

Deloitte.



Indirect Tax Chat

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

May 2020



MAKING AN
IMPACT THAT
MATTERS
since 1845

Issue 5.2020

Quick links: [Contact us - Our Indirect Tax team](#)

Key takeaways:

1. [Legislative Amendments on Service Tax and Digital Services](#)
2. [Guide on Determination of Sale Value for Manufacturing Charges of Taxable Goods under Subsection 9\(3\) of the Sales Tax Act 2018](#)
3. [Key Changes to Customs Legislation](#)

Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, and welcome to the May 2020 edition of our Indirect Tax Chat. We hope you have been keeping safe and well.

The Movement Control Order (MCO) in Malaysia has once more been extended, this time by four weeks to the 9th of June, but with less restrictions and more businesses being allowed to operate. While the last MCO extension resulted in a payment deadline extension for certain indirect taxes, there is no indication that the Royal Malaysian Customs Department (RMCD) will further extend this payment deadline or provide any new extensions for returns due at the end of this month. We would ask that you observe the published deadline and ensure prompt filing and payment. We covered the previous payment deadline extensions in a separate alert which you can access [here](#).



Moving onto other matters, three separate amendments relating to service tax were also gazetted, as announced in our earlier alert which is accessible [here](#). We cover these amendments in greater detail in this month's issue.

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

- In terms of diversifying Malaysia's revenue base, Professor Datuk Dr Rajah Rasiah, an economics professor at the Asia-Europe Institute of Universiti Malaya believes that introducing the GST at a lower rate of 2.5%, against 6% before, would be acceptable. He cautions that the Government must also have an instrument to offset payments by the B40 group through some form of subsidy. The consumption tax may not have been popular with the public, especially low to medium-income earners, but the more than RM40 billion collected every year helped buoy the Government's coffers. For more information, please click [here](#).
- The President of the Malaysian Association of Tax Accountants (MATA), Datuk Abdul Aziz Abu Bakar stated that to help kickstart the economy, the Malaysian Government should consider certain unorthodox measures such as bringing back the Goods and Services Tax (GST) but at a lower percentage of 3%, as well as reducing the excise duty on cigarettes. This is to ensure sufficient funds for the country as revenue from income tax is sure to drop because of the sluggish economy. This way, everyone will be contributing to strengthening the government's fiscal position. For more information, please click [here](#).

We hope you find this month's tax chat engaging, and to those of you celebrating, we would like to wish you Selamat Hari Raya Aidilfitri.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Legislative Amendments on Service Tax and Digital Services

The Malaysian Minister of Finance has gazetted three legislative amendments on the Service Tax Law, which came into operation on 14 May 2020.

The amendments are:

- [Service Tax \(Amendment\) Regulations 2020](#)
- [Service Tax \(Digital Service\) \(Amendment\) Regulations 2020](#)
- [Service Tax \(Persons Exempted From Payment Of Tax\) \(Amendment\) Order 2020](#)

Our technical comments on the Amendments are as per the table below:

Amendment	Deloitte's Comments
Service Tax (Amendment) Regulations 2020	
<p>Item (m), Group G of the First Schedule to the Service Tax Regulations ("STR") 2018 on the provision of digital services has been deleted and merged with item (l), Group G of the First Schedule to STR 2018 ("item (l), Group G").</p> <p>Item (l), Group G now covers the provision of digital services including provision of electronic medium that allows suppliers to provide supplies to customers or transaction for provision of digital services on behalf of any person, excluding provision of such services in relation to matters outside Malaysia.</p>	<p>The amendments result in the provision of an electronic medium being brought under the broader category of digital services which is consistent with the treatment for foreign service providers, and is more practical.</p> <p>An exclusion has also been introduced for 'matters outside Malaysia' which is a welcomed one as it allows for export transactions to perhaps be exempted. However, the drafting of the relevant provision makes it unclear if this exclusion only applies to the "provision of digital services on behalf of any person" or to all matters relating to digital services. A literal reading of the provision suggests it only applies to this narrow type of digital services, but we suspect the intention is for it to apply to all digital services.</p> <p>We note that for other categories of taxable services, for example, management services, the exemptions are listed under specific subparagraphs and it is unclear why the drafters did not follow the same approach in this case.</p>
<p>The scope of intragroup relief under Paragraphs 3 and 3A of the First Schedule, STR 2018 has been expanded to include digital services under item (l), Group G</p>	<p>The inclusion of digital services into the scope of the intragroup relief is a sensible move as there was no clear reason why digital services should be viewed</p>

(please refer [here](#) and [here](#) for our past discussions on the intragroup relief).

Paragraph 3 now reads “where a company in a group of companies provides any taxable service specified in item (a), (b), (c), (d), (e), (f), (g), (h), (i) or (l) in column (2) in Group G to any company within the same group of companies, such service shall not be a taxable service.

As for Paragraph 3A, the paragraph is substituted with “where a company in a group of companies acquires any taxable service specified in item (a), (b), (c), (d), (e), (f), (g), (h), (i) or (l) in column (2) in Group G from any company other than FRP within the same group of companies, such service shall not be an imported taxable service.

With the above, there has been some changes to the wording where part of the conditions would include that “the services being acquired from other than the FRP”.

These amendments have been highlighted in an announcement by the RMCD in the national language, which can be accessed [here](#).

differently from other professional services that were eligible for intragroup relief such as management, IT and consultancy services.

However, there is an exclusion to this for services acquired from an FRP which adds to some confusion, as it is unclear what it is intended to capture. For services where the FRP has imposed service tax, an exemption already applies under a separate exemption order, which removes the need to account for tax on imported service. It would appear the only limited circumstance where it could apply would be where an FRP provides a digital service to its related company which is exempt under the Law (e.g. intragroup services as discussed further below), and therefore require the local related company to account for service tax on imported services. However, such an outcome would not only be unfair, it also defeats the purpose of providing an exemption to the FRP in the first place.

We would recommend further clarification from the authorities on the interpretation of this provision.

Service Tax (Digital Services) (Amendment) Regulations 2020

The Regulations now introduce an intragroup relief mechanism for digital services provided by FRPs.

The FRP is now not required to charge service tax on its digital services under the intragroup relief provision provided that:

- The services are provided to companies in Malaysia within its group*; and
- The same digital services are not provided to companies outside the group in Malaysia

*To determine if a company is related or in a group of companies, they must satisfy the ‘control test’ under Paragraphs 4-7 of the First Schedule, STR 2018), i.e. (1) where one company holds the other company (directly or indirectly through subsidiaries) shareholding of more than 50%; or (2) where

This amendment is definitely a welcomed one, as it significantly reduces the administrative and operational burden for a number of FRPs who solely provide services within their own group. There is some confusion arising from the use of the term FRP, as it implies that in order to be eligible for the exemption, the service provider needs to be registered. This would be impractical, and we understand from informal discussions with the authorities, that it was not intended. FRPs who provide only services to group companies will be able to deregister from the tax as [announced in the MySToDS portal](#). A FRP wanting to deregister may do so by logging into their account on the MySToDS portal and cancelling the registration.

shareholding is between 20% - 50%, to have exercisable power to appoint or remove all/majority of board of directors of the other company.

Please note that the control test is the same as that for the intragroup relief for local taxable services and imported taxable services.

For FRPs that provide services to third parties as well as group companies, further analysis is required. In particular, a need to assess to what extent the services to group companies are also provided to third parties.

To that end, we have also noted that no *de minimis* rule or threshold is included. For local service providers, the intragroup exemption was expanded last year to include a 5% *de minimis* rule. As of this moment, no similar exclusion exists and therefore even an isolated transaction can result in an FRP becoming ineligible to apply the concession. We will be monitoring this area for further developments.

Service Tax (Person Exempted from Payment of Tax) (Amendment) 2020

The scope of exemption for digital services for local service recipients to account for the import of the services where the FRP has charged and invoiced for service tax has been modified with the removal of the requirement where the service acquired must not be for personal consumption.

This amendment allows the rules to be more aligned with the intention and practice i.e. where a local service recipient is invoiced by an FRP with tax, no tax on imported service is to be accounted for. This is also now consistent with Guide on Digital Services, as at 20 August 2019.

Brought to you by:



Nicholas Lee
Associate Director
KL Office



Tiffany Lee
Senior
KL Office

[Back to top](#)

2. Guide on Determination of Sale Value for Manufacturing Charges of Taxable Goods under Subsection 9(3) of the Sales Tax Act 2018

The Royal Malaysian Customs Department (“RMCD”) issued a sales tax guide as at 30 January 2020 on the determination of sale value for manufacturing charges of taxable goods under subsection 9(3) of the Sales Tax Act 2018 (“STA”). For our readers’ ease, the provision in subsection 9(3) of the STA reads as below:

“Where any manufacturer receives taxable goods from any person to be manufactured and subsequently returns the goods so manufactured to such person, the sale value of the goods so manufactured shall, subject to approval of the Director General, be the amount that the manufacturer charges for work performed by him.”

The guide was released only in the national language which you can access [here](#). For the purpose of this guide and article, the following terms have been defined in item 3 of the guide:

- a) Amount of work performed = Any charges including *wages* and *assist*
- b) *Assist* = Any additional goods and services supplied by the manufacturer and/or obtained from any supplier other than the sender for the purpose of manufacture
- c) *Sender* = Any person who sends goods to the manufacturer to be manufactured and subsequently acquired back the finished goods that are taxable goods
- d) *Wages* = labour charges and overhead

Conditions of approval

The manufacturer is allowed to apply the amount of work performed as the sale value of the manufactured taxable goods, subject to the following conditions:

- a) The manufacturer performs manufacturing work on the goods received.
- b) All goods sent to the manufacturer must be taxable goods.
- c) Goods sent must be in the form of raw materials, components, packaging materials, or partially finished goods for the purpose of further manufacture.
- d) The finished goods, having undergone manufacturing work, must be returned to the same *sender* [supplier of goods in (c) above].
- e) The sender of the goods can be any person.
- f) If the *sender* and manufacturer (receiver) are both sales tax registered manufacturers, the *sender* may utilise item 5 in Schedule C of the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018 where goods acquired back are not subject to sales tax.
- g) The manufacturer who receives the goods is allowed to provide additional goods for the manufacturing work.

Determination of sale value of taxable goods based on amount of work performed without ‘assist’

Where a manufacturer performs manufacturing work on taxable goods received from the *sender* without providing any *assist* for use in the manufacturing work, the value for sales tax purposes will be based on the amount of work performed i.e. value of the *wages* only.

Determination of sale value of taxable goods based on amount of work performed with ‘assist’

Where a manufacturer performs manufacturing work on taxable goods received from the *sender* and also provides *assist* for use in the manufacturing work, the value for sales tax purposes will be based on the amount of work performed i.e. value of the *wages* and the value of the *assist* regardless whether sales tax has been paid on the *assist*.

Types of manufacture that are ineligible to use the amount of work performed as the sale value of taxable goods

The following are not eligible to utilise subsection 9(3) of the STA:

- a) When all goods received from the *sender* for manufacturing work are non-taxable goods; or
- b) When goods received from the *sender* for manufacturing work comprise a mix of taxable and non-taxable goods.

Where a manufacturer is not eligible to use the amount of work performed as the sale value of taxable goods, he will be subject to the rules of sales tax valuation under Sales Tax (Determination Of Sale Value Of Taxable Goods) Regulations 2018.

Application to use the amount of work performed as the sale value of taxable goods

Prior approval must be obtained from the Director General of Customs. Application must be made to the respective Zone Assistant Director of Customs or the State Director of Customs of the controlling station using Form 9(3) as per Appendix A in the guide.

Deloitte’s comments

The guide is intended to provide guidance and clarification relating to the imposition of sales tax based on manufacturing charges provided under subsection 9(3) of the STA. The levying of sales tax on manufacturing charges will lower the cost of doing business and it is important for businesses to take note of the conditions set out by the RMCD.

Brought to you by:



Wong Poh Geng
Director
KL Office



Patrick Ng
Tax Assistant
KL Office

[Back to top](#)

3. Key Changes to Customs Legislation

Customs (Amendment) Act 2019

The Customs (Amendment) Act 2019 highlighted in our Indirect Tax Chat for [June 2019](#) has been appointed to be effective from 1 January 2020. The amended rules came into operation on 1 January 2020.

Deloitte's comments

As highlighted in our earlier Indirect Chat, it would now be important to put into effect preparations made when anticipating the implementation of these amendments.

Customs Regulations 2019

Customs Regulations 2019 serves to replace the Customs Regulation 1977, effective 1 January 2020.

Extensive changes have been made to provide more clarity on the administrative matters, among which include the areas below:

- Port or airport clearance on departure or vessel or aircraft
- Submission of manifest of vessel or aircraft
- Transportation of customs duty or tax paid goods
- Transshipment and transit
- Conditions and requirements for regional transit
- Application requirements to be a licensed carrier
- Warehouse, Duty Free Shop, Inland Clearance Depot or Petroleum Supply Base
- Importation, exportation and internal movement of goods into or from Joint Development Areas

Changes include clearer indication of the type of Customs declaration forms to be declared depending on specific scenarios, the inclusion of administrative relating to petrol supply bases (which was introduced by the Customs (Amendment) Act 2019 above) and updated formats of Customs documents such as the Customs Form No. 1, Customs Form No. 2 and manifests.

The new Regulations also provides some transitional rules where any declaration was submitted or application made prior to 1 January 2020 and pending approval shall be dealt with under the old Customs Regulations 1977. However, for those granted prior to 1 January 2020, shall continue to have force and effect under the new Customs Regulations 2019.

Deloitte's comments

The amendments to the Regulations should be welcomed – especially when it provides more clarity on the administrative aspects of Customs matters.

Given that the old Regulations have now been revoked, businesses should familiarise themselves with the new rules covered under the new Regulations.

Customs Duties (Pangkor) Order 2019 and Excise Duties (Pangkor) Order 2019

With Pangkor's new duty-free island status, the Orders discuss the exceptions where effective 1 January 2020, the importation of motor vehicles into Pangkor shall be subject to import and excise duties.

With the exception of import duties, the transportation of motor vehicles from a principal customs area to Pangkor would also be subject to excise duties.

Deloitte's comments

As Pangkor is currently designated a duty free island, and is no longer in the Principal Customs Area, this Order serves to allow Customs authority to levy customs duties on the importation of motor vehicles into Pangkor.

Customs (Prohibition of Import) (Amendment) (No. 6) Order 2019

The Customs (Prohibition of Imports) Order 2017 is amended with the insertion of the definition for the term 'goods in transit'.

Additional amendments include the insertion of Pangkor to Paragraphs 3, 4, 5, 7, 10, and Part III, Second Schedule of the Customs (Prohibition of Imports) Order 2017.

These amendments came into effect on 1 January 2020.

Deloitte's comments

The changes above provide more clarity to the term 'goods in transit' which was not defined in the Order. In addition, the inclusion of Pangkor to the relevant sections above serves to align with the inclusion of Pangkor as a duty-free island.

Customs Duties (Exemption) (Amendment) (No. 4) Order 2019

This serves to insert 'Pangkor' in items 10 and 11, Part I, Schedule of Customs Duties (Exemption) Order 2017.

Item 115 of Part I of the same Order above (which discusses on the duties exemption of the importation of intoxicating liquor into duty-free islands) has been deleted.

The amendments came into effect on 1 January 2020.

Deloitte's comments

The amendments of this Order serve to align with the inclusion of Pangkor as a duty-free island and to reflect recent changes on the duties treatment of intoxicating liquor brought to these duty-free islands.

Customs Duties (Exemption) 2017 (Amendment) Order 2020

Anchovies products under subheading 0305.59.29. 00 which are less than 10cm long have been included into the scope of duties exemption under item 76 of the Customs Duties (Exemption) Order 2017.

The amendment came into effect on 6 January 2020.

Customs (Customs Ruling) (Amendment) Regulations 2019

1. This served to amend the applicable forms for Customs Ruling, namely
 - Schedule A – Application Form for Customs Ruling
 - Schedule B – Customs Ruling (i.e. decision)
 - Schedule C – Application Form for Renewal of Customs Ruling

Deloitte's comments

Any person intending to make an application for Customs Ruling should take note of the changes above to avoid delays in the application process. This is especially crucial as the processing of Customs Ruling may generally be long drawn.

Brought to you by:



Atika Hartini Suharto
Manager
KL Office



Jonathan Lai
Supervisor
KL Office

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
Global Indirect Tax Clients &
Industries Leader
selalingam@deloitte.com
+603 7610 8879



Wong Poh Geng
Director
powong@deloitte.com
+603 7610 8834



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



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



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



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



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

Name	Email address	Telephone
Leong Wan Chi Manager	wanleong@deloitte.com	+603 7610 8549
Eliza Azreen Kamaruddin Manager	eazreen@deloitte.com	+603 7610 7271
Atika Hartini Suharto Manager	asuharto@deloitte.com	+603 7610 7986
Tamil Selvan Chandran Manager	tchandran@deloitte.com	+603 7610 9231
Emeline Tong Assistant Manager	emtong@deloitte.com	+603 7610 8733
Naresh Srinivasan Assistant Manager	narsrinivasan@deloitte.com	+603 7650 6459

Other offices

Name	Email 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](#)



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities. DTTL (also referred to as “Deloitte Global”) and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 312,000 people make an impact that matters at www.deloitte.com.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities provide services in Australia, Brunei Darussalam, Cambodia, East Timor, Federated States of Micronesia, Guam, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, New Zealand, Palau, Papua New Guinea, Singapore, Thailand, The Marshall Islands, The Northern Mariana Islands, The People’s Republic of China (incl. Hong Kong SAR and Macau SAR), The Philippines and Vietnam. In each of these, operations are conducted by separate and independent legal entities.

About Deloitte in Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organisation”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.