



## **GUIDELINES ON MALAYSIA DIGITAL (MD) TAX INCENTIVE (NEW INVESTMENT INCENTIVE)**

### **1. INTRODUCTION**

MD New Investment Incentive<sup>1</sup> aims to promote new investment activities in Malaysia and is offered to eligible companies that propose to undertake the qualifying activity under the tax incentive scheme. Under this New Investment Incentive, an eligible company may choose to enjoy either the reduced tax rate or investment tax allowance on income derived from the qualifying activity.

### **2. ELIGIBILITY CRITERIA**

2.1 To be eligible to apply for the New Investment Incentive, the applicant must be a company which:

- (a) is incorporated under the Companies Act 2016/Companies Act 1965 and resident in Malaysia;
- (b) has a minimum paid up capital of RM50,000.00;
- (c) has been awarded MD Status;
- (d) is proposing to undertake the qualifying activity in Malaysia;
- (e) has not issued any sales invoice for the qualifying activity in Malaysia prior to the date of submission of the tax incentive application, or has sixty per cent direct or indirect Malaysian equity ownership and has not issued any sales invoice for the

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<sup>1</sup> This tax incentive is offered under MD Status Bill of Guarantees.

qualifying activity in Malaysia more than twelve months prior to the date of submission of the tax incentive application; and

- (f) is not granted any tax incentive by the Government of Malaysia in relation to the qualifying activity.

- 2.2 Qualifying activity means one or more new activities<sup>2</sup> which fulfills the criteria of Malaysia Digital Activities specified in **Appendix 1**.
- 2.3 If a company has any related company which has been granted tax incentive in respect of the qualifying activity, the company shall not be qualified to be granted tax incentive under the New Investment Incentive in respect of the same qualifying activity.
- 2.4 If a company has any related company which has issued any sales invoice for the qualifying activity in Malaysia prior to the date of submission of the tax incentive application by the company, the company shall not be qualified to be granted tax incentive under the New Investment Incentive in respect of the same qualifying activity.
- 2.5 The company may choose to apply for the reduced tax rate OR investment tax allowance under the New Investment Incentive.<sup>3</sup>

### 3. **REDUCED TAX RATE**

#### 3.1 **Scope and Conditions:**

	Non-IP Income		IP Income <sup>4</sup>
Tax Rate	10%	5%	0%
Years of Assessment (YA)	10 consecutive YA		
Minimum Conditions	(1) To employ an <b>adequate number of full-time employees (FTE)</b> in Malaysia to carry on the qualifying activity throughout the YA.		
	(2) To ensure the FTE comprises adequate number of knowledge workers with a <b>minimum monthly basic salary of RM5,000.00</b> throughout the YA.		
	(3) To incur an <b>adequate amount of annual operating expenditure</b> <sup>5</sup> in Malaysia to carry on the qualifying activity by the end of each YA.		
	(4) To undertake the qualifying activity in Malaysia throughout the YA.		

<sup>2</sup> Enhancement and/or upgrading of existing product or services are not considered as new activities.

<sup>3</sup> Reduced tax rate and investment tax allowance are mutually exclusive. Once the tax incentive has been approved, the company will not be allowed to change from reduced tax rate to investment tax allowance or from investment tax allowance to reduced tax rate.

<sup>4</sup> Only qualifying intellectual property (IP) income as specified in Item C of Appendix 2 can qualify for tax incentive.

<sup>5</sup> The operating expenditure amount must be the annual operating expenditure incurred by the end of each year of assessment and not cumulative operating expenditure from previous years of assessment.

	(5) To remain an MD Status company and comply with all the conditions under MD Status at all times.		
	(6) To submit to MDEC annually a self-declaration form (SDF) on compliance of conditions within 7 months from the end of each year of assessment, and the information submitted in the SDF must first be verified by an independent external auditor appointed by the company at its own costs <sup>6</sup> .		
	(7) Other condition(s) related to economic development commitment by the company.		
	Not Applicable		(8) To comply with <b>modified nexus approach</b> as specified in <b><u>Appendix 2</u></b> .
<b>Additional Conditions</b>	Not Applicable	(9) To meet <b>minimum 3 conditions related to sustainable economic development</b> such as relevant initiatives in education, social and environment at the end of each YA as stated in the approval letter.	Not Applicable
	(10) Other condition(s) related to economic development commitment by the company.		

3.2 For non-IP income, the company shall be entitled to enjoy a reduced tax rate of 10% subject to compliance of minimum conditions (1) to (7). If the company complies with minimum conditions (1) to (7) and additional conditions (9) and (10), the company shall be entitled to enjoy reduced tax rate of 5%. For IP income, the company shall be entitled to enjoy a reduced tax rate of 0% subject to compliance of minimum conditions (1) to (8).

3.3 The company shall be entitled to enjoy the applicable tax rate for each year of assessment based on compliance of conditions applicable for that tax rate.

<sup>6</sup> If the company is not able to submit the SDF within the stipulated period, the company shall not be entitled to claim the reduced tax rate for the relevant year of assessment.

#### 4. **INVESTMENT TAX ALLOWANCE (ITA)**

##### 4.1 **Scope and Conditions:**

<b>ITA Period</b>	<b>5 consecutive years</b>
<b>ITA Rate</b>	<b>60% or 100% of qualifying capital expenditure (QCE), against up to 100% statutory income</b>
<b>Minimum Conditions</b>	(1) To incur an <b>adequate amount of qualifying capital expenditure</b> .
	(2) To employ an <b>adequate number of full-time employees (FTE)</b> in Malaysia to carry on the qualifying activity.
	(3) To undertake the qualifying activity in Malaysia at all times.
	(4) To remain an MD Status company and comply with all the conditions under MD Status at all times.
	(5) Other condition(s) related to economic development commitment by the company.
<b>Additional Conditions</b>	(6) To meet <b>minimum 3 conditions related to sustainable economic development</b> such as relevant initiatives in education, social and environment, each in year 4 and year 5 of the ITA Period, as stated in the approval letter.
	(7) Other condition(s) related to economic development commitment by the company.

- 4.2 If the company complies with the minimum conditions (1) to (5) within **36 months** from the date of approval in principle, the company shall be eligible for ITA of **30% of QCE** incurred in the First ITA Period<sup>7</sup>. If the company maintains the compliance of minimum conditions (1) to (5) until the expiry of the ITA Period, the company shall be eligible for ITA of **remaining 30% of QCE** incurred in the First ITA Period and **60% of QCE** incurred in the Second ITA Period<sup>8</sup>. If the company maintains the compliance of minimum conditions (1) to (5) and complies with the additional conditions (6) and (7) by the expiry of the ITA Period, the company shall be eligible for ITA of **remaining 70% of QCE** incurred in the First ITA Period and **100% of QCE** incurred in the Second ITA Period.

<sup>7</sup> First ITA Period refers to the period commencing from the Commencement Date until the date of submission of declaration on compliance of minimum conditions by the company.

<sup>8</sup> Second ITA Period refers to the period commencing from the day following the expiry of First ITA Period until the expiry date of the 5-year ITA Period.

Incentive to be granted	Compliance with Minimum Conditions		Compliance with Additional Conditions
	First ITA Period	Second ITA Period	
30% of QCE incurred in First ITA Period	Yes	N/A	N/A
60% of QCE incurred in First and Second ITA Period	Yes	Yes	No
100% of QCE incurred in First and Second ITA Period	Yes	Yes	Yes

## 5. **DEFINITIONS**

5.1 **Full-time employee (FTE)** means any person employed by the company under a contract of service for at least 6 hours a day, 20 days a month, 12 months a year and receives salary directly from the company. This includes traveling sales, engineering, maintenance and repair personnel who are paid by and are under the control of the company. Personnel outsourced from a third party and not directly under the company's payroll are not considered as the company's employees.

5.2 A **"knowledge worker"** is an individual who holds one of the following:

- tertiary qualification from an institution of higher learning (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 System, 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 MD Status companies.
- workers who are utilised for their creative talent to produce value-added creative work for MD Status companies.

5.3 **Operating expenditure** means expenses incurred in the course of undertaking the qualifying activity. For the purpose of condition compliance, it will be based on the operating expenditure reflected in the company's audited financial statement (excluding interest, depreciation and other expenses which are not directly incurred for the production of income in relation to the qualifying activity). Example of operating expenditures are transportation services, banking services, insurance services, legal services, information & communication technology (ICT), employee's remuneration for services activities (i.e.: wages, salaries, bonuses, social insurance contribution etc.), rental, utilities, sales and marketing.

5.4 **Qualifying capital expenditure (QCE)** means capital expenditure incurred by the company in relation to a multimedia and peripheral equipment (software and hardware), machinery, plant or building used solely for the purpose of carrying on the qualifying activity.

5.5 **Basic salary** shall have the same meaning as the definition of "wages" under Section 2 of Employment Act 1955.

- 5.6 **Related company** has the same meaning assigned to it in subsection 2(1) of the Promotion of Investments Act 1986

## **6. COMMENCEMENT OF TAX INCENTIVE**

### **6.1 Reduced Tax Rate:**

- (a) The company is required to submit a request for the determination of the commencement year of assessment. The request is to be made to MDEC no later than 24 months from the date of approval in principle.

### **6.2 Investment Tax Allowance:**

- (a) The commencement date of the ITA Period shall be the date on which the **first qualifying capital expenditure is incurred** by the company one day after the date of submission of the tax incentive application ("Commencement Date").

## **7. APPLICATION FOR ADDITIONAL ACTIVITIES UNDER REDUCED TAX RATE**

- 7.1 A company which has been granted reduced tax rate may, during the incentive period<sup>9</sup>, apply to add activity as qualifying activity under the approved incentive ("Application"), provided that prior to the date of submission of the Application, the company has not issued any sales invoice for such activity in Malaysia.
- 7.2 The Application(s) has to be submitted to MDEC no later than 18 months before the expiry of the incentive period.
- 7.3 The incentive period for additional qualifying activity shall be granted within the existing incentive period and shall commence from the year of assessment in which the Application is approved and shall expire on the expiry date of the existing incentive period.
- 7.4 The company shall be subjected to another set of conditions as specified under paragraph 3.1 for the additional qualifying activity.

## **8. MECHANISM**

- 8.1 The reduced tax rate is to be granted under Section 65B of Income Tax Act 1967.
- 8.2 The investment tax allowance is to be granted under Section 127(3)(b) of Income Tax Act 1967.
- 8.3 All applications under this Guidelines are to be submitted to MDEC and will be evaluated and presented to the National Committee on Investments (NCI), for consideration and approval.

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<sup>9</sup>The incentive period refers to the approved years of assessment for the reduced tax rate.

8.4 Applications submitted to MDEC on or after 19 April 2024 and **not later than 31 December 2027** are eligible to be considered for this tax incentive.

8.5 Company that has been awarded MD Status on or after 1 July 2022, which has indicated its interest to apply for MD tax incentive during application for MD Status, is required to submit its application for tax incentive no later than 20 July 2025 if it wishes to proceed with the application.

## **9. SEPARATE SOURCE AND SEPARATE ACCOUNT**

9.1 Where the company carries on a business in Malaysia in respect of a source consisting of a qualifying activity under the approved tax incentive, the business shall be treated as a separate and distinct business and source of that company.

9.2 The company which carries on a business in respect of the source consisting of a qualifying activity under the approved tax incentive shall maintain a separate account for the income derived from such qualifying activity for the basis period for each year of assessment.

9.3 The company shall also maintain separate accounts for qualifying IP income and non-IP income.

## **10. NON-COMPLIANCE OF CONDITIONS**

10.1 The company must comply with all the applicable conditions as specified in the approval letter in order to enjoy the tax incentive granted.

10.2 For reduced tax rate, the company which fails to comply with the applicable conditions is subject to prevailing corporate tax rate for the relevant year of assessment.

10.3 For investment tax allowance, the company which fails to comply with the applicable conditions shall not be allowed to claim the investment tax allowance.

## **11. CESSATION**

11.1 Upon approval of the tax incentive, the company may apply for the Rules for reduced tax rate or the Order for the investment tax allowance to cease to be applicable to the company.

11.2 The application can be made at any time, except where the company fails to comply with any of the minimum conditions.

## **12. TOP-UP TAX**

12.1 The company shall carry out its assessment to determine whether the company falls within the category of company with group annual consolidated revenue of EUR 750 million or more. If the company falls within such category, the company can be imposed

with top-up tax if the effective tax rate of the company group in Malaysia is below 15%. The top-up tax can be collected through the Domestic Top-up Tax mechanism under Part XI, Income Tax Act 1967.

### **13. AMENDMENT OF GUIDELINES**

- 13.1 The Government of Malaysia reserves the right to amend these Guidelines from time to time without prior notice to the companies.

**ISSUED BY MALAYSIA DIGITAL ECONOMY CORPORATION SDN. BHD. (MDEC)**

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Disclaimer: The information contained in these Guidelines is to provide details, explanations and/or clarifications on the financial incentives offered. You are advised to refer to the applicable legislations. MDEC does not accept responsibility for any action or decision made in reliance of these Guidelines or any liability incurred or loss suffered as a consequence of relying on these Guidelines. These Guidelines are not intended to address all possible tax issues that may arise and you are advised to seek professional advice in respect of the tax issues. MDEC reserves the right to amend or update these Guidelines from time to time, based on approval of the Government of Malaysia.



## **APPENDIX 1**

### **MALAYSIA DIGITAL ACTIVITIES**

Research, development or commercialisation of solution or provision of services utilising any of the following promoted technology enablers:

- 1. artificial intelligence (AI) or big data analytics (BDA);**
- 2. internet of things (IoT);**
- 3. cybersecurity;**
- 4. cloud;**
- 5. blockchain;**
- 6. drone technology;**
- 7. creative media technology including extended reality (XR) or mixed reality (MR);**
- 8. integrated circuit (IC) design with embedded software;**
- 9. robotics or automation; or**
- 10. advanced network connectivity or telecommunication technology.**

Further description of each promoted tech enablers is set out in Appendix 1A.

**NOTE:**

The following activities do not fall under the Malaysia Digital Activities:

- (a) trading;
- (b) manufacturing activities;
- (c) provision of telecommunication services;
- (d) digital banking services;
- (e) global business services or knowledge process outsourcing which is:
  - (i) non-technical;
  - (ii) low value call centre;
  - (iii) data entry; or
  - (iv) recruitment process outsourcing; or
- (f) provision of services in the supply chain such as buying and selling or provision of services, directly or indirectly, to the industry of cigarettes, tobacco, alcohol and gambling.

**APPENDIX 1A****DESCRIPTION OF PROMOTED TECH ENABLERS**

The following is a further description of what may be considered as MD Activities, which can be undertaken by a company as a component of their service offerings or on a project delivery model basis:

No	Tech Enablers	Descriptions
1	artificial intelligence (AI) or big data analytics (BDA)	<p>Artificial intelligence leverages computers and machines to mimic the problem-solving and decision-making capabilities of the human mind. Deep learning and machine learning are sub-fields of artificial intelligence, and deep learning is a sub-field of machine learning. AI application - Speech recognition, customer service, computer vision, recommendation engines, and fraud detection</p> <p>Generative AI describes algorithms that can be used to create new content, including text, audio, images, videos and simulations. It falls under the broad category of machine learning.</p> <p>Big data analytics is the use of advanced analytic techniques against very large, diverse big data sets that include structured, semi-structured and unstructured data, from different sources, and in different sizes from terabytes to zettabytes.</p>
2	internet of things (IoT)	The Internet of things (IoT) describes physical objects (or groups of such objects) with sensors, processing ability, software, and other technologies that connect and exchange data with other devices and systems over the Internet or other communications networks.
3	cybersecurity	Cybersecurity is the practice of protecting critical systems and sensitive information from digital attacks. Also known as information technology (IT) security, cybersecurity measures are designed to combat threats against networked systems and applications, whether those threats originate from inside or outside of an organization.
4	cloud	"The cloud" refers to servers that are accessed over the Internet, and the software and databases that run on those servers. Cloud servers are located in data centres all over the world. By using cloud computing, users and companies do not have to manage physical servers themselves or run software applications on their own machines.

No	Tech Enablers	Descriptions
5	blockchain	<p>A blockchain is a distributed database or ledger that is shared among the nodes of a computer network that facilitates the process of recording transactions and tracking assets. As a database, a blockchain stores information electronically in digital format. The innovation with a blockchain is that it guarantees the fidelity and security of a record of data and generates trust without the need for a trusted third party.</p>
6	drone technology	<p>A drone is an unmanned aircraft. Drones are more formally known as unmanned aerial vehicles (UAVs) or unmanned aircraft systems. Essentially, a drone is a flying robot that can be remotely controlled or fly autonomously using software-controlled flight plans in its embedded systems, that work in conjunction with onboard sensors and a global positioning system (GPS).</p> <p>Drone technology refers to the technologies to fly drones utilizing software-controlled flight programs that are embedded within the drones' systems.</p>
7	creative media technology including extended reality (XR) or mixed reality (MR)	<p>Activities and technologies involved in the creation, delivery and enhancement of digital content, such as animation, games, visual effects and others. These include the creative content development services through the use of design, simulation, extended reality (XR) and other related technologies.</p> <p>Extended Reality (XR) and Mixed Reality (MR) is an umbrella term used to encompass the convergence of either Augmented Reality (AR), Virtual Reality (VR) or both, as the mixed total solutions to develop these applications, technologies or experiences.</p> <p>Virtual reality (VR) services cover technologies and services that support the creation of fully immersive user experiences with the goal towards replacing physical reality with a digital environment. VR technologies would include, but are not necessarily limited to, programming software, the development of technologies for specialty hardware and includes technologies that support or augment stereoscopic displays, spatial audio, and motion-tracking sensors to simulate the virtual experience.</p> <p>Augmented reality (AR) services encompass the development of virtual elements onto real-world environments via smartphones or heads-up displays (HUDs). AR include software development that would include, but are not limited to, the</p>

No	Tech Enablers	Descriptions
		extraction of data from visual representations of the physical world to overlay and superimpose computer generated sensory inputs, use of technologies to incorporate sound, video, graphics, or other virtual content.
8	integrated circuit (IC) design with embedded software	<p>The integrated circuit (IC) is the heart of many generations of modern electronics innovations and the current push for digitalization. IC design is one of the most advanced and one of the most complex engineering tasks in modern world. The goal of IC design is to create a circuit which have a desired functionality. For example, an IC which can decode the incoming weather messages and notify the users. The IC design contains two distinct processes:</p> <ol style="list-style-type: none"> <li>1. Logic Design which includes the combination of circuit elements to implement desired functionality using Computer Aided Design (CAD) or Electronic Design Automation (EDA) tools.</li> <li>2. Physical design which includes creation of those circuit elements on semiconductor substrate using the geometrically distinguished regions and their interconnection.</li> </ol> <p>Embedded software is a piece of software that is embedded in hardware or non-PC devices used for the overall operation of the device. The main difference between embedded software and application software is that the former is usually tied to a specific device, serving as the Operating System (OS) itself, with restrictions tied to that device's specifications, so updates and additions are strictly controlled, whereas application software provides the functionality in a computer and runs on top of an actual full OS, so it has fewer restrictions in terms of resources.</p>
9	robotics or automation	<p>Robotics is the intersection of science, engineering and technology that produces software called robots, that substitute for (or replicate) human actions.</p> <p>Automation is the use of self-operating computer software and other technologies to perform tasks that are usually done by people. This process is designed to automatically follow a predetermined sequence of operations or respond to encoded instructions.</p>

No	Tech Enablers	Descriptions
		The development of the software may utilize the standardized methodology or approach such as DevOps or Agile approach in which software developers and IT operations work together to produce software and infrastructure services rapidly, frequently and reliably by standardizing and automating processes.
10	advance network connectivity or telecommunication technology	Communications designed for high capacity (100s Gbps or Terabit scale) optical networking with technology such as Software Defined Networks (SDN) for submarine and terrestrial applications.

## **APPENDIX 2**

### **MODIFIED NEXUS APPROACH<sup>10</sup>**

#### **A. PERCENTAGE OF QUALIFYING IP INCOME**

1. The reduced tax rate shall apply on a **percentage of qualifying IP income** derived from the **qualifying IP right** in connection with the **qualifying activity**.
2. The percentage of qualifying IP income is determined by **modified nexus approach formula<sup>11</sup>**.

#### **B. QUALIFYING IP RIGHT (IPR)**

1. Only the following qualifying IPR is eligible:
  - (a) any patent or utility innovation under the Patents Act 1983 [Act 291] or the equivalent law of any country or territory outside Malaysia;
  - (b) any computer program<sup>12</sup> or any derivative or adaptation of any computer program which has been registered as a copyrighted work under the voluntary notification provisions of the Copyright Act 1987 [Act 332] or the equivalent law of any country or territory outside Malaysia; or
  - (c) family of qualifying IPR (two or more qualifying IPR that are interlinked in such a way that it is not possible to identify—
    - (i) which part of any expenditure incurred in the research and development resulting in the creation of those rights is incurred solely in the creation of a particular right; or
    - (ii) which part of any income derived using those rights is derived solely from using a particular right).
2. The company must own the qualifying IPR.
3. The qualifying IPR must be either registered or filed for application for registration, with the Intellectual Property Corporation of Malaysia (MyIPO) or any equivalent body outside of Malaysia.
4. The qualifying IPR must be in connection with the qualifying activity.

#### **C. QUALIFYING IP INCOME**

1. Qualifying IP income<sup>13</sup> is as follows:
  - (a) Royalty<sup>14</sup>; and/or
  - (b) Licensing Fees.

<sup>10</sup> Modified nexus approach is an international standard set by OECD to ensure there is direct nexus between the income receiving tax benefit and the expenditures contributing to that income.

<sup>11</sup> The details of the formula are as specified in the subsidiary legislation for the tax incentive.

<sup>12</sup> Also referred to as copyrighted software.

<sup>13</sup> Sale price of qualifying IPR shall not be considered as qualifying IP income.

<sup>14</sup> Royalty has the same meaning as defined in Section 2 of Income Tax Act 1967.

2. The qualifying IP income must derive from the qualifying IPR in connection with the qualifying activity.

**D. QUALIFYING R&D EXPENDITURE**

1. The research and development (R&D) expenditure to be used in the modified nexus approach formula shall be in line with the types of eligible expenditure under Section 34A Income Tax Act 1967<sup>15</sup>.
2. A three-year transitional measure is given for the requirement of tracking and tracing the expenditure to the qualifying IPR. The details are as specified in the subsidiary legislation for the tax incentive.

**<End>**

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<sup>15</sup> Kindly refer to the relevant public ruling issued by the Inland Revenue Board of Malaysia. Companies currently enjoying incentives under Section 34A/34B Income Tax Act 1967 will not be eligible for reduced tax rate for qualifying IP income.