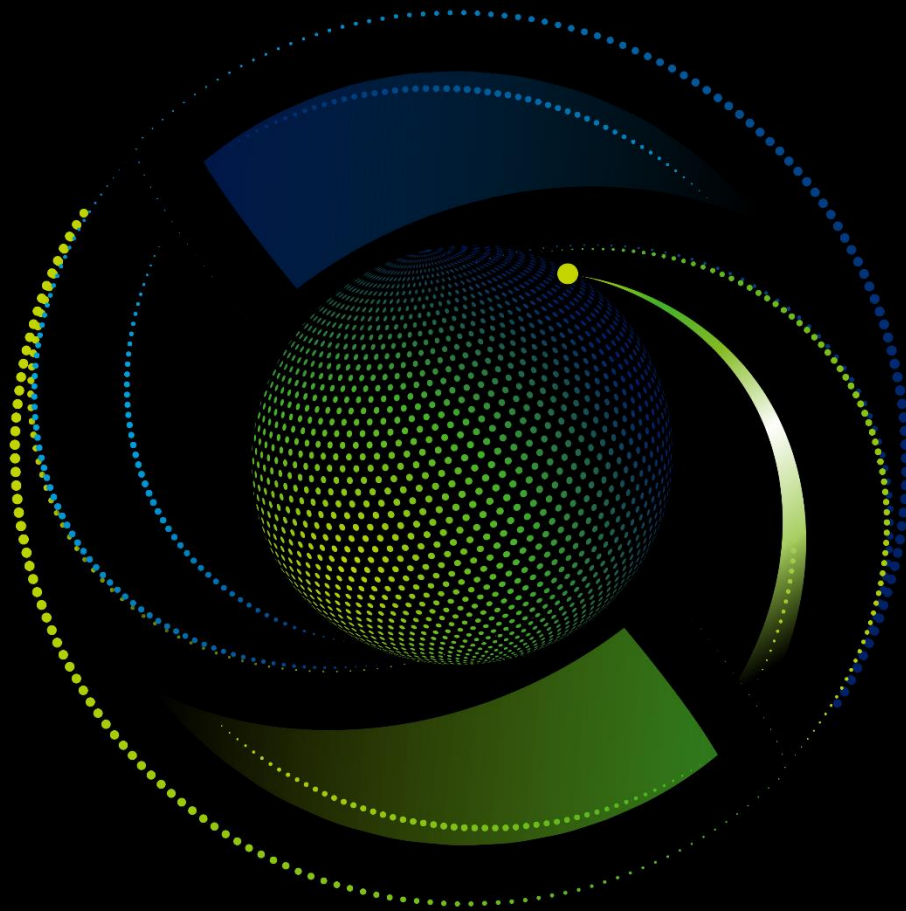


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## Indirect Tax Chat

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

*September 2022*



# Issue 9.2022

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Key takeaways:

1. [Amendments to the Sales Tax Regulations 2018](#)
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## Greetings from Deloitte Malaysia's Indirect Tax team

Greeting's readers, and welcome to the September 2022 edition of our Indirect Tax Chat.

As the Voluntary and Amnesty ("VA") Program draws to a close, the Royal Malaysian Customs Department ("RMCD") has made an [announcement](#) to extend the payment deadline to 14 October 2022. This extension is only for applicants who have submitted their applications to join the VA Program by 30 September 2022.



The Federal Budget date has been brought forward to 7 October 2022, with many suggesting that this may be a sign that an early Federal election will be called. In last year's Budget 2022 speech, it was estimated that the Government would collect RM44.04 billion from indirect taxes in the year 2022. This would comprise RM14.56 billion of sales tax and RM13 billion of service tax. Other indirect tax revenue estimates included import duties of RM2.5 billion, export duties of RM1.6 billion, and excise duties of RM10.2 billion. In the Ministry of Finance's pre-Budget statement that was published in June 2022, it stated that as of April 2022, the indirect tax collection recorded was RM17.3 billion or 39.4% of the target. As we have since rolled out the VA program, it is likely that more significant revenue has been recorded in the past five months. The Budget 2022 figures can be accessed [here](#) and [here](#).

We will be covering the indirect tax developments arising from the Federal Budget, as part of a wider tax alert. We are not anticipating any significant indirect tax reforms to be announced in this year's budget, but there are likely to be further adjustments to the indirect tax laws, and perhaps additional clarification on the introduction of electronic invoicing which was proposed to be rolled-out in phases in the next few years. Look out for next month's Chat, where we will be sharing more and providing the link to our Tax Alert.

This month there are some updated regulations for sales tax, and a new sales tax policy issued by the RMCD. We also cover amended and new service tax policies, as well as an updated guide released by the RMCD.

Separately, here is a recent news that may interest you:

- The Federation of Malaysian Manufacturers' ("FMM") latest survey of business conditions in the manufacturing sector showed that a majority of respondents favoured the reintroduction of the goods and services tax ("GST") at a lower rate of 4%. FMM President, Tan Sri Soh Thian Lai said survey respondents felt that the GST is a "good broad-based tax and a majority of the industries (in the survey) would prefer its reintroduction". For more information, please click [here](#).

We hope that you are keeping safe and well.

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

# 1. Amendments to the Sales Tax Regulations 2018

The [Sales Tax \(Amendment\) Regulations 2022](#) has been gazetted and came into operation on 15 August 2022. Summary of the key points are as follows:

## Furnishing of returns

The sales tax returns shall be furnished to the RMCD through electronic service, or in any manner as the Director General (“DG”) may determine.

## Payments

The payment of sales tax, surcharge, penalty, fee or any other money payable under the Sales Tax Act 2018 shall be made by electronic banking, or in any manner as the DG may determine.

## Drawback

The conditions to claim sales tax drawback have been updated as follows:

- The 3-month period to export the goods is now calculated from the date of issuance of invoice for the taxable goods purchased from the registered manufacturer.
- The taxable goods are not used after importation or purchase (instead of after payment of sales tax).

## Deloitte’s comments

It appears that provisions requiring physical forms of furnishing returns and making payments for sales tax were removed in this amendment. There is also ambiguity on what manner of furnishing returns/payments is allowed by the DG of the RMCD, where similar amendments are not observed in the case of service tax. To avoid last minute surprises or delays in filing for sales tax returns or making sales tax payment, clarity should be sought from your respective controlling RMCD stations on whether the amendment above would impact your existing mode of filing sales tax returns or making sales tax payments.

For the changes to drawback provisions, though not appearing to be significant, the amendments serve to provide more clarity to the requirements to claim a sales tax drawback. As a precaution, businesses should review its existing practice of claiming sales tax drawback and ascertain if this could impact its eligibility to claim the same.

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## 2. Sales Tax Exemption Facility for Drop Shipment Activities

A sales tax registered manufacturer (“registered manufacturer”) who exports his manufactured goods and supported with Customs export form No.2 is exempted from payment of sales tax under Item 56 of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (“Item 56”).

Item 56 does not specifically cover drop shipment arrangement, where a local trader buys from the registered manufacturer, and arrange for the registered manufacturer to export the goods from his premises directly to the local trader’s customer overseas, and with the registered manufacturer exempted from payment of the sales tax.

To facilitate the drop shipment export arrangement, the RMCD has issued the Sales Tax Policy No.2/2022 (“STP2/2022” or “Policy”) on 24 August 2022 that Item 56 will also apply on drop shipment arrangement, subject to the following:

- a) Registered manufacturer shall issue an invoice containing all the prescribed particulars (as per Regulation 7 of the Sales Tax Regulations 2018) to the local trader without imposing sales tax, and include the details below:
  - **Bill to** – Local trader in Malaysia; and
  - **Ship to** – Overseas buyer.
- b) The above sales tax exemption facility is granted only at a single stage, i.e., exemption only applies when the local trader purchases the manufactured finished goods from the registered manufacturer and has instructed the registered manufacturer to export the goods directly to the trader’s customer overseas. The said exemption does not apply for any subsequent sale by the first local trader to a second trader, though the registered manufacturer will export the goods to the second trader’s customer in overseas.
- c) The following criteria shall be complied with when preparing the Customs K2 Form:
  - Consignor/Exporter of Record – Shall be under the name of the registered manufacturer.
  - Consignee/Importer of Record – Shall be under the name of the overseas buyer; and
  - The words Care of (C/O) – Shall be under the name and address of the Malaysian trader and stated at the left side of the Customs K2 Form, next to the column for Forwarding Agent.
- d) The Bill of lading (“BL”) shall also indicate the same particulars as the Customs K2 Form (i.e., Consignor: registered manufacturer; Consignee: overseas customer). Additionally, the BL shall state the “*Notify Party*” which would be the trader.
- e) For compliance purposes, the registered manufacturer shall declare the value of finished goods exported on behalf of the trader under Item 18(a) of the SST-02 Form (i.e., Export/Special Area/Designated Area).

The STP2/2022 is currently only available in the national language and can be accessed [here](#).

### Deloitte's comments

Based on a narrow interpretation of Item 56, it appears that the sales tax exemption will only apply for transactions between two parties only i.e., the sales tax registered manufacturer who sells and export his manufactured goods to the buyers from overseas.

For commercial reasons, drop shipments are common and Item 56 should also apply so long as the sales tax registered manufacturer exports the goods directly from his premises to a place outside Malaysia and supported by the relevant Customs K2 Form and other relevant documents (e.g., BL, commercial invoices, packing list, etc.) as required by the DG of the RMCD.

On a separate note, there was a recent judicial review decision by the High Court (“HC”) with respect to the drop shipment mechanism under the abolished GST, where the HC decided that the goods exported to overseas buyers by taxpayer should not be subject to GST.

In this judicial review, the RMCD had argued that the supply of goods to the local trader should be subject to 6% GST based on the tax invoices issued by the taxpayer, despite the goods being shipped directly to overseas buyers by the taxpayer and Customs K2 Form was available to support the exportation. Nevertheless, the HC had set aside the RMCD’s position in issuing a Bill of Demand (“BOD”) in relation to goods that have already been exported out from Malaysia, in view that GST should be imposed on the supply of goods that were supplied overseas, and not based on the ownership of goods.

Based on the decision made by the HC above, it can be seen that the RMCD applied a similar position for goods exported from Malaysia by the registered manufacturers, despite the fact that the ownership of the goods were transferred to local traders under the Sales Tax regime.

The details of the court case can be viewed [here](#).

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### 3. Service Tax Updates

#### Service Tax Exemptions for Digital Payment Services

Following our article on the RMCD's [Service Tax Policy No. 1/2022](#) ("STP 1/2022") in the [August 2022 Chat](#), the RMCD released an [amendment](#) to STP 1/2022.

The original policy stated that local non-bank service providers eligible for the exemption are those **governed and licensed** by Bank Negara Malaysia ("BNM") under the [Financial Services Act 2013](#) or [Islamic Financial Services Act 2013](#).

The amendment removes the words "and licensed" from the requirements i.e., those without a licence from BNM but still governed under the relevant Acts would still be eligible for the service tax exemption.

#### Deloitte's comments

The impact of this amendment is that the exemption applies to a broader range of entities i.e., companies do not need to be licensed by BNM to enjoy the benefit of the exemption.

Nonetheless, non-bank digital payment service providers should still exercise caution by ensuring that they are governed (or regulated) by BNM in the manner specified in the policy, and that their services would fall within the scope of the exempted digital payment processing services.

The list of both bank and non-bank service providers are available on BNM's website [here](#).

#### Service Tax Exemption and Refund Facility in the Joint Development Area

Effective 15 August 2022, the Minister of Finance has prescribed that companies operating in the Joint Development Area ("JDA") are approved for a refund of service tax paid on all taxable services listed in the Service Tax Regulations 2018 ("STR"). This is given effect by way of the RMCD's [Service Tax Policy No. 2/2022](#) ("STP 2/2022").

This exemption is subject to the following conditions:

- The services acquired must be used entirely for official business of the company operating in the JDA, and must be a primary need which is vital in the running of daily operations at the JDA. Services acquired for non-official business or for personal use would not be eligible for the refund.
- For control and uniformity, the operator company must make a declaration and the Malaysia-Thailand Joint Authority ("MTJA") must verify that the service was acquired entirely for official business of the company operating in the JDA.
- The acquisition of the services must be paid for by the company operating in the JDA.
- The refund application must be made to the DG of the RMCD in the period set by the DG.

- Comply with any conditions or procedures set by the DG.

The refund application should be submitted by the end of the month, followed by quarterly periods as below:

Period of service acquired	Deadline to submit refund application
15 August 2022 – 30 September 2022	31 October 2022
1 October 2022 – 31 December 2022	31 January 2023
1 January 2023 – 31 March 2023	30 April 2023
Every 3 months thereafter	Last day of month following the 3-month period

Refund applications sent in late will not be processed by the RMCD.

The service tax exemption does not extend to imported taxable services from foreign vendors or digital services acquired from foreign registered persons.

With the issuance of the STP 2/2022, the exemption under the [Service Tax Policy No. 1/2021](#) (“STP 1/2021”) is valid only until 14 August 2022.

#### Deloitte’s comments

With STP 2/2022 replacing STP 1/2021, it appears that companies in the JDA would now have to first pay service tax to the service providers and then request for a refund from the RMCD. This is a stark difference compared to STP 1/2021, where there was no requirement to pay service tax to the service providers. Companies operating in the JDA should take note and ensure it submits applications for service tax refunds on a timely manner to manage cash flow.

#### Updated Guide on Customs Agent Services

The RMCD released an [updated Guide on Customs Agent Services](#) (“Customs Agent Guide”) dated 9 August 2022. This supersedes the [previous Customs Agent Guide dated 5 March 2019](#) (“superseded Guide”). The salient updates are as below.

- The definition of a customs agent now also includes freight forwarders, in addition to the shipping agents and forwarding agents.
- The services of shipping agents and freight forwarders are not subject to service tax because these services are under the category of logistics management services, which have since been removed as a taxable service in 2019.
- There is now a deadline for customs agents to register for service tax, which is 14 days from the date of such approval as a customs agent under subsection 90(2) [Customs Act 1967](#).
- Some examples of services provided by a customs agent which was considered taxable in paragraph 13 of the superseded Guide have been removed from paragraph 12 in the Customs Agent Guide.



- A new example 6 is inserted to explain that a customs agent providing advice on the import and export of goods would be liable to add on consultancy services to his service tax registration and charge service tax accordingly.

Deloitte's comments

The updated Customs Agent Guide provides welcome clarity that the services of shipping agents and freight forwarders are not subject to service tax, as there would have been some confusion in the industry. Customs agents should also take note of the new 14-day deadline to register for service tax once they have obtained approval to be a customs agent.

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