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**Indirect Tax Chat**

Keeping you up to date on the latest news in the  
Indirect Tax world

*December 2018*

# Issue 12.2018

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# Greetings from Deloitte Malaysia's Indirect Tax team

Greetings dear readers, and welcome to the December 2018 edition of Indirect Tax Chat.

This has certainly been a busy year for everyone with all the changes that have happened, and it is not over just yet. In the final week of 2018, many of you will be working on finalising and submitting your last GST Return. This could be further complicated by the release of some new guidance from the Royal Malaysian Customs Department (RMCD) which clarifies their view in relation to tax invoices, credit notes and debit notes issued after 1 September 2018. We discuss this in detail, further below.



In this edition, we will also share some important updates from recent meetings with RMCD as well as some recent technical updates.

Also an important reminder to all of you that the tax on imported services (i.e. reverse charge) commences on 1 January 2019. As at the time of writing, the updated Service Tax Regulations and the RMCD guidance on this have yet to be released. Nevertheless, we do expect that the requirement will still start from the new year.

Other news that may interest you;

- A study was carried out by the Ministry of Domestic Trade and Consumer Affairs (MDTCC) on the price points of 6 categories of items of following the implementation of Sales Tax on 1 September 2018. These categories of items includes the study of price points of 417 items namely fresh goods, dry goods, packaged goods, beverages, food & baby items and hygiene items. The price change analysis carried out comparing average prices of items between the period of May 2018 and September 2018 found that 70% (or 291 items) recorded a decrease in prices, 27% (115 items) had an increase and 3% (11 items) remained unchanged.
- The Ministry of Finance (MOF) has granted a 6% service tax exemption to 4.42 million individual policyholders who purchased and renewed insurance or takaful policies for motor insurance, fire and personal accident during the tax holiday from 1 June 2018 to 31 August 2018.

Please do not hesitate to contact us if you have any queries, comments or require our assistance on any indirect tax matters.

Merry Christmas and Season's Greetings from us at Deloitte.

Best regards,

**Tan Eng Yew**  
Indirect Tax Leader

# 1. Extension of time on issuing invoices and claiming input tax

Late on Friday evening (21 December 2018), the RMCD released an amendment to its previously published Director General's (DG) Decision 1/2018 and DG's Decision 3/2018.

## *Background*

In DG Decision 1/2018, RMCD had expressed the view that GST Registered taxpayers would not be allowed to issue tax invoices with GST after 1 September 2018. This had posed significant practical issues for businesses who had yet to issue tax invoices for services rendered prior 1 June 2018 when GST was still 6%. There was also a cost attached to this interpretation as the recipient would not be able to claim an input tax credit without a valid tax invoice

DG Decision 1/2018 was also unclear on the RMCD view as to whether credit notes and debit notes could still be issued. However, as we had highlighted in an earlier edition of Indirect Tax Chat, there was arguably a technical basis for allowing such documents to be issued validly.

DG Decision 3/2018 which dealt specifically with the issue of retention sums (for example on construction contracts), had expressed the view that where a retention sum had not yet been paid on work that had been performed prior to 1 June 2018, the supplier would need to account for and pay GST on this retention sum, even where the amounts had not been received by 29 December 2018 (the due date of the Final GST Return). Similar to DG Decision 1/2018, DG 3/2018 posed significant administrative hurdles as well as a real cost to the parties involved as it required early accounting of the GST with the inability to recover an input tax credit

## *How does the Amendment Address These Concerns?*

The amendments represents a change in the RMCD view, as they now consider tax invoices, credit notes and debit notes can be validly issued on or after 1 September, though any that are issued after 29 December 2018 can still be subject to audit.

The DG can also approve an extension of time to account for output tax or claim input tax beyond the 29 December 2018 deadline. Extension of time decisions would be assessed on merits which are considered reasonable. An example given is where a retention sum is due to be paid after 29 December 2018.

## *What is the likely impact of this Amendment?*

Due to the timing of the release of this Amendment, it is unlikely that many businesses are in a position to act on this change in view.

The most practical approach would be to prioritising high value transactions. To the extent possible, we would recommend identifying the following (prioritising the large value transactions):

- Any major purchase tax invoices, credit notes or debit notes received that had previously been rejected on the basis it was issued with a post 1 September date
- Any major sale or service invoices issued to customers as 'commercial invoices' which contained GST, and assess whether a manual invoice can be issued

Although the DG Decision allows for invoices to be issued after 29 December 2018, the GST Repeal Legislation is very clear that any entitlement to input tax ceases as at 29 December 2018. Any entitlement to claim beyond that is contingent on obtaining the Director General's approval for an extension of time. Unfortunately, no details have been provided on the application or approval process, nor has any information be provided on what are "acceptable and reasonable" grounds.

Due to the limited time available it is also unclear as to how RMCD would be able to assess and approve any applications prior to 29 December 2018. Our recommendation is that the absence of further clarification, businesses take a prudent position and assume that extension of time won't be granted except in limited circumstances (i.e. retention sum scenarios) and that best efforts should be made to ensure that the GST Return is both filed on time (i.e. on 29 December) and accurately. However, we understand that it may not be commercially feasible to do so in all circumstances, and businesses would need to make a decision on the approach that would be taken.

The link to the amended DG's decision can be accessed via this [link](#).

**Brought to you by:**



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## 2. Latest Proposed Indirect Tax Updates

Following recent discussions between the various tax and accounting bodies and the RMCD, a number of technical issues in relation to GST and SST were clarified. Here is a summary of the key issues discussed.

<b>Topic</b>	<b>Description</b>
<p><b>Service Tax on intra-group relief</b></p>	<p>RMCD have confirmed that the relief also applies to services rendered to companies incorporated outside Malaysia (within the same group and fulfils the control conditions).</p> <p>For example, if 123 Sdn. Bhd. and 456 Sdn. Bhd. are wholly-owned by 100 Pty. Ltd. (foreign company), then the management services provided by 123 Sdn. Bhd. to 456 Sdn. Bhd. and 100 Pty. Ltd are eligible for this exemption.</p> <p><u>Deloitte's View</u></p> <p>This interpretation is consistent with our interpretation of the Regulations and clears considerable uncertainty in this area.</p>
<p><b>Service Tax Clarification on the "same type of services" under STR 2018 for intra-group relief</b></p>	<p>RMCD have clarified that the "same taxable service" must refer to the specific type of services provided by the company and not the broader category of taxable service that it falls within.</p> <p>As an illustration, if ABC Sdn. Bhd. provides both project management services and warehouse management services within the ABC group and warehouse management services to XYZ Sdn. Bhd. (a third party), then only the provision of warehouse management services would be subject to service tax. The fact that project management services is also a 'management service' does not result in it being treated as the 'same' service'.</p> <p><u>Deloitte's View</u></p> <p>This is a welcome clarification from RMCD, and one we consider to be practical for businesses to apply.</p>
<p><b>Clarification on 'Management services'</b></p>	<p>The previous guidance issued had been withdrawn some time ago. RMCD have indicated the new guidance to issue will provide more clarification on the specific type of management services that will be taxable, to be introduced via a positive list.</p>

<p><b>Service Tax Exemption on specific Business-to-business ("B2B) services</b></p>	<p>RMCD will release a specific list of services that would be eligible for the exemption.</p> <p><u>Deloitte's View</u></p> <p>As anticipated, the exemption on B2B services was likely to be narrow and with a limited application. It is unlikely to address all scenarios involving double taxation and would more likely be subject to further revision as additional scenarios are included.</p>
<p><b>Service Tax on Imported Services</b></p>	<p>Guidance on this is expected to issue soon which will address a number of the areas of uncertainty. One area that has been clarified is the non-application of the intragroup relief to imported services.</p> <p><u>Deloitte's View</u></p> <p>The basis for this position remains unclear as the intention of the reverse charge was to give 'equal' treatment to domestic and cross border services. As of now, multinational businesses who have Malaysian operations are likely to be negatively impacted by this tax as it will result in additional costs.</p>
<p><b>GST on Bad Debt Relief and Bad Debt Recovery</b></p>	<p>RMCD have indicated that Bad Debt relief can only be claimed through the final GST-03 Return, and this would still be subject to the fulfilment of all the conditions under Bad Debt Relief as stipulated under section 58(1) of the GST Act 2018 (which has since been repealed). If the Bad Debt has been recovered on or after 1 September 2018, then the recovery must be paid to the RMCD by amending the final GST-03 return for the last taxable period as per Sec. 4(1)(b) Goods and Services Tax (Repeal) Act 2018). RMCD has indicated that the Tax Access Portal would remain open for the amendment to be made, although for how long remains uncertain.</p>

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### 3. SST Technical Updates

Below are the bills and guides that have been released or revised recently.

#### **Amendments to the Sales Tax Act 2018 and Service Tax Act 2018 (as at 9 November 2018)**

The Sales Tax Act 2018 and Service Tax Act 2018 has been amended to include a new section in the law, whereby a senior RMCD officer now additionally has the powers of a police officer of any rank in relation to enforcement, inspection and investigation.

#### **Revised Guide on Information Technology (IT) Services (as at 9 November 2018)**

The Guide has been amended to specify that the maintenance of software is taxable, but not the maintenance of hardware.

#### **Voluntary Disclosure (VD) Form**

The VD form provides businesses a means for a business to make a declaration and payment to RMCD on a voluntary basis for sales tax and service tax wrongly collected (e.g. wrongly collected service tax for provision of non-taxable services).

The link to the VD form can be accessed via this [link](#).

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