

马来西亚建筑工程企业的一般 税务、商业规定和法规

General tax and business rules and
regulations for the Construction
Business in Malaysia



在马来西亚的中国企业主要是以建筑工程服务为主。以下概况信息是针对实施建筑工程项目的中国企业，更加了解马来西亚的主要税收规定、法则和与企业相关的合规要求。

A. 外汇管制

- A.1 马来西亚对外汇控制采取自由体制，与贸易伙伴的交易保有一致的体制。在马来西亚任何建筑工程得到的资本、利益和收入（包括股息、利息、特许权使用费、租金等）可自如汇回中国总公司/控股公司。
- A.2 居民公司欲向其他非居民借贷(除了非银行、非居民的关联公司)包括通过金融机构以每个集团公司汇总超过马币1亿，需向中央银行提交申请审批以取得许可。
- A.3 申请可通过提交表格10A。中国控股公司的分支机构或马来西亚子公则司无需向中央银行的提交申请审批。

B. 建筑企业注册

- B.1 马来西亚国家建筑工业发展局(“CIDB”)监管工业规范。总体来说，承包商(本地和外国两方)需要在投标/开始建筑工程前向CIDB注册。
- B.2 本地承包商注册时，必须遵守不同承包商等级特定的工作投标资格。在确定申请合格的等级时，申请必须符合可靠的财务和技术执照。本地承包商注册证书有效期至少1至3年。
- B.3 外国承包商(分支机构/公司)注册时，注册证书将以项目为基础颁发，其中不划分承包商的等级。“外国承包商”是指持有31%或以上外国股权的公司。
- B.4 条例规定建筑工程合约总额在马币50万以上的承包商需要在执行合约日期后14天内或施工开始前14天内或更早通知CIDB。主承包商需被征收合约额的0.125%。

C. 税收规定

1. 公司所得税

- 1.1 马来西亚执行属地税务体制，只有来自马来西亚的收入被马来西亚征税。来自外国的收入不应在马来西亚纳税。针对一些活动是对全球收入征税，例如银行、保险、空运及船运业，除非直接利润或收益不在马来西亚，否则将被马来西亚征税。

1.2 房地产公司在处理不动产或股份从而构成的资本收益是不被征税的，然而该资本收益将在1976年不动产业利得税法(“RPGT”)下被征税。

1.3 马来西亚一般公司所得税税率是25%(2016年将下调至24%)。中小型企业以及关联企业实收资本小于马币250万(近似人民币4,237,288元)，前马币50万(近似人民币847,458元)税率为20%。非马来西亚纳税居民公司(例如，外国分支机构)也享有同样税率。如在马来西亚执行业务控制和管理，该公司即被视为马来西亚纳税居民公司。

1.4 现年的税收亏损是可以抵消同年的非营业收入(例如，利息)。建筑工程项目中未被吸纳税务亏损可无限期结转至未来其他项目法定营业收入中扣除。但现年亏损不可带回之前年度扣除。

1.5 公司必须确定其开始业务的日期，以确定营业费用可否享有扣除及遵循一定的税务合规要求。总体来说，当公司签订商业合约的时间就可视为已开始其商业活动。

1.6 公司开始运营的课税年度的前3个月内需向马来西亚内陆税收局(MIRB)提交预估所得税。

1.7 提交了预估所得税后，公司需要对该课税年的预估所得税开始12个月相同税款分期纳税支付。缴付的截止日期为每月的第15天。针对刚开始营业的公司，第一次分期缴税将在计税基期开始的第6个月。

1.8 公司需要在财政年结束的7个月里提交税务申报。如扣减提交纳税申报的分期缴付后有任何应纳税收差额，公司需在财政年度结束的7个月内缴付余额。如没有按时汇款缴付额给MIRB，罚款率将高达15.5%。

2. 预扣税

2.1 马来西亚有一个全面的预扣税制度。总体来说，以下支付给非居民的款项类型需缴纳预扣税：

- a) 利息 - 支付总额的15%
- b) 特许权使用费 - 依据所得税法令第109条款，支付总额的10%
- c) 依据所得税法令第109B条款特别种类的收入包括：
 - (i) 非居民或非居民的雇员所提供的服务与财产或所得权利关联，或者对从非居民购买的机器或其他设备进行安装或操作；
 - (ii) 非居民提供技术咨询、援助或其所提供的技术咨询、援助或服务与科学、工业或商业、项目或方案等的技术应用与管理有关联；
 - (iii) 针对使用动产的协议或安排支付给非居民的租金或其它款项。

服务 (i) 及 (ii) 中，若在马来西亚境外执行的，则无需承担预扣税。

- d) 合约支付给在马来西亚拥有常设机构或分支机构的非居民企业 - 依据所得税法定第107A条例，预扣税率为13%（与上文 (c) 的10%比较）。13%预扣税并非最终税收，而是一种预缴税：
 - (i) 10%预扣税将用来抵消马来西亚常设机构应缴公司所得税，超过部分将可予以退还，而不足部分则需向马来西亚税务局补缴。在退税前，MIRB将会对非居民公司进行税务稽查/审核。审核完毕将发出通知函。
 - (ii) 当外籍雇员全额缴纳在马来西亚时的个人所得税，将可获得3%的预扣税的退税。

e) 马来西亚不对支付给非居民的股息征收预扣税。

2.2 双边税收协议可能减少预扣税率。依据双边税收协议，利息、专利费和技术服务费税率为10%。

3. 1988年中马双重税收协定 (“CM-DTA”)

常设机构 (“PE”)

3.1 尽管中国公司没有在马来西亚注册公司但在本地从事商业活动，如中国公司在马来西亚有常设机构将被征收马来西亚公司所得税。

3.2 依据中马双重税收协定第5 (1)、(2) 条例，“常设机构”一语是指企业进行全部或部分营业的固定营业场所，包括：：

- a) 管理场所；
- b) 分支机构；
- c) 办事处；
- d) 工厂；
- e) 作业场所；
- f) 矿场、油井、气井、采石场或者其他开采自然资源包括木材或其他林业产品的场所；
- g) 农场或种植园

3.3 依据中马双重税收协定第5 (3) 条例中，扩展“常设机构”一语包括建筑工地，建筑、装配或安装工程，或者与其有关的监督管理活动，仅以连续6个月以上为限。在第5 (3) 条例中进一步说明缔约国一方企业通过雇员或者其他人员，在缔约国另一方为同一个项目或相关联的项目提供的劳务，包括咨询劳务，仅以在任何十二个月中连续或累计超过六个月的为限。

3.4 缔约国一方企业的利润应仅在该缔约国征税，但该企业通过设在缔约国另一方常设机构，并在该缔约国的另一方进行营业的除外。如果该企业通过设在缔约国另一方的常设机构在该缔约国另一方进行营业，其利润可以在该缔约国另一方征税，但应仅以属于该常设机构的利润为限。

4. 转让定价

MIRB发布的转让定价指南明 (TP 指南) 确指出对企业间交易公平原则的明确要求。在中国的总公司或控股公司向在马来西亚开设的公司收取费用 (包括货物和服务供应、利息、特许权使用费等) 必须等同市场价率。如查出收费过高，MIRB做出任何调整可能受到严重处罚。

根据该TP指南，每年总收入超过马币2,500万或与关联方交易 (不包含财务支援) 每年累积值超过马币1,500万的公司需要准备同期资料。尽管如此，不在此范围的公司也建议准备该文档以面对MIRB的稽查。

5. 印花税

- 5.1 服务协议和建筑工程合约需缴纳从价印花税，税率为每马币1,000需缴马币5令吉。债务人（例如，提供服务者）有责任缴纳印花税。在许多级合约安排中，只有主合约需缴纳从价印花税，随后级的分包合约将缴纳普通印花税，税额为马币50。建筑工程合约必须施工日期起30天内缴纳印花税，如未在有效期限内缴纳，将会受到严重处罚。

6. 进口税

建筑行业所需进口的某些器材和建筑材料需进口税，不同种类的商品税率也不相同。在马来西亚对一些器材满足某些条件下，此商品是有可能被税收豁免的。

7. 消费税 (GST)

- 7.1 在马来西亚年度应纳税营业额超过马币50万被视为GST的纳税人被要求注册消费税。供应工程服务的承包商年度营业额超过马币50万被视为纳税人。
- 7.2 工程服务应纳税供应征收6%的GST。服务供应给政府也需要征税，但货物供应给政府可得到GST减免。
- 7.3 在符合某些条件下，承包商在购买商品和服务中发生的进项税是与在工程服务供应中产生的销项税抵消。净销项税从纳税期结束的1个月内支付给关税局。在净进项税情况下，关税局退回会在商家呈报GST后14天（电子报税）及28天内（手写填表方式报税）。
- 7.4 在建筑工程行业中，2014年消费税法第11条例中说明了对建筑业的特别供应时间。涉及建筑工程签发完工证明，供应时间将以最早日期为主视何者为先如下：
- (i) 税务发票签发日期；
 - (ii) 收到货物和服务日期；
 - (iii) 如果签发完工证明后21天内，发票没有签发，以签发完工证明日期为准

8. 外籍人士税收

- 8.1 不论付款方式或付款地点，在马来西亚就业的人士，其收入需缴马来西亚所得税。
- 8.2 马来西亚个人税率将依据是否为马来西亚纳税居民状态而定。总体上，如果个人一年内在马来西亚居留至少182天，将被视为马来西亚纳税居民。也有其他可证明是马来西亚纳税居民的说明条件。
- 8.3 从2015年课税年起，马来西亚纳税居民个人所得税税率范围为0%-25%，非马来西亚纳税居民固定税率为25%。马来西亚纳税居民可从他们的纳税收入中扣减个人减免。
- 8.4 有条例说明马来西亚个人就业收入可获得税务豁免。总体来说，如符合相关条例，员工将被豁免缴付马来西亚个人所得税。
- 8.5 此外，如果个人是缔约国的纳税居民，他可征询税务条约豁免，其中他需符合豁免条约条件。

D. 出入境事项

- D.1 外国人进入马来西亚必须拥有有效国籍护照或其他国际认证的旅游文件，这些文件必须从进入马来西亚当天算起，有效期至至少6个月。
- D.2 若在马来西亚就业少于2年，外籍雇员必须从移民局得到临时工作签证；若就业超过2年，需获得工作签证。此类签证须在抵达马来西亚前申请。目前，申请工作签证可获马来西亚移民局批准最多5年。所有“赞助”必须在马来西亚进行，雇主/“赞助方”须负责续签或遣返雇员。申请过程需时大约6-8周。
- D.3 一般外籍就业人员若拥有马来西亚人没有的专业或知识，该项申请将被批准。在马来西亚的外资公司可申请所需的相关专业人士名额。此外，此类公司可申请永久性录用外籍人员担纲该职位。总体来说，实收资本高于马币50万的公司方可申请外籍职位。

Construction is a major sector the Chinese businesses are actively participating in Malaysia. The following general information aim at assisting the Chinese businesses that are undertaking construction projects to have a better understanding in major tax rules and regulations and some business related compliance requirements in this country.

A. Exchange Controls

- A.1 Malaysia maintains a liberal system of exchange controls that applies uniformly to transactions with its trading partners. Repatriations of capital, profits and income from any construction activities in Malaysia back to the head office/ holding company in China are freely permitted including dividends, interest, royalties, rental, etc.
- A.2 For borrowing from other non-residents (other than non-bank, non-resident related company) including financial institutions by a resident company exceeding RM100 million in aggregate per corporate group, approval from Central Bank is needed. Application can be submitted.
- A.3 Using Form 10A. A branch or Malaysian subsidiary of a China holding company can borrow without approval from the Central Bank.

B. Registration of Construction Business

- B.1 The Construction Industry Development Board of Malaysia ("CIDB") regulates the construction industry. In general, contractors (both local and foreign) are required to be registered with CIDB before tendering/commencing work for a construction project.
- B.2 When registering for local contractors, applicants would have to abide by the contractors' grade classification which specifies the different job tendering capacity. In determining the eligibility for applied grade, the applicants must fulfil certain financial and technical criteria. The certificate of registration for local contractors is valid for a minimum of 1 year up to 3 years.
- B.3 For foreign contractors (branch/company), the certificate of registration will be issued on a project-basis and the contractors' grade classification does not apply. "Foreign contractor" is interpreted as a foreign/local entity with $\geq 31\%$ foreign shareholding.
- B.4 The regulation requires contractors undertaking construction works having a contract sum of above RM500,000 to notify CIDB using the prescribed form within 14 days after the date of contract execution, or within 14 days before the commencement of the said construction work, whichever earlier. A levy of 0.125% of the contract sum would be payable by the main contractor.

C. Tax Rules

1. Corporate Tax

- 1.1 Malaysia adopts a territorial tax system where only income derived from Malaysia is subject to Malaysian tax generally. Income from foreign-sources is generally not taxable in Malaysia. Unless profits or gains are attributed directly to operations conducted outside Malaysia, they are to be derived from Malaysia.
- 1.2 Capital gains are not taxable apart from capital gains arising from disposal of real property or shares in a real property company where real property gains tax ("RPGT").
- 1.3 The prevailing corporate tax rate in Malaysia is 25% (to be reduced to 24% with effect from YA 2016), while a reduced rate of 20% applies to the first RM 500,000 (approximately CNY847,458) chargeable income of small and medium-sized enterprises ("SME"). The same rate also applies to a non-tax resident in Malaysia (e.g. branch of a foreign corporation). A corporation is considered as a tax resident in Malaysia if its management and control are exercised in Malaysia.
- 1.4 Current year tax losses may be offset against non-business income (for e.g., interest) in the year the losses arise. Unabsorbed tax losses from a construction project may be carried forward indefinitely for utilisation against future statutory business income from another project. The carry back of tax losses are not allowed.
- 1.5 A company is required to determine the date of commencement of its operations in order to adhere to tax compliance requirements. Generally, when a construction company enters into a construction contract, it may be considered to have commenced its business.
- 1.6 A company which first commenced operations in a year of assessment is required to furnish the estimate of its tax payable for the year of assessment within three months from the date of commencement of operations. The tax estimate is furnished to the Malaysian Inland Revenue Board (MIRB).
- 1.7 Where an estimated tax payable is furnished, the company will be required to commence an instalment payment scheme to pay the estimated tax payable for that year of assessment in 12 equal monthly instalment payments. The due date for payment is on the 15th of each month. For a company that just commences operations, the first instalment payment will commence from the 6th month of the basis period.

- 1.8 A company is required to file a return within 7 months from the end of its financial year. Any balance of tax payable after deducting the instalment payments made upon submission of the tax returns which is a deemed assessment of the company is due within 7 months from the end of its financial year. Penalties up to 15.5% will be imposed for failure to remit payment to the MIRB within the stipulated due date.

2. Withholding tax

- 2.1 Malaysia has a comprehensive withholding tax system. Generally, WHT is applicable to the following types of payments made to non-residents:
- a) Interest – 15% of the gross amount paid.
 - b) Royalty fee – 10% of the gross amount paid under Section 109 of the Act
 - c) Special classes of income under 109B of the Act which includes:
 - (i) Amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;
 - (ii) Amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;
 - (iii) Rent or other payments, made under any agreement or arrangement for the use of any moveable property.

Services mentioned in (i) and (ii) above will not be liable to WHT if such services are performed outside Malaysia.

- d) Contract payment in instances where the non-resident has a permanent establishment or branch in Malaysia – 13% under Section 107A of the Act (as compared to 10% as in (c) above). The 13% WHT is not a final tax, but is a form of advance tax in respect of the following:
 - (i) 10% of the WHT is to be utilised to set off against the corporate tax payable by the PE in Malaysia and any surplus/deficit is refundable to the taxpayer / payable to the MIRB.
 - (ii) 3% WHT is refundable when the expatriate employees have fully settled their Malaysian taxes.
 - (iii) Malaysia does not impose withholding tax on dividends paid to non-resident.
- 2.2 Double tax agreements may provide reduced rates of WHT where available. Based on DTA, the rates for interest, royalties and technical fees is 10%.

3. China-Malaysia Double Tax Agreement 1988 (“CM-DTA”) Permanent Establishment (“PE”)

- 3.1 A Chinese company which undertakes business activity in Malaysia without incorporating a company locally may still be subject to Malaysian corporate income tax if it has a PE in Malaysia.
- 3.2 Under Article 5(1) and (2) of the CM-DTA, the term “PE” is defined as a fixed place of business through which the business of the enterprise is wholly or partly carried on, and it includes especially:
- a) A place of management;
 - b) A branch;
 - c) An office;
 - d) A factory;
 - e) A workshop;
 - f) A mine, an oil or gas well, quarry or other place of extraction of natural resources, including timber or other forest produce; and
 - g) A farm or plantation.
- 3.3 Article 5(3) of the CM-DTA also expands the inclusion of PE to cover a building site, a construction, assembly or installation project or supervisory activities, but only where such site, project or activities continue for a period of more than 6 months. Article 5(3) further includes the furnish of services, including consultancy services, by the foreign company’s employees in the said jurisdiction, provided that such activities continue for a period of more than 6 months within an 12 month period.
- 3.4 Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state but only so much of them as are attributable to that permanent establishment.

4. Transfer Pricing

The TP Guidelines issued by MIRB provides for the explicit requirements on the application of the arm’s length principle for inter- company transactions. Charges (including supply of goods and services, interest, royalty etc) made by the head office or holding company from China to the operation in Malaysia have to be at market rate. If the charges are excessive, any adjustments made by the MIRB may attract severe penalties.

Under the TP Guidelines, contemporaneous documentation is required where the gross income of the taxpayer exceeds RM25 million per annum and/or the cumulative value of related party transactions (excluding financing) exceeds RM15 million per annum. Nonetheless, even if contemporaneous documentation is not required, it is encouraged that such documentation be prepared in the event of a transfer pricing audit.

5. Stamp Duty

Service agreements and construction contracts are generally subject to stamp duty at ad valorem rates of RM5 for every RM1,000. The person liable to pay the duty is the obligor i.e. the service provider. In a multi-tiers contracting arrangement, only the main contract is subject to duty at ad valorem rates whilst for the subsequent level of sub-contracts, Malaysian stamp duty will apply at a nominal rate of RM50. A construction contract has to be stamped within 30 days from the date of execution failing which heavy penalties may be imposed.

6. Import Duties

Import duties are applicable to the importation of certain equipment and building materials required by the construction industry, the rate of duties varies for different type of goods. Duties exemption is available for some equipment subject to the fulfilment of certain conditions including whether the goods is available in Malaysia.

7. Goods and Service Tax (GST)

- 7.1 A person who makes taxable supplies in Malaysia with annual turnover exceeding RM500,000 is required to be registered as a taxable person for GST purposes. A contractor that supplies construction services that has annual turnover exceeds RM500,000 is considered as a taxable person.
- 7.2 The supply of construction services is a form of taxable supply subject to 6% GST. Supply of services to the government is also taxable but supply of goods to the government is given GST relief.
- 7.3 Input tax incurred by the contractor on purchase of goods and services would generally be claimable against the output tax arising from the supply of construction services, subject to certain conditions. The net output tax is payable to the Customs within one month from the end of the taxable period. In a scenario of net input tax, refund from the Customs will be made within 14 days if the GST returns are filed electronically or 28 days in the case of manual filing.
- 7.4 In the case of the construction industry, there is a special time of supply rule under Regulation 11 of the GST Regulations 2014 providing for the time of supply. Where the construction work involving issuance of certificate of work done, the time of supply will be earliest of the following events:
 - (i) date of issuance of tax invoice;
 - (ii) date of receiving payment for goods and services; or
 - (iii) date on which the certificate of work done is issued, if invoice is not issued within 21 days after the certificate of work done is issued.

8. Expatriate Tax

- 8.1 An individual who is exercising employment in Malaysia is subject to Malaysian income tax on their employment income regardless of the mode or place of payment.
- 8.2 The tax rate applicable for an individual in Malaysia differs according to the tax residence status of the individual. Generally, an individual will be considered as a tax resident if he stays in Malaysia for at least 182 days in a year. There are other circumstances an individual can be treated as tax resident are stated in Section 7 of the Malaysia Income Tax Act, 1967.
- 8.3 From year of assessment 2015 onwards, the income tax rate applicable to a tax resident is based on scaled rates ranging from 0% - 25% whilst a flat rate of 25% applies to non-residents. Tax residents will also be allowed to claim personal reliefs against their taxable income.
- 8.4 There are provisions that grant exemption to an individual exercising employment in Malaysia on employment income. Generally, an employee deriving employment income from exercising employment in Malaysia could be exempted from tax.
- 8.5 In addition, if an individual is a tax resident of a treaty country, he may seek tax treaty exemption. There are conditions set in the treaty to be fulfilled in order to enjoy the exemption.

D. Immigration Matters

- D.1 Foreign personnel entering into Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia for at least six months from the date of entry into Malaysia.
- D.2 The foreign employees must also obtain from the Immigration Department either a temporary employment pass for employment period of less than two years or employment pass for employment period of more than two years. Applications for the passes must be made before arrival in Malaysia. Applications for employment passes can now be made for up to five years subject to approval of the Malaysian Immigration Authorities. All such applications must have sponsorship in Malaysia whereby the sponsor agrees to be responsible for the maintenance and repatriation of the employee if necessary. The application process to obtain an employment pass is generally 6 – 8 weeks.
- D.3 The general policy with respect to the employment of expatriate personnel is that employment will be permitted where the requisite expertise or skills are not readily available amongst Malaysians. Foreign owned companies investing in Malaysia are allowed to hire expatriate personnel where necessary and should apply for the relevant number of expatriate posts required. In addition, such companies are also allowed to key posts that may be permanently filled by expatriate personnel. Generally, a minimum paid up share capital of RM500,000 is required to be eligible to apply for expatriate positions.

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