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Doing business in Asia Pacific 2018

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Executive summary

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Doing Business in Asia Pacific was made possible through the contributions by member and correspondent firms in the region. This publication summarizes the corporate and personal tax systems of countries in the region. It also covers the investment climate, including labor laws, financial infrastructure, and business incentives.

This publication is an overview and should not be seen as a complete explanation of the tax systems or business regulations in the Asia Pacific region. The information contained within is accurate, to the best of our knowledge, at the date of publication. Regional laws might change after publication.

Neither Moore Stephens International nor any of its member firms is responsible for actions incurred or omitted based on this publication.

Further details may be found in local publications. We advise readers to consult with specialists in Moore Stephens members of each country. Contact information of all member and correspondent firms can be found in the contact information.

Moore Stephens Asia Pacific

May 2018



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1. Bangladesh

Country profile

| | |
|----------------------|--|
| Official name | People's Republic of Bangladesh |
| Capital | Dhaka |
| Location | West Bengal of India and Myanmar |
| Area | 143,998 km ² |
| Climate | Tropical monsoon-type climate, with a hot and rainy summer and a dry season in the cooler months |
| Time zone | UTC +6 no DST |
| Population | ~166 million |
| Currency | BDT (1 US\$ = BDT 83.20) |
| Language | Bangla (Bengali) Official English |
| Religion | 80% Muslim 13% Hinduism 7% Buddhism, Christian and others |
| International | South Asian Association for Regional Cooperation Developing 8 OIC |
| Government | Parliamentary republic |

Executive

The Prime Minister is the head of government and is appointed by the President with the support of the majority members in Parliament. The Prime Minister appoints and heads the cabinet members from among Parliament members and one-tenths of the total members are from outside of the Parliament.

The President is the head of state with key ceremonial duties. The President is elected by the Parliament for a five-year term. The President acts in accordance with the advice of the Prime Minister and he is the supreme command of the Armed Forces.

Legislative

The Legislative function is under the unicameral form of Parliament, which is composed of 350 members of the parliament (MPs). It is headed by the Speaker of Parliament, who is second in line to the presidency. The Prime Minister is traditionally the Leader of the House from the single largest party. The 300 lawmakers are elected on a first-past-the-post basis. The Speaker allocates an additional 50 reserved seats for women candidates.

Judicial

The Judiciary of Bangladesh consists of a Supreme Court, subordinate courts and tribunals. The Supreme Court is the highest court of law in Bangladesh and it comprises the Appellate Division and the High Court Division. Other Courts and Tribunals are subordinate to it.

Economy

Agriculture

In FY 2017, 14.79% of GDP came from agriculture. Principal crops are rice, wheat, jute, tea, tobacco and sugarcane.

Industry

Garments, textiles, ceramics, jute, tea, paper, newsprint, fertilizer, leather and leather goods, sugar, cement, fish processing, pharmaceuticals and chemical industries. In FY 2017, 32.48% of GDP came from this sector.

Trade

Traditional export are garments, textiles, ceramics, pharmaceuticals, raw jute, jute specialty products like hessian, sacking, carpet backing, carpets, tea, leather, leather products etc. Non-traditional exports are frozen shrimps, other fish products, handicrafts, newsprint, paper, furnace oil, urea etc.

Principal imports are rice, wheat, oil seeds, sugar, onion, beans, edible oil, crude petroleum, petroleum products, fertilizer, cement, raw cotton, staple fibers, motor vehicles, electronics goods, capital goods etc.

| Data | 2015 | 2016 | 2017 |
|------------------------------|--------|-------|-------|
| Real GDP USD billions | 195 | 221 | 248 |
| GDP per capita USD | 1,235 | 1,385 | 1,538 |
| Investments % GDP | 28.89% | 29.65 | 30.27 |
| Inflation, EoY | 6.40% | 5.92% | 5.44 |
| GDP Growth | 6.55% | 7.11% | 7.24% |

Types of business entities

Introduction

Business can be conducted through:

- sole proprietorship
- partnership
- limited company.

The legal identities of sole proprietorship and partnership are not distinct from the personal identity of the proprietor or partners who has unlimited liability for the debts of the business. The limited company is a distinct legal entity created to separate its business affairs from the personal affairs of its proprietors. Investors are free to choose their preferred form of entity.

Types of limited company

The two most common types of limited companies regulated by laws are Private Limited Company and Public Limited Company.

Private Limited Company

- Minimum and maximum number of shareholders are two and 50 respectively.
- Minimum number of directors is two. No maximum limit.
- No minimum limit for the amount of share capital. If paid-up share capital exceeds Taka 400 million (US\$4.81 million), it needs to be converted into a Public Limited Company.

Public Limited Company

- Minimum number of shareholders are seven. No maximum limit.
- Minimum number of directors are three. No maximum limit.
- No minimum limit for the amount of share capital. If paid-up share capital exceeds Taka 500 million (US\$6.01 million), it needs to go for Public Issue (Initial Public Offer).

Finance and capital market

- Bangladesh Bank is the central bank of Bangladesh.
- Six nationalized commercial banks.
- 40 private commercial banks.
- Nine foreign commercial banks.
- 35 Non-Banking Financial Institutions (NBFI) including leasing companies
- 62 insurance (general & life) companies including one foreign (Metlife Alico).
- Eight Credit Rating Companies.
- Bangladesh Securities & Exchange Commission (BSEC) is the regulator of the capital market.
- Two stock exchanges:
 - Dhaka Stock Exchange Ltd. and
 - Chittagong Stock Exchange Ltd.
- Particulars of Dhaka Stock Exchanges:
 - market capitalization on 31 December 2017 was US\$51,093 million.
 - 302 listed companies.
 - 36 mutual funds.
 - Eight debentures.
 - 221 treasury bonds.
 - two corporate bonds

Labour

There is a “National Labour Policy” of the Government of Bangladesh.

The Bangladesh Labour Code, 2006 is the principal law relating to labour which provides amongst others:

- employment and conditions of service.
- employment of adolescent.
- provision of maternity benefit & health.
- safety.
- special provisions relating to health, hygiene and safety.
- welfare measure.
- working hours & leave.
- wages & payment
- wage board.
- compensation for injury by accident.
- trade unions & industrial relations.
- settlement of dispute, labour court, labour appellate tribunal, legal proceedings, etc.
- workers’ participation in companies’ profit.
- provident fund.
- offence, penalties and procedure.

Other related law & rules

- The EPZ Workers’ Union & Industrial Relations Act.
- Minimum Wage Rate for Garments Workers Rules.
- The Bangladesh Labour Welfare Foundation Act & Rules.

Bangladesh offers an abundant supply of disciplined, easily trainable and low-cost workforce suitable for any labor-intensive industry. Of late, there is an increasing supply of professionals, technologists and other middle and low level skilled workers. They receive technical training from universities, college, technical training centers, polytechnic institutions etc. The expenditure incurred by an employer to train his employee is exempt from income tax.

Employment conditions

The minimum age for workers in Bangladesh is 16 years in factories and establishments. Contracts are made in the form of a letter of offer. Workers may also be engaged on verbal agreements. In government organizations and in some private organizations as well, a probationary period exists for skilled or semi-skilled workers varying between three months to one year. During this period either party may serve one month's notice for termination from or giving up to the job. The dignity of labor is ensured in accordance with the principles enunciated in the International Labour Organization (ILO) convention and recommendations.

Minimum wages per month is Taka 5,300 (US\$64) approx.

Taxation

Corporate income tax rates (both resident and non-resident)

- Income tax rate on business income:
 - In case of every publicly traded company (Listed Company) – 25%.
 - In case of every such company not being a publicly traded company, including local authorities – 35%.
 - In case of bank, insurance and financial institutions (excluding merchant banks):
 - In case of such company which are publicly traded company – 40%.
 - In case of such company which are not publicly traded company – 42.5%.
 - In case of merchant bank – 37.5%
 - In case of cigarette manufacturing company – 45% + 2.5% Surcharge
 - In case of mobile phone operating company – 45%
- Income tax rate of capital gain – 15%
- Income tax rate on intercompany dividend (dividend income) – 20%
- Special/reduced tax rate
 - Income from poultry industries:
 - On first Taka 2 million – nil
 - On next Taka 1 million – 5%
 - On the balance – 10%
 - Poultry feed, dairy, mulberry, apiculture, horticulture, pisciculture etc.:
 - On first Taka 1 million – 3%
 - On next Taka 2 million – 10%
 - On the balance – 15%
 - Shrimp/poultry/fish hatchery:
 - On first Taka 1 million – nil
 - On next Taka 1 million – 5%
 - On the balance – 10%

Payment and collection

Advance payment of income tax

Advance tax is payable by a company during each financial year (July-June) in four quarterly installments on 15 September, 15 December, 15 March and 15 June if the latest assessed income except agricultural income and capital gain exceeds Taka 0.40 million. In the case of first year of income, advance tax is payable if the income during the relevant financial year is likely to exceed Taka 0.40 million.

The amount of advance tax payable by a company in a financial year shall be the amount equal to the tax payable on his total income of the latest assessed income as reduced by the amount of tax required to be deducted or collected at source.

Withholding tax

- Total 54 types of incomes are subjected to tax deducted or collected at sources.
- Total 25 types of payment to non-residents are subject to Bangladesh withholding tax (which may be reduced according to an applicable tax treaty) including 20% withholding tax on payment of professional services, interest, royalty or commission to non-resident.
- Withholding tax on divided income:
 - Individual - Resident 10%
 - Non-resident 30%
 - Corporate - Resident/non-resident 20%.

The tax payable as per the return, as reduced by the amount of tax paid in advance and tax deducted at source shall be paid before or at the time of submission of return.

If the undisputed assessed tax is higher than the tax as per return and tax already paid, the unpaid tax shall be payable within the time as prescribed in the notice of demand issued by the tax authority after completion of assessment.

Filing of income tax return

Companies shall file the income tax return by the 15th day of the 7th months following the end of the income year or the 15th day of September following the end of the income year where the said 15th day falls before the 15th day of September.

Company residence and territoriality

A company whether incorporated in Bangladesh or outside Bangladesh is deemed to be a resident if the control and management of its affairs is wholly situated in Bangladesh.

Permanent establishment

Non-resident company conducting business in Bangladesh through a permanent establishment (e.g. a branch) are subject to tax on all income attributable to or received from such a permanent establishment. In addition, non-resident companies are subject to tax on income from business situated in Bangladesh. Non-resident companies are obliged to file a Bangladesh tax return to declare such income.

Losses

- Business/trading Losses
 - Current year: any loss (except for loss from speculative business, capital gain and from any other source, the income from which is tax-exempt) can be set off against any other income except income from house property & income from manufacturing of cigarette.
 - Carry back: not allowed.
 - Carry forward: six years.

- Speculative loss/capital loss
 - Current year: offset against speculative/capital gain and not against any other source.
 - Carry back: not allowed.
 - Carry forward: only against speculative/capital gain upto six years but in case of capital loss in excess of Tk. 5,000.

Depreciation

Normal depreciation (reducing balance basis)

- Buildings (general) – 10%
- Factory building – 20%
- Plant and machinery – 20%
- Furniture and fittings – 10%
- Vehicles – 20%
- Computer & computer equipments – 30%
- Computer software:
 - Bangladeshi made – 50%
 - Imported – 10%

Accelerated depreciation on plant & machinery

Subject to fulfillment of certain conditions, an industry is allowed accelerated depreciation equivalent to 50% of the actual cost in the first year, 30% in the second year and 20% in the third year of the plant & machinery used in the industry first time in Bangladesh.

Personal taxation

Income tax rates

- Income tax on income other than capital gain

| Total income (Taka in million) | Rate |
|--------------------------------|--------------------|
| Resident | |
| On first 0.25 | Nil |
| On next 0.40 | 10% |
| On next 0.50 | 15% |
| On next 0.60 | 20% |
| On next 3.00 | 25% |
| On balance amount | 30% |
| Non-resident | 30% (maximum rate) |

- Income tax on capital gain: (Both resident & non-resident)
 - Gain on disposal within five years – Same as applicable as the above table.
 - Gain on disposal after five years – Lower of 15% or rate applicable as the above table.

Wealth surcharge

In case of an Individual Assessee whose net asset exceeds Tk. 22.50 million, surcharge (% of income tax payable) is to be imposed as below:

| Sl. No. | Book value of net assets shown (Taka in million) | Surcharge (% of income tax payable) |
|---------|--|-------------------------------------|
| (a) | Up to 22.50 | Nil |
| (b) | More than 22.50 up to 50 | 10% |
| (c) | More than 50 up to 100 | 15% |
| (d) | More than 100 up to 150 | 20% |
| (e) | More than 150 up to 200 | 25% |
| (f) | More than 200 up to any amount | 30% |

Provided that minimum surcharge will not be less than Tk. 3,000.

Residence and domicile

An individual is resident in Bangladesh if:

- he has been in Bangladesh in the income year for total 182 days or more; or
- he has been in Bangladesh in the income year for total 90 days or more having previously in Bangladesh for total 365 days or more during four years preceding the income year.

Tax credit on investment allowance

An individual residence is allowed 15%/12%/10% (depend on total income) tax credit on investment he made in specified area i.e., government securities, life insurance premium, deposit pension scheme, etc. The maximum limit of investment allowance is lower of Taka 15 million or 25% of total income.

Exemption of dividend income received from listed companies

Dividend income received from listed companies is exempt up to Taka 25,000 for the resident.

Major income tax incentives/exemptions (subject to fulfilment of certain conditions)

- Tax holiday
- Accelerated depreciation
- Reduced tax rate
- Consideration of withholding tax as final settlement of income tax liability
- 50% income tax exemption on income from export
- The Government of Bangladesh has agreement for the avoidance of double taxation with 28 countries.

VAT

- VAT Act & Rules 1991.
- Unless specifically exempted VAT is payable:
 - by importer on goods imported
 - by manufacturer on goods produced and
 - by service provider on service provided
- The standard rate of VAT is 15%. There are some truncated VAT rates.
- A number of business activities are exempt from paying the VAT.
- Entrepreneurs supplying taxable goods or services must register for VAT if they have an annual taxable turnover of more than Taka 8 million.

Turnover tax

Unless specifically exempt, the manufacturer of taxable goods or the provider of taxable services, who are not required for VAT registration are required to pay 3.00% of annual turnover as turnover tax.

Investment**Institutions directly related to investments**

- Bangladesh Investment & Development Authority (BIDA) [Former Board of Investment (BoI)]
- Bangladesh Bank (Central Bank)
- National Board of Revenue (NBR)
- Registrar of Joint Stock Companies (RJSC)
- Export Promotion Bureau (EPB)
- Bangladesh Export Processing Zone Authority (BEPZA)
- Public Private Partnership Authority (PPPA)
- Bangladesh Economic Zone Authority (BEZA).

BIDA investors service**Thinking of investing in Bangladesh?**

In order to decide whether and how to invest in Bangladesh, BIDA provides a welcoming service to visiting foreign investors. The services include reception at airport, assistance with hotel bookings, transport arrangements and drawing up an itinerary in accordance with the needs of the foreign investors visiting Bangladesh.

Decided to invest in Bangladesh?

Once you are ready to invest in Bangladesh, BIDA offers following advice and support, on a complimentary basis, in respect of planning for setting up business in Bangladesh:

- Pre-investment information and counseling service
- Investor welcome service (including a faster immigration service)
- Registration and approval of foreign, joint-venture and local projects
- Registration and approval of branch, liaison and representative offices
- Approving remittances of royalty, technical know-how and technical assistance fees
- Approving foreign loan suppliers' credit, PAYE scheme etc.
- Assistance in obtaining industrial plots
- Providing necessary facilities and assistance in the establishment of businesses
- Obtaining approval for work permits for foreign nationals
- Facilitating the import of capital machinery and raw materials
- Facilitating utility connections (electricity, gas, water and sewerage, telecoms etc.)
- Assistance with import clearance and warehousing licenses
- Online Registration System (ORS)
- BIDA Online Service Tracking (BOST).

One stop service by BIDA

- Trade License from respective city corporation and local government body are given within 48 hours, assuming all required documents are provided. Board of Investment with local government division insures this service.
- Company registration from Registrar of Joint Stock Companies (RJSC) complete within 48 hours.
- Registration of BIDA is complete within a day, assuming all required documents are provided.

- Electricity connection's result are given within 10 days after receive the application from BIDA where representative of power development board authority is working.
- Environmental certificate are given within 10 days from BIDA where respective officer from Environment Department are working.
- The result of gas connection are given within 10 days from the date of application received from BIDA's representative in Titas Gas Authority.
- Foreign loan borrowing application disposed within 30 days assuming all required documents are provided.
- Tax related complication is taken from BIDA by respective National Board of Revenue officer after getting application from entrepreneur and result are given within 10 days.
- Assistance for Land acquire are supported by BIDA.
- Online services also provided by BIDA.

BIDA's listed priority sectors

1. Agribusiness
2. Ceramics
3. Electronics
4. Frozen Foods
5. Garments and Textile
6. ICT and Business Services
7. Leather and Leather Goods
8. Light Engineering
9. Power Industry
10. Life science
11. Telecommunication Sector
12. Health Sector
13. Pharmaceuticals Sector
14. Medical Equipment Sector
15. Automobile Sector
16. Ship Building Industry Sector.

(For detailed information, please visit www.bida.gov.bd)

New industrial policy

Top priority sectors

- Agriculture
- Food & food processing
- Readymade garments (RMG)
- ICT & software
- Pharmaceutical
- Leather & leather goods
- Jute & jute goods

Other priority sectors

- Plastic
- Shipbuilding
- Service sectors

Residency offer for US\$0.20 million investment

Major income tax incentives

- Tax holiday
- Accelerated depreciation
- Reduced tax rate
- Consideration of withholding tax as final settlement of income tax liability
- 50% Income tax exemption on income from export
- The Government of Bangladesh has agreement for the avoidance of double taxation with 28 countries.

(For detailed information, please visit www.nbr.gov.bd)

Audit and accounting

Financial statements

- The management of each business is responsible for the maintenance of reasonable accounting records and for the preparation of annual accounts covering each accounting period. In a company, the board of directors is responsible.
- The annual financial statements of a company is approved by the shareholders at the annual general meeting.
- Financial statements of companies are to be prepared in accordance with:
 - Companies Act
 - Securities & Exchange Rules (for listed companies)
 - Banking Companies Act (For Bank)
 - Bangladesh Accounting Standards (BASs) & Bangladesh Financial Reporting Standards (BFRSs) adopted by the Institute of Chartered Accountants of Bangladesh (ICAB) based on IASs & IFRSs issued by the IASC.
 - Other relevant rules & guidelines
- Chartered Accountants having practicing license from the Institute of Chartered Accountants of Bangladesh (ICAB) are authorized to conduct the Statutory Audit. The audit is based on the International Standards on Auditing, Assurance and related engagement pronounced by International Auditing and Assurance Standards Board (IAASB) and adopted by ICAB which is a member of IFAC, IASB, CAPA.
- Financial statements of a listed company is to be authorized for issue by the directors within 120 day of year end and is to approved by the shareholders within six months of year end.
- The companies law provides that the following conditions need to be complied with in respect of Annual General Meeting (AGM):
 - AGM at least once in a calendar year
 - Not more than 15 months elapse between the two AGM.
 - Year end of an accounts which is to be approved in an AGM must be within nine months of the date of AGM.

Major relevant regulators

- Registrar of Joint Stock Companies (RJSC)
- Bangladesh Securities & Exchange Commission (BSEC)
- Bangladesh Bank (Central Bank)
- Micro Credit Regulatory Authority ((MCRA)
- Insurance Development & Regulatory Authority (IDRA)
- NGO Affairs Bureau.
- Financial Reporting Council (FRC) [Formed under the Financial Reporting Act (FRA) 2015]
- Institute of Chartered Accountants of Bangladesh (ICAB) (for issuing & monitoring accounting & auditing standards and for regulating the auditing profession).

Relevant act, rules and standards

- Companies Act.
- Bank Companies Act.
- Securities & Exchange Ordinance & Rules.
- Financial Reporting Act (FRA).
- Income Tax Ordinance.
- VAT Act.
- Non-Banking Financial Institutions Act.
- Bangladesh Accounting Standards adopted by ICAB.
- Bangladesh Standards on Auditing (BSA), Bangladesh Standards on Quality Control (BSQC), Bangladesh Standards on Review Engagements (BSREs), Bangladesh Standard on Assurance Engagements (BSAEs) and Bangladesh Standard on Related Services (BSRSs) adopted by ICAB.
- Other rules & guidelines issued under the above stated act, rules & standards.

Accounting period/income year

- For banks, insurance & other financial institutions – calendar year (January-December).
- For others, financial year (July-June).
- Subsidiary, branch, liaison office, etc of foreign companies may be allowed different accounting year for the purpose of consolidation of its accounts with the foreign parent company.

2. Kingdom of Cambodia

Country profile

| | |
|----------------------|---|
| Official name | Kingdom of Cambodia |
| Capital | Phnom Penh |
| Location | South East of Thailand South West of Vietnam South of Laos |
| Area | 181,035 km ² |
| Climate | Tropical monsoon climate with two seasons (Wet Season: May to October) |
| Time zone | UTC +7 (no DST) |
| Population | 13.4 million, 81.5% rural (2008 Census) 15.8 million, 79.3% rural (2015 UN statistics) |
| Currency | Khmer Riel (KHR) |
| Language | Khmer |
| Religion | 90% Buddhism |
| International | UN, ASEAN, ADB, EAS, G77, NAM, UNCTAD, WTO, IFC, ILO |
| Government | Parliamentary Representative Democratic Monarchy |

Executive

The Head of State is the King while the Prime Minister of Cambodia is the head of government of Cambodia. The prime minister is also the chairman of the Cabinet and leads the executive branch of the Royal Cambodian Government. The prime minister is required to be a member of parliament and is appointed by the monarch. He is elected for a term of five years; no term limits are imposed on the office.

Judicial

The Supreme Court led by the Chief Justice, is the highest court in Cambodia. Below it, in order, are the Court of Appeal and The First Courts (Municipal and Provincial Courts).

Legislative

The Parliament of Cambodia is the bicameral legislature of the Government of Cambodia, consisting of the Senate and the National Assembly. The Parliament is composed of 184 members, 123 MPs and 61 Senators.

Parliament has two chambers:

- The National Assembly of Cambodia has 123 members, elected for a five-year term by proportional representation.
- The Senate of Cambodia has 61 members, two of which are appointed by the king and two others by the National Assembly, and the rest elected by the commune councillors from 24 provinces of Cambodia.

| IMF Data | 2014 | 2015 | 2016 Est. |
|-------------------------------|--------|--------|-----------|
| Real GDP US\$ billions | 16,551 | 17,714 | 19,918 |
| GDP per capita US\$ | 1,081 | 1,140 | 1,217 |
| Investments % GDP | 23.2% | 22.5% | 22.7% |
| Inflation, EoY | 1.0% | 1.9% | 2.8% |

Business entities

Sole proprietorship

A sole proprietorship is owned and operated by single person, who owns all its capital and is entitled to all its profits. Conducting business on your own, without ever formally registering, will be deemed a sole proprietorship, all obligation and liabilities of the proprietorship are the sole personal responsibility of the proprietor, along with a significant burden and danger.

General and limited partnerships

A general partnership is an agreement between two or more persons to combine their properties, knowledge or activities to carry on business together. Like a sole proprietor, general partner are each personally liable for all the partnership's debt and obligation. A limited partnership is a contract between one or more general partners who run the business, and at least one limited partner, who contributes capital. A limited partner is liable only to the extent of their capital contribution, while the general partners are personal are personally liable for all debts and obligations. Limited partnerships must be registered with the Ministry of Commerce, or else it will be deemed a general partnership.

Private Limited Company

When establishing a company, the first choice is what legal entity to use. For, most ventures, a private limited company is the obvious choice. A private limited company is a legal entity distinct from its shareholder and director. It therefore limits the liability of shareholders and director-they will not be personally liable for the company's debts.

A private limited Company can have from two to 30 shareholders. If there will be one shareholder, It is called a single member limited company. It is restricted from offering shares to public and must contain one or more restrictions on transfer of each class of shares.

In practice, the minimum share capital required by authorities is approximately US\$10,000.

Public Limited Company

A public limited company is a form of a limited company that is authorised by Law to issue securities to the public.

Foreign subsidiary

Foreign companies have several options for entering the Cambodian market. All three registered with the Ministry of Commerce.

The choice is to create a subsidiary of the foreign parent. This a locally incorporated limited company with at least 51% of the shares held by the foreign company. Its formation, management, rights and obligation must be provided for the memorandum and articles of association of the limited company. Foreigner can own 100% share of the company except a real estate related company.

Branch

A branch office can be opened by a foreign company for conducting a particular commercial activity. The branch office is the same entity as the parent company, and therefore the parent is liable for all the branch's debt and obligation. It can engage in general business activities, such as buying and selling products.

Representative offices

A representative office can be setup, but is only allowed to facilitate the sourcing of local goods and service and to collect information for its parent company. Crucially, it is not allowed to make sales or buy product in Cambodia.

Accounting and auditing

Accounting standards

Entities which have public accountability, with the exception of financial institutions under the supervision of the National Bank of Cambodia, are required to adopt the Cambodian International Financial Reporting Standards (CIFRS) effective from 1 January 2012. Entities subject to statutory audit which do not have public accountability have an option to use either the CIFRS for Small and Medium-sized Entities (CIFRS for SMEs), which came into effect on 1 January 2010, or the CIFRS.

The CIFRS and CIFRS for SMEs are verbatim of the International Financial Reporting Standards and International Financial Reporting Standards for Small and Medium-sized Entities issued by the International Accounting Standards Board.

Language and currency

The accounting records shall be prepared in Khmer language and expressed in KHR. Enterprises and subsidiaries of foreign companies may be authorised to prepare accounting records in English and/or in other currency along with accounting records in Khmer language and expressed in KHR. Accounting records must be maintained for a period of 10 years.

Financial year end

The mandatory financial year end is 31 December. A foreign subsidiary, branch or representative office is permitted to adopt its parent's financial year end (other than 31 December), subject to documentary evidence.

Auditing

The following are required to have its financial statements audited by an independent external auditor registered with the Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA):

- 'Qualified Investment Project' (QIP) registered with the Council for the Development of Cambodia;
- Financial Institutions registered with the National Bank of Cambodia (NBC); and
- All enterprise (physical or legal person) that meet two of the following three criteria:
 - Annual turnover >KHR 3.0m (Approximately US\$750k);
 - Total assets >KHR 2.0b (Approximately US\$500k); or
 - >100 employees.

Finance and capital market

Exchange control

All matters relating to the management of foreign exchange are carried out by the National Bank of Cambodia. Although the KHR is the official currency of Cambodia, the US Dollar is in common circulation and the majority of commerce is denominated in USD.

There are currently no restrictions on the repatriation of profits or capital from Cambodia, and foreign investors may remit foreign currencies abroad for:

- the payment of imports and repayment of principal and interest on foreign loans
- the payment of royalties and management fees
- the remittance of profits
- the repatriation of invested capital on dissolution of an investment project.

Banking system

The NBC, the Cambodian's central bank, is the monetary and supervisory authority. The mission of the NBC is to determine and direct the monetary policy aimed at maintaining price stability in order to facilitate economic development within the framework of the kingdom's economic and financial policy. The NBC conducts this in consultation with the Royal Government and in consideration of the framework of the economic and financial policy of the kingdom. As the monetary authority, the NBC is the sole issuer of the Khmer riel, the national currency. In doing so, this helps maintain monetary stability.

As the supervisory authority, the NBC has the authority to license or revoke, regulate and supervise banks and financial institutions in Cambodia. The NBC also conducts regular economic and monetary analysis, publishes various publications, oversees the nation's payment systems, establishes balance of payments, and participates in the management of external debt claims.

Types of banks

Banking sector in Cambodia is composed of three depository institutions: commercial banks, specialized banks, and microfinance institutions. Commercial banks and specialized banks provide funds to big and medium enterprises while microfinance plays an important role in savings and financial intermediation for individuals and small enterprises, especially outside of the main urban areas.

Capital market

Securities and Exchange Commission of Cambodia (SECC)

SECC is established to regulate the securities industry in Cambodia to contribute to socio-economic development through capital mobilization from public/ securities investors to meet the demand of financing for investors.

Cambodia Stock Exchange (CSX)

The CSX is the national stock exchange of Cambodia. Their website is csx.com.kh. The exchange's purpose is to achieve high economic growth by facilitating flows of capital, investment, and reallocation of capital based on capital market mechanisms. Currently, there are five counters listed on the CSX.

Labour

The Labour Law (LL) serves as the law governing employment practice and labor relations in Cambodia. The Ministry of Labor and Vocational Training (MOLVT) is the government authority enforcing labour laws in Cambodia.

Types of employment

The two types of employment contract provided in the LL are:

- Specific Duration Contract (SDC), and
- Undetermined Duration Contract (UDC).

A SDC becomes a UDC if the aggregate period of continuous employment of a SDC, or its renewal, exceed a period of two years. Both SDC and UDC have their merits and disadvantages due to different benefits and covenant accorded in the LL.

Foreign employee or expatriate

The MOLVT imposes a total limit of 10% (6% – skilled or specialised worker; 3% – office and administration and 1% – unskilled) on foreign employee of any employer. An employer may seek permission from the MOLVT to exceed this limit with appropriate justifications.

Expatriates are required to undergo medical examinations and apply for work permit annually from the MOLVT.

Minimum Wage Law

There is no Minimum Wage Law (MWL) except for a Minimum Wage Agreement applicable to the garment and footwear industry (US\$153/month from January 2017). A draft national MWL was planned for enactment from January 2017 but the enactment has been postponed indefinitely due to various stakeholders (e.g. employees union, industry/employer associations and authorities) failing to reach a consensus to the WML in entirety.

Paid vacation/annual leave and public holidays

A full time employee, working on a 48-hour/week is entitled to 1.5 days of annual leave for each month of completed service (e.g. 18 days for 12 months of service). Employees working less than 48 hours per week are entitled to annual leave on a pro-rata basis. Annual leave also increases with the length of service. The increase in annual leave is one day of extra leave for every three years of continuous service.

Employees are entitled to paid days-off during public and religious holidays. If a public holiday falls on a Sunday, employees are given a day-off on the following working day. There are currently 27 days of gazetted public holidays in Cambodia.

In addition to the above, employers are also required to grant paid days-off to Cambodian nationals during national election or polling (i.e. one day for those polling within same province as place of employment and three days for those polling in province outside of place of employment).

Taxation

The General Department of Taxation (GDT) is responsible for taxation in Cambodia. All taxpayers shall be obliged to register with the tax administration with 15 days after of having economic activity. The tax regime is one of self-assessment, known as 'Real Regime' or "RRTS". A RRTS taxpayer, except for Representative Office, is required to register under the Value Added Tax (VAT) system.

All enterprises and corporations in the Kingdom of Cambodia shall comply with the tax provisions containing in the Finance Acts, the Law on Taxation (LOT), various authorities' Prakas (Proclamation), sub-decree and notifications. The major types of taxes are:

Corporate tax and tax rates

The corporate tax or known as Tax on Profit (TOP) is the debt of a resident taxpayer on income from Cambodia sources and from foreign sources. For a non-resident taxpayer, this tax is assessed on income from Cambodia sources only. The self-assessment regime taxpayers must file and pay, on a monthly basis, the prepayment of profit tax (PPT) at the rate of 1% of the turnover (inclusive of all taxes except for VAT) realized in the previous month by the 20th of the following month. This prepayment is deductible against the tax on the profit at the annual liquidation of the tax due within three months from the end of fiscal year end (e.g. by 31 March of following year for financial year ended on 31 December).

The TOP rates on taxable profits are:

- Qualified Investment Project (QIP) during tax exemption period – 0%
- All RRTS businesses including QIP's post tax exemption period – 20%
- Companies in exploitation of Oil and Gas, and certain minerals – 30%
- Insurance – 5% on gross premium income, 20% on profits of non-insurance income.

Minimum Tax (MT)

The MT is a separate and distinct tax from the TOP. The MT is imposed at the rate of 1% of the annual turnover inclusive of all taxes except for VAT, and is payable at the time of the annual liquidation of the tax on profit. The minimum tax may be reduced by the annual tax on profit that is actually paid. A QIP is exempted from MT.

Individual tax and tax rates

There is no provision in the LOT for individual natural person to file personal income tax returns. A natural person is expected to earn income either from employment or from business. Taxation on employment income (or known as Tax on Salary (TOS)) is deducted at source by employer. The employer are obligated under the LOT and TOS Prakas to report and remitted the TOS withheld to the GDT. Whilst a physical person resident in the Kingdom of Cambodia is also liable to TOS for Cambodian source salary and foreign source salary, the collection of TOS from the latter source would be difficult if the employer is not in Cambodia.

The TOS rates are:

| Salary (approximate US\$) | Tax (%) |
|---------------------------|---------|
| 0 – 300 | 0 |
| 300 – 500 | 5 |
| 500 – 2,125 | 10 |
| 2,125 – 3,125 | 15 |
| > 3,125 | 20 |

A rebate of approximately US\$37.50 is claimable by:

- either parents if both are subject to TOS, for each dependent child (age <14 years of age; or >14 and <25 years of age and a full-time student at an accredited institution);
- a husband for a non-working spouse (i.e. housewife).

Other benefits such as housing, provision of low interest loans by employer, health or life insurance (unless provided to all employees), use of company's car for private purposes or excessive allowance are subject to Fringe Benefits Tax (FBT). The FBT is 20% on market value of benefits received.

Withholding Tax (WHT)

Any resident taxpayer carrying on business and who makes any payment* in cash or in kind to a resident or non-resident taxpayer for the type of income below, shall withhold and pay as tax, an amount according to the below mentioned rates which are applied to the amount paid before withholding the tax:

| | Resident recipient – WHT rate | Non-resident recipient – WHT rate |
|--|-------------------------------|-----------------------------------|
| Interest Income: | | |
| • Payment by a domestic bank or savings institution on: | | |
| - Fixed term deposit | 6 | 14 |
| - Non-fixed term deposit | 4 | 14 |
| • Payment by resident taxpayer to domestic banks or savings institution | Nil-exempted | N/A |
| • Payment by a taxpayer to other than domestic banks or savings institution | 15* | 14 |
| Royalties for intangibles and interest in minerals | 15* | 14 |
| Management, consulting, technical or similar services* | 15* | 14 |
| Rental of moveable and immovable property, and income connected with the use of property | 10 | 14 |
| Dividends | N/A | 14 |

*The WHT need not be withheld if the resident recipient has a valid Tax Identification Number stated in a prescribed format of Value Added Tax (VAT) invoice.

Additional dividend distribution tax (ADDT)

If a RRTS taxpayer pays a dividend out of its profits that were subjected to a tax concessionary rate or tax exempted rate, it shall pay additional dividend distributions tax out of its profits as follows:

| Tax rate on profits distributed as dividend (%) | ATDD rate on dividend distributed |
|---|-----------------------------------|
| 0 (QIP tax holiday) | 20/100 |
| 9 (QIP concession tax rate) | 11/91 |
| 20% or 30% | Nil |
| 5% on gross premium | Nil |

Value Added Tax (VAT)

VAT is applicable to the taxable supply of goods and services. A VAT registrant is required to charge VAT on all sales of taxable supplies (output VAT). Such entities can offset the VAT paid on purchases and on import of goods (input VAT credit), except for VAT charged on entertainment, petroleum products, mobile telephone calls or the purchase of passenger motor vehicles, against their output VAT.

Export of goods and services are 'zero' rated, whilst certain services are exempted from VAT (e.g. postal service, sale of land, supply of money, hospitals, supply of unprocessed agriculture products, electricity and water).

The net output VAT is payable by the 20th of the month following the month that the supplies are made. Net input VAT credit is carried forward to following month. A VAT registrant have the option to claim a refund of input VAT credit but the process is onerous and requires extended period of time.

Specific tax on certain merchandises and services

The specific tax on certain merchandise and services is imposed on a number of local and imported products, and services. Some of the goods and services subjected to this specific tax are:

| Goods/services | Specific tax (%) |
|---|------------------|
| Carbonated soft drink and similar non-alcoholic drink | 10 |
| All type of beer products | 30 |
| All type of wine products | 35 |
| All type of cigarettes | 20 |
| Entertainment services, including spa | 10 |
| Local and International air transport of passengers | 10 |
| Telephone services | 3 |

The local taxpayer producing or supplying these merchandises or services is responsible to pay this tax to the tax administration by the 20th of the month following the month that the supplies are made.

Tax on accommodation

The tax on accommodation is an indirect tax with the rate of 2% to be imposed on accommodation in hotels and guest houses. The person who supplies accommodation services is responsible for the payment of this tax to the Tax Administration by the 20th of the month following the month that the supplies are made.

Patent tax

The patent tax is a fixed tax payment and is paid by the end of March every year. The new taxpayer shall pay this tax in a full year amount if the business is started within the first half of the year, or pay in a half year amount if the business is started within the second half of the year.

The taxpayer who has branches, warehouses, factories or workplaces for the same business in the same local jurisdiction is subject to only one patent tax payment, but if that taxpayer has different businesses in different local jurisdictions he shall pay the patent tax for each business and each jurisdiction. The taxpayer must display the patent certificate at the principle place of business.

The patent tax rates are:

| Classification of taxpayer | Annual patent tax (US\$) |
|---|--------------------------|
| Small sized taxpayer (sole-proprietor or partnership enterprise with annual turnover exceed KHR250m (or approximately US\$62,500), or has or expects a taxable turnover of KHR60m (or approximately US\$15k) in any consecutive three months in a fiscal tax year) | 100 |
| Medium sized taxpayer (incorporated entities including Representative Office, Associations, Non-governmental Organisations, and enterprise with annual turnover exceed KHR700m (or approximately US\$175,000). | 300 |
| Large sized taxpayer (Branch of foreign companies, QIPs approved by CDC, International Organisations and Agencies, Government Institutions, Foreign Diplomatic and Consular mission, and enterprise with annual turnover exceed KHR2,000m (or approximately US\$500,000). | 750 |
| If annual turnover exceed KHR10,000m (or approximately US\$2.5m). | 1,250 |

Income tax treaties

Cambodia has signed Double Taxation Agreement (DTA) with:

- Singapore (May 2016)
- China (October 2016)
- Thailand (September 2017).

The DTA with Singapore and Thailand are effective from 1 January 2018. The DTA with China is pending ratification.

The reduced WHT rate under DTAs with Singapore and Thailand are:

| Nature of income | Treaty WHT rate – Singapore | Treaty WHT rate – Thailand |
|-----------------------------|-----------------------------|---|
| Interest | 10% | 10% (recipient is a financial institution or insurance company)/15% (all other recipient other than government) |
| Dividend | 10% | 10% |
| Royalties | 10% | 10% |
| Fees for technical services | 10% | 10% |

DTA's treaty WHT rates are subject to prior approval by the GDT. Any approvals are valid for one year. Payments made prior to approval are subject to non-treaty WHT rates.

Transfer pricing

The Cambodian Ministry of Economy and Finance issued Prakas No. 986. MEF.P. (Prakas 986) on 10 October 2017. Prakas 986 regulates that Cambodian enterprises that have transactions with related parties must comply with new compliance requirements consisting of:

- an annual transfer pricing declaration, to be submitted together with the annual TOP (by 31 March annually)
- annual transfer pricing documentation, to be submitted upon request by the General Department of Taxation (GDT).

The five methodologies endorsed by Prakas 986 to determine an arm's length price in a related party transaction are as per those set out by the Organization for Economic Co-operation and Development.

Prakas 986 is effective from the signing date of 10 October 2017, with no clear indication of the first fiscal year to be applied. However, with the GDT having published a new TOP 2017 form requiring declaration of transactions with related parties, the Prakas should be effective from 1 January 2018.

Failure to comply with the above requirements may lead to:

- transfer pricing adjustments, which would result in additional tax
- tax penalties, which range from 10% to 40% of the additional tax for violations of the Law on Tax (LOT) according to Article 133 of the LOT, plus an interest charge of 2% per month on late payment
- any other actions stipulated under the LOT.

Investment

The Council for Development of Cambodia (CDC) was established in 1994 to promote the growth of investment in Cambodia. It reviews investment applications and approves incentives.

Business incentives

Incentives are granted to Qualified Investment Project (QIP). Some of the incentives granted to QIPs are:

- tax holiday on profit tax (between three to nine years depending on amount of investments and milestone in achieving profitability) OR a claim for accelerated depreciation of 40% in lieu of tax holiday
- duty-free import of production equipment, construction materials and production inputs for export
- 100% exemption for export tax.

Special economic zones (SEZ)

There are various SEZ established within Cambodia. Cambodian SEZs are designed to offer a one-stop service for imports and exports, and have specially trained government officials stationed on site to provide administrative services. Applications to establish businesses within SEZs are dealt with on site, as is company registration and investment licenses, work permits and labour books for workers. Investment approvals, customs inspections and import-export procedures are also conducted on site.

A business established in SEZ is entitled to the same incentives offered to a QIP.

Intellectual property rights

Cambodia's 2004 accession to the World Trade Organization prompted the adoption of several laws regulating intellectual property rights. Various departments are responsible for registration of patents and licensing of trademarks, designs, and copyright and enforcement of these laws.

Property ownership

Only a citizen of Cambodia or an artificial legal entity where more than 50% of the equity are owned by a Cambodian national is permitted to own land or properties located on ground floor of a building.

Foreigners are not prohibited from owning properties located above the ground floor or from leasing of properties. The maximum tenure of leasing permitted is 50 years.

3. Hong Kong

Country profile

| | |
|----------------------|---|
| Official name | Hong Kong Special Administrative Region of the People's Republic of China |
| Capital | - |
| Location | Southern coast of China Borders South China Sea Borders Shenzhen |
| Area | 1,105.7 km ² 200+ islands |
| Climate | Subtropical with four seasons 12° C winter 31° C summer |
| Time zone | UTC +8 no DST |
| Population | ~7.4 million |
| Currency | Hong Kong Dollar HKD Pegged at HKD 7.80 = USD 1.00 |
| Language | Chinese English |
| Religion | 21 % Buddhism 14% Taoism 12% Christian 4% Islam |
| International | APEC ADB WTO FTA |
| Government | "One Country, Two Systems" |

The Hong Kong Government is financially independent from the Chinese government and is in charge of its own internal affairs and external relations (e.g. trade agreements). However, the Chinese government is responsible for Hong Kong's national defense and foreign affairs.

Executive

The Chief Executive is the head and representative of Hong Kong. The Chief Executive is elected into office by a 1200-member Election Committee, which is elected within functional constituencies. While the Chief Executive is granted a lot of power under the Basic Law, he/she can only make important policies and legislations after consulting the Executive Council, which is led by the Chief Secretary.

Judicial

The Court of Final Appeal, led by the Chief Justice, is the highest court in Hong Kong. Below it, in order, are the Court of Appeal, Court of First Instance, and District Courts. Below it are smaller courts to handle criminal cases and tribunals to handle civil cases. Hong Kong uses common law, which uses cases as precedents.

Legislative

The Legislative Council, led by the President, mainly deals with laws, fiscal policy, and monitoring the government. Currently, the Council is composed of 70 seats – half elected through geographic constituency, the other half through functional constituency. Members hold their position for four years. The Council can impeach the Chief Executive and endorse changes to the Court of Final Appeal.

| IMF Data | 2015 | 2016 | 2017 |
|---------------------------|--------|--------|--------|
| GDP USD billions | 308 | 319 | 340 |
| GDP per capita USD | 42,097 | 43,530 | 46,200 |
| Investments % GDP | 23.2% | 22.52% | 22.89% |
| Unemployment | 3.3% | 3.4% | 3.1% |
| Inflation | 3.0% | 2.5% | 1.7% |

Business entities

Corporations

Limited liability company

LLC is the preferred type of business entity as liability is limited only to capital contribution. Every business and every company in Hong Kong must be registered in Hong Kong. Under the Companies Ordinance, two types of company can be incorporated, namely a private company and a public company.

A private company, by its Articles of Association:

- restricts the right to transfer shares
- limits the number of members to fifty (excluding employees)
- prohibits any invitation to the public to subscribe for any shares or debentures of the company.

A public company is a company which is not a private company, i.e. does not fulfil all of the above criteria. It is normally a publicly listed company.

A company incorporated outside Hong Kong which establishes a place of business in Hong Kong can be registered as a branch of a non-Hong Kong company in Hong Kong.

Backed by guarantee

An LLC may instead be backed by a guarantee instead of contributed capital. This form is mainly used by non-profit organizations.

Shelf companies

Shelf companies are available for purchase by investors. They can be up and running within 24 hours, making shelf companies ideal for investors who want to get down to business quickly. The minimum number of shares to be issued is one, i.e. only one shareholder is required. Common stock can be denominated in any currency.

Sole proprietorship

While the simplest to establish, a sole proprietorship is not distinct from its owner. The owner, who must own a Hong Kong identity card, holds unlimited liability, i.e. the owner's personal assets may be seized to cover the company's liabilities.

Partnership

A partnership is formed when at least two people work together under the same name with to make some profit. Hong Kong recognizes two types of partnerships: general and limited. In a limited partnership, one general partner holds unlimited liability while the other partners are only liable to the extent of capital contribution. In a general partnership, all partners are general partners, i.e. all partners hold unlimited liability.

Branches

If a foreign company wants to establish a presence in Hong Kong but does not want to incorporate a subsidiary, then the company can open a branch instead. Unlike a subsidiary, the branch's obligations and liabilities are also the responsibility of the parent company (i.e. not limited by the capital contribution like with an LLC).



Representative offices

A representative office is not a business entity and may be established for restricted activities such as product and market research, quality control, and liaison with local distributors. The company cannot have a place of business, which includes a share registration office or any place used for the manufacture or warehousing of any goods, but it does not include a place not used by the company to transact any business that creates legal obligations, such as sales and purchases contracts, etc. The office should receive no income in Hong Kong so that no liability to tax can arise, and expenses should be borne offshore.

Accounting and auditing

Public companies must file audited annual reports at the Companies Registry according to the Hong Kong Financial Reporting Standards (HKFRS), which is similar to the IFRS. While private companies are not required to file annual reports, they must maintain a proper book of accounts at the company's registered office, or other place that directors think fit, for seven years. All of these records must be independently audited once a year according to the Hong Kong Standards on Quality Control, Auditing, Assurance, and Related Services (HKSA). Only those qualified under the Professional Accountants Ordinance (PAO) are recognized as auditors.

Finance and capital markets

Exchange control

There are no restrictions on capital flows into and out of Hong Kong. There are also no exchange controls in Hong Kong. The local currency is the Hong Kong Dollar. While the government prints HKD 10 notes and mints coins, the other denominations are printed by three commercial banks: HSBC, Standard Chartered, and Bank of China. Since 1983, the Hong Kong Dollar has been pegged at HKD 7.80 = USD 1.00. Accordingly the rate of exchange of the HKD to other currencies follows broadly USD fluctuations.

Banking system

The Hong Kong Monetary Authority (HKMA), was established in 1993. It reports to the Financial Secretary. The Exchange Fund Ordinance and the Banking Ordinance define the HKMA's four main responsibilities:

- **Monetary stability** by maintaining a HKD 7.80 = USD 1.00 exchange rate. All HKD must be backed by a matching amount of USD.
- **Banking stability** by overseeing and regulating the banking industry.
- **International financial center** by promoting confidence and development in Hong Kong's financial infrastructure.
- **Exchange Fund** as a tool to affect, either directly or indirectly, the exchange value of HKD.

Types of banks

Hong Kong uses a three-tiered banking system:

- Licensed banks are the only ones that can operate checking and savings accounts, pay or collect checks, and accept deposits of any size and maturity. They have rights to other banking activities as well.
- Restricted license banks mainly deal with merchant banking and the capital market; they may accept deposits of any maturity above HKD 500,000.
- Deposit-taking companies engage in specialized activities like consumer finance and securities; they may accept deposits above HKD 100,000 with a maturity of at least three months.

Roughly 80% of banks are incorporated as licensed banks due to the increased freedom. Additionally, about 50 banks decided to open representative offices. However, some banks may fall under several categories by using subsidiaries. For instance, Bank of China is a licensed bank, but its subsidiary, Bank of China International, is registered as a restricted license bank.

Hong Kong does not distinguish between private, commercial, and investment banking. The law only discriminates based on the three tiers.

Deposit Protection Board (DPB)

All banks must get coverage (the Scheme) from the DPB, an independent statutory institution formed by the Deposit Protection Scheme Ordinance. The DPB covers deposits of up to HKD 500,000. However, time deposits with maturity longer than five years, structured deposits, bearer instruments, and offshore deposits aren't protected.

Bank Secrecy

While Hong Kong respects bank confidentiality, Hong Kong actively fights against terrorist financing, money laundering, and tax evasion to maintain its integrity in the financial system. Laws such as The Drug Trafficking Ordinance and The Organized and Serious Crimes Ordinance allow the government to penetrate confidentiality in certain cases. In addition, the Securities and Futures Ordinance allows the Securities and Futures Commission to more closely monitor banks for money laundering activities. Banks and financial managers are expected to report suspicious high-risk activities. Government authorities may then apply to the High Court for a warrant, which obliges individuals and institutions to disclose information.

Capital market

Securities and futures commission (SFC)

The SFC was established in 1989 as an independent body to regulate the securities and futures market. Other than regulation, the SFC supervises market operators and participants, as well as authorizing prospectuses.

Hong Kong Exchange (HKEx)

The HKEx was established in 1891 and runs a variety of trading services. It is currently the second biggest stock exchange in Asia. To list on the main board, a company must satisfy one of the following criteria:

- At least HKD 20 million of profit in the previous year, and at least HKD 30 million of aggregate profit for the two years before that; market cap of at least HKD 500 million
- At least HKD 500 million of revenue in the previous year; market cap of at least HKD 4 billion
- At least HKD 500 million of revenue in the previous year; at least HKD 100 million of aggregate positive cash flow in the previous three years; market cap of at least HKD 2 billion.

If a company cannot list on the main board, the company may enlist itself on the GEM instead. The requirements are much less strict. The company must have at least HKD 30 million of aggregate positive cash flow in the previous two years and a market cap of at least HKD 150 million.

Other than stocks, the HKEx trades warrants, bonds, ETFs, futures, options, etc. through the Hong Kong Futures Exchange (HKFE). The HKEx also runs its own depository, clearing, and settlement services.

Labor

The Employment Ordinance serves as the law governing employment practice and labor relations in Hong Kong. The Labour Department is the national implementing government agency.

Types of employment

All employees in Hong Kong except seamen, apprentices, and family members living in the same dwelling are entitled to wage protection and statutory holidays. After four weeks of employment with at least 18 hours worked per week, an employee automatically falls under a continuous contract and can receive other benefits.

An employment contract must stipulate the wage, wage period, notice requirements, and bonus calculations if applicable. If a contract is in writing, the employee must receive a copy; and if the contract is made orally, the employee is entitled to a copy if s/he requests one. Additionally, the employer must keep records of the employee's name, identity card number, job title, wage, wage period, notice requirement, the number of leaves entitled and taken, as well as payments made during leaves. If applicable, the employer must also keep record of the number of hours in a wage period, bonus calculations, and date of termination. Failure to keep these records results in a fine of HKD 10,000. In the case of an investigation by a government official, failure to comply results in a fine of HKD 100,000 and imprisonment of one year.

Working hours and compensation

Wages must be paid out within seven days after the wage period. Hong Kong has no law about regular working hours and overtime hours – they are specified in the employment contract. Employers are only required to provide one rest day every week. The average full-time employee in Hong Kong works 50 hours a week and over half of employees receive no remuneration for overtime.

Wages and benefits

Minimum daily wage

Since 2011, Hong Kong has enforced a statutory minimum wage. As of now, minimum wage is \$34.5 per hour.

Benefits

Holiday pay

Each employee is entitled to twelve days of paid leave during public holidays. In cases of emergency, an employee may be required to work during a holiday. If so, the employer must arrange an alternative day of paid leave within 60 days.

Service incentive leave

A worker who has rendered one year of service is entitled to seven days of paid leave. After the third year of service, the number of paid leaves increases by one every year, up to a cap of 14 days. The employee is paid the average daily wage.

Sick leave

An employee can accumulate two sick days a month for the first year of service and four sick days a month thereafter, up to a cap of 120 days. A paid sick leave must be taken for at least four consecutive days with the proper medical certificate. The employee must be treated by a registered doctor. During sick leave, employees are paid 80% of their average daily wage.

Annual bonuses

If the employment contract specifies a 13th-month salary or end-of-year bonus, then the employer must make the necessary payments. If the amount is not specified, then the amount payable is the average monthly wage in the previous 12-month period.

Mandatory Provident Fund

The Mandatory Provident Fund (MPF) is designed to provide a formal, compulsory system of retirement protection by way of a privately managed contribution scheme. Generally, all benefits derived from mandatory contributions must generally be preserved until the contributor reaches the prescribed retirement age of 65.

Early withdrawal of benefits including where a person in fact retires between ages 60 and 65, has departed or will depart from Hong Kong permanently, has become totally incapacitated, or has died before 65 years old. The benefits accrued from mandatory contributions to MPF schemes are withdrawn in a lump sum upon retirement, rather than as annuity.

Certain categories of persons are not required to join an MPF scheme, including those who are already covered by overseas retirement schemes, and foreigners who enter Hong Kong for employment with a working visa for a validity period that does not exceed 13 months.

Under the MPF system, the employee is required to contribute 5% of his/her monthly income and the employer has to match this amount. An employee and an employer may make voluntary contributions in addition to the mandatory contributions.

Maternity leave

Female employees are entitled to 10 weeks of maternity leave, which can begin between two to four weeks before birth. If the mother is ill from the birth or pregnancy for longer than the leave period, she may receive additional maternity leave not more than four weeks. During the leave, the employee is entitled to 80% of her average daily wage if she has rendered at least 40 weeks of service and has informed the employer after she has confirmed the pregnancy.

Paternity leave

Eligible male employees are entitled to three days' paternity leave.

Retirement benefits

See Mandatory Provident Fund. Retirees may also be entitled to long service payments as explained in the next section.

Termination of employment

An employee is entitled to severance payment after 24 months of service if the employee was laid off because of redundancy. An employee is entitled to a long service payment after five years of service if the employee is dismissed not because of redundancy or misconduct, but because of old age, ill health, or death. The amount payable is 2/3 of last month's salary (up to a cap of HKD 22,500) multiplied by reckonable years of service. The payment is capped at HKD 390,000.

The relevant party has to be notified of the termination according to the notice period requirement as specified in the employment contract. If no notice time was specified, then the party has to be notified at least one month before termination. Summary dismissal is allowed only if the employee has committed a grave misconduct or if the employee habitually neglects his/her duties and has been warned repeatedly. The employee may disagree and file a case with the labor tribunal. The employee may terminate the employment without notice if s/he is reasonably threatened by violence or disease, has been subjected to maltreatment by the employer, or is deemed unfit by a medical practitioner after five years of service.

Labor relations

Labor union

Every employee is entitled to be or apply to be a member or officer in a trade union. Those employees may take part in trade union activities outside of working hours or during working hours under the agreement of the employer. An employer cannot interfere with its employees' trade union activities.

Strike

Employees are lawfully allowed to strike. Employers cannot dismiss employees for a strike, but the employer may choose not to renew the employment contract.

Employment of foreigners

Hong Kong actively attracts foreign employees through its Quality Migrant Admission Scheme as administered by the Immigration Department. Applicants are screened for work potential and talent; others may opt to be judged based on publications or awards such as the Nobel Prize. They compete for a spot in the quota. As such, Hong Kong has no shortage of brilliant foreign minds.

Taxation

The Inland Revenue Department is responsible for the administration of major taxes and duties and the related rules and regulations in Hong Kong. Corporations (including branches of foreign corporations), individuals, bodies of persons, and partnerships carrying on a trade, profession or business in Hong Kong are subject to profits tax. Place of incorporation generally has little or no impact for tax purposes.

Territoriality

Only income arising in or derived from Hong Kong is taxed. Foreign-sourced income, whether remitted to Hong Kong or otherwise, is not taxed except when it is deemed to have a Hong Kong source. Taxability of income elsewhere has no bearing on taxability in Hong Kong. In general, if the operations from which the profits in substance are earned take place in Hong Kong, the source is Hong Kong and the profits are taxable.

Corporate income tax

Tax rates

All companies' Hong Kong-sourced taxable profit, less allowable deductions, is subject to profits tax of 16.5%. The tax rate is identical for public limited companies, private limited companies and branches. For unincorporated businesses (i.e. partnerships and sole proprietorships), the profits tax rate is 15%.

Hong Kong has introduced a new two-tiered profits tax rates regime recently. The two-tiered profits tax rates regime will be applicable to any year of assessment commencing on or after April 1, 2018 (i.e. effective from year of assessment 2018/19). The profits tax rates for the first \$2 million of profits of corporations will be lowered to 8.25%. Profits above that amount will continue to be subject to the tax rate of 16.5%. For unincorporated businesses, the two-tiered tax rates will correspondingly be set at 7.5% and 15%.

The application is restricted to only one enterprise nominated from among those which are connected.

Taxable profit

All profits made in or from Hong Kong are taxable except for capital gains, dividends, and offshore operations. In general, expenses incurred in the production of chargeable profits and not of a capital nature are deductible for profits tax purposes.

Allowable deductions/deductible expenses

- Interest on certain borrowed funds
- Rent
- Bad or doubtful debts (general provision for bad debts is non-deductible)
- Statutory depreciation allowance based on acquisition cost (accounting depreciation is non-deductible)
- Repairs.

The following may be deductible if prescribed conditions are satisfied:

- Registration or purchase of intellectual property
- Research and development
- Technical education
- Employee retirement schemes
- Charitable donations.

Loss carryover

Generally, a tax loss may be carried forward to offset the taxable profits of future tax years without any time limit. No carry-back of tax losses is allowed. Group relief of tax losses is not available.

Withholding tax

Hong Kong does not impose withholding tax except on entertainers and sportsmen and on royalties paid to non-residents. Withholding tax is generally taxed at 4.95% on royalties paid to non-residents. For royalties paid to non-resident associates, the withholding tax rate can be 16.5% if the intellectual property was previously partly or wholly owned by a Hong Kong person.

Individual tax

For employees whose income is from an employment, as distinct from income from an office, liability to Hong Kong salaries tax arises as follows:

- Employees who render services in Hong Kong during visits not exceeding a total of 60 days in a tax year are exempt from tax on the income from their employment even if it is a Hong Kong employment.
- A person under foreign employment who has regional responsibilities that require travelling outside Hong Kong may claim to be assessed on a proportion of income that relates to days spent in Hong Kong (the time-apportionment basis).
- A person who renders services outside Hong Kong and who has paid foreign tax in that jurisdiction of substantially the same nature as Hong Kong salaries tax on the employment income can apply for an exemption on that income.

The tax concessions described above do not apply to fees arisen from acting as statutory director. If the company that pays fees is managed and controlled in Hong Kong, this puts the source of the fees in Hong Kong, and they are therefore taxable income in Hong Kong even though the director renders services outside Hong Kong.

Tax rates

Taxpayers are required to pay taxes at progressive rates on net chargeable income or at standard rate of 15% on net income (without deduction of the allowances), whichever is lower.

Net chargeable income
 = Income – Deductions – Allowances

Below tables show the tax on net chargeable income.

For the year of assessment 2017/18 :

| Net chargeable income (HKD) | Tax rate |
|-----------------------------|----------|
| First 45,000 | 2% |
| Next 45,000 | 7% |
| Next 45,000 | 12% |
| Balance >135,000 | 17% |

For the year of assessment 2018/19 onwards:

| Net chargeable income (HKD) | Tax rate |
|-----------------------------|----------|
| First 50,000 | 2% |
| Next 50,000 | 6% |
| Next 50,000 | 10% |
| Next 50,000 | 14% |
| Balance >200,000 | 17% |

For example, if an employee earns HKD 120,000 (after deductions and personal allowances), then the first 50,000 is taxed at 2%, the next 50,000 is taxed at 6%, and the remaining 20,000 is taxed at 10%.

Hong Kong does not levy taxes on capital gains.

Taxable income

Taxable employment income includes all cash compensations and benefits-in-kind derived in Hong Kong including:

- salary
- commissions
- bonuses
- awards
- gratuities
- allowances
- stock options, once exercised.

Non-taxable income includes:

- severance pay and long-service payments calculated according to the Hong Kong Employment Ordinance
- certain compensation related to loss of employment.

Allowable deductions

- Donations to charities not less than HKD 100, up to 35% assessable income minus other deductions
- Certain deductions wholly, exclusively and necessarily incurred in producing income
- Self-deduction expenses up to HKD 100,000
- Home loan interest up to HKD 100,000 (for up to 20 years)
- Elderly residential care expenses up to HK\$92,000 (to be raised to HKD 100,000 in the year of assessment 2018/19)
- Contributions to the MPF up to HKD 18,000
- Various allowances including personal allowance of HKD 132,000 per person.

Income tax treaties

While Hong Kong levies taxes on a territorial basis, double taxation may still occur. Hong Kong sees benefit in formalizing taxing rights so investors can better assess tax liabilities. Additionally, Hong Kong can lure foreign companies to do business in Hong Kong since they can enjoy lower tax rate for income derived in Hong Kong.

Hong Kong has signed Comprehensive Double Taxation Agreements with these countries:

| | | | | | |
|----------|-----------|---------------|-------------|---------------|----------------------|
| Austria | France | Japan | Malaysia | Portugal | Spain |
| Belarus* | Guernsey | Jersey | Malta | Qatar | Switzerland |
| Belgium | Hungary | Korea | Mexico | Romania | Thailand |
| Brunei | India# | Kuwait | Netherlands | Russia | United Arab Emirates |
| Canada | Indonesia | Latvia* | New Zealand | Saudi Arabia# | United Kingdom |
| China | Ireland | Liechtenstein | Pakistan* | South Africa | Vietnam |
| Czech | Italy | Luxembourg | | | |

* Signed and to be effective from 2018/19.

Signed but not effective yet.

Hong Kong has signed Limited Double Taxation Agreements, which are limited to air and/or shipping income, with these countries:

| Air service income | | | | | |
|--------------------|----------|--------|-----------|-------------|----------------|
| Bangladesh | Ethiopia | Israel | Laos# | Netherlands | Seychelles# |
| Canada | Fiji | Jordan | Macao | New Zealand | Sweden |
| Croatia | Finland | Kenya | Maldives# | Norway | Switzerland |
| Denmark | Germany | Korea | Mauritius | Russia | United Kingdom |
| Estonia# | Iceland | Kuwait | Mexico | | |

Signed but not effective yet

| Shipping income | | |
|-----------------|-------------|----------------|
| Denmark | Netherlands | United Kingdom |
| Germany | Norway | USA |

| Airline and shipping income | |
|-----------------------------|-----------|
| Singapore | Sri Lanka |

Value added tax

Hong Kong does not levy VAT.

Other taxes

Excise tax

Excise tax is levied on these goods, whether they are imported or produced domestically:

| Products | Rate | Unit |
|---|----------|------------|
| Liquor with an alcoholic strength > 30% by volume measured at a temperature of 20°C | 100% | |
| Methyl alcohol | HKD840 | Hectolitre |
| For every 1% by which the alcoholic strength by volume exceeds 30% | HKD28.1 | Hectolitre |
| Aircraft fuel | HKD6.51 | Litre |
| Leaded petrol | HKD6.82 | Litre |
| Unleaded petrol | HKD6.06 | Litre |
| Light diesel | HKD2.89 | Litre |
| Ultra low sulphur diesel | HKD2.89 | Litre |
| Cigars | HKD2,455 | Kg |
| For each 1000 cigarettes | HKD1,906 | |
| Chinese prepared tobacco | HKD468 | Kg |
| Other tobacco | HKD2,309 | Kg |

Customs duty

Hong Kong does not levy import tax.

Inheritance tax/gift tax

Hong Kong does not levy inheritance or gift taxes.

Property taxes

Property tax is levied on the owner of land and buildings in Hong Kong. The current rate is 15%, charged on the basis of actual rent receivable, less a 20% statutory deduction. Actual expenses incurred (e.g. repairs and maintenance, building management fees, etc.) are non-deductible. Rent received by a limited company is subject to profits tax instead of property tax.

Stamp duty

Stamp duty is charged on the following documents:

- Share transfers: 0.2% (0.1% on each of the bought note and sold note)
- Lease of immovable property (tenancy agreement): 0.25% to 1% of the rental amount depending on the terms
- Sale or transfer of immovable property
- Conveyance on sale (i.e. assignment).

Ad valorem stamp duty (AVD)

With effect from 5 November 2016, Scale 1 AVD rates are divided into Part 1 and Part 2.

Unless specifically exempt, AVD is payable at Part 1 of Scale 1 on an agreement for sale or for the acquisition of residential property, if the agreement is executed on or after 5 November 2016.

Part 2 of Scale 1 applies to instruments of residential property executed on or after 23 February 2013 but before 5 November 2016 and instruments of non-residential property executed on or after 23 February 2013.

The major exception to Scale 1 is where the subject property is a residential property and the purchaser/ transferee is a Hong Kong permanent resident acting on his/ her own behalf and does not own any other residential property in Hong Kong at the time of acquisition of the property. In this case, lower rates (Scale 2) will apply.

Scale 1 (Part 1)

A flat rate of 15% of the consideration or value of the property (whichever is higher).

Scale 1 (Part 2)

| Consideration or value of property whichever is higher (HKD) | AVD Rates (HKD) |
|--|---|
| Up to 2,000,000 | 1.50% |
| 2,000,001 – 2,176,470 | 30,000 + 20% of excess over 2,000,000 |
| 2,176,471 – 3,000,000 | 3.00% |
| 3,000,001 – 3,290,330 | 90,000 + 20% of excess over 3,000,000 |
| 3,290,331 – 4,000,000 | 4.50% |
| 4,000,001 – 4,428,580 | 180,000 + 20% of excess over 4,000,000 |
| 4,428,581 – 6,000,000 | 6.00% |
| 6,000,001 – 6,720,000 | 360,000 + 20% of excess over 6,000,000 |
| 6,720,001 – 20,000,000 | 7.50% |
| 20,000,001 – 21,739,130 | 1,500,000 + 20% of excess over 20,000,000 |
| 21,739,131 and above | 8.50% |

Scale 2

| Consideration or value of property whichever is higher (HKD) | AVD Rates (HKD) |
|--|---|
| Up to 2,000,000 | 100 |
| 2,000,001 – 2,351,760 | 100 + 10% of excess over 2,000,000 |
| 2,351,761 – 3,000,000 | 1.50% |
| 3,000,001 – 3,290,320 | 45,000 + 10% of excess over 3,000,000 |
| 3,290,321 – 4,000,000 | 2.25% |
| 4,000,001 – 4,428,570 | 90,000 + 10% of excess over 4,000,000 |
| 4,428,571 – 6,000,000 | 3.00% |
| 6,000,001 – 6,720,000 | 180,000 + 10% of excess over 6,000,000 |
| 6,720,001 – 20,000,000 | 3.75% |
| 20,000,001 – 21,739,120 | 750,000 + 10% of excess over 20,000,000 |
| 21,739,121 and above | 4.25% |

On 11 April 2017, the Government announced that it would introduce legislative amendments to tighten up the existing exemption arrangement for Hong Kong permanent resident, to the effect that, unless specifically exempt or otherwise provided in the law, acquisition of more than one residential property under a single instrument executed on or after 12 April 2017 will be subject to AVD at a flat rate of 15%, even if the purchaser/transferee is a Hong Kong permanent resident who is acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition.

Special stamp duty (SSD)

Unless specifically exempt, residential properties in Hong Kong acquired on or after 27 October 2012 by an individual or a company (irrespective of its place of incorporation) and resold within 36 months from the date of acquisition are subject to SSD calculated based on the stated consideration for the transaction or the market value of the residential property, whichever is higher.

The relevant SSD rates are stated in the table below:

| Period within which a residential property is re-sold after acquisition | SSD rates (Reselling a residential property acquired on or after 27 October 2012) |
|---|---|
| 6 months or less | 20% |
| 6 to 12 months | 15% |
| 12 to 36 months | 10% |

Buyer's stamp duty (BSD)

Unless specifically exempt, BSD is payable on an agreement for sale or a conveyance on sale for the acquisition of any residential property executed on or after 27 October 2012, except where the purchaser or the transferee is a Hong Kong permanent resident acquiring the property on his/her own behalf.

BSD is charged at a flat rate of 15% on higher of the stated consideration or market value of the residential property.

Investment

Business incentives

While Hong Kong does not offer many special business incentives, its low tax rates and financial infrastructure are enough to establish itself as a leading global business center. Expenditure on plant and machinery directly related to manufacturing and computers may be wholly tax deductible in the year of purchase. Other plant and machinery may be tax deductible at around 68% for the year of purchase (depending on the nature of the fixed assets) and the remaining balance is depreciated at a certain rate (usually 20%) for the following years.

Corporate treasury centres

A concessionary tax rate of 50% reduction on existing rates (i.e. 8.25%) for specified treasury activities of qualifying Corporate Treasury Centres is applied on the deemed interest income and other gains on certain intra-group lending which is subject to tax in Hong Kong regardless of the place where the relevant contracts are effected and where the loan fund is provided. Interest expense for intra-group lending can be deducted when specific conditions are met.

Limited sectors and indirect investments

Hong Kong allows full foreign ownership of companies except in the broadcasting industry (capped at 49%) and government-owned activities.

Intellectual property rights

Hong Kong follows a lot of international standards for intellectual property. The Intellectual Property Department is responsible for registration of patents and licensing of trademarks, designs, and copyright while the Intellectual Property Investigation Bureau of the Customs and Excise Department protects and enforces the laws.

Patents

Patents are technological solutions and innovations. They can enjoy a protection of up to 20 years after date of application. One may apply for a short-term patent instead, which is only subject to a formality examination, but the patent is only protected for eight years.

Trademarks

Trademarks are used to distinguish a good or service from others in the form of words, images, and/or colors. They are protected for 10 years and may be renewed indefinitely.

Copyright

Copyright is automatically protected upon the creation of a work until 50 years after the author's death. Unlike patents and trademarks, copyrights do not need to be registered.

Trade names

Trade names are names used by organizations or individuals to designate and differentiate themselves in business activity. Trade names do not have to be filed but a company can apply for the Business Registration Certificate in the trade name issued by the Business Registration Office.

Layout-design of an integrated circuit

Layout-designs are automatically protected upon creation with no need for registration. The owner of this right can take civil action to prohibit others from reproducing or distributing layout-design without the owner's consent.

Plant varieties protection

Plant varieties protection ordinance, Cap. 490, allows plant breeders to apply for proprietary rights over cultivated plant varieties they have developed. Protection lasts for 25 years for trees and vines and 20 years for every other type.



Resumption and Compensation

The Hong Kong Government can exercise statutory power to compulsorily take ownership of private land for public interest. Compensation depends on the purpose as different ordinances apply (e.g. Lands resumption ordinance, railways ordinance, etc.).

Property ownership

The Hong Kong Government virtually owns all land and grants new leases of land for a 50-year term. The lease may be renewed under the discretion of the government.

Foreigners can freely purchase apartments, condominiums, and other residential housing. Hong Kong has increased stamp duty and imposed property tax of 15% on non-resident property owners to deter foreign speculation amidst rapidly increasing housing prices.

International trade agreements

Hong Kong has signed free trade agreements with the following jurisdictions:

- Chile
- China
- Macau
- New Zealand
- The Member States of the European Free Trade Association
 - Iceland
 - Liechtenstein
 - Norway
 - Switzerland
- The Association of Southeast Asia Nations (expected to be in force on 1 January 2019 at the earliest)
 - Brunei
 - Cambodia
 - Indonesia
 - Laos
 - Malaysia
 - Myanmar
 - Philippines
 - Singapore
 - Thailand
 - Vietnam

Hong Kong is now negotiating with the following jurisdictions:

- Georgia
- Maldives
- Australia

4. India

Country profile

| | |
|----------------------|--|
| Official name | Republic of India |
| Capital | New Delhi |
| Location | Southern Asia, bordering the Arabian Sea And Bay of Bengal Between Burma and Pakistan |
| Area | 3,387,240 km ² |
| Climate | Varies from tropical monsoon in the south Temperate in the north |
| Time zone | UTC +5.5 no DST |
| Population | ~1.35 billion |
| Currency | Indian Rupee (INR) |
| Language | 22 official languages recognized by the Constitution English is widespread for business circles |
| Religion | 80% Hinduism 14% Muslim 2% Christian 2% Sikh 2% Others |
| International | ASEAN East Asia Summit G-20 OIC |
| Government | Federal republic |

Executive

The President of India is the Head of State and the Supreme Commander of the Indian Armed Force. He is elected by members of both the Houses of Parliament and the Legislative Assemblies of all the states for a renewable term of five years. The Prime Minister of India is the head of government and exercises most of executive powers. The Prime Minister is appointed by the President, and is supported by the party or political alliance holding the majority of seats in the lower House of Parliament. The executive branch of the Indian government consists of the President, the Vice-President and the Council of Ministers, headed by the Prime Minister. Any minister holding a portfolio must be a member of one of the Houses of Parliament. In the Indian parliamentary system, the executive is subordinate to the legislature, the Prime Minister and his council is directly responsible to the lower House of the Parliament.

Legislative

The legislature of India is the bicameral parliament and it comprises the upper house called the Rajya Sabha ("Council of States") and the lower house called the Lok Sabha ("House of the People"). The upper house is a permanent body that has 245 members who serve in staggered six-year terms. The members are elected indirectly by the state and territorial legislatures in numbers proportional to their state's share of the national population. All 545 members of the lower house are directly elected by popular vote for five-year terms.

Judiciary

India has a unitary three-tier independent judiciary that comprises the Supreme Court, headed by the Chief Justice of India, 24 High Courts, and a large number of trial courts. The Supreme Court has original jurisdiction over cases involving fundamental rights and over disputes between states and the centre; it has appellate jurisdiction over the High Courts. It has the power to declare the law and to strike down union or state laws which contravene the constitution, as well as to invalidate any government action it deems unconstitutional.

Economy

| IMF Data | 2014 | 2015 | 2016 | 2017 |
|---|------|------|------|------|
| GDP, current prices (USD thousand billions) | 2.04 | 2.1 | 2.27 | 2.61 |
| GDP per capita (USD thousands) | 1.61 | 1.64 | 1.75 | 1.98 |
| Inflation, End of Year | 5.3% | 5.3% | 3.6% | 4.7% |

Business entities and accounting

Incorporation options

The principal business entities for doing business in India are:

- limited liability company – public or private or one person
- partnership
- limited liability partnership (LLP)
- sole proprietorship.

Companies

A company may be incorporated either as a public or private company or a One Person Company.

The characteristics and requirements of the various types of company are outlined below:

| | Public | Private | One Person Company |
|---|----------|---------|--------------------|
| Minimum number of subscribers/shareholders/members | 7 | 2 | 1* |
| Maximum number of subscribers/shareholders/members | No limit | 200 | 1* |
| Minimum number of directors | 3 | 2 | 1 |
| Invitation to public for shares/debentures/deposits from public permitted | Yes | No | No |

* The member should be a natural person, Indian citizen and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one financial year.

Partnership

Partnerships, governed by the Indian Partnership Act, 1932, are created by execution of a Partnership Deed. At least two members are required to start a partnership. The number of members should not exceed 100. The partners are jointly and severally liable for the debts of the partnership.

Prior approval from the Reserve Bank of India (RBI) is required if foreign nationals intend to become partners in an Indian partnership.

Limited liability partnership

A Limited Liability Partnership is an alternative business vehicle that not only gives members the benefit of limited liability but also the flexibility of organising their internal structure as a traditional partnership. It is a separate legal entity and, while the LLP itself is liable for the full extent of its assets, the liability of the members is limited.

Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be a resident in India. The duties and obligations of Designated Partners shall be as provided in the law.

Investment in a LLP by a body corporate incorporated outside India is governed by the foreign direct investment (FDI) policy of the RBI along with the provisions of the Foreign Exchange Management Act, 1999. As per the provisions of these legislations, a person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs. However, some specified persons are not eligible to invest in LLPs.

Further, the eligible investor would be eligible to invest, only in LLPs operating in sectors/activities where 100% FDI is allowed under the automatic route. LLP engaged in activities wherein investment is allowed through government route or where investment is allowed for less than 100% through automatic route are not eligible for FDI.

Sole proprietorship

Sole proprietorship is a form of business organisation in which an individual introduces his/her own capital, uses his/her own skill and intelligence in the management of its affairs, assumes all the risks of business and is solely responsible for the results of its operations.

Others

In addition to the above legal entities, the following types of entities are available for foreign investors/foreign companies doing business in India:

- **Company:** A foreign company can set up a Company in India to carry out business activities. Such a company is treated as an Indian resident. At least two shareholders for a private limited company and seven shareholders for a public limited company are mandatory. In addition, there is also the requirement that one of the directors of the entity should be an Indian resident. The activities of such a company need to comply with the provisions of the foreign direct investment (FDI) policy.
- **Liaison office:** A Liaison Office (LO) (also known as Representative Office) can undertake only liaison activities, (i.e., it can act as a channel of communication between Head Office abroad and parties in India). It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such LO are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. Permission to set up such offices is initially granted for a period of three years. However, such permission may be extended from time-to-time.
- **Project office:** A foreign company planning to execute a particular project in India can set up a temporary project office (PO). A Project Office can only undertake activities relating and incidental to the execution of specific projects in India and has to be wound up following the completion of the project.
- **Branch office:** Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Office (BO) in India with specific approval of the RBI. Such BOs are permitted to represent the parent/group companies and undertake certain specified activities. Normally, the BO should be engaged in the activity in which the parent company is engaged. A BO is not allowed to undertake manufacturing or processing activities or retail trading activities of any nature in India, directly or indirectly. Profits earned by the BOs are freely remittable from India, subject to payment of applicable taxes.
- **Joint venture Company with an Indian Partner (Equity participation):** Subject to FDI guidelines, a foreign company may also set up a joint venture by forming strategic alliances with Indian partners. Generally, a foreign company identify partners in the same area of activity and enters into business agreement in which parties agrees to develop, for a finite time, a new entity and new assets by contributing equity. The parties exercise control over the enterprise and consequently share revenues, expenses and assets.

Accounting and auditing

Companies are required, under the Companies Act 2013, to keep and maintain such books and records to enable a true and fair view of the state of affairs of the company to be prepared. The books of account must be kept for a minimum of seven years. Financial statements should be presented in INR.

The Institute of Chartered Accountants of India (ICAI) is the apex institution that regulates the accounting and auditing practices in India.

Previously, in India, the companies only followed domestic accounting standards (Indian GAAP or IGAAP) while preparing their financial statements. On 2 January 2015, the Press Information Bureau, Government of India, Ministry of Corporate Affairs (MCA) issued a note outlining the various phases in which Indian Accounting Standards converged with IFRS (Indian Accounting Standards – IND AS). IND AS has been implemented in India, for Companies other than Banking Companies, Insurance Companies and Non Banking Financial Companies. The application of Ind AS as per the notification of the Ministry of Corporate Affairs dated 16th February, 2015 is tabulated below:

| Phase | Date of Applicability | Class of Companies (fulfilling either criteria) |
|-------|---------------------------|--|
| I | On or after 1 April, 2016 | Listed or unlisted companies with a net worth of or exceeding INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. |
| II | On or after 1 April, 2017 | All listed companies with a net worth of less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. Unlisted companies with a net worth of or exceeding INR 2,500 million and less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. |
| III | On or after 1 April, 2018 | Non-Banking Financial Companies (NBFCs) with a net worth of or exceeding INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. |
| IV | On or after 1 April, 2019 | All listed NBFCs with a net worth of less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. Unlisted NBFCs with a net worth of or exceeding INR 2,500 million and less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. |

- Listed Companies/NBFCs also include companies/NBFCs in the process of listing.
- Any other company may voluntarily apply these Accounting Standards in preparation of their financial statements for the period ended 31 March 2015 and onwards.

Scheduled commercial banks would have to start implementing the new accounting norms from 1 April 2019 with comparatives for the periods ending 31 March 2019 or thereafter. It would be applicable for consolidated as well as individual financial statements.

The following audits are conducted in respect of the financial statements:

- Statutory audit:** Mandatory for every company whether public or private. It must be conducted annually in respect of the financial statements of every company by an auditor appointed by the company in its Annual General Meeting or the Board of Directors (in case of the first appointment).
- Internal audit:** As per section 138 of the Companies Act, 2013, it is mandatory for every listed public company. For unlisted public company, where the paid-up capital of the company exceeds INR 500 million or the annual turnover during the preceding financial year exceed INR 2,000 million or outstanding loans or borrowings from banks or public financial institutions exceed INR 1,000 million or more at any point of time during the preceding financial year or outstanding deposits exceed INR 250 million or more at any point of time during the preceding financial year, the Company is required to have an appropriate internal audit system commensurate with the size of the company and nature of its business. Every private company having annual turnover exceeding INR 2,000 million during the preceding financial year or outstanding loans or borrowings from banks or public financial institutions exceeding INR 1,000 million or more at any point of time during the preceding financial year is required to have an internal audit system. The internal auditor reviews and issues their report after conducting an internal audit of the company.

- **Cost audit:** Applies to a list of industries and the products covered under section 148 of the Companies Act, 2013 such as cement, cycles, refrigerators, electric motors etc. Cost accounts shall be audited by a Cost Accountant in practice.
- **Tax audit:** Required under the Income tax Act, 1961 and is mandatory for LLP and Companies with gross turnover exceeding INR 10 million and professionals with gross receipts exceeding INR 50 million. Gross turnover shall include any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, notwithstanding any right arising as a consequence of such payment. The tax audit comprises verification of all records, documents, books of account etc. to determine the actual tax liability of the entity. Only a chartered accountant holding a valid certificate of practice may carry out a tax audit.
- **Transfer pricing audit:** Required under the Income tax Act, 1961 and is mandatory for entities entering cross border transactions with associated enterprises (of any amount) or specified domestic transactions with related parties in excess of prescribed limits. The basic objective of the transfer pricing audit is to verify whether the International transactions or specified domestic transactions entered into by the Indian entity with its associated enterprises have been entered into at an arm's length price or not.
- **Internal Financial Control (IFC) Audit:** Companies Act, 2013 has placed special emphasis on IFC Audit which would be applicable on all companies registered under the Act (other than one person companies and private companies which satisfy prescribed conditions). Under section 143 of the Companies Act, 2013, the auditor's report shall now give separate audit report (as an annexure) stating whether the company has adequate IFCs in place and the operating effectiveness of such controls. Under section 134 of the Companies Act, 2013, the directors responsibility statement would also state that the directors has laid down IFCs to be followed by the company and that such IFCs are adequate and operating effectively (only for listed entities).

Corporate filing requirements

Companies incorporated in India under the Companies Act are required to file annual accounts with the Registrar of Companies. Foreign investors and/or their agents in India are required to file certain statements and returns at periodic intervals as prescribed by the RBI under the Foreign Exchange Management Act, 1999.

Various reporting requirements are also prescribed under the Companies Act, 2013 for various types of companies.

Finance and investment

Exchange control

The RBI is the governing authority for all matters relating to foreign exchange management and control. Any transaction in a foreign currency is governed by the Foreign Exchange Management Act, 1999. Residents are required to sell foreign money coming into their possession to a central bank or specialized government agency at the exchange rate set by the government.

Foreign Investment in various sectors is permitted, and there has been an increased flow of foreign exchange in India since the Government of India replaced controls under FERA (Foreign Exchange Regulation Act) with regulations under FEMA (Foreign Exchange Management Act). FEMA makes provisions in respect of foreign exchange transactions, which are of the following two types:

- **Current account transactions:** the INR is fully convertible for trade and current account purposes. Except for certain specified restrictions, where RBI's approval is required, foreign currency may be freely purchased for trade and current account purposes.
- **Capital account transactions:** such transactions are not permitted unless they are specifically allowed and prescribed conditions are satisfied.

Sources of finance

Banking

The banking system in India is advanced and well developed to meet the requirements of trade, commerce and industry and is comprised of public and private sector banks, co-operative banks, foreign banks and regional rural banks. The banking sector is regulated by the Reserve Bank of India (RBI).

Banks and financial institutions in India grant loans for capital expenditure, for setting up a new project or for expansion and diversification programmes of existing units. Banks also grant working capital facilities secured against the current assets of the business entities and other non fund based limits such as Letters of Credit/Bank Guarantees etc.

Venture capital funds and companies

Venture capital funding is an option for funding business. There are a number of funds which are currently operational in India and involved in funding start up ventures. Many of the venture funds are involved in providing mezzanine, bridge financing, growth capital and are active private equity players. Venture capital firms also provide entrepreneurs with incubator facilities with innovative ideas. These funds are regulated by the Securities Exchange Board of India (SEBI) and are now mostly structured as Alternative Investment Funds with difference categories depending on the nature of each fund.

Stock exchange

The Indian capital markets are extremely advanced and efficient with over 5,000 listed companies.

There are six stock exchanges and nine commodity exchanges in India; however, the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) are the most significant. The growth of the Indian corporate sector is thereby facilitated by the provision of an efficient capital raising platform.

Incentives and restrictions for foreign investors

India offers foreign investors a balanced package of fiscal incentives including:

- complete tax exemptions
- investment incentives offered by Central and State Governments
- tax treaties with around 93 countries and limited agreements with eight countries.

India has a number of Special Economic Zones (SEZ). SEZs are considered as foreign territory in all that concerns taxes and customs. Companies in a SEZ are eligible for a total exemption from tax for the first five years and a 50% exemption from tax due for the following five years.

India is attracting the attention of foreign investors and a number of incentives are available. FDI is however, not permitted in certain sectors including lottery business including government/private lottery, online lotteries, gambling and betting including casinos, real estate business, construction of farm houses, etc. Also, in some sectors, FDI is permitted only after obtaining specific approval of the Government. In the following key sectors, the level of FDI is subject to restrictions and fulfilment of prescribed conditions:

- Private sector banking (automatic up to 49% and Government route beyond 49% and up to 74%)
- Insurance (automatic up to 49%)
- Defense (Automatic up to 49%, Government route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded)
- Private security agencies (automatic up to 49% and Government route beyond 49% and up to 74%)
- Telecommunication (Automatic up to 49% and Government route beyond 49%)
- Aviation (100%)
- Mining and exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores (100%).

Employment regulation and social security

Entry visa and work permit requirements

Foreigners wishing to visit India can obtain a visa from the Indian Mission in the country of their residence. They should possess a valid international passport, except in the case of nationals of Bhutan and Nepal for whom an approved means of identification is sufficient. The following types of visas may be granted to foreigners wishing to work in India:

Business visa

A business visa is required by persons visiting India on business related trips such as purchase/sale of industrial or commercial products, exploring possibilities to set up business or ventures in India. A multiple entry business visa may be granted for one year or more (US citizens can get five years or 10 years multiple entry business visa). However, the period of stay in India for each visit is limited to six months.

Employment visa

A multiple entry employment visa may be granted on a case by case basis to foreign nationals wishing to take up employment in India. An employment visa must be obtained from the Indian Consulate in the country of residence of the applicant prior to departure for India.

Entry visa

An entry visa is issued to those of India origin visiting India for tourism or other non-business related purposes. Members of the family of a person employed in India are also eligible for an entry visa. In the latter case, documents establishing the employment of the person employed in India along with a copy of their employment visa must be attached to the application.

Tourist visa

A tourist visa is given to those visiting India for tourism or other non-business related purposes and is generally valid up to six months.

Hiring local employees

India has one of the world's largest pools of scientific and technical personnel: this serves as an important attraction for foreign investors.

Contracts of employment may be expressed or implied, in writing or verbal. Contract labour in India must be paid a minimum wage and, except as required under the applicable laws relating to Provident Fund (see 4.4), ESI (see 4.4), withholding tax etc, wages must be paid without deductions.

There are various acts which regulate labour and employment in India, including:

- Employee's Compensation Act, 1923
- Children (Pledging of Labour) Act, 1933
- Payment of Wages Act, 1936
- Employees' State Insurance Act, 1948
- Minimum Wages Act, 1948
- Indian Factories Act, 1948
- Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Maternity Benefit Act, 1961
- Equal Remuneration Act, 1976
- Contract Labour (Regulation & Abolition) Act
- Child Labour (Prohibition & Regulation) Act, 1986

Trade unions

There are, at present, numerous trade unions in India which regulate the aspirations of the working classes. In India, there is a guaranteed fundamental right to form Labour unions. This right applies whether a union has been recognized or not. The Trade Unions Act, 1926 is completely silent on the question of recognizing a trade union for the purpose of collective bargaining. During the collective bargaining process, workers are represented through trade unions. Collective bargaining aims to resolve issues pertaining to wages, working conditions, health and safety, and working hours of workers.

Social security system

India has a sound social security system in place. The principal social security laws enacted in India are the following:

The Employees' State Insurance Act, 1948

An employee covered under the scheme must contribute 1.75% of the wages paid/payable and an employer contributes 4.75% of the wages paid /payable to an employee. For newly implemented areas, the contribution rate is 1% of wage of employee and 3% payable by employer for first 24 months. Employees receiving daily average wages up to INR 137 are exempted from payment of contribution. The employers will however contribute their own share in respect of these employees.

The Employees' Provident Funds & Miscellaneous Provisions Act, 1952

Employers with 20 or more employees must pay contributions equivalent to 12% of their salaries to the employees' provident fund. Employees earning not more than INR 15,000 per month must pay contributions of 12% of their salary to the employees' provident fund. Higher paid employees may make voluntary contributions. Contributions are deductible for income tax purposes subject to fulfilment of prescribed conditions.

The Payment of Gratuity Act, 1972

Gratuity is a statutory benefit paid to employees who have rendered continuous service for at least five years under the Payment of Gratuity Act, 1972. The employee is entitled to 15 days of pay for each completed year of service. The employer can also structure a gratuity benefit that is higher than statutory requirements. The gratuity benefit is payable on cessation of employment (either by resignation, death, retirement or termination, etc) by taking the last drawn salary as the basis for the calculation.

Taxation

The indirect tax structure in India has now been upgraded to Goods & Services Tax (GST), a major reform of the Indian tax system. It replaces a plethora of cascading center, state, inter-state, and local taxes with a single, nationwide, value-added tax on goods and services.

| Direct taxes | Indirect taxes |
|--|--|
| <ul style="list-style-type: none"> • Income tax • Corporation Tax • Capital Gains Tax | <ul style="list-style-type: none"> • Customs duty • Stamp duty • GST: <ul style="list-style-type: none"> - SGST - CGST - IGST |

Direct taxes

The right to levy direct tax rests with Central Government.

Income tax

Corporate and personal taxation in India is governed by the Income tax Act, 1961. Income tax is levied on “total income” of entities and individuals for the financial year which is known as “previous year” in India. The tax year in Indian runs from 1 April until 31 March.

The income liable to tax is to be computed under the following headings:

- Income from salaries
- Income from residential property other than the exempted residence
- Profits/gains from business/profession
- Capital gains
- Income from other sources.

Certain exemptions and deductions are available for different tax payers under various provisions of the Income tax Act, 1961 including:

- expenditure for newly established undertakings in Free Trade Zones, Special Economic Zones, 100% export-oriented undertakings
- expenditure on scientific research, know-how
- expenditure on acquisition of patent or copyrights
- expenditure for obtaining a license to operate telecommunication services
- expenditure for carrying out rural development programmes.

Withholding taxes [also referred to as Tax Deducted at Source (TDS)] is liable to be deducted on various categories of payments made within India and abroad at different rates. The deductee gets credit for the amounts deducted in their tax computation.

Corporate tax

- Levied on all Indian Companies and companies having its Place of Effective Management in that tax year, in India.
- Foreign companies are taxed on income that arises, or is deemed to accrue or arise, in India or have a Permanent Establishment in India.
- Includes Minimum Alternative Tax (MAT) which was introduced to bring Zero Tax companies under the income tax regime, whose accounts were made in accordance with the Companies Act.
- Includes Dividend Distribution Tax (DDT) which is a tax levied on any amount declared, distributed or paid as dividend by any domestic company. Foreign companies are exempt from this tax.
- Includes Securities Transaction Tax (STT) which is a tax levied on taxable securities transactions. There is no surcharge applicable on this.
- Equalization Levy is tax leviable on consideration received or receivable for certain specified service (viz., online advertisement, provision for digital advertising space or any facilities/service for the purpose of online advertisement. The applicable tax rate is 6% on gross consideration payable for service.

Income tax rates for individuals and Hindu undivided families:

| Total income | Tax rate (FY 2017-18) | Health and health and education cess (on income tax and surcharge) |
|-------------------------------|-----------------------|--|
| Financial Year 2017-18 | | |
| Up to INR 250,000* | Nil | Nil |
| INR 250,001 – INR 500,000 | 5% | 4% |
| INR 500,001 – INR 1,000,000 | 20% | 4% |
| Above INR 1,000,000 | 30% | 4% |

* INR 300,000 in case of resident senior citizens above 60 years, INR 500,000 in case of resident senior citizens above 80 years. The amount of income tax shall be increased by a surcharge as follows:

| | |
|-----------------------------|-----|
| Less than INR 5 million | Nil |
| INR 5 million to 10 million | 10% |
| More than 10 million | 15% |

Others

| Category | Tax rate (fy 2017-18) | Surcharge (on income tax) | Health and education cess (on income tax and surcharge) |
|-----------------------------|---|---|---|
| Partnership (including LLP) | 30% | 12% (if net income exceeds INR 10 million) | 4% |
| Domestic company* | 25% for companies having turnover less than INR 2,500 million in the tax year 2016-17 and 30% for all other companies | 7% (if net income exceeds INR 10 million) | 4% |
| | | 12% (if net income exceeds INR 100 million) | 4% |
| Foreign company | 40% | 2% (if net income exceeds INR 10 million) | 4% |
| | | 5% (if net income exceeds INR 100 million) | 4% |

* Note: All Companies incorporated in India as per Companies Act are Domestic Companies.

Minimum Alternate Tax (MAT) on book profit is charged at 18.5% plus applicable surcharge and Health and Education Cess. A MAT applies if a Company's tax liability is calculated to be less than 18.5% of its deemed book profits. For all companies, where the minimum alternate tax applies, the excess of the liability over the tax calculated on ordinary principles may be carried forward and credited against future tax liabilities for up to 15 years.

Domestic companies are subject to Dividend Distribution Tax at a Basic rate of 17.6471% which is grossed up by Surcharge (12%) and Health and Educations cess (4%) making the effective DDT rate of 20.5553%, on the amount of dividends declared.

Income computation and disclosure standards

The Central Board of Direct Taxes vide its Notification No: 87/2016 dated 29th September 2016 notified 10 Income Computation and Disclosure Standards which is to be followed by all tax payers (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the Indian Income tax Act, 1961) at the time of computation of income chargeable to tax under the head "Profit and Gains of Business or Profession" or "Income from other sources" with effect from the tax year 2016-17.

Relief from double taxation

India has entered into Double Taxation Avoidance Agreement (DTAA) with 93 countries and limited agreements with eight countries. Most agreements currently in force lay down various tests in order to determine the actual residential status of the individual. Generally, the provisions of DTAA prevail over the domestic tax provisions. However, the domestic tax provisions may apply to the extent they are more beneficial to the taxpayer. The benefit of the DTAA will not be available unless a taxpayer obtains a Tax Residency Certificate from the government of the country where the taxpayer resides.

Indirect taxes

Goods and Services Tax is a comprehensive destination based tax levy on manufacture, sale and consumption of goods and services at a national level under which no distinction is made between goods and services for levying of tax. Most of the central and state Indirect taxes shall be subsumed under GST. GST offers a multi-tiered system with tax rates varying from Nil, 5%, 12%, 18%, and 28% plus cess. Entire GST has classified into Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST), Integrated Goods and Services Tax (IGST) and Union Territory Goods and Services Tax (UTGST).

Central goods and services tax

Central GST or CGST would be levied on the intra-state supplies of goods and services. Hence, in case of intra-state supplies of goods and services, both the central and State government would combine their levies with an appropriate revenue sharing between them.

State goods and services tax

State GST or SGST is a tax levied under the SGST Act on intra-state supplies of goods and services that is administered by the respective State Government.

Integrated goods and services tax

Integrated GST or IGST is the tax levied under the IGST Act on the supply of any goods and/or services in the course of inter-state trade across India. Further, IGST would include any supply of goods and/or services in the course of import into India and export of goods and/or services from India. IGST will replace the present Central State Tax. Thus, IGST would be applicable for all inter-state transactions, import and export of goods and/or services.

Customs duty

Customs duty is levied on the import of goods. Although, Countervailing Duty in lieu of Excise Duty and Special Additional Duty of Customs has been subsumed by IGST, Basic Custom Duty has continued after the introduction of the GST regime. The rate of customs duty is levied as per the Customs Tariff Act, 1975, which is aligned with the Harmonized System of Nomenclature (HSN) followed internationally. Exemptions are available depending on the nature of goods, status of importer, country of import etc. Further with effect from 1 February 2018, Social Welfare Surcharge @ 10% on the aggregate duties of customs is levied at the time of import.

Stamp duty

It is duty imposed at state level on certain legal instruments and commercial transactions. The rate of stamp duties varies from state to state.

There may be other state level taxes that are not covered above.

Incentives and benefits

There are several schemes which grant incentives and other benefits to tax payers including:

- export promotion capital goods scheme – allows the import of capital goods on payment at a concessional rate of 5%, subject to fulfillment of export obligations. The Centre has modified existing export incentive schemes removing most exemptions provided on input taxes to align them with the Goods & Services Tax (GST) regime which has rolled in from 1st July 2018.
- advance license scheme – inputs required to manufacture export products may be imported without payment of customs duty
- duty drawback – Duty drawback means the refund of duty of customs and duty of central excise that are chargeable on imported and indigenous materials used in the manufacture of exported goods. Despite the rollout of GST, there are several blocked input taxes such as on transport fuels, electricity, stamp duties on immovable property, taxation from composition and unregistered dealer inputs. Duty drawback scheme at its present shape is a well settled scheme seamlessly reimbursing the tax incidence on input and input services
- input tax credit under GST regime – Input tax credit is the credit that the manufacturer/service provider receives for paying input taxes towards input goods and services used. Similarly, a dealer is entitled to input tax credit if he has purchased goods for resale. All dealers are liable for output tax on taxable sales done in the process of their business.

Also, units which undertake to export their entire production of goods and services may set up an Export Oriented Unit located in an electronic hardware technology park, a software technology park or a biotechnology park in India.

5. Indonesia

Country profile

| | |
|----------------------|--|
| Official name | Republic of Indonesia |
| Capital | Jakarta |
| Location | Southeast Asia Indian Ocean Between Malaysia and Australia |
| Area | 1,919,400 km ² 17,509 islands |
| Climate | Tropical with wet and dry seasons |
| Time zone | UTC +7 to +9 no DST |
| Population | ~238 million |
| Currency | Indonesian Rupiah IDR or Rp. |
| Language | Indonesian official English |
| Religion | 87% Moslem 10% Christianity 3% Hinduism 1% Buddhism |
| International | ASEAN East Asia Summit G-20 OIC |
| Government | Presidential republic |

Executive

The President of Indonesia is the head of state, commander-in-chief of the Indonesian National Armed Forces, and the director of domestic governance, policy-making, and foreign affairs. The president appoints a council of ministers, who is not required to be elected members of the legislature. The president may serve a maximum of two consecutive five-year terms.

Legislative

The highest representative body at national level is the People's Consultative Assembly (MPR). It supports and amends the constitution, inaugurates the president, and formalizes broad outlines of state policy. It has the power to impeach the President. The MPR consists of the 560-member People's Representative Council (DPR) and the 132-member Regional Representative Council (DPD). The DPR passes legislation and monitors the executive branch; party-aligned members are elected for five-year terms by proportional representation. The DPD is a new chamber for matters of regional management.

Judicial

At the top is the Supreme Court (*Mahkamah Agung*), which hears final cessation appeals and conducts case reviews. Below it is the High Court, which hears the appeals, and the State Court, which hears civil disputes. Other courts include the commercial court (insolvency), state administrative court (against the government), constitutional court, and religious (Moslem court based on *sharia* law).

| IMF Data | 2015 | 2016 | 2016 |
|-----------------------|-------|-------|-------|
| Real GDP USD billions | 872 | 932 | 1,015 |
| GDP per capita USD | 3,369 | 3,604 | 3,876 |
| Investments % GDP | 34.1% | 33.8% | 33.4% |
| Unemployment | 6.2% | 5.6% | 5.4% |
| Inflation, EoY | 3.4% | 3.0% | 3.6% |

Business entities

Indonesia's commercial sector recognizes three principal categories of business organizations:

Limited liability company or *Perseroan Terbatas* (PT)

The Law No. 40 of 2007 concerning Limited Liability Company or *Perseroan Terbatas* (PT) regulates the establishment of a PT, the most common form of business entity. Major characteristics include:

- the Articles of Association can specify limited period or unlimited period of operations
- two or more persons can establish a PT with a notarized deed written in Indonesian language
- the company becomes a legal entity after issuance of the Ministerial Decree
- capital must be at least IDR 50 million or IDR 10 billion for foreign investment (depending on whether capital intensive or not), with some exceptions by law, with at least 25% issued and paid-up in full
- shares must have Rupiah nominal value
- shares can be issued based on classifications, e.g. with or without voting rights
- the basic structure of a PT consists of Shareholders' Meeting, Directors, and the Board of Commissioners
- certain changes in a PT's Articles of Association, such as an increase or decrease in authorized and paid-up capital, must be approved by the Ministerial Decree
- the name of the company must begin with "*Perseroan Terbatas*" or the abbreviation "PT". Publicly-listed companies (*Perseroan Terbuka*) must add "Tbk." at the end of the company name
- the Directors consists of one or more members as appointed by the shareholders in their general meeting. Companies that engage in mobilizing public funds, issuing public shares, or issuing debt instruments must have at least two members. The same applied to the Board of Commissioners
- a company having its business activities based on the sharia principle must also have a *Sharia* Supervisory Board. The *Sharia* Supervisory Board is responsible for advising the Board of Directors and supervising company activities to comply with the *sharia* principle
- annual general meetings must be held within six months after the end of the accounting year
- foreign direct investments can only be made through a PT, including an incorporated joint venture.

Sole proprietorship

Sole proprietorship is generally owned by an individual and used in the informal sector. It does not require formal registration at Indonesian authorities.

Partnership

There are three types of partnership recognized by law as follows:

- Civil Partnership
Persekutuan Perdata (PP)
- Open Partnership
Firma (Fa)
- Limited Partnership
Commanditaire Vennootschap (CV)

The Indonesian Civil Code and the Indonesian Commercial Code govern all types of partnerships. Firma and CV are established by Deed of Establishment that need to be notarized and registered with the local court while PP are established privately or before a notary by the partners.

Accounting and auditing

Law No. 40 of 2007 requires an annual report to be presented in a general shareholders' meeting no later than six months after the accounting year end. The Board of Directors submits the annual report after it has been reviewed by the Board of Commissioners. It must contain financial statements, company activities, issues during the accounting year, and names, salary, and compensation of the Board of Directors and Board of Commissioners for the previous year.

For certain types of limited liability companies which are raising and managing public funds such as banks and financial institutions, publicly-listed companies, companies issuing debts to public, state-owned entities, and companies having assets and/or business of at least IDR 50 billion, their financial statements must be audited by an independent auditor selected in a general shareholders' meeting and prepared under generally accepted accounting principles in Indonesia (Indonesian FAS). Indonesian FAS has mostly converged with International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS).

After being approved by the shareholders, the audited financial statements of publicly-listed companies, companies issuing debts to public, and companies raising and managing public funds must be published and submitted to the Indonesian Financial Services Authority (or Otoritas Jasa Keuangan/ OJK) by 31 March every year. The OJK also issued regulations that have to be complied by those companies, such as the requirements and procedures for, e.g. issuing shares or bonds to public, entering transactions with related parties and transactions considering material. Banks (including publicly-listed banks) should also comply with Bank Indonesia (the central bank) Regulations in handling and reporting their banking transactions.

Finance and capital markets

Exchange controls

The Indonesian Rupiah (IDR) is generally freely convertible. However, taking IDR 100 million (or equivalent in foreign currency) or more outside Indonesia needs prior approval from Bank Indonesia, the central bank. Conversely, bringing IDR 100 million (or equivalent in foreign currency) or more into Indonesia is subject to Indonesian custom verification for authenticity of the money upon arrival. In addition, all Indonesian commercial banks must report their currency flow activities to BI, giving rise to transfers of financial assets and liabilities between residents and non-residents, including transfers of external assets and liabilities between residents.

To build international and national confidence in the Rupiah, the government has issued Law No. 7 of 2011 on Currency. The Rupiah must be used for all payment transactions, monetary obligation settlements, and other financial transactions in Indonesia except payments related to implementation of state budget and international commercial transactions.

Banking

The Banking Law of 1992, as amended in 1998, categorizes banks into two types: commercial banks and rural banks. The difference between commercial banks and rural banks pertains to the capitalization and restricted transactions. Some of transactions in rural banks are prohibited from accepting deposits in the form of demand deposit, conducting business in foreign exchange; conducting equity participation and conducting insurance business.

The Act No. 21 of 2008 has provided a more adequate legal base to the development of Islamic banking in Indonesia and consequently will accelerate the growth of the industry.

As of October 2011, BI recognizes 120 commercial banks and 1,837 rural banks in Indonesia, including state-owned and private banks. The two biggest banks by asset in Indonesia are state-owned banks.

Bank Indonesia

The Bank Indonesia (BI), the central bank on Indonesia, was created under the Central Bank Act, Law No. 23 of 1999 on Bank Indonesia, which has been amended with Law No.3/2004 on 15 January 2004. These laws establishes BI as an independent state institution, free from interference by the Government or any other external parties, which new tasks are to monitor and implement monetary policy, regulating a smooth payment system and financial system stability. The monitoring and supervision of banks were transferred to Indonesian Financial Services Authority or Otoritas Jasa Keuangan (OJK).

Indonesian Financial Services Authority or Otoritas Jasa Keuangan (OJK)

The OJK is an independent government agency, established in 2011, that has replaced the role of Bapepam-LK in regulating and supervising the capital market and financial institutions, and that of Bank Indonesia in regulating and supervising banks, and to protect consumers of financial services industry.

Bank secrecy

Banks are required to safeguard the secrecy of all customer information unless BI demands it, in writing, for tax and criminal proceedings.

Deposit insurance

The Indonesia Deposit Insurance Institution was formally established under Law No. 24 of 2004 as an independent institution that insures depositors' funds and actively maintains stability in the banking system. All deposits up to IDR 2 billion per customer for each bank must be insured. Each bank in Indonesia must become a member of the Indonesia Deposit Insurance Institutions and pay insurance premiums based on their deposits portfolio.

Capital market

Indonesia Stock Exchange (IDX)

IDX is based in Jakarta, Indonesia. It was previously known as the Jakarta Stock Exchange (JSX) before merging with Surabaya Stock Exchange (SSX) in 2007. At the end of 2017, the IDX had 566 listed companies with a combined market capitalization of USD 522 billion. The IDX also trades bonds (government and corporate) and warrants.

The Jakarta Composite Index (JKSE) and the Jakarta Islamic Index (JII) are the two primary stock market indices. The JKSE consists of all stocks of publicly-listed companies in Indonesia. The JII was established in 2002 to measure and benchmark market activities based on Sharia (Islamic law). About 30 stocks are listed in the JII.

Labor

Law No. 13 of 2003, the Labor Law, combines most labor laws and legislation into a single legal instrument while adding new provisions. This law gives emphasis on worker protection and labor welfare.

Employment relations

Employment can be made verbally and in writing. Normally, the work contract is put in writing to avoid legal question by parties. There are two types of contracts exist:

- A fixed contract is based on either a term or the completion of a certain job and must be written in Indonesian language. It can be made only for certain jobs (e.g. seasonal work and work to be completed at once) and can be renewed.
- A permanent contract can have a probation period of at most three months.

Wages and benefits

Minimum wage is set by the regional government of each province. The minimum wage in Jakarta is IDR 3.6 million (about USD 265) per month. Employees may receive an annual allowance equal to one month's salary. It is a mandatory allowance for workers in Indonesia to celebrate their religious holidays. The allowance must be paid one week before Lebaran for Moslems, before Christmas for Christians, before Nyepi for Hindus, and before Buddha's Enlightenment Day for Buddhists.

Other benefits

Employee and employer negotiations or collective bargaining determine other fringe benefits. These benefits may include family and cost-of-living allowances, free medical care (including dental care) for employees and their families, housing, transport, and work uniform. Many firms offer pension schemes. Senior executives often receive additional benefits such as a company car and annual home leave.



Social welfare obligation

The Indonesian government has introduced new social security schemes for employees, which are applicable for Indonesian nationals as well as foreigners, who work in Indonesia for at least six months. These schemes are the Manpower Scheme (BPJS Ketenagakerjaan) and Healthcare Scheme (BPJS Kesehatan).

Manpower scheme

Businesses employing employees must register with BPJS Manpower Agency, a government-run workers' insurance and social security fund. In general it continues the old worker's social security scheme (i.e. Jamsostek). BPJS manpower covers retirement at 55 years old, work accidents, old age savings, and death. The employer contributes 3.7% of salary for old age savings, from 0.24% to 1.74% for working accident protection and 0.3% for death insurance and 2% for pension. Employees only contribute 2% of their salaries for old age savings and 1% for pension.

Healthcare scheme

The healthcare scheme replaces the old healthcare scheme and will be fully mandatory by 1 January 2019. Small, medium, and large enterprises were required to register their employees to the Healthcare Scheme by 1 January 2015. The employer contributes 4% of salary while employee contributes from 0.5%-1%.

Working hours

Normal working hours are:

- seven hours per day, 40 hours per week, and six working days per week or
- eight hours per day, 40 hours per week, and five working days per week.

Employees must be given at least a thirty-minute break after working for four hours. The break is not included in working time.

Workers are entitled to overtime compensation when working in excess of the normal working hours or during formal public holidays.

Leave and break

- At least one rest day per week.
- At least 12 paid leaves per year.
- Three months of paid maternity leave, half before childbirth and half after.
- Ninety days of rest after a miscarriage with accompanying medical statement.
- Formal public holidays.
- Paid sick leaves.

Labor unions and collective labor agreement

Workers can form their own unions, which must have their own by-laws and manage their own budget.

Workers and employers can enter into a written Collective Labor Agreement and shall at least contain the following:

- Rights and obligations of the employer
- Rights and obligations of the union and workers
- The starting date and period of effect
- Signatures of all involved parties.

Employment termination

Before an employer terminates its worker, the employer must discuss or negotiate with the employee or existing labor union. If the negotiation fails, the employer may only terminate the employee after receiving a decision from the institution for the settlement of industrial relations disputes.

Upon termination, an employer must pay severance, gratuity and compensation based on equivalent number at of xx month's salary and every year of service, in accordance with the Labor Law. Other entitlements include cash payments for accrued annual leaves.

Employment of foreign workers

Normally, foreign employments are temporary and fall under four types: professionals, managers, supervisors, and technicians/operators.

Entities planning to hire foreigners must submit a Foreign Worker Utilization Plan (RPTKA) to the Ministry of Manpower and Transmigration. After approval, the Ministry will issue a work permit (KITAS card) subject to an annual fee. Indonesian counterpart must be employed for each expatriate employee to support transfer of knowledge and technology.

Taxation

The Directorate General of Taxation, under the Ministry of Finance, formulates and implements policies and technical standards for Indonesian taxation.

Corporate income tax

Companies are taxed based on residency:

Resident taxpayer

A company established or domiciled in Indonesia is taxed on its worldwide income, subject to tax credits for foreign income which has been subject to tax.

Non-resident taxpayer

A company incorporated outside Indonesia is taxed only on Indonesia-sourced income, subject to tax relief under the double taxation agreements. Non-resident taxpayers with permanent establishments (PE) in Indonesia (e.g. branch offices) are taxed on:

- the PE's income from its business, activities, and assets it owns and controls
- the head office's income from the sale of goods or services in Indonesia of the same type as those sold by the PE in Indonesia
- all other income received or accrued by the head office such as dividends, interest, royalties, rent, and other income connected with the use of property, fees for services, etc. of the PE in Indonesia.

A PE is generally defined as an operation where a non-resident establishes a fixed place of business in Indonesia, including a management location, a branch office, an office building, etc. A PE can also be established when the nonresident entity's employees provide services in Indonesia for more than 60 days in any 12-month period. If the home country has a Double Tax Agreement (DTA) with Indonesia, the definition can be slightly modified.

Taxpayers must prepay its income tax in monthly installments based on the previous year's tax assessment under Article 25 of the tax regulation. These installments are then deducted from year-end tax liability to calculate the final amount of tax payable after all creditable withholding taxes.

Each taxpayer is required to file the tax return and pay taxes based on a self-assessment system. An annual tax return must be submitted to the Tax Office at the end of the 4th month after accounting year-end. Consolidated returns are not allowed.

Income tax calculation

Income tax payable is calculated by multiplying taxable income by the corporate tax rate.

Income subject to tax

Taxable income is defined as assessable income less tax deductible expenses, whether originating from within or outside Indonesia, that may be used for consumption or to increase the taxpayer's wealth in whatever name and form.

Allowable tax deductions

Generally, taxpayers may deduct from gross income all expenses related to earning, securing, and collecting taxable income.

Major deductible expenses include:

- Costs related to business, such as:
 - costs of materials
 - employee wages and salaries
 - honoraria, bonuses, gratuities, and monetary remuneration
 - interest, rents and royalties
 - travel expenses
 - insurance premiums
 - advertisement and selling expenses subject to government regulation
 - administrative expenses
 - taxes other than income tax
- Capital losses
- Contributions to an approved pension fund
- Loss from the sale or transfer of properties owned and used in business or used for earning, collecting, and securing income
- Training expenses for employees

- Losses from foreign exchange
- Research and development costs in Indonesia
- Write-off of uncollectible debts subject to certain tax conditions
- Certain donations such as for national disaster, education facilities, social infrastructure, and sports enhancement subject to government regulations
- Depreciation and amortization (including intangible costs) with useful life longer than one year. Taxpayers can adopt either the straight-line or the double-declining balance method for depreciation (except buildings) and amortization and apply it consistently. The Tax Office must approve any changes in method. Special rules are applied to certain industries such as forestry, plantation and breeding.

The depreciation and amortization schedule is presented in the following table:

| Assets | Useful life (years) | Method of calculation | |
|---------------|---------------------|-----------------------|------------------|
| | | Straight-line | Double-declining |
| I. Buildings | | | |
| Permanent | 20 | 5% | |
| Non permanent | 10 | 10% | |
| II. Others | | | |
| Group 1 | 4 | 25% | 50% |
| Group 2 | 8 | 12.5% | 25% |
| Group 3 | 16 | 6.25% | 12.5% |
| Group 4 | 20 | 5% | 10% |

Corporate taxpayers can revalue their depreciable assets at market or fair value for tax purposes with approval from the Directorate of General Taxation (DGT) and compliance to specific conditions and requirements. Once approved by the DGT, the depreciation applied to depreciable assets must be based on the new tax book values and the new useful life. The excess of fair market value over the old tax book value of the revalued assets is subject to final income tax at 10%, and be paid in installments over 12 months, if taxpayer has financial difficulties. Also, there is a requirement that these revalued assets must be retained (i.e. not disposed of or transfer to) at certain period of time or else an additional final tax of 10% is imposed on the original revaluation gains subject to specific transfer exemptions.

Non-deductible items include:

- private expenses for the personal benefit of shareholders
- benefits-in-kind (e.g. housing and vehicles) provided to employees, except for the provision of food and beverages for all employees and benefits provided to employees in certain remote areas
- gifts and donations including “excessive” payments for goods or services where a special relationship is deemed to exist between the buyer and seller
- incurred expenses in producing income that is exempt from tax or subject to final tax
- tax penalties
- employer contributions to the life, health, and accident insurance and contributions to unapproved pension funds, unless the contributions are treated as part of the taxable income of employees
- expenses related to income taxed at a final rate, e.g. interest expense on loans related to time deposits
- expenses related to income exempt from tax, e.g. interest on loans used to buy shares where dividends are not subject to income tax
- salaries or compensation received by partnership or firm members whose participation is not divided into shares
- reserves or allowances except bad debt allowances for banks or finance leasing companies, reserves in insurance companies, and reserves for reclamation costs in the mining industry.

Loss carryovers

Fiscal losses can be carried forward for five years. In certain regions and business sectors, fiscal losses can be carried forward for ten years as part of investment incentives. Losses cannot be carried backwards.

Tax rate

The corporate tax rate is a flat rate of 25% of taxable income. However, small taxpayers with gross revenue of not more than IDR 50 billion can receive a 50% discount of the standard tax rate on the portion of taxable income up to IDR 4.8 billion of revenue.

Public companies can get a 5% tax reduction for any given year if:

- at least 40% of their shares are publicly owned
- the public should consist of at least 300 individual shareholders, each holding less than 5% of shares
- the above conditions must be maintained for at least six months in a taxable year.

Deemed profit margin

Businesses that have deemed profit margin for tax purposes are presented below.

| Business | Effective rate |
|--|----------------|
| Domestic shipping operations | 1.20% |
| Domestic airline operations | 1.80% |
| Foreign shipping and airline operations | 2.64% |
| Foreign oil and gas drilling | 3.75% |
| Certain Ministry of Trade representative offices | 0.25% |

Tax on oil, gas, and geothermal industries

For companies engaged in oil, gas, and geothermal projects, income tax depends on its production sharing contract (PSC), a cooperation contract between the holder of the contract and the government. The PSC overrides the Indonesian tax law. The tax law applies only on matters not mentioned in the PSC.

Oil and gas contractors are exempt from import duty, VAT, and luxury tax as of April 2014 under the Finance Ministry's new regulation, PMK 70 of 2013.

Tax on mining

The Mining Law states that general prevailing income tax laws/regulations will apply to mining projects, except specifically stated in the prevailing contract or if contract of work is expired, in the prevailing regulation (i.e. IUPK – Special Mining Operation License).

Tax on consolidation

Tax consolidation is not available in Indonesia.

Dividends and branch profit

Dividend received by a resident corporate taxpayer, including cooperatives and government-owned corporations, from an Indonesian company is subject to a 15% withholding tax, an advance income tax payment. Companies are exempt from withholding tax if:

- dividends are paid out of retained earnings
- the company receiving dividend owns at least 25% of the company paying out dividends.

Dividends received by partnership, CV, foundations and similar organizations are also subject to 15% withholding tax.

Dividend received by a non-resident taxpayer is subject to a 20% final withholding tax subject to tax treaty agreements.

Permanent establishments are subject to a 20% branch remittance tax on after-tax profits, subject to tax treaties. PEs are exempt from this tax if all profits are reinvested in Indonesia.

Transfer pricing

The tax rules require that related party transactions must be conducted in an arm's length principle. Thus, the tax authorities require specific transfer documentation to prove this arms length basis. Under the new tax rule, taxpayers under certain criteria should prepare transfer price documentations such as master file, local file, and country by country report. Also, certain specific disclosures are required in the corporate income tax return.

Individual income tax

Individuals are taxed based on residency:

Resident taxpayer

An individual living in Indonesia, staying in Indonesia for more than 183 days within any 12-month period, or intending to reside in Indonesia is taxed on worldwide income. Foreign tax credit imposed on foreign income can be credited to Indonesia tax due subject to domestic rule.

Non-resident taxpayer

An individual staying in Indonesia for fewer than 183 days with no intention to reside in the country is taxed only on Indonesia-sourced income.

Taxable income

For resident taxpayers, income tax payable is calculated by multiplying the net taxable income, minus deductions and reliefs, by the graduated tax rates.

Taxable income of resident individual taxpayers:

- Employment income (e.g. salary)
- Income from business or profession
- Passive income (e.g. interest and royalties)
- Capital gains.

Benefits-in-kind received by employees are neither taxable on the employee nor deductible for the employer.

Deductions and reliefs

Deductions are generally available for expenses incurred in generating income. Business expenses are generally the same for corporate deductible expenses.

Tax relief is also available for resident individuals as presented below.

| Basis of deduction | Deductions per year |
|--|--|
| Taxpayer | IDR 54,000,000 |
| Spouse | IDR 4,500,000 |
| Each dependent (max 3) | IDR 4,500,000 each |
| Occupational support | 5% of gross income, max of IDR 6,000,000 |
| Pension maintenance cost (pensioners) | 5% of gross income max of IDR 2,400,000 |
| Contribution to BPJS Manpower (2% of gross income) | Full amount |

Tax rates

| Taxable Income | Rate |
|---------------------------|------|
| First IDR 50 million | 5% |
| Next IDR 200 million | 15% |
| Next IDR 250 million | 25% |
| Exceeding IDR 500 million | 30% |

Under Article 21 of the Tax Law, employer must withhold income tax and pay the tax on the employees' behalf.

Non-resident taxpayers are subject to a withholding tax rate of 20% on Indonesia-sourced income, subject to tax treaty provisions.

Withholding taxes

| Income | Resident Art 4(2) – (Final)/Art 23 | | Non-resident (Article 26) |
|---|---------------------------------------|--|------------------------------|
| | Company | Individual | |
| Interest not from bank deposits | 15% | 20% | 20% |
| Interest from bank deposits | 20% | 20% | 20% |
| Dividends from Indonesian entities | 15% | 10% | 20% |
| Royalties | 15% | 15% | 20% |
| Technical and other professional services | 2% | Progressive rates | 20% |
| Rentals other than land and/or buildings | 2% | Progressive rates | 20% |
| Rentals of land and/or building | 10% | 10% | 20% |
| Construction services | 2-4% | 50% of gross income at progressive rates | – |
| Constructing planning or supervision services | 4-6% | 50% of gross income at progressive rates | – |
| Transfer of land and/or building | 5% | 5% | – |
| Sale of shares listed in the IDX | 0.1% | 0.1% | 0.1% |
| Transfer of unlisted shares | 5% | 5% | 5% |
| Sale of shares listed in the IDX | 0.1% | 0.1% | 0.1% |
| Transfer of unlisted shares | 5% | 5% | 5% |

Non-residents can get a lower tax rate through tax treaties.

Withholding tax on certain purchases and sales

Payments of purchases and sales for certain goods are subject to withholding tax under Article 22 of the Tax Code. Withholding tax rates range from 0.3% – 7.5% of selling price depending on nature of purchase or sale transactions.

These include import of goods using Importer Identification Number, auctioned imported goods, sale of goods to government, sale of goods to state-owned enterprises, purchase of oil fuel by state-owned or private gas stations, purchase of very luxurious goods and others, and purchase of automotive products, pharmaceutical products, paper products, and steel by local distributors.

Value added tax

Value Added Tax (VAT) is rendered on the transfer of taxable goods, provision of taxable services, and importation of capital goods and services. The VAT rate is typically 10%, but some items may be taxed at 5% or 15% according to government regulation. Export is fixed at 0%, with some limits on the export of services.

VAT payables are settled by output-input mechanism. Net output payables should be settled in the following month while net input (overpaid VAT) can be carried to the following month or can be refunded at the end of the year.

Some goods are not subject to VAT:

- Mining or drilling products extracted directly from the source (e.g. crude oil, natural gas, sand and gravel, iron ore, copper ore, etc.)
- Basic commodities such as rice, salt, and corn
- Money, gold bars, and securities.

Some services are not subject VAT:

- Medical health services
- Social services
- Financial services
- Insurance services
- Religious and educational services
- Broadcasting services
- Public transportation
- Manpower services
- Hotel services
- Public services provided by the government
- Parking area services
- Food or catering services.

Inheritance and gift tax

Indonesia does not levy inheritance or gift tax.

Stamp duty

Stamp duty is a flat IDR 3,000 or IDR 6,000 for agreements, notarized deeds, and other civil documents.

Luxury-goods sales tax

The importer or the resident manufacturer of certain goods may be subject to Luxury-Goods Sales Tax (LST). The list of goods subject to LST and the tax rates can be found in the Customs Book using the harmonized system code. The LST rate currently ranges from 10% to 125% and may be increased to 200% depending on government regulation.

Examples of luxury goods:

- Luxury residences such as luxury houses, apartments, condominiums, townhouses, etc.
- Perfumes
- Photographic and cinematographic devices
- Household appliances
- Ships or other water vehicles including cruisers
- Musical instruments
- Alcoholic beverages
- Articles made of precious metal or
- Footwear
- Carpets, including made of fine animal hair
- Commercial or state air transport
- Vehicles depending on their types, motor engine, and cylinder capacity.



Land and building tax

Land and building tax is payable annually on land, buildings, and permanent structures at no more than 0.5% of the sale value of the property as determined by the Tax Office.

Duty on the acquisition of land and building rights

Taxpayers who acquire rights on lands and buildings get final taxed at 2.5% of acquisition value minus a maximum threshold of IDR 60 million depending on the region, except for inheritance of which amount will depend on the region.

Import and excise taxes

Any goods coming from outside Indonesia through customs are considered imports and are generally subject to import duty and taxes. An importer must register with the Ministry of Trade to obtain an Import Identification Number and with the Directorate General of Customs and Excise to obtain a Customs Identification Number.

Tariff rates range from 0% to 40% calculated using CIF (Cost, Insurance, and Freight). Preferential tariff rates are extended to countries that have signed trade and economic agreements with Indonesia. Imports from these countries gain tax or exemption.

Certain alcohol and tobacco products are subject to excise tax of 275% on CIF value and duty. Excise can also be applied per measurement unit based on the manufacturers' total production volume.

Tax treaties

| | | | | | |
|------------|-----------|-------------|------------------|--------------|----------------------|
| Algeria | Denmark | Jordan | New Zealand | Singapore | Thailand |
| Armenia | Egypt | North Korea | Norway | Slovakia | Tunisia |
| Australia | Finland | South Korea | Pakistan | South Africa | Turkey |
| Austria | France | Kuwait | Papua New Guinea | Spain | Ukraine |
| Bangladesh | Germany | Laos | Philippines | Sri Lanka | United Arab Emirates |
| Belgium | Hong Kong | Luxembourg | Poland | Sudan | United Kingdom |
| Brunei | Hungary | Malaysia | Portugal | Suriname | United States |
| Bulgaria | India | Mexico | Qatar | Sweden | Uzbekistan |
| Canada | Iran | Mongolia | Romania | Switzerland | Venezuela |
| China | Italy | Morocco | Russia | Syria | Vietnam |
| Croatia | Japan | Netherlands | Seychelles | Taiwan | Zimbabwe |
| Czech | | | | | |

Investment

The Investment Law No. 25 of 2007 governs investments in any sector within Indonesia. It provides:

- same treatment for domestic and foreign investors
- protection for micro-, small-, and medium-sized enterprises
- service and/or licensing convenience through a one-stop integrated service for land rights, immigration, and imports
- investment incentives subject to specific conditions.
- the Investment Coordinating Board or Badan Koordinasi Penanaman Modal (BKPM).

The Investment Coordinating Board or *Badan Koordinasi Penanaman Modal* (BKPM)

The Investment Coordinating Board implements laws on foreign and domestic investment. It directly reports to the President.

These sectors are open to investment with conditions on foreign ownership, business size, special license requirements, and locations:

- Agriculture
- Banking
- Culture and tourism
- Defense
- Education
- Energy and mineral resources
- Finance
- Forestry
- Health
- Industrial
- Manpower
- Public works
- Trade
- Transportation.

Investment incentives

Indonesia offers incentives under certain conditions such as located in rural or border regions, employing a large workforce, or undertaking research and development.

Non-tax incentives

Export incentives or guarantees

The Indonesian Law No. 2 of 2009 established the Indonesia Eximbank (or Lembaga Pembiayaan Ekspor Indonesia) that regulates and promotes the granting of financing facilities:

- Financing in the form of working capital and/or investment financing
- Guarantees for:
 - Indonesian exporters receiving payment from overseas buyers
 - Overseas Indonesian importers giving payment to Indonesian exporters
 - Banks that offer financing to Indonesian exporters
 - Tender purposes for projects fully or partially supporting exports
- Insurance for:
 - Export performance risk
 - Non-payment risk
 - Overseas investment risk for Indonesian companies
 - Political risk in the export destination.

Bonded zones

Industrial companies in designated bonded zones are not required to apply for additional implementation licenses (location, construction, nuisance act permits, and land titles). Companies may also lend machinery and equipment to subcontractors outside the zone for up to two years. The companies are also exempt from paying VAT and sales tax on luxury goods on the delivery of products for further processing outside of bonded zones.

Tax incentives

Investment law

The Investment Law offers tax incentives to investors who are new, expanding production by at least 30%, or diversifying into new products. They can be granted relief from duties on the importation of:

- capital goods (machinery, equipment, spare parts, and auxiliary equipments) for two years
- raw materials and manufacturing components for two years of production. Car and motorcycle assembly (except for components) does not qualify for this incentive.

Bonded zone

Companies with a bonded-zone status may qualify for certain tax breaks such as:

- postponement of import duties (normally 0% to 150% of the customs value) on capital goods and raw materials
- exemption from the 10% VAT and luxury tax (ranging between 10%-75% imposed at point of import or manufacture) on materials purchased domestically for use in manufacturing
- exemption from prepaid income tax on importation of capital goods and other equipment directly related to production
- exemption from paying VAT and luxury tax for the delivery of products to subcontractors for further processing outside of bonded zones.

Export-oriented company

Instead of obtaining a bonded-zone status, export-oriented companies can be registered as Kemudahan Impor Tujuan Ekspor or KITE. Importation of goods that will be processed, assembled, or affixed to other goods for further exportation can enjoy:

- postponement of import duty and excise
- non-collection of VAT and luxury tax.

Designated regions

Investors in designated regions (including the 25 Integrated Economic and Development Zones or NEDZ) may apply for income tax facilities such as:

- a reduction in taxable income up to 30% of the total capital investment spread over six years
- accelerated depreciation and amortization
- loss carry-forward for five years with possible extension of up to five additional years, depending on the type of investment
- a 10% income tax on dividends paid to non-resident taxpayers (possibly lower if stipulated in the provisions of an existing tax treaty).

Free trade zones

Goods entering or delivered among companies within designated Free Trade Zones in Batam, Bintan and Karimunjawa can get exemptions from:

- import duty and excise tax
- VAT, luxury tax, and import prepaid tax.

Tax holiday for pioneer industries

New companies in pioneer industries can get income tax relief or reduction for five to ten years from the start of commercial operation, followed by a 50% tax reduction for two years. The criteria include:

- a new investment plan approved by BKPM with a minimum investment of IDR one trillion
- placing at least 10% (ten percent) of the total capital investment in Indonesian banks without withdrawing it before capital investment realization
- operating in a pioneer industry such as:
 - basic metals
 - oil refinery and/or basic organic chemicals from oil and natural gas
 - machinery
 - renewable resources
 - communication devices.

Real estate ownership

Under the National Agrarian Law, the government grants several kinds of rights to citizens and corporations depending on the type of land right.

Right of ownership or *Hak Milik*

Hak Milik is the most complete form of land ownership granted only to Indonesian citizens. Subject to zoning restrictions, the holder can use the land for any purpose. The title has no time limit and may be sold, gifted, exchanged, and bequeathed.

Right of exploitation or *Hak Guna Usaha* (HGU)

HGU is the right to cultivate State land, typically used for agricultural projects such as plantations, fisheries, and cattle ranches. The owner can construct buildings and structures related to such agricultural uses. Corporations and Indonesian citizens can own an HGU up to 35 years (can be extended for another 25 years). This right can be sold, gifted, exchanged, bequeathed, and/or encumbered.

Right of building or *Hak Guna Bangunan* (HGB)

HGB is the right to build and own buildings, used for residential, commercial, and industrial properties. It lasts up to 30 years and can be extended for another 20 years. HGB can be sold, gifted, exchanged, bequeathed, and/or encumbered.

Right of use or *Hak Pakai* (HP)

HP is the right to use and/or collect the product from land owned by the State or by other persons. This right can be granted for a certain period of time as long as the land is utilized for a specific purpose. Both foreign and domestic entities can get an HP.

Right of lease or *Hak Sewa* (HS)

HS is the right to use land for buildings by paying its owner some rent. Both domestic and foreign entities can get an HS.

Right of opening-up land and right of collecting forest product or *Hak Membuka Tanah and Hak Memungut Hasil Hutan*

They are used to collect forest products legally and are granted only to Indonesian citizens.

Foreign property ownership

HGU, HGB, and HP can be granted to foreign companies and joint-venture companies registered under the Investment Law. The Investment Law can grant the combined duration of land right, its extension, and its renewal upon request:

- HGU of 95 years
- HGB of 80 years
- HP of 70 years.

Individual foreigners who can benefit national development, reside in Indonesia, and have proper immigration documents may purchase the following real estate properties in Indonesia using HP:

- Non-subsidized housing
- Strata-titled condominium unit
- Vacant land.

Intellectual property rights protection

Indonesia has signed numerous international property rights agreements including WIPO, TRIPS, and Hague Convention for Designs. The Directorate General of Intellectual Property administers and registers rights. Patents have to be registered while other forms of intellectual property are automatically protected by law.

Patent

The Patents Law of 2001 recognizes patents with 20 year-terms and 10-year terms, which can be extended. The latter is used for less inventive products. Patent rights can be transferred through inheritance, grant, written agreement, etc.

Industrial design rights

The Industrial Design Law of 2000 protects industrial designs for 10 years after date of filing.

Trademarks

The Marks Law of 2001 protects registered trademarks for 10 years and can be extended indefinitely. A trademark can be scrapped if not used for three years.

Copyright

The Copyright Law of 2002 protects published works (literature, computer programs, cinematography, and photography) for 50 years after date of publication. All other copyrighted works are protected for 50 years after the last author's death.

Trade secret

The Trade Secret Law of 2000 makes the divulging of trade secrets by a licensee a criminal offense. Trade secrets include information (e.g. methods of production, methods of processing, selling, etc.) with economic value in business and technology that are kept confidential by the owner.

Other laws of intellectual property

In addition, Indonesia has the Protection for Plant Varieties Law of 2000 and the Protection of Layout-Designs of Integrated Circuits Law of 2000.

Trade agreements

As a member of ASEAN, Indonesia follows these free trade agreements:

- ASEAN – Australia New Zealand
- ASEAN – China
- ASEAN – India
- ASEAN – Japan
- ASEAN – Korea

Other trade agreements with specific countries:

- Japan
- Pakistan
- Group of eight developing countries.

6. Japan

Country profile

| | | |
|----------------------|--|--|
| Official name | Japan | |
| Capital | Tokyo | |
| Location | Northeast Asia Sea of Japan and Pacific Ocean | |
| Area | ~380,000 km ² 4 major islands 6,000 small islands | |
| Climate | 5.1° C winter North: cold West: humid | 25.2° C summer South: tropical East: temperate |
| Time zone | UTC +9 no DST | |
| Population | ~127 million | |
| Currency | Japanese Yen – JPY, ¥ | |
| Language | Japanese | official |
| International | G8 APEC | ASEAN Plus Three |
| Government | Constitutional monarchy | |

The government of Japan is headed by the Emperor, whose power is limited by Japan's 1947 Constitution. His role is relegated primarily to ceremonial duties.

Executive

The chief of the executive branch is the Prime Minister, as appointed by the Emperor and directed by the Diet. The Prime Minister organizes and is assisted by a Cabinet. The majority of Cabinet members are from the Diet.

Legislative

Japan's legislative branch, the National Diet, consists of two houses: the House of Representatives (Shugi-in) and the House of Councilors (Sangi-in). Both houses of the Diet are directly elected through general election. The Diet can table and pass Bills. If voted down by the House of Councilors, the House of Representatives can override the decision of the other chamber. The members of both houses (242 Councilors with six-year terms and 480 Representatives with four-year terms) are elected by a combination of proportional representation and prefectural constituencies. 96 Councilors and 180 Representatives are elected by proportional representation while the rest by district (47 prefectures and 300 single-seat electoral districts, respectively).

Judicial

The Supreme Court is appointed by the Cabinet. The Supreme Court manages and oversees the legal system of lesser courts: High Courts, District Courts, Family Courts, and Summary Courts.

| IMF Data | 2015 | 2016 | 2017 Est |
|------------------------------|--------|--------|----------|
| Real GDP USD billions | 5,118 | 5,237 | 5,420 |
| GDP per capita USD | 34,493 | 38,883 | 38,550 |
| Investments % GDP | 22.0% | 21.5% | 21.6% |
| Unemployment | 3.5% | 3.1% | 2.8% |
| Inflation | 0.1% | 0.3% | 0.1% |

Business entities

Corporations

Joint stock company

Kabushiki Kaisha (KK)

KK is a limited stock corporation, meaning its shareholders are liable up to their capital contribution. Certain regulated activities (such as pharmaceuticals, securities, and telecommunications) can only be performed by a KK. The business community views KK as the most stable and prestigious form of establishment.

KK can be incorporated with capital as low as JPY 1 plus incorporation taxes and fees, typically around JPY 600,000 to JPY 1 million. However, corporations with under JPY 3 million in assets cannot issue dividends.

At least one entity, whether individual or corporate, must be involved in the formation of a KK.

Under present law, a KK must have at least one director. It may have an audit committee and a board of directors. Directors have a statutory term of office of up to ten years while audit committee members have a term of four years. At least one director is designated as a representative director. The representative holds the corporate seal, is empowered to represent the company in transactions, and is liable for damages from his/her own gross negligence or willful misconduct. The representative director must "report" to the board of directors periodically.

Limited Liability Company

Godo Kaisha (GK)

GK is modeled after the American limited liability company (LLC). GK are typically used for joint ventures between a domestic and a foreign entity. US corporations prefer GK because, under US tax law, they become eligible for pass-through taxation.

A GK is formed by Articles of Incorporation signed by up to 50 investors, called members (similar to KK's shareholders). Each member may provide a capital contribution in money or property.

Following ratification of the agreement, the GK's Articles of Incorporation and corporate seal must be registered with the Legal Affairs Bureau. Once the bureau processes the registration, the company may open a bank account, seal contracts, and engage in other activities as a legal entity.

Only investors can take part in company management. All, some, or a single member(s) can be designated as a manager(s) representing the company. If the manager is a corporation, it must appoint a functional manager, who can be an independent third party if specified under its articles of incorporation. The legal duties and personal liabilities of GK managers are very similar to those of KK directors'.

Partnership company***Gomei Kaisha (GNK)***

In GNK, all partners are jointly and severally liable for any liability incurred by the partnership, similar to a general partnership. The partners' liability is unlimited; creditors can go after each partner's personal assets if the assets of the partnership are insufficient to meet the obligations.

Limited liability partnership company***Goshi Kaisha (GSK)***

In GSK, partners are either:

- general partners with unlimited liability similar to a partner in a general partnership or
- limited partners who have limited liability only up to the amount invested in the partnership.

All partners are still directly liable to creditors of the partnership. Therefore, partners can still be sued individually (direct liability).

Partnerships**General partnership*****Nin-i Kumiai (NK)***

NK is formed when partners jointly invest and carry on a business. They are each personally liable, jointly and severally, for business debts, taxes, etc. (unlimited liability) and their personal assets can be liquidated. Partnerships do not need to be registered and do not have limitations as to what kind of business it can perform.

Investment limited partnership***Toshi Jigyo Yugen Sekinin Kumiai (TYSK)***

A TYSK adopts most provisions of civil law but provides limited liability for certain partners. General partners have unlimited liability and are responsible for managing daily operations. This partnership needs to be registered with the Legal Affairs Bureau.

Limited liability partnership***Yugen Sekinin Jigyo Kumiai (YSJK)***

YSJK was introduced in Japan under the Limited Liability Partnership Act of 2005. YSJK can be formed for any purpose with JPY 2 million in capital, although, the purpose must be clearly stated in the partnership agreement and cannot be general. It is typically used for joint ventures in specific projects, such as consulting or design.

Silent partnership***Tokumei Kumiai (TK)***

A TK is a Japanese bilateral contract governed by the Commercial Code of Japan, Article 535 et seq. Under this arrangement, silent (or anonymous) partners invest in a venture where a manager or operator agrees to operate the business on behalf of itself and the silent partners. By law, the partnership itself has no legal personality. The manager owns all assets while the silent partners have a right to a share of the profits as stated in the partnership agreement. Silent partners have limited liability for the partnership's debts, provided that they are anonymous or silent. If silent partners allow their names to be used in the name of the manager or in the name of the partnership, the silent partners lose their limited liability. TK are often used for investment funds.

Sole Proprietorship

Sole proprietorship is commonly used in small shops or businesses by individual businessman.

Foreign investment

The most common entities for foreign investment include representative offices, branches, joint ventures, limited liability companies, general partnerships, and silent partnerships.

Representative office (RO)

Representative offices (ROs) are easy to create but are limited to certain activities before making the more permanent commitment involved in a branch or subsidiary. ROs need to legally register for payroll and social insurance purposes only if employees receive remuneration paid into a Japanese bank account.

ROs cannot participate in sales activities but can supply information to distributors, communicate prices and terms of sale, and identify potential sales opportunities. They can also purchase and store assets, as well as provide auxiliary services such as advertising, information gathering, and market research. While ROs are not taxed, breaching these activity limitations may subject them to full Japanese taxation.

Since ROs are fully controlled by their parent companies, they do not need to follow local management, shareholding, bookkeeping, or audit requirements. However, if an RO claims input tax credits, it is required to keep books and records for consumption tax purposes.

Branch office

Foreign companies who wish to engage in sales activities can incorporate a branch office. The company must appoint a representative, who is a Japanese resident, and register as the branch of a foreign company under the Corporate Law, followed by securing an office location before it can begin business activities.

A branch office does not have a separate legal corporate status from its parent company. The parent company is therefore liable for all debts and credits of its Japanese branch offices. However, a branch office can open bank accounts and lease real estate under its own name.

Because a branch office is regarded as the same entity as its head office, it is only taxed on Japan-sourced income. However, no Japanese withholding income tax is applicable to the remittance of branch profits to its head office and no additional tax on undistributed profits is imposed. On the contrary, per capita inhabitant tax (see discussion on income tax) is assessed on the share capital of the head office, thus, leading to a higher assessment.

The registration process of a branch office is similar to the registration process for transfer pricing.

Accounting and auditing

Companies incorporated under KK are required to maintain accounting records (general and subsidiary ledgers, accounting journals, etc.) and supporting transaction documents for ten years while those incorporated under GK are required to maintain them for seven years. The accounting records can be maintained basically in Japanese language and in Japanese yen.

Japanese laws require companies to prepare annual financial statements according to the JGAAP issued by the Accounting Standards Board of Japan. Financial statements must include the balance sheet, statement of income, and statement of changes in net assets. Listed companies must also prepare statements of cash flows and consolidated financial statements (if applicable). The Financial Instruments and Exchange Law requires listed companies to prepare quarterly and annual financial statements.

Financial statements issued by large companies (with capital of JPY 500 million or more, or with total liabilities of JPY 20 billion or more) and listed companies must be audited by independent auditors, either certified public accountants or audit corporations registered in Japan. Other entities are generally not required to be audited.

Finance and capital markets

Exchange control

There are no currency exchange controls in Japan, however, some transactions have to be reported to applicable government agencies.

Banking

Bank of Japan

The Bank of Japan is Japan's central bank formed under the Bank of Japan Act. It strives to enhance general activities through implementation of monetary policy and achieving price and financial stability in Japan.

Private financial institutions

Private banking in Japan consists of mega banks, money center banks, regional banks, and foreign banks. Foreign banks operate in financial groups, commercial banks, and representative offices. Some of the largest banks in the world are Japanese mega banks.

Other government financial institutions

A group of government financial institutions parallel the private banking sector. They promote the growth of specialized domestic sectors using deposits collected by Japan's postal savings system. The postal savings system, through its thousands of post offices, accepts funds including savings, annuities, and insurance. The post offices offer the highest interest rates for regular savings accounts and tax-free savings, thereby collecting more deposits and accounts than any other institution in the world. Two of the biggest are Japan Finance Corporation and Japan Bank for International Cooperation.

Japan Finance Corporation

Japan Finance Corporation (JFC) is a policy-based public financial institution wholly-owned by the Japanese government. It complements financial activities carried out by private financial institutions, contributes to the development of the economy and Japanese living standard, and supports the local and regional economies, business growth of customers, and the globalization of Small and Medium Enterprises.

The JFC facilitates crisis responses and specific businesses promotions. It can provide credit to designated financial institutions in cases of domestic or international financial disorder, large-scale natural disasters, and other similar events. It can also provide loans to designated financial institutions based on the Low Carbon Investment Promotion Act and the Industrial Revitalization Act.

Japan Bank for International Cooperation

The Japan Bank for International Cooperation (JBIC) is Japan's financial institution and export credit agency. JBIC is the international wing of JFC; its budget and operations are regulated by the JBIC law. It is headquartered in Tokyo and operates in 16 countries with 18 offices. By providing resources to foreign investments and by fostering international commerce, the JBIC boosts Japanese exports and imports as well as Japan's overseas activities.

JBIC mainly has two independent ways of extending loans: international financial operations (IFOs) and official development assistance (ODA) economic operations. The IFOs include loans and equity participation in overseas projects of Japanese corporations. The ODA operations provide long-term and low-interest loans to important projects that develop social structure and infrastructure, mainly in Asian developing countries.

Capital market

Securities exchanges

The Tokyo Stock Exchange (TSX) and the Osaka Securities Exchange (OSX) allow domestic or international companies to raise capital by selling shares, bonds, and other financial instruments to the investing public. TSX is the third largest stock exchange in the world by market capitalization. Both trade the following marketable securities:

- Domestic and international stocks
- Derivatives, futures, and options
- Exchange Traded Funds (ETF) and Exchange Traded Notes (ETN)
- Real Estate Investment Trust (REIT)
- Bonds
- Carbon emission permits
- Pro-Markets and Pro-Bonds.



Labor

The Constitution of Japan framed Japanese laws with regards to the employer and employee relationship. As such, numerous laws regulate the employment environment in Japan.

Labor standards law (LSL)

The LSL stipulates the rights and obligations of employers and employees in relation to labor.

Labor contracts

Employers with more than ten employees must clearly set out formal work rules, including terms and conditions of work, hours, pay rates, promotion, retirement, and dismissal of the employee. A copy of the rules must be submitted to the Labor Standard Office.

Term and Termination

A fixed-term employment contract is generally limited to one year, with some exceptions. Tenured employees use age of retirement instead of a specific contract period. An employee can resign at any time with two weeks' notice. However, employee dismissal is more difficult since employers need a reasonable and socially-acceptable reason. To fire an employee, the employer must provide 30 days' advance notice or a full month's salary. Firing is specifically prohibited during:

- maternity leave of a female employee, and for 30 days afterward
- hospitalization of an employee following job-related illness or injury, and for 30 days afterward.

Pay and working hours

Minimum wage varies between regions, taking into account the local cost of living. Salary is usually through electronic fund transfer at dates specified in the contract. The maximum standard pay period is one month although bonuses and other supplemental payments may be paid at longer intervals.

The maximum full-time working hours in Japan is eight hours per day and forty hours per week. Employees are entitled to one weekly holiday or four holidays in one month. Work in excess of this is considered overtime with a wage premium. Employees must provide a 45-minute break for a six-hour work period and a one-hour break in an eight-hour work period.

Leave benefits

The LSL prescribes minimum periods of paid annual leave based on an employee's seniority. Ten days of annual leave must be allowed following the employee's first six months of service.

The minimum amount of annual leave increases each year thereafter following a fixed schedule (as per the contract). Other forms of unpaid leaves are also provided by law such as maternity, child care, family care and nursing leave.

Prohibiting discrimination

The LSL prohibits discrimination based on gender, ethnicity, nationality, or religion in respect to wages, working hours, or other working conditions. In addition, the Trade Union Law prohibits discrimination against people who join or attempt to join a union, or who participate in union activities.

Trade unions

The Trade Union Law (TUL) of Japan protects the workers' right to organize and bargain collectively as embodied in the Constitution. The TUL regulates the election of union representatives to negotiate working conditions, the promotion of collective bargaining, and the procedures for concluding collective agreements.

Social welfare programs

Health insurance

The Health Care Act regulates Japan's health insurance. All residents and their dependents must subscribe to either the Employees' Health Insurance (EHI) or the National Health Insurance (NHI). Insurance benefits include medical and dental care, childbirth allowance, funeral allowance, hospitalization and other medical expenses, etc. Insurance premium, whether borne solely by the employer or shared with the employee, depends on the type of insurance program, although it typically falls around 10% of salary.

Employees' health insurance

Most employers participate in EHI, which may include compensation for lost wages because of maternity leave or non-work-related illness or injury. Employers with more than 700 employees or trades and professions with more than 3,000 participants can organize their own insurance plans if the benefits exceed NHI's. Usually, insurance contributions are shared equally, where the employee's half is deducted from salary. Insurance associations under EHI include:

- union managed health insurance
- government managed health insurance
- workers mutual aid association insurance
- private school teachers' and employees' mutual aid association insurance.

National health insurance

Those not eligible for EHI can enroll in the NHI, which is run by municipal governments. Typically, the unemployed, self-employed, or employees of small companies are registered under this insurance. The head of household pays for the insurance premium with a maximum ceiling based on the resident tax charged by the municipal government.

Nursing care insurance

Residents above 65 years old covered under NHI and employees above 40 years old covered under EHI are eligible for Nursing Care Insurance (NCI). NCI provides for nursing care related to age-related illnesses. For EHI subscribers, the premium is split between the employer and employee.

Latter-stage elderly healthcare insurance

Insurance for people aged 75 years old are automatically switched to the Latter-Stage Elderly Healthcare Insurance (LEHI). Benefits include payment reductions for healthcare services and funeral expense allowance. The premium is calculated based on the income structure of the family.

Childcare allowance support

In an effort to increase the birthrate amidst an aging population, low-income families can receive childcare support if they bear children. The employer pays for the premium (0.29% of salary).

Workers' accident compensation insurance

Employers must insure all employees under the Workers' Accident Compensation Insurance (WACI). WACI provides benefits for work-related illnesses and injuries, such as full medical expenses coverage, compensation for lost wages, and lump-sum or annual payments for permanently disabled employees. The premium is based on the salary of the employee and is borne solely by the employer. The premium can range from 0.25% to 8.8%.

Employment insurance

Employers must enroll all their employees in the Employment Insurance (EI), which provides unemployment benefits. Depending on the reason for unemployment and the length of service with the previous employer, benefits can represent up to 80% of the previous salary. The premium of 0.9% of total compensation is split between employee (0.3%) and employer (0.6%).

Welfare pension insurance

All residents, whether Japanese or foreign, must enroll in the Welfare Pension Insurance (WPI) as regulated by the National Pension Act. The contribution, 18.30% of salary up to a cap, is split evenly between employer and employee. Benefits include:

- pension benefits for people above 65 years old who have contributed to the pension plan for at least 25 years
- disability benefits due to non-work related injury or sickness, depending on severity
- survivor benefits paid to qualified dependents if the insured person dies.

Private pensions

Corporate pensions are set up by a company or a group of companies as either a Defined Benefit Pension Plan (DB) or a Defined Contribution Pension Plan (DC). The consent of the labor union's or employee's representative is required. They cover national pension requirements plus the corporate sponsor benefits.

With DB, the employers' board of directors and the assembly of delegates establish a corporate pension fund to administer the plan.

With DC, the employer makes contributions to each employee's DC account every month. Unlike DB plans, employees make investment orders by themselves and bear the investment risk. If an employer adopts a DC type plan as its primary pension plan, its employees' benefits might be insufficient for their retirement – in the worst case scenario, the value will be nil.

International social security agreements

With globalization, many people work abroad or live abroad after retirement. When living overseas, people occasionally pay social security contributions to both the country of residence and the country of citizenship. In addition, different countries have different eligibility requirements for pension benefits, which may render a person eligible in one country and not the other. International social security agreements were created to eliminate both of these problems. So far, Japan has agreements with these countries:

| | | | | |
|-----------|----------------|------------|------------------|----------------|
| Australia | Czech Republic | India | Netherlands | Spain |
| Belgium | France | Ireland | Philippines* | Switzerland |
| Brazil | Germany | Italy* | Slovak Republic* | United Kingdom |
| Canada | Hungary | Luxembourg | South Korea | United States |

*Signed but awaiting implementation

Foreign workers

Traditionally, Japan has had strict laws regarding the employment of foreigners. Exceptions were made for certain occupational categories such as executives and managers engaged in commercial activities, full-time scholars associated with research and education institutions, professional entertainers, engineers and others specializing in advanced technology, foreign-language teachers, and others with special skills unavailable among Japanese nationals.

Foreigners who wish to work in Japan must attain work visa from a Japanese embassy or consulate outside of Japan. Most permits are valid for one, three or five years except for entertainer permits (valid for three, six, or 12 months) and diplomatic/NGO permits (valid for duration of post). An employer is generally necessary to serve as the applicant's guarantor; after landing, the applicant may work for any employer within the scope and duration of their landing permission.

Taxation

Taxation in Japan is governed by the Corporation Tax Law and nationally administered by the National Tax Administration Agency. Japanese taxation is based on a self-assessment system: calculate taxable income, file returns, and pay taxes due. The district tax authorities handle the tax collection and tax audits. High penalties are imposed for tax evasion.

The municipal and prefectural governments impose their own taxation system based on their local by-laws. In general, the tax base used in the calculation is consistent with the one used for national tax.

Income tax

Scope of tax

Individuals and corporations engaged in economic activities in Japan are subject to taxes in Japan on the income generated by such activities. For certain taxpayers, worldwide income regardless of locations of the source of income is subject to income tax.

The Corporation Tax Law has enumerated the following specific domestic source income subject to income tax in Japan:

- Business profit under a partnership contract
- Consideration for the transfer of land, building, or auxiliary equipment located in Japan
- Consideration for personal services
- Consideration for real estate or quarrying rights
- Consideration for lease of real estate, mines, vessels, or aircrafts to a domestic corporation
- Interest income from Japanese government and local company bonds
- Dividend income from a domestic corporation
- Distribution of profit from a jointly managed money or bond investment trust
- Interest income from a loan
- Royalties from the transfer of technical rights, copyrights, publishing rights, and related rights
- Rental of movable assets
- Money or items awarded for advertising business in Japan
- Salary, compensation, wages, and the likes for personal services carried out in Japan
- Pensions received from life insurance contracts, casualty insurance contracts, and other such arrangements executed in Japan
- Compensation money for benefits from installment deposits paid under agreements executed with business offices in Japan
- Distribution of profits received under any silent partnership contract
- Distribution of profits from foreign special purpose trust or distribution of revenue from foreign special investment trusts
- Monetary awards from deposit offering awards which are deposited in Japan.

Taxpayers who conduct business activities can choose to file the “blue form” or the “white form”. The blue form offers special depreciation allowances, loss carryovers, and certain tax credits. However, the taxpayer has to continuously maintain accounting books and records. Generally, the blue form is more advantageous.

Companies in the same group may file a consolidated tax return if approved by the tax authority. It may be revoked only with the approval of the same authority. Consolidated tax return filing is only applicable to domestic parent corporations and their 100%-owned domestic subsidiaries.

For individual taxpayers, joint filing of married couples is not permitted.

Taxpayers

Taxpayers subject to income tax include individuals, corporations, a body of persons, trustees, executors and beneficiaries. Partnerships are flow-through entities; instead of taxing the partnership, each individual partner is taxed on his or her share of net income.

Classification of corporate taxpayers

- **Domestic corporation** refers to a corporation established in Japan.
- **Foreign corporation** refers to a corporation established and registered outside of Japan and is further categorized based on its activity in Japan and source of income:
 - Foreign Corporation having a certain fixed place of business in Japan such as branch, sub-branch, office, or factory.
 - Foreign Corporation engaging in construction, installation, assembly or other works, or control and supervision of such works.
 - Foreign Corporation engaging in business through its agent(s).

Classification of individual taxpayers

- **Permanent resident** refers to a resident individual who has a domicile or a residence in Japan for more than five years.
- **Non-permanent resident** refers to a resident individual, normally not a Japanese national, who has a domicile or a residence in Japan for fewer than five years.
- **Non-resident** refers to an individual who is neither of the above.

Corporate taxation

Types of corporate income taxes

Japanese (domestic) and certain foreign companies are subject to the following corporate income taxes:

- National corporate income tax
- Local corporate income taxes
 - Prefectural business tax
 - Inhabitant taxes
 - Prefectural inhabitant tax
 - Municipal inhabitant tax
 - Enterprise tax.

Taxable income

Corporate taxes are levied on the worldwide income of a domestic corporation. Foreign corporations are taxed only on Japan-sourced income unless otherwise provided in a tax treaty.

The tax levied is computed by applying the corporate tax rate on the taxable income, which is calculated by making the necessary tax adjustments (deductible expenses) to corporate profits (or gross taxable income) under J-GAAP. The taxable income used in the calculation for corporate income tax is the same with the local income taxes.

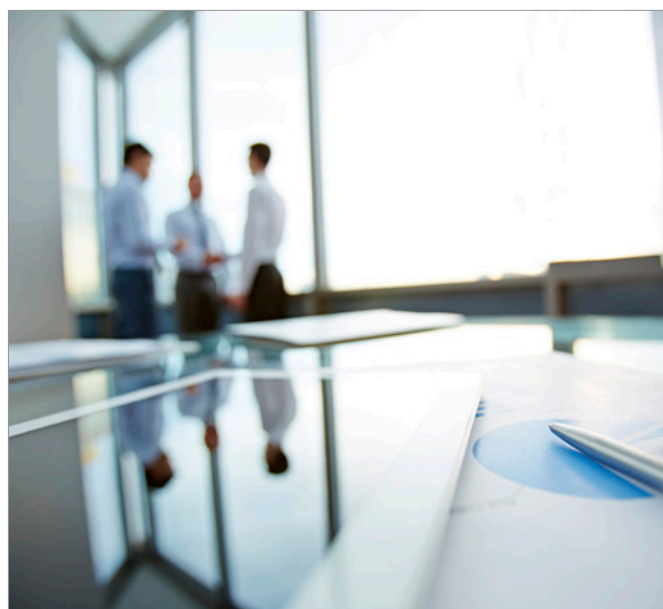
The local inhabitant taxes are also levied not only on income but also on a per capita basis using the corporation's capital and the number of its employees as the tax base. Corporations having paid-in capital of more than JPY 100 million are subject to enterprise tax on a pro-forma basis.

Gross revenue

Gross revenue includes all accrued revenue from every transaction (except for certain gains on capital asset transactions) and includes all domestic-source income for domestic corporations as enumerated above.

Deductible expenses

- Material costs
- Administration expenses
- Interest, rentals, and royalties paid. However, interest for shareholders' loans exceeding three times the equity from that shareholder is non-deductible.
- Bonuses and compensation paid to employees. However, payments of unreasonable amounts to directors will not be allowed as an expense.
- 50% of total costs of foods and drinks (over JPY5,000 per individual invoice) included in the entertainment expenses based on calculated maximum amount and limitations
- Donations subject to limitations
- Research and development costs subject to limitations
- Bad debts
- Repairs
- Depreciation of assets
- Tax losses subject to limitations.



Depreciation of capital assets

Capital assets are assets used for business in Japan, divided between tangible assets (e.g. buildings, improvements and structures, tools, equipment, and motor vehicles) and intangible assets (e.g. software and goodwill).

Companies can depreciate capital assets either by the straight-line or the declining-balance method. If a company does not report its preference to the tax authorities, then the declining-balance method is used, except for buildings, improvements and structures. The depreciable life of assets depends on the amount, type, structure, and purpose.

Small assets worth less than JPY 100,000 may be deducted immediately while small assets worth between JPY 100,000 and JPY 200,000 may be depreciated over three years. Goodwill may be amortized over five years using the straight-line method.

Tax losses

Tax losses may be carried forward for ten years. Only 50% of the taxable income may be offset with tax losses except for SMEs with paid-in capital of not more than JPY 100 million. Carry-forward losses may be restricted following a change of majority ownership (> 50%), resulting in the discontinuance of an old business and commencement of a new business within five years of the change.

A group of companies filing consolidated returns may carry forward their consolidated tax losses for a similar time period. For authorized consolidated filings, a subsidiary's tax loss incurred before joining the group may be carried forward and offset against the taxable income of the subsidiary's own taxable income.

SMEs with paid-in capital of not more than JPY 100 million can carry back losses for one year.

Tax rates

The tax rates may vary depending on the scale of business and the local government jurisdiction. The effective rate for large companies including local taxes is around 30.62% and around 34.59% for small companies.

National corporate tax

| Income bracket (JPY) | Effective 1 April 2017 | Effective 1 April 2018 |
|-----------------------|------------------------|------------------------|
| Capital > 100 million | 23.4% | 23.2% |
| Income < 8 million | 15% | 19% |
| Income > 8 million | 23.4% | 23.2% |

A local corporate tax (national levy) is levied at 4.4% on the corporate tax.

Local corporate taxes

In addition to the national corporate tax, companies need to pay local corporate taxes, which vary according to the location (municipalities or prefectures) and size of the firm (capital and number of employees).

Prefectural enterprise tax rates depend on the capital and income. Rates for companies with less than JPY 100 million of paid-in capital:

| Taxable income (JPY) | Standard | Maximum |
|------------------------|----------|---------|
| The first 4 million | 3.4% | 3.65% |
| The next 4 million | 5.1% | 5.465% |
| In excess of 8 million | 6.7% | 7.18% |

Rates for companies with more than JPY 100 million of paid-in capital:

| Taxable income (JPY) | Standard | Maximum |
|----------------------------|----------|---------|
| The first 4 million | 0.3% | 0.395% |
| The next 4 million | 0.5% | 0.635% |
| In excess of 8 million | 0.7% | 0.88% |
| And, in addition: | | |
| Value added ⁽¹⁾ | 1.26% | 1.26% |
| Capital ⁽²⁾ | 0.525% | 0.525% |

⁽¹⁾ Labor cost + net interest payment + net rent payment + income/loss

⁽²⁾ Capital + capital surplus for tax purposes

Inhabitant taxes

Prefectural and municipal inhabitant tax rates based on corporate taxable income (profit-based):

| Inhabitant tax | Standard | Maximum |
|----------------|----------|---------|
| Prefectural | 3.2% | 4.2% |
| Municipal | 9.7% | 12.1% |
| Total | 12.9% | 16.3% |

In addition to the profit-based tax, companies must pay per-capita taxes using the sum of paid-in capital and capital surplus as the tax base.

Prefectural per-capita tax rates, in JPY:

| Tax base (JPY) | Standard (JPY) |
|---------------------------|----------------|
| Below 10 million | 20,000 |
| 10 million to 100 million | 50,000 |
| 100 million to 1 billion | 130,000 |
| 1 billion to 5 billion | 540,000 |
| Above 5 billion | 800,000 |

Municipal per-capita tax rates, in JPY:

| Tax base (JPY) | > 50 Employees | ≤ 50 Employees |
|---------------------------|----------------|----------------|
| Below 10 million | 120,000 | 50,000 |
| 10 million to 100 million | 150,000 | 130,000 |
| 100 million to 1 billion | 400,000 | 160,000 |
| 1 billion to 5 billion | 1,750,000 | 410,000 |
| Above 5 billion | 3,000,000 | 410,000 |

Local corporate special tax

The companies with paid-in capital of more than JPY 100 million is taxed at 414.2% while with less than JPY 100 million is taxed at 43.2%. The tax base is the amount of Enterprise Tax.

Family corporation

A Japanese family corporation that meets certain conditions is subject to taxation of retained earnings in addition to corporate tax on ordinary income. The tax is calculated by multiplying the taxable retained earnings (obtained by subtracting the retained earnings deductible from the amount of retained earnings in each business year) by the following tax rates:

| Taxable retained earnings (JPY) | Rate |
|---------------------------------|------|
| Below 30 million | 10% |
| 30 million to 100 million | 15% |
| Above 100 million | 20% |

Dividends

Dividend received by a resident domestic corporation from another resident domestic corporation is generally included in the taxable income of the recipient, with certain limitations:

- Full exclusion of the dividend in the taxable income if the recipient holds 25% or more of the shares of the company paying dividend for at least six months before the dividend distribution.
- 50% exclusion of the dividend in the taxable income if the recipient holds less than 25% of the shares of the company paying dividend or for less than six months before the dividend distribution.

A 95% exemption can be included in the taxable income of dividends received by a Japanese company from a foreign company if the recipient holds qualifying shareholdings of 25% or more for at least six months before the dividend determination.



Dividend received by a non-resident is subject to 20.42% withholding tax unless reduced under a tax treaty.

Branch remittance is not subject to tax.

Individual taxation

Types of income taxes

Like a corporation, an individual taxpayer is subject to both a national tax and local inhabitant taxes. The income subject to taxation depends on the type of taxpayer:

- Permanent residents are taxed on all income.
- Non-permanent residents are taxed on their Japan-sourced income and overseas income paid in or remitted into Japan.
- Non-residents are taxed only on Japan-sourced income. However, most tax treaties provide a Japanese tax exemption on employment income if a non-resident taxpayer is present in Japan for 183 days or less during a calendar year, with certain conditions. The taxpayer must apply for the exemption with the tax authorities.

Taxable income

Almost all domestic-source income of every individual is taxable, such as:

- employment income
- business income
- dividend income not subject to separate taxation
- real estate income
- interest income not subject to separate taxation.

Employment income represents gross employment income less employment income deduction. Gross employment income includes salaries, wages, bonuses and allowances (such as cost of living, housing, and healthcare), director's remuneration, pension contributions, and insurance premium. Some employment income may not be taxable such as moving expenses and loan interest above market rate.

Exemptions and deductions

Employment income deductions, in JPY:

| Lower limit | Upper limit | Deductions |
|-------------|-------------|-----------------|
| 0 | 1,625,000 | 650,000 |
| 1,625,000 | 1,800,000 | 40% |
| 1,800,000 | 3,600,000 | 30% + 180,000 |
| 3,600,000 | 6,600,000 | 20% + 540,000 |
| 6,600,000 | 10,000,000 | 10% + 1,200,000 |
| 10,000,000 | – | 2,200,000 |

For national income tax purposes, certain deductions and exemptions are allowed to calculate taxable income. Deductible expenses include social insurance premiums paid under Japanese government plans, some life and non-life insurance premiums, charitable contributions, medical expenses, and other qualified expenses.

Specific deductible expenditures that require documentation and certification from employers are commuting, moving, and training expenses.

Personal exemptions are available for national income tax and inhabitant tax for resident taxpayers. These fixed-amount deductions consist of:

- personal (JPY 380,000)
- spouse (JPY 380,000)
- dependent children 16-18 years old (JPY 380,000)
- dependent children 19-22 years old (JPY 630,000)
- medical expenses (up to JPY 2,000,000).

Dependent children under 16 years old do not qualify for deductions because the government provides cash allowances instead.

Tax rates

The national tax follows a tiered progressive rate. The tax rates apply to the amount in excess of the previous tier.

| Income bracket (JPY) | Tax rate |
|----------------------|----------|
| 1,950,000 | 5% |
| 3,300,000 | 10% |
| 6,950,000 | 20% |
| 9,000,000 | 23% |
| 18,000,000 | 33% |
| 40,000,000 | 40% |
| > 40,000,000 | 45% |

Additionally, residents must pay an additional 10% for inhabitant tax: 4% and 6% for prefectural and municipal tax, respectively. The inhabitant tax does not apply to non-residents.

Withholding tax on payroll

The employer is obligated to deduct tax at source from a salaried resident worker in accordance with the withholding tax table. The amount to be withheld depends on the nature of the salary, period of payment, and number of dependents. The employer must pay the income tax by the 10th of the month following the month of payment.

When paying a salary to a foreign resident employee, 20.42% should be deducted at source irrespective of the amount of salary, period, and dependents.

Capital Gains Tax

Gains from the sale of shares are taxed at 20%. Short-term (held for fewer than five years) and long-term gains from sale of land are taxed at 10% and 20%, respectively.

Withholding tax for non-resident individuals and foreign corporations

Domestic-source income received by non-resident individuals and foreign corporations are subject to withholding taxes. The interest on Japanese government and corporate bonds, local deposits and savings, and distribution of profit from joint managed, bond, and investment trusts are taxed at 15.315%. All of the following are taxed at 20.42%:

- Interest on loans
- Royalties for the transfer of technical rights, such as industrial property rights and production methods employing special technologies or know-how
- Royalties for the transfer of copyrights, related rights, or publishing rights
- Rental of movable assets
- Money or items awarded for advertising business in Japan
- Pension-based life insurance contracts, casualty insurance contracts, and other such arrangements executed in Japan
- Compensation money for benefits arising from instalment deposits paid under agreements executed with business offices in Japan
- Distribution of profits received under any silent partnership contract
- Distribution of profits from foreign special purpose trust or distribution of revenue from foreign special investment trusts
- Monetary awards from deposit offering awards which are deposited in Japan
- Profit from redemption of discount bonds.

The above rates can be reduced based on Japan's international tax treaties.

Tax treaties

Japanese companies and residents may deduct either foreign income taxes or foreign tax credits on their overseas income from Japanese income taxes, except for qualifying 95% foreign dividend exemption subject to certain limitations. Japan has tax treaties, based on OECD's model, with the following countries to avoid double taxation:

| | | | | |
|------------|---------------|--------------|-------------|--------------|
| Albania* | Columbia* | India | Netherlands | Slovenia* |
| Andorra | Cook Islands* | Indonesia | New Zealand | South Africa |
| Anguilla* | Costa Rica* | Ireland | Nigeria* | South Korea |
| Argentina* | Croatia* | Isle of Man* | Niue* | Spain |

| | | | | |
|------------------------|----------------|-------------------|-----------------------------------|--------------------------|
| Armenia | Curacao | Israel | Norway | Sri Lanka |
| Aruba* | Cyprus* | Italy | Oman | Sweden |
| Australia | Czech Republic | Kazakhstan | Pakistan | Switzerland |
| Austria | Denmark | Kuwait | Panama* | Taiwan |
| Azerbaijan | Egypt | Kyrgyz | Philippines | Tajikistan |
| Bahamas* | Estonia* | Latvia* | Poland | Thailand |
| Barbados* | Faroe Island* | Liechtenstein* | Portugal | Tunisia* |
| Belize* | Fiji | Lebanon* | Qatar | Turkey |
| Bermuda* | Finland | Lithuania* | Romania | Turkmenistan |
| Bangladesh | France | Luxembourg | Russia | Turks and Caicos Islands |
| Belarus | Germany | Macau* | Samoa | Uganda* |
| Belgium | Georgia | Malaysia | Saint Christopher and Nevis* | United Kingdom |
| Brazil | Ghana* | Malta* | Saint Lucia | United Arab Emirates |
| British Virgin Island* | Gibraltar* | Marshall Islands* | Saint Vincent and the Grenadines* | United States |
| Brunei | Greece* | Mauritius* | San Marino* | Ukraine |
| Bulgaria | Greenland* | Mexico | Saudi Arabia | Uruguay* |
| Cameroon* | Guatemala* | Moldova | Senegal* | Uzbekistan |
| Canada | Guernsey* | Monaco* | Seychelles* | Vietnam |
| Cayman Islands* | Hong Kong | Montserrat* | Singapore | Zambia |
| Chile | Hungary | Nauru* | Slovakia | |
| China | Iceland* | | | |

* Exchange of information only

Other taxes

Real property tax

Real property taxes are based on values assessed by municipalities and prefectures with the following tax rates:

| Type of tax | Rate |
|---------------------------|------------|
| Fixed property | 1.4% |
| City planning | Up to 0.3% |
| Real property acquisition | 3% |
| Real estate registration | 0.4% to 2% |

Inheritance tax

Individual taxpayers who acquire property from any inheritance, bequest, or devise are taxed progressively based on the asset value:

| Legal share (JPY) | Rate | Deduction (JPY) |
|-------------------|------|-----------------|
| 10,000,000 | 10% | - |
| 30,000,000 | 15% | 500,000 |
| 50,000,000 | 20% | 2,000,000 |
| 100,000,000 | 30% | 7,000,000 |
| 200,000,000 | 40% | 17,000,000 |
| 300,000,000 | 45% | 27,000,000 |
| 600,000,000 | 50% | 42,000,000 |
| > 600,000,000 | 55% | 72,000,000 |

Taxpayers may instead use the special tax treatment for basic deduction equal to JPY 30 million + (JPY 6 million × number of legal heirs).

Gift tax

Individual taxpayers who acquire property by gift are taxed progressively based on the asset value:

| Taxable amount (JPY) | Rate | Deduction |
|-------------------------|------|-----------|
| 2,000,000 | 10% | - |
| 2,000,001 – 3,000,000 | 15% | 100,000 |
| 3,000,001 – 4,000,000 | 20% | 250,000 |
| 4,000,001 – 6,000,000 | 30% | 650,000 |
| 6,000,001 – 10,000,000 | 40% | 1,250,000 |
| 10,000,001 – 15,000,000 | 45% | 1,750,000 |
| 15,000,001 – 30,000,000 | 50% | 2,500,000 |
| > 30,000,000 | 55% | 4,000,000 |

Stamp tax

Stamp duty varies between JPY 200 and JPY 600,000 for taxable documents.

Registration tax

Share registration tax is imposed on the registration of new or additional share at 0.7%.

Special reconstruction income tax

Until 31 December 2037, individuals will be taxed 2.1% to help rebuild the regions impacted by the Great East Japan Earthquake on 11 March 2011.

Indirect taxes and duties

Consumption tax

In Japan, the consumption tax (CT) is equivalent to VAT or GST. CT is applicable to sales, leases, and services of companies with one of the following:

- taxable sales above JPY 10 million in the basis year, typically two years prior
- paid-in capital of at least JPY 10 million
- a parent company with paid-in capital of at least JPY 100 million.

Companies not under those categories may voluntarily elect for CT. CT is also applicable to the removal of foreign goods from bonded areas. Some transactions, enumerated in the Consumption Tax Act, are exempt from CT (zero-rated). Examples include:

- transfer or leasing of land
- transfer of securities
- interest on loans
- insurance premiums
- export of goods and services to non-residents.

The current CT rate of 8% (national rate of 6.3% and local rate of 1.7%) is expected to 10% beginning October 2019.

Digital service

Digital services provided by foreign suppliers to businesses and consumers in Japan is categorized as domestic transactions and is subject to consumption tax effective on 1 October 2015.

Where the service recipient is a consumer considered as “B2C” (Business to Consumer), the foreign seller must collect Consumption Tax and file the tax returns within two months after the fiscal year end. A foreign supplier providing “B2B” (Business to Business) digital services has an obligation to notify domestic business customers in advance that these supplies are subject to the reverse charge system.

Custom duties

Japan adopts the harmonized system of product classification and tariff duties on imported goods using ad valorem, specific tax rates, or a combination of both. These tariff duties are in addition to the consumption tax imposed on imported goods.

These imported products range from food, agricultural products, fish and fish products, alcoholic beverages, and others. Other internal taxes are imposed on certain imported goods such as liquor, tobacco, etc.

In addition, Japan has a simplified tariff system for imported goods with customs value of less than JPY 100,000 or less per importation (considered as personal effects and small packages). This tariff system simplifies the determination of tax rate based on specific product and value.

The complete tariff schedules are available on Customs and Tariff Bureau.

Transfer pricing

A new transfer pricing documentation requirements is effective on 1 April 2017.

The new requirements require that all Japanese corporations, and foreign corporations with a permanent establishment in Japan, that are constituents of a multinational enterprise group must submit the following documents if the consolidated turnover for the prior tax year is JPY 100 billion (approx. USD 1 billion) or more:

- Notification of the ultimate parent entity
- country-by-country report
- master file.

In addition, a corporation engaged in transactions with another related foreign entity must prepare or obtain, and then store the documents considered necessary to assess arm's length prices for the controlled transactions (Local File) by the due date for submission of the respective tax year's final returns. The applicable transactions are sales and purchases of assets, as well as the provision of services valued at JPY 5 billion or more, or if a transaction involving intangible assets is valued at JPY 300 million or more for the previous tax year.

Investment

Investment incentives

The foreign direct investment (FDI) in Japan has increased dramatically through the "Invest Japan" initiative. Under this program, Japan has set up Business Support centers, which provide information and support to foreign investors.

Japan does not have a screening process on the regular business and imposes few legal restrictions on inward FDIs. It has also deregulated or liberalized most economic sectors. FDIs cannot be related to national security (e.g. weapons, aircraft, nuclear power, spacecraft), public orders (e.g. electricity, gas, heat supply, communication, broadcasting, water, public transportation), and public safety (e.g. biological chemicals, security services). Some industries are reserved for the Japanese only: agriculture, forestry and fishing, oil, leather, and air/maritime transport.

Foreign investors must file with the Ministry of Finance and the ministry governing the sector of investment. For some licenses, either the Ministry of Finance or the industry-specific ministry has the authority to decide on the investment matter.

Japan's FDI promotion focuses on the initial stages of investment when foreign enterprises enter Japan. Japan provides low-interest loans, credit guarantees, tax incentives, and information and consultation services.

Tax Incentives

- SMEs in manufacturing can get 30% depreciation rate or tax credit of 7%, up to 20% of the corporate tax liability, for purchase of certain machinery and equipment.
- SMEs in energy-saving machinery get 30% depreciation rate or 7% tax credit, up to 20% of the corporate tax liability.
- In the case of an increase in staff salary expenses compared to the previous average, the company can get tax credit equal to the smaller of the two: 10% of the additional salary expense or 10% of the corporate tax.
- Companies with high R&D expenses compared to the previous three years' average can get tax credit up to 25% of the corporate tax.

Expropriation

Japan provides full protection and security to all foreign investments and investors in Japan. Nationalization or expropriation can only be performed for a public purpose in a proper and non-discriminatory manner with due process of law. The owner will receive adequate, reasonable, and prompt compensation. Investors affected have the right to access courts of justice or administrative authorities. A good example of a Japanese law is the Land Appropriation Act, which outlines necessary conditions, procedures, and compensation to mediate public benefit and the right to private property. This Act is applicable to both Japanese and foreigners indiscriminately.

Intellectual property rights

The Japan Patent Office (JPO) is the government agency responsible for the protection of industrial property rights in Japan as covered under several laws protecting technology, designs and trademarks. Some of these notable laws are Patent Law, Utility Model Law, Design Law, and Trademark Law.

Patent

Under the Patent Law, an invention can be patented through the JPO for 20 years from the filing date, which may be extended for medicines. The owner may grant an exclusive or a non-exclusive license.

Trademark

Under Trademark Law, only properly examined and registered trademarks have a TM right (Article 18). However, unregistered trademarks are still protected by the Unfair Competition Prevention Act.

Copyright

The Copyright Law protects all copyrights and related rights. The Law has been revised periodically due to technological advancements and the conclusion of various international treaties. Japanese copyright laws consist of two parts: author's rights and neighboring rights. The latter applies to distribution rights, such as broadcasting and website publication. Works authored by an individual or by a corporation, under the real name or a known pseudonym, are protected for 50 years following the author's death or date of publication, respectively.

Cinematographic works are protected for 70 years after publication or creation if unpublished.

Trade secrets

Japan allows everyone to claim damages and request injunctions against the unfair acquisition of, using, or disclosing trade secrets through the Unfair Competition Prevention Law.

Trade agreements

Japan has several trade and investment agreements to promote and facilitate trade and investment by reducing or eliminating tariffs, import quotas, export restraints, and other trade barriers. Japan has entered bilateral and economic partnership agreements with the following countries and blocs:

| | | | |
|-----------|----------|-------------|-------------|
| Australia | India | Mongolia | Singapore |
| Brunei | Laos | New Zealand | Vietnam |
| Cambodia | Malaysia | Peru | South Korea |
| Chile | Mexico | Philippines | Switzerland |
| Indonesia | Myanmar | Thailand | |

Appendix A

General flow of procedures for establishing a Kabushiki-Kaisha (KK)

1. Determine the profile of KK to be established.
2. Prepare the KK's articles of incorporation.
3. Acquire registration certificates, etc., for parent company, and prepare affidavit regarding the profile of parent company and signatures of representatives of parent company. The affidavits must be attested by a public notary in parent company's country of domicile.
4. Notarize the KK's articles of incorporation by the Japanese notary public.
5. Remit KK capital to the promoter's Japanese bank account.
6. Appoint directors and other officers, such as representative directors and auditors.
7. Apply to the Legal Affairs Bureau (LAB) in Japan for registration of KK incorporation (KK incorporation date), and registration of company seal with LAB.
8. Acquire certificate on registered information and company seal registration certificate (approximately one week after the application for registration).
9. Open a corporate bank account under the company's name.
10. Notify stock acquisition to the Bank of Japan (notification prior to company establishment may be required in certain sectors).
11. Submit the tax registration to the Japanese tax authorities.
12. Set up a payroll system for KK (Payroll register format, Pay day, Expense reimbursement).
13. Set up a monthly reporting system (Format and Due date).
14. Determine accounting policy for Japan KK including the transfer pricing policy as a guideline.
15. Apply for membership on Japanese social insurances.

Appendix B

General flow of procedures for establishing a limited liability company (LLC) or Godo Kaisha (GK)

1. Determine the profile of LLC/GK to be established.
2. Prepare the LLC/GK articles of incorporation.
3. Remit LLC's/GK's entire amount of capital to the promoter's bank account.
4. Apply to the Legal Affairs Bureau (LAB) in Japan for registration of LLC/GK incorporation, and registration of company seal with LAB.
5. Acquire certificate of registered information and company seal registration certificate (approximately one week after application for registration).
6. Open a corporate bank account under the company's name.
7. Submit the tax registration to the Japanese tax authorities.
8. Set up a payroll system for LLC/GK (Payroll register format, Pay day, Expense reimbursement).
9. Set up a monthly reporting system (Format and Due date).
10. Determine accounting policy for Japan LLC/GK including the transfer pricing policy as a guideline.
11. Apply for membership on Japanese social insurances.

Appendix C

Tax filing and payment schedule

| Submission | Filing due | Payment due |
|--|---|--|
| Fixed asset tax | 31 January | 30 Jun, 30 Sep, 28 Dec and 1 Mar |
| National corporate tax | Two months after the year end | Two months after the year end (Note 1) |
| Local business tax | Same as above | Same as above (Note 1) |
| Local corporate tax | Same as above | Same as above (Note 1) |
| Consumption tax | Same as above | Same as above |
| Withholding income taxes withheld from the employee's salary | Submission of the summarized report to the tax office by 31 January | 10th of the following month |
| (Note 2) | 10 July | 10 July, 31 October and 31 January |
| Labor insurance tax (Due date is every 20th of the month) | 10 July | 10 July, 31 October and 31 January |
| Employees' health and pension insurance | 10 July | Every end of the month |

Note 1

Except for consumption tax, a one-month extension for tax filing is allowed where an application is filed in advance. Interest will be charged by the tax authority for delay in payment at the Japan prime rate plus 2.7%. Two months after the due date, the rate is changed to 9% per annum.

For non-filing of tax return, 5% to 15% penalty will be charged.

Note 2

In case the company's employees is less than 10, the payment can be made on 10 July and 20 January.

Appendix D

Social insurance scheme in Japan

| Type of insurances | Covered for | Contribution | % Applied on monthly salary (employer's share) | Ceiling insurance amount | | Payment due date for the employer |
|---|---|---|--|--|---|-----------------------------------|
| | | | | Monthly salary | Bonus | |
| Employees' health insurance (EHI) | Full time employees locally hired and salaries are paid in Japan | Shared by the employer and employees by 50% | 9.90% (4.95%) | JPY 137,749 (JPY 68,875) | JPY 568,260/yr (JPY 284,130/yr) Bonus amount is JPY 5.74 million | Every month end |
| Employees' nursing care insurance | Additional premium of the above EHI for an employee whose age is between 40 and 64 at the time of the monthly payment | Shared by the employer and employees by 50% | 1.57% (0.785%) | JPY 22,935 (JPY 11,468) | JPY 90,118/yr (JPY 45,059/yr) Bonus amount is JPY 5.74 million | Every month end |
| Employees' pension insurance (EPI) | Full time employees locally hired and salaries are paid in Japan | Shared by the employer and employees by 50% | 18.30% (9.091%) | JPY 112,728 (JPY 56,364) | JPY 274,500/mo (JPY 137,250/mo) Bonus amount is JPY 1.5 million | Every month end |
| Child support allowance | Full time employees locally hired and salaries are paid in Japan | Allowance is entirely paid by the employer. | 0.29% | No ceiling (Zero) | JPY3,450/mo (Zero) | Every month end |
| Asbestos disease support | Full time employees locally hired and salaries are paid in Japan | Allowance is entirely paid by the employer. | 0.002% | No ceiling (Note 2) | | 10 Jul, 31 Oct, and 31 Jan |
| Unemployment insurance | Full time employees locally hired and salaries are paid in Japan | 0.4% of monthly salary is withheld from employees' salary and the rest is born by the employer. | 3% (6%) | No ceiling | | 10 Jul, 31 Oct, and 31 Jan |
| Workmen's accident compensation insurance | Full time employees locally hired and salaries are paid in Japan | Insurance is entirely paid by the employer. | 0.3% | No ceiling (Note 2) Varies by industry (Note 3) | | 10 Jul, 31 Oct, and 31 Jan |

Note 1

Employee's share should be deducted through monthly salary.

Note 2

There is no ceiling for the workmen's accident compensation insurance for employees. However, where the director joins the Workmen's accident compensation insurance program, the insurance for the director through the special joining has the ceiling amount of JPY 22,812 per year.

Note 3

The standard rate is 0.3%, however, the rate applied varies by industry.

Appendix E

Coverage by workmen's accident compensation

| Kind of benefits | Eligible for | Coverage under Workmen's Accident Compensation |
|------------------------------|---|---|
| Hospital insurances | Employee who needed medical cares at the hospital due to job related injuries or diseases | Medical expenses are free. |
| Compensation for earnings | Employee who is not able to work due to job related injuries or diseases | Approximately 60% of the employees average daily wage for up to 18 months of the unworkable period. A waiting period of three days applies |
| Injuries or diseases | Employee who is injured or deceased in relation to his/her job | Pension will be paid if he the employee is deceased or has been injured for 18 months or more. |
| Disability insurance benefit | Disabled worker | For those heavily disabled, paid in the manner of pension. For those other than the above, lump-sum payment amounting to compensation 245-313 days × average daily wage. |
| Survivor's benefits | Widow (Widower) and dependents | <ul style="list-style-type: none"> • Funeral Allowance – Either of the higher amount stated below. Average daily wage × 60 days or 30 days daily wage plus JPY 315,000. • Survivors support – 1000 days of the deceased employee's average daily wage. This payment is made in a manner of pension. |
| Unemployment benefits | Employee who worked for a company for more than six months before becoming unemployed | Approximately 60% of his/her average daily wage for 90 to 300 days, depending upon the age of the individual and the number of years of participation in the plan. |

Appendix F

Types of VISA

| Visa category | Term | Activities authorized to engage in |
|---|-------------------------|--|
| Professor | Three years or one year | Applicants must be involved in research, research guidance, or education as academic professor, assistant professor, or assistant, etc. at universities, equivalent educational institutions, or technical colleges (koto senmon gakko). |
| Artist | Three years or one year | Applicants must be involved in the arts that provide income; ie. composers, songwriters, artists, sculptors, craftspeople, photographers, etc. |
| Religious activities | Three years or one year | Applicants must be in position as Missionary, or be engaged in other religious activities conducted by members of foreign religious organizations. |
| Journalist | Three years or one year | For those in contract with a foreign press organization such as a foreign newspaper company, news agency, broadcasting station, documentary movie company, etc. |
| Investor and business manager | Three years or one year | Applicants must be legally registered prior to the application process for visa. Their employer/company must have employed two or more full-time employees together with an annual investment of JPY 5 million or above. If their employer/company is newly established, the employer/company can be exempted from having two or more full-time employees if it had invested JPY 5 million or above as an initial investment. The office of the employer/company at which the applicant is employed must be separate from his or her residence and be used for business purposes only. |
| Legal/accounting service professionals | Three years or one year | Applicants must be engaged in a legal or accounting business. Applicants must be attorneys or public accountants certified to perform their duties in Japan, or those with other legal qualifications recognized by Japan. |
| Medical services | Three years or one year | Applicants must be physicians, dentists, or those with other medical qualifications, and must be qualified to perform medical treatment services under Japanese law. They must fulfill certain conditions concerning work experience, skill, and work status. |
| Researcher | Three years or one year | For those in contract with a public or private organization in Japan can engage in research, examinations, surveys, etc. Applicants must fulfill certain conditions concerning work experience, knowledge, and work status. |
| Instructor | Three years or one year | Applicants must be an academic (eg. language) instructor at elementary schools, junior/senior high schools, schools for the blind, schools for the handicapped, other educational institutions such as or similar to kakushu gakko and senshu gakko. |
| Engineer | Three years or one year | For those in contract with a public or private organization in Japan. Service requires technological skill and/or knowledge pertinent to physical science, engineering, or other natural science fields. Applicants must fulfill certain conditions concerning work experience, skill, and work status. |
| Specialist in humanities/international services | Three years or one year | For those in contract with a public or private organization in Japan. Service requires knowledge pertinent to economics, sociology or other human science fields. Service requires specific ways of thought or sensitivity based on experience with foreign culture such as interpretation, translation, copywriter, fashion design, interior design, sales, overseas business, information processing, international finance, or public relations and advertising. Applicants must fulfill certain conditions concerning work experience, knowledge, and work status. |

| Visa category | Term | Activities authorized to engage in |
|--|--------------------------------------|---|
| Intracompany transferee | Three years or one year | Personnel transferred to business offices in Japan for a limited period of time from businesses offices established in foreign countries by public or private organizations with head offices, branch offices, or other business offices in Japan. Applicants must have worked overseas for the sponsoring company for at least one year and their job duties must be of a professional nature. They must also fulfill certain other conditions concerning work experience and work status. |
| Entertainer | One year, six months or three months | Applicants must be engaged in theatrical/musical performances, arts, music, or any other show business. They must fulfill certain conditions concerning work experience and form of entertainment. |
| Skilled labor | Three years or one year | For those in contract with a public or private organization in Japan. Service requires industrial techniques or skills. Applicants must fulfill certain conditions concerning work experience, work status, and health. |
| Highly skilled professionals (HSP) No. 1 | Five years | For those in contract with a private or public organization in Japan can engage in research, research guidance or education, work requiring specialized knowledge or skills in the field of natural sciences or humanities, and in operation or management of the organization. Applicants must reached at least 70 points based on the point system for HSP visa type. |
| HSP No. 2 | Indefinite period of stay | Applicants must have engaged in activities of HSP No. 1 visa type for three years or more. |

Appendix G

Business holidays and vacations

| Date | Holiday |
|-------------------------|--------------------------|
| 1 January | New Year's Day |
| 2nd Monday of January | Adult's Day |
| 11 February | National Foundation Day |
| 20 March | Spring Equinox |
| 29 April | Day of Showa |
| 3 May | Constitution Day |
| 4 May | Greenery Day |
| 5 May | Children's Day |
| 3rd Monday of July | Marine Day |
| 11 August | Mountain Day |
| 3rd Monday of September | Respect for the Aged Day |
| 23 September | Autumnal Equinox |
| 2nd Monday of October | Physical Fitness Day |
| 3 November | Cultural Day |
| 23 November | Labor Thanksgiving Day |
| 23 December | Emperor's Birthday |

Three main holidays that should be noted:

- Period around 29 April through 5 May is referred to as "golden week". Many employees take extra vacation days during this period.
- Middle of August is referred to as "Obon". Many businesses close for a week during this period.
- At year-end, many businesses close for a week.

7. Korea

Country profile

| | | |
|----------------------|--|--------------------|
| Official name | Republic of Korea | |
| Capital | Seoul | |
| Location | North Korea to the north China to the west Japan to the east | |
| Area | 100,033 km ² | |
| Climate | Four seasons -6-3° C winter 22-26° C summer | |
| Time zone | UTC +9 no DST | |
| Population | 51.6 million | |
| Currency | Korean Won | KRW |
| Language | Korean | |
| Religion | 46% Non-religious 25% Christianity 26% Buddhism | |
| International | APEC ADB World Bank | OECD WTO FTA |
| Government | Constitutional democracy | |

The central government is split into three branches while state governments are semi-autonomous.

Executive

The President is the head of state, head of government, and executive-in-chief of the South Korean army. He or she is democratically elected to serve a single five-year term. The Cabinet is responsible for policy resolutions and policy consultations, but the Cabinet cannot bind the President's decisions. The President can veto the legislative branch, but it can be overturned by a two-thirds majority vote.

Legislative

The National Assembly deals with legislation, audit and administration, treaties, and state appointments. Members are elected into one of the 300 seats to serve four-year terms. It has the power to impeach high-ranking officials such as the President.

Judicial

The Supreme Court led by the Chief Justice is the highest-ranking court and the final court of appeal. Below it is the high courts, followed by district courts. The Constitutional Court only deals with constitutional review and impeachment. The President, the National Assembly, and the Chief Justice can each appoint three judges for a total of nine members of the Constitutional Court.

| IMF data | 2015 | 2016 | 2017 |
|------------------------------|--------|--------|--------|
| Real GDP USD billions | 1,269 | 1,305 | 1,344 |
| GDP per capita USD | 27,097 | 27,533 | 29,730 |
| Investments % GDP | 28.9% | 29.3% | 31.2% |
| Unemployment | 3.6% | 3.7% | 3.7% |
| Inflation, EoY | 0.7% | 1.0% | 1.9% |

To be protected under the Foreign Investment Promotion Act, a foreigner must invest at least KRW 100 million into the business and own at least 10% of the total shares. Furthermore, the investment must be registered at the government agency based on the Foreign Investment Promotion Act, followed by the court and the tax authorities.

Companies

Stock company or corporation

A stock company is the only business entity that can issue shares in exchange for much stricter regulation requirements, e.g. statutory audit requirements. The number of shareholders is unlimited, and the Corporation can issue bonds. Most foreign companies incorporate their subsidiaries as a stock company.

Limited liability company

The members of an LLC can subscribe for capital contribution by entering many contribution units. An LLC can receive in-kind contributions but cannot issue bonds. Members are only liable up to the contributed capital. The number of directors and their terms of office are not regulated.

Partnerships

General partnership

A partnership is formed when at least two people work together under the same name to make profit. Only natural persons can become partners in a General Partnership, all of whom bear unlimited liability. Partners can contribute capital by cash or in-kind, personal service, or credits.

Limited partnership

In a limited partnership, at least one person should become the general partner who bears unlimited liability while all the other partners hold limited liability. General partners can contribute cash or in-kind, personal service, or credits while the other partners can only contribute cash or in-kind. Only the general partners have the right and duty to manage the partnership.

Branch

Because a branch is considered a part of the main company, branches are governed under the Foreign Exchange Transaction Act. Unlike a subsidiary in the form of an LLC, the branch's obligations and liabilities are also the responsibility of the Head Office (i.e. not limited by capital contribution).

Representative office

A representative office is not a business entity and may be established for certain activities such as product and market research, quality control, and liaison with local distributors. With no business income, no profit can be generated. Representative offices must register and request a business code number. Like branches, they are governed by the Foreign Exchange Transaction Act and there is no minimum requirement such as minimum capital (KRW 100 million) and foreign investment ratio (10%).

Accounting and auditing

Listed companies must follow the K-IFRS, which is fully translated version of IFRS. Non-listed companies can use the ASNPE (Accounting Standards for Non-Public Entities) instead, which is much simpler and less costly to implement, as an effort to reduce accounting burden. Companies can choose their own year-end for accounting periods. Most companies choose 31 December.

Any of the following stock companies shall be subject to an accounting audit conducted by an external auditor pursuant to Article 2 of the Act on External Audit on Stock Companies.

- A stock company whose total amount of assets as of the end of the immediately preceding business year amounts to at least 12 billion won.
- A stock-listed corporation or a stock company that intends to become a stock-listed corporation during the relevant business year or the following business year.
- A stock company each of whose total amount of liabilities and total amount of assets amounts to at least seven billion won as of the end of the immediately preceding business year.
- A stock company whose number of employees reaches at least 300 as of the end of the immediately preceding business year and whose total amount of assets amounts to at least seven billion won.

Annual reports must include:

- statements of financial position
- statements of income
- statements of changes in equity
- statement of cash flows
- notes, e.g. significant accounting policies.

Finance and capital markets

Exchange control

Korea emphasizes international balance in its Foreign Exchange Transaction Act. Current transactions are freely allowed although the government might need to be notified of certain transactions. Capital account transactions are generally allowed with advance notification, although these transactions require permission: loans, guarantees, financial derivatives, and overseas portfolio investments.

Banking system

The Bank of Korea (BOK) was established in 1950 as the central bank of Korea through the Bank of Korea Act. The Monetary Policy Committee in BOK decides on a Base Rate and steers the overnight call rate through open market operations.

BOK's key objective is price stability, which can be achieved through financial stability. The BOK looks at three key aspects: financial institutions, financial markets, and financial infrastructure. The BOK constantly monitors the financial system, examines financial institutions, operates the payment and settlement systems, acts as the lender of last resort, and evaluates then publishes about Korea's financial stability.

Types of banks

- Banks hold full banking licenses and can be commercial or specialized, but foreign banks are not allowed to open specialized banks.
- Non-bank financial institutions do not have full banking licenses. They include mutual savings banks, credit card companies, leasing companies, factoring companies, credit unions, and small business creditors.
- Insurance companies may sell life insurance, property insurance, annuities, and pension plans.
- Financial investment services companies are further divided into six types: dealers, brokers, discretionary investment advisors, non-discretionary investment advisors, collective investment managers, and trust service companies.
- Financial holding companies control or manage financial corporations through stock ownership. They are not allowed to hold nonfinancial Subsidiaries.

Bank secrecy

The Emergency Presidential Order on Real Name Financial Transactions and Protection of Confidentiality came into effect in 1993. Now, to open bank accounts, individuals must prove the veracity of their real name through documents and certificates. In exchange, the government formalized bank secrecy laws. Banks will be held liable for breach of confidentiality and they should not disclose unauthorized information to third parties. Government officials can ask for information only with the proper warrant or subpoena or by law, e.g. as outlined by tax laws.

Korea Deposit Insurance Corporation (KDIC)

The KDIC was established in 1996 under the Depositor Protection Act. All deposits in banks, insurance companies, investment traders and brokers, merchant banks, mutual savings banks, and asset management firms licensed under the Financial Investment Services and Capital Markets Act are insured up to KRW 50 million per depositor per institution.



Capital market

Securities and Futures Commission (SFC)

The SFC is part of the Financial Supervisory Service (FSS), which was established in 1998 through the Act on the Establishment of Financial Supervisory Organizations in response to the Asian financial crisis. The SFC's main responsibilities include investigating unfair trading, reviewing accounting and auditing standards, and monitoring and supervising the securities and futures market.

Korean Securities Depository (KSD)

In 1994, the Korean Securities Settlement Corporation was transformed into the KSD, Korea's central securities depository. It is a nonprofit special public organization that provides the following services: deposit, registration, settlement, derivative management (including collateral), custody, proxy, transfer, and issuing.

Korea Exchange (KRX)

The KRX was established in 2005 by consolidating several securities exchanges organization under the Korea Securities and Futures Exchange Act. KRX operates four markets: equity market, bond market, securitized product market and derivatives market. Equity market is composed of KOSPI, KOSDAQ, KONEX. The KOSPI (established in 1956) is the main board and deals with large companies' stocks such as Samsung, LG and Hyundai. The KOSDAQ (established in 1996) is closely modeled after NASDAQ and deals with stocks of smaller companies. The KONEX (Korea New Exchange, established in 2013) was created to supply funds to small and medium-sized venture companies at the early stage.

In the bond market, government bonds, municipal bonds, corporate bonds and REPOs. The bond market ranked as second largest in the world in trading volume.

The securitized product market is for ETF (Exchange-traded Funds), ETN (Exchange-traded Notes) and ELW (Equity Linked Warrants) The derivatives market deals with futures and options related to indices, stocks, interest rates, foreign exchange, and commodities.

Labor

The Labor Standards Act serves as the law governing employment practice and labor relations in Korea. The Ministry of Employment and Labor (MOEL) is the national implementing government agency.

Wages and benefits

Working hours and compensation

Employers can only require employees to work for eight hours a day, 40 hours a week. However, work hours can be flexible depending on the contract. Overtime is limited to 12 hours a week.

Employees are given 30-minute breaks in a four-hour shift and one-hour breaks in an eight-hour shift. Overtime rate is 150% of normal salary.

Minimum daily wage

In 2018, the minimum wage is 7,530 KRW per hour. Do note that the one day off per week (usually Sunday) counts as paid holiday leave.

Holiday pay

Employers are not required to provide paid holiday leaves during public holidays except for Worker's Day on 1 May.

Annual paid leave

Each employee is given fifteen days of paid annual leave if he or she has registered not less than 80% of attendance for one year. After the first year of service, an employer shall grant one day's paid leave for each two years of consecutive service in addition to the 15 days to a worker who has worked consecutively for three years or more (up to 25 days at the maximum). The days of paid leave cannot be carried over to the following years and cannot be exchanged for money. Employers must notify employees of the number of unused leaves three months before they expire.

Medical care and disability compensation

If an employee suffers from occupational injury or disease, the employer must cover the medical expenses and grant paid leaves at 70% of ordinary salary until the employee recovers. If after two years the employee still has not recovered, then the employer must pay a lump sum of 329 days' salary to the fullest, after which the employer is no longer responsible for medical expenses or paid leaves.

The above is not required if the employee became injured or disabled due to any reasons except for work. Employers must keep relevant documents for at least three years.

Survivors' benefit

If an employee dies on duty, the employer must pay 1,300 days' salary to surviving family members. In addition, the employer must grant to family 120 days' salary towards funeral expenses.

Annual bonuses

Bonuses are not mandated by the government, but employers can provide and specify bonuses in accordance with the rules of employment.

Social insurance

Korea requires all employees by law to get four insurances: health, pension, unemployment, and industrial accident. In 2017, health and pension insurance fee is around 6.12% and 9% of each employee's salary (half to be paid by the employee and the other half by the employer), respectively. Unemployment insurance fee is 1.3% of employee's salary. And employers shall pay industrial accident insurance fee ranges from 0.7% to 34% of each employee's salary depending on the industry.

Maternity leave

A pregnant employee can get 90 days of maternity leaves, the first 60 days of leaves must be paid. At least 45 of those days must be after childbirth. A pregnant woman cannot work in hard manual labor or hazardous conditions until one year after childbirth. For the year after childbirth, the female employee shall not work overtime for more than two hours a day, six hours a week, and 150 hours a year.

Menstruation leaves

A female employee can get one day of unpaid menstruation leave each month.

Paternity leave

According to the Korea Labor Law, paid paternity leave is not required.

Retirement benefits

The compulsory pension contribution covers retirement except for severance pay equal to one month's salary for each year of service.

Termination of employment

An employer cannot terminate the labor contract without justifiable reasons, usually stated in collective labor agreements. An employer must notify the employee at least 30 days in advance except for special cases in accordance with labor standard act. Otherwise, the employer must give at least a month's salary to the employee. In addition, the employee can receive 30 days or more of the average wages for each year of his/her consecutive service as retirement pay and this applies for all employees who have worked more than 1 year at company. In cases of downsizing, the employee that was laid off gains preferential treatment: if the position becomes available in three years, the employer must ask the former employee to fill the spot (if s/he wants to) before hiring other applicants.

Labor relations**Labor union**

An employer shall not interfere with union activities or discriminate against an employee by reasons related union. Unions have collective bargaining powers and usually select a representative(s) to do the bargaining. Union members must hold a meeting at least once a year. A member may work full-time for a union without fulfilling his/her original obligations only if the employer consents or if the clause was agreed upon through collective bargaining.

Strike

Fair strikes are allowed by Labor law, except in the defense and utility (electricity, water, etc.) sectors, only when more than 50% of labor union members agree to it. Employees on strike cannot actively or intentionally cause extra damage, e.g. blocking entrance of other employees, damaging company property, etc. Employers cannot subcontract or hire temporary workers to maintain operations in case of a strike.

Employment of foreigners

Foreigners can freely work in Korea as long as they have the appropriate visa, depending on the type of work (teaching, technology, research, etc.). The duration of working visa is decided depending on each foreigners' working conditions and his/her circumstances, and visa can be renewable.

Additionally, they can apply for permanent residency if they have lived in Korea for at least five years.

Taxation

Taxation is administered through the National Tax Service. The National Tax Tribunal examines and judge disputes in tax.

Corporate income tax

Corporations are taxed based on residence. Domestic companies (i.e. incorporated in Korea) pay taxes on worldwide income. Branches of foreign companies pay taxes only on Korea-sourced income.

Tax rates

Corporate taxes are calculated using a tax base (taxable income minus deductions and exemptions) and a tax rate. The tax rates are as follows:

| Taxable income (KRW) | Tax rate |
|--------------------------|----------|
| < 200 million | 10% |
| 200 million – 20 billion | 20% |
| 20 billion – 300 billion | 22% |
| > 300 billion | 25% |

Minimum tax rate

Even in the occasion that corporations enjoy tax benefits from income deductions, tax deductions, tax exemptions or expensing reserves and special depreciations, they are required to pay minimum amount of corporate tax applying following tax rate for all companies bear equally tax burden.

| Taxable income (KRW) | Tax rate |
|----------------------|----------|
| SME | 7% |
| <10 billion | 10% |
| 10 – 100 billion | 12% |
| > 100 billion | 17% |

Minimum tax is a kind of corporate tax. The minimum tax is calculated just like the regular corporate tax.

Taxable income

Companies are taxed on all income, including transfer of real estate and liquidation. Foreign companies are only taxed on Korea-sourced income. The only automatic exemption is income from any trust estate of a public trust.

Allowable Deductions

- Interest expense directly related to income production
- Depreciation
- Amortization of goodwill
- Incorporation and business registration fees
- Donations to approved charities
- Employee remuneration
- Pension expense
- Entertainment expense, up to a cap
- Insurance premiums
- Dividend income, up to a cap.

Dividend income is deductible depending on the subsidiaries type and receiver type.

Receiver type: holding companies:

| Subsidiary type | Ownership | Deductibility |
|--------------------|-----------|---------------|
| Unlisted companies | 40% – 80% | 80% |
| | > 80% | 100% |
| Listed companies | 20% – 40% | 80% |
| | > 40% | 100% |

Receiver type: all other companies:

| Subsidiary type | Ownership | Deductibility |
|--------------------|------------|---------------|
| Unlisted companies | <50% | 30% |
| | 50% – 100% | 50% |
| | 100% | 100% |
| Listed companies | <30% | 30% |
| | 30% – 100% | 50% |

For holding companies and ordinary companies, the deductible amount is reduced by some portion of interest expense arising from borrowings related to investments in a subsidiary.

Loss carryover

All tax losses may be carried forward for ten consecutive years. Only small and medium-sized companies can carry back losses by one year.

Withholding tax

General:

| Source | Tax rate |
|---------------------------------------|----------|
| Interest prescribed by Income Tax Law | 14% |
| Interest from non-commercial loan | 25% |
| Securities investment trusts | 14% |

Withholding tax rate applicable to remittance of following income by foreigners (Corporations) in Korea in occasions that tax treaty does not apply.

| Type | Tax rate |
|-------------------|----------|
| Dividends | 20% |
| Interest | 20% |
| Rent | 2% |
| Royalties | 20% |
| Services | 20% |
| Branch remittance | 5-15% |

Branch tax applies to France, Canada, Indonesia, Philippines, Thailand, Brazil, Kazakhstan and a few more countries.

Individual income tax

Residents are taxed on all income, whether generated domestically or internationally. An individual is considered a tax resident if that person has had a domicile in Korea for at least one year.

Non-residents are taxed only on income generated in Korea.

Tax rates

People pay taxes according to the following schedule by applying increasing marginal tax rates to annual income:

| Annual income (KRW) | Tax rate |
|---------------------|----------|
| < 12 million | 6% |
| 12- 46 million | 15% |
| 46-88 million | 24% |
| 88-150 million | 35% |
| 150-300 million | 38% |
| 300-500 million | 40% |
| >500 million | 42% |

Residents should pay an additional 10% of taxes payable as the resident surcharge. Foreign employees can choose to pay a flat 20.9% tax instead, including the local residence tax but in this case, they can't enjoy deduction.

Non-taxable income

- Housing costs paid by the employer for employees and officers who are not shareholders.
- Reimbursement of business expenses.
- Automobile-related expenses and insurance paid by the employer.
- Relocation reimbursement.
- Pension contribution.
- Income from providing labor overseas, up to KRW 1 million per month.
- Meal cost, up to KRW 100,000 per month.

Allowable deductions

- Expenses for earning payroll income can be deducted applying increasing marginal tax rates to annual payroll income:

| Annual payroll income (KRW) | Tax rate |
|-----------------------------|----------|
| <5 million | 70% |
| 5-15 million | 40% |
| 15-45 million | 15% |
| 45-100 million | 5% |
| >100 million | 2% |

- Basic deduction: Personal allowance of KRW 1.5 million per year for employee himself or herself.
- Additional deduction: Allowance of KRW 1.5 million per year for each spouse and dependents earning less than KRW 1 million per year.

Income tax treaties

Income tax treaties exist to prevent double taxation and may grant tax reductions or exemptions, depending on the terms of the treaty. Korea has tax treaties with the following countries:

| | | | | |
|------------|-----------|------------|-----------------|----------------|
| Albania | Denmark | Israel | Netherlands | South Africa |
| Algeria | Ecuador | Italy | New Zealand | Spain |
| Australia | Egypt | Japan | Norway | Sri Lanka |
| Austria | Ethiopia | Jordan | Oman | Sweden |
| Azerbaijan | Estonia | Kazakhstan | Pakistan | Switzerland |
| Bahrain | Fiji | Kuwait | Panama | Thailand |
| Bangladesh | Finland | Kyrgyzstan | Papua | Tunisia |
| Belarus | France | Laos | Peru | Turkey |
| Belgium | Gabon | Latvia | Philippines | Turkmenistan |
| Brazil | Germany | Lithuania | Poland | Tajikstan |
| Brunei | Greece | Luxembourg | Portugal | UAE |
| Bulgaria | Hong Kong | Malaysia | Qatar | USA |
| Canada | Hungary | Malta | Romania | Ukraine |
| Chile | Iceland | Mexico | Russia | United Kingdom |
| China | India | Mongolia | Saudi Arabia | Uruguay |
| Colombia | Indonesia | Morocco | Singapore | Uzbekistan |
| Croatia | Iran | Myanmar | Slovak Republic | Venezuela |
| Czech | Ireland | Nepal | Slovenia | Vietnam |

Value added tax

Not subject to VAT:

- Basic unprocessed food and water
- Medical services
- Educational services
- Passenger transportation services
- Coal
- Publications except advertisements
- Stamps
- Banking and insurance services
- Lease of residential housing
- Land
- Certain cultural works and events.

Subject to 0% VAT:

- Exports
- Provision of services in or outside Korea of which service fee is received in foreign exchange
- International transportation services.

Subject to 10% VAT:

- Everything else.

Excise tax

| Products/services | Tax rate |
|-------------------|----------|
| Distilled liquor | 72% |
| Beer | 72% |
| Fermented liquor | 30% |

Environment protection tax

These items are subject to additional tax:

| Goods | Unit | Tax (KRW) |
|----------|-------|-----------|
| Gasoline | Liter | 475 |
| Diesel | Liter | 340 |



Customs duty

Import tax is levied on most imported goods based on the CIF (cost, insurance, freight). Tax rates vary. The typical tax rate is 4-8% but can go as high as 20% on electronics and luxury goods.

Stamp duty

Stamp duty uses a nominal amount instead of a percent tax. It can range from as low as KRW 100 to KRW 350,000. The higher end taxes apply for transfer of rights (mining, fishing, intellectual property, etc.) or usable facilities over KRW 1 billion (golf fields, condominiums, etc.).

The securities transaction tax of 0.5% applies on the transfer of stocks or ownership unless the stocks are traded in a foreign market.

Inheritance tax/gift tax

Inheritances and gifts after deductions are taxed like income (increments or steps) using the following:

| Amount (KRW) | Tax rate |
|-----------------|----------|
| 100,000,000 | 10% |
| 500,000,000 | 20% |
| 1,000,000,000 | 30% |
| 3,000,000,000 | 40% |
| > 3,000,000,000 | 50% |

Property taxes

Property tax is a flat 0.3% on the value of land and buildings. For certain areas, factories are taxed 0.6% instead. These taxes are levied annually.

There is also a one-time property acquisition tax, which applies to vehicles and heavy equipment in addition to the land and buildings. The tax is a various flat rate on the value. In some urban areas, companies might be taxed 10% instead.

Local government taxes

- All kinds of income taxes mentioned in the above shall be added with residence tax in 10% of the income tax.
- Local tax authorities may levy local inhabitant's tax, which depends on company capital and number of employees.

Investment

Business incentives

Under the Foreign Investment Promotion Act (FIPA), businesses related to high-level technology or businesses that provide support services for the development of other industries can get income tax exemption of 100% for the first five years equal to the percentage of foreign equity in the company. This incentive can be extended for additional five years if the business generated no income in the first five years of operation. Upon expiration, the business gets two years of 50% income tax exemption.

- Inhabitant or developer of a free economic zone, with approval from the Free Economic Zones Committee
- Developer of Jeju investment promotion zone
- Inhabitant of a foreign investment area under Article 18(1) 1 of the FIPA
- Inhabitant or developer of an enterprise city development zone
- Inhabitant or developer of the Saemangeum Business Area, with approval from the Saemangeum Committee
- Others specified by Presidential Decree.

These businesses except for the last two bullet points get 100% exemption on acquisition and property taxes for five years and 50% exemption for the next two years. All of them are fully exempt from customs duty on capital goods. Businesses under FIPA that meet Presidential Decree standards and businesses related to the enterprise city development zone also get a 100% exemption on VAT and consumption tax on capital goods.

Intellectual property rights

Korea follows a lot of international standards for intellectual property as it accepted the Paris Convention, the Berne Convention, TRIPS, and the Madrid System. The Korean Intellectual Property Office handles intellectual property except copyright, which is handled by the Korea Copyright Commission.

Patents

Patents are technological solutions and innovations. They enjoy a protection of 20 years after date of application. The protection may be extended by up to five years to cover for the processing time. Utility models, which are similar to patents but have much laxer requirements, are protected for only 10 years.

Trademarks

Trademarks are used to distinguish a good or service from others in the form of words, images, and/or colors. They are protected for 10 years and may be renewed indefinitely.

Copyright

While works that fall under copyright law are immediately protected upon creation, registering the work offers further protection from disputes. Additionally, copyright can only be assigned or sold if it's registered. Depending on the type of work, economic copyrights can last 70 years after the author's death.

Expropriation and compensation

Korea follows international standards and can only expropriate for public purposes. The government gives compensation equal to fair market value.

Property ownership

A foreigner can purchase Korean land as stipulated by the Foreigner’s Land Acquisition Act. For property other than land (e.g. buildings), the Foreign Investment Promotion Act applies. Therefore, when a foreigner wants to purchase both land and building, s/he needs to file under two separate laws. Companies with over 50% foreign ownership are considered foreigners.

Do note that foreigners cannot remit profit made from rent as an individual. The foreigner needs to create a joint stock company to hold the property and remit the rent income as dividends.

International trade agreements

Currently, 15 FTAs have been concluded with 52 countries (effectuated and agreed) as follows:

| | | | |
|-----------|--------|-------------|---------------|
| ASEAN | Canada | India | Turkey |
| Australia | China | New Zealand | United States |
| Chile | EFTA | Peru | Vietnam |
| Colombia | EU | Singapore | |

8. Malaysia

Country profile

| | |
|----------------------|--|
| Official name | Malaysia |
| Capital | Kuala Lumpur |
| Location | Thailand to the north Indonesia to the east Singapore to the south by bridge |
| Area | 329,847 km ² |
| Climate | Tropical, warm and sunny |
| Time zone | UTC +8 no DST |
| Population | ~30 million |
| Currency | Malaysian Ringgit MYR |
| Language | Malaysian English |
| Religion | 62% Islam 20% Buddhism 9% Christianity 6% Hinduism |
| International | ASEAN OIC |
| Government | Federal constitutional elective monarchy |

Executive

The head of state is the Yang di-Pertuan Agong, the king, who is elected to a five-year term by and from among the nine hereditary rulers of the Malay states. The King's role has been largely ceremonial since changes to the constitution in 1994.

Executive power lies in the Cabinet led by the Prime Minister. The Prime Minister is the head of government and must be a member of the House of Representatives. Cabinet members are chosen from both the House of Representatives and the Senate.

| | 2010 | 2011 | 2012 |
|---------------------------|-------|-------|-------|
| GDP USD billions | 709 | 846 | 895 |
| GDP per capita USD | 2,981 | 3,512 | 3,660 |
| Investments % GDP | 32.6% | 32.8% | 34.9% |
| Unemployment | 7.1% | 6.6% | 6.2% |
| Inflation | 7.0% | 3.8% | 5.0% |

Judicial

The highest court is the Federal Court, followed by the Court of Appeal and two high courts presiding over different regions: Peninsular Malaysia and East Malaysia. Malaysia also has the Syariah Courts, which deal with Islamic law and run separately from the secular courts.

Legislative

The federal parliament has two houses. The 222 members of the House of Representatives are elected for five years from single-member constituencies. The Senate has 70 senators who serve three-year terms; 26 are elected by the 13 state assemblies and 44 are appointed by the King upon the Prime Minister's recommendation.

Each state also has a unicameral State Legislative Assembly. Its members are elected from single-member constituencies.

Business entities

Companies

The Companies Act 2016 (Act) allows three types of companies:

- Company limited by shares
- Company limited by guarantee
- Unlimited company.

Companies limited by shares

Almost all companies are limited by shares, where each member's liability is limited to the share capital. Companies can be private or public. A private company cannot issue any shares or bonds to the public nor ask the public to deposit money into the company. A private company can only have up to fifty shareholders, who have restricted rights to transfer the shares. A public company is not subject to those limitations.

Incorporation requires an application to the Companies Commission of Malaysia (CCM). The new Act has now simplified the laws and procedures for new incorporations, where promoters may incorporate their own company. The appointment of a Company Secretary is optional at point of incorporation but must appoint a Company Secretary within 30 days from incorporation. A Company can be incorporated by a single member and that single member can also be the sole director. However, a Public company must have at least two directors. There are no more multiple forms for the incorporation process which is now replaced with a single 'Superform'. The Constitution (formerly Memorandum and Articles of Association) is optional except for companies limited by guarantee. Notice of Registration is Conclusive Evidence that the requirements of registration is complied with. A certificate of incorporation is issued upon application and payment of fees. The entire incorporation of a private company generally takes within five to seven days. The concept of Authorised Share Capital no longer exist under the new Act. All shares issued before or upon commencement of the Act shall have no par or nominal value.

Companies limited by guarantee

Members' liabilities are limited by the Constitution to the amount contributed to the company in the case of bankruptcy. This type of company is not used for commercial undertakings but for clubs, trade associations, charitable bodies, and professional bodies.

Limited liability partnerships (LLP)

The CCM introduced this type of business entity through the Limited Liability Partnerships Act of 2012. LLP is a hybrid between a company and a conventional partnership.

LLP is a separate legal entity from its partners, who can be individual or corporate. The partners hold limited liability while the LLP has unlimited capability in conducting business and holding property. An LLP has perpetual succession and any change in the partners will not affect the existence, rights, or liabilities of a LLP.

An LLP can also be used to provide professional services. The partners must be individuals who have the same professional practice holding professional indemnity insurance approved by the Registrar.

Partnerships

A partnership is an unincorporated business entity made up of between two and twenty partners. Partnerships are assumed to exist where partners carry on a business in common, in view of making a profit, and share profits and losses proportionately. Registration must be formalized at the Registrar of Business also under the Registration of Business Ordinance 1965. Partners are both jointly and severally liable for the debts and obligations of the partnership, with unlimited liability.

Sole proprietorships

A sole proprietorship is an unincorporated business owned by one person. Since the business is not a separate legal entity (like a corporation) the owner is personally liable for all business debts. Before commencement of a business under a sole proprietorship, registration must be made with the Registrar of Business under the Registration of Business Ordinance 1965.

Joint venture

Joint ventures are structured either as partnerships or as incorporated companies but are not separate and distinct business entities. This form is typically used for construction or infrastructure projects.

Branch of a foreign company

A company incorporated outside Malaysia can establish a branch by filing returns to the CCM. A branch isn't recommended for wholesale or retail.

Representative office

A representative office cannot engage in profit-making activities and does not to be registered. It can identify investment opportunities, especially in the manufacturing and services sector, enhance bilateral trade relations, promote the export of Malaysian goods and services, and carry out research and development (R&D). All funding must come from the head office abroad.

Regional office

Like a representative office, a regional office cannot seek profit and must get funding from its overseas head office. It can coordinate the parent company's affiliates, subsidiaries, and agents in Southeast Asia and the Asia Pacific.

Trusts

Trusts may be public (e.g. for charity) or private and may be formed as either non-fixed (where all or some interests in the trust are at the discretion of the trustee such as discretionary trusts) or fixed trusts (e.g. unit trusts). Unit trusts are often used for public investments in the form of property trusts or cash management trusts.

Accounting and auditing

The Malaysian Accounting Standards Board (MASB) determines the accounting standards in Malaysia:

- Malaysian Financial Reporting Standards (MFRS)
- Malaysian Private Entities Reporting Standards (MPERS).

PERS is basically IFRS for SMEs.

The company's directors are responsible for the accounting records, which must be kept in Malaysia by every company incorporated under the Companies Act 2016 for at least seven years. All transactions must be recorded within 60 days of completion. Records for overseas operations can be kept outside Malaysia as long as detailed statements and returns are kept in Malaysia.

Annual statements

A copy of the annual statement must be filed at the Registrar of Companies and made available for public inspection.

A directors' report about the state of the company's affairs must be sent to shareholders, along with financial statements, at least 14 days before the general meeting (21 days for public companies).

The first financial statement, covering all activities since the date of incorporation, must be presented in a shareholders' general meeting at the latest 18 months after incorporation. Afterwards, the circulation of financial statements and reports for a private company, shall be within six months of its financial year end; and for public company, shall be at least 21 days before the date of its annual general meeting.



The financial statements must be prepared with the MASB-approved accounting standards and audited by an approved independent auditor. All amounts must be stated in MYR.

At least two directors must sign a statement that, in their opinion, the financial statement presents a true and fair view. This statement must be attached to every statutory financial statement.

In addition, the director or officer primarily responsible for the financial management must make a statutory declaration regarding the correctness of financial statements. This declaration must be attested by the Commissioner for Oaths.

Finally, an auditor must provide an opinion on the truth and fairness of the company's affairs, results, and cash flow in accordance with the MASB-approved accounting standards.

Requirements for public companies

Public listed companies must comply with the Listing Requirements of Bursa Malaysia Securities Bhd. Public companies must provide quarterly income statements, balance sheets, and notes within two months after the end of the quarter. In addition, they must provide audited financial statements within four months of the year-end.

Audit requirements

The directors appoint the company's auditor for the first time. Afterwards, the shareholders select the auditor in the annual general meeting. If a shareholder wishes to propose a new auditor, then s/he must provide notification to the company 21 days before the general meeting, which will be passed on to all shareholders. This allows enough time for all shareholders to vote on the matter.

The auditor must have been approved by the Minister of Finance. To be approved, an auditor must be a member of the Malaysian Institute of Accountants and have a residence in Malaysia. An accounting firm can audit if the partners are approved auditors.

Auditors must follow the International Standards on Auditing (ISA) issued or adopted by the International Auditing and Assurance Standards Board (IAASB).

Finance and capital markets

Exchange Controls

The Exchange Control Act of 1953 governs foreign currency transactions while the Central Bank of Malaysia, Bank Negara Malaysia (BNM), gives permission and directions through the Controller of Foreign Exchange.

In the context of foreign exchange control, a **resident** is:

- a Malaysian citizen who resides in Malaysia. That person can have permanent residency status in another country but must reside in Malaysia.
- a non-Malaysian citizen with permanent resident status in Malaysia and resides in Malaysia.
- a business enterprise or society operating in Malaysia and is registered at any authority in Malaysia.

While a **non-resident** is:

- a non-Malaysian citizen
- a Malaysian citizen residing in another country
- a foreign embassy, high commission, supranational, or central bank
- a business entity established abroad.

Non-residents can invest in Malaysia in any form. They can obtain financing and foreign exchange contracts from licensed onshore banks (commercial or Islamic) both in MYR or any foreign currency. Non-residents can also freely exchange currencies and repatriate their capital, profits, and income in foreign currency.

Residents are allowed to use foreign currency funds, undertake foreign investment, and enter risk management agreements through licensed onshore banks.

A resident can pay in Ringgit (to be converted when remitting abroad) to a non-resident. However, for international trade or for investments abroad, payments must be made or received through the non-Resident's external account.

Investments abroad in foreign currency assets might be limited:

- A resident without domestic Ringgit credit facilities can invest any amount abroad.
- Corporations with domestic credit facilities can invest up to MYR 50 million per year. However, the companies that meet prudential requirements can invest any amount with written permission from the BNM. Corporations with only foreign currency funds can invest any amount.
- Individuals with domestic credit facilities can invest up to MYR 1 million per year. Individuals can invest any amount if it's funded by their own foreign currency funds.

Borrowings in foreign currency

Resident companies can borrow foreign currency from its non-resident non-bank related companies, resident related companies, licensed onshore banks, and licensed International Islamic banks. However, if the non-resident non-bank related company is set up solely to obtain foreign currency loans from a non-resident financial institution, the amount of borrowing is subject to the aggregate limit of RM100 million or equivalent from non-residents.

In addition, resident companies can get any amount of foreign currency credit for capital goods from their suppliers. They can also buy immovable properties from non-residents using Ringgit credit facilities.

Non-residents can use Ringgit credit facilities from residents to finance activities in all non-financial sectors in Malaysia. Furthermore, they can finance or purchase any Malaysian residential or commercial property, except using financing for purchase of land.

Types of accounts

Any resident company or individual can open a foreign currency account in any licensed banks. Resident exporters must credit their proceeds into licensed onshore banks only.

Non-residents are free to do as they please with foreign currency accounts. They can maintain any number of external accounts with any financial institution in Malaysia with no restriction on MYR amounts. However, BNM limits the sources of ringgit funding and uses of funds for external accounts.

Capital markets

Securities commission (SC)

The SC is the single regulator for all fund raising activities, especially the securities and futures markets. SC's responsibilities include:

- Exchanges, clearing houses, and central depositories
- Prospectuses of corporations other than unlisted recreational clubs
- Corporate bond issues
- Securities and futures contracts
- Mergers and acquisitions
- Unit trust schemes
- Licensed persons
- Self-regulation
- Proper conduct of market institutions and licensed persons.

The Malaysian capital market moved from a merit-based to a disclosure-based regulatory framework for fundraising in 2003. Under the new framework, investors have the burden of assessing the merit of securities while the SC regulates the disclosure of material information. Essentially, the capital market progressed to self-regulation and higher standards of disclosure, due diligence, and corporate governance practices.

Bursa Malaysia

Public trading of shares is conducted through Bursa Malaysia Securities Bhd. (BMSB), the stock exchange unit of Bursa Malaysia Bhd. (Bursa Malaysia). It was previously called the Kuala Lumpur Stock Exchange (KLSE) until 2004. Bursa Malaysia runs two stock markets: the Main Market for established corporations and the ACE Market for companies of all sizes.

The exchange, which is supervised by the SC, acts as the frontline regulator for the Malaysian stock market. The fundraising framework was updated in 2009 to provide greater certainty, short time-to-market, and lower regulatory costs. The SC's review of corporate proposals will focus on:

- compliance with minimum requirements;
- standards of corporate governance
- resolution of conflicts of interest
- preservation of public interest
- adequacy of disclosures to enable investors to make informed investment decisions.

SC's approval is needed only for the following substantive corporate proposals in the Main Market:

- Initial Public Offerings
- Acquisitions resulting in a significant change in business direction or policy of a listed corporation (reverse takeovers and backdoor listings)
- Secondary listings and cross listings
- Transfer of listings from the ACE Market to the Main Market.

All other equity-based corporate proposals such as acquisitions (other than reverse takeovers and backdoor listings), disposals, placements of securities, rights offerings, and issuance of warrants no longer require the SC's approval.

The Bursa Malaysia Derivatives Bhd. (formerly known as Malaysia Derivatives Exchange Bhd.) allows investors to trade futures and options covering financial, equity, and commodity-related instruments.

Labor

All provisions of the Employment Act of 1955 cover everyone under an employment contract with income no more than MYR 2,000 per month. In West Malaysia, those earning between MYR 2,000 and 5,000 per month can use the enforcement provisions to enforce monetary claims under the employment contract.

Working hours

Working hours are limited to eight hours a day and 48 hours a week with up to two hours of overtime per day. An employee must get a rest period of at least thirty minutes after five hours of working. Working hours can be more flexible if both the employer and employee agree in the contract: hours may be subtracted from some days and added to other days, but no more than nine hours in a day are allowed.

Overtime rate is 150% for workdays, 200% for rest days, and 300% for public holidays. With overtime, no employee is allowed to work for more than 12 hours a day, except in the case of:

- threat or occurrence of accidents
- work essential to the life of the community
- work essential to national defense or security
- urgent work on machinery or plant
- work interruption that's impossible to foresee
- work essential to the economy of Malaysia.

The Director General has the power to enquire into and judge whether or not the overtime is justified.

Leave benefits

All employees are entitled to 11 days of paid leave per year during public holidays. In addition, they must get at least eight days of annual paid leave, increasing to 12 days after two years of service and 16 days after five years of service.

Female employees receive 60 days of paid maternity leave on pregnancy.

Employees receive 14 days of paid sick leave per year, increasing to 18 days after two years of service and 22 days after five years of service. If hospitalization is necessary, then the employee can get up to 60 days of sick leave.

Other labor laws

- Factories and Machinery Act of 1967
- The Occupational Safety and Health Act of 1994
- Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace.

Labor relations

Omnibus or general workers' unions are not permitted, but unions belonging to the same industry may apply to form a federation of trade unions or become affiliated with the Malaysian Trade Unions Congress or the Malaysian Labor Organization. All trade unions must register at the Registrar of Trade Unions and must comply with the Trade Unions Act, which sets out rules for the conduct of union business such as the election of officers, strike ballots, and the use of union funds.

Employees' provident fund

The Employees Provident Fund Act 1991 requires employers and employees to make monthly contributions to the EPF, which will be repaid as a lump sum to employees at the age of 55 – earlier in the case of incapacity or permanent departure from Malaysia. Contributions are mandatory only for Malaysian citizens or permanent residents. Foreigners can participate but are not required to do so.

Social Security Organization

The Employment Injury Insurance Scheme (EIS) and the Invalidity Pension Schemes (IPS), which are administered by the Social Security Organization (SOCSO), cover all employees earning less than MYR 3,000 per month. An employee who has entered the scheme once will remain covered even if the wages increase beyond MYR 3,000.

The employer and employee both contribute to the EIS and IPS. Contribution amount depends on employee salary, up to MYR 51.65 from employer and MYR 14.75 from employee. If the employee is not eligible for IPS, then only the employer must contribute, up to MYR 36.90.

Human resources development fund

HRDF provides financial assistance for designated training. Contribution rate is 1% of employees' monthly salary, paid once per year – but only for employees who are Malaysian citizens. HRDF is mandatory for employers in these sectors:

- Manufacturing with 50 or more employees
- Manufacturing with 10 to 49 employees and paid-up capital of at least MYR 2.5 million
- Service with 10 or more employees
- Supermarkets and department stores with 50 or more employees.

Employers in manufacturing with 10 to 49 employees and less than MYR 2.5 million in paid-up capital can enroll in the HRDF by choice. In this case, contribution rate is 0.5% instead of 1%.

Foreign employment

A company wishing to employ foreigners should apply to the agency overseeing the company sector:

- Malaysian Investment Development Authority (MIDA) for manufacturing, hotel and tourism, and research and development.
- Multimedia Development Corporation (MDeC) for IT companies with MSC status
- Public Service Department (PSD) for doctors and nurses in government hospitals and clinics, lecturers and tutors in government institutions of higher learning, and contract posts in public services and jobs offered by the Public Service Commission or related government agencies
- Central Bank of Malaysia for the banking, finance, and insurance sectors
- Securities Commission for the securities market.
- Expatriate Committee for all other sectors.

To apply with the Expatriate Committee, a company must fulfill minimum capital requirements:

| Company type | Paid-up capital (MYR) |
|-----------------------|-----------------------|
| 100% Malaysian | 250,000 |
| Malaysian and foreign | 350,000 |
| 100% foreign | 500,000 |
| Distributive trade | 1,000,000 |
| Foreign restaurant | 1,000,000 |

While the Malaysian government permits foreign employment for executive or technical positions, their goal is to have all jobs eventually filled by Malaysians.

Taxation

Corporate tax

A regular partnership is not considered a company. Instead, partners pay individual tax on their shares of income. However, an LLP is taxed like a company.

Residence

A **tax resident** manages and controls its affairs from Malaysia. Holding a single Board of Directors meeting in Malaysia will qualify the company as a tax resident for that accounting year. Typically, an accounting year coincides with the tax year. A tax resident is taxed only on Malaysia-sourced income except for international transport and finance/banking companies, which are taxed on worldwide income.

A **non-tax resident** is a company that does not fulfill the above requirement and is taxed only on income from trading within, not with, Malaysia. Under certain international tax agreements, a non-resident may be taxed only on the income of its Malaysia-based permanent establishment. Income not derived from doing business, such as royalties and interest fees, is subject to withholding tax.

Tax rates

Generally, residents are taxed at 24%. However, small and medium enterprises [i.e. companies with paid-up capital of not more than MYR 2.5 million and none of their related companies within the group (related by way of shareholding of more than 50%) having paid-up capital exceeding MYR 2.5 million] are taxed at the lower rate of 18% on the first MYR 500,000 of income. The excess will be taxed at 24% similar to other residents with reduction in tax rates of 1% to 4% on incremental chargeable income.

Non-residents are taxed at flat 24% for all business income. Non-business income is subject to withholding tax payable to the Inland Revenue Board within one month: interest at 15%, and everything else at 10%, including royalty, rent, and service fees. Dividends from single-tier companies are exempt from withholding tax.

Taxable income

Taxable income is based on the profit from the audited financial statements with some adjustments. Capital receipts (except real estate gains) and single-tier dividends are exempt from taxation. Expenses are generally deductible with some exception, e.g. private expenses, income tax, pre-operating expenses, capital withdrawn, and capital expenditure on improvements.

Capital allowances

Depreciation of fixed assets in financial statements is not deductible for tax purposes. Instead, certain fixed assets are granted capital allowances, which are tax deductible.

Capital allowances from one business cannot be deducted against another line of business. Unused allowances can be carried forward indefinitely. They take precedence over losses from previous years, which can also be carried over indefinitely. However, dormant companies with significant shareholder change cannot carry forward the losses or allowances.

Industrial buildings

Industrial building allowances are given for construction or purchase of structures used as factories, docks, warehouses, farm buildings, or mining facilities. The cost of the land cannot be included in the expense. Generally, initial and annual allowances of 10% and 3% respectively are given for the first year and 3% annually thereafter.

Offices may get capital allowance only if they are integrated with an industrial building and costs less than 10% of the entire facility.

Other buildings can also qualify:

- Provision of utilities to the public
- Licensed hospital, maternity, or nursing homes
- Approved educational institutions
- Home for the elderly
- Research and training for approved industries
- Hotels
- Childcare facilities for employees
- Public roads recoverable through toll collection
- Building used for providing living accommodation to employees (non-administrative) in certain businesses
- Building in a Cyberjaya Flagship Zone for MSC status company
- Commercial building used for specific business in the Tun Razak Exchange
- Airport
- Motor racing circuit
- Building used by Bionexus status company.

Plant and machinery

Qualifying expenditures include the cost of assets used for business (office equipment, vehicles), the installation and construction of plant and machinery, and the cost of facilities for animal farming. The annual allowance ranges from 10% to 20% depending on the type of expenditure. Certain assets may be written off between one and three years.

Assets costing not more than MYR 1,300 each can be fully written-off upon purchase, up to a limit of MYR 13,000 each year.

The capital allowance claim for motor vehicles is generally restricted to MYR 50,000. However, new vehicles not exceeding MYR 150,000 can receive capital allowance for up to MYR 100,000 of its value.

Plantations and forests

New planting gets an annual allowance of 50%. Replanting is considered a deductible cost and is not part of capital allowances.

Construction of buildings in a forest that will be worthless after the timber has been extracted get an agricultural allowance of 10% per year – 20% for buildings used for staff welfare and accommodation.

Mining

Expenditures on mining, exploration, and acquisition of rights and buildings or constructs with no salvage value can be written off over the life of the mine. However, buildings or constructs with salvage value are treated as regular plant and machinery.

Balancing adjustments

Upon disposal of assets, a balancing adjustment must be made according to the difference between sales proceeds and tax-written-down values. Where the tax-written-down value is more than the sales proceed, balancing allowance shall be given. Conversely, balancing charge shall form part of taxable income if the sales proceed is in excess of the tax-written-down value. However, the balancing charge is limited to the capital allowances already claimed.



Assets disposed within two years of purchase might have its capital allowances withdrawn unless there is commercial justification.

Assets sold or transferred between companies under the same group will not need balancing adjustments. Instead, they will be valued at the tax-written-down values.

Group relief

Locally incorporated resident companies may use 70% of losses to offset profits from a related company. However, group relief is subject to the fulfillment of many conditions such as the companies are not enjoying certain tax incentives.

Individual tax

Residence

A **resident individual** is taxed on income derived in Malaysia. They enjoy preferential scale tax rates (as below) and can claim tax reliefs and rebates. Generally, an individual would be a resident if he is in Malaysia for at least 182 days in a calendar year.

Similarly, a **non-resident individual** is taxed on income derived in Malaysia. However, they are not entitled to tax reliefs and rebates and are subject to tax at 28% flat rate.

Resident Individual Taxation

Taxable Income

The following are taxable:

- Gains from business and profession
- Employment income
- Dividends, interests, and discounts
- Rents, royalties, and premiums
- Pensions and annuities

Employment income includes bonuses and benefits-in-kind, including vehicles, fuel, chauffeur, housekeeper, gardener, etc. Some benefits are exempted from tax:

- One overseas leave package, only for travel fare up to MYR 3,000
- Three local leave packages, including travel fare, meals, and accommodation
- Employer's goods sold at a discount, up to MYR 1,000
- Employer's service provided to employee
- Maternity expenses and traditional medicine
- Telephone, mobile phone, broadband subscription, and the bills, limited to one unit each.

Tax rates

Tax rates are applied marginally, up to each income bracket.

| Income (MYR) | 2017 |
|---------------------|-------------|
| 0 – 5,000 | 0% |
| 5,001 – 20,000 | 1% |
| 20,001 – 35,000 | 3% |
| 35,001 – 50,000 | 8% |
| 50,001 – 70,000 | 14% |
| 70,001 – 100,000 | 21% |
| 100,001 -250,000 | 24% |
| 250,001 – 400,000 | 24.5% |
| 400,001 – 600,000 | 25% |
| 600,001 – 1,000,000 | 26% |
| >1,000,000 | 28% |

Non-residents get taxed at flat 28%.

Tax deductions and reliefs

Expenses for the performance of duties are fully deductible. Additionally, tax reliefs are provided:

| Basis | MYR |
|-----------------------------------|------------|
| Self | 9,000 |
| With disability, additional | 6,000 |
| Spouse | 4,000 |
| With disability, additional | 3,500 |
| Each child | |
| <18 years old | 2,000 |
| With disability | 6,000 |
| >18 years old in higher education | 8,000 |
| With disability | 8,000 |

The following tax reliefs are also provided, but the numbers refer to the maximum limit allowed:

| Basis | MYR |
|--|-------|
| Life insurance and EPF contributions | 6,000 |
| Private pension and annuity contributions | 3,000 |
| Net saving in SSPN scheme | 6,000 |
| Education fees per individual | 7,000 |
| Insurance for healthcare and education | 3,000 |
| Medical expenses for serious disease | 6,000 |
| Supporting equipment for direct family | 6,000 |
| Contribution to SOCSO | 250 |
| Parental care for each parent | 1,500 |
| Purchase of breastfeeding equipment | 1,000 |
| Fees paid to childcare centres and kindergartens | 1,000 |
| Lifestyle relief (purchase of books/journals, computer/smartphone, sports equipment, subscription of broadband internet and gymnasium membership fees) | 2,500 |

The following tax rebates are also available:

| Basis (MYR) | Rebate (MYR) |
|---|--------------|
| Individual income <35,000 | 400 |
| Spouses assessed separately, each with income <35,000 | 400 each |
| Spouses assessed jointly, with joint income <35,000 | 800 |
| Islamic religious duties | 100% |

Housing allowance and Labuan territory allowance received by a citizen employed in Labuan by a Labuan entity are tax exempt up to 50% of gross income until 2020.

A resident under the Returning Expert Program may opt for 15% flat rate for five years. Additionally, Iskandar residents who do specialised work for designated entities in Iskandar may also opt to be taxed at 15% flat rate.

Non-resident individual taxation

Tax rates

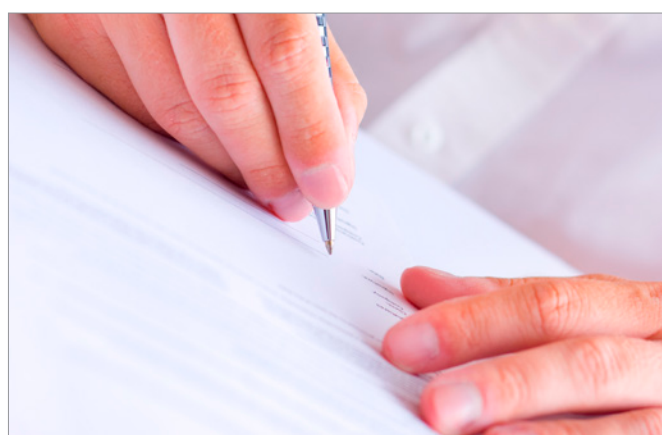
| Basis | Rate |
|----------------------------------|------|
| Business and employment income | 28% |
| Income from public entertainment | 15% |
| Single-tier dividend | - |
| All other income | 10% |

Tax exemptions

Non-residents who are employed in Malaysia for less than 60 days in a calendar year (or two years, if the employment period overlaps two calendar years) are exempted from tax.

Expatriates working in operational headquarters, regional offices, international procurement centres, regional distribution centres, or treasury management centres are taxed depending on the number of days they worked in Malaysia during the year.

Foreigners working in management of a Labuan entity are exempted from tax on 50% of their gross income – 100% for director’s fees – until 2020.



Withholding tax

Almost all sources of taxable income are subject to withholding tax of 10%. Interest is taxed at 15%, while early withdrawal from a private retirement scheme is taxed at 8%.

Tax treaties

Foreigners can get lower tax rates, especially withholding tax rates, under certain tax treaties. Currently, Malaysia has tax treaties with:

| | | | | |
|------------------------|------------|-----------------|------------------|--------------------------|
| Albania | Fiji | Kyrgyz Republic | Papua New Guinea | Sudan |
| Argentina | Finland | Kuwait | Philippines | Sweden |
| Australia | France | Laos | Poland | Switzerland |
| Austria | Germany | Lebanon | Qatar | Syria |
| Bahrain | Hong Kong | Luxembourg | Romania | Taiwan |
| Bangladesh | Hungary | Malta | Russia | Thailand |
| Belgium | India | Mauritius | San Marino | Turkey |
| Bosnia and Herzegovina | Indonesia | Mongolia | Saudi Arabia | Turkmenistan |
| Brunei | Iran | Morocco | Senegal* | United Arab Emirates |
| Canada | Ireland | Myanmar | Seychelles | United Kingdom |
| Chile | Italy | Namibia | Singapore | United States of America |
| China | Japan | Netherlands | South Africa | Uzbekistan |
| Croatia | Jordan | New Zealand | Spain | Venezuela |
| Czech Republic | Kazakhstan | Norway | Slovak Republic | Vietnam |
| Denmark | Korea | Pakistan | Sri Lanka | Zimbabwe |
| Egypt | | | | |

*Not yet entered into force

Other taxes

Land and building

Annual assessment is payable on residential property at 6% of the value assessed by the authorities. All landed properties also have to pay annual quit rent, typically MYR 0.01-0.02 per square foot.

Real property gains tax

Gains from the sale of real estate are taxed at a rate depending on the duration the property is held.

| Holding period (years) | Individual | | Corporate |
|------------------------|----------------------------|-------------|-----------|
| | Citizen/permanent resident | Non-citizen | |
| 3 | 30% | 30% | 30% |
| 4 | 20% | 30% | 20% |
| 5 | 15% | 30% | 15% |
| ≥6 | 0% | 5% | 5% |

Stamp duty

The typical rate is 0.1% of contract value, but certain contracts have different rates. For the transfer of property:

| Property value | Marginal tax rate |
|--|-------------------|
| First MYR 100,000 | 1% |
| Next MYR 400,000 | 2% |
| Subsequent amount in excess of MYR 500,000 | 3% |

Loan agreements are typically at 0.5%, but SMEs can get the following lower rates with the approval of the Ministry of Finance:

| Loan value | Marginal tax rate |
|--|-------------------|
| First MYR 250,000 | 0.05% |
| Next MYR 1,000,000 | 0.25% |
| Subsequent amount in excess of MYR 1,000,000 | 0.5% |

Goods and services tax

With effect from 1 April 2015, goods and services tax (GST) will be charged on all taxable supplies at 6% to replace the sales and services tax.

Nevertheless, supplies that are under the zero-rated list and exempt list have no GST.

Import duty

The tariffs range from 0% to 50%, with most goods being taxed around 6% on average. Some electronic products are exempted from import duty.

Excise duty

Motorcycles (four-wheelers) are taxed an additional 20-30% (60-105%), depending on engine capacity.

Liquor, cigarettes, tobacco, playing cards, and mahjong tiles are also subject to excise tax.

Investment

The Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976, and Free Zones Act 1990 provide tax incentives to the manufacturing, agriculture, tourism (including hotel), and approved services sectors as well as R&D, training, and environmental protection activities.

Main incentives

Companies can choose one of two main incentives. The pioneer status (PS) incentive grants tax exemption on a portion of the company's statutory income beginning on the production date, defined as the day production reaches 30% capacity.

Meanwhile, the investment tax allowance (ITA) incentive grants greater capital allowances for all approved expenditures for a certain number of years starting from the first capital expenditure, which can be used to offset company profits. Unused allowances and unutilised RA during these incentive periods can be carried forward indefinitely.

Generally, the following industries may be considered for tax incentives (either PS or ITA):

- Manufacturing
- Agricultural
- Tourism
- Research and development
- Education
- Healthcare
- High technology and multimedia
- Waste recycling and green technology
- Real Estate Investment Trust
- Biotechnology.

Other incentives for manufacturing

Reinvestment allowance (RA)

Manufacturing and some agricultural companies that reinvest for expansion, automation, modernisation, or diversification within the same industry can qualify for this incentive, provided they have been in operation for 36 months.

Similar to the ITA incentive, the RA gives a 60% allowance on capital expenditures incurred by a company, which can be offset against 70% of its business income. The company can offset against 100% of its business income if the company can maintain a certain productivity level set by the Ministry of Finance.

The RA lasts for 15 years from the first reinvestment. A special RA is given for another three years commencing from 2016 to 2018. The RA given on an asset will be withdrawn if it is disposed of within five years after purchase.

Accelerated capital allowance (ACA)

Upon expiry of the RA, a company that manufactures certain promoted products can apply for general ACA. Under this incentive, capital expenditures are given 40% initial allowance and 20% annual allowance thereafter. However, other companies can take advantage of the ACA for specific expenditures:

- Industrial Building Systems, which create a safer and cleaner working environment
- Security control equipment such as alarm systems, sirens, and security cameras.

Equipment to main quality of power supply get a special rate. These equipment get an initial allowance of 20% and an annual allowance of 80%.

Increased export incentives

To promote the growth of exports, companies can gain tax exemption based on the increase of exports.

Goods with at least 30% (50%) value added grant tax exemption equal to 10% (15%) of the increase.

The percentage of value add be revised from 30% to 20% (or 50% to 40%) for 2016 to 2018.

Companies with at least 60% Malaysian ownership get additional benefits. With a significant increase in exports, the company can get tax exemption on 30% of the increase. The number increases to 50% if the company can penetrate new markets and 100% if the company can achieve the highest increase in its category.

Group relief

70% of a year's losses can be used to offset the income of another company within the same group if these criteria are satisfied:

- Both companies have paid-up capital of ordinary shares of more than MYR 2.5 million
- Both companies must have the same accounting period
- The group must own at least 70% of both companies during the relevant year and the preceding year
- The companies are not under any of these other incentives: PS, ITA, RA, Exemption of Shipping Profits, Exemption of Income Tax under Section 127 of Income Tax Act 1967, and Incentive Investment Company.

Free industrial zones (FIZ)

Special zones are set up for export-oriented industries. Companies in a FIZ are exempted from import duty of raw materials, components, parts, machinery, and equipment needed for manufacturing. Companies can get these benefits outside of FIZ if setup as a Licensed Manufacturing Warehouse.

Principal hub

An approved principal hub company is defined as a locally incorporated company that uses Malaysia as a base for conducting its regional and global businesses and operations to manage, control and support its key functions including management of risks, decision making, strategic business activities, trading, finance, management and human resource. This incentive which is effective 1 May 2015 that replaced the previous three incentives of operational headquarters (OHQ), international procurement centers and regional distribution centers.

The eligibility criteria for an approved principal hub are:

- Must be a locally incorporated company under the Companies Act 1965
- With paid-up capital of more than MYR 2,500,000
- Minimum annual sales of MYR 300 million (additional requirement for companies applying for tax exemption on trading income)
- Control and serve network companies in at least three countries outside Malaysia
- Carry out at least three qualifying services, with one of the qualifying services must be regional profit and loss/business unit management from the strategic services cluster
- Fulfill the employment requirement with at least:
 - Tier 3: 15 high value jobs, including 3 key strategic/management positions
 - Tier 2: 30 high value jobs, including 4 key strategic/management positions
 - Tier 1: 50 high value jobs, including 5 key strategic/management positions

- Annual business spending of at least:
 - Tier 3: RM3 million
 - Tier 2: RM5 million
 - Tier 1: RM10 million
- Training and development plan for Malaysians
- Significant use of local banking and financial services and other ancillary services and facilities
- Malaysian-owned and incorporated businesses are encouraged to provide headquarters-related services and expertise to their overseas companies.

New companies are eligible for 3-tiered preferential corporate tax rates of 0% (for Tier 1 principal hub), 5% (for Tier 2 principal hub) and 10% (for Tier 3 principal hub) for a period of five years whilst existing companies are eligible for 100% income tax exemption on Value Added Income (with an extension up to five years, subject to fulfillment of certain conditions).

Existing companies that have completed OHQ, international procurement center or regional distribution center incentive may apply for the principal hub incentive subject to the following commitment under Tier 1:

- 20% incremental commitment of the existing employment
- 30% incremental commitment of the existing business spending.

For goods-based approved principal hub companies, such companies will enjoy customs duty exemption on imported raw materials, components and finished products into free industrial zones, licensed manufacturing warehouse, free commercial zones and bonded warehouse for production or re-packaging, cargo consolidation and integration before distribution to its final customers.

Intellectual property rights

Malaysia accedes to the Paris Convention, Berne Convention, TRIPS, and WIPO. The TRIPS Council periodically reviews Malaysia's intellectual property rights protection so it conforms to international standards. In most cases, Malaysian residents can apply for protection on their own while non-residents must go through registered agents.

The Intellectual Property Corporation of Malaysia (MyIPO), an agency under the Ministry of Domestic Affairs, handles all matters related to intellectual property.

Patents

The Patents Act 1983 and the Patents Regulations 1986 allow inventions to be patented. For an invention to be patentable, it must be new, involves an inventive step, and is industrially applicable. A patent lasts for 10 years and can be renewed twice for five years each. Patented products that already trade in other markets can still be imported.

Trademarks

The Trade Marks Act 1976 and the Trade Marks Regulations 1997 protect trademarks from being used by unauthorized persons. While residents can apply for protection on their own, non-residents must go through registered agents. Trademarks last for 10 years and can be renewed indefinitely. Well-known international names cannot be trademarked in Malaysia except by the owner of those trademarks. Border measures are taken to prevent the importation of counterfeit goods.

Malaysia follows the Nice Agreement for the international classification of goods and services and the Vienna Agreement for the classification of marks and figurative elements.

Industrial designs

The Industrial Designs Act 1996 and Industrial Designs Regulations 1999 allow industrial design rights to be treated as intangible property. To be registered, the industrial design must be new and not dictated solely by function nor by another article. The protection lasts for 5 years and can be renewed twice for five years each.

Copyright

The Copyright Act 1987 outlines the items available for protection and the scope of protection. Literary, musical, or artistic works are protected for 50 years after the author's death. Sounds recordings, broadcasts, film, and live performances are protected for 50 years after first publication.

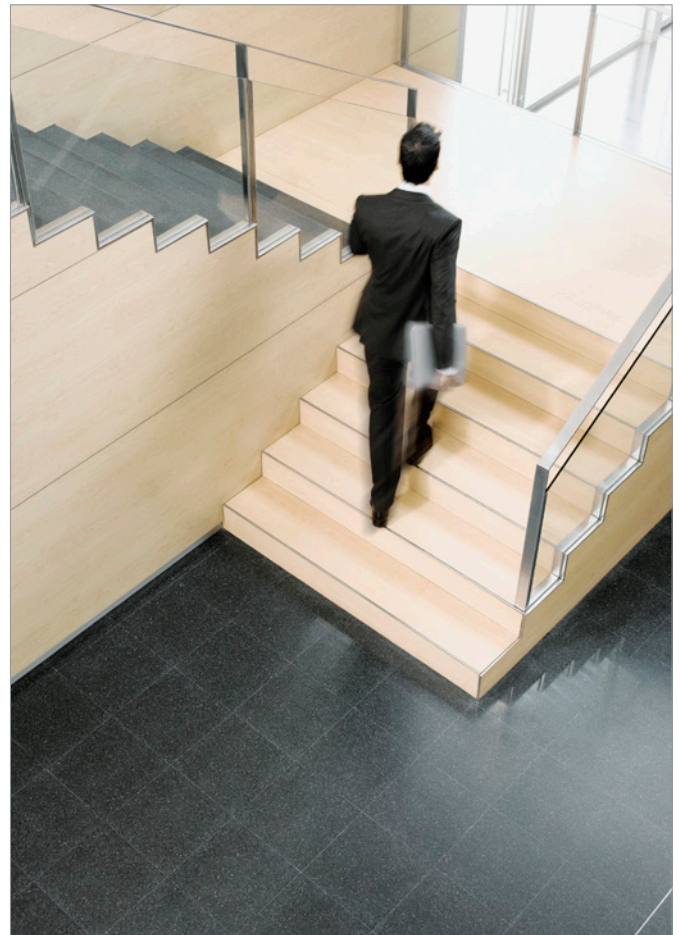
Notably, the Act enables the Ministry of Domestic Trade and Consumer Affairs to search premises suspected of having infringing copies and seize those copies without warrant.

Layout design of integrated circuits

The Layout Designs of Integrated Circuits Act 2000 protects layout design for 10 years from commercial use or 15 years from date of creation if not used commercially.

Geographical indications

The Geographical Indications Act 2000 protects the registration of goods using the name of the place they're produced. The protection is primarily used for wines, spirits, natural or agricultural products, and handcraft.



9. Philippines

Country profile

| | | |
|----------------------|--|---|
| Official name | Republic of the Philippines | |
| Capital | Manila | |
| Location | South of Taiwan North of Indonesia | |
| Area | 298,170 km ² 7,107 islands | |
| Climate | Marine tropical with rainy season | |
| Time zone | UTC +8 no DST | |
| Population | ~103 million | |
| Currency | Philippine Peso PHP | |
| Language | Filipino English | |
| Religion | 90% Christianity 5% Islam | |
| International | EAS G-77 ADB World Bank WTO | APEC ASEAN Colombo Plan Next Eleven ICO |
| Government | Constitutional republic with presidential system | |

The Philippines is a unitary state with the exception of the Autonomous Region in Muslim Mindanao which is largely free from the national government.

Executive

The President functions as head of state, head of government, and commander-in-chief of the armed forces. The President is elected for a six-year term and delegates his power to the Cabinet, mostly composed of the heads of executive departments. The President also has power to propose a national budget, which the Congress can adopt, amend, or revise.

Legislative

The Congress has two chambers. The 24 members of the Senate (upper chamber) are elected to six-year terms while the 287 members of the House of Representatives (lower chamber) are elected to three-year terms.

Judicial

The Supreme Court is the court of last resort and also deals with the constitutionality of laws. The Chief Justice presides over 14 associate judges appointed by the President from the nominations of the Judicial and Bar Council. Other courts include the Court of Appeals, the Court of Tax Appeals, the People's Advocate Court, and the Regional Trial Courts. The Ombudsman investigates and prosecutes government officials.

| PH economy data | 2015 | 2016 | 2017 |
|-----------------------|-------|-------|-------|
| Real GDP USD billions | 293 | 305 | 321 |
| GDP per capita USD | 2,878 | 2,951 | 3,022 |
| Unemployment | 6.3% | 5.9% | 6.0% |
| Inflation, eop | 1.5% | 2.6% | 3.1% |

Business entities

The Securities and Exchange Commission (SEC) regulates business entities. Registration with the SEC is required to start any of these entities.

Sole proprietorship

In a sole proprietorship, the owner has full control, owns all assets, and holds unlimited liability. A sole proprietorship must register with the Department of Trade and Industry.

Partnership

A partnership is a legal entity distinct from its owners. In a general partnership, all partners have unlimited liability. In a limited partnership, at least one general partner must hold unlimited liability, while all other partners are only liable up to their capital contributions. Only partnerships with capital above PHP 3,000 must register with the SEC.

Corporation

Corporations are legal entities distinct from their owners. Between 5 and 15 incorporators must hold shares in the company. They must contribute at least PHP 5,000 in paid-up capital. Liability is limited to share capital. A company with more than 40% foreign ownership is considered a foreign company.

In a stock corporation, the capital is divided into shares, through which dividends are distributed.

In a non-stock corporation, no shares are issued to its members. This form is used for public purposes such as charity or education.

Branch office

A branch office is considered a foreign corporation that carries out business in the Philippines. A company can open a branch only if it provides at least USD 200,000 in paid up capital, or USD 100,000 for high technology companies or companies that directly employ 50 people.

Representative office

A representative office is a foreign entity that does not generate income and is fully subsidized by the parent company. It deals with clients of the parent company and can disseminate information, promote company products, and control the quality of products for export. The parent company must remit at least USD 30,000 a year to the representative office.

Regional headquarters (RHQ)

Regional operating headquarters (ROHQ)

The Republic Act No. 8756 allows foreign entities to create an RHQ or ROHQ to supervise, inspect, or coordinate related companies.

An RHQ is limited to supervising, communicating with, and coordinating related companies in the Asia-Pacific region. It can also handle administration for international trade. However, it cannot generate any income whatsoever. The parent company must send at least USD 50,000 to the RHQ annually.

An ROHQ is limited to planning, administration, coordination, procurement of raw material, financial advisory, marketing control, sales promotion, employee management and training, logistics, research and development, technical support, and business development. Unlike an RHQ, an ROHQ can derive income from the Philippines. Since it can sustain its own operations, the parent company only needs to send an initial capital of USD 200,000.

Accounting and auditing

Books of accounts

All taxable business entities must maintain a journal and a ledger in Filipino or English. Those with quarterly earnings of less than PHP 50,000 can use a simplified bookkeeping method, while those earning more than PHP 150,000 per quarter must have their books audited by an independent CPA annually and submit an Account Information Form with the tax returns.

Financial statements

The SEC requires companies to file financial statements if they meet any of these thresholds:

- Stock corporation with paid up capital of PHP 50,000
- Non-stock corporation with total assets of PHP 500,000 or gross annual receipts of PHP 100,000
- Branch office of stock corporation with assigned capital of PHP 1,000,000
- Branch office of non-stock corporation with total assets of PHP 1,000,000
- ROHQ with annual revenue of PHP 1,000,000.

The format of the financial statements depends on the type of the company.

A large or publicly-accountable entity must use the Philippine Financial Reporting Standards (PFRS) or a framework approved by the SEC for certain subclasses (e.g. banks, insurance companies). These are entities:

- with assets above PHP 350 million or total liabilities above PHP 250 million
- required to file financial statements under Part II of SRC Rule 68
- planning to issue any instruments in the public market
- holding secondary licenses issued by regulatory agencies.

A medium-sized entity must use the Philippine Financial Reporting Standards for Small and Medium Entities (PFRS for SMEs), although some types can use the regular PFRS instead. These entities:

- have total assets between PHP 100-350 million or total liabilities between PHP 100-250 million
- are not required to file financial statements under Part II of SRC Rule 68
- are not in the process of filing their financial statements for the purpose of issuing any class of instruments in a public market
- are not holders of secondary licenses issued by regulatory agencies.

A small-sized entity must use the Philippine Financial Reporting Standards for Small Entities (PFRS for SEs) as adopted by the Securities and Exchange Commission (SEC), although some types can use the regular PFRS or PFRS for SMEs instead. These entities:

- have total assets between PHP 3-100 million or total liabilities between PHP 3-100 million
- are not required to file financial statements under Part II of SRC Rule 68
- are not in the process of filing their financial statements for the purpose of issuing any class of instruments in a public market
- are not holders of secondary licenses issued by regulatory agencies.

A micro entity have the option to use as their financial reporting framework either the income tax basis of the PFRS for SEs. They have similar requirements to small-sized entities but must have total assets and total liabilities below PHP 3 million.

Finance and capital markets

Exchange control

The Bangko Sentral ng Pilipinas (BSP), the Central Bank, maintains a floating exchange rate policy. Foreign exchange can be freely traded outside of the banking system. In addition, foreign exchange receipts may be sold for PHP outside the banking system, deposited in foreign currency accounts, or used for virtually anything else.

Peso-dollar trading among banks (usually members of the Bankers Association of the Philippines) and between these banks and the BSP are done through the Philippine Dealing System (PDS). Commercial banks can deal in spot, forward, and swap transactions in PHP or USD and another currency.

Banking system

The General Banking Law of 2000 governs the banking system while the BSP supervises all banking operations and activities.

Types of banks

Universal and commercial banks represent the largest group in the country with 43 banks (including 21 foreign bank) and almost 6,531 offices and branches. They offer the widest banking services, including commercial banking and underwriting activities, among others.

Thrift banks consist of savings and mortgage banks, private development banks, stock savings and loan associations, and microfinance thrift banks. Thrift banks mainly accumulate deposits and invest them. They also provide financing in the agriculture, services, industry and housing, and financial sectors, mostly to SMEs and individuals. About 55 thrift banks with almost 2,439 offices and branches are scattered in the Philippines.

Rural and cooperative banks are popular in rural communities and provide basic financial services, including financial to farmers. Rural banks are privately owned while cooperative banks are owned by co-ops. About 487 banks with almost 2,935 offices and branches exist in the Philippines.

Islamic banks provide Syariah banking as defined in the "Charter of Al Amanah Islamic Investment Bank of the Philippines".

Non-banks with quasi-banking functions borrow funds from 20 or more lenders on behalf of another party through issuances, assignment with recourse, or acceptance of deposit substitutes for relending or purchasing receivables and other obligations.

Foreign banks

Foreign banks can operate in the Philippines by acquiring up to 60% of only one existing domestic bank, investing 60-100% in only one domestic subsidiary, or establishing branches with full banking authority. They can only choose one of the above options.

Foreign banks can also open Offshore Banking Units (OBU). An OBU is a branch, subsidiary, or affiliate of a foreign bank authorized by the BSP to conduct banking transactions in foreign currencies from external sources. The two OBU in the Philippines include BNP Paribas and Taiwan Cooperative Bank.

Twenty three (23) branches; two (2) subsidiaries; and twenty one (21) representative offices of foreign banks operate in the Philippines. Some of the big foreign banks, categorized either universal or commercial banks, include Citibank, HSBC, Maybank, Standard Chartered Bank, Bank of Tokyo-Mitsubishi UFJ Ltd., Deutsche Bank, ANZ, JP Morgan Chase, Mizuho Bank Ltd., ING Bank N.V, CTBC Bank and Bank of China.

Bank secrecy

The Bank Secrecy Law treats all deposits in banking institutions, including investments in Philippine government bonds, as strictly confidential. They cannot be examined by anyone except with written consent by the depositor. However, they may be examined with a court order in the case of bribery, dereliction of duty of public officials, or if the deposit is the subject matter of the litigation.

Deposit insurance

The Philippine Deposit Insurance Corporation (PDIC), under the Department of Finance, insures the covered deposits in all banks up to PHP 500,000. The PDIC determines the products covered by insurance, conducts independent special examination of banks, receives and liquidates closed banks, and issue debt.

Government financial institutions

Social security system (SSS)

SSS provides social security protection to workers and their beneficiaries as well as to all residents, especially the disadvantaged, disabled, sick, pregnant, elderly, dead, or suffering from loss of income.

Government service insurance system (GSIS)

GSIS provides social security benefits such as compulsory and optional life insurance, retirement benefits, disability benefits for work-related accidents, and death benefits to all employees of the Philippine government in exchange for monthly contributions. In addition, GSIS handles the administration of the General Insurance Fund. GSIS also provides loan privileges such as salary, policy, emergency, and housing loans to active GSIS members.

Development bank of the philippines (DBP)

The DBP aids critical industries, such as infrastructure, and promotes entrepreneurship in the countryside. It also provides social and environmental protection services.

Land bank of the philippines (LBP)

The LBP primarily aims to develop the countryside by financing the agricultural reforms. It has evolved into a full-service commercial bank while retaining its roots—profits are used to finance development programs. Additionally, the LBP is the official depository of government funds.

Capital market

Philippine Stock Exchange, Inc. (PSE)

The Manila Stock Exchange, established in 1927, is one of the oldest financial markets. A rival financial group created the Makati Stock Exchange in 1963, but due to conflict, the government merged the two exchanges in 1992 into the self-regulatory Philippines Stock Exchange (PSE).

In 2001, PSE was transformed into a shareholder-based, revenue-earning corporation by the Securities Regulation Code (SRC). PSE maintains an efficient and orderly market for the purchase and sale of stocks, warrants, bonds, options and other securities. Currently, the PSE is the country's sole stock exchange with more than 324 listed firms and 270 active trading participants.

The main barometer of stock price movements is measured by the PSE Index (PSEi). Companies can enlist in one of three boards:

| General criteria | First board | Second board | SME board |
|--|--|-----------------------------------|---|
| Market capitalization | PHP 500 million | PHP 250 million | – |
| Operating history | Three years | One year | One year |
| Track record | Profitable for three previous years with total pre-tax profit of PHP 50 million Minimum pre-tax profit of PHP 10 million each year thereafter | – | Profitable for three previous years with total pre-tax profit of PHP 15 million A positive EBITDA was generated in at least two of the last three fiscal years, including the fiscal year immediately preceding the filing of the application; and |
| Minimum requirement: Authorized capital stock Subscription | PHP 400 million PHP 100 million | PHP 100 million PHP 25 million | PHP 100 million PHP 25 million |

Securities and Exchange Commission (SEC)

The SEC is a Philippine state commission responsible for securities laws and regulation. It approves the registration of securities on the PSE, supervises and analyzes all registered business entities, creates policies regarding securities, investigates and sanctions violations, and enforces the securities laws.

Labor

The Labor Code of the Philippines serves as the main labor law while the Department of Labor and Employment (DOLE) is the national implementing government agency.

Types of employment

All employment should be bound by a contract signed by both the employer and employee. Various types of employment exist:

- **Project employment** is fixed to a specific project and the terms of completion should be stated in the contract
- **Seasonal employment** is seasonal and typically has short durations
- **Casual employment** lasts for a definite period and becomes fixed employment after one year
- **Term or fixed employment** is permanent; the employee must have already worked for at least one year and passed the probationary period
- **Probationary employment** is where an employee's performance is evaluated for a certain period, generally six months, to determine if an employee is qualified for a permanent employment.

Working hours and compensation

Normal working hours are limited to eight hours a day with a one-hour meal break. Employees must receive a rest day after six consecutive days of working. All work exceeding this limit is considered overtime. Overtime rate is 125% on a working day and 130% on a rest day.

Night shifts, deemed work between 11 pm and 6 am, must be compensated 10% more than the day shifts. Generally, women are prohibited from night shifts, although they are allowed to work until midnight in non-industrial sectors.

Wages and benefits

Minimum daily wage

The National Wages and Productivity Commission and the Regional Tripartite Wages and Productivity Boards decide minimum wage rates depending on the demand for living wages, the cost of living, the consumer price index, the needs of workers and their families, and fair return of the capital invested and employer's capacity to pay. For the National Capital Region or Metro Manila Area, the daily minimum wage rate effective 5 October 2017 ranges from PHP 475 (agriculture sector) to PHP 512 (non-agriculture sector). Salaries and wages are generally paid in cash at least twice a month (i.e. every 15th and the last day of the month).

Benefits

Holiday pay

The DOLE differentiates between regular holidays and special holidays. In 2018, there is 12 and 9 days of each, respectively. Employees receive full pay. Work on these days is considered overtime with the following rates: 200% on regular holidays, 130% on special holidays, and 150% on special holidays that fall on a rest day.

Service incentive leave

A worker who has rendered at least one year of service is entitled to five days of paid leave annually.

Thirteenth month pay

A rank and file employee who has worked for at least one month during a calendar year must get a bonus of at least one month's salary. Employees paid on a piecework basis or on a fixed wage plus commission also qualify. The bonus must be paid before 24 December.

Maternity leave

Pregnant female employees who have worked for six months out of the last 12 months are entitled to pay maternity leave of two weeks before and four weeks after pregnancy. The leave may be extended without pay due to medically certified illnesses related to the pregnancy. An employer is only obliged to cover four pregnancies.

Paternity leave

Male employees can get seven days of paid leave to aid his wife during the recovery period or nurse the newborn child. Only four deliveries must be covered by the employer.

Parental leave for solo parents

Single parents get seven days of paid leave annually to take care of their children.

Retirement benefits

Employees can retire at 60 years old and must retire at 65 years old. The age requirements may differ because of collective bargaining agreements. They can collect retirement benefits if they have worked for at least five years for the company.

The minimum retirement benefit includes half a month's pay and one twelfth of an annual bonus for each year of service rendered for the company. Additionally, the employee should receive the cash equivalent of up to five days of paid leave.

Social Security System and Government Service Insurance System

The SSS provides social security benefits to all residents and employees, while the GSIS provides benefits to only government employees. Both of these organizations are explained in more detail in the capital markets section. Mandatory contributions are shared by employer and employee.

Employee's Compensation Program (ECP)

The ECP, administered by the Employees' Compensation Commission under the DOLE, compensates employees or their dependents in case of work-related illness, injury, disability, or death. Compensation comes in the form of cash to replace lost income, medical benefits, rehabilitation services, career allowance, and death benefits to beneficiaries. This program covers everyone enrolled in the SSS or the GSIS except for self-employed persons. The employer is solely responsible for the mandatory contributions.

National Health Insurance Program (NHIP)

The Philippine Health Insurance Corporation, a government corporation, administers the NHIP, which provides health insurance and accessible healthcare services. All contributing members, indigenous people, and even non-paying pensioners can enjoy these benefits. The contributions are split between the employer and employee—self-employed people bear the entire contribution.

Termination of employment

Employees terminated due to automation or redundancy receive severance pay equal to one month's salary for every year of service. Employees terminated due to retrenchment or disease, where work may harm the diseased or the coworkers, get severance pay equal to half a month's salary for each year of service. Severance pay has a floor of one month's salary; each year is rounded up. Employees terminated with a just cause are not entitled to severance pay.

Labor relations**Labor unions**

Employees, except managerial employees, can join, assist, or form labor organizations for collective bargaining. Supervisory employees can only join, assist, or form labor organizations separate from the rank-and-file employees' labor organization.

Strike and lockout

Labor unions can organize strikes while employers can declare lockouts as long as they follow the provisions in the labor code. Some business activities are prohibited from strikes and lockouts, however.

Foreign assistance

Aliens and foreign organizations can join trade union activities only if their home countries grant similar union rights. Foreign assistance such as donations and grants to labor organizations are prohibited unless permitted by the Secretary of Labor.

Employment of foreigners

The DOLE can grant an Alien Employment Permit if a position cannot be filled by anyone in the Philippines who is competent, able, and willing. Once the permit is issued, transfer of employment is prohibited without the approval of the DOLE.

For short-term employment, the local employer should apply for the Special Work Permit upon arrival of the foreign employee. The permit lasts three months and can be extended for another three months.

Taxation

The National Internal Revenue Code of 1997, as amended sets out taxation laws in the Philippines. The Bureau of Internal Revenue, under the Department of Finance, handles the administration of taxes. The Commissioner can decide disputed assessments, refund taxes and other charges, modify payments, and cancel tax liability. Taxpayers may appeal directly to the Court of Tax Appeals for disputes with the Commissioner.

The tax year can be the calendar year or the fiscal year of the company. Corporate income tax is based on self-assessment and the filing of tax returns.

The Local Government Code imposes local corporate taxes.

Corporate tax

Tax residents are taxed on worldwide income. They can be a domestic company organized under Philippine laws or a foreign company doing business within the Philippines.

Tax non-residents are taxed only on income derived in the Philippines. Only foreign corporations not engaging in any business activities in the Philippines are considered non-residents.

Tax rates

The standard tax rate is a flat 30% of taxable income. ROHQs and some nonprofits are taxed at 10%. Meanwhile, government-owned corporations and RHQs are exempt from income tax.

Firms can choose to be taxed on 15% of gross income if they fulfill certain requirements, such as gross profit margin of less than 45%. Once chosen, this taxation scheme applies for at least three years.

The Minimum Corporate Income Tax (MCIT) applies to all resident companies beginning on the fourth taxable year. Companies pay the greater tax amount between the standard rate and MCIT, which is 2% of gross income. If a company pays MCIT, the portion exceeding normal income tax can be credited to normal income tax in the three following years. Corporations facing losses due to labor disputes, force majeure, or other legitimate business reasons are exempted from MCIT.

Improperly accumulated taxable income – earnings accumulated instead of being distributed to avoid income tax – are taxed at 10%. Generally, this means taxable income adjusted by income exempt from tax, income excluded from gross income, income subject to final tax, and net operating loss carry-over deducted by dividends and income taxes paid during a taxable year. Public companies, financial institutions and intermediaries, and insurance companies are exempt from this tax.

Certain classes of business have lower tax rates:

- Offshore Banking Units at 10% final tax
- Resident foreign international carriers at 2.5% Gross Philippine Billings
- Branch remittance at 15% of after-tax profits
- Non-resident foreign cinematographic film owner, lessor, or distributor at 25%
- Non-resident foreign company leasing vessels to domestic entities at 4.5% gross rentals
- Non-resident foreign company renting aircraft, machinery, or other equipment at 7.5% gross rentals.

Taxable income and gross income

Taxable income refers to gross income minus deductions and additional exemptions, while gross income refers to gross receipts minus cost of goods sold, discounts, sales returns, and allowances. Some items are not considered gross income:

- Income exempt under treaty
- Income from domestic loans, stocks, or bonds received by a foreign government
- Interest in domestic bank deposits received by a foreign government
- Income from public utility or governmental functions
- Gains from the sale, exchange, or retirement of bonds with maturity of more than five years
- Gains from redemption of shares in a mutual fund.

Allowable deductions

All expenses are deductible if they pertain to revenue generation, are properly documented, and are not categorized as non-deductible expenses. Some components of deductible expenses may be non-deductible. Allowable deductions include:

- Ordinary and necessary expenses except:
 - Gross monetary value of fringe benefits where related final tax is not yet paid
 - Amount of representation and entertainment above the ceiling amount
- Interest:
 - Reduced by 33% of interest income subjected to final tax
 - Allowed only in the period the indebtedness is paid
 - If paid in periodic amortization, allowable deduction is interest corresponding to the amount of principal paid, except for petroleum exploration financing
 - Allowed as a deduction or treated as a capital expenditure when incurred to acquire property
- Taxes except for:
 - Corporate income tax
 - Taxes related to overseas income of a resident foreign corporation
- Net operating loss can be carried forward and deducted in the 3 consecutive taxable years following the year of loss except when:
 - Such net loss is incurred when the taxpayer is exempt from income tax
 - There is a substantial change in the ownership
 - The loss is incurred in the first 10 years of operations by mining companies, except petroleum, not granted incentives by the Omnibus Investment Code
- Capital losses, including short-sales, with limitations
- Bad debts related to trade or business; recovery of bad debts is included in gross income
- Depreciation according to the methods and rates prescribed by the Secretary of Finance based on the agreed useful life between the taxpayer and the Commissioner, with additional limitations for properties used in mining and petroleum; foreign companies can only deduct depreciation of property in the Philippines
- Depletion of oil and gas wells and mines in the Philippines using the cost-depletion method; alternately, the company can deduct exploration and development expenditures, which is irrevocable and binding for succeeding years
- Charitable and other contributions up to 5% of taxable income; no limit on contributions to the government, certain international and foreign organizations, and accredited non-government organizations
- Research and development may be treated as ordinary and necessary expenses or as deferred expenses
- Pension trust established or maintained by the employer shall be allowed as a deduction; a reasonable amount transferred or paid into such trust.

Individual tax

Resident citizens are taxed on worldwide income. Resident aliens, non-resident aliens engaging in trade or business, and non-resident citizens are taxed only on income derived in the Philippines. Non-resident aliens staying for more than 180 days in the Philippines are considered engaging in a trade or business.

Tax rates

Those earning minimum wage are exempt from income tax. However, when receipts after including commissions and fringe benefits amount to more than PHP 250,000, they are no longer exempt from income tax.

| Taxable income (PHP) | New tax rate under R.A. 10963 |
|----------------------|--------------------------------|
| 250k or less | 0% |
| Over 250k to 400k | 20% in excess of 250k |
| Over 400k to 800k | 30k + 25% in excess of 400k |
| Over 800k to 2m | 130k + 30% in excess of 800k |
| Over 2m to 8m | 490k + 32% in excess of 2m |
| Over 8m | P2.410m + 35% in excess of P8m |

Self-employed individuals and/or professionals shall have the option to avail of an eight percent (8%) tax on gross sales or receipts and other non-operating income in excess of two hundred fifty pesos (PHP 250,000) in lieu of the graduated income tax rate of 0%-35% provided its annual gross sales/revenue is not exceeding the VAT threshold of PHP 3 million.

Taxable income

Taxable income includes gross income minus allowable deductions. Gross income consists of all compensation for services or from the conduct of trade, business, or professional practice. The following sources are not considered part of gross income:

- Proceeds of life insurance policies paid to beneficiaries, except for interest payments
- Amount received by the insured through life insurance, endowment, or annuity contracts
- Gifts except for income from such property
- Compensation for injury, sickness, or damage
- Income exempt under treaty
- Retirement benefits
- Prizes and awards from public achievements and sports competitions
- 13th month pay and benefits such as productivity incentives not exceeding PHP 90,000.
- GSIS, SSS, Medicare, and other contributions
- Gains from redemption of mutual fund shares.

Allowable deductions

Allowable deductions are exactly the same as with corporate taxation except for the section on taxes, net operating loss, capital losses, and depletion of petroleum wells. They are replaced with:

- Taxes, including taxes paid to a foreign country by a Philippine citizen, except:
 - Individual income tax
 - Estate and donor's tax
 - Taxes on overseas income of non-resident aliens
- Losses except those claimed as deduction for estate tax purposes.

All marriages are treated as though they occurred at the beginning of the taxable year, while deaths are at the end. Non-resident aliens engaging in trade or business can get whichever exemption is lower: the exemptions allowed in the country of citizenship or the Philippines.

Other non-resident aliens

Non-resident aliens not in a trade or business face 25% final tax on all income from the Philippines.

Withholding tax

Taxes for non-resident foreign companies may be reduced under a tax treaty. Wages exceeding the minimum wage per month are subject to withholding tax of 0-35%. Fringe benefits are subject to 35% withholding tax, except for rank-and-file employees.

| Income source | Corporation | | | Individual | | | |
|--|-------------|----------|-----|------------|-----|----------|-----|
| | Domestic | Foreign | | Citizen | | Alien | |
| | Both | Resident | Non | Resident | Non | Resident | Non |
| Interest from deposits | 20% | 20% | | 20% | 20% | 20% | 20% |
| Royalties | 20% | 20% | 30% | 20% | 20% | 20% | 20% |
| Royalties from literary works and musical composition | | | | 10% | 10% | 10% | 10% |
| Royalties, prizes including PCSO and lotto winnings in excess of PHP 10,000 | | | | 20% | 20% | 20% | 20% |
| Interest from depository bank under the expanded foreign currency deposit system | 15% | 15% | | 15% | | 15% | |
| Interest from long-term investment pre-terminated before the fifth year: | | | | | | | |
| • Within three years to maturity | | | | 20% | 20% | 20% | 20% |
| • Between three and four years to maturity | | | | 12% | 12% | 12% | 12% |
| • Between four and five years to maturity | | | | 5% | 5% | 5% | 5% |
| Income from foreign currency loans under the foreign currency deposit system | 10% | 10% | | | | | |
| Interest on foreign loans | | | 20% | | | | |
| Dividends from domestic corporation | | | 30% | 10% | 10% | 10% | 10% |
| Regional Operating Headquarters | | | | 10% | 10% | 10% | 10% |
| Capital gains on sale of real estate: | | | | | | | |
| • Not used in business | 6% | 10% | | | | | |
| • Considered capital assets | | | | 6% | 6% | 6% | 6% |
| • To the government | | | | 6% | 6% | 6% | 6% |
| Net gains on sale of domestic unlisted stock | 15% | 15% | 15% | 15% | 15% | 15% | 15% |

Income tax treaties

Tax treaties eliminate double taxation and reduce tax rates on incomes such as dividends, interest, and royalties. These treaties follow the OECD guidelines.

| | | | | |
|----------------|-----------|-------------|-----------|----------------------|
| Australia | Denmark | Japan | Pakistan | Sweden |
| Austria | Finland | Korea | Poland | Switzerland |
| Bahrain | France | Kuwait | Qatar | Thailand |
| Bangladesh | Germany | Malaysia | Romania | Turkey |
| Belgium | Hungary | Netherlands | Russia | United Arab Emirates |
| Brazil | India | New Zealand | Singapore | United Kingdom |
| Canada | Indonesia | Nigeria | Spain | United States |
| China | Israel | Norway | Sri Lanka | Vietnam |
| Czech Republic | Italy | | | |

Value added tax

The standard VAT rate is 12%. Certain sales get 0% VAT:

- Export sales except section 2, 3, 4 of Section 106(A)(2)(a)
- Services given 0% rate under international agreements
- Services rendered to vessels exclusively for international shipping
- Services by (sub)contractors for companies that export at least 70% of its annual production

Person required to register for Value-Added Tax are those whose gross sales or receipts for the past twelve (12) months, other than those that are exempt under Section (A) to (BB), have exceeded three million pesos (PHP 3 Million).

Other taxes

Excise tax

| Item | Base | Rate (PHP) |
|------------------------------|----------------------------|-------------|
| Distilled spirits | Proof liter | 20 |
| Sparkling wines | Net price | 270-757 |
| Still wines | Net price | 32.45-64.90 |
| Fermented liquors | Liter | 19-30.28 |
| Tobacco | Kilogram | 1.62-1.89 |
| Cigarettes | Pack | 32.50 |
| Petroleum products | Liter | 1-8 |
| Gold, minerals | Market value | 4% |
| Coal | Ton | 50 |
| Non-metallic | Market value | 4% |
| Indigenous petroleum | Market value | 6% |
| Automobiles | Price | 4%-50% |
| Luxury goods | Price or CIF | 20% |
| Non-essential goods | Price | 20% |
| Lubricating oils and greases | Per liter and per kilogram | 8 |

Percentage tax

Percentage tax is a business tax imposed on entities exempt from VAT and entities that are not registered for VAT.

| Taxpayer | Base | Rate |
|--|----------------|------|
| Persons exempt from VAT or not registered for VAT | Gross receipts | 3% |
| Domestic carriers | Gross receipts | 3% |
| International carriers doing business in the Philippines | Gross receipts | 3% |
| Electricity, gas, and water utilities | Gross receipts | 2% |
| Radio and television broadcasting with <PHP 10 million in annual gross receipts the preceding year | Gross receipts | 3% |
| Overseas dispatch, message or conversation originating from Philippines | Gross receipts | 10% |

| Taxpayer | Base | Rate | |
|---|--|------------|----|
| Banks and non-bank financial intermediaries | Income from lending activities with maturity of: | | |
| | • <5 years | 5% | |
| | • >5 years | 1% | |
| | Dividends & equity shares and net income of subsidiaries | 0% | |
| Banks and non-bank financial intermediaries | Royalties, rent | 7% | |
| | Net trading gains on foreign currency, debt security, derivatives, and other similar financial instruments | 7% | |
| Foreign Insurance companies | Premium | 5% | |
| Life insurance companies | Premiums | 2% | |
| Cockpits | Gross Receipts | 18% | |
| Cabarets, clubs | Gross receipts | 18% | |
| Boxing exhibitions | Gross receipts | 10% | |
| Professional basketball games | Gross receipts | 15% | |
| Jai-alai and race tracks | Gross receipts | 30% | |
| Winnings (Except winnings amounting to PHP10,000 or less from Philippine Charity Sweepstakes and Lotto which shall be exempt) | Prize | 20% | |
| Seller of stock in a domestic stock exchange, except dealers | Gross selling price | 0.5% | |
| Corporate issuer selling IPOs | Gross selling price, depending on what % of stock is publicly traded: | | |
| | | • <25% | 4% |
| | | • 25-33.3% | 2% |
| | | • >33.3% | 1% |

Stamp duty

Stamp tax is imposed on documents such as bonds, share certificates, sales agreements, bank drafts, bills of exchange, letters of credit, insurance policies, bills of lading, lease agreements, mortgages, charter parties, and warehouse receipts.

| Instrument | Amount in PHP |
|---|---|
| Stamp tax on original issuance of shares of stock | PHP 2.00 for every PHP 200.00 par value of share. In the case of stock dividend, on the actual value represented by each share |
| Stamp tax on sales, agreement to sales, deliveries or transfer of shares or certificate of stocks | PHP 1.50 for every PHP 200.00 par value of share |
| Stamp tax on certificates of profits or interest in property | PHP 1.00 for every PHP 200.00 of the face value of such certificates |
| Stamp tax on bank checks, drafts, certificate of deposits not bearing interest | PHP 3.00 per document |
| Stamp tax on all debt instrument | PHP 1.50 for every PHP 200.00 of the issue price |
| Stamp tax on all bills of exchange or drafts | PHP 0.60 for every PHP 200.00 or the face value of such bill |

| Instrument | Amount in PHP |
|--|---|
| Stamp tax on life insurance policies | PHP 20.00 – PHP 200.00 based on the amount of insurance |
| Stamp tax on policies of annuities and pre-need plans | PHP 1.00 for every PHP 20.000 of the premium or installment payment PHP.40 for every PHP 200.00 of the premium/ contribution collected |
| Stamp tax on certificates | PHP 30.00 for each certificate |
| Stamp tax on warehouse receipts | PHP 30.00 for each warehouse receipt |
| Stamp tax on Jai-alai, Horse Race, Tickets, Lotto or Other authorized number games | PHP.20, if the cost of the tickets exceed PHP 1.00, an additional tax of PHP.20 for every one peso (PHP 1.00) |
| Stamp tax on bills of lading | PHP 2.00 – PHP 200.00 based on the value of goods |
| Stamp tax on proxies | PHP 30.00 on each proxy |
| Stamp tax on power of attorney | PHP 10.00 on each power of attorney |
| Stamp tax on leases and other hiring agreements | PHP 6.00 for the first two thousand pesos (2,000) and an additional PHP 2.00 for every one thousand pesos (PHP 1,000) for each year of the term of the contract. |
| Stamp tax on mortgages, pledges and deed of trust | PHP 40.00 for amount secured less than PHP 5,000. Additional PHP 20.00 for every excess of five thousand pesos |
| Stamp tax on deeds of sales, conveyance and donation of real property | PHP 15.00 for every PHP 1,000 of the value received or contracted to be paid. for such realty |
| Stamp tax on charters parties and similar instruments | PHP 1,000 if the registered gross tonnage does not exceed 1,000 tons and durations does not exceed six months. Additional PHP 100.00 in excess of 6months. PHP 2,000 if the registered gross tonnage exceed 1,000 tons and durations does not exceed six months. Additional PHP 200.00 in excess of 6months. |

Customs duty

Tax rates vary depending on classification and country of origin. Goods imported from members of GATT or ASEAN can get lower tax rates.

Estate tax

Estate tax only applies to the transfer of estate through inheritance and it shall be taxed by 6% of the value of the net estate at the time of death.

Property taxes

Property taxes are imposed locally. Rates vary depending on the region, up to 2% in Metro Manila and up to 1% outside that region. An additional 1% is levied for the Special Education Fund.

Transfer of real estate is taxed at 0.5% of gross sales price or fair market value, whichever is higher.

Donor's tax

Gift tax applies to transfer of property between still-living people. Just like estate tax, it shall be taxed by 6% to be computed on the basis of the total gifts in excess of PHP 100,000 exempt gift made during the calendar year, although certain contributions such as charity are exempt from tax.

Local government taxes

Other than the property tax, local government may levy a local business tax on the gross receipts of certain businesses.

Investment

The government guarantees that:

- foreign investors can repatriate liquidation proceeds and remit earnings in the currency the investment was originally made
- companies can remit sums necessary to pay principal and interest on foreign obligations at the prevailing exchange rate
- expropriation and requisition will be made only with just cause and compensation.

Companies get different incentives depending on where they register. For instance, a company can register with the Board of Investment (BOI), under the Department of Trade and Industry, which issues an Investment Priorities Plan (IPP) enlisting the business activities eligible for BOI incentives.

The Foreign Investments Act of 1991 promotes foreign investment in all sectors except financial institutions, which are regulated by the BSP. The Act requires all foreign business entities (more than 40% foreign ownership) to inject capital of at least USD 200,000, which is reduced to USD 100,000 for high-tech companies. Companies with at least 60% Filipino ownership have lower capital requirements. A foreign company that exports at least 60% of its output only needs PHP 5,000 in capital.

Different sectors might have different foreign equity caps. For instance, professional practice cannot have any foreign equity, while financing companies and investment houses regulated by the SEC can have up to 60% foreign equity. For the full list, please consult the Foreign Investment Negative List (FINL).

Former Filipino nationals have the same investment rights as a Filipino citizen in certain sectors, including those in List B of the FINL and cooperatives, rural banks, thrift banks, and financing companies. They can own up to 5,000m² of urban land and 30,000m² of rural land.

Board of investments

To qualify for these incentives, the business must be in the IPP and registered at the BOI. Foreign enterprises must also register for a pioneer status or as an export-oriented firm. Domestic (foreign) companies not in the IPP may still qualify if they export at least 70% of their production.

Fiscal incentives

- Income Tax Holiday (full income tax exemption) from the start of commercial operations:

| Type | Years |
|--|-------|
| New project with pioneer status | 6 |
| Expansion project in rural areas | 6 |
| New project without pioneer status | 4 |
| Expansion and modernization, exemption only on incremental sales revenue | 3 |

The exemption can be extended by an additional year if the company is new or operating in rural areas if: at least 50% of raw materials were domestically sourced; the company complies with BOI's capital requirement relative to the number of workers; or the net foreign exchange savings or earnings total USD 500,000 annually for the first three years of operation.

- Exemption from customs duties and national internal revenue taxes on imported spare parts for a registered enterprise with a bonded manufacturing warehouse.
- Exemption from wharf dues and export duties on non-traditional export products for 10 years from date of registration for all enterprises registered in IPP.
- Reduction of the rates of duty on capital equipment, spare parts and accessories.
- Tax exemption on breeding stocks and genetic materials for 10 years from the date of registration or commercial operation.

- 100% tax credit for domestic breeding stocks and genetic materials within 10 years from date of registration or commercial operation for agricultural producers and tax credit for raw materials, supplies, and semi-manufacture of export products.
- 50% additional deduction on wages for the first five years if the company meets the capital to labor ratio requirement; cannot be used with the income tax exemption.
- 100% additional deduction for the development of necessary and major infrastructure in LDAs except in forestry and mining projects.

Non-fiscal incentives

- Employment of foreigners in supervisory, technical, or advisory positions for five years from date of registration; can be extended with BOI approval. The positions of President, General Manager, and Treasurer of foreign enterprises have no time limit.
- Simplification of customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products.
- Unrestricted use of consigned equipment subject to posting of a re-export bond equivalent to 100% of the estimated taxes.
- The privilege to operate a bonded manufacturing/trading warehouse.

Autonomous Region in Muslim Mindanao

The Regional Board of Investments ARMM has authority over investments in the ARMM, which can get greater benefits. Requirements are the same as BOI requirements.

Fiscal incentives

- Income Tax Holiday for six years.
- Reduced duty on importation of capital equipment.
- Exemption from duties on imported spare parts.
- Exemption from wharf dues and export duties.
- Tax exemption on breeding stocks and genetic materials.
- Additional deduction from taxable income.
- Tax credit on domestic capital equipment, duty portion of domestic breeding stocks and genetic materials and taxes and duties on raw materials.
- Incentives for necessary and major infrastructure and public utilities.

Non-fiscal incentives

- Employment of foreign nationals.
- Simplification of customs procedures.
- Importation of consigned equipment.
- The privilege to operate a bonded manufacturing warehouse.

Economic zones and freeport authorities

Enterprises located in export processing zones, free trade zones, and certain industrial estates, collectively known as economic zones, or “ecozones” enjoy preferential tax treatment. These enterprises are outside the customs territory, thereby allowing them to import capital equipment and raw material without being subject to customs duties and other import restrictions. However, a business can only claim one category of incentives even if in both an export processing zone and a free trade zone.

Philippine Economic Zone Authority (PEZA)

PEZA, a certified government agency under the Department of Trade and Industry, is mandated to promote investments, grant incentives, and facilitate the business operations of investors in export-oriented manufacturing and service facilities or to develop into agro-industrial, recreational, commercial, and investment centers within the PEZA Special Economic Zones.

Fiscal incentives

- Income tax holiday for up to eight years depending on the project type..
- 5% special tax on gross income after expiration of income tax holiday
- Duty-free importation of raw materials, capital equipment, medical equipment, machineries, and spare parts.
- Exemption from wharf dues and export duties.
- 0% VAT on local purchases.
- Exemption from all local government taxes. Production equipment not attached to real estate is exempt from real property taxes; however, exemption from real estate tax while on ITH is only allowed for the first three years.
- Exemption from expanded withholding tax.
- Exemption from duties on raw materials and semi-finished goods to be processed for export.

Non-fiscal incentives

- Simplified import and export procedures.
- Employment of non-resident foreign nationals in supervisory, technical, or advisory positions.
- Special non-immigrant visa with multiple entry privileges for Investors, officers, and employees in supervisory, technical, or advisory positions, and their spouses and unmarried children under twenty-one years of age who are non-resident foreign nationals.

Subic Bay Metropolitan Authority and Clark Freeport Zone

The Bases Conversion Development Authority is mandated to develop the former U.S. military facilities in Clark and Subic into economic zones. They are managed as separate custom territories, ensuring free flow of articles within the zones. Full foreign ownership is allowed.

Fiscal incentives

- 5% tax based on gross income if at least 70% of the products are to be exported.
- Income tax holiday for six years, which can be extended for an additional two years.
- 0% VAT on local purchases.
- Exemptions from real property tax.

Non-fiscal incentives

- Duty-free importation of capital equipment, raw materials, and even finished goods if 70% of products are exported.
- Free movement of finished goods within the customs territory.
- Special visas for investors.
- Unlimited purchase and consumption of duty-free goods within the Freeport zone.
- R&D as an allowable deduction for manufacturing, trading, and service enterprises.

Other economic zones

All of these economic zones offer comparable benefits with similar requirements as the PEZA. Cagayan has several more requirements for the incentives. They are all classified as a separate customs territory, ensuring free flow of articles within the zones.

- The PHIVIDEC Industrial Authority is a government-owned and controlled corporation that manages and supervises the 3,000-hectare Phividec Industrial Estate in Misamis Oriental.
- The Cagayan Economic Zone Authority develops the Cagayan Special Economic Zone and Freeport into an industrial, commercial, financial, and recreational center. It also grants gaming licenses.
- The Zamboanga City Special Economic Zone Authority manages the only economic zone in the Visayas and Mindanao Region.
- The Aurora Special Economic Zone Authority manages the Aurora Pacific Economic Zone (APECO) in Casiguran, Province of Aurora, at the northeastern quadrangle of Luzon.

Bases conversion and development authority

BCDA aims to convert the Clark and Subic military reservations into productive economic areas. Its two subsidiaries manage two zones with different incentives.

Poro Point Freeport Zone

- Managed as a separate customs territory, ensuring free flow of articles within the Freeport.
- Tax and duty free importation of raw materials and capital equipment and consumer goods within the PPFZ.
- Five percent (5%) tax on gross income.

John Hay Special Economic Zones

- Exemption from taxes under the National Revenue Code (NRC) and local taxes except real property taxes.
- Zero-rated tax on transactions.
- Five percent (5%) tax on gross income earned (National Government (3%) and Local Government Unit (2%)).
- Fiscal incentives provided under Investment Code.

Tourism Infrastructure and Enterprise Zone Authority

The TIEZA, under the Department of Tourism, encourages the development of tourism infrastructure. To qualify for the incentive, the business entity must be locally incorporated and comply with the Foreign Investments Act of 1991, if applicable.

Fiscal incentives

- Income Tax Holiday
 - 100% exemption for six years from start of new business in the Greenfield and Brownfield Tourism Zones; can be extended with substantial upgrade or expansion
 - 100% exemption for existing enterprises undertaking substantial expansion or upgrade
 - Loss carry-forward for six years
- 5% tax on gross income in place of all taxes other than real estate taxes
- Exempt from all taxes and customs duties on importation of:
 - capital investment exclusively used by the enterprise
 - transportation and spare parts not locally available at comparable quality and reasonable price and will be used exclusively by the enterprise
 - goods actually consumed in the course of services but not for the purpose of operating a wholesale or retail establishment
- Full tax credit on taxes paid on all locally-sourced goods and services used for tourism activities
- Up to 50% tax deduction on expenditures related to environmental protection, cultural heritage preservation, sustainable livelihood programs for local communities, and other similar activities.

Non-fiscal incentives

- Employment of foreign nationals in executive, supervisory, technical, or advisory positions for a reasonable period .
- Special investor's resident visa for a foreign national who invests at least USD 200,000 in a registered enterprise while his or her investment subsists; and for foreign personnel and other aliens possessing highly-technical skills which no Filipino within the tourism zone possesses, renewable every two years after the Alien Employment Permit has been secured from the DOLE, subject to regulations by the Bureau of Immigration.
- Right to use the original currency and the prevailing exchange rates for repatriation of the investments, remittance of earnings from foreign investments and remittance of interest and principal on foreign loans and obligations arising from technological assistance contracts.

- Requisition of investment in the event of war or national emergency.
- Subject to the Investor's Lease Act, lands and buildings may be leased to foreign investors for up to 50 years and can be renewed once up to an additional 25 years; these leasing rights may be sold, transferred or assigned.

Regional Headquarters and Regional Operating Headquarters

RHQ does not derive income from sources within the Philippines nor participate in the management of any subsidiary or branch office in the Philippines and requires an annual capital of USD 50,000 to cover operating expenses. On the other hand, ROHQ derives income in the Philippines and requires one-time inward remittance of USD 200,000.

Fiscal incentives

- RHQs are exempt from VAT, local taxes, and taxes on corporate income, sale or lease of goods and property, and services to RHQ.
- ROHQs are subjected to 10% corporate income tax and 10% VAT but are exempt from local taxes.
- Duty-free importation of equipment and materials for training and conferences if not locally available; cannot be disposed within two years of purchase.
- Importation of brand new motor vehicles subject to payment of taxes and duties.

Non-fiscal incentives

- Multiple entry visa is granted to expatriates and their immediate family (unmarried children below 21 years old) for up to six years; only 72-hour processing for non-immigrant visa; and not required to get an Alien Certificate of Registration
- Withholding tax of 15% on compensation of both foreigners and Filipinos in managerial and technical positions
- Duty-free importation of used household goods and personal effects
- Travel tax exemption including dependents.

Property ownership

Only Filipino citizens and corporations or partnerships with at least 60% Filipino ownership can acquire land in the Philippines. Acquisition by foreigners is allowed if:

- acquired before the 1935 Constitution
- acquired through hereditary succession
- only up to 40% stake in a condominium project.

According to the Philippines Republic Act No. 8179, former natural-born Filipino citizens can own up to 1,000m² of residential property or up to 10,000m² of rural land. They can also own, in the form of business property, up to 5,000m² of urban land or 30,000m² of rural land according to the Batas Pambansa No. 185.

Although foreign investors cannot own land, they can sign a long-term lease of private land. The Presidential Decree No. 471 allows foreigners to lease private land for 25 years, which can be renewed once for another 25 years.

The Republic Act No. 7652 allows foreigners to lease private land for up to 75 years, which can be renewed once for 25 years, as long as the land is used for a long-term investment for up to 50 years. Foreigners investing at least USD 5 million in a tourism project can also get this type of lease.

Expropriation and compensation

Expropriation of private property for public use or in the interest of national welfare or defense is permitted under the Philippine laws as an inherent power of the State. The government will offer just compensation. In the case of a foreign investment, the investor can remit the compensation in the original currency at the prevailing exchange rate.

Intellectual property rights

The Philippines is a member and signatory of the Rome, Paris, and Berne Conventions. Therefore, the Intellectual Property Code of the Philippines is in line with international standards. The Intellectual Property Office protects and administers intellectual property rights.

Patents

Patents are granted for 20 years from date of filing. The first person to file for a patent gains the rights make, use, sell, or import the product or process.

Trademarks

Trademarks prevent other parties to use identical or similar marks on their goods and services. Trademarks are valid for 10 years after date of registration, given that they are actually used, and are renewable for another 10 years.

Copyright

The owner of a copyright has the exclusive right to: reproduction, dramatization, translation, adaptation, bridgment, arrangement, first public distribution, rental of an audiovisual or cinematographic work, public display, public performance, and other communication to the public of the work.

Applied art and broadcast are protected for only 20 years. Other copyrights are protected for 50 years with different starting dates: death of author; date of first publication by anonymous or pseudonymous author for photographic and audio-visual works; date of unrecorded performance; end of the year in which the recording of sound, images, and performances is made.

Other intellectual property rights

The Electronic Commerce Act extends the legal framework for internet-based intellectual property.

Industrial designs, geographic indications, and layout designs (topographies) are also protected. Industrial designs can be registered for five years and can be renewed twice for an additional 5 years each. Other laws include the Plant Variety Protection Act and the Integrated Circuit Act.

International trade agreements

The Philippines is a member of ASEAN and WTO:

- ASEAN Free Trade Agreement
- ASEAN-China Free Trade Agreement
- Japan-Philippines Economic Partnership Agreement
- ASEAN-Korea Free Trade Agreement
- ASEAN-Australia/New Zealand Free Trade Agreement
- ASEAN-Japan Comprehensive Economic Partnership Agreement
- ASEAN Trade in Goods Agreement
- ASEAN-India Free Trade Agreement
- United States of America – Philippine Trade Agreement
- Member of World Trade Organization
- ASEAN-Hong Kong, China Free Trade Agreement
- Philippines-Europe Free Trade Association Free Trade Agreement.

These are still in negotiation:

- ASEAB-European Union Free Trade Agreement.

10. Russia

Country profile

Russia, officially known as both Russia and the Russian Federation, is a country in northern Eurasia. It is a federal semi-presidential republic, comprising 85 federal subjects. From northwest to southeast, Russia shares borders with Norway, Finland, Estonia, Latvia, Lithuania and Poland, Belarus, Ukraine, Georgia, Azerbaijan, Kazakhstan, China, Mongolia, and North Korea. It also has maritime borders with Japan by the Sea of Okhotsk, and the US state of Alaska by the Bering Strait. At 17,125,191 square kilometres (6,612,073 sq mi), Russia is the largest country in the world, covering more than one eighth of the Earth's inhabited land area. Russia is also the eighth most populous nation with 146.9 million people. It extends across the whole of northern Asia and 40% of Europe, spanning nine time zones and incorporating a wide range of environments and landforms. Russia has the world's largest reserves of mineral and energy resources and is one of the world largest and natural gas producers. Russia has the world's largest forest reserves and its lakes contain approximately one-quarter of the world's fresh water.

Types of business entities

When establishing a business in Russia a foreign investor has a number of possible options:

- Representative office of a foreign company
- Branch office of a foreign company
- Limited Liability Company (designated by the prefix OOO)
- Non-public or private Joint-Stock Company (designated by the prefix NPAO)
- Public Joint-Stock Company (designated by the prefix PAO).

A representative office and a branch are not considered to be independent legal entities; instead they are viewed as an extension of the entity of which it is a representative office or a branch respectively. Each of the other three types of entities is considered to be an independent legal entity with its own legal personality.

In addition to operating through one of the entities listed above, a foreign investor may establish a business presence in Russia through an economic partnership or joint activity agreement (JAA). Foreign companies are entitled to participate in a JAA with a local partner. A JAA is not itself a legal entity but represents the pooling of assets for the common conduct of business. One of the partners is usually appointed as the party responsible for bookkeeping and statutory reporting.

Each of the possible ways of establishing a presence in Russia has its own advantages and disadvantages.

Formation and statutory requirements

Capital

Neither a representative office nor a branch have any capital separate to that of its parent company, except that a branch formation requires that its founding documentation include information about the amount and deadlines for the contribution to the funds of the branch that will be made by its parent company. This amount should not be less than RUB 10 thousand.

The capital of a LLC (minimum RUB 10 thousand) is established in the Charter and is not divided into shares – instead each participant is recorded as owning a certain percentage of capital. A LLC can have any number of participants from 1 to 50. The liability of each participant is limited to that participant's share of capital as stated in the charter. Once this amount has been paid up a participant cannot be required to make additional contributions. A participant wishing to withdraw from an OOO may do so by notifying the other participants (or the OOO itself via its Executive Body) and withdrawing assets equivalent to their interest in the company (i.e. net assets multiplied by the relevant participation percentage).

The capital of Joint-Stock Companies is established in its Charter and is specified as a given number of shares of a particular nominal value. A non-public JSC can have any number of shareholders from 1 to 50. A public JSC is not limited in the number of shareholders that it may have. Both types of Joint-Stock Companies cannot have as a sole founder (shareholder) another business entity consisting of one person, unless otherwise provided for by federal law. The liability of each shareholder in both types of entities is limited to the nominal value of the shares for which they have subscribed. Once this amount has been paid up a shareholder cannot be required to make additional contributions. Share emissions must be registered by the Federal Commission for Financial Markets. A shareholder may sell shares to another existing shareholder or a third party. In a non-public JSC the consent of the majority of shareholders must be obtained. For a public JSC no preliminary approval is required. A public JSC is able to list its shares on a public stock exchange.

Contributions in kind

Provided that the founding documentation is drafted in an appropriate manner, a Russian company (LLC or JSC) may receive contributions to its capital in kind. Where such a contribution made by a foreign participant/shareholder involves the import of certain types of goods and equipment these imports may be exempted from import VAT and duties. Consequently, a company that plans to import goods or equipment for use in its business may make considerable cash savings by structuring the transactions in this manner.

Procedures for formation and registration

The procedures for registration of a representative office or a branch (accreditation) are identical and consist of the following stages:

- Accreditation in the State Registration Chamber
- Registration as a tax payer with a local Tax Authority
- Production of the entity's stamp
- Registration with the State Funds (Pension, Compulsory Medical and Social Insurance)
- Registration at the State Committee for Statistics
- Opening a bank account.

These stages can be completed in 25-30 working days although the process may take considerably longer if there are delays in providing the necessary supporting documents.

Upon completion of the registration a representative office or a branch will usually need to go through the following processes:

- Registration of the company with local employment center
- Submission of quota (and extra quota) applications to employ foreigners and obtaining a Permit for a foreign company to engage foreign labour (an exception is made for highly experienced (qualified) specialists)
- Obtaining work permits for the foreign employees
- Registration the company with the Federal Migration Services for the purpose of getting invitations
- Notification to the local tax authorities and the local employment center concerning the foreigner(s) employed.

The process for formation of an LLC and JSCs is essentially the same as for a branch or representative office except that:

- instead of an initial accreditation with the State Registration Chamber – registration with the Tax Inspectorate
- JSCs also require processing of share issue by Company and registration with the Federal Financial Market Agency (FFMA) following initial registration.

The registration process can be completed in three weeks although, as with the accreditation of a branch or representative Office, the process may take considerably longer if there are delays in providing the necessary supporting documents. Registration with FFMA will require a further month.

Costs of accreditation and incorporation

Formation of an LLC and JSCs require a small state duty payment of RUB 4,000.

The state duty for branch and representative office accreditation is currently RUB 120,000. In addition, the Chamber of Commerce and Industry may charge a certain insignificant fee for a review of the documents required in order to agree on the number of foreign employees for accreditation purposes.

Changing form of entity

If a Russian company has been registered in one form e.g. as an LLC it is possible to subsequently change the form of registration to another such as JSC (public or private). The process of making this change is easier when the change is from OOO or NPAO. It is harder if a company that is registered as a PAO wants to change to OOO or NPAO status.

Activities

A representative office is only permitted to carry out activities which are ancillary to the main activity of the company it represents. These include carrying out market research, placing advertisements, participating in exhibitions and trade shows and signing contracts on behalf of the company it represents. However, it is not allowed to conduct any kind of commercial activity. As a result it cannot issue invoices. Its ability to complete customs clearance procedures for the import or export of goods is limited to goods which it uses in its own activities i.e. it cannot affect customs clearance for goods which are to be resold.

A branch has the right to conduct commercial activities including the provision of goods and services. However, there are some activities, particularly those for which a license is required within Russia, which a Branch is prohibited from carrying out. Although there may be theoretical restrictions on the ability of a Branch to complete customs clearance procedures, in practice they are able to do so. To do so the Branch must first go through a registration process with the customs authorities.

As an independent legal entity an LLC and JSCs, has the right to enter into any kind of commercial activity. It should be noted that this general ability is limited in certain restricted/controlled spheres by the need to first obtain a license. It may complete customs clearance procedures for the import and export of goods. To do so the company must first go through a registration process with the customs authorities.

Corporate governance

Management of a representative office or a branch is vested in the Head of the representative office or a branch respectively. The Head of representative office/branch is appointed by the parent company and acts on the basis of a power of attorney (PoA) from that company. The PoA can be absolute or alternatively can place limitations on the authority of the Head of representative office/branch. The parent company can revoke the PoA of the Head of representative office/branch at any time and can issue a new PoA to a replacement.

The ultimate governing body of an LLC is the General Meeting of its participants. An executive body (which may be collegial and/or one person – usually a General Director) must be established to carry out the day-to-day management of its activities and shall be answerable to the General Meeting of its participants. A LLC may or may not have a Board of Directors (Supervisory Board) but generally does not.

The ultimate governing body of JSC is the General Meeting of Shareholders. The Board of Directors (Supervisory Board) is responsible for general management of a company. The Board will generally consist of five or more individuals elected by the shareholders. Some competencies of the General Meeting of Shareholders may be passed to the Board of Directors. Under certain circumstances a General Meeting of shareholders may carry out the functions of the Board of Directors. The executive body of a company may be collective (governing board, directorate) and (or) consist of one person (director, general director).

Currency control and repatriation of profit

Since foreign currency transactions between Russian residents are generally prohibited (subject to certain exceptions) under Russian currency law, any settlements between Russian residents are generally performed only in Russian roubles. With respect to currency transactions between residents and non-residents, such transactions may be carried out without any restrictions and in any currency. However, when performing currency transactions, residents should comply with certain requirements under Russian currency control legislation. For instance, Russia's currency control law establishes certain rules with respect to foreign bank account use, repatriation and reporting requirements for residents when performing settlements with non-residents under foreign trade agreements.

A representative office is unable to participate in commercial activity, it cannot generate a profit and there will therefore be no profits to repatriate. Subject to the presentation of appropriate documentation to the recipient's bank, a parent entity may make cash transfers to a representative office or a branch in order to fund its activities. Any surplus funds may be returned to a parent entity subject to the presentation of appropriate documentation to the paying bank.

LLC and JSCs may pay a dividend to participants, including foreign shareholders out of profits after tax. Such dividends, if paid to a foreign shareholder, are subject to withholding tax of 20%. The rate of withholding tax may be reduced or eliminated subject to the terms of the relevant treaty for the avoidance of double taxation (if any).

Labour

The Russian Labor Code forms the basis of labor relations in Russia, establishing procedures for hiring and dismissal of employees, as well as regulations concerning working time, holidays, business trips, salary payments etc. Russian labor law applies to all employees working on the territory of Russia regardless of their nationality or country of incorporation of their employer. This covers expatriates as well as Russian citizens, regardless of where employment contracts were concluded.

Employment contracts

An employment contract for any type of employment (full-time, part-time, temporary or permanent) must always be in writing, with two original copies signed by both parties, and one kept by each party. If in exceptional cases a company admits an employee without a written contract, a contract should be prepared and signed within three days of admission.

All contracts usually contain the following:

- Name and contact details for the employer and the employee
- Details of the position
- Start date
- Probation period
- Salary and method of payment
- Working hours
- Holiday allowance
- Social insurance and/or health care arrangements
- Training and obligations for the employee
- Work conditions
- Confidentiality agreements, where relevant
- Rights and obligations of both parties.

Employee rights

Employees are required to work for a maximum of eight hours per day, 40 hours per week with a lunch break of no less than half an hour and of no more than two hours. Employees should be compensated for overtime, but the law is stringent in limiting overtime hours. Overtime work should not exceed four hours in two consecutive days. The maximum number of overtime hours per year is limited to 120 hours. Employees may take time off in lieu. Female employees are only required to work a 36-hour week in regions that are classified as 'Extreme North' and areas that are equivalent to 'Extreme North'.

Employees are entitled to 28 calendar days (in the Far East – 36 calendar days) holiday per annum as well as nine public holidays. Employees working in regions that are classified as 'Extreme North' are entitled to 52 calendar days' holiday per annum. Employees working in regions that are classified as equivalent to Extreme North are entitled to 44 calendar days' holiday per annum.

Termination of employment contracts

Employment contracts can be terminated by either the employee or the employer. At least two weeks' written notice is required if it is initiated by the employee. If initiated by the employer, the contract can be terminated by mutual agreement, expiration of the terms of employment, the liquidation of the employer or violation of employment provisions. Where the contract is terminated by the employer without the agreement of the employee, procedures are detailed and complex. To save time and money, it is advisable to seek the services of a Russian employment lawyer before trying to dismiss an employee. Before any court hearing all documents should be reviewed by an experienced Russian employment lawyer. On hiring or termination of employment, each employee's workbook must be signed.

Trade unions

Trade union activity is regulated under the Labor Code and Federal Law №10-FZ of 12 January 1996 "On Trade Unions, their Rights and Guarantees of their Activities". The Labor Code stipulates that an employer in certain cases should consider the position of a trade union before adopting internal policies or dismissing employees who hold union membership.

Foreign personnel

In order to be eligible to work in Russia it is necessary to have a work permit and a working visa.

Some categories of employees do not need a work permit since different rules apply. Those include:

- temporary and permanent residents since they have the same rights as Russian citizens and don't need a permit to work in Russia
- students and instructors invited to teach by an academic institution
- diplomats
- representatives of international humanitarian organisations such as the Red Cross.

All foreign nationals willing to work in Russia need a work permit and without it foreigners living in Russia have no right to engage in any work or business activities in the country. Permits are issued by the Federal Migration Service of the Russian Federation. Permits (for a company and for an employee) are valid for one year. The number of extensions is not restricted.

Once it is issued, an application may then be made by an employee for a working visa, which is required for most foreign nationals to enter and live in Russia. Highly qualified specialists can be employed without obtaining a permit for the company. Highly experienced (qualified) specialists include foreign citizens whose annual salary exceeds RUB 2 million.

Finance and capital markets

Banking system

The Central Bank of the Russian Federation (Tsentral'niy bank Rossiiskoy Federatsii – CBR) is the main regulator of the banking activity. The CBR issues licences to all credit institutions in Russia. A general licence allows banks to conduct substantially all common banking operations, including deposit and distribution of monetary funds, keeping accounts, making payments and issuing guarantees. Special licences are needed for a few types of banking operations, e.g. the deposit and resale of precious metals.

The CBRF also regulates and oversees activity in the financial markets, including stock exchanges. It also regulates the investment of pension savings. Key activities are to maintain stability in the financial markets, make the markets more efficient and attractive to investors, increase market transparency and reduce investment risks. It regulates the activities of financial market players and establishes the conditions for issuing and trading securities.

Regulatory bodies

The primary regulatory body governing the banking sector of the Russian Federation is the CBR. Article 75 of the Constitution of the Russian Federation establishes a special legal status of the Central Bank of Russia, gives it the exclusive right to issue currency and protect the rouble and ensure its stability.

The CBR and the Government share authority over monetary policy. The CBR is charged with responsibility for the circulation of monetary funds, and for ensuring the stability of the Russian Ruble. As part of its general oversight role, the CBR establishes state registration and licensing rules, determines minimum capital and reserve requirements, and also approves the appointment of the senior management of all banks (including branches of foreign banks). The CBR maintains regional offices located throughout the Russian Federation. Among the self-regulatory banking organizations, the Association of Russian Banks (ARB) is the largest.

Credit organizations in the Russian market

Pursuant to the Banking Law, there are two main groups of credit organizations: banks and non-banking credit organizations. A bank is a credit organization, which may engage in all types of banking activities, subject to obtaining the appropriate licenses. Thus, in the Russian Federation, there is no system of specialized banking institutions (e.g. mortgage banks or investment banks). Conversely, a non-banking credit organization is an entity, which is entitled to perform only certain banking operations that are specified by the CBR.



Currently, foreign banks may not establish branch offices in the Russian Federation but may set up Russian banking subsidiaries. Participation of foreign banks in the Russian market is subject to certain restrictions. The most notable restriction is the requirement for non-residents to obtain a CBR approval prior to acquiring a share in a Russian bank, regardless of the amount of the investment. Russian residents, on the other hand, need only apply to the CBR for such approval if they acquire 20% or more of a bank's shares.

Banking activities

According to the Banking Law, the list of banking operations includes: raising and investing funds; depositing precious metals; maintaining accounts; settling bank accounts of individuals and legal entities; collecting money; exchanging foreign currency; issuing bank guarantees; and transferring money. Banks are also entitled to perform certain non-banking operations, inter alia: providing financial suretyship; trust management; performing operations with precious metals and stones; renting safe boxes; participating in financial leasing operations; and providing consultancy and other informational services. Credit organizations are prohibited from engaging in any industrial, trade, or insurance activities.

Currency

The national currency is the Russian Rouble.

The currency regulation system of the Russian Federation is based on the assumption that certain currency operations stipulated by the Central Bank of the Russian Federation may only be carried out with the possession of a license obtained from the Central Bank. Obtaining such a license takes from one up to several months and requires that a number of documents be submitted.

Capital market

The Equity & Bond Market is a key platform for Russian businesses to raise capital and for domestic and international investors to access equity and debt investment opportunities. The marketplace is the main trading venue for Russian stocks as well as government, municipal, and corporate bonds.

Moscow Exchange's FX and Money Market is a key element of the Russian financial system. The Bank of Russia uses the Exchange's infrastructure to implement monetary policy and provide liquidity to the market through repo transactions and FX swap transactions. For its domestic and international clients, including banks and corporates, Moscow Exchange offers a range of products to manage liquidity and FX exposure. It is the center of pricing for RUB and offers many RUB currency pairs, all with tight spreads based on a transparent order book.

Reporting and taxation

The Tax Code of the Russian Federation states that the tax reporting procedures for foreign companies operating in the Russian Federation are the same as those for Russian companies. As a consequence a branch is required to submit declarations for all relevant taxes including profit tax, VAT and property tax amongst others and will be liable to pay all these taxes in the same way as any other commercial entity in Russia. The same concerns a representative office except that as a non-commercial entity it will file a nil profit tax declaration and pay no profit tax, but will be subject to all other taxes levied on businesses in the Russian Federation.

OOO and JSC (both public and non-public) are not subject to any special taxation treatment and will be taxed in the same manner as any other commercial entity.

The Federal Law on Accounting Rules states that foreign companies operating in the Russian Federation through branch or representative office are exempted from the need to produce financial statements under the Russian accounting standards (RAS). As a consequence branches and representative offices of foreign legal entities may elect not to maintain accounting records and prepare financial statements according to RAS, provided they maintain tax records compliant with Russian tax legislation.

All registered entities are required to make quarterly/annual reports (financial statement plus additional forms) to the State Tax Authorities. These must be prepared based on accounting regulations set out in RAS. The requirements of Russian legislation may differ significantly from treatments under IFRSs. The deadlines for the submission of the quarterly reporting sets are as follows:

- Quarter 1: 15-30 April
- Quarter 2: 15-31 July
- Quarter 3: 15-31 October
- Quarter 4/Year: 15 January-31 March

Audit and accounting

Financial statements and accounting period

For historical reasons the Russian financial reporting framework has been determined and regulated by the state, rather than being developed by professional bodies. Indeed, the primary users of Russian statutory financial statements based on RAS are the tax and other state authorities, rather than management or third parties. Currently the country develops a stronger awareness of International Financial Reporting Standards (IFRS), both in terms of influencing the development of RAS and as the compulsory standards for certain types of Russian entity.

Standalone statutory financial statements are prepared by every legal entity registered in Russia for each financial reporting (calendar) year ending 31 December. The format and content of the financial statements are set by the Ministry of Finance, including the chart of accounts and recommended accounting entries for typical transactions.

Certain entities, including PAOs, banks and other lending agencies, insurance companies, stock exchanges and investment funds are required to publish their RAS financial statements. Such companies may have additional reporting and disclosure requirements.

Audit

From 2017 auditing activities in Russia should be conducted in accordance with International Standards on Auditing (ISA). But audit companies and auditors (individuals) must be certified in compliance with the Auditing Act.

The audit of annual RAS financial statements is mandatory for

- joint-stock companies
- companies with securities traded on stock exchanges
- banks and other lending agencies, insurance companies, credit bureaux, pension and investment funds, securities' market participants and stock exchanges
- companies with annual revenue for the preceding financial year exceeding RUB 400 million
- companies with total assets as at the preceding 31 December exceeding RUB 60 million.

Publicly traded companies, banks, insurance companies, non-government pension funds, and companies with more than 25% state participation must be audited by an audit firm, rather than by an individual auditor.

Adoption of IFRS in Russia

Public Interest Entities (PIEs) are now required to prepare consolidated financial statements under IFRS, in addition to stand-alone statements prepared under RAS. This is following the formal adoption of IFRS in Russia during 2011.

PIEs include companies with securities traded on a stock exchange, banks and insurance companies. Other entities that have issued securities by way of public offering, or by means of private placements to a wide group of shareholders, must also prepare consolidated financial statements under IFRS.

Annual consolidated IFRS statements must be audited, presented to the shareholders and filed with the Federal Securities Markets Service (or the CBT for banks) within 120 days of the year end. The financial statements must also be published.

Taxation

The main profit tax rate – at 20% – is one of the lowest amongst the major economies. Tax and other incentives are becoming more common, many of them are aimed at promoting innovation and the modernization of industry.

Transfer pricing

Transfer pricing legislation that is essentially based on OECD principles came into effect on 1 January 2012.

A transfer price should be viewed as a price subject to monitoring by the tax authorities. The tax authorities monitor prices to ensure that they reflect market realities and have not been fixed to reduce the tax burden.

Since 2012 the following changes have been made to Russia's transfer pricing rules:

- The list of legal entities that are considered related parties has been considerably extended;
- Prices will no longer be permitted to deviate up to 20 percent from market prices. It thus has become more difficult to set prices with a view to planning the tax amounts to be paid. Instead, the concept of an arm's length range has been introduced;
- Transactions subject to transfer pricing control (controlled transactions) have been defined and specified more clearly.

Russian transfer pricing legislation is now more detailed and developed. As a result, the tax authorities could potentially be more successful in challenging transfer prices in court following a transfer pricing audit.

Thus, in accordance with the law, the following transactions should be subject to transfer pricing regulation:

- Transactions between related parties, where:
 - Cross-border transactions occur (with no limit on the annual aggregate turnover from all transactions between the parties)
 - The amount of income and expenses under the transaction for one calendar year exceeds RUB 1 billion, unless this transaction is performed between:
 - The participants in a consolidated group of taxpayers, or
 - Companies registered in the same region of the Russian Federation, provided that these companies (a) do not pay corporate income tax (CIT) in another region of the Russian Federation, (b) do not have tax losses, and (c) do not have separate divisions in other Russian regions or outside the Russian Federation, or
 - Companies conducting activities within the same hydrocarbon mine, engaging in transactions related to the extraction of hydrocarbon raw materials, or
 - Taxpayers engaged in making interbank loans (deposits) which are limited in term to seven calendar days, or
 - Taxpayers engaged in transactions in the sphere of military and technical cooperation between the Russian Federation and other foreign countries (as regulated by the respective federal laws)
- One of the parties to the transaction is a taxpayer using the unified tax on an imputed income system, or the unified agricultural tax system, while the other party does not use this tax regime; provided that the amount of income and expenses under the transaction exceeds RUB 100 million for one calendar year
- One of the parties to the transaction is a resident of the Skolkovo Innovation Center and applies a zero percent CIT rate, or is free of taxpayer obligations, or is a resident of an SEZ in Russia, or is a participant in a free economic zone; while the other party is not utilizing any such benefits, provided that the amount of income and expenses under the transaction exceeds RUB 60 million for one calendar year
- One of the parties is subject to the mineral extraction tax (with a rate stipulated as a percentage), provided that the transaction concerns extracted minerals and that the amount of income and expenses in the transaction exceeds RUB 60 million for one calendar year
- One of the parties to the transaction is a taxpayer holding a license to extract hydrocarbon raw materials from a mine, while the second company is the operator of the mine, provided that the amount of income and expenses in the transaction exceeds RUB 60 million for one calendar year
- One of the parties is a participant in a regional investment project that can apply preferential tax rates, if the amount of income and expenses in the transaction exceeds RUB 60 million for one calendar year
- Cross-border transactions involving oil and oil products, ferrous and non-ferrous metals, mineral fertilisers, precious metals and precious stones (i.e. goods traded on international commodity exchanges), if the proceeds from these transactions with the same counterparty exceed RUB 60 million for one calendar year

- Transactions, where one of the parties is a tax resident in a country included on the Russian Federation Ministry of Finance's blacklist, and if proceeds from the transactions with this counterparty exceed RUB 60 million in one calendar year.

Taxpayers are obliged to notify the tax authorities of any controlled transactions carried out within the calendar year before 20 May of the year following the year in which the transactions took place. Notification of controlled transactions should be given in a strictly prescribed format. This discloses information about each operation performed within the controlled transaction (for instance, the operations performed within a buy-sell transaction would cover each delivery of each particular item of goods).

Taxpayers could be subject to a penalty of RUB 5,000 if notification is provided after the deadline or errors/mistakes are detected in the notification by the tax authorities. Although the taxpayer may regard the penalty amount as insignificant, the presence of the penalty on the taxpayer's records will act as a sign that the tax authorities should include the company on their lists for further transfer pricing audits.

In addition, in order to comply with Russian transfer pricing regulations, taxpayers – as per the request of the tax authorities – should justify the prices applied in controlled transactions by preparing supporting transfer pricing documentation. The taxpayer should submit the documentation with respect to the controlled transaction (or for a group of similar transactions) specified in the request from the Russian tax authorities. Transfer pricing documentation should contain the following information: a description of the main characteristics of the taxpayer's business, analysis of related parties or a description of the main characteristics of the group of companies in which the taxpayer participates, information about the controlled transaction and functional analysis, selection of the transfer pricing method applied for tax purposes and the sources of information used, and calculation of the arm's length range.

The tax authorities may request the transfer pricing documentation on controlled transactions starting from 1 June of the year following the year in which the transactions took place. Accordingly, the taxpayer should provide the transfer pricing documentation 30 working days after receiving the request.

For taxpayers who qualify for major taxpayer status (in accordance with the criteria stipulated by the Tax Code), the new law introduces the possibility of concluding advance pricing agreements with the tax authorities (i.e. the taxpayers and the tax authorities agree in advance to apply a specific methodology to calculate the arm's length price range).

Corporate profit tax rate

Profit tax applies to Russian legal entities and foreign legal entities carrying out activities in Russia through a permanent establishment or receiving income from Russian sources. The maximum profit tax rate is 20%. Income from the sale of unquoted shares and participation in Russian companies, and of quoted shares in high-tech Russian companies acquired after 1 January 2011 and held for at least five years, is exempt from profit tax.

From 1 January 2017 preferential tax rates were introduced for the participants of regional investment projects. The rates are set by regional authorities (from 0% to 10%).

Corporate profit tax administration

The tax period for profit tax is the calendar year. The annual profit tax return is due by 28 March of the following year. Taxpayers have a choice paying tax either on a monthly or a quarterly basis, provided it is applied consistently throughout the tax year. If the monthly basis applies the tax return must be filed and the tax paid by the 28th day of the following month. If the quarterly basis applies, monthly payments are made based on one third of the previous quarter's liability, while a tax return must be filed, and the balance of taxes should be paid by the 28th day of the calendar month following the reporting quarter. In each case, the cumulative profits and payments to date are

taken into account when filing each monthly or quarterly return and making the appropriate tax payment. Certain types of taxpayer, including foreign companies using the quarterly basis, are exempted from the obligation to make monthly payments. Tax agents paying income, including dividends, to foreign companies must withhold tax each time income is paid.

The tax payment must be remitted to the budget within one day of the payment date. Interest applies to late paid tax.

Dividends

Dividends are taxed as follows:

- 13% at source for dividends paid by one Russian company to another (unless the 0% rate below applies). In determining the tax base, the paying company should deduct the amount of dividends received in the same and preceding tax periods
- 15% at source for dividends paid by Russian companies to foreign companies. The rate may be reduced according to the relevant tax treaty
- 13% for dividends paid by foreign companies to Russian companies (unless the 0% rate below applies). Where a double tax treaty applies, a credit for any withholding tax suffered can be claimed against this liability
- 0% for dividends paid by either a Russian or foreign company to a Russian company, provided that the Russian company has owned no less than 50% of the company for at least 365 consecutive days. Dividends from foreign companies registered in certain “low tax” jurisdictions are excluded from this rule.

Interest income

Interest income is taxed on an accrual basis. A standard tax rate of 20% is applied to interest income, except for interest on state and municipal securities, which is taxed at 0%, 9%, or 15%, depending on the type of security. The rate may be reduced (typically to zero) according to the relevant tax treaty. The level of interest income recognised for tax purposes may be subject to control (see the “Interest expense” section for more details).

Interest expenses

Starting from 2015, the tax authorities can audit interest income and expenses only for transactions that are controlled under the Russian transfer pricing rules (that means transactions with related parties in most cases) and only in accordance with these rules.

Losses

From 2017 tax losses can be carried forward by a taxpayer to all subsequent years following the year in which the loss was incurred. In the reporting and tax periods from 1 January 2017 to 31 December 2020 the related reduction of taxable base by the amount of losses of previous periods cannot exceed 50%. Losses from certain activity (for example financial instruments trading) are determined and carried forward separately and may be offset only against relevant future profit.

VAT

VAT is charged on the majority of sales of goods, works and services supplied in Russia, including those supplied free-of-charge. VAT is also imposed on most imports into Russia. Companies and entrepreneurs may apply for exemption from VAT if their aggregate revenues for three consecutive months, excluding VAT, are below RUB 2 million. In addition, businesses which apply certain special tax regimes, such as the simplified tax system (available only to relatively small businesses) and the unified agricultural tax regime are outside the scope of VAT unless they import goods into Russia.

There are three main VAT rates that apply depending on the nature of supply:

- 0% applies in particular to exports and a list of services mostly related to transportation of exported and imported goods etc
- 10% applies to certain foods, children's goods, medical and pharmaceutical products
- 18% applies to all other taxable sales of goods, works and services.

Certain activities are exempt from VAT, and so is import of certain types of equipment in particular which has no equivalent produced in Russia.

From 2018 foreign individuals can compensate the VAT paid when making a purchase amounting to at least 10 thousand rubles (a tax free system). Compensation services can be provided, in particular, at airports.

Property tax

Generally the tax base is the net book value of the average annual fixed assets according to Russian statutory accounting. For a number of property types the tax base is the cadastral value of the specific facility.

Movable property that has been booked as a fixed asset since 1 January 2013 is exempt from tax, except for facilities booked as a result of reorganization or the liquidation of a legal entity, or as a result of a transfer between related parties. Foreign legal entity's having no permanent establishment in Russia are subject to property tax only on immovable property located in Russia.

The maximum tax rate is 2.2 percent. Lower tax rates are established for assets classified as public railways, pipelines and power lines, and on assets constituting an integral, technical component of the above. The list of these types of assets was compiled by the Government of the Russian Federation. The rates for these assets are 1% in 2015, 1.3% in 2016, 1.6 % in 2017, and 1.9% in 2018.

With respect to immovable property, for which the tax base is the cadastral value, the tax rate (in Moscow) cannot exceed 1.7% in 2015, and 2% from 2016. For other Russian regions, the rate in 2015 should not exceed 1.5%, and 2% from 2016.

The regional authorities set the terms for advance and final property tax payments.

Property tax calculations are filed quarterly. The annual property tax return should be filed by 30 March of the year following the reporting year.

Other taxes

Excise tax

Excise tax is payable by companies and individual entrepreneurs on the production of excisable goods in Russia, or when imported into Russia. Primary categories of excisable goods are tobacco products, motor vehicles, ethyl alcohol and certain spirit-based and oil products (no excise tax on natural gas and crude oil). Tax rates vary depending on the category of goods.

Land tax

Legal entities and individuals owning land or having a permanent right to use it, except those eligible for a special tax regime, are subject to land tax. The tax base is cadastral value of the land as determined on 1 January of the reporting year. The rates are determined by local tax authorities and may not exceed:

- 0.3% of the cadastral value of land which is a) either used for agricultural purposes, or b) occupied by residential properties
- 1.5% of the cadastral value of other land.

Advance payments are due quarterly, with the final tax payment due no later than 1 February of the following year.

State duty

The Tax code provides an exhaustive list of state duties. The main items applicable to legal entities include:

- the initiation of a court action
- the state registration of a legal entity, and on the accreditation of branches and representative offices of a foreign legal entity
- the state registration of issues of shares, including certain securities placed through subscription
- the state registration of a mutual investment fund
- obtaining a license to conduct certain activities
- services provided by notaries
- vehicle registration.

Personal taxation

Residency

Individuals are taxed according to their status as follows: tax residents are taxed on their worldwide income, and non-residents are taxed only on their income sourced in Russia, irrespective of its nature. Residency is established based on whether the individual is physically present in Russia for at least 183 calendar days during a 12 month rolling period. Domicile and citizenship is not relevant for income tax purposes.

Rates

Different tax rates are applied to residents and non-residents.

Residents

- A 13% rate applies to most types of income, i.e. other than those subject to an alternative rate.
- A 13% rate applies primarily to dividends received from Russian or foreign corporations.
- A 35% rate applies to certain prizes, insurance receipts and bank deposit interest in excess of specific limits, as well as to income deemed to be received on low-interest loans (except those used to acquire real estate).

Non-residents

A 30% rate applies to non-residents on all types of Russian-sourced income. Passive income (e.g. investment income) is Russian-sourced if it is due/ paid from a source located in Russia. Earned income (e.g. from employment) is Russian-sourced if the duties for which it is received are performed in Russia. Dividends paid by Russian organizations to non-residents are taxed at a 15% rate, withheld at source.

Specific personal income tax situations

"Highly qualified specialists", being foreign citizens with experience, skills or achievements in a particular area who, under their (local) employment arrangements, receive remuneration of no less than RUB 2 million. per annum (approximately USD 30 thousands), or lower in certain cases, is eligible for the standard personal income tax rate of 13% on remuneration from that employment, even before becoming a Russian tax resident. The employer of a highly qualified specialist is obliged to register the individual with the Russian tax authorities.

Investment

Advanced Development Territories

Advanced Development' territories (TOR) are economic zones with preferential tax conditions, simplified administrative procedures and other privileges, formed not only for economic development, but also to create comfortable living conditions for the population. In the first three years of regulation of the Federal Law №473-FZ "About the territories of advanced social and economic development in the Russian Federation", the TORs can be only established in the Far Eastern Federal District. Thus, the TOR is a tool of the Far East, focused on global competitiveness.

Advantages of TOR include:

- 0% income tax, property tax, land tax for the first five years
- 0% customs duties
- 0% VAT on imports for processing
- 7.6% of insurance fee instead of 30% for the investor first ten years
- an accelerated procedure for the return of VAT to exporters
- free customs zone
- accelerated and facilitated administrative procedures, including obtaining building permits and customs clearance.

The easiest and shortest way to become a resident of TOR is to offer a specific investment project with a high degree of realization. The minimum amount of investment should be RUB 5 million. The company wishing to become a resident of TOR must be registered and based in the Far East and have no branches outside the TOR. Administrative decision-making body is Far East Development Corporation – a management company, which is defined by the Government of the Russian Federation in order to carry out the functions for managing the territories of advancing social and economic development and management of a free port “Vladivostok”, 100% owned by the Government of the Russian Federation.

Free port “Vladivostok”

The free port “Vladivostok” (FPV) is a port zone under a special custom and taxation system, with a particular jurisdiction regarding investments. The Federal Law of the RF (No 212-FZ) “On the Free Port of Vladivostok” specifies that the free port regime in Vladivostok will last for 70 years, and that the period could be renewed by an additional law.

The project was intended to improve the cross-border commerce, to develop the transport infrastructures and to integrate the Primorsky Krai in the world transportation routes; its purpose is also to attract investors, to create a network of logistic centers for transportation, storage and partial transformation of the goods, in order to foster the organization of local industries working on the exportation of manufactured goods to create added value.

The new status is applied to 15 municipalities of Primorsky Krai. It includes major ports of the South of Russian Far East as well as Vladivostok International Airport. The free port zone is crossed by the future international transportation corridors “Primorye-1” and “Primorye-2”. Their realization would have a significant economic effect on the zone, ensuring transit of goods from North-East of China to the free ports of Russian Far East.

Advantages of FPV include:

- state support to entrepreneurs in order to attract investments for the development of transport infrastructures, the creation and development of an industry oriented towards export on the Asia-Pacific market
- reduced rate of profit tax for investors (5% during the first five years with 12% for the following five years)
- 0% property tax during the first five years
- reduced social welfare contributions on investment projects during the first ten years (7.6% instead of the usual 30%), decreased tax on mine resources extraction, and accelerated procedure for getting VAT back
- planned facilitated visa regime (possibility to get a 8-days visa at the border).

FPV residency conditions include a new investment project or a newly registered company with the minimum capital investments of RUB 5 million for a period of not exceeding three years.

Investment tax deduction

Starting from 2018 and up till 2027 the companies may apply for an investment deduction for income tax that relates to the acquisition, construction or reconstruction of fixed assets with a useful life of three to 20 years.

Categories of taxpayers who have the right to use the investment tax deduction are set by the regional authorities – subjects of the Russian Federation.

Regional legislation approves the amount of deduction (not exceeding the limit), categories of fixed assets to which the deduction can be applied and conditions under which the right of deduction arises.

The following categories of taxpayers are not entitled to apply the investment tax deduction:

- companies – participants of regional investment projects
- companies – residents of special economic zones
- companies engaged in activities related to the extraction of hydrocarbon raw materials in a new offshore hydrocarbon field
- companies – participants of a free economic zone
- companies – residents of the territories of advanced social and economic development or residents of the free port “Vladivostok”
- foreign companies recognized as tax residents of the Russian Federation.



The company can reduce the current income tax by the amount of investment deduction, which cannot exceed 90% of costs associated with the acquisition, construction or reconstruction of fixed assets. The balance of the investment deduction unused in the current year can be carried forward to subsequent tax periods.

11. Singapore

Country profile

| | | |
|----------------------|--|------------------|
| Official name | Republic of Singapore | |
| Capital | Singapore | |
| Location | South of Malaysian Peninsula | |
| Area | 722 km ² 60+ islands | |
| Climate | Warm and humid 23-33° C | |
| Time zone | GMT +8 no DST | |
| Population | ~5.6 million | |
| Currency | Singapore Dollar SGD | |
| Language | Malay Mandarin | English Tamil |
| Religion | 33% Buddhism 19% Christianity 18% Nonreligious 14% Islam 11% Taoism 5% Hinduism | |
| International | WTO ASEAN APEC IMF IMO | |
| Government | Parliamentary | |

Executive

The Executive branch consists of the President and the Cabinet. The elected President is empowered to veto government budgets and appointments to public office. It is the Cabinet, comprising the Prime Minister and other Ministers appointed (from the elected Members of Parliament) that is responsible for the general direction and control of the Government.

Legislative

The Legislature comprises the President and Parliament, and is responsible for enacting legislation. Parliament is made up of elected, non-constituency and nominated Members of Parliament. The President's assent is required for all bills passed by Parliament and he may in his discretion withhold assent to certain bills.

Judicial

The Judiciary consists of the Supreme Court and the State Courts and the head of the Judiciary is the Chief Justice. Judicial power in Singapore is vested in the Supreme Court and in such subordinate courts as may be provided for by any written law for the time being in force.

| IMF data | 2015 | 2016 | 2017 |
|-----------------------|--------|--------|--------|
| Real GDP USD billions | 303 | 309 | 325 |
| GDP per capita USD | 53,630 | 52,962 | 57,722 |
| Investments % GDP | 27% | 27% | 28% |
| Unemployment | 1.9% | 2.1% | 2.2% |
| Inflation, EoY | -0.52% | -0.53% | 0.60% |

Business entities

Generally, there are no licensing requirements on business activities carried on in Singapore. However, certain businesses have to apply for special licenses from the Government before they can commence such trading activities. These include banks, insurance and finance companies, manufacturers of certain goods (detergents, motor vehicles, etc), travel agencies, real estate agencies and educational institutions.

Persons who wish to carry on business in Singapore must seek registration with the Accounting and Corporate Regulatory Authority (ACRA).

Sole proprietorships and partnerships

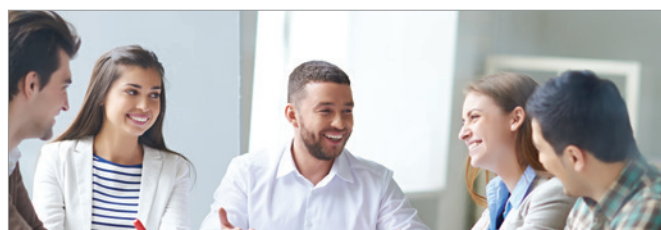
A sole proprietorship is a business conducted by a single individual. A partnership consists of a minimum of two to a maximum of 20 partners. (This maximum limit does not apply to professional firms such as doctors and accountants). A partnership is not necessarily restricted to individuals. A joint venture between two companies or between individuals and incorporated companies can also form a partnership.

Businesses carried on in the form of sole proprietorships or partnerships must be registered with the ACRA under the Business Registration Act. Registration is relatively simple. The registration fee is SGD 100 (for one year) or SGD 160 (for three years) and the renewal fee is SGD 30 (for one year) or SGD 90 (for three years). Un-incorporated entities are not required to get their accounts audited or file annual returns to the ACRA.

Sole proprietors and the individual partners in a partnership are jointly and individually liable for all debts and obligations incurred by the firm. The partners can decide each partner's liabilities among themselves, but such arrangements do not affect the joint liabilities to external parties. General rules governing partnerships may be found in the Partnership Act (Cap. 391). While not required, formal partnership agreements should be written down to prevent disputes. Where there is no partnership agreement or the agreement is not comprehensive, the relationship between partners is governed by the relevant provisions of the Partnership Act.

Limited Liability Partnership

A Limited Liability Partnership (LLP) gives owners the flexibility of operating as a partnership while having a separate legal identity like a private limited company. The partners of the LLP will not be held personally liable for any business debts incurred by the LLP. However, a partner may be held liable for losses due to wrongful acts or omissions.



Incorporated Companies

The Companies Act (Cap. 50) regulates all incorporated companies in Singapore. Under the Act, one or more persons associated for any purposes may form an incorporated company by subscribing their names to the constitution and complying with various requirements for registration.

The following companies may be formed under the Act:

Private companies limited by shares

Private company

A private company can have one or more shareholders, with a maximum of 50.

Exempt private company

An Exempt Private Company (EPC) is a private company which has at most 20 shareholders, none of whom is a corporation.

A private company has restricted rights to transfer its shares and is prohibited from inviting the public to subscribe to its shares and debentures or to deposit money into it.

Public companies

Public company limited by shares

A public company limited by shares can have more than 50 shareholders. The company may raise capital by offering shares and debentures to the public. A public company must register prospectus with the Monetary Authority of Singapore before making any public offer of shares and debentures.

Public company limited by guarantee

A public company limited by guarantee is one which carries out non-profit making activities that have some basis of national or public interest, such as for promoting art, or charity etc. The Minister may approve the registration of the company without the addition of the word "Limited" to its name.

Unlimited companies

An unlimited company is one in which the liabilities of members are unlimited.

Branches

As an alternative to incorporating a subsidiary company, a foreign company can carry on business in Singapore in the form of a branch.

To do so, the foreign company must submit a copy of its audited financial statements to the Registrar of Companies within 60 days after its annual general meeting. Such financial statements may be in the form required under the laws of the country in which the company is incorporated. If the company's statements are not required to be audited in its home country, the audit requirement can be dispensed with. Audited financial statements of the branch itself have to be filed in all cases.

Representative offices

A foreign company can apply to International Enterprise Singapore (IE Singapore) or the Monetary Authority of Singapore (MAS) for approval to establish a representative office in Singapore for the purpose of carrying out market research, feasibility studies, and liaison work on behalf of its parent company. A representative office is not permitted to trade.

IE Singapore registers representative offices from the manufacturing, trading, trade logistics and trade-related services sectors while MAS registers representative offices from finance-related industries.

The advantages of a representative office are that there are minimal reporting requirements, simple procedures for approval of office. Since a representative office by definition does not derive income from its activities, it is not subject to income tax unless in the view of the tax authority, the representative office is in fact involved in trading activities.

Accounting and auditing

Companies incorporated under the Companies Act are required to keep accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time. The Companies Act requires all these records to be retained for at least five years from the end of the financial year in which the transactions were completed.

The accounting records must be kept at the registered office (which must be located in Singapore) or at a suitable place as the directors think fit. If the accounting records are kept outside Singapore, statements and returns that will enable true and fair profit and loss accounts and balance sheets to be prepared must be sent to and kept in a place in Singapore. The accounting records must at all times be open to inspection by the directors.

Unless exempted, all limited companies must appoint independent auditors who are practicing members of the Institute of Singapore Chartered Accountants (ISCA) to conduct an annual audit of the company's financial statements. The registration and conduct of these professional auditors is regulated separately by the Public Accountants Oversight Committee under the purview of ACRA. A company must appoint an auditor within three months of incorporation.

Finance and capital markets

Monetary Authority of Singapore

The Monetary Authority of Singapore (MAS) is the principal government body overseeing the overall financial affairs of the country. The main role of MAS is to act as banker, fiscal agent, and financial advisor to the Government. It helps the Government in promoting monetary stability and credit and exchange policies conducive to the growth of the economy.

Banking system

The financial and banking system in Singapore is highly developed. Many major international banks and financial institutions have set up offices in Singapore.

Banks are divided into several types:

- **Commercial banks** may undertake commercial banking, including deposit taking, check services, and lending. They may also provide financial advisory services, capital market services, and insurance broking which are regulated and authorised by MAS.
 - **Full banks** may perform all banking businesses permitted by the Banking Act.
 - **Wholesale banks** can do everything a full bank can do except SGD retail banking.
 - **Offshore banks** have similar capabilities but must book all foreign currency transactions through their Asian Currency Units and book all SGD transactions through their Domestic Banking Unit.
- **Merchant banks** can partake in corporate finance, underwriting of shares and bonds, mergers and acquisitions, investment management, management consultancy, and other fee-based activities. They generally have Asian Currency Units to transact in the Asian Dollars Market.

Bank secrecy

Singapore embraces bank secrecy. The Banking Act stipulates that a bank and its officers must not disclose customer information to anyone unless expressly allowed by the Banking Act. In addition, banks are obliged to observe and comply with the requirements of the Personal Data Protection Act 2012.

Singapore deposit insurance corporation

All full banks and finance companies must become a member of the SDIC. In case a member fails, each of its customers can receive a payout of up to SGD 50,000 per account. In the case of a joint account, the money in the account is distributed evenly and each account holder's share is then combined with his or her own accounts, for the purpose of calculating the payout not exceeding SGD 50,000 per account holder.

Exchange control

All forms of exchange controls were dismantled on 1 June 1978. All Singapore residents both corporate and individuals are allowed complete freedom from exchange controls for any form of investment and payment. There are no exchange control approvals or formalities in respect of payments, remittances, repatriation of profits, or capital to most countries.

Stock Exchange of Singapore

The Stock Exchange of Singapore (SGX) is well established in the region. It provides an important avenue for public companies to raise long-term capital funds. The trading session lasts from 9 am to 5 pm, Monday to Friday, except on public holidays. The SGX lists both local and foreign companies' shares, bonds, debentures, and loan stocks. The SGX is a self-regulatory body but its activities are monitored by the MAS.

In general, foreign ownership of a company is not limited unless stated in the company's Memorandum and Articles of Association. The cap, if it exists, ranges from 19-70% ownership. These are usually in industries such as banking, stock broking activities, airlines, shipping lines and media companies. The company is responsible for monitoring its own foreign shareholding limits.

Catalist

The Catalist has been established by the SGX to enable small and medium-sized Singapore companies with good growth prospects to raise capital to finance business expansion and as an alternative to listing on the Main Board of the SGX. This allows participating companies to increase their visibility in the market and also widen the range of investment opportunities available to investors. Upgrading to the Main Board is possible.

The entry requirements for a Catalist listing are less stringent since there is no applicable quantitative requirement and the company is not required to demonstrate an operating track record.

It also offers more flexibility in post-IPO fund raising with the ability to issue up to 100% of its existing share capital without seeking shareholders' approval. Further, there is a lower threshold for mergers and acquisitions, i.e. shareholders' approval is only required where an acquisition exceeds 75% of the relevant tests vis-a-vis 20% for Mainboard listed companies.

Labor

The Employment Act ("the Act") stipulates the basic terms and conditions of employment. If a change in the Act makes the terms of a labor contract less favorable than the new Act, then the Act prevails. The Act covers every employee except seamen, domestic workers, government employees, and those employed in a managerial or executive position earning more than SGD 4,500 in base salary per month.

The labor contract

A labor contract is an agreement between the employer and the employee to define the employer-employee relationship, including the terms and conditions of employment. From 1 April 2016, all employers are required to issue key employment terms (KETs) in writing to employees covered under the Act. The KETs includes certain terms and essential clauses such as start date, work arrangement, salary, job title, probation period, notice period and basic benefits, etc. For those employees who are not covered, it is highly recommended to use a formal labor contract to minimise disputes on the agreed terms and conditions.

Termination of contract

The party that wishes to terminate a labor contract prematurely must give advance notice in writing. If a party fails to give advance notification, then the party at fault must compensate the other party equal to the salary for the number of days without advance notice.

The notice period should be according to the written contract, or verbal agreement. If this was not previously agreed the following applies:

| Length of service, up to | Notice period |
|--------------------------|---------------|
| 26 weeks | 1 day |
| 2 years | 1 week |
| 5 years | 2 weeks |
| Above 5 years | 4 weeks |

An employer may dismiss an employee without notice and without penalty only after a proper inquiry. The inquiry will show whether an employee is guilty of misconduct such as theft, dishonesty, disorderly or immoral conduct at work and insubordination, etc. A guilty verdict can result in termination, demotion, or suspension of up to one week.

Working hours¹

An employee is not required to work more than eight hours a day, 44 hours a week, and six days a week. If the employee only works five days or fewer in a week, then the cap is raised to nine hours a day. A shift worker may work 12 hours a day given that the weekly average over a three-week period does not go over 44 hours. An employee cannot work for more than 12 hours a day except in cases of emergency or if the employee consents in writing after being informed of his/her rights. If the weekly rest day does not fall on Sunday, the employer must make a monthly roster at the beginning of each month showing the rest days.

Overtime rate is 1.5 times of the salary by the hour, 2 times for work done on the weekly rest day. An employee may not work more than 72 hours of overtime in a month.

Leaves¹

Annual Leave and Holidays

Every employee, barring the Exceptions, is entitled to receive seven days of statutory paid leave per year. The number of days increases by one for every additional year of service up to 14 days. Annual leaves may be saved only until the next year.

In addition, the Employment Act mandates 11 days of paid holiday leave every year.

Sick Leave and Hospitalization Leave

After three months of service, an employee is entitled to paid medical leaves. Additionally, the employer is mandated to pay for medical consultation fees. The sick leave has to be certified by the appointed company doctor – if none, then a government doctor – and the employee has to notify the employer within 48 hours. Each employee is allowed five days of sick leave annually after three months of service, increasing by three days for each additional month of service up to 14 days. In cases of more severe illnesses, an employee can get 15 days of hospitalization leave after three months of service, increasing by 15 days for each additional month of service up to 60 days. The doctor has to certify that an illness warrants hospitalization, but the employee does not have to stay in a hospital.

¹ These conditions of service do not cover workmen employees earning more than SGD 4,500 per month, non-workmen employees earning more than SGD 2,500 per month and all managers and executives. This group will be referred as the Exceptions.

Maternity, paternity, shared parental and childcare leave

Lawfully married employees, including employee who is single, who has worked for at least three months for the current employer and whose child is a Singapore citizen will be entitled to the following leave:

| Type of leave | Leave period |
|---|--|
| Maternity leave | 16 weeks ¹ |
| Paternity leave | 2 weeks |
| Shared parental leave | Up to four weeks of wife's 16 weeks of maternity leave |
| Childcare Leave (for child under seven years old) | 6 days per year ² |
| Extended Childcare Leave (for child under 12 years old) | 2 days per year ³ |

- Entitlement is reduced to 12 weeks, out of which eight weeks are mandated paid leaves, if the child is not a Singapore citizen.
- If it is the employee's first year of service, s/he is entitled to two days of paid leave after three months of service, increasing by one day for each additional two months of service up to six days.
- For employee with children in both age groups (i.e. below seven years as well as between seven and 12 years), the total child care leave for each parent is a maximum of six days per year.

Salary

All salary is up to the negotiation of the employee and employer. Salary must be paid at least once a month and at most seven days after the working period. Overtime salary can be paid at most 14 days afterwards. In cases of termination by employer or termination by employee, provided the employee has served the notice period, all remaining salary is to be paid in full on the last day of employment, if not, within three working days from the date of termination.

Retrenchment

A company that is facing retrenchment must obey the law on notice periods. Employers must notify MOM of retrenchments within five working days after they notify the affected employees. An employee who has worked for at least two years at a company can request retrenchment benefits. The Act does not specify the amount to be paid, so retrenchment benefits are up for negotiation between the employee and employer. The employer may give retrenchment benefits to other employees at their discretion, but it is not mandatory.

Instead of retrenchment, a company can also choose to redeployment, reduce the workweek temporarily or lay off employees for a short period of time.

Employees can be rotated within the company when the job scope is restructured. Employees who are redeployed should also be provided with the relevant training. Workweek reduction cannot last more than three months and employers can only shave off two working days a week. If an employee is temporarily laid off, s/he is entitled to receive half-day pay during the period. Alternatively, the employee may use half-day paid annual leaves so s/he can receive full salary.

Retirement and re-employment

For Singapore citizens and permanent residents, the statutory minimum retirement age is 62 but employers are required to offer re-employment up to the age of 67, given satisfactory work performance and soundness of health.

For more information on terms and conditions at work, please refer to www.mom.gov.sg

Central Provident Fund (CPF)

The CPF is a compulsory saving scheme under which both employers and employees are required to contribute. It is designed to provide substantial financial security for wage earners in their old age or when they become unable to work. Under the Income Tax Act, compulsory contributions made by employees are specifically allowed as a deduction against their chargeable income and CPF funds withdrawn on retirement are exempt from tax. Any employer's contribution above the mandatory amount is subject to tax in the hands of the employee.

The contribution rates vary with age and citizenship. The monthly rates of compulsory contribution by employers and Singaporean employees for individuals up to 55 years of age are 17% and 20% respectively, up to a maximum contribution of SGD 2,220 per employee based on gross wages of SGD 6,000 a month on their ordinary wages (e.g. monthly salaries, overtime pay, other monthly payments, etc.). In the case of additional wages which are defined as annual bonus, leave pay, incentives, and other payments made at intervals of more than a month, restrictions are imposed on the tax deduction for CPF contributions on additional wages.

Foreigners who become permanent residents need to make contributions to the CPF at reduced rates in the first two years of taking up permanent residency.

By the third year, they must make the full mandatory contribution. However, if both the employer and the employee prefer to contribute the full rate before the third year, they may apply jointly to the CPF Board to do so. If the CPF Board approves the application, then the full CPF contributions would be treated as mandatory CPF contributions that are tax deductible.

For more information on CPF contributions, please refer to www.cpf.gov.sg

Workmen's compensation

Compensation for injuries and diseases sustained at work is provided for by the Work Injury Compensation Act. The Work Injury Compensation Act ensures that victims and their dependents are equitably and quickly compensated. It requires that compulsory insurance to be covered for all manual workers, regardless of their level of earnings, and non-manual workers who earns SGD 1,600 or less per month.

Immigration requirements

All foreigners who wish to take up employment in Singapore must apply for either an employment pass or work permit from the Ministry of Manpower. If specified conditions are met, holders of employment passes and work permits or other eligible persons can also apply to the authority to become Singapore Permanent Residents or even Singapore Citizens. The Government adopts a pragmatic approach in its immigration policies.

Trade unions and strikes

Singapore uses a tripartite system in which the Ministry of Manpower, The National Trades Union Congress, and The Singapore National Employers Federation work together to reach agreements.

Strikes are generally unheard of in Singapore. Employees in essential services, such as public transportation, public broadcast, and civil defence, may be charged criminally for holding a strike. Workers in other sectors may be outright prohibited from striking. Even if employees are allowed to strike, they must give a 14-day advance notice, given that the matter is not being settled by the Industrial Arbitration Court.

Taxation

The Inland Revenue Authority of Singapore (IRAS) was established in 1992 under the Ministry of Finance to oversee all matters related to taxation. Of note, Singapore does not impose capital gains tax or net worth tax. The tax period coincides with the calendar year (for individuals) and the accounting year (for companies and businesses). However, income tax charged in a year is based on the income from the preceding year, e.g. tax paid in the Year of Assessment (YA) 2018 is based on income from 2017.

Territoriality

Singapore taxes income on a territorial basis in that tax is imposed on income accrued in or derived from Singapore, or received in Singapore (where the income is sourced outside Singapore).

Tax residence

The residence of an individual or a company is not relevant in determining the taxability of net income, as tax is levied on income accrued in or derived from Singapore. However, the concept of tax residence is important for the following reasons:

- Tax treaty benefits are only applicable to resident companies and individuals, so that they can obtain favourable tax credits to avoid double taxation on their foreign sourced income
- All individuals are not subject to tax on income derived or accrued outside Singapore, even if it is remitted to Singapore, except for income received through a partnership in Singapore.

In contrast, a resident company is subject to tax on foreign sourced income if it is remitted to Singapore. However, remittance of foreign sourced income in the form of dividends, branch profits and service income are exempt from tax if the stipulated conditions are met.

Generally, an individual is considered a resident for tax purpose if he resides in Singapore (except for temporary absences) or he spends at least 183 days in Singapore either through physical presence or exercise of an employment.

A company is treated as a tax resident in the country where the control and management of its business is exercised. Normally, a company is considered a tax resident in the country where its board of directors hold their meetings on strategic matters of the company.

Taxable income

Income subject to tax includes:

- gains or profits from any trade, business, profession, or vocation
- gains or profits from employment, including allowances and benefits
- pensions, annuities, and charges
- dividends, interest, and discounts
- rents, royalties, premiums, and other profits arising from property
- any gains or profits from income of any other nature.

Expenses can be deducted from taxable income only if they are wholly and exclusively used to generate that income. For instance, expenses used to generate income in another country, which is not received in Singapore, cannot be deducted against other taxable income in Singapore for tax purposes.

Corporate tax

Tax rate

All companies (locally incorporated or branches of foreign companies) pay tax at the standard rate of 17%. Concessionary tax rates or tax exemption are available for certain approved businesses under the various tax incentive schemes.

Up to YA 2019, partial tax exemption for normal chargeable income up to SGD 300,000 is available, where 75% of the first SGD 10,000 is exempt and 50% of the next SGD 290,000 is exempt. The remaining chargeable income is taxable at prevailing corporate tax rate.

With effect from YA 2020, the partial tax exemption will be restricted to chargeable income of SGD 200,000, where 75% of the first SGD 10,000 is exempt and 50% of the next SGD 190,000 is exempt. The remaining chargeable income is taxable at prevailing corporate tax rate.

A new startup company can enjoy even greater partial tax exemption benefits in its first three YAs. To qualify, the company must be a Singaporean tax resident and must have no more than 20 individual shareholders or at least one individual shareholder holding at least 10% of the issued ordinary shares. Up to YA 2019, the new startup company can enjoy 100% exemption on the first SGD 100,000 and 50% exemption on the next SGD 200,000 of chargeable income. With effect from YA 2020, the partial tax exemption will be restricted to chargeable income of SGD 200,000, where 75% of the first SGD 100,000 is exempt and 50% of the next SGD 100,000 is exempt.

For the YA 2018, a 40% tax rebate, capped at SGD 15,000 is granted (enhanced from 20%, with cap of SGD 10,000 previously).

For the YA 2019, a 20% tax rebate, capped at SGD 10,000 will be granted.

Capital allowances

Depreciation and expenses related to fixed assets are not tax deductible. Instead, companies may claim capital allowances (tax depreciation) for tax calculation purposes. These are available for the following:

| Basis | Initial | Annual |
|-----------------------------------|---------|---------------|
| Land intensification | 25% | 5% |
| Plant and machinery – normal | 20% | 5-16% |
| Plant and machinery – accelerated | – | 33% |
| Intellectual property | – | 6.67%/10%/20% |
| Computers, robots, etc. | 100% | – |

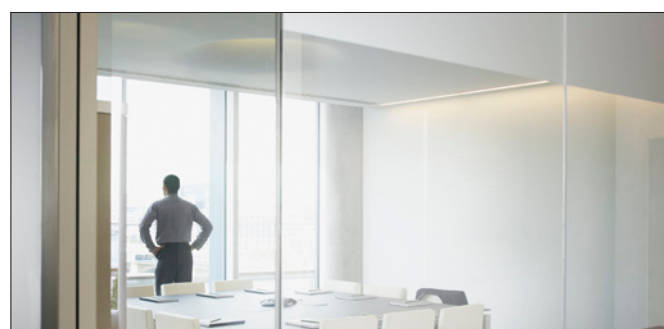
Land intensification allowance (“LIA”)

The LIA tax incentive, available up to 30 June 2020, was introduced to support enhanced land productivity among industrial users. Upon obtaining approval, businesses may claim LIA on qualifying expenditure incurred for the construction of a qualifying building or structure.

Plant and machinery

Capital allowances can be claimed on qualifying plant and machinery. An initial allowance of 20% is available in the year that the qualifying cost is incurred, and annual allowances are available on a straight line basis on the remaining cost over the prescribed useful life ranging from five to 16 years.

In lieu of the above standard allowances, an accelerated allowance of 33 1/3% (straight line) is available for all qualifying plant and machinery.



Expenditure on low-value plant and machinery can qualify for 100% write-off, provided each asset is not more than SGD 5,000 and the total value of such claims is capped at SGD 30,000 per year.

Capital allowances of 100% write-off are available for expenditure incurred for the purchase of computers, website development costs and registration of domain names, prescribed automation equipment, robots, generator, approved highly efficient equipment and etc.

On the sale, disposal or write off of plant and machinery, a balancing allowance or balancing charge (which is taxable) will be made to cover the deficiency/excess of the remaining allowances not yet claimed on the expenditure below/over the sales proceeds. However, the balancing charge will not exceed the aggregate of all allowances previously granted in respect of the asset.

Intellectual property

For the qualifying intellectual properties acquired during basis periods in relation to YAs 2017 to 2020, companies can make an irrevocable election to elect a 5, 10 or 15 year writing down period.

Enhanced tax deductions

From YA 2019 through YA 2025, the following enhanced tax deductions would be available for qualifying expenditure incurred on:

| Expenditure | Enhanced deduction |
|--|--------------------|
| R&D staff costs and consumables | 250% |
| Intellectual property registration fees | 200% |
| Intellectual property in-licensing costs | 200% |

Group relief

Unused losses, capital allowances and donations arising in the current year can be transferred for set-off against the taxable profits of a related company within the same group, subject to the stipulated conditions.

A group must consist of a Singapore incorporated parent company and all its Singapore incorporated subsidiaries, to qualify for the group relief claim. The parent company must own at least 75% of the subsidiaries and the subsidiaries must have the same year-end as the parent company. However, certain loss items such as investment allowances, exempt loss and loss from foreign branches, cannot be transferred.

Loss carry-forward

Unused tax losses and capital allowances can be carried forward indefinitely for set-off against subsequent years' income, provided there is no more than 50% change of ultimate shareholders as at the relevant comparison dates. For unused capital allowances, there is an additional condition that the trade giving rise to the capital allowances is still carried on. Unused donations can be carried forward for up to five years. Where there is a substantial shareholding change, the affected losses, capital allowances and donations would be disregarded, unless a ministerial approval is sought to waive the shareholders test requirement.

Loss carry-backward

A person in a trade, business, profession, or vocation can carry back current year tax losses and capital allowances for one year, up to SGD 100,000, subject to the substantial shareholdings and same-trade test.

Individual tax

Resident taxation

Tax rates

YA 2017 (calendar year 2016) onwards:

| Income (SGD) | Marginal tax rate |
|--------------|-------------------|
| 20,000 | 0% |
| 30,000 | 2% |
| 40,000 | 3.5% |
| 80,000 | 7% |
| 120,000 | 11.5% |
| 160,000 | 15% |
| 200,000 | 18% |
| 240,000 | 19% |
| 280,000 | 19.5% |
| 320,000 | 20% |
| >320,000 | 22% |

Tax relief

- Personal tax (earned income) relief of SGD 1,000, increasing to SGD 6,000 at 55-59 years old and SGD 8,000 at 60 years old onwards.
- Spousal tax relief of SGD 2,000 if the spouse does not earn more than SGD 4,000 annually.
- Child relief of SGD 4,000 if the child is under 16 years old, is a full-time student, and does not earn more than SGD 4,000 per year.
- Choice of relief on employee contribution to the Central Provident Fund (CPF) or life insurance premium. For the self-employed, CPF relief of up to SGD 37,740 (YA 2018).
- Approved academic, professional, or vocational course fees up to SGD 5,500.
- Twice the levy paid for one foreign maid, applicable to working married women.

Non-resident taxation

Non-resident individuals working in Singapore for fewer than 60 days in a year are exempted from employment income tax, with some exceptions. This 60-day exemption rule does not apply to public entertainers and professionals. Non-resident individual entertainers are taxed at 15% (reduced to 10% for income due and payable during the period up to 31 March 2020). Non-resident professionals are taxed at 15%, with an option to be taxed on net income at 22%.

Non-resident directors of Singapore resident companies are taxed at 22% on their directors' fees and other remuneration.

Individuals working for more than 60 days but less than 183 days in a year are subject to employment income tax at the greater of 15% (with no personal reliefs) or resident taxation (with tax reliefs).

All other sources of income for non-resident individuals are taxed 22%, except for certain income which are taxed at reduced final withholding tax rates.

Withholding tax

| Income source | Rate |
|--|------|
| Dividends | 0% |
| Time, voyage and bareboat charter fees for ships | 0% |
| Interest | 15% |
| Royalties | 10% |
| Technical service fees | 17% |
| Management service fees | 17% |
| Rent | 15% |
| Directors' fees | 22% |

Tax treaties

To avoid double taxation, Singapore has entered into tax treaties with other countries. Typically, the country that sourced the income claims the tax while the country of residence credits the tax. Currently, Singapore has tax treaties with the following countries:

| Comprehensive treaties | | | | |
|------------------------|-------------|--------------|--------------------|----------------------|
| Albania | Egypt | Jersey | Netherlands | Slovak Republic |
| Australia | Estonia | Kazakhstan | New Zealand | Slovenia |
| Austria | Ethiopia | South Korea | Norway | South Africa |
| Bahrain | Fiji | Kuwait | Oman | Spain |
| Bangladesh | Finland | Laos | Pakistan | Sri Lanka |
| Barbados | France | Latvia | Panama | Sweden |
| Belarus | Georgia | Libya | Papua New Guinea | Switzerland |
| Belgium | Germany | Lichtenstein | Philippines | Taiwan |
| Brunei | Guernsey | Lithuania | Poland | Thailand |
| Bulgaria | Hungary | Luxembourg | Portugal | Turkey |
| Cambodia | India | Malaysia | Qatar | Ukraine |
| Canada | Indonesia | Malta | Romania | United Arab Emirates |
| China | Ireland | Mauritius | Russian Federation | United Kingdom |
| Cyprus | Isle of Man | Mexico | Rwanda | Uruguay |
| Czech Republic | Israel | Mongolia | San Marino | Uzbekistan |
| Denmark | Italy | Morocco | Saudi Arabia | Vietnam |
| Ecuador | Japan | Myanmar | Seychelles | |

| Limited treaties | | |
|-----------------------------------|--------------------------------------|---|
| Bahrain (air transport) | Hong Kong (air transport & shipping) | United Arab Emirates (air transport) |
| Brazil (air transport & shipping) | Oman (air transport) | United States of America (air transport & shipping) |
| Chile (shipping) | Saudi Arabia (air transport) | |

Transfer pricing

The Singapore transfer pricing rules apply to the related party transactions (both local and cross-border) between a Singapore taxpayer and its related parties. The IRAS has issued guidelines on transfer pricing and has more recently introduced contemporaneous transfer pricing documentation requirements.

IRAS has introduced a new related party transaction (RPT) reporting requirement with effect from a financial year beginning on or after 1 January 2017. Companies will be required to complete and file the form for reporting RPT only if the value of RPT exceeds SGD 15 million.

The Income Tax Act has been amended to introduce, amongst others, a new penalty regime with effect from YA 2019 which allows the Comptroller to apply a surcharge of 5% on the transfer pricing adjustments initiated by the IRAS, as well as mandatory TP documentation requirements that apply to taxpayers with gross turnover exceeding SGD 10 million per financial year, with specific penalties for non-compliance. Further, it has been clarified that any claim for relief for error or mistake in relation to a RPT must be supported by contemporaneous and adequate transfer pricing documentation from YA 2019, even for cases where the mandatory transfer pricing documentation do not apply.

Unilateral and bilateral APAs are possible and they generally cover a three to five year period. In Singapore there are no thin capitalization rules.

Other taxes

Stamp duty

Stamp duty is levied on specific dutiable documents relating to immovable property in Singapore and stocks/shares of Singapore companies. Typically, the purchaser pays the stamp duty, which is insignificant except for:

- transfer of shares at 0.2%
- sale of immovable property at stepped rates of 1 to 4%.

The following additional stamp duties may be applicable to the acquisition/sale of residential properties, industrial properties and property holding entities:

- Additional Buyer's Stamp Duties (ABSD) of up to 15% depending on the profile of the buyer
- Sellers's Stamp Duties (SSD) if the properties are purchased/sold within certain period/holding period
- Additional Conveyance Duties (ACD) for acquisition/sale of equity interests in property holding entities whose primary tangible assets are Singapore residential properties, at the top marginal rate of 19% (for the buyer) and 12% (for the seller).

Estate and gift taxes

Singapore does not levy these taxes.

Property tax

Property tax is levied on immovable properties. It is computed as a percentage applied to the annual value which is the gross amount for which a property is expected to be rented for the year.

Non-residential properties, such as commercial and industrial buildings and land are taxed at 10%.

Residential properties are taxed at a minimum rates of 4% (owner-occupied) and 10% (non owner-occupied).

Goods and services tax

Goods and services tax (GST) is a tax on consumption. It is imposed on any taxable supply of goods or services, where the supply is made in Singapore by a taxable person. Additionally, goods imported into Singapore by any person will also be subject to GST. The taxable person is a registrable person who makes or intends to make at least SGD 1 million in total value of taxable supplies annually. It includes companies, individuals, partnerships, cooperatives, trusts, charities, businesses, profession or vocations.

The standard GST rate is 7%, although certain goods and services enjoy a 0% rate (export of goods/international services) or full exemption.

The standard rate of 7% will be raised by two percentage points to 9% sometime during the period 2021 to 2025. In addition, with effect from 1 January 2020, the importation of services will also be subject to GST.

Customs and excise duties

Customs and excise duties are levied on liquors, tobacco products, motor vehicles, and petroleum products.

Carbon tax

With effect from 2019, a carbon tax of SGD 5 per tonne of greenhouse gas emissions will be charged on large emitters producing 25,000 tonnes or more of greenhouse gas emissions a year.

Investment

Tax incentives

The Economic Expansion Incentives (Relief from Income Tax) Act 1967 (together with the Amendment Acts) (EEIA) and The Singapore Income Tax Act provides tax incentives to specific industries. The provision of such incentives is to encourage industries to produce high value-added goods and services for the world market and to promote automation and wide-scale mechanization.

The Economic Development Board (EDB) is the principal government body responsible for administering the various incentives provided in the EEIA. The International Enterprise Singapore and the Maritime and Port Authority (MPA) administer certain of the incentives provided in the Singapore Income Tax Act.

Pioneer status incentives

A 100% exemption from tax for a period up to 15 years is available to industries which manufacture approved pioneer products or provide approved services that have the effect of promoting economic or technological development in Singapore.

Development and expansion incentives

The Development and Expansion Incentive (DEI) is available to companies that engage in high value-added operations in Singapore but do not qualify for pioneer incentive status and to companies whose pioneer incentive status has expired.

DEI companies enjoy a concessionary tax rate of not less than 5% on their incremental income from qualifying activities. The tax relief period is 10 years, with possible extensions.

Investment Allowances

A company may apply to be granted investment allowances in respect of capital expenditure for manufacturing operations, specialized engineering or technical services, research and development, construction, reduction of drinking water consumption and, activities qualifying for the pioneer service company incentives described earlier. Upon approval, investment allowances of up to 100% of the expenditure incurred on productive equipment is granted, in addition to the normal tax depreciation allowance.

MSI – Approved International Shipping Enterprise Award (MSI – AIS)

The MSI – AIS award applies to resident shipping companies which operate non-Singapore flag ships. Qualifying foreign ships include towage vessels, salvage ships, dredges, seismic vessels, and semisubmersible oil rigs. Incomes of approved international shipping enterprises qualifying for tax exemption under the scheme include those derived from:

- carriage of passengers, mails, livestock or goods from outside Singapore port limits by any foreign ship
- charter of any foreign ship to a non-resident of Singapore, or to another approved international shipping enterprise, for the carriage of passengers, mails, livestock or goods outside Singapore port limits
- carriage of passengers, mails, livestock or goods by a foreign ship to Singapore for the purpose of trans-shipment
- income derived from the operation of Floating Production Storage Offloading vessels and Floating Storage Offloading vessels in Singapore
- exploration or exploitation of offshore energy or offshore mineral extraction, and ancillary activities supporting the above offshore activities.

To qualify for this scheme, the shipping company must be a Singapore-registered company and a tax resident in Singapore with local business spending of more than SGD 5 million annually. Initially, the incentive can be granted for 10 years with provision for extension up to a total of 40 years.

The MSI – AIS (Entry) was introduced on 1 June 2011 for qualifying entry players to enjoy similar tax benefits as the MSI – AIS award. The MSI – AIS (Entry) award will be granted for a non-renewable 5-year period, with the option of graduating to the mainstream MSI – AIS scheme. Window for application is open until 31 May 2021.

MSI – Shipping-related Support Services Award (MSI – SSS)

Ship agencies, ship management companies, logistics providers and ship brokers may apply for this incentive. To qualify, the company must have substantial operations and a good track record in their relevant field.

Qualifying companies will be accorded a concessionary tax rate of at least 10% on their incremental income only. The base profit will continue to be taxed at the normal corporate tax rate. The incentive period is five years, subject to approval for renewal. Window for application is open until 31 May 2021.

MSI – Maritime Leasing Award (MSI – ML)

To encourage the development of ship financing activities in Singapore, the MSI – ML was introduced in 2007. Under this scheme, an Approved Shipping Investment Enterprise (ASIE) will enjoy tax exemption on its investment income, which includes income (and dividend paid out of such income) from chartering or finance leasing of seagoing ships to qualifying persons. In addition, an approved shipping investment management company will enjoy a 10% concessionary tax rate on qualifying income derived from ASIE management.



The Approved Container Investment Enterprise (ACIE) will enjoy concessionary rate of 5% or 10% on its income from leasing sea containers. An approved container investment management company will enjoy a 10% concessionary tax rate on qualifying income derived from management of ACIE.

Global trader programme (GTP)

This incentive was introduced to encourage companies to use Singapore as their regional or global base for their trading operations. Under the GTP, approved companies enjoy a concessionary tax rate of 5% or 10% on qualifying transactions conducted on qualifying commodities and products, such as energy, agriculture, building and industrial materials, consumer products, machinery components, minerals, etc. A sunset clause of 31 March 2021 applies to the GTP scheme.

Intellectual property

All intellectual property rights are handled by the Intellectual Property Office of Singapore (IPOS).

Patent

A patent can take the form of a new product, process or technical improvement to existing technology. A patentable invention provides a novel solution to a technical problem. To register a patent, the invention has to meet three criteria: new (not publicly known anywhere in the world), inventive (improvement over an existing product or process), and industrially applicable (can be made or used in practice). A patent lasts 20 years from the date of filing and prevents others from making, using, selling, or importing without permission.

Trademark

A trademark is an identifying sign used to distinguish a service or product, usually the company logo or brand. A trademark does not have to be registered; disputes can be settled by common law. However, registering a trademark grants its owner monopoly over that mark and serves as absolute evidence in cases of dispute. A trademark lasts 10 years and can be renewed indefinitely.

Registered design

Sometimes called patentable design in other countries, a registered design is the features of a shape, configuration, pattern, or ornament applied to an article. A design must be new and industrially applicable – the owner must intend to sell at least 50 copies of the design. A registered design lasts five years and can be renewed up to an additional 10 years.

Plant variety protection

To register a plant variety, the variety must be novel, distinct, uniform, and stable. Additionally, it must have its own name or identification. The protection lasts 25 years, provided it is renewed annually.

Copyright

A work is automatically copyrighted upon completion and does not need to be registered. Literary and artistic works, sound recordings and films, broadcasts and cable programs, and performances enjoy copyright protection. Copyrights usually last 70 years after date of publication. A literary or artistic work may be protected for an additional 70 years after the death of the creator. Broadcasts only enjoy 50 years of protection. The right to publish a literary, dramatic, musical or artistic work is protected for 25 years. Sound recording, films, performances are protected for 70 years.

Layout-design of an integrated circuit

In short, the design of a computer chip can be protected for 10 years after the first commercial use or 15 years after date of creation, whichever is shorter.

Expropriation

Singapore has never expropriated the property of a foreign investor and has no laws that would ever force foreign investors to transfer ownership to local interests.

Property ownership

All residential land dealings are regulated by the Residential Property Act and are under the administration of the Land Dealings Unit. A foreign person cannot obtain residential land or landed residential property without permission from the Minister for Law. However, a foreign person is free to rent or buy an apartment or condominium under the Planning Act, given that the person does not buy all the units in a project. Also, a foreigner can buy a leasehold estate in a landed residential property for a term up to seven years.

Foreigners can buy shophouses (for commercial use), hotels, commercial or industrial properties without separate approval.

International trade agreements

Singapore has entered the following free-trade agreements:

Regional FTAs

- ASEAN – Free Trade Area (AFTA)
- ASEAN – Australia/New Zealand (AANZ FTA)
- ASEAN – China (ACFTA)
- ASEAN – India (AIFTA)
- ASEAN – Japan (AJCEP)
- ASEAN – Korea (AKFTA)
- European Free Trade Association-Singapore Free Trade Agreement (ESFTA)
- The Gulf Cooperation Council-Singapore Free Trade Agreement (GSFTA)
- Trans-Pacific Strategic Economic Partnership (TPSEP).

Bilateral FTAs

| | | | |
|------------|--------|-------------|---------------|
| Australia | India | Korea | Peru |
| China | Japan | New Zealand | United States |
| Costa Rica | Jordan | Panama | Turkey |

Concluded FTAs but not ready for use

- European Union-Singapore FTA (EUSFTA)
- Trans-Pacific Partnership (TPP)
- Sri Lanka-Singapore FTA (SLSFTA).

FTAs under negotiation

- ASEAN – India Services and Investment
- ASEAN – Japan Services and Investment
- Eurasian Economic Union – Singapore Free Trade Agreement (EAEU)
- Pacific Alliance – Singapore Free Trade Agreement
- RCEP (Regional Comprehensive Economic Partnership).

12. Thailand

Country profile

| | |
|----------------------|--|
| Official name | Kingdom of Thailand |
| Capital | Bangkok |
| Location | Myanmar and Laos to the north Cambodia Laos to the east Myanmar to the West Malaysia to the South |
| Area | ~513,120 km ² |
| Climate | Tropical with monsoons |
| Time zone | UTC +7 no DST |
| Population | 66.19 million (2017) |
| Currency | Thai Baht THB |
| Language | Thai English |
| Religion | 95% Buddhism 4.6% Islam |
| International | APEC ASEAN |
| Government | Constitutional monarchy under [military junta] Parliamentary democracy |

On 13 October 2016 His Majesty King Bhumibol Adulyadej, King Rama the 9th had demised. King Rama the 10th, His Majesty King Maha Vajiralongkorn BodindradebayavarangkunIn has succeeded the throne subsequently. In Thailand, the King is head of state, while the leader of the government is the Prime Minister. Other chief executives also include cabinet members and ministers, together with high-ranking government officials in ministries, bureaus and agencies. As head of state, the King has the authority to exercise sovereign power through the National Assembly, the Council of Ministers, and the Courts. The Prime Minister functions in the name of the King, and is responsible for all royal commands regarding the affairs of the State.

Executive

The Prime Minister heads the executive branch and leads the Cabinet or the Council of Ministers of Thailand. The Prime Minister can appoint or remove any Minister. He represents the country in both domestic and international relations.

Under the road map of National Council for Peace and Order (NCPO), the next general election is expected to be held in February 2019.

Legislative

Both the Senate and the House of Representatives were abolished as a result of the 2014 Thai coup d'état. These were replaced with the unicameral National Legislative Assembly, a body of 250 members, selected by the National Council for Peace and Order (NCPO).

Judicial

The judicial branch contains three separate systems:

- The Constitutional Court settles all matters regarding the constitution
- The Administrative Court settles litigations between [state official and a private individual or dispute between an administrative agency and an individual State Official.] citizens and bodies of government

- Court of Justice handles everything else, containing:
 - trial court
 - court of appeal
 - supreme court
 - court martial

Remark: 1 and 2 uses Accusatorial system for trial procedure whilst 3. uses Inquisitorial system for trial procedure.

| Economic data | 2015 | 2016 | 2017 |
|--------------------|----------|----------|--------|
| GDP USD billions | 399.23 | 406.84 | 423.11 |
| GDP per capita USD | 5,814.86 | 6,035.10 | 6,336 |
| Investments % GDP | 24.32% | 25.5% | 26.53% |
| Unemployment | 1% | 0.9% | 1% |
| Inflation | -0.9% | 0.19% | 0.59% |

Ref: Ministry of Finance: <http://www.mfa.go.th>
 Bank of Thailand: www.bot.or.th
 Board of Investment: www.boi.go.th
 Fiscal Policy Office: www.fpo.go.th
 MF: www.imf.org
http://www.economywatch.com/economic-statistics/Thailand/Investment_Percentage_of_GDP/

Business entities

The Thailand Civil and Commercial Code enumerates types of business entities that can be wholly owned by foreigners. However, certain business sectors are restricted up to 49% foreign participation. Business entities specifically for foreigners are listed in the Board of Investment Act and the Foreign Business Operation Act 1999. See Type of Business Organization from the link beneath; http://www.dbd.go.th/dbdweb_en/images/pic/organization_eng.jpg

Sole proprietorships

A sole proprietorship is owned by a single person and is restricted to foreigners living in Thailand.

Partnerships

Unregistered ordinary partnerships

This type of partnership is not registered with the Thai Commercial Registration Office, so it is not considered a legal entity and is taxed like an individual. Every partner has joint unlimited liability for all partnership's debts and obligations from the time of joining and even after leaving the partnership. Partners can contribute money, other assets, or labor to the partnership.

Registered ordinary partnerships

Because this type of partnership is registered at the Commercial Registration Office, it is considered a legal entity and gains several forms of protection:

- A partner can make a claim against third parties on behalf of the partnership without having to be named in the transaction which gives rise to the claim
- A partner's liability ceases two years after he leaves the partnership
- Creditors must exhaust all assets of the partnership before they can pursue claims against individual partners
- A partner's personal creditors can only make claims on profits from the partner's share and not on assets belonging to the partnership.

The partnership must submit annual financial reports and pay corporate income taxes. However, income may also be reported on individual partner's tax returns.

Limited partnerships

A limited partnership must have at least one general partner, called "The managing partner", who holds unlimited liability for the partnership's debts and obligations. It can have any number of limited partners, whose liabilities are limited to their own contributions. Limited partners can contribute money or other assets to the partnership but not labor. Only general partners can put their names on the partnership's name.

A limited partnership must be registered with the Thai Commercial Registration Office. It must submit annual financial reports and is taxed as a corporate entity.

Limited liability companies

Private limited companies

Private limited company is probably the most commonly used business structure in Thailand, particularly for foreign investors. To establish a company limited, initially, there must be at least three ordinary persons (not juristic persons), called "promoters", signing together in order to prepare Memorandum of Association and then register. For the "Shareholders" anyone either individual or juristic person can be the company's shareholder as stated in the memorandum. There must be at least three shareholders at all times. The registration of a company limited is subject to the Civil and Commercial Code.

Major characteristics include:

- no minimum level of capitalization, though it must be enough for the company's objectives
- the capital must be divided equally into shares with minimum par value of THB 5. The company can issue common and preferred shares, all of which must have voting rights. Preferred shares can have $\frac{1}{3}$ or $\frac{1}{5}$ the weight of a common share's voting rights, as specified in the Articles of Association
- all shares must be subscribed to, and at least 25% of shares must be paid up. Each promoter must hold at least one share
- must have at least three shareholders at all times
- managed by the board of directors with at least one director, who can be a foreigner. There is no limitation of number of directors required and the director needs not to be shareholder. The director can be anyone who is appointed by the shareholders through shareholders' meeting
- the shareholders' liability is limited to the par value of the authorized capital. However, the liability of directors can be unlimited if stated in the company's articles or memorandum of association
- the company must register its articles and memorandum of association with the Ministry of Commerce. After share subscription, the company must hold a statutory meeting to approve the articles of incorporation, elect its directors, appoint an auditor, etc
- the company cannot publicly offer shares in stock markets or issue securities to the public
- a private limited company can be converted to a public limited company by an extraordinary resolution from the shareholders' meeting following the provisions of the Civil and Commercial Code.

Public limited companies

A public limited company requires at least 15 shareholders, called "promoters", at least half of which must reside in Thailand. The Public Limited Companies Act governs public companies.

Major characteristics include:

- no minimum level of capitalization, although the company must have minimum registered capital of THB 20 million to enlist in the Market for Alternative Investment (MAI) and a minimum of THB 300 million to enlist in the Stock Exchange of Thailand (SET)
- the capital must be divided equally into shares with a designated par value
- all shares must be fully paid up. Promoters must subscribe to at least 5% of total shares and hold the shares for at least two years from the company's incorporation date, unless approval has been given from the shareholders' meeting
- the board of directors must have at least five members; at least half the members must reside in Thailand. The directors must disclose their shareholdings in the company, and will generally have more responsibilities than directors of a private limited company
- as a limited company, the shareholders' liability is limited to the par value of the authorized capital. However, the liability of directors can be unlimited if it is so stated in the company's articles or memorandum of association
- the company must register its articles and memorandum of association with the Ministry of Commerce. After share subscription, the company must hold a statutory meeting to approve the articles of incorporation, elect its directors, appoint an auditor, etc
- a public limited company can offer and trade shares in stock markets and issue securities to the public. The Securities and Exchange Commission (SEC) is responsible for approving public offerings of securities and supervising the Stock Exchange of Thailand (SET).

Branch offices

A foreign company incorporated outside of Thailand can establish a branch office to carry out business activities subject to the Foreign Business Act. A branch office is considered the same legal entity as its head office in terms of status and liabilities. The branch can engage in any activity within the head office's scope of business objectives.

The approval of the Foreign Business Operation License requires minimum working capital of THB 3 million, which can be brought in by the head office in chunks following this schedule:

| Months since beginning of operations | Minimum working capital (THB) |
|--------------------------------------|-------------------------------|
| 3 | 750,000 |
| 12 | 1,500,000 |
| 24 | 2,250,000 |
| 36 | 3,000,000 |

The business license lasts indefinitely until the branch ceases operations.

Branch offices pay corporate income tax, VAT, withholding taxes, and any other taxes at the same rate as any company in Thailand. Only the net profits derived from business in Thailand can get taxed.

Representative offices

Representative offices can provide information and assistance to their foreign head offices. However, they cannot engage in profit-seeking or profit-making activities, or act on behalf of third persons.

Representative office is not subject to apply for the Foreign Business Operation License, effective on 26 May 2017 onwards.

Representative offices are exempt from Thai corporate income tax and have relatively cheap registration fees. However, representative offices still need to get a Corporate Tax Identification number. In addition, they must submit income tax returns and audited financial statements to the Revenue Department and the Department of Business Development under the Ministry of Commerce.

General characteristics of the representative office

- Not derive any revenue from its service and not subject to Corporate Income Tax (CIT), in accordance with revenue code.
- Must receive subsidies for office expenses from the head office only.
- Cannot accept purchase orders, make sales officers or engage in business negotiation with any person.
- Rendering service to affiliated or group companies is allowed.

In Thailand, representative offices are allowed to:

- procurement of supply sources for goods and services for the head office or affiliated / group companies.
- inspection and control the quality and quantity of goods purchased or outsourced by the head office or affiliated / group companies.
- give advice about goods sold by the head office to agents or consumers
- spread information about new products
- report business trends and movements.



Breach of these limitations will subject the parent company's income to taxation.

The head office must transfer working capital to the representative office following the same schedule as the branch office.

Joint ventures

A joint venture (JV) is when two or more parties enter into an agreement to carry out business or work together. It does not need to be registered with the government since it's a private contract. JV can be unincorporated, where parties maintain their own separate legal status, or incorporated, where parties create a new and distinct legal entity.

In an unincorporated JV, each party must obtain separate licenses and registration requirements to carry out their part of the business venture, e.g. factory licenses, commercial registration, and VAT registration.

Under the Revenue Code, both types of JV are viewed as a single entity and are subject to corporate income tax. If parties under an unincorporated JV wish to remain separate taxpaying entities, they must appropriately structure their contracts and business operations in advance.

Regional offices (RO)

Regional office is not subject to apply for the Foreign Business Operation License, effective on 26 May 2017 onwards.

General characteristics of regional office

- The office must be a juristic person established under the law of a foreign country.
- There must be at least a branch office or subsidiary company situated in the same region which can include Thailand.
- The office must not derive any revenue from its services.
- The office cannot accept purchase orders, make sales offers or engage in business negotiations with any person.
- The office must receive subsidies for office expenses from the head office only.
- The office is not liable for CIT under the tax code. For interest accrued from deposits of the remainder of sum received from the head office must be assessed for CIT liability.
- The office must prepare financial statement and statutory audit report.

Scope of business of a regional office

- Coordination and supervision of operations of branch offices or subsidiary companies situated in the same region on behalf of the head office.
- Consultation and management service in the following areas:
 - Personal training and development
 - Financial management
 - Control of marketing and sales promotion planning
 - Product development
 - Research and development service.

Note: The applicant can apply for all seven types of activities although only some of them will actually be operated.

Regional Operating Headquarters (ROH)

ROH means a locally incorporated company which carries on business in Thailand providing qualifying services to its associated enterprise or its domestic or foreign branches:

- General management, business planning and business coordination
- Procurement of raw materials and parts
- Research and development of products
- Supporting technical assistance
- Marketing and sales promotion
- Human resource management and training in the region
- Financial advisory services
- Economic and investment analysis and research
- Credit management and control
- Any other supporting services as stipulated by the Director-General of the Revenue Department.

An ROH can apply for tax incentives, which will be covered in the Investments sections later.

International Headquarters and International Trading Centers (IHQ and ITC)

IHQ is a company incorporated under Thai law provides any of the following activities to its branches or “associated enterprises” whether located in Thailand or overseas:

- Managerial services or technical services
- Supporting services engaged in:
 - general management, business planning, and business coordination.
 - procurement of raw materials and parts
 - research and development of products
 - technical support
 - marketing and sales promotion
 - human resource management and training
 - financial advisory services
 - economic and investment analysis and research
 - credit management and control
 - any other supporting services stipulated by the Director General of the Revenue Department.

- Financial management, including:
 - financial management by corporate treasury centers approved under the Exchange Control Law.
 - borrowing and lending in Thai Baht for the following cases:
 - borrowing in Thai Baht from financial institutions or associated enterprises in Thailand
 - managing Thai Baht obtained from 3.1 or 3.2.1 by lending in Thai Baht to associated enterprises in Thailand.

An IHQ can apply for tax incentives, which will be covered in the Investments sections.

International Trading Center (ITC) refers to a company incorporated under Thai laws that purchases and sells goods, raw materials and parts or that provides international trading-related services to juristic persons incorporated under foreign laws. International trading related services include:

- procurement of goods
- warehousing and inventory services prior to delivery
- packaging services
- transportation of goods
- insurance on goods
- advisory, technical and training services on goods
- any other services stipulated by the Director General of the Revenue Department.

An ITC can apply for tax incentives, which will be covered in the Investments sections

Accounting and auditing

All companies must use the Thai-GAAP (TFRS), which is very close to IFRS, as set by the Federation of Accounting Professions (FAP). Currently, TFRS is modeled after IFRS in 2012. FAP plans to integrate IFRS 2013 in 2015. Accounts have to be stated in Thai, although they can be accompanied by another language. Every year, juristic entities must lodge an independently audited financial statement to the Revenue Department and Commercial Registrar.

Finance and capital markets

Exchange controls

Exchange controls are administered by the Bank of Thailand (BOT), Thailand's central bank, on behalf of the Ministry of Finance. Although certain transactions still require direct BOT approval, the BOT has delegated its authority to approve many commercial transactions to agents. Most foreign exchange transactions can be processed through commercial banks. For all foreign currency matters, currency inflows, must be recorded, and contracts, and legal documents must be documented.

Both residents and non-residents can open foreign currency deposit accounts (FCDs) at commercial banks following certain conditions; if said conditions are not satisfied, BOT approval may be required. A non-resident can also open a non-resident baht account with commercial banks.

Personal fund transfers

Foreigners in transit can bring any amount of foreign currency into and out of Thailand. While the amount of THB brought into Thailand is unlimited, travelers must have BOT approval to take THB 50,000 out of Thailand per trip, or THB 500,000 per trip to neighboring countries such as Vietnam.

Residents can bring any amount of foreign currency into Thailand. Within seven days from arrival, the foreign currency must be converted into THB or deposited into a foreign currency deposit account in a commercial bank. Commercial banks can sell foreign currency with certain limits and must examine the reason for purchase.

Trading imports and exports

Importers can make payments by withdrawing from their own foreign currency deposit accounts or buying foreign currency not exceeding the value of imports. Both need to be done through commercial banks with their approval. As such, commercial banks will require appropriate documents including invoices, bills of collection, import permits, etc.

Exports are not subject to foreign exchange restrictions. However, export proceeds greater than a certain limit must be collected within 120 days and deposited in a foreign currency account or converted into THB at a commercial bank within 15 days from date of receipt.

Investment funds

Thailand allows remittance of funds into Thailand for investment and foreign loans. However, funds must be converted into THB or deposited in a foreign currency deposit account with a commercial bank within seven days from the date of remittance.

Repatriation of investment funds outside Thailand, including profits, dividends, and loan repayments, can be made freely through commercial banks with the relevant documents. For amounts above USD 20,000, a foreign exchange transaction form must be submitted to the commercial bank for approval, which in certain cases may require BOT approval. Securities, promissory notes, and bills of exchange can be issued outside Thailand without restrictions.

Promoted businesses

Under the Investment Promotion Act, foreign investments in promoted industries enjoy benefits including guarantees on repatriation of profits, dividends, interest, and imported capital. Also, they can remit foreign currency regarding return of capital and contract payment.

Banking system

The Financial Institution Act defines commercial banks and the allowable types of business. The law covers commercial banks for small businesses and subsidiaries or branches of foreign commercial banks.

The Ministry of Finance (MOF) and the Bank of Thailand regulate the financial sector. The MOF sets out fiscal, economic, and financial system policies. It also oversees public finances, taxation, treasury, government property, and operations of state enterprises and government monopolies.

The central bank (BOT) sets monetary policies, manages the foreign exchange rate, controls foreign exchange, supervises and examines financial institutions, provides banking facilities to the government and financial institutions, and issues banknotes and other securities.

Financial institutions

- **Domestic commercial banks** are licensed to undertake traditional commercial banking business by the MOF.
- **Foreign commercial banks** are similar to domestic commercial banks but have additional restrictions, such as in setting up branches.
- **Government banks** have special mandates by the government. Six such banks exist:
 - Bank of Agriculture and Agricultural Cooperatives
 - Government Housing Bank
 - Government Savings Bank
 - Export Import Bank of Thailand
 - Islamic Bank of Thailand
 - Small and Medium Enterprise Development Bank of Thailand
- **International banking facilities** engage in offshore and domestic lending, foreign exchange transactions, debt guarantees, letters of credit, loan syndications, investment feasibility studies, merger and acquisition advice, and underwriting activities.
- **Securities companies** undertake securities brokerage, dealing, underwriting, investment advisory, and fund management.

Financial markets

Thailand has four main financial markets:

- The Stock Exchange of Thailand (SET)
- The Market for Alternative Investment (MAI)
- The Bond Electronic Exchange (BEX)
- The Thai Futures Exchange (TFEX)

The Securities Exchange Commission (SEC), an independent state agency, directly regulates the primary markets, such as SET and MAI. Secondary markets are regulated by the exchanges themselves.

Post-trade services such as securities depository services, clearing and settlement, fund registration, and broker back-office operations services are provided by the Thailand Securities Depository Co. Ltd. (TSD), which is a subsidiary of SET.

Stock exchange of thailand

SET was established as a juridical entity under the Securities Exchange of Thailand Act, B.E. 2517 (1974) and began trading in 1975. The SEC supervises it under the Securities and Exchange Act, B.E. 2535 (1992). The SET offers equities, ETFs, depository receipts and bonds, and unit trusts.

SET's roles are:

- to be a market or center for the trading of listed securities, promoter of financial planning, and provider of services connected to such activities without distributing any profits to members
- to encourage the general public to become shareholders in a variety of local industries
- to list securities; supervise listed companies, information disclosure, trading, market surveillance, and members; and spread information to educate investors.

As of 2015, there are 517 listed companies with total market capitalization of THB 12.3 trillion.

Market for alternative investment

MAI was established in 1992 by the SET under the Securities and Exchange Act. MAI operates independently under the supervision of the SET's Board of Directors. Certain functions, such as the trading system, clearing and settlement procedures, trading surveillance and supervision, as well as disclosure requirements, are based entirely on existing SET operations. Small- and medium-size enterprises that are too small to enlist in the SET can enlist in the MAI instead. MAI only deals with equities, mainly on businesses with registered capital between THB 20-300 million.

As of 2015, the MAI has 122 listed companies with total market value of THB 323.5 billion.

Bond electronic exchange

BEX was launched by the Stock Exchange of Thailand in November 2003 to support the development of Thailand's secondary bond market and allow bond activities for smaller investors. Bonds traded include government, corporate, and Asian bonds.

Thai futures exchange

TFEX was established in May 2004 as a subsidiary of SET. It offers SET50 index futures, stock options, stock futures, and gold futures. TFEX is governed by the Derivatives Act B.E. 2546 (2003) and is supervised by the SEC.

The Thai derivatives market has a reliable trading infrastructure and TFEX ensures a fair, orderly and transparent market. TFEX offers a cost-efficient and comprehensive range of services including order entry facilities, a matching system, and market dissemination system through a reliable electronic trading platform.

Labor

Thai labor laws allow significant freedom regarding employment. Statutes have more weight than collective agreements regarding working conditions.

The Labor Protection Act specifies employment conditions, including maintenance of employment records, working hours and leave, termination of employment, severance, and the employee welfare fund. The Act applies to all businesses and employees, except household staff who are not under the Act's definition of employee. The minimum age for employment is 15 years old.

Other laws about labor and employment include:

Department of employment

- Alien Employment Act B.E.2521 (1978)
- Employment and Job Seeker Protection Act B.E.2528 (1985)

Department of skill development

- Skill Development Promotion Act B.E.2545 (2002)

Department of labor protection and welfare

- Labor Relations Act B.E. 2518 (1975)
- Labor Protection Act B.E.2541 (1998)
- State Enterprise Labor Relations Act B.E.2543 (2000)

Social security office

- Social Security Act B.E.2533 (1980)
- Workmen's Compensation Act B.E. 2537 (1994)

Employment records

An employer with ten or more regular employees must provide written work rules and regulations including working days, wages and remuneration, termination, and severance. A copy must be submitted to the Labor Department.

In addition, the employer must keep an employee register with records of employees and documents regarding payment of wages, overtime pay, holiday pay, and holiday overtime pay for at least two years after termination of employment or the last payment to each worker.

Minimum wage

Thailand's nationally set daily minimum wage, currently set at 300 Baht (approximately US \$9) in 2013.

Employee welfare fund

Companies with at least ten employees with no provident fund must establish an employee welfare fund to compensate employees who resign, are laid off, or die in service. Both employers and employees must contribute to this fund.

Working hours

The Labor Protection Act B.E. 2541 (1998) limits work hours to eight hours a day or as agreed between employer and employee, but not exceeding 48 hours a week for non-hazardous work; or seven hours a day and 42 hours a week for hazardous work. Employees are entitled to a one-hour rest period after five consecutive hours of work.

Employers must pay overtime for work in excess of the above limit, with rates ranging between 1-3 times actual wages. Maximum overtime is 36 hours per week.

Holidays and leaves

- Minimum one day weekly holiday, with a maximum of 6 days between weekly holidays.
- Minimum of 13 traditional holidays per year.
- Minimum of six days of annual leave after working for one year.
- Employees have a choice in working overtime or on holidays. Total must not exceed 36 hours per week.
- Sick leave: An employee is entitled to a sick leave as long as he/she is actually sick. For sick leave of three days or more, an employer may ask an employee to present a certificate from a first class physician or an official medical establishment. A day which an employee cannot work because of injury or illness arising out of working or maternity leave must not be regarded as sick leave. Wages must be paid for sick leave that not exceeding 30 working days per year.
- Leave for necessary business: An employee is entitled to a leave for necessary business in accordance with the work rules of his/her workplace.
- Maternity leave of 90 days including holidays, of which 45 days shall be paid leave.
- Leave for military service; Wages must be paid for military service leave that not exceeding 60 days per year.
- Wages must be paid for sterilization.

Temporary workers are entitled to the same holidays and leave.

Workers compensation

The Compensation Act states that the employer must provide compensation for employees who are injured, ill, or die during or as a result from work:

- Compensation amount
- Medical expenses
- Work rehabilitation expenses
- Funeral expenses.

Termination of employment

If an employment contract does not specify the duration of employment, either the employer or employee can give notice of termination which will take effect in the next payment period.

If the employment contract specifies the duration of employment, then employment shall be terminated upon contract expiry without notice.

While employees who are terminated without valid cause as stipulated by law is entitled to receive severance pay, an employee can be dismissed without notice and severance pay if the employee:

- intentionally commits a crime or act of dishonesty against the employer;
- intentionally or negligently causes the employer to suffer damage

- violates the employer’s work rules, regulations or lawful orders and a written warning has been given (note such warning is not required for serious offences)
- has been absent for three consecutive working days without a reasonable excuse
- is judged to serve a prison sentence (except due to negligence or petty offense).

Employees are entitled to severance pay equal to the wage of x number of days, depending on the duration of employment.

| Employment duration | Severance (days) |
|-----------------------|------------------|
| 120 days but > 1 year | 30 |
| 1 year<3 years | 90 |
| 3 years<6 years | 180 |
| 6 years<10 years | 240 |
| 10 years or more | 300 |

Temporary workers are entitled to the same severance pay.

Social security

The Social Security Act requires employers to register each employee for social security insurance at the Zone Office of Social Security, under the Social Security Office.

The Social Security Act also requires employers to withhold social security contributions from each employee’s at the rate of 5% of monthly salary but not exceeding 750 Baht. The employer must match the employee contribution at the same amount, and remit both contributions to the Social Security Office within the 15th day of the following month.

This insurance fund provides compensation to employees in case of injury, illness, disability or death that is unrelated to work. Compensation is also provided for child delivery, child welfare, old age pensions, and unemployment.

Employment of foreign workers

Working Aliens Act

The Working Aliens Act (also referred to as The Aliens Employment Act) is administered by the Thai Labor and Social Welfare Department under the Labor Department. The Act controls the employment of foreign workers, the issuance of work permits to foreigners, and occupation restrictions.

To work in Thailand, virtually all non-Thai nationals must obtain a work permit issued by the Ministry of Labor, including foreign volunteers who may not receive remuneration for services. Foreigners working under special international conventions, such as diplomatic corps, consular missions, and work for international organizations such as the World Bank, do not have to obtain a work permit.

Work permits issued to foreigners are restricted to certain occupations, employers, and locality for which the work permit was applied; any changes in these details will require a new work permit. Employers must notify the government entity that issued the original work permit within 15 days after the date of employment, transfer to a new locality, or separation of a foreign employee.

Foreigners working in companies promoted by the Board of Investment or who are in Thailand under special laws can be issued work permits for the duration of their work as prescribed by said laws. Likewise, foreigners assigned to work in representative or regional offices can obtain work permits from the Commercial Registrar. Foreigners who enter Thailand to work with said promoted firms or under special laws can start work immediately, but should apply for a work permit within 30 days from date of entry.

Three categories of foreigners may apply for a work permit:

- Foreigners who reside in Thailand or are allowed temporary stay in Thailand, but not as a tourists or transit travelers.
- Foreigners permitted to work in Thailand under investment promotion laws or other laws.
- Foreigners who have been deported but are permitted to work in certain locations; foreigners who illegally entered Thailand; foreigners born in Thailand but who were not granted Thai nationality or have been denaturalized; or foreigners awaiting deportation can work in 27 occupations as stipulated in the Ministerial Announcement.

Immigration, visas, and work permits

While the majority of foreigners are granted visa exemptions for short visits of up to one month, foreigners who wish to work must apply for a non-immigrant visa so they can apply for a work permit.

In Thailand, a visa is a permit to enter the country and the validity period only indicates the period of entering the country, not the length of stay. Foreigners from most countries do not need visas for short visits. Foreigners who want to stay longer or work in Thailand should obtain a non-immigrant visa, which can be used to apply for a work permit. The foreigner's accompanying spouse and dependents must also obtain non-immigrant visas.

Upon arrival, a Permit-to-Stay is granted, which sets out the length of time a foreigner may stay in Thailand, depending on the type of visa. It can be extended based on the reasons and type of visa. For example, a Permit-to-Stay can be extended up to three months with a tourist visa or up to one year with a non-immigrant visa.

Work permits are granted by the Department of Employment, Ministry of Labor and Social Welfare following the restrictions set out by the Working Alien Act. However, for government contracts, BOI-promoted companies and other investment promotion, there is usually no difficulty.

A Permit-to-Stay is automatically cancelled upon departure unless the foreigner has obtained a Re-entry Permit beforehand. Both single-entry and multiple-entry permits can be obtained from the Immigration Bureau in Bangkok. Re-entry Permits allow foreigners to re-enter Thailand within a specific time period. If the Re-entry Permit has expired, the foreigner must obtain a new visa from a Thai embassy or consulate before re-entry.

Taxation

In Thailand, taxes are collected by three main government agencies under the Ministry of Finance:

- The Revenue Department
- The Excise Department
- The Customs Department.

Principal taxes can be classified into direct taxes, directly collected by the government from taxpayers such as the income taxes, and indirect taxes, collected by intermediaries such as value added tax, specific business tax, excise tax, customs duties, and stamp duties

Generally, income tax in Thailand is based on self-assessment rule where tax declarations and payments are assumed to be appropriate. The Revenue Department can examine taxes and taxpayers' tax records.

The Revenue Code is the principal tax law which imposes corporate and personal income taxes, VAT, specific business tax, and stamp duty. Specific revenue-collecting statutes impose taxes such as excise tax, customs duties, petroleum income tax, and property and land taxes.

Corporate income tax

Corporate income tax is a direct tax levied on the following Thai and foreign business entities (hereby referred to as “companies”) deemed to be conducting business in Thailand, or deriving certain types of income in or from Thailand:

- Private and public limited companies
- Registered ordinary and limited partnerships
- Joint ventures
- Foundations and associations.

For foreign companies, the Revenue Code defines the term “conducting business in Thailand” as:

“If a juristic company or partnership incorporated under a foreign law has an employee, a representative, or a go-between in Thailand, for carrying on its business, and thereby derives income or gains in Thailand, such a juristic company or partnership shall be deemed to be carrying on business in Thailand.”

A foreign company that employs an independent sales agent is not “conducting business in Thailand”. The agent is not considered an “employee, representative, or a go-between” if they are truly independent from the principal.

In Thailand, income payers are required to withhold portions of income for tax payments (withholding tax), which must be filed and paid to relevant government agencies within prescribed timeframes. Withheld taxes are credited to taxpayers (i.e. receivers of income) for use in tax filings.

Taxable entities

Domestic companies are taxed on worldwide profits and are required to withhold taxes at source for certain transactions. Foreign companies are subject to Thai taxation if they are deemed to be conducting business in Thailand or derive certain types of income in or from Thailand.

Foreign companies are taxed on profits from conducting business in Thailand, where some taxes are withheld at source for certain transactions. However, foreign companies in international transport are taxed on gross receipts.

Foreign companies that do not conduct business in Thailand but receive certain forms of income must pay taxes on gross income, where usually 10-15% is withheld at source. These types of income include service fees, interests, dividends, rents, and professional fees.

Taxable income

Net profits are assessed on an accrual basis within a 12-month accounting period of the company’s choosing. Net profits equal to total revenues minus total expenses according to the Revenue Code.

For domestic companies, portions of dividend income received from other Thai companies may be excluded from taxable income. Capital gains are treated as ordinary taxable income.

Deductible expenses

Deductible expenses include ordinary and necessary expenses, net losses carried forward from the previous five accounting periods, tax and interest, bad debts, and depreciation.

- Bad debts may be deductible after complying with certain tax rules.
- Expenses determined based on net profit are not deductible (e.g. bonus based on net profit).
- Provisions or reserves are non-deductible.
- Donations and contributions to public charities are subject to percentage limitation.

- Entertainment expenses are subject to maximum limits.
- Tax costs such as corporate income tax, VAT penalties, and surcharges may not be deductible.
- Depreciation of assets is limited to maximum rates based on acquisition cost and the life of the asset, if applicable.

| Asset | Rate |
|---|--|
| Building | 5% |
| Temporary building | 100% |
| Natural resources | 5% |
| Cost of acquisition of lease rights <ul style="list-style-type: none"> • No written lease agreement • Written lease agreement; containing non renewable clause or containing renewal clause but with a definite duration of renewal periods | 100% divided by the original and renewable lease period |
| Unlimited-period of use rights | 10% |
| Limited-period of use rights | 100% divided by number of years used |
| Other depreciation except land and goods <ul style="list-style-type: none"> • Machinery used in R&D • Cash registering machine • Passenger car or bus with no more than 10 passengers capacity | Initial allowance of 40% on the date of acquisition and the residual can be depreciated at the rate in five Initial allowance of 40% on the date of acquisition and the residual can be depreciated at the rate in five Depreciated at the rate in five but the depreciable value is limited to 1 million baht |
| Computer and accessories <ul style="list-style-type: none"> • SME* • Other business | Initial allowance of 40% on the date of acquisition and the residual can be depreciated at the rate over three years. Depreciation over three years. |
| Computer programs <ul style="list-style-type: none"> • SME* • Other business | Initial allowance of 40% on the date of acquisition and the residual can be depreciated at the rate over three years. Depreciation over three years. |

Tax rates

The usual tax rate is 20%, but other rates may apply:

| Taxpayer | Tax base | Rate |
|---|--|-----------------|
| SME with paid-up capital < THB 5 million and income < THB 30 million per year | <ul style="list-style-type: none"> • Net profit < THB 300,000 • Net profit 300,00-3,000,000 baht. • Net profit over 3 million baht | - 15% 20% |
| Non-SME | Net profit | 20% |
| Company listed in Stock Exchange of Thailand (SET) | Net profit | 20% |
| Company newly listed in MAI | Net profit | 20% |
| Bank profiting from international banking facilities (IBF) | Net profit | 10% |

| Taxpayer | Tax base | Rate |
|---|----------------|-----------|
| Foreign company engaging in international transportation | Gross receipt | 3% |
| Foreign company not doing business in Thailand, on dividends | Gross receipt | 10% |
| Foreign company not carrying on business in Thailand receiving other types of income apart from dividend from Thailand. | Gross receipt | 15% |
| Foreign company disposing profits out of Thailand | Gross receipts | 10% |
| Profitable association or foundation | Gross receipt | 2% or 10% |

Dividends

Dividends received by domestic companies listed in the SET are tax-exempt.

Dividends received by domestic companies from another domestic company are tax-exempt if the recipient holds at least 25% of voting shares for the three months before and after the dividend distribution, without cross-holding. Otherwise, 50% of the dividend income will be taxed as ordinary corporate income.

Dividends received by a domestic company from a foreign company are tax-exempt if:

- the foreign company has a minimum tax rate of 15%
- the Thai company has a 25% or more equity interest in the foreign company and
- the Thai company maintains its shareholding in the foreign company for six months.

Withholding taxes

| Income source | Company | | Individual | |
|-------------------------------|-----------|---------|------------|--------------|
| | Domestic | Foreign | Resident | Non-resident |
| Interest | 1%* | 15% | 15% | 15% |
| Dividends | 10% or 0% | 10% | 10% | 10% |
| Rent | 5% | 5% | | |
| Royalties | 3% | 15% | | 15% |
| Technical fees | 3% | 15% | | 15% |
| Advertising fees | 2% | | 2% | |
| Prizes | 5% | | 5% | |
| Service and professional fees | 3% | 5%** | 3% | |

**Only for non-financial institutions.

**3% for those with a permanent branch in Thailand.

Interest and royalties paid to associations or foundations are subject to 10% withholding rate instead.

The taxes in the table above must be deducted at source by the income payer, who is required to file tax returns and pay the tax withheld to the district revenue offices within seven days of the month after income payment. Withholding taxes will be credited to the taxpayer's tax liability. Non-residents may get a lower rate with applicable tax treaties.

For foreign companies not conducting business in Thailand, applicable income taxes shall be withheld at source by the income payer residing in Thailand.

Government agencies must withhold tax at the rate of 1% on all types of income paid to a domestic company.

Individual tax

Personal Income Tax is a direct tax levied on income from employment or conducting business in Thailand received by:

- an individual
- an ordinary partnership
- a non-juristic body of a person
- an undivided estate

A **resident taxpayer** is any person residing in Thailand for 180 days or more in any calendar year. Income from employment or business carried in Thailand and income from foreign sources brought into Thailand are taxed.

A **non-resident taxpayer** is any person other than a resident taxpayer. Only income from sources in Thailand gets taxed.

Personal income tax exemptions are granted to persons following the terms of international and bilateral agreements such as UN officers, diplomats, and certain visiting experts.

The tax year is the calendar year ending in 31 December. Tax returns, whether paper or electronic, and payments must be filed by 31 March of the following year.

Minimum tax payment for taxable income other than from employment (Section 48(2))

The minimum tax payment at the rate of 0.5% of the assessable income is still applicable for those who earn taxable income other than income from employment. However, the income threshold is increased from Baht 60,000 to Baht 120,000.

Tax rates

Taxpayers pay the greater of 0.5% of assessable income (if greater than THB 60,000) or the following tax calculation, using marginal tax rates:

| Taxable income (THB) | Marginal rate |
|---------------------------------|---------------|
| 0-150,000 | - |
| More than 150,000 – 300,000 | 5% |
| More than 300,000 – 500,000 | 10% |
| More than 500,000 – 750,000 | 15% |
| More than 750,000 – 1,000,000 | 20% |
| More than 1,000,000 – 2,000,000 | 25% |
| More than 2,000,000 – 5,000,000 | 30% |
| Over 5,000,000 | 35% |

This PIT rate is effective from 1 January 2017 hence forth.

Taxable income

Taxable income equals the assessable income less deductible expenses less allowances. Assessable income refers to income that is subject to personal income tax. Assessable income includes:

- income derived from employment or services
- income from professional fees
- interest income
- dividends
- capital gains on securities
- royalties
- income from copyrights
- rental income
- income derived by contractors
- other income.

For employees, assessable income includes:

- personal income tax paid and absorbed by the employer
- living allowances
- monetary value of rent-free accommodation
- school fees paid by employer
- monetary value of other benefits provided by the employer.

Not included in assessable income are business travel expenses, work-related moving expenses, insurance benefits, inheritances, and scholarships.

Deductible expenses and allowances

Standard expense deductions include:

- 50% of employment income, but not exceeding THB 100,000
- 50% of copyright, good will or other rights income, but not exceeding THB 100,000
- 10-30% of rental income
- 30% of income from “liberal” professions
- 60% of income from medical professions
- actual expense or 70% for certain contract work
- actual expense or 65-85% for other business.

Personal tax allowances include:

- THB 60,000 per taxpayer
- THB 60,000 for spouse with no income
- total THB 120,000 Taxpayer and spouse earn income
- **child:**
 - THB 30,000 for each taxpayer’s legitimate child or spouse’s legitimate child without limit
 - THB 30,000 for each taxpayer’s adopted child up to maximum three children
 - If there are legitimate and adopted children together, a maximum of only three children allowed
- **educational allowance:** Revoked
- **estate:** BHT 60,000



- **non-juristic partnership/non-juristic body of persons:** BHT 60,000 per member, but total not exceeding BHT 120,000
- **THB 30,000 per parent** of taxpayer and taxpayer's spouse, if the parent is over 60 years old and earned less than THB 30,000 during the tax year.

And limited allowances for:

- life insurance premiums paid by taxpayer and spouse, up to THB 100,000 each
- qualified provident fund payments, capped at 15% wage or THB 500,000, whichever is smaller
- interest payments on home mortgages, actual basis, up to THB 100,000
- long-term equity fund and retirement mutual fund purchases, actual basis, capped at 5% wage or THB 500,000, whichever is smaller
- social insurance contributions, actual basis
- charitable contributions, actual basis, capped at 10% of income after all the other deductions and allowances.

For non-residents, personal tax allowances regarding family members are applicable only if family members reside in Thailand.

Dividend income is subject to personal income tax. For Thai tax residents, taxpayers may choose between paying a fixed 10% tax and not include dividend income in personal income tax calculations, or incorporate dividends into their assessable income and claim dividend tax credits equal to $\frac{3}{7}$ of dividends received.

Double tax treaties

Thailand has double tax treaties with 60 countries to eliminate double taxation:

| | | | | |
|------------|------------------------------------|-------------|--------------|----------------|
| Armenia | Czech Republic | Israel | New Zealand | Spain |
| Australia | Denmark | Italy | Norway | Sri Lanka |
| Austria | Estonia | Japan | Oman | Sweden |
| Bahrain | Finland | South Korea | Pakistan | Switzerland |
| Bangladesh | France | Kuwait | Philippines | Chinese Taipei |
| Belarus | Germany | Laos | Poland | Turkey |
| Belgium | Great Britain and Northern Ireland | Luxembourg | Romania | Ukraine |
| Bulgaria | Hong Kong | Malaysia | Russia | UAE |
| Canada | Hungary | Mauritius | Seychelles | USA |
| Chile | India | Myanmar | Singapore | Uzbekistan |
| China P.R. | Indonesia | Nepal | Slovenia | Vietnam |
| Cyprus | Ireland | Netherlands | South Africa | |

Value added tax

Valued added tax is an indirect tax imposed by the Revenue Code on the value added to goods and services at each stage of production and distribution.

A company must register for VAT in three cases:

- Activities of the company are subject to VAT (e.g. export of goods).
- Turnover of the company is more than THB 1.8 million per year. A company needs to apply for a VAT number within 30 days after the company reaches this amount of sales.
- The company will employ a foreigner and must apply for a work permit.

The standard VAT rate is 7%. Some businesses can enjoy 0% VAT rate:

- Export of goods
- Services rendered in Thailand and utilized outside Thailand in accordance with rule, procedure, and condition prescribed by the Director-General
- Aircraft or marine vessels in international transportation
- Supply of goods and services to government agencies or state-owned enterprises under a foreign-aid program
- Supply of goods and services to the United Nations and its agencies as well as embassies, consulate-generals, and consulates
- Supply of goods and services between bonded

| Business | Tax rate |
|---|----------|
| Banking , finance, and similar business | 3.0% |
| Life insurance | 2.5% |
| Pawn brokerage | 2.5% |
| Real estate | 3.0% |
| Factoring | 3.0% |

- warehouses or between enterprises located in Export Processing Zones.

Many are fully exempt from VAT:

- Small entrepreneurs whose annual turnover is less than THB 1.8 million
- Sales and import of unprocessed agricultural products and related goods such as fertilizers, animal feeds, pesticides, etc.
- Sales and import of newspapers, magazines, and textbooks
- Certain basic services related to:
 - transportation by land
 - healthcare provided by government and private hospitals as well as clinics
 - education provided by recognized educational institutions
 - medicine, audit, law, and similar regulated professions
 - culture such as amateur sports, libraries, museums, and zoos
 - research and technical services
 - public entertainment
 - religion and charity
 - government agencies and local authorities.
- Rent of immovable properties
- Goods exempted from import duties under the Industrial Estate law imported into an Export Processing Zones (EPZs) and under Chapter 4 of the Customs Tariff Act
- Imported goods that are kept under the supervision of the Customs Department which will be re-exported and be entitled to a refund for import duties.

Other taxes

Specific business tax

Certain businesses are not subject to VAT, but are subject to Specific Business Tax (SBT), which is an indirect tax imposed by sellers on buyers. The tax is imposed on the gross revenue and the tax rate depends on the nature of business.

Businesses subject to SBT must also pay Municipal.

Tax of 10% on the SBT. For example, if the SBT is 3%, then SBT + Municipal Tax = 3.3%.

Activities of certain entities are exempt from SBT, most notably, the sale of securities listed on the Stock Exchange of Thailand (SET). Several banks and financial corporations that are governmental institutions or state enterprises are also exempted.

SBT is applied on the monthly gross receipts. The tax return must be filed monthly within 15 days of the subsequent month.

Stamp duty

Stamp duty is an indirect tax on certain documents, not on transactions or persons. Examples include lease land or buildings, loan documents, and Memorandum of Association of limited companies. The holders, executors, or beneficiaries of these documents pay the tax. Rates depend on the type of document.

Petroleum income tax

The Petroleum Income Tax Act imposes a direct tax on income derived by any company that owns an interest in a petroleum concession granted by the government or a company that buys oil for export from a concession holder.

A petroleum concession, which is obtained from the Department of Mineral Resources, is required only for exploration and production of petroleum products. Downstream industries such as oil refining are not covered under this Act.

Petroleum Income Tax is 35% or 50% depending on the status of the petroleum concession holder, and 23.08% on disposal of profits such as through dividend payments.

Customs duty

According to the Customs Tariff Decree B.E. 2530 (1988), customs duties are levied on goods on an ad valorem or specific-rate basis in addition to VAT. The majority of imported goods are taxed between 5% and 60% based on the CIF value. Goods imported for re-export are exempt.

Excise tax

Excise tax is an indirect tax imposed by the Excise Tax Act on certain commodities regardless of where they are produced, such as:

- petroleum and petroleum products
- non-alcoholic beverages
- electrical appliances
- lead crystal products
- motor vehicles, motorcycles, yachts
- perfume
- certain services.

Excise tax is imposed on the manufacturer or importer; tax liability is incurred when the goods are imported or leave the factory or bonded warehouse.

Rates range from less than 1% to 50%.

Property and land taxes

The House and Land Tax Act taxes all properties, except owner-occupied residences, at a flat 12.5% of annual rental value (both land and building).

The Local Development Tax Act imposes a typically low tax rate on land based on the appraised land value (excluding the building structure) as determined by local authorities. Land used by government and public organizations, and land subject to the House and Land Tax Act are exempted from this tax.

Investment

Land and real estate ownership

The Land Code prohibits foreigners (and, by extension, foreign companies) from outright land ownership unless the company is majorly owned by Thai nationals or is granted business promotion privileges (e.g. BOI incentives). Foreigners can instead rent the required land, which can have a term of up to 50 years if used for industrial or commercial purposes.

However, the Condominium Act allows foreigners to own up to 40% of the total area of the condominium units in a condominium project.

Foreign Business Act of 1999

List 1 – businesses not permitted for foreigners

- Newspaper, radio, television, and radio-broadcasting station.
- Farming, cultivation, or horticulture.
- Animal husbandry.
- Forestry and timber conversion from natural forests.
- Fisheries, especially fishing in Thai territorial waters and in specific economic areas.
- Extracting Thai herbs.
- Trade and auction of Thai antiques or objects of historical value.
- Making or casting Buddha images and alms bowls.
- Trading in land.

List 2 – businesses allowed for foreigners only with prior Cabinet approval

Businesses concerning national security or safety in the form of manufacturing, distributing, repairing or maintaining:

- firearms, ammunition, gunpowder, and explosive materials
- components of firearms, ammunition, and explosive materials
- armaments, ships, aircraft, or military vehicles
- war equipment and any of its parts
- domestic land, water, or air transportation.

Businesses that could have an adverse effect on arts and culture, customs, and native handicrafts:

- Trading of antiques or artifacts that are Thai works of art or Thai handicrafts
- Wood carving
- Silkworm rearing, manufacture of Thai silk, Thai silk weaving, or Thai silk printing

- Manufacturing of Thai musical instruments
- Manufacturing of gold-, silver-, niello-, bronze-, or lacquer-ware
- Making bowls or earthenware that are of Thai art and culture.

Businesses that could have an adverse effect on natural resources or the environment:

- Manufacturing of sugar from cane
- Salt farming, including rock salt farming
- Mining of rock salt
- Mining, including stone quarrying or crushing
- Timber processing for making furniture and utilities.

List 3 – businesses allowed for foreigners with a Foreign Business License

- Rice milling and flour production
- Fishery and aquaculture
- Forestry from re-planting
- Production of plywood, veneer, chipboard, or hardboard
- Production of lime
- Accountancy
- Legal services
- Architecture
- Engineering
- Construction, with some exceptions
- Agency or brokerage, with some exceptions
- Auctioneering, with some exceptions
- Domestic trade in local agricultural products
- Retail, with capital of less than THB 100 million in total or less than THB 20 million per store
- Wholesale, with capital of less than THB 100 million per store
- Advertising
- Hotel operation, excluding hotel management
- Tourism
- Sale of food and beverages
- Planting and agriculture
- Other services, except those prescribed in the ministerial regulations.

In addition, there is a catch-all promotional category named “Trade and Investment Support Office” (TISO) which permits a variety of services, including monitoring/servicing affiliates, consultancy services, engineering and technical services, and activities related to machinery, engines, tools and equipment such as training installation, maintenance and repairs, calibration, and software design and development. Sales and administration expenses must amount at least 10 million baht per year. TISO does not qualify for tax benefits.

Amendment of Foreign Business Operation Act

Business not subject to apply for Foreign Business Permission (No. 3), B.E. 2560 (2017)

Under section 46 paragraph 1 of the Foreign Business Operation Act 1999 (2B.E. 2542) and “(21) of List 3” of such Act, the Ministry of Commerce has announced the Ministerial regulation no. 3, B.E. 2560 to amend the types of Business not subject to apply for Foreign Business Operation License (FBL). The amended laws are as follows:

- Financial institutions (14 categories):
 - Private Banking
 - Bank representative office
 - Islamic finance according to Shariah principle
 - Banking agent
 - Deposit with withdrawal terms on customer orders and Escrow agent
 - Private repo / repurchase agreement
 - Agent for collecting insurance premium or export credit insurance and credit guarantee service to customers
 - Business finance service to financial institutions, group of financial institutions, Bank of Thailand, and Public sectors;
 - Rental service of immovable assets
 - Factoring
 - Cash management service
 - Service for preparing business documentation to client
 - Debt collection agency
 - Buy purchase and leasing agent.
- Asset management business
- Representative office
- Regional Office
- Service providing to Government sector according to Budget Procedure Act
- Service providing to State Enterprise according to Budget Procedure Act.

The effective date will be on 26 May 2017 onwards.

Investment Promotion Act

The Office of the Board of Investment (BOI) is a government agency under the Ministry of Industry tasked with promoting investment in Thailand under the Investment Promotion Act B.E 2520 and Amendment Acts No.2 B.E 2534 and No.3 B.E 2544.

Through BOI, the government of Thailand offers a variety of tax and non-tax incentives, support services, and import duty exemptions granted to priority or promoted activities and entities.

Tax incentives

- Exemption/reduction of import duties on machinery
- Reduction of import duties for raw or essential materials
- Exemption of dividend and income tax
- A 50 percent income tax reduction
- Double deductions from the costs of transportation, electricity, and water supply
- Additional 25 percent deduction of installation or construction costs of facilities
- Exemption of import duty on raw or essential materials for use in production of exports.

Non-tax incentives

- Permit for foreigners to enter Thailand to study investment opportunities
- Permit to bring skilled workers and experts into Thailand
- Permit to own land
- Permit to take out or remit money abroad in foreign currency.

Guarantees

The Thai government will not:

- nationalize the activity
- compete in the activity
- monopolize similar products
- impose price controls
- prevent export activities
- import similar products with duty exemption.

Protection

The Thai government will:

- charge extra import fees for similar products up to 50 percent of CIF for at most one year
- ban the import of similar products if the above is deemed insufficient
- render any appropriate assistance if significant obstacles prevent the activity.

Industrial Estate Authority of Thailand Act

The Industrial Estate Authority of Thailand (IEAT), under the Ministry of Industry, was established as a state enterprise under the Industrial Estate Authority of Thailand Act. The IEAT organizes and creates industrial estates, grouping together industrial facilities in a synergistic manner. It also works to decentralize industrial activity away from the capital to the outlying provinces.

The IEAT currently operates 12 industrial estates and co-manages 26 of Thailand's 38 industrial estates. Industrial estates are divided into two zones without export conditions, in line with WTO obligations.

General industrial estates

The BOI encourages businesses to locate in industrial estates so they can qualify for special privileges. Businesses can also benefit from the estate's industrial infrastructure and proximity to relevant industries.

IEAT provides industrial services such as transport, warehouses, training centers, and clinics. They also grant permission to own land required for operations.

Industrial businesses in government-sponsored estates are also granted incentives regardless of eligibility for BOI promotions.

Export processing zones

The IEAT can grant tax privileges to businesses in an approved export processing zone, such as exporting products without any restrictions and bringing merchandise or raw materials into an IEAT Free Zone.

Tax privileges are similar to those granted by the BOI, including exemptions from customs duty and VAT on required production supplies such as machinery, equipment, and raw materials.

Non-tax incentives

The IEAT grants investors permission:

- to own land for carrying out industrial activities
- for foreign technicians, experts, and their spouse or dependents to stay in Thailand
- to bring foreign technicians and experts to work in industrial activities
- to take or remit foreign currency abroad.

Tax incentives

Tax incentives from the IEAT include:

- tax exemption on the import of machinery and raw materials
- tax exemption or refund on imports for the production of exports
- tax exemption on exported goods.

Petroleum Act

According to the Petroleum Act, petroleum belongs to the state and nobody can explore or produce petroleum except through concession. The company must have adequate assets, machinery, and specialists to explore, produce, sell, and dispose of petroleum. In return, the concessionaire pays the government:

- Royalties amounting 5-15% of production
- Petroleum income tax of 50%
- Special remunerations.

The Petroleum Act gives concessionaires similar privileges as those granted by the BOI:

- Assurances against nationalization
- Permission to own land
- Bringing in foreign skilled workers and experts
- Remittance of foreign currency abroad
- Tax exemptions.

Regional Office Headquarters (ROH)

Details about establishment and activity restrictions can be found under the Business Entities section. Regional offices get special tax incentives:

- Corporate income tax (CIT) at the rate of 10 % of net profits for income derived from services provided to ROH's foreign branches or associated enterprises
- CIT at the rate of 10 % of net profits for royalties derived from ROH's foreign branches or associated enterprises for the use of Research and Development (R&D) done in Thailand by ROH. This benefit is also extended to royalties received from a third party providing services to ROH's branches or associated enterprises using ROH's R&D
- CIT at the rate of 10 % of net profits on interest received from ROH's foreign branches or associated enterprises for loans granted, provided that such loans are made from other sources and extended to ROH's branches or associated enterprises
- Tax exemption on provision of qualifying services to associated companies or branches
- Tax exemption on dividend received from associated companies
- Tax exemption for dividends paid to companies not carrying on business in Thailand
- For buildings to carry out operations, accelerated depreciation rate of 25% as initial allowance. The remaining balance can be depreciated over 20 years.

Expatriate

- Exempt from Personal Income Tax (PIT) in Thailand provided that he/she works outside Thailand. However, the said income must not be borne by the ROH or its associated company in Thailand.
- Expatriate may choose to be subject to withhold tax at the rate of 15% throughout the year. By doing so, the income received must not be calculated together with other income and claimed for refunds. This privilege is available only to the expatriate employed by ROH and is limited to their first four years since ROH is granted with ROH privileges.

To be entitled to the benefits once again, expatriates have to discontinue employment with any ROH in Thailand for more than 356 days.

The criteria required for ROH for tax benefits

To qualify for the tax benefits, the ROH must fulfill the following conditions:

- An ROH must be a juristic company or partnership incorporated under Thai law
- Paid-up capital of at least THB 10 million at the end of each accounting period
- The company should serve associated company or branches situated in at least three other countries excluding Thailand
- Income received from rendering services to its associated companies or branches outside Thailand must not be less than 50% of total income (except during the first three years, $\frac{1}{3}$ of total income is allowed as the minimum income received from its associated companies or branches outside Thailand)
- To notify the Revenue Department about the incorporation of ROH. The benefits given starts from the notified accounting period onwards.

International Headquarters (IHQ) receives the following incentives:

Incentives offered by the Board of Investment (BOI)

- Permission to bring in skilled personnel and experts into the Kingdom to work in investment promoted activities.
- Permission to own land.
- Exemption of import duty on machinery (only machinery for R&D and training activities).
- Exemption of import duty on raw materials and parts used in the production for export.

Conditions to apply for privileges offered by the BOI

- Must supervise at least one branch or associated enterprise outside Thailand.
- Paid-up capital must be at least THB10 million.

Incentives offered by the Revenue Department (RD)

- Corporate income tax (CIT) for 15 accounting periods from the date of approval by the Director General of the Revenue Department.
 - Revenue entitled to corporate income tax exemption:
 - Income derived from managerial services or technical services, supporting services, or financial management services to associated enterprises incorporated under foreign laws.
 - Royalties received from associated enterprises incorporated under foreign laws.
 - Dividends received from associated enterprises incorporated under foreign laws.
 - Capital gains received from the sales of shares in associated enterprises incorporated under foreign laws.
 - Income derived from the purchase and sales of goods overseas on the condition that such goods must not be imported into Thailand, except for the purpose of transit or transshipment under Thai customs law, and income derived from providing international trading related services to juristic persons incorporated under foreign laws on the condition that such income must be received from or in foreign country.
 - Revenue entitled to 10% of corporate income tax rate*
 - Income derived from managerial services or technical services, supporting services or financial management services to associated enterprises established under Thai laws.
 - Royalties received from associated enterprises established under Thai laws.
 - Note: *The amount of revenue entitled to corporate income tax reduction must not be greater than revenue entitled to corporate income tax exemption according to item 1.1 and 1.2
- Personal income tax (PIT)
 - PIT rate for expatriates working in an IHQ is reduced to 15% on gross income and benefits derived from employment.
- Specific business tax
 - Exemption for the gross receipts from lending to associated enterprises.

- Final Tax Exemption for the following revenue:
 - Dividends paid by the IHQ (dividends paid from revenue entitled to corporate income tax exemption) to a company or juristic partnership incorporated under foreign laws and has no operation in Thailand.
 - Interest paid by the IHQ (interest from loans taken out by an IHQ to relend to associated enterprises under financial management) to a company or juristic partnership incorporated under foreign laws and has no operation in Thailand.

Conditions to apply for privileges offered by the Revenue Department:

- Must provide managerial services or technical services or supporting services or financial management to its associated enterprises incorporated under foreign laws.
- Paid-up capital must be at least THB10 million on the last day of each accounting period.
- Total operating expenses which are paid to recipients in Thailand (sales and administration expenses) must be at least THB15 million per accounting period.

Note: If the IHQ is unable to meet any of the specified conditions within an accounting period, the tax incentives in that accounting period will not be granted.

International trading center (ITC) receive the following incentives:

Incentives offered by the Board of Investment (BOI)

- Permission to bring in skilled personnel and experts into the Kingdom to work in investment promoted activities.
- Permission to own land.
- Exemption of import duty on machinery.
- Exemption of import duty on raw materials and parts used in the production for export.

In addition, to facilitate IHQ/ITC registration for a foreign business certificate/ license, the Department of Business Development, Ministry of Commerce, has reduced the timeframe as follows:

- 30 days to 15 days for BOI-promoted companies
- 60 days to 30 days for non-BOI promoted companies.

The Bank of Thailand will also assist IHQ/ITC through a relaxation of foreign currency conditions.

Intellectual property rights

Copyright

Under the Copyright Act BE 2521 (1978), copyright is automatically protected for 50 years since the death of an individual author or the date of publication for an anonymous or corporate author. Copyright can be registered at the Department of Intellectual Property (DIP), although not required. Disputes are first heard in the Intellectual Property and International Trade Court.

Works of applied art, such as drawings, paintings, sculpture, prints, architecture, photography, drafts, and models for utility or functional use, are only protected for 25 years since date of publication

Trademark

Under the Trademark Act B.E.2534 trademark rights are acquired only through proper registration at the Trademark Office of the DIP. Trademarks are protected for 10 years and can be renewed indefinitely.

The owner of the trademark can:

- use or permit others to use the trademark
- prohibit others from using the trademark
- assign and/or license the trademark

Using the mark means:

- Affixing the protected mark to goods, packages, means of business, services, and communication in business
- Circulating, offering, advertising, or storing for sale of goods bearing the protected mark
- Importing goods or services bearing the protected mark

Patent

Thailand recognizes three types of patents:

- An invention patent which provides a 20-year term of protection from the filing date.
- A design patent which provides a 10-year term of protection from the filing date.
- A petty patent which provides a 6-year term of protection, plus two allowable extensions of two years each.

The Thai Patent Act defines “invention” as any discovery or invention which results in a new product or process or any improvement of a product or process. The Patent Act further defines “process” as any method, art, or process of producing a product, maintaining or improving its quality, or adapting it to a better condition, including the application of such process.

The following are not eligible for patent protection:

- Microorganisms that naturally exist, animals and/or plants, or extracts from animals or plants, and their components
- Scientific and mathematical rules and theories
- Computer programs
- Methods for diagnosing, treating, or curing human or animal diseases
- Inventions which are contrary to public order or morality, public health, or welfare.

Other Intellectual Property Laws

- The Plant Varieties Protection Act
- The Protection and Promotion of Traditional Thai Medicine Wisdom Act
- The Protection of Layout-Designs of Integrated Circuits Act
- The Trade Secret Act
- The Geographical Indications Act
- The Optical Disc Production Act
- The Film and Video Act.

International trade agreements

Bilateral and economic partnership agreements entered by Thailand are with the following countries and blocs:

| | |
|---|---|
| Australia: FTA | India: FTA |
| Bahrain: Comprehensive Economic Partnership | New Zealand: Comprehensive Economic Partnership |
| China: FTA | Peru: Closer Economic Partnership Agreement |
| Japan: Closer Economic Partnership | USA: Trade and investment frame work |

Prospect BTA's:

| | | | |
|--------------|----------|--------------|----------------|
| South Africa | Croatia | South Korea | Sri Lanka |
| Bangladesh | Mexico | Saudi Arabia | Czech Republic |
| Chile | Pakistan | Singapore | |

13. Vietnam

Country profile

| | | |
|----------------------|--|---|
| Official name | The Socialist Republic of Vietnam | |
| Capital | Hanoi | |
| Location | Eastern Indochinese peninsula Borders China, Laos, and Cambodia | |
| Area | 331,210 km ² | |
| Climate | Wet and dry seasons Varied according to latitude | |
| Time zone | UTC +7 no DST | |
| Population | ~91.6 million | |
| Currency | Vietnamese Dong VND | |
| Language | Vietnamese English French | |
| Religion | 81 % Nonreligious 8% Buddhism 7% Christianity | |
| International | EAS G-77 ADB World Bank WTO CPTPP | APEC ASEAN Colombo Plan Next Eleven ICO |
| Government | Socialist republic | |

Vietnam has a single ruling party, the Communist Party of Vietnam. Most of the power is concentrated in the Legislative branch.

Executive

The president of Vietnam is the head of state, commander-in-chief of the Vietnam People's Armed Forces, and chairman of the Council of Defense and Security. The president selects prime ministers, vice presidents, ministers, and other officials with agreement of the National Assembly. The president may serve a maximum of two five-year terms. In case of early termination, the Vice President acts as the President until the National Assembly elects a new President.

Legislative

The National Assembly is the highest government organization in Vietnam with the power to appoint the president, prime minister, chief justice, head of procuracy, and cabinet members. The National Assembly has the power to make and amend both the laws and the constitution so it can define the role of each government organization including itself. The members are elected for five-year terms and convene at least twice a year. Currently the National Assembly has 500 members.

Judicial

The Supreme People's Court of Vietnam is the highest court for appeal and review. Below it are the Provincial and District courts. Other courts include economic, labor, and administrative courts, as well as the military tribunal.

| IMF Data | 2014 | 2015 | 2016 |
|-----------------------|---------|---------|---------|
| Real GDP USD billions | 186 | 193.2 | 202.62 |
| GDP per capita USD | 1.596,3 | 1.684,7 | 1.770,3 |
| Inflation, EoY | 4.1% | 5% | 5% |
| Unemployment | 2.5% | 2.5% | 2.5% |

Business entities

Setting up a business entity in Vietnam should abide the Law on Enterprises and Law on Investment.

Distinct entities

Sole proprietorship

A Private Enterprise is the equivalent of sole proprietorship. An individual has full control over the business, acts as the legal representative, and holds unlimited liability.

Partnership

A Partnership is established when at least two co-owners work together under the same name. At least one partner, the general partner, has to be an individual. Liability can be limited or unlimited. The general partner must hold unlimited liability; if the general partner is unable to pay, other partners may be held liable.

Limited liability company

A Limited Liability Company (LLC) can have between one and fifty members. As the name implies, liability is limited to capital contribution. The chairman of the members' council or the general director becomes the legal representative. In the case of a single LLC, the chairman of the company may act as the legal representative instead.

Joint stock company

A Joint Stock Company or a Shareholding Company is the only type of entity that can sell shares and securities. It needs at least three shareholders to establish. Shareholder liability is limited to capital contribution. The chairman of the board of management or the general director acts as the legal representative.

Ownership of Entities

A Wholly Foreign-Owned Enterprise cannot attain land use rights but can rent land for business purposes. However, a Vietnamese company or individual can own land use rights, which may be contributed to the business. Hence, a foreigner can attain land use rights only through a Joint Venture with a Vietnamese company or individual.

Other business options

Business cooperation contracts

Business cooperation contracts allow foreign investors to work with Vietnamese partners without establishing a business entity.

BOT, BT, BTO, PPP

Investors may enter a contract with the Vietnamese government to build-operate-transfer, built-transfer, build-transfer-operate or Private – Public Partnership infrastructure facilities project.

Representative office

A Representative Office is not allowed to conduct commercial activities or generate any profits within Vietnam. However, it is useful for gathering information and looking for potential business deals.

Investment certificates

A foreign investor must get an Investment Certificate from the People's Committee or Industrial Zone Management Authority. The investor must present a tangible plan and feasibility study as well as prove capital adequacy with a minimum equity of 20%. Projects below 300 billion VND that do not fall under conditional sectors can be approved within 15 days while other projects need 30 days. Projects that need approval from the Prime Minister need an additional 15 days. Projects in the conditional sector will have to fulfill higher standards. The duration of an Investment Certificate cannot exceed 50 years; the Standing Committee of the National Assembly may extend the duration to no more than 70 years.

Projects worth less than 15 billion VND and not on the conditional sector do not need Investment Certificates. Instead, they need to be registered at local authorities.



Limited sectors

The conditional sectors include defense and safety, banking and finance, health, education, entertainment, real estate, media, mining, real estate, etc. Projects in sensitive areas (generally those with negative social impact, such as cigarettes) need to be approved by the Prime Minister. Projects that may be detrimental to national security are strictly prohibited. Other prohibited sectors include projects that are detrimental to: national defense and security; public interest; historical and cultural traditions and ethics; Vietnamese fine customs; public health; and natural resources and the environment. Additionally, projects related to the treatment of toxic waste brought into Vietnam or the manufacturing of chemical agents prohibited by international treaties are strictly prohibited.

Foreign ownership in public company

Foreign investors can purchase shares, bonds, and other valuable papers of Vietnamese companies. However, foreign ownership in certain special sector is capped. For instance, only 30% of a joint stock bank can be owned by foreigner.

Finance and capital markets

Foreign exchange control

All business activities in Vietnam, including transactions, payments, billings, listings, advertisements, price quotes, and any other form of price, must be denominated in the Vietnamese Dong (VND) unless specifically permitted by the State Bank of Vietnam (SBV) through legislation. While shops might accept USD, the USD must be converted to VND at their own rate, which ends up being significantly more expensive; however, it is still illegal for shops to list prices in USD. As such, commercial entities need to open local bank accounts in VND to conduct any business within Vietnam. Transactions with foreign counterparties may list prices using foreign currencies only if it is proven absolutely necessary.

Investors need to open a capital bank account, which is a foreign currency account designed to keep track of capital inflows and outflows in Vietnam. Investors can only move money from the capital account to a current account, which enables them to conduct business transactions. The Law on Foreign Exchange Management stipulates that investors may:

- move legal capital, reinvestment capital, or BCC capital (once liquidated) out of Vietnam
- transfer profits abroad at the end of the fiscal year only if all financial obligations are fulfilled at the end of the fiscal year with an advance notice of seven working days. All money moved out of Vietnam must be in foreign currency.

Banking system

The 2010 Law on the State Bank of Vietnam (SBV) clearly defined the role of the SBV. Previously, the SBV acted as both the central bank and a commercial bank. In 1990, the SBV had to split its operations: the SBV remains as the central bank while its industrial and commercial activities were conducted by four State-Owned Commercial Banks (SOCB) that specialize in different sectors and industries. The SBV is responsible for creating monetary policies, managing foreign exchange reserves, licensing and supervising credit institutions.

According to Moody's Investor Service announcement on 31 October 2017, the outlook for the banking system in Vietnam (B1 stable) is stable over the next 12-18 months. Moody's also rates 15 banks in Vietnam, which together accounted for 58% of banking system assets at 30 June 2017. Three of the 15 banks Bank for Investment and Development of Vietnam (BIDV-B1 local-currency deposit rating, stable), Bank for Foreign Trade of Vietnam (Vietcombank – B1 local-currency deposit rating, stable) and Vietnam Joint Stock Commercial Bank for Industry and Trade (Vietinbank; B1 local-currency deposit rating, stable) – are government controlled. The other 12 are privately owned joint-stock banks.

Types of banks

Banks in Vietnam are classified by their ownership:

- **Government controlled commercial banks** used to be fully owned by the government (SOCBs), but Vietnam has "equitized" three out of four SOCBs, i.e. selling shares to both domestic and foreign investor to eventually reduce state ownership to 51%.
- **Joint-stock commercial banks** are owned by both public and private shareholders. Total foreign ownership is limited to 30%, one foreign investor can own up to 15%, with a 20% cap for strategic investors.
- **Joint-venture banks** are formed through capital contribution by Vietnamese bank(s) and foreign bank(s). They are similar to JSCBs but foreign ownership is capped at 49% instead.
- **Wholly foreign-owned banks** are sought after by foreign investors for their trade finance and foreign exchange services. They are also targeting the Vietnamese middle class and above with their retail banking and wealth management services.

Bank secrecy

Vietnam does not have a bank secrecy law. The credit institution, not the customer, has the right to maintain confidentiality and can divulge a customer's information if it wants to. Additionally, any government agency can demand information from a credit institution.

Deposit insurance of vietnam (DIV)

All credit institutions are required to get insurance from the DIV for maximum deposit coverage of 75 million VND per depositor. The DIV wishes to increase coverage to 200 million VND because it believes deposit insurance should cover 3-5 times GDP per capita. Other than insuring deposits, the DIV can conduct special examinations, such as compliance and risk assessments, on credit institutions.

Capital market

State Securities Commission (SSC)

The SSC was established in 1996 to oversee the development of capital markets, the licensing of participants, and the issuance and enforcement of regulations.

To be listed in HOSE (Ho Chi Minh Stock Exchange), a company must have been profitable for the previous two years and have capitalization of at least VND 120 billion, and ROE in the previous year $\geq 5\%$. Additionally, at least 20% of the share of the company must be owned by at least 300 shareholders who are not major shareholders.

To be listed in HNX (Hanoi Stock Exchange), a company must not have accumulated loss to the registered year, have capitalization of at least VND 30 billion, and ROE in the previous year $\geq 5\%$. Additionally, at least 15% of the share of the company must be owned by at least 100 shareholders who are not major shareholders.

Vietnam Securities Depository (VSD)

The VSD is the only central securities depository in Vietnam. All public companies must register their shares, corporate bonds, municipal bonds, government bonds, corporate bonds guaranteed by the government, and fund certificates registered for trading. The VSD provides these services for its clients: securities lodging, withdrawal, pledging, releasing, and transfer of non-trades securities. The VSD finalizes securities trades through clearing and settlement based on the trading results sent by stock exchanges at the end of trading sessions.

Furthermore, the VSD provides corporate actions services such as the rights to vote, receive stock dividends, receive interest and principal of bonds and treasury bills, buy additional stocks, convert convertible bonds, exchange and merge shares, rename stocks, and split and consolidate stocks, among other rights.

Ho Chi Minh Stock Exchange (HOSE or HSX)

The Ho Chi Minh Securities Trading Center was established in 2000 and was renamed the Ho Chi Minh Stock Exchange in 2007. It is the first securities exchange and also the biggest in Vietnam. Morning trading session is 9:00-11:30 and afternoon trading session is 13:00-15:00 from Monday to Friday, except on public holidays. Trading is automated using an order-matching system with the capability to process up to 300,000 orders per day. Although the Law on Securities recognizes options, warrants, they cannot be traded in a stock exchange yet. The Vietnamese stock exchanges only have facilities to accommodate the trade of ordinary shares, fund certificates, bonds and some types of future contracts.

Hanoi Stock Exchange (HNX) and UPCoM

The Hanoi Securities Trading Center opened in 2005 and was transformed into the Hanoi Stock Exchange in 2009. It is the second securities exchange to open in Vietnam. Morning trading session is 9:00-11:30 and afternoon trading session is 13:00-14:15 from Monday to Friday, except on public holidays. Limitations similar to HOSE apply to HNX. The HNX operates its listed securities market, a government bond market, and the Unlisted Public Company Market (UPCoM). Because the VSD does not recognize share transfers that have not gone through a regulated market, all unlisted public companies need to enlist in UPCoM to trade its shares and convertible bonds except in the case of a takeover.

Labor

The Labor Code of Vietnam serves as the law governing employment practice and labor relations in Vietnam. The Ministry of Labor, War Invalids, and Social Affairs (MOLISA) is the national implementing government agency.

This Labor Code contains provisions regulating the hiring and termination of private employees, working conditions, including work hours and overtime, employee benefits, guidelines in the organization, and membership in labor unions as well as in collective bargaining.

Types of employment

There are three types of labor contract based on duration:

- a seasonal contract of fewer than 12 months
- a fixed term contract between 12 and 36 months
- an indefinite term contract.

A labor contract must be made in writing: one copy for the employer and one copy for the employee. A labor contract may be made orally only for housekeeping and work lasting fewer than three months. An employee may be put under a probationary period of at most 60 days. A seasonal or fixed term contract may only be extended once; afterwards, the employee has to be hired indefinitely or released.

Working hours and compensation

Employers can only require an employee to work for a maximum of 10 hours a day, 48 hours per week, and six days a week. Payment must be made at least once every fifteen days unless both parties agree on monthly payments. The weekly limit may be increased to 50 hours during peak season for a maximum of two months. If a job requires a worker to work seven days a week, then the employer must rearrange the work schedule to give at least four rest days a month. At least 12 rest hours are required between each night shift. Every employee is entitled to a 30 minutes break – 45 for night workers – within a shift. If a shift exceeds 10 hours, the employer must provide an additional break period of at least 30 minutes.

Overtime rate is 150%, 180% for work at night (between 21:00-5:00 or 22:00-6:00), 200% for work on weekly rest days, and 300% on public days. Overtime is limited to four hours per day and 200 hours per year; the limit may be increased to 300 hours per year during emergencies but must be approved by the State.

Minimum monthly wage

Vietnam stipulate minimum monthly wages for four different regions. From 1 January 2017, minimum wage ranges from VND 2.76 million to VND 3.98 million a month, depending on the region. Minimum wage in Hanoi and Ho Chi Minh City is VND 3.98 million.

Benefits

Holidays

Each year, every employee is entitled to ten days of paid leaves during public holidays. The employee is paid three times the regular rate when work is performed on a holiday.

Service incentive leave

A worker who has rendered at least one year of service is entitled to 12-16 days of paid leave, depending on the nature of the work.

Annual bonuses

An employer may give an annual bonus equal to one month's salary (13th month's salary) to its employees although it is not mandated by law. Employees who have worked for fewer than twelve months may get a prorated bonus.

Additionally, an employer may hand out a "Lunar New Year Bonus" (or the "Tet Bonus") prior to the four days of paid leave for the Lunar New Year. This bonus typically reflects the company's performance; the amount ranges from less than a month's salary to a full year's salary.

Compulsory insurance

The Law on Social Insurance mandates that Vietnamese employees under contracts lasting more than one month, officials and public servants, and police and army members; foreign employees who work in Vietnam and obtain work permits or practicing certificate issued by the Vietnamese competent authorities are subject to compulsory insurance. Employers must contribute 21.5% of the total wage fund while employees must contribute 10.5% of their wages to the social, health, unemployment insurances, occupational accident and occupational disease insurance. The insurance covers sick leaves, maternity leaves, medical expenses, labor accidents, occupational diseases, retirement benefits, severance payments, and survivorship allowances.

Maternity leave

Female labor may not be used if it might hinder her reproductive abilities, such as hard labor during later stages of pregnancy or work in areas with toxic fumes. A pregnant employee may take a maternity leave of four to six months depending on the nature of the work; two of those months must be after childbirth. In case of abortion or sterilization, the female employee may claim seven to 50 days of paid leave. Salary is covered by the social insurance. The employee may take a longer maternity leave in the case of multiple births. Additionally, the employee will receive a bonus of a month's salary if it is her first or second child. She may request additional unpaid leave as agreed upon by her employer.

Paternity leave

Vietnam has paid paternity leaves.

Retirement

A social pension system was established in 1995 through Decree number 19/CP, which is covered by the social insurance system. Employees are eligible for pension benefits after 20 years of social insurance contribution. Employees can retire at:

- age 60 for men and age 55 for women
- age 55 for men and age 50 for women who work in hazardous occupations, live in designated areas
- age 50 for men and age 45 for women who work in military sector in some cases.

Termination of employment

Severance payments are covered by the compulsory unemployment insurance. The employer is responsible for severance pay for the periods of non-participation in the unemployment insurance. Severance is half a month's salary for each year of service, unless the employee was laid off due to structural or technological changes, in which case severance becomes a month's salary for each year of service for a minimum of two months' salary. Employees fired as a form of discipline are not entitled to severance payments.

Whether an employee wishes to resign or an employer wants to terminate the labor contract, that individual must give a notice 45 days in advance for an indefinite term contract, 30 days for a definite term contract, and three days for seasonal contracts. If breached, the party at fault must pay compensation equal to the salary for the number of days without proper notice.

Labor relations

Labor union

If after six months of operations a trade union has not been set up, the Vietnam General Confederation of Labor will make a provisional union. The employer must recognize the union and work together to achieve favorable conditions but cannot interfere with the union's activities. A union member may use some of his/her working time to work with the trade union while still getting paid by the employer. The amount of time is determined by an agreement between the employer and the union but may not be fewer than three hours per month.

Strike

Employees are lawfully allowed to strike if 75% of the employee group participates or 50% for companies with fewer than 300 employees. If a strike is deemed unlawful, the participants need to cease the strike or face penalties.

Employment of foreigners

According to the Law on Investment, foreign workers are permitted only if the work requires a specialized skill set, but the company must train a Vietnamese person to replace the foreign worker. Foreigners who wish to work in Vietnam for more than three months have to get a Labor Permit from the Ministry of Labor, War Invalids, and Social Affairs. The foreigner must be above 18 years old and work as a manager, executive, or expert. To apply, the individual has to submit a legal record of the former residence (Vietnam if the foreigner has resided there for more than six months), a health certificate, a specialist certification for technical jobs or an equivalent document, and a photo, among other forms and documents. The Labor Permit is valid for 24 months unless the Vietnamese worker who will fill the position is still being trained.

Taxation

Taxation is administered through the General Department of Taxation, which is under the supervision of the Ministry of Finance. The Commissioner possess the power to, among others, decide disputed assessments, grant refunds of taxes, fees and other charges and penalties, modify payment of any internal revenue tax and cancel a tax liability. Taxpayers may appeal directly to the Court of Tax Appeals for any disputes between them and the Commissioner concerning the decisions of the latter.

Vietnam does not have local government taxes. However, if a business has many branches in different provinces, then the tax payment might have to be split among the local tax authorities.

Corporate income tax

Tax rates

From January 2016 corporate tax rate is reduced to a common flat rate of 20% (previously was 22%) for all business entities, whether domestic or foreign-invested, with no additional local or provincial taxes. This tax rate extends to the domestic income of foreign parties that have not incorporated in Vietnam but have entered contracts such as BCC. Some exceptions exist to the 20% tax rate:

- 10% for businesses in:
 - areas with especially difficult socio-economic conditions, economic zones, and high tech zones or
 - the technology and infrastructure sectors for the first 15 years, with four years of tax exemption followed by nine years of 50% tax reduction
- 10% for businesses in social care, such as education, health, culture, sport, and the environment, social housing with four years of tax exemption followed by nine years of 50% tax reduction
- 10% for print newspaper, some type of agriculture
- 17% for new businesses in areas with difficult socio-economic conditions for the first 10 years, with two years of tax exemption followed by four years of 50% tax reduction
- 32-50% for exploitation of rare natural resources such as oil and gas.

Tax exemptions begin during the company's first profitable year. However, if the company still makes no profits after three years, the tax exemption begins on the fourth year of operations. Fifty percent tax reductions begin after the tax exemption period is over.

Taxable income

Taxable income is domestic or foreign revenue minus deductible expenses, adjusted for other assessable income. All expenses are deductible if they pertain to revenue generation, are properly documented, and are not categorized as non-deductible expenses.

Non-deductible expenses

- The expenditures that fail to meet all conditions of deductible expenses, except for the loss cause by natural disasters, epidemics, and other force majeure that are not compensated.
- Fines for administrative violations.
- The expenditures that are covered by other budgets.
- The administrative expense allocated by the foreign enterprise to the permanent establishment in Vietnam that exceeds the limit imposed by Vietnam's law.
- The expenditure in excess of the limit on making provision according to the laws.
- Interest on loans from non-banks exceeding 1.5 times the interest rate set by the State Bank of Vietnam at the date the loan is taken.
- Improper depreciation of fixed assets.
- Improper accrued expenses.
- Wages and remunerations of owners of private enterprises; wages of founders that do not participate in business management; wages, remunerations, and amounts payables to the employees that are not actually paid or do not have invoices.
- Interest on loans corresponding to the portion of charter capital not yet contributed.
- Deducted input VAT, VAT paid using the deduction method, corporate income tax.
- Donations except certain donations for education, health care, scientific research, natural disasters, or building charitable homes for the poor.
- Voluntary payments to retirement funds or social security funds, payments for voluntary retirement insurance for employees that exceed the limits imposed by law.
- Expenditures on businesses of banking, insurance, lottery, securities, and some other special businesses specified by the Minister of Finance.

Loss carry forward

All tax losses may be carried forward for a maximum of five consecutive years. Profits and losses may not be offset between companies within a group. Tax losses may not be carried backwards.

Value added tax

VAT is levied on goods and services sold in Vietnam at a rate of 0%, 5%, or 10%. For goods and services not subject to VAT, input VAT can be credited.

Not subject to VAT:

- Goods and services provided outside of Vietnam in certain cases
- Financial revenues such as compensation, bonus, and subsidy
- Sales of assets by non-business entities not registered for VAT
- Capital contributions
- Certain asset transfers between parent and subsidiary
- Collection of indemnities by insurance companies
- Collection by intermediary not related to provision of the good or service
- Commissions earned by certain agents
- Certain agricultural products
- Transfer of land use rights

- Financial derivatives and credit services
- Securities activities
- Capital assignment
- Foreign currency trading
- Debt factoring
- Teaching
- Healthcare
- Certain insurance services
- Newspapers, magazines, certain types of books
- Public buses,
- Transfer of technology
- Gold not in jewelry
- Drilling rigs, airplanes, and ships that cannot be produced inside Vietnam
- Imported items for research and development that cannot be produced inside Vietnam
- Imported items for oil and gas fields that cannot be produced inside Vietnam
- International aid (subject to limitations).

Subject to 0% VAT:

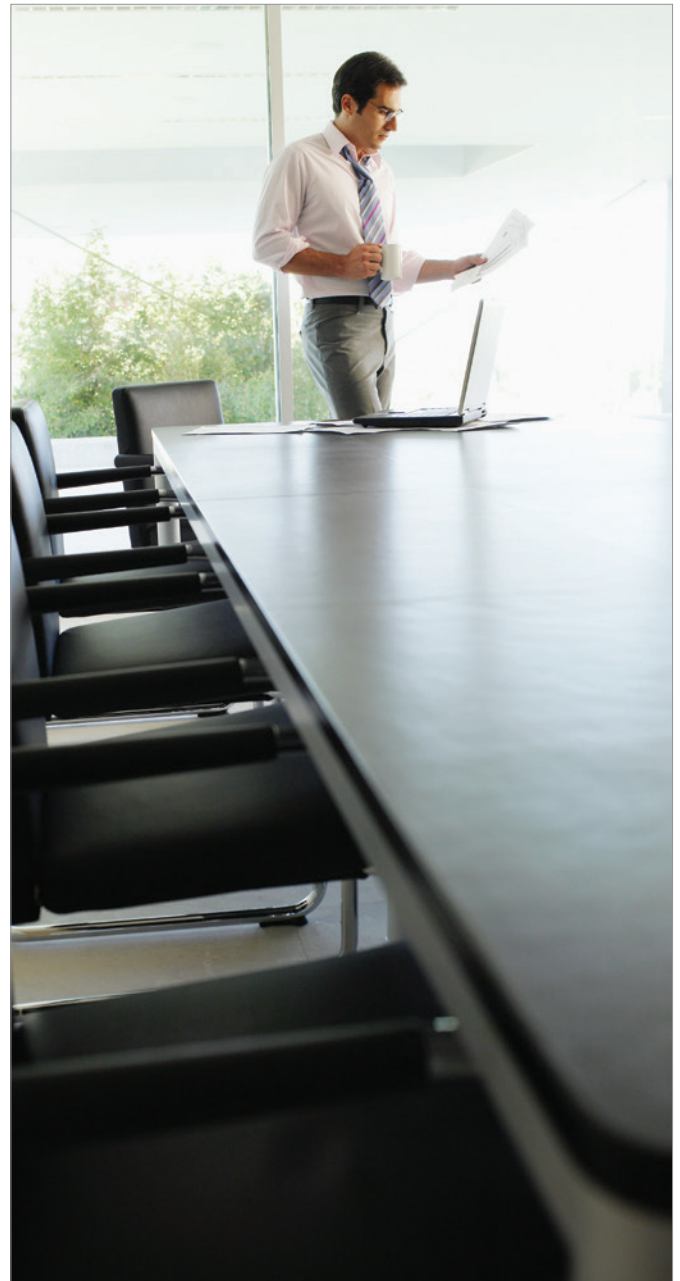
- Exported goods and services
- Construction and installation overseas and in free trade zones
- International transportation
- Goods and services that are not subject to VAT when exporting.

Subject to 5% VAT:

- Certain type of water
- Certain agricultural products & machines
- Unprocessed food
- Educational goods
- Medicine and medical equipment
- Technical or scientific services
- Certain cultural, sport, or art products and services
- Certain types of social housing.

Subject to 10% VAT:

- Everything else.



Foreign contractor withholding tax

Foreign contractor withholding tax (FCWT) applies to certain payments to foreign parties. Dividends pay to institutional investors are exempt from FCWT. The FCWT consists of CIT and VAT. The VAT portion of the FCWT is exempt if the product or service falls under VAT exemption.

| Industry | Effective VAT rate | Deemed CIT rate |
|---|--------------------|-----------------|
| Restaurant, hotel, casino | 5% | 10% |
| Royalties | - | 10% |
| Services | 5% | 5% |
| Leasing of machinery, equipment | 5% | 5% |
| Insurance | 5% | 5% |
| Construction or installation without supply of materials, machinery, or equipment | 5% | 2% |
| Construction or installation with supply of materials, machinery, or equipment | 3% | 2% |
| Interest | - | 5% |
| Financial derivatives | - | 2% |
| Leasing of aircraft, vessels | - | 2% |
| Transfer of securities | - | 0.1% |
| Re-insurance | - | 0.1% |
| Supply of goods | 2% | 1% |
| Supply of goods associated with services in Vietnam | 3% | 1% |
| Manufacturing, transportation | 3% | 2% |
| Other business activities | 2% | 2% |

Personal income tax

The government recognizes two types of individual taxpayers:

- Tax residents are taxed on worldwide income, whether domestic or international. An individual is considered a tax resident if that person:
 - has stayed in Vietnam for at least 183 days in a calendar year
 - has stayed for at least 183 days in the 12 consecutive months from date of arrival
 - has a permanent residence in Vietnam
 - has rented a home for more than 90 days but fewer than 183 days in Vietnam while unable to prove tax residence in another country
- Tax non-residents are taxed only on income generated in Vietnam.

Tax rates

For employment income, tax non-residents pay a 20% flat tax rate (can be less with a favorable tax treaty) while tax residents pay marginal taxes according to the following schedule:

| Annual income (VND) | Tax rate |
|-----------------------------|----------|
| To 60,000,000 | 5% |
| >60,000,000 to 120,000,000 | 10% |
| >120,000,000 to 216,000,000 | 15% |
| >216,000,000 to 384,000,000 | 20% |
| >384,000,000 to 624,000,000 | 25% |
| >624,000,000 to 960,000,000 | 30% |
| > 960,000,000 | 35% |

Some sources of income have different rates.

For tax residents:

| Taxable income | Tax rate |
|--|----------|
| Sale of real estate: | |
| Net gain or | 25% |
| Sales proceeds | 2% |
| Sale of securities: | |
| Sales proceeds | 0.1% |
| Capital assignments: | |
| Net gain | 20% |
| Prizes, inheritances, or gifts (over VND 10 million) | 10% |

For tax non-residents:

| Taxable income | Tax rate |
|--|----------|
| Prizes, inheritances, or gifts (over VND 10 million) | 10% |
| Royalties, copyrights, or franchises (over VND 10 million) | 5% |
| Interest | 5% |
| Dividends paid to an individual | 5% |
| Business income | 1-5% |
| Sale of real estate: | |
| Sales proceeds | 2% |
| Sale of securities: | |
| Sales proceeds | 0.1% |

Taxable income

Taxable employment income includes all cash compensations and benefits-in-kind except:

- payments for business trips, telephone charges, uniforms, stationery (capped)
- overtime premium (compensation above standard overtime salary)
- home leave allowance and transportation for resident expatriates
- school fees up to high school for the children of resident expatriates
- training
- mid-shift meals (capped if in cash)
- collective benefits (e.g. healthcare, work transportation).

Taxable non-employment income includes:

- business income
- investment income
- gains from the sale of shares or property
- prizes, inheritances, or gifts in excess of VND 10 million
- royalties, copyrights, or franchises in excess of VND 10 million.

Non-taxable income includes:

- interest in bank deposits and life insurance
- compensation from insurance
- retirement pension from government insurance
- transfer of property, gifts, and inheritances between direct family members.

Allowable deductions

- Mandatory insurance contributions
- Voluntary pension contributions (maximum VND 1 million/month)
- Contributions to approved charities
- Personal allowance of 9 million VND a month
- Allowance for registered dependents of 3.6 million VND a month per individual.

Other taxes

Customs duty

Import tax is levied on most imported goods based on the CIF (cost, insurance, freight). Tax rates vary from 0-100%. Import tax may be waived if a business operating in a preferential zone or sector wishes to import fixed assets.



Environment protection tax

Production and importation of goods hazardous to the environment are subject to additional tax:

| Goods | Unit | Tax (VND) |
|----------------------|----------|---------------|
| Liquid fossil fuels | Liter/kg | 300-1,000 |
| Coal | Ton | 10,000-20,000 |
| CFC | Kg | 4,000 |
| Plastic bags | Kg | 40,000 |
| Restricted chemicals | Kg | 500-1,000 |

Excise tax

Vietnam has excise tax in the form of Special Sales Tax (SST), which is levied in addition to VAT. The selling price is used to calculate the SST. If a company uses agents for distribution, the SST is calculated using 90% of the average price the agents are selling the product for. A company that pays SST may claim tax credits from SST-liable inputs.

| Products/services | SST rate |
|--------------------------------------|----------|
| Votive papers | 70% |
| Cigarettes | 70% |
| Automobiles with fewer than 24 seats | 5-150% |
| Beer | 65% |
| Spirits/wine | 35-65% |
| Playing cards | 40% |
| Discotheques | 40% |
| Airplanes | 30% |
| Boats | 30% |
| Massage, karaoke | 30% |
| Casinos, gambling | 35% |
| Motorcycles above 125cc | 20% |
| Golf | 20% |
| Lotteries | 15% |
| Petrol | 10% |
| Air conditioners | 10% |

Stamp duty

Stamp duty, formally known as Registration Fee, is required only for registration of ownership for assets such as land, buildings, vehicles, and firearms. The tax ranges from 0.5% to 10%.

Inheritance tax/gift tax

Inheritances and gifts in excess of 10 million VND are taxed at 10% except for real property given to family members or next-of-kin.

Property taxes

Land use fee

Land may be allocated to Vietnamese citizens indefinitely for housing and a limited period up to 50 years for business, which may be extended. Vietnamese citizens must pay land use fees annually or upfront in a lump sum. The land cannot be mortgaged, subleased, transferred, or contributed into a joint venture unless the lump sum has been paid. Certain eligible foreigners may be able to “purchase” an apartment within a residential complex with land use rights for up to 50 years. The land use fee uses a progressive tax rate of 0.03% to 0.15% of the land price.



Land rental

Foreign investors can lease land for commercial purposes for up to 50 years, which may be renewed, or up to 70 years for residential development. Foreigners can pay the rental annually or upfront in a lump sum.

Transfer Pricing

Vietnam released Transfer Pricing regulations from 2005 which provide the primary regulatory framework for the determination and audit of Transfer Pricing activities in Vietnam. It has been few years already that Transfer pricing (TP) is a top priority for both companies, and tax authorities. The principle is that, transactions between related parties must be made on an arm's length basis. Failure to comply with the arm's length principle implies an exposure to a reassessment of prices or profits for tax purposes which may be accompanied by penalties and interest charges (to some extent, this literally implies that the tax authorities may set transfer prices for the company if there is no supporting transfer pricing documentation). The adjustments entail wider consequences in terms of an altered tax profile and possible adverse publicity. In terms of required documents, an enterprise which has related party transactions must submit a disclosure form of the related party transactions during the year (to be lodged annually to the tax authority together with a year-end CIT return) and preparation of Transfer Pricing documentation as evidence of the arm's length principle. In 2017, it should be of even greater importance with the new TP guidelines and the increased controls. The Government released Decree No. 20/2017/ND-CP dated 24 February 2017 (the Decree) which is the largest development of Transfer Pricing regime since the implementation of Circular 66/2010/TT-BTC issued by Ministry of Finance in 2010. Ministry of Finance also issued the Circular 41/2017/TT-BTC guiding the implementation of the Decree. Some impacting points as follows:

- The Decree adopts parts of the new guidelines of the Organization for Economic Cooperation and Development's Action Plan on Base Erosion and Profit Shifting (BEPS), whereby a TP Documentation to be presented to the Vietnamese tax authorities must cover not only local reports of the Vietnamese taxpayer, but also Global Master Files and Country by Country (CbC) report for the whole group if its overseas ultimate parent company is obliged to prepare and submit such documents to the respective tax authorities, or if taxpayer is a Vietnamese ultimate parent company with worldwide consolidated revenue exceeding VND18,000 billion in a fiscal year. The Decree clearly required such three-tiered TP documentation to be available before the year-end corporate income tax return's filing date.
- The Decree also include guidance on interest deductibility as well as tax deductibility for related party expenses, and a new set of TP declaration forms with much more detailed disclosure requirements.

For certainty on methodology of setting up the arm's length range, enterprises might consider applying for the Advanced Pricing Agreement (APA), which is proved a vital tax planning tool. Vietnam has released Circular 201/2013/TT-BTC providing detailed guidance on the application of APA in tax administration. Under APA, taxpayers agree with tax authorities on the pricing of related party transactions in advance for a maximum effective period of five years (with a renewal period of another five years in some cases). The overall application process is conducted through various phases (evaluation of APA strategy, pre-filing consultation, preparation of formal APA documentation, submission and negotiation with tax, and finalizing the APA).

Tax Treaties

Income tax treaties exist to prevent double taxation and may grant tax reductions or exemptions, depending on the terms of the treaty. Vietnam has tax treaties with these countries:

| | | | | |
|----------------|-------------|-------------|--------------|-------------|
| Algeria | Finland | South Korea | Palestine | Spain |
| Australia | France | Kuwait | Pakistan | Sri Lanka |
| Austria | Germany | Laos | Panama* | Sweden |
| Azerbaijan | Hong Kong | Luxembourg | Philippines | Switzerland |
| Bangladesh | Hungary | Macedonia* | Poland | Taiwan |
| Belarus | Iceland | Malaysia | Potugal* | Thailand |
| Belgium | India | Malta | Qatar | Tunisia |
| Brunei | Indonesia | Mongolia | Romania | Turkey* |
| Bulgaria | Iran | Morocco | Russia | Ukraine |
| Canada | Ireland | Mozambique | San Marino | UAE |
| China | Israel | Myanmar | Saudi Arabia | UK |
| Cuba | Italy | Netherlands | Seychelles | US* |
| Czech Republic | Japan | New Zealand | Serbia | Uruguay |
| Denmark | Kazakhstan | Norway | Singapore | Uzbekistan |
| Egypt | North Korea | Oman | Slovakia | Venezuela |
| Estonia* | Maroc | | | |

*The DTA has not come into effect.

Investment

Vietnam offers corporate tax incentives, which are detailed in the corporate tax section. Import tax may be waived if a business operating in a preferential zone or sector wishes to import fixed assets. Businesses can also send foreign workers for up to 24 months each to supervise operations and train new employees. Invest

Intellectual property rights

Vietnam follows a lot of international standards for intellectual property as it acceded to the Paris Convention, the Berne Convention, TRIPS, and the Madrid System. The Vietnam Intellectual Property Law offers further protection. The Copyright Office regulates copyrights, the Ministry of Agriculture and Rural Development handles plant variety, and the National Office of Intellectual Property handles everything else. The first person to file an intellectual property holds the right. If an investor's intellectual property right is infringed, that individual may protect him/herself through civil disputes, criminal sanctions, administrative sanctions, and/or customs intervention.

Patents

Patents are technological solutions and innovations. They enjoy a protection of 20 years after date of application. Industrial design patents are granted for outward appearance or recognizable feel; these patents last five years and may be renewed twice.

Trademarks

Trademarks are used to distinguish a good or service from others in the form of words, images, and/or colors. They are protected for 10 years and may be renewed indefinitely.

Copyright

While works that fall under copyright law are immediately protected upon creation, registering the work offers further protection from disputes. Depending on the type of work, economic copyrights can last from 75 to 100 years from date of formulation or 50 years after the author's death.

Trade names

Trade names are names used by organizations or individuals to designate and differentiate themselves in business activity. Trade names do not have to be filed; instead, they are protected once the business entity has been formed.

Expropriation and compensation

According to the Law on Investment, capital and other lawful assets of foreign investors will not be requisitioned through administrative measure. Enterprises with foreign capital will not be nationalized. The US Department of State remarks that "no recent instances of expropriation of a foreign investment" occurred in Vietnam.

Property ownership

Only the Vietnamese government can own land. The government can allocate land to Vietnamese citizens for residential, agricultural, or commercial purposes for an indefinite period or a period up to 50 years, which may be renewed. The citizens pay a land use fee annually, akin to land tax. Vietnamese citizens may contribute land use rights in a joint venture only if the land use fee has been paid upfront in a lump sum.

While foreigners cannot own property, they can lease land and pay the land rental fee annually. Land is leased for a period of up to 50 years or up to 70 years for residential development, both of which may be renewed. In certain cases, foreigners may be approved to "purchase" apartments in residential areas and attain land use rights for up to 50 years.

International trade agreements

As a member of ASEAN and WTO, Vietnam has entered the following free-trade agreements:

- ASEAN
- ASEAN – China Free Trade Area
- ASEAN – Korea Free Trade Area
- ASEAN – India Free Trade Area
- ASEAN – Hong Kong
- ASEAN – Australia/New Zealand Free Trade Area
- ASEAN – Japan Comprehensive Economic Partnership
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) signed, waiting for rectify by National Assembly.

In addition, Vietnam has established free trade agreements with the following countries:

- Chile
- Japan
- Korea
- EAEU (Russia, Belarus, Kazakhstan, Armenia, Kyrgyzstan).

These trade agreements are still in negotiation:

- ASEAN + 6
- ASEAN – EU
- Vietnam – EU
- Vietnam – EFTA
- Vietnam – Israel

Accounting and audit

Legal framework on Vietnamese accounting system

Vietnamese new Accounting Law issued by the National Assembly of Vietnam in November 2015 replacing the old one issued in 2003. New regulation shall take effect from 1 January 2017.

The Accounting Law provides the legal framework for accounting, and corporate reporting in Vietnam. Under Accounting Law, all companies are required to prepare their financial statements in accordance with Vietnamese Accounting Standards (VAS), Vietnamese Accounting Regimes and detailed guidelines of the Ministry of Finance (MoF).

The Accounting Law endorses the alignment of Vietnamese Accounting Standards with International Standards for the preparation of corporate Financial Statements.

Between 2000 and 2006, the MoF released 26 Vietnamese Accounting Standards (VAS) and 37 Vietnamese Standards of Auditing (VSA) based on international accounting and auditing standards. Circular No. 200/2014/TT-BTC dated 22 December 2014 issued by the MOF which came into effect since the fiscal year 2015 provides new guidelines for enterprise accounting regimes.

Medium and small enterprise may choose to apply a simplified accounting system issued under the Circular 133/2016/TT-BTC dated 26 August 2016 issued by the MoF which came into effect since the fiscal year 2017.

The accounting system in Vietnam

Enterprises with foreign-owned capital and foreign parties to business co-operation contracts (collectively FIE's), are required to adopt the Vietnamese accounting system, Vietnamese Accounting Standards and their interpretive guidance. Generally, companies do not need to register their accounting system if they are fully complying with the standard accounting system. However, when a company wishes to adopt any supplement or revision to the standard, they must register and get approval from the MOF before implementation.

The general requirements of the Vietnamese Accounting System include:

- the use of Vietnamese language or both Vietnamese language and another widely used language in the preparation of accounting records
- the use of Vietnamese Dong as the currency unit in accounting. Only in limited cases can FIEs use a 'foreign currency' as the currency unit in their accounting records
- chart of accounts must comply with the Vietnamese Accounting Regulations. If business enterprises wish any changes in chart of accounts, they must register and get approval from the MOF before application
- numerous reports must be produced as specified in the Vietnamese Accounting Regulations.

The Vietnamese Accounting standards (VAS)

Accounting treatments are not always clearly stipulated in the Vietnamese Accounting Standard and may therefore be made based on the International Accounting Standard. The reason is that it is considered as the implicit policy of the MOF to use the International Accounting Standard is to fill the gaps left by the not-yet-fully developed "fair accounting practice" in Vietnam. Needless to say, its application should be pre-approved by the MOF.

Accounting currency

As noted above, it is required that companies in Vietnam (including foreign invested companies) must use Vietnamese Dong as the currency unit in accounting. However, where the company mainly receives income and makes payments in a foreign currency, the company could use a foreign currency regulated by the MOF as its accounting currency. The company must be self-responsible for this and notify the tax authority upon implementation.

Companies with foreign capital established and operating in Vietnam and using foreign currency as the accounting monetary unit shall concurrently make financial statements in the accounting monetary unit (foreign currency) and convert these statements into Vietnam Dong for submission to state management agencies.

Fiscal year

The fiscal year applicable to FIEs in Vietnam is normally a calendar year i.e. 1 January-31 December. FIEs may notify to the local tax authority their own 12-month fiscal year, commencing from the first day of a quarter and ending on the last day of the previous quarter in the following year.

Chief accountant

Every enterprise is required to employ a Chief Accountant who must satisfy the criteria and conditions stipulated by the Law on Accounting. A foreigner may be appointed to act as the Chief Accountant of the enterprise, provided that he/she meets the prescribed conditions and he/she has a certificate of accounting expertise or an accounting/auditing certificate issued by a foreign organization recognized by the MOF; or an accounting/auditing professional practicing certificate issued by the MOF; or a Chief Accountant certificate obtained after having passed the chief accountant's training course as prescribed in the regulations of the MOF.

Audit

The annual financial statements of FIEs have to be audited once a year in accordance with Vietnamese regulations. The audit must be carried out by an independent auditing company permitted to operate in Vietnam.

FIEs are required to submit audited financial statements to the authorities (e.g. licensing authority, local tax authority, etc.) within three months from the date the fiscal year ends.

Representative offices and project management offices are not subject to audit and only have to produce financial statements to meet the obligations of the parent. However they are required to keep the accounting records under simplified VAS.

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