

Expert tax insights
delivered to your inbox
regularly.



TAX UPDATE: APRIL - JUNE 2023

RSM Tax Consultants (Malaysia) Sdn Bhd

GLOSSARY

Abbreviation / Acronym	Description
AES	Awareness, Education, Service
AI	Artificial Intelligence
AMLA Act 2001	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001
APA	Advance Pricing Arrangement
APA Rules 2023	Income Tax (Advance Pricing Arrangement) Rules 2023
APAC	Asia Pacific
API	Application Programming Interface
BOD	Bill of Demand
DEMPE	Development, Enhancement, Maintenance, Protection, and Exploitation
DGIR	Director General of Inland Revenue
DPSP	Digital Platform Service Provider
DTA	Double Tax Agreement
FAQ	Frequently Asked Questions
FAR	Functions, Assets and Risks
GMT	Global Minimum Tax
GST	Goods and Services Tax
HC	High Court
IP	Intangible Properties
ITA 1967	Income Tax Act 1967
MIRB	Malaysian Inland Revenue Board
MNE	Multinational Enterprise
MOF	Ministry of Finance
NOAA	Notice of Additional Assessment
PE	Permanent Establishment
QDMTT	Qualified Domestic Minimum Top-up Tax
RMCD	Royal Malaysian Customs Department
RPGT	Real Property Gains Tax
SCIT	Special Commissioners of Income Tax
SMK	Sistem Maklumat Kastam
SVDP	Special Voluntary Disclosure Programme
TP	Transfer Pricing
TP Rules 2023	Income Tax (Transfer Pricing) Rules 2023
TPD	Transfer Pricing Documentation
TTx	Tourism Tax
VDP	Voluntary Disclosure Program
YA	Year of Assessment

TABLE OF CONTENTS

1	SVDP 2.0 Updates	Page 4
2	TP Updates	Page 8
3	GMT	Page 10
4	E-Invoicing (Updates)	Page 10
5	Extension of Stamp Duty Exemption for Restructuring or Rescheduling of a Loan or a Financing Agreement	Page 11
6	Guideline on Tax Deduction for Contributions / Sponsorship for Smart AI Driven Reverse Vending Machines	Page 11
7	Extension of Grace Period for DPSP to Charge, Collect, Account and Remit TTx	Page 12
8	Use of new code in SMK	Page 12
9	Tax Case – DGIR v Procter & Gamble (Malaysia) Sdn Bhd	Page 13



1. SVDP 2.0 – UPDATES

Further to the SVDP announcement in the revised Budget 2023, the following were issued on 2 June 2023:-

No.	Authority	Program	Scope	Guidelines / FAQ
1	MIRB	SVDP 2.0	Direct taxes	(i) Operational Guidelines No. 2/2023 (ii) FAQ (Updated on 2 June 2023)
2	RMCD	VDP for indirect taxes	Indirect taxes	(i) Guidelines on VDP for indirect taxes (ii) FAQ

What is SVDP 2.0 and VDP?

	SVDP 2.0 (Direct Taxes)	VDP (Indirect Taxes)
Objective / Purpose	<ul style="list-style-type: none"> To encourage taxpayers to come forward voluntarily and declare their income accordingly. Provides an opportunity for taxpayers to increase their level of tax compliance based on the AES concept practised at the MIRB. 	<ul style="list-style-type: none"> Provides an opportunity for any person to voluntarily declare non-compliance in relation to their indirect tax liability that was previously unknown or undiscovered by the RMCD.
Program duration	6 June 2023 until 31 May 2024	
Who can participate	<p>All categories of taxpayers (except employer file category).</p> <p>Refer Note 1 for details.</p>	<p>All companies and individuals who are liable to Sales Tax, Service Tax, GST and TTx.</p> <p>Refer Note 2 for details.</p> <p><i>Note: Customs duties, Excise duty and Departure Levy are not applicable for this program.</i></p>
Covered period / YAs	<ul style="list-style-type: none"> New taxpayers (YA 2022 and preceding YAs) Existing taxpayers (YA 2021 and preceding YAs) For RPGT – assets disposed in YA 2022 and preceding YAs For stamp duty – agreements executed (signed) on or before 1 May 2023 	<p>All indirect taxes (i.e. Sales Tax, Service Tax, GST and TTx) liable up to 28 February 2023</p>

1. SVDP 2.0 – UPDATES (CONT.)

What is SVDP 2.0 and VDP? (Cont.)

	SVDP 2.0 (Direct Taxes)	VDP (Indirect Taxes)
Incentives	100% penalty remission	
Payment of tax	Shall be paid in full within 30 days from the date of the notice of assessment / instalment by 31 May 2024	Shall be paid in full / instalment by 31 May 2024 For instalment payments, an extension of time may be applied (subject to RMCD's discretion).
Exclusion / non-applicability	<ul style="list-style-type: none"> ■ Tax audit / investigation action taken on taxpayers has commenced for the YA(s) involved. ■ Non-taxable cases, reduced assessment or tax repayment (except for TP cases). ■ Investigation action has been initiated or prosecution proceedings following a criminal investigation have been filed in court based on the provisions under the ITA 1967, RPGT Act 1976, Stamp Act 1949 or the AMLA Act 2001. 	<ul style="list-style-type: none"> ■ Tax liabilities that are being or have been investigated by the Enforcement Division of RMCD. ■ BOD has been issued by RMCD. ■ Tribunal / court cases that are currently under trial. ■ Cases being audited by the Compliance Division of RMCD.

Note 1: Who is eligible to participate in SVDP 2.0 (Direct Taxes)?

New taxpayers who have never declared income to the MIRB but have commenced a business or have received income.

Taxpayers who have previously declared income to MIRB and still have income / additional income not declared.

Taxpayers who have not declared disposal of assets.

Duty payer who submits any document / agreement that has been executed (signed) on or before 1 May 2023 for stamping from 6 June 2023 to 31 May 2024.

1. SVDP 2.0 – UPDATES (CONT.)

Note 2: Who is eligible to participate in VDP (Indirect Taxes)?

<p>Any person who has registered and: -</p> <ul style="list-style-type: none">Submitted Nil return for a return in which taxes should have been declared and paid.Failed to submit a return despite taxes being due.Submitted tax returns but underdeclared or underpayment of tax.Imposed tax on goods/services that are not taxable, but did not remit the tax to RMCD.	<p>Any person who is liable to be registered but failed to register and has charged taxes but failed to pay them to RMCD;</p>	
<p>Any person who is liable to be registered but did not register and collect tax from customers;</p>	<p>Any person who acquires imported taxable service under the GST Act 2014 or Service Tax Act 2018 but have not accounted for tax payable to RMCD; or</p>	<p>Any person who is licensed / registered under the Sales Tax Act 1972 or the Sales Tax Act 2018 and has declared sales tax that is not in accordance with the valuation method under Sales Tax (valuation) Regulations 2020 or Sales Tax (Determination of Value of Taxable Goods) Regulations 2018, including transactions involving related parties.</p>

Benefits of SVDP 2.0 (Direct Taxes) and VDP (Indirect Taxes)

<p>Penalty Remission</p> <p>Both programs offer a 100% penalty remission to encourage taxpayers to come forward voluntarily and disclose any non-compliance.</p>	<p>Tax Compliance</p> <p>Taxpayers can rectify their past non-compliance issues and bring their direct taxes and indirect taxes affairs up to date.</p>	<p>Accept in Good Faith</p> <p>MIRB and RMCD will accept information voluntarily disclosed made during the SVDP 2.0 / VDP period in good faith.</p>	<p>No Further Tax Audit / Investigation in the Future</p> <p>Tax audit / investigation action will not be carried out in the future in respect of the YA / period in which the voluntary disclosure is made.</p>
---	--	--	---

Note: Based on the FAQ issued by the RMCD, the RMCD has indicated that the period declared under the VDP will not be audited unless there is an element of fraud.



1. SVDP 2.0 – UPDATES (CONT.)

How can we assist?

Conduct brainstorming session with your team to assess your tax position and identify key risk areas.

Assist in conducting tax health check by reviewing prior years' tax returns, computations and supporting documents in order to identify any potential non-compliance issues.

Highlight the tax implications arising from any potential errors / non-compliance issues.

Quantify the amount of tax underpaid.

Assist with the submission of SVDP 2.0 / VDP application.

To liaise with MIRB / RMCD officers and to attend their queries in relation to the SVDP 2.0 / VDP application.

To follow up with MIRB / RMCD until the settlement letter for the SVDP 2.0 / VDP is issued.



2. TP UPDATES

On 29 May 2023, the TP Rules 2023 and APA Rules 2023 were gazetted.

(1) TP Rules 2023

The TP Rules 2023 would take effect from YA 2023 while the Income Tax (Transfer Pricing) Rules 2012 will continue to apply for prior YAs.

Here are a few notable revisions introduced in the TP Rules 2023:

TPD is to be prepared on a contemporaneous basis, i.e., this must be ready prior to the tax return filing deadline and the completion date must be indicated in the TPD.

Redefinition of “Arm’s Length Range”, - a range of figures or a single figure that falls within the range of 37.5% to 62.5% of the accepted data set.

DGIR has the power to adjust the price of a controlled transaction to the median - if the data set lacks sufficient comparability; or if it is not possible to identify, quantify, or adjust the comparability defect.

The MIRB has expanded the list of information that needs to be included in the contemporaneous TPD which resembles the disclosure requirement in a Master File – previously, this requirement is only applicable to MNE groups with consolidated revenue of EUR750 million / RM3 billion (whichever threshold is applicable).

Usage of multiple year averages is no longer accepted. Taxpayers shall determine the arm’s length price based on the most current information that is reasonably available at the point of determining the arm’s length price.

The TP Rules 2023 effectively replaces the hierarchy of methods with the best method approach and mandates taxpayers to furnish an explanation and rationale for selecting a particular method. However, the DGIR may still replace the selected method if there is reason to believe that the selected method is not the most appropriate method.

On IP, the TP Rules 2023 explicitly states that if the owner of the IP does not carry out the functions; control the functions; or assume the risks associated with the DEMPE of the IP, they will not be entitled to any income related to the IP.

The rule which allows taxpayers to request for offsetting adjustments on an assessment has been removed in the TP Rules 2023.

The updated TP Rules 2023 indicates the MIRB’s ongoing efforts to ensure TP compliance amongst taxpayers. Taxpayers are advised to re-look into the area of TP to ensure compliance and prepare a robust and contemporaneous TPD before submitting the yearly tax return.

2. TP UPDATES (CONT.)

(2) APA Rules 2023

Unlike the TP Rules 2023, the APA Rules 2023 would take immediate effect. The Income Tax (Advance Pricing Arrangement) Rules 2012 have been revoked.

Some of the key changes introduced by the APA Rules 2023 are outlined below:

Application

A taxpayer who undertakes cross-border transaction has the option to apply for an APA, subject to the following:

- Where the related party is from a country which has a DTA with Malaysia, the taxpayer may apply for a bilateral APA or multilateral APA; or
- Where the related party is from a country which does not have a DTA with Malaysia, the taxpayer may only apply for unilateral APA;
- A PE may apply for a bilateral APA or multilateral APA and such application shall be made on its behalf by its head office.

Fees

The submission of APA application has been extended to a period of 6 months (instead of 2 months as per previous rules) after receiving a notification from the DGIR to submit the formal application after the pre-filing meeting.

For a new application, a non-refundable fee of: (i) RM 5,000, if the application is made within 2 months; or (ii) RM 10,000, if the application is made after 2 months but within 6 months after receipt of the notification from DGIR.

For a renewal application, a non-refundable fee of RM 5,000 will be charged.

Rollback application

- A rollback is allowed only for a bilateral/multilateral APA for not more than 3 YAs immediately preceding the covered period.
- If a rollback is granted, taxpayers are required to submit the revised tax computations for the relevant YAs within 30 days of the signing of the APA.





3. GMT

GMT is a revolutionary global tax reform to tackle profit shifting and tax avoidance .

Briefly, GMT aims to ensure that MNEs pay fair amount of taxes regardless of where they operate.

GMT is applicable to MNEs operating in at least two (2) jurisdictions and having consolidated group revenue of minimum EUR750 million in at least 2 of the four (4) immediate preceding financial years.

While Singapore, Thailand and Hong Kong have deferred their GMT implementation to year 2025, the United Kingdom, Australia, Japan, the European Union, among others, have chosen year 2024 as their starting year. For Malaysia, the MOF has indicated that the Malaysian Government is committed to introduce GMT of 15% and QDMTT in year 2024 to collect top-up tax from MNEs located in Malaysia.

It is imperative for MNEs such as Malaysian based MNEs and foreign based MNEs who have operations in Malaysia should get themselves ready and assess the impact of GMT and QDMTT on their businesses, before GMT comes into operation in year 2024.

4. E-INVOICING (UPDATES)

Commencing June 2024, e-invoicing is mandatory for companies with annual sales value exceeding RM100 million.

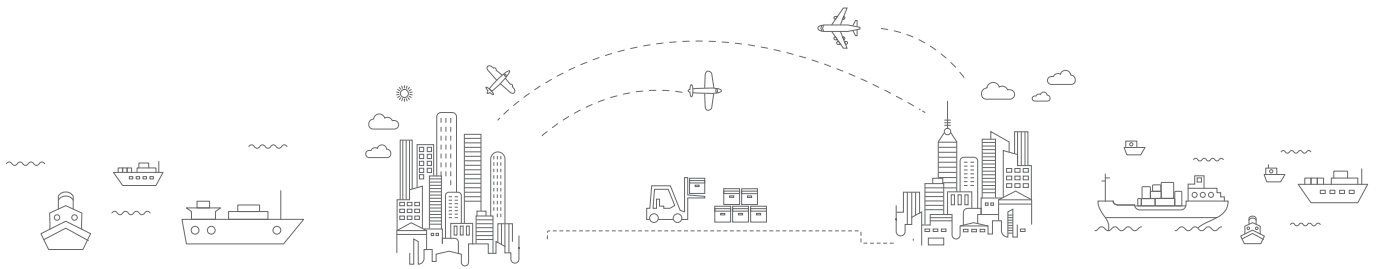
As such, companies with annual sales value exceeding RM100 million should get themselves ready and familiar with the e-invoicing mechanism, pending further guidelines to be issued by the MIRB.

The e-invoicing process, according to Datuk Dr Mohd Nizom Sairi, the CEO of MIRB, involves the following :-

- The buyer and seller are required to register with the MIRB and have a tax identification number.
- E-invoice will be sent via API to MIRB for verification.
- MIRB will check on the taxpayer authentication and provide a URL data invoice which has been verified to the taxpayer (who has given out the e-invoice).
- MIRB will send the data e-invoice which has been verified via API to the seller.
- The seller or the issuer, upon receipt of the MIRB's verification, is required to enter the URL data e-invoice to create a QR code for the invoice which has been sent to the buyer.
- The buyer and seller will simultaneously receive the MIRB's verification notification regarding the status of the e-invoice.

5. EXTENSION OF STAMP DUTY EXEMPTION FOR RESTRUCTURING OR RESCHEDULING OF A LOAN OR A FINANCING AGREEMENT

On 27 April 2023, the MOF issued Stamp Duty (Exemption) (No.11) 2021 (Amendment) Order 2023 (in this Section referred as “the Order”) to extend the exemption given for stamp duty on instrument of loan or a financing agreement relating to restructuring or rescheduling of a loan or a financing agreement which ended on 31 December 2022. The Order is effective 1 January 2023. The said exemption is available from 1 January 2023 to 31 December 2024.



6. GUIDELINE ON TAX DEDUCTION FOR CONTRIBUTIONS / SPONSORSHIP FOR SMART AI-DRIVEN REVERSE VENDING MACHINES

Following the announcements in the re-tabled Budget 2023, the MOF has issued Guideline on Tax Deduction for Contributions / Sponsorship for Smart AI-Driven Reverse Vending Machines. The guideline stated the eligibility criteria and procedures for applying for the said tax deduction.

Companies, individuals, partnerships, trust bodies and cooperative societies which derived business income and contributed cash or financing for smart vending machines with smart AI technology may apply to the MOF for tax deduction under section 34(6)(h) of the ITA 1967.

Only contributions / sponsorship made and application received and approved by MOF between 1 April 2023 until 31 December 2024 are allowed for tax deduction.

Approved application must be declared in the respective income tax return in the relevant YA. The following supporting documents must be retained in case of an audit: -

Approval letter from the MOF.

Official receipt, letter of receipt of contributions or financing agreement letter (stating the period, location and serial number of the equipment supplied).

Verification from Ministry of Natural Resources, Environment and Climate Change for the value of cash/ equipment/ services.

7. EXTENSION OF GRACE PERIOD FOR DPSP TO CHARGE, COLLECT, ACCOUNT AND REMIT TTX

On 13 April 2023, the RMCD has released a new TTx policy i.e. TTx Policy No. 2/2023. The new TTx policy extends the grace period given earlier under TTx Policy No. 1/2023.

The grace period is available from 1 April 2023 to 31 December 2025 where the MOF has agreed to extend the grace period pertaining to the following matters: -

A registered DPSP is not liable to collect, account and remit the TTx to the RMCD according to the registered DPSP's relevant taxable period if it **does not receive payment** directly from a foreign tourist for the online booking of an accommodation premise.

A registered operator is required to collect, account and remit the TTx to the RMCD according to the registered operator's relevant taxable period if it **receives payment** for the accommodation premise provided through an online booking made by a foreign tourist through a DPSP.

A registered DPSP is liable to collect, account and remit the TTx to the RMCD according to the registered DPSP's relevant taxable period if it **receives payment** for the accommodation premise provided through an online booking made by a foreign tourist.



8. USE OF NEW CODE IN SMK

Effective 1 June 2023, exporters are required to use the code "**XE - Export Finished Goods with Exemption**" in the SMK when submitting online declaration for the export of finished goods manufactured from raw materials and components imported / purchased from a registered manufacturer, which were exempted from import duty / excise duty / sales tax under Section 14(2) of the Customs Act 1967, Section 11(2) of the Excise Act 1976 and Section 35(3) of the Sales Tax Act 2018.

9. TAX CASE – DGIR V PROCTER & GAMBLE (MALAYSIA) SDN BHD

This was a case decided by the HC on 20 April 2022 which emphasised the importance of proper TPD in place to protect taxpayers in the event of disputes from the MIRB.



Background facts

The Taxpayer is a company incorporated in Malaysia. The Taxpayer is principally engaged in marketing and distribution of health, personal care and beauty care products.

The Taxpayer entered into a distribution agreement with Procter & Gamble International Operations Pte Ltd (“PGIO”) where: -

- The Taxpayer was appointed as PGIO’s distributor to oversee the distribution of a range of P&G consumer goods to customers in Malaysia; and
- PGIO set prices at a guaranteed margin of 2.25% for goods sold to the Taxpayer, in accordance with arm’s length principles.

In 2009, the DGIR requested for TPD for YAs 2004 to 2008 from the Taxpayer.

The Taxpayer furnished the TPD as requested and based on the TPD, the Taxpayer stated among others, that: -

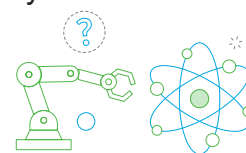
- It was a limited risk distributor based on the functional analysis of the Taxpayer’s FAR; and
- The margin of 2.25% was within the arm’s length range, based on the 16 comparable companies from the APAC region.

The Taxpayer also furnished the following supporting documents as requested: -

- Marketing and promotional briefs sample provided by PGIO to the Taxpayer;
- Information relating to grant payments from PGIO;
- Information relating to APAC set of comparables and the corresponding rejection criteria adopted in its TPD;
- The benchmarking analysis of 22 local comparable companies in Malaysia; and
- A functional analysis of PGIO which explained the different functions of the Taxpayer and PGIO.

The DGIR contended that: -

- The Taxpayer was a distributor and not a limited risk distributor;
- The margin of 2.25% was not within the arm’s length range; and
- The Taxpayer’s results were adjusted to the median based on DGIR’s own set of comparables



The DGIR disallowed the deductions made by the Taxpayer for the grant payments to PGIO and imposed penalties on TP and non-TP adjustment.

The Taxpayer appealed against the NOAA. The SCIT allowed the Taxpayer’s appeal.

The DGIR appealed to the HC against the SCIT’s deciding order.

9. TAX CASE – DGIR V PROCTER & GAMBLE (MALAYSIA) SDN BHD (CONT.)

Subject matter

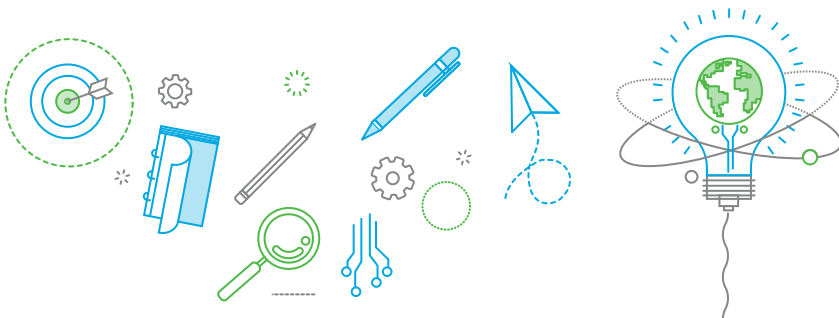
Whether the adjustment made by DGIR was excessive and wrong.

Decision

The HC dismissed the appeal on the following basis, among others: -

- The Taxpayer's TPD met the requirements of both TP Guidelines 2003 and OECD Guidelines 2010;
- The DGIR did not produce TPD and FAR as evidence and therefore, the Taxpayer's TPD prevailed;
- The DGIR's own set of comparables were not applicable as they are not similar in FAR and did not comply with OECD Guideline 2010;
- The DGIR's adjustment to median was incorrect and did not comply with OECD Guideline 2010;
- The assessments for YA 2004 and YA 2005 were time-barred; and
- The Taxpayer had been consistent in explaining on the grant payments made to PGIO.

The HC concluded that the tax deductions claimed by the Taxpayer is allowable on the basis that they were incurred wholly and exclusively in the production of its income.



TAX PROFESSIONAL TEAM

Ng Ah Bah

Head of Tax

T +603 2610 2827

E ngab@rsmmalaysia.my

Dato' Robert Teo

Managing Director

T +603 2610 2886

E roberteo@rsmmalaysia.my

Corporate Tax Compliance

Anston Cheah

Executive Tax Director

T +603 2610 2829

E anston.cheah@rsmmalaysia.my

Nicole Chong

Tax Director

T +603 2610 2830

E nicole.chong@rsmmalaysia.my

Lim Sok Jiuan

Associate Tax Director

T +603 2610 2842

E limsj@rsmmalaysia.my

Soong Kim How

Associate Tax Director

T +603 2610 2848

E soongkh@rsmmalaysia.my

Tax Advisory

Ng Ah Bah

Head of Tax

T +603 2610 2827

E ngab@rsmmalaysia.my

Prabu Chaloraju

Tax Director

T +603 2610 2828

E prabu.chaloraju@rsmmalaysia.my

Indirect Tax

Mayadevi Karpayah

Tax Director

T +603 2610 2831

E mayadevi@rsmmalaysia.my

Kalvinder Singh

Senior Tax Manager

T +603 2610 2863

E kalvinders@rsmmalaysia.my

Field Audit and Investigation

Ng Ah Bah

Head of Tax

T +603 2610 2827

E ngab@rsmmalaysia.my

Chang Suang Yue

Tax Manager

T +603 2610 2862

E changsy@rsmmalaysia.my

Expatriate Employee Tax

Mayadevi Karpayah

Tax Director

T +603 2610 2831

E mayadevi@rsmmalaysia.my

Lynda Harun

Senior Tax Manager

T +603 2610 2832

E lynda@rsmmalaysia.my

Transfer Pricing

Prabu Chaloraju

Tax Director

T +603 2610 2828

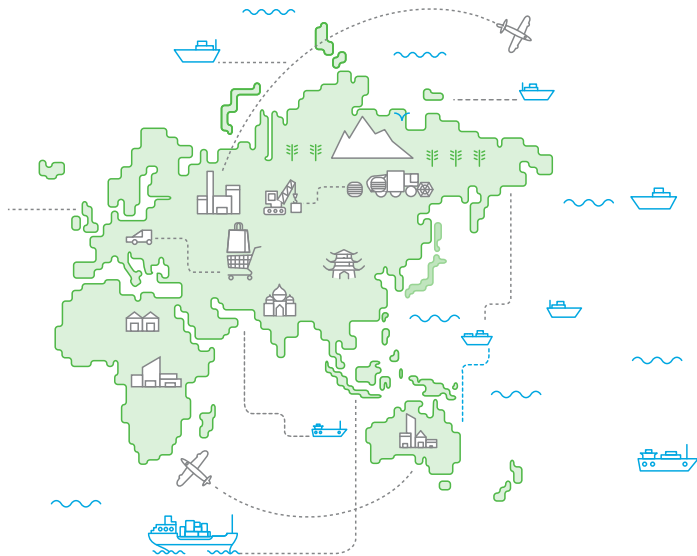
E prabu.chaloraju@rsmmalaysia.my

Jeyapriya Pereysamy

Associate Tax Director

T +603 2610 2844

E jeyapriya@rsmmalaysia.my



RSM Tax Consultants (Malaysia) Sdn Bhd

5th Floor, Penthouse, Wisma RKT,
Block A, No.2 Jalan Raja Abdullah Off Jalan Sultan Ismail,
50300 Kuala Lumpur,
Malaysia

Johor Bahru Office

Suite 16-02, Level 16, Menara Landmark,
No. 12, Jalan Ngee Heng,
80000 Johor Bahru,
Malaysia

General Email askus@rsmmalaysia.my
Website www.rsmmalaysia.my

RSM Tax Consultants (Malaysia) Sdn Bhd is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and advisory firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London, EC4N 6JJ.

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

This article is not intended to provide specific business or investment advice. No responsibility for any errors or omissions nor loss occasioned to any person or organisation acting or refraining from acting as a result of any material in this website can, however, be accepted by the author(s) or RSM International. You should take specific independent advice before making any business or investment decision.