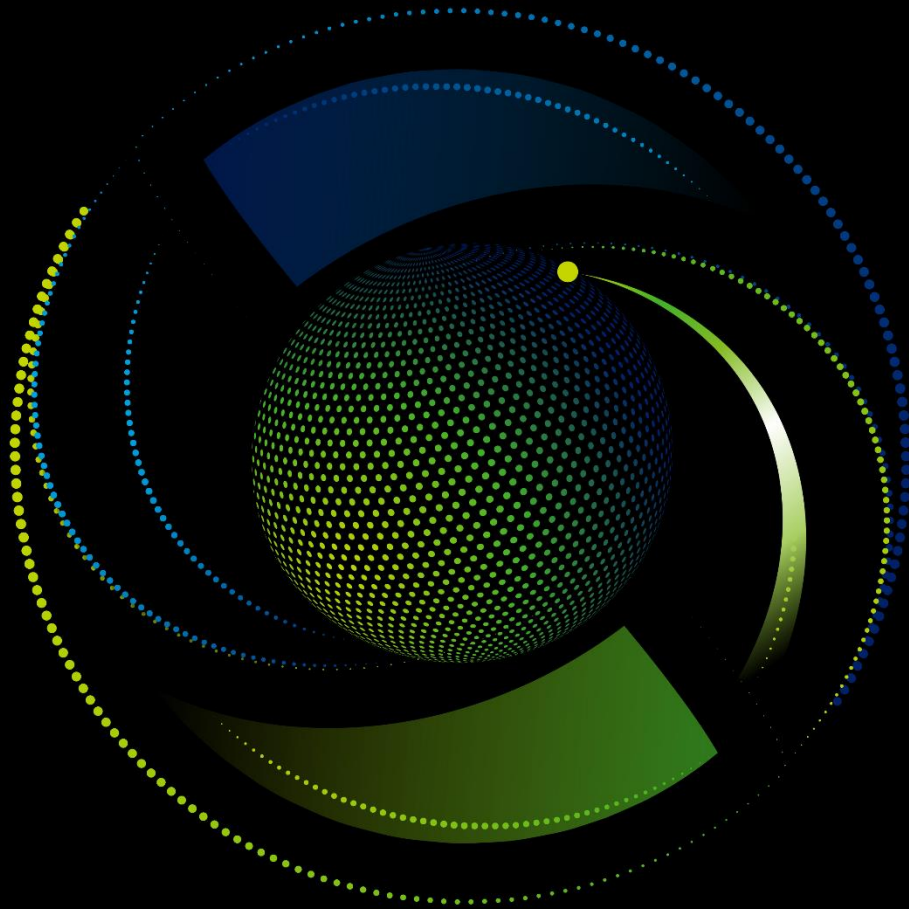


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Indirect Tax Chat

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

January 2024



Issue 01.2024

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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 January 2024 edition of our Indirect Tax Chat. We hope that you had a wonderful start to the new year.

In a recent public seminar, the Royal Malaysian Customs Department ("RMCD") disseminated crucial information about the 'proposed' transitional rules for the increase in service tax rate from 6% to 8%. Please note that these rules are currently in the 'proposed' stage, and we recommend waiting for the official guidance to be issued.



The implementation of the announced sales tax on Low Value Goods ("LVG") has commenced this year. We have observed that some affected sellers have already begun charging the sales tax on LVG for goods sold into Malaysia.

In this month's chat, we will be discussing the amendments to Sales Tax Regulations, Orders, and Service Tax Regulations, along with legislative updates on sales tax for Low-Value Goods (LVG).

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

- An economist, Geoffrey Williams, state that sales tax on LVG is not a good idea as it would only yield RM200 million annually, which is not worthwhile. Another economist, Carmelo Ferlito, says that protecting locally produced goods burdens consumers and hinder competitiveness among Malaysian businesses. For more information, please click [here](#).
- The Prime Minister, Datuk Seri Anwar Ibrahim, who is also Finance Minister, said that in 2023, the Inland Revenue Board achieved RM183 billion, surpassing its target, and the Customs Department exceeded expectations by collecting RM55 billion. For more information, please click [here](#).

We would like to extend our warm wishes for a Happy Chinese New Year to all who are celebrating, and to the rest of you, happy holidays. We hope that you continue to stay safe and well.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Amendments to the Sales Tax Regulations

There were amendments to the following Sales Tax Regulations which were gazetted on 29 December 2023 and came into operation on 1 January 2024:

- [Sales Tax \(Amendment\) \(No.2\) Regulation 2023](#)
- [Sales Tax \(Customs Ruling\) \(Amendment\) Regulation 2023.](#)

Notable amendments made to the Sales Tax Regulation 2018 and Sales Tax (Customs Ruling) Regulation 2018 (“principal regulations”) are as follows:

Sales Tax (Amendment) (No.2) Regulation 2023

- Amendment to Regulation 2(1) – Deletion of the “Form JKDM No.2” definition.
- Amendment to Regulation 3

In subregulation (1)

- In relation to paragraph (a), the word “shall apply” was added after the words “section 12 of the Act”;
- In relation to paragraph (b), the word “may apply” was added after the words “section 20 of the Act”; and
- The original wording “shall apply in Form SST-01” was substituted with “to be registered in the form and manner as determined by the Director General”.

In subregulation (2)

- Substitute the original Regulation 3(2) with “(2) Upon receipt of the application referred to in subregulation (1), the Director General shall assign a registration number to the manufacturer whose registration has been approved by a written notification in writing”.

- Deletion of Regulation 4, 10, 31, 32,33, 36 and Second Schedule
- Amendment to Regulation 8

- Substitute the original Regulation 8(1) with:

“(1) Any registered manufacturer who sells taxable goods shall issue a credit note or debit note where, after the return for the taxable goods has been furnished to the Director General, there is a reduction of, or addition to, the amount of sales tax which has been charged on the taxable goods—

 - due to a change in the rate of sales tax under section 10 of the Act; or*
 - due to any adjustment in the course of business.”*
- Deletion of subregulation (2)

- The original Regulation 9 was substituted with “A taxable person shall furnish a return for each taxable period as required under section 26 of the Act in the form and manner as determined by the Director General.”

- f) The original Regulation 11 was substituted with *"If a taxable person makes an error in any return furnished under the Act, the taxable person may correct the error in the form and manner as determined by the Director General."*
- g) The original Regulation 14(1) was substituted with *"Any person who is eligible to claim for a refund under paragraph 39(1)(a), subsection 35(6) or subsection 41(3) of the Act may apply to the Director General."*
- h) The original Regulation 15 was substituted with *"Any person who is eligible to claim for a refund of sales tax in relation to bad debt under section 36 of the Act may apply to the Director General in the form and manner as determined by the Director General."*
- i) Under Regulation 17, the following amendments were made:
- For subregulation (2)(a), substitution of the words *"JKDM Form No.2"* with *"the form and manner as determined by the Director General"*
 - For subregulation (2)(b), substitution of the words *"Customs Form No. 1, Customs Form No. 9" and "Customs Form No.2"* with *"a declaration in the form and manner as determined by the Director General under the Customs Regulations 2019"*
- j) Substitution of the words *"prescribed form"* with *"form and manner as determined by the Director General"* in Regulation 26B.

Sales Tax (Customs Ruling) (Amendment) Regulation 2023

- a) For Regulation 2(1), the original wording *"An application for a customs ruling shall be made in the form prescribed in the First Schedule and..."* was substituted with *"Any person may apply for a customs ruling under section 43 of the Act to the Director General and the application shall be..."*
- b) The original wording *"a duly completed form prescribed in the First Schedule"* was substituted with *"the application for a customs ruling referred to in subregulation 2(1)"* in Regulations 3(a) and 4(1)(a).
- c) The original wordings for:
- Regulation 4(3) - *"the form prescribed in the Second Schedule"*; and
 - Regulation 7(1) - *"in the form prescribed in the Third Schedule"*;
- were substituted with *"the form and manner as determined by the Director General"*.
- a) Deletion of First, Second and Third Schedule.

Deloitte's comments

For any applications and declarations made to the Royal Malaysian Customs Department (“RMCD”), it appears that the Director General of the RMCD may determine/change the required form format and information from time to time without amending the Regulation (as opposed to the previous practice). Where the relevant provision of the specific regulations requires completion of a specific form, the Director General of the RMCD should issue clear public guidelines to identify the type of required form and how it should be completed. This would aid businesses in matters pertaining to sales tax returns and customs rulings, among others. Where necessary, businesses and individuals should also seek clarification from the RMCD before making any form of applications or submissions.

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2. Sales Tax Legislative Amendments

The following Orders were gazetted on 28 and 29 December 2023 respectively and came into effect from 1 January 2024:

- [Sales Tax \(Goods Exempted from Tax\) \(Amendment\) \(No. 2\) Order 2023](#)
- [Sales Tax \(Persons Exempted from Payment of Tax\) \(Amendment\) \(No. 3\) Order 2023](#)

The abovementioned Orders are available in *Bahasa Malaysia* and English language – please refer to the link for each Order above for details.

Notable amendments were made to the abovementioned Orders:

Sales Tax (Goods Exempted from Tax) (Amendment) (No. 2) Order 2023

Amendments were made to tariff subheading 9025.19 under Schedule A by:

- Deleting the words “---Electrically operated” in **column (3)**
- Adding new subheading 9025.19.20 00 with description “---Not electrically operated” in **column (3)**

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2023

Amendments under Schedule B

The following remarkable amendments were made under Schedule B, of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018:

- Deletion of words “(including packing materials)” in **column (3) of Item 1 to Item 3**
- Addition of words “or transported from a licensed warehouse under section 65 of the Customs Act 1967, a licensed manufacturing warehouse under section 65A of the Customs Act 1967 or a free zone established under the Free Zones Act 1990’ after the words “registered manufacturer” in **column (4) of Item 1,2 and 4.**
- Substitute the words of “The person approved by the Director General” with the words “The manufacturer in column (2)” in **column (5) of Item 1,2 and 4.**
- The following changes are specifically for **Item 4**, worth noting in:
 - **Column (3):** The wording “Taxable raw materials and components (including packing materials)” is replaced by “Raw materials, components, manufacturing aids, cleanroom equipment, and, packing and packaging materials.”

- **Column (4):**
 - addition of subitem (aa) on manufacturing aids and cleanroom equipment
 - addition of subitem (ba) on the produced exempted goods shall be exported within twelve months from the date of import or purchase or such further period as approved by the Director General
 - deletion of subitem (d)
 - substitute the wording in subitem (e) from “*raw materials and components*” with “*goods in column (3)*”

Amendments under Schedule C

The following amendments were made under Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018:

- Substitute the words “*and packaging materials*” with the words “*..manufacturing aids, cleanroom equipment, and, packaging and packaging materials*” in **column (3) of Item 1 to 4**.
- Insertion of new subitems under **column 4 for Item 1 to 4** to address the following:
 - the manufacturing aids and cleanroom equipment as specified by the Director General of the RMCD
 - If the manufacturing aids, cleanroom equipment, and, packaging and packaging materials are damaged, destroyed due to unavoidable accident or failure to meet a specific quality, the exempted person may apply in writing to the Director General of the RMCD to export, transport, or return the goods to the supplier, with no sales tax charged.

Deloitte’s comments

The aforementioned Orders have undergone noteworthy amendments with the inclusion of manufacturing aids and cleanroom equipment. These additions to the list of exempted goods present opportunities for businesses and individuals to optimise their utilisation of sales tax exemption facilities.

Nevertheless, it is imperative for businesses and individuals to be mindful of the stipulated conditions outlined in the Orders before seeking exemption from the tax authorities.

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3. Amendments to the Service Tax Regulations

The Service Tax (Amendment) (No. 2) Regulations 2023, Service Tax (Digital Service) (Amendment) Regulations 2023 and Service Tax (Customs Ruling) (Amendment) Regulations 2023 have been gazetted and came into operation on 1 January 2024. The salient amendments are listed below:

Service Tax (Amendment) (No. 2) Regulations 2023

- The definition of “Forms JKDM No. 2” in Regulation 2 (Interpretation) has been deleted.
- Under Regulation 7 (Application for Registration), the respective subregulations have been amended as follows:
 - In subregulation (1), the words *“shall apply in Form SST-01”* are replaced with *“to be registered in the form and manner as determined by the Director General”*
 - Subregulation (2) has been replaced with the following paragraph:

“Upon receipt of the application referred to in subregulation (1), the Director General shall assign a registration number to the person whose registration has been approved by a notification in writing.”
 - Subregulation (3) which previously stated, *“Every application for registration under subregulations (1) and (2) shall be submitted to Director General through electronic service.”* has been deleted.
- Regulation 8 (Notification of Registration) has been deleted. However, we note that a similar provision is now stated as subregulation 7(2) above.
- The subregulations (1) and (2) under Regulation 12 (Manner of Furnishing Return or Declaration) have been replaced with the following:
 - (1) *“A taxable person shall furnish a return for each taxable period as required under section 26 of the Act in the form and manner as determined by the Director General.”*
 - (2) *“A person other than a taxable person shall furnish a declaration as required under section 26A of the Act in the form and manner as determined by the Director General.”*
- The subregulations (1) and (2) under Regulation 15 (Correction of Errors) have been replaced with the following:
 - (1) *“If a taxable person makes an error in any return furnished under the Act, the taxable person may correct the error in the form and manner as determined by the Director General.”*
 - (2) *“If a person other than a taxable person makes an error in any declaration furnished under the Act, the person other than a taxable person may correct the error in the form and manner as determined by the Director General.”*
- Subregulation (1) under Regulation 18 (Manner of Claiming Refund under paragraph 38(1)(a), or subsection 34(6) or 40(3), of the Act) has been replaced with the following paragraph:

“Any person who is eligible to claim for a refund under paragraph 38(1)(a), subsection 34(6) or subsection 40(3) of the Act may apply to the Director General.”

- Regulation 19 (Manner of Claiming Refund of Service Tax in relation to Bad Debt) has been replaced with the following paragraph:

“Any person who is eligible to claim for a refund of service tax in relation to bad debt under section 35 of the Act may apply to the Director General in the form and manner as determined by the Director General.”

- Regulation 25 (Application for Review) and Regulation 29 (Forms) have been deleted.
- The Third Schedule, which previously stated the application form for sales tax and service tax (“SST”) registration, i.e., SST-01, SST returns, i.e., SST-02, imported taxable services declaration, i.e., SST-02A and application for review, i.e. SST-03 forms, has been deleted.

Deloitte’s comments

We observe that the above amendments mainly substitutes the previously prescribed form or manner with the words in ‘the form and manner as determined by the Director General’. However, unlike other indirect tax laws, the regulations have been amended without making similar amendments to the parent Act, i.e., Service Tax Act 2018. As such, the Service Tax Act 2018, which still contains provisions on prescribed form or manner, should ideally be amended as well.

However, for Regulation 18 on claiming refund for service tax overpaid or erroneously paid, or exempted or remitted by the Minister, it was previously stated that such applications shall be made in prescribed form JKDM No. 2. This regulation has now been amended to only state that such applications may be made to the Director General and does not contain the words ‘the form and manner as determined by the Director General’, unlike the amendments to other regulations.

With the changes made to Regulation 19 on claiming refund of service tax in relation to bad debt, which removed the prescribed form JKDM No. 2 together with other conditions for the refund application, it is now becoming unclear on how such applications should be submitted.

Furthermore, Regulation 25 on submission of application for review via prescribed form SST-03 has been deleted. Although the provision for review is still covered under the Service Tax Act 2018, it is also unclear on how review applications should be submitted.

We note that although forms under the Third Schedule such as SST-01 and SST-02 have been deleted, the same forms are still being used in practice.

To summarise, in general, the form and manner for the amended regulations above can change as and when determined by the Director General of the RMCD without amending the regulations (as opposed to the previous practice). As such, it is important that businesses stay on top of any changes to the forms, as well as notifications and updates issued by the RMCD, especially on the RMCD’s webpage. In the case of uncertainty, businesses should seek clarification from the RMCD accordingly.

Service Tax (Digital Service) (Amendment) Regulations 2023

- Under Regulation 3 (Application for Registration), the respective subregulations have been amended as follows:
 - In subregulation (1), the registration form (i.e. *Form DST-01*) is now replaced with “*in the form and manner as determined by the Director General*”
 - In subregulation (2), the words “*through electronic service*” have been deleted.
- The heading of Part IV, which previously stated “*RETURN, PAYMENT AND REFUND*” has been amended by deleting the word “*RETURN,*”.
- Regulation 7 (Manner of Furnishing Return) and Regulation 18 (Forms) have been deleted.
- The Schedule, which previously stated the application form for digital service registration, i.e., DST-01 and service tax on digital service return DST-02 forms, has been deleted.

Deloitte’s comments

Similar to our comments above, the regulations have been amended to remove the prescribed form or manner without making similar amendments to the Service Tax Act 2018.

It is noted that the prescribed form and manner for furnishing service tax on digital service return have been removed entirely from the Service Tax (Digital Service) Regulations 2019. Although forms under the Schedule have been deleted, the same forms are still being used in practice.

As such, businesses should remain aware of any changes or updates issued by the RMCD from time to time and seek clarification from the RMCD accordingly in case of uncertainty.

Service Tax (Customs Ruling) (Amendment) Regulations 2023

- The words “*An application for a customs ruling shall be made in the form prescribed in the First Schedule and*” in subregulation (1) under Regulation 2 (Application for Customs Ruling) are replaced with “*Any person may apply for a customs ruling under section 42 of the Act to the Director General and the application shall be*”.
- Under Regulation 3 (Analysis by Any Party Determined by Director General), paragraph (a), which previously stated “*a duly completed form prescribed in the First Schedule;*” is replaced with “*the application for a customs ruling referred to in subregulation 2(1);*”.

- Under Regulation 4 (Issuance of Customs Ruling), the respective subregulations have been amended as follows:
 - In subregulation (1), paragraph (a), which previously stated “*a duly completed form prescribed in the First Schedule;*” is replaced with “*the application for a customs ruling referred to in subregulation 2(1);*”
 - In subregulation (3), the words “*the form prescribed in the Second Schedule*” are replaced with “*the form and manner as determined by the Director General*”
- Under Regulation 7 (Renewal of Customs Ruling), the words “*in the form prescribed in the Third Schedule*” in subregulation (1) are replaced with “*to the Director General in the form and manner as determined by the Director General*”.
- The First Schedule, Second Schedule, and Third Schedule, which previously stated the forms in relation to Customs ruling, have been deleted.

Deloitte’s comments

Similar to the above, the regulations have been amended to remove the prescribed form or manner without making similar amendments to the Service Tax Act 2018.

We note that Regulation 2 on application for customs ruling previously stated that such applications shall be made in the prescribed form. This regulation has now been amended to only state that such applications may be made to the Director General and does not contain the words ‘the form and manner as determined by the Director General’, unlike the amendments to other regulations.

As the forms for customs ruling have been deleted, it is important for businesses to stay updated of any changes issued by the RMCD from time to time. If required, seek clarification from the RMCD accordingly in case of uncertainty.

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4. Legislative Updates on Sales Tax for Low Value Goods

The following in relation to sales tax on LVG were gazetted on 28 and 29 December 2023 respectively and came into effect from 1 January 2024:

- [Sales Tax \(Low Value Goods\) Regulation 2023](#)
- [Sales Tax \(Rate of Tax for Low Value Goods\) Order 2023](#)
- [Sales Tax \(Determination of Low Value Goods\) Order 2023](#)

The amendments to various laws include:

Sales tax (Low Value Goods) Regulation 2023

- Issuance of credit note and debit note

Introduction of a new regulation 6A allows a registered seller (“RS”) that sells LVG to issue credit notes or debit notes if there is a deduction or addition to the amount of sales tax payable on LVG after the sales tax on LVG return (Form LVG-02) has been submitted to the RMCD. The regulation also includes the particulars required in the credit note or debit note issued by the RS.

- Manner of furnishing return

Additionally, regulation 7 has been substituted to mandate that registered sellers must furnish a return for each taxable period, as required under section 26 of the Sales Tax Act 2018, in the form and manner determined by the Director General.

Sales Tax (Rate of Tax for Low Value Goods) Order 2023

This order revokes the Sales Tax (Rate of Tax for Low Value Goods) Order 2022, while the rate of sales tax for LVG is maintained at 10% and the effective date for charging sales tax on LVG has been shifted to 1 January 2024.

Sales Tax (Determination of Low Value Goods) Order 2023

This order revokes the Sales Tax (Determination of Low Value Goods) Order 2022, while maintaining the threshold of not exceeding MYR 500 for determining LVG and brought into Malaysia by land, air, or sea. Additionally, the order also excludes certain items from falling under the category of LVG, such as cigarettes, tobacco products, intoxicating liquors, smoking pipes, electronic cigarettes, and preparations used for smoking through electronic cigarettes.

Deloitte’s comments

The amendments, effective from 1 January 2024, align with the revised guide on LVG released by the RMCD on 3 November 2023. Given that the sales tax on LVG has gone live on 1 January 2024, affected businesses should ensure measures are put in place to ensure compliance and to avoid disruptions in importing LVG into Malaysia. In instances of uncertainty, businesses should seek clarification from the RMCD to assess the potential implications of this tax.

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