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Indirect Tax Chat

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

March 2020

Issue 3.2020

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Greetings from Deloitte Malaysia's Indirect Tax team

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

The impact of the coronavirus pandemic has continued to be the focus of everyone's attention the last few months. We, Malaysians are now in the midst of a Movement Control Order (MCO), which has effectively closed all business and commercial activities except for essential services. The Malaysian Government continues to look at measures to stimulate the economy, and address medical concerns and citizen welfare. Following on from earlier stimulus measures, the Government announced a second stimulus package on the 27th of March. The indirect tax implications of this are covered in a separate Special Alert.



From the earlier announcement, the key earlier indirect tax related measures has been an extension of the date of filing and payment for both service tax and sales tax returns that were originally due at the end of this month to 30 April 2020. A sales tax and import duty exemption has also been announced on masks and other medical equipment, which is discussed further below.

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

- With a new cabinet sworn into Government, questions have arisen over policies that may potentially be revived, such as the Goods and Services Tax (GST). Economist Dr Chung Tin Fah said the GST regime may resurface as it is a comprehensive and administratively better tax while Alliance Bank Malaysia Bhd chief economist Manokaran Mottain said bringing back the GST at 4% could generate around RM32 billion for the government, as compared to RM27.5 billion under the sales tax and service tax (SST). In response, Prime Minister Tan Sri Muhyiddin Yassin pledged to consider calls to reinstate GST, promising to review all tax systems as part of the new government's effort to rein in living costs. For more information, please click [here](#) and [here](#).

We hope you find this month's tax chat engaging.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Import Duty and Sales Tax Exemptions to Combat COVID-19

Import Duty and Sales Tax Exemptions for Face Masks

The Malaysian Minister of Finance has exercised his power under the relevant legislation in granting the following exemptions:

- Import duty and sales tax exemption on the importation of face masks
- Exemption to sales tax registered manufacturers from charging sales tax on the sales of face masks

The face masks described above are as follows:

Face mask type	Tariff code
Face mask (surgical/medical) 1 ply (ear loop)	6307.90.40 00
Face mask (surgical/medical) 2 ply (ear loop)	6307.90.40 00
Face mask (surgical/medical) 3 ply (ear loop/head loop/head tie-on)	6307.90.40 00
Face mask (surgical/medical) N95	6307.90.90 00

The exemption comes into effect on 23 March 2020 and will cease at a later date to be determined by the Ministry of Finance. You may access the announcement [here](#), which is only available in Bahasa Malaysia.

Deloitte's comments

The exemption above serves to address the issue of insufficient face masks in Malaysia – especially for frontline healthcare staff in containing the pandemic. This is further complemented with the export ban of the face masks listed above, under the Control of Supplies (Prohibition on Export) (Amendment) Regulations 2020 which was issued on 12 March 2020.

However, given that the exemption is applied to specific face masks, relevant businesses should ensure accuracy of the HS codes used to avoid future disputes by the Royal Malaysian Customs Department (“RMCD”).

Sales tax and import duty exemption for medical, lab and personal protective equipment as well as consumables used in tackling COVID-19, which are donated to the Ministry of Health

The Minister of Finance has approved the following exemptions:

- a) Import duty and sales tax exemption on the import of items mentioned in the subject above
- b) Exemption to sales tax registered manufacturers from charging sales tax on the items mentioned in the subject above

The specific list of items mentioned above are provided in Appendix A, which you can access [here](#). Please note the appendices are only available in Bahasa Malaysia.

The exemptions above will be subject to specific conditions which include:

- The donor producing the Ministry of Health’s endorsement letter to the RMCD;
- Where applicable, the donor to apply to the relevant Ministry or governmental department/agency for specific permits as per Appendix B in the link above;
- For items which are subject to only import duties, the importer/donor may utilise the import duty exemption as per item 77 of the Customs Duties (Exemption) Order 2017 – subject to further conditions as per Appendix C in the link above.

Effective: The exemption commences on 25 March 2020 and will cease at a later date to be determined by the Ministry of Finance.

Deloitte’s comments

The above exemption serves to address the issue of insufficient supply of key items in tackling the COVID-19 outbreak in Malaysia, especially for frontline healthcare staff. However, given that the exemption is applied on specific items, relevant businesses should ensure accuracy of the HS codes used to avoid future disputes by the RMCD and to be familiar with specific exemption conditions indicated in Appendix A, provided in the link above.

Brought to you by:



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2. Tax Exemptions from the Economic Stimulus Package 2020 & FAQ from RMCD on MCO

Guidelines on Application for Import Duty and Sales Tax Exemption on Machinery and Equipment for Port Operations

Further to the announcement of the first Economic Stimulus Package (please refer to our [February 2020 indirect tax chat](#)), the Tax Department of the Ministry of Finance have released guidelines on how to apply for the import duty and sales tax exemption for machinery and equipment used for port operations (guide is accessible [here](#)). For now, only the Bahasa Malaysia version is available.

Application criteria

- The machine and equipment acquired are new and directly used in the port operations.
- Spare parts and consumables including those used for maintenance are not qualified for the exemptions.

Application procedure

- The port operator is required to produce a written application to the Ministry of Finance before the importation or local acquisition of machinery and equipment.
- The application must be accompanied with Form JKMSPPRE2020 (A) for the exemptions on the importation of machinery and equipment; and Form JKMSPPRE2020 (B) for the local acquisition of machinery and equipment.
- The completed application should be submitted to the Secretary of Tax at the Ministry of Finance from 1 April 2020 to 31 March 2023.

Deloitte's comments

With the stimulus, port operators will be able to enjoy these import duty/sales tax exemptions for a longer period of time. Nevertheless, like other exemptions, it is crucial that steps are in place in ensuring that all relevant exemption conditions are met to avoid back taxes and penalties.

FAQ from RMCD on MCO

The RMCD have released an FAQ pertaining to their operations and measures during the MCO. You may access the FAQ [here](#), which is only available in Bahasa Malaysia. As a summary:

- The operations of RMCD still continue as normal, though with minimum staff involved. Any applications should be made online and be accompanied with supporting attachments via e-mail.

- Imports and exports can still be made but subject their relevant trade restriction rules.
- Applications for approvals under the First Schedule to the Customs (Prohibition of Removal) 2018 can be made via e-mail. The approval process should take approximately 3 days.
- Activities involving the transfer of goods from or to licensed warehouses under section 65 of the Customs Act 1967 are subject to the MCO.
- Tourists or visitors to the country will be inspected by the RMCD according to the usual procedures set out under the Customs Act 1967. Malaysians entering the country will need to undergo health screening process and quarantine according to requirements set out by the Ministry of Health
- Only surgical / medical face masks under the tariff code 6307.90.40 00 and 6307.90.90 00 are subject to export restrictions
- Licensed manufacturing warehouse (“LMW”) companies which are manufacturing and exporting face masks can still continue enjoying its relevant exemptions despite the export restrictions above.
- Enquiries and applications in relation to free zone matters should be made over the phone or online.
- Excise licence may be made online via email to the relevant controlling RMCD office.
- Customers wanting to apply for an Authorised Economic Operator (AEO) status are encouraged to call in to the officers at the AEO head office or Account Manager AEO at nearby RMCD office, or refer to the AEO portal to obtain guidance on the application. A complete application with the required supporting documents can be sent to aeo.support@customs.gov.my or secretariat.aeo@customs.gov.my. Enquiries pertaining to AEO matters should generally be made via phone call or e-mail.

Deloitte’s comments

With the MCO limiting businesses’ activities, the RMCD has provided measures to facilitate compliance whilst attempting to keep disruptions to a minimum for Customs-related matters. Nevertheless, businesses should keep abreast to the new Customs-related administrative procedures in the midst of the MCO in order to minimise the impact of the restriction.

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3. Additional Service Tax Policies

The RMCD had published two service tax policies on 28 February 2020 and one on 6 March 2020. We understand that these policies are intended to provide further guidance in interpreting the recent amendments and/or outline specific administrative or technical concessions. We have summarised the key points below, together with our commentary.

[Service Tax Policy No 7/2020](#) – Accounting of Service Tax Items 3 and 4 in the Service Tax (Persons Exempted from Payment of Tax) Order 2018 (“exempt order”)

Effective 1 January 2020, subject to meeting the conditions stated in the exempt order, the following imported taxable services by service tax registrant and non-registrant are exempted from self-accounting for Service Tax:

- i) Digital services acquired from a foreign registered person; and
- ii) IT services procured from foreign vendors for resale or redistribute

In view of the above exemption, the exemption of service tax on the imported taxable services are not required to be declared by the following:-

- i) Taxable persons in section B1, B2 and item 18(c) of their SST-02 forms; and
- ii) Persons other than taxable persons in any SST-02A form.

Deloitte’s comments

The Service Tax Policy provides a very broad overview of the operation of the exemption, but provides little insight on the areas of uncertainty that exist in interpreting the exemption order. In particular RMCD’s views on what constitutes “personal consumption” is not covered and this remains a significant area of uncertainty.

[Service Tax Policy No 8/2020](#) – Group Relief Facility on Provision of Taxable Services to Company within the Same Group of Companies

Prior to 1 January 2020, taxable services provided under items (a) to (i), Group G of the First Schedule to the Service Tax Regulations 2018 (“STR”) are treated as non-taxable subject to the following conditions (under Para 3, First Schedule of the STR) (also known as the group relief):-

- i) The service is provided to any person in the same group of companies; and
- ii) Where the same taxable service is provided to any person outside the group of companies, the group relief will cease to apply.

With Para 8(2), Group G of the First Schedule to the Service Tax Regulations 2018 (“STR”), effective 1 January 2020, the group relief may still apply even if the taxable services (also mentioned above) are provided to a third party. However this is subject to the condition that the total value of taxable services provided to the third party does not exceed 5% of the total value of the same taxable services within 12 months.

The RMCD had issued the Service Tax Policy 8/2020 with the aim to guide businesses in applying the new rules under Para 8(2) mentioned above.

Key points of the Service Tax Policy

- a) The calculation of the 12-month value of the same taxable services will be based on the future method i.e. the value for the current month and the eleven months immediately succeeding that month.
- b) In the case of item (i), Group G, services under sub-items (i) to (x) are deemed same services.
- c) Where the company cannot ascertain whether the value of a taxable service exceeds the 5% threshold for a period of 12 months, the company should not apply the group relief.
- d) Further to the above, adjustments can be made by the company via credit note after the 12-month period if the value of services provided to third parties do not exceed 5% of the total value of taxable services for that 12-month period.
- e) Where the company fails to charge service tax (by applying the group relief) and, the 5% threshold has been breached, the company will be subject to penalties for late accounting and payment of service tax.
- f) In the case of service tax registration, the value of taxable services used in determining service tax registration liability should take into consideration the same taxable services provided to the company's group of companies and to third parties.
- g) The rules discussed above do not apply on imported taxable services.

Deloitte's comments

With the guidelines above, businesses providing taxable services to both related companies and third parties may assess whether the group relief can still be applied to them. However, proper processes should be in place in monitoring if the 5% threshold will be exceeded.

The use of a prospective test based on 'actuals' and not forecasts is unique, and many businesses will find it impractical to comply. Nevertheless, in order to access the concession, businesses need to adhere to the rules set out by the RMCD as described above.

[Service Tax Policy No 9/2020](#) – Service Tax Treatment on Group A: Accommodation First Schedule Service Tax Regulations 2018 under Economic Stimulus Package 2020 (ESP 2020)

In line with the Economic Stimulus Package 2020 announced on 27 February 2020, this service tax policy is released to further provide the extent of exemption available to businesses particularly in the hotel industry.

An exemption was given for a period of **6 months** from **1 March 2020 to 31 August 2020** under the Group A, 1st Sch, STR 2018:

- i) accommodation premises operators registered for service tax are exempted from charging service tax on accommodation and other services; and

- ii) any person acquiring accommodation or other services from any operators of accommodation premises registered for service tax is exempted from paying service tax.

The taxable services qualified for exemptions are:-

- i) Provision of accommodation premises;
- ii) Provision of any other taxable services specified in other Groups in the 1st Sch, STR 2018;
- iii) Provision of other services within the accommodation premises (e.g. rental of space in the accommodation premise by the operator); and
- iv) Provision or sale of tobacco products and alcoholic and non-alcoholic beverages.

Note: The above exemptions are only applicable for persons registered under Group A.

However, the exemption is not given to other service providers such as registered car park operators and restaurant operators at a hotel.

Registered accommodation premises operator are liable to perform the following:-

- i) Issue invoice stating 0% or tax exempted;
- ii) Submit SST-02 form in accordance to their taxable periods;
- iii) Declare total value of exempted services under item 18 (c) of the SST-02 form;
- iv) Account and make payment for imported taxable services using the SST-02 form; and
- v) Tourism Tax (TTx) is not exempted and continues to be chargeable.

Transitional rules

Scenarios	Service Tax Implications
a) Services provided from 29 February 2020 to 1 March 2020	6% service tax is applicable
b) Services that will take place from 31 August 2020 to 1 September 2020	Service tax is exempted
c) Services provided from 29 February 2020 to 3 March 2020	Apportionment method will be utilised, where services provided from 1 March 2020 to 31 August 2020 will not be subjected to service tax.
d) Service tax has been charged and collected for services rendered from 1 March 2020 to 31 August 2020, but not accounted in the SST-02 form	The accommodation premise operator to issue credit note to qualify for exemption.

<p>e) Service tax has been charged and collected for services to be rendered from 1 March 2020 to 31 August 2020, and accounted in the SST-02 form</p>	<p><u>For individuals</u> The accommodation premise operator to refund the service tax amount and apply for deduction under Section 39 of the Service Tax Act 2018, subject to meeting conditions.</p> <p><u>For customers other than individuals</u> The accommodation premise operator to issue credit note and make adjustments in the SST-02 form accordingly.</p>
<p>f) Where service tax has been charged and collected for services to be rendered from 1 March 2020 to 31 August 2020, but not refunded to customers</p>	<p>The accommodation premise operator to account for the service tax collected and make the necessary payment to the RMCD.</p>

Deloitte's comments

Although the exemptions are in place, accommodation service providers must still perform most of their obligations as a service tax registrant such as the following:-

- i) Declaring total value of exempted services under item 18 (c) of the SST-02 form
- ii) Filing and making payment for imported taxable services
- iii) Filing returns within the stipulated deadlines

On the requirement to issue an invoice with 0% or “tax exempted”, it is unclear if the registrant is required to comply with the required prescribed contents under the service tax law. Accordingly, any exemption from charging of service tax is required to have the additional particulars in the invoice to the exempt customer as per subregulation 10(1A) of the Service Tax Regulations 2018:

- i) Name and address of the customer;
- ii) The customer’s service tax registration number; and
- iii) The customer’s total amount of exempted service tax.

Service providers would need to put in place appropriate procedures and processes to comply with the above requirements.

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4. Sales Tax Guide on Refund, Drawback and Appeal

The RMCD has released the third version of the guide on sales tax refund, drawback, and appeal dated 13 February 2020. The guide serves to provide guidance on the conditions and administrative requirements to utilise these specific facilities for sales tax. Despite its title, the guide also covers refund and appeal matters for service tax. The guide is currently only available in Bahasa Malaysia and can be accessed [here](#).

A summary of the various categories of refunds and drawback:

No.	Type	Application process
1.	<p>Refund by power of Minister under subsection 35(3)(c) of the Sales Tax Act 2018 (“STA 2018”) and subsection 34(3)(b) of the Service Tax Act 2018 (“SeTA 2018”)</p> <p>The Minister of Finance can instruct the Director General of Customs for sales tax/service tax or penalties be refunded to any person</p>	<ul style="list-style-type: none"> • Application for exemption of sales tax/service tax or penalty should be made to the Ministry of Finance (“MoF”). • Once approval is obtained, an application for a refund should be made to the Revenue Accounting Branch, Technical Services Division of the controlling State Customs of that company. • If the person making the application for a refund does not have any premises or an operating office, the application can be made to the RMCD office nearest to his mailing address.
2.	<p>Refund by power of Minister under subsection 35(6) of the STA 2018 and subsection 34(6)(b) of the SeTA 2018</p> <p>Any person can be granted with a sales tax/service tax refund provided that:-</p> <ul style="list-style-type: none"> • He was granted with exemption by the MoF; • He has paid the sales tax/service tax pertaining to the exemption above; and • Approval is given by MoF for the refund. 	<ul style="list-style-type: none"> • Applications for refunds based on Minister of Finance’s approval should be made to the Revenue Accounting Branch, Technical Services Division of the controlling State Customs of that company. • If the person making the application for a refund does not have any premises or an operating office, the application can be made to the RMCD office nearest to his mailing address.
3.	<p>Refund under section 36 of the STA 2018 and section 35 of the SeTA 2018</p>	<ul style="list-style-type: none"> • An application should be made to the controlling State Customs’ Domestic Taxes Division. Subparagraph 11(ii) of the guide provides a list of documents/information required for such application. • Eligibility criteria:

	<p>Claim for refund of sales tax/service tax in relation to bad debt</p>	<ul style="list-style-type: none"> – An application can only be made within 6 years from the date when sales tax/service tax was paid – Claims for the whole value of sales tax/service tax can be made if the company has yet to receive any amount for its sales of taxable goods / provision of taxable services – Where partial payment is received, the company can claim a proportion of the sales tax/service tax paid – The Director General of Customs should be satisfied that: <ul style="list-style-type: none"> • In the case of individual debtors:- <ul style="list-style-type: none"> – He is adjudged; – A deed or arrangement is made for the benefit of his creditors; or – A composition or scheme of arrangement proposed by him is approved under the Insolvency Act 1967. • In the case of debtors which are companies:- <ul style="list-style-type: none"> – It is ordered by the court to be wound up because it is unable to pay its debts within the meaning of the Companies Act 1965; or – A receiver is appointed and the statement of affairs lodged with the Companies Commission of Malaysia shows that its assets would be insufficient to cover the payment of any dividend in respect of debts which are neither secured nor preferential.
4.	<p>Refund under subsection 39(1)(a) of the STA 2018 and subsection 38(1)(a) of the SeTA 2018</p> <p>An application for a refund can be made for any sales tax/service tax, surcharge, penalty, fee or other money that has been overpaid or erroneously paid.</p>	<ul style="list-style-type: none"> • The application for a refund should be made to the Revenue Accounting Branch, Technical Services Division of the controlling State Customs of that company. Sub-paragraph 12(iii) of the guide provides a list of documents/information required for such application.

	SALES TAX DRAWBACK	
1.	<p>Drawback under subsection 40(1) of the STA 2018</p> <p>A drawback can be made on sales tax paid on taxable goods which are exported.</p>	<ul style="list-style-type: none"> • The application for a drawback should be made to the Revenue Accounting Branch, Technical Services Division of the controlling State Customs of that company within 3 months from the date the taxable goods are exported. Subparagraph 15 of the guide provides a list of documents/information required for such application. • In order to apply for such drawback, the applicant must first satisfy the conditions outlined in Regulation 17 of the Service Tax Regulations 2018. • The guide also provides additional documents/ information required for the drawback application (under subparagraph 14 of the guide) – depending on the methods of ‘exportation’ adopted by the company: <ul style="list-style-type: none"> – Direct export; – Goods transported to special areas; or – Goods transported to designated areas.

Appeals in respect of refunds and drawbacks

The guide also covers steps which companies can take in the event where applications for refunds or drawbacks are rejected. Appeals can be made based on the following:

- For refund/drawback applications which were rejected, the applicant can lodge an appeal within 30 days from the date of the Director General of Customs’ rejection letter under subsection 96(1) of the STA 2018 and subsection 81(1) of the SeTA 2018. In the case of unsuccessful appeals, a further appeal can be made to the Customs Appeal Tribunal under subsection 96(5) of the STA 2018 and subsection 81(5) of the SeTA 2018.
- For sales tax refund/drawback, an application for a review of rejected applications can also be made to the Facilitation Control and Consultation branch, Domestic Taxes Division of RMCD’s HQ in accordance to section 96 of the STA 2018.
- Appeal applications should also be made to the same RMCD office above for refund cases where designated time limits (under subsections 36(3) and 39(2) of the STA 2018, and subsections 35(3) and 38(2) of the SeTA 2018) have elapsed.

Deloitte’s comments

It is crucial for businesses to be familiar with the circumstances and documentation requirements to make the relevant applications. As approval for these refunds/drawbacks lie on the RMCD, failure to comply even with the documentation requirements may result in a prolonged process of retrieving these refunds/drawbacks. From experience, a large amount of rejection of these applications were due to minor documentation negligence e.g. failure to make the necessary declaration on a Customs declaration form or failure to submit a particular invoice. With the above, these conditions should not to be taken lightly especially if it involves a significant tax amount.

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