

Deloitte.



Indirect Tax Chat

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

December 2019

Issue 12.2019

Quick links: [Contact us - Our Indirect Tax team](#)

Key takeaways:

1. [SST technical updates](#)
2. [Ambiguities in the review and appeal process under indirect tax laws](#)

Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the December 2019 edition of our Indirect Tax Chat.



Earlier this week, an amendment to the Service Tax Regulations was gazetted (Click [here](#) for the amendments). The amendment covers the modification to the intragroup relief to include a 'de-minimis' rule as announced in the Budget, but also a number of other changes that were not previously announced. Some of the critical changes include an expansion of the scope of the domestic service tax regime to cover online platforms and "digital services". There has also been an expansion of the scope of IT services to include resellers and distributors. It is possible that these changes have been introduced to bring greater alignment with the digital services rules applying to foreign service providers. However, as we are only days away from 1 January 2020, it does not give taxpayers much time to study these rules. It is our hope that in the future, the Ministry of Finance or the Royal Malaysian Customs Department ("RMCD") could at least ensure drafts of these documents are made available to businesses and their advisors to help with the transition.

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

- According to Deputy Finance Minister Datuk Amiruddin Hamzah, the total sales tax and service tax revenue collected from January 2019 until October 2019 was RM22.6 billion. This has already exceeded this year's target of RM21 billion, even with two months left. For more information, please click [here](#).
- The Child Restraint System (CRS) or use of child safety seats for all private cars will be enforced starting 1 January 2020. To ensure that the mandatory CRS will not be a burden to the B40 group, Deputy Transport Minister Kamarudin Jaffar said that the import duty has been zero-rated and its sales tax rate will be reduced from 10% to 5%. For more information, please click [here](#).

We at Deloitte Indirect Tax would like to wish all our readers Merry Christmas and a Happy New Year. We look forward to seeing you all next year in the January 2020 edition of our indirect tax chat.

Best regards,

Tan Eng Yew
Indirect Tax Leader

1. SST Technical Updates

Guide on Customs Ruling

The RMCD had published a Guide on Customs Ruling (“Ruling Guide”) on 2 December 2019, however this was subsequently removed from the MySST website. You can however still access the Ruling Guide by clicking [here](#).

Section 43 of the Sales Tax Act 2018 and section 42 of the Service Tax Act 2018 provides that a person may apply for a Customs Ruling from the Director General of RMCD (“DG”) by using a prescribed form and a prescribed fee. The two aforementioned sections of the Sales Tax and Service Tax Act, empowers the DG to make a Customs Ruling on how the provision under these Acts would apply to the applicant, and to the matters for which the Customs Ruling is sought.

The Ruling Guide prescribes that a Customs Ruling may be sought in respect of sales tax and service tax for the following :-

- a) Classification of taxable goods/services;
- b) Determination of taxable person;
- c) Principles adopted in the determination of the value of taxable goods/services; and
- d) Any other matter as determined by the DG.

The application process has been outlined in the Ruling Guide and has to be made using the prescribed forms submitted either via post or hand. It was further highlighted that the application for a Customs Ruling will only be processed after the remittance of the processing fee to the RMCD.

Customs Ruling applicants can expect to receive a Customs Ruling issued by the DG within a period of 90 days from the date all necessary documents are received by the DG. However if the DG deems that the case requires analysis, the DG will notify the applicant of such a requirement in writing.

If the applicant agrees to the analysis, an additional payment would need to be remitted to the specific body or party who performed the analysis. If however the applicant rejects the request for an analysis, the DG will issue a written notice stating that the application for the Customs Ruling will not be continued on the basis that the requirement to conduct an analysis has not been fulfilled.

A Customs Ruling will then be issued within 60 days from the date the DG receives the analysis report and the applicant has remitted any analysis fee due.

The Customs Ruling issued by the DG shall be binding upon a person in relation to any matters specified in the application made by the applicant and is valid for a period of three years from the date stated in the Customs Ruling.

A Customs Ruling may be amended, modified or revoked by the DG under several conditions. If the amendment, modification or revocation of the Customs Ruling results in a decrease in the sales tax or service tax liability, any higher sales tax or service tax which has been paid is treated as if the higher sales tax or service tax has been erroneously paid.

If dissatisfied by the Customs Ruling decision, applications may submit an application for review to the Director General of Customs within 30 days from the date the applicant is notified of the Customs Decision, by submitting a physical SST-03 form (Click [here](#) for the form) along with supporting documentation to the Customs headquarters in Putrajaya.

Subsequently, applicants who are dissatisfied with the decision of the review may submit a written appeal to the Customs Appeal Tribunal within 30 days from the date of the decision.

Revised Guide on Sales Tax Deduction Facility as at 30 October 2019

In our October 2019 edition (Click [here](#) to access the newsletter), we covered the third edition of the Sales Tax Deduction Facility Guide that was released by RMCD on 9 August 2019.

A fourth edition of the Sales Tax Deduction Facility guide has since been released (Click [here](#) to access the updated Guide as at 30 October 2019) which had included a new FAQ 13.

The new FAQ references an example where a sales tax deduction was made for an invoice for a specific taxable period but the goods were subsequently returned and the supplier had issued a credit note. The example further describes that in the event of such scenarios, a refund of the sales tax involved shall be made in the SST-ADM form (Click [here](#) for the form) by the end of the following month in which the credit note was issued.

Deloitte's view

The Ruling Guide as it has been withdrawn cannot be relied upon and should be used only as a matter of reference. The constant updates, withdrawals and re-writes of Guides continue to pose challenges for taxpayers in keeping updated with the current RMCD practice and requirements. We would recommend businesses to stay in-the-know with developments through regularly reading our updates, as well that published on the MYSST Portal. It is important to continually review positions taken in the past to see if these can continue to be applied after the issuance or re-writes of Guides.

Brought to you by:



Susie Tan
Associate Director
Johor Bahru and Melaka



Patrick Ng
Tax Assistant
KL Office

[Back to top](#)

2. Ambiguities in the review and appeal process under indirect tax laws

Under the relatively new review and appeal process in indirect tax laws (i.e. customs, excise, sales tax and service tax laws), any person aggrieved by any decision of the DG, has a right to apply to the DG for a review of such decisions. If still aggrieved (by the DG's 'review' decision), the person may subsequently appeal to the Customs Appeal Tribunal. As an alternative to applying for a review of his decision, a person may also appeal directly to the Customs Appeal Tribunal against any decision made by the DG under any provision of the indirect tax laws.

The above review and appeal process is modelled on the process under the repealed Goods and Services Tax (GST) Law, with some slight yet significant changes compared to the repealed GST Law and prior practice, as shown in the table below:

| No. | Subject matter | Current review and appeal process | Previous appeal process |
|-----|--|--|---|
| 1 | Decisions of officers that may be reviewed by/appealed to DG | Review by DG of decision of DG | Appeal to DG against decision of proper officer of customs |
| 2 | Requirement for decisions to be appealable to Customs Appeal Tribunal | Decision must be a review decision of DG or other decision of DG made under any provision of indirect tax laws <i>Example: Customs ruling by DG on indirect tax treatment, made under specific provision of indirect tax laws</i> | Decision may be any decision of DG (not necessarily made under any provision of indirect tax laws) <i>Example: Written confirmation by DG on indirect tax treatment (not made under any specific provision of indirect tax laws)</i> |
| 3 | Number of review application(s)/appeal(s) to DG required in 'mixed' import duty/sales tax matters (e.g. import duty/sales tax on imported goods declared in single customs import declaration) | 2 review applications to DG – 1 for import duty and 1 for sales tax | 1 appeal to DG covering both import duty and sales tax |

Deloitte's view

The rationale for the above changes is not clear from the Bills which introduced the review and appeal legislative provisions in Parliament.

The changes tend to be restrictive in nature, as compared to the clearer and broader scope of appeal under the previous appeal process.

The changes have also brought about ambiguities for taxpayers (and even RMCD) to resolve disputes on decisions of RMCD officers (not expressed to be acting on behalf of DG in issuing such decisions) or decisions of DG not under any specific provision of the indirect tax laws (e.g. written confirmation made on behalf of DG on indirect tax treatment).

We have, through various professional bodies, made proposals to RMCD to amend the current review and appeal process to effectively revert to the previous appeal process.

Pending the consideration of such proposals, a 'workaround' may have to be taken, where appropriate. These include construing an inherent right of appeal to the DG from decisions of proper officers of RMCD (not expressed to be issuing the decisions on behalf of DG). The inherent right of appeal to DG is by virtue of the DG's supervisory control, under the indirect tax laws, over all other RMCD officers. For decisions of the DG not made under any provision of the indirect tax laws (e.g. written confirmation by DG), taxpayers may have to first apply to the DG for review of such decisions, as the DG's review decision would then be appealable to the Customs Appeal Tribunal.

Brought to you by:



**Naresh
Srinivasan**
Assistant Manager
KL Office



**Sarvin
Chelvarajah**
Semi-senior
KL Office

We invite you to explore other tax-related information at:
<http://www2.deloitte.com/my/en/services/tax.html>

To subscribe to our newsletter, please [click here](#).

[Back to top](#)

Contact us – Our Indirect Tax Team



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



Senthuran Elalingam
**Global Indirect Tax
Clients & Industries
Leader**
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
lsta maria@deloitte.com
+603 7610 8636



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



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



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

| Name | Email address | Telephone |
|---|----------------------------|----------------|
| Leong Wan Chi Manager | wanleong@deloitte.com | +603 7610 8549 |
| Eliza Azreen Kamaruddin Manager | eazreen@deloitte.com | +603 7610 7271 |
| Atika Hartini Suharto Manager | asuharto@deloitte.com | +603 7610 7986 |
| Tamil Selvan Chandran Manager | tchandran@deloitte.com | +603 7610 9231 |
| Naresh Srinivasan Assistant Manager | narsrinivasan@deloitte.com | +603 7650 6459 |

Other offices

| Name | Email 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 |

[Back to top](#)



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 312,000 people make an impact that matters at www.deloitte.com.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities provide services in Australia, Brunei Darussalam, Cambodia, East Timor, Federated States of Micronesia, Guam, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, New Zealand, Palau, Papua New Guinea, Singapore, Taiwan, Thailand, The Marshall Islands, The Northern Mariana Islands, The People's Republic of China (incl. Hong Kong SAR and Macau SAR), The Philippines and Vietnam. In each of these, operations are conducted by separate and independent legal entities.

About Deloitte in Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

Disclaimer

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.