

# INTRODUCTION TO OECD – BEPS EXERCISE



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# AGENDA

- // OECD Background
- // OECD BEPS Action 5
- // Next Step

# OECD BACKGROUND

- /// **Malaysia joined the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework** as an Associate Member in 2017 to implement the **OECD Base Erosion and Profit Shifting (BEPS) Action 5**.
- /// BEPS is a project by OECD to address the **worldwide problem of base erosion and profit shifting**.
- /// On **12 June 2018 the Ministry of Finance announced** details of Malaysia's progress on the OECD BEPS Action Plan:  
<http://www.treasury.gov.my/index.php/en/tax/item/3959-malaysia-s-commitment-in-international-tax-standard.html>
- /// Hence, the requirement to **review the MSC Malaysia** criteria was announced on 6 July 2018.

# OECD BEPS ACTION 5

15 actions required to address BEPS were identified:

- 1 Address the tax challenges of the digital economy
- 2 Neutralise the effects of hybrid mismatch arrangements
- 3 Strengthen controlled foreign company rules
- 4 Limit base erosion via interest deductions and other financial payments
- 5 Counter harmful tax practices more effectively, taking into account transparency and substance**
- 6 Prevent treaty abuse
- 7 Prevent the artificial avoidance of permanent establishment status
- 8 Assure that transfer pricing outcomes are in line with value creation: Intangibles
- 9 Assure that transfer pricing outcomes are in line with value creation: Risks and Capital
- 10 Assure that transfer pricing outcomes are in line with value creation: Other high-risk transactions
- 11 Establish methodologies to collect and analyse data on BEPS and the actions to address it
- 12 Require taxpayers to disclose their aggressive tax planning arrangements
- 13 Re-examine transfer pricing documentation
- 14 Make dispute resolution mechanisms more effective
- 15 Develop a multilateral instrument

# OECD BEPS ACTION 5: CHANGES REQUIRED

MSC Malaysia income tax exemption will be segregated into:

1. IP – to incentivize companies that carry out R&D of IP (**tax will be granted from income deriving from IP**)
2. Non-IP – to incentivize companies that carry out services (**tax will be granted from income deriving from services**)

# OECD: REQUIREMENTS

IP INCOME	NON-IP INCOME
<p><b>Nexus Approach</b></p> <p>Only R&amp;D expenditures incurred in Malaysia are eligible for Income tax exemption</p>	<p><b>1. Ring Fencing</b></p> <p>No distinction on tax treatment including transaction and currency restrictions between residents and non-residents.</p> <p><b>2. Substantial Activities</b></p> <p>Substantial activities requirements under FHTP are as follows:</p> <ul style="list-style-type: none"><li>i. adequate investment amount or annual business operating expenses incurred in Malaysia; and</li><li>ii. adequate number of full-time job employment in Malaysia.</li></ul>

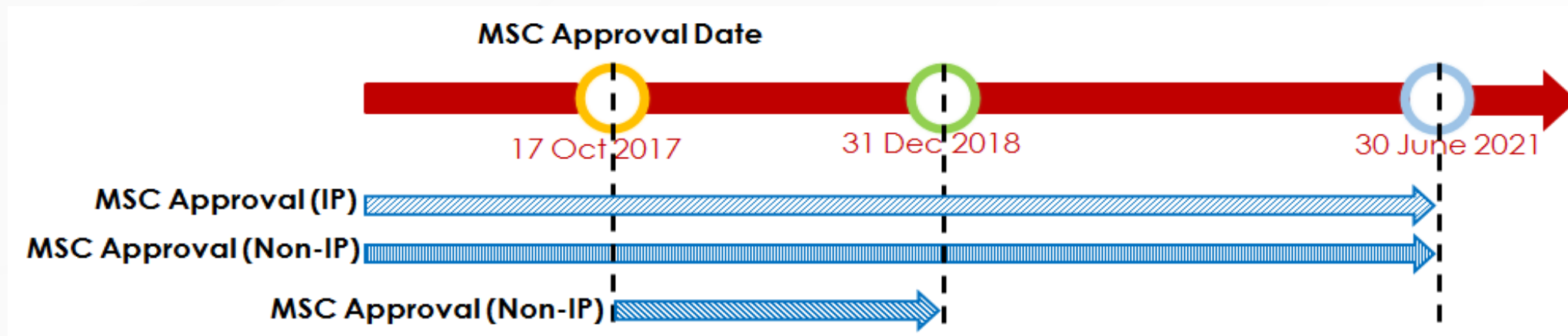
Source: <http://www.treasury.gov.my/index.php/en/tax/item/3959-malaysia-s-commitment-in-international-tax-standard.html>



# OECD COMPLIANCE TIMELINE

- /// **No new approvals and/ or extension** will be granted from **1 July 2018** until the new legislation and guidelines come into force, which is targeted to be finalized by **31 December 2018**.
- /// New MSC criteria/conditions are currently being reviewed by the Government and more info will be released soon.
- /// Existing MSC companies can either opt **to CONTINUE** until certain cut-off dates below OR **ADOPT** new MSC criteria once finalised.

Cut off dates:



# OECD: EXCHANGE OF INFORMATION

- Under OECD BEPS Action 5, Malaysia has also committed to exchange certain information on tax recipients with other countries.
- Hence, MDEC will be issuing letters to existing and newly approved MSC companies to request for the information.



# NEXT STEPS

- // Upon approval of the new OECD-compliant MSC criteria for IP and Non-IP, MDEC will arrange further sessions with interested companies.
- // For further enquiries, please contact [clic@mdec.com.my](mailto:clic@mdec.com.my).

**THANK YOU**

[www.mdec.my](http://www.mdec.my)