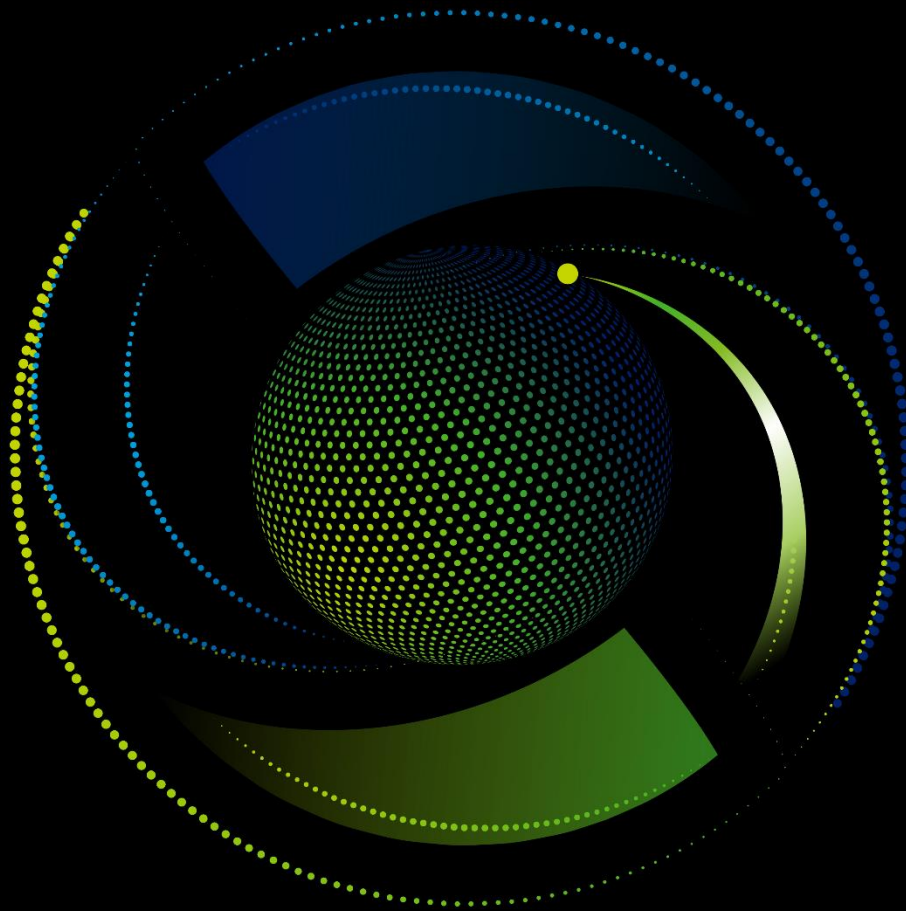


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Indirect Tax Chat

Keeping you updated on the latest news in the Indirect Tax world

April 2023



Issue 04.2023

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Greetings from Deloitte Malaysia's Indirect Tax team

Welcome to the April 2023 edition of our Indirect Tax Chat.

The RMCD recently released an official [announcement](#) about a program for the remission of penalties and surcharges between February to September 2023. The eligible taxes are goods and services tax ("GST"), sales tax and service tax 2.0 (from September 2018 onwards), tourism tax, and the departure levy. This is a separate scheme from the Special Voluntary Disclosure Programme ("SVDP") 2.0 announced in Budget 2023. For more information on the current remission program, please refer to our Alert [here](#).



Moving on to what we will cover in this month's Chat, we explore the ways the Sales Tax and Service Tax ("SST") could be improved, as well as tourism tax regulatory updates. We also cover a sales tax and excise duty exemption on taxis and private vehicles.

Separately, here are some recent news that may interest you:

- Senator Tan Sri Low Kian Chuan said that the Government should consider a sustainable and comprehensive method of expanding income by reintroducing the GST at a reasonable rate. Low, who is also the president of the Associated Chinese Chambers of Commerce and Industry of Malaysia ("ACCCIM") said that this effort is expected to strengthen the Government's revenue collection. He shared that ACCCIM fully supports the reintroduction of GST, and suggests improving the reimbursement system and setting the annual threshold value at a reasonable level. For more information, please click [here](#) and [here](#).
- Deputy Finance Minister II Steven Sim Chee Keong said that the luxury goods tax ("LGT") announced in Budget 2023 is not an alternative to the GST. He added that the ministry is refining the LGT and studying several aspects of it, such as the tax structure and the rate to be imposed. The Finance Ministry is also getting feedback from sessions with stakeholders, such as manufacturers, retailers, and tourism industry players on the LGT. For more information, please click [here](#) and [here](#).

We would like to take this opportunity to wish all our readers *Selamat Hari Raya* and a happy *Wesak Day*!

Best regards,
Tan Eng Yew
Indirect Tax Leader

1. Modernising the SST

Now that it is clear that the Government does not intend to make any wholesale changes - such as the reintroduction of the goods and service tax - there should be some focus on improving the existing tax system, to make it more business-friendly.

The Sales Tax and Service Tax, commonly referred to as “SST”, in its current form is difficult to navigate, overburdened by process, negatively impacts exporters, and attracts multiple layers of tax through the supply chain. Due to its narrow scope, the burden of the tax is also more skewed to the manufacturing and services sectors, with other sectors impacted in only a limited fashion.

It is important that these inherent issues in the SST are addressed if we want to maintain our competitiveness in the region. We look at some of these critical areas:

Export challenges

Malaysia aspires to become a regional manufacturing hub – and for good reason, as we are already home to many manufacturers. These aspirations have been, however, made increasingly challenging to achieve by competition from our neighbours – Indonesia, Thailand, Vietnam and even Singapore.

Ideally, we would want to ensure that goods exported from Malaysia are ‘tax-free’ as these goods would be taxed in the country where the goods are imported into and consumed. It is also consistent with international norms, as most countries (including all our key competitors) adopt a GST / VAT type tax that allows for ‘tax-free’ imports i.e., no tax charged and no tax embedded in the price.

While the sales tax provides for a multitude of ‘exemptions’ and ‘drawback’ claims that allow manufacturers to remove any embedded sales tax, this is cumbersome and inefficient in practice. We have encountered numerous scenarios, where exporters have encountered difficulty in accessing these concessions and as a consequence, need to bear the cost. Furthermore, the ability to offset or reduce the SST cost is only limited to sales tax, while service tax continues to be an additional burden that needs to be factored into the final price. Our competitors have regimes where exporters can offset all of the GST/VAT they pay, so they are truly free of tax. At best, our SST only allows partial offset, and in some cases, none at all.

The export services sector does not fare much better as the service tax only ‘exempts’ export services in limited and ‘vague’ circumstances. Our competitors have adopted the GST / VAT concept of taxing services where the customer ‘consumes’ the service, whereas Malaysia has a principle of exemption only if the “subject” of the service is “outside of Malaysia”. The former is much clearer on when tax needs to be applied. There is also very little guidance on how and when tax should be imposed in Malaysia. Many exporters simply impose service tax on their services – which increases their service costs. Additionally, as the foreign customer is most likely in a GST / VAT jurisdiction, they would need to pay tax under their domestic rules for importing services. This creates a further competitive disadvantage for Malaysian exporters of services.

Lack of cohesion between the Sales Tax and Service Tax

While the term SST implies it is a single tax, it comprises two separate taxes operating independently of each other, with no common principles. Sales tax is a tax on manufacturers and importers and is imposed on the import and wholesale value. Service tax is imposed on the provision of services and is on the final sales price charged. While there are exemptions / concessions in both of these taxes, they are only limited to those operating under the respective tax regime i.e., it is not possible for a service tax registrant to claim a concession under sales tax without first being registered for sales tax and meeting the relevant conditions.

The tax rates that apply are also not consistent, with sales tax using rates of 5%, 10%, and “exempt”, while service tax has 6% and “exempt”. From a tax policy standpoint, it is not good for one form of business activity to be taxed on principles totally different from another form of business activity, as we see here between the manufacturing and services sectors. As both sectors are critical sectors to the Malaysian economy, it would make sense to have a more consistent methodology for taxing this activity.

Supply Chain

The recent pandemic has highlighted how interdependent our supply chains are. It is no longer the case where you have a single business responsible for all facets of how a product is ultimately delivered to you. In this technological age, we are seeing even more advancements in the way that services are delivered. If Malaysia is to continue to be a competitive ‘cog’ in this global supply chain, it needs to ensure that the SST system is not creating additional ‘cascading’ costs.

Unfortunately, the service tax, and to a lesser extent, the sales tax can create multiple layers of tax throughout the supply chain. Since the reintroduction of the SST in 2018, there have been attempts to address the issue of double tax or cascading tax. This has largely been patchwork and ‘firefighting’ measures, which have resulted in concessions with limited application and complex requirements to satisfy that have ultimately failed to tackle the core issue.

What steps can we take to modernise?

What is outlined above is certainly not a comprehensive listing of all the issues businesses are facing with the SST, however, I consider these to be the most critical to ensure we retain our competitiveness.

Here are a few measures that could be explored to ‘modernise’ the SST and put our businesses on a level playing field with our counterparts in Vietnam, Indonesia, and Thailand:

1. Allow exporters of goods and services the ability to offset / refund any sales tax and service tax incurred in relation to undertaking that activity
2. Adopt a ‘consumption test’ for exported services so that only services consumed in Malaysia are brought to tax
3. Provide a broad-based ‘offset’ for any sales tax or service tax incurred by a business through its supply chain to ensure tax is only paid once and not multiple times

While the Government has made it clear that now is not the right time to reintroduce the GST, it does not mean that we cannot take steps to modernise our SST, so that it does not impact our competitiveness as an economy and our attractiveness as an investment destination.

This article was published on Edge Weekly on 1 April 2023.

Brought to you by:



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2. Tourism Tax Regulatory Updates

As a brief background, the tourism tax (“TTx”) has been in effect since [1 September 2017](#), where accommodation operators (i.e. hotels) are required to collect TTx from any tourist staying at their premises. The TTx at the rate of [RM10 per room per night](#) is required to be collected by the operator and then paid to the Royal Malaysian Customs Department (“RMCD”).

Effective 1 January 2023, the collection requirements changed to include online travel platforms facilitating online bookings of accommodation, who would now have to collect and report the TTx in relation to any bookings made through their platform. There was a limited concession provided by way of the RMCD’s [Tourism Tax Policy No. 1/2023](#), which we covered in our [March 2023 Chat](#).

On 1 March 2023, new regulations were gazetted and are detailed below.

Tourism tax for accommodation service providers (operators)

The [Tourism Tax Regulations 2017](#) (“TTR”) for accommodation operators was amended via the [Tourism Tax \(Amendment\) Regulations 2023](#). The salient points of the amendments to the TTR are as below.

- New regulation 5A to be inserted, which prescribes the following particulars on invoice or receipt in relation to accommodation premises provided to the tourist:
 - a) the invoice or receipt serial number;
 - b) the date of the invoice or receipt;
 - c) the name, address and tourism tax identification number of the operator; and
 - d) the number of accommodation and nights for each accommodation provided.
- Subregulation 6(5) is amended to prescribe the following particulars on credit notes or debit notes:
 - a) the serial number of the credit note or debit note;
 - b) the date of issuance of the credit note or debit note;
 - c) the name, address and tourism tax identification number of the operator;
 - d) the serial number and the date of the original invoice or receipt;
 - e) the reason for the issuance of the credit note or debit note;
 - f) the number of accommodation and nights for each accommodation provided; and
 - g) the rate and amount of tourism tax chargeable.
- Regulation 8 is amended to prescribe the manner of furnishing [TTx-03 returns](#) to be submitted electronically via the RMCD’s [MyTTX portal](#), or in any manner as the Director General may determine.
- Regulation 9 is amended to state that payment of TTx, penalty, surcharge or any other money, shall be made through electronic banking or in any manner as the Director General may determine.

Tourism tax for Digital Platform Service Providers (online travel platforms)

The [Tourism Tax \(Digital Platform Service Provider\) Regulations 2021](#) (“DPSP Regs”) for online travel platforms was amended via the [Tourism Tax \(Digital Platform Service Provider\) \(Amendment\) Regulations 2023](#). The salient points of the amendments to the DPSP Regs are as below.

- New regulation 4A to be inserted, which prescribes the following particulars on invoice or receipt in relation to booking of accommodation premises made by a tourist:
 - a) the invoice or receipt serial number;
 - b) the date of the invoice or receipt;
 - c) the name, address and registration number of the digital platform service provider (“DPSP”); and
 - d) the number of accommodation and nights for each accommodation provided.
- Subregulation 5(3) is amended to prescribe the following particulars on credit notes or debit notes:
 - a) the serial number of the credit note or debit note;
 - b) the date of issuance of the credit note or debit note;
 - c) the name, address and registration number of the DPSP;
 - d) the serial number and the date of the original invoice or receipt;
 - e) the reason for the issuance of the credit note or debit note;
 - f) the number of accommodation and nights for each accommodation provided; and
 - g) the rate and amount of tourism tax chargeable.
- In subregulation 7(3), the deadline to make payment of tax is made clearer by stating it is due “not later than” the last day of the month following the end of each taxable period.
- New subregulation 15(3) is inserted, which sets that regardless if the due date to submit the TTx-03A return and make payment of TTx falls on a holiday in Malaysia or in the country of establishment for the DPSP, such deadline remains, and is not extended to the next business day.

Compounding for tourism tax offences

The [Tourism Tax \(Compounding of Offences\) Regulations 2023](#) was gazetted to prescribe the following as compoundable offences:

- all offences committed under the [Tourism Tax Act 2017](#) (“TTA”) except for sections 39 and 58;
- all offences committed under the TTR; and
- all offences committed under the DPSP Regs.

Upon receipt of any information or complaint that an offence which may be compounded has been committed, the RMCD may, with the written consent of the Public Prosecutor, issue an offer to compound the offence.

An offer to compound an offence shall be valid for a period of 14 days or such extended period as the RMCD may grant. If full payment of the sum offered is made (by bank draft) before the expiry of 14 days or such extended period granted, no further proceedings shall be taken against the person who committed such offence.

If no payment of the compound offered is made within the period specified, prosecution may be instituted against the offender without further notice.

Tourism Tax Policy No. 2/2023

The RMCD issued the [Tourism Tax Policy No. 2/2023](#), which extends the limited concession provided under the RMCD's [Tourism Tax Policy No. 1/2023](#), from 1 April 2023 to 31 December 2025.

In summary, with regards to accommodation premises booked online via a DPSP's online travel platform, the party who receives payment from the tourist (DPSP or Operator) will be responsible for the collection, accounting and remitting of the TTx to the RMCD.

This means that:-

- a) DPSP Collect: If payment for the online booking of accommodation by the tourist is made directly to the DPSP via its online travel platform, the DPSP would be the party responsible to charge, collect, account for, and remit the TTx to the RMCD.
- b) Hotel Collect: If payment for the online booking of accommodation by the tourist is made directly to the Operator upon check-in/check-out, the Operator would be responsible to charge, collect, account for, and remit the TTx to the RMCD. This would be done in the same manner as bookings that have been made directly with the hotel, under subsection 7(1) of the [TTA](#).

Deloitte's comments

The TTR and DPSP Regs were mainly amended to prescribe required particulars when issuing invoices or debit and credit notes in relation to TTx. Accommodation operators or online travel platforms who are not able to produce tax-compliant documents would be required to seek a waiver from the RMCD from doing so.

We welcome the extension of the grace period up to the end of 2025. With this extension, it is hoped that the implementation of TTx may be carried out in a smoother manner.

Brought to you by:



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3. Excise duty and sales tax exemptions on private rental cars and taxis

Previously, the excise duty and sales tax exemptions on the sale, transfer, private use, or disposal of budget taxis and hired cars were:

- i. Limited to individually-owned budget taxis and hired cars only; and
- ii. Age of vehicle must exceed 7 years from the date of registration.

Following the recent 2023 Budget Announcement, the excise duty and sales tax exemptions granted to individual owners on the sale, transfer, private use, or disposal of budget taxis and hired cars will be expanded to include taxis (budget taxis, executive taxis, and Teksi 1 Malaysia [“TEKS1M”]), airport taxis (budget and family), and hired cars.

The qualifying age of the vehicle is now 5 years from the JPJ registration date, and this would apply to applications received by the RMCD from 1 March 2023.

The Guide on the Application for Excise Duty and Sales Tax Exemptions on the Sale or Transfer of Taxis and Private Rental Cars ([“the Guide”](#)) which was recently released by the RMCD introduces the following terminology:

1. Individual Owner Operator License
2. Individual-owned Vehicle Permit
3. Taxi (First Schedule of Act 715)
 - i. Budget Taxi
 - ii. TEKS1M
 - iii. Executive Taxi
4. Airport Taxi
 - i. Budget
 - ii. Family
5. Hired car

Eligibility for the exemptions on excise duty and sales tax:

- a) According to the 2023 Budget Announcement, the exemption granted is only applicable for the sale/transfer of ownership/use/disposal of taxis and hired cars owned by individuals after 5 years from the date of vehicle registration at JPJ.
- b) For a taxi or hired car under 5 years, payment of duties/taxes must be made based on the current assessment of the vehicle by the RMCD. The application should be submitted directly to the RMCD at the nearest branch.
- c) There is no duty or tax exemption for the purpose of sale or exchange of ownership for Premier Airport Taxi and Luxury Taxi categories.
- d) Excise duty and sales tax exemption will not be granted for the purpose of conversion of license class from taxi to car rental.

Individual owners must comply with the conditions, as stipulated in the Guide.

The summary of the application procedure is as follows:

- a) Applicants can obtain the form online [here](#), or at the nearest RMCD office.
- b) The following supporting documents must be submitted together with the form:
 - Copy of the original owner’s Identity Card;
 - Copy of driver’s licence;
 - Copy of public service vehicle (“PSV”) driving licence/ PSV of the vehicle owner’s or Second Driver’s license;
 - Copy of APAD vehicle permit;
 - Front and rear copies of the Vehicle Registration Certificate / Vehicle Ownership Certificate (vehicle grant);
 - Copy of SSM Registration Certificate; and
 - Copy of PUSPAKOM inspection (if available).
- c) The application can be submitted over the RMCD’s counter, or via post to the nearest RMCD office. For applications to the RMCD WPKL branch (i.e. in Kuala Lumpur), the online application can be submitted on the “E-Teksi” System available at [e-TEKSI \(customs.gov.my\)](http://e-TEKSI.customs.gov.my).

Deloitte’s comments

The COVID-19 pandemic has had an impact on the taxi service business in numerous nations, including Malaysia. The road transportation activity for taxis has significantly decreased with the increasing popularity of ride-hailing. The excise duty and sales tax exemptions on the change of ownership or disposition of taxis are made available not only to individual taxi owners, but have also expanded to include the owners of exclusive and airport taxis, to assist those who have been negatively impacted by the pandemic. Additionally, the vehicle age, which has been held for at least 7 years from the registration date, is now reduced to 5 years. This indicates that the approach is to regulate and further enhance the protection of taxi services in hopes of resolving the crisis effectively. It is thus crucial for relevant parties to be informed of this new exemption, and that the above is applicable for applications received by the RMCD as of March 2023.

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