

Foreword

Information contained herein is prepared for general reference purpose, especially to provide foreign investors with a general understanding of the Malaysian culture and business environment.

Standard requirements and compliances for the basic needs of all businesses are gathered and shown as you will find these useful if you're interested to start a business in Malaysia but with limited information in hand.

As an international accounting firm, ECOVIS provides wide range and comprehensive services to you in exploring the business opportunities and setting up your business in Malaysia.



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About Malaysia

The Eleventh Malaysian Plan (11MP), 2016-2020, is the final 5-years plan before Malaysia is envisaged to be a better country by 2020 along all dimensions: economically, politically, socially, spiritually, psychologically, and culturally. One of the macroeconomic strategies is "Promoting investment to Spearhead Economic Growth".

The private sectors will continue its significant role in leading the country towards become advanced economy. The strategy relies on promotional of both Domestic Direct Investment (DDI) and Foreign Direct Investment (FDI). For DDI, SMEs will be emphasised as they represent 98.5% of total establishments and 59% total employment in the economy in 2015.

In order to strengthen investment outcomes, 5 strategies will be implemented:

To reduce cost of doing business through increased provision of basic infrastructure, facilities, and review of bureaucratic regulations.

To provide performance-based incentives for high-income based and knowledge-intensive economic activities, by reviewing the current investment programme.

To address the talent gap and mismatch by establishing a labour market data warehouse, improving labour market clearance mechanism as well as re-skilling and multi-skilling programmes.

To improve access to financing for knowledge-intensive industries by introducing innovative financing options.

To provide tipping point financing through the Facilitation Fund, to bridge the viability gap in financing for strategic investment projects.

The latest World Bank Group report finds that Malaysia constantly improved its business environment and maintains its friendliness with the ranking stays at 18th in Ease of Doing Business 2016 report and ranked 2nd within ASEAN.

Malaysia has continue improved its business regulatory framework has therefore narrowed the gap with some of the best practices worldwide.

Economic strength, developed infrastructure, supportive government policies as well as developed financial facilities also advantages of doing business in Malaysia.

Source: MIDA website as at 4th February 2016 and newsletter January 2016



Foreign Investment

To encourage foreign investors, the Malaysian Government committed to maintain a business environment that provides companies with opportunities for growth and profit.

Supportive Government policies in Malaysia included pro-business policies, attractive tax and other tax incentives, liberal investment policies, no Foreign Exchange Administration (FEA) restrictions and intellectual property protection.



Liberal Equity Policy

Since June 2003, foreign investors could hold 100% of the equity in all investments in new projects, as well as investments in expansion/ diversification projects by existing companies irrespective of the level of exports and without excluding any product or activity.

In 2009, Malaysia removed its former International Funding Committee (FIC) funding tips, enabling transactions for acquisitions of interests, mergers, and takeovers of native companies by domestic or foreign events without FIC approval. Whereas the FIC itself still exists, it now solely evaluations the acquisition by foreigners of commercial properties valued better than at RM20 million (approximately US\$6.5 million) from Bumiputras (ethnic Malays and other indigenous ethnicities in Malaysia).

Employment of Expatriates

Foreign companies in the manufacturing sector are allowed to employ expatriates where certain skills not available in Malaysia. A company with foreign paid-up capital of US\$2 million and above will be allowed up to 10 expatriate posts, including five key posts, that is, posts that are permanently filled by foreigners.

The Malaysian government is desirous that Malaysians are eventually trained and employed at all levels of employment. Thus, companies are encouraged to train more Malaysians so that the employment pattern at all levels of the organisation reflects the multi-racial composition of the country.

Notwithstanding this, where there is a shortage of trained Malaysians, companies are allowed to bring in expatriate personnel i.e. 'key post' or 'time post'. Key posts are posts that are permanently filled by foreigners whereby time post are position filled on specified time.

Protection of Foreign Investment

To encourage foreign investors, the Malaysian Government offers a number of incentives and reassurances that any company that has been approved with a certain equity participation will not be required to restructure its equity at any time, provided that the company continues to comply with the original conditions of approval and retains the original features of the project.

The issue of nationalisation. expropriation and settlement of disputes are also addressed through Government's Investment Guarantee Agreements (IGAs) with a number of countries. For more information on which countries, please refer to the Malaysian Investment Development Authority (MIDA) website.

An IGA provides foreign investors with the following:

- Protection against nationalisation and expropriation.
- Prompt and adequate compensation in the event of nationalization or expropriation.
- Free transfer of profits, capital and other fees.
- Settlement of investment disputes under the Convention on the Settlement of Investment Disputes, of which Malaysia has been a member since 1966

Intellectual Property Protection

Intellectual property protection in Malaysia comprises of patents, trademarks. industrial designs, copyright, geographical indications and layout designs of integrated circuits. Malaysia is a member of the World Intellectual Property Organisation (WIPO) and a signatory to the Paris Convention and Berne Convention which govern these intellectual property rights.

In addition, Malaysia is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organisation (WTO). Malaysia provides adequate protection to both local and foreign investors. Malaysia's intellectual property laws are in conformance with international standards and have been reviewed by the TRIPs Council periodically.

Source: MIDA website as at 4th February 2016

Disclaimer:

This publication contains general information for general guidance only, and should not be construed as professional advice. You should consult a qualified professional adviser before making any business or investment decision or taking any action.

Conducting Business in Malaysia

With the attractive Foreign Investments incentives available in Malaysia has increased the number of foreigners to conduct their business in Malaysia. The most common forms of business entity chosen for their businesses for foreign investors are limited liability companies, joint ventures, branches or representative/regional offices.

certain whereas cases unincorporated joint ventures between two or more incorporated entities are common in civil construction and in large infrastructure projects. Besides that, Limited Liability Partnership and sole proprietorship or partnerships are also other forms of business entities available in Malaysia. However, for sole proprietorship or partnerships is not available for foreigner.





Remarks: **Establish Entities in Malaysia** Restriction on business activities Non-restriction on business activities Representative / **Regional Office Type of Entities** Ministry of Tourism, Malaysia Investment Development Authority (MIDA), Ministry of Trade & Industry (MITI), Ministry of Finance (MOF), Ministry of Domestic Trade, Cooperatives & Consumerism (MDTCC) **Labuan Offshore Company Labuan Financial Service Authority** Joint Venture / Branch Company/ Local Company (Sdn Bhd) Appoint licensed Labuan Trust Company Name search **Limited Liability Partnership** Submission of: Memorandum and Articles of Association, consent form to act as director, statutory declaration of compliance by the trust company, companies act, cert of identity, statutory declaration by persons before appointments as directors, individual forms etc. Suruhanjaya Syarikat Malaysia Determine suffixes to denote liability Registration Procedures: Name Search Completion & submission of Form 13A of the Suruhanjaya Syarikat Malaysia Companies Act Appoint at least ONE compliance officer Registration Documents: Certified True Copy Certificate of Proposed name of LLP; nature of business; registered Incorporation/Registration office address; name & details of compliance officer **Registration of:** Certified True Copy foreign company charter, Memorandum and Articles of Association OR other Certified True Copy certificate of registration of its place Employee Provident Fund (EPF) instrument defining its constitution of incorporation, establishment or origin Social Security Organisation (SOCSO) Malaysia Inland Revenue Board (MIRB) Certified True Copy of its charter or instrument defining Memorandum of appointment or power of attorney Kastam Diraja Malaysia (RMC)* its constitution authorising the person(s) residing in Malaysia *(applicable Turnover > RM500k) • Form 80

Additional: Form 13A & approval letter from SSM of

using the name of foreign company

Limited Company

Companies are governed by the Companies Act, 1965 (Companies Act). The Companies Act provides for 3 types of companies:

- a. Company limited by shares
- **b.** Company limited by guarantee
- c. Unlimited company

Companies may be formed as either private or public companies. A private company is usually suitable as a subsidiary of an overseas corporation that does not wish to raise capital or borrow funds from the public as it is prohibited by its article of association to issue any invitation to the public to subscribe for shares or debentures or the company to deposit money with the company. For a private company, there shall not be more than 50 members and they are also restricted in their rights to transfer their shares in the company. A public company is employed where it is intended to invite the public to subscribe for shares or debentures in the company or to deposit money with the company.

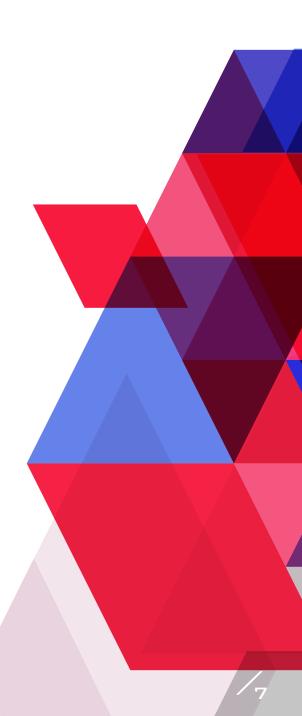
Joint Venture

Joint venture is business arrangements in which two or more parties agreed to converge their resources for the purpose of completing a specific task. This form of business is structured either as a partnership or as a consortium of incorporated companies; the term 'joint venture' does not denote a separate and distinct business entity.

Branch of Foreign Company

A foreign company (i.e. company incorporated outside Malaysia) may set up a branch in Malaysia if they are desires to build a place of business or to carry on business within Malaysia. However, the foreign company is not encouraged to use the established branch to engage in wholesale or retail trade.

The disadvantage of setting up a branch office is the higher cost of registration as the fees are based on the share capital of the foreign parent company overseas in foreign currency converted to Ringgit Malaysia at the prevailing exchange rate.



Representative/Regional Office

The representative office/regional office (RE/RO) is a cost center that entitles any foreign company to prospect the Malaysian or the regional market. This type of entity is the least preferred option as a way to conduct business in Malaysia due to the restrictions on activities to be carried out. The representative office/regional office (RE/RO) is not required to be incorporated under the Companies Act. However, it is requires to obtain the approval from the Malaysian Government in order to set-up a representative/regional office.

 Representative office: An office of a foreign company approved to collect relevant information on investment opportunities in the country, especially in the manufacturing and services sector, enhance bilateral trade relations, promote the export of Malaysian goods and services and carry out research and development (R&D).

- Regional office: An office of a foreign company that serves as the coordination centre for the company's affiliates, subsidiaries and agents in Southeast Asia and the Asia Pacific. The regional office established is responsible for the designated activities of the company/organisation within the region it operates.
- The permissible activities are as follows:
 - (a) planning or coordinating of business activities;
 - (b) gathering and analysis of information or undertaking feasibility studies pertaining to investment and business opportunities in Malaysia and in this region;
 - (c) identifying sources of raw materials, components or other industrial products;
 - (d) research and product development;
 - (e) as a coordination centre for the corporation's affiliates, subsidiaries, agents in the region; and
 - (f) other activities which will not result directly in actual commercial transactions.

The application for permission to set up a representative office must be obtained from the government: the Ministry of Trade and Industry (MITI) (for trading businesses), Malaysia Investment Development Authority (MIDA) (for investment in manufacturing services), Bank Negara Malaysia (for foreign banks) or Ministry of Tourism (for travel related services).

Expatriate Posts

A Representative office/ Regional office will be given expatriate post and the number allowed depends on the function and activates of the Regional Office/ Representative Office. Expatriates will only be considered for managerial and technical posts. The work permit will be considered for a minimum of 2 years and is renewable.

An expatriate working in a Representative Office is subject to normal income tax. However, an expatriate working in a Regional Office is taxed only on the portion of their chargeable income attributed to the number of days that they are in the country.

Duration of Establishment

- (a) Government and Trade Association Duration is based on the requirement of the applicant;
- (b) Company Minimum 2 years depending on the merits of each case;
- (c) Other (including non-profit organizations not relating to trade) Minimum of 2 years depending on the merits of each case.

Limited Liability Partnership (LLP)

Limited Liability Partnership (LLP) is a business vehicle introduced by Suruhanjaya Syarikat Malaysia (SSM) recently. It provides the public with more options to choose their business vehicle. LLP is a hybrid between a limited company and a conventional partnership. LLP is a separate legal entity from its partners. The liabilities of the partners of a LLP are limited while the LLP has unlimited capability in conducting business and holding property. Two or more individuals or bodies/corporate may form a LLP for any lawful business in accordance with the terms of the LLP Agreement. LLP may also be formed for the purposes of carrying on professional services of which the partners must be natural persons of same professional practice and have in force professional indemnity insurance approved by the Registrar.

LLP has perpetual succession and any change in the partners will not affect the existence, rights or liabilities of a LLP.

Partnership and Sole Proprietorship

sole proprietorships All and partnerships (excluding LLPs) are unincorporated and must be registered with the Registrar of Business also under the manager of the SSM. Foreigners are not allowed to incorporate these two types of entities for their businesses. As unincorporated entity, sole proprietorships and partnerships have unlimited liability to its owner/s.

Private Limited Company (Sdn Bhd)

Among all forms of businesses in Malaysia, the most common type of entity to conduct business in Malaysia is the private limited company. Such a company can be wholly owned or set up with local participation. Normally foreign ownership of up to 100% is permissible in limited company, with the exception of certain areas in regulated industries such as oil and gas and logistics. Every forms of business have their advantages, disadvantages and specific requirements. Foreign investor are advised to engaged a consultant to compare and verify the pros and cons of all options available before deciding which type of entity is most suitable.

The following is a comparison of relative advantages, disadvantages and requirement of a corporation, branch, representative office, LLP and sole proprietorship or partnership:

	Local Company	Branch Company	Representative / Regional Office	Limited Liability Partnership	Sole Proprietorship or Partnership
Advantages	Limited liability Corporations have unlimited life extending beyond the illness or death of the owners Benefits from tax treaties. Transfer of ownership facilitated by sale of stock Change of ownership need not affect management Easier to raise capital through sale of stocks and bonds	Cessation of business is more easy as compare to Local Company. Capital and profits can be freely repatriated.	Enable to determine the market strategies and the viability of its proposed investments To observe the local way of doing business To build local contacts	Limited liability Provides flexibility of organisation arrangement whereas a company is subject to more stringent compliance requirements More affordable business as maintenance cost is cheaper as compared to Local Company	Minimal regulatory requirements to comply
Disadvantages	More expensive to incorporate than sole proprietorship or partnerships More legal compliances More state and federal rules and regulations to comply with.	The establishment of a branch cannot be involved in the wholesale and retail trade.	There are restrictions on activities: Not allowed to engaged in any trading (including import and export), business or any form of commercial activity Not allowed to lease warehousing facilities; any shipment/transshipment or storage of goods must be carried out through a local agent or distributor. Not allowed to sign business contracts on behalf of the foreign corporation or provide services for a fee. Not allowed to participate in the daily management of any of its subsidiaries, affiliates or branches in Malaysia.	Not easier to raise fund as fund only can obtain through its partners only. Change of ownership might effects its managements	Unlimited liabilities where personally liable for the liabilities of the business
Requirements	Minimum of 2 shareholders (may be foreigner) Minimum of 2 directors and 1 qualified company secretary where both must have a place of principal in Malaysia Minimum paid up capital is RM2.00	Resident agent is required. Registration fee is payable at the same rate as for locally incorporated companies, depending on the amount of authorised share capital of the foreign corporation	Requires to get approval from the Government of Malaysia in order to set up RE/RO To register a RE/RO, the foreign company must have at least 2 years audit reports, balance sheet, bank statement of company for past 6 month, and a business plan. The proposed operational expenditure of the RE/RO must be at least RM300,000 per annum. The RE/RO should be financed by funds emanating from sources outside Malaysia.	Minimum of 2 partners with no limit to maximum number of partners (i.e. partner can be individuals persons or bodies corporate or combination of both) Partners need not be resident in Malaysia, however there is requirement for the compliance officer to be resident in Malaysia. Partnership agreement required.	Registration as a business with the SSM Partnership agreement Foreigners are generally not permitted to set up this type of businesses, except for carrying out government or other approved projects.

Disclaimer

Employer Responsibilities by Statutory Requirements

Employment Provident Fund (EPF)

The EPF Act provides for mandatory monthly contributions on the amount of wages to be made by both the employer and the employee to a government-managed retirement fund on a 13:11 percentage-of-income ratio if the monthly wage is RM5,000 and below i.e. the employer contributes 13% of the income and the employee contributes 11%. A ratio of 12:11 is applicable if the monthly wage is more than RM 5,000.

The contributions for employees who are 60 to 75 years of age at a lower ratio of 6.5:5.5 if the monthly wage is less than RM 5,000. A ratio of 6:5.5 if the monthly wage is more than RM 5,000.

Failure to make contributions in accordance with the provisions of the EPFA is an offence.

All foreign workers, expatriates and their employers are exempted from compulsory contributions. However, the employer may choose to contribute at the applicable rates of RM5 per employee per month whilst the employees are to contribute 11% of their monthly wages if below 60 years of age and 5.5% if 60 years of age or above.

(As at 1 May 2016. Source: http://www.kwsp.gov.my/portal/documents/10180/492918/ BUKU PANDUAN MAJIKAN NOV2015.pdf)

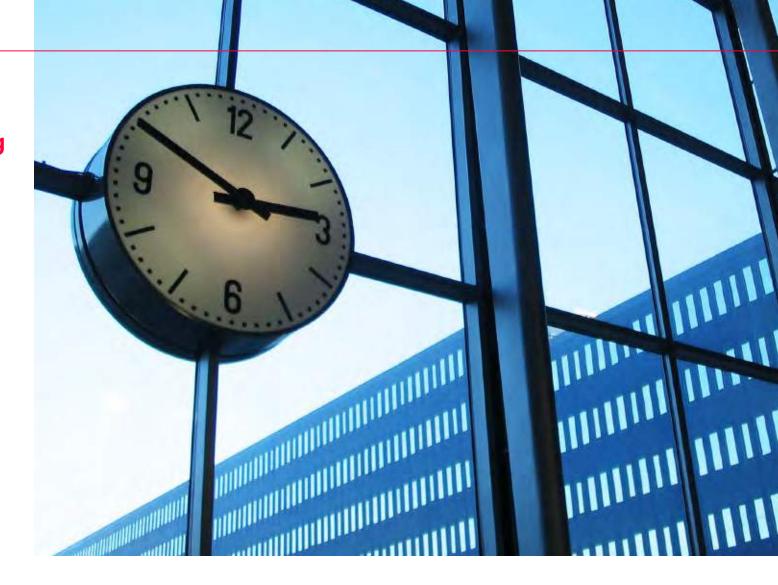
Social Security Organization (SOCSO)

The SOCSO Act provides for 2 schemes, namely the Employment Injury and Invalidity Scheme ("First, Category") & Employment Injury Scheme ("Second Category"). Mandatory contributions are to be made by both the employee and the employer to this government-managed programme which is akin to an insurance scheme. This is mandatory for any employee who has ever earned less than RM 3,000 per month. All Malaysian employees including permanent residence whom have been employed by an employer under a contract of service or apprenticeship are liable under SOCSO Act. Once covered, employees remain covered irrespective of their wages.

The Second Category is funded solely by the employer with the contribution of 1.25% and the First Category is funded with the contribution of 1% which is shared equally by employers and employees. The maximum contribution is based on wages of RM 2,999 per month.

(As at 1 May 2016. Source: http://www.perkeso.gov.my/en/social-security protection/employer-employee eliQibilty/contribution.html)

Statutory Requirement for Audit and Accounting



Accounting and Other Records

Section 167 of the Companies Act 1965 requires every company and the directors and managers thereof to keep such accounting and other records so as to sufficiently explain the transactions and financial position of the company and enable preparation of financial statements showing a true and fair view to be conveniently and properly audited.

All transactions must be recorded within 60 days of completion. These accounting and other records must be kept at the company's registered office, which must be in Malaysia, or such other place in Malaysia as the directors think fit. These records are to be retained for 7 years after the completion of the transactions.

Financial Reporting Framework in Malaysia

The MASB approved accounting standards comprise:

- (i) Malaysian Financial Reporting Standards ("MFRS");
- (ii) Malaysian Private Entities Reporting Standards ("MPERS").

Malaysian Accounting Standards Board ("MASB") had issued MFRS framework, which are word-by-word equivalent to International Financial Reporting Standards issued by International Accounting Standards Board for Entities Other Than Private Entities for annual periods beginning on or after 1 January 2012, with the exception of Transitioning Entities within the scope of MFRS 141 Agriculture and/or IC Interpretation 15 Agreements for the Construction of Real Estate.

Transitioning Entities, including its parent, significant investor and venture(s) will apply the MFRS framework for annual periods beginning on or after 1 January 2018. However, early application of MFRS is permitted. FRS will be withdrawn for application for financial statements with annual periods beginning on or after 1 January 2018

Only private entities can apply MPERS. A private entity is defined as a private company, incorporated under the Companies Act 1965, that:

- is not itself required to prepare or lodge any financial statements under any law administered by the Securities Commission ("SC") or Bank Negara Malaysia ("BNM"); and
- is not a subsidiary or associate of, or jointly controlled by, an entity which is required to prepare or lodge any financial statements under any law administered by the SC or BNM.

Private entities which previously adopted Private Entities Reporting Standards ("PERS") shall apply either the MPERS or MFRS or FRS for financial statements with annual periods beginning on or after 1 January 2016.

Financial Statements and Audit Requirement

Directors of a company must present financial statements to its shareholders in a general meeting not later than 18 months after incorporation and, subsequently, at least once in every financial year at intervals of not more than 15 months. The financial statements must be prepared in accordance with approved accounting standards by MASB and provisions of the Companies Act 1965 and audited by an approved auditor. All amounts shown in the financial statements shall be presented in Ringgit Malaysia ("RM").

An approved auditor must be a member of the Malaysian Institute of Accountants ("MIA") under the Chartered Accountant category for at least 1 year and granted an audit license by the Minister of Finance. The auditors shall conduct their audit in accordance with approved standards on auditing in Malaysia, namely Malaysian Approved Standards on Auditing issued by MIA, which is based on the International Standards on Auditing ("ISA").

First auditors are usually appointed by the directors of a company. Subsequently, except for appointments to fill casual vacancies, auditors are normally appointed by the shareholders at each annual general meeting (AGM) to hold office until the end of the next AGM.



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The information stated in this document is of a general nature only and it is not meant to be comprehensive and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. Whilst due care has been taken in preparing this document, Ecovis AHL PLT will not be liable for any loss caused by reliance on any statement made in this document and makes no guarantee or representation as to its completeness and accuracy.

This document was updated on 2 February 2016 and was based on the information available at that time.

Malaysia Taxation



Tax Overview

The law governing the imposition of income tax is the Income Tax Act 1967 ("ITA"). The tax administration agency is the Malaysian Inland Revenue Board ("MIRB").

MIRB has changed the official assessment system to the self-assessment system ("SAS") for the respective type of taxpayers in 2001 and 2004 as below:

Type of taxpayers	Effective year
Companies	2001
Businesses, partnerships and co-operatives	2004
Salaried individuals	2004

The assessment of income tax is also changed from preceding year basis to current year basis since year 2000.

Corporate Income Tax

Scope of Tax

Corporate income tax is imposed on income accruing in or derived from Malaysia. Income received in Malaysia by any person other than a resident company carrying on a business of air or sea transport, banking or insurance, (which are taxed on a worldwide basis) derived from sources outside Malaysia is exempt from tax.

The corporate income tax rates are provided in the following table :

Type of company	Chargeable income (RM)	YA 2009 - 2015 Tax rate (%)	YA 2016 Tax rate (%)
Resident company (other than SME as below)		25%	24%
Resident company - Small and Medium Enterprise ("SME")	First 500,000	20%	19%
 with paid-up capital less than RM 2.5 million at the beginning of the basis period does not control, directly or indirectly, another company that has paid-up capital of more than RM 2.5 million, and is not controlled, directly or indirectly, by another company that has paid-up capital of more than RM 2.5 million. 	On subsequent chargeable income	25%	24%
Non-resident company/branch		25%	24%

Corporate Residence

Generally, a company is tax resident in Malaysia in a basis year (normally the financial year) if, at any time during the basis year, the management and control of its affairs are exercised in Malaysia. In practice, a company is regarded as resident in Malaysia if at any time during the basis period for a year of assessment, at least one meeting of the Board of Directors is held in Malaysia concerning the management and control of the company.

The MIRB has issued Public Ruling No.5/2011 on the Residence Status of Companies and Bodies of Persons to provide guidance on ascertaining the tax residence status of a company.

Permanent Establishment ("PE")

Generally, a non-resident entity is regarded as having a PE in Malaysia if it has a fixed place of business in Malaysia, where the business of the entity is wholly or partly carried on. A non-resident company may also be deemed to have a PE in Malaysia under certain circumstances, such as the following:

- It is represented by a dependent agent in Malaysia who has the authority to conclude contracts on its behalf and who has repeatedly exercised that authority.
- It carries on supervisory activities in Malaysia for six or nine months in connection with a construction, installation, or assembly project.

Taxable Income and Gains

The sources of income subject to tax include those listed below:

- Gains or profits from any trade, business, profession, or vocation;
- Dividends, interest and discounts;
- Rents, royalties and premiums;
- Pensions, annuities and other periodic payments;
- Amounts received by a non-resident person for provision of technical advice, assistance or services, or the provision of services relating to the installation or operation of any apparatus or plant. (Such income is only taxable if the services are performed in Malaysia.); and
- Rent or other payments for the use of movable property received by a non-resident.



Taxation of Dividends

From 1 January 2008, the imputation system was replaced by a single-tier system of taxation. Under the single-tier system, tax on a company's profits is a final tax and all dividends paid by the company are exempt in the hands of shareholders.

A transition period of 6 years (1 January 2008 to 31 December 2013) is provided for implementation of the single-tier system. All companies will move to the single-tier system on 1 January 2014, even though they may still have unutilised Section 108 credits under the imputation system as at 31 December 2013.

Deductible Expenses

Deductions are allowed for all outgoings and expenses incurred wholly and exclusively in producing gross income, unless specifically prohibited by the ITA.

Deductible items include business expenditure, rent, repair and renewals, wages and salaries, insurance premiums and contributions to the Employees Provident Fund of up to 19% of the employee's remuneration.

The deductibility of some expenses is subject to restrictions or limitations, e.g. interest expense, entertainment, lease rentals of motor vehicles and bad or doubtful debts.

Non-allowable expenses include domestic or private expenses, income tax or similar taxes, preliminary expenses, annual general meeting expenses, fines and penalties, contributions to an unapproved scheme, payments from which withholding tax has not been withheld, capital expenditure on improvements.

W.e.f YA 2015, Goods and Services Tax (GST) input tax paid by a person is not allowed as a deduction if:

- (a) Liable to be registered under GST Act 2014 and had failed to do so; or
- (b) Entitle under GST Act to credit on that amount as input tax

GST output tax borne by a person is also not deductible.

Losses

Losses may be carried forward indefinitely (except where there is a substantial change in corporate ownership of a dormant company – effective from YA 2006).

Capital Allowances

Capital allowances are given on qualifying capital expenditure. Capital allowances can only be claimed against each business source based on the rates set by MIRB. Initial allowances are given only once while annual allowances are given every year using the straight-line method. The broad categories of qualifying expenditure are described below.

Initial Allowance	Rate
Industrial building	10%
Computer and IT equipment	20%
Plant and machinery used for conservation of energy	40%
Heavy machinery and motor vehicles	20%
General plant and machinery	20%
Others	20%

Annual Allowance	Rate
Industrial building	3%
Computer and IT equipment	80%/10%* ^(Note)
Plant and machinery used for conservation of energy	20%
Heavy machinery and motor vehicles	20%
General plant and machinery	14%
Others	10%

*Not

- 10% applies for companies which have been granted certain incentive under the Promotion of Investments Act 1986
- 80% only applies up to Year of Assessment 2016.

Any unabsorbed capital allowances can be carried forward indefinitely to be set off against future income from the same business.

Withholding Taxes

The various types of withholding taxes are charged on the following types of payments to non-residents:

Payment Type	Income Tax Act 1967	Withholding Tax Rate	Payment Form
Contract Payment	Section 107A (1) (a) & 107A (1) (b)	10%, 3%	CP37A
Interest	Section 109	15%	CP37
Royalties	Section 109	10%	CP37
Special classes of income: Technical fees, payment for services, rent/payment for use of moveable property	Section 109B	10%	CP37D
Interest (except exempt interest) paid by approved financial institutions	Section 109C	5%	CP37C
Income of non-resident public entertainers	Section 109A	15%	Payment memo issued by Assessment Branch
Real Estate Investment Trust (REIT) (i) Other than a resident company (ii) Non Resident company (iii) Foreign investment institution effective from 01/01/2007	Section 109D	10% 25% 10%	CP37E
Family Fund/Takaful Family Fund/Dana Am (i) Individual and other (ii) Non Resident Company	Section 109E	8% 25%	CP37E(T)
Income under Section 4(f) ITA 1967 such as introductory fee, commission, guarantee fee, etc.	Section 109F	10%	CP37F

Source: MIRB website

Where the recipient is resident in a country which has a double tax treaty with Malaysia, the tax rates for specific sources of income may be reduced. Kindly refer to the treaty withholding tax rates table in the next page. The table contains the withholding tax rates that are applicable to dividend, interest and royalty payments from Malaysia to non-residents under the tax treaties currently in force. However, Malaysia does not impose any withholding tax on dividends under domestic law.

List of double tax treaties and withholding tax rates

DOUBLE TAXATION AGREEMENTS WITHHOLDING TAX RATES EFFECTIVE DOUBLE TAXATION AGREEMENTS

No.	Country	Dividends (%)	Interest (%)	Royalties (%)	Technical Fees (%)	S.4(f) Income ^(a)
1	Albania	NIL	10	10	10	10
2	Australia	NIL	15	10	NIL	10
3	Austria	NIL	15	10	10	10
4	Bahrain	NIL	5	8	10	10
5	Bangladesh	NIL	15	10	10	10
6	Belgium#	NIL	10	10	10	10
7	Bosnia Herzegovina	NIL	10	8	10	10
8	Brunei	NIL	10	10	10	10
9	Canada	NIL	15	10	10	10
10	Chile	NIL	15	10	5	10
11	China	NIL	10	10	10	10
12	Croatia	NIL	10	10	10	10
13	Czech Republic	NIL	12	10	10	10
14	Denmark	NIL	15	10	10	10
15	Egypt	NIL	15	10	10	10
16	Fiji	NIL	15	10	10	10
17	Finland	NIL	15	10	10	10
18	France	NIL	15	10	10	10
19	Germany	NIL	10	7	7	NIL
20	Hungary	NIL	15	10	10	10
21	Hong Kong	NIL	10	8	5	10
22	India	NIL	10	10	10	10
23	Indonesia #	NIL	10	10	10	10
24	Iran	NIL	15	10	10	10
25	Ireland	NIL	10	8	10	10
26	Italy	NIL	15	10	10	10
27	Japan	NIL	10	10	10	10
28	Jordan	NIL	15	10	10	NIL
29	Kazakhstan	NIL	10	10	10	10
30	Kyrgyz Republic	NIL	10	10	10	10
31	Kuwait#	NIL	10	10	10	10
32	Laos	NIL	10	10	10	10
33	Lebanon	NIL	10	8	10	10
34	Luxembourg	NIL	10	8	8	10
35	Malta	NIL	15	10	10	10
36	Mauritius	NIL	15	10	10	10
37	Mongolia	NIL	10	10	10	10

No.	Country	Dividends (%)	Interest (%)	Royalties (%)	Technical Fees (%)	S.4(f) Income ^(a)
38	Morocco	NIL	10	10	10	10
39	Myanmar	NIL	10	10	10	10
40	Namibia	NIL	10	5	5	10
41	Netherlands	NIL	10	8	8	10
42	New Zealand	NIL	15	10	10	10
43	Norway	NIL	15	10	10	10
44	Pakistan	NIL	15	10	10	10
45	Papua New Guinea	NIL	15	10	10	10
46	Philippines	NIL	15	10	10	10
47	Poland	NIL	15	10	10	10
48	Qatar	NIL	5	8	8	10
49	Romania	NIL	15	10	10	10
50	Russia	NIL	15	10	10	10
51	SanMarino	NIL	10	10	10	10
52	Saudi Arabia	NIL	5	8	8	10
53	Seychelles#	NIL	10	10	10	10
54	Singapore	NIL	10	8	5	10
55	SouthAfrica	NIL	10	5	5	10
56	SouthKorea	NIL	15	10	10	10
57	Spain	NIL	10	7	5	10
58	Sri Lanka	NIL	10	10	10	10
59	Sudan	NIL	10	10	10	10
60	Sweden	NIL	10	8	8	10
61	Syria	NIL	10	10	10	10
62	Switzerland	NIL	10	10	10	10
63	Thailand	NIL	15	10 / 5 (JDA)	10 / 5 (JDA)	10
64	Turkey#	NIL	15	10	10	10
65	Turkmenistan	NIL	10	10	10	NIL
66	United Arab Emirates	NIL	5	10	10	10
67	United Kingdom	NIL	10	8	8	10
68	Uzbekistan	NIL	10	10	10	10
69	Venezuela	NIL	15	10	10	10
70	Vietnam	NIL	10	10	10	10
71	Zimbabwe	NIL	10	10	10	10

- (i) There is no withholding tax on dividends paid by Malaysia companies.
- (ii) To claim the DTA rate, please attach the Certificate of Tax Residence from the country of residence.
- (iii) Where the rate provided in the ITA 1967 is lower than the DTA rate, the lower rate shall apply.
- (iv) #Protocol which amends limited articles of the treaty has been gazetted but not entered into force.
- (v) JDA = Joint Development Agreement



GAZETTED DOUBLE TAXATION AGREEMENTS

No.	Country	Dividens (%)	Interests (%)	Royalties (%)	Technical Fees (%)	S.4(f) Income ^(a)
1	Senegal	NIL	10	10	10	10

LIMITED AGREEMENTS

No.	Country	Dividens (%)	Interests (%)	Royalties (%)	Technical Fees (%)	S.4(f) Income ^(a)
1	Argentina	NIL	15*	10*	10*	10
2	United States of America	NIL	15*	10*	10*	10

^{*}The withholding tax rate on interest, royalties and fees for technical services is as provided in the ITA 1967.

INCOME TAX EXEMPTION ORDER

No.	Country	Dividens (%)	Interests (%)	Royalties (%)	Technical Fees (%)	S.4(f) Income ^(a)
1	Taiwan	NIL	10	10	7.5	10

Source: MIRB website as at 23 Feb.2016



Group relief

From YA 2006 group relief is available to all locally incorporated, resident companies that fulfilled certain conditions. Companies that qualify were allowed to surrender a maximum of 50 % of its adjusted loss for a year of assessment to one or more related companies. From YA 2009, the maximum percentage of loss that can be surrendered has been increased to 70%. Companies opting for group relief must make an irrevocable election to surrender or claim the tax loss in the return to be filed with the IRB for that YA.

Companies currently enjoying certain incentives such as pioneer status, investment tax allowance, reinvestment allowance etc. are not eligible for group relief.

To be eligible for group relief, the claimant and surrendering companies must meet the following conditions:

- Must be resident and incorporated in Malaysia;
- Each has a paid-up capital of ordinary shares exceeding RM2.5 million at the beginning of the assessment period;
- Both companies must have the same (12-month) accounting period;

They are 'related companies' as defined in the law, and must be 'related' throughout the relevant basis period as well as the 12 months preceding that basis period; and Companies currently enjoying certain incentives such as pioneer status, Investment Tax Allowance (ITA), reinvestment allowance etc. are not eligible.

Administration and Compliance

Companies are required to furnish estimates of their tax payable for a year of assessment not later than 30 days before the beginning of the basis period, but from YA 2008, a newly established company with paid-up capital of RM 2.5 million and less that meets certain specified conditions, is exempted from furnishing the tax estimate for 2 years, beginning from the YA in which the company commences operation. However, companies are required to submit a notification to the tax authority via Form CP204 on its SME status. A revised estimate can be submitted in the 6th and 9th months of the basis period for a year of assessment.

Companies are then required to pay advance corporate tax by 12 monthly installments (based on the estimates submitted) commencing from the second month of the company's basis period (financial year).

From YA 2011, a company commencing operations in a YA is not required to furnish estimates of tax payable or make instalment payments if the basis period for the year of assessment in which the company commences operations is less than 6 months.

A tax return must be filed within 7 months from the end of the financial year unless extended by the MIRB. With effect from year of assessment (YA) 2014, all dormant companies (includes companies which have not commenced operations) must also file the income tax return form. Any balance tax payable after deducted the advance corporate tax by a company upon submission of a return is due and payable by the "due date" i.e. the last day on expiry of 7 months from the date on which the accounts are closed.

Assessments or additional assessments can be made within 6 years after the expiration of the relevant year of assessment. This time limit is not applicable where fraud, wilful default, or negligence has been

committed. However, with effective from 1 January 2014, the time bar for raising an assessment or additional assessment be reduced from 6 years to 5 years.

Disregard of the time bar for raising an assessment or additional assessment, business records are to be retained for at least 7 years from the end of the of the year to which any income from the business or operation relates.



Incentives

Various tax incentives are available in Malaysia for investments in promoted products and activities in the manufacturing, services, trading, agriculture, hotel and tourism industries, research and development ("R&D") and other specific business activities as promoted by the Malaysian government.

These incentives are contained in the Promotion of Investments Act, 1986 and the Income Tax Act, 1967. Generally, the incentives may provide full or partial tax exemption, reduced tax rates, investment allowances, accelerated capital allowances or special deductions.

We summarized herewith the major tax incentives available in Malaysia as below:

- (i) Pioneer status
- (ii) Investment tax allowance
- (iii) Reinvestment allowance

Pioneer Status

Pioneer Status ("PS") is a form of tax incentive which provides for full or partial exemption from payment of Income Tax. Generally, a company granted Pioneer Status enjoys 70% exemption from income tax at the statutory income level (income after deduction of allowable expenses and capital allowances) for 5 or 10 years (extension for 5 years provided relevant conditions are fulfilled) from the date of the commencement of the pioneer period.

The period of tax exemption commences from the "production date" as determined by the Malaysian Investment Development Authority ("MIDA"). Based on the corporate tax rate of 24%, the effective tax rate for a PS company is only 7.2% (i.e. 30% of chargeable income multiply tax rate of 24%).

In the event that a PS company makes losses during the pioneer period, the unutilised losses and capital allowances may be carried forward to the post-pioneer period for an indefinite period of time for set off against future business income of the company.

Investment Tax Allowance

The Investment Tax Allowance ("ITA") incentive is an alternative incentive to PS. Both the ITA and PS incentives are mutually exclusive, i.e. a company can only enjoy either one of the incentives and not both. Similar to PS, ITA is available to companies involved in promoted activities or promoted products.

Eligible projects with large capital investment and long gestation periods can consider ITA as an alternative to the PS incentive. ITA is an incentive based on the qualifying capital expenditure incurred. Generally, a company granted ITA will be granted an allowance of 60% in respect of qualifying capital expenditure incurred within 5 years from the date on which the first qualifying capital expenditure is incurred. The allowance can be used to set-off against 70% of its statutory income for each Year of Assessment. Based on the corporate tax rate of 24%, the effective tax of an ITA company is only 7.2% (i.e. 30% of the chargeable income × tax rate of 24%).

Any unutilised ITA during the ITA period may be carried forward for an indefinite period for set off against the future business income in the post ITA period.

Reinvestment Allowance

Reinvestment allowance ("RA") is an incentive granted under Schedule 7A of the Income Tax Act 1967, to a resident manufacturing company that reinvest in capital expenditure on a factory, plant or machinery used for a project for either expansion of existing production capacity, modernisation or automation of the production facilities, or diversification into related products. RA is also available to company engaged in agricultural projects (e.g. cultivation of rice, maize, fruits, vegetables, tubers and roots, livestock farming, spawning, breeding or culturing aquatic products, etc.).

The rate of RA is 60% on the qualifying capital expenditure i.e. factory and plant and machinery and is granted in addition to capital allowances. The RA is used to reduce up to 70% of statutory income. Any unused RA may be carried forward indefinitely.

With effect from YA 2016 to YA 2018, a special reinvestment allowance is given to companies whose RA incentives period has expired.

A company can claim RA up to 100% of its statutory income in a particular year of assessment if it could demonstrate that the level of process efficiency ratio exceeds the industrial average for the year. Companies that reinvest in the states of Perlis, Sabah, Sarawak, the Federal Territory of Labuan and designated areas in the Eastern Corridor of Peninsular Malaysia as well as companies that achieve a desired level of productivity as determined by the Minister of Finance will be allowed to utilise the allowance fully against statutory income.

To qualify for the allowance, the company must have been in operations for at least 36 months. Companies which are currently enjoying other incentives for example PS or ITA will not qualify for RA

The incentive period for RA is 15 consecutive years from the year of assessment the first Reinvestment Allowance is claimed or Year of Assessment 1998, whichever is the later. Unlike PS or ITA, this incentive does not require prior approval from any of the authorities. RA incentive cannot be claimed in the same basis period if a company is also enjoying PS or ITA incentives.

The RA given on a particular asset will be withdrawn and will be deemed as the statutory income in the basis period for the YA where the asset is disposed of at any time within 5 years from the date of acquisition of that asset. Further, RA is not allowed for an asset purchased by a company from a related company within the same group.



Real Property Gains Tax ("RPGT")

RPGT is a form of capital gains tax.

RPGT is charged on gains arising from the disposal of real property which is defined as:

- Any land situated in Malaysia and any interest, option or other right in or over such land; or
- Shares in a real property company (RPC).

A real property company (RPC) is a controlled company that owns or acquires real property or RPC shares with a defined value of not less than 75 percent of its total tangible assets.

With effective from 1 January 2010, a tax of 2% is to be withheld for real property gains tax purposes. The tax must be withheld by the acquirer of a chargeable asset and paid over to the Director General of Inland Revenue within 60 days of the disposal of the asset.

RPGT is imposed at the following rates:

Effective from 1 January 2014

Initial Allowance	Companies	Individuals (Citizens and Permanent Residents)	Individual (Non Residents)
Within 3 years	30%	30%	30%
In the 4th year	20%	20%	20%
In the 5th year	15%	15%	15%
In the 6th and subsequent years	5%	5%	5%

Prior to 1 January 2014

Initial Allowance	Companies / Individuals (Citizens & Permanent Residents) / Individuals (non-citizens)		
	1.1.2013 onwards	1.1.2012 onwards	1.1.2010 onwards
Up to 2 years	15%	10%	5%
Exceeding 2 years and up to 5 years	10%	5%	5%
Exceeding 5 years	0%	0%	0%

Stamp Duty

Stamp duty is chargeable on instruments and not on transactions. If a transaction can be effected without creating an instrument of transfer, no duty is payable.

Malaysia imposes stamp duty, which is payable by the buyer or transferee, on chargeable instruments. Some examples are provided as follows:

Transaction type	Value chargeable	Stamp duty rate (%)
Sale/transfer of properties (excluding stock, shares, or marketable securities)	Market value	1 to 3
Sale/transfer of stock, shares, or marketable securities	Consideration paid or market value, whichever is higher	0.3
Service/loan agreements	Value of services/loans	0.5

Transfer Pricing ("TP")

Section 140A of the ITA came into effect on 1 January 2009, introducing specific provisions to address transfer pricing issues, whereby the Director-General of Inland Revenue Board is empowered to make adjustments on transactions of goods or services between related companies, based on the arm's length principle.

Consequently, the Malaysian Inland Revenue Board ("MIRB") has issued the Transfer Pricing Rules 2012 which is effective retrospectively from 1 January 2009 and the revised Transfer Pricing Guidelines 2012 to give guidance on the arm's length standard that is acceptable to the MIRB. The TP Rules and Guidelines seek to provide guidance on the application of the law on controlled transactions, the acceptable methodologies as provided in the rules and administrative requirements including the types of records and documentation expected from tax payers involved in transfer pricing arrangements.

Thin Capitalization

From 1 January 2009, Section 140A of the ITA requires financial assistance between associated companies to be conducted at arm's length and empowers the DGIR to make adjustments where necessary. So far, no official debt-equity ratio has been provided by the MIRB as the effective date of implementation of thin capitalization rules has been further deferred to 31 December 2017.

Goods and Services Tax (GST)

A multi-stage, broad-based Goods and Service tax (GST) has been implemented by the Malaysian Government on 1 April 2015 to replace the existing single stage sales tax and service tax.

GST shall be levied and charged on the taxable supply of goods and services made in the course or furtherance of business in Malaysia by a taxable person. GST is also charged on the importation of goods and services. A taxable supply is a supply which is standard rated or zero rated. Exempt and out of scope supplies are not taxable supplies. GST is to be levied and charged at the rate of 6% on the value of the supply. GST can be levied and charged only of the business is registered under GST. A business is not liable to be registered of its annual turnover of taxable supplies does not reach the prescribed threshold, RM 500,000.

Employer's Tax Obligations

Where an individual exercises a Malaysian employment, his or her employer would be required to comply with the following:

- Submit an annual return of remuneration by the employer i.e.
 Form E which provides a summary of the salary paid and tax deducted in respect of their employees not later than 31 March in the year immediately following the relevant year of assessment;
- With effect from YA 2016, where the employer is a company, the return must be submitted by way of e-filing;
- The Statement of Remuneration from Employment i.e. Form EA must be prepared and rendered to the employee on or before the last day of February of the following year;
- Remit monthly tax deductions ("MTD") to the MIRB by the 15th of the following month for each employee, if applicable;

- To submit the notification of commencement of employment (i.e. Form CP 22) and the tax questionnaire (i.e. Form KL/R/173) not later than one month from the date of commencement of employment; and
- When an employee is ceasing employment and leaving the country, the employer has the obligation to notify the MIRB by submitting the notification of departure from the country (i.e. Form CP21) together with its original passport for verification in order to facilitate the tax clearance procedure for the employee. In addition, the employer is required to retain whatever amount of monies due to the employee, i.e. salary, allowances etc. until 90 days after the receipt of the notification for cessation of employment by the MIRB or when the employee obtains his tax clearance, whichever is earlier.



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This publication contains general information for general guidance only, and should not be construed as professional advice. You should consult a qualified professional adviser before making any business or investment decision or taking any action.



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