

Doing Business in Malaysia

2011



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 81 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Malaysia has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at October 2011.

We look forward to helping you do business in Malaysia.

UHY, a Malaysian partnership, (the "Firm") is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms. UHY is the brand name for the UHY International network. The services described herein are provided by the Firm and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for services provided by other members.

2. Business environment

Parliament and law-making

Malaysia practises Parliamentary Democracy with Constitutional Monarchy and His Royal Highness is the Paramount Ruler. The Federal Constitution was legislated with the establishment of conditions for this system to exist. One of the conditions of Parliamentary Democracy is the division of the administrative power into three parts: legislative, judiciary and administrative or executive.

Malaysia is also a country that practises a system of democracy based on the Federation system. Accordingly, all of the states have agreed to form the country of Malaysia.

Each state has surrendered part of its power, such as finance, defence, education, foreign affairs and others, as stated in the Malaysian Constitution, and which is administered by the Central Government. There are matters that are under the power of the state and each state administers power over those matters. As a country with a Constitutional Monarchy, the Constitution is allocated by the institutions of Yang Di-Pertuan Agong, the Paramount Ruler, the hereditary rulers of the nine states and the Council of Malay Rulers. His Royal Highness has the power to safeguard the customs and traditions of the Malay people and the Administration of the Islamic Religion in each state.

Seri Paduka Baginda Yang Di-Pertuan Agong is also the Paramount Ruler of the country and His Royal Highness is the Highest Commander of the Armed Forces. His Royal Highness carries out his Constitutional duties with the advice of the Prime Minister and Cabinet Ministers. The hereditary rulers are Heads of State of their own state and carry out their duties with the advice of their own Menteri Besar, or Chief Minister.

Parliament is the legislative authority for the Federation and, in this capacity, it makes laws applicable to the Federation as a whole. Parliament passes federal laws, makes amendments to existing federal laws, examines government policies, approves government expenditure and approves new taxes.

The Parliament also serves as the forum for criticism and focus of public opinion on national affairs.

Market conditions

Malaysia, with its strong economic strength, supportive government policies, educated workforce, developed infrastructure, vibrant business environment and quality of life, has always been an attractive market for foreign investors.

Population

Malaysia is a multi-racial country with a mid-year population projection for 2011 of 28.7 million. Malays, who make up about 60% of the population, are the predominant group, with Chinese, Indians and other ethnic groups making up the rest. About 80% of the nation's total population occupies the Peninsular Malaysia.

Area

Malaysia is located in the heart of South-East Asia, slightly north of the Equator. It is made up of two geographical regions - Peninsular Malaysia, or West Malaysia comprising 11 states and the Federal Territory of Kuala Lumpur; and East Malaysia, which has two states, and the Federal Territory of Labuan. The total area of Malaysia is approximately 330,000 sq. km. Most of its land is located in the island of Borneo. Peninsular Malaysia occupies only about 40% of its total area.

The climate is hot and humid. Relative humidity ranges from 60 to 90 per cent, except in the highlands.

Language

Bahasa Malaysia is the official language. However, English is widely used for business and in the tourism industry. Apart from English, Mandarin and Tamil are also common languages taught at school concurrently with Bahasa Malaysia and English.

Currency

The local currency is Ringgit Malaysia (RM). Major hotels and larger establishments readily accept foreign currency. Foreign currencies can also be readily exchanged at banks or licensed money changers.

The economy

The economic policies and strategies of the country are set out in the National Development policy. These are implemented through the outline Perspective Plan. The current action plan is the Tenth Malaysia Plan (2011-2015).

The Tenth Malaysia Plan is the first of three five-year blueprints for the National Mission, encapsulating policy directions and programmes, which

are aimed at delivering the Mission's philosophy and thrusts. The National Mission will drive the design and prioritisation of programmes, plans and budgets from the year 2011 onwards. With consistent and determined effort in the implementation and delivery of the National Mission, the nation will be well placed to achieve its aspirations and join the ranks of developed nations by the year 2020.

The Malaysian economy recorded a 7.2% GDP growth for the year 2010 (2009: 1.7%). Growth for 2010 was largely contributed by growth in the Islamic finance, high technology industries, biotechnology, and services sectors. With the strengthening of domestic-led activities coupled with a fairly favourable external environment, 2012 is expected to yield growth of 5.2%. From 2005 until 2010, the average inflation rate in Malaysia was 2.77%.

3. Foreign investment

Multinational corporations from more than 40 countries have invested in more than 3,000 projects in Malaysia's manufacturing sector, attracted by a conducive business environment which has made Malaysia one of the world's top locations for offshore manufacturing operations. Many of them have reinvested in multiple projects.

Foreign investors must comply with government guidelines and policies, and obtain a licence from the government, for investment in the following sectors:

- High technology manufacturing
- Energy
- Information technology
- Telecommunications
- Other sectors of strategic importance to Malaysia.

Foreign investment in any activities other than those in manufacturing, multimedia and petroleum industries may require the approval of the Foreign Investment Committee (FIC).

As for exchange control or currency, transactions are regulated by the Central Bank of Malaysia (Bank Negara Malaysia). Some of the related rulings pertaining to foreign investment are: The extension of a domestic credit facility by resident controlled to non-resident controlled companies, provided that it does not exceed RM 50 million:

- Payment to non-residents for the import of goods and services;
- Repatriation of a foreign direct investor's investments, including capital, profits, dividends and interest.

Tax incentives are offered for foreign investments into the following industries:

- Manufacturing
- Tourism
- Agriculture
- Environment protection
- Training
- Research and development
- Transport and communication.

4. Setting up a Business

The principal forms of business entity through which business can be conducted are:

- Limited companies
- Branch of a foreign company
- Sole proprietorship
- Partnerships.

Limited companies

Most businesses in Malaysia are registered as limited companies and regulated by the Companies Act 1965. Generally, there are three types of companies: limited by shares, limited by guarantee and unlimited companies. All businesses must first seek approval and be registered with the Companies Commission of Malaysia. A company can start operating only upon receipt of the certificate of incorporation.

In any incorporation, there must be a minimum of two resident directors. Directors need not be shareholders of the company. The minimum authorised capital is RM 100,000. Foreign investors may hold 100% of shares in the corporation.

Branch of foreign company

Foreign companies are allowed to engage in a wide range of businesses in Malaysia, e.g. to carry out wholesale and retail trade in Malaysia. In any case, a branch of a foreign company needs to register itself with the Companies Commission of Malaysia before it may start business in Malaysia.

Sole proprietorship

Sole proprietorships are basically single-owner businesses that are generally small. The registration of sole proprietorship is governed under the Registrar of Business under the Registration of Business Ordinance 1965. However, no foreign individual or companies can be registered as a sole proprietor with the Companies Commission of Malaysia.

Partnership

Partnerships are businesses consisting of not less than two and not more than 20 partners. The registration of partnership is also governed under the Registrar of Business under the Registration of Business Ordinance 1965. The Companies Commission of Malaysia in practice also does not

permit companies or foreign individuals to be registered as partners in a partnership.

5. Labour

General

Malaysian employment is governed by the Employment Act 1955 which regulates the minimum terms and conditions for services earning RM 1,500 per month and below. The Act also provides for payment of compensation covered by the Employees Social Security Act 1969 for injuries caused by accidents arising from employment.

Foreign employees

Foreigners are encouraged to take up employment in Malaysia, however, only in areas where there is a shortage of suitably trained Malaysians. The Malaysian Government has issued the following guidelines on the employment of expatriate personnel:

Manufacturing companies with a foreign paid-up capital of USD 2 million and above: (i) Automatic approval will be given for up to ten expatriate posts, including five key posts; (ii) Expatriates can be employed for up to a maximum of ten years for executive posts and five years for non-executive posts.

Manufacturing companies with a foreign paid-up capital of more than USD 200,000 but less than USD 2 million: (i) Automatic approval will be given for up to five expatriate posts, including at least one key post; (ii) Expatriates can be employed for up to a maximum of ten years for executive posts, and five years for non-executive posts.

Manufacturing companies with a foreign paid-up capital of less than USD 200,000 will be considered for both key posts and time posts based on the following guidelines: (i) Key posts can be considered where the foreign paid-up capital is at least RM 500,000. This amount, however, is only a guideline and the number of key posts allowed depends on the merits of each case; (ii) Time posts can be considered for up to 10 years for executive posts that require professional qualifications and practical experience, and five years for non-executive posts that require technical skills and experience. For these posts, Malaysians must be trained to take over the posts eventually; (iii) The number of key posts and time posts allowed depends on the merits of each case.

For Malaysian-owned manufacturing companies, automatic approval for the employment of expatriates for technical posts, including R&D posts, will be given as requested.

All employment passes are valid for the period approved for the posts. However, key post holder employment passes are issued on a five-year renewable basis. Holders of employment passes are issued with multiple entry visas valid for the duration of the employment pass.

6. Taxation

Scope of charge

Malaysia taxation is imposed on income accruing in or derived from Malaysia. Malaysia's taxes are also assessed on a current year basis and are regulated by a self-assessment system for all corporate and individual taxpayers.

The Malaysian taxation system consists of direct and indirect imposition of taxes. Direct taxes are:

- Income tax
- Real property gains tax (re-introduce on 1.1.2010)
- Petroleum income tax
- Stamp duty.

Indirect taxes are:

- Excise duty
- Import and export duty
- Sales tax
- Service tax.

Corporate tax

Companies with a paid up ordinary share capital that exceeds RM 2.5 million (whether resident or non-resident) are currently taxed at a rate of 25% on all income or profits derived from Malaysia (except those incomes which are exempt under the Malaysian law).

However, effective from Year of Assessment 2004, all residents with a share capital of less than RM 2.5 million at the beginning of basis period are taxed at a preferential rate of 20% on their first RM 500,000 chargeable income and the balance will be taxed at the current prevailing tax rate. With effect from Year of Assessment 2009, the preferential rate for SME will not be applicable if more than:

- a) 50% of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
- b) 50% of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company;
- c) 50% of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

“Related company” is defined as a company which has a paid up capital exceeding RM 2.5 million in respect of ordinary shares.

Personal income tax

Resident individuals are subject to tax at graduated tax rates after the deduction of personal reliefs. The resident individual tax rates are as shown in appendix II.

Non-resident individuals are taxed on income derived from Malaysia at a flat rate of 28% (YA 2008) with no personal reliefs given. Non-resident individual tax rate is reduced to 27% in 2009 and 26% in YA 2010 and onwards.

Personal reliefs

Resident individuals are entitled to the following personal reliefs for the YA 2010:

No.	Type of Individual Tax Reliefs	Amount (RM)
1.	Self and Dependent	9,000
2.	Medical expenses for parents (scope extended from YA 2011, see Budget 2011 summary)	5,000 (max)
3.	Basic supporting equipment for disabled taxpayer, spouse, children or parent	5,000 (max)
4.	Disabled Individual (in addition to self relief above)	6,000
5.	Education Fees (Individual) for acquiring qualifications at tertiary level or any course of study at post graduate level in technical, vocational, industrial, scientific, technological, law, accounting, Islamic financing or skills	5,000 (max)
6.	Medical expenses for serious diseases	5,000 (max)
7.	Complete medical examination	500 (max)
8.	Purchase of books, journals, magazines and publications	1,000 (max)
9.	Purchase of computer (once every three years)	3,000 (max)

No.	Type of Individual Tax Reliefs	Amount (RM)
10.	Net saving in Skim Simpanan Pendidikan Nasional	3,000 (max)
11.	Purchase of sport equipment for sport activities	300 (max)
12.	Subscription fees for broadband registered in the name of the individual (from 2010 to 2012)	500 (max)
13.	Income Tax Relief on Interest of Housing Loan	10,000 (max)
14.	Husband/Wife (for joint assessment)/Alimony Payments	3,000
15.	Further deduction of RM 5,000 if the taxpayer is a disabled person and another RM 3,500 if the spouse (i.e. husband/wife) is also disabled	5,000 (taxpayer) 3,500(spouse)
16.	Ordinary child relief (regardless number of children) for child below 18 years old and unmarried	1,000 per child
17.	Child	1,000
18.	Child age 18 years old and above, not married and pursuing diplomas or above qualification in Malaysia at a bachelor degree or above outside Malaysia in program and in Higher Education Institute that is accredited by related Government authorities	4,000
19.	Disabled child An additional relief of RM 4,000 if the disabled child is not married	4,000
20.	EPF and life insurance (scope extended from YA 2011, see Budget 2011 summary)	6,000 (max)
21.	Premium on new annuity scheme or additional premium paid on existing annuity scheme commencing payment from 1 January 2010 (amount exceeding RM 1,000 can be claimed together with life insurance premium)	1,000 (max)

No.	Type of Individual Tax Reliefs	Amount (RM)
22.	Insurance premium for education or medical benefit	3,000 (max)

Tax rebates

Income tax rebates for resident individual with chargeable income less than RM 35,000

No.	Tax Rebate	Year of Assessment 2001-2008 (RM)	Year of Assessment 2009 Onwards (RM)
a	Separate Assessment	-	-
	Wife	350	400
	Husband	350	400
b	Combined Assessment	-	-
	Wife	350	400
	Husband	350	400
	Total	700	800
b	Assessment where husband or wife does not have any total income	-	-
	Wife	350	400
	Husband	350	400
	Total	700	800

Other tax rebates

No.	Tax Rebate	(RM)
a	Zakat/Fitrah	Subject to the maximum of tax charged
b	Fees/Levy on foreign workers	Subject to the maximum of tax charged

Withholding tax

Non-resident individuals are subject to a final withholding tax on the following sources of income:

- Ten per cent on special classes of income such as use of movable property, technical advice, assistance or services; installation

services on the supply of plant, machinery, etc.; personal services associated with the use of intangible property;

- Ten per cent on royalties;
- Fifteen per cent on services of a public entertainer;
- Ten per cent on gains or profits taxable under Section 4(f) of the Income Tax Act 1967 such as commissions guarantee fees and introducer's fees.

Effective 21 September 2002, technical and installation fees for services performed outside Malaysia are not subject to withholding tax.

Real property gains tax (re-introduced effective January 2010)

Capital gains are generally not subject to tax in Malaysia. Real property gains tax is imposed on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such land as well as the disposal of shares in real property companies.

For individuals: citizens and permanent residents

Year of disposal	Rate of tax
Within the 1 st and 2 nd years	30%
Within the 3 rd year	20%
Within the 4 th year	15%
Within the 5 th year and thereafter	5%

For companies

Year of disposal	Rate of tax
Within the 1 st and 2 nd years	30%
Within the 3 rd year	20%
Within the 4 th year	15%
Within the 5 th year and thereafter	5%

For individuals who are non-citizens and not permanent residents

Within 5 years	30%
After 5 years	5%

Effective 1 January 2010, all gains arising from the disposal of real property in Malaysia are subject to RPGT at the rate of 5% if the disposal was within a period of five years from the date of acquisition/purchased

of the chargeable assets. No RPGT is applicable for gains arising from the disposal of chargeable assets after five years of ownership. However, this exemption shall not apply to the gains arising from the disposal of shares in real property companies (RPC).

Sales tax

Sales tax in Malaysia is a single stage tax imposed on taxable goods manufactured locally and/or imported. Taxable goods means goods of a class or kind not for the time being exempted from sales tax.

The Sales Tax Act 1972, and its related legislation, applies throughout Malaysia, excluding the Joint Development Area, Labuan, Langkawi and Tioman. Licensed Manufacturing Warehouses are deemed to be placed outside Malaysia and, as such, do not fall within the ambit of the tax.

Sales tax is ad valorem tax and can be computed based on the value of the taxable goods sold, used or disposed of, or imported. Specific sales tax rates are currently imposed only on certain classes of petroleum (generally refined petroleum).

Broadly, sales tax is chargeable at the following rates: fruits, certain food, timber and building materials – 5%; liquor and alcoholic drinks – 5%; cigarettes and tobacco products – 5%; all other goods not specifically exempted – 10%.

Service tax

Service tax is a consumption tax levied and charged on any taxable service provided by any taxable person. This Act applies throughout Malaysia excluding Langkawi, Labuan, Tioman and the Joint Development Authority. The Free Trade Zone is deemed to be outside Malaysia.

The current rate of service tax is 6% of the price, charge or premium of the taxable service. The list of taxable persons and taxable services are set out in the Second Schedule of the Service Tax Regulations 1975.

Double Taxation Agreements

Double Taxation Agreements are signed between countries to avoid the incidence of double taxation on income such as business profits, dividends, interest and royalties that are derived in one country and remitted to another country. Malaysia has signed 68 Double Taxation Agreements with various countries: Detailed of the DTA signed can be downloaded from the income tax website at www.hasil.gov.my

Albania	Iran	Romania
Argentina	Italy	Russia
Australia	Japan	Saudi Arabia
Austria	Jordan	Seychelles
Bahrain	Kazakhstan	Singapore
Bangladesh	Korea	South Africa
Belgium	Kuwait	Spain
Bosnia & Herzegovina	Kyrgyz, Republic	Sri Lanka
Canada	Lebanon	Sudan
Chile	Luxembourg	Sweden
China	Malta	Switzerland
Croatia	Mauritius	Syria
Czech Republic	Mongolia	Taiwan
Denmark	Morocco	Thailand
Egypt	Myanmar	Turkey
Fiji	Namibia	United Arab Emirates
Finland	Netherlands	United Kingdom
France	New Zealand	USA
Germany	Norway	Uzbekistan
Hungary	Pakistan	Venezuela
India	Papua New Guinea	Vietnam
Indonesia	Philippines	Zimbabwe

Tax incentives

The Malaysian Government offers a range of tax incentives to attract foreign investors. Applications for tax incentives should be made to the Malaysian Industrial Development Authorities (MIDA), a division of the Ministry of International Trade and Industry.

To ensure foreign investors can secure their investments, Malaysia signs guarantee an agreement (IGAs), which guarantee the investor against expropriation and allows the free remittance and repatriation of capital.

A summary of the incentives available for various industries are listed below:

Incentives for manufacturing sector

- Pioneer status;
- Investment tax allowance;
- Reinvestment allowance;
- Export credit refinancing facility;
- Double deduction for export credit insurance premium;
- Double deduction for promoting export;
- Incentives for research and development;
- Incentives for training;
- Incentives for storage, treatment and disposal of toxic and hazardous waste;
- Incentives for small-scale companies;
- Incentives for high-technology industries or strategic industries;
- Incentives for the manufacture of machinery and equipment;
- Incentives for the Multimedia Super Corridor;
- Incentives for information and communication technology;
- Incentives for relocating manufacturing activities to promoted areas
- Incentives to strengthen industrial linkages
- Incentives for automotive component modules
- Accelerated Capital Allowance
- Incentive for Industrialized building system
- Tax exemption on the value of increased exports
- Group relief.

Incentives for the agricultural sector

- Pioneer status;
- Investment tax allowance;
- Agricultural allowance;
- Export credit refinancing facility;
- Double deduction for promotion of exports;
- Double deduction of export credit insurance premium;
- Industrial building allowance;
- Reinvestment allowance;
- Incentives for research and development;
- Incentives for food production;
- Incentives for existing company which reinvests;
- Incentives for companies providing cold chain facilities and services for food products
- Incentives for modernizing chicken and duck rearing;
- Accelerated capital allowance;
- Tax exemption on the value of increased exports;
- Double deduction for expenses to obtain “Halal” certification and quality systems and standards certification;

- Double deduction on freight charges for export of rattan and wood based products.

Incentives for the tourism sector

- Pioneer status;
- Investment tax allowance;
- Enhanced incentives for undertaking new investments;
- Incentives for reinvestment in hotels and tourism projects;
- Incentives for the luxury yacht industry;
- Industrial building allowance;
- Double deduction for expenses incurred on approved training;
- Double deduction on overseas promotion;
- Double deduction on approved trade fairs;
- Tax exemption for tour operators;
- Tax exemption for promoting international conference and trade exhibitions;
- Deduction on cultural performance;
- Incentive for car rental operators.

7. Accounting & reporting

Applicable regulation

All limited companies in Malaysia are governed by the Companies Act 1965, which includes provisions relating to:

- The maintenance and retention of accounting records;
- The maintenance of registers and minutes relating to directors and shareholders and their meetings;
- The form and content of annual accounts;
- The publication to shareholders and the public filing of annual accounts;
- The requirements for annual accounts to be audited;
- The penal provisions for incorrect or unsatisfactory annual accounts.

There are no regulations directly governing the accounting practices of unincorporated businesses such as sole proprietorships and partnerships. However, such unincorporated businesses would have to comply with Income Tax Ruling 4/2000 as mentioned below.

Accounting standards

Financial reporting in Malaysia adopts the framework of the Financial Reporting Foundation (FRP), established under the Financial Reporting Act 1997, and the Malaysian Accounting Standards Board (MASB).

All financial statements prepared pursuant to any law administered by the Securities Commission, the Central Bank and the Companies Commission of Malaysia has to comply with MASB-approved accounting standards.

MASB has issued ED 75 IFRS-compliant Financial Reporting Standards and plan to fully converge with IFRS on 1 January 2012. It will result in the Malaysia financial reporting framework being recognized as an IFRS compliant financial reporting framework. The existing framework is virtually the same as the IFRS framework except for IAS 41 Agriculture, IFRIC 15 Agreements for the Construction of Real Estate, different effective dates and additional transitional provisions in a limited number of standards.

The Companies Commission of Malaysia, Bursa Malaysia and Securities Commission are empowered by law to monitor compliance with MASB standards.

Income tax ruling

Under Inland Revenue Board Public Ruling 4/2000, all companies must keep records and books of accounts including a cash book, sales ledger, purchase ledger and a general ledger. The books should be written up at regular intervals.

Appropriate entries for each transaction should be recorded as soon as possible (in any case not later than 60 days after the transaction). Supporting documents such as invoices, bank statements, paying-in slips, cheque butts, receipts for payments, payroll records and copies of receipts issued should be retained. Receipts issued should be serially numbered.

Audit requirements

The Companies Act 1965 requires that the annual accounts include a report from qualified registered auditors to the shareholders.

Filing of accounts

All limited companies are required to file their audited accounts with the Companies Commission of Malaysia unless they are private exempt companies.

8. UHY firms in Malaysia

UHY in Malaysia

UHY in Malaysia is the Malaysian member of UHY, one of the world's leading medium-size accountancy networks.

UHY in Malaysia has three offices in major business centres around Malaysia providing personal and corporate clients with a full range of tax, accounting and business advisory services including:

- Business development and improvement services
- Business and strategic planning
- Mergers and acquisitions
- Due diligence, investigation and evaluations
- Corporate finance
- Business systems
- Tax planning and compliance
- Transfer pricing
- Financial reporting
- Audit and assurance
- Financial planning and retirement planning estate planning
- Liquidations
- Forensic, Litigation and Valuation services.

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