Luther.

Malaysia News:

Towards the Introduction of the GST on the Foreign Supplied Digital Services?

May 2018

Towards the Introduction of the GST on the Foreign Supplied Digital Services?

Background

In April 2015, Malaysia introduced a Goods and Services Tax system at a rate of 6% on the supply of goods and services in Malaysia.

Under the Goods and Services Tax ("GST") Act 2014, the digital business-to-business ("B2B") services supplied by foreign companies to Malaysian businesses are subjected to GST.

The digital business-to-costumers ("B2C") services supplied by foreign companies to Malaysian consumers for non-business purposes (i.e. Uber, Grab, Airbnb) are not however subjected to GST, as the current legislation on services only applies to businesses with a "business establishment" or a "fixed establishment" in Malaysia.

In February 2017, the National GST Conference of the Royal Malaysian Customs Department announced amendments to the GST laws on the digital B2C services supplied by foreign companies to Malaysian customers in order to level the playing field and raise revenue.

These amendments reflect the differences initiatives and measures already taken on an international level regarding the taxation on the digital services.

International Environment

Over the past 20 years, Malaysia has blossomed in the economic growth of the ASEAN area and has become one of the key player in the digital economy, especially thanks to:

- the surge of the consumers' spending;
- the rise of the mobile phone ownership and usage (18 million mobile phone internet users in 2016 and probably more than 21.5 million by 2022);
- the digital economy accounting for 18% of the Malaysian economy.

Consequently, the GST loophole on the digital B2C services supplied by foreign companies might be one of the biggest losses in the digital economy and is creating a discrimination between local players who are taxed and foreign players who are not.

The 15-steps Base Erosion and Profit Shifting ("BEPS") plan implemented by the Organization for the Economic Cooperation and Development's ("OECD") addresses the tax challenges of the digital economy.

Action 1 of the BEPS final reports concludes that rules and implementing mechanisms must be developed to lead to a more effective and efficient collection of tax on digital services, and as such promotes the Destination Principle as the key mechanism.

This principle allows to determine the place of taxation of the cross-border B2C transactions for GST collection purposes by requiring the digital foreign suppliers to register and account for GST in the customers' country of residence.

Some measures have been already implemented worldwide to address this issue. Since 2015, the European Union, Japan, South-Korea, Australia have introduced a tax system to close the digital loophole. In ASEAN, Singapore is already taking similar actions and Malaysia intends to follow this trend.

Scope of the Proposed Amendments

The digital economy represents all the commercial transactions which are conducted electronically by use of the Internet.

However, the amendments announced by the Royal Malaysian Customs Department might only apply to the electronically-supplied services, i.e. streaming of music, downloading of games, films, software and e-books.

Consequently, the foreign-based trading and shopping platforms might not be affected by the proposed amendments for the following reasons:

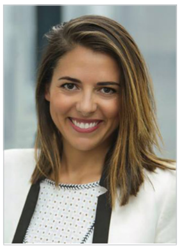
- these platforms do not charge any fees to consumers to use the platform;
- the consumers are only making a purchase of goods;
- the importation of goods is subjected to GST, which is borne by the consumers.

The key points of this reform are to be defined and it remains to be seen how the reform will be implemented in practice as it could significantly impact the tourism industry and cross-border online shopping, not to mention the increase of prices to cover the additional GST charge.

Tabled before the Parliament end of 2017, the reform has been postponed to an undefined date in light of the upcoming elections in the country.

Stay tuned!

Your Contacts



Caroline Pelaez
Senior Associate
Luther Corporate Services Sdn. Bhd.
Malaysia
Phone +60 3 2166 0085
caroline.pelaez@luther-services.com

Coline Grison
Associate
Luther Corporate Services Sdn. Bhd.
Malaysia
Phone +60 3 2166 0085
coline.grison@luther-services.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22, 50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110, contact@luther-lawfirm.com

Editor: Pascal Brinkmann, LL.M. (Stellenbosch), Managing Director, Unit 17-2, Level 17, Wisma UOA II, No. 21, Jalan Pinang, Phone: +60 (0)3-21660085, pascal.brinkmann@luther-services.com

Luther Corporate Services, the Corporate Services arm of Luther lawfirm enables us to offer our clients a “one-stop” solution for all their business needs. Our accountants, company secretaries and tax consultants provide the whole range services, which our clients expect from such a one-stop concept, from corporate secretarial services, outsourced administration, payroll and accounting to tax compliance. We assist our clients comprehensively in all stages of a business lifecycle, from the formation of a business vehicle, to ongoing support and statutory compliance matters and to the dissolution of a company.

Delhi-Gurugram, Kuala Lumpur, Shanghai, Singapore, Yangon

Luther Corporate Services Sdn Bhd (872040W) | Unit 17-2, Level 17 | Wisma UOA II | No. 21, Jalan Pinang | 50450 Kuala Lumpur | Malaysia Phone +60 3 2166 0085 | Fax +60 3 2166 0087

Your contact:
Pascal Brinkmann, pascal.brinkmann@luther-services.com

Further contacts can be found on our website www.luther-services.com.

Hits the mark. Luther.