

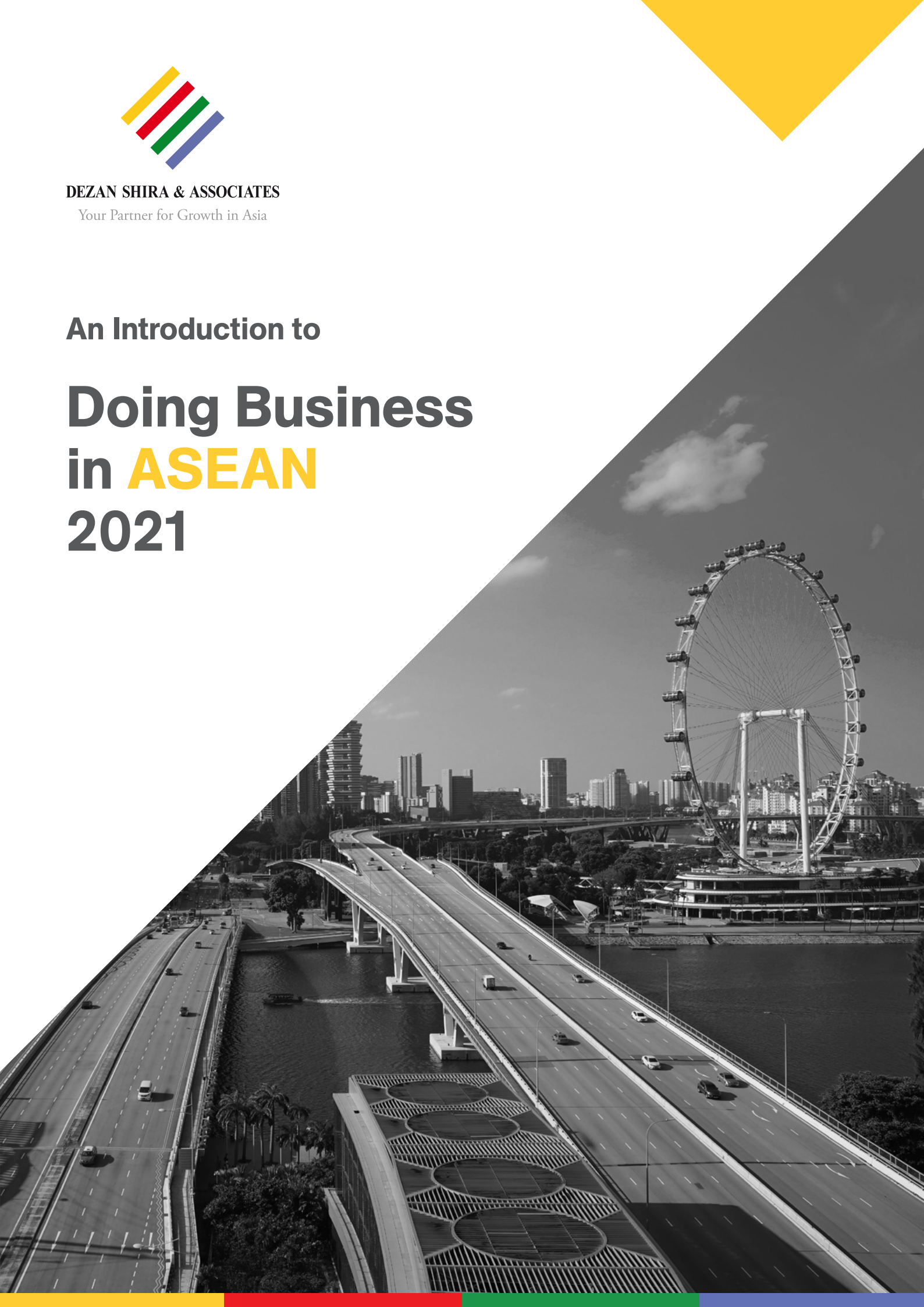


DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

An Introduction to

# Doing Business in **ASEAN** 2021





# DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

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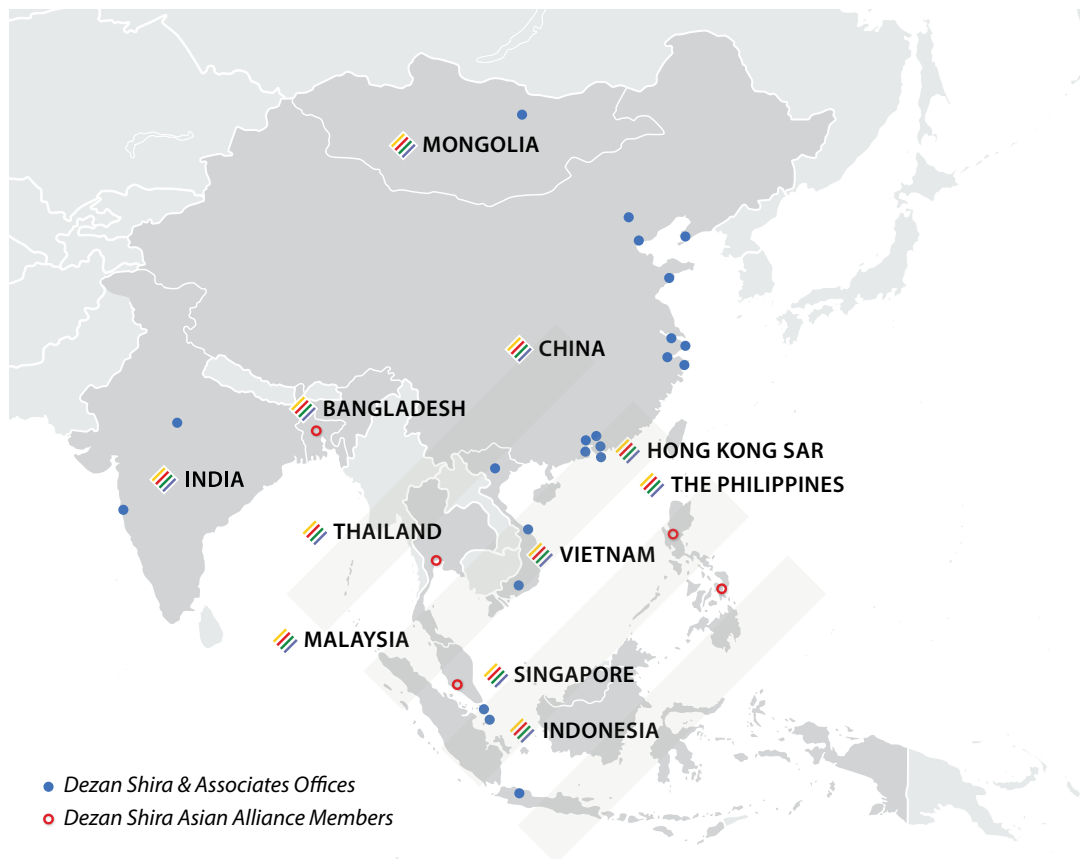
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## DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



## About Dezan Shira & Associates

At Dezan Shira & Associates, our mission is to guide foreign companies through Asia's complex regulatory environment and assist them with all aspects of establishing, maintaining and growing their business operations in the region. Since its establishment in 1992, Dezan Shira & Associates has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam, as well as liaison offices in Italy, Germany and the United States, and partner firms across the ASEAN region. With over 25 years of on-the-ground experience and a large team of professional advisers, we are your reliable partner in Asia.

# Preface

The Association of Southeast Asian Nations (ASEAN) was established in 1967 by Indonesia, Malaysia, Philippines, Singapore and Thailand to accelerate the economic growth and social development in the region. Brunei Darussalam joined in 1987, Vietnam in 1995, Lao DPR and Myanmar in 1997, and Cambodia in 1999.

ASEAN is home to more than 600 million people (larger than the EU and North America) and has the third-largest labor force behind India and China; more than 213 million are aged between 15-34.

Since its inception, the bloc has seen growth in sectors such as manufacturing, retail, transportation, and telecommunications. This has resulted in ASEAN becoming an economic powerhouse with an estimated GDP of US\$9.3 trillion as of 2019 – Indonesia represents some 40 percent of the bloc's economic output – and the bloc is projected to be the world's fourth-largest economy in 2050.

ASEAN members have continued to take steps to improve the ease of doing business through reforming legal and trade frameworks as well as investing in infrastructure and sophisticated manufacturing capabilities. The financial, technology, and health sectors are new growth drivers for the region as new initiatives drive the bloc to adopt high-tech solutions.

The aforementioned factors will ensure ASEAN remains attractive to foreign investors, in particular for those looking to move a part or all of their manufacturing activities from China. This publication, designed to introduce the fundamentals of investing in ASEAN, was compiled by the experts at Dezan Shira & Associates, a specialist foreign direct investment practice, providing corporate establishment, business intelligence, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.

An Introduction to Doing Business in ASEAN 2021 covers the following:

- Corporate establishment;
- Tax and accounting;
- Human resources and payroll; and
- Audit and compliance.



**ALBERTO VETTORETTI**

Managing Partner  
Dezan Shira & Associates



## CONTACT

**Dezan Shira & Associates**  
indonesia@dezshira.com  
www.dezshira.com



# Table of Contents

<b>Preface</b>	<b>04</b>
<b>Part 1   Corporate Establishment</b>	<b>08</b>
Country-wise business structures and set up process	09
Brunei	09
Cambodia	10
Indonesia	13
Laos	17
Malaysia	18
Myanmar	20
Philippines	21
Singapore	24
Thailand	28
Vietnam	32
ASEAN's free trade agreements	37
<b>Part 2   Taxation in ASEAN</b>	<b>39</b>
Country-wise tax structure	40
Brunei	40
Cambodia	42
Indonesia	44
Laos	60
Malaysia	63

# Table of Contents

Myanmar	69
Philippines	71
Singapore	77
Thailand	90
Vietnam	98
<b>Part 3   Human Resources &amp; Payroll in ASEAN</b>	<b>102</b>
Employment permits and relevant visa categories	103
Brunei	103
Cambodia	105
Indonesia	108
Laos	115
Malaysia	119
Myanmar	124
Philippines	127
Singapore	132
Thailand	139
Vietnam	140
Minimum wages in ASEAN	145
Indonesia	145
Singapore	147
Brunei	147
Malaysia	147
Cambodia	148
Laos	148

# Table of Contents

Myanmar	149
Philippines	149
Thailand	150
Vietnam	151
<b>Part 4   Auditing and Compliance in ASEAN</b>	<b>153</b>
Brunei	154
Cambodia	157
Indonesia	159
Laos	162
Malaysia	165
Myanmar	167
Philippines	170
Singapore	173
Thailand	176
Vietnam	179



ASEAN's economic performance has outperformed the global average in recent years as it aims to enhance its attractiveness to foreign investors.

ASEAN members are trying to realize their potential by issuing initiatives to liberalize trade and standardize regulatory and legal frameworks.

These perquisites vary among member states, and can impact the transparency, length, and cost of establishing a company in the region.

## Country-wise business structures and set up process



### Brunei

Brunei Darussalam has seen a gradual increase in the World Bank's Ease of Doing Business report, ranking 105 in 2014 to 66 in 2020. In the report, the country maintained its number one joint-ranking for the 'getting credit' category with New Zealand, which reflects the strength of Brunei's credit reporting system. In terms of starting a business, Brunei was ranked 16<sup>th</sup>.

## Corporations

Establishing a limited liability company (Sdn Bhd) is the preferred option for most foreign investors as there is no minimum share capital required.

The advantages are that the foreign investor can own all the shares in the company and that the shareholders' liabilities are limited to their share capital contributions.

## Incorporation

The first step in the incorporation process is to research the available names at the Registrar of Companies. Once a name has been approved, the applicant should submit the following documents to the Registrar:

- Articles of association;
- Memorandum;
- Details of shareholders identity;
- Details of directors;
- Office address; and
- Declaration of compliance.



**MARCOS SALGADO**

Manager  
Dezan Shira & Associates  
Singapore Office

*“Despite recording a downturn, ASEAN economies offer compelling investment prospects for prominent businesses and niche industries given the region's well-established trade networks, growing middle-class cohort, and a young and educated workforce.”*

---

The company requires a minimum of two shareholders, which can be natural persons or legal entities with the maximum number of shareholders set at 50.

The minimum number of directors required is two, where one must be Brunei citizen or a resident. Additionally, there is a BND 300 (US\$218) fee for incorporating a private limited company.

## Branch office

Establishing a branch office is the ideal choice for foreign investors who do not want to go through the process of appointing a local director. However, the branch office must still appoint a local agent.

The incorporation procedure is similar to that of a limited liability company except the complementing documents are different. The applicant will need submit the following data:

- Certified true copy of the company charter or articles of associations defining the constitution of the parent company;
- Details of the directors and their particulars; and
- An original copy of the company resolution approving the establishment of a branch office in Brunei.

The branch office must have a registered office and will be subject to the corporate tax rate of 18.5 percent on income derived from or received in Brunei.



## Cambodia

Most industries in Cambodia allow for 100 percent foreign ownership, although this exception only when a company owns land in which case the company must have majority Cambodian ownership.

## Private limited company

Private limited companies are the most favored investment vehicles for foreign investors. This is because for most business sectors, there are no limitations on foreign ownership.

Furthermore, the start-up capital is fairly modest at US\$1,000. The Cambodian authorities, however, can ask for higher capital requirements for some selected industries.

The private limited company would still require two shareholders and one director, and these persons do not have to be a Cambodian national.

## Branch office

Foreign branch offices are considered as extensions of the parent company and are allowed to buy and sell goods and services in the manufacturing, processing, and construction industries. However, these must be in-line with the business activities of the parent company.

## Representative office

Representative offices (ROs) are prohibited from earning any income in Cambodia and are often used to test the market before entry. There are no registered capital requirements to set up this type of business entity.

## Incorporation

To incorporate all business entity types, the government launched the Single Portal, an online business registration system, to facilitate this process.

Launched in June 2020, the portal aims to approve applications within eight working days.

There are six ministries integrated into the system: The Ministry of Interior, Economy and Finance, Commerce, Labor and Vocational Training, the General Department of Taxation, and the Council for the Development of Cambodia. This means investors can register their business and taxes under one platform. Further, all fees are done online through various e-payment channels.

## How do you apply for a business license?

There are several steps investors need to follow to begin their application.

## Creating an account

After opening the Single Portal website, visitors should open the 'Register Business' icon, which will instruct the user to download the CamDigiKey app for either Android or iOS.

Visitors should download the app on their mobile device and create an account. Once this has been approved, scan the QR code on the Single Portal website with the CamDigiKey app; the user can then begin registering their business.

In addition to entering their basic information details, there are various documents that investors will need to upload into the system.



To register a foreign company, the following documents are required:

- Lease agreement or land title of the business' location;
- A photo of the current Director, which should be no older than three months and taken on a white background;
- Passport ID or national ID card of the Director;
- The company's or parent company's articles of association;
- Letter of appointment of the Director in the case of a representative office or branch office; and
- Any special licenses.

## Tax registration

Once the business is registered, the applicant should then fill out the tax registration section. Foreign companies will need to upload the following documents:

- Property information of where the business is domiciled or proof of payment of property tax; and
- Bank account details (this information must be given in digital form within 15 working days after tax registration).

## Notice of enterprise opening

The 'Notice of Enterprise' section requires the applicant to enter details regarding the estimated number of employees (local and foreign) and their gender.

Moreover, the applicant must state the type of weekly holidays available for employees and the number of working hours per week.

## Pricing scheme

The final step is the payment, which can be done through debit/credit cards or through the ABA Bank app.

The cost of business registration varies based on the type of enterprise and its taxpayer classification by the General Department of Taxation.

Foreign companies will first need to reserve a company name at a cost of 25,000 riels (US\$6). The business registration fee will cost 1 million riels (US\$246).

## Notice for enterprise opening fee

There is a fee for the 'notice for enterprise opening' set at 120,000 riels (US\$30) for all enterprise types.

## Applying for QIP projects

Through the Single Portal, investors can also apply for QIP (Qualified Investment Projects) projects. QIPs are projects that are eligible to receive fiscal and non-fiscal incentives from the Cambodian Investment Board. They are divided into three types – domestic QIPs, export QIPs, and supporting industry QIPs.

## Indonesia

Despite improvements in the Ease of Doing Business report, Indonesia continues to be challenging for foreign investors. The implementation gap between regulations issued by the central government and their application at the regional level can be a major barrier for businesses.

Investors should assess their specific needs carefully before deciding which corporate structure to operate from. Using a reliable local advisor is recommended for first-time investors in the country as they find it easier to remain compliant with applicable regulations.

There are two legal options for foreign investors looking to set up in the country: a foreign investment company (PT PMA) or representative office (RO).

### Foreign investment company

Establishing a foreign investment company, or PT PMA, is the preferred structure for companies looking to have a legal presence in the country. Foreign investors will need to have an investment plan of a minimum 10 billion rupiah (US\$750,000) and a minimum paid-up capital equivalent of 2.5 billion rupiah (US\$178,000).

Prior to setting up, applicants should study the Negative Investment List (NIL) to see which business sectors are unavailable or restricted for foreign ownership. For business sectors that are restricted, foreign investors will need to engage in a joint venture with a local company.

There are several advantages of PT PMAs, including:

- Special financial and non-financial incentives, particularly in pioneer industries;
- Incentives for setting up in special economic zones (SEZs);
- Foreign investors can own as little as one percent and as much as 100 percent of the company (depending on the industry);
- Able to participate in government sponsored business tenders in the country;
- Ease of processing for business licenses;
- Ease of processing for work permits;
- Lower tax and import duties;

- Simple organization structure (requiring only one director, one commissioner, and two shareholders); and
- Ability to sponsor foreign executives and employees.

There are no restrictions on where the PT PMA can set up in the country, but the business can only focus on one specific sector or area. Moreover, all applicants will need approval from the Indonesian Investment Coordinating Board (BKPM) and should submit an investment plan (this must show their intended investment realizations).

## Set up requirements

According to the Investment Coordinating Board Regulation No. 14 of 2015 (BKPM Reg 14/2015), investors looking to incorporate a PT PMA need to adhere to the following requirements:

- A total investment plan of a minimum of 10 billion rupiah (US\$750,000) (excluding land and properties);
- A minimum paid up capital of 2.5 billion rupiah (US\$187,500 or equivalent to 25 percent of the total investment);
- Appointment of two shareholders (these can be foreign individuals or corporations);
- There must be minimum equity of 10 million rupiah (US\$725) per share;
- The appointment of at least one commissioner and a director (these can be held be foreign individuals); and
- The director will be responsible for running the day to day activities of the company.

## Set up process

1. Reserve a company name through the AHU portal under the Ministry of Law and Human Rights (which should not be similar to the name of other companies or use vulgar language);
2. Establish a legal entity with the company's activities stated in the Deed of Establishment (this must be done with a local notary and the Deed of Establishment will have to be ratified by the Ministry of Law and Human Rights);
3. Obtain a Single Business Number (NIB) by applying through the Online Single Submission system (the NIB functions as the company's import identification number, customs ID, and registration certificate; the NIB will also automatically register your company under the government's health and social security scheme);
4. Obtain a taxpayer identification number from the local tax office and domicile letter from the district government; and
5. Some companies may need to apply for additional licenses based on the type of industry (such as in mining and fintech).

## Representative office

Opening an RO is the fastest and simplest way of establishing a legal entity in the country. This set up is a temporary arrangement – ROs are generally not allowed to engage in any commercial activities, issue invoices, sign contracts, or earn any revenue. Foreign investors, however, can own 100 percent of this business entity and don't have to contribute the same paid-up capital required by PT PMAs.

The business activities of ROs are limited to market research activities, obtaining information on potential clients, developing trade contacts, and gathering information on regulations and laws. There are four types of ROs, which we explore below.

### General representative office (KPPA)

A KPPA is a general RO structure, ideal for investors who are still exploring opportunities in Indonesia. The KPPA has two main responsibilities:

- Represent, supervise, and manage its parent company in Indonesia; and
- Prepare for the establishment of a limited liability company for the parent company.

The KPPA must be incorporated in the capital of any Indonesian province and must be located in an office building. The KPPA permit is valid for an initial three years and can be extended twice for one year each time.

### Representative office for a foreign trading company (KP3A)

A KP3A is similar to a KPPA but is more ideally suited for manufacturers or product owners looking to establish a network of distributors in the country. The KP3A is divided into the following categories:

- Can act as a buying/or selling agent for the parent company, performing liaising or promotional activities; or
- Act as a manufacturing agent with its activities also limited to market research and liaising.

Unlike a KPPA, the KP3A does not have to be established in the capital city of a province; they can set up in any district or regency in the country.

Foreign investors will also need to obtain a Foreign Company Trade Representative license (SIUP3A), which can be done through the OSS system of the BKPM. The KP3A permit is limited to two months (temporary license) to a maximum of one year (permanent license).

## Representative office for a foreign construction company (BUJKA)

A BUJKA is an RO for foreign construction companies, through a joint operation with a local construction company and unlike the KPPA and KP3A entities, a BUJKA can undertake projects in Indonesia through a joint venture with a local construction company. The BUJKA license is valid for three years and the local partner must be a limited liability company.

Applicants must prove to the National Construction Services Development Board (LPJK) that they are classified as a 'large' construction company, and they must have a service business license issued by the Department of Public Works.

## Representative office for a foreign oil and gas company (KPPA MIGAS)

Foreign oil companies can set up a representative office through a KPPA MIGAS permit. The license is valid for three years and applicants will need to seek prior approval from the BKPM.

## General set up requirements for ROs

Foreign investors looking to open an RO will need to fulfil the following requirements:

- Register through the OSS online portal;
- The parent company's Articles of Association legalized by a notary and the Indonesian Embassy of the parent company's country of origin;
- Letter of Appointment by the Indonesian Embassy located in the parent company's country of origin;
- Latest financial statements of the parent company;
- Letter of intent legalized by a notary and the Indonesian Embassy located in the parent company's country of origin;
- Certificates demonstrating competency in the relevant industry or sub-sector;
- Recommendation letter from the Ministry of Energy and Mineral Resources (for KPPA MIGAS applicants);
- Lease agreements;
- Must be located in the capital of a province (unless it is a KP3A applicant); and
- A letter that states the RO will not engage in any commercial activities in Indonesia. Unless they are BUJKA or KPPA MIGAS



## Laos

Limited liability companies and representative offices are the most efficient options available for foreign investors looking to establish a business entity in the country.

Laos is notorious for being one of the most difficult countries to do business although the government has pushed for regulatory reforms to ease doing business in the country. Several industries are closed to foreign investment, these include fisheries, construction, and the restaurant sectors.

### Corporation

This structure is the most used by foreign investors in Laos and requires a minimum of two shareholders and one director to operate. The liability of the shareholders is limited to the share capital that they invested.

The Ministry of Industry has abolished the minimum registered requirements for foreign investors; however, this may not cover industries that have specific regulations regarding the minimum capital requirements.

### Branch office

The scope of business of a foreign branch office in Laos is defined by the parent company, but they are limited to operating in specific sectors – insurance, foreign banks, airline companies, and financial institutions.

### Representative office

A representative office (RO) can be established in Laos for a minimum of one year and it can be extended twice, one year each time. The RO is prohibited from earning an income in Laos.

The ROs activities are limited to:

- Information gathering and market research;
- Monitor the implementation of contracts between the parent company; or
- Coordinate with the parent company to facilitate its business activities in the country.

### Incorporation

The Ministry of Industry made amendments to the business registration process in February 2018, which reduces the time to register a legal entity from an average of 174 days to 17 days.

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The process is as follows:

- Enterprise registration – the investors applies for an enterprise registration certificate (ERC) at the Ministry of Industry. The applicant will receive a tax identification number and will be registered for VAT simultaneously with the ERC. The process takes 10 working days.
- Company seal – the next step is to obtain the company seal, which can be obtained from the Ministry of Public Security. This process takes five working days.
- Social security – the investor applies for social security registration at the National Social Security Fund. This process takes two working days.

Investors should note that this process relates to registering the legal entity and does not include business operating license schemes.

## Documentation requirements

- Among the documents the company will need to register in Laos are:
- Articles of association;
- Bank statements demonstrating the financial viability of the investor;
- Lease agreement (the company will need to lease a premise before registering; and
- Business plan.



## Malaysia

Foreign investors looking to establish a business entity in Malaysia must register under either the Registration of Business Act 1956 (ROBA 1956), Companies Act 2016 (CA 2016), or the Limited Liability Partnerships Act 2012.

There are seven types of business entities in Malaysia:

- Limited liability partnerships;
- Partnerships;
- Sole proprietorship;
- Company limited by shares;
- Company limited by guarantee;
- Unlimited company; and
- Branch of a foreign company.

Foreign investors are only allowed to establish a company limited by shares (Sdn Bhd) or a branch office unless the persons has permanent residence status, in which case they are eligible to start a partnership or a sole proprietorship.

## Corporation

This type of business entity is more well known as Sendirian Berhad (private limited company) or Berhad (public limited company) and is the most common type of business entity in Malaysia.

A foreign investor can own the majority shares (100 percent) of a private limited company, depending on the industry the business is engaging in. The CA 2016 restricts the members of a private limited company to 50 and restricts the rights of members to transfer their shares. There is a flat fee of 1,000 ringgit (US\$235) to incorporate a company limited by shares.

### Requirements for incorporation

Foreign investors can register their business online through the MyCoID portal, which is managed by the Companies Commission of Malaysia (SSM). Firstly, the applicant needs to conduct a name search on the portal to check the availability of their proposed company name.

The company requires a minimum of one shareholder, which can be a foreigner depending on the industry, in which case a local shareholder is also required. There is also a requirement to appoint a director who needs to be a minimum of 18 years of age and resides in Malaysia. If the director does not reside in Malaysia, then a local director will satisfy this legal requirement.

## Branch office

Establishing a branch office is ideal for foreign companies operating in Malaysia on a short-term basis.

The business activities of the branch office must be the same as that of its parent company and must have at least one person residing in Malaysia to act as an authorized agent to set up the company. The branch office is forbidden to carry out wholesale and retail trade businesses in the country as foreigners must establish a company limited by shares to undertake these types of businesses. The agent will be personally liable for any penalties imposed on the branch office.

The parent company must pay a registration fee to establish a branch office, which is dependent on its share capital.

### Registration Fees

In the event the branch office does not prescribe a any share capital, then a flat rate of 70,000 ringgit (US\$6,500) will be imposed.

The branch office is also taxed as a non-resident and so a 25 percent tax on profits attributed to the branch is applicable. Further, a withholding tax of 10+3 percent is applicable on payments made to the branch office for businesses conducted in Malaysia.

Share capital	Fees
Not more than 1 million ringgit (US\$235,000)	5,000 ringgit (US\$1,100)
1 million – 10 million ringgit (US\$235,000 – US\$2.35 million)	20,000 ringgit (US\$4,700)
10 million – 50 million ringgit (US\$2.35 million – US\$11.7 million)	40,000 ringgit (US\$9,400)
50 million – 100 million ringgit (US\$11.7 million – US\$23.5 million)	60,000 ringgit (US\$14,100)
100 million and above (more than US\$23.5 million)	70,000 ringgit (US\$16,500)

## Representative office

A foreign company can establish a representative office (RO) in Malaysia for a minimum of three years and is only a representative of the parent company. The RO is not a permanent business entity and is thus not governed by the regulations under CA 2016 and is not permitted to earn any revenue in the country. Instead, the RO is permitted to conduct market research, collect information on relevant investment opportunities, or promote the export and import of goods and services.



## Myanmar

Prior to establishing a business entity in Myanmar, investors are advised to research the Myanmar Companies Law (MCL) 2017, which regulates the country's corporate framework.

## Limited liability entity

Under the MCL, it is possible to set up a wholly foreign-owned company, in the form of a limited liability entity. Businesses in which foreign ownership does not exceed 35 percent is considered a local company and are thus permitted to engage in sectors that are closed to foreign investors.

A private company only requires one shareholder to be incorporated in addition to one director, whether a Myanmar or foreign citizen (they need to be a resident in the country).

There is no minimum capital requirement unless the company engages in the services or manufacturing industries in which case the company needs to invest US\$50,000 and US\$150,000 respectively.

## Joint venture with a local partner

Under this structure, the company requires two shareholders (one foreign and one local) and US\$50,000 in capital requirement. Additionally, the foreign investors can own up to 80 percent of the shares within this business entity.

## Branch office

The MCL allows for the establishment of a foreign branch office but the parent company will be liable for its activities. The branch office needs one shareholder to operate in addition to an authorized company representative in the country, who can also be a foreigner.

The parent company will need to also inject US\$50,000 as a minimum capital requirement and the branch will be subject to a 35 percent corporate income tax rate as opposed to the 25 percent rate applicable to companies incorporated in Myanmar.

## Representative office

The representative office (RO) can be foreign owned, requiring only one shareholder and one company representative in the country.

The RO cannot operate any commercial activities and can only engage in market research or liaison activities on behalf of the parent company.

There is, however, a minimum US\$50,000 of capital requirement.

## Incorporation process

The first step to incorporation is checking the availability of a company name on the website of the Directorate of Investment and Company Administration (DICA) website. During this process, the company should submit the details of its directors.

Once a name is approved, the applicant can obtain the company registration forms at DICA and pay stamp duty at the One Stop Service (OSS). After the registration forms are completed and signed, and all government fees are paid, the applicant will receive the company incorporation certificate from DICA.

The government fees total approximately US\$122 and the whole process could take three to six months to complete.



## Philippines

There are a range of entry modes to choose from when investing in the Philippines. Each one is governed by different rules and, as such, each is suitable for different functions and business models.



There are three main methods of entries, these are:

- Corporations;
- Branch office; and
- Representative office (RO).

## Corporation

One option to enter the Philippines is establishing as a corporation. This means registering a new legal entity with the Securities and Exchange Commission (SEC).

The structure of a corporation is such that the individual assets of the owners are legally separate from those of the company. Corporations come in two forms:

- Filipino corporation – minimum of 60 percent Filipino equity ownership; or
- Foreign-owned domestic corporation – greater than 40 percent foreign equity ownership.

Most sectors are open to foreign ownership although foreign investors are advised to check the country's Negative Investment List.

Foreign-owned domestic corporations serving the Filipino market require a minimum of five shareholders and at least US\$200,000 of paid-in capital. The paid-in capital can be reduced to US\$100,000 if the corporation is involved in advanced technology or employs 15 local employees.

Foreign-owned domestic corporations face the same tax conditions as local corporations – 30 percent corporate income tax and 12 percent VAT on local sales. Foreign corporations can register for numerous tax incentives with the Philippine Economic Zone Authority.

If the corporation is an 'export market enterprise'– defined as exporting at least 60 percent of its goods or services – the required capital is reduced significantly to PHP5,000 (US\$100).

## Set up requirements

The applicant will need to adhere to the following steps in their registration process:

- Submit the company name;
- Submit the company's articles of association;
- Submit bank certificate showing paid-up capital;
- Registration with the Bureau of Internal Revenue;
- Procurement of business permits and licenses; and
- Registration with employee-related government agencies.

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As part of the corporate structure, corporations require:

- President – acts as a signatory of the company and they must also be a director and shareholder of the company;
- Corporate secretary – has to be a Filipino citizen and is responsible for administrative tasks such as preserving records and taking minutes of meetings; and
- Treasurer – responsible for the company's financial matters, such as financial statements and annual reports.

## Branch office

A branch office is a profit-oriented subsidiary of a foreign enterprise that engages in the activities of its parent company in the Philippines. This is the typical structure for business process outsourcing, such as call centers or back offices for multinational firms.

Similar to corporations, the capital requirements are US\$200,000 for domestic market serving enterprises and PHP5,000 (US\$100) for export-oriented companies. The taxation of branch offices is also similar, with 30 percent corporate income tax and 12 percent VAT on local sales. Branch offices also have to pay a 15 percent profit remittance tax on repatriation of profits to the parent company.

To establish the branch office, the applicant will first need to complete the application form to the SEC, signed by any member of the board of directors. The next step is to pay the SEC registration and deposit the US\$200,000 to a Treasurer-in-Trust account, which has been opened on behalf of the branch office.

The final steps will be to authenticate the company's latest financial statements.

## Representative office

An RO differs from a branch office in that it is not legally allowed to derive income.

The minimum paid-in capital for a representative office is a US\$30,000 remittance from the parent company, which must be used for operational expenses.

### Set up requirements

To open an RO, the parent company will need to submit the following documents to the SEC:

- The parent company's financial statements;
- Details of the person managing the RO office; and
- The parent company's article of associations.



## Singapore

Foreign investors can set up a variety of business structures in Singapore for their investments. Establishing a subsidiary, branch office, or representative office are some of the most popular options.

Investors need to assess their specific business needs before deciding on a corporate structure to operate from. Those entering Asia for the first time, for instance, may want to set up a low-risk, exploratory presence in the form of a representative office, while those looking to use Singapore as a springboard to access the ASEAN markets may need to be more strategic by setting up a branch office or subsidiary company.

### Private company limited by shares

A private company limited by shares, also known as a private limited company, is by far the preferred structure among small and medium-sized (SME) foreign companies for setting up a local business presence in Singapore.

A private limited company is a separate legal entity from its directors, shareholders, and officers of the company; this means that the foreign holding company cannot be held for the liabilities of its subsidiary. In addition, the holding company's liability is limited to the share capital subscribed in its subsidiary. A private limited company can benefit from tax incentives available to local companies.

As a private limited company can be wholly owned by a foreign individual and/or corporate investor, this legal entity can be established as a regional holding company or subsidiary of the foreign holding company. Having a Singapore incorporated company increases the advantage of gaining access to the wider Asian market and ASEAN Free Trade Zones, as well as FTAs through ASEAN, which include ASEAN-Hong Kong, ASEAN-India, and ASEAN-China.

This is particularly helpful for companies looking to set up larger manufacturing operations elsewhere in ASEAN.

### Key set up requirements

#### 1. Reservation of company name

- The company name must be approved by the Accounting and Corporate Regulatory Authority (ACRA) prior to the company registration process;
- Once a name is selected, the name application shall be submitted via ACRA Bizfile for approval, which may be rejected if the name is identical, similar, or phonetically similar to a company that has already been registered; and
- The name application costs S\$15 (US\$10), which will be reserved for 120 days upon approval.

## 2. Appointment of company officers

The officers of a company include the following:

- Director;
  - » The appointment of at least one director who is either a Singaporean citizen, permanent resident, EntrePass, or Employment Pass holder; and
  - » The director needs to be at least 18-years of age and must not have a history of misconduct or bankruptcy in their work history.
- Auditor (to be appointed within three months of incorporation unless exempted from audit requirements);
- Company secretary (to be appointed within six months of incorporation); and
- Shareholders, (the minimum issued, and paid-up capital is S\$ 1).

## 3. Registered address

- This must be a commercial business address in Singapore.

# Branch office

Foreign companies can establish branch offices to conduct any type of business activity that falls within the scope of the parent company.

Branch offices are not eligible for the tax exemptions and incentives available to local companies as ultimate control of the branch remains vested in the overseas parent company. As such, branch offices are regarded as an extension of the foreign holding company and is therefore taxed as a non-tax resident at the corporate tax rate of 17 percent.

The name of the branch office must be the same as the parent company which also must bear ultimate legal responsibility for all liabilities and be registered with the ACRA. Because of this liability, many foreign companies choose to establish a subsidiary or private limited company rather than branch offices.

## Key set up requirements

### 1. Reservation of name of branch office

- The name of the branch office must be the same as the foreign parent company;
- The name of the branch office must be approved by the ACRA prior to the branch office registration process;
- Once a name is selected, the name application shall be submitted via ACRA Bizfile for approval, which may be rejected if the name is identical, similar, or phonetically similar to a company that has already been registered; and
- The name application costs S\$15 (US\$10), which will be reserved for 120 days upon approval.

### 2. Appointment of company officers

The officers of a company include the following:

- Director

- » The board of directors of the Singapore branch office must be the same as the board of directors on the foreign parent company; and
  - » The director needs to be at least 18-years of age and must not have a history of misconduct or bankruptcy in their work history.
  - **Authorized representative**
    - » The branch office must have at least one authorized representative who is ordinarily resident in Singapore.
3. **Registered address**
- This must be a commercial business address in Singapore.

Investors looking to set up branch offices must ensure its activities do not go outside the scope of the parent company.

The parent company will bear all the liabilities of its branch office as it is viewed as a legal extension of the parent company. This means they are also subject to Singaporean taxes and are not eligible for local tax incentives and exemptions.

## Representative office

A representative office (RO) is a short-term, temporary arrangement with a limited purpose; however, it must be established for a maximum of three years, the status of which is subject to evaluation by Enterprise Singapore, the government agency under the Ministry of Trade and Industry, before the RO can be further renewed on an annual basis. This set up is an ideal choice for foreign investors who are still researching their investment options before setting up a fully-fledged office in Singapore.

The RO is confined to activities set out by Enterprise Singapore, which include:

- Gathering of information on markets and potential clients;
- Carrying out research to ascertain product/service information;
- Developing trade contacts and manage product enquiries;
- Participating in trade shows and exhibitions; and
- Gathering information on regulatory requirements for the set-up of a permanent entity.

## Key requirements for setting up

An RO is a temporary administrative office set up to coordinate non-commercial activities of the foreign company.

They are normally established to explore potential opportunities in Singapore and in ASEAN and can operate for a maximum of three years from inception.

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As a temporary administrative office, the RO cannot engage in profit-yielding business activities and can only participate in information gathering or market research-based activities.

Investors wishing to establish a RO in Singapore must ensure:

- The parent company has been established for more than three years;
- The parent company has incurred an annual sales turnover of more than US\$250,000;
- The foreign chief representative is from its headquarters; alternatively, the RO may appoint a Singapore citizen to fulfil the role of the chief representative; and
- The RO does not hire more than five local employees as support staff.

## How do I establish a business in Singapore?

Incorporating a company in Singapore is a cost-effective and efficient process, allowing investors to concentrate on pursuing their business opportunities across the region.

Investors can process their applications within the same business day for a relatively low cost. The transparent nature of the country's business and legal system means any information a business requires is readily available online.

Investors looking to establish a presence in Singapore may use the services of registered local advisors who can ensure your application is accurate and complete.

### Apply for an entrepreneur pass or employment pass

Foreign investors who fulfil the criteria as an entrepreneur, innovator or investor may apply for an EntrePass in Singapore prior to the registration of a private limited company. If the company has already been registered, the EntrePass application must be submitted within six months from the date of incorporation.

Alternatively, foreign investors, directors and/or employees may apply for an Employment Pass if the eligibility criteria are met. The Employment Pass may be applied after the private limited company, branch office, or representative office has been established. Foreign directors residing in Singapore with an Employment Pass may fulfil the role of a local director of a private limited company.

### Apply for SingPass

Once the EntrePass and/or Employment Pass has been approved, foreign individuals are eligible to apply for a Singapore personal access password (SingPass). This will enable foreign investors to access and perform online transactions with e-government services.



## Thailand

The government recognizes two types of limited companies – private limited companies and public limited companies. The first is governed by the Civil and Commercial Code (CCC) and the latter is governed by the Public Limited Company Act.

In Thailand, a company is considered to be foreign-owned if more than half of its shares are owned by non-Thai individuals. Investors should then refer to the Foreign Business Act (FBA), the main law which dictates the sectors that ‘foreign’ companies are allowed or forbidden to engage with.

The FBA governs private limited companies, and as such, foreign investors can only own 49 percent of the company.

### Private limited company

Establishing a private limited company is the preferred structure for foreign investors looking to have a legal presence in the country.

For foreign investors to achieve 100 percent ownership, they need to obtain:

- A Foreign Business License;
- Obtain promotion from the Board of Investment (BOI); or
- Register through the Treaty of Amity (for US citizens only).

### Set up requirements

All limited companies are required to have shareholders, directors, and promoters. Company promoters are responsible for registering the company with the Ministry of Commerce (MOC) and are the ones that sign documentation during the registration process.

There must also be a minimum of three promoters for a private limited company, and 15 for public companies. Each promoter must be among the company's initial shareholder upon registration.

The process for company registration can be completed within one business day. Initially, a promoter will need to register a company name with the Department of Business Development (DBD). The name should not be identical or resemble the name of a pre-existing company.

The promoter should provide the company name with two alternative names, and once approved, the name is reserved for 30 days.

## Registering the Memorandum of Association

After registering a name, the company will need to submit its Memorandum of Association (MOA) to the DBD. The MOA must contain:

- Name of the proposed company;
- Address;
- The company's proposed objectives;
- The declaration that the liability of the shareholders will be limited; and
- The number of shares prescribed by each promoter.

## Convening a statutory meeting

The statutory meeting is called to do the following:

- Adopt the Articles of Association of the company;
- Appointment of directors and auditors;
- Ratification of the business activities; and
- Establishment of shares.

## Company registration

Within three months of the statutory meeting, the directors must submit the application to the MOC. The company registration fee is 5,500 baht (US\$161) per million baht of registered capital, up to 250,000 baht (US\$8,000).


## Tax registration

Once the company is registered, it must register for a corporate tax ID card from the Revenue Department within 60 days of incorporation. Businesses that have annual turnover of 1.8 million baht (US\$58,000) must register for VAT within 30 days after reaching the 1.8 million baht ceiling.

## Representative office

Before launching a registered company in Thailand, a foreign company may test the size of the Thai market by establishing a limited presence in the country through a representative office (RO).

The function of an RO is limited to rendering non-revenue-raising services on behalf of its head office. A representative office cannot generate income from its business activities and is not permitted to receive any purchase order, or sign sale and purchase agreement, or negotiate business with any person. It can only engage in a limited range of activities, such



as sourcing of local goods or services in Thailand, reporting local business development and activities to its head office, and engaging with clients on behalf of its head office.

To establish an RO, investors will need to:

- Register with the Ministry of Commerce (Department of Business Development), and obtain a 13-digit registration number;
- Obtain a corporate tax ID number, even though the RO is not subject to taxation in Thailand;
- Remit a minimum of 3 million baht (US\$95,000) from the RO's head office into Thailand to cover future expenses;
- Obtain a work permit for any foreign employee; and
- Have at least one representative present to handle the day-to-day management of the RO (must be a Thai citizen).

## Branch office

A foreign company may use a branch office (BO) to establish its presence in Thailand. Legally, a BO holds the same position as its head office and is considered as having a foreign status.

As a result, its business activities are restricted and subject to conditions and requirements under the FBA. Further, the head office and other branches are jointly held responsible for all liabilities of the BO.


Further, unlike an RO, a BO entity can earn an income in Thailand. Due to this, a BO needs to apply for a business license and apply for a tax number.

The BO will also need to remit a minimum of 3 million baht (US\$95,000) and obtain a VAT registration number. Any income earned from the branch activities will be subject to Thai corporate income tax laws.

## Civil and commercial code amendments to ease doing business

In June 2020, Thailand's government approved new amendments to the Civil and Commercial Code (CCC) to simplify the process of setting up and conducting business in the country. It is anticipated that the proposed amendments will become law towards the end of 2020 or the beginning of 2021.

The changes to the CCC relate to simplifying the company formation process, new merger provisions, and a set timeline for the payment of dividends, among other amendments.



The amended CCC is part of the government's efforts of ongoing regulatory reforms that provide additional clarity to doing business in the country.

## Streamlining the company formation process

Previously, a minimum of three Thai citizens was required to form a company and they could become the initial shareholders of the business.

With the amendments to the CCC, this has been reduced to just two, which is a positive move for foreign investors, many of whom find it difficult to find suitable promoters.

### **Court order dissolution**

The CCC provides that a company can be dissolved by court order if the number of shareholders is less than three. This has been changed to reflect the aforementioned amendments on the number of promoters needed to establish a company in Thailand.

## Merger provisions

Before the amendments, the CCC only recognized the concept of amalgamation of companies as opposed to mergers.

Under this concept, two or more companies are combined, along with their assets and liabilities, to form a newly formed business entity. Through a merger process, however, two companies are merged into a single entity (A+B), with the remaining company (A or B) being liquidated.

The amended CCC will now recognize the concept of a merger, giving companies the choice of either an amalgamation or a merger.

### **Business registration**

Company registration for private businesses can now be done at any approved Department of Business Development office, regardless of the location. The Ministry of Commerce is set to also waive registration fees for incorporation.

## Dividend payments

The proposed amendments will formally enshrine the National Council for Peace and Order (NCPO) No. 21/2017 that mandates the payment of dividends within one month from approval of the company's shareholders.

The amended CCC also recognizes the NCPO's permission for companies to add

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procedures in their articles of associations in relation to dealing with disputes between the management team (shareholders and directors).

## E-meeting provisions

The CCC will now allow e-meetings of shareholders and directors. E-meetings were first formalized by Royal Decree in April 2020, at the height of the COVID-19 spread in Thailand. A minimum of two shareholders must attend a shareholders' meeting in order to constitute a quorum.

## Why foreign investors should seek BOI promotion

Foreign investors can have 100 percent ownership of a Thai company if the businesses are promoted by the BOI.

In order to be promoted by the BOI, the business must engage in one of the following industries:

- Agriculture and agricultural products;
- Chemicals, paper, and plastics;
- Services and public utilities;
- Light;
- Technology and development;
- Electronics;
- Metal products, machinery and transport equipment; and
- Mining, ceramics and basic metals.

Companies that are promoted by the BOI are eligible for a variety of fiscal and non-fiscal incentives. These include exemptions and reductions of taxes, reduction in the import duties of machinery, permission to bring skilled foreign workers, and the ability to remit money abroad in foreign currency, among others.

Additionally, businesses are allowed to own land for industrial projects.

## Vietnam

Due to the dynamism of Vietnam's economy in recent years, the country has become an appealing destination for foreign investors. Investors have a number of options for entry into the Vietnamese market.

## Wholly foreign-owned enterprise

A wholly foreign-owned enterprises (WFOE) in Vietnam can operate under the following structure:

- Joint stock companies; and
- Limited liability companies.

Limited liability companies (LLC) are the most common form of investment for foreign investors due to their reduced liability and capital requirements. LLCs can be broken down into single member LLCs, where there will only be one owner, and multiple member LLCs, where there will be more than one stakeholder. These owners can be private individuals or companies, depending on the requirements of a given investor. The setup time for a WFOE ranges between two to four months on average.

### Set up requirements

While Vietnam is a highly attractive investment destination for foreign investors, it still has a complex legal process for establishing a company.

The first step in the Vietnamese corporate establishment process is an application for an Investment Registration Certificate (IRC). This is required of all WFOE investment projects and establishes the right of the foreign enterprise to invest within Vietnam.

To apply, an investor must meet the following requirements:


- Application for implementation of investment project (this should include details of the project in Vietnam);
- Proposal of investment project (should include the details of the investment project, including lease agreements or land use needs); and
- Financial statements (to be provided for the last two years of a company's operation; additional information may be required to prove financial capacity).

The next step is applying for the enterprise registration certificate (ERC).

The ERC is required for all projects that seek to set up new entities within Vietnam. When obtained, the ERC will be accompanied by a number that will double as the tax registration number of the entity. As part of the application process, the following information should be prepared:

Application for enterprise registration;

- Company charter;
- List of all board members; and
- List of legal representatives.



Once the IRC and ERC have been issued, additional steps have to be taken to complete the procedure and start business operations. This includes:

- Seal carving;
- Bank account opening;
- Labor registration; and
- Business license tax payment.

## Representative office

A representative office (RO) offers a low-cost entry for companies seeking to gain a better understanding of the Vietnamese market. As such, this option is among the most common for first-time entrants to the Vietnamese market and often precedes a larger presence within the country.

### What are ROs permitted to do?

ROs are permitted to engage in the following activities:

- Conducting market research;
- Acting as a liaison office for its parent company;
- Promoting the activities of its head office through meetings, and other activities, that leads to a business at later stages.

Representatives offices are dependent on their parent company and are not allowed to generate their profits or enter directly into contracts. They are also not allowed to issue invoices.

### Set up requirements

Pre-licensing checklist for setting up an RO:

1. File an application for setting up an RO with company chop or seal;
2. Appointment letter of Chief of RO with identification documents and company seal;
3. Power of attorney in favor of consultant to submit the application dossier;
4. Certificate of Incorporation for the Company and/or Business Registration Certificate of the Company;
5. Audited financial report of the company for the latest fiscal year;
6. Memorandum of Understanding (MoU) of leasing office or leasing contract; and
7. Documents providing legal rights of landlord regarding the right of the leasing office.

For steps 1 to 6, the foreign entity would require one notarized and consularized copy of each document and a translated copy in Vietnamese by a Vietnamese competent authority. A signed leasing contract is also required before registering an RO in Vietnam.



Post-licensing checklist for setting up an RO:

8. Make a seal for the RO;
  - License on the establishment of RO; and
  - Passport of Chief of RO if a foreigner or passport/ID card if Chief is Vietnamese.
9. Register a tax code for the RO;
  - Declaration to register a tax code;
  - Power of attorney;
  - Certificate of seal registration; and
  - Certificate of RO in Vietnam.
10. Open a bank account of RO;
  - License on the establishment of RO;
  - Certificate of seal registration;
  - Certificate of tax code registration; and
  - Letter of authorization appointing the authorized signatories of the bank accounts.
11. Announcement of the establishment of RO of Company.

For steps 8 to 10, notarized and translated documents will be required to complete the process.

## How long does it take to set up an RO?

ROs can be set up in between six to eight weeks. We recommend hiring a professional service advisor to deal with the myriad of laws and procedures.

Given the absence of in-country revenue and associated licensing requirements, the setup process for this option does not entail as many bureaucratic procedures as others.

An RO license is valid for five years but can be extended for another five years.

## What comes next?

Hiring, tax, and reporting.

There is no cap on the number of local and expatriate employees that a representative office can hire as long as their employment is properly documented.

All expatriate hires, including the chief representative, are required to have a work permit. ROs can hire staff directly or use the assistance of recruiting agencies.

An RO is not subject to Vietnamese corporate income tax (CIT). However, it is responsible for declaring its employees' personal income tax (PIT).

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To determine payable tax, ROs have to undertake a tax audit, which checks all revenues and expenses during the tax term to establish grounds for declaring and paying tax.

The RO also has to send reports of its activities of the previous year to the Department of Industry and Trade before January 30 of each year.

## Branch office

A branch office (BO) can conduct business activities in Vietnam with the parent company's business scope. To set up a BO, a parent company must have conducted business in its home country for at least five years. BOs are limited to certain types of service businesses, such as finance and banking. BOs can hire staff directly, make it easier to do contracts between parent company and Vietnamese companies, and serve in similar ways to a liaison office. BOs are permitted to engage in the following activities:

- Rent offices;
- Lease or purchase the equipment and facilities required for operations;
- Recruit local and foreign employees;
- Remit profits abroad;
- Purchase and sell goods and commercial activities per licensing; and
- Set up accounting, marketing, and HR departments to represent the parent company.

The BO will need to obtain an establishment license and have a seal with the name of the parent company. The BO will also need to appoint a branch manager who is a Vietnam resident. Foreign companies may appoint a manager from their countries of origin; however, this employee must get a Vietnam work permit to be hired as a BO manager. The Department of Industry and Trade approves the registration of the BO after the company submits all the documents, with the process taking 20 working days.

## Public private partnership

A public private partnership (PPP) entails a partnership between a foreign or domestic enterprise and the government for the completion of key infrastructure projects. Vietnamese authorities are aggressively pursuing PPPs for a variety of infrastructure projects as a means of filling gaps left by the reduced role of state-owned enterprise, rising population, and increasing urbanization. The five types of PPPs are: Build-Transfer-Operate (BTO), Build Transfer (BT), Build- Operate-Transfer (BOT), Build-Own-Operate (BOO), and Build, Transfer and Lease (BTL).

# ASEAN's Free Trade Agreements

ASEAN has ratified several free trade agreements (FTAs). ASEAN has entered into a number of free trade agreements with other Asian nations that are now radically altering the global sourcing and manufacturing landscape. It has a treaty with China, for example, that has effectively done away with reduced tariffs on nearly 8,000 product categories, or 90 percent of imported goods, to zero.

We identify the region's FTAs below.

## ASEAN Free Trade Area

The ASEAN Free Trade Area (AFTA) was signed in 1992 with the aim to be a catalyst to help ASEAN become a production base for global markets. Under the agreement, goods originating in ASEAN are applied a 0-5 percent tariff rate.

## ASEAN-Australia and New Zealand FTA

The ASEAN-Australia and New Zealand Free Trade Area (AANZFTA) came into force in January 2010. Through the AANZFTA, 90 percent of tariffs were eliminated and barriers to trade in services have been progressively liberalized following increased market access.

## ASEAN-People's Republic of China FTA

This agreement was signed in 2002 and by 2004, Indonesian exports were open to the Chinese market. Some 90 percent of tariffs on imported goods have been reduced or eliminated.

## ASEAN-Hong Kong, China FTA (AHKFTA)

This trade agreement came into force in June 2019. Indonesia will eliminate duties for 75 percent of its products within 10 years and another 10 percent of its tariff lines within 14 years.

## ASEAN-India FTA

The ASEAN-India Free Trade Area (AIFTA) was signed in 2009, resulting in one of the world's largest FTAs. The agreement has seen tariffs eliminated for 90 percent of products traded between the two regions, which includes for products such as palm oil, pepper, tea, and coffee.

## ASEAN-Japan Comprehensive Economic Partnership

The ASEAN-Japan Comprehensive Economic Partnership (AJCEP) was enforced in 2008. AJCEP liberalizes trade in goods between Japan and the bloc, particularly in areas such as intellectual property, agriculture, fisheries, and forestry.

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## ASEAN-Republic of Korea Comprehensive Economic Cooperation Agreement

The ASEAN-Republic of Korea Free Trade Agreement (AKFTA) was signed in 2005 and has eliminated more than 90 percent of tariffs between ASEAN and the Republic of Korea.

Additionally, the agreement has also liberalized the investment process and there has been enhanced cooperation in trade services.





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The Association of Southeast Asian Nations (ASEAN) represents a highly integrated economic region when compared to other parts of the world. Yet, in terms of taxation, there is a wide variation among its 10 member states.

ASEAN tax coordination is limited to the elimination of certain withholding taxes and the completion of the network of double tax treaties among all ASEAN countries. Companies that are looking to enter emerging markets in ASEAN must take note of the various taxes they may be subject to, and their variation across the region.

## Country-wise tax structure



### Brunei

A company is considered a resident if it is managed and controlled in Brunei, whereas a person who is physically present in the Sultanate for 183 days or more during the year is also considered a resident.

## Tax structure

Businesses in Brunei will be impacted by the following taxes:

- Corporate income tax;
- Value-added tax;
- Withholding tax; and
- Petroleum tax.

### Corporate income tax

A company is subject to tax on income derived from Brunei.

The corporate income tax (CIT) rate is 18.5 percent and is charged on the following threshold:

- 25 percent of the first BND 100,000 (US\$73,540) is charged at the 18.5 percent rate;
- 50 percent of the first BND 150,000 (US\$110,300) is charged at the 18.5 percent rate; and
- 100 percent for the amount above BND 250,000 (US\$183,000) is charged at the 18.5 percent rate.

### Value-added tax

There is no value-added tax (VAT) or sales tax in Brunei

## Withholding tax

For resident companies in Brunei, there is no withholding tax on dividends, interest, royalties, and fees for technical services. Non-resident companies, however, will have to pay rates between 2.5 to 10 percent.

Withholding Tax Rates for Resident and Non-Resident Companies in Brunei		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	0
Interest	0	2.5
Royalties	0	10
Fees for technical services	0	10

## Personal income tax

There is no personal income tax in Brunei, however, employers are required to contribute five percent of the wages of local employees to the Employees Trust Fund.

## Petroleum tax

Under the Income Tax (Petroleum) Act of 1963, oil and gas companies operating in the country are subject to a special 55 percent income tax rate.

## Brunei's DTA network

There is no withholding tax on dividends for resident and non-resident companies as well as no withholding tax on interest and royalties for resident companies. There is a withholding tax rate of 2.5 percent, 10 percent, and 10 percent for payment paid on interest, royalties, and fees for technical services for non-resident companies.

Countries with Signed DTAs with Brunei				
A-B	C-J	K-O	P-S	T-Z
Bahrain	Cambodia	Korea (South)	Pakistan	United Arab Emirates
	China	Kuwait	Singapore	United Kingdom
	Hong Kong	Laos		Vietnam
	Indonesia	Luxembourg		
	Japan	Malaysia		
		Oman		



## Cambodia

The Law of Taxation is the principle taxation law in Cambodia and taxpayers must submit and pay their taxes to the General Department of Taxation (GDT) on an annual and monthly basis.

### Tax structure

Most businesses will be affected by the following taxes:

- Corporate income tax;
- Minimum tax;
- Value-added tax;
- Withholding tax; and
- Personal income tax.

### Corporate income tax

The standard corporate income tax (CIT) rate in Cambodia is 20 percent, which is implemented through a self-assessment regime.

There are three classes of taxpayers:

- Small taxpayers – businesses with revenues of over 250 million riel (US\$61,000) per annum;
- Medium taxpayers – businesses with revenues between 700 million riel (US\$170,900) and 4 billion riel (US\$976,000); and
- Large taxpayers – businesses with revenues of more than 4 billion riel (US\$976,000).

Business entities engaged in oil and natural gas production and the exploitation of natural resources will be subject to a 30 percent CIT rate. Entities engaging in Qualified Investment Projects (QIP) will generally pay a zero percent rate.

## Minimum tax

The minimum tax is imposed on taxpayers who maintain improper accounting records. The minimum tax due is equal to one percent of total turnover, except value-added tax (VAT), and is irrespective of whether the taxpayer is in a profit or loss situation.

## Value-added tax

VAT is levied on goods and services as well as the sales of fixed assets. The standard rate is 10 percent although some businesses are eligible for zero percent VAT if they engage in activities that support exporters. These include garment, textile, and footwear industries.

## Withholding tax

Withholding tax applies to both residents and non-resident companies in Cambodia. There is no withholding tax on dividends paid to resident companies, whereas non-residents will pay a 14 percent rate. The tax rate on interest, royalties, and fees for technical services is 15 percent for resident companies and 14 percent for non-resident companies.

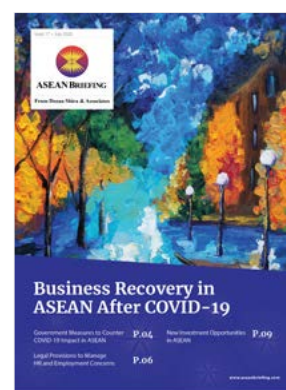
Withholding Tax Rates for Resident and Non-Resident Companies in Cambodia		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	14 + Advance tax on dividend distributions (ATDD)
Interest	15	14
Royalties	15	14
Fees for technical services	15	14

## Personal income tax

Cambodia does not impose personal income tax per se, instead, there is a tax on monthly salaries imposed on individuals who derive income from the country. The term salary also includes, in addition to wages, remunerations, bonuses, and other fringe benefits.



### RELATED READING



#### Business Recovery in ASEAN After COVID-19

ASEAN Briefing Magazine  
July, 2020

In this issue of the ASEAN Briefing magazine, we begin by introducing the different incentives and measures issued by ASEAN's largest economies from March to June 2020 to mitigate the economic impact of the virus. We then analyze the HR and employment issues faced by businesses during the pandemic. Finally, we focus on the investment opportunities in ASEAN in the post COVID-19 era.

AVAILABLE HERE

A resident employee is taxed on their worldwide sources of income whereas non-residents are taxed on Cambodia-sourced income.

An individual is considered a resident in Cambodia if they domicile in the country or are in Cambodia for than 182 days in any 12-month period.

Personal Income Tax Rates in Cambodia	
Income	Tax rate (%)
0-1,300,000 riel (US\$317)	0
1,300,001 riel (US\$317) – 2,000,000 riel (US\$489)	15
2,000,001 riel (US\$489) – 8,500,000 riel (US\$2,078)	10
8,500,001 riel (US\$2,078) – 12,500,000 riel (US\$3,056)	15
Above 12,500,000 riel (US\$3,056)	20

Non-residents are taxed at a flat rate of 20 percent.

## Cambodia's DTA network

There is no withholding tax on dividends for resident companies whereas there is a withholding tax rate of 15 percent on interest and royalties paid to resident companies.

Countries with Signed DTAs with Cambodia				
A-B	C-J	K-O	P-S	T-Z
Brunei	Hong Kong	Kazakhstan	Singapore	Thailand
				Vietnam

## Indonesia

Taxation in Indonesia was based on Law No. 6, 2009, before reforms led to amendments under Law No. 16, 2009, as the government continues to reform the tax system to further ease doing business.

In an effort to boost compliance and tax revenues, the government introduced the electronic digital transaction tax as well as preparing the landmark omnibus bill on taxation to simplify tax regulations and improve compliance.

## Tax structure

There are a variety of taxes in the country which include corporate income tax (CIT), personal income tax, value-added tax, and digital tax.

### Corporate taxation

Corporate income tax is set at a basic rate of 22 percent for the 2020-2021 fiscal year. The government has stated it will reduce CIT to 20 percent by 2022. Other applicable CIT rates are:

- Public companies that offer the minimum requirement of 40 percent of total share capital are subjected to a five percent tax cut from the standard rate, allowing them to pay 20 percent CIT;
- Companies that have an annual turnover of 50 billion rupiah (US\$3.5 million) are eligible for a 50 percent tax cut from the standard rate, which is imposed proportionally on the part of the gross turnover of 4.8 billion rupiah (US\$341,000); and
- Companies with gross turnover of no more than 4.8 billion rupiah (US\$341,000) are subject to 0.5 percent tax of total turnover.

### Value-added tax

Value-added tax (VAT) in Indonesia is imposed on the provision of services or the transfer of taxable goods. VAT rates are set out below:


- 10 percent imposed on most manufacturers, retailers, wholesalers, and importers;
- Export of tangible and intangible goods are subject to zero percent VAT; and
- Export of services is subject to zero percent VAT.

The government's negative list sets out all the goods and services that are non-taxable. These include among others – mining or drilling products, basic food commodities, medical health services, financial services, and educational services.

#### **Export services eligibility for zero-rated VAT**

On March 29, 2019, Indonesia's Ministry of Finance (MOF) issued regulation PMK-32 that expands the list of export services eligible for zero-rated VAT. PMK-32, which amends the previous PMK-70, 2011, aims to encourage greater development of the country's services sector and improve the competitiveness of domestic providers in the global market.

However, businesses that are eligible need to conduct some administrative work to obtain zero-rated VAT for their exported services.



Businesses that require guidance should seek to consult their advisors to understand whether their product is eligible and what they need to do to obtain the benefit. Meanwhile, service sector businesses that have not invested in the country should consider whether their products are eligible.

### **Requirements for zero-rated VAT**

Under PMK-32, export services are defined as services (production of goods, facilities, or rights) produced within Indonesian territory by a taxable business or entrepreneur for the benefit of recipients outside of Indonesia.

The following types of exported services subject to zero-rated VAT:

- Toll manufacturing;
- Repair and maintenance;
- Freight forwarding services for export-orientated goods;
- Construction consulting services (which includes the development of feasibility studies, assessments, and designing of a building or master plan that is located outside of Indonesia);
- Information and technology services;
- Research and development services;
- Charter of aircraft or ships for international flights or shipping services;
- Business consultation and management;
- Legal consultation;
- Architecture and interior design consulting;
- HR consulting;
- Marketing;
- Engineering;
- Accounting or bookkeeping;
- Taxation;
- Financial audits;
- Trading services to find Indonesian suppliers for export purposes; and
- Interconnection, satellite providers, and/or communication and data connectivity.

Export services eligible for zero-rated VAT must comply with two formal requirements. There must be a written agreement between the Indonesian taxable business and the foreign recipient that must include the type of service, the value of the exported services, and a description of the service provided by the Indonesian taxable business that will be utilized by the foreign recipient, and show supporting documents for payments from the recipient of the exported service to the Indonesian service provider.

Failure to meet the above requirements will mean the service is deemed to have occurred within the territory of Indonesia and will be subject to 10 percent VAT.

## Withholding tax

Withholding tax applies to both residents and non-resident companies in Cambodia. The tax rate on dividends is 15 percent for residents and 20 percent for non-residents (unless they have an applicable tax treaty). The withholding tax rate on interest and royalties are also set at 15 percent for residents and 20 percent for non-residents.

Withholding Tax Rates for Resident and Non-Resident Companies in Indonesia		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	15	20
Interest	15	20
Royalties	15	20

## Personal income tax

Expatriate workers need to know that personal income tax (PIT) in Indonesia is determined through a self-assessment scheme.


The country has adopted a worldwide income taxation system, meaning that individuals considered as Indonesia tax residents pay tax to the government on the income they earned in Indonesia, and also on income they earned from abroad, unless there is an applicable double tax agreement.

Non-resident taxpayers will only be liable to pay PIT for income they earn in Indonesia, unless the country in which they are a tax resident has an applicable tax treaty with Indonesia. In these cases, the taxpayer might not pay any tax in Indonesia or pay a reduced amount.

Given these tax treatments, it is important for expatriate workers to understand their tax liabilities in Indonesia. It is advisable to use the services of registered local tax advisors to help determine which tax law regime will be applicable along with any exemptions that may bring.

### Eligibility to pay income tax

Foreign workers that are designated as tax residents in Indonesia must pay PIT. The key criteria to determine whether or not an individual must be considered as an Indonesian tax resident isn't nationality, but rather length of stay (or intended stay).



A foreign individual is considered a tax resident of Indonesia when they meet the following conditions:

- In-country for more than 183 days during a 12-month period in Indonesia (anyone who has spent that length of time in the country, regardless of the type of visa they are using to visit the country, will be considered as a tax resident in Indonesia);
- Intends to reside in the country for more than 183 days even if they have spent less than 183 days in the country (for instance, in cases where the individual's dependents have moved to Indonesia and it was clear they are staying in the country for a reasonable length of time); and
- Individuals who work abroad for more than 183 days within a 12-month period but are still earning any form of income in Indonesia, must pay PIT on the Indonesian income.

Individuals that work overseas for more than 183 days within a 12-month period and do not earn any income in Indonesia are not eligible to pay Indonesian PIT.

Notably, an expatriate will be considered a tax resident in Indonesia until the date of their final departure from the country.

### **Exemptions criteria**

Certain foreign expatriates, because of their special legal status, are not considered as Indonesian tax residents and are exempted from paying PIT, even if they stay for more than 183 days per year or reside and intend to stay in Indonesia.

These exemptions apply for:

- Foreign diplomatic and consular personnel;
- Military personnel and civilian employees of foreign armed services; and
- Representatives of international organizations specified by the Minister of Finance.

### **Scope of taxable income**

According to the Personal Income Tax Law, income must be defined as any increase in economic capacity. It can consist of, among others, employment income and personal investment income.

According to Article 4 of Chapter 3 of the Law, income includes:

- Employment income;
- Income from the exercise of an independent profession or business;
- Passive income (dividends, royalties, interest, insurance gains);
- Capital gains (from the sale or transfer of property); and
- Rents and other income from the use of property.

## Personal income tax rates

When it comes to tax rates, residents and non-residents are taxed differently:

- Residents are subject to a withholding progressive tax (their net taxable income is set at graduated rates, with current rates ranging from five percent up to a maximum of 30 percent, depending on an individual's income); and
- Non-residents are subject to a final withholding flat tax of 20 percent on gross income.

The progressive tax rate is currently structured around four income bands, with rates that apply to the fractional income within each band.

Personal Income Tax Rates in Indonesia	
Annual income	Rate (%)
Up to 50 million rupiah (US\$3,501)	5
Between 50 - 250 million rupiah (US\$3,558 – US\$17,505)	15
Between 250 - 500 million rupiah (US\$17,788 – (US\$35,011)	25
500 million rupiah (US\$35,011) and above	30

## Deductions and relief

There are several elements that can be deducted from the gross income when determining the annual taxable income of an individual.

It is worth noting that a family is regarded as a single tax reporting unit with a single tax identity number (NPWP) in the name of the head of the family. The head of the family needs to report the income of their dependent spouse and children their tax return.

The following personal deductions are available for resident taxpayers.

Income Tax Deductions in Indonesia	
Basic of deduction	Deductible amount per year
Individual taxpayer	54 million rupiah (US\$3,781)
Spouse	Additional 4.5 million rupiah (US\$315)
Each dependent (max 3)	Additional 4.5 million rupiah (US\$315)

#### Employer compliance obligations

Income tax in Indonesia is mostly paid by withholding by the employer. The tax withheld by employers must be remitted to the government body on a monthly basis.

#### Employee compliance obligations

Expatriate employees are required to complete an annual tax return and compute their tax liability by March 31 of the following tax year.

The majority of PIT is paid through statutory employer withholdings on earned income. However, for any other income that a taxpayer in Indonesia earns on a regular basis, they must make monthly provisional tax payments to the tax department based on the income earned in the previous year.


#### Filing a tax return

In order to file a tax return, an individual must register as a taxpayer in order to obtain a tax identification number (NPWP). Expatriates must obtain a NPWP if they are a tax resident. While employers are responsible for deducting tax from their employees' salaries, it is the individual employee's responsibility to register as a taxpayer and file their tax returns.

### Tax deregistration when leaving Indonesia

It is highly recommended that expatriates leaving Indonesia permanently cancel their tax registration to avoid any misunderstandings, and thus avoid being continuously considered a tax resident of Indonesia.

To do so, expatriates should submit an application to the local tax office, which will then perform a tax audit on the taxpayer's returns and supporting documents prior to granting approval to deregister.



The individual should ensure that all tax related documents are readily available in anticipation of a tax audit (including bank statements, salary slips, foreign tax documentation if applicable, work contracts, etc.).

## Tax liability in the digital economy

In late November 2019, Indonesia introduced its long-awaited law on e-commerce through Government Regulation 80 of 2019 (GR 80, 2019). GR 80, 2019 was issued to improve the governance of internet-based and electronic trading activities in addition to ensuring tax compliance among e-commerce businesses.

The regulation, which will apply to domestic and international internet companies, defines the type of entities that can engage in e-commerce. Additionally, the regulation addresses the specific set up requirements businesses will need to comply with, as well as the framework for online contracts and transactions, and the provisions for consumer right protection. Businesses will have until November 2021 to adhere to the new provisions.

## Entities allowed to engage in e-commerce

GR 80, 2019 addresses the types of entities that are permitted to engage in e-commerce activities. These are:

- Business practitioners;
- Consumers;
- Non-business individuals; and
- Government agencies.

The term 'business practitioners' can be divided into the following categories:

- Merchants (sellers) – business entities or individuals who conduct trade through an 'electronic system,' which they own or manage directly or through a third party;
- E-commerce providers (PPSME) – any business entity, individual, or government agency that provide facilities or business models that enable e-commerce transactions.

These can include:

- » Online retail websites;
- » Online classified ads;
- » Price comparison websites; and
- » Daily deal websites.
- Intermediary service providers – business entities or individuals that provide search engine services, hosting services, or caching services.

### ***Set up requirements***

As per the new regulation, businesses and individuals (domestic or foreign) engaging in e-commerce activities must adhere to several new requirements. This includes obtaining:

- A business license – this is done through the government's Online Single Submission System (OSS);
- A tax identification number;
- A technical license; and
- A business identification number.

Another key provision of the set-up requirement is to prioritize the trade of domestic goods or services, improve their competitiveness, and facilitate a special section or area to promote such goods or services on online marketplaces.

Online marketplaces must also store their data (subscribers, payments, complaints, contracts, shipments etc.) in local data centers in addition to having domain names that 'reflect' Indonesia (that is, dot id). Online marketplaces are asked to retain financial data for up to 10 years and non-financial data for five years.

### **Foreign e-commerce entities**

Foreign e-commerce businesses or internet companies that have a significant economic presence in Indonesia will be classified as having a permanent establishment in the country, and as such, deemed as an Indonesian tax residence. These entities would need to satisfy the following criteria:

- Reach a certain number of transaction volumes;
- Achieve certain transaction values;
- Achieved a certain volume of packages shipped; and
- Achieve a certain volume of traffic accessing who accesses the businesses' platform.

Businesses that do fulfill the categories must also appoint a local representative in Indonesia and adhere to all applicable tax regulations.

### **E-commerce import tax**

From January 2020, the government has lowered the import tax threshold value on consumer goods sold via e-commerce platforms. Goods now worth at least US\$3 are liable for import tax; the threshold was previously at US\$75.

This new rule is aimed at controlling the number of cheap foreign products entering the country in addition to protecting domestic firms.

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Additionally, there are different tariff rates for imported textiles, shoes, and bags. Textiles will be subject to 15-20 percent in import duties, as are bags, while shoes will be subject to a 25-30 percent rate. This is also before applying the 10 percent VAT and 7.5 percent in income tax.

### **Tax on digital services**

Indonesia's Ministry of Finance issued Regulation No. 48/PMK.03/2020 (Reg 48/2020) in May 2020, which imposes a 10 percent value-added tax (VAT) on digital services on non-resident companies, starting July 1, 2020.

The tax will apply to companies that have 'significant economic presence' in Indonesia operating in sectors, such as big data, multimedia, and software.

#### ***Digital intangible goods and services subject to VAT***

The following digital intangible goods will now be subject to VAT:

- The use or the right to use copyrights material in the field of art, science, and literature, such as e-books, magazines, software;
- The right to use recorded images or sounds, which are distributed via fiber optics, satellite, or cable, among others;
- Image recordings or sound recordings used in television broadcasts, radio broadcasts, which are distributed via fiber optics, satellite, or cable, among others; and
- Motion-picture films or videotapes used as television broadcasts.

#### ***Collection of tax***

Digital products and services providers are obligated to charge VAT if:

- They are international merchants who sell digital products to Indonesian customers;
- They are international online marketplaces who sell digital products to Indonesian consumers; or
- Indonesian operators of online marketplaces that sell foreign digital products to local consumers.

International digital service providers should note that under the regulation, an Indonesian customer is classified as:

- Someone who provides an Indonesian billing and mailing address;
- Utilizes credit or debit cards provided by Indonesian financial institutions; and
- Orders the product or service using an Indonesian IP address.

### *Appointed VAT collector*

International companies that have been appointed as a 'VAT collector' by the Ministry of Finance are obligated to charge the 10 percent VAT rate on the sales of digital products to Indonesian consumers.

Digital products and service providers are obligated to charge VAT if:

- They are foreign merchants who sell digital products to Indonesian customers;
- They are international online marketplaces who sell digital products to Indonesian consumers; or
- Are Indonesian operators of online marketplaces that sell foreign digital products to local consumers.

To be classified as VAT collectors, the company must fall under on these following categories:

- Must have total transactions in Indonesia worth more than 600 million rupiah (US\$41,500) per year or 50 million rupiah (US\$3,400) per month; or
- Have total web traffic in Indonesia that exceeds 12,000 visitors per year or 1,000 per month.

### *Reporting obligations*

VAT collectors are subject to quarterly reporting periods, which are:

- January to March;
- April to June;
- July to September; and
- October to December

The tax returns should contain information regarding the total number of recipients, the amount of tax collected, and the amount of tax paid.

The government has allowed businesses to pay their VAT deposits in several currencies, namely:

- Rupiah;
- US dollar; and
- Other foreign currencies to be determined by the Director-General of Tax.

## Tax incentives for businesses

Since 2015, Indonesia has introduced an array of policies, ranging from tax incentives to economic stimulus packages that are aimed at developing the logistics sector, enhancing the ease of doing business, and ultimately, increasing foreign investment.

One significant initiative targeted at improving the country's investment climate was the issuance of the 16<sup>th</sup> Economic Policy Package in 2018. The policy package provides tax holidays for certain business sectors and tax cuts for companies that repatriated their export earnings.

Under the package, foreign investors could attain a 50 percent corporate income tax (CIT) cut for up to five years if they invested 100 billion rupiah (US\$7.1 million) and up to 500 billion rupiah (US\$35 million).

Capital investments worth more than 500 billion Rupiah (US\$35 million) but less than 1 trillion Rupiah (US\$71 million) are eligible for 100 percent CIT cut for a period of five years.

Tax Incentives Available in Indonesia			
Investment type	Capital investment	Tax holiday (%)	Period (years)
1	Up to 100 billion rupiah (US\$7.1 million) less than 500 billion Rupiah (US\$35 million)	50	5
2	More than 500 billion Rupiah (US\$7.1 million) less than 1 trillion rupiah (US\$71 million)	100	5
3	More than 1 trillion rupiah (US\$71 million) less than 5 trillion Rupiah (US\$356 million)	100	7
4	More than 5 trillion rupiah (US\$356 million) less than 15 trillion Rupiah (US\$1 billion)	100	10
5	More than 15 trillion rupiah (US\$1 billion) less than 30 trillion rupiah (US\$2.1 billion)	100	15
6	More than 30 trillion rupiah (US\$2.1 billion)	100	20

*Note: There are further CIT reductions offered for two years following the end of the timeline from the table above. These reductions are an additional 25 percent tax holiday allowance for investment type 1 and an additional 50 percent tax holiday allowance for investment types 2 through 6.*

## How to obtain tax incentives

To obtain a tax incentive, investors must have an Indonesian legal entity, comply with the Indonesian thin-capitalization rule by having a debt to equity ratio of not more than 4:1, and the minimum capital investment requirement of 100 billion rupiah (US\$7.1 million). Furthermore, companies must make new investments into pioneer industries, which is defined as any industry that provides added value for the national economy, broad connections, and introduces new technology.

## Pioneer industries

Under the latest economic package, two new sectors – digital economy and agricultural commodity processing – are now open for 100 percent foreign ownership. There are also modifications to certain pioneer industries on the list, as the government aims to bring its industries beyond assembly and up the value chain. This can be seen from the introduction of irradiation, electro medical, or electrotherapy equipment and robotics components to support the creation of manufacturing machinery as new sectors open for investment.

The full list of sectors consists of:

- Oil and gas purification and or refinery industry;
- Organic base chemical industry;
- Manufacturing industry of main components for industrial engines and main components for engines;
- Inorganic base chemical industry;
- Petrochemical industry, based on petroleum, natural gas, or coal;
- Economic infrastructures;
- Manufacturing of irradiation equipment, electro medical, or electrotherapy;
- Manufacturing of electronic and telematics devices, main components such as semiconductors wafer, backlight for liquid crystal display, electrical driver, or displays;
- Pharmaceutical raw material industry;
- Manufacturing of the main components for ships;
- Upstream base metal industry;
- Manufacturing of the main components for aircraft and other supporting aircraft industries;
- Manufacturing of the main components for electrical power generation engines;
- Manufacturing of the main components for trains;
- Manufacturing of robotic components, which support the engines manufacturing industry;
- Agricultural, plantation or forestry-based processing industries that produce pulp;
- Manufacturing of vehicle and the main components for vehicles; and
- Digital economy that includes data processing, hosting, and other related activities.

Investors that want to engage in an industry not listed above can make a request to the Ministry of Finance, which will assess their application in coordination with the Indonesian Investment Coordinating Board (BKPM).

## Online application process

Investors must now apply for the tax holiday through the Online Single Submission System (OSS), a one-stop-shop business licensing system. After entering their details onto the platform, the system will issue a business registration number and business license on the same day.

## New tax incentives

In June 2019, the Indonesian government issued GR 45/2019, which sets out a series of tax incentives for businesses that invest in labor intensive industries, training programs, as well as research and development (R&D).

GR 45/2019 also amends GR 94/2010 to expand the criteria for taxpayers eligible to receive tax incentives irrespective of industry. Under GR 94/2010, those eligible for tax facilities were those that had invested in pioneer industries.

Taken together, the incentives are designed to encourage more foreign direct investment (FDI), expand the skilled labor base, and develop industry.

### Investment in labor-intensive industries

Taxpayers that invest or expand into labor-intensive or pioneer industries can enjoy a net income reduction of 60 percent of their total investment in the form of tangible fixed assets, which includes any land used for the main business activities over a certain period.

The Ministry of Industry defines a labor-intensive industry as one that employs a minimum of 200 workers with labor costs not exceeding 15 percent of production costs, while the Ministry of Finance defines a pioneer industry as one that provides value-added economic consequences to surrounding areas.

To attain this tax facility, the taxpayer must not obtain any other tax allowance facilities under Article 31A of the Income Tax Law.

Still, investors will need to wait for upcoming Ministry of Finance regulations that are expected to explain the duration of the facility period and more details on the specific industries that are eligible for the tax incentive.

Foreign investors can take advantage of this new incentive – along with the country's manufacturing base, competitive labor costs, and large consumer market – to establish bases in Indonesia for key sectors, such as textiles and garments, commodities, as well as services.

Greater FDI into labor-intensive industries will generate employment and help improve the existing infrastructure and business ecosystem – companies that invest now will also benefit from a first mover advantage.

## Apprenticeships and training activities

Investors looking to start apprenticeship programs or training activities to develop workers based on certain competencies can receive a gross income reduction of up to 200 percent of the total costs incurred. The regulation defines 'certain competencies' as developing human resources that can meet the labor requirements needed by national industries and businesses.

This incentive will be particularly advantageous for foreign companies that need to develop a skilled labor pool or improve the efficiency of their operations. Meanwhile, companies already based in the country who undertake regular training of its workers, especially those in high-end manufacturing, such as automotive production and electronics, will benefit.

This incentive will likely increase demand for vocational training, which offers further downstream opportunities for investors. Language courses, for instance, are in high demand as students and professionals are eager to equip themselves with the language skills needed to compete in today's global economy.

Furthermore, the fields of hospitality and IT are also becoming increasingly popular as many secondary schools do not have the capabilities to prepare students for the job market. The country is also in dire need of quality teachers, another opportunity for foreign investment in vocational education.

## R&D activities

Taxpayers that engage in R&D initiatives can receive a tax facility of 300 percent in gross income reduction of total costs incurred. To avail of this facility, the taxpayer must be conducting R&D that is assessed by the government to be advancing the national economy, new industries and technologies, or transfer of foreign technology to local businesses.

It is still unclear whether the 300 percent tax reduction is applicable for the first year only or for every year and investors will have to wait for the upcoming Ministry of Finance regulation for further details.

This incentive is designed to encourage more companies to generate innovation and shift to more high technology industries and products, whether it be developing specialized fabric finishes or new farming cultivation methods. This type of innovation is a necessity for expanding industries.

Indonesia is currently behind its neighbors in the field of R&D. According to UNESCO, Indonesian companies only conducted some half a million dollars' worth of R&D compared to that of Malaysian and Singaporean companies, which conducted US\$4 billion and US\$6 billion, respectively.

However, Indonesia has plenty to contribute to the world of science, technology, and academia. Its position on the Asia Pacific ring of fire presents unique opportunities for foreign education and research partners in niche subjects, such as herbal medicine, marine science, renewable

energy, and horticulture technology – Indonesia is the world's largest exporter of crude palm oil – among many others.

## Indonesia's DTA network

Indonesia has signed over 60 double tax avoidance (DTA) agreements with various countries, which eliminate instances of double taxation from cross-border activities. The withholding tax rate on dividends are set between seven to 15 percent whereas interest rates are set between five to 15 percent unless an applicable tax treaty is in place wherein there will be no tax.

The tax rate for royalties are between 10 to 15 percent.

Countries with Signed DTAs with Indonesia				
A-B	C-J	K-O	P-S	T-Z
Algeria	Canada	Korea (North)	Pakistan	Taiwan
Armenia	China	Korea (South)	Papua New Guinea	Tajikistan
Australia	Croatia	Kuwait	Philippines	Thailand
Austria	Czech Republic	Laos	Poland	Tunisia
Bangladesh	Denmark	Luxembourg	Portugal	Turkey
Belarus	Egypt	Malaysia	Qatar	Ukraine
Belgium	Finland	Mexico	Romania	United Arab Emirates
Brunei	France	Mongolia	Russia	United Kingdom
Bulgaria	Germany	Morocco	Serbia	United States of America
	Hong Kong	Netherlands	Seychelles	Uzbekistan
	Hungary	New Zealand	Singapore	Venezuela
	India	Norway	Slovakia	Vietnam
	Iran		South Africa	Zimbabwe
	Italy		Spain	
	Japan		Sri Lanka	
	Jordan		Sudan	
			Suriname	
			Sweden	
			Switzerland	
			Syria	

## Laos

In February 2020, Laos' new Income Tax Law (Tax Law No. 67/NA) came into effect. The law replaces Tax Law No. 70/NA, which was issued in 2015 and sets out the latest tax rates for businesses and employees.

### Tax structure

All companies that are incorporated under Lao Law will be subject to Lao taxes, such as corporate income tax, value-added tax, withholding tax, and personal income tax.

#### Corporate income tax

Corporate income tax, also known as profit tax, is collected from all domestic and foreign businesses and is imposed on profits. The progressive rates range from 0-20 percent, as illustrated in the following table.

Profit Tax Rates		
Description	2020 tax rates	2015 tax rates
General activities (eg freelancers, sole trader enterprises)	Progressive rate of 0-20%	Progressive rate of 0-24%
Tobacco companies	22%	26%
Mining activities	35%	35%
Lao stock exchange	13% for first four years, then 20% after	5% for first four years, then 24% after
Activities utilizing innovative technologies or renewable energy	7%	
Human resource development	5%	

#### Value-added tax

The standard rate for value-added tax is 10 percent and applies to:

- Import of goods and services;
- Supply of goods and services in Lao DPR; and
- Export of services.

The export of goods is taxed at zero percent except for the export of natural resources that are not finished goods which is taxed at 10 percent.

## Withholding tax

The withholding tax rates have also been amended under the new tax law. The withholding tax rate on dividends is at 10 percent as well as interest paid to resident companies. The withholding tax rate for payment on royalties to resident companies is set at five percent.

Income Tax from Certain Business Activities		
Activities	2020 tax rates	2015 tax rates
Share transfer		2-10%
Building/land/house transfer	2%	2-5%
Online trading		
Commissions		10%
Intellectual property	5%	5%
Consultancy services		
Dividends		10%
Guarantee fees		
Rentals	10%	
Non-banking loan interest		
Transfer of agricultural land	1%	

## Personal income tax

Personal income tax is collected on a monthly basis through progressive rates. Individuals who reside in Laos for at least 183 days are subject to tax on all income earned in Laos.

Income Tax Rates			
Monthly income	2020 tax rates	Monthly income	2015 tax rates
LAK 1.3 million or below (US\$146)	0%	LAK 1 million or below (US\$112)	0%
Over LAK 1.3-5 million (US\$146-US\$562)	5%	Over LAK 1-3 million (US\$112-US\$337)	5%
Over LAK 5-15 million (US\$146-US\$1,688)	10%	Over LAK 3-6 million (US\$337-US\$674)	10%
Over LAK 15-25 million (US\$1,688-US\$2,813)	15%	Over LAK 6-12 million (US\$674-US\$1,350)	12%
Over LAK 25-65 million (US\$2,813-US\$7,314)	20%	Over LAK 12-24 million (US\$1,350-US\$2,700)	15%
Over LAK 65 million (US\$7,314)	25%	Over LAK 24-40 million (US\$2,700-US\$4,500)	20%
		Over LAK 40 million (US\$4,500)	24%

## Laos DTA network

There is withholding tax on dividends for resident and non-resident companies set at 10 percent. The withholding tax rate on royalties paid to resident and non-resident companies is five percent.

Countries with Signed DTAs with Laos				
A-B	C-J	K-O	P-S	T-Z
Belarus	China	Korea (North)	Singapore	Thailand
Brunei		Korea (South)		Vietnam
		Luxembourg		
		Malaysia		
		Myanmar		

## Malaysia

Malaysia implements a territorial tax system with residents and non-residents are taxed on their Malaysian source income.

### Tax structure

Foreign investors in Malaysia are subject to the following major taxes:

- Corporate income tax;
- Value-added tax;
- Income tax; and
- Digital service tax.

### Corporate tax

For resident and non-resident companies, corporate income tax (CIT) is imposed on income incurred in Malaysia.

The tax rates are of the following:

Corporate Income Tax Rates in Malaysia		
Company type	Chargeable income	Tax rate (%)
Resident company		24
Resident company with paid up capital of 2.5 million ringgit (US\$599,000) and gross income of less than 50 million ringgit (US\$11.9 million)	For the first 600,000 ringgit (US\$143,800)	17
Non-resident company		24

### Value-added tax

Malaysia replaced its Goods and Services Tax (GST) with the Sales and Services Tax (SST) regime in 2018. The sales tax rates are 10 percent, and the service tax rate is six percent. Some goods are taxed at a reduced rate of five percent.

The sales tax rate is levied on companies with sales value of taxable goods that exceed 500,000 ringgit (US\$120,000) in a 12-month period. The threshold for restaurants is 1.5 million ringgit (US\$361,000).

Businesses that are subject to the service tax rate include hotels, advertising, electricity, accounting services, and employment agencies.

## Withholding tax

The withholding tax only applies to non-resident companies or individuals who have sourced an income from Malaysia.

Withholding Tax Rates for Non-Resident Companies	
Nature of income	Tax rate (%)
Dividends	0
Interest	15 (unless the rate is reduced under a tax treaty)
Royalties	10
Fees for onshore services/ use of movable property	10

## Individual income tax

Malaysia uses both progressive and flat rates for personal income tax (PIT), depending on an individual's duration and type of work in the country. As expatriates may fall into either tax category, it is important to understand Malaysia's basic tax structure.


The Income Tax Act of 1967 structures personal income taxation in Malaysia, while the government's annual budget can change the rates and variables for an individual's taxation.

### *Taxation principle and its exceptions*

Malaysia adopts a territorial principle of taxation, meaning only income earned in Malaysia is taxable, regardless of where the expatriate is paid. All types of incomes are taxable, including gains from employment or business activities and dividends.

While profits sourced elsewhere are not subject to PIT there are three main exceptions:

1. Malaysia has signed numerous double taxation avoidance agreements. When addressing instances of double taxation, the wide bilateral tax treaties network can be an exception to the territoriality taxation principle, as it sometimes allocates the right to other countries to tax domestically earned income of Malaysian tax residents. In such instances, tax residents will be exempted from paying PIT in Malaysia.
2. Expatriates may benefit from a special tax regime exemption on their income if the following

- 
- two conditions are verified:
- Not being defined as a fiscal resident; and
  - If the period of employment in Malaysia does not exceed 60 days per the calendar year.
3. Finally, for income derived from specific industries – including air transport and banking – Malaysia does not apply the territorial basis, but instead employs a worldwide basis for taxation.

### ***Tax residency status***

Not all foreign workers in Malaysia have to file PIT. Expatriates working in Malaysia for less than 60 days are exempt from filling out taxes.

The Malaysian government considers expatriates working in the country for more than 60 days but less than 182 days as “non-residents” and subjects them to a flat taxation rate of 30 percent. Non-residents are ineligible for tax deductions.

Expatriates who qualify as “residents” for tax purposes pay progressive tax rates and are eligible for tax deductions.

Under Part II, Section 7 of the Income Tax Act, 1967, the Malaysian government considers an individual – regardless of their nationality – a tax resident if that individual fulfills one of the following criteria:

- The individual has been resident in Malaysia for 182 days of the tax year;
- The individual has been a resident in Malaysia for less than 182 days of the tax year, but was a resident in the country for a total of 182 consecutive days linked to days from the year immediately preceding or following that tax year;
- The individual has been a resident in Malaysia for at least 90 days of the current tax year and was a resident in Malaysia for at least 90 days in three of the four preceding years; or
- The individual will be a resident in Malaysia in the year following and has been a resident in Malaysia in the three years preceding the one being taxed.

### ***Tax rates in Malaysia***

The Malaysian 2020 budget raised the maximum tax rate an individual could pay to 30 percent (from 28 percent) for chargeable income exceeding 2 million ringgit (US\$489 thousand).

For expatriates that qualify for tax residency, Malaysia has a progressive personal income tax system in which the tax rate increases as an individual's income increases, starting at 0 percent, and capped at 30 percent.

The applicable tax rates are the following:

Malaysia Personal Income Tax	
Income	Tax rate (%)
0-5,000 ringgit (US\$1,222)	0
5,001-20,000 ringgit (US\$1,223-US\$4,891)	1
20,001-35,000 ringgit (US\$4,891-US\$8,559)	3
35,001-50,000 ringgit (US\$8,559-US\$12,227)	8
50,001-70,000 ringgit (US\$12,227-US\$17,118)	14
70,001-100,000 ringgit (US\$17,118-US\$24,465)	21
100,001-250,000 ringgit (US\$24,465-US\$61,134)	24
250,001-400,000 ringgit (US\$61,134-US\$97,813)	24.5
400,001-600,000 ringgit (US\$97,813-US\$146,685)	25
600,001-1,000,000 ringgit (US\$146,685-US\$244,493)	26
1,000,000-2,000,000 ringgit (US\$244,493-US\$489,000)	28
Exceeding 2,000,000 ringgit (US\$489,000)	30

#### *Tax relief and deductions*

The Malaysian government offers several tax deductions and benefits that expatriate workers who qualify as tax residents are eligible for.

These include:

1. Tax relief for a spouse (so long as the spouse does not earn an income in or out of Malaysia);
2. Tax relief for taxpayers who have to pay parental care;
3. Tax relief for each child below the age of 18; and
4. Tax relief for children studying at the tertiary level.

There is also an income tax exception granted for women looking to return to the workforce after a career break, through the Malaysians@Work program.

This program provides a maximum 12-month income tax exemption for women aged between 30 and 50 years old. The incentives include the following:

- 
- Employee – 500 ringgit per month for two years; and
  - Employers – 300 ringgit per month for two years.

Budget 2020 has extended this program until 2023.

Further, there is income tax relief of up to 6,000 ringgit granted on expenses for medical treatment of serious illnesses. Budget 2020 has now expanded this to include expenses incurred for fertility treatments.

## Digital service tax

From January 1, 2020, the Malaysian government will impose a digital services tax (DST) of six percent on foreign digital service providers (FSPs) in Malaysia.

### *Defining digital services*

The Royal Malaysian Customs Department (RMCD) guide defines digital services as any service that is subscribed or delivered over the internet or other electronic networks with minimal human intervention from the service provider.

The Royal Malaysian Customs Department (RMCD) guide defines digital services as any service that is subscribed or delivered over the internet or other electronic networks with minimal human intervention from the service provider.

The guide provides a few examples of digital services which include:

- Online licensing of software;
- Firewalls;
- Mobile applications and video games;
- Provision of e-books, films, music, streaming services, subscription-based media;
- Search engines and social networks;
- Website hosting services, cloud storage services;
- Online advertising platforms;
- Internet-based communications; and
- Online learning services.

The guide also defines FSPs as:

- A person who sells digital products to consumers in Malaysia;
- A person who sells digital products through intermediaries; or
- An online platform that sells digital products on behalf of an overseas provider.

### *Revenue threshold*

Foreign digital service providers who have reached 500,000 ringgit (US\$120,000) in annual turnover must register to collect and remit the six percent service tax. Applications for submission began October 1, 2019.

Registered FSPs must issue invoices and file tax returns on a quarterly basis, ending on the last day of any month of any calendar year.

## Defining consumers

The RMCD guide defines a consumer as any business or individual that fulfils any two of the following criteria:

- Makes payment an FSP through a credit card or debit facility provided by a financial institution under the country's Ministry of Finance;
- Resides in Malaysia; or
- Acquires the digital service through an internet protocol (IP) address registered in Malaysia.

To determine whether the consumer resides in Malaysia, the guide advises FRPs to consider:

- The consumer's billing address in Malaysia; and
- The consumer's home address in Malaysia.

## Malaysia's DTA network

The withholding tax rate is only subject to non-residents in Malaysia. Dividends are subject to a zero percent withholding tax and interest paid to non-resident companies are subject to a 15 percent tax rate. Royalties are subject to a 10 percent withholding tax.

Countries with Signed DTAs with Malaysia				
A-B	C-J	K-O	P-S	T-Z
Albania	Canada	Kazakhstan	Pakistan	Thailand
Australia	China	Korea (South)	Papua New Guinea	Turkey
Austria	Chile	Kyrgyz Republic	Philippines	Turkmenistan
Bahrain	Croatia	Kuwait	Poland	United Arab Emirates
Bangladesh	Czech Republic	Laos	Qatar	United Kingdom
Belgium	Denmark	Lebanon	Romania	Uzbekistan
Bosnia & Herzegovina	Egypt	Luxembourg	Russia	Venezuela
Brunei	Fiji	Malta	San Marino	Vietnam
	Finland	Mauritius	Saudi Arabia	Zimbabwe
	France	Morocco	Senegal	
	Germany	Myanmar	Seychelles Republic	
	Hong Kong	Namibia	Singapore	
	Hungary	Netherlands	Slovak Republic	
	India	New Zealand	Sri Lanka	
	Indonesia	Norway	South Africa	
	Iran		Spain	
	Ireland		Sudan	
	Italy		Sweden	
	Japan		Switzerland	
	Jordan		Syria	

## Myanmar

The Internal Revenue Department under the Ministry of Planning, Finance, and Industry regulates the administration of tax in Myanmar.

### Tax structure

There are several tax laws in Myanmar that foreign investors should be aware of. These are:

- Union Tax Law;
- Tax Administration Law of 2019;
- Specific Goods Tax Law of 2016;
- Commercial Tax Law of 1990; and
- Income Tax Law of 1974.

## Corporate income tax

Resident and non-resident entities are subject to a 25 percent corporate income tax (CIT) rate. Companies listed on the Yangon Stock Exchange are taxed at a reduced rate of 20 percent.

## Value-added tax

There is no value-added tax in Myanmar

## Withholding tax

There is no withholding tax on resident companies apart from royalties (10 percent) and fees for technical services (two percent) but applies only to payments made by government entities to residents. There is withholding tax on non-resident companies, ranging from 2.5 to 15 percent.

Withholding Tax Rates for Companies in Myanmar		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	0
Interest	0	15
Royalties	10	15
Fees for technical services	0 (two percent for payments made by government entities to residents)	2.5

## Personal income tax

Under the Myanmar Income Tax Act, resident foreigners are taxed on their worldwide income whereas non-residents are taxed only on income derived from Myanmar.

Foreigners who reside in Myanmar for at least 183 days are considered resident foreigners.

Personal Income Tax Rates in Myanmar	
Income	Tax rate (%)
1,000,000 kyat (US\$746) – 2,000,000 kyat (US\$1,492)	0
2,000,001 (US\$1,492) – 5,000,000 kyat (US\$3,730)	5
5,000,001 kyat (US\$3,730) – 10,000,000 kyat (US\$7,461)	10
10,000,001 kyat (US\$7,461) – 20,000,000 kyat (US\$14,923)	15
20,000,001 kyat (US\$14,923) – 30,000,000 kyat (US\$22,384)	20
Above 30,000,000 kyat (US\$22,384)	25

## Myanmar DTA network

There is no withholding tax levied on dividends and interest paid to resident companies but there is a 15 percent withholding tax levied on interest paid to non-resident companies. The withholding tax rate on royalties paid to resident and non-resident companies is 10 and 15 percent, respectively.

Countries with Signed DTAs with Myanmar				
A-B	C-J	K-O	P-S	T-Z
	India	Korea (South)	Singapore	Thailand
		Laos		United Kingdom
		Malaysia		Vietnam



## Philippines

The taxation policy in the Philippines is chiefly governed by three Republic Acts:

- Article VI, Section 28 of the Constitution;
- The National Internal Revenue Code; and
- Local Government Code of 1991.

## Tax structure

The country imposes a territorial tax system meaning only Philippine-sourced income is subject to Philippine taxes.



## Corporate income tax

The corporate income tax (CIT) of 30 percent is levied on net income on all sources. Non-resident companies is taxed on only its Philippine-sourced income.

A domestic company is taxed on its worldwide income.

### Minimum corporate income tax

A minimum corporate income tax (MCIT) of two percent is imposed on the gross income of both domestic and resident foreign corporations, on an annual basis. It is imposed from the beginning of the fourth taxable year immediately following the commencement of the business operations of the corporation.

The MCIT is imposed when the standard 20 percent CIT is lower than the two percent MCIT on the company's gross income. Any excess of the MCIT over the normal tax may be carried forward and credited against the normal tax for the three immediately succeeding taxable years.

## Withholding tax

### Dividends

Dividends distributed by a resident company are subject to withholding tax at 30 percent; those distributed to non-residents are taxed at 15 percent, provided the country of the non-resident recipient allows a tax credit of 15 percent. The withholding tax may be reduced under an applicable tax treaty.

### Interest


Interest paid to a non-resident is subject to a 20 percent withholding tax unless otherwise stipulated under a tax treaty.

### Royalty

Royalty payments made to a domestic or resident company are subject to a final withholding tax of 20 percent. A 30 percent withholding tax is levied on royalty payments to non-residents.

## Fringe benefits tax

Fringe benefits granted to supervisory and managerial employees are subject to 35 percent tax on the grossed-up monetary value of the fringe benefit. Under new income tax regulations, fringe benefits mean any good, service or other benefit granted in cash or in kind, other than the basic compensation, by an employer to an individual employee.



The benefits include, but not limited to housing; expense accounts; vehicles; household personnel; interest on loans at less than market rate; club membership fees; expenses for foreign travel; holiday and vacation expenses; education assistance; and life or health insurance and other non-life insurance premiums.

Fringe benefits tax, however, is not imposed when the fringe benefits are deemed necessary to the nature of your business.

## Branch profit remittance tax

Branches of foreign companies in the Philippines, except those registered with the Philippine Economic Zone Authority, are subject to income tax at the rate of 30 percent on their income derived within the Philippines. A 15 percent branch profit remittance tax (BPRT) is levied on the after-tax profits remitted by a branch to its head office.

After-tax profits remitted by a branch do not include income items which are not effectively connected with the conduct of its trade or business in the Philippines. Such income items include interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received during each taxable year from all sources within the Philippines.

## Improperly accumulated earnings tax

Income accumulated by closely held corporations with a purpose of avoiding tax attracts an improperly accumulated earnings tax (IAET) of 10 percent. The closely held corporation may refer to companies wherein at least 50 percent of the capital stock or voting power is owned directly or indirectly by not more than 20 individuals.

The tax base of the 10 percent IAET is the taxable income of the current year plus income exempt from tax, income excluded from gross income, income subject to final tax, and the amount of net operating loss carry-over deducted.

Corporations excluded from the ambit of the IAET include banks and other nonbank financial intermediaries; insurance companies; publicly-held corporations; taxable partnerships; general professional partnerships; non-taxable joint ventures; and duly registered enterprises located within the special economic zones declared by law, which enjoy payment of special tax rate on their registered operations or activities in lieu of other taxes, national or local.

The criteria to determine the liability for the IAET is the purpose of the accumulation of the income and not the consequences of the accumulation. That is, if a company allows its earnings or profits to accumulate within its reasonable needs, then it would not be subject to the tax unless proven to the contrary.

## Personal income tax

The tax rate on employment income are as follows.

Personal Income Tax Rates in the Philippines	
Income	Tax rate (%)
0-PHP250,000 (US\$5,100)	None
PHP250,001 (US\$5,100) – PHP400,000 (US\$8,160)	20
PHP400,001 (US\$8,160) – PHP800,000 (US\$16,300)	25
PHP800,001 (US\$16,300)- PHP2,000,000 (US\$40,000)	30
PHP2,000,001 (US\$40,000) – PHP8,000,000 (US\$163,000)	32
Above PHP8,000,000 (US\$163,000)	35

## Value-added tax

The 12 percent value-added tax (VAT) rate is imposed on most goods and services that have achieved actual gross sales of over PHP3,000,000 (US\$61,300).


Under the VAT framework set in the Philippines, there are certain business activities that are classified as zero percent VAT. These include:

- Manufacturing or repackaging goods;
- Sales of goods or services exported outside of the country; or
- Services that are under specific laws or agreements that render zero percent VAT.

## CREATE Act

The Philippines government is preparing to launch the largest stimulus program in the country's history – the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE).

CREATE is a recalibration of the Corporate Income Tax and Incentives Rationalization Act (CITIRA), which was issued in September 2019, aimed at reducing the corporate income tax (CIT) rate and rationalizing specific tax incentives.



Through CREATE, the government will immediately reduce the CIT rate from the current 30 percent to 25 percent. The Act also proposes any losses incurred by non-large taxpayers in 2020 can be carried over for the next five years, and the government will be more flexible in granting fiscal and non-fiscal incentives to attract high-value foreign investments.

### **Accelerated CIT reduction**

The government is proposing to immediately cut the CIT rate from 30 percent to 25 percent from July 2020 until 2022. This will be followed by a one percent yearly reduction until 2027 to bring the rate to 20 percent.

In reducing the CIT rate, the government hopes this will benefit more than 90,000 micro, small, and medium-sized (MSMEs) who make up the backbone of the Philippines' economy. Its current CIT rate is the highest in ASEAN, a factor that has hindered local businesses from expanding and hampers the country's ability to compete with its regional neighbors.

The government says businesses in the country can save an estimated PHP42 billion (US\$842 million) in tax savings and over PHP625 billion (US\$12.5 billion) over the next five years. These savings can be reinvested by firms to revitalize their business and boost cost competitiveness.

### **Carryover of net operating loss**

The Act recognizes the unique circumstances businesses are going through in 2020 and has proposed an enhanced net operating loss carryover (NOLCO), by extending the current three-year carryover period by a further two years, making it a total of five years.

This enhanced NOLCO amendment will allow companies to deduct incurred losses from tax payments for a much longer period and provide them time to re-organize their financial standings.

### **Greater flexibility in granting incentives**

Under CREATE, the Fiscal Incentives Review Board (FIRB), the agency responsible for overseeing the country's investment promotion agencies (IPAs), will be given the authority to recommend to the President the appropriate fiscal and non-fiscal support initiatives. This includes tax incentives, logistics support, training, the facilitation of obtaining certification from government agencies, and customs facilitation for investors, among others. Under CITRA, the FIRB had no such power.

Upon the recommendation of the FIRB, the President can approve the said incentives along with longer periods of availments of up to 40 years. The President can also modify or mix the type of incentive to create high-value investments and job creation.

### **Extension of the sunset period**

IPA-registered companies that are paying the existing five percent gross income earned (GIE) tax incentive will have their sunset period extended by two years to adjust to the new incentive scheme.

IPA-registered firms can avail the preferential final tax of five percent of gross income in lieu of all national and local taxes. This is only available after the income tax holiday (ITH) of six years initially provided by the IPA comes to an end.

The new sunset periods are:

- Four years for businesses that have spent more than 10 years under the GIE program;
- Five years for businesses that have spent 5-10 years under the GIE program;
- Seven years for businesses that have spent 7 years under the GIE program; and
- Nine years for businesses that export 100 percent of their products/business and employ at least 10,000 people.

### **CREATE aims to be more targeted**

The government has promised the CREATE Act will promote a fair and accountable tax incentive system.

Companies applying for CREATE will need to showcase to the government that they can make measurable economic contributions, such as through the creation of high-quality jobs, promoting quality exports, development of pioneer industries, and use of modern technology.

Companies will also be reviewed every two years and approved activities will be given incentives in set periods of five, seven, and 10 years. Furthermore, the names of the businesses receiving the incentives shall be made open to the public for transparency.

## **The Philippines DTA network**

The Philippines is signatory to over 35 double tax avoidance treaties. Under these agreements, tax relief comes in the form of preferential tax rates or tax exemptions.

Dividends distributed to a resident company will not be subject to any withholding taxes whereas non-residents are subject to a withholding tax rate of between 15 and 30 percent. Interest received from a resident company is subject to a 20 percent withholding tax and royalties for resident companies are subject to the same tax rate.

### Countries with Signed DTAs with the Philippines

A-B	C-J	K-O	P-S	T-Z
Australia	Canada	Korea (South)	Pakistan	Thailand
Austria	China	Kuwait	Poland	Turkey
Bahrain	Czech Republic	Malaysia	Qatar	United Arab Emirates
Bangladesh	Denmark	Mexico	Romania	United Kingdom
Belgium	Finland	Netherlands	Russia	United States
Brazil	France	New Zealand	Singapore	Vietnam
	Germany	Nigeria	Spain	
	Hungary	Norway	Sweden	
	India		Switzerland	
	Indonesia			
	Israel			
	Italy			
	Japan			



## Singapore


Singapore's favorable tax regime is internationally recognized for allowing entrepreneurs and companies to enjoy low tax rates and numerous types of tax relief – through incentives, comprehensive tax treaty networks, and exemptions from certain incomes.

### Tax structure

As Singapore adopts a territorial basis of taxation, companies are taxed only on Singapore-sourced income. Foreign-sourced income such as branch profits, dividends, and service income are taxed when remitted or deemed remitted into Singapore but will be exempted provided that the income has been taxed in the source country with a rate of at least 15 percent. There is also no capital gains tax in Singapore.

### Corporate income tax in Singapore

Singapore imposes corporate income tax (CIT) at a flat rate of 17 percent, which is the lowest among ASEAN member states. The country practices a single-tier corporate tax system, which means businesses pay CIT only on chargeable income (profits), and all dividends are exempt from further taxation.



The low CIT rate has attracted a dynamic investment community into Singapore, comprising of more than 7,000 multinational firms, with more than half operating their Asia-Pacific business from the country.

Foreign investors should seek the help of registered local tax advisors to better understand how they can stay compliant with the relevant regulations.

### **Who is obligated to pay?**

Businesses that have their income derived from Singapore or income remitted to the country are obligated to pay corporate taxes at a rate of 17 percent on its chargeable income regardless of whether it is a local or foreign company.

The place of incorporation tax residency of a company is determined by where the business is managed and controlled. The location of the company's Board of Directors meetings where strategic decisions are made is a key factor in determining where the control and management is exercised. If the company's board of directors or other key management personnel that control the business are based outside of Singapore, then the company will be considered a non-tax resident.

Additionally, this is also the case if the company holds its board meetings outside the country, despite having the day-to-day operations conducted in Singapore.


Taxable incomes include:

- Profits from trade or business (the single-tier system this means Singapore-based companies will only pay taxes on profits and not on revenue);
- Royalties and premiums;
- Rental property income; and
- Income from investments such as interests.

### **Benefits of being a tax resident**

Qualifying as a tax resident will mean the company is eligible for the multitude of tax incentives the country offers, which can lower the total effective CIT tax rate.

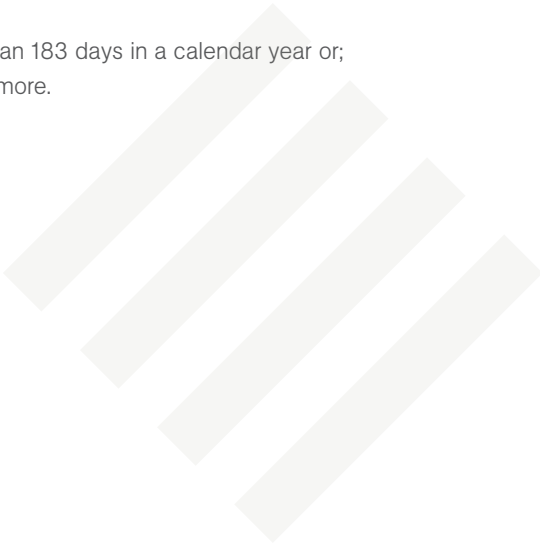
These incentives include being eligible for new startups to receive a tax exemption of 75 percent on the first S\$100,000 (US\$7,000) of chargeable income and a further 50 percent exemption on the next S\$100,000 (US\$73,000) of chargeable income (available for the first three years of operations). All other companies will receive a tax exemption of 75 percent on the first S\$10,000 and a further 50 percent on the next S\$190,000 of chargeable income.



Tax residents can enjoy the benefits from the country's more than 90 double tax avoidance (DTA) agreements, enabling businesses to eliminate instances of double taxation between treaty signatories. Moreover, tax residents have the advantage of gaining access to the wider Asian markets through the country's comprehensive free trade agreements (FTA).

## Individual income tax

The tax liability of foreigners in Singapore is dependent on their tax residency status. Foreigners are considered tax residences if they:

- Stay or work in Singapore for more than 183 days in a calendar year or;
  - Work continuously for three years or more.
- 

## Tax rates

The tax rates on chargeable income are shown in the table below.

Individual Income Tax Rates in Singapore		
Chargeable income	Income tax rate (%)	Gross tax payable
First S\$20,000 (US\$14,763)	0	S\$0
Next S\$10,000 (US\$7,381)	2	S\$200 (US\$147)
First S\$30,000 (US\$22,145)	-	S\$200 (US\$147)
Next S\$10,000 (US\$7,381)	3.5	S\$350 (US\$258)
First S\$40,000 (US\$29,572)	-	S\$550 (US\$405)
Next S\$40,000 (US\$7,381)	7	S\$2,800 (US\$2,066)
First S\$80,000 (US\$59,054)	-	S\$3,350 (US\$2,473)
Next S\$40,000 (US\$7,381)	11.5	S\$4,600 (US\$3,395)
First S\$120,000 (US\$88,580)	-	S\$7,950 (US\$5,868)
Next S\$40,000 (US\$7,381)	15	S\$6,000 (US\$4,429)
First S\$160,000 (US\$118,107)	-	S\$13,950 (US\$10,297)
Next S\$40,000 (US\$7,381)	18	S\$7,200 (US\$5,314)
First S\$200,000 (US\$147,663)	-	S\$21,150 (US\$15,612)
Next S\$40,000 (US\$7,381)	19	S\$7,600 (US\$5,610)
First S\$240,000 (US\$177,157)	-	S\$28,750 (US\$21,223)
Next S\$40,000 (US\$7,381)	19.5	S\$7,800 (US\$5,757)
First S\$280,000 (US\$206,683)	-	S\$36,550 (US\$26,981)
Next S\$40,000 (US\$7,381)	20	S\$8,000 (US\$5,905)
First S\$320,000 (US\$236,205)	-	S\$44,500 (US\$32,850)
Excess S\$320,000 (US\$236,205)	22.5	-

Source: [iras.gov.sg](https://www.iras.gov.sg)

Singapore's non-tax residents are taxed at a flat rate of 15 percent.

## Goods and services tax

The goods and services tax (GST), also known as value-added tax (VAT), is a consumption tax imposed on goods and services in Singapore regardless if they are acquired from domestic or overseas suppliers.

As GST is a self-assessed tax, Singapore-based businesses are required to assess their need to register for GST. This is, however, only applicable to businesses that earn a taxable turnover of more than S\$1 million (US\$738,000) during a 12-month period. The current GST rate is seven percent.

The GST that is charged onto customers is known as 'output tax', and the GST that is incurred on business purchases and expenses, which includes the import of goods, is known as the 'input tax'. The difference between the output and input tax is the net GST payable to the government.

### **GST on overseas digital services**

Starting from January 1, 2020, foreign digital service providers will have to register and charge for GST under Singapore's Overseas Vendor Registration (OVR) regime. Currently, only services procured from local businesses were subject to GST. Digital services include:

- Downloading mobile applications, e-books, and movies;
- Subscriptions to TV shows, music, and online gaming; and
- Downloading drivers, software, and firewalls.

However, foreign digital service providers will need to have yearly global turnover of more than S\$1 million (US\$738,000), and sell more than S\$100,000 (US\$73,800) worth of digital services to customers in Singapore, to be obligated to register and charge GST.

## Withholding tax

The withholding tax only applies to non-resident companies or individuals who have sourced an income from Singapore. The types of income subjected to withholding tax are shown in the table below.

Withholding Tax on Payments to Non-Resident Companies	
Nature of income	Tax rate (%)
Dividends	Exempt
Interest	15
Royalties	10
Technical assistance and services fees	17
Rent on moveable property	15
Charter fees for aircraft or ship	0-2

## Capital gains tax

There is no capital gains tax in Singapore. Generally, the gains derived from the sale of a property/investment in Singapore are not subjected to tax as it is a capital gain. However, the gains may be taxable if one is in the business of trading shares.

## Tax incentives for businesses in Singapore

With one of the world's most business-friendly tax regimes, Singapore has emerged as a major financial and economic hub in Asia. Investors are also drawn by the efficient and cost-effective process to incorporate a company, and the country's transparent legal system.

Companies setting up in Singapore are eligible for various tax incentives if their business is deemed beneficial to the country's economic development.

However, tax incentive applicants must fulfil rigorous requirements, which include committing to certain levels of investments, introducing leading-edge skills, technology, as well as contributing to the growth of research and development and innovation capabilities.

Given the diverse tax incentives made available, foreign investors should consult registered local tax advisors to determine which incentives will be applicable to them and their sector.

## Wage Credit Scheme

The Wage Credit Scheme (WCS) is also part of the government's Three-Year Transition Support Package. The scheme enables the government to co-fund the wage increases of Singaporean employees earning a gross monthly wage of up to S\$5,000 (US\$3,666) as of 2020.

The program was introduced in the 2013 budget and set for three years. In the 2015 budget, the scheme was extended for another three years, and the 2018 budget extended the program further for the same period.

In 2019, the government co-funded 15 percent of wage increases, down from 20 percent in 2018. In 2020, this was maintained at the 15 percent level due to the economic impact of the coronavirus pandemic.

## Tax exemptions for startups

The Start-up Tax Exemption (SUTE) scheme was introduced in 2005 with the aim to support new businesses and entrepreneurs in the country.

From 2020, qualified companies can obtain a 75 percent tax exemption on the first S\$100,000 (US\$73,000) of chargeable income during the first consecutive three years. The next S\$100,000 of chargeable income can receive a 50 percent tax exemption.

SUTE is only available for the first three-yearly assessments. After this period, companies can apply for the partial tax exemption scheme (PTE).

The tax exemption scheme is shown in the table below.

Tax Exemption Scheme for Startups in Singapore	
Income	Exempted from tax (%)
First S\$100 thousand (US\$73 thousand)	75
Next S\$100 thousand (US\$73 thousand)	50



To qualify for SUTE, businesses must:

- Be a tax resident in Singapore; or
- Owned by no more than 20 shareholders (where all the shareholders are individuals or at least one shareholder controls 10 percent of the issued shares).

Businesses must not be:

- An investment holding company; or
- Engaged in the property development industry, either for investments or for sale.

## Partial tax exemptions

Companies that do not qualify for SUTE may be eligible for the PTE scheme. From 2020, businesses can receive 75 percent exemption on the first S\$10,000 (US\$7,300) of chargeable income. A further 50 percent exemption can then be applied on the next S\$190,000 (US\$139,000).

## Investment allowance

The investment allowance incentive is administered by the EDB, from which businesses can enjoy a tax exemption of up to 100 of fixed capital expenditure incurred.

The EDB defines fixed capital expenditure as expenditure incurred for qualifying projects within a five-year period, which can be extended up to eight years.

Companies can attain the 100 percent tax exemption if they make considerable investments towards automation for a project.

The approved projects by the EDB include, among others:

- Manufacture of new products or increase production of existing products;
- Promotion of the tourism industry in the country;
- Research and development activities;
- Energy efficiency projects;
- Construction projects;
- Projects that focus on reducing water consumption;
- Provide specialized engineering or technical services; and
- Maintenance, repair and overhaul services for the aircraft industry.

The category for expenditures covered by the investment allowance consists of:

- New productive equipment;
- Building factories in Singapore; and
- Acquiring patents and know-how.

## Industry-specific tax incentives

There are four main government agencies that can administer business and tax incentives for Singaporean entities in specific domains. These are:

- Singapore Economic Development Board (EDB) – which is responsible for developing and executing strategies that facilitate investment into the country's industries;
- Inland Revenue Authority of Singapore (IRAS) – the tax regulatory authority in the country;
- Enterprise Singapore (ESG) – which aids Singaporean companies expand worldwide and promotes local exports; and
- Monetary Authority of Singapore (MAS) – the central bank and financial services authority.

A full list of industry-specific incentives can be found on the individual websites of these agencies. The industries eligible for tax incentives are:

- Financial services;
- Banks;
- Fund management;
- Tourism;
- Shipping and maritime;
- Global trading industries;
- Insurance;
- Processing services;
- Research and development;
- Headquarter activities;
- Legal firms;
- E-commerce; and
- Event organization.

## Enterprise finance scheme

The Enterprise Finance Scheme (EFS) scheme is offered by IE Singapore and provides financing needs for local businesses to realize their growth and expansion needs. The scheme covers six areas:

### **SME working capital loan**

This scheme allows small and medium-sized enterprises to apply for an uncollateralized loan of up to S\$300,000 (US\$22,000), for working capital for the business. The maximum repayment period is five years.

### **SME fixed assets loan**

This scheme assists in financing the investment of domestic and overseas assets such as for the purchasing of equipment and machines as well as factories. The maximum loan available is S\$30 million (US\$22 million) with a repayment period of 15 years.

### **Venture debt loan**

The venture debt loan is used for high-growth startups that do not have significant assets that can be used as collateral for bank loans. Startups can utilize the funds for growing the business or diversify their products or services. The maximum loan available is S\$5 million (US\$3.6 million), and the repayment period is five years.

### **Trade loan**

An S\$5 million (US\$3.6 million) loan is available for businesses engaging in import and export activities. The repayment period is set at one year.

### **Project loans**

The project loan is mainly for working capital for companies looking to secure overseas projects. The maximum loan available is S\$50 million (US\$36 million) with the repayment period set at a 15-year period.

### **Merger and acquisition loan**

The merger and acquisition loan (M&A) will enable businesses to acquire local or international companies. The maximum loan available for this scheme is S\$50 million (US\$36 million), and the repayment period is five years.

## **Double tax deduction for internationalization**

The double tax deduction for internationalization (DTD<sub>i</sub>) scheme allows companies who want to expand overseas to claim a 200 percent tax deduction on qualifying expenses. The expenditure cap for DTD<sub>i</sub> is at S\$150,000 (US\$110,000) for 2019.

The DTD<sub>i</sub> covers the following expenses:

- Market preparation – engaging in feasibility studies or market research;
- Market exploration – overseas business trips, trade fairs;
- Market promotion – international promotion campaigns, production of brochures; and
- Market presence – overseas trade offices, master licenses and franchising.

## Pioneer tax incentives

Through the pioneer tax incentive, businesses engaging in the manufacture of high-value-added products or services can apply for a pioneer certificate which entitles them to tax exemption for five and up to 15 years.

To qualify, applicants are assessed on a qualitative and quantitative criterion. This includes:

- Ability to introduce create employment for Singaporeans;
- Introduction of new skills and expertise;
- The capacity for business expenditure to create economic spin-off;
- Manufacturing projects must commit to developing soft and hard infrastructure;
- Introduce new technology and know-how that can advance an industry; and
- Business activities must be new and have not been undertaken by other companies in the country.

## Development and expansion incentive

After the pioneer tax incentive period has ended, businesses can attain the Development and Expansion Incentive (DEI). This awards companies that migrate to business activities that add more value (such as investing in projects that advance key industries like manufacturing), with a five to 10 percent tax break. The tax relief period is subject to a maximum of 40 years.

## Merger and acquisitions scheme

In addition to the M&A loan, there is also an M&A scheme that provides a stamp duty relief, double tax deduction, and tax allowance M&A activities.


The tax allowance allows businesses to write off 25 percent of the total merger or acquisition value over a five-year period. This write off is capped at S\$10 million (US\$7.3 million).

The stamp duty relief is also capped, at S\$80,000 (US\$58,000). The double tax deduction is granted on all transaction costs with a cap set at S\$100,000 (US\$737,000).

## Singapore's DTA network

Singapore has one of the world's most extensive double tax agreement (DTA) networks, attracting international businesses from a multitude of conventional and nuanced industries.

DTAs eliminate instances of double taxation from cross-border activities, such as trade, knowledge sharing, as well as investments between two countries.



Singapore has signed over 90 DTAs with various countries and the full list can be found on the website of the Inland Revenue Authority of Singapore or IRAS, the main tax authority in the country.

Foreign investors should seek the help of registered tax advisors to better understand how they can benefit from Singapore's vast DTA network.

## Income types covered under a DTA

Currently, there are several types of DTAs signed by Singapore: comprehensive, limited, and exchange of information arrangements (EOIAs).

Comprehensive DTAs provides relief from double tax for all income types between the two signatories. Limited DTAs, however, only provides relief from income generated from air transport and shipping, and EOIAs are provisions for the exchange of tax information.

The tax relief under each DTA treaty differs for each country.

They normally cover several income types:

- Tax on royalties;
- Tax on dividends;
- Tax on capital gains;
- Tax on interests;
- Shipping and air transport;
- Directors' fees;
- Independent and dependent personal services;
- Researchers;
- Students; and
- Income from immovable property.


## Claiming relief under the DTA

To obtain the benefits of the DTA, the company must first submit its Certificate of Residence (COR) to IRAS as evidence it is a tax resident in Singapore. Only Singaporean tax residents and the tax residents of the treaty partner are recognized.

To qualify as a Singaporean tax resident, an individual must be employed in the country for 183 days or more during the year. For companies, they must be registered in Singapore.

Tax residents of the treaty partner must also submit a COR certified by the tax authority of the treaty partner to the IRAS in order to obtain relief under the DTA.

Singaporean tax residents can still avoid double taxation even if Singapore does not have a DTA



with a particular country through the Universal Tax Credit (UTC) scheme. This applies to all foreign taxes paid by a Singaporean tax resident on the following income categories:

- Royalties derived from outside of Singapore;
- Foreign income from professional services or consultancy;
- Foreign-sourced dividends; and
- Foreign branch profits.

The IRAS will grant the tax exemption if the following conditions are met:

- At least 15 percent in corporate taxes (headline tax) are paid on the income sourced from the foreign jurisdiction;
- The company has been subjected to tax in the foreign jurisdiction, this can be different from the headline tax; and
- The IRAS is satisfied that granting the tax exemption will benefit the tax resident in Singapore.

## Determining the treatment of profits

Defining a permanent establishment (PE) is an important feature within all DTA treaties in order to determine the treatment of business profits. The PE refers to the fixed place of business through which the taxpayer carries out their business operations.

The taxation of profits falls under the country where the PE is set up unless the company opens a PE in another country. In the absence of a DTA treaty, any profits would mean the PE would bear a double tax burden for the business.

This means foreign investors who have a subsidiary company registered in Singapore can take advantage of the country's DTAs as well as free trade agreements (FTAs) through ASEAN and Asia.

A business is deemed to have a PE if they carry out business activities lasting over 183 days in the following places:

- Offices;
- Factories;
- Warehouses;
- Farm or plantation;
- Construction or installation site
- Mines, wells, or quarries; and
- Workshops.



## Thailand

Taxes in Thailand are governed by the Revenue Code, which follows the concept of a self-assessment system. The Revenue Department of the Ministry of Finance is responsible for the administration of taxes, which is imposed on regional as well as national levels.

### Tax structure

Taxes are imposed on the national and local levels. The taxes are levied under the following:

#### Direct taxes

- Corporate income tax;
- Personal income tax; and
- Petroleum tax.

#### Indirect taxes

- Value-added tax;
- Specific business tax; and
- Land and building tax.

#### Corporate income tax

A company incorporated under Thai laws will be considered as a resident company and be subject to the 20 percent corporate income tax (CIT) rate.

For businesses that are classified as small or medium sized (SMEs), the CIT rates can be seen in the following table.

Corporate Income Tax Rates for SMEs	
Net profit	Tax rates (%)
0-300,000 baht (US\$9,600)	Nil
300,001 baht (US\$9,600) - 3,000,000 baht (US\$96,300)	15
Over 3,000,000 baht (US\$96,300)	20

SMEs can get a reduced tax rate if they meet the following criteria:

- Income from the sales of goods and services not exceeding 30 million baht (US\$960,000) in any accounting period; and
- Having a paid-up share capital of not more than 5 million baht (US\$160,000).

## Personal income tax

To be considered as a resident taxpayer, the individual must reside in Thailand for 180 days or more in any tax year.

Personal Income Tax Rates in Thailand	
Net income	Tax rates (%)
0-150,000 baht (US\$4,800)	None
150,001 baht (US\$4,800) – 300,000 baht (US\$9,600)	5
300,001 baht (US\$9,600) – 500,000 baht (US\$16,000)	10
500,001 baht (US\$16,000) – 750,000 baht (US\$24,000)	15
750,001 baht (US\$24,000) – 1,000,000 baht (US\$32,000)	20
1,000,001 baht (US\$32,000) – 2,000,000 baht (US\$64,000)	25
2,000,001 baht (US\$64,000) – 5,000,000 baht (US\$160,000)	30
Over 5,000,000 baht (US\$160,000)	35

## Value-added tax

The value-added tax (VAT) rate of 10 percent is liable for every person who conducts business in Thailand, which includes manufacturers, importers, and retailers. Businesses that have an annual turnover of over 1,800,000 baht (US\$57,000) must register as VAT operators.

Business activities are exempt from VAT, some of these are:

- Taxpayers with sales with less than 1,800,000 baht (US\$57,000) per year;
- Educational services;
- Research and technical services;
- Religious activities and public charities;
- Healthcare services;
- Imported goods brought into a duty-free zone;
- Sale of goods related to agriculture; and
- Rent of immovable properties.

## Withholding tax

The withholding tax imposed on dividends paid to another Thai company is subject to a 10 percent tax rate. This can be exempt if certain conditions are satisfied under the promotion law or Revenue Code.

Interest paid to non-resident companies are subject to 15 percent withholding tax whereas it is only one percent for residents. Royalties are subject to a three percent withholding tax for residents and a 15 percent tax on non-residents.

Withholding Tax Rates for Resident and Non-Resident Companies in Thailand		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	10/0	10
Interest	1	15
Royalties	3	15
Fees for technical services	3	15

## Specific business tax

The specific business tax (SBT), is an alternative tax levy on services. Businesses that are excluded from VAT will instead be subject to SBT.

Specific Business Tax Rates	
Business type	Applicable rate (%)
Commercial banking or credit financing businesses	3 (although for certain types of banking incomes the rate is 0.01 percent)
Life insurance	2.5
Pawn business	2.5
Businesses with transactions similar to commercial banking	3

## Land and building tax

In March 2019, the Thai government introduced the new Land and Building Tax Act B.E. 2562, which has been in effect since January 1, 2020.

The Act obligates individuals, corporate entities, or any beneficiaries of land or buildings, to pay land and building tax. The new law replaces several legislations which include – the Land Tax of 1932; the Land Development Tax of 1965; the Notification of the National Executive Council No. 156 of 1972; and the Royal Decree Designating the Medium Price of Land for Land Development Tax Assessment of 1986.

The tax rates on properties were previously assessed on an income-based method. The Act replaces this method with an assessment based on the property's appraised value, as determined under the current Land Code.

The tax will be applied to the following categories of property:

- Residential (including condominiums);
- Commercial;
- Agricultural; and
- Unused/vacant land.

Through these latest changes, the government hopes to introduce a progressive tax system, encourage landowners to utilize their land, and help reduce the overall tax burden on property owners. The tax payments will be due in April of every year.

### Maximum tax rates for land and building tax

The Act sets a ceiling tax rate for the different categories of property.

Maximum Tax Rates in Thailand for Properties	
Property type	Tax rate
Commercial (land or property used solely for commercial use and not agricultural or residential purposes)	1.20%
Unused/vacant land (property that is either left vacant or is not reasonably used)	1.20%
Residential (places of dwelling)	0.3%
Agricultural (used for agricultural purposes such as farming, agriculture, animal domestication)	0.15%

## Tax exemptions

Property owners can be exempted from the land and building tax if they fall under the following categories:

- Agricultural land worth up to 50 million baht (US\$1.5 million);
- Land or building used for residential purposes and is worth up to 50 million baht (US\$1.5 million) (the owner's name should be on the deed of the property);
- The building is used for residential purposes and is worth up to 10 million baht (US\$318,000) (the owner's name should be on the deed of the property); and
- Individual owners of agricultural properties – they will be exempt from land and property tax for the tax period 2020-2023.

## Transition period

The Act provides a two-year transition period, starting January 1, 2020, to allow property owners to adjust to the new law. During this period there will be a reduced tax rate. This can be seen from the following tables.

Residential Property	
Appraised value	Tax rate
0-50 million baht (US\$0-1.5 million)	0.02%
50-75 million baht (US\$1.5-2.3 million)	0.03%
75-100 million baht (US\$2.3-3.1 million)	0.05%
Above 100 million baht (US\$3.1 million)	0.1%

Commercial Property	
Appraised value	Tax rate
0-50 million baht (US\$0-1.5 million)	0.3%
50-200 million baht (US\$1.5-6.3 million)	0.4%
200 million-1 billion baht (US\$6.3-31 million)	0.5%
1 billion-5 billion baht (US\$31-159 million)	0.6%
Above 5 billion baht (US\$159 million)	0.7%

Unused/Vacant Property	
Appraised value	Tax rate
0-50 million baht (US\$0-1.5 million)	0.3%
50-200 million baht (US\$1.5-6.3 million)	0.4%
200 million-1 billion baht (US\$6.3-31 million)	0.5%
1 billion-5 billion baht (US\$31-159 million)	0.6%
Above 5 billion baht (US\$159 million)	0.7%

Agricultural Property	
Appraised value	Tax rate
0-75 million baht (US\$0-2.3 million)	0.01%
75-100 million baht (US\$2.3-3.1 million)	0.03%
100-500 million baht (US\$3.1-15.9 million)	0.05%
500 million-1 billion baht (US\$15.9-31 million)	0.07%
Above 1 billion baht (US\$31 million)	0.1%

## Tax reductions

There are further tax deductions in the broad tax deduction clause of the Act. To qualify, property owners should fulfil certain criteria:

For 50 percent tax reduction:

- An inherited property that is used for residential purposes. The owner's name must be on the deed; or
- Property used for energy infrastructure projects such as a power plant.

For 90 percent tax reduction:

- Land or buildings that are under development for an industrial estate for no longer than three years;
- Land or buildings that are awaiting sale for no longer than two years starting March 2019;
- Land or buildings awaiting sale and is owned by a financial institution. The financial institution must have held the property for no more than five years;

- Land or buildings under development for industrial or residential purposes; or
- Land or buildings under development for an educational institute.

The government is estimated to collect 394 billion baht (US\$1.2 billion) from land and property tax in 2020.

## Tax incentives in Thailand – the Thailand Plus package

On September 6, 2019, Thailand introduced a stimulus package called “Thailand Plus” that contains a wide variety of measures to attract foreign investment.

Thailand Plus covers seven key points, including the introduction of new tax incentives and deductions as well as reforms and initiatives designed to improve the ease of doing business.

The package was reportedly designed for companies affected by the US-China Trade War that would like to relocate to another country in Asia. Authorities in Thailand hope the move will give it a competitive edge over other low-cost neighbors, like Vietnam, particularly as the Thai economy is growing at its weakest in five years, due to a downturn in exports, tourism, and farming.

Investors looking to take advantage of the new stimulus package should seek to develop a base understanding of the new Thailand Plus scheme before assessing factors that may benefit their business. Meanwhile, several of the initiatives announced as part of the package still require implementation measures.

### Tax incentives for investments

Through the Eastern Economic Corridor (EEC) – a special economic zone – Thailand offers investors corporate income tax (CIT) exemptions for the first 13 years and 50 percent reduction for the next five. Under Thailand Plus, companies are eligible for a further five years of 50 percent CIT reductions if they invest at least Thai Bhat 1 billion (US\$32 million) provided the investment is realized by the end of 2021.

#### Tax deductions for STEM development

Foreign investors that employ highly-skilled personnel in the field of science, technology, engineering, and mathematics (STEM) are eligible for CIT tax deductions of 200 percent for training expenses related to projects endorsed by the Ministry of Higher Education, Science, Research and Innovation, beginning in the 2019-20 financial year (FY).

Further, investors that are engaged in the development of advanced technology are entitled to 200 percent CIT tax deductions during the 2019-20 FY, for business investments or training expenses.

### **Deductions for investment in automation systems**

Businesses looking to engage in automation systems and robotics can receive a CIT reduction of 200 percent from the 2019-20 FY. The government is pushing the country's automation and robotics industry to help move the manufacturing sector – a backbone of the economy – further up the value chain and provide greater export-driven revenue streams.

### **Amendment to the Foreign Business Act**

The government will amend the Foreign Business Act – the main law that regulates foreign business activities in Thailand – to be better integrated with regulations issued by the Thailand Board of Investment (BOI), the government agency responsible for foreign investment promotion.

The amendment includes simplifying the process for obtaining visas and work permits for foreign investors, in addition to improving information sharing between the BOI and relevant state agencies.

### **Establishment of an investment and steering committee**

The BOI, in cooperation with the government, will establish an investment and steering committee, which will be chaired by the prime minister. The aim of the committee is to help facilitate investments – particularly large investments – through a 'one-stop service' that addresses laws and regulations that delay the investment process.

Investors will need to wait for upcoming regulations that clarify the exact powers of the committee and how they will coordinate with the existing Investment Law.

### **Expanding free trade networks**

The government will seek to expand the country's existing free trade agreements (FTAs) under the Thailand Plus initiative. The stimulus package will aim to revive the Thailand-EU FTA, which stalled in 2014, as well as joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

### **Development of new special investment zones**

The government is set to develop special investment zones for companies from individual countries, namely South Korea, Japan, China, and the US. Investors will need to monitor for upcoming regulations that explain how these special investment zones are implemented.

## **Thailand's DTA network**

Countries that have double tax treaties with Thailand are shown in the table below. Dividends are subject to a 10 percent withholding tax and interest paid to resident companies are subject

to a one percent tax rate. Royalties are subject to a three percent withholding tax.

Countries with Signed DTAs with Thailand				
A-B	C-J	K-O	P-S	T-Z
Armenia	Cambodia	Korea (South)	Pakistan	Taiwan
Australia	Canada	Kuwait	Philippines	Tajikistan
Austria	Chile	Laos	Poland	Turkey
Bahrain	China	Luxembourg	Romania	Ukraine
Bangladesh	Cyprus	Malaysia	Russia	United Arab Emirates
Belarus	Czech Republic	Mauritius	Seychelles	United Kingdom
Belgium	Denmark	Myanmar	Singapore	United States
Bulgaria	Estonia	Nepal	Slovenia	Vietnam
	Finland	Netherlands	South Africa	
	France	New Zealand	Spain	
	Germany	Norway	Sri Lanka	
	Hong Kong	Oman	Sweden	
	Hungary		Switzerland	
	India			
	Indonesia			
	Ireland			
	Israel			
	Italy			
	Japan			

## Vietnam

All taxes in Vietnam are imposed at the national level; there are no local, city, or provincial taxes. Enterprises should pay tax in localities where they are headquartered or have duly registered branches.

### Tax structure

Most companies and foreign investors in Vietnam are subject to the following major taxes:

- Corporate income tax;
- Business license tax;

- Value-added tax;
- Special consumption tax; and
- Foreign contractor tax.

## Corporate income tax

All income arising inside Vietnam is subject to CIT, no matter whether a foreign enterprise has a Vietnam-based subsidiary, or whether that subsidiary is considered a permanent establishment (PE). The CIT rate of 20 percent is a direct tax levied on the profits (gross revenue minus expenses) earned by companies or organizations.

## Business license tax

The business license tax (BLT), is an indirect tax imposed on entities conducting business activities in Vietnam, paid by enterprises annually for each calendar year that they do business in the country. All companies, organizations or individuals (including branches, shops and factories) and foreign investors operating businesses in Vietnam are subject to BLT.

## Value-added tax

Value-added tax (VAT) is imposed on the supply of goods and services at three different rates: 0, 5, and 10 percent, with the latter being the standard rate. All organizations and individuals producing and trading goods and services in Vietnam are liable to pay VAT, regardless of whether the organization has a Vietnam-based establishment.

## Withholding tax

There is no withholding tax imposed on dividends for resident and non-resident companies in Vietnam. Interest rates for non-resident companies are set at five percent and can be further reduced under a tax treaty. Withholding tax on interest, royalties, and fees for technical services for resident companies are set at 20 percent.

Withholding Tax Rates for Resident and Non-Resident Companies in Vietnam		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	0	0
Interest	20	5
Royalties	20	10

## Special consumption tax

The special consumption tax (SCT) is a form of excise tax that applies to the production or importation of 11 categories of products and six types of services, which are considered to be luxurious or non-essential, such as alcohol and tobacco products. Companies are liable for SCT both at the time of import and sale. However, to prevent an excessive tax burden, import SCT will be creditable against SCT incurred at the point of sale.

## Foreign contractor tax

Foreign businesses are considered foreign contractors if they conduct business or earn income in the country under contract with local organizations and individuals. Usually, foreign contracts are the winners of auctions or bid offerings organized by the Vietnamese government or organizations and may be principal contractors, general contractors, partnership contractors or subcontractors. Foreign contractors in Vietnam are liable to pay the same tax rates applicable to local companies, including import-export duties, personal income tax and other taxes required by authorities.

## Vietnam's DTA network

The country has signed DTA's with over 70 countries. The tax rate on interest rates are set between 10 to 15 percent unless it is reduced under a tax treaty. Royalties paid to non-resident companies are subject to a 10 percent withholding tax whereas resident companies are subject to a 20 percent tax rate. There is no withholding tax on dividends.

Countries with Signed DTAs with Vietnam				
A-B	C-J	K-O	P-S	T-Z
Australia	Cambodia	Kazakhstan	Pakistan	Taiwan
Austriac	Canada	Korea (North)	Palestine	Turkey
Azerbaijan	China	Korea (South)	Panama	Ukraine
Bangladesh	Croatia	Laos	Philippines	United Arab Emirates
Belarus	Cuba	Latvia	Poland	United Kingdom
Belgium	Czech Republic	Luxembourg	Portugal	Uruguay
Brunei	Denmark	Macao	Qatar	Uzbekistan
Bulgaria	Estonia	Malaysia	Romania	Venezuela
	Finland	Mongolia	Russia	
	France	Morocco	San Marino	
	Germany	Mozambique	Saudi Arabia	
	Hong Kong	Myanmar	Serbia	
	Hungary	Netherlands	Seychelles	
	Iceland	New Zealand	Singapore	
	India	Norway	Slovakia	
	Indonesia	Oman	Spain	
	Iran		Sri Lanka	
	Ireland		Sweden	
	Israel		Switzerland	
	Italy			
	Japan			



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Understanding the dynamics of ASEAN's labor market can prove to be a time-consuming endeavor for new market entrants as well as established investors seeking to expand their operations.

Although optimization of ASEAN based investment can present a degree of uncertainty due to the magnitude of regulation and diversity within the regional bloc's labor markets, those with up-to-date information on staffing regulations, prevailing hiring conditions, and comparative costs between the regional markets will be able to make targeted decisions pertaining to the location and structure of their operations.

## Employment permits and relevant visa categories



### Brunei

#### Labor law

The Employment Order of 2009 legislates the minimum terms and conditions of employment in Brunei. The Order covers those employed under a contract of service but excludes seamen, domestic servants, as well as those employed in a managerial or executive position. Civil servants are also excluded from this Order.

#### Relevant visa categories

##### Employment visa

Foreigners looking to work in Brunei need a valid employment visa from the Department of Immigration and National Registration.

There are several prerequisites employers need to follow in order to hire expatriates.

##### Requirements to apply for an employment visa

The previous regulation on 'foreign quota' on recruiting foreign employees was replaced by the *Lesen Pekerja Asing* (LPA) (foreign worker license) in 2018. It takes seven working days to issue this license from 41 days previously.

As part of the LPA process, companies will first need to register themselves as well as advertise any job vacancies on the JCB online platform for a minimum of two weeks.

The JCB will provide the company a list of qualified local candidates, but if these are not suitable, then the JCB will issue a clearance letter to the company, which can then be taken to the Department of Labor who will issue the LPA in seven working days.

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The documents required for an LPA are as follows.

- Two copies of foreign worker application form;
- A copy of the identity card; passport for each applicant, owner or partner in the company;
- A copy of the valid passport for every applicant;
- Copies of approval letters from relevant government agencies (if applicable);
- A list of local employees verified by the TAP;
- Verification of mandatory registration from JobCentre Brunei;
- A copy of certificate equivalent to the occupation should the occupation require qualifications;
- A copy of the tenancy agreement for office, or company and worker residence (If applicable); and
- In case of construction activities, attached copies of ongoing or upcoming projects.

#### *Visa application*

Upon the approval of an LPA, foreign workers must undergo a pre-employment medical examination at accredited health centers in the country, as per the conditions set out by the Ministry of Health, Brunei.

Once the medical report is received and approved, foreign workers must file the following application documents:

- An application letter from the employer to the Director of Immigration and National Registration;
- An employment pass application form;
- A visa application form;
- The employer's labor license;
- Labor department Form 500;
- A passport recognized by the Brunei Director of Immigration and National Registration, with a validity of more than six months before entering the country; and
- Required fee.

After the documents are verified and visa application is approved, the applicant may collect the work pass from the relevant Brunei diplomatic mission. The pass is valid for a period of two years and can be renewed for another two years at a time.

## Business visit visas

A business visit visa is a short-term visa issued for applicants undertaking business related activities in Brunei.

It is the responsibility of the Brunei-registered company or government agency to apply on behalf of the applicant, which includes a supporting letter in addition to supporting documents from the applicant.

## Professional visit visas

As with a business visit visa, the professional visa is a short-term visa, but issued for professional expertise for a project in Brunei.

It is also the responsibility of the Brunei-registered company or government agency to apply on behalf of the applicant, which includes a supporting letter in addition to supporting documents from the applicant.

## Social insurance

The employer is obligated to contribute five percent of the employees' wages to the Employees Trust Fund and 3.5 percent of the monthly salary for the Supplementary Pension Fund.

These rules only apply to citizens and permanent residents of Brunei.



## Cambodia

### Labor law

Cambodia's Labor Law provides the legal landscape for the rights and obligations of the employer and employee. The Law was amended in 2018 and 2019 to include seniority payments, severance payments, and the introduction of bimonthly salary payment system.

### Key amendments to labor law

Under the amendments there are a number of pro-employee initiatives employees should be aware of.

#### *Seniority payments*

Employers are no longer required to pay compensation for dismissals, but instead must pay seniority payments to the employee. Employees who have worked for at least one month are entitled to seniority payments equal to seven and a half days of wages and benefits.

The second component to this scheme requires employers to pay seniority back payments for the employment period before 2019. This is calculated at a rate of 15 days of wages and benefits for each year of service before 2019.

Employees who resign are not entitled to seniority back payments. Fixed duration contracts and renewals

### *Fixed duration contracts and renewals*

The Ministry of Labor and Vocational Training (MVLTV) has set out the initial fixed duration contracts (FDC) for local and foreign employees at two years. The contract can be renewed so long as the total duration of the renewal does not exceed two years.

### *Employment contracts for foreign workers*

Employers can now submit the Khmer-language translations of the company's employment contracts when they are applying the work permits for foreign employees.

### *Severance payments*

Employers are required to pay severance payments to employees at the end of their fixed-term contracts. The severance pay is equivalent to five percent of the wages that the employee received during the length of the contract.

### *Bimonthly salary payments*

Salary payments are now paid twice a month with the first payment made between the 16<sup>th</sup> and 18<sup>th</sup> of every month and the second payment made between the first and seventh of the following month.

## Relevant visa categories

### E-visas

Foreign workers looking to work in Cambodia will need a valid business visa (E-class visa). The E-class visa that is initially valid for a period of 30 days. The visa can be extended for a period of one month, three months, six months, or maximum a year at a time, by filing an application at the immigration department of the Ministry of Interior (Mol).

The six- and 12-months visas allow applicants multiple entries into Cambodia, while the one month and three-month visas permit single entry.

E-visas can be obtained at the employee's nearest Cambodian embassy as well as upon arrival at Phnom Penh international airport.

There are several E-class visa extension categories, which include:

- **EB visa** – the most common type of E-class visa issued to foreign nationals planning to work in Cambodia. It covers foreigners who are working in the country or want to start a business; freelancers; foreign employees' non-working partner and dependent children; or

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- any other foreigner who wants to stay in Cambodia for more than a month;
- **EP visa** – an EP visa is issued to foreign nationals looking for a job, or considering starting a business in Cambodia, after the expiry of their initial 30 days stay under the E-class visa. The EP is extendable up to three months. Foreigners unsuccessful in gaining employment within these three months are not permitted to continue their stay in the country;
  - **EG visa** – this general visa applies to foreigners looking for work in the country. The duration can be for one, three, or six months;
  - **ES visa** – the visa is issued for international students going to school or university in Cambodia; and
  - **ET visa** – This is a visa extension for technicians or work in specific industries.

To extend the E-class visa, foreigners need the following:

- A passport with at least six months validity;
- A blank page in the passport;
- One passport-sized photo; and
- A renewal fee in US dollars.

## Work permit

In addition to an E-visa, a foreign worker must also obtain a work permit and employment card. This is the responsibility of the employer who will apply through the MVLT.

### Requirements to apply for a work permit

The company will need to provide the following information to the MVLT:

- Certificate of incorporation with company stamp;
- Registered business address;
- Tax patent with company stamp;
- Foreign employee quota approval;
- An approval from the Ministry of Commerce; and
- An article of incorporation of the company.

The documents required at the employee level:

- Three sets of application form as issued by the MOI;
- Copy of passport with valid visa;
- Three photographs (4×6);
- Health certificate; and
- Written work contract from the employer.

Companies – foreign owned or domestic – are restricted in the number of foreigners they can employ under the quota system.

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Under the quota system, the number of foreigners employed in a company is subject to a maximum of 10 percent of the company's total workforce. This quota may be increased, at the discretion of the MLVT, if the company requires employers with a specific skill set that is currently unavailable in Cambodia.

## Social insurance

Employers must make Occupational Risk Contribution (ORC) payments to the National Social Security Fund (NSSF)

ORC payments are set at 0.8 percent of the employee's average monthly salary, capped at US\$240 per employee.

The contribution for healthcare to the NSSF is the obligation of the employer, at 2.6 percent of the employees' monthly wage.

## Indonesia

### Labor law

The Labor Law (Law No 13 of 2003) regulates all employment in Indonesia. Employer's must fulfil the following rights for employees:

- Receive the minimum wage, this varies depending on sector and province;
- Receive social security, which includes pension, healthcare, life insurance, accident insurance, and old-age benefits;
- Receive religious holiday allowance (1 month's salary)
- Receive statutory absence or payment when the employee does not take annual leave; and
- Receive payment for overtime.

### Relevant visa categories

There are a variety of visas foreign visitors can apply for depending on their purpose of visit.

#### Business visas

This is a single-entry visa valid for 60 days upon arrival and can be extended up to four times. This type of visa is intended for businesspeople who are engaging in meetings in the country, attending conferences, or undertaking market research.



This visa must be sponsored by a legal entity in Indonesia and the holders are not allowed to gain employment while in the country.

## Multiple entry business visas

Multiple entry business visas allow foreign visitors to make repeated trips into Indonesia for one year. The visa, however, has a 60-day limit upon arrival, meaning that visitors will have to leave the country before it expires before entering Indonesia again.

The requirements for obtaining this visa type is the same as that of the business visa. The fee is US\$100.

### Application requirements

The application requirements for the business visa is as follows:

- A passport valid for at least six months;
- A letter of invitation from the Indonesian-based sponsor mentioning the purpose of the applicant's visit, and length of stay. The Indonesian sponsor will also need to do an online application to the immigration office in Jakarta on behalf of the applicant;
- The process usually takes five working days by which the immigration office will issue a visa approval letter. This will then be sent to the applicant's nearest Indonesian Embassy, who will issue the visa.
- A business cover letter from the applicant's own company;
- One passport-sized photograph (white background);
- A copy of the applicant's round trip, electronic airline ticket;
- Pay the US\$50 fee; and
- A bank statement proving the applicant has at least US\$1,500.

## Working visas

A work visa (IMTA) can only be applied by the Indonesian company that will hire the foreign worker. The company must prove to the Ministry of Manpower (MOM) that the foreign applicant is required to fulfil certain positions.

Foreign employees are not allowed to obtain work in the following sectors:

- Human resource management;
- Legal;
- Health and safety;
- Quality control; and
- Supply chain management.

## Application requirements

The MOM will issue a recommendation letter to the Directorate General of Immigration in Jakarta, who will issue the final approval. Other than employees, applicants who have an Indonesian spouse are also eligible for this visa with the Indonesian spouse acting as the sponsor.

The applicant's sponsor must then pay US\$100 in advance as part of the Develop Fund for Expatriate Workers Law (DKPTKA) to the MOM. This amount is to be paid monthly to the MOM.

The MOM will issue the IMTA, and the immigration office will issue a limited stay visa (VITAS). Upon arriving in Indonesia, the applicant must convert their VITAS into a limited stay permit (KITAS).

## Permanent stay visas

The permanent stay visa (KITAP) allows expatriates to permanently stay in Indonesia. To qualify for this visa, expatriate workers would need to have held a Kartu Izin Tinggal Terbatas (KITAS) for four consecutive years, work in the same company, and having the same position. As with other visas, applicants will need a local sponsor. In addition to their employer, this could also be their spouse (who must be Indonesian).

## Visa on arrival

Foreign tourists can obtain visas on arrival at any of the country's main international airports. Those that are eligible must belong to one of the 73 nationalities listed in the Directorate General of Immigration's website. The visa is valid for 30 days and can be extended by an additional 30 days. Holders of this visa are not permitted to work in Indonesia.

## Positions open for employment for expatriate workers

On August 27, 2019, Indonesia's Ministry of Labor issued Regulation No. 228 of 2019 ("Regulation 228, 2019") to define the types of job positions foreign employees can hold in the country. The new regulation widens the number of positions open to expatriate workers, consolidates the list of positions into one, and simplifies the approval process for foreigners and their employers.

Regulation 228 lists more than 2,000 job titles across 18 sectors that can now be filled by expatriates. The job titles are taken directly from the International Standard Classification of Occupations (ISCO), issued by the International Labor Organization (ILO). The job positions and the requirements in Regulation 228, 2019 will be re-evaluated by the government in two years.

This regulation was issued as an implementing regulation for Ministry of Labor Regulation No. 10 of 2018 (Regulation 10, 2018), intended to attract highly skilled foreign employees into Indonesia. Regulation 10 was also designed to provide greater convenience for local employers – previous regulations regarding foreign workers were scattered across individual sectors.

Sectors and Positions Open to Foreign Employees	
Sector	Number of positions available
Construction	181
Real estate	6
Education	780
Manufacturing/processing industry	70
Water and waste management, recycling, remediation	19
Art and entertainment	57
Transportation and warehousing	51
Hospitality and F&B	12
Agriculture, forestry and fisheries	10
Leasing, manpower, travel agencies, and other support services	3
Financial services and insurance	32
Health and social activities	4
Information and telecommunications	244
Mining and Excavation	592
Wholesale and retail trade, repair and maintenance of cars and motorcycles	46
Procurement of electricity, gas, geothermal, and cool air	40
Miscellaneous services	8
Professional, scientific, and technical activities	20

The full list of positions that can be filled by foreign employees can be found on page eight of *Regulation 228, 2019*. The sectors with the highest number of positions open to expatriates are construction, information technology, mining, and education.

## Social insurance

Indonesia's social security programs are run by two organizations – the Social Security Administrator for Health (*BPJS Kesehatan*) and the Workers Social Security (*BPJS Ketenagakerjaan*) for pensions.

The government raised the taxable wage cap for the national pension plan program from March 2020 as well as the premiums for the universal healthcare program from July 2020.

The government launched its ambitious universal healthcare and pension programs in 2014. Since its inception, the healthcare program has become the biggest in the world with more than 185 million participants. Registered Indonesians and expatriates are eligible for free health services ranging from dental care to medicines to physiotherapy. Further, patients are also eligible for free emergency and chronic care, in addition to organ transplants.

### Who is eligible?

The government has made it mandatory for all Indonesian citizens and expatriates to participate in the social security programs. Expat employees must also enroll their families in the programs.

### Classification of healthcare class facilities

The BPJS healthcare system is divided into three classes. This does not determine the level of treatment a patient receives, but it does determine the type of hospital room they will be given. Hospital rooms in Indonesia come with varying levels of comfort and size.

Class I patients are provided rooms with two or three other patients while class II patients have to share with three to six others. Class III patients will have to share with 10 or more patients.

### How to calculate the healthcare premiums for employees?

The premium for employees is calculated as five percent of the monthly salary, with a salary cap of 12 million rupiah (US\$839).

In the private sector, the employer must pay four percent and the employee the remaining one percent. For civil servants, the government contributes to three percent while the employee contributes two percent.

In addition to the employee, the premium also covers their spouse and up to three dependent children up to the age of 21.

Employees earning less than 4 million rupiah (US\$279) per month are eligible to receive Class I room facilities at the hospitals. Employees earning lower than this can receive Class II and III room facilities.

## How to calculate the healthcare premiums for non-employees?

The new premiums for individuals that are classed as non-employees/self-employed /non-formal workers is as follows:

- Class I – 150,000 rupiah (US\$10.21) per person, per month;
- Class II – 100,000 rupiah (US\$6.80) per person, per month; and
- Class III – 42,000 rupiah (US\$2.85) per person, per month (for this specific class, the government will pay 16,600 rupiah (US\$1.12) of the total amount, per person, per month)

## How to calculate the pension premium for employees?

The pension program covers the following:

- Work compensation – provides protection for accidents occurring during or as a result of work;
- Old age benefits – provides protection for participants that are in retirement, laid off;
- Pension benefits – provides guaranteed income in retirement; and
- Life insurance – upon the death of the participant, their heirs can claim the benefits.

Based on Government Regulation No. 45 of 2015, the required rate of contribution to the pension fund is three percent of the employee's monthly wages. This is divided between the employer (two percent) and the employee (one percent).

Furthermore, there is a maximum wage base for these deductions. As of March 2020, this will be raised to 8,939,700 rupiah (US\$625). and increase from 8,512,400 rupiah (US\$593) in 2019.

The government calculates the maximum wage base through the following formula:

### **Highest wage limit in 2019 x (1 + Gross domestic population growth rate in 2019)**

Therefore:

$$8,512,400 \text{ rupiah (US\$593)} \times (1 + 5.02/100) = 8,939,700 \text{ rupiah (US\$625)}$$

As of 2018, the number of participants in the pension program had reached 11.5 million people. Only medium and large companies are obligated to join the program whereas small and micro enterprises can participate on a voluntary basis.

Some 90 percent of workers in large companies and 60 percent in medium-sized companies are already covered by the pension program.

The social security system is summarized in the table below.

Social Security Scheme in Indonesia			
Scheme	Areas covered	% of regular salaries/wages	
		Employer contribution	Employees contribution
BPJS Ketenagakerjaan (Pension scheme)	Accident insurance	0.24% - 1.74%	
	Life insurance	0.3%	
	Old age benefits	3.7%	2%
	Pension plan	2%	1%
BPJS Kesehatan (Healthcare)		4%	1%

## Religious holiday allowances

The payment of the religious holiday allowance (Tunjangan Hari Raya – THR) by employers to their employees is mandatory in Indonesia. This is in accordance with the Ministry of Manpower's Regulation No. 6 of 2016 (Reg 6).

### What is THR?

The THR is a yearly bonus given to employees at least one week before the start of the religious holiday observed by the employee (based on the employee's religion), equivalent to one month's salary (based on the period of employment). The recognized religious holidays for THR payment are:

- Eid-il-Fitri for Muslims;
- Christmas for Catholics and Protestants (considered as two different religions in Indonesia);
- Nyepi for Hindus;
- Vesak for Buddhists; and
- Chinese New Year for Confucianism.

The practice of many businesses in the country has been to pay the THR of non-Muslim employees prior to the Christmas holidays, and those of Muslim employees before the Eid-il-Fitri break.

## Who is eligible to receive THR and how is it calculated?

All employees, whether permanent or contract-based are eligible for THR and it must be paid using Indonesian rupiah.

The amount paid is based on the employees' service period. For employees working for more than 12 continuous months, they are entitled to THR equivalent to one month's salary.

For employees who have served one month or more but less than 12 months, the THR is calculated on a pro-rata basis using the following formula:

**$(\text{service period}/12) \times 1 \text{ month's salary}$**

Freelance workers are also entitled to THR. Those working for more than 12 continuous months must receive the equivalent of one month's salary, which is calculated on the average salary they received throughout this period.

For those working more than one month and less than 12 months, the THR is calculated based on the average monthly salary throughout the employment period.

## Fines for non-compliance

The regulation reiterates that businesses who fail to pay the THR will be fined five percent of the THR amount, which will be used for the employees' welfare. Further, this sanction does not waive the employer's obligation to pay the THR.

In addition to financial sanctions, employers will be subject to administrative sanctions for failure to pay the THR. These are:

- Restriction of business activities;
- Permanent or temporary suspension of production facilities; or
- Suspension of business activities.



## Laos

## Labor law

The Labor Law of 2013 applies to Lao and foreign employees and replaces the Labor Law of 2006. The key changes under the 2013 amendments are:

*Quota of foreign employees* – the quota for foreign employees has been increased from a

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ratio of 10 percent of the total workforce for manual labor to 20 percent. Further, the ratio for skilled employees has been increased from 15 percent to 25 percent of the total workforce.

**Requirements for foreign employees** – foreign employees are required to meet certain requirements in order to work in Lao. This includes being over the age of 20 years, possessing the correct skills for the position, and possessing no criminal records.

**Duration of employment contracts** – employees under fixed term contracts of three years or are renewed for more than three years are considered indefinite term employees.

**Working hours** – the number of working hours of 48 per week did not change from the 2006 Law. However, shifts are limited to the same time as the prescribed working hours, and overtime compensation for working on an official holiday or weekly rest day from 16:00 to 22:00 has increased to 300 percent of the employee's hourly wage.

Moreover, overtime compensation for working between 22:00 to 06:00 has increased to 350 percent of the employee's hourly wage.

**Severance payment** – severance pay has been fixed at 10 percent of the employee's monthly wage or the wage multiplied the number of years of employment.

**Employees representative organization** – companies that have between 10 to 50 employees must appoint an employees' representative.

**Collective bargaining** – the 2013 Labor Law allows for the collective bargaining of labor contracts.

**Health and safety** – a company with 100 employees or less must establish a health and safety committee.

## Relevant visa categories

Laos issues several types of work visas to foreigners planning to work in the country, based on the type of employment and projects assumed by them. Some of these are given below:

- Investor visa (NI-B2) – for foreign nationals investing in an enterprise registered in Laos; and
- Labor visa (LA-B2) – for foreign nationals working in Laos on a fixed employment contract.

After acquiring one of these visa types, the foreign worker must apply for a work permit and stay permit.

## Investor Visa

The Investor Visa is issued to foreign nationals who have invested in an enterprise registered in Laos and possess an investment license or an enterprise registration certificate as a document of proof. The visa can be applied for by foreign investors, stockholders, directors, deputy directors, and technical officers at Laos' Ministry of Planning and Investment (MPI) through its One-Stop Service (OSS), a single-window system.

### Requirements to apply for an investor visa

The investor applies for the NI-B2 visa to the Investment Promotion Department (IOSSO) who will confirm with the Immigration and Emigration Department that the applicant is not registered as someone who is prohibited to enter the country.

The application must include the following documents:

- Proposal form of the company;
- Copy of investment license, and concession registration certificate;
- Copy of enterprise registration certificate along with tax registration certificate; and
- Copies of foreign applicant's passport.

Once this has been verified, the documents will be sent to the Consular Department of the Ministry of Foreign Affairs for the approval of the visa. The investor can collect their NI-B2 visa at their nearest consulate or at a visa-on-arrival unit of an international checkpoint in Laos.


To secure a multiple entry NI-B2 Visa with a three-month, six-month, or one-year validity – investors must first obtain an Investor Visa (NI-B2) and a Stay Permit (SP) from the relevant departments: Foreigner Management Department of Ministry of Public Security for investments approved at the federal level; and Foreigner Control Police Section of Provincial Police Headquarters for investments approved at the provincial level.

The applicant must submit a copy of the NI-B2 Visa along with investment related documents and a passport copy to secure a multiple entry visa and a SP.

## Labor visa

The LA-B2 is the most common type of visa issued to foreigners living and working in Laos. It is a multiple entry visa and is available for a period of three-month, six-month, or one-year duration.

Foreign applicants must ensure that they register for the visa before entering the country from a Lao consular post located in their country of residence or home country; the visa cannot be applied for while residing in Laos.



To be eligible for the LA-B2 Visa, foreign applicants must first secure employment legally and obtain a sponsorship letter from a locally licensed and incorporated entity in Laos. The sponsoring entity is required to seek approval from the Lao Ministry of Foreign Affairs (MFA) in the capital Vientiane and present a financial guarantee for the prospective foreign employee.

### **Requirements to apply for a labor visa**

The application must include the following documents:

- Proposal form of the company;
- Quota approval for foreign employee;
- Approval of foreign employee import;
- Copy of investment license, and concession registration certificate;
- Copy of enterprise registration certificate along with tax registration certificate; and
- Copies of foreign applicant's passport.

As with an NI-B2 visa, the Immigration and Emigration Department will undertake background checks to verify that the applicant is eligible to enter the country. The Consular Department of the Ministry of Foreign Affairs will then approve the visa. The applicant can collect the visa at a Lao consulate or at a visa-on-arrival unit.

## **Work Permit and Stay Permit**

A Work Permit is issued by the Ministry of Labor and Social Welfare, and an SP by the Immigration Department, Ministry of Public Security. The application for the Work Permit and SP must be registered by the employer who is sponsoring the foreign applicant.

Documents required for the registration and issuance of Work Permit for foreign workers are as follows:

- Approval for importing foreign workers;
- Copy of the applicant's passport and visa (visa LA-B2);
- Passport photographs;
- Copy of the entity's registration certificate; and
- The proposal form of the company.

As per the law, a foreign worker must meet the following conditions to be employed in Lao PDR:

- Must be over the age of twenty years;
- Must possess skills and a professional level consistent with the required position;
- Must not possess a criminal record; and
- Be in good health.

An employment contract for foreign employees is valid for an initial period of 12 months and can be extended for another 12 months up to a maximum of five years.

## Social insurance

The employee must contribute 5.5 percent of their monthly wage, capped at 4.5 million kip (US\$494), to the Social Security Fund. The employer's contribution is 6 percent of the employee's wage.



## Malaysia

### Labor law

The Employment Act of 1955 governs employment laws in Malaysia and sets out the minimum benefits that are afforded to employees; however, it does not apply to every employee.

The protections provided under the Employment Act only apply to these categories of employees:

- Those earning less than 2,000 ringgit (US\$481) per month or below;
- Employees employed as manual labor or as supervisors of manual laborers, regardless of salary;
- Employees engaging in the maintenance and operation of mechanically propelled vehicles;
- Those employed as domestic servants; and
- Those employed on seagoing vehicles (subject to certain conditions).

Employees not covered under the Employment Act will be governed by the terms set out in their employment contracts. There are several mandatory statutory requirements that employers have to adhere to such as contributing to social insurance premiums as well as not retiring an employee before they reach the minimum retirement age (60 years).

### Relevant visa categories

Foreign workers who wish to be employed by a company within Malaysia will have to have their application reviewed by the relevant government agencies, such as the Ministry of Manpower. The employee's sponsoring company must also work with the government to ensure that the worker is approved for entry.

The Malaysian government generally issues three different types of work permits:

- Employment pass;
- Temporary employment pass; and
- Professional visit pass.

## Employment pass

This work permit enables foreign workers to take up employment under a contract of service with an organization in Malaysia. This pass is issued to employees with specific skills, usually for technical or managerial jobs.

The employment pass is classified into three categories:

### *Category I*

Applicants must receive a monthly base salary of 10,000 ringgit (US\$2,410) or more and have an employment contract of up to 60 months.

Applicants may bring eligible dependent(s) and/or foreign domestic helper(s), subject to approval and the employment pass may be renewed.

### *Category II*

Applicants must receive a monthly base salary of above 5,000 ringgit (US\$1,200) and under 10,000 ringgit (US\$2,410) have an employment contract with a maximum validity period of 23 months. The employment pass may be renewed.

Applicants can bring eligible dependent(s) and/or foreign domestic helper(s), subject to approval

### *Category III*


Employment pass category III is available to foreign nationals working on contracts of 12 months or less and with monthly salaries ranging from 3000 ringgit (US\$723) and under 5,000 ringgit (US\$1,200). The employment pass may be renewed up to two times. Applicants are not allowed to bring dependent(s) and/or foreign domestic helper(s).

### **Requirements to apply for an Employment Pass**

It is the responsibility of the employer to apply for an employment pass on behalf of the foreign employee.

The employer must first apply for an 'expatriate post' at one of the following government agencies:

- Multimedia Development Corporation – for jobs in the technology sector;
- Malaysia Industrial Development Authority – for manufacturing and services sectors;
- Malaysian Biotechnology Corporation – for jobs in the biotechnology sector;
- Central Bank of Malaysia – for sectors of finance, banking, and insurance;
- Securities Commission – for the securities and futures market sectors; and
- Expatriate Committee – for sectors that are not under the above.



Once the expatriate post has been approved, the employer can then submit the employment pass application to the Immigration Department of Malaysia.

- The employer will need to submit the following documents to the Immigration Department;
- The Employment Pass application form;
- Copy of passport;
- Letter of approval from the relevant authority body;
- Employment contract;
- CV and education certificates; and
- The employer's company profile.

## Temporary employment pass

Malaysian companies requiring the immediate services of semi-skilled foreign workers in specific sectors can obtain a temporary employment pass, also known as a visitor's pass. The pass is valid for a period of 12 months and employers can apply for an extension on a yearly basis for up to 10 years.

There are two types of temporary employment passes in Malaysia:

- For foreign workers in the construction, plantation, agriculture, manufacturing, and services; and
- Foreign domestic helpers.

Further, this work permit is open only to the citizens from the approved countries:

- Bangladesh – only allowed to work in plantation sector through government to government agreements;
- Cambodia;
- India – citizens are not allowed to work in the manufacturing sector;
- Indonesia – male citizens are only allowed to work in the manufacturing sector whereas females can work in all sectors;
- Kazakhstan;
- Laos;
- Myanmar;
- Nepal;
- Pakistan;
- Philippines – female citizens are prohibited from working in any sector;
- Sri Lanka;
- Thailand;
- Turkmenistan;
- Uzbekistan; and
- Vietnam.

## Requirements to apply for a temporary employment pass

As with employment passes, it is the duty of the employer to apply for the temporary employment pass on behalf of the foreign applicant.

The employer will also need to apply for a visa approval letter from the Immigration Department of Malaysia.

The employer will need to provide the following documents:

- VDR application form;
- An approval letter from the Ministry of Home Affairs regarding the quota approval;
- IM.12 and IM.38 visa application forms;
- Receipt of payment for levy;
- Security bond – insurance guarantees/bank guarantee;
- Copy of the foreign applicant's passport;
- Passport-sized photo of applicant;
- Medical certificate issued from a medical center in the applicant's country of origin (valid for three months);
- Foreign Worker Compensation Scheme (insurance); and
- Insurance policy of Health Insurance Protection Scheme Foreign Workers (SPIKPA) (health insurance).

After the visa approval letter is approved, the employee will then use it to apply for a visa with reference (VDR) from the Malaysian embassy (certain nationals do not need an entry visa).

In addition to the VDR, the employee will need to obtain a Immigration Security Clearance (ISC) from an ISC center in their source country.

The Temporary Employment Pass will only be issued after the employee has passed the FOMEMA (Foreign Workers Medical Examination Monitoring Agency) medical examination within 30 days of arrival. FOMEMA is the company appointed by the Malaysian government to undertake these examinations.

## Professional Visit Pass

The Professional Visit Pass is granted to foreign workers with the necessary qualifications or skills to work in Malaysia on a temporary basis for up to 12 months.

They can only provide their services to a Malaysian company on behalf of an overseas company and are not allowed to apply for a dependent's pass.

### Requirements to apply for a Professional Visit Pass

The application must be made by the sponsor company in Malaysia to the Immigration Department by submitting the following documents:

- Copy of passport of foreign employee;
- IM.12 and IM.38 visa application forms;
- Letter of offer from Malaysian company;
- Sponsor's company profile;
- Academic certificates (for international students);
- Letter of approval from the Department of Religion and the Islamic Religious Department (for religious missionaries); and
- Bank guarantee (if you are a Chinese citizen).

Once the professional visit pass has been approved, the employee can then apply for the VDR (certain nationals do not need an entry visa) to enter the country.

After arrival in Malaysia, the employee must visit the Immigration Department of Malaysia to receive the professional visit pass sticker on their passport.

#### *Who is eligible?*

- People under the following categories are eligible to apply for a Professional Visit Pass:
- Islamic missionaries;
- Foreign artists – filming and performing;
- Government officials;
- Volunteers;
- International students – under industrial training or mobility program; and
- Other religious workers – priests, granthi, gurukkal, guru dharma (these must be at least 40 years of age).

#### **Business visas**

Malaysia does not issue business visas, and so those travelling for business purposes can do so through a tourist visa.

To apply, the applicant must show proof of having sufficient funds while in Malaysia and must possess a valid return ticket.

## Social insurance

Employers and employees are required to make monthly contributions to the social security fund managed by the Malaysian Social Security Organization (SOCSO). Contributions are capped at the monthly wage of 4,000 ringgit (US\$963).

The monthly contributions fall under two categories:

### *Employment injury and invalidity scheme*

This scheme provides protection against accidents or occupational disease arising from one's employment and is obligatory for employees under the age of 60. The employee contributes 0.5 percent from their monthly wage while the employer contributes the remaining 1.75 percent.

### *Employment injury scheme*

Employees who have reached the age of 60 will have to contribute 1.25 percent of their monthly wage to this scheme, payable by the employer. The scheme provides protection against someone who has died due to their employment or suffered from invalidity due to their employment.

### *Foreign workers obligated to contribute*

From January 2019, foreign workers were obligated to register under SOCSO and make the monthly contributions, whereas prior to this they were not forced to do so.

The employer will incur a 1.25 percent charge calculated on the worker's salary.



## Myanmar

## Labor law

Myanmar is governed by various employment laws and many of the laws from the colonial period have survived. These are:

- The Leave and Holiday Act of 1951 (amended in 2006);
- The Overseas Employment Law of 1999;
- The Labor Organization Law of 2011;
- The Labor Organization Rule of 2012;
- The Settlement of Labor Dispute Law and Rules of 2012;
- The Social Security Law of 2012;

- The Social Security Rule of 2012;
- The Minimum Wages Law of 2013;
- The Minimum Wages Rule of 2013;
- The Employment and Skill Development Law of 2013;
- The Amended Settlement of Dispute Law of 2014;
- The Amended Leave and Holiday Law of 2014;
- The Amended Factory Act of 2016;
- The Payment of Wages Law of 2016; and
- The Amended Shop and Workplace Law.

The country continues to embark on a comprehensive reform process. Foreign investors and workers should thus monitor the policies and practices issued by the Ministry of Labor, who not only provide interpretations of existing laws but also impose additional requirements on employers and employees

## Relevant visa categories

Initially, most foreign workers acquire a single-entry business visa valid for a 70 day stay. A multiple entry business visa can be acquired if the applicant has already had at least two single entry business visas and has not violated any immigration laws.

### Business visa

The criteria for awarding a multiple entry business visa are not set in stone, but rather determined on a case-by-case basis. In some cases, authorities might only require one previous single-entry visa, while in other cases they may require three.

Citizens from 50 different countries are eligible to apply online for a 70-day single entry business e-visa. E-visas require entry into the country through Yangon, Mandalay, or Nay Pyi Taw airports. Only nationals from Cambodia, Indonesia, Laos, the Philippines, Singapore, Thailand, and Vietnam can arrive in Myanmar visa-free, with a maximum stay of 14 days.

#### Requirements to apply for a business visa

The following documentation is required when applying for a business visa:

- A recommendation letter from the employer, including details about the type of business, purpose of visit, applicant's name, passport details, position in company, and intended entry and exit dates;
- Invitation letter from a Myanmar registered company on its official letterhead;
- A guarantor from the Myanmar registered company who is the one officially inviting the applicant. The guarantor must be the managing director or owner of the company and must give a copy of the Myanmar company registration certificate. The guarantor may be contacted by the immigration authorities during the application process;

- Visa application form;
- Two recent color photographs with white background size 35mm x 45mm; and
- Passport valid for at least six months and a copy of the passport details page.

## Stay Permits and multiple journey special re-entry visa

Although business visas are limited to 70 day stays regardless of whether they are single or multiple entry classification, a stay permit, or multiple journey special re-entry visa can be acquired to extend the total stay period.

The Stay Permit is not a separate visa, but a special permit that removes the 70-day limit on visas, allowing a foreign worker to remain in Myanmar for lengths of either three months, six months, or one year.

However, the Stay Permit is only valid for one entry, even if the holder has a valid multiple entry visa. In order to keep the Stay Permit valid when leaving Myanmar, a Multiple Journey Special Re-entry Visa must be obtained. The Multiple Journey Special Re-Entry Visa is also valid for either three months, six months, or one year.

To be eligible for the Multiple Journey Special Re-Entry Visa, the applicant must have traveled to Myanmar on a business visa a minimum of three separate times and present evidence that they are employed as a consultant, director, or manager.

### Requirements to apply for Stay Permit or Multiple Journey Special Re-Entry Visa

The following documents are required:

- A recommendation letter from the employer, including details about the type of business, purpose of visit, applicant's name, passport details, position in company, and intended entry and exit dates;
- Invitation letter from a Myanmar registered company on its official letterhead;
- Applicant's CV;
- Authorization letter notarized and legalized by the relevant Myanmar Embassy or Consulate;
- Company documents, including certificate of registration, permit, company affidavit;
- Visa application form;
- Two recent color photographs with white background size 35mm x 45mm; and
- Passport valid for at least six months and a copy of the passport details page.

## Work permits

Companies established under the Myanmar Foreign Investment Law (MFIL), or set up under the Myanmar Special Economic Zone Law (MSEZL), can apply for work permits for employees in managerial or supervisory roles or for those holding technical skills.

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To do so, a company must have an investment permit and receive an endorsement to employ foreign workers from the Myanmar Investment Commission (MIC). Alternatively, if a company is operating under the MSEZL, they can apply at the zone's One Stop Service Center (OSSC).

In order to acquire a work permit, the applicant must be in good health, have a letter of recommendation from their employer, and hold a degree that is regionally or internationally recognized in relation to their employment as proof of expertise.

Even with a work permit, foreign workers will still need to acquire a Stay Permit, or Multiple Journey Special Re-Entry Visa.

## Social insurance

Under the Social Security Act of 2012, companies with more than five employees are required to provide social security benefits, such as healthcare as well as insurance against employment-related injuries.

The employer is obligated to contribute three percent of an employee's basic salary, capped at 9,000 kyat (US\$6.8), whereas employees contribute two percent of their total salary, capped at 6,000 kyat (US\$4.50).



## Philippines

### Labor law

The *Labor Code* is the main employment statute in the Philippines and the Department of Labor and Employment (DOLE) is the administrative entity in the field of labor and employment.

Foreign nationals planning to work in the Philippines are required to secure a work visa, which can be obtained from the Philippines' Bureau of Immigration (BI), as well as an Alien Employment Permit (AEP) issued by DOLE.

## Employment permit and relevant visa categories

### Alien employment permit

An Alien Employment Permit (AEP) authorizes a foreign national to work in the Philippines. Though not a work permit, AEP is an important legal document required to secure a work visa in the country.



Some foreign nationals are exempted from obtaining an AEP. These include:

- All members of the diplomatic service and foreign government officials;
- Owners and representatives of foreign principals whose companies are accredited by Philippines Overseas Employment Administration (POEA); and
- Permanent resident foreign nationals and probationary or temporary resident visa holders under the Philippines' immigration law.

Besides, foreign nationals working in the Philippines whose employers are located abroad, or those who do not have an employer are also excluded from securing an AEP.

An AEP is valid for a year, or for the complete duration of the employment contract not exceeding three years. However, the issued AEP is valid only for the position and company that it was secured for. A new AEP must be secured in the event an employee assumes a new job position within the same company or joins a new company.

The application for an AEP may be filed by the employer or the foreign nationals themselves.

#### **Requirements to apply for an AEP**

- Application form;
- Photocopy of employee's passport with valid visa;
- All documents related to the contract of employment;
- Photocopy of current AEP (in cases of reissue); and
- Photocopy of mayor's permit or photocopy of business permit.

## **Pre-arranged Employment Visa or 9 (G) visas**

The most common type of work visa issued in the Philippines is the 9 (G) visa, also known as the Pre-arranged Employment Visa. It allows employers in the country to employ foreign nationals with skills, qualifications, and experience that may be in short supply in the country. The issuance of the 9 (G) visa falls within the competences of the BI.

A 9 (G) visa is applied through an employer's sponsorship. Therefore, securing a job with a Philippines-based company is a prerequisite. Further, applicants are also required to obtain an AEP before securing a 9 (G)-work visa.

It is important for applicants to note that a 9 (G) holder may only work for the company that has sponsored his/her work visa. In the case of change of employer, the 9 (G) status is downgraded to a tourist visa, and foreign workers are required to make a new work visa application.

A 9 (G) is valid for an initial period of one, two, or three years, and can be extended up to three years at a time, depending on the duration of the employment contract. The validity,

however, cannot exceed the period granted under the AEP issued by the DOLE. The visa can be renewed multiple times.

#### **Requirements to apply for a 9 (G) visa**

- A Notarized Certification of Number of Foreign and Filipino Employees of the employer;
- Application form;
- Photocopy of employment contract, Securities and Exchange Commission (SEC) certification, and Articles of Incorporation (AOI);
- A certified true copy of AEP from DOLE;
- Original newspaper clipping showing publication of AEP application by DOLE;
- BI clearance certificate;
- Alien certificate of registration;
- Applicant's passport; and
- Other documents supporting the employment of the applicant.

#### **Treaty trader's visa or 9 (D) visa**

A 9 (D) Visa or Treaty Trader's Visa is for foreign nationals belonging to countries that have a bilateral trade agreement with the Philippines. Currently, the Philippines has such an agreement with the United States, Japan, and Germany.

#### **Requirements to apply for a 9 (D) visa**

To qualify for a 9 (D) Visa, foreign nationals must prove that:

- They or their employers are engaged in substantial trade, involving investment of at least US\$120,000 between the Philippines and their country of origin;
- They intend to leave the Philippines upon the completion or termination of their work contract;
- They hold the same nationality as their employer or company's major shareholder; and
- They hold a position of a supervisor or executive in the company;

The Treaty Trader's Visa is valid for up to two years.

Other nationalities who want to invest in the country can apply for special kinds of resident visas. These are:

- Special resident retiree's visa – available to international investors at least of 35 years of age;
- Special investor's resident visa (SIRV) – this allows the holder to reside in the Philippines for an indefinite period. They must be willing to invest at least US\$75,000 in the country; and
- SIRV for investors in tourism related projects – the SIRV is given to foreigners who invest at least US\$50,000 in qualified tourism-related projects.

## Social insurance

The employer must make social security contributions to the social security fund on behalf of the employee. This monthly amount corresponds to the salaries of the covered employees.

Employers contribute PHP1,600 (US\$32.90) per month for employees in the highest salary bracket. The employee themselves will contribute PHP 80 (US\$1.65) to PHP 800 (US\$16.45) based on their salary bracket.

In addition to the social security contributions, the employer and employee also have to contribute to the Philippine Health Insurance Corporation (PHIC) and the Home Development Fund (HDMF).

The maximum contribution by employers to the PHIC is PHP 900 (US\$18.5) per month and PHP 100 (US\$2) for the HDMF. An employee, based on their salary bracket, will pay between PHP 150 (US\$3) to PHP 900 (US\$18.5) per month for the PHIC and up to PHP 100 (US\$2) for the HDMF.

## Christmas bonuses and 13<sup>th</sup> month pay

The 13<sup>th</sup> month pay and Christmas bonuses in the Philippines are an important aspect of HR policy that employers need to understand.

A key topic that often prompts questions is the distinction between the two systems and the tax rules surrounding them. Though both bonus payments are distinct, they can interact to create diverse tax outcomes.

### **Distinction between 13<sup>th</sup> month pay and Christmas bonuses**

The key distinction between the 13<sup>th</sup> month pay and Christmas bonuses is that the former is mandatory by law for all non-managerial staff, while the latter is at the discretion of the employer. Furthermore, the 13<sup>th</sup> month pay must be paid on or before December 24. It has become common for employers to pay half at the beginning of the school year and the rest in the days running up to Christmas. In contrast, there is no set date for Christmas bonuses to be paid; as with the amount, it is at the discretion of the employer.

Furthermore, the 13<sup>th</sup> month pay must be paid on or before December 24. It has become common for employers to pay half at the beginning of the school year and the rest in the days running up to Christmas. In contrast, there is no set date for Christmas bonuses to be paid; as with the amount, it is at the discretion of the employer.

## The 13<sup>th</sup> month pay

### *Eligibility*

Employees **excluded** from the 13<sup>th</sup> month pay fall into the following categories:

- Managers;
- Employees covered by civil service law;
- Housekeepers and persons in the personal service of another; and
- Employees paid on commission or task basis.

### *Calculation*

The 13<sup>th</sup> month pay can be calculated as one-twelfth (1/12) of the basic salary of the employee within one calendar year. Alternatively, if the employee is paid on a monthly basis, the following equation can be used:

$$(\text{Basic Monthly Salary} \times \text{Number of Months Worked}) / 12$$

### *Taxation*

The 13<sup>th</sup> month pay is exempt from tax, up to a limit of PHP82,000 (US\$1600). However, in January 2018, the government issued the Tax Reform for Acceleration and Inclusion (TRAIN) law which raised this limit to PHP90,000 (US\$1,778). If the 13<sup>th</sup> month pay exceeds this limit, the excess will be added to the salary of the employee and included in the income tax calculation.

## Christmas bonuses

### *Eligibility*

The Christmas bonus is not an enforceable obligation and can only be released at the employer's discretion. They are usually issued to show appreciation and gratitude to employees for their services during the year.

### *Taxation*

The taxation of Christmas bonuses must be split into two parts: non-performance-based bonuses (also known as 'other benefits') and performance-based incentives.

## Other benefits

'Other benefits' fall into the same category as the 13<sup>th</sup> month pay and are subject to the same PHP90,000 limit (US\$1,778). In other words, if 'other benefits' and the 13<sup>th</sup> month pay combine

to a total of less than PHP90,000 (US\$1,778), no tax is to be paid. If the combination of 'other benefits' and the 13<sup>th</sup> month pay exceeds the limit, the excess will be subject to income tax.

## Taxation of performance-based incentives

Collective Bargaining Agreements (CBAs) and productivity incentive schemes are subject to a PHP10,000 (US\$197) tax-free limit. If the performance-based bonus exceeds PHP10,000, the whole amount (not just the excess) will be counted as 'other benefits' and included in the PHP90,000 (US\$1,778) tax-free limit. Any excess over PHP90,000 (US\$1,778) will be taxable.

If 'other benefits' (13<sup>th</sup> month pay and non-performance-based incentives) already exceed the tax-free limit, the performance-based incentives will automatically be subject to the normal income tax rate. For example:

- An employee earns PHP10,000 (US\$197) in performance-related incentives – no tax is payable on this bonus;
- An employee earns PHP15,000 (US\$296) in performance-related incentives, as well as PHP 20,000 (US\$395) in 'other benefits' – no tax is payable;
- An employee earns PHP20,000 (US\$395) in performance-related incentives, as well as PHP 80,000 (US\$1,581) in 'other benefits' – tax is payable on the PHP10,000 (US\$197) excess, (20,000 (US\$395) + 80,000 (US\$1,581) – 90,000 (US\$1,778)); or
- An employee earns PHP30,000 (US\$592) in performance-related incentives, as well as PHP 100,000 (US\$1,976) in 'other benefits' – tax is payable on the PHP30,000 (US\$592) bonus.



## Singapore


### Labor law

The Employment Act (EA) is the main labor law in Singapore. The Act regulates employment terms and conditions for all employees under a work contract with an employer. The EA covers the following:

- Minimum days for giving notice of termination of contract;
- Actions employers are entitled to upon misconduct of employees;
- Salary periods, time of payment;
- Maternity protection and benefits, and childcare leave for parents; and
- Public holiday, leave, and sick leave entitlements.

### Amendments to the Employment Act

On April 1, 2019, the Singapore government enacted major amendments to the EA. The changes affect core human resource (HR) and payroll compliances termination procedures and leave



allowances for employers as well as employees' rights in the workplace.

The new law affects all businesses and all employees – local and foreign – under contract with an employer in Singapore.

The amendments were designed to improve employment conditions by expanding the qualifying requirements around salary and job grades, resulting in every private sector employee now entitled to the rights and protections under the EA.

This was done to closely reflect the changing needs of the country's employment landscape, with professionals, managers, executives, and technicians (PMETs), predicted to make up some two-thirds of the country's work force by 2030 compared to just half currently. Notably, the EA also applies to foreign employees.

Those excluded under the EA are public servants, seafarers, and domestic workers (they were not included before as well) as they are covered by other regulations.

### **Core provisions extended to more employees**

Core provisions refer to employee entitlements given to workmen (manual labor workers or blue-collar workers), non-workmen (non-managers and executives, white-collar workers), and managers and executives (M&Es) earning more than S\$4,500 (US\$3,240) per month.

After the amendment, the S\$4,500 threshold was removed, allowing an additional 430,000 M&Es to benefit from employment protection under the EA.

- The core provisions include:
- Timely payment of salaries;
- Paid annual and sick leave;
- Paid public holidays;
- Protection from wrongful dismissal; and
- Maintenance of employment records.

### **Salary threshold for non-workmen increased**

Before April 1 2019, non-workmen earning up to US\$1,800 (S\$2,500) were protected by Part IV provisions of the EA (which provides for rest days, hours of work, and other conditions of service), with overtime rate capped at US\$1,620 (S\$2,250).

With the new law in place, non-workmen earning up to US\$1,872 (S\$2,600) are now protected by the Part IV provisions and the overtime rate will be capped at S\$2,600. Managers and executives are not covered under the Part IV provisions.

### **New approach to salary deductions**

Prior to the new amendments, employers were limited to the type of salary deductions they could take, such as for absence from work or damage or loss of company property and goods. Now employers may make other deductions, such as for company insurance plans, but only if the employee agrees to the deduction in writing and can withdraw their consent any time without incurring sanctions.

This arrangement provides employers with the flexibility to cater to mutually agreed deductions while safeguarding the salary of employees.

### **Medical certificates (MCs) and hospitalization leave**

MCs issued by doctors and dentists registered under the Medical Registration Act, 1997 and the Dental Registration Act, 1999 is now recognized, whereas previously only MCs issued by the government- and company-appointed doctors were acknowledged. This provides employees with the convenience to visit doctors closer to home.

However, this policy does not impact the reimbursement of medical consultation fees. Employers are only required to reimburse fees from government doctors or company-approved doctors.

### **Working on public holidays**

Compensation for working on public holidays has now been extended to all employees. Previously, when workmen and non-workmen were required to work on public holidays, employers either provided compensation with an extra day's pay or a full-day off-in-lieu. The new changes will now allow employers to grant time off for the number of hours worked on a public holiday, rather than the full day.

Part IV employees will continue to receive an extra day's pay or a full day off.

### **Wrongful dismissal**

The Employment Claims Tribunal (ECT) will now manage wrongful dismissal claims, which were previously adjudicated by the Ministry of Manpower. Furthermore, the ECT will also adjudicate salary-related claims which were resolved by the Tripartite Alliance for Dispute Management (TADM) – the TADM provided mediation services to resolve disputes before they were brought forth to the ECT.

Employees who felt they were forced to resign and can substantiate their claims can submit a dismissal claim. This is described in the EA as:

- Dismissal due to discrimination based on the employee's age, gender, disability, nationality, race, or religion;

- Dismissal to depriving an employee of benefits/entitlements — such as maternity benefits and bonus entitlements; and
- Dismissal to punish an employee for exercising a right — such as whistleblowing.

Additionally, for M&Es to submit a wrongful dismissal claim, they now need to have served a minimum period of six months at their respective companies. Before the reform, M&Es needed to serve one year before making a claim. For non-M&Es, there is no minimum service period required.

Either party could, however, terminate an employment contract by providing written notice or by paying a salary in lieu, to the other party.

## Employment permits

The Ministry of Manpower (MoM) issues a wide range of employment permits to expatriates planning to work in Singapore. Each employment permit differs across various categories of employees and is based on their professional skills and monthly salaries.

It is important for applicants to note that most work permits are applied through the employer or an employment agent via the MoM's online platform. Therefore, it is mandatory for skilled professionals to first obtain a job offer in the country before applying.

### Employment Pass

The Employment Pass (EP) is issued to expatriates employed as foreign managers, executives, and skilled professionals in Singapore. First-time candidates can obtain an EP for an initial two years which can then be renewed for up to three years at a time.

The EP is issued to individuals with a job offer that includes a minimum monthly salary of S\$4,500 (US\$3,308). More experienced candidates are required to be offered a higher salary to qualify for this work permit.

Candidates that are offered a monthly salary of S\$6,000 (US\$4,383) or more, are eligible to apply for a dependent's pass for their legally married spouse and unmarried children under 21 years of age to join them in Singapore.

Applicants looking to bring their parents, common-law spouse, or stepchildren must apply for the Long-Term Visit Pass (LTVP). The requirements are the same as for the dependent's pass, however, only those having a fixed monthly salary of at least S\$12,000 (US\$8,768) can bring their parents into the country.

There is no foreign worker levy or quota for this specific work permit. Moreover, the processing time for EP applications is up to five weeks, and, if submitted online, the application may be processed within three weeks.

## Salary requirements for financial services sector

Foreign applicants in the financial services sector must now receive a qualifying salary of S\$5,000 (US\$3,678). Similarly, the qualifying salaries for older and experienced candidates will also be raised. This will come into effect September 1, 2020 for new applicants and from May 1, 2021 for renewals.

## Documents for EP applications

Employers need to submit the following documents for EP applications:

- Personal information of the applicant's passport;
- Company's latest business profile or information registered with Singapore's Accounting and Corporate Regulatory Authority (ACRA); and
- Details of the applicant's academic certificates. Applicants from India and China are required to produce additional documents.

Additional documents for Indian and Chinese nationals:

1. Indian applicants – transcripts and marksheets.
2. Chinese applicants – certificate of graduation and verification proof in English from sources recommended by the MoM.

Further, documents in languages other than English must be submitted along with a translated copy of each. Also, it is important to note that the MoM may ask for more documents to be submitted at the time of processing the application.

## Personalized Employment Pass

The Personalized Employment Pass (PEP) is designed for high-earning EP holders and overseas foreign professionals. The minimum salary required to obtain a PEP is S\$12,000 (US\$8,767) per month for existing EP holders and S\$18,000 (US\$13,151) per month for overseas foreign professionals. Candidates can apply for a PEP themselves. The application takes around eight weeks to process.

One key advantage for PEP holders is the flexibility to switch jobs without re-applying for another employment permit. They can also stay in the country for up to six months before securing the next job. Another important advantage is that PEP holders can apply for any job in any sector, including medicine, law, pharmacy, and dentistry.

There is also no foreign worker levy or quota for this type of work permit, and PEP holders can apply for a dependent's pass or an LTVP for their family members. However, the PEP can only be issued once for a period of three years. Thereafter, applicants need to either apply for an EP or S Pass to continue their employment in Singapore.

## Entrepreneur Pass

The Entrepreneur Pass (EntrePass) is for foreign business professionals and entrepreneurs who wish to start their own business in Singapore.

The initial EntrePass is valid for one year and two years for every subsequent renewal. Business owners must, however, meet the renewal criteria set by the MoM, which includes aspects such as the number of hired local employees as well as the total amount of annual business spending. The full list can be found on the MoM website.

As per the eligibility criteria stated by the MoM, the applicant's company must have either:

- Funding from an accredited source;
- Hold intellectual property (IP) registered with a recognized national IP institution;
- Research collaboration with a recognized institution; or
- Be an incubatee at a Singapore government-supported incubator or accelerator.

According to the MoM, businesses, such as coffee shops, hawker centers, food courts, bars, night clubs, karaoke lounges, massage parlors, and employment agencies, are not eligible under the EntrePass scheme.

The documents required for the EntrePass are:

- Copy of the personal information page of the applicant's passport;
- Past employment testimonials in English; and
- A business plan in English.

For businesses registered with the ACRA:

- Company's latest business profile

## S Pass

The S Pass is similar to the EP except that it is designed for mid-level skilled employees with a job offer that includes a minimum monthly salary of S\$2,500 (US\$1,838) or more.

As with the EP, S Passes are valid for up to two years and can be renewed for up to three years at a time. S Pass holders that earn a monthly salary of S\$6,000 (US\$4,383) or more, are eligible to ask their employer to apply for a dependent's pass on their family's behalf.

The government has also placed a quota on the number of S Pass applicants. From January 2020, Singaporean businesses are forbidden to have more than 10 percent of their total workforce as S Pass holders. This is capped at 13 percent for businesses in the services sector.

## Work permits

Semi-skilled foreign workers applying for jobs in construction, manufacturing, or the services sector in Singapore are required to apply for a Work Permit (WP).

There are three kinds of WPs issued by the government, depending on the sector of the applicant's job. These are WP for foreign domestic workers; WP for confinement nannies; and WP for performing artists.

Only workers from approved countries are eligible for work permits provided the employer pays a levy and the security bond, meet the quota criterion, and provide the worker with healthcare insurance.

The WP is usually valid for up to two years and is subject to the foreign workers' contract with the associated employer. Additionally, employees entering Singapore on a WP visa are not permitted to apply for a dependent's pass for their family members.

WPs can only be applied by the employer on the worker's behalf. The processing time for a WP is one to seven working days.

Other short duration employment visas available are:

- Training Employment Pass (TEP) – a TEP is issued to foreigners engaged in practical training for jobs of a professional, managerial, executive, or specialist nature in Singapore. The candidates must earn at least S\$3,000 (US\$2,191) a month. The TEP is valid for a maximum period of three months and is not renewable; and
- Training Work Permit (TWP) – a TWP is issued to unskilled or semi-skilled foreign trainees or students on practical training in Singapore for up to six months. The number of TWP holders a local company can hire is capped based on the sector the business operates in.

## Social insurance

The Central Provident Fund (CPF) is a social security savings scheme, which is funded from the contributions of employers and employees. This mandatory program is an important pillar of Singapore's social security system and aims to meet the retirement, housing, and healthcare needs of its people.

Individual CPF funds are further subcategorized into three savings accounts: Ordinary Account, Special Account, and Medisave Account.

The Ordinary Account can be used at any time to purchase a home, make investments, and provide for education, the Special Account cannot be utilized until the account holder reaches

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retirement, unless the money is used to purchase retirement-related financial products. This account will serve as the income a retired person receives.

The Medisave Account is used to pay for medical expenses, hospitalization expenses and pay for approved medical insurance. Required employer contributions range from 7.5 percent to 16 percent depending on the age and wage of the employee. Required employee contributions range from five percent to 20 percent.

## Thailand

### Labor law

Employees are protected by various law provisions, which include:

- Labor Protection Act 1998;
- Civil and Commercial Code;
- Labor Relations Act 1975;
- Social Security Act 1990;
- Skill Development Promotion Act 2002;
- Act on Establishment of the Labor Court and Labor Dispute Procedure 1979;
- Emergency Decree on Managing the Work of Aliens 2017;
- Provident Fund Act 1987;
- Occupational Safety, Health and Environment Act 2011; and
- Workmen Compensation Act 1994.

### Relevant visa categories

Foreigners who want to work or do business in Thailand will need to apply for a non-immigrant visa. These are generally B and IB visas. The visa fees set at 2,000 baht (US\$64), which is a single-entry visa and is valid for three months.

#### Application process for visa category B (business visas)

Foreigners who wish to work in Thailand must provide the following documents:

- Completed visa application form;
- Valid passport and travel documents;
- Evidence of adequate financing (20,000 baht per person (US\$641) or 40,000 baht (US\$1,281) per family);
- Letter of approval from the Ministry of Labor (to obtain this, the employer in Thailand needs to submit a WP3 Form to the Office of Foreign Workers Administration, Department of

- Employment at the Ministry of Labor; and
- Copy of the work permit issued by the Ministry of Labor.

## IB visas (investment and business visa)

This visa type is issued to foreign investors who are involved in projects endorsed by the Thailand Board of Investment (BOI). These projects must bring benefits to Thailand in the following ways:

- Increase local employment;
- Utilize raw materials;
- Export-orientated; and
- Encourage knowledge transfer to Thai nationals.

Foreigners who wish to conduct business in Thailand must provide the following documents:

- Valid passport and travel documents;
- Evidence of adequate financing (20,000 baht per person (US\$641) or 40,000 baht (US\$1,281) per family);
- Letter from the applicant's company stating the applicant's length of employment, salary, position;
- Corporate documents associated with the company; and
- Evidence of tax registration and payment.

## Social insurance

The employee must pay five percent of the first 15,000 baht (US\$481) earned per month towards the social security contribution. The employer also contributes five percent.

The contribution to the social security fund is divided into :

- Disability, maternity, and death benefits;
- Child and old age benefits; and
- Unemployment benefits.



## Vietnam

## Labor law

Foreign companies wanting to do business in Vietnam must ensure they follow the provisions of the Labor Code, which contains the legal framework for the rights and obligations of employers and employees with respect to working hours, labor agreements, social insurance, overtime, strikes, and termination of employment contracts, to name a few.

## Relevant visa categories

In order to enter Vietnam, a foreigner needs a visa issued by the Vietnamese Embassy or Consulate. A Vietnamese visa can be granted while in a third-party country or from within Vietnam. Citizens of ASEAN countries receive a free entry visa to Vietnam that lasts between 15 and 30 days, while Vietnam also has an e-visa policy for 80 nationalities lasting until 30 days.

However, to work in Vietnam and remain for an extended period, foreigners need to apply for a longer-term three-month single or multiple entry visa.

Relevant visa types are stated in the table below.

Vietnam Visa Types		
Visa type	Description	Validity
DL	Tourist visa	3 months
HN	Meetings/Conferences	3 months
LD	Foreign workers/Working visas	2 years
LV1-LV2	Working with Vietnamese authorities	12 months
DT	Investor Visas	5 years
DN	Working with Vietnam businesses	12 months
NN1-NN2	Chief Representative Office in Vietnam, Head of Project Office of foreign NGO	12 months
NN3	NGO Staff, Representative Office	12 months
DH	Student/Internship	12 months
NG1-NG4	Diplomatic visas	12 months

## Requirements

A work permit is required when working in Vietnam for more than three months. This should ideally be applied 15 days by the employer with the provincial Ministry of Labor, Invalids and Social Affairs (MoLISA) before the foreign worker commences their employment. Work permit processing times take up to 10 business days.

Where a work permit is not compulsory, a notice must be submitted seven days in advance to the provincial MoLISA prior to working in Vietnam. Currently, work permits for foreigners are valid for a maximum of three years and are not renewable. A new application must be made if the company wishes to continue employing the foreign worker.

To be eligible for a work permit, the applicant must comply with the following conditions:

- At least 18 years of age;
- In good enough health to satisfy job requirements;
- A manager, executive director or expert with technical skills and knowledge necessary for the job; and
- Not currently subject to criminal prosecution or any criminal sentence in Vietnam or overseas or have a criminal record.

A work permit may be terminated in the following circumstances:

- Expiration of work permit;
- Termination of labor contract;
- The content of the labor contract is not consistent with the work permit granted;
- If the foreign employee is fired by the foreign employer;
- Withdrawal of work permit by authorized state agencies;
- Termination of operation of the company, organization, and partners in Vietnam; and
- The foreigner is sentenced to prison, dies or is proclaimed missing by court.

The following situations exempt the foreigner from needing a work permit:

- Working in Vietnam for less than three months;
- A member of a limited liability company with two or more members;
- The owner of a limited liability company with only one member;
- A member of the board of a joint stock company;
- Coming to Vietnam to market products and services;
- Coming to Vietnam for less than three months in order to resolve an emergency or technologically complex situation that could affect production, which Vietnamese experts or foreign experts currently in Vietnam are unable to resolve;
- Lawyers granted a professional permit in Vietnam;
- Heads of representative offices, chiefs of project offices or someone working for foreign

- 
- non-government organization in Vietnam;
- Internally transferred within an enterprise, which has a commercial presence in the committed service list of Vietnam with the World Trade Organization, including: business service, information service, construction services, distribution service, education service, environment service, financial service, health service, tourism service, cultural and recreational services and transportation service; and
  - Coming to Vietnam to supply consulting services on tasks serving to research, build, appraise, monitor and evaluate, manage and process programs and projects that use Official Development Assistance (ODA) in accordance with regulations or agreements in an international treaty on ODA signed between an authorized Vietnam agency and foreign agency.

Vietnamese authorities are becoming stricter regarding work permits. Those who violate the regulations by working in Vietnam without a work permit may be penalized or, if unable to meet work permit requirements, deported back to their home countries within 15 days. In addition, the employer's operations may be suspended for three months with a possible penalty of up to US\$3,300.

## Temporary residence cards

Foreigners who hold work permits valid for one year or more, as well as senior management, can be granted a Temporary Residence Card (TRC). A TRC is issued by the immigration agency under the Ministry of Public Security and is valid from one to five years depending on the visa type. People granted a TRC can enter and exit Vietnam without a visa within the valid terms of their TRC. The processing time typically takes five working days while the fee varies between US\$60 to US\$100, depending on the duration of the card.

Holders of work visas are eligible for a Temporary Residence Card, as well as members of management boards, members of councils and boards of directors, heads of company branches and Chief Representatives of representative offices of foreign enterprises in Vietnam.

## Permanent Residence Cards

An expatriate who has a legal residence while earning a living in Vietnam may also apply for a Permanent Residence Card (PRC); however, they are subject to the following conditions:

- The expat works for the development of Vietnam and is awarded a medal or title by the government;
- The expat resides temporarily in Vietnam for three or more consecutive years and is sponsored by his parent, spouse or child who is a Vietnamese citizen and has a permanent residence in Vietnam; and
- Foreign scientists or experts recommended by the head of a ministerial or government agency.

The processing time typically takes five working days with a fee of US\$100. A PRC holder can stay in Vietnam without a visa however, a PRC must be re-issued every 10 years.

## Social insurance

There are three types of mandatory social security in Vietnam that must be covered by foreign enterprises seeking to hire local staff:

- Social insurance;
- Health insurance; and
- Unemployment insurance.

As of December 1, 2018, Social insurance was made compulsory only for foreign staff as well, in accordance with Vietnam's Labor Code. Employers register and pay insurance contributions monthly on behalf of their employees at the provincial Department of Labor, Invalids and Social Affairs (DoLISA).

	<b>Social Insurance</b>			
Capped salary base subject to contribution	<b>US\$ 1,295</b>	Employer contribution	<b>17%</b>	Employee contribution <b>8%</b>
	<b>Health Insurance</b>			
Capped salary base subject to contribution	<b>US\$ 1,295</b>	Employer contribution	<b>3%</b>	Employee contribution <b>1.5%</b>
	<b>Labor Accident &amp; Occupational Disease Insurance</b>			
Capped salary base subject to contribution	<b>US\$ 1,295</b>	Employer contribution	<b>0.5%</b>	

Contributions are determined based on employees' monthly salary or wage. While payable amounts will differ depending on the compensation of an employee, it should be noted that a wage ceiling for calculation of contributions is imposed at 20 times the common minimum wage for social and health insurance (Currently VND29,800,000 (US\$1,300)) and 20 times the regional minimum wage for unemployment insurance (VND88,400,000 (US\$3,800) depending on the region).

# Minimum wages in ASEAN

Minimum wage rates across ASEAN countries are rising gradually to match the region's increased cost of living and boost domestic demand. To combat inflation and prevent any outbreaks of labor unrest, ASEAN countries have increasingly been pushing for higher minimum wage levels and enacting new labor laws to protect workers' rights.

Despite rising salaries, minimum wages in the majority of ASEAN countries remain significantly lower than those in the developed economies of the world. Businesses must take note that the minimum wages in most countries vary regionally and as per the industry and job specifications. They may also be subject to periodic – national as well as local – regulatory changes.

## Indonesia

Indonesia's labor market contains significant regional variation because monthly wages are fixed at the provincial level by governors through the wage councils and district wage councils throughout the archipelago's 34 provinces.

The country utilizes a unique formula to calculate the annual percentage increase of the minimum wage. The formula is as follows:

**National inflation + national economic growth = Percentage increase of minimum wage**

On October 15, 2019, the Minister of labor issued circular B-M 308, 2019, which authorizes provincial governors to increase their provinces' minimum wage by 8.51 percent for 2020.

The province of Jakarta continues to have the highest minimum wage at 4,200,000 rupiah (US\$298) whereas Central Java province has the lowest at 1,742,00 rupiah (US\$123).

In addition to the provincial minimum wages, there is also a minimum wage rate for 'leading industries or sectors'. Under the Minister of Labor Regulation 7 of 2013, certain industries can determine their own minimum wage rate, known as the UMSP, if they fulfill the following criteria:

- The specific industry encompasses a large number of local businesses;
- The industry requires significant manpower;
- The industry can generate added-value to the economy; and
- The industry is export-oriented.

Despite the annual increases in the minimum wage, Indonesia continues to endure low worker productivity, as less than half of the country's workforce is classified as 'skilled'. This has resulted in the slow advancement of sectors vital to economic development, such as manufacturing and agriculture.

The minimum wage rate for each province is shown in the table below.

Minimum Wages in Indonesia		
Province	Minimum wage 2019	Minimum wage 2020
Aceh	2,916,000 rupiah (US\$207)	3,165,000 rupiah (US\$224)
North Sumatra	2,303,000 rupiah (US\$163)	2,499,000 rupiah (US\$177)
West Sumatra	2,289,000 rupiah (US\$162)	2,484,000 rupiah (US\$176)
Riau	2,662,000 rupiah (US\$189)	2,888,000 rupiah (US\$205)
Riau Islands	2,769,000 rupiah (US\$196)	3,005,000 rupiah (US\$213)
Jambi	2,423,000 rupiah (US\$172)	2,630,000 rupiah (US\$186)
South Sumatra	2,804,000 rupiah (US\$199)	3,043,000 rupiah (US\$216)
Bangka Belitung	2,976,000 rupiah (US\$211)	3,230,000 rupiah (US\$229)
Bengkulu	2,040,000 rupiah (US\$144)	2,213,000 rupiah (US\$157)
Lampung	2,240,000 rupiah (US\$159)	2,431,000 rupiah (US\$172)
Banten	2,267,000 rupiah (US\$160)	2,460,000 rupiah (US\$174)
DKI Jakarta	3,940,000 rupiah (US\$279)	4,200,000 rupiah (US\$298)
West Java	1,668,000 rupiah (US\$118)	1,810,000 rupiah (US\$128)
Central Java	1,605,000 rupiah (US\$113)	1,742,000 rupiah (US\$123)
Special Region of Yogyakarta	1,570,000 rupiah (US\$111)	2,704,000 rupiah (US\$120)
East Java	1,630,000 rupiah (US\$115)	1,768,000 rupiah (US\$125)
Bali	2,297,000 rupiah (US\$163)	2,493,000 rupiah (US\$177)
West Nusa Tenggara	2,012,000 rupiah (US\$142)	2,183,000 rupiah (US\$155)
East Nusa Tenggara	1,793,000 rupiah (US\$127)	1,945,000 rupiah (US\$138)
West Kalimantan	2,211,000 rupiah (US\$157)	2,399,000 rupiah (US\$170)
South Kalimantan	2,651,000 rupiah (US\$188)	2,877,000 rupiah (US\$204)
Central Kalimantan	2,663,000 rupiah (US\$189)	2,903,000 rupiah (US\$206)
East Kalimantan	2,747,000 rupiah (US\$195)	2,981,000 rupiah (US\$211)
North Kalimantan	2,765,000 rupiah (US\$196)	3,000,000 rupiah (US\$213)
Maluku	2,400,000 rupiah (US\$170)	2,604,000 rupiah (US\$184)
North Maluku	2,508,000 rupiah (US\$178)	2,721,000 rupiah (US\$193)

Province	Minimum wage 2019	Minimum wage 2020
Gorontalo	2,350,000 rupiah (US\$166)	2,586,000 rupiah (US\$183)
North Sulawesi	3,051,000 rupiah (US\$216)	3,310,000 rupiah (US\$235)
Southeast Sulawesi	2,351,000 rupiah (US\$166)	2,552,000 rupiah (US\$181)
Central Sulawesi	2,123,000 rupiah (US\$150)	2,303,000 rupiah (US\$163)
South Sulawesi	2,860,000 rupiah (US\$203)	3,103,000 rupiah (US\$220)
West Sulawesi	2,369,000 rupiah (US\$168)	2,571,000 rupiah (US\$182)
Papua	3,240,000 rupiah (US\$230)	3,516,000 rupiah (US\$249)
West Papua	2,934,000 rupiah (US\$208)	3,134,000 rupiah (US\$222)



## Singapore

Singapore's Ministry of manpower does not prescribe a minimum wage. As such, wages are determined on market demand and the supply of labor. Furthermore, employers are to pay employees based on their competencies, skills, and experience.



## Brunei

Brunei's Labor Department does not prescribe a minimum wage. Pay rates are agreed upon directly with the employer.



## Malaysia

The Malaysian government has increased the minimum wage for major towns under 56 city and municipality councils. The new wage hike came into force on February 1, 2020.

Employees are now eligible to receive 1,200 ringgits (US\$283) monthly, an increase of 100 ringgits (US\$23) from 2019. Furthermore, for employees earning an hourly wage, the rate has been increased to 5.77 ringgits (US\$1.36) from 5.29 ringgits (US\$1.25).

The planned increase was part of the government's 2020 budget and part of the drive to modernize the country's workforce.

In addition to the minimum wage increase, the government has increased maternity leave from 60 days to 90 days, and workers earning less than 4,000 ringgits (US\$944) per month are now eligible for overtime pay.

## Which regions are eligible for the increase?

The 56 city and municipality councils eligible for the minimum wage increase are highlighted in the following table:

Regions Eligible for Minimum Wage Increase	
City councils	Municipality councils
Alor Setar, Iskandar Baru, Johor Baru, Ipoh, Penang, Melaka, Seberang Prai, Petaling Jaya, Shah Alam, Kuala Terengganu, Kota Kinabalu, Kuala Lumpur, Miri, Seremban, and Kuching Selatan	Putrajaya, Bintulu, Labuan, Dungun, Sibu, Tawau, Kota Semarahan, Subgang Jaya, Kemaman, Sepang, Ampang Jaya, Batu Pahat, Alor Gajah, Hang Tua Jaya, Port Dickson, Teluk Intan, Klang, Kajang, Kangar, Taiping, Jempol, Alor Gajah, Jasin, Temerloh, Selayang, Kulai, Kluang, Pasir Gudang, Kubang Pasu, Segamat, Langkawi, Kuantan, Manjung, Bentong, Kulim, Muar, Kota Baru, and Kuala Kangsar

Employers should note the minimum wage does not apply to domestic workers.



## Cambodia

In Cambodia, the minimum wage is mainly guaranteed for workers in the country's textiles and footwear manufacturing industry. The monthly rate has increased to US\$190 for 2020 from US\$182 in 2019.

Though a significant hike, the wage increase in Cambodia does not impact the competitive advantage of its garment manufacturing industries as the government continues to delay taxing profits in the sector and eliminating export management fees.



## Laos

Laos has yet to implement an increase in its minimum wage since 2018. Back then, the Laotian government increased the minimum wage for all businesses and factories from 900,000 kip (US\$101) to 1.1 million kip (US\$124) a month.

The minimum wage was determined through tripartite social discussions between the employers' associations, workers' organizations, and government representatives.

## Myanmar

The daily minimum wage in Myanmar is revised every two years and discussions on the new rate will begin in May 2020.

Myanmar's current daily minimum wage is set at 4,800 kyat (US\$3.29) for eight hours of work. After conducting research on the cost of living and healthcare in the country, the Confederation of Trade Unions of Myanmar will propose a minimum wage increase of 7,200 kyat (US\$4.88) for eight hours of work or 9,000 kyat (US\$6.10) per hour.

## Philippines

The Philippines has daily minimum wage rates that vary from region to region, ranging from P290 (US\$5.70) to P537 (US\$10.61) a day. The wages are set by tripartite regional wage boards located in every region.

The country's average minimum wage rate is among the highest in ASEAN – and compared to its neighbors Indonesia and Vietnam.

Region	Minimum wage rate
NCR (Caloocan, Las Pinas, Mandaluyong, Makati, Manila, Marikina, Malabon, Muntinlupa, Navotas, Paranaque, Pasay, Pasig, Quezon, San Juan, Valenzuela, Taguig)	PHP500 (US\$10.29)-PHP537(US\$11.06)
CAR (Abra, Apayao, Benguet, Ifugao, Kalinga, Mountain Province)	PHP340 (US\$7.00)-PHP350 (US\$7.20)
I (Ilocos Norte, Ilocos Sur, La Union, Pangasinan)	PHP282 (US\$5.80)-PHP340 (US\$7.00)
II (Batanes, Cagayan, Isabela, Nueva Vizcaya, Quirino)	PHP320 (US\$6.59)-PHP360 (US\$7.41)
III (Aurora, Bataan, Bulacan, Nueva Ecija, Pampanga, Tarlac, Zambales)	PHP304 (US\$6.26)-P360 (US\$7.41)
IV-A (Batangas, Cavite, Laguna, Quezon, Rizal)	PHP303 (US\$6.24)-PHP400 (US\$8.23)
IV-B (Marinduque, Occidental Mindoro, Oriental Mindoro, Palawan, Romblon)	PHP294 (US\$6.05)-PHP320 (US\$6.59)
V (Albay, Camarines Norte, Camarines Sur, Catanduanes, Masbate, Sorsogon)	PHP310 (US\$6.38)

VI (Aklan, Antique, Capiz, Guimaras, Iloilo, Negros Occidental)	PHP310 (US\$6.38)-PHP395 (US\$8.13)
VII (Bohol, Cebu, Negros Oriental, Siquijor)	PHP351 (US\$7.22)-PHP404 (US\$8.32)
VIII (Biliran, Leyte, Eastern Samar, Southern Leyte, Northern Samar, Western Samar)	PHP285 (US\$5.87)-PHP315 (US\$6.48)
IX (Zamboanga Del Sur, Zamboanga Sibugay)	PHP303 (US\$6.24)-PHP316 (US\$6.50)
X (Bukidnon, Camiguin, Lanao Del Norte, Misamis Oriental)	PHP331 (US\$6.81)-PHP365 (US\$7.51)
XI (Compostela Valley, Davao Del Norte, Davao Del Sur, Davao Oriental)	PHP381 (US\$7.84)-PHP396 (US\$8.15)
XII (North Cotabato, Sarangani, South Cotabato, Sultan Kudarat)	PHP290 (US\$5.97)-PHP311 (US\$6.40)
XIII (Agusan Del Norte, Agusan Del Sur, Surigao Del Sur, Dinagat Island, Sirgao Del Norte)	PHP320 (US\$6.59)
ARMM (Basilan, Tawi-Tawi, Lanao Del Sur, Sulu, Maguindanao)	PHP290 (US\$5.97)-PHP325 (US\$6.69)

## Thailand

The Thai government announced an increase of between 313 baht (US\$10) –336 baht (US\$11) to the daily minimum wage starting from January 1, 2020, representing an increase of five baht (US\$0.17) to six baht (US\$0.20) from 2018.

Marking only the second time in seven years that the national daily minimum wage has been raised, the government identified nine provinces that will receive the six baht increase, while the rest of the country will see a five baht increase.

The wage levels can be seen in the following table.

Minimum Wages in Thailand	
Daily minimum wage 2020	Provinces
313 baht (US\$10.36)	Narathiwat, Pattani, and Yala
315 baht (US\$10.45)	Uthai Thani, Trang, Tak, Sukhothai, Si Sa Ket, Sing Buri, Ranong, Satun, Ratchaburi, Phichit, Phrae, Nong Bua Lam Phu, Amnat Charoen, Chaiyaphum, Chiang Rai, Nakhon Si Thammarat, Maha Sarakham, Mae Hong Son, Lamphun, Lampang, Kamphaeng Phet, and Chumphon
320 baht (US\$10.59)	Ang Thong, Bung Kan, Buri Ram, Chai Nat, Kanchanaburi, Loei, Nakhon Phanom, Nakhon Sawan, Nan, Phattalung, Phayao, Phetchabun, Phetchaburi, Phitsanulok, Prachuap Khiri Khan, Roi Et, Sa Kaeo, Surin, Udon Thani, Uttaradit, and Yasothorn
323 baht (US\$10.69)	Samut Songkhram, Sakon Nakhon, Mukdahan, Nakhon Nayok, Kalasin, and Chanthaburi
324 baht (US\$10.73)	Prachin Buri
325 baht (US\$10.76)	Chiang Mai, Ayuttha, Khon Kaen, Ubon Ratchathani, Trat, Surat Thani, Suphan Buri, Songkhla, Phangnga, Saraburi, Nong Khai, and Nakhon Ratchasima
330 baht (US\$10.93)	Chachoengsao
331 baht (US\$10.96)	Bangkok, Samut Sakhon, Samut Prakan, Nakhon Pathom, and Pathum Thani
335 baht (US\$11.09)	Rayong
336 baht (US\$11.12)	Phuket and Chonburi

## Vietnam

Following the country's rapid economic growth, in the past few years, the Vietnamese government has increased minimum wages to combat inflation.

The monthly minimum wage rate was increased by 5.7 percent from January 1, 2020, higher than the 2019 hike of 5.3 percent. The country sets a different minimum wage level across its four regions. As a result of the new increase, Region I (urban Hanoi and Ho Chi Minh City) registered the highest minimum wage of VND 4,200,000 (US\$190) while Region IV was the lowest with VND 3,070,000 (US\$132).

Moreover, employees that have had vocational training must be paid at least seven percent higher than the applicable minimum wage rate.

The minimum wage rates are as shown below.

Vietnam Minimum Wage 2020			
Region	2020 monthly minimum wage	Hike	2019 monthly minimum wage
I	VND 4,420,000 (US\$190)	VND 240,000 (US\$10)	VND 4,180,000 (US\$180)
II	VND 3,920,000 (US\$169)	VND 210,000 (US\$9)	VND 3,710,000 (US\$159)
III	VND 3,430,000 (US\$148)	VND 180,000 (US\$8)	VND 3,250,000 (US\$140)
IV	VND 3,070,000 (US\$132)	VND 150,000 (US\$6)	VND 2,920,000 (US\$125)

- Region I covers urban Hanoi and Ho Chi Minh City
- Region II covers rural Hanoi and Ho Chi Minh City along with Da Nang
- Region III includes provincial cities and the districts of Bac Ninh, Bac Giang, Hai Duong, Phu Tho, Vinh Phuc and other provinces not listed in Region I and II
- Region IV covers the remaining localities

Businesses cannot reduce overtime, night shift, or other hardship allowances that are provided to employees when applying the new minimum salaries as per the labor law.

The capped salary for unemployment insurance will, therefore, increase as follows:

- Region I VND 88,400,000 million (US\$3,800) from the present VND 83,600,000 million (US\$3,600);
- Region II VND 78,400,000 million (US\$3,380) from 74,200,000 million (US\$3,200);
- Region III VND 68,600,000 million (US\$2,950) from 65,000,000 million (US\$2,800); and
- Region IV VND 61,400,000 million (US\$2,645) from 54,400,000 million (US\$2,344)

Vietnam has set different minimum wage levels for the four regions to reflect the cost of living in each area.



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Audit compliance is one of the most important tasks that needs to be undertaken by companies at the beginning of a new fiscal year. This process can be even more complex when doing business in the evolving markets of emerging ASEAN, despite laudable steps towards regulatory harmonization.

As the region becomes more attractive for foreign investors, it is important for all companies to be informed on the latest updates and regulations to remain in compliance.



## Brunei

The Companies Act regulates the audit and accounting requirements that companies must adhere to in Brunei.

### Auditing and compliance requirements

A company limited by shares with no more than 50 shareholders must audit their accounts but are not obligated to submit their accounts to the Registry of Companies and Business Names (ROCBN).

A company limited by shares (public companies) of more than 50 shareholders, or companies limited by guarantee are obligated to have their accounts audited in addition to filing these accounts to the ROCBN.

Companies must keep proper accounts and books with respect to;

- All sales and purchases of goods and services by the company;
- Every amount of money received and paid by the company; and
- A record of all the assets and liabilities of the company.

This is done by maintaining a cash book to record the receipts and payments made by the business in addition to a journal to record other non-cash transactions. Finally, businesses should maintain a ledger to record the transactions made in the cash book and journal.

### Annual general meetings

A company's first AGM should be held within 18 months after incorporation and subsequent AGMs are to be held once every year and cannot be more than 15 months apart.

The meeting needs to be called in writing at least 21 days before the start date, with the directors, at least seven days before the meeting is held, sending a statutory report to every member of the company.

This report must be certified by at least two directors and must state:

- The total number of shares allotted;
- The total number of cash received by the company;
- Names and addresses of the directors, auditors (if any), company secretary, and managers and;
- Company receipts.

## Appointing auditors

A company must appoint an auditor to have its accounts audited. These appointments are to be done at the AGM, and the auditor(s) will hold this position until the next AGM. The Public Accounts Oversight Committee (PAOC) is the main body responsible for regulating public accountants in the country.

Companies must allow auditors access to the accounts and books of the company and are entitled to enquire from the directors and managers such information and explanation.

The remuneration of the auditor is decided and fixed in the AGM unless the auditor is appointed to fill a vacancy, in which case the directors will decide the remuneration amount.

Private companies are only exempted from audit requirements if:

- Revenue for that year does not exceed BND 1 million (US\$703,000);
- Its shares are held, directly or indirectly, by another corporation; and
- The company has no more than 20 members.

In addition to the aforementioned criteria, dormant companies – those that have no accounting transactions – can also be granted audit exemptions. They must be:

- Dormant from the time of incorporation; or
- Were dormant from the previous financial year.

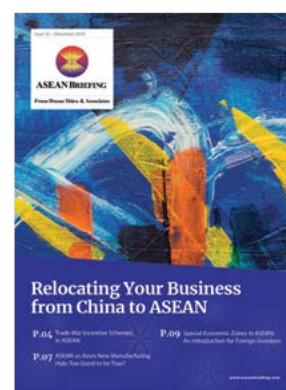
### *Audit committees*

Public companies must have an audit committee, who will elect a chairman from amongst them who is not a director or employee of the company. The function of the audit committee will be to:

- Review audit plans with the auditor;
- Evaluate internal accounting controls;
- Evaluate audit reports; and
- Evaluate balance sheets.



### RELATED READING



#### **Relocating Your Business from China to ASEAN**

*ASEAN Briefing Magazine  
December, 2019*

This edition of the ASEAN Briefing magazine covers: the incentives issued by ASEAN countries to attract investments, productivity levels, and the increasing importance of special economic zones.

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## Fiscal periods

All companies must file their tax returns using the e-filing system (STARS) by June 30 of every year. Businesses are not allowed to submit consolidated returns with each company having to file a separate return.

## Accounting standards

Brunei adopts two types of accounting standards, the IFRS, which is issued by the IASB, and the Brunei Darussalam Accounting Standards (BDAS).

The IFRS principles are used for entities that have public accountability (public interest entities, PIE), whereas BDAS is issued for non-public interest entities. The entity has public accountability if its debt or equity instruments are traded in a public marketplace or it is in the process of doing so.

BDAS was introduced to provide transparency of financial statements prepared by non-public interest entities (non-PIEs), as previously there were several ways businesses could present their financial statements, thus often not reflecting the company and industry they operate in.

## Annual reports

As stipulated in the Companies Act, annual reports must be filed within 28 days after the AGM. The company's officers, such as directors or secretary, can file the annual returns; the company can also engage the services of a professional firm to file on their behalf.

The required documents needed to file annual reports are:

- Annual return form;
- Date of AGM with proof;
- Audited financial statements (for public companies); and
- Cover letter stating the name of the company and its registration number.

Dormant companies are still required to submit annual returns and will be subject to any fees payable to the Registrar.

## Penalties for non-compliance

A fine of BND10,000 (US\$7,300) and imprisonment of up to 12 months can be imposed for entities that fail to file. Businesses that do not hold an AGM can be liable to a fine of BND5,000 (US\$3,600), with directors also liable to a fine of BND2,500 (US\$1,800).



# Cambodia

Resident taxpayers are subject to tax on their worldwide income while non-resident taxpayers are taxed on their Cambodia-sourced income only.

Resident taxpayers will have their principle place of business in Cambodia whereas a non-Cambodian national will be considered a resident taxpayer if they are in Cambodia for more than 183 days or have their principle place of abode in the country.

## Auditing and compliance requirements

All business entities, that meet the criteria set out in Prakas 643 of the Ministry of Economy and Finance must submit their financial statements to be audited by an independent auditor.

The business must fulfil at least two of the three following criteria:

- Businesses that have annual turnover of 4 billion riel (US\$977,000);
- Businesses that have total assets of over 3 billion riel (US\$733,000); and
- Have more than 100 employees.

## Appointing auditors

On July 10, 2020, Cambodia's Ministry of Finance and Economy issued Ministerial Order 563 (MO 563), which sets out the requirements for the types of business entities that must be independently audited.

Under MO 563, public companies, companies with public accountabilities (businesses that have debt instruments), and 'investment projects', are obligated to be independently audited for each financial period. The regulation also states that other business entities that achieve a certain annual turnover or have assets of a certain value will also need to be independently audited.

Businesses that are obligated to be audited are required to do so for a minimum of three consecutive years, and the issuance of the audit report shall be completed no later than six months from the closing date of the accounting period.

*How are these entities defined?*

Companies with public accountabilities are those that have debt instruments traded in the domestic or international stock market.

These also include enterprises that hold assets in a fiduciary capacity (holding or managing assets on behalf of persons that are unrelated to the company. These are banks, insurance companies, credit unions, and mutual funds, among others.

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Public companies are those that are effective under the Law on the General Status of Public Enterprise.

Non-profit organizations will also need to be audited if they meet the following criteria:

- Have annual expenses of more than 2 billion riel (US\$489,000); and
- Have more than 20 employees.

### **Certificate of compliance**

Enterprises that are classified as Qualified Investment Projects (QIPs) must submit a certificate of compliance (CoC) by March 31 of each year in which they were given a Final Registration Certificate by the Council for the Development of Cambodia (CDC). Without a CoC, the entity could lose its investment incentives.

The following documents need to be submitted to obtain the CoC:

- Articles of incorporation;
- Articles of incorporation issued by the MoC;
- Latest audited financial statements;
- Latest patent tax certificate;
- Certificate pertaining to tax obligations from the Tax Department;
- Latest information regarding the import of materials or equipment by the QIP;
- The CoC from previous years (if applicable); and
- Latest company information extracted from the MoC website (business extract).

## **Fiscal periods**

The tax and accounting year in Cambodia do not need to coincide with the calendar year. If a company is established during the financial year, then the first period of accounts will run from the date of incorporation to December 31.

## **Accounting standards**

The National Accounting Council of Cambodia has adopted the same standards as the IFRS for SMEs. The standards are referred to as the Cambodian International Financial Reporting Standards (CIFRS for SMEs) and the Cambodia International Financial Reporting Standards (CIFRS).

Businesses registered as QIPs must have their financial statements audited by an external independent auditor registered with the Kampuchea Institute of Certified Public Accountants and Auditors.

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Investment projects are defined as QIPs. QIPs are projects that are eligible to receive fiscal and non-fiscal incentives from the Cambodian Investment Board. They are divided into three types – domestic QIPs, export QIPs, and supporting industry QIPs.

## Annual reports

All companies regardless are required to prepare their documents in the Khmer language and must use the Khmer Riel on all accounting records. However, financial statements can also be prepared in English and other foreign currencies if the business activities are with foreign entities.

Businesses should provide the following:

- Financial statements;
- Statement by directors on the financial statements;
- Statutory declaration by the director or officer primarily responsible for financial management; and
- Auditor's report.

All business entities registered with the Ministry of Commerce (MoC) are required to file an Annual Declaration of Commercial Enterprises (ADCEs) on the MoC's online system within three months of re-registration with the MoC. Failure to do so could result in a 2,000,000 riel (US\$500) fine.

Tax returns for monthly taxes, such as withholding tax and corporate income tax, must be filed monthly, and within 20 days of the following month. This will be extended if the 20th day falls on a public holiday or non-working day.


## Penalties for non-compliance

Penalties for non-compliance apply to failure to file, late filing, or filing fraudulent returns. The resultant penalties range from 10, to 25, to 40 percent and interest of 1.5 percent for late or unpaid taxes.



## Indonesia

There is currently no single unifying regulation on auditing and compliance in Indonesia. Foreign investors will need to be aware that regulations regarding auditing, accounting, and financial reporting are stipulated over several laws and bylaws, and that a good understanding of these can ensure their business stays compliant.



Foreign investors should, however, focus on the Company Law, which dictates the terms for when audits become obligatory in addition to the accounting standards companies should adhere to when preparing financial statements.

## Auditing and compliance requirements

The Investment Law lays out the basic requirements on how to operate in Indonesia. These are part of key compliance norms:

- Implementing good corporate governance;
- Undertake corporate social responsibility activities;
- Comply with the labor law;
- Submit quarterly investment activities to the Investment Coordinating Board (BKPM); and
- Honor the cultural traditions of communities.

### Who is obligated to be audited?

The Company Law mandates that financial statements of a limited liability company must be audited by a public accountant registered in Indonesia if they meet at least one of the following criteria:

- Companies with assets exceeding 50 billion rupiah (US\$3.6 million);
- Public companies;
- Companies that issue debt instruments;
- The company is a state-owned enterprise; or
- The company collects or manages public funds (such as banks and insurance companies).


By law, a company must keep its accounting records and books for at least 10 years from the end of its reporting period.

#### Public companies

Under the Capital Markets Law, foreign companies are allowed to be listed in the country's bourse.

Their prospectus, however, must first be audited by an auditing firm that is recognized by the country's Financial Services Authority (OJK), the main regulator of Indonesia's financial services sector.

Public companies must comply with the format set out by the Capital Market and Financial Institutions Supervision Agency (Bapepam-LK). They are required to submit to the Bapepam-LK, their audited financial statements by three months before the end of their financial period.



Public companies must also establish internal audit committees, an internal audit unit, and a company secretary. The audit committee supports the board of commissioners to ensure the effectiveness and integrity of a company's financial statements and internal controls.

Additionally, the committee will also review the risk management activities conducted by the board of directors and oversee the implementation of the recommendations of the internal and external auditors.

## Auditor independence

The auditor must be a registered and independent public accountant as stipulated by the Ministry of Finance (MOF). They must avoid all potential conflicts of interests and adhere to MOF regulations.

The MOF does not allow a company to use the services of an auditing firm for six consecutive years – unless there have been significant changes of partners at the company.

## Fiscal year

The annual deadline for reporting and paying corporate income tax is April 30 – if a company's fiscal year begins from January 1 – December 30. If a company's fiscal year differs from the calendar year, then their deadline is four months after the end of their fiscal year.

## Accounting standards

Audits are to be conducted based on the Indonesian Financial Accounting Standards (SAK), which are set by the Financial Accounting Standards Board (DSAK IAI) and the Indonesian Sharia Accounting Standards Board (DSAS IAI), for sharia-based companies.

Since 2015, the DSAK IAI has converged its accounting standards with that of the International Financial Reporting Standards (IFRS), issued by the IFRS Foundation and the International Accounting Standards Board (IASB). Current harmonization revolves around the chronological adoption of past IFRS with emphasis on closing the gap between Indonesia's adoption status and the most up to date International standards.

Currently SAK is broken down in two tiers:

- Tier 1 SAK – applies to listed companies and other entities with significant public accountability.
- Tier 2 SAK ETAP – applies to entities with low public accountability. Tier 2 SAK ETAP was developed with IFRS for SE as its point of reference.

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This is part of Indonesia's efforts to make local financial statements more comparable and understandable across international boundaries as the country aims to attract greater foreign investment and play a more prominent role within the G20.

## Annual reports

Every registered company's annual financial statements are to be submitted to a regional tax office once a year. Financial statements consist of the following:

- Balance sheet;
- Cash flows;
- Profit and loss statement; and
- Statement of changes in equity.

Financial statements are required to provide both the current and previous year's figures and need to be presented on a comparative basis. All financial statements must be prepared in the Indonesian language. A company can use another language only if it has received permission from the MOF.

The accounting books must also use the rupiah as its currency. Companies will need to seek permission from the tax authorities for the use of the US dollar, the only other eligible functional currency.

## Penalties for non-compliance

Companies that fail to comply with Indonesia's audit and tax requirements can expect to receive monthly interest penalties, starting from two percent and up to 48 percent. Furthermore, issuing false tax and accounting documents can also result in imprisonment.



## Laos

The Enterprise law and the Law on Independent Audit are the main laws that establish audit requirements in Laos.

## Auditing and compliance requirements

Mandatory audits are required for companies with total assets of more than 50 billion kip (US\$54 million). This is also the case for public interest entities (PIE), foreign enterprises, state-owned enterprises, and other external loan and grant projects. These companies must strictly conduct bookkeeping obligations and responsibilities from the date of its registration.

## Appointing auditors

The Ministry of Finance is responsible for setting the auditing standards, which is the International Standards on Auditing (ISA).

There are two types of independent audits:

- Statutory audits – this is a mandatory audit of the auditee's financial statements; and
- Contractual audits – this is the voluntary audit requested by the auditee for the examination of its financial statements.

The audit process for non-PIE is as follows:

1. Auditor selection – this is done by shareholder votes or upon the proposal by an investor;
2. Audit engagement and preparation;
3. Audit planning – defining an audit strategy and program as well as engaging in evidence;
4. Audit performance – performing the audit in accordance to the audit strategy; and
5. Auditor's report preparation.

For PIEs, the audit process is:

1. Selection of statutory auditor – this is done at least 60 days before the shareholders' meeting;
2. Timing and termination of audit agreement – the audit agreement between the PIE and the audit firm is five years, which is renewable only once; and
3. Disclosure of audit firm fees – the auditor must publish its fees related to the audit of the PIE in the gazettes of the Ministry of Finance.

Audit practitioners must adhere to the Code of Ethics for Professional Accountants.

## Fiscal periods

The fiscal period generally starts from January 1 to December 31, and the Minister of Finance can approve reporting period start dates, although the reporting period must remain 12 months. Annual returns are due by January 20 and the filing of financial statements are due on March 31 of the following tax year.

## Accounting standards

Public interest entities (PIEs) in Laos are required to apply the IFRS principles when preparing their financial statements. PIEs comprise of financial institutions, listed companies, and banks. Non-public interest entities (non-PIEs) – which comprise of large, medium, and small companies – can apply the Laos Financial Reporting Standards for Non-Public Interest Enterprises (FRS for Non-PIEs). FRS for Non-PIEs is based on the FRS for SMEs standards.



Micro-enterprises shall apply under the Guideline for Micro-enterprises Accounting.

FRS applies to businesses that meet two of the three criteria:

*For small enterprises*

- Employ no more than 19 people throughout the financial year;
- Have total assets of no more than 250 million kip (US\$27,000); and
- Have an annual income of no more than 400 million kip (US\$43,700).

*For medium-sized enterprises*

- Employ no more than 99 people throughout the financial year;
- Have total assets of no more than 1.2 billion kip (US\$131,200); and
- Have an annual income of no more than 1 billion kip (US\$109,400).

*For large enterprises*

- Employ no more than 99 people throughout the financial year;
- Have total assets of no more than 1.2 billion kip (US\$131,200); and
- Have an annual income of no more than 1 billion kip (US\$109,400).

## Annual reports

The accounting entries must be kept in the Lao language and in the Kip currency, unless otherwise given permission by the Ministry of Finance. If financial statements are in another language and currency, they must be translated and reported jointly.

The required documents needed to file annual reports are:

- Income statement;
- Statement of financial position; and
- Any explanatory notes to the financial statements.

## Penalties for non-compliance

There is a fine of 0.1 percent per day based on the tax payable for late filing and payment of taxes.

For the under reporting or underpayment of taxes, the penalties are:

- First offence – fine of 30 percent of the tax payable;
- Second offence – fine of 60 percent of the tax payable; and

- Third offence – fine of 100 percent of the tax payable and the permanent closure of the business.



## Malaysia

Malaysia operates a self-assessment tax system, and tax returns must be filed within seven months of the company's year-end.

### Auditing and compliance requirements

All companies incorporated in Malaysia must have their accounts audited by a Ministry of Finance approved auditor as mandated by the Companies Act of 2016. These companies are required to, under the Companies Act, keep their accounting books up to date.

Under the Act, private companies were no longer obligated to hold AGMs, and thus the election of auditors, the retirement or election of directors, and the lodgment of audited annual returns are no longer tied to the holding of an AGM and are dealt separately. Public companies are still required to hold an AGM.

### Appointing auditors

During the filing process, companies must use the services of a professional accountant qualified under the Accountants Act 1967, which must confirm that the applicant's statements comply with the approved accounting standards.

Private exempt companies are not required to file audited accounts; an exempt private company is defined as a private company having not more than 20 members, none of whom are corporations having direct or indirect interest in its shares.

The criteria for audit exemption for certain private companies are:

- The company is dormant – this means the business has no accounting transactions occurring and its operations have halted;
- Zero-revenue companies – these are companies that do not generate any revenue during the current financial year, as well as the past two financial years. Further, its total assets do not exceed 300,000 ringgit (US\$72,600) in the current financial year and the previous two financial years; and
- Threshold-qualified companies – these are companies that have revenue that do not exceed 100,000 ringgit (US\$24,200) during the current financial year as well as the previous two financial years. Secondly, its total assets do not exceed 300,000 ringgit (US\$72,600) in the current financial year and the previous two financial years, and it ended the current financial year and the previous two financial years with no more than five employees.

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However, an exempt private company, which is solvent, may still need to audit its accounts if it receives a written notice from the Ministry of Finance.

Any company opting for audit exemption must submit to the Registrar together with the necessary certificate. In addition, the must be submitted with:

- A written statement that the company is qualified for audit exemption; and
- There have been no requests from shareholders demanding an audit.

The unaudited financial statements must be submitted together with the director's report, and statements by other directors.

The certificate that substitutes the attachment of the audited accounts must either be in Bahasa Malaysia or English. If presented in any other language, a translation must be provided.

## Fiscal periods

The Companies Act of 2016 does not specify a date for the fiscal year; this is left to the discretion of the company.

Private companies are obliged to prepare their financial statements not more than six months from the financial year end. For public companies, financial statements are prepared within 30 days of an AGM (within six months from the company's financial year).

Most companies in the country choose to have their fiscal period end either on the last day of the year or on the last day of a quarter.

## Accounting standards

Companies doing business in Malaysia are required to prepare their financial reports in accordance with the following two sets of reporting standards:

- The Malaysian Financial Reporting Standards (MFRS), designed for companies with public accountability; and
- The Malaysian Private Entities Reporting Standards (MPERS), designed for private companies with annual periods beginning on or after January 1, 2016.

MFRS standards are almost on a word-by-word basis in alignment with IFRS and SMEs are permitted to use the MPERS standards.

It should be noted that foreign companies listed in Malaysia are able to apply either Malaysian Accounting Standards Board approved accounting standards or acceptable internationally recognized accounting standards. Similarly, Malaysian companies are able to use IFRS in their financial statements if they wish to do so.

## Annual reports

The documents required during an annual audit are similar for both foreign companies operating in Malaysia and Malaysia-incorporated companies. These include the following:

- Director's report;
- Financial statements;
- Principal business activities;
- Statement by directors on the financial statements;
- Total paid-up capital;
- Statutory declaration by the director or officer primarily responsible for financial management; and
- Auditor's report.

## Penalties for non-compliance

For private limited companies, non-compliance in relation to the late submission of financial statements could lead to a fine of up to 2,000 ringgit (US\$478) while the non-submission of audited financial statements could lead to a 30,000 ringgit (US\$7,180) or imprisonment of up to five years.



## Myanmar

The Myanmar Companies Law of 2017 and Myanmar Accountancy Council Law are the main legislation that governs audit and compliance requirements for businesses in the country.

If businesses find conflict between the requirements set out under both laws, then the requirements under the Myanmar Accountancy Council Law will be sufficient.

## Auditing and compliance requirements

Myanmar operates two assessment systems: the self-assessment system (SAS) and the official assessment system (OAS).

If the corporate taxpayer is under the SAS, then they are not required to submit audited financial statements to the Internal Revenue Department (IRD). Corporate taxpayers must submit their audited financial statements to the Directorate of Investment and Company Administration (DICA) and the IRD if they are under the OAS.

Small companies, classified as having less than 30 employees and revenue of less than 50 million kyat (US\$37,000), are not required to submit their financial statements to DICA.

## Annual general meetings

A company is required to hold its first AGM no later than 18 months from the date of incorporation and in subsequent intervals of no more than 15 months. Within 21 days of the AGM, the annual return will need to be filed to the Companies Registration Office.

During an AGM, the following activities will occur:

- Electing directors;
- Appointing auditors;
- Approval of financial statements by shareholders; and
- Approval of the director's report.

## Fiscal periods

The financial year in Myanmar runs from October 1 to September 30. This financial year is mandatory for all businesses. Companies must file any corporate income tax returns and audited financial statements to the IRD.

## Appointing auditors

Companies incorporated in Myanmar must maintain proper books of accounts as well as appoint an auditor by the company's directors. At each AGM, the directors must present the audited financial statements.

A person must hold a certificate from an authorized body entitling them to act as an auditor for companies. All auditors must be either a certified public accountant or hold an accountancy degree in a foreign country recognized by the Myanmar Accountancy Council (MAC).

The following people are prohibited from being appointed as auditors:

- The director or officer of the company;
- A partner of the director or officer;
- Any person indebted to the company; and
- Any person in the employment of the director or officer.

It is the duty of the auditor to state in their report the following:

- Have the books and accounts been maintained in accordance with the law?
- Do the balance sheets represent the true state of financial affairs of the company?
- Was the auditor able to obtain the necessary information from the relevant parties in the company?
- Were the balance sheets drawn up in accordance with the law?

## Accounting standards

Financial statements in Myanmar are prepared in accordance with the Myanmar Accounting Standards (MAS) and the Myanmar Financial Reporting Standards (MFRS), implemented by MAC.

MAC has also implemented the MFRS for SMEs, which is adopted from the IFRS for SMEs standards. Publicly accountable companies must only use the MFRS standards.

Both MAS and the MFRS are based on the IFRS principles, except for the following:

- IFRS 9 – financial instruments;
- IFRS 10 – consolidated financial statements;
- IFRS 11 – joint arrangements;
- IFRS 12 – disclosure of interests in other entities; and
- IFRS 13 – fair value measurement.

## Annual reports

All companies incorporated in Myanmar must file annual returns with the Directorate of Investment and Company Administration (DICA) within two months of incorporation, and at least once annually after. Companies will receive an electronic reminder from DICA when their annual returns are due.

Annual return documents must contain the following information:

- List of directors;
- Capital structure of the company;
- Information on shareholders; and
- The date when the AGM was conducted.

## Penalties for non-requirements

If the taxpayer is late in filing their tax returns, the penalty will be either:

- A fine of five percent of the tax due and an additional one percent of the tax due for each month; or
- Fixed fine of 100,000 kyat (US\$74).

If the taxpayer deliberately provides incorrect information or omits vital information, which results in the underpayment of the tax liability, then the following penalties will apply:

- A 25 percent penalty of the underpaid tax; or

- A 75 percent penalty of the underpaid tax if this amount is less than 100 million kyat (US\$74,000) or not more than 50 percent of the payable tax.



## Philippines

Under the Tax Code, all persons, natural or juridical, who are subject to internal revenue taxes must keep proper records of all business transactions and keep books of their accounts.

### Auditing and compliance requirements

Companies whose gross annual earnings exceed PHP3 million (US\$61,760) are required to have their accounts audited. Companies whose annual sales that do not exceed PHP3 million (US\$61,760) can file their tax returns with unaudited financial statements.

There are several government regulatory bodies who have the power to establish additional reporting requirements. These regulatory bodies are:

- Securities and Exchange Commission (SEC);
- Insurance Commission (IC);
- The Bangko Sentral ng Pilipinas (BSP);
- Professional Regulation Commission (PRC); and
- Professional Regulatory Board of Accountancy (PRBOA).


Regulated entities, such as public utilities, insurance companies, and banks or corporations, are to submit their audited financial statements to their relevant government regulatory agency as well as filing to the SEC.

Further, the Securities Regulation Code (SRC) Rule 68 provides the reporting requirements for the following types of entities:

- Regional operating headquarters of foreign companies who have total revenue of more than PHP1 million (US\$20,590);
- Stock corporations with paid up capital of more than PHP50,000 (US\$1,029);
- Branch offices of foreign corporations with capital of more than PHP1 million (US\$20,590); and
- Non-stock corporations with assets of more than PHP500,000 (US\$10,294) and gross annual revenue of PHP100,000 (US\$2,058).

### Appointing auditors

All companies must submit their financial statements accompanied by an auditor's report issued by an independent certified public accountant (CPA). The PRC is the government



agency responsible for regulating the accounting profession in the country and the PRBOA is responsible for the licensure examination as well as for CPAs to observe the rules implemented in the Philippine Accountancy Law of 2004.

The auditor is appointed by the board of directors of the corporation and the Securities and Exchange Commission (SEC) requires external auditors to be rotated every five years.

The BSP requires external auditors engaged by banks to be changed every five years and the IC requires insurance companies to also change their external auditor every five years. Once the services of the auditor have been used for these five consecutive years, the same auditor cannot participate in the auditing process for a period of, in most cases, two years.

## Fiscal periods

The Philippines uses a self-assessment tax system, and the accounting period consists of 12 months, normally ending on December 31. Tax returns must be filed on the 15th day of the fourth month following the closing of the taxable year. A company can change its accounting period with prior approval from the Bureau of Internal Revenue (CIR).

## Accounting standards

The Philippine Financial Standards (PFRS) is the most authoritative accounting standards in the country. This applies to all entities with public accountability.

The SRC Rule 68 sets out the applicable framework for the following type of entities:

- For large and publicly accountable entities – The PFRS;
- For SMEs – PFRS for SMEs; and
- Micro-enterprises – PFRS for SMEs or other accounting standards issued after 2004.

Large companies are classified as any of the following criteria:

- Companies with total assets of more than PHP350 million (US\$7.2 million) or have total liabilities of more than PHP250 million (US\$5.1 million);
- Companies that in the process of filing financial statements in order to issue class instruments;
- Companies that are required to file financial statements; or
- Holders of secondary licenses from a regulatory agency.

A company is classified as an SME if it meets all of the following criteria:

- Have total assets of between PHP3 million (US\$61,760) and PHP350 million (US\$7.2 million) or total liabilities of between PHP3 million (US\$61,760) and PHP250 million (US\$5.1 million);

- 
- Are not in the process of filing financial statements in order to issue class instruments; and
  - Do not hold secondary licenses from regulatory agencies.

SMEs are obligated to follow the PFRS for SMEs unless they fall under one of the below categories:

- Subsidiary of a parent company who are reporting under the full PFRS;
- Is part of a group that is reporting under full PFRS;
- It is a branch office or regional operating headquarters of a foreign company, also reporting under full PFRS; or
- The company is a subsidiary of a foreign parent company that is planning to implement the IFRS system.

## Annual reports

All companies regardless of their size are required to prepare their documents in Tagalog, in addition to Spanish and English.

Companies must maintain their books of account, which consist of a journal and a ledger (or their equivalents). These records need to be retained for three years although some local governments may require records to be kept for up to five years, and the Philippine Stock Exchange requires dealers in securities to retain their records for six years.

Accounting records must also be kept in Philippine Pesos, or a 'functional currency' used in its operations, if approved by the SEC and the BIR.

Companies must maintain a stock and transfers book that must be registered with the SEC; as well as a book of accounts that must be registered with the BIR before use, which consists of the following:

- General ledger;
- General journal;
- Purchase journal;
- Sales journal; and
- Cash receipts/disbursements journal.

The BIR has the power to examine a company's financial records for up to three years from the date of filing.

## Penalties for non-compliance

There is a 25 percent surcharge of the amount of tax due if a company fails to timely file any return plus a 12 percent interest per annum. A 50 percent surcharge of the basic tax due is applied to companies who willfully neglect to file their return or purposefully submit fraudulent returns.



# Singapore

Singapore's transparent business and legal system have made the island nation a popular destination for international companies to establish their regional headquarters.

In maintaining this vibrant business climate, the government has obliged certain businesses to adhere to its audit and compliance regulations. However, the country's audit and compliance procedures are considerably less burdensome compared with its ASEAN peers, which is why Singapore is consistently ranked number one in the World Bank's Ease of Doing Business index.

## Auditing and compliance requirements

According to Singapore's Companies Act, the primary legislation regulating the conduct of companies in the country, companies must comply with annual filing requirements of the Accounting and Corporate Regulatory Agency (ACRA), as well as the Inland Revenue of Singapore (IRAS).

### Who is obligated to be audited?

The *Companies Act* states that private limited companies must have their financial statements audited by a qualified public accountant at least once a year.

### Annual general meeting

An annual general meeting (AGM) is obligatory for a Singapore company. The AGM can be held anywhere in the world, whereby the shareholders discuss the following items:

- Approval of the audit reports;
- Re-elect directors (if required);
- Re-appointing auditors;
- Declare dividends; and
- Transact other business.

AGMs are to be held:

- Once every year;
- Within 15 months from the previous AGM; or
- Six months from the FYE date.

## Appointing auditors

Within three months of company incorporation, company directors must appoint an auditor, unless they fall under the following criteria:

- Annual turnover is less than S\$5 million (US\$3,700,00);
- The total number of shareholders is less than 20; and
- All shareholders are individuals and not corporations.

The role of the auditor is to report if the company's financial statements comply with the relevant financial reporting standards and to provide an objective analysis of the company's financial performance. Additionally, only public accountants registered with ACRA can conduct company audits.

## Fiscal year

All companies in Singapore should determine a financial year-end (FYE) (that is, the last day of the company's first financial year) after incorporation.

After the FYE, the company must hold their AGM as well as file their annual returns (AR). Listed companies must file their AR within five months and non-listed companies within seven months.

Many companies choose December 31 for their FYE while others have chosen the end of any quarter (March 31, June 30, and September 30).

In deciding an FYE, companies should consider whether the chosen date affects their eligibility to receive tax incentives. Starting in 2020, qualified new companies can receive a 75 percent tax exemption on the first S\$100 thousand (US\$73 thousand) of chargeable income during the first three consecutive years. There is a 50 percent tax exemption on the next S\$100 thousand.

For certain companies, it is, therefore, more advantageous to have December 31 as their fiscal year-end date.

## Audit exemptions

In July 2015, ACRA amended the Companies Act through the Small Company Concept. This amended the audit exemption criteria for businesses.

Companies that qualify as 'small' are exempted from having their accounts audited and from appointing an auditor. They first need to fulfil two of the three following criteria:

- Total revenue must not exceed S\$10 million (US\$7.3 million);
- Total number of full-time employees must not exceed 50; or

- Total assets of the company should not exceed S\$10 million (US\$73. million).

## Group company audits

Holding companies and their subsidiaries can also be exempt from audit compliance if they qualify as a 'small group'. To qualify, the group (comprising of all the companies) should fall under two of the three criteria as written above for small companies.

Businesses that are exempt from audits are advised to prepare annual financial statements.

## Accounting standards

Companies in Singapore that have a financial period starting after January 1, 2003 must use the Singapore Financial Reporting Standards (SFRS), which are based on the IFRS.

Financial statements are prepared under the accrual basis of accounting, which is a one of the main principles of the accounting standards in Singapore. Under this accounting method, revenues are recorded when a transaction occurs rather than when the payment is received.

When the International Accounting Standards Board (IASB) issued the IFRS for small entities (SE) in 2009, the Accounting Standards Council of Singapore introduced the SFRS for small entities (SE) in 2010. The SFRS for SE provides an alternative framework to the full SFRS for SEs reporting periods beginning on or after January 1, 2011.

Businesses that are eligible to apply for SFRS for SE are:

- Classified as a small entity, meaning they must also qualify in two of the three aforementioned criteria under audit exemptions, being:
  - » Total revenue of not more than S\$10 million (US\$7.3 million);
  - » Total assets of not more than S\$10 million (US\$7.3 million); or
  - » Total number of employees of not more than 50.
- The company is not publicly accountable; and
- It publishes financial statements for external users.

Some of the advantages for small companies abiding by the SFRS for SE are that the process for preparing a company's financial statements are much simpler, and there is a reduction in the disclosure requirements.

## Annual reports

Singapore's authorities require companies to submit their estimated chargeable income within three months from the financial year-end. This accounting should include the following:

- Statement of comprehensive income (profit and loss accounting);
- Company details;
- Balance sheet;
- Shareholder details;
- Dates of annual returns and AGM;
- Detail of company officers;
- Cash flow statement; and
- Statement of changes in equity.

## Penalties for non-compliance

Businesses that fail to hold an AGM and are late to file financial statements are at risk of fines, summons, and even an arrest warrant issued by ACRA.

Failing to file tax returns for two years or more will result in a Court summons, and upon conviction, the company will be ordered to pay a penalty that is twice the amount of tax and a fine of up to S\$1,000 (US\$730).



## Thailand

Audit and compliance are outlined in a number of laws in Thailand. These are:

- The Accounting Act of 2000;
- The Securities and Exchange Act of 1992;
- The Bank of Thailand Act B.E. 2485;
- Insurance Commission Act B.E. 2550; and
- Financial Institutions Business Act B.E. 2551.

## Auditing and compliance requirements

All companies, partnerships, joint ventures, and branches of foreign companies must prepare financial statements for their assigned accounting period to the Ministry of Commerce.

Foreign companies (ROs, branch office, regional offices) must submit their financial statements no later than 150 days after the end of the fiscal year. Once an accounting period is chosen, it cannot be changed unless there is written approval obtained from the Revenue Department.

## Annual general meetings

Companies and partnerships must comply with the requirements set out in the Thai Civil and Commercial Code to hold annual general meetings (AGM).

The board of directors must issue a letter to organize the AGM within four months of the end of the fiscal year. The AGM must be held at least once a year. The AGM should have the following agendas:

- To clarify the minutes of the AGM for the previous AGM;
- Approval of the director's report on the company's business activities;
- Acknowledge the company's operational results from the previous year;
- Select new directors to replace those that have been terminated;
- To appoint an auditor and determination of audit fees; and
- To consider dividends.

## Appointing auditors

Financial statements must be examined and certified by an independent certified auditor. The Thai Accounting Professions Act requires all certified public accountants (CPA) to apply the Thai Standards of Auditing. The audit opinion issued by the CPA is required when submitting financial statements and tax returns.

This auditing should be done regardless of whether the company is traded or not. The only exception to this rule is the financial statements of a registered partnership under Thai law, whose total capital, assets, and income are not more than that prescribed in Ministerial Regulations.


## Fiscal year

Thailand operates a self-assessment tax system with the tax year generally set as the 12-month period ending on December 31. A company, however, can choose their own accounting period as long as it does not exceed 12 months.

If a company chooses their own accounting period, they must inform the Director-General of the Revenue Department. Starting from April 2020, financial statements must be filed electronically with the Department of Business Development (DBD) of the Ministry of Commerce.

## Accounting standards

Under Thai law, a company registered in Thailand, irrespective of whether it is a limited company, a foreign company operating in the country, or a partnership, are obligated to keep their accounts and undertake annual audits.



Companies in Thailand should apply the Thai Financial Reporting Standards (TFRS) in the preparation of financial statements. TFRS have made great strides in harmonization with IFRS in recent years. In addition to International Accounting standards currently pending adoption in Thailand, TFRS also contain many national elements that extend beyond the mandate set by the International Accounting Standards Board (IASB).

Currently, SMEs in Thailand are allowed to use one of the two following standards:

- Thai Accounting Standards (TAS); and
- Thai Accounting Standard for Non-Publicly Accountable Entities (NPAEs).

Foreign companies are permitted to use the IFRS system.

Companies listed on the Thailand Stock Exchange must also prepare financial statements which must also be reviewed by Thai auditors on a quarterly basis.

## Annual reports

Limited companies, both public and private, should provide the following documents at the end of each accounting period:

- Company name;
- Type of business;
- Details of directors;
- Audited financial statement;
- Balance sheet;
- Profit and loss accounts;
- List of shareholders, as of the date of the meeting; and
- Minutes of the annual meeting.

For reporting purposes, companies must prepare their documents in the Thai language. While foreign companies may prepare their documents in a language other than Thai, a translation must be attached.

Private and public limited companies must have their financial statements audited at the end of the fiscal year by an independent auditor.

In accordance with the Accounting Act of 2000, businesses are required to retain their books of accounts for at least five years. This may be extended for a period of seven years by the Director-General of the Revenue Department, depending on the business activity.

## Penalties for non-compliance

Failure to comply with these regulations may result in a penalty up to 100,000 baht (US\$3,200).

If a business underestimates its profits for an entire year by more than 25 percent, it is subject to a 20 percent surcharge is imposed. A surcharge of 100 percent in the case of an incorrect filing and 200 percent in the case of failure to file a return. The penalty can be reduced by 50 percent if the taxpayer submits a written request to the tax officer.



## Vietnam

The Accounting Law governs the principles for accounting, audits, and organizational structure, for businesses to stay compliant in Vietnam.

The tax year in Vietnam is determined according to the calendar year, and a Vietnamese-based auditing company must conduct the audit. The financial reports should then be submitted to the local tax authority, Ministry of Finance, and the statistics office 90 days before the end of the fiscal year.

## Auditing and compliance requirements

Investors should be aware that the audit and compliance requirements are different for a foreign-owned enterprise (FOE) and representative office (RO) in Vietnam.

### Annual compliance for foreign-owned companies

FOEs are obligated to provide an annual audit report and the finalization of corporate and personal income taxation.

- The statutory audit requirements are as follows:
- Statement of income;
- Statement of financial position (profit and loss);
- Statement of changes in equity, if any; and
- Balance sheets.

Within 90 days after the end of the fiscal year, FOEs need to submit the audited reports to three government agencies:

- Provincial Department of Planning and Investment (DPI) or the Provincial Level Export Processing and Industrial Zone Department in the case of FOEs based in investment zones (IZs) or export processing zones (EPZs);

- Provincial level tax departments; and
- Provincial level statistical offices.

## Fiscal year

The financial period in Vietnam usually coincides with the calendar year. FOEs can choose from four fiscal periods with the 12-month period beginning in the first day of each quarter after registering with the Tax Department.

The financial reports should then be submitted to the local tax authority, Ministry of Finance, and the statistics office before the end of the fiscal year.

The four fiscal periods are:

- January 1 – December 31;
- April 1 – March 31;
- July 1 – June 30; or
- October 1 – September 30.

## Annual compliance for representative offices

Representative offices are one of the simplest and fastest ways to establish a legal entity in Vietnam. Their reporting requirements are also more simplified compared to FOEs.


ROs are forbidden from directly conducting profit-generating activities and are limited to market research, developing trade contacts, and gather information on regulations and laws.

## Accounting standards

In addition to the Accounting Law, local and international companies are obligated to adhere to the Vietnamese Accounting Standards (VAS), which has been developed by the Vietnamese Ministry of Finance, when documenting financial transactions. The VAS provides the guidelines for bookkeeping, financial reporting, and financial statement preparations.

There are industry-specific accounting guidelines for businesses engaging in insurance, securities, as well as funds management.

Foreign investors should be well aware of unique fundamental characteristics of VAS to fully comprehend compliance requirements and make informed investment decisions. Vietnam's government currently has 26 VAS accounting standards based on IFRS. To provide guidance for local and foreign enterprises in Vietnam on these standards, the Ministry of Finance (MoF) recently issued *Circulars, No. 200/2014/TT-BTC and No. 202/2014/TT-BTC*, which enhance the comparability and transparency of corporate financial statements and bring the two systems closer.



The government aims to replace VAS and adopt the International Financial Reporting Standards (IFRS) by 2025 through a draft IFRS roadmap, published in 2019. The roadmap divides the IFRS implementation into three stages:

**Stage 1 (2019-2021):** The MoF makes necessary preparations for the implementation of the roadmap, such as the publication of the Vietnamese translation of IFRS standards, training and the preparation of guidelines for IFRS implementation. Companies that will adopt IFRS from 2022 onwards will receive special support.

**Stage 2 (2022-2025):** The MoF selects certain pilot companies, in particular state-owned enterprises, listed companies, and (large) non-listed companies, to implement IFRS in practice. Foreign companies can adopt IFRS for their individual financial statements on a voluntary basis.

**Stage 3 (from 2025):** IFRS will be mandatory for the consolidated accounts of all state-owned companies, listed companies, and (large) non-listed companies. All other companies can adopt IFRS for their individual financial statements on a voluntary basis.

## Annual reports

Enterprises under foreign ownership must have their financial statements audited by an independent audit firm operating in Vietnam. Such statutory audits are performed in accordance with VAS and every organization is required to have a Chief Accountant, as annual financial statements must be approved by the chief accountant and the legal representative.


The company should sign with the independent auditing company no later than 30 days before the end of the fiscal year, with the company also being responsible for providing accurate and adequate information to the auditors. If the company is a credit institution, they are required to rotate their audit firms every five years, whereas non-credit institutions have to change their auditors every three years.

The accounting records should be maintained in the Vietnamese language although this can be combined with another commonly used foreign language, such as English.

Additionally, the Vietnamese Dong must be used as the accounting currency, however, entities that receive and pay with foreign currency can select that said foreign currency in their accounting records and financial statements. For statutory reporting, the foreign currency must be converted to the Vietnamese Dong equivalent.

For ROs, the annual reports must include:

- Basic information – contact information, such as office address, telephone numbers, and primary bank contacts. Investors should note that the address should match to that written in the RO license;

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- Human resource report – ROs must document their policies with regards to salaries, bonuses, insurance, and other benefits. The personal information and position of every employee should also be included; and
  - Activities report – ROs must document their activities for the preceding year, which includes information, such as market research activities, advertising activities, participation in trade fairs, and the promotion of service agreements, among others.

## Penalties for non-compliance

Under the government's New Penal Code, which was issued in 2018, businesses that fail to adhere to the compliance laws can now be held criminally responsible.

If the tax authorities find discrepancies in the financial reports, after an audit, a 20 percent tax will be imposed on the amount that is under-declared. There is also a 0.03 percent daily interest rate for the late payment of tax.

In addition, tax authorities can penalize companies for VAS non-compliance through the disallowance of input VAT credits and withdrawal of CIT incentives.



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## Our Offices in ASEAN

### VIETNAM

**Ho Chi Minh City**

hcmc@dezshira.com

**Hanoi**

hanoi@dezshira.com

**Da Nang**

danang@dezshira.com

### INDONESIA

**Jakarta**

indonesia@dezshira.com

**Batam**

batam@dezshira.com

### SINGAPORE

singapore@dezshira.com

## Our Alliance Members in ASEAN

### MALAYSIA

malaysia@dezshira.com

### THAILAND

thailand@dezshira.com

### THE PHILIPPINES

philippines@dezshira.com



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