



TaXavvy

14 January 2020 | Issue 3-2020

In this issue

- Revised audit frameworks
- Labuan developments
- Public Ruling 8/2019 - Notification of change in accounting period of a company, trust body, co-operative society
- Public Ruling 9/2019 - Residence status of companies and bodies of persons
- Public Ruling 10/2019 - Withholding tax on special classes of income
- Public Ruling 11/2019 - Benefits in Kind
- Public Ruling 12/2019 - Tax treatment of foreign exchange gains and losses
- Revised guidelines for setting up a Representative Office / Regional Office

www.pwc.com/my/tax



Revised audit frameworks

The Inland Revenue Board (IRB) has issued the following revised audit frameworks:

- Tax Audit Framework
- Petroleum Audit Framework
- Transfer Pricing Audit Framework

The above revised audit frameworks are effective from 15 December 2019.

The frameworks are available on www.hasil.gov.my (Legislation > IRBM Tax Audit Framework).

Tax Audit Framework

The revised audit framework supersedes the Tax Audit Framework dated 1 April 2018. The salient changes are as follows:

	New Framework	Old Framework
Visit to taxpayer's premises	The IRB may pay a visit to any premises in connection with a taxpayer by providing advance notification to the taxpayer.	No prior notification was required to be given.
Letter of Settlement of Audit	The finalised tax adjustments, tax and penalty (if any) will be notified through a Letter of Settlement of Audit.	This is not mentioned.
Monitoring Deliberate Tax Defaulter (MDTD) Programme (Note 1)	This is not mentioned.	Taxpayers who have been audited but continue to be non-compliant are placed on the MDTD list. These taxpayers are monitored and delisted if no offences are committed in the following years of assessment.
Offences and penalties for incorrect returns	<ul style="list-style-type: none"> • Penalty of 45% will be imposed under section 113(2) of the Income Tax Act 1967 ("ITA 1967"). • Director General (DG) has discretionary powers under section 124(3) of the ITA 1967 to reduce or waive the penalty. • Repeated offences (Note 2) committed by taxpayers will be subject to penalty of 55%. 	<ul style="list-style-type: none"> • Penalty of 100% will be imposed under section 113(2) of the ITA 1967. • DG has discretionary powers under section 124(3) of the ITA 1967 to reduce the penalty rate to 45%. • Repeated offences committed by taxpayers listed under the MDTD Programme will be subject to penalty of 100%.

Note 1: the MDTD Programme was introduced in 2014 to monitor taxpayers identified as non-compliant in accordance with existing rules and income tax laws.

Note 2: Repeated offences refers to offences committed by taxpayers who have been audited or investigated and assessment, additional / composite assessment have been raised with section 113(2) penalty imposed. The first repeated offence is recognised from the date of the notice of assessment issued from 1 January 2020 onwards.

Petroleum Tax Audit Framework

The revised Petroleum Tax Audit Framework supersedes the earlier framework dated 1 April 2013. The majority of the changes are made to align this framework to the Tax Audit Framework. The salient changes are as follows:

	New Framework	Old Framework
Years of assessment (YAs) covered	Full audit will be carried out for up to 3 YAs, which may be extended to cover the last 5 YAs, depending on the issues discovered during the audit. The limit on YAs covered does not apply in cases of fraud, wilful default or negligence.	The audit may cover a period of 1 to 3 YAs depending on issues identified.
Request for information and documents	<ul style="list-style-type: none"> The request will be made via email, fax or post and the taxpayer is required to respond within 14 calendar days from the date of the request. Otherwise, audit will be carried out using appropriate approach. In cases of desk audit, no formal request will be issued for certain cases. The taxpayer will be notified of tax adjustments together with the notice of assessment. 	This is not mentioned.
Time frame to object against proposed tax adjustments	18 calendar days from date of notification of audit findings.	21 days from the date of notification of audit findings.

	New Framework	Old Framework
Audit settlement timeframe	<ul style="list-style-type: none"> 240 calendar days for taxpayers in exploration stage, 450 calendar days for taxpayers in production stage, from the commencement date of audit visit. 	240 days from the last day of the audit.
Letter of Settlement of Audit	The finalised tax adjustments, tax and penalty (if any) will be notified through a Letter of Settlement of Audit.	This is not mentioned.
Voluntary disclosure	<ul style="list-style-type: none"> Voluntary disclosure is only allowed where the taxpayer has submitted the tax return on or before the statutory filing due date. Sets out the procedures and documents required. 	This is not mentioned.
Offences and penalties for incorrect returns	<ul style="list-style-type: none"> Penalty of 45% will be imposed under section 52(2) of the Petroleum Income Tax Act 1967 ("PITA 1967"). DG has discretionary powers under section 63 of the PITA 1967 to reduce or waive the penalty. 	<ul style="list-style-type: none"> Penalty of 100% will be imposed under section 52(2) of the PITA 1967. DG has discretionary powers under section 63 of the PITA 1967 to reduce the penalty rate to 45% for first offence.

Transfer Pricing Audit Framework

The revised Transfer Pricing Audit Framework supersedes the earlier framework dated 1 April 2013. The salient changes are as follows:

	New Framework	Old Framework
Statutory provisions under the laws	Legislative provisions relating to transfer pricing (TP) includes the ITA 1967, PITA 1967, Real Property Gains Tax Act 1976, Promotion of Investments Act 1986, Stamp Act 1949, Labuan Business Activity Tax Act 1990 and other Acts administered by IRB.	This is not mentioned.
Statutory limit for TP audit	7 YAs.	5 YAs.
Time frame to object against proposed tax adjustments	18 calendar days from date of notification of audit findings.	21 days from the date of notification of audit findings.
Letter of Settlement of Audit	A Letter of Settlement of Audit will be issued.	This is not mentioned.
Voluntary disclosure	<ul style="list-style-type: none"> Voluntary disclosure is only allowed where the taxpayer has submitted the tax return on or before the statutory filing due date. Sets out the procedures and documents required. 	This is not mentioned.

	New Framework		Old Framework		
Offences and penalties for incorrect returns	<ul style="list-style-type: none"> Penalty of 100% will be imposed under section 113(2) of the ITA 1967. DG has discretionary powers under section 124(3) to reduce or waive the penalty. 		<ul style="list-style-type: none"> Penalty of 100% will be imposed under section 113(2) of the ITA 1967. No mention of DG's discretionary powers to reduce or waive the penalty. 		
Penalty rates:	Normal audit	Voluntary disclosure	Normal audit	Voluntary disclosure	
				1	2
<i>Understatement / omission of income</i>	-	-	45%	35%	15%
<i>TP documents:</i>					
<i>- Not prepared</i>	50%	N/A	35%	30%	15%
<i>- Prepared but not TP guidelines compliant</i>	30%	20%	25%	20%	10%
<i>- Prepared and TP guidelines compliant but failed to submit within 30 days of request</i>	30%	20%	0%*	0%*	0%*
<i>- Prepared and TP guidelines compliant and submitted within 30 days of request</i>	0%	0%	0%*	0%*	0%*

1 - After notification but before audit visit commenced

2 - Before case is selected for audit

* Penalty rate not distinguished whether TP document is submitted within 30 days of request.

Labuan developments

1. Labuan Investment Committee Pronouncement 2-2019 (LIC 2-2019)
2. Clarification to LIC's Pronouncement 2-2019
3. Labuan FSA's Circular on revision of disallowance of tax deduction for payments made to Labuan companies



Labuan Investment Committee Pronouncement 2-2019 (LIC 2-2019)

The Labuan Investment Committee (LIC) has released pronouncement 2-2019 on 11 December 2019 on the following matters:

1. Substantial activity requirements (i.e. Number of full time employees (FTE) and annual operating expenditure (OPEX):

Substantial activity requirements will be moderated

- First party captive insurance / takaful
- Reinsurance / retakaful
- Insurance brokers
- Groups of leasing companies

The following activities will be subject to substantial activity requirements

- Pure equity holding (management and control, and OPEX requirements)
- Non-pure equity holding (FTE and OPEX requirements)

2. Labuan entities that are dormant, struck off, under winding up or liquidation are exempted from audit requirements under the Labuan Business Activity Tax Act 1990's (LBATA) requirements.
3. Run-off entities are required to comply with substantial activity requirements.
4. Non-compliance to substantial activity requirements will result in the Labuan entity being taxed at 24% under the LBATA.

The pronouncement is available on Labuan IBFC's website [www.labuanibfc](http://www.labuanibfc.com) (Guidelines > General).

Clarification on LIC 2-2019

The LIC Clarification Circular was issued on 20 December 2019 to set down the revised substantial activity requirements for certain Labuan entities as approved by the Ministry of Finance. Amendments to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 will be made accordingly and the revisions are to be effective from 1 January 2019.

Examples of some of the changes (highlighted in bold) are as below. The full list of affected Labuan entities is available on Labuan IBFC's website [www.labuanibfc](http://www.labuanibfc.com) (Guidelines > General)

Labuan entity	Existing substance requirements		Revised substance requirements	
	FTE	OPEX (RM)	FTE	OPEX (RM)
Labuan banks, investment banks including islamic banks / investment banks	3	180,000	3	200,000
Labuan (re)insurer / (re) takaful operator	4	150,000	3	200,000
Labuan insurance brokers or takaful brokers	4	100,000	2	100,000
Labuan entity undertaking pure equity holding activities (new category)	-	-	Not required @	20,000

@ these entities have to instead comply with management and control requirements

The LIC has also stated that separate rules will be issued on the substantial activity requirements for Labuan entities that undertake pure equity holding activities.



Labuan FSA's Circular on revision of disallowance of tax deduction for payments made to Labuan companies

The Income Tax (Deductions not allowed for payments made to Labuan company by resident) Rules 2018 had been gazetted on 31 December 2018 (the 2018 Rules) to prescribe the amount which is disallowed in respect of payments made by residents to Labuan companies from 1 January 2019. The Labuan FSA has now released a Circular on Revisions to Non-Deductibility Rules dated 23 December 2019 to inform of revision to the non-deductibility rates, ahead of the final release of the gazetted amendments to the 2018 Rules.

The revised non-deductible rates for payments with effect from 1 January 2019 will be as follows:

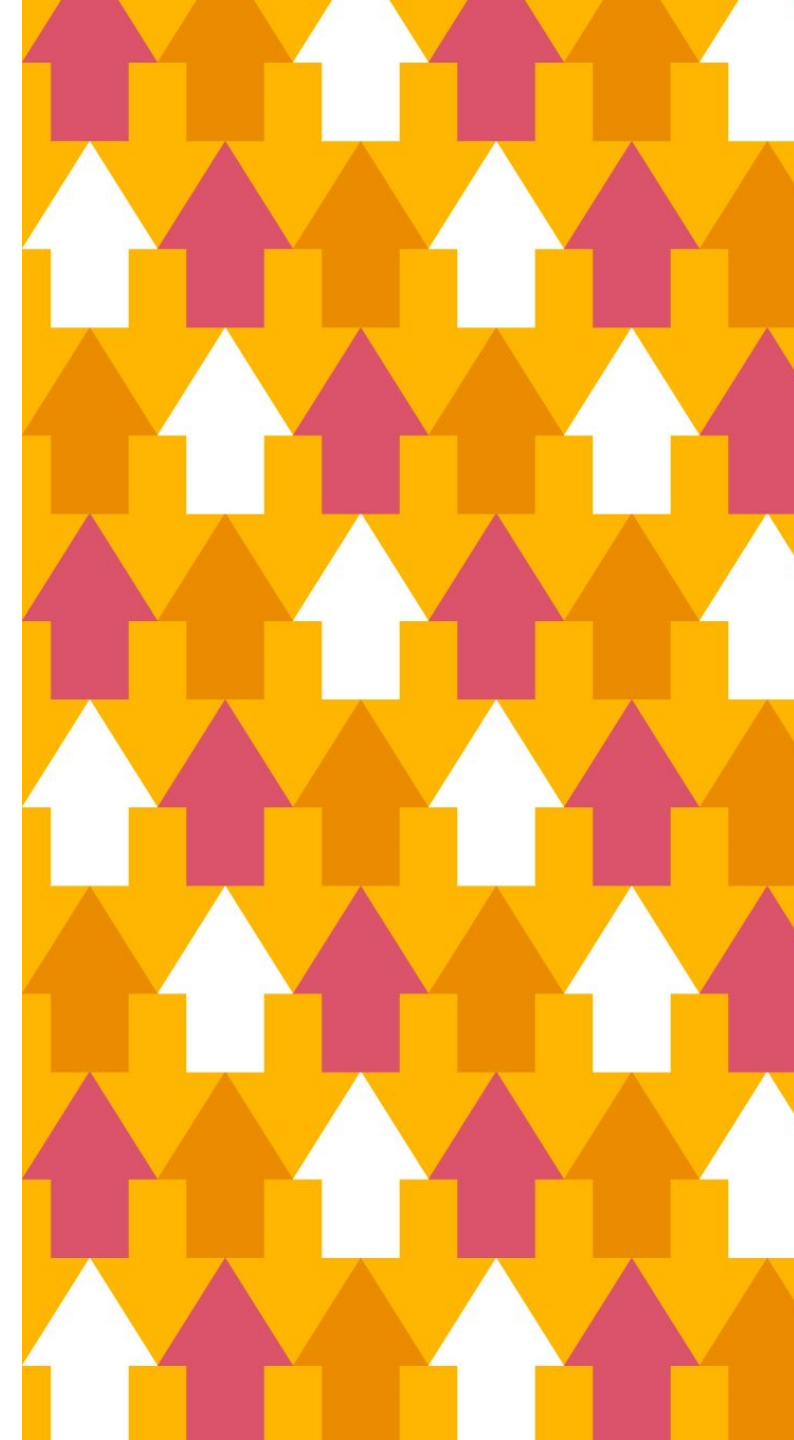
Type of payment	Percentage not deductible	
	Current	Revised
Interest	33%	25% [#]
Lease rental	33%	25%
Other payments	No change. The rate remains at 97%	

[#] including all payments relating to financing e.g. commission, facility & upfront fees.

In addition, the 2018 Rules (to be amended) will not be applicable to the following transactions between:

- Labuan International Commodity Trading Company (LITC) and Malaysian residents;
- Labuan entities that have opted to pay tax under the ITA 1967 and Malaysian residents; and
- Labuan entities that are paying taxes under the ITA 1967 and Labuan entities that are paying taxes under LBATA.

The 2018 Rules continue to not apply to payments made by a resident general insurer to a Labuan (re)insurer as per the LIC Pronouncement 1-2019.



Public Ruling 8/2019 - Notification of change in accounting period of a company, trust body, co-operative society

Public Ruling 8/2019 - Notification of change in accounting period of a company, trust body, co-operative society ("PR 8/2019") issued on 6 December 2019, replaces PR 7/2011 on the same subject to reflect current legislation. Broadly similar to the old PR, PR 8/2019's main update was to incorporate the requirements of section 21A(3A) of the ITA 1967 which specifies a time frame to notify the DG on any change to the accounting period.



PR 8/2019 explains the requirement to notify the DG on any change of accounting period by a company, limited liability partnership (LLP), trust body or co-operative society via the prescribed Form CP204B on any change to the accounting period.

Effective from YA 2019, section 21A(3A) of the ITA 1967 requires that where:

- *The accounting period is shortened*
The DG has to be notified no later than 30 days before the end of the new accounting period where the new accounts are less than 12 months and are closed before the end of the original accounting period.
- *The accounting period is extended*
The DG has to be notified 30 days before the end of the original accounting period where the new accounts are more than 12 months and are closed after the end of the original accounting period.

PR 8/2019 has to be read together with PR 8/2014 - Basis period of a company, LLP, trust body and Co-operative Society.

The public ruling is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).

Public Ruling 9/2019 - Residence status of companies and bodies of persons

Public Ruling 9/2019 - Residence status of companies and bodies of persons ("PR 9/2019") issued on 6 December 2019, replaces the earlier Public Ruling 5/2011 on the same subject to bring in line with current legislation. PR 9/2019 also now includes the determination of residence status for LLPs and Business Trusts (BTs).



This Public Ruling (PR) provides explanation on the determination of the residence status of companies and bodies of persons. Other than updates that bring the public ruling in line with current legislation (example: updated tax rates), the notable additions to PR 9/2019 are as follows:

Branch of a foreign company

A foreign company with a Malaysian branch which claims that it is a resident of Malaysia must prove to the satisfaction of the DG that the management and control of its affairs or business(es) is exercised in Malaysia.

Limited Liability Partnership

- An LLP carrying on a business is resident in Malaysia if the management and control of its business is exercised in Malaysia; and
- Any other LLP is resident in Malaysia if the management and control of its affairs is exercised in Malaysia by its partners.

Business trust

A BT is tax resident in Malaysia if the trustee manager carries on the business of the business trust in Malaysia, and if the management and control of the BT's business is exercised in Malaysia.

The public ruling is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).

Public Ruling 10/2019 - Withholding tax on special classes of income

Public Ruling 10/2019 - Withholding tax on special classes of income ("PR 10/2019") issued on 10 December 2019 replaces PR 11/2018 on the same subject.

PR 10/2019 essentially updates PR 11/2018 to incorporate changes to the law since PR 11/2018 was issued.

Removal of the word "technical"

Pursuant to the Finance Act 2018, effective from 28 December 2018, the word "technical" had been removed from section 4A(ii) of the ITA 1967. With this amendment, withholding tax (WHT) is applicable on advice, assistance or services rendered in connection with management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme.

Withholding tax borne by the payer

The old PR 11/2018 had stated that with effect from 5 December 2018, there will be no regrossing of payments to determine the WHT amount. PR 10/2019 now clarifies that the date of 5 December 2018 refers to the date of payment by the payer to a non-resident in accordance with contractual agreement.

Consequences of not deducting and remitting tax

The old PR 11/2018 states that where WHT is not due for payment and no payment is made to the non-resident payee on or before the due date of submission of the Income Tax Return Form (ITRF), a deduction is not allowed under Section 39(1)(j) of the ITA 1967 if the WHT is not paid or remitted to the DG.

PR 10/2019 has now stated that a deduction is not allowed under Section 39(1)(j) of the ITA 1967 even if the WHT is paid or remitted to the DG.

Withholding tax on late payment penalty imposed by non-resident

Under the old PR 11/2018, any late payment penalty imposed by a non-resident on a Malaysian resident had been regarded as interest income under Section 4(c) of the ITA 1967 and subject to withholding tax under Section 109 of the ITA 1967.

PR 10/2019 clarified that in the absence of a double taxation agreement (DTA) between the two contracting parties or where the DTA is silent on the treatment of such late payment penalty, the late payment penalty will be considered as income under Section 4(f) of the ITA 1967, and hence subject to withholding tax under Section 109F of the ITA 1967.

Due date for payment

Where the due date for payment of WHT falls on a weekly holiday (Saturday and Sunday) or a public holiday in Malaysia, the following day would be considered as the due date. Weekly holiday is extended to cover Friday and Saturday.

The public ruling is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).



Public Ruling 11/2019 - Benefits in Kind

Public Ruling 11/2019 - Benefits in Kind (“PR 11/2019”) issued on 12 December 2019 replaces PR 3/2013 of the same topic.

PR 11/2019 essentially updates PR 3/2013 to incorporate changes to the law since PR 3/2013 was issued.

In aligning the public ruling to current legislation, tax treatments which are no longer in effect have been removed, for example, the tax exemption of up to RM2,400 per YA in respect of travelling allowance which was effective from YA 2008 to YA 2010. In addition, the notable additions to PR 11/2019 are as follows:

MTD in excess of salary

In situations where an employee’s MTD is higher than his / her monthly salary owing to high value of benefits in kind (BIK) received for that month, the employer is required to obtain IRB’s approval for the MTD on the BIK to be paid by instalments.

Goods & Service Tax (GST) output tax borne by employer

In line with the requirements of section 13(1A) of the ITA 1967 which took effect from YA 2015, paragraph 6.5 and Example 15 are introduced to explain and illustrate that the value of BIK to be brought to tax by an employee should include any GST borne by his/her employer.

Tax exemption on BIK in respect of traditional medicine - updated list of qualifying bodies

Consistent with the previous PR 3/2013, PR 11/2019 states that only traditional medicine given by a medical practitioner registered with a body which is certified or registered in accordance with the rules governing traditional medicine as laid down by the Ministry of Health (“qualifying bodies”) qualifies for the exemption. An updated list of the qualifying bodies (non-exhaustive) has been included in PR 11/2019.

The public ruling is available on IRB’s website www.hasil.gov.my (Legislation > Public Rulings).



Public Ruling 12/2019 – Tax treatment of foreign exchange gains and losses

New Public Ruling 12/2019 - Tax treatment of foreign exchange gains and losses (“PR 12/2019”) was issued on 13 December 2019. PR 12/2019 outlines the tax treatment for businesses in Malaysia in respect of foreign exchange gains and losses, which arise from cross border transactions denominated in foreign currency.



The salient points of PR 12/2019 are as follows:

Functional currency (FC)

- Transactions involving currencies other than the FC of the business is a foreign currency transaction.
- If the FC of an entity is other than the RM (e.g. USD), then transactions involving RM would be a foreign currency transaction.

Translation differences

- Any forex differences arising from translation of an entity's financial statements from FC to presentation currency are not taxable or deductible.

Foreign exchange (forex) gains or losses

- Only forex gains or losses from realised revenue transactions are taxable or deductible. Forex gains or losses of a capital nature, whether realised or not, are not taxable or deductible. The underlying nature of each transaction to which the forex gain or loss is attributed to has to be examined in substance.
- Forex differences are considered as “realised” upon settlement.
- Where an amount is settled in foreign currency via a foreign currency account, no physical conversion of the currency is necessary before the amount is treated as realised.
- Borrowings or borrowing costs
 - Taxability or deductibility of forex gains or losses attributable to borrowings or borrowing costs would depend on the nature of the underlying transaction related to the borrowings.
 - Where borrowed money forms part of permanent working capital (defined) of the business, the borrowing and any attributable forex gains or losses will be considered capital in nature. This is regardless of how the borrowed money is eventually used.

PR 12/2019 should be read together with the Guidelines on Tax Treatment Related to the Implementation of MFRS 121 (or Other Similar Standards) (Revised) dated 16 May 2019. The public ruling is available on IRB's website www.hasil.gov.my (Legislation > Public Rulings).

Revised guidelines for setting up a Representative Office / Regional Office

The Malaysian Investment Development Authority (MIDA) has issued revised guidelines for Setting up a Representative Office / Regional Office (“2019 Guidelines”). The 2019 Guidelines replaces the Guidelines on the same topic issued in November 2018 (“2018 Guidelines”).

The key changes made to the 2019 Guidelines are as follows:

	2019 Guidelines	2018 Guidelines (old)
Duration of approval period	<ul style="list-style-type: none"> Company and others[#]: <ul style="list-style-type: none"> Minimum of 2 years Government and trade association: <ul style="list-style-type: none"> Maximum of 5 years (based on contractual agreement / equivalent document) 	<ul style="list-style-type: none"> Company and others[#]: <ul style="list-style-type: none"> minimum 2 years (based on merits of each case) Government and trade association: <ul style="list-style-type: none"> as required by applicant
Extension of approval period	<ul style="list-style-type: none"> Company and others[#]: <ul style="list-style-type: none"> Based on merits of each case and additional OPEX commitment Government and trade association: <ul style="list-style-type: none"> merits of each case 	Not stated
Operating expenditure (“OPEX”)	Minimum RM300,000 per annum; or OPEX as proposed by applicant, whichever is higher	Minimum RM300,000 per annum

[#] including non-profit organisations not relating to trade

The revised guidelines can be obtained at MIDA’s website www.mida.gov.my (Resources > Forms and Guidelines > Services sector)

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

Kuching

Bryan Chen
bryan.chen@pwc.com
+60(82) 527 218

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

Services & Infrastructure

Lim Phaik Hoon
phaik.hoon.lim@pwc.com
+60(3) 2173 1535

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

Dispute Resolution

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

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

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

International Tax Services / Mergers and Acquisition

Gan Pei Tze
pei.tze.gan@pwc.com
+60(3) 2173 3297

Tax Technology

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

Pauline Lum

pauline.ml.lum@pwc.com
+60(3) 2173 1059

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



www.pwc.com/my/tax

TaXavvy is a newsletter issued by PricewaterhouseCoopers Taxation Services Sdn Bhd. Whilst every care has been taken in compiling this newsletter, we make no representations or warranty (expressed or implied) about the accuracy, suitability, reliability or completeness of the information for any purpose. PricewaterhouseCoopers Taxation Services Sdn Bhd, its employees and agents accept no liability, and disclaim all responsibility, for the consequences of anyone acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Recipients should not act upon it without seeking specific professional advice tailored to your circumstances, requirements or needs.

© 2020 PricewaterhouseCoopers Taxation Services Sdn Bhd. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see www.pwc.com/structure for further details.