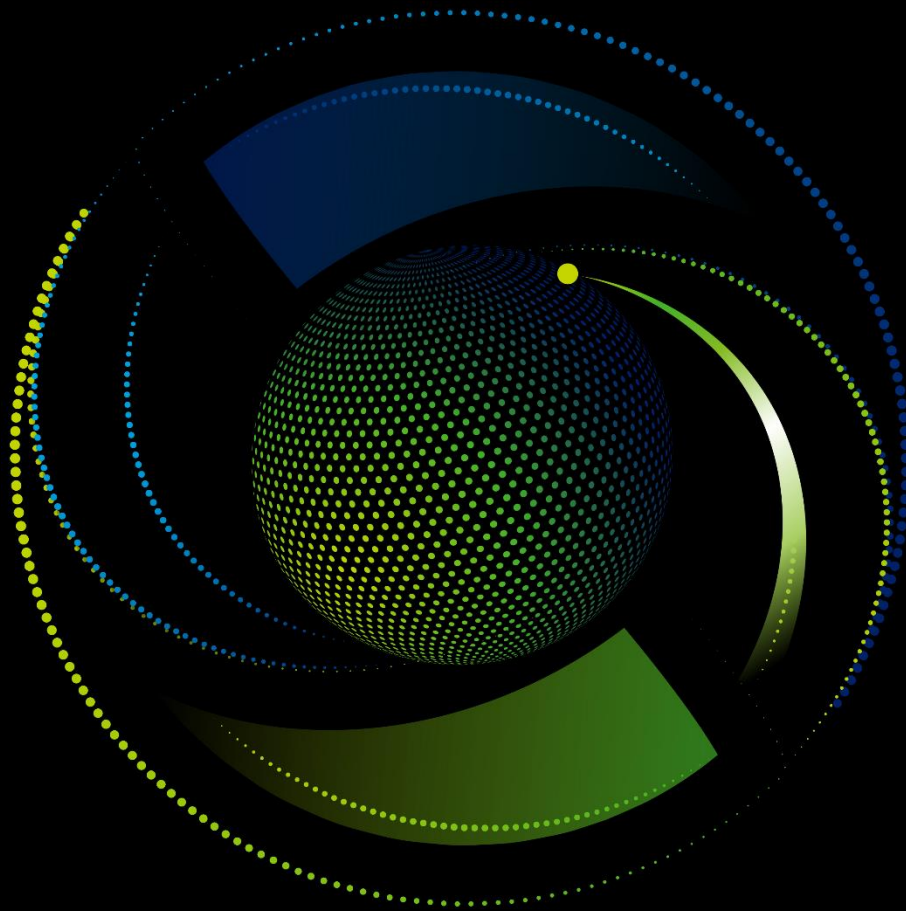


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Indirect Tax Chat

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

February 2023



Issue 02.2023

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Key takeaways:

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Greetings from Deloitte Malaysia’s Indirect Tax team

Greeting’s readers, and welcome to the February 2023 edition of our Indirect Tax Chat.

Finance Minister Dato’ Seri Anwar Ibrahim presented the revised 2023 Federal Budget on 24 February 2023. We covered the indirect tax developments arising from the Federal Budget, as part of a wider tax alert, which you may access [here](#).



For the full year of 2022, indirect tax collection by the Royal Malaysian Customs Department (“RMCD”) stood at RM55.3 billion, which is RM11.7 billion more than its 2021 collection of RM43.6 billion. This 2022 tax collection consisted of sales tax and service tax (“SST”) of RM31.4 billion, excise duties of RM12.6 billion, import duties of RM3.2 billion, and export duties of RM2.6 billion. For the year 2023, indirect tax collection is estimated to reduce slightly to RM54.1 billion, but with an increased SST collection of RM33.3 billion. With the tourism tax (“TTX”) exemption having [ended](#) on 31 December 2022, and with the imposition of TTX on digital platform service providers, TTX revenue for 2023 is estimated to be RM200 million. For more information, please click [here](#) and [here](#).

In this month’s Chat, we look at a newly released draft service tax guide on goods delivery services. We also cover the RMCD’s sales tax guide on an exemption for prime movers and container trailers, as well as the RMCD’s Public Ruling 1/2022.

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

- The World Bank’s lead economist Apurja Sanghi said Malaysia needs to raise its revenue, and the best way to do so is by implementing the Good and Services Tax (“GST”). He added that it is not by coincidence that 174 countries employ the consumption tax to fill their coffers. Apurja also shared that the GST is a mean and lean machine that mobilises revenue the best. For more information, please click [here](#).
- Royal Selangor International chairman Tan Sri Yong Poh Kon believes that not introducing the GST for now presents an opportunity for the SST to be improved and streamlined for easier compliance, better enforcement, and increased government revenue. He believes that the SST system can be modified to incorporate beneficial features of GST and streamlining compliance without negatively affecting government revenue. For more information, please click [here](#).
- While the government is not bringing back the GST anytime soon, economists say there is no running away from imposing this type of consumption tax as they feel that Malaysia needs to broaden its tax base and revenue streams. Economists opine that GST should be revisited, perhaps as soon as next year, when there is more political stability and public awareness of the matter, and an improved economy. For more information, please click [here](#).

We hope you continue to stay safe and well.

Best regards,
Tan Eng Yew
 Indirect Tax Leader

1. Draft Service Tax Guide on Goods Delivery Services

Following our article in the [December 2022 Chat](#), service tax on goods delivery services has been postponed until further notice as per the RMCD's announcement [here](#). The RMCD published a *draft* Service Tax Guide on Goods Delivery Services ("GDS Guide") on 9 January 2023. At present, the GDS Guide is only available in the national language [here](#). The salient points of the GDS Guide are as below.

The GDS Guide introduces the following terminology:

- Goods means all kinds of moveable property, under section 2 of the [Service Tax Act 2018](#) ("STA").
- Food and Beverages ("F&B") Establishment is the place where F&B are prepared, served, and are under the control of the F&B preparer.
- Goods delivery is the physical movement of goods from one place to another.
- Logistics service encompasses the entirety of the movement process including storage, preparation, delivery, and movement of goods to the receiver.
- Delivery of F&B means the physical movement of food or drinks from the place of preparation or served by the owner to a customer at another place.
- Courier service means the postal services provided in an expedited manner with track and trace services (definition under regulation 2 in the [Postal Services \(Licencing\) Regulations 2015](#)).
- Express delivery service means courier service.
- E-commerce platform means the digital space where the process of buying and selling of products and services take place electronically.

Taxable person

The taxable person who should register for service tax are goods delivery service providers including courier of documents, parcels or goods. Service providers who deliver goods, even on behalf of others including courier services provider and e-commerce platform service providers are a taxable person under item 6 in Group I of the First Schedule to the [Service Tax Regulations 2018](#) ("STR").

Whoever provides goods delivery services should register for service tax if the value of their delivery services exceeds RM500,000 in a rolling 12-month period.

Taxable service

The prescribed service of goods delivery services are:

- a) delivery services including courier for documents, packages or goods; or
- b) delivery services including the courier of documents, packages or goods using e-commerce platforms on behalf of other persons.

This would include deliveries:

- a) from a place in Malaysia to another place in Malaysia
- b) from a place in Malaysia to a Designated Area (Labuan, Langkawi, Tioman, Pangkor)
- c) from a place in Malaysia to a Special Area (free zone, licensed warehouse, and licensed manufacturing warehouse, the Joint Development Area, and a petroleum supply base licensed under the [Customs Act 1967](#))
- d) from a Designated Area to a Special Area, or vice versa, if the company principal place of business is in Malaysia

The GDS Guide provides three scenarios of taxable delivery services:

Scenario A: Conventional Purchase without use of Delivery Company

Where a seller sells goods to a buyer and charges a delivery fee to deliver the goods, the delivery fee would be subject to service tax.

The RMCD provided an example where a florist sells flowers to a customer, and also charges a delivery fee for delivering the flowers. While the sale of the flowers would not be taxable, the delivery fee would be subject to service tax. As such, the florist would need to register and charge service tax on such delivery fees.

Scenario B: Conventional Purchase with use of Delivery Company

A seller sells goods to a buyer and arranges for a delivery company to deliver the goods to the buyer. The delivery company would charge service tax on their delivery service to the seller. Where the seller also charges a delivery fee to the buyer, such delivery fee would be subject to service tax. If the seller does not charge a separate delivery fee and only for the sale of the goods, no service tax would be charged by the seller.

Scenario C: Purchases on an Electronic Market Place (“EMP”) platform

The seller sells goods to a customer on an e-commerce or EMP platform, and the delivery could be done by third party delivery companies or by the EMP operator.

Where a third-party delivery company (this includes a related company or courier company) is engaged by the EMP operator to deliver goods to buyers, the third-party delivery company shall charge service tax on their delivery fee to the EMP operator. Where the EMP operator charges a delivery fee to either the seller or the buyer, such delivery fee would likewise be subject to service tax. If there is no delivery fee charge stated in the invoice to the buyer, no service tax would be charged.

Where the EMP operator’s in-house riders conduct the delivery of goods, the in-house riders would not need to charge service tax to the EMP operator.

Non-taxable delivery services (exclusions)

The following goods delivery services would not be subject to service tax:

- a) delivery of F&B that are prepared or served*
- b) logistics services**
- c) delivery of goods from a place outside Malaysia to another place outside Malaysia

d) delivery of goods from a place within Malaysia to a place outside Malaysia

e) delivery of goods from a place outside Malaysia to a place within Malaysia

This include the delivery of goods within Malaysia that form part of the service referred to in (d) and (e) where the service is provided by the same person.

*The GDS Guide distinguishes between delivery of F&B from F&B establishments and non-F&B establishments (such as convenience stores). Only delivery of F&B from the F&B establishments are excluded from service tax, whereas delivery of F&B from places like convenience stores (non-F&B establishments) are not excluded, and therefore subject to service tax.

**Logistics services would include goods delivery, loading and unloading, handling, pick and pack, and safety control. However, where a logistics service provider engaged a third-party transport company to deliver the goods on behalf to the customer, the delivery of goods by the third-party company would be subject to service tax.

Threshold for registration

RM500,000 in a rolling 12-month period.

Deloitte's comments

At present, the draft GDS is silent on the B2B exemption, intragroup relief and disbursement of cost recovery for goods delivery services. Such exemptions and reliefs are vital to reduce the instances of double taxation occurring and the resulting increase in the overall costs of delivery. If these matters are not properly addressed, it would either significantly increase costs for consumers, impact margins of the companies involved, or force a re-think on how such arrangements are contracted and structured. All of these would be inefficient outcomes which we hope can be avoided through the introduction of appropriate measures to alleviate incidences of double taxation.

As the service tax legislation has not been amended to scope in such goods delivery services, we would have to wait for the amended regulations to be gazetted, and for the release of the finalised guidelines by the RMCD to understand the final position adopted.

We will cover the goods delivery services in a future Chat once the finalised regulations are gazetted and the finalised guide is published by the RMCD.

Brought to you by:



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2. Guide on Sales Tax Exemption for Purchase of Prime Mover or Container Trailer

Under Item 65 in Schedule A of the Sales Tax (Person Exempted from Payment of Tax) Order 2018 (“Item 65”), any haulage operator endorsed by the Malaysian Investment Development Authority (“MIDA”) may apply for sales tax exemption for purchase of prime mover or container trailer subject to conditions. The key conditions for Item 65, among others, as listed under the abovementioned include the following:

- The prime mover must be used for the purpose of hauling the container trailer.
- The container trailer must be directly used for haulage operations.
- Goods are purchased from a manufacturer registered under Sales Tax Act 2018.
- Goods must be new and unused.

Given the above, the RMCD has issued a guide with respect to applying for the exemption certificate for Item 65 – available [here](#).

Effective from 1 January 2023, application for the sales tax exemption certificate under Item 65 shall be made through the MySST system and the Vehicles Tax Exemption Monitoring System (eVTEMS).

We have summarised the application steps below:

1. Sign up via the MySST system and eVTEMS to obtain login credentials (for first time user).
2. Apply for Item 65 sales tax exemption via the MySST system (under this phase, the status of application will be shown as “pending approval”).
3. To complete the item 65 sales tax exemption application, the applicant needs to login into eVTEMS and provide the ‘application no.’ obtained under step 2 above, as well as complete the purchase information of the prime mover/container trailer.
4. Once completed, the sales tax exemption result will be sent via e-mail and the status in the MySST system shall be reflected as “Registered” or “Rejected” (depending on the RMCD’s decision).

Each sales tax exemption application is valid for one (1) unit prime mover or container trailer only.

Deloitte’s comments

From the guide issued, it appears that the RMCD has updated its application process for sales tax exemption under Item 65, specifically for haulage operators to utilise the same in relation to purchase / importation of prime mover or container trailer used directly for its haulage operations. A noticeable process added by the RMCD was the introduction of eVTEMS effective from 1 January 2023, where prior to the implementation date, the haulage operators endorsed by MIDA would only apply for Item 65 via the MySST portal upon receiving the confirmation letter from MIDA.

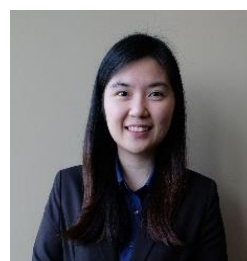
For the existing sales tax exemption certificate obtained by the haulage operators prior to 1 January 2023 and where these are not yet utilised, we understand from the RMCD that the same should still be valid and operators do not have to update its exemption certificate by completing the relevant information required in the eVETMS. Nonetheless, there is no clear guidance issued by the RMCD with respect to these exemption certificates issued prior to the implementation date above (i.e., 1 January 2023).

As such, it is important for businesses to be aware about this new process, ensuring that all information required by the RMCD are readily available to ensure that the taxpayer's application is smooth, and that it complies with the conditions stated under Item 65.

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3. Public Ruling No. 1/2022 by the RMCD

On 30 December 2022, the RMCD released a Public Ruling ("PR") No. 1/2022 on prescribed forms under the [Customs Act 1967](#), [Excise Act 1976](#), and [Windfall Profit Levy Act 1998](#) (available in the national language only). This PR No.1/2022 came into force on 1 January 2023.

The purpose of this ruling is to establish the form and manner of declaration of goods to be imported, exported, movement of goods and other procedures under the Customs Act 1967 and the Excise Act 1976, as well as producer registration, payment of levy, and refund application under the Windfall Profit Levy Act 1998.

Prior to this ruling, prescribed forms used for procedures such as importation, exportation, refund application and payment of levy were gazetted under the Customs Regulations 2019, Excise Regulations 1977, and Windfall Profit Levy Regulations 1998. This includes commonly used forms such as Customs Form No. 1, Customs Form No. 2, JKDM No. 1, JKDM No. 2, Application Form for a Customs Ruling, etc.

Effective 1 January 2023, provisions under the principal Acts relating to prescribed forms are substituted with the words "*in the form and manner as determined by the Director General*" through the [Customs \(Amendment\) Act 2022](#), [Excise \(Amendment\) Act 2022](#) and [Windfall Profit Levy \(Amendment\) Act 2022](#).

The form and manner as determined by the Director General is published via a PR for ease of reference by the industries and public.

The PR No. 1/2022 and prescribed forms are available on the RMCD's website [here](#).

Deloitte's comments

With the aid of the PR, businesses are better guided in matters pertaining to declaration on import, export, refund, drawback etc. Businesses are advised to be mindful of the relevant Prescribed Forms to be applied.

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