Indirect Tax Alert
Service Tax on Foreign Digital Services to Malaysian Consumers

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 1st 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.

We have summarised this below:

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:

(a) makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia;
(b) acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia;
(c) 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 MYR 500,000 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.

Deloitte's View

Although the primary intention of the Malaysian Government and the RMCD was to bring into the tax net the large online service providers providing digital and electronic content, the Bill as drafted creates the potential for a much broader range of services and service providers to fall into the net. As we have seen in some countries that have adopted these rules, it appears that our Malaysian rules will also have specific intermediary / marketplace / platform rules that would apply to shift the obligation for collection of tax onto those intermediaries (e.g. App stores).

The definition of consumer also leaves some ambiguity as to whether it is intended to only apply to private individuals, and if a broader application is taken it will create significant conflict and confusion with the existing rules that cover business to business imported taxable services. We anticipate that there will be further guidance providing on how to distinguish between customers who are business and consumer in nature.

As there is less than 9 months to the date of commencement and less than 6 months for the date of registration, we would recommend that foreign digital service providers start the process to assess whether their activities fall within the scope. An early start would enable identification of any areas of uncertainty or difficulties in administration that can be brought before the authorities to address prior to implementation.

Although no detailed information has been provided, based on discussions that have taken place with the authorities, we understand that there would be a simpler process for online registration than that is currently in place for domestic companies. We anticipate that there would be less information required, though as of now it is unclear whether the requirement for the use of local bank accounts will remain.

As the threshold for registration is not high, it remains to be seen the approach the authorities will take to get all digital service providers into the net. In previous discussions, the authorities have indicated that they could seek to block the IP addresses of any service provider who fails to register. Significant penalties can also apply for non-compliance such as failing to register on time, including maximum 40% of the tax involved for late payment of the tax, and the potential for jail terms. However, in practice we have not seen jail terms imposed in relation to tax non-compliance. Where a monetary penalty is to be imposed, it also remains unclear what measures the authorities would look to take to collect from non-compliant foreign service providers.

As the Bill also proposes that RMCD will have power to make regulations on "all matters relating to digital services", further and more detailed rules may be introduced to address implementation and enforcement matters e.g. whether foreign service providers

would have to appoint 'fiscal representatives' in Malaysia for the purpose of service tax compliance and whether the liability of foreign service providers would be imputed to such fiscal representatives.

If you would like to discuss any of the above further, feel free to reach out to your usual Deloitte indirect tax contact or to any of the people listed below.

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Best regards,

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