

# ASEAN INVESTMENT & TAX NEWS

## FEATURE ARTICLE

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## NEWS

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# FOREWORD

**Greetings all and welcome to the fourth and final edition of the ASEAN Investment & Tax News of 2019. Despite the economic headwinds and trade wars dominating the business headlines for the better part of the year, we in ASEAN have weathered it well, with various Southeast Asian nations reporting higher trade and foreign direct investments.**

ASEAN has also made considerable progress in the implementation of the ASEAN Economic Community (AEC) Blueprint 2025, said Malaysia's Minister of International Trade and Industry, Datuk Darell Leiking. Among the key achievements reported include the elimination of intra-ASEAN tariffs and intensification of efforts to enhance trade facilitation and address non-tariff measures in the bloc.

The Regional Comprehensive Economic Partnership (RCEP) is back on the agenda and is now in its 'final stretch' of negotiations with an agreement expected in late 2019 or early 2020. RCEP will create a free trade pact covering a third of the world's economy, between ASEAN and its six trading partners.

With another exciting quarter in the ASEAN economic environment, our tax experts continue to analyse and bring the latest in-depth updates and reforms from around the region.

Our feature article touches on Malaysia's implementation of service tax on Digital Services (DS), which will be levied on digital services from 1 January 2020. DS covers any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated.

In Cambodia, our colleagues discuss the changing definition of zero-rated Value Added Tax (VAT) for export services. Service providers in the country should take heed of the changes discussed in this article to avoid any tax exposures. We also discuss Cambodia's Double Tax Agreement (DTA) with Hong Kong signed in July 2019, wherein the agreement is expected to bring tax relief as well as better tax enforcements by both countries.

Our Vietnam colleagues meanwhile take an in-depth look at key changes of the country's tax administrative laws. Meanwhile, we discuss how the Indonesian government is expediting to improve legal certainty in taxation by emphasising the definition of Permanent Establishment (PE). PE is a form of business that is used by foreign individuals or foreign entities to conduct businesses or carry out activities in Indonesia.

We also discuss the key takeaways from Myanmar's Tax Administrative Law (TAL), which came into effect on 1 October 2019. This Law aims to modernise and provide guidance on the administrative procedures on tax-related matters in the country.

In Thailand, we talk about the amendment to Thailand's Revenue Code to make foreign e-commerce businesses liable for VAT on services provided to customers in the country.

Finally, our colleagues in Laos summarise the nation's efforts in combating illegal foreign businesses, including the punitive measures that will be taken against such businesses.

We trust the updates shared here will give you insights into key developments on tax and investment, in and around the region. Please contact us if you would like to have further insights pertaining to the topics discussed.

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## FEATURE: MALAYSIA

### SERVICE TAX ON DIGITAL SERVICES

The proposed extension of the scope of service tax to digital services was first announced in the 2019 Malaysian Budget.

Imported services (which includes information technology services) would be subject to service tax from 1 January 2019, whilst online services imported by consumers would be subject to service tax from 1 January 2020.

**Under the Service Tax (Amendment) Act 2019 (Amendment Act) (gazetted on 9 July 2019), service tax shall be levied on Digital Services (DS) with effect from 1 January 2020.**

This is primarily aimed at taxing the importation of digital products and services by non-business to consumers, as businesses are already required to account for service tax on imported information technology services since 1 January 2019.

DS includes any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated. The Royal Malaysian Customs Department (RMCD)'s Guide which was issued on 20 August 2018 provides clarification that DS includes online subscriptions, training, provision of music, books, film, software, cloud services, payment processing, advertisement etc. However, as the scope of DS under the Amendment Act requires that the service involves the use of information technology and the delivery of the service is essentially automated, there is still a certain level of subjectivity. For example, it would appear that payment processing services may or may not be DS depending on the level of human intervention.

#### REGISTRATION AND COMPLIANCE REQUIREMENTS

A foreign service provider who is providing DS to consumers in Malaysia is required to register to charge service tax at 6% if the total value of DS provided is more than Malaysian Ringgit (MYR) 500,000 per year.

"Consumer" means any person who fulfils any two (2) of the following:

- a. Makes payment for Digital Services using credit or debit facility provided by any financial institution or company in Malaysia;
- b. Acquires Digital Services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia; or
- c. Resides in Malaysia.

#### PRACTICAL ISSUES

We wish to highlight some of the following practical issues:

1. Subjectivity in the scope of DS;
2. Double tax may arise if foreign service providers are already charging Goods and Services Tax (GST) or Value Added Tax (VAT) in their home country;
3. Double service tax may arise if recipient businesses are already paying service tax on imported taxable services;
4. Intragroup DS are not excluded, and there is no intragroup exemption or business to business (B2B) exemption;
5. Software purchased from a reseller which is excluded from the scope of imported services is included under DS; and
6. Education services are excluded from the scope of imported services but online education is included under DS.

In view of potential challenges from the above, BDO in Malaysia has a team of experienced indirect tax professionals who are ready to assist.



# NEWS

## CAMBODIA:

### GENERAL DEPARTMENT OF TAXATION (GDT) TIGHTENS THE DEFINITION OF ZERO-RATED VALUE ADDED TAX (VAT) FOR EXPORT SERVICES

Currently, under Article 64 of the Law on Taxation in Cambodia, a VAT rate of 0% is imposed on each taxable supply of services rendered outside of Cambodia. Furthermore, Article 46 of Sub-decree 114 provides that a supply of services for use outside of Cambodia is considered to be provided outside Cambodia (export services) and should be subject to 0% VAT.

Based on the above regulations, many practitioners have taken the interpretation that if the service is consumed (or used) outside of Cambodia, then 0% VAT is applied. However, some tax regulators are of the view that if the service relates to economic benefits in Cambodia (e.g. the provision of tax advice on Cambodian laws), then in substance it is consumed in Cambodia and therefore subject to 10% VAT. This has created an endless debate over the intended meaning of "for use outside of Cambodia" between practitioners and tax regulators.



In order to address this issue, in June 2019, the GDT issued Notification No. 176 (the Notification) to further explain the definition of zero-rated VAT for export services. The following are the main points of the Notification:

#### a How is export service now defined?

Under Article 1 of the Notification, a service is considered to be exported if the service is provided outside of Cambodia by a Cambodian resident enterprise. The service may be conducted outside of Cambodia by a Cambodian resident enterprise through the dispatching or hiring of employees or technicians outside of Cambodia to perform related tasks outside of Cambodia.

#### b How is "for use outside of Cambodia" now defined?

As per Article 2 of the Notification, the provision of a service is considered to be for use outside of Cambodia should that service be provided by a Cambodian resident enterprise to a non-resident customer, and it will not in any way be used in connection with the customer's presence or any economic activities in Cambodia.

#### c How can a taxpayer determine whether a service is "intended" for use inside or outside of Cambodia?

Under Article 2, paragraph C of the Notification, a service will not be considered to be for use outside of Cambodia where that service is used by the non-Cambodian resident for any business objective or economic interest that relates to Cambodia.

# NEWS

## CAMBODIA: DOUBLE TAX AGREEMENT WITH HONG KONG



On 26 June 2019, Cambodia had signed a Double Tax Agreement (DTA) with Hong Kong. Under the DTA, double taxation will be avoided when any tax paid in Cambodia by Hong Kong companies in accordance with the DTA will be allowed as a credit against the tax payable in Hong Kong on the same income and vice versa for Cambodian companies.

In addition, the Hong Kong-Cambodia DTA also provides the following tax relief arrangements:

- a The withholding tax rates for Hong Kong tax residents in Cambodia on dividends, interests, royalties and fees for technical services will be reduced from 14% to 10%;
- b Hong Kong airlines operating flights to and from Cambodia will be taxed at Hong Kong's corporate tax rate and will not be subjected to income tax in Cambodia; and
- c Hong Kong residents deriving income from international shipping transport in Cambodia will enjoy a 50% reduction in income tax in Cambodia in respect of the income subject to tax in Cambodia.

In addition to the above, there is also a provision in the DTA for the exchange of information between the two countries so that tracking of tax evasion acts by the respective tax authorities would be easier.

In light of the introduction of this new Notification, service providers in Cambodia should importantly note that it is not sufficient to think that if their customer (a non-resident entity) does not currently have any business presence or interests in Cambodia at the time of supply, zero-rated VAT can be applied to the provision of their services. The terms in the service contract should be carefully and clearly spelled out to justify the application of zero-rated VAT and safeguard your business against any related tax exposure.

# NEWS

## INDONESIA:

### UPDATES ON PERMANENT ESTABLISHMENT RULES

The Indonesian government is expediting to improve legal certainty in taxation by emphasising the definition of Permanent Establishment (PE). This improvement is contained through the Minister of Finance (MoF) Regulation Number 35/PMK.03/2019 (PMK-35) which was released on 1 April 2019.



Previously, the regulation regarding PE was already explained in Article 2 paragraph 5 of the Income Tax Law (Law Number 36/2008). However, the issuance of this regulation is expected to increase the certainty of Indonesian law in the case of PE and is also expected to stimulate investment in Indonesia.

This regulation (PMK-35) explains that PE is a form of business that is used by foreign individuals or foreign entities to conduct businesses or carry out activities in Indonesia.

# NEWS

## INDONESIA:

### UPDATES ON PERMANENT ESTABLISHMENT RULES (Con't)

The criteria for determining PE are divided into **three** groups:

- 1 The place of business exists in Indonesia
  - a Place of Management;
  - b Branch;
  - c Representative Office;
  - d Office Building;
  - e Factory;
  - f Workshop;
  - g Warehouse;
  - h Room for Promotion and Sales;
  - i Mining and Extraction of Natural Resources;
  - j Oil or Natural Gas Mining Work Area;
  - k Fishery, Animal Husbandry, Agriculture, Plantation, or Forestry; and
  - l Computer, Electronic Agent, or Automated Equipment that is Owned, Leased or Used by Electronic Transactions Provider to Run the Business Through the Internet.
- 2 The place of business referred to in (1) is permanent.
- 3 The place of business referred to in (1) is used by a foreign individual or foreign entity to conduct business or carry out activity.

Even if there is no fixed place of business in Indonesia, the foreign individuals or foreign entities may still be deemed to have a PE in Indonesia if they carry out business or activity in Indonesia through any of the following:

- Construction, installation, and assembly projects in Indonesia. A construction project covers construction consultation services, construction works, and integrated construction works, which covers design or engineering model, procurement, and implementation works. Installation and assembly projects cover installation or assembly works that are related to construction works, as well as the installation or assembly of machinery or equipment.
- The furnishing of services in whatever form by employees or other personnel for more than 60 days within a 12-month period. This applies if the employee or other personnel are employed by a foreign individual or foreign entity or is a subcontractor of a foreign individual or foreign entity.
- A person or an entity acting as a dependent agent and acting for and on behalf of a foreign individual or foreign entity. This applies if their business or activity is acting under instructions from the foreign individual or foreign entity or does not bear their own risk from the business or activity. However, it does not apply if they only carry out preparatory or auxiliary activities.
- An agent or employee of an insurance company which is not established or domiciled in Indonesia that collects a premium in Indonesia or insures risks, whereby the insured resides or is domiciled or located in Indonesia.

# NEWS

## LAOS:

### ENFORCEMENT AGAINST ILLEGAL FOREIGN BUSINESSES

The Division of Industry and Commerce, Vientiane (DIC-Vte) had issued Instruction No. 0651 (the Instruction) which provides measures to be taken against the illegal operation of businesses by foreigners.



The scope of the Instruction covers foreigners who operate unapproved businesses, defined as those who:

1 Operate a business without an Enterprise Registration Certificate (ERC) or business license; or

2 Violate or fail to comply with the terms of of the ERC or business that has conditions for foreigners.

# NEWS

## LAOS:

### ENFORCEMENT AGAINST ILLEGAL FOREIGN BUSINESSES (Con't)



Under the Instructions, the following measures are set out:

- ① Operating a business without an ERC or business license**  
 The foreign company shall levy a fine of Laotian Kip (LAK) 10 million or US Dollar (USD) 1,162 and its business operations will be suspended. In addition, the company must confirm in writing that it will apply for an ERC and business license within 90 days and if the company does not apply for the ERC and business license within 90 days, an additional fine of LAK 10 million or USD 1,162 will be levied on the company, its business dissolved, and the foreign owner deported.
- ② Violating or failing to comply with the terms of the ERC**  
 The foreign company shall levy a fine of LAK 3 million or USD 348. If the company wishes to conduct a business activity other than that stated in the ERC or business license, then it must amend its ERC and business license. If the authorities discover that it has not amended its license, an additional fine of LAK 5 million or USD 581 will be levied, its business dissolved, and the foreign owner deported.
- ③ Operating a business using of another person's license**  
 The company will be subject to the same measures as those specified in item 1 above.
- ④ Violating or failing to comply with the terms of the type of business that has conditions for foreigners**  
 The company will be subject to the same measures as those specified in item 2 above.
- ⑤ Operating a business that is prohibited for foreigners**  
 The foreign owner will be deported.
- ⑥ Allowing a foreigner to lease their premises without permission**  
 The lessor will be punished as per the applicable regulations.

# NEWS

## MYANMAR:

### TAX ADMINISTRATIVE LAW INTRODUCED

The Tax Administrative Law (TAL) was issued in June 2019 but is to be officially effective from 1 October 2019. The objectives of the TAL are to maintain consistency in administrative processes, promote effective tax collections, and define the rights and obligations of the taxpayers. The law also allows the Inland Revenue Department (IRD) to create a more efficient and comprehensive self-assessment system (SAS) for taxpayers.

The table below summarises the main changes:

SUMMARISES OF THE MAIN CHANGES			
KEY CHANGE	INCOME TAX LAW	COMMERCIAL TAX LAW	TAX ADMINISTRATIVE LAW (TAL)
① Tax Identification Number (TIN)	Only taxpayers under the SAS require TIN	Taxpayers providing taxable supplies for Commercial Tax (CT) are required to self-register with IRD and subject to renewal every year	Every taxpayer will have a TIN TIN to be mentioned on returns, declarations and all correspondences between taxpayer and IRDs' Director General (DG) Changes must be informed to DG within 15 days for CT and 1 month for Income Tax
② Tax Clearance Certificate (TCC)	Not covered. Currently IRD only issues a demand notice every financial year  Only people who are leaving Myanmar require a TCC	Not covered. Currently IRD only issues a demand notice every financial year	Taxpayer can request DG to issue the certificate
③ Public Rulings	Not covered	Not covered	The DG shall issue a clarification statement on practicing tax laws for the public, with an objective to ensure consistency in implementation of tax laws; and - provide a guidance for public and tax officers
④ Advance Rulings	Not covered	Not covered	The DG shall issue an advance ruling in order to interpret a law to the taxpayer on an ad hoc basis (special matters)

# NEWS

## MYANMAR:

### TAX ADMINISTRATIVE LAW INTRODUCED (Con't)

#### SUMMARISES OF THE MAIN CHANGES

KEY CHANGE	INCOME TAX LAW	COMMERCIAL TAX LAW	TAX ADMINISTRATIVE LAW (TAL)
5 Maintaining Records and Accounts	3 years from relevant income year	3 years from relevant income year	7 years from date of transaction
6A Assessment Statute of Limitation	Statute of limitation is 3 years after relevant assessment year	Statute of limitation is 3 years after relevant assessment year	Statute of limitation is 6 years after relevant assessment year
6B Assessment or Re-Assessment in the Event of Fraud	Any time with the Ministry of Planning and Finance's prior approval	Any time with the DGs prior permission	DG can conduct an assessment or re-assessment within a period of twelve (12) years after the end of the relevant assessment year
7 Communication	Not covered  In practice, written submission in person and acknowledgement from the tax officer	Not covered	Electronic communication and registered mail accepted
8 Representative and Officer	Not covered	Not covered	Taxpayers are required to have a representative or appoint an agent
9 Anti-Avoidance of Tax	Not covered	Not covered	DG can deny transactions that are fake, fraudulent and lacking economic substance
10 Advance Tax Assessment due to Risk of Non-collection	Not covered	Not covered	DG shall assess based on available information, before prescribed period of assessment
11 Submission of Tax Returns	Annual – 3 months from end of the financial year	Annual – 3 months from end of the financial year	Taxpayer must file as per tax law timeframe or with DG instructions
12 Extension for Submission of Tax Return	Not covered	Not covered	DG may grant extension upon request
13 Extension of Time for Payment of Tax	Not covered	Not covered	DG may grant extension upon request or allow payment in instalments
14 Tax Appeal	Not covered	Not covered	Taxpayer can make an application for an administrative review in the event they do not agree with the tax assessment results

# NEWS

## MYANMAR:

### TAX ADMINISTRATIVE LAW INTRODUCED (Con't)

#### SUMMARISES OF THE MAIN CHANGES

KEY CHANGE	INCOME TAX LAW	COMMERCIAL TAX LAW	TAX ADMINISTRATIVE LAW (TAL)
15 Tax Refund	Must claim within 1 year from date of receipt of letter requesting refund	Must claim within 1 year after receiving intimation of refund	Can request for refund or offset within a period of 6 years from relevant assessment year
16 Interest on Underpayment and Refund of Tax	Not covered	Not covered	Interest to be paid on tax amount due by taxpayer  Interest on excess amount received by the IRD to be refunded to taxpayer
17 Recovery of Tax	Not covered	Not covered	To commence within a period of six (6) years from the date the taxpayer is determined a defaulter

Notification No. 64/2019, issued on 5 August, 2019, provides more clarity on the procedures in relation to tax assessment and collection for the transition period i.e. 1 April 2019 to 30 September 2019.

#### A Income Tax

How to calculate for the following:

- Resident Salary Income
- Property Rental (less than 1 year and more than 1 year)
- Professional, Business and Other sources of incomes.
- Businesses that are operating with the Myanmar Investment Committee (MIC) permit, Companies, and Cooperatives that are not basic cooperatives.
- Capital Gains
- Undisclosed Source of Income
- Small & Medium Enterprises
- Non-Resident Citizen
- Non-Resident Foreigner
- Resident Foreigner

#### B Specific Goods Tax (SGT)

SGT to be paid if 2 times the total domestic sales of impacted products exceed Myanmar Kyat (MMK) 20 million.

#### C Commercial Tax (CT)

CT to be paid if 2 times the total sales proceeds from non-CT exempted goods / services exceed MMK 50 million.

#### D Due Date for filing the Tax Return

3 months from the end of 30 September 2019.

# NEWS

## THAILAND:

### VAT ON FOREIGN E-COMMERCE BUSINESSES EXPECTED TO BE EFFECTIVE IN 2020

Last year, the Thai Cabinet approved an initial draft of an amendment to Thailand's Revenue Code to make foreign e-commerce businesses liable for VAT on services provided to customers in Thailand. The government has indicated that it is likely that the law will come into effect in 2020, in an effort to boost VAT collections.

Online businesses expected to be affected include:

- Online hotel reservations
- Subscription to online movies, music and e-books
- Online gaming services
- Online advertising
- Sticker downloads
- Websites, applications and online market places

#### CURRENT LEGISLATION

At the moment, the responsibility for remitting VAT on online services from foreign service providers rests with the customer, commonly known as a reverse charge mechanism. The customer is meant to pay the VAT to the Revenue Department themselves.

A large number of individuals use the services of foreign online service providers and in practice only a limited number of individuals would actually remit the VAT to the Revenue Department.

In contrast, domestic entities would have to add VAT to the price of their services. For individuals this means the service from a domestic supplier could end up costing more compared to the same service from a foreign service provider, assuming an individual adopts the usual practice of not remitting VAT for the foreign service provider.

#### PROPOSED NEW LEGISLATION

The new law puts the onus for paying VAT on the foreign services provider. If the service provider has annual income of at least Thai Baht (THB) 1.8 million, they are required to register for VAT and pay online on a monthly basis, similar to domestic businesses.

The law divides persons liable to remit VAT into two categories:

- Foreign entities providing services through electronic media in Thailand to non-VAT registered recipients that use such services in Thailand.
- Digital platform owners, who are liable to VAT instead of foreign suppliers, providing services electronically to non-VAT registered recipients that use such services in Thailand.

In addition to boosting VAT collections, the draft law aims to create a level playing field for domestic and foreign entities providing services online to Thai customers.

# NEWS

## VIETNAM:

### KEY CHANGES TO VIETNAM'S NEW LAW ON TAX ADMINISTRATION TO TAKE EFFECT ON 1 JULY 2020



This new law replaces the 2006 Tax Administration Law which was amended and supplemented under a number of laws, i.e. Law No. 21/2012/QH13, Law No. 71/2014/QH13 and Law No. 106/2016/QH13, with the key changes impacting the taxpayers as below:

#### 1 Formalisation of the law of electronic invoices (e-invoice)

The e-invoice regime has been regulated under Decree No. 119/2018/ND-CP dated 12 September 2018 (Decree 119). This law sets out guidance on e-invoicing which aligns with the guidance under the mentioned Decree.

It is worth noting that the effective date of e-invoice deployment is again extended to 1 July 2022 instead of 1 November 2020 under Decree 119.

#### 2 Extension of deadline for submitting the Personal Income Tax (PIT) finalisation declaration

Individuals shall directly submit their self-finalised PIT returns to the tax authorities no later than the end date of the fourth month from the end date of calendar year. This timeline has been extended by a month compared to the 90-day deadline under the former law.

# NEWS

## VIETNAM:

### KEY CHANGES TO VIETNAM'S NEW LAW ON TAX ADMINISTRATION TO TAKE EFFECT ON 1 JULY 2020 (Con't)

#### 3 Transfer Pricing (TP) principles are legislated in the Law

##### Emphasis of "Substance over Form" (SOF)

The SOF had been previously used in the audits of all kinds of taxations of the tax authorities. It is now legislated under the form of law. Accordingly, the tax authority will perform the benefit test, value creation of the transactions with the related parties for additional deemed taxes and in alignment with Base Erosion and Profit Shifting (BEPS)/arm's length principle.

##### Tightening the TP administration

This law regulates the prohibited acts including collusion, connection, and connivance between taxpayers and tax officers, tax authorities for TP and tax evasion. In addition, it also clearly states that the Ministry of Planning and Investment is responsible for directing and guiding relevant authorities to enhance the valuation of investment projects to prevent TP and tax avoidance.

On the other hand, the Law stipulates that the means and scope of cooperation between Vietnamese tax authorities and their counterparts overseas are broadened in various areas, e.g. information exchange, technical cooperation.

#### 4 Stipulation on Tax Administration of electronic commerce (e-commerce)

- Commercial banks will now be responsible for the collection of tax on behalf of foreign enterprises who conduct e-commerce activities in Vietnam; and
- Non-resident enterprises who supply goods and services and who do not have a permanent establishment in Vietnam, are obliged to register, declare and pay tax in Vietnam or authorise other parties to do so on their behalf.

#### 5 Supplement of the functions of providing accounting services for tax agents

This law supplements the function of providing accounting services by the tax agents for micro-enterprises. This is in line with the Law on supporting the small and medium enterprises and facilitating cost savings.

#### 6 Other changes in tax administration procedures

- Tax registration certificates will be issued within 3 working days (10 working days currently).
- When the tax authorities' online portal is down during the deadline for tax submission, taxpayers are allowed to submit returns and online tax payment vouchers when the online portal resumes operations.
- Taxpayers will not be subject to administrative penalties and late payment interest if they have declared and paid taxes in accordance with rulings issued by the tax authorities at the time.
- Taxpayers are entitled to interest on any tax refunded as a result of appeal/litigation.
- Taxpayers are allowed to submit revised returns up to 10 years after the filing deadline, but this must be done before the tax authorities issue a decision to commence a tax audit of the years in question.
- There are two types of tax audit, i.e. a tax examination and a tax inspection, accordingly:

For tax examination, the maximum tax examination period is increased from 5 to 10 working days.

The tax inspections can be conducted in certain circumstances, within 2 years from the date the earlier inspection conclusion was signed off.

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No. 23, Jalan PBS 14/15, Taman Perindustrian Bukit Serdang  
43300 Seri Kembangan, Selangor D.E  
T: +603-8942 1881  
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ASEAN Investment & Tax News is published by:  
BDO Tax Services Sdn Bhd  
Level 8  
BDO @ Menara CenTARA  
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