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17 FEBRUARY 2021

Confusion Over the Scope of Management Service

What constitutes management services for the purposes of service tax has always been a hotly debated topic, from the day the service tax was implemented in Malaysia. This lingering uncertainty could be largely due to the fact that “management service” is neither defined in the Service Tax Act 2018 (**STA**) nor in the Service Tax Regulations 2018 (**STR**). The situation is further exacerbated by frequent amendments to the legislation.

Pursuant to Item (i), Column 2, Group G under the First Schedule of the STR, the following types of management services have been categorised as taxable management services:

- (i) Project management services, full or part of the project;
- (ii) Tourism management services (deleted with effect from 1 September 2018);
- (iii) Logistic management services (deleted with effect from 1 September 2018);
- (iv) Maintenance management services;
- (v) Warehousing management services;
- (vi) Collection and debt management services;
- (vii) Car park management services;
- (viii) Sports facilities management services;
- (ix) Secretarial management services;
- (x) Any management services other than specified in (i) to (ix) made on behalf of another person,

excluding the management services listed in sub-items (xi) to (xiv) (**Non-Taxable Management Services**).

On 15 January 2021, the Royal Malaysian Customs Department (**Customs**) issued a revised guide on management services (**Guide**) which supersedes the earlier one issued on 1 October 2020.

This alert sets out several material points discussed in the Guide and the author's views on them.

1. Scope/definition of management services

Customs has taken the view that “management services” covers the coordination and the arrangement of any activities in providing services to customers, where the service in question is not categorised under any specific taxable service.¹ These activities consist of organising, supervising, monitoring, planning, controlling and directing various resources, such as human resources, finance, technology, physical resources and others.²

2. Significance of a written contract

If there is a written contract, the said contract would be a material factor in determining whether the service contracted for can be categorised as a management service.³ If there is none, the service could be treated as management service if it falls within the scope and definition of Item 1 above.

3. What constitutes maintenance management services?

Several examples in the Guide have illustrated situations where Customs takes the view that there is a provision of maintenance management services. Such instances include:

- (a) If the owner of a shopping complex appoints a building maintenance company to provide maintenance services, such services are taxable and amount to the provision of maintenance management services.⁴ If the owner of a shopping complex charges its tenants maintenance management fees, such fees would be taxable.⁵
- (b) If a lift service provider assigns his staff to monitor and conduct inspections periodically to ensure that the lift is in good condition, such service would be taxable as it would amount to a maintenance management service.⁶
- (c) Air-conditioning maintenance services would not be taxable if the services are performed at the request of customers and thereby considered as corrective maintenance service.⁷ However, if the services are carried out through periodic monitoring and maintenance (without being specifically requested to do so), such services would be taxable.⁸ Should there be any replacement of components and the value of the components and the value of the services are not separately itemised in the invoice, the entire value of the invoice would be subject to 6% service tax.

¹ See para 10 of the Guide

² See para 10 of the Guide

³ See para 11 of the Guide

⁴ See Example 4 at page 4 of the Guide

⁵ See Example 5A at page 5 of the Guide

⁶ See Example 6 at page 5 of the Guide

⁷ See Examples 7 and 8 at pages 5 and 6 of the Guide

⁸ See Example 7 at pages 5 and 6 of the Guide

(d) In respect of IT maintenance services that involve both hardware and software, the maintenance of software systems is subject to service tax as it is a provision of IT services. Maintenance of hardware would not be taxable. However, if the service provider is providing preventive maintenance services over a period of time, such service (whether it is software or hardware maintenance) would be taxable as it is a provision of maintenance management services.⁹

In short, it would appear that Customs has taken the view that if the maintenance service in question is not a corrective maintenance service but a preventive maintenance service that is provided periodically and requires monitoring by the supplier, such service would amount to maintenance management services and is subject to service tax.

4. Any management services other than those specified in (i) to (ix) made on behalf of another person

Examples given by Customs on other management services which are taxable include the provision of employee training programmes on behalf of a company and event management services. These services do not fall within any of the categories under Items (i)(i) to (i)(ix) but have elements of monitoring, planning and coordinating.

Author's observations

In determining whether a service falls under any of the categories of taxable management services as prescribed under Item (i), Column 2 of Group G, Customs appears to have placed a lot of emphasis on whether the service involves any elements of monitoring, arranging, coordinating and planning. If the answer is in the affirmative and the service in question does not fall under Non-Taxable Management Services, business-to-business (B2B) exemptions¹⁰ or intra-group relief,¹¹ it would likely be treated as a taxable management service.

It is inevitable that services generally involve ancillary or incidental elements of monitoring, planning, coordinating and/ or supervising. Taking lift maintenance services as an example, it is artificial to classify preventive lift maintenance services as a "maintenance management service" purely because it was done periodically and performed without the need for a prior request from customers. At the end of the day, customers are still paying for maintenance services instead of maintenance management services.

Accordingly, the author takes the view that the predominant

⁹ See Example 9 at page 7 of the Guide

¹⁰ See Item 1 of the Schedule in the Service Tax (Person Exempted from Payment of Tax) Order 2018

¹¹ See paras 3 and 3A, First Schedule of the STR

purpose of a particular service should be given priority in determining whether a service falls within one of the aforementioned categories. A wedding/ event planner, for example, is hired predominantly for the coordination and arrangement of events. This would clearly fall within the ambit of Item (i)(x), Column 2 of Group G. However, in cases where planning, coordination or monitoring is not the predominant purpose of why a particular service is provided, we are of the view that such services should not be treated as falling within one of the categories of taxable management services purely because the service is engaged routinely or provided over a period of time.

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Published by the Tax, SST & Customs Practice

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