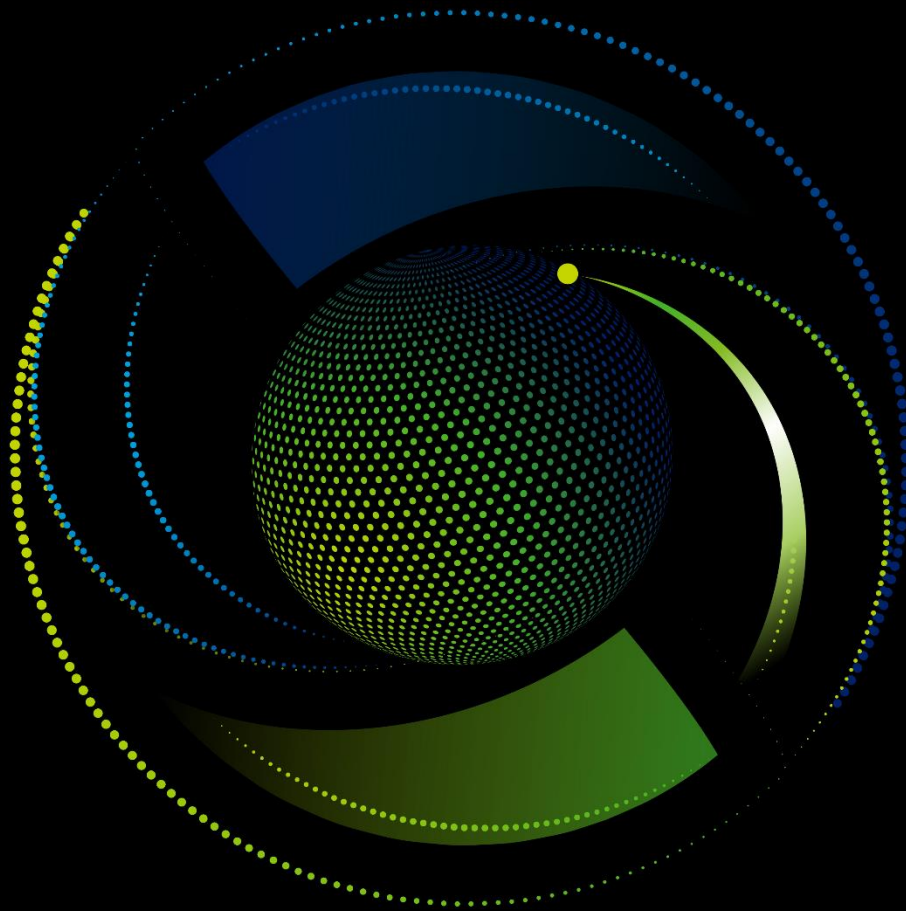


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Indirect Tax Chat

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

August 2022



Issue 8.2022

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the August 2022 edition of our Indirect Tax Chat. We hope that you are keeping safe and well.

As the Voluntary Disclosure and Amnesty (“VA”) Program comes to an end on 30 September 2022, we held a follow up to our webinar earlier this year. For our webinar held on 22 August 2022, we were supported again by our honourable guest speaker Puan Roszita binti Dim, Deputy Director of the RMCD, as we delved into the learnings from Phase 1 and examine the identified common areas of non-compliance .



August 2022 saw the introduction of nine [Bills](#) into Parliament to amend nine indirect tax Acts, which include sales tax and service tax (“SST”). Apart from Bills to amend Acts of Parliament, SST amendment regulations and tax policies were released by the Ministry of Finance (“MOF”) and the Royal Malaysian Customs Department (“RMCD”) respectively. In this month’s edition, we focus on some of the critical changes arising from these new bills, including the details on the expansion of sales tax on low-value goods. We also cover a new service tax policy that announces an exemption for certain non-bank digital payment service providers.

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

- The proposed introduction of sales tax for online sales of low-value goods will further reduce the purchasing power of consumers, although it will widen the tax base for the Malaysian government. Malaysia Association of Tax Accountants secretary general, Dr Mohd Fairuz A Razak said the sales tax amendment bill would further affect consumers who had been beleaguered by rising costs due to higher inflation and the weakening domestic currency. For more information, please click [here](#).
- Former chairman of the Malaysian Institute of Economic Research, Kamal Salih has questioned the think tank’s wisdom in pushing for a harmonised sales and service tax as an alternative to the government’s proposed goods and services tax (“GST”). He acknowledged that while the GST may not be perfect, it was the most efficient form of taxation, adding that there were measures to correct the imperfections. For more information, please click [here](#).

To our readers in Malaysia, we wish you a wonderful *Hari Merdeka!*

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Sales Tax on Low Value Goods

The Sales Tax (Amendment) Bill 2022 (“the Bill”) has passed the House of Representatives (*Dewan Rakyat*) and Senate (*Dewan Negara*) of Parliament. The most significant amendment brought about by the Bill is the introduction of sales tax on low value goods. We have summarised the key points below:

Imposition of sales tax on low value goods (“LVG”)

Scope of the Tax

Sales tax would be charged on **low value goods** sold by a **taxable person i.e. registered seller**

“**Low value goods**” (“LVG”) means any prescribed goods or class of goods outside Malaysia which are sold at a price not more than a prescribed amount (which we understand to be RM500) and brought into Malaysia in the manner prescribed.

“**Seller**” means a person whether in or outside Malaysia, who sells low value goods on an online marketplace or operates an online marketplace for the sales and purchase of low value goods.

When to account for sales tax

Sales tax will be due and payable in the period when the LVGs are sold by the taxable person.

LVG not to be delivered until sales tax has been paid

Where the sales tax of the LVG is not paid correctly and in full, the RMCD will not allow these goods to be delivered to the customer until the sales tax is paid in full.

Transitional provisions

A seller who sells LVG before the effective date for the imposition of sales tax on the LVG, is required to apply to register as a registered seller if there are reasonable grounds for believing that the total sale value of the LVG in the month of the effective date, and the 11 months immediately succeeding that month will exceed the prescribed registration threshold.

If the LVGs are purchased before the effective date for the imposition of sales tax on the LVG, such LVG shall not be charged with sales tax even though the LVGs are delivered to Malaysia after the effective date.

Deloitte’s comments

The applicable tax rate although not stated in the Bill is expected to be 10% and it would be applied on top of the price of the LVG, not including any tax, fee or other charges imposed. There are no new provisions covering the conversion of foreign currency amount for the purpose of reporting and collection.

Likewise, the threshold for registration is not stated in the Bill. However, we understand that it should be an annual turnover of RM500,000 for sales of LVG. A seller is generally required to assess on a historical and prospective basis (on a rolling 12 months' basis) its turnover in relation to LVG to determine if this threshold is breached. Where the threshold is breached, the seller would need to apply to the RMCD for registration and then be required to file a quarterly (3-month period) sales tax return. A registered seller would also be required to issue invoices to customers for any LVG sold.

Similar to service tax, the Malaysian Government's efforts of expanding the existing scope of sales tax by taxing the LVG will also have implications to marketplace / platform sellers where these parties will be obliged to collect tax. Despite such move, the mechanism of this new tax poses a number of ambiguities that include the following:

- Given the definition of 'seller', there is a lack of clarity as to what the implications could be if either the online marketplace operator or the seller in that marketplace decides to charge sales tax. We anticipate that there should be more guidance to distinguish each party's obligations above.
- Will cascading sales tax occur since sales tax could still be imposed on the import of taxable goods which may include LVG. Some form of exemption should be introduced to address this or that the prescribed list of LVGs should avoid such cascading circumstances – though information is scarce in respect to this.
- As only LVG with sales tax paid can be delivered to Malaysia, there is concern on how enforcement can be executed without creating administrative difficulties for customers to purchase/import the LVGs. Significant penalties can also apply for non-compliance, such as a maximum tax of 40% involved for late payment of the tax. Where a monetary penalty is to be imposed, it also remains unclear what measures authorities would take against non-compliant sellers.
- There is no clear timeline on the implementation of this new tax – other than that which was announced in the Budget 2022 i.e. 1 January 2023. With the potential issues discussed, affected businesses have less than 5 months (unless this is delayed) to implement while juggling potential ambiguities which the proposed amendments to the sales tax law could pose.

We are expecting more rules and guidelines to be issued to support businesses in implementing this new sales tax. However, we recommend that affected sellers should start assessing if they would fall within the scope of this new sales tax. Starting early will allow identification of any uncertainty or roadblocks which can be brought up to the authorities for consideration or rectification. Where required, specific concessions can also be sought prior to the implementation.

Brought to you by:



Nicholas Lee
Director
Kuala Lumpur



Nikki Suah
Manager
Kuala Lumpur

2. Service Tax Exemptions for Digital Payment Services

Over the last weekend of July 2022, the RMCD published two service tax policy documents (both only available in the national language); the first being an amendment to Service Tax Policy No. 10/2020 (“STP 10/2020”) and the second being the Service Tax Policy No. 1/2022 (“STP 1/2022”).

With regards to the [amendment](#) to [STP 10/2020](#), the service tax exemption remains status quo with the exception that the exemption is now applicable for transactions up to 31 July 2025. This policy is relevant for service providers in Malaysia who provide digital services in relation to withdrawals or transfer of funds from one bank account to another (i.e. primarily applicable to banks), where service charges are charged separately to the account holder. The only change from the amendment is the expiry date of such exemption which is 31 July 2025. For more information on STP 10/2020, please refer to our [April 2020 Chat](#).

As for the new [STP 1/2022](#), the salient points are as follows:

1. The policy exempts the recipients (customers) of digital payment services from having to pay service tax on services acquired from local non-bank service providers.
2. In line with this, effective 1 August 2022 to 31 July 2025, the following local (Malaysian) service providers are exempted from charging service tax to its customers:
 - a) Non-bank payment instrument issuers;
 - b) Non-bank merchant acquirers; and
 - c) Non-bank payment system operators
3. The local non-bank service providers who are eligible for the exemption are those:
 - a) registered for service tax under the [Service Tax Act 2018](#);
 - b) governed and licensed by the Bank Negara Malaysia (“BNM”) under the [Financial Services Act 2013](#) or Islamic Financial Services Act 2013; and
 - c) provides digital payment services in Malaysia.

Transitional rules

1. Any service tax collected from customers from 1 September 2018 to 31 July 2022 must be remitted to the RMCD.
2. No refund is allowed for service tax paid to the RMCD before 31 July 2022.
3. Where service tax is accounted for based on invoice date (accruals basis), and you have not received payment from your customer, you may issue a credit note and account for such credit note in your SST-02 return accordingly.
4. For any digital payment services provided before 1 August which spans across 1 August 2022, service tax should be imposed and accounted for on such services provided up to 31 July 2022, with the tax remitted to the RMCD.

Deloitte's comments

The release of STP 10/2020 back in 2020 was a significant development as it ensured that the new digital services rules would not give rise to additional costs in the banking system. However, the scope of the policy as it related to non-bank service providers was unclear. This created considerable confusion as to whether non-banks could access this exemption.

In a number of cases the RMCD and the MOF had taken a narrow reading that STP 10/2020 should only apply to banks. However, this view was never made public, and these positions were never clarified. As a consequence, there was significant uncertainty for non-bank financial service providers.

The release of STP 1/2022 provides some more clarity in relation to the views of MOF / RMCD, in particular by announcing an exemption for payment instrument issuers, merchant acquirers and payment system operators, the assertion is that these service providers were previously not eligible for exemption under STP 10/2020. While STP 1/2022 highlights that a requirement to account for tax remains for services prior to 1 August 2020, it is unclear how actively the RMCD would seek to audit this issue given the uncertainty that existed previously.

At least on a go-forward basis, the new exemption is a welcome one as it acknowledges the expansion of fintech use among the *rakyat* and provides an equal playing field for non-bank service providers that provide similar services to the banks or financial institutions.

Nonetheless, with the new STP 1/2022 policy, non-bank digital payment service providers should still exercise caution by ensuring that they are governed and licensed by BNM in the manner specified in the policy, and that their services would fall within the scope of the exempted digital payment processing services. This is to avoid a situation where a future tax audit disputes the position taken that a particular company is eligible to utilise the exemption under STP 1/2022.

Unfortunately, like with STP 10/2020, STP 1/2022 is only limited to local service providers and foreign providers are still obliged to register and collect service tax under the service tax on digital services rules. The policy is intended to support the local industry, but this seems inconsistent with Malaysia's aim to be a regional hub for Islamic and other financial services, failing to acknowledge the global and interconnected nature of financial services.

Another interesting development is the introduction of an end date for STP 10/2020 of 31 July 2025 (the same date applies to the exemption under STP 1/2022). Although it is common for exemptions to have an end date, it is unusual for one to be introduced after a period of more than 2 years since the exemption was first released. It is possible that the Government intends to give the local industry a fixed period to enjoy this concession before returning to equal treatment for both local and foreign providers.

The list of both bank and non-bank service providers are available on BNM's website [here](#).

Brought to you by:



**Ahmad Amiruddin
Ridha Allah**
Senior Manager
Kuala Lumpur



Patrick Ng
Senior
Kuala Lumpur

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3. Amendments to the Service Tax Act and Regulations

Amendments to the Service Tax Act 2018

Earlier this month, the Service Tax (Amendment) Bill 2022 was tabled in the House of Representatives (*Dewan Rakyat*) in Parliament to amend the [Service Tax Act 2018](#) (“STA”), which was passed on 4 August 2022. The proposed amendments in the Bill are as below.

- New section 38A to be inserted, which seeks to empower the Director General of the RMCD to withhold the whole or any part of the refundable amount to a foreign registered person, to be credited to any following or subsequent taxable period, and treat such amount as payment or part payment received from the foreign registered person.
- New subsection (4B) to be inserted in section 56A, which seeks to provide that a foreign registered person who ceases to be liable to be registered for service tax, the service tax shall be due on the day the return is furnished to the Director General of the RMCD.
- New subsection (aa) to be inserted in section 56D, to provide that a foreign registered person ceases to be liable to be registered if the Director General is satisfied that the total value of all digital services in that month, and the eleven months immediately preceding that month does not exceed the total value of digital services prescribed under subsection 56B(1) of the STA (currently at MYR 500,000 per year).
- New subsection (aa) to be inserted in section 56E, to provide that a foreign registered person shall notify the Director General in writing within 30 days from the date the foreign registered person ceases to be liable to be registered for service tax.
- New section 90A to be inserted to empower the Minister to extend the period to perform an act that is required to be completed within a certain period under the STA, if he is satisfied that the act or thing could not be completed within the period due to the occurrence of any public emergency or public health crisis. For example, where the SST-02 return is to be submitted by a registered person at the end of a particular month but due public emergency or public health crisis, the Minister may extend the deadline to a date as he deems fit.
- New section 90B to be inserted, where terms and conditions are imposed for any matter under the STA, the Minister may, on the advice of the Director General of the RMCD, modify (i.e. add to, delete, or vary) the terms and conditions for the purpose of carrying out the objectives of the STA. Reasonable notice must be given to the person bound by the terms and conditions to notify them of such modifications and effective date of such modifications.

Deloitte's comments

The proposed amendments in the Bill seek to provide avenues for foreign registered persons to obtain service tax refunds or to deregister from service tax. It also provides additional powers to the Minister and the RMCD relating to extension of statutory deadlines and modification of terms and conditions granted under the STA. The Bill was passed in the Senate (*Dewan Negara*) on 15 August 2022, and will receive the King's royal assent before becoming Law.

Regulatory updates for foreign service providers of digital services

The [Service Tax \(Digital Services\) \(Amendment\) Regulations 2022](#) was gazetted and became effective on 15 August 2022. They bring into effect certain changes in the principal [Service Tax \(Digital Services\) Regulations 2019](#) ("SToDS Regs"). The salient amendments to the SToDS Regs are as below.

- In subregulation 5A(1), the wordings of the intragroup relief are made clearer by stating that digital services provided by a foreign registered person ("FRP") to a related company in Malaysia is not considered as a digital service for the purposes of the (Service Tax) Act 2018.
- New subregulation 6A(3A) is inserted, which provides the RMCD with the regulatory power to allow any prescribed particulars not to be stated in a credit note or debit note issued by the FRP, upon request in writing and subject to conditions the RMCD deem fit.
- In subregulation 9(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 16(3) is inserted, which sets that regardless if the due date to submit the DST-02 return and make payment of tax falls on a holiday in Malaysia or in the country of establishment for the FRP, such deadline remains, and is not extended to the next business day.

Deloitte's comments

The most significant amendment is the additional powers granted to the RMCD to allow FRPs to request for simplified credit notes and debit notes. Previously, the RMCD only had the regulatory power to grant such requests for invoices which gave rise to administrative burdens to FRPs who could not configure their systems to meet the documentation requirements to be compliant with local tax regulations.

Brought to you by:

Ahmad Amiruddin
Ridha Allah
 Senior Manager
 Kuala Lumpur



Patrick Ng
 Senior
 Kuala Lumpur

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Contact us – Our Indirect Tax Team



Tan Eng Yew
Indirect Tax Leader
etan@deloitte.com
+603 7610 8870



Senthuran Elalingam
Executive Director (Partner)
selalingam@deloitte.com
+603 7610 8879



Wong Poh Geng
Director
powong@deloitte.com
+603 7610 8834



Chandran TS Ramasamy
Director
ctsramasamy@deloitte.com
+603 7610 8873



Larry James Sta Maria
Director
lstamaria@deloitte.com
+603 7610 8636



Nicholas Lee
Director
nichlee@deloitte.com
+603 7610 8361



Irene Lee
Associate Director
irlee@deloitte.com
+603 7610 8825



Wendy Chin
Senior Manager
wechin@deloitte.com
+603 7610 8163



Ahmad Amiruddin Ridha Allah
Senior Manager
aamiruddin@deloitte.com
+603 7610 7207



Leong Wan Chi
Senior Manager
wanleong@deloitte.com
+603 7610 8549



Eliza Azreen Kamaruddin
Senior Manager
eazreen@deloitte.com
+603 7610 7271

Name	E-mail address	Telephone
Naresh Srinivasan Manager	narsrinivasan@deloitte.com	+603 7650 6459
Syifa Yin Izhar Manager	syizhar@deloitte.com	+603 7610 7512
Nikki Suah Manager	nsuah@deloitte.com	+60 3 7610 7642
Ashokkumar Hothiyakumar Assistant Manager	ahothiyakumar@deloitte.com	+603 7610 9238

Other offices

Name	E-mail address	Telephone
Susie Tan Johor Bahru and Melaka	susietan@deloitte.com	+607 268 0851
Ng Lan Kheng Penang	lkng@deloitte.com	+604 218 9268
Lam Weng Keat Ipoh	welam@deloitte.com	+605 253 4828
Philip Lim Kuching and Kota Kinabalu	suslim@deloitte.com	+608 246 3311

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