

COVER STORY 2

Service tax amendments surprise industry

STORIES BY **ESTHER LEE**
AND **IZZUL IKRAM**

By the time this week's edition of *The Edge* hits the streets, the new service tax rate of 8% and its expanded scope would have already come into effect.

That said, it may not be noticeable to the man in the street, given that services commonly used by the general public — food and beverage, telecommunications and parking — have been spared the increase. The tax for such services has been kept at 6%.

In fact, some businesses might even be as unaware of the changes as the common man, seeing how the expansion of the scope of the tax and an earlier-than-expected effective date announced at the eleventh hour, caught even the tax fraternity by surprise.

In the federal gazette order that was made available on Feb 23, a Friday, the tax industry was surprised to learn that the scope of the service tax had been widened to include maintenance and repair services (previously, only preventive maintenance was subject to tax). This was on top of services such as brokerage, underwriting, karaoke and logistics, whose inclusion had been announced earlier. These services will incur 8% tax, except for logistics which will be taxed at 6%.

Even more startling was the early enactment date of the Service Tax (Amendment) Regulations 2024. It was slated to take effect on Feb 26, a mere weekend from the issuance of the federal gazette order. The date differed from what had been communicated earlier, March 1, and from what the industry had been expecting.

Thankfully, the Ministry of Finance (MoF) addressed this problem promptly and issued a service tax policy that essentially pushed the effective implementation date to March 1 for existing service tax registered persons.

The surprises did not end there, however.

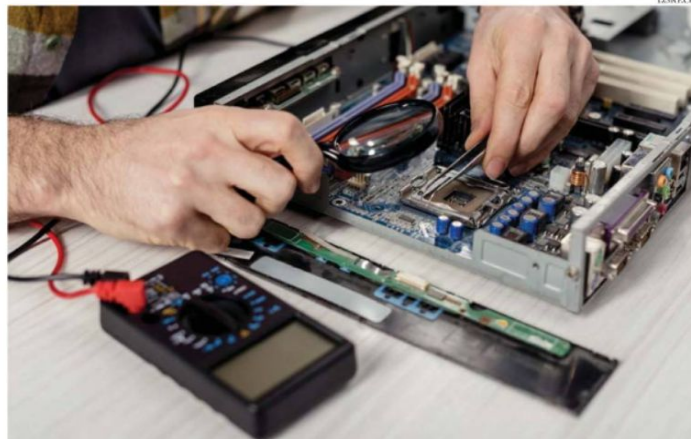
While the logistics industry had anticipated the service tax, it did not expect that logistics services within designated areas or special areas would also be subject to a service tax of 6%.

KPMG Malaysia head of indirect tax Ng Sue Lynn says another surprise is that training or coaching services will also now be subject to service tax, even if they are not related to Malaysia.

These sudden inclusions and surprises have caused concern and confusion within the business community and caught the tax fraternity off guard. It begs the question of why such major changes have been rolled out in a seemingly haphazard manner.

Tax consultants say this is the first time that an expansion of tax scope has been made known through a gazette order so close to the effective date.

"Usually, we will find out about the tax changes and new inclusions and scope when the budget is tabled in parliament. Further details will be known when the draft Finance Bill is released. So we know what's coming and when the finance bill is gazetted as the Finance Act, it is usually pretty much similar to the draft Finance Bill," says chairman of



Maintenance and repair, and brokerage services will now incur 8% tax

the Technical Committee for Indirect Tax at Chartered Tax Institute of Malaysia (CTIM), Alan Chung.

"Some of the proposals tabled in the budget, however, are not provided in the Finance bill or Finance Act, and they are effected separately by orders that are gazetted. There may be some surprises in terms of how the budget proposals are to be implemented when the gazette orders come out, but we are not aware of past instances where major changes such as an expansion of scope are included in a gazette order without prior announcement. These new taxable services subject to service tax were not mentioned in the Budget speech or stated in the appendix to the speech."

He adds that the time frame from when the order was released to its effective date is too short for both businesses and the tax community to digest and plan for an expanded scope of tax. Changes to systems to charge service tax require time, Chung says, and in some instances, lengthy negotiations are required to amend contracts in order to charge service tax.

PwC Malaysia indirect tax leader Raja Kumaran adds that while the Royal Ma-

laysian Customs Department mentioned charging service tax for maintenance and repair during its roadshows in mid-January, it did not get picked up by the industry.

"People who attend these seminars are usually from the tax fraternity and not from the maintenance and repair industry," he explains.

But shouldn't such changes to the tax scope also be communicated in a more formal setting?

Raja, who is a long-time tax practitioner, hopes that in future, the authorities could provide the industry with more lead time on new taxes or rates to be implemented. He cites the example of Singapore where the public is informed about the percentage increase on goods and services tax a year or two before it is implemented.

"Generally, announcements of new taxes are done on the day they become effective. For example, in the case of import duties, rates are only informed on the day of implementation. On one hand, I can understand the rationale behind it, because you want to avoid hoarding.

"But in the case of services, it is not some-



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Applicable service tax rate for various groups

SOURCE: MINISTRY OF FINANCE MALAYSIA

| Taxable service group | Previous rate | New rate |
|--|---------------|----------|
| A Accommodation | 6% | 8% |
| B Food and beverage | 6% | 6% |
| C Nightclubs, dance halls, cabarets, health and wellness centres, massage parlours, public houses and beer houses | 6% | 8% |
| Including karaoke (new) | | |
| <i>Note: Service tax is not imposed on traditional and complementary medicine</i> | | |
| D Private clubs | 6% | 8% |
| E Golf clubs | 6% | 8% |
| F Betting and gaming | 6% | 8% |
| G Professional | 6% | 8% |
| <i>Note: Including maintenance (preventive and corrective) services</i> | | |
| H Credit card and charge card | RM25 | RM25 |
| I Other service providers | 6% | 8% |
| Including expansion of brokerage other than financial except telecommunication (6%) vehicle parking space (6%) | | |
| <i>Note: Service tax is not imposed on cellular pre-paid telecommunication services provided to Malaysian citizens</i> | | |
| J Logistics (new) | — | 6% |
| Including warehousing management (Group G) custom agent (Group I) courier (Group I) | | |

Expansion of scope & change of service tax rate

Expansion of scope

The scope of taxable services is expanded to include the following services:

- Karaoke centres
- Brokerage and underwriting (other than financial)
- Logistics services
- Maintenance services, including corrective maintenance

Change of rate

- Service tax rate increased from 6% to 8%
- Except for the following services, which are subject to 6% service tax:
 - Food & beverage (F&B) services
 - Telecommunications services
 - Parking space services
 - Logistics services including delivery of goods

Service tax on maintenance services

Before March 1, 2024

- Maintenance management services (preventive) subject to service tax
- Corrective maintenance not subject to service tax
- Exemption for residential buildings
 - Sinking fund
 - Maintenance charges imposed by the developer/joint management body/Management Corp on the homeowner

March 1, 2024 and onwards

- All maintenance services (regardless preventive or corrective) subject to service tax
- Exemption for residential buildings
 - Repairs
 - Sinking fund
 - Maintenance charges imposed by the developer/joint management body/Management Corp on the homeowner

thing you can hoard. So, it would be better if the industry is informed three to four months earlier, so that when it comes to implementation day, it will be smooth as businesses would have sufficient time to consult and prepare for it operationally," he says.

Despite the initial confusion, credit should be given to MoF for its swift action last week. The ministry's Treasury secretary-general Datuk Johan Mahmood Merican held a media briefing last Wednesday to address the issue, explaining the wider scope of the service tax and also admitting that more extensive communication should have been done prior to the Budget 2024 announcement.

The tax industry has commented on the ministry's openness and responsiveness to its feedback.

"The MoF's quick action in hosting consultation sessions and the exercise of the minister's power to exempt up to Feb 29 are applauded. Likewise, credit goes to customs for publishing so many policy papers and guidelines within

a short time frame," says Tratax Sdn Bhd executive director Thenesh Kannaa.

Nonetheless, the chaos of last week brings to mind the upcoming new tax — the high-value goods tax — that will be implemented on May 1. Since it was first made known two budgets ago, save for the tax rate of 5% to 10% announced in Budget 2024, little is known about what would be deemed as "high value" and subject to tax at this juncture.

During the parliamentary session last week, the government said it expects to collect tax revenue of RM700 million a year from the implementation of the high-value goods tax. The bill on the tax has been proposed to be tabled in the current parliamentary session.

One can only hope that the relevant authorities will give the industry sufficient time to prepare for the new tax.

It should also be noted that with the country keen on attracting foreign direct investment and growing domestic direct investment, such ambiguity and uncertainty as seen in the case



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If necessary, service providers may need to look into renegotiating their customer contracts. They will also have to look into reconfiguring their systems and documentation to cater for the changes."

— Tan, Deloitte

of the service tax would not look good in the eyes of investors.

Waiting for clarity

While the new service tax rate and its expanded scope is already in effect, there are still issues that need to be ironed out.

Among matters that need further clarification is the tax treatment for maintenance and repair, which is now subject to service tax except for repairs, sinking funds and maintenance charges imposed by a joint management body (JMB) for residential buildings.

"The government has provided some exemptions for residential properties to mitigate the impact of the expansion of service tax scope on the rakyat. However, there are some unintended consequences as a result of how the exemptions are drafted. For example, while maintenance management services provided by the JMB for buildings used for residential purposes are exempted from service tax, a contractor hired by the JMB to provide a maintenance service (for example, lift maintenance) will have to charge the JMB service tax. In effect, it would mean that residents or owners of the building will not be enjoying the service tax exemption.

"There is also a question whether repairs for residential buildings used for commercial purposes are exempted from service tax," says CTIM's Chung.

In addition, the narrow scope of business-to-business (B2B) exemption needs to be looked at in order to minimise the compounding effect of the service tax.

"B2B services are exempt if the service provided is the same. For example, if I send the goods from the factory in Bentong and it goes to the airport (the whole chain can be B2B), the problem comes at the point where I take the goods and put it in the warehouse while I wait for the ship to come. Since the warehouse is not the same service, I don't get the relief. The transporter who brings the goods from Bentong will charge 6% service tax; the warehouse will also charge 6%, and there will be another 6% from the loading transporter from warehouse to airport. Ports are now taxable too. So, this is going to raise the cost," notes Raja.

KPMG's Ng says the limitation in the B2B exemption given has raised concerns.

"Although the government has clarified its rationale for setting the service tax rate for logistics services at 6% (instead of 8%) with the aim of safeguarding key essential services, the imposition of stricter conditions on the 'business to business' exemption may counteract this objective," she says.

Thenesh also believes that the authorities should re-evaluate the removal of the exemption on warehouse services within free zones and licensed warehouses as it affects the attractiveness of the nation as a regional distribution centre. This could ultimately affect employment opportunities and other economic indicators.

Notably, Chung says that MoF has expressed its commitment to looking into all of these issues.

"CTIM will be one of the parties spearheading this and compiling all the issues. Then we will send it to MoF for consideration."

While waiting for more clarity on the matter, businesses will still have to forge ahead with the implementation of the service tax. Deloitte Malaysia indirect tax leader Tan Eng Yew says that service providers will have to assess themselves on aspects such as whether they would come under the ambit of tax, whether the company has the liability to register and charge the tax, and if there are any exemptions or B2B relief that could be applicable.

"If necessary, they may need to look into renegotiating their customer contracts. Service providers will also have to look into reconfiguring their systems and documentation to cater for the changes," he adds.