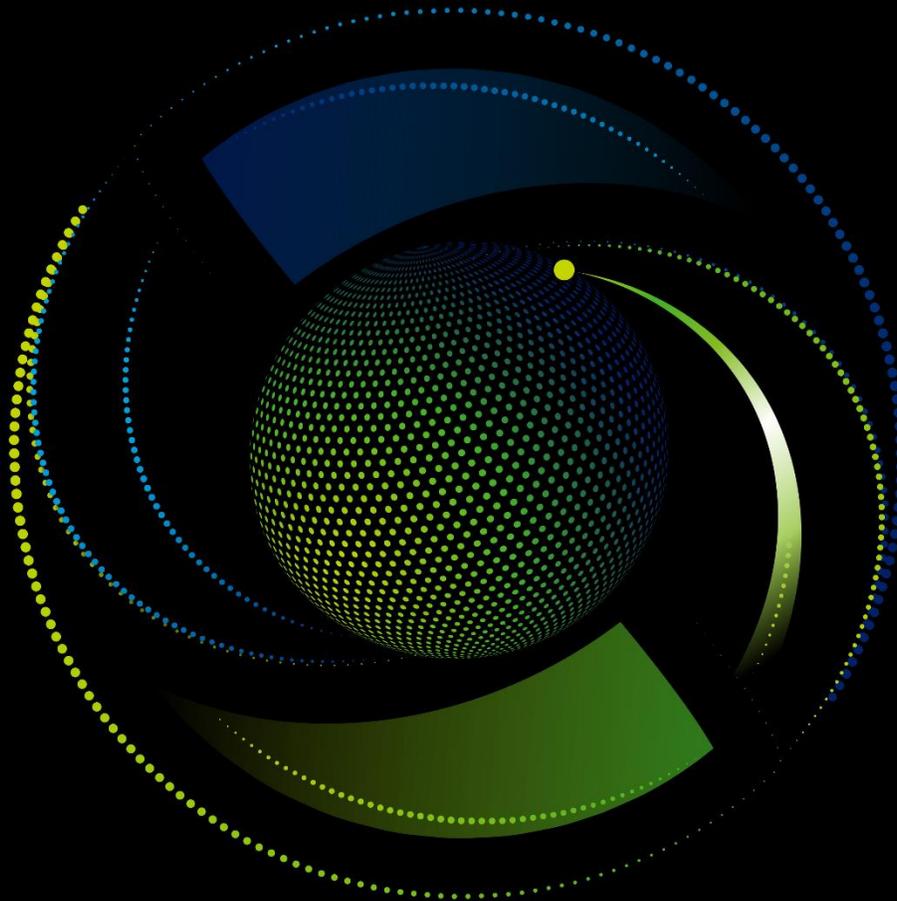


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Indirect Tax Chat

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

June 2022



Issue 6.2022

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Key takeaways:

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the June 2022 edition of our Indirect Tax Chat. We hope that you are keeping safe and well.

Phase one of Voluntary Disclosure & Amnesty Program (“VA Program”) will conclude at the end of this month. However, the Royal Malaysian Customs Department (“RMCD”) have extended the payment deadline under Phase 1 from 30 June to 14 July 2022 for applications submitted by 30 June 2022.



We would like to remind everyone that there is still a second phase which will continue until the end of 30 September 2022. Although the benefits are not as attractive as Phase 1, it is still better than what is available outside the VA Program. We expect to see a more permanent mechanism to handle voluntary disclosures in the future, but at the moment there is no structured framework to handle such cases, with decisions being made on a case-by-case basis.

In this month's edition we look at various sales tax and service tax (“SST”) Technical updates issued by the RMCD in more detail, in particular the VA Program, Excise Duties, and some of the RMCD's responses to indirect tax issues.

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

- The president of the Federation of Malaysian Consumers Association (FOMCA), Datuk Dr Marimuthu Nadason agreed that the move to reintroduce the goods and services tax (“GST”) will directly contribute to increasing the national income and help the government, especially in terms of tax collection. He also stated that the most economically developed countries have applied this move and it helped them to build their countries and their people. For more information, please click [here](#).
- According to AmInvestment Bank Bhd, car prices in Malaysia are expected to increase by 1% to 3% after a switch back to the GST, the opposite effect compared to the aftermath of the implementation of the sales and service tax (“SST”) back in 2018. Analyst Alex Goh said most of the sectors — namely banking, oil and gas, plantation, telco, power, healthcare, glove, manufacturing, gaming, and technology — would see a zero-to-negligible impact from the GST. For more information, please click [here](#).
- Finance Minister, Tengku Datuk Seri Zafrul Abdul Aziz said that the automotive sales tax exemption will not be applicable for cars purchased after 30 June. The minister noted that 868,422 vehicles have been sold and citizens have benefited from the sales tax exemption amounting to RM4.7 billion. For more information, please click [here](#).

To our readers celebrating, we wish you a *Selamat Hari Raya Haji!*

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Updates from the SST Technical Committee on the VA Program

The SST Technical Committee raised several issues pertaining to SST which has been incorporated in the minutes of Meeting No.1/2022. We have summarised the relevant key issues in relation to the VA Program that was raised by the SST Technical Committee along with the RMCD's responses provided via e-mail dated 17 May 2022 below.

Clarifications on the bill of demand (“BOD”) issued by the RMCD to Foreign Service Provider (“FSP”) on the late tax payment

This Amnesty Program will be available for offences committed by a FSP that was discovered by the RMCD and for which a BOD was issued on or before 31 October 2021. There were instances where the BOD was issued after 31 October 2021 for the late tax payment but, there was no audit involved and the company only has arrears of late payment penalty.

The RMCD has clarified that the companies are still eligible to participate in the VA Program for the undeclared taxes on or before 31 October 2021 even if the BOD was issued after 1 November 2021.

Deloitte's comments

It is clear that the VA Program covers any tax declaration up to 31 October 2021 or any BOD issued in relation to the period up to 31 October 2021. For cases where the RMCD audit is still being conducted, it is better to complete the audit as soon as possible to enjoy the benefits of the VA Program.

Clarification in rectifying errors which do not result in additional payment of tax

The VA Program has encouraged taxpayers to review and improve their indirect tax compliance status and overall governance of indirect tax matters. Therefore, anyone may begin to correct the errors as a matter of principle to eliminate the risk arising in a RMCD audit and being susceptible to a compound.

The RMCD has advised that offenses incurred by the company that do not involve the payment of tax, are only required to rectify the issue and there is no need to participate in the VA Program.

Deloitte's comments

The RMCD has confirmed that the purpose of the VA program is to provide an opportunity for companies to make a voluntary disclosure only for the duty/tax/levy/penalty liabilities that remain outstanding.

Ambiguity in paying back taxes following a late registration

There are cases where a company is liable to register at a certain date (e.g. January). However the application to register for sales tax or service tax is only made at a much later date (e.g. July). Once the company is registered, there is no option available for the company to amend previous returns as the first return available to the company only starts from current month of registration onwards.

In the case above, the RMCD has stated that there is no need for the company to submit the past SST-02 returns prior to the effective registration date in the MySST portal. If the company intends to declare the past tax liabilities, then the company is encouraged to participate in the VA program.

Deloitte's comments

The VA Program is not only applicable for a scenario of non-filing of returns – it also covers scenarios where the company should have been registered at an earlier date and the service tax liability should have been based on the earlier date. It is worth noting that there is remission of penalty up to 100%, and remission of tax up to 30% for participation by companies who were liable to be registered but were not and therefore did not charge service or sales tax to their customers.

Clarifications on the payment of penalties based on the BOD issued by the RMCD

As stated by the RMCD, the VA program only covers the period of up to 31 October 2021. However, the problem arises when the BOD issued covers offenses up to 31 October 2021 and after. It is stated in the VA Guideline and clarified by the RMCD that any BOD issued by the Compliance Division and other divisions on or before 31 August 2022 for duty/tax/levy liable for the audit coverage period on or before 31 October 2021 is eligible to participate in the VA Program.

Deloitte's comments

It is still unclear in cases where the BOD issued is for an audit period that spans October 2021 (for example, July to December 2021) will be able to utilise the VA Program.

Clarification on the FAQ 55 for the VA Program - Correcting import duty/import sales tax

FAQ 55 is in relation to imported dutiable goods and raw materials using the preferential tariff treatment facility under a free trade agreement that does not qualify to be categorised as originating from the country of origin. In such cases, companies need to ensure that the goods comply with the criteria of place of origin as “original goods” and does not violate the rules of place of origin (Rules of Origin). Impacted companies will need to make sure to pay import duty at the rate set by the Customs Duty Order 2017. The RMCD stated that it is not necessary for the companies to make amendments to K1 import form, but they may make the tax payment by participating in the VA program.

Deloitte's comments

The RMCD has made it convenient for taxpayers to avoid making amendments to K1 form just to pay the under declared import duty or sales tax. By participating through the VA program, payments can be made directly to the RMCD upon receiving the Letter of Confirmation of eligibility for the VA Program (“VA-02”).

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2. SST Technical Updates

The SST Technical Committee had raised several issues pertaining to SST which has then been incorporated in the minutes of Meeting No.1/2022. We have summarised the relevant key issues raised by the SST Technical Committee along with the RMCD's responses provided via e-mail dated 17 May 2022 below.

Clarification on the obligations of a FSP to account service tax on digital services where the recipient has accounted service tax on imported taxable services

Effective 1 January 2020, service tax shall be charged and levied on any digital services provided by a foreign registered person (FRP) to any consumer in Malaysia. A FSP is required to be registered under the Service Tax Act 2018 where digital services provided to consumers in Malaysia exceed the threshold of RM500,000. There are instances where the FSP was late to register for service tax on digital services and the recipient of the imported digital services in Malaysia has accounted 6% service tax on imported taxable services (for the acquisition of digital services).

Clarification was sought whether the FSP still has the obligation to declare and account the 6% service tax on digital services which have been provided to consumers in Malaysia for the period prior to the date of registration of service tax on digital services. This is based on the grounds that the FSP is able to obtain confirmation from its customers in Malaysia that they have self-accounted service tax on imported taxable services for the digital services acquired from the FSP.

The RMCD has clarified that FSP cannot discharge its obligation to account service tax on digital services provided to consumers in Malaysia although its customers have accounted service tax on imported taxable services. The FSP is required to make a declaration of the 6% service tax on digital services provided to consumers in Malaysia for digital services rendered during the period prior to the date of registration.

From the perspective of consumers in Malaysia, where 6% service tax has been accounted and paid on imported taxable services, the customers may potentially have to incur another 6% service tax on digital services if the FSP seeks to recover the 6% service tax on digital services provided prior to its date of registration. In this instance, the RMCD has indicated that the customer in Malaysia should apply for a refund of service tax paid on the imported services if service tax on digital services is subsequently charged by the FRP on the same services where service tax on imported taxable services have been accounted previously by the customer.

Deloitte's comments

Any application for refund on service tax paid to the RMCD is complicated and time consuming. The Malaysian service recipient should undertake regular checks of the registration status of the FSP that it believes may need to be registered for service tax. We would also recommend a review of contracts and other documents to determine whether any potential exposure to service tax imposed on the FSP by the RMCD during an audit or other exercise could be passed on to the Malaysian service recipient.

Clarification on the exclusion clauses provided under the First Schedule, Group G Professional Services of the Service Tax Regulations 2018 (“STR”)

The following taxable services are excluded from service tax in accordance with the exclusion clauses provided under the First Schedule, Group G of the STR.

Item (g) Consultancy services

Provision of consultancy services including professional consultancy services other than specifically mentioned in this Schedule, or training or coaching services with or without the issuance of certificate for which the fees are imposed, excluding—

(ii) provision of consultancy, training or coaching services in connection with:

- (A) goods or land situated outside Malaysia; or
- (B) matters outside Malaysia other than matters specified in (A).

Item (i) Management services

Provision of all types of management services ... excluding provision of such services in connection with—

- (xi) goods or land situated outside Malaysia; or
- (xii) matters outside Malaysia other than matters specified in (xi).

Clarification was sought on the RMCD’s interpretation of the exclusion clauses provided under the abovementioned item (g) and item (i) based on examples with various scenarios. The RMCD responded and indicated that the services provided based on the following scenarios are excluded from service tax in accordance with the exclusion clause provided under item (g) and item (i).

Example 1: ABC Sdn Bhd is a company that provides lab testing services and is registered for service tax under Group G, item (g) consultancy services.

The following scenarios are excluded from service tax:

- Lab testing is performed in Malaysia for an overseas customer’s business operation and project outside Malaysia. The report will be used for the customer’s business or project overseas;
- The company outsourced the services to an overseas lab to perform the analysis on the goods outside Malaysia and the report will be sent back to Malaysia either for its customer in Malaysia or for its business operation and project outside Malaysia;

Example 2: DEF Sdn Bhd is a training company providing soft skill services and is registered for service tax under Group G, item (g) for training and coaching services.

The following scenario is excluded from service tax:

- The company performs physical training or virtual training in Malaysia for an overseas customer for its business operation and project outside Malaysia.

Deloitte's comments

The location where the services are performed should not affect the taxability of the services. Instead, the service provider should seek to establish if the services performed by the company would be attributable to a person/business operation/project outside Malaysia and there should not be any evidence to suggest that the services rendered are related to any goods or land or matters in Malaysia.

Clarification on the GST declaration and adjustment to the final GST-03 return (Taxable period ended 31 August 2018) after 1 September 2018

A registered person is still liable for any liabilities incurred during the GST era as specified in Section 4(1)(a), Goods and Services Tax (Repeal) Act 2018 (Repeal Act) although the Goods and Services Tax Act 2014 ("GSTA") has been repealed. Any overpaid GST can be claimed under provision of subsection 4(1)(b), Repeal Act. Any GST tax due, overpaid or erroneously paid may be collected, refunded or remitted.

Typically, tax adjustments and declarations are required to be made due to the following matters:

- Adjustment for outstanding amount due from buyer (Bad debt relief)
- Adjustment for recovery of outstanding amount due from buyer
- Adjustment for outstanding amount due to supplier
- Adjustment for repayment of outstanding amount due to supplier

The RMCD has issued the Guide "GST Declaration & Adjustment after 1 September 2018" ("the Guide") to specifically assist businesses in understanding matters with regards to the tax adjustments and declarations after the repeal of the GSTA. The Guide dated 8 May 2019 has been updated and the latest version of the Guide was dated 18 August 2020. Based on the latest version of the Guide, it is noted that the following paragraph has been removed/deleted from the Guide:

"Guide dated 8 May 2019 under paragraph 19 states the following:

DEADLINE FOR GST ADJUSTMENTS

19. Any GST adjustment shall be made by a registered person before 1st September 2020. A registered person is not required to adjust his output or input tax for any changes taking place on or after 1st September 2020.

According to Paragraph 19 of the Guide dated 8 May 2019, a registered person is not required to adjust his output or input tax for any changes taking place on or after 1 September 2020. However, since paragraph 19 has been removed in the Guide dated 18 August 2020 and the Guide is also silent as to the reason for the removal, it appears to indicate that the declaration for GST adjustments is required to be submitted, where applicable.

Due to the inconsistent position in the Guide, further clarification was sought from the RMCD. The RMCD has responded that the decision as stated in the Guide dated 18 August shall apply and this has been clearly stated in Paragraph 2 of the same Guide:

"Where there is any inconsistency between previous GST decisions and the decisions stated in this guide, the GST decisions of this guide shall prevail".

Consequently, from the RMCD's view, GST declarations and adjustments to the final GST return are still required to be submitted, where applicable. In respect of adjustments relating to bad debt relief or outstanding amount/payment due to supplier, the RMCD has clarified that the declarations and adjustments are as follow:

1. Bad debt relief

For businesses who previously claimed bad debt relief and subsequently received payment from the customer after 1 September 2020, the RMCD has decided through the Guide dated 18 August 2020 that both the supplier and recipient must make a GST adjustment in relation to the recovery of the bad debt. This would involve both the supplier and recipient making an amendment to its respective final GST return in the month in which the payment was received from/paid by the recipient.

2. Outstanding amount / payment due to supplier

Businesses who previously has accounted for GST output tax due to payment to supplier was not made after 6 months from date of acquisition, and has subsequently made payment of the outstanding amount, the RMCD has clarified that the company can make the declaration for the adjustment of input tax claim by making the amendments to the final GST-03 return in the month in which the payment is made to the supplier.

The RMCD has also further explained the review process they will undertake upon receiving the GST declaration and adjustment to the final GST return:

- a) The RMCD would conduct a verification exercise and the approval process would typically take less than a month for any company that has provided complete documents to the RMCD and the records are in-order.
- b) If the adjustment give rise to a GST payable position and a late payment penalty is issued by the RMCD, the RMCD has indicated that companies do not have to pay the late payment penalty amount in advance before the penalty remission appeal is made. Companies are only required to make the tax payments (i.e., the additional GST payable) that are due and payable. Companies can continue to apply for penalty remission in the GST TAP portal.
- c) If the adjustment gives rise to a GST refund position, the RMCD indicated that the company would be required to go through an audit verification before the refund is approved by the RMCD. It is the policy of the RMCD to make proper verification and inspection for any tax return made, especially after the date of GST abolition.

There are instances where the GST refund may be rejected by the RMCD due to the following reasons:

- The applicant is not eligible to claim bad debt relief due to insufficient efforts being taken to recover the amount of debt from the customer
- The amount of tax adjustment declared for bad debt relief is not in accordance with the prescribed method/formula to calculate the bad debt relief;
- The deadline for adjustments due the issuance of debit notes/credit notes (i.e., by 31 August 2020) was not complied by the applicant.
- The RMCD also highlighted that the deadline for any other adjustments is to be declared within 6 years from the date of repeal of GST i.e., latest by 30 August 2024.

Deloitte's comments

It is unfortunate that the RMCD continues to change its view on GST adjustment scenarios that arise after the submission of the final GST return. We are approaching the four-year anniversary of the abolition of the GST in Malaysia, and it is unreasonable to expect businesses to continue to account for GST adjustments. In addition to this, the continual shifting of positions from no longer needing to account tax to needing to account tax has created considerable confusion for taxpayers.

We hope that the RMCD and the Ministry of Finance can come to a more practical and business-friendly outcome to this issue.

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3. Excise Duties technical updates

The levying of excise duties is based on the Harmonised System (“HS”) structure under the prevailing customs duties order. In conjunction with the update to the Customs Duties Order 2022 to reflect the Harmonised System adopted by the World Customs Organisation, the relevant excise orders have also been updated/amended and gazetted to take effect from 1 June 2022.

- [Excise Duties Order 2022](#)
- [Excise Duties \(Labuan\) Order 2022](#)
- [Excise Duties \(Langkawi\) Order 2022](#)
- [Excise Duties \(Pangkor\) Order 2022](#)
- [Excise Duties \(Tioman\) Order 2022](#)
- [Excise Duties \(Motor Vehicles\) \(Payment\) Order 2022](#)

Excise Duties Order (“EDO”) 2022

The EDO prescribes the goods (with description and the HS codes) that are subject to excise duty at the prevailing rate.

Key changes to take note of include:

- the rules of interpretation of the Schedule to the EDO – follows the List of Abbreviations and Symbols in the CDO 2022
- the Schedule to the EDO 2022 – new tariff codes and description for the goods have been introduced.

Excise Duties Orders for Designated Area (i.e., Labuan, Langkawi, Pangkor, and Tioman)

These orders prescribe the goods that are currently subjected to excise duty at the prevailing rate specified in the EDO when imported into the Designated Area or transported from the principal customs area into the Designated Area.

Excise Duties (Motor Vehicles) (Payment) Order 2022

The significant change on this Order is on the tariff codes of the motor vehicles as set out under Item no. 2 of this Order. Aside to Item no.2, the other items e.g., the excise duty scope, method of payment for removal of motor vehicles from places of manufacture and saving as stated in the previous order in 2017 remain unchanged.

Deloitte’s comments

Business and/or individual should take note of the changes on the tariff codes and descriptions of the goods rates to ensure correct HS codes are used in the relevant declaration to the authorities.

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