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Indirect Tax Chat

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

March 2021



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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the March 2021 edition of our Indirect Tax Chat.

In this month's edition we will cover a number of recent technical developments, including changes to guides in relation to Sales Tax and Service Tax, as well as some important new verification measures that we have observed in relation to applications for service tax registration.



We also share a critical update in relation to the [MyGST](#) portal. The portal was the main information repository for all materials issued by the Royal Malaysian Customs Department ("RMCD"). It contained all GST-related guides and policy decisions. The RMCD has made the decision to [close the portal](#) from 19 April 2021 and any information contained within would no longer be made available. The decision to close the portal is a disappointing one, as the RMCD have yet to complete all GST Closure Audits, and there are still GST-related matters before the courts. It is thus important that these materials remain accessible. We hope the RMCD would review its decision. This change will not impact the [Taxpayer Access Point](#) and taxpayers will still continue to be able access GST returns and correspondence from the RMCD. Going forward, announcements relating to GST will be on [RMCD's official portal](#) and [MySST](#) portal.

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

- The RMCD is targeting to collect RM40.7 billion in taxes this year, or higher than the RM38.6 billion in 2020. Finance Minister Tengku Datuk Seri Zafrul Abdul Aziz is confident that the department could achieve the target, even though the country still has to contend with the sting of the COVID-19 pandemic. For more information, please click [here](#), [here](#) and [here](#).
- According to Finance Minister Tengku Datuk Seri Zafrul Abdul Aziz, the federal government will not be introducing any new additional taxes for now as it is seeking ways to broaden its revenue post-pandemic. He added the ministry is currently undertaking a study to review the national tax regime and noted that any new introduction of tax such as GST is not a priority for now. 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.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Removal of Sales Tax Exemption on Manufacturing Aids

On 8 March 2021, the RMCD issued a revised Sales Tax Guide on Manufacturing and Import/Export (“2021 MIX Guide”) on the MysST website, available [here](#). The 2021 MIX Guide replaces an earlier version of the [MIX Guide published on 23 August 2018](#) (“2018 MIX Guide”). In the 2021 MIX Guide, the RMCD removed the section on manufacturing aids that was included in the 2018 MIX Guide, including matters on the application of the Schedule C1 sales tax exemption on the acquisition of manufacturing aids.

Schedule C1 of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018 (“the Sales Tax Exemption Order”) provides an exemption for registered manufacturers of taxable goods on the acquisition of raw materials, components, and packaging materials. Manufacturing aids are not specifically listed in the Sales Tax Exemption Order, but were instead addressed through the 2018 MIX Guide. The 2018 MIX Guide stated in paragraph 31 that the exemption provided for by Schedule C1 also covered manufacturing aids. The 2018 MIX Guide also included examples of what constituted manufacturing aids in paragraph 29 and these included lubricants, jigs, mould, mounting materials, chemical cleaners, and sandpaper.

In practice we have observed inconsistencies in the approach taken by the RMCD prior to the update of the Guide. We have seen in some cases manufacturers being able to access the exemption with approval being granted automatically. However, there were also cases where the RMCD disputed the ability of a manufacturer from accessing the Schedule C1 Exemption for manufacturing aids. Consequently, there was confusion among manufacturers on the approach the RMCD were taking in relation to manufacturing aids.

The amendment to the MIX Guide should at the very least serve to make it clear that the RMCD do not consider the acquisition of manufacturing aids to be eligible for the Schedule C1 sales tax exemption. As the Sales Tax Exemption Order does not specifically cover manufacturing aids, there is a reasonable basis for the RMCD to make that conclusion. However, this creates considerable uncertainty for manufacturers that had relied on the earlier guidance and applied the exemption. It is unclear if the RMCD would apply its revised view retrospectively, though in our view, taxpayers should have a right to rely on the published guidance as at the time transactions are entered into.

At the very least, acquisitions of manufacturing aids made after the published date of the new guidance should be considered no longer eligible for the exemption. In relation to past applications, as we noted above, RMCD’s position is less clear.

We would recommend manufacturers undertake a historical review to identify all instances of such claims, and ensure that appropriate documentation is retained to evidence reliance on the RMCD’s prevailing view at the time the claim was made. Impacted manufacturers may also consider if this particular issue should be escalated either individually or at an industry level to the RMCD to confirm their position.

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2. Service Tax Technical Updates

Revised Guide on Digital Services by Foreign Service Providers

An updated Guide on Digital Services by Foreign Service Provider (“the Digital Services Guide”) as at 1 February 2021 has been released by the RMCD, accessible [here](#), to replace the Guide on Digital Services as at 1 August 2020.

We have provided a summary of the significant updates to the Guide as below.

Examples of digital services and non-digital services

RMCD has provided additional examples in the revised Digital Services Guide, which include the following:

Provision of digital services	HouzImage Ltd provides digital images which can be downloaded from HouzImage.com.
	TheGrandDesign Ltd provides presentation templates which can be downloaded via dedicated cloud-based storage (i.e. Google Drive).
	Wan Ween Sdn Bhd is an architecture company in Malaysia. They purchased available 3D drawing from a company located in New Zealand. The drawing was sent via e-mail to WanWeen Sdn Bhd. The drawing delivered via e-mail is a digital service.
Provision of services that are not considered as digital services	Mr Reezal purchased an anti-virus software from an online platform operator. The anti-virus software is in a physical form (in CD) and was sent to Mr Reezal by post. The purchase of this anti-virus is not considered as a digital service. However, Mr Reezal may be imposed with Malaysia Sales Tax on importation.
	Hakeem & Co. is an architecture company in Malaysia. He requested a customised 3D drawing from his counterpart located in California. A series of draft versions and a final version of the drawing was sent via e-mail to Hakeem & Co. The drawing sent via e-mail is not considered as a digital service.

Deloitte’s comments

The mere download of ‘templates’ or ‘images’ being classified as a digital service is problematic as it is not made clear if this service should be read narrowly or broadly. It is common under various trademark and intellectual property agreements, for example for a rights holder to require the use of standardised templates and images by affiliates etc. If this issue is not further clarified, it poses a risk that such transactions could be brought within the net.

The new examples also highlight that digital media that is brought into Malaysia in a physical form would fall outside the scope of the service tax. The new guidance does not address how the Sales Tax would be imposed on the physical item, and in particular the value that would be ascribed, and this would need to be further explored.

Key changes

We have highlighted a few salient points mentioned in the revised Digital Services Guide below:

Sub-topic	Description
Digital service provided within the same group of companies	<p>Effective 14 May 2020, intra-group relief also applies to foreign service provider (“FSP”) who provides digital services to a company in Malaysia within the same group of companies. This is in line with the changes made to the law via Service Tax (Digital Services) (Amendment) (No.2) Regulations 2020. We have covered this in our January 2021 newsletter, which you can access here.</p> <p>In addition to the minor amendment above, the Digital Services Guide was amended to inform that the foreign registered person (“FRP”), who provides digital service only to a company in Malaysia who is in the same group of companies, may apply for cancellation of registration since the provision of digital services to company within the same group of companies shall not subject to service tax.</p> <p>As for the FSP who provides digital service only to a company in Malaysia who is in the same group of companies is not liable to be registered for service tax.</p> <p>To determine if a company satisfies the intra-group relief conditions, RMCD has informed paragraph 4 – 7 of First Schedule of Service Tax Regulations 2018 shall apply.</p>
Accounting basis	<p>The Service Tax Act 2018 (“STA”) was amended to include a new provision under 56A (4A) via Service Tax (Amendment) Act 2020 under the imposition of service tax on digital services.</p> <p>The new provision has been incorporated in the Digital Service Guide. Effective 1 January 2021, Director General (“DG”) may, upon application from FRP, approve service tax to be due at the time invoice is issued. The application should be made online by the FRP through MySToDS portal.</p> <p><u>Deloitte’s comments</u></p> <p>This Concession already existed in an administrative form and this change simply updates the Law to reflect the administrative practice.</p>
Manner of furnishing DST-02 Return	<p>STA was amended (via Service Tax (Amendment) Act 2019) by inserting a new provision of section 56D on the cessation of liability to be registered. FRP who ceases to be liable to be registered under section 56D, shall furnish DST-02 return not later than thirty days or such later date and containing particulars as the DG may determine in respect of that part of last taxable period during which he was registered. This provision has been incorporated in the Digital Services Guide.</p>

<p>Issuance of credit notes and debit notes</p>	<p>The amendment made to the STA (via Service Tax (Amendment) Act 2019) and the Service Tax (Digital Services) Regulations 2019 (via Service Tax (Digital Services) (Amendment) Regulations 2/2020) in respect of issuance of credit notes and debit notes have been incorporated in the Digital Services Guide.</p> <p>Effective 1 January 2021, an FRP shall issue credit and debit notes to make service tax adjustments as per section 56GA of STA, which may be due to: -</p> <ul style="list-style-type: none"> • changes in tax rates effective under section 10 of the STA; or • any adjustment in the conduct of business. <p>The credit and debit notes mentioned above shall contain the prescribed particulars under the regulation 6A of the Service Tax (Digital Services) Regulations 2019:</p> <ul style="list-style-type: none"> • the words ‘credit note’ or ‘debit note’ in a prominent place; • the serial number of the credit note or debit note; • the date of issuance of the credit note or debit note; • the registration number of the foreign registered person; • the reason for the issuance of the credit note or debit note; • a description sufficient to identify the digital services provided; • the quantity and amount for each digital service provided; • the total amount excluding service tax; • the rate and amount of service tax; and • the number and date of the invoice or document issued for digital service. <p>Any adjustment to either reduction or addition to the amount of service tax under section 56GA STA 2018, shall be made in DST-02 return for the taxable period in which the credit or debit note is issued or received.</p> <p>FRP who has ceased to be an FRP, shall make adjustments to either the reduction or addition of service tax in the DST-02 for the last taxable period during which he was registered.</p> <p><u><i>Deloitte’s comments</i></u></p> <p>We have previously provided our comments on these amendments in our January 2021 newsletter, which you can access here.</p>
<p>Remission of Penalty</p>	<p>With the removal of subsection 40(4) from the STA through Service Tax (Amendment) Act 2020, an FRP may apply for remission for penalties under section 40(3) of the STA, and the DG may remit the whole or any part of the amount of penalties.</p> <p>The application has to be submitted online through the MySToDS portal together with the relevant supporting documents.</p>

	<p><u><i>Deloitte's comments</i></u></p> <p>We previously covered these recent amendments in our January 2021 newsletter, which you can access here. This provision would now be helpful for FRP in this current challenging time.</p>
<p>Transitional Rules (Provision of Digital Services Spanning Before and After 1 January 2020)</p>	<p>Example 21 of the Digital Services Guide was amended to include the words “business purpose”.</p> <p>Mizzi Ltd provides a variety of music through his online platform. Syasya who is a consumer in Malaysia subscribes through the platform on a yearly basis, for business purposes. If an annual subscription to a music platform started on 1 April 2019 and expires on 31 March 2020, service tax on digital services will only be charged by Mizzi Ltd (who is an FRP) on the portion of services provided from 1 January 2020. For the period before 1 January 2020, Syasya must account service tax as she has acquired imported taxable service.</p> <p><u><i>Deloitte's comments</i></u></p> <p>The word “business purpose” is added into the example to provide clarity that the annual subscription for music is for business-to-business (“B2B”) where service tax is applicable on acquisition of such imported taxable services prior to 1 January 2020.</p>

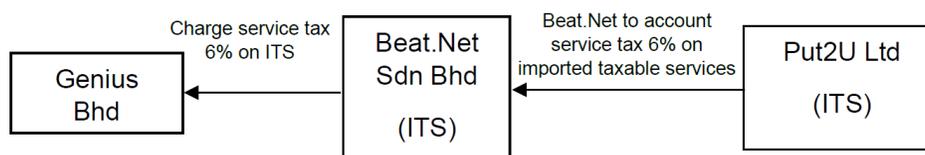
Revised Guide on Information Technology Services as at 8 March 2021

The RMCD released its latest service tax guide on IT services (IT Guide) earlier this month, available [here](#). This revised IT Guide contains two updates, one of which is on Example 24.

Example 24 provides a scenario where there was a service tax registrant who provides IT services, Beat.Net Sdn Bhd. which was appointed by Genius Berhad to develop a new software for the company. Beat.Net Sdn Bhd then engaged a foreign vendor Put2U Ltd. in London to develop the software. Beat.Net will customise the software acquired from Put2U Ltd (foreign vendor) based on Genius Berhad (local customer)’s requirements.

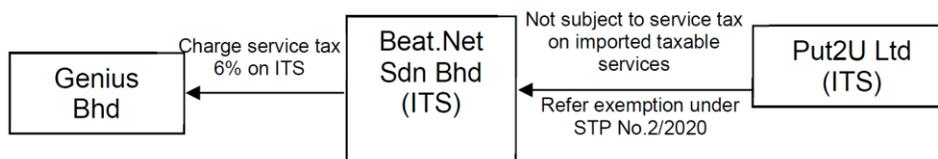
What is changed in this revised IT Guide is the tax treatment on the imported IT service from Put2U Ltd.

Tax treatment in the previous [IT Guide as at 13 July 2020](#):



In the previous IT Guide, it is stated that the software development services acquired by Beat.Net Sdn Bhd (local IT service provider) from Put2U Ltd (foreign vendor) was subject to service tax on imported services.

Tax treatment in the revised [IT Guide as at 8 March 2021](#):



In the revised IT Guide, the RMCD makes it clear that where an IT service is acquired from a foreign vendor for the furtherance of business and not for personal consumption, the imported services would not be subject to service tax under [Service Tax Policy No. 2/2020](#). We covered this policy in our January 2020 Chat, available [here](#).

The other update in the revised IT Guide is a correction to FAQ 10 to state that IT services provided by an IT service provider based in Johor Bahru (Malaysia) to a customer in Langkawi (Designated Area) would be subject to service tax as the supplier's principal place of business is in Malaysia. This is in line with section 50 of the [Service Tax Act 2018](#).

Deloitte's comments:

The amendments to the IT Guide are much welcomed as they add more clarity to the already complicated service tax rules for IT services.

Specifically, the change to Example 24 could be significant as several businesses would have relied on the previous example and accounted for service tax on imported services where the service tax cost could have been substantial. With the change, businesses may reassess its position and if the quantum involved is significant, consider applying for a service tax refund (though this will depend on RMCD's discretion).

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3. Verification of new Service Tax Registration Applications

Previously new applications for service tax registration were rarely reviewed or queried by the RMCD. However, we have noticed a trend on all recent applications where the RMCD have responded to applicants seeking further documents and information for the purpose of “verification”.

The information and documents requested include details on business activities, list of services provided, copies of utility bills, sample invoices and contracts, picture of business premises, audit reports etc. The most significant piece of information requested was a month-by-month breakdown of the value of taxable services provided for in the past 12 months from the month in which the application for registration was submitted.

As per the service tax legislation, a company is required to lodge an application for registration by the end of the month following the month in which the prescribed threshold is exceeded. For example, a company which exceeds the prescribed threshold of RM 500,000 in the month of February 2021, is required to lodge an application for registration by the end of March 2021.

The effective date of registration shall be on the first day of the month following the month in which the application is made or from an earlier date as may be agreed between the Director General and the company, but such date shall not be earlier than the date the person becomes liable to be registered. In the example above, the effective date of registration would be 1 April 2021.

It is possible that the RMCD is carrying out these verification exercises with a view to determine if a particular applicant registered late. The implication of a late registration would be the possibility of the RMCD back dating the effective date of that registration to an earlier date.

The above approach would be consistent with the recent practice taken by the RMCD of reviewing and backdating the registration effective dates for Foreign Service Providers (“FSPs”), that are registered for service tax on digital services (“SToDS”). Please see our [January 2021 newsletter](#) for more information on this.

Consequently, all new applicants for registration should take note that a verification process is likely to occur and should take appropriate measures to plan ahead.

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4. Other Indirect Tax Updates

Program Strategik Memperkasa Rakyat dan Ekonomi (PEMERKASA)

Earlier this month, Prime Minister Tan Sri Dato' Haji Muhyiddin Yassin unveiled the *Program Strategik Memperkasa Rakyat dan Ekonomi* (PEMERKASA). Under the PERMERKASA program, a number of indirect tax initiatives were announced including the extension of service tax and tourism tax exemptions on accommodation provided by hotel operators until 31 December 2021. The other indirect tax initiative under PEMERKASA is that motorcycles with an engine capacity of 150cc and below purchased under the *TEKUN Mobilepreneur Program* will be fully exempted from excise duty, commencing 1 April 2021 to 31 December 2021.

Tourism Tax Regulatory Updates

The [Tourism Tax \(Amendment\) Act 2021](#) comes into operation on 1 April 2021, except for section 10 which comes into operation on 1 July 2021, as per the appointment of date announcement [here](#). The effective date for charging and levying of tourism tax on accommodation premises made available through service relating to online booking of accommodation premises is 1 July 2021. Please see the appointment of date [here](#).

The Tourism Tax (Rate of Digital Platform Service Provider Tax) Order 2021 was also gazetted, which is available [here](#). Based on the Order, the rate of tourism tax shall be RM10 per room per night.

Lastly, the Tourism Tax (Digital Platform Service Provider) (Exemption) Order 2021 was gazetted, which is available [here](#). Based on the Order, Malaysian citizens and permanent residents are exempted.

Launch of the RMCD's e-Review website

The RMCD has launched an online review system called e-Review. The website is a platform to appeal any decision by the Director General made under the Customs Act 1967, Excise Act 1976, Sales Tax Act 2018, Service Tax Act 2018, and Departure Levy Act 2019. The website is available only in the national language [here](#). A bilingual application guide is also available [here](#).

Amendment to Customs Duties Order 2017

The government gazetted the [Customs Duties \(Amendment\) Order 2021](#) which came into operation on 25 March 2021. The principal [Customs Duties Order 2017](#) was amended in the First Schedule in relation to subheadings 7204.10.00 00, 7204.29.00 00, 7204.30.00 00, 7204.41.00 00 and 7204.49.00 00 in column (6) by substituting the word "0% to "15%". This means that 5 items under the "ferrous waste and scrap; remelting scrap ingots of iron or steel" subheader have increased export duties from 0% to 15%.

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<http://www2.deloitte.com/my/en/services/tax.html>

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