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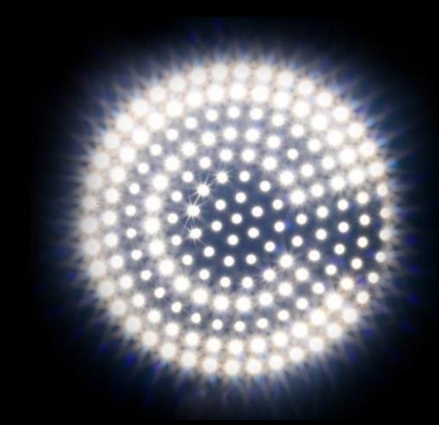
International Tax
Malaysia Highlights 2019



Updated February 2019

Recent developments:

For the latest tax developments relating to Malaysia, see Deloitte tax@hand.

Investment basics:

Currency – Malaysian Ringgit (MYR)

Foreign exchange control – Malaysia maintains a system of exchange controls that is subject to foreign exchange administration rules issued by its central bank. The repatriation of capital, profits, dividends, royalties, rents and commissions is freely permitted.

Accounting principles/financial statements – MFRS is mandatory for nonprivate entities for annual periods beginning on or after 1 January 2018.

Malaysian Private Entities Reporting Standards (MPERS) are mandatory for private entities for annual periods beginning on or after 1 January 2018, except for private entities that opt to adopt MFRS in its entirety.

Principal business entities – These are the public and private limited company, business trust, limited liability partnership, partnership, sole proprietorship and branch of a foreign corporation.

Corporate taxation:

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

Basis – Corporations are taxed on income derived from Malaysia. Foreign-source income is exempt unless the corporation is carrying on a business in the banking, insurance, air transport or shipping sectors.

Taxable income – Taxable income comprises all earnings derived from Malaysia, including gains or profits from a trade or business, dividends, interest, rents, royalties, premiums or other earnings.

Taxation of dividends – All corporations in Malaysia are required to adopt the single-tier system (STS). Dividends paid by companies under the STS are not taxable.

Capital gains – 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. The rate is 30% for such disposals of property made within three years after the date of acquisition. The rates are 20% and 15% for disposals in the fourth and fifth years after acquisition, respectively, and 10% for disposals in the sixth year after acquisition and thereafter.

Losses – Losses may be carried forward for seven years of assessment (YAs) (except where there is a substantial change in corporate ownership of a dormant company). The carryback of losses is not permitted.

Rate – The standard corporate tax rate is 24%, while the rate for resident small and medium-sized companies (i.e. companies incorporated in Malaysia with paid-up capital of MYR 2.5 million or less and that are not part of a group containing a company exceeding this capitalization threshold) is 17% (reduced from 18%, effective from YA 2019) on the first MYR 500,000, with the balance being taxed at the 24% rate.

Surtax – No

Alternative minimum tax – A Labuan company carrying on a Labuan business activity that is a Labuan trading activity is taxed at 3% of the audited accounting profit.

Foreign tax credit – 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.

Participation exemption – No, but foreign-source income is not taxable and domestic dividends are 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 expenses falling within the definition of "permitted expenses" in the tax legislation qualify for a tax deduction in respect of an IHC.

Incentives – A wide range of incentives are available for certain industries, such as manufacturing, hotels, healthcare services, information technology services, biotechnology, Islamic finance, venture capital, tourism, 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). A new incentive has been proposed in the form of accelerated capital allowances and automation equipment allowances, to encourage the transformation to "Industry 4.0," which involves the adoption of technology drivers such as "big data" analytics, autonomous robots, industrial internet of things, etc., by the manufacturing sector and its related services.

Withholding tax:

Dividends – Malaysia does not levy withholding tax on dividends.

Interest – A withholding tax of 15% applies to interest paid to a nonresident, unless the rate is reduced under a tax treaty. However, interest paid to a nonresident by a bank 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.

Royalties – A withholding tax of 10% applies to royalties paid to a nonresident, unless the rate is reduced under a tax treaty.

Technical service fees – A 10% withholding tax applies to service fees paid to a nonresident for services (including both technical and non-technical services) rendered onshore, unless the rate is reduced under a tax treaty. Fees paid to a nonresident for services rendered offshore are not subject to withholding tax.

Branch remittance tax – No

Other – A 10% withholding tax applies to the rental of movable property, installation fees and certain one-time income paid to nonresidents, unless the rate is reduced under a tax treaty.

Other taxes on corporations:

Capital duty – No capital duty is payable, but a local company is subject to an incorporation fee of MYR 1,000 and a foreign company is subject to an incorporation fee ranging from MYR 5,000 to MYR 70,000.

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

Real property tax – Individual states in Malaysia levy "quit" rent and assessments at varying rates.

Social security – Both the employer and the employee are required to make contributions to the Social Security Organization (SOCSO). The employer generally contributes 1.75% for each employee registered with the SOCSO. 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. Both the employee and the employer contribute 0.2% of the employee's remuneration (capped at MYR 4,000 a month) to the Employment Insurance System (EIS).

Stamp duty – Stamp duty is levied at rates between 1% and 4% of the value of property transfers, and at 0.3% on share transaction documents.

Transfer tax – No, except for stamp duty

Other – Equity requirements have been substantially relaxed.

Anti-avoidance rules:

Transfer pricing – Transfer pricing rules apply. Taxpayers can request an advance pricing agreement. Country-by-country (CbC) reporting has been introduced. A reporting entity (i.e. a Malaysian ultimate parent entity or surrogate parent entity of a multinational group with total consolidated group revenue of MYR 3 billion or more in the financial year preceding the reporting financial year) must file a CbC report for the entire financial year no later than 12 months from the close of the reporting entity's financial year.

Thin capitalization – The Income Tax Act 1967 has been amended to permit the introduction of earnings stripping rules (ESR) that would apply as from 1 January 2019. Although the implementing rules have yet to be issued, the ESR would be in line with the OECD recommendations under BEPS action 4 to address tax leakages due to excessive interest deductions on loans between related companies. Under the proposed rules, interest deductions on loans between companies in the same group would be limited based on a ratio that is yet to be determined.

Controlled foreign companies – No

Disclosure requirements – 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.

Other – 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.

Compliance for corporations:

Tax year – Fiscal year (generally the accounting year)

Consolidated returns – Consolidation is not permitted; each company is required to file a separate tax return. However, subject to certain conditions, 70% of a company's adjusted loss may be used to offset profits of a related entity. The losses that may be surrendered generally are limited to those that relate to the first three YAs following a company's first 12-month fiscal year of operations.

Filing requirements – Malaysia operates a self-assessment regime. Advance corporate tax is payable in 12 monthly installments. A tax return must be filed within seven months of the company's year end.

Penalties – Penalties apply for failure to comply with the tax law.

Rulings – Taxpayers may request an advance ruling on the tax treatment of a specific transaction. Public rulings also are issued by the authorities from time to time.

Personal taxation:

Basis – Individuals are taxed on income derived from Malaysia. Foreign-source income is exempt in Malaysia.

Residence – An individual is considered a tax resident if he/she is present in Malaysia for 182 days or more in a calendar year. Alternatively, residence 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.

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

Taxable income – Taxable income comprises all earnings derived from Malaysia, including gains or profits from a trade or business, employment, dividends, interest, rents, royalties, premiums or other earnings. Employment income includes most employment benefits, whether in cash or in kind.

Capital gains – 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. The rate is 30% for such disposals of property made within three years after the date of acquisition. The rates are 20% and 15% for disposals in the fourth and fifth years after acquisition, respectively, and a 5% rate applies for disposals after five years. For disposals by an individual who is not a citizen and not a permanent resident, the rates are 30% and 10% for disposals within and after five years after acquisition, respectively.

Deductions and allowances – Various allowances and personal deductions are available.

Rates – Income tax is imposed at progressive rates up to 28% for resident individuals. Individuals who do not meet the residence requirements are taxed at a flat rate of 28%.

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duty is levied at rates between 1% and 4% of the value of property transfers, and at 0.3% on share transaction documents.

Capital acquisitions tax – No

Real property tax – Individual states in Malaysia levy "quit" rent and assessments at varying rates.

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – 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, as well as to the SOCSO. Both the employee and the employer contribute 0.2% of the employee's remuneration (capped at MYR 4,000 a month) to the EIS.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Tax on employment income is withheld by the employer under a 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.

Penalties – Penalties apply for failure to comply with the tax law.

Sales tax and service tax:

Taxable transactions – Malaysia levies sales tax and service tax on certain goods and services. Sales tax is charged on taxable goods manufactured in, or imported into, Malaysia (all goods are taxable unless exempt). Service tax is imposed on taxable services including, among other things, domestic air passenger transport, telecommunication services, provision of accommodation, food and beverages, services in health and wellness centers and golf clubs and certain professional services. Imported taxable services acquired by any business in Malaysia from any person (vendor) outside Malaysia also are subject to service tax, which the Malaysian recipient of the service must account for under a reverse-charge mechanism.

Rates – The standard sales tax rates are 10% or 5%, and the service tax rate is 6%. Goods that are exempt from sales tax generally include live animals, unprocessed food and vegetables, antibiotics, certain machinery, certain chemicals and certain raw materials for the manufacture of goods.

Registration – The threshold for sales tax and service tax registration generally is MYR 500,000 per annum of taxable goods/taxable services, except for restaurants, where the threshold is MYR 1 million per annum of taxable services.

Filing and payment – Sales tax and service tax are to be paid to the authorities within one month after the end of a taxable period (which generally is two months). Service tax on imported taxable services is to be paid to the authorities under the reverse-charge mechanism within one month after the month in which the Malaysian business recipient of the service (i) makes the payment to the overseas vendor, or (ii) receives the invoice from the overseas vendor, whichever is earlier.

Source of tax law: Income Tax Act 1967; Customs Act 1967; Real Property Gains Tax Act 1976; Sales Tax Act 2018; Service Tax Act 2018; Stamp Act 1949; Promotion of Investments Act 1986

Tax treaties: Malaysia has concluded over 70 income tax treaties. Malaysia signed the OECD MLI on 24 January 2018.

For further information on Malaysia's tax treaty network, visit Deloitte International Tax Source.

Tax authorities: Inland Revenue Board of Malaysia; Royal Customs Department of Malaysia

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