



Smart decisions. Lasting value.

# Crowe Chat

Vol.1/2024 (Tax)



## Table of Contents

- 01 | Income Tax (Exemption) (No. 3) Order 2024
- 02 | Income Tax (Amendment) Bill 2024
- 03 | Guideline on the Tax Treatment on Gains from the Disposal of Capital Assets Received from Outside Malaysia
- 04 | Service Tax Policy No. 3/2024 (Amendment No. 1)
- 05 | Service Tax Policy No. 4/2024

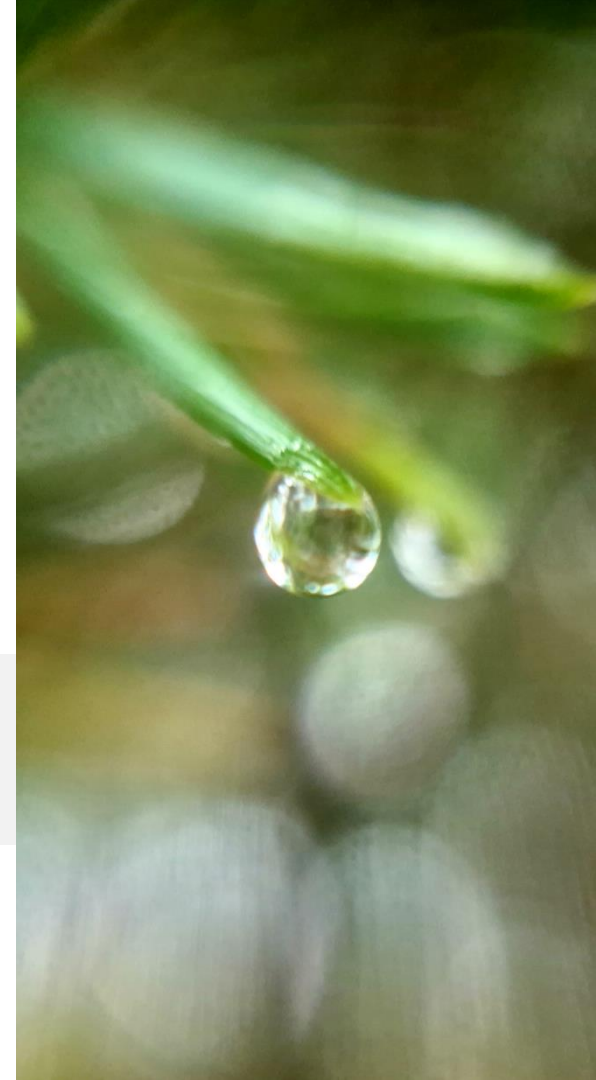
# 1. Income Tax (Exemption) (No. 3) Order 2024

## Introduction

The law governing Capital Gains Tax (CGT) was enacted by the Finance (No. 2) Act 2023 which came into effect on 29 December 2023. On the same day, the Income Tax (Exemption) (No 7) Order 2023 was gazetted in relation to CGT, in order to defer the effective date for CGT to 1 March 2024 in respect of disposal of shares of an unlisted company incorporated in Malaysia. For CGT on the gains from disposal of foreign capital assets received in Malaysia, the effective date remains as 1 January 2024.

## Income Tax Exemption Order

To provide exemption from CGT on the gains from disposal of foreign capital assets received in Malaysia, [Income Tax \(Exemption\) \(No. 3\) Order 2024](#) was gazetted on 4 March 2024.



# 1. Income Tax (Exemption) (No. 3) Order 2024 (cont'd)

## Details of the Income Tax Exemption Order

- The Income Tax Exemption Order has been gazetted to provide exemption from CGT on gains from disposal of foreign capital assets (excluding the intellectual property rights) received by a company, limited liability partnership, trust body and co-operative society resident in Malaysia, during the period from 1 January 2024 until 31 December 2026.
- This exemption is subject to the conditions imposed by the Minister as specified in the guidelines to be issued by the Director General of Inland Revenue Board of Malaysia (IRBM) under Section 134A of the Malaysian Income Tax Act, 1967 (MITA) which shall include the following conditions:
  - (a) employ an adequate number of employees in Malaysia; and
  - (b) incur an adequate amount of operating expenditure in Malaysia.
- A person carrying on the business of banking, insurance, sea transport or air transport is not eligible for this exemption.

## 2. Income Tax (Amendment) Bill 2024

### Introduction

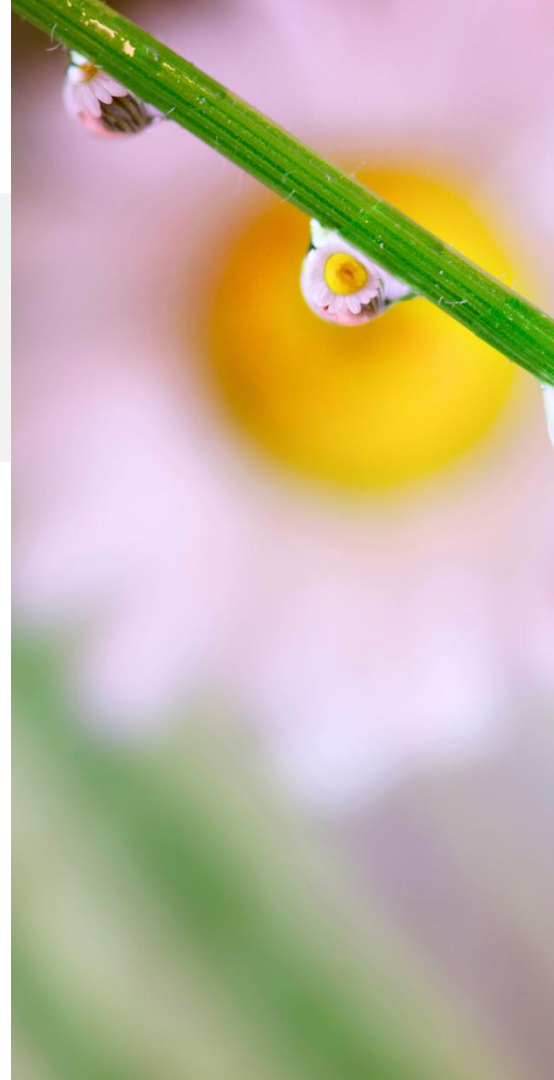
The [Income Tax \(Amendment\) Bill 2024](#) and the [Labuan Business Activity Tax \(Amendment\) Bill 2024](#) were passed in the Dewan Rakyat on 26 March 2024. The key amendments in these Bills include redefining “capital asset”, clarifying the disposal of shares in controlled companies, e-invoicing and revision of estimate of tax payable.

### Income Tax (Amendment) Bill 2024

- Redefinition of capital asset
- Clarifying the definition of “shares” subject to CGT
- Issuance of receipt
- Electronic commerce platform provider to issue a self-billed invoice
- Revision of estimate of tax payable

### Labuan Business Activity Tax (Amendment) Bill 2024

- Electronic commerce platform provider to issue a self-billed invoice



## 2. Income Tax (Amendment) Bill 2024 (cont'd)

# 01

### Redefinition of capital asset

**Present** "Capital asset" means movable or immovable property including any rights or interests thereof;' as defined in the Finance (No. 2) Act 2023.

**Proposed** It is proposed that "capital asset" be defined as:

- (a) movable or immovable property situated outside Malaysia including any rights or interests thereof; or
- (b) movable property situated in Malaysia which is a share of a company incorporated in Malaysia not listed on the stock exchange (including any rights or interests thereof) owned by a company, limited liability partnership, trust body or co-operative society;'.

**Effective Date** From coming into operation of the Amendment Act.

**Commentary** This proposal aims to clarify that capital asset is now applicable only for assets situated outside Malaysia. As for assets situated in Malaysia, the scope will only include unlisted shares of companies incorporated in Malaysia which are owned by a company, limited liability partnership, trust body or co-operative society. Therefore, CGT will not apply to individuals on disposal of unlisted shares of companies incorporated in Malaysia.

## 2. Income Tax (Amendment) Bill 2024 (cont'd)

### 02

#### Clarifying the definition of “shares” subject to CGT

Present

“shares” means all or any of the following:

- (a) stock and shares in a company;
- (b) loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;
- (c) a member’s interest in a company not limited by shares whether or not it has a share capital;
- (d) any option or other right in, over or relating to shares as defined in paragraphs (a) to (c)

as defined in the Finance (No. 2) Act 2023.

Proposed

It is proposed that the definition of “shares” under Section 65C of the MITA be deleted.

Effective Date

From coming into operation of the Amendment Act.

Commentary

This proposal aims to clarify that the definition of “shares” is now narrower as compared to the definition in the Finance Act (No. 2) Act 2023 and will now follow the definition of shares under Section 2 of the MITA which is:

*“shares” in relation to a company, includes stock other than debenture stock*

This is also in line with the [Guideline for CGT on Unlisted Shares](#) issued by the IRBM dated 1 March 2024 which explains that “shares”, in relation to a company, include stock other than debentures.

## 2. Income Tax (Amendment) Bill 2024 (cont'd)

### 03

#### Issuance of receipt to buyers

##### Present

Presently, a person who is required to submit a consolidated transaction invoice on a periodical basis to the Director General of IRBM shall issue a printed receipt to the buyers.

##### Proposed

It is proposed that the issuance of receipts to buyers can be made in any manner and is not limited to printed receipts.

##### Effective Date

1 January 2024.

##### Commentary

This proposal is in line with the implementation of electronic invoicing.



## 2. Income Tax (Amendment) Bill 2024 (cont'd)

# 04

### Electronic commerce platform provider to issue a self-billed invoice

Present

Presently there is no requirement for electronic commerce platform providers to issue self-billed invoices.

Proposed

It is proposed in both the MITA and Labuan Business Activity Tax Act 1990 that an electronic commerce platform provider is required to issue a self-billed invoice in accordance with the conditions and specifications as determined by the Director General of IRBM.

Effective Date

1 January 2024.

Commentary

This proposal is in line with the [Implementation of e-Invoice in Malaysia: Frequently Asked Questions \(FAQs\) for e-Commerce Industry](#) which was updated on 22 December 2023. The FAQ has highlighted that the e-commerce platform provider is responsible to assume the role of Issuer and shall issue a self-billed e-Invoice to record the merchant and/or service provider's income earned from transactions concluded through the e-commerce platform.

## 2. Income Tax (Amendment) Bill 2024 (cont'd)

# 05

### Revision of estimate of tax payable

Present

Currently, “revised estimate” means a revised estimate made in the ninth month of the basis period or if there is no revised estimate made in the ninth month of the basis period, the revised estimate made in the sixth month of the basis period.

Proposed

It is now proposed that the definition of “revised estimate” includes the revised estimate made in the eleventh month.

Effective Date

Year of Assessment (YA) 2024.

Commentary

This proposal is the consequence of allowing the 11<sup>th</sup> month revision of estimate of tax payable for a YA. Therefore, revisions made in the 11<sup>th</sup>, 9<sup>th</sup> or 6<sup>th</sup> month, whichever is the latest, will be referred to when computing the estimate of tax payable for the following YA. An estimate of tax payable for a YA must not be less than 85% of the latest revised estimate of tax payable for the immediately preceding YA.

### 3. **Guideline on the Tax Treatment on Gains from the Disposal of Capital Assets Received from Outside Malaysia**

#### **Introduction**

To provide exemption from CGT on the gains from disposal of foreign capital assets received in Malaysia, [Income Tax \(Exemption\) \(No. 3\) Order 2024](#) was gazetted on 4 March 2024 (refer to page 5 and 6 of this Crowe Chat). It was mentioned in the Exemption Order that this exemption is subject to the conditions imposed by the Minister as specified in the guidelines to be issued by the Director General of IRBM under Section 134A of the MITA.

#### **New Guideline**

The IRBM has issued the [Guideline on the Tax Treatment on Gains from the Disposal of Capital Assets Received from Outside Malaysia](#) on 27 March 2024.



### 3. **Guideline on the Tax Treatment on Gains from the Disposal of Capital Assets Received from Outside Malaysia (cont'd)**

#### **Details of the new Guideline**

- ❖ Gains from the disposal of foreign capital assets received in Malaysia that are subject to tax refer to the disposal of foreign capital assets that occur on or after 1 January 2024.
  
- ❖ The economic substance requirements to qualify for the exemption from CGT on the gains from disposal of foreign capital assets received in Malaysia are spelled out in the Guideline as follows:
  - employ adequate number of employees with necessary qualifications to carry out the specified economic activities in Malaysia; and
  - incur adequate amount of operating expenditure for carrying out the specified economic activities in Malaysia.

### 3. **Guideline on the Tax Treatment on Gains from the Disposal of Capital Assets Received from Outside Malaysia (cont'd)**

#### **Details of the new Guideline**

- ❖ It is also mentioned in the Guideline that due to the different operating methods between industries, the determination of any minimum threshold value for the appropriate economic substance requirements is based on the facts of a case. Factors that will be considered include:
  - the number of employees considering the type of activity involved, for example whether it is a capital or labor-intensive industry;
  - whether the employee works full-time or part-time; and
  - whether the office premises have been used to carry out related activities and whether the premises are sufficient for those activities.
  
- ❖ A service director who is employed based on a contract of service and not on a contract for service can be considered as an employee. Therefore, a non-service director is not considered as an employee.
  
- ❖ Taxpayers must report the gains from the disposal of foreign capital assets received in Malaysia in the basis period for a YA in the annual Income Tax Return Form and not in the CGT Return Form.

## 4. Service Tax Policy No. 3/2024 (Amendment No. 1)

### Introduction

Effective 1 March 2024, the Service Tax rate on taxable services has increased from 6% to 8%, except for food and beverage services, telecommunication services, parking services and logistics services. Credit card and charge card services remain at a fixed rate of RM25 per card. On 28 February 2024, the Royal Malaysian Customs Department (RMCD) published Service Tax Policy No. 3/2024 to clarify the Service Tax rate for taxable services provided by the persons registered under Groups A to E.

### Amended Service Tax Policy

The RMCD issued the [Service Tax Policy No. 3/2024 \(Amendment No. 1\)](#) on 29 March 2024.



## 4. Service Tax Policy No. 3/2024 (Amendment No. 1) (cont'd)

### Details of the Amended Service Tax Policy

The Service Tax Policy 3/2024 (Amendment No. 1) specifies that the amendments will take effect from 1 March 2024. However, if Service Tax has already been collected from customers for the period between 1 March 2024 and 31 March 2024, such Service Tax must be remitted to the RMCD and no Service Tax refund is allowed. The following table summarises the amendments or updates of the Service Tax rates:

| Services   | Service Tax Rate            |
|--|-----------------------------|
| Alcoholic drinks including temperance drinks   | 8%                          |
| Non-alcoholic beverages in ready-to-drink form, bottles, packs, cans, boxes, etc.                                  | 6%                          |
| Alcoholic beverages provided together with meals and drinks as a part of packages (e.g. buffets or banquets, etc.) | 6%                          |
| Corkage fee  | 8%                          |
| Preparation or sale of snacks, fruits or similar items   | NIL (Not a taxable service) |
| Service charge   | NIL (Not a taxable service) |

## 5. Service Tax Policy No. 4/2024

### Introduction

Logistics services have been classified as taxable services under Group J of the Service Tax Regulations 2018, effective from 26 February 2024. However, the Minister of Finance (MOF) has granted an exemption, allowing the existing registered persons to start charging from 1 March 2024 and new registered persons from 1 April 2024, in accordance with Service Tax Policy No. 1/2024.

### New Service Tax Policy

The RMCD issued the [Service Tax Policy No. 4/2024](#) on 29 March 2024.





## 5. Service Tax Policy No. 4/2024 (cont'd)

### Details of the New Service Tax Policy

The following table outlines the details specified in the Service Tax Policy No. 4/2024:

| No. | Details  |
|-----|--|
| 1.  | <p><u>Amendments to the Service Tax Regulations 2018:</u><br/>The taxable person listed in item 1(b) of Group J under the Service Tax Regulations 2018 (pertaining to services for delivery, distribution or transportation of goods) have been combined with the taxable person listed in item 1(a) of Group J under the same regulations.</p>  |
| 2.  | <p><u>Amendments to Service Tax (Imposition Of Tax For Taxable Service In Respect Of Designated Areas and Special Areas) (Amendment) Order 2024</u><br/>All logistics services provided within or between Designated Areas and/or Special Areas should be subject to Service Tax pursuant to Service Tax (Imposition Of Tax For Taxable Service In Respect Of Designated Areas and Special Areas) (Amendment) Order 2024.</p> <p>Amendments have been made to this Service Tax Order where all services falling under Group J (i.e. logistics services under item 1 in Group J) provided within or between Special Areas or Designated Areas, or between Special Areas and Designated Areas, should not be subject to the Service Tax, except for customs agent services (i.e. under item 2 in Group J). Customs agent services provided within and between Designated Areas and/or Special Areas remain subject to Service Tax.</p> |

## 5. Service Tax Policy No. 4/2024 (cont'd)

| No. | Details  |
|-----|--|
| 3.  | <p data-bbox="311 277 1769 339"><u>Amendments to business-to-business exemption under Service Tax (Person Exempted From Payment Of Tax) Order 2018</u></p> <p data-bbox="311 350 1760 412">The business-to-business exemption under Group J is expanded to cover situations where both the service provider and recipient are registered under the same item in Group J.</p> <p data-bbox="311 423 1779 452">In other words, the business-to-business exemption may apply to all logistics services within the same item, including:</p> <ul data-bbox="311 478 1696 762" style="list-style-type: none"><li data-bbox="311 478 1696 540">• logistics services provided by a person registered under item 1(a) in Group J to another person registered under item 1(a) in Group J;</li><li data-bbox="311 551 1696 613">• delivery or distribution or transportation service using the E-Commerce platform provided by a person registered under item 1(c) in Group J to another person registered under item 1(c) in Group J;</li><li data-bbox="311 624 1696 686">• courier services licensed under section 10 of the Postal Services Act 2012 provided by a person registered under item 1(d) in Group J to another person registered under item 1(d) in Group J; and</li><li data-bbox="311 697 1696 760">• customs agent services provided by a customs agent registered under item 2 in Group J to another customs agent registered under item 2 in Group J.</li></ul> <p data-bbox="311 809 1785 943">Besides the requirement that both parties must be registered under the relevant items, it is important to note that other conditions must also be met. These conditions include ensuring that the registered person exempted from paying Service Tax provides the same services to its subsequent customer and that these services are not intended for the exempted person's own use.</p> |

## 5. Service Tax Policy No. 4/2024 (cont'd)

| No. | Details  |
|-----|--|
| 4.  | <p><u>Service Tax exemption on door-to-door delivery services</u><br/>The MOF has granted Service Tax exemption on door-to-door services, with specific definitions and conditions outlined below:</p> <ul style="list-style-type: none"><li>a) Provision of delivery services from a place outside Malaysia to a place within Malaysia or from a place within Malaysia to a place outside Malaysia without involving a third party;</li><li>b) Provision of delivery services by the same network service provider from the consignor to the recipient;</li><li>c) The goods travelled by using the same airway bill or bill of lading or consignment note from consignor to recipient; and</li><li>d) Use of the same invoice for delivery charges from consignor to recipient (single billing invoice).</li></ul> |
| 5.  | <p><u>Service Tax exemption on logistics services related to transit activities</u><br/>The MOF has granted Service Tax exemption on logistics services related to transit activities, including goods arriving in Malaysia and subsequently transported to another place outside Malaysia via land or sea or air modes.</p>   |
| 6.  | <p><u>Service Tax exemption on ocean freight services</u><br/>The MOF has granted Service Tax exemption on ocean freight service charges for goods transported via sea mode and limited to the following specific journeys:</p> <ul style="list-style-type: none"><li>a) Peninsular Malaysia to Sabah or Sarawak or Labuan;</li><li>b) Sabah or Sarawak or Labuan to Peninsula Malaysia; and</li><li>c) Between Sabah, Sarawak, and Labuan.</li></ul>  |



## Start the conversation with us

### Corporate Tax Compliance

Foo Meng Huei  
Executive Director  
[menghuei.foo@crowe.my](mailto:menghuei.foo@crowe.my)  
+603 2788 9898 Ext 12501

Dr. Voon Yuen Hoong  
Executive Director  
[yuenhoong.voon@crowe.my](mailto:yuenhoong.voon@crowe.my)  
+603 2788 9898 Ext 12522

Wong Man Yee  
Executive Director  
[manyee.wong@crowe.my](mailto:manyee.wong@crowe.my)  
+603 2788 9898 Ext 12519

### Tax Advisory

Chong Mun Yew  
Executive Director  
[munyew.chong@crowe.my](mailto:munyew.chong@crowe.my)  
+603 2788 9898 Ext 12523

### Indirect Tax

Fam Fui Chien  
Manager  
[fuichien.fam@crowe.my](mailto:fuichien.fam@crowe.my)  
+603 2788 9898 Ext 12504

### Business Outsourcing

Esther Chan  
Senior Manager  
[esther.chan@crowe.my](mailto:esther.chan@crowe.my)  
+603 2788 9898 Ext 12546

### Transfer Pricing

Song Sylvia  
Executive Director  
[sylvia.song@crowe.my](mailto:sylvia.song@crowe.my)  
+603 2788 9898 Ext 12514

### Global Mobility Services

Shalina Binti Jaafar  
Executive Director  
[shalina.jaafar@crowe.my](mailto:shalina.jaafar@crowe.my)  
+603 2788 9898 Ext 12505

Monaliza Mohd Ali  
Executive Director  
[monaliza@crowe.my](mailto:monaliza@crowe.my)  
+603 2788 9898 Ext 12621



## Our offices (West Malaysia)

### **Kuala Lumpur**

Level 16, Tower C,  
Megan Avenue II,  
12 Jalan Yap Kwan Seng,  
50450 Kuala Lumpur.

+603 2788 9999 Main | Audit  
+603 2788 9898 Main | Tax

### **Klang**

Suite 50-3, Setia Avenue,  
No. 2, Jalan Setia Prima SU13/S,  
Setia Alam, Seksyen U13,  
40170 Shah Alam, Selangor.

+603 3343 0730 Main

### **Ipoh**

59C, Hala Pusat Perdagangan Canning 1,  
Pusat Perdagangan Canning II,  
30350 Ipoh,  
Perak, Malaysia

+605 237 8800 Main

### **Penang**

Level 6, Wisma Penang Garden,  
42 Jalan Sultan Ahmad Shah,  
10050 Penang.

+604 227 7061 Main  
+604 227 8011 Fax

### **Melaka**

52 Jalan Kota Laksamana 2/15,  
Taman Kota Laksamana, Seksyen 2,  
75200 Melaka.

+606 282 5995 Main  
+606 283 6449 Fax

### **Johor Bahru**

E-2-3 Pusat Komersial Bayu Tasek,  
Persiaran Southkey 1,  
Kota Southkey,  
80150 Johor Bahru,  
Johor.

+607 288 6627 Main  
+607 338 4627 Fax

### **Muar**

8, Jalan Pesta 1/1,  
Taman Tun Dr. Ismail 1,  
Jalan Bakri, 84000 Muar,  
Johor.

+606 952 4328 Main  
+606 952 7328 Fax



## Our offices (East Malaysia)

### **Kuching**

2nd Floor, C378, Block C,  
iCom Square, Jalan Pending,  
93450 Kuching,  
Sarawak.

+6082 552 688 Main

+6082 266 987 Fax

### **Sibu**

1st & 2nd Floor,  
No. 1 Lorong Pahlawan 7A2, Jalan  
Pahlawan, 96000 Sibu, Sarawak.

+6084 211 777 Main

+6084 216 622 Fax

### **Miri**

Lot 2395, Block 4,  
Bulatan Business Park,  
Jalan Bulatan Park, 98000 Miri,  
Sarawak.

+6085 658 835 Main

+6085 655 001 Fax

### **Bintulu**

1st floor, Lot 4542-4543,  
Jalan Abang Galau Shophouse,  
Kampung Masjid, 97000 Bintulu,  
Sarawak.

+6086 333 328 Main

+6086 334 802 Fax

### **Labuan**

Office Suite 1662,  
Level 16(A), Main Office Tower,  
Financial Park Complex Labuan,  
Jalan Merdeka,  
87000 Labuan F.T

+6087 584 798 Main

### **Kota Kinabalu**

Damai Plaza 3, 3rd Floor, C11,  
Jalan Damai 88300, P.O. Box 11003,  
88811 Kota Kinabalu, Sabah.

+6088 233 733 Main

+6088 238 955 Fax



Crowe Malaysia PLT  
Level 16, Tower C  
Megan Avenue II  
12, Jalan Yap Kwan Seng  
50450 Kuala Lumpur  
Malaysia

Tel. +603 2788 9999

[www.crowe.my](http://www.crowe.my)

### **About Crowe Malaysia PLT**

Crowe Malaysia PLT is the 5th largest accounting firm in Malaysia and an independent member of Crowe Global. The firm in Malaysia has more than 10 offices, employs over 1,200 staff, serves mid-to-large companies that are privately-owned, publicly-listed and multinational entities, and is registered with the Audit Oversight Board in Malaysia and the Public Company Accounting Oversight Board in the US.

### **About Crowe Global**

Crowe Global is one of the top 10 accounting networks with over 200 independent accounting and advisory firms in more than 145 countries. For almost 100 years, Crowe has made smart decisions for multinational clients working across borders. Our leaders work with governments, regulatory bodies and industry groups to shape the future of the profession worldwide. Their exceptional knowledge of business, local laws and customs provide lasting value to clients undertaking international projects.

This communication is prepared and issued by Crowe Malaysia PLT, it is meant for general information purposes only and it is not intended to be professional advice. Recipients should not act upon this communication and please consult qualified advisors for professional advice and services. Crowe Malaysia PLT or any of Crowe's entities will not be responsible for any loss or consequences of anyone acting in reliance on this communication or for decisions made based on this communication.

Crowe Malaysia PLT is a member of Crowe Global, a Swiss Verein. Each member firm of Crowe is a separate and independent legal entity. Crowe Malaysia PLT and its affiliates are not responsible or liable for any acts or omissions of Crowe or any other member of Crowe and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe or any other Crowe member.

© 2024 Crowe Malaysia PLT