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Businesses need to start taking stock of the current state of affairs so that detailed analyses and changes can start once the SST framework is made known

Sales and Services Tax — a new beginning

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In line with its pre-election promise, that is to abolish the Goods and Services Tax (GST), the Pakatan Harapan government announced on May 16 that the consumption tax will be zero-rated from June 1. It also announced that the Sales and Services Tax (SST) will make a comeback on Sept 1.

News of the tax holiday was naturally well received by the Malaysian public. Businesses, however, were shocked at the announcement to close out the barely three-year-old GST and at the need to deal with multiple tax transitions — first when GST was reduced to zero and later when a revised SST is introduced. On top of that, they will have to deal with the close-out of GST, including likely Customs audits.

With the transition to zero-rated GST still occasionally cropping up in conversations, businesses are now anxiously awaiting news of the upcoming SST to undergo the next transition. To date, there has been no official announcement on how SST will take shape. Will it take the form of the previous Sales Tax and Service Tax — two different taxes — or will it be an enhanced version of the two? Or will it be a hybrid tax system?

In terms of timeline, the general expectation is that the SST framework and draft law will be known by mid-July. If that happens, and with the implementation date set for Sept 1, businesses will have only 1½ months to prepare. This is a tall order because businesses were given 1½ years to implement GST. Representations and requests have been made by various business groups for sufficient time to be given to prepare for the transition. However, there seems to be no intention to push back the implementation date.

While the clock ticks, we can only guess and plan ahead according to what we anticipate. In this article, we take a bird's-eye view of what the previous Sales Tax and Service Tax regime looked like, dive into some broad areas to be addressed while transitioning to SST and list the steps to take to allow a smooth GST close-out. The idea behind this is to start taking stock of the current state of affairs so that detailed analyses and changes can start once the SST framework is made known.

Overview of Sales Tax and Service Tax

Considering the indicative time that the government is giving itself to reintroduce SST, one may conclude that the way to go would be to reinstate the previous Sales Tax and Service Tax with minimal changes. With that in mind, we give below a brief overview of the Sales Tax and Service Tax regime that was in place before GST came in.

Introduced in 1972, the Sales Tax was considered quite straightforward at the time as it only applied to manufacturers and importers. It was a single-stage tax charged and levied on all taxable goods (unless exempted) manufactured and sold in the domestic market or imported into Malaysia. It was charged on the sales of manufactured taxable goods by manufacturers licensed for Sales Tax. Exemptions from registration were given to manufacturers whose annual turnover was less than RM100,000 and toll operators whose value of services was less than RM20,000.

Depending on the classification of the goods, businesses will need to consider the different Sales Tax rates. Most goods were charged 10% while certain goods were charged 5% and petroleum had a specific rate. Sales Tax is due upon invoicing to the customer and has two taxable periods — monthly for petroleum products and bi-monthly for other goods. Similar to GST, Sales Tax does not apply to joint development areas, bonded warehouses, licensed manufacturing warehouses and free zones. Special provisions are also applicable to Langkawi, Labuan and Tioman.

The Service Tax was a single-stage tax charged and levied on prescribed taxable services provided by prescribed taxable persons. The Second Schedule to The Service Tax Regulations 1975 details the prescribed taxable services and taxable persons who are subject to the tax. The general rate for Service Tax was 6%. However, a specific amount was charged on the annual fee for credit cards — RM50 for principal credit cards and RM25 for supplementary cards. In terms of licensing requirements, the Service Tax registration threshold depended on the type of taxable service provided/provider — ranging from zero to RM3 million. Service Tax was payable to the Royal Malaysian Customs Department (RMCD) when payment was received by the service provider or 12 months from the date of invoice if the invoice remained unpaid. However, there were specific circumstances when Service Tax could be accounted upon billing. The filing period for Service Tax was on a bi-monthly basis.

As both the Sales Tax and Service Tax were single-stage taxes, there were no input tax credit facilities, unlike for GST. Therefore, any Sales Tax or Service Tax paid by businesses could be a cost. However, for the Sales Tax, exemptions were available on limited inputs, that is raw materials used directly to manufacture taxable goods. The exemptions were given on an application basis to the RMCD via special forms. There were also other facilities for drawback, refunds and concessions available under the Sales Tax regime, which aimed to provide relief under certain circumstances, including exports. As for the Service Tax, there were administrative methods to mitigate cascading tax.

What do I have to do?

With a basic understanding of the previous Sales Tax and Service Tax, there are areas that businesses should consider when preparing for the new SST. As experienced during the implementation of GST, SST may be a wide initiative involving various departments within the organisation. We have summarised what we feel are the key areas that you should focus on in preparing for the new tax.

The scope

First, you will need to determine whether your goods or services fall within the scope of SST. Manufacturers should identify the tariff codes of their goods as the tax rate to be charged should correspond with them. If you are a service provider, you should list and identify all the types of services you provide as the new law should prescribe which services fall within its ambit.

The next step is to consider the registration threshold for SST and whether there is an option to register voluntarily if there are benefits. Manufacturers would have a more straightforward way of determining the threshold — by looking at the total revenue from the sale of manufactured taxable goods. Service providers should allocate their annual revenue to each type of service that they provide as this will help them determine whether they will meet the prescribed threshold based on the service.

Transactions and business arrangements should be analysed in detail to determine if there are SST implications, such as valuation issues, that involve related parties or facilities where relief is granted to mitigate the tax cost to the business.

Finance and administration matters

SST paid can be an added cost and also impact cash flow. Thus, there should be an assessment of the impact on cost, pricing and profitability. Also, as cash flow would be impacted, you should consider revisiting spending budgets for the remaining months of the current year to take into account any unrecoverable SST.

Other related issues to consider include SST and financial reporting requirements, workflow, controls and documentation that has to be changed or modified.

Sales and marketing

As mentioned before, the SST incurred becomes part of the cost of goods. Should there be any change in prices due to SST? It is important to have a clear and timely communication strategy.

When revising the price of your goods and services, you should also consider other laws, such as the anti-profiteering law, which functions to ensure that businesses do not profiteer from the introduction of SST. To avoid negative publicity or penalties, take a proactive approach to engage the Ministry of Domestic Trade and Consumer Affairs on any price increase, particularly where fast-moving consumer goods are concerned.

Procurement

In terms of sourcing for goods or services, you should consider whether there are exemption facilities available where SST would not be a cost to the business and in order to mitigate cascading tax. Should exemption facilities be available, consider their scope, the process of applying for exemptions and whether the exemptions are provided to the supplier or the receiver of the said goods or services.

Where there is no exemption facility in place, SST paid on any procured goods or services will be a cost. In mitigating such cost, you may consider acquiring the goods or services before SST is introduced or acquire them from other suppliers who can enjoy exemption facilities. It is critical that the facilities are applied for early to avoid a situation where the exemptions are not granted on time for the implementation of SST. The cost may be significant, depending on the tax rates. There should be some planning in terms of timing the acquisition of goods and services, that is whether some acquisitions should be made earlier in anticipation of SST being introduced.

Systems, processes and documentation

System enhancements are critical to ensure that you not only charge but also report the correct SST amount. You should consider whether your current system used for GST reporting can be tweaked to cater for SST requirements. Although SST is similar to GST, where you would need to charge tax on your supplies, SST may have variable rates for different classes of goods or services. The system must be able to issue compliant documents that cover invoices, credit notes and debit notes in the prescribed format under the new tax.

Contracts

Consider reviewing all your current contracts to ensure that there are clauses that allow you to charge SST as an additional item on top of the price stated. Contracts that are long term would need to take into consideration any change in law so that you can charge the future SST. You should also look at your purchase contracts as to whether the price has taken into account any change in indirect tax and consider renegotiating any terms or conditions to be in your favour.

Transitional provisions

There will be rules governing the supply of goods and services that spans the date of transition. It is key to consider the SST implications of these transactions as the tax may be applicable to some of them as the transitional rules may differ from the general rules applicable to the same transactions.

Resources

Employees handling GST for the day-to-day operations will need to be trained on the basics of SST. Consider setting up a project steering committee and project management team now to ensure that all decision-makers are aware of the tight deadline for implementation where roadblocks will need to be dealt with on a timely basis. Finally, you should consider the help of professional tax advisers who can guide you through the implementation of SST and also identify other key areas of your business that might be affected by the tax.

What you should do to ensure a smooth transition

Since GST has been zero-rated, businesses would most likely be in a claimable position rather than a payable position from this month. To manage potential cash flow issues, you can analyse your GST return trends to assess whether the last few will be in a payable or refund position. Also, to manage cash flow, it is critical to monitor the accounts receivable to ensure that you claim bad debt relief for any taxable supply made up to May 31 that was charged 6% GST. If you are not able to make the claim via GST returns, the RMCD will likely introduce a way via special forms or other methods to claim bad debt relief once GST is abolished.

It is most likely that the RMCD will perform audits on companies before the GST deregistration. In anticipation of this, you should review historical GST positions taken to identify potential exposure in anticipation of final audits. Where you have taken a position that is contrary to the RMCD's views, it is best that the position is well documented. In addition, a health check of your previous GST return submissions will reveal any minor errors or issues before they are identified during the RMCD audit. Although the law does not have specific voluntary disclosure provisions to reduce penalties, it is best to notify the RMCD now if you have found certain errors or ambiguities in your GST reporting or GST treatment of certain supplies to hopefully mitigate potential exposure.

If you have pending applications or clarifications with the RMCD, it is best that you follow up quickly and request a written response. A written response will prove that the RMCD had agreed to your application in case an audit is conducted on your company. You should also keep your GST-related records for seven years as the RMCD can assess you up to six years from when the tax was due.

The areas we have covered are generally applicable to all businesses. However, you should look at your day-to-day business activities and identify any other potential area that may require changes when SST is introduced. It is best again to prepare earlier rather than later so as not to disrupt your business activities, given the short time for the tax's implementation. E

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