Service Tax-Additonal syallubus for P6

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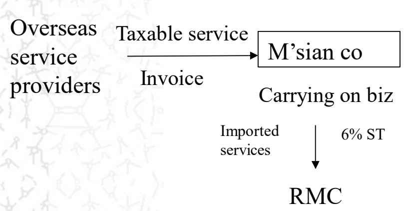
Imported services



- Service tax registrant
- Non ST registrant

- One month upon expiration of the taxable period
- Within one month following the end of the month in which
(i) payment made;or
(ii) invoiced received
whichever is earlier

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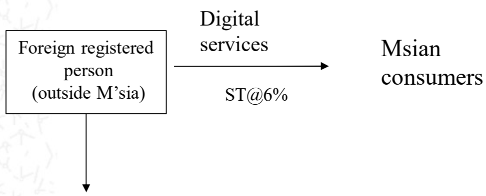
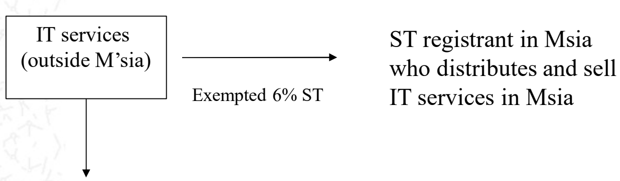
Digital service tax



- Need to register as taxable person if turnover >RM500,000
- Taxable period is 3 months , SST needs to be accounted for <= 1 month upon the expiration of a taxable priod

Information technology services



- Must be identical to the IT services distributed and sell in Msia
- Not for personal consumption

Artificial separation

- RMC has the discretion to consolidate 2 or more businesses which are set up separately with the sole intention to avoid registration. Criteria used:
- (a) common employees;

  (b) common premises

  (c) common shareholders providing the required financial assistance and capital

  (d) >= businesses are interconnected and servicing the same customers

Can be treated as 'single taxable person' and directed by RMC for service tax registration

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Service tax exemption -Services provided within group

- Service tax **would not apply** for Companies providing services <u>exclusively</u> within the group of companies in Group G (other than employment services and private agencies) with the sole intention to share the resources or cost recovery is said to be not providing taxable service
- If the Company providing similar services to its customers and also to its related companies within the same group, the entire services are subject to service tax.
- *Effective from 1 January 2020, this rule is relaxed to allow for the same services to be rendered to persons outside the group, provided that the value of the services does not exceed 5% of the total value of services provided by that company within 12 months.*
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Service tax exemption -Professionals

- Service tax registrants in Group G (Professional) who acquires taxable services (of the same nature & provided to customers)) of Group G (including imported taxable service) would be exempted from ST *(other than employment services and private agency)*
- The same exemption applies to imported services of item (a) to (i) from companies within the group of companies which are outside Malaysia

Service providers in Group G ⟷ Service providers in Group G

(a)-(i) services
Service tax exemption

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Service tax exemption-Advertising

- Service tax registrants in Group I, Item 8 (advertising company) who acquires advertising services from suppliers providing advertising services within the same industry (including imported taxable service) would be exempted from ST(same nature and provided to customers)

Advertising company ⟷ Advertising company

Service tax exemption

June 2022 Q4(b)(i)(ii), March/June 21 Q3(b)

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Dec 2022Q4(a)

(ii) Service tax treatment for payments made to non-resident service providers

Design service fees payable to Nice Design Pte Ltd (NDPL)

Any person, whether service tax registrant or not, who, in carrying on his business acquires any imported taxable service, should account for service tax in Malaysia at the prevailing rate of 6%. 'Imported taxable service' refers to any taxable service acquired by any person in Malaysia from any person who is outside Malaysia.

The provision of design services should fall within the ambit of taxable services under the consultancy services category. In this respect, as the fees are payable to a foreign service provider, GSB would need to account for service tax as an imported taxable service. The place where the services are rendered is not relevant in determining the service tax treatment.

Based on a fee of RM2 million, the service tax applicable is RM120,000 (6% x RM2 million).

The service tax is due at the time when the payment is made or invoice is received for the service, whichever is the earlier. As GSB is a service tax registrant, the service tax on imported taxable services can be accounted for in its service tax return.

Refurbishment service fees payable to Strong Renovators

Construction/refurbishment services are not within the scope of taxable services and therefore, there is no requirement to account for service tax.

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Dec 2022Q4(a)

Management service fees payable to PT Gading Resorts

Management services are regarded as a taxable service and therefore may be subject to service tax as an imported taxable service. However, where a company acquires taxable management services from any company within the same group of companies outside Malaysia, such a service shall not be regarded as an imported taxable service. In this case, as PT Gading Resorts and GSB are within the same group of companies, the provision of the management services should not attract service tax.

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Dec 2023 Q3

Hafiz is planning to acquire 20 acres of agricultural land in Sarawak, Malaysia for RM5 million. His brother, Amir, introduced him to the landowner. Hafiz has offered to pay Amir a commission of RM100,000 for the introduction, and if paid, this will be the first time Amir will receive such income.

Amir has also instructed his legal firm to assist Hafiz, free of charge, with the legal matters relating to the land purchase. The purchase will be subject to both State Government approval and to the landowner obtaining approval from its shareholders. The landowner has indicated that their sale of agricultural land to Hafiz will be subject to income tax. The estimated stamp duty for the land purchase is RM150,000.

Hafiz plans to plant coconut trees on the agricultural land at a cost of RM1 million, and expects to be able to harvest the coconuts after three years. The business is expected to make a loss during the initial years until harvesting.

The agricultural land is located in Sarawak, Malaysia, near a town, and has good investment potential. Hafiz intends to sell the land once it is worth RM10 million. He expects this value can be achieved after holding the land for between five to eight years.

Hafiz has an allowable loss from a previous disposal of real property of RM500,000.

Hafiz was advised by his business friends that he should make the land investment through a company set up and owned by him. This would facilitate his future divestment of the land through the sale of the company.

SmartFirm also provides accounting services to Amir&Co for an annual fee of RM50,000. The brothers are of the view that the commission, legal fees and accounting service fees between them and their firms should not be subject to service tax as they relate to services provided to connected persons, where relief should be available.

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Dec 2023 Q3

(b) Service tax treatment

It should be noted that there is no relief available for transactions between connected persons, with the exception of group relief for the provision of certain taxable services between companies within the same group. Therefore, the service tax treatment would need to be analysed based on the prevailing service tax rules.

Commission received by Amir

As the introduction for the land transaction to Hafiz is a one-off transaction and made in his personal capacity, Amir is not in the business of making introductions for land transactions. In this regard, the commission paid to Amir should not be subject to service tax.

Provision of free legal services

If the recipient of the service is connected to the taxable person, or where the service is provided free of charge, the value of imposing the service tax will be determined based on the value of the service in the normal course of business to a person not connected to the taxable person. Therefore, Amir&Co, a service tax registrant, would still need to account for 6% service tax based on the fees it would charge to its other customers in the ordinary course of the business.

Provision of accounting services to Amir's legal practice

The provision of accounting services is a taxable service to Amir&Co by SmartFirm, a service tax registrant, and therefore should be subject to service tax. SmartFirm would need to establish whether the annual fees of RM50,000 reflect the fees it would charge to its other customers in the ordinary course of the business. If they do not, in accounting for the service tax, the value of taxable services would have to be substituted with the value of services which it would normally charge to its other customers in the ordinary course of the business.

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Sales Tax – Additional Syllabus for P6

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Artificial separation

- RMC has the discretion to consolidate 2 or more businesses which are set up separately with the sole intention to avoid registration.
- Separate businesses which are found closely bound to one another through:
  (a) financial link
  (b) economical link
  (c) organizational link

Sept/Dec 21Q3(b)
March/June 2021 Q3(b)

Can be treated as 'single taxable person' and directed by RMC for sales tax registration

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December 2021 Q3(b)

(i) Explain the sales tax treatment on the importation of the production equipment, including the computation of sales tax payable, if any.

(3 marks)

(ii) Explain whether there is a basis for the Royal Malaysian Customs Department to require TMSB to charge sales tax on its sales as well as the collection of the back sales tax.

(4 marks)

December 2021 Q3(b)

(b) Tutup Mulut Sdn Bhd (TMSB)

(i) Sales tax on importation of production equipment

Even though Tutup Hidung Sdn Bhd (THSB) is not registered for sales tax, the importation of production equipment into Malaysia is subject to sales tax. The sales tax would be payable when THSB clears the equipment from customs control at the port.

The sales value to compute the sales tax payable would be based on the value of the taxable goods for the purpose of customs duty, including any customs duty and excise duty payable on such taxable goods. The value for customs duty purposes would be the value of the goods including freight and insurance, i.e. the cost, insurance and freight (CIF) value.

Based on the above, the sales tax payable would be computed as follows:

	RM
Value of the goods	800,000
Freight cost	10,000
Insurance cost	5,000
	815,000
Customs duty at 10%	81,500
	896,500
Sales tax at 5%	44,825

December 2021 Q3(b)

(ii) Direction to be treated as a single taxable person

As the expected annual sales turnover of both TMSB and THSB are below RM500,000 individually, there is no requirement for the entities to be registered for sales tax.

However, under the sales tax legislation, where the Director General of Customs is satisfied that any separation of business activities is artificial, a direction can be made requiring the persons named in the direction to be treated as a single taxable person effective from the date specified in the direction. Based on this direction, the single taxable person will be registered for sales tax effective from the date specified in the direction.

In assessing whether any separation of business activities is artificial, the extent to which different persons carrying on those business activities are closely bound to one another by financial, economic and organisational links would be considered.

In the present case, TMSB has set up a new subsidiary, THSB, to undertake the new production lines to contain the financial risk of the project under a separate company. However, the new production lines are carried out within the same premises as well as being managed by the same management team. Based on this, while the company could justify the need to carry out the manufacturing activity under a separate entity for its internal risk management purposes, due to the economic and organisational links between TMSB and THSB, there is a basis for the Royal Malaysian Customs Department (RMCD) to direct that both TMSB and THSB be treated as a single taxable person for sales tax purposes. On a combined basis, the expected annual turnover would have exceeded the RM500,000 threshold, and therefore, required to be registered for sales tax.

The direction for registration for sales tax as a single taxable person can only be made prospectively, in this case effective from 1 December 2021. Therefore, there is no basis for the RMCD to require TMSB to pay the sales tax on the sales made prior to the date of the direction.

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June 2023 Q4

- KSSB is exploring the feasibility of directly importing one of its raw materials through a trading company, Lapis Sdn Bhd (LSB), instead of acquiring it from local suppliers.
- KSSB has also decided to subcontract some of the manufacturing processes to a subcontractor because its current factory capacity is unable to cope due to increased orders.
- KSSB will send partially completed components to the subcontractor for assembly, after which the assembled components will be returned to KSSB for final testing and packaging. The subcontractor is a registered manufacturer.
- KSSB recently learnt that a trade customer has been declared bankrupt. The relevant invoice for RM550,000 (inclusive of 10% sales tax) dated 1 February 2020 was partially paid: RM300,000 was received in 2021. The outstanding amount is now written off as an irrecoverable debt.

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June 2023 Q4

(a)(i) Explain the sales tax treatment of:

– the proposed acquisition of raw materials through Lapis Sdn Bhd (LSB); and
– the return of the assembled components under the subcontracting arrangement.

Note: You should consider the availability of any facility which KSSB can enjoy to reduce its sales tax exposure.

(5 marks)

(a)(ii) Advise, with supporting calculations, the sales tax treatment for KSSB of the irrecoverable debt.

(4 marks)

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June 2023 Q4

(i) Sales tax treatment

Purchase of raw materials through Lapis Sdn Bhd (LSB)

As a trading company, LSB is not required to be registered for sales tax. However, when LSB imports the raw materials, the importation of the materials would be subject to sales tax, where sales tax would be payable at the point of customs clearance. In this respect, LSB is expected to pass on the sales tax cost to KSSB as part of its selling price.

As the raw materials are meant for KSSB, being a registered manufacturer, KSSB should be entitled to acquire raw materials, components and packaging materials for use in the manufacturing of taxable goods without payment of sales tax to avoid double taxation on the manufactured taxable goods. In this regard, it is possible for LSB to apply to the Royal Malaysian Customs Department (RMCD) for approval to acquire the raw materials on behalf of KSSB, being a registered manufacturer. LSB would need to provide an appointment letter from KSSB to act as KSSB's representative for this purpose. Once approved, LSB would be able to import the raw materials without any payment of sales tax.

Return of assembled components from a subcontractor

Under normal circumstances, as the subcontractor is a registered manufacturer, when the assembled components are returned to KSSB, it would be required to charge sales tax.

To relieve KSSB from the double imposition of sales tax under a subcontracting arrangement, it can apply to RMCD for approval to subcontract the manufacturing of partially completed taxable goods to a subcontractor for completion of manufacturing. Such exemption will not be granted if KSSB fully outsources the manufacturing process to a subcontractor without undertaking any manufacturing activities on the taxable goods. As KSSB is only subcontracting part of the manufacturing process to the subcontractor, it is possible for KSSB to avail itself of this exemption.

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June 2023 Q4

(ii) Sales tax treatment on irrecoverable debt

In relation to the sales tax charged to the bankrupt customer, KSSB would have accounted for the sales tax to RMCD in its sales tax return at the point when the invoice was issued on 1 February 2020. As the customer is now declared bankrupt, KSSB would not be able to fully recover, from the customer, the sales tax amount paid to RMCD.

In this regard, it is possible for KSSB to claim a refund on the whole or any part of the sales tax paid within six years from the date the sales tax is paid by the company. KSSB should be able to fulfil the conditions for a refund as follows:

– The whole or any part of the sales tax payable to KSSB has been written off in the company's accounts as irrecoverable debts; and

– All reasonable efforts have been made by the company to recover the sales tax.

The eligible refund is calculated as follows:

$$\frac{\text{Outstanding amount}}{\text{Total taxable value for sales tax plus the sales tax payable}} \times \text{Sales tax payable}$$

$$= \frac{(\text{RM550,0000} - \text{RM300,000})}{\text{RM550,000}} \times (10/110 \times \text{RM550,0000})$$

= RM22,727·27

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Dec 2023 Q2

Purchase of apartment from Alicia's uncle

Alicia's uncle has offered to sell his apartment in Malaysia to her for RM500,000. The market value of the apartment is RM600,000. The purchase will be partly financed by taking out a loan. Alicia plans to use the apartment as her home, together with her parents, if she stays in Malaysia, but if she is to take up the secondment offer, her parents will live rent-free in the apartment.

Stamp duty on the purchase of the apartment

The purchase of the apartment would be subject to stamp duty at 1 to 4% based on the higher of the purchase consideration or market value of the property. As her uncle has offered to sell the apartment to Alicia at a discount, the market value of the property would be used to compute the stamp duty payable as follows:

	RM
First RM100,000 at 1%	1,000
Next RM400,000 at 2%	8,000
Balance RM100,000 at 3%	3,000
	12,000

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