



Indirect Tax Alert Service tax on foreign digital services (Update)

Members of the Deloitte Indirect Tax Team participated in a recent dialogue session with the Royal Malaysian Customs Department (RMCD) held on 9 August 2019 in relation to the contents of the draft Guidance on Digital Services (Draft Guide).

RMCD has indicated that the Draft Guide is currently pending, subject to the approval of the Ministry of Finance and could be subject to further revision, including taking into consideration feedback provided during the session.

We have provided below a summary of the key updates from the session. For further background, you may refer to our earlier Alert dated 25 July 2019 (link [here](#)).

Scope of digital service

The Draft Guide provides the following categories of services that would fall within the scope of digital services (non-exhaustive list).

Software, application and video games <ul style="list-style-type: none"> • Online licensing of software • Updates and add-ons website filters • Firewalls • Provision of mobile applications 	Database hosting <ul style="list-style-type: none"> • Website hosting • Online data warehousing • File sharing • Cloud storage
Music, e-books and film	Telecommunication services <ul style="list-style-type: none"> • Cloud-based telephony
Advertisement and online platform	Online training <ul style="list-style-type: none"> • Webinar • Online courses • E-learning • Distance teaching
Search engines and social networks	Others <ul style="list-style-type: none"> • Subscription to online newspapers and journals • Provision of other digital content like images • Text • Information and payment processing services

The following would NOT be considered as digital service:

- Where the services can be obtained without the use of information technology (IT);
- Where the transmission of the services is provided via email (delivery of the services require human intervention).

Marketplace rule

As mentioned previously, the expansion of the service tax rules will include a marketplace rule where intermediaries who sell digital products will be required to register and collect service tax. In determining the registration obligation of a foreign service provider, RMCD will look at who issues the invoice for the digital service provided. For instance, where an intermediary, such as a platform owner, issues an invoice directly to the consumer, the platform owner will have to account for service tax. Additionally, where an application developer who provides the application on the platform issues an invoice to a consumer, then the liability to account for service tax falls on the application developer.

Malaysian resident

In determining whether a consumer is based in Malaysia, the primary test of residency will be assessed based on the following:

- Billing address
- Home address
- Recipient's country selection

Registration

The Draft Guide states that registration for service tax in Malaysia will open for foreign service providers from 1 October 2019 onwards. The threshold for registration will be kept at RM500,000 on the total turnover of the digital services provided. The application for registration will be similar to the existing service tax rules and the registration will be available online. A foreign service provider will be considered as being effectively registered for service tax the first day of the next month after submission of application, and the first filing period will be January-March 2020. Where a foreign service provider registers after the effective date (i.e. 1 January 2020), and the first taxable period for the purposes of filing will be the next taxable quarter.

Invoicing

The invoicing requirements for a foreign service provider will be identical to the requirements for local service providers with the only exception being the ability to quote in foreign currency on the invoice.

Filing of service tax return

The declaration of service tax for digital services will be made via DST-02 form. The returns must be declared in Malaysian Ringgit (RM) and RMCD has confirmed that there are no specific requirements on the foreign exchange rate used, i.e. any method of conversion can be used.

Deloitte's comments

Technical Issues

A number of critical points has arisen from the discussion that were not covered in the Draft Guide. In particular:

- 'Digital Services' is not the same as information technology services under the domestic taxable services category and can in fact be broader and cover more services;
- The exemptions that exist under the domestic service tax rules (i.e. the B2B services exemption and the intra-group exemption) would not apply to digital services;
- The authorities view the term 'automated' as being without significant human intervention. The download of an item from the internet by a recipient would still be seen as automated;
- Telecommunication services are intended to cover only VOIP-type services and not traditional telecommunication services.

Implementation timeframe and next actions

The final guidance is likely to be delayed further and we would recommend that businesses do not wait until the issuance of this guidance before proceeding with their implementation.

It is unlikely that the guidance itself would be comprehensive enough to address all issues and concerns of foreign digital service providers and so assumptions and positions may need to be taken. There is also limited time to engage with RMCD individually on company-specific issues and we would recommend that businesses consider taking such actions.

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Best regards,

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