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Indirect Tax Chat

Keeping you up to date on the latest news in the
Indirect Tax world

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings dear readers, and welcome to the November 2018 edition of Indirect Tax Chat.

Earlier this month we had the 2019 National Budget announcement on 2 November 2018, followed by the release of the Finance Bill 2018 on 19 November 2018. The Budget and the Finance Bill contained a number of significant tax developments which have been covered in detail in our Alerts sent earlier this month.



From a Sales and Service Tax (SST) perspective, there were a number of critical announcements. Firstly, the SST would now be expanded to tax imported services, with the change being implemented in two stages. A service tax would be imposed on Business-to-Business (B2B) transactions effective 1 January 2019 and then on Business-to-Consumer (B2C) transactions from 1 January 2020 onwards.

Another significant announcement from the Budget was the service tax exemption on specific B2B services. Although no details have been released yet, we understand that the exemption is aimed at preventing the cascading 'tax-on-tax' effect of service tax, for example, where a service is acquired and onward-supplied through a supply chain.

Other news that may be of interest to you:

- It was reported that Malaysia's Finance Minister, Lim Guan Eng has said that no action will be taken for the time being against business owners who have yet to register for SST. The Finance Minister has advised for business owners to register themselves as soon as possible. As of late October 2018, a total of 92,682 businesses had registered for SST.
- It was reported that the advertising industry has raised concerns that international firms may leave Malaysia, as this may result in increased costs under the SST regime. E.g., where a media owner charges an agency service tax of 6% on the invoice, the agency is then required to impose an additional service tax of 6% for the recharging of the same services when invoicing to the end customer.

The Budget changes as well as some critical technical updates are covered in more detail further below. We hope that our Indirect Tax Chat newsletter would provide insights to help you and your business navigate the tax landscape in Malaysia.

Please do not hesitate to contact us if you have any queries, comments or require our assistance on any indirect tax matters.

Best regards,

Tan Eng Yew
Indirect Tax Leader

1. What is in the Budget 2019?

Proposals	Description
<p>Service Tax on imported services and imported online services</p>	<p>Service tax to be charged on imported taxable services in two stages:</p> <ul style="list-style-type: none"> • Business to Business (B2B) transactions: Malaysian recipient customers to account for 6% tax via reverse charge from 1 January 2019; and • Business to Consumer (B2C) transactions: Foreign providers of digital products and services are required to register and collect 6% service tax from 1 January 2020. • Imported taxable services mean any taxable service acquired by any person in Malaysia from any person outside Malaysia. • The value of an imported taxable service will be prescribed by the Director General of Customs and Excise (The DG). • The service tax on imported services shall be due at the earlier of the payment date or date of receipt of invoice. • Non-taxable persons acquiring imported taxable services will need to account for service tax in a declaration to be prescribed by the DG, no later than the last day of the month following the month the payment was made or the invoice received. • Non-taxable persons failing to furnish the declaration as prescribed, or furnishing an incorrect declaration will be subject to the same penalties as a taxable person. <p>Effective:</p> <ul style="list-style-type: none"> – Business to Business (B2B) transactions: 1 January 2019 – Business to Consumer (B2C) transactions: 1 January 2020 <p><u>Deloitte's View</u></p> <p>The expansion of service tax to cover imported services is intended to provide parity between local suppliers and offshore service providers. Critical details have been released in the Finance Bill but there still remains considerable uncertainty on its application. Many of the concepts from the reverse charge adopted under the GST regime have been replicated including</p>

	<p>the requirement for the Malaysian business recipient to self-account the tax in the month corresponding to the payment or receipt of invoice and the requirement to file a monthly ad-hoc return to make payment for non-service tax registrants. A notable difference from the GST is the absence of a 'consumption test' i.e. the issue of whether the services are consumed in Malaysia do not seem to be a relevant consideration. Furthermore, the method in which the tax is to be calculated has not been clearly stated. These issues may be addressed in the Regulations.</p>
<p>Service Tax exemption on specific B2B services</p>	<p>An exemption for service tax is proposed to be given for specific business-to-business services between service tax registrants that are registered for the same taxable service. The exemption is meant to prevent the cascading 'tax-on-tax' effect of service tax, for example where a service is acquired and onward-supplied through a supply chain.</p> <p>Effective: 1 January 2019</p> <p><u>Deloitte's View</u></p> <p>The exemption would be to address tax cascading in specific situations of taxable services provided between registered persons registered for the same taxable service, and will not be a blanket exemption on all business-to-business transactions.</p> <p>It is unclear at this stage how the exemption would be applied, including whether it would require prior approval.</p>
<p>Determination of value for a manufacturer</p>	<p>Currently where a manufacturer, who is sales tax-registered, receives taxable goods from any person, which are to be manufactured and subsequently returned to that person, the sales value of those manufactured goods shall (for sales tax purposes), subject to the approval of the DG, be the amount that the manufacturer charges for the work performed.</p> <p>This treatment for registered manufacturers is now proposed to be expand the application of the sub-section to non-registered manufacturers as well.</p> <p>Effective: 1 January 2019</p> <p><u>Deloitte's View</u></p> <p>This provision is expanded to cover non-registered manufacturers who perform subcontract work, for the purposes of determining their registration threshold to be based on the value of their subcontract work performed (subject to DG's approval). With this amendment, more manufacturers could fall below the RM500,000 annual registration threshold and hence</p>

	<p>not liable to be registered, if their DG-approved sale value of work performed is below the registration threshold.</p>
<p>Credit system for deduction of Sales Tax</p>	<p>A credit system for Sales Tax will be implemented for the deduction of sales tax on raw materials, components or packaging materials purchased by any registered manufacturer.</p> <p>The DG will prescribe the necessary conditions for, and the form and manner of claiming such deductions.</p> <p>Effective: 1 January 2019</p> <p><u>Deloitte’s View</u></p> <p>A registered manufacturer is generally eligible for a sales tax exemption on the purchase of raw materials, components and packaging materials. However, sales tax paid goods may go through several levels of a supply chain before it is acquired by the registered manufacturer and in those situations, the registered manufacturer may not be eligible to claim the available exemptions.</p> <p>The proposed credit or deduction system for sales tax would allow a prescribed fraction of the purchase price to be deducted in such situations, as a further cost relief to manufacturers.</p>
<p>Excise duty on sugar sweetened drinks</p>	<p>An excise duty at the rate of RM0.40 per litre is proposed to be charged on sugar sweetened beverages based on the sugar content as follows:</p> <ul style="list-style-type: none"> i. fruit juices and vegetable juices whether or not containing added sugar or other sweetening matter under the tariff heading of 20.09, which contains sugar exceeding 12 grams per 100 millilitres; and ii. beverages including carbonated drink containing added sugar or other sweetening matter or flavoured and other non-alcoholic beverages under the tariff heading of 22.02, which contains sugar exceeding 5 grams per 100 millilitres. <p>Effective: 1 April 2019</p>
<p>Increase in gaming duties</p>	<p>The following increases to duties and taxes for the gaming industry are proposed:</p> <ul style="list-style-type: none"> i. Casino License to be increased from RM120 million to 150 million per annum ii. Casino Duties to be increased up to 35% on gross collection iii. Machine dealers license to be increased from RM10,000 to RM 50,000 per annum

	<p>iv. Gaming machine duties to be increased from 20% to 30% on gross collection</p> <p>Effective: <i>To be confirmed</i></p>
Reduction of import duties on bicycles	<p>It is proposed that the import duty rate for bicycles falling under the tariff code 8712.00.30 00 be reduced from the current 25% to 15%.</p> <p>This is to make bicycles more affordable to further support a healthy lifestyle through cycling activities.</p> <p>Effective: 1 January 2019</p>
Airport departure levy	<p>A levy will be imposed on all outbound travelers by air, at the proposed rates of RM20 for outbound travelers to ASEAN countries, and RM40 to countries other than ASEAN.</p> <p>The move is to promote domestic tourism.</p> <p>Effective: 1 June 2019</p>
Duty and tax incentives for tourism	<p>In measures to promote tourism, Penang’s Swettenham Pier will be given tax free incentives in the form of duty-free shops to cater to its cruise tourism business.</p> <p>The Government has also affirmed its decision to declare Pulau Pangkor as a duty free island.</p> <p>It is also proposed that the duty-free island status of Pulau Langkawi will be further expanded but no details have been provided.</p>

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2. SST Technical Updates

To date, the Guide on Employment Services dated 25 August 2018 has been withdrawn from the MySST website. Below are the guides that have been revised recently.

Revised Guide on Advertising Services (As at 9 November 2018)

The Guide has amended the value of advertising services in Paragraph 10 to include all costs incurred including all types of production cost and media cost. FAQ 13 further provides that the media/ production cost incurred is part of the advertising services provided and therefore subject to service tax.

Deloitte's View

Based on the amendment in Paragraph 10 and the further clarification provided in FAQ 13, the total amount charged to the customer including the third party production cost recharges is subject to service tax. As the issue of a cascading tax-on-tax effect may arise, businesses should look into seeking concessions with RMCD to help mitigate the cascading tax effect as service tax is intended to be a single-stage tax system.

It has also been announced in the recent Budget 2019 that exemptions will be given to specific B2B transactions, however, little details on how this exemption would operate are available at this stage.

Revised Guide on Food and Beverages (As at 2 November 2018)

The examples of Food and Beverages Establishments (FBE) required to charge service tax have been narrowed down to reflect the provision of places like restaurants or similar FBEs that meet certain criteria as set out in Paragraph 15(i) (e.g. an area in FBE for food and beverages preparations, provisions of tables and chairs, waiters or employees taking orders and serving food and/or beverages ordered, etc.), the provision of catering services and food courts.

The provision of vending machines by a vending machine operator is not subject to service tax, but beverage sales through a vending machines operated by a F&B Operator is subject to service tax.

The newly inserted FAQ 33 is consistent with the Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) (Amendment) Order 2018 as per 6th September 2018, whereby the provision of foods and beverages in special areas (SA) is subject to service tax.

Revised Guide on Information Technology (IT) Services (As at 9 November 2018)

The Guide has clarified that the provision of hardware, string-wrap software and provision of exported IT services is not subject to service tax. Further guidance was provided through additional examples given as stated below:

- (i) The first example relates to the provision of hardware and off-the-shelf software. Provision of hardware and the distribution of software are generally not subject to service tax. However, in the event that the business is the developer or provider of the software, then the provision of the software is subject to service tax.
- (ii) The second, third and fourth examples further clarifies that provision of IT services in relation to goods, land or matter outside Malaysia (i.e. exported services) is not subject to service tax. Some examples provided includes software maintenance of a server located outside Malaysia and the provision of IT services consumed in a country outside Malaysia (regardless if the billing party is to a Malaysian entity or an overseas entity).

Paragraph 15 of the Guide has also been amended to provide further clarification on the provision taxable services subject to service tax. Installation of a system or software is subject to service tax. However, the provision of installation services bundled with software purchased from retailers or resellers is not subject to service tax.

Further, maintenance of IT equipment is also now subject to service tax. However, no further clarification has been provided with regards to what constitutes "IT equipment". As the maintenance of physical goods, computer, hardware and server are removed from the list of IT services not subject to service tax, it is likely that IT equipment could now possibly mean that the maintenance of both software and hardware are subject to service tax.

The provision of cloud services and management services of data centres (excluding rental of rack space and hardware) is now subject to service tax. However, the provision of software embedded in the hardware for the hardware to be operational (e.g. laptop comes with operating system) is not subject to service tax. The sale and renewal of software by retailers or resellers and the provision of IT training of software or system by external parties are not subject to service tax. However, should the IT training be provided by the developer or provider of the software or system, then the provision of this training is subject to service tax.

Deloitte's View

With the release of the revised Guide on IT services, it appears the intention of the authorities is to greatly expand the scope of IT services under the service tax regime.

Participants in the industry will need to review current positions in line with the revisions and determine whether adjustments will need to be made to contracts and pricing as well as systems and processes. The Guide does not make it clear whether these changes are prospective or retrospective, and as a result, it should be assumed to apply from 1 September.

Revised Guide on Telecommunication Services (As at 31 October 2018)

Paragraph 11 of the revised Guide states that the provision of telecommunication services to another telecommunication service provider in Malaysia or outside Malaysia is not subject to service tax. Further, FAQ 25 further states that telecommunication services provided by a telecommunications services provider to an ASP license holder is not subject to service tax, provided that the telecommunication services is used for furtherance of business of the ASP license holder.

Further to the above, the installation of towers, cables, Distribution Points and etc. (the vendors may be licensed by MCMC for installation of cables to customer's DP) and the International lease line services provided outside of Malaysia are not subject to service tax.

Deloitte's View

Paragraph 11 is consistent with the First Schedule stated in the Service Tax Regulations 2018. Further, we are of the same view that the installation of towers, cables, Distribution Points, and etc. are not telecommunication services even if these services are provided by a licensed vendor registered for service tax as the service providers are ultimately providing telecommunication services (e.g. fixed network voice telephone, mobile network value added services, etc.) to consumers, not the installation and fixtures in connection to the provision of the telecommunication services.

Further, although the FAQ provides that International lease line services provided outside of Malaysia are not subject to service tax, it does not specify if the lease line must be located completely outside Malaysia or if lease lines starting from Malaysia and ending outside of Malaysia are not subjected to service tax as well.

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3. Filing of Final GST Return

Introduction

Under section 6(1), Goods and Services Tax (Repeal) Act 2018 ("GST Repeal Act"), any taxable period under the GST Act 2014 ("GST Act") that begins before the appointed date of the repeal of the GST Act (i.e. 1 September 2018), and ends after 1 September 2018, is deemed to end on 1 September 2018.

This would make the last taxable period to be the tax period that would end on 31 August 2018. The GST return for the last taxable period has been commonly referred to as the 'final GST return.'

As the return for the last taxable period would be the final official GST return after the repeal of GST, businesses are expected to pay particular attention to capture all relevant matters in the final GST return.

It is uncertain whether RMCD would require submission of an administrative return for taxpayers to declare tax due and payable after the last taxable period. There is precedence for this under the previous service tax regime, where an administrative return (Lampiran SP 3D for declaration and payment of service tax) was required to allow for payment after the filing of the last service tax return.

Particulars to be declared in the final GST return

There are three key reference points that must consider when preparing the final GST return: (1) GST Repeal Act, (2) GST Regulations 2014 ("GST Regulations") and (3) RMCD guidance in the form of published Guides, DG Decisions etc.

GST Repeal Act

Based on the GST Repeal Act, a person who is registered under the GST Act shall furnish a GST return for the last taxable period for:

1. **All supplies made in the last taxable period** and pay the GST due and payable relating to those supplies (section 6(2), GST Repeal Act); and
2. **Claiming input tax which has not been claimed before 1 September 2018** - this claim is considered the final claim for input tax (section 8(1), GST Repeal Act).

The deadline for the above is not later than 120 days after 1 September 2018, i.e. by 29 December 2018 (sections 6(2) & 8(2), GST Repeal Act).

GST Regulations

It should be noted that, though the GST Act has been repealed effective 1 September 2018, the GST Regulations, which contain provisions on GST returns, have not been repealed.

Based on section 28 of the Interpretation Acts 1948 and 1967, subsidiary legislation made under the GST Act, which would include the GST Regulations, are deemed to be made under the GST Repeal Act, and such regulations would essentially still be applicable unless inconsistent with the GST Repeal Act.

Regulation 61(2), GST Regulations provides that, all particulars as requested in the GST return shall be furnished by the GST-registrant in respect of the last taxable period.

Therefore, apart from the particulars required by the GST Repeal Act i.e. supplies made in the last taxable period and pre-1 September 2018 input tax yet to be claimed, the GST registrant would need to be mindful of other particulars required by the GST return per se, for the last taxable period. These would include "other supplies" - field 15 of the GST return (e.g. out of scope supplies and disregarded supplies) and "total value of capital goods acquired" - field 16 of the GST return.

An example where the GST Regulations would be inconsistent with the GST Repeal Act, and hence the GST Repeal Act would prevail, is in the case of input tax not claimed in any earlier taxable period when the tax invoice was received and held by the taxable person. Regulation 38(4)(a), GST Regulations gives RMCD the discretion to allow the claim to be made within 6 years, and a literal reading of regulation 68, GST Regulations requires the claim to be made by amending the GST return for the earlier taxable period. For example, if the tax invoice was received and held by the taxable person in May 2016, and the taxable person for some reason did not claim the input tax in May 2016, RMCD has the discretion to allow the taxable person to make the claim of input tax within 6 years after May 2016, by amending the GST return for May 2016.

However, Section 8(1), GST Repeal Act states that any claim for pre-1 September 2018 input tax that had not been claimed earlier, must be included in the final GST return. This would mean that, in the above example, the taxable person has the 'last chance' to claim the input tax which was not claimed in May 2016, in the final GST return for the last taxable period. The claim is not to be made by amending the GST return for May 2016 as required by the GST Regulations. Section 8(1), GST Repeal Act would override the above inconsistent provisions in the GST Regulations. Further, section 8(2)(b), GST Repeal Act states that RMCD shall make the refund of the above pre-1 September 2018 input tax claimed in the final GST return, within 6 years after 1 September 2018, subject to RMCD's "verification, audit and investigation" only. This would arguably override the more general discretion of RMCD to allow such input tax claim under Regulation 38(4)(a), GST Regulations.

RMCD practice in RMCD Guides, DG Decisions etc

Finally, and perhaps most importantly, RMCD practice in the form of RMCD Guides, DG Decisions etc, as to what particulars are required to be in the final GST return, would be critical to consider.

The biggest and most controversial issue in terms of RMCD practice requirements for the final GST return, is in relation to **post-1 September 2018 GST-impacted transactions for output tax/input tax (e.g. adjustments) until the filing deadline of 29 December 2018, and beyond.**

In this regard, even if there is no explicit reference to RMCD Guide or DG Decision requiring the declaration in the last GST return of post-1 September 2018 GST-impacted transactions for output tax / input tax, this is a necessary implication in the absence of any 'administrative' GST return post-1 September 2018, to capture such transactions.

Having said that, we examine in the table below some key output tax / supplies and input tax/acquisitions for inclusion in the final GST return, and the references in the GST law and RMCD practice requiring or allowing their inclusion:

Output tax/supplies

No.	Transaction-type for inclusion in final GST return	Reference
1.	Business assets on hand as at the day the GST registrant ceases to be taxable person (arguably on 31 August 2018), to be declared in field 5(a) in the GST return, as standard rated 'deemed' supplies. Tax rate at 31 August 2018 is 0%.	Section 6(2)(a), GST Repeal Act read with para 5(8) & (9), First Schedule to the GST Act. (FAQ 67 of RMCDs' SST Guide on Transitional Rules (as at 5 September 2018), reflects this legal position - though the basis in law is not explicitly stated in the said FAQ.)
2.	All zero rated supplies (in the last taxable period) of goods that are exported, would technically have to be reported in field 11 of the GST Return (total value of export supplies).	Section 6(2)(a), GST Repeal Act read with section 17(1)(b), GST Act and regulation 61(2), GST Regulations.
2.	However, unlike zero-rated exports of goods, all 'zero-rated supplies' under the revoked GST (Zero-Rated Supply) Order 2014 (revocation effective 1 June 2018), made by the registered person in the last taxable period (post-1 June 2018 till 31 August 2018), will be treated as standard rated supplies, in field 5(a) of the GST return. The tax rate on such supplies would be 0%.	Section 6(2)(a), GST Repeal Act read with GST (Zero-Rated Supply) Order 2014 and GST (Zero-Rated Supply (Revocation) Order 2018.
3.	Bad debt recovered and other adjustments in the last taxable period e.g. credit note/debit note issued in the last taxable period adjusting output tax in tax invoice issued in earlier taxable periods.	Regulation 61(2), GST Regulations.
4.	GST-impacted supplies (including adjustments) between 1 September 2018 and filing deadline of 29 December 2018.	RMCD practice, due to absence of administrative GST return to capture such GST-impacted transactions arising post-1 September 2018.

Input tax/acquisitions

No.	Transaction-type for inclusion in final GST return	Reference
1.	All input tax arising <u>before</u> 1 September 2018 and yet to be claimed by that date.	Section 8(1), GST Repeal Act.
2.	Claim for bad debt relief & other adjustments in the last taxable period e.g. credit note/debit note received in the last taxable period adjusting input tax claimable in respect of tax invoices received in earlier taxable periods.	Regulation 61(2), GST Regulations.
3.	GST-impacted acquisitions (including adjustments) between 1 September 2018 and filing deadline of 29 December 2018.	RMCD practice, due to absence of administrative GST return to capture such GST-impacted transactions arising post-1 September 2018.

Conclusion

In our view, RMCD's practice to not have administrative GST returns for post 1-September 2018 GST-impacted transactions, has created a key imperative for businesses to mitigate such transactions, by 'squeezing' GST-impacted transactions between 1 September 2018 and 29 December 2018, into the final GST return.

The RMCD practice seems to require businesses to bring all their GST transactions to a 'hard close' before 1 September 2018 and to capture these in the final GST return. For example, RMCD's DG Decision SST 1/2018 disallows the issuance of tax invoice post-1 September 2018 for GST-impacted transactions arising on or after 1 September 2018, and this consequently results in denial of input tax credit to the GST-registered recipients in these transactions. The situation is anticipated to get more complicated after the final GST return is filed i.e. post-29 December 2018, where there is no more official GST return to file and declare GST-impacted transactions from output tax/input tax perspective.

Based on FAQ No.19 of RMCD Guide on Transitional Rules as at 5 September 2018, businesses would be able to make GST adjustment resulting from the issuance of debit note or credit note after 120 days from 1 September 2018 (i.e. after the last GST return is due on 29 December 2018). However, there is no clear guidance or mechanism to-date on how to make the said GST adjustment after the last GST return is filed by 29 December 2018.

All this seems to be contrary to the letter and intent of the GST Repeal Act, which is to capture transactions before 1 September 2018 in the final GST return and not beyond.

As for those GST-impacted transactions beyond 1 September 2018, section 4(1), GST Repeal Act saves inter alia the collection of the tax due (tax due is arguably the net of output tax and input tax), as if the GST Act has not been repealed.

To this end, it is hoped that RMCD would introduce the proper mechanism required for the collection of the tax due post-1 September 2018, via an administrative GST return, as per the past precedent under the old service tax regime (vide the Service Tax Act 1975).

As mentioned at the outset of this article, during the transition from the old service tax regime to the former GST era, an administrative service tax return i.e. Lampiran SP 3D was used after the last service tax return was filed. If such an administrative mechanism/return was in place for the collection of a simpler tax such as service tax, the complex regime that was GST surely deserves an administrative GST return, especially after the final GST return is filed by 29 December 2018.

Stay tuned as we keep you up-to-date with the developments of SST.

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