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Indirect Tax Chat

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

July 2020



Issue 7.2020

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Greetings from Deloitte Malaysia's Indirect Tax team

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

As we pass the half way point in the year, we continue to face a challenging economic and business environment both here and globally. Fortunately, there has been some respite in the form of the payment of outstanding GST refunds. The Director General of the Royal Malaysian Customs Department (RMCD), Datuk Abdul Latif Abdul Kadir has indicated that RM 1.264 billion was refunded to 4,316 companies during the period between 22 June and 2 July 2020.



The payment of GST refunds represents a significant policy shift as previously large refunds were rarely paid without the completion of a final GST audit or the provision of a Bank Guarantee (BG). However, a number of clients we have worked with, shared that they were able to get their refunds without either, which has been very much a welcome development. Unfortunately, this does not hold true for all businesses and some still need to offer BGs or await completion of audits.

For businesses who are still requested to provide BGs, we would recommend you take the utmost care in reviewing any agreements or legal documentation provided by the RMCD. In a recent case, we had a client who was asked to not only provide a BG but to also sign a document that waives any possible appeal rights that could arise from a subsequent audit decision. It is unclear to what extent such agreements are enforceable under the Law, but given the uncertainty in relation to the direction a GST audit could take, we would recommend caution before agreeing to such terms.

Moving on, the RMCD have also launched the MySToDS portal (accessible [here](#)), which allows businesses to confirm if foreign service providers are registered for service tax on digital services. As with the equivalent portal for domestic companies, MySST portal, this will allow service recipients to verify that these companies are in fact registered for service tax and when that registration took effect.

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

- Carmelo Ferlito, an economist with the Institute for Democracy and Economic Affairs has warned of worsened economic problems if the government were to raise the statutory national debt limit to above 55% of gross domestic product. Ferlito instead called for an economic action plan with longer term benefits, with one suggestion being to replace the current sales tax and service tax (SST) regime with a “reformed” GST regime as part of the government’s tax reforms. In a previous interview, Ferlito suggested a 10% GST rate for luxury goods, a 3% rate for “key development items” related to culture and education, zero rating for basic goods regularly consumed by the lower-income group and 6% for other items. For more information, please click [here](#) and [here](#).

We hope you find this month’s tax chat informative, and that you continue to stay safe and well. To those celebrating, we wish you a very happy Hari Raya Haji!

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Sales Tax Amendments in relation to the Approved Major Exporter Scheme

A new sales tax exemption facility, the Approved Major Exporter Scheme (“AMES”), took effect from 1 July 2020. The AMES is intended to relieve the challenges under the existing sales tax drawback mechanism for traders who re-export/export the tax paid goods and specific exemption facility for manufacturers of non-taxable goods for export. The benefits that accrue to AMES participants are as follows:

- AMES Traders are exempted from payment of sales tax on importation/acquisition of the goods which are subsequently exported, or transported to designated areas (DA) or special areas (SA);
- AMES manufacturers of non-taxable goods are exempted from payment of sales tax on importation/acquisition of raw materials, components packing, and packaging materials for use in manufacturing of sales tax exempted goods, which are subsequently exported , or transported to DA or SA.

On 30 June 2020, the Sales Tax Regulations 2018 was also amended to introduce Part IXA as cited in the [Sales Tax \(Amendment\) Regulations 2020](#). This became effective on 1 July 2020, and the details of conditions and application procedures for the AMES are described below.

AMES eligibility criteria

Trader	Manufacturer
i. Has been operating in Malaysia for at least 1 year ;	i. Has been operating in Malaysia for at least 1 year ;
ii. Annual sales value of taxable goods exceeded RM10 million at the time of application; and	ii. Annual sales value of manufactured goods exempted from sales tax exceeded RM10 million at the time of application; and
iii. At least 80% of the annual sales value of the taxable goods are exported sales or transported to DA or SA.	iii. At least 80% of annual sales value of the manufactured goods exempted from sales tax are exported or transported to DA or SA.

Exemption from sales tax payment conditions

Sales tax exemption under the AMES is subject to the following conditions:-

Where the approved person is a Trader	Where the approved person is a Manufacturer
a) Taxable goods are directly imported or transported from DA or SA, or purchased or obtained from registered manufacturer by the trader ;	a) Raw materials, components, packing and packaging materials shall be imported or transported from DA or SA, or purchased from registered manufacturer directly by the manufacturer ;

b) Tax exempted goods shall not be used or have undergone any value-added process ;	b) Tax exempted raw materials, components, packing and packaging materials shall be used by the manufacturer directly and solely in the manufacture of goods exempted from sales tax;
c) Tax exempted goods are subsequently exported or transported to DA or SA by the trader ; and	c) The manufactured goods exempted from sales tax shall be exported or transported to DA or SA by the manufacturer ; and
d) Tax exempted goods: - for destruction purposes should be disposed of by way as approved by the Director General of Customs ("DG"); - should not be sold locally; and - should be accounted for. The Trader has to repay the sales tax to the DG if not in compliance with the above.	d) Tax exempted raw materials, components, packing and packaging materials : - for destruction purposes should be disposed by way as approved by the DG; - should be used only for manufacturing of non-taxable goods; - should not be sold locally; and - should be accounted for. Manufacturer has to repay the sales tax to the DG if not in compliance with the above.

Note: If the approved person is both a trader and a manufacturer, the approved person is required to make two (2) separate applications (based on the AMES guidelines) and must comply with the corresponding prescribed conditions mentioned above.

Goods listed below are not eligible for the AMES:

- (a) wine, spirits, beer and malt liquor;
- (b) cigarettes, tobacco and tobacco products; and
- (c) petroleum.

AMES approval conditions

- (i) Any importation, transportation and exportation of goods shall be declared by approved person in the prescribed form under the Customs Act 1967 or any document as the DG may determine;
- (ii) The accounting and internal control system are able to fulfil such accounting and auditing standards;
- (iii) Notify in writing to the DG within 14 days after any change in the business particulars of the approved person;
- (iv) Prepare a statement relating to the AMES in the manner as the DG may determine and submit such statement for inspection as may be required by a senior officer of sales tax at any time; and
- (v) Any other conditions as the Director General may deem fit to impose.

Validity of approval

- 1) The approval for the AMES facility is **valid for a period of two (2) years** or a period as determined by the DG of RMCD.
- 2) An application for renewal of the approval period may be made in the form and manner as the DG may determine **within 30 days before the expiry date** of such approval.
- 3) The DG may refuse to renew an approval if the **approved person fails to comply with any approval conditions** mentioned above.

For more information, you may access the RMCD's notice on the AMES which was released in the national language by clicking [here](#). The AMES application form can be found [here](#).

Deloitte's comments

Now that the relevant Law and guidance are in place, traders and manufacturers should start reviewing the eligibility criteria to determine if their circumstance meet those conditions. There are clear benefits from participating in the scheme, both in terms of reducing cash flow and compliance costs. However, once approved to participate in scheme, ensuring continued compliance of the conditions are critical. If it is determined at a later date that the conditions were not met, then any sales tax previously exempted would become due and payable from the date of the non-compliance.

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2. FAQ on the Short Term Economic Recovery Plan

Pursuant to the Government's announcement (in early June 2020) of the economic stimulus plan known as '*Pelan Jana Semula Ekonomi Negara*' ("PENJANA"), the RMCD released an FAQ on 30 June 2020 to provide some further information and clarification with respect to PENJANA (only available in the national language and can be accessed [here](#)).

The salient points in the FAQ are as below:

Initiative 23 – 50% remission on the late payment penalties for sale tax and service tax ("SST") (from 1 July 2020 till 30 September 2020) for registered taxable service-provider or manufacturer ("Registered Person")

1. Which taxable periods are eligible for the 50% penalty remission?

A: The taxable periods ending May, June, July and August 2020 where SST payment is made within 90 days from the SST payment due date are eligible for the 50% penalty remission.

2. What are the conditions for the Registered Person to obtain the 50% penalty remission?

A: The Registered Person would need to declare in the SST-02 or SST-02A form and make full SST payment within 90 days from the payment due date.

3. How does a Registered Person apply for the 50% penalty remission?

A: No application is required to be made to the RMCD.

4. Prior to PENJANA, the RMCD had granted full (100%) remission of late payment penalty on SST where the tax payment was made by 30 June 2020. Does the 50% penalty remission under PENJANA apply to any SST payment that has not been paid after 30 June 2020 and how would the 50% penalty remission be applied towards the late payment penalty?

A: Prior to PENJANA, RMCD had decided to fully remit any late payment penalty for taxable periods ending February, March and April 2020, where SST payment was made to the RMCD by 30 June 2020. The RMCD has gone a step further to grant 50% penalty remission for SST payment which has yet to be paid after 30 June 2020. Please refer to the table below:

Taxable period ended	SST payment due date	100% penalty remission (SST payment made by 30 June 2020)	50% penalty remission (provided SST payment made within 90 days from payment due date)
February 2020	31 March 2020	✓	
March 2020	30 April 2020	✓	
April 2020	31 May 2020	✓	✓ (for payment made between 1 July – 29 August 2020)
May 2020	30 June 2020		✓
June 2020	31 July 2020		✓
July 2020	31 August 2020		✓
August 2020	30 September 2020		✓

Note: The 50% penalty remission is not applicable to late payment of (1) service tax on digital services by a foreign registered person and (2) tourism tax by an accommodation operator tourism.

Example:

Taxable period	Payment due date	Penalty rate before/after 30 June 2020					
			1 Jun – 30 Jun	1 Jul – 30 Jul	31 Jul – 29 Aug	30 Aug – 28 Sep	29 Sep – 28 Oct
Mar – Apr	31 May 2020	Original penalty rate	10%	25% (10% +15%)	40% (10%+15% +15%)	40%	40%
		Penalty rate after remission	0% (100% remission)	12.5% (50% remission)	20% (50% remission)	40% (No remission on the penalty as it exceeds 90 days)	40% (No remission on the penalty as it exceeds 90 days)

Deloitte's comments

As mentioned in our previous tax updates, late payment penalties can be quite significant. The Government and the RMCD have recognised that due to the various lockdown measures, businesses have faced many operational and business challenges in meeting filing and reporting requirements. The introduction of penalty remission measures is welcomed.

In addition to the above, businesses can also apply to the RMCD to settle outstanding tax and penalties via instalments provided that they demonstrate financial hardship. The RMCD also has the discretion, on a case by case basis, to provide full penalty remission. However, no guidelines can be provided as to what criteria would be applied in assessing such claims.

Initiative 32 – 100% and 50% sales tax exemptions on the sales of locally assembled and imported passenger cars respectively

(A) Exemption from paying sales tax

- When will this sales tax exemption be valid?

A: The exemption will be valid starting from 15 June 2020 to 31 December 2020 ("exemption period"), subject to other conditions set by the Ministry of Finance ("MoF") and RMCD.

- What type of passenger cars are applicable to this sales tax exemption?

A: Any type of passenger cars including MPV and SUV except for the following:

- i. van used for the purpose of trading; and
- ii. MPV with 11 seaters and above.

3. Who is entitled for this sales tax exemption?

A: Only the following companies are entitled for the sales tax exemption:

- i. Any franchise holder/ distributor or dealer who buys the passenger car from a local registered car manufacturer;
- ii. Any franchise approved permit (“AP”) holder who imports new CBU cars;
- iii. Any open AP holder who is registered as a member of the Association of the Importation and Business of Vehicles Malaysia Malay (“PEKEMA”) that imports used CBU cars; and
- iv. Any other person who has obtained approval from MoF.

4. What is the date of validity of the exemption?

A:

Passenger car	Date of validity of the sales tax exemption
Locally assembled passenger car	The date of sale invoice issued by the manufacturer to franchise holder/distributor or dealer
Imported passenger car	The date of sales tax payment document (i.e. Customs K1 form)

Note: Only sale invoice and Customs K1 form dated between 15 June 2020 and 31 December 2020 would be valid to qualify for this sales tax exemption.

5. A CBU car was registered in the Customs information system (“SMK”) before 15 June 2020. However, sales tax was only paid after 15 June 2020, will the car be allowed to enjoy this exemption?

A: Yes, this will be allowed.

6. What are the methods to enjoy this sales tax exemption and is there any declaration or letter of exemption that needs to be referred to?

A: The reference of the letter issued by the MoF will need to be stated to obtain this sales tax exemption:

- i. For locally assembled CKD cars, the sale invoice issued by the registered manufacturer to the buyer (i.e. franchise holder/distributor or dealer) would need to state:
“100% sales tax exemption under section 35(3) Sales Tax Act 2018 in accordance with the letter MOF.TAX.700-2/3/36 Jld.3 (12)”.
- ii. For imported new CBU cars, the Customs K1 form would need to state:
“I am claiming sales tax exemption of 50% under section 35(3) Sales Tax Act 2018 in accordance with the letter MOF.TAX.700-2/3/36 Jld.3 (12)”.
- iii. For imported used CBU cars, the Customs K1 form would need to state:
“I am claiming sales tax exemption of 50% under section 35(3) Sales Tax Act 2018 in accordance with the letter MOF.TAX.700-2/3/36 Jld.3 (11)”.

The relevant company would need to provide certain information in accordance with the format and timing set out in the conditions of the MOF letters references MOF.TAX.700-2/3/36 Jld.3 (11) and MOF.TAX.700-2/3/36 Jld.3 (12).

7. How is the value (amount) of the sales tax exemption determined?

A: The value (amount) of the sales tax exemption is calculated based on the percentage of exemption (100% or 50%) on the actual value (amount) of sales tax imposed and levied on the sale value (of the taxable passenger car) in accordance to Regulations 4 to 8 under Sales Tax (Determination of Sale Value of Taxable Goods) Regulations 2018.

8. When is the last date for passenger cars to be registered?

A: The cars which have obtained the sales tax exemption have to be registered between the period of 15 June 2020 and 31 January 2021. Any company which has failed to register the cars by 31 January 2021 would need to pay back the exempted sales tax to the nearest RMCD branch through a SST-ADM form.

(B) Refund for overpayment of sales tax

1. Will companies that have paid the sales tax before the exemption period (15 June 2020 – 31 December 2020) be allowed to claim a refund for the overpayment of sales tax?

A: Sales tax payment made during the period between 1 January 2020 and 14 June 2020 is allowed to be claimed as a refund, provided that - (1) the relevant passenger car is registered within the period between 15 June 2020 and 31 January 2021, and (2) the refund claim is made no later than 31 March 2021, with the following supporting documents:

- i. Sales invoice issued by the registered manufacturer for locally assembled CKD passenger cars (dated 1 January 2020 to 14 June 2020), which states the amount of sales tax imposed.
- ii. Customs K1 form and sales tax payment receipt for imported CBU passenger cars (dated 1 January 2020 to 14 June 2020), which proves that sales tax has been paid.

2. Will the amount claimed for refund be received in full?

A: The amount of sales tax that will be refunded will be subject to MoF's confirmation letter on the difference between the OTR (on the road) price and further review by the RMCD.

3. Who is entitled to claim the refund?

A: i. Locally assembled passenger cars – Buyer (i.e. franchise holder/distributor or dealer).

ii. Imported CBU passenger cars – Payee of the sales tax as per the Customs K1 form.

4. When is the last date for passenger cars to be registered and the refund claim to be made?

A: Cars which are allowed to claim the refund would need to be registered between 15 June 2020 and 31 January 2021. The refund claim would need to be submitted to the Tax Division of MoF before 31 March 2021. It is advisable for the company to submit the refund claim on a monthly basis.

(C) Sales tax refund claim to RMCD

1. What is the process to claim the sales tax refund?

A:

- i. First, an application for a sales tax refund would need to be submitted to the MoF via Appendix B or C, and a confirmation letter will be issued by MoF to allow the said company to claim for a sales tax refund from RMCD. *[Deloitte's comments: Appendix B and Appendix C are not published and are likely to be appendices to the MOF letters of exemption.]*
- ii. Subsequently, an application is to be made to the Revenue Accounting Branch (Cawangan Perakaunan Hasil) at the nearest RMCD office via the JKDM-2 form together with the following supporting documents, within 3 months from the date of issuance of the confirmation letter from MoF:
 - Confirmation letter from MoF;
 - Purchase invoice from the registered manufacturer by the franchise holder/distributor/dealer (for CKD passenger car);
 - Customs K1 form (for imported CBU passenger car);
 - A copy of the passenger car grant (to confirm that the car has been sold); and
 - A copy of the invoice from the distributor/ dealer to the customer (to confirm that the selling price is not inclusive of sales tax).

Deloitte's comments

The RMCD has addressed a ‘transitional’ issue in the FAQ (i.e. refund of sales tax paid on unsold stock for the period of 1 January 2020 to 14 June 2020). It also provides more details on how the sales tax exemption on passenger cars would operate for the period of 15 June 2020 to 31 December 2020.

Initiative 35 – Exemption from tourism tax starting from 1 July 2020 to 30 June 2021 and the extension of service tax exemption for hotels to 30 June 2021

1. When will the tourism tax exemption take effect and will any approval be required by the accommodation operator?

A: The exemption period for the tourism tax is from 1 July 2020 to 30 June 2021 and no approval is required to enjoy the said exemption.

Examples of scenarios on how the exemption works are as below:

Hotel accommodation		Exemption on tourism tax
Check in	Check out	
30 June 2020, 2pm	1 July 2020, 11am	X
30 June 2021, 2pm	3 July 2021, 11am	✓ (Only for the overnight stay on 30 June 2021. Tourism tax is applicable on the overnight stay on 1 – 2 July 2021)

2. Will the accommodation operator be required to submit the TTx-03 form during the exemption period?
A: Yes, although no tourism tax is imposed, the TTx-03 form would still need to be submitted. An accommodation operator must also account for and pay any tourism tax that: (1) has been received from the foreign tourists before the exemption period, or (2) has not been received from the foreign tourists within twelve calendar months [after the date of the accommodation operator's invoice], which would become due in the taxable period.
3. Is there a requirement to insert the total amount of the exempted tourism tax in the TTx-03 form?
A: The total amount of the exempted tourism tax for each room (for every night) would need to be inserted in field 7b (i.e. tax exempted) in the TTx-03 form.
4. Will the accommodation operator be required to state the said exemption in the invoice?
A: Any invoice issued to foreign tourists during the exemption period may be indicated as "tax exempted" or "NIL" or "RM0.00".
5. What are the liabilities of an accommodation operator who commenced operations in the exemption period?
A: Any accommodation operator who started operations in the exemption period is required to register within 30 days from the date of commencement of operations. The effective date of registration is on the first day of the following month after the application for registration is submitted.

Deloitte's comments

This is consistent with the Government's other policy measures to reactivate the domestic tourism industry. The FAQ provides some details in this regard.

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3. Updated Service Tax Guide on IT Services

The RMCD released an updated guide pertaining to service tax on IT services as at 13 July 2020, which you may access [here](#). Following our [July 2019 Indirect Tax Chat](#) which covered a previous version of the guide, below are some key changes made in this latest version.

Additional IT services that are subject to service tax

- Provision of cloud services
- Enhancing and upgrading an operating system along with providing reports on the performance of such system form part of IT management services.
- Renewal of licence for software (that was previously considered to not be a taxable IT service in previous IT guides) is now included as an example of a taxable IT service.

Scope of service tax on IT service resellers and distributors

The scope of the tax in the guide has now been expanded to include ‘distributing or reselling of information technology services on behalf of any person’, in line with the amended STR that came into effect on 1 January 2020. The concession provided by the RMCD in its previous guides to resellers and distributors has likewise been removed in this updated IT guide. Two new examples (5 and 6) are added to explain that resellers who acquire software should charge service tax when they onwards resell the software to their customers.

Exemption from self-accounting for imported IT services for resellers and distributors

With the insertion of item 4 in the Schedule of the Service Tax (Persons Exempted from Payment of Tax) Order 2018 effective 1 January 2020, the guide has been updated to explain that an IT service provider is granted the exemption from payment of service tax (by way of self-accounting) on IT services acquired from overseas if they fulfil the three conditions required. This is consistent with [Service Tax Policy No.7/2020](#) which we covered in our [March 2020 Indirect Tax Chat](#).

Intragroup relief on imported IT services

In line with the amended paragraph 3A of the First Schedule to the STR, the IT guide has been updated to reflect that the intragroup relief applies to imported taxable services (such as IT services) that are acquired by a local company from a related company overseas that is within the same group of companies.

Removal of notification by local distributor to customer to self-account for service tax

In the previous version of the IT guide, example 26 provided a scenario where a foreign software developer raises an invoice in its own name, but the invoice is passed from a local distributor to the customer. In this example, the local distributor was to inform the customer to self-account for imported services. With the scope of tax now expanded to include resellers and distributors, the distributor will levy the service tax when distributing to the customer. The customer will not be required to self-account for imported IT services.

Deloitte's comments

The update of the Guide is long overdue given that the amendments to the relevant Law took place in December 2019. While the Law takes precedence over the Guide, many businesses rely purely on the RMCD’s guidance in applying service tax treatments. As a consequence, there was considerable confusion among many participants in the industry over this 6-month period as many were not aware that the Law had changed. The issuance of the

updated Guide will hopefully reduce the level of confusion that is out there in relation to applying the tax on the sale of software and IT services.

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