



SERVICE TAX 2018

GUIDE ON FOOD & BEVERAGES

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INTRODUCTION

1. Service Tax is a consumption tax governed by the Service Tax Act 2018 and its subsidiary legislation. The effective date of the Service Tax Act 2018 is 1 September 2018.
2. Service tax is imposed on prescribed services called “taxable services”.
3. A person who provides taxable services exceeding a specified threshold is required to be registered under the Services Tax Act 2018 and is known as a “registered person” who is required to charge service tax on his taxable services made to his customers.
4. The Guide is prepared to assist in understanding the service tax treatment on provision of food and beverage (F&B).

TERMINOLOGY

5. The following words have these meanings in this guide unless the contrary intention appears:
 - “**Designated area**” (DA) means Labuan, Langkawi, Pangkor and Tioman (Section 2, Service Tax Act 2018).
 - (i) “**Special area**” (SA) means any free zone, licenced warehouse (Section 65, Customs Act 1967) and licenced manufacturing warehouse (Section 65(A), Customs Act 1967), joint development area and petroleum supply base (Section 77B, Customs Act 1967) (Section 2, Service Tax Act 2018).
 - (ii) “**Food & Beverage Establishment (FBE)**” is an area where food and beverage preparation services are prepared and served under the control of the food and beverage providers

Example 1

The restaurant with its own building, FBE is the whole area of the building including surrounding area which is under the control of the restaurant where customers can enjoy food and beverages from the restaurant.

Example 2

Restaurant entities operating within a hotel or a commercial building such as a supermarket, FBE are the areas under the control and operation of restaurant's operator only and not the whole hotel or commercial building.

Example 3

A company provides catering services for a wedding in the town hall, FBE for this company is the food preparation premise and includes a hall where catering services are given.

IMPOSITION AND SCOPE OF TAX

6. Effective 1st September 2018, under Group B, First Schedule of the Service Tax Regulations (STR) 2018, the provision of F&B under prescribed circumstances is subject to service tax.
7. For the purpose of this guide, F&B Operator is defines as follows:
 - (i) Any person operating restaurant, bar, snack-bar, canteen, coffee house or any place which provides F&B whether wholly or partly eat-in or take-away excluding;
 - (a) A canteen located in an educational institution; or
 - (b) A canteen operated by a religious institution or body.
 - (ii) Any person providing catering services;

Example 4

De'Enak Enterprise has obtained a contract to supply cooked food from the Ministry of Education to be served to students in Hulu Selangor boarding school for 3 years. The contract of cooked food includes the provision of food and beverages for students in the school dining hall. De'Enak Enterprise has been given a kitchen space and a place to store the raw materials in the dining hall area for the purpose of preparing and cooking. The contract of cooked food is a catering service and is subject to service tax.

- (iii) Any person operating a food court including any eating place which is centrally managed with a common cashier system and where two or more person provides food and drinks.
8. F&B operators under category 7(i) are entities that have the characteristics of a restaurant where customers can order food or beverages according to customer's preferences.
9. "Taxable Services" means the services provided by F&B operator of :
- (i) Provision of preparing and serving of food and beverage;
 - (ii) Provision of any other taxable service specified in other Groups in the First Schedule, STR 2018;
 - (iii) Provision of other services other than services of rental of space within FBE; or
 - (iv) Provision or sale of beverages.
10. F&B operator whose total value of taxable services exceeds the threshold is required to be register and charge service tax.
11. The value of service tax is to be calculated on the value of actual price excluding service charge.

Example 5

Spaghetti Meatball	RM 15.60
Orange Juice	RM 6.00
Service Tax @ 6%	RM 1.30
Sub Total	RM 22.90
Service Charge @ 10%	RM 2.15
Total	<u>RM 25.05</u>

12. The service tax chargeable shall be due at the time when payment is received.

THRESHOLD AND RATE OF TAX

13. The threshold is the total value of taxable services which exceeds RM1,500,000 for a period of 12 months.
14. Rate of tax is at 6% and effective from 1 September 2018 as prescribed and gazetted in accordance to STR 2018.

GENERAL OPERATIONS OF THE INDUSTRY

15. The F&B operators who has reached the prescribed threshold and provide taxable services at places described below are required to charge service tax:

(i) **Restaurant , bar, snack bar, canteen, coffee house or similar FBE**

A place where people acquire services for meals that are prepared and served on the premise or to be eaten elsewhere.

A place providing F&B can be considered as a restaurant, bar, snack bar, canteen, coffee house if it has the characteristics of a place to enjoy food or drink including:

- (a) An area in FBE for food or beverage preparations;
- (b) Tables and chairs in FBE for customers to eat and drink;

- (c) Food or beverage menu for customers to make order according to their preferences;
- (d) Provide dining facilities such as spoons, garnishes, sauces and more;
- (e) Waiter or employee who takes orders from customers;
- (f) Waiter or employee serves the food or beverage ordered;
- (g) Customers do not need to prepare the food or beverage by themselves; and
- (h) Customers can choose to either eat-in in the FBE or take away the F&B

(ii) **Catering Services**

Catering services includes the activities of coordination, preparation, delivery and serving of F&B to customers for any event, venue or other person either within the FBE or outside the FBE.

(iii) **Food Court**

A food court is generally a common area within a facility that is set apart for food concessions. The food court operator provide space for F&B customers as well as space for F&B providers to prepare or to serve F&B. Food court operator usually provides a centralized payment system.

Other Related Services

16. Other related services which may also be provided in FBE which will be imposed service tax are as follows:

(i) **Parking Facility**

Any parking provided by the F&B operator is subject to service tax including valet service.

(ii) ***Other services provides in FBE that attract service tax:**

- (a) Rental of facilities;
- (b) Services of entertainment such as karaoke, playground and others;
- (c) Cooks services; or
- (d) Services of corkage and towel;

**NOTE: The list above is not exhaustive.*

(iii) **Sale of goods subject to service tax:**

- (a) Bottled, pack, or canned drinks, mineral water or drinking water.

REGISTRATION AND RESPONSIBILITIES OF A REGISTERED PERSON

17. A service provider i.e. F&B Operator reaching prescribed threshold of taxable services is required to be registered. For further guidance and details on registration including an auto-registration exercise, please refer **MySST User Manual (Registrant) Registration**.

18. A registered person is responsible to:

- (i) charge service tax on taxable services;
- (ii) issue invoices and receipts with specific particulars;
- (iii) submit service tax return SST-02 electronically and pay service tax before due date; and
- (iv) keep proper records.

For further information with regards to the responsibilities of a registered person, please refer to **General Guide**.

FREQUENTLY ASKED QUESTIONS (FAQs)

1. Q : I am a restaurant owner and provide parking facilities for my customers without any charges as they dine-in at my restaurant. Am I required to account for service tax on the parking facilities which are provided free of charge to the customers and if there is a charge imposed, how do I account for the service tax?

A : Parking facilities provided to the customers for free are not subject to service tax. If there is a charge imposed, it is subject to service tax.

2. Q : I am a restaurant owner who received a customer request to organize a birthday celebration. However, the F&B was outsourced to a caterer. What is the treatment for this situation?

A : F&B by the caterer which was charged to restaurant owner is subject to service tax of 6%. Birthday celebration that is charged as a package by the restaurant owner is subject to service tax with the value of F&B included.

3. Q : I cater food at a wedding event together with waiter services. Does the cost of waiter services subject to service tax?

A : The cost of waiter services is part of the wedding package. Therefore, it is subject to service tax.

4. Q : A customer ordered catering services for an event in December 2018. The deposit was received in October 2018. When and how should I account for service tax?

A : Deposit received in October 2018 (considering his bi-monthly taxable period is October and November) should be accounted for not later than the last day of the month following the end of each taxable period i.e. December 2018.

5. Q : What is the service tax treatment for a wedding package by F&B operator where the package is inclusive of wedding planner, tent, catering services, makeup, photographer, DJ, etc which was provided by a restaurant?

A : All services in the wedding package provided by F&B operator in FBE is subject to service tax.

6. Q : What is the tax treatment for F&B sold on-board in passenger transport via air, land and sea to passengers?

A : F&B sold in passenger transport via land and sea mode are not subject to service tax as they are not provided by F&B operators in the restaurant category. However food sales for air passenger transport are subject to service tax under the air passenger transport service category.

7. Q : We cater in-flight food and beverage for airline services. What is the tax treatment for the in-flight F&B services?

A : The in-flight catering services are subject to service tax.

8. Q : Is service charge subject to service tax?

A : No, service charge is not subject to service tax.

9. Q : Are tips given by customer voluntarily subject to service tax?

A : Tips given voluntarily by a customer to a restaurant's staff is considered as token of appreciation for the services rendered by him. Tips are not subject to service tax.

10. Q : Are the beverage sales from vending machines located in FBE subject to service tax?

A : Yes, all beverage sales through any vending machines operated by F&B operator in FBE is subject to service tax. Service tax is to be accounted as inclusive in the sales value.

11. Q : What is the tax treatment for coupon/ voucher purchased online and redeemed at the F&B operator?

A : Coupon/ voucher purchased online and redeemed at the F&B operator is treated as payment for the services and is subject to service tax. The coupon/ voucher value shall be accounted for by F&B operator. The value to impose service tax is on the value of actual price.

12. Q : Is package promotion campaign by the F&B operator e.g. buy 1 free 1 is subject to service tax?

A : Yes, F&B package purchased and free meal are subject to service tax based on the package price offered to customer and shall be accounted for by the F&B operator.

13. Q : Is rental of space in FBE subject to service tax?

A : No, rental of space is not subject to service tax. Rental of space includes incidental charges incurred in connection with rental of space such as electricity and water usage charges.

14. Q : ABC restaurant also sells non-food merchandise such as stationery, newspaper, toys, etc in his restaurant. Are the merchandise subject to service tax?

A : No, it is not subject to service tax.

15. Q : An F&B operator also sells tit-bits and snacks such as sweets, ice cream, banana chips, etc in his restaurant. Are the tit-bits and snacks subject to service tax?

A : No, it is not subject to service tax.

16. Q : A walk-in customer came to my restaurant with his catch. He requested for the fish to be cooked for him to dine in with his family. Is the request made by the customer subject to service tax?

A : Yes, it is subject to service tax.

17. Q : Are canned beers (alcoholic drinks) sold subject to service tax?

A : Yes, beer is an alcoholic beverages which is subject to service tax.

18. Q : A restaurant based in Langkawi provides catering services in Alor Setar, Kedah. Are the services subject to service tax?

A : Services provided within or between Designated Areas are not subject to service tax. However, service tax shall be charged by any person whose principal place of business is located in a Designated Area on any taxable service provided by him within Malaysia.
In the scenario above, catering services provided by the restaurant whose principle place of business situated in Langkawi, which is gazetted as Designated Area, to Alor Setar, Kedah is subject to service tax.

19. Q : Other than F&B services, my restaurant also provides karaoke session and dance performance throughout the dining experience. Does those services subject to service tax?

A : Yes, they are subject to service tax if the services are chargeable.

20. Q : What is the tax treatment for fishing activities in the pond owned by the restaurant?

A : Fishing activities at the pond owned by the restaurant is considered as a service provided by the restaurant if it is located in FBE. Hence, it is subject to service tax.

21. Q : Are the delivery services by F&B operator subject to service tax?

A : Yes, the delivery services by F&B operator are subject to service tax.

22. Q : What is the service tax treatment on deposit for reservation?

A : Deposit for reservation is subject to service tax and become due when service is provided.

23. Q : A customer was charged cost for breaking a tableware. Is the charge subject to service tax?

A : No, the customer does not have to pay service tax for the broken tableware

24. Q : Are free F&B for staff by the F&B operator subject to service tax?

A : No, free F&B for staffs are not subject to service tax.

25. Q : A convenience store at petrol station provides a facility for its customers to prepare food and beverages themselves (eg. Microwave, water heater, hot drink vending machine, etc). Are the food and beverages purchased by the customer is subject to service tax?

A : Food and beverages purchased and consumed on self-service basis at convenience stores are not subject to service tax. However, if the convenience store provides area to dine in such as tables and chairs, the food prepared or served by the staff are subject to service tax, including sales of tobacco products, alcoholic and non-alcoholic beverages.

26. Q : I am the owner of a petrol station. Apart from selling petrol and diesel, I also have self service counter which sells ready packed variety of food such as ready-to-eat nasi lemak and fried noodle. We also have frozen food like curry puff, roti canai, etc as well as a small kiosk that sells snacks e.g. waffle, corn-in-cup and hotdog. Are the food above subject to service tax?

A : Ready packed food is not subject to service tax. Likewise the food sold at kiosk which is prepared by staff is not subject to service tax because the entity is not a food preparation place that has the characteristics of a restaurant.

27. Q : Is service tax chargeable for food served at lounges in airports?

A : Generally, service tax is chargeable for F&B served at lounges in airports. For passengers who receive complimentary meals at lounges, the service tax is deemed inclusive in the passenger ticket, e.g. Business class and First class. For walk-in customers who pay for the meals, the service tax is chargeable.

28. Q : I am a vending machine operator who has vending machines in public places such as shopping mall, airport, etc. Should I register under Service Tax Act 2018?

A : A vending machine operator is not a taxable person. Therefore, a vending machine operator is not liable to be registered.

29. Q : Cinemas have snack bars/ counters or kiosks selling hot, light meals or snacks (e.g. waffles, pop corn, nuggets, etc) and beverages to its customers. Do cinemas required to be registered under Service Tax Act 2018? Are the F&B sold taxable?

A : If a bar / counter snack or kiosk selling hot food or snacks has the characteristics of a restaurant, then it can be registered and charge service tax.

30. Q : Are service operated from home or any premises that prepares and sells food and beverages through online subject to service tax?

A : The service of preparing and selling food and beverages through online may subject to service tax. The service of preparing and selling food by a taxable entity can be taxed if the entity provides catering services and the sales value exceeds threshold.

31. Q : Are purchases of food or beverages provided through the self-service vending machine in EMM of a registered entity under service tax subject to service tax?

A : Purchases of food or beverages from vending machines located in FBE that are not owned or operated by a registered entity are not subject to service tax.

32. Q : Are provision of F&B services within or between KD provided by a branch restaurant in KD subject to service tax?

A : F&B preparation services provided in or between KD by a branch restaurant in KD are not subject to service tax if the entity providing such services may issue invoices and have control on their own accounts. However, service tax will be imposed by any person whose principal place of business is located at KD and only the head office may issue an invoice and have full control over the KD branch.

33. Q : Are the provision of F&B services within or between KK subject to service tax?

A : Yes, service tax applies to provision of F&B services in or between KK.

34. Q : Are the rental of premises, equipment and other facilities provides in a package by a registered restaurant subject to service tax?

A : The services offered by the registered restaurant in EMM as a package (eg space, food and beverage rentals, event riders etc.) are subject to service tax.

35. Q : Is the F&B operators under a franchise license who provides food or beverage at a sales counter / kiosk subject to service tax?

A : The preparation or sale of food or beverages provided by the franchisee shall be in accordance with the terms set out by the franchisor as specified in the franchise agreement. If the franchisor requires a franchisee to be register under Service Tax Act 2018, the franchisee may be voluntarily registered even if it does not exceeds the threshold.

36. Q : Is bakery sales at a cake shop subject to service tax?

A : The sale of bread / biscuits / bakery at the cake shop is not subject to service tax if the cake shop establishment does not have the characteristics of a restaurant. However, if the bakery product is under the category of taxable goods, the cake shop shall be registered as a registered manufacturer under the sales tax. Please refer to the Sales Tax Act 2018 for more information.

37. Q : Other than sales of bakery, my shop also sells cooked foods such as chicken rice, fried chicken and sandwiches. Are the sales of chicken rice, fried chicken and sandwiches subject to service tax?

- A : Yes, the sale of cooked food prepared or cooked at FBEM is subject to service tax.
- 38. Q : I sell F&B at the night market. Do I need to register for service tax and charge 6% service tax on the sale of F&B sold at the night market?**
- A : The F&B operator at the night market is not a taxable person in item (1), Group B, First Schedule, STR 2018.
- 39. Q : Pizzeria Pizza (PP) is a restaurant that sells western food such as pizza, spaghetti, macaroni and burger. However, PP only allows take away purchases. Is the sale of take away foods subject to service tax?**
- A : The sale of food by PP whether to be enjoyed in the FBE or taken home is subject to service tax as it is a taxable service under Group B, First Schedule, STR 2018.
- 40. Q : Is the sale of F&B prepared by staff and sells at the counter of a convenience shop subject to service tax?**
- A : No, the sale of F&B provided by staff or employees of a convenience shop is not subject to service tax. Convenience shop is not a taxable persons such as restaurants, bars, snack bars, canteens, coffee houses or similar FBEs.

INQUIRY

For any inquiries for this guide please contact:

Internal Tax Division
Royal Malaysian Customs Department
Level 3 – 7, Block A, Menara Tulus,
No. 22, Persiaran Perdana, Presint 3,
62100 Putrajaya.

FURTHER ASSISTANCE AND INFORMATION ON SST

Further information on SST can be obtained from:

- (i) SST website : <https://mysst.customs.gov.my>
- (ii) Customs Call Center:
 - Tel: 03-7806 7200 / 1-300-888-500
 - Fax: 03-7806 7599
 - Email: ccc@customs.gov.my

