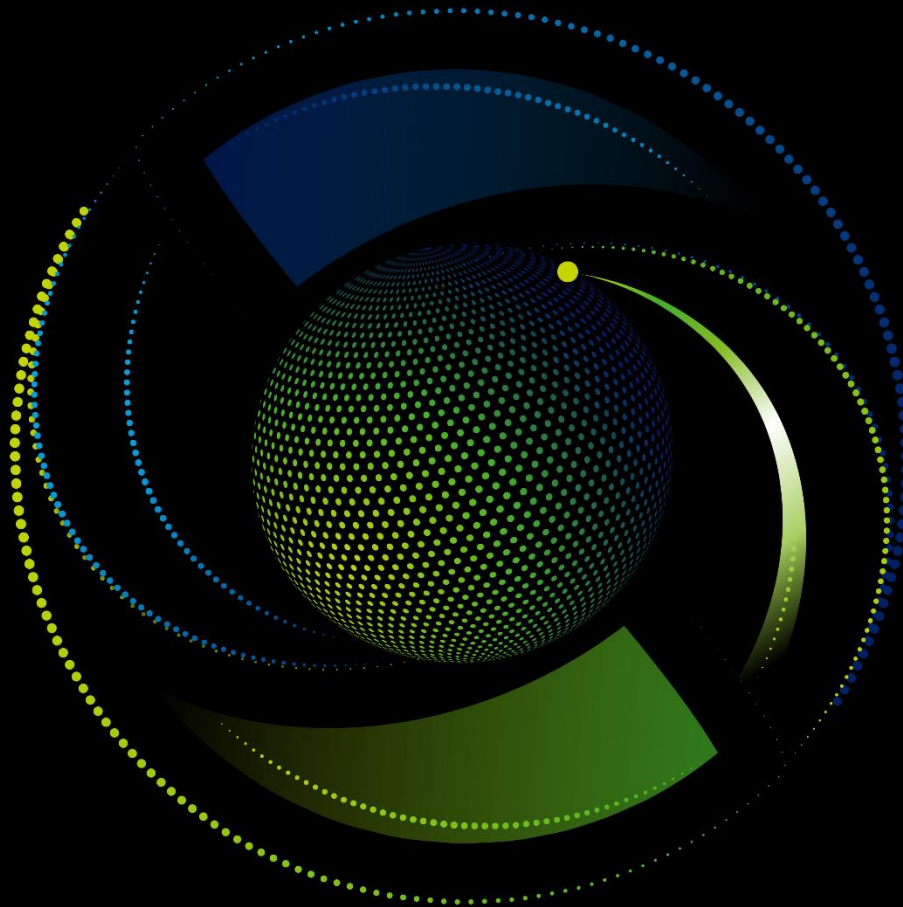


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Indirect Tax Chat

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

July 2024



Issue 07.2024

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

Key takeaways:

1. [Updates on Guide on Domestic Flights and Customs Agent Services](#)
2. [Updates on Guide on Employment and Hire Passenger Vehicle Services](#)
3. [Guide on Approved Major Exporter Scheme](#)

Greetings from Deloitte Malaysia’s Indirect Tax team

Greetings readers, and welcome to the July 2024 edition of our Indirect Tax Chat.

The Royal Malaysian Customs Department (“RMCD”) launched “Audit Verifikasi Pematuhan” (“AViP”) on 10 July 2024. AViP, which is also known as Compliance Verification Audit Program is aimed at promoting self-compliance and encouraging voluntary disclosure. Participating companies are provided with incentives, such as blanket approval for penalty remission and instalment payment on bill of demand. For further details, please refer to our alert [here](#).



On 17 July 2024, Dewan Rakyat approved five bills which are the Customs (Amendment) Bill 2024, Excise (Amendment) Bill 2024, Free Zones (Amendment) Bill 2024, Sales Tax (Amendment) Bill 2024, and Service Tax (Amendment) Bill 2024. The amendment to these bills is primarily to designate Pulau Satu in Forest City, Johor, as a duty-free zone, joining Labuan, Langkawi, Tioman, and Pangkor.

In this month’s chat, we will be sharing our thoughts on the service tax updates on Guide on Domestic Flights Services, Customs Agent Services, Employment Services, and Hire Passenger Vehicle Services as well as the Guide on Approved Major Exporter Scheme.

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

- The Dewan Rakyat was informed that the Sales and Service Tax (“SST”) delivers a quicker fiscal impact than the Goods and Services Tax (GST), which was abolished in 2018. Deputy Finance Minister Lim Hui Ying stated there are no plans to reintroduce GST, as the focus is on subsidy rationalisation. Any future consideration of GST will depend on a suitable economic environment and inflation impact. Meanwhile, efforts to strengthen tax governance, increase taxpayer awareness, and curb tax evasion will continue to maintain strong revenue collection and support fiscal stability. For more information, please click [here](#).
- Despite requests for a delay, Datuk Dr Abu Tariq Jamaluddin, CEO of the Inland Revenue Board (“IRB”), confirmed that the rollout of e-invoicing for taxpayers with a turnover over RM100 million will proceed as scheduled by August. Although some exemptions have been granted and the IRB is addressing individual requests for extensions, penalties will be assessed based on compliance reasons. For more information, please click [here](#).
- The sugar tax on Sugar-sweetened beverage (“SSB”) in Malaysia is seen as a crucial tool for reducing sugar consumption and funding healthcare. Stakeholders suggest expanding the tax to include more sugary items like sweets and canned foods and channelling the revenue into healthcare services and awareness programs. For more information, please click [here](#).

We hope you continue to stay safe and well.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Updates on Guide on Domestic Flights and Customs Agent Services

A. Guide on Domestic Flights

The RMCD released a [Guide on Domestic Flights](#) (“the Guide”) on 30 May 2024, which is only available in the national language and can be accessed through the list of industry guides on the Malay version of the MySST portal. This supersedes the previous Guide dated 9 September 2018. The salient updates in the Guide are as below:

Paragraph 11, 24, and 31 of the new Guide has updated the rent or lease of aircraft for carrying domestic passengers is subject to service tax.

Paragraph 21 highlights that the air ticket purchase for the combination of domestic flight and RAS is subject to service tax.

Paragraphs 28 and 29 provide further explanation on dry lease charter and wet lease charter. The charterer will provide its own pilot and crew for dry lease charter. Depending on the contract, usually the maintenance costs and operating costs of the aircraft are borne by the charterer. The dry lease charter rental service remains not subject to service tax. Conversely, for wet lease charter, depending on the contract, usually the aircraft maintenance and care is the responsibility of the aircraft owner. However, the operating costs are borne by the charterer. The rental of wet lease charter services for flights carrying domestic passengers remains subject to service tax.

Other Services by Airlines under Paragraph 32 highlights cargo or freight transportation which is subject to service tax. The treatment for cargo delivery services can be referred to the Logistics Service Guide.

A “Frequently Asked Questions (FAQ)” section was added onto number 11 to clarify the service tax treatment on the domestic flight air ticket purchased before 1 September 2018 for the flight to be scheduled on or after 1 September 2018. Accordingly, service tax exemption is granted under Section 34(3)(a) of the Service tax Act 2018.

Deloitte’s comments

This latest Guide now distinguishes the dry lease charter from wet lease charter and the imposition of service tax on rent or leasing of aircraft to carry domestic passengers as compared to the previous Guide. Businesses involved in chartering and rent or lease of aircraft may conduct a thorough review of their business to ensure cost effectiveness.

Additionally, based on Paragraphs 39 - 40 and examples 18 and 24, air ticket in relation to international flight with a connecting flight in Malaysia is not subject to service tax. However, based on example 20, the purchase of food for an international flight with a connecting flight in Malaysia is subject to service tax. Airlines are required to clarify with the RMCD on the inconsistency of the service tax treatment for the purchase of food and air ticket.

B. Guide on Customs Agent Services

The RMCD released an updated [Guide on Customs Agent Services](#) (“the Guide”) on 30 May 2024, which is only available in the national language and can be accessed through the list of industry guides on the Malay version of the MySST portal. This supersedes the previous Guide dated 9 August 2022. The salient updates in the Guide are as below:

Paragraph 8 explains that effective 26 February 2024, customs agent services have been transferred to Logistics Services under Item 2, Group J, First Schedule, Service Tax Regulations 2018.

Paragraph 12 summarised the groups and details of taxable services for customs agents as follows:

Customs agent	Services	Taxable service
Forwarding agent	Manage the declaration and release of goods from customs control	Item 2, Group J
Shipping agent	Manage matters relating to the entry or exit of vessels	Item 1(a), Group J
Freight forwarder	Manage the declaration of sea and air manifest	Item 1(a), Group J

Paragraph 14 and 15 explains that customs agents mentioned above is required to be registered as a taxable person under the Service Tax Act 2018 and only forwarding agent licensed under Section 90(2) of the Customs Act 1967 can be registered under Item 2, Group J, Service Tax Regulations 2018.

Paragraph 16 includes additional taxable services for the clearing of goods from customs control to the existing list in the previous guide, i.e.

- i. Late charges (seal)/ seal and seal break;
- ii. Other charges for releasing goods from customs control.

Exemption order and imposition of service tax

Paragraph 19 explains that effective 1 March 2024, in accordance with the power of Minister under section 34(1), Service Tax Act 2018, Service Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2024, service tax exemptions are granted to service providers under the same items in column (1), Group J as follows:

i.	1(a)	→	1(a)	Any person providing logistics services including all or part of the supply chain of logistic management services, warehousing or warehousing management services, freight forwarding services, port or airport services, shipping services, aviation services or cold chain facilities services, delivery, and the distribution or transportation of goods services.
ii.	1(c)	→	1(c)	Any person providing delivery, distribution or transportation of goods, documents or packages services through the E-Commerce platform including on behalf of any person.

iii.	1(d)	→	1(d)	Any person providing courier services licensed under Section 10 of the Postal Services Act 2012 [Act 741].
iv.	2	→	2	Any person who is approved to act as a customs agent under subsection 90(2) of the Customs Act 1967.

Any person acting as a customs agent (forwarding agent) under Item 2, Group J, Service Tax Regulations 2018 is eligible for tax exemption if using the services of another customs agent as stated in paragraph 20.

Paragraph 21 explains that Customs agent services to service providers under Item 1, Group J, Service Tax Regulations 2018 are subject to service tax.

Paragraph 22 explains that Customs agent services provided within and between Designated Areas and Special Areas or vice-versa are subject to service tax (Service Tax Policy No. 4/2024).

“Frequently Asked Questions (FAQ)” has been updated to include revised answers to the questions from previous FAQ and include additional questions as follows:

- Payment by electronic banking.
- Service tax treatment for freight services (haulage).
- Service tax treatment for the release of goods in Designated Areas by a customs agent based in Designated Areas to customers in Principal Customs Area.
- Service tax treatment for the appointment of a customs agent (forwarding agent) by a freight forwarder to release the goods from customs control on behalf of customer.

Deloitte’s comments

The updated Guide was to amend the existing paragraphs and insert additional paragraphs to provide clarity on the treatment of Customs Agent services. The imposition of service tax for customs agent services in Designated Area and Special Area may increase the cost of doing business in Malaysia and indirectly may cause products to be less competitive compared with similar players outside of Malaysia. Additionally, service providers may assess the services received from other service providers that are under the same items in column (1), Group J, to benefit from the available B2B exemption.

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2. Updates on Guide on Hire Passenger Vehicle and Employment Services

A. Guide on Hire Passenger Vehicle Services

The RMCD released an updated [Guide on Hire Passenger Vehicle Services](#) (“the Guide”) dated 14 June 2024, which is available in Malay language only. This supersedes the previous Guide dated 21 August 2018. For ease of reference, the salient updates in the latest Guide are as below:

- a) Paragraph 2 of the Guide is amended to include imported taxable services as part of the service tax scope which came into force on 1 January 2019.
- b) Under the “Terminology” section, the following definitions have been added:
 - o “Bus” – means a motor vehicle with a seating capacity of not less than eight persons (including the driver).
 - o “Special Area” – means any free zone, licensed warehouse and licensed manufacturing warehouse, Joint Development Area, and petroleum supply base licensed under Section 77B of the Customs Act 1967.
- c) Under “Imposition and Scope of Tax” section, the person liable to be registered for service tax has been expanded to include any person granted with operator’s license under Section 4, Tourism Vehicles Licensing Act 1999 for Sabah, Sarawak, and the Federal Territory of Labuan.
- d) A new section, “Change in Service Tax Rate” (paragraph 8, 9 and 10), was added to the Guide to align with the recent increase in service tax rate from 6% to 8% for hire passenger vehicle services alongside other taxable services with effect from 1 March 2024, except for the provision of food and beverages services, telecommunication services, parking space services, and logistics services.
- e) Under “Service Tax Treatment for Hire Passenger Vehicle Services” section, the scope of taxable hire passenger vehicle services is expanded to include the following:
 - o Vehicles licensed under section 16 of the Commercial Vehicles Licensing Board Act 1987, for Sabah, Sarawak and the Federal Territory of Labuan which include charter bus, excursion bus, hire car, and a hire-and-drive car.
 - o Vehicles licensed under section 4 of the Tourism Vehicles Licensing Act 1999 for Sabah, Sarawak and the Federal Territory of Labuan which include excursion bus and hire and drive car.
- f) Paragraph 14 from the previous guide has been deleted, which provided clarification on the service tax treatment for charges imposed by a third-party such as summons and car wash charges, which were not subject to service tax. Accordingly, the clarification on the appropriate service tax treatments for the above charges are now being addressed in the FAQ section of the Guide (i.e., item 8 and 9).

- g) Paragraph 15 of the Guide has been amended to include ‘Special Areas’ to the service tax treatment for the provision of hire passenger vehicle services within or between Designated Areas or Special Areas, in which the services would not be subject to service tax if provided by the operator whose principal place of business is in Designated Areas or Special Areas. This amendment is merely to align with the existing service tax treatment as mentioned above, pursuant to Section 53 of the Service Tax Act 2018.
- h) Under the FAQ section, there are several new items added therein which provide further clarity and explanation on the updates in the Guide, as follows:
- Item 7 – this clarifies that car rental services provided by a Sabah-based company licensed under the Tourism Vehicles Licensing Act 1999 but not licensed under the Commercial Vehicles Licensing Board Act 1987 would be subject to service tax, as the company is a taxable person.
 - Item 8 – this clarifies that car wash service is not a taxable service under Hire Passenger Vehicle Services category. However, car wash service is a taxable service under Cleaning Services, item 13, Group I, First Schedule of Service Tax Regulations 2018.
 - Item 9 – this explains that summons issued by local authorities for speeding are not subject to service tax, as the same is considered as a fine or penalty which is not a taxable service.
 - Item 10 – this explains that the provision of stage bus rental services by a licensed bus operator is not subject to service tax.

Deloitte’s comments

The updated Guide reflects the legislative updates on the recent increase in service tax rate from 6% to 8% for hire passenger vehicle services. Affected businesses would need to ensure the correct service tax rate is charged to customer and reported in the preparation of the SST-02 return.

Businesses should take note of the expansion to the scope of taxable hire passenger vehicle services affecting certain licensed vehicles in Sabah, Sarawak, and the Federal Territory of Labuan.

For affected businesses, it would be important for the businesses to evaluate all provisions of hire passenger vehicle services and to identify the appropriate service tax treatments to be applied.

B. Guide on Employment Services

The RMCD released an updated [Guide on Employment Services](#) (“the Guide”) dated 14 May 2024, which is available in Malay language only. This supersedes the previous Guide dated 5 August 2019. The salient updates in the latest Guide are as below:

- a) New section “Change in Service Tax Rates” (paragraph 6, 7 and 8) is added to the Guide to align with the recent increase in service tax rate from 6% to 8% for employment services alongside other taxable services with effect from 1 March 2024, except for the provision of food and beverages services, telecommunication services, parking space services and logistics services.

- b) An updated clarification on the expenses that can be claimed as disbursements and not subject to service tax is provided in paragraphs 17 and 18 of the Guide. The updated paragraphs to clarify that where any expenses are claimed from customers with a mark-up, the entire value of the expenses plus the mark-up would be subject to service tax. Paragraph 17 additionally provides that the original documents for the expense should be attached to support that no mark-up was charged. Under the previous Guide, it may be construed as only the margin (i.e., mark-up portion) will be regarded as a taxable service and subjected to service tax.
- c) New example (i.e., Example 14) is added to the Guide to further explain the service tax treatment for provision of employment services which includes reclaiming of levy payment with mark-up. Based on the example provided, the actual value of the services and levy payment with mark-up would be subject to service tax.
- d) Item 6 of the FAQ section from the previous Guide has been removed to align with the above updated clarification provided in paragraph 18 of the Guide. This was in relation to the service tax treatment on the mark-up value which is itemized separately in the invoice.

Deloitte's comments

The updated Guide reflects the legislative updates on the recent increase in service tax rate from 6% to 8% for employment services. For affected businesses, it would be important for the businesses to ensure that the correct service tax rate is charged and elected during the preparation of the SST-02 return.

Businesses should also take note on the service tax treatment for expenses allowed for reimbursement from customers with added value i.e., mark-up. Affected businesses with such transactions may consider revisiting the service tax treatment adopted in the past to determine if there is any potential service tax exposure, in the case where the service tax was only applied on the margin (i.e., mark-up portion) instead of the entire value of expense including the mark-up. On a separate note, businesses should always ensure that disbursements without any added value are itemised in the invoice to customers and are attached together with the relevant supporting documents.

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3. Guide on Approved Major Exporter Scheme (AMES)

The RMCD has released the [Guide on Approved Major Exporter Scheme \(“AMES”\)](#) dated 29 March 2024, which is only available in the national language and can be accessed through the list of specific guides on the Malay version of the MySST portal.

For context, AMES is a scheme which allows a qualified person to be exempted from sales tax which may be imposed on taxable goods imported, transported from designated areas (“DA”) or special areas (“SA”) or purchased from a registered manufacturer. This is granted on the condition that said taxable goods are exported or transported to DA/SA [Section 61A of the Sales Tax Act 2018 (“SaTA 2018”)] in addition to satisfying other specific conditions.

The salient points covered in the guide are as follow:

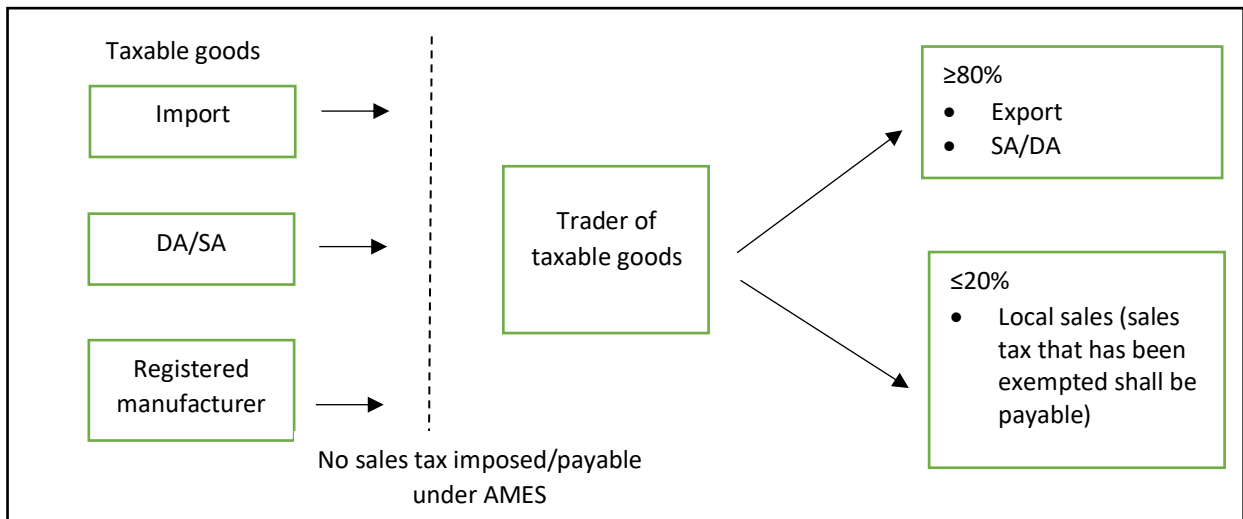
Qualifying Criteria

- (i) Trader
 - Has been operating in Malaysia for a period of at least one (1) year;
 - At the time the application is made, the total annual sales of taxable goods exceeds RM10 million; and
 - At least 80% of total annual sales are for export or transport to DA/SA.
- (ii) Manufacturer
 - Has been operating in Malaysia for a period of at least one (1) year;
 - At the time the application is made, the total annual sales of manufactured goods exempted from sales tax exceeds RM10 million; and
 - At least 80% of total annual sales of manufactured goods exempted from sales tax are exported sales or transported to DA or SA.
- (iii) Trader and manufacturer
 - If the person is both a trader and manufacturer, such person must satisfy one of the criteria above.
- (iv) Any person as may be determined by the Minister.

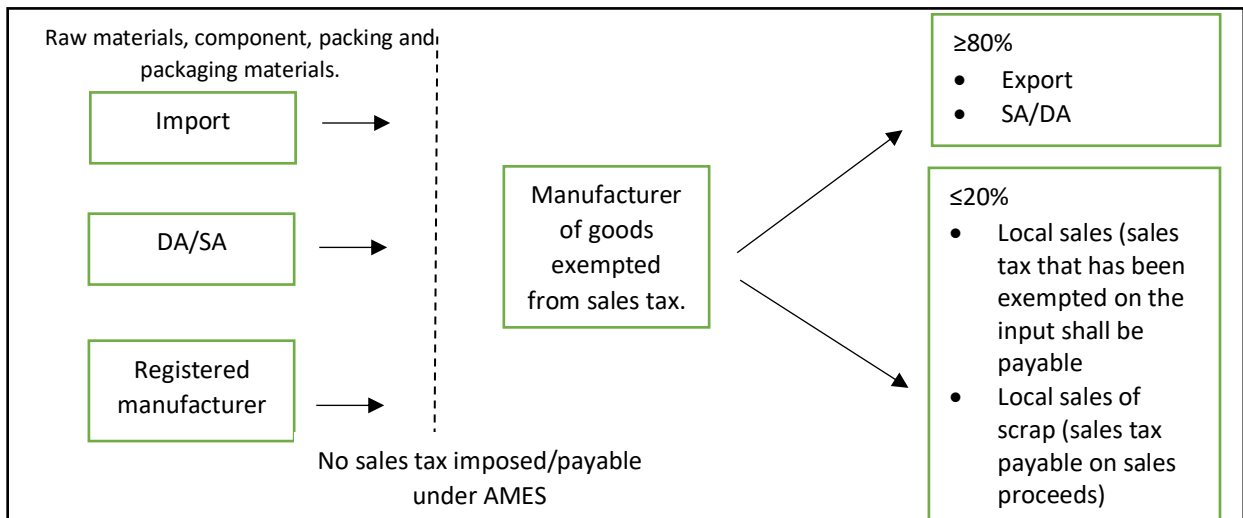
How AMES is executed

The diagrams below illustrate the execution of the AMES for trader/ manufacturer.

(i) For trader



(ii) For manufacturer



Application procedure

- (a) To apply for the AMES, the prescribed form i.e. AMES-01 must be completed and submitted to the controlling state RMCD office via e-mail. Such form can be obtained via the same guide above or MySST portal.
- (b) The submission of the form above must be accompanied by copies of the documents:-
 - Company Registration Certificate issued by the Companies Commission of Malaysia
 - Business licence issued by the local authority
 - Super Form or Form 24, 44 and 49 issued by the Companies Commission of Malaysia
 - Latest audited financial statement

- Company's management report which includes information related to annual sales
 - Formula prepared and declared by the company's technical officer pertaining to the ratio of the usage of manufacturing inputs to the production of one unit of output which include a calculation example of the sales tax payable based on the ratio of local sales.
- (c) If the applicant is both a trader and a manufacturer, two (2) separate applications should be made for the two different categories.
- (d) If the company has more than one branch or business location, only the principal business/ manufacturing premises is needed for AMES application purposes.

Conditions

Any person that has been granted approval under AMES must comply with the following:-

- (a) Any importation, transportation, and exportation of goods shall be declared by the approved person in the prescribed form under the Customs Act 1967 or any document as the Director General may determine.
- (b) Keep a complete and true records or accounts with respect of the goods imported, transported, purchased, exported, and sold for a period of seven (7) years from the latest date to which the records relate to in the national language or English language.
- (c) Accounting and internal control system comply the relevant accounting and auditing standards.
- (d) Notify the relevant state Customs in writing within fourteen (14) days for any changes in business particulars or the approved person.
- (e) For traders, the taxable goods must be exported / transported to the SA/DA within six (6) months from the date of importation / purchase or any later date as approved by the Director General of RMCD.
- (f) For manufacturers, the manufactured goods exempted from sales tax must be exported / transported SA/DA within twelve (12) months from the date of importation/purchase (of the inputs) or any later date as approved by the Director General of RMCD.
- (g) Prepare the relevant reports relating to such scheme in a manner as determined by the Director General of RMCD.
- (h) Where any person who has been granted an approval under the AMES fails to comply with any prescribed conditions, any sales tax that has been exempted shall become due and payable, and such sales tax shall be paid through the form AMES-02.

Goods not eligible for exemption from payment of sales tax

The following goods are not eligible for exemption from payment of sales tax under AMES:-

- (a) Wine, spirits, beer & malt liquor
- (b) Cigarettes, tobacco, and tobacco products
- (c) Petroleum

Despite the above, goods that not listed in the approved list are not eligible for the same exemption as well.

Deloitte's comments

The issuance of the new AMES guide serves to aid businesses by providing more clarity to the requirements and conditions to utilise such facilities. As such, it is important that businesses that intend to utilise this facility are familiar with the relevant requirements. Failure to satisfy these requirements not only stalls the company's progress of attaining such exemptions, it can also could pose potential compliance implications, such as the claw back of exempted sales tax.

For existing holders of the AMES, it would also be worthwhile to conduct an internal review to gauge the extent the facility's conditions are met and complied with.

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