

15 AUGUST 2019

## Service Tax Exemptions For B2B Transactions

Pursuant to the announcement made during the tabling of Budget 2019, the Minister of Finance issued the Service Tax (Person Exempted from Payment of Tax) Order 2018 (**Exemption Order**), which came into effect on 1.1.2019. The Minister has exempted service tax for specific business-to-business (**B2B**). Paragraph 3 of the Exemption Order ascertains the persons, services and other conditions that have to be met to qualify for exemption from service tax.

### Contact persons:



**Datuk D. P. Naban**  
Senior Partner  
Tax, SST & Customs Practice  
T: +603 6208 5858  
E: dpn@lh-ag.com



**S. Saravana Kumar**  
Partner  
Tax, SST & Customs Practice  
T: +603 6208 5813  
E: sks@lh-ag.com

### Persons Exempted

The eligible taxable persons identified under Column (2) of the Schedule to the Exemption Order are eligible for exemption and are broken down into two categories, as follows:

**(1) “The taxable person specified in column (1) Group G in the First Schedule to the Service Tax Regulation 2018 except the person specified in items 10 and 11.”**

- (i) Advocates and solicitors;
- (ii) *Syarie* lawyers;
- (iii) Public accountants;
- (iv) Licensed or registered surveyors (including registered valuer, appraiser and estate agent);
- (v) Professional engineers;
- (vi) Architects;
- (vii) Involved in consultancy, training or coaching services;
- (viii) Involved in information technology services; or
- (ix) Involved in management services.

**(2) “The taxable person specified in column (1) item 8 Group I, in the First Schedule to the Service Tax Regulation 2018”**

- (i) Person, government agency, local authority or statutory body who provides advertising services.

**CHAMPIONING  
TAXPAYERS**

We represent taxpayers. Be it tax litigation, advisory or structuring,  
we focus on clarity, certainty and solutions.  
Make us your confidante today.

## Qualifying Taxable Service

Taxable services that are eligible for service tax exemption are set out in column 3 of the Schedule in the Exemption Order. This list refers to the First Schedule to the Service Tax Regulation 2018. These tax exempted services for the two categories of the taxable persons are summarised as follows:

### (1) Category (1)

- (i) Legal services;
- (ii) Legal services on Islamic matters;
- (iii) Accounting, auditing, book keeping, consultancy or other professional services;
- (iv) Surveying services;
- (v) Engineering consultancy services or other professional services;
- (vi) Architectural services;
- (vii) Consultancy services;
- (viii) Information technology services;
- (ix) Management services other than in relation to:
  - a. Employment services; or
  - b. Guards, or protection for safety or security services for personal, property or business purposes within Malaysia; and

### (2) Category (2)

- (i) Advertising services.

## Conditions

Meanwhile, the conditions that must be fulfilled to obtain the exemption from service tax are provided in column 4 of the Schedule to the Exemption Order. A summary is as follows:

### (1) Category (1)

There are three conditions that have to be fulfilled for the grant of the exemption of service tax to the taxable persons in Category (1), namely:

#### Our sub-specialisation includes:

##### INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

##### INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

##### SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitsteering

##### CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

##### TRADE FACILITATION & INCENTIVES

##### REAL PROPERTY GAINS TAX

##### PETROLEUM INCOME TAX

##### SALES & SERVICES TAX

##### STAMP DUTY

[www.lh-ag.com](http://www.lh-ag.com)

## Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122  
Email: [tax@lh-ag.com](mailto:tax@lh-ag.com)

- a. The recipient of the taxable service must be a registered taxable person within Category (1);
- b. The provider of the taxable service must be a registered taxable person within Category (1); and
- c. The taxable service in Category (1) must be the same taxable service as column (2) of the First Schedule to the Service Tax Regulation 2018.

## (2) Category (2)

There are two conditions that have to be fulfilled for the grant of the exemption of service tax to the taxable persons in Category (2), namely:

- a. The recipient of the taxable service must be a registered taxable person within Category (2);
- b. The provider of the taxable service must be also be a registered taxable person within Category (2).

Essentially, the necessary conditions are that the taxable person must be registered and receives the taxable services mentioned above from another taxable person within the same category.

## Our Comments

These service tax exemptions granted for B2B transactions are necessary to avoid the cascading taxation effect on services that are being provided. Without such exemptions, it is inevitable that the cost of business will increase as a result of compounded taxation. The implementation of this Exemption Order highlights the weakness of service tax.

Previously, under the goods and service tax regime, there was an input tax credit mechanism in place. This mechanism allowed the taxes paid on input to be reduced by the taxes paid on output. In this vein, the cascading taxation effect of the service tax was avoided.

### Our sub-specialisation includes:

#### INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

#### INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

#### SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitfiltering

#### CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

#### TRADE FACILITATION & INCENTIVES

#### REAL PROPERTY GAINS TAX

#### PETROLEUM INCOME TAX

#### SALES & SERVICES TAX

#### STAMP DUTY

[www.lh-ag.com](http://www.lh-ag.com)

## Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122  
Email: [tax@lh-ag.com](mailto:tax@lh-ag.com)

As such, it is recommended that businesses take advantage of these exemptions, which could lead to cost savings. However, these service tax exemptions are only available to certain B2B transactions, specifically those that were addressed in Categories (1) and (2) above.

In this regard, reference is made to the *Syarikat Pendidikan Staffield Berhad* case, where the High Court held that the “heavy” burden of establishing a tax exemption entitlement “rests upon a person seeking it”. The person claiming the tax exemption must be able to clearly “prove by clear and convincing evidence” that he is entitled to it.

Further, tax exemption statutes “must be strictly construed in favour of taxation and courts have no power to create exemption”. As such, if businesses were to have any doubts on the relevant service tax exemptions, they should consult their tax agents or lawyers.

If you have any queries pertaining to service tax matters, please contact our tax partners **Datuk D P Naban** or **S Saravana Kumar** at [tax@lh-ag.com](mailto:tax@lh-ag.com)

**Published by the Tax, SST & Customs Practice,  
Lee Hishammuddin Allen & Gledhill**

#### Contact persons:

##### **Datuk D. P. Naban**

Senior Partner  
Tax, SST & Customs Practice  
T: +603 6208 5858  
E: [dpn@lh-ag.com](mailto:dpn@lh-ag.com)

##### **S. Saravana Kumar**

Partner  
Tax, SST & Customs Practice  
T: +603 6208 5813  
E: [sks@lh-ag.com](mailto:sks@lh-ag.com)

#### Our sub-specialisation includes:

##### INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

##### INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

##### SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitsteering

##### CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

##### TRADE FACILITATION & INCENTIVES

##### REAL PROPERTY GAINS TAX

##### PETROLEUM INCOME TAX

##### SALES & SERVICES TAX

##### STAMP DUTY

[www.lh-ag.com](http://www.lh-ag.com)

## Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122  
Email: [tax@lh-ag.com](mailto:tax@lh-ag.com)

