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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group
Subject: Malaysia's Headquarters (or principal hub) regime (MY012)
– Final description and assessment

ROLLBACK REVIEW PROCESS (FEBRUARY 2019)

The concerns raised by the Code of Conduct Group (COCG) in 2017 related to the fact that the regime appeared to be ring-fenced, that there was no clear substance requirement and that the regime was not transparent.

When the COCG examined the rollback of the regime on 30 January 2019, it had been abolished in relation to IP income and amended for the non IP income part through legislative acts Nos 385, 386 and 387 of 31 December 2018. Substance requirements had been introduced in Paragraph 7 of each of the three relevant acts, and ring-fencing removed in general through the amended legislation.

The regime was closed to new entrants as of 1 January 2019. Grandfathering is available in respect of IP income for existing beneficiaries until 30 June 2021, whilst no grandfathering is provided for non IP income.

The gazetted legislation is available here:

http://www.federalgazette.agc.gov.my/output/pua_20190101_PUA%20387.pdf

However, in paragraph 3 of each of the three relevant acts there was a provision stipulating that, to benefit from the regime, an entity should “*provide at least three qualifying services to its network companies which are located in three countries outside Malaysia*”. Paragraph 3d of No 385, 3d of No 386 and 3e of No 387 therefore limited the benefits of the regime to entities that provide services to companies outside Malaysia. Following the conclusion reached by the OECD FHTP in January 2019 that the regime is potentially harmful for the non IP aspect, the COCG meeting of 30 January 2019 concluded that the above paragraphs limited the benefits to entities that carry out transactions with foreign counterparts and therefore constituted a harmful ring-fencing of the regime under the criteria of the Code of Conduct.

This negative assessment was reported to Malaysia, which stated its intention to amend the legislation before the 24 February 2019 COCG cut-off date.

On 18 February 2019, Malaysia adopted three orders¹. The orders amended the three acts that regulated the Headquarters regime. The amendments consisted of removing the requirement to provide at least three qualifying services to its network companies “*which are located in three countries outside Malaysia*” in order to benefit from the regime.

The Orders were gazetted on 19 February 2019 and apply from the year of assessment 2018:

http://www.federalgazette.agc.gov.my/output/pua_20190219_PUA43_2019.pdf

As a result, the Code of Conduct Group meeting of 27 February 2019 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

¹ Income tax (exemption) (No 6) 2018 (Amendment) Order 2019; Income tax (exemption) (No 7) 2018 (Amendment) Order 2019; Income tax (exemption) (No 8) 2018 (Amendment) Order 2019.