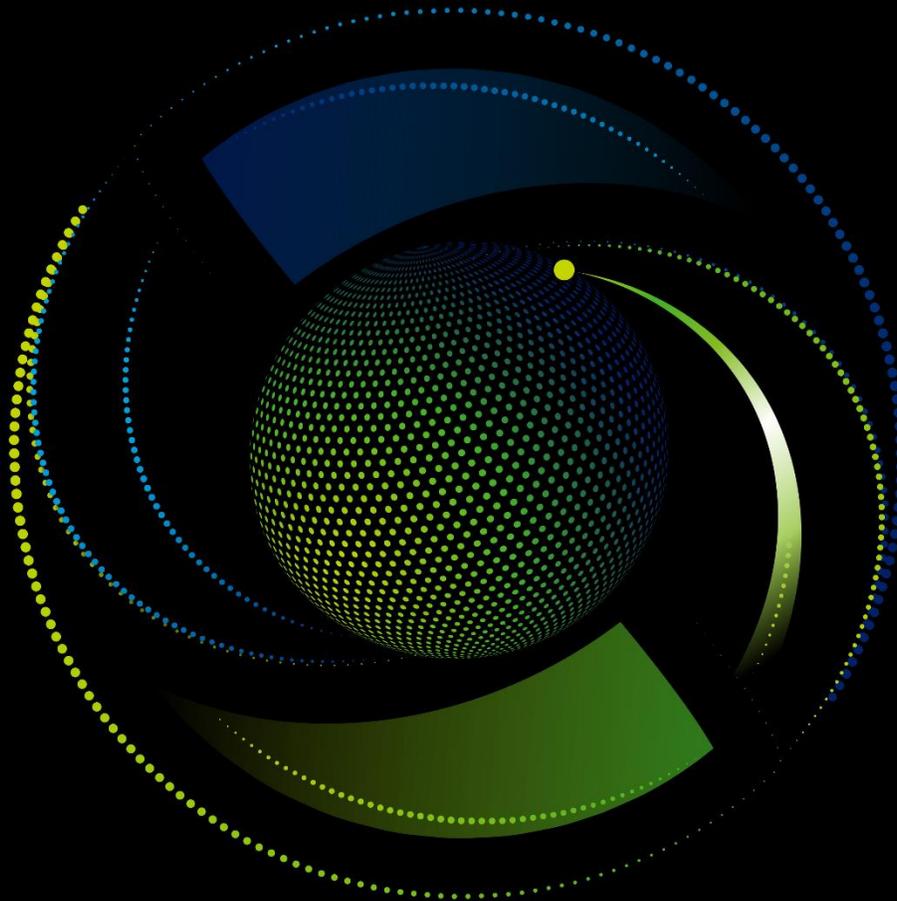


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Indirect Tax Chat

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

February 2022



Issue 2.2022

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the February 2022 edition of our Indirect Tax Chat.

In this month's edition we look into the technical updates for sales tax and service tax ("SST") as well as delve into technical developments from the recent discussions with the Royal Malaysian Customs Department ("RMCD"). The first of these relates to the service tax treatment for services between a branch and its headquarters, and the second, on the use of credit notes on adjustments for service tax overpayments.



The Special Voluntary Disclosure and Amnesty ("VA") Program is also in full force. We have seen over the past month many of our clients receiving formal or informal communications from the RMCD encouraging participation. The formal communications have generally been for taxpayers who have been selected by the RMCD for inclusion in their audit program. In its communication, the RMCD is giving taxpayers the option of participating in the VA or be subjected to an audit. Businesses that receive these letters should give them serious consideration and respond appropriately. While we understand that the indications from the individual RMCD officers have not been consistent, the guidance from the RMCD headquarters states that if you decline the offer to participate now, you will still be afforded a chance to change your mind and apply later, provided it is done during the disclosure period.

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

- In a speech at the launch of the 40th International Customs Day on 26 January 2021, Prime Minister Datuk Seri Ismail Sabri Yaakob said that the RMCD's revenue collection for 2021 has reached RM42.50 billion, surpassing the [initial target of RM40 billion](#) set by the Ministry of Finance. This marks an increase of nearly RM4 billion compared to the [2020 collection of RM RM38.67 billion](#). The Prime Minister said that with such a performance, he believes that the RMCD will continue to be successful as 'Economic Frontliners', which will be able to drive quality and positive growth for the country's gross domestic product, thus nurturing the people's prosperity. For more information, please click [here](#), [here](#), and [here](#).
- The Ministry of Finance is confident that the RMCD will be able to achieve its target of collecting between RM1 billion and RM2 billion under the VA Program from early this year until 30 September 2022. Finance Minister Tengku Datuk Seri Zafrul Aziz said the RMCD has been given the mandate to implement the VA Program, a government effort in tax reform to encourage taxpayers to come forward voluntarily and properly report taxes. The Finance Minister went on to say that the RMCD has played its role as one of the agencies that drives government policies and initiatives. In addition to the [Guide](#) and [FAQ](#), the RMCD has now released a [User Manual](#) and a [list of contact details](#) by individual controlling stations. For more information, please click [here](#) and [here](#).

We hope that you continue to stay safe and well.

Best regards,
Tan Eng Yew
 Indirect Tax Leader

1. SST Technical Updates

Updated Guide on Advertising Services

The RMCD released an updated [Guide on Advertising Services](#) dated 19 January 2022 (“Advertising Guide”). This supersedes the previous Advertising Guide dated 26 March 2019. The salient updates in the Advertising Guide are as below.

- Advertising services now include the selling of advertising airtime.
- Paragraph 15 explains that effective 1 January 2019, advertising services acquired by local businesses from overseas vendors are subject to self-accounting of service tax on imported services. Example 5 illustrates where a Malaysian company hires a local advertising agency to advertise on overseas platforms owned by foreign media owners, the advertising services provided by the foreign media owners would be subject to service tax on imported services.
- To mitigate double taxing (once from self-accounting on imported services, and again when charging the local client), paragraph 16 explains that effective 1 January 2020, where an imported taxable service is acquired from overseas vendors which are then provided to local customers, the imported taxable service is exempted from self-accounting of service tax. This exemption is provided through the RMCD’s [Service Tax Policy No. 2/2020](#).
- Paragraph 17 explains that effective 1 January 2020, digital services provided by foreign service providers (“FSPs”) to local Malaysian customers are subject to [service tax on digital services](#) (“SToDS”). Digital services would include advertising services which are rendered through digital means. Example 7 illustrates that an FSP providing digital advertising services to a local advertising agency would charge 6% SToDS, and as advertising service is a taxable service, the local advertising agency would also need to charge 6% service tax to the customer.
- To mitigate double taxing (once from FSP, and again when charging the local client), paragraph 18 explains that effective 1 January 2020, where an FSP provides a digital service to a local business (and charges them 6% SToDS), who also provides the same digital service (that was acquired from the FSP) to their customers, the local business may claim a refund of service tax paid to the FSP by offsetting the service tax payable to the RMCD. This facility is granted through the RMCD’s [Service Tax Policy No. 3/2020](#) and its [amendment](#).
- The implementation of SToDS for FSPs does not affect the registration and obligations of a local business who provides advertising services. They shall remain registered for service tax and would need to continue levying service tax on advertising services provided by them.

Deloitte’s comments

The updated Advertising Guide includes legislative updates concerning imported taxable services and SToDS for FSPs. It addresses the self-accounting of service tax obligation from January 2019 and the implementation of SToDS (including for digital advertising) effective January 2020. However, the new examples provided do not distinguish if the advertising services are for promotion inside or outside Malaysia. If the advertising services

provided by the overseas vendor is clearly for promotion outside of Malaysia, the overseas advertising services is not a taxable service.

It should also be noted that where an FSP provides digital services to a local business, on top of the refund by way of offsetting through the RMCD's [Service Tax Policy No. 3/2020](#), the local business is also exempted from self-accounting of service tax, under item 3 in the Schedule of the Service Tax (Persons Exempted From Payment of Tax) Order 2018.

Updated News on the Approved Major Exporter Scheme (AMES)

[News 11](#) is updated to state that with effect from 1 January 2022, all completed application forms and supporting documents must be submitted to the Internal Tax Division (*Bahagian Cukai Dalam Negeri*) of the zone/state controlling station where the applicant's premises operate. For more information, please refer to our [July 2020 Chat](#).

[News 12](#) is updated to announce that the following additional reports are required to be submitted by manufacturers or traders who are enjoying exemption under AMES in addition to the reports announced previously:

- [AMES-03A](#): Statement of Sales Tax Repayment Calculation for Local Sales of Taxable Goods under AMES
- [AMES-04B](#): Statement of Sales Tax Repayment Calculation for Local Sales of Exempt Finished Goods under AMES

For information on the other reports, please refer to our [May 2021 Chat](#).

Expiration of Service Tax Exemptions

Imported services for Labuan

Under the RMCD's [Service Tax Policy No. 2/2019](#), eligible companies in Labuan were exempted from self-accounting of service tax on imported professional services from 1 September 2019 to 31 December 2021 (through an [amendment](#)).

Accommodation services

As announced under the [Economic Stimulus Package 2020](#), a service tax exemption was provided to accommodation service providers from March to August 2020, and this was done through the RMCD's [Service Tax Policy No. 9/2020](#). Under the [PENJANA](#) initiative, this exemption was first extended to 30 June 2021 through an [amendment](#) to the Policy. Under the [PEMERKASA](#) initiative, accommodation services were once more exempted up to 31 December 2021 by way of the RMCD's [Service Tax Policy No. 2/2021](#) and its [amendment](#) (only available in the national language).

Deloitte's comments

With the expiration of the exemptions and no further extensions announced, affected businesses should take note and ensure tax compliance from 1 January 2022. Businesses in Labuan who previously relied on the exemption should start self-accounting for service tax on imported taxable services. Accommodation service providers should start charging service tax on the accommodation services and related services provided.

Brought to you by:



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2. Treatment of services between a branch and its headquarters

The RMCD have recently issued a written decision that services between a branch and its headquarters can be within the scope of service tax.

In order for service tax to apply, it requires the provision of service from a service provider to a service recipient. There is also the general acceptance of the principle that you cannot provide a service to yourself i.e. services between departments in the same legal entity are not within the scope of service tax. However, there appears to be less certainty in the case where that same legal entity consists of a non-resident corporate entity and its resident branch.

The issue of the treatment of services between a branch and its headquarters is not a new issue. This has been debated considerable times both during the previous GST and the current service tax. In the earlier GST, there was a lot of ambiguity and a lack of clarity on the treatment of these services. We observed inconsistent positions being provided by the RMCD on the treatment, with some taxpayers being advised these were out of scope, while others received responses that the services were within the scope of GST.

When the service tax was reintroduced in 2018, and importantly when a tax on imported services was introduced in 2019, this issue was never addressed by the RMCD in any published guidance. Many businesses adopted a position of excluding services between a branch and its headquarters from the scope of the tax, either on the basis of the services being within the same entity, or adopting the view that it would fall within the scope of the intragroup relief.

The RMCD did finally address this issue in the Sales Tax and Service Tax Implementation Issue Technical Committee Discussion's 2/2019 meeting minutes dated 29 August 2019. In this committee discussion, the question was raised as to whether services between a branch and its headquarters would be within the scope of service tax, on the basis it was the same legal entity. To this question, the RMCD responded that they were of the view that the services were not taxable under service tax, but then added that this is provided the conditions in Paragraph 3 and 3A of the First Schedule to the Service Tax Regulations 2018 (Regulations) were met.

While the outcome of the RMCD's view was consistent, there was still some uncertainty on the application of Paragraphs 3 and 3A of the Regulations to the scenario. In particular, paragraphs 3 and 3A form part of the provisions that apply to exclude services by a company to any company within the same group of companies from the scope of the service tax. The issue inherent with this reference for paragraphs 3 and 3A to apply, would require more than one company. In the case of a corporate entity and its branch, there are no two legal entities, just one. It also did not clearly acknowledge or reference the no-tax on 'self-supply' proposition under the service tax. This position was never further clarified by the RMCD. However, there appear to be a general acceptance that services between a branch and its headquarters are not within the scope of the service tax.

However, recently a number of our clients had received separate confirmations from the RMCD that services provided by its non-resident headquarters to its Malaysian branch would fall within the scope of service tax. This is followed by a service tax ruling issued by the RMCD that a branch would not meet the conditions for intragroup relief, and therefore the services would be within scope. While this decision is being appealed further, it is important for businesses to take note of this shift in thinking by the RMCD and any potential risk or exposure that may arise as a result.

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3. Credit Note Adjustments on Service Tax Component

Clarification was sought with the RMCD recently to determine if a registrant is able to issue credit notes under Section 23 of [Service Tax Act 2018](#) (“STA”) to his/her customer to adjust the service tax amount that was over-charged or erroneously charged and if a service tax adjustment is allowed for such credit note in the filing of the SST-02 return.

Section 23 of the STA enables a registered person to issue credit notes and make a service tax deduction in the returns.

Subregulation 11(1) of the Service Tax Regulations 2018 (“STR”) further provides that credit notes can be issued to make a reduction of service tax amount if such reduction is:

- a) due to a change in the rate of service tax in force under Section 10; or
- b) due to any adjustment in the course of business

The RMCD’s response was that typically businesses are able to issue credit notes as part of their commercial practice, however not all credit notes qualify for an adjustment in the SST-02 return. Credit note adjustments are only allowed for credit notes that are issued in the “normal course of business”. The issuance of a credit note to correct an over-charge or erroneous charge of service tax does not constitute as adjustment made in the course of business. From the RMCD’s perspective, a credit note is said to be issued in the normal course of business in the following scenarios:

- The registrant discounts the value of the service provided to a customer
- The customer is wrongly charged for a service that they did not receive

Based on the confirmation, it is unclear if these two scenarios are exhaustive of what constitutes as an adjustment made in the normal course of business. Where a company has overcharged or erroneously charged service tax to its customers and wishes to correct this error, the recourse available to the company is to apply for a service tax refund pursuant to Section 38 of STA.

The RMCD’s narrow interpretation of “adjustments made in the normal course of business” may restrict the avenues available to a company to recover from overpaid service tax. It is worth noting that under the GST regime, taxpayers were allowed to make credit note adjustments on the GST component alone in the GST returns based on the RMCD’s guidance.

A refund application via Section 38 of STA may not always be a viable option as there is a time limit of 12 months from the date of overpayment to make a claim. The interpretation adopted by the RMCD does not allow for commercial fluidity in terms of transactions, and companies may even run the risk of having to absorb the overpayment as cost to maintain customer relationships in cases where the overpayment is discovered after the lapse of 12 months.

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