



## Tax Espresso

IRBM's latest deduction  
guidelines for secretarial fee and  
tax filing fee and gazette orders  
October 2020



**MAKING AN  
IMPACT THAT  
MATTERS**  
*since 1845*

# Greetings from Deloitte Malaysia Tax Services

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## Takeaways:

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3. [Income Tax \(Exemption\) \(No. 9\) 2002 \(Amendment\) Order 2002 \[P.U.\(A\) 269/2020\]](#)
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9. [Loans Guarantee \(Bodies Corporate\) \(Remission of Tax and Stamp Duty\) \(No. 3\) Order 2020 \[P.U.\(A\) 240/2020\]](#)

## Important deadlines:

Task	Due Date
	31 October 2020
1. 2021 tax estimates for companies with November year-end	√
2. 6 <sup>th</sup> month revision of tax estimates for companies with April year-end	√
3. 9 <sup>th</sup> month revision of tax estimates for companies with January year-end	√
4. Statutory filing of 2020 tax returns for companies with March year-end	√
5. Maintenance of transfer pricing documentation for companies with March year-end	√
6. Deadline for 2020 CbCR notification for companies with October year-end	√

## 1. Guidelines for deducting expenses in relation to secretarial fee and tax filing fee from YA 2020 onwards

The Inland Revenue Board of Malaysia (IRBM) has recently uploaded the [Guidelines for Deducting Expenses in relation to Secretarial Fee and Tax Filing Fee from YA 2020 onwards \(dated 18 September 2020\)](#)\* to explain the tax treatment of expenses in relation to secretarial fees and tax filing fees including the filing for sales tax, service tax, departure levy and tourism tax from year of assessment (YA) 2020 onwards pursuant to the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [[P.U.\(A\) 162/2020](#)].

*\*Available in Bahasa Malaysia version only.*

### **Secretarial fee**

For the purposes of claiming a deduction:

- i) The types of secretarial fee expenditure that comply with the statutory requirements under the Companies Act 2016 (the CA) which are eligible for tax deduction are secretarial fee for advisory services on company meetings, preparation of directors' resolutions, issuance of shares, submission of forms prescribed under the CA and others which are in relation to company matters.
- ii) Secretarial fees do not include incidental expenses such as reimbursement / out of pocket expenses, telephone and fax, printing, stationery expenses, postage, travel, accommodation and general meeting expenses.
- iii) Under the P.U.(A) 162/2020, a secretarial fee deduction is given in the basis period for a YA **after the service has been received (the liability has arisen and can be charged to the profit and loss account) and paid.**
- iv) As compared to the accounting standards, an expense can be recognised after the existence of a liability and can be charged to the profit and loss account even if the expense has not been paid.

### **Tax Filing Fee**

For the purposes of claiming a deduction:

- i) Tax filing fees for the submission of Income Tax Return Form (ITRF) can be claimed for the basis period for a YA immediately following the YA. ITRF for YA 2019 must be submitted within seven months from the date following the close of the accounting period which constitutes the basis period for YA 2019. Therefore, tax filing fees incurred and paid for the submission of ITRF YA 2019 in the basis period for YA 2020 are eligible for deduction for YA 2020.
- ii) Expenditure on tax filing fees for tax estimates and instalment payments under Section 107C of the Income Tax Act 1967 for YA 2021 is eligible for deduction for YA 2020 if incurred and paid within the basis period for YA 2020.
- iii) From 1 September 2018, the Goods and Services Tax (GST) has been replaced by Sales Tax and Services Tax (SST). Expenditure on tax filing fees for SST is eligible for deduction under P.U.(A) 162/2020 for YA 2020 if the services are performed and fee incurred is paid in the basis period for YA 2020.
- iv) From YA 2020, tax filing fees for departure levy and tourism tax are eligible for deduction under P.U.(A) 162/2020. A deduction is given for YA 2020 if the services are performed and fee incurred is paid in the basis period for YA 2020.
- v) The filing fee expenditure shall be specific to the filing of tax forms / departure levy including advisory services of the tax agent / agent of the operator or foreign operator in relation to the calculation of company tax and departure levy. Incidental expenses such as reimbursement / out of pocket expenses such as telephone and fax, printing, stationery expenses, postage, travel and accommodation are not eligible for deduction.

Please refer to the Guidelines for the full details and examples provided.

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## 2. Income Tax (Prescribed Fees under Schedule 5 to the Act) Rules 2020 [P.U.(A) 274/2020]

The [P.U.\(A\) 274/2020](#) was gazetted on 22 September 2020 and came into operation on 25 September 2020 to:

- specify the prescribed fees for the purpose of the payment of the fees under Schedule 5 to the Income Tax Act 1967 (Act); and
- revoke the Income Tax (Prescribed Fees under Schedule 5 to the Act) Rules 1998 [[P.U.\(A\) 497/1998](#)].

**Prescribed fees payable under Schedule 5 to the Act under the ‘Rules 2020 [P.U.(A) 274/2020]’ vs the ‘Revoked Rules 1998 [P.U.(A) 497/1998]’**

<i>Paragraph to Schedule 5</i>	Rules 2020		Revoked Rules 1998	
34	The filing of a notice of appeal to the High Court	RM200 for each deciding order against which an appeal is lodged	Requisition to state a case to the High Court	RM100 in respect of each deciding order against which an appeal is lodged
37A	Cost of notes of proceedings:		Cost of preparing the case stated	RM5 per page to cover the cost of preparing two copies for the High Court and one copy each for the parties to the appeal:  RM1 per page of each extra copy
	(a) in the form of printed copy	RM2 per page for the first copy  RM1 per page for the second or subsequent copy		
	(b) in the form of compact disc	RM10 per unit		
	Copy of any document filed during the proceedings before the Special Commissioner	RM2 per page		
43(2)	Copy of the grounds of decision from the Special Commissioners for the purposes of authorised publication	RM5 per page	Obtaining authorised publication from the Special Commissioners or the court	RM1 per page

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### 3. Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2002 [P.U.(A) 269/2020]

The [P.U.\(A\) 269/2020](#) (the Amendment Order) was gazetted on 8 September 2020 to legislate the proposed increase in the income tax exemption from 50% to 100% of the value of increased exports of private health care services as announced in Budget 2018.

The Amendment Order, which amended the Income Tax (Exemption) (No. 9) Order 2002 [[P.U.\(A\) 57/2002](#)] as shown in green text below, is deemed to have come into operation from YA 2018 until the YA 2020.

#### Amendment to Paragraph 4 of [P.U.\(A\) 57/2002](#)

“4. (1) The amount of income referred to in paragraph 3, **other than private health care**, shall be equal to 50 per cent of the value of increased exports.

**(1A) The amount of income referred to in paragraph 3 in relation to private health care services shall be equal to one hundred per cent of the value of increased exports.**

**(1B) For the purposes of subparagraph 1A, the person mentioned in paragraph 3 shall be subject to the following conditions:**

- (a) at least ten per cent of its total patients consist of foreign client who have obtained private health care services in each YA; and
- (b) at least ten per cent of its gross income is derived from the foreign client who have obtained private health care services in each YA.

(2) Where an amount of income equivalent to ~~50 per cent of the value of increased exports~~ **fifty per cent or one hundred per cent of the value of increased exports, as the case may be**, has been determined for a YA, so much of the statutory income of the business of that person for that YA as is equal to that value of increased exports (or to the aggregate amount of any such value of increased export, as the case may be) but not exceeding 70 per cent of the statutory income shall be exempted from tax.”

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#### 4. Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2020 [P.U.(A) 267/2020]

The [P.U.\(A\) 267/2020](#) was gazetted on 4 September 2020 to substitute Schedule 2 “*Excluded Accounts*” by the following:

“SCHEDULE 2  
[Paragraph 4(4)(b)]

##### ***Excluded Account***

For the purposes of the Standard, an Excluded Account is a depository account which is dormant [other than an Annuity Contract] –

- (a) with a balance that does not exceed USD1,000.00;
- (b) where the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the Reporting Financial Institution in the previous three years;
- (c) where the account holder has not communicated with the Reporting Financial Institution regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years; and
- (d) in relation to a Cash Value Insurance Contract, where the Reporting Financial Institution has not communicated with the account holder regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years.”

Following the above updated Schedule 2, a securities account which is a dormant account under Rule 26.10 of the Rules of Bursa Malaysia Depository Sdn Bhd is no longer listed as an “Excluded Account” for the purpose of the Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 [P.U.(A) 355/2016].

*Note: The term “Standard” for the purpose of P.U.(A) 355/2016 means “the Common Reporting Standard set out in the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the Organisation for Economic Co-operation and Development as amended from time to time”. [Paragraph 2 of the Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017 ([P.U.\(A\) 403/2017](#)) refers].*

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#### 5. Labuan Business Activity Tax (Automatic Exchange Of Financial Account Information) (Amendment) Regulations 2020 [P.U.(A) 266/2020]

The [P.U.\(A\) 266/2020](#) was gazetted on 4 September 2020 to substitute First Schedule “*Excluded Accounts*” by the following:

“FIRST SCHEDULE  
[Paragraph 5(3)(b)]

##### ***Excluded Account***

For the purposes of the Standard, an Excluded Account is a depository account which is dormant (other than an Annuity Contract) that fulfils the conditions as shown below:

- (a) with a balance that does not exceed USD1,000.00;
- (b) where the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the Reporting Financial Institution in the previous three years;
- (c) where the account holder has not communicated with the Reporting Financial Institution regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years; and
- (d) in relation to a Cash Value Insurance Contract, where the Reporting Financial Institution has not communicated with the account holder regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years.

Following the above updated First Schedule, a securities account which is a dormant account under Rule 26.10 of the Rules of Bursa Malaysia Depository Sdn Bhd is no longer listed as an “Excluded Account” for the purpose of the Labuan Business Activity Tax (Automatic Exchange of Financial Account Information Regulations 2018 [[P.U.\(A\) 20/2018](#)]).

*Note: The term “Standard” for the purpose of P.U.(A) 20/2018 means “the Common Reporting Standard set out in the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the Organisation for Economic Co-Operation and Development as amended from time to time”. [Paragraph 2 of P.U.(A) 20/2018 refers].*

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## **6. Income Tax (Deduction for Expenses in relation to Listing on Access, Certainty, Efficiency (ACE) Market or Leading Entrepreneur Accelerator Platform (LEAP) Market of Bursa Malaysia Securities Berhad) Rules 2020 [P.U.(A) 263/2020]**

The [P.U.\(A\) 263/2020](#) (the Rules) was gazetted on 3 September 2020 to legislate the proposed tax deduction of up to RM1.5 million be given to technology-based companies and SMEs seeking to raise additional capital through listing in the ACE Market or the LEAP market announced in Budget 2020. The Rules has effect from the YA 2020 until the YA 2022.

The Rules shall apply to a technology-based company –

- (a) which is involved in the design, development and manufacture, production or application in any of the field and activities –
  - (i) as specified in the Schedule; and
  - (ii) which has been certified by the Bursa Malaysia Securities Berhad as the principal business activity of the technology-based company; and
- (b) which has applied for listing on the ACE Market or LEAP Market.

According to the Rules:

- 1) For the purpose of ascertaining the adjusted income of a technology-based company from its business for the basis period for a YA, a deduction shall be allowed for an amount equivalent to the amount of the following expenditures incurred by the technology-based company in relation to listing on the ACE Market or LEAP Market:
  - (a) payment of fees to Bursa Malaysia Securities Berhad and Securities Commission Malaysia as the authorities;
  - (b) payment of the following professional fees:
    - (i) advisory fee to the sponsor, being the main adviser for listing on the ACE Market, and approved adviser, being the main adviser for listing on the LEAP Market; and
    - (ii) in relation to the listing exercise, fees to the solicitor, company secretary, tax adviser, reporting accountant, auditor, valuer, independent market researcher, issuing house and share registrar; and
  - (c) payment of fees for underwriting, placement and brokerage services.
- 2) The deduction shall only be claimed by the technology-based company for the basis period for a YA in which the technology-based company is listed on the ACE Market or LEAP Market.

- 3) The total amount of the deduction allowed shall be an amount not exceeding RM 1,500,000.
- 4) The amount of deduction in respect of expenditure shall not exceed the adjusted income of the technology-based company for the basis period for that YA and such adjusted income shall be ascertained before such deduction.
- 5) Where by reason of an absence or insufficiency of adjusted income for that YA, the deduction in respect of expenditure cannot be claimed or cannot be claimed in full, the deduction in respect of such expenditure shall not be allowed to the technology-based company in any subsequent YAs.

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## 7. Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) (Amendment) Order 2020 [P.U.(A) 279/2020]

[P.U.\(A\) 279/2020](#) (the Amendment Order) was gazetted on 28 September 2020 and came into operation on 30 September 2020.

With the Amendment Order, the Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) 2016 [[P.U.\(A\) 199/2016](#)] is amended as shown in green text below:

### Amendment to Paragraph 2 of [P.U.\(A\) 199/2016](#)

"2. Any tax payable under the Income Tax Act 1967 by any of the following individual or entity in respect of any money payable under any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 4 shall be remitted in full:

- (a) the Public Sector Home Financing Board to which the Act applies by virtue of the Loans Guarantee (Declaration of Bodies Corporate) (Public Sector Home Financing Board) Order 2016 [P.U.(A) 198/2016];
- (b) any holder of the Islamic Commercial Papers and the Islamic Medium Term Notes;
- (c) any holder of the Conventional Commercial Papers or Conventional Medium Term Notes;
- (d) any financier of the Syndicated Revolving Credit-i Facility, which in this Order is referred to as the "RC-i Facility";
- (e) ~~any financier of the Syndicated Credit Facilities, which in this Order is referred to as the "Credit Facilities";~~
- (f) any other party to any agreement, note, instrument and document in relation to the Islamic Commercial Papers and Islamic Medium Term Notes Programme, which in this Order is referred to as the "ICP and IMTN Programme", or the guarantee provided or to be provided by the Government of Malaysia, including any party to whom such agreement, note, instrument and document is transferred or assigned;
- (g) any other party to any agreement, note, instrument and document in relation to the Conventional Commercial Papers and Conventional Medium Term Notes Programme, which in this Order is referred to as the "CP and MTN Programme", or the guarantee provided or to be provided by the Government of Malaysia, including any party to whom such agreement, note, instrument and document is transferred or assigned;
- (h) any other party to any agreement, note, instrument and document in relation to the RC-i Facility, including any party to whom such agreement, note, instrument and document is transferred or assigned; **or**
- ~~(i) any other party to any agreement, note, instrument and document in relation to the Credit Facilities, including any party to whom such agreement, note, instrument and document is transferred or assigned; or~~
- (j) any other party to any agreement, note, instrument and document in relation to the guarantee provided or to be provided by the Government of Malaysia, including any party to whom such agreement, note, instrument and document is transferred or assigned."

### Amendment to Paragraph 4 of [P.U.\(A\) 199/2016](#)

"4. This Order shall apply to –

- (a) the Islamic Commercial Papers and Islamic Medium Term Notes issued or to be issued by the Public Sector Home Financing Board pursuant to the ICP and IMTN Programme;
- (b) the Conventional Commercial Papers and Conventional Medium Term Notes issued or to be issued by the Public Sector Home Financing Board pursuant to the CP and MTN Programme;
- (c) the RC-i Facility obtained by the Public Sector Home Financing Board; **and**

~~(d) the Credit Facilities obtained by the Public Sector Home Financing Board; and~~

- (e) the guarantee provided or to be provided by the Government of Malaysia relating to the Islamic Commercial Papers and Islamic Medium Term Notes, the Conventional Commercial Papers and Conventional Medium Term Notes, **and** the RC-i Facility **and the Credit Facilities:**

provided that the combined aggregate of the outstanding nominal value of the Islamic Commercial Papers and Islamic Medium Term Notes, the outstanding nominal value of the Conventional Commercial Papers and Conventional Medium Term Notes, **and** the outstanding principal amount under the RC-i Facility **and the outstanding principal amount under the Credit Facilities**, shall not exceed ~~twenty five billion ringgit (RM25,000,000,000.00)~~ **fifty billion ringgit (RM50,000,000,000.00).**"

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## 8. Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) Order 2020 [P.U.(A) 276/2020]

The [P.U.\(A\) 276/2020](#) was gazetted on 24 September 2020 and came into operation on 25 September 2020.

### Remission of income tax

The Order provides that any tax payable under the Income Tax Act 1967 by any of the following individual or entity in respect of any money payable under any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2 of the Order shall be remitted in full:

- (a) Perbadanan Tabung Pendidikan Tinggi Nasional to which the Act applies by virtue of the Loans Guarantee (Declaration of Bodies Corporate) (Perbadanan Tabung Pendidikan Tinggi Nasional) Order 2004 [P.U.(A) 408/2004];
- (b) any holder of the Islamic Commercial Papers and the Islamic Medium Term Notes;
- (c) any financier of the Credit Facilities; or
- (d) any party to any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2, including any party to whom such agreement, note, instrument and document are transferred or assigned.

### Remission of stamp duty

Any stamp duty payable under the Stamp Act 1949 in respect of any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2 of the Order shall be remitted in full.

### Paragraph 2 of the Order

Paragraph 2 provides that the Order shall apply to—

- (a) the Islamic Commercial Papers and the Islamic Medium Term Notes issued by Perbadanan Tabung Pendidikan Tinggi Nasional pursuant to the Islamic Commercial Papers and the Islamic Medium Term Notes Programme in nominal value of up to twelve billion three hundred million ringgit (RM12,300,000,000.00):

Provided that the combined aggregate of the outstanding nominal value of the Islamic Commercial Papers and the Islamic Medium Term Notes, and the outstanding principal amount under the Syndicated or Bilateral Financing, or Loan Facilities obtained or will be obtained by Perbadanan Tabung Pendidikan Tinggi Nasional, which are referred to as the "Credit Facilities" in this Order, shall not exceed twelve billion three hundred million ringgit (RM12,300,000,000.00);

- (b) the Credit Facilities subject to the combined aggregate referred to in proviso to subparagraph (a);
- (c) the Islamic Commercial Papers and the Islamic Medium Term Notes Programme in nominal value of up to twelve billion three hundred million ringgit (RM12,300,000,000.00); and
- (d) the guarantee given by the Government of Malaysia in relation to the Credit Facilities and the Islamic Commercial Papers and the Islamic Medium Term Notes Programme referred to in Subparagraphs (b) and (c).

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## 9. Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2020 [P.U.(A) 240/2020]

The [P.U.\(A\) 240/2020](#) was gazetted on 26 August 2020 and came into operation on 27 August 2020.

### Remission of income tax

The Order provides that any tax payable under the Income Tax Act 1967 by any of the following individual or entity in respect of any money payable under any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2 of the Order shall be remitted in full:

- (a) DanaInfra Nasional Berhad to which the Act applies by virtue of the Loans Guarantee (Declaration of Bodies Corporate) (DanaInfra Nasional Berhad) Order 2012 [[P.U.\(A\) 176/2012](#)];
- (b) any holder of the IMTN and ICP Programme;
- (c) any financier of the SFF-i Facility; or
- (d) any other party to any agreement, note, instrument and document relating to the IMTN and ICP Programme or the guarantee given by the Government of Malaysia including any party to whom such agreement, note, instrument or document is transferred or assigned.

### Remission of stamp duty

Any stamp duty payable under the Stamp Act 1949 [the SA 1949] in respect of any agreement, note, instrument and document in relation to the product, facility, programme and guarantee referred to in Paragraph 2 of the Order shall be remitted in full.

### Paragraph 2 of the Order

Paragraph 2 provides that the Order shall apply to—

- (a) the Islamic Medium Term Notes and Islamic Commercial Papers issued by DanaInfra Nasional Berhad pursuant to the Islamic Medium Term Notes and Islamic Commercial Papers Programme (IMTN and ICP Programme), in nominal value of up to ten billion ringgit (RM10,000,000,000.00):

provided that the combined aggregate of the outstanding nominal value of the IMTN and ICP and the outstanding principal amount under the Syndicated Islamic Revolving Credit Facility (SFF-i Facility), shall not exceed ten billion ringgit (RM10,000,000,000.00);

- (b) the SFF-i Facility in the aggregate outstanding principal amount not exceeding four billion ringgit (RM4,000,000,000.00) subject to the combined aggregate mentioned in subparagraph (a);
- (c) the IMTN and ICP Programme which has been upsized in nominal value from sixty one billion ringgit (RM61,000,000,000.00) to a maximum aggregate value of up to seventy one billion ringgit (RM71,000,000,000.00); and
- (d) the guarantee given by the Government of Malaysia relating to the IMTN and ICP Programme and SFF-i Facility.

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**Note:** Please refer to the respective Gazette Orders for the full details or conditions.

We invite you to explore other tax-related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

# Tax Team - Contact us

Service lines / Names	Designation	Email	Telephone
<b>Business Tax Compliance &amp; Advisory</b>			
Sim Kwang Gek	Managing Director	<a href="mailto:kgsim@deloitte.com">kgsim@deloitte.com</a>	+603 7610 8849
Tan Hooi Beng	Deputy Managing Director	<a href="mailto:hooitan@deloitte.com">hooitan@deloitte.com</a>	+603 7610 8843
Stefanie Low	Executive Director	<a href="mailto:gelow@deloitte.com">gelow@deloitte.com</a>	+603 7610 8891
Thin Siew Chi	Executive Director	<a href="mailto:sthin@deloitte.com">sthin@deloitte.com</a>	+603 7610 8878
Choy Mei Won	Director	<a href="mailto:mwchoy@deloitte.com">mwchoy@deloitte.com</a>	+603 7610 8842
Suzanna Kavita	Director	<a href="mailto:sukavita@deloitte.com">sukavita@deloitte.com</a>	+603 7610 8437
<b>Business Process Solutions</b>			
Julie Tan	Executive Director	<a href="mailto:jultan@deloitte.com">jultan@deloitte.com</a>	+603 7610 8847
Shareena Martin	Director	<a href="mailto:sbmartin@deloitte.com">sbmartin@deloitte.com</a>	+603 7610 8925
Eugene Chow Jan Liang	Director	<a href="mailto:euchow@deloitte.com">euchow@deloitte.com</a>	+605 254 0288
<b>Capital Allowances Study</b>			
Chia Swee How	Executive Director	<a href="mailto:swchia@deloitte.com">swchia@deloitte.com</a>	+603 7610 7371
Sumaisarah Abdul Sukor	Associate Director	<a href="mailto:sabdulsukor@deloitte.com">sabdulsukor@deloitte.com</a>	+603 7610 8331
<b>Global Employer Services</b>			
Ang Weina	Executive Director	<a href="mailto:angweina@deloitte.com">angweina@deloitte.com</a>	+603 7610 8841
Chee Ying Cheng	Executive Director	<a href="mailto:yichee@deloitte.com">yichee@deloitte.com</a>	+603 7610 8827
Michelle Lai	Director	<a href="mailto:michlai@deloitte.com">michlai@deloitte.com</a>	+603 7610 8846
Cynthia Wong	Director	<a href="mailto:cywong@deloitte.com">cywong@deloitte.com</a>	+603 7610 8091
<b>Government Grants &amp; Incentives</b>			
Tham Lih Jiun	Executive Director	<a href="mailto:litham@deloitte.com">litham@deloitte.com</a>	+603 7610 8875
Thin Siew Chi	Executive Director	<a href="mailto:sthin@deloitte.com">sthin@deloitte.com</a>	+603 7610 8878

**Indirect Tax**

Tan Eng Yew	Executive Director	<a href="mailto:etan@deloitte.com">etan@deloitte.com</a>	+603 7610 8870
Senthuran Elalingam	Executive Director	<a href="mailto:selalingam@deloitte.com">selalingam@deloitte.com</a>	+603 7610 8879
Chandran TS Ramasamy	Director	<a href="mailto:ctsramasamy@deloitte.com">ctsramasamy@deloitte.com</a>	+603 7610 8873
Larry James Sta Maria	Director	<a href="mailto:lstamaria@deloitte.com">lstamaria@deloitte.com</a>	+603 7610 8636
Wong Poh Geng	Director	<a href="mailto:powong@deloitte.com">powong@deloitte.com</a>	+603 7610 8834

**International Tax & Value Chain Alignment**

Tan Hooi Beng	Deputy Managing Director	<a href="mailto:hooitan@deloitte.com">hooitan@deloitte.com</a>	+603 7610 8843
---------------	--------------------------	--	----------------

**Mergers & Acquisitions**

Sim Kwang Gek	Managing Director	<a href="mailto:kgsim@deloitte.com">kgsim@deloitte.com</a>	+603 7610 8849
---------------	-------------------	--	----------------

**Private Wealth Services**

Chee Pei Pei	Executive Director	<a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>	+603 7610 8862
Chan Ee Lin	Director	<a href="mailto:eelchan@deloitte.com">eelchan@deloitte.com</a>	+604 218 9888

**Tax Audit & Investigation**

Chow Kuo Seng	Executive Director	<a href="mailto:kuchow@deloitte.com">kuchow@deloitte.com</a>	+603 7610 8836
Stefanie Low	Executive Director	<a href="mailto:gelow@deloitte.com">gelow@deloitte.com</a>	+603 7610 8891
Anston Cheah	Director	<a href="mailto:kcheah@deloitte.com">kcheah@deloitte.com</a>	+603 7610 8923
Kei Ooi	Director	<a href="mailto:soooi@deloitte.com">soooi@deloitte.com</a>	+603 7610 8395
Wong Yu Sann	Director	<a href="mailto:yuwong@deloitte.com">yuwong@deloitte.com</a>	+603 7610 8176

**Transfer Pricing**

Theresa Goh	Executive Director	<a href="mailto:tgoh@deloitte.com">tgoh@deloitte.com</a>	+603 7610 8837
Subhabrata Dasgupta	Executive Director	<a href="mailto:sudasgupta@deloitte.com">sudasgupta@deloitte.com</a>	+603 7610 8376
Philip Yeoh	Executive Director	<a href="mailto:phyeoh@deloitte.com">phyeoh@deloitte.com</a>	+603 7610 7375
Gagan Deep Nagpal	Director	<a href="mailto:gnagpal@deloitte.com">gnagpal@deloitte.com</a>	+603 7610 8876
Justine Fan	Director	<a href="mailto:jufan@deloitte.com">jufan@deloitte.com</a>	+603 7610 8182
Vrushang Sheth	Director	<a href="mailto:vsheth@deloitte.com">vsheth@deloitte.com</a>	+603 7610 8534
Anil Kumar Gupta	Director	<a href="mailto:anilkgupta@deloitte.com">anilkgupta@deloitte.com</a>	+603 7610 8224

**Sectors / Names****Designation****Email****Telephone****Automotive**

Stefanie Low	Executive Director	<a href="mailto:gelow@deloitte.com">gelow@deloitte.com</a>	+603 7610 8891
--------------	--------------------	--	----------------

**Consumer Products**

Sim Kwang Gek	Managing Director	<a href="mailto:kgsim@deloitte.com">kgsim@deloitte.com</a>	+603 7610 8849
---------------	-------------------	--	----------------

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**Financial Services**

Chee Pei Pei	Executive Director	<a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>	+603 7610 8862
Mark Chan	Executive Director	<a href="mailto:marchan@deloitte.com">marchan@deloitte.com</a>	+603 7610 8966
Mohd Fariz Mohd Faruk	Director	<a href="mailto:mmohdfaruk@deloitte.com">mmohdfaruk@deloitte.com</a>	+603 7610 8153

---

**Oil & Gas**

Toh Hong Peir	Executive Director	<a href="mailto:htoh@deloitte.com">htoh@deloitte.com</a>	+603 7610 8808
Kelvin Kok	Director	<a href="mailto:kekok@deloitte.com">kekok@deloitte.com</a>	+603 7610 8157

---

**Real Estate**

Chia Swee How	Executive Director	<a href="mailto:swchia@deloitte.com">swchia@deloitte.com</a>	+603 7610 7371
Tham Lih Jiun	Executive Director	<a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a>	+603 7610 8875
Gan Sin Reei	Director	<a href="mailto:sregan@deloitte.com">sregan@deloitte.com</a>	+603 7610 8166

---

**Telecommunications**

Thin Siew Chi	Executive Director	<a href="mailto:sthin@deloitte.com">sthin@deloitte.com</a>	+603 7610 8878
---------------	--------------------	--	----------------

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**Other Specialist Groups**

Names	Designation	Email	Telephone
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**Chinese Services Group**

Tham Lih Jiun	Executive Director	<a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a>	+603 7610 8875
---------------	--------------------	--	----------------

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**Japanese Services Group**

Mark Chan	Executive Director	<a href="mailto:marchan@deloitte.com">marchan@deloitte.com</a>	+603 7610 8966
-----------	--------------------	--	----------------

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**Korean Services Group**

Chee Pei Pei	Executive Director	<a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>	+603 7610 8862
--------------	--------------------	--	----------------

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**Branches / Names**

## Designation

## Email

## Telephone

**Penang**

Ng Lan Kheng	Executive Director	<a href="mailto:lnkg@deloitte.com">lnkg@deloitte.com</a>	+604 218 9268
Au Yeong Pui Nee	Director	<a href="mailto:pnaueong@deloitte.com">pnaueong@deloitte.com</a>	+604 218 9888
Monica Liew	Director	<a href="mailto:monicaliew@deloitte.com">monicaliew@deloitte.com</a>	+604 218 9888
Tan Wei Chuan	Director	<a href="mailto:wctan@deloitte.com">wctan@deloitte.com</a>	+604 218 9888

---

**Ipoh**

Mark Chan	Executive Director	<a href="mailto:marchan@deloitte.com">marchan@deloitte.com</a>	+603 7610 8966
Lam Weng Keat	Director	<a href="mailto:welam@deloitte.com">welam@deloitte.com</a>	+605 253 4828

---

Patricia Lau	Director	<a href="mailto:palau@deloitte.com">palau@deloitte.com</a>	+605 254 0288
Eugene Chow Jan Liang	Director	<a href="mailto:euchow@deloitte.com">euchow@deloitte.com</a>	+605 254 0288

**Melaka**

Julie Tan	Executive Director	<a href="mailto:jultan@deloitte.com">jultan@deloitte.com</a>	+603 7610 8847
Gabriel Kua	Director	<a href="mailto:gkua@deloitte.com">gkua@deloitte.com</a>	+606 281 1077

**Johor Bahru**

Chee Pei Pei	Executive Director	<a href="mailto:pechee@deloitte.com">pechee@deloitte.com</a>	+603 7610 8862
Thean Szu Ping	Director	<a href="mailto:spthean@deloitte.com">spthean@deloitte.com</a>	+607 222 5988

**Kuching**

Tham Lih Jiun	Executive Director	<a href="mailto:ljtham@deloitte.com">ljtham@deloitte.com</a>	+603 7610 8875
Philip Lim Su Sing	Director	<a href="mailto:suslim@deloitte.com">suslim@deloitte.com</a>	+608 246 3311
Chai Suk Phin	Director	<a href="mailto:spchai@deloitte.com">spchai@deloitte.com</a>	+608 246 3311

**Kota Kinabalu**

Chia Swee How	Executive Director	<a href="mailto:swchia@deloitte.com">swchia@deloitte.com</a>	+603 7610 7371
Leong Sing Yee	Assistant Manager	<a href="mailto:sleong@deloitte.com">sleong@deloitte.com</a>	+608 823 9601



Sim Kwang Gek



Tan Hooi Beng



Stefanie Low



Thin Siew Chi



Julie Tan



Chia Swee How



Ang Weina



Chee Ying Cheng



Tham Lih Jiun



Tan Eng Yew



Senthuran Elalingam



Chee Pei Pei



Mark Chan



Chow Kuo Seng



Theresa Goh



Subhabrata Dasgupta



Philip Yeoh



Toh Hong Peir



Ng Lan Kheng



Choy Mei Won



Suzanna Kavita



Shareena Martin



Eugene Chow  
Jan Liang



Michelle Lai



Cynthia Wong



Chandran TS Ramasamy



Larry James Sta Maria



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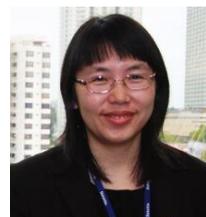
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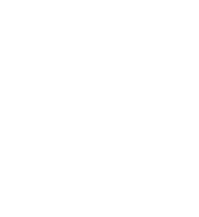
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Anil Kumar Gupta



Mohd Fariz Mohd Faruk



Kelvin Kok



Gan Sin Reei



Au Yeong Pui Nee





Monica Liew



Tan Wei Chuan



Lam Weng Keat



Patricia Lau



Gabriel Kua



Thean Szu Ping



Philip Lim  
Su Sing



Chai Suk Phin



Sumaisarah Abdul  
Sukor



Leong Sing Yee



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