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May 2022

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Quick links:
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Takeaways:
1. Income Tax Exemption Amendment Orders 2022 [P.U.(A) 88/2022 – 92/2022, 124/2022]
2. Income Tax (Exemption) Order 2022 [P.U.(A) 96/2022]
3. Income Tax Orders and Rules 2022 [P.U.(A) 115/2022, 116/2022 and 117/2022] in relation to Venture Company, Venture Capital Company and Venture Capital Management Company
4. Stamp Duty (Remission) 2003 (Amendment) Order 2022 [P.U.(A) 111/2022] and Stamp Duty (Remission) Order 2022 [P.U.(A) 112/2022]
5. Stamp Duty (Exemption) (No. 2) 2016 (Amendment) Order 2022 [P.U.(A) 123/2022]
6. HASiL – FAQs on the processing fee for the indorsement of instruments exempted from stamp duty
7. HASiL – FAQs on special deduction for landlords who provide rental reduction on business premises to SME and non-SME tenants (updated on 22 March 2022)
8. HASiL – Media Release and FAQs on implementation of e-TT system for TT, EFT, and IBG payment methods
9. HASiL – Responses to the Joint Memorandum on Issues Arising from 2022 Budget Speech & Finance Bill 2021
10. Updates on Double Tax Agreements
11. Increase in minimum wage effective 1 May 2022

Important deadlines:

Task	Deadline
	31 May 2022
1. 2023 tax estimates for companies with June year-end	√
2. 6th month revision of tax estimates for companies with November year-end	√
3. 9th month revision of tax estimates for companies with August year-end	√
4. Statutory filing of 2021 tax returns for companies with October year-end	√
5. Maintenance of transfer pricing documentation for companies with October year-end	√
6. 2022 CbCR notification for applicable entities with May year-end	√

1. Income Tax Exemption Amendment Orders 2022 [P.U.(A) 88/2022 – 92/2022, 124/2022]

The relevant income tax exemption order has been recently amended to extend the application deadline for for tax exemption to the Minister of Finance (MOF) through the East Coast Economic Region (ECER) Development Council from 31 December 2020 to 31 December 2022 as summarised below:

East Coast Economic Region (ECER) [Approving authority: ECER Development Council]

P.U.(A)	Tax exemption on statutory income derived from:	Amended by P.U.(A)
157/2016	A qualifying activity (QA), which is equivalent to the amount of allowance of 100% of the qualifying capital expenditure (QCE) for 5 consecutive years.	88/2022 (gazetted on 1 April 2022)
158/2016	A special QA, which is equivalent to the rate of allowance as specified by the MOF of 60% - 100% of the QCE for a period of consecutive years of assessment (YAs) as the MOF may determine.	89/2022 (gazetted on 1 April 2022)
159/2016	A QA for 10 consecutive YAs.	90/2022 (gazetted on 1 April 2022)
160/2016	A special QA at the rate of 70% - 100% as may be specified by the MOF for a period of consecutive YAs as the MOF may determine.	91/2022 (gazetted on 1 April 2022)
161/2016	The following activities of an approved developer for 10 consecutive YAs: • the disposal of any right over any land or disposal of a building or rights over a building or part of a building located in an industrial park or a free zone; or • the rental of a building or part of a building located in an industrial park or a free zone.	92/2022 (gazetted on 1 April 2022)
162/2016	A QA for 10 consecutive YAs.	124/2022 (gazetted on 22 April 2022)

Please refer to the respective Orders for full details.

Back to top

2. Income Tax (Exemption) Order 2022 [P.U.(A) 96/2022]

On 5 April 2022, the Malaysian government gazetted P.U.(A) 96/2022 (the Order) to legislate the exclusion of foreign-source income from the calculation of the special one-off tax known as the "Cukai Makmur" that applies to certain companies with chargeable income exceeding RM100 million in the basis period for YA 2022; the exclusion was announced by the MOF via a Media Release on 30 December 2021 (*available in the Bahasa Malaysia language only*). The Order is effective for YA 2022 and is relevant to resident companies that receive income in Malaysia from outside of Malaysia as of 1 July 2022.

The Malaysian government announced the "Cukai Makmur" during the tabling of Budget 2022, in addition to a proposed measure to impose tax on the income of residents derived from sources outside of Malaysia effective from 1 January 2022. As a transition measure, the foreign-source income received in Malaysia from 1 January 2022 until 30 June 2022 would be taxed at a 3% rate on a gross basis. The foreign-source income received in Malaysia as from 1 July 2022 would be subject to tax, based on the prevailing income tax rate. These measures were implemented through the Finance Act 2021, which came into operation on 1 January 2022. However, following joint discussions between the government and various stakeholders, the government agreed to exempt Malaysian tax residents from the imposition of tax (subject to certain conditions) effective from 1 January 2022 to 31 December 2026 on certain types of foreign-source income (including dividend income received by companies and limited liability partnerships and all types of foreign-source income received by individuals, except for individuals carrying on a partnership business in Malaysia). As noted above, the MOF also announced that foreign-source income received in Malaysia in YA 2022 would be excluded from the calculation of the "Cukai Makmur".

The Order gazetted on 5 April 2022 to legislate the exclusion from the calculation of "Cukai Makmur" applies to companies that receive income in Malaysia from outside of Malaysia from 1 July 2022. Prior to 1 July 2022, all foreign-source income that is not exempted from tax, and received by any resident person in the period from 1 January 2022 to 30 June 2022 (both dates inclusive) will be subject to a tax rate of 3% on the gross amount [pursuant to Section 6(1)(p) and Part XX of Schedule 1 to the Income Tax Act 1967 (ITA), as inserted by the Finance Act 2021].

<u>Overview of "Cukai Makmur"</u>

"Cukai Makmur" is to be imposed on companies that generate high income during the COVID-19 pandemic period and was legislated under Paragraph 2(2) of Part I of Schedule 1 to the ITA ["Paragraph 2(2)"], through the Finance Act 2021. Paragraph 2(2) provides that a company [other than small and medium-sized enterprises (SME)] with chargeable income in excess of RM100 million in the basis period for YA 2022 is subject to income tax at the following rates:

- 24% on the first RM100 million of chargeable income; and
- 33% for the chargeable income exceeding RM100 million.

Key definitions under the Order are described below.

<u>Relevant definitions</u>

A "company" refers to any company that is incorporated under the Companies Act 2016 (*Act 777*) and that is resident in Malaysia.

As noted above, the exclusion from "Cukai Makmur" is applicable to income received in Malaysia from outside Malaysia from 1 July 2022. "Income received in Malaysia from outside Malaysia" refers to income arising from outside Malaysia that is brought into Malaysia.

The term "SME" is not specifically defined in the Order. However, under the ITA, the definition generally applies to resident enterprises incorporated in Malaysia that have paid-up capital not exceeding RM2.5 million in respect of ordinary shares at the beginning of the basis period for a YA, that are not part of a group containing a company exceeding this capitalisation threshold, and that have gross income from business sources not exceeding RM50 million for the YA.

<u>Other salient points</u>

A company that has chargeable income in relation to income received in Malaysia from outside Malaysia in the basis period for YA 2022 will be exempt from the application of the provisions of Paragraph 2(2), i.e., the "Cukai Makmur" will not apply to such chargeable income.

The company's chargeable income in relation to income received in Malaysia from outside Malaysia in the basis period for YA 2022 that will be exempt from the application of the provisions of Paragraph 2(2) will be determined in accordance with a prescribed formula, as illustrated through the image below from the Order:

$$\frac{A}{B} \times C$$

where A is the statutory income in relation to the income received in Malaysia from outside Malaysia in the basis period for the year of assessment 2022;

B is the aggregate income in the basis period for the year of assessment 2022;

C is the chargeable income of the company in the basis period for the year of assessment 2022.

Where a company determines the chargeable income that is exempt from the application of the provisions of Paragraph 2(2) using the formula above, any excess chargeable income of the company that remains taxable will be subject to income tax for YA 2022 under Paragraph 2(1) or Paragraph 2(2) of Part I of Schedule 1 to the ITA:

Chargeable income for YA 2022	Tax rate
Chargeable income in relation to foreign source income that is received in Malaysia from outside Malaysia [subject to income tax under Paragraph 2(1)]	24% [prevailing rate]
Remaining chargeable income [subject to income tax under Paragraph 2(2)]: - First RM100 million - In excess of RM100 million	 24% [prevailing rate] 33% ["Cukai Makmur"]

Please refer to the Order for more details.

Back to top

3. Income Tax Orders and Rules 2022 [P.U.(A) 115/2022, 116/2022 and 117/2022] in relation to Venture Company, Venture Capital Company and Venture Capital Management Company

P.U.(A)	Remarks
115/2022 Income Tax (Exemption) (No. 2) Order 2022 (Gazetted on 15 April 2022)	Exemption A venture capital company (VCC) is exempted from the payment of income tax in respect of the statutory income on all sources of income which shall: (a) commence from the YA in the basis period the VCC obtains its first certification from the Securities Commission Malaysia (SCM); and (b) the first certification received shall not be later than 31 December 2026. The exemption shall be for a period of 5 YAs or the YAs equivalent to the remaining life of the fund established for the purpose of investing in a venture company (VC), whichever is the lesser. The exemption shall not apply to interest income arising from savings or fixed deposits and profits from syariah-based deposits. Note: 1. The conditions to qualify for the exemption and the treatment of losses from disposal of investment are set-out in paragraphs 4 and 5 of this Order respectively. 2. The meaning of "seed capital financing", "early stage financing", "start-up financing", "SCM", "VCC", and "VC" are found in Paragraph 2 of this Order. The meaning of "related company" is found in Paragraph 4(2) of this Order. 3. The Income Tax (Exemption) (No. 11) Order 2005 [P.U.(A) 75/2005] is revoked with effect from YA 2018. Where a VCC has been granted an exemption under the P.U.(A) 75/2005, such exemption shall continue to remain in effect for the remainder YA in the exemption period of that VCC as if the P.U.(A) 75/2005 was not revoked by this Order.

P.U.(A)	Remarks
	Any application for an exemption under the P.U.(A) 75/2005 which is pending on the date of the coming into operation of this Order shall, on that date, cease to be dealt with under the P.U.(A) 75/2005 and shall be dealt with under this Order. Effective date Deemed to have effect from YA 2018.
116/2022 Income Tax (Exemption) (No. 3) Order 2022 (Gazetted on 15 April 2022)	Exemption A venture capital management company (VCMC) is exempted from the payment of income tax in respect of the statutory income derived from the management of VCC fund received by the VCMC from a VCC as stipulated in the agreement on the management of the investment of the VCC entered into between the said company in relation to – (a) share of profits; (b) management fee; and (c) performance fee including performance bonus and carried interest. The exemption is from the YA 2018 until YA 2026. Note: 1. The meaning of "SCM", "VCMC", and "VCC" are found in Paragraph 2(3) of this Order. 2. The treatment of losses and the maintenance of separate accounts are set-out in Paragraphs 3 and 4 of this Order respectively. 3. The Income Tax (Exemption) (No. 12) Order 2005 [P.U.(A) 77/2005], is revoked with effect from YA 2018. Where a VCMC has been granted an exemption under the P.U.(A) 77/2005, such exemption shall continue to remain in effect for the remainder YA in the exemption period of that VCMC as if the P.U.(A) 77/2005 was not revoked by this Order. Any application for an exemption under the P.U.(A) 77/2005 which is pending on the date of the coming into operation of this Order shall, on that date, cease to be dealt with under the P.U.(A) 77/2005 and shall be dealt with under this Order. Effective date Deemed to have effect from YA 2018.
117/2022 Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022 (Gazetted on 15 April 2022)	Deduction allowed In ascertaining the adjusted income of a company or an individual from his business in a basis period for a YA, there shall be allowed a deduction for an amount in that basis period which is equivalent to – (a) the value of investment made in a VC; or (b) the value of investment or RM20 million, whichever is the less, made in a VCC. Note: 1. The investment made shall be deemed to be incurred in the YA where the investment is held for a period of 3 years from the date the investment is made and the investment holding period is certified by the SCM. 2. The deduction allowed may be claimed in the YA where the investment was held for a period of 3 years from the date the investment is made.

P.U.(A)	Remarks
	3. To qualify for the deduction, the company or individual shall make the investment on or after 27 October 2017 but not later than 31 December 2026. Please refer to Rule 4(2) of these Rules for more details on the conditions to qualify for the deduction. 4. The meaning of "individual", "seed capital financing", "early stage financing", "start-up financing", "SCM", "company", "related company", "VCC", and "VC" are found in Rule 2 of these Rules. 5. These Rules shall not apply to a VCC to which the Income Tax (Exemption) (No. 2) Order 2022 [P.U.(A) 115/2022] applies for the whole of the exemption period provided under the said Order. 6. The Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U. (A) 76/2005] are revoked with effect from YA 2018. A company or an individual who has made an investment in the basis period for the YA before YA 2018 and complied with the provisions of these Rules but has not applied for a deduction under the P.U.(A) 76/2005 shall be entitled to apply for a deduction under these Rules. Effective date Deemed to have effect from YA 2018.

Please refer to the respective Orders and Rules for full details.

Back to top

4. Stamp Duty (Remission) 2003 (Amendment) Order 2022 [P.U.(A) 111/2022] and Stamp Duty (Remission) Order 2022 [P.U.(A) 112/2022]

Further to the MOF's announcement on the imposition of a limit of RM1,000 on stamp duty charged for each contract note and any amount of stamp duty in excess of RM1,000 will be remitted for the trading of shares or stocks listed on Bursa Malaysia from 1 January 2022 to 31 December 2026 [reported in Deloitte Malaysia Tax Espresso (Special Alert) - Policy Changes on the Taxation of Foreign-Sourced Income and Remission of Stamp Duty on Contract Notes for Shares Listed on Bursa Malaysia], the following orders have been gazetted to provide the legislative effect:

P.U.(A)	Remarks
111/2022 Stamp Duty (Remission) 2003 (Amendment) Order 2022 (Gazetted on 15 April 2022)	Amendment of Paragraph 2 The Stamp Duty (Remission) Order 2003 [*P.U. (A) 81/2003*] is amended in Paragraph 2 by deleting the words "shares, stock or" as follows: "2. The stamp duty payable on all instruments of contract notes relating to the sale of any ~~shares, stock or~~ marketable securities which are listed on stock market of a stock exchange approved under subsection 8(2) of the Securities Industry Act 1983 [*Act 280*] is remitted: Provided that the said remission applies to a stamp duty that is in excess of RM200 calculated at the prescribed rate in item 31 of the First Schedule to the Act." Effective date Deemed to have come into operation on 1 January 2022.

P.U.(A)	Remarks
112/2022 **Stamp Duty (Remission) Order 2022** (Gazetted on 15 April 2022)	Remission The stamp duty that is in excess of RM1,000 calculated at the prescribed rate in Item 31 of the First Schedule to the Stamp Act 1949 payable on all instruments of contract notes relating to the sales of any shares or stock which are listed on the stock market of a stock exchange approved under subsection 8(2) of the Capital Markets and Services Act 2007 [*Act 671*] is remitted. Effective date Deemed to have come into operation on 1 January 2022 and shall continue to be in operation until 31 December 2026.

Please refer to the respective Orders for full details.

Back to top

5. Stamp Duty (Exemption) (No. 2) 2016 (Amendment) Order 2022 [P.U.(A) 123/2022]

P.U.(A) 123/2022 (the Amendment Order) which was gazetted on 22 April 2022 extends the exemption from stamp duty on instrument for transfer of real property or lease of land or building granted under the Stamp Duty (Exemption) (No. 2) Order 2016 [P.U.(A) 164/2016] for another two years.

Pursuant to Paragraph 3(1) of P.U.(A) 164/2016, any instrument chargeable with *ad valorem* duty for transfer of the real property or lease of land or building, used for the purpose of carrying out a qualifying activity in the East Coast Economic Region (ECER) is exempted from stamp duty, provided the instrument is executed between 13 June 2008 and 31 December 2020 (both dates inclusive). The exemption is now extended to instrument executed between 1 January 2021 and 31 December 2022 (both dates inclusive).

Please refer to the Amendment Order and P.U.(A) 164/2016 for full details.

Back to top

6. HASiL – FAQs on the processing fee for the indorsement of instruments exempted from stamp duty

The Inland Revenue Board of Malaysia (HASiL) has issued frequently asked questions (FAQs) in relation to Section 37(2A) of the Stamp Act 1949 which provides that with effect from 1 January 2022, a processing fee of RM10 will be imposed for a Collector to certify by indorsement that an instrument is exempted from stamp duty. The fee will apply if the instrument would have been chargeable with duty exceeding RM10, had it not been exempted from stamp duty. The FAQ is dated 2 January 2022 and is only available in Bahasa Malaysia.

Some of the key points in the FAQ are outlined below:

- The fee applies to all instruments exempted from stamp duty (i.e., it is not restricted to specific types of instruments or applications).
- The fee is not imposed on subsidiary instruments.
- The fee can be remitted by way of cash, bank draft, client's check or online payment. Revenue stamps cannot be used for the fee payment.
- The fee applies to stamping applications submitted from 3 January 2022.

Back to top

7. HASiL – FAQs on special deduction for landlords who provide rental reduction on business premises to SME and non-SME tenants (updated on 22 March 2022)

Further to the issuance of P.U.(A) 479/2021 and P.U.(A) 480/2021, HASiL has updated the Frequently Asked Questions (FAQs) on special deduction for landlords who provide rental reduction on business premises to SME and non-SME tenants *(Available in Bahasa Malaysia only)*.

The changes are as follow:

1) The special deduction period for landlords has been extended to June 2022 as follow:
   - From April 2020 to **June 2022** for reduction in rental to SME tenants.
   - From January 2021 to **June 2022** for reduction in rental to non-SME tenants.

2) For the special deduction period from January 2022 to June 2022, the term SME also includes Micro, Small and Medium Enterprises (MSMEs).

3) For the period from January 2021 to **June 2022**, SME tenants are not required to furnish the SME Status Certificate to landlords in cases where the certificate has yet to be issued by SME Corporation Malaysia.

4) A landlord who has received rental payments for **January 2022 to June 2022** in December 2021 can still offer rental reduction to the tenant and claim the special deduction, provided that the landlord fulfils all the conditions for claiming the special deduction and has the relevant supporting documents as stated in FAQ No. 11.

Please refer to the FAQs (updated on 22 March 2022) for full details.

Back to top

8. HASiL – Media Release and FAQs on implementation of e-TT system for TT, EFT, and IBG payment methods

HASiL issued a Media Release dated 3 March 2022 (in Bahasa Malaysia only) announcing that an e-Telegraphic Transfer (e-TT) system has been introduced with effect from 1 April 2022 for the payment of Income Tax, Petroleum Tax, Real Property Gains Tax (RPGT), Compound Payment, Public Entertainer Tax (Seniman Kembara) and Withholding Tax (WHT) through Telegraphic Transfer (TT), Electronic Funds Transfer (EFT) and Interbank GIRO Transfer (IBG) methods from within and outside Malaysia. FAQs on the implementation of e-TT system for TT, EFT and IBG payment methods has also been issued recently.

The e-TT is a system that will generate a Virtual Account Number (VA) as a payment identification identity. Taxpayers who wish to pay tax through TT from within and outside Malaysia will be required to access the e-TT system as follow:

i. Visit the My Tax Portal at https://mytax.hasil.gov.my;
ii. Click on ezHasil Services > submenu e-TT;
iii. Fill up the required payment information to generate the VA number; and
iv. Use the VA Number as the payment account number when making payment through TT at the bank counter or through the electronic banking portal.

With the implementation of the new e-TT system, four types of payment - Compound, Public Entertainer Tax (Seniman Kembara), WHT, and RPGT (3% retention sum by the acquirer under Section 21B, RPGT Act 1976) - which only can be paid manually at HASiL Payment Counters, can now also be paid through the e-payment method.

Tax payment using the VA number from the e-TT system can be performed through:
- Internet banking portal via IBG / RENTAS / TT / Funds Transfer;
- Bank Counter: IBG / RENTAS / TT / Funds Transfer only*;
  **Payment by cash and cheque are not allowed*
- Automated Teller Machine (ATM)

Any queries on the above can be directed to HASiL through:
a) HASiL Care Line at 03-8911 1000 or 603-8911 1100 (overseas)
b) HASiL Live Chat
c) Feedback Form in HASiL's official portal at this link.

Back to top

9. HASiL – Responses to the Joint Memorandum on Issues Arising from 2022 Budget Speech & Finance Bill 2021

HASiL released the minutes of the online dialogue held with the MOF, CTIM, and other professional bodies on 28 February 2022 to discuss the Joint Memorandum on Issues Arising from 2022 Budget Speech & Finance Bill 2021 submitted to the Tax Authorities on 29 November 2021. The issues arising are in respect of amendments to the tax legislations and proposals in the 2022 Budget Speech and Appendices.

Please refer to HASiL's minutes of the dialogue and responses to the issues raised in the Joint Memorandum for full details.

Back to top

10. Updates on Double Tax Agreements

Double Taxation Agreement between Malaysia and Ukraine – Entry into force

The Double Tax Agreement (DTA) in the Double Taxation Relief (The Government of Ukraine) Order 2021 [*P.U.(A) 223/2021*] entered into force on 29 December 2021 and is effective in Malaysia from 1 January 2022.

Some of the withholding tax (WHT) rates in the DTA are set-out in the table below:

Payments	Normal WHT rate in the ITA	WHT rate in DTA
Interest	15%	0% / 10% Note
Royalties	10%	8%
Fees for technical services	10%	8%

Note:
The WHT rate is 0% if the recipient is the Government of Ukraine or certain qualifying institutions of Ukraine. Otherwise, the 10% WHT rate applies.

Double Taxation Agreement between Malaysia and Poland – Corrigendum

The Double Taxation Relief (The Government of the Republic of Poland) Order 2014 – Corrigendum [P.U.(A) 78/2022] was gazetted on 29 March 2022.

The Corrigendum amends the heading of paragraph 3 of the Protocol to the DTA on page 69 of the Double Taxation Relief (The Government of the Republic of Poland) Order 2014 [P.U.(A) 168/2014] to read as '*With reference to Articles 4, 11, 18 and 20*' instead of '*With reference to Articles 4, 11, and 19*'.

Paragraph 3 of the Protocol to the DTA provides the meaning of the term '*statutory body*'.

Back to top

11. Increase in minimum wage effective 1 May 2022

The increase in minimum wage to RM1,500 effective 1 May 2022 has recently been gazetted in the Minimum Wages Order 2022 [P.U.(A) 140/2022] on 27 April 2022.

Please note that the law now requires employers to implement the following minimum wage rates for employees who are paid on a monthly, daily or hourly basis, as set out in the table below:

Minimum wages rate				
Monthly	Daily			Hourly
RM1,500	Number of working days in a week			RM7.21
	6	5	4	
	RM57.69	RM69.23	RM86.54	

We also wish to highlight the following:

(i) Employers with less than 5 employees are temporarily exempted until 31 December 2022. This exemption however does not apply to employers who carry out professional activities classified under the Malaysia Standard Classification of Occupations published by the Ministry of Human Resource, regardless of the number of employees.

(ii) The new minimum wage rate will apply to ALL employers from 1 January 2023.

Feel free to reach out if you have any questions.

Back to top

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Theresa Goh


Subhabrata Dasgupta


Philip Yeoh


Gagan Deep Nagpal


Vrushang Sheth


Tan Wei Chuan


Mark Chan


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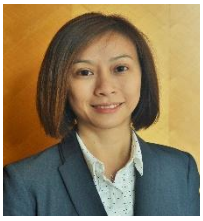
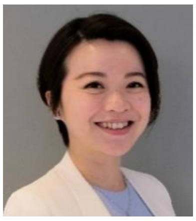

Thean Szu Ping


Suzanna Kavita


Shareena Martin


Eugene Chow Jan Liang


Michelle Lai


Cynthia Wong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Wong Poh Geng


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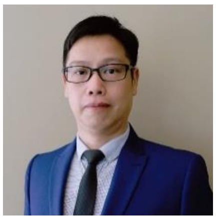
Kelvin Yee Rung Hua


Chan Ee Lin


Kei Ooi


Wong Yu Sann


Cheong Mun Loong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Philip Lim Su Sing


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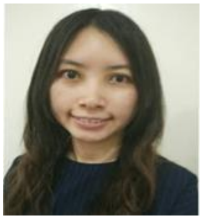
Leong Sing Yee