Grant Thornton
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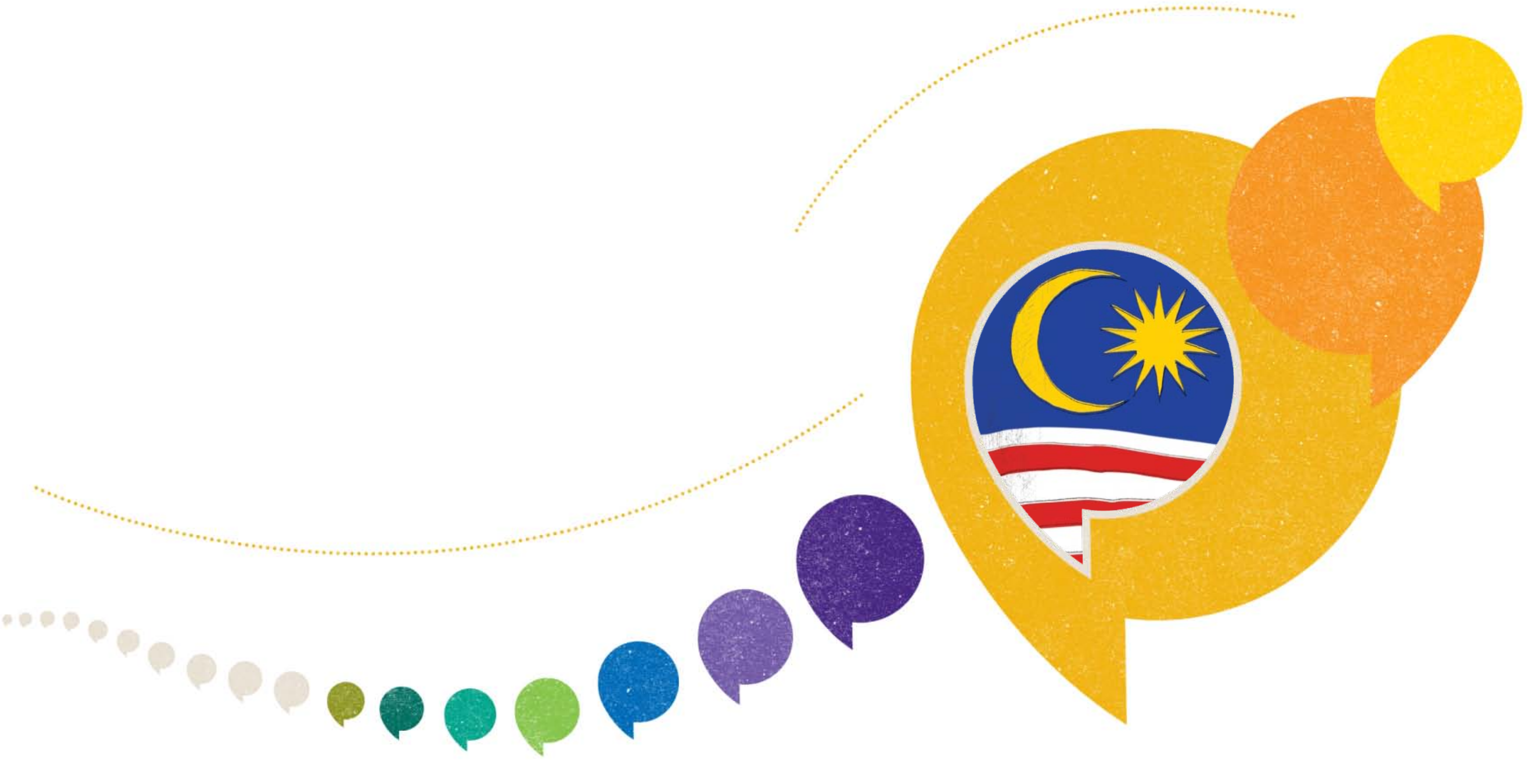
Doing business in Malaysia

2014



Content

Foreword

SJ Grant Thornton is the Malaysian member firm of Grant Thornton International Ltd and we have been established since 1974. With offices in Kuala Lumpur, Penang, Johor Bahru and Kuantan, we offer a full range of services to help clients of all sizes address the challenges and opportunities of growth.

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This guide has been prepared for the assistance of those interested in doing business in Malaysia. It does not cover the subject exhaustively but is intended to answer some of the important, broad questions that may arise. When specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Malaysia and to obtain appropriate accounting and legal advice. This guide contains only brief notes and includes legislation in force as of 31 March 2014.

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Country profile

Summary

Malaysia is bustling melting-pot of races and religions where Malays, Indians, Chinese and many other ethnic groups live together in peace and harmony. Our multiculturalism has made Malaysia a gastronomical paradise and home to colourful festivals of different races. Malaysians are warm and friendly and love welcoming guests who are from different parts of the world.

Geography and population

Malaysia is located in the Southeast Asia, with a land area of approximately 330,000 square kilometres (127,000 square miles) and is divided into 2 distinctive land masses – Peninsular Malaysia and East Malaysia. These two parts of Malaysia are separated by the South China Sea. Peninsular Malaysia borders Thailand to the North and is separated from Singapore to the South by the Straits of Johore. East Malaysia is part of Borneo and shares its borders with Brunei and Indonesia.

Both regions share a largely similar landscape, which features coastal plains rising to hills and mountains. Malaysia enjoys an equatorial climate, with warm sunshine interspersed with monsoon rains. The average daily temperature varies from 21˚C to 32˚C.

Peninsular Malaysia consists of 11 states – Perlis, Kedah, Pulau Pinang, Perak, Selangor, Negeri Sembilan, Melaka, Johor, Pahang, Terengganu, Kelantan and the Federal Territories of Kuala Lumpur and Putrajaya. On the island of Borneo are 2 states - Sabah and Sarawak, and the Federal Territory of Labuan off Sabah.

Malaysia is a multi-racial country with an estimated population of 29.9 million (Source: National Statistics Department, 2013). Malays who make up about 50.4% of the population are the predominant group with Chinese, Indians and other ethnic groups like Ibans, Dayaks, Kadazans and Dusuns and others making up the rest. Islam is the state religion but freedom of religion is guaranteed by the Constitution.

Political and legal system

Malaysia system of government comprises the federal, state and local government. Malaysia is thirteen states united and joined together within a constitutional monarchy using the British system and is categorized as a representative democracy.

Malaysia has 13 states and three federal territories - Kuala Lumpur, Putrajaya and Labuan, governed directly by the federal government of Malaysia. Kuala Lumpur is the Malaysian capital, while Putrajaya is Malaysia's administrative capital. Executive power is exercised by the federal government and the 13 state governments. Federal legislative power is vested in the federal parliament and the 13 state assemblies. The judiciary is independent of the executive and the legislature, though the executive maintains a certain level of influence in the appointment of judges to the courts.

Nine of the 13 states - Perlis, Kedah, Kelantan, Terengganu, Pahang, Selangor, Negeri Sembilan and Johor, have hereditary rulers, the Sultans who serve as constitutional heads of state. The remaining four states are headed by Yang Di-Pertua Negeri (governors) who are appointed for fixed terms of office to serve as constitutional heads of state.

Each state has its own written constitution and an elected legislative assembly. Each state government is led by a Mentri Besar (Chief Minister), who is appointed from among the members of the legislative assembly. The division of powers between the various state governments on the one hand and the federal government on the other is defined in the Federal Constitution, which provides for a parliamentary system of government, with a central federal government and a measure of autonomy for the 13 constituent states.

The federal government adopts the principle of separation powers and has three branches: executive, legislature and judiciary. The executive branch is more powerful than legislature, while judiciary is the weakest institution. The monarchy is head of the government in whole. There is also a committee of rulers that comprise the Sultans of nine states and four state governors.

The state governments in Malaysia also have their respective executive and legislative bodies. The judicial system in Malaysia is a federalized body operation uniformly throughout the country.

Executive: comprising the Prime Minister as the head of the government, and the various ministers of the Cabinet.

Executive power is vested in the cabinet led by the prime minister; the Malaysian constitution stipulates that the prime minister must be a member of the Lower House of parliament who, in the opinion of the Yang di-Pertuan Agong, commands a majority in parliament. The cabinet is chosen from among members of both houses of Parliament and is responsible to that body (Malaysian Consitution).

The Executive branch of the government formulates various socio-economic policies and developments plans, for the development of the country as a whole. The Executive has the power and authority to generate revenues through the collection of various taxes, levies, fines, summons, custom duties, and fees etc.

Legislature: The bicameral parliament consists of:

- the lower house called the Dewan Rakyat, literally the "Chamber of the People";
- the upper house, called the Dewan Negara, literally the "Chamber of the Nation".

The Parliament comprises the Dewan Rakyat (House of Representatives), which is a fully elected body of 222 members, and the Dewan Negara (Senate), which comprises 44 members appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. A member of the Dewan Rakyat who commands the confidence of the majority of the members may be appointed Prime Minister and may select cabinet ministers from among the members of the Dewan Rakyat and the Dewan Negara. In practice, the overwhelming majority of cabinet ministers are drawn from the Dewan Rakyat.

Judiciary: The highest court in the judicial system is the Federal Court, followed by the Court of Appeal, and 2 High Courts (one for Peninsular Malaysia, and the other for East Malaysia.) The subordinate courts in each of these jurisdictions include Sessions Courts, Magistrates' Courts, and Courts for Children. Malaysia also has a Special Court to hear cases brought by or against all Royalty.

State governments: Each state government in Malaysia has its own unicameral state legislative chamber (Dewan Undangan Negeri) whose members are elected from single-member constituencies. They are led by Menteri Besars or Chief Ministers (for states without hereditary rulers), who are state assembly members from the majority party in the state legislature. In each of the states with a hereditary ruler, the Menteri Besar is required to be a Malay, appointed by the Sultan upon the recommendation of the Prime Minister.

Local governments: The local government or local authority is the lowest level in the system of government in Malaysia, after the Federal and state governments. Unlike the federal and state governments, the local governments in Malaysia are not elected, but appointed by the state government after local council elections were suspended by the federal government in 1965. They are headed by a civil servant with the title of "Yang Di-Pertua" (President). Local government jurisdictions usually parallel district boundaries but in some places, the boundaries overlap with adjoining districts, especially in urbanized areas.

Legal system: The law of Malaysia is mainly based on the common law legal system. This was a direct result of the colonization of Malaya, Sarawak, and North Borneo by Britain between the early 19th century to 1960s. The Constitution of Malaysia, the supreme law of the land, theoretically sets out the legal framework and rights of Malaysian citizens.

Federal laws enacted by the Parliament of Malaysia apply throughout the country. There are also state laws enacted by the State Legislative Assemblies which applies to the particular state. The constitution of Malaysia also provides for a unique dual justice system:

- secular laws (criminal and civil); and
- syariah laws.

Articles 73-79 of the Federal Constitution specifies the subject in which the federal and state government may legislate:

- Parliament has the exclusive power to make laws over matters falling under the Federal List, e.g. citizenship, defence, internal security, civil and criminal law, finance, trade, commerce and industry, education, labor, and tourism;
- State Legislative Assemblies have legislative power over matters under the State List, e.g. land, local government, Syariah law and Syariah courts, State holidays and State public works.

Parliament and state legislatures share the power to make laws over matters under the Concurrent List, e.g. water supplies and housing, but Article 75 provides that in the event of conflict, Federal law will prevail over State law.

General elections: The Constitution of Malaysia requires that a general election be held at least once every 5 years. General elections in Malaysia exist at 2 levels:

- Federal level, for membership in the Dewan Rakyat, the lower house of Parliament; and
- State level, for membership in the various State Legislative Assemblies.

While, in theory, any State may dissolve its assembly independently of the Federal Parliament, the traditional practice is for most state assemblies to be dissolved at the same time as Parliament, with the sole exception of Sarawak.

Language

Bahasa Malaysia is the official and national language. It is the language of administration for the federal and state government. English, taught as a second language in schools, is widely used for business and in the tourist industry. Mandarin and Tamil are also familiar local languages, and are taught concurrently with Bahasa Malaysia and English in the education system.

Business hours/time zone

Malaysia is 8 hours ahead of Greenwich Mean Time (GMT).

All government offices are opened 5-days a week. In all states except the states of Kedah, Kelantan and Terengganu, offices are opened from Mondays to Fridays. Saturdays and Sundays are considered weekends and hence the offices are closed during these days. On top of that, the offices are also closed during the national public holidays and special state holidays. If the public holiday falls on a non-working day, the following day will be declared as a public holiday.

The typical operation hours of the offices here are:

Putrajaya and Kuala Lumpur: 8:00am to 5:30pm
Other States: 8:00am to 5:00pm
On Fridays, the lunch break is usually from 12:15pm-2:45pm to allow the Muslims to perform their prayers.

Kedah, Kelantan, Terengganu and Johor
In the states of Kedah, Kelantan, Terengganu and Johor the working days are from Sundays to Thursdays. Fridays and Saturdays are considered Weekends. The typical operation hours of the offices here are:

Sundays to Wednesdays : 8:00am to 4:45pm
Thursdays: 8:00am to 4:30pm

Banks Operation Hours
Banks also operates on a 5-day week basis. However, some banks in the shopping complexes or selected branches operate 6 days a week.

All States except Terengganu, Kelantan, Kedah and Johor
Mondays - Thursdays : 9:15am to 4:30pm
Fridays : 9:15am to 4:00pm
Saturdays - Sundays : Closed

Terengganu, Kelantan, Kedah and Johor
Sundays - Wednesdays : 9:15am to 4:30pm
Thursdays : 9:15am to 4:00pm
Fridays - Saturdays : Closed

Private offices generally run on a normal eight hours a day system, from 9 am to 5 pm, with some offices open for half day on Saturdays. Many large shopping complexes are open seven days a week between 10 am to 10 pm.

Public holidays

Public holidays are non-working days that are officially given by Malaysia's government to its' citizens.

In Malaysia they are normally in celebration of an historic event, a significant religious event or commemoration, or the birthdays of Kings, Sultans, or governors. Malaysia Day and National Independence Day are examples of public holidays that celebrate key historical events, while Hari Raya and Christmas are examples of holidays that days of religious significance.

Malaysia has one of the highest numbers of days off in the world, ranking number seven in the top ten countries after Thailand, Indonesia, India and Hong Kong. Fourteen of our holidays are national and celebrated across the nation, while some are also celebrated only in a few states or even in one state.

If a public holiday falls on a weekday (Monday to Friday) then that day becomes a non-working day and students and employees are generally not required to attend work or school (though many people in retail and other sectors still work on many of the public holidays, since shopping malls and many service still operate). **This applies for all states except Johor, Kedah, Kelantan and Terengganu, where the weekday starts on Sunday rather than Monday.**

If public holidays fall on a Saturday, then people who normally work on that day are entitled to a day off. If a public holiday falls on a Sunday, then a replacement is given the next day, on Monday. In this way, the number of days off each year because of public holidays remains basically the same, with no reduction in days-off because of public holidays falling on existing off-days.

National Holidays:
Birthday of Prophet Muhammad, Chinese New Year, Labour Day, Wesak Day, King's Birthday, Hari Raya Puasa, National Day, Malaysia Day, Hari Raya Haji, Deepavali*, Awal Muharam, Christmas.

Note: (*) except Sarawak

Economy

GDP growth – 4.7% (2013) (Source: Department of Statistics Malaysia)

Malaysia is a fast growing economy with liberal market policies aimed at promoting trade, entrepreneurship, industrial and economic development. Initiatives undertaken by the government and the private sector have always been investor-centric and business-friendly with the aim of encouraging market development. This has transformed Malaysia into one of the most dynamic business environments in South East Asia

Major economic activities in Malaysia includes manufacturing, export trade, services, tourism, commodities such as petroleum, palm oil, natural rubber and timber are Malaysia's economic activities. Information technology is also a growing industry

The major trading partners of Malaysia are United States, Singapore, Japan, People's Republic of China, Thailand, Hong Kong, South Korea Germany, and Indonesia.

Living standards

Malaysia has one of the highest standards of living in the region with all the modern infrastructure and facilities in place. The whole country is very well connected with up-to-date and modern road, rail, air and sea transportation systems. Public transport by buses, taxis, trains and planes are comfortable, efficient and relatively low in cost.

Regulatory environment

Summary

Malaysia has made major changes to its capital markets to boost foreign investments, cutting Bumiputera equity quotas for share offerings and in fund management firms while trimming the role of a powerful but conservative panel overseeing such investments.

Foreign ownership

Companies with foreign capital and foreign interests ("foreign interests") may purchase immovable property in Malaysia. Foreign interests are referring to people who are non-citizens and foreign companies as defined under Section 433A of the National Land Code 1965 and Section 4 of the Companies Act 1965.

All property acquisitions by foreign interest that do not require the approval of the Economic Planning Unit, Prime Minister's Department but fall under the purview of the relevant Ministries and/or Government Departments as follows:

(a) acquisition of commercial unit valued at RM1,000,000 and above;

(b) acquisition of agricultural land valued at RM1,000,000 and above or at least five (5) acres in area for the following purposes:

- (i) to undertake agricultural activities on a commercial scale using modern or high technology; or
- (ii) to undertake agro-tourism projects; or
- (iii) to undertake agricultural or agro-based industrial activities for the production of goods for export.

(c) acquisition of industrial land valued at RM1,000,000 and above; and

(d) transfer of property to a foreigner based on family ties is only allowed among immediate family members.

Acquisition of residential unit by foreign interest valued at RM1,000,000 and above. This acquisition, however, **does not** require the approval of the Economic Planning Unit, Prime Minister's Department but falls under the purview of the State Authorities.

Restrictions on foreign ownership

Foreign interest is **not allowed** to acquire:

1. Properties valued less than RM 1,000,000 per unit;

2. Residential units under the category of low and low-medium cost as determined by the State Authority;

3. Properties built on Malay reserved land; and
4. Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

(taken from Economic Planning Unit, Prime Minister's Department; effective 1 March 2014)

Conditions for Acquisition

Conditions for the acquisition of property are subject to equity and paid-up capital conditions as follows:

Equity Condition

Companies to have at least 30 percent Bumiputera interest shareholding;

Paid-Up Capital Conditions

Local company owned by local interest to have at least RM100,000 paid-up capital; and Local company owned by foreign interest to a have at least RM250,000 paid-up capital.

Exemptions

The transactions listed below are exempted from requiring the approval of the Economic Planning Unit, Prime Minister's Department:

1. Any acquisition of residential unit under the "Malaysia My Second Home" Programme;
2. Multimedia Super Corridor (MSC) status companies are allowed to acquire any property in the MSC area provided that the property is only used for their operational activities including as residence for their employees;
3. Acquisition of properties in the approved area in any regional development corridor by companies that have been granted the status by the local authority as determined by Government;
4. Acquisition of properties by a company that has obtained the endorsement from the Secretariat of the Malaysian International Islamic Financial Centre (MIFC);
5. Acquisition of residential units to be occupied as a hostel for company's employees. However, local companies owned by foreign interest are only allowed to acquire residential units valued at RM100,000 and above and this matter is under the jurisdiction of the relevant state authorities;
6. Transfer of property to a foreign interest pursuant to a will and court order;
7. Acquisition of industrial land by manufacturing company;
8. Acquisition of properties by Ministries and Government Departments (Federal and State), Ministry of Finance Incorporated, Menteri Besar Incorporated or Chief Minister Incorporated, State Secretary Incorporated and listed Government Linked Companies;
9. Acquisition of properties under the privatization projects, whether at the Federal or State

level, provided that it involves the companies that are the original signatories in the contracts for the privatized projects; and

10. Acquisition of properties by companies that have been granted the status of International Procurement Centers, Operational Headquarters, Representative Offices, Regional Offices, Labuan entities and Bio-Nexus or other special status by the Ministry of Finance, Ministry of International Trade and Industry and other ministries

11. Acquisition of residential unit for accommodation purpose by:
    (i) foreigner with expatriate status who is serving the Government; or
    (ii) foreigner with expatriate status who is serving non-government organization and receiving a minimum monthly salary of RM8,000, or
    (iii) Permanent Resident who holds a red Identity Card.

They are allowed to purchase only one residential unit valued at minimum RM250,000 (except in Kuala Lumpur, Johor Bahru and Penang) and the matter is under State Authorities jurisdiction.

Government approvals and registration

The Companies Commission of Malaysia (CCM) serves as an agent to the Government in collecting and enforcing payment of prescribed fees, regulate matters pertaining to the incorporation of companies and business registration, promote ethical conducts amongst directors, company secretaries, managers and personnel who are directly involved in the management of a company or business and carry out research on matters relating to corporations, companies and businesses.

Exchange control

The Exchange Control Act 1953, first enacted in Malaysia in 1953, confer powers, and impose duties and restrictions in relation to:

- gold, currency, payments, securities, and debts;
- import, export, transfer and settlement of property;

and for all purposes connected with the above. Bank Negara acts as an agent of the Government of Malaysia on exchange control matters and administers the Exchange Control Act 1953, jointly with the Governor as the Controller of Foreign Exchange.

The penalty for offences committed under the Exchange Control Act, 1953 is a fine of up to RM10,000 or a jail term not exceeding 3 years, or both.

Permitted Currency Limits

Effective 31 January 2012, a resident and non-resident are permitted to carry into and out of Malaysia, ringgit notes not exceeding USD 10,000 equivalent per person.

There is no limited for a resident and non-resident to carry into and out of Malaysia foreign currency notes and traveller's cheques but need to declare in Customs

Should you need to carry ringgit notes, in excess of the permitted limits, prior written permission must be obtained from the Exchange Control Department of Bank Negara Malaysia.

Incentives for Investments

In Malaysia, tax incentives, both direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990. These Acts cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors as well as R&D, training and environmental protection activities.

The direct tax incentives grant partial or total relief from income tax payment for a specified period, while indirect tax incentives are in the form of exemptions from import duty, sales tax and excise duty.

The major tax incentives for companies investing in the services sector are the Pioneer Status and the Investment Tax Allowance.

Eligibility for Pioneer Status and Investment Tax Allowance is based on certain priorities, including the level of value-added, technology used and industrial linkages. Eligible activities and products are termed as "promoted activities" or "promoted products".

(i) Pioneer Status

A company granted Pioneer Status enjoys a five year partial exemption from the payment of income tax. It pays tax on 30% of its statutory income*, with the exemption period commencing from its Production Day (defined as the day its production level reaches 30% of its capacity).

Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company.

** Statutory Income is derived after deducting revenue expenditure and capital allowances from the gross income.*

(ii) Investment Tax Allowance

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance (ITA). A company granted ITA is entitled to an allowance of 60% on its qualifying capital expenditure (factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date the first qualifying capital expenditure is incurred.

The company can offset this allowance against 70% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of its statutory income will be taxed at the prevailing company tax rate.

(iii) Incentives for the Services Sector

- Incentives for Tourism Industry
- Incentives for Mine Wellness City Developer, Manager and Operator
- Incentives for Environmental Management
- Incentives for Research and Development
- Incentives for Medical Devices Testing Laboratories

- Incentives for Training
- Incentives for Approved Service Projects
- Incentives for Integrated Logistics Services
- Incentives for Cold Chain Facilities
- Incentives for Gas and Radiation Sterilisation Services
- Incentives for Operational Headquarters
- Incentives for International Procurement Centres/Regional Distribution Centres
- Representative Offices and Regional Offices
- Incentives for Treasury Management Centre (TMC)
- Incentives for Providers of Industrial Design Services In Malaysia
- Incentives for Private and International Schools
- Other Related Incentives

Finance

Summary

Finance and Banking sector in Malaysia is regulated by Bank Negara Malaysia. Bank Negara Malaysia is the central bank of the country (established on 26 January 1959) under the Central Bank of Malaya Act 1958 (Revised – 1994). The Bank reports to the Minister of Finance, Malaysia and keeps the Minister informed of matters pertaining to monetary and financial sector policies.

The objectives of the Bank Negara Malaysia:

- To issue currency and keep reserves safeguarding the value of currency
- To act as a banker and financial adviser to the Government
- To promote monetary stability and a sound financial structure; and
- To influence the credit situation to the advantage of the country.

Banking system

The banking system, comprising commercial banks, investment banks, and Islamic banks, is the primary mobiliser of funds and the main source of financing to support economic activities in Malaysia. The non-bank financial intermediaries, comprising development financial institutions, provident and pension funds insurance companies, and takaful operators, complement the banking institutions in mobilising savings and meeting the financial needs of the economy.

Imports

Summary

Malaysian legal provision in importation and exportation are stipulated in the Malaysian Customs Act 1967 and Customs Regulations 1977. The main concept of legal provisions is to apply customs control procedures in importation and exportation

Importation means to bring or cause to be brought into Malaysia by land, sea or air.

Import restrictions

The following goods are absolutely prohibited from importation:

- Reproduction of any currency note, bank note, or coin which are currently been issued in any country
- Indecent printings, paintings, photographs, books, cards, lithographic, engravings, films, video tapes, laser discs, color slides, computer discs and any other media
- Any device which is intended to be prejudicial to the interest of Malaysia or unsuited with peace
- All genuses of Piranha fish
- Turtle eggs
- Cocoa pods, rambutans, pulasan, longan and nam nam fruits from Philippines and Indonesia
- Intoxicating liquors containing more than 3.46 milligrams per liter in any lead or any compound of copper
- Daggers and flick knives
- Broadcast receivers capable of receiving radio communication within the ranges (68-87) MHz and (108-174) MHz
- Sodium arsenate
- Cloth bearing the imprint or duplicate of any verses of the Quran
- Pen, pencil and other articles resembling syringes
- Poisonous chemical
- Lightning arresters containing radioactive material

Special permits are needed for the import of munitions, automobiles, chemicals, certain pharmaceuticals, plants, soil, tin ore and certain essential foodstuffs.

Illicit Drugs

The punishment for drug trafficking is death by hanging.

Import and export of illicit drugs (eg: morphine, heroine, candu, marijuana, etc.) are strictly prohibited. Prescribed drugs can only be imported into or exported from the country by virtue of a licence issued by the Ministry of Health, Malaysia.

Customs duties

In Malaysia, import duty is mostly imposed ad valorem although some specific duties are imposed on a number of items. Nevertheless, in line with trade liberalisation, import duties on a wide range of raw materials, components and machinery have been abolished, reduced or exempted.

Types of duty

All goods dutiable on import are subject to cutoms duty in accordance with the Customs Duties Order of 1996. The types of duties are as follows:

1. Import Duty
   The rate of import duty varies according to the type of goods imported. The rate applicable to each category of goods is indicated in Columns (4) and (5) of the "First Schedule to the Customs Duties Order of 1996."

2. Sales Tax
   Sales tax which is currently enforced is a single stage tax levied on certain imported and locally manufactured goods, either at the time of importation or at the time the goods are sold or otherwise disposed of by the manufacturer. It is not imposed on personal or professional services, sales of real property, or sales of intangible property. It is an ad valorem tax and current rates are as follows:

   (a) General rate on all goods (10%)

   (b) Rate on cigarette, liquor and alcoholic drink (15%)

   (c) Rate on fruits, certain food stuff and building materials (5%)

Goods exempted from sales tax are being listed in the Sales Tax (Exemption) Order 1988.

3. Export Duty
   Column 5 of the "First Schedule to the Customs Duties Order of 1988" indicates the rate of export duty applicable to a particular type of goods. The word nil in column (5) appearing against any type of goods in the first schedule denotes that no export duty is leviable on that particular type of goods.

4. Other
   Service Tax and Excise Duty; but these are domestic taxes.

Rates of Duty
The rates of duty vary according to the type of goods imported/exported.

Payment of duties
Payment of duties can be made at the prescribed offices of the Royal Customs Excise Malaysia (RCEM) during office hours after import/export declaration of goods has been approved by Customs. Duties can be paid in cash or by cheque guaranteed by banks.

Duty concessions
Royal Customs and Excise Malaysia provides concessional tariff rates for a wide range of goods in line with Malaysia's commitment arising from the bilateral and multilateral trade negotiations with other ASEAN members. Several goods originating from other ASEAN members are eligible for admission into Malaysia at preferential rate of duty. Importers who intend to claim a preferential rate of duty must submit at the time of lodging an import entry certificate of origin (Form D) issued by a proper authority of the exporting country.

Goods imported for use as raw material in certain industries (LMW) are exempted from payment of customs duty. Individual Manufacturers may be exempted from duty on certain goods imported as raw material by the Minister of Finance under the provision of Section 14 of the Customs Act 1967. Under the Customs Duties (Exemption) Order 1980, certain goods (subject to specific rules and conditions) are exempted from payment of duty. A bona fide traveller or tourist may bring into Malaysia, without payment of customs duty personal goods and personal effect in reasonable quantities subject to specific conditions. In addition, a Malaysian who has stayed abroad or foreign nationals, who have been granted permission to take up residence in Malaysia are permitted to import used household effects duty free, subject to specific conditions.

Goods Exempted from Payment of Duty
Customs Duty Exemption is given to all raw materials/components used directly in the manufacture of approved products for export. This includes packaging materials and casings. This exemption is granted by the Minister of Finance under Section 14(2) of the Customs Act 1967 subject to certain condition.

Under the Customs Duties (Exemption) Order 1988, and Sales Tax (exemption) Order 1980 duty exemption may be granted on prescribed goods to entitled persons or organisations subject to specific rules and conditions.

Duty Free Entitlement for Bona Fide Travellers
Persons entitled to exempt are:

- Bona fide travellers, tourists or any other person entering Malaysia

- Foreign travel writers and journalists

The exemptions are given subject to the following conditions:
That the goods are imported on or with the person or in the baggage of the importer and that the importer satisfies the proper officer of customs.

Business entities

Summary

Malaysia offers excellent opportunities and incentives to foreign investors particularly in those encouraged industries. Foreign company means a corporation, society, association or other body incorporated outside Malaysia which under the law of its place of origin may sue and be sued. A foreign company cannot carry on business in Malaysia unless it incorporates a local company or register the foreign branch in Malaysia.

Companies

There are generally three types of companies operating in Malaysia: companies limited by shares; companies limited by guarantee; and foreign branches.

There are three different types of business entities in Malaysia.

1. Sole Proprietorship (also known as Sole Trader)
2. Partnership business entity
3. Limited Company (SDN. BHD. or Sendirian Berhad or BHD. or Berhad)

Sole proprietorships

These are basically one-owner businesses. Before commencement of a business under a sole proprietorship, an interested person must seek registration with the Registrar of Business under the Registration of Business Ordinance 1965. (not available to foreign investors)

Partnerships

These are business concerns consisting of not less than two and not more than 20 partners. Registration must be formalised at the Registrar of Business also under the Registration of Business Ordinance 1965. (not available to foreigners unless in very specific professional capacity e.g solicitors etc.)

Limited Company (SDN BHD or BHD)

Sendirian Berhad (SDN BHD) is a private limited company, where it prohibits any invitation to the public to subscribe to any of its shares, deposit money with the company for investment or subscription. Minimum members in a private limited company is two and maximum is fifty.

Berhad (BHD) is a public limited company where its shares can be offered to the public for fixed periods and any other forms of subscription. The minimum amount of members' (shareholders) are two and maximum of unlimited amount of members.

There are three (3) types of limited companies in Malaysia:

1. Limited by Shares
2. Limited by Guarantee
3. Unlimited company with/without share capital

Companies Limited by Shares

Liability of members' contribution to this company is limited to the amount specified on their unpaid shares. Should the company becomes insolvent or goes into liquidation, members are not obligated to pay off the company's debts if and unless any one of the members gives a personal guarantee.

Also, members' personal assets, employment and personal income are not liable to any of the company's debts. This type of business entity is the most common one in Malaysia.

Companies Limited by Guarantee

In a limited company's Memorandum and Articles of Association, members' liability is limited to the amount they 'guarantee' or undertake during winding up – In which the amount is specified in the Memorandum, agreed and signed by all members.

In many cases, companies limited by guarantee are often registered by non-profit organizations, public societies and clubs.

Unlimited Companies

A company is defined as an unlimited if its memorandum or articles of association provide that the liability of its members shall be unlimited.

Foreign Companies

Foreigners (non-Malaysian residents) are allowed to register a private limited company in Malaysia, so long as TWO (2) of the company's directors are principally resided in Malaysia.

Foreign companies are companies ALREADY incorporated (formed) outside of Malaysia but set up its business premises and operations in Malaysia. There are two ways to go about being a 'foreign company' in Malaysia:

1. Register a branch in Malaysia, or;
2. Incorporate a local company (see "Requirements" below)

<u>Requirements for registration of a Foreign Branch</u>

The registration process and documents to be filled in (with payable fees) are as common:

1. A certified copy of the certificate of incorporation OR registration from its country of registration.

2. A certified copy of the company's memorandum and articles of association, charter, statute defining its constitution.

3. A list of all directors in the company (foreign and local) and list of their powers.

4. A memorandum of appointment or power of attorney under the seal of the foreign company wanting to incorporate in Malaysia to authorize a Malaysian resident to accept on behalf of the company its service of processed and noticed required to be served on the company.

5. A statutory declaration made by the agent of a company (you can get an authorized local Malaysian company secretary here)

6. Registration fees.

Foreign Company's Local Agent

Companies in Malaysia are governed under Malaysia's Companies Act of 1965. The agent's duties and responsibilities include ensuring the company is performing all corrective acts and requirements stated by the Companies Commission of Malaysia (or referred to as CCM and/or SSM).

Requirements for incorporating a company

All businesses must first seek approval and be registered with the Companies Commission of Malaysia (CCM). Only after this and on receipt of the certificate of incorporation can a company commence operations. All companies in Malaysia are governed by the Companies Act 1965. Companies limited by shares are the most popular and preferred vehicle as they are legal entities.

Restriction of companies

The most important criterion for the setting up of a company is local participation. All companies must have at least two directors who are principally residing in Malaysia. The minimum authorised capital is RM100,000.

Fees

Fees are payable to the CCM for incorporation of companies and submission of forms and returns. The amount involved is dependent on the value of the authorised capital and the type of form lodged.

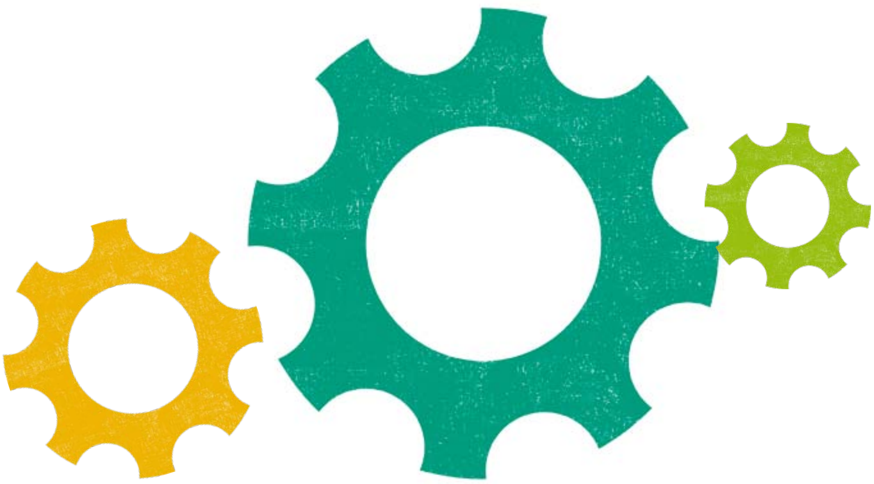
Foreign companies

Foreign branch companies must be formally registered with the CCM before commencing business in Malaysia. They are allowed to engage in a wide range of businesses in Malaysia except some and in some instances approval must first be obtained from the Domestic Trade Division, Ministry of International Trade and Industry.

Foreign branch is not permissible for trading in nature.

Sole Proprietorship/Partnership

Only Malaysians or foreigners who are permanent residents in Malaysia may register a sole proprietorship or a partnership.



Labour

Summary

Malaysia's important resource lies in its youthful labour force which is diligent, disciplined, educated and readily trainable. Though labour cost in Malaysia is low relative to the industrialised countries, labour productivity and quality standards are high.

Wages

Workers covered under the Employment Act 1955 are all workers whose earnings do not exceed RM2,000.00 a month and all manual workers irrespective of their earnings. If you are a foreign worker legally employed in this country, you are also covered under the Employment Act 1955.

Employees earning more than RM2,000 but not exceeding RM5,000 may use the enforcement provisions of the Employment Act to enforce monetary claims under their contracts. This is applicable to West Malaysia only. The Sabah and Sarawak Labour Ordinances cover certain types of employees who have entered into or work under a contract of service with their employers. The ordinances include foreign workers of these specified occupations. Where the persons are not covered by the Employment Act and the ordinances, common law relating to employment will apply to them.

The Minimum Wages Order 2012 commenced on 1 January 2013 for employers with more than five employees, and on 1 July 2013 for employers with five or fewer employees. Meanwhile, SMEs will pay their foreign employees minimum wages beginning 1 January 2014. Minimum Wages Policy has raised the basic wages of all employees to a minimum of RM900 in Peninsular Malaysia and RM800 in Sabah, Sarawak and Labuan respectively.

Social Security

The Employee Provident Fund is a social security institution formed according to the Laws of Malaysia, Employees Provident Fund Act 1991 (Act 452) which provides retirement benefits for members through management of their savings in an efficient and reliable manner. Members of this fund are Private and Non-Pensionable Public Sector employees.

Mandatory contribution

	Employer (minimum of)	Employee (minimum of)
Employees aged up to 60 with a monthly wage of RM5,000 and below	13%	11%
Employees aged up to 60 with a monthly wage more than RM5,000	12%	11%
Employees aged 60 until 75 with a monthly wage of RM5,000 and below	6.5%	5.5%
Employees aged 60 until 75 with a monthly wage more than RM5,000	6%	5.5%
Employees aged up to 50 with a monthly wage of RM5,000 and below	13%	11%
Employees aged up to 50 with a monthly wage more than RM5,000	12%	11%

Current contribution rate is in accordance with wage/salary received. The monthly contributions are invested in a number of approved financial instruments to generate income. They include Malaysian Government Securities, Money Market Instruments, Loans & Bonds, Equity and Property.

The EPF ensures that the savings are secure and receive reasonable dividends. A minimum of 2.5 Per Cent Dividend is guaranteed annually. Dividends are paid annually into your account. The dividend rate declared by the EPF is subject to the returns from investments made in the approved instruments.

Pensions

Only applicable for Government servants.

Fringe benefits

Annual leave

An employee is entitled to paid annual leave of:

(a) 8 days for every 12 months of continuous service with the same employer if he has been employed by that employer for a period of less than two years;
(b) 12 days for every 12 months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and
(c) 16 days for every 12 months of continuous service with the same employer if he has been employed by that employer for a period of five years or more,

and if he has not completed twelve months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service.

Sick pay

An employee should be entitled to paid sick leave of not less than the following:

- less than 2 years service - 14 days in each calendar year.
- more than 2 years but less than 5 years - 18 days in each calendar year.
- 5 years or more - 22 days in each calendar year.

Workers' compensation

The Social Security Organization (SOCSO) protects workers against industrial accident including accident occurred while working, occupational diseases, invalidity or death due to any cause. SOCSO also provide vocational and physical rehabilitation benefits and enhance occupational safety and health awareness of workers.

Healthcare

Employer is usually legally obliged to bear medical examination fee if his employee has worked for him for one year or more.

Personnel limitations - foreigners/nationals

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These documents must be valid for at least six (6) months beyond the date of entry into Malaysia.

Those with passports not recognised by Malaysia must apply for a document in lieu of the passport as well as a visa issued by Malaysian missions abroad.

Visa requirements

Commonwealth citizens (except India, Bangladesh, Pakistan, Sri Lanka, Cameroon, Mozambique and Nigeria), ASEAN countries, Switzerland, Netherlands, San Marino and Liechtenstein do not need a visa to enter Malaysia.

Citizen of Algeria, Argentina, Austria, Bahrain, Belgium, Bosnia-Herzegovina, Brazil, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, Italy, Jordan, Kyrgystan, Kuwait, Lebanon, Luxembourg, Norway, Oman, Poland, Qatar, Romania, Saudi Arabia, South Korea, Sweden, Slovakia, Tunisia, Turkey, Turkesmenistan, United Arab Emirates, USA, Uruguay and Yemen do not require a visa for a visit not exceeding three months.

Citizens of Afghanistan, Iran, Iraq, Libya and Syria do not need a visa for a visit not exceeding two weeks.

Employment of expatriate personnel

It is the Government's policy to see that Malaysians are eventually trained and employed at all levels of employment. Notwithstanding this, foreign companies are allowed to bring the required personnel in areas where there is a shortage of trained Malaysians to do the job. In addition to this, foreign companies are also allowed certain "key posts" to be permanently filled by foreigners.

Companies should make every effort to train more Malaysians so that the employment pattern at all levels of the organisation will reflect the multi-racial composition of the country.

Financial reporting and audit

Filing/publication requirements

A business entity incorporated in Malaysia is required to comply with various reporting requirements as listed below:

For a private entity, its reporting requirements are:

- the Approved Accounting Standards;
- the Companies Act 1965; and
- the Income Tax Act 1967.

For a listed public entity, its reporting requirements are more extensive:

- the Approved Accounting Standards;
- the Companies Act 1965;
- the Securities Commission's guidelines;
- the Bursa Malaysia Listing Requirements;
- the Income Tax Act 1967, and
- the Bank Negara Malaysia's guidelines, if it is a bank or financial institution.

Accounting Standards

Private entity applies Private Entity Reporting Standards ("PERS"), while entity other than private entity applies Malaysian Financial Reporting Standards ("MFRS"). These accounting frameworks are issued by Malaysian Accounting Standards Board, which is oversight by Financial Reporting Foundation. Both bodies were established under the Financial Reporting Act 1977.

PERS is a set of accounting standards issued for company incorporated under the Companies Act 1965 that:

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

Entity which does not fulfil the criteria of Private Entity shall comply with MFRS, which is a fully compliant with International Financial Reporting Standards ("IFRS") and equivalent to IFRSs. The adoption of the MFRS Framework will allow Malaysian entities to be able to assert that their financial statements are in full compliance with IFRSs.

On 14 February 2014, the MASB has issued Malaysian Private Entities Reporting Standard ("MPERS") for use by private entities. The MPERS is based on the 'IFRS for Small and Medium-sized Entities' as issued by the International Accounting Standards Board in July 2009, with some limited amendments.

Audit Requirements

The Malaysian Approved Standards on Auditing issued by the Malaysian Institute of Accountants (MIA) is based on the International Standards on Quality Control, International Standards on Auditing, International Auditing Practice Statements, International Standards on Review Engagements, International Standards on Assurance Engagements and International Standards on Related Services of the International Auditing and Assurance Standards Board published by the International Federation of Accountants (IFAC).

Tax

Tax

Summary

Malaysia's taxes are assessed on current year basis and are under self-assessment system for all taxpayers. There are two types of taxes, i.e. direct and indirect.

Direct taxes:

- Income tax
- Real property gains tax
- Petroleum income tax
- Stamp duty
- Others

Indirect taxes:

- Excise duty
- Import and export duty
- Sales tax (will be repealed with effect from 1 April 2015)
- Service tax (will be repealed with effect from 1 April 2015)
- Goods and Services tax (to be implemented with effect from 1 April 2015)
- Others

All income accrued in, deemed derived from or remitted to Malaysia are liable to tax. However, income of any person (other than a resident company carrying on the business of banking, insurance or sea or air transport) derived from sources outside Malaysia and received in Malaysia is exempted from tax.

Companies

Liability to tax and Tax rates

Companies are subject to tax on non-exempted income or profit derived from Malaysia as follows:

- For companies with paid up capital of not more than RM2.5 million, the income tax rate is 20% on the first RM500,000 of chargeable income and 25% thereafter subject to conditions.*The rates will be reduced by 19% and 24% respectively with effect from YA 2016.

- For companies with paid up capital of more than RM2.5 million, the income tax rate is at the flat rate of 25%.The rate will be reduced to 24% with effect from YA 2016.

* Does not apply to a company which 50% of its paid up capital is directly or indirectly owned by a company which has a paid up capital of more than RM2.5 million.

Groups

A company may surrender not more than 70% of its adjusted (current year) loss to one or more than one of its related companies under the group relief provision subject to various conditions being fulfilled.

Filing of tax returns

All companies must file their tax returns within 7 months from the end of the accounting period.

Use of losses

With effect from year of assessment 2006, a company with substantial change in the shareholders of the company or in the ultimate shareholders of the company will not be allowed to carry forward its unabsorbed losses and unabsorbed capital allowances, if the company is a dormant company.

Single tier system

Under the single tier system, income tax payable on the chargeable income of a company is a final tax in Malaysia. Any dividends distributed by the company will be exempt from tax in the hands of the shareholders.

Withholding tax

Withholding tax is imposed on payments to non-residents in respect of the following:-

Types	**Tax Rate** **%**
Interest	15
Royalties	10
Payments to non-resident contractors, consultants or professionals	10 plus 3
Remuneration of public entertainer	15
Payment for use of property or installation or operation of plant and machinery	10
Technical fees (services provided on-shore)	10
Rent on moveable property	10
Other income (commission, guarantee fee, etc.)	10

Effect of treaties

The above withholding tax rates may be reduced subject to provisions in the double taxation agreement.

Foreign income

With effect from year of assessment 2004, individuals, trusts, co-operatives and resident corporations will be tax exempt on foreign source income received in Malaysia from outside Malaysia. Hence, there is no requirement to compute bilateral relief. However, banking, shipping, insurance and air transport companies continue to be assessed on worldwide income and therefore bilateral relief is still applicable.

Individuals

Expatriates taking up employment in Malaysia will be subject to Malaysian taxes.

Tax rates

Income of resident taxpayers is subject to tax at progressive tax rates after the deduction of personal relief as shown below:

Chargeable Income (RM)	*YA 2013 onwards*		*YA 2015 onwards*	
	Tax rate	*Tax Payable (RM*	*Tax rate*	*Tax Payable (RM)*
First 2,500	0	0	0	0
Next 2,500	0	0	0	0
On 5,000		0		0
Next 5,000	2	100	1	50
On 10,000		100		50
Next 10,000	2	200	1	100
On 20,000		300		150
Next 15,000	6	900	5	750
On 35,000		1,200		900
Next 15,000	11	1,650	10	1,500
On 50,000		2,850		2,400
Next 20,000	19	3,800	16	3,200
On 70,000		6,650		5,600
Next 30,000	24	7,200	21	6,300
On 100,000		13,850		11,900
Next 50,000	26	13,000	24	12,000
On 150,000		26,850		23,900
Next 100,000	26	26,000	24	24,000
On 250,000		52,850		47,900
Next 150,000	26	39,000	24.5	36,750
On 400,000		91,850		84,650
Exceeding 400,000	26		25	

Residence criteria

An individual is resident in Malaysia for the basis year for a particular year of assessment if:

(a) he is in Malaysia in that basis year for a period or periods amounting in all to one hundred and eighty-two days or more;
(b) he is in Malaysia in that basis year for a period of less than one hundred and eighty-two days and that period is linked by or to another period of one hundred and eighty-two or more consecutive days;
(c) he is in Malaysia in that basis year for a period or periods amounting in all to ninety days or more, having been a resident in Malaysia or in Malaysia for a periods amounting in all to ninety days or more with respect to each of any three of the basis years for the four years of assessment immediately preceding that particular year of assessment; or
(d) he is resident in Malaysia for the basis year for the year of assessment following that particular year of assessment, having been so resident for each of the basis years for the three year of assessment immediately preceding that particular year of assessment.

Taxation of non-residents

Non-resident individual is taxed at a flat rate of 26%. The rate will be reduced to 25% w.e.f YA 2015.

Payment dates

For employment income, it is mandatory for an employer to deduct tax from the monthly remuneration of each of the employees, both locals and expatriates for remittance to the Malaysian Inland Revenue Board (MIRB). The amount of tax is based on the MTD calculator via MIRB's system.

Tax returns

An individual with no business income has to file an income tax return by 30 April each year.

Sales tax

Sales tax shall be computed and paid by –

(a) any taxable person who carries on a business in Malaysia, whether for profit or otherwise, in respect of taxable goods manufactured by him in the course of such business;
(b) any person who imports taxable goods into Malaysia, in respect of such goods.

Sales tax will be repealed with effect from 1 April 2015.

Rates

Sales tax rate varies from 5% to 10%.

Returns

Every taxable person shall within 28 days after the end of each taxable period (two calendar months) deliver a return in the prescribed form.

Other taxes

Stamp duty

Stamp duty is chargeable on certain types of instruments and documents. The rate of duty varies according to the nature of the instruments and documents as well as the transacted values.

Property taxes/Capital gains tax

	With effect from 01.01.2014		
Disposal after the date of acquisition of chargeable asset	Individual & others (%)	Company only (%)	Non-citizen and non-permanent resident individual (%)
Within 3 years	30	30	30
In the 4th year	20	20	30
In the 5th year	15	15	30
After 5 years	0	5	5

Estate tax/inheritance tax

There is no estate tax/inheritance tax in Malaysia.

Tax treaties

Double taxation agreements provide for the avoidance of incidence of double taxation on international income such as business profits, dividends, interest, royalties, etc. To date, Malaysia has signed such tax treaties with the following countries:

Albania	**Italy**	**San Marino**
Argentina *	**Japan**	**Saudi Arabia**
Australia	**Jordan**	**Senegal ****
Austria	**Kazakhstan**	**Seychelles #**
Bahrain	**Kuwait #**	**Singapore**
Bangladesh	**Kyrgyz**	**South Africa**
	Laos	
Belgium #	**Lebanon**	**South Korea**
Bosnia and Herzegovina**	**Luxembourg**	**Spain**
Brunei	**Malta**	**Sri Lanka**
Canada		
Chile	**Mauritius**	**Sudan**
China, People's Republic #	**Mongolia**	**Sweden**
Croatia	**Morocco**	**Switzerland**
CzechRepublic	**Myanmar**	**Syria**
Denmark	**Namibia**	**Thailand**
Egypt	**Netherlands**	**Turkey #**
Fiji	**New Zealand**	**Turkmenistan**
Finland	**Norway**	**United Arab Emirates**
France	**Pakistan**	**United Kingdom**
Germany	**Papua New Guinea**	**USA ***
Hungary	**Philippines**	**Uzbekistan**
Hong Kong S.A.R	**Poland**	**Venezuela**
India		
Indonesia	**Qatar**	**Vietnam**
Ireland	**Romania**	**Zimbabwe**
Iran	**Russia**	

*** Limited double tax treaty** **** DTA not yet entered into force**
 # Protocol which amends limited articles of the treaty has been gazetted but not entered into force

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