Unlock Malaysia

Your Pathway to Stimulus & Growth

2020

Exploring business opportunities in Malaysia

Representative office

Foreign companies may set up representative office (RO) to explore business opportunities in Malaysia or perform coordination activities for their parent company or head office. RO is not permitted to carry out any business activities during their presence in Malaysia.

The general types of activities that are permissible to be carried out by a RO are as follows:

- undertaking feasibility studies on business and investments opportunities in Malaysia and in the region;
- identifying suppliers for procurement sources for raw materials, components, products or liaising with consumers;
- acting as liaising office between head office, the manufacturers and consumers in the region;
- planning or coordination of business activities;

RO's proposed operating expenditures must be at least MYR300,000 annually and be fully funded outside Malaysia by their head office. Approval for setting up of RO is generally for a period of between 2 - 5 years.

RO is not subject to income tax in Malaysia. RO can have expatriates based in Malaysia and the number of expatriate posts given, depend on the functions and activities in Malaysia.

Incorporation

Foreign company set up in Malaysia

A foreign company can either set up a branch or a subsidiary company in Malaysia. There is not much difference between a foreign branch and a foreign subsidiary company as far as tax reporting and other statutory reporting requirements. Liability is one of the major concerns when deciding on whether to set up a foreign branch or foreign subsidiary company in Malaysia.

Foreign branch

A foreign branch is an extension of a foreign company in Malaysia. It has to use the same name as its parent company and engage in similar business activities as its parent company. The parent company will have to assume the liabilities and obligations of its Malaysian branch. A foreign branch cannot be engaged in wholesale or retail business.

A foreign branch is required to have a minimum of one individual resident in Malaysia to be the authorised agent to answer all matters that are required to be done by the foreign branch and be personally liable for all penalties that may be imposed on the branch for any contravention of the Companies Act 2016.

Foreign subsidiary company

A foreign subsidiary company is a separate legal entity from its parent company. A foreign subsidiary company is independent and can engage under its own name to carry out business activities in Malaysia. The foreign subsidiary company will have its own board of directors. The board of directors will be responsible for all business and financial affairs of the company and comply with the various statutory reporting requirements in Malaysia.

Incorporation of companies and secretarial services

Grant Thornton Malaysia PLT does not provide services relating to the incorporation of foreign branches or subsidiary companies in Malaysia. However, we work closely with an established secretarial company or other established legal firms to assist clients with such services.

Tax registrations and tax advice

Taxation of foreign branch and companies

Resident and non-resident companies (including foreign branches) are taxed only on income accruing in or derived from Malaysia. Resident companies engaged in banking, insurance, air transportation or shipping are taxable on their worldwide income. A company is resident for tax purposes in Malaysia if its management and control is exercised in Malaysia, the place of incorporation does not matter at all.

Foreign branch is subject to income tax at 24% (effective YA 2020). Resident company with paid-up ordinary share capital of not more than MYR2,500,000 and with annual sales of not more than RM50 million (SME) is taxed at a rate of 17% on its first MYR600,000 of chargeable income and the balance at 24%. This concessionary income tax rate is not applicable if the SME controls or is controlled directly or indirectly by another company that has a paid-up ordinary share capital of more than MYR2,500,000 or is otherwise related to another company that has a paid-up ordinary share capital of more than MYR2,500,000. Non-SME company is subject to tax at 24% of the chargeable income.

Withholding tax rates on income received by non-resident

Rates	%
Dividend	0
Interest	15
Royalty	10
Specified services and use of moveable property	10

Tax incentives

Resident companies may be eligible for tax incentives depending on the selected industries/sectors and promoted areas. Non-residents are not eligible for tax incentives. The types of tax incentives are Pioneer Status (PS), a profit-based tax incentive or Investment Tax Allowance (ITA), a capital expenditures-based tax incentive.

Double Treaties Agreements (DTAs)

Malaysia has concluded DTA with 76 countries. Malaysia has also entered into limited agreements with Argentina and the United States of America covering aircrafts and ship transportations.

Bumper Tax-Free Incentives for New/Additional Investments

COVID-19: Short term Economic Recovery Plan (PENJANA)

The Government has announced a MYR35 billion stimulus package and adopted a strategy comprising of six approaches (6R) – “Resolve, Resilience, Restart, Recovery, Revitalise and Reform” to revitalise the Malaysian economy due to the impact of the COVID-19.

Tax incentives for manufacturing

Manufacturing activities	Capital investment	Tax incentive	Application date	Commencement of operations
New investments	MYR300million to MYR500 million	0% tax rate for 10 years	Application received by Malaysia Industrial Development Authority (MIDA) from 1 July 2020 to 31 December 2021	Commence operations within 1 year from the date of approval and capital investment must be made within 3 years.
New investments	MYR500 million and above	0% tax rate for 15 years		
Existing company in Malaysia relocating their overseas manufacturing facilities in Malaysia	MYR300 million and above	100% ITA for 5 years		

Special Reinvestment Allowance (SRA)

SRA for manufacturing and selected agriculture activity, from year of assessment 2020 to year of assessment 2022

SRA of 60% be given on qualifying capital expenditure incurred on the reinvestment made from the year of assessment 2020 to year of assessment 2022.

The qualifying projects for manufacturing and selected agriculture activities are as provided in Schedule 7A of the Income Tax Act 1967.

Real Property Gains Tax

Real property gains tax

Real property gains tax is a form of capital gains tax levied on capital gains derived from disposals of real property located in Malaysia and shares in controlled companies with substantial real property interests. The tax applies to gains derived by both resident and non-resident companies.

The tax rates depending on period of ownership range from 30% to 10% as follows:

Date of Disposal	Real Property Gains Tax Rates (RPGT)		
	Companies Incorporated in Malaysia or a Trustee of a Trust	Individual (Citizen* / Permanent Resident)	Individual (Non-Citizen / Non-Permanent Resident or a Company Not Incorporated in Malaysia)
Within 3 years from date of acquisition	30%	30%	30%
In the 4th year	20%	20%	30%
In the 5th year	15%	15%	30%
In the 6th year and subsequent years	10%	5%	10%

Losses incurred on disposals of real property may be carried forward indefinitely to offset future real property gains. Losses incurred on disposal in real property companies are disregarded.

* RPGT exemption will be given to Malaysian citizens for disposal of residential properties from 1 June 2020 to 31 December 2021. This exemption is limited to disposal of 3 units of residential properties per individual.

Indirect Taxes

Goods and Services Tax (GST)

Sales Tax and Service Tax (SST)

Goods and Services Tax (GST) was abolished and replaced with Sales Tax and Service Tax (SST) effective 1 September 2018. Sales tax and service tax are two different taxes.

Sales tax

Sales tax is a single-stage tax, applied to sales of locally manufactured taxable goods as well as to taxable goods imported into Malaysia for domestic consumption.

All taxable goods manufactured in or imported into Malaysia are subject to sales tax, unless they are exempted. Sales tax does not apply to goods manufactured in, or exported into free zones, licensed warehouses, licensed manufacturing warehouses (LMW), Joint-Development Area (JDA), and the islands of Labuan, Langkawi, Tioman and Pangkor.

Sales tax is levied at 5%, 10% or a specific rate for petroleum products. Entities manufacturing taxable goods exceeding MYR500,000 thresholds for a 12-month period are required to register for sales tax. Voluntary registration is permitted with approval of the Royal Malaysian Customs Department (RMCD). Sales tax is also levied on importation of taxable goods upon the clearance of the taxable goods from customs. However, an importer of taxable goods would not be liable to register for sales tax merely because he imports taxable goods. There is no input tax recovery for sales tax.

Service tax

Service tax is a single-stage tax levied on selected prescribed taxable services. Service tax is charged on any provision of taxable service in the course or furtherance of business by a taxable person. The service tax at the current rate of 6% is levied on the value of taxable services rendered in Malaysia. The registration threshold for a 12-month period is MYR500,000 for most of the taxable services with exception to a few taxable services. Food and beverages establishments has a registration threshold of MYR1,500,000, while credit cards or charge cards issuers and services relating to clearing of goods from customs control have a nil threshold (i.e. registration required when such services are provided). Service tax is not chargeable on services where the subject matter is outside of Malaysia.

Effective from 1 January 2019, service tax is chargeable on taxable services imported by both service tax registered and non-registered persons. Voluntary registration is permitted subject to the approval of the RMCD. The recipient of imported taxable service is required to self-account and pay the service tax at the current rate of 6% based on the actual value of the imported taxable services. There is no input tax recovery for service tax.

Digital economy

Effective from 1 January 2020, service tax on digital services (SToDS) at the current rate of 6% shall be charged and levied by a foreign service provider (FRP) who provides digital services to consumers (individuals or businesses) in Malaysia. The FRP is liable to register for SToDS when the total value of digital services provided to consumers in Malaysia exceeds MYR500,000 in a period of 12 months. The total value of the digital services is computed based either on the historical or future method.

Transfer Pricing

Transfer pricing

The tax authorities have issued transfer pricing legislations and guidelines on intercompany transactions requiring companies to determine and apply an arm's length price. The transfer pricing rules also require the preparation of contemporaneous transfer pricing documentations (TPDs) to support the arm's length transactions.

The preparation of contemporaneous TPDs should be based on the latest reliable data that is reasonably available at the time of determination.

The Malaysian Transfer Pricing Guidelines (MTPGs) provide for de minimis rules and exceptions whereby taxpayers may opt for limited or minimum TPDs:

- gross income of less than MYR25 million; OR
- related party transactions of less than MYR15 million;

The MTPGs on financial assistance are only applicable if the financial assistance exceeds MYR50 million, otherwise, a limited or minimum TPD is required. The MTPGs do not apply to transactions involving financial institutions.

Effective 1 January 2019, the government has introduced the Earnings Stripping Rules (ESR) based on the principles under the OECD BEPS Action 4 Plan. The maximum amount of interest deduction allowed is 20% of Tax-EBITDA.

Malaysia introduced the Income Tax (Country-by-Country) (CbC) Rules 2016 and is effective from 1 January 2017. The CbCR applies to MNCs where:

- the consolidated revenue of the MNC Group is at least MYR3 billion in the financial year (FY) preceding the reporting FY;
- ultimate holding company is incorporated under the Companies Act (CA) 2016 or any written law and resident in Malaysia;
- its constituent entities are incorporated, registered under the CA 2016 or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia.

Transfer pricing (cont'd)

Ultimate holding company of an MNC Group that is resident in Malaysia shall file a CbCR to the Inland Revenue Board of Malaysia (IRBM) not later than 12 months after the last day of the reporting FY. Otherwise, a CbCR Notification is required by the fiscal year end of the Malaysian entity.

Labuan

Labuan Financial Services Authority (Labuan FSA)

Labuan Financial Services Authority (Labuan FSA) was established on 15 February 1996 under the Labuan Financial Services Authority Act 1996. Labuan FSA is the statutory body responsible for the development and administration of the Labuan International Business and Financial Centre (Labuan IBFC).

Labuan FSA's key role is to license and regulate licensed entities operating within Labuan IBFC and to ensure all such entities remain in compliance with the internal and international best standards adopted by the jurisdiction. Labuan FSA also develops policies for the orderly conduct of business and financial services in Labuan IBFC.

Labuan business activity means a Labuan trading or a Labuan non-trading activity carried out in Labuan. Labuan trading activities include banking, insurance, trust, fund management, commodity trading, management, leasing or any other activities which are not Labuan non-trading activities. Labuan non-trading activities relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf.

Labuan companies may transact business with Malaysian residents and hold shares, debt obligations or other securities in domestic companies. Labuan companies are subject to tax at a rate of 3% on their net audited profits derived from their Labuan trading activities (as defined).

As from 1 January 2019, Labuan companies to enjoy the preferential tax rate of 3%, they must have a minimum number of employees based in Labuan and a minimum amount of annual operating expenditure incurred in Labuan depending on the types of business activities.

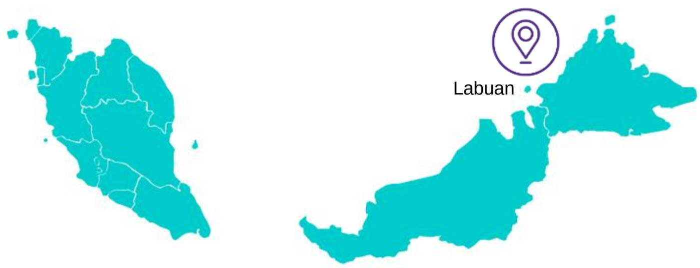
Labuan Financial Services Authority (Labuan FSA)(cont'd)

Effective from 1 January 2019, Malaysian residents making payment(s) to a Labuan company are not allowed full deductions. The amounts of payments not allowed are:

- interest payment – 25%*;
- lease rental – 25%*;
- other payments – 97%

** To be gazetted by way of statutory order*

Labuan companies can also make an irrevocable election to be taxed under the Income Tax Act, 1967 (Act). Labuan companies are generally exempt from the requirements to withhold tax on payments made to non-residents.



Immigration

Immigration

Foreigner wishing to enter Malaysia for employment needs to obtain an employment work permit.

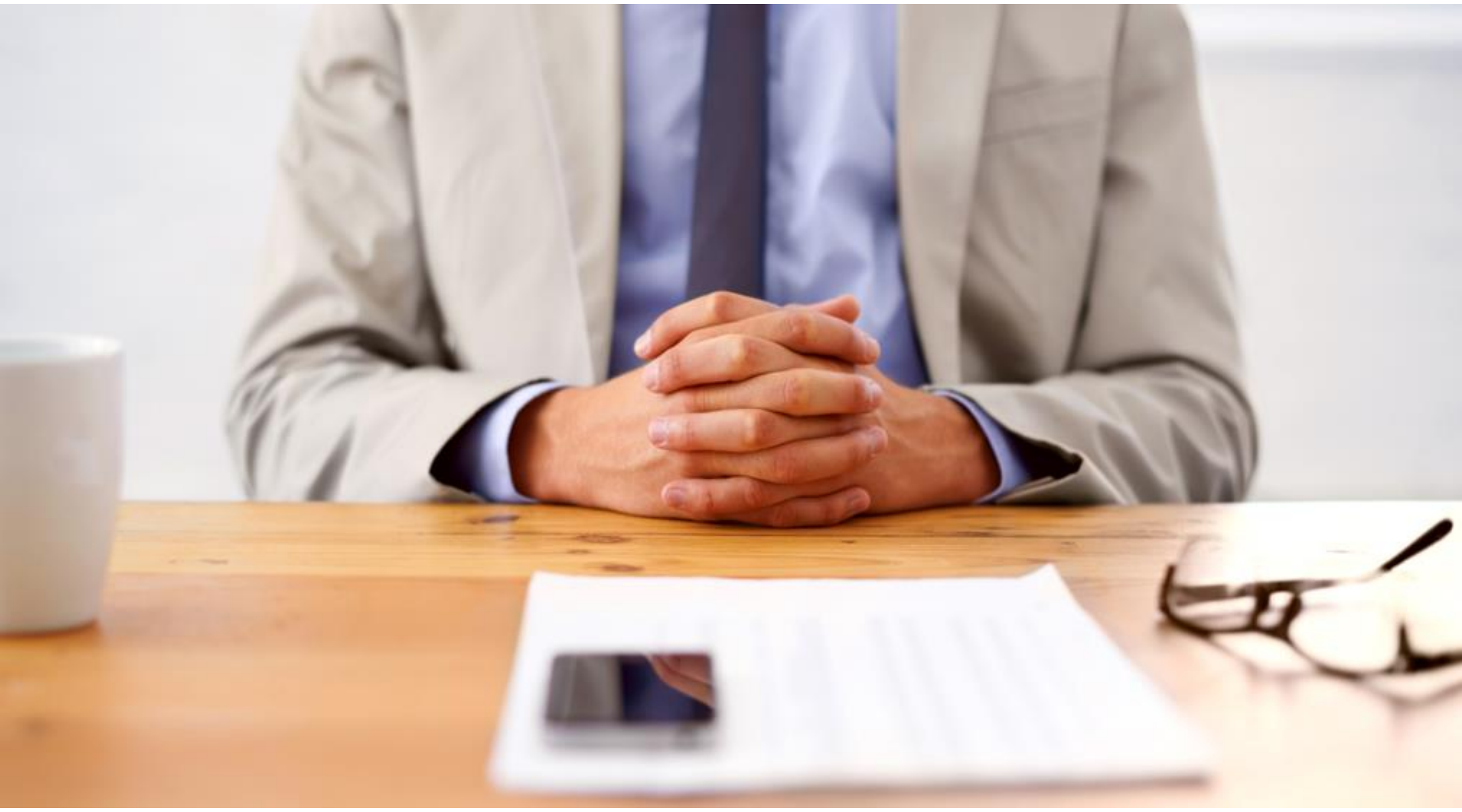
Professional Visit Pass

Foreigner who enters Malaysia for short-term assignment may apply for a Professional Visit Pass (PVP). A PVP is for the period of assignment and renewal up to a period of 12 months. No extensions are granted beyond the maximum duration allowed. The foreigner’s salary must be paid by an overseas company. A PVP holder will be issued with a Multiple Entry Visa (MEV) to enter Malaysia.

Employment Pass

Foreigner wishing to take up employment with a company in Malaysia is required to have an Employment Pass (EP). The EP is issued by the Immigration Department for MEV and valid for a period of between one to five years. EP is renewable subject to approval by the Immigration Department.

An EP is granted to a foreigner on a case-by-case basis for positions that require specialised skills or experiences not generally available in Malaysia.



Social security

Employees Provident Funds (EPF)

EPF is a statutory body that provides retirement savings for employees when they retired. It is a compulsory saving scheme for Malaysian employees. Both employer and employee contribute to the EPF.

The statutory contribution rate is either 23% or 24% of the employee's monthly wages. Employer contributes 12% if the employee's monthly wage is above MYR5,000 or 13% if the employee's monthly wage is below MYR5,000. Employee contributes at 11% deducted from his monthly wage.

Employer may increase their contribution up to 19% and the contribution is deductible for income tax purposes. Self-employed person may elect to voluntarily contribute to the EPF at a fixed monthly rate of any amount between MYR50 to MYR5,000. Foreign employee in Malaysia is not required to contribute to EPF, but may elect to contribute as their contribution is tax deductible subject to a maximum amount allowed by the IRBM. Foreign employee who opt to contribute to the EPF has a minimum employee's monthly contribution of 11% and their employer is only required to contribute MYR5 monthly, though the employer may contribute more.

EPF contributions and dividends credited in their accounts are not taxable when the contributor withdraws from the EPF. There are conditions set by the EPF as to when a contributor is allowed to withdraw. Generally, a contributor is allowed to withdraw their EPF contribution upon reaching 55 years of age or at an earlier time if the employee leaves Malaysia permanently with no intention of returning.

Social Security Organisation (SOCSO)

SOCSO provides protection to employees against employment injuries or invalidity. Employer and employee contribution to SOCSO are compulsory for Malaysian citizens. Contributions to SOCSO are capped at the wage ceiling of MYR4,000. Wage above MYR4,000 attracts no further contribution.

As from January 2018, Employment Insurance System (EIS) has been introduced to provide unemployed workers with financial aid and assist them in search for employment. Employer and employee are required to make monthly contributions of an equal amount to SOCSO per the schedule therein. EIS contribution is in addition to the SOCSO contribution mentioned above.

Effective 1 January 2019, employer who hire foreign workers have to contribute to SOCSO. The contribution rate is 1.25% of the insured monthly wages of the foreign workers (excluding domestic helpers) and to be paid by the employer.

Grant Thornton:
A truly global organisation

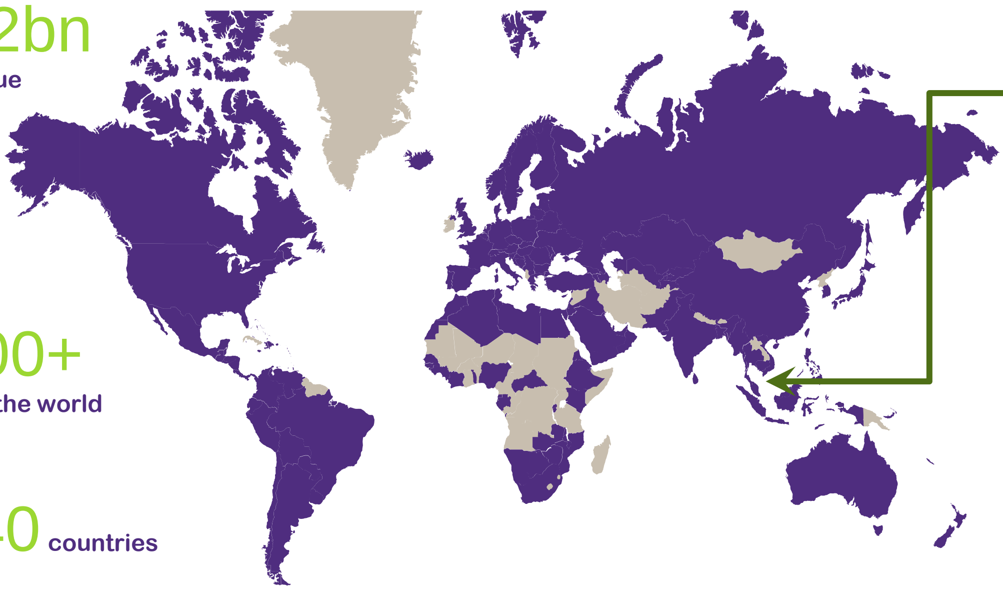
Grant Thornton is one of the world's leading organisations of independent assurance, tax and advisory firms. Wherever you choose to do business, you want access to people with the best ideas and critical thinking that will enable you to grow your business at home and abroad. To ensure continuity of service, we have 40 international business centres (IBC) led by experts from around the world, that work together to provide and co-ordinate the gateway to the resources of Grant Thornton.

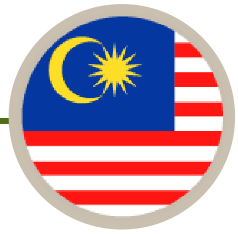
US$5.72bn
global revenue

700+
offices globally

56,000+
people around the world

in over 140 countries





4
Malaysia locations

800+
employees

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