KC Chia & Noor
Chartered Accountants

A Guide for Doing Business in Malaysia 2016

A Guide for Doing Business in Malaysia
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“Twenty years from now you will be more disappointed by the things that you didn't do than by the ones you did do.

So throw off the bowlines.
Sail away from the safe harbor.
Catch the trade winds in your sails.
Explore, Dream and Discover!”

- H. Jackson Brown Jr., P.S. I Love You

Contents

Executive summary

Malaysia is a multi-ethnic, multi-cultural and multi-lingual society. It is a relatively open, state-oriented and newly industrialized market economy. Although the economy has traditionally been commodity based, services have gradually become the single largest component of its economic activity.

Malaysia today is one of the world's top locations for offshore manufacturing and service based operations as encouraged by the government's pro-business environment. Over 5,000 multinational corporations from more than 50 countries have invested in Malaysia and continued to show their support and confidence in the country's potential as an ideal investment location through their numerous expansions and diversifications over the years, particularly in high technology and knowledge-based projects.

Malaysia's political, social and economic stability, prudent and pragmatic investor friendly business policies, cost-productive workforce, a well developed infrastructure comparable to that of any western country and a host of other amenities that makes this country an enticing place for investors. Thanks to the strong regulatory environment, investors are assured of good protection in the summer. Once again, Malaysia ranks within the top five in the world in this category.

Foreign investments are welcomed especially in areas like manufacturing particularly in high end technology, solar technology, bio-technology industries and in the development of information technology through the establishment of the Multimedia Super Corridor.

Key points for foreign investors to consider when looking at Malaysia as an ideal place for investment include:

- Growth potential in the industrial and services sectors;
- Gateway to the ASEAN market and Muslim world;
- Easy accessibility – through air and sea;
- Youthful, productive and educated workforce;
- Attractive incentive package for foreign investors;
- Liberal, pragmatic and pro-business conducive government policies;
- Various flexible forms of business set-ups;
- Tax-free zones and growth corridors; and
- Labuan International Business and Financial Centre.

All of the above pertinent points are elaborated in this guide.

Foreword

Ideally located in the heart of South East Asia, Malaysia has long played an important role in international trade and has gained commercial significance due to its strategic position linking seaborne trade routes between the Indian Ocean and East Asia.

Today, the country continues to play a major role in international trade and business. The market-oriented economy and pro-business Government policies in Malaysia have made it one of the world's top investment destinations for offshore manufacturing and service based operations. To date, the country has attracted over 5,000 foreign multi-national corporations from more than 50 countries to invest and establish their operations in the country.

With a population of 30.3 million people, Malaysia is on the right track towards achieving its goal of becoming a developed country by 2020. A country that depended primarily on agriculture and primary commodities in the sixties, Malaysia has evolved to an export-driven economy spurred by high technology, knowledge-based and capital intensive industries. Last year, the country recorded a GDP growth of 6.0% in 2014 - one of the remarkable showings in the region and amongst emerging economies globally.

Malaysia with its key strengths as an ideal business destination has well-developed infrastructure, educated and cost-productive workforce, politically and socially stable, well developed legal and government administrative systems, vibrant business environment and a strategic location that linked to the proximity of the major Asian and Muslim world markets. It also has a diversified economy with almost 54% of GDP coming from the services sector which offers attractive incentive package for foreign investors. Thanks to the strong regulatory environment, investors are assured of good protection in the summer. Once again, Malaysia ranks within the top five in the world in this category.

KCN was incepted in 1985 and it has been in practice for more than 30 years since then it never looks back and has grown progressively in tandem with the development of the country. With our vast local experience and global connectivity through GGI, a leading global alliance of professional service firms, we are well positioned to assist in making the most of market opportunities here.

KCN is a full-fledged accounting firm offers a wide range of professional services ranging from accounting, audit and assurance, corporate secretarial, corporate finance, corporate recovery, management advisory, business consultancy, taxation compliance and advisory services for both local and foreign clients through a growing network of 3 branches nationwide that can help businesses tap into this fast-growing market.

This guide will offer you insightful information on doing business here. We look forward to helping you unlock potential opportunities in Malaysia.

KC Chia
Chairman
KCN Malaysia

30 October 2015

Introduction

Doing business

Malaysia is a dynamic country on the move. Often dubbed as the 'lucky country' because of its wealth of mineral resources and fertile soils, Malaysia did not rest on its laurels, but progressed from an economy dependent on agriculture and primary commodities in the sixties, with a spectacular transformation to become a manufacturing-based and export-driven economy spurred on by high technology, knowledge-based and capital-intensive industries.

Economic environment

Malaysia is one of the world's leading exporters of semiconductor devices, computer accessories, audio and video products and air conditioners and the country hopes to move-up the value chain and is currently focusing on attracting high-technology, high value-added, knowledge based and high skills intensive industries, incorporating activities such as design and development and research and development.

The last decade has seen a deepening and widening of Malaysia's industrial base, as well as the further development of its services sector. As such, a strong foundation has been laid for the economy to move forward into the new globalised business environment.

Accessibility

Malaysia is situated in the heart of Southeast Asia, bordered by Thailand in the north, Indonesia in the south and west, the Philippines in the east and Singapore in the south.

The Malaysian government had made considerable efforts and large investments in expanding its highways, railroads, seaports and airports. More recently, the government played an active role in encouraging development of modern modes of communications, such as satellite telecommunications, and the internet.

The major seaports in Malaysia are Klang, George Town, Penang, and Kuantan on the Peninsula, and Kota Kinabalu and Kuching in East Malaysia. During the last few decades, these ports were expanded to serve rapidly-growing Malaysian exports and imports.

Malaysia has also promoted development of aviation in order to serve growing tourism and business needs. The country has 32 airports with paved runways and 83 airports with unpaved runways. The largest of them is the US$3.2 billion state-of-the-art Kuala Lumpur International Airport (KLIA), which is capable of handling 25 million passengers and 1.2 million tons of cargo annually. Neighbouring the main terminal is Kuala Lumpur International Airport 2 (KLIA2) which is the largest low cost carrier terminal in the Southeast Asian region with a total area of 257,000 sq. meters catered up to 45m passengers annually.

Telecommunication services in Malaysia are up to international standards, thanks to an inflow of private investments and the government's initiatives in developing this sector.

Malaysia as a place to do business

The adverse circumstances arising from the financial crisis in both the U.S. and Europe had a contagion effect in Asia. Despite the adverse circumstances, Malaysia's gross domestic product (GDP) grew 6.0% in 2014 (2013 - 4.7%), supported by domestic demand and continued expansion in private and public consumptions. The economy is expected to record a positive growth in the forthcoming years as the Government is optimistic in weathering these challenges.

For 2015, Malaysia's ranking in the World Bank's Ease of Doing Business is improved to 18th (2014 - 20th) out of 189 territories. Malaysia is a natural choice for shared services in view of its low costs, particularly for modern infrastructure, pro-business conducive environment, and a high level of global integration.

The Malaysia's population is very young, with 29.6% below the age of 15 and just 5.5% of the population older than 64. The labour market conditions in Malaysia are favourable. While the unemployment rate remains low at 3.2%, total employment has reached 13.77 million in June 2015 (2014 - 13.88 million). Basic literacy among the labour workforce is high, and the workforce is youthful and trainable and the environment is generally strike-free. Both employers and employees do make contribution to the Employees Provident Fund.

Bahasa Malaysia or the Malaysia language is the official language. It is the language of administration for the federal and state governments. Correspondence from the government is in Bahasa Malaysia, although certain government departments will accept correspondence in English. English, taught as a second language in schools, is widely used and communicated in business circle.

Incentives for foreign investors

Foreign direct investment (FDI) inflows into Malaysia totaled RM35.1 billion in 2014 (2013 – RM38.3 billion). The FDI inflows have been slow due to the acute slowdown in most parts of the region as reflected by a gradual drop in the investors' confidence in Malaysia. The approved investments in manufacturing sector approximated RM71.9 billion in 2014 (2013 – RM52.1 billion). The FDI inflows into Malaysia are expected to remain slow this year and beyond.

In continuing to draw more FDI into the country, the Government has, since April 2009, announced a series of bold and significant liberalisation measures for the services sector including financial services, information and communication technology (ICT) and logistics sectors. Companies from various sectors including but not limited to the manufacturing, services, tourism, construction, trading, agriculture, medical and education may be eligible to apply for the types of tax, fiscal and non-fiscal incentives available for the respective sector.

It may be useful to note that the Malaysian Government, in trying to attract foreign direct investment, is amiable to also consider pre-package incentive, i.e. foreign investor's wish list for tax fiscal and non-fiscal incentives. Factors such as the size of investment, level of spin-off, employment opportunities, and technology transfer, whether of national and strategic importance will become the crucial factors for granting of such incentives.

Conducting business

Forms of business

In Malaysia, the most common form of businesses for foreign investors are limited liability companies, joint ventures, branches or setting up representative/ regional offices. Unincorporated joint ventures between two or more incorporated entities are common in civil construction and in large infrastructure projects.

The following details out the principal forms of business:

Company

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

a. Company limited by shares;
b. Company limited by guarantee;
c. Unlimited company.

In practical terms, almost all companies will be companies limited by shares, i.e. companies with limited liability, the maximum liability being limited to the value of share capital. Only a public company may offer shares or other securities to the public. Companies may be formed as either private or public companies.

- Public company: The public can subscribe for shares or debentures in the company or deposit money with the company. A public company must, before it allots shares or debentures, file with the Companies Commission of Malaysia (CCM) a prospectus in relation to its affairs, or a statement in lieu of prospectus if no public issue is made.

- Private company: This type of company limits the number of shareholders to between 2 and 50. There are also restrictions on the right to transfer its shares and a prohibition on any invitation to the public to subscribe for shares or debentures of the company. 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.

A private company qualifies as an exempt private company if it has no more than 20 shareholders, beneficial interest is not held by a corporation and if it is a solvent company. A local subsidiary of a foreign corporation therefore does not qualify.

An exempt private company is relieved of certain obligations under the Companies Act, such as the requirement to file annual accounts with the CCM, where they would be available for public inspection. Also, the prohibition of loans to directors and to companies connected with the directors, does not apply to an exempt private company.

Limited Liability Partnership (LLP)

Limited Liability Partnership is a new business vehicle introduced by the Companies Commission of Malaysia (CCM). It provides the public with more options to choose their business vehicle.
LLP is a hybrid between a company and a conventional partnership and LLP is governed by the Limited Liability Partnerships Act 2012. 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 body corporate may form a LLP for any lawful business in accordance with the terms of the LLP Agreement. A 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.

The requirements to form a LLP are:

i. application to be made to CCM to ascertain whether the proposed name of the LLP to be incorporated is acceptable and available;

ii. intended nature of business;

iii. a minimum of two partners (Section 6);

iv. a registered office within Malaysia (Section 18(1)); and

v. a compliance officer, who can be either one of the partners of the LLP or a person qualified to act as a company secretary under CA who:

  a. is a citizen or permanent resident of Malaysia; and

  b. ordinarily resides in Malaysia.

Accounting and Annual declaration

Accounting and other records are the responsibility of the LLP's partners. The LLP and partners must keep such accounting and other records so as to sufficiently explain the transactions and financial position of the LLP and enable preparation of financial statements showing a true and fair view of the state of affairs of the LLP.

Subject to terms and conditions of the LLP Agreement, the financial statements are not required to be audited. A LLP must lodge with CCM an annual declaration of solvency by at least two of the partners of the LLP within 90 days from financial year end of the LLP. The declaration may contain documents that require the LLP to disclose its revenue, profit, assets, liabilities and particulars of indebtedness.

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

Other conventional partnership or sole proprietorship

All sole proprietorships and other conventional partnerships are unincorporated and must be registered with the Registrar of Businesses also under the auspices of the CCM. As unincorporated entities, sole proprietorships and partnerships have unlimited liability. In the case of partnerships, partners are both jointly and severally liable for the debts and obligations of the partnerships.

Joint venture

Joint ventures are 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 is a company incorporated outside Malaysia. A foreign company desiring to establish a place of business or to carry on business within Malaysia, may establish a branch by filing the required returns to CCM. The establishment of a branch is not encouraged for a foreign company engaged in wholesale or retail trade.

Representative/ regional office

The representative office/ regional office does not undertake any commercial activities and only represents its head office/principal to undertake designated functions. The representative office's/ regional office's operation is completely funded from sources outside Malaysia.

The representative office/ regional office is not required to be incorporated under the Companies Act. The set-up of a representative/regional office requires the approval of the Malaysian Government.

- Representative office: An office of a foreign company/ organisation 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/ organisation that serves as the coordination centre for the company/organisation'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.

So far, the most common type of entity to conduct business in Malaysia is the private limited company (Sendirian Berhad or Sdn Bhd). Such a company can be wholly owned or set up with local participation. In most instances, foreign ownership of up to 100% is permissible, with the exception of certain areas in regulated industries such as oil and gas and logistics.

The main fees to be paid to CCM in respect of registering a company are as follows:

	RM
Reservation of a name	30
For registration of a company, fees range according to nominal share capital, e.g.	
Not exceeding RM400,000	1,000
Exceeds RM400,000 but does not exceed RM500,000	2,000
Exceeds RM500,000 but does not exceed RM1 million	5,000
Exceeds RM1 million but does not exceed RM5 million	8,000
Exceeds RM5 million but does not exceed RM10 million	10,000

The requirements to form a company are:

i. application to be made to CCM to ascertain whether the proposed name of the company to be incorporated is acceptable and available;

ii. a minimum of two subscribers to the shares of the company (Section 14 CA);

iii. a minimum of two directors (Section 122 CA); and

iv. a company secretary who can be either:

   a. an individual who is a member of a professional body prescribed by the Minister of Domestic Trade and Consumer Affairs; or

   b. an individual licensed by the CCM.

Annual return

Companies must hold an annual general meeting in each calendar year, not more than 15 months after the previous annual general meeting. A newly-incorporated company must hold its first annual general meeting within 18 months from its date of incorporation. Companies must lodge an annual return with CCM within one month of the date of the annual general meeting. Unless the company is an exempt private company, the audited financial statements together with directors' report must be lodged with the annual return.

The annual return contains the list of shareholders; a summary of the issued share capital; particulars of the directors, managers, secretary, and auditors; and certain other statutory information. This return must include a copy of the audited financial statements approved by the members in the latest annual general meeting.

Taxation

Corporation Income Tax

Concepts of income taxation

Malaysia operates under a Self-Assessment System (SAS) and income is taxed on a territorial basis. Income tax in Malaysia is imposed on income accruing in, or derived from Malaysia except for income of resident companies carrying on a business of air or sea transport, banking or insurance, which are taxed on a worldwide basis. Foreign-source income received in Malaysia is not taxable.

Income tax rates

Corporations are taxed at a rate of 24% (up to 2014 – 25%). A reduced rate of 19% (up to 2015 – 20%) on the first RM500,000 of chargeable income applies to resident companies with a paid-up share capital of RM2.5 million or below and is not controlled directly or indirectly by a related company which has a paid up capital exceeding RM2.5 million in respect of ordinary shares.

The tax assessment period coincides with the actual financial year and is assessed on a current-year basis. For example, for the financial year ended 31 December 2015, the tax assessment period is from 1 January 2015 to 31 December 2015.

Every company subject to tax is required to file an annual return of income with the Malaysian Inland Revenue Board (MIRB). Failure to file a return or to give notice of the liability to tax is a punishable offence.

The time limit for filing of the tax return is 7 months from the end of the financial year unless extended by the MIRB. Under the SAS, taxpayers are required to file a tax return and also to compute their own tax liabilities. It is not necessary to file audited statements of accounts together with the return.

Tax audits will be the key enforcement tool used by the MIRB to ensure that the SAS is strictly complied with to prevent any loss of revenue to the Government and to promote and increase awareness and voluntary compliance by taxpayers.

Profit distribution

From year of assessment (YA) 2008 onwards, the imputation system of taxation was replaced by a single-tier system of taxation which came into effect from 1 January 2008. Under this system, tax on a company's profits is a final tax and dividends are exempt in the hands of shareholders. Companies are no longer required to deduct tax at source from dividends distributed to shareholders. A transition period of 6 years 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 franking-credits as at 31 December 2013.

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 o 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.

Real property gains tax

Real property gains tax (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).

Disposals of chargeable assets between 1 April 2007 and 31 December 2009 are not subject to RPGT. From 1 January 2010, RPGT was re-introduced and the following rates have been imposed from 2010 onwards on gains arising from the disposals of chargeable assets made within or after 5 years of their acquisition.

RPGT rates for companies and individuals:

Duration of acquisition	1 Apr 2007 to 31 Dec 2009	1 Jan 2010 to 31 Dec 2011	1 Jan 2012 to 31 Dec 2012	1 Jan 2013 to 31 Dec 2013	1 Jan 2014 onwards		
					Individual	Company	Foreigner
Up to 2 years	0%	5%	10%	15%	30%	30%	30%
Exceeding 2 until 3 years	0%	5%	5%	10%	30%	30%	30%
Exceeding 3 until 4 years	0%	5%	5%	10%	20%	20%	30%
Exceeding 4 until 5 years	0%	5%	5%	10%	15%	15%	30%
Exceeding 5 years	0%	0%	0%	0%	0%	5%	5%

Losses

Business losses as adjusted for tax purposes can be utilised against income from all sources liable to income tax in the same basis period. Any excess business losses not utilised may be carried forward for set-off against future income from all business sources indefinitely.

Loss carry-back

Taxpayers can make an election to carry-back current year loss for deduction against income of the immediately preceding year subject to a maximum deduction of RM100,000. The election can be made for YA 2009 and YA 2010 only.

Group relief

From YA 2006, group relief is available for all locally incorporated resident companies provided that the conditions for eligibility are met.

A company that qualifies may surrender a maximum of 50% of its adjusted loss for a YA to one or more related companies. With effect from YA 2009, the maximum percentage of loss that can be surrendered is increased to 70%.

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 months) 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.

Capital allowances

Capital allowances (some rates of which are shown below) 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.

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

Annual allowances	Rate
Industrial building	3%
Computer and IT equipment	80%/10%*
Plant and machinery used for conservation of energy	20%
Heavy machinery and motor vehicles	20%
Plant and machinery	14%
Others	10%

* 10% applies for companies which have been granted certain incentive under the Promotion of Investments Act 1986

Tax incentives for foreign investors

There are a suite of tax incentives available in Malaysia including but not limited to the following:

- Pioneer status;
- Investment tax allowance;
- Special Reinvestment allowance (up to 2015-Reinvestment allowance);
- Infrastructure allowance;
- Tax-free allowances for export-oriented industries;
- Operational Headquarters (OHQ);
- Double deductions/ Special deductions;
- Pre-package incentives for approved business; and
- Import duty and sales tax exemption.

The extent of exemption under each type of tax incentive varies. For example, Companies that are granted with Pioneer status enjoy tax exemption up to 100% of their statutory income for a period of up to 10 years. ITA on the other hand, allows tax exemption up to 100% of their statutory income based on certain percentage of qualifying capital expenditure incurred by the companies. Certain companies which incurred qualifying expenditure can also avail for double deduction or special deduction as the case may be, to reduce their taxable income.

Companies from various sectors including but not limited to the manufacturing, services, tourism, construction, trading, agriculture and education may be eligible to apply for the types of incentives available for the respective sector.

It may be useful to note that the Malaysian Government, in trying to attract foreign direct investment, is amiable to consider pre-packaged incentives, i.e. foreign investors' wish list for tax, fiscal and non-fiscal incentives. Factors such as the size of investment, level of spin-off, employment opportunities, technology transfer, whether of national and strategic importance, will become the crucial factors for granting such incentives.

Special investment zones and economic growth corridors

The Government has also introduced various measures to facilitate economic growth, spur investments and bridge the rural-urban divide in the country. The measures include the implementation of:

- Growth corridors – Several growth corridors have been conceptualised and implemented to promote investments and development in certain promoted areas and activities/industries.

Major corridors include:

1. Multimedia Super Corridor (MSC): Designated cybercities and cybercentres;
2. Iskandar Malaysia: Southern Johor;
3. Northern Corridor Economic Region (NCER): Perlis, Kedah, Pahang and Northern Perak;
4. East Coast Economic Region (ECER): Kelantan, Terengganu, Pahang and Mersing district of Johor;
5. Sabah Development Corridor (SDC): Sabah; and
6. Sarawak Corridor of Renewable Energy (SCORE): Sarawak.

Apart from the incentives which are offered to various industries and approved activities under the Promotion of Investments Act 1986 and the Income Tax Act 1967, customised or special incentives have been modified for the purpose of each corridor.

These incentives are over and above the existing set of incentives offered by the Malaysian Government.

- Industrial park – Industries in Malaysia are mainly located in over 200 industrial estates or parks. State governments and private developers are continuously developing new sites which are fully equipped with infrastructure facilities such as roads, electricity and water supplies, and telecommunications.

Specialised parks have also been developed in Malaysia to cater for the needs of specific industries. Examples of these parks are:

1. Technology Park Malaysia (TPM) in Bukit Jalil, Kuala Lumpur: Among the world's most advanced and comprehensive centres for research and development by knowledge-based industries;
2. Kulim Hi-Tech Park in the northern state of Kedah: Caters to technology-intensive industries and research and development activities; and
3. Halal Parks: Communities of Halal-oriented businesses built on common property where they are provided with infrastructure and service support.

- Free Industrial Zones (FIZ) – There are 18 FIZs throughout the country. FIZs are export processing zones which have been developed to cater for the needs of export-oriented industries. Companies in FIZs are allowed to duty-free imports of raw materials, components, parts, machinery and equipment directly required in the manufacturing process. FIZ manufacturers are also exempted from the payment of sales tax, excise duty and service tax.

- Licensed Manufacturing Warehouse (LMW) – In areas where FIZs are not available, companies can set up LMWs which are accorded facilities similar to those enjoyed by establishments in FIZs.

Transfer pricing legislation

The basis for determining proper compensation is, almost universally, the arm's length principle which has also been accepted by the Malaysian tax authorities. The arm's length principle is incorporated into Section 140A of the Malaysian Income Tax Act, 1967 (ITA). It allows the DGIR to adjust any transfer prices between related parties in Malaysia which, in the view of the DGIR, do not meet the arm's length standard. What constitutes "arm's length" is not defined in the ITA.

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

To enhance transparency of tax treatment relating to transfer pricing and thin capitalization cases, a new provision was introduced effective from 1 January 2009, which empowers the DGIR to make adjustments on transactions of goods, services if the DGIR is of the opinion that the transactions were not entered into on an arm's length basis.

With regard to thin capitalization, the portion of the interest charge that relates to the amount of financial assistance which is excessive will be disallowed a deduction. This would cover cross border related party transactions as well as those involving domestic group of companies. However, the specific rules to be made under this provision have not been issued, and the effective date of implementation of thin capitalization rules has been further deferred to 31 December 2015.

Advance pricing arrangements (APA)

From 1 January 2009, companies are allowed to apply for APAs from the DGIR. The objective of establishing APAs is to provide an avenue for taxpayers to obtain certainty upfront that their related party transactions meet the arm's length standard. The MIRB has issued the APA Rules 2012 and APA Guidelines 2012 to give guidance on the procedures for and APA.

Withholding taxes

Withholding tax is imposed on income derived in Malaysia by non-residents and is restricted to certain specific payments.

The payments and the related withholding tax rates are as below:

	Rate
Dividends	Nil
Interest	15%
Royalty	10%
Technical fees	10%
Rental of moveable properties	10%
Contract payment (from 21 September 2002)	10% + 3%
Services performed by public entertainer	15%
Other income	10%

Note: 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.

Tax treaty networks

Malaysia has an extensive network of tax treaties including:

Albania, Australia, Austria, Bangladesh, Bahrain, Belgium, Brunei, Canada, Chile, China (P.R.C.), Croatia, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea (R.O.K.),Kuwait, Kyrgyz, Lebanon, Luxembourg, Republic of Laos, Malta, Mauritius, Mongolia, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Qatar, Romania, Russia, Saudi Arabia, San Marino, Seychelles, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Vietnam, Zimbabwe.

Malaysia also has limited tax treaties with Argentina (shipping and air transport), United States of America (shipping and air transport) and Taiwan (exemption orders).

Personal income tax

Basis of taxation in Malaysia

The tax year for an individual is the calendar year. Income is assessed on a current year basis. This means that income earned in 2015 will be assessed in the YA 2015. The SAS also applies to individuals.

Income is taxed in Malaysia on a territorial basis, i.e. income tax is chargeable on income accruing in or derived from Malaysia. With effect from YA 2004, income received in Malaysia from a source outside Malaysia by an individual, whether tax resident or non-tax resident, is exempt from tax.

The manner in which an individual is taxed is dependent on his tax residency status which is determined by the number of days that he is physically present in Malaysia

Taxation of residents and non-residents

A tax resident individual is subject to income tax at graduated rates between 0% and 28% after deducting personal tax reliefs. Various tax reliefs are available. A non-resident individual for tax purposes is not entitled to personal tax reliefs and is taxed at a flat rate of 28%.

Tax residence status of individuals

An individual is generally regarded as tax resident if he is:

- in Malaysia for at least 182 days in a calendar year;
- in Malaysia for a period of less than 182 days during the year (shorter period) but that period is linked to a period of physical presence of 182 or more 'consecutive' days in the following or preceding year (longer period). Temporary absence from Malaysia for certain specified reasons during the shorter or longer period are counted as part of the consecutive days, provided that the individual is in Malaysia before and after each temporary absence;
- in Malaysia for 90 days or more during the year and, in any three of the four immediately preceding years, he was in Malaysia for at least 90 days or was resident in Malaysia; or
- resident for the year immediately following that year and for each of the three immediately preceding years.

Exemption (short-term employees)

Income of a non-resident from employment in Malaysia is exempt:

- if the aggregate of the period or periods of employment in Malaysia does not exceed 60 days in a calendar year;
- for a continuous period (not exceeding 60 days) which overlaps two calendar years; or
- for a continuous period (not exceeding 60 days) which overlaps two successive years and for a period or periods which together with the continuous period do not exceed 60 days.

Self-assessment for individuals

Self-assessment for individuals was implemented from YA 2004. Under the SAS, the responsibility for correctly assessing a person's tax liability is transferred from the MIRB to the taxpayer.

The prescribed Form B/BE/M will be issued to individual taxpayers in the month of January or earlier and will be due for submission not later than 30 April (no business source) or 30 June (with business source) following the assessment year. The submission of the Form B/BE/M is deemed to be a notice of assessment for which tax is due and payable in the same date as the filling deadline.

Under the SAS, the MIRB monitors taxpayers' compliance with the law through tax audits.

Employer's tax obligations

Employers are required to comply with the following tax and reporting obligations:

- Submit an annual return of remuneration (i.e. Form E) which provides a summary of the salary paid and tax deducted in respect of employees no later than 31 March in the year immediately following the relevant year of assessment;
- the income certificate (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 10th of the following month, for each new employee, 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 no longer employed and leaving the country, the employer has the obligation to notify the MIRB 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 Malaysian tax authorities or when the employee obtains his tax clearance, whichever is earlier.

Goods and Service Tax (GST)

Effective from 1 April 2015, a multi-stage, broad-based Goods and Service tax has been implemented to replace the existing single stage sales tax and service tax.

GST is levied at the rate of 6% on all taxable supply of goods and services. Except for those specifically exempted or out-of-scope, GST is a multi-stage consumption tax charged on all taxable supplies of goods and services made in the course or furtherance of any business in Malaysia by a taxable person.

GST is also charged on importation of goods and services into Malaysia. All imported services acquired for the purpose of business except for those specifically exempted will be subject to GST.

Supplies made by the Federal and State Government departments are not within the scope of GST except for some services prescribed by the Minister of Finance and supplies made by the local authorities and statutory bodies in relation to regulatory and enforcement functions are not within the scope of GST.

Input tax is the GST incurred by a taxable person on business purchases for the purpose of making taxable supplies. Eligible businesses can claim the input tax credit incurred through input tax credit mechanism.

Taxable person / registration

A taxable person is a person who makes taxable supplies in Malaysia and whose annual turnover exceeds the threshold of RM500,000. Such person is required to be registered for GST as a registered person. A person who makes taxable supplies below the threshold are not required to register but may register on a voluntary basis.

Type of supplies

1. Standard rate supply
Standard rated supply means goods and services supplied by businesses that are subject to GST at the rate of 6%. All imported goods and services except those prescribed as zero rated and exempt will be subject to GST at the rate of 6%.

2. Zero-rated supply
Zero-rated supply means goods and services supplied by businesses which are subject to a GST tax rate of zero percent. GST paid on their inputs can be claimed as credits.

The list of zero rate supplies includes:

- **Food items**

- Live animals, animal products, vegetable products and some prepared food stuff. The approach by the government to identify products that will be zero rated is to use the Customs tariff codes for the items. The list includes a significant number of items covered under the Control of Supplies Act 1961.

- **Others goods**

- Goods supplies to Labuan, Langkawi and Tioman
- Goods supplied in connection with international shipping and air transport services
- Supply of treated water (unlimited) to domestic consumers
- First 300 units of electricity to domestic household
- Supply of raw materials and components for approved toll manufacturing scheme

- **Services** - Zero rated services will include:

- Services and replacement parts in connection with ships and aircraft (excluding private use)
- International transportation of passenger and goods
- Leasing of goods outside of Malaysia
- Services rendered in connection with goods or land outside Malaysia
- Services rendered to a person outside Malaysia
- Specified services provided in Malaysia to a person (in his business capacity) who belongs outside Malaysia

- Insurance relating to export of goods; services connected with the export of goods; insurance of risk outside Malaysia
- Telecommunication services provided to outside Malaysia
- Services supplied relating to co-location of computer servers in Malaysia belonging to a person outside Malaysia
- Advertising services made available outside Malaysia
- International mail services
- Qualifying inbound / outbound tour services
- Lease of air or sea containers

3. Exempt supply

Exempt supply means goods and services supplied by businesses that do not attract GST, but GST paid on their inputs cannot be claimed as credit. The goods and services to be treated as exempt supplies include:

- **Goods**

- Land and building used for residential, agricultural, burial and religious purposes.

- **Services**

- Financial services*:
  i. The operation of any current, deposit or savings account.
  ii. The provision of any loan, advance or credit or other similar facility.
  iii. The transfer of derivatives/securities
  iv. Unit trust transactions
  v. Life insurance
  vi. Islamic financial services will be given the same treatment as conventional financial services
  (* It is to be noted that any fee, commission, or similar charges associated with the above services will be treated as a taxable supply.)
- Education services
- Childcare services
- Healthcare services
- Rental of residential properties and accommodation (more than 28 days)
- Public transport
- Toll
- Funeral, burial, and cremation services
- Qualifying supplies by societies and associations

4. Special Schemes

- There are a suite of schemes available to alleviate the cash flows for GST payment, the input tax on the importation or supply of goods to the taxable persons under special schemes is suspended until the trigger point for GST is met. Such schemes include:
  (i) Approved trader scheme;
  (ii) Approved toll manufacturer scheme;
  (iii) Approved jeweler scheme; and
  (iv) Warehouse scheme.

- Tourist refund scheme - To encourage more tourists spending and promote Malaysia as a tourist shopping destination, a tourist is entitled to the GST refund for the goods purchased if he/she satisfies certain conditions.

- Flat rate scheme – To facilitate the purchases of agricultural goods from those unregistered farmers with low literacy, the taxable persons are allowed to treat the prescribed flat rate addition paid as their input tax.

5. Adjustments for Mixed Suppliers

Where the taxable person is undertaking mixed supplies inclusive of taxable supply and exempt supply, certain input tax is not directly attributable to either taxable supply or exempt supply is termed as “residual input tax”. Adjustments need to be made for GST purposes:

- Partial exemption - Input tax claimable is restricted to the proportion of the taxable supplies over total supplies (equivalent to the sum of taxable supplies and exempt supplies).

- De Minimis Rule – A taxable person is entitled to claim the entire input tax on exempt supplies if the amount of such supplies is not more than :
  (a) an average of RM5,000 per month; and
  (b) 5% of the total supplies in the particular taxable period.

- Annual adjustment – To even off the possible fluctuation of supplies and over deduction and under deduction of residual input tax from one taxable period to another over the whole tax year, an annual adjustment needs to be made to account for such difference in the pertinent GST return.

- Capital goods adjustment - To provide a fair and reasonable attribution of input tax to taxable supplies, adjustment is made for each financial year for changes in the proportion of taxable use of such capital goods over a period of time i.e. about 10 years for land and buildings and 5 years for other items.

Audit and Accountancy

Statutory requirements for companies incorporated under the Companies Act 1965

• Accounting and other records

Accounting and other records are the responsibility of the company's directors. The company directors must 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. Accounting records relating to operations outside Malaysia may be kept at a place outside Malaysia, provided statements and returns are sent to a place in Malaysia and are in sufficient detail to enable preparation of financial statements showing a true and fair view.

Accounting and other records are to be retained for seven years after the completion of the transactions or operations to which they relate.

• Financial statements

Directors must present financial statements of the company to the shareholders in a general meeting not later than 18 months after incorporation and, subsequently, at least once in every calendar year at intervals of not more than 15 months.

The financial statements must be prepared in accordance with the MASB approved accounting standards, the provisions of the Companies Act 1965 and audited by an approved auditor. The auditor's report shall state whether the financial statements have been properly drawn up so as to give a true and fair view of the company's affairs and in accordance with the MASB approved accounting standards and provisions of the Companies Act.

All amounts shown in the financial statements shall be presented in Malaysian currency.

Statutory requirements for foreign incorporated companies carrying on a business in Malaysia

• Accounting and other records

The requirements under the Companies Act 1965 for foreign companies carrying on a business in Malaysia in respect of accounting and other records and of audited financial statements are similar to those companies incorporated in Malaysia as stated above.

• Financial statements

The requirement of financial statements is similar to those companies incorporated in Malaysia. In addition, foreign incorporated companies that are publicly listed in Malaysia can also apply the acceptable international accounting standards issued by any of the following accounting standards issuing bodies:

i. International Accounting Standards Board (IASB);
ii. Financial Accounting Standards Board, United States of America;
iii. Accounting Standards Board, United Kingdom; or
iv. Australian Accounting Standards Board, Australia.

Financial Reporting Framework in Malaysia

The Malaysian Accounting Standards Board (MASB) approved accounting standards comprise:

i. Malaysian Financial Reporting Standards (MFRS); and
ii. Malaysian Private Entities Reporting Standards (MPERS) [2015 – Private Entities Reporting Standards (PERS)] .

Only private entities can apply the PERS. Private entities are defined as private companies incorporated under the Companies Act 1965 that:

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

MASB, the statutory body that issues MFRS to full convergence with IFRS by 1 January 2012, with the exception of entities that subject to the application of MFRS 141: Agriculture and/or IC Interpretation 15: Agreements for the Construction of Real Estate.

MPERS are almost similar to those Private Entities Reporting Standards (PERS) for SMEs issued or adopted by the International Accounting Standards Board (IASB) that have been adopted in Malaysia by MASB.

Audit requirements

Under the Companies Act, 1965, it is a requirement that every public or private limited company doing business in Malaysia appoints an approved company auditor for auditing its financial statements and reporting to the members of the company annually regardless of the size of the company.

Businesses which registered as a sole proprietor or partnership are not required by law to have their financial statements audited.

Approved standards on auditing

Approved standards on auditing in Malaysia are those International Standards on Auditing (ISA) issued or adopted by the International Auditing and Assurance Standards Board (IAASB) that have been adopted in Malaysia by MIA.

Auditors and their duties

A company's first auditors are usually appointed by the directors. Subsequently, except for appointments to fill casual vacancies, auditors are normally appointed by the shareholders at each annual general meeting to hold office until the end of the next annual general meeting.

To qualify for appointment, a person must be approved as an 'approved auditor' by the Minister of Finance. No auditor will be so approved if he is not a member of the Malaysian Institute of Accountants (MIA) and whose principal or only place of residence is not in Malaysia.

The auditors shall conduct their audit in accordance with approved standards on auditing in Malaysia.

Human Resources and Employment Law

The Employment Act, 1955 is the main legislation on labour matters in Malaysia*. Malaysia's business environment is generally strike-free. The Industrial Relations Department (IRD) continues to play an important role in maintaining a harmonious environment in the labour market, by helping to avert industrial action through active intervention, consultations as well as negotiations between parties. In the event of a dispute, the Industrial Relations Act provides for free negotiation between trade unions and employers on a voluntary basis. Disputes may be reported to the Ministry of Human Resources for conciliation and referred to the Industrial Court for settlement. Awards made by the Industrial Court are final and legally binding.

The Act prohibits strikes or lockouts after a dispute has been referred to the Industrial Court. Key employment law considerations are summarised below:

Paid maternity leave	90 days
Normal work hours	Not exceeding eight hours in one day or 48 hours in one week
Paid holiday	At least 10 gazetted public holidays (inclusive of four compulsory public holidays):- (i) National Day, (ii) Malaysia Day, (iii) Birthday of the Yang Dipertuan Agong, (iv) Birthday of Ruler or the Yang di-Pertua Negeri or Federal Territory Day (as the case may be), and (v) Labour day) in one calendar year and on any day declared as a public holiday under Section 8 of the Holidays Act 1951.
Minimum paid annual leave for employees:	
Less than two years of service	8 days
Two or more but less than 5 years of service	12 days
Five years or more of service	16 days
Minimum paid sick leave per calendar year:	
Less than two years of service	14 days
Two or more but less than five years of service	18 days
Five years or more of service	22 days
Where hospitalisation is necessary up to	60 days
Maternity leave	60 days
Payment for overtime work:	
Normal working days	One-and-a-half times the hourly rate of pay
Rest days	Two times the hourly rate of pay
Public holidays	Three times the hourly rate of pay

Recruitment of staff

Malaysia offers investors a young, educated and productive workforce at very competitive costs. Malaysia's literacy rates are high and school leavers entering the job market have at least 11 years of basic education. Malaysia has a young, educated and productive workforce. The unemployment rate for the year 2015 is forecasted at 3.2% (2014 – 3.1%).

Termination of employment

The notice of termination required under the Employment Act, 1955 is summarised below:

Experience	Written notice of termination
< 2 years	4 weeks
2 to 5 years	6 weeks
> 5 years	8 weeks

An employee may also be terminated on the grounds of proven gross misconduct and/ or absenteeism for more than 2 consecutive working days without reasonable excuse and without notification to the employer.

Unfair Dismissal

Industrial Relations Act 1967 provides protection to employees against unfair dismissals, i.e. dismissals without just cause or excuse by his/her employer.

The Industrial Court will hear, decide and hand down awards or remedies in cases related to unfair dismissals. The Industrial Court in awarding its decision can order reinstatement or award compensation in lieu of reinstatement plus salary arrears.

Unions

Omnibus or general workers' unions are not permitted, but unions belonging to the same industry may apply to form a federation of trade unions or become affiliated with the Malaysian Trade Unions Congress.

All trade unions are required by law to be registered with the Registrar of Trade Unions and must comply with the requirements of the Trade Unions Act. The Act sets out rules for the conduct of union business, such as the election of officers, strike ballots and the use of union funds.

Minimum wage

On 1 January 2013, Malaysia implemented a minimum wage policy thereby joining more than 150 other countries that already have minimum wage laws in place. The policy sets a minimum wage of RM900 per month for Peninsular Malaysia and RM800 per month for Sabah, Sarawak and the Federal

Territory of Labuan, covering both the local and foreign workforce (except for domestic workers such as domestic helpers and gardeners).

Retirement age

In accordance with the Minimum Retirement Age Act 2012 (MRA 2012) effective 1 July 2013, the minimum retirement age of an employee shall be upon the employee attaining the age of 60 years old.

Under the MRA 2012, early retirement before the minimum retirement age can be fixed by the employer with the consent of the employee as agreed in the contract of service or collective agreement.

Legal obligations

The Employees Provident Fund Act 1991 requires employers and employees to make monthly contributions to the Employees Provident Fund (EPF) to secure lump-sum payments to employees at the age of 55, or earlier in the case of incapacity, or upon permanent departure from Malaysia. Employees can also withdraw part of their EPF for the purpose of purchasing a residential house or for settling medical bills for specific illnesses.

* applicable in West Malaysia only and to employees with monthly wages not exceeding RM2,000 and those who are engaged in such employments as prescribed under the Act only

Immigration law

Before a foreign national is allowed to work in Malaysia, they must have a valid employment pass. The pass is obtained generally through an application submitted by a Malaysian company to the Immigration Department. Depending on the type of industry the application can take from two to six weeks to process.

It is therefore advisable for an application to be made prior to taking up your Malaysian assignment. The Malaysian Immigration authority also requires all Malaysian companies to fulfill the following minimum paid-up capital before an application for a work permit can be submitted:

Wholly local owned company: RM250,000.
Local and foreign owned company: RM350,000.
Wholly foreign owned company: RM500,000.

Generally, the following applicant’s documents must accompany the application:

- A copy of curriculum vitae (CV).
- Original certificates of the latest qualification(s) or photocopies of the original certificates duly endorsed by the issuing authority.
- A statutory declaration of the authenticity of the qualifications.
- A copy of employment contract with the Malaysian company that you will be attached to, which must have the following 5 components:
    1. effective date of commencement of work;
    2. monthly remuneration (which must be stated in Ringgit Malaysia);

3. the duration of employment;
4. the position that will be undertaken;
5. full name of the applicant (signed by the Malaysian company authorised representative and indication by the applicant that he/she has accepted the above terms.)

All applicants must earn a monthly salary of not less than RM5,000. The requirement for applicants to be at least 25 years of age was waived in early 2010.The minimum age (21 years of age) requirement for foreign applicants under contract with a multimedia super corridor (MSC) status company has also been waived.

The Malaysian Immigration Authority has also introduced a fast track approval route for applicants with monthly salary of RM8,000 or above. This application would take a maximum of three weeks to process and complete the whole process.

Employment passes are normally issued for an initial period of between two to three years and are subject to renewal. An employment period of less than 24 months would also now be granted with an employment pass without any levy.

The applicant's spouse and children below the age of 21 can apply for a dependant pass which is valid for the same period as the employment pass. Spouses of applicants, with professional qualifications will be allowed to work in Malaysia by obtaining an employment pass from the Immigration Department. Spouses of applicants holding dependant passes are allowed to work in Malaysia without converting the dependant pass provided an application for Permission to Work is submitted to the Malaysian Immigration Authorities by the Malaysian employer.

Children of employment pass holders under 18 years of age who are attending schools or an institution which is recognised by the government in Malaysia will have to apply for Permission to Study.

Trade

Free trade agreements

Malaysia has concluded several regional and bilateral free trade agreements and several more are still under negotiation. One of the key features of free trade agreements is the preferential tariff treatment accorded to member countries.

Currently, Malaysia has signed the following free trade agreements:
• Malaysia- Australia Free Trade Agreement;
• Malaysia- Chile Free Trade Agreement;
• Malaysia- India Free Trade Agreement;
• Malaysia- Japan Economic Partnering Agreement;
• Malaysia- Korea Free Trade Agreement;
• Malaysia- New Zealand Free Trade Agreement;
• Malaysia- Pakistan Closer Economic Partnership;
• Malaysia- Turkey Free Trade Agreement;
• ASEAN Free Trade Agreement;
• ASEAN- Australia-New Zealand Free Trade Agreement;
• ASEAN- China Free Trade Agreement;
• ASEAN- India Trade in Goods Agreement
• ASEAN- Korea Free Trade Agreement;
• ASEAN-Japan Comprehensive Economic Partnership;
• Trade Preferential System-Organisation of Islam Conference;
• Developing Eight (D8) Preferential Tariff Agreement;
• Trans-Pacific Partnership Agreement; and
• ASEAN-European Union Free Trade Agreement (under negotiation).

The preferential tariff treatment and the rules of origin may vary from one free trade agreement to another.

Customs Duty

Customs duty is levied under the Customs Act 1967 on dutiable goods imported into or exported from Malaysia.

• Import duties: Import duties are levied only on goods imported into the country and that are subject to import duties. The ad valorem rates of import duty may range from 2% to 60%. Raw materials, machinery, essential foodstuffs and pharmaceutical products are generally non-dutiable or subject to duties at lower rates.

However, beer and spirits are still levied at specific rates - beer at RM5 per litre and brandy at RM58 per litre.

• Export duties: Export duties are generally imposed on the country’s main commodities that are exported. The ad valorem rates of export duty range from 2.5% to 20%. Some of the commodities that attract export duty are crude petroleum oil (at 10%), rattan whole (at RM2,700 per kg), whilst export duty on crude palm oil is imposed based on scale rates.

Excise Duty

Excise duties are imposed on a selected range of goods manufactured and imported into Malaysia. Goods which are subject to excise duty include beer/stout, cider and perry, rice wine, mead, undenatured ethyl alcohol, brandy, whisky, rum and tafia, gin, cigarettes containing tobacco, motor vehicles, motorcycles, playing cards and mahjong tiles.

The main legislation relating to excise duty are the Excise Act 1976 and the Excise Regulations 1977. The rates of excise duty vary from 10% per litre and 15% for certain types of spirituous beverages, to as much as 125% for motorcars (depending on the engine capacity).

Labuan

Labuan, a Federal Territory of Malaysia, was established on 1 October 1990 as an international financial business centre to provide for the development of offshore activities in the areas of banking and insurance, trust and fund management, investment holding and other activities carried on by multinational companies.

In a rebranding exercise, the name was changed to Labuan International Business and Financial Centre (Labuan IBFC) in January 2008 to reflect the jurisdiction's growing international status. In the same year, a new entity, the Labuan IBFC Incorporated Sdn Bhd (Labuan IBFC Inc.), wholly owned by the Labuan Financial Services Authority, was established as the official agency for the promotion and marketing of Labuan as the premier international business and financial centre in Asia Pacific.

The Labuan Financial Services Authority (LFSA), formerly known as Labuan Offshore Financial Services Authority (LOFSA) is an agency established on 15 February 1996 under the Labuan Offshore Financial Services Authority Act 1996, to be the supervisory authority in charge of regulating and supervising the industry in Labuan. Their role includes drawing up plans for further growth and greater efficiency of the Labuan IBFC.

The objective of Labuan FSA is to act as a one-stop agency to implement the government's vision to develop Labuan as a premier IBFC by ensuring the highest level of integrity, commitment and professionalism.

The Labuan Companies Act 1990 (LCA) provides for the incorporation, registration and administration of Labuan and foreign Labuan companies in Labuan. Such companies will not come within the provisions of the principal Companies Act 1965, which governs companies operating in Malaysia domestically.

A Labuan company is one which is formed either through incorporation under the LCA or through registration under the LCA of a foreign company incorporated outside Malaysia as a foreign Labuan company.

The incorporation of a Labuan company would involve the following procedures:

• Appointment of a Labuan trust company as an agent for registration of the applicant.
The trust company must conduct its own due diligence on the prospective applicant;

• Application for reservation and approval of name;

• After reservation and approval of name, various documents must be lodged for registration including the memorandum and articles of association; and

• Payment of the incorporation fee depending on the value of nominal capital, as well as other administrative fees.

A Labuan company may be limited by shares, limited by guarantee or an unlimited company. There is no minimum capital requirement other than for Labuan companies formed to carry on the business of Labuan banking or Labuan insurance. Various classes of shares and different rights may be issued. A Labuan company has the power to issue different classes of shares valued in a currency other than Malaysian Ringgit.

A foreign Labuan company is not required to maintain its accounting and other records in Labuan. It must submit an annual return in the prescribed form once every calendar year, not later than 30 days prior to the anniversary of the date of registration.

With effect from 1 January 2009, a Labuan Holding Company is allowed to establish an operational and management office in Kuala Lumpur (co-location).

Approval must be obtained from the Labuan FSA before setting up the office, and is subject to conditions, including a requirement for the Labuan company to make an irrevocable election for it to be taxed under the Income Tax Act, 1967 instead of the Labuan Business Activity Tax Act, 1990. An annual fee of RM7,000 is charged upon approval, and for every subsequent year during which the approval is valid.

Generally, Labuan entities are accorded with a preferential tax treatment under the Labuan Business Activity Tax Act 1990 (LBATA) and subject to nil or low income tax (i.e. 3% of net audited profits or RM20,000) depending on the type of activity conducted in Labuan.

The preferential tax treatment under the LBATA is granted to Labuan entities conducting Labuan business activities in Labuan.

Labuan business activity is defined as a Labuan trading or Labuan non-trading activity carried on, in, from or through Labuan in a currency other than the Malaysian Ringgit by a Labuan entity with non-residents or another Labuan entity. Labuan trading activities include banking, insurance, trading, management, licensing, shipping operations or any other activities not considered as a Labuan non-trading activity. Labuan non-trading activities refer to the holding of investments in securities, stocks, shares, loans, deposits or any other by a Labuan entity on its behalf.

Exchange control

Remittances abroad

A resident is freely permitted:

• To make payments in Ringgit (to be converted when remitting abroad) to a non-resident for any purpose other than for international trade of goods and services or for investments abroad. Payment in Ringgit are however, permitted for international trade in goods and services provided the payments are made or receipts are received through the non-resident's foreign account;

• To make payment in foreign currency to a non-resident for any purpose and for settlement of import of goods and services;

• To make investments abroad in foreign currency assets, subject to the following:

– A resident, individual or company, without domestic Ringgit credit facilities is free to invest any amount abroad;

– Ability to invest any amount abroad from conversion of Ringgit up to RM50 million per annum (on corporate group basis) for corporations with domestic credit facilities. No limit if funded by own foreign funds maintained onshore or offshore;
– Ability to invest any amount abroad from conversion of Ringgit up to RM1 million per annum for individuals with domestic credit facilities. No limit if funded by own foreign currency funds maintained onshore or offshore; and

– A resident company that has met prudential requirements will be permitted to undertake any amount of direct investment abroad. Direct investments abroad are excluded from the prevailing limit of RM50 million equivalents on investment in foreign currency assets.

• To hedge with licensed onshore banks to buy or sell foreign currency against Ringgit or another foreign currency to make payment to non-resident for the purpose of:
– International trade in goods and services;
– Hedging foreign currency exposure of permitted investment abroad; and
– Committed capital inflow or outflow of funds.

Prior permission of the Controller of Foreign Exchange (Controller) is required:

– For a resident:

• To pay any amount in Ringgit to a non-resident for international trade in goods and services if settlement is not through the non-resident's foreign account;
• To make payment to a nonresident for any derivative products or futures not transacted at an exchange in Malaysia;
• To convert Ringgit into foreign currency exceeding RM50 million (for companies) and RM1 million (for individuals) per year for investment abroad. This applies to companies and individuals with domestic borrowings. Companies and individuals with no domestic borrowings are free to invest abroad; and

• To make payment in foreign currency to another resident, other than:

i. payments for education or employment overseas; or
ii. repayments of foreign currency credit facilities obtained from licensed banks or licensed merchant banks; or
iii. payments for futures denominated in foreign currency traded on the MDEX; or
iv. payments to purchase approved foreign currency investment products offered onshore; or
v. payments by all International Islamic banks, International Takaful Operators and International Currency Business Units of licensed onshore banks, takaful operators or retakaful operators for financial services rendered by resident intermediaries to these institutions;
vi. a resident company with export earnings is free to pay another resident company in foreign currency for settlement of goods and services. The foreign currency fund used for such settlements shall be sourced from the resident payer's foreign account;
vii. for payments to Israel;
viii. for a resident traveller to export Ringgit notes exceeding RM1,000 and foreign currency (including traveller's cheques) exceeding the equivalent of US$10,000; and
ix. for a non-resident traveller to export Ringgit notes exceeding RM1,000 and foreign currency exceeding the amount of foreign currency brought into Malaysia upon his leaving Malaysia, or US$10,000 whichever is higher.

Non-resident controlled companies

A non-resident controlled company (NRCC) means a corporation, company or branch operating in Malaysia, controlled directly or indirectly by non-residents.

A NRCC in Malaysia is permitted to:

• obtain any amount in Ringgit or foreign currency of short term trade financing; and
• obtain domestic credit facilities locally without having to seek specific permission from the Controller.

Purchase of immovable properties by non-residents

Non-residents may borrow domestically for financing properties used for productive (real) activities such as manufacturing.

Non-residents are permitted to borrow any amount of Ringgit credit facilities from residents (banks and non-banks) to finance the purchase or construction of any residential or commercial property in Malaysia (excluding financing for purchase of land only).

Borrowings in foreign currency

A resident company is free to:

• borrow any amount in foreign currency from its non-resident non-bank related companies, other resident companies within the same corporate group in Malaysia, resident associates and sister company and licensed onshore banks and licensed International Islamic Banks. However, where the non-resident non-bank related company is set up solely to obtain foreign currency loans from a non-resident financial institution, the amount of borrowing from the non-resident non-bank related company continues to be subject to the prevailing aggregate limit of RM100 million equivalents from non-residents;

• procure from non-resident suppliers, any amount of foreign currency supplier's credit for capital goods; Other borrowings by a resident company from other non-residents:
• a resident company is free to refinance outstanding approved borrowing in foreign currency (including principal and accrued interest); and
• up to RM100 million equivalent in aggregate by a resident company on a corporate group basis for other financing activities.

A resident individual is free to:
• to refinance outstanding approved borrowing in foreign currency (including principal and accrued interest); and
• up to RM10 million equivalent in aggregate for other financing activities.

Borrowings in Ringgit by a resident

A resident company is allowed to borrow in Ringgit, including the issuance of Ringgit-denominated redeemable preference shares or loan stocks:
• of any amount from its nonresident non-bank parent company to finance activities in the real sector in Malaysia; and
• up to RM1 million in aggregate from other non-resident non-bank companies or individuals for use in Malaysia.

A resident individual is allowed to borrow in Ringgit up to RM1 million in aggregate from non-resident, non-bank companies and individuals for use in Malaysia.

A resident company is free to borrow any amount in foreign currency and Ringgit from its resident and non-resident non-bank related companies.

Foreign currency accounts

In general, a resident (individual or company) is allowed to open foreign currency accounts with licensed onshore banks, Labuan offshore banks and overseas banks for any purpose.

A resident individual is allowed to maintain joint foreign currency accounts with another resident individual for any purpose.

As for a resident exporter, export proceeds must be credited into foreign currency accounts maintained with licensed onshore banks only.

There is no restriction on the maintenance of a foreign currency

A resident individual is free to open and maintain a joint foreign currency account with a non-resident individual who is an immediate family member.

Non-resident accounts

Non-residents may maintain any number of foreign accounts with any financial institution in Malaysia. Transfers of funds can be made between foreign accounts of the same account holder.

There is no restriction on the amount of Ringgit funds to be retained in the foreign accounts.

Sources of Ringgit funding the account can be from:

• proceeds from sale of foreign currency to a licensed onshore bank, Ringgit assets or goods and services to a resident;
• income earned in Malaysia, including salaries, wages, commissions, fees, rental, interest, profits or dividends;
• proceeds from drawdown or repayment of permitted Ringgit credit facilities;
• cash deposit of up to RM10,000 per day;
• deposits of cheques up to RM5,000 per cheque for any purpose;
• transfers from other external account(s) of the same account holder;
• transfers from external account and/or resident account of different account holders by way of automated teller machine or internet bank transfers not exceeding RM5,000 a day per bank.

Uses of funds in the account can be for the following purposes:

• purchase of foreign currency (excluding the currency of Israel) from licensed onshore banks;
• payment to a resident for own account for:
– *purchase of Ringgit assets;*
– *payment for goods and services;*
– *payment of administrative and statutory expenses incurred in Malaysia;*
– *settlement of a permitted Ringgit-denominated financial or non-financial guarantee;*
– *granting, servicing or repayment of any permitted Ringgit credit facility; and*
• payment to another non-resident for:
– *purchase of Ringgit assets;*
– *granting, servicing or repayment of any permitted Ringgit credit facility; and*
– *any amount of cash withdrawals.*

Ringgit funds in the External Account may be converted into foreign currency, repatriated or used in Malaysia for permitted purposes.

Payments between resident and non-resident individuals

Resident and non-resident individuals are free to make payments in Ringgit and foreign currency between:

• non-resident individuals who are immediate family members; and
• non-resident and resident individuals who are immediate family members.

Important note: Foreign exchange control regulations in Malaysia are subject to periodic updates. For latest regulations, kindly refer to Bank Negara Foreign Exchange Administration website.
http://www.bnm.gov.my/microsites/fxadmin/index.htm

Banking

Financial institutions that make up the banking system include commercial banks, investment banks and Islamic banks. They form the primary sources of financing to support economic activities in Malaysia. Bank Negara Malaysia (BNM) is the central bank and is responsible for supervising the banking system and the insurance industry. It also issues the Malaysian currency, acts as a banker and financial advisor to the government, administers foreign exchange control regulations, and is a lender of last resort to the banking system.

Comprehensive regulations govern the management and ownership of banks and finance institutions. The principal ones are the BNM Guidelines and the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983, which cover licensing, financial requirements (e.g. liquidity ratio, statutory reserve), duties, ownership, control and management of licensed institutions and restrictions on the business activities.

Subject to other conditions, the maximum permissible shareholding of an individual in a licensed local institution is 10%; maximum shareholding of a corporation is 20%. All acquisition or disposal of shareholdings of a licensed institution of 5% and above requires written approval from the Minister of Finance.

The Minister of Finance, on the recommendation of BNM may approve exceptions on maximum permissible holdings in the financial institutions.

Under the Banking and Financial Institutions Act 1989, no licensed institution can open any office in or outside Malaysia (to carry out banking business) without prior written consent of BNM. BNM has set the minimum capital fund requirement of domestic banks at RM2 billion.

There are also other financial intermediaries operating parallel to conventional banking institutions, which include Islamic banks, investment banks, offshore banks and specialised financial institutions.

Commercial banks are the main players in the banking system. In 1999, the BNM initiated a programme for the consolidation of the domestic banking sector. The objective is to create strong domestic banking groups that are able to meet the demands of adverse economic conditions as well as future challenges from globalisation and liberalisation.

Since then, the banking sector has been successfully consolidated to only 9 anchor banks. The anchor banking groups provide a wide range of financial services covering retail banking and financing, asset management, unit trusts, investment banking and even insurance services for some of the larger ones. In view of the challenging and competitive banking environment, the Government continues to encourage further consolidation of the banking sector.

Local financing

Sources of local financing available to business include the range of normal banking loans and facilities, as well as development finance, export credit, refinancing, Private Debt Securities (PDS) market and venture capital. Working capital financing is available through the commercial banking sector, while more specialised needs are usually met through the investment banking sector.

Loan availability to foreign investors

The rules for domestic borrowing by non-resident controlled companies are fully liberalised by removing the RM50 million limit and the 3:1 gearing ratio requirement.

Previously, borrowings of above RM50 million and 3:1 gearing ratio required the approval of the Bank Negara Malaysia.

Country overview

Capital city	Kuala Lumpur
Area and population	Area of 329,847 sq km and population of 30.3 million.
Languages	Bahasa Malaysia (official language), English and Mandarin are widely used in business circle.
Currency	Ringgit Malaysia (RM)
International dialing code	Country exit code + 6 + City area code + Number
Major stock exchange	Bursa Malaysia Securities Berhad (BMSB)
Political structure	A federation with 13 states (11 in peninsular Malaysia and 2 in Malaysian Borneo) and 3 federal territories. As a federation, the governance of the country is divided between the federal and the state governments.
Economic statistics	GDP for year 2014 was USD 326.9 million, with a growth rate of 6.0%.
National Holidays	Scheduled Public Holidays for 2016 *New Year's Day* - 1 January *Thaipusam* – 24 January *Chinese New Year* – 8 - 9 February *Labour Day* - 1 May *Wesak Day (Birth of Buddha)* - 21 May *Malaysian King's Birthday* – 4 June *Hari Raya Puasa (End of Ramadan)* - 6 - 7 July *Independence Day* - 31 August *Malaysia Day* - 16 September *Hari Raya Qurban (Feast of the Sacrifice)* – 12 September *Awal Muharram (Islamic New Year)* - 2 October *Deepavali or Diwali (Festival of Lights)* – 29 October *Mawlid al-Nabi (Birth of Prophet Muhammad)* – 12 December *Christmas Day* - 25 December

Useful Web Resources

Bank Negara Malaysia: **www.bnm.gov.my**
Securities Commission: **www.sc.com.my**
MIDA: **http://www.mida.gov.my**
World Intellectual Property Organization (WIPO): **www.wipo.int/**
LawNet : **www.lawnet.com.my**
E-Warta: **http://www.e-warta.com.my/**
MITI: **http://www.miti.gov.my/**
Companies Commission: **http://www.ssm.com.my/**
MyIPO: **http://www.myipo.gov.my/**

Business culture and etiquette

Face – A vital element of Malaysian culture, as with most Asian cultures, is the concept of face. In Malaysian society to 'lose face', that is to lose control of one's emotions or to show embarrassment in public, is perceived as a negative behaviour. Malaysians will use a number of methods in order to 'save face'. Laughter, for instance, is often used to mask one's true feelings and can reveal numerous emotions including nervousness, shyness or disapproval.

Saving face is particularly crucial in business contexts, as causing your Malaysian counterpart to lose face may influence the outcome of your future business dealings.

High context culture – In high context cultures such as Malaysia, meaning is often more explicit and less direct than in many Western cultures. This means that words are less important and greater attention must be given to additional forms of communication such as voice tone, body language, eye contact and facial expressions. In Malaysia, because business is personal and based on trust, developing relationships rather than exchanging facts and information is the main objective of communication.

Direct answers, particularly negative ones, are avoided in order to prevent disagreement and preserve harmony; two very important aspects of Malaysian culture.

Business attire – Dress styles in Malaysia range from the traditional to the very modern. To avoid offence, long sleeve shirt and tie for men should suffice for most business meetings. Women can wear pants or skirts, and it is not necessary to wear stockings. A jacket is often necessary for evening cocktails or other events.

Women should avoid showing too much flesh. If you choose to wear clothing which exposes your shoulders, wear a jacket or wrap and decide what is appropriate on arrival. When in doubt, check with your host in advance.

If you receive an invitation with the wording 'Long sleeve batik,' it refers to a men's silk shirt made from Malaysia's batik materials. The standard alternative is lounge suit (business wear or early evening for women) unless otherwise stipulated. If you want to make an impression, buy a batik – your hosts will love it and you will feel cool (in more than one sense)! However, understand that the batik is not daily business attire.

Forms of address – Malaysians are often very formal until they know you well. They will normally call you Mr. or Mrs. unless you insist otherwise. You may hear Malays being referred to in local terms:
Encik – Malay men (unmarried / married)
Tuan (Haji) – For Muslim men, if they carry a title of Haji, they are then addressed as 'Tuan Haji'
Tuan – If an individual is in a position of high authority, on official duty.
Cik/Puan – Malay women (unmarried / married)
(Tip: 'Cik' is pronounced Chik)

Deciphering Chinese, Indian and Malay names can be a challenge so check the appropriate form of address with the local agent or your host, or else ask the individual how they prefer to be addressed.

Note: Many prominent business people have also been given titles such as Tun, Tan Sri, Dato' or Datuk. In addressing them, one should always use these titles. Whether you use first name or surname with the honorific will vary depending on race. To be on the safe side, just call them by the title (e.g. Tan Sri or Dato') until you are sure what is appropriate.

Greeting / handshake – When meeting your Malaysian counterparts for the first time, a firm handshake is the standard form of greeting. However, you should only shake hands with a Malaysian businesswoman if she initiates the gesture. Otherwise a nod or a single bow is appropriate.

Business cards – Remember to bring plenty of business cards. Usage and exchange of business/name cards is standard in all business introductions in Malaysia. Cards should be handed over to another person with two hands and vice versa. Treat the card with dignity.

Eating with Malaysians – Malaysians are extremely hospitable. Food is a Malaysian pastime and a part of standard business. Accept a little bit of any food that is offered to you. If you are interested to eat Malaysian food but find that your host keeps 'treating' you to Western food, ask them if you can eat Malaysian – they will be relieved and complimented!

Malays are generally Muslim and follow a Halal diet. They do not eat pork or drink alcohol. Most Malaysian restaurants are Halal. Most Indians and some Chinese do not eat beef, and some are vegetarian. If you are arranging a set meal for a number of races, include lots of vegetables, chicken, lamb and fish (in place of pork and beef).

At many events, particularly official events, alcohol will not be served. The host (who has invited the guests) will normally pay.

Gifts – Gifts are not usually exchanged as they may be perceived as a bribe. However, in the event that you are presented with a gift, it is customary to accept it with both hands and wait until you have left your Malaysian counterparts before opening it. Be sure to reciprocate with a gift of equal value in order to avoid loss of face.

Communication style – Malaysians often communicate in an Eastern or cyclical style. Often it feels that they are taking a long time to get to the point. Malaysians avoid confrontation. Yes does not always mean yes.

- Avoid being too abrupt or direct.
- Slow down – remember they are often communicating in a second language.
- Be patient – you will get a better understanding of the situation if you avoid interrupting and driving your point. It takes practice and discipline but it's worth the effort!

There are many cultural rules that you will hear, such as: don't point with your index finger, don't touch people on the head, don't use your left hand, and don't cross your legs. Malaysians are a highly international race and do not expect you to know every nuance of their culture.

Malaysian business etiquette

- DO be patient with your Malaysian counterparts during business negotiations. The process is often a long and detailed one that should not be hastened.
- DO remain polite and demonstrate good etiquette at all times. Elderly Malaysian business people for example should be treated with respect and always acknowledged before younger members of the organisation. This is an essential part of achieving successful business dealings in Malaysia.
- DO take time to establish productive business relationships with your Malaysian colleagues. Initial meetings are generally orientated towards developing such relationships and will be maintained throughout and beyond the negotiations. Without them, your business plans may be fruitless.
- DON'T assume that a signed contract signifies a final agreement. It is common for negotiations to continue after a contract has been signed.
- DON'T be surprised if your Malaysian counterparts ask what you may consider to be personal questions. In Malaysia, asking people about their weight, income and marital status for example, is not uncommon and is viewed as an acceptable approach to initial conversations.
- DON'T enter into business with a Malaysian company without conducting due diligence about the company and its management.

KCN Malaysia

Overview

KC Chia & Noor (KCN), Chartered Accountants was locally incepted in 1985 and is a principal member of KCN Malaysia Group. KCN is a full-fledged accounting firm offers a wide range of professional services ranging from accounting, audit and assurance, corporate secretarial, corporate finance, corporate recovery, management advisory, business consultancy, taxation compliance to advisory services for both local and foreign clients through a growing network of 3 branches nationwide that can help businesses tap into this fast-growing market.

KCN is an independent member firm of GGI global alliance of professional firms. Through such alliance, KCN's ability to combine international expertise with in-depth local knowledge and experience place us in a unique position to serve customers' domestic and international needs.

Corporate Sustainability

For KCN, to be sustainable means managing our business for a long term. That means achieving sustainable profits for our partners, building long-lasting relationships with customers, valuing our highly committed employees and managing the social and environmental impact of our business. KCN has a longstanding commitment to protecting the environment and believes it is fundamental to a thriving society and sound economy - upon which business expands.

At KCN, we are committed to reduce the impact of climate change on people, forests, fresh water and environment, and accelerate the adoption of low-carbon policies by working with local communities, governments, businesses, environmental NGOs and our employees alike.

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GGI and Global disclaimer of liabilities

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