

# Rödl & Partner

MALAYSIA NEWSFLASH

THINKING GLOBALLY

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Latest News on Law, Tax and Business in Malaysia

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#### → Recent Updates on Sales and Service Tax (“SST”)

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## → Recent updates on Sales and Service Tax (“SST”)

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In recent months there have been several updates on the SST regime. The salient point of all these amendments is the inclusion of digital services in the Service Tax Act 2018 and the removal of certain taxable services from the First Schedule of the Service Tax Regulations, as well as new provisions under the Sales Tax Act.

In this newsflash, we will provide you with an overview of these amendments.

### INTRODUCTION OF SERVICE TAX ON DIGITAL SERVICES

The key amendment to the Service Tax Act is the introduction of SERVICE TAX ON DIGITAL SERVICES.

Effective as of 1 January 2020, foreign service providers who provide digital services to consumers in Malaysia, with the total value of the digital services provided exceeding RM 500,000, are liable to be registered for service tax as a foreign registered person and charge service tax at 6 per cent on the digital services provided.

A registered foreign service provider would be required to:

- Charge 6 per cent of service tax on digital services provided to consumers in Malaysia at the time when payment for the digital service is received;
- Issue an invoice or document containing prescribed particulars (either electronically or in paper form);
- File a service tax return and remit the service tax collected in each taxable period to the RMCD by the last day of the month following the end of the taxable period.

The following key new terms and definitions in the Amendment Act are important to understand the scope of service tax on digital services.

- **DIGITAL SERVICES** – any service that is delivered or subscribed over the internet or other electronic networks and which cannot be obtained without the use of information technology, and where the delivery of the service is essentially automated.

- **FOREIGN SERVICE PROVIDER** – any person located outside Malaysia providing any digital service to a consumer, including any person who is outside Malaysia for operating an online platform for buying and selling goods or for providing services (whether or not such person provides any digital services) and who makes transactions for the provision of digital services on behalf of any person.
- **CONSUMER** – any person who fulfils any two of the following: (a) makes payment for digital services using credit or debit facilities provided by any financial institution or company in Malaysia; (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.

### OUR VIEW

Given the short lead time before the implementation of the new service tax on digital services, foreign businesses should assess whether their services come within the scope of “digital services” and if so, to assess their internal controls and systems to ensure that it is ready for the new digital tax regime.

### REMOVAL OF CERTAIN SERVICES FROM 1ST SCHEDULE OF NEW TAX REGULATIONS

Effective as of 1 September 2019, the provision of logistics management services, tourism management services, amusement park services and coin operated laundry services are no longer taxable. However, this amendment is not retrospective.

SERVICE TAX POLICY NO. 1/2019 has been issued to clarify the service tax treatment for these services between 1 January and 31 August 2019.

The Service Tax Policy No. 1/2019 states that:

- For the period from 1 January to 31 August 2019, these services are exempted from

service tax under Section 34(3) of the Service Tax Act.

The following adjustments can be made for services rendered during this exemption period:

- Issue the invoice without service tax if the service has been provided but the invoice has not been issued; or
- Issue credit note which relates to the invoice if the invoice has been issued but the payment has not been made by the customer.

If service tax has been collected by the service provider, the service tax collected shall be remitted to RMCD. No service tax refund is allowed for any person who has paid the service tax.

## OUR VIEW

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Under this policy, these services are exempt from service tax from 1 January 2019 to 31 August 2019. The policy also allows for service providers to make necessary adjustments to ensure that service tax is not chargeable during this period, unless the service tax has already been collected. In this case, RMCD will not allow a refund of the service tax collected.

This approach is at odds with the announcement that an exemption has been granted on these services from 1 January 2019 until 31 August 2019, and does not seem fair to payees and taxpayers who have paid the service tax within the prescribed timeframe.

## EXEMPTION ON SERVICES IMPORTED INTO LABUAN

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Effective from 1 September, 2019 until 31 August 2020, in accordance with SERVICE TAX POLICY NO. 2/2019, companies in Labuan are given exemptions from the accounting and payment of service tax on services imported into Labuan subject to the following conditions:

- imported services are acquired within the above-mentioned period;
- eligible companies are Labuan entities carrying out the activities listed in the Labuan Business Activity (Requirements for Labuan Business Activity) Regulations 2018, irrespective of whether the company is registered under the Service Tax Act 2018; and
- Only applicable to taxable services listed under Group G.

- Any company who has accounted for and paid service tax on exempted taxable services may apply for a refund of service tax paid.

## OUR VIEW

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The concession granted to Labuan companies may be an advantage to attract more companies to Labuan. However, given the recent changes to corporate tax rules, specifically with regard to substance, for a Labuan company, it is uncertain if this will bring much benefit.

## CHANGES TO THE SALES TAX ACT

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- APPLICATION FOR DEDUCTION OF SALES TAX BY REGISTERED MANUFACTURER – The Director General is empowered to approve any application made by a registered manufacturer for deduction of sales tax in respect of taxable goods which are raw materials, components, or packing and packaging materials used solely in the manufacturing. The deduction allowed shall be in accordance with the percentage and conditions prescribed.
- OFFSETTING UNPAID TAX AGAINST REFUND OR DRAWBACK – If a person failed to pay, in whole or in part, the tax amount, the Director general may offset the unpaid amount against any amount or part of refund or drawback.
- IMPRISONMENT FOR NON-PAYMENT OF FINE – Depending on specific thresholds of the amount of fine involved, a certain maximum period of imprisonment would also be imposed.
- EVASION OF SALES TAX ON TAXABLE GOODS IMPORTED – Any kind of evasion or assistance to evade sales tax commits an offence, which will be punished with a fine and/or imprisonment.
- SERVICE OF SUMMONS – Summons shall be deemed to be duly served on the person even if the summons were delivered to any family member or servant residing with that person.

## OUR VIEW

It appears that with the introduction of these new provisions, the authorities will be applying the provisions of the Sales Tax Act more stringently and may be more aggressive in penalizing non-compliant individuals.

We hope that this comprehensive review has provided you with a more thorough insight on what is to come, and its implications on you and your business.

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