

Chapter 6

Taxation

6.1 Overview

Direct and Indirect Taxes

The Malaysian Government derives a major part of its revenue from taxes, both direct and indirect.

Direct taxes include:

- Taxes on Income;
- Stamp Duty;
- Real Property Gains Tax; and
- Petroleum Income Tax.

Indirect taxes include:

- Export Duty;
- Import Duty;
- Excise Duty;
- Sales Tax; and
- Service Tax and Other Taxes.

Fundamental Features of the Malaysian Income Tax System

Income Tax is levied on the chargeable income of a person. A “person” for tax purposes includes a company, a body of persons and a corporation sole.

Income Tax is generally imposed on a “territorial” basis, whereby residents of Malaysia are taxed on all income derived from Malaysia as well as on income received in Malaysia from outside Malaysia. However, all income arising from sources outside Malaysia and received in Malaysia by a resident company (other than a company carrying on the business of banking, insurance, shipping and air transport) or a unit trust is exempted from Income Tax. Non-residents are taxed on Malaysian derived income only.

Effective from year 2000, tax is assessed for a year of assessment on all income derived in the current year as compared to the previous basis of taxation where income was taxed on a preceding year basis.

Currently, Income Tax is assessed by the Inland Revenue Board (IRB) according to the Official Assessment System, under which the IRB issues tax assessments after reviewing all the tax returns submitted, except for companies which are governed by the Self Assessment System. Under the Self Assessment System, tax returns submitted by taxpayers will be accepted as correct without further review. Instead the IRB will make random checks and audits to ensure full compliance and declaration of income. Self Assessment will be accompanied by severe penalties for non-compliance and under-declaration of income. Self Assessment is to be implemented in stages as follows:

Group	Year of Implementation
Companies	2001
Sole proprietorships, partnerships and co-operatives	2004
Salaried group	2004

Self Assessment System

Under the Self Assessment System, every existing company is required to furnish an estimate of its tax payable for a year of assessment to the IRB generally not later than 30 days before the beginning of the basis period for a year of assessment. Companies which commence operations in a year of assessment would have to furnish the estimate of tax payable to the IRB within 3 months from the date of commencement of operations. A revision to the estimate of tax payable for a year of assessment may be made either upwards or downwards in the sixth month of the basis period for a year of assessment.

After furnishing the estimate of tax payable, the IRB issues the tax installment scheme to the company. Generally, each installment must be paid to the IRB by the 10th day of each calendar month beginning from the second month of the basis period for that year of assessment, otherwise late payment penalties will be imposed. In the event that the tax payable under an assessment exceeds the estimate/revised estimate of tax payable, by an amount of more than 30% of the tax payable under the assessment, a 10% penalty will be imposed on the difference in excess of the 30% unless the company can provide evidence that the underestimation of tax payable is beyond its control.

Companies are generally required to submit their tax return within 6 months from the close of the accounting period (or any extension of time as may be granted by the IRB) effective from Year of Assessment 2000 (Current Year Basis). The balance of Income Tax (net of the monthly instalments paid earlier) under a deemed assessment (the return) shall be due and payable on the due date of the submission of the return i.e. 6 months from the close of the accounting period (or any extension of time as may be granted by the IRB).

Individuals and other taxpayers, with the exception of companies which are currently under the Self Assessment System, have to submit their tax returns within 30 days of the issuance of their return forms. In practice, an extension is given up to 5 months from the end of the particular year of assessment i.e. 31 May, for submission of tax returns unless further extension beyond May is applied for and approved. If a return form is not issued, the onus lies with the taxpayer to inform the IRB before 14 April of the same year of his chargeability. Assessments are required to be paid within 30 days from the date of assessment, failing which penalties of up to 15.5% may be imposed. Notices of tax to be paid by 5 bi-monthly instalments are also issued to taxpayers receiving non-employment income and falling under the compulsory instalment payment scheme (i.e. taxpayers with an estimated tax liability of RM1,000 or more based on the previous year's assessment). The due date for each payment is the first of the relevant month and the amount must be paid within 30 days of the due date, otherwise late payment penalties will be imposed.

In the case of employees, under the Schedular Tax Deduction scheme, employers are required to deduct tax from the employees' monthly remuneration based on a table and to remit such tax directly to the IRB by the 10th day of the following month.

The main sources of income liable to Income Tax are as follows:

- gains or profits from any trade, business, profession or vocation;
- employment income;
- dividends, interest or discounts;
- rents, royalties or premiums;
- pensions, annuities or other periodical payments; and
- gains or profits not falling under any of the above.

6.2 Taxation of Individuals

Resident Status

Generally, an individual becomes a tax resident for a year of assessment if the aggregate number of days he stays in Malaysia during the basis year is not less than 182 days (in certain circumstances, an individual may be a tax resident even if the total number of days of stay is less than 182 days).

	Residents	Non-residents
Taxable income	Income from Malaysian sources & Income from foreign sources when remitted into Malaysia	Income from Malaysian sources
Rates of tax	Graduated rates from 1% to 28%	Flat rate of 28%
Personal relief	See below	None

Graduated Tax Rates for Resident Individuals (effective Year of Assessment 2002)

	Chargeable Income RM	Rate	Income Tax Payable RM
On the first	2,500	0%	0
On the next	2,500	1%	25
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On the first	5,000		25
On the next	5,000	3%	150
	-----		-----
On the first	10,000		175
On the next	10,000	3%	300
	-----		-----
On the first	20,000		475
On the next	15,000	7%	1,050
	-----		-----
On the first	35,000		1,525
On the next	15,000	13%	1,950
	-----		-----
On the first	50,000		3,475
On the next	20,000	19%	3,800
	-----		-----
On the first	70,000		7,275
On the next	30,000	24%	7,200
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On the first	100,000		14,475
On the next	150,000	27%	40,500
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On the first	250,000		54,975
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On all income above	RM250,000	28%	

Combined Assessment

The total income of a husband and wife is assessed separately unless the wife elects to have her total income aggregated with that of her husband to be assessed in her husband's name. Alternatively, the husband is allowed to elect for combined assessment under the wife's name and in such case, the wife will be given the husband relief of RM3,000.

Personal Relief

The following relief are given to resident individuals only:

	RM
■ personal allowance inclusive of dependent relative allowance	8,000
■ additional personal allowance if taxpayer is disabled	5,000
■ wife living with or maintained by husband or vice versa (provided the wife/husband elects to have her/his income aggregated with that of her/his husband/wife for assessment purposes)	3,000
■ additional spouse allowance if he/she is disabled	2,500
■ medical treatment for parents actual sum incurred up to a maximum of	5,000
■ child relief for each child (the child must be unmarried and under 18 years of age, or unmarried receiving full-time education)	800

Where a child is receiving full-time instruction at a university or its equivalent in Malaysia, the relief may be further increased to the actual amount expended on his maintenance and education, up to a maximum of four times the normal relief for that child. In the case where the university is outside Malaysia, the relief available is the actual expenditure, restricted to twice the normal relief for a child who has commenced receiving education prior to 17 October 1997. However, if the child commenced education outside Malaysia after 17 October 1997, the relief available is only the normal child relief of RM800.

The wife is given the option to claim child relief.

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| ■ disabled child, irrespective of age | 5,000 |
| ■ costs of purchase of basic supporting equipment for a disabled individual's own use or for the use of his disabled wife, child or parent up to a maximum of RM5,000. | |
| ■ compulsory contributions made as an employee or as a self-employed person to Government or Approved Provident Funds, subject to the limitations stated below | |
| - life insurance premiums paid on the life of the taxpayer and/or the life of his wife. However, the total deduction for provident fund contributions and life insurance premiums is limited to RM5,000 for each individual taxpayer. | |
| - premiums paid for family insurance conducted according to Islamic principles are given tax relief similar to that given for premiums paid for life insurance. | |
| - there is no mandatory requirement for expatriates to contribute to approved provident funds. However, if an expatriate elects to contribute to an approved provident fund, his contributions will be subject to the same limitations enumerated above. | |

- premiums up to RM3,000 on educational or medical insurance for himself, his wife or his child in addition to the RM5,000 stated above.
- relief on premiums paid on all annuities purchased through Employees Provident Fund annuity scheme up to a maximum of RM1,000.
- fees up to a maximum of RM5,000 for education in scientific, technological or vocational information and communication technology fields. Courses up to post graduate level are also included.
- relief of RM500 per annum for the purchase of books, journals, magazines and other similar types of publications including school textbooks for the purpose of enhancing the individual's own knowledge, or that of his wife or child.

Tax Rebates

- A tax rebate of RM350 is given to a resident individual whose chargeable income does not exceed RM35,000. A further rebate of RM350 for the spouse is granted where the individual has been allowed a deduction for wife or husband relief and their total chargeable income does not exceed RM35,000.
- The amount in respect of zakat, fitrah or any other Islamic religious dues is granted a full rebate.
- A tax rebate of RM400 is granted to a resident individual once every five years for the purchase of a personal computer. Such a rebate is further restricted to one computer per family.
- A rebate will be granted for the expatriate levy paid for the issue of an employment pass. Where the rebate exceeds the Income Tax payable, the excess shall not be refunded or be available as a credit to set off against the tax liability of subsequent years of assessment.

Tax Deductions

- A maximum deduction of RM5,000 is available in respect of medical expenses incurred by the taxpayer on himself, spouse or children for treatment of serious diseases. The deduction include expenses for a complete medical examination incurred by the taxpayer for himself, spouse or children up to a maximum amount of RM500 per year (this amount is included as part of the above deduction of RM5,000).
- A tax deduction is given on contributions of paintings to the State/National Art Gallery.
- A tax deduction is given to individuals who contribute towards the medical expenses of a seriously ill person. That person must have no or insufficient means or in the case of a dependent individual, the parents or guardian must have no or insufficient means, to pay for the cost of the medical treatment required. The donations must be deposited into an account approved by the Inland Revenue Board.
- A tax deduction is given for contributions in cash or in the form of medical equipment (not exceeding RM20,000) to healthcare facilities approved by the Ministry of Health.
- A tax deduction is given for gifts of money or contributions in kind (both to be approved by the local authorities) to set up facilities in public places for the benefit of disabled persons.

- A tax deduction is given for gifts of money to the Government, a State Government or an approved local authority, institution or organization.
- A tax deduction is given for subscriptions to professional bodies to which membership is compulsory, such as the medical and legal professions.
- A tax deduction is given for cash donations (not exceeding RM20,000) for the provision of library facilities for the public as well as in schools and institutions.

6.3 Taxation of Companies

Resident Status

A company is resident for a year of assessment, regardless of where it is incorporated, if at any time during the basis period for a year of assessment, it is managed and controlled in Malaysia. Non-resident companies are subject to the withholding tax provisions in respect of certain types of income such as interest, royalties, technical fees and contract payments.

It is pertinent to note that some of the tax incentives in Chapter 7 are only available to resident companies.

Tax Rates

Income Tax is chargeable on companies at the rate of 28% on chargeable income.

Ascertainment of Chargeable Income

Income Tax is imposed on “chargeable income” which broadly is:

- gross income;
- less allowable deductions;
- less capital allowances including unabsorbed allowances brought forward;
- less business losses brought forward; and
- less individual relief (given to individual residents only.)

(For steps to be taken in ascertaining chargeable income, see Appendix I).

Gross Income

This is income as the term is generally understood, excluding any income exempted from tax, and includes any values “deemed” to be income by operation of the Income Tax Act 1967 such as the annual value of property occupied for non-business purposes.

Exempt Income

Exempt income includes:

- income exempted under the Promotion of Investments Act, 1986 (refer to Chapter 7);
- dividends paid out of profits that are exempt under the various tax incentives available.
- redistributions by shareholder companies of such exempt dividends may also not be taxable on the recipients;

- interest earned from savings and fixed deposits, specifically granted tax exemptions under various orders by the Government;
- income from employment exercised in Malaysia by non-resident employees for not more than sixty days in a year or where the stay overlaps two calendar years, a total of not more than sixty days over the two years; and
- income specifically exempted under Schedule 6 of the Income Tax Act, 1967.

Allowable and Non-allowable deductions

Allowable deductions are confined to revenue expenditure wholly and exclusively incurred in the production of gross income and are allowable against a particular income source only. Non-allowable deductions are expenses of a private or capital nature (with certain exceptions). Apart from these, certain revenue expenditure is also specifically disallowed as a tax deduction under the Income Tax Act 1967.

Examples of allowable and non-allowable deductions:

Allowable deductions

- cost of sales
- manufacturing, trading, administration, selling and certain financial expenses
- expenses incurred in respect of employees' welfare including contributions to the Employees Provident Fund and other approved funds (limit of 19% of each employee's remuneration)
- a justifiable share of regional office or head office revenue expenses (which do not relate to capital or stewardship costs)
- expenses for repairs of premises, plant and machinery or fixtures or for the renewal of implements, utensils or articles employed in producing the income
- irrecoverable trade debts arising out of the business, including provisions for specific bad debts where attempts to collect the debts have failed

Non-allowable deductions

- expenses (preliminary and pre-operating) incurred prior to commencement of business (exception: incorporation expenses incurred by companies having an authorized share capital not exceeding RM250,000 and certain training expenses)
- domestic or private expenses
- losses of a capital nature
- remuneration payable to members of the proprietor's family in excess of the commercial value of their services
- contract service payments, interest, royalties and Section 4A income paid or credited to non-residents where tax has not been withheld and paid to the IRB
- expenses incurred in the provision of entertainment other than entertainment provided to employees and a few other exceptions

- expenses incurred on replanting crops and scientific research
- interest on loans employed in producing income
- rent payable in respect of any land or building occupied for the purpose of producing income
- bonus payments to employees are fully deductible with effect from Year of Assessment (“Y/A”) 2002
- rental of private motor vehicle increased from RM50,000 up to a maximum of RM100,000 per vehicle with effect from Y/A 2002 (provided vehicle is new and its total cost does not exceed RM150,000)
- expenditure for which capital allowances (wear and tear allowance) can be given under the Income Tax Act, 1967
- expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia.
- payments to unapproved schemes

Adjusted Loss

The excess of allowable deductions over income from a business source constitutes an adjusted loss which is allowed to be set off against income derived from other sources in the same year, and thereafter against income from business sources only in subsequent years.

Capital Allowances

Depreciation and amortisation of fixed assets for accounting purposes are not allowable for tax purposes. Instead, tax deductions take the following forms:

- capital allowances;
- mine depletion allowances;
- deduction of prospecting expenditure.
- an initial allowance (I.A.) which is given once for the year of assessment in which the qualifying capital expenditure is incurred; and
- an annual allowance (A.A.) which is given each year commencing from the year of assessment in which the qualifying capital expenditure is incurred.

Generally, an asset has to be owned and in use at the end of the basis period for the purpose of the business to qualify for capital allowances. The rates generally allowed are:

	I.A.	A.A.
Industrial Buildings	10%	3%

(With effect from Y/A 2002, the initial allowance of 10% is extended to purchased industrial buildings and the period for claiming industrial building allowance has been shortened from 45 to 30 years. In addition industrial building status is extended to include hotels, airports and motor racing circuits)

Agricultural/Forest

- expenditure on clearing and preparation of land for agriculture, initial planting of approved crops, construction of roads or bridges in a plantation	Nil	50%
- buildings constructed for the welfare of persons in connection with growing and harvesting of crops or extraction of timber in a forest	Nil	20%
- any other buildings and construction of roads in a forest	Nil	10%

Plant and Machinery

- furniture and fittings	20%	10%
- office equipment	20%	10%
- computer/IT equipment	20%	40%
- motor vehicles licensed for commercial use	20%	20%
- other motor vehicles (qualifying cost limited to RM100,000, if the motor vehicle is new on purchase and the total on the road cost does not exceed RM150,000)	20%	20%
- plant and machinery	20%	14%
- heavy machinery	20%	20%

All rates are applied to the original qualifying cost of the relevant fixed assets.

Mining Expenditure

Deductions are given against mining income over the life of the mine for capital expenditure incurred on:

- the acquisition of mining rights;
- searching, discovering, testing or winning access to deposits;
- the construction of works or buildings in relation to the mine; and
- development, general administration or management before the commencement of actual production or during any period when minerals are not being mined.

Where expenditure incurred in prospecting for minerals has been claimed as a deduction, the mining allowance is not available in respect of that expenditure.

Prospecting Expenditure

Any person who has incurred qualifying prospecting expenditure may, within three months after the beginning of the year of assessment in which the expenditure was incurred, elect to claim for deduction expenditure incurred by him on prospecting in Malaysia.

Balancing Allowances and Charges

Where an asset is disposed of and the disposal proceeds exceed the tax written down value of the asset, a balancing charge will be imposed on the disposer. The balancing charge is restricted to the total capital allowances claimed by the disposer.

Where the disposal proceeds are less than the tax written down value of the asset, the disposer is entitled to claim the difference as a balancing allowance.

Withdrawal of Capital Allowances

Where an asset is disposed of within two years of its purchase, the IRB may withdraw the allowances already given on the asset.

Unabsorbed Capital Allowances

If capital allowances in any year are not fully absorbed by adjusted business income, they are carried forward for set-off against future income from the same business source only.

Other Deductions Against Aggregate Income

The following deductions are allowed provided there is sufficient aggregate income remaining after deducting capital allowances and unabsorbed business losses (against income from business source only):

- current year business loss
- prospecting expenditure
- qualifying farm expenditure (refer to Chapter 7)
- qualifying pre-operational business expenditure (refer to Chapter 7)
- current year business loss of a 'surrendering company' for approved food production projects only (refer to Chapter 7)
- approved cash donations (limited to 5% of the aggregate income)

6.4 Stamp Duty

Stamp duty is governed by the Stamp Act, 1949. For rates of stamp duty payable on the various instruments, please refer to the First Schedule to the Stamp Act, 1949. In general, stamp duty is payable on instruments executed in Malaysia or if executed outside Malaysia, pertaining to property in Malaysia.

Sections 15 and 15A of the Stamp Act 1949 provide respectively exemptions from stamp duty on instruments in connection with amalgamations or reconstructions of company and transfers of property between associated companies, upon satisfaction of specified conditions.

6.5 Real Property Gains Tax

Real Property Gains Tax (RPGT) is chargeable on gains made on the disposal of real property situated in Malaysia, as well as shares in Real Property Companies. Individuals (citizens and permanent residents) are given an exemption amounting to RM5,000 or 10% of the gain, whichever is greater, provided the asset disposed of is not part of a larger asset. In addition, they are also entitled to full exemption of the gain from the disposal of one residential property during their lifetime. The tax rates for individuals and companies are as follows:

<i>Category of Disposal</i>	<i>Rates of Tax</i>	
	<i>Company %</i>	<i>Individual %</i>
Disposal within two years	30	30
Disposal in the third year	20	20
Disposal in the fourth year	15	15
Disposal in the fifth year	5	5
Disposal in the sixth year and thereafter	5	Nil

Prior to 17 October 1997, a disposal by an individual who is not a citizen or a permanent resident was subject to RPGT at a flat rate of 30% of the chargeable gain on the disposal of a chargeable asset irrespective of the holding period of the chargeable asset. However, with effect from 17 October 1997, such an individual will be taxed at only 5% if the disposal of the asset takes place after the fifth year from the date of acquisition of the chargeable asset.

A Real Property Company is defined as a controlled company (ie, one which is controlled by not more than 5 persons) which:

- as at 21 October 1988, owns real property and/or shares in a Real Property Company, the defined value of which is not less than 75% of its total tangible assets; or
- after 21 October 1988, acquires real property and/or shares in a Real Property Company whereby the defined value is not less than 75% of its total tangible assets.

A chargeable gain arises if the disposal price exceeds the acquisition price. An allowable loss arises if the disposal price is less than the acquisition price. Losses arising from the disposal of RPC shares do not qualify as an allowable loss.

6.6 Withholding Tax on Payments to Non-Residents

General

Malaysian Income Tax law provides that interest, royalties and payment for services under a contract and certain classes of income are subject to withholding tax where the recipient is non-resident.

Interest and Royalties

Withholding tax is applicable where interest (other than exempt interest) or royalties (other than approved industrial royalties) derived from Malaysia are paid or credited to any person not known to the payer to be resident or to have a place of business in Malaysia.

Both interest and royalties are deemed to be derived from Malaysia if they are borne directly or indirectly by the Government or resident person or if they are charged as an outgoing or expense in the accounts of a business carried on in Malaysia. Interest which arises from money lent to a resident person on the security of Malaysian-based assets or employed on assets used in generating gross income will also be deemed to be derived from Malaysia.

Royalties and interest paid or credited to a non-resident person are subject to withholding tax at the rates of 10% and 15% respectively. The rate may be reduced where specifically provided for in a Double Taxation Agreement.

The withholding tax deducted has to be paid to the IRB within one month of the earlier of paying or crediting the non-resident. Where a person fails to deduct withholding tax on interest or royalties, the IRB can recover the tax as a debt due by the payer.

If the payer fails to withhold tax, the payment to the non-resident will be allowed as a deduction only if the withholding tax and the penalty are paid. The penalty is calculated at 10% of the total payments subject to withholding tax.

Services Under a Contract

Withholding tax is applicable where a payment for contract services is paid or credited to a non-resident contractor in respect of services under a contract.

The rate of withholding tax is 20% of the service portion of the contract payment, which comprises:

- 15% of the service portion of the contract payment to cover the tax liability of the non-resident contractor; and
- 5% of the service portion of the contract payment to cover the tax liability of the employees of the non-resident contractor.

The withholding tax deducted has to be paid to the IRB within one month of the earlier of paying or crediting the non-resident. If the payer fails to deduct withholding tax, the IRB can recover the tax as a debt due by the payer.

If the payer fails to withhold tax, the payment to the non-resident will be allowed as a deduction only if the withholding tax and the penalty are paid. The penalty is calculated at 10% of the total payments subject to withholding tax.

“Services under a contract” means the performing or rendering of any work or professional service in Malaysia, being work or professional service in connection with, or in relation to, any contract project.

The 15% portion represents an advance collection of tax which will be compared with the final tax liability of the non-resident contractor when the tax returns are filed. Where the 15% tax withheld is higher than the final tax liability, the excess will be refunded to the non-resident contractor. On the other hand, where the final tax liability is higher than the 15% tax withheld, the difference will have to be paid by the non-resident contractor. The 5% portion will be refunded to the non-resident contractor when the IRB is satisfied that the employees of the non-resident contractor have filed their tax returns and their taxes are fully settled.

Special Classes of Income (Section 4A Income)

Section 109B of the Income Tax Act, 1967 imposes a withholding tax at the rate of 10% on payments to a non-resident in respect of the following:

- services rendered by the non-resident 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 non-resident;
- technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; and

- rental or other payments made under any agreement or arrangement for the use of any moveable property.

The withholding tax deducted has to be paid to the IRB within one month of the earlier of paying or crediting the non-resident.

Such payments received by a non-resident shall be deemed to be derived from Malaysia if:

- the responsibility for payment lies with the Government or a State Government or a person resident in Malaysia; or
- the payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.

If the payer fails to withhold tax, the payment to the non-resident will be allowed as a deduction only if the withholding tax and the penalty are paid. The penalty is calculated at 10% of the total payments subject to withholding tax.

Dividends

Malaysia has an imputation system of taxation for dividends. Dividends paid by Malaysian resident corporations are subject to an apparent 28% deduction of Income Tax on the gross dividend. To the extent that the dividend is paid out of profits already subject to Income Tax at the corporate level ('franked' dividend), the 28% deduction of Income Tax from the dividend is not required to be paid but would be offset against the Income Tax paid by the paying corporation on its profits. In other words, the Income Tax paid by the corporation is available as a credit which can be offset against the tax deemed payable on the gross dividend.

With effect from Year of Assessment 2001, only tax paid in the basis period for a year of assessment instead of the tax deemed payable by a corporation is available for dividend franking purposes.

Dividends paid out of tax exempt income are generally not required to be franked.

6.7 Double Taxation Agreements

General

Malaysia has concluded agreements for the avoidance of double taxation with the following countries:

Argentina	Germany	Morocco	South Africa
Albania	Hungary	Myanmar	Sri Lanka
Australia	India	Namibia	Sudan
Austria	Ireland	Netherlands	Sweden
Bahrain	Indonesia	New Zealand	Switzerland
Bangladesh	Iran	Norway	Taiwan
Belgium	Italy	Oman	Thailand
Brunei	Japan	Pakistan	Turkey
Canada	Jordan	Papua New Guinea	United Arab Emirates
China	Kazakstan	Philippines	United Kingdom
Czech Republic	Korea	Poland	United States of America
Denmark	Kuwait	Romania	Uzbekistan
Egypt	Kyrgyzstan	Russia	Vietnam
Fiji	Malta	Saudi Arabia	Yugoslavia
Finland	Mauritius	Singapore	Zimbabwe
France	Mongolia		

These Double Taxation Agreements (DTAs) follow the general principle that the country of source of the income has the prior right of tax and the country of residence provides relief through either tax exemption or tax credit.

The general effect of DTAs is that business profits earned from Malaysia by a resident of another treaty country are not subject to Malaysian tax unless the non-resident carries on business activities in Malaysia through a 'permanent establishment'. A 'permanent establishment' refers to a fixed place where a trade or business is wholly or partly carried on, for example, a Malaysian branch of a non-resident company. An individual other than an agent of an independent status stationed in Malaysia could also be regarded as the permanent establishment of a non-resident company if he habitually exercises an authority to conclude business contracts in Malaysia on behalf of the company or if he maintains stocks of merchandise belonging to the company from which he regularly fulfils orders on behalf of the company. In most of the DTAs, supervisory activities in connection with a construction, installation or assembly project carried on in Malaysia for more than six months in a year also constitute a permanent establishment.

Tax Sparing Relief

Certain DTAs provide that whilst interest on approved loans, and approved industrial royalties are exempt from tax in Malaysia, double taxation credit is to be given in the foreign country as though Malaysian tax has been paid. This is termed as tax sparing which is also available for dividends paid by a Malaysian company whose income is exempt from tax under the various tax incentives.

6.8 Other Direct Taxes

Petroleum Income Tax

Income derived by persons (which includes a partnership) engaged in upstream petroleum operations in Malaysia is liable to Income Tax under the Petroleum (Income Tax) Act, 1967. Petroleum Income Tax is chargeable at 38% on the chargeable income.

6.9 Labuan as an Offshore Financial Centre

In supplement to its establishment as an offshore financial center, Labuan provides a low tax regime for “offshore companies” engaged in “offshore business activities”. The Labuan Offshore Business Activity Tax Act 1990 defines an “offshore company” as an offshore company (or offshore trust) incorporated or registered under the Offshore Companies Act 1990 and an “offshore business activity” as an offshore trading or offshore non-trading activity carried on in or from Labuan with non-residents or another offshore companies (with certain exceptions). Offshore non-trading activities are holding of investments in securities, shares, stocks, loans, deposits, and immovable properties (excluding petroleum and shipping operations). Offshore trading activities are activities which are not offshore non-trading activities such as trading, banking and insurance.

Tax Incentives available under Labuan Offshore Business Activity Tax Act 1990

	<i>Corporate Tax</i>	<i>Withholding Tax</i>	<i>Sales Tax/ Import duties/ Export duties</i>	<i>Stamp Duty</i>	<i>Other Exemptions</i>
Rates of Tax	3% on income from offshore trading activity or RM20,000 maximum	0% on royalties, interest, technical or management services fees paid by offshore company to another offshore company or non-resident(s).	0% except on petroleum or petroleum products	0% on any instruments made in connection with offshore activity by offshore company	Dividends received or payable by Labuan offshore company are exempt from tax
	0% on income from offshore non-trading activity				

6.10 Indirect Taxes

Service Tax

The Service Tax Act 1975 provides that a 5% service tax shall be charged certain taxable services provided by taxable persons except for export taxable services (which are exempt from tax). Export taxable service has been defined as “service supplied for and to a person in a country other than Malaysia (excluding Langkawi, Labuan and free zones), provided that the service is not supplied in connection with goods or land situated in Malaysia and the person is not in Malaysia at the time the service is performed.”

■ Taxable Persons and Taxable Services

A complete list of taxable persons and taxable services is prescribed in the Service Tax Regulations, 1975.

■ Licensing

A taxable person who carries on a business of providing taxable services has to apply for a service tax licence and charge service tax on all taxable services provided.

■ Charge and Remittance of Service Tax

Service tax charged and received by the taxable person must be paid to Customs within 28 days after the end of a taxable period. A taxable period is defined as 2 calendar months. Service tax is only due at the time when payment is received for the taxable service provided by the taxable person. However, where the whole or any part of the payment for any taxable service is not received from the customer within a period of 12 calendar months from the date of the invoice for the taxable service provided, service tax shall be due on the day following that period of 12 calendar months.

■ Penalties

Any amount of service tax which is unpaid after the due date (i.e. 28 days after the end of a taxable period) will attract a penalty of 10% of such unpaid amount. If the amount remains unpaid, the penalty will be increased by a further 10% for every succeeding period of 30 days or part thereof subject to a maximum of 50% of the taxes unpaid.

Sales Tax

■ Basis of Taxation

Sales tax is a consumption tax levied on a wide variety of goods manufactured in Malaysia, or imported into Malaysia for local consumption. Conceptually, sales tax is a single stage tax.

■ Licensing / Exemption from Licensing

A person manufacturing taxable goods is required to be licensed under the Sales Tax Act, 1972 to charge and remit sales taxes to Customs. Certain categories of manufacturers are exempted from licensing.

■ Tax-free Raw Materials

For locally manufactured taxable goods, sales tax should only be levied once by the manufacturer in the course of production, i.e., at the output stage. Accordingly, manufacturers of taxable goods may apply to Customs for exemption of sales tax on raw materials and components used in the manufacturing process.

■ **Charge and Remittance of Sales Tax**

For locally manufactured taxable goods, sales tax is levied at the time the goods are sold, used or disposed of other than by sale. Sales tax charged by the licensed manufacturer must be paid to Customs within 28 days after the end of a taxable period. A taxable period is defined as 2 calendar months.

■ **Penalties**

Any amount of sales tax which is unpaid after the due date (i.e. 28 days after the end of a taxable period) will attract a penalty of 10% of such unpaid amount. If the amount remains unpaid, the penalty will be increased by a further 10% for every succeeding period of 30 days or part thereof subject to a maximum of 50% of the taxes unpaid.

Import Duties

■ **Basis of Taxation**

Generally, import duty is payable on imported goods at the time of clearance from Customs' control.

■ **Rates of Tax**

The rates of import duty generally ranges from nil to 35% depending on the category of goods imported, as classified under the Harmonised System (HS) of classification. However, certain goods may attract higher rates of duties of up to 300%. Import duties are generally levied on an ad valorem basis but may also be imposed on a specific basis.

■ **Determination of Value**

With effect from 1 January 2000, Customs has adopted the rules of valuation under the WTO Valuation System in its Customs (Rules of Valuation) Regulations, 1999 for the purposes of levying import duty.

■ **Exemptions**

Subject to fulfilling certain conditions, plant/machinery and raw materials/components used for manufacturing may be considered for import duty exemption. The main condition applicable generally are as follows:-

- that the item be used directly in production;
- the items must not be available from local manufacturers.

■ **Prohibition of Import**

Certain goods are absolutely or conditionally prohibited from being imported under the provisions of Customs (Prohibition of Imports) Order 1988. Import licences for conditionally prohibited goods are generally issued by the Ministry of International Trade and Industry or other prescribed authorities.

Export Duties

■ **Basis of Taxation**

The principal legislation governing export duties is the Customs Act, 1967. Export duty is generally imposed on depletable resources to discourage the export of such commodities. In addition to export duties, exporters may also be required to apply for certain permits or licenses before they may export such goods.

Excise Duties

■ Basis of Taxation

The principal legislation governing excise duties is the Excise Act, 1976. Excise duty is a domestic tax imposed on a limited range of locally manufactured goods. Manufacturers manufacturing goods that are subject to excise duties have to be duly registered with Customs for charging and remittance of excise duties to Customs. Excise duty is generally levied on the following:

- Alcoholic beverages;
- Tobacco products;
- Motor vehicles;

■ Rates of Tax

The rate of tax to be levied varies and would depend on the nature of the goods manufactured.

6.11 Other Taxes

Anti-Dumping Duties

The Countervailing and Anti-Dumping Duties Act 1993 came into force on 28 April 1994. The Act enables the Ministry of Industrial Trade and Industry to take remedial measures against unfair trading by foreign manufacturers / exporters and to provide a framework for investigating allegation of injury caused by dumped or subsidized imports.