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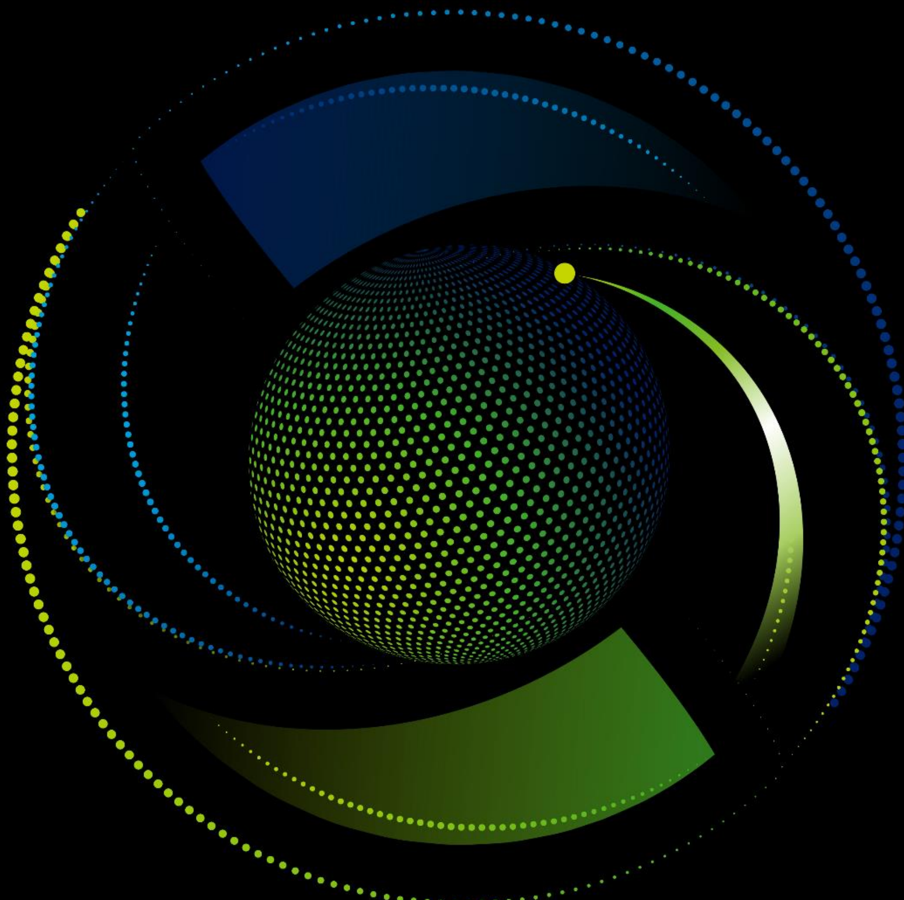

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Indirect Tax Chat

Keeping you updated on the latest news in the Indirect Tax world

MAKING AN IMPACT THAT MATTERS since 1845

January 2023

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Quick links: *Contact us - Our Indirect Tax team*

Key takeaways:

Greetings from Deloitte Malaysia's Indirect Tax team

Greeting's readers, and welcome to the January 2023 edition of our Indirect Tax Chat.

The Government had planned to introduce service tax on goods delivery services, and excise duty on premix products, on 1 January 2023. However, the Royal Malaysian Customs Department ("RMCD") have announced that both taxes would be postponed until further notice. The announcements are available here and here.

It has been announced that the Finance Minister Dato' Seri Anwar Ibrahim will be presenting the 2023 Federal Budget on 24 February 2023. As you may recall the Budget that was announced by the previous government prior to the Federal Election was not tabled. It is unclear what changes will be made to the tax-related measures previously announced. We will be covering the indirect tax developments arising from the Federal Budget, as part of a wider tax alert. For more information, please click here and here.

Moving on to what we will cover this month, we look at sales tax on low value goods, amendments to sales tax exemptions, and amendments to the Customs Act 1967.

Separately, here are some recent news that may interest you:

- According to Bank Islam Malaysia Berhad's chief economist, Firdaos Rosli, the goods and services tax ("GST") will be a step in the right direction to tackle the country's high deficit levels. Given rising inflation, he said there was "no right timing" when it came to implementing the consumption-based tax system. He elaborated saying that we need the GST and despite its flaws, it is a much more robust taxation system than the sales tax and service tax ("SST"). For more information, please click here and here.

- The Federation of Malaysian Manufacturers ("FMM") has urged the Government to reintroduce the GST by 2024, in place of the current SST. FMM president Tan Sri Dato Soh Thian Lai said that the GST would help the nation shore up sufficient fiscal buffers in view of a challenging economic climate, while helping the country with its high debt. In a joint survey with the Malaysian Institute of Economic Research in August 2021, it was found that 74% of respondents backed having GST over SST. For more information, please click here.

- The International Trade and Industry Minister Tengku Zafrul Aziz said that the Government is fully committed to taking part in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"). He said the prime minister himself had signed all the necessary administrative agreements to ensure exports and imports can continue under the ratified 11-member free trade deal, which came into effect in Malaysia on 29 November 2022. For more information, please click here.

We at Deloitte Indirect Tax would like to wish all who are celebrating, a happy Chinese New Year, and to everyone else, happy holidays!

Best regards,
Tan Eng Yew
Indirect Tax Leader

1. Sales Tax on Low Value Goods

Legal provisions to introduce sales tax on low value goods have been inserted into the Sales Tax Act 2018 ("STA") through the Sales Tax (Amendment) Act 2022 which came into effect on 1 January 2023, as per the gazette notification. This article provides an overview of sales tax on low value goods based on the related amendments to the STA, Regulations, Orders and the recently released *draft* Sales Tax Guide on Low Value Goods ("LVG Guide") as at 9 January 2023 issued by the RMCD.

What are low value goods?

Low value goods ("LVG") is defined under section 11A of the STA to mean any *prescribed goods or class of goods* outside Malaysia which are sold at a price not more than a *prescribed amount* and brought into Malaysia in *the manner as prescribed*.

Based on the Sales Tax (Determination of Low Value Goods) Order 2022, LVG for the purpose of charging sales tax shall be **all goods** which are sold at a price not exceeding MYR 500 and are brought into Malaysia by land, sea or air.

Who is a taxable person?

Under subsection 8(1) in the Schedule of the STA, sales tax shall be charged on LVG sold by a taxable person. A taxable person is defined under section 2 in the Schedule of the STA to mean a registered seller or a **seller** who is liable to be registered under section 12 in the Schedule.

Under section 11A of the STA, a "seller" means a person, whether in or outside Malaysia, who sells LVG on an online marketplace ("OMP") or operates an OMP for the sales and purchase of LVG. A "registered seller" means any seller who is registered under section 13.

There is no legal definition of an OMP under the STA. However, paragraph 2.3 of the LVG Guide defines an OMP to be an online platform that provides facilities for the sale and purchase of LVG which includes marketplaces operated via websites, internet portals or gateways, distribution platforms or any other type of electronic interface. An OMP does not include payment processors or payment gateway or internet service providers.

What is the rate of tax?

Under the Sales Tax (Rate Of Tax for Low Value Goods) Order 2022, the rate of sales tax for LVG to be charged and levied shall be fixed at 10%.

What is the value to charge sales tax on?

Under section 9 in the Schedule of the STA, the sale value of LVG on which sales tax is payable shall be **the price of LVG** not including any tax, fee or other charges imposed on the LVG.

Under paragraph 3.3 of the LVG Guide, sales tax is charged only on the sale value of the LVG excluding:

a) Transportation and insurance costs (i.e. fees charged to customers) for transporting the goods from overseas to the place of delivery in Malaysia; and
b) Any tax or duties, chargeable and payable on the sale of LVG.

When is sales tax due?

Under section 11 in the Schedule of the STA, the 10% sales tax chargeable shall be due at the time when the LVG are sold by the taxable person (i.e. registered seller or a seller who is liable to be registered).

Who needs to register for sales tax?

Under the Sales Tax (Total Sale Value Of Low Value Goods) Order 2022, the total sale value of LVG for the purpose of registration of any seller under subsection 12(1) of the STA shall be **MYR 500,000.** Therefore, any seller who sells LVG or has reasonable grounds to believe that the value of LVG to be sold in a rolling 12-month period to be over MYR 500,000, should apply to register for sales tax.

Under regulation 2 of the Sales Tax (Low Value Goods) Regulations 2022 ("Regulations") and paragraph 4.2.1 of the LVG Guide, a seller may apply for sales tax registration using the LVG-01 form to be submitted via the RMCD's MyLVG online platform.

How are tax returns submitted?

Under subsection 25(1) in the Schedule of the STA, the taxable period for registered sellers will be every three months (quarterly). Under subregulation 7(1) of the Regulations and paragraph 7.6.1 of the LVG Guide, the registered seller ("RS") shall submit the **LVG-02 tax return** online via the MyLVG platform, by the end of the last day following the end of each taxable period.

The values declared in the LVG-02 tax return shall be in Malaysian Ringgit (MYR), as per subregulation 9(5) of the Regulations. Where a RS charges its customers in a currency other than MYR, the RS shall convert the total value of sales tax to MYR according to the following conversion methods:

a) In the case that the conversion is done on daily basis, to use the daily conversion rate
b) In the case that the conversion is done at the end of the taxable period, to use the conversion rate either:
    i. at the end of each taxable period; or
    ii. at the time of furnishing the LVG-02 return

Once a RS chooses to use the option for conversion from one of the options given above, the RS shall use that consistently, as per paragraph 7.6.4 of the LVG Guide.

How is the sales tax paid to the RMCD?

Under subregulation 9(1) of the Regulations, payment of sales tax or penalty payable under the STA shall be made to the RMCD through electronic banking or any manner as the Director General may determine.

According to paragraph 7.10.1 of the LVG Guide, payment of tax can be made via the MyLVG platform through the Financial Process Exchange (FPX) or Telegraphic Transfer (TT). However, the TT method is only for RSs overseas, and the FPX method requires the RS to have a bank account registered in Malaysia.

RSs are required to pay the amount of sales tax due and payable not later than the last day of the month following after the end of the taxable period. Penalties for late-payment may be imposed up to 40% of the outstanding tax amount, under subsection 26(8) of the STA.

What information should be displayed on packages?

Under regulation 5 of the Regulations, every RS shall furnish a consignment note that contains the **sales tax registration number** of the RS. The information of the consignment note shall be displayed by patching or affixing such information on the package of the LVG being delivered.

Appendix 1 in the LVG Guide provides an example of the information to display.

What information should be displayed on invoices?

Under subregulation 6(1) of the Regulations, every RS who issues an invoice or document in relation to the sales of LVG to a buyer shall state thereon the following particulars:

a) the serial number of the invoice or document;
b) the date of the invoice or document issued;
c) the name and address of the registered seller;
d) the sales tax registration number of the RS;
e) a description sufficient to identify the LVG being sold; and
f) the total amount payable excluding sales tax, the rate of the sales tax, and total sales tax chargeable shown as a separate amount.

When will sales tax begin to be charged and levied on?

Based on the gazette notification, the effective date for charging and levying of sales tax on LVG shall be **1 April 2023**. This is consistent with paragraph 1.4 and Example 5 of the LVG Guide.

Deloitte's comments

The gazetted Regulations and Orders provide some clarity on what low value goods are and how the sales tax will be implemented. However, there remains a considerable number of areas where the Law and guidance is not sufficiently clear. In considering the short timeframe available, the RMCD needs to ensure that all issues that are currently unaddressed are resolved ahead of the 1 April 2023 commencement date.

One major issue noted is the flat tax rate of 10%. As it stands, there are certain goods manufactured and sold in Malaysia which attract a sales tax rate of 5%, if it is listed in the First Schedule of the Sales Tax (Rates Of Tax) Order 2022. However, if those same goods are sold and imported into Malaysia in consignments under RM500, the applicable tax would be 10% instead of 5%.

It should also be brought to attention that there is a difference between an OMP and regular e-commerce websites. An OMP would have multiple sellers where else a regular e-commerce website would only have one seller selling its own goods. However, we understand that the RMCD views any website that sells goods directly to customers would fall within the definition of an OMP.

Businesses should begin preparing for the implementation and conduct internal reviews to ensure they are ready for when the tax goes live on 1 April 2023. For impacted sellers whose goods are delivered from both overseas and locally, proper segregation should be in place to distinguish whether the goods fall within the definition of LVG upon sale or otherwise.

The RMCD has released an announcement regarding the implementation of sales tax on LVG and that the RMCD's MyLVG portal is now up and running. Sellers and operators of OMP may register by submitting the LVG-01 form online, with the guidance of the user manual.

Brought to you by:

Ahmad Amiruddin Ridha Allah
Senior Manager
Kuala Lumpur

Patrick Ng
Senior
Kuala Lumpur

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2. Amendments to Sales Tax Exemptions

The following Amendment Orders to the Sales Tax (Person Exempted From Payment of Tax) Order 2018 ("STPEO") were gazetted recently on 14 and 30 December 2022 respectively and came into operation on 1 January 2023:-

- Sales Tax (Person Exempted from Payment of Tax) (Amendment) Order 2022; and
- Sales Tax (Person Exempted from Payment of Tax) (Amendment) (No. 2) Order 2022

Sales Tax (Person Exempted from Payment of Tax) (Amendment) Order 2022

Amendments to Schedule A

- In relation to Items 58, 58A, and 60, in column (3), the HS codes of 2710.19.43 00 and 2710.19.44 00 were substituted to 2710.19.44 00, 2710.19.45 00 and 2710.19.46 00.
- In relation to item 65, the description of goods exempted were substituted for subitem (a) with *"Prime mover falling under subheadings 8701.21.90 00, 8701.22.90 00, 8701.23.90 00, 8701.24.90 00, and 8701.29.90 00 of the prevailing Custom Duties Order".*

Amendments to Schedule B

- In relation to item 3, in column (3) (goods exempted) and in column (4) (conditions) subitem (b), the following were substituted:
  - the HS code 0403.10.29 00 to 0403.20.19 00
  - the HS code 0403.10.99 00 to 0403.20.99 00
  - the HS code 0403.90.90 90 to 0403.90.90 00

Amendments to Schedule C

- In relation to item 1, column (4) (conditions), notable amendments were made, where:-

  - For subitem (b), *the goods shall be:-*
    i. imported;
    ii. purchased from another registered manufacturer; or
    iii. transported from –
      A. a licensed warehouse under section 65 of the Customs Act 1967 or a licensed manufacturing warehouse under section 65A of the Customs Act 1967; or
      B. a free zone established under the Free Zones Act 1990 by person acting on behalf of a registered manufacturer

  - For subitem (c), *the goods shall be used in the manufacturing of finished goods of-*
    i. taxable goods; or
    ii. both taxable and exempted goods of the person mentioned in column (2) – i.e., registered manufacturer.

- New conditions were also introduced under subitem (c), as below:-

  (ca) that in the case of manufacturing the exempted goods, the finished goods shall be exported by the person mentioned in column (2);
  (cb) notwithstanding subitem (ca), that in the case of manufacturing the exempted goods, the following finished goods:
  1. *controlled article under the Control of Supplies Act 1961 [Act 122] and subject to price control;*
  2. *pharmaceutical product falling under chapter 30 of the prevailing Customs Duties Order; or*
  3. *milk products falling under headings or subheadings 04.01, 04.02, 0403.10.29 00, 0403.20.19 00, 0403.10.99 00, 0403.90.10 00, 0403.90.90 90, 0403.90.90 00, 04.04, 1901.10.20 00, 1901.90.31 00, 1901.90.32 00, 1901.90.39 00, and 2202.99.10 00 of the prevailing Customs Duties Order*

  may be sold locally by the registered manufacturer;

  (cc) subject to subitem (ca), if the goods mentioned in column (3) are not used in the manufacturing of the exempted goods and the goods produced thereof are not exported within twelve months from the date of import, transport or purchase or such other period as approved by the Director General, the sales tax become due and payable and the person mentioned in column (2) shall pay for the sales tax.

- In relation to item 3, column (4) (conditions), the following amendments were made:-

  - For subitem (c), this was replaced with similar condition stated for Item 1 – subitem (b), as extracted below:-

    the goods shall be:-
    i. imported;
    ii. purchased from another registered manufacturer; or
    iii. transported from –
    A. a licensed warehouse under section 65 of the Customs Act 1967 or a licensed manufacturing warehouse under section 65A of the Customs Act 1967; or
    B. a free zone established under the Free Zones Act 1990 by person acting on behalf of a registered manufacturer

  - For subitem (d), *the goods shall be sold to, delivered, and used solely in the manufacturing of taxable goods or both taxable and exempted goods of the registered manufacturer*.

  - New conditions were also introduced under subitem (d), as below:-

    (da) that in the case of manufacturing the exempted goods, the finished goods shall be exported by the registered manufacturer;

    (db) notwithstanding subitem (da), that in the case of manufacturing the exempted goods, the following finished goods may be sold locally by the registered manufacturer:
    1. *controlled article under the Control of Supplies Act 1961 [Act 122] and subject to price control;*
    2. *pharmaceutical product falling under chapter 30 of the prevailing Customs Duties Order; or*

iii. *milk products falling under headings or subheadings 04.01, 04.02, 0403.10.29 00, 0403.20.19 00, 0403.10.99 00, 0403.90.10 00, 0403.90.90 90, 0403.90.90 00, 04.04, 1901.10.20 00, 1901.90.31 00, 1901.90.32 00, 1901.90.39 00, and 2202.99.10 00 of the prevailing Customs Duties Order*

(dc) subject to subitem (da), if the goods mentioned in column (3) are not used in the manufacturing of the exempted goods and the goods produced thereof are not exported within twelve months from the date of import, transport or purchase or such other period as approved by the Director General, the sales tax become due and payable and the registered manufacturer shall pay for the sales tax.

Sales Tax (Person Exempted From Payment of Tax) (Amendment) (No.2) Order 2022

Amendment to Item 24, Schedule A

The notable amendments were made to the abovementioned Item as below:-

- In column (2) (person exempted), the original wordings were substituted with "*Any person importing goods using air courier service (including postal service)*".

- For column (3) (goods exempted), it is noted that the list of goods excluded for exemption has been expanded to include the following items:-

  - smoking pipes (including pipe bowls);
  - electronic cigarettes and similar personal electric vaporising devices; and
  - preparation of a kind used for smoking through electronic cigarette and electric vaporising device, in forms of liquid of gel, not containing nicotine.

- For column (4), changes were made to the existing condition, and shall be read as below:-

  That the goods are imported by any person using air courier service (including postal services) -

  i. *Through the following airports:*
     A. *Kuala Lumpur International Airport, Selangor;*
     B. *Sultan Abdul Aziz Shah Airport, Selangor;*
     C. *Penang International Airport, Penang;*
     D. *Senai International Airport, Johor;*
     E. *Kota Kinabalu International Airport, Sabah;*
     F. *Kuching International Airport, Sarawak; or*
     G. *Langkawi International Airport, Kedah; and*
  ii. *that the goods imported are of a total C.I.F. value not exceeding MYR 500.00 per consignment.*

Deloitte's comments

Based on the amendments made, specifically for Items 1 and 3, Schedule C of the STPEO, the additional conditions introduced appears to allow businesses (especially registered manufacturers under sales tax) in utilising these exemptions to acquire the relevant goods for manufacturing both taxable and non-taxable goods.

However, prior to the amendments above, businesses may have utilised / are currently utilising exemption under Schedule B of the STPEO which has similar conditions under the amended Items 1 and 3 of Schedule C. It is thus unclear as to the intention behind the introduction of the additional conditions under Items 1 and 3 of Schedule C by the RMCD.

From a compliance perspective, this still remains unclear, especially in terms of segregating or keeping track of the use of the same sales tax exempted goods in manufacturing both taxable and non-taxable finished goods. At the moment, the RMCD has yet to provide adequate guidance on complying with such scenarios. Businesses may need to observe such changes and re-assess the company's position in utilising such sales tax exemption.

Similarly, in light of the amendments to certain Items under Schedule A, it is also important for businesses to re-assess the conditions under these exemptions to ensure full compliance with the legislations.

It would be worthwhile to seek clarity from the RMCD on steps that can be taken, in light of the amendments made to the STPEO.

Brought to you by:

Syifa Yin Izhar
Manager
Kuala Lumpur

Vanessa Chua
Senior
Kuala Lumpur

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3. Legislative Amendments to Customs Act 1967

On 18 October 2022, the Customs (Amendment) Act 2022 was gazetted and came into effect on 1 January 2023. The amendments to the Customs Act 1967 ("CA") which took effect are as below:

- Substitution of the words "in the prescribed form" with the words "in the form and manner as determined by the Director General" appeared in sections 57, 59, 78, 82, 83, 85, 86, 94, 157 and subsections 10A, 16(1), 37(1), 38(2), 52(1), 54(1), 56(1), 58(1), 78(1), 80(1)(a), 84(1), 99()1)(d), 143(2), and paragraphs 93(1)(e), 128(3a)(b), and 133(1)(g)

- In Section 3(3) on appointment of powers and officers of the CA, substitution of the following words "sections 10F, 13B, 22, and 145" the words "sections 10F, 13B, and 22" as Section 145 of the CA has been deleted.

- Deleting subsection 19(2) of the CA as the determination of the customs value of imported goods for the purpose of calculating the customs duty payable is provided by the regulations made under paragraph 142(35b) of the CA.

- In Paragraph 65a(3)(b) of the CA, substituting the words "Subject to subsection (4), if" the word "If" as subsection 65a(4) of the CA has been deleted.

- In sub-section 78B(2) of the CA, substitution of the words "the date of the declaration being approved by the proper officer of customs" the words "the date of arrival of such goods", which seeks to provide that the importer of the dutiable goods shall pay the customs duties and other charges leviable on such goods within fourteen days from the date of arrival of such goods.

- Section 142 of the CA is amended by deleting subsections (12) and (35e).

- New section 145c inserted, which seeks to empower the Minister to extend the period to perform an act or a thing which is required to be completed within certain period under the CA if he is satisfied that the act or thing could not be completed within the period due to the occurrence of any public emergency or public health crisis.

- New section 145d inserted, which seeks to empower the Minister to add to, delete or vary any terms and conditions imposed pursuant to the CA for the purpose of carrying out the objects of the CA, provided that reasonable notice is given to the person bound by the terms and conditions.

Deloitte's comments

Where relevant sections/subsections of the CA require completion of a specific form, the DG of the RMCD should issue clear public guidelines identifying clear the form that is to be completed and how it was must be completed. This would aid businesses in matters pertaining to, amongst others, declaration on import, export, refund, drawback etc.

Brought to you by:

Nicholas Lee
Director
Kuala Lumpur

Ashokkumar Hothiyakumar
Assistant Manager
Kuala Lumpur

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Contact us – Our Indirect Tax Team

Tan Eng Yew
Indirect Tax Leader
etan@deloitte.com
+603 7610 8870

Senthuran Elalingam
Executive Director (Partner)
selalingam@deloitte.com
+603 7610 8879

Chandran TS Ramasamy
Director
ctsramasamy@deloitte.com
+603 7610 8873

Larry James Sta Maria
Director
lstamaria@deloitte.com
+603 7610 8636

Nicholas Lee
Director
nichlee@deloitte.com
+603 7610 8361

Irene Lee
Associate Director
irlee@deloitte.com
+603 7610 8825

Wendy Chin
Senior Manager
wechin@deloitte.com
+603 7610 8163

Ahmad Amiruddin Ridha Allah
Senior Manager
aamiruddin@deloitte.com
+603 7610 7207

Eliza Azreen Kamaruddin
Senior Manager
eazreen@deloitte.com
+603 7610 7271

Leong Wan Chi
Senior Manager
wanleong@deloitte.com
+603 7610 8549

Name	E-mail address	Telephone
Naresh Srinivasan Manager	narsrinivasan@deloitte.com	+603 7650 6459
Syifa Yin Izhar Manager	syizhar@deloitte.com	+603 7610 7512
Nikki Suah Manager	nsuah@deloitte.com	+60 3 7610 7642
Ashokkumar Hothiyakumar Assistant Manager	ahothiyakumar@deloitte.com	+603 7610 9238

Other offices

Name	E-mail address	Telephone
Susie Tan Johor Bahru and Melaka	susietan@deloitte.com	+607 268 0851
Ng Lan Kheng Penang	lkng@deloitte.com	+604 218 9268
Lam Weng Keat Ipoh	welam@deloitte.com	+605 253 4828
Philip Lim Kuching and Kota Kinabalu	suslim@deloitte.com	+608 246 3311

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