

德勤马来西亚中国服务部刊物

马来西亚数字服务税

2020 年 1 月 1 日起，马来西亚将把服务税征税范围扩大至向马来西亚消费者提供数字服务的外国服务供应商。随后，概述此马来西亚规则框架的《2019 年服务税(修订)法案》于 2019 年 4 月 4 日提交至马来西亚国会。

我们对此进行总结如下：

征税范围

已注册服务税的**外国服务供应商**向马来西亚任何**消费者**提供任何**数字服务**，都将被征收此数字服务税。

“数字服务”指任何通过互联网或其他电子网络进行交付或订阅、并且如果不使用信息技术便无法获得的任何服务，同时此类服务的交付是自动完成的。

“外国服务供应商”指任何于马来西亚境外向消费者提供任何数字服务者，也包括任何于马来西亚境外运营商品买卖或提供服务的网络平台（不论该人是否提供任何数字服务）者，以及代表任何人就提供数字服务进行交易者。

“**消费者**”指任何符合以下任意两项条件者：

- (a) 使用任何马来西亚金融机构或公司提供的信用借贷设施支付数字服务；
- (b) 使用在马来西亚注册的互联网协议地址或分配给马来西亚的国际移动电话国家代码以获取数字服务；
- (c) 居住于马来西亚。

税率与价值

虽然在法案中没有说明适用的税率，但预计为 6%，并将以服务提供商对提供该服务收取的费用为基础进行计算。目前没有新规定针对在报税与征收上外币应如何换算进行说明，因此，目前规定使用在提供服务当日的马来西亚国家银行(马来西亚中央银行)汇率进行换算的做法仍然适用。

何时计入服务税

服务税将在消费者付款被收到的应税周期内进行缴纳。有些规定将作为修订法案的一部分被引入，这些规定将授予马来西亚皇家关税局(RMCD)的局长(DG)自由裁量权来允许一个服务税注册者根据发票日期来计入服务税。然而，这些规定似乎不涵盖提供数字服务的外国服务供应商。

注册与发票开具

虽然在法案中没有规定注册门槛，不过预计此门槛应为年营业额 500,000 马币。外国服务供应商通常需要以历史和预期为基础(前后滚动 12 个月的基础上)评估其向马来西亚消费者提供数字服务的营业额，以确定是否超出了这一门槛。如超过此门槛，外国服务供应商须向 RMCD 申请注册，并须提交季度(三个月)申报表。注册的外国服务供应商还被要求为提供任何应税数字服务向消费者开具发票。

在特殊情况下，对目前为马来西亚消费者提供数字服务同时预计突破注册门槛的外国服务供应商(基于未来 2020 年营业额预估)，必须于正式征税日期 2020 年 1 月 1 日的前 3 个月前起，即 2019 年 10 月 1 日起向 RMCD 提交注册申请。对于此类申请，RMCD 有权自 2020 年 1 月 1 日起或在其确定的较晚日期为此类外国服务供应商注册。

目前，注册申请表格、服务税申报表及发票的格式尚未就绪。

过渡规定

对于在 2020 年 1 月 1 日前已开始提供、并持续提供至此日期之后的数字服务，需要对 2020 年 1 月 1 日起开始提供的服务进行分摊和征税。

对于已在 2020 年 1 月 1 日前收款、自 2020 年 1 月 1 日起才开始提供的数字服务，服务税将不会被征收。

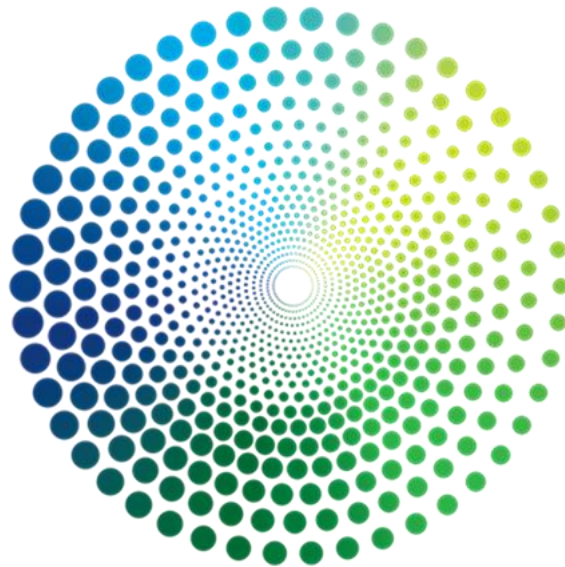
最新发展

马来西亚财政部确认数字服务税(DST)的 2020 年 1 月 1 日实施日期不会推迟，其它被讨论重点如下：

- DST 将适用于外国服务供应商向马来西亚企业和消费者提供的数字服务。这意味着它将同时适用于企业对企业(B2B)和企业对消费者(B2C)的交易。
- 在如何判断马来西亚消费者的方面，马来西亚财政部计划采用“居住地测试”。居住地是否在马来西亚将是主要测试，而次要测试将根据 IP 地址是否在马来西亚注册，电话号码是否是分配给马来西亚国家代码的电话号码，或支付设施是否由马来西亚公司提供(例如马来西亚金融机构发行的信用卡)来确定。服务购买方首先需要满足主要测试，然后符合其中一项次要测试，才能被视为马来西亚消费者。

- 为确保不存在双重征税,对 SST 注册公司从境外采购应税服务并收到境外公司发票的情况,公司将被豁免针对此交易征收服务税,因为外国实体已对该交易征收服务税(如数字服务)。
- 对数字服务税的征税范围, RMCD 已确认将尽可能广泛。任何使用电子基础设施的服务(例如 IT 支持服务)都将包括在范围内。
- 对某些特定行业(例如医疗与教育)的服务,如果该服务在以非电子设施进行交付时为非应税服务,将有可能给予豁免,以协调电子和非电子方式提供服务的非应税处理。
- DST 的最终指南将在 2019 年 7 月就绪。
- DST 的注册将于 2019 年 10 月 1 日开始,外国服务供应商有 3 个月的时间为将于 2020 年 1 月 1 日开始实施的 DST 做准备。发票的要求将保持与本地要求相同(即引用服务税务注册 ID、服务税金额等)。
- RMCD 可能为外国服务供应商提供一些余地,以协助其 DST 实施过程顺利进行。RMCD 也会举办路演,以协助外国服务供应商实施 DST。

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Deloitte Malaysia Chinese Services Group Publication

Malaysia Digital Service Tax

During his Budget 2019 Speech on 2nd November 2018, the Minister of Finance Lim Guan Eng announced that Malaysia would expand its service tax to tax foreign service providers who provide digital services to Malaysian consumers from 1 January 2020. Following on from this speech, the Service Tax

(Amendment) Bill 2019 ("the Bill") was introduced before the Malaysian Parliament on 4th April 2019 which outlines the framework for the Malaysian rules.

Scope of the tax

The tax would be charged and levied on any **digital service** provided by a **foreign service provider** who is registered for service tax to any **consumer**.

"**digital service**" means 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.

"**foreign service provider**" means any person who is outside Malaysia providing any digital service to a consumer and includes any person who is outside Malaysia operating an online platform for buying and selling of goods or providing services (whether or not such person provides any digital services) and who makes transactions for the provision of digital services on behalf of any person.

"**consumer**" means any person who fulfils any 2 of the following:

- Makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia
- Acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia
- Resides in Malaysia

Rate and value

The applicable rate although not stated in the Bill is expected to be 6% and it would be applied on top of the value charged by the service provider for the service. There are no new provisions covering the conversion of foreign currency amount for the purpose of reporting and collection, and so it would appear the current practice requiring the use of the Bank Negara Malaysia (Malaysian Central Bank) selling rate on the date the service is provided would still apply.

When to account for service tax

Tax will be due and payable in the period corresponding to when payment was received from the consumer. There are provisions that will be introduced as part of the Amendment Bill that would give the Director General (DG) of the Royal Malaysian Customs

Department (RMCD) the discretion to allow a registered person to account for service tax on an invoice basis, however, it does not appear to cover foreign service providers providing digital services.

Registration and invoicing

The threshold for registration, although not stated in the Bill, is expected to be MYR500,000 per annum. A foreign service provider is generally required to assess on a historical and prospective basis (on a rolling 12 months' basis) its turnover in relation to digital services provided to Malaysian consumers to determine whether this threshold is breached. Where the threshold is breached, the foreign service provider would need to apply to the RMCD for registration and then be required to file a quarterly (3-month period) return. A registered foreign service provider would also be required to issue invoices to consumers for any taxable digital services.

Exceptionally, for foreign services providers who are currently providing digital services to Malaysian consumers and expect to breach the registration threshold (based on projected prospective turnover for the 2020 calendar year), there will be a requirement to make the registration application to RMCD 3 months before the commencement of the tax on 1 January 2020 i.e. on 1 October 2019 onwards. In respect of such registration application, RMCD has the discretion to register the foreign service provider with effect from 1 January 2020 or such later date as RMCD may determine.

The format of application form, service tax return and invoice have not yet been made available.

Transitional rules

For digital services provided before 1 January 2020 but spanning the commencement date of 1 January 2020, there will be a need to apportion and collect tax for the service attributed to the period on or after 1 January 2020.

For payments received before 1 January 2020 in respect of digital services that will be provided on or after 1 January 2020, service tax is not chargeable.

Further development

MoF has confirmed that there will be no deferral of the go-live date for Digital Service Tax (DST) and it will commence from 1 January 2020. Among other points discussed:

- DST will be applicable for digital services supplied by a foreign service provider to both businesses and consumers

in Malaysia. This would mean that it would apply to both business to business (B2B) and business to consumer (B2C) transactions.

- In terms of identifying who is a consumer in Malaysia, MoF intends to apply a 'residence test'. The place of residence in Malaysia would be the primary test, and the secondary test would be determined based on either the IP address registered in Malaysia, telephone number country code assigned to Malaysia or payment facility provided by a company in Malaysia (e.g. credit card issued by financial institution in Malaysia). The acquirer would first need to meet the primary test, followed by one of the secondary conditions, to be viewed as being in Malaysia.
- To ensure that there is no double taxation, a blanket exemption would be given to SST-registered entities from accounting for service tax on a transaction of imported taxable service if they receive an invoice from a foreign entity, where service tax was imposed by the foreign entity on that transaction (as digital services).
- On the scope of taxable digital services, RMCD has confirmed that it would be as wide as possible. Any service using an electronic infrastructure (e.g. IT-enabled services) would be included in the scope.
- There is the possibility of exemptions for certain industries (e.g. health or education) for services that are not taxable services if delivered non-electronically – the exemption would be given to the electronic delivery of such services to harmonise the non-taxable treatment of both electronic and non-electronic mediums of service delivery.
- The finalised guide on DST is to be made available by RMCD in July 2019.
- Registration for DST will be open from 1 October 2019, providing foreign service providers three months to prepare for the implementation of DST effective 1 January 2020. The invoicing requirements would remain the same as what is required locally (i.e. quoting the Service Tax Registration ID, service tax amount, etc.).
- RMCD may provide some leeway to assist in facilitating and smoothing the implementation process of DST for the foreign service providers. RMCD will also be organising roadshows to assist the implementation of these foreign service providers.

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