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# Doing business in Asia Pacific 2015

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# Executive summary

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Doing Business in Asia Pacific was made possible through the contributions of member firms in Hong Kong, Indonesia, Japan, Korea, Malaysia, Philippines, Singapore, Taiwan, Thailand, and Vietnam. This publication summarizes the corporate and personal tax systems of those ten countries. It also covers the investment climate, including labor laws, financial infrastructure, and business incentives.

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

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Moore Stephens Asia Pacific

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# 1. Hong Kong

## Country profile

<b>Official name</b>	Hong Kong Special Administrative Region of the People's Republic of China
<b>Capital</b>	-
<b>Location</b>	Southern coast of China Borders South China Sea Borders Shenzhen
<b>Area</b>	1,104 km <sup>2</sup> 200+ islands
<b>Climate</b>	Subtropical with four seasons 12° C winter 31° C summer
<b>Time zone</b>	UTC +8 no DST
<b>Population</b>	~7.2 million
<b>Currency</b>	Hong Kong Dollar – HKD Pegged at HKD 7.80 = USD 1.00
<b>Language</b>	Chinese English
<b>Religion</b>	21% Buddhism 14% Taoism 12% Christian 3% Islam
<b>International</b>	APEC    ADB WTO    FTA
<b>Government</b>	“One Country, Two Systems”

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

### Executive

The Chief Executive is the head and representative of Hong Kong. He is elected into office by a 1,200-member Election Committee, which is elected within functional constituencies. While the Chief Executive is granted a lot of power under the Basic Law, he can only make important policies and legislations after consulting the Executive Council, which is led by the Chief Secretary.

### Judicial

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

### Legislative

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

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	262	274	293
<b>GDP per capita</b> USD	36,589	37,955	40,304
<b>Investments</b> % GDP	25.2%	23.8%	23.7%
<b>Unemployment</b>	3.3%	3.1%	3.1%
<b>Inflation, EoY</b>	3.8%	4.3%	3.9%

## Business entities

### Corporations

#### Limited liability company

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

A private company, by its Articles of Association:

- Restricts the right to transfer shares;
- Limits the number of members to fifty (excluding employees); and
- Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

A company incorporated outside Hong Kong but has established a place of business in Hong Kong can be registered as a foreign branch.

#### Backed by guarantee

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

#### Shelf companies

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

### Sole proprietorship

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

### Partnership

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

### Branches

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

### Representative offices

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

### Accounting and auditing

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

### Finance and capital markets

#### Exchange control

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

#### Banking system

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

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

#### Types of banks

Hong Kong uses a three-tiered banking system:

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

Roughly 78% of banks are incorporated as licensed banks due to the increased freedom. Additionally, about 63 foreign banks decided to open representative offices. However, some banks may fall under several categories by using subsidiaries. For instance, Bank of China is a licensed bank, but its subsidiary, Bank of China International, is registered as a restricted license bank.

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

### Deposit Protection Board (DPB)

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

### Bank secrecy

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

## Capital market

### Securities and Futures Commission (SFC)

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

### Hong Kong Stock Exchange (HKEx)

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

1. At least HKD 20 million of profit in the previous year, and at least HKD 30 million of aggregate profit for the two years before that; market cap of at least HKD 200 million
2. At least HKD 500 million of revenue in the previous year; market cap of at least HKD 4 billion
3. At least HKD 500 million of revenue in the previous year; at least HKD 100 million of aggregate positive cash flow in the previous three years; market cap of at least HKD 2 billion

If a company cannot list on the main board, the company may enlist itself on the Growth Enterprise Market (GEM) instead. The requirements are much less strict. The company must have at least HKD 20 million of aggregate positive cash flow in the previous two years and a market cap of at least HKD 100 million.

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

## Labor

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

### **Types of employment**

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

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

### **Working hours and compensation**

Wages must be paid out within seven days after the wage period. Hong Kong has no law about regular working hours and overtime hours—they are specified in the employment contract. Employers are only required to provide one rest day every week. The average full-time employee in Hong Kong works 49 hours a week and over half of employees receive no remuneration for overtime.

### **Wages and benefits**

#### **Minimum daily wage**

Since 2011, Hong Kong has enforced a statutory minimum wage. As of now, minimum wage is HKD 30 per hour.

#### **Benefits**

##### ***Holiday pay***

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

##### ***Service incentive leave***

A worker who has rendered one year of service is entitled to 7 days of paid leave annually. After the third year of service, the number of paid leaves increases by one every year, up to a cap of 14 days. The employee is paid the average daily wage.

An employee can accumulate 2 sick days a month for the first year of service and 4 sick days a month thereafter, up to a cap of 120 days. A paid sick leave must be taken for at least 4 consecutive days with the proper medical certificate. The employee must be treated by a registered doctor. During sick leave, employees are paid 80% of their average daily wage.

##### ***Annual bonuses***

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

##### ***Mandatory Provident Fund***

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

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

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

Under the MPF system, the employee is required to contribute 5% of his/her monthly income, capped at HKD 30,000, and the employer has to match this amount. Each employee and employer may make voluntary contributions in addition to the mandatory contributions.

#### ***Maternity leave***

Female employees are entitled to 10 weeks of maternity leave, which can begin between two to four weeks before birth. If the mother falls ill from the birth or pregnancy for longer than the leave period, she may receive additional maternity leave for not more than 4 weeks. During the leave, the employee is entitled to 80% of her average daily wage during the leave if she has rendered at least 40 weeks of service and has informed the employer after she has confirmed the pregnancy.

#### ***Paternity leave***

Hong Kong does not require paid paternity leaves.

#### ***Retirement benefits***

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

### **Termination of employment**

An employee is entitled to severance payment after 24 months of service if the employee was laid off because of redundancy. An employee is entitled to a long service payment after 5 years of service if the employee is dismissed not because of redundancy or misconduct, but because of old age, ill health, or death. The amount payable is 2/3 of the previous month's salary (up to a cap of HKD 22,500) multiplied by reckonable years of service. The payment is capped at HKD 390,000.

The relevant party has to be notified of the termination according to the notice period requirement specified in the employment contract. If no notice time was specified, then the party has to be notified at least 1 month before termination. Summary dismissal is allowed only if the employee has committed a grave misconduct or if the employee habitually neglects his/her duties and has been warned repeatedly. The employee may disagree and file a case with the labor tribunal. The employee may terminate the employment without notice if s/he is reasonably threatened by violence or disease, has been subjected to maltreatment by the employer, or is deemed unfit by a medical practitioner after five years of service.

### **Labor relations**

#### **Labor union**

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



### Strike

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

### Employment of foreigners

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

### Taxation

The Inland Revenue Department is responsible for taxation in Hong Kong as defined in the Inland Revenue Ordinance. Corporations (including branches of foreign corporations), individuals, bodies of persons, and partnerships carrying on a trade, profession, or business in Hong Kong are all persons subject to profits tax. Place of incorporation generally has little or no impact for profits tax purposes..

### Territoriality

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

### Corporate income tax

#### Tax rates

All companies' Hong Kong-sourced taxable profit, less allowable deductions, is subject to Profits Tax of 16.5%. The tax rate is identical for public limited companies, private limited companies, and branches.

#### Taxable profit

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

#### *Allowable deductions/deductible expenses*

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

The following may be deductible if prescribed conditions are satisfied:

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

**Loss carryover**

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

**Withholding tax**

Hong Kong does not impose withholding tax except on royalties paid to non-residents, which are taxed at 4.95% if the intellectual property was never owned by a Hong Kong company. For royalties paid to non-resident associates, the withholding tax rate can be 16.5% if the intellectual property was previously owned by a Hong Kong company.

**Individual tax**

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

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

Directors' fees arise from an office and not from an employment, so the tax concessions described above do not apply. If the company that pays fees is managed and controlled in Hong Kong, this puts the source of the fees in Hong Kong, and they are therefore taxable income in Hong Kong even if the services are rendered outside Hong Kong.

**Tax rates**

Taxpayers are required to pay taxes on Hong Kong-sourced taxable income, less allowable deductions. Salary currently has a 15% maximum tax rate.

However, lower wage earners pay the lower of 15% total income before personal allowances or the following tax schedule:

Annual income (HKD)	Tax rate
40,000	2%
80,000	7%
120,000	12%
>120,000	17%

For example, if an employee earns net chargeable income of HKD 100,000 (after deductions and allowances), then the first 40,000 is taxed at 2%, the next 40,000 is taxed at 7%, and the remaining 20,000 is taxed at 12%.

Hong Kong does not levy taxes on capital gains.

**Taxable income**

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

- Salary
- Commissions

- Bonuses
- Awards
- Gratuities
- Allowances
- Stock options, once redeemed

Non-taxable income includes:

- Severance pay and long-service payment calculated according to the Hong Kong Employment Ordinance
- Certain compensation related to loss of employment

### *Allowable deductions*

- Donations to approved charitable institutions above HKD 100, up to 35% of assessable income minus other deductions
- Business deductions necessary to produce income
- Self-deduction expenses up to HKD 80,000
- Home loan interest up to HKD 100,000 (for up to 15 years)
- Elderly residential care expenses up to HKD 80,000
- Contributions to the MPF up to HKD 17,500, to be raised to HKD 18,000 in the 2015-2016 fiscal year
- Personal allowance of HKD 120,000 per person, HKD 70,000 each for siblings (an additional HKD70,000 in the year of birth)

### **Income tax treaties**

Because Hong Kong levies taxes on a territorial basis, double taxation rarely occurs. However, Hong Kong sees benefit in formalizing taxing rights so investors can better assess tax liabilities. Additionally, Hong Kong can lure foreign companies to do business in Hong Kong since they can enjoy lower tax rates for income derived in Hong Kong.

Hong Kong has signed Comprehensive Double Taxation Agreements and Limited Double Taxation Agreements with the following countries:

Austria	Italy	New Zealand
Belgium	Japan	Portugal
Brunei	Jersey	Qatar
Canada	Korea	South Africa
China	Kuwait	Spain
Czech	Liechtenstein	Switzerland
France	Luxembourg	Thailand
Guernsey	Malaysia	United Arab Emirates
Hungary	Malta	United Kingdom
Indonesia	Mexico	Vietnam
Ireland	Netherlands	

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

Bangladesh	Iceland	Norway
Croatia	Israel	Russia
Denmark	Jordan	Seychelles

Estonia	Kenya	Singapore
Ethiopia	Laos	Sri Lanka
Fiji	Macao	Sweden
Finland	Maldives	USA
Germany	Mauritius	

### Value added tax

Hong Kong does not levy VAT.

### Other taxes

#### Excise tax

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

Products	Rate	Unit
Liquor above 60-proof	100%	
Methyl alcohol	\$840	hL
<i>for every 2 proof above 60</i>	<i>\$28.1</i>	<i>hL</i>
Aircraft fuel	\$6.51	L
Leaded petrol	\$6.82	L
Unleaded petrol	\$6.06	L
Light diesel	\$2.89	L
Ultra low sulfur diesel	\$2.89	L
Cigars	\$2,455	Kg
1000 cigarettes	\$1906	
Chinese tobacco	\$468	Kg
Other tobacco	\$2,309	Kg

#### Customs duty

Hong Kong does not levy import tax.

#### Inheritance tax/gift tax

Hong Kong does not levy inheritance or gift taxes.

#### Property taxes

Property tax is levied on the owner of land and buildings in Hong Kong. The current rate is 15%, charged on the basis of actual rent receivable, less a 20% deduction to allow for repairs and maintenance. Rent received by a limited company is subject to profits tax instead of property tax.

#### Stamp duty

Stamp duty is charged on the following documents:

- Conveyance on sale of immovable and residential property (Assignment) – ad valorem stamp duty (AVD) charged at rates depending on the amount or value of the consideration. The existing maximum AVD is 4.25% if the amount or value of consideration exceeds HKD 21,739,131.

- Agreement for sale and purchase of residential or non-residential property – maximum AVD of 8.25% if the amount or value of consideration exceeds HKD 21,739,131. For the sale or purchase of residential property by a Hong Kong resident who does not own any other residential property in Hong Kong at the time of the agreement, only the existing maximum AVD of 4.25% applies.
- Lease of immovable property (Tenancy Agreement) – charged at 0.25% to 1% of the rental amount
- Transfer of Hong Kong stock – 0.2% on the higher of the transfer consideration or the fair market value of the shares, equally shared by the transferor and transferee (0.1% each)
- Any residential properties in Hong Kong acquired on or after 27 October 2012 by an individual or a company (irrespective of its place of incorporation) and resold within 36 months of acquisition will be subject to Special Stamp Duty (SSD) which ranges from 10% to 20%. The SSD is calculated based on the stated consideration for the transaction or the market value of the property, whichever is higher.

All non-Hong Kong permanent residents and companies (both local and overseas) acquiring residential properties in Hong Kong are subject to Buyer Stamp Duty (BSD) at a flat-rate of 15% on the higher of the stated consideration or market value of the residential property. The BSD is to be levied on top of the existing AVD and SSD.

## Investment

### Business incentives

While Hong Kong does not offer special business incentives, its low tax rates and financial infrastructure are enough to establish itself as a leading global business center. Expenditure on plant and machinery directly related to manufacturing and computers may be written off on the year of purchase. Other plant and machinery may be written off at 60% for the year of purchase and the remaining balance is depreciated at a certain rate (usually 20%) for the following years.

### Limited sectors and indirect investments

Hong Kong allows full foreign ownership of companies except in the broadcasting industry (capped at 49%) and government-owned activities (e.g. Hong Kong Link and Kowloon-Canton Railway Corporation).

### Intellectual property rights

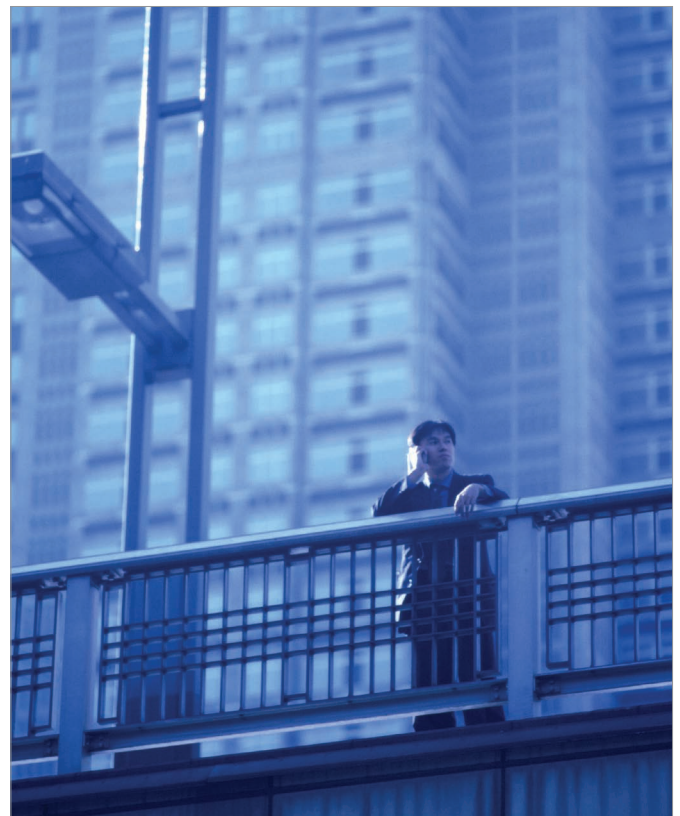
Hong Kong follows a lot of international standards for intellectual property. The Intellectual Property Department is responsible for registration of patents and licensing of trademarks, designs, and copyright while the Intellectual Property Investigation Bureau of the Customs and Excise Department protects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

#### Patents

Patents are technological solutions and innovations. They enjoy a protection of 20 years after date of application. One may apply for a short-term patent instead, which is only subject to a formality examination, but the patent is only protected for 8 years.

#### Trademarks

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



### Copyright

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

### Trade names

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

### Layout-design of an integrated circuit

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

### Plant varieties protection

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

### Resumption and compensation

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

### Property ownership

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

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

### International trade agreements

Hong Kong has signed a comprehensive free trade agreement with the following European countries:

- Iceland
- Liechtenstein
- Norway
- Switzerland



## 2. Indonesia

### Country profile

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

#### Executive

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

#### Legislative

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

#### Judicial

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

IMF Data	2012	2013	2014 Est.
Real GDP USD billions	878	870	856
GDP per capita USD	3,591	3,510	3,404
Investments % GDP	34.7%	33.6%	33.4%
Unemployment	6.1%	6.3%	6.1%
Inflation, EoY	3.7%	8.1%	5.2%

## Business entities

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

### Limited liability company or *Perseroan Terbatas (PT)*

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

- The Articles of Association can specify limited or unlimited period of operations.
- Two or more persons can establish a PT with a notarized deed written in Bahasa Indonesia.
- The company becomes a legal entity after issuance of the Ministerial Decree.
- Capital must be at least IDR 50 million, with some exceptions by law, with at least 25% issued and paid-up in full.
- Shares must have IDR nominal value.
- Shares can be issued based on classifications, e.g. with or without voting rights.
- The name of the company must begin with "Perseroan Terbatas" or the abbreviation "PT". Public companies (*Perseroan Terbuka*) must add "Tbk." at the end of the company name.
- The Board of Directors consists of one or more members as appointed by the shareholders in their general meeting. Companies that engage in mobilizing public funds, issuing public shares, or issuing debt instruments must have at least two members. The same applies to the Board of Commissioners.
- A company having its business activities based on the syariah principle must also have a Shariah Supervisory Board. The Syariah Supervisory Board is responsible for advising the Board of Directors and supervising company activities to comply with syariah principles.
- Annual general meetings must be held within six months after the end of the accounting year.
- Foreign direct investments, including incorporated joint ventures, can only be made through a PT.

### Sole proprietorship

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

### Partnership

There are three types of partnership recognized by law:

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

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

### Accounting and auditing

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

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

### Finance and capital markets

#### Exchange controls

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

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

#### Banking

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

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

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

#### Bank Indonesia

All banks are monitored and supervised by BI, which was created under the Central Bank Act, Law No. 23 of 1999 on Bank Indonesia. The Act establishes BI as an independent state institution, free from interference by the Government or any other external parties.

#### Bank secrecy

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

### Deposit insurance

The Indonesia Deposit Insurance Corporation was formally established under Law No. 24 of 2004 as an independent institution that insures depositors' funds and actively maintains stability in the banking system. All deposits up to IDR 100 million per customer for each bank must be insured.

### Capital market

#### Indonesian Financial Services Authority or *Otoritas Jasa Keuangan (OJK)*

The capital market in Indonesia is supervised and regulated by the Capital Market Supervisory Agency, now known as OJK, created under the Capital Market Law of 1995. The OJK reports to the Ministry of Finance.

OJK can give licenses, approve the issuance of securities, and supervise and manage the stock exchange and market participants. It also monitors for and sanctions erroneous behavior.

#### Indonesia Stock Exchange (IDX)

IDX is based in Jakarta, Indonesia. It was previously known as the Jakarta Stock Exchange (JSX) before merging with Surabaya Stock Exchange (SSX) in 2007. At the end of 2012, the IDX had 462 listed companies with a combined market capitalization of USD 426.78 billion. The IDX also trades bonds (government and corporate) and warrants.

The Jakarta Composite Index (JKSE) and the Jakarta Islamic Index (JII) are the two primary stock market indices. The JII was established in 2002 to measure and benchmark market activities based on Shariah (Islamic law). About 30 stocks are listed in the JII.

### Labor

Law No. 13 of 2003, the Labor Law, combines most labor laws and legislation into a single legal instrument while adding new provisions. It encourages worker protection and labor welfare by formalizing employment relations.

#### Employment relations

Employment can be made verbally and in writing. To avoid legal dispute it is best to have a work contract in writing. Two types of contracts exist:

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

#### Wages and benefits

Minimum wage is set by the regional government of each province. In 2013, minimum wage in Jakarta is IDR 2.2 million (about USD 220) per month. Employees receive an annual bonus equal to one month's salary. The bonus must be paid before Lebaran for Muslims, before Christmas for Christians, before Nyepi for Hindus, and before Buddha's Enlightenment Day for Buddhists.

#### Other benefits

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

#### Social welfare obligation

Effective January 1, 2014, a comprehensive social security program has been launched to cover all Indonesian citizens and is implemented gradually.

### Health insurance

All Indonesian citizens are covered by health insurance with minimal premium. This will become compulsory starting on January 1, 2019.

### Jamsostek

Employers must register with Jamsostek, a government-run workers' insurance and social security fund. Jamsostek covers retirement at 55 years old, work accidents, old age savings, health, and death. The employer contributes 3.7% of salary for married workers and 3% of salary for unmarried workers for health coverage, from 0.24% to 1.74% for working accident protection, and 0.3% for death insurance. In addition, the employer contributes 3.7% of salary for retirement coverage. Employees only contribute 2% of their salaries for retirement coverage.

### Working hours

Normal working hours are

- 7 hours per day, 40 hours per week, and 6 working days per week or
- 8 hours per day, 40 hours per week, and 5 working days per week.

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

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

### Leave and break

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

### Labor unions and collective labor agreement

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

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

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



### Employment termination

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

Upon termination, an employer must pay severance of one month's salary for every year of service, up to a cap of nine months' salary. In addition, the employer must pay service rewards of two months' salary for every three years of service. Fifteen percent is added as housing and medical benefits. Other entitlements include cash payments for accrued annual leaves.

### Employment of foreign workers

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

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

## Taxation

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

### Corporate income tax

Companies are taxed based on residency:

#### Resident taxpayer

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

#### Non-resident taxpayer

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

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

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

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

Each taxpayer is required to file the tax return and pay taxes based on a self-assessment system. Consolidated returns are not allowed.



### Income tax calculation

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

### Income subject to tax

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

Assessable income includes:

- Business profits
- Foreign exchange gains
- Dividends
- Interest
- Rent
- Royalties
- Capital gains
- Other property-related income

### Allowable tax deductions

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

Major deductible expenses include:

- Costs related to business, such as:
  - cost of materials
  - employee wages and salaries
  - honoraria, bonuses, gratuities, and monetary remuneration
  - interest, rent and royalties
  - travel expenses
  - insurance premiums
  - advertisement and selling expenses subject to government regulation
  - administrative expenses
  - taxes other than income tax
- Capital losses
- Contributions to an approved pension fund
- Loss from the sale or transfer of properties owned and used in business or used for earning, collecting, and securing income
- Training expenses for employees
- Losses from foreign exchange
- Research and development costs in Indonesia
- Write-off of uncollectible debts subject to certain tax conditions
- Certain donations such as for national disaster, education facilities, social infrastructure, and sports enhancement subject to government regulations
- Depreciation and amortization of assets with useful life longer than one year. Taxpayers can adopt either the straight-line or the double-declining balance method for depreciation (except buildings) and amortization and apply it consistently. The Tax Office must approve any changes in method. Special rules are applied to certain industries such as forestry, plantation and breeding.

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

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

Corporate taxpayers can revalue their depreciable assets at market or fair value for tax purposes with approval from the Directorate of General Taxation (DGT) and compliance to specific conditions and requirements. Once approved by the DGT, the depreciation applied to depreciable assets must be based on the new tax book values and the new useful life. The excess of fair market value over the old tax book value of the revalued assets is subject to final income tax at 10%, which can be paid in installments over 12 months if the taxpayer has financial difficulties.

Non-deductible items include:

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

#### Loss carryovers

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

#### Tax rate

The corporate tax rate is a flat 25% of taxable income. However, small taxpayers with gross revenue of not more than IDR 50 billion can receive a 50% discount on the standard tax rate for the percentage of taxable income equal to 4.8 billion divided by gross revenue. For instance, if a company generates 9.6 billion in sales, then half of its taxable income is taxed at 12.5% while the other half is taxed at the standard rate of 25%. Qualifying sole proprietorships earning less than IDR 4.8 billion per year can opt to pay taxes equal to 1% of revenue instead.

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

- At least 40% of their shares are publicly owned
- The public should consist of at least 300 individual shareholders, each holding less than 5% of shares

### Deemed profit margin

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

Business	Effective Rate
Domestic shipping operations	1.20%
Domestic airline operations	1.80%
Foreign shipping and airline operations	2.64%
Insurance premiums paid by resident insurance or re-insurance companies	3.75%
Foreign oil and gas drilling	0.75%
Certain Ministry of Trade representative offices	0.25%

### Tax on oil, gas, and geothermal industries

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

### Tax on mining

The Mining Law states that general prevailing income tax laws/regulations will apply to mining projects, unless specifically stated in the mining license.

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

### Tax on consolidation

Tax consolidation is not available in Indonesia.

### Dividends and branch profit

Dividends received by resident corporate taxpayers, including cooperatives and government-owned corporations, from an Indonesian company are subject to 15% withholding tax. Companies are exempt from withholding tax if:

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

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

Dividends received by non-resident taxpayers are subject to 20% final withholding tax, which may be lowered by tax treaty agreements.

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

## Individual income tax

Individuals are taxed based on residency:

### Resident taxpayer

An individual living in Indonesia, staying in Indonesia for more than 183 days within any 12-month period, or intending to reside in Indonesia is taxed on worldwide income subject to tax credits for foreign income.

### Non-resident taxpayer

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

### Taxable income

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

Taxable income of resident individual taxpayers include:

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

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

### Deductions and reliefs

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

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

Basis of deduction	Deductions per year
Taxpayer	IDR 24,300,000
Spouse	IDR 2,025,000
Each dependent (max 3)	IDR 2,025,000
Occupational support	5% of gross income max of IDR 6,000,000
Pension maintenance cost (pensioners)	5% of gross income max of IDR 2,400,000
Contribution to Jamsostek (2% of gross income)	Full amount

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

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

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

### Withholding taxes

	Resident Art 4(2) – (Final)/Art 23 – (Creditable)		Non-resident (Article 26)
	Company	Individual	
Interest not from bank deposits (final)	15%	20%	20%
Interest from bank deposits (final)	20%	20%	20%
Dividends from Indonesian entities (creditable)	15%	-	20%
Dividends from Indonesian entities (final)	-	10%	
Royalties (creditable)	15%	15%	20%
Technical and other professional services (creditable)	2%	2%	20%
Rentals not from real estate (creditable)	2%	2%	20%
Rentals of real estate (final)	10%	10%	20%
Construction contracting services (final)	2-6%	2-6%	-
Constructing planning or supervision services (final)	4-6%	4-6%	-
Transfer of real estate (final)	5%	5%	5%
Prizes and rewards (final)	15%	15%	20%
Sale of shares listed in the IDX (final)	.1%	.1%	.1%
Transfer of unlisted shares (final)	5%	5%	5%

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

### *Withholding tax on certain purchases and sales*

Payments of purchases and sales for certain goods are subject to withholding tax under Article 22 of the Tax Code. Withholding tax rates range from .3% – 7.5% of selling price depending on nature of purchase or sale transactions.

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

### Value added tax

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

Some goods not subject to VAT:

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

Some services not subject VAT:

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

### Inheritance and gift tax

Indonesia does not levy inheritance or gift tax.

### Stamp duty

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

### Luxury-goods sales tax

The importer or the resident manufacturer of certain goods may be subject to Luxury-Goods Sales Tax (LST). The list of goods subject to LST and the tax rates can be found in the Customs Book. The LST rate currently ranges from 10% to 75% and may be increased to 200% depending on government regulation.

Examples of luxury goods:

- Luxury residences such as luxury houses, apartments, condominiums, townhouses, etc.
- Perfumes
- Photographic and cinematographic devices
- Household appliances
- Ships or other water vehicles including cruisers
- Musical instruments
- Alcoholic beverages
- Articles made of precious metal

- Footwear
- Carpets
- Commercial or state air transport
- Vehicles depending on their types, motor engine, and cylinder capacity



### Land and building tax

Land and building tax is payable annually on land, buildings, and permanent structures at no more than .5% of the sale value of the property.

### Duty on the acquisition of land and building rights

Taxpayers who acquire rights on lands and buildings get taxed at 5% of acquisition value minus a maximum threshold of IDR 60 million depending on the region, except for inheritance which can reach up to IDR 300 million.

### Import and excise taxes

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

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

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

### Tax treaties

Algeria	Hungary	Philippines	Switzerland
Australia	India	Poland	Syria
Austria	Italy	Portugal	Taipei
Bangladesh	Japan	Qatar	Thailand
Belgium	Jordan	Romania	Tunisia
Brunei	Korea	Russia	Turkey
Bulgaria	Kuwait	Saudi Arabia	Ukraine
Canada	Luxembourg	Seychelles	United Arab Emirates
China	Malaysia	Singapore	United Kingdom
Czech	Mexico	Slovakia	United States
Denmark	Mongolia	South Africa	Uzbekistan
Egypt	Netherlands	Spain	Venezuela
Finland	New Zealand	Sri Lanka	Vietnam
France	Norway	Sudan	
Germany	Pakistan	Sweden	

## Investment

The Investment Law of 2007 governs investments in any sector within Indonesia. It provides:

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

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

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

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

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

### Investment incentives

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

#### Non-tax incentives

##### *Export incentives or guarantees*

The Indonesian Eximbank Law of 2009 created the Indonesian Eximbank that regulates and promotes the granting of financing facilities:

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



### **Bonded zones**

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

### **Tax incentives**

#### **Investment law**

The Investment Law offers tax incentives to investors who are new, expanding production by at least 30%, or diversifying into new products. They can be granted relief from duties on the importation of 1) capital goods (machinery, equipment, spare parts, and auxiliary equipments) for two years and 2) raw materials and manufacturing components for two years of production. Car and motorcycle assembly (except for components) does not qualify for this incentive.

#### **Bonded zone**

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

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

#### **Export-oriented company**

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

- Postponement of import duty and excise
- Non-collection of VAT and luxury tax

#### **Designated regions**

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

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

#### **Free trade zones**

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

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

#### **Tax holiday for pioneer industries**

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

- A new investment plan approved by BKPM with a minimum investment of IDR one trillion
- Placing at least 10% of the total capital investment in Indonesian banks without withdrawing it before capital investment realization

- Operating in a pioneer industry such as:
  - Basic metals
  - Oil refinery and/or basic organic chemicals from oil and natural gas
  - Machinery
  - Renewable resources
  - Communication devices

### Real estate ownership

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

#### Right of ownership or *Hak Milik*

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

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

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

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

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

#### Right of use or *Hak Pakai (HP)*

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

#### Right of lease or *Hak Sewa (HS)*

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

#### Right of opening-up land and right of collecting forest product

##### *Hak Membuka Tanah and Hak Memungut Hasil Hutan*

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

#### Foreign property ownership

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

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

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

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

### Intellectual property rights protection

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

#### Patent

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

#### Industrial design rights

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

#### Trademarks

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

#### Copyright

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

#### Trade secret

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

#### Other laws of intellectual property

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

### Trade agreements

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

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

## 3. Japan

### Country profile

Official name	Japan	
Capital	Tokyo	
Location	Northeast Asia Sea of Japan and Pacific Ocean	
Area	~380,000 km <sup>2</sup> 4 major islands 6,000 small islands	
Climate	5.1° C winter North: cold West: humid	25.2° C summer South: tropical East: temperate
Time zone	UTC +9 no DST	
Population	~128 million	
Currency	Japanese Yen – JPY, ¥	
Language	Japanese	official English
Religion	34% Buddhism 3% Shinto 1% Christianity 1% Others	
International	G8 APEC	ASEAN Plus Three
Government	Constitutional monarchy	

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

#### Executive

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

#### Legislative

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

### Judicial

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

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	5,938	4,899	4,770
<b>GDP per capita</b> USD	46,531	38,468	37,540
<b>Investments</b> % GDP	20.8%	21.0%	22.2%
<b>Unemployment</b>	4.3%	4.0%	3.7%
<b>Inflation, EoY</b>	-0.2%	1.4%	2.6%

### Business entities

#### Corporations

##### Joint stock company

##### *Kabushiki Kaisha (KK)*

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

KK can be incorporated with capital as low as JPY 1 million plus incorporation taxes and fees, typically around JPY 600,000 to JPY 1,000,000. However, corporations with under JPY 3 million in assets cannot issue dividends, and KK must increase capital to JPY 10 million within five years of formation.

At least one entity, whether individual or corporate, must be involved in the formation of a KK. Multiple incorporators must sign a partnership agreement before incorporating the company.

Under present law, a KK must have at least one director. It may have an audit committee and a board of directors. Directors have a statutory term of office of up to two years while audit committee members have a term of four years. Restricted-share companies can exist with only one director with a term of up to ten years.

At least one director, who must be a Japanese resident, is designated as a representative director. The representative holds the corporate seal, is empowered to represent the company in transactions, and is liable for damages from his/her own gross negligence or willful misconduct. The representative director must "report" to the board of directors periodically.

##### Limited liability company

##### *Godo Kaisha (GK)*

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

A GK is formed by Articles of Incorporation signed by up to fifty investors, called members (similar to KK's shareholders), at least one of which must be a Japanese resident. Each member may provide a capital contribution in money or property to reach the minimum capital requirement of JPY 3 million.

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

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

A GK may be converted to a KK with the unanimous consent of all its members.

#### Partnership company

##### Gomei Kaisha (GNK)

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

#### Limited liability partnership company

##### Goshi Kaisha (GSK)

In GSK, partners are either 1) general partners with unlimited liability similar to a partner in a general partnership or 2) limited partners who have limited liability only up to the amount invested in the partnership. All partners are still directly liable to creditors of the partnership. Therefore, partners can still be sued individually (direct liability).

### Partnerships

#### General partnership

##### Nini Kumiai (NK)

NK is formed when partners jointly invest and carry on a business. They are each personally liable, jointly and severally, for business debts, taxes, etc. (unlimited liability) and their personal assets can be liquidated. Partnerships don't need to be registered and are not limited in the kind of business it can perform.

#### Investment limited partnership

##### Toshi Jigyo Yugen Sekinin Kumiai (TYSK)

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

#### Limited liability partnership

##### Yugen Sekinin Jigyo Kumiai (YSJK)

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

Each partner must take an active role in the business. YSJK can only act through the approval of its partners. The key feature of this type of partnership is that all partners' liabilities are limited to their capital investments. YSJK is required to be registered with the Legal Affairs Bureau and at least one of the partners must reside in Japan.

### Silent partnership

#### Tokumei Kumiai (TK)

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

### Sole proprietorship

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

### Foreign investment

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

#### Representative office

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

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

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

#### Branch office

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

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

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

## Accounting and auditing

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

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

Financial statements issued by large companies (with capital exceeding JPY 500 million or with total liabilities exceeding JPY 20 billion) and listed companies must be audited by independent auditors, either certified public accountants or audit corporations registered in Japan.



## Finance and capital markets

### Exchange control

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

### Banking

#### Bank of Japan

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

#### Private financial institutions

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

#### Other government financial institutions

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



### Japan Finance Corporation

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

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

### Japan Bank International Corporation

The Japan Bank International Corporation (JBIC) is Japan's financial institution and export credit agency. JBIC is the international wing of JFC; its budget and operations are regulated by the JBIC law. It is headquartered in Tokyo and operates in 18 countries with 21 offices. By providing resources to foreign investments and by fostering international commerce, the JBIC boosts Japanese exports and imports as well as Japan's overseas activities.

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

## Capital market

### Securities exchanges

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

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

## Labor

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

### Labor Standards Law (LSL)

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

### Labor contracts

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

### Term and termination

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

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

### Pay and working hours

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

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

### Leave benefits

The LSL prescribes minimum periods of paid annual leave based on an employee's seniority. Ten days of annual leave must be allowed following the employee's first six months of service. The minimum amount of annual leave increases each year thereafter following a fixed schedule (as per the contract). The paid leave must be used within two years. Other forms of unpaid leaves are also provided by law such as maternity, child care, family care and nursing leaves.

### Prohibiting discrimination

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

### Trade unions

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

## Social welfare programs

### Health insurance

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

### **Employees' Health Insurance**

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

- Union Managed Health Insurance
- Government Managed Health Insurance
- Workers Mutual Aid Association Insurance
- Private School Teachers' and Employees' Mutual Aid Association Insurance

### **National Health Insurance**

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

### **Nursing Care Insurance**

Residents above 65 years old covered under NHI and employees above 40 years old covered under EHI are eligible for Nursing Care Insurance (NCI). NCI provides for nursing care related to age-related illnesses. The premium (1.72% of salary) is equally split between the employer and employee.

### **Latter-Stage Elderly Healthcare Insurance**

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

### **Childcare allowance support**

In an effort to increase the birthrate amidst an aging population, low-income families can receive childcare support if they bear children. The employer pays for the premium (0.15% of salary).

### **Workers' Accident Compensation Insurance**

Employers must insure all employees under the Workers' Accident Compensation Insurance (WACI). WACI provides benefits for work-related illnesses and injuries, such as full medical expenses coverage, compensation for lost wages, and lump-sum or annual payments for permanently disabled employees. The premium is based on the salary of the employee and is borne solely by the employer. The premium can range from 0.45% to 11.8%.

### **Employment Insurance**

Employers must enroll all their employees in the Employment Insurance (EI), which provides unemployment benefits. Depending on the reason for unemployment and the length of service with the previous employer, benefits can represent up to 80% of the previous salary. The premium of 1.35% of total compensation is split between employee (0.5%) and employer (0.85%).

### **Welfare Pension Insurance**

All residents, whether Japanese or foreign, must enroll in the Welfare Pension Insurance (WPI) as regulated by the National Pension Act. The contribution, 17.12% of salary up to a cap, is split evenly between employer and employee. Benefits include:

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

### Private pensions

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

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

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

### International social security agreements

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

Germany	United Kingdoms
South Korea	United States
Belgium	France
Canada	Australia
Netherlands	Czechoslovakia
Spain	Ireland
Italy	Switzerland

### Foreign workers

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

Foreigners who wish to work in Japan must attain work visa from a Japanese embassy or consulate outside of Japan. Most permits are valid for 1 or 3 years except for entertainer permits (valid for 3, 6, or 12 months) and diplomatic/NGO permits (valid for duration of post).

An employer is generally necessary to serve as the applicant's guarantor; after landing, the applicant may work for any employer within the scope and duration of their landing permission.

### Taxation

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

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

### Income tax

#### Scope of tax

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

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

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

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

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

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

#### Taxpayers

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

#### Classification of corporate taxpayers

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

**Classification of individual taxpayers**

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

**Corporate taxation****Types of corporate income taxes**

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

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

**Taxable income**

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

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

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

**Gross revenue**

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

**Deductible expenses**

- Material costs
- Administration expenses
- Interest, rentals, and royalties paid. However, interest for shareholders' loans exceeding three times the equity from that shareholder is non-deductible.
- Bonuses and compensation paid to employees. However, payments of unreasonable amounts to directors will not be allowed as an expense.
- 50% of entertainment expenses based on calculated maximum amount and limitations

- Donations subject to limitations
- Research and development costs subject to limitations
- Bad debts
- Repairs
- Depreciation of assets
- Tax losses subject to limitations

### *Depreciation of capital assets*

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

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

Small assets worth less than JPY 100,000 may be deducted immediately while small assets worth between JPY 100,000 and JPY 300,000 may be depreciated over three years. Goodwill may be amortized over five years using the straight-line method.

### *Tax losses*

Tax losses may be carried forward for seven years (nine years if using the blue form). Only 80% of the taxable income may be offset with tax losses except for SMEs with paid-in capital of not more than JPY 100 million. Carry-forwards may be restricted following a change of majority ownership (>50%), resulting in the discontinuance of an old business and commencement of a new business within five years of the change.

A group of companies filing consolidated returns may carry forward their consolidated tax losses for a similar time period. For authorized consolidated filings after April 1, 2010, a subsidiary's tax loss incurred before joining the group may be carried forward and offset against the taxable income of the subsidiary's own taxable income.

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

### *Tax rates*

The local tax rates may vary depending on the scale of business and the local government jurisdiction. The effective rate for large (small) companies is typically around 38.0% (22.9%) until April 1, 2015, when it will change to around 35.6% (21.4%).

### *National corporate tax*

Income bracket (JPY)	Effective Apr 1, 2012	Effective Apr 1, 2015
Capital > JPY 100million	28.5%	25.5%
Income < JPY 8million	16.5%	15%
Income > JPY 8million	28.5%	25.5%

A surtax of 10% is levied starting April 1, 2012 for the three following years.

**Local corporate taxes**

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

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

Taxable income (JPY)	Standard	Maximum
The first JPY 4 million	5.0%	6.0%
The next JPY 4 million	7.3%	8.76%
Excess	9.6%	11.52%

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

Taxable income (JPY)	Standard	Maximum
The first JPY 4 million	3.8%	4.56%
The next JPY 4 million	5.5%	6.6%
Excess	7.2%	8.64%
And, in addition:		
Value added <sup>(1)</sup>	0.48%	0.576%
Capital <sup>(2)</sup>	0.2%	0.24%

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

<sup>(2)</sup> Capital + capital surplus for tax purposes

**Inhabitant taxes**

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

Inhabitant tax	Standard	Maximum
Prefectural	5%	6%
Municipal	12.3%	14.7%
Total	17.3%	20.7%

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



Prefectural per-capita tax rates, in JPY:

Tax base	Standard
Below 10 million	20,000
10 million to 100 million	50,000
100 million to 1 billion	130,000
1 billion to 5 billion	540,000
Above 5 billion	800,000

Municipal per-capita tax rates, in JPY:

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

### Enterprise tax

Corporations whose capital or investment exceeds JPY 100 million are taxed on a pro-forma basis using income, added value, and capital as the taxable base:

Taxable income (JPY)	Standard
The first JPY 4 million	1.5%
The next JPY 4 million	2.2%
Excess	2.9%
And, in addition:	
Value added <sup>(1)</sup>	0.48%
Capital <sup>(2)</sup>	0.2%

<sup>(1)</sup> Labor Cost + Net interest payment + Net Rent Payment + Income/Loss

<sup>(2)</sup> Capital + Capital Surplus for tax purposes

Companies with capital of less than JPY100 million are only taxed based on income:

Taxable Income (JPY)	Standard
The first JPY 4 million	2.7% - 3.24%
The next JPY 4 million	4.0% - 4.8%
Excess	5.3% - 6.36%

### Family corporation

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

Taxable retained earnings (JPY)	Rate
Less than 30 million	10%
30 million to 100 million	15%
Above 100 million	20%

### Dividends

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

- Full exclusion of the dividend in the taxable income if the recipient holds 25% or more of the shares of the company paying dividend for at least 6 months before the dividend distribution.
- 50% exclusion of the dividend in the taxable income if the recipient holds less than 25% of the shares of the company paying dividend or for less than 6 months before the dividend distribution.

A 95% exemption can be included in the taxable income of dividends received by a Japanese company from a foreign company if the recipient holds qualifying shareholdings of 25% or more for at least 6 months before the dividend determination.

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

Branch remittance is not subject to tax.

### Individual taxation

#### Types of income taxes

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

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



### Taxable income

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

- Employment income
- Business income
- Dividend income not subject to separate taxation
- Real estate income
- Interest income not subject to separate taxation

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

### Exemptions and deductions

Employment income deductions, in JPY:

Lower limit	Upper limit	Deductions
0	650,000	100%
650,000	1,625,000	650,000
1,625,000	1,800,000	40%
1,800,000	3,600,000	30% + 180,000
3,600,000	6,600,000	20% + 540,000
6,600,000	10,000,000	10% + 1,200,000
10,000,000	15,000,000	5% + 1,700,000
15,000,000	-	2,450,000

For national income tax purposes, certain deductions and exemptions are allowed to calculate taxable income. Deductible expenses include social insurance premiums paid under Japanese government plans, some life and non-life insurance premiums, charitable contributions, medical expenses, etc. Specific deductible expenditures that require documentation and certification from employers are commuting, moving, and training expenses.

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

- personal (JPY 380,000)
- spouse (JPY 380,000)
- dependent children 16-19 years old (JPY 380,000)
- dependent children 19-23 years old (JPY 630,000)
- medical expenses (up to JPY 2,100,000)

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

## Tax rates

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

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

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

### Withholding tax on payroll

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

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

### Capital gains tax

Gains from the sale of shares are taxed at 20%. Short-term (held for fewer than 5 years) and long-term gains from sale of land are taxed at 10% and 20%, respectively.

### Withholding tax for non-resident individuals and foreign corporations

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

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

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

### Tax treaties

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

Armenia	Korea
Australia	Kyrgyzstan
Austria	Lichtenstein
Azerbaijan	Luxembourg
Bahamas	Malaysia
Bermuda	Mexico
Bangladesh	Moldova
Belarus	Netherlands
Belgium	New Zealand
Brazil	Norway
Brunei	Pakistan
Bulgaria	Philippines
Canada	Poland
Cayman Islands	Romania
China	Russia
Czech Republic	Saudi Arabia
Denmark	Singapore
Egypt	South Africa
Finland	Spain
France	Sri Lanka
Germany	Sweden
Georgia	Switzerland
Guernsey	Tajikistan
Hong Kong	Thailand
Hungary	Turkey
India	Turkmenistan
Indonesia	United Kingdoms
Ireland	Ukraine
Isle of Man	United States
Israel	Uzbekistan
Italy	Vietnam
Jersey	Zambia
Kazakhstan	

## Other taxes

### Real property tax

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

Type of tax	Rate
Fixed property	1.4% to 2.1%
City planning	Up to .3%
Real property acquisition	3% to 4%
Real estate registration	.4% to 2%

Companies with fixed assets below JPY 1.5 million are exempt.

### Inheritance tax

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

Legal share (JPY)	Rate	Deduction (JPY)
10,000,000	10%	-
30,000,000	15%	500,000
50,000,000	20%	2,000,000
100,000,000	30%	7,000,000
300,000,000	40%	17,000,000
Over 300,000,000	50%	47,000,000

Taxpayers may instead use the special tax treatment for basic deduction equal to JPY 30,000,000 + (JPY 6,000,000 × number of legal heirs).

### Gift tax

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

Taxable amount (JPY)	Rate
2,000,000	10%
3,000,000	15%
4,000,000	20%
6,000,000	30%
10,000,000	40%
Over 10,000,000	50%

### Stamp tax

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

### Registration tax

Share registration tax is imposed on the registration of new or additional share at .7%.

### Special reconstruction income tax

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

### Indirect taxes and duties

#### Consumption tax

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

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

Companies not under those categories may voluntarily elect for CT. CT is also applicable to the removal of foreign goods from bonded areas.

Some transactions, enumerated in the Consumption Tax Act, are exempt from CT (zero-rated). Examples include:

- Transfer or leasing of land
- Transfer of securities
- Interest on loans
- Insurance premiums
- Export of goods and services to non-residents

The current CT rate is 8% (national rate of 6.3% and local rate of 1.7%) and will be raised to 10% (national rate of 7.8% and local rate of 2.2%) on October 1, 2015.

#### Custom duties

Japan adopts the harmonized system of product classification and tariff duties on imported goods using ad valorem, specific tax rates, or a combination of both. These tariff duties are in addition to the consumption tax imposed on imported goods. These imported products range from food, agricultural products, fish and fish products, alcoholic beverages, and others. Other internal taxes are imposed on certain imported goods such as liquor, tobacco, etc.

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

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

### Investment

#### Investment incentives

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

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

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

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

#### Tax incentives

- SMEs in manufacturing can get 30% depreciation rate or tax credit of 7%, up to 20% of the corporate tax liability, for purchase of certain machinery and equipment.
- SMEs in energy-saving machinery get 30% depreciation rate or 7% tax credit, up to 20% of the corporate tax liability.
- In the case of an increase in staff training expenses compared to the previous average, the company can get tax credit equal to the smaller of the two: 25% of the additional expense or 10% of the corporate tax.
- Companies with high R&D expenses compared to the previous 3 years' average can get tax credit up to 20% of the corporate tax.

#### Foreign access zones

The Japanese Government has set up economic zones (foreign access zones), mainly in areas around ports or airports, to promote import businesses and attract foreign capital. All companies in these areas can get tax and financing benefits, while foreign companies are also eligible for advisory services and rented premises. Benefits include:

- Loans at reduced interest
- Exemption from local taxes: real estate purchase tax and property taxes
- Increased rates of depreciation
- Credit guarantees from Government funds
- Investment Protection

#### Expropriation

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

#### Intellectual property rights

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

#### Patent

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



### Trademark

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

### Copyright

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

### Trade secrets

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

### Trade agreements

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

ASEAN	Malaysia
Australia	Peru
Brunei	Philippines
Canada	Thailand
Chile	Singapore
Gulf Cooperation	Vietnam
Indonesia	South Korea
India	Switzerland

## 4. Korea

### Country profile

<b>Official name</b>	Republic of Korea	
<b>Capital</b>	Seoul	
<b>Location</b>	North Korea to the north China to the west Japan to the east	
<b>Area</b>	99,392 km <sup>2</sup>	
<b>Climate</b>	Four seasons with humid climate -7-1° C winter      22-30° C summer	
<b>Time zone</b>	UTC +9 no DST	
<b>Population</b>	~50.2 million	
<b>Currency</b>	Korean Won      KRW	
<b>Language</b>	Korean English	
<b>Religion</b>	47% Nonreligious 29% Christianity 23% Buddhism	
<b>International</b>	APEC ADB World Bank WTO	OECD Colombo Plan Next Eleven FTA
<b>Government</b>	Constitutional democracy	

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

#### Executive

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

#### Legislative

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

#### Judicial

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

IMF Data	2010	2011	2012
<b>Real GDP</b> USD billions	709	846	895
<b>GDP per capita</b> USD	2,981	3,512	3,660
<b>Investments</b> % GDP	32.6%	32.8%	34.9%
<b>Unemployment</b>	7.1%	6.6%	6.2%
<b>Inflation, EoY</b>	7.0%	3.8%	5.0%

### Business entities

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

#### Companies

##### Joint stock company or corporation

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

##### Limited liability company

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

#### Partnerships

##### General partnership

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

##### Limited partnership

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

#### Branch

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

### Representative office

A representative office is not a business entity and may be established for certain activities such as product and market research, quality control, and liaison with local distributors. With no business income, no profit can be generated. Representative offices must register and request a business code number. Like branches, they are governed by the Foreign Exchange Trade Act.

### Accounting and auditing

Listed companies must follow the K-IFRS, which is closely modeled after the IFRS. Non-listed companies can use the Accounting Standards for Non-Public Entities instead, which is much simpler and less costly to implement, as an effort to reduce accounting burden. Companies can choose their own year-end for accounting periods—most companies choose December 31.

Private companies with more than KRW 10 billion of assets and public companies must submit annual reports audited by an independent external auditor. Only CPAs are recognized as qualified external auditors. Annual reports must include:

- Balance sheet
- Income statement
- Statement of cash flows
- Changes in equity
- Appropriation of retained earnings
- Notes, e.g. significant accounting policies

Accounting records must be kept by the company for at least 10 years except for accounting slips, which have to be kept for 5 years.

### Finance and capital markets

#### Exchange control

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

#### Banking system

The Bank of Korea (BOK) was established in 1950 as the central bank of Korea through the Bank of Korea Act. Its primary objective is to maintain price stability by keeping inflation at 2.5-3.5% (2013-2015 goal). The Monetary Policy Committee decides on a Base Rate and steers the overnight call rate towards that number through open market operations.

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

#### Types of banks

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

### Bank secrecy

Previously, many individuals opened bank accounts under fake names for tax evasion, money laundering, and other illicit purposes. The Emergency Presidential Order on Real Name Financial Transactions and Protection of Confidentiality came into effect in 1993. Now, in order to open bank accounts, individuals must prove the veracity of their real name through documents and certificates. In exchange, the government formalized bank secrecy laws. Banks will be held liable for breach of confidentiality should they disclose unauthorized information to third parties. Government officials can ask for information only with the proper warrant or subpoena or by law, e.g. as outlined by tax laws.

### Korea Deposit Insurance Corporation (KDIC)

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

### Capital market

#### Securities and Futures Commission (SFC)

The SFC is part of the Financial Supervisory Service (FSS), which was established in 1997 through the Act on the Establishment of Financial Supervisory Organizations in response to the Asian financial crisis. The SFC's main responsibilities include investigating unfair trading, reviewing accounting and auditing standards, and monitoring and supervising the securities and futures market.

#### Korean Securities Depository (KSD)

In 1994, The Korean Securities Settlement Corporation was transformed into the KSD, Korea's central securities depository. It is a nonprofit special public organization that provides the following services: deposit, registration, settlement, derivative management (including collateral), custody, proxy, transfer, and issuing. The KSD is looking to incorporate an electronic securities system and bring financial services up to international standards.

#### Korea Exchange (KRX)

The KRX was established in 2005 by consolidating three exchanges under the Korea Stock and Futures Exchange Act. The KOSPI is the main board and deals with stocks, bonds, ETFs, ELWs, and REITs. The KOSDAQ is closely modeled after NASDAQ and deals with stocks of smaller companies. The derivatives market deals with futures and options related to indices, stocks, interest rates, foreign exchange, and commodities. Please refer to the KRX website for listing requirements, which is quite complicated.

### Labor

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

#### Types of employment

##### Working hours and compensation

Employers can only require employees to work for a maximum of 8 hours a day, 40 hours a week, and 6 days a week. However, work hours can be flexible depending on the contract. Overtime is limited to 8 hours a week; if stipulated in the employment contract, then the limit can be raised to 12 extra hours per week.

Employees are entitled to 30-minute breaks in a 4-hour shift and 1-hour breaks in an 8-hour shift. Overtime rate is 150% normal salary.

## Wages and benefits

In 2014, the minimum wage is KRW 5210 per hour. Do note that the one day off per week (usually Sunday) counts as paid leave.

### Benefits

#### *Holiday pay*

Employers are not required to provide paid leave during public holidays except for Worker's Day on May 1. Instead, employees can use the service incentive leave to take days off during public holidays. Employers can still grant paid leaves during public holidays in addition to the service incentive leave.

#### *Service incentive leave*

Each employee is entitled to fifteen days of paid annual leave after working for more than 80% of a year. The number increases by one for each two additional years of service, up to a cap of 25. The days of paid leave cannot be carried over to the following years and cannot be exchanged for money. Employers must notify employees of the number of unused leaves three months before they expire.

#### *Medical care and disability compensation*

If an employee suffers from occupational injury or disease, the employer must cover the medical expenses and grant paid leaves at 60% salary until the employee recovers. If after two years the employee still has not recovered, then the employer must pay a lump sum of 1340 days' salary, after which the employer is no longer responsible for medical expenses or paid leaves.

The above is not required if the employee became injured or disabled due to his/her own gross negligence. Employers must keep relevant documents for at least three years.

#### *Survivorship compensation*

If an employee dies on duty, the employer must pay 1000 days' salary to surviving family members. In addition, the employer must contribute 90 days' salary towards funeral arrangements.

#### *Annual bonuses*

Bonuses are not mandated by the government, but employers can provide and specify bonuses in the rules of employment. Many employers prefer using bonuses to lower monthly salary since paid leaves, severance pay, and other premiums are calculated using the monthly salary (except if employees are paid by the hour).

#### *Compulsory insurance*

Korea requires all employees by law to get four insurances: health, pension, unemployment, and industrial accident. In 2013, the first three insurances total 17% salary, half to be paid by the employee and the other half by the employer. In addition, employers must pay for vocational ability development, which ranges from 0.25% to 0.85% depending on number of employees, and industrial accident insurance, which ranges from 0.6% to 3.4% depending on the industry.

#### *Maternity leave*

A pregnant employee is entitled to 90 days of maternity leave, the first 60 of which must be paid. At least 45 of those days must be after childbirth. A pregnant woman cannot work in hard manual labor or hazardous conditions until one year after childbirth. For the year after childbirth, the female employee may not work overtime for more than 2 hours a day, 6 hours a week, and 150 hours a year.

#### *Menstruation leave*

A female employee is entitled to one day of unpaid menstruation leave each month.

### *Paternity leave*

Korea does not require paid paternity leaves.

### *Retirement benefits*

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

### **Termination of employment**

An employer cannot terminate the labor contract without justifiable cause, usually stipulated in collective labor agreements. An employer must notify the employee at least 30 days in advance except in cases of force majeure. Otherwise, the employer must give at least a month's salary to the employee. In addition, the employee is entitled by law to receive one month's salary for every year of service—this applies for all forms of termination, including resignation, laying off, and firing. In cases of downsizing, the employee that was laid off gains preferential treatment: if the position becomes available in three years, the employer must ask the former employee to fill the spot (if s/he wants to) before hiring other applicants.

### **Labor relations**

#### Labor union

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

#### Strike

Strikes are allowable by law, except in the defense and utility (electricity, water, etc.) sectors, only when the majority of a labor union agrees to it. Employees on strike cannot actively or intentionally cause extra damage, e.g. blocking entrance of other employees, damaging company property, etc. Employers cannot subcontract or hire temporary workers to maintain operations in case of a strike.

#### Employment of foreigners

Foreigners can freely work in Korea as long as they have the appropriate visa, usually by the type of work (teaching, technology, research, etc.). The visa lasts 5 years and is renewable. Additionally, they can apply for permanent residency if they have lived in Korea for at least 3 years.

### **Taxation**

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

#### **Corporate tax**

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

#### Tax rates

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

Tax base (KRW)	Tax rate
< 0.2 billion	10%
0.2 - 20 billion	20%
> 20 billion	22%

For the above tax rates, if a company makes KRW 2 billion, then the first 200 million is taxed at 10% and the 1.8 billion is taxed at 20%. Companies are taxed the greater of the above calculations or the "minimum tax". Minimum tax is calculated using taxable income before deductions and exemptions:

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

The minimum tax is calculated just like the regular corporate tax. If a company makes KRW 20 billion, then the minimum tax equals KRW 10 billion x 10% + KRW 10 billion x 12% = KRW 2.2 billion.

### Taxable income

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

### Allowable deductions

- Dividend income is deductible depending on the type:
  - Received by **institutional investors**: flat 90%
  - Received by **financial holding companies**:

Type	Ownership	Deductibility
Unlisted companies	> 80%	100%
	≤ 80%	80%
Listed companies	> 40%	100%
	≤ 40%	80%

- Received by **all other companies**:

Type	Ownership	Deductibility
Unlisted companies	≤ 50%	30%
	> 50%	50%
	100%	30%
Listed companies	≤ 30%	30%
	> 30%	50%
	100%	30%



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

- Interest expense directly related to income production
- Depreciation
- Amortization of goodwill
- Incorporation and business registration fees
- Donations to approved charities up to 10-50% of taxable income
- Employee remuneration
- Pension expense up to 5% of wage expense
- Entertainment expense, up to a cap
- Insurance premiums

### **Loss carryover**

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

### **Withholding tax**

General:

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

If money is paid to nonresident corporations:

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

### **Individual tax**

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

Tax Non-Residents are taxed only on income generated in Korea.

### Tax rates

People pay taxes according to the following schedule:

Annual income (KRW)	Tax rate
12,000,000	6%
46,000,000	15%
88,000,000	24%
150,000,000	35%
>150,000,000	38%

Tax residents have to pay an additional 10% of taxes payable as the resident surcharge. Foreign employees can choose to pay a flat 18.7% tax instead, including local residence tax.

### Non-taxable income

- Housing costs paid by the employer
- Reimbursement of business expenses
- Automobile-related expenses and insurance paid by the employer
- Relocation reimbursement
- The first KRW 1,000,000 per month from providing service overseas
- Meal cost of KRW 100,000 per month

### Allowable deductions

- Allowable deductions

Yearly expense (KRW)	Deductible
<5 million	70%
<15 million	40%
>45 million	15%
<100 million	5%
≥ 100 million	2%

- Pension contribution
- Personal allowance of KRW 1.5 million per mo.
- Allowance of KRW 1.5 million per month for each spouse and dependent earning less than KRW 1 million per month
- Other allowances from handicapped or elderly dependents, birth or adoption of children, etc.
- Special deductions that must be filed (e.g. charity, education, life insurance, mortgage, interest, etc.)

### Income tax treaties

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

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

### Value added tax

Not subject to VAT:

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

Subject to 0% VAT:

- Exports
- Provision of services outside Korea
- International transportation services
- Certain payments received in foreign exchange

Subject to 10% VAT:

- Everything else

#### Excise tax

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

#### Environment protection tax

These items are subject to additional tax:

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

#### Customs duty

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

#### Stamp duty

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

The Securities Transaction Tax of 0.5% applies on the transfer of stocks or ownership unless the stocks are traded in a foreign market.

#### Inheritance tax/gift tax

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

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



### Property taxes

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

There is also a one-time property acquisition tax, which applies to vehicles and heavy equipment in addition to the land and buildings. The tax is a flat 2% on the value. In some urban areas, companies might be taxed 10% instead.

### Local government taxes

Local tax authorities may levy local inhabitants tax, which depends on company capital and number of employees.

### Investment

#### Business incentives

Under the Foreign Investment Promotion Act (FIPA), businesses related to high-level technology or businesses that provide support services for the development of other industries can get income tax exemption for the first 5 years equal to the percentage of foreign equity in the company. This incentive can be extended for an additional 5 years if the business generated no income in the first 5 years of operation. Upon expiration, the business gets 2 years of 50% income tax exemption.

A similar incentive with a shorter duration of 3 years of 100% exemption and 2 years of 50% exemption applies to these types of businesses:

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

All of these businesses except for the last two bullet points get 100% exemption on acquisition and property taxes for 5 years and 50% exemption for the next 2 years. All of them are fully exempt from customs duty on capital goods. Businesses under FIPA that meet Presidential Decree standards and businesses related to the enterprise city development zone also get a 100% exemption on VAT and consumption tax on capital goods.

### Intellectual property rights

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

### Patents

Patents are technological solutions and innovations. They enjoy a protection of 20 years after date of application. The protection may be extended by up to 5 years to cover for the processing time. Utility models, which are similar to patents but have much laxer requirements, are protected for only 10 years.

### Trademarks

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

### Copyright

While works that fall under copyright law are immediately protected upon creation, registering the work offers further protection from disputes. Additionally, copyright can only be assigned or sold if it's registered. Depending on the type of work, economic copyrights can last 50 years after the author's death. Computer software is copyrighted for 50 years.

### Expropriation and compensation

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

### Property ownership

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

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

### International trade agreements

Korea has established free trade agreements with the following countries:

- ASEAN
- Chile
- China
- Colombia
- EFTA
- EU
- India
- Peru
- Singapore
- Switzerland
- United States

## 5. Malaysia

### Country profile

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

### Executive

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

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

### Legislative

The federal parliament has two houses. The 222 members of the House of Representatives are elected for five years from single-member constituencies. The Senate has 70 senators who serve three-year terms; 26 are elected by the 13 state assemblies and 44 are appointed by the King upon the Prime Minister's recommendation.

Each state also has a unicameral State Legislative Assembly. Its members are elected from single-member constituencies.

### Judicial

The highest court is the Federal Court, followed by the Court of Appeal and two high courts presiding over different regions: Peninsular Malaysia and East Malaysia. Malaysia also has the Syariah Courts, which deal with Islamic law and run separately from the secular courts.

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	305	313	337
<b>GDP per capita</b> USD	10,331	10,457	11,062
<b>Investments</b> % GDP	25.9%	26.1%	26.7%
<b>Unemployment</b>	3.0%	3.1%	3.0%
<b>Inflation, EoY</b>	1.2%	3.2%	2.9%

## Business entities

### Companies

The Companies Act 1965 allows three types of companies.

#### Companies limited by shares

Almost all companies are limited by shares, where each member's liability is limited to the share capital. Companies can be private or public. A private company cannot issue any shares or bonds to the public nor ask the public to deposit money into the company. A private company can only have up to fifty shareholders, who have restricted rights to transfer the shares. A public company is not subject to those limitations.

Incorporation requires an application to the Companies Commission of Malaysia (CCM). Documents such as the Memorandum and Articles of Association of the company and other documents must be lodged with the CCM. On payment of a registration fee, which depends on the amount of the company's authorized share capital, a Certificate of Incorporation will be issued by the CCM. This Certificate is conclusive evidence of the existence of the company. The incorporation of a company generally takes three to six days.

#### Companies limited by guarantee

Members' liabilities are limited by the Memorandum to the amount contributed to the company in the case of bankruptcy. This type of company is not used for commercial undertakings but for clubs, trade associations, charitable bodies, and professional bodies.

#### Unlimited companies

A cross between company and partnership/sole proprietorship, this form, as the name implies, exposes the owners to unlimited liability.

### Limited liability partnerships

The CCM recently introduced this type of business entity through the Limited Liability Partnerships Act of 2012. LLP is a hybrid between a company and a conventional partnership.

LLP is a separate legal entity from its partners, who can be individual or corporate. The partners hold limited liability while the LLP has unlimited capability in conducting business and holding property. An LLP has perpetual succession and any change in the partners will not affect the existence, rights, or liabilities of a LLP.

An LLP can also be used to provide professional services. The partners must be individuals who have the same professional practice holding professional indemnity insurance approved by the Registrar.

### Partnerships

A partnership is an unincorporated business entity made up of between two and twenty partners. Partnerships are assumed to exist where partners carry on a business in common, in view of making a profit, and share profits and losses proportionately. Registration must be formalized at the Registrar of Business also under the Registration of Business Ordinance 1965. Partners are both jointly and severally liable for the debts and obligations of the partnership, with unlimited liability.



### **Sole proprietorships**

A sole proprietorship is an unincorporated business owned by one person. Since the business is not a separate legal entity (like a corporation) the owner is personally liable for all business debts. Before commencement of a business under a sole proprietorship, registration must be made with the Registrar of Business under the Registration of Business Ordinance 1965.

### **Joint venture**

Joint ventures are structured either as partnerships or as incorporated companies but are not separate and distinct business entities. This form is typically used for construction or infrastructure projects.

### **Branch of a foreign company**

A company incorporated outside Malaysia can establish a branch by filing returns to the CCM. A branch isn't recommended for wholesale or retail.

### **Representative office**

A representative office cannot engage in profit-making activities and does not need to be registered. It can identify investment opportunities (especially in the manufacturing and services sectors), enhance bilateral trade relations, promote the export of Malaysian goods and services, and carry out research and development. All funding must come from the head office abroad.

### **Regional office**

Like a representative office, a regional office cannot seek profit and must get funding from its overseas head office. It can coordinate the parent company's affiliates, subsidiaries, and agents in Southeast Asia and the Asia Pacific.

### **Trusts**

Trusts may be public (e.g. for charity) or private and may be formed as either non-fixed (where all or some interests in the trust are at the discretion of the trustee such as discretionary trusts) or fixed trusts (e.g. unit trusts). Unit trusts are often used for public investments in the form of property trusts or cash management trusts.

## Accounting and auditing

The Malaysian Accounting Standards Board (MASB) determines the accounting standards in Malaysia:

- Malaysian Financial Reporting Standards (MFRS)
- Malaysian Private Entities Reporting Standards (MPERS)

MPERS is significantly comparable to IFRS for SMEs.

The company's directors are responsible for the accounting records, which must be kept in Malaysia by every company incorporated under the Companies Act 1965 for at least seven years. All transactions must be recorded within 60 days of completion. Records for overseas operations can be kept outside Malaysia as long as detailed statements and returns are kept in Malaysia.

### **Annual statements**

A copy of the annual statement must be filed at the Registrar of Companies and made available for public inspection.

A directors' report about the state of the company's affairs must be sent to shareholders, along with financial statements, at least 14 days before the general meeting (21 days for public companies).

The first financial statement, covering all activities since the date of incorporation, must be presented in a shareholders' general meeting at the latest 18 months after incorporation. Afterwards, a financial statement must be presented at least once every calendar year with intervals of at most 15 months, at least six months before the general meeting.

The financial statements must be prepared with the MASB-approved accounting standards and audited by an approved independent auditor. All amounts must be stated in MYR.

At least two directors must sign a statement that, in their opinion, the financial statement presents a true and fair view. This statement must be attached to every statutory financial statement.

In addition, the director or officer primarily responsible for the financial management must make a statutory declaration regarding the correctness of financial statements. This declaration must be attested by the Commissioner for Oaths.

Finally, an auditor must provide an opinion on the truth and fairness of the company's affairs, results, and cash flow in accordance with the MASB-approved accounting standards.



### Requirements for public companies

Publicly listed companies must comply with the Listing Requirements of Bursa Malaysia Securities Bhd. Public companies must provide quarterly income statements, balance sheets, and notes within two months after the end of the quarter. In addition, they must provide audited financial statements within four months of the year-end.

### Audit requirements

The directors appoint the company's auditor for the first time. Afterwards, the shareholders select the auditor in the annual general meeting. If a shareholder wishes to propose a new auditor, then s/he must provide notification to the company 21 days before the general meeting, which will be passed on to all shareholders. This allows enough time for all shareholders to vote on the matter.

The auditor must have been approved by the Minister of Finance. To be approved, an auditor must be a member of the Malaysian Institute of Accountants and have a residence in Malaysia. An accounting firm can audit if the partners are approved auditors.

Auditors must follow the International Standards on Auditing (ISA) issued or adopted by the International Auditing and Assurance Standards Board (IAASB).

## Finance and capital markets

### Exchange Controls

The Exchange Control Act of 1953 governs foreign currency transactions while the Central Bank of Malaysia, Bank Negara Malaysia (BNM), gives permission and directions through the Controller of Foreign Exchange.

In the context of foreign exchange control, a resident is:

- A Malaysian citizen who resides in Malaysia. That person can have permanent residency status in another country but must reside in Malaysia.
- A non-Malaysian citizen with permanent resident status in Malaysia and resides in Malaysia.
- A business enterprise or society operating in Malaysia and is registered at any authority in Malaysia.

While a non-resident is:

- A non-Malaysian citizen
- A Malaysian citizen residing in another country
- A foreign embassy, high commission, supranational, or central bank
- A business entity established abroad

Non-residents can invest in Malaysia in any form. They can obtain financing and foreign exchange contracts from licensed onshore banks (commercial or Islamic) both in MYR or any foreign currency. Non-residents can also freely exchange currencies and repatriate their capital, profits, and income in foreign currency.

Residents are allowed to use foreign currency funds, undertake foreign investment, and enter risk management agreements through licensed onshore banks.

A resident can pay in MYR (to be converted when remitting abroad) to a non-resident. However, for international trade or for investments abroad, payments must be made or received through the non-Resident's external account.

Investments abroad in foreign currency assets might be limited:

- A resident without domestic MYR credit facilities can invest any amount abroad.
- Corporations with domestic credit facilities can invest up to MYR 50 million per year. However, the companies that meet prudential requirements can invest any amount with written permission from the BNM. Corporations with only foreign currency funds can invest any amount.
- Individuals with domestic credit facilities can invest up to MYR 1 million per year. Individuals can invest any amount if it's funded by their own foreign currency funds.

### Borrowings in foreign currency

Resident companies can borrow foreign currency from non-resident non-bank related companies, resident related companies, licensed onshore banks, and licensed International Islamic banks. However, if the non-resident non-bank related company is set up solely to obtain foreign currency loans from a non-resident financial institution, the amount of borrowing is subject to the aggregate limit of MYR 100 million or equivalent from non-residents.

In addition, resident companies can get any amount of foreign currency credit for capital goods from their suppliers. They can also buy immovable properties from non-residents using Ringgit credit facilities.

Non-residents can use Ringgit credit facilities from residents to finance activities in all non-financial sectors in Malaysia. Furthermore, they can finance or purchase any Malaysian residential or commercial property, except for financing a land purchase.

### Types of accounts

Any resident company or individual can open a foreign currency account in any licensed banks. Resident exporters must credit their proceeds into licensed onshore banks only.

Non-residents are free to do as they please with foreign currency accounts. They can maintain any number of external accounts with any financial institution in Malaysia with no restriction on MYR amounts. However, BNM limits the sources of ringgit funding and uses of funds for external accounts.

## Capital markets

### Securities commission

The SC is the single regulator for all fund raising activities, especially the securities and futures markets. SC's responsibilities include:

- Exchanges, clearing houses, and central depositories
- Prospectuses of corporations other than unlisted recreational clubs
- Corporate bond issues
- Securities and futures contracts
- Mergers and acquisitions
- Unit trust schemes
- Licensed persons
- Self-regulation
- Proper conduct of market institutions and licensed persons.

The Malaysian capital market moved from a merit-based to a disclosure-based regulatory framework for fundraising in 2003. Under the new framework, investors have the burden of assessing the merit of securities while the SC regulates the disclosure of material information. Essentially, the capital market progressed to self-regulation and higher standards of disclosure, due diligence, and corporate governance practices.

### Bursa Malaysia

Public trading of shares is conducted through Bursa Malaysia Securities Bhd. (BMSB), the stock exchange unit of Bursa Malaysia Bhd. It was previously called the Kuala Lumpur Stock Exchange (KLSE) until 2004. Bursa Malaysia runs two stock markets: the Main Market for established corporations and the ACE Market for companies of all sizes.

The exchange, which is supervised by the SC, acts as the frontline regulator for the Malaysian stock market. The fundraising framework was updated in 2009 to provide greater certainty, short time-to-market, and lower regulatory costs. The SC's review of corporate proposals will focus on:

- Compliance with minimum requirements;
- Standards of corporate governance;
- Resolution of conflicts of interest;
- Preservation of public interest; and
- Adequacy of disclosures to enable investors to make informed investment decisions.

SC's approval is needed only for the following substantive corporate proposals in the Main Market:

- Initial Public Offerings
- Acquisitions resulting in a significant change in business direction or policy of a listed corporation (reverse takeovers and backdoor listings)
- Secondary listings and cross listings
- Transfer of listings from the ACE Market to the Main Market

All other equity-based corporate proposals such as acquisitions (other than reverse takeovers and backdoor listings), disposals, placements of securities, rights offerings, and issuance of warrants no longer require the SC's approval.

The Bursa Malaysia Derivatives Bhd. allows investors to trade futures and options covering financial, equity, and commodity-related instruments.

### Labor

All provisions of the Employment Act of 1955 cover everyone under an employment contract with income no more than MYR 2,000 per month. In West Malaysia, those earning between MYR 2,000 and 5,000 per month can use the enforcement provisions to enforce monetary claims under an employment contract.

### Working hours

Working hours are limited to eight hours a day and 48 hours a week with up to two hours of overtime per day. An employee must get a rest period of at least thirty minutes after five hours of working. Working hours can be more flexible if both the employer and employee agree in the contract: hours may be subtracted from some days and added to other days, but no more than nine hours in a day are allowed.

Overtime rate is 150% for workdays, 200% for rest days, and 300% for public holidays. With overtime, no employee is allowed to work for more than 12 hours a day, except in the case of:

- Threat or occurrence of accidents
- Work essential to the life of the community
- Work essential to national defense or security
- Urgent work on machinery or plant
- Work interruption that's impossible to foresee
- Work essential to the economy of Malaysia

The Director General has the power to enquire into and judge whether or not the overtime is justified.

### Leave benefits

All employees are entitled to 11 days of paid leave per year during public holidays. In addition, they must get at least 8 days of annual paid leave, increasing to 12 days after two years of service and 16 days after five years of service.

Female employees receive 60 days of paid maternity leave on pregnancy.

Employees receive 14 days of paid sick leave per year, increasing to 18 days after two years of service and 22 days after five years of service. If hospitalization is necessary, then the employee can get up to 60 days of sick leave.

### Other labor laws

- Factories and Machinery Act of 1967
- The Occupational and Safety and Health Act of 1994
- Code Of Practice On The Prevention And Eradication Of Sexual Harassment In The Workplace

### Labor relations

Omnibus or general workers' unions are not permitted. Unions belonging to the same industry may apply to form a federation of trade unions or become affiliated with the Malaysian Trade Unions Congress or the Malaysian Labor Organization. All trade unions must register at the Registrar of Trade Unions and must comply with the Trade Unions Act, which sets out rules for the conduct of union business such as the election of officers, strike ballots, and the use of union funds.

### Employees' Provident Fund

The Employees Provident Fund Act 1991 requires employers and employees to make monthly contributions to the EPF, which will be repaid as a lump sum to employees at the age of 55—earlier in the case of incapacity or permanent departure from Malaysia. Contributions are mandatory only for Malaysian citizens or permanent residents. Foreigners can participate but are not required to do so.

### Social security organization

The Employment Injury Insurance Scheme (EIS) and the Invalidity Pension Schemes (IPS), which are administered by the Social Security Organization (SOCSO), cover all employees earning less than MYR 3,000 per month. An employee who has entered the scheme once will remain covered even if the wages increase beyond MYR 3,000.

The employer and employee both contribute to the EIS and IPS. Contribution amount depends on employee salary, up to MYR 51.65 from employer and MYR 14.75 from employee. If the employee is not eligible for IPS, then only the employer must contribute, up to MYR 36.90.

### Human Resources Development Fund

HRDF provides financial assistance for designated training. Contribution rate is 1% of employees' monthly salary, paid once per year—but only for employees who are Malaysian citizens. HRDF is mandatory for employers in these sectors:

- Manufacturing with 50 or more employees
- Manufacturing with 10 to 49 employees and paid-up capital of at least MYR 2.5 million
- Service with 10 or more employees
- Supermarkets and department stores with 50 or more employees

Employers in manufacturing with 10 to 49 employees and less than MYR 2.5 million in paid-up capital can enroll in the HRDF by choice. In this case, contribution rate is 0.5% instead of 1%.

### Foreign employment

A company wishing to employ foreigners should apply to the agency overseeing the company sector:

- Malaysian Investment Development Authority (MIDA) for manufacturing, hotel and tourism, and research and development.
- Multimedia Development Corporation (MDeC) for IT companies with Multimedia Super Corridor (MSC) status.
- Public Service Department (PSD) for doctors and nurses in government hospitals and clinics, lecturers and tutors in government institutions of higher learning, and contract posts in public services and jobs offered by the Public Service Commission or related government agencies.
- Central Bank of Malaysia for the banking, finance, and insurance sectors.
- Securities Commission for the securities market.
- Expatriate Committee for all other sectors

To apply at the Expatriate Committee, a company must fulfill minimum capital requirements:

Company type	Paid-up capital (MYR)
100% Malaysian	250,000
Malaysian and foreign	350,000
100% foreign	500,000
Distributive trade	1,000,000
Foreign restaurant	1,000,000

While the Malaysian government permits foreign employment for executive or technical positions, their goal is to have all jobs eventually filled by Malaysians.

### Taxation

#### Corporate tax

A regular partnership is not considered a company. Instead, partners pay individual tax on their shares of income. However, an LLP is taxed like a company.

#### Residence

A **tax resident** manages and controls its affairs from Malaysia. Holding a single Board of Directors meeting in Malaysia will qualify the company as a tax resident for that accounting year. Typically, an accounting year coincides with the tax year. A tax resident is taxed only on Malaysia-sourced income except for international transport and finance/banking companies, which are taxed on worldwide income.

A **tax non-resident** is a company that does not fulfill the above requirement and is taxed only on income from trading within, not with, Malaysia. Under certain international tax agreements, a non-resident may be taxed only on the income of its Malaysia-based permanent establishment. Income not derived from doing business, such as royalties and interest fees, is subject to withholding tax.

#### Tax Rates

Residents are taxed at a flat 25% (24% in 2016). However, SMEs are taxed at the lower rate of 20% (19% in 2016) on the first MYR 500,000 of income. SMEs are defined as companies with no more than MYR 2.5 million in paid-up capital, where all related companies (parent-subsidiary relationship) within the group also follow this limit.

Non-residents are taxed at a flat 25% (24% in 2016) for all business income. Non-business income is subject to withholding tax payable to the Inland Revenue Board within one month: interest at 15% and everything else at 10%, including royalty, rent, and service fees. Dividends from single-tier companies are exempt from withholding tax.

#### Taxable income

Taxable income is based on profit from the audited financial statements with some adjustments. Capital receipts (except real estate gains) and single-tier dividends are tax-exempt. Expenses are generally deductible with some exceptions such as private expenses, income tax, pre-operating expenses, withdrawn capital, and capital expenditure on improvements.

#### Capital allowances

Depreciation of fixed assets in financial statements is not deductible for tax purposes. Instead, certain fixed assets are granted capital allowances, which are tax deductible.

Capital allowances from one business cannot be deducted against another line of business. Unused allowances can be carried forward indefinitely. They take precedence over losses from previous years, which can also be carried over indefinitely. Dormant companies with significant shareholder change cannot carry forward the losses or allowances.

#### Industrial buildings

Industrial building allowances are given for construction or purchase of structures used as factories, docks, warehouses, farm buildings, or mining facilities. The cost of the land cannot be included in the expense. Initial allowance is 10% and annual allowance is 3% (including the first year).

Offices may get capital allowances only if the offices are integrated with an industrial building and costs less than 10% of the entire facility.

Other buildings can also qualify:

- Provision of utilities to the public
- Licensed hospital, maternity, or nursing homes
- Approved educational institutions
- Home for the elderly
- Research and training for approved industries
- Hotels
- Childcare facilities for employees
- Public roads recoverable through toll collection
- Buildings used for living accommodations to non-administrative employees in manufacturing
- Buildings in Cyberjaya Flagship Zone for MSC status companies
- Commercial buildings used for certain businesses in the Tun Razak Exchange
- Airport
- Motor racing circuit
- Building used by Bionexus status companies

#### ***Plant and machinery***

Qualifying expenditures include the cost of assets used for business (office equipment, vehicles), the installation and construction of plant and machinery, and the cost of facilities for animal farming. The annual allowance ranges from 10 to 20% depending on the type of expenditure. Certain assets may be written off between one and three years.

Assets costing up to MYR 1,300 each can be fully written off upon purchase, up to a limit of MYR 13,000 per year. Capital allowance for motor vehicles is typically capped at MYR 50,000. However, new vehicles not exceeding MYR 150,000 can receive capital allowance for up to MYR 100,000 of its value.

#### ***Mining***

Expenditures on mining, exploration, and acquisition of rights and buildings or constructs with no salvage value can be written off over the life of the mine. However, buildings or constructs with salvage value are treated as regular plant and machinery.

#### ***Plantations and forests***

New planting gets an annual allowance of 50%. Replanting is considered a deductible cost and is not part of capital allowances.

Construction of roads and buildings in a forest that will be worthless after the timber has been extracted get an agricultural allowance of 10% per year—20% for buildings used for staff welfare and accommodation.

#### ***Balancing adjustments***

Upon disposal of assets, a balancing adjustment must be made according to the sales proceeds subtracted by the tax-written-down values. If positive, a balancing charge will be included in the taxable income; if negative, a balancing allowance. The balancing charge is limited to the capital allowances already claimed. Assets disposed within two years of purchase might have its capital allowances withdrawn unless there is commercial justification.

Assets sold or transferred between companies under the same group will not need balancing adjustments. Instead, they will be valued at the tax-written-down values.



### Group relief

Locally incorporated resident companies may use 70% of losses to offset profits from a related company. However, they must fulfill certain conditions. For instance, companies enjoying certain tax incentives become ineligible.

### Individual tax

#### Residence

A **resident individual** is taxed on income derived in Malaysia. They enjoy preferential scale tax rates and can claim tax reliefs and rebates. Generally, an individual is considered a resident if s/he has stayed in Malaysia for at least 182 days in a calendar year.

A **non-resident individual** is taxed only on income derived in Malaysia. However, they are not entitled to tax reliefs and rebates.

#### Resident individual taxation

##### Taxable income

The following are taxable:

- Gains from business and profession
- Employment income
- Dividends, interests, and discounts
- Rents, royalties, and premiums
- Pensions and annuities

Employment income includes bonuses and benefits-in-kind, including vehicles, fuel, chauffeur, housekeeper, gardener, etc. Some benefits are exempted from tax:

- One overseas leave package, only for travel fare up to MYR 3,000
- Three local leave packages, including travel fare, meals, and accommodation
- Employer's goods sold at a discount, up to MYR 1,000
- Employer's service provided to employee
- Maternity expenses and traditional medicine
- Telephone, mobile phone, broadband subscription, and bills, limited to one unit each

##### Tax rates

Tax rates are applied marginally, up to each income bracket.

Income (MYR)	2015
5,000	0%
20,000	1%
35,000	5%
50,000	10%
70,000	16%
100,000	21%
250,000	24%
400,000	24.5%
>400,000	25%

Non-residents get taxed a flat 25%.

**Tax deductions and reliefs**

Expenses for the performance of duties are fully deductible. Additionally, tax reliefs are provided:

Basis	MYR
Self	9,000
With disability, additional	6,000
Spouse	3,000
With disability, additional	3,500
Each child	
<18 years old	1,000
With disability, additional	6,000
>18 years old in higher education	6,000
With disability, additional	6,000
>18 years old serving trade indenture	6,000
With disability, additional	6,000

The following tax reliefs are also provided, but the numbers refer to the maximum limit allowed:

Basis	MYR
Life insurance and EPF contributions	6,000
Private pension and annuity contributions	3,000
Real estate mortgage interest, first 3 years	10,000
Net saving in SSPN scheme	6,000
Education fees per individual	5,000
Purchase of computer, once every 3 years	3,000
Insurance for healthcare and education	3,000
Purchase of books, journals, magazines	1,000
Medical expenses for serious disease	6,000
Supporting equipment for direct family	6,000
Sports equipments	300

The following tax rebates are also available:

Basis (MYR)	Rebate (MYR)
Individual income <35,000	400
Spouses assessed separately, each with income <35,000	400 each
Spouses assessed jointly, with joint income <35,000	800
Islamic religious duties	100%

Housing allowance and Labuan territory allowance received by a citizen employed in Labuan by a Labuan entity are tax exempt up to 50% of gross income until 2020.

A resident under the Returning Expert Program may opt for 15% flat rate for five years. Additionally, Iskandar residents who do specialized work for designated entities in Iskandar may choose a 15% flat tax rate.

### Non-resident individual taxation

#### Tax rates

Basis	Rate
Business and employment income	25%
Income from public entertainment	15%
Single-tier dividend	-
All other income	10%

#### Tax exemptions

Non-residents who are employed in Malaysia for less than 60 days in a calendar year (or two years, if the employment period overlaps two calendar years) are exempted from tax.

Expatriates working in operational headquarters, regional offices, international procurement centers, regional distribution centers, or treasury management centers are taxed depending on the number of days they worked in Malaysia during the year.

Foreigners working in management of a Labuan entity are exempted from tax on 50% of their gross income—100% for director's fees—until 2020.

#### Withholding tax

Almost all sources of taxable income, excluding dividends, are subject to withholding tax of 10%. Interest is taxed at 15%, while early withdrawal from a private retirement scheme is taxed at 8%.

## Tax treaties

Foreigners can get lower tax rates, especially withholding tax rates, under certain tax treaties. Currently, Malaysia has tax treaties with:

Albania	Germany	Mauritius	Singapore
Argentina	Herzegovina*	Mongolia	South Africa
Australia	Hong Kong	Morocco	Spain
Austria	Hungary	Myanmar	Sri Lanka
Bahrain	India	Namibia	Sudan
Bangladesh	Indonesia	Netherlands	Sweden
Belgium	Iran	New Zealand	Switzerland
Bosnia and Herzegovina*	Ireland	Norway	Syria
Brunei	Italy	Pakistan	Taiwan
Canada	Japan	Papua New Guinea	Thailand
Chile	Jordan	Philippines	Turkey
China	Kazakhstan	Poland	Turkmenistan
Croatia	Korea	Qatar	United Arab Emirates
Czech Republic	Kyrgyz Republic	Romania	United Kingdom
Denmark	Kuwait	Russia	United States of America
Egypt	Laos	San Marino	Uzbekistan
Fiji	Lebanon	Saudi Arabia	Venezuela
Finland	Luxembourg	Senegal	Vietnam
France	Malta	Seychelles	Zimbabwe

\*has not entered into force

## Other taxes

### Land and building quit rent and assessment

Annual assessment is payable on residential property at 6% of the value assessed by the authorities. All landed properties also have to pay annual quit rent, typically MYR 0.01-0.02 per ft<sup>2</sup>.

### Real property gains tax

Gains from the sale of real estate are taxed at a rate depending on the duration the property is held.

Holding period (Years)	Individual		Corporate
	Citizen or PR	Non-citizen	
3	30%	30%	30%
4	20%	30%	20%
5	15%	30%	15%
6	5%	30%	5%
>6	0%	5%	5%

### Stamp duty

The typical rate is 0.1% of contract value, but certain contracts have different rates. For the transfer of property:

Property value (MYR)	Marginal tax rate
First 100,000	1%
Next 400,000	2%
Excess of 500,000	3%

Loan agreements are typically taxed at 0.5%, but SMEs can get lower rates with the approval of the Ministry of Finance:

Loan value (MYR)	Marginal tax rate
First 250,000	0.05%
Next 750,000	0.25%
Excess of 1,000,000	0.5%

### Sales and services tax

Certain services are subject to 6% service tax, while imported or domestically produced goods are subject to 10% sales tax.. However, food products are only taxed at 5%.

The Sales and Services Tax will be replaced by the Goods and Services Tax in 2015, which will apply a 6% tax rate to all taxable supplies. Some supplies fall under the zero-rated or exempt list.

### Import duty

The tariffs range from 0% to 50%, with most goods being taxed around 6% on average. Some electronic products are exempted from import duty.

### Excise duty

Motorcycles (four-wheelers) are taxed an additional 20-30% (60-105%), depending on engine capacity.

Liquor, cigarettes, tobacco, playing cards, and mahjong tiles are also subject to excise tax.

## Investment

The Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976, and Free Zones Act 1990 provide tax incentives to the manufacturing, agriculture, tourism (including hotel), and approved services sectors as well as R&D, training, and environmental protection activities.

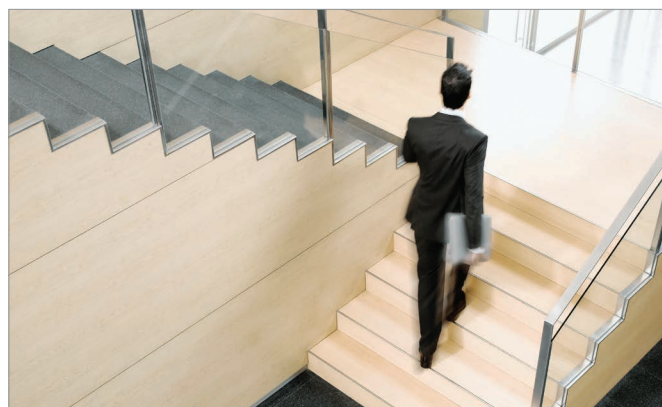
### Main Incentives

Companies can choose one of two main incentives. The **pioneer status (PS)** incentive grants tax exemption on a portion of the company's statutory income beginning on the production date, defined as the day production reaches 30% capacity.

Meanwhile, the **investment tax allowance (ITA)** incentive grants greater capital allowances for all approved expenditures for a certain number of years starting from the first capital expenditure, which can be used to offset company profits. Unused allowances and accumulated losses during these incentive periods can be carried forward indefinitely.

Generally, the following industries may be considered for tax incentives, either PS or ITA:

- Manufacturing
- Agriculture
- Tourism
- Research and development
- Education
- Healthcare
- Technology and multimedia
- Waste recycling and green technology
- Real estate investment trust
- Biotechnology



### Other incentives for manufacturing

#### Reinvestment Allowance (RA)

Manufacturing and some agricultural companies that reinvest for expansion, automation, modernization, or diversification within the same industry can qualify for this incentive, provided they have been in operation for 36 months.

Similar to the ITA, the RA gives a 60% allowance on capital expenditures incurred by a company, which can be offset against 70% of its business income. The company can offset against 100% of its business income if the company can maintain a certain productivity level, set by the Ministry of Finance.

The RA lasts for 15 years from the first reinvestment. RA given on an asset will be withdrawn if the asset is disposed within 5 years of purchase.

#### Accelerated Capital Allowance (ACA)

Upon expiration of the RA, a company that manufactures certain promoted products can apply for general ACA. Under this incentive, capital expenditures are given 40% initial allowance and 20% annual allowance thereafter. However, other companies can take advantage of the ACA for specific expenditures:

- Industrial Building Systems, which create a safer and cleaner working environment
- Security control equipments such as alarm systems, sirens, and security cameras

Equipments to main quality of power supply get a special rate. These equipments get an initial allowance of 20% and an annual allowance of 80%.

#### Increased export incentives

To promote growth of exports, companies can gain tax exemption based on the increase of exports.

Goods with at least 30% (50%) value added grant tax exemption equal to 10% (15%) of the increase.

Companies with at least 60% Malaysian ownership get additional benefits. With a significant increase in exports, the company can get tax exemption on 30% of the increase. The number increases to 50% if the company can penetrate new markets and 100% if the company can achieve the highest increase in its category.

### Group relief

70% of a year's losses can be used to offset the income of another company within the same group if these criteria are satisfied:

- Both companies have paid-up capital of ordinary shares of more than MYR 2.5 million
- Both companies must have the same accounting period
- The group must own at least 70% of both companies during the relevant year and the preceding year
- The companies are not under any of these other incentives: PS, ITA, RA, Exemption of Shipping Profits, Exemption of Income Tax under Section 127 of Income Tax Act 1967, and Incentive Investment Company

### Free Industrial Zones (FIZ)

Special zones are set up for export-oriented industries. Companies in a FIZ are exempted from import duty of raw materials, components, parts, machinery, and equipment needed for manufacturing. Companies can get these benefits outside of FIZ if setup as a Licensed Manufacturing Warehouse.

### Operational Headquarters (OHQ)

To be considered an operational headquarter, a company must:

- Be incorporated under the Companies Act 1965
- Have paid-up capital of at least MYR 500,000
- Have operational expenditure of at least MYR 1.5 million per year
- Appoint at least three senior management
- Serve at least three related companies outside Malaysia
- Have a sizeable network of companies outside of Malaysia
- Carry out at least three of these services:
  - General management and administration
  - Business planning and coordination
  - Coordination of procurement of raw materials, components, and finished products
  - Technical support and maintenance
  - Marketing control and sales promotion planning
  - Data/information management and processing
  - Research and development carried out in Malaysia
  - Training and personnel management
  - Corporate financial services
  - Treasury and fund management services

An OHQ can get 100% tax exemption for 10 years on business income, interest, and royalties from its related offices outside Malaysia, given that those sources of income make up less than 20% of total income. Additionally, they are exempted from import, excise, and sales taxes on machinery, equipment, and materials.

### Distribution centers

Distribution centers can either be an international procurement center, which procures and sells materials and products, or a regional distribution center, which collects and consolidates finished goods and components produced by its related companies.

To be considered a distribution center, a company must:

- Be incorporated under the Companies Act 1965
- Have paid-up capital of at least MYR 500,000
- Have operational expenditure of at least MYR 1.5 million per year

- Use Malaysian ports and airports
- Have annual sales turnover of MYR 50 million by its third year of operation
- Have less than 20% in domestic sales
- Have no more than 30% of its sales turnover from drop shipment

Once the company reaches MYR 100 million in annual sales turnover, it can get full tax exemption on statutory income. Domestic sales turnover exceeding 20% will get taxed. The dividends from the tax-exempt portion of income will also be exempted from tax.

Also, the company can bring in raw materials, components, or finished products into a FIZ or equivalent for repackaging, cargo consolidation, and integration with no import duty.

### Intellectual property rights

Malaysia accedes to the Paris Convention, Berne Convention, TRIPS, and WIPO. The TRIPS Council periodically reviews Malaysia's intellectual property rights protection so it conforms to international standards. In most cases, Malaysian residents can apply for protection on their own while non-residents must go through registered agents.

The Intellectual Property Corporation of Malaysia (MyIPO), an agency under the Ministry of Domestic Affairs, handles all matters related to intellectual property.

#### Patents

The Patents Act 1983 and the Patents Regulations 1986 allow inventions to be patented. For an invention to be patentable, it must be new, involves an inventive step, and is industrially applicable. A patent lasts for 10 years and can be renewed twice for 5 years each. Patented products that already trade in other markets can still be imported.

#### Trademarks

The Trade Marks Act 1976 and the Trade Marks Regulations 1997 protect trademarks from being used by unauthorized persons. While residents can apply for protection on their own, non-residents must go through registered agents. Trademarks last for 10 years and can be renewed indefinitely. Well-known international names cannot be trademarked in Malaysia except by the owner of those trademarks. Border measures are taken to prevent the importation of counterfeit goods.

Malaysia follows the Nice Agreement for the international classification of goods and services and the Vienna Agreement for the classification of marks and figurative elements.

#### Industrial designs

The Industrial Designs Act 1996 and Industrial Designs Regulations 1999 allow industrial design rights to be treated as intangible property. To be registered, the industrial design must be new and not dictated solely by function nor by another article. The protection lasts for 5 years and can be renewed twice for 5 years each.

#### Copyright

The Copyright Act 1987 outlines the items available for protection and the scope of protection. Literary, musical, or artistic works are protected for 50 years after the author's death. Sounds recordings, broadcasts, film, and live performances are protected for 50 years after first publication.

Notably, the Act enables the Ministry of Domestic Trade and Consumer Affairs to search premises suspected of having infringing copies and seize those copies without warrant.



### Layout design of integrated circuits

The Layout Designs of Integrated Circuits Act 2000 protects layout design for 10 years from commercial use or 15 years from date of creation if not used commercially.

### Geographical indications

The Geographical Indications Act 2000 protects the registration of goods using the name of the place they're produced. The protection is primarily used for wines, spirits, natural or agricultural products, and handicraft.

## 6. Philippines

### Country profile

<b>Official name</b>	Republic of the Philippines	
<b>Capital</b>	Manila	
<b>Location</b>	South of Taiwan North of Indonesia	
<b>Area</b>	298,170 km <sup>2</sup> 7,107 islands	
<b>Climate</b>	Marine tropical with rainy season	
<b>Time zone</b>	UTC +8 no DST	
<b>Population</b>	~100 million	
<b>Currency</b>	Philippine Peso    PHP	
<b>Language</b>	Filipino English	
<b>Religion</b>	90% Christianity 5% Islam	
<b>International</b>	EAS G-77 ADB World Bank WTO	APEC ASEAN Colombo Plan Next Eleven ICO
<b>Government</b>	Constitutional republic with presidential system	

The Philippines is a unitary state with the exception of the Autonomous Region in Muslim Mindanao which is largely free from the national government.

#### Executive

The President functions as head of state, head of government, and commander-in-chief of the armed forces. The President is elected for a six-year term and delegates power to the Cabinet, mostly composed of the heads of executive departments. The President also has power to propose a national budget, which the Congress can adopt, amend, or revise.

#### Legislative

The Congress has two chambers. The 24 members of the Senate (upper chamber) are elected to six-year terms while the 287 members of the House of Representatives (lower chamber) are elected to three-year terms.

#### Judicial

The Supreme Court is the court of last resort and also deals with the constitutionality of laws. The Chief Justice presides over 14 associate judges appointed by the President from the nominations of the Judicial and Bar Council. Other courts include the Court of Appeals, the Court of Tax Appeals, the People's Advocate Court, and the Regional Trial Courts. The Ombudsman investigates and prosecutes government officials.

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	250	272	290
<b>GDP per capita</b> USD	2,612	2,791	2,913
<b>Investments</b> % GDP	18.1%	19.7%	19.1%
<b>Unemployment</b>	7.0%	7.1%	6.9%
<b>Inflation, EoY</b>	3.0%	4.1%	4.3%

### Business entities

The Securities and Exchange Commission (SEC) regulates business entities. Registration with the SEC is required to start any of these entities.

#### Sole proprietorship

In a sole proprietorship, the owner has full control, owns all assets, and holds unlimited liability. A sole proprietorship must register with the Department of Trade and Industry.

#### Partnership

A partnership is a legal entity distinct from its owners. In a general partnership, all partners have unlimited liability. In a limited partnership, at least one general partner must hold unlimited liability, while all other partners are only liable up to their capital contributions. Only partnerships with capital above PHP 3,000 must register with the SEC.

#### Corporation

Corporations are legal entities distinct from their owners. Between 5 and 15 incorporators must hold shares in the company. They must contribute at least PHP 5,000 in paid-up capital. Liability is limited to share capital. A company with more than 40% foreign ownership is considered a foreign company.

In a stock corporation, the capital is divided into shares, through which dividends are distributed.

In a non-stock corporation, no shares are issued to its members. This form is used for public purposes such as charity or education.

#### Branch office

A branch office is considered a foreign corporation that carries out business in the Philippines. A company can open a branch only if it provides at least USD 200,000 in paid up capital, or USD 100,000 for high technology companies or companies that directly employ 50 people.

#### Representative office

A representative office is a foreign entity that does not generate income and is fully subsidized by the parent company. It deals with clients of the parent company and can disseminate information, promote company products, and control the quality of products for export. The parent company must remit at least USD 30,000 a year to the representative office.

#### Regional Headquarters (RHQ)

#### Regional Operating Headquarters (ROHQ)

The Republic Act No. 8756 allows foreign entities to create an RHQ or ROHQ to supervise, inspect, or coordinate related companies.

An RHQ is limited to supervising, communicating with, and coordinating related companies in the Asia-Pacific region. It can also handle administration for international trade. However, it cannot generate any income whatsoever. The parent company must send at least USD 50,000 to the RHQ annually.

An ROHQ is limited to planning, administration, coordination, procurement of raw material, financial advisory, marketing control, sales promotion, employee management and training, logistics, research and development, technical support, and business development. Unlike an RHQ, an ROHQ can derive income from the Philippines. Since it can sustain its own operations, the parent company only needs to send an initial capital of USD 200,000.

## Accounting and auditing

### Books of accounts

All taxable business entities must maintain a journal and a ledger in Filipino or English. Those with quarterly earnings of less than PHP 50,000 can use a simplified bookkeeping method, while those earning more than PHP 150,000 per quarter must have their books audited by an independent CPA annually and submit an Account Information Form with the tax returns.

### Financial statements

The SEC requires companies to file financial statements if they meet any of these thresholds:

- Stock corporation with paid up capital of PHP 50,000
- Non-stock corporation with total assets of PHP 500,000 or gross annual receipts of PHP 100,000
- Branch office of stock corporation with assigned capital of PHP 1,000,000
- Branch office of non-stock corporation with total assets of PHP 1,000,000
- ROHQ with annual revenue of PHP 1,000,000

The format of the financial statements depends on the type of the company.

A **large or publicly-accountable entity** must use the Philippine Financial Reporting Standards (PFRS) or a framework approved by the SEC for certain subclasses (e.g. banks, insurance companies). These are entities:

- With assets above PHP 350 million or total liabilities above PHP 250 million
- Required to file financial statements under Part II of SRC Rule 68
- Planning to issue any instruments in the public market
- Holding secondary licenses issued by regulatory agencies

A small- or medium-sized entity (SME) must use the PFRS for SMEs, although some types can use the regular PFRS instead. These entities:

- Have total assets between PHP 3-350 million or total liabilities between PHP 3-250 million
- Are not required to file financial statements under Part II of SRC Rule 68
- Are not in the process of issuing any instruments in the public market
- Are not holding secondary licenses issued by regulatory agencies

A **micro entity** can choose between the PFRS or the PFRS for SMEs. They have similar requirements to SMEs but must have total assets and total liabilities below PHP 3 million.



### Finance and capital markets

#### Exchange control

The Bangko Sentral ng Pilipinas (BSP), the Central Bank, maintains a floating exchange rate policy. Foreign exchange can be freely traded outside of the banking system. In addition, foreign exchange receipts may be sold for PHP outside the banking system, deposited in foreign currency accounts, or used for virtually anything else.

Peso-dollar trading among banks (usually members of the Bankers Association of the Philippines) and between these banks and the BSP are done through the Philippine Dealing System (PDS). Commercial banks can deal in spot, forward, and swap transactions in PHP or USD and another currency.

#### Banking system

The General Banking Law of 2000 governs the banking system while the BSP supervises all banking operations and activities.

#### Types of banks

**Universal and commercial banks** represent the largest group in the country with 35 banks and almost 5,000 offices and branches. They offer the widest banking services, including commercial banking and underwriting activities, among others.

**Thrift banks** consist of savings and mortgage banks, private development banks, stock savings and loan associations, and microfinance thrift banks. Thrift banks mainly accumulate deposits and invest them. They also provide financing in the agriculture, services, industry and housing, and financial sectors, mostly to SMEs and individuals. About 70 thrift banks with almost 1,600 offices and branches are scattered in the Philippines.

**Rural and cooperative banks** are popular in rural communities and provide basic financial services, including financial aid to farmers. Rural banks are privately owned while cooperative banks are owned by co-ops. The comprise about 600 banks with almost 2,800 offices and branches exist in the Philippines.

**Islamic banks** provide Shariah banking as defined in the "Charter of Al Amanah Islamic Investment Bank of the Philippines".

**Non-banks with quasi-banking functions** borrow funds from 20 or more lenders on behalf of another party through issuances, assignment with recourse, or acceptance of deposit substitutes for relending or purchasing receivables and other obligations.

#### Foreign banks

Foreign banks can operate in the Philippines by acquiring up to 60% of only one existing domestic bank, investing 60-100% in only one domestic subsidiary, or establishing branches with full banking authority. They can only choose one of the above options.

Foreign banks can also open Offshore Banking Units (OBU). An OBU is a branch, subsidiary, or affiliate of a foreign bank authorized by the BSP to conduct banking transactions in foreign currencies from external sources.

Sixteen foreign banks operate in the Philippines with more than 10 offices and branches. Some of the big foreign banks, categorized either universal or commercial banks, include ANZ, Deutsche Bank AG, Internationale Nederlanden Groep Bank, Mizuho, Standard Chartered, HSBC, Bank of America, Citibank, and Bank of China.

#### Bank secrecy

The Bank Secrecy Law treats all deposits in banking institutions, including investments in Philippine government bonds, as strictly confidential. They cannot be examined by anyone except with written consent by the depositor. However, they may be examined with a court order in the case of bribery, dereliction of duty of public officials, or if the deposit is the subject matter of the litigation.

#### Deposit insurance

The Philippine Deposit Insurance Corporation (PDIC), under the Department of Finance, insures the covered deposits in all banks up to PHP 500,000. The PDIC determines the products covered by insurance, conducts independent special examination of banks, receives and liquidates closed banks, and issues debt.

#### Government financial institutions

##### *Social Security System (SSS)*

SSS provides social security protection to workers and their beneficiaries as well as to all residents, especially the disadvantaged, disabled, sick, pregnant, elderly, dead, or suffering from loss of income.

##### *Government Service Insurance System (GSIS)*

GSIS provides social security benefits such as compulsory and optional life insurance, retirement benefits, disability benefits for work-related accidents, and death benefits to all employees of the Philippine government in exchange for monthly contributions. In addition, GSIS handles the administration of the General Insurance Fund. GSIS also provides loan privileges such as salary, policy, emergency, and housing loans to active GSIS members.

##### *Development Bank of the Philippines (DBP)*

The DBP aids critical industries, such as infrastructure, and promotes entrepreneurship in the countryside. It also provides social and environmental protection services.

##### *Land Bank of the Philippines (LBP)*

The LBP primarily aims to develop the countryside by financing agricultural reforms. It has evolved into a full-service commercial bank while retaining its roots—profits are used to finance development programs. Additionally, the LBP is the official depository of government funds.

#### Capital market

##### Philippine Stock Exchange, Inc. (PSE)

The Manila Stock Exchange, established in 1927, is one of the oldest financial markets. A rival financial group created the Makati Stock Exchange in 1963, but due to conflict, the government merged the two exchanges in 1992 into the self-regulatory Philippines Stock Exchange (PSE).

In 2001, PSE was transformed into a shareholder-based, revenue-earning corporation by the Securities Regulation Code (SRC). PSE maintains an efficient and orderly market for the purchase and sale of stocks, warrants, bonds, options and other securities. Currently, the PSE is the country's sole stock exchange with more than 290 listed firms and 134 active trading participants.

The main barometer of stock price movements is measured by the PSE Index (PSEI). Companies can enlist in one of three boards:

General criteria	First board	Second board	SME board
Market capitalization	PHP 500 million	PHP 250 million	-
Operating history	5 years	1 year	1 year
Track record	Profitable for 3 previous years with total pre-tax profit of PHP 50 million  Minimum pre-tax profit of PHP 10 million each year thereafter	-	Positive net operating income in the last financial year
Minimum requirement:			
Authorized capital stock	PHP 400 million	PHP 100 million	PHP 20 million
Subscription	PHP 100 million	PHP 25 million	25%

### Securities and Exchange Commission (SEC)

The SEC is a Philippine state commission responsible for securities laws and regulation. It approves the registration of securities on the PSE, supervises and analyzes all registered business entities, creates policies regarding securities, investigates and sanctions violations, and enforces the securities laws.

### Labor

The Labor Code of the Philippines serves as the main labor law while the Department of Labor and Employment (DOLE) is the national implementing government agency.

### Types of employment

All employment should be bound by a contract signed by both the employer and employee. Various types of employment exist:

- **Project employment** is fixed to a specific project and the terms of completion should be stated in the contract
- **Seasonal employment** is seasonal and typically has short durations
- **Casual employment** lasts for a definite period and becomes fixed employment after one year
- **Term or fixed employment** is permanent; the employee must have already worked for at least one year and passed the probationary period
- **Probationary employment** is where an employee's performance is evaluated for a certain period, generally 6 months, to determine if an employee is qualified for a permanent employment.

### Working hours and compensation

Normal working hours are limited to 8 hours a day with a 1-hour meal break. Employees must receive a rest day after 6 consecutive days of working. All work exceeding this limit is considered overtime. Overtime rate is 125% on a working day and 130% on a rest day.

Night shifts, deemed work between 11 pm and 6 am, must be compensated 10% more than the day shifts. Generally, women are prohibited from night shifts, although they are allowed to work until midnight in non-industrial sectors.

## Wages and benefits

### Minimum daily wage

The National Wages and Productivity Commission and the Regional Tripartite Wages and Productivity Boards decide minimum wage rates depending on the demand for living wages, the cost of living, the consumer price index, the needs of workers and their families, and fair return of the capital invested and employer's capacity to pay. For the National Capital Region or Metro Manila Area, the daily minimum wage rate effective October 4, 2013 ranges from PHP 429 to PHP 466. Salaries and wages are generally paid in cash at least twice a month (i.e. every 15th and the last day of the month).

### Benefits

#### *Holiday pay*

The DOLE differentiates between regular holidays and special holidays. In 2013, there were 10 and 7 days of each, respectively. Employees receive full pay. Work on these days is considered overtime with the following rates: 200% on regular holidays, 130% on special holidays, and 150% on special holidays that fall on a rest day.

#### *Service incentive leave*

A worker who has rendered at least one year of service is entitled to five days of paid leave annually.

#### *Thirteenth month pay*

A rank and file employee who has worked for at least one month during a calendar year must get a bonus of at least one month's salary. Employees paid on a piecework basis or on a fixed wage plus commission also qualify. The bonus must be paid before December 24.

#### *Maternity leave*

Pregnant female employees who have worked for 6 months out of the last 12 months are entitled to paid maternity leave of 2 weeks before and 4 weeks after pregnancy. The leave may be extended without pay due to medically certified illnesses related to the pregnancy. An employer is only obliged to cover four pregnancies.

#### *Paternity leave*

Male employees can get 7 days of paid leave to aid his wife during the recovery period or nurse the newborn child. Only four deliveries must be covered by the employer.

#### *Parental leave for solo parents*

Single parents get 7 days of paid leave annually to take care of their children.

#### *Retirement benefits*

Employees can retire at 60 years old and must retire at 65 years old. The age requirements may differ because of collective bargaining agreements. They can collect retirement benefits if they have worked for at least 5 years for the company.

The minimum retirement benefit includes half a month's pay and one twelfth of an annual bonus for each year of service rendered for the company. Additionally, the employee should receive the cash equivalent of up to 5 days of paid leave.

#### *Social Security System and Government Service Insurance System*

The SSS provides social security benefits to all residents and employees, while the GSIS provides benefits to only government employees. Both of these organizations are explained in more detail in the capital markets section. Mandatory contributions are shared by employer and employee.



### ***Employee's Compensation Program (ECP)***

The ECP, administered by the Employees' Compensation Commission under the DOLE, compensates employees or their dependents in case of work-related illness, injury, disability, or death. Compensation comes in the form of cash to replace lost income, medical benefits, rehabilitation services, career allowance, and death benefits to beneficiaries. This program covers everyone enrolled in the SSS or the GSIS except for self-employed persons. The employer is solely responsible for the mandatory contributions.

### ***National Health Insurance Program (NHIP)***

The Philippine Health Insurance Corporation, a government corporation, administers the NHIP, which provides health insurance and accessible healthcare services. All contributing members, indigenous people, and even non-paying pensioners can enjoy these benefits. The contributions are split between the employer and employee—self-employed people bear the entire contribution.

### **Termination of employment**

Employees terminated due to automation or redundancy receive severance pay equal to one month's salary for every year of service, rounded up. Employees terminated due to retrenchment or disease, where work may harm the diseased or the coworkers, get severance pay equal to half a month's salary for each year of service—with a minimum of a full month's salary. Employees terminated with a just cause are not entitled to severance pay.

### **Labor relations**

#### **Labor unions**

Employees, except managerial employees, can join, assist, or form labor organizations for collective bargaining. Supervisory employees can only join, assist, or form labor organizations separate from the rank-and-file employees' labor organization.

#### **Strike and lockout**

Labor unions can organize strikes while employers can declare lockouts as long as they follow the provisions in the Labor Code. Some business activities are prohibited from strikes and lockouts, however.

#### **Foreign assistance**

Aliens and foreign organizations can join trade union activities only if their home countries grant similar union rights. Foreign assistance such as donations and grants to labor organizations are prohibited unless permitted by the Secretary of Labor.

### **Employment of foreigners**

The DOLE can grant an Alien Employment Permit if a position cannot be filled by anyone in the Philippines who is competent, able, and willing. Once the permit is issued, transfer of employment is prohibited without the approval of the DOLE.

For short-term employment, the local employer should apply for the Special Work Permit upon arrival of the foreign employee. The permit lasts three months and can be extended for another three months.

### **Taxation**

The National Internal Revenue Code of 1997 sets out taxation laws in the Philippines. The Bureau of Internal Revenue, under the Department of Finance, handles the administration of taxes. The Commissioner can decide disputed assessments, refund taxes and other charges, modify payments, and cancel tax liability. Taxpayers may appeal directly to the Court of Tax Appeals for disputes with the Commissioner.

The tax year can be the calendar year or the fiscal year of the company. Corporate income tax is based on self-assessment and the filing of tax returns. The Local Government Code imposes local corporate taxes.

## Corporate tax

Tax residents are taxed on worldwide income. They can be a domestic company organized under Philippine laws or a foreign company doing business within the Philippines.

Tax non-residents are taxed only on income derived in the Philippines. Only foreign corporations not engaging in any business activities in the Philippines are considered non-residents.

### Tax rates

The standard tax rate is a flat 30% of taxable income. ROHQs and some nonprofits are taxed at 10%. Meanwhile, government-owned corporations and RHQs are exempt from income tax.

Firms can choose to be taxed on 15% of gross income if they fulfill certain requirements, such as gross profit margin of less than 45%. Once chosen, this taxation scheme applies for at least 3 years.

The Minimum Corporate Income Tax (MCIT) applies to all resident companies beginning on the fourth taxable year. Companies pay the greater tax amount between the standard rate and MCIT, which is 2% of gross income. If a company pays MCIT, the portion exceeding normal income tax can be credited to normal income tax in the three following years. Corporations facing losses due to labor disputes, force majeure, or other legitimate business reasons are exempted from MCIT.

Improperly accumulated taxable income—earnings accumulated instead of being distributed to avoid income tax—are taxed at 10%. Generally, this means taxable income adjusted by income exempt from tax, income excluded from gross income, income subject to final tax, and net operating loss carry-over deducted by dividends and income taxes paid during a taxable year. Public companies, financial institutions and intermediaries, and insurance companies are exempt from this tax.

Certain classes of business have lower tax rates:

- Offshore Banking Units at 10% final tax
- Resident foreign international carriers at 2.5% gross receipts
- Branch remittance at 15% of after-tax profits
- Non-resident foreign cinematographic film owner, lessor, or distributor at 25%
- Non-resident foreign company leasing vessels to domestic entities at 4.5% gross rentals
- Non-resident foreign company renting aircraft, machinery, or other equipment at 7.5% gross rentals

### Taxable income and gross income

Taxable income refers to gross income minus deductions and additional exemptions, while gross income refers to gross receipts minus cost of goods sold, discounts, sales returns, and allowances. Some items are not considered gross income:

- Income exempt under treaty
- Income from domestic loans, stocks, or bonds received by a foreign government
- Interest in domestic bank deposits received by a foreign government
- Income from public utility or governmental functions
- Gains from the sale, exchange, or retirement of bonds with maturity of more than 5 years
- Gains from redemption of shares in a mutual fund

### **Allowable deductions**

All expenses are deductible if they pertain to revenue generation, are properly documented, and are not categorized as non-deductible expenses. Some components of deductible expenses may be non-deductible. Allowable deductions include:

- Ordinary and necessary expenses except:
  - Gross monetary value of fringe benefits where related final tax is not yet paid
  - Amount of representation and entertainment above the ceiling amount
- Interest:
  - Reduced by 38% of interest income subjected to final tax
  - Allowed only in the period the indebtedness is paid
  - If paid in periodic amortization, allowable deduction is interest corresponding to the amount of principal paid, except for petroleum exploration financing
  - Allowed as a deduction or treated as a capital expenditure when incurred to acquire property
- Taxes except for:
  - Corporate income tax
  - Taxes related to overseas income of a resident foreign corporation
- Net operating loss can be carried forward and deducted in the 3 consecutive taxable years following the year of loss except when:
  - Such net loss is incurred when the taxpayer is exempt from income tax
  - There is a substantial change in the ownership
  - The loss is incurred in the first 10 years of operations by mining companies, except petroleum, not granted incentives by the Omnibus Investment Code
- Capital losses, including short-sales, with limitations
- Bad debts related to trade or business; recovery of bad debts is included in gross income
- Depreciation according to the methods and rates prescribed by the Secretary of Finance based on the agreed useful life between the taxpayer and the Commissioner, with additional limitations for properties used in mining and petroleum; foreign companies can only deduct depreciation of property in the Philippines
- Depletion of petroleum wells in the Philippines using the cost-depletion method; alternately, the company can deduct exploration and development expenditures, which is irrevocable and binding for succeeding years
- Charitable contributions up to 5% of taxable income; no limit on contributions to the government, certain international and foreign organizations, and accredited non-government organizations
- Research and development may be treated as ordinary and necessary expenses or as deferred expenses

### **Individual tax**

Resident citizens are taxed on worldwide income. Resident aliens, non-resident aliens engaging in trade or business, and non-resident citizens are taxed only on income derived in the Philippines. Non-resident aliens staying for more than 180 days in the Philippines are considered engaging in a trade or business.

### **Tax rates**

Those earning minimum wage are exempt from income tax. However, when receipts after including commissions and fringe benefits amount to more than PHP 60,000 per year, they are no longer exempt from income tax.

Taxable Income (PHP)	Marginal Tax Rate
<10,000	5%
30,000	10%
70,000	15%
140,000	20%
250,000	25%
500,000	30%
>500,000	32%

### Taxable income

Taxable income includes gross income minus allowable deductions. Gross income consists of all compensation for services or from the conduct of trade, business, or professional practice. The following sources are not considered part of gross income:

- Proceeds of life insurance policies paid to beneficiaries, except for interest payments
- Amount received by the insured through life insurance, endowment, or annuity contracts
- Gifts except for income from such property
- Compensation for injury, sickness, or damage
- Income exempt under treaty
- Retirement benefits
- Prizes and awards from public achievements and sports competitions
- 13th month pay and benefits such as productivity incentives, GSIS, SSS, Medicare, and other contributions
- Gains from redemption of mutual fund shares

### Allowable deductions

Allowable deductions are exactly the same as with corporate taxation except for the section on taxes, net operating loss, capital losses, and depletion of petroleum wells. They are replaced with:

- Taxes, including taxes paid to a foreign country by a Philippine citizen, except:
  - Individual income tax
  - Estate and donor's tax
  - Taxes on overseas income of non-resident aliens
- Losses except those claimed as deduction for estate tax purposes

A citizen or a resident alien can instead choose a standard deduction of 10% of gross income instead of the usual allowable deductions for any taxable year.

### Personal exemptions

Citizens and resident aliens can get tax exemptions:

- Basic personal exemption of PHP 50,000 if single, PHP 50,000 if married, and an additional PHP 50,000 if head of family.
- PHP 25,000 for each dependent, up to four

All marriages are treated as though they occurred at the beginning of the taxable year, while deaths are at the end. Non-resident aliens engaging in trade or business can get whichever exemption is lower: the exemptions allowed in the country of citizenship or the Philippines.

### Other non-resident aliens

Non-resident aliens not in a trade or business face 25% final tax on all income from the Philippines. Persons working in an RHQ, ROHQ, offshore banking unit, or foreign petroleum service contractor operating domestically only get taxed 15%.

**Withholding tax**

Taxes for non-resident foreign companies may be reduced under a tax treaty. Wages exceeding the minimum wage or PHP 5,000 per month might be withheld 0-32%. Fringe benefits are subject to 32% withholding tax, except for rank-and-file employees.

Income source	Corporation			Individual			
	Domestic	Foreign		Citizen		Alien	
	Both	Resident	Non	Resident	Non	Resident	Non
Interest from deposits	20%	20%		20%	20%	20%	20%
Royalties	20%	20%	30%				
Royalties from literary works and music				10%	10%	10%	10%
Royalties, prizes in excess of PHP 10,000				20%		20%	20%
Interest from depository bank under the expanded foreign currency deposit system	7.5%	7.5%		7.5%	7.5%	7.5%	
Interest from long-term investment pre-terminated before the fifth year:							
Within 3 years to maturity				20%	20%	20%	20%
Between 3 and 4 years to maturity				12%	12%	12%	12%
Between 4 and 5 years to maturity				5%	5%	5%	5%
Income from foreign currency loans under the foreign currency deposit system	10%	10%					
Interest on foreign loans			20%				
Dividends from domestic corporation			15%	10%	20%	10%	20%
Dividends from domestic entity or ROHQ				10%	10%	10%	10%
Capital gains on sale of real estate:							
Not used in business	6%	10%					
Considered capital assets				6%	6%	6%	6%
To the government				6%	6%	6%	6%
Net gains on sale of domestic unlisted stock:							
< PHP 100,000	5%	5%	5%	5%	5%	5%	5%
In excess of PHP 100,000	10%	10%	10%	10%	10%	10%	10%

### Income tax treaties

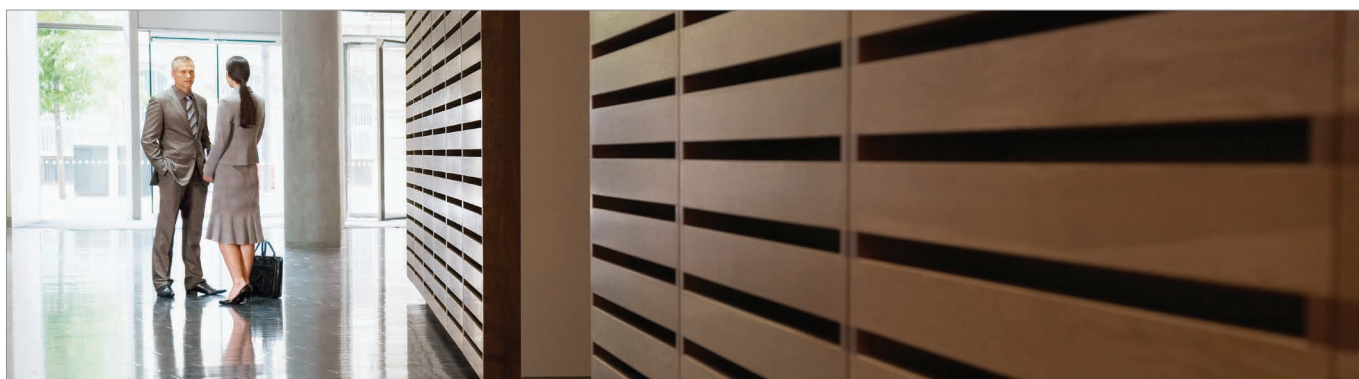
Tax treaties eliminate double taxation and reduce tax rates on incomes such as dividends, interest, and royalties. These treaties follow the OECD guidelines.

Australia	Korea
Austria	Malaysia
Bahrain	Netherlands
Bangladesh	New Zealand
Belgium	Norway
Brazil	Pakistan
Canada	Poland
China	Romania
Czech Republic	Russia
Denmark	Singapore
Finland	Spain
France	Sweden
Germany	Switzerland
Hungary	Thailand
India	United Arab Emirates
Indonesia	United Kingdom
Israel	United States
Italy	Vietnam
Japan	

### Value added tax

The standard VAT rate is 12%. Certain sales get 0% VAT:

- Export sales
- Sales in foreign currency according to BSP rules
- Processing, manufacturing, and repacking of good to be exported, if paid in foreign currency according to BSP rules
- Services given 0% rate under international agreements
- Services rendered to vessels exclusively for international shipping
- Services by (sub)contractors for companies that export at least 70% of their annual production



### Other taxes

#### Excise tax

Item	Base	Rate (PHP)
Distilled spirits	Proof liter	11.65-504
Sparkling wines	Net price	146-436
Still wines	Net price	17-35
Fermented liquors	Liter	8-16
Tobacco	Kilogram	1
Cigarettes	Pack	2.72-28.30
Cigars	Net price	10-15%
Petroleum products	Liter	0.05-5.35
Gold, minerals	Market value	2%
Metal, petroleum	Market value	3%
Coal	Ton	10
Automobiles	Price	15-100%
Luxury goods	Price or CIF	20%

#### Percentage tax

Percentage tax is a business tax imposed on entities exempt from VAT and entities that are not registered for VAT.

Taxpayer	Base	Rate
Persons exempt from VAT or not registered for VAT	Gross receipts	3%
Domestic carriers	Gross receipts	3%
International carriers doing business in the Philippines	Gross receipts	3%
Electricity, gas, and water utilities	Gross receipts	2%
Radio and television broadcasting with <PHP 10 million in annual gross receipts the preceding year	Gross receipts	3%
Banks, non-bank financial intermediaries, and financial companies	Income from lending activities with remaining maturity of:	
	<2 years	5%
	2-4 years	3%
	4-7 years	1%
	>7 years	0%
Banks and non-bank financial intermediaries	Royalties, rent	5%
Financial companies	Income from lending capital to non-banking institutions	5%
Life insurance companies	Premiums	5%
Cabarets, clubs	Gross receipts	18%
Boxing exhibitions	Gross receipts	10%

Taxpayer	Base	Rate
Professional basketball games	Gross receipts	15%
Jai-alai and race tracks	Gross receipts	30%
Seller of stock in a domestic stock exchange, except dealers	Gross selling price	0.5%
Corporate issuer selling IPOs	Gross selling price, depending on what % of stock is publicly traded:	
	<25%	4%
	25-33.3%	2%
	>33.3%	1%

#### Customs duty

Tax rates vary depending on classification and country of origin. Goods imported from members of GATT or ASEAN can get lower tax rates.

#### Stamp duty

Stamp tax is imposed on documents such as bonds, share certificates, sales agreements, bank drafts, bills of exchange, letters of credit, insurance policies, bills of lading, lease agreements, mortgages, charter parties, and warehouse receipts. Rates can be nominal, ranging from PHP 1 to 15 per document, or based on percentages ranging from 0.1 to 1.25%.

#### Estate tax

Estate tax only applies to the transfer of estate through inheritance and ranges from 5% to 20% depending on the bracket, just like individual income tax. The first PHP 200,000 is not taxed.

#### Property taxes

Property taxes are imposed locally. Rates vary depending on the region, up to 2% in Metro Manila and up to 1% outside that region. An additional 1% is levied for the Special Education Fund.

Transfer of real estate is taxed at 0.5% of gross sales price or fair market value, whichever is higher.

#### Gift tax

Gift tax applies to transfer of property between still-living people. Just like estate tax, rates vary from 2% to 15% depending on the bracket. The first PHP 100,000 is exempt from tax. If the donation is to a stranger, the tax rate is 30%, although certain contributions such as charity are exempt from tax.

#### Local government taxes

Other than the property tax, local government may levy a local business tax on the gross receipts of certain businesses.

### Investment

The government guarantees that:

- Foreign investors can repatriate liquidation proceeds and remit earnings in the currency the investment was originally made
- Companies can remit sums necessary to pay principal and interest on foreign obligations at the prevailing exchange rate
- Expropriation and requisition will be made only with just cause and compensation

Companies get different incentives depending on where they register. For instance, a company can register with the Board of Investment (BOI), under the Department of Trade and Industry, which issues an Investment Priorities Plan (IPP) enlisting the business activities eligible for BOI incentives.



The Foreign Investments Act of 1991 promotes foreign investment in all sectors except financial institutions, which are regulated by the BSP. The Act requires all foreign business entities (more than 40% foreign ownership) to inject capital of at least USD 200,000, which is reduced to USD 100,000 for high-tech companies. Companies with at least 60% Filipino ownership have lower capital requirements. A foreign company that exports at least 60% of its output only needs PHP 5,000 in capital.

Different sectors might have different foreign equity caps. For instance, professional practice cannot have any foreign equity, while financing companies and investment houses regulated by the SEC can have up to 60% foreign equity. For the full list, please consult the Foreign Investment Negative List (FINL).

Former Filipino nationals have the same investment rights as a Filipino citizen in certain sectors, including those in List B of the FINL and cooperatives, rural banks, thrift banks, and financing companies. They can own up to 5,000 m<sup>2</sup> of urban land and 30,000 m<sup>2</sup> of rural land.

### Board of investments

To qualify for these incentives, the business must be in the IPP and registered at the BOI. Foreign enterprises must also register for a pioneer status or as an export-oriented firm. Domestic (foreign) companies not in the IPP may still qualify if they export at least 50% (70%) of their production.

#### *Fiscal incentives*

- Income Tax Holiday (full income tax exemption) from the start of commercial operations:

Type	Years
New project with pioneer status	6
Expansion project in rural areas	6
New project without pioneer status	4
Expansion and modernization, exemption only on incremental sales revenue	3

The exemption can be extended by an additional year if the company is new or operating in rural areas if: at least 50% of raw materials were domestically sourced; the company complies with BOI's capital requirement relative to the number of workers; or the net foreign exchange savings or earnings total USD 500,000 annually for the first 3 years of operation.

- Exemption from customs duties and national internal revenue taxes on imported spare parts for a registered enterprise with a bonded manufacturing warehouse
- Exemption from wharf dues and export duties on non-traditional export products for 10 years from date of registration for all enterprises registered in IPP
- Reduction of the rates of duty on capital equipment, spare parts and accessories
- Tax exemption on breeding stocks and genetic materials for 10 years from the date of registration or commercial operation
- 100% tax credit for domestic breeding stocks and genetic materials within 10 years from date of registration or commercial operation for agricultural producers and tax credit for raw materials, supplies, and semi-manufacture of export products
- 50% additional deduction on wages for the first 5 years if the company meets the capital to labor ratio requirement; cannot be used with the income tax exemption
- 100% additional deduction for the development of necessary and major infrastructure in LDAs except in forestry and mining projects

### *Non-fiscal Incentives*

- Employment of foreigners in supervisory, technical, or advisory positions for 5 years from date of registration; can be extended with BOI approval. The positions of President, General Manager, and Treasurer of foreign enterprises have no time limit
- Simplification of customs procedures for the importation of equipment, spare parts, raw materials, supplies, and exports of processed products
- Unrestricted use of consigned equipment subject to posting of a re-export bond equivalent to 100% of the estimated taxes
- The privilege to operate a bonded manufacturing/trading warehouse

### **Autonomous Region in Muslim Mindanao (ARMM)**

The Regional Board of Investments ARMM has authority over investments in the ARMM, which can get greater benefits. Requirements are the same as BOI requirements.

### *Fiscal incentives*

- Income Tax Holiday for 6 years
- Reduced duty on importation of capital equipment
- Exemption from duties on imported spare parts
- Exemption from wharf dues and export duties
- Tax exemption on breeding stocks and genetic materials
- Additional deduction from taxable income
- Tax credit on domestic capital equipment, duty portion of domestic breeding stocks and genetic materials and taxes and duties on raw materials
- Incentives for necessary and major infrastructure and public utilities

### *Non-fiscal incentives*

- Employment of foreign nationals
- Simplification of customs procedures
- Importation of consigned equipment
- The privilege to operate a bonded manufacturing warehouse

### **Economic zones and freeport authorities**

Enterprises located in export processing zones, free trade zones, and certain industrial estates, collectively known as economic zones, or “ecozones”, enjoy preferential tax treatment. These enterprises are outside the customs territory, thereby allowing them to import capital equipment and raw material without being subject to customs duties and other import restrictions. However, a business can only claim one category of incentives even if in both an export processing zone and a free trade zone.

### **Philippine Economic Zone Authority (PEZA)**

PEZA, a certified government agency under the Department of Trade and Industry, is mandated to promote investments, grant incentives, and facilitate the business operations of investors in export-oriented manufacturing and service facilities or to develop into agro-industrial, recreational, commercial, and investment centers within the PEZA Special Economic Zones.

### *Fiscal incentives*

- Income tax holiday for up to 8 years depending on the project type
- 5% special tax on gross income after expiration of income tax holiday
- Duty-free importation of raw materials, capital equipment, medical equipment, machineries, and spare parts.
- Exemption from wharf dues and export duties
- 0% VAT on local purchases

- Exemption from all local government taxes. Production equipment not attached to real estate is exempt from real property taxes; however, exemption from real estate tax while on an income tax holiday is only allowed for the first 3 years
- Exemption from expanded withholding tax
- Exemption from duties on raw materials and semi-finished goods to be processed for export

### *Non-fiscal incentives*

- Simplified import and export procedures
- Employment of non-resident foreign nationals in supervisory, technical, or advisory positions
- Special non-immigrant visa with multiple entry privileges for Investors, officers, and employees in supervisory, technical, or advisory positions, and their spouses and unmarried children under twenty-one years of age who are non-resident foreign nationals.

### Subic Bay Metropolitan Authority and Clark Freeport Zone

The Bases Conversion Development Authority is mandated to develop the former U.S. military facilities in Clark and Subic into economic zones. They are managed as separate custom territories, ensuring free flow of articles within the zones. Full foreign ownership is allowed.

### *Fiscal incentives*

- 5% tax based on gross income if at least 70% of the products are to be exported
- Income tax holiday for 6 years, which can be extended for an additional 2 years
- 0% VAT on local purchases
- Exemptions from real property tax

### *Non-fiscal incentives*

- Duty-free importation of capital equipment, raw materials, and even finished goods if 70% of products are exported
- Free movement of finished goods within the customs territory
- Special visas for investors
- Unlimited purchase and consumption of duty-free goods within the Freeport zone
- R&D as an allowable deduction for manufacturing, trading, and service enterprises.

### Other economic zones

All of these economic zones offer comparable benefits with similar requirements as the PEZA. Cagayan has several more requirements for the incentives. They are all classified as a separate customs territory, ensuring free flow of articles within the zones.

- The PHIVIDEC Industrial Authority is a government-owned and controlled corporation that manages and supervises the 3,000-hectare Phividec Industrial Estate in Misamis Oriental.
- The Cagayan Economic Zone Authority develops the Cagayan Special Economic Zone and Freeport into an industrial, commercial, financial, and recreational center. It also grants gaming licenses.
- The Zamboanga City Special Economic Zone Authority manages the only economic zone in the Visayas and Mindanao Region.
- The Aurora Special Economic Zone Authority manages the Aurora Pacific Economic Zone (APECO) in Casiguran, Province of Aurora, at the northeastern quadrangle of Luzon.

### **Bases Conversion and Development Authority**

BCDA aims to convert the Clark and Subic military reservations into productive economic areas. Its two subsidiaries manage two zones with different incentives.

***Poro Point Freeport Zone***

- Managed as a separate customs territory, ensuring free flow of articles within the Freeport
- Tax and duty free importation of raw materials and capital equipment and consumer goods within the PPFZ
- 5% tax on gross income

***John Hay Special Economic Zones***

- Exemption from taxes under the National Revenue Code (NRC) and local taxes except real property taxes
- Zero-rated tax on transactions
- 5% tax on gross income
- Fiscal incentives provided under Investment Code

**Tourism Infrastructure and Enterprise Zone Authority**

The TIEZA, under the Department of Tourism, encourages the development of tourism infrastructure. To qualify for the incentive, the business entity must be locally incorporated and comply with the Foreign Investments Act of 1991, if applicable.

***Fiscal incentives***

- Income tax holiday
  - 100% exemption for 6 years from start of new business in the Greenfield and Brownfield Tourism Zones; can be extended with substantial upgrade or expansion
  - 100% exemption for existing enterprises undertaking substantial expansion or upgrade
  - Loss carry-forward for 6 years
- 5% tax on gross income in place of all taxes other than real estate taxes
- Exempt from all taxes and customs duties on importation of:
  - capital investment exclusively used by the enterprise
  - transportation and spare parts not locally available at comparable quality and reasonable price and will be used exclusively by the enterprise
  - goods actually consumed in the course of services but not for the purpose of operating a wholesale or retail establishment
- Full tax credit on taxes paid on all locally-sourced goods and services used for tourism activities
- Up to 50% tax deduction on expenditures related to environmental protection, cultural heritage preservation, sustainable livelihood programs for local communities, and other similar activities.

***Non-fiscal incentives***

- Employment of foreign nationals in executive, supervisory, technical, or advisory positions for a reasonable period
- Special investor’s resident visa for a foreign national who invests at least USD 200,000 in a registered enterprise while his or her investment subsists; and for foreign personnel and other aliens possessing highly-technical skills which no Filipino within the tourism zone possesses, renewable every 2 years after the Alien Employment Permit has been secured from the DOLE, subject to regulations by the Bureau of Immigration
- Right to use the original currency and the prevailing exchange rates for repatriation of the investments, remittance of earnings from foreign investments and remittance of interest and principal on foreign loans and obligations arising from technological assistance contracts
- Requisition of investment in the event of war or national emergency
- Subject to the Investor’s Lease Act, lands and buildings may be leased to foreign investors for up to 50 years and can be renewed once up to an additional 25 years; these leasing rights may be sold, transferred or assigned

### Regional Headquarters and Regional Operating Headquarters

RHQ does not derive income from sources within the Philippines nor participate in the management of any subsidiary or branch office in the Philippines and requires an annual capital of USD 50,000 to cover operating expenses. On the other hand, ROHQ derives income in the Philippines and requires one-time inward remittance of USD 200,000.

#### *Fiscal incentives*

- RHQs are exempt from VAT, local taxes, and taxes on corporate income, sale or lease of goods and property, and services to RHQ
- ROHQs are subjected to 10% corporate income tax and 10% VAT but are exempt from local taxes
- Duty-free importation of equipment and materials for training and conferences if not locally available; cannot be disposed within 2 years of purchase
- Importation of brand new motor vehicles subject to payment of taxes and duties

#### *Non-fiscal incentives*

- Multiple entry visas are granted to expatriates and their immediate family (unmarried children below 21 years old) for up to 6 years. The process takes only 72-hours for non-immigrant visas. They are not required to get an Alien Certificate of Registration
- Withholding tax of 15% on compensation of both foreigners and Filipinos in managerial and technical positions
- Duty-free importation of used household goods and personal effects
- Travel tax exemption including dependents

### Property ownership

Only Filipino citizens and corporations or partnerships with at least 60% Filipino ownership can acquire land in the Philippines. Acquisition by foreigners is allowed if:

- Acquired before the 1935 Constitution
- Acquired through hereditary succession
- Only up to 40% stake in a condominium project

According to the Philippines Republic Act No. 8170, former natural-born Filipino citizens can own up to 1,000 m<sup>2</sup> of residential property or up to 10,000 m<sup>2</sup> of rural land. They can also own, in the form of business property, up to 5,000 m<sup>2</sup> of urban land or 30,000 m<sup>2</sup> of rural land according to the Batas Pambansa No. 185.

Although foreign investors cannot own land, they can sign a long-term lease of private land. The Presidential Decree No. 471 allows foreigners to lease private land for 25 years, which can be renewed once for another 25 years.

The Republic Act No. 7652 allows foreigners to lease private land for up to 75 years, which can be renewed once for 25 years, as long as the land is used for a long-term investment for up to 50 years. Foreigners investing at least USD 5 million in a tourism project can also get this type of lease.

### Expropriation and compensation

Expropriation of private property for public use or in the interest of national welfare or defense is permitted under the Philippine laws as an inherent power of the State. The government will offer just compensation. In the case of a foreign investment, the investor can remit the compensation in the original currency at the prevailing exchange rate.

## Intellectual property rights

The Philippines is a member and signatory of the Rome, Paris, and Berne Conventions. Therefore, the Intellectual Property Code of the Philippines is in line with international standards. The Intellectual Property Office protects and administers intellectual property rights.

### Patents

Patents are granted for 20 years from date of filing. The first person to file for a patent gains the rights make, use, sell, or import the product or process.

### Trademarks

Trademarks prevent other parties to use identical or similar marks on their goods and services. Trademarks are valid for 10 years after date of registration, given that they are actually used, and are renewable for another 10 years.

### Copyright

The owner of a copyright has the exclusive right to: reproduction, dramatization, translation, adaptation, abridgment, arrangement, first public distribution, rental of an audiovisual or cinematographic work, public display, public performance, and other communication to the public of the work.

Applied art and broadcast are protected for only 20 years. Other copyrights are protected for 50 years with different starting dates: death of author; date of first publication by anonymous or pseudonymous author for photographic and audio-visual works; date of unrecorded performance; end of the year in which the recording of sound, images, and performances is made.

### Other intellectual property rights

The Electronic Commerce Act extends the legal framework for internet-based intellectual property.

Industrial designs, geographic indications, and layout designs (topographies) are also protected. Industrial designs can be registered for 5 years and can be renewed twice for an additional 5 years each. Other laws include the Plant Variety Protection Act and the Integrated Circuit Act.

## International trade agreements

The Philippines is a member of ASEAN and WTO:

- ASEAN Free Trade Agreement
- ASEAN-China Free Trade Agreement
- Japan-Philippines Economic Partnership Agreement
- ASEAN-Korea Free Trade Agreement
- ASEAN-Australia/New Zealand Free Trade Agreement
- United States of America – Philippine Trade Agreement
- Member of World Trade Organization

These are still in negotiation:

- ASEAN-India Free Trade Agreement
- ASEAN-European Union Free Trade Agreement

## 7. Singapore

### Country profile

<b>Official name</b>	Republic of Singapore	
<b>Capital</b>	Singapore	
<b>Location</b>	Southern Malaysian peninsula	
<b>Area</b>	700 km <sup>2</sup> 60+ islands	
<b>Climate</b>	Warm and humid 23-31° C	
<b>Time zone</b>	UTC +8 no DST	
<b>Population</b>	~5.2 million	
<b>Currency</b>	Singapore Dollar SGD	
<b>Language</b>	Malay Mandarin	English Tamil
<b>Religion</b>	34% Buddhism 18% Christianity 16% Nonreligious 14% Islam	
<b>International</b>	ASEAN	
<b>Government</b>	Parliamentary	

### Executive

The executive branch consists of the President and the Cabinet. Although the President acts in his personal discretion as a check on the Cabinet and Parliament of Singapore, his role is largely ceremonial. It is the Cabinet, composed of the Prime Minister and other Ministers appointed (from the elected Members of Parliament) on his advice by the President, that generally directs and controls the Government. The Cabinet is formed by the political party that gains a simple majority in each general election once every 5 years.

### Legislative

The Parliament is responsible for enacting legislation. Members of the Parliament are voted in a general election.

### Judicial

Judicial powers are vested in the Supreme Court as well as subordinate courts by the Constitution of Singapore. The Supreme Court consists of the Court of Appeal and the High Court. The Court of Appeal exercises appellate criminal and civil jurisdiction, while the High Court exercises both original and appellate criminal and civil jurisdiction.

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	287	298	307
<b>GDP per capita</b> USD	54,007	55,182	56,113
<b>Investments</b> % GDP	30.4%	29.1%	29.2%
<b>Unemployment</b>	2.0%	1.9%	2.0%
<b>Inflation, EoY</b>	4.0%	1.0%	1.1%

## Business entities

Generally, there are no licensing requirements on business activities carried on in Singapore. However, certain businesses have to apply for special licenses from the Government before they can commence such trading activities. These include banks, insurance and finance companies, manufacturers of certain goods (detergents, motor vehicles, etc), travel agencies, real estate agencies and educational institutions.

Persons who wish to carry on business in Singapore must register at the Accounting and Corporate Regulatory Authority (ACRA).

### Sole proprietorships and partnerships

A sole-proprietorship is a business conducted by a single individual. A partnership consists of a minimum of 2 to a maximum of 20 partners. This maximum limit does not apply to professional firms such as of doctors and accountants. A partnership is not necessarily restricted to individuals. A joint venture between two companies or between individuals and incorporated companies can also form a partnership.

Businesses carried on in the form of sole proprietorships or partnerships must be registered with the ACRA under the Business Registration Act. Registration is relatively simple. The registration fee is SGD 50 and the renewal fee is SGD 20 per annum. These entities don't need to get accounts audited or file annual returns.

Sole proprietors and the individual partners in a partnership are jointly and individually liable for all debts and obligations incurred by the firm. The partners can decide each partner's liabilities among themselves, but such arrangements do not affect the joint liabilities to external parties. Singapore does not impose any laws on partnerships but individuals often use the UK Partnership Act 1890 as reference. While not required, formal partnership agreements should be written down to prevent disputes.

### Limited Liability Partnership

A Limited Liability Partnership (LLP) gives owners the flexibility of operating as a partnership while having a separate legal identity like a private limited company. The partners of the LLP will not be held personally liable for any business debts incurred by the LLP. However, a partner may be held liable for losses due to wrongful acts or omissions.

### Incorporated companies

The basis of company law in Singapore is the Companies Act (Cap. 50) which regulates all incorporated companies in Singapore. Under the Act, one or more persons associated for any purposes may form an incorporated company by subscribing their names to a memorandum and complying with various requirements for registration.

Three types of companies may be formed under the Act:

- A company **limited by shares**, in which the liabilities of members are limited to the unpaid (if any) value of shares held by them;
- A company **limited by guarantee**, in which the liabilities of members are limited to the amount which they undertake to contribute to the assets of the company in the event of liquidation; and
- An **unlimited** company, in which the liabilities of members are unlimited. Companies limited by shares are the most common in Singapore.

A company can be incorporated in Singapore as a private or public company. A private company limited by shares can have a maximum of 50 shareholders. It has restricted rights to transfer shares and is prohibited from inviting the public to subscribe to its shares and debentures or to deposit money into it.

A private company may be classified as an "exempt" private company if the company has fewer than 20 shareholders, none of whom are corporate bodies.



### **Branches**

As an alternative to incorporating a subsidiary company, a foreign company can carry on business in Singapore in the form of a branch.

To do so, the foreign company must submit a copy of its audited financial statements to the Registrar of Companies within two months after its annual general meeting. Such financial statements may be in the form required under the laws of the country in which the company is incorporated. If the company's statements are not required to be audited in its home country, the audit requirement can be dispensed with. Audited financial statements of the branch itself have to be filed in all cases.

### **Representative offices**

A foreign company can apply to International Enterprise Singapore (IE Singapore) or the Monetary Authority of Singapore (MAS) for approval to establish a representative office in Singapore for the purpose of carrying out market research, feasibility studies, and liaison work on behalf of its parent company. A representative office is not permitted to trade.

IE Singapore registers representative offices from the manufacturing, trading, trade logistics and trade-related services sectors while MAS registers representative offices from finance-related industries.

The advantages of a representative office are that there are minimal reporting requirements, simple procedures for approval of office. Since a representative office by definition does not derive income from its activities, it is not subject to income tax unless in the view of the tax authority, the representative office is in fact involved in trading activities.

### **Accounting and auditing**

Companies incorporated under the Companies Act are required to keep accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time. The Companies Act requires all these records to be retained for at least 5 years from the end of the financial year in which the transactions were completed.

The accounting records must be kept at the registered office (which must be located in Singapore) or at a suitable place as the directors think fit. If the accounting records are kept outside Singapore, statements and returns that will enable true and fair profit and loss accounts and balance sheets to be prepared must be sent to and kept in a place in Singapore. The accounting records must at all times be open to inspection by the directors.

Unless exempted, all limited companies must appoint independent auditors who are practicing members of the Institute of Singapore Chartered Accountants (ISCA) to conduct an annual audit of the company's financial statements. The registration and conduct of these professional auditors is regulated separately by the Public Accountants Oversight Committee under the purview of ACRA. A company must appoint an auditor within 3 months of incorporation.

### **Finance and capital markets**

#### **Monetary Authority of Singapore**

The Monetary Authority of Singapore (MAS) is the principal government body overseeing the overall financial affairs of the country. The main role of MAS is to act as banker, fiscal agent, and financial advisor to the Government. It helps the Government in promoting monetary stability and credit and exchange policies conducive to the growth of the economy.

## Banking system

The financial and banking system in Singapore is highly developed. Many major international banks and financial institutions have set up offices in Singapore.

Banks are divided into several types:

- Commercial banks may undertake commercial banking, including deposit taking, check services, and lending. They may also provide financial advisory services, capital market services, and insurance broking.
  - Full banks may perform all banking businesses permitted by the Banking Act.
  - Wholesale banks can do everything a full bank can do except SGD retail banking.
  - Offshore banks have similar capabilities but must book all foreign exchange transactions through their Asian Currency Units and book all SGD transactions through their Domestic Banking Unit.
- Merchant banks can partake in corporate finance, underwriting of shares and bonds, mergers and acquisitions, investment management, management consultancy, and other fee-based activities. They generally have Asian Currency Units to transact in the Asian Dollars Market.

## Bank secrecy

Singapore embraces bank secrecy. The Banking Act stipulates that a bank and its officers must not disclose customer information to anyone unless expressly allowed by the Banking Act.

## Singapore Deposit Insurance Corporation

All full banks and finance companies must become a member of the SDIC. In case an insured member fails, each customer can receive a payout of up to SGD 50,000 per account. In the case of joint accounts, the sum of the payout cannot exceed SGD 50,000 and the money is distributed evenly.

## Exchange control

All forms of exchange controls were dismantled on June 1, 1978. All Singapore residents, both corporate and individual, have complete freedom from exchange controls. There are no exchange control approvals or formalities in respect to payments, remittances, or repatriation of profits or capital to most countries.

## Stock Exchange of Singapore

The Stock Exchange of Singapore (SGX) is well established in the region. It provides an important avenue for public companies to raise long-term capital funds. The trading session lasts from 9 am to 5 pm, Monday to Friday, except on public holidays. The SGX lists both local and foreign companies' shares, bonds, debentures, and loan stocks. The SGX is a self-regulatory body but its activities are monitored by the MAS.

In general, foreign ownership of a company is not limited unless stated in the company's Memorandum and Articles of Association. The cap, if it exists, typically ranges from 19-70% ownership. The company is responsible for monitoring its own foreign shareholding limits.

## Catalist

The Catalist has been established by the SGX to enable small and medium-sized Singapore companies with good growth prospects to raise capital to finance business expansion. It is an alternative to listing on the Main Board of the SGX. This allows participating companies to increase their visibility in the market and also widen the range of investment opportunities available to investors.

Upgrading to the Main Board is possible. Catalist's entry requirements are less stringent and more flexible than that of the Main Board.

### Labor

The Employment Act stipulates the basic terms and conditions of employment. If a change in the Employment Act makes the terms of a labor contract less favorable than the new Act, then the Act prevails. The Act covers every employee except seamen, domestic workers, government employees, and those employed in a managerial or executive position earning more than SGD 4,500 in base salary per month.

#### The labor contract

A labor contract is valid only if both the employer and employee agree to it. However, if a person has signed a letter of employment but later informs the employer that s/he does not intend to work there, assuming that the individual has not showed up to work, then the Act does not apply because the employer-employee relationship has not started yet. The employer cannot request compensation. Therefore, it is highly recommended to use a formal labor contract.

#### Termination of contract

The party that wishes to terminate a labor contract prematurely must give advance notice. If a party fails to give advance notification, then the party at fault must compensate the other party equal to the salary for the number of days without advance notice.

Length of service, up to	Notice period
26 weeks	1 day
2 years	1 week
5 years	2 weeks
Above 5 years	4 weeks

The employer cannot force the employee to go on leave during the notice period. If the employee wishes to use his/her annual leave, that employee will only be paid until the last day of work and the annual leave will be treated as an unpaid leave. If the employee is on sick leave, the days of sick leave can serve as part of the notice period.

An employer may dismiss an employee without notice and without penalty only after a proper inquiry. The inquiry will show whether an employee is guilty misconduct such as theft, dishonesty, immoral conduct at work, willful insubordination, etc. A guilty verdict can result in termination, demotion, or suspension of up to one week.

#### Working hours

An employee is not required to work more than 8 hours a day, 44 hours a week, and six days a week. If the employee only works five days or fewer in a week, then the cap is raised to 9 hours a day. A shift worker may work 12 hours a day given that the weekly average over a three-week period does not go over 44 hours. An employee cannot work for more than 12 hours a day except in cases of emergency or if the employee consents in writing after being informed of his/her rights. If the weekly rest day does not fall on Sunday, the employer must make a monthly roster at the beginning of each month showing the rest days.

Overtime rate is 1.5 times salary by the hour – 2 times for work done on the weekly rest day. An employee may not work more than 72 hours of overtime in a month.

Workmen employees earning more than SGD 4,500 per month and professionals, managers, executives, and non-workmen employees earning more than SGD 2,500 per month are not covered by this section of the Employment Act. This group will be referred as the Exceptions.

## Leaves

### Annual leave

Every employee, barring the Exceptions, is entitled to receive 7 days of statutory paid leave per year starting in the first year of service. The number of days increases by 1 for every additional year of service up to 14 days. Annual leaves may be saved only until the next year.

In addition, the Employment Act mandates 11 days of paid holiday leave every year.

### Sick leave and hospitalization leave

After three months of service, an employee is entitled to paid medical leave. Additionally, the employer is mandated to pay for medical consultation fees. The sick leave has to be certified by the appointed company doctor—if none, then a government doctor—and the employee has to notify the employer within 48 hours. Each employee is allowed 5 days of sick leave annually after three months of service, increasing by 3 days for each additional month of service up to 14 days. In cases of more severe illnesses, an employee can get 15 days of hospitalization leave after three months of service, increasing by 15 days for each additional month of service up to 60 days. The doctor has to certify that an illness warrants hospitalization, but the employee does not have to stay in a hospital.

### Maternity and paternity leave

An employee is entitled to 16 weeks of maternity leave – 4 immediately before childbirth and 12 immediately after – only if the child is a Singaporean citizen, the child's parents are lawfully married, and the employee has worked at least 3 months for the current employer. If the father is lawfully married to the mother, then he is entitled to 1 week of paid paternity leave, which has to be taken within the maternity leave. If the first two conditions are not fulfilled, then the employee is only entitled to 12 weeks of maternity leave, only 8 weeks of which are mandated paid leaves.

### Child Development Co-Savings Act

If an employee has served the current employer for more than a year and has a child who is a Singapore citizen under 7 years old, then that employee is eligible to 6 days of paid leaves per year – 3 paid by the employer, 3 paid by the government. If it is the employee's first year of service, s/he is entitled to 2 days of paid leave after 3 months of service, increasing by 1 day for each additional two months of service up to 6 days.

### Infant care leave

If an employee has served the current employer for more than 3 months and has a child who is a Singapore citizen under 2 years old, then that employee is entitled to 6 days of unpaid infant care leave a year in addition to the paid leave under the Child Development Co-Savings Act.

## Salary

There is no enforceable minimum wage in Singapore. All salary is up to the negotiation of the employee and employer. Salary must be paid at least once a month and at most 7 days after the working period. Overtime salary can be paid at most 14 days afterwards. In cases of termination by employer or termination by employee, provided the employee has served the notice period, all remaining salary must be paid in full on the last day of employment.

## Retrenchment

A company that is facing retrenchment must obey the law on notice periods. An employee who has worked for at least three years at a company can request retrenchment benefits. The Act does not specify the amount to be paid, so retrenchment benefits are up for negotiation between the employee and employer. The employer may give retrenchment benefits to other employees at their discretion, but it is not mandatory.

Instead of retrenchment, a company can also choose to reduce the workweek temporarily or lay off employees for a short period of time. Workweek reduction cannot last more than two months and employers can only shave off two working days a week. If an employee is temporarily laid off, s/he is entitled to receive half-day pay during the period. The employee may use half-day paid annual leaves so s/he can receive full salary.

### **Retirement and re-employment**

For Singapore citizens and permanent residents, the statutory minimum retirement age is 62 but employers are required to offer re-employment up to the age of 65, given satisfactory work performance and soundness of health.

### **Central Provident Fund (CPF)**

The CPF is a compulsory saving scheme under which both employers and employees are required to contribute. It is designed to provide substantial financial security for wage earners in their old age or when they become unable to work. Under the Income Tax Act, compulsory contributions made by employees are specifically allowed as a deduction against their chargeable income and CPF funds withdrawn on retirement are exempt from tax. Any employer's contribution above the mandatory amount is subject to tax in the hands of the employee.

The monthly rates of compulsory contribution by employers and employees for individuals up to 50 years of age are 17% and 20% respectively, up to a maximum contribution of SGD 1,800 per employee based on gross wages of SGD 5,000 a month on their ordinary wages (e.g. monthly salaries, overtime pay, other monthly payments, etc.). The contribution rates vary with age. In the case of additional wages which are defined as annual bonus, leave pay, incentives, and other payments made at intervals of more than a month, restrictions are imposed on the tax deduction for CPF contributions on additional wages.

Foreigners who become permanent residents need to make contributions to the CPF at reduced rates in the first two years of taking up permanent residency.

By the third year, they must make the full mandatory contribution. However, if both the employer and the employee prefer to contribute the full rate before the third year, they may apply jointly to the CPF Board to do so. If the CPF Board approves the application, then the full CPF contributions would be treated as mandatory CPF contributions that are tax deductible.

### **Workmen's compensation**

Compensation for injuries and diseases sustained at work is provided for by the Work Injury Compensation Act. The Act ensures that victims and their dependents are equitably and quickly compensated. The Act requires that compulsory insurance be taken out on all manual workers regardless of their level of earnings and non-manual workers earning SGD 1,600 or less per month.

### **Immigration requirements**

All foreigners who wish to take up employment in Singapore must apply for either an employment pass or work permit from the Ministry of Manpower. If specified conditions are met, holders of employment passes and work permits or other eligible persons can also apply to the authority to become Singapore Permanent Residents or even Singapore Citizens. The Government adopts a pragmatic approach in its immigration policies.

### **Trade unions and strikes**

Singapore uses a tripartite system in which the Ministry of Manpower, The National Trades Union Congress, and The Singapore National Employers Federation work together to reach agreements. However, the trade union system has been criticized for being unilateral. The members of trade unions don't have much say; the NTUC merely negotiates and announces the results.

Strikes are generally unheard of in Singapore. Employees in essential services, such as public transportation, public broadcast, and civil defense, may be charged criminally for holding a strike. Workers in other sectors may be outright prohibited from striking. Even if employees are allowed to strike, they must give a 14-day advance notice, given that the matter is not being settled by the Industrial Arbitration Court.

## Taxation

The Inland Revenue Authority of Singapore (IRAS) was established in 1992 under the Ministry of Finance to oversee all matters related to taxation. Of note, Singapore does not impose capital gains tax or net worth tax. The tax period coincides with the calendar year. However, income tax charged in a year is based on the income from the preceding year, i.e. tax paid in 2015 is based on income from 2014.

### Territoriality

Only income derived from Singapore or received in Singapore from overseas entities are subject to taxation.

However, residence may still be relevant to taxation under certain circumstances. For instance, tax treaties apply only to Singapore residents. Also, withholding tax applies only to payments from residents to non-residents. Other benefits will be covered in the future.

An individual is considered a resident if s/he resides in Singapore for at least 183 days in a calendar year. Meanwhile, a company is considered a resident if the central management is done in Singapore, e.g. if the board of directors meets in Singapore.

### Taxable income

- Gains or profits from any trade, business, profession, or vocation
- Gains or profits from employment, including allowances and benefits
- Pensions, annuities, and alimony
- Dividends, interest, and discounts
- Rents, royalties, premiums, and other profits arising from property
- Any gains or profits from income of any other nature

Expenses can be deducted from taxable income only if they are wholly and exclusively used to generate that income. For instance, expenses used to generate income in another country, which is not received in Singapore, cannot be deducted for tax purposes.

### Corporate tax

#### Tax rate

The standard tax rate is a flat 17%. Some companies can get partial tax exemption relief, where the first SGD 10,000 gets 75% exemption and the next SGD 290,000 gets 50% exemption.

A new startup company can enjoy even greater tax exemption benefits. To qualify, the company must be a Singaporean resident and must have no more than 20 individual shareholders or at least one individual shareholder holding at least 10% of the issued ordinary shares. During the first 3 years, the company can enjoy 100% exemption on the first SGD 100,000 and 50% exemption on the next SGD 200,000. Afterwards, the exemptions are reduced to 75% for the first SGD 10,000 and 50% for the next SGD 290,000.

#### Capital allowances

Depreciation and expenses related to fixed assets are not tax deductible. Instead, companies get capital allowances for tax calculation purposes.

Basis	Initial	Annual
Industrial building	25%	3%
Land intensification	25%	5%
Plant and machinery	20%	5-16%
or	-	33%
Intellectual property	-	20%
Computers, robots, etc.	100%	-

Certain assets worth less than SGD 5,000 can immediately be written off, with a limit of SGD 30,000 per year.

A balancing charge will need to be made on the disposal of assets. The balancing charge cannot be more than the capital allowances. Profits in excess of this limit are considered capital gains and are therefore not taxable.

### Productivity and innovation credit

Until 2017, all businesses can deduct 400% of qualifying expenditure on these activities, up to SGD 400,000 per year:

- Acquisition or leasing of automation equipment
- Employee training
- Acquisition or in-licensing of intellectual property rights
- Research and development
- Approved design projects
- Registration of patents, trademarks, designs, and plant varieties

### Group relief

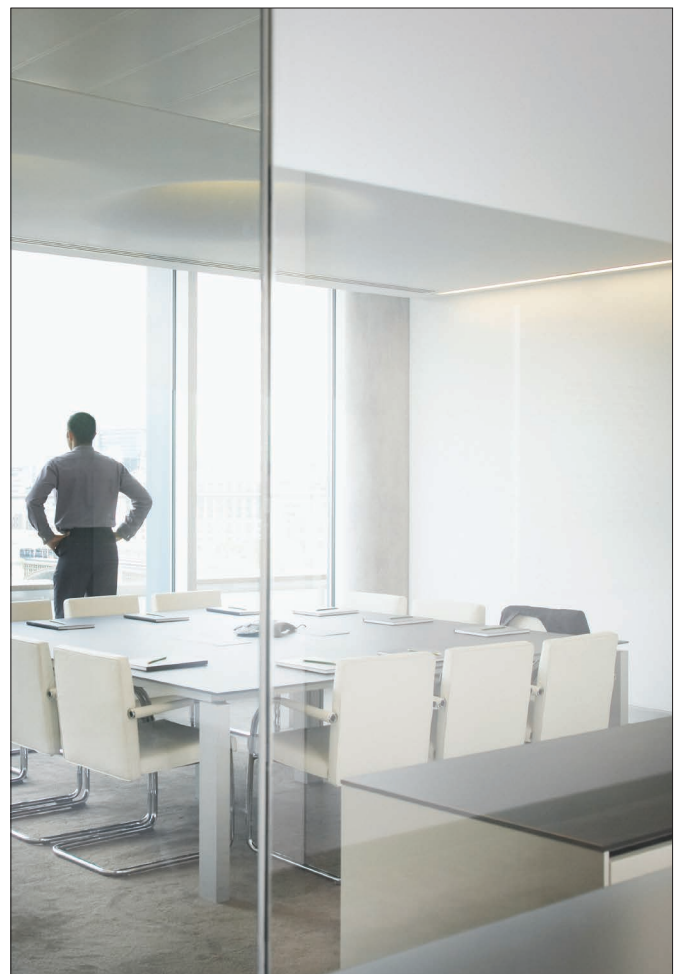
Unused capital allowances, losses, and deductions in a year can be transferred to a related company under certain conditions. The parent company and its subsidiaries must be Singaporean residents. The parent company must own at least 75% of the subsidiaries and the subsidiaries must have the same year-end as the parent company. However, investment allowances and foreign losses cannot be transferred.

### Loss carry-forward

Unused tax losses and capital allowances can be carried forward indefinitely. However, the company loses this right if more than 50% of shareholders change from one year to the next.

### Loss carry-back

A person in a trade, business, profession, or vocation can only carry back tax losses and capital allowances for 1 year, up to SGD 100,000. Unused donations can be carried forward for up to 5 years.



## Individual tax

### Resident taxation

#### Tax rates

Income (SGD)	Marginal tax rate
20,000	0%
30,000	2%
40,000	3.5%
80,000	7%
120,000	11.5%
160,000	15%
200,000	17%
320,000	18%
>320,000	20%

#### Tax relief

- Personal tax relief of SGD 1,000, increasing to SGD 6,000 at 55 years old and SGD 8,000 at 60 years old
- Spousal tax relief of SGD 2,000 if the spouse does not earn more than SGD 4,000 annually
- Child relief of SGD 3,500 (will increase to SGD 5,500 starting in 2015) if the child is under 16 years old, is a full-time student, or does not earn more than SGD 4,000 per year
- Choice of employee contribution to the Central Provident Fund or approved insurance premium
- Approved academic, professional, or vocational course fees up to SGD 5,500
- Twice the levy paid for one foreign maid, applicable to working married women

#### Non-resident taxation

Non-residents working in Singapore for fewer than 60 days in a year are exempted from employment income tax, with some exceptions. Personal entertainers get taxed 10% (will increase to 15% from March 31, 2015), professionals get taxed 15%, and directors get taxed 20%.

Those working for more than 60 days in a year are subject to employment income tax at the greater of 15% (with no tax relief) or resident taxation (with tax reliefs).



All other sources of income are taxed 20%.

Income source	Rate
Dividends	0%
Interest	15%
Royalties	10%
Technical service fees	17%
Management service fees	17%
Rent	15%
Directors' fees	20%

### Tax treaties

To avoid double taxation, Singapore has entered into tax treaties with other countries. Typically, the country that sourced the income claims the tax while the country of residence credits the tax. Currently, Singapore has tax treaties with the following countries:

### Withholding tax

Albania	France	Lithuania	Qatar
Australia	Georgia	Luxembourg	Romania
Austria	Germany	Malaysia	Russian Federation
Bahrain	Guernsey	Malta	Saudi Arabia
Bangladesh	Hungary	Mauritius	Slovak Republic
Barbados	India	Mexico	Slovenia
Belarus	Indonesia	Mongolia	South Africa
Belgium	Ireland	Morocco	Spain
Brunei	Isle of Man	Myanmar	Sri Lanka
Bulgaria	Israel	Netherlands	Sweden
Canada	Italy	New Zealand	Switzerland
China	Japan	Norway	Taiwan
Cyprus	Jersey	Oman	Thailand
Czech Republic	Kazakhstan	Pakistan	Turkey
Denmark	South Korea	Panama	Ukraine
Egypt	Kuwait	Papua New Guinea	United Arab Emirates
Estonia	Latvia	Philippines	United Kingdom
Fiji	Libya	Poland	Uzbekistan
Finland	Lichtenstein	Portugal	Vietnam

### Other taxes

#### Stamp duty

Typically, the purchaser pays the stamp duty, which is insignificant except for: transfer of shares at 0.2% and sale of immovable property at 3%.

### Estate and gift taxes

Singapore does not levy these taxes.

### Property tax

All real estate is taxed at least 10% of the assessed annual rent. Owner-occupied residential properties are taxed at a minimum rate of 4% instead.

### Goods and services tax

All goods and services produced domestically by an entity supplying at least SGD 1 million of goods and services, as well as all imports, are subject to the GST. The standard rate is 7%, although some categories of goods enjoy a 0% rate or full exemption.

### Customs and excise duties

These taxes only apply to liquors, tobacco products, motor vehicles, and petroleum products.

## Investment

### Tax incentives

The Economic Expansion Incentives (Relief from Income Tax) Act of 1967 (EEIA) and The Singapore Income Tax Act provide tax incentives for specific industries. The provision of such incentives is to encourage industries to produce high value-added goods and services for the world market and to promote automation and wide-scale mechanization.

The Economic Development Board (EDB) is the principal government body responsible for administering the various incentives provided in the EEIA. The International Enterprise Singapore and the Maritime Port Authority administer certain of the incentives provided in the Singapore Income Tax Act.

### Pioneer status incentives

A 100% exemption from tax for a period up to 15 years is available to industries that manufacture approved pioneer products. In addition, approved overseas enterprise deriving income from its overseas investments or projects will also be granted exemption for a period not exceeding 15 years in aggregate. In approving tax holiday companies, the type of product, the investment level, and the advanced technology to be introduced are the main factors considered by the EDB. Companies engaging in qualifying service activities can also be considered for Pioneer Service Incentive. Dividends declared by a pioneer company from its exempt pioneer profits are tax-free. Certain service companies can also seek approval for tax holidays for a period of up to 15 years.

### Investment allowances

A company may apply for investment allowances in respect to capital expenditure for manufacturing operations, specialized engineering or technical services, research and development, construction, reduction of drinking water consumption, or activities qualifying for the pioneer service company incentives described earlier.

### Overseas Enterprise Incentive

To encourage Singapore companies to expand their business activities overseas, an Overseas Enterprise Incentive was introduced in 1994. Under this incentive scheme, an approved overseas enterprise is exempted from tax on its income derived from manufacturing, infrastructure and tourism development and management, and other qualifying activities for a total period of up to 10 years.

### Export of services

90% of incremental qualifying export services income is tax-exempt for up to 10 years with provision for extension up to a maximum of 20 years. This is provided to encourage the establishment of consultancy firms or engineering contractors that export their services to overseas markets. Consultancy services include technical advisory services, design and engineering, fabrication of equipment, management and supervision of installation or construction, and data processing, programming, or other computer services.

### Approved contributions

Non-residents who derive income from Singapore in the form of royalties, fees, and development contributions are entitled to a reduction or exemption from tax. This would usually involve the transfer of advanced technology or know-how.

### MSI – Approved International Shipping Enterprise Award (MSI – AIS)

The MSI—AIS award applies to resident shipping companies which operate non-Singapore flag ships. Qualifying foreign ships include towage vessels, salvage ships, dredges, seismic vessels, and semisubmersible oil rigs. The following incomes of approved international shipping enterprises are exempted from income tax under the scheme:

- income from the carriage of passengers, mails, livestock or goods from outside Singapore port limits by any foreign ship;
- income from the charter of any foreign ship to a non-resident of Singapore, or to another approved international shipping enterprise, for the carriage of passengers, mails, livestock or goods outside Singapore port limits;
- income from the carriage of passengers, mails, livestock or goods by a foreign ship to Singapore for the purpose of trans-shipment; and
- income derived from the operation of Floating Production Storage Offloading vessels and Floating Storage Offloading vessels in Singapore.

To qualify for this scheme, the shipping company must be a Singapore-registered company and a tax resident in Singapore with direct business spending of more than SGD 4 million annually. Initially, the incentive can be granted for 10 years with provision for extension up to a total of 40 years.

The MSI—AIS (Entry) was introduced on June 1, 2011 for qualifying entry players to enjoy similar tax benefits as the MSI—AIS award. The MSI—AIS (Entry) award will be granted for a non-renewable 5-year period, with the option of graduating to the mainstream MSI—AIS scheme. Application is open until May 31, 2021.

### MSI – Shipping-related Support Services Award (MSI – SSS)

Ship agencies, ship management companies, logistics providers and ship brokers may apply for this incentive. To qualify, the Company must have substantial operations and a good track record in their relevant field.

Qualifying companies will be accorded a concessionary tax rate of at least 10% on their incremental income only. The base profit will continue to be taxed at the normal corporate tax rate. The incentive period is 5 years, subject to approval for renewal.

### MSI – Maritime Leasing Award (MSI – ML)

To encourage the development of ship financing activities in Singapore, the MSI - ML was introduced in 2007. Under this scheme, an Approved Shipping Investment Enterprise (ASIE) will enjoy tax exemption on its investment income. In addition, an approved shipping investment management company will enjoy a 10% concessionary tax rate on qualifying income derived from ASIE management.

Leasing of containers is included under the Maritime Finance Incentive. The Approved Container Investment Enterprise (ACIE) will enjoy concessionary rate of 5% or 10% on its income from leasing sea containers. An approved container investment management company will enjoy a 10% concessionary tax rate on qualifying income derived from management of ACIE.

### Global Trader Programme (GTP)

This incentive was introduced to encourage companies to use Singapore as their regional or global base for their trading operations. Under the GTP, approved companies enjoy a concessionary tax rate of 5% or 10% on qualifying transactions conducted on qualifying commodities and products, such as energy, agriculture, building and industrial materials, consumer products, machinery components, minerals, etc.

### International Headquarters (IHQ) Award

IHQ companies are expected to commit substantially more than RHQ companies in business spending and senior staff. The incentive period ranges from 5 to 10 years and the tax rate reduction can be negotiated with the Economic Development Board (EDB). Starting October 1, 2015, this incentive will be withdrawn. Companies performing headquarter activities may then apply to EDB for the Development and Expansion Incentive instead.

## Intellectual property

All intellectual property rights are handled by the Intellectual Property Office of Singapore (IPOS).

### Patent

A patentable invention provides a novel solution to a technical problem. To register a patent, the invention has to meet three criteria: new (not broadly talked about), inventive (improvement over an existing product), and industrially applicable (can be made or used). A patent lasts 20 years from the date of filing and prevents others from making, using, selling, or importing without permission.

### Trademark

A trademark is an identifying sign used to distinguish a service or product, usually the company logo or brand. A trademark does not have to be registered; disputes can be settled by common law. However, registering a trademark grants its owner monopoly over that mark and serves as absolute evidence in cases of dispute. A trademark lasts 10 years and can be renewed indefinitely.

### Registered design

Sometimes called patentable design in other countries, a registered design is shape, configuration, pattern, or ornament applied to an article. A design must be new and industrially applicable. The owner must intend to sell at least 50 copies of the design. A registered design lasts 5 years and can be renewed up to an additional 15 years.

### Plant variety protection

To register a plant variety, the variety must be novel, distinct, uniform, and stable. Additionally, it must have its own name or identification. The protection lasts 25 years.

### Copyright

A work is automatically copyrighted upon completion and does not need to be registered. Literary and artistic works, sound recordings and films, broadcasts and cable programs, and performances enjoy copyright protection. Copyrights usually last 70 years after date of publication. A literary or artistic work may be protected for an additional 70 years after the death of the author. Broadcasts only enjoy 50 years of protection. The right to publish a literary or artistic work is protected for 25 years.

### Layout-design of an integrated circuit

In short, the design of a computer chip can be protected for 10 years after the first commercial use or 15 years after date of creation, whichever is shorter.

### Expropriation

Singapore has never expropriated the property of a foreign investor and has no laws that would ever force foreign investors to transfer ownership to local interests.

### Property ownership

All residential land dealings are regulated by the Residential Property Act and are under the administration of the Land Dealings Unit. A foreign person cannot obtain residential land or landed property without permission from the Minister of Law. However, a foreign person is free to rent or buy an apartment or condominium under the Planning Act, given that the person does not own all the units. Also, a foreigner can lease an estate in specified residential areas for up to 7 years.

Foreigners can buy commercial or industrial properties without any restrictions.

### International trade agreements

As a member of ASEAN and WTO, Singapore has entered the following free-trade agreements:

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

In addition, Singapore has established free trade agreements with the following countries:

Australia	New Zealand
Bahrain	Norway
Brunei	Oman
China	Panama
Chile	Peru
Costa Rica	Qatar
Iceland	Saudi Arabia
India	South Korea
Japan	Switzerland
Jordan	United Arab Emirates
Kuwait	United States
Lichtenstein	

These trade agreements are still in negotiation:

- ASEAN-India Services and Investment
- ASEAN-Japan Services and Investment
- Canada
- Mexico
- Pakistan
- TPP
- Ukraine

## 8. Taiwan

### Country profile

<b>Official name</b>	Republic of China
<b>Capital</b>	Taipei
<b>Location</b>	Between China and Philippines
<b>Area</b>	35,883 km <sup>2</sup>
<b>Climate</b>	Marine tropical with rainy season
<b>Time zone</b>	UTC +7 no DST
<b>Population</b>	~23.4 million
<b>Currency</b>	New Taiwan Dollar NTD
<b>Language</b>	Chinese English
<b>Religion</b>	35% Buddhism 33% Taoism 4% Yiguandao 4% Christianity
<b>International</b>	ADB                      WTO
<b>Government</b>	

Taiwan has five Yuan, or branches of government. The President is democratically elected for up to two four-year terms as head of state and commander-in-chief of the armed forces. The President has authority over all Yuan.

#### Executive

The Executive Yuan is headed by the Premier. The President personally appoints the Premier and the other high ranking members through the Premier's recommendation. The Executive Yuan proposes policies to the Legislative Yuan and is responsible for publicly answering questions directed to the government, often from the Legislative Yuan.

#### Legislative

The Legislative Yuan acts like a parliament. The 113-member committee is responsible for passing laws. In some cases, the Legislative Yuan can propose its own laws. Members are elected democratically to serve four-year terms. Neither the President nor the Premier can veto bills.

#### Judicial

The Constitutional Court is the highest body in the Judicial Yuan. Eight members serve four-year terms—two of which can be appointed by the President to become president and vice president of the Judicial Yuan—and seven members serve eight-year terms. It supervises the lower courts, interprets the Constitution, and can impeach the Premier. Below it is the Supreme Court, the court of last resort. The Judicial Yuan as a whole adjudicates civil, criminal, and administrative cases.

#### Control

The Control Yuan audits, investigates, and monitors the other Yuan and government officials.

#### Examination

The Examination Yuan uses a civil service examination system to make sure all civil servants are qualified.

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	475	489	505
<b>GDP per capita</b> USD	20,386	20,925	21,572
<b>Investments</b> % GDP	19.8%	19.1%	19.3%
<b>Unemployment</b>	4.2%	4.2%	4.0%
<b>Inflation, EoY</b>	1.6%	0.3%	1.4%

### Business entities

All foreign investors who wish to set up a business entity in Taiwan must get a Foreign Investment Approval from the Ministry of Economic Affairs.

#### Companies

Taiwan recognizes four types of companies:

- **Unlimited** – all shareholders can be held liable up to their personal assets, analogous to sole proprietorship
- **Unlimited with limited liability shareholders** – some shareholders' liabilities are limited to their capital contributions, while some other shareholders can be held liable up to their personal assets
- **Limited** – at least one shareholder, each only liable up to their capital contribution
- **Limited by shares** – at least two shareholders, or at least one shareholder if a corporation or governmental body, with liability limited to their shares

#### Partnership

Partnerships are formed by two or more people who want to conduct business under the same name. All partners share unlimited liability. Partnerships do not need to be registered.

#### Sole proprietorship

This type of business entity is not separate from its owner, i.e. the owner's assets can be seized to cover for any liability. However, foreigners cannot set up a sole proprietorship under Taiwanese law.

#### Branches

A company that has been registered in another country may open a branch office with the approval of the Ministry of Economic Affairs (MOEA). Branches might be more restricted than companies, such as in the banking industry.

#### Representative offices

These can be set up if a company does not plan to generate any profits in Taiwan. A representative office can conduct research and procure goods.

### Accounting and auditing

All companies must use the Taiwan-IFRS, which is very close to IFRS. The fiscal year runs from January 1 to December 31. Accounts have to be stated in Chinese; it is possible to prepare books of accounts in multiple languages.

Annual reports must have:

- Business report
- Balance sheet
- Profit and loss statement

- Status of shareholding changes
- Cash flow statement
- Proposals for allocation of profits or covering of losses

Companies with revenue above NTD 30 million must have their financial statements audited by an independent CPA. Additionally, all listed companies must have their quarterly and annual reports reviewed and certified by independent auditors, respectively.

## Finance and capital markets

### Exchange control

Taiwan has actively deregulated foreign exchange controls since 1987. Direct investments, portfolio investments, and inward and outward remittances related to foreign trade do not need prior approval from the Central Bank. Other than for those purposes, up to USD 5 million and USD 50 million per year can be moved by a resident individual or entity, respectively, without prior approval from the Central Bank although single remittances of more than USD 500,000 and USD 1,000,000, respectively, require supporting documents. For non-residents, the limit is USD 100,000 per instance without prior approval.

### Banking system

The Central Bank of the Republic of China (CBC) is Taiwan's central bank and is officially part of the Executive Yuan. The CBC is an independent body responsible for monetary policy with the goals of maintaining financial stability, banking operations, and currency value. The CBC prints bank notes and mints coins while the Bank of Taiwan, a state-owned commercial bank under the CBC, distributes the notes and coins.

#### Types of banks

- **Commercial banks** offer full banking services. As of 2013, 39 commercial banks account for 78% of deposits taken and 92% of loans extended.
- **Local branches of foreign banks** can act like commercial banks but have more restrictions.
- **Specialized banks** can accept deposits but cannot open checking accounts. They extend loans to specific industries, such as agriculture and import-export.
- **Local credit co-ops** can accept deposits from anyone but can only extend loans within their industries, such as farming and fishing.

Other than those four types of banks, Taiwan also recognizes these non-banking institutions:

- **Postal remittances and savings banks** only offer deposit and remittance services, yet account for 15% of deposits taken. These banks are run by over 1,300 post offices nationwide.
- **Trust and investment companies** manage trust funds and cannot accept deposits, but may extend loans.
- **Insurance companies** offer insurance, although a single firm cannot offer both life and non-life insurance policies.

#### Bank secrecy

Banking secrecy is mandated by Banking Law 48, which is quite strict in requiring banks to not disclose customers' personal and financial information.

#### Central Deposit Insurance Corporation (CDIC)

The CDIC is jointly owned by the Financial Supervisory Commission and the CBC. All deposit-taking financial institutions must take part in the insurance. The CDIC covers up to NTD 3 million per customer per bank.



### Capital market

#### Securities and Futures Bureau (SFB)

The SFB is one of the four bureaus under the Financial Supervisory Commission (FSC). Its four main goals are: supervising securities issuance and trading, facilitating economic development, protecting investors, and developing the futures market.

#### Taiwan Depository and Clearing Corporation (TDCC)

The TDCC was formed in 2005 when the FSC decided to merge and integrate the services of the Taiwan Securities Central Depository Company and the Debt Instrument Depository and Clearing Company. As the name implies, the TDCC is Taiwan's central depository that also provides clearing and settlement services. It also provides custodian and payment processing services.

#### Taiwan Stock Exchange (TWSE)

The TWSE is the largest stock exchange in Taiwan: its listed stocks have a combined market cap of NTD 24.5 billion as of 2013. TWSE uses automated trading, clearing, and settlement systems. To enlist in the TWSE, the company must have at least NTD 600 million in paid-up capital or have a market cap of at least NTD 1.6 billion after listing. Additionally, the company must have a profit of at least NTD 120 million in the previous year and a total profit of NTD 250 million for the last three years. More than 50% of the company's shares must be publicly traded after listing. Smaller companies may enlist in the Greta Securities Market (GTSM), which has much less stringent requirements. Futures are traded in the TAIEX.

### Labor

The *Labor Standards Act* serves as the law governing employment practice and labor relations in Taiwan. The Ministry of Labor is the national implementing government agency.

#### Types of employment

There are two types of labor contract based on duration: fixed term contract for up to 90 days and continuous contract.

All fixed term contracts automatically become continuous contracts after 90 days of work. A series of fixed-term contracts have a combined duration if not more than 30 days have passed between each contract.

#### Working hours and compensation

Employers can only require employees to work 8 hours a day, 84 hours every two weeks, with two paid off days every two weeks. With the agreement of the labor union, an employer may distribute a day's work over the course of the week, with no more than 2 extra hours per week (e.g. 5-day workweek with maximum of 10 hours of work per day). A break of at least thirty minutes must be provided after 4 hours of work.

Overtime rate is 133% for fewer than 2 hours of work, 167% for 2 to 4 hours of work, and 200% for everything else (e.g. holidays). Overtime is limited to 46 hours a month. Work, including overtime, cannot exceed twelve hours a day.

#### Wages and benefits

##### Minimum daily wage

As of the beginning of 2014, the hourly minimum wage is NTD 115 (roughly USD 3.82).

#### Benefits

##### Holiday pay

Each employee is entitled to fourteen days of paid leave during public holidays and is paid twice the regular rate when work is performed on a holiday.

***Service incentive leave***

After the first year of service, each employee is entitled to seven days of paid annual leave. The number goes up to ten after the third year, fourteen after the fifth year, and an additional day for each year of service in excess of ten years.

***Annual bonuses***

An employer may give an annual bonus equal to one month's salary (13th month's salary) to its employees although it is not mandated by law. Employees who have worked for fewer than twelve months may get a prorated bonus.

***Compulsory insurance***

The Labor Insurance Act requires all employers with five or more employees to insure all the employees at the Bureau of Labor Insurance. The insurance covers maternity benefits, injury, disability, death, and retirement. The premium ranges from 7.5 to 13%: 70% is paid by the employer, 20% by the employee, and 10% by the government.

Additionally, under the Labor Pension Act, employers must insure all resident employees for pension coverage. Employers must contribute at least 6% of the employee's salary; employee contribution is optional but can go up to 6%.

***Maternity leave***

Every female employee is entitled to eight weeks of paid maternity leave. In the case of miscarriage, the employee may take four weeks of paid maternity leave. If the employee has worked for at least six months, then the employee receives 100% salary; otherwise, the employee receives 50% salary.

***Retirement benefits***

The accumulated contributions through the Labor Pension Act and the accrued interest and dividends will be paid out at time of pension. Employees with fewer than 15 years of service will receive a lump sum, while those with more than 15 years of service receive monthly payments. Employees can retire at the age of 60.

Previously, those claiming pension cannot also claim severance. However, under the new laws, all pensioners can claim severance of half a month's salary for each year of service, up to a maximum of six months' salary.

**Termination of employment**

Employees must be notified at least 10 to 30 days before termination, depending on duration of employment. Employers must pay severance fees equal to one month's salary for each year of service rendered unless the employee was fired (e.g. due to criminal offense).

**Labor relations****Labor union**

The Labor Union Act allows employees to form a union as long as it has at least thirty members. If a place of employment has its own union, then all employees are required to join that union. The Act forbids employers to interfere with labor union activities. If unable to reach an agreement through collective bargaining, a union can get help from the Council of Labor Affairs.

**Strike**

Employees are lawfully allowed to strike after a majority vote from the labor union. Some sectors, such as defense and education, are not allowed to strike.

### **Employment of foreigners**

Foreign workers are only allowed to work in Taiwan as a teacher, technician, or executive in a foreign-invested project. Application for work permit must be filled by the employer. Work permits are generally valid for three years. Foreigners cannot be self-employed. After receiving the work permit, the foreigner must still apply for a resident visa at the National Immigration Agency.

### **Taxation**

Taxation is administered through the Taxation Administration, which is under the supervision of the Ministry of Finance.

#### **Corporate tax**

Corporations pay taxes based on residency. Resident corporations pay taxes on worldwide income while branches of foreign companies pay taxes on Taiwan-sourced income. All Taiwan-sourced income must have their taxes withheld.

#### **Tax rates**

Businesses earning less than NTD 120,000 per year enjoy a 0% tax rate. All other companies are taxed a flat 17%, although the amount cannot exceed 50% of the profits above NTD 120,000. For instance, if a company makes NTD 130,000 in profit, the 17% tax amounts to NTD 22,100. However, 50% of the excess profit only amounts to NTD 5,000, so the company is only taxed NTD 5,000.

Taiwan also employs an Alternate Minimum Tax. Companies pay the higher of the above tax calculation or the AMT. The AMT is all income minus NTD 500,000, multiplied by 12%.

#### **Taxable profit**

Taxable profit is revenue minus deductible expenses, adjusted for other assessable income. These sources of income are not taxable:

- Sale of land
- Securities and futures transactions
- International transportation (for foreign companies)
- Construction service for manufacturing facilities (for foreign companies)
- Dividends from a Taiwanese company (for domestic companies)

#### **Allowable deductions**

All expenses are deductible if they pertain to revenue generation, are properly documented, and are not categorized as non-deductible expenses.

#### **Loss carryover**

All tax losses may be carried forward for a maximum of ten consecutive years but cannot be carried backwards.

#### **Withholding Tax**

Resident companies are exempt from withholding tax if they can supply the appropriate invoices.

Income source	Resident	Non-resident
Commissions	10%	20%
Rentals	10%	20%
Prizes and awards	10%	20%
Dividends	-	20%
Professional fees	10%	20%
Interest	10%	15 or 20%
Technical service fees	10%	20%
Royalties	10%	0 or 20%

### Individual tax

Individual income tax is only levied on Taiwan-sourced income, regardless of residence, although tax rates may vary.

#### Tax rates

Tax residents (including foreigners staying for more than 183 days in Taiwan) pay according to the following schedule:

Annual income (NTD)	Tax rate
500,000	5%
1,130,000	12%
2,260,000	20%
4,230,000	30%
> 4,230,000	40%

Non-residents who stay for fewer than 90 days are taxed 18% only on income from domestic employers, while non-residents who stay between 90 and 183 days are taxed at a flat 18% from all Taiwan-sourced income.

#### Taxable income

Individual taxpayers are taxed on all income minus deductions and exemptions.

#### Allowable exemptions

- Personal deduction of NTD 82,000
- Deduction of NTD 82,000 for spouse
- Deduction of NTD 82,000 for each dependent below 20 years old, pursuing education, or above 60 years old
- Deduction of NTD 123,000 for each dependent above 70 years old

#### Allowable deductions

- Personal deduction of NTD 76,000, or NTD 152,000 if married
- Rent deduction of up to NTD 120,000
- Insurance premiums
- Mortgage interest
- Uncompensated medical, maternity, or casualty expenses
- Contributions to charities and political parties

### Income tax treaties

Australia	Israel	Senegal
Belgium	Japan	Singapore
Canada	Korea	Slovak Republic
Denmark	Luxembourg	South Africa
European Union	Macau	Swaziland
France	Macedonia	Sweden
Gambia	Malaysia	Switzerland
Germany	Netherlands	Thailand
Hungary	New Zealand	United Kingdom
India	Norway	United States
Indonesia	Paraguay	Vietnam

### Business tax

Business Tax is divided into two: GBRT (Gross Business Receipts Tax) and VAT (Value Added Tax). VAT is levied at a flat rate of 5%, with several items taxed at 0% or exempt. GBRT follows this table:

Business	Rate
Tearooms, cafes, bars	25%
Nightclubs and restaurants with entertainment	15%
Financial institutions	2%
Businesses not required to report transactions	1%
Wholesale agricultural traders or suppliers	0.1%

### Other taxes

#### Excise tax

Products	Tax rate
Vehicles	15-30%
Rubber tires	10-15%
Non-alcoholic beverages	8-15%
Flat-glass	10%
Electric appliances	10-20%

Goods	Unit	Tax (NTD)
Liquefied petroleum gas	Ton	600
Other oil and gas	KL	110-6,830
Cigarettes	1000 sticks	1,590
Other tobacco products	Kg	1,590
Beer	L	26
Other alcoholic beverages	2-proofs, L	2.5 or 7

### Customs duty

Import tax is levied on most imported goods based on the CIF (cost, insurance, freight). Tax rates vary from 0-30%, the average being around 6.5%. Some items such as books and laptops, as well as items with cost less than NTD 3000, are exempt from import duty. All items are also subject to Trade Promotion Tax at 0.4%.

### Stamp duty

NTD 12 is levied on all contracts on the sale of movable properties. Cash receipts, excluding checks, are taxed at 0.4%. All others are taxed at 0.1% of contract value.

### Inheritance tax/gift tax

Real estate worth more than NTD 12 million get taxed 10%. Taiwanese citizens giving gifts of more than NTD 2.2 million are taxed 10%.

### Property taxes

Land is taxed depending on the use: industrial 1%, residential 0.2%, public buildings 0.6%. Other uses of land get taxed anywhere from 1% to 5.5%. Buildings get taxed similarly: commercial 3-5%, residential 1.2-2%, offices and hospitals 1.5-2.5%.

Transfer for property is also taxed at 20-40% of the increase in value, except self-used residential property which is taxed at 10%. For properties where the above tax doesn't apply, the Deed Tax is used: 2-6% of total value.

### Securities and futures transaction tax

Shares are taxed 0.3% and corporate bonds are taxed 0.1% of the transaction price. Futures traded at the TAIFEX are taxed depending on the type of derivative, ranging from 0.0000125% to 0.004% of the transaction price. Options are taxed 0.1% on the premium paid.

## Investment

### Business incentives

Taiwan wants to attract technology and brainpower, so most of the incentives are focused on the high-tech sectors. To push companies towards investing in R&D, Taiwan allows companies to get tax credit equal to 15% of R&D spending, up to 30% tax payable. Certain industries enjoy greater benefits. Pharmaceuticals and biotech companies can deduct 35% of R&D and personnel training expenses over the next five years. To encourage companies to implement foreign technology and intellectual property, royalties paid to foreign companies are exempted from tax.

Companies working on infrastructure or transportation, with government approval, enjoy the 15% R&D tax credit and 5-20% tax credit on capital expenditure in addition to a five-year tax holiday. Imported machinery and equipment are exempt from customs duty.

Taiwan designates some free trade zones, export processing zones, and bonded areas, which typically enjoy tax exemption on the import of materials and machinery, and on exports of goods and services.

### Intellectual property rights

The Taiwan Intellectual Property Office handles the registration and protection of all intellectual property in Taiwan. As a member of WTO, Taiwan follows TRIPS, although it has not signed up for the other major intellectual property agreements.

### Patents

Taiwan recognizes three types of patents with different scopes of protection: new inventions 20 years, utility model improvement 10 years, new design improvement 12 years.

### Trademarks

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

### Copyright

While works that fall under copyright law are immediately protected upon creation, registering the work offers further protection from disputes. Copyrights are protected for 50 years after the author's death. If the author is anonymous or a business entity, then copyright lasts for 50 years after publication. Integrated circuit design are also copyrighted with protection of 10 years.

### Trade secrets

Trade secrets are protected by law, given that the information is not common knowledge, the owner reasonably protects such secrecy, and the secret has real economic value.

### Expropriation and compensation

Taiwan regularly expropriates land for public use. Property owners are compensated at current market value, sometimes with a premium attached. Property of foreign businesses cannot be expropriated if the foreign ownership is above 45%.

### Property ownership

Property ownership is generally freehold, although leasehold is an option which is getting more popular. Foreigners can buy real estate by registering at the Ministry of Economic Affairs, provided that the foreigner's home country has a reciprocal agreement where a Taiwan citizen can purchase real estate in that country.

### International trade agreements

Taiwan has entered free trade agreements with the following countries:

- China
- El Salvador
- Guatemala
- Honduras
- Nicaragua
- New Zealand
- Singapore
- Panama

## 9. Thailand

### Country profile

<b>Official name</b>	Kingdom of Thailand
<b>Capital</b>	Bangkok
<b>Location</b>	Burma and Laos to the north Cambodia to the east
<b>Area</b>	~513,000 km <sup>2</sup>
<b>Climate</b>	Tropical with monsoons
<b>Time zone</b>	UTC +7 no DST
<b>Population</b>	67 million
<b>Currency</b>	Thai Baht THB
<b>Language</b>	Thai English
<b>Religion</b>	95% Buddhism 5% Islam
<b>International</b>	APEC                      ASEAN
<b>Government</b>	Constitutional monarchy under parliamentary democracy

In Thailand, the King is head of state, while the leader of the government is the Prime Minister. Other chief executives also include cabinet members and ministers, together with high-ranking government officials in ministries, bureaus and agencies. As head of state, the King has the authority to exercise sovereign power through the National Assembly, the Council of Ministers, and the Courts. The Prime Minister functions in the name of the King, and is responsible for all royal commands regarding the affairs of the State.

#### Executive

The Prime Minister heads the executive branch and leads the Cabinet or the Council of Ministers of Thailand. The Prime Minister can appoint or remove any Minister. He represents the country in both domestic and international relations.

#### Legislative

The National Assembly of Thailand is bicameral. The Senate, the upper house of the legislative branch, has 150 members: 76 elected by provinces and 74 elected by the Senate Selection Commission. The House of Representatives, the primary house, has 375 members directly elected by constituencies and 125 members elected through proportional representation.

#### Judicial

The judicial branch contains three separate systems: the Constitutional Court settles all matters regarding the constitution; the Administrative Court settles litigations between citizens and bodies of government; and the Court Justice handles everything else.

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	366	387	381
<b>GDP per capita</b> USD	5,390	5,676	5,550
<b>Investments</b> % GDP	29.7%	29.2%	27.0%
<b>Unemployment</b>	0.7%	0.7%	0.7%
<b>Inflation, EoY</b>	3.6%	1.7%	1.7%



### Business entities

The Thailand Civil and Commercial Code enumerates types of business entities that can be wholly owned by foreigners. However, certain business sectors are restricted up to 49% foreign participation. Business entities specifically for foreigners are listed in the Board of Investment Act and the Foreign Business Act.

#### Sole proprietorships

A sole proprietorship is owned by a single person and is restricted to foreigners living in Thailand.

#### Partnerships

##### Unregistered ordinary partnerships

This type of partnership is not registered with the Thai Commercial Registration Office, so it is not considered a legal entity and is taxed like an individual. Every partner has joint unlimited liability for all partnership's debts and obligations from the time of joining and even after leaving the partnership. Partners can contribute money, other assets, or labor to the partnership.

##### Registered ordinary partnerships

Because this type of partnership is registered at the Commercial Registration Office, it is considered a legal entity and gains several forms of protection:

- A partner can make a claim against third parties on behalf of the partnership without having to be named in the transaction which gives rise to the claim
- A partner's liability ceases two years after leaving the partnership
- Creditors must exhaust all assets of the partnership before they can pursue claims against individual partners
- A partner's personal creditors can only make claims on profits from the partner's share and not on assets belonging to the partnership

The partnership must submit annual financial reports and pay corporate income taxes. However, income may also be reported on individual partners' tax returns.

##### Limited partnerships

A limited partnership must have at least one general partner who holds unlimited liability for the partnership's debts and obligations. It can have any number of limited partners, whose liabilities are limited to their own contributions. Limited partners can contribute money or other assets to the partnership but not labor. Only general partners can put their names on the partnership's name.

A limited partnership must be registered with the Thai Commercial Registration Office. It must submit annual financial reports and is taxed as a corporate entity.

#### Limited liability companies

##### Private limited companies

Private limited company is probably the most commonly used business structure in Thailand, particularly for foreign investors. A private company must have at least three shareholders, called "promoters", and is subject to the Civil and Commercial Code.

Major characteristics include:

- No minimum level of capitalization, though it must be enough for the company's objectives.
- The capital must be divided equally into shares with minimum par value of THB 5. The company can issue common and preferred shares, all of which must have voting rights. Preferred shares can have 1/3 or 1/5 the weight of a common share's voting rights, as specified in the Articles of Association.
- All shares must be subscribed to, and at least 25% of shares must be paid up. Each promoter must hold at least one share.
- Must have at least 3 shareholders at all times.

- Managed by the board of directors with at least one director, who can be a foreigner.
- The shareholders' liability is limited to the par value of the authorized capital. However, the liability of directors can be unlimited if stated in the company's articles or memorandum of association.
- The company must register its articles and memorandum of association with the Ministry of Commerce. After share subscription, the company must hold a statutory meeting to approve the articles of incorporation, elect its directors, appoint an auditor, etc.
- The company cannot publicly offer shares in stock markets or issue securities to the public.
- A private limited company can be converted to a public limited company by an extraordinary resolution from the shareholders' meeting following the provisions of the Civil and Commercial Code.

### Public limited companies

A public limited company requires at least 15 shareholders, called "promoters", at least half of which must reside in Thailand. The Public Limited Companies Act governs public companies.

Major characteristics include:

- No minimum level of capitalization, although the company must have minimum registered capital of THB 20 million to enlist in the the Market for Alternative Investment (MAI) and a minimum of THB 300 million to enlist in the Stock Exchange of Thailand (SET).
- The capital must be divided equally into shares with a designated par value.
- All shares must be fully paid up. Promoters must subscribe to at least 5% of total shares and hold the shares for at least two years from the company's incorporation date, unless approval has been given from the shareholders' meeting.
- The board of directors must have at least 5 members; at least half the members must reside in Thailand. The directors must disclose their shareholdings in the company, and will generally have more responsibilities than directors of a private limited company.
- As a limited company, the shareholders' liability is limited to the par value of the authorized capital. However, the liability of directors can be unlimited if it is so stated in the company's articles or memorandum of association.
- The company must register its articles and memorandum of association with the Ministry of Commerce. After share subscription, the company must hold a statutory meeting to approve the articles of incorporation, elect its directors, appoint an auditor, etc.
- A public limited company can offer and trade shares in stock markets and issue securities to the public. The Securities and Exchange Commission (SEC) is responsible for approving public offerings of securities and supervising the Stock Exchange of Thailand (SET).

### Branch offices

A foreign company incorporated outside of Thailand can establish a branch office to carry out business activities subject to the Foreign Business Act. A branch office is considered the same legal entity as its head office in terms of status and liabilities. The branch can engage in any activity within the head office's scope of business objectives.

The approval of the Foreign Business Operation License requires minimum working capital of THB 3 million, which can be brought in by the head office in chunks following this schedule:

Months since beginning of operations	Minimum working capital (THB)
3	750,000
12	1,500,000
24	2,250,000
36	3,000,000

The business license lasts indefinitely until the branch ceases operations.

Branch offices pay Corporate Income Tax, VAT, withholding taxes, and any other taxes at the same rate as any company in Thailand. Only the net profits derived from business in Thailand can get taxed.

### Representative offices

Representative offices can provide information and assistance to their foreign head offices. However, they cannot engage in profit-seeking or profit-making activities, or act on behalf of third persons.

Representative offices must apply for the Foreign Business Operation License. They are exempt from Thai corporate income tax and have relatively cheap registration fees. However, representative offices still need to get a Corporate Tax Identification number. In addition, they must submit income tax returns and audited financial statements to the Revenue Department and the Department of Business Development under the Ministry of Commerce.

In Thailand, representative offices are allowed to:

- Find procurement sources for the head office
- Check and control the quality and quantity of goods purchased or outsourced by the head office
- Give advice about goods sold by the head office to agents or consumers
- Spread information about new products
- Report business trends and movements

Breach of these limitations will subject the parent company's income to taxation.

The head office must transfer working capital to the representative office following the same schedule as the branch office.

### Joint ventures

A joint venture (JV) is when two or more parties enter into an agreement to carry out business or work together. It does not need to be registered with the government since it's a private contract. JV can be unincorporated, where parties maintain their own separate legal status, or incorporated, where parties create a new and distinct legal entity.

In an unincorporated JV, each party must obtain separate licenses and registration requirements to carry out their part of the business venture, e.g. factory licenses, commercial registration, and VAT registration.

Under the Revenue Code, both types of JV are viewed as a single entity and are subject to corporate income tax. If parties under an unincorporated JV wish to remain separate taxpaying entities, they must appropriately structure their contracts and business operations in advance.

### Regional Offices (RO)

A foreign company can set up a regional office in Thailand if:

- The company is a transnational corporation, defined as a juridical person incorporated by foreign law that has entered to carry out business in other countries; and
- The company has at least one branch or affiliate in Asia (which can include Thailand).

The head office must cover all expenses. The regional office cannot generate income from its activities and is not authorized to accept purchase orders, make sales offers, or have business negotiations in Thailand. It only gets taxed on deposit interest on remitted funds from the head office.

Regional offices are permitted to work on general administration, business planning, communication, coordination of operations, and other supporting services to branches and affiliates in the same region on behalf of the head office, including:

- Consulting and management
- Training and personnel management
- Financial management
- Marketing control and sales promotion planning
- Product development
- Research and development

A regional office is considered a foreign entity and is therefore subject to the Foreign Business Act requirements. Because an RO is not allowed to generate any profit, it does not get taxed.

### **Regional Operating Headquarters (ROH)**

An ROH is a juristic company incorporated in Thailand providing services to an ROH's foreign branches or associated enterprises. Even though an ROH is only allowed to provide services similar to an RO, an ROH can generate business income in Thailand.

An ROH can apply for tax incentives, which will be covered in the Investments sections later.

## Accounting and auditing

All companies must use the Thai-GAAP (TFRS), which is very close to IFRS, as set by the Federation of Accounting Professions (FAP). Currently, TFRS is modeled after IFRS in 2012. FAP plans to integrate IFRS 2013 in 2015. Accounts have to be stated in Thai, although they can be accompanied by another language. Every year, juristic entities must lodge an independently audited financial statement to the Revenue Department and Commercial Registrar.

## Finance and capital markets

### Exchange controls

Exchange controls are administered by the Bank of Thailand (BOT), Thailand's central bank, on behalf of the Ministry of Finance. Although certain transactions still require direct BOT approval, the BOT has delegated its authority to approve many commercial transactions to agents. Most foreign exchange transactions can be processed through commercial banks. For all foreign currency matters, currency inflows, must be recorded, and contracts, and legal documents must be documented.

Both residents and non-residents can open foreign currency deposit accounts (FCDs) at commercial banks following certain conditions; if said conditions are not satisfied, BOT approval may be required. A non-resident can also open a non-resident baht account with commercial banks.

### Personal fund transfers

Foreigners in transit can bring any amount of foreign currency into and out of Thailand. While the amount of THB brought into Thailand is unlimited, travelers must have BOT approval to take THB 50,000 out of Thailand per trip, or THB 500,000 per trip to neighboring countries such as Vietnam.

Residents can bring any amount of foreign currency into Thailand. Within seven days from arrival, the foreign currency must be converted into THB or deposited into a foreign currency deposit account in a commercial bank. Commercial banks can sell foreign currency with certain limits and must examine the reason for purchase.

### Trading imports and exports

Importers can make payments by withdrawing from their own foreign currency deposit accounts or buying foreign currency not exceeding the value of imports. Both need to be done through commercial banks with their approval. As such, commercial banks will require appropriate documents including invoices, bills of collection, import permits, etc.

Exports are not subject to foreign exchange restrictions. However, export proceeds greater than a certain limit must be collected within 120 days and deposited in a foreign currency account or converted into THB at a commercial bank within 15 days from date of receipt.

### Investment funds

Thailand allows remittance of funds into Thailand for investment and foreign loans. However, funds must be converted into THB or deposited in a foreign currency deposit account with a commercial bank within 7 days from the date of remittance.

Repatriation of investment funds outside Thailand, including profits, dividends, and loan repayments, can be made freely through commercial banks with the relevant documents. For amounts above USD 20,000, a foreign exchange transaction form must be submitted to the commercial bank for approval, which in certain cases may require BOT approval. Securities, promissory notes, and bills of exchange can be issued outside Thailand without restrictions.

### Promoted businesses

Under the Investment Promotion Act, foreign investments in promoted industries enjoy benefits including guarantees on repatriation of profits, dividends, interest, and imported capital. Also, they can remit foreign currency regarding return of capital and contract payments.

### Banking system

The Financial Institution Act defines commercial banks and the allowable types of business. The law covers commercial banks for small businesses and subsidiaries or branches of foreign commercial banks.

The Ministry of Finance (MOF) and the Bank of Thailand regulate the financial sector. The MOF sets out fiscal, economic, and financial system policies. It also oversees public finances, taxation, treasury, government property, and operations of state enterprises and government monopolies.

The central bank (BOT) sets monetary policies, manages the foreign exchange rate, controls foreign exchange, supervises and examines financial institutions, provides banking facilities to the government and financial institutions, and issues banknotes and other securities.

### Financial institutions

- **Domestic commercial banks** are licensed to undertake traditional commercial banking business by the MOF.
- **Foreign commercial banks** are similar to domestic commercial banks but have additional restrictions, such as in setting up branches.
- **Government banks** have special mandates by the government. Six such banks exist:
  - Bank of Agriculture and Agricultural Cooperatives
  - Government Housing Bank
  - Government Savings Bank
  - Export Import Bank of Thailand
  - Islamic Bank of Thailand
  - Small and Medium Enterprise Development Bank of Thailand
- **International banking facilities** engage in offshore and domestic lending, foreign exchange transactions, debt guarantees, letters of credit, loan syndications, investment feasibility studies, merger and acquisition advice, and underwriting activities.
- **Securities companies** undertake securities brokerage, dealing, underwriting, investment advisory, and fund management.

## Financial markets

Thailand has 4 main financial markets:

- The Stock Exchange of Thailand (SET)
- The Market for Alternative Investment (MAI)
- The Bond Electronic Exchange (BEX)
- The Thai Futures Exchange (TFEX)

The Securities Exchange Commission (SEC), an independent state agency, directly regulates the primary markets, such as SET and MAI. Secondary markets are regulated by the exchanges themselves.

Post-trade services such as securities depository services, clearing and settlement, fund registration, and broker back-office operations services are provided by the Thailand Securities Depository Co. Ltd. (TSD), which is a subsidiary of SET.



### Stock Exchange of Thailand

SET was established as a juridical entity under the Securities Exchange of Thailand Act, B.E. 2517 (1974) and began trading in 1975. The SEC supervises it under the Securities and Exchange Act, B.E. 2535 (1992). The SET offers equities, ETFs, depository receipts and bonds, and unit trusts.

SET's roles are:

- To be a market or center for the trading of listed securities, promoter of financial planning, and provider of services connected to such activities without distributing any profits to members.
- To encourage the general public to become shareholders in a variety of local industries.
- To list securities; supervise listed companies, information disclosure, trading, market surveillance, and members; and spread information to educate investors.

As of 2012, there are 477 listed companies with total market capitalization of THB 11.8 trillion.

### Market for Alternative Investment

MAI was established in 1992 by the SET under the Securities and Exchange Act. MAI operates independently under the supervision of the SET's Board of Directors. Certain functions, such as the trading system, clearing and settlement procedures, trading surveillance and supervision, as well as disclosure requirements, are based entirely on existing SET operations. Small- and medium-size enterprises that are too small to enlist in the SET can enlist in the MAI instead. MAI only deals with equities, mainly on businesses with registered capital between THB 20 - 300 million.

As of March 14, 2013, the MAI has 84 listed companies with total market value of THB 193 billion.

### Bond Electronic Exchange

BEX was launched by the Stock Exchange of Thailand in November 2003 to support the development of Thailand's secondary bond market and allow bond activities for smaller investors. Bonds traded include government, corporate, and Asian bonds.

### Thai Futures Exchange

TFEX was established in May 2004 as a subsidiary of SET. It offers SET50 index futures, stock options, stock futures, and gold futures. TFEX is governed by the Derivatives Act B.E. 2546 (2003) and is supervised by the SEC.

The Thai derivatives market has a reliable trading infrastructure and TFEX ensures a fair, orderly and transparent market. TFEX offers a cost-efficient and comprehensive range of services including order entry facilities, a matching system, and market dissemination system through a reliable electronic trading platform.

### Labor

Thai labor laws allow significant freedom regarding employment. Statutes have more weight than collective agreements regarding working conditions.

The Labor Protection Act specifies employment conditions, including maintenance of employment records, working hours and leave, termination of employment, severance, and the employee welfare fund. The Act applies to all businesses and employees, except household staff who are not under the Act's definition of employee. The minimum age for employment is 15 years old.

Other laws about labor and employment include:

- The Working Alien Act
- Employment and Job Seeker Protection Act
- Skill Development Promotion Act
- Labor Relations Act
- Labor Protection Act
- State Enterprise Labor Relations Act
- Social Security Act
- Workmen's Compensation Act

### Employment records

An employer with ten or more regular employees must provide written work rules and regulations including working days, wages and remuneration, termination, and severance. A copy must be submitted to the Labor Department.

In addition, the employer must keep an employee register with records of employees and documents regarding payment of wages, overtime pay, holiday pay, and holiday overtime pay for at least two years after termination of employment or the last payment to each worker.

### Minimum wage

Minimum wage rates apply to all businesses and vary according to location. As of June 2008, minimum wage rates range between THB 151 – 206 per day. Bangkok and the surrounding provinces have the highest rates.

### Employee welfare fund

Companies with at least ten employees with no provident fund must establish an Employee Welfare Fund to compensate employees who resign, are laid off, or die in service. Both employers and employees must contribute to this fund.

### Working hours

The Labor Protection Act B.E. 2541 (1998) limits work hours to 8 hours a day or as agreed between employer and employee, but not exceeding 48 hours a week for non-hazardous work; or 7 hours a day and 42 hours a week for hazardous work. Employees are entitled to a one-hour rest period after five consecutive hours of work.

Employers must pay overtime for work in excess of the above limit, with rates ranging between 1-3 times actual wages. Maximum overtime is 36 hours per week.

### Holidays and leaves

- Minimum 1 day weekly holiday, with a maximum of 6 days between weekly holidays
- Minimum of 13 traditional holidays per year
- Minimum of 6 days of annual leave after working for one year
- Employees have a choice in working overtime or on holidays
- Employees can take as many days of sick leave as necessary. However, if an employee takes three months of sick leave, the employer is required to pay wages for only one month.
- Maternity leave of 90 days including holidays, of which 45 days shall be paid leave
- Paid leave for military service, necessary business, training, and sterilization

Temporary workers are entitled to the same holidays and leave.

### Workers compensation

The Compensation Act states that the employer must provide compensation for employees who are injured, ill, or die during or as a result from work:

- Compensation amount,
- Medical expenses,
- Work rehabilitation expenses, and
- Funeral expenses.

### Termination of employment

If an employment contract does not specify the duration of employment, either the employer or employee can give notice of termination which will take effect in the next payment period.

If the employment contract specifies the duration of employment, then employment shall be terminated upon contract expiry without notice.

While employees who are terminated without valid cause as stipulated by law are entitled to receive severance pay, employees can be dismissed without notice and severance pay if the employee:

- intentionally commits a crime or act of dishonesty against the employer;
- intentionally or negligently causes the employer to suffer damage;
- violates the employer's work rules, regulations or lawful orders and a written warning has been given (not required for serious offences);
- has been absent for three consecutive working days without a reasonable excuse; or
- is judged to serve a prison sentence (except due to negligence or petty offence).

Employees are entitled to severance pay equal to the wage of x number of days, depending on the duration of employment.



Employment Duration	Severance (days)
120 days	0
1 year	30
3 years	90
6 years	180
10 years	240
> 10 years	300

Temporary workers are entitled to the same severance pay.

### Social security

The Social Security Act requires employers to register each employee for social security insurance at the Zone Office of Social Security, under the Social Security Office.

The Social Security Act also requires employers to withhold social security contributions from each employee's monthly salary. The employer must match the employee contribution, and remit both contributions to the Social Security Office by the 15th day of the following month.

This insurance fund provides compensation to employees in case of injury, illness, disability, or death that is unrelated to work. Compensation is also provided for child delivery, child welfare, old age pensions, and unemployment.

### Employment of foreign workers

#### Working Aliens Act

The Working Aliens Act (also referred to as The Aliens Employment Act) is administered by the Thai Labor and Social Welfare Department under the Labor Department. The Act controls the employment of foreign workers, the issuance of work permits to foreigners, and occupation restrictions.

To work in Thailand, virtually all non-Thai nationals must obtain a work permit issued by the Ministry of Labor, including foreign volunteers who may not receive remuneration for services. Foreigners working under special international conventions, such as diplomatic corps, consular missions, and work for international organizations such as the World Bank, do not have to obtain a work permit.

Work permits issued to foreigners are restricted to certain occupations, employers, and locality for which the work permit was applied; any changes in these details will require a new work permit. Employers must notify the government entity that issued the original work permit within 15 days after the date of employment, transfer to a new locality, or separation of a foreign employee.

Foreigners working in companies promoted by the Board of Investment or who are in Thailand under special laws can be issued work permits for the duration of their work as prescribed by said laws. Likewise, foreigners assigned to work in representative or regional offices can obtain work permits from the Commercial Registrar. Foreigners who enter Thailand to work with said promoted firms or under special laws can start work immediately, but should apply for a work permit within 30 days from date of entry.

Three categories of foreigners may apply for a work permit:

- Foreigners who reside in Thailand or are allowed temporary stay in Thailand, but not as a tourists or transit travelers.
- Foreigners permitted to work in Thailand under investment promotion laws or other laws.
- Foreigners who have been deported but are permitted to work in certain locations; foreigners who illegally entered Thailand; foreigners born in Thailand but who were not granted Thai nationality or have been denaturalized; or foreigners awaiting deportation can work in 27 occupations as stipulated in the Ministerial Announcement.

### Immigration, visas, and work permits

While the majority of foreigners are granted visa exemptions for short visits of up to 1 month, foreigners who wish to work must apply for a non-immigrant visa so they can apply for a work permit.

In Thailand, a visa is a permit to enter the country and the validity period only indicates the time limit for entering the country, not the length of stay. Foreigners from most countries do not need visas for short visits. Foreigners who want to stay longer or work in Thailand should obtain a non-immigrant visa, which can be used to apply for a work permit. The foreigner's accompanying spouse and dependents must also obtain non-immigrant visas.

Upon arrival, a Permit-to-Stay is granted, which sets out the length of time a foreigner may stay in Thailand, depending on the type of visa. It can be extended based on the reasons and type of visa. For example, a Permit-to-Stay can be extended up to three months with a tourist visa or up to one year with a non-immigrant visa.

Work permits are granted by the Department of Employment, Ministry of Labor, and Social Welfare following the restrictions set out by the Working Alien Act. However, for government contracts, BOI-promoted companies, and other investment promotion, there is usually no difficulty.

A Permit-to-Stay is automatically cancelled upon departure unless the foreigner has obtained a Re-entry Permit beforehand. Both single-entry and multiple-entry permits can be obtained from the Immigration Bureau in Bangkok. Re-entry Permits allow foreigners to re-enter Thailand within a specific time period. If the Re-entry Permit has expired, the foreigner must obtain a new visa from a Thai embassy or consulate before re-entry.

## Taxation

In Thailand, taxes are collected by three main government agencies under the Ministry of Finance:

- The Revenue Department
- The Excise Department
- The Customs Department

Principal taxes can be classified into Direct Taxes, directly collected by the government from taxpayers such as the income taxes, and Indirect Taxes, collected by intermediaries such as Value Added Tax, specific business tax, excise tax, customs duty, and stamp duty.

Generally, income tax in Thailand is based on self-assessment rule where tax declarations and payments are assumed to be appropriate. The Revenue Department can examine taxes and taxpayers' tax records.

The Revenue Code is the principal tax law which imposes corporate and personal income taxes, VAT, specific business tax, and stamp duty. Specific revenue-collecting statutes impose taxes such as excise tax, customs duties, petroleum income tax, and property and land taxes.

### Corporate income tax

Corporate income tax is a direct tax levied on the following Thai and foreign business entities (hereby referred to as “companies”) deemed to be conducting business in Thailand, or deriving certain types of income in or from Thailand:

- Private and public limited companies
- Registered ordinary and limited partnerships
- Joint ventures
- Foundations and associations.

For foreign companies, the Revenue Code defines the term “conducting business in Thailand” as:

“If a juristic company or partnership incorporated under a foreign law has an employee, a representative, or a go-between in Thailand, for carrying on its business, and thereby derives income or gains in Thailand, such a juristic company or partnership shall be deemed to be carrying on business in Thailand.”

A foreign company that employs an independent sales agent is not “conducting business in Thailand”. The agent is not considered an “employee, representative, or a go-between” if they are truly independent from the principal.

In Thailand, income payers are required to withhold portions of income for tax payments (withholding tax), which must be filed and paid to relevant government agencies within prescribed timeframes. Withheld taxes are credited to taxpayers (i.e. receivers of income) for use in tax filings.

### Taxable entities

Domestic companies are taxed on worldwide profits and are required to withhold taxes at source for certain transactions. Foreign companies are subject to Thai taxation if they are deemed to be conducting business in Thailand or derive certain types of income in or from Thailand.

Foreign companies are taxed on profits from conducting business in Thailand, where some taxes are withheld at source for certain transactions. However, foreign companies in international transport are taxed on gross receipts.

Foreign companies that do not conduct business in Thailand but receive certain forms of income must pay taxes on gross income, where usually 10-15% is withheld at source. These types of income include service fees, interest, dividends, rent, and professional fees.

### Taxable income

Net profits are assessed on an accrual basis within a 12-month accounting period of the company's choosing. Net profits equal to total revenues minus total expenses according to the Revenue Code.

For domestic companies, portions of dividend income received from other Thai companies may be excluded from taxable income. Capital gains are treated as ordinary taxable income.

### Deductible expenses

Deductible expenses include ordinary and necessary expenses, net losses carried forward from the previous five accounting periods, tax and interest, bad debts, and depreciation.

- Bad debts may be deductible after complying with certain tax rules
- Expenses determined based on net profit are not deductible (e.g. bonus based on net profit)
- Provisions or reserves are non-deductible
- Donations and contributions to public charities are subject to percentage limitation

- Entertainment expenses are subject to maximum limits
- Tax costs such as corporate income tax, VAT penalties, and surcharges may not be deductible
- Depreciation of assets is limited to maximum rates based on acquisition cost and the life of the asset, if applicable:

Asset	Rate
Building	5%
Temporary building	100%
Natural resources	5%
Renewable lease	10%
Nonrenewable lease	Linear
Unlimited-period rights	10%
Limited-period rights	Linear
Others	20%

#### Tax rates

The usual tax rate is 20%, but other rates may apply:

Taxpayer	Tax base	Rate
SME with paid-up capital < THB 5 million and Income < THB 30 million per year	Net profit < THB 300,000	-
	THB 300,000 – 1,000,000	15%
	> THB 1,000,000	20%
Non-SME	Net profit	20%
Company newly listed in MAI	Net profit, first 5 years	20%
	After 5 years	30%
Bank profiting from international banking facilities	Net profit	10%
Company in international transportation	Gross receipt	3%
Foreign company not doing business in Thailand, on dividends	Gross receipt	10%
	On other Thailand-sourced income	Gross receipt
Foreign company disposing profits out of Thailand	Amount disposed	10%
Profitable association or foundation	Gross receipt	2% or 10%

#### Dividends

Dividends received by domestic companies listed in the SET are tax-exempt.

Dividends received by domestic companies from another domestic company are tax-exempt if the recipient holds at least 25% of voting shares for the three months before and after the dividend distribution, without cross-holding. Otherwise, 50% of the dividend income will be taxed as ordinary corporate income.

Dividends received by a domestic company from a foreign company are tax-exempt if:

- The foreign company has a minimum tax rate of 15%;
- The Thai company has a 25% or more equity interest in the foreign company; and
- The Thai company maintains its shareholding in the foreign company for 6 months.

### Withholding taxes

Income source	Company		Individual	
	Domestic	Foreign	Resident	Non-resident
Interest	1%*	15%	15%	15%
Dividends	10% or 0%	10%	10%	10%
Rent	5%	5%		
Royalties	3%	15%		15%
Technical fees	3%	15%		15%
Advertising fees	2%		2%	
Prizes	5%		5%	
Service and Professional Fees	3%	5%**	3%	

\*Only for non-financial institutions

\*\*3% for those with a permanent branch in Thailand

Interest and royalties paid to associations or foundations are subject to 10% withholding rate instead.

The taxes in the table above must be deducted at source by the income payer, who is required to file tax returns and pay the tax withheld to the district revenue offices within seven days of the month after income payment. Withholding taxes will be credited to the taxpayer's tax liability. Non-residents may get a lower rate with applicable tax treaties.

For foreign companies not conducting business in Thailand, applicable income taxes shall be withheld at source by the income payer residing in Thailand.

Government agencies must withhold tax at the rate of 1% on all types of income paid to a domestic company.

### Individual tax

The Personal Income Tax is a direct tax levied on income from employment or conducting business in Thailand received by:

- an individual
- an ordinary partnership
- a non-juristic body of a person
- an undivided estate

A **resident taxpayer** is any person residing in Thailand for 180 days or more in any calendar year. Income from employment or business carried in Thailand and income from foreign sources brought into Thailand are taxed.

A **non-resident taxpayer** is any person other than a resident taxpayer. Only income from sources in Thailand gets taxed.

Personal income tax exemptions are granted to persons following the terms of international and bilateral agreements such as UN officers, diplomats, and certain visiting experts.

The tax year is the calendar year ending in 31 December. Tax returns, whether paper or electronic, and payments must be filed by 31 March of the following year.

### Tax rates

Taxpayers pay the greater of 0.5% of assessable income (if greater than THB 60,000) or the following tax calculation, using marginal tax rates:

Taxable Income (THB)	Marginal Rate
150,000	-
300,000	5%
500,000	10%
750,000	15%
1,000,000	20%
2,000,000	25%
4,000,000	30%
>4,000,000	35%

### Taxable income

Taxable income equals the assessable income less deductible expenses less allowances. Assessable income refers to income that is subject to personal income tax. Assessable income includes

- employment income
- income from professional and service fees
- income from intellectual property
- interest income, dividends, and capital gains on securities
- rental income
- income from liberal professions
- income derived by contractors
- other income from business, commerce, agriculture, industry, or transport

For employees, assessable income includes:

- personal income tax paid and absorbed by the employer
- living allowances
- monetary value of rent-free accommodation
- school fees paid by employer
- monetary value of other benefits provided by the employer

Not included in assessable income are business travel expenses, work-related moving expenses, insurance benefits, inheritances, and scholarships.

### Deductible expenses and allowances

Standard expense deductions include:

- 40% of employment income, but not exceeding THB 60,000
- 40% of copyright income, but not exceeding THB 60,000
- 10-30% of rental income
- 30% of income from “liberal” professions
- 60% of income from medical professions
- Actual expense or 70% for certain contract work
- Actual expense or 65-85% for other business

Personal tax allowances include:

- THB 30,000 per taxpayer
- THB 30,000 for spouse
- THB 15,000 per child
- THB 2,000 educational allowance per child
- THB 30,000 per parent of taxpayer and taxpayer’s spouse, if the parent is over 60 years old and earned less than THB 30,000 during the tax year

And limited allowances for:

- life insurance premiums paid by taxpayer and spouse, up to THB 100,000 each
- qualified provident fund payments, capped at 15% wage or THB 500,000, whichever is smaller
- interest payments on home mortgages, actual basis, up to THB 100,000
- long-term equity fund and retirement mutual fund purchases, actual basis, capped at 5% wage or THB 500,000, whichever is smaller
- social insurance contributions, actual basis
- charitable contributions, actual basis, capped at 10% of income after all the other deductions and allowances

For non-residents, personal tax allowances regarding family members are applicable only if family members reside in Thailand.

Dividend income is subject to personal income tax. For Thai tax residents, taxpayers may choose between paying a fixed 10% tax and not include dividend income in personal income tax calculations, or incorporate dividends into their assessable income and claim dividend tax credits equal to 3/7 of dividends received.



### Double tax treaties

Thailand has double tax treaties with 55 countries to eliminate double taxation:

Armenia	Mauritius
Australia	Nepal
Austria	Netherlands
Bahrain	New Zealand
Bangladesh	Norway
Belgium	Oman
Bulgaria	Pakistan
Canada	Philippines
Chile	Poland
China	Russia
Cyprus	Romania
Czech Republic	Seychelles
Denmark	Singapore
Finland	Slovenia
France	South Africa
Germany	Spain
Hong Kong	Sri Lanka
Hungary	Sweden
India	Switzerland
Indonesia	Taiwan
Israel	Turkey
Italy	Ukraine
Japan	UAE
South Korea	United Kingdom
Kuwait	USA
Laos	Uzbekistan
Luxembourg	Vietnam
Malaysia	

### Value added tax

Value added tax is an indirect tax imposed by the Revenue Code on the value added to goods and services at each stage of production and distribution.

A company must register for VAT in three cases:

- Activities of the company are subject to VAT (e.g. export of goods)
- Turnover of the company is more than THB 1.8 million per year. A company needs to apply for a VAT number within 30 days after the company reaches this amount of sales.
- The company will employ a foreigner and must apply for a work permit.



The standard VAT rate is 7%. Some businesses can enjoy 0% VAT rate on:

- export of goods
- services rendered in Thailand and utilized outside Thailand in accordance with rule, procedure, and condition prescribed by the Director-General
- aircraft or marine vessels in international transportation
- supply of goods and services to government agencies or state-owned enterprises under a foreign-aid program
- supply of goods and services to the United Nations and its agencies as well as embassies, consulate-generals, and consulates
- supply of goods and services between bonded warehouses or between enterprises located in Export Processing Zones

Many are fully exempt from VAT:

- Small entrepreneurs whose annual turnover is less than THB 1.8 million
- Sales and import of unprocessed agricultural products and related goods such as fertilizers, animal feeds, pesticides, etc.
- Sales and import of newspapers, magazines, and textbooks
- Certain basic services related to:
  - transportation by land
  - healthcare provided by government and private hospitals as well as clinics
  - education provided by recognized educational institutions
  - medicine, audit, law, and similar regulated professions
  - culture such as amateur sports, libraries, museums, and zoos
  - research and technical services
  - public entertainment
  - religion and charity
  - government agencies and local authorities
- Rent of immovable properties
- Goods exempted from import duties under the Industrial Estate law imported into an Export Processing Zones (EPZs) and under Chapter 4 of the Customs Tariff Act
- Imported goods that are kept under the supervision of the Customs Department which will be re-exported and be entitled to a refund for import duties

### Other taxes

#### Specific business tax

Certain businesses are not subject to VAT but are subject to Specific Business Tax (SBT), which is an indirect tax imposed by sellers on buyers. The tax is imposed on the gross revenue and the tax rate depends on the nature of business.

Business	Tax rate
Banking , finance, and similar business	3.0%
Life insurance	2.5%
Pawn brokerage	2.5%
Real estate	3.0%
Factoring	3.0%

Businesses subject to SBT must also pay Municipal Tax of 10% on the SBT. For example, if the SBT is 3%, then SBT + Municipal Tax = 3.3%.

Activities of certain entities are exempt from SBT, most notably, the sale of securities listed on the Stock Exchange of Thailand (SET). Several banks and financial corporations that are governmental institutions or state enterprises are also exempted.

SBT is applied on the monthly gross receipts. The tax return must be filed monthly within 15 days of the subsequent month.

#### Stamp duty

Stamp duty is an indirect tax on certain documents, not on transactions or persons. Examples include lease agreements, loan documents, and Memorandums of Association of limited companies. The holders, executors, or beneficiaries of these documents pay the tax. Rates depend on the type of document.

#### Petroleum income tax

The Petroleum Income Tax Act imposes a direct tax on income derived by any company that owns an interest in a petroleum concession granted by the government or a company that buys oil for export from a concession holder.

A petroleum concession, which is obtained from the Department of Mineral Resources, is required only for exploration and production of petroleum products. Downstream industries such as oil refining are not covered under this Act.

Petroleum Income Tax is 35% or 50% depending on the status of the petroleum concession holder, and 23.08% on disposal of profits such as through dividend payments.

#### Customs duty

According to the Customs Tariff Decree B.E. 2530 (1988), customs duties are levied on goods on an ad valorem or specific-rate basis in addition to VAT. The majority of imported goods are taxed between 5% and 60% based on the CIF value. Goods imported for re-export are exempt.

#### Excise tax

Excise tax is an indirect tax imposed by the Excise Tax Act on certain commodities regardless of where they are produced, such as:

- petroleum and petroleum products
- non-alcoholic beverages
- electrical appliances
- lead crystal products
- motor vehicles, motorcycles, yachts
- perfume
- certain services

Excise tax is imposed on the manufacturer or importer; tax liability is incurred when the goods are imported or leave the factory or bonded warehouse.

Rates range from less than 1% to 50%.

#### Property and land taxes

The House and Land Tax Act taxes all properties, except owner-occupied residences, at a flat 12.5% of annual rental value (both land and building).

The Local Development Tax Act imposes a typically low tax rate on land based on the appraised land value (excluding the building structure) as determined by local authorities. Land used by government and public organizations, and land subject to the House and Land Tax Act are exempted from this tax.

### Investment

#### Land and real estate ownership

The Land Code prohibits foreigners (and, by extension, foreign companies) from outright land ownership except for a company that is majorly owned by Thai nationals or is granted business promotion privileges (e.g. BOI incentives). Foreigners can instead rent the required land, which can have a term of up to 50 years if used for industrial or commercial purposes.

However, the Condominium Act allows foreigners to own up to 49% of the total area of the condominium units in a condominium project.

### Foreign Business Act of 1999

#### List 1 – Businesses not permitted for foreigners

- Newspaper, radio, television, and radio-broadcasting station
- Farming, cultivation, or horticulture
- Animal husbandry
- Forestry and timber conversion from natural forests
- Fisheries, especially fishing in Thai territorial waters and in specific economic areas
- Extracting Thai herbs
- Trade and auction of Thai antiques or objects of historical value
- Making or casting Buddha images and alms bowls
- Trading in land

#### List 2 – Businesses allowed for foreigners only with prior Cabinet approval

Businesses concerning national security or safety in the form of manufacturing, distributing, repairing or maintaining:

- Firearms, ammunition, gunpowder, and explosive materials
- Components of firearms, ammunition, and explosive materials
- Armaments, ships, aircraft, or military vehicles
- War equipment and any of its parts
- Domestic land, water, or air transportation

Businesses that could have an adverse effect on arts and culture, customs, and native handicrafts:

- Trading of antiques or artifacts that are Thai works of art or Thai handicrafts
- Wood carving
- Silkworm rearing, manufacture of Thai silk, Thai silk weaving, or Thai silk printing
- Manufacturing of Thai musical instruments
- Manufacturing of gold-, silver-, niello-, bronze-, or lacquer-ware
- Making bowls or earthenware that are of Thai art and culture

Businesses that could have an adverse effect on natural resources or the environment:

- Manufacturing of sugar from cane
- Salt farming, including rock salt farming
- Mining of rock salt
- Mining, including stone quarrying or crushing
- Timber processing for making furniture and utilities.

### List 3 – Businesses allowed for foreigners with a Foreign Business License

- Rice milling and flour production
- Fishery and aquaculture
- Forestry from re-planting
- Production of plywood, veneer, chipboard, or hardboard
- Production of lime
- Accountancy
- Legal services
- Architecture
- Engineering
- Construction, with some exceptions
- Agency or brokerage, with some exceptions
- Auctioneering, with some exceptions
- Domestic trade in local agricultural products
- Retail, with capital of less than THB 100 million in total or less than THB 20 million per store
- Wholesale, with capital of less than THB 100 million per store
- Advertising
- Hotel operation, excluding hotel management
- Tourism
- Sale of food and beverages
- Planting and agriculture
- Other services, except those prescribed in the ministerial regulations.

In addition, there is a catch-all promotional category named “Trade and Investment Support Office” (TISO) which permits a variety of services, including monitoring/servicing affiliates, consultancy services, engineering and technical services, and activities related to machinery, engines, tools and equipment such as training installation, maintenance and repairs, calibration, and software design and development. Sales and administration expenses must amount at least 10 million baht per year. TISO does not qualify for tax benefits.

### Investment Promotion Act

The Office of the Board of Investment (BOI) is a government agency under the Ministry of Industry tasked with promoting investment in Thailand under the Investment Promotion Act B.E 2520 and Amendment Acts No.2 B.E 2534 and No.3 B.E 2544.

Through BOI, the government of Thailand offers a variety of tax and non-tax incentives, support services, and import duty exemptions granted to priority or promoted activities and entities.

#### Tax incentives

- Exemption/reduction of import duties on machinery
- Reduction of import duties for raw or essential materials
- Exemption of dividend and income tax
- A 50 percent income tax reduction
- Double deductions from the costs of transportation, electricity, and water supply
- Additional 25 percent deduction of installation or construction costs of facilities
- Exemption of import duty on raw or essential materials for use in production of exports

### Non-Tax incentives

- Permit for foreigners to enter Thailand to study investment opportunities
- Permit to bring skilled workers and experts into Thailand
- Permit to own land
- Permit to take out or remit money abroad in foreign currency

### Guarantees

The Thai government will not:

- Nationalize the activity
- Compete in the activity
- Monopolize similar products
- Impose price controls
- Prevent export activities
- Import similar products with duty exemption

### Protection

The Thai government will:

- Charge extra import fees for similar products up to 50 percent of CIF for at most one year
- Ban the import of similar products if the above is deemed insufficient
- Render any appropriate assistance if significant obstacles prevent the activity

### Industrial Estate Authority of Thailand Act

The Industrial Estate Authority of Thailand (IEAT), under the Ministry of Industry, was established as a state enterprise under the Industrial Estate Authority of Thailand Act. The IEAT organizes and creates industrial estates, grouping together industrial facilities in a synergistic manner. It also works to decentralize industrial activity away from the capital to the outlying provinces.

The IEAT currently operates 12 industrial estates and co-manages 26 of Thailand's 38 industrial estates. Industrial estates are divided into two zones without export conditions, in line with WTO obligations.

### General industrial estates

The BOI encourages businesses to locate in industrial estates so they can qualify for special privileges. Businesses can also benefit from the estate's industrial infrastructure and proximity to relevant industries.

IEAT provides industrial services such as transport, warehouses, training centers, and clinics. They also grant permission to own land required for operations.

Industrial businesses in government-sponsored estates are also granted incentives regardless of eligibility for BOI promotions.

### Export processing zones

The IEAT can grant tax privileges to businesses in an approved export processing zone, such as exporting products without any restrictions and bringing merchandise or raw materials into an IEAT Free Zone.

Tax privileges are similar to those granted by the BOI, including exemptions from customs duty and VAT on required production supplies such as machinery, equipment, and raw materials.

### Non-tax incentives

The IEAT grants investors permission:

- To own land for carrying out industrial activities
- For foreign technicians, experts, and their spouse or dependents to stay in Thailand
- To bring foreign technicians and experts to work in industrial activities
- To take or remit foreign currency abroad

### Tax incentives

Tax incentives from the IEAT include

- Tax exemption on the import of machinery and raw materials
- Tax exemption or refund on imports for the production of exports
- Tax exemption on exported goods

### Petroleum Act

According to the Petroleum Act, petroleum belongs to the state and nobody can explore or produce petroleum except through concession. The company must have adequate assets, machinery, and specialists to explore, produce, sell, and dispose of petroleum. In return, the concessionaire pays the government:

- Royalties amounting 5-15% of production
- Petroleum income tax of 50%
- Special remunerations

The Petroleum Act gives concessionaires similar privileges as those granted by the BOI:

- Assurances against nationalization
- Permission to own land
- Bringing in foreign skilled workers and experts
- Remittance of foreign currency abroad
- Tax exemptions

### Regional Office Headquarters (ROH)

Details about establishment and activity restrictions can be found under the Business Entities section. ROHs get special tax incentives:

- Reduced corporate tax rate of 10% for service income, royalties, and interest
- Tax exemption on provision of qualifying services to associated companies or branches
- Tax exemption on dividend received from associated companies
- Tax exemption on dividend paid to foreign companies with no business in Thailand
- For buildings to carry out operations, accelerated depreciation rate of 25% as initial allowance. The remaining balance can be depreciated over 20 years
- Expatriates working in ROHs can choose a withholding tax of 15% instead of the standard individual tax rates

To qualify for the tax benefits, the ROH must fulfill the following conditions:

- Paid-up capital of at least THB 10 million at the end of each accounting period
- Service to associated companies or branches in at least: one other country for the first two years; two other countries for the next two years; and three other countries thereafter
- Total operating costs paid to Thai entities of at least THB 15 million per year
- Total investment spending of at least THB 30 million annually

- Foreign associates must have executive or senior manager and employees working in the ROH
- Maintain at least 75% of skilled staff at the end of the third year
- Notification to the Revenue Department about its status and its intention to apply privileges.

If the ROH meets all of the above criteria for all accounting periods and have accumulated business spending of at least THB 150 million by the end of the tenth year, it may apply for an additional five years of this incentive.

### Intellectual property rights

#### Copyright

Under the Copyright Act BE 2521 (1978), copyright is automatically protected for 50 years after the death of an individual author or the date of publication for an anonymous or corporate author. Copyright can be registered at the Department of Intellectual Property (DIP), although not required. Disputes are first heard in the Intellectual Property and International Trade Court.

Works of applied art, such as drawings, paintings, sculpture, prints, architecture, photography, drafts, and models for utility or functional use, are only protected for 25 years since date of publication

#### Trademark

Under the Trademark Act B.E.2534 trademark rights are acquired only through proper registration at the Trademark Office of the DIP. Trademarks are protected for 10 years and can be renewed indefinitely.

The owner of the trademark can:

- use or permit others to use the trademark
- prohibit others from using the trademark
- assign and/or license the trademark

Using the mark means:

- Affixing the protected mark to goods, packages, means of business, services, and communication in business
- Circulating, offering, advertising, or storing for sale of goods bearing the protected mark
- Importing goods or services bearing the protected mark

#### Patent

Thailand recognizes three types of patents:

- An invention patent which provides a 20-year term of protection from the filing date
- A design patent which provides a 10-year term of protection from the filing date
- A petty patent which provides a 6-year term of protection, plus two allowable extensions of 2 years each

The Thai Patent Act defines "invention" as any discovery or invention which results in a new product or process or any improvement of a product or process. The Patent Act further defines "process" as any method, art, or process of producing a product, maintaining or improving its quality, or adapting it to a better condition, including the application of such process.

The following are not eligible for patent protection:

- Microorganisms that naturally exist, animals and/or plants, or extracts from animals or plants, and their components
- Scientific and mathematical rules and theories
- Computer programs
- Methods for diagnosing, treating, or curing human or animal diseases
- Inventions which are contrary to public order or morality, public health, or welfare

#### Other intellectual property laws

- The Plant Varieties Protection Act
- The Protection and Promotion of Traditional Thai Medicine Wisdom Act
- The Protection of Layout-Designs of Integrated Circuits Act
- The Trade Secret Act
- The Geographical Indications Act
- The Optical Disc Production Act
- The Film and Video Act



#### International trade agreements

Bilateral and economic partnership agreements entered by Thailand are with the following countries and blocs:

- Australia
- Chile
- India
- New Zealand
- Peru



# 10. Vietnam

## Country profile

<b>Official name</b>	The Socialist Republic of Vietnam	
<b>Capital</b>	Hanoi	
<b>Location</b>	Eastern Indochinese peninsula Borders China, Laos, and Cambodia	
<b>Area</b>	331,210 km <sup>2</sup>	
<b>Climate</b>	Wet and dry seasons Varied according to latitude	
<b>Time zone</b>	UTC +7 no DST	
<b>Population</b>	~89.7 million	
<b>Currency</b>	Vietnamese Dong VND	
<b>Language</b>	Vietnamese English French	
<b>Religion</b>	81 % Nonreligious 8% Buddhism 7% Christianity	
<b>International</b>	EAS G-77 ADB World Bank WTO	APEC ASEAN Colombo Plan Next Eleven ICO
<b>Government</b>	Socialist republic	

Vietnam has a single ruling party, the Communist Party of Vietnam. Most of the power is concentrated in the Legislative branch.

### Executive

The president of Vietnam is the head of state, commander-in-chief of the Vietnam People's Armed Forces, and chairman of the Council of Defense and Security. The president selects prime ministers, vice presidents, ministers, and other officials with agreement of the National Assembly. The president may serve a maximum of two five-year terms. In case of early termination, the Vice President acts as the President until the National Assembly elects a new President.

### Legislative

The National Assembly is the highest government organization in Vietnam with the power to appoint the president, prime minister, chief justice, head of procuracy, and cabinet members. The National Assembly has the power to make and amend both the laws and the constitution so it can define the role of each government organization including itself. The members are elected for five-year terms and convene at least twice a year. Currently the National Assembly has 500 members.

### Judicial

The Supreme People's Court of Vietnam is the highest court for appeal and review. Below it are the Provincial and District courts. Other courts include economic, labor, and administrative courts, as well as the military tribunal.

IMF Data	2012	2013	2014 Est.
<b>Real GDP</b> USD billions	156	171	188
<b>GDP per capita</b> USD	1,752	1,902	2,073
<b>Investments</b> % GDP	27.2%	26.6%	25.2%
<b>Unemployment</b>	4.5%	4.4%	4.4%
<b>Inflation, EoY</b>	6.8%	6.0%	5.3%

## Business entities

Foreigners interested in doing business should abide by the Law on Enterprises and Law on Investment.

### Distinct entities

#### Sole proprietorship

A Private Enterprise is the equivalent of sole proprietorship. An individual has full control over the business, acts as the legal representative, and holds unlimited liability.

#### Partnership

A Partnership is established when at least two co-owners work together under the same name. At least one partner, the general partner, has to be an individual. Liability can be limited or unlimited. The general partner must hold unlimited liability; if the general partner is unable to pay, other partners may be held liable.

#### Limited liability company

A Limited Liability Company can have between one and fifty members. As the name implies, liability is limited to capital contribution. The chairman of the members' council or the general director becomes the legal representative. In the case of a single LLC, the chairman of the company may act as the legal representative instead.

#### Joint Stock Company

A Joint Stock Company or a Shareholding Company is the only type of entity that can sell shares and securities. It needs at least three shareholders to establish. Shareholder liability is limited to capital contribution. The chairman of the board of management or the general director acts as the legal representative.

#### Ownership of entities

A Wholly Foreign-Owned Enterprise cannot attain land use rights but can rent land for business purposes. However, a Vietnamese company or individual can own land use rights, which may be contributed to the business. Hence, a foreigner can attain land use rights only through a Joint Venture with a Vietnamese.

### Other business options

#### Business Cooperation Contracts

Business Cooperation Contracts allow foreign investors to work with Vietnamese partners without establishing a business entity. However, liability is unlimited.

#### BOT, BT, BTO

An investor may enter a contract with the Vietnamese government to build-operate-transfer, build-transfer, or build-transfer-operate infrastructure facilities. Investors can also renovate and modernize existing facilities.

### Representative Office

A Representative Office is not allowed to conduct commercial activities or generate any profits within Vietnam. However, it is useful for gathering information and looking for potential business deals.

### Investment certificates

A foreign investor must get an Investment Certificate from the People's Committee or Industrial Zone Management Authority. The investor must present a tangible plan and feasibility study as well as prove capital adequacy with a minimum equity of 20%. Projects below 300 billion VND that do not fall under conditional sectors can be approved within 15 days while other projects need 30 days. Projects that need approval from the Prime Minister need an additional 15 days. Projects in the conditional sector will have to fulfill higher standards. The duration of an IC cannot exceed 50 years; the Standing Committee of the National Assembly may extend the duration to no more than 70 years.

Projects worth less than 15 billion VND and not on the conditional sector do not need Investment Certificates. Instead, they need to be registered at local authorities.

### Limited sectors

The conditional sectors include defense and safety, banking and finance, health, education, entertainment, real estate, media, mining, real estate, etc. Projects in sensitive areas (generally those with negative social impact, such as cigarettes) need to be approved by the Prime Minister. Advertising services are limited to joint ventures with no limit on foreign capital. Projects that may be detrimental to national security are strictly prohibited. Other prohibited sectors include projects that are detrimental to: national defense and security; public interest; historical and cultural traditions and ethics; Vietnamese fine customs; public health; and natural resources and the environment. Additionally, projects related to the treatment of toxic waste brought into Vietnam or the manufacturing of chemical agents prohibited by international treaties are strictly prohibited.

### Indirect investments

Investors can purchase shares, bonds, and other valuable papers of Vietnamese companies. However, foreign ownership in public companies is capped at 49%. Some sectors might have lower caps. For instance, only 30% of a joint stock bank can be owned by foreigners.

### Accounting and auditing

All foreign-invested business entities must use the Vietnamese Accounting System, which is based on the 2003 International Accounting Standards. The fiscal year runs from January 1 to December 31. If a company wishes to use another accounting system, it must get approval from the Ministry of Finance. Failure to comply may allow tax authorities to levy additional taxes.



Under the VAS, annual reports must have:

- Balance sheet
- Profit and loss statement
- Cash flow statement
- Notes to financial statements, which include:
  - Summary of operations
  - Accounting policies
  - Details on operating expenses, COGS, fixed assets, compensation, etc.
  - Comments on the current accounting period
  - Financial ratios:
    - Labor and remuneration
    - Inventory
    - Sales
    - Cash
    - Fixed assets
  - Future business prospects

Financial reports must be written in Vietnamese and figures must be denominated in VND. A foreign-invested business entity is permitted to select a foreign currency for its accounting records and financial statements if they meet local requirements. Foreign-invested entities must submit externally-audited annual statements to local tax authorities to determine tax payments.

## Finance and capital markets

### Exchange control

All business activities in Vietnam, including transactions, payments, billings, listings, advertisements, price quotes, and any other form of price, must be denominated in the Vietnamese Dong (VND) unless specifically permitted by the State Bank of Vietnam (SBV) through legislation. While shops might accept USD, the USD must be converted to VND at their own rate, which ends up being significantly more expensive. However, it is illegal for shops to list prices in USD. As such, commercial entities need to open local bank accounts in VND to conduct any business within Vietnam. Transactions with foreign counterparties may list prices using foreign currencies only if it is proven absolutely necessary.

Investors need to open a capital bank account, which is a foreign currency account designed to keep track of capital inflows and outflows in Vietnam. Investors can only move money from the capital account to a current account, which enables them to conduct business transactions. The Law on Foreign Exchange Management stipulates that investors may

- move legal capital, reinvestment capital, or BCC capital (once liquidated) out of Vietnam
- transfer profits abroad at the end of the fiscal year only if all financial obligations are fulfilled

at the end of the fiscal year with an advance notice of seven working days. All money moved out of Vietnam must be in foreign currency.

### Banking system

The 1990 Ordinance on the State Bank of Vietnam clearly defined the role of the SBV. Previously, the SBV acted as both the central bank and a commercial bank. In 1990, the SBV had to split its operations: the SBV remains as the central bank while its industrial and commercial activities were conducted by four newly created State-Owned Commercial Banks (SOCB) that specialize in different sectors and industries. The SBV is responsible for creating monetary policies, managing foreign exchange reserves, and licensing and supervising credit institutions.

Vietnam has one of the highest NPL (Non-Performing Loan) ratios in Southeast Asia. Even though the SBV claims a ratio lower than 4% at the end of 2013, both Moody's and Fitch say the ratio must be at least 15%. Moody's also claims that at least 15% of assets in the banking system are bad assets. Most of the bad debt comes from loans by SOCBs to state-owned enterprises. However, as foreign banks keep increasing their presence in Vietnam, the banking market is becoming more and more competitive. The SOCB's market share is gradually decreasing as joint stock banks and other banks keep growing.

### Types of banks

Banks in Vietnam are classified by their ownership:

- **State-Owned Commercial Banks** used to be fully owned by the government, but Vietnam is trying to "equitize" some SOCBs, i.e. selling shares to both domestic and foreign investor to eventually reduce state ownership to 51%. SOCBs typically cater to state-owned enterprises, which is the source of absurdly high NPL ratios.
- **Joint-Stock Commercial Banks** are owned by both public and private shareholders. They specialize in retail finance and small- and medium-sized enterprise clients. Foreign ownership is limited to 30% with a 10% cap for strategic investors, although the cap may be raised to 15% with approval from the government.
- **Joint-Venture Banks** are formed through capital contribution by Vietnamese bank(s) and foreign banks(s). They are similar to JSCBs but foreign ownership is capped at 49% instead.
- **Wholly Foreign-Owned Banks** are sought after by foreign investors for their trade finance and foreign exchange services. They are also targeting the Vietnamese middle class and above with their retail banking and wealth management services.

### Bank secrecy

Vietnam does not have a bank secrecy law. The credit institution, not the customer, has the right to maintain confidentiality and can divulge a customer's information if it wants to. Additionally, any government agency can demand information from a credit institution.

### Deposit Insurance of Vietnam (DIV)

All credit institutions are required to get insurance from the DIV for maximum deposit coverage of 50 million VND. The DIV wishes to increase coverage to 200 million VND because it believes deposit insurance should cover 3-5 times GDP per capita. However, the DIV is still waiting on approval. Other than insuring deposits, the DIV can conduct special examinations, such as compliance and risk assessments, on credit institutions.

## Capital market

### State Securities Commission (SSC)

The SSC was established in 1996 to oversee the development of capital markets, the licensing of participants, and the issuance and enforcement of regulations. The SSC states that, to be listed, a company must have been profitable for the previous two years and have capitalization of at least 5 billion VND. Additionally, at least 20% of the company must be owned by at least 50 shareholders not currently employed by the company. Only a joint stock company can be listed.

### Vietnam Securities Depository (VSD)

The VSD is the only central securities depository in Vietnam. All public companies must register their shares, corporate bonds, municipal bonds, government bonds, corporate bonds guaranteed by the government, and fund certificates registered for trading. The VSD provides these services for its clients: securities lodging, withdrawal, pledging, releasing, and transfer of non-trades securities. The VSD finalizes securities trades through clearing and settlement based on the trading results sent by stock exchanges at the end of trading sessions.

Furthermore, the VSD provides corporate actions services such as the rights to vote, receive stock dividends, receive interest and principal of bonds and treasury bills, buy additional stocks, convert convertible bonds, exchange and merge shares, rename stocks, and split and consolidate stocks, among other rights.

### Ho Chi Minh Stock Exchange (HOSE or HSX)

The Ho Chi Minh Securities Trading Center was established in 2000 and was renamed the Ho Chi Minh Stock Exchange in 2007. It is the first securities exchange and also the biggest in Vietnam. Trading is automated using an order-matching system with the capability to process up to 300,000 orders per day. Although the Law on Securities recognizes options, forward contracts, warrants, and indices, they cannot be traded in a stock exchange yet. The Vietnamese stock exchanges only have facilities to accommodate the trade of ordinary shares, fund certificates, and bonds.

### Hanoi Stock Exchange (HNX) and UPCoM

The Hanoi Securities Trading Center opened in 2005 and was transformed into the Hanoi Stock Exchange in 2009. It is the second securities exchange to open in Vietnam. Morning trading session is 9:00-11:30 and afternoon trading session is 13:00-14:15 from Monday to Friday, except on public holidays. Limitations similar to HOSE apply to HNX. The HNX operates its listed securities market, a government bond market, and the Unlisted Public Company Market (UPCoM). Because the VSD does not recognize share transfers that have not gone through a regulated market, all unlisted public companies need to enlist in UPCoM to trade its shares and convertible bonds except in the case of a takeover.

## Labor

The Labor Code of Vietnam serves as the law governing employment practice and labor relations in Vietnam. The Ministry of Labor, War Invalids, and Social Affairs (MOLISA) is the national implementing government agency.

This Labor Code contains provisions regulating the hiring and termination of private employees, working conditions, including work hours and overtime, employee benefits, guidelines in the organization, and membership in labor unions as well as in collective bargaining.

### Types of employment

There are three types of labor contract based on duration:

- a seasonal contract of fewer than 12 months,
- a fixed term contract between 12 and 36 months, and
- an indefinite term contract.

A labor contract must be made in writing: one copy for the employer and one copy for the employee. A labor contract may be made orally only for housekeeping and work lasting fewer than three months. An employee may be put under a probationary period of at most 60 days. A seasonal or fixed term contract may only be extended once; afterwards, the employee has to be hired indefinitely or released.

### Working hours and compensation

Employers can only require an employee to work for a maximum of 10 hours a day, 48 hours per week, and 6 days a week. Payment must be made at least once every fifteen days unless both parties agree on monthly payments. The weekly limit may be increased to 50 hours during peak season for a maximum of two months. If a job requires a worker to work seven days a week, then the employer must rearrange the work schedule to give at least four rest days a month. At least 12 rest hours are required between each night shift. Every employee is entitled to a 30 minute break – 45 for night worker – within a shift. If a shift exceeds 10 hours, the employer must provide an additional break period of at least 30 minutes.

Overtime rate is 150%, 180% for work at night (between 21:00-5:00 or 22:00-6:00), 200% for work on weekly rest days, and 300% on statutory leave days. Overtime is limited to 4 hours per day and 200 hours per year; the limit may be increased to 300 hours per year during emergencies but must be approved by the State.

### Minimum daily wage

Minimum wage ranges from 1.9 to 2.7 million VND a month, depending on the region. Minimum wage in Hanoi and Ho Chi Minh is 2.7 million VND except for some rural areas that only require 2.4 million VND.

### Benefits

#### Holidays

Each year, every employee is entitled to nine days of paid leaves during public holidays and is paid three times the regular rate when work is performed on a holiday.

#### Service incentive leave

A worker who has rendered at least one year of service is entitled to 12-16 days of paid leave, depending on the nature of the work.

#### Annual bonuses

An employer may give an annual bonus equal to one month's salary (13th month's salary) to its employees although it is not mandated by law. Employees who have worked for fewer than twelve months may get a prorated bonus.

Additionally, an employer may hand out a "Lunar New Year Bonus" (or the "Tet Bonus") prior to the four days of paid leave for the Lunar New Year. This bonus typically reflects the company's performance; the amount ranges from less than a month's salary to a full year's salary.

#### Compulsory insurance

The Law on Social Insurance mandates that Vietnamese employees under contracts lasting more than three months, officials and public servants, and police and army members are required to get insurance. Employers must contribute 22% of the total wage fund while employees must contribute 10.5% of their wages to the social, health, and unemployment insurances. The insurance covers sick leaves, maternity leaves, medical expenses, labor accidents, occupational diseases, retirement benefits, severance payments, and survivorship allowances. If the employee is a foreigner, then only the health insurance is mandatory: 3% contribution from the employer and 1.5% contribution from the employee.

#### Maternity leave

Female labor may not be used for work that might hinder reproductive abilities, such as hard labor during later stages of pregnancy or work in areas with toxic fumes. A pregnant employee may take a maternity leave of four to six months depending on the nature of the work; two of those months must be after childbirth. In case of abortion or sterilization, the female employee may claim 7 to 50 days of paid leave. Salary is covered by the social insurance. The employee may take a longer maternity leave in the case of multiple births. Additionally, the employee will receive a bonus of a month's salary if it is her first or second child. She may request additional unpaid leave as agreed upon by her employer.

#### Paternity leave

Vietnam does not require paid paternity leaves.

#### Retirement

A social pension system was established in 1995 through Decree number 19/CP, which is covered by the social insurance system. Employees are eligible for pension benefits after 20 years of optional social insurance contribution. Employees can retire at:

- Age 60 for men and age 55 for women, or
- Age 55 for men and age 50 for women who work in hazardous occupations, live in designated areas, or are war veterans

Monthly pension benefits start at 55% average salary, increasing by 2% for each contribution year over twenty.

## Termination of employment

Severance payments are covered by the compulsory unemployment insurance. The employer is responsible for severance pay for the periods of non-participation in the unemployment insurance. Severance is half a month's salary for each year of service, unless the employee was laid off due to structural or technological changes, in which case severance becomes a month's salary for each year of service for a minimum of two months' salary. Employees fired as a form of discipline are not entitled to severance payments.

Whether an employee wishes to resign or an employer wants to terminate the labor contract, that individual must give a notice 45 days in advance for an indefinite term contract, 30 days for a definite term contract, and 3 days for seasonal contracts. If breached, the party at fault must pay compensation equal to the salary for the number of days without proper notice.

## Labor relations

### Labor union

If after six months of operations a trade union has not been set up, the Vietnam General Confederation of Labor will make a provisional union. The employer must recognize the union and work together to achieve favorable conditions but cannot interfere with the union's activities. A union member may use some of his/her working time to work with the trade union while still getting paid by the employer. The amount of time is determined by an agreement between the employer and the union but may not be fewer than three hours per month.

### Strike

Employees are lawfully allowed to strike if 75% of the employee group participates – 50% for companies with fewer than 300 employees. If a strike is deemed unlawful, the participants need to cease the strike or face penalties.

## Employment of foreigners

According to the Law on Investment, foreign workers are permitted only if the work requires a specialized skill set, but the company must train a Vietnamese person to replace the foreign worker. Foreigners who wish to work in Vietnam for more than three months have to get a Labor Permit from the Ministry of Labor, War Invalids, and Social Affairs. The foreigner must be above 18 years old and work as a manager, executive, or expert. To apply, the individual has to submit a legal record of the former residence (Vietnam if the foreigner has resided there for more than six months), a health certificate, a specialist certification for technical jobs or an equivalent document, and a photo, among other forms and documents. The Labor Permit is valid for 36 months unless the Vietnamese worker who will fill the position is still being trained.

## Taxation

Taxation is administered through the General Department of Taxation, which is under the supervision of the Ministry of Finance. The Commissioner possess the power to, among others, decide disputed assessments, grant refunds of taxes, fees and other charges and penalties, modify payment of any internal revenue tax and cancel a tax liability. Taxpayers may appeal directly to the Court of Tax Appeals for any disputes between them and the Commissioner concerning the decisions of the latter.

## Corporate tax

Provisional quarterly tax returns must be filed and the taxes be paid within 30 days of the end of the quarter. Annual tax returns must be filed and the outstanding taxes payable be paid within 90 days of fiscal year end. The fiscal year follows the calendar year. If a company wishes to begin the fiscal year on another month, that company must get approval from the Ministry of Finance.



### Tax rates

As of January 2014, corporate tax rate is a flat 22% for all business entities, whether domestic or foreign-invested, with no additional local or provincial taxes. This tax rate extends to the domestic income of foreign parties that have not incorporated in Vietnam but have entered contracts such as BCC, BOT, BT and BTO. The tax rate will fall to 20% on January 2016. Some exceptions exist to the 22% tax rate:

- **10%** for businesses in 1) areas with especially difficult socio-economic conditions, economic zones, and high tech zones or 2) the technology and infrastructure sectors for the first 15 years, with 4 years of tax exemption followed by 9 years of 50% tax reduction
- **10%** for businesses in social care, such as education, health, culture, sport, and the environment, with 4 years of tax exemption followed by 5 years of 50% tax reduction
- **20%** for new businesses in areas with difficult socio-economic conditions for the first 10 years, with 2 years of tax exemption followed by 4 years of 50% tax reduction
- **32-50%** for exploitation of rare natural resources such as oil and gas

Tax exemptions begin during the company's first profitable year. However, if the company still makes no profits after three years, the tax exemption begins on the fourth year of operations. Fifty percent tax reductions begin after the tax exemption period is over.

### Taxable profit

Taxable profit is domestic or foreign revenue minus deductible expenses, adjusted for other assessable income. All expenses are deductible if they pertain to revenue generation, are properly documented, and are not categorized as non-deductible expenses.

#### *Non-deductible expenses*

- Depreciation of fixed assets not following regulations;
- Cost of inputs in excess of reasonable consumption levels;
- Employee compensation which is not actually paid, is not stated in a labor contract, or is not stated in the collective labor agreement;
- Reserves for research and development not following regulations;
- Provisions for severance allowance (except for companies not subject to mandatory unemployment insurance contributions) and payments of severance allowance in excess of Labor Code requirements;
- Overhead expense allocation of foreign companies exceeding the revenue-based allocation formula;
- Interest on loans corresponding to the portion of charter capital not yet contributed;
- Interest on loans from non-banks exceeding 1.5 times the interest rate set by the State Bank of Vietnam;
- Provisions for stock devaluation, bad debts, financial investment losses, product warranties, or construction work not following regulations;
- Advertising and promotion expenses (except market research, trade fairs, commissions for insurance, and multi level marketing) exceeding 10% of total other deductible expenses (15% for the first 3 operating years of a new company);
- Unrealized foreign exchange losses other than account payables;
- Donations except certain donations for education, health care, natural disasters, or building charitable homes for the poor;
- Administrative penalties, fines;
- Creditable input value added tax, corporate income tax, and personal income tax.

#### *Loss carryover*

All tax losses may be carried forward for a maximum of five consecutive years. Profits and losses may not be offset between companies within a group. Tax losses may not be carried backwards.

**Foreign contractor withholding tax**

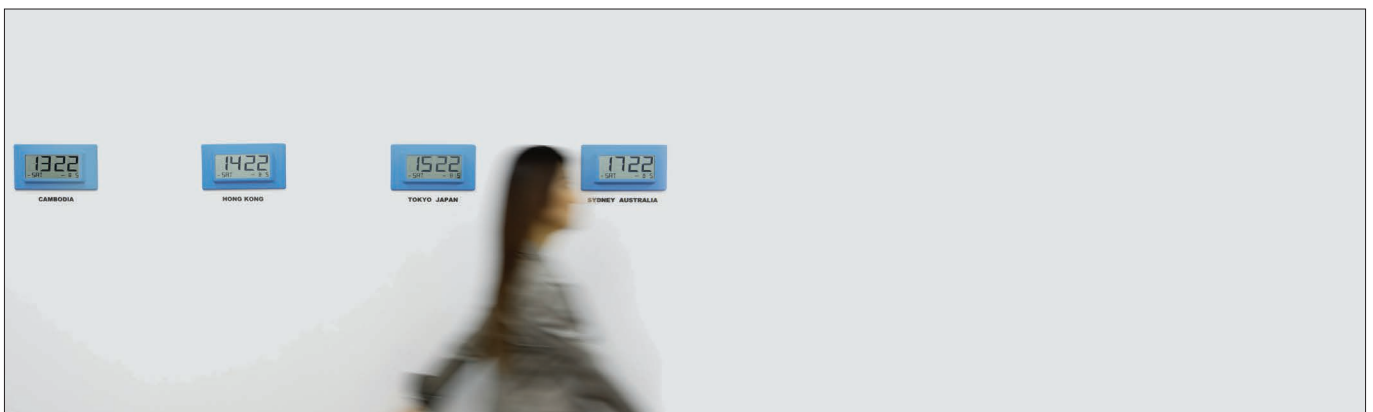
FCWT applies to certain payments to foreign parties. Dividends are exempt from FCWT. The VAT portion of the FCWT is exempt if the product or service falls under VAT exemption. Additionally, these numbers assume that all applicable import VAT has been paid.

Industry	Effective VAT rate	Deemed CIT rate
Restaurant, hotel, casino	5%	10%
Royalties	-	10%
Services	5%	5%
Leasing of machinery and equipment	5%	5%
Insurance	5%	5%
Construction or installation without supply of materials, machinery, or equipment	5%	2%
Interest	-	5%
Financial derivatives	-	2%
Leasing of aircraft and vessels	n/a	2%
Transfer of securities	-	0.1%
Re-insurance	-	0.1%
Supply of goods or associated with services in Vietnam	2%	1%
Manufacturing, other business activities	3%	2%

**Individual tax**

The government recognizes two types of individual taxpayers:

- **Tax Residents** are taxed on all generated income, whether domestic or international. An individual is considered a tax resident if that person
  - has stayed in Vietnam for at least 183 days in a calendar year,
  - has stayed for at least 183 days in the 12 consecutive months from date of arrival,
  - has a permanent residence in Vietnam, or
  - has rented a home for more than 90 days but fewer than 183 days in Vietnam while unable to prove tax residence in another country
- **Tax Non-Residents** are taxed only on income generated in Vietnam.



### Tax rates

Tax non-residents pay a 20% flat tax rate (can be less with a favorable tax treaty) on employment income while tax residents pay marginal taxes according to the following schedule:

Annual income (VND)	Tax rate
60,000,000	5%
120,000,000	10%
216,000,000	15%
384,000,000	20%
624,000,000	25%
960,000,000	30%
> 960,000,000	35%

Some sources of income have different rates. For tax residents:

Taxable income	Tax rate
Sale of real estate:	
Net gain or	25%
Sales proceeds	2%
Sale of securities:	
Net gain or	20%
Sales proceeds	0.1%
Capital assignments:	
Net gain	20%
Prizes, inheritances, or gifts	10%

For tax non-residents:

Taxable income	Tax rate
Prizes, inheritances, or gifts	10%
Royalties, copyrights, or franchises	10%
Interest	5%
Dividend paid to an individual	5%
Business income	1-5%
Sale of real estate:	
Sales proceeds	2%
Sale of securities:	
Sales proceeds	0.1%

### Taxable income

Taxable employment income includes all cash compensations and benefits-in-kind **except:**

- Payments for business trips, telephone charges, uniforms, stationery (capped)
- Overtime premium (compensation above standard overtime salary)
- Home leave allowance and transportation for resident expatriates
- School fees up to high school for the children of resident expatriates
- Training
- Mid-shift meals (capped if in cash)
- Collective benefits (e.g. healthcare, work transportation)

Taxable non-employment income includes:

- Business income
- Investment income
- Gains from the sale of shares or property
- Inheritance in excess of 10 million VND

Non-taxable income includes:

- Interest in bank deposits and life insurance
- Compensation from insurance
- Retirement pension from government insurance
- Transfer of property, gifts, and inheritances between direct family members

### *Allowable deductions*

- Mandatory insurance contributions
- Voluntary pension contributions
- Contributions to approved charities
- Personal allowance of 9 million VND a month
- Allowance for registered dependents of 3.6 million VND a month per individual

### **Income tax treaties**

Income tax treaties exist to prevent double taxation and may grant tax reductions or exemptions, depending on the terms of the treaty. Vietnam has no tax treaty with the United States. Vietnam has tax treaties with these countries:

Australia	Ireland	Qatar
Austria	Israel	Romania
Bangladesh	Italy	Russia
Belarus	Japan	Saudi Arabia
Belgium	North Korea	Seychelles
Brunei	South Korea	Singapore
Bulgaria	Kuwait	Slovakia
Canada	Laos	Spain
China	Luxembourg	Sri Lanka
Cuba	Malaysia	Sweden
Czech Republic	Mongolia	Switzerland
Denmark	Morocco	Taiwan
Finland	Myanmar	Thailand
France	Netherlands	Tunisia
Germany	Norway	Ukraine
Hong Kong	Oman	UAE
Hungary	Pakistan	UK
Iceland	Philippines	Uzbekistan
India	Poland	Venezuela
Indonesia		

### Value added tax

VAT is levied on goods and services sold in Vietnam at a rate of 0%, 5%, or 10%. For goods and services not subject to VAT, input VAT can be credited.

Not subject to VAT:

- Goods and services provided outside of Vietnam
- Financial revenues such as compensation, bonus, and subsidy
- Sales of assets by non-business entities not registered for VAT
- Capital contributions
- Certain asset transfers between parent and subsidiary
- Collection of indemnities by insurance companies
- Collection by intermediary not related to provision of the good or service
- Commissions earned by certain agents
- Certain agricultural products
- Transfer of land use rights
- Financial derivatives and credit services
- Securities activities
- Capital assignment
- Foreign currency trading
- Debt factoring
- Teaching

- Healthcare
- Certain insurance services
- Newspapers, magazines, certain types of books
- Public buses,
- Transfer of technology
- Gold not in jewelry
- Drilling rigs, airplanes, and ships that cannot be produced inside Vietnam
- Imported items for research and development that cannot be produced inside Vietnam
- Imported items for oil and gas fields that cannot be produced inside Vietnam
- International aid (subject to limitations)

Subject to 0% VAT:

- Exports
- Goods processed for export
- Goods sold to duty-free shops
- Construction for export-processing enterprises

Subject to 5% VAT:

- Water
- Agriculture
- Educational goods
- Unprocessed food
- Medicine and medical equipment
- Technical or scientific services
- Certain cultural, sport, or art products and services

Subject to 10% VAT:

- Everything else

## Other taxes

### Customs duty

Import tax is levied on most imported goods based on the CIF (cost, insurance, freight). Tax rates vary from 0-100%. Import tax may be waived if a business operating in a preferential zone or sector wishes to import fixed assets.

### Environment protection tax

Production and importation of goods hazardous to the environment are subject to additional tax:

Goods	Unit	Tax (VND)
Liquid fossil fuels	Liter / kg	300-1,000
Coal	Ton	10,000-20,000
CFC	Kg	4,000
Plastic bags	Kg	40,000
Restricted chemicals	Kg	500-1,000

### Excise tax

Vietnam has excise tax in the form of Special Sales Tax (SST), which is levied in addition to VAT. The selling price is used to calculate the SST. If a company uses agents for distribution, the SST is calculated using 90% of the average price the agents are selling the product for. A company that pays SST may claim tax credits from SST-liable inputs.

Products/services	SST rate
Votive papers	70%
Cigarettes	65%
Automobiles with fewer than 24 seats	10-60%
Beer	50%
Spirits/wine	25-50%
Playing cards	40%
Discotheques	40%
Airplanes	30%
Boats	30%
Massage, karaoke	30%
Casinos, gambling	30%
Motorcycles above 125cc	20%
Golf	20%
Lotteries	15%
Petrol	10%
Air conditioners	10%

### Stamp duty

Stamp duty, formally known as Registration Fee, is required only for registration of ownership for assets such as land, buildings, vehicles, and firearms. The tax ranges from 0.5% to 20%.

### Inheritance tax/gift tax

Inheritances and gifts in excess of 10 million VND are taxed at 10% except for real property given to family members or next-of-kin.

### Property taxes

#### *Land use fee*

Land may be allocated to Vietnamese citizens indefinitely for housing and a limited period up to 50 years for business, which may be extended. Vietnamese citizens must pay land use fees annually or upfront in a lump sum. The land cannot be mortgaged, subleased, transferred, or contributed into a joint venture unless the lump sum has been paid. Certain eligible foreigners may be able to “purchase” an apartment within a residential complex with land use rights for up to 50 years. The land use fee uses a progressive tax rate of 0.03% to 0.15% of the land price.

#### *Land rental*

Foreign investors can lease land for commercial purposes for up to 50 years, which may be renewed, or up to 70 years for residential development. Foreigners can pay the rental annually or upfront in a lump sum.

### Local government taxes

All taxes are handled at the federal level. There are no additional local or provincial taxes. However, if a business has many branches in different regions, then the tax payment might have to be split among the local tax authorities.

### Investment

Vietnam offers corporate tax incentives, which are detailed in the corporate tax section. Import tax may be waived if a business operating in a preferential zone or sector wishes to import fixed assets. Businesses can also send foreign workers for up to 36 months each to supervise operations and train new employees.

### Intellectual property rights

Vietnam follows a lot of international standards for intellectual property as it signed the Paris Convention, the Berne Convention, TRIPS, and the Madrid System. The Vietnam Intellectual Property Law offers further protection. The Copyright Office regulates copyrights, the Ministry of Agriculture and Rural Development handles plant variety, and the National Office of Intellectual Property handles everything else. The first person to file an intellectual property holds the right. If an investor's intellectual property right is infringed, that individual may protect him/herself through civil disputes, criminal sanctions, administrative sanctions, and/or customs intervention.

### Patents

Patents are technological solutions and innovations. They enjoy a protection of 20 years after date of application. Industrial design patents are granted for outward appearance or recognizable feel; these patents last 5 years and may be renewed twice.

### Trademarks

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

### Copyright

While works that fall under copyright law are immediately protected upon creation, registering the work offers further protection from disputes. Depending on the type of work, economic copyrights can last from 75 to 100 years from date of formulation or 50 years after the author's death.

### Trade names

Trade names are names used by organizations or individuals to designate and differentiate themselves in business activity. Trade names do not have to be filed; instead, they are protected once the business entity has been formed.

### Expropriation and compensation

According to the Law on Investment, capital and other lawful assets of foreign investors will not be requisitioned through administrative measure. Enterprises with foreign capital will not be nationalized. The US Department of State remarks that "no recent instances of expropriation of a foreign investment" occurred in Vietnam.

### Property ownership

Only the Vietnamese government can own land. The government can allocate land to Vietnamese citizens for residential, agricultural, or commercial purposes for an indefinite period or a period up to 50 years, which may be renewed. The citizens pay a land use fee annually, akin to land tax. Vietnamese citizens may contribute land use rights in a joint venture only if the land use fee has been paid upfront in a lump sum.



While foreigners cannot own property, they can lease land and pay the land rental fee annually. Land is leased for a period of up to 50 years or up to 70 years for residential development, both of which may be renewed. In certain cases, foreigners may be approved to “purchase” apartments in residential areas and attain land use rights for up to 50 years.

### **International trade agreements**

As a member of ASEAN and WTO, Vietnam has entered the following free-trade agreements:

- ASEAN
- ASEAN-China Free Trade Area
- ASEAN-Korea Free Trade Area
- ASEAN-India Free Trade Area
- ASEAN-Australia/New Zealand Free Trade Area
- ASEAN-Japan Comprehensive Economic Partnership

In addition, Vietnam has established free trade agreements with the following countries:

- Chile
- Japan

These trade agreements are still in negotiation:

- ASEAN+6
- ASEAN-EU
- Trans-Pacific Partnership
- Vietnam-EU
- Vietnam-Korea
- Vietnam-LMTQ
- Vietnam-EFTA

# Appendix

The following tables show the most typical tax rates for easy comparison. However, tax rates may vary depending on a number of factors, such as incentives for SMEs or different classes of goods. Non-resident income tax rates and withholding tax rates may be lower due to international tax treaties. We recommend reading the guide for each individual country to learn about specific details.

## Income tax and Value-Added Tax / Goods and Services Tax / Consumption Tax

	Corporate	Individual			VAT / GST / CT
		Resident		Non-Resident	
		Lowest	Highest		
Hong Kong	16.5%	2.0%	17.0%	<sup>1</sup> 2.0-17.0%	0.0%
Indonesia	25.0%	5.0%	30.0%	20.0%	10.0%
Japan <sup>2</sup>	<sup>3</sup> 21.4 or 35.6%	15.0%	50.0%	20.4%	8.0%
Korea	<sup>4</sup> 10.0-22.0%	<sup>5</sup> 6.6%	<sup>5</sup> 41.8%	<sup>5</sup> 18.7%	10.0%
Malaysia	25.0%	0.0%	25.0%	25.0%	6.0%
Philippines	30.0%	5.0%	32.0%	25.0%	12.0%
Singapore	17.0%	0.0%	20.0%	<sup>1</sup> 20.0%	7.0%
Taiwan	17.0%	5.0%	40.0%	18.0%	5.0%
Thailand	20.0%	0.0%	35.0%	0.0-35.0%	<sup>6</sup> 7.0%
Vietnam	22.0%	5.0%	35.0%	20.0%	10.0%

<sup>1</sup> Employment income tax is capped at 15%

<sup>2</sup> Income tax rates include the inhabitant tax

<sup>3</sup> The lower rate applies to SMEs

<sup>4</sup> Further subject to 1-2% resident surcharge with a separate tax base calculation

<sup>5</sup> Includes 10% resident surcharge

<sup>6</sup> Will become 10% starting on Oct 1, 2015

## Withholding tax

	Dividend	Interest	Rent	Royalty	Services
Hong Kong	-	-	-	<sup>1</sup> 16.5%	-
Indonesia					
Resident					
Company	15.0%	<sup>2</sup> 20.0%	<sup>3</sup> 10.0%	15.0%	2.0-6.0%
Individual	10.0%	20.0%	<sup>3</sup> 10.0%	15.0%	2.0-6.0%
Non-Resident	20.0%	20.0%	20.0%	20.0%	20.0%
Japan	20.4%	<sup>4</sup> 15.3%	20.4%	20.4%	20.4%
Korea					
Non-Resident	20.0%	20.0%	2.0%	20.0%	20.0%
Malaysia	-	15.0%	<sup>5</sup> 10.0%	10.0%	10.0%
Philippines					
Resident					
Company	-	<sup>6</sup> 20.0%	5.0%	20.0%	2.0-15.0%
Individual	10.0%	<sup>6</sup> 20.0%	5.0%	20.0%	2.0-15.0%
Non-Resident					
Company	15.0%	<sup>6</sup> 30.0%	30.0%	30.0%	30.0%
Individual	<sup>7</sup> 20.0%	<sup>6</sup> 20.0%	25.0%	<sup>7</sup> 20.0%	25.0%
Singapore	-	15.0%	15.0%	10.0%	17.0%
Taiwan					
Resident	-	10.0%	10.0%	10.0%	10.0%
Non-Resident	20.0%	15.0 or 20.0%	20.0%	0.0 or 20.0%	20.0%
Thailand					
Resident					
Company	10.0%	1.0%	5.0%	3.0%	3.0%
Individual	10.0%	15.0%	5.0%	-	-
Non-Resident					
Company	10.0%	15.0%	-	15.0%	15.0%
Individual	10.0%	15.0%	-	15.0%	15.0%
Vietnam					
Non-Resident	5.0%	5.0%	-	10.0%	5.0%

<sup>1</sup> 4.95% if the intellectual property was never owned by a Hong Kong company

<sup>2</sup> 15% for non-bank

<sup>3</sup> 2% for movable properties

<sup>4</sup> Resident companies need to pay an additional 5% inhabitant tax

<sup>5</sup> Only for movable properties

<sup>6</sup> 7.5% if from foreign currency deposits from banks

<sup>7</sup> 25% for non-residents not engaged in business in the Philippines

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