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**Indirect Tax Chat**

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

*September 2018*

# Issue 9.2018

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## **Key takeaways:**

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# Greetings from Deloitte Malaysia's Indirect Tax team

Greetings dear readers, and welcome to the September 2018 edition of Indirect Tax Chat.

1<sup>st</sup> September has now come and gone, as we bid farewell to the GST and re-welcomed the Sales Tax and Service Tax or "SST". However, whilst the country has made the move to the new tax system, many businesses have still a way to go before they are comfortable with the new system.



This hasn't been helped by the considerable amount of uncertainty and confusion that exists in the scope of the new SST. We have seen new concepts introduced into the Law (e.g., information technology services) as well as wider interpretations taken on others (e.g., management services and consultancy services) by the Royal Malaysian Customs Department (RMCD).

Whilst this uncertainty exists, it becomes very difficult for businesses and their tax advisors to navigate these rules, and as a result we are likely to see a lot of different positions taken in the marketplace. This is not a good outcome and efforts should be taken to try and reduce this uncertainty in the scope of the tax through the release of clearer and more descriptive guidelines.

In the interim, it is important for businesses to take careful consideration of the Law and take a view on the treatment. This can be a conservative one, or one based on a 'reasonable position'. Either way, the reasons should be documented and reviewed when further information is made available.

On that note, we have already seen some amendments to the Law and the release of new or updated guidance. We discuss this further below.

## *Other news that may be of interest you:*

- Members of the public can now lodge complaints in relation to post-SST price increases through *WhatsApp* messages to the Domestic Trade and Consumer Affairs Minister Saifuddin Nasution Ismail. He stated that the use of the social media application serves as an alternative channel to facilitate consumers' complaints. The Ministry has received 642 complaints in the first week of the month since the reintroduction of SST on 1 September 2018. The number to reach is +6019 279 4317 and action will be taken by the Ministry within 24 hours.
- RMCD Director General, Datuk Seri Subromaniam Tholasy informed the media earlier this month that there were 472,000 business that were registered under GST, but Customs are only expecting 80,000 businesses to register under SST.

Please do not hesitate to contact us if you have any queries, comments or require our assistance on any GST matters or the transition to SST.

Best regards,

**Tan Eng Yew**

Indirect Tax Country Leader

# 1. Amendments to the SST Regulations and Orders

## Service Tax (Amendment) Regulations 2018

With effective from 6<sup>th</sup> September 2018, the provision of electricity by a taxable person to any domestic consumers in the designated areas (DAs) i.e Langkawi, Tioman and Labuan is not subject to service tax.

## Sales Tax (Goods Exempted From Tax) (Amendment) Order 2018

Effective 1<sup>st</sup> September 2018, the exemption of sales tax on goods includes the HS Tariff Code with the subheadings 8711.20.95 (i.e. of a cylinder capacity exceeding 200 cc but not excluding 250 cc) and 8711.20.96 (i.e. Other) under Schedule A.

## Sales Tax (Goods Exempted From Tax) (Amendment) (No.2) 2018

Subsequent to the above amendment to Schedule A, with effective from 6<sup>th</sup> September 2018, Schedule A includes a wider variety of fish and seafood with the amendment of the exemptions under tariff heading 03.05 and 03.06, and inclusion of certain items under tariff heading 03.07. In addition, other new items were also included to be exempted from sales tax. However, with the additions made, several items were also removed. The Order also serves to amend certain typos present in the original Order.

**Note:** Due to the extensive list of amendments made, please refer to this [link](#) for a copy of the Order above.

## Sales Tax (Rate of Tax) Order 2018

Effective 6<sup>th</sup> September 2018, several items were deleted in order to reflect the amendments made under the Sales Tax (Goods Exempted From Tax)(Amendment)(No. 2) Order 2018 – where the items should not be exempted from sales tax. The Order also adds certain items under the tariff heading 16.05 into the First Schedule where the effective sales tax rate shall be 5% (these were previously subject to sales tax at 10%). Other minor additions and deletions were also made.

**Note:** Please refer to this [link](#) for a copy of the Order above for more details of the amendments made with respect to the sales tax rate on specific items.

## Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) (Amendment) Order 2018

Effective 6<sup>th</sup> September 2018, the Order is amended in the Schedule to further clarify that the provision of accommodation premises and foods and beverages in special areas (SA) are subject to Service Tax at 6%.

Deloitte's View

The provision of these services in designated areas (DA) are not subject to service tax.

**Brought to you by:**



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## 2. Provision of Director General's (DG's) Decisions

RMCD have released their first DG's Decision on the transition of GST to SST which can be found at the following [link](#). For those of you who were not familiar with the DG's Decisions under the previous GST regime, it is important to note that these are not rulings and are not legally binding on the taxpayer or the RMCD. However, they represent the view of the authorities and often contain administrative concessions. Due to the limited information that is contained in the DG's Decision, we would recommend that it can only be applied to the specific circumstances identified in the Decision and to not apply it to scenarios that are not specifically covered.

We have summarised our thoughts on the DG's Decisions below:

DG'S Decisions on SST	
Item 1: Issuance of tax invoice on or after 1/9/2018	<p>It has been made expressively clear that businesses are not allowed to issue GST tax invoices from 1<sup>st</sup> September onwards as the GST Act 2014 is repealed.</p> <p>However, it then goes onto say that GST must still be accounted for and paid on any supply that falls within the scope of GST (e.g. services performed or goods made available before 1 September 2018).</p> <p>The implication of this is that GST must still be accounted for and paid by the supplier, but a tax invoice cannot be issued and accordingly the recipient would not be able to claim a corresponding input tax credit. As a consequence, the GST would become a cost. As to who bears that cost would become a commercial and legal matter to be addressed between the two parties.</p> <p>From a tax policy perspective, this contravenes the basic principle of GST that it should not be a cost to business. Further, this interpretation appears to be inconsistent with the provisions contained in the GST Repeal Act 2018. We do anticipate further discussion and analysis of the merits of this view in the coming months and perhaps years.</p> <p>There are also other areas of inconsistency:</p> <ol style="list-style-type: none"> <li>1. The DG's Decision suggests that where a contract has been signed before 1 June 2018, but the sale of goods or the provision of services occurs after 1 September 2018, this would fall under the GST regime and be subject to GST. It is unclear why a post September 2018 activity would be subject to GST and not SST, and the basis for this view should be further clarified;</li> <li>2. The DG's Decision specifies that any GST liability ought to be settled by the due date of the final GST Return, however, applying the relevant time of supply rules, in some cases the GST liability may not have crystallised at the time the GST Return is due. Applying the DG's view in this case would result in the supplier making payment earlier than would normally be required.</li> </ol>

Item 2: Declaration of Importation by Licensed Manufacturing Warehouse (LMW)	For a manufacturer holding a LMW license, raw materials imported from overseas for the manufacturing activities is not subject to sales tax. The manufacturer is only required to choose the type "L" transaction in the Customs Form No.1 and the SMK System will automatically indicate the sales tax amount as zero.
Item 3: Retention Payments (GST Transitional Issue)	<p>This follows the same principles identified in item 1 above to retention payments. In short, when a retention sum is paid post 1 September 2018 that relates to a construction service performed prior to 1 September 2018, GST would apply and would have to be accounted for in the last GST Return by the supplier. As tax invoice cannot be issued after 1 September 2018 the recipient would not be entitled to claim an input tax credit.</p> <p>The inconsistency in relation to when the GST should be accounted for i.e. at the due date for filing the last GST Return or based on the correct time of supply rules, also remains.</p>

### Brought to you by:



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### 3. SST Technical Updates

As of to date, the Guide on Food and Beverages dated 22 August 2018 has been withdrawn from MySST website. Below are the guides that have been revised recently.

#### **Revised General Guide for Service Tax (As At 7 September 2018)**

With the removal of the taxable services on provisions of accommodation premises and foods and beverages within or between DA and SA in Paragraph 154 of the amended Guide, the provisions of these taxable services are now not subject to service tax.

##### Deloitte's View

The amendment in Paragraph 154 is not consistent with the Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) (Amendment) Order 2018. The order states that the provisions of these services in special areas are subject to service tax.

#### **Revised Transitional Rules Guide (As At 5 September 2018)**

Sales Tax and Service Tax are not applicable in special areas (SA) and designated areas (DA) except accommodation, telecommunication services, domestic flight between DA, between SA, and from DA to SA and vice versa, customs clearance and provision of food and beverages.

Further, under paragraph 47 and FAQ 32 the purchase of domestic flight tickets purchased prior to 1<sup>st</sup> September 2018 for flights departing on or after 1<sup>st</sup> September 2018 are exempted from payment of service tax, as given by Minister under Section 34(3)(a) of the Service Tax Act 2018.

FAQ 38 has been amended to provide further clarification for accommodation services spanning between the GST and SST regime, whereby if a guest checks in on 31<sup>st</sup> August 2018 and checks out on 1<sup>st</sup> September 2018, the service is subject to service tax.

Additionally, FAQ 39 have been added to include issues on top up cards bought prior to 1<sup>st</sup> September 2018 but uses it (redeem) from 1<sup>st</sup> September 2018 onwards which are subject to service tax. However, with effect of 6<sup>th</sup> September 2018, the Ministry of Finance (MOF) under Section 34(3)(a) of Service Tax Act 2018 has given a service tax exemption on the provision of telecommunication services provided to Malaysian citizen. With that, any reload of top up (prepaid) will get full credit value when the customer reload the prepaid cards.

##### Deloitte's View

As the Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) (Amendment) Order 2018 was updated and made available after the Revised Transitional Rules Guide, there is some inconsistency as the law states that only the provision in accommodation premises and foods and beverages in SA is subject to service tax.

### **Revised Guide on Accommodation (As At 7 September 2018)**

The provision for accommodation services within or between designated areas is not subject to service tax.

The provision of free tickets or complimentary rooms, regardless if it is offered to guests or business associates, is subject to service tax. Service tax must be accounted for at the open market value. However, if the complimentary rooms are let out under promotional program or given as part of a package that have been charged, this complimentary rooms will be treated as discounts given and hence are not subject to service tax.

With regards to the queries on tips given by guests voluntarily under FAQ 24, a portion of the answer has been removed and hence this tips are then not subject to service tax.

#### Deloitte's View

The treatment of the provision of free tickets or complimentary rooms is consistent with Subsection (9)(iii) of the Service Tax Regulations 2018 whereby the provision of free taxable services by a taxable person is subject to service tax.

### **Revised Guide on Domestic Flight (As At 9 September 2018)**

The FAQ section has been added to include a section regarding domestic flight tickets purchased prior to 1<sup>st</sup> September 2018 for flights departing on or after 1<sup>st</sup> September 2018. These domestic flight tickets are exempt from payment of Service Tax, as given by Minister under Section 34(3)(a) of the Service Tax Act 2018.

#### Deloitte's View

The amendment in the Guide with regards to the domestic flight tickets is consistent with the amendment in the Revised Guide on Transitional Rules (as at 5 September 2018).

### **Revised Guide on Information Technology Services (As At 9 September 2018)**

Item (i) and (ii) of Paragraph 14 of the Guide has been amended to provide further clarification on the provision of developing or providing the software/computer system to be subject to service tax.

The Guide has clarified that the installation of computer, hardware and server is not subject to service tax. Further guidance was provided through additional examples given as stated below:

- (i) The first example relates to the provision of hardware and software maintenance. Hardware maintenance is generally not subject to service tax. However, in the event that the business is unable to itemize the hardware and software maintenance (lump sum amount), the full lump sum amount is subject to service tax.
- (ii) The second example provide clarification on the buying and reselling of software licenses by a retailer or a distributor to be not subject to service tax.

### Deloitte's View

In relation to exported IT services, item (ii) under Paragraph 10 of the Guide states that the provision of exported IT services are not subject to service tax. However, the First Schedule of the Service Tax Regulations 2018 does not specifically exclude exported IT services and therefore would mean that all IT services provided in Malaysia or outside Malaysia will be subject to service tax.

### **Revised Guide on Insurance and Takaful (As At 19 September 2018)**

Paragraph 19 of the guide is amended to state that the provision of life insurance contract or family takaful certificate to cover any risks incurred to an individual (B2C) is not a taxable service and therefore is not subject to service tax. However, the provision of life insurance contract or family takaful certificate to cover any risks incurred to business (B2B) is taxable service and is subject to service tax.

### Deloitte's View

The amendment in the Guide with regards to the provision of B2B and B2C life insurance policies is consistent with the First Schedule of the Service Tax Regulations 2018.

### **Revised Guide on Professional Services (As At 9 September 2018)**

Independent/Non-Executive Directors (does not have a contract of service with the company) are taxable persons providing consultancy services, and will be liable to register and pay for service tax in the event that the threshold is met.

FAQ 18 further states that for directors employed in a company and holding a position in another company, the Director's Fees received under the employment of the company (i.e. has a contract of service) is not subject to service tax.

Stay tuned to this space as we keep you up to date with the developments of SST.

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