



## Indirect Tax Alert

# Voluntary Disclosure Program for Indirect Tax – Get Prepared

The Ministry of Finance (MoF) in its inaugural Pre-Budget Statement has announced that there would be a ‘Special Voluntary Disclosure Program’ (SVDP) focused on indirect taxes.

### What do we know?

At present, voluntary disclosures without imposition of compound have been granted by the Royal Malaysian Customs Department (RMCD) for import duty, sales tax, and service tax on a case-by-case basis. This upcoming SVDP for indirect taxes is likely to include sales tax, service tax (including service tax on digital services and imported taxable services), the abolished GST, customs and excise duties, and the tourism tax.

We also anticipate that the SVDP is likely to be a fairly broad waiver of penalties for underpaid tax and/or customs duties that are disclosed, and some concessions from the RMCD that a disclosure would result in minimum verification of documents.

We expect more details to be released in the coming weeks and months.

### Why is it important?

The SST has been around for 3 years and other indirect taxes like customs duty and excise duty have a much longer history. What we have seen over time is a lot of changes being made to the Law and guidance, as well as the practical application of the rules also evolving over time. As a consequence, it is very challenging for businesses to stay on top of compliance requirements, and errors occur. In addition, the RMCD can now conduct indirect tax audits going as far back as 6 years, with expanded powers.

Areas where we have seen errors and issues:

- Correctly reporting and accounting for service tax on imported services;
- Customs and excise duty and sales tax implications of transfer pricing adjustments for the import of goods;
- Tariff classification of goods;
- Sales tax implications on intermediate taxable goods in the course of an integrated manufacturing process to produce non-taxable goods;
- The scope of service tax on 'digital services', 'management services', 'information technology services' and 'consultancy services';
- The application of various exemptions provided for under the indirect tax laws.
- Late registration for SST

The concern with such errors is that they are transactional in nature and can be compounded, as they are not discovered until much later. Consequently many transactions could have been incorrectly reported.

If such errors are discovered by the RMCD, a business would not only need to pay the underlying tax amount, there can also be significant penalties imposed.

At present, if a business proactively discloses the error, there is no guarantee that penalties would be waived. This is because presently, the RMCD does not have a formal voluntary disclosure scheme. As a result, each disclosure is handled on a case-by-case basis, and there are no published guidelines on penalty waivers by the RMCD. This lack of formal process has thus made some businesses reluctant or wary of disclosing errors to the RMCD.

For this reason, the SVDP for indirect tax is greatly welcomed. This is why we encourage businesses to take advantage of this scheme as it is not clear how often, or if at all it would be repeated in the future.

### **What can you do now?**

Businesses will need to wait for detailed guidelines from the RMCD on how to make an application under the SVDP. To take full advantage of this offer, we recommend businesses proactively undertake a self-review to ensure they identify any/all errors that need to be disclosed. It is likely that the penalty waiver would only apply to the items disclosed in the application instead of a broad waiver of any/all penalties on errors that a business may have committed. It is thus important to be precise.

### **How can Deloitte help?**

Our team of indirect tax specialists have significant experience in undertaking indirect tax reviews and health checks which can be comprehensive and tailored to specific risk areas. We can assist you in developing the scope of the review by sharing our experience of the key and common risk areas made by businesses in your industry. We can support you in the conduct of the review, confirmation of technical positions undertaken, appropriateness of the documentation issued/retained, and most importantly identification of any errors.

If based on our review, we have identified any errors, we can then support you in quantifying the amount of tax underpaid and in the management of the SVDP process with the RMCD.

If you are interested in hearing more about our services, please get in touch with any of our indirect tax professionals listed below or your usual indirect tax contact.

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Best regards,

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