



SERVICE TAX 2018

**GUIDE ON:
DIGITAL SERVICES BY FOREIGN
SERVICE PROVIDER (FSP)**

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CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| IMPOSITION AND SCOPE OF TAX | 1 |
| TERMINOLOGY | 2 |
| GENERAL OVERVIEW | 3 |
| IMPLEMENTATION OF SERVICE TAX ON DIGITAL SERVICE | 3 |
| What Kind of Services Considered as Digital Service? | 3 |
| Who is considered as Foreign Service Provider? | 6 |
| Who is considered as Consumer in Malaysia? | 8 |
| Digital Service Provided within the same group of Companies | 10 |
| REGISTRATION | 11 |
| Mandatory Registration | 11 |
| Registration before Effective Date | 14 |
| Cancellation of Registration | 14 |
| ACCOUNTING FOR TAX | 16 |
| Issuance of Tax Invoice | 16 |
| Accounting Basis | 16 |
| Taxable Period | 17 |
| Manner of Furnishing DST-02 Return | 18 |
| Furnishing Return Amendment | 20 |
| Payment and Penalty | 20 |
| Duty to Keep Records | 21 |
| REFUND OF SERVICE TAX, PENALTY, FEE OR OTHER MONEY | 22 |
| TRANSITIONAL RULES | 23 |
| COMPLIANCE AND ENFORCEMENT | 27 |
| OTHER RELATED INFORMATION | 29 |
| FREQUENTLY ASKED QUESTIONS (FAQs) | 30 |
| INQUIRY | 31 |
| FURTHER ASSISTANCE AND INFORMATION ON SST | 31 |

INTRODUCTION

1. Service Tax is a consumption tax governed by the Service Tax Act 2018 and its subsidiary legislation. The effective date of the Service Tax Act (STA) 2018 is 1st September 2018.
2. Service tax is imposed on prescribed services called “taxable services” if provided in Malaysia.
3. A person who provides taxable services exceeding a specified threshold is required to be registered under the STA 2018 and is known as a “registered person” who is required to charge service tax on his taxable services made to his customers.
4. Due to the new policy to impose service tax on digital services provided by foreign service provider this guideline is prepared to assist you in understanding the imposition of service tax on digital services provided by foreign service provider.
5. Implementation of digital service provided by Malaysian service provider will be provided separately in Guide on Information Technology Services.

IMPOSITION AND SCOPE OF TAX

6. Effective 1st January 2020, service tax shall be charged and levied on any digital service provided by a foreign registered person (FRP) to any consumer in Malaysia. Digital service has the meaning assigned to it under Section 2, STA 2018. The rate is 6%.

TERMINOLOGY

7. The following words refer to these meanings in this guide unless the contrary intention appears:

- (i) “digital service” means 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;”.
- (ii) “foreign service provider” means 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;
- (iii) “consumer” means 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
- (iv) “foreign registered person” means any foreign service provider who is registered under section 56C STA.
- (v) “Designated Areas” (DA) means Labuan, Langkawi, Tioman and Pangkor (Section 2, STA 2018).
- (vi) “Special Areas” (SA) means any free zone, licenced warehouse and licenced manufacturing warehouse, the Joint Development Area, and a petroleum supply base licenced under section 77B of the Customs Act 1967 (Section 2, STA 2018).

GENERAL OVERVIEW

8. Under current service tax treatment, taxable service provided by service provider in Malaysia, is subject to service tax.

9. In order to ensure equal treatment within the industry, taxable services acquired by businesses in Malaysia from foreign service provider (FSP) falls under the scope of imported taxable services effective from 1 January 2019. The businesses have to account and pay for service tax on imported taxable services.

IMPLEMENTATION OF SERVICE TAX ON DIGITAL SERVICE

10. Malaysia has amended the current service tax legislation to make FSP who provide digital services to consumer liable to be registered as FRP. FSP is mandatory to be registered when the total value of digital services provided to a consumer in Malaysia exceeds RM500,000 per year.

What Kind of Services Considered as Digital Service?

11. Any provision of services that satisfy the definition of digital service is a provision of digital service. The service:

- (i) that is to be delivered through information technology medium or other electronic network;
- (ii) cannot be delivered without the use of internet technology;
- (iii) that to be delivered to consumer is essentially automated. The term essentially automated may refer to the nature of the service when it is to be delivered as with minimal or no human intervention from service provider. For example, when the digital service is to be provided to consumer, service provider does not have to interfere or carrying or perform any activities, but the consumer will be able to acquire or download the digital services themselves.

12. These services **include** the provision of the following (the list is not exhaustive):

(i) **Software, application & video games**

(e.g. downloading of online software, updates and ad-ons website filters, firewalls, provision of mobile applications, online gaming);

(ii) **Music, e-book and film**

(e.g. provision of music, streaming services, include subscription-based media / membership)

(iii) **Advertisement and online platform**

(e.g. offering online advertising space on intangible media platform, offering platform to trade products or services)

(iv) **Search engines and social networks**

(e.g. customised search-engine services)

(v) **Database and hosting**

(e.g. website hosting, online data warehousing, file-sharing and cloud storage services)

(vi) **Internet Based Telecommunication**

(e.g. Cloud-PABX, VOIP Phone)

(vii) **Online training**

(e.g. Provision of distance learning (please refer to paragraph 14 for more detail), e-learning, online courses, pre-recorded webinar)

(viii) **Others**

(e.g. Subscription to online newspapers and journals (please refer to paragraph 14 for more detail), provision of other digital content like images, text, information and payment processing services)

13. The provision of the following is not considered as digital services if:

(i) The services can be obtained without the use of IT:

Example 1

Mr. Reezal request his favourite singer from Australia to perform song during his wedding event. The singer will be performing in Malaysia. This is not subject to service tax because the service is not a digital service due to the service is obtained without the use of IT.

(ii) The transmission of the services via email:

The services delivered via email is not considered as digital services if:

- the delivery of the services requires human intervention
- the services cannot be associated with the transaction of selling and buying, where normally email being used as a communication medium.

Example 2

Hakeem & Co. is an architecture company in Malaysia. He requested 3D drawing from his counterpart which located in California. The drawing was sent via email to Hakeem & Co. The drawing delivered via email is not considered as digital service.

14. Minister of Finance has prescribed the following digital services as not subject to service tax effective from 1st January 2020.

(i) **Online distance learning**

Online distance learning service provided by foreign service provider is not subject to service tax effective from 1st January 2020. The online distance learning services involved are as follows:

- (a) Preschool education;
- (b) Primary and secondary education; or
- (c) Tertiary education including vocational education and professional trainings which is recognised by the relevant authority in such country.

(ii) **Online Newspaper, Online Journals and Periodicals**

Online newspaper, online journals and periodicals provided by foreign service provider is not subject to service tax effective from 1st January 2020. The online newspaper, online journals and periodicals involved are as follows:

eNewspaper including printed digital version of newspaper under the tariff code of 4902.10 and 4902.90;

- (a) eNewspaper refers to publications of matters at regular interval, each issue being dated and also frequently being numbered mainly of current news of general interest, together usually with literary articles on subjects of current, historical, biographical, etc. It is generally providing space for illustrations and advertisements.
- (b) Online educational, technical, scientific, historical or cultural journals and periodicals including printed digital version of journals and periodicals under the tariff code of 4902.90.10 00 and other publication under the tariff code 4902.90.90 00.

Online journals and periodicals refer to publications issued weekly, fortnightly, monthly, quarterly or half-yearly.

Who is considered as Foreign Service Provider?

15. FSP is a person either business or individual outside Malaysia who provides digital services to consumer. FSP includes person:

- (i) who provide digital service directly or:

Example 3

TheThreeZ Music sell songs to consumer using its own website. TheThreeZ Music will issue invoice to customer. TheThreeZ Music is considered as FSP and will responsible to account service tax on digital services.

Example 4

ShopU.com who provides online platform and at the same time sells its own application to consumer. ShopU.com will issue invoice to consumer for the

sale of its own application. ShopU.com is considered as FSP and will account service tax on digital services.

Example 5

CZU Inc provides powerpoint presentation template through his own website. Customer will make payment and immediately download the presentation template through the website. CZU Inc is considered as FSP and will account service tax on digital services.

Example 6

SmartDaney advertise his online education game through Amazing.com who is an online platform operator that trade services and goods. Consumer who interested to purchase the education game will download and make payment through SmartDaney website. SmartDaney will issue invoice for the provision of game through his website. Under this scenario SmartDaney is considered as FSP and will account service tax on digital services.

Example 7

FiSTDubai provides accommodation booking platform to consumer. Lazfa Hotel KL will advertise accommodation through FiSTDubai. Sabreena who is in Malaysia will book Lazfa Hotel KL using the platform.

Services provided from FiSTDubai to Sabreena does not fall under the scope of digital services. However, advertising service from FiSTDubai to Lazfa Hotel KL is subject to service tax on digital services.

- (ii) who sell digital service on behalf of service provider through his online platform
Online platform operator who makes transaction for provision of digital services on behalf of any service provider shall be regarded as FSP. FSP is considered as making transaction on behalf of any service provider if any of the following conditions are met:
 - a) The online platform operator is authorizes/ functions setting the term and conditions of the underlying transactions

- b) The online platform operator has a direct or indirect involvement in the payment processing
- c) The online platform operator has a direct or indirect involvement in the delivery of the digital service
- d) The online platform operator provides customer support service in relation to the supplies provision of digital services
- e) The invoice or any other document provided to the consumer identifies the supply as made by the online platform operator

Example 8

Amazing.com who provide online platform to trade services or goods. Customer will purchase online gaming from COC Inc (owner of the online gaming) through Amazing.com. Amazing.com will receive the payment on behalf of COC Inc and issue invoice to customer. Under this scenario, Amazing.com is considered as FSP and Amazing.com will account service tax on digital services.

Example 9

Izzy.com operates online platform for buying and selling of business presentation templates. Template providers including CZU Inc place their powerpoint templates on Izzy.com platform. Customer will make payment and immediately download the powerpoint through Izzy.com website. Izzy.com is considered as FSP and will account service tax on digital services.

Who is considered as Consumer in Malaysia?

16. Consumer in Malaysia is any person who fulfils **any two** of the following:
- (i) Makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia;
 - (ii) Acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia.

(iii) Resides in Malaysia.

17. In determining whether consumer is residing in Malaysia, FRP may consider information or a declaration from the consumer as below (the list is not exhaustive):

- (i) The billing address of the consumer is in Malaysia
- (ii) The home address of the consumer is in Malaysia
- (iii) Recipient's country selection upon registration / purchase is Malaysia

18. FRP shall obtain or maintain at least two non-conflicting information that support the consumer is a Malaysia consumer for the purpose of charging the service tax to consumer.

Example 10

Seexu Co, an Australia company sells a digital services to Ayda. Ayda pay for that digital services using her Malaysian credit card and provides her Malaysian billing address.

19. *Since the information collected by Seexu Co establish that Ayda is consumer in Malaysia, Seexu Co shall charged service tax on digital services.* In a situation where FRP provides digital service periodically and impose charges on a periodic basis (every month), FRP shall use the information provided by consumer that established the consumer status during subscription or registration unless the consumer updates the status. This is in accordance with Sec 56A(1), where service tax shall be charged and levied on any digital service provided by FRP to any consumer.

Example 11

Seexu Co, offers online music and film through his platform on a subscription basis. Ayda subscribe the online film for a period of one year and payment is made on monthly basis.

To determine whether Ayda is a consumer in Malaysia or not, Seexu Co shall maintain any information that was provided by Ayda during subscription or registration and charge service tax on the provision of online film to Ayda every month unless Ayda update his profile and affect the consumer status.

20. Consumer in Para 16 refers to businesses or individual and includes such person in Designated Area (DA) and Special Area (SA).

21. Businesses who have been charged service tax on digital services by FRP is exempted from liability to account service tax on imported taxable services by virtue item 3, Service Tax (Persons Exempted From Payment of Tax) Order 2018.

Digital Service Provided within the same group of Companies

22. Effective from 14th May 2020, FRP who provides digital service to a company in Malaysia within the same group of companies shall not charge service tax in accordance with provisions of Regulation 5A, Service Tax (Digital Service) Regulations 2020.

23. However, if the same digital service provided to any person outside the group of companies, the provision of digital service provided to any person or company in Malaysia who is outside or within the group of companies **shall be** subject to service tax.

REGISTRATION

Mandatory Registration

Liability to be registered

24. FSP who provides digital services to consumer in Malaysia and the value of digital service for a period of twelve months or less exceeds the threshold of RM500,000 is liable to be registered under section 56B STA2018.

25. The value of digital service for a period of twelve months can be determined based on either the historical or future method.

26. The historical method is based on the value of digital service in any month plus the value of digital service for the eleven months preceding that month.

27. For the future method, the value of digital service is based on the value of digital service in any month plus the expected value of digital service for the eleven months succeeding that month. FSP shall have reasonable grounds to expect its value of digital service to exceed the threshold if they have signed a written contract/agreement to provide digital service or received confirmed purchase orders from customer.

28. For registration purposes, the method to be used for computing the taxable turnover depends on the category of FSP.

Table 1: Calculation for Value of Digital Service

| Category of Person | Value of Digital Service |
|--------------------------------|---|
| Foreign Service Provider (FSP) | <p><u>The value of all digital service sold directly to consumer in Malaysia</u></p> <p><i>e.g.: CZU Inc provides powerpoint template through his own website. The total value of powerpoint template to consumer in Malaysia is RM 800,000.</i></p> <p><i>CZU Inc has exceed the prescribed threshold and liable to be registered.</i></p> |

| | |
|---|--|
| <p>Online Platform Operator (OPO), who satisfy condition as FSP</p> | <p><u>The value of all digital service sold by OPO to consumer in Malaysia include value of digital services sold to consumer in Malaysia on behalf of FSP through the online platform</u></p> <p><i>e.g.: Izzy.com operates online platform for buying and selling of business presentation templates. Template providers including CZU Inc place their powerpoint templates on Izzy.com platform. The total value of sales through Izzy.com to consumer in Malaysia is RM 4,000,000.</i></p> <p><i>This total value of RM 4,000,000 comprises of sale of digital service provided by</i></p> <ul style="list-style-type: none"> - <i>Izzy.com itself which is RM 1,000,000; and</i> - <i>all other template providers (including CZU Inc) through Izzy.com. which is RM 3,000,000.</i> <p><i>Izzy.com has exceed the prescribed threshold and liable to be registered.</i></p> |
| <p>Foreign Service Provider (FSP), who sell directly to consumer in Malaysia and indirectly through OPO</p> | <p><u>The value of all digital service sold directly to consumer in Malaysia</u> <u>*(the value of digital service that sold through online platform operator will be calculated as the value of all digital service made by the online platform operator not by the FSP. These sales do not count towards FSP's total value of digital service when deciding if FSP need to be registered or not)</u></p> <p><i>e.g.: CZU Inc provides powerpoint template on its own website. The total value of powerpoint template to consumer in Malaysia is RM 350,000.</i></p> <p><i>At the same time, CZU Inc also places its powerpoint template on Izzy.com platform. The total value of sales to consumer in Malaysia through Izzy.com is RM 400,000.</i></p> <p>Note: For the purpose of threshold calculation, CZU Inc has to calculate the sales of powerpoint template through his own website only which is RM 350,000.</p> <p><i>Thus, CZU Inc has not exceed the prescribed threshold and not liable to be registered.</i></p> |

| | |
|--|---|
| | <p><i>The total sales of RM 400,000 on powerpoint templete through Izzy.com will be calculated as part of Izzy.com threshold.</i></p> |
|--|---|

Application for registration

29. FSP who is liable to be registered under the implementation of service tax on digital services (SToDS) shall apply for registration **not later than the last day of the month** following the month in which he exceeds threshold. FSP, who has been registered will be referred as Foreign Registered Person (FRP).

Example 12

RaysmaApp Inc. provides digital services. The value of digital service made to consumer in Malaysia has exceeded RM500,000 on 15.02.2020. RaysmaApp Inc. is liable to be registered on 29.02.2020 and must apply for registration within the period from 1.03.2020 to 31.03.2020.

Effective Date of Registration

30. The effective date of registration is on the first day of the month following the month in which the application is made.

Example 13

In relation to Example 12 above, RaysmaApp Inc. has apply for registration on 31.03.2020. The registration effective date for RaysmaApp Inc. will be on 1.4.2020 and he has to charge SToDS starting from 1.4.2020.

How to Register

31. FSP has to complete DST-01 form online through MySToDS system.

Manner to apply for registration

32. Please refer to Appendix 1 of Guide on Digital Services by Foreign Service Provider

Registration before Effective Date

33. Since the effective date of the imposition of service tax on digital services is on 1st January 2020, early registration program is provided from 1st October 2019. Any FSP who provides digital services to consumer in Malaysia before the effective date of service tax on digital services, shall be liable to be registered if he expects his total value of digital service from 1st January 2020 and for the next eleven months exceed RM500,000. The determination of value of digital service will be based on future method.

34. The effective date of registration will be on 1st January 2020.

Cancellation of Registration

Cessation of liability to be registered

35. The liability for registration will end when FRP:

(a) ceases to provide digital services; or

(b) has been registered under section 13 STA in respect of the provision of digital services in Malaysia

Notification of cessation of liability to be registered

36. FRP who has ceased provide digital services to consumer in Malaysia or has been registered under Section 13 STA is required to notify Director General of Customs (DG) within thirty days from the date of such occurrence.

37. FRP who has notified his cessation of liability to be registered has to continue fulfill his obligations as FRP i.e. to charge service tax on digital services and submit DST-02 return, until the approved effective date of cancellation of his registration.

Cancellation of Registration

38. FRP may apply to cancel his registration if his liability to be registered has

ceased. The registration of any person may also be cancelled by DG if it is found that the person is not liable or eligible to be registered.

39. Application for cancellation of registration can be made online through MySToDS system. FRP will be notified on the approval and the effective date of cancellation.

ACCOUNTING FOR TAX

Issuance of Tax Invoice

40. FRP is required under section 56G STA to issue an invoice or a document containing prescribed particulars to the consumer in respect of the transaction.

41. The invoice or document that relates to provision of digital service to consumer shall state the following particulars—

- (i) date of invoice;
- (ii) registration number of the FRP;
- (iii) a description sufficient to identify the digital services provided;
- (iv) the total amount payable excluding service tax, the rate of service tax and the total service tax chargeable shown as separate amount.

42. A receipt or any other document can be considered as an invoice if it fulfills all the particulars as para 35.

43. FRP may request in writing to the DG for any particulars specified under para 35 not to be stated on an invoice.

44. Issuance of an invoice electronically or in paper form is allowable.

Accounting Basis

45. The service tax for digital service chargeable under subsection 56A (4) STA 2018 is due at the time when payment is received for the service provided to the consumer by the FRP.

46. However, in order to facilitate FRP on the implementation of service tax on digital service, DG may provide administrative concession for FRP to account service tax on an invoice basis. FRP shall apply through MySToDS system for this facility. Upon approval from DG, service tax shall due at the time the invoice is issued.

47. In the case of FRP who ceases to carry on a business of providing digital services or whose registration is suspended or revoked by the DG, service tax on

digital services required to be accounted in any return made shall be due on the day the return is required to be furnished to the DG.

Taxable Period

48. Every Foreign Registered Person (FRP) will be assigned a taxable period for which he is required to account for SToDS. The taxable period shall be a period of three months (quarterly) ending on the last day of any month of any calendar year under subsection 56H(1) STA 2018 for the purpose of DST-02 return submission.

49. The DG, through application in writing may reassign the FRP to any taxable period other than the period previously assigned to him and vary the length of any taxable period or the date on which any taxable period begins or ends if he considers it necessary in the circumstances of any particular case.

Assignment of taxable period for registration before effective date

50. Any registration made before effective date and the registration effective date is on 1st January 2020, the taxable period is as follows:

| Filing Frequency | Taxable Period |
|----------------------------------|---|
| First Taxable Period (Quarterly) | January – March 2020 |
| Subsequent Taxable Period | April – June 2020; July – September 2020; October – December 2020 |

Example 14

Roseflix apply for registration on 3rd October 2019. The effective date to charge SToDS will be on 1st January 2020. Roseflix need to submit the 1st taxable period for January-March 2020 by 30th April 2020.

| Apply for registration | Effective date | Taxable period | Submission Due Date |
|------------------------------|------------------------------|----------------------|-----------------------------|
| 3 rd October 2019 | 1 st January 2020 | January – March 2020 | 30 th April 2020 |

Assignment of taxable period for registration after effective date

51. Any registration made after effective date, the taxable period shall begin from the date FSP should be registered.

Example 15

MayDia Music apply for registration on 2nd January 2020. The effective date to charge SToDS will be on 1st February 2020 and the first taxable period will be February-April 2020. Hence, MayDia Music required to submit his first return not later than 31st May 2020.

| Apply for registration | Effective date | Taxable period | Submission Due Date |
|-------------------------------|-------------------------------|-----------------------|----------------------------|
| 2 nd January 2020 | 1 st February 2020 | February – April 2020 | 31 st May 2020 |

52. FRP may make an application to DG for changes of taxable period. Upon approval, the new taxable period will take effect on the subsequent taxable period.

Example 16

In relation to example 14, MayDia Music’s financial year end is on 31st Dec, MayDia Music may apply for taxable period other than being assigned to suit his financial year end. Upon approval, the new first taxable period will be as follows:

| Registration Effective date | Apply for new taxable period | Taxable period | Submission Due Date |
|------------------------------------|-------------------------------------|---|--|
| 1 st February 2020 | Within first taxable period | First Taxable Period: <i>February – April 2020</i> Subsequent Taxable Period: <i>May – June 2020;</i> <i>July – Sept 2020;</i> <i>Oct – Dec 2020</i> | 31 st May 2020 31 st Jul 2020 31 st Oct 2020 31 st Jan 2021 |

Manner of Furnishing DST-02 Return

53. FRP shall furnish a return and account for SToDS in DST-02 form. DST-02 need to be furnished to DG on quarterly basis according to his taxable period as required under Section 56H STA 2018

54. All particulars requested in DST-02 form shall be furnished by the FRP and shall contain a declaration that such return is true, accurate and complete.
55. The value of digital services and the amount of SToDS shall be declared in Ringgit Malaysia (MYR). Service tax amount shall be according to the amount of service tax charged to consumer.
56. Where FRP charge consumer in currency other than MYR, FRP shall convert the total value of digital services and the amount of SToDS to MYR.
- (i) In the case that the conversion is done on daily basis, FRP shall use the daily conversion rate
 - (ii) In the case that the conversion is done at the end of the taxable period, FRP shall use the conversion rate either at:
 - (i) the end of each taxable period; or
 - (ii) the time of furnishing the DST-02 return
57. Once FRP choose to use the option for conversion from one of the above, FRP shall consistently use that option.
58. The DST-02 return shall be furnished according to the taxable period whether or not there is any service tax to be paid.
59. FRP shall issue debit note to consumer. FRP shall declare the amount of service tax in the taxable period covering the month of the debit note is issued or payment received
60. FRP is allowed to issue credit note to consumer. If FRP intend to claim refund due to changes of service tax that has been declared and paid, FRP shall make amendment in DST-02 related to such taxable period. FRP may proceed with refund application.
61. DST-02 shall be submitted online through MySToDS system at <https://mystods.customs.gov.my/> (Please refer to Appendix 1 of Guide on Digital Services by Foreign Service Provider)

Furnishing Return Amendment

62. If there is any error in DST-02 declaration, FRP may correct the errors by amending the DST-02 declaration.

63. Amendment to the DST-02 are subject to the following amendment rules:

| Situation | Amendment Rules |
|--|--|
| <p>(1) Before submission of return (At this stage return status shown as 'Draft')</p> | No limitation to amend (edit) the declaration (DST-02) |
| <p>(2) After submission of return and no payment made (At this stage return status shown as 'Submitted')</p> | <p>If the amendment results in:</p> <p>(i) Addition to the amount of service tax, the tax shall be paid accordingly.</p> |
| <p>(3) After submission of return and payment has been made (At this stage return status shown as 'Paid or Partial Paid')</p> | <p>(ii) Reduction to the amount of service tax, a verification by RMCD officer is required and amendment is allowed up to three (3) times only.</p> |

64. DST-02 amendment shall be done online through MySToDS system. For more information, please refer to MySToDS system guideline.

Payment and Penalty

65. FRP requires to pay to the DG the amount of SToDS due and payable not later than the last day of the month following after the end of his taxable period as prescribed under Section 56I STA 2018

66. Any payment of SToDS, penalty, or any other money payable under STA 2018 shall be made to the DG through the method provided by RMCD. (Please refer to Appendix 1 of Guide on Digital Services by Foreign Service Provider)

67. Payment of SToDS, penalty or any other money by FRP shall be deemed to be paid when the payment is received by the DG and is credited to the RMCD's account.

68. Any amount of SToDS, penalty or any other money can only be done in **Ringgit Malaysia (MYR)** and the **payment amount** should follow as per DST-02 declaration or other bills (e.g. Bill of Demand)

69. Any bank charges relate to the payment transaction, shall be borne by the **FRP**.

Duty to Keep Records

70. FRP shall keep complete and true records written up to date of all transactions which affect or may affect his liability to service tax on digital services, including the following records:

- (i) all records of provision of digital service by the FRP including invoices and any document; and
- (ii) all other records related to service tax on digital services.

71. Any record kept shall be preserved for a period of seven (7) years from the latest date to which the record relates.

72. Where the record is in an electronically readable form, the record shall be kept in such manner as to enable the record to be readily accessible and convertible in writing.

73. A copy of the record shall be admissible in evidence in any proceedings to the same extent as the record itself.

REFUND OF SERVICE TAX, PENALTY, FEE OR OTHER MONEY

74. In accordance with Section 38 of STA 2018, the DG may grant a refund of service tax, penalty, fee or other money to a person who:

- a) has overpaid or erroneously paid
- b) is entitled to the refund under subsection 34(6) or 40(3)

75. Application for refund shall be made online through MySToDS system by filing DST-ADM01 form and submitted together with the relevant supporting documents.

76. Refund shall be made separately according to the taxable period and shall apply within one year after such overpayment or erroneous payment occurred or such entitlement of the refund under subsection 34(6) or 40(3) occurred.

77. The DG may, reduce or disallow any refund on the basis that the refund would unjustly enrich the claimant.

78. In accordance with Section 37 of STA 2018, DG shall demand the whole or part of any service tax, penalty, fee or other money, which, after having been paid, has been erroneously refunded, from the person to whom the refund was erroneously made.

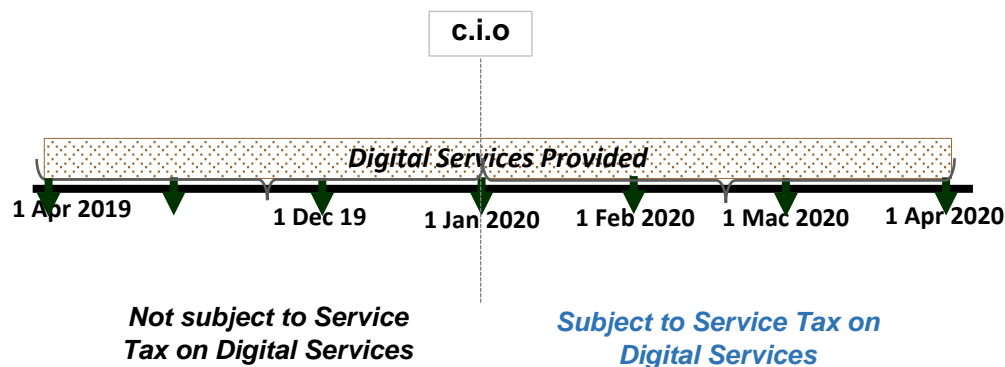
79. The demand must be made within six years from the date on which the refund was made.

TRANSITIONAL RULES

80. Service tax treatment on provision of digital service that spanning before and after the date of coming into operation (c.i.o) and during transitional period is as provided under Section 52 of Service Tax (Amendment) Act 2019.

Provision of Digital Services Spanning Before and After the date of c.i.o

81. Where any digital service is provided before the date of c.i.o (1st January 2020) and is spanning on or after the 1st January 2020, the proportion of the digital service which is attributed to the part of the period on or after the 1st January 2020 is chargeable to service tax. Tax implication on provision of digital services spanning 1st January 2020 is as follows:

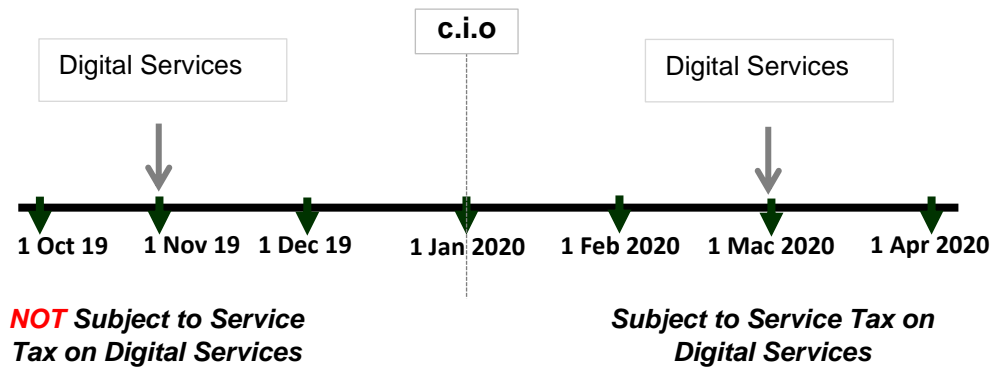


Example 17

Mizzi Ltd provides variety of music through his online platform. Syasya who is consumer in Malaysia subscribed music through the platform on yearly basis. If an annual subscription to a music platform started on 1 April 2019 and expires on 31 March 2020, service tax on digital services will only be charged by Mizzi Ltd (who is a FRP) on the portion of services provided from 1 January 2020. For the period before 1 January 2020, Syasya must account service tax as she has acquired Imported Taxable Service.

Provision of Digital Services Before or After the date of c.i.o (non-Spanning)

82. Service tax implication on provision of digital services that is provided before or after the date of c.i.o (1st January 2020) is as follows:

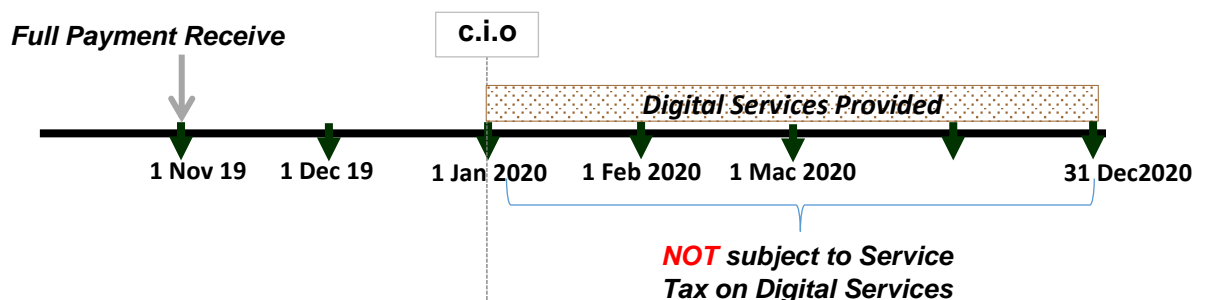


Payment in relation to the provision of Digital Service after the date of c.i.o

83. In a situation where payment is received before the date of c.i.o (1st January 2020) in connection with the provision of digital services that will be provided on or after 1st January 2020, no service tax on digital services shall be charged on the payment received. Tax implication on provision of digital services is as follows:

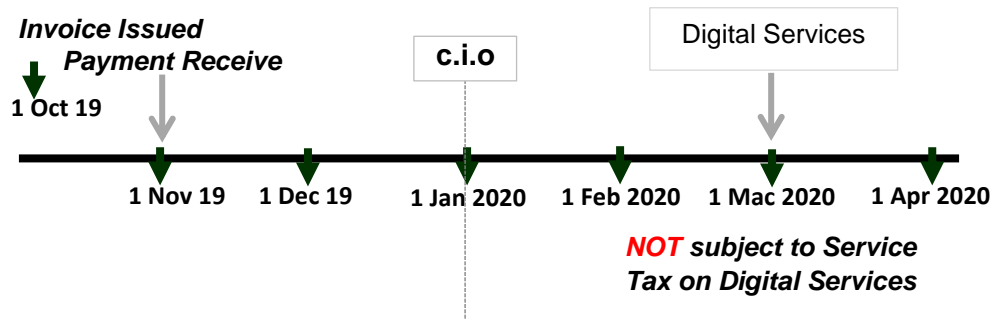
Example 18

If an annual subscription to a music platform is for the period of 1 January 2020 to 31 December 2020 and full payment was received on 1 November 2019, no service tax on digital services will be charged by FRP, however recipient in Malaysia has to account service tax on Imported Taxable Service.



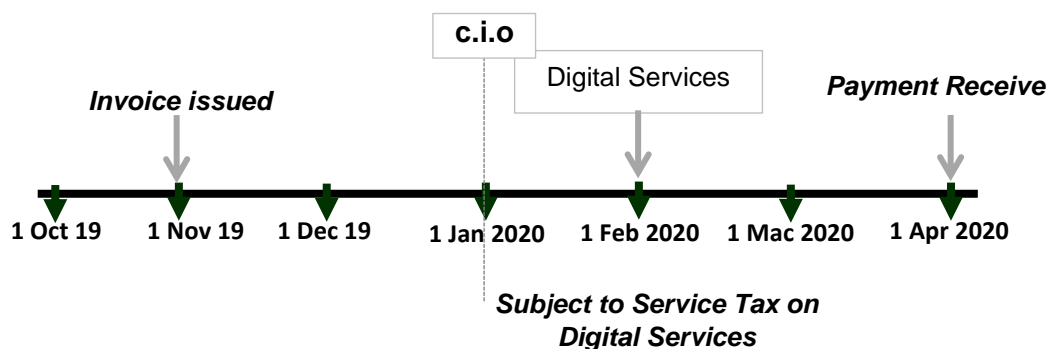
Example 19

ReyFee Ltd provides digital service. He issued invoice on 01 Nov 2019 for the digital service that is to be provided on 01 March 2020. Syasya who is consumer in Malaysia make a payment for that digital services also on 1 Nov 2019. Based on this example, ReyFee Ltd shall not charged service tax on digital service.



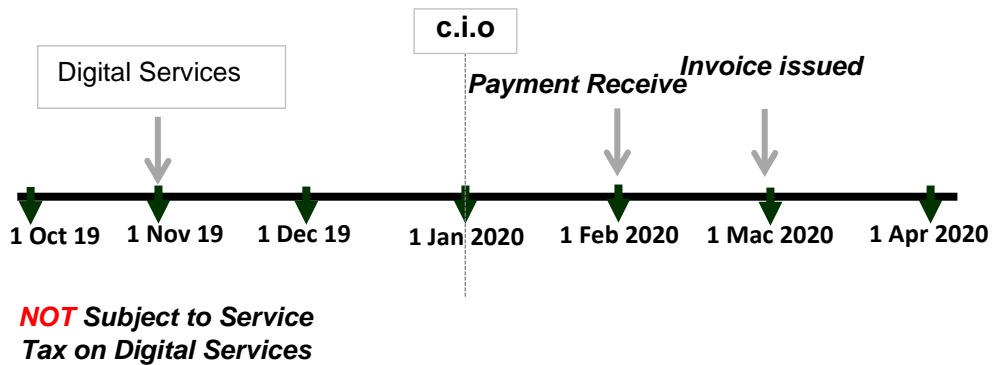
Example 20

ReyFee Ltd provides digital service. He issued invoice on 01 Nov 2019 for the digital service that is provided on 1 Feb 2020. Syasya who is customer in Malaysia make a payment for that digital services on 1 April 2020. Based on this example, ReyFee Ltd shall charge service tax on digital service.



Example 21

ReyFee Ltd provides digital service on 1st November 2019, however payment for the digital service and invoice in relation to provision of the digital services issued after 1.1.2020. Based on this example, ReyFee Ltd shall not charge service tax on digital service since digital service is provided before the date of c.i.o.



COMPLIANCE AND ENFORCEMENT

84. Failure to comply to any provision under STA is an offence and subject to penalty. Penalties may apply in the following scenarios:

- a) Failure or late application for registration
- b) Late or non-filing of DST-02 returns
- c) Submission of incorrect DST-02 returns
- d) Late or non-payment of service tax on digital services due
- e) Failure to issue invoice or document as required by the Act
- f) Failure to keep records

85. With regards to para 85(d), any service tax on digital services due and payable is not paid wholly or partly by the FRP after the last day on which it is due and payable, the FRP shall pay a penalty of:

- (i) ten percent of the amount of service tax on digital services remains unpaid for the first thirty-day period that the service tax on digital services is not paid wholly or partly after the expiry of the period;
- (ii) an additional penalty of fifteen percent of the amount of service tax on digital services remains unpaid for the second thirty-day period that the service tax on digital services is not paid wholly or partly after the expiry of the period; and
- (iii) an additional penalty of fifteen per cent of the amount of service tax on digital services remains unpaid for the third thirty-day period that the service tax is not paid wholly or partly after the expiry of the period.

86. The example of the penalty is as follows:

Example 22

Roseflix apply for registration on 3rd October 2019. The effective date to charge service tax on digital services will be on 1st January 2020. Roseflix need to submit the 1st taxable period for January-March 2020 by 30th April 2020.

Based on the calculation made by Roseflix, the value of service tax

that need to be declared and accounted to RMCD for is RM10,000. However, on 1st May 2020, Roseflix yet to submit its return. A 10% (RM1,000) penalty is imposed to the service tax value of RM10,000.

In addition, 30 days later on 31st May 2020, Roseflix still failed to submit its return to RMCD. A further 15% (RM1,500) penalty is imposed to the service tax value of RM10,000. After another 30 days, on 30th June 2020, Roseflix still failed to submit its return to RMCD where the last penalty of 15% (RM1,500) will be imposed to the service tax value of RM10,000. Hence the total amount of penalty is RM4,000 (RM1,000+RM1,500+RM1,500).

| Taxable period | Last day of return and payment (30 th April 2020) | 10% Penalty on first 30 day (1 st May - 30 th May 2020) | 15% Penalty on the next 30 day (31 st May - 29 th June 2020) | 15% Penalty on the next 30 day (30 th June – 28 th July 2020) |
|--------------------------------|--|---|--|---|
| Jan - Mar 2020 | RM10,000 service tax value | RM1,000 | RM1,500 | RM1,500 |
| TOTAL AMOUNT = RM14,000 | | | | |

OTHER RELATED INFORMATION

Hours for submission of return and payment

87. For the purposes of receiving DST-02 returns and payments of service tax on digital services, penalty or other money payable through the electronic service, the ordinary hours shall be from 0730 hrs to 2330 hrs Malaysia Standard Time (UTC/GMT + 8 hours) on any day of the week.

Administration office

88. The location of administration office for the purpose of service tax on digital services is Wilayah Persekutuan Putrajaya.

Recovery of service tax on digital services as a Civil Debt

89. In addition to the recovery of service tax on digital services, penalty or other moneys by a demand, any service tax on digital services, penalty or other moneys due and payable may be recovered as a civil debt due to the Government.

FREQUENTLY ASKED QUESTIONS (FAQs)

1. Q : **How does service tax on digital services works?**

A : Service tax on digital services is a tax charged on:

- Any digital services;
- Provided by a FRP; and
- To any consumer in Malaysia

2. Q : **How to be a FRP?**

A : An FSP who provides digital services to consumer in Malaysia and having sales turnover in Malaysia for twelve (12) months period which exceeds RM500,000 have to apply for registration via online.

3. Q : **How to submit return and make payments?**

A : A FRP need to submit service tax return DST-02 and make payments via electronic (MyDST) or any other facilities offered by payee bank.

4. Q : **What exchange rate should be used if FSP sells digital services to a consumer in Malaysia using foreign currency?**

A : There is no specific exchange rate determined by customs. FRP may use any exchange rate they preferred.

5. Q : **Can documents be maintained outside Malaysia?**

A : Yes. FRP can keep their documents or records related to service tax on digital services outside Malaysia as long as the record is readily accessible when required.

6. Q : **Can payment be made from a foreign bank account?**

A : Yes.

INQUIRY

For any inquiries for this guide please contact:

(i) Internal Tax Division

Royal Malaysian Customs Department
Level 3 - 7, Block A, Menara Tulus,
No. 22, Persiaran Perdana, Presint 3,
62100 Putrajaya.

(ii) Issue related to policy –

Phone no.: 03-8882 2857/2844
03-8311 1306/1309/1311
Email address: stods@customs.gov.my

(iii) Issue related to Registration & Filing of DST-02

Phone: 03-8888
Email address: mystods@customs.gov.my

(iii) Issue related to Payment of service tax

Phone: 03-8888
Email address: mystods_payment@customs.gov.my

FURTHER ASSISTANCE AND INFORMATION ON SST

Further information on can be obtained from:

(i) Website: <https://mystods.customs.gov.my/>

(ii) Customs Call Centre:

- Tel : 03-7806 7200 / 1-300-888-500
- Fax : 03-7806 7599
- Email: ccc@customs.gov.my

SUMMARY OF DOCUMENT CHANGE

Version 2 – 01 August 2020

| PARA | CHANGES |
|--------------------|--|
| Title | Change to “GUIDE ON: DIGITAL SERVICES BY FOREIGN SERVICE PROVIDER (FSP)” |
| Para 1 | Insert the word “(STA)” after the word “product”. |
| Para 5 | Insert new paragraph “Implementation of digital service provided by Malaysian service provider will be provided separately in Guide on Information Technology Services”. |
| Para 7 (v) | Replace “Pangkor and Tioman. (Section 47, STA” with “Tioman and Pangkor (Section 2, STA 2018)” |
| Para 7 (vi) | Replace “and Joint Development Area. (Section 52, STA)” with “, the Joint Development Area, and a petroleum supply base licensed under section 77B of the Customs Act 1967 (Section 2, STA 2018).” |
| Para 11 | Replace para 11 with the following: “Any provision of services that satisfy the definition of digital service is a provision of digital service. The service: <ul style="list-style-type: none"> (i) that is to be delivered through information technology medium or other electronic network; (ii) cannot be delivered without the use of internet technology; (iii) that to be delivered to consumer is essentially automated. The term essentially automated may refer to the nature of the service when it is to be delivered as with minimal or no human intervention from service provider. For example, when the digital service is to be provided to consumer, service provider does not have to interfere or carrying or |

| PARA | CHANGES |
|----------------|---|
| | perform any activities, but the consumer will be able to acquire or download the digital services themselves.” |
| Para 12 | Replace “supplies” with “provision” |
| Para 12 (i) | Insert the word “downloading of” before the word “online” |
| Para 12 (i) | Insert the word “online gaming” after the word “applications” |
| Para 12 (ii) | Remove the word “live” after the word “music,” |
| Para 12 (vii) | Replace “teaching” with “learning (please refer to paragraph 14 for more detail)” |
| Para 12 (vii) | Insert the word “pre-recorded” after the word “courses,” |
| Para 12 (viii) | Insert the word “(please refer to paragraph 14 for more detail)” after the word “journals,” |
| Para 13 (ii) | Replace “require” with “requires” |
| Para 13 (ii) | Insert the word “, where normally email being used as a communication medium” after the word “buying” |
| Example 2 | <p>Replace para 11 with the following:</p> <p><i>“Hakeem & Co. is an architecture company in Malaysia. He requests 3D drawing from his counterpart which located in California. The drawing was sent via email to Hakeem & Co. The drawing delivered via email is not considered as digital service.”</i></p> |
| Para 14 | <p>Insert new paragraph</p> <p>Minister of Finance has prescribed the following digital services as not subject to service tax effective from 1st January 2020.</p> <p>(i) Online distance learning</p> <p>Online distance learning service provided by foreign service provider is not subject to service tax effective from 1st January 2020. The online distance learning services involved are as follows:</p> |

| PARA | CHANGES |
|--------------------|---|
| | <p>(a) Preschool education;</p> <p>(b) Primary and secondary education; or</p> <p>(c) Tertiary education including vocational education and professional trainings which is recognised by the relevant authority in such country.</p> <p>(ii) Online Newspaper, Online Journals and Periodicals Online newspaper, online journals and periodicals provided by foreign service provider is not subject to service tax effective from 1st January 2020. The online newspaper, online journals and periodicals involved are as follows: eNewspaper including printed digital version of newspaper under the tariff code of 4902.10 and 4902.90;</p> <p>(a) eNewspaper refers to publications of matters at regular interval, each issue being dated and also frequently being numbered mainly of current news of general interest, together usually with literary articles on subjects of current, historical, biographical, etc. It is generally providing space for illustrations and advertisements.</p> <p>(b) Online educational, technical, scientific, historical or cultural journals and periodicals including printed digital version of journals and periodicals under the tariff code of 4902.90.10 00 and other publication under the tariff code 4902.90.90 00. Online journals and periodicals refer to publications issued weekly, fortnightly, monthly, quarterly or half-yearly. “</p> |
| Para 15 (i) | Replace “sell” with “provide” |
| Para 15 (i) | Replace “products” with “service” |
| Example 5 | Insert new example |

| PARA | CHANGES |
|----------------------------|--|
| | <p><i>“CZU Inc provides powerpoint presentation template through his own website. Customer will make payment and immediately download the presentation template through the website. CZU Inc is considered as FSP and will account service tax on digital services.”</i></p> |
| <p>Example 6</p> | <p>Replace Example 6 with the following:</p> <p><i>“SmartDaney advertise his online education game through Amazing.com who is an online platform operator that trade services and goods. Consumer who interested to purchase the education game will download and make payment through SmartDaney website. SmartDaney will issue invoice for the provision of game through his website. Under this scenario SmartDaney is considered as FSP and will account service tax on digital services.</i></p> |
| <p>Example 7</p> | <p>Insert new example</p> <p><i>“FiSTDubai provides accommodation booking platform to consumer. Lazfa Hotel KL will advertise accommodation through FiSTDubai. Sabreena who is in Malaysia will book Lazfa Hotel KL using the platform.</i></p> <p><i>Services provided from FiSTDubai to Sabreena does not fall under the scope of digital services. However, advertising service from FiSTDubai to Lazfa Hotel KL is subject to service tax on digital services.”</i></p> |
| <p>Para 15 (ii)</p> | <p>Replace the sentence “who sell digital products indirectly through intermediaries such as online platform” with</p> <p>“who sell digital service on behalf of service provider through his online platform.</p> <p>Online platform operator who makes transaction for provision of digital services on behalf of any service provider shall be regarded as FSP. FSP is considered as making transaction on behalf of any service provider if any of the following conditions are met:</p> |

| PARA | CHANGES |
|-----------------------------|--|
| | <p>f) The online platform operator is authorizes/ functions setting the term and conditions of the underlying transactions</p> <p>g) The online platform operator has a direct or indirect involvement in the payment processing</p> <p>h) The online platform operator has a direct or indirect involvement in the delivery of the digital service</p> <p>i) The online platform operator provides customer support service in relation to the supplies provision of digital services</p> <p>j) The invoice or any other document provided to the consumer identifies the supply as made by the online platform operator”</p> |
| <p>Example 8</p> | <p>Replace “purchases game” with “purchase online gaming”</p> <p>Insert the word “Inc (owner of the online gaming)” after the word “COC”</p> <p>Insert the word “receive the payment on behalf of COC Inc and” after the word “will”</p> |
| <p>Example 9</p> | <p>Insert new example</p> <p><i>“Izzy.com operates online platform for buying and selling of business presentation templates. Template providers including CZU Inc place their powerpoint templates on Izzy.com platform. Customer will make payment and immediately download the powerpoint through Izzy.com website. Izzy.com is considered as FSP and will account service tax on digital services.”</i></p> |
| <p>Para 17</p> | <p>Replace “reside” with “residing”</p> |
| <p>Para 17</p> | <p>Insert the word “(the list is not exhaustive” after the word “below”</p> |
| <p>Para 17 (iii)</p> | <p>Replace “recipient’s country selection” with “Recipient’s country selection upon registration / purchase is Malaysia”</p> |

| PARA | CHANGES |
|-------------------|---|
| Para 18 | <p>Insert new paragraph</p> <p>“FRP shall obtain or maintain at least two non-conflicting information that support the consumer is a Malaysia consumer for the purpose of charging the service tax to consumer.”.</p> |
| Para 19 | <p>Insert new paragraph</p> <p>“In a situation where FRP provides digital service periodically and impose charges on a periodic basis (every month), FRP shall use the information provided by consumer that established the consumer status during subscription or registration unless the consumer updates the status. This is in accordance with Sec 56A(1), where service tax shall be charged and levied on any digital service provided by FRP to any consumer. ”</p> |
| Example 11 | <p>Insert new example</p> <p><i>“Seexu Co, offers online music and film through his platform on a subscription basis. Ayda subscribe the online film for a period of one year and payment is made on monthly basis.</i></p> <p><i>To determine whether Ayda is a consumer in Malaysia or not, Seexu Co shall maintain any information that was provided by Ayda during subscription or registration and charge service tax on the provision of online film to Ayda every month unless Ayda update his profile and affect the consumer status.”</i></p> |
| Para 20 | <p>Replace para 20 with the following:</p> <p>“Consumer in Para 16 refers to businesses or individual and includes such person in Designated Area (DA) and Special Area (SA).”</p> |
| Para 21 | <p>Replace para 21 with the following:</p> <p>“Businesses who have been charged service tax on digital services by FRP is exempted from liability to account service tax on imported taxable services by virtue item 3, Service Tax (Persons Exempted From Payment of Tax) Order 2018.”</p> |

| PARA | CHANGES |
|---|---|
| Para 22 | <p>Insert new paragraph</p> <p>“Digital Service Provided within the same group of Companies Effective from 14th May 2020, FRP who provides digital service to a company in Malaysia within the same group of companies shall not charge service tax in accordance with provisions of Regulation 5A, Service Tax (Digital Service) Regulations 2020.”</p> |
| Para 23 | <p>Insert new paragraph</p> <p>“However, if the same digital service provided to any person outside the group of companies, the provision of digital service provided to any person or company in Malaysia who is outside or within the group of companies shall be subject to service tax.”</p> |
| Chapter Registration | Replace with the new Registration Chapter |
| Chapter Accounting for Tax | Replace with the new Accounting for Tax Chapter |
| Chapter Refund of Service Tax, Penalty, Fee or Other Money | <p>Insert new chapter</p> <p>“REFUND OF SERVICE TAX, PENALTY, FEE OR OTHER MONEY</p> <p>70. In accordance with Section 38 of STA 2018, the DG may grant a refund of service tax, penalty, fee or other money to a person who:</p> <ul style="list-style-type: none"> c) has overpaid or erroneously paid d) is entitled to the refund under subsection 34(6) or 40(3) <p>71. Application for refund shall be made online through MySToDS system by filing DST-ADM01 form and submitted together with the relevant supporting documents.</p> <p>72. Refund shall be made separately according to the taxable period and shall apply within one year after such overpayment or erroneous payment occurred or such entitlement of the refund under subsection 34(6) or 40(3) occurred.</p> |

| PARA | CHANGES |
|-------------------|--|
| | <p>73. The DG may, reduce or disallow any refund on the basis that the refund would unjustly enrich the claimant.</p> <p>74. In accordance with Section 37 of STA 2018, DG shall demand the whole or part of any service tax, penalty, fee or other money, which, after having been paid, has been erroneously refunded, from the person to whom the refund was erroneously made.</p> <p>75. The demand must be made within six years from the date on which the refund was made. “</p> |
| Para 80 | <p>Insert new paragraph</p> <p>“Service tax treatment on provision of digital service that spanning before and after the date of coming into operation (c.i.o) and during transitional period is as provided under Section 52 of Service Tax (Amendment) Act 2019.”</p> |
| Para 81 | <p>Replace para 82 with the following:</p> <p><u>“Provision of Digital Services Spanning Before and After the date of c.i.o”</u></p> |
| Example 17 | <p>Replace Example 17 with the following:</p> <p><i>“Mizzi Ltd provides variety of music through his online platform. Syasya who is consumer in Malaysia subscribed music through the platform on yearly basis. If an annual subscription to a music platform started on 1 April 2019 and expires on 31 March 2020, service tax on digital services will only be charged by Mizzi Ltd (who is a FRP) on the portion of services provided from 1 January 2020. For the period before 1 January 2020, Syasya must account service tax as she has acquired Imported Taxable Service. ”</i></p> |
| Para 82 | <p>Replace para 82 with the following:</p> <p><u>“Provision of Digital Services Before or After the date of c.i.o (non-Spanning)</u></p> |

| PARA | CHANGES |
|-------------------|---|
| | Service tax implication on provision of digital services that is provided before or after the date of c.i.o (1 st January 2020) is as follows:” |
| Para 83 | <p>Insert new paragraph</p> <p><u>“Payment in relation to the provision of Digital Service after the date of c.i.o</u></p> <p>In a situation where payment is received before the date of c.i.o (1st January 2020) in connection with the provision of digital services that will be provided on or after 1st January 2020, no service tax on digital services shall be charged on the payment received. Tax implication on provision of digital services is as follows:”</p> |
| Example 18 | Insert the word “by FRP, however recipient in Malaysia has to account service tax on Imported Taxable Service.” after the word “charged” |
| Example 19 | Insert new example <i>“ReyFee Ltd provides digital service. He issued invoice on 01 Nov 2019 for the digital service that is to be provided on 01 March 2020. Syasya who is consumer in Malaysia make a payment for that digital services also on 1 Nov 2019. Based on this example, ReyFee Ltd shall not charged service tax on digital service.”</i> |
| Example 20 | Insert new example <i>“ReyFee Ltd provides digital service. He issued invoice on 01 Nov 2019 for the digital service that is provided on 1 Feb 2020. Syasya who is customer in Malaysia make a payment for that digital services on 1 April 2020. Based on this example, ReyFee Ltd shall charge service tax on digital service.”</i> |
| Example 21 | Insert new example <i>“ReyFee Ltd provides digital service on 1st November 2019, however payment for the digital service and invoice in relation to provision of the digital services issued after 1.1.2020. Based on this example, ReyFee Ltd shall not charge service tax on digital service</i> |

| PARA | CHANGES |
|----------------|--|
| | <i>since digital service is provided before the date of c.i.o.”</i> |
| Para 84 | Insert new item as the following: “e) Failure to issue invoice or document as required by the Act” |
| Para 85 | Replace “60(d)” with “85(d)” |