



## Indirect Tax Perspective ⇨ everything

## GST Chat All you need to know

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Issue 5.2015

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## Greetings from the GST Team of Deloitte Malaysia

Hi everyone, Happy Deepavali for next month, we bring to you our October edition of GST Chat which covers the latest updates in the world of Indirect Tax including the Malaysian Budget.

As at the 1st of October 2015, the Malaysia GST reached six months since implementation. The six month mark triggers some critical actions for GST compliance including the claiming of bad debt relief on long outstanding debts and the reversal of input tax credits on outstanding invoices, and the cessation of the use of hand written invoices. We shall discuss these in greater detail in our GST technical update section below.



On 23 October 2015, Budget 2015 was presented to the Malaysian Parliament. On the GST front while there were no major changes to the law or the regulations there are some changes that you need to be aware of. These include an extension to the zero rating list of medicines/drugs and certain food items, GST relief on the purchase of education equipment by skills and vocational training centres. Take note, that it is likely that the start date for these changes will probably be 1 January 2016, so where possible plan your purchases accordingly.

You should also be aware that one of the crucial amendments proposed in the Finance Bill is the levying of penalties on the late payment of GST starting from 1 January. The penalties prescribed will start from 5% in the first month up to a maximum of 25% of amount due. We shall discuss on this in further detail in our GST technical update section below.

Earlier this month, the Director General of Customs, Datuk Seri Khazali Ahmad released a statement noting that automatic tax assessments will be issued to 22,000 registered persons for not submitting their monthly returns or quarterly returns before the 11<sup>th</sup> of October 2015. Failure to pay the amount of assessment would result in a fine of RM25,000 and the possibility of getting charged in court. It appears clear now that the Royal Malaysian Customs Department ('RMCD') are actively seeking to round up companies that they consider to be trying to avoid or failing to report GST.

Here are some other interesting developments and news from the past month:

- The RMCD has now sped up the process for GST refunds. From the statistics released by the RMCD, 41% of the GST refunds were made within the 14-days period in July. However, we are still aware of some rather substantial refund cases that are still outstanding despite a lengthy waiting period.

- Terengganu's state government, with the cooperation of the Ministry of Domestic Trade, Cooperatives and Consumerism ('MDTCC') has now taken a step forward in expediting feedback on the complaints via WhatsApp made in relation to the price of goods and GST issues.
- A survey conducted by the Malaysian Employers Federation ('MEF') shows that 84.7% of those surveyed said that the GST had increased operating costs and wanted the Government to enhance the claiming input/output tax procedures.

We have dealt with a number of other practical issues in the topics covered in this edition of the GST Chat, and we hope that you find our October edition informative.

Once again – we wish you well for Deepavali and best regards from us, the Deloitte GST Team.

Regards,

**Tan Eng Yew**

GST and Customs Country Leader – Deloitte Malaysia

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# 1. GST Budget Announcements and Technical Updates



**Diamond Khanted**  
**(GST Manager)**  
**[Deloitte Kuala Lumpur]**

## **Budget Announcements**

Until we have further detail, it is assumed that the amendments identified below will have effect from 1 January 2016. Further detail on the effective date of these proposals may be needed in certain circumstances, as identified below:

- **Change in time of supply provisions for imported services – Amendment to section 41(4)**  
It is proposed that Section 13 (4) of the GST Act, 2014 (GST Act), be amended to set the time of supply for imported services as being the earlier of the following dates:
  - a. The date when **any** payment is made by the recipient; or
  - b. The date when any invoice is issued by the supplier who belongs in a country other than Malaysia or who carries on a business outside Malaysia

This means, if an invoice comes before payment then you need to account for GST on invoice date and not on that date of the payment of invoice. Please note however that the input tax credit for GST paid under reverse charge can only be claimed when payment is actually made to the overseas supplier.

Unfortunately, this change in the time of supply will create a timing difference between output tax and input tax under reverse charge, as well as require that a business process the invoice number of times – i.e. on receipt for accrual accounting purposes, at the end of the month of receipt for GST purposes, and then on payment for purposes of claiming the input tax credit. This will also create functional problems where the amount actually paid differs from the amount accounted for as output tax because of changing exchange rates.

- **Penalty on late payment of GST**  
It is proposed that new subsections 41 (8), (9), (10) and (11) be introduced to provide for the imposition of penalties on any late payment of GST. Since implementation we have observed that RMCD are very particular on timely filing and payment of GST, hence with this new sub sections they will be able to impose penalties on any late payment of GST. The minimum penalty is intended to be from 5% up to maximum penalty of 25% of the amount of tax due and payable based on the number of days delay.

Further, section 43 (1) and 43 (8) of the GST Act, are proposed to be amended to empower the Director General to assess and recover the amount of tax due including penalty imposed under new subsection 41 (8) of the GST Act. These powers would be used in situations of a failure to register, failure to furnish returns, or the furnishing of an incomplete or incorrect return.

As this provision is only likely to come into effect from 1 January, we would suggest that you use the time wisely in order to ensure that any outstanding GST is paid before the penalties start to apply.

We, Deloitte, can assist you by undertaking a GST Healthcheck in order to identify any risk of a GST payment shortfall. Please contact us if you have any questions about the process.

- **Suspension of import GST for goods imported under the Warehousing Scheme**

In the GST guide on the Warehousing Scheme it was suggested that GST at importation of goods to be deposited in a licensed warehouse would be suspended. It was further stated that the GST on the movement of goods between warehouses would also be suspended. However the GST Act, only suspended the GST on supplies made between warehouses.

The amendment that has been proposed to sec 70 (1) of the GST Act 2014 is aimed at including the suspension of GST on the imported goods when deposited in the warehouse, and to allow for disregarding supplies of goods made between the warehouses.

- **Expansion of zero rating list – to include some more medicines/drugs and food items**

a) Additional food items have been proposed to be zero rated under GST include:

- Organic, soy bean based milk for infants of 0-36 months
- Chickpeas, green and white bean, pigeon peas
- Lotus root, water chestnut
- Mustard seeds
- Jiggery powder
- Mee kolok (dry)

b) 4,415 new brands of products are to be added to the existing list of zero rated medicines as below:

- 4,320 brands of controlled drugs which are falling under Poisons Groups A, B, C and D under the Poisons Act 1952
- 92 brands of over-the-counter medicines
- 3 brands of medical devices

It is very important to look into the amended zero rated order to know the exact list of items which are zero rated.

- **Exemption for rural air services – Domestic Air Transport**

From the date of the amendment of the Exempt Order, unless otherwise specified, the list of exempt supplies are intended to include economic class domestic air travel within and between Sabah, Sarawak and Labuan for passengers of the Rural Air Service routes. This should mean that there should be no GST on air travel within East Malaysia. This is going to affect the ability of the RAS to claim input tax credits going forward, which will make their GST administration significantly more complex.

In view of above proposed changes, it may mean that MASwing, as the airline providing air travel within East Malaysia as well as other places could be considered as a mixed supplier. All the provisions affecting a mixed supplier, such as apportionment of input tax credit, capital goods adjustments etc. would be need to be done. At present there is no indication of whether the insurance charge levied by airline companies, extra luggage charges etc. would also be exempted from GST or not?

We will need to wait for further clarification from RMCD on this as well as look into the exact amendment made in Exempt Supply Order, however we would urge affected RAS to review their positions and seek assistance in dealing with the issues that will inevitably arise as a result of the changes required.

- **Extension of Approved the Trader Scheme (ATS)**

Companies undertaking aerospace maintenance, repair and overhaul (MRO) activities will be eligible to apply for the ATS scheme. This will subject to certain conditions, which have not, as yet, been publicized

- **GST relief on the procurement education related equipment**

Presently GST relief is offered on procurement of teaching materials and equipment by private educational institutions for childcare, schools, higher education institution, universities etc. Now this

relief has been extended to cover skills and vocational training centres which conduct approved and accredited programs under the National Skills Development Act 2006.

- **Rebate of GST on prepaid cards**

From 1 January 2016 to 31 December 2016, local mobile phone users of prepaid telecommunication services or prepaid cards will receive rebates equivalent to amount of GST paid by way of direct credit to their prepaid accounts. It is unclear at this stage how this will be implemented and it may pose a challenge for the phone companies in accurately distinguishing between Malaysian prepaid card users and foreigners to facilitate the payment of the rebate. The rebate itself poses an interesting question as to whether it itself may attract GST.

- **GST relief on relief offered to certain Oil and Gas industry activities**

In future, where the O&G industry re-imports equipment that had previously been exported for the purpose of rental and leasing, they will be able to do so without GST being imposed on the importation. No detail has been provided as to what the situation will be where there have been modifications or changes to the equipment while outside Malaysia, and whether the importer will need to distinguish the value of such goods for purposes of accounting for GST on importation.

With all of these changes, there is a concern that there appear to be no transitional provisions to deal with when and how the changes will be addressed, other than that the legislation is to be effective from 1 January 2016.

### **Revision of some important technical aspects**

- **Bad Debt Relief (GST Act 2014, GST Regulations 2014 & Panel Decision 1/2014)**

As per the GST Act, a taxable person is entitled to make a claim for bad debt relief where he has not received whole / part payment from the debtor for a period of six months from the date of supply and sufficient efforts have been made by him to recover the debt. The statutory time limit to make such claim is within six years from the time of supply [*Regulation 70(1) of the Regulations*].

We have dealt with this topic in greater detail below.

- **Handwritten Tax Invoice (GST Act 2014, GST Regulations 2014 & DG's Decision 3/2015)**

Section 33 of the Act states that any registered person who makes taxable supplies of goods or services shall issue a tax invoice with prescribed particulars as listed under GST Regulation 22.

Per issue 2 of the DG's Decision 3/2015, the RMCD have disallowed the use of handwritten tax invoices and all registered persons are required to use a computer generated tax invoices or pre-printed tax invoice starting from 1<sup>st</sup> October 2015.

- **Requirement for 'retailers' businesses**

The RMCD requires registered person in business as 'retailers' to use a GST compliant Point Of Sale (POS) system, or a GST compliant cash register, to issue GST tax invoices with effect from the beginning 1st October 2015. Retailers referred to include the following categories of business:-

- Hardware shops;
- Restaurant including coffee shops;
- Mini market, grocery and sundry shops;
- Book stores;
- Pharmacies; and
- Places of entertainment.

Accordingly, from 1st October onwards all registered person need to be able to issue a computer generated tax invoices or pre-printed tax invoice. No further handwritten invoices will be accepted by RMCD as a valid tax invoice. This is also an issue for all taxpayers purchasing goods from Retailers – you need to ensure that you receive an acceptable tax invoice so that you can claim your input tax credit.

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## 2. Rules on 'Place of Supply' under the GST Regime



**Shaishav Udani**  
(GST Associate Director)  
[Deloitte Kuala Lumpur]

One of the important condition for applying GST is that supply of goods or services must be “*in Malaysia*” and the only exception to this is the importation of goods and services, which is specifically dealt with under other provisions. Therefore, in determining the GST liability on any transactions, it is crucial for businesses to assess the ‘Place of Supply’.

There are separate provisions on the place of supply depending on whether you are dealing with goods or services. For goods, the Place of Supply is based on the place of ‘removal’ of goods, or the place that they are ‘made available’. The place of supply for services, however is based on the ‘*belonging status*’ of the service provider.

To explain further, the goods are treated as supplied ‘in Malaysia’ where goods are removed from a place in Malaysia to another place in Malaysia (local sales) or outside Malaysia (export sales). For services, however, the services are treated as supplied ‘in Malaysia’ where the service provider supplies the services from a place that is either a ‘*fixed establishment*’ or ‘*business establishment*’ in Malaysia.

While these rules sounds simple and easy to adopt, businesses have already started witnessing difficulties on the practical application. The RMCD also acknowledge the concerns and in an effort to facilitate the trade, have come up with certain parameters for determining the Place of Supply for the drop shipment transactions. However this is only one of the issues where further clarity s required.

As we are coming to grips with the practical application of GST, there are more emerging issues that need to be attended to, including:

- Interpretation on the term ‘*fixed establishment*’ and ‘*business establishment*’;
- Determination of the ‘*belonging*’ status of permanent establishments, project offices etc.;
- Potential double taxation where goods are imported by a local entity (e.g. as consignment stock) and ownership changes afterwards with the result that GST needs to be charged a second time;
- Qualification of export of services;
- Determination of the Place of Supply on e-commerce and digital service transactions.

We would not be surprised to see the RMCD issuing more DG’s decisions to clarify the applicability of these rules on different trade flows and for there to be interpretational issues being taken to and resolved in the courts of law. In short, whilst it is a long way to go before some certainty is obtained, there also lies an opportunity for tax planning on cross border transactions.

We at Deloitte have advised a significant number of clients in determining the place of supply for transactions such as cross border, drop shipment, online services etc. Our team would be happy to assist in this area of concern.

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### 3. Bad debt relief – what is calling for your attention?



**Karen Yeo**  
(GST Senior)  
[Deloitte Johor Bahru]



**Dickson Lee**  
(GST Senior)  
[Deloitte Johor Bahru]

As noted above, it is now time for GST registered persons to claim bad debt relief on the GST output tax charged and accounted for, but where the debt remains unpaid by the customers. The GST Act provides that bad debt relief shall be made within six years from the time of supply. If the bad debt is subsequently recovered from the debtors either fully or partly, an adjustment has to be made on the claimant's output tax.

Among the evidence required to support the bad debt relief claims are records or other documents showing that "sufficient effort" has been made by the claimant to recover the debt. The question therefore, is to what extent would the efforts be considered as sufficient?

RMCD have indicated, in the GST Guide, that they may not approve a request for bad debt relief if the claimant is merely sending letters of demand to debtors. This could be a concern for claimants as the additional efforts such as issuing demand letters, or involving lawyers or debt collectors will result in additional cost for businesses. Most of the time, in order to retain a good business relationship with customers, suppliers may not take legal action to their debtor immediately after the expiry of credit term or within a short period of six months, and in some cases of significant infrastructure contracts we are aware that the terms of trade, which pre-date GST, may be in excess of 6 months.

Although the statutory time limit to make a bad debt relief claim is within six years from the time of supply, the RMCD has, through its Director General's Decision, required that bad debt relief be claimed by the taxable person in the taxable period immediately after expiry of the sixth months from the date of supply. Otherwise, the claimant has to notify the DG within 5 working days after such expiry on his intention to claim it at a later date.

We understand from RMCD that the notification requirement is to assist RMCD during GST audits. Prior notification will also provide RMCD information on when the claimant will make the bad debt relief claim and the number of taxable period that RMCD needs to audit for this claim. In practice, the requirement to inform the DG may cause RMCD to receive a large number of notification letters for approval to claim the bad debt relief after the period of more than six months. It will be interesting to see how RMCD react to the additional work that administering this will require.

The provision of bad debt relief is definitely beneficial to businesses in resolving the risk of having to bear the GST paid on behalf of debtors.

In view of the above, from October onwards, every month GST registered businesses will need to assess whether they are carrying any 'bad debt' that have not been paid for at least six months, and claim relief in their GST return. Similarly, for any payments outstanding to suppliers for more than 6 months they will need to be dealt with and the input tax credit previously claimed will need to be reversed. The credit can be claimed again once payment has been made.

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## 4. Property Developers: Can a newly created company register to undertake a new development?



**Bruce Hamilton**  
(GST Tax Director)  
[Deloitte Kuala Lumpur]



**Wendy Chin**  
(GST Senior Manager)  
[Deloitte Kuala Lumpur]

Amongst the practical issues that have surfaced in the last 6 months or so, it has become clear that many developers face significant GST issues on new developments. The reason is that developers traditionally use a new company for each new development – this is a risk management issue. However one of the practical issues that has been identified is of GST registration where a developer uses a new company.

The present law allows two types of registration – i.e., when the Developer entity makes taxable supplies and is required to register, and where it seeks to register voluntarily and has not yet made taxable supplies. RMCD takes the view that to register voluntarily for GST, a person must show it intends to make taxable supplies **within 12 months** of the registration date.

The reality for any property developer engaged in a large development is that it usually takes well over a year (and sometimes 2 or more) to complete developments before the developer can generate income from it. If the Customs approach is correct, this means that registration for GST is not possible until the developer is in a position to make taxable supplies within 12 months.

This has a significant cash flow consequence for the developer, and risk consequences for its financier. In an industry where the time period from acquiring land to obtaining approval from various authorities, and appointing consultants and contractors before the first work on site begins, it is usually impractical for the developer to complete the development within 1 year.

GST costs incurred for residential developments is not claimable because the supply of the development would be exempt, the GST incurred for the development of commercial, or mixed developments is otherwise wholly, or partially claimable provided that the developer is GST registered. However, if the developer cannot make taxable supplies within 12 months for GST registration purposes, it would not be able to claim many GST costs incurred during the development stage prior to earning any revenue.

The Director General's discretion in considering whether the registration should be allowed when the business commenced, needs to be reconsidered. It could be argued that where the Director General does not specifically take into account the circumstances of the application made under Section 24, the discretion is not being properly applied in the manner intended by the Law.

If it is accepted that the Developer is only allowed to register once it is going to make taxable supplies within 12 months, if it cannot register voluntarily from the outset, it will be unable to recover any GST incurred on services that have been acquired prior to registration. Subject to conditions stipulated in the law, it may be possible to claim the GST on cost incurred on goods acquired or imported prior to the registration date, with prior approval obtain from Customs, however this is little consolation, as usually the major expenses early on will be incurred in obtaining planning approval, site preparation (i.e. services).

Under the current treatment by RMCD, the loss of the GST credit entitlement will lead to an unnecessary increase in the cost in doing business for many developers unless a practical solution is established. This being the case, due the experience with business structuring both locally and offshore, we are in a position to work with developers to tailor effective solutions to their specific circumstances.

## 5. Adjustments due to change of use - Complexities suppliers should take note of!



**Emeline Tong**  
(GST Supervisor)  
[Deloitte Kuala Lumpur]



**Nigel Looi**  
(GST Senior)  
[Deloitte Kuala Lumpur]

Most mixed suppliers (i.e., those making both taxable and exempt supplies) would be familiar with the input tax attribution adjustments that need to be carried out in each tax period (monthly or quarterly). They would also be aware of the longer term adjustments that need to be carried out at the end of the tax year or longer period.

However, many businesses are not aware that in addition to these adjustments, there is **another** type of adjustment that needs to be done when there is a change in the *'actual use'* of taxable purchases vis-à-vis the *'intended use'* when these purchases were initially acquired.

Regulations 44 and 45 of the GST Regulations 2014 prescribe the above adjustments. Under Regulation 44 an adjustment for over-deduction of input tax would usually be triggered when a taxable person has attributed goods or services:

- for making wholly taxable supplies, but later uses the goods or services for making both taxable and exempt supplies or wholly exempt supplies;
- for making both taxable and exempt supplies, but later uses the goods or services for making wholly exempt supplies; or
- for making both taxable and exempt supplies, but later reduces the proportion of making taxable supplies to exempt supplies.

In the reverse situations, an adjustment under Regulation 45 for under-deduction of input tax would be triggered.

Whilst the purpose of these adjustments seems to be that the amount of input tax claimed must reflect the **actual taxable use** of acquisitions, the lack of guidance on how these adjustments need to be calculated and carried out in the practical business environment gives rise to a lot of complex issues in complying with the above Regulations. Additionally, these adjustments would also require that the mixed supplier track the *'actual use'* of all the purchases that would be used over a period of time, as compared to the original planned usage.

Unfortunately, there is limited guidance and definition in these Regulations as to how one determines the *'intended use'* or *'actual use'*. In addition there are potentially significant compliance cost for these businesses to enable them to account for these adjustments as we are still in the infancy stage of the GST era as in comparison to other jurisdictions. Businesses would be well advised to pay attention to this issue. The application of the Regulations should be well considered by mixed suppliers seeking to ensure that they are in compliance in the event an audit is triggered by the RMCD.

Given our offshore experience with similar provisions, we, Deloitte, would be pleased to assist.

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## 6. Publications and Media

Our Deloitte GST team have been active in assisting in spreading the GST message. Here are some publications and events that have occurred in the past month.

### Publications and News Media

Our Deloitte GST team have been active in assisting in spreading the GST message. Here are some publications and events that have occurred in the past month.

1. [Post-Budget 2016 Special by BFM](#) on 27 October 2015 with Wing Peng. He shared with BFM's Keith Kam on his Budget 2016 outlook.
2. [Post-Budget 2016 Special by The Edge TV](#) on 23 October 2015 with Wing Peng. He shared with The Edge TV's Nadia S Hassan and Charlotte Chong on how he felt about the Budget 2016.
3. [Post-Budget 2016 Special by The Edge TV](#) on 23 October 2015 with Eng Yew, GST Leader of Deloitte Malaysia. The Edge TV's Nadia S Hassan and Charlotte Chong discussed the post-GST implementation and its interaction with the proposed hike in personal tax rates.
4. [Pre-Budget 2016 Live Interview by Bloomberg TV Malaysia](#) on 22 October 2015 with Wing Peng. He said exporters should be given more tax breaks in Budget 2016. He also told Bloomberg TV Malaysia's Sophie Kamaruddin that the country's corporate and personal income tax structures are no longer competitive and should be gradually reduced
5. [Pre-Budget 2016 Interview by TV3](#) on 22 October 2015 with Eng Yew. He shared his budget predictions specifically on the GST, and how the Malaysian government can channel the collected funds. He appeared on Bulletin Utama with various industry experts.
6. [Pre-Budget 2016 Live Panel Discussion by Astro Awani](#) on 22 October 2015 with Bruce Hamilton, GST Director of Deloitte Malaysia. He shared his insights on what he expects the Malaysian government would do with the collected GST funds and predictions for Budget 2016.
7. [Bloomberg TV – Tax advisors discuss GST 200 days](#) on 16 October with Senthuran Elalingam, GST Tax Director. He was invited to share his point of view on pre-budget announcement. Throughout 200 days of GST going live, there are still certain industries with uncertain GST treatments.
8. Published in the Edge Malaysian (19th October 2015) 'Keeping up with post-GST implementation', written by GST Executive Director, Tan Eng Yew and GST Tax Director, Wong Poh Geng. The news may be read [here](#).
9. Published in the The Edge Financial Daily (28<sup>th</sup> September 2015) 'GST refunds getting quicker', which features Wong Poh Geng, GST Tax Director, talking about the GST refunds. The news is accessible [here](#).
10. Published in the Malaysia SME (18<sup>th</sup> September 2015) 'GSTough' which features Bruce Hamilton, GST Tax Director speaking about unreasonable profiteering. The news may be read [here](#).
11. Published in Bernama.com (24 October 2015) "Malaysia May Face Significant Budget Deficit If GST Was Not Implemented" which features our GST Tax Director, Senthuran Elalingam giving his views on effects of GST on Malaysian economy. The news may be read [here](#)

We hope that you have enjoyed this edition of the GST Chat and for now. See you again in the next month edition!

For our past and upcoming events related to indirect taxes, please [click here](#).

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# Contact Us

## Kuala Lumpur Office



**Robert Tsang**  
**South East Asia**  
**Indirect Tax Leader**  
[robsang@deloitte.com](mailto:robsang@deloitte.com)  
(+65) 6530 5523



**Tan Eng Yew**  
**Country GST & Customs Leader**  
[etan@deloitte.com](mailto:etan@deloitte.com)  
(+60 3) 7610 8870



**Fan Kah Seong**  
**Executive Director**  
[kfan@deloitte.com](mailto:kfan@deloitte.com)  
(+60 3) 7610 8859



**Senthuran Elalingam**  
**Asia Pacific Indirect Tax Clients & Markets Leader**  
[selalingam@deloitte.com](mailto:selalingam@deloitte.com)  
(+60 3) 7610 8879



**Wong Poh Geng**  
**Director**  
[powong@deloitte.com](mailto:powong@deloitte.com)  
(+60 3) 7610 8834



**Bruce Hamilton**  
**Director**  
[bruhamilton@deloitte.com](mailto:bruhamilton@deloitte.com)  
(+60 3) 7610 8844



**Bonny Wei Teik Teo**  
**Associate Director**  
[bteo@deloitte.com](mailto:bteo@deloitte.com)  
(+60 3) 7610 8683



**Irene Lee Ah Kam**  
**Associate Director**  
[irlee@deloitte.com](mailto:irlee@deloitte.com)  
(+60 3) 7610 8825



**Ha Kok Fei**  
**Associate Director**  
[kha@deloitte.com](mailto:kha@deloitte.com)  
(+60 3) 7610 8190



**Shaishav Udani**  
**Associate Director**  
[sudani@deloitte.com](mailto:sudani@deloitte.com)  
(+60 3) 7610 8683

Name	Title	Email Address	Telephone
<b>Wendy Poh Lynn Chin</b>	Senior Manager	<a href="mailto:wechin@deloitte.com">wechin@deloitte.com</a>	(+60 3) 7610 8163
<b>Vivek Mehta</b>	Manager	<a href="mailto:vivekmehta@deloitte.com">vivekmehta@deloitte.com</a>	(+60 3) 7610 8575
<b>Diamond Khanted</b>	Manager	<a href="mailto:dkhanted@deloitte.com">dkhanted@deloitte.com</a>	(+60 3) 7610 8618
<b>Jeet Oza</b>	Manager	<a href="mailto:jeoza@deloitte.com">jeoza@deloitte.com</a>	(+60 3) 7610 7827
<b>Nicholas Lee</b>	Manager	<a href="mailto:nichlee@deloitte.com">nichlee@deloitte.com</a>	(+60 3) 7610 8361
<b>Leong Wan Chi</b>	Assistant Manager	<a href="mailto:wanleong@deloitte.com">wanleong@deloitte.com</a>	(+60 3) 7610 8549
<b>Annie Leong</b>	Assistant Manager	<a href="mailto:kleong@deloitte.com">kleong@deloitte.com</a>	(+60 3) 7610 8170

#### Other branches

Name	Title	Email Address	Telephone
<b>Johor Bahru Susie Tan</b>	Senior Manager	<a href="mailto:susietan@deloitte.com">susietan@deloitte.com</a>	(+60 7) 222 5988
<b>Penang Evelyn Lee</b>	Director	<a href="mailto:evelee@deloitte.com">evelee@deloitte.com</a>	(+60 4) 218 9913
<b>Melaka Terence Ng</b>	Associate Director	<a href="mailto:terenceng@deloitte.com">terenceng@deloitte.com</a>	(+60 6) 281 1077
<b>Ipoh Terrence Mooi</b>	Senior Manager	<a href="mailto:tmooi@deloitte.com">tmooi@deloitte.com</a>	(+60 5) 254 0288
<b>Kuching &amp; Kota Kinabalu Kane Bong</b>	Manager	<a href="mailto:kbong@deloitte.com">kbong@deloitte.com</a>	(+60 8) 246 3311

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Level 16, Menara LGB  
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Malaysia

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