RM5k be determined based on average salary of total employees of the company?

In the new condition, the monthly base salary refers to the monthly base salary of individual employee, and not the overall average monthly base salary of all employees.

26. Please define base salary. Does it include overtime and bonuses?

Base salary refers to basic salary only, excluding any fixed allowance, allowance, bonus, gratuities, EPF, benefits, overtime pay.

27. Why is external auditor required to sign off the SDF in transition application?

It is a requirement for the declaration of compliance of applicable conditions by the company be verified by an independent external auditor, to be appointed by the company at the company's own costs.

28. What if previously the company is under MSC4Startups, can the company remain under the same tier?

MSC4Startups falls under Tier 3. The company may remain under the same Tier 3 in which the company is eligible to enjoy 70% tax exemption for 5 years only.

29. Since office space requirement is no longer a requirement under the Revised Regime, does it mean the company can move to a co-working space?

Under the Revised Regime, there will be no more office space requirement. However, a Tier 1 or Tier 2 company is still required to maintain the location, implementation and operation of the MSC Malaysia approved activities at the Designated Premises or Other Commercial Premises within the MSC Malaysia Cybercity/Cybercentre.

30. Can the external auditor for SDF be different from the auditor for audited account?

The company may opt for any external auditor registered under MIA.

Disclaimer: The companies are advised to refer to the relevant guidelines approved by the Government and the applicable legislations governing the transition. MDEC cannot accept responsibility for any action or decision made in reliance of this FAQs or any liability incurred or loss suffered as a consequence of relying on this FAQs. This FAQs is not intended to address all possible tax issues that may arise and the companies are advised to seek professional advice in respect of the tax issues. MDEC reserves the right to amend or update this FAQs from time to time.