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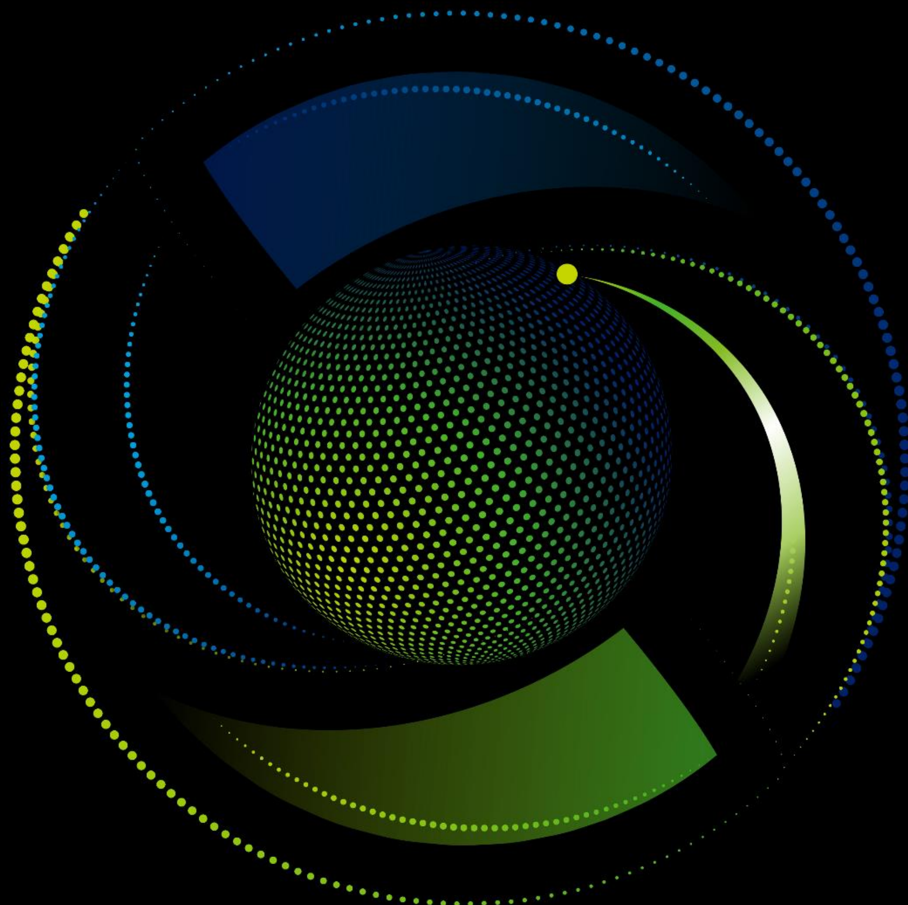

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# Indirect Tax Chat

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

MAKING AN IMPACT THAT MATTERS since 1845

*November 2023*

# Issue 11.2023

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Key takeaways:

1. *Proposed service tax rate-hike from 6% to 8% – past guidance as indicator for the future?*

2. *Sales Tax on Low Value Goods*

# Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, we are delighted to welcome you to the November 2023 edition of our Indirect Tax Chat.

Following the government's announcement to implement electronic invoicing in 2024, the Inland Revenue Board Malaysia ("IRBM") released two revised guidelines on 28 October 2023: e-Invoice Guideline Version 2.1 and e-Invoice Specific Guideline Version 1.1.You may access them by clicking here. The Finance Bill was presented in Parliament on 7 November 2023. Our commentary on direct and indirect tax changes are contained in the Tax Espresso (Special Edition) – Highlights of Budget 2024. A copy of this is available here for your perusal.

On a separate note, with the enforcement of the European Union (EU) Carbon Border Adjustment Mechanism (CBAM) regulation on 16 May 2023, Malaysian exporters are advised to begin collecting data and information on their products' embedded greenhouse gas (GHG) emissions as collating this information can be quite burdensome. Click here for more information on this.

This month, we will be discussing the proposed service tax rate hike from 6% to 8% and exploring whether past guidance serves as an indicator for the future. We will also cover updates on the imposition of Sales Tax on Low Value Goods.

Additionally, here are some recent news that may interest you:

- Deputy Finance Minister II, Steven Sim, has stated that the Malaysian government will contemplate implementing "other taxes," such as the Goods and Services Tax ("GST"), only after exploring all possible options to strengthen the country's financial resources. For more information, please click here.

- The High-Value Goods Tax, formerly referred to as the Luxury Goods Tax, is scheduled to go into effect on 1 May 2024. In a written parliamentary reply, the Finance Ministry said it is in the final stages of finalising the policy and legislation for the High-Value Goods Tax. For more information, please click here.

We hope that you are keeping safe and well.

Best regards,
**Tan Eng Yew**
Indirect Tax Leader

# 1. Proposed service tax rate-hike from 6% to 8% – past guidance as indicator for the future?

*Background*

In the 2024 Budget tabled on 13 October 2023, one key proposal was to increase the service tax rate from 6% to 8%, effective from 1 March 2024. Exceptions to this proposal would be the following services, which would still be subject to service tax at 6%:

- Group B: food and beverage*
- Group I: telecommunication services*
- Group I: vehicle parking space services
- Group I: logistics services (prescribed as taxable service only from 1 March 2024)

*Note: *The groups above include other prescribed taxable services not specifically mentioned above, for example: provision or sale of cigarettes, alcoholic drinks, etc., under Group B, and provision of broadcasting services, digital services, etc., under Group I. These other prescribed services do not seem to be excluded from the proposed rate hike, although this has to be confirmed with the expected amendments to the law.*

*Transition from old rate to new rate*

The Royal Malaysian Customs Department ("RMCD") has yet to publish any guidelines or announcement on the transition from the old rate to the new rate. It should be noted that there was a similar change in the service tax rate, effective 1 January 2011 (from 5% to 6%), under the former service tax regime, i.e., the Service Tax Act 1975 ("SST 1.0"). There were no transitional provisions in the law under SST 1.0 to cater for any changes in the tax rate. For the purpose of the rate-hike in 2011, the RMCD had published transitional guidelines to help with the transition from the old rate to the new rate, linked here (the guidelines are available in the National Language only). These past guidelines could potentially be the basis for the new regime under the Service Tax Act 2018 ("SST 2.0"). However, some modifications may be necessary due to changes in the new regime. The guiding principles in the past guidelines are discussed below.

*Guiding principles in past guidelines on rate-transition*

The 2011 guidelines essentially followed the rate applicable (either 5% or 6%) at the time that the taxable service is provided or payment is received, whichever is earlier. For example, where the service was provided after the effective date of the rate change, i.e., after 1 January 2011, but the payment was received before 1 January 2011, the applicable rate would still be the old rate of 5%, as the date when the payment is received is earlier than the date when the taxable service is provided. This guiding principle was adopted for partial payments and part provision of services as well.

The rationale, though not explicit in the 2011 guidelines, could be that service tax is due under SST 1.0 at the time when payment is received, subject to a time limit of 12 months after the invoice is issued. After this period, tax would become due even if payment is not received. The 2011 guidelines did not seem to factor in the possible expiration of the 12 months' time limit.

However, exceptions to the above general guiding principle were made for telecommunication (telco) services. In the case of advance billings for telco services, the guidelines followed the rate applicable on the date when the invoice was issued, regardless of when the telco service was provided or when the payment was received. (Note that telco service is excluded from the rate change of 6% to 8% under the SST 2.0 proposed rate hike, but it remains to be seen whether this kind of exceptional policy would be used for other taxable services subject to the proposed rate hike.)

*Possible adoption or adaptation of past guidelines for SST 2.0 rate-hike*

The 2011 guidelines could serve as a basis for the RMCD to adopt or adapt to the SST 2.0 rate-hike, since the time when payment is received is still the starting point when service tax is due, although the 12-month time limit to receive payment is measured differently in the current SST 2.0 regime, i.e., from the time that service is provided instead of the date when the invoice is issued.

However, one key change in the SST 2.0 regime is where debit notes ("DN") are mandatorily required to be issued by service tax registrants, in the circumstance as prescribed under the Service Tax Regulations 2018, i.e., where there is a change in the tax rate (to a higher rate), resulting in a tax increase. This appears to be precisely the circumstance envisaged by the proposed rate-hike from 6% to 8%. Such a mandatory DN adjustment provision had not existed in SST 1.0. It remains to be seen whether and how the RMCD would take into account the mandatory DN upward adjustment provision in its transitional policy for the proposed rate-hike.

Additionally, the current service tax return (SST-02) does not have a specific column to account for tax-only upward adjustments via DN, such as would arise in a rate-hike scenario, since the value of the services are unchanged in a rate-hike. Therefore, if the RMCD does take into account the mandatory tax-only DNs for the purpose of the proposed rate-hike, the service tax return would seem to require an amendment as well, to cater for a column for registrants to account for such tax-only DNs.

With the increase in service tax rate to take effect on 1 March 2024, the changes to the law, such as rate of tax order, etc., are expected by end of 2023 or early 2024. More importantly, an early release by the RMCD regarding transitional policies and whether the past guidance in 2011 would be followed, would be much welcomed by businesses to update their related compliance processes.

**Brought to you by:**


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# 2. Sales Tax on Low Value Goods

The RMCD recently announced that the imposition of Sales Tax on Low Value Goods ("LVG") will commence on **1 January 2024.**

The Sales Tax on LVG, which was first announced in Budget 2022, was meant to go live on 1 April 2023 but was subsequently deferred.

In line with the announcement of the new commencement date, the RMCD has released an updated Sales Tax on LVG Guide ("LVG Guide") dated 3 November 2023, superseding the previous draft guide from 1 January 2023. Additionally, Frequently Asked Questions ("FAQ") on the Implementation of Sales Tax on LVG were released on 6 November 2023.

We will discuss the salient updates based on the recently released information.

### Overview of Sales Tax on LVG

A sales tax is to be charged on the importation of LVG sold online by a seller and delivered to consumers in Malaysia.

LVG refers to all goods which are sold at a price not exceeding MYR 500 and brought into Malaysia by land, air, or sea, excluding cigarettes, tobacco products, intoxicating liquors, smoking pipes (including pipe bowls), electronic cigarettes, and similar personal electric vaporising devices, and preparation of a kind used for smoking through electronic cigarette and electric vaporising device, in forms of liquid or gel, whether or not containing nicotine.

For the purpose of registration, a seller with a total sale value of LVG in a rolling 12-month period exceeding **MYR 500,000,** either via a historical or future method, would need to register for Sales Tax on LVG. A Registered Seller ("RS") will then need to charge and account for the sales tax on the online sale of LVG brought into Malaysia. The rate of sales tax on LVG is 10%.

### Updates to Sales Tax on LVG

We highlight below certain key changes and updates to the LVG Guide that are to align with proposed changes in the law as well as to provide clarity to previous guidance.

1. <u>Determination of registration threshold</u>

   For the purposes of calculating the threshold, the LVG Guide stresses that the threshold should be calculated by the seller starting from 1 January 2023 onwards, which is the effective date of the tax, notwithstanding that the Sales Tax on LVG should only be collected by sellers starting from 1 January 2024.

   - For the purpose of registration, a seller with a total sale value of LVG in a rolling 12-month period exceeding **MYR 500,000,** either via historical or future method, should apply to register for Sales Tax on LVG.
   - Once the seller is successfully registered, the effective date of registration will be on the first day of the following month, after the month which the seller becomes liable to be registered.

2. Accounting for sales tax on LVG

The Sales Tax on LVG shall be due and payable at the time when the LVG are sold by a RS. The LVG Guide clarifies that the **point of sale** refers to the time when the purchase order is confirmed.

3. Definition of a "seller" for LVG purposes

The definition of a seller for LVG has been amended to also include a person who sells LVG on any Online Platform in addition to selling via an "online marketplace" (OMP). An Online Platform refers to *a platform that provides facilities for the sales and purchase of LVG, which includes a marketplace operated via a website, internet portal, or gateway*.

The amended definition provides clarity that sellers who sell LVG via their own online platforms and not just via OMPs that are typically operated by third parties, would also need to register for and charge sales tax on LVG.

The LVG Guide further clarifies that local and foreign OMP operators would be regarded as the seller of LVG if any of the following conditions are met:

i) authorised to charge the customer;
ii) authorised to deliver the LVG to the customer;
iii) sets the terms and conditions under which the transaction of sales is made;
iv) documentation issued to customer identifies the transaction of sales is made by the marketplace; or
v) the marketplace and merchant contractually agree that the marketplace is responsible for sales tax on LVG obligations

4. Import clearance procedures for LVG

The LVG Guide clarifies certain procedures for the clearance of LVG on import to identify whether sales tax on LVG had been charged on the goods, or whether import sales tax would be applicable.

The following are the key points to note:

- The customs values to be declared on the import of LVG should be the Cost (excluding Sales Tax on LVG) + Insurance + Freight ["CIF"] value.
- Sales tax on LVG would apply based on the sales price of each item, and not on a per-line basis as displayed on the invoice at import.
- Where both LVG and non-LVG items are imported from the same RS and shipped in a single consignment to a recipient/importer in Malaysia, the shipment can be declared in a single K1 form. However, the goods must be itemised per line and the value of each line item declared as a CIF value.
- The Customs system will not charge sales tax on imports for line items with a total CIF value of MYR 500 and below. Line items with a total CIF value of more than MYR 500 will be charged with import sales tax based on the applicable tax rate for the HS code of the goods.
- The importer/customs agent are required to inform and provide supporting documents to the proper customs officer for any line items with a CIF value greater than MYR 500, on which sales tax on LVG has already been charged by the RS to avoid double taxation.

- K1 declarations that are not itemised clearly on a per line basis may be imposed with sales tax on imports (if applicable) upon importation.
- In the event that the actual sale value of line items does not exceed MYR 500 and sales tax on LVG has been charged at the point of sale, but the CIF value of the line items exceeds MYR 500 (caused by foreign exchange differences or insurance and freight costs, for example), then the importers/customs agents must provide supporting documents to the customs officer for further assessment. The calculation of the sales tax may be amended if it can be proven to the satisfaction of the customs officer, that the sales tax on LVG has been imposed.
- The LVG Guide advises that specific details have to be declared in the system when importing LVG consignment or a consignment containing both LVG and non-LVG items:
  i. Transaction Type: "LG"
  ii. SST Exemption Type: "LG"
  iii. Include the LVG Registration Number under the exporter/consignor column/field

The above procedures are to support the proposed changes to the Sales Tax Act, 2018 (STA 2018) to provide that no sales tax shall be levied on the LVG at the point of import, if it is proven to the proper sales tax officer that sales tax has been charged by the registered seller and is being paid on the LVG to avoid a potential double taxation scenario.

5. Issuance of Credit Notes/Debit Notes for LVG

A RS who sells LVG shall issue a Credit Note ("CN") or Debit Note ("DN") in the following situations, if there is a deduction or addition to the amount of sales tax payable on LVG after the Sales Tax on LVG Return (Form LVG-02) for a particular taxable period has been submitted:

(i) Any changes in the sales tax rate on LVG in force; or
(ii) Financial adjustments made in the course of a business transaction.

The CN/DN must contain the following particulars:

(i) the words "credit note" or "debit note" clearly stated;
(ii) the serial number;
(iii) the date of issuance;
(iv) the name, address, and registration number of the RS;
(v) the name and address of the person to whom the LVG is sold;
(vi) the reason for the issuance;
(vii) the description, quantity, and amount of LVG for which the credit note or debit note is given;
(viii) the total amount excluding sales tax;
(ix) the rate and amount of sales tax; and
(x) the number and date of the issuance of the original invoice.

A RS can apply to the DG for any of the particulars to be excluded from the CN/DN, subject to the approval of the DG.

The above additions to the LVG Guide are to reflect the proposed amendments to the STA 2018, which now allows sellers of LVG to issue credit notes and/or debit notes to their buyers to adjust any previous sales tax charged on the sale of LVG.

6. <u>Discounts and Monetary Vouchers</u>

The LVG Guide provides examples of the application of discounts and monetary vouchers.

In summary:

- A discount would directly reduce the price of the goods, and the discounted value will be used to determine whether the goods meet the MYR500 LVG threshold.

- The example provided for a "voucher" is in the form of a monetary voucher that is treated as a cash equivalent, used as payment by the buyer but does not reduce the sales price of the good for the purpose of the MYR500 LVG threshold.

The limited and non-exhaustive examples above imply that the nature and terms of the various types of discounts, vouchers, special offers, etc., may need to be clearly defined to determine its impact on the price of the goods for sales tax on LVG.

*Deloitte's comments*

It is expected that the effective date for the imposition of Sales Tax on LVG on 1 January 2024 will be officially gazetted in the coming weeks.

In the meantime, the updated LVG Guide and FAQ provides some clarity on certain practical and operational issues to assist taxpayers in implementing the tax.

Nevertheless, the inordinately short timeframe given for the implementation of the tax may likely impact the readiness level of businesses in preparing their systems and processes to comply with the charging and accounting for the tax.

If there is no further postponement of the implementation date, affected businesses will need to urgently assess the extent of measures that can be put in place to be compliant or the potential implications and impact for non-compliance when the tax goes live on 1 January 2024.

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