



## **Indirect Tax Alert**

### Updated Service Tax Regulations and Introduction of New Exemptions

In late December 2019, the [Service Tax \(Amendment\) \(No. 2\) Regulations 2019](#) and [Service Tax \(Persons Exempted From Payment of Tax\)\(Amendment\) Order 2019](#) were gazetted and scheduled to take effect from 1 January 2020 onwards. While some of the amendments made to the Regulations reflect the changes that were proposed in Budget 2020, a number of the changes were not mentioned previously. The key changes are summarised below with our commentary.

We anticipate further Orders and Amendments to be released in the coming months, which are likely to clarify some of the areas of uncertainty highlighted below.

## Service Tax (Amendment) (No.2) Regulations 2019

### 1. Improvement on group relief facility under service tax

Version before amendment	Version after amendment	Deloitte's comments
<p>Paragraph 8 of the First Schedule to the Service Tax Regulations 2018 ("STR") states -</p> <p>Where a company provides any taxable service to a person outside the group of companies, the same taxable service provided to any company outside or within the group of companies shall be a taxable service.</p>	<p>Paragraph 8 of the First Schedule to the STR is added to include -</p> <p>Where a company provides any taxable service to another person outside the group of companies, the same taxable service provided to any company within the group of companies shall not be a taxable service, provided that the total value of taxable service to another person outside the group of companies in that month and the eleven months immediately succeeding that month does not exceed an amount equal to 5% of the total value of taxable services.</p>	<p>The introduction of a 5% <i>de minimis</i> rule was announced in Budget 2020 and was generally welcomed, as it would reduce some of the impact of service tax on intercompany services.</p> <p>However, there is some confusion in how the 5% rule would work. Firstly, the rule does not work as anticipated on a literal reading, i.e. it does not compare the value of the 'same service' provided within the group and outside, but rather the overall value of taxable services made by the company in and outside of the group. If the contextual purpose of the test is to assess whether the particular qualifying service is <i>de minimis</i> ('minor'), the 5% rule should perhaps focus on the value of the same qualifying service within and outside the group, and not all third party services. In its current form, many</p>

businesses who provide other third party taxable services would find it difficult to fall within the 5% rule, if a literal reading is applied.

A second area of concern with the 5% rule is the introduction of a "succeeding" test for monitoring the 5%. In the past, we have seen requirements to calculate thresholds based on historical figures and / or forecasts. The challenge with using actual future values is that a service provider needs to assess the service tax treatment at the time of the transaction but would not be in a position to do so accurately as the 5% calculation takes into consideration transactions over the next 12 months. It is also unclear if a service provider, once they determine a breach has occurred in the subsequent period, whether it would be obligated to amend all prior returns and be subject to penalties.

We would recommend that the test be altered to

		<p>reflect historical transactions or reasonable forecasts.</p> <p>A further point to note is that the new categories of taxable services under Group G, electronic medium and digital services (discussed further below) are not included in the categories of services eligible for intragroup relief. This is inconsistent with the recent press release published by the Ministry of Finance, which suggests such services would be eligible for relief.</p>
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2. Exclusion of provision of training and coaching services for disabled persons from service tax imposition

Version before amendment	Version after amendment	Deloitte's comments
<p>(1) Taxable person</p> <p>Item 7 of Group G under First Schedule to the STR prescribes "Any person who provides consultancy, training or coaching services, excluding..."</p> <p>(2) Taxable service</p> <p>Item (g) of Group G under First Schedule to the STR prescribes any "provision of consultancy services including professional</p>	<p>(1) Taxable person</p> <p>The following taxable person has been added to Item 7 to be excluded from service tax -</p> <p>Any training centre or coaching centre-</p> <p>(a) registered with the Ministry of Health;</p> <p>(b) registered with the Social Welfare Department; or</p> <p>(c) recognized by any national association</p>	<p>These changes are in line with the Budget 2020 announcements and will reduce the burden of accounting for service tax on those service providers.</p>

<p>consultancy services other than specifically mentioned in this Schedule, or training or coaching services with or without the issuance of certificate for which the fees are imposed, excluding...”</p>	<p>for persons with disabilities registered with the Registrar of Societies Malaysia.</p> <p>(2) Taxable service</p> <p>The provision of training services and coaching services provided to a person who holds a valid Kad OKU issued under the Person with Disabilities Act 2008 [Act 685] has been added to item (g) for service tax exclusion.</p>	
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### 3. Expansion of the scope of IT services

Version before amendment	Version after amendment	Deloitte’s comments
<p>Item (h) of Group G to the STR reads –</p> <p>Provision of all types of information technology services are prescribed as taxable service.</p>	<p>The term “information technology services” in item (h) has been substituted to “information technology services including distributing or reselling of information technology services on behalf of any person”.</p>	<p>The scope has been broadened to include resellers and distributors of any IT services. In the case of software, this winds back the concession provided in the Guide on Information Technology Services that such sales are not within scope.</p> <p>Impacted resellers and distributors would now need to carefully consider the available exemptions (i.e. B2B) to mitigate the cost impact of this change.</p>

4. Introduction of new taxable services in Group G and Group I of the First Schedule of the Service Tax Regulations 2018 ("STR")

Amendments introduced	Deloitte's comments
<p>The following have been added to Group G of the First Schedule of STR:</p> <p>(1) Taxable person</p> <p>Item 12 - Any person who operates online platform or market place</p> <p>(2) Taxable service</p> <p>Item (l) - Provision of electronic medium that allows the suppliers to provide supplies to customers.</p> <p>Item (m) - Provision of digital services including transaction for provision of digital services on behalf of any person</p>	<p>These amendments appear to have been made to ensure parity between local service providers and foreign service providers, as the latter is caught under the new digital services rules.</p> <p>For the providers of online platforms / marketplaces, it is unclear how much of their fees and services the authorities intend to tax, as it is only the "provision of the electronic medium" that is deemed the taxable service. These platforms can provide a variety of services.</p> <p>In saying that, the broader 'digital services' under item (m) would perhaps capture anything that is not caught under item (l).</p> <p>The Royal Malaysian Customs Department (RMCD) currently provides examples of digital services (non-exhaustive) in its Guide on Digital Services, which was initially released for foreign service providers but now can be equally applicable to domestic companies.</p>
<p>Under Group I, in relation to item 2 which prescribes telecommunication services and any content applications service provider, the following has been added under the taxable service column –</p> <p>"Provision of digital services"</p>	<p>Telecommunication providers who are providing digital services would not be required to register under Group G, as any such services would be caught under the existing service tax category (Group I).</p>

5. Expansion of the scope of advertising services

Version before amendment	Version after amendment	Deloitte's comments
The taxable service under item 8 of Group I of the First Schedule to the STR - Provision of all advertising services, excluding provision of such services for promotion outside Malaysia.	The term all "advertising services" under Item 8 has been substituted with the term all "types of advertising services including digital advertising services".	Similar to our comments for telecommunication service providers, this amendment ensures that those advertising service-providers who are registered under this category and provide digital services can report the digital services under their existing service tax category.

**Service Tax (Persons Exempted From Payment of Tax) (Amendment) Order 2019**

Amendments made	Deloitte's comments
An additional condition has been added for the application of service tax exemption for business to business transactions ("B2B exemption") and to advertising services under the Service Tax (Persons Exempted From Payment of Tax) Order 2018 ('the Order'). The added condition is that the taxable service provided is not for the personal consumption of the exempted person.	"Personal consumption" has not been defined and it could potentially mean 'self-consumption' (as opposed to service acquired or consumed as 'input' to provide the same taxable service). This would likely create uncertainty, similar to the RMCD practice (prior to this amendment) of not allowing B2B exemption for services acquired by a recipient who is an 'end-consumer'.
<p><b>New Exemption on Imported Digital Service:</b></p> <p>Any person who, in carrying on his business, acquires digital services from a foreign registered person is exempted from service tax if the following conditions are met:</p> <p>a) the exempted person is a taxable person who shall account for service tax due under Section 26 of the Service Tax Act 2018 or person other</p>	<p>This exemption was alluded to in the Guide on Digital Services and ensures that no double taxation occurs where a foreign service provider is required to account for service tax on digital services but equally a local service recipient is required to account for service tax on imported services.</p> <p>Where the local service recipient receives an invoice with service tax included from the foreign service provider, the local</p>

than a taxable person who shall account for service tax due under Section 26A of the Service Tax Act 2018;

b) the exempted person holds an invoice or document issued in connection with digital service from foreign registered person under subregulation 6(1) or (2) of the Service Tax (Digital Service) Regulations 2019; and

c) the digital services acquired from foreign registered person is not for personal consumption by the exempted person.

service recipient would be exempted from accounting for service tax on imported services.

There is a further condition of exemption that the imported digital services is not for 'personal consumption' (see our above comments on personal consumption in the context of B2B exemption, which are equally applicable here, though personal consumption does not seem to be relevant in the context of avoiding double tax on imported digital services).

**New Exemption on Imported IT Service:**

Any person who acquires IT services from any person who is outside Malaysia is exempted from service tax if the following conditions are met:

a) the taxable person is a registered person for IT services;

b) IT service acquired is identical to the IT service distributed or sold by the taxable person; and

c) the IT services acquired is not for personal consumption by the taxable person.

This exemption appears to address the impact of the expanded IT services scope (to include distributing and reselling of IT services), discussed above. In particular, it allows for a B2B like exemption for imported services to apply where the IT services are acquired and resupplied. However, for the exemption to apply, the services acquired and supplied must be 'identical'. It is unclear as to how strictly the authorities would apply the identical rule.

This exemption is only limited to IT services and does not address digital services. Exemption for digital services would depend on the fulfilment of the specific exemption for digital services as discussed above.

There is a further condition of exemption that the imported IT services are not for 'personal consumption' (see our above comments on personal consumption in the context of



B2B exemption, which are equally applicable here).

### What should you do next?

- Businesses should review prior technical positions taken, as well any previous technical opinions obtained from advisors and / or the RMCD to assess the potential impact;
- Due to the considerable uncertainty that exists in how the amended provisions should apply, we would recommend a flexible approach taking into consideration that more information is expected to be published in the coming weeks;
- Businesses also have the option of engaging with the authorities, (i.e. Ministry of Finance or RMCD) either directly or through industry associations or business chambers to provide their feedback on the amendments; and
- Foreign service providers should take note that none of the above apply directly to them and that as of this moment, there are no exemptions granted to foreign service providers under any Act, Regulation or Order.

If you would like to have further discussions on any of the above matters, please reach out to your usual Deloitte indirect tax contact or to any of our team members below.

Name	Email address	Telephone
<b>Tan Eng Yew</b> Indirect Tax Country Leader	<a href="mailto:etan@deloitte.com">etan@deloitte.com</a>	+603 7610 8870
<b>Senthuran Elalingam</b> Global Indirect Tax Clients & Industries Leader	<a href="mailto:selalingam@deloitte.com">selalingam@deloitte.com</a>	+603 7610 8879
<b>Wong Poh Geng</b> Director	<a href="mailto:powong@deloitte.com">powong@deloitte.com</a>	+603 7610 8834
<b>Chandran TS Ramasamy</b> Director	<a href="mailto:ctsramasamy@deloitte.com">ctsramasamy@deloitte.com</a>	+603 7610 8873

**Larry James  
Sta Maria**  
Director

[lstamaria@deloitte.com](mailto:lstamaria@deloitte.com)

+603 7610 8636

Best regards,

**Indirect Tax Team**



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**Deloitte Tax Services Sdn Bhd**

Level 16, Menara LGB  
1, Jalan Wan Kadir  
Taman Tun Dr Ismail  
60000 Kuala Lumpur  
Malaysia

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