Taxation and Investment in Malaysia 2016

Reach, relevance and reliability

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1.0 Investment climate

1.1 Business environment

Malaysia is a federated constitutional monarchy, with a bicameral federal parliament consisting of an appointed Senate and an elected House of Representatives.

Following independence in 1957, rapid industrialization transformed the economy from one relying primarily on the production of mineral and agricultural export commodities into one dominated by manufacturing and services. Under the “Vision 2020” blueprint for economic development, Malaysia aims to become a fully developed nation by 2020.

Malaysia continues to play a leading role in world markets for some of its commodities: it is a leading producer of palm oil and one of the main sources of rubber. The country also is a producer and exporter of oil and natural gas and electrical and electronic goods, the latter of which accounts for 35.8% of total export value. However, to elevate the nation to a more advanced economy, Malaysia is shifting to a new economic model based on innovation, creativity and knowledge-based activities.

Malaysia is committed to a multilateral trading system. The country maintains a relatively open trade policy regime, with policies aimed at improving market access for exports of primary commodities, manufactured products and, increasingly, services. As a founding member of the Association of Southeast Asian Nations (ASEAN) and a signatory to the ASEAN Free Trade Area agreement (AFTA), Malaysia intends to eliminate import duties on all products and thereby realize AFTA’s ultimate target of creating an integrated market with free flow of goods within the region. ASEAN, comprised of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, is a trade and social alliance intended to foster economic and social cooperation among ASEAN members and others, to establish a joint market for attracting foreign trade and investment.

Malaysia also enjoys generalized system of preferences (GSP) privileges from the European Union, Norway, Switzerland, Belarus, Russia and Turkey.

Price controls

The Ministry of Domestic Trade, Co-operatives and Consumerism controls prices of liquefied petroleum gas, sugar, cooking oil, bread and flour. Prices of specific food staples are subject to price controls during festival seasons.

Intellectual property

Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Malaysia also has signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and acceded to the Patent Cooperation Treaty and the Nice and Vienna Agreement, to ensure that intellectual property protection in Malaysia conforms to international standards and provides protection to both local and foreign investors.

Intellectual property protection in Malaysia covers trademarks, patents, copyrights, industrial designs, geographical indications and layout designs of integrated circuits. In this regard, Malaysia has strong laws with adequate civil and criminal penalties, and takes a proactive approach to enforcement. There is an Intellectual Property Court and the government has crafted a National Intellectual Property Policy.

The Intellectual Property Corporation of Malaysia manages and regulates the relevant laws (i.e. the Intellectual Property Corporation of Malaysia Act 2002, the Geographical Indications Act 2000, the Layout-Designs of Integrated Circuit Act 2000, the Trade Marks Act 1976, the Patents Act 1983, the Industrial Designs Act 1996 and the Copyright Act 1987) and other matters relating to intellectual property, such as providing advisory services on intellectual property and promoting public awareness on the importance of intellectual property.

1.2 Currency

The currency is the Malaysian Ringgit (MYR).

1.3 Banking and financing

The Malaysian banking sector undertook significant restructuring, consolidation and rationalization efforts in accordance with the Financial Sector Master Plan (FSMP) that covered the period from 2001-2010. These financial reforms placed the banking sector on a stronger foundation with increased resilience and improved performance to face foreign competition.

The second master plan, the Financial Sector Blueprint (blueprint) was released in 2011 to cover the period from 2011-2020. The blueprint builds on the achievements of the FSMP to help the financial system evolve in a way that will best serve a high value-added, high-income Malaysian economy, while also having an increasingly important role in meeting the growing financial needs of emerging Asia. Initiatives will continue to be pursued to strengthen financial sector linkages and support intra-regional integration, to effectively and efficiently direct Asia's surplus funds toward the vast investment opportunities in the region.

Islamic financing is of growing significance. The International Islamic Financial Centre initiative was launched in 2006 to position Malaysia strategically in this area. Malaysia also continues to promote Labuan as an international financial center for offshore services.

1.4 Foreign investment

The Malaysian government generally encourages foreign investment, although restrictions are imposed on investment in certain sectors.

The government has been liberalizing services sub-sectors since 2009 and allowing foreign equity participation, and it is expected that 128 sub-sectors (in areas including health and social services, tourism, transport, business services and computer and related services) will be liberalized. A National Committee for Approval of Investments in the Services Sector has been established to facilitate investments.

A broad range of incentives are available for companies seeking to invest in new projects or expand existing projects. These include pioneer status, special investment capital allowances, a variety of tax deductions, access to government-sponsored industrial estates and concessional grants and loans from government agencies. Investments in less-developed areas qualify for many of the same programs, but may receive additional benefits. Incentives for "principal hub" companies also are available.

Incentives are provided for high-technology companies in the Multimedia Super Corridor Malaysia, companies in the Economic Development corridors and small and medium-sized enterprises. Other favored activities include biotechnology, Islamic finance, venture capital, services, tourism, certain types of agriculture, petroleum, car component manufacturing, specialized machinery and equipment and energy conservation and environmental protection. Offshore financial services are favored on the island of Labuan. Incentives also are available for firms that succeed in creating operational headquarters, international procurement centers and regional distribution centers.

Available tax incentives are described further under 1.5, below.

1.5 Tax incentives

A wide range of incentives are available for certain industries, such as manufacturing, information technology services, biotechnology, Islamic finance, energy conservation and environmental protection. Incentives include tax holidays of up to 10 years (pioneer status); investment tax allowances (i.e. a 60% to 100% allowance on capital investments made up to 10 years); accelerated capital allowances; double deductions; and reinvestment allowances (i.e. a 60% allowance on capital investments made in connection with qualifying projects). Certain modifications to various incentives are proposed in the finance bill 2016.

The government has issued detailed guidelines for tax incentives to promote the establishment of "principal hubs" in Malaysia. A principal hub is a company incorporated in Malaysia and that uses

Malaysia as a base for conducting its regional and global businesses and operations to manage, control and support its key functions, including management of risks, decision making, strategic business activities, trading, finance, management and human resources.

Principal hubs will enjoy a reduced corporate tax rate of 0%, 5% or 10% (rather than the standard corporate tax rate of 24% effective from year of assessment 2016) for a period of five years, with a possible extension for another five years. The following incentives also will be available:

- A customs duty exemption for goods-based companies on raw materials, components or finished products brought into free zones for production or repackaging, cargo consolidation and integration before distribution to the final consumers;
- No requirements for local equity/ownership;
- Permission for a foreign-owned company to acquire fixed assets for the purpose of carrying out the operations of its business plan;
- Flexibility in foreign exchange administration; and
- Certain permitted posts for expatriates, based on the requirements of the company's business plan and subject to Malaysia's current policy on expatriates.

The scheme replaced the incentive schemes for international procurement centers, regional distribution centers and operational headquarters, effective 1 May 2015. (A company benefitting from one of these schemes will continue to receive benefits until the end of the incentive period; upon the completion of this period, the company may be eligible to apply for the principal hub incentive scheme and receive a 10% corporate tax rate for a maximum period of five years if it fulfills certain criteria.)

1.6 Exchange controls

Malaysia maintains a liberal system of exchange controls that applies uniformly to transactions with its trading partners. The central bank handles foreign exchange controls and regulations aimed to assist the banks in monitoring settlement payments and receipts of international transactions.

Repatriations of capital, profits and income (which includes dividends, interest, royalties, rents and commissions) are freely permitted. Foreign exchange administration rules have been relaxed or eliminated, except for trade with certain countries. Generally, restrictions apply only to a resident with domestic ringgit borrowing.

2.0 Setting up a business

2.1 Principal forms of business entity

The main types of business organization include the limited company (either public or private), local branch of a foreign company, business trust, limited liability partnership, partnership and sole proprietorship. Among foreign investors, the limited company is the most popular form. It limits liability to the unpaid portion of the nominal value of the shares held, safeguarding the interests of all parties (including the foreign parent company). Private limited companies restrict the right of share transfers and may not seek capital—either equity or debt—from the public. All limited companies that do not meet the conditions governing private firms are deemed public. Private companies may be converted into public companies, or vice versa.

Formalities for setting up a company

The country's economic expansion has been accompanied by a steady rise in technical assistance as a means to transfer technology to new ventures. Nevertheless, most such transfers through licensing agreements have been limited to subsidiaries and to affiliates of the foreign licenser.

It no longer is necessary to obtain approval from the Malaysian Industrial Development Authority (MIDA) for technology transfer agreements, including joint ventures, technical assistance, licensing and engineering services.

To establish a company in Malaysia, a similar name search must be conducted for the availability of the proposed company's name, and a nominal fee paid to the Companies Commission. After that, the following documents, together with registration fees, must be submitted to the commission within three months from the date of approval of the company's name: (1) the memorandum of association; (2) the articles of association; (3) statutory declaration of compliance; (4) statutory declaration by a director/promoter; and (5) summary of incorporation details. As part of the requirements, a company secretary who is a member of a prescribed body or is licensed by the Companies Commission must be appointed. The incorporation of a domestic company can be completed within one day, through the "single interaction counter."

Forms of entity

Requirements for public and private limited companies

Capital: There must be a minimum of two subscribers holding one share of MYR 1 each, except for a wholly owned subsidiary of another company. There are no legal reserve requirements. Contributions can be made in cash or in kind, with valuation carried out by an impartial party.

Founders, shareholders: There must be at least two founders. There are no residence or nationality requirements. For a private limited company, shareholders are restricted to a maximum of 50, excluding employees and former employees of the company or its subsidiary.

Board of directors: Public and private limited companies must have at least two directors that maintain their principal (or only) place of residence in Malaysia (although they need not be Malaysian citizens).

Management, labor: There is no requirement that labor be represented in management or on the board of directors. There are no nationality or residence requirements for management.

Taxes and fees: The formation of a company involves professional fees ranging from MYR 2,500 to MYR 5,000. There are no taxes on the issuance of shares, bonds or other issues, although stamp duty may be payable. A registration fee is payable upon incorporation, based on the authorized share capital. The fee ranges from MYR 1,000 (for authorized share capital not exceeding MYR 400,000) to MYR 70,000 (for authorized share capital exceeding MYR 100 million). The same fee structure applies to registration of a foreign branch.

Types of shares: Shares must be registered, and ordinary shares in a public company and its subsidiary must carry equal voting rights. Preferential shares are permitted and may carry special rights or restrictions on dividends, voting, repayment of capital, etc.

Control: Decisions are made by a simple majority of capital, except for amendments to the memorandum or articles of association and reductions of share capital, where a three-fourths majority (special resolution) is required.

Branch of a foreign corporation

A foreign company may conduct its business through a branch in Malaysia.

Branches may be established by making an application to the Companies Commission on a prescribed form to ensure the availability of the proposed company's name, along with payment of a nominal fee. After that, registration documents (i.e. a certified copy of the foreign company's certificate of incorporation and charter, statute or memorandum and articles of association or other instrument defining its constitution, details of its directors, a statutory declaration by an agent of the foreign company and supporting documents approving the name of the foreign company) must be submitted to the commission, together with the registration fees, within three months from the date of approval of the company's name. A branch also must supply the name and address of at least one Malaysian resident who is authorized to accept notices served on the company.

Branches of foreign corporations in Malaysia generally are treated as nonresidents of Malaysia for tax purposes. As part of the government's efforts to encourage foreign companies to incorporate local subsidiaries, certain tax benefits enjoyed by resident companies are not available to branches. Although branch operations are subject to income taxes similar to those levied on resident companies, branches generally are not eligible for tax incentives and must supply proof of income not derived from Malaysia. If a branch does decide to incorporate, it may not carry forward its existing business losses on incorporation.

The tax implications associated with establishing a branch versus a subsidiary depend, in substantial part, on the tax regime in the home country. Where the latter taxes the worldwide income of its residents, a company may initially open a branch (during the loss-making period) and subsequently incorporate a company (when the business begins to make a profit).

A representative office or regional office of a foreign company performing permissible activities in Malaysia is not required to be registered with the Companies Commission. Approval must be obtained, however, from the MIDA and normally is valid for two years. These offices are not subject to tax in Malaysia.

2.2 Regulation of business

Mergers and acquisitions

Previously, the Foreign Investment Committee (FIC) regulated guidelines on the acquisition of assets, mergers and takeovers of existing companies and businesses in Malaysia to ensure consistency with the objectives of the New Economic Policy. The FIC was disbanded in 2009, and the guidelines have been liberalized. No equity conditions apply except for those imposed by regulators in certain strategic sectors. However, any direct or indirect acquisition of property valued at MYR 20 million and above that results in the dilution of ownership interests held by *Bumiputera* (indigenous peoples) or a government agency requires approval of the Economic Planning Unit (EPU). No other property acquisitions require EPU approval, but foreign interests cannot acquire property valued at less than MYR 1,000,000 per unit.

Monopolies and restraint of trade

Malaysia does not have antitrust legislation or a formal definition of "monopoly." Its free enterprise economy encourages healthy competition and fair play of the market forces of supply and demand. Industry consolidation is undertaken in the financial, communications and multimedia and plantation sectors to strengthen local companies, in lieu of implementing trade and investment liberalization measures under the country's World Trade Organization commitments. However, certain strategic sectors still are protected from competition through government procurement and trade licensing or permits.

The Competition Act 2010, which is anti-monopoly and anti-cartel, includes traditional pillars of competition law concerning anti-competitive agreements, abuses of dominant position and mergers having the effect of substantially lessening competition.

The Malaysia Competition Commission (MyCC) is an independent body established under the Competition Commission Act 2010 to enforce that Act. Its main role is to protect the competitive process, for the benefit of businesses, consumers and the economy.

2.3 Accounting, filing and auditing requirements

Entities generally are required to prepare their financial statements according to Malaysian Financial Reporting Standards (MFRS) equivalent to IFRS, except for private entities that continue to follow Private Entity Reporting Standards (PERS) for financial statements with annual periods beginning before 1 January 2016 and the Malaysian Private Entities Reporting Standard (MPERS) for financial statements with annual periods beginning on or after 1 January 2016.

Companies must submit an annual return, directors' report and audited financial statements to the Companies Commission of Malaysia. Financial statements must be independently certified by government-approved auditors.

3.0 Business taxation

3.1 Overview

Corporations in Malaysia are subject to corporate income tax, real property gains tax and goods and services tax (GST).

As noted above under 1.5, a wide range of tax incentives are available.

The Inland Revenue Board (IRB), a division of the Ministry of Finance, is responsible for the administration of direct taxes enacted under the Income Tax Act 1967, the Petroleum (Income Tax) Act 1967, the Real Property Gains Tax Act 1976, the Promotion of Investments Act 1986, the Stamp Act 1949 and the Labuan Business Activity Tax Act 1990.

Malaysia Quick Tax Facts for Companies	
Corporate income tax rate	24%
Branch tax rate	24%
Capital gains tax rate	5%-30% (real property or shares in a real property company); 0% (other property)
Basis	Territorial, except for income from banking, insurance or air and sea transport
Participation exemption	No
Loss relief	
– Carryforward	Unlimited
– Carryback	No
Double taxation relief	Yes
Tax consolidation	No, but group loss relief may be available
Transfer pricing rules	Yes
Thin capitalization rules	No
Controlled foreign company rules	No
Tax year	Fiscal year
Advance payment of tax	Yes
Return due date	Seven months after end of accounting period
Withholding tax	
– Dividends	0%
– Interest	0%/15%
– Royalties	10%
– Branch remittance tax	No
Capital duty	MYR 1,000-MYR 70,000 (for registration of a company)
Social security contributions	0.5% (employee) and 1.75% (employer) for social security; 11% (employee) and 12%/13% (employer) for Employees Provident Fund
Real estate tax	Varies

Stamp duty	0.3% (share transaction documents); 1%-3% (property transfers)
GST	6%

3.2 Residence

A corporation is resident in Malaysia if its management and control are exercised in Malaysia.

3.3 Taxable income and rates

The standard corporate tax rate is 24% (with effect from year of assessment (YA) 2016), while the rate for resident and Malaysian-incorporated small and medium-sized companies (SMEs, i.e. companies capitalized at MYR 2.5 million or less and not part of a group containing a company exceeding this capitalization threshold) is 19% (with effect from YA 2016) on the first MYR 500,000, with the balance taxed at the 24% rate. The finance bill 2016 contains a proposal to temporarily reduce (i.e. for YA 2017 and 2018) the tax rate for companies and entities that are subject to the standard corporate tax rate of 24% and to reduce the 19% rate applicable to SMEs to 18%.

Tax is levied on petroleum income at a rate of 38%. Insurance companies are taxed at 8% on investment income and capital gains of life funds, and 24% (with effect from YA 2016) on the income of shareholders' funds (including surpluses actually transferred from the life fund). Cooperative societies are taxed on a sliding scale from 0% on the first MYR 30,000 to 24% for income exceeding MYR 750,000.

No local taxes are levied on corporate income, but there is an excess profits tax (i.e. windfall profit levy) imposed on oil palm fruit producers when the monthly average price of crude palm oil exceeds MYR 2,500 per metric ton.

Companies incorporated under the Labuan Companies Act 1990 undertaking Labuan trading activities (which include banking, insurance, trading, management, licensing and shipping operations) may choose between paying a 3% tax based on audited net profits or a flat rate of MYR 20,000 each year. Such companies also may make an irrevocable election to be taxed under the Income Tax Act 1967.

Taxable income defined

Taxable corporate income includes all earnings derived from Malaysia, including gains or profits from a trade or other business, dividends, interest, discounts, rents, royalties, premiums or other current earnings. These rules apply to branches as well as to entities incorporated in Malaysia.

To simplify and ease the administrative burden under the previous tax imputation system, a single-tier tax system was introduced with effect from YA 2008. Under this single-tier tax system, income tax imposed on a company's chargeable income is a final tax and dividends distributed are exempted from tax in the hands of the shareholders.

Foreign-source income is not subject to tax in Malaysia, although tax is levied on worldwide income for certain activities, such as banking, insurance, and air and sea transport operations. Unless profits or gains are attributed directly to activities conducted outside Malaysia, they are assumed to be derived from Malaysia. Thus, the burden is on the company or branch to prove which part of its income is foreign source.

For a company carrying on Labuan trading activity, income derived solely from the holding of investments, i.e. Labuan nontrading activities, is not subject to tax. Any dividend received from such a company is tax exempt.

Holding company regime

An investment holding company (IHC) is a company whose activities consist mainly of the holding of investments and that derives no less than 80% of its gross income (other than gross income from a source consisting of a business of holding of an investment) from such investments. Generally, only a fraction of the expenses falling within the definition of "permitted expenses" in the tax legislation qualify for a tax deduction in respect of an IHC.

Deductions

Deductions are allowed for any revenue expenditure incurred wholly and exclusively in the production of income, including interest, royalty payments and certain taxes. However, no expenses attributable to single-tier dividend income will be deductible.

Interest expense deductions are restricted when borrowings are used for nontrade purposes. Similarly, deductions are restricted to 10% of aggregate income for donations to approved organizations and 19% of deductible remuneration for the employer's contribution to the Employees Provident Fund.

No deduction is allowed for preliminary or pre-operating costs, capital expenditure or costs of flotation, registration, winding up or liquidation of a company, unless specifically permitted by the Income Tax Act 1967 or Ministerial Orders—such as the deductions for incorporation expenses, pre-commencement recruitment and training expenses and expenses for registration of trademarks and patents.

Depreciation

The government sets depreciation rates for various assets, with favorable rates for some items to promote their sale or use. There are three general classes of annual capital allowances for plant and machinery. Office equipment, furniture and fittings are subject to an annual depreciation allowance of 10% over eight years. The depreciation rate for general plant and machinery is set at 14% over six years. For heavy machinery and motor vehicles, the rate is 20% over four years. Certain types of plant and machinery such as computers, which have been given special annual allowances exceeding 20%, will continue at the higher rate. Small value assets with a cost not exceeding MYR 1,300 each are fully depreciated within a year, subject to a maximum amount of MYR 13,000 per year for non-SMEs.

Under the standard rates, industrial buildings (principally factories and warehouses, but not office buildings) are depreciated at 13% in the first year and 3% annually thereafter on a straight-line basis, regardless of whether constructed or purchased. The definition of "industrial building" also applies to a dock, jetty, wharf, hotel, airport or motor racing circuit, as well as buildings used for research, schools or other educational institutions, private hospitals, senior care centers and living accommodations for employees, etc. Depending on the usage of the industrial building, the annual allowances may be at a higher rate of 10%.

A reinvestment allowance of 60% is granted to resident manufacturing or agricultural companies that incur capital expenditure on qualifying plant, machinery and factory buildings for qualifying projects. This incentive is granted to pioneer companies as well, subject to the forfeiture of their pioneer status or grant of investment tax allowance.

There is no provision for depreciating patents, trademarks, copyrights, goodwill or leases (except mining leases), unless specifically permitted by the Ministerial Orders.

Losses

Losses may be carried forward indefinitely except where there is a substantial change in the ownership of a dormant company. Losses may offset income from all business sources.

The carryback of losses is not permitted.

3.4 Capital gains taxation

Malaysia does not tax capital gains from the sale of investments or capital assets other than those related to land and buildings.

A real property gains tax (RPGT) applies to the sale of land in Malaysia and any interest, option or other right in or over such land. This includes gains from the sale of shares in a "real property company," i.e. a controlled company (one with no more than 50 members and controlled by no more than five persons) whose holdings of real property or shares in a real property company amount to 75% or more of its total tangible assets.

The rate is 30% for such disposals of real property made within three years of the date of acquisition. The rates are 20% and 15% for disposals in the fourth and fifth years after acquisition, respectively, and 5% for disposals in the sixth year after acquisition and thereafter.

Capital losses arising from the sale of real property may be used to offset against capital gains from such sales. Gains resulting from the disposal of property compulsorily acquired are exempt from the tax, as are asset transfers by resident companies under an approved restructuring scheme.

3.5 Double taxation relief

Since Malaysia taxes only income that accrues in or is derived from the country, foreign income derived by a resident is not taxed in Malaysia (except for banking, insurance, and air and sea transport operations).

Unilateral relief

Foreign tax paid may be credited against Malaysian tax on the same profits (limited to 50% of foreign tax in the absence of a tax treaty), but the credit is limited to the amount of Malaysian tax payable on the foreign income.

Tax treaties

Malaysia has a broad tax treaty network, with the treaties generally following the OECD model treaty. New treaties contain OECD-compliant exchange of information provisions (and based on a policy decision made by the Malaysian competent authority, the exchange of bank information is allowed even if the bilateral agreement does not have the provision equivalent to article 26(5) of the 2005 OECD model tax treaty). Standard requirements, such as those relating to tax residence, beneficial ownership, etc. apply. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other.

A claim for tax treaty relief can be made in a taxpayer's income tax return form, or a written request can be made for treaty relief within two years from the end of the relevant year of assessment for which the claim for relief is made.

Malaysia Tax Treaty Network			
Albania	Germany	Mauritius	Singapore
Australia	Hong Kong	Mongolia	South Africa
Austria	Hungary	Morocco	Spain
Bahrain	India	Myanmar	Sri Lanka
Bangladesh	Indonesia	Namibia	Sudan
Belgium	Iran	Netherlands	Sweden
Bosnia & Herzegovina	Ireland	New Zealand	Switzerland
Brunei	Italy	Norway	Syria
Canada	Japan	Pakistan	Taiwan
Chile	Jordan	Papua New Guinea	Thailand
China	Kazakhstan	Philippines	Turkey
Croatia	Korea (ROK)	Poland	Turkmenistan
Czech Republic	Kuwait	Qatar	United Arab Emirates
Denmark	Kyrgyzstan	Romania	United Kingdom
Egypt	Laos	Russia	Uzbekistan

Fiji	Lebanon	San Marino	Venezuela
Finland	Luxembourg	Saudi Arabia	Vietnam
France	Malta	Seychelles	Zimbabwe

3.6 Anti-avoidance rules

Transfer pricing

Malaysia's transfer pricing rules basically follow the OECD guidelines. The IRB has introduced five testing methods to determine whether a related party transaction is made on ordinary commercial terms: the comparable uncontrolled price, resale price, cost plus, transactional net margin and profit split methods. Any transaction for the supply or purchase of properties/services with an associated person that is not at an arm's length price can be adjusted by the IRB. Failure to demonstrate arm's length consideration also may result in additional taxes and penalties.

Transactions with related companies within or outside of Malaysia must be disclosed on the annual income tax return, including purchases, loans, other expenses and other income. Taxpayers also must declare in the annual income tax return whether they have prepared transfer pricing documentation for the period for which the return is filed. Documentation should be prepared by the annual tax return filing due date, although there is no statutory deadline to submit the documentation. Documentation should be contemporaneous and should be made available to the IRB upon request.

Advance pricing agreements are possible for a period of three to five years, depending on the nature of the business.

Country-by-country reporting

In line with the OECD BEPS action 13 recommendations on transfer pricing documentation to be prepared by multinational enterprises, Malaysia is set to introduce rules and guidelines on the preparation and submission of country-by-country (CbC) reports for financial years beginning on or after 1 January 2017, with the first submissions being due by 31 December 2018. The finance bill 2016 does not provide details on the CbC reporting requirements, but it includes the penalties proposed for failure to file a CbC report or for filing incorrect information (a fine ranging from MYR 20,000 to MYR 100,000, or imprisonment for up to six months, or both), which would apply as from the date the law enacting the finance bill enters into force. The IRB is expected to release additional guidance on CbC reporting in early 2017.

Thin capitalization

Thin capitalization has been included in the Income Tax Act 1967, but its effective date was deferred by the authorities. No rules or guidelines have been issued on the implementation.

Controlled foreign companies

Malaysia does not have CFC rules.

General anti-avoidance rule

Malaysia has a general anti-avoidance rule that allows tax schemes that are entered into with a primary or dominant purpose of obtaining a tax benefit to be disregarded. There also are several specific anti-avoidance rules.

3.7 Administration

Tax year

The tax year (i.e. the year of assessment) for a company is its fiscal year.

Filing and payment

Companies must pay tax in monthly installments based on estimates of tax payable. Installments must be paid on or before the 15th day of each month. Late or insufficient installments may incur a

10% penalty. Underestimation of tax payable also may result in a 10% penalty if the actual tax payable exceeds the estimate by more than 30%.

Companies are required to electronically submit a return on the prescribed form to the IRB within seven months from the end of their accounting period. The form is used to report actual tax liabilities, which may result in a balance of tax payable (which must be settled by the filing deadline) or a refund from the tax installments paid. Any additional assessment raised by the IRB must be settled within 30 days from the day the notice is served.

Penalties apply for failure to comply with the tax law. The finance bill 2016 would introduce penalties similar to those for failure to comply with the CbC reporting obligation (see above) that would be imposed for submitting an incorrect tax return or information return or report.

Consolidated returns

There is no provision for consolidated returns but, under a group relief system, resident companies may surrender up to 70% of current-year adjusted losses to one or more related companies. The following requirements, among others, must be met to qualify for group relief:

- The group companies (i.e. surrendering and claimant companies) have a paid-up capital of more than MYR 2.5 million at the beginning of the basis period for the relevant year of assessment;
- The group companies are related in the period in which the claim for group relief is made, as well as in the 12-month period immediately preceding that period; and
- The group companies have the same accounting year end.

Companies enjoying pioneer status, an investment tax allowance, a reinvestment allowance or an exemption of shipping profits are not eligible for group relief.

Statute of limitations

The general statute of limitations for an assessment or additional assessment is five years from the end of the relevant year of assessment. If the IRB is of the view that a transaction is not at an arm’s length price, the statute of limitations is extended by another two years to seven years. However, if there is fraud, willful default or negligence on the part of the taxpayer, an assessment can be made at any time. There is no statute of limitations for the collection of unpaid tax.

Tax authorities

The IRB is responsible for the administration of direct taxes. The Royal Customs Department administers customs and excise duties and the GST.

Rulings

Taxpayers may submit a request for an advance ruling on the tax treatment of a specific transaction. Public rulings also are issued.

4.0 Withholding taxes

4.1 Dividends

Malaysia does not impose withholding tax on dividends paid to nonresidents.

4.2 Interest

Interest paid to a nonresident is subject to a 15% withholding tax, which may be waived or reduced under an applicable tax treaty. However, interest paid to a nonresident by banks operating in Malaysia is exempt from tax, except for interest accruing to the nonresident's place of business in Malaysia and interest paid on funds required to maintain "net working funds," as prescribed by the Central Bank. Certain other interest paid to a nonresident also may be exempt.

Interest on "approved loans," as specified in the Income Tax Act 1967, is exempt from tax. Approved loans include those made by a nonresident to the government, local authority, statutory body or a person guaranteed by the government.

4.3 Royalties

Royalties and technical service fees paid to nonresidents are subject to a 10% withholding tax, which may be waived or reduced under an applicable tax treaty.

The finance bill 2016 would broaden the definition of royalties under the income tax act to include payments for the use of, or the right to use, software, among other items (e.g. items relating to technologies such as satellite, cable, fiber optics and the radiofrequency spectrum). This measure would reduce the ambiguity regarding the application of withholding tax on royalties, particularly by clarifying that payments in relation to software would be treated as royalties, which would be subject to withholding tax at the prevailing rate of 10% (unless a lower rate is provided under an applicable tax treaty). The new definition would apply as from the date the law enacting the finance bill enters into force.

4.4 Branch remittance tax

Malaysia does not levy a branch remittance tax.

4.5 Wage tax/social security contributions

Tax on employment income is withheld by the employer under a pay-as-you-earn (PAYE) scheme and remitted to the tax authorities.

Both the employer and the employee are required to make contributions to the Social Security Organisation. The employer generally contributes 1.75% of an employee's remuneration while the employee contributes 0.5% of his/her monthly wages. The employer and the employee also contribute to the Employees Provident Fund (EPF) at a rate of 12%/13% and 11% of the employee's remuneration, respectively. The required EPF contribution rate for employees is temporarily reduced to 8% from March 2016 through December 2017; however, employees may opt to continue contributing at the 11% rate during this period.

4.6 Other withholding taxes

A 10% withholding tax applies to income received by nonresidents from the rental of movable property or from technical or installation services rendered in Malaysia, which may be waived or reduced under an applicable tax treaty. Income received by nonresidents from technical or installation services currently is deemed to be derived from Malaysia only if the income is attributable to services that are carried out in Malaysia. The finance bill 2016 would remove the provision regarding the location of the performance of the services and income of a nonresident would be deemed to be derived from Malaysia regardless of whether the services are carried out within or outside Malaysia. In other words, payments made by a resident to a nonresident for offshore services, as well as onshore services, would be subject to withholding tax. This measure would apply as from the date the law enacting the finance bill enters into force.

A 10% withholding tax is also imposed on gains or profits falling under section 4(f) of the Income Tax Act 1967 (income that is not from a business, employment, dividend, interest, discount, rent, royalty, premium, pension, annuity or other periodical payments) derived by nonresidents. Generally, the tax applies to “one-off” income received by the nonresident, such as commission or guarantee fees.

5.0 Indirect taxes

5.1 Goods and services tax

The GST is levied at a rate of 6% on the supply of taxable goods and services (at each stage of the supply chain) in Malaysia, as well as on the import of goods and some imported services.

Supplies of goods and services can be either taxable or nontaxable supplies. A taxable supply is standard-rated or zero-rated. Nontaxable supplies are exempt or outside the scope of the GST.

Standard-rated supplies of goods and services are subject to GST at a 6% rate. A taxable person who is registered for GST must collect GST on the supply, and is eligible to claim input tax credits on the business inputs in making taxable supplies. Zero-rated supplies are subject to GST at a rate of zero percent. Businesses that make zero-rated supplies do not collect GST, but are entitled to claim credit for inputs used in the course of the business. Zero-rated supplies include basic essential goods such as rice, fresh fish, meat, chicken, cooking oil and fresh vegetables; water for domestic use; the first 300 kWh of electricity for domestic use; and exports of goods.

Exempt supplies are not subject to GST. Businesses do not collect GST and are not entitled to claim credit for inputs used in the course of business. Exempt supplies include residential buildings, life insurance, private health services, private educational services, financial services, land for agricultural and public use, public mass transportation and highway tolls.

Supplies that are outside the scope of GST (i.e. that do not fall within the charging provision of the GST Act) include nonbusiness transactions, sales of goods from a place outside Malaysia to another place outside Malaysia and certain services provided by the government, such as healthcare services, education and the issuance of licenses.

GST returns must be submitted no later than the last day of the month following the end of the taxable period. The taxable period is one month, three months or such other period as determined by the Director General.

5.2 Capital tax

Capital duty is levied at rates ranging from MYR 1,000 to MYR 70,000.

5.3 Real estate tax

Individual states levy real property taxes at varying rates.

5.4 Transfer tax

None, except for stamp duty (see 5.5 below).

5.5 Stamp duty

Stamp duty is levied at rates between 1% and 3% of the value of property transfers, and 0.3% on share transaction documents.

5.6 Customs and excise duties

Excise duties are levied on tobacco, beer and liquor, motor vehicles, playing cards and mahjong tiles. As for import duty, the rates range from 5% to 30% for most dutiable goods. Import duty on a motor vehicle will depend on the cylinder capacity, and ranges from 5% to 35%.

5.7 Environmental taxes

None

5.8 Other taxes

An entertainment duty of 25% of the admission price is charged, although many performances are exempt.

Other taxes include a road tax (levied on vehicles, based on the type of vehicle and the type of fuel used) and gaming taxes.

6.0 Taxes on individuals

Individuals in Malaysia are subject to personal income tax, real property gains tax, social security contributions, real estate tax, stamp duty and GST.

The federal government is the only authority that levies income tax on individuals in Malaysia.

Malaysia Quick Tax Facts for Individuals	
Income tax rates	0%-28%
Capital gains tax rates	0%-30% (real property or shares in a real property company); 0% (other property) for citizens/permanent residents 5%/30% (real property or shares in a real property company) for noncitizens and nonpermanent residents
Basis	Territorial
Double taxation relief	Yes
Tax year	Calendar year
Return due date	30 April/30 June of following calendar year
Withholding tax	
– Dividends	0%
– Interest	0%/15%
– Royalties	10%
Net wealth tax	No
Social security	0.5% (employee) and 1.75% (employer) for social security; 11% (employee) and 12%/13 (employer) for Employees Provident Fund
Inheritance/gift tax	No
Real estate tax	Varies
Stamp duty	0.3% (share transaction documents); 1%-3% (property transfers)
GST	6%

6.1 Residence

Individuals are considered tax resident if they are present in Malaysia for 182 days or more in a calendar year. Residence also may be established by physical presence in Malaysia for a mere day if it can be linked to a period of residence of at least 182 consecutive days in an adjoining year. Other residence tests involve a minimum of 90 days of physical presence in Malaysia (if certain other conditions are satisfied) or residence for a specified number of years preceding or following the year in question.

Individuals who do not meet the residence qualifications described above are taxed at a flat rate and are not eligible for personal tax reliefs or tax rebates.

6.2 Taxable income and rates

Generally, income taxes are withheld from salaries and are subsequently settled upon the filing of income tax returns after the close of the tax year.

Taxable income

Resident individuals are taxed on Malaysia-source income at normal personal rates. They are entitled to various deductions and personal reliefs. Foreign-source income is exempt from income tax.

Income includes gains or profits from any trade, business or profession; salary or wages; dividends, interest or discounts; and rent from property. An exemption is allowed for interest income from banking and financial institutions and certain federal and state government bonds. Single-tier dividends also are exempted. Taxpayers must report employer-provided allowances, such as those provided for housing or education.

Capital gains are not taxed in Malaysia, except for gains derived from the disposal of real property or on the sale of shares in a real property company, which are subject to real property gains tax (RPGT). Individuals may claim a standard exemption of MYR 10,000 or 10% of the chargeable gains, whichever is higher, on each sale of any type of real property. Citizens and permanent residents also are entitled to a full exemption on one sale of a private residence. These exemptions apply to both residents and nonresidents.

Special expatriate tax regime

Foreign business personnel in Malaysia must register as taxpayers with the IRB and are subject to normal taxation if they derive income from Malaysia. An expatriate's employment income is exempt from income tax where the duration of employment (not the period of residence) does not exceed 60 days in a calendar year and the employee does not qualify as a tax resident. The exception will not apply where such individual is in Malaysia for a continuous period exceeding 60 days that overlaps over two successive basis periods, or where the continuous overlapping period together with another period or periods exceeds 60 days. An exemption also may be granted under a tax treaty, where applicable.

Special tax concessions are available for foreign nationals employed in qualifying activities in Labuan or in the Iskandar Development Region. An exemption is granted to foreign experts in Islamic finance and those participating in the Malaysian Technical Cooperation Programme.

Expatriates working in an approved operational headquarters, international procurement center, regional distribution center or regional office are taxed on only the portion of their chargeable income attributable to the number of days that they are in the country.

Deductions and reliefs

Employees may deduct only those expenses wholly incurred in performing employment duties.

Personal tax reliefs include the following (which reflect some increases with effect from YA 2016): MYR 9,000 for the taxpayer (MYR 15,000 if disabled); MYR 4,000 for a spouse (MYR 7,500 if disabled) if joint assessment is elected; MYR 2,000 for each unmarried child below the age of 18 (MYR 6,000 if disabled) or MYR 8,000 for each child above 18 studying at the diploma level or above in Malaysia or studying at degree level or above overseas (total relief of MYR 14,000 if disabled); life insurance premiums and provident fund contributions (up to MYR 6,000); medical and education insurance premiums (up to MYR 3,000); premiums for deferred annuities and contributions to private retirement schemes (up to MYR 3,000); medical expenses of parents (up to MYR 5,000); medical expenses where the taxpayer, spouse or child contracts a serious disease (up to MYR 6,000); purchases of supporting equipment for a disabled taxpayer, spouse, child or parent (up to MYR 6,000); approved technical or vocational or any postgraduate education fees (up to MYR 7,000); purchases of sports equipment (up to MYR 300); up to MYR 1,000 for the purchase of books; contributions to social security (up to MYR 250); and MYR 1,500 for each parent whose annual income does not exceed MYR 24,000, subject to certain conditions. Additional tax relief of MYR 3,000 is available for the purchase of a personal computer, which can be claimed every three years. The finance bill 2016 proposes combing the existing tax reliefs for the purchase of books, computers and sports equipment into a new "lifestyle" tax relief that would be limited to MYR 2,500 per year and would be extended to include certain other items.

Relief also is granted for interest on housing loans up to MYR 10,000 for three consecutive years, provided certain conditions are fulfilled. A deduction is available for approved donations, restricted to 7% of aggregate income. Islamic religious dues may be deducted from the tax payable.

If a wife's income is assessed separately from that of her husband, or vice versa, she/he may claim the above personal reliefs under separate assessment. Single or married couples with taxable income (net of personal reliefs) of less than MYR 35,000 are entitled to tax credits/rebates of MYR 400 under single/separate assessment and MYR 800 under combined assessment.

Rates

Residents are taxed on a sliding scale from 0% on the first MYR 5,000 to 28% for income exceeding MYR 1,000,000 (the top rate increased from 25% for income exceeding MYR 400,000 with effect from YA 2016 (for returns filed in 2017)). Nonresidents are taxed at a flat rate of 28% on Malaysia-source income only (increased from 25% with effect from YA 2016).

The RPGT rate is 30% for disposals of real property made within three years of the date of acquisition. The rates are 20% and 15% for disposals in the fourth and fifth years after acquisition, respectively, and an exemption applies for disposals after five years. For noncitizens and nonpermanent residents, the RPGT rates are 30% for disposals within five years and 5% for disposals in the sixth year and thereafter.

6.3 Inheritance and gift tax

Malaysia does not levy inheritance or gift tax.

6.4 Net wealth tax

Malaysia does not levy a net wealth tax.

6.5 Real property tax

Individual states levy real property taxes at varying rates. See 6.2 above for the real property gains tax.

6.6 Social security contributions

Both the employee and the employer are required to make contributions to the EPF at a rate of 11% and 12%/13% of remuneration, respectively. The required EPF contribution rate for employees is temporarily reduced to 8% from March 2016 through December 2017; however, employees may opt to continue contributing at the 11% rate during this period. The employer and employee also contribute to social security: the employer generally contributes 1.75% of an employee's remuneration, and the employee contributes 0.5% of his/her monthly wages.

6.7 Other taxes

None

6.8 Compliance

The tax year for individuals is the calendar year.

Tax on employment income is withheld by the employer under a pay-as-you-earn (PAYE) scheme and remitted to the tax authorities. Malaysia imposes a self-assessment regime. An individual deriving employment income or business income must file a tax return and settle any balance owed by 30 April or 30 June, respectively, in the following calendar year.

A married couple living together may opt to file a joint or separate assessment.

Penalties apply for failure to comply with the tax law.

7.0 Labor environment

7.1 Employee rights and remuneration

Malaysia's main labor laws include the Employment Act 1955, the Trade Unions Act 1959, the Industrial Relations Act 1967, the Employees' Social Security Act 1969 and the Employees Provident Fund Act 1991.

Working hours

Normal working hours are limited to 48 hours or six days per week, at eight hours per day. A 44-hour working week is common for industrial and office employees. The maximum allowable overtime is 104 hours per month. A generally observed convention requires that all Muslim men be allowed to attend prayers on Friday afternoons (between noon and 2:45 p.m.).

Overtime on working days is compensated at a minimum of one-and-a-half times the regular hourly rate. On nonregular working days, such as Sundays, overtime is paid at twice the regular rate; public holidays require an overtime rate of three times the regular wage.

7.2 Wages and benefits

Malaysia has implemented a minimum wage policy that raised the basic wages of all employees to a minimum of MYR 1,000 in Peninsular Malaysia and MYR 920 in Sabah, Sarawak and Labuan, respectively (an increase from MYR 900 and MYR 800, respectively, with effect from 1 July 2016). Wages earned must be paid no later than the seventh day after month end.

Pensions

The Employees Provident Fund (EPF) Act 1991 provides for a compulsory contributory retirement fund that is payable to employees in full when they reach age 55. All employers and employees must contribute to the fund; the minimum mandatory employee's contribution is 11% of basic monthly pay. An employer must contribute another 12%/13% to each employee's personal EPF holding, which is tax deductible in determining the employer's corporate income tax. The relief provided to employers may be extended to contributions of up to 19% of an employee's monthly pay that is placed into an EPF or another government-approved savings scheme. All foreign workers/expatriates and their employers are exempt from compulsory contributions; alternatively, expatriates may elect to make contributions at 11% of their monthly wages, with employers providing MYR 5 per expatriate per month. Employers can seek tax deductions for contributions to their own approved pension schemes, in addition to the EPF.

Social insurance

The Social Security Organisation administers both the Employment Injury Scheme and the Invalidity Scheme for all workers (with effect from 1 June 2016). The contributions are capped at a percentage of MYR 4,000 (with effect from 1 June 2016). Generally, employers contribute 1.75% of an employee's wages, while employees contribute 0.5% of their respective monthly wages under the Employment Injury and Invalidity Schemes.

Other benefits

Holiday and annual leave provisions vary widely among the states and industries. However, 11 paid holidays are mandatory nationwide.

An employee whose wages do not exceed MYR 2,000 per month and with fewer than two years of service is entitled to eight days of paid annual leave each year. An employee with service of two to five years is entitled to 12 days of paid annual leave, and those employed for more than five years are entitled to 16 days. In practice, most employees receive around 14 days of paid annual leave per year, and executives expect three weeks of annual holiday.

An employee is entitled to 14 days of annual sick leave if employed for less than two years, 18 days if employed for two to five years and 22 days after five years. If hospitalization is necessary, paid medical leave is extended to a total of 60 days per year. Most companies provide free medical facilities. Female employees are guaranteed 60 consecutive days of paid maternity leave (for up to five surviving children) at the greater of the employee's normal rate of pay or MYR 6 per day.

Bonus payments can be discretionary or fixed in Malaysia. Generally, employees receive an annual bonus equivalent to one to three months of salary.

7.3 Termination of employment

Employment contracts must include a clause stating the procedures for termination by either party. Normally, one month's notice of dismissal or one month's salary must be given, unless a longer period is stipulated in the agreement. The notice period sometimes may be as long as six months, or there may be provisions for lump-sum severance payments. Either party may end a contract without notice if an indemnity is paid equal to the amount of wages involved.

Where notice is not provided for in the agreement, the law stipulates that four weeks' notice must be given for employment of less than two years of service; six weeks for two to five years of service; and eight weeks for service exceeding five years.

Under the Employment (Termination and Lay-off Benefits) Regulations 1980, employees are entitled to a redundancy benefit of at least 10 days' wages for each year of service under two years; 15 days' wages per year for two or more years, but less than five years, of service; and 20 days' wages per year for five years of service or more.

7.4 Labor-management relations

Only about 6.5% of the country's 14.07 million workers are unionized. Trade unions must be registered with the Trade Union Affairs Department. Labor relations generally are harmonious and nonconfrontational.

7.5 Employment of foreigners

Firms are encouraged to employ *Bumiputera* at all levels, proportional to the local ethnic composition. The government also requires all foreign investment firms to set up training programs for their Malaysian staff and plan for the gradual replacement of expatriates (except those holding key posts) by Malaysians, particularly in managerial and white-collar positions. As part of the application for certain incentives, firms may be required to present a localization schedule. A labor shortage, however, has compelled the government to be more flexible in applying these policies.

The government has made it easier for companies to hire skilled foreigners. Automatic approval is granted to recruit highly skilled workers where no local expertise is available. Expatriates may fill executive posts if no Malaysians can be found with the necessary qualifications and experience. The expatriate may hold the post for up to 10 years. Within one year of the expatriate's arrival, a training program must begin for a Malaysian to fill the position.

Approval for expatriate posts usually is handled by the MIDA. The Multimedia Development Corporation approves applications from companies with Multimedia Super Corridor status, and the Public Service Department approves applications from government hospitals and clinics and public higher education institutions. Other approving authorities are the Central Bank and Securities Commission for the banking, finance, insurance and securities industries.

8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

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A database that allows users to view and compare tax information for 65 jurisdictions that includes:

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Guides and Highlights: Deloitte's Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 100 jurisdictions.

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