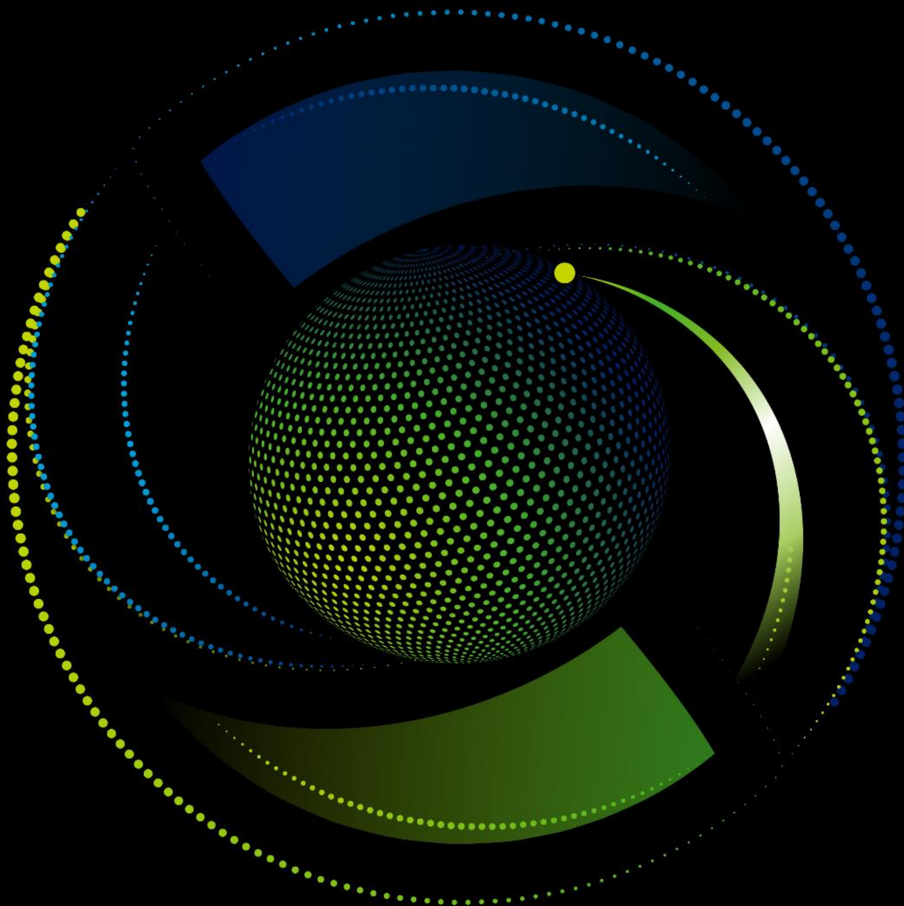
Deloitte.



Trusted. Transformational. Together.

Indirect Tax Chat

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

MAKING AN IMPACT THAT MATTERS since 1845

June 2023

Issue 06.2023

Quick links: *Contact us - Our Indirect Tax team*

Key takeaways:

Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the June 2023 edition of our Indirect Tax Chat.

In this month's edition, we look at the Voluntary Disclosure ("VD") Program, with a focus on the finalised VD Guide and FAQ that was released earlier this month by the Royal Malaysian Customs Department ("RMCD"). To coincide with the launch of the VD Program, we hosted a joint webinar with the RMCD which was well attended by over 328 attendees.

It is important to note that certain incentives offered under this program may differ from those offered in the first Voluntary Disclosure and Amnesty ("VA Program"). Some of the key messages that were shared during the webinar included disclosures that would be accepted at face value and would not undergo an audit. In addition to a full waiver of penalties granted by the RCMD, there would also be no compound issued, which differs from the first VA Program where a payment was required. For more details, please refer to our Alert here.

In this month's Chat, we look at technical updates including the use of a new code for exported goods and amendments to the Service Tax Regulations 2018.

Here are some recent news that may interest you:

- The United Kingdom's inclusion in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is expected to further boost ties with Malaysia. Investment, Trade and Industry Minister Tengku Datuk Seri Zafrul Tengku Abdul Aziz said, he is looking forward to the CPTPP meeting that is set to be held in New Zealand in July. During the birthday celebration of King Charles III hosted by the British High Commission in Malaysia at the Sentul Depot, he said, "with UK's participation, I expect to see increase in trade and investment flows between the two countries." Click here to read more.

- The government, through the Ministry of Investment, Trade and Industry Ministry (MITI), and the Malaysian Investment Development Board (MIDA), are constantly working on improving strategies and approaches to strengthen the country's ecosystem and investment facilitation. MITI Minister Tengku Datuk Seri Zafrul Tengku Abdul Aziz said last year, a total of RM267.8 bil in investment from 4,517 approved projects in various economic sectors such as main sectors, manufacturing and services, in Malaysia would generate 140,440 job opportunities with domestic investment contributing RM104.4 billion, or 38.9% of the total amount. Click here to read more.

We hope that you continue to stay safe and well.

Best regards,
Tan Eng Yew
Indirect Tax Leader

1. Use of New Code for Exported Goods

On 24 May 2023, the RMCD issued a notification on the use of a new code in the Customs Information System (Sistem Maklumat Kastam (SMK)) with effect from 1 June 2023.

Exporters are directed to use the code "XE – Export Finished Goods with Exemption" in the SMK when making online export declarations of finished goods made from raw materials or components imported or acquired with import duty exemption under Section 14(2) of Customs Act 1967, excise duty exemption under Section 11(2) of Excise Act 1976 and sales tax exemption under Section 35(3) of the Sales Tax Act 2018.

The appendix of the notification is available on the RMCD's website here.

Deloitte's comments

Manufacturers granted with the above-mentioned Ministerial exemptions (import duty, excise duty or sales tax) on their manufacturing input are advised to be mindful of the new export code to be applied. Affected businesses are encouraged to update the standard operating procedure for export to ensure the correct declaration code is used by the appointed Customs agent when making online declarations in SMK, on behalf of the exporter.

Brought to you by:

Susie Tan
Associate Director
Johor Bahru and Melaka

Back to top

2. Amendments to the Service Tax Regulations 2018

The Service Tax (Amendment) Regulations 2023 has been gazetted and became effective on 15 May 2023. Amendments were made to Regulation 11, Regulation 14, Regulation 16, and the First Schedule of the Service Tax Regulations 2018.

Amendment to Regulation 11 – Issuance of Credit Note and Debit Note

Sub-relegation (3A) has been inserted, which sets out that upon request in writing by any registered person, the Director General may allow any particulars specified under sub-regulation (3) not to be stated on the credit note or debit note issued by the registered person, subject to any conditions as the Director General deems fit.

Deloitte's comments

A registered person may request to exclude certain prescribed particulars on the invoice issued pursuant to Regulation 10. Following the amendment to Regulation 11, the registered person also may request to exclude any prescribed particulars on the credit note or debit note issued. The amendment made to Regulation 11 would allow the registered person to align the particulars to be stated on the invoice, credit note, or debit note issued by the registered person.

Amendment to Regulation 14 – Furnishing of Return or Declaration

Sub-regulation (1) has been amended to the following paragraph:
"A return or declaration made under regulation 12 shall be furnished to the Director General through electronic services or in any manner as the Director General may determine."

Sub-regulation (2) has been amended to the following paragraph:
"A return or declaration shall be deemed to be furnished when the return or declaration has been received by the Director General through electronic services or in any manner as the Director General may determine."

Amendment to Regulation 16 – Payment of Service Tax, etc.

Sub-regulation (1) has been amended to the following paragraph:
"Payment of service tax in respect of any return made under section 26 of the Act, declaration made under section 26A of the Act, surcharge, penalty, fee or any other money payable under the Act shall be made by electronic banking or in any manner as the Director General may determine."

Sub-regulations (2) and (3), which relate to payment made by cheque or bank draft sent by post or courier services, have been removed.

Under sub-regulation (4), paragraphs (a) and (b) have been amended to the following:

"(a) where the payment is made through electronic banking, the amount shall be deemed not to have been received until such amount is lodged to the credit of the Director General; or

(b) where the payment is made in any manner as the Director General may determine, the amount shall be deemed not to have been received notwithstanding any receipt given until such amount is duly paid to the Director General.”

Deloitte’s comments

Following the amendments made to Regulation 14 and Regulation 16, furnishing of return/declaration by post or courier together with payment of service tax by cheque orbank draft are no longer allowed. Registered persons are to furnish returns and make payments for service tax via electronic means. Notwithstanding the above, it appears the Director General has the power to allow the furnishing of return/declaration in any manner as the Director General may determine. Businesses are advised to seek assistance from the respective controlling RMCD stations if filing via electronic means is not possible.

For cases where payment is made in any manner as the Director General may determine, the amount is deemed received only when the payment is duly received by the Director General and not when a receipt of payment is issued to the registered person.

Amendment to the First Schedule

Notable amendments were made in relation to the scope of taxable service in column (2) relating to the item “tobacco products” under Group A (Accommodation), Group B (Food and Beverage), Group C (Night-clubs, dance halls, cabarets, health and wellness centres, massage parlours, public houses, and beer houses), Group D (Private club) and Group E (Golf club and golf driving range). The “provision or sale of tobacco products” has been expanded and replaced with “the provision or sale of:

- cigarettes;
- tobacco products;
- smoking pipes (including pipe bowels);
- electronic cigarettes and similar personal electric vaporising devices; and
- preparation of a kind used for smoking through electronic cigarettes and electric vaporising device, in form of liquid or gel, whether or not containing nicotine”

Other notable amendments:

- In relation to Group A subitem (a)(iii) in column (1), accommodation premises excluded from service tax have been expanded to include accommodation premises provided by private educational institutions registered under the Education Act 1996. This is in addition to the existing private higher educational institutions registered under the Private Higher Educational Institutions Act 1996.

- In relation to Group E, it appears that the provision or sale of food has been removed from the scope of taxable service under item (d) in column (2).

- In relation to Group G (Professionals):
    - In column (1), prescribed training or coaching centre under item 7(c) has been removed from the list of taxable person;
    - In column (2), taxable service under subitem (g)(iii) has been amended to the following subitem:

"*(iii) provision of training services or coaching services provided to a person who holds a valid Kad OKU issued under the Persons with Disabilities Act 2008 [Act 685] prepared by training centre or coaching centre service provider—*

(A) registered with the Ministry of Health;
(B) registered with the Social Welfare Department; or
(C) recognised by any national association for person with disabilities which is registered with the Registrar of Societies Malaysia."

- In relation to Group I (Other Service Providers):
  - Taxable person [in column (1)] under paragraph 7 has been amended to the following paragraph:

    "Any person who—

    (a) is granted an operator's licence under section 18 or 38 of the Land Public Transport Act 2010 [Act 715] for Peninsular Malaysia;
    (b) is licensed under section 16 of the Commercial Vehicles Licensing Board Act 1987 [Act 334] for Sabah, Sarawak and Federal Territory of Labuan; or
    (c) is licensed under section 4 of the Tourism Vehicles Licensing Act 1999 [Act 594] for Sabah, Sarawak and Federal Territory of Labuan."
  - In column (2) (Taxable service), the words "*or hire car services*" were removed from item 7(a) and the words "*Hire car services*" were inserted as item 7(aa).

<u>*Deloitte's comments*</u>

The scope of taxable service in respect of provision or sale of tobacco products has been expanded to include the provision or sale of the items listed above such as cigarettes, electronic cigarettes, etc. As such, registered persons under the aforementioned Groups would be required to charge service tax on the provision or sale of these items.

For Group E, the provision or sale of food under item (d) in column (2) was removed. However, it appears that provision or sale of food would still be taxable under item (b) (i.e., provision of any other taxable service specified in other Groups in this Schedule).

Following the amendment to Group G, the provision of training services or coaching services provided to a person who holds a valid Kad OKU would not be subject to service tax, provided that these services are rendered by the aforementioned training centre or coaching centre service provider.

In Group I, the scope of taxable person is expanded to include persons licensed under the Tourism Vehicles Licensing Act 1999 for Sabah, Sarawak, and Federal Territory of Labuan. Businesses that fall under the scope above and are providing taxable service are advised to assess whether there is any service tax liability that arise from this amendment.

Brought to you by:

Irene Lee
Associate Director
Kuala Lumpur

Najwa Baharin
Senior 2
Kuala Lumpur

Back to top

3. Exploring Luxury Goods Tax: Global Insights and Prospects for Malaysia

In the Budget 2023 proposals, the Malaysian government announced its intention to introduce a Luxury Goods Tax starting from this year. It was proposed that the tax would be on specific items such as luxury watches and high-end fashion items, with a predetermined threshold value. Further details on the tax were expected in June, but to date, none has been forthcoming.

The key stated objective of the Government in introducing this tax would be to broaden the existing tax base with a progressive tax to increase tax revenue collections.

In this article, we take a broad look at similar taxes introduced in other countries in the region and discuss some of the key considerations for Malaysia to introduce a similar tax.

1. <u>Taxes on Luxury Goods in other jurisdictions</u>

   The following are examples of similar taxes on luxury items introduced in other countries close to home:

   1.1. Vietnam
   Referred to as "Special Consumption Tax" charged on imported or manufactured items. Implementation: Luxury goods and services which includes high-end cars, yachts, aircraft, dance halls, and lottery.
   Rate: Varies between 7% to 75%

   1.2. China
   Referred to as "Consumption Tax" that is collected at a certain stage (i.e., manufacturing, importing, wholesale or retail) depending on the type of item.
   Implementation: Luxury goods including wine, high-grade cosmetics, precious jewellery and jade, fireworks, luxury watches.
   Rate: 1 to 56%

   1.3. Indonesia
   Referred to as “Pajak Penjualan Barang Mewah” charged on imported or manufactured items.
   Implementation: Luxury goods including luxury residences, shotguns, aircraft, luxury cruisers, and motor vehicles.
   Rate: 10% to 95%

   1.4. South Korea
   Referred to as “Special Excise Tax” charged on imported goods.
   Implementation: Luxury goods including luxury bags, watches, and jewellery.
   Rate: 10 to 20%

2. Considerations for Malaysia

There are some key considerations for Malaysia in introducing a tax on luxury goods.

Definition of Luxury Goods

The first would be the definition of a luxury good. In most countries, a luxury tax is imposed on goods that are considered:

- Non-essential but highly desirable within a society or culture
- Have high price points that exceed the average cost of comparable alternatives
- Rare and unique goods with limited availability

Based on these descriptions, it is easy to cast luxury goods into a category of expensive, non-essential goods typically purchased by the more affluent, to reflect status and prestige. If the objective is to make it a more progressive tax, the tax would be expected to be aimed at goods typically consumed by this category of consumers.

Based on comments by the authorities, it appears that they will be looking at targeting specific types of goods. Two examples given were luxury watches and high-end fashion items. Presumably, within these categories, luxury would be categorised based on the value of these goods. The question then, is where the line between necessity and luxury would be drawn.

If the key objective is to generate additional tax revenue, then the basket of luxury goods would need to be sufficiently wide in terms of value and consumer volume to make the tax worthwhile.

3. Taxing mechanism

The next key consideration would be the tax administration and collection mechanism. This would determine where the tax would be collected and by whom. For example, should it be imposed at the point of import, local manufacturers, or at the retail level?

Consequently, this would also determine if the tax can be imposed within existing indirect tax legislation and frameworks such as the sales tax and/or service tax or if a new tax legislation will be required for luxury goods.

a) Manufacturing or Import Level

The current Sales Tax is imposed on goods at the point of import or local manufacture. The easiest starting point may seem to extend the existing sales tax scope to include a higher rate for luxury goods. This is similar to the sales tax on Low Value Goods ("LVG") that was recently introduced, albeit now currently on hold.

However, using the existing sales tax legislation comes with its own challenges. If the tax is imposed at the point of import, the basis of valuation of the good would be critical to determine if the tax would apply. Similar to the sales tax on LVG, if the tax is to be accounted for at the point it was purchased via online marketplaces, there is an additional challenge of ensuring that the goods are correctly identified as tax that is paid at the point of import. This could potentially lead to double taxing and a negative impact on the efficiency of Customs' clearance procedures. Challenges arising from the imposition of the sales tax on LVG could also apply to tax imposed on luxury goods.

In practice, luxury goods purchased outside Malaysia could be hand-carried into the country. The obligation would then fall on the individual bringing in the goods to make a declaration at the port of entry. Failing to do so can result in penalties or fines.

Imposing a tax at the import or manufacturer level may also reduce the tax value base as it would exclude margins built in further up the value chain by traders and retailers. It would also reduce the transparency for consumers on the imposition of the tax on luxury goods.

b) Retail Level

Retail sales could include both online channels and traditional retail outlets. Imposing the tax at a retail level would provide most transparency to the final consumer, who would be directly aware of the tax they are paying for. However, it would involve the introduction of a new tax legislation.

The introduction of a new legislation may be the authorities' preferred choice. This would enable tax establishment on a clean slate, instead of building it into existing frameworks, which may hinder the effective implementation and execution of the tax.

Many other jurisdictions impose tax on luxury goods via existing GST or VAT systems. This would be the most efficient mechanism to impose the tax as such a mechanism already exists. However, in Malaysia, the reintroduction of GST would have a much wider ranging impact, but the Government has consistently stated that this is likely to be considered for the immediate future.

Tax at the retail level would also involve bringing in new taxpayers into the indirect tax scope. Retailers of goods, with the possible exception of online sales of LVG or certain goods subject to service tax, are generally not included within the taxing scope of current indirect tax legislation.

This would mean new and additional compliance requirements for retailers of luxury goods to register for, charge, and account for the tax. This may add additional cost to the retailers in complying with the new requirements, or they may face punitive measures for non-compliance.

Coupled with efforts by Customs to administer the tax, new legislation should balance between the objectives of the additional tax revenue against efforts to collect and administer the tax.

4. Economic Impact

The introduction of any new tax would need to consider its wider economic impact on other sectors of the economy.

a) How would the tax impact the local industry?

Consumers of high-end luxury goods may be aware of comparative prices in and outside of Malaysia. If the tax is imposed at a prohibitive rate, it could steer local buyers to purchase the goods in neighbouring countries.

b) In a related vein, how would it impact the tourism industry?

Would the implementation of the tax discourage foreign visitors from shopping for these luxury items in Malaysia, and subsequently, discourage inbound tourism into the country? The Government has acknowledged this and countered that the tax should not impact tourism as the primary intention of tourists visiting Malaysia is not centred around luxury goods shopping.

c) Would the tax differentiate between imported goods and locally produced goods?

Taking the fashion industry as an example, taxing the developing local fashion industry may divert focus to foreign brands. The intention to encourage and promote locally produced luxury goods would need to be balanced against measures to ensure a level playing field between locally produced and imported luxury goods.

The Government has stated that the implementation of the tax on luxury goods aims to extend the country's tax revenue collection and create a more progressive taxation system, without causing the industry to suffer. Therefore, it is expected that they will be working with these objectives in mind to consider all aspects of the tax before it is implemented.

Brought to you by:

Larry James Sta Maria
Director
Kuala Lumpur

Danushiny Sivasubramaniam
Associate 1
Kuala Lumpur

We invite you to explore other tax-related information at:
http://www2.deloitte.com/my/en/services/tax.html

To subscribe to our newsletter, please [click here](#).

[Back to top](#)

Contact us – Our Indirect Tax Team

Tan Eng Yew
Indirect Tax Leader
etan@deloitte.com
+603 7610 8870

Senthuran Elalingam
Executive Director (Partner)
selalingam@deloitte.com
+603 7610 8879

Chandran TS Ramasamy
Director
ctsramasamy@deloitte.com
+603 7610 8873

Larry James Sta Maria
Director
lstamaria@deloitte.com
+603 7610 8636

Nicholas Lee
Director
nichlee@deloitte.com
+603 7610 8361

Irene Lee
Associate Director
irlee@deloitte.com
+603 7610 8825

Wendy Chin
Senior Manager
wechin@deloitte.com
+603 7610 8163

Eliza Azreen Kamaruddin
Senior Manager
eazreen@deloitte.com
+603 7610 7271

Leong Wan Chi
Senior Manager
wanleong@deloitte.com
+603 7610 8549

Name	E-mail address	Telephone
Naresh Srinivasan Manager	narsrinivasan@deloitte.com	+603 7650 6459
Syifa Yin Izhar Manager	syizhar@deloitte.com	+603 7610 7512
Nikki Suah Manager	nsuah@deloitte.com	+60 3 7610 7642
Ashokkumar Hothiyakumar Assistant Manager	ahothiyakumar@deloitte.com	+603 7610 9238

Other offices

Name	E-mail address	Telephone
Susie Tan Johor Bahru and Melaka	susietan@deloitte.com	+607 268 0851
Ng Lan Kheng Penang	lkng@deloitte.com	+604 218 9268
Lam Weng Keat Ipoh	welam@deloitte.com	+605 253 4828
Philip Lim Kuching and Kota Kinabalu	suslim@deloitte.com	+608 246 3311

Back to top