

SST e-Alert

7 DECEMBER 2018

Highlights Of Budget 2019 (Amendments) Part 2: Proposed SST Amendments Under Finance Bill 2019

During the tabling of the Malaysian Budget 2019, the Finance Minister proposed the following reforms for sales and service tax (SST) from 1.1.2019 onwards:

- (a) Grant exemptions for specific business-to-business service tax for registered service tax entities to prevent an increase in the cost of doing business as a result of compounded taxation and protect the competitiveness of our local service industry.
- (b) Introduce a credit system for sales tax deduction to prevent compounded taxation and in turn lower the cost of doing business for small manufacturers who purchase their products from importers instead of registered manufacturers.
- (c) Subject imported services to service tax to ensure local service providers are not unfairly disadvantaged against foreign competitors.

The Finance Minister also proposed during Budget 2019 that online services such as the downloading of software, music, and videos or digital advertising be subject to service tax from 1.1.2020 onwards.

Businesses would be required to pay service tax if they acquire these services, while foreign service providers would be required to register with Customs and charge and remit the relevant service tax if these services are acquired by the consumers.

This is to neutralise the cost of the disadvantage faced by the physical retailers against their virtual storefront counterparts, especially those operated by foreign entities.

On 19.11.2018, the Finance Bill 2018 was released. The proposed amendments to the current Sales Tax Act 2018 and Service Tax Act 2018 are as follows:

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Sales Tax Act 2018

Valuation method for contract manufacturer

- (a) Pursuant to Section 9(3) of the Sales Tax Act 2018, the sales value in the case of a registered contract manufacturer for taxable goods, subject to the approval of the Director General of Customs (**DG**), shall be the amount charged for work performed. It is proposed that Section 9(3) be amended for such valuation method to be extended to contract manufacturers who are not registered.

A credit system for sales tax

- (b) It is proposed that Section 41A be inserted to allow the Minister to make regulations prescribing the form and manner, the condition and the amount of sales tax to be deducted, in respect of taxable goods purchased by any registered manufacturer.

It is also proposed that such deduction is only allowed for taxable goods consisting of raw materials, components or packaging material used solely in the manufacturing of taxable goods. It is further proposed that should any registered manufacturer fail to comply with any of the conditions, sales tax that has been deducted shall be deemed to become due and payable by the registered manufacturer on the date on which any of the conditions has not been complied with.

- (c) It is also proposed that it will be an offence for any person to improperly obtain a deduction of sales tax.

Service Tax Act 2018

Service tax on imported services

- (a) It has been proposed that Section 7 of the Service Tax Act 2018 be amended so that service tax is also imposed on any imported taxable service.

It is also proposed that “imported taxable service” be defined as any taxable service acquired by any person in Malaysia from any person who is outside Malaysia and the value of imported service is to be prescribed by the Minister later.

- (b) As opposed to service tax on taxable services which is due on a payment basis, it has been proposed that service tax on imported taxable services is due at the time when:

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- (a) Payment is made; or
 (b) Invoice is received for the service
- whichever is the earlier.
- (c) A new Section 26A has been proposed to be inserted into the Service Tax Act 2018 for businesses that acquire imported taxable services to account and pay for service tax due in a prescribed declaration. The prescribed declaration shall be furnished and the service tax on imported taxable services shall be paid to Customs by the last day of the following month in which service tax is due.
- (d) The Finance Bill has also proposed that both criminal sanctions and late payment penalties be imposed if non-service tax registered businesses fail to comply with the new requirement to furnish the prescribed declaration and to pay service tax on imported taxable services.
- (e) Relevant amendments under Section 27 of the Service Tax Act 2018 have also been proposed for the DG to raise best judgment assessments on any businesses that acquire imported taxable services, but fail to furnish a return or furnish an incomplete or incorrect return.

Our views

Sales tax

- Based on the above, a credit system would be introduced from 1.1.2019 onwards to allow registered manufacturers who acquire taxable raw material and component and packaging material for the manufacturing of taxable goods to deduct sales tax paid. Currently, sales tax exemption is given to registered manufacturers who acquire taxable goods from another registered manufacturer. We believe that with the introduction of the credit system, the manufacturing cost for registered manufacturers who purchase taxable raw materials and component and packaging material directly from importers can be reduced as the embedded sales tax can now be deducted.

Service tax

- The Finance Bill has proposed a service tax on imported taxable services that is consistent with the announcement made by the Minister during Budget 2019.

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However, based on the current proposed amendments, only businesses that acquire imported taxable services are required to make declarations and pay for service tax.

3. In respect of the proposed service tax exemptions for business-to-business transactions where the parties are registered for service tax, we believe such exemptions would be reflected in the amendment to the First Schedule of the Service Tax Regulations 2018.
4. As for the “digital tax” which has been widely reported by social media, we believe this would be reflected in the Finance Bill in the year 2019 for it to be implemented in 2020.
5. Under Section 8 of the current Service Tax Act, the Minister has the power to prescribe any service to be a taxable service and the list of taxable services can be found in the First Schedule of the Service Tax Regulations 2018.
6. If the government intends to introduce digital tax starting from 1.1.2020, such introduction can be achieved by amending the list of taxable services under the First Schedule of the Service Tax Regulations 2018 to include online services as a taxable service.
7. That being said, we are of the view that the government’s intention to request foreign service providers to register, charge and remit the relevant service tax with the Malaysian Customs when these online services are provided to consumers in Malaysia cannot be achieved without amending the Service Tax Act. Even if such amendment is made, Customs would face considerable challenges in carrying out the necessary enforcement actions against a foreign entity that has no physical presence in Malaysia.

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Please contact our tax partners Datuk D P Naban or S Saravana Kumar at tax@lh-ag.com if you have any queries pertaining to the recently introduced sales tax and service tax.

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