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Indirect Tax Chat

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

February 2020

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

Key takeaways:

1. [RMCD's clarification on Service Tax matters](#)
2. [SST technical updates](#)

Greetings from Deloitte Malaysia's Indirect Tax team

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

The Malaysian Government announced a stimulus package in the final week of the month to boost the country's economy and mitigate any adverse repercussions from the coronavirus (Covid-19) outbreak and other external uncertainties. The package contained several indirect tax concessions that would stimulate the economy, in particular a service tax exemption for hotels from March to August 2020. There will also be an import and sales tax exemption on the importation or local purchase of machinery and equipment used in port operations for 3 years commencing 1 April 2020. Please look out for our more detailed update on this.



Moving onto other matters, this month, we held our first Sales Tax and Service Tax seminar for the year. We invited Tuan Faizulnudin bin Hashim, Head of Service Tax Policy from the Royal Malaysian Customs Department ("RMCD"), to speak on the recent changes to the service tax regime. We share key talking points from the session in this issue.

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

- Some RM7.8 billion of outstanding GST refunds have yet to be repaid to taxpayers. The repayment of the outstanding amounts, based on February 2020 numbers by the RMCD, is delayed, as it is required to conduct field audits first. For more information, please click [here](#).
- The Federation of Malaysian Manufacturers ("FMM") is proposing that Putrajaya reduce the sales tax and service tax ("SST") by 2% for 12 months as part of a measure to minimise the impact of the coronavirus on the nation's economy. FMM president Soh Thian Lai said the reduction of the tax would boost business conditions.
- The RMCD has issued a revised guide on the transmission and distribution of electricity services. It is currently only available in Bahasa Malaysia and accessible [here](#).

We hope you find this month's tax chat engaging.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. RMCD's clarification on Service Tax matters

On 19 February 2020, we held a seminar on the latest developments on sales tax and service tax. The honourable Tuan Faizulnudin bin Hashim, Head of Service Tax Policy division of RMCD, spoke on service tax developments. We share some interesting questions together with his responses, raised during the Q&A session. Please note that content below is paraphrased for clarity.

1. Q: Are we likely to see more changes and tweaks, or a total revamp of the service tax regime?
A: There may be additional services becoming prescribed as taxable in the future. If the tax base for service tax is widened, there will be an increase in facilities available to people who acquire the services (both companies and individuals). If service tax becomes a cost to the businesses, facilities will be available to them (i.e. to reduce the cost impact).
2. Q: In terms of service tax relief like B2B exemption, service tax refunds, imported services etc., what does RMCD mean by 'same service'?
A: With regards to 'same service', RMCD tries to be consistent. Looking at services under column 2 of Group G in the Service Tax Regulations 2018, 'same service' would, for example, be acquiring a legal service and providing a legal service. Another example would be acquiring a digital service and also providing a digital service. For management services under item (i) in Group G of the First Schedule to the Service Tax Regulations 2018, the category of management services between what is acquired, and what is provided must match, for example, acquiring maintenance services and also providing maintenance services.
3. Q: Regarding imported IT services, a Malaysian company's HQ overseas acquires IT services from a third party outside of Malaysia. The HQ then recharges entities globally for their shared use of the IT services. Does the Malaysian entity have to self-account for service tax on imported IT services?
A: When an overseas HQ charges a Malaysian related company for IT services, the local firm may utilise the intragroup relief in order to not self-account for service tax on imported services. Besides that, if the local entity is registered, they may also consider Service Tax Policy 2/2020 as a facility.
4. Q: The HQ overseas provides a software licence to the Malaysian company through an email. Thereafter, the local IT staff installs the software manually. Is this subject to service tax on digital services ("SToDS")?
A: Digital services are a subset of IT services. If the HQ is registered as a foreign registered person, they have to charge SToDS. If the HQ is not registered under SToDS, then the software is deemed an imported taxable service under item (m) in Group G of the First Schedule to the Service Tax Regulations 2018.
5. Q: A Malaysian company currently provides management services to related companies both inside and outside of Malaysia. The company is thinking of providing the management services to non-related companies in Malaysia. How do we calculate our registration threshold and the 5% *deminimis* compliance rule for intragroup relief?
A: Management services provided to companies outside Malaysia are out of scope of service tax. For registration purposes, the company would need to calculate the total value of management services provided to related and non-related companies within Malaysia over 12 months, to assess if it has breached the RM500,000 threshold. With regards to the 5%

deminimis rule, the company would need to ensure that the value of management services provided to non-related companies over a 12-month period does not exceed 5% of the total value of management services provided within Malaysia (both to related and non-related companies).

6. Q: A local Malaysian company receives an invoice from a foreign service provider ("FSP"), charging 6% SToDS. Is there a way to check the registration status of the FSP, similar to how it is possible to check the registration status of local companies through the MySST portal?
A: The Ministry of Finance does not allow RMCD to provide a list of foreign registered persons. RMCD is currently developing a simple system for the public to check the registration status of a FSP.
7. Q: A local Malaysian company receives an invoice from an FSP that states the amount due is inclusive of SToDS. Can the local recipient, without knowing the registration status of the FSP, not self-account for service tax on imported services?
A: Even if the invoice does not have all the prescribed particulars, as long as an invoice from an FSP states that the amount due contains SToDS, the local recipient would not have to self-account for service tax on imported services.
8. Q: A local Malaysian company with multiple domains imports some services, for example, for our Indian domain for Indian customers. Would these services be subject to service tax on imported services?
A: If the domain and customers are outside of Malaysia, the subject matter is outside of Malaysia and therefore excluded from service tax. Furthermore, the company may be eligible for the imported service exemption under the Service Tax Policy 2/2020.
9. Q: Regarding the refund by offset for digital services under the Service Tax Policy 3/2020, if the local Malaysian company is registered but does not provide any taxable services, can we get a refund by cash?
A: There is currently a system limitation. When filing service tax returns, if a company's output is zero or less than the amount to be offset, the company is deemed to be in a refund position, and RMCD's system currently cannot handle this. It is advised that the company not claim the offset yet, but inform RMCD about this. RMCD is in the process of amending the Service Tax Act 2018 to be able to refund companies the money. As of now, there is no provision in the law allowing this.
10. Q: Must a sales tax invoice and service tax invoice be issued separately? Is there any way a company that is registered for both sales tax and service tax to issue one invoice for both taxes?
A: There are no rules preventing companies from doing so. However as there are slightly different prescribed particulars for sales tax and service tax invoices, companies have to be careful to make sure all the prescribed particulars are in the one single invoice. For example, the company will need to have both the sales tax and service tax registration ID present in the one invoice. Sales tax and service tax rates are also different, so companies would need to be careful to charge the right tax amount.

11. Q: Is repair work subject to SST? What about warranty?
A: Repair works under sales tax is a component of manufacturing. Solely providing repair works for second hand or used goods is exempted from sales tax registration. However, the term 'repair' is sometimes used loosely and it could actually be a maintenance service which is a taxable management service. Warranty is not taxable, as no service is being provided. Where warranty and maintenance are bundled together, companies would need to look at the substance of the transaction. Where there is regular and scheduled maintenance, which is not a service directly requested for, then it would fall within management services. It depends on the situation, scenario, and facts of each case.
12. Q: Robots are imported from overseas, but the programming work to make the robots function is done in Malaysia. Will the programming work be subject to service tax?
A: When a robot is imported into Malaysia, depending on the HS code, it may be subject to sales tax on imported goods. Programming services fall under IT services and would be subject to service tax whether or not acquired from local IT experts and foreign IT experts.

Deloitte's comments

We would like to thank Tuan Faizulnudin for gracing us with his presence at our SST seminar and for providing valuable insights into recent service tax developments. Please note that questions asked above, along with the responses provided, are general in nature and do not take into account specific circumstances of any persons. One last thing we would like to share with you from our recent seminar is that the RMCD is in the midst of releasing two more [Service Tax policies](#), one on imported services and another on intragroup relief. Once released, we will cover them in future newsletters and alerts.

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[Back to top](#)

2. SST Technical Updates

Updates from the SST Technical Committee

The SST Technical Committee ('the Committee') was formed to resolve and bring clarity to various technical issues faced by businesses. The Committee comprises various industry associations, professional bodies, and senior officers of the RMCD. Its first meeting convened on 29 November 2019 to deal with several technical issues where clarification was needed. The meeting minutes were circulated in recent months. Based on the minutes, several issues still remain unclear and need to be addressed by the RMCD.

Please find below a summary of important issues raised, together with RMCD's responses.

Double or multiple charges of service tax for customs clearance

There are situations where the buyer or seller engages with its own customs' agent to perform customs clearance, and the importer or exporter may need to appoint its own customs agent in clearing the goods from customs. Due to this, the importer or the exporter's agent may charge the buyer or seller's agent service tax, and the buyer or seller's agents may then charge the buyer or seller service tax for their services.

Another scenario is when a main customs agent engages another to clear goods from warehouse to airport, for shipment to East Malaysia. Another customs agent in East Malaysia is then engaged by the main customs agent for the purposes of clearing the goods at the airport. The two customs agents will charge service tax to the main customs agent, who will then, in turn, charge his customer service tax.

Currently, RMCD is aware that there is no facility under the Service Tax Act 2018 to handle the cascading or compounding effect of service tax. However, section 34 of the Service Tax Act 2018 states that the Minister has the power to grant any exemption to any person from paying tax.

Deloitte's comments

Currently, the only avenue available to the customs agent is to seek an exemption from the MOF from paying tax. While RMCD accepts there will be tax cascading, there is nothing announced that would remedy this.

Definition of "Consumer" under Digital Services

The definition of "Consumer" is any person who fulfils any two of the following:

- (a) Makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia;
- (b) Acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned in Malaysia;
- (c) Resides in Malaysia.

The issue arises when the services provided by the FRP are done progressively or periodically, and payment is made for that period. Should the FRP consider the status of the consumer as at the

time when the consumer pays for digital service or at the time when the consumer receives the services?

According to subsection 56A(1) of the Service Tax Act 2018, for the FRP to charge the tax, it would need to determine the consumer's location status, if it is in Malaysia or overseas. The consumer will need to provide the abovementioned information to the FRP when the consumer intends to acquire digital services.

RMCD has clarified that where the FRP provides the service periodically and impose charges for a particular period, the FRP shall use the status as provided by the consumer, unless the status has been updated or changed by the consumer.

Deloitte's comments

RMCD has taken a very practical approach based on the information provided by the consumer. FRPs should monitor for any changes submitted by the consumer and at that point assess if the service tax position has changed.

Digital Services Guide – Scope of Payment Processing Services

Under Paragraph 11(viii) of the Guide on Digital Services as at 20 August 2019, payment processing services is listed as a supply of digital services.

Paragraph 10 in the Guide also specifies that digital service means services that is to be delivered through an information technology medium, with minimal or no human intervention from the service provider.

It is noted that payment processing services provided by outsourcing service providers are often not automated and requires extensive human intervention.

RMCD clarified the following:

1. Minimal human intervention (automation) in digital service definition refers to the provider, not the consumer.
2. Payment processing services fall within the scope of implementation if it satisfies the definition of Digital Service.
3. Examples of Foreign Service Provider ("FSP") who provide digital service under this category can be FSPs who provide payment platforms, facilitate online payments or are payment gateway providers.

Deloitte's comments

Currently, "minimal or no human intervention" is not clearly defined in the Guide on Digital Services. The interpretation of "minimal or no human intervention" and application should be carefully considered by businesses.

Digital Services Guide – Propose clarification on the definition of residency

Under paragraph 16, in determining whether a consumer is residing in Malaysia, the Foreign Registered Person ("FRP") may consider information or a declaration from the consumer as below:

- (i) The billing address of the consumer is in Malaysia;
- (ii) The home address of the consumer is in Malaysia; or
- (iii) Recipient's country selection.

RMCD clarified that residency is determined by having an address in Malaysia at the time digital service is provided and RMCD will update this information in the guide.

Deloitte's comments

This appears to conflict with earlier comments that the FRP should merely consider the information provided by the consumer at the time of registration, until such time the consumer decides to update it.

Digital Services Guide – Amendment to the Return by FRP

Paragraph 49 states that "If any FRP makes an error in any return furnished under STA, he may correct the errors." However, there is no guidance provided on how an FRP can correct the errors.

RMCD response was that they will provide a guideline on correction of errors.

Deloitte's comments

There are a lot of teething issues with digital services, due to the short period of time from its inception to its effective date. We are hopeful that the guidelines will shed some light on how an FRP can correct errors in its return.

RMCD's response on CTIM's Memorandum on Indirect Tax Issues arising from 2020 Budget Speech and Finance Bill 2019 dated 19 November 2019

Improvement on Group Relief Facility under Service Tax

Prior to 1 January 2020, where a company provides the same services to another company outside the group of companies, such services provided to any company outside or within the group of companies shall be treated as a taxable service and subject to service tax.

Effective 1 January 2020, where a company provides any taxable service to another person outside the group of companies, the same taxable service provided to any company outside or within the group of companies shall be a taxable service, if the value of services provided to a third party exceeds 5% of the total value of services provided by the company within 12 months.

Due to the change in the regulations, the following issues arise:

1. Whether group relief would apply to the 5% portion of the taxable service that has been provided to third parties;
2. Whether the 5% is in relation to the total value of the same service or value of the total services provided by the company;

3. Whether the 5% is applicable to imported taxable services; and
4. Whether the 12 months is based on a calendar or financial year

RMCD clarified that:

1. Intra group relief is applicable even though same service is provided to a third party, provided that the value of service to a third party does not exceed 5% of total value of service within 12 months.
2. The 5% is based on the total value of the same service provided by the company.
3. The 5% is not applicable to imported taxable services; and
4. The 12 months is based on a calendar year.

Deloitte's comments

Based on RMCD's response, companies will now need to assess whether the total value of the same services provided to a company outside the group exceeds 5%. If the percentage of value of services to third parties cannot be determined, the prudent approach would be to account for service tax and to make a credit note adjustment at the end of the 12-month period.

Issues with regards to Section 61A of the new Part IX_A of the Sales Tax Act 2018 on the Approved Major Exporter Scheme ("AMES")

There were several issues raised with regards to Section 61A of the new Part IX_A of the Sales Tax Act 2018 on the AMES:

1. Whether the AMES provides exemption on manufacturing aids.
2. Whether there is an effective period of the scheme and if there is, is it limited to a specific period.
3. Whether the goods need to be exported within a certain period.
4. Whether there is an exemption for the importation of goods in the interim period, i.e. between date of application for the AMES and the effective date of the AMES.
5. Whether the goods exported are eligible for the scheme if the exporter on record and the AMES holder are not the same.

RMCD clarified that:

1. Based on Section 61A, manufacturing aids are not specifically mentioned, hence do not qualify for the AMES.
2. It is proposed that the AMES approval is for a period of 2 years.
3. Under the AMES, the proposed timeline for export are as follows:
 - (a) For traders, taxable goods are to be exported within **3 months** from the date of acquisition or import or whichever extended period approved by the Director General;
 - (b) For manufacturers, manufactured goods that are exempted from sales tax have to be exported within **6 months** from the date the goods are manufactured.
4. During the interim period, the company is not allowed to use bank guarantee for the importation and acquisition of taxable goods pending approval from the AMES. The AMES approval date also cannot be backdated in the AMES approval letter.
5. The exporter on record under the AMES has to be the same as the approved AMES person.

Deloitte's comments

The objective of the AMES is to assist manufacturers and traders who export at least 80% of their annual sales to obtain exemption on the import or purchase of goods. As the rules under the AMES are stringent, the timing for the AMES application up to the date of importation should be properly planned to fully benefit from the AMES.

Introduction of the AMES under the Sales Tax Act 2018

Commencing 1 July 2020, RMCD has proposed to introduce the AMES in the Sales Tax Act 2018. This is to improve the existing drawback and exemption facility. In this scheme, the approved traders and manufacturers are:

1. Eligible for full sales tax exemption on the importation and purchase of goods or raw materials, components and packaging materials; and
2. Not required to determine the quantity of goods to be exported at the time of importation or purchase of goods.

Sales tax will be paid on:

1. The portion of trading goods or manufactured exempted goods that are not exported or sold in local market, based on the prescribed formula; and
2. Waste or refuse of raw materials, components, and packaging materials used for the manufacturing of exempted goods that are disposed or sold in the local market.

Traders and manufacturers can apply for the scheme provided that their export is not less than 80% of their annual sales. There are concerns on if the 80% ratio is determined based on the quantity of the goods sold or the sales value/revenue.

RMCD had proposed the following:

- for traders, the 80% annual sales is based on the annual sale value of goods which are exported and / or transported to a designated area or a special area.
- for manufacturers, the 80% annual sales is from the annual sale value of goods manufactured, which are exported and or transported to a designated area or a special area.

Deloitte's comments

There is currently no additional conditions set out in the proposed scheme. Manufacturers and traders would likely need to closely monitor the 80% annual sale threshold.

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[Back to top](#)

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[Back to top](#)

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