



**Malaysia Sales and Service Tax (SST)
update seminar**

Balancing today's demands with tomorrow's
opportunities

24 August 2018

Agenda

SST—What we know today

Sales Tax

Service Tax

SST transition strategy

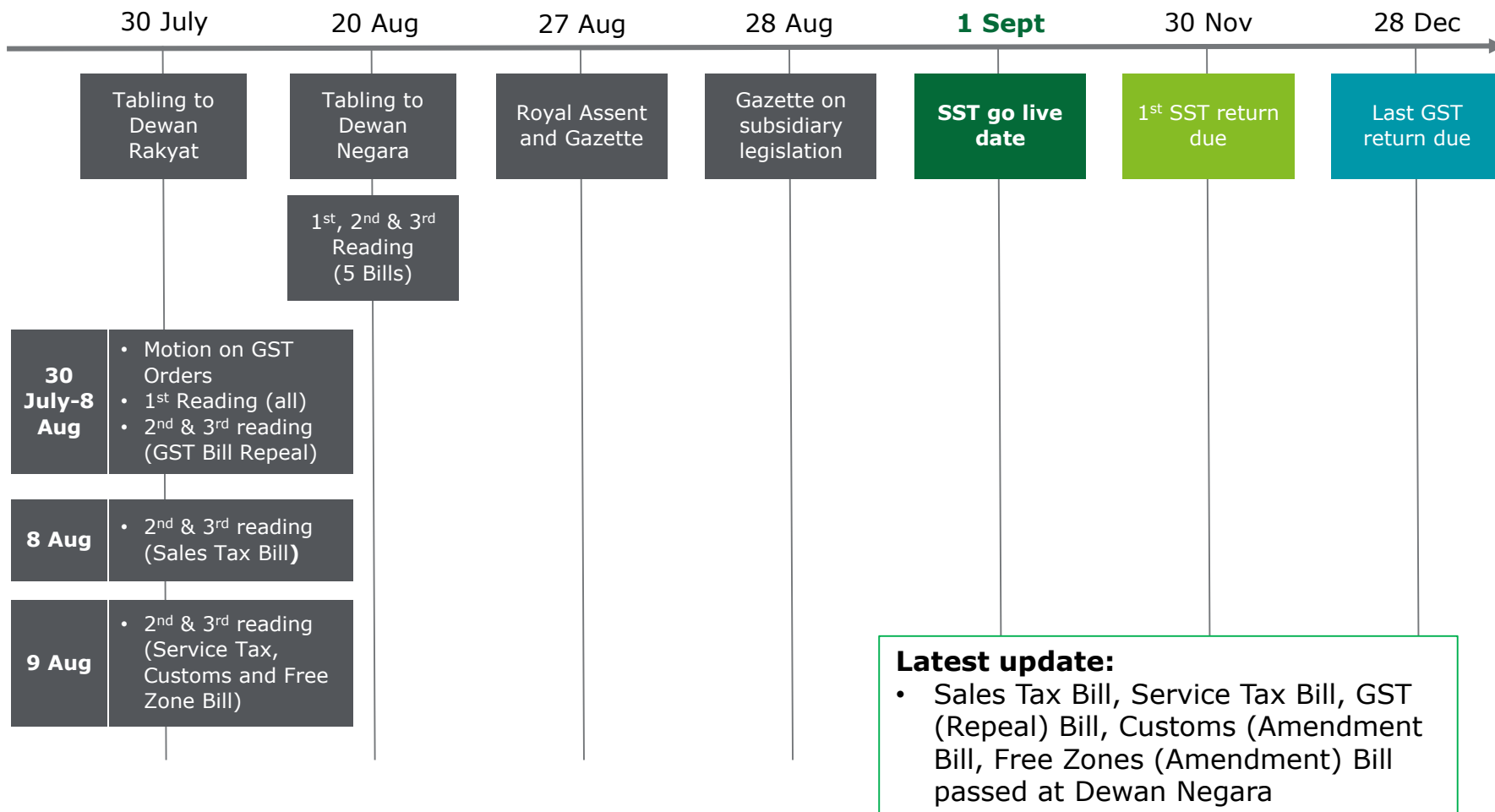
Repeal of GST

Q&A



SST—What we know today

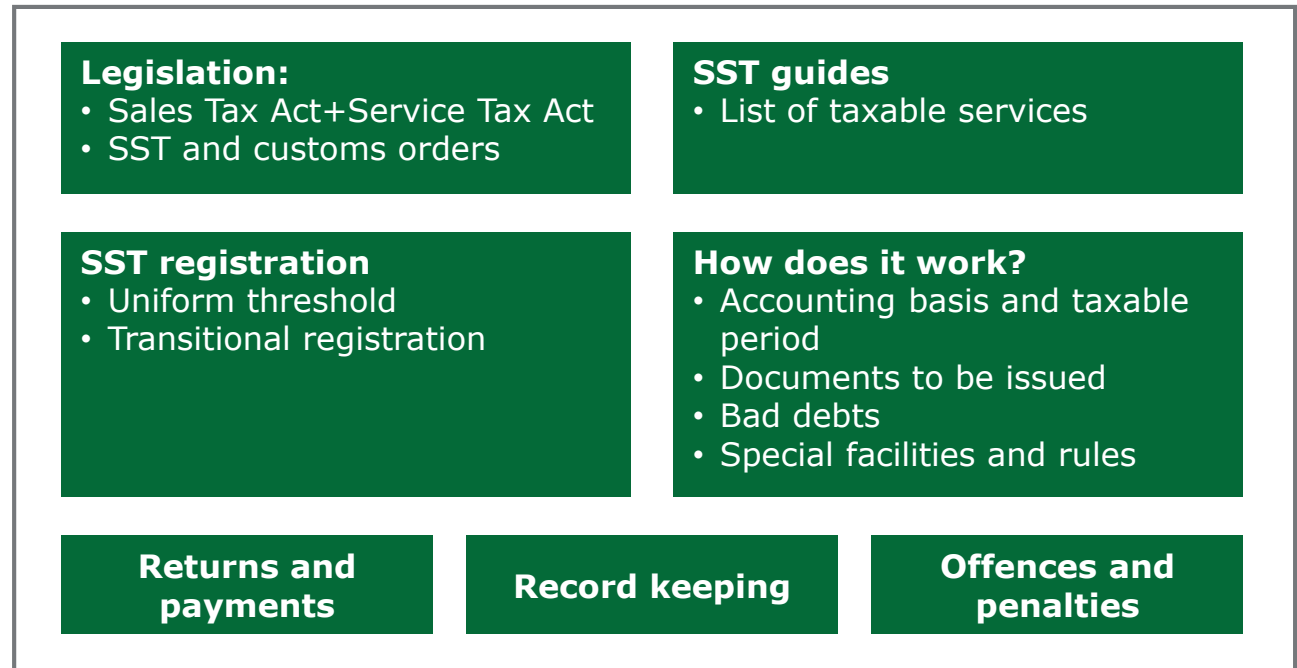
Expected SST implementation time frame



What we know now

What we have:

- SST framework
- SST bills
- SST regulations
- Certain industry guides



Last glance

GST vs SST

GST

- GST is taxed at every stage of the supply chain
- GST consists of standard-rated supply, zero-rated supply and exempt supply
- Input tax credit can generally be claimed on inputs

SST

- Single tax at the point of manufacture/importation/service provided
- Several rates apply—10%, 6%, 5% or a specific rate
- Only raw material/components may be exempted from SST

Sales Tax

Proposed Sales Tax legislations

Proposed Sales Tax Legislations

- | | |
|--------------------|---|
| Act | <ul style="list-style-type: none">• Sales Tax Act 2018 |
| Regulations | <ul style="list-style-type: none">• Sales Tax Regulations 2018• Sales Tax (Customs Ruling) Regulations 2018• Sales Tax (Rules of Valuation) Regulations 2018• Sales Tax (Compounding of Offences) Regulations 2018 |
| Orders | <ul style="list-style-type: none">• Sales Tax (Amount of Sale Value of Taxable Goods Manufactured) Order 2018• Sales Tax (Rate of Tax) 2018• Sales Tax (Goods Exempted from Sales Tax) Order 2018• Sales Tax (Person Exempted from Sales Tax) Order 2018• Sales Tax (Exemption from Registration) Order 2018• Sales Tax (Imposition of Tax In Respect of Designated Areas) Order 2018• Sales Tax (Imposition of Tax In Respect of Special Areas) Order 2018• Sales Tax (Appointment of Date of Coming Into Operation) Order 2018 |
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Scope of tax and rate

Scope of tax

- Tax imposed on **taxable goods manufactured** in Malaysia* unless specifically exempted;
- Tax imposed on goods to be sold, used or disposed by taxable person; or
- Tax imposed on goods **imported** into Malaysia* by any person.
 - Designated Area and Special Area **deemed** outside Malaysia. Special treatment under relevant Order.
 - Designated Area refers to Labuan, Langkawi and Tioman.
 - Special Area refers to Free Zone, LMW, Licensed Warehouse and Joint Development Area.
 - “Goods” means all kinds of movable property
 - any importation of taxable goods into Malaysia shall be levied and payable as if it were a customs duty or an excise duty and as if the imported taxable goods are dutiable and liable to customs duty or excise duty.

Rate of tax

- 5% or 10%
- Special rate for petroleum.

Definition of “Manufacture” and “Petroleum”

- **Manufacture** is defined as:
 - A **conversion of materials by manual or mechanical** means **into a new product** by changing the size, shape, composition, nature or quality of such materials; and
 - Includes the assembly of parts into a piece of machinery or other products.
 - However, manufacture does not include the installation of machinery or equipment for the purposes of construction.
- **Petroleum** is any process of separation, purification, conversion, refining and blending.

How does it work?

Sales tax @ 10%

Price: RM10.00
Sales Tax: RM1.00

Manufacturer

**Tax remitted to
Customs**

Sales Tax=**RM1.00**

Price: RM50.00
Sales Tax: RM0.00

Distributor

Retailer

End Consumer

Total amount remitted
to Customs=RM1.00

Proposed Sales Tax exemption list

- Agriculture products—Rice and fresh vegetables
- Foodstuff—Rice, sugar, table salt, plain flour, cooking oil
- Livestock supplies—Live animals, meat of cattle, buffaloes, goat, sheep and swine (fresh or frozen)
- Poultry—Live and unprocessed meat of chicken and duck
- Egg (fresh and salted) and fish
- Treated water and ice
- Certain household machineries such as dryers and washing machine
- Certain ores such as nickel, cobalt, tungsten, zinc and tin
- Certain medicines and medical paraphernalia.

Please note that these exemptions are based on HS/Tariff Codes, if the items does not have the specific HS/Tariff Code as indicated, the exemption does not apply.

Sales tax value

1. If taxable goods:
 - Sold by a taxable person; or
 - Manufactured by a taxable person; and
 - i. Used otherwise than as materials in the manufacture of the taxable goods; or
 - ii. Disposed of otherwise than by sale.
2. If the taxable goods are imported into Malaysia, the sale value of the taxable goods shall be the sum of the following amounts:
 - The value taxable goods for the purpose of customs duty as determined in accordance with the Customs Act 1967;
 - The amount of customs duty, if any; and
 - The amount of excise duty, if any.
3. Where any registered manufacturer receives taxable goods from any person to be manufactured and subsequently return the goods so manufactured to such person, the sale value of the goods so manufactured shall, subject to approval of the Director General, be the amount that the manufacturer charges for work performed by him.

Sales Tax registration

Sales Tax threshold

Type of registration	Conditions
Mandatory <ol style="list-style-type: none">1. Manufacturers of taxable goods—value of taxable goods sold has exceeded RM500,000 for a 12 month period;2. Manufacturers who carry out sub-contract work on taxable goods—value of work performed exceeds RM500,000 for a 12 month period	<ul style="list-style-type: none">• Historical method—the total value of taxable supplies in that month and 11 months immediately preceding the month• Future method—the total value of taxable supplies in that month and the 11 months immediately succeeding the month• Apply for registration in the month following the month liable to be registered• Registration commence on first day of the month following the month the application is made
Voluntary	DG to determine
Branch registration	Not allowed

Transitional: Registration before 1 Sept 2018

- Apply within 30 days from the day the Sales Tax Act come into force
- **GST registered businesses** will be notified of automatic registration
 - Deemed to be registered on 1 Sept 2018
 - To charge sales tax from 1 Sept 2018

What if GST Registered businesses notified but NOT subject to sales tax?

- **Cancellation** of registration?

Documentation and record keeping

Documentation

- | | |
|--|--|
| What documents do we need to issue? | <ul style="list-style-type: none">• Invoice for registered manufacturer provided (mandatory)<ul style="list-style-type: none">– Details on the required particulars of an invoice would be stated in the Sales Tax Regulations• Credit/debit note |
| Is there a format for these documents? | <ul style="list-style-type: none">• Hardcopy/electronic• Contains the prescribed particulars• Bahasa Malaysia/English |
| What do I do when I issue a credit/debit note? | <ul style="list-style-type: none">• Make an adjustment in his return |
-

Record keeping requirements:

- Documents are to be kept for 7 years;
- Records can be kept in both Bahasa Malaysia or English;
- Documents to be kept in Malaysia unless specifically permitted; and
- Documents can be kept in soft or hard copy.

Invoice—Regulation 7 of the *proposed* Sales Tax Regulation 2018

- The invoice serial number;
- The date of invoice;
- The name, address and identification number of the registered manufacturer;
- The name and address of the person to whom the taxable goods is sold;
- Description and quantity of the goods;
- Any discounts offered;
- For each description, distinguish the goods, quantity and amount payable excluding tax;
- The total amount payable excluding tax, rate of tax, and total tax chargeable must be shown as separate or the total amount to be paid including the total tax to be charged; and
- Any amount expressed in a currency other than Malaysian Ringgit must be expressed in Ringgit at the selling rate of exchange prevailing in Malaysia at the time of sale.

Please note that according to Customs, as the relevant legislation has yet to be in place, the information above serves as a draft and will be reconfirmed upon the release of the relevant legislation.

Credit/debit note—Regulation 8 of the *proposed* Sales Tax Regulation 2018

- The words “credit note” or “debit note” in a prominent place;
- The serial number and date of issue;
- The name, address and identification number of the registered manufacturer;
- The name and address of the person to whom the taxable goods is sold;
- The reason of issuance;
- A description, quantity and amount of taxable goods for which the credit note or debit note is given;
- The total amount excluding tax;
- The rate and amount of tax; and
- The number and date of the original invoice.

Please note that according to Customs, as the relevant legislation has yet to be in place, the information above serves as a draft and will be reconfirmed upon the release of the relevant legislation.

When is it due?

Taxable period

- Bimonthly (every 2 months); or
- Specific basis (subject to approval).

Accounting basis

- Sales tax is to be accounted for when goods are sold, disposed of otherwise than by sale or first used otherwise than as materials in manufacturing.
- Section 21—The registered person must issue an invoice and shall be collected by the registered manufacturer from the purchaser **in addition to the price** and any other amount due and payable by the purchaser in respect of the taxable goods.

But, does not specify **when** the invoice should be issued.

Returns and payment

Sales Tax returns

- To be submitted and pay no later than the last day of the following month after the end of the taxable period
- To be submitted regardless whether there tax is to be paid or not
- To be submitted electronically or by post

Payment in respect of Sales Tax return

- Payment to be made electronically or by cheque, bank draft (to be posted to SST Processing Centre).

Other matters

Claiming bad debt relief

- Claimed by a registered manufacturer or a person who has ceased to be registered manufacturer
- Within 6 years from the date the sales tax is paid
- Subject to conditions and discretion of the Director General of Customs (DG)

Recovery of bad debt

- Registered person has claimed and received bad debt relief from RMCD
- Payment was recovered by debtor
- Registered person to repay DG for the sales tax recovered
- Repayment is in accordance to the prescribed formula

Special facilities

- Exemption from Sales Tax:
 - Goods: Live animals, unprocessed goods, vegetables, medicines, machinery
 - Persons: Rulers of states, local authority, registered manufacturers, etc
- Exemption from registration:
 - Manufacturing activities such as tailoring, engraving, varnishing table top, etc

Sales Tax Exemptions and Facilities

Exemption from Sales Tax:

- Goods exempted are governed by the Proposed Sales Tax (Goods Exempted from Sales Tax) Order 2018 and include live animals, unprocessed food, vegetables and machinery.

PROPOSED GOODS EXEMPTED FROM SALES TAX

15.11		Palm oil and its fractions, whether or not refined, but not chemically modified.
	1511.10.00 00	- Crude oil
	1511.90	- Other:
	1511.90.20 00	- - Refined oil
		- - Fractions of refined oil:
		- - - Solid fractions:
	1511.90.31 00	- - - - With iodine value 30 or more, but less than 40
	1511.90.32 00	- - - - Other
		- - - Liquid fractions:
	1511.90.36 00	- - - - In packing of a net weight not exceeding 25 kg
	1511.90.37 00	- - - - Other, with iodine value 55 or more but less than 60
	1511.90.39 00	- - - - Other
		- - Fractions of unrefined oil:
	1511.90.41 00	- - - Solid fractions

Sales Tax Exemptions and Facilities

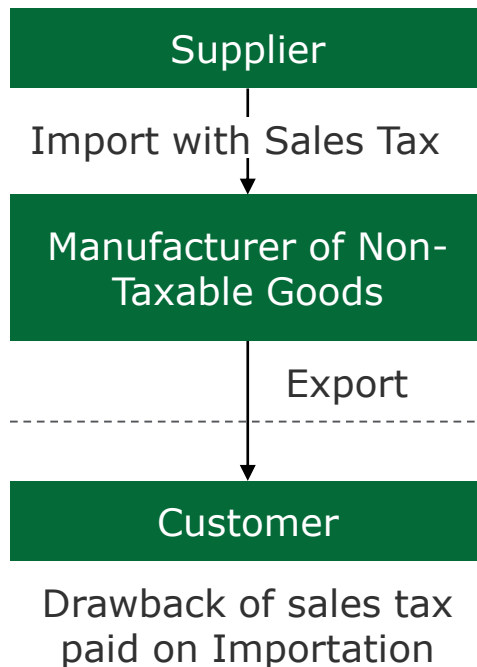
Exemption from Sales Tax: (cont.)

- Persons exempted are governed by the Proposed Sales Tax (Persons Exempted from Sales Tax) Order 2018 as follows:
 - Schedule A: Class of person, e.g., Ruler of state, duty free shop, local authority.
 - Schedule B: Manufacturer of specific non-taxable goods—Exemption on tax on the acquisition of raw materials, components and packaging to be used in manufacturing activities.
 - Schedule C: Registered manufacturer—Exemption of tax on the acquisition of raw materials, components and packaging to be used in manufacturing of taxable goods. The sales exemption facilities are to be applied for electronically via the SST website.

Drawback

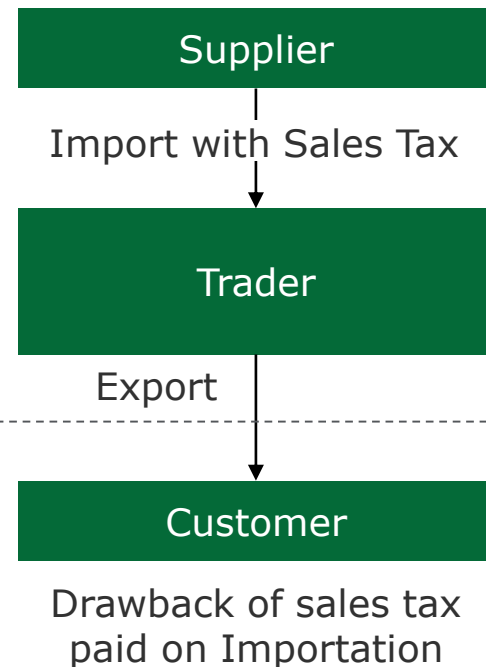
- The Director General may allow drawback of the full amount of Sales Tax paid by **a person** in respect of taxable goods which are subsequently exported by the person from Malaysia.
- Drawback facility is no longer available for petroleum products.
- The requirements would be established within the Sales Tax Regulations.

Example 1



Overseas

Example 2



Special rules

Treatment in Designated Area (DA)

Designated Area (deemed outside Malaysia)	Labuan, Langkawi and Tioman
Manufacturing activities in DA	Proposed Sales Tax does not apply to DA except for petroleum
Importation into DA (world to DA)	Exemption from Sales Tax except: <ul style="list-style-type: none"> • Langkawi: Importation of marble, petroleum and anchovies • Tioman: Importation of petroleum and motor vehicles • Labuan: Importation of petroleum
Removal of goods	<ul style="list-style-type: none"> • From Principal Customs Area (PCA) to DA—Deemed export and no sales tax • From DA to PCA—Deemed import, subject to sales tax • To/from DA to DA—No sales tax • To/from DA to Special Area (SA)—No sales tax
Goods still chargeable to tax [Proposed Sales Tax (Imposition of Tax in Respect of Designated Area) Order 2018]	<ul style="list-style-type: none"> • Importation of wine, spirit, beer, malt liquor, tobacco and tobacco products, marble and anchovies into Langkawi; and • Importation of motor vehicle into Tioman.

Special rules

Treatment in Special Area (SA)

Special Area (deemed outside Malaysia)	Free Zone, Licensed Warehouse, Licensed Manufacturing Warehouse and Joint Development Area (JDA)
Manufacturing activities in SA	Proposed Sales Tax does not apply to SA
Importation into SA (world to SA)	Generally not subject to Sales Tax except for goods in the free zone as governed by the Proposed Special Area Order
Removal of Goods	<ul style="list-style-type: none">• From PCA to SA—Deemed export and no sales tax• From SA to PCA—Deemed import, subject to sales tax• To/from SA to SA—No sales tax• To/from SA to DA—No sales tax
Goods still subject to tax [Proposed Sales Tax (Imposition of Tax in Respect of Special Area) Order 2018]	<ul style="list-style-type: none">• Imported good specified in Schedule A to be used/consumed in the Free Zone under Section 2 of the Free Zone Act 1990; or• Importation of wine, spirit, beer, malt liquor, tobacco and tobacco products into Tasik Kenyir Duty Free Area.

Special rules

Treatment in Special Area (SA) (cont.)

Schedule A as per the *Proposed* Sales Tax (Imposition of Tax in Respect of Special Area) Order 2018

SCHEDULE A

1. Forklifts
 - 1A. Crane
2. Office equipment or furniture
3. Firefighting and pollution control equipment
4. Motor vehicles and spare parts
5. Petroleum and petroleum products
6. Tyres
7. Explosives and chemicals
8. Air conditioning equipment
9. Manufacturing aids
10. All goods which are not used directly in the activities approved under the First and Second Schedules of the Free Zone Act 1990.

Transitional matters

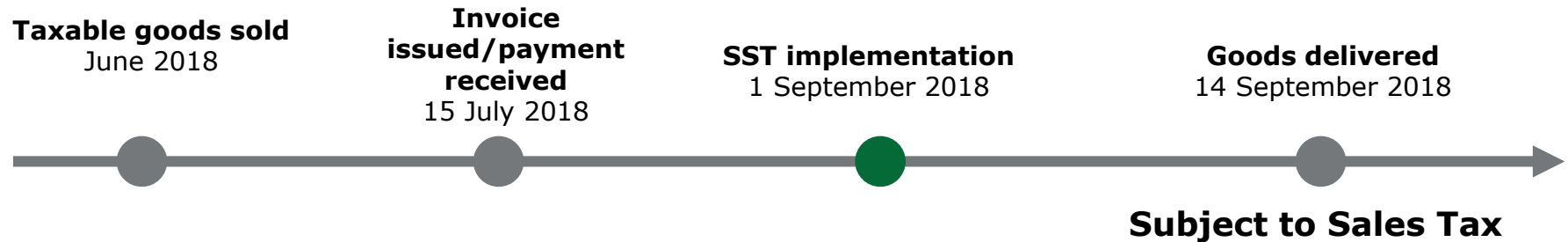
Clause 11(2)(b) of the Sales Tax Bill 2018

- Any sales by a taxable person, invoice and payment received, within the period of 1 June 2018 to 31 August 2018 is deemed as taking place on the date the taxable goods is delivered, the Sales Tax is also treated as due on the date the taxable goods is delivered.
 - which seems to be assumed to be on or after 1 September 2018

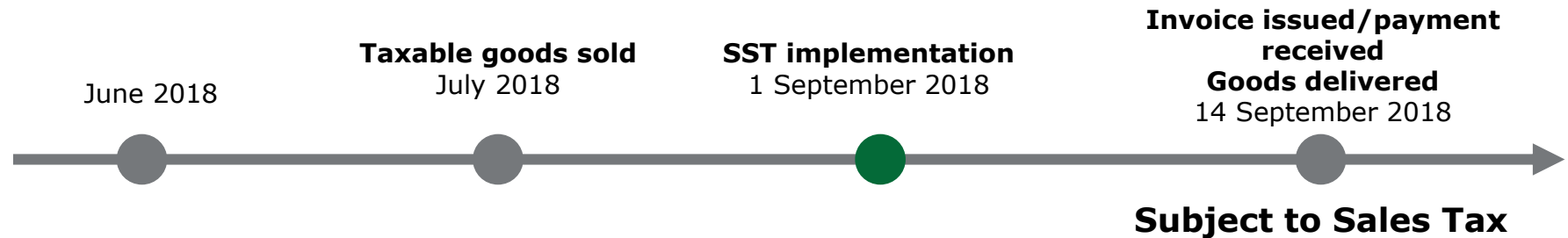
Transitional matters

Clause 11(2)(b) of the Sales Tax Bill 2018

Example 1:



Example 2:

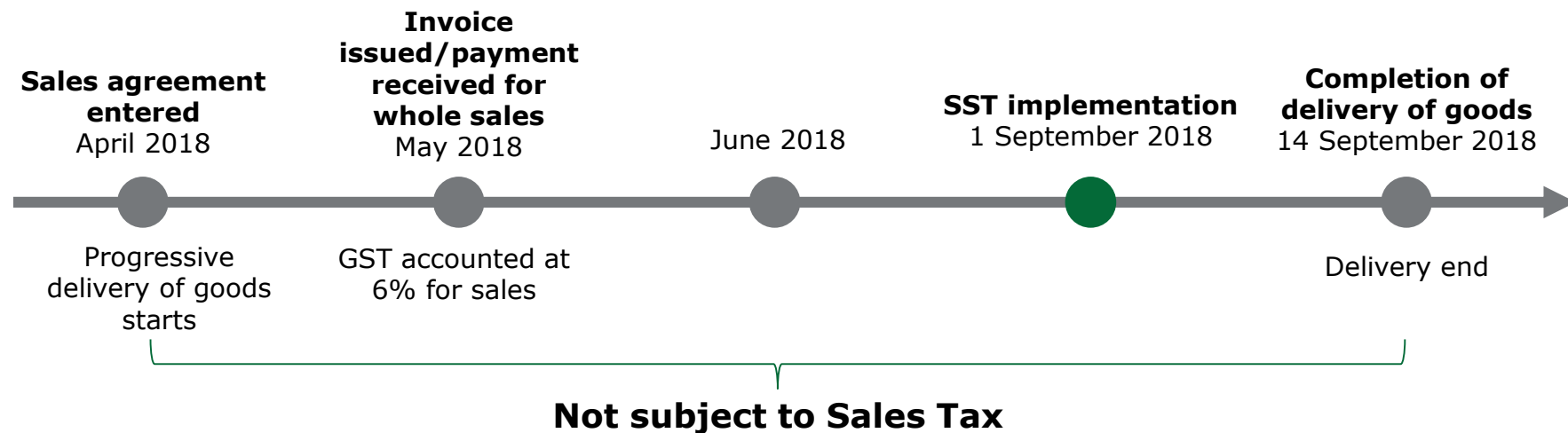


Transitional matters

Clause 108 of the Sales Tax Bill 2018

- Clause 108 is for taxable goods delivered under an agreement for a period or progressively over a period commencing before 1 June 2018 and ending on or after the effective date, i.e., 1 September 2018.
- Under this clause, the proportion of the sale attributed to the period post-1 September 2018 would be subject to Sales Tax, except where GST has already been paid on the goods.

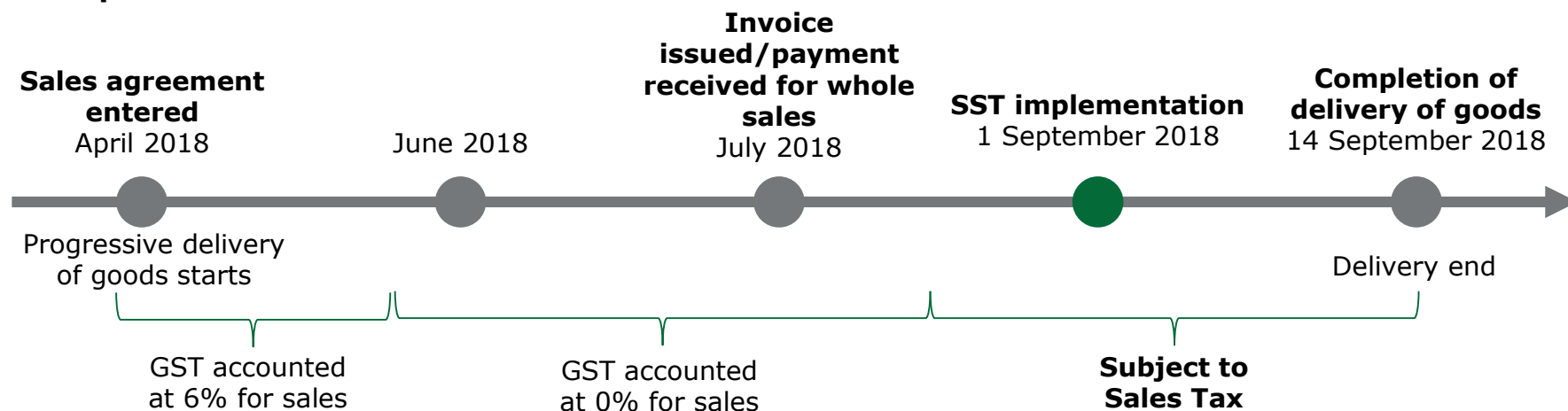
Example 1:



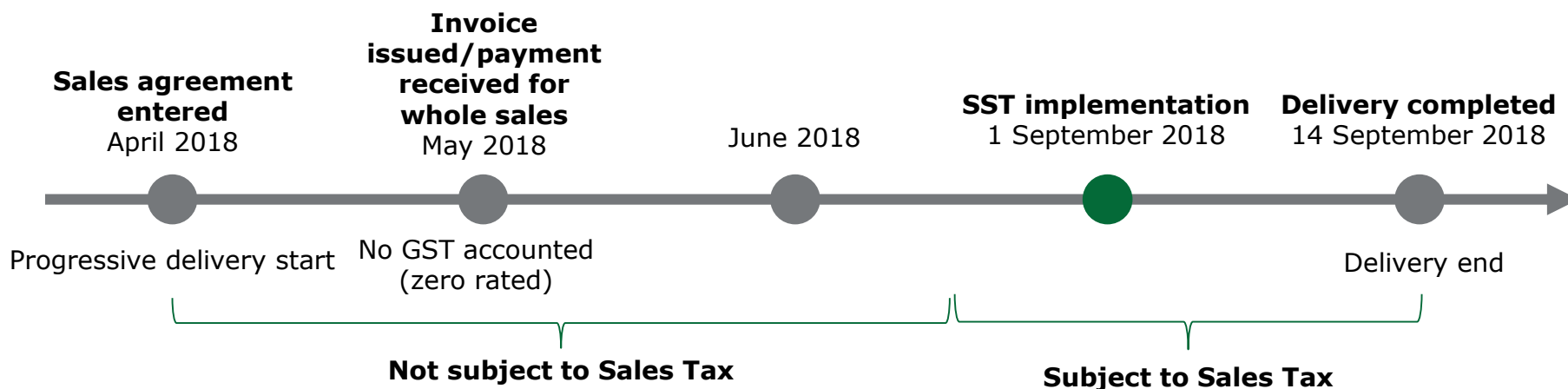
Transitional matters

Clause 108 of the Sales Tax Bill 2018 (cont.)

Example 2:



Example 3:



Rulings

Public ruling

- The DG may produce a public ruling on the application of any provision of the Act in relation to any persons, or any type of business activities
- Where a public ruling applies to any person in relation to a business activity and a particular person, the DG shall apply the provision in relation to the person (binding)

Customs rulings

- Any person may apply to the DG for:
 - The determination of a taxable person
 - The determination of a taxable service
 - The principles to be adopted for the purposes of determination of value of taxable service
 - Any other matters determined by the DG
- The ruling made by the DG on the above matters would be binding to the applicant

Offences and penalties

- **Offences**

- Evasion of tax—intent to evade or assist to evade
 - First offence=10-20 times the amount of service tax due
 - Second offence onwards=20-40 times the amount of sales tax due
- Giving incorrect information relating to liability to tax
- Improperly obtaining refund

- **General penalty**—RM30,000 per offence

- **Late payment penalty**

- Late payment penalty on the outstanding amount:
 - 10%—first 30 days period;
 - 15%—second 30 days period;
 - 15%—third 30 days period;
 - Maximum penalty of 40% after 90 days.

Potential issues of the proposed Sales Tax

- Potential cascading effect of sales tax, i.e., tax on tax
- Limited scope of sales tax exemption—Limited to raw material, component and packaging
- Need to identify if goods sold are considered taxable—This may lead to classification disputes
- Valuation disputes
- Additional compliance requirements for sales tax exemptions
- Application for exemption via Schedule C can be tedious compared to GST although application can be done electronically
- The Bill is unclear on circumstances when:
 - Sales commences prior to June 2018 for non-progressive/non-periodic goods transactions which may be delivered 1 September 2018 onwards
 - Sales transactions under progressive/periodic agreements commence on/after June 2018 which ends or after 1 September 2018

Service Tax

Proposed Service Tax legislations

Proposed Service Tax legislations

Act	<ul style="list-style-type: none">• Service Tax Act 2018
Regulations	<ul style="list-style-type: none">• Service Tax Regulations 2018• Service Tax (Customs Ruling) Regulations 2018• Service Tax (Compounding of Offences) Regulations 2018
Orders	<ul style="list-style-type: none">• Service Tax (Amount of Value of Taxable Service) Order 2018• Service Tax (Rate of Tax) Order 2018• Service Tax (Appointment of Date of Coming Into Operation) Order 2018

Scope of tax and rates

Scope of tax

- Tax imposed on **any taxable services** (i.e., if not a taxable service, no tax to be imposed);
- Taxable services made in **carrying on his business**;
- Services are made by a **taxable person**; and
- Taxable services were provided **in Malaysia** (i.e., no tax imposed on imported and exported services).

Rate of tax

- 6%
- RM25.00 upon issuance of principal or supplementary card and every subsequent year or part thereof.

First schedule of the *proposed* Service Tax regulations 2018

Group A: Accommodation

- Total value of taxable service—RM500,000

1. Person

Any person operating accommodation including hotel, inns, lodging house, service apartment, homestay and other similar establishment

2. Taxable service

Provision of all services and provision or sale of food, drinks and tobacco products

Group B: Food and beverage

- Total value of taxable supplies—RM1,000,000

1. Person

- Any person restaurant, bar, snack-bar, canteen, coffee house or any place which provides food and drinks, whether wholly or partly eat-in or take-away excluding:
 - A canteen located in an educational institution
 - A canteen operated by a religious institution or body
- Any person providing catering services
- Any person operating food court

2. Taxable service

Provision by the person in column (1) of:

- All services including prepared or served food or drinks
 - Sale of tobacco products, alcoholic and non-alcoholic beverages
-

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group C: Night-clubs, dance halls, health centres, massage parlours, public houses and beer houses

- Total value of taxable service—RM500,000

1. Person

- Any person operating any:
 - Night-club;
 - Dance hall;
 - Cabaret; or
 - Place licensed under paragraph (a) or (b) of subsection (1) of Section 35 of the Excise Act 1976 and which is stated in the licence in paragraph (1) of Regulation (9) of the Excise (Sales of Intoxicating Liquors) Regulations 1977 as First, Second or Third Class Public House or First or Second Class Beer House.
- Any person operating any health or wellness centre, massage parlour or similar places which is approved by the appropriate local authorities or which is lawfully registered, and where applicable, which is approved by the appropriate local authorities and lawfully registered excluding any facilities providing similar activities registered under Private Healthcare Facilities and Services Act 1998, government healthcare facilities, teaching hospital established under the Universities and University Colleges Act 1971 or the University Technologies MARA Act 1976.

2. Taxable service

Provision of all services and provision or sale of food, drinks and tobacco products.

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group D: Private club

- Total value of taxable service—RM500,000

1. Person

Any person operating a private club

2. Taxable service

Provision of all services and provision or sale of food, drinks and tobacco products

Group E: Golf club and golf driving range

- Total value of taxable service—RM500,000

1. Person

Any person operating any gold course or golf driving range

2. Taxable service

Provision of all services and provision or sale of food, drinks and tobacco products

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group F: Betting and gaming

- Total value of taxable service—RM500,000

1. Person

Any person licensed under any written law involving bettings, sweepstakes, lotteries, gaming machines or games of chance

2. Taxable service

- Betting and gaming services involving bettings, sweepstakes, lotteries, gaming machines or games of chance
 - Conducting tournaments involving bettings, sweepstakes, lotteries, gaming machines or games of chance
 - Conducting or allowing the conduct of a card game or any other game by the casino operator
-

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group G: Professionals

- Total value of taxable service—RM500,000

1. Person	2. Taxable service
1. Any person who is an advocate and solicitor registered under the written laws for the time being in force.	a. Provision of legal services including consultancy services on legal matters and other charges in connection to the provision of legal services excluding: <ul style="list-style-type: none">– Provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia– Any statutory fees paid to government or statutory body
2. Any person who is a syarie lawyer registered under the relevant State Enactment laws.	b. Provision of legal services on Islamic matters including consultancy services and other charges in connection to the provision of legal services excluding: <ul style="list-style-type: none">– Provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia– Any statutory fees paid to government or statutory body
3. Any person who is a public accountant registered under the written laws for the time being in force	c. Provision of accounting, auditing, book keeping, consultancy or other professional services and other charges in connection to the provision of accountancy services excluding: <ul style="list-style-type: none">– Provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia– Any statutory fees paid to government or statutory body

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group G: Professionals (cont.)

- Total value of taxable service—RM500,000

1. Person	2. Taxable service
4. Any person who is, a licensed or registered surveyors including registered valuers, appraisers or estate agents licensed or registered under the written laws for the time being in force	d. Provision of surveying services including valuation, appraisal, estate agency or professional consultancy services and other charges in connection to the provision of surveying services excluding: <ul style="list-style-type: none">– Provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia; and– Any statutory fees paid to government or statutory body.
5. Any person who is a professional engineer registered under the written laws for the time being in force	e. Provision of engineering consultancy or other professional services and other charges in connection to the provision of engineering services excluding: <ul style="list-style-type: none">– Provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia; and– Any statutory fees paid to government or statutory body.
6. Any person who is an architect registered under the written laws for the time being in force.	f. Provision of architectural services including professional consultancy services and other charges in connection to the provision of architectural services excluding: <ul style="list-style-type: none">– Provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia; and– Any statutory fees paid to government or statutory body.

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group G: Professionals (cont.)

- Total value of taxable service—RM500,000

1. Person	2. Taxable service
7. Any person provides consultancy services excluding approved companies with status or definitions as research and development companies and contract research and development companies under Section 2 of the Promotion of Investments Act 1986 [Act 327] and approved research institute under Section 34B of the Income Tax Act 1967 [Act 53].	g. Provision of consultancy services including professional consultancy services and other charges in connection to the provision of consultancy services other than specifically mentioned in this Schedule excluding: <ul style="list-style-type: none">– Provision of consultancy services relating to medical and surgical treatment provided by private clinics or specialist clinics; or– Provision of consultancy services supplied in connection with:<ul style="list-style-type: none">i. Goods or land situated outside Malaysia; orii. Other than matters relating to (ii) outside Malaysia.
8. Any person who provides information technology services.	h. Provision of all types of information technology services excluding: <ul style="list-style-type: none">– Provision or sale of goods in connection with the provision of the information technology services; or– Provision of information technology services in connection with:<ul style="list-style-type: none">i. Goods or land situated outside Malaysia; orii. Other than matters relating to (ii) outside Malaysia.

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group G: Professionals (cont.)

- Total value of taxable service—RM500,000

1. Person

9. Any person who provides management services excluding the management services provided by:
- The developer, joint management body or management corporation to the owners of a building held under a strata title; or
 - Asset and fund managers

10. Any person who provides employment services.

11. Any person who is a private agency licensed under the Private Agencies Act 1971 [Act 333]

2. Taxable service

- i. Provision of all types of management services and other charges in connection to the provision of management services including project management or project coordination excluding provision of such services supplied in connection with:
- i. Goods or land situated outside Malaysia; or
 - ii. Other than matters relating to (i) outside Malaysia.
- j. Provision of all types of employment services excluding:
- Provision of employment services in the form of secondment of employees or supplying employees to work for another person for a short period of time; or
 - Provision of employment services for employment outside Malaysia.
- k. Provision of guards or protection for the personal safety or security of another person or for the safety or security of the property or business of such other person excluding provision of such services to guard or protect person, property or business situated outside Malaysia.

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group H: Credit card and charge card

- Total value of taxable service—Nil

1. Person

Any person who is regulated by Bank Negara Malaysia and provides credit card or charge card services through the issuance of a credit card or a charge card

2. Taxable service

Provision of credit card or charge card services through the issuance of a principal credit card, principal charge card, supplementary card, whether or not annual subscription or fee is imposed excluding:

- Provision of charge card services where the charge card is issued by any petroleum company to the Government of Malaysia or any person for the procurement of products and services supplied for the use of or in connection with vehicles owned or used by the Government of Malaysia or such person; or
- Provision of charge card services where the charge card is used as a payment instrument only within the premises of a workplace, an education institution or a golf or sports club by its workforce, students or members, as the case may be.

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group I: Other service providers

- Total value of taxable service—RM500,000

1. Person

1. Any person who is an insurer, takaful operator, licensed under the Financial Services Act 2013, Islamic Financial Service Act 2013, Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010

2. Taxable service

- Provision of all types of insurance contract or takaful certificate to cover against any risks in Malaysia incurred to an individual excluding medical insurance or medical takaful and life insurance contract or family takaful certificate.
- Provision of all types of insurance contract or takaful certificate to all businesses organisations excluding:
 - a. The insuring or takaful coverage of risks relating to the transport of passengers or goods:
 - i. From a place outside of Malaysia to another place outside of Malaysia;
 - ii. From the last exit point in Malaysia to any place in other country; or
 - iii. From a place outside Malaysia to the first entry point in Malaysia.And includes the insuring or takaful coverage of risks relating to the transportation of:
 - iv. Goods from a place in Malaysia to another place in Malaysia to the extent the services are provided by the same provider that forms part of the transport services referred to in paragraph (ii) and (iii)
 - v. Passengers from a place in Malaysia to another place in Malaysia to the extent the services are provided by the same provider that forms part of the transport services referred to in paragraph (ii) and (iii)

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group I: Other service providers (cont.)

- Total value of taxable service—RM500,000

1. Person	2. Taxable service
1. (Any person who is an insurer, takaful operator, licensed under the Financial Services Act 2013, Islamic Financial Service Act 2013, Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010 (cont.)	b. The insuring or takaful coverage on educational institution and religious organisation registered under any written law. c. Provision of all types of insurance contract, takaful certificate, to cover against any risk incurred in the making of advances or the granting of credit directly relating to the export of goods, services or investments outside Malaysia. d. Provision of insurance contract or takaful certificate to cover risks outside Malaysia.
2. Any person providing telecommunication services and paid television broadcasting services who is registered under the Communications and Multimedia Act 1998 [Act 588] or licensed under Communications and Multimedia (Licensing) Regulations 2000.	• Provisions of: <ul style="list-style-type: none">– Telecommunication services; and– Other services in connection with telecommunication services Excluding provisions of services to another telecommunication service provider in Malaysia or outside Malaysia. • Provision of paid television broadcasting services

First schedule of the *proposed* Service Tax regulations 2018 (cont.)

Group I: Other service providers (cont.)

- Total Value of Taxable Service – RM500,000 (other than No. 3 which is NIL)

1. Person	2. Taxable service
3. Any person who is given permission to act as an agent under Section 90 of the Customs Act 1967	Provision of services for clearing of goods from customers control.
4. Any person who operates or provides parking spaces	Provision of parking spaces for motor vehicles where parking charges are imposed.
5. Any person who operates a motor vehicle service or repair centre or provides motor vehicle service or repair	Provision of general servicing engine repairs and tuning, changing, adjusting and fixing of parts, wheel balancing, wheel alignment or body repairs including knocking, welding or repainting of motor vehicles.
6. Any person who provides courier services licensed under Section 10 of Postal Services Act 2012	Provision of courier delivery services for documents or parcels not exceeding 30 kilograms each excluding provision of courier delivery services for documents or parcels: a. From a place outside Malaysia to a place outside Malaysia; b. From a place within Malaysia to a place outside Malaysia; or c. From a place outside Malaysia to a place within Malaysia And includes the provision of courier delivery services within Malaysia that forms parts of the service referred to in subparagraphs b and c where the service is provided by the same person.

First schedule of the proposed Service Tax regulations 2018 (cont.)

Group I: Other Service Providers (cont.)

- Total value of taxable service—RM500,000

1. Person	2. Taxable service
7. Any person who provides hire-and-drive passenger motor vehicle and hire-passenger motor vehicle services	Provision of hire-and-drive or hire-car services including hire of any kind of passenger motor vehicle with or without chauffeur licensed by Suruhanjaya Pengangkutan Awam Darat in Peninsular Malaysia and Commercial Vehicles Licensing Board Act 1987 for Sabah and Sarawak including provision of hire-and-drive car and hire of any kind of passenger motor vehicle as defined under the Tourism Vehicles Licensing Act 1999 as operated by tourism operators registered under the Tourism Industry Act 1992
8. Any person who provides advertising services	Provision of all advertising services excluding provision of such services for promotion outside Malaysia
9. Any person who provides transmission and distribution of electricity	Provision of electricity to any domestic consumer excluding for the first 600 kWh for a minimum period of twenty-eight days per billing cycle consumed by that consumer
10. Any person who granted air service licence under Section 35 of the Malaysian Aviation Commission Act 2015 [Act 771] or air service permit under Section 36 of Malaysian Aviation Commission Act 2015	a. Provision of passenger air transport service excluding provision of passenger air transport service: <ul style="list-style-type: none"> – From a place outside Malaysia to a place outside Malaysia; – From a place within Malaysia to a place outside Malaysia; – From a place outside Malaysia to a place within Malaysia; or – By an operator for the route as specified under the Rural Air Services Agreement; b. Provision of all services in connection with services referred to in a.

Service Tax exemption

Intra group services

- Any taxable service mentioned in item a, b, c, d, e, f, g, h, or i of Group G (i.e., services in relation to legal, accounting, surveying, engineering, architectural, consulting, IT and management services) to any company within the same group of companies are not treated as a taxable service.
- Companies are treated to be in a group of companies if one company controls each of the other companies.
- Exception: If the same services above is also provided to another person outside the group of companies, service tax should apply to both parties, i.e., that other person and the company within the group of companies.

Value for Service Tax

Goods (e.g., restaurants, hotel)/services

1. Non-connected persons—actual price (goods)/value (services)
2. Connected persons—price “would have been sold” to non-connected person
 - Premium for insurance policy, or takaful contribution for takaful certificate—The actual premium or contribution paid
 - Free taxable goods and services—Service tax payable at market value
 - Betting and gaming—To be prescribed in regulations.

Value for Service Tax (cont.)

Issues:

- “Value” vs price of services?
- Meaning of “connected persons”—regulations
- No clear basis for valuing services in bill—regulations/orders?
- Valuation issues for non-monetary consideration/barter transactions

How does it work?

Service tax @ 6%

Price: RM10.00
Service Tax: RM0.60



**Tax remitted to
Customs**

Service Tax=**RM0.60**

Price: RM15.00
Service Tax: RM0.00



Total amount remitted
to Customs=RM0.60

Service Tax registration

Service Tax threshold

Type of registration	Conditions
Mandatory <ul style="list-style-type: none">Value of any taxable services made exceeds RM500,000 in a 12 month periodFor F&B preparation services—RM1,000,000	<ul style="list-style-type: none">Historical method—the total value of taxable supplies in that month and 11 months immediately preceding the monthFuture method—the total value of taxable supplies in that month and the 11 months immediately succeeding the monthApply for registration in the month following the month liable to be registeredRegistration commence on 1st day of the month following the month the application is made
Voluntary	DG may determine
Branch/division (i.e., in the name of the branch/division)	DG may determine

Service Tax registration

Transitional: Registration before 1 Sept 2018

- Apply within 30 days from the day the Service Tax Act come into force
- **GST registered businesses** will be notified of automatic registration
 - Deemed to be registered on 1 Sept 2018
 - To charge service tax from 1 Sept 2018

What if GST Registered businesses notified but NOT subject to service tax?

- Cancellation of registration?

Documentation and record keeping

Documentation

What documents do we need to issue?	<ul style="list-style-type: none">• Invoice for taxable services provided (mandatory)<ul style="list-style-type: none">– Details on the required particulars of an invoice would be stated in the Service Tax Regulations– There is no requirement on the timing to issue invoices.• Credit/debit note
Is there a format for these documents?	<ul style="list-style-type: none">• Hardcopy/electronic• Contains the prescribed particulars• Bahasa Malaysia/English
What do I do when I issue a credit/debit note?	<ul style="list-style-type: none">• Make an adjustment in his return

Record keeping requirements:

- Documents are to be kept for 7 years;
- Records can be kept in both Bahasa Malaysia or English;
- Documents to be kept in Malaysia unless specifically permitted;
- Documents can be kept in soft or hard copy.

Invoice—Regulation 11 of the *proposed* Service Tax regulation 2018

- The invoice serial number;
- The date of invoice;
- The name, address and identification number of the registered person;
- A description sufficient to identify the taxable service provided;
- Any discounts offered;
- The total amount payable excluding tax, rate of tax, and total tax chargeable must be shown as a separate amount;
- The total amount payable inclusive of total tax chargeable; and
- Any amount expressed in a currency other than ringgit shall also be expressed in ringgit at the selling rate of exchange prevailing in Malaysia at the time of taxable service is provided.

Please note that according to Customs, as the relevant legislation has yet to be in place, the information above serves as a draft and will be reconfirmed upon the release of the relevant legislation.

Credit/debit note—Regulation 12 of the *proposed* Sales Tax regulation 2018

- The words “credit note” or “debit note” in a prominent place;
- The serial number and date of issue;
- The name, address and identification number of the registered person;
- The reason of issuance;
- A description which identifies the taxable services;
- The quantity and amount of each taxable service;
- The total amount excluding tax;
- The rate and amount of tax; and
- The number and date of the invoice.

Please note that according to Customs, as the relevant legislation has yet to be in place, the information above serves as a draft and will be reconfirmed upon the release of the relevant legislation.

When is it due?

Taxable period

- Bimonthly (every 2 months); or
- Specific basis (subject to approval).

Accounting basis

1. When payment received; or
2. 12 months from the date invoice issued.
 - Section 21—the registered person must issue an invoice and shall be collected from the customer in addition to the value and any other amount due and payable by the customer.
 - But, does not specify when the invoice should be issued.
 - Prescribed betting and gaming taxable services – to be prescribed in Regulations.

Questions:

- Where no invoice issued+no payment received=no service tax due?
- Can businesses collect service tax on inclusive value?

Returns and payment

Service Tax returns

- To be submitted and pay no later than the last day of the following month after the end of the taxable period
- To be submitted regardless whether there tax is to be paid or not
- To be submitted electronically or by post

Payment in respect of Service Tax return

- Payment to be made electronically or by cheque, bank draft (to be posted to SST Processing Centre).

Other matters

Claiming bad debt relief

- Claimed by a registered person or a person who has ceased to be registered
- Within 6 years from the date service tax was paid
- Subject to conditions and discretion of the DG

Recovery of bad debt—Section 36

- Registered person has claimed and received bad debt relief from RMCD
- Payment was recovered by debtor
- Registered person to repay DG for the service tax recovered
- Repayment is in accordance to the prescribed formula

Special facilities—Contra system

- Registered person allowed to deduct service tax in return for any cancellation or termination of services/any other reasons such as reducing premiums or discounts.

Special rules

Designated Area (DA)

Designated Area (deemed outside of Malaysia)	Labuan, Langkawi and Tioman
Services provided between and within DA	Not subject to service tax except prescribed by Minister
Provision of services	<ol style="list-style-type: none">1) From PCA to DA—Subject to service tax except prescribed by Minister2) From DA to PCA—subject to service tax3) To/from DA to SA - no service tax

Special Area (SA)

Special Area (deemed outside of Malaysia)	Free Zone, Licensed Warehouse, Licensed Manufacturing Warehouse & Joint Development Area
Services provided between and within SA	Not subject to Service Tax except prescribed by Minister
Provisions of services	<ol style="list-style-type: none">1. From PCA to SA—subject to service tax except prescribed by Minister2. From SA to PCA—subject to service tax3. To/from SA to DA—no service tax

Location of company in DA/SA is determined by “*principle place of business*”

Transitional provision—Clause 11 of the Service Tax Bill 2018

Arrangement or agreement

- **made between 1 June to 31 August and**
- **services are provided or performed on/after 1 September**

Note: The arrangement is made during tax free period

Assumption: Effective date is 1 September 2018

Deeming provision

Arrangement deemed to be made on the date the service is provided or performed

- Notwithstanding any invoice issued or payment received
- Service tax is to be charged and due on the date the service is provided or performed

Key issues

- Must identify arrangements/agreements entered from 1 June and ending before the effective date AND service period is from effective date onwards (assuming from 1 September 2018)
- Service tax due is not based on payment received, it is date when service is provided or performed
- Concept of service provided or performed could be subject to interpretation
- Need to attribute value of taxable services provided/performed

Transitional provision—Clause 11(3) of the Service Tax Bill 2018

Arrangement or agreement made between 1 June to 31 August

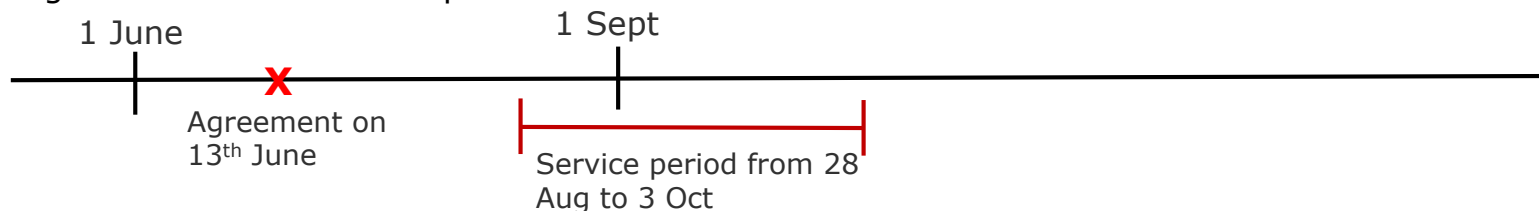
Services that will be subject to service tax:

- Agreement entered into between 1 June and 31 August. Services to be provided after 1 September.



Services transactions that are unclear:

- Agreement entered into between 1 June and 31 August. Services to be provided from between 1 June and 31 August and ends after 1 September



The issue is clause 11(3)(c) mentions that service tax shall be charged on taxable service that is provided or performed on or after 1 September. As the service is completed, i.e., performed after 1 September, it is unclear in the scenario above whether:

- The entire value of supply will be subject to service tax; or
- Only the portion from 1 September will be subject to service tax.

Transitional provision—Clause 93 of the Service Tax Bill 2018

Progressive or Periodic Agreement made before 1 June

- Where period commence before 1 June 2018; and
- Ends on or after 1 September 2018.

Tax treatment

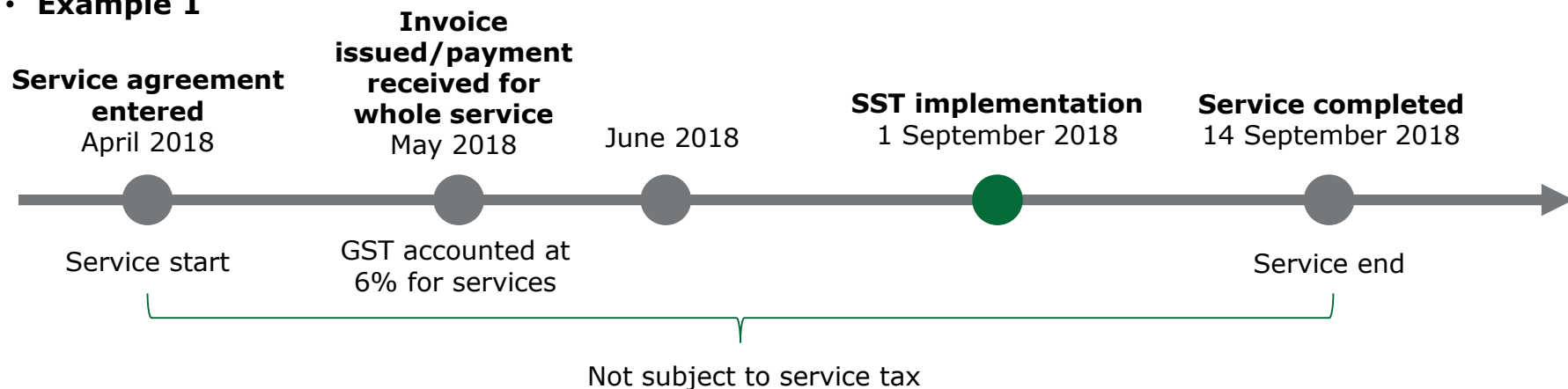
- The proportion after Effective Date—Is subject to Service Tax
- The proportion where GST has been paid on the services—Is not subject to Service Tax

Key issues

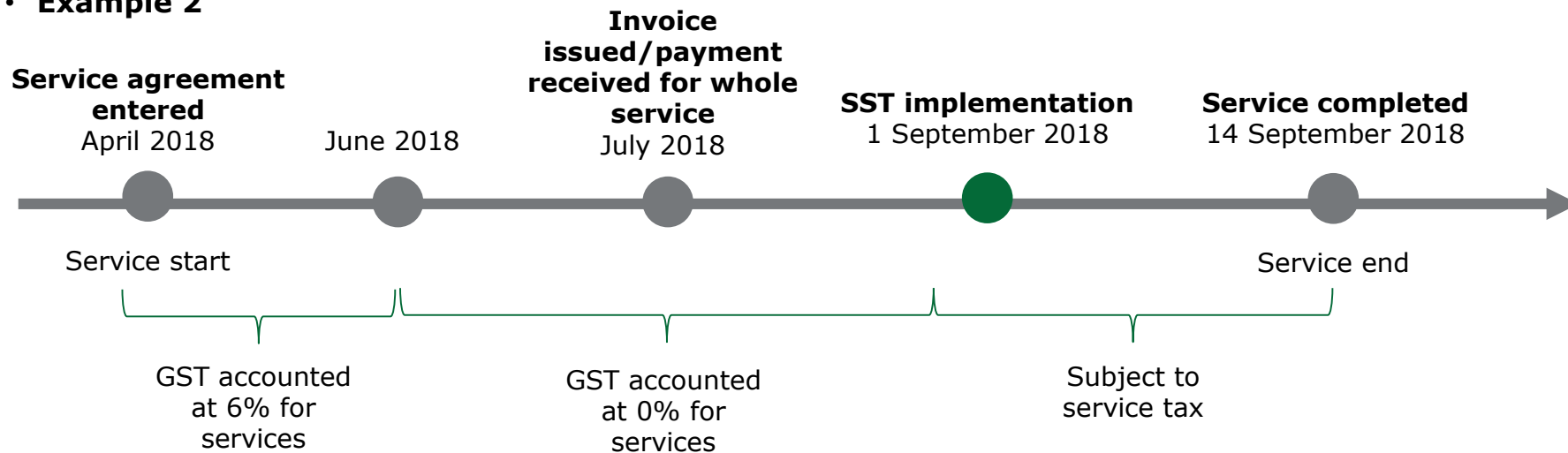
- Need to attribute the the proportion to the period post 1 September 2018
- Proportion of the service shall be taken to be made
 - “continuously and uniformly” throughout the period of the Agreement

Transitional matters—Clause 93 of the Service Tax Bill

• Example 1

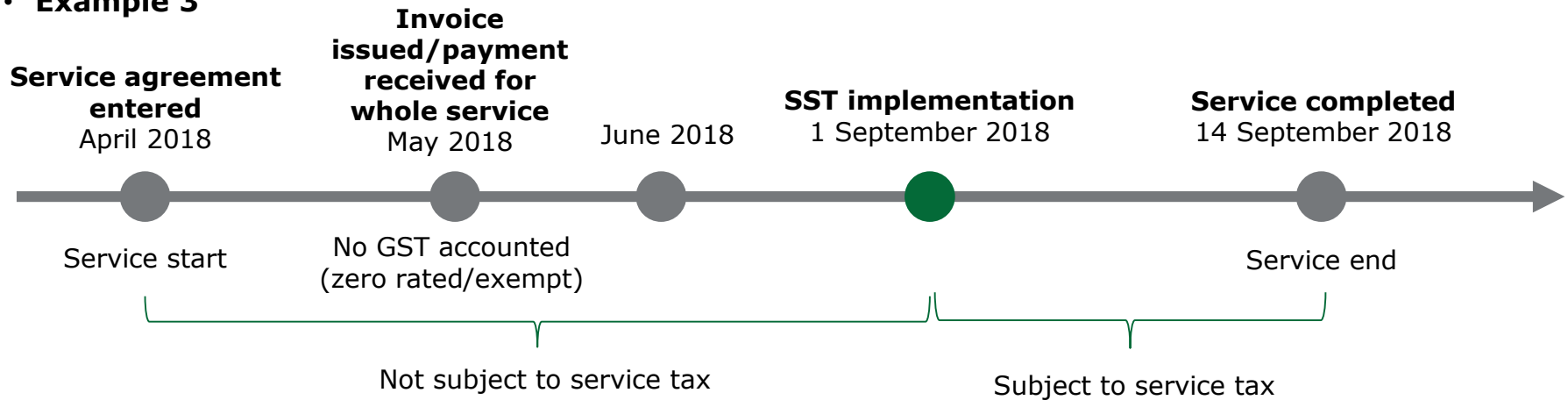


• Example 2



Transitional matters—Clause 93 of the Service Tax Bill (cont.)

- **Example 3**



Rulings

Public ruling

- The DG may produce a public ruling on the application of any provision of the Act in relation to any persons, or any type of business activities
- Where a public ruling applies to any person in relation to a business activity and a particular person, the DG shall apply the provision in relation to the person (binding)

Customs rulings

- Any person may apply to the DG for:
 - The determination of a taxable person
 - The determination of a taxable service
 - The principles to be adopted for the purposes of determination of value of taxable service
 - Any other matters determined by the Director General
- The ruling made by the Director General on the above matters would be binding to the applicant

Offences and penalties

Offences

- Evasion of tax—intent to evade or assist to evade
 - First offence=10-20 times the amount of service tax due
 - Second offence onwards=20-40 times the amount of sales tax due
- Giving incorrect information relating to liability to tax
- Improperly obtaining refund

General penalty

- RM 30,000 per offence

Late payment penalty

Late payment penalty on the outstanding amount:

- 10%—first 30 days period
- 15%—second 30 days period
- 15%—third 30 days period
- Maximum penalty of 40% after 90 days.

Uncertainties and potential issues

- There may be a cascading effect of service tax, i.e., tax on tax
- Definitions (e.g., consultancy services, management services and IT services)
 - Words used in documents (e.g., agreements, invoices) do not reflect the nature of services provided (e.g., the use of “consult” or “managed”) appears to indicate that the service provider is providing taxable service
- Service Tax due and payable overlooked for invoices which remains unpaid—12 month rule from the date of invoice issued
- No group registration & intra-group relief
- Treatment of out-of-pocket expenses and reimbursements in relation to taxable services
- Taxability of international/export services
- Timing difference between completion of services and the issuance of invoices as well as receipt of payments (e.g., commission income).
- No guidance whether any credit or debit notes can be issued for any adjustments to be made post 1 September for services completed before 1 June.

Key observations

Our thoughts and observations

- The transition back to SST will not require as comprehensive an implementation as required for GST, but there will be a need to make adjustments to systems and processes.
- Front-end systems are unlikely to require significant change aside from adjustment of rates and treatment (e.g., for items subject to service tax it would simply be returning it back to pre-GST rate adjusted amounts and pricing).
- To minimise disruption and to “future proof” systems and process, we would recommend that to the extent possible the GST infrastructure (systems and process) be retained.
- The additional controls and internal reporting introduced as a consequence of GST should be reviewed and where appropriate maintained, in particular where these processes and reports can meet other management and risk requirement.
- Where reporting and compliance have been centralised as a consequence of GST, consideration should be given as to whether this should be retained and whether there are sufficiently capable resources to manage this requirement if decentralized.

SST transition strategy

SST transition strategy

- Flexible and agile implementation required
 - Be prepared for changes/clarifications to the scope/exemptions in the coming weeks
 - Expect that systems configurations/enhancements may not be ready by 1 September 2018 and manual processes may need to be in place
 - Understand that there will be uncertainty on some treatments and that “reasonable” positions would need to be taken pending confirmation
 - Anticipate cash flow costs arising from initial delays or uncertainty in the exemption process for Sales Tax
 - Develop a plan and prioritise actions and assign resources
- Transition strategy should focus on Technical, Systems and Process

Transitional strategy

Technical

Sales Tax

1. Assessing whether your business is within scope as a manufacturer
2. If yes to 1, identifying activities within the business that fall within scope
3. Prepare a template listing setting out description of impacted activities including HS code
4. Assess sales tax treatment including whether any previous qualification for exemption—consider whether correct HS code and description has been used
5. Reviewing valuations/values for tax calculation
6. Identify treatments that are uncertain or have unexpected outcomes and catalogue to seek further clarification from RMCD/MOF (this should include cases requiring special exemption applications)

Transitional strategy

Technical (cont.)

Service Tax

1. Assessing whether your business is within scope based on the broad categories of services
2. If yes to 1, prepare a template listing out the description of different services performed
3. Assess service tax treatment including whether any previous qualification for exemption—consider whether correct description of the service has been used
4. Map scenarios for both local and export services
5. Identify treatments that are uncertain or have unexpected outcomes and catalogue to seek further clarification from RMCD/MOF

Transitional strategy

Systems enhancements

1. Re-assigning tax codes to reflect new treatments for sales tax and service tax including applicable tax rates (5%, 6%, 10%, Exempt)
2. Configuring for the change in "revenue recognition"/time of supply rules under SST to ensure reporting occurs in correct period
3. Review of system outputs and GL entries created to ensure accuracy of reporting
4. Mapping of new Sales Tax and Service Tax return labels to ensure accurate reporting and determine any exception reports that should be created
5. Updating invoice template (including credit note/debit notes) to reflect new invoicing requirements

Transitional strategy

Updating processes

1. Implement process to manage transitional sales/purchases and billings. In particular, addressing both GST 6% to 0% and GST to SST matters.
 - There are complex transitional rules that apply covering pre-June arrangements and June to August arrangements and this can impact whether tax applies
 - Identify any efficiencies/savings that can be obtained in the transitional period
2. Undertaking a cost impact analysis to understand the overall impact to costs and any adjustments to be made to pricing (consider impact of anti-profiteering rules and information required to manage MDTCC audits)
3. Stakeholder engagement:
 - Review sales and purchase contracts to assess whether contractual wording needs to change
 - Correspondence with suppliers/customers to notify them of introduction of SST and to address matters relating to new procedures, pricing adjustments and invoicing

Transitional strategy

Updating processes (cont.)

4. Mapping process for claiming of SST exemptions
5. Update return preparation process to reflect the requirements of the new SST return including re-assigning of responsibilities with respect to data collection, document review, return preparation and sign-off and submission
6. Documentation of technical positions taken including retention of any advice/clarification obtained
7. Training for impacted employees on new SST requirements and updates to systems and processes

Final thoughts

- Due to the speed of the transition, we expect a continued evolution of the SST over the coming months and perhaps year(s) as the Government and the policy makers refine the scope and the administrative requirements.
- It is possible that we will see change as early as the November budget.
- So being “agile” and “flexible” in the approach to systems and process is critical in managing this transitional period.

Repeal of GST

GST close out

- GST (Repeal) Bill 2018—made available on 1 August 2018
- Effective date of repeal—31 August 2018*
- Following parts of GSTA continues as if it had not been repealed:
 - Collection of liabilities and enforcement in relation to GSTA, Sales Tax Act 1972 and Service Tax Act 1975;
 - Provisions relating to the Special Refund of Sales Tax under GSTA;
 - Review applications under S124(2) of the GSTA
 - Decisions made by DG under S124(2) which are appealable to GST Tribunal
 - Any appeal before the GST Appeal Tribunal
 - Appointment or employment of any person other than officer of customs, for any duty or service relating to GST.

*Assuming the appointed date would be 31 August 2018 given that SST is to be implemented on 1 September 2018

GST close out (cont.)

- Furnishing GST-03 return by GST registered persons
 - Last taxable period deemed to end on 31 August 2018*
 - Last return shall be furnished and GST payables (if any) made not later than 120 days from 31 August 2018* (i.e., August 2018 return for monthly; July and August 2018 for quarterly)
- Last GST-04 return and payment due no later than 30 days from 31 August 2018* (i.e., on 30 September*) for non-GST registered persons
- Any input tax under GST which has not been claimed before 31 August 2018* should be claimed in the final GST return.
- Outstanding refund of input tax under S38 of GSTA yet to be made as at 31 August 2018* or in the final GST return shall be paid within 6 years from 31 August 2018*, subject to verification, audit or investigation.

*Assuming the appointed date would be 31 August 2018 given that SST is to be implemented on 1 September 2018

GST close out

Next Steps

- GST “health checks” in preparation of GST closure audit, if any
- Ensure documentation are in place to support position(s) taken
- Engage with suppliers to ensure that tax invoices are issued and received as soon as possible to allow for claiming of input tax in final GST return
- Consider potential cashflow impact of RMCD’s intention to pay GST refund, if any, on an instalment basis for a period of up to 6 years.



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