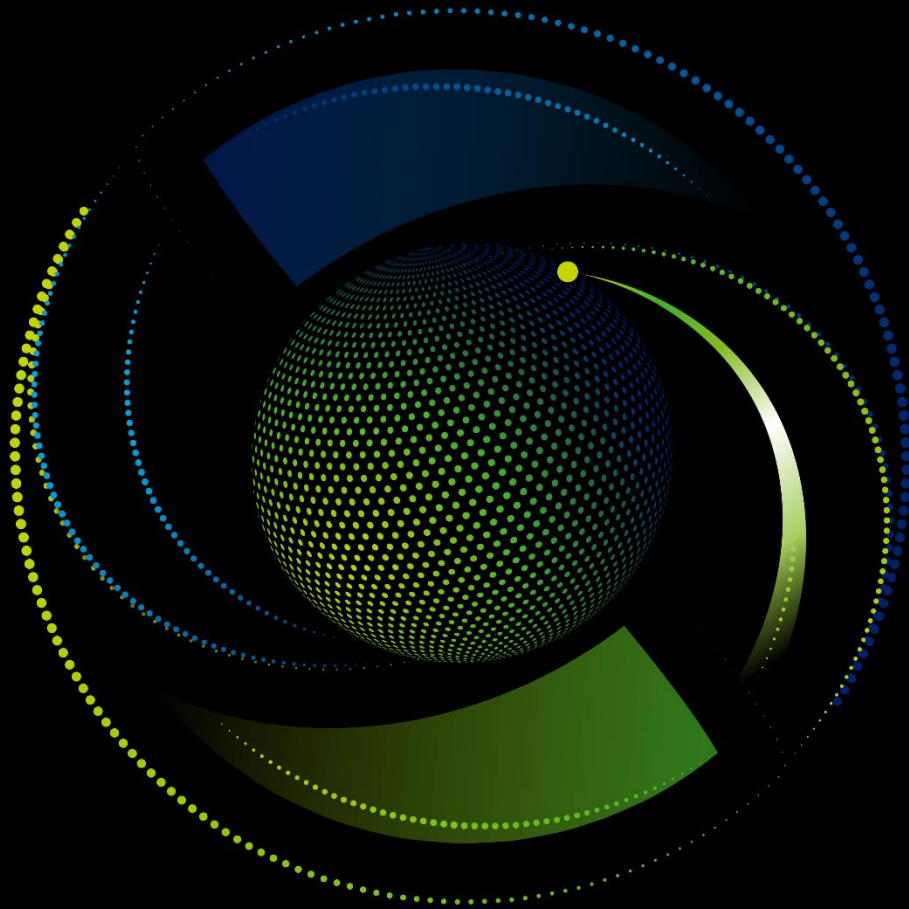


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Indirect Tax Chat

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

June 2024



Issue 06.2024

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Key takeaways:

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Greetings from Deloitte Malaysia's Indirect Tax team

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

We reported last month that the voluntary disclosure program has ended, and that both submissions and payments were due by the end of May. However, since then the Royal Malaysian Customs Department ("RMCD") has extended the payment deadline in a published notice (link found [here](#)) from 31 May 2024 to 30 June 2024 to accommodate businesses that have applied but require additional time to make payment.



The RMCD announced at the end of the voluntary disclosure period it would start commencing indirect tax audit activities. We have already begun to see signs of this activity, with a number of taxpayers receiving visits from the RMCD.

On the technical front, the RMCD issued [Public Ruling No. 3/2024](#) on 1 June 2024, which provides guidance on the RMCD's interpretation of the meaning of "used directly" or "directly used" in the context of sales tax.

In this month's chat, we will be sharing our thoughts on the service tax updates on Maintenance or Repair Services, Guide on Groups C, D and E, as well as Guide on Disposal.

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

- RMCD is enhancing efforts to ensure transparency and accountability in tax collection and expenditure management. Customs director-general Datuk Anis Rizana Mohd Zainudin said the department is investing in modernising customs procedures with technology like AI scanners to streamline processes and expedite cargo clearance. For more information, please click [here](#).
- The shift towards mandatory e-invoicing is posing significant challenges for smaller businesses as highlighted by industry leaders. Datuk William Ng, national president of the Small and Medium Enterprises Association of Malaysia (SAMENTA), expressed concern over the short notice for companies with over RM100 million in annual revenue to implement e-invoicing by 1 August 2024. He emphasised that other countries typically provide a year's notice and comprehensive guidelines for such implementations, suggesting that the current timeline may hinder smooth and efficient adoption of the system. For more information, please click [here](#).

We hope you continue to stay safe and well. We would also like to take this opportunity to wish to our readers celebrating a meaningful and blessed *Awal Muharram*!

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Updates on Maintenance or Repair Services

A. Service Tax Exemption for Maintenance or Repair Services for maintenance, repair and overhaul (“MRO”)

On 30 April 2024, the RMCD published [Service Tax Policy No. 6/2024](#) (“STP 6/2024”) which outlines the Ministerial Exemption, that exempts service tax on maintenance or repair services for MRO activities up to 31 December 2027. As the STP 6/2024 is only available in the national language (Malay version), it can only be accessed via the national language version of the MySST portal.

The salient points are as follows:

1. The Minister of Finance had granted exemption from paying and imposing service tax on maintenance or repair services for MRO activities, effective from 1 March 2024 to 31 December 2027.
2. For the purpose of this exemption, MRO activity refers to any maintenance, repair and recovery activities as stipulated by the Malaysian Investment Development Authority (MIDA) under the Malaysian Aerospace Industry Blueprint 2030 for the aerospace sector and Shipbuilding and Ship Repairing (SBSR) incentives for the maritime sector.
3. Recipients of MRO activity services exempted from paying service tax on MRO activity services received from the service providers specified in paragraph 4 are as follows:
 - a) Airlines with an Air Operator Certificate (AOC) issued by the Civil Aviation Authority of Malaysia (CAAM);
 - b) Shipping company registered with the Marine Department of Malaysia;
 - c) Federal and State Government Departments such as the Malaysian Armed Forces, Royal Malaysian Police and Fire and Rescue Department; or
 - d) Recipients of MRO activity services who are overseas (where goods/equipment involved with MRO activities carried out in Malaysia must be taken out of Malaysia subject to the conditions set by RMCD).
4. Service providers of MRO activities exempted from imposing service tax on MRO activity services supplied to recipients of MRO activity services as per paragraph 3, (a) to (d) are as follows:
 - a) Approved Maintenance Organisation (AMO) registered with the Malaysian Civil Aviation Authority (CAAM); or
 - b) Shipbuilding or ship repairing approved by the Malaysian Investment Development Authority (MIDA).
5. Any service tax collected must be remitted to RMCD, and no refund of service tax will be approved for any party who has paid service tax on any MRO activity services supplied from 1 March 2024.

Deloitte’s comments

The STP 6/2024 outlines the service tax exemptions granted for MRO activities in the airlines and aviation sector, shipping sector, Malaysian government military forces and for MRO activities provided to offshore service recipients.

The expansion of the service tax to cover repair and maintenance services brought about a number of unintended and unexpected consequences with numerous industries impacted. The imposition of service tax on MRO activities would have significantly affected Malaysia's ambitions to be a regional MRO hub as it would increase the cost of procuring those services relative to other jurisdictions. The introduction of this exemption would ensure that the cost is mitigated.

Businesses should take note that the exemption is not broad and still requires the relevant conditions to be met including confirming the service recipient falls within one of the qualifying categories. It is also relevant to note that the exemption is only provided till the end of 2027, and so it is possible that tax may be applied in the future.

B. Updated Guide on Maintenance or Repair Services

The RMCD had released the [updated Guide on Maintenance or Repair Services](#) (“the updated Guide”) dated 29 March 2024 in the national language (Malay version). As such, the updated Guide can only be accessed via the national language version of the MySST portal. This supersedes the [previous Guide on Maintenance or Repair Services](#) (“the previous Guide”) dated 26 February 2024, which we covered in our [March 2024 Chat](#).

We summarise the salient details below:

- Under paragraph 18, Example 1, the service tax treatment on the maintenance contract for the provision of maintenance of quarters had been updated. Under the previous Guide, the maintenance contract which consists of 2 types of services (i.e., routine work and repair work) was treated as a single maintenance and repair contract and was wholly subject to service tax. However, the updated Guide provides separate service tax treatments, with the routine work continuing to be subject to service tax, but the repair work is now no longer viewed as subject to service tax. This amended view is on the basis that the repair services were performed on residential buildings.
- Under paragraph 18 Example 5, RMCD had made editorial changes in updating “water pressure monitoring system and application” to “water pressure monitoring hardware” developed by the company, and for the repair services to cover “all damages”. No changes were made to the service tax treatment, where the maintenance service is subject to service tax.
- RMCD inserted 2 additional examples, Example 13 and Example 14, under the “Services That Are Not Subject to Service Tax” section (paragraph 22), in relation to repair services for residential buildings. Example 13 relates to the repair service provided on the lift equipped in a residential building and the said repair service is not subject to service tax. Example 14 relates to the repair service on a television at a residential building and such repair services are subject to service tax.
- Paragraph 25 was reworded to provide clarity and elaboration on the service tax registration timeline for maintenance or repair service providers upon reaching the registration threshold of RM500,000 and when the service tax registration comes into effect (i.e., when the registered person will need to start imposing service tax).

- Paragraph 32 and 33 from the previous Guide had been removed from the updated Guide. Those paragraphs were relating to intra-group relief on the provision of maintenance or repair services to any person within the same group of companies or imported from any person within the same group of companies outside of Malaysia.
- Under paragraph 32 Example 17 in the updated Guide (paragraph 34 Example 15 in the previous Guide), we understand that an amendment had been made to rectify the error in party who is eligible for the exemption from paying service tax (i.e., ASB instead of PBA). However, we note that further amendments will need to be made to this example to correctly reflect that there is no need for TSB to charge service tax to ASB (and not PBA) because ASB (and not PBA) provides the same service as TSB to its customers.
- Under the “FAQ” section of the updated Guide, RMCD had amended the answer in FAQ 3 to reflect that maintenance or repair service providers who are liable to register for service tax are required to register online through the MySST system by 26 February 2024 and not 1 February 2024.

Deloitte’s comments

The update was to amend the existing examples and insert additional examples to provide clarity on the treatment of repair services on residential building which is excluded from service tax under Group G column (2) subitem (n)(ii) of the Service Tax Regulations 2018. Following the amendments to the updated Guide, RMCD had also issued with the [Service Tax Policy No. 5 / 2024](#) dated 1 April 2024 which outlines RMCD’s views on maintenance services related to residential homes (only available in Malay Language), which was covered in our [April 2024 Chat](#).

Based on Examples 13 and 14 provided, we understand that the exclusion of service tax on maintenance services (including repairs) on residential buildings specifically relate to goods/equipment affixed to the structure of the building and are provided directly to the owner or occupant of the residential home such as the lift in Example 13. In Example 14, since the television is a movable item in the residential building, the repair services on the television is not excluded from service tax.

The RMCD’s introduction of a distinction between repair and maintenance work on goods / equipment affixed to a structure of a building versus those that are not will likely pose challenges to implement. In particular, the service provider would need to properly assess whether the item being worked on is affixed and then if it is affixed to the residential component of a development. This is likely to result in different positions and treatments being adopted depending on how prudent a position the service provider may wish to take.

The updated Guide had also removed the paragraphs on intra-group relief which is in line with the published [Service Tax \(Amendment\) Regulations 2024](#) which excludes maintenance or repair services as a taxable service eligible for the intra-group relief.

Whilst the reasons for excluding repair and maintenance services from intragroup relief are not adequately explained, the presumption is that these are services that are most likely consumed directly by the service recipient and not used to provide third party services. This presumption is debatable and remains unclear why services such as IT, consulting and management are eligible, but repair and maintenance are not.

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2. Guides on Group C: Nightclubs, Dance Halls, etc., Group D: Private Clubs, and Group E: Golf Clubs & Courses

The RMCD released an updated [Guide on Group C, D and E](#) on 29 February 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.

The salient updates in the Guide are as below.

Imposition and Scope of Service Tax

- The taxable services under Groups C, D and E are expanded to include provision or sale of:
 - (i) Cigarettes;
 - (ii) Tobacco products;
 - (iii) Tobacco pipes (including pipe heads);
 - (iv) Electronic cigarettes and similar personal vaporizing devices;
 - (v) Preparations used for smoking through electronic cigarettes and vaporizing devices, in liquid or gel form, whether containing nicotine or not; or
 - (vi) Alcoholic and non-alcoholic beverages.
- Under Group C: Nightclubs, Dance Halls, Cabarets, Karaoke Centres, Health Centres, Massage Parlours, Public Houses and Beer Houses:
 - The imposition of service tax on taxable services under Group C, First Schedule of the Service Tax Regulations 2018 is expanded to include karaoke centres effective 26 February 2024.
 - The taxable person is expanded to include any person who operates karaoke centres.
 - A karaoke centre is a premise that provides individual or group entertainment facilities to sing selected songs with musical accompaniment pre-recorded in audiovisual equipment.
 - Generally, the FAQ has been updated to include examples for karaoke centres and confinement care services for mothers (including postpartum massage service at the customer's house).
- Under Group E: Golf clubs & golf courses:
 - The FAQ has been updated to include example where the wedding package services provided by golf club is subject to service tax.
- Service tax rate for the provision of taxable services under Groups C, D, and E, First Schedule for the Service Tax Regulations 2018 has been increased to 8% effective 1 March 2024. For further information on the change of rate of service tax, please refer to our [February 2024 Chat](#) on the [Guide on the Transition of Service Tax Rate Change](#) from 6% to 8% dated 26 February 2024.

Service Tax Rate for the Provision of Various Taxable Services

The service tax rate for the provision of various taxable services by registered persons under Group C, D and E is determined by:

- (i) The type of taxable services provided, rather than the primary service; or
- (ii) Taxable services provided as a package, where the service tax rate will be determined based on the group of taxable services.

Examples of service tax rate determination for the provision of various taxable services are as follows:

Under Group C: Nightclubs, Dance Halls, Cabarets, Karaoke Centres, Health Centres, Massage Parlours, Public Houses and Beer Houses

Taxable Service	Service Tax Rate
Provision of all types of services such as entrance/cover charge	8%
Provision of any other taxable services specified in other Groups in the First Schedule, under the Service Tax Regulation 2018:- Examples: 1. Provision of food and beverages 2. Provision of parking space 3. Other taxable services such as event management, business centre	6% or 8% 1. 6% 2. 6% 3. 8%
Provision or sale of: - (a) Cigarettes; (b) Tobacco products; (c) Tobacco pipes (including pipe heads); (d) Electronic cigarettes and similar personal vaporizing devices; (e) Preparations used for smoking through electronic cigarettes and vaporizing devices, in liquid or gel form, whether containing nicotine or not; or (f) Alcoholic and non-alcoholic beverages.	8%

Under Group D: Private clubs

Taxable Service	Service Tax Rate
Provision of all services within the private club Example: Wedding packages including banquet/ catering services, venue preparation, and rental of equipment/ live band/ karaoke	8%
The provision of any other taxable services as specified in other Groups in the First Schedule of the Service Tax Regulation 2018:- Example: 1. Provision of food and beverages 2. Provision of parking space 3. Other taxable services such as event management, business centre	6% or 8% 1. 6% 2. 6% 3. 8%
Provision or sale of:- (a) Cigarettes; (b) Tobacco products; (c) Tobacco pipes (including pipe heads); (d) Electronic cigarettes and similar personal vaporizing devices; (e) Preparations used for smoking through electronic cigarettes and vaporizing devices, in liquid or gel form, whether containing nicotine or not; or (f) Alcoholic and non-alcoholic beverages.	8%

Under Group E: Golf clubs & golf courses

Taxable Service	Service Tax Rate
Provision of golf clubs or golf courses or services related to golf or golf courses.	8%
The provision of any other taxable services as specified in other Groups in the First Schedule of the Service Tax Regulation 2018:- Example: 1. Provision of food and beverages 2. Provision of parking space 3. Other taxable services such as event management, business centre	6% or 8% 1. 6% 2. 6% 3. 8%
The provision of any other services within a golf club or golf course:- Example: 1. Rental of advertising space 2. Rental of business space 3. Wedding packages including banquet/ catering services, venue preparation, and rental of equipment/ live band/ karaoke	8% 1. 8% 2. 8% 3. 8%
Provision or sale of:- (a) Cigarettes; (b) Tobacco products; (c) Tobacco pipes (including pipe heads); (d) Electronic cigarettes and similar personal vaporizing devices; (e) Preparations used for smoking through electronic cigarettes and vaporizing devices, in liquid or gel form, whether containing nicotine or not; or (f) Alcoholic and non-alcoholic beverages.	8%

Deloitte's comments

The Guide on Group C, D and E was mainly updated to align with the amendments covered via the Service Tax (Amendment) Regulations 2023, Service Tax (Amendment) Regulations 2024 and the Service Tax (Rate of Tax) (Amendment) Order 2024.

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3. Guide on Disposal

The RMCD has uploaded the [Guide on Disposal dated 30 April 2024](#) on its [MySST website](#). The guide is only available in Bahasa Malaysia (at the time this article is prepared).

For context, there are various sales tax mitigation facilities granted under the Sales Tax Act 2018 which can include those under Sections 35, 41A and 61A of the Sales Tax Act 2018. Where such facilities are granted on the acquisition of specific goods, these are often subject to specific compliance requirements, which are commonly associated with how such goods should be managed.

This guide is issued to provide guidance on the compliance requirements and steps to be taken in dealing with the disposal of goods granted with sales tax exemptions or facilities under Sections 35, 41A and 61A of the Sales Tax Act 2018.

The salient points covered in the guide are as follows:

- a) The guide discusses on the need to seek for approval for the disposal of the following items:
 - i. Raw materials, components, manufacturing aids, cleanroom equipment & packaging materials (“manufacturing input”);
 - ii. Manufactured finished goods;
 - iii. Scrap, waste, and residue; and
 - iv. Any taxable goods other than the above that are imported/purchased/transported with sales tax exemptions or facilities.

- b) For disposals made by way of destruction:
 - i. An application form (Appendix 2 of the guide) along with required documents listed in the guide shall be submitted and approved by Head of Division /Branch at RMCD Controlling Station governing the sales tax, import duty or excise duty exemption.
 - ii. Blanket exemption from paying sales tax is given provided the destruction is made under the RMCD supervision and all procedures and conditions set by the RMCD are complied with:
 - o For disposal of scrap, waste and residue that are not subject to sales tax, blanket approval is given for a period up to one year.
 - o For disposal of goods that are subject to sales tax, depending on the quantity and frequency of disposal, blanket approval is given for a period of thirty (30) days.
 - iii. Disposal must be made within the approved period specified in the approval letter issued by the RMCD controlling station.
 - iv. The company must prepare a certificate of destruction (Appendix 3 and Appendix 4 of the guide) along with documents listed in the guide for each disposal.
 - v. The company shall prepare a quarterly disposal report for submission to RMCD upon request by the sales tax officer or audit officer.

- c) For disposals via sale or gifts are as follows where sales tax would be payable:
 - i. Raw materials, components, manufacturing aids, cleanroom equipment & packaging materials:
 - o Approval from RMCD Controlling Station is required.
 - o Sales tax to be paid via SST-ADM Form or AMES-02 Form.
 - o Sales tax payable is based on sales tax amount that has been exempted upon importation/purchase.

- ii. For manufactured taxable finished goods:
 - Approval from RMCD Controlling Station is not required.
 - Sales tax to be paid via SST-02 return.
 - For disposal by way of sale, sales tax to be calculated based on tariff code, tax rate, and transaction value of the finished goods in their original form.
 - For disposal by way of gift, sales tax to be calculated based on tariff code, tax rate, and open market value of the finished goods in their original form.

- iii. For manufactured non-taxable/exempt finished goods using sales tax exempted manufacturing input:
 - Approval from RMCD Controlling Station is required.
 - Sales tax to be paid via SST-ADM Form or AMES-02 Form.
 - Sales tax payable is based on sales tax amount that has been exempted upon importation/purchase of the manufacturing input used in the manufacture of the goods disposed of.

- iv. For scrap, waste, or residue:
 - Approval from RMCD Controlling Station is required.
 - Sales tax to be paid via SST-ADM Form or AMES-02 Form.
 - For disposal by way of sale, sales tax to be calculated based on tariff code, tax rate and transaction value of the scrap, waste or residue.
 - For disposal other than sale, sales tax to be calculated based on tariff code, tax rate and open market value of the scrap, waste or residue.

- v. For taxable goods acquired with sales tax exemption under Schedule A of Sales Tax (Persons Exempted from Payment of Tax) Order 2018, Approved Major Exporter Scheme (“AMES”) or Minister exemption under Section 35(3)(a) of the Sales Tax Act 2018:
 - Approval from RMCD Controlling Station is required.
 - Sales tax must be paid based on the amount of sales tax that has been given exemption upon importation/purchase.

- vi. For taxable goods purchased with sales tax deduction facility:
 - Approval from RMCD Controlling Station is required.
 - Sales tax must be paid based on the whole or any part of the tax amount that has been deducted .

Deloitte’s comments

Compliance with disposal requirements/conditions relating to sales tax exempted items is often an overlooked area. Non-compliance can often lead to costly back taxes and risks of exemption facilities being revoked.

Considering the risks potentially posed by non-compliance, it would be important for taxpayers to familiarize themselves with not only the requirements/conditions discussed above but also those indicated in the respective sales tax mitigating approvals.

We also recommend that a periodic review be conducted on the existing process in dealing with items granted with sales tax exemption in order to gauge the level of compliance.

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