

Deloitte.



Indirect Tax Chat

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

November 2019

Issue 11.2019

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

Key takeaways:

1. [SST Technical Updates](#)

2. [Assessing EPCC agreements – Applicability of service tax](#)

Greetings from Deloitte Malaysia's Indirect Tax team

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



We are just over a month away from 1 January 2020, when foreign service providers (FSPs) will begin collecting service tax on digital services (SToDS). Since the portal for registration for SToDS opened on 1 October 2019, we have been assisting a number of FSPs get registered for the tax. While FSPs have until 31 December 2019 to apply for registration, we would recommend that you begin studying the rules and understanding its impact. This will ensure that there is sufficient time to implement system and process changes prior to the commencement of the tax.

On another note, here are some recent news which have been making the headlines:

- According to the research team at MIDF Amanah Investment Bank Bhd (MIDF Research), the impact of departure levy that went live in September 2019 could be negated by the robust travel demand due to the Visit Malaysia Year 2020 campaign. MIDF Research noted that in comparison with other countries such as Hong Kong, Bangkok, and Australia, Malaysia still has the lowest departure levy for economy class passengers (for both Asean and non-Asean destinations) and premium class passengers (for Asean destinations).
- The Royal Malaysian Customs Department (RMCD) destroyed a whopping 1.9 million litres of smuggled hard liquor of various brands and 10.3 million cigarettes worth RM12.4 million. Director General Datuk Seri Paddy Abd Halim said the contraband goods were seized in two operations in Port Klang, Selangor, in April and yesterday. The goods involved unpaid taxes amounting to RM61.9 million. For more information, click [here](#).
- The Federal Government has collected RM12.5 billion in excise duties (sin taxes) — with gamblers contributing RM4.5 billion from the figure — between May 2018 and September 2019. Finance Minister Lim Guan Eng said in a written parliamentary reply that the sin tax — imposed on tobacco, alcohol, and gambling — was also collected from tobacco products worth RM4.4 billion and RM3.6 billion from alcohol sales.
- The state government of Pahang is looking into introducing an 'accommodation' tax to go into effect in 2020. Tourism, Environment and Plantations Committee chairman, Datuk Seri Mohd Sharkar Shamsudin said the new tax will only be levied on tourists that visit the state and are looking to book a room to stay. Although the rate has not been confirmed, Mohd Sharkar stressed that the amount would not be very high. This new state tax is separate and in addition to the federal tourism tax of RM10 per room per night for foreign tourists.

We hope you find this month's newsletter informative.

Best regards,

Tan Eng Yew
Indirect Tax Leader

1. SST Technical Updates

Guide on Sales Tax Exemption under Item 57, Schedule A, Sales Tax (Persons Exempted from Payment of Tax) Order 2018 as at 30 October 2019 (“the Guide”)

RMCD had initially published the Guide on 30 October 2019, however we would like to highlight that the Guide has since been removed from the RMCD website.

The Guide covers how any person approved by the Director General (DG) can apply for the sales tax exemption on goods purchased for export to other countries. The goods must be:

- locally manufactured;
- manufactured by any manufacturer licensed under Licensed Manufacturing Warehouse (LMW); or
- manufactured by any manufacturer in the Free Industrial Zone (FIZ).

Movement of goods from principal customs area to Designated Areas and Special Areas are not considered as exports for the purposes of the exemption under Item 57.

Key points covered in the Guide include the following:

1) Conditions of sales tax exemption

- a) the goods exempted are locally manufactured, manufactured by any manufacturer licensed under LMW or manufactured by any manufacturer in the FIZ;
- b) the goods are purchased from a registered manufacturer or from LMW or FIZ. Purchase of goods are effective on 1 October 2018;
- c) the goods must be exported to other countries within 6 months from the date of purchase by the person granted the exemption;
- d) sales tax will be payable on any goods which are not exported within 6 months from the date of purchase; and
- e) the approved business is required to keep records or accounts of the goods purchased and exported.

2) Application for the sales tax exemption

- a) Application is to be made to the Director General via MySST portal.
- b) There are 5 parts to complete in the application form, as follows:
 - Part A: Application information
 - Part B: Information of the company’s director/authorised person
 - Part C: Supplier information
 - Part D: Description of goods (for purchase of goods other than vehicle)
 - Part E: Description of vehicle (for purchase of vehicle only)
- c) Any incomplete application will render the automatically generated exemption certificate invalid.

Application for the sales tax exemption (Cont'd)

- d) No amendment is allowed once the exemption certificate has been obtained.
- e) The applicant who has submitted the completed application form and obtained the exemption certificate through MySST Portal is considered an approved person subject to the prescribed conditions.

3) Other key points in the Guide

- a) For Part D of the application form, goods tariff code, goods description, and quantity of the goods applied are required.
- b) As the exemption certificate is valid for 6 months, businesses granted exemption have 6 months to purchase the entire quantity of goods applied for.
- c) Businesses utilising the sales tax exemption are required to prepare Laporan CJ(P) Jadual A-57A every 3 months from the date of the sales tax exemption certificate until all the goods purchased have been exported.
- d) A completed Laporan CJ(P) Jadual A-57A, purchase invoices and Customs Form No. 2 (export declaration form) must be submitted at the end of the following month after the end of each quarter.
- e) In the event where any condition for the sales tax exemption is not complied with, sales tax is due and payable on the date of failure to comply with the conditions. The approved business is required to report the breach of exemption condition via Borang SST-ADM in 2 signed copies.
- f) The approved business is not allowed to sell the exempted goods to any Special Areas or Designated Areas, or sales tax will be payable for any such sales.
- g) The exempted goods exported must be the same as the goods purchased with the sales tax exemption. This would mean that no manufacturing activities, including repacking, are allowed before the exempted goods are exported.

Deloitte's view

The Guide provides more clarity on the steps involved in applying for the sales tax exemption facility. It is crucial that businesses intending to utilise the exemption be aware of the exemption conditions and to repay any sales tax on sales that do not meet the prescribed conditions.

Having said that, the Guide has since been removed from the RMCD website, hence it is possible that the conditions and procedures outlined in the Guide will be amended. We will provide updates if and when the new amendments are made.

Guide for Refund on the Acquisition of Services by Foreign Missions and International Organizations (as at 29 October 2019) (“the refund guide”)

The RMCD has recently released the guide for refunds on the acquisition of services by foreign missions and international organisations.

The refund guide, published on 29 October 2019 ([Click here](#)) is aimed at assisting foreign missions and international organisations in understanding the procedures in applying for the service tax refund on certain services acquired by them.

1) Conditions for claiming the refund

- a) the bills/receipts issued are for the purchase of taxable services meant for the official use of foreign missions or international organisations;
- b) bills/receipts for the taxable services are issued by a service tax registered person;
- c) all receipts/bills are issued in the name of diplomatic missions, consular offices or international organisations;
- d) payments are made by foreign missions or international organisations;

Note

Payments using personal charge cards or credit cards for services acquired are not eligible for refund.

- e) service tax refund is only claimable for bills/receipts of the approved service acquired;

Note

Taxable services listed under item 3 of Appendix A of the refund guide) will need to have an individual value of RM500 and above. (Bills/receipts cannot be combined to achieve the value of RM500 for such services acquired).

- f) claims for services acquired from 1 September 2018 to 31 August 2019 are to be made before 31 December 2019; and
- g) for services acquired from 1 September 2019 onwards, claims are to be submitted on a quarterly basis.

2) Submission of service tax refund claims

Service tax refund claims must be submitted to the RMCD and the Ministry of Foreign Affairs (MOFA). Further to that MOFA will:

- a) Verify that refund claims are made in respect of service tax paid on approved taxable services (Refer Appendix A of the refund guide) used for official purposes; and
- b) Verify that refund claims are signed by officers designated/appointed by diplomatic missions, consular offices and international organisations.

The submission should be accompanied by the following documents:

- application for Approval of Refund of Service Tax (Refer Appendix 1 of the refund guide);
- list of bills/receipts containing the following information (Refer Appendix 1A of the refund guide); and
- original bills/receipts need to be enclosed with the submission.

Note

- All documents must be submitted in two (2) copies (i.e. an original and photostat copy);
- upon verification from MOFA, the claims together with all the documents shall then be submitted to the relevant State Customs Department.

Deloitte's view

This incentive provided to the Foreign Missions and International Organisations is essential to strengthen the bilateral and multilateral diplomacy. It provides effective and efficient services to the ministry's stakeholders and clients, promoting Malaysia and disseminating information through public diplomacy and strengthening the institution and improving human capital that would aid in Malaysia's development towards becoming an advanced economy and inclusive nation.

Brought to you by:



Wong Poh Geng
Director
KL Office



Lim Chong Wei
Senior
KL Office

[Back to top](#)

2. Assessing EPCC agreements – Applicability of service tax

Engineering, Procurement, Construction and Commissioning (EPCC) agreements rely on the collective undertaking of activities that may include design, procurement, project management, construction, and commissioning and handover of the project. Due to specific commercial requirements and to allow funding for a particular EPCC agreement, billings are usually made based on the completion of specific project milestones and these are usually depicted through specific values assigned to specific activities in the EPCC agreements.

Where values are assigned to specific activities set out in the EPCC agreement's billing milestones, there may be risks that such activities may be interpreted by RMCD as services being 'provided' for a particular sum.

This is further supported by the fact that such activities alone may constitute taxable services (e.g. design (as consultancy), project management (as management)), giving rise to arguments on the application of service tax.

Furthermore, depending on how the EPCC agreement is structured, there may be circumstances where the terms of such agreements portray that the business provides the activities separately, as services, to the recipient.

Nevertheless, this is in conflict with the overall nature of an EPCC agreement where such an agreement is made for the provision of a single supply as a whole, rather than the provision of specific activities as broken down in the EPCC agreements.

In view of the above, it is crucial for businesses to assess the contractual terms of the EPCC agreements in order to ensure that the terms reflect the overall nature of the project.

Based on our experience, potential areas to observe in the agreements may include:

- the overall intention of the agreement;
- provisions in respect of warranties and liabilities;
- the commercial basis of project fee breakdowns; and
- how closely linked is the scope of work to the actual intention of the agreement.

In summary, businesses should aim to mitigate the risks of disputes by engaging with RMCD in discussions relating to EPCC agreements, in order to assist with their understanding of specific EPCC projects and more importantly, to foster a common understanding between the business and the RMCD in respect of the EPCC agreements.

Where applicable, businesses should also document this understanding via written agreements issued by the RMCD to ascertain the relevant service tax treatments.

Brought to you by:



Nicholas Lee
Associate
Director
KL Office



Atika Hartini Suharto
Manager
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
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, Taiwan, 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.

Disclaimer

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) 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 entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.