



**SERVICE TAX 2018**

**GUIDE ON:  
BROKING AND UNDERWRITING  
SERVICES**

**Published by :**

**Royal Malaysian Customs Department  
Internal Tax Division  
Putrajaya**

**27 February 2019**

## **Publication**

Date: 27 February 2019.

## **Copyright Notice**

Copyright 2019 Royal Malaysian Customs Department.

All rights reserved. Subject to the Copyright Act, 1987 (Malaysia).

The Guide may be withdrawn, either wholly or in part, by publication of a new guide. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form, including on-site for commercial purposes without written permission from the Royal Malaysian Customs Department (RMCD). In reproducing or quoting the contents, acknowledgment of source is required.

## **Disclaimer**

This information is intended to provide a general understanding of the relevant treatment under Services Tax Legislations and aims to provide a better general understanding of taxpayers' tax obligations. It is not intended to comprehensively address all possible tax issues that may arise. While RMCD has taken the initiative to ensure that all information contained in this Guide is correct, the RMCD will not be responsible for any mistakes and inaccuracies that may be contained, or any financial loss or other incurred by individuals using the information from this Guide. All information is current at the time of preparation and is subject to change when necessary.

## **CONTENTS**

<b>INTRODUCTION.....</b>	<b>1</b>
<b>IMPOSITION AND SCOPE OF TAX.....</b>	<b>1</b>
<b>OVERVIEW OF BROKING SERVICES .....</b>	<b>1</b>
<b>Securities and Derivatives Broking.....</b>	<b>2</b>
<b>Brokerage transactions involving an executing broker and clearing broker .....</b>	<b>9</b>
<b>Placement of Securities.....</b>	<b>14</b>
<b>Insurance Broking .....</b>	<b>14</b>
<b>TREATMENT OF SERVICE TAX ON INSURANCE OR TAKAFUL BROKER SERVICES.....</b>	<b>15</b>
<b>Manner of billing, payment and accounting for tax by the insurance or takaful broker.....</b>	<b>16</b>
<b>Payment made directly to insurer or takaful operator. ....</b>	<b>18</b>
<b>Payment made through insurance or takaful broker .....</b>	<b>18</b>
<b>Money-Broking.....</b>	<b>19</b>
<b>OVERVIEW OF UNDERWRITING SERVICES .....</b>	<b>20</b>
<b>Securities Underwriting.....</b>	<b>21</b>
<b>Debt Underwriting .....</b>	<b>24</b>
<b>Insurance Underwriting .....</b>	<b>25</b>
<b>TREATMENT OF SERVICE TAX ON BROKING AND UNDERWRITING SERVICES.....</b>	<b>27</b>
<b>REGISTRATION AND RESPONSIBILITIES OF A REGISTERED PERSON..</b>	<b>27</b>
<b>INQUIRY .....</b>	<b>30</b>
<b>FURTHER ASSISTANCE AND INFORMATION ON SST .....</b>	<b>30</b>

## **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 2018 is 1 September 2018.
2. Service tax is imposed on prescribed services called “taxable services”.
3. A person who provides taxable services exceeding a specified threshold is required to be registered under the Services Tax Act 2018 and is known as a “registered person” who is required to charge service tax on his taxable services made to his customers.
4. The Guide is prepared to assist you in understanding the service tax treatment on the provision of broking and underwriting services.

## **IMPOSITION AND SCOPE OF TAX**

5. Effective 1 January 2019, under Group I, item 12, First Schedule of the Service Tax Regulations 2018, the provision of broking and underwriting services under prescribed circumstances are subject to service tax. Services tax is not applicable for such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia.

## **OVERVIEW OF BROKING SERVICES**

6. Broking services is a service provided by a broker acting as an intermediary that connects buyers and sellers to facilitate a transaction. A broker can also furnish market information regarding prices, products, and market conditions. The broker may represent either the seller or the buyer or both at the same time and plays an important role in the sale and purchase of securities and derivatives, insurance, money broking, commodities, real estate, etc.

7. A broker receives payment for its services in the form of a brokerage fee or commission determined based on a percentage of the transaction, a flat fee or a hybrid of the two. This fee or commission is charged by the broker to execute the broking transactions or provide specialised services such as purchases, sales, consultations, negotiations and delivery. Brokerage fees or commission vary according to the industry and type of broker.

8. Item 12 of Group I, First Schedule of the Service Tax (Amendment) (No.3) Regulations 2018 states that any broker or underwriter that provides broking or underwriting services relating to financial services for which a fee or commission is charged is subject to service tax if the total value of the services provided by the broker or underwriter exceeds the prescribed threshold.

9. Therefore, for the purpose of service tax, the provision of broking services refers to sale and purchase of securities and derivatives, insurance, money broking and other financial services industry.

### **Securities and Derivatives Broking**

10. Bursa Malaysia Securities Berhad (“BMS”) and Bursa Malaysia Derivatives Berhad (“BMD”) are wholly-owned subsidiaries of Bursa Malaysia Berhad (“Bursa” or “Bursa Malaysia”). BMS and BMD are responsible for providing, operating and maintaining the securities exchange and derivatives exchange respectively in Malaysia.

11. BMS and BMD do not have direct dealing with investors. The Participating Organisation (“PO”) and Trading Participant (“TP”), (thereafter collectively referred to as the “Brokers”), which are the exchange participants of BMS or/and BMD, act as intermediaries between Bursa and the investors. All the exchange listed securities and derivatives trading activities must be performed through a PO (for securities trading) or TP (for derivatives trading).

12. The POs and TPs which hold the relevant licenses as required under Capital Markets and Services Act 2007 (“CMSA”) for dealing in securities (for PO) or derivatives (for TP), are regulated by the Securities Commission Malaysia (“SC”). The

POs and TPs are either investment banks which are licensed under the Financial Services Act 2013 or broking companies.

13. In general, Brokers earn a brokerage fee or commission for performing the brokerage services.

14. The brokerage fee/commission is based on either;

- (i) The trade amount traded by the client for trading in securities; or
- (ii) The number of lot(s) traded by the client for trading in derivatives.

15. Brokers in Malaysia can facilitate trade of securities and derivatives in the local exchange, i.e Bursa Malaysia or overseas securities/derivatives exchange via the foreign brokers.

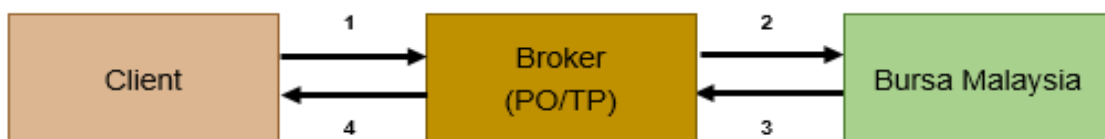
16. The parties involved and their function for trading of securities and derivatives are as below:

Parties Involved	Function
<p><b>Securities/ Derivatives Exchange:</b></p> <p>Bursa Malaysia</p> <p>Overseas Exchange</p>	<p>Bursa Malaysia is the securities and derivatives exchange of Malaysia where securities and derivatives are traded.</p> <p>Similarly there are also specified exchanges in other countries such as SGX in Singapore or HKEX in Hong Kong.</p>
<p><b>Broker:</b></p> <p>Participating Organisations (“PO”)</p> <p>Trading Participants (“TP”)</p>	<p>The Participating Organisations (“PO”) and Trading Participants (“TP”), which are also referred to as the Brokers, act as intermediaries between Bursa and the investors. All the exchange listed securities and derivatives trading activities must be performed through a PO or TP.</p>

Parties Involved	Function
<p>Remisiers / Commissioned Futures Broker's Representatives (CFBRs)</p>	<p>Remisiers/CFBR are independent commissioned dealer's/future broker's representatives of the POs/TPs who are not employees of the POs/TPs.</p> <p>Remisiers/CFBR are licensed to execute trades on behalf of the POs/TPs for their clients to buy or sell securities/ derivatives. In return, remisier will earn a percentage of brokerage fee/commission for every trade performed by their clients.</p> <p>A remisier/CFBR can only be a commissioned licensed dealer's/futures broker's the representative of one PO/TP at any point of time.</p>
<p>Foreign Broker ("FB")</p>	<p>For the purpose of discussion here, FB refers to an overseas broker.</p> <p>Where a client (local or overseas) wishes to purchase or sell securities/derivatives in an exchange outside of Malaysia, the PO/TP will liaise with a FB or their affiliate company within the same group to assist with executing the trade.</p> <p>A FB will also deal with a PO/TP to assist with the trading of securities/derivatives in Malaysia for the foreign broker's client.</p>

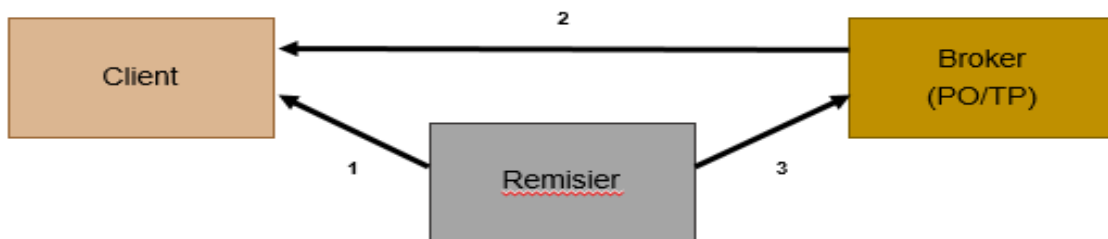
17. Below are some illustrations of transactions involving broking services and the tax treatments.

**Illustration 1: General transaction**



No.	Transaction	Service Tax Treatment
1.	Client (either Malaysian or foreign investor) will approach the Broker to buy or sell securities/derivatives.	N/A
2.	Broker will execute the trade into Bursa by initiating the buying / selling process.	N/A
3.	Bursa will charge the fee relating to the trade (e.g. clearing fees, exchange fees) which is to be charged and paid by the Client	N/A
4.	Once completed, Broker will charge the Client: (a) Brokerage fee/ commission (b) Related Bursa trading fees charged on behalf of Bursa (e.g. clearing fees, exchange fees) (c) Stamp duty	(a) Taxable (b) Not taxable  (c) Not taxable

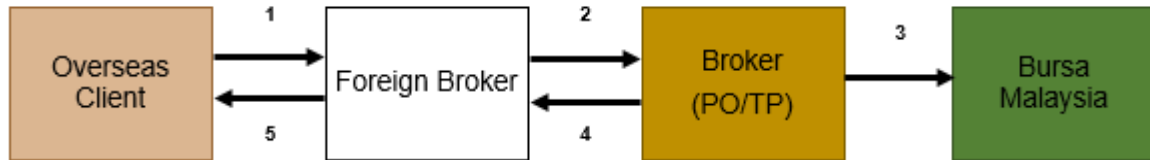
**Illustration 2 : Sharing of brokerage fees with remisiers**



No.	Transaction	Service Tax Treatment
1.	Remisier will deal with the client to purchase or sell securities/derivatives for the client.	N/A
2.	Broker will charge the brokerage fee to the client	Taxable
3.	The Broker will share a certain percentage of the brokerage fee charged by the Broker with the remisier	Not taxable on the basis that the brokerage commission charged by the Broker is already taxable.

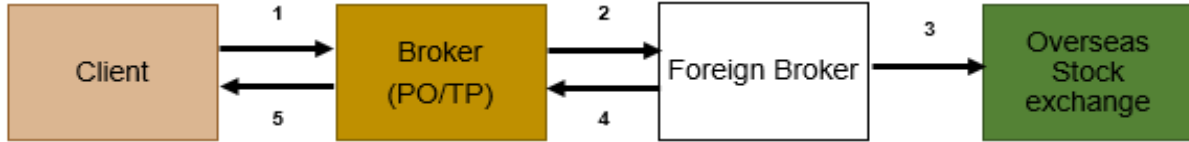


**Illustration 3: Brokerage fees charged to foreign brokers for trading in Bursa Malaysia.**



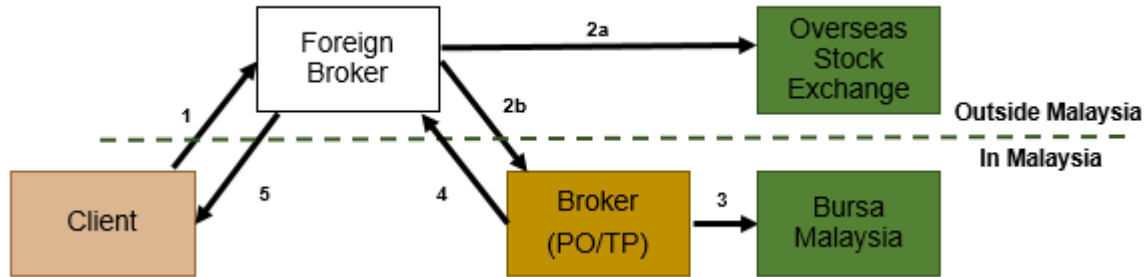
No.	Transaction	Service Tax Treatment
1.	The overseas client approaches the FB to buy or sell securities/derivatives in Bursa Malaysia	N/A
2.	The FB will approach the Broker to assist with the trade transaction	N/A
3.	Broker will execute the trade into Bursa Malaysia	N/A
4.	Once completed, Broker will charge the FB: <ul style="list-style-type: none"> <li>(a) Brokerage fee/commission</li> <li>(b) Related Bursa trading fees charged on behalf of Bursa (e.g. clearing fees, exchange fees)</li> <li>(c) Stamp duty</li> </ul>	<ul style="list-style-type: none"> <li>(a) Taxable</li> <li>(b) Not taxable</li> <li>(c) Not taxable</li> </ul>
5.	The FB will charge the overseas client the brokerage fee/commission	N/A – Transaction outside Malaysia

**Illustration 4:** Brokerage fees charged for trading of foreign shares to residents/non-residents.



No.	Transaction	Service Tax Treatment
1.	The client (in Malaysia or overseas) approaches the Broker to buy or sell securities in an overseas securities/derivatives exchange	N/A
2.	Broker will approach a FB to assist with the trade transaction	N/A
3.	FB will execute the trade in the overseas securities/derivatives exchange	N/A
4.	Once trade completed the FB will charge brokerage fee/commission and related fees to the Broker	The brokerage services is not subject to imported taxable services as the brokerage services is provided outside Malaysia*
5.	The Broker will charge the brokerage fee/commission for the trade completed in the overseas stock exchange	The brokerage services is not subject to service tax as it relates to brokerage services provided outside Malaysia*

**Illustration 5:** Local client engages a foreign broker to trade in Malaysia and outside Malaysia. Potential scenario where double taxation may occur.



No.	Transaction	Service Tax Treatment
1.	The local client approaches the FB to buy or sell securities/derivatives in an overseas securities/derivatives exchange and Bursa Malaysia	N/A
2a.	FB will execute the trade in the overseas securities/derivatives exchange	N/A
2b.	FB will approach a Broker to assist with the local trade transaction	N/A
3.	Broker will execute the transaction at Bursa	N/A
4.	Once completed, Broker will charge brokerage fee/commission to FB for the transactions executed at Bursa	Taxable
5.	The FB will charge the brokerage fee/commission for the trade completed in the overseas stock exchange and Bursa Malaysia to the local client	The brokerage fee/commission paid by the local client to the FB is not subject to service tax as the Broker has already charged service tax on the brokerage fee/commission to the FB as per transaction 4.

## Brokerage transactions involving an executing broker and clearing broker

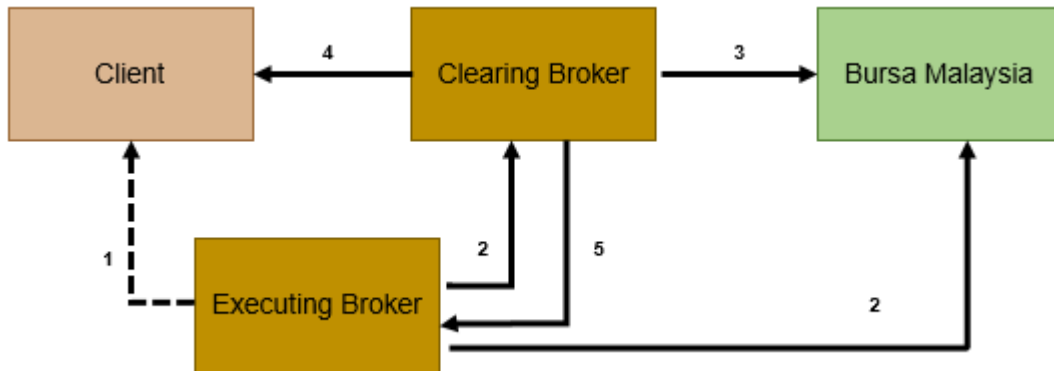
18. There are scenarios where more than one broker is involved to facilitate the securities/derivatives transactions i.e. an executing broker and clearing broker.

19. Below are their stipulated functions and illustrations of transactions involving an executing broker and clearing broker services.

### Scenario A

Parties Involved	Function
Executing Broker ("EB")	<ul style="list-style-type: none"><li>• Faces the client and provides them access to the derivatives market.</li><li>• The client will submit an order to trade to the EB.</li><li>• If the trade is matched, the EB will transfer the matched trade to the CB</li><li>• The EB charges an execution commission to the <b>clearing broker</b> for the trade.</li></ul>
Clearing Broker ("CB")	<ul style="list-style-type: none"><li>• Clears the trade with Bursa Malaysia as requested by the client</li><li>• The CB charges the client the brokerage fee/commission associated with the trading transaction</li><li>• The CB will pay the execution commission to the EB based on the total amount of brokerage fee/commission charged to the client.</li></ul>

**Illustration 6:**  
**(Scenario A)**

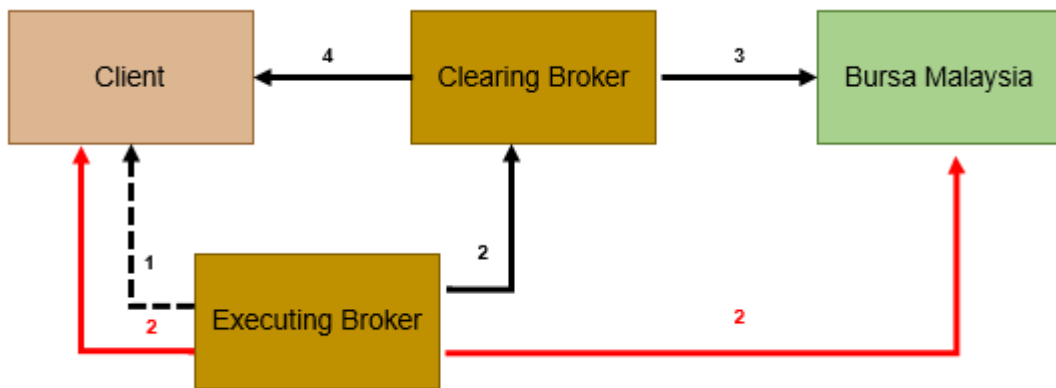


No.	Transaction	Service Tax Treatment
1.	The EB deals with the client	N/A
2.	EB will execute the trade with Bursa, and then transfer the matched trade to the CB	N/A
3.	CB will clear the trade with Bursa	N/A
4.	Once the trade is completed, the CB will charge brokerage fee/commission to the client	Taxable
5.	CB will pay the EB execution commission based on the brokerage fee/commission charged to the client	The execution commission should not be taxable on the basis that the brokerage commission charged by the CB is already taxable

**Scenario B:**

Parties Involved	Function
Executing Broker ("EB")	<ul style="list-style-type: none"> <li>• Faces the client and provides them access to the derivatives market.</li> <li>• The client will submit an order to trade to the EB.</li> <li>• If the trade is matched, the EB will transfer the matched trade to the clearing broker.</li> <li>• The EB charges an execution commission to the <b>client</b> for the trade.</li> </ul>
Clearing Broker ("CB")	<ul style="list-style-type: none"> <li>• Clears the trade with Bursa Malaysia as requested by the client.</li> <li>• The CB charges the client the brokerage fee associated with the trading transaction.</li> </ul>

**Illustration 7: (Scenario B)**



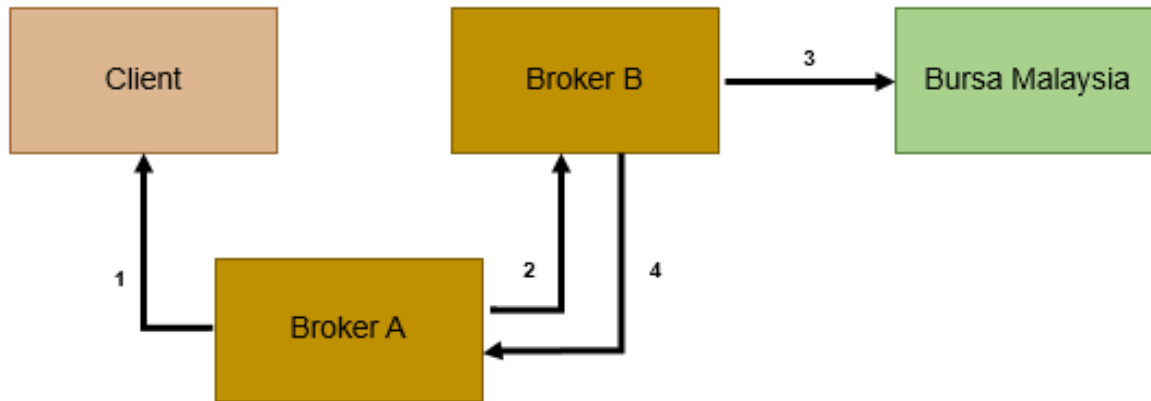
No.	Transaction	Service Tax Treatment
1.	The EB deals with the client	N/A
2.	EB will execute the trade with Bursa, and then transfer the matched trade to the CB.  EB will charge execution commission to the client.	N/A  Taxable

No.	Transaction	Service Tax Treatment
3.	CB will clear the trade with Bursa	N/A
4.	CB will charge clearing commission to the client	Taxable

**Scenario C**

Parties Involved	Function
Broker A	<ul style="list-style-type: none"> <li>• Faces the client and provides them access to the securities market.</li> <li>• The client will submit an order to trade to Broker A.</li> <li>• Broker A will transfer the trade request to the Broker B.</li> <li>• Broker A charges the client the brokerage fee associated with the trading transaction.</li> </ul>
Broker B	<ul style="list-style-type: none"> <li>• Execute and clears the trade with Bursa Malaysia on behalf of Broker A's clients.</li> <li>• Broker B charges commission to Broker A for the trade.</li> </ul>

**Illustration 8: (Scenario C)**



No.	Transaction	Service Tax Treatment
1.	Broker A deals with the client Broker A will charge brokerage fee/commission to the client.	N/A Taxable
2.	Broker A will pass the trade request to Broker B.	N/A
3.	Broker B will execute and clear the trade in Bursa on behalf of Broker A's client.	N/A
4.	Once completed, the Broker B will charge commission to Broker A.	The interbroker commission should not be taxable on the basis that the brokerage commission charged by the Broker A is already taxable



## **Placement of Securities**

Financial institutions (FIs) also provide services in relation to private placement of securities (e.g. Initial Public Offering (IPO) exercises, private placement of secondary securities, blocktrade, special capital issues by business, etc) in which the FIs act as intermediaries to distribute securities. Generally, FIs will earn placement fee/commission for providing the securities placement services. Thus, the placement fee/commission which is similar to brokerage fee is a taxable service and is subject to service tax.

When a business company (i.e. "Issuer") raises capital through an Initial Public Offering (IPO) in Malaysia, it typically contracts with a group of FIs. The sharing/re-distribution of the placement fee/commission among the FIs is not subject to service tax as it has already been taxed by the lead FI who initially deals with the company.

## **Insurance Broking**

20. As defined under Financial Services Act 2013 and Islamic Financial Services Act 2013 which are regulated by Bank Negara Malaysia and as defined under Labuan Financial Services and Securities Act 2010 which is regulated by Labuan Financial Services Authority, an insurance or takaful broking business is the business of soliciting, negotiating or procuring a policy with an insurer or a takaful certificate with a takaful operator, or the renewal or continuance of the policy or the takaful certificate by a person, for a policy owner or a takaful participant other than for himself and includes reinsurance or retakaful broking for an insurer or a takaful operator.

21. Thus, the services of an insurance or takaful broker is to provide professional advice and market knowledge to his customer and subsequently providing a suitable cost effective insurance protection coverage.

22. An insurance or a takaful broker, an independent contractor who carries on insurance or takaful broking business which includes reinsurance or retakaful broking, must be an approved insurance or takaful broker as regulated by Bank Negara Malaysia or a licensed insurance or takaful broker as regulated by Labuan Financial

Services Authority.

23. The following are some of an insurance and takaful broker's functions:
- (i) The broker is appointed by the client and the prime duty is to protect the client's interests.
  - (ii) He is regarded as an insurance professional who understand the client's business and risks and source the market for an insurance programme at competitive price and comprehensive coverage.
  - (iii) He will also undertake on behalf of the client the negotiation of claims with the insurance company, work with the loss adjustor to ensure fair and prompt settlement of claims.

24. The provision of broking services in relation to life insurance contract or family takaful certificate to cover any risks incurred to an individual (B2C) is not a taxable service and is not subject to service tax. The provision of broking services in relation to life insurance contract or family takaful certificate to cover any risks incurred to business (B2B) is taxable service and is subject to service tax.

## **TREATMENT OF SERVICE TAX ON INSURANCE OR TAKAFUL BROKER SERVICES**

25. The provision of broking services in relation to all types of general insurance contract or general takaful certificate to cover any risks incurred in Malaysia to an individual or business organisation is a taxable service and subject to service tax except the provision of broking services in relation to medical insurance contracts to cover against any risks incurred to an individual is not subject to service tax.

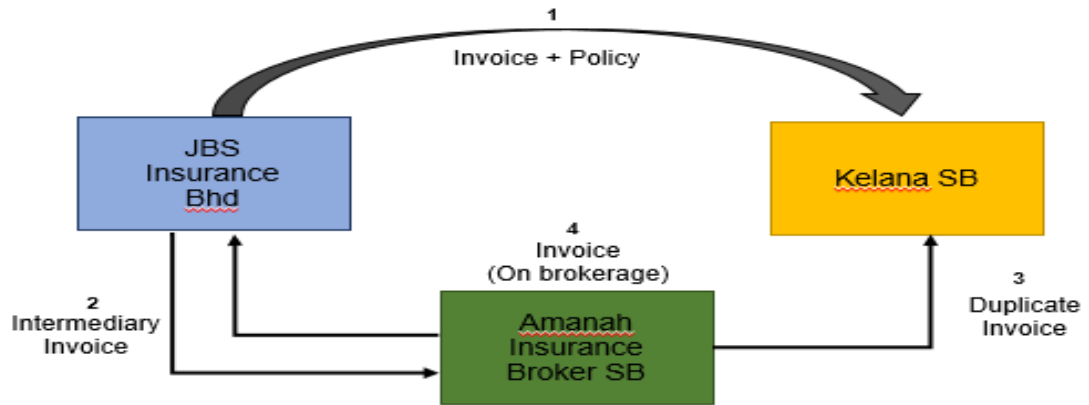
26. The provision of broking services in relation to all types of life reinsurance, family retakaful, general reinsurance or general retakaful contracts is not a taxable service and not subject to tax.

27. The insurance or takaful brokerage fee/ commission is based on;
- (i) A percentage of the gross insurance premiums normally known as brokerage commission which is determined either by market practice or regulated by Bank Negara Malaysia, or
  - (ii) Flat fee on a negotiation basis, e.g. Fee in lieu of brokerage.

**Manner of billing, payment and accounting for tax by the insurance or takaful broker.**

28. Normally, billing for the insurance or takaful broking services are as below:
- (i) The insurer or takaful operator issues an invoice together with the insurance policy or takaful certificate to client.
  - (ii) The insurer or takaful operator issues intermediary invoice to the broker, where the amount of brokerage is reflected.
  - (iii) The broker issues a duplicate invoice similar to the invoice issued by insurer or takaful operator to the client under (i). However, if the amount of brokerage commission which has been included in the insurance premium or takaful contribution, is taxed and accounted by the insurer or takaful operator, a note should be stated on the invoice that the service tax on insurance premium or takaful contribution has been accounted by the insurer or takaful operator. This is because the insurance premium is not a taxable service of the broker.
  - (iv) In addition, the broker issues a duplicate invoice to insurer or takaful operator on the brokerage similar to the intermediary invoice under (ii).

This can be illustrated as below:



**Illustration 9:**

*Amanah Insurance Broker Sdn. Bhd. provides broking services to his client Kelana Sdn Bhd for the purchase of general insurance from JBS Insurance Bhd. JBS Insurance Bhd will issue invoice together with insurance policy to Kelana Sdn Bhd. As a broker who provide broking services to his client, Amanah Insurance Broker Bhd will also issue a duplicate invoice to his client, Kelana Sdn Bhd.*

29. Payment of insurance premium or takaful contribution by client will be made in the following manner:

- (i) Payment made directly to insurer or takaful operator; or
- (ii) Payment made through insurance or takaful broker.

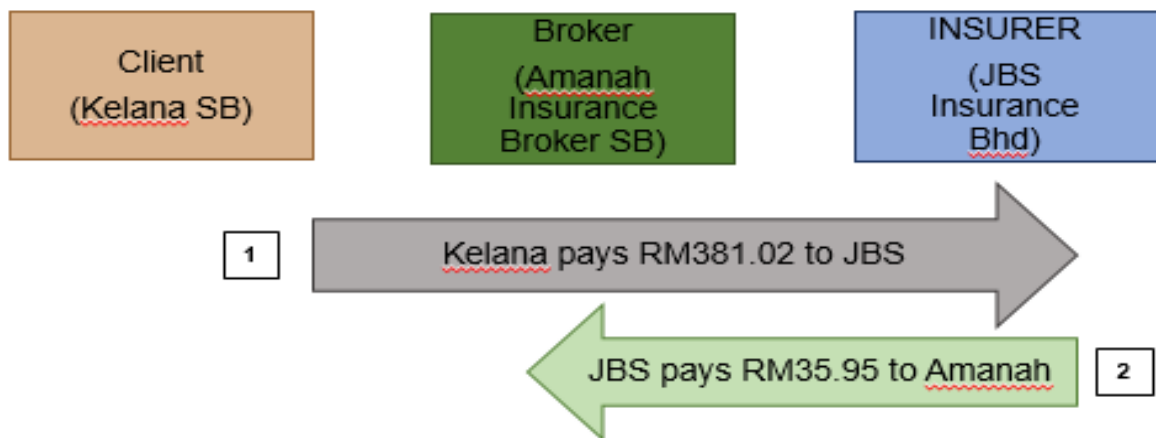
**Illustration 10:**

Description	Amount (RM)
Gross Insurance Premium	359.45
Service Tax - 6%	21.57 * (6% of gross premium)
Stamp Duty	-
<b>Total Amount due from client</b>	<b>381.02</b>
Less: Brokerage - 10%	(35.95) * (10% of gross premium)

Description	Amount (RM)
Net Premium Payable to Insurer	345.07

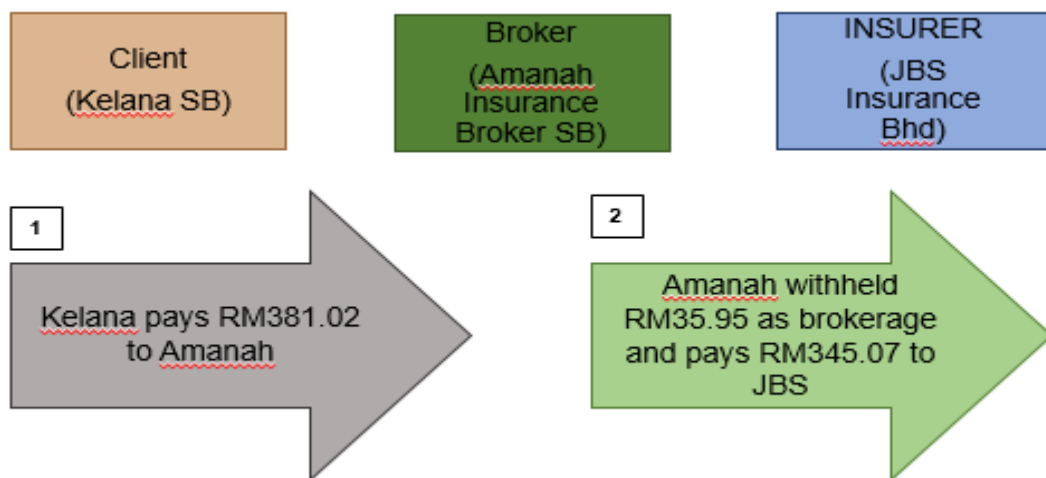
**Payment made directly to insurer or takaful operator.**

**Scenario 1:** Client issue payment of RM381.02 to JBS Insurance Bhd



**Payment made through insurance or takaful broker**

**Scenario 2:** Client issue payment of RM381.02 to Amanah Insurance Broker Sdn Bhd



30. In a normal situation, the brokerage commission which is included in the insurance premium or takaful contribution has been taxed and accounted by the insurer or takaful operator. Thus, this brokerage commission shall not be taxed anymore by the insurance or takaful broker. However, this brokerage commission should be taken into account for calculation of the threshold value of RM500,000.

31. In other situation, based on negotiations between the insurance or takaful broker and the client, a flat fee in lieu of brokerage commission may be charged, which is subject to service tax. This is to be charged and accounted by the broker.

32. The table below shows the summary of service tax treatment on other types of income earned by insurance or takaful brokers:

Type of Income	Description	Service Tax Treatment
Brokerage	% of Gross Premium	Service tax levied on gross premium includes that portion of the tax levied on brokerage and is paid to RMCD by insurer or takaful operator. Hence, there should not be any additional service tax on brokerage.
Fee in lieu of brokerage	No brokerage but a fix amount of fee as agreed with client or network office.	Service tax is levied on the fee amount.
Top-up Fee	Additional fee earned from client or network office for the administration of the insurance programme.	Service tax is levied on the fee amount.

### Money-Broking

33. Money-broking, as defined in the Financial Services Act 2013, is the business of arranging transactions between buyers and sellers in the money markets with brokers acting as an intermediary in consideration of brokerage fees paid or to be paid,

but does not include the buying or selling of foreign currencies by the broker as a principal in such markets.

34. Therefore, as a money-broking company, the principle activity of the company is to act as an intermediaries or arrangers of deals between authorised financial institutions in foreign exchange and domestic money market. In return for the service provided by the broker, payment in the form of brokerage commission or fees are received when deals between two parties are concluded. Money-broker takes no speculative positions and is not a principal party to any transactions.

35. Money-brokers are intermediaries for all interbank players facilitates inter-bank transactions in wholesale Over-The-Counter (OTC) markets by providing a confidential point of contact for all markets participants local and abroad. Commissions or brokerage fees are earned directly from trade counter-parties such as in foreign exchange, currency deposits, swaps and domestic money market instruments.

36. The brokerage commissions or fees of a money broking business is a taxable service and subject to service tax.

37. A money-broker should meet the following minimum criteria:

- (i) A licensed domestic money-broker,
- (ii) A company with money broking expertise, incorporated under the Companies Act 2016 or Labuan Companies Act 1990; or
- (iii) Any licensed institutions under the Financial Services Act 2013 or Labuan Financial Services and Securities Act 2010.

## **OVERVIEW OF UNDERWRITING SERVICES**

38. Underwriting activities are frequently done in investment banking, insurance and commercial banking.

39. In the insurance industry, the insurance company will evaluate the risks of a potential candidate for insurance, based on a variety of actuarial factors. The bottom

line from such an underwriting process is to price the insurance in accordance with its associated risk.

40. In securities trading, underwriting also includes assessing the risk and pricing the security accordingly. However, the formal underwriting process also involves agreeing to buy the security (by the underwriter) and then selling the security for a profit. The underwriter effectively takes a risk by agreeing to buy the security at the established price.

### **Securities Underwriting**

41. Securities underwriting is the process by which an investment bank (“IB”) or Broker raise investment capital from investors (public) on behalf of companies (issuer) that intend to issue securities which can comprise of both equity and/or debt capital, whereby the investment bank guarantees a certain amount of capital, to be raised (“underwritten amount”). An IB/Broker underwrites the transaction, which means the IB/Broker will take on the risk of distributing the securities. The investment banks/brokers cover the risk by selling the securities to potential investors.

42. An IB/ Broker helps the company to determine what type of security to issue, the optimal offering price, the number of securities to be issued and the time to bring it to market.

43. IB/ Broker make their income of underwriting fee based on:

- (i) Percentage of the underwritten amount;
- (ii) A percentage of the value of securities to be issued for underwriting for bonds specifically.

44. Where the IB/ Broker is not be able to find enough investors, they will have to subscribe or hold some of the securities. In such cases, the IB/Broker assumes risk by agreeing to take up the securities if they are unable to place them. IB/Broker will receive underwriting fee on the total underwritten value, including the portion of unsold securities



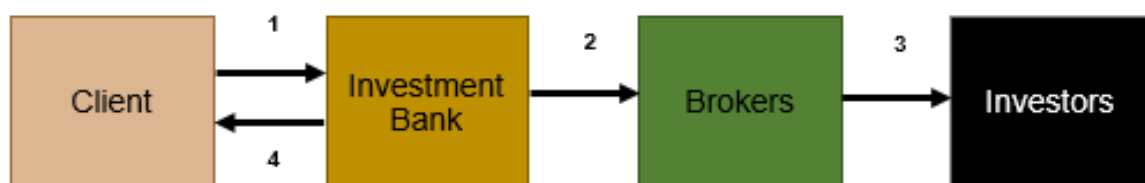
45. Underwriting fee charged by the IB/ Broker on the underwriting services provided is a taxable service and subject to service tax.

46. The parties involved and their function for issuance of securities are as below:

Parties Involved	Function
Issuing company (Client)	The company that intends to raise the investment capital by issuing securities
Underwriter: Investment Bank ("IB")	An IB underwrites the transaction, which means the IB is taking on the risk of subscribing for purchasing the securities in the event that some or all of the securities have not been subscribed for or purchased by the investors.
Brokers	Brokers can consist of other IBs or independent brokers where their role will be to sell the securities offered by the issuing company
Underwriting syndicate ("US")	In certain instances, a single IB is not able to undertake all the risk of underwriting the securities.  The IB will form an underwriting syndicate which comprises of several IBs where the risk is spread between the IBs.  There will be one or more IB who acts as the lead underwriter(s) for the underwriting syndicate.

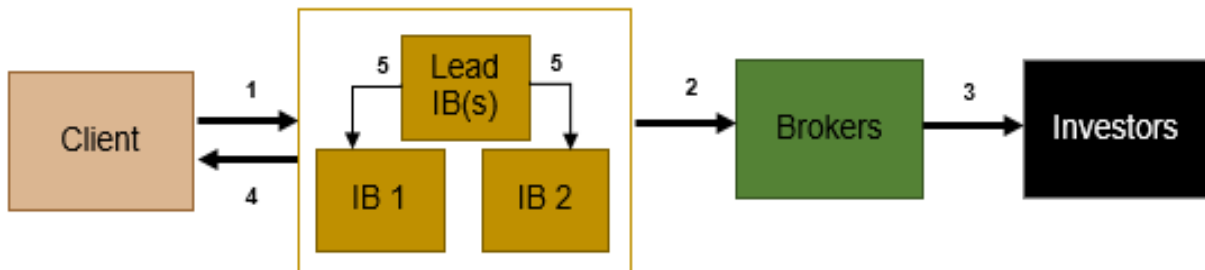
47. Below are some illustrations of transactions involving issuance of securities and the tax treatment.

**Illustration 11: General transaction**



No.	Transaction	Service Tax Treatment
1	Client will approach the IB with intent to raise investment capital via the issuance of securities	N/A
2	IB will underwrite the securities and offer the securities for sale to the market through the broker	N/A
3	Broker will source for investors to purchase the offering in the market	N/A
4	Once the issuance of the securities has been completed, IB will charge underwriting fee to the client	Taxable

**Illustration 12:** Transactions on issuance of securities involving underwriting syndicate (“US”)



No.	Transaction	Service Tax Treatment
1.	Client will approach the Lead IB(s) with intent to raise investment capital via the issuance of securities. The Lead IB(s) determines the risk is high and approaches IB 1 and IB 2 to form an US.	N/A
2.	The US will underwrite the securities and offer the securities for sale to the market through the brokers	N/A

No.	Transaction	Service Tax Treatment
3.	Brokers will source for investors to purchase the offering in the market	N/A
4.	Once the issuance of the securities has been completed, the US will charge the Client the underwriting fee	Taxable
5.	Sharing of underwriting fee between the Lead IB(s) with the IBs in the US	Not subject to service tax on the basis that the underwriting fee charged to the Client is already taxable

### Debt Underwriting

48. In commercial banking, underwriting means assessing the credit worthiness of borrowers and agreeing to fund loans. The risk is that the borrower will default on the loan and thus fail to repay the amount borrowed. The fee for underwriting this risk is typically periodic interest charged to the borrower as long as there is a balance due on the loan. The said underwriting is not a service rendered to the customer, it is merely to assist the banks to weigh the risk of the customer before approving any loans to the customer and to determine the interest charged. Thus, the interest charged to the borrower is not an underwriting fee and it is not subject to service tax.

49. Underwriter may also purchase debt securities from the issuer with the goal of selling the debt securities at a profit, known as the "underwriting spread." The underwriters can resell the debt securities either directly to the marketplace or to dealers who will distribute the securities to other buyers. The "underwriting spread" is merely a gain from buy and sell of the debt securities and it is not subject to service tax.

50. Some debt security issues may require more than one underwriter. When a group of underwriters oversee a bond issue, the group is known as a syndicate. The imposition of service tax on underwriting of debt security services is dependent on

consensus of underwriters involved in the transaction, i.e whether the lead underwriter or each of the individual underwriters under the syndicate.

51. Asset securitisation is an example of debt underwriting, which is a way of raising funds by selling receivables, which are then turned into asset-backed loan and securities. This method of financing brings various benefits such as diversification of funding sources and improvement of cash flow. However, if there is a fee charged for the asset-backed loan and securities arrangement pertaining to the role as underwriter then the said fee shall be subject to service tax.

52. If the underwriting fees relates to debt securities traded outside of Malaysia, underwriting services should not be subject to service tax as it relates to services provided outside Malaysia.

### **Insurance Underwriting**

53. In the insurance industry, underwriting is the process of agreeing to bear the financial risk inherent in an insurance contract. The insurance underwriters assess the risk that is being insured, for instance, fire damage to a house. The underwriters receive the insurance premium from the homeowner and in return, the underwriters agree to provide compensation for damages that result from a fire.

54. The function of the underwriter in the insurance company is to evaluate the risk, determine if the company is willing to take on the risk and determine the appropriate premium. During the underwriting process, the insurer will review and assess various information and factors relating to the insured and the insured event.

55. Therefore, in the context of insurance, underwriting is an internal evaluation process, undertaken by the insurer prior to entering into the contract of insurance. The cost of the underwriting process is initially borne by the insurer meaning a specific underwriting fee is not charged to the client, regardless of whether the risk is accepted. Thus, since no underwriting fee is charged on the underwriting services provided internally by the insurance company, it is not a taxable service and not subject to service tax.

56. The underwriting process is a core function of the insurer. As such, under paragraph 1.5 of the Bank Negara Malaysia rules on Outsourcing dated 28 December 2018, it is not permissible for an insurer to outsource the underwriting function to a third party. Therefore, there would not be any instances in which a specific fee or a charge is levied for the insurance underwriting process.

**Illustration 13:**

*Ali is considering obtaining motor vehicle insurance for his car, and he makes an application for a motor insurance policy from ABC Insurance Bhd. In evaluating whether or not it should sell such a policy to Ali, ABC performs the underwriting process by assessing various factors including Ali's age, address, previous driving history, previous claims history, as well as the make, model and age of the car. After completing the underwriting process, and determining that Ali is an acceptable risk, ABC issues the motor vehicle insurance policy to cover the vehicle against loss or damage as per the policy. Ali pays the insurance premium determined by the underwriting process. As the underwriting process is an internal evaluation process, ABC does not charge Ali any fee for undertaking the underwriting assessment.*

57. However, pursuant to Labuan Financial Services and Securities Act 2010, a licensed Labuan underwriting manager must only provide underwriting services.

58. A licensed Labuan underwriting manager must provide underwriting services in or from Labuan to any person licensed under the Labuan Financial Services and Securities Act 2010. The licensee is not allowed to provide services in or from Labuan to any business carried on by an insurer registered under the Insurance Act 1996 or by a takaful operator registered under the Takaful Act 1984.

59. Therefore, underwriting services provided by Labuan underwriting manager to insurance company licensed under Labuan Financial Services and Securities Act 2010 is not subject to Service Tax Act 2018 as it is a service provided within or between designated areas.

60. However, if the underwriting activity is performed by the licensed Labuan underwriting manager in its co-location or a marketing office in Malaysia (other than DA), then the transaction is subject to service tax.

### **TREATMENT OF SERVICE TAX ON BROKING AND UNDERWRITING SERVICES**

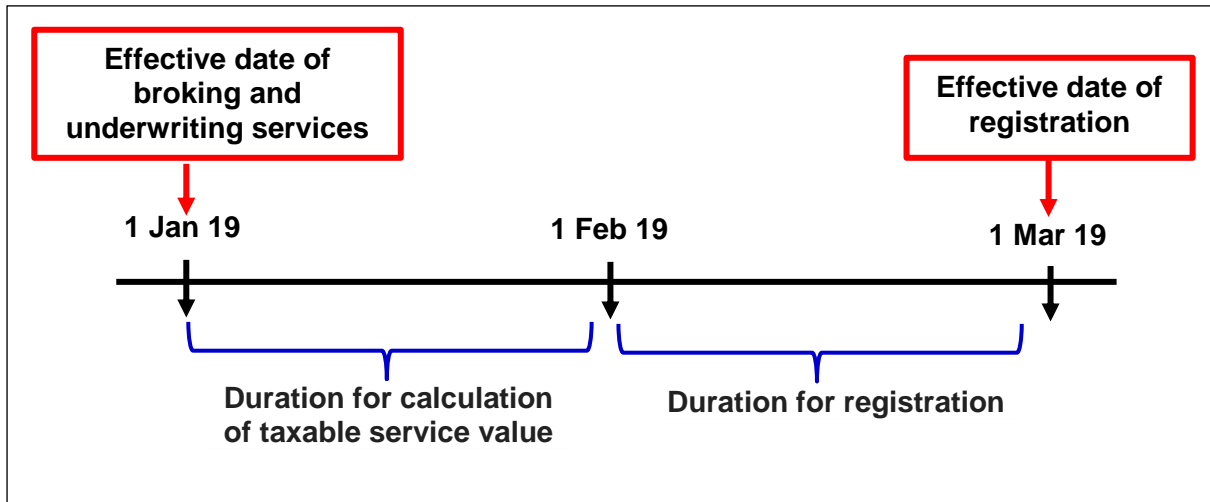
61. Service tax is charged on any taxable services relating to financial services for the use of provision of broking and underwriting on any fee and commission charged as stipulated in Item 12 of Group I, First Schedule of the Service Tax (Amendment) (No.3) Regulations 2018.

62. A broking and underwriting service provider are required to charge service tax at the rate of 6% to the businesses or consumer on the taxable services provided and account the tax to the government.

### **REGISTRATION AND RESPONSIBILITIES OF A REGISTERED PERSON**

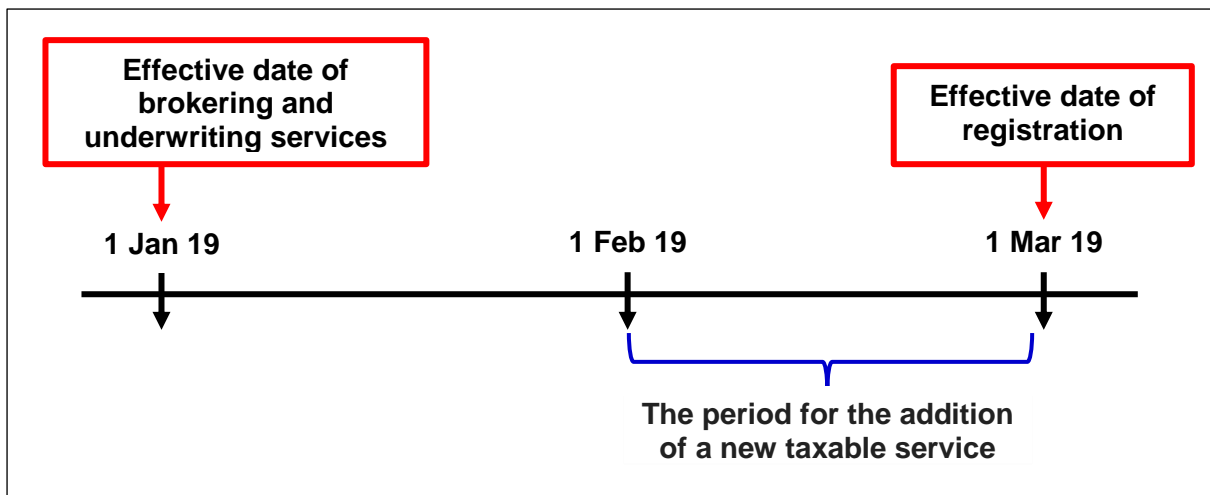
63. The broking and underwriting service is a taxable service coming into force on 1 January 2019.

64. For purposes of registration under the Service Tax Act 2018, any person providing broking or underwriting services shall make a calculation on the sale of taxable services rendered in January 2019 and eleven months immediately after January 2019. If the total value of such taxable service exceeds RM500,000, the application for registration of such taxable service shall be requested no later than February 28 2019.



65. Registration is effective from 1 March 2019 as provided under Section 13 (3), Service Tax Act 2018 and service tax shall be imposed from 1 March 2019.

66. Any person who becomes a registered person prior to 1 January 2019 and provides a new taxable service where the value of taxable service for January 2019 and eleven months forward is expected to exceed RM500,000, the application for the addition of this new service activity shall be made before 28 February 2019. The service tax on this new service shall be charged from 1 March 2019.



67. The registered person is responsible for:

- (i) Charging a service tax on taxable service,
- (ii) Issuing invoices and receipts to customers in respect of any transaction in connection with the provision of taxable services,

(iii) Submit electronically / manual SST-02 service tax returns and pay service tax before the expiry date,

(iv) Keeping an appropriate record in relation to service tax transactions.

68. For more information on the responsibilities of registered persons, please refer to the **General Guide on Service Tax**.



## **INQUIRY**

For any inquiries for this guide please contact:

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

## **FURTHER ASSISTANCE AND INFORMATION ON SST**

Further information on can be obtained from:

- (i) SST website : <https://mysst.customs.gov.my>
- (ii) Customs Call Center:
  - Tel : 03-7806 7200 / 1-300-888-500
  - Fax : 03-7806 7599
  - Email: [ccc@customs.gov.my](mailto:ccc@customs.gov.my)

