Indirect Tax Alert
Abolition of the Malaysian GST – How does it impact you?

Background

10 May 2018 represented a truly significant landmark in the history of Malaysia, as the general elections resulted in a change in the Federal Government for the first time. Pakatan Harapan, the coalition forming the new Government, had run the election on a comprehensive reform agenda which included, as a cornerstone policy, the abolition of the unpopular goods and services tax, to be replaced with a Sales and Services tax (SST) regime.

In this alert, we cover our reaction and thoughts to the proposed abolition and importantly what you need to be focusing on now.

Will there be an abolition of GST?

Whilst we can debate the merits of the GST system which had not only broadened the scope of the tax system and brought in revenues of RM44 billion (USD7 billion), it has to be also acknowledged that it was largely unpopular amongst the public and was often seen as the cause or a key contributing factor to the rising cost of living. Since winning the election, key representatives from the new Government including the new Prime Minister (Tun Dr Mahathir Mohamad) and the nominated Finance Minister (Mr Lim Guan Eng) have made public statements confirming their intention to abolish GST, as promised.

In considering the communications coming out from the Government as well as the overall public sentiment, we are of the view that the abolition of GST will take place.

When is it likely to happen?

The election manifesto of the new Government had proposed to implement these reforms, i.e., abolish GST and replace it with SST, **within 100 days** of coming into power.

It is unclear at this stage as to whether 100 days is still the intended time-frame, and the Ministry of Finance has confirmed on 14 May 2018 that no date has been set yet. In the interim, it is business as usual and businesses "must follow the current law and continue imposing GST as required".

From a purely legislative and tax administration perspective, it would be a daunting challenge for the Government to pass legislation and ready tax administrative machinery and processes, let alone undertake appropriate consultation, within the intended short time-frame. From a business perspective, there could certainly be challenges of inadequate time to change processes.

Due to the urgency, it is possible that the Government may simply re-enact the consumption tax (i.e., sales tax and service tax) legislation that existed previously with no amendment, which would shorten the process on their side. However, we expect that businesses may request a time-frame for implementation, for example, 6 months to make adjustments to business processes and systems.

What is SST and how does it differ from GST?

Prior to GST, there existed two separate taxes, a sales tax and a service tax that commenced in the 1970s and were subsequently replaced by the GST in 2015. There was no single, uniform SST prior to GST although this was proposed in the 1990s. If SST is a mere re-enactment of sales tax and service tax, it should be noted that, sales tax applied on the importation and the manufacture of prescribed taxable goods by prescribed taxable persons, and a rate of 10% generally applied on taxable goods (with exceptions of 5% and 15% for certain taxable goods). Service tax applied on prescribed taxable services made by prescribed taxable persons and a rate of 6% applied generally (with the exception of specific rates for the prescribed taxable service of providing credit/charge cards). Both the sales tax and service tax have specific exemptions and exclusions.

Aside from the difference in rates (GST is currently 6% and 0%), some of the notable differences that existed between the previous tax regimes and the current GST are:

- The absence of an input credit regime in the sales tax and service tax: the taxes are essentially single-stage taxes with no ability to recover any tax paid along the supply chain;

- The tax points differ for sales tax (administratively on invoice basis only) and service tax (on payment basis only);

- Bad Debt Relief was only available upon application and not via the returns filed to Customs for every taxable period;

- Whilst "exported taxable services" were generally not subject to service tax (legislated via exclusions from the scope of prescribed taxable service), the definition is not entirely the same as that under GST zero-rating;

- Reverse Charge rules did not exist and there was no tax applicable on imported services (B2B or B2C);

- Electronic filing was not available.

It is unclear at this stage whether the new SST model will adopt some of the above aspects of GST, but we are hopeful that the previous model could be enhanced to limit the cost impact to business.

What should I be doing now?

Although we are in a period of uncertainty regarding the potential model that would be implemented and the time-frame for that implementation, it is also possible that we may not be given a lot of time to get ready, especially if the Government sticks to its original 100-day plan for the tax reforms.

We feel it is important to prioritise the following critical steps and actions:

- Engagement with trade bodies and associations

    - Now is the time to engage with the Government and make recommendations on changes to the SST model as well as agree on time-frames for implementation

- Based on the earlier sales tax and service tax laws, identify the particular products and service offerings that are potentially taxable and not taxable, and the implications, as follows:

    - The identification of taxable and non-taxable goods and services should be undertaken not only from a classification perspective but also from a pricing perspective.

  - There is an expectation amongst the public that the removal of the GST would result in a reduction on the price of goods and services.

  - We anticipate that the existing anti-profiteering rules could be tweaked to ensure that there is appropriate enforcement and analysis of any price adjustments.

  - As such, any potential pricing decisions need to be appropriately documented to reflect the reasons the price has either increased or remained the same.

  - In undertaking this analysis, businesses should also factor in that business costs that fall under the scope of taxable goods and services would also increase business cost as the tax would not be creditable.

- Transactions that span the introduction

  - Whilst there are no formal transitional provisions or proposals available as yet, we can be guided by the transitional provisions that are in the GST Act that addressed the transition from sales tax and service tax to GST

  - Draft wording should be prepared for insertion into standard contracts to reflect the transition from GST to SST

  - Contracts that have already priced in GST should be identified so that they can be later renegotiated

  - Long-term contracts that had previously qualified for zero-rating under the transitional rules should be identified and assessed whether sales tax or service tax could apply

  - Processes to be put in place for valuations of “stock on hand” and WIP as at the implementation date

- Close-out of GST issues

  - Reviewing of GST Return trends to assess whether final returns are likely to be in a payable or refund position

  - Calculation of potential adjustments upon GST de-registration for stock on hand and other assets

- Prioritising close-out of GST issues, e.g., clarifications, notifications, outstanding refunds etc.
- Review of historical GST position in anticipation of a final audit

How can Deloitte help?

Deloitte has considerable experience in advising on the prior sales tax and service tax regimes, with expertise from three experienced Directors (one who was formerly from the Royal Malaysian Customs Department) and a Partner. Together, we have a cumulative experience of over 90 years.

In helping you manage the transition, we have formed a specific 'SST transition team' to specifically focus on this issue. This team will be working with our existing GST industry sector teams to formulate plans on an industry-by-industry basis so that we can best tailor our approach to your needs. As we saw with the implementation of GST, no implementation is the same and we expect the de-implementation to be likewise.

If you would like to know more, please feel free to reach out to any of your contacts below or your usual Deloitte GST contact.

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