Indirect Tax Chat
Keeping you up to date on the latest news in the Indirect Tax world

May 2019
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Key takeaways:

1. SST technical updates
Greetings from Deloitte Malaysia’s Indirect Tax team

Greetings, readers, and welcome to the May 2019 edition of our Indirect Tax Chat.

We had earlier reported that a number of amendment bills for the indirect tax laws were introduced before the lower house of Parliament. These bills included amendments to the service tax, sales tax and customs rules in Malaysia. We can now report that these bills have been passed through the upper house of Parliament and will proceed to Royal Assent. The bill covering the introduction of the new departure levy was also passed and is awaiting Royal Assent.

Another critical development that occurred in the past month was the announcement of 31 August 2020 as the cut-off date for any transactions that would still require Goods and Services Tax (GST) to be accounted on. The cut-off date was included in an update to two guides that were released by the Royal Malaysian Customs Department (RMCD). You can read our analysis of these two GST guides in our Indirect Tax Alert, issued on 23 May 2019 here.

Here is some recent news that may interest you:

- Finance Minister Lim Guan Eng has announced that a total of RM9.5 billion of GST refunds was paid by the Ministry of Finance to 76,002 businesses as of 30 April 2019.

- Assistant Director-General (DG) of RMCD, Datuk Ahmad Maher Abd Jalil stated that Malaysia had lost billions of ringgit in revenue through the outstanding GST-03 statements not submitted to RMCD. He further stated that over 200,000 GST registrants have not submitted their GST-03 statements.

We hope you find this month’s Indirect Tax Chat informative. Please do not hesitate to contact us if you have any queries, comments or require our assistance on any indirect tax matters.

Best regards,

Tan Eng Yew
Indirect Tax Leader
1. SST technical updates

Report to be prepared for Sales Tax Exemption under Schedule B & C of Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ("the Order")

On 22 April 2019, RMCD announced that a company which has been approved with sales tax exemption under the Order is required to prepare the following reports:

<table>
<thead>
<tr>
<th>Approved person</th>
<th>Item</th>
<th>Type of report</th>
<th>When to prepare report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any manufacturer approved by the Customs</td>
<td>Schedule B - 1,2,3 - 4</td>
<td>Laporan CJ(P) Jadual B-01 Laporan CJ(P) Jadual B-01 and Laporan CJ(P) Jadual B-02</td>
<td>Every three (3) months from the date of sales tax exemption certificate</td>
</tr>
<tr>
<td>Sales tax registered manufacturer</td>
<td>Schedule C - 1,2,3 and 4</td>
<td>Laporan CJ(P) Jadual C-01</td>
<td>Every three (3) months from the date of sales tax exemption certificate</td>
</tr>
<tr>
<td>Person acting on behalf of a sales tax registered manufacturer</td>
<td>Schedule C - 3 and 4</td>
<td>Laporan CJ(P) Jadual C-02</td>
<td>Every three (3) months from the date of exemption certificate until all approved goods are delivered to the sales tax registered manufacturer</td>
</tr>
<tr>
<td>Sales tax registered manufacturer who sends their goods to be completed by a subcontractor</td>
<td>Schedule C - 5</td>
<td>Laporan CJ(P) Jadual C-03</td>
<td>Every three (3) months from the date of exemption certificate</td>
</tr>
</tbody>
</table>

Some important notes are:

1. The above report templates can be downloaded via the My SST system ([click here](#)).
2. No printed report and submission to SST Division is required. The completed report should be kept and only be submitted upon request by sales tax officer/audit officer.
3. Report must be signed by company’s authorised officer. Signature is only needed on the last page of the report which contains grand total information.

**Deloitte’s view**

Proper internal procedures must be in placed to ensure reporting is prepared on a timely basis in accordance with the requirement above and ready for RMCD to review when required.
Application for Exemption under Schedule C Item 3 or 4, Sales Tax (Persons Exempted from Payment of Tax) Order 2018

On 1 January 2019, a new module for the exemption application on item C3 and C4 was made available on the MySST system. Following this, exemption certificates generated before 1 January 2019 would be invalid after 1 June 2019.

Under the new application module, two parties must be involved in the certificate of exemption application:

<table>
<thead>
<tr>
<th>Step</th>
<th>Involved parties</th>
<th>Action to be taken</th>
<th>Document generated</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sales Tax registered manufacturer</td>
<td>Appoint the person to buy or import on his behalf</td>
<td>Appointment Approval Letter</td>
</tr>
<tr>
<td>2</td>
<td>Person citing on behalf of the sales tax registered manufacturer</td>
<td>Sign up to MySST system and generate certificate by using approval number given by the sales tax registered manufacturer</td>
<td>Exemption Certificate</td>
</tr>
</tbody>
</table>

Some important notes:

(a) Detailed steps are provided in the User Manual.
(b) Application is made based on purchase order, contract or approximate purchase quantity for 3 months or less.
(c) Once application is submitted, it cannot be edited.
(d) Additional items would require submission of new applications.
(e) For cancellation of exempted item or certificate, the following forms have to be submitted manually to the RMCD controlling station, together with company official letter:
   - Cancellation Application (Delete) Item / Goods Form for Exemption Certification under Schedule B and C Sales Tax (Persons Exempted From Payment of Tax) Order 2018. [Click here](#)
   - Cancellation Application Form for Exemption Certification under Schedule B and C Sales Tax (Person Exempted from Payment of Tax) Order 2018. [Click here](#)

Deloitte’s view

Companies should take note of the changes to the application procedure. With the new module for exemption application, a company needs to apply for the exemption through a new module for goods to be exempted after 1 June 2019.

Declaration form for breach of sales tax exemption conditions

On 2 May 2019, declaration for a breach of the sales tax exemption condition can be made via submission of two (2) copies of the SST-ADM form to RMCD. Declaration details can be found [here](#) on the MySST website. The company can make a declaration for the following scenarios:

- Payment of sales tax for breach of exemption conditions under Section 35(5) of the Sales Tax Act 2018 (Additional reports as in Appendix 1 shall be prepared);
• amount payable other than taxes or any amount as tax or required to be paid under the Sales Tax Act 2018;
• amount payable other than taxes or any amount as tax or required to be paid under the Service Tax Act 2018; and/or
• other payment under Sales Tax Act 2018/ Service Tax Act 2018 (e.g. Disposal of raw materials, components, packaging materials (Additional reports as in Appendix 2 shall be prepared).

During the submission of the SST-ADM form, Appendix 1 and / or Appendix 2 (if applicable), the company should make payment with a cheque or bank draft in the name of ‘Ketua Pengarah Kastam Malaysia’ to the controlling station.

It is pertinent to note that the declaration made will not prevent RMCD to conduct audits or take any legal action in the event of a breach of Sales Tax Act 2018, Service Tax Act 2018, Sales Tax Regulations 2018, Service Tax Regulations 2018 and other related legislation or regulations.

Deloitte’s view

To encourage voluntary declaration, RMCD should consider reducing or waiving any penalty.

Revised Guide on Advertising Services (as at 26 March 2019)

The Guide was recently updated and released on 26 March 2019. The updates in the guide focus mainly on the application of the exemption under Item 2 of the Schedule of Service Tax (Person Exempted from Payment of Tax) Order 2018 (“Exemption Order”), specifically for advertising service providers.

The Guide illustrates the conditions of item 2 of the exemption order from the perspective of an advertising services provider as follows:

(a) The service that is exempted is an advertising service, not other services received by advertising service provider.
(b) Advertising service provider who is the recipient of such advertising services must be a registered person.
(c) The advertising services are provided by an advertising service provider who is a registered person.

In applying the exemption, the advertising services provider must also adhere to the following requirements:

(a) Invoices must be issued with the following additional particulars:
   (i) Name and address of the customer;
   (ii) the customer’s services tax registration number; and
   (iii) the customer’s total amount of service tax which are exempted.

(b) Declare the total value of exempted taxable services
   (i) Declaration of the value of service exempted from tax (B2B exemption) to be made in column 18 (c) of the SST-02 form.
Example 3 further highlights that the exemption is solely for the purpose of business to business (B2B) type transactions and is not applicable when the recipient of the advertising services is the end consumer.

_Deloitte’s view_

The guide highlights that the provision of item 2 of the exemption order is solely for B2B transactions. A proper review of the businesses’ supply flow is recommended in order to ensure that the transaction is a B2B transaction.

**Brought to you by:**

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Sales Tax Act 2018

The Sales Tax Act 2018 is to be amended by the Sales Tax (Amendment) Bill 2019 (which has been passed by Parliament but yet to be gazetted), effective from a date to be notified in the gazette. The proposed amendments are as below:

In relation to Section 2:

- Pangkor is to be included as one of the defined “designated areas” (DA) and Pangkor is specifically defined to include “Pangkor Island, Mentagor Island, Giam Island, Simpan Island, Tukun Terindak Island, Pelanduk Island, Anak Pelanduk Island, Landak Island, Batu Orang Tua and Batu Jambal”.
- Petroleum supply bases are to be included as one of the defined “special areas” (SA).

Paragraph 3(1)(b):

- The definition of “manufacture” is to be amended to provide clarity in relation to sales tax manufacturing processes for petroleum i.e. confined to (downstream) refining processes only, and not the current broad definition, which extends to upstream production processes.

New Section 27A:

- A new section is to be introduced to stipulate that any outstanding amount of sales tax, service tax, customs duty, etc., due to Customs by a person may be offset by the Director General of RMCD, against any refund or drawback owed by RMCD to that person. The power to offset is based on the Director General’s discretion.

Section 41A:

- The amendments relate to the facility introduced recently for registered manufacturers for deduction of sales tax paid on acquisition of raw materials and components.

New Section 84A:

- A new section to provide for a sentence of imprisonment to be imposed by any court in respect of non-payment of court fines for offences under the Sales Tax Act 2018.
- The maximum period of imprisonment proposed varies depending on the amount of fine defaulted i.e. (a) maximum of 2 months for fine (defaulted) up to RM5,000, (b) maximum of 4 months for fine (defaulted) more than RM5,000 up to RM10,000, and (c) maximum of 6 months for fine (defaulted) more than RM10,000 up to RM20,000, with 2 additional months for every RM10,000 after the first RM20,000.
New section 86A:

- The introduction of this section intends to make it an offence and imposes a penalty for any person who evades sales tax on the importation of taxable goods, whereby, on court conviction, the offender may face a fine or imprisonment or both, the quantum of which varies for (a) 1st offence – minimum fine not less than 10 times the sales tax evaded or RM50,000, whichever is the higher, and maximum fine not more than 20 times the sales tax evaded or RM500,000, whichever is the higher, or imprisonment up to 5 years, or to both; (b) 2nd or subsequent offence – minimum fine not less than 20 times the sales tax evaded or RM100,000, whichever is the higher, and maximum fine of 40 not more than 40 times the sales tax evaded or RM1 million, whichever is the higher, or imprisonment up to 7 years, or to both.

New section 101A:

- This section covers the manner of service of court summons in civil or criminal proceedings under the Sales Tax Act 2018.

Deloitte’s View

With the inclusion of Pangkor in DA and petroleum supply bases in SA, businesses would have to review the sales tax treatment of inter alia the movement of goods inbound and outbound into/from Pangkor/petroleum supply bases, based on the list of goods to be excluded from sales tax-free status (which are expected to be made known via Ministerial gazette order).

The proposed restriction of the scope of manufacture for petroleum, i.e. “process of refining”, removes the doubt in the existing broad scope that covers even upstream production processes. For refund or drawback that is due to any claimant taxpayer, the claimant may only be given the balance if RMCD decides to offset any customs duties/taxes owed to RMCD against the refund/drawback amount owed to taxpayer.

With the proposed enhanced punishment for non-compliance under the sales tax legislation, it is timely for sales tax registered businesses to review the level of compliance and the changes required to their systems/procedures to enhance compliance for sales tax legislation purposes.

Free Zones Act 1990

The Free Zones Act 1990 (“FZA”) is to be amended by the proposed Free Zones (Amendment) Act 2019 (which has been passed by Parliament but yet to be gazetted), effective from a date to be notified in the gazette. The proposed amendments are as below:

In relation to section 2:

- The amendment intends to revise certain existing definitions such as the removal of transit activities from “commercial activities”, and to introduce the definition of “owner” and “Pangkor”.
- Pangkor is to be excluded from the “principal customs area” (PCA).
• A new subsection 2A is to be added to clarify that the definition of “owner”, “exporter” and “importer” shall have the same meaning respectively as under section 2 of the Customs Act 1967.

Section 7:

• The amendment provides that any custom duty on goods taken out from the PCA into a free zone (deemed to be exported from Malaysia) and goods brought out from the free zone into the PCA (deemed to be imported into Malaysia), shall be payable.

New Section 8A:

• The introduction of the section relates to the specific details to be provided for any declaration under FZA so as to ensure that a full and true account of the goods are provided.

New Section 8B:

• This new section intends to impose responsibility on the owner of the goods or operator of a shop, warehouse, premises etc. in a free zone to account for all goods kept in those premises. Where the goods are found to be short in quantity, then the owner or operator is deemed to have illegally removed the goods from the free zone into the PCA and the goods are uncustomed goods to be subjected to duty. Such duty would be payable by the abovementioned owner or operator, on demand being made by RMCD within 6 years (or even after 6 years in the case of fraud or willful default).

Section 9:

• The amendment seeks to impose a heavier penalty for non-compliance with certain procedures in the free zone under section 5 (dealing or disposing of goods in free zone), 6A (retail trade in free zone) and 8 (goods manufactured in free zone), whereby, on court conviction, the offender may face a fine or imprisonment or both, the quantum of which varies for:

   (a) 1st offence – minimum fine not less than 10 times the sales tax evaded or RM50,000, whichever is the higher, and maximum fine not more than 20 times the sales tax evaded or RM500,000, whichever is the higher, or imprisonment up to 5 years, or to both;

   (b) 2nd or subsequent offence – minimum fine not less than 20 times the sales tax evaded or RM100,000, whichever is the higher, and maximum fine of 40 not more than 40 times the sales tax evaded or RM1 million, whichever is the higher, or imprisonment up to 7 years, or to both. However, where the value of the goods cannot be ascertained, the penalty would be either a maximum fine of RM500,000 or imprisonment up to 5 years, or both.

New Section 10A:

• The introduction of the section intends to ensure that all documents and records relating to importation, exportation or manufacturing of goods in the free zone are preserved for 7 years and any person who fails to do so will be liable to a fine up to RM50,000 or to imprisonment up to 3 years, or both, upon court conviction.
Sections 14 and 15:

- The amendments intend to empower a free zone Authority to approve erection of buildings/other structures and prohibit entry into or residence within both the free industrial zone and free commercial zone, respectively.

Section 18:

- This amendment seeks to provide that the allegation that any information or document was furnished inadvertently or without criminal/fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter, shall not be a defence, once the information or document is proven to be untrue or incorrect in whole or in part.

Section 19:

- The general penalty is to be revised to introduce the penalty of imprisonment up to 3 years and to increase the amount of fine from a maximum of RM5,000 to a maximum of RM50,000, on court conviction.

Section 33:

- Section 33 (on the compounding of offences) is substituted, whereby, inter alia, the maximum compound is up to 50% of the maximum fine for the compoundable offence.

New section 41A:

- This section seeks to provide that any unpaid tax, duty money or payment may be recovered as a civil debt, similar to section 22B of the Customs Act 1967.

Section 18 of the Free Zones (Amendment) Act 2019:

- This clause intends to provide saving provisions in relation to inter alia the erection of structures in the free commercial zone prior to the operation of the above proposed amendments to sections 14 and 15, and that any pending compounding of offences under section 33 of the FZA shall be dealt with as if the FZA has not been amended by the Free Zones (Amendment) Act 2019.

**Deloitte’s View**

The proposal to include Pangkor as a DA would impact the customs duty/sales tax treatment for movement of goods inbound and outbound into Pangkor from Free Zones and vice versa.

The proposal to define the term “owner” in the FZA to be broadly in line with the Customs Act 1967, appears to be a measure towards the harmonisation of obligations and responsibilities of owners under the FZA and the Customs Act 1967.

With the proposed enhanced responsibility of businesses in the FZ and the proposed enhanced penalties for non-compliance under the FZA, it is timely for businesses in the FZ to review the level of compliance and the changes required to their systems/procedures to enhance compliance for FZ legislation purposes.
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