

SST e-Alert

29 MARCH 2019

Sales Tax Deduction Facility

Recently, the Minister of Finance introduced a Sales Tax Deduction Facility through the insertion of Regulations 16A, 16B, 16C, 16D and 16E to the Sales Tax Regulations 2018. This facility is available to registered manufacturers to deduct sales tax paid on raw materials, components and packaging materials purchased from a supplier. Regulation 2(1) states that “supplier” means a person who is not a registered manufacturer.

This facility does not automatically apply to every registered manufacturer as a prior application is required as prescribed under Regulation 16A(1). The sales tax deduction rate is based on the sales tax rate levied on the taxable goods purchased from a supplier, namely:

Category	Rate of sales tax deduction
Taxable goods levied with sales tax rate of 5%	2% of total value of the taxable goods
Taxable goods levied with sales tax rate of 10%	4% of total value of the taxable goods

Computation of Sales Tax Deduction

In preparing the sales tax deduction computation, a registered manufacturer must ascertain the sales tax deductible rate, which is illustrated as follows:

Taxable goods with sales tax rate of	5%	10%
Total selling price of the supplier (A)	RM11,000	RM12,000
Deduction facility rate (B)	2%	4%
Amount of sales tax deductible against the sales tax payable (A x B)	RM220	RM480

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

**CHAMPIONING
 TAXPAYERS**

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

Regulation 16E(1) states that a registered manufacturer is not allowed to make deductions outside the taxable period. In other words, a registered manufacturer must claim the sales tax which is deductible against the sales tax payable within the same taxable period where the taxable goods were purchased.

Sales Tax Deduction Facility Conditions

Regulation 16C sets out the following conditions:

- (a) The registered manufacturer is not connected¹ with the supplier who sells the taxable goods;²
- (b) The taxable goods purchased from the supplier must be proved with the invoice issued by the supplier;³
- (c) The invoice must contain particulars such as serial number, date, name and address of the supplier and the registered manufacturer, description that is sufficient to identify the taxable goods, quantity and amount payable pursuant to Regulation 16C(b)(i) to (ix); and
- (d) The registered manufacturer must keep all records related to the deduction of sales tax for seven years.⁴

Mechanism Of Sales Tax Deduction Facility

The mechanism for the facility is as follows:

- (a) The deduction of sales tax shall be made based on the rate prescribed under Regulation 16B;⁵
- (b) A registered manufacturer must claim the sales tax which is deductible against the sales tax payable within the taxable period;⁶
- (c) No refund would be made to the registered manufacturer if the sales tax deduction for that

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

¹ Regulation 2(3) of the Sales Tax (Determination of Sale Value of Taxable Goods) Regulations 2018

² Regulation 16C(a)

³ Regulation 16C(b)

⁴ Regulation 16C(c)

⁵ Regulation 16E(1)(a)

⁶ Regulation 16E(1)(b) and Paragraph 11 of the Guide on Sales Tax Deduction Facility (Guide)

taxable period is more than the sales tax payable but the balance amount is allowed to be carried forward to the next taxable period until it is fully utilised;⁷

- (d) If a registered manufacturer ceases operation, the balance of sales tax deductions would not be refunded;⁸
- (e) In the event that the registered manufacturer disposes of the taxable goods purchased from a supplier for any commercial reason, the registered manufacturer is required to notify such disposal to the Royal Malaysian Customs Department (**Customs**) and repay the amount of the sales tax deducted in respect of the taxable goods disposed of.⁹ Otherwise, the registered manufacturer commits an offence;¹⁰
- (f) Sales tax must have been paid for taxable goods purchased from the supplier;¹¹ and
- (g) The registered manufacturer must use the taxable goods purchased from the supplier for the purpose of manufacturing taxable goods only.¹²

Disallowance Of Sales Tax Deduction

Customs may disallow the sales tax deduction if the registered manufacturer:

- (a) provides false, misleading or inaccurate information in the application under Regulation 16A;¹³
- (b) ceases to manufacture taxable goods;¹⁴ or
- (c) sends a written request on his own accord.¹⁵

Our sub-specialisation includes:

INCOME TAX <ul style="list-style-type: none"> • Tax Litigation & Dispute Resolution Proceedings • Tax Advisory & Planning • Tax Audit & Investigation • Transfer Pricing & Thin Capitalisation 	SALES & SERVICE TAX <ul style="list-style-type: none"> • SST Litigation • SST Legal Advisory • SST Audit & Investigation • Anti-Profitteering
INTERNATIONAL TAX <small>(Including Cross-border Transaction Tax & Withholding Tax)</small>	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

7	Regulation 16E(2) and Paragraphs 12 of the Guide
8	Regulation 16E(3)
9	Regulation 16E(4)
10	Regulation 16E(5)
11	Paragraph 7(ii) of the Guide
12	Regulation 16A and Paragraph 7(iv) of the Guide
13	Regulation 16D(a)(i)
14	Regulation 16D(a)(ii)
15	Regulation 16D(b)

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

Our views

The introduction of the sales tax deduction facility addresses the previous gap whereby registered manufacturers were unable to claim for sales tax deduction in respect of taxable goods purchased from suppliers who are not registered manufacturers. Previously, registered manufacturers were only allowed to claim for an exemption of sales tax for purchases made from another registered manufacturer pursuant to Schedule C of the Sales Tax (Persons Exempted from Payment of Sales Tax) Order 2018.

However, the conditions provided in the Regulations are stringent and require strict compliance from the registered manufacturers. A registered manufacturer who intends to apply for sales tax deduction must ensure that the invoice issued by the supplier contains particulars which are sufficient to identify the taxable goods. In our view, particulars such as the full description of the taxable good or the Harmonized System (HS) Code are sufficient to satisfy the said requirements under the Regulations.

Other than that, all other prescribed conditions must also be satisfied in order to avoid the risk of sales tax deduction being revoked and/or the risk of committing an offence under Regulation 34. If found guilty of an offence, a registered manufacturer would be slapped with a fine not exceeding RM30,000 or imprisonment for a term not exceeding two years, or both, pursuant to Regulation 34.

If there is any inadvertent omission or action which leads to an incorrect disclosure of sales tax deduction, the registered manufacturer may rely on Regulation 11 to correct the error made in Form SST-02. Regulation 11 states that if a taxable person makes an error in any returns furnished under the Act, he may correct the error voluntarily and such correction shall be made in Form SST-02, and in such manner and within such time as the senior officer of sales tax may determine.

As a matter of prudence, any correction to Form SST-02 in respect of the sales tax deduction shall be made as soon as possible once the error has been identified.

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-Profitshifting

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

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

On a separate note, it is observed that there is a discrepancy between the Regulations and the Guide on Sales Tax Deduction Facility (**Guide**) published by Customs.

Regulation 16E(5) reads:

“Any registered manufacturer who fails to comply with subregulation (4) **commits an offence.**”

whereas paragraph 15 of the Guide reads:

“Any registered manufacturer who fails to notify disposal of a taxable goods is **deemed to have committed an offence.**”

Conclusion

Paragraph 15 of the Guide is contrary to Regulation 16E(5), as the former appears to be a deeming provision which deems one to have committed an offence while the Regulation does not expressly state so. We are of the view that Customs cannot arbitrarily introduce a deeming provision as it amounts to a usurpation of Parliament’s power. The Regulation, as gazetted, shall prevail over the Guide if there is any inconsistency.

Please contact our tax partners **Datuk D P Naban** or **S Saravana Kumar** at tax@lh-ag.com if you have any further queries in respect of sales tax deduction.

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

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

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

