

Chapter 10

Indirect and Miscellaneous Taxes and Surcharges

Introduction

Indirect taxes and miscellaneous tax and surcharges include:-

- Service Tax;
- Sales Tax;
- Import Duties;
- Licensed Manufacturing Warehouse;
- Free Zones;
- Export Duties;
- Excise Duties;
- Stamp Duty;
- Tax or Duty on Gambling Activities;
- Quit Rent and Assessment;
- Anti-Dumping Duties.

Indirect Taxes

Service Tax

Scope of Tax

Service tax is applicable throughout Malaysia, excluding Langkawi, Labuan, Free Zones and the Joint Development Area.

Basis of Taxation

The principal legislation governing service tax is the Service Tax Act, 1975. The Act provides that service tax shall be charged on and paid by any taxable person who carries on a business of providing taxable services. A 5% service tax is chargeable on the value of taxable services provided by a taxable person, except for exported taxable services (which are exempt from tax).

Exported taxable service has been defined as “service supplied for and to a person in a country other than Malaysia (excluding Langkawi, Labuan and free other than insurance services zones), provided that the service is not supplied in connection with goods or land situated in Malaysia and the person is not in Malaysia at the time the service is performed.”

Taxable Persons and Taxable Services

A complete list of taxable persons and the threshold for taxable services is prescribed in the Second Schedule of the Service Tax Regulations, 1975, a summary of which is as follows:

	<i>Taxable Person</i>	Annual Sales Turnover Threshold RM
i	Operators of hotels with more than 25 rooms (subject to some exclusions)	*
ii	Operators of restaurants, bars, snack-bars, coffee houses or places located in hotels with more than 25 rooms	*
iii	Operators of restaurants, bars, snack-bars, coffee houses or places located in hotels with 25 rooms or less	300,000
iv	Operators of restaurants, bars, snack bars, coffee houses or places located outside hotels (subject to some exclusions) (administrative waiver- for certain establishments threshold remains at RM500,000).	300,000
v	Operators of food courts -administration waiver-for certain establishments threshold remains at RM500,000.	300,000

vi	Operators of night-clubs, dance halls and cabarets	*
vii	Operators of approved health-centres and massage parlours	*
viii	Operators of private clubs	300,000
ix	Licensed private hospitals	300,000
x	Insurance companies	*
xi	Telecommunications companies	*
xii	Approved forwarding agents	*
xiii	Operators of parking space for motor vehicles	150,000
xiv	Courier-services companies	150,000
xv	Operators of motor vehicle service and/ or repair centres	150,000
xvi	Licensed private agencies	150,000
xvii	Employment agencies	150,000
xviii	Public Accountants	150,000
xix	Advocate and Solicitors	150,000
xx	Professional Engineers	150,000
xxi	Architects	150,000
xxii	Licensed or Registered Surveyors/Registered Valuers, Appraisers and Estate Agents	150,000
xxiii	Consultants (subject to some exclusions)	150,000
xxiv	Private veterinary clinics	150,000
xxv	Hire-and-drive car and hire-car service companies	150,000
xxvi	Management companies	150,000
xxvii	Advertising companies	300,000
xxviii	Operators of golfing and golf-driving ranges	*

* No threshold.

Rate of Tax

Generally, the rate of service tax is 5% ad valorem. However, a specific rate is applicable in the following case:

- RM2 per room per night in the case of free hotel rooms to an approved person responsible for the development of the tourism industry.

Licensing

A taxable person who carries on a business of providing taxable services has to apply for a service tax licence with the Customs station nearest to the place of business and charge service tax on all taxable services provided.

Charge and Remittance of Service Tax

Service tax charged and received by the taxable person must be paid to Customs within 28 days after the end of a taxable period. A taxable period is defined as 2 calendar months. Service tax is only due at the time when payment is received for the taxable service provided by the taxable person.

However, where the whole or any part of the payment for any taxable service is not received from the customer within a period of 12 calendar months from the date of the invoice for the taxable service provided, service tax shall be due on the day following that period of 12 calendar months.

Penalties

Any amount of service tax which is unpaid after the due date (i.e. 28 days after the end of a taxable period) will attract a penalty of 10% of such unpaid amount. If the amount remains unpaid, the penalty will be increased by a further 10% for every succeeding period of 30 days or part thereof subject to a maximum of 50% of the taxes unpaid.

Sales Tax

Scope of Tax

Sales tax is a domestic based tax. Goods exported are not subject to sales tax. Sales tax is also not applicable to Labuan, Langkawi, Free Zones, Licensed Manufacturing Warehouses and the Joint Development Area.

Basis of Taxation

The principal legislation governing sales tax is the Sales Tax Act, 1972. Sales tax is a form of consumption tax levied on a wide variety of goods manufactured in Malaysia, or imported into Malaysia for local consumption. Conceptually, sales tax is a single stage tax. In respect of imported goods, sales tax is levied on the value of the goods (as determined under the Customs (Rules of Valuation) Regulations, 1999) plus the import duty payable. In respect of locally manufactured goods, the manufacturer is required to charge sales tax on the sale of the goods for local consumption. Sales tax is levied by the manufacturer on the sale value of the goods, which refers to an independent arm's length price. Generally, the sales tax rates range from 5% to 25%. Specific rates of sales tax are only imposed on certain classes of petroleum products.

The ad valorem rates are as follows:

Class of Goods	Rate %
Fruits, certain foodstuff, timber and building materials	5
Liquor and alcoholic drinks	20
Cigarettes and tobacco	25
All other goods (except petroleum and goods not specifically exempted)	10

Licensing / Exemption from Licensing

A person manufacturing taxable goods and having an annual sales turnover above RM100,000 is required to be licensed under the Sales Tax Act, 1972 and shall charge and levy sales taxes on the sale of taxable goods. Application for a licence must be made to the Customs Station nearest to where the manufacturer is located. In addition, any person licensed as a manufacturer shall carry on business only at the place or places specified in the licence issued. Manufacturers of taxable goods who do not meet the licensing threshold of RM100,000 shall apply for a certificate of exemption from licensing. However, these manufacturers may choose to apply for a licence in order to enjoy tax-free facilities.

Certain categories of manufacturers are exempted from licensing. These are manufacturers involved in, amongst others, the developing and printing of photographs and production of film slides, preparation of ready-mixed concrete, repacking of bulk goods, repair of second hand goods and the installation of air conditioners in motor vehicles.

Tax-free Raw Materials

For locally manufactured taxable goods, sales tax should only be levied once by the manufacturer in the course of production, i.e., at the output stage. Accordingly, manufacturers of taxable goods may apply to Customs for exemption of sales tax on raw materials and components used in the manufacturing process. The application can be made using the Form C.J. No.5.

Charge and Remittance of Sales Tax

For locally manufactured taxable goods, sales tax is levied at the time the goods are sold, used or disposed of other than by sale. Sales tax charged by the licensed manufacturer must be paid to Customs within 28 days after the end of a taxable period. A taxable period is defined as 2 calendar months.

Penalties

Any amount of sales tax which is unpaid after the due date (i.e. 28 days after the end of a taxable period) will attract a penalty of 10% of such unpaid amount. If the amount remains unpaid, the penalty will be increased by a further 10% for every succeeding period of 30 days or part thereof subject to a maximum of 50% of the taxes unpaid.

Sales Tax Drawback

Manufacturers who do not enjoy sales tax exemption but who have purchased or imported raw materials/components/packing materials/accessories for use in the manufacture of finished products which are subsequently exported, may apply for a drawback of the sales tax with Customs.

Import Duty

Basis of Taxation

The principal legislation governing import duty is the Customs Act, 1967. Generally, import duty is payable on imported goods at the time of clearance from Customs' control.

Rates of Tax

The rates of import duty generally ranges from nil to 35% depending on the category of goods imported, as classified under the Harmonised System (HS) of classification. However, certain goods may attract higher rates of duties of up to 300%. Import duties are generally levied on an ad valorem basis but may also be imposed on a specific basis.

Malaysia is committed to the ASEAN Common Effective Preferential Tariff (CEPT) Scheme. Under the CEPT Scheme, import duties imposed on most manufactured goods of ASEAN origin will be reduced to between 0% to 5% by 1 January 2003.

Determination of Value

With effect from 1 January 2000, Customs has adopted the rules of valuation under the WTO Valuation System in its Customs (Rules of Valuation) Regulations, 1999 for the purposes of levying import duty.

Exemptions

Exemption from import duty can be considered on raw materials / components irrespective of whether the finished products are sold in the domestic market or are exported.

i. Manufacture of Goods for Export

Full exemption from import duty on direct raw materials is normally granted, provided the raw materials/components are not manufactured locally or, where they are manufactured locally, are not of acceptable quality and price.

ii. Manufacture of Goods for the Domestic Market

Full exemption from import duty on direct raw materials and components that are not manufactured locally can be considered. Full exemption from import duty can also be considered if the finished product made from dutiable raw materials/components, is not subject to any import duty.

Most machinery and equipment not produced locally are not subject to import duty and sales tax. However, machinery and equipment attracting import duty and sales tax can be considered for exemption if:

- i. They are used directly in the manufacturing process, or
- ii. The equipment is used for environmental control, recycling, maintenance and quality control.

Prohibition of Import

Certain goods are absolutely or conditionally prohibited from being imported under the provisions of Customs (Prohibition of Imports) Order 1988. Import licences for conditionally prohibited goods are generally issued by the Ministry of International Trade and Industry or other prescribed authorities. If required, the licence has to be obtained before the goods can be imported.

Import Duty Drawback

Manufacturers who do not enjoy duty exemption but have imported raw materials/ components/ packing materials/ accessories for use in the manufacture of finished products, which are subsequently exported, may alternatively apply for a drawback of the import duty with Customs.

Import Duty and Sales Tax Exemption on Spares and Consumables

Import duty and sales tax exemptions are granted on manufacturing spares and consumables based on any one of the following qualifying criteria:-

- Full exemption on spares and consumables attracting import duty of more than 5% and having no potential to be produced locally; or
- Companies which are export oriented (must export at least 80%); or
- Products with limited demand.

This exemption is due to expire on 31 December 2003.

Licensed Manufacturing Warehouse

Export oriented manufacturers who export 80% or more of their finished products may apply for licensed manufacturing warehouse (LMW) status under section 65 and 65A of the Customs Act, 1967. The intention of the facility is to facilitate export oriented manufacturers to import raw materials and components and plant and machinery directly used in the manufacture of finished products without the payment of import duties and sales tax.

Free Zones

The Free Zones Act 1990 was enacted to facilitate export oriented manufacturing activity and to promote entreport trade. A Free Zone is deemed to be a place outside Malaysia and goods and services directly used in the manufacturing activity and not specifically excluded can be brought into such area without payment of customs duty, excise duty, sales tax or service tax. Similarly, goods and services produced, manufactured or provided in the zone are not subject to customs duty, excise duty, sales tax or service tax.

Manufacturing or commercial activities conducted in Free Zones are subject to minimal customs control, restricted only to the control of movement of goods at the point of entry/exit points of the Free Zones.

Free Zones may either be:

- A *Free Commercial Zone* for commercial activity which includes trading, breaking bulk, grading, repacking, relabelling and transit;
- A *Free Industrial Zone* for manufacturing activity.

Export Duties

Basis of Taxation

The principal legislation governing export duties is the Customs Act, 1967. Export duty is generally imposed on depletable resources to discourage the export of such commodities. In addition to export duties, exporters may also be required to apply for certain permits before they may export such goods.

Prohibition of Export

Certain goods are absolutely or conditionally prohibited to be exported under the provisions of Customs (Prohibition of Exports) Order 1988. Export licences for conditionally prohibited goods are generally issued by the Ministry of International Trade and Industry or other prescribed authorities. If required, the licence has to be obtained before the goods can be exported.

Excise Duties

Basis of Taxation

The principal legislation governing excise duties is the Excise Act, 1976. Excise duty is a domestic tax imposed on a limited range of locally manufactured goods. Manufacturers manufacturing goods that are subject to excise duties have to be duly registered with Customs for charging and remittance of excise duties to Customs. Excise duty is generally levied on the following:-

- Alcoholic beverages;
- Tobacco products;
- Motor vehicles;
- Playing cards and mahjong tiles.

Rates of Tax

The rate of tax to be levied varies and would depend on the nature of the goods manufactured.

Miscellaneous Taxes and Surcharges

Stamp Duty

Stamp Duty is governed by the Stamp Act, 1949. In general, stamp duty is payable on instruments executed in Malaysia or if executed outside Malaysia, when brought into Malaysia. Duty is payable at varying rates, examples of which are:-

Statutory Declarations		RM10
Memorandum of Association		RM100
Articles of Association		RM100
Contract Notes		RM200 (maximum rate per transaction)
Conveyances of property (from 1 January 2001)	- Market value: - up to RM100,000 - RM100,001-RM500,000 - RM500,001 above	For every RM100 or Fractional Part of RM100: RM1.00 RM2.00 RM3.00
Conveyance of unlisted securities	- for every RM1,000 or fractional part thereof	RM3.00

Generally, relief from stamp duty can be applied for in the case of reconstruction of any company or companies. Relief from stamp duty can also be obtained in the case of transfer of assets between related companies provide certain conditions are met.

Tax or Duty on Gambling Activities

The tax or duty rates for gambling activities is generally as follows:-

- Gaming tax 8%;
- Pooling betting duty 10% to 12% (subject to reduction);
- Casino win duty rate 25%

Quit Rent and Assessment on Realty

Local rates, for example assessment and quit rent, are imposed by the State Governments and Local Authorities and vary from state to state and within each state itself. Assessment rates are based on the annual value of properties and the percentage charged thereon may differ quite substantially between one location and another. Quit rent is calculated with reference to the area of the land. Its charge depends on the location and usage of the land; for example, the state is divided into town and country land, each sector being further divided into residential, commercial, industrial and agricultural land.

These levies contribute to the cost of maintenance and the provision of essential services to the various localities.

Anti-Dumping Duties

The Countervailing Anti-Dumping Duties Act 1993, and its Regulation provides the legal basis for:-

- The investigation and determination of subsidies being provided on, and the dumping of, merchandise imported into Malaysia; and
- The imposition of countervailing or anti-dumping duties to offset such subsidies or dumping.

The Act also provides a mechanism for maintaining fair levels of import competition for Malaysian producers when subsidisation or dumping of imported goods causes material injury or threatens to cause material injury to an established Malaysian industry or materially retards the establishment of a new industry.