Sales Tax and Service Tax ("SST") Framework – Deloitte Analysis and Views

Overview

The proposed taxes are conceptually a re-introduction of the Sales Tax and Service Tax that existed prior to the introduction of GST, but with some changes in its scope and also its administrative and compliance aspects. Below is a brief conceptual overview of two proposed taxes.

Sales Tax

- Sales tax is charged on taxable goods that are manufactured in or imported into, Malaysia. Manufactured goods exported would not be subject to sales tax.
- The proposed rates of tax will 5% and 10% or a specific rate. Goods are taxable unless specifically listed as being exempt from sales tax.
- Sales tax is a single-stage tax meaning that it is only imposed at one stage in the supply chain at the import or manufacturers level.
- To maintain the single-stage principle, manufacturers would be entitled to an exemption on sales tax paid on their raw materials and other input to production.

Service Tax

- Service tax is imposed on specific prescribed services provided by a taxable person in the course or furtherance of a business in Malaysia. The proposed rate of service tax 6%.
- Service tax is also a single-stage tax charged once by the service provider. There are no input or exemption mechanisms available for service tax.
- Services specifically proposed to be subject to service tax include hotels, restaurants, telecommunication, gaming, professional and consultancy services, motor vehicle repair, credit cards, domestic flights, IT services and electricity.

We set out below certain key differences from the previous versions taxes that existed previously.

Key differences between the previous Service Tax Act 1975 with proposed Service Tax Model

We have made reference to the SST Implementation Briefing Session – Proposed Service Tax Implementation Model ('Slides') issued on the RMCD website on 19 July 2018. We have also received some verbal clarification ("Verbal") in relation to the proposed model.

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Reference	Area	Previous Act	Proposed Model	Comments
Slide 7,12	Registration Threshold	Threshold varied according to taxable persons/taxable services	Generally single threshold of RM 500,000 (exception is for credit card/charge card providers, where there is no threshold)	The proposed model adopts the same registration threshold as the current GST.
Slide 7	Rate of tax for Credit/Charge Card	RM 50 for principal credit/charge card and RM 25 for supplementary credit/charge card to be imposed on an annual basis	RM25 for both principal and supplementary credit/charge card to be imposed on an annual basis	Uniform specific rate of RM25 for principal and supplementary credit/charge cards
Slide 9	Hotels	Any person operating 1 or more hotels, any 1 hotel having more than 25 rooms excluding: i. hostels for pupils or students of educational institutions; ii. hostels established and run or maintained by religious institutions or bodies	Hotel includes: • lodging house • service apartment • homestay • Inn • Rest house • Boarding house	Verbal indication that taxable hotel category would not be based on number of rooms in the hotel exceeding 25 rooms It is not clear at this moment whether there would be exclusions for hostels run by educational and religious institutions
Slide 9	Insurance and takaful	Provision of all types of insurance policies to all business organisations excluding certain insurance in relation to export of goods	Scope of taxable insurance policies covers: • All business to business insurance policies; and • All business to consumer general insurance or takaful excluding medical insurance or medical takaful policies	Expansion of the scope of service tax to cover general insurance policies to consumers. It is not clear at the moment whether general insurance would cover any general riders under life insurance policies.
Slide 10	Restaurants	Any person operating 1 or more restaurants, bars, snack-bars, coffee houses or places which provide food, drinks or tobacco products, whether wholly eat-in or partly take-away, having a total annual sales turnover,	Service of food and beverage preparation includes: • restaurant • cafe • catering • take-away	Expansion of food providers category.

Reference	Area	Previous Act	Proposed Model	Comments
		whether combined or singly, of more than RM3 million of any 1 or more taxable services mentioned within this Group and located outside a hotel excluding: i. a canteen located in an educational institution; or ii. a canteen operated by a religious institution or body	• food truck • retail outlet • hawkers • etc	
Slide 10	Electricity	Not taxable	Service tax to be charged on electricity more than 600kWh	Comparing the proposed model to the current GST regime, the threshold is double than under the current GST regime at 300kWh.
Slide 11	Gaming	Not taxable	Gaming includes: • Casino • Games of chance • Sweepstakes • Gaming machines • Lottery • Betting	Details on how to account for service tax on gaming is further explained under FAQ 6.
Slide 16	Late payment	• 10% - first 30 days period • 10% - second 30 days period • 10% - third 30 days period • 10% - fourth 30 days period • 10% - fifth 30 days period Maximum penalty of 50%	• 10% - first 30 days period • 15% - second 30 days period • 15% - third 30 days period Maximum penalty of 40%	Although the total penalty rate has been reduced, the timeframe for payment has also been reduced. The proposed late payment penalty is the same as the current GST law.
Slide 22	Bad debts	Refund for bad debt allowed if: a) the service tax has been paid by such person on or after 1 January 2013 b) the whole or any part of the service tax payable to such	Claiming of refund for bad debts allowed subject to the following conditions: i. Within 6 years form the date the taxable services is provided ii. Subject to conditions determined by the DG	It is not clear at the moment what would be the conditions to be imposed by the DG for service tax refund on bad debts.

Reference	Area	Previous Act	Proposed Model	Comments
		person has been written off in his accounts as bad debts; and c) the Director General is satisfied that all reasonable efforts have been made by such person to recover the service tax	iii. According to a prescribed formula	
Slide 18	Designated Areas	Service tax law does not apply to Langkawi, Labuan and Tioman	a) Services provided between and within DA – not subject to service tax except prescribed by Minister of Finance (MOF) b) Services from Principal Customs Area (PCA – basically any area in Malaysia except DA and Special Area) to DA – subject to service tax except prescribed by MOF c) From DA to PCA – subject to service tax d) To/from DA to Special Area – no service tax	The proposed model adopts the current GST treatment for DA. Service providers in DA will need to quantify the revenue earned specifically for taxable services provided to PCA to determine whether they would fall within the mandatory registration threshold.
Slide 19	Special Areas	Service tax did not apply to Free Zones and Joint Development Area (JDA)	Special areas include Free Zone (FZ), Licensed Warehouse (LW), Licensed Manufacturing Warehouse (LMW) and Joint Development Area (JDA). a) Services provided between and within SA – not subject to service tax except prescribed by MOF b) Services from PCA to SA – subject to service tax except prescribed by MOF c) From SA to PCA – subject to service tax d) To/from SA to DA - no service tax e) From PCA (other than SA) to FZ or LMW – subject to service tax	A new concept of Special Area has been created. A major change from the old service tax regime, where taxable services provided from PCA to free zones and JDA were not subjected to service tax, but taxable services provided from PCA to LW/LMW were subjected to service tax. With the imposition of service tax from PCA to SA, and the absence of service tax on imported taxable services, companies operating in SA may be incentivised to buy services

Reference	Area	Previous Act	Proposed Model	Comments
				from overseas, thereby potentially making domestic service providers less competitive.
Slide 20	Issuance of invoices	Invoice must show service tax payable separately from the charges for the taxable service provided	Invoice will need to contain prescribed particulars	It is not certain at the moment what prescribed particulars will need to be included in the invoices and whether it will be similar to the GST law.
Slide 17, 20	Issuance of credit note, debit notes and contra system	Adjustments via credit notes were usually under contra facility/system, which was allowed under certain circumstances, on one-time application being made by service tax registrant.	a) Issuance of credit notes and debit notes is allowed b) Adjustments to be made in the service tax return c) Shall contain prescribed particulars d) Contra system also proposed	Issuance of credit notes were previously a feature under the contra facility/system, which was applicable under certain circumstances only, on one-time application being made by service tax registrant. It is not clear at the moment whether the proposed adjustment via credit notes/debit notes would be separate from the proposed contra facility/system.
Verbal	Intra group relief	Intra group relief available for certain services provided within a group of companies	No intra group relief present	It was verbally communicated that there is no intra group relief for group of companies.

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Key differences between the previous Sales Tax Act 1972 with the proposed Sales Tax Model

We have made reference to the SST Implementation Briefing Session – the Proposed Sales Tax Implementation Model ('Slides') as issued on the RMCD website on 19 July 2018.

Reference	Area	Previous Act	Proposed Model	Comments
Slide 3	Legislation	There were special provisions in the Sales Tax Act 1972 on sales tax treatment on Designated Areas. Special Areas were deemed as places outside Malaysia	There are two proposed new pieces of legislation not present in the previous SST regime, namely Sales Tax (Imposition of Tax In Respect of Designated Areas) Order 2018 and Sales Tax (Imposition of Tax In Respect of Special Areas) Order 2018.	Same intention to exclude DAs and Special Areas from sales tax.
Slide 6	Definition of 'Manufacture' and 'Petroleum'	Manufacture is defined as the conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape or nature of such materials and includes the assembly of parts into a piece of machinery or other products, but does not include the installation of machinery and equipment for the purpose of construction, for goods other than petroleum Petroleum is defined as the refining or compounding and includes the addition of any foreign substance.	Manufacture is defined as a <u>conversion of materials by manual or mechanical</u> means <u>into a new product</u> by changing the size, shape, composition, nature or quality of such materials and includes the assembly of parts into a piece of machinery or other products. However, manufacture does not include the installation of machinery or equipment for the purposes of construction. Petroleum is any process of separation, purification, conversion, refining and blending.	More concise definition in the proposed SST.
Slide 7, 10	Registration Requirements	All manufacturers of taxable goods were required to register for sales tax unless:	<u>Mandatory registration</u> Manufacturer - Value of taxable goods provided for a period of 12 months that exceeds a threshold of RM 500,000	Higher registration threshold in the proposed SST to exclude small industries from the sales tax regime.

Reference	Area	Previous Act	Proposed Model	Comments
		• They are exempted from sales tax licensing by law; or • They value of the taxable goods manufactured was less than RM100,000 and he obtained a certificate of exemption from licensing No voluntary registration available.	Sub-contractor - Value of work performed for a period of 12 months that exceeds a threshold of RM 500,000 <u>Voluntary registration</u> Value of taxable goods/work performed falls below RM 500,000	
Slide 10	Registered Person	The Registered Person is known as the 'Sale Tax Licensee'.	The Registered Person is known as the 'Registered Manufacturer',	To reflect that only manufacturers of taxable goods are liable to register for sales tax.
Slide 11	Voluntary Registration	N/A	Voluntary registration is available to manufacturers where the value of taxable goods provided for a period of 12 months is below the prescribed threshold and persons who are exempted from registration may voluntarily register.	More flexibility is given to targeted businesses on whether to register for sales tax or otherwise.
Slide 12	Determination of Turnover	N/A	Manufacturers to determine the sales value of taxable goods based on the historical method or future method.	Provides clarity on how to determine sales tax registration.
Slide 14	Licence Registration	Manufacturers who were liable to be registered must do so via a manual application.	Customs will identify and notify manufacturers who fulfil the required criteria and these manufacturers will automatically be registered. The Registered Manufacturers must charge tax from 1st September 2018.	To reduce the burden of registration and processing for both businesses and RMCD under the proposed SST.

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Reference	Area	Previous Act	Proposed Model	Comments
			For Persons (liable to register) not registered automatically by 1st September 2018, such persons are to apply for registration within 30 days of this date.	
Slide 15	SST Return	The Return submission must be made not later than 28 days of the following month. The Return must be submitted manually, sent by post or dropped at the Customs office.	The Return submission must be made not later the last day of the following month after the taxable period has ended. The Return must be submitted electronically or by post to the SST Processing Centre.	Deadline of filing is the last day of the month which makes it easy to track for businesses. Provides flexibility to submit the SST Return manually or electronically, but it does not appear that you can submit directly to the Processing Centre.
Slide 16	Payment of SST	Payment of SST must be made manually.	Payment of SST must be made electronically; or by cheque, bank draft and posted to SST Processing Centre.	Electronic payment is a welcome change but it appears that you cannot pay directly at the Processing Centre like before.
Slide 16,	Late payment	• 10% - first 30 days period • 10% - second 30 days period • 10% - third 30 days period • 10% - fourth 30 days period • 10% - fifth 30 days period Maximum penalty of 50% is reached after 150 days.	• 10% - first 30 days period • 15% - second 30 days period • 15% - third 30 days period Maximum penalty of 40% is reached after 90 days.	Under the proposed SST, the rate of penalty is lower by 10%. However, it reaches the maximum rate within 90 days as opposed to 150 days under the previous regime.
Slide 17	Exemption and Facilities	Sales exemption facilities under the Forms CJ5, CJ5A and CJ5B must be submitted manually to the Customs authority.	For the Registered Manufacturer, the sales exemption facilities are to be applied for electronically via the SST website.	Electronic submission and processing of sales tax exemption will reduce business costs and expedite the approval process.

Reference	Area	Previous Act	Proposed Model	Comments
Slide 20	Accounting	Only credit notes issued for goods returned or discount subsequently given are allowed for sales tax deduction via the sales tax return.	Credit notes and debit notes are generally allowed to be issued by the Registered Manufacturer and make adjustment in his returns.	To suit actual commercial practices and to facilitate trade.
Slide 22	Bad Debts	An application to the Customs must be made to claim back the sales tax paid on bad debt subject to fulfillment of conditions.	Claiming of bad debts allowed subject to the following conditions: iv. Within 6 years form the date the taxable good is sold v. Subject to conditions determined by the DG vi. According to a prescribed formula	Reduce the cost of doing business and alleviate cash flow.
Slide 23	Recordkeeping	Records are to be kept for 6 years and whether it can be kept in soft copy format is unclear.	Records are to be kept for 7 years and can be kept in both soft copy or hard copy format.	
Slide 18	Designated Areas	Specific provisions on the Designated Areas are contained within the Sales Tax Act 1972	Under the new model, the provisions on Designated Areas are governed by the Sales Tax (Imposition of Tax In Respect of Designated Areas) Order 2018. The Special Area consists of the Free Zone, Licensed Warehouse, Licensed Manufacturing Warehouse and Joint Development Area.	

Reference	Area	Previous Act	Proposed Model	Comments
Proposed Exemption List	Exemptions	Exemption Order	Proposed Goods Exempted from Sales Tax	Based on our review of the proposed exemptions list we have noticed changes in the treatment of various items. We would recommend detailed analysis of your specific goods to determine whether there is a change in treatment.

Transitional Matters

De-Registration from GST and Final GST Return

Once the GST Act is repealed (expected to be effective 1 September), all GST Registrants will be automatically deregistered from the GST system and no application for de-registration would be required.

GST Registrants will be required to submit a final return within a 120 days from the Act being repealed (late December). The final GST Return will be the last opportunity for businesses to:

- Claim any remaining input tax credits / adjustments / bad debt relief
- Report any GST on supplies subject to 6% / 0% (this includes stock on hand as at 31 August)

Whilst we would need to wait for the Bill to understand the rules in detail, it would appear that once the 120 days have passed, the requirement to pay or be refunded GST would cease to apply. This would mean any pre-1 June transactions where a GST liability has not yet crystalised would appear to fall entirely outside of the GST net (whether it is a GST payable or an input tax credit claimable amount).

Taxation of Sales Spanning the abolition of GST and implementation of SST

Sale or import of goods within the scope of Sales Tax
Where goods are removed prior to 1 September, it would fall under the scope of GST, but if the goods are moved on or after 1 September then Sales Tax would apply. This is regardless of whether an invoice has been issued or payment has been received prior to 1 September. Businesses will need to look at advance billings and prepayments to assess whether any of these sales would be subject to sales tax. As of now, it is not clear what is the treatment when there is no 'physical movement' of goods, but we would assume a similar concept to goods being made available or transfer of title would be used to determine whether it is subject to GST or Sales Tax. Although not clearly stated, we would assume that for importations, the date of import clearance would determine whether it falls under GST or Sales Tax.

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Subcontracting work within the scope of Sales Tax
To the extent that the services are performed pre 1 September, GST would apply, whereas the portion of the services performed on or after 1 September would be subject to Sales Tax. This is regardless of whether these services have been invoiced and paid for by the customer prior to 1 September. Businesses will need to look at advance billings and prepayments to assess whether some portion of these services would not be subject to Sales Tax.

Services within the scope of Service Tax:
To the extent that the services are performed pre 1 September, GST would apply, whereas the portion of the services performed on or after 1 September would be subject to service tax. This is regardless of whether these services have been invoiced and paid for by the customer prior to 1 September. Businesses will need to look at advance billings and prepayments to assess whether some portion of these services would not be subject to service tax.

Where the services are wholly performed on or after 1 September, then service tax would apply on the entire payment received.

Credit Cards: For the special rules applying to credit cards, the RM 25 service tax would only apply on the next annual renewal and not from 1 September.

Final GST Audits

GST audits for closure purposes will commence from 1 September. Based on earlier discussions with RMCD we expect that these audits will cover more than just the final GST Return and are likely to cover the last 12 – 18 months of GST. We also understand that RMCD would like to complete all GST audits by December 2019 or at the very latest July 2020.