

TAXING THE DIGITAL ECONOMY:

DO YOU NEED TO PAY TAX IN MALAYSIA?

Effective 1 January 2020, foreign service providers are liable for charging service tax on “digital services” provided to Malaysian customers under Malaysia’s Service Tax Act 2018. The regime is broader than other similar overseas vendor registration regimes as it also captures provision of digital services to Malaysian businesses.

A foreign service provider who has a liability to register, charge and collect the service tax of 6 per cent with effect from 1 January 2020 must register by 31 December 2019. A registered service provider will need to consider the compliance and record keeping obligations under the Malaysian law as well as a range of operational, legal and business Implications.

TIPS ON HOW TO GET YOUR BUSINESS READY

1. Determine if you need to register in Malaysia

If you are a “foreign service provider providing digital services to Malaysian consumers in excess of RM500,000 in a 12-month period”, you are impacted by this law. The underlined concepts are explained in greater detail below:

A “foreign service provider” is:

“any person who is outside Malaysia providing any digital service to a consumer and includes any person who is outside Malaysia operating an online platform for buying and selling goods or providing services (whether or not such person provides any digital services) and who makes transactions for provision of digital services on behalf of any person.”

A “consumer” is defined as any person who fulfils any two of the following –

- a) makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia;
- b) acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia;
- c) resides in Malaysia.

“Digital service” is:

“any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated”

2. Seek professional advice

Each business should consider obtaining professional advice as to how their operations involving the provision of digital services to Malaysian customers may be impacted by the requirement to impose Malaysian service tax. This includes compliance requirements, repercussions of non-compliance, pricing.

3. Review and assess all contracts with purchasers or customers listing on your platform (if you're a platform operator)

The legal officer (or external lawyer) should review and assess all your contracts with Malaysian customers to ensure that service tax can be appropriately charged. Such a review must consider the transitional rules that apply to pre-existing contracts that span 1 January 2020.

4. Review your pricing and pricing information

Pricing implications and the need to update pricing terms on the websites/platforms, is another important consideration.

5. Ensure timely communication

Timely communication of the changes you make to your prices and procedures due to this law change should make the transition easier. Consider communicating to all relevant internal and external stakeholders, including customers, finance or tax personnel and IT personnel or IT vendors.

6. Update your system settings/configurations and compliance processes

You may need to work with systems personnel to for example, ensure relevant systems are updated to capture any necessary data to identify when service tax is to be imposed, generating a compliant invoice to Malaysian customers and to generate the necessary reports for service tax return filing.

7. Review the efficacy of the tax payment facility

It is expected that the Malaysian tax authorities will implement a system that will enable registered foreign businesses to pay their tax liabilities through foreign banks and/or credit cards. You will need to investigate alternative payment modes if an online facility is not available immediately.

8. Update internal compliance plans and train affected staff

The changes to the Malaysian service tax law means additional reporting requirements for foreign businesses and new deadlines. It is important that the affected staff understand how service tax on digital services applies, how amounts should be coded in accounts, when returns are due for filing and payments need to be remitted.

FURTHER INFORMATION

1. Royal Malaysian Customs' Guide on Digital Services – <https://mysst.customs.gov.my/IndustryGuides>
2. Service Tax on Digital Services Regulation and Order – <https://mystods.customs.gov.my/landing-page/regulation.html>
3. Service Tax (Amendment) Act 2019 – <https://mysst.customs.gov.my/SSTAct>
4. Service Tax on Digital Services Registration landing page – <https://mystods.customs.gov.my/landing-page/>