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MOORE STEPHENS

Tax Flash

JANUARY 2019

PRECISE. PROVEN. PERFORMANCE.

In this Issue

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- Moore Stephens Malaysia
- Moore Stephens International
- Inland Revenue Board

Finance Act 2018
Income Tax (Amendment) Act 2018
Labuan Business Activity Tax (Amendment) Act 2018

The above Act / amendment Acts have been gazetted on 27th December 2018 to take effect the proposals made in the 2019 Budget with no changes to the relevant Bills.

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PR No. 10/2018 – Tax Incentives for Investment in BioNexus Status Company

The Inland Revenue Board ["IRB"] has recently issued the Public Ruling ["PR"] No. 10/2018 – Tax Incentives for Investment in BioNexus Status Company to provide guidance on the tax treatment in respect of the tax incentives for investors who invest in BioNexus Status Company ["BSC"] in Malaysia.

Salient points of the abovementioned PR include:-

i. Criteria for Investor
- To qualify for a deduction on the amount equivalent to the actual value of investment made in a BSC, the investor must fulfil the following criteria:-
  - where the investor is a company:-
    - the company has to be incorporated under the Companies Act 2016 including those incorporated under the Companies Act 1965;
    - its related company has not been allowed the deduction under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [revoked] or Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016
  - where the investor is an individual:-
    - the individual is a Malaysian citizen, resident and has business income source;
    - only 3 application are allowed for the purpose of approval of deductions under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016;
    - each approval must be granted in respect of an investment made in 3 different activities of a new business which are agriculture, healthcare or industrial;
    - the investments are to be made in a BSC which any of its paid-up capital is not owned by:-
      a. spouse of the individual;
      b. brother or sister, of the individual or to the spouse of the individual;
      c. parent, of the individual or of the spouse of the individual;
      d. the child, including step child or child adopted in accordance with any law, of the individual;
      e. grandparent or grandchild, of the individual or of the spouse of the individual;
      f. spouse of any of the individual referred to in item (b) above; or
      g. uncle, aunt or cousin, of the individual or of the spouse of the individual
  - An application to make an investment in a BSC must be submitted to the Minister of Finance ["the Minister"] through Bioeconomy Corporation for approval on or after 1st January 2016.

Hyperlinks

- PR No. 10/2018

ii. Tax Incentive under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016
- An investor is allowed a deduction in the basis period for a year of assessment of an amount equivalent to the actual value of investment made in a BSC company.
- The investment made by the investor has to be made:-
  - for a period not earlier than 1st January 2016 and not later than 31st December 2020;
  - for the value as approved by the Minister; and
  - for the sole purpose of financing activities at the initiation of commercialisation stage of a new business approved by the Minister.
- The investment made by an investor prior to the commencement of a new business is deemed to be made on the date the new business commences as determined by Bioeconomy Corporation.
- For any disposal of shares (investment made in the form of holding of paid-up capital) within a 5-year period from the date of last investment made, the consideration for the disposal of such shares has to be added back in ascertaining the adjusted business income of the investor for the year of assessment in the basis period the consideration is received. The amount added back shall not exceed the total deduction allowed in relation to the investment made.

iii. Cessation of Tax Incentive
- The deduction granted to an investor will cease in the basis period for a year of assessment when the:-
  - amount of approved investment has been fully claimed; or
  - BSC commences the commercialisation of the activities in respect of which the investment is made which is based on the date of the first sales invoice,

  whichever is earlier.

iv. Non-Application
- The above incentive granted to an investor under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2016 is subject to certain conditions as specified therein.

v. Revocation of Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007
- Any deduction for the investment which has been approved under the abovementioned revoked Rules shall continue to apply as if the Rules have not been revoked.

Hyperlinks

PR No. 11/2018 – Withholding Tax on Special Classes of Income

The IRB has recently issued the PR No. 11/2018 – Withholding Tax ["WT"] on Special Classes of Income ["this PR" or "new PR"]. This PR is to replace the PR No. 1/2014 issued/updated on 23rd January 2014 and 27th June 2018. The new PR takes into account the law in force as at the date this PR is issued.

This PR has incorporated the removal of the proviso in Section 15A of the Income Tax Act 1967 ["the Act"] (effective 17th January 2017). With this amendment to Section 15A of the Act, any income which falls under Sections 4A(i) and 4A(ii) of the Act are now subject to WT under Section 109B of the Act irrespective of whether the services are performed in Malaysia or outside Malaysia. However, with effect from 6th September 2017 exemption has been granted to a non-resident ["NR"] person from the payment of income tax in respect of income derived from Malaysia in relation to income that falls under Sections 4A(i) and 4A(ii) of the Act which are performed outside Malaysia under the Income Tax (Exemption) (No. 9) Order 2017.

This PR is in line with the Practice Note ["PN"] No. 1/2017 issued subsequent to the amendments to Section 15A of the Act which clarifies the applicability of WT for contracts signed and/or performed before/after 17th January 2017. This PR is also in line with the PN No. 3/2017 which provides guidance on the applicability of WT for contracts signed and performed before/after 6th September 2017 [i.e. after the Income Tax (Exemption) (No. 9) Order 2017 came into operation].

***Note**: For further information on the PN No. 1/2017 and PN No. 3/2017, kindly refer to our Tax Flash – July 2017 and January 2018 issues.*

Significant changes made to the new PR include:-

i. Services Rendered in Connection with the Use or Installation or Operation of Assets under Section 4A(i) of the Act [Paragraph 6.2 of the new PR]
   - Besides services performed by a NR person or his employees in connection with the installation or operation of any plant, machinery or other apparatus purchased from him, the PR stipulates that any services provided in connection with use of property or rights belonging to the NR person that falls under the scope of royalties would also fall under Section 4A(i) of the Act.

ii. Testing and Calibration Services [Paragraphs 7.2 and 7.4(f) of the new PR]
   - Testing and calibration services are considered examples of technical management, which fall under Section 4A(ii) of the Act.
   - Previously, testing services for the provision of test results on finished products to meet required standards, which do not involve technical advice or consultation, are not subject to WT [based on Paragraph 13.2(d) and Example 23 of the previous PR].

Hyperlinks

- PR No. 11/2018
- Tax Flash – July 2017
- Tax Flash – January 2018

iii. Exclusion of WT on Expenses Allocation from Head Office in respect of "Ordinary Day-to-Day or Routine Administration Expenses" [Paragraph 8.4 and Example 4 of the previous PR]
- Previously, it was clarified that the allocation of head office expenses by a NR head office to the Malaysian branch or by a NR parent company to the Malaysian subsidiary for ordinary day-to-day or routine administration expenses is not subject to WT provided that the payments are in no way related to the performance of any specialised services.
- The aforesaid paragraph and Example 4 have now been deleted.

iv. Specially-Tailored Training Course [Paragraph 7.4(e) of the new PR]
- It is stipulated that specially-tailored training courses that are specifically designed to meet the business needs of a company in connection with a company project for a specific group of people may fall under Section 4A(ii) of the Act and subject to WT.

v. Freight Charges [Paragraph 8.2 of the new PR]
- Similar to the position outlined in the previous PR, freight charges in respect of export/import of goods are not subject to WT.
- The PR stipulates that fees other than freight charges for the shipment of goods such as handling fees and agency service fees falls under the scope of Section 4A(ii) of the Act and subject to WT.

vi. WT Borne by Payer [Paragraph 12.1(b) of the new PR]
- Effective 5th December 2018 (i.e. the date of issuance of this PR), where WT under Section 109B of the Act is borne by a payer, the WT is to be computed on the gross amount paid to a NR. This means that the payment made to the NR need not be regrossed to determine the amount of WT.
- This is opposed to the stance taken by the IRB previously where in the examples provided in the previous PR, if the WT on payments made to NRs are paid and borne by the payer, the payment that is received by the NR has to be regrossed and WT is computed on the regrossed amount.
- The IRB's position now is consistent with the High Court's decision in the case law of *Esso Production Malaysia Inc v Ketua Pengarah Hasil Dalam Negeri (2003) MSTC 4016*.

vii. Computation of WT where Payment to a NR is Made in Foreign Currency [Paragraph 12.2 of the new PR]
- For purposes of determining the amount of WT where payment to a NR is made in non-Ringgit currency, the equivalent Ringgit Malaysia (RM) value has to be calculated at the time payment is made to the NR at the:-
  - prevailing foreign exchange rate on the date the payment is made (the rate as reflected in the telegraphic transfer);

Hyperlinks

- rate published in the official portal of the IRB; or
- rate published by Bank Negara Malaysia.

viii. Remittance of Tax Deducted [Paragraph 13.1 of the new PR]

- In the case where the income tax reference number of the payee is not available when filling up the Form CP37D, the payer has to make a request for the income tax reference number of the payee from the NR Branch by writing in or sending through facsimile an application letter together with full details of the payee.

ix. Consequences of Not Deducting and Remitting Tax Penalty under Section 113(2) of the Act [Paragraph 14.3 and Examples 18 - 21 of the new PR]

- Similar to the position outline in the previous PR, in the event that a payer makes a claim for tax deduction in respect of an expense subject to WT without deducting and remitting WT to the IRB, tax adjustments will be made by the IRB and additional tax payable will arise. Additional assessment will be issued and the penalty under Section 113(2) of the Act for incorrect return will be imposed (computed based on the tax undercharged). It is noteworthy that the penalty imposed under Section 113(2) of the Act will remain even after the payer has subsequently paid the WT and penalty on late payment.
- The IRB has included new Examples 20 and 21 to demonstrate the above IRB's position on the penalty imposed under Section 113(2) of the Act.

x. Late Payment Penalty to NR [Example 22 of the new PR]

- Previously, it was provided that the penalty for late payment charged by the NR (as well as the principal fee) will be disallowed for tax deduction under Section 39(1)(j) of the Act on the basis that the WT due was not deducted and remitted to the IRB.
- The IRB has amended the above Example and added that the late payment penalty charged by the NR will not be eligible for tax deduction under Section 33(1) of the Act [instead of disallowance under Section 39(1)(j) of the Act] on the basis that it is not wholly and exclusively incurred in the production of gross income.
- In cases where late payment penalty is paid to a NR by a payer, it should be ascertained whether that late payment penalty is considered an interest income. In the absence of a Double Taxation Agreement ["DTA"] between Malaysia and the country of residence of the NR or if there is a DTA and there is no mention whether late payment penalty is regarded as interest income or not, the domestic tax laws of Malaysia shall prevail. Pursuant to Section 4B of the Act, the late payment interest which is payable to the NR would be considered as interest income under Section 4(c) of the Act. As such, the WT provision under Section 109 of the Act is applicable.

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xi. Non-Application of Sections 39(1)(f), (i) and (j) of the Act [Paragraph 16.5 and Examples 24 - 27 of the new PR]

- Similar to the position outlined in the previous PR, effective 1st January 2012, where a payer enjoys full exemption on income from all sources for the basis period of a year of assessment under:-
  - Promotion of Investments Act 1986;
  - Section 127(3)(b) of the Act; or
  - Section 127(3A) of the Act,

  (with the exception of cases where the exemption is granted on income equivalent to capital expenditure incurred i.e. Investment Tax Allowance or the payer has no chargeable income), there will be no disallowance of payments made to NR even though WT has not been remitted within the specified period.
- The IRB has amended the Examples 25 and 26 showing that there will be disallowance of payments made to NR if a payer enjoys tax exemption of 70%/100% of its statutory income equal to capital expenditure incurred. Previously, the disallowance of payments made to NR is applicable only if the investment tax allowance was granted a full exemption.

xii. Appeal by Payer on Payment of WT [Paragraph 15 of the new PR]

- Similar to the position outlined in the previous PR, effective 1st January 2013, a payer may appeal to the Special Commissioners of Income Tax ["SCIT"] on the basis that the WT due is not liable to be paid under the Act. The appeal shall be made within 30 days from the date the payment is due to be made to the Director General of Inland Revenue ["DGIR"].
- However, no appeal shall be made to the SCIT under the following circumstances: -
  - the payee (NR) has filed an appeal to the SCIT in respect of the payment under Section 4A of the Act to which the WT relates;
  - the payment to the NR has been disallowed in the payer's tax computation under Section 39(1) of the Act; or
  - the WT due has not been remitted/paid to the DGIR by the payer.

xiii. Application for Relief Other Than in Respect of Error or Mistake [Paragraph 16 of the new PR]

- Effective 1st January 2017, a payer who has furnished to the DGIR a return for a year of assessment and has paid tax for that year of assessment may file an application for relief if the payer alleges that the assessment relating to that year of assessment is excessive.
- The assessment is said to be excessive where a deduction is not allowed in respect of payment not due to be paid under Section 109B of the Act on the day the return is furnished. The payer may make an application in writing to the DGIR within one year after the end of the year the payment is made.

xiv. Agreement for the Avoidance of Double Taxation [Paragraph 18 of the new PR]

- In cases where a DTA has been signed with a particular country, and the DTA does not have a "Technical Fee/ Fees for Technical Services" article, then the "Royalty" article or the "Other Income/ Income Not Expressly Mentioned" article would apply. Where there is no DTA or limited DTA with a particular country, the domestic tax laws of Malaysia shall prevail.
- Where an Australian resident provides technical services in Malaysia for less than 3 months in any 12-month period, the WT under Section 109B of the Act shall not apply. WT under Section 107A of the Act is applicable if the Australia resident provides services through a permanent establishment (i.e. more than 3 months in any 12-month period). This is unique to the Australia – Malaysia DTA.

xv. WT under Sections 109B and 107A of the Act [Paragraph 19 of the new PR]

- Section 109B of the Act is applicable to a NR in respect of income falling under Section 4A of the Act.
- However, if payment to the NR in respect of Sections 4A(i) or 4A(ii) of the Act is in relation to a contract project in Malaysia, which results in:-
  - the setting up of a PE in Malaysia (where a DTA applies); or
  - a business presence in Malaysia (in the absence of a DTA)

  and the payment is in relation to that contract project, then the WT provision under Section 107A of the Act would be applicable.

Note: *For further information on the previous PR No. 1/2014, kindly refer to our Tax Flash – February 2014 and July 2018 issues.*

PR No. 12/2018 – Income from Letting of Real Property

The IRB has recently issued the PR No. 12/2018 – Income from Letting of Real Property to provide guidance on the tax treatment on income derived from letting of real property as a business source and non-business source. This PR replaces the PR No. 4/2011 issued on 10th March 2011.

Hyperlinks

- Tax Flash – February 2014
- Tax Flash – July 2018

- PR No. 12/2018

Significant changes made are as follows:-

i. Rental Income Received in Advance
   - Paragraphs 9.2 and 9.4 of the PR
     - Rental income received in advance from letting of property as a non-business source is assessed to tax under Section 4(d) of the Act in the basis period in which it is received. Any expense in relation to the advance rental income incurred after that basis period is allowable in the basis period in which the income is assessed i.e. amendment has to be done to the assessment for the year of assessment concerned.
     - When there is more than one real property and rental income from one or several real properties is received in advance, expenses related to that source is deductible from other rental income in the basis period in which the expenses are incurred. This is only applicable to rental income from real properties which are assessed as one source.
   - Paragraph 9.3 of the PR
     - Rental income received in advance from letting of property as a business source is assessed to tax under Section 4(a) of the Act in the basis period in which it is received. Any expense in relation to the advance rental income incurred after that basis period is allowable in the basis period of the year of assessment the expense was incurred.
     - In a case of a refund of the advance payment to the tenant, a claim for a tax deduction on the amount refunded can be made in the basis period the refund occurs.

Note: *For further information on letting of real property under the previous PR No. 4/2011, kindly refer to our Tax Flash – April 2011 issue.*

Tax Exemption for Takaful Operators and Insurance Companies in Respect of Statutory Income from a Shareholders' Fund

The Income Tax (Exemption) (No. 4) Order 2018 has been gazetted to provide exemption to takaful operators and insurance companies specified in Section 36(2) of the Malaysia Deposit Insurance Corporation ["MDIC"] Act 2011 from payment of income tax in the basis period for a year of assessment in respect of the statutory income of a shareholders' fund that is derived from the following businesses:-

- a life fund;
- a family fund;
- a general fund;
- any composite insurance business which consists of a life fund and a general fund; or
- any composite takaful business which consists of a family fund and a general fund.

Hyperlinks

› Tax Flash – April 2011

› Income Tax (Exemption) (No. 4) Order 2018

The exemption is equivalent to the first levy or annual levy paid from the shareholders' fund to the MDIC for that year of assessment.

If there is absence or insufficiency of the statutory income in the basis period for a year of assessment where the exemption for the statutory income cannot be granted or cannot be granted in full for that year of assessment, then so much of the statutory income in respect of which exemption cannot be granted shall be allowed against the statutory income of the shareholders' fund derived from a business (as referred to above) in the subsequent years until it is fully exempted.

The Order is deemed to have come into operation from the year of assessment ["YA"] 2018.

Tax Exemption for the Statutory Income of a Company Derived from the Business of Providing Fund Management Services

Following the Budget 2018 announcement, the Income Tax (Exemption) (No. 5) Order 2018 has been gazetted to exempt a company in the basis period for a year of assessment from the payment of income tax in respect of statutory income derived from the business of providing fund management services for Sustainable and Responsible Investment ["SRI"] Fund in Malaysia.

The SRI Fund must comply with the requirements set out in the guidelines relating to SRI Fund issued by the Securities Commission Malaysia under the Capital Markets and Services Act 2007.

Where a company carries on a business other than the business of providing fund management services, each business shall be treated as a separate and distinct source of the business and separate account for the income derived from the business of providing fund management services for SRI Fund shall be maintained.

This Order shall not apply to a company if in the basis period for a year of assessment the company has been granted:-

- any incentive under Section 60G of the Act; or
- any exemption under Section 127(3)(b) of the Act.

"Company" means a fund management which is:-

- resident in Malaysia;
- incorporated under Companies Act 2016; and
- licensed under the Capital Market and Service Act 2007 or registered with the Securities Commission Malaysia as a venture capital management corporation or a private equity management corporation.

The above Order come into operation from YA 2018 until YA 2020.

Hyperlinks

› Income Tax (Exemption) (No. 5) Order 2018

Deduction for Payment of Premiums to MDIC

Under the Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013, a deduction of an amount equivalent to the first premium or annual premium paid by a member institution to the MDIC in the basis period for a year of assessment is allowed to ascertain the adjusted income of that member institution from its business.

For the purpose of the above Rules, a member institution is:-

- a financial institution provided under Section 36(1)(a) of the MDIC Act 2011; or
- a financial institution provided under Section 36(1) and a takaful operator or an insurance company provided under Section 36(2) of the MDIC Act 2011.

The Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) (Amendment) Rules 2018 has recently been gazetted to stipulate that the above Rules will no longer apply to a takaful operator or an insurance company provided under Section 36(2) of the MDIC Act 2011.

The amendment Rules are deemed to have effect from the YA 2018.

Note : *For further information, kindly refer to our Tax Flash – May 2013 issue.*

RPGT Exemption for Disposal of Chargeable Asset at the Price of RM200,000 and below

Following the Budget 2019 announcement, the Real Property Gains Tax (Exemption) Order 2018 [PU(A) 360] has been gazetted to provide exemption from payment of Real Property Gains Tax ["RPGT"] to a Malaysian citizen in respect of the chargeable gain accruing on the disposal of a chargeable asset (except shares) with the following conditions:-

- the disposal of the chargeable asset is made in the 6th year or after the date of acquisition of the chargeable asset; and
- the consideration for the disposal of chargeable asset is not more than RM200,000.

The above Order comes into operation on 1st January 2019.

Hyperlinks

- Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013
- Tax Flash – May 2013
- Real Properties Gains Tax (Exemption) Order 2018 [PU(A) 360]

RPGT Exemption for Disposal of Building in Node Medini

The Real Property Gains Tax (Exemption) Order 2018 [PU(A) 368] has been gazetted to provide exemption from payment of RPGT to an individual in respect of the chargeable gains accruing on the disposal of a building or part of the building or a parcel of the building in Node Medini which was acquired directly from the developer. The disposal must be made between the period from 1st January 2010 until 31st December 2020.

The above Order is deemed to have come into operation on 1st January 2010.

Stamp Duty Exemption on Loan Agreement to Finance the Purchase of Residential Property

Following the Budget 2019 announcement, the Stamp Duty (Exemption) (No. 4) Order 2018 has been gazetted to provide exemption of stamp duty chargeable on loan agreement to finance the purchase of only one (1) unit of residential property (i.e. a house, a condominium unit, an apartment or a flat purchased or obtained solely to be used as a dwelling house) with value not exceeding RM300,000 by an individual who is a Malaysian citizen.

This exemption is given on the conditions that:-

- the sale and purchase agreement for the purchase of the residential property is executed from 1st January 2019 to 31st December 2020; and
- the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly

This Order comes into operation on 1st January 2019.

Stamp Duty Remission on Loan Agreement to Finance the Purchase of Residential Property

Following the Budget 2019 announcement, the Stamp Duty (Remission) Order 2018 has been gazetted to provide that an amount of RM1,500 shall be remitted from the stamp duty chargeable on loan agreement to finance the purchase of only one (1) unit of residential property (i.e. a house, a condominium unit, an apartment or a flat purchased or obtained solely to be used as a dwelling house) with value exceeding RM300,000 up to RM500,000 by an individual who is a Malaysian citizen.

Hyperlinks

- Real Property Gains Tax (Exemption) Order 2018 [PU(A) 368]
- Stamp Duty (Exemption) (No. 4) Order 2018
- Stamp Duty (Remission) Order 2018

This remission is given on the conditions that:-

- the sale and purchase agreement for the purchase of the residential property is executed from 1st July 2019 to 31st December 2020; and
- the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly

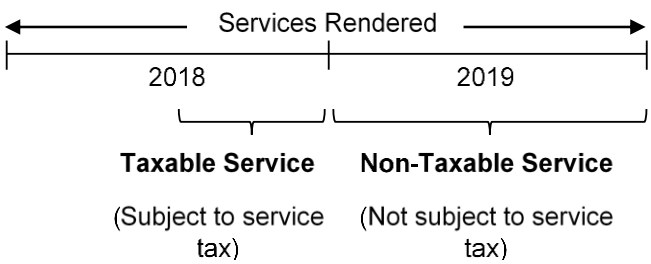
This Order comes into operation on 1st July 2019.

Service Tax

The relevant amendments in relation to service tax have recently been gazetted via the issuance of the Service Tax (Amendment) (No. 3) Regulations 2018 and the Service Tax (Persons Exempted from Payment of Tax) Order 2018. The regulations and order are in force effective 1st January 2019.

The salient amendments to the regulations and order are summarised below:-

i. Effect of Change in Taxable Services on Service Tax Treatment
   - In the case where the taxable service is no longer specified as a taxable service and the provision of such service is spanning after the change, service tax shall be charged on the proportion of the taxable service which is attributed to the part of the period before 1st January 2019.
   - In the case where a new service is specified as a taxable service and the provision of such service is spanning after the change, service tax shall be charged on the proportion of the service which is attributed to the part of the period after 1st January 2019.
   - In the case where a new service is specified as a taxable service and before the date of such change, any payment is received in connection with such service that will be provided on or after 1st January 2019, no service tax shall be charged on the payment received.
   - Please refer to the below summary of the service tax treatment in respect of the scenarios mentioned above:-
     - Taxable Service No Longer Specified as a Taxable Service Effective 1st January 2019



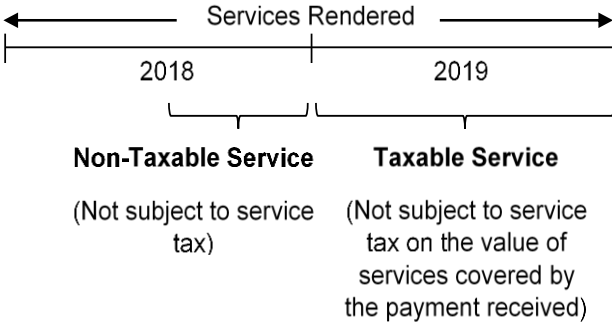
Hyperlinks

- Service Tax (Amendment) (No. 3) Regulations 2018

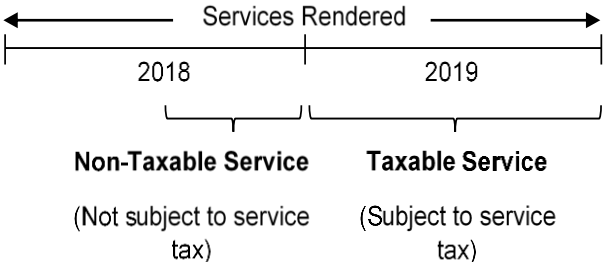
Hyperlinks

- New Service (Previously Not-Taxable) Specified as a Taxable Service Effective 1st January 2019

  a. Payment received before 1st January 2019



  b. Payment received on / after 1st January 2019



ii. Value of Imported Taxable Services
- The value of imported taxable services for cases where:-
  - the foreign service provider is not a connected person to the service recipient in Malaysia, the actual value of the imported taxable services except for premium for insurance policy or takaful contribution for takaful certificate, where the actual premium or contribution paid is taken as the value of the imported taxable services.
  - the foreign service provider is a connected person to the service recipient in Malaysia, the value of the imported taxable services is the value which would have been acquired in the ordinary course of business by the person who is not connected with the foreign service provider.

iii. Provision of Imported Taxable Services Within the Same Group of Companies
- Any imported taxable services acquired by a company in Malaysia from any company within the same group of companies located outside Malaysia will be regarded as taxable services and subject to service tax.

  [Note: It was announced by the Finance Minister via Media Release on 30th December 2018 that a ministerial exemption will be issued to exempt the abovementioned imported taxable services.]

iv. Furnishing of Declaration by a Person other than a Taxable Person
- A person other than a taxable person who acquires imported taxable services shall furnish a declaration in Form SST-02A.

v. Additional Particulars to be Disclosed in Invoice to a Person Who is Entitled to Service Tax Exemption
- Where a service tax registrant provides any taxable service to his customer who is also a service tax registrant providing the same taxable service and entitled to exemption from payment of service tax under Section 34 of the Service Tax Act 2018, the registered person shall issue an invoice with the following additional particulars:-
  - name and address of the customer
  - the customer's service tax registration number
  - the total amount of service tax that is exempted

vi. Determination of Total Value of Taxable Services for the Purpose of Service Tax Registration
- The total value of taxable services which is exempted from payment of service tax under Section 34 of the Service Tax Act 2018 shall be taken into account in computing the total value of taxable services for service tax registration purposes.

vii. Redefinition of "Taxable Person" under Item 2, Group C – Health or Wellness Centres and Massage Parlours
- The definition of "taxable person" under Item 2, Group C has been redefined to "any person operating any health or wellness centre, massage parlour or similar places **whether or not registered with, or approved by, any relevant authorities**, excluding:-
  a. any facilities providing similar activities registered under the Private Healthcare Facilities and Services Act 1998 [*Act 586*];
  b. any Government healthcare facilities;
  c. any facility managed by any university established under the University Colleges Act 1971 [*Act 30*] or the Universiti Teknologi MARA Act 1976 [*Act 173*] for the purposes of healthcare."
- Prior to the amendments, "taxable person" is defined as "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**, excluding the facilities mentioned in (a) to (c) above."

Hyperlinks

- Form SST-02A

viii. Redefinition of "Taxable Person" under Item 7, Group G – Provision of Consultancy Services

- The definition of "taxable person" under Item 7, Group G has been redefined to "any person who provides consultancy, **training or coaching** services, excluding:-
  a. approved companies with status or definition 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 institutes under Section 34B of the Income Tax Act 1967 [*Act 53*]; or
  b. **the Federal or State Government, local authorities or statutory bodies**."
- Prior to the amendments, "taxable person" does not include any person who provides training or coaching services and the exclusion in (b) above is not provided.

ix. Redefinition of "Taxable Person" under Item 9, Group G – Provision of Management Services

- The definition of "taxable person" under Item 9, Group G has been redefined to "any person who provides management services, excluding:-
  a. the management and maintenance services in connection with land or building **solely for residential use** provided by any developer, joint management body, management corporation or residential association;
  b. the management services provided by any person who is licensed or registered with the Securities Commission Malaysia for carrying out the regulated activity of fund management under the Capital Markets and Services Act 2007 [*Act 671*]; or
  c. the management services provided by any person, Government agency, local authority or statutory body for the purposes of religious, welfare, bereavement, **burial, cemeteries, cremation, sewerage, water supply**, health or **transport services**."
- Prior to the amendments, the exclusion clauses mentioned in (a) and (c) above are as follows:-
  a. any developer, joint management body or management corporation to the owners of a building held under a strata title;
  c. any person, Government agency, local authority or statutory body for the purposes of religious, welfare, bereavement, health or public transport services.

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x. Redefinition of "Taxable Service" under Item (g), Group G – Provision of Consultancy Services
- The definition of "taxable service" under Item (g), Group G has been redefined to "provision of consultancy services including professional consultancy services other than specifically mentioned in this Schedule, **or training or coaching services with or without the issuance of certificate for which the fees are imposed**, excluding:-
  - provision of consultancy services relating to healthcare services and veterinary services;
  - provision of consultancy, **training or coaching** services in connection with:-
    a. goods or land situated outside Malaysia; or
    b. matters outside Malaysia other than matters specified in (a)."
- The amendment is to prescribe training and coaching services as taxable services with effect from 1st January 2019.

xi. Redefinition of "Taxable Service" under Item (h), Group G – Provision of Information Technology Services
- The definition of "taxable service" under Item (h), Group G has been redefined to "provision of all types of information technology services, excluding:-
  a. provision or sale of goods in connection with the provision of the information technology services;
  b. **provision of information technology** in relation to:-
     A. **goods or land situated outside** Malaysia; or
     B. matters **outside Malaysia** other than matters specified in (A)."
- The amendment is to provide clarity that provision of information technology services in relation to (A) and (B) above will not be regarded as taxable services.

xii. Redefinition of "Taxable Service" under Item (i), Group G – Provision of Management Services
- The definition of "taxable service" under Item (i), Group G has been redefined to "provision of **any of following management services**:-
  a. project management services, full or part of the project;
  b. tourism management services;
  c. logistics management services;
  d. maintenance management services;
  e. warehousing management services;
  f. collection and debt management services;
  g. car park management services;
  h. sports facilities management services;
  i. secretarial management services;
  j. any management services other than above made on behalf of another person,

  excluding the provision of such services in connection with:-
  A. goods or land situated outside Malaysia; or
  B. matters outside Malaysia other than matters specified in (A)."

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- Prior to the amendments, "taxable services" under Item (i) Group G is defined as "provision of **all types of management services** including project management or project coordination, excluding provision of such services in connection with:-
  a. goods or land situated outside Malaysia; or
  b. matters outside Malaysia other than matters specified in (a)."

xiii. Redefinition of "Taxable Service" under Item (j), Group G – Provision of Employment Services

- The definition of "taxable service" under Item (j), Group G has been redefined to "provision of all types of employment services, excluding-
  - provision of employment services in the form of secondment of employees;
  - provision of employment services for employment outside Malaysia."
- With the amendments, the provision of employment services in the form of supplying employees to work for another person for a period of time has been deleted from the exclusion clause. Hence, provision of such services will be regarded as taxable services.
- Additional New Taxable Services Included in Group I – Other Service Providers

Taxable Person	Taxable Service	Total Value of Taxable Service
Any person who operates an amusement park which is a place on which there is any building, premises or structure thereon, either temporarily or permanently, in which there are various attractions including rides, games, fun activities, with or without themes, where people are allowed to enter such place with admission charges imposed.	(a) Provision of all services including entrance fees. (b) Provision or sale of food and beverages.	RM500,000

Taxable Person	Taxable Service	Total Value of Taxable Service
Any person providing services in relation to the use or provision of brokerage and underwriting.	The provision of services relating to financial services for the use or provision of brokering and underwriting on any fees or commissions charged.	RM500,000
Any person providing cleaning services, excluding cleaning services in relation to goods, land or building for religious, educational, residential or agricultural purposes.	The provision of any cleaning services in relation to goods, land or commercial or industrial building.	RM500,000

xiv. Exemption from Payment of Service Tax in Respect of Specific Business-to-Business Transactions

- The following taxable person, who acquires taxable services specified in items (a) to (i), Group G of the First Schedule to the Service Tax Regulations 2018 from another taxable person providing the similar taxable services in the course or furtherance of his business, is entitled to service tax exemption:-
  - Any person who is an advocate and solicitor registered under the written laws for the time being in force;
  - Any person who is a *syarie* lawyer registered under the written laws for the time being in force;
  - Any person who is a public accountant registered under the written laws for the time being in force;
  - 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;
  - Any person who is a professional engineer registered under the written laws for the time being in force;
  - Any person who is an architect registered under the written laws for the time being in force;
  - Any person who provides consultancy, training or coaching services excluding:-

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› Service Tax (Persons Exempted from Payment of Tax) Order 2018

- approved companies with status or definition 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 institutes under Section 34B of the Income Tax Act 1967 [*Act 53*]; or
- the Federal or State Government, local authorities or statutory bodies.

○ Any person who provides information technology services;

○ Any person who provides management services, excluding:-

- the management and maintenance services in connection with land or building solely for residential use provided by any developer, joint management body, management corporation or residential association;
- the management services provided by any person who is licensed or registered with the Securities Commission Malaysia for carrying out the regulated activity of fund management under the Capital Markets and Services Act 2007 [*Act 671*]; or
- the management services provided by any person, Government agency, local authority or statutory body for the purposes of religious, welfare, bereavement, burial, cemeteries, cremation, sewerage, water supply, health or transport services.

- Any taxable person (i.e. any person, Government agency, local authority or statutory body) who acquires advertising services from another taxable person providing the similar advertising services in the course or furtherance of his business is entitled to service tax exemption.

xv. On 11th January 2019, Royal Malaysian Customs Department has published the following Industry Guides (currently only made available in our National language) in its website:-

- Guide on Imported Taxable Services;
- Guide on Cleaning Services;
- Guide on Consultancy, Training and Coaching Services; and
- Guide on Amusement Park.

Sales Tax

The following regulations or orders in relation to sales tax have recently been gazetted and are in force effective 1st January 2019:-

- Sales Tax (Amendment) Regulations 2018
- Sales Tax (Rate of Tax) (Amendment) (No. 3) Order 2018
- Sales Tax (Imposition of Sales Tax in Respect of Special Areas) (Amendment) Order 2018

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- Guide on Imported Taxable Services (*Bahasa Malaysia*)
- Guide on Cleaning Services (*Bahasa Malaysia*)
- Guide on Consultancy, Training and Coaching Services (*Bahasa Malaysia*)
- Guide on Amusement Park (*Bahasa Malaysia*)

- Sales Tax (Amendment) Regulation 2018
- Sales Tax (Rate of Tax) (Amendment) (No. 3) Order 2018
- Sales Tax (Imposition of Sales Tax in Respect of Special Areas) (Amendment) Order 2018

- Sales Tax (Customs Ruling) (Amendment) Regulations 2018
- Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2018
- Sales Tax (Goods Exempted from Tax) (Amendment) (No. 4) Order 2018

The salient amendments to the Sales Tax (Amendment) Regulations 2018 are summarised below:-

i. Credit system for Sales Tax Deduction

- Any registered manufacturer may make an application for the deduction of sales tax paid in respect of taxable goods purchased by the registered manufacturer which are raw materials, components or packaging materials used solely in the manufacturing of his taxable goods.
- Any amount of sales tax to be deducted in respect of taxable goods purchased by any registered manufacturer shall be based on the following rates:-

Category	Rate of Sales Tax Deduction
For any taxable goods charged and levied with 5% sales tax	2% of the total value of the taxable goods purchased
For any taxable goods charged and levied with 10% sales tax	4% of the total value of the taxable goods purchased

- Conditions
  - the taxable goods are purchased from a supplier who is not a connected person to the registered manufacturer;
  - the purchase of the taxable goods is proved with proper invoice issued by the supplier (a person who is not a registered manufacturer) in our national language or English language containing the following particulars:-
    - the invoice serial number;
    - the date of the invoice;
    - the name and address of the supplier;
    - the name and address of the registered manufacturer whom the taxable goods are sold to;
    - a description sufficient to identify the taxable goods sold;
    - any discount offered;
    - for each description, distinguish the type of taxable goods, quantity of the taxable goods and the amount payable;
    - the total amount payable; and
    - any amount expressed in a currency other than Ringgit shall also be expressed in Ringgit at selling rate of exchange prevailing in Malaysia at the time of sale of the taxable goods.

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- Sales Tax (Customs Ruling) (Amendment) Regulations 2018
- Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2018
- Sales Tax (Goods Exempted from Tax) (Amendment) (No. 4) Order 2018

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- the registered manufacturer shall keep all records related to the deduction of sales tax for a period of seven years from the date of deduction; and
- any other conditions as the Minister may deem fit to impose.

- Disallowance of sales tax deduction
  - The Minister may at any time, in such form and manner as determined by him, disallow the deduction of sales tax to be made to the registered manufacturer-
    - if he is satisfied that the registered manufacturer:-
      - has provided any false, misleading or inaccurate information in his application; or
      - has at any time ceased to manufacture taxable goods; or
    - upon request made in writing by the registered manufacturer.
- In the event that the sales tax to be deducted for any taxable period exceeds the amount of the sales tax payable, the excess may be deducted in the sales tax return for the next taxable period until the whole amount is fully deducted.
- However, the excess shall not be refunded in the event that the registered manufacturer ceases to manufacture taxable goods.
- Where the registered manufacturer has deducted any amount of sales tax payable on the purchase of taxable goods and such goods have been disposed of by another person other than the registered manufacturer or other than for the manufacturing of his taxable goods, he shall notify the proper officer of sales tax of such disposal and pay the whole or any part of the amount of sales tax deducted.