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Indirect Tax Chat

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Indirect Tax world

August 2020



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Key takeaways:

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the August 2020 edition of our Indirect Tax Chat.

In recent months we have seen an increase in audit activity by the Royal Malaysian Customs Department ("RMCD"), with the continuation of final GST Audits as well targeted sales tax, service tax and import duty audits. Due to the increased activity in this area, we encourage you to stay updated on the technical developments and ensure you are compliant with the rules.



On a more positive note, the RMCD has reported that the GST amounts refunded have increased to RM1.479 billion as of 8 July 2020, leaving an outstanding amount of RM4.763 billion awaiting payment. The authorities are expecting to settle all payments by the end of 2020.

We previously advised that a number of key deadlines were approaching. Firstly, 1 September 2018 was set by RMCD in their guidance as being the final date for GST adjustments and reporting. However, the RMCD just released an updated version of the GST Guide On Declaration and Adjustment After 1st September 2018 (accessible [here](#)) in which the reference to 1 September 2020 deadline has been removed. It is unclear as to the intention of the removal, and we note the GST Guide on Tax invoice, debit note, credit note and retention payment after 1 September 2018 which also contains this deadline has not been amended. We will be seeking further clarification on this and hope to have more updates in our next edition.

Secondly, the exemption given to companies in Labuan from self-accounting for service tax on imported professional services under the [Service Tax Policy 2/2019](#) will end on 31 August 2020. At the time of writing, no extension has been announced. For companies in Labuan who have been relying on this exemption, we would advise you to take note of the expiry date of the policy.

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

- The Chairman of the International Strategy Institute, Cheah Chyuan Yong, suggests to explore the reimplementing of GST for a better future for the country and that the decision to implement GST should not in any way be politicised, but be seen strictly from an economic perspective, and implemented as a form of necessity in a country that is struggling fiscally to save its economy from a recession. For more information, please click [here](#).
- Deputy Domestic Trade and Consumer Affairs Minister, Datuk Rosol Wahid said that neither the Sales Tax and Service Tax (SST) nor the Goods and Services Tax (GST) systems have a significant impact on the price of goods. Instead, the prices of goods in Malaysia are more significantly influenced by supply and demand than the tax system currently in place. For more information, please click [here](#).

We hope you find this month's tax chat informative, and that you continue to stay safe and well. To all Malaysians, we wish you a Happy Merdeka Day and a Happy Malaysia Day!

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Updated Service Tax Guide on Digital Services

An updated [Guide on Digital Services by Foreign Service Provider](#) (“the Guide”) as at 1 August 2020 has been released by the RMCD to replace the Guide on Digital Services as at 20 August 2019.

We have provided a summary of the significant updates to the Guide as below.

Services considered as Digital Service

Any provision of services that satisfy the definition of digital service is a provision of digital service.

The following services are defined as digital services:

- (i) *that is to be delivered through information technology medium or other electronic network;*
- (ii) *that cannot be delivered without the use of internet technology;*
- (iii) *that is to be delivered to consumer is essentially automated.*

RMCD has clarified that the term “essentially automated” may refer to the nature of the service when it is to be delivered with minimal or no human intervention from a service provider. For example, when the digital service is to be provided to consumer, service provider does not have to interfere, carry out or perform any activities, but the consumer will be able to acquire or download the digital services themselves.

The Guide also provides an updated example for the following types of digital services:

Provision of digital service	Example
(i) Software, application & video games	Online licensing of software has been replaced with “ <i>downloading of online software</i> ” “ <i>Online gaming</i> ” has been inserted to the example
(ii) Music, e-book and film	Live streaming services has been replaced with “ <i>streaming services</i> ”
(viii) Online training	Provision distance teaching has been replaced with “ <i>provision of distance learning</i> ” Webinar has been replaced with “ <i>pre-recorded webinar</i> ”

The Guide released by the RMCD has further incorporated the changes provided in [Service Tax Policy 4/2020](#) and [Service Tax Policy 5/2020](#) where online distance learning and online newspaper, online journals and periodicals provided by a FSP are not subject to service tax effective from 1 January 2020. This is consistent with the changes highlighted in our [January 2020 Indirect Tax Chat](#) regarding Service Tax Policy No.4/2020 and Service Tax Policy 5/2020.

Online platform operator who is considered as Foreign Service Provider (“FSP”)

Online platform operator who makes transaction for provision of digital services on behalf of any service provider shall be regarded as a FSP if **any** of the following conditions are met:

- a) *The online platform operator authorises / functions in setting the term and conditions of the underlying transactions*
- b) *The online platform operator has a direct or indirect involvement in the payment processing*
- c) *The online platform operator has a direct or indirect involvement in the delivery of the digital service*
- d) *The online platform operator provides customer support service in relation to the provision of digital services*
- e) *The invoice or any other document provided to the consumer identifies the supply as made by the online platform operator*

Who is considered a Consumer in Malaysia?

In determining if a consumer is in Malaysia, the Guide has also clarified that the foreign registered person (“FRP”) shall obtain or maintain at least two non-conflicting information (i.e. billing or home address, recipient’s country selection upon registration/purchase) that support the consumer is a Malaysia consumer for the purpose of charging service tax to consumer. In a situation where the FRP provides digital service periodically and impose charges on a periodic basis (e.g. every month), the FRP shall use the information provided by consumer that established the consumer status during subscription or registration unless the consumer updates the status.

Digital Service provided within the same group of companies

This is an intra-group facility available to FRPs who provides digital service to a company in Malaysia within the same group of companies. This facility was recently inserted into the Service Tax (Digital Services) Regulations 2019 effective 14 May 2020 and is now incorporated in this Guide. Please click [here](#) for a copy of the amendments for your reference. We previously covered these recent amendments in our May 2020 newsletter, which you can access [here](#).

Manner of Furnishing DST-02 Return

It is stated in the Guide that FRP is allowed to issue debit notes and credit notes to consumers in Malaysia.

For debit note issued by FRP, service tax is due when the debit note is issued or payment received.

For credit note issued by the FRP, if the FRP intends to claim a refund of service tax charged that has been declared and paid in earlier return, FRP shall make amendment to the return (i.e. DST-02) of the same taxable period the service tax was declared earlier. FRP may then proceed with a refund application.

Furnishing Return Amendment

The Guide released by the RMCD has further incorporated this section that was reflected in Appendix 1 to Guide on Digital Services by Foreign Service Provider, as at 30 March 2020. Please click [here](#) for a copy of the Appendix 1 as at 30 March 2020 for your reference.

Refund of Service Tax, Penalty, Fee or Other Money

The Director General of Customs may grant a refund of service tax, penalty, fee or other money that has either been overpaid or erroneously paid by a FRP, or where the FRP is entitled to such refund due to a Ministerial exemption. The refund application shall be filed using the DST-ADM01 form through the MySToDS portal together with the relevant supporting documents. Any application for refund should be made within one year from such overpayment or erroneous payment, or from when such entitlement of refund under a Ministerial exemption occurs.

Transitional Rules

Provision of Digital Services spanning before and after 1 January 2020

The Guide has provided additional examples to clarify the service tax treatment in relation to the provision of Digital Service before and after 1 January 2020.

- (i) If full payment has been received prior to 1 January 2020 for the provision of digital services to be provided on or after 1 January 2020, no service tax on digital services shall be charged by the FRP. Nevertheless, the recipient of the digital services in Malaysia has to account for service tax on imported taxable services.
- (ii) If invoice has been issued and payment has been received prior to 1 January 2020 for the provision of digital services to be provided after 1 January 2020, no service tax on digital services shall be charged on the payment received.
- (iii) If invoice has been issued prior to 1 January 2020 for the provision of digital services to be provided after 1 January 2020 and payment is received after 1 January 2020, the FRP shall charge service tax on digital service.
- (iv) If digital services has been provided to a consumer in Malaysia prior to 1 January 2020 and the invoice together with payment will be issued/received after 1 January 2020, the FRP shall not charge service tax on digital service since the digital service was provided before 1 January 2020.

Deloitte's comments

The examples of digital services that were updated in the Guide aim to provide more clarity to the FRPs. The previous digital services guide triggered more questions when looking into these services as a digital service especially from the aspect of human involvement/intervention.

Besides that, it appears that the FRP is provided with a concession to account and make adjustment for the issuance of debit/credit note respectively. However the process of making the relevant amendment to the DST-02 return followed by the refund application are an additional administrative burden to the FRP. At present, the refund form DST-ADM01 is not made available and we will need to wait for guidance to be released by the RMCD on how this refund will be processed.

Brought to you by:



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2. Updating a Foreign Registered Person's Service Tax Registration Details

With the RMCD having updated the [MySToDS portal](#) for foreign registered persons (FRP) of digital services, there are new features that FRPs may use to update the details of their registration.

Certain information changes require the FRP to notify the RMCD of such change as per subregulation 5(1) of the Service Tax (Digital Services) Regulations 2019. This includes any change in the following:

- a) Name of business
- b) Address of business
- c) Status of the business
- d) Authorised person(s) or details of the authorised person(s); and
- e) Types of digital services provided

The FRP can now notify the RMCD by submitting a request to update their details via the FRP's account in the MySToDS portal, by clicking the 'update' button on their DST-01 tab.

Apart from the above, there are other details a FRP can update in their registration through the MySToDS portal, such as:

- a) Website name
- b) Office telephone number
- c) Month of financial year end
- d) Business email address
- e) Date of achieving the prescribed value of digital services provided to Malaysian consumers
- f) Total value of digital services provided (in MYR)

Where a FRP requests to update certain details in their registration, the FRP will need to provide reasons for requesting the update. Supporting documents are required to be uploaded if the changes are made in relation to the FRP's business name, address, financial year end or authorised person(s).

We also note that there are three other particulars FRPs can request to alter through the MySToDS portal. This would require the FRP to provide reasons during the submission.

- a) Change of accounting basis
Under service tax legislation, service tax is to be accounted for when the FRP receives payment for its services (cash basis). However, though not provided for in service tax legislation, the RMCD has provided a concession to FRPs which provides them the option of accounting for service tax when their invoice is issued instead (accruals basis).
- b) Service tax amount to be shown on invoice
Under service tax legislation, the amount of service tax charged must be shown as a separate amount in a FRP's invoice. However, the RMCD has provided FRPs a concession that allows them the option to have the service tax amount as inclusive in the total amount payable in a FRP's invoice, instead of having the service tax amount stated as a separate amount.

c) Change in taxable period

Although the default taxable period for FRPs of SToDS is quarterly, subsection 56H(2) of the Service Tax Act 2018 allows a FRP to apply in writing to the Director General of Customs for a different taxable period. The Director General, upon receiving the written application, may:

- allow the application and the taxable period shall be the period as applied for; or
- refuse the application and the taxable period shall remain at every three months (quarterly); or
- vary the length of the taxable period.

Consistent with the legislation, RMCD is allowing a FRP to request for change in taxable period through the MySToDS portal where the available options are as follows:

- Monthly (12 DST-02 return submissions in a year)
- Bimonthly (6 DST-02 return submissions in a year)
- Quarterly (4 DST-02 return submissions in a year)
- Trimonthly (3 DST-02 return submissions in a year)
- Semi-annual (2 DST-02 return submissions in a year)
- Annually (1 DST-02 return submission in a year)

Deloitte's comments

The recent updates to the MySToDS portal make it administratively easier for FRPs to update certain details of their service tax registration. FRPs can state reasons for requesting any update, as well as upload any supporting documents to substantiate their request.

The concession to allow a FRP to alter its taxable period is a welcome one as it reduces the administrative cost of reporting and filing. As of the moment, no clear guidelines are provided as to when the authorities would approve an FRP to move to semi-annual or annual filing. We have been advised that decisions would be made on a case by case basis, and applications should be made through the MY SToDS portal.

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3. Policy on Sales Tax and Service Tax in Government Procurement

The Ministry of Finance (MOF) has issued a policy on SST regarding Government procurement, which came into effect on 15 January 2020. The policy, which is in the national language, can be found [here](#).

The policy will be applicable for all Government procurement of supplies of goods and services.

Please note that the terms “Government” and “Government agencies” in this policy generally refer to the Federal Government, State Government and local authority.

This policy would be useful for companies who are currently contracting or intending to contract with Government agencies.

A summary of the key points from the policy, for companies to take into account:

a) Supply to the Government

i. Goods

- Although sales tax is chargeable on taxable manufactured goods in Malaysia and/or on taxable goods imported into Malaysia, Government agencies are granted sales tax exemption on such acquisition of taxable goods (excluding petroleum and imported motor cars), under the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (“Person Exempted Order 2018”).
- The exemption would be based on the conditions laid down in the Person Exempted Order 2018.
- The relevant exemption certificate must be duly obtained by the Government agency on the MySST portal and furnished to the local supplier.
- This would also apply to a situation where a “third party” under a contract who has been appointed to undertake the importation or (local) purchase on behalf of the Government.
- This would also be applicable to companies who have a manufacturer status under the MOF Registry and registered with RMCD as sales tax-registered manufacturer.

ii. Services

Service tax is chargeable on all taxable services under the Service Tax Regulations 2018 (“STR”), that are supplied to the Government.

iii. Procurement of works (construction works)

Construction works are not subject to service tax. For other supplies, e.g. facility management etc., this will have to be referred to in the First Schedule of the STR (whether they would be taxable).

b) Adjustment of (Ongoing) Contract Price (when SST came into effect on 1 September 2018)

- For any contracts which were in force when SST came into effect on 1 September 2018, the supplier-company may apply for an adjustment to be made to the contract price from the respective government agencies, once the company has been registered for SST (if the contract is not completed yet).
- If there a reduction in the price (resulting from the adjustment), the Government Agency would be responsible to implement the adjustment fairly.
- It would be the supplier-company's responsibility to put forward a strong justification with clear evidence to show any increase of the contract price is due to the implementation of SST. The change of price needs to reflect the change in SST amount to be paid by the supplier-company.
- All contract price adjustments would have to be approved by the Controller-Officer ("*Pegawai Pengawal*") of the Government Agency prior to the adjustment.

c) Government Estimates and Determination of Procurement Method

- The Government Agency would have to take into account the SST impact in the annual procurement planning and allocation especially for the procurement of services.
- The Government Agency would have to use the departmental estimates without taking into account the SST amount, to determine the procurement method.

d) Offer Price made to the Government by supplier-company

- All offer prices made by the supplier-company who are contracting with the Government should not include service tax. If the services to be supplied are under the list of taxable services in the STR and the supplier-company has been duly registered by the RMCD, then the Government Agency would have to offer a procurement value inclusive of service tax.
- The supplier-company has to inform the Government at any time after it has registered with the RMCD, in order for the Government to make the service tax payments. Failure or delay in informing would result in the company being liable to bear the SST and will not be eligible to claim the service tax payment from the Government Agency.
- For price offers of supply of petroleum and motor cars, the pricing for direct purchase, quotations and tenders to the Government, have to be made without the inclusion of sales tax.
- For price offers of supply of services, the pricing for direct purchase, quotations and tenders to the Government, have to be made without the inclusion of service tax.

The above would apply to services provided by "other government agencies", under "central contract and "centralised panel contracts" entered into by the Government Agency.

These rules are enforceable from 1 September 2018.

Deloitte's comments

This policy seems to provide administrative guidance to the Federal/State Governments and local authorities to administer the implementation of SST in Malaysia and the SST impact on procurement value vis a vis budget estimate / allocation for such Government agencies.

This policy would also be useful as guidance to supplier-companies who are SST-registered and supply goods/services to such Government agencies. The general principle seems to be that, prices are to be initially quoted exclusive of SST to the Government agency. However, where supplier-companies are registered for SST, the procurement value would only then be inclusive of SST. In this regard, supplier-companies would have to promptly notify the Government agencies of their SST registration, otherwise they would have to bear the SST and would not be able to recover the SST from the Government agencies.

The SST rules came into effect on 1 September 2018 but the policy was only effective from 15 January 2020. This leaves an interim period between 1 September 2018 and 14 January 2020, where supplier-companies may have to deal with the Government agencies to resolve any SST issue outside the policy.

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