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Indirect Tax Chat

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

September 2019

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Greetings from Deloitte Malaysia's Indirect Tax team

Welcome to the September 2019 edition of Indirect Tax Chat.

In the lead up to the National Budget (to be tabled on 11 October 2019) there have been plenty of discussion about our current system, including various calls to reintroduce the Goods and Services Tax (GST). While we do not expect to see GST back in Malaysia in the near future, we do anticipate that there will be some critical changes announced to the Sales and Service Tax (SST) in Budget 2020. So look out for our next publication, which will cover the impact of the newly-tabled Budget.



Before we get there, we still have a lot to cover in this month's edition with amendments to the Service Tax Regulations, as well as the release of two new Service Tax Policy documents by the Royal Malaysian Customs Department (RMCD).

Registration will open in October 2019 for foreign service providers for the new digital services requirements. For more details on the rules and application, you can listen to our recorded webcast at the following [link](#).

Here are some other recent news that may interest you:

- Several leaders from both sides of the political divide have supported calls by economists for the GST to be re-implemented to invigorate the country's economy. The government only expects to collect RM22 billion this year – half of the RM44 billion collected under GST. Suggestions were made to consider bringing back GST at a rate of between 2% and 3% before increasing it gradually. However, Finance Minister Lim Guan Eng has clarified that there are no plans to reintroduce GST. For more information, please click [here](#).
- RHB Research in an economic note has said that it is unlikely for the Government to introduce new taxes in the Budget after implementing a slew of new taxes in 2019 such as gaming duties, sugar-sweetened beverage excise, service tax on digital services, and departure levy among others. For more information, please click [here](#).

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. Service tax technical updates

Service Tax (Amendment) Regulations 2019

Following the gazettal of the Service Tax (Amendment) Act 2019 on 9 July 2019, the Ministry of Finance released the updated accompanying Regulations for service tax on 30 August 2019. The latest changes under this Service Tax (Amendment) Regulations 2019 comes into effect 1 September 2019. We have included our analysis below.

| Key changes | Description |
|--|--|
| Regulation 2 of the Service Tax (Amendment) Regulations 2019 | <p>Definition of courier services</p> <p>The word “courier service” has been inserted and defined as postal services provided in an expedited manner with track and trace service. This definition is in line with Regulation 2 of the Postal Services (Licensing) Regulations 2015.</p> |
| Regulation 3 of the Service Tax (Amendment) Regulations 2019 | <p>Determination of the value of taxable service where payment is made to machine or device operated by coins, etc.</p> <p>This provision provides for a formula to be used in calculating the value of any taxable service provided by a taxable person wherein the payment is made through any machine or devices operated by coins, tokens, or the like.</p> |
| Regulation 5 of the Service Tax (Amendment) Regulations 2019 | <p>Invoicing requirement for registrant when applying the service tax exemption under Section 34 of the Service Tax Act 2018</p> <p>This regulation has been amended to replace “a registered person providing the same taxable service as provided by him, and such customer is entitled for exemption of service tax under Section 34 of the Act in relation to the taxable service provided by the registered person” with “a person or class of person from the payment of service tax under Section 34 of the Act”.</p> <p><i>Deloitte’s view</i></p> <p>As a consequence of this amendment, any service tax exemption given under Section 34 of the Service Tax Act 2018 would now need to comply with the invoicing requirement and not only limited to those where B2B exemption applies.</p> |
| i) Regulation 6 of the Service Tax (Amendment) Regulations 2019 | <p>Submission of service tax return and payment of tax via courier service</p> <p>For the purpose of furnishing service tax returns (i.e. SST-02, SST-02A) and making payment of service tax via courier services, the deemed date of receipt is on the date the tracking number is recorded in the courier services company’s system.</p> |

| Key changes | Description |
|--|---|
| <p>ii) Regulation 7 of the Service Tax (Amendment) Regulations 2019</p> | <p><u>Deloitte's view</u></p> <p>Prior to this, registered post was the only option provided for under the service tax law for businesses to declare and make payment where it was not done via the SST portal. However, in practice, businesses were able to submit the return and make payment via courier services. In most cases, this was the method adopted for delivery of payment. However, this approach was not without risk as the payment was only deemed received on the date when RMCD has physically received the delivery from the courier which posed a risk of making late payment.</p> <p>The amendment removes this risk and eases the burden for businesses to comply with the rules. However, businesses should take note that there could be potential delays when it comes to capturing the tracking number in the courier company's system. Hence, we urge businesses to remember this when making payments for service tax, to avoid any late payment penalties.</p> |
| <p>Regulation 8 of the Service Tax (Amendment) Regulations 2019 i.e Amendment to the First Schedule of the Service Tax Regulations 2018</p> | <p>a) Registration for companies providing more than 1 taxable service</p> <p>Only one registration application is required if a company is providing more than one taxable service. This is regardless of the total value of taxable service that would exceed the threshold for each Group in the First Schedule of the Service Tax Regulations 2018.</p> <p><u>Deloitte's view</u></p> <p>This is in line with the current practice by RMCD where businesses providing more than one taxable service will only need to maintain one service tax registration number together with administrative matters, such as compliance.</p> <p>b) Intra-group relief for imported taxable services</p> <p>Regulations 3A of the principal Service Tax Regulations 2018 has been amended, and intra-group relief is now applicable on the acquisition of imported taxable services effective 1 September 2019, whereby if a company acquires any taxable services specified in item (a) to (i) in Group G of the First Schedule of the Service Tax Regulations 2019 from a company within the same group of companies outside of Malaysia, such acquisition of service would not be considered as imported taxable service.</p> |

| Key changes | Description |
|-------------|---|
| | <p><u>Deloitte's view</u></p> <p>In the previous amendment to the principal Regulations (i.e. Service Tax (Amendment) (No.3) Regulations 2018), the intra-group relief was not applicable for the acquisition of imported taxable services from the same group of companies outside Malaysia. Subsequently, a Ministerial exemption was granted, as stated in the Guide on Imported Taxable Services as at 9 January 2019 (Malay version).</p> <p>Effective 1 September 2019, this relief is now granted in the service tax legislation to provide businesses certainty on the treatment of service tax for the acquisition of imported taxable services within intra-group companies in and outside Malaysia.</p> <p>c) Group A: Accommodation</p> <p>The provision of accommodation services by State Governments have now been included as an exclusion under the taxable person category.</p> <p>Additionally, the paragraph "as a facility to any person for educational, training or welfare purposes" has been deleted as an exclusion requirement for Federal or State Government, or any statutory body or local authority or any private higher educational institutions when providing the accommodation service.</p> <p>The words "provided by an employer as a facility to his employees", has been removed under the taxable person category and inserted as an exclusion under the taxable services category.</p> <p>d) Group G: Professionals</p> <p><u>Management Services</u></p> <p>The following item has been removed under the category of a taxable person and inserted as an exclusion under the taxable services category:</p> <p>(xii) the management services provided by any person who is licensed or registered with the Securities Commission Malaysia for carrying out the regulated activity of fund management under the Capital Markets and Services Act 2007;</p> <p>The following items have been removed under the category of a taxable person and inserted with amendments as an exclusion under the taxable services category:</p> |

| Key changes | Description |
|-------------|--|
| | <p>(xi) the management services in connection with land or building for residential use provided by any developer, joint management body, management corporation or residential association.</p> <p>The word "maintenance" has been removed from exclusion (xi) above.</p> <p>(xiii) the management services provided by any person, Government agency, local authority or statutory body for the religious, welfare, bereavement, burial, cemeteries, cremation, sewerage, water supply, health, transport, tourism or logistic services.</p> <p>The words "tourism services" and "logistic services" have been inserted in exclusion (xiii) above.</p> <p>The following item has been simplified under the taxable services category:</p> <p>(xiv) management services in connection with goods or land situated outside Malaysia or other matters outside Malaysia.</p> <p><u>Deloitte's view</u></p> <p>Effective 1 September 2019, the following prescribed taxable management services have been removed:</p> <p>(i) Logistics Management Services (i.e. management services by freight forwarder); and (ii) Tourism Management Services (i.e. management services for inbound tour packages by travel agent).</p> <p>This is in line with the Service Tax Policy, No 1/2019 issued by RMCD on 1 September 2019, which we will cover below.</p> <p>e) Group I – Other Service Providers</p> <p><u>Amusement Park Services</u></p> <p>Services in relation to operations of an amusement park are no longer a taxable service effective 1 September 2019.</p> <p><u>Deloitte's view</u></p> <p>This is also in line with the Service Tax Policy, No 1/2019 issued by RMCD on 1 September 2019.</p> |

| Key changes | Description |
|-------------|---|
| | <p><u>Brokerage and Underwriting Services</u></p> <p>Under brokerage and underwriting services, the words “on any fees or commission charged” have been removed.</p> <p><u>Cleaning Services</u></p> <p>The exclusion on cleaning services concerning “goods, land or building for religious, educational, residential or agricultural purposes” has been deleted under the category of a taxable person and inserted as an exclusion under the taxable services category.</p> <p>Additionally, any laundry services using any machine or device operated by coins, tokens or the like are no longer a taxable service.</p> <p><u>Deloitte’s view</u></p> <p>The exclusion of laundry services using any machine or device operated by coins, tokens or the like is now clearly indicated in the law. This is also in line with the Service Tax Policy, No 1/2019 issued by RMCD on 1 September 2019.</p> |

Service Tax Policy, No 1/2019

The [first Service Tax Policy](#) was issued by the RMCD, reaffirming the exclusion of the four prescribed taxable services under the service tax legislation (i.e. logistic management service, tourism management services, amusement park services and laundry services using any machine or device operated by coins, tokens, or the like) from service tax for the period from 1 January 2019 until 31 August 2019. This policy also includes guidance on the key transitional issues businesses should take note of.

1. Adjustment of service tax being exempted are as follows:
 - (i) The service provider shall issue the invoice without service tax if the service has been provided but the invoice which relates to the service has not been issued.
 - (ii) The service provider shall issue a credit note which relates to the invoice if the invoice for the service has been issued but the payment has not been made by the customer.
2. Any service tax collected from customers beginning 1st January 2019 must be remitted to the RMCD.
3. Refund of service tax is not allowed for any person who has paid service tax.

Deloitte's view

Following the amendment to Regulation 5 of the Service Tax (Amendment) Regulations 2019 as mentioned above, businesses should be mindful that there is now an additional invoicing requirement that service providers must fulfil for invoices issued without service tax for the provision of the abovementioned services exempted from service tax from 1 January 2019 to 31 August 2019.

These service providers would also likely be required to declare the total value of exempted taxable services under Item 18(c) of the SST-02 return.

Service Tax Policy, No 2/2019

As highlighted previously in our Indirect Tax Alert dated 19 September 2019, it was recently published by the RMCD that eligible Labuan entities are exempt from accounting and paying service tax on imported taxable services listed in Group G (Professional Services) of the First Schedule of the Service Tax Regulations 2018.

You may refer to our [Indirect Tax Alert](#) for further information.

Brought to you by:



Wendy Chin
Senior Manager
KL Office



Sarvindheran Chelvarajah
Semi-Senior
KL Office

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2. Levy on departing Malaysia

RMCD has released a [Guide](#) on using the departure levy return form ([DL-02](#)). From the Guide, here are some important points to note:

- In item 4 of the return form, fill in the number of persons departing Malaysia by flight. This first row is for ASEAN flights and the second row, for non-ASEAN flights. The first column is for the number of people departing Malaysia, while the second column is for the number of people exempted from paying the departure levy. For more information on departure levy exemptions, please refer to our [August 2019 chat](#). An example is provided in the table below:

| Country | Total persons departing Malaysia | Total persons exempted from levy |
|---------|----------------------------------|----------------------------------|
| ASEAN | 10,000 | 500 |
| Others | 5,000 | 500 |
| Total | 15,000 | 1,000 |

- In item 5 of the return form, fill in the number of people charged with the departure levy. The first row is for economy seats and the second row is for non-economy seats. The first column is for ASEAN flights, while the second column, for non-ASEAN flights. Following the example above, the table below is provided for illustrative purposes:

| Class | ASEAN | Others |
|---------|------------|-------------|
| Economy | 8,000 (i) | 3,300 (iii) |
| Others | 1,500 (ii) | 1,200 (iv) |
| Total | 9,500 | 4,500 |

As a check and balance, the total number of people charged with the departure levy in each column must equal the total number of people departing Malaysia in item 4 above (minus) total persons exempted from levy in its respective row. For example, the total number of people charged with the departure levy for ASEAN flights is 9,500 which tallies with the 10,000 people departing from ASEAN countries in item 4 above minus the 500 people exempted from the departure levy.

- In item 6 of the return form, fill in the departure levy payable for the taxable period. The rates for the departure levy are as below:

| Country/Class | ASEAN countries | | Other than ASEAN countries | |
|------------------------|-----------------|----------|----------------------------|-----------|
| | Economy class | Others | Economy class | Others |
| Rate of departure levy | RM8 (a) | RM50 (b) | RM20 (c) | RM150 (d) |

The formula to calculate the departure levy payable is as below:

$$[i \times a] + [ii \times b] + [iii \times c] + [iv \times d]$$

Following our example in items 4 and 5, the departure levy payable would be:
 $[8,000 \times \text{RM}8] + [1,500 \times \text{RM}50] + [3,300 \times \text{RM}20] + [1,200 \times \text{RM}150]$
 $= \text{RM}64,000 + \text{RM}75,000 + \text{RM}66,000 + \text{RM}180,000$
 $= \text{RM}385,000$

Deloitte's view

Similar to the service tax return form, [SST-02](#), the Guide states that the departure levy return declarant may make amendments to a previously submitted DL-02 form by ticking (X) in the amendment check box. However, the current DL-02 form does not have an amendment check box. This may be included in a revised DL-02 return form in the future.

With the departure levy now in effect, airline operators and agents should take note to file their monthly departure levy returns in a timely manner to ensure compliance with tax laws and to avoid penalties.

Foreign airlines requiring a local tax agent for assistance may contact Deloitte. We will be happy to assist you. For more information on the departure levy, please refer to our [July 2019](#) and [August 2019](#) tax chats.

Brought to you by:



**Senthuram
Elalingam**
Executive Director
KL Office



Patrick Ng
Tax Assistant
KL Office

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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 |
| 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 | lking@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 |

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