Service Tax on Digital Services ("SToDS")
17 April 2020
Senthuran Elalingam | Larry James Sta Maria
Agenda

• Current state and recap
• Legislative developments
• Post implementation - operational and technical
• Compliance – filing the first Return
• Final thoughts
Current state and recap
Current state

- The Law took effect on 1 January 2020, and approximately 200 foreign service providers have registered to date.

- To coincide with the introduction of these rules for foreign service providers, the scope of taxable services for local service providers was also expanded to cover digital services.

- The Law and practice is still developing and evolving. While concepts have been borrowed from other jurisdictions, the uniqueness of the Malaysian indirect tax system, coupled with some critical differences in approach to taxing digital services has meant comparisons to positions adopted elsewhere challenging.

- The authorities’ immediate approach has been to encourage compliance through education and information sharing. There has been, and continues to be significant engagement between the authorities, foreign service providers, and their advisor on technical and business issues.
Recap

Scope of Service Tax on Digital Services

- Tax to be charged and levied on any digital service provided by a foreign registered digital service provider to consumers in Malaysia.

Digital service

- any service delivered or subscribed over the Internet or other network which cannot be obtained without the use of information technology, and where delivery of the service is essentially automated

Foreign service provider (“FSP”)

- person who is outside Malaysia providing any digital service to a consumer.
- includes any person who is outside Malaysia operating an online platform for buying and selling goods or providing services; and
- makes transactions for the provision of digital services on behalf of any person

Consumer

A person who fulfills any two of the following:

a) makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia; or

b) acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia; or

c) resides in Malaysia – to assess based on billing address, home address, recipient’s country selection
Legislative developments

Expansion, exemptions and exclusions
Legislative developments
Expansion of scope of taxable services

Amendment of the First Schedule to the Service Tax Regulations, 2018

Group G: Professional services

a. Expansion of IT services: Item (h) – IT services expanded to include distributing or reselling of information technology services on behalf of any person

a. New taxable service: Item (l) – provision of electronic medium that allows the suppliers to provide supplies to customers

a. New taxable service: Item (m) – provision of digital services including transaction for provision of digital services on behalf of any person

Group I, Column 2

a. Expansion of telecommunication services: Item 2 – expanded to include provision of digital service.

b. Expansion of advertising services: Item 8 – expanded to include digital advertising services.
Legislative developments
Exemption for importation of digital service by local company

Service tax (persons exempted from payment of tax) Order 2018 (“Exemption Order”)

• Under Item 3 of the Exemption Order, where a Malaysian company acquires digital services from any foreign registered person (“FRP”) who charges service tax on digital service, the Malaysian company is exempted from self-accounting for service tax under the reverse charge

• The Malaysian service recipient company will pay service tax to the FRP as charged, no need to self-account for tax on imported service

• Conditions for the exemption to apply:
  a) The Malaysian recipient company must be required under the law to account for imported service tax; and
  b) The Malaysian recipient company holds a valid/compliant invoice or document issued in connection with digital services from FRP
Refund by offsetting method (Service Tax Policy 3/2020)

- A facility that will allow Malaysian recipient company who has paid service tax on an imported digital service to an FRP, to claim a refund of the service tax paid by way of an offsetting method

- Conditions to claim a refund:
  a) The Malaysian recipient company must be registered for service tax under the Service Tax Act 2018;
  b) The Malaysian recipient company provides the same digital service as the imported digital service;
  c) The imported digital service must be for the furtherance of his business and not for personal consumption; and
  d) Payment of service tax has been made to the FRP
Legislative developments
Example: Sale and distribution of software

- **Foreign Service Provider**
  - SToDS 6%

- **Malaysian Distributor/Reseller**
  - Pay FSP 6%
  - RC Exemption
  - Refund Offset
  - Service Tax 6%

- **End-User**
(i) **Online distance learning services (Service Tax Policy 4/2020)**

- Online distance learning services by Foreign Service Provider, are excluded for service tax are:
  - Preschool education;
  - Primary and secondary school education; or
  - Tertiary education including vocational education and professional trainings.

  **Condition:** Must be “recognised” by the relevant authority in the FSP’s country
(ii) Online newspaper, online journals, and periodicals (Service Tax Policy 5/2020)

- Online newspaper, online journals, and periodicals which are digital services including the services provided by local service providers are prescribed as being excluded for the imposition of service tax effective 1 January 2020.

- The online publications that are excluded for service tax are:
  
  a) eNewspaper including printed digital version of newspaper
      
      — Publications of matters at regular interval, each issue being dated and also frequently being numbered mainly of current news of general interest, together usually with literary articles on subjects of current, historical, biographical, etc.

  b) Online educational, technical, scientific, historical or cultural journals and periodicals including printed digital version of journals and periodicals
      
      — Online journals and periodicals refer to publications issued weekly, fortnightly, monthly, quarterly or half-yearly.
Legislative developments
Intra-Group relief for service tax

**Service tax relief for services provided between companies in a Group**

- Digital services are NOT eligible for service tax relief tax for services provided between companies in a Group

- Registered Foreign Service Providers will still need to charge SToDS to Malaysian Group companies
Post implementation – operational and technical
Engagement with the authorities

- Customs continues to be open for business even during the restricted movement period. The approach to foreign service providers has been one of open dialogue and discussion, and acknowledgment that the authorities themselves are developing their understanding.

- A number of practical concessions have been made for foreign service providers as a means to facilitate engagement with authorities including providing electronic channels for submissions and responses (i.e. email) and providing written responses in English as opposed to the National Language.

- Decisions and responses received thus far show that Customs are taking a practical approach to applying and interpreting the rules. Importantly, the authorities have been receptive and open to arguments and positions put forward on services that would fall outside of the scope of the tax, and in a number of cases have provided decisions supporting the view put forward.

- Customs have also acknowledged and understood the operational and business challenges faced by foreign service provider in implementing some of the administrative requirements. The authorities have been open to relaxing some of these requirements on a case by case basis.

- In line with the approach of education and encouraging voluntary compliance, Customs have also taken a more relaxed approach to the imposition of late registration penalties.
Post implementation

OPERATIONAL ISSUES

- Waiver of prescribed invoice details
- Invoice conditions
- Payment / Invoice basis of accounting
- Relaxation of Reporting Requirements
- Customer and stakeholder management
Post implementation

- Financial Services and related services
- Software and IT
- Shared services/Regional HQ
- Broadcasting, television and movies
- Automation and minimal human intervention
Compliance – filing the first Return
Compliance

**RMCD released on 30 March 2020:**

- Guide on: Digital Services By Foreign Service Provider (FSP)
- Guideline on:
  - Application for registration as foreign registered person
  - Furnishing DST-02 return of service tax on digital services
  - Payment of service tax on digital services

- **MYSToDS Portal** for service tax on digital services compliance operational on 1 April 2020

- **Reporting currency**
  - Three options for reporting in MYR:
    i. Convert on a daily basis using a daily conversion rate
    ii. Convert at the end of each taxable period
    iii. Convert at the time of furnishing the DST-02 return
  - Selected approach to be consistently applied going forward
Compliance

- **Payment of tax**
  - Two payment methods available:
    i. Telegraphic Transfer (TT)
    ii. Financial Process Exchange (FPX) – available from 1 July 2020 only and will require the FRP to have a bank account in Malaysia
  - FRP will receive an individually addressed letter by email with the bank account details for payment
  - Tax is deemed paid when payment is received - credited into the RMCD’s account

- **Amendment to the return**
  - Amendments to the return:
    i. Before submission of the return - no limitation
    ii. After submission of the return:
      - If additional tax payable, the tax must be paid; or
      - If reduction of tax payable, RMCD verification required - Up to 3x amendments only
Lodgement of service tax return (cont’d)

Step 1: Log In

[Image of login page for Mystods Customs.my/stods/login]

Sign in

Foreign Registered Person

REGISTRATION NO
FRP’s Service Tax ID

PASSWORD

BUSINESS EMAIL ADDRESS
Email used to submit the DST-01 registration

Forgot Password?

New Registration

Sign in

Announcements

No Announcements
Lodgement of service tax return (cont’d)

Step 2: On the dash board on the left, click on “Return” then click on “DST-02”
Lodgement of service tax return (cont’d)

Step 3: The type of digital services the FRP has registered for will be listed. Simply click on the purple “Edit” button to insert the value of digital services. The amount of tax, service tax payable, and currency are all auto populated with no option to amend.

### Service Details

**Details of Digital Services.**

<table>
<thead>
<tr>
<th>NO</th>
<th>TYPE OF DIGITAL SERVICES</th>
<th>VALUE OF DIGITAL SERVICES (MYR)</th>
<th>AMOUNT OF TAX (MYR)</th>
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<tr>
<td>1</td>
<td>PROVISION OF CLOUD COMPUTING CRM SERVICES</td>
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<td>0.00</td>
</tr>
</tbody>
</table>

Showing 1 to 1 of 1 entries

**Total Amount of Service Tax Payable**

- **6%**
- MYR 0.00

**Currency**

- MYR
Final thoughts
Final thoughts

• The Law will continue to evolve and develop as the authorities engage with more service providers

• Although no time frame is given, the authorities are likely to shift from education to audit in the short term, and so there is a limited opportunity to get comfortable on positions taken

• Customer engagement is also critical on commercial transactions due to the potential unrecoverable cost. Knowledge of the available concessions and exemptions for local service recipients can assist in managing such discussions
## Deloitte Contacts

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