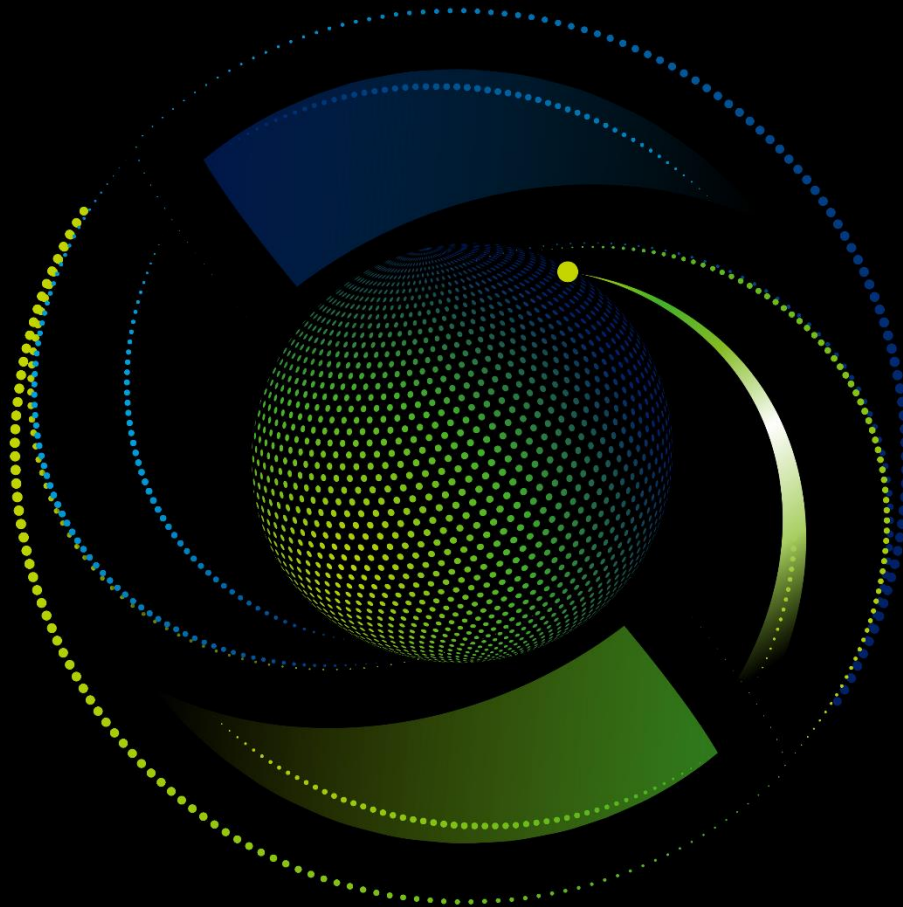


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## Indirect Tax Chat

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

August 2023



# Issue 08.2023

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## Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, we are delighted to welcome you to the August 2023 edition of our Indirect Tax Chat.

The Sabah Ministry of Finance (“MOF Sabah”) has announced an initiative to encourage State Sales Taxpayers in the categories of (i) fishery commodities brought out of Sabah and (ii) scrap iron and waste taken out of Sabah, to voluntarily register their licence and pay undeclared State Sales Tax to MOF Sabah. The program is effective from 15 August 2023 to 31 December 2023. Further details can be found in the guideline [here](#).



This month, we look at the updates on the Food & Beverages Services Guide published on 27 June 2023 and other Sales and Service Tax (“SST”) matters. We will also cover the amendments to the Free Zones Regulations and the Excise Regulations 1977.

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

- At the National Tax Conference 2023, Professor Jomo Kwame Sundaram, an economist and research adviser at the Khazanah Research Institute, said that we should go for the modified value added tax (“MVAT”) rather than going back to the goods and services tax (“GST”). He also added that any future consumption tax should be simplified and not be housed under the Royal Malaysian Customs Department (“RMCD”), but under one roof (by Inland Revenue Board of Malaysia). For more information, click [here](#).
- Wan Saadah Mohamed Muhibuddin, Deputy Director General of the Internal Tax Division of the RMCD, said they are targeting 4,248 new registrants comprising various premises, including restaurants, private companies, tourism, and hotel services. A nationwide registration operation has been deployed, where the RMCD officers will go on-site and help businesses and premise owners register with the department from Aug 1 until Aug 31 this year. For more information, click [here](#) and [here](#).
- A lawyer's legal challenge against the departure levy imposed on Malaysians traveling abroad concludes as the Federal Court denies him leave to appeal. In delivering the court's decision, Justice Nallini said the law on imposition of departure levy is valid as the Departure Levy Act 2019 does not impinge on the right of a person to travel abroad, adding that the act merely levies a tax on a person who departs from the country. For more information, click [here](#).

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

Best regards,

**Tan Eng Yew**

Indirect Tax Leader

# 1. Updates on the Guide on Food & Beverages Services and Other SST matters

## A. Updates on the Guide on Food & Beverages

The RMCD released an [updated Guide on Food and Beverages](#) (“F&B Guide”) dated 26 June 2023. This supersedes the previous Food and Beverages Guide dated 27 December 2021. The salient updates are as below.

- The provision or sale of alcoholic and non-alcoholic beverages were expanded to include the following, in accordance with the amendment to item (d) column 2 of Group B: Food and Beverage to the First Schedule of the Service Tax Regulations 2018 in force from 15 May 2023:
  - Cigarettes;
  - Tobacco product;
  - Smoking pipes (including pipe bowls);
  - Electronic cigarettes and similar personal electric vaporising devices;
  - Preparation of a kind used for smoking through electronic cigarettes and electric vaporising device in form of liquid or gel, whether or not containing nicotine; or
  - Alcohol or non-alcoholic beverages.
  
- Service tax treatment for the sale of cigarettes at SST registered restaurants (FAQ no. 43)  
Sale of tobacco products, whether or not containing nicotine, are subjected to service tax with effect from 15 May 2023. Therefore, SST registered restaurants will need to charge service tax on the sale of cigarettes.
  
- Service tax treatment on deposit for reservation (FAQ no. 22)  
Deposit for reservation is subject to service tax. According to the updated guide, service tax become due when payment is received, not when service is provided as stated in the previous guide dated 27 December 2021.
  
- Service tax treatment on packed food for take away at the restaurant (FAQ no. 41 and no. 42)  
Charges for packaging for the purpose of packaging the food for take away is subject to service tax as it is part of the service by the restaurant. However, charges on the sale of the plastic bags charged to the customer for their packed food from the restaurant is not subject to service tax.
  
- Service tax treatment on food and beverages prepared and sold in a convenience store (FAQ no. 25 and no. 44)  
Convenience store is not a taxable person as specified in column (1) Group B, First Schedule to the Service Tax Regulations 2018. Self-service food and beverage purchases are not subject to service tax. However, if the convenience store allocates a dedicated area for the purpose of preparing and selling food or beverages and fulfilled the characteristics of a restaurant, cafeteria, or similar, then the sale of food and beverages are subjected to service tax.

- The updated F&B Guide further reiterated that the provision of food and beverage services in Special Areas are subject to service tax since 6 September 2018, excluding a canteen located in an educational institution and a canteen operated by a religious institution or body. “Special Areas” means any free zone, licensed warehouse and licensed manufacturing warehouse, the Joint Development Area, and a petroleum supply base licensed under section 77B of the Customs Act 1967. Meanwhile, food and beverage services provided within the Designated Areas (Labuan, Langkawi, Tioman, and Pangkor) are not subject to service tax.

## B. Other SST Updates

### a. Draft Guidelines on Low-Value Goods (“LVG”)

The RMCD released an announcement on 1 August 2023 [here](#), mentioning that the draft LVG guide is being updated and will be released once it is finalised. The previous guide has been removed from the MySST portal.

### b. SST-ADM and SST-ADM 2

The RMCD has recently made the updated SST-ADM and SST-ADM 2 forms available on 1 August 2023. Businesses who may have undeclared SST may voluntarily disclose by submitting these designated forms to the RMCD.

### Deloitte’s comments

The RMCD appears to have changed its view regarding the service tax treatment on deposit for reservation, indicating that service tax becomes due when payment is received and not when service is provided. The amended Guide on Food and Beverage does not indicate when the change takes effect and the reason to support the change. Persons affected by the change should seek further clarification and confirmation from the RMCD as the change could have an adverse impact on the submitted service tax returns.

Effective from 15 May 2023, food and beverage operators who are registered for service tax must not only charge service tax on the provision of food and beverage (including alcoholic and non-alcoholic beverages), but must also charge service tax on the sale of cigarettes and its related products (i.e., electronic cigarettes/devices, tobacco products, smoking pipes/bowls, etc.). With this expanded scope of taxable goods and services falling under Group B First Schedule to the Service Tax Regulations 2018, food and beverage operators who are currently unregistered for service tax may potentially breach the threshold for service tax registration if its total value of taxable services, taking into consideration the abovementioned expanded scope, exceeds RM1,500,000 for a period of 12 months. Hence, such operators are encouraged to conduct a review to ascertain whether there is a liability to register for service tax and charge 6% service tax.

Convenience store operators with a dedicated area for customers to enjoy food and beverages prepared at the store should assess whether the store has the characteristics of a restaurant/cafeteria to determine whether registration for service tax is required.

Brought to you by:



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## 2. Amendments to Free Zones Regulations – prescribed forms changed to forms as determined by Director General of Customs

The Free Zones (Amendment) Regulations 2023 was gazetted on 19 April 2023 and deemed to have come into effect on 1 January 2023. The Free Zone Regulations 1991 (“principal Regulations”) was amended to essentially substitute the words and forms in relation to ‘prescribed form’ with the words in ‘the form and manner as determined by the Director General’, in relation to the following provisions of the Principal Regulations:

- Regulation 17A (1) - Port or airport clearance on departure of vessel or aircraft
- Regulation 17B - Permission for vessel go alongside legal landing place, etc
- Regulation 18 - Submission of manifest for goods imported, exported or transshipment
- Regulation 21A - Declaration of goods excluded from free status imported from outside Malaysia into free zones
- Regulation 24 - Goods brought from principal customs area into free zones
- Regulation 24A - Goods taken out from free zones into principal customs area
- Regulation 25 - Import and export of goods through free zones
- Regulation 26A - Goods transported from principal customs area to any territory through free zones
- Regulation 27 - Removal of goods under transit from free zones through principal customs area
- Regulation 28 - Removal of goods under transit from licensed warehouse etc. to free zones
- Regulation 29 - Removal of goods under transit from licensed warehouse etc. to free zones

### Deloitte’s comments

The above amendments on forms were made to the Principal Regulations only, and not the Free Zones Act 1990, because the provisions on the declaration forms, etc. for free zones purposes were enacted in the Principal Regulations. Similar amendments on forms to be used were made to other indirect tax laws, including the relevant parent Acts, such as the Customs Act 1967. However, for other indirect tax laws, the parent Acts contained the provisions on the declaration forms, etc. Hence, amendments had to be made to the parent indirect tax Acts themselves.

The relevant forms for free zone purposes, as determined by the Director General of Customs, are found in Public Ruling No. 1/2022 dated 30 December 2022 (“PR No. 1/2022”). The forms in PR No. 1/2022 are substantially the same as the previous ‘prescribed forms’ referred to in the pre-amended Principal Regulations, hence there is no significant practical change.

Nevertheless, in future, it would be easier for any changes to be made to the forms by the Director General of Customs, as there would not be any need to go through the legislative gazetting process. Businesses would have to monitor for any changes to the forms, which could be way of amendment to PR No. 1/2022 or other public rulings or notifications by RMCD.

For reference to the relevant forms, etc. as determined by the Director General of Customs, businesses may refer to PR No. 1/2022 at RMCD's website [here](#).

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### 3. Amendment to Excise Regulations 1977

On 20 April 2023, the Excise (Amendment) (No. 2) Regulations 2023 was gazetted and came into effect on 1 January 2023. Notable amendments were made to the abovementioned Regulations as below:

#### Revision of wordings in the Regulations

- Certain Regulations with expressions of Customs declaration forms (e.g., Form JKDM No. 1, Form JKDM No.3, Form Excise No.7, Form Excise No.8, Form Customs No.8, Form JDA No. 1, Form JDA No.2, etc.) are now replaced with “a declaration in the form and manner as determined by the Director General”.

#### Deletions in the Regulations

- Deletion of subregulation 28(4);
- Deletion of Part X; and
- Deletion of First Schedule

#### Deletions of word “completed in quadruplicate” in Regulations

- In subregulation 59E(1); and
- In subregulation 59F(1)

#### Substitution to Regulation 22 – Records to be kept by licensed manufacturer in tobacco product

- This regulation is substituted with the following:

*“Every licensed manufacturer in tobacco product shall keep at his licensed premises an entry book, a register, delivery book and a waste stock book in the form and manner as determined by the Director General.”*

#### Substitution to Regulation 29A – Removal of dutiable goods

- The subregulation (1), paragraph (a) is substituted with the following:

*“submit a declaration in the form and manner as determined by the Director General under the Customs Regulations 2019 to the proper officer of customs when removing part or whole of the dutiable goods;”*; and

- The subregulation (2), is substituted with the following:

*“the proper officer of customs shall authorize the removal of the goods.”*

#### Substitution to Regulation 31 – Removal of dutiable goods

- The marginal note is substituted with the following:

*“Removal of dutiable goods from premises licensed under section 20, licensed warehouse, or warehouse or other place approved by Director General under the Act.”*; and

## Substitution to Regulation 59G – Declaration when arriving in or leaving Malaysia

- This regulation is substituted with the following:

*“Every traveller or other person arriving in or leaving Malaysia shall submit a declaration in the form and manner as determined by the Director General under the Customs Regulations 2019 to the proper officer of all dutiable goods imported, in his possession either on his person or in any of his baggage or in any of his vehicles and pay the excise duty assessed, if any.”*

## Substitution to Regulation 59H – Declaration of imported goods

- The marginal note is substituted with the following:

*“Declaration of imported goods”; and*

### Deloitte’s comments

Businesses should remain vigilant about these changes and assess their potential impacts on current operational methods.

A crucial aspect to monitor is the completion of customs declarations for the movement of goods. The significance lies in the fact that the Director General of the Customs can alter the formats and information required for these forms without modifying the Regulations themselves, unlike the prior procedure.

Hence, it is imperative for businesses to stay informed about any alterations to these forms or updates released by the RMCD, particularly through its official webpage. In instances of uncertainty, both businesses and individuals should proactively seek clarification from the RMCD to ensure compliance and avoid disruptions.

### **Brought to you by:**



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