

GUIDELINE ON INCENTIVE FOR INTELLECTUAL PROPERTY (IP) DEVELOPMENT

I. INTRODUCTION

The objective of this incentive is to encourage researchers to exploit intellectual property through the licensing of patented knowledge, to encourage enterprises to invest in research and knowledge creation and to support the exploitation of intellectual property.

Apart from attracting companies to conduct R&D activities in Malaysia and facilitating the commercialisation of IP arising from local R&D, this incentive will also anchor more post-R&D economic activities, thereby creating jobs and new products/services for the economy.

II. INCENTIVE

Full Income tax exemption on qualifying intellectual property (IP) income for a period of up to ten (10) years

The tax exemption is subject to the guidelines on Modified Nexus Approach¹ to ensure that only income derived from IP developed in Malaysia is eligible for the incentive.

III. ELIGIBLE APPLICANTS

New/Existing companies² that own the rights of the qualifying intellectual properties (IPs) and are receiving income from the qualifying IP activities related to the promoted activities/list prescribed under the Promotion of Investments Act, 1986 and Income Tax Act, 1967.

¹ Refers to a formula adopted by the Forum on Harmful Tax Practices (FHTP) to calculate qualifying income based on actual R&D expenditure incurred by companies. The formula may be referred to the relevant Gazette Order on Modified Nexus Approach.

² Companies currently enjoying incentives under Section 34A/34B, Income Tax Act will not be eligible for this IP Development incentive.

IV. QUALIFYING IP ASSET

Types of qualifying IP assets³ under this incentive are as follows:

- a) Patent or utility innovation under the Patents Act, 1983 [Act 291] or the equivalent law of any country or territory.
- b) Copyrighted software under the Copyright Act 1987.
- c) Family qualifying IPs (two or more qualifying IPRs that are inter-linked in such a way that it is not possible to identify):
 - which part of any expenditure incurred in the R&D resulting in the creation of those rights is incurred solely in the creation of a particular right; or
 - which part of any income derived using those rights is derived solely from using a particular right.

V. QUALIFYING IP INCOME

Types of qualifying IP income⁴ under this incentive are as follows:

- a) Royalty⁵
- b) Licensing Fees

VI. ELIGIBILITY CRITERIA

1. The company must be incorporated under the **Companies Act, 2016** and **resident in Malaysia**.
2. Companies must be **conducting R&D activities⁶ in Malaysia, where such R&D activities lead to the development, improvement, modification or creation of the Qualifying IP Asset.**
3. **The IP must be registered / filed with MyIPO or any equivalent body outside of Malaysia. The IP must be related to the activities as prescribed under the promoted list / activity of the Promotion of Investments Act, 1986 and Income Tax Act, 1967.**
4. The company must have at least 30% science and technical staff (S&T) having degree or diploma with a minimum 5 years experience from related fields.

³ Only IP filed and first invoice issued on/after 1 July 2018 will be considered for this incentive.

⁴ Sale of IP will not be considered as eligible IP income under this IP Development incentive.

⁵ Royalty is defined as stated in Section 2 of the Income Tax Act, 1967

⁶ R&D activities under the promoted activities which approved by the Minister of Finance must be in line with the new R&D definition as prescribed under the Promotion of Investment Act 1986 & Income Tax Act 1967.

5. The company must incur **adequate⁷ amount of operating expenditure annually⁸ to support the company in conducting its business operation in Malaysia. The operating expenditure should include local services for insurance, legal, banking, ICT and transportation; if those services could be sourced from local/domestic service providers.** However, this amount shall not include the cost of goods sold/cost of sales⁹, and expenses that are not directly involved in the company's proposed activities.

VII. QUALIFYING R&D EXPENDITURE

- Eligible R&D expenditure for calculation of Modified Nexus Approach will be in line with types of eligible expenditure under Section 34A, Income Tax Act 1967.

- **Cost Sharing Agreement (CSA)**

CSA expenditure is allowed as part of eligible R&D expenditure; provided that the cost of payable R&D is clearly stated in the agreement.

- **Track & Trace**

Qualifying expenditures can be backdated up to 3 years from the date of the IP filed with Intellectual Property Corporation of Malaysia (MyIPO) or any equivalent body outside of Malaysia as prescribed under the promoted list / activity of the Promotion of Investments Act, 1986 and Income Tax Act, 1967.

VIII. EFFECTIVE DATE OF INCENTIVE / EXEMPTION PERIOD

- a) The exemption period of the incentive will start from the date of the first IP filed at Intellectual Property Corporation of Malaysia (MyIPO) or any equivalent body outside of Malaysia.
- b) The exemption period for subsequent filing of IPs will be granted within the period approved for the first IP.

Note: For products that have not been commercialised, the date of the first invoice or date of IP filed must not be earlier than 1 January 2019.

⁷ *Proposals submitted by companies will be evaluated in detail by MIDA and will be deliberated in the National Committee on Investments (NCI) for decision.*

⁸ *For the purpose of compliance of condition, 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 incurred for the production of services income).*

⁹ *Cost of goods sold (COGS)/Cost of Sales refers to but not limited to direct labour, direct materials, rent of production facilities, depreciation of production equipment and facilities, maintenance and repair of production equipment and facilities, utility cost for production facilities etc. For services companies, COGS/Cost of Sales can also be referred as cost of services directly associated with the services activities.*

IX. EFFECTIVE DATE OF APPLICATION

Applications **received by MIDA from 1 January 2020 until 31 December 2022** are eligible to be considered for the incentive.

X. MECHANISM

The IP Development incentive to be provided under the **subsidiary legislation under the Income Tax Act 1967** and to be deliberated in the National Committee on Investments (NCI).

XI. WITHDRAWAL OF INCENTIVE

Withdrawal of incentive will be undertaken as follows:

- a) When the **IP filed by the company at MyIPO or any equivalent body outside of Malaysia is not approved / rejected:**
 - **The incentive period of the IP incentive will still be maintained for subsequent registered IPs.**
 - However, withdrawal of incentive will be **applicable on any exemption starting from the first day of the claim made by a company on that particular IP.**
- b) When a company fails to comply with any of the approved conditions under this incentive:
 - The incentive will be withdrawn starting from the year of assessment of non-compliance.

XII. PROCEDURE FOR APPLICATION

1. Application with complete information should be submitted in **three (3) sets** to MIDA at the following address:

**Chief Executive Officer
Malaysian Investment Development Authority (MIDA),
MIDA Sentral,
No. 5, Jalan Stesen Sentral 5
Kuala Lumpur Sentral
50470 Kuala Lumpur.
(Attn.: Advanced Technology and Research & Development Division
(ATRD) Division)**

Application with incomplete information will not be accepted by MIDA and will be returned to applicant.

For further enquiries and clarification, please refer to:-

Director

**Advanced Technology and Research & Development Division (ATRD)
Division**

Malaysian Investment Development Authority (MIDA)

Tel. No. : (603) 2267 3633

Fax No. : (603) 2274 8470

Website : www.mida.gov.my