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Malaysia News:

Important SST changes introduced in the Finance Act 2018 and Update on enforcement of corporate liability provision in MACC (Amendment) Act 2018

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1. Finance Act 2018

Practical implications of the sales and service tax changes

The gazetting of the Finance Act 2018 (the 'Act') on 27 December 2018 has introduced, among others, amendments to the Service Tax Act 2018 and Sales Tax Act 2018. Please find set out below a number of these note-worthy changes to the sales and service tax regime.

Service tax on imported services

Before the Act was implemented, service tax was chargeable only on the provision of taxable services by a taxable person in Malaysia. Imported services were not taxable. This put local service providers at a disadvantage compared to their offshore competitors since the latter's cost of service was lower as they did not have to pay any service tax. In other words, offshore service providers paid less tax and were, therefore, able to offer their services at a lower rate than that of their local competitors.

To remedy this, the ambit of service tax has been expanded and now includes imported taxable services. The Act defines these as 'any taxable service acquired by any person in Malaysia from any person outside Malaysia'. Imported taxable services can be services such as architectural or engineering design services and even online services such as downloaded software, music, video and digital advertising.

The imposition of service tax on imported services is effective:

1. from 1 January 2019 for services imported by Malaysian businesses (B2B transactions); and
2. from 1 January 2020 for services imported by Malaysian consumers (B2C transactions).

In B2B transactions, the local company, as the recipient of the imported services, will have to pay the service tax to the Royal Malaysian Customs Department. Whereas, in B2C transactions, the foreign service provider will have to register with the Royal Malaysian Customs Department and pay the service tax.

Deduction of sales tax

Under the Sales Tax Act 2018, when a small registered manufacturer purchased materials from importers who were not registered for sales tax, rather than other registered manufacturers, the sales tax was embedded into the purchase price. This meant that small registered manufacturers were subject to increased costs of materials and compound taxation as they were paying tax not only on the materials they purchased and but also on the goods they sold.

The new amendment aims to eliminate this compound taxation, thereby helping to reduce the cost of doing business for small registered manufacturers. It provides that the Minister has the discretion to make regulations which result in the small registered manufacturers being able to obtain a credit for a small part of the cost of the goods purchased, as a notional sales tax credit. In other words, if the Minister provides for such relief, the tax still has to be paid at first instance by the small registered manufacturer, but may later be refunded as a credit that can be used to reduce the amount of tax owed by such manufacturer accordingly. There may, however, be an administrative cost to recover the credit for the small registered manufacturers.

The deduction of sales tax which the Minister may prescribe shall be made on the following, all of which are to be used solely in the manufacturing of taxable goods:

- raw materials;
- components; or
- packaging materials.

Value for subcontract manufacturing

The Sales Tax Act 2018 provides that, if a sales tax registered manufacturer receives taxable goods from any person, and these goods are to be manufactured and returned to that original person, the sale value of the taxable goods is calculated based on the cost of the manufacturing service only (excluding the cost of the goods). The Act amends this provision by removing its application to 'registered' manufacturers alone. From 1 January 2019, non-registered manufacturers may also have the sale value of their taxable goods calculated in such a manner.

Since the Sales Tax Act 2018 now focuses on the cost of the manufacturing services, the number of companies required to register for sales tax will be far less than before and the amendment results in de facto relief for small manufacturers.

2. MACC (Amendment) Act 2018

Enforcement of corporate liability provision

As highlighted in one of our previous newsletters on the Malaysian Anti-Corruption Commission (Amendment) Act 2018, the enforcement of the new section 17A corporate liability provision had been deferred. In a speech made on 10 December 2018 in Kuala Lumpur at a seminar on anti-corruption, the Prime Minister stated that section 17A will now be effective on 1 June 2020.

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