TaXavvy

9 April 2019 | Issue 6-2019

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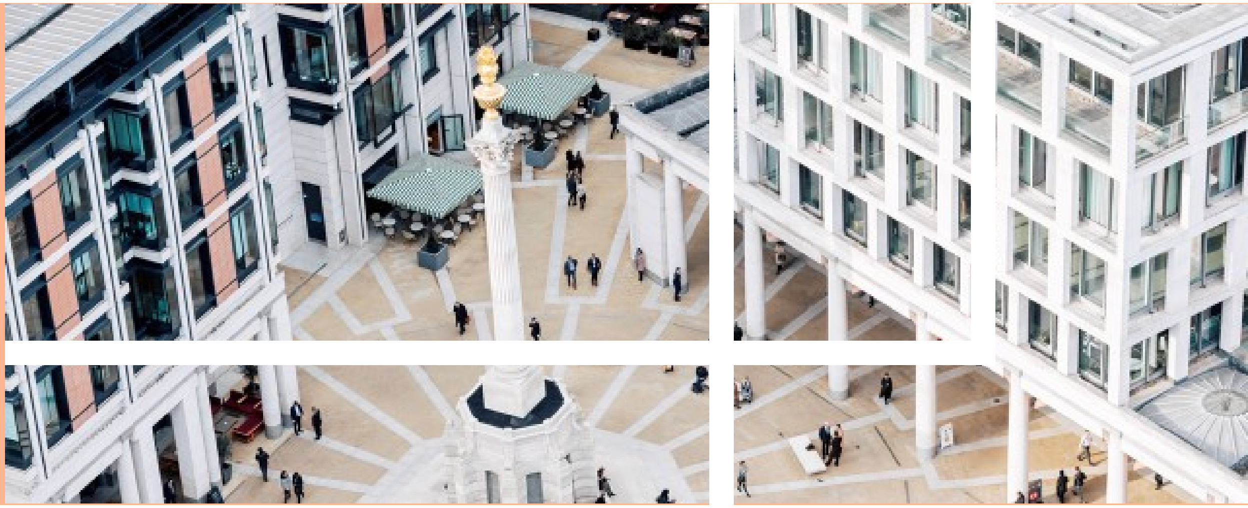
Special Voluntary Disclosure Programme (SVDP) – extension of programme period

Subsequent to the issuance of the media releases as reported in TaXavvy 4-2019, the Ministry of Finance (MOF) has issued a media release dated 7 April 2019 to extend the SVDP programme period.

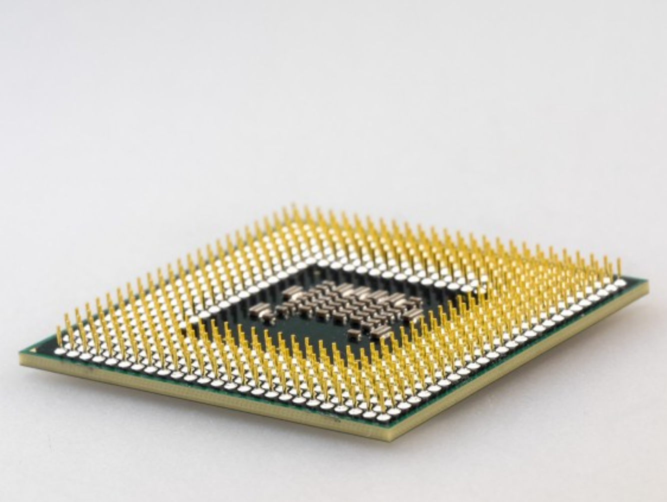


The MOF has announced that the SVDP is extended as follows:

	Original SVDP	**Extended SVDP**
First phase SVDP		
Time period	3 November 2018 to 31 March 2019	1 April 2019 to 30 June 2019 *(previously second phase - now revised as extension of first phase)*
Penalty	10%	10%
Second phase SVDP		
Time period	1 April 2019 to 30 June 2019	1 July 2019 to 30 September 2019 *(extension - new second phase)*
Penalty	15%	15%

After the period for SVDP ends, the penalty rate is at 45%.

MSC Malaysia status tax incentive – updates



The MSC Bill of Guarantee No. 5 which aims to provide competitive financial incentives for companies granted MSC Malaysia status has been reviewed by the Malaysia Digital Economy Corporation Sdn Bhd (MDEC) to ensure compliance with the requirements of *BEPS Action 5 – Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*. Due to the above review, the grant of MSC Malaysia status and its incentives, including extension of income tax exemption period, or addition of new MSC Malaysia qualifying activities, has been put on hold since 1 July 2018.

Following from the above, MDEC has now announced that moving forward, all new applications from companies for MSC Malaysia status will be eligible for tax exemption on income derived from:
- Services activities (the Services Incentive); and / or
- Intellectual property (the IP Incentive)

MSC Malaysia Status Services Incentive

MDEC has announced on its website that the application for MSC Malaysia Status Services Incentive can be made starting from 2 April 2019. The incentive is granted under the Income Tax (Exemption) (No.10) Order 2018 ("Order No. 10") which was legislated on 31 December 2018.

MSC Malaysia Status IP incentive

MDEC has also stated that the policy for MSC Malaysia Status IP Incentive is still being reviewed by the government. As such, currently no application for this incentive can be made.

Application details

The following applies in respect of application for the MSC Malaysia Status Services Incentive:

- Application fee is RM2,120.
- Approval would take approximately 30 working days from the submission of complete application.

The salient points of Order No. 10, MDEC guideline as well as additional requirements stipulated in the application form for new companies applying for the MSC Malaysia Status Services Incentive are outlined in the following pages.

<table>
<tr><th></th><th>Category 1</th><th>Category 2</th><th>Category 3</th></tr>
<tr><td>MSC Malaysia Status Services Incentive: Income tax exemption</td><td colspan="3">Statutory income (may be value added income (as defined)) derived from services provided in relation to promoted activities for MSC (“core income generating activities”), but excludes royalty and income from intellectual property (as defined).</td></tr>
<tr><td>Percentage exempted</td><td colspan="2">100% statutory income</td><td>70% statutory income</td></tr>
<tr><td>Incentive period</td><td colspan="2">5 + 5 years (extension)</td><td>5 + 5 years (extension, subject to meeting conditions of category 1 or 2)</td></tr>
<tr><td colspan="4">Qualifying conditions</td></tr>
<tr><td>Qualifying company</td><td colspan="3">• Incorporated under Companies Act 2016
• Resident in Malaysia
• Not enjoying any income tax exemption
• Has been awarded MSC status
• On date of application for MSC status:
1) the company has not issued any invoice for the core income generating activities in Malaysia, or
2) where the company has 60% Malaysian equity, the company has not issued any invoice for the core income generating activities in Malaysia in the 12 months prior to the said application. The 60% Malaysian ownership must be maintained throughout the exemption period.</td></tr>
<tr><td>Election of category</td><td colspan="3">There can be no change of category during the exemption period.</td></tr>
<tr><td colspan="4">Conditions for exemption (to be complied with by end of Year 2 from commencement of exemption period and thereafter during the exempt period)</td></tr>
<tr><td rowspan="3">Minimum number of full time employees with monthly base salary</td><td colspan="2">(i) 50 full time employees with monthly base salary of RM5,000; or
(ii) 30 full time employees with monthly base salary of RM10,000</td><td rowspan="2">(i) 30 full time employees with monthly base salary of RM5,000; or
(ii) 20 full time employees with monthly base salary of RM8,000</td></tr>
<tr><td colspan="2">Data Centre: 5 full time employees with monthly base salary of RM5,000</td></tr>
<tr><td colspan="2">Percentage of Malaysian knowledge workers: 70%</td><td>Percentage of Malaysian knowledge workers: 50%</td></tr>
<tr><td rowspan="2">Minimum annual operating expenditure and investment in fixed assets</td><td colspan="2">RM3.5 million</td><td rowspan="2">RM1 million</td></tr>
<tr><td colspan="2">Data centre: RM10 million</td></tr>
<tr><td>Minimum paid up capital</td><td colspan="2">RM500,000</td><td>RM250,000</td></tr>
</table>

	Category 1	Category 2	Category 3
Conditions for exemption (to be complied with by end of Year 2 from commencement of exemption period and thereafter during the exempt period)			
Location of core income generating activities	Designated premises within MSC cyber city or cyber centre	MSC cyber city or cyber centre (commercial permises)	Not subject to location conditions
	The company must be located at the approved location within 24 months from the date of award of MSC Malaysia status and thereafter during the exemption period.		
Promoted activities	1) Big data analytics 2) Artificial intelligence 3) Financial technology 4) Internet of things 5) Cybersecurity (technology/software/design and support) 6) Data centre and cloud (technology/software/design and support) 7) Blockchain 8) Creative media technology 9) Sharing economy platform 10) User interface and user experience 11) Integrated circuit design and embedded software 12) 3D printing (technology/software/design and support) 13) Robotics (technology/software/design) 14) Autonomous (technology/software/design and support) 15) Systems or network architecture design and support 16) Global business services or knowledge process outsourcing excluding: • Non-technical • Low value call centre • Data entry • Recruitment processing outsourcing *Note: trading, manufacturing activities and provision of telecommunication services are expressly excluded*		

Public Ruling 2/2019 – Director's Liability

The Inland Revenue Board (IRB) has issued Public Ruling 2/2019 - Director's Liability ("PR 2/2019"), dated 14 March 2019. PR 2/2019 explains the liabilities of a company director in respect of a company's tax, that is:

a) any tax that is due and payable by a company; and

b) any debt that is due and payable by a company as an employer in relation to tax deductions from emoluments and pensions under the Monthly Tax Deduction scheme.

PR 2/2019 explains that any person occupying the position of a "director" (as defined under section 75A of the Income Tax Act 1967) during the period in which the tax or debt is liable to be paid, would be jointly and severally liable for any tax or debt that is due and payable by the company. PR 2/2019 seeks to provide guidance on this matter.

Examples from PR 2/2019 on situations where directors of a company are liable or not liable for the company's tax and debt due to the Government

Corporate income tax

An individual is liable if he / she is a director of the company during the period in which tax was due and payable by the company i.e. from the date the notice of assessment is served or the notice of assessment is deemed to have been served on the company.

Under the self-assessment regime, when a tax return is submitted, a notice of assessment is deemed to have been served on the date of submission.

[Example 6]

Monthly Tax Deduction (MTD)

An individual is liable if he / she is a director of the company during the period in which the debt is due to be paid by the company. Action can only be taken against the director when the MTD becomes overdue i.e. the day after the due date of the MTD.

[Example 8]

Company under winding up

Action cannot be taken by the Director General of Inland Revenue (DGIR) against the directors of a company to collect tax or debt which arose after the company has commenced winding-up action.

[Example 11]

Meaning of "director" for purposes of section 75A

Director = **Management of company**

Occupying the position of director (by whatever name called) and is concerned with the management of the company's business

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Ownership

Owns / controls at least 20% of the ordinary share capital of the company

OR

Control

Directly or indirectly, individually or with associates, control at least 20% of the ordinary share capital of the company

Tax recovery action

The DGIR can take the following recovery action(s) against the directors of a company:

- Prevent a director of a company from leaving Malaysia by imposing a stoppage order

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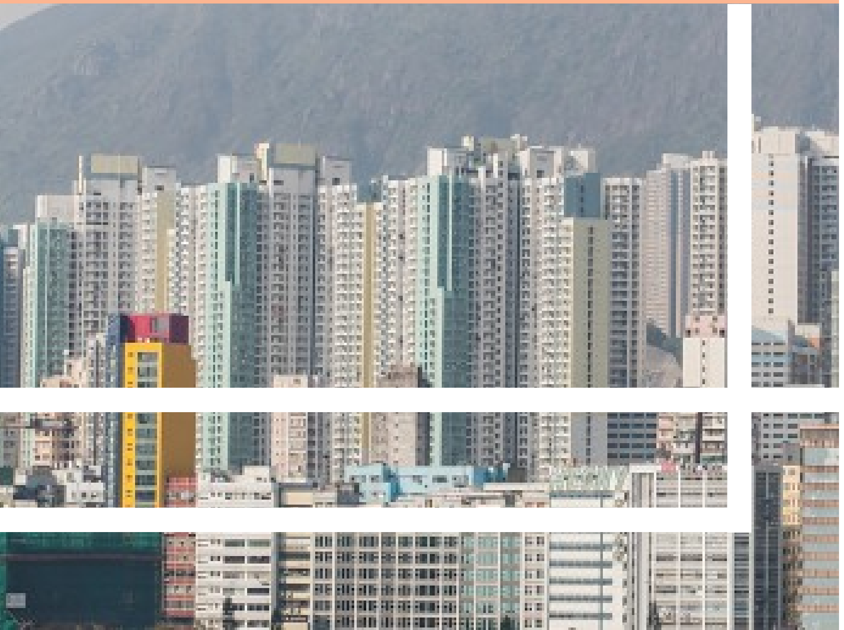
- Take up a civil suit against both the company and its directors

National Home Ownership Campaign 2019 – Stamp Duty Exemptions

Following the recent launch of the National Home Ownership Campaign 2019 and in line with the government's announcement to provide stamp duty exemption for purchases of residential property, the relevant gazette orders have been issued.



The National Home Ownership Campaign 2019 was initiated to increase home ownership among Malaysians and to address the current property overhang. This campaign runs from 1 January 2019 to 30 June 2019. The salient points of the stamp duty exemptions are as follows:

	Stamp Duty (Exemption) (No 2) Order 2019	Stamp Duty (Exemption) (No 3) Order 2019
Instrument exempted	Loan agreement	Instrument of transfer
Rate of exemption	Full exemption	• Exemption on first RM1 million, and • 3% stamp duty on every RM100 in excess of the first RM1 million of the property value.
Conditions for exemption	• The sale and purchase agreement (SPA) for the residential property is executed on or after 1 January 2019 but not later than 30 June 2019. • The SPA is between a property developer * and a Malaysian citizen(s). • The purchase price stated in the SPA is a price after a discount of 10% given by the property developer, except in the case of a property subjected to controlled pricing. • The value of property is more than RM300,000 but not more than RM2,500,000. • The application for exemption is to be accompanied by a National Home Ownership Campaign 2019 Certification issued by REHDA, SHAREDA or SHEDA.	
Type of property	Residential property which includes a house, a condominium unit, an apartment or a flat, used as a dwelling house.	
Effective date	1 January 2019	

* Registered under the Real Estate and Housing Developers' Association Malaysia (REHDA), Sabah Housing and Real Estate Developers' Association (SHAREDA) or Sarawak Housing and Real Estate Developers' Association (SHEDA).

Labuan Leasing Business – revised guideline

A revised Guideline on the Establishment and Operations of Labuan Leasing Business dated 5 March 2019 ("the revised guideline") has recently been issued by the Labuan Financial Services Authority ("Labuan FSA") which replaces the earlier guideline dated 29 December 2017 ("the earlier guideline"). The revised guideline is effective from 1 January 2019.

The Labuan FSA has also removed the related Frequently Asked Questions on Labuan Leasing Business from their website.

The following are key changes made to the guideline:

Operational requirements

Substance requirements
In line with the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 ("the Regulations") the substance requirements are now consistent with the Regulations, that is:

1) maintaining an operational office in Labuan, and
2) carrying out core income generating activities from the Labuan office, such as acquiring of assets to be leased, agreeing funding terms, setting the terms of financing / leasing, monitoring and revising agreements, and managing risks.

Stamping of leasing agreements
Para 7.7 of the earlier guideline has been removed. This paragraph previously specified that the stamping of leasing agreements entered into by a Labuan leasing company must be made by the Stamp Duty Office of the Labuan branch of IRB.

[Para 7.10]

Fees payable

A non-refundable processing fee of RM1,000 and RM3,500 is now specified for "normal" and "fast-track" applications respectively.

[Para 9.1]

Application requirements

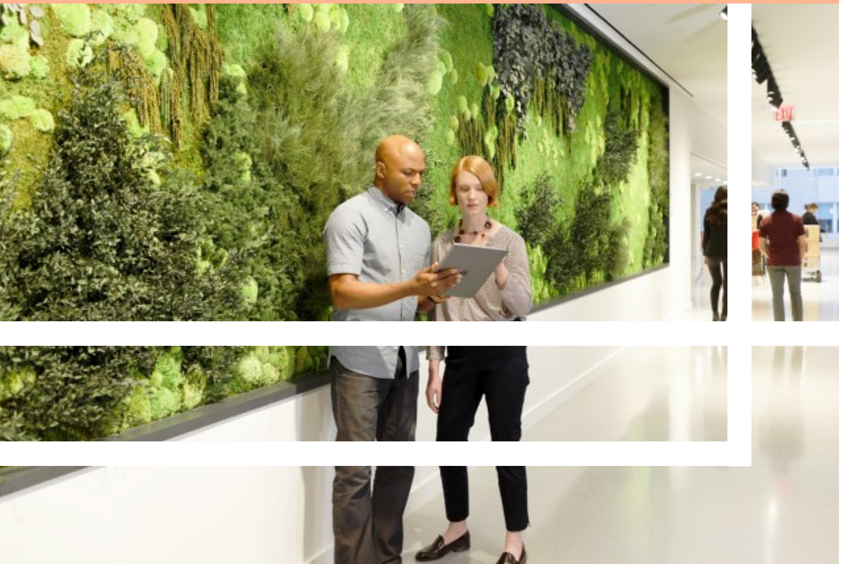
The application to Labuan FSA may be submitted directly by the applicant or through the Labuan trust company, together with a non-refundable processing fee.

[Para 6.3]

For the revisions made to the earlier guideline, please refer to TaXavvy 3-2018.

Guideline on work permit application for licensed and non-licensed Labuan entities – new guideline

The Labuan FSA has issued a new Guideline on Work Permit Application in Labuan IBFC for Licensed and Non-licensed Entities dated 2 April 2019. This guideline covers both licensed and non-licensed entities, and replaces the previous guidelines for licensed and non-licensed entities, both dated 25 February 2015, including the Clarification Note for Guidelines on Work Permit Application in Labuan IBFC for Licensed and Non-licensed Entities (Clarification Note) issued on 13 March 2015.

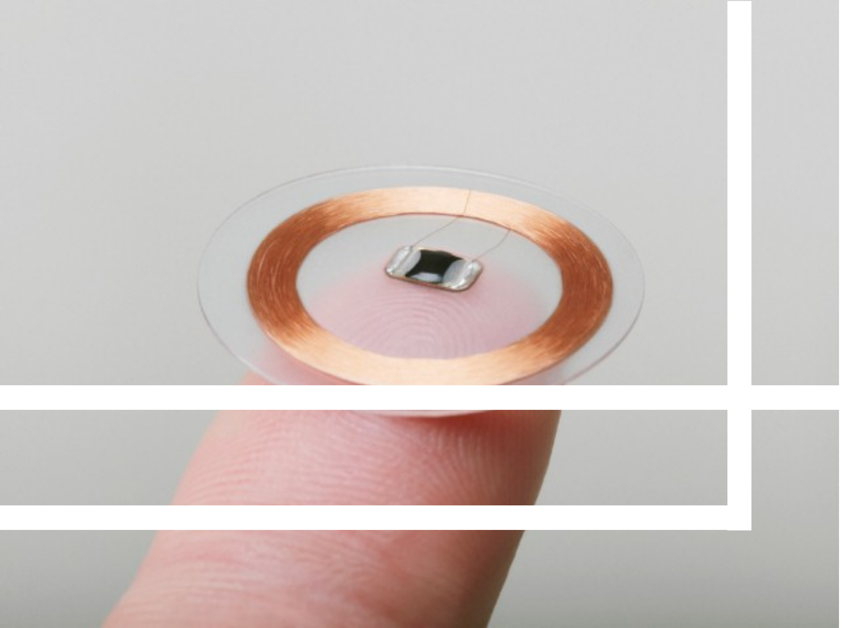


The following are the salient points in relation to the work permit application:

	Previous guidelines (25 February 2015)	New guideline (2 April 2019)
Certified documents to be submitted to Labuan FSA (for applicants of *non-licensed entities*)	1. Business plan shall be submitted together with the application for a work permit. 2. Employer and Employee tax reference numbers are required to be submitted within 30 working days *from the date of their registration with the bank or IRB respectively.* 3. The requirement by Immigration Department to provide the residential address of the applicant in Malaysia.	1. Business plan shall be submitted during the *first* work permit application. *For subsequent work permit applications the business plan need not be submitted unless changes were made.* 2. Employer and Employee tax reference numbers are required to be submitted within 30 working days *upon obtaining the tax reference number from IRB.* 3. This requirement has been removed.
Maximum work permit period	Recommended: 2 years.	This has been removed.
Non-refundable processing fee of RM1,000 / USD350	Applies to the application for a work permit.	Applies to application for a work permit *and renewal of a work permit.*
Permissible activities	The Labuan entity's activities.	The Labuan entity's *business* activities.

Incentives for Less Developed Areas – updated guideline

The guideline has been updated to include the eligibility criteria in respect of application for stamp duty exemption on transfer or lease of land or building used.



The incentives in brief

The incentives for Less Developed Areas was proposed during the 2015 Budget with the objective of promoting balanced regional growth and inclusiveness in the less developed areas (Please refer to TaXavvy Issue 9-2015). Briefly, the incentives are:

- 100% income tax exemption of up to 15 years of assessment (5+5+5) commencing from the first year of assessment statutory income is derived, **or** income tax exemption of 100% of qualifying capital expenditure (Investment Tax Allowance) which can be offset against 100% statutory income for 10 years.

- Stamp duty exemption on transfer or lease of land or building.

- Withholding tax exemption on fees for technical advice, assistance or services, or royalty relating to manufacturing and services activities up to 31 December 2020.

- Import duty exemption on raw materials and components, machinery and equipment which are not produced locally and used directly in the manufacturing or services activity.

Update

New item no. v has been inserted into the Eligibility Criteria section of the guideline to state that for the application of stamp duty exemption on transfer or lease of land or building used for development in relation to manufacturing and services activities, the application must be made prior to the following:

(i) Transfer or lease of land or building; and
(ii) Payment of stamp duty

Contribution made to SOCSO in respect of the Employment Insurance System

The Chartered Tax Institute of Malaysia (CTIM) has sought clarification from the IRB on whether the employee's contribution made to SOCSO in respect of the Employment Insurance System (EIS) is an allowable deduction for personal income tax purposes. The IRB has clarified that the EIS contribution will not be an allowable deduction as it is not a contribution made under the Employees' Social Security Act 1969.

CTIM has sought clarification on whether the contribution by employees to SOCSO in respect of the EIS would form part of the amount allowed a personal deduction under section 46 of the Income Tax Act. Section 46 provides for a deduction of up to RM250 for contributions made by an employee to SOCSO under the Employees' Social Security Act 1969. This deduction will be made against the employee's income reported in his personal income tax return form.

The IRB has clarified that the EIS contribution made is not an allowable deduction as it is a contribution made pursuant to the Employment Insurance System Act 2017 and not the Employees' Social Security Act 1969 as required under section 46.

Correction

TaXavvy 5-2019 which was issued on 5 April 2019 has been corrected on page 11 with respect to the general date to meet the substantial activities requirements for incentives approved on or before 16 October 2017.

The date should be 1 July **2021** and not 1 July **2017**.

The error is regretted.

Connect with us

Kuala Lumpur
Jagdev Singh
jagdev.singh@pwc.com
+60(3) 2173 1469

Penang & Ipoh
Tony Chua
tony.chua@pwc.com
+60(4) 238 9118

Johor Bahru
Benedict Francis
benedict.francis@pwc.com
+60(7) 218 6000

Melaka
Benedict Francis
benedict.francis@pwc.com
+60(7) 218 6000

Tan Hwa Yin
hwa.yin.tan@pwc.com
+60(6) 283 6169

Labuan
Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services
Margaret Lee
margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia
steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Emerging Markets
Fung Mei Lin
mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining
Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Financial Services
Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Technology, Media, and Telecommunications
Heather Khoo
heather.khoo@pwc.com
+60(3) 2173 1636

Specialist services

Corporate Services
Lee Shuk Yee
shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Global Mobility Services
Sakaya Johns Rani
sakaya.johns.rani@pwc.com
+60(3) 2173 1553

Hilda Liow
hilda.liow.wun.chee@pwc.com
+60(3) 2173 1638

International Tax Services / Mergers and Acquisition
Frances Po
frances.po@pwc.com
+60(3) 2173 1618

Tax Reporting & Strategy
Pauline Lum
pauline.ml.lum@pwc.com
+60(3) 2173 1059

Dispute Resolution
Tai Weng Hoe
weng.hoe.tai@pwc.com
+60(3) 2173 1600

Indirect Tax
Raja Kumaran
raja.kumaran@pwc.com
+60(3) 2173 1701

Yap Lai Han
lai.han.yap@pwc.com
+60(3) 2173 1491

Chan Wai Choong
wai.choong.chan@pwc.com
+60(3) 2173 3100

Tax Technology
Yap Sau Shiung
sau.shiung.yap@pwc.com
+60(3) 2173 1555

Transfer Pricing
Jagdev Singh
jagdev.singh@pwc.com
+60(3) 2173 1469

China Desk
Lorraine Yeoh
lorraine.yeoh@pwc.com
+60(3) 2173 1499

Japanese Business Consulting
Yuichi Sugiyama
yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap
clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446

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