

# Data Centre



# Speakers



**Klenn Yeo**  
Tax Partner  
Deloitte Singapore



**Nandita Tripathi**  
Tax Partner  
Deloitte India



**Mohd Fariz Mohd Faruq**  
Tax Partner  
Deloitte Malaysia



**Vorasa Palsingh**  
Tax Partner  
Deloitte Thailand



**An Vo Hiep Van**  
Tax Partner  
Deloitte Vietnam

# Powering Asia Pacific's data centre boom

## Deloitte report, Feb 2026

### Asia Pacific is set to become the world's next data centre hub

#### • Key findings

- Approx. US\$800 bil in data centre investment by 2030
- Electricity demand to increase by nearly 50% by 2035
- Rapid data centre growth presents economic opportunity, but uncoordinated expansion risks worsening grid congestion and price volatility
- With proactive planning and addition of new clean energy capacity, data centres can then support grid stability and accelerate this region's clean energy transition
- In most Asia Pacific markets, clean energy can now be faster to deploy, with lower costs, compared with conventional energy
- Addressing this challenge requires a multi-stakeholder approach across the data centre and energy ecosystem, including developers, operators, governments, energy providers, asset owners, investors, and major customers

MORE THAN  
**doubling**  
installed  
capacity

**\$800**  
**BILLION**  
of investment

HOME TO  
**40%**  
of global  
capacity

# Agenda

**1** What's New?

**2** The World of Incentives

**3** Entering the Market...

**4** Exit Implications

# What's New?



# What's New?

## India: Market Highlights

01

Data generated in India ~ 20%

Data center capacity ~ 3%

Opportunity + competitiveness gap

02

Share of India's electricity demand  
[2024] ~ 0.8% → [2030] ~ 3.2%

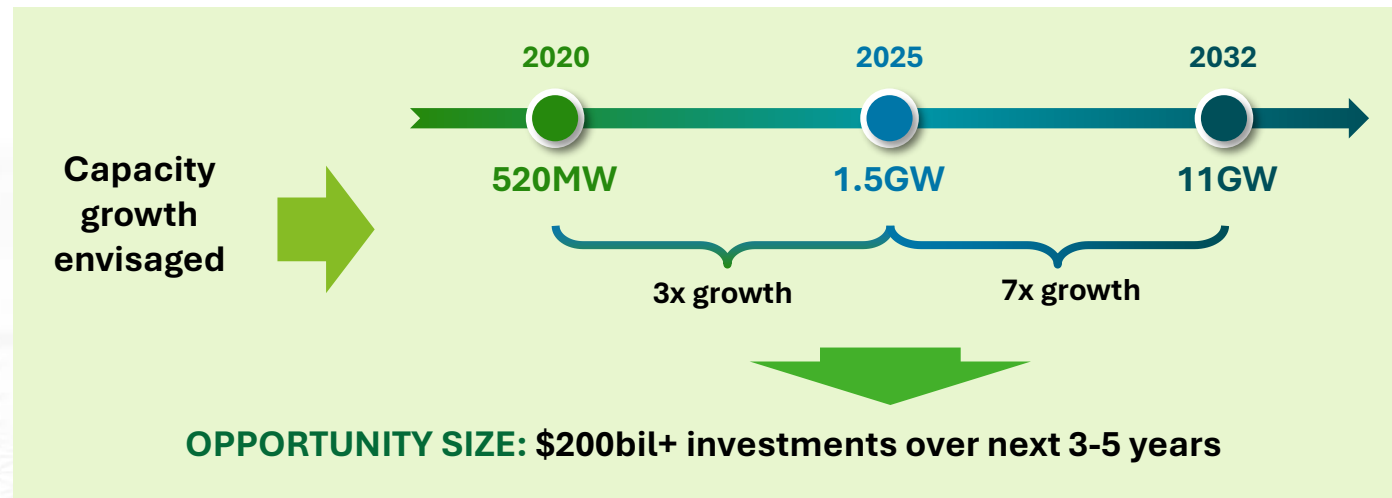
4x growth in power consumption

03

Second fastest growing data centre  
market in Asia-Pacific

Among the top-10 global markets

### Projected Data Centre capacity:



### Key triggers for growth:

- 1 Generative AI and cloud adoption
- 2 Data Sovereignty [DPDP Act 2023]
- 3 Favourable tax and regulatory policies

# What's New?

## Malaysia: New Developments

**“Malaysia has frozen the development of new data centers not used for artificial intelligence over power and water concerns”**  
- Prime Minister Anwar Ibrahim (24 Feb 2026).

### Import Duty/Sales Tax Exemption on Equipment

- Importation of goods can be subject to import duty (0 to 35%) and sales tax (5% or 10%)
- Any import duty/sales tax incurred will not be claimable
- Import duty/sales tax exemption was previously granted to Malaysia Digital (MD) status holders
- Key policy updates (with effect from 1 Jan 2026):
  - Exemption is limited to a maximum of five years, applicable to a maximum of three companies within the same group
  - Equipment is limited to direct and specialised equipment directly used for approved MD activities
  - Sales tax exemption is limited to locally manufactured equipment; For imported multimedia/ICT equipment, the exemption may be considered for companies making significant investments

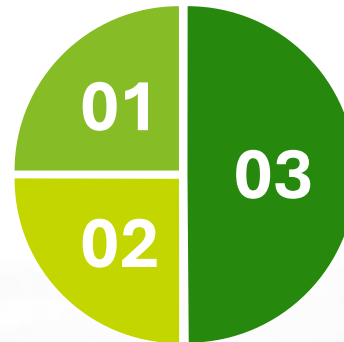
### Service Tax Expansion—Colocation income

- From 1 Jul 2025: Colocation services will be subject to 8% service tax as rental service
- From 1 Jan 2026: Reduction of service tax rate from 8% to 6% on rental or leasing services, in the form of service tax exemption
- The latest guide does not expressly address ancillary charges, although based on prior discussions, such charges are expected to follow the same service tax treatment as colocation services
- Industry players have submitted appeals and representations to Customs seeking exceptions for certain ancillary charge; the outcome may affect the final implementation approach

# What's New?

## Thailand: Market Outlook

<b>Investment</b>	<ul style="list-style-type: none"><li>Hybrid financing structure (debt financing &gt; equity investment)</li></ul>
<b>Long application process</b>	<ul style="list-style-type: none"><li>Approval required by BOI sub-committee.</li><li>Confirmation letter required from EGAT/PEA to ensure sufficient power supply for the project.</li><li>High number of application but limited BOI authorities resources</li></ul>
<b>Government support</b>	<ul style="list-style-type: none"><li>Thailand targets a &gt;25% reduction in electricity costs in this year.</li><li>Direct Power Purchase Agreement</li><li>Utility Green Tariff</li></ul>
<b>Key players</b>	<ul style="list-style-type: none"><li>Hyperscalers<ul style="list-style-type: none"><li>Amazon Web Service (AWS)</li><li>Google</li><li>Microsoft</li></ul></li><li>Colocation<ul style="list-style-type: none"><li>True Internet Data Center</li><li>STT GDC Thailand/SUPERMAP</li></ul></li></ul>



<b>Market Trend</b>	<ul style="list-style-type: none"><li>The Thai data center market is still in an early growth phase.</li><li>37 data center projects were approved by BOI in the last year.</li><li>In beginning of 2026, approved 7 major Data Center investment projects with total investment value exceeding THB 96bil.<ul style="list-style-type: none"><li>GSA Data Center 05: A joint venture between Gulf, Singtel, and AIS providing a combined IT load of 120 MW.</li><li>True Internet Data Center: investing in three projects designed to support a combined IT load of 223 MW.</li></ul></li><li>Many operators are expanding capacity such as:<ul style="list-style-type: none"><li>Increasing power capacity MW; or</li><li>Applying for additional BOI promotion certificates for new facilities.</li></ul></li></ul>
---------------------	--

# What's New?

## Vietnam: Market Highlights



- **New Law on Investment** (effective 1 Mar 2026)—Investors could obtain the Enterprise Registration Certificate (**ERC**) before applying for the Investment Registration Certificate (**IRC**).
- **100% foreign ownership** permitted for data center service investments including cloud services.



### Tax Incentives:

- 10% for 15 years, 4-year tax exemption, and 50% reduction for next 9 years (high-tech zones, centralised digital technology zones and **AI data center**).
- 17% for 10 years, 2-year tax exemption, and 50% reduction for next 4 years (economic zones, difficult socio-economic areas).



### Additional incentives:

- **Land rent exemption** for centralised digital technology zone projects.
- **Personal income tax exemption** up to **5 years** for high-quality digital technology industry personnel.



### New Capital Transfer Tax Regime:

- **2% CTT on gross sales** of **offshore** corporate sellers.
- 20% CGT on gain of onshore corporate sellers.
- **Real estate** transfer considerations.

# What's New?

## Singapore: Co-location Income

### Tax transparency on specified income, subject to conditions

Specified income includes all **co-location** and co-working income derived from 1 Jul 2025

### Co-location income means any income that is derived from the undertaking of both of the following

the provision of the **infrastructure, facilities or services**, relating to the immovable property used to house or operate the information technology equipment

the provision of a physical space relating to any immovable property for use by one or more persons to house or operate any information technology equipment belonging to that person or those persons

### Meaning of infrastructure, facilities and services under co-location income

**Examples:** Uninterruptible power supply systems, electrical power systems, fire suppression systems, security systems and cooling systems

**Examples:** Support for installation and maintenance of computer server equipment and on-site security

# The World of Incentives



# The World of Incentives

## India: Tax and Regulatory Incentives Available to Data Centres

### Policy incentives

1 Inclusion within “**Harmonised list of Infrastructure**”

2 Introduction of draft “**National Data centre Policy 2025**”

3 **State Incentives & Capital Subsidies** ~ land, stamp duty and electricity duty etc [18% to 25% of cost reduction]

4 **Financing support by Government** (including interest subsidies on loans)

### INCOME TAX INCENTIVES [discussed in next slide]

**Tax-exempt investment regime** for notified SWFs and PFs for investments up to 31 Mar 2030

**Tax holiday regime for non-resident service providers** up to 31 Mar 2047 [Finance Bill 2026 proposal]

**15% safe harbor margin for Indian entities providing data centre services** to related foreign cloud companies [Finance Bill 2026 proposal]

### INDIRECT TAX INCENTIVES

1 **ITC availability** on the GST levied on massive capital expenditure

2 **Export of services** eligible for zero GST

### IMPACT ON INVESTMENTS

Increase in greenfield projects + Acceleration in capacity expansion

Increase in cheaper debt financing and hence lower cost of capital

Uplift in valuation multiples of operational assets

Reduced operational costs and hence better IRRs

# The World of Incentives

## India: SWF/PF Tax Exemption

### EXEMPT INCOME [NIL tax]^

- 1 Dividend income
- 2 Interest income
- 3 Long term capital gains [including on debentures]
- 4 Repayment of capital to unitholders of InvIT

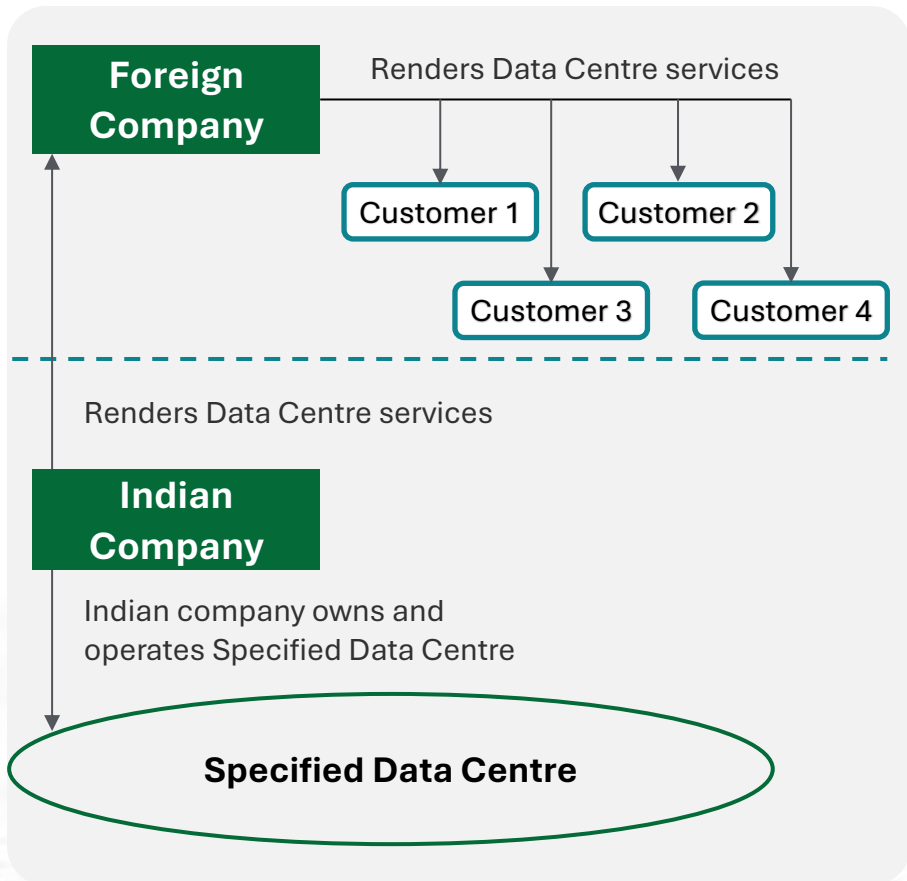
^ Prior registration is required with Indian government for availing the specified tax exemption

### KEY CONDITIONS [for claiming tax exemption]:

- 1 Investment should be made in **eligible infra sector** (which includes data centers)
- 2 Qualifying investments to be **made by 31 Mar 2030**
- 3 Minimum investment **tenure of 3 years**
- 4 Investments **to be made directly** (via notified entity); not through an intermediary jurisdiction or offshore co-invest vehicle
- 5 Investment **should not be made out of loans or borrowings, directly or indirectly**

# The World of Incentives

## India: Budget 2026 Masterstroke



### Budget proposal

1. Foreign company (FC) to enjoy tax holiday for 21 years—up until 31 Mar 2047
  - FC avails data centre services from a Specified Data Centre in India. In turn consumes such services for delivering in overseas market
  - Specified Data Centre to be notified by the Central Government
  - Specified Data Centre shall be owned and operated by an Indian company
  - FC to use Indian reseller where there is domestic market sale.
2. Transfer pricing safe harbor where Indian Company is a related party—15% on cost

### Impact on sector

- Significant step in the Viksit Bharat @ 2047 vision
- Provides long term tax certainty foreign taxpayers
- First among many steps in promoting the Data Centre and AI infrastructure investments
- Reduces litigation risk for hyper-scaler structures

**Initiatives expected to provide a strong push to achieve the 11GW target**

# The World of Incentives

## Malaysia: Digital Ecosystem Acceleration (DESAC) Scheme

### Overview

- Offers tax incentives for Malaysian resident companies that carry on a qualifying activity as a digital infrastructure provider and that fulfil certain requirements
- Effective until 31 Dec 2027

### Qualifying Activities

- Submarine cable, including cable landing stations; or
- Data centres and cloud computing, or data centres and data hosting

### Sustainable Data Centre Status

- Eligibility is based on certain measurements relating to power usage effectiveness, carbon usage effectiveness, and water usage effectiveness

### New Companies

- Must be incorporated under the Companies Act 2016 (CA) and be a resident in Malaysia
- Must be established for the purpose of carrying on a qualifying activity as a digital infrastructure provider
- Must meet one of the following requirements:
  - Does not have an existing or related entity in Malaysia; or
  - Has an existing or related entity in Malaysia, but that entity has not carried on the same qualifying activity in Malaysia

### Eligibility

### Existing Companies

- Must be incorporated under the CA and be a resident in Malaysia
- Must meet one of the following requirements:
  - Must be approved for a DESAC incentive and must plan to undertake an expansion project during the relevant incentive period; or
  - Must have a related entity in Malaysia that has been approved for a DESAC incentive or for the Multimedia Super Corridor (MSC)/Malaysia Digital (MD) scheme

Under the DESAC and MSC/MD schemes, eligibility for tax incentives is limited to a maximum of three companies within the same corporate group. Companies are considered part of the same “group” if there is at least a 20% direct or indirect ownership relationship.

# The World of Incentives

## Malaysia: Digital Ecosystem Acceleration (DESAC) Scheme

Tax Incentive (New Company)	Tier 1	Tier 2	Eligible Period
Investment Tax Allowance	<ul style="list-style-type: none"> <li>100% of qualifying capital investments (excluding land), may be set off against up to 100% of statutory income</li> </ul>	<ul style="list-style-type: none"> <li>60% of qualifying capital investments (excluding land) may be set off against up to 100% of statutory income</li> </ul>	<ul style="list-style-type: none"> <li>5 or 10 years</li> </ul>
Special Tax Rate	<ul style="list-style-type: none"> <li>10% on statutory income (excluding intellectual property income)</li> </ul>	<ul style="list-style-type: none"> <li>15% on statutory income (excluding intellectual property income)</li> </ul>	<ul style="list-style-type: none"> <li>5 or 10 years</li> </ul>

### Minimum Conditions

#### First 5 years:

- Paid-up capital of at least MYR 2.5mil;
- Incur capital expenditure (excluding land) as proposed;
- Full-time Malaysian employees with a minimum monthly basic salary of MYR 5,000 must be at least 50% of the total manpower;
- Undertake at least two local vendor development programs;
- Adopt “Industry 4.0” elements; and
- Adopt a minimum of one “green technology”

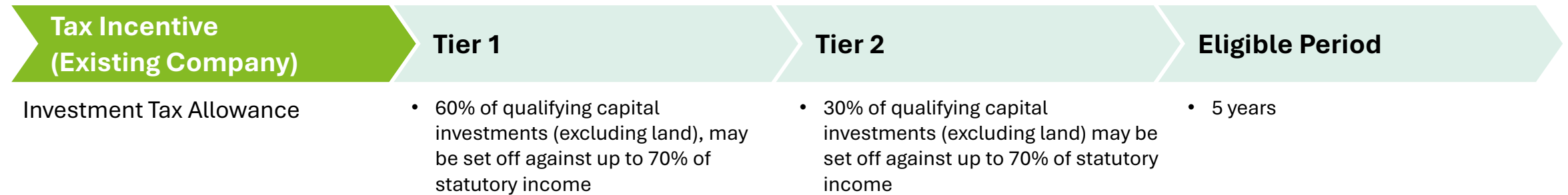
Note: Minimum conditions need to be complied within 36 months (for income tax allowance) or 24 months (for special tax rate) from the date of the “principle approval letter” until the end of the first five years.

#### Next 5 years:

- Compliance with all minimum and additional conditions imposed for the first five years;
- Incur a cumulative capital expenditure (excluding land) of at least MYR 1bil;
- Undertake at least two local vendor development programs; and
- Substantial increase in the number of full-time Malaysian employees with a minimum monthly basic salary of MYR 5,000 that represent at least 50% of the total manpower

# The World of Incentives

## Malaysia: Digital Ecosystem Acceleration (DESAC) Scheme



### Minimum Conditions

- Paid-up capital of at least MYR 2.5mil;
- Incur capital expenditure (excluding land) as proposed;
- Full-time Malaysian employees with a minimum monthly basic salary of MYR 5,000 must be at least 50% of the total manpower;
- Undertake at least two local vendor development programs;
- Adopt “Industry 4.0” elements; and
- Adopt a minimum of one “green technology”

Note: Minimum conditions need to be complied within 36 months from the date of the “principle approval letter” until the end of the first five years.

# The World of Incentives

## Thailand: Tax and Non-Tax Incentives

Tax Incentives	Non-Tax Incentives						
<ul style="list-style-type: none"> <li>Import duty on machinery/equipment exemption</li> </ul>	<ul style="list-style-type: none"> <li>100% foreign ownership</li> </ul>						
<ul style="list-style-type: none"> <li>CIT Exemption:               <table border="1"> <tr> <td><b>8</b></td> <td>High energy efficiency located outside the EEC*</td> </tr> <tr> <td><b>5</b></td> <td>High energy efficiency located in the EEC Other Data Centers located outside the EEC</td> </tr> <tr> <td><b>3</b></td> <td>Other Data Centers located in the EEC</td> </tr> </table> </li> </ul>	<b>8</b>	High energy efficiency located outside the EEC*	<b>5</b>	High energy efficiency located in the EEC Other Data Centers located outside the EEC	<b>3</b>	Other Data Centers located in the EEC	<ul style="list-style-type: none"> <li>Thai visa and work permit for non-Thai employees</li> </ul>
<b>8</b>	High energy efficiency located outside the EEC*						
<b>5</b>	High energy efficiency located in the EEC Other Data Centers located outside the EEC						
<b>3</b>	Other Data Centers located in the EEC						
<ul style="list-style-type: none"> <li>Dividend income exemption</li> <li>Additional 50% CIT reduction and 5 years tax losses after tax holiday.</li> </ul>	<ul style="list-style-type: none"> <li>Permit foreigner to own land</li> <li>Permit to remit money abroad in foreign currency</li> </ul>						

\*EEC stands for Thailand Eastern Economic Corridor. Currently, EEC covers 3 provinces of Thailand, i.e., Chonburi, Rayong and Chachoengsao

### Pillar 2

- Option to apply 50% of the CIT rate, capped at 10 years.
- Have plans for Qualified Refundable Tax Credits (QRTC) to support BOI-promoted projects, with detailed rules pending Cabinet approval and legislation.

### Data Center types

#### High-Efficiency Data Centre

- Lower PUE
- Water Usage Efficiency
- Tangible Benefits to Thailand

#### Other Data Centre

### Key Requirement

- The ISO/IEC 27001 certification
- Minimum investment of THB 5bil
- Install an electrical system with at least 2 MW capacity
- At least 50% of Thai executive and expert positions are filled within 3 years of operation

# The World of Incentives

## Thailand: Tax and Non-Tax Incentives

The Thai Government provides VAT exemption for certain data center services under Royal Decree No. 759 and DGN No. 251:

<b>1. Data Center Services</b>	Provision of server space and related devices for data storage and processing
<b>2. Activities Supporting (1)</b>	<ul style="list-style-type: none"><li>• Data backup services to prevent data loss (disaster recovery site);</li><li>• Network connection services for internet or cloud service providers; or</li><li>• System management and IT security services</li></ul>



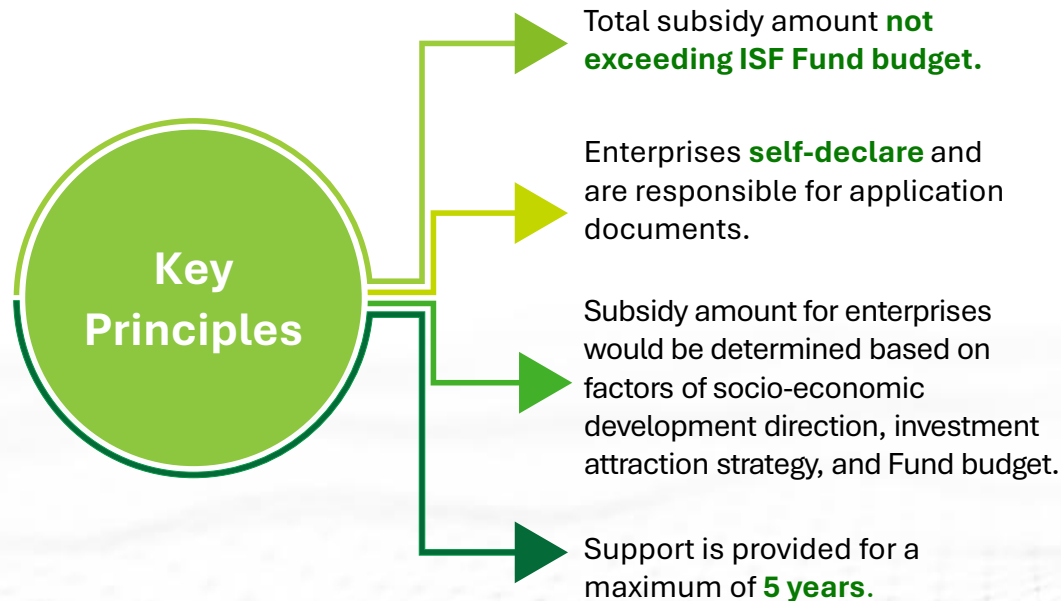
### Remark

- Must submit an application by 8 Nov 2027
- Past input VAT claims from the prior 3 years must be reversed with penalties and surcharges before approval, creating a significant pre-application cash flow burden
- Potential VAT allocation and leakage issues in case of operating other VATable business

# The World of Incentives

## Vietnam: Investment Support Fund (ISF)

Decree 182/2024/ND-CP effective from 1 Jan 2025 introduces Vietnam's Investment Support Fund (ISF) to attract high-tech investment, particularly in enterprises having **high-tech application projects in AI data centers**.



### Application Process

- Enterprises prepare and submit application dossier to Ministry of Planning and Investment (now merged into the Ministry of Finance following the recent restructuring): **before 10 Jul** of subsequent year of subsidised FY.
- The dossier would be evaluated by competent authorities before final decision of subsidy amount by the Government.

### Specific Requirements for AI Data Centers

- >= 6** Capital scale: Minimum VND6tril (US\$239mil); OR
- >= 10** Annual revenue: Minimum VND10tril (US\$399mil)

### Support Types

- Initial Investment Subsidy: Covering **up to 50%** of initial investment costs.
- Annual Expenses Subsidy
  - Training and HR development (up to 50%)
  - R&D activities (up to 30%)
  - Fixed asset investment (up to 10%)

### Fund Structure

- National fund established by the Government and managed by the Ministry of Planning and Investment (now merged into the Ministry of Finance following the recent restructuring)
- Operating on a **non-profit** basis
- Financed by the state budget

# The World of Incentives

## Vietnam: Customs Incentives and Import Considerations

### KEY CONSIDERATIONS

Import Duty Exemption	HS Classification	Customs Valuation	Import Control Policies
<ul style="list-style-type: none"> <li>• Goods directly used for <b>digital technology industry</b> (e.g., M&amp;E, spare parts, specialised supplies);</li> <li>• Goods imported to form <b>fixed assets of incentivised projects</b> (e.g., high-tech, IT infrastructure), including:               <ul style="list-style-type: none"> <li>— M&amp;Es;</li> <li>— Components &amp; spare parts (for synchronous assembly/operation)</li> <li>— Materials &amp; supplies for manufacturing M&amp;E.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Determination and declaration</b> of HS codes of M&amp;E imported for data center establishment.</li> </ul> <p>E.g., Imported M&amp;E under could be classified by:</p> <ul style="list-style-type: none"> <li>— a synchronised system; <u>OR</u></li> <li>— individual machine/equipment/components.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Integrated Packages</b> <ul style="list-style-type: none"> <li>— Separation of hardware, software, installation &amp; technical services</li> <li>— Determination of dutiable vs. non-dutiable elements</li> </ul> </li> <li>• <b>Royalties &amp; License Fees</b> <ul style="list-style-type: none"> <li>— Allocation of royalties/license fees related to imported M&amp;E</li> <li>— Assessment of customs duty ability</li> </ul> </li> <li>• <b>Related-Party Pricing Implications</b> <ul style="list-style-type: none"> <li>— Declaration of special relationship</li> <li>— Correlation with TP adjustments (year-end TPA)</li> <li>— Exposure to post-clearance audit</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Import Control Policies</b> <ul style="list-style-type: none"> <li>— Import license (e.g., civil cryptography/cyber security products)</li> <li>— Certification &amp; declaration of conformity</li> <li>— Specialised quality inspection (unsafe product control)</li> </ul> </li> <li>• <b>Refurbished/Used Equipment—Stricter Conditions</b> <ul style="list-style-type: none"> <li>— Age limitations</li> <li>— Country of origin restrictions</li> <li>— Technical standards &amp; conformity requirements</li> </ul> </li> </ul>

### Non-compliance may lead to

- Additional customs duties, and penalties
- Increased scrutiny at the border points—leading to delays of customs clearance
- Further inspections during post-clearance audits

# Entering the Market...

# Entering the Market...

## India: Critical Updates Shaping the Data Centre Industry

### AVENUES FOR DEBT FUND RAISING IN INDIA

Local non-bank fundings

OCDs under FVCI route

NCDs under FPI route



Domestic bank financing

External borrowing from overseas institutions

IFSC/GIFT CITY for debt financing

### All round impact for the FS sector

Evolving capex funding and asset ownership structures

Debt push down and more complex structuring to achieve similar advantage

Cost benefit analysis critical vis cheap funding vs additional compliance costs

# Entering the Market...

## Malaysia: Practical Considerations

### Foreign Ownership

Malaysia permits up to 100% foreign ownership in ICT and infrastructure services, including data centres, subject to licensing conditions. This policy makes Malaysia one of the more open jurisdictions in the region for foreign investment in digital infrastructure.

### Structuring Options

#### Private Limited Company (Sdn. Bhd.)

- Most common structure for foreign-owned infrastructure entities.
- Requires at least 1 shareholder and 1 resident director.
- Foreigners can own 100% equity with MIDA and MCMC approval.

#### Labuan Entity

- Suitable for cross-border data routing or holding structures.
- Preferential 3% tax rate subject to meeting the substance requirements.
- No capital gains tax applicable.
- Often used for hybrid structures involving offshore billing or IP holding.

### Sustainable Data Centre Status

- Under the DESAC and MSC/MD schemes, eligibility for tax incentives is limited to a maximum of three companies within the same corporate group. Companies are considered part of the same “group” if there is at least a 20% direct or indirect ownership relationship.
- Sales tax exemption now limited to locally manufactured equipment
- Sales tax exemption for imported multimedia/ICT equipment may still be considered for companies making significant investments, such as hyper scaler and co-location companies developing AI-driven data centres.

# Entering the Market...

## Thailand: Practical Issues and Alternative Strategies

### Practical Issues

#### Allocation Issues for Multiple BOI Certificates

Allocation issues may arise when a company holds more than one BOI promotion certificate and the activities cannot be clearly separated.

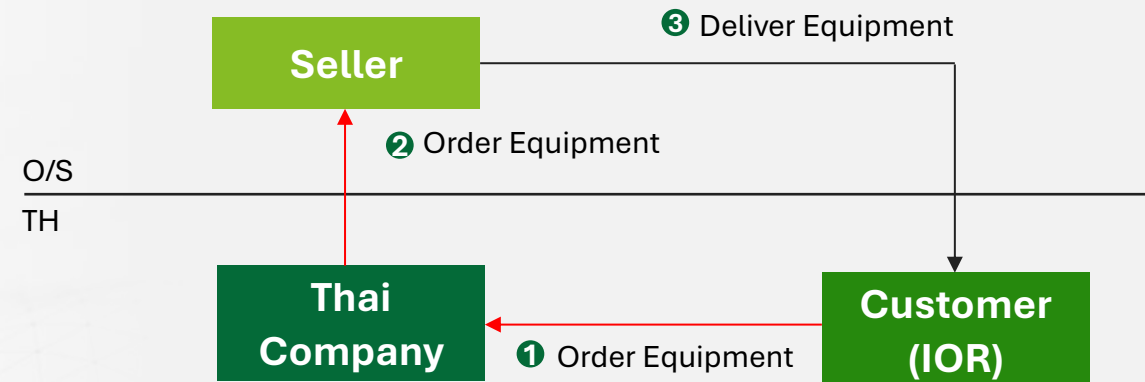
- Two BOI—promoted projects operate in the same location.
- Shared costs such as depreciation of capitalised assets cannot be easily allocated to each project.

TRD recommended allocation methods

1. Direct allocation
2. Area-based allocation
3. Revenue ratio

### VAT issues

VAT implications depend on the import structure and contractual arrangement.



# Entering the Market...

## Vietnam: Common Investment Structures

### Challenges in Greenfield Development

- Compliance with various Vietnamese laws and sectoral regulations.
- Numerous approvals required for project establishment, land acquisition, and commercial operations.
- Administrative procedures could be lengthy and bureaucratic.



### Alternative Strategies for Foreign Investors

- Acquiring Existing Data Centers—Focusing on locations with strong commercial potential.
- Joint Ventures with Local Partners to leverage local expertise and ease regulatory processes.



AI & Hyperscale data center invested by VNPT Corp, LG CNS (Korea) and Korea Investment Real Asset Management Company



Hyperscale data center invested by FPT-Viet Thai Group and G42 (UAE)

# Exit Implications



# Exit Implications

## India: Taxability of Capital Gains

### Taxability of Capital Gains in India subject to DTAAs [for non-residents]:

Capital Gains [Unlisted Shares*]	Period of Holding criteria	Tax rate
Long-Term Capital Gains	Holding > 24 months	13.65%
Short Term Capital Gains	Holding ≤ 24 months	38.22%

\* Unlisted debentures always treated as short term and hence taxable at 38.22%

### Typical Market Practice for India Investment exits

• **Intermediary jurisdictions** such as Singapore, Netherlands, UAE or Mauritius commonly used for India investments

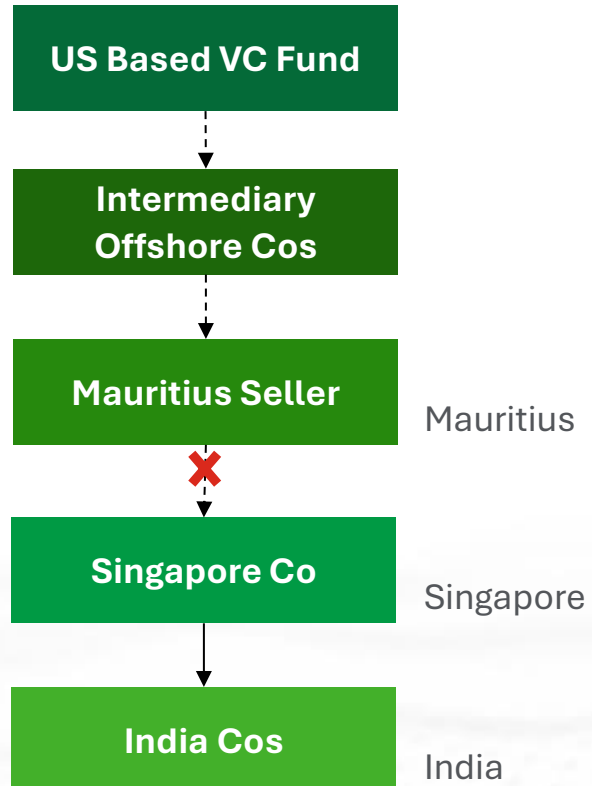
• Most fund exits are structured to achieve **NIL Indian exit tax** based on treaty positions like

- Indirect Transfers
- Transfer value through hybrid/ debt instruments
- Using Treaties of countries like, Netherlands where direct transfers are exempt
- Grandfathering benefit for investments up to Apr 2017 under Mauritius and Singapore

Subject to recent ruling of apex court in case of Tiger Global ~ wherein the courts have raised the bar on demonstrating adequate commercial substance and rationale in treaty structures

# Exit Implications

## India: Tiger Global—The Ruling [1/2]



### The Structure

Typical multi-tiered PE structure, whereby a US Fund uses Mauritius Holding Companies to invest in a Singapore company, deriving value from India

### The Transaction

Exit business by selling Singapore Shares with NIL Tax

### The Ruling

The Indian Apex Court, based on Facts, challenged the Seller's Mauritius Tax residency, citing effective control and management to be in U.S and denied Mauritius tax treaty benefit. **The Court further ruled that treaty protection cannot shield transactions that lack real commercial substance**

# Exit Implications

## India: Tiger Global—The Ruling [2/2]

A landmark ruling laying down guiding principles for treaty interpretation and application

**Tax Residency Certificate  
sufficient?**

**General Anti-Abuse Rules  
[GAAR]**

**Ambiguity created for Indirect  
Transfers**

**Substance over Form  
re-iterated strongly**

**Judicial Anti-Abuse Rules vs  
GAAR**

**Dual Non-Taxation - Triggering  
anti-abuse provisions**

Granting treaty benefit to entities lacking substance would: (i) defeats the object of the tax treaty; and (ii) convert treaties into tools for double non-taxation

# Exit Implications

## Malaysia: Capital Gains Tax



### CGT is applicable on disposal of capital assets:-

- Unlisted shares of companies incorporated in Malaysia
- Shares of a foreign controlled company that owns real property in Malaysia or shares of another controlled company (RPC shares) or both.
- Movable or immovable property situated outside Malaysia



### Chargeable persons

- Company
- Limited liability partnership (LLP)
- Trust body
- Co-operative society



### Applicable tax rate

Disposal of capital asset	Tax rate applicable
Unlisted shares acquired <b>before 1 Jan 2024</b>	10% on gain or 2% of gross disposal price
Unlisted shares acquired on <b>or after 1 Jan 2024</b>	10% on net gain
Movable or immovable property situated outside Malaysia	At prevailing tax rates (e.g., 24% for companies)

# Exit Implications

## Malaysia: Clarification on the definition of “disposal”

### Current

#### Definition of “disposal”

- Sell
- Convey
- Transfer
- Assign
- Settle
- Alienate
- Reduction of share capital
- Purchase by a company of its own shares



### Effective 1 Jan 2026

#### “Disposal” includes:

- **redemption**
- **conversion**
- **winding up**
- **dissolution**
- other circumstances resulting in the **cessation of share ownership**



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication.