Malaysia Investment Guide: An Introductory Legal and Business Perspective for Foreign Investors

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Part 1

1. The Malaysian Investment Environment

Malaysia, a dynamic Southeast Asian nation, has long been a promising destination for foreign direct investment (FDI). The Malaysian government actively encourages foreign participation in its economy, with continued reforms to attract new investors. From Penang's high-tech corridors to Johor's industrial zones and the Klang Valley's financial centers, multinational corporations and SMEs alike have competed for operations throughout the country. Key areas that attract FDI are manufacturing, services, renewable energy, infrastructure, and the digital economy. Legacy factors including Malaysia's location, mature infrastructure, and English-speaking workforce have long driven its attractiveness.

However, like in any jurisdiction, foreign investors need to deal with some regulatory issues. This guide discusses the obstacles that overseas businesses encounter when investing in Malaysia, including the measures recently implemented by the Malaysian government and the state of the investment environment in the country.

2. Barriers to Foreign Investment and Government Initiatives

Obstacles Encountered by Foreign Investors

For all its economic attractions, foreign investors have repeatedly voiced similar concerns about Malaysia over the years:

- Bureaucratic inefficiencies, such as the licensing and permits process;
- Lags in developing infrastructure in rural or less-developed areas;
- Labor Market Rigidity. While the workforce is generally well-educated, strict labor laws, challenges in hiring foreign talent and limited vocational training in certain sectors can pose operational difficulties;
- Increasing operational costs e.g., labor, compliance and utilities;
- Competition from Regional Peers. Other ASEAN countries (Vietnam, Thailand, Indonesia) offer similar advantages, sometimes with fewer restrictions.

Institutional Reforms and Support

In response, Malaysia has initiated an array of institutional and legal reforms:

- The Malaysian Investment Development Authority (MIDA) facilitates the ease of doing business by being a one-stop center and minimizing the hassle of looking for information or coordinating among varying levels of authority.
- High-tech and value-added investments are underpinned by the Digital Economy Blueprint (MyDIGITAL) and the Malaysia's national policy on Industry 4.0 (Industry4WRD policy).
- The Malaysian Companies Commission (SSM) and Malaysia Corporate Identity Number (MyCOID) have simplified company incorporation.
- Tax dispute mechanisms have been made more transparent, and double taxation agreements (DTAs) are in force with many countries.

- Labour legislation has also evolved. The Employment Act 1955 (Amendment 2022) and the introduction of the Minimum Wage Order aim to balance employer flexibility with worker protection, though challenges remain in certain sectors.

3. Malaysia's Current Investment Climate

Malaysia's macroeconomic indicators have shown resilience, with stable GDP growth, improved current account balance, and increasing participation in regional trade agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP).

Important aspects of the climate:

- Greater investment in green energy, logistics and digital infrastructure;
- Revived interest in public-private partnerships (PPPs) for infrastructure and urban development;
- Federal inducements including pioneer status, investment tax holidays, and principal hub programs for the promotion of multinational headquarters. For example, a multinational logistics company may select Malaysia as its ASEAN headquarters, coordinating its procurement, distribution, finance and strategic planning for the entire region from its Malaysian office. Under this program, companies that set up a Principal Hub in Malaysia can enjoy tax incentives, flexibility in employment of foreign talent, facilitated customs procedures and access to government support for infrastructure and operations.
- An increasing ease of doing business, with digital portals for permits and tax-filing.

4. Outlook

In ASEAN, Malaysia is still one of the most competitive and important destinations for FDI. Government efforts focus on digitalization, climate resilience, and inclusive economic growth. The New Industrial Master Plan (NIMP 2030) and 12th Malaysia Plan outline a vision that is for the long term, with a focus on high-value investments as well as sustained development. Facts show that, if a foreign company is to enter or expand, it should use the local statutory lawyer to engage in work as early as possible, put an end to shortcut measures, and match its development plan with national development goals. With proper navigation, foreign investors stand to benefit not only from stability but also from opportunities in a diversifying regional economy.

Malaysia Investment Overview

Part 2

Q1: Can a 100% foreign-owned company be established in Malaysia?

A1: Yes, Malaysia generally allows 100% foreign ownership for companies, with the most common structure being a private limited company (Sendirian Berhad or Sdn. Bhd.), incorporated under the Companies Act 2016. However, certain sectors are subject to foreign equity restrictions or require local partnership, particularly those involving national interest or public utility services.

Q2: Are there sectors where foreign ownership is restricted?

A2: Yes. Malaysia maintains a "Negative List" approach through sector-specific regulations rather than a single published document. Restrictions typically fall into the following categories:

1. Sectors closed to foreign participation (e.g. arms manufacturing, lottery operations).
2. Sectors requiring Malaysian equity participation, such as:
   - Freight forwarding (at least 51% Malaysian ownership)
   - Wholesale and retail trade (restrictions based on type and scale)
3. Regulated sectors where special licences or Bumiputera equity requirements apply, e.g.:
   - Oil & gas (PETRONAS involvement)
   - Education (local partners needed for private institutions)
4. Special conditions or joint venture obligations, e.g.:
   - Construction (CIDB registration, Bumiputera shareholding conditions)

Q3: Are there any restrictions based on the size of business?

A3: Yes. Malaysia promotes Small and Medium Enterprises (SMEs) and Bumiputera participation. For some business licenses or grants, particularly in retail and services sectors, foreign investors may be required to:

- Establish a minimum paid-up capital (e.g. RM1 million for wholesale or retail)
- Partner with Bumiputera-owned firms
- Limit their involvement in micro or cottage-level industries

In general:

- Micro enterprises: less than 5 employees or RM300,000 turnover
- Small enterprises: 5–75 employees or RM300,000–RM15 million turnover
- Medium enterprises: 75–200 employees or RM15–RM50 million turnover

Q4: Is there a minimum capital requirement for foreign investment?

A4: No fixed statutory minimum, except where sector-specific rules apply. However, certain sectors and activities may have specific capital requirements. For example:

- Manufacturing Sector: Companies with shareholders' funds of RM 2.5 million or more, or employing 75 or more full-time employees, are required to obtain a manufacturing licence under the Industrial Coordination Act 1975.

Q5: What is the typical legal form of a foreign investment enterprise?

A5: The standard form is a Private Limited Company (Sdn. Bhd.) registered with the Companies Commission of Malaysia (SSM). Features include:

- Limited liability for shareholders
- At least one director ordinarily resident in Malaysia
- At least one shareholder (can be corporate or individual)
- Incorporation can be completed online via MyCoID portal

Alternatively, foreign investors may establish:

- A branch office (limited to non-trading activities)
- A representative office (for market research, no commercial operations)
- A joint venture company (common in regulated industries)

Legal and Practical Considerations for Foreign Business Entry into Malaysia

Part 3

Forms of Business Entry into Malaysia
This article outlines the common methods by which foreign enterprises can establish a presence in Malaysia.

Q1: What types of business entities can a foreign company use to enter the Malaysian market?

A1: The two most common forms are:

1. Incorporation of a local company (typically a Sendirian Berhad or Sdn. Bhd.)
2. Setting up a representative office (RO)

Foreign companies may choose to establish a wholly foreign-owned company or enter a joint venture with a Malaysian partner. All incorporated entities must be registered with the Companies Commission of Malaysia (SSM) and comply with the Companies Act 2016.
Alternatively, representative offices may be established primarily for market research or liaison purposes, and do not carry out commercial transactions.

Q2: What are the differences between a Sdn. Bhd. and a Representative Office?

A2: The key distinctions are:

Category	Private Limited Company (Sdn. Bhd.)	Representative Office (RO)
Legal Status	Separate legal entity with corporate personality	No legal personality
Registration	Must be registered with SSM	Must be approved by MIDA (Malaysian Investment Development Authority)
Business Activity	May carry out commercial, sales, and operational activities	Cannot engage in commercial or revenue-generating activities
Ownership	Can be 100% foreign-owned or joint venture	Remains part of the foreign parent Company
Duration	Perpetual (subject to compliance)	Typically approved for 2–5 years, renewable

A Sdn. Bhd. is suitable for companies intending to actively trade or provide services in Malaysia. It requires at least one director who is ordinarily resident in Malaysia.

A Representative Office, on the other hand, is ideal for preliminary market studies, liaison work, or acting as a coordination center for the parent company. It cannot sign contracts or issue invoices in Malaysia.

Q3: Who can set up a Representative Office?

A3: In principle, any foreign company with strong financial standing and genuine interest in exploring business in Malaysia may apply to establish a representative office. Applications are assessed by **MIDA**, which considers:

- The applicant's paid-up capital and financial track record
- The proposed activities of the RO
- The intended duration of stay in Malaysia

Conclusion
Foreign businesses aiming to enter the Malaysian market must choose the appropriate entry form depending on their long-term goals. A **Sdn. Bhd.** offers full trading capability but comes with regulatory obligations. A **Representative Office**, though limited in scope, can serve as a strategic first step into the Malaysian economy.

Procedures for Establishing a Foreign Direct Investment Company in Malaysia

Part 4

By Legal Consultant Team
This article introduces the basic procedures and legal requirements involved in establishing a foreign direct investment (FDI) company in Malaysia.

Q1. What approvals and documents are required to establish an FDI company in Malaysia?

A1. To establish a foreign-owned company in Malaysia, the following key approvals and documents are generally required:

1. Approval from the Malaysian Investment Development Authority (MIDA) – for regulated sectors or when tax incentives are sought.
2. Company Incorporation with the Companies Commission of Malaysia (SSM) – under the Companies Act 2016.
3. Business Premises Licences and Signboard Licences – issued by local municipal councils.
4. Employment Pass and Expatriate Post Approvals – for hiring foreign professionals.
5. Approval for Manufacturing Licence (if applicable) – required under the Industrial Coordination Act 1975 for manufacturing activities exceeding certain thresholds.
6. Customs Duty Exemptions and Import Licences – for capital goods or raw material importation, usually applied via MIDA.
7. Tax Registration and Bank Account Opening – including registration with the Inland Revenue Board (LHDN) and Royal Malaysian Customs.
8. Environmental Impact Assessment (EIA) – required for projects with significant environmental implications.
9. Building and Land Use Approvals – depending on project type and zoning requirements.
10. Other sector-specific approvals – e.g., telecommunications, financial services, energy.

Q2. Is there a validity period for investment approvals? What happens if the investment is not implemented?

A2. Yes, MIDA approvals (e.g., manufacturing licence, incentives) typically carry a validity period of 1–3 years. If substantive progress (such as site acquisition, commencement of construction, or machinery installation) is not made within this time, the approval may lapse automatically or require a fresh application. Investors must demonstrate project implementation progress, such as:

- Signing a tenancy or land acquisition agreement.
- Company bank account setup.
- Commencement of site works or construction.

Q3. Which government agencies assist foreign investors in Malaysia?

A3. The following agencies play a key role in supporting FDI in Malaysia:

1. **MIDA** – the lead agency promoting and coordinating industrial investment.
2. **SSM (Companies Commission of Malaysia)** – handles company incorporation and registration.
3. **MITI (Ministry of Investment, Trade and Industry)** – provides industrial policies and oversight.
4. **Local Authorities (PBTs)** – issue premises and business operation licenses.
5. **Immigration Department** – handles expatriate work permits and employment passes.
6. **Department of Environment (DOE)** – oversees environmental approvals and monitoring.
7. **Royal Malaysian Customs and LHDN** – manage tax, duties, and import/export regulations.
8. **Sectoral Regulators** – such as Bank Negara Malaysia (finance), MCMC (communications), and Suruhanjaya Tenaga (energy).

Q4. What is the process for importing capital goods?

A4. Companies intending to import capital goods must:

- Submit a detailed Import Master List through MIDA for customs duty exemption (if applicable).
- Obtain an Approval Letter from MIDA.
- Seek a Customs Exemption Certificate from the Royal Malaysian Customs.
- Ensure proper registration as an importer (via the Ministry of International Trade and Industry or the Customs portal).

Goods must be aligned with the investment project and justified in terms of capacity and technological relevance.

Q5. What is the procedure for incorporating a private limited company (Sdn. Bhd.) in Malaysia?

A5. Under the Companies Act 2016, the process generally involves:

1. Preparation of the Constitution (optional) and company name application.
2. Incorporation with SSM – requires minimum one director and one shareholder (individual or corporate, foreign or local).
3. Issuance of Certificate of Incorporation and company registration number.
4. Opening a company bank account and obtaining necessary licences.
5. Companies must also register with the Inland Revenue Board (LHDN) and, if applicable, register for Sales and Service Tax (SST).

Q6. Is company registration mandatory in Malaysia?

A6. Yes. All business entities, including foreign-owned ones, must be registered with SSM. Failure to do so is an offence under the Companies Act and can result in fines and/or imprisonment.
Exceptions exist only for very small family businesses or sole proprietors operating under certain income thresholds and not incorporated.

Q7. What about setting up a Representative Office (RO)?

A7. A Representative Office may be established for market research, liaison, and promotion (but not commercial trading). Requirements include:

- Application to MIDA, with the parent company's financial details and appointment letter for the representative.
- No sales income may be generated in Malaysia.
- ROs may hire a limited number of expatriate staff with Employment Passes.
- Typically approved for a 2 to 3 years period, renewable.

Land Rights in Malaysia

Part 5

Overview of Land Rights in Malaysia
In Malaysia, land matters fall under state jurisdiction, meaning each of the 13 states has authority over land administration, though federal laws such as the National Land Code 1965 (NLC) provide a framework. The Malaysian government maintains sovereignty over all land, and individuals or companies, whether local or foreign, must obtain specific titles or leases to use land.

Q1: What types of land rights exist in Malaysia?

A1: The main types of land titles and rights under the NLC are:

1. Freehold Title – perpetual ownership, rarely available to foreigners.
2. Leasehold Title – typically for 30, 60, or 99 years.
3. Temporary Occupation License (TOL) – short-term land use rights, usually for agricultural or temporary commercial purposes.
4. Strata Title – for subdivided buildings (e.g., apartments, offices).
5. Reserved Land – land designated for specific purposes (e.g., Malay Reserved Land) and not accessible to non-Malaysian entities.

Q2: Can foreign investors acquire land in Malaysia?

A2: Yes, but with restrictions. Foreign entities and non-citizens cannot own Malay Reserved Land or land in sensitive areas such as protected forests or designated Bumiputera development zones.
However, they may acquire:

- Commercial or residential properties above a certain threshold (typically RM1 million or more, depending on the state).
- Industrial land for business operations with state approval.
- Leasehold interests in land for investment or development projects.

All transactions involving foreign purchasers must be approved by the State Authority.

Q3: What approvals are needed for land acquisition by foreign investors?

A3: The key approvals include:
- State Authority consent (under Section 433B of the National Land Code, NLC).
- Economic Planning Unit (EPU) approval (for certain thresholds or strategic sectors).
- Local authority and planning permissions if development is involved.

Q4: Are there land size limits or conditions for foreign investors?

A4: Yes. Limits and conditions vary by state and industry. For example:
- Foreign-owned industrial companies may be restricted to acquiring land only for operational purposes.
- Some states impose minimum built-up areas or investment values (e.g., Penang and Selangor).
- The Federal Government's Guidelines on the Acquisition of Properties specify minimum purchase prices and prohibited categories.

Q5: What rights do investors have under leasehold land?

A5: Leaseholders can typically:
- Build on the land (subject to planning approval).
- Use the land for business, industrial, or residential purposes.
- Transfer or sublease the lease (with state approval).
- Mortgage the lease interest for financing.

Leases are renewable, subject to negotiation with the state and compliance with land use requirements.

Q6: Can land be used as capital injection in a company?

A6: Yes. Land (especially leasehold or industrial land with state approval) can be injected as in-kind equity into a company. This must be supported by a valuation report and approval from the Companies Commission of Malaysia (SSM) and the State Authority.

Q7: Can foreign investors develop property on Malaysian land?

A7: Foreign investors can undertake property development through a locally incorporated company (with possible foreign shareholding). Development activities require:
- Land acquisition with State approval.
- Planning permission and development orders from local authorities.
- Compliance with Housing Development (Control and Licensing) Act if residential units are involved.

Joint ventures with local partners are common to facilitate approvals and land access.

Conclusion

Malaysia welcomes foreign investment, but land use and ownership by foreigners are subject to state-specific controls and federal guidelines. Proper legal and administrative guidance is essential to navigate land acquisition and investment compliance.

Taxation in Malaysia (i)

Part 6

Q1: Who is subject to income tax under Malaysian law?

A1: According to the Income Tax Act 1967 (ITA), the following are subject to Malaysian income tax:
1. Resident individuals
2. Non-resident individuals
3. Resident companies
4. Non-resident companies
5. Trusts, estates, and partnerships (where applicable)

Malaysia employs a territorial basis of taxation, meaning only income derived from or accrued in Malaysia is taxable, except for certain foreign-source income received in Malaysia by residents.

Q2: Who qualifies as a resident individual?

A2: An individual is considered a tax resident in Malaysia if they meet any of the following criteria:
1. Present in Malaysia for greater than or equal to (≥) 183 days in a calendar year.
2. Continuously present over multiple years with certain linking rules (e.g., 183-day rule linked to the previous year).
3. Present for greater than or equal to (≥) 90 days in a year and has been resident in 3 of the 4 preceding years.

Residency is determined only for tax purposes and may differ from immigration status.

Q3: What defines a non-resident individual or company?

A3: An individual who does not meet any of the residency criteria is considered a non-resident. A company is non-resident if its control and management are not exercised in Malaysia (typically, where board meetings are held).
Non-residents are generally taxed at flat rates and not entitled to many deductions or tax reliefs.

Q4: What constitutes "income" under Malaysian tax law?

A4: Income includes:
- Business profits
- Employment income
- Rent and royalties
- Dividends and interest
- Gains or profits from investments
- Other forms of recurring or non-recurring income

Capital gains are generally not taxable, except for real property gains under the Real Property Gains Tax Act 1976.

Q5: Is the tax levied on gross or net income?

A5: Tax is levied on chargeable (net) income, i.e., gross income minus allowable deductions such as:

- Business expenses
- Depreciation (capital allowances)
- Bad debts
- Donations (with limits)
- Personal reliefs (for individuals)

Q6: What are the tax rates for individuals and companies?

A6:

1. **For resident individuals (progressive rates):**
   - 0% to 30%, depending on income band.
2. **For non-resident individuals:**
   - Flat rate of 30% on all income.
3. **For resident companies:**
   - 15% to 24% standard corporate tax rate.
4. **For non-resident companies:**
   - Flat 24% corporate tax on Malaysia-source income.

SMEs (paid-up capital ≤ RM2.5 million) enjoy a reduced rate of 15% on the first RM150,000, then 17% on the next RM450,000, and 24% thereafter.

Q7: What is the self-assessment system?

A7: Malaysia operates on a self-assessment system. Taxpayers must:

- Compute their own chargeable income.
- Submit annual tax returns (Form BE for individuals, Form C for companies).
- Make timely payments of tax due.

Employers and businesses are subject to withholding tax, CP38/CP500 schemes, and monthly tax deductions (MTD) where applicable.

Q8: What are the penalties for late filing or non-compliance?

A8: Key penalties include:

- Late filing: RM200 to RM1,000 plus monthly increments of 10% on unpaid taxes.
- Failure to file or pay: Possible prosecution, fines, and up to 6 years imprisonment.
- Understated income: Additional tax and penalties up to 100% of the underpaid amount.

Q9: What is the Tax Identification Number (TIN) and how is it obtained?

A9: The TIN (formerly known as Income Tax Number) is issued by the Inland Revenue Board (LHDN). Individuals and companies must register online or through the nearest LHDN branch. It is mandatory for all taxable persons.

Q10: When are taxes due?

A10:
- Individuals: Tax returns are due by April 30 (manual) or May 15 (e-filing) each year.
- Companies: Tax returns (Form C) are due within 7 months after the financial year end.
- Monthly tax estimates (CP204) must be paid accordingly.

Q11: Are there withholding taxes in Malaysia?

A11: Yes. Malaysia imposes withholding tax on payments to non-residents, including:
- Royalties: 10%
- Interest: 15%
- Technical/management fees: 10%
- Contract payments: 10%
- Dividends: No withholding tax (dividends are exempt)

Double taxation agreements (DTAs) may reduce these rates.

Taxation System (ii)

Part 7

Q1: In what cases is tax representation (i.e. acting on behalf of the taxpayer) permitted under Malaysian law?

A1: Under the Income Tax Act 1967 and related guidelines from the Inland Revenue Board of Malaysia (LHDN), tax obligations may be fulfilled by an appointed representative in the following cases:
1. Companies or legal entities: The board of directors or appointed tax agents or accountants may act on behalf of the company.
2. Winding-up or bankruptcy: The liquidator or trustee in bankruptcy is responsible for tax matters during liquidation or insolvency proceedings.
3. Deceased estates: The executor or administrator of the estate handles tax obligations on behalf of the estate.
4. Minors or individuals under guardianship: The parent or legal guardian may file taxes and deal with LHDN on their behalf.

Q2: When is lump-sum tax payment required instead of instalments?

A2: While Malaysia generally allows for monthly instalments (CP204) for companies and monthly deductions (MTD/PCB) for employees, lump-sum payments may be required in the following situations:
1. Permanent departure from Malaysia by a taxpayer.
2. Cessation of business, including disposal of significant assets or company dissolution.
3. Company restructuring, including mergers, acquisitions, or major downsizing.
4. Enforcement actions such as asset seizures or insolvency.

Q3: What qualifies as a bad debt for income tax deduction purposes?

A3: Under Malaysian tax rules, a debt may be written off as bad (and claimed as a deduction) if the following conditions are met:

1. It has been recorded as income previously.
2. There is clear evidence of efforts made to recover the debt.
3. Legal action has been taken, or it is proven that the debtor is insolvent.
4. The amount is written off in the accounts for that year of assessment.
5. Adequate documentation (e.g. letters, reports, notices) supports the irrecoverability.

Q4: What tax reliefs are available in the case of corporate debt restructuring?

A4: Where companies undertake restructuring under official schemes such as Corporate Debt Restructuring Committee (CDRC) or court-sanctioned arrangements, the following tax treatments may apply:

1. Waiver of debt: May not be treated as taxable income.
2. Asset transfers to creditors: Subject to Real Property Gains Tax (RPGT) or stamp duty depending on the asset type.
3. Share capital restructuring: Stamp duty exemptions may apply if approved by the relevant authorities.

Q5: What are Malaysia's Goods and Services Tax (GST) status?

A5: As of now, Malaysia does not have GST. The previous GST (6%) was repealed in 2018 and replaced by the Sales and Service Tax (SST) regime:

- Sales Tax: Levied at the manufacturer level at 5%, 10%, or a specific rate.
- Service Tax: Charged at 6% on prescribed services (e.g., hotels, food and beverage, telecoms, insurance).

Q6: How is Service Tax calculated?

A6: Service Tax is imposed at a flat 6% rate on the value of taxable services rendered. It is only applicable if:

- The business is registered and exceeds the RM500,000 threshold (in most sectors).
- The service is rendered in Malaysia or to a Malaysian recipient.

Q7: What items and services are not subject to Sales and Service Tax?

A7: Exemptions include:

- Essential goods such as basic food items, medicines, and agricultural products.
- Services such as public transport, education, and healthcare (private hospitals are exempt if registered under the Private Healthcare Facilities Act).
- Financial services provided by banks and insurers.

Q8: Are intra-company transactions taxable under SST?

A8: Generally, inter-branch or inter-company transfers within a group are not subject to SST, provided they are not deemed to be separate taxable supplies and proper exemption registration is obtained from the Royal Malaysian Customs Department (RMCD).

Q9: What is stamp duty and when is it payable?

A9: Stamp duty is levied on instruments of transfer and loan agreements, including:

- Sale and purchase agreements
- Loan agreements and facilities
- Share transfer forms

Rates are generally:

- Up to 4% on property transfers.
- 0.5% on loan agreements.
- Fixed duty for certain documents (e.g., RM10).

Q10: What is the quit rent and assessment tax in Malaysia?

A10: These are state-imposed land taxes:

- Quit Rent (Cukai Tanah): Annual payment based on land size and use.
- Assessment Tax (Cukai Pintu): Charged biannually by local councils based on estimated annual rental value of the property.

Q11: What other taxes should businesses be aware of?

A11:

1. Vehicle Excise Duties: High duties imposed on imported and luxury vehicles.
2. Employees Provident Fund (EPF): Mandatory contribution for Malaysian workers (employers: 12–13%, employees: 11%).
3. SOCSO and EIS: Social security and employment insurance contributions required for local employees.
4. Real Property Gains Tax (RPGT): Applicable on gains from disposal of real estate.

Q12: How does Malaysia avoid double taxation?

A12: Malaysia has signed over 70 Double Tax Agreements (DTAs) to avoid taxing the same income in multiple countries. Non-residents can claim DTA benefits by:

- Obtaining a Certificate of Residence from their home tax authority.
- Submitting it with a Form CP21 or Form C to LHDN for relief or reduced withholding tax rates.

Investment Incentives and Tax Benefits (i)

Part 8

Introduction

Malaysia actively encourages foreign direct investment (FDI) through a variety of incentives aimed at easing entry and promoting industrial development. These include tax holidays, import duty exemptions, and investment allowances. These incentives are administered by government agencies such as the Malaysian Investment Development Authority (MIDA) and are governed by legislation such as the Promotion of Investments Act 1986, the Income Tax Act 1967 and various gazetted orders.

This guide outlines the key incentives available to foreign investors seeking to establish or expand operations in Malaysia.

1. Pioneer Status and Investment Tax Allowance (ITA)

Pioneer Status (PS)

- Companies granted PS enjoy partial tax exemption on statutory income (usually 70%) for a period of 5 to 10 years.
- Applicable to promoted activities or products, typically in manufacturing, biotechnology, green technology, and other high-value industries.

Investment Tax Allowance (ITA)

- An alternative to PS, this grants an allowance of 60% on qualifying capital expenditure incurred within 5 years, offset against 70% of statutory income.
- Particularly suitable for capital-intensive industries or projects with longer gestation periods.

2. Import Duty and Sales Tax Exemptions

Foreign and domestic companies in the manufacturing sector may apply for exemptions on:

- Import duties and/or sales tax on raw materials, components, and machinery not available locally.
- Conditions:
  a) The machinery must be used directly in the manufacturing process.
  b) Exemptions are usually valid for a specific project duration and subject to MIDA approval.

3. Accelerated Capital Allowances (ACA)

Malaysia permits accelerated depreciation for qualifying capital expenditures:

- Generally, initial allowance of 20%, followed by annual allowance of 14%.
- Certain high-impact industries or environmental initiatives (e.g., energy-efficient equipment) may enjoy enhanced ACA.

4. Reinvestment Allowance (RA)

Granted to companies that reinvest in:

- Expansion, modernisation, automation, or diversification of existing manufacturing businesses.
- RA offers a 60% allowance on qualifying capital expenditure, deductible against 70% of statutory income for 15 years.

5. Incentives for Export-Oriented Industries

To promote export activities:

- Export incentives may include exemptions on import duties for goods used in export production.
- Service tax exemptions for services exported abroad (e.g., business process outsourcing).
- Double deduction for promotion expenses (e.g., participation in trade fairs, overseas advertising).

6. Tax Incentives for Strategic and High-Technology Projects

Special incentives are available for:

- Principal Hub operations: Global or regional base for logistics, finance, and management.
- Green technology: Includes tax exemptions for renewable energy projects, energy-efficient equipment, and recycling operations.
- Digital investments: MSC Malaysia status offers income tax exemption for ICT and digital service companies.

7. Incentives for Locating in Specific Regions or Economic Corridors

Malaysia encourages development in less-developed areas through:

- Location-based tax incentives, including additional allowances or longer tax holidays.

- Example regions: East Malaysia (Sabah & Sarawak), East Coast Economic Region (ECER), Northern Corridor Economic Region (NCER), Iskandar Malaysia.

Investment Incentives and Tax Benefits (ii)

Part 9

Introduction
Malaysia supports foreign investment through well-structured regional frameworks like Free Zones and Special Economic Corridors, offering tailored fiscal and administrative incentives. A newer initiative is the Forest City Special Financial Zone, part of the government's strategy to stimulate targeted high-value sectors.

1. Free Zones in Malaysia: Incentives and Purpose
Free Zones are designated areas where goods can be imported, manufactured, processed, and re-exported with minimal customs interference. These zones are critical in boosting Malaysia’s export capabilities.
Key Benefits:

- Duty-free import of raw materials and components
- Streamlined customs clearance
- 100% foreign ownership permitted
- Simplified licensing and regulatory processes

2. Special Economic Corridors and Their Incentives
Malaysia’s Economic Corridors offer zone-specific incentives to attract large-scale, long-term investment in underdeveloped or strategic areas.
Major Corridors:

- Iskandar Malaysia (IM)
- East Coast Economic Region (ECER)
- Northern Corridor Economic Region (NCER)
- Sabah Development Corridor (SDC)
- Sarawak Corridor of Renewable Energy (SCORE)

Common Incentives:

- Tax holidays (5–10 years) or Investment Tax Allowances
- Import and sales tax exemptions
- Stamp duty relief
- Accelerated depreciation

3. Forest City Special Financial Zone (Sultan Ibrahim Forest City Special Financial Zone)
Announced in 2023, the Forest City Special Financial Zone (FCSFZ) is located in Johor, near the Singapore border, and is envisioned as a gateway for international finance and digital commerce.
Incentives for Investors:

- Flat income tax rate of 15% for eligible knowledge workers
- Multiple entry visas and fast-track immigration lanes
- No import duties on specified capital goods and equipment
- Targeted at fintech, digital services, high-value logistics, and green economy firms

Forest City’s proximity to Singapore and Iskandar Malaysia makes it a strategically significant hub for foreign companies looking to base regional HQs or operational centers.

4. Inter-Zone Operations
Companies located in free zones or economic corridors may:
- Subcontract to entities outside the zone (under customs control)
- Import raw materials despite local availability (subject to approval)
- Lease machinery for off-site export-oriented use (time-limited)

5. Compliance and Approval
Incentives are not automatic. Companies must:
- Apply through MIDA or the respective corridor authority
- Meet minimum investment and employment criteria
- Maintain proper audit and reporting practices

Mergers and Acquisitions (M&A) in Malaysia

Part 10

Q1: What is a merger under Malaysian law and how is it carried out?

A1: In Malaysia, a merger typically involves the combination of two or more companies into one entity. While the Companies Act 2016 does not define "merger" per se, such corporate restructuring can be effected through mechanisms like amalgamation under Section 370 of the Act, or via schemes of arrangement (Section 366), which require:
- Approval by the shareholders of each company (75% majority in value of creditors or members present and voting)
- Sanction by the High Court
- Lodgement of the court order with the Companies Commission of Malaysia (SSM) for it to take effect

Q2: What about acquisitions?

A2: An acquisition generally refers to one entity acquiring control of another, usually through the purchase of shares (share acquisition) or assets (asset acquisition). Common methods include:
- Share acquisition: The acquiring party purchases more than 50% of the voting shares to gain control.
- Asset acquisition: The acquiring party buys specific business assets and assumes selected liabilities.

In cases involving public-listed companies, the Capital Markets and Services Act 2007 (CMSA) and Malaysian Code on Take-Overs and Mergers will also apply.

Q3: What are the shareholders' requirements for approving mergers or acquisitions?

A3: Under the Companies Act 2016:
- A special resolution (at least 75% of voting members present) is typically required for major transactions, including asset sales or structural mergers.
- In schemes of arrangement, both shareholder and court approval are needed.
- The company's constitution, if any, may set out additional requirements.

Q4: Is government approval required?

A4: Yes, in certain cases. Notably:

- Foreign investment approval: Approvals from the Ministry of Investment, Trade and Industry (MITI) and Malaysian Investment Development Authority (MIDA) may be required, particularly in strategic sectors.
- Equity conditions: For some industries, foreign equity ownership is capped (e.g., 70% in certain service sectors).
- Merger control: While Malaysia currently has no general merger control regime for private companies, sectoral regulators (e.g., Bank Negara Malaysia, Malaysian Communications and Multimedia Commission) may impose requirements for regulated sectors.

Q5: Can due diligence or company investigations be conducted?

A5: Yes. Legal due diligence is a standard step in any M&A transaction, allowing the acquirer to assess legal, financial, and operational risks. In addition:

- Public information (e.g., company profiles, filings, charges) can be obtained from the SSM's MyData system.
- For deeper investigations, the buyer may request representations and warranties, or include inspection rights in the share purchase agreement (SPA).

Q6: Who may initiate such investigations or make requests for company data?

A6: Investigations and information access may be carried out by:

1. Shareholders: Under Section 245 and 247 of the Companies Act 2016, shareholders can inspect company records.
2. Regulators: The SSM or sector regulators may also initiate investigations.
3. Authorized persons: Under the terms of the company's constitution or shareholders' agreement.

Q7: Can the results of due diligence or investigations be publicly disclosed?

A7: Generally, no. Confidentiality obligations and data protection laws apply. The Personal Data Protection Act 2010 (PDPA) prohibits unauthorized disclosure of personal or sensitive corporate data. However, disclosure may be required under securities regulations if the company is listed on Bursa Malaysia.

Company Dissolution and Liquidation in Malaysia

Part 11

Q1: When can a company be dissolved in Malaysia?

A1: In Malaysia, a company may be dissolved voluntarily or through a court order. Common circumstances include:

- Voluntary winding up by shareholders (Section 439 of the Companies Act 2016), typically via a special resolution.
- Voluntary winding up by creditors, where the company is insolvent and cannot pay its debts.

- Automatic dissolution if the company has reached the expiration date stated in its incorporation documents. Certain companies are set up for a fixed duration, for example, to complete a specific project or venture.
- Court-ordered winding up under Section 465, including where:
  a) The company is unable to pay its debts.
  b) It has suspended business for over a year.
  c) It is just and equitable to do so (e.g. deadlock between shareholders).

Q2: What is the liquidation procedure in Malaysia?

A2: Liquidation involves collecting the company's assets, settling liabilities, and distributing remaining assets to shareholders. The steps typically include:
1. Appointment of a liquidator (Section 433-437).
2. Notification to the Companies Commission of Malaysia (SSM) and publication in a local newspaper.
3. Asset realization and debt repayment.
4. Final account preparation and distribution of residual assets.
5. Dissolution application to SSM or the court upon completion of the liquidation.

Q3: How is a liquidator appointed?

A3: As below:
- In members' voluntary winding up, shareholders appoint the liquidator by ordinary resolution.
- In creditors' voluntary winding up, creditors nominate the liquidator at a creditors' meeting.
- In court-ordered winding up, the court appoints the liquidator.

Licensed liquidators must be approved under the *Companies Commission of Malaysia Act 2001* and be registered with the SSM.

Q4: What are the duties of a liquidator?

A4: The liquidator must:
- Notify SSM and publish notices in newspapers.
- Realize company assets.
- Pay off creditors in order of priority.
- Prepare periodic and final accounts.
- Convene final meetings and apply for company dissolution.

Failure to properly notify and report may result in personal liability or sanctions under Section 543 of the Companies Act.

Q5: Can the company continue normal business during liquidation?

A5: No. The company may only conduct business necessary for the winding-up process, including:
- Selling assets.
- Settling claims.
- Defending or pursuing legal proceedings relevant to liquidation.
- Distributing final returns to shareholders.

Q6: Are there deadlines for creditors to submit claims?

A6: Yes. Creditors must submit claims within a timeline specified by the liquidator, typically not less than 21 days from the date of notice. If a creditor's claim is rejected, they may appeal to the court within a set statutory period.

Q7: Can a company in liquidation be made bankrupt?

A7: Technically, corporate entities in Malaysia do not go bankrupt, but they may be wound up if insolvent. If the company's liabilities exceed its assets and it cannot meet its obligations, it may be subject to a creditors' voluntary winding up or court-ordered liquidation.

Q8: When is liquidation considered complete?

A8: Liquidation concludes when:

- All assets are realized and liabilities settled.
- The liquidator holds a final meeting of shareholders/creditors.
- The liquidator submits the final account and applies for dissolution.
- The SSM or the court issues a notice of dissolution.

Employing Foreign Workers in Malaysia

Part 12

Q1: Who are the relevant parties when hiring a foreign worker in Malaysia?

A1: The key parties involved are:

- The foreign worker, who must meet immigration and employment pass requirements.
- The employer, who must be registered and approved to hire foreign workers.
- The local counterpart or Malaysian understudy, who may be designated to receive knowledge or skills transfer in some sectors, particularly under the Professional Visit Pass scheme.

Q2: What are the legal conditions for a foreign national to work in Malaysia?

A2: A foreign national must obtain:

- A valid work pass, such as the Employment Pass, Temporary Employment Pass, or Professional Visit Pass from the Immigration Department.
- Approval from the relevant sectoral authority, e.g., Ministry of Health for medical professionals, Construction Industry Development Board (CIDB) for construction workers.
- A quota approval, usually required for lower-skilled workers, issued by the Ministry of Home Affairs (MOHA) or related agency.

Q3: What types of entities can employ foreign workers in Malaysia?

A3: The following entities may employ foreign workers:

- Private companies registered with the Companies Commission of Malaysia (SSM)

- Government-approved institutions
- Representative offices and regional offices
- Companies with MSC Malaysia or MIDA status (for high-skilled foreign professionals)

Q4: What conditions must the employer fulfil to employ a foreign worker?

A4: Employers must:
- Be registered with the Ministry of Human Resources (MOHR) and Immigration Department
- Obtain quota approval for foreign workers (except for certain categories of professionals)
- Provide adequate accommodation as per the Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446)
- Pay levies and social security contributions (if applicable)
- Provide training and ensure skills transfer to local staff in professional roles

Q5: What is the Employment Pass (EP) and how long is it valid?

A5: In Malaysia, the Employment Pass (EP) is a work visa issued to expatriates who are hired to work in managerial, technical, or professional positions with a Malaysian company.

Here's a clearer breakdown of Malaysia's Employment Pass (EP) categories, including the minimum monthly salary required for each:

Category	Salary Range (RM/month)	Validity	Dependents Allowed?	Notes
I	≥ 10,000	Up to 5 years	Yes	For senior executives (e.g., CEOs, Directors)
II	5,000 – 9,999	Up to 2 years	Yes	For managers, professionals (e.g., Engineers, Lecturers)
III	3,000 – 4,999	Up to 1 year	No	For technical roles (e.g., lab technician)

- **Renewals**: Category I & II can be renewed indefinitely, typically in the same duration blocks. Category III can be renewed **twice only**.
- **Exemptions**: For Category III (RM3,000 - RM4,999), employers must obtain an exemption letter if applying before the salary reaches RM5,000.
- **Family & Maid Access**: Only holders of Category I & II can sponsor Dependants and foreign domestic helpers.
- **Approving Agencies**: Employers must apply via relevant agencies (e.g., MDEC for digital companies, MIDA for manufacturing/services, EC for others).

Q6: What is Malaysia's general policy directions on hiring foreign workers?

A6: Malaysia's approach emphasises:
- Prioritising local employment
- Allowing foreign workers only when sufficient local manpower is unavailable
- Encouraging skills and knowledge transfer

- Enforcing a strict compliance and permit regime under the Immigration Act 1959/63 and Employment Act 1955 (as amended)

Q7: Is there a fund or fee required for skills development or levy payments?

A7: Yes. Employers hiring foreign workers must:
- Pay a foreign worker levy, which varies by sector (e.g., manufacturing, agriculture, services)
- Pay for SOCSO (Social Security Organisation) contributions under the Foreign Workers Compensation Scheme
- Bear the costs for foreign worker medical insurance (SPIKPA)

Q8: Are there eligibility requirements for foreign workers?

A8: Yes. Requirements include:
- Age between 18 and 45 at the time of application (varies slightly by sector)
- No criminal record
- Medical examination and FOMEMA health clearance
- For professional roles: relevant academic or vocational qualifications, and English or Malay language proficiency

Q9: Are there sector-specific limitations or quotas for foreign employment?

A9: Yes. Malaysia has a quota system and restrictions:
- Manufacturing, construction, plantations, agriculture, and services sectors are allowed to hire lower-skilled foreign workers
- Professional sectors (engineering, IT, medicine) allow foreign workers under EPs but may require local understudy programmes
- Certain jobs (e.g., cashier, front office clerk, drivers for company vehicles) are reserved for Malaysians only

Q10: Must foreign workers be enrolled in Malaysia's social security scheme?

A10: Yes, employers must ensure:
- SOCSO (Perkeso) enrolment under the Foreign Workers Social Security Scheme (since 2019 is mandatory)
- Private health insurance coverage (SPIKPA) for foreign workers in the private sector
- For EP holders: enrolment in EPF (Employees Provident Fund) is optional unless specified by contract

Malaysia My Second Home (MM2H) and Foreign Investment in Malaysia
<u>Part 13</u>

The Malaysia My Second Home (MM2H) program is a long-term residency scheme designed to attract foreigners who wish to reside in Malaysia for an extended period. While its primary aim is to grant long-term social visit passes, MM2H also plays a vital role in promoting foreign investment by facilitating access to Malaysia's real estate market, business opportunities and financial assets.

Eligibility Criteria and Minimum Requirements

- Open to foreigners aged 25 and above from countries with diplomatic ties to Malaysia.
- Applicants must have no criminal record.
- Applications must be submitted via licensed MM2H tour operators.

Criteria	Platinum	Gold	Silver
Fixed Deposit (FD)	USD 1,000,000	USD 500,000	USD 150,000
Participation Fee (One-off)	RM 200,000 (Principal only)	RM 3,000 (Principal only)	RM 1,000 (Principal only)
FD Withdrawal	Up to 50% for housing, education, medical, tourism	Same as Platinum	Same as Platinum
Property Requirement	Mandatory purchase, min. RM 2 million	Mandatory purchase, min. RM 1 million	Mandatory purchase, min. RM 600,000
Property Sale Restriction	Cannot sell for 10 years (can upgrade)	Same as Platinum	Same as Platinum
Minimum Stay (per year)	90 days (fulfilled by principal or dependents)	Same as Platinum (age 25–49 for dependents)	Same as Gold
MM2H Pass Duration	20 years (renewable)	15 years (renewable)	5 years (renewable)
Multiple Entry Visa (MEV)	Yes	Yes	Yes
Dependents Allowed	Spouse, children, disabled children, parents/in-laws, maid	Same as Platinum	Same as Platinum
Children's Education	Allowed (up to tertiary level), Student Pass given	Same as Platinum	Same as Platinum
Medical Treatment	Long-term treatment allowed	Same as Platinum	Same as Platinum
Business/Investment	Permitted	Not allowed (pass required)	Not allowed (pass required)
Career Opportunities	Permitted	Not allowed (pass required)	Not allowed (pass required)
Medical Check-up	Mandatory (panel clinic/hospital)	Same as Platinum	Same as Platinum
Tax Exemption	On incoming FD funds	Same as Platinum	Same as Platinum
Transfer of Principal (upon death)	Allowed to next-of-kin among dependents	Same as Platinum	Same as Platinum
Renewal Period (Post-Max Term)	Every 5 years	Every 5 years	Every 5 years
Renewal Fee (per person)	RM 5,000	RM 3,000	RM 1,500
Documents for Renewal	Valid passport, medical report, health insurance	Same as Platinum	Same as Platinum

Terms and Regulations Under Special Economic Zone/ Special Financial Zone Category

The Ministry of Tourism, Arts and Culture has also introduced special conditions for the MM2H Program for the country's new Special Financial Zones. The Special Financial Zone (SFZ) and Special Economic Zone (SEZ) are distinct yet related concepts within the MM2H program. The SEZ is a broader designation encompassing multiple areas, while the SFZ is a specific zone within the SEZ, focusing on financial services incentives. Both aim to attract foreign investment, but the SFZ offers specialized benefits for financial companies relocating to the area.

The special conditions for the MM2H Program in the Special Economic/Financial Zones are as follows:

Criteria	**Special Economic/Financial Zone Category**
Participation Age	21 years and above
Fixed Deposit (FD)	• USD 65,000 (ages 21–49) • USD 32,000 (ages 50 and above)
FD Withdrawal	Up to 50% allowed (for residence, education, medical, tourism)
Participation Fee (One-off)	RM1,000 (principal only)
Dependents Fee	No fee
Property Purchase Requirement	• Mandatory • Must buy directly from developers • Floor price subject to Johor state policy • Cannot sell for 10 years (upgrade allowed)
Minimum Length of Stay	90 days/year (can be fulfilled by principal or dependents, age 21–49)
Dependents Allowed	• Spouse • Children (under 21 or 21–34 if single & unemployed) • Disabled children (no age limit) - Parents / in-laws
MM2H Pass Duration	10 years
Visa Type	Multiple Entry Visa (MEV)
Pass Renewal	Renewable every 5 years after 10 years max duration
Renewal Fee	RM300 per person
Documents for Renewal	• Valid passport • Medical report • Health insurance
Education for Dependents	Allowed (up to tertiary level); student pass granted automatically
Medical Treatment	Long-term treatment allowed
Business / Investment	Not allowed
Career Opportunities	Not allowed
Medical Check-up	Mandatory at panel clinics/hospitals appointed by Ministry
Tax Benefit	Tax exemption on incoming funds (e.g., fixed deposit)
Change of Principal (upon death)	Pass transferable to next-of-kin among registered dependents

Investment Opportunities Through MM2H

1. Real Estate Investment

- Mandatory property purchase in tiered categories (minimums RM 600,000 to RM2 million property). This investment contributes to Malaysia's real estate market growth and generates rental income or capital gains for the investor.
- Prime areas include:
    i. Forest City (SFZ): offers entry-level property investments in the Johor–Singapore corridor. While initially criticized for slow uptake, it is revitalized through new tax incentives and family-office setups.
    ii. Major cities like Kuala Lumpur, Penang, Melaka and Sabah follow strong demand from expats and short-stay tenants.
- Opportunities:
    i. Buy-to-let condos and homes with strong rental yield potential, from long-term tenants and lucrative stays.
    ii. Serviced residences in MM2H-active zones, benefiting from high expat occupancy.

2. Special Financial Zone (SFZ) in Forest City

- Located within the Johor–Singapore SEZ, this SFZ is geared toward high-value financial operations:
    i. Tax incentives: 0% corporate tax for family offices, 0-5% for financial and fintech firms and 15% for skilled professionals.
    ii. IMFC-J (Invest Malaysia Facilitation Centre Johor) accelerates investor onboarding and is a hub for coordination.
- Opportunities:
    i. Family office creation and wealth management structures.
    ii. Fintech startups and shared-service centers targeting ASEAN markets.
    iii. Skilled professional services, thanks to 15% income tax rate and Multiple Entry Visa (MEV).

3. Medical Tourism and Healthcare Investments

- Malaysia ranks No.1 in medical tourism and MM2H participants often seek long-term healthcare.
- In the JS-SEZ, states like Johor are actively encouraging healthcare facilities, including private hospitals and specialized clinics.
- Opportunities:
    i. Establish clinics or specialist centers targeted at MM2H residents and regional patients.
    ii. Pair real estate with concierge healthcare services (e.g., residential clinics, rehab centers, wellness retreats).

4. Tourism-Linked Ventures & Ancillary Services

- MM2H participants contribute significantly to local tourism, offering business potential in:
    i. Boutique hotels and specialized tour packages.
    ii. Property management services for absentee owners which covering rental management, furnishing and compliance to local authorities.
- Opportunities:
    i. Launch a tourism or lifestyle enterprise focused on long-stay residents.
    ii. Offer turnkey property management for international homeowners under MM2H.

Role of MM2H in Foreign Direct Investment (FDI)

Though MM2H is not a traditional FDI incentive, it indirectly boosts foreign capital inflows by:

- Increasing property investments by foreigners.
- Stimulating consumption and demand in services such as healthcare, education and tourism.
- Encouraging long-term economic ties through fixed deposits and personal spending.
- Enhancing Malaysia's image as a stable, attractive destination for expatriates and investors.

Conclusion

The MM2H program acts as a strategic platform for foreign investors seeking residency combined with investment opportunities in Malaysia. By meeting financial criteria and maintaining fixed deposits, MM2H participants gain access to real estate markets, financial assets and business ventures. This foster diversified foreign investment and contributes positively to Malaysia's economic growth, making MM2H a key component in the country's broader investment landscape.