

SST e-Alert

19 SEPTEMBER 2019

Recent Updates On Service Tax

The following subsidiary legislation pertaining to service tax came into effect on 1.9.2019:

- Service Tax (Amendment) Regulations 2019;
- Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) (Amendment) Order 2019;
- Service Tax (Compounding of Offences) (Amendment) Regulations 2019.

The Regulations and Order aim to provide further clarity to the existing law by addressing some of the existing legal gaps.

Service Tax (Amendment) Regulations 2019

The material amendments are as follows:

- Regulation 6A: Valuation of taxable service to include service tax for instances where payment for the service is made to any machine or device operated by coins, tokens or the like.
- First Schedule, para 1A: Clarification that only one application for registration is required if a taxable person provides two or more taxable services in different Groups and the value of these taxable services in each Group exceeds the threshold value prescribed.
- First Schedule, para 3A: Substituted so that “intra-group relief” is also made available for companies who acquire taxable services under Items (a) to (i) in Column 2 of Group G from any companies within the same group outside Malaysia.

By virtue of this amendment, the Ministerial relief on imported taxable service has now been incorporated in the Service Tax Regulations 2019 (please refer to our previous e-Alert,

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[Service Tax On Imported Taxable Services](#), for more information on imported taxable service).

- Item (i), Column 2, Group G of the First Schedule: Removal of tourism management service and logistics management services from the scope of management service.
- Paragraph 11 of Group I and the particulars relating to it in column (2) and column (3): Removal of services provided by amusement park operators as taxable services.
- Paragraph 13, Column 2 of Group I: Cleaning services in relation to the following are excluded as taxable service:
 - (a) Goods, land or building for religious, educational, residential or agricultural purposes; and
 - (b) Laundry services using any machine or device operated by coins, tokens or the like.
- Forms SST-01, SST-02 and SST-02A prescribed in the Third Schedule are amended.

Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) (Amendment) Order 2019

The only amendment is the introduction of a new item 6 to the Schedule to this Order, whereby provision of food and beverages in special areas by any person operating any night club, dance hall, cabaret or public house (1st, 2nd, 3rd class licensed under the Excise Act 1976) or beer house (1st or 2nd class licensed under the Excise Act 1976) is now a taxable service.

Service Tax (Compounding of Offences) (Amendment) Regulations 2019

The material amendments are as follows:

- Under Regulation 4(2), an offer by a senior officer of service tax from Customs to compound a compoundable offence lasts for a period of 14 days. It has now been amended to be for 14 days or “such extended time as the Director General may grant”.

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- Item (viA) has been inserted in the First Schedule to enable offences committed by non-taxable persons who:
 - (a) fail to furnish a declaration;
 - (b) furnish an incorrect declaration; or
 - (c) fail to pay the service tax due and payable
 for the purposes of imported taxable services pursuant to Sections 26A(2) and 26A(4) to also be compoundable.
- Form 2 (Offer to Compound Offences) and Form 3 (Acceptance of Offer to Compound Offences) under the Second Schedule have been replaced.

Service Tax Policy No 1/2019

One of the most notable amendments made by the Service Tax (Amendment) Regulations 2019 is that the provision of tourism management services, logistics management services, amusement park services and coin/token operated laundry services are no longer taxable with effect from 1.9.2019. However, the amendment is not retrospective.

On 1.9.2019, the Internal Tax Division of the Royal Malaysian Customs Department (**Customs**) released the Service Tax Policy No 1/2019 (**Service Tax Policy**) to clarify the service tax treatment for the following services between 1.1.2019 and 31.8.2019:

- (a) Management services by freight forwarder (logistic management);
 - (b) Management service for inbound tour packages by travel agent;
 - (c) Amusement park services; and
 - (d) Cleaning services operated via Coin Operated Laundry machine
- (collectively referred to as “**Selected Services**”).

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In summary, the Service Tax Policy states that:

- For the period from 1.1.2019 until 31.8.2019, the Selected Services are exempted from service tax under Section 34(3) of the Service Tax Act 2018.
- The service provider can make the following adjustments:
 - (a) If the Selected Services have been provided but the invoices have not been issued, the service provider shall issue an invoice without service tax.
 - (b) If an invoice for the Selected Services has been issued but payment has not been made, the service provider shall issue a credit note for the invoice issued.
- However, if service tax has been collected by the service provider, the service tax collected shall be remitted to Customs. No refund is allowed for any person who has paid the service tax.

Our Comments On The Service Tax Policy

Under Section 34(3) of the Service Tax Act 2018, the Minister of Finance may, subject to any condition he deems fit, exempt any person or class of person from payment of the whole or any part of the service tax which may be charged and levied on any taxable service provided. Although the Minister is not required to publish a *Gazette* order in granting such exemption, if the Selected Services are exempted from service tax, a letter of exemption should be issued. We understand that Customs had communicated this exemption on behalf of the Minister to the relevant stakeholders in May this year.

Based on the Service Tax Policy, Customs has exercised its administrative discretion to allow the service providers to make necessary adjustments for services rendered from 1.1.2019 until 31.8.2019 in order to ensure that service tax is not chargeable on the Selected Services during this period.

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However, Customs also requires service providers to remit the service tax collected during this period for the Selected Services instead of refunding the service tax to the payees. It is further stated that no refund will be made for any person who has paid the service tax. This approach appears to be at odds with the announcement that an exemption had been granted by the Minister for the Selected Services from 1.1.2019 until 31.8.2019.

Further, this approach is not fair to payees and taxpayers who have paid the service tax due within the prescribed time and places those who did not observe the prescribed time in an advantageous position. Given that the Minister had granted the exemption for the period 1.1.2019 to 31.8.2019, the service tax collected by Customs for the Selected Services should be refunded accordingly. Payees and taxpayers aggrieved by Customs' stance in this respect may consider recovering the service tax on the grounds of unjust enrichment.

If you have any queries on these recent amendments to service tax law, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at tax@lh-ag.com

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