MALAYSIA

1. INTRODUCTION

a. Forms of Legal Entity

In Malaysia, the five most common types of legal entities are:

- Sole proprietorship
- Partnership
- Limited Liability Partnership ("LLP")
- Private Limited Company (commonly known as Sdn Bhd)
- Public limited company (commonly known as Berhad).

These entities differ in terms of the level of ownership/control and liability with respect to third parties. LLPs, private limited companies and public limited companies are generally subject to the same tax treatment.

b. Taxes, Tax Rates

Income tax

The current corporate tax rate is 24%. Small and Medium Enterprises are taxed at 17% on the first chargeable income of MYR600,000, with the balance taxed at 24%.

Resident individuals are taxed at progressive rates ranging from 0% to 30% (for chargeable income exceeding MYR2 million). Non-resident individuals are taxed at a flat rate of 30%.

Petroleum income tax

Upstream oil and gas activities are subject to petroleum income tax at 38%.

Withholding tax ("WHT")

Withholding tax ("WHT") is levied on the following income derived from Malaysia by a non-resident with no permanent establishment in Malaysia:

Nature of payment	Rate
Royalty	10%
Interest	15%
Payment for advice, assistance or services rendered in Malaysia in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme	10%
Payment for services rendered 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 the non-resident	10%
Rental of moveable property	10%

The WHT rate can be reduced in line with the applicable double taxation agreement ("DTA").

Real property gains tax ("RPGT")

There is no capital gains tax regime in Malaysia except for real property gains tax ("RPGT"). This is levied on gains arising from a disposal of real property situated in Malaysia , or shares in a real property company. The RPGT rates where the seller is a company incorporated in Malaysia are as follows:

Disposal within 3 years of date of acquisition	30%
Disposal in the 4th year after date of acquisition	20%
Disposal in the 5th year after date of acquisition	15%
Disposal in the 6th year after date of acquisition and thereafter	10%

If the seller is a company incorporated outside Malaysia, the RPGT rates are as follows:

Disposal within 5 years of the date of acquisition	30%
Disposal in the 6th year after date of the acquisition and thereafter	10%

In the case where the disposal consideration consists wholly or partly of cash, the acquirer is required to retain all of that money, or a sum not exceeding 3% of the total value of the consideration (whichever is less) and remit that amount to the Malaysian Inland Revenue Board ("IRB"). However, if the seller is a company incorporated in Malaysia or a trustee of a trust or a body of persons registered under any written law in Malaysia and where the disposal takes place within three years after the date of acquisition, the retention sum to be withheld by the acquirer will be the whole amount of the cash consideration or a sum not exceeding 5% of the total value of the consideration, whichever is lower.

An exemption from RPGT is available for the transfer of chargeable assets between companies in the same group in any scheme of reorganisation, reconstruction or amalgamation, subject to meeting the qualifying conditions.

Stamp duty

Stamp duty is levied on certain instruments of transfer of property. The rate of duty varies according to the nature of the instrument and transacted values.

The ad-valorem stamp duty rates for the conveyance, assignment or transfer of property (except stock, shares or marketable securities) are as follows:

Value of property	Rate
On the first MYR100,000	1%
On the next MYR400,000	2%
On the next MYR500,000	3%
In excess of MYR1 million	4%

The transfer of unlisted shares in a Malaysian company is subject to stamp duty at 0.3% of the transfer consideration or value, whichever is higher.

Relief from stamp duty is available in the case of reconstructions and amalgamations of companies and for transfer of property between group companies, subject to meeting the prerequisite conditions.

Sales and Services Tax

Malaysia implements a sales and services tax, a single stage tax that is levied on taxable goods and services.

Sales tax is imposed on all taxable goods manufactured by a registered manufacturer for local consumption, and on the importation of taxable goods by any person. Generally, the sales tax rate is 5% or 10%.

Service tax is charged on any taxable service provided in Malaysia by a registered person in carrying on their business or on any imported taxable service. The current service tax rate is 6%.

c. Common divergences between income shown on tax returns and local financial statements

For tax purposes, the following are deductible against gross business income in arriving at chargeable business income:

- Allowable expenses and outgoings.
- Special deductions/double deductions for specific expenditure.
- Capital allowances.
- Certain tax incentives e.g. reinvestment allowance.
- Business losses brought forward from prior years.
- Group relief.
- Approved donations.

2. RECENT DEVELOPMENTS

Multilateral Convention to Implement Tax Treaty Related Measures ("MLI") to Prevent Base Erosion and Profit Shifting ("BEPS")

Malaysia deposited the instrument of ratification on the MLI on 18 February 2021 with the Organisation for Economic Co-operation and Development ("OECD") Depository. The MLI in respect of Malaysia entered into force on 1 June 2021.

Malaysia has provided its positions on the minimum standard and accepted the following optional provisions:

- Artificial avoidance of permanent establishment ("PE") status through commissionaire arrangements and similar strategies: If an agent or intermediary plays the principal role in concluding substantively finalised business contracts in a country on behalf of a foreign enterprise, that arrangement will constitute a PE of the foreign enterprise in that country.
- Artificial avoidance of PE status through specific activity exemptions: Only genuine preparatory or auxiliary activities will be excluded from the definition of PE. In addition, related entities will be prevented from fragmenting their activities in order to qualify for this exclusion.

Malaysia has signed Double Tax Agreements ("DTAs") with more than 70 jurisdictions, out of which about 50 DTAs will be modified by the MLI. These countries include Australia, China, Hong Kong, Singapore and UK.

COVID-19 related tax measures

Ever since the breakout of the COVID-19 pandemic, the Malaysian Government has introduced various economic stimulus packages to boost the recovery of economy. The tax measures which are in effect in 2022 include:

- Special tax rate of 0% for 10 or 15 years for new investment in manufacturing sectors with capital investment of at least MYR300 million. This is applicable to companies relocating eligible manufacturing facilities from overseas to Malaysia, or companies establishing new operations in Malaysia.
- 100% Investment Tax Allowance for five years for existing companies in Malaysia relocating overseas facilities into Malaysia with capital investment above MYR300 million.
- Special tax rate of 0% to 10% for up to 10 years for new / existing services companies relocating operations to Malaysia and adopting Industrial Revolution 4.0 and digitalisation technology.
- Preferential individual tax rate of 15% for five consecutive years for non-citizen individuals holding key (C-suite) positions.
- Special deduction of up to MYR300,000 on the cost of renovation and refurbishment of business premises incurred from 1 March 2020 to 31 December 2022.
- Double deduction for employers for implementing flexible work arrangements ("FWA") or enhancing existing FWAs.

The COVID-19 related tax measures are subject to eligibility criteria.

3. SHARE ACQUISITION

a. General Comments

The acquisition of shares in a target company involves the purchaser acquiring the legal ownership of a legal entity and assuming its underlying assets and liabilities.

b. Tax Attributes

From a buyer's perspective:

When the acquiring company buys the shares in the target company, the target company continues to benefit from claiming any tax incentives granted to it, subject to conditions imposed on the change in shareholders, where applicable. Any unabsorbed tax losses or unabsorbed capital allowances (tax depreciation) incurred by the target company can be carried forward to future years, subject to the "substantial change in shareholders" provision as explained below. Unabsorbed capital allowance can be carried forward indefinitely, whereas unabsorbed tax losses can be carried forward only for a period of 10 years of assessment.

Where there is a substantial change (more than 50%) in the shareholders of a company, any unabsorbed tax losses or unabsorbed capital allowances cannot be carried forward to future years. However, this provision does not apply to active companies, following a concession granted by the Minister of Finance.

From a seller's perspective:

The gain from sale of shares is generally not subject to income tax if the seller is not engaged in the trading of shares. There is no capital gains tax imposed on a sale of shares, except for a sale of shares in real property companies as discussed below.

c. Tax Grouping

Malaysia has group relief provisions for companies within a group where a surrendering company may transfer its current year tax losses to other entities within the group, subject to meeting certain conditions. The transfer of losses is, however, only applicable for the first three years of assessment after the surrendering company commences its operations.

d. Tax Free Reorganisations

Generally, relief from stamp duty is available for reconstructions or amalgamations of companies, or for the transfer of property (including shares) between associated companies, subject to fulfilling certain conditions. However, the relief is not applicable where the transferee company (i.e. the buyer) is not a company incorporated in Malaysia.

e. Purchase Agreement

The purchase agreement will typically contain tax warranties and tax indemnity clauses. Prior to acquisition, it is usual practice for a purchaser to perform a tax due diligence exercise on the target company, the result of which would be reflected in the tax warranties and indemnities clauses.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

From a buyer's perspective:

The sale of unlisted shares in a Malaysian incorporated company will be subject to stamp duty at the rate of 0.3% on the sale consideration or value, whichever is the greater. The stamp duty is required to be paid within 14 days of the date of the notice of assessment and is to be borne by the buyer, unless agreed otherwise between the parties.

From a seller's perspective:

The gain arising from the sale of shares in a real property company will be subject to RPGT at rates ranging from 5% to 30%, depending on the period of ownership.

A "real property company" is defined as a controlled company that owns real property or shares in real property companies, or both, whereby the market value of the real property or shares or both is not less than 75% of the value of the company's total tangible assets. A "controlled company" is a company having not more than 50 members and controlled by not more than five persons.

g. Share Purchase Advantages

- Gains from a sale of shares are generally capital in nature and hence not subject to income tax. Only gains from a disposal of shares in real property companies are subject to RPGT.
- A target company will continue to carry forward unabsorbed business losses, capital allowances and tax incentives, subject to the requisite rules. Any tax incentives granted to the target company will remain in the company, unless there is an approval condition attached to changes in shareholders.
- A lower stamp duty rate of 0.3% applies compared to an asset purchase deal.

h. Share Purchase Disadvantages

- In a share acquisition, the buyer will assume the liabilities of the target company.
- The target company will continue to claim capital allowances to the extent of the qualifying assets' tax residual value. The tax legislation does not provide for any avenue to achieve a step up in value of the assets in this instance.

4. ASSET ACQUISITION

a. General Comments

In an asset acquisition, the purchaser acquires specific assets from the seller and the ownership of such assets will be transferred to the purchaser. The tax attributes, (e.g. unabsorbed losses of the seller company), will not be transferred to the buyer.

b. Purchase Price Allocation

There are no specific rules governing the allocation of purchase price. In a non-related party transaction, the allocation of the purchase price can be agreed upon between the parties pursuant to the asset purchase agreement. However, market valuation is required for certain transactions such as for the sale of immovable property.

c. Tax Attributes

From a buyer's perspective:

In a sale transaction between unrelated parties, the buyer will be able to claim capital allowances on the price paid for the qualifying assets acquired, provided that the assets are used in the business of the buyer. Industrial buildings allowances can be claimed on the price paid for industrial buildings used for business purposes.

Capital allowances are given by way of an initial allowance and an annual allowance. The rate of initial allowance is 20%, whereas the annual allowance rate depends on the category of qualifying assets and the general rates are 10%, 14% or 20%. Certain qualifying assets qualify for accelerated capital allowance at 40%. Industrial buildings generally qualify for industrial building allowance at 10% (initial) and 3% (annual). Annual allowance is granted on a straight-line basis based on the qualifying cost.

From a seller's perspective:

The seller will be subject to tax adjustment by way of a balancing allowance, or a balancing charge where capital allowances have been claimed on the disposed asset. A balancing charge (taxable item) arises when the sales proceeds for the asset exceed its tax residual value. Conversely, a balance allowance (deductible item) arises where the sale proceeds are lower than the tax residual value.

However, this provision does not apply in a "controlled transfer" where the seller has control over the acquirer or vice versa, or where the seller and the acquirer are controlled by another person. In a controlled transfer, no balancing charge nor balancing allowance will arise to the seller. The acquirer can continue to claim capital allowances on the transferred asset, subject to the tax residual value of the asset.

d. Tax Free Reorganisations

Generally, relief from stamp duty is available for reconstructions or amalgamations of companies, or for transfer of property between associated companies, subject to fulfilling certain conditions. The relief is, however, not applicable where the transferee company (i.e. the buyer) is not a company incorporated in Malaysia.

In the case of a transfer of real property (e.g. land or building) situated in Malaysia, exemption from RPGT may apply, subject to meeting the qualifying conditions.

e. Purchase Agreement

As the purchase of assets does not come with the inherent risk of historical tax liabilities, there is usually minimal tax content in the purchase agreement.

f. Depreciation and Amortisation

There are no provisions in the Malaysian Income Tax Act that provide for a step up in value of the underlying assets in an asset deal. The accounting impact of depreciation and amortisation of assets or goodwill is disregarded for tax purposes.

As outlined above, capital allowances can be claimed on the cost of qualifying assets at prescribed rates. Goodwill is not tax deductible and does not qualify for capital allowances (tax depreciation).

g. Transfer Taxes, VAT

Malaysia currently does not have a VAT regime but implements a sales and service tax regime. The sale of assets in an M&A transaction does not attract any sales or service tax.

From a buyer's perspective:

The transfer or sale of certain assets such as land and receivables will attract stamp duty at rates ranging from 1% to 4% on the market value or sale consideration of the assets, whichever is the higher.

From a seller's perspective:

The gain arising from the sale of real property and shares in real property companies will be subject to RPGT at rates ranging from 5% to 30%, depending on the period of ownership.

h. Asset Purchase Advantages

- The buyer is able to claim capital allowances / industrial buildings allowances on the purchase price paid for the qualifying assets in a non-controlled transfer situation.
- Relief from stamp duty and RPGT for transfer of assets within a group of companies is available, subject to meeting the requisite conditions.

i. Asset Purchase Disadvantages

- The seller will be subject to a balancing charge (taxable item) on the sale of qualifying assets in a non-controlled transaction, where the sale consideration exceeds the tax written down value of the asset.
- The seller will be subject to RPGT on gains arising from the sale of real property or shares in real property companies.
- Stamp duty at rates of between 1% to 4% for transfer of assets is higher than the rate of 0.3% in a share acquisition deal.

5. ACQUISITION VEHICLES

a. General Comments

There are several vehicles that can be used for the acquisition of shares or assets in Malaysia by foreign investors. The choice of acquisition vehicle depends on the tax implications and regulatory framework governing the acquisition vehicle. The most commonly used acquisition vehicle is a locally incorporated limited liability company. Generally, there is no foreign equity restriction, except for certain activities such as the oil and gas sector.

b. Domestic Acquisition Vehicle

The most common domestic acquisition vehicle used by foreign investors to acquire shares or assets is a wholly-owned locally incorporated company. Profits repatriated to the foreign investor via dividend are not subject to any Malaysian withholding tax ("WHT"). Furthermore, any gain arising from a divestment of shares or asset is generally not taxable except for divestment of real property or shares in real property companies.

c. Foreign Acquisition Vehicle

Shares in a Malaysian company can be acquired via a foreign parent company or a foreign intermediate holding company, depending on the availability of treaty benefits.

For certain assets such as land, there may be regulatory restrictions on the use of a foreign vehicle for such an acquisition. If the asset is intended to be used in a business or activity in Malaysia, the preferred acquisition vehicle is a locally incorporated company.

d. Partnerships and joint ventures

A partnership is not a separate entity from a tax perspective. Accordingly, each individual partner is assessed on its share of the partnership income. An LLP is a hybrid between a corporation and a partnership. However, for tax purposes, an LLP is taxed as a corporation.

A joint venture ("JV") can be either incorporated or unincorporated. An incorporated JV involves the incorporation of a local limited liability company to undertake a specific project. An unincorporated JV, on the other hand, is a collaboration of two or more parties to undertake a specific project without the incorporation of a separate legal entity. From a tax perspective, each party to an unincorporated JV is assessed on its share of the JV's income.

In Malaysia, it is not common to use partnerships or unincorporated JVs for M&A activity.

e. Strategic vs Private Equity Buyers

A number of tax incentives are offered by Malaysia for investment by a Venture Capital Company ("VCC") or individuals. A VCC is a company incorporated in Malaysia investing in a Venture Company ("VC") in the form of seed capital financing, start-up financing or early-stage financing and registered with the Securities Commission. To use this incentive, the foreign investor needs to incorporate a local company to undertake the investment in a VC.

Tax exemption for a VCC investing in a VC

A VCC is exempted from income tax:

- On income from all sources excluding interest income arising from savings or fixed deposits and profits from syariah-based deposits; and
- For a period of 10 years of assessment or the life of the fund established for the purpose of investing in a VC, whichever is less.

Tax Deduction for an Individual or a Company Investing in a VC

An individual or a company (including a VCC) is entitled to claim a deduction of an amount equivalent to the value of the investment in shares (cost of investment) in a VC provided the individual or company (including a VCC):

- Is resident in Malaysia;
- Has a business source; and
- Has invested in a VC at start-up, seed capital and early-stage financing for qualifying products and activities.

Besides the above, there are other qualifying conditions that need to be met.

6. ACQUISITION FINANCING

a. General Comments

An acquisition can be financed by equity, debt or a hybrid of both. Malaysia has liberal exchange controls and there is no restriction on repatriation of profits outside Malaysia. Funding by equity is commonly used in Malaysia because funding via debt will attract WHT on interest payments to non-residents, as well as a restriction of interest deduction pursuant to the Earning Stripping Rules ("ESR").

b. Foreign Acquirer

There is no restriction on equity ownership by a foreign acquirer except in certain industries such as oil and gas and the acquisition of land in certain cases.

c. Debt

When using debt as a financing instrument, incidental costs such as legal and guarantee fees are not deductible. However, there are some exceptions for certain Islamic financing instruments. In addition, interest payments to non-residents will attract WHT at 15% (unless reduced under the relevant DTA) and the deduction of interest is subject to interest restriction and ESR as explained below.

i Limitations on Interest Deductions

Interest is deductible against gross business income if it relates to borrowings used for working capital, or laid out on assets used, or held for the production of gross income from the business. The deductibility of interest is subject to restriction if the loan on which the interest relates was used directly or indirectly for non-trade purposes (e.g. investment in movable or immovable property or loans to others). The amount of interest restricted can be claimed against income from the investment, if any (e.g. rental or interest income).

Under the single tier system, dividends received by the shareholders are exempt from tax. In line with this, any expenses - including interest on borrowings to finance the share acquisition - will be "lost" because such expenses are to be disregarded for tax purposes.

ESRs apply where financial assistance (including loans) is provided by a related party. Under the ESRs, the allowable amount of interest deduction in a year of assessment is limited to 20% of tax-EBITDA. Any excess amount can be carried forward to be deducted in the following years of assessment (subject to the allowable amount) until the whole amount is fully utilised. ESRs do not apply when the total interest for all financial assistance from all business sources for the basis period for a year of assessment is MYR500,000 or less.

Payment of interest to a non-resident lender is subject to WHT at 15%, unless a reduced rate applies under the relevant double tax agreement ("DTA").

ii Related Party Debt

The provision of financial assistance (including loans) by a related party will need to be carried out on an arm's length basis.

iii Debt Pushdown

Where the foreign acquirer pushes down a debt that has been used to finance the acquisition of shares in a local company, the local company will not be allowed a deduction for interest on the borrowings.

It would be more tax efficient if the undertaking, rather than the shares, of the local company is acquired by a local acquiring company. In this instance, the acquiring company would be entitled to claim a deduction for the interest on borrowings obtained to fund the acquisition of the undertaking.

d. Hybrid Instruments

Redeemable preference share ("RPS") is commonly used as a hybrid instrument. For tax purposes, RPS is usually treated as a form of equity and hence, RPS distribution is generally not treated as interest.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

An earn-out is a contractual agreement whereby the seller is able to obtain additional compensation in the future if the business achieves certain financial goals.

There is no specific tax treatment for earn-outs in Malaysia. The earn-outs received by the seller will need to be assessed separately to determine the tax implications.

7. DIVESTITURES

a. Tax Free

Malaysia does not have a participation exemption regime. Generally, sales of shares or assets are capital in nature and not subject to income tax, except for RPGT – which is applicable to disposals of real property situated in Malaysia or shares in real property companies.

b. Taxable

There is no capital gains tax regime except for RPGT, which is applicable to gains on the disposal of real property situated in Malaysia or shares in real property companies.

Where the prior approval from the tax authorities is obtained, exemption from RPGT is available in the case of a transfer of a chargeable asset between companies in the same group to bring about greater efficiency in operation for a consideration consisting of shares in the company or substantially of shares in the company and the balance in cash, and where the transferee company is resident in Malaysia.

The sale of unlisted shares in a Malaysian company is subject to stamp duty at the rate of 0.3% while the stamp duty on the sale of other assets (e.g. land and receivables) is levied at rates ranging from 1% to 4%. The stamp duty is to be borne by the buyer, unless agreed otherwise between the contracting parties.

Relief from stamp duty is available in the case of reconstruction or amalgamation of group companies, or in relation to the transfer of property between related parties, subject to meeting the prescribed conditions.

c. Cross Border

There is no differential in the tax treatment for non-residents in respect of sale of shares or assets, except for differential in RPGT rates for the seller who is not a company incorporated in Malaysia as shown below:

Disposal within 5 years of the date of acquisition	30%
Disposal in the 6th year after the date of acquisition and thereafter	10%

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Malaysia adopts a territorial tax system under which income tax is levied on income accrued in or derived from Malaysia. However, resident companies carrying on the business of banking, insurance or sea or air transport are taxed on a worldwide scope.

Foreign-sourced income received in Malaysia by a non-resident is exempt from tax. A concession is given to foreign-sourced dividend income remitted to Malaysia by resident companies and LLPs, subject to meeting the eligibility criteria. Such dividend income will be tax exempt from 1 January 2022 to 31 December 2026.

b. CFC Regime

There is no CFC regime in Malaysia.

c. Foreign Branches and Partnerships

Foreign branches operating in Malaysia are subject to the same taxation rules as those applicable to a company. However, payments made by a resident to a foreign branch are subject to WHT at 13% i.e. 10% (on account of corporate tax payable by the branch) plus 3% (on account of personal tax payable by employees). The 10% WHT is creditable against the corporate tax liability of the foreign branch, while the 10% tax withheld will be refunded if the tax authorities are satisfied that the employees' taxes have been duly settled.

An unincorporated partnership is not a separate entity for tax purposes. Each partner will account for his share of the divisible income of the partnership and report this in their tax return.

d. Cash Repatriation

Cash repatriation by way of dividend is not subject to tax in the hands of the shareholder. Dividends remitted to non-resident shareholders are not subject to WHT. From a Companies Act perspective, the ability of a company to declare dividends is subject to availability of distributable reserves and meeting solvency requirements.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Malaysia has an RPGT regime. Under this regime, any chargeable gain accruing on the disposal of a chargeable asset shall be subject to RPGT. A chargeable asset constitutes any real property situated in Malaysia and shares in a Real Property Company ("RPC"). The term "real property" means any land situated in Malaysia and any interest, option or other right in or over such land. An RPC refers to a company which:

- Is a controlled company;
- Acquires real property and/or shares in an RPC; and
- At the date of acquisition, the market value of those real property and/or shares is not less than 75% of its total tangible assets.

A company can cease to become an RPC when it disposes of its real property and/or shares in an RPC and at the date of disposal, the market value of real property and/or shares in a RPC owned is less than 75% of its total tangible assets.

The current RPGT rates range from 0% to 30%, depending on the holding period of the chargeable asset and the category of taxpayers.

b. CbC and Other Reporting Regimes

CbC Reporting Regime

The CbC Reporting Regime came into operation on 1 January 2017 in Malaysia. It applies to an MNE group that has total consolidated group revenue of at least MYR3 billion in the financial year preceding the reporting financial year. The ultimate holding company of the MNE group that is resident in Malaysia is responsible for preparing and filing the CbC report to the Malaysian Inland Revenue Board ("IRB") within one year of the end of the reporting financial year. A Malaysian taxpayer who is part of an MNE group which is required to prepare and file a CbC report in another country is required to notify the MIRB of their reporting entity and the reporting entity's residency before the end of the reporting financial year.

Foreign Account Tax Compliance Act ("FATCA")

On 21 July 2021, Malaysia signed an Intergovernmental Agreement ("IGA") with the US to implement FATCA. Under the terms of the IGA, Malaysia-based financial institutions ("MYFIs") will provide the IRB with the required account information of US persons. The IRB will then exchange that information with the US IRS. It is understood that the date for submitting the reportable information in respect of years 2014 to 2022 under FATCA to the IRB has been tentatively deferred to 2023.

Common Reporting Standard ("CRS")

Under the CRS, MYFIs are required to collect and report to the IRB financial account information on non-residents. The IRB will exchange this information with the participating foreign tax authorities of those non-residents. More than 100 jurisdictions have committed to exchange the CRS information. Malaysia has committed to exchange the CRS information from 2018 and will also receive financial account information on Malaysian residents from other countries' tax authorities.

10. TRANSFER PRICING

Malaysian transfer pricing legislation was introduced with effect from 1 January 2009 to deal specifically with transactions between associated persons. When a person enters into a transaction with an associated person for the acquisition or supply of property or services, that person shall determine and apply the arm's length price for the transaction. In addition to the principal legislation, Malaysia also has a set of transfer pricing rules and guidelines to provide further guidance on the application of the arm's length principle. The rules and guidelines are largely in line with the OECD Transfer Pricing Guidelines.

In terms of transfer pricing documentation, Malaysia adopts the three-tiered documentation approach which is in line with BEPS Action 13: country by country reporting, comprising the following:

- CbC report: The concept of CbC report has been explained in an earlier section of this chapter.
- Master File: Taxpayers who are obliged to prepare the CbC Report are required to prepare the Master File and submit it together with the Local File when requested by the Malaysian IRB. The Master File contains information of the MNE group such as a description of the businesses, intangibles, intercompany financial activities, financial and tax positions, etc.
- Local File: Taxpayers who carry out transactions with associated persons are required to maintain contemporaneous transfer pricing documentation, also referred to as the Local File. Less strict rules apply to transactions that are smaller in value. Transfer pricing documentation is not required to be submitted with the annual corporate tax return, but should be made available within 14 days upon request by the Malaysian IRB. Failure to do so will attract a penalty of MYR20,000 to MYR100,000. Where transfer pricing adjustments are made by the Malaysian IRB during a transfer pricing audit, a surcharge of not more than 5% will be imposed on the amount of increase in income or reduction in tax deduction (arising from the transfer pricing adjustments).

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

This section is left intentionally blank.

b. Use of Hybrid Instruments

Hybrid instruments are instruments that have a combination of equity and debt features (e.g. redeemable preference shares and perpetual bonds). From an accounting perspective, a hybrid instrument can be classified as either debt or equity.

The tax treatment depends on whether the instrument is treated as an equity or debt instrument, based on the characteristics of the instrument. If it is an equity instrument, the "distribution" arising from it is treated as a dividend, whereas in a debt instrument, the "distribution" is treated as an interest payment.

There is no WHT levied on dividends paid to non-residents. However, interest paid to non-residents is subject to WHT at 15%, unless the rate is reduced under the relevant DTA.

c. Principal/Limited Risk Distribution or Similar Structures

Malaysia does not have specific legislation governing principal/limited risk distribution or similar structures. Such structures are generally acceptable in Malaysia, provided the arm's length nature of transfer prices in such structures can be demonstrated using acceptable transfer pricing methodologies. These should take into consideration the functions performed, assets employed and risks assumed by the parties concerned.

The prevailing Malaysian transfer pricing rules and guidelines are largely based on the OECD Transfer Pricing Guidelines. Accordingly, transfer pricing methodologies which can be used in Malaysia to determine arm's length prices for such structures are those in line with the OECD approach, i.e. comparable uncontrolled price method, resale price method, cost plus method, profit split method or transactional net margin method.

d. Intellectual Property

Generally, costs incurred to develop intellectual property such as patents, trademarks and copyrights are not tax deductible in Malaysia because these are considered capital in nature.

There are, however, a few incentives available for intellectual property as follows:

- Capital allowances on the cost of developing customised software.
- Double deductions on payments (not being capital expenditure) for approved research and development activities.

e. Special Tax Regimes

Post acquisition, companies may invest additional capital or transfer global operations to Malaysia.

The key tax benefits applicable in Malaysia are, among others:

- Reinvestment allowance on capital expenditure incurred in undertaking a qualifying project in the manufacturing or agricultural sector.
- Principal Hub Incentive for entities functioning as a regional hub to manage, control and support key functions of the group. The tax incentive takes the form of tax exemption or preferential corporate tax rate, according to classification in "Tier 1" or "Tier 2".
- Double deductions for certain expenses incurred for the promotion of exports.
- Accelerated capital allowances on prescribed ICT equipment.
- Double deductions for approved R&D activities.

12. OECD BEPS CONSIDERATIONS

Malaysia is a member of the Inclusive Framework on BEPS and is committed to the implementation of four minimum standards:

- Countering harmful tax practices (BEPS Action 5)
- Prevention of treaty abuse (BEPS Action 6)
- Implementation of CbC reporting (BEPS Action 13)
- Enhancing dispute resolution mechanisms (BEPS Action 14).

To date, the Malaysian Government has issued legislation relating to the implementation of CbC reporting (in 2016), as well as those governing tax incentives that comply with the Forum of Harmful Tax Practices ("FHTP") criteria (in 2018). On 24 January 2018, Malaysia signed the MLI to implement tax treaty related measures to prevent BEPS. Malaysia subsequently deposited its instrument of ratification for the MLI with the OECD on 18 February 2021 and the MLI came into force on 1 June 2021. Key modifications to Malaysian bilateral tax treaties relate to the prevention of tax treaty abuse, widening of the scope of permanent establishment and improvement of dispute resolution procedures. The effective date of the MLI provisions for Malaysian bilateral tax treaties will also depend on when Malaysia's treaty partners ratify the MLI.

On 1 July 2021, 130 countries, including Malaysia, agreed a Statement on a Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy. Work on the implementation of the Two-Pillar Solution is under way, with a targeted implementation date in 2023.

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

For a company to be able to declare dividends, it must have sufficient distributable reserves and meet the solvency test as provided under Section 132 of the Companies Act 2016.

b. Application of Regional Rules

This section is left intentionally blank.

c. Tax Rulings and Clearances

Tax rulings, or tax clearances, are not applicable for share or asset transactions in Malaysia. However, the sale of certain assets (e.g. land) may require the prior approval of the relevant governing authority.

15. MAJOR NON-TAX CONSIDERATIONS

It is recommended that appropriate legal, financial and tax due diligence be conducted in a merger and acquisition exercise. This is to identify any potential issues and risks in connection with the acquisition and divestment in future.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	NIL	10	10	
Argentina	NIL	15	10	[A]
Armenia	NIL	15	10	[B]
Australia	NIL	15	10	
Austria	NIL	15	10	
Azerbaijan	NIL	15	10	[B]
Bangladesh	NIL	15	10	
Barbados	NIL	15	10	[B]
Belarus	NIL	15	10	[B]
Belgium	NIL	10	10	[C],[D]
Bolivia	NIL	15	10	[B]
Bosnia and Herzegovina	NIL	10	8	
Botswana	NIL	15	10	[B]
Brazil	NIL	15	10	[B]
Bulgaria	NIL	15	10	[B]
Canada	NIL	15	10	
Chile	NIL	15	10	
China	NIL	10	10	
Croatia	NIL	10	10	
Cyprus	NIL	15	10	[B]
Czech Republic	NIL	12	10	
Denmark	NIL	15	10	
Egypt	NIL	15	10	
Estonia	NIL	15	10	[B]
Faroe Islands	NIL	15	10	[B]
Finland	NIL	15	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
France	NIL	15	10	
Gambia	NIL	15	10	[B]
Georgia	NIL	15	10	[B]
Germany	NIL	10	7	
Greece	NIL	15	10	[B]
Hungary	NIL	15	10	
Iceland	NIL	15	10	[B]
India	NIL	10	10	
Indonesia	NIL	10	10	[D]
Ireland	NIL	10	8	
Israel	NIL	15	10	[B]
Italy	NIL	15	10	
Jamaica	NIL	15	10	[B]
Japan	NIL	10	10	
Kazakhstan	NIL	10	10	
Kenya	NIL	15	10	[B]
Korea, Republic of	NIL	15	10	
Latvia	NIL	15	10	[B]
Lithuania	NIL	15	10	[B]
Luxembourg	NIL	10	8	
Macedonia	NIL	15	10	[B]
Malaysia	N/A	N/A	N/A	
Malta	NIL	15	10	
Mauritius	NIL	15	10	
Mexico	NIL	15	10	[B]
Montenegro	NIL	15	10	[B]
Namibia	NIL	10	5	
Netherlands	NIL	15	8	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
New Zealand	NIL	15	10	
Nigeria	NIL	15	10	[B]
Norway	NIL	15	10	
Pakistan	NIL	15	10	
Philippines	NIL	15	10	
Poland	NIL	15	10	
Portugal	NIL	15	10	[B]
Romania	NIL	15	10	
Russia	NIL	15	10	
Saudi Arabia	NIL	5	8	
Serbia	NIL	15	10	[B]
Singapore	NIL	10	8	
Slovakia	NIL	5	10	
Slovenia	NIL	15	10	[B]
South Africa	NIL	10	5	
Spain	NIL	10	7	
Sri Lanka	NIL	10	10	
Switzerland	NIL	10	10	
Taiwan	NIL	10	10	
Tanzania	NIL	15	10	[B]
Thailand	NIL	15	10	
Trinidad and Tobago	NIL	15	10	[B]
Tunisia	NIL	15	10	[B]
Turkey	NIL	15	10	[D]
Ukraine	NIL	10	8	
United Kingdom	NIL	10	8	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United States	NIL	15	10	[A]
Venezuela	NIL	15	10	
Vietnam	NIL	10	10	
Zambia	NIL	15	10	[B]
Zimbabwe	NIL	10	10	

Footnotes	
[A]	Limited DTA with Malaysia.
[B]	No DTA with Malaysia.
[C]	WHT rate of 10% is applicable only for interest paid or incurred by an enterprise in an industrial undertaking.
[D]	Protocol that amends limited articles of the treaty has been gazetted but is not yet in force.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss Malaysian tax matters.
2	Tax Due Diligence	Financials	Audited Financial Statements and Trial Balances for the last three financial years.
3	Tax Due Diligence	Corporate Tax	Tax return (Form e-C) for the last three years of assessment.
4	Tax Due Diligence	Corporate Tax	Tax computation for the last three years of assessment.
5	Tax Due Diligence	Corporate Tax	Correspondence with the Malaysian IRB on tax audits, notice of demand for tax penalties and notices of additional assessments for the last three years of assessment (if any).
6	Tax Due Diligence	Corporate Tax	Submission of tax estimates (Form CP204/Form CP204A) for the last three years of assessment.
7	Tax Due Diligence	Corporate Tax	Tax payment receipts for the last three years of assessment.
8	Tax Due Diligence	Corporate Tax	Payments made to non-residents and supporting documents in relation to WHT payments for the last three years of assessment (if any).
9	Tax Due Diligence	Corporate Tax	Details of any tax incentive granted by the relevant approving authorities (e.g. approval letter).
10	Tax Due Diligence	Transfer Pricing	Transfer pricing documentation (if relevant) for the last five years of assessment.
11	Tax Due Diligence	Sales / Service Tax	SST-02 returns submitted for each taxable period and transaction listings.
12	Tax Due Diligence	Sales / Service Tax	Correspondence / letter with the Royal Malaysian Customs Department on sales / service tax matters, if any.

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