



SERVICE TAX 2018

GUIDE ON: DIGITAL SERVICES

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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 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 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. 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.

IMPOSITION AND SCOPE OF TAX

5. 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. The rate is 6%.

TERMINOLOGY

6. 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, Pangkor and Tioman. (*Section 47, STA*).
- (vi) “Special Areas” (SA) means any free zone, licenced warehouse and licenced manufacturing warehouse and Joint Development Area (*Section 52, STA*).

GENERAL OVERVIEW

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

8. 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

9. 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?

10. Digital services means services that is to be delivered through information technology medium with minimal or no human intervention from service provider.

11. These services **include** the supplies of the following (the list is not exhaustive):

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

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

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

(e.g. provision of music, live 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 teaching, e-learning, online courses, webinar)

(viii) **Others**

(e.g. Subscription to online newspapers and journals, provision of other digital content like images, text, information and payment processing services)

12. The provision of the above 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 require human intervention. The delivery of the services cannot be associated with the transaction of selling and buying.

Example 2

Hakeem & Co. is an architecture company in Malaysia. He requests 3D drawing from ABC Inc. which is located in California. ABC Inc. will send the drawing via email to Hakeem & Co. This service is not subject to service tax on digital service. However, Hakeem & Co. need to account service tax under imported taxable services.

Who is considered as Foreign Service Provider?

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

- (i) Who sell digital products 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.

- (ii) Who sell digital products indirectly through intermediaries such as online platform.

Example 5

SmartDaney sell online education game through Amazing.com who is an online platform that trade services or goods. SmartDaney issue invoice for the sell of game through Amazing.com. Under this scenario SmartDaney is considered as FSP and will account service tax on digital services.

14. Online platform who makes transactions on behalf of the oversea service provider and issues invoice or any other document under their name, will be regarded as FSP.

Example 6

Amazing.com who provide online platform to trade services or goods. Customer will purchases game from COC through Amazing.com. Amazing.com will issue invoice to customer. Under this scenario, Amazing.com is considered as FSP and Amazing.com will account service tax on digital services.

Who is considered as Consumer in Malaysia?

15. 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.
16. In determining whether consumer is reside in Malaysia, FRP may consider information or a declaration from the consumer as below:
- (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

Scenario under Business to Consumer (B2C)

Example 7

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.

Since the information collected by Seexu Co establish that Ayda is consumer in Malaysia, Seexu Co shall charged service tax on digital services.

Scenario under Business to Business (B2B)

Example 8

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.

17. Businesses who have been charged service tax on digital services by FRP is exempted from imported taxable services. Hence, they should not account for imported taxable services.
18. Consumer in Para 16 includes businesses and individual in Designated Area (DA) and Special Area (SA).

REGISTRATION

Mandatory Registration

Liability to be registered

19. 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 required to be registered under section 56B STA.
20. The value of digital service for a period of twelve months can be determined based on either the historical or future method.
21. The historical method is based on the value of digital service in any month plus the value of digital service for the eleven months immediately before that month.
22. 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 immediately after 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.

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

Category of Person	Value of Digital Service
Foreign Service Provider	the value of all digital service made to consumer in Malaysia
Online Platform Operator (who satisfy condition as FSP)	the value of all digital service made by online platform operator to consumer in Malaysia include value of digital services made to consumer in Malaysia by any FSP through the online platform

Application for registration

24. FSP who is liable to be registered under the implementation of service tax on digital services shall apply for registration not later than the last day of the month following the month in which he exceeds threshold.

Example 9

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. must apply for registration within the period from 1.03.2020 to 31.03.2020.

Effective Date of Registration

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

Example 10

In relation to Example 9 above, RaysmaApp Inc. has apply for registration on 16.03.2020. The registration effective date for RaysmaApp Inc. will be on 1.4.2020 and he has to charge service tax on digital services starting from 1.4.2020.

How to Register

26. FSP has to complete DST-01 form via online through <http://dst.customs.gov.my>.

Registration before Effective Date

27. 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.

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

Cancellation of Registration

Cessation of liability to be registered

29. The liability for registration will end when a person:

- (i) Ceases to provide digital services; or
- (ii) 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

30. FSP 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.

31. FSP who has notified his cessation of liability to be registered has to continue fulfill his obligations as FSP 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

32. FSP 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.

33. Application for cancellation of registration can be made by completing the **DST-Adm1** through online. FSP will be notified on the approval and the effective date of cancellation.

ACCOUNTING FOR TAX

Issuance of Tax Invoice

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

35. 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.

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

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

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

39. FRP who contravenes the list of particulars as para 35, is committing an offence and liable to a fine not exceeding RM 30,000 or to imprisonment for a term not exceeding two (2) years or to both.

Accounting Basis

40. The service tax for digital service chargeable under subsection 11(1) STA is due at the time when payment is received for the service provided to the consumer by the FRP. The DG may allow FRP upon application in writing to account for tax on accrual basis.

41. When the whole or any part of the payment in respect to the digital service provided is not received within a period of twelve (12) calendar months from the date of the invoice shall be due on the day following that period of 12 calendar months.

42. 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

43. FRP will be assigned a taxable period for which he is required to account for service tax on digital services in his return to be furnished to DG. 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.

44. The DG may reassign the FRP to any taxable period other than the period previously assigned to him and also upon an application in writing, 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

45. 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 11

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.

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

46. Any registration made after effective date, the taxable period is as follows:

Example 12

MayDia Music apply for registration on 2nd January 2020. The effective date to charge service tax on digital services will be on 1st February 2020 and the first taxable period will be for February-April 2020. Hence, MayDia Music need to submit it first return by 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

Since MayDia Music’s financial year end is on 31st March. 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:

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

Manner of Furnishing Return

47. FRP has to furnish a return and account for service tax on digital services in DST-02 form on quarterly basis according to his taxable period as required under Section 56H STA.

48. All particulars as requested in DST-02 form shall be furnished by the FRP and shall contain a certification that such return is true, accurate and complete. The value of digital services and the amount of service tax on digital services shall be declared in Malaysian Ringgit (MYR).

49. If any FRP makes an error in any return furnished under STA, he may correct the errors.

Payment and Penalty

50. Any payment of service tax on digital services, penalty, or any other money payable under STA shall be made to the DG through electronic service or at any institutional banking.

51. Payment of service tax on digital services, penalty or any other money by FRP shall be deemed to be received by the DG at the time payment is made to any institutional banking and lodged the credit to representative account.

52. Any amount of service tax on digital services payable shall be declared in MYR and payment must be made according to the amount of service tax charged to consumer.

53. FRP requires to pay to the DG the amount of service tax on digital services due and payable not later than the last day of the month following after the end of his taxable period under Section 56I STA.

Duty to Keep Records

54. 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.

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

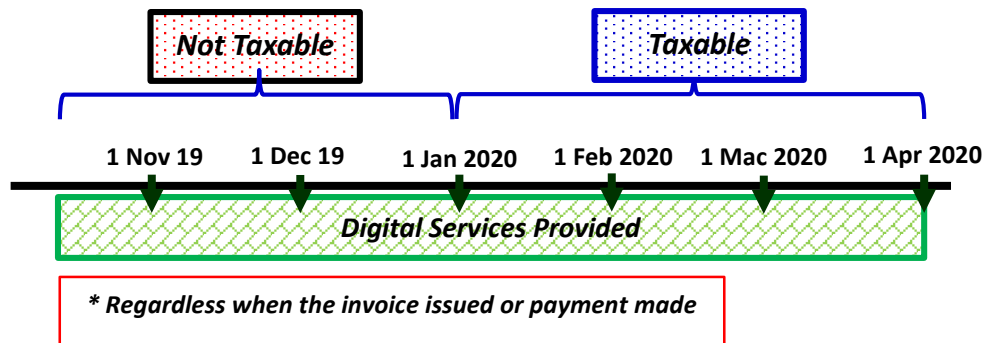
56. Where the record is in an electronically readable form, the record shall be kept in such manner as to enable the record to be readily accessible and convertible in writing.

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

TRANSITIONAL RULES

Progressive and Periodic Services Spanning Service Tax on Digital Services Implementation

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

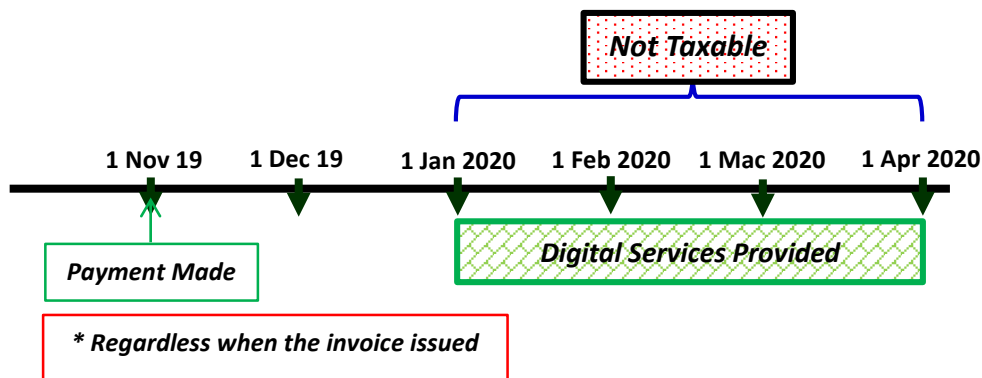


Example 13

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 on the portion of services provided from 1 January 2020.

Provision of Digital Services Before or After Implementation Date (non-Spanning)

59. Where any payment is received before the effective date in connection with the provision of digital services that will be provided on or after the effective date, no service tax on digital services shall be charged on the payment received. Tax implication on provision of digital services is as follows:



Example 14

If an annual subscription to a music platform 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.

COMPLIANCE AND ENFORCEMENT

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

- (i) Failure or late application for registration
- (ii) Late or non-filing of DST-02 returns
- (iii) Submission of incorrect DST-02 returns
- (iv) Late or non-payment of service tax on digital services due
- (v) Failure to keep records

61. With regards to para 60(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.

62. The example of the penalty is as follows:

Example 15

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

63. 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

64. 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

65. 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 : **Is there any service tax exemption under the provision of service tax on digital services?**
A : No

6. 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.

7. Q : **Can payment be made from a foreign bank account?**
A : Yes.
8. Q : **What if FRP discovered service tax on digital services has been over paid?**
A : FRP can apply for a refund using prescribed form (JKDM 2) online.

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) Policy issues –

Phone no. : 03-8882 2857/2844

03-8311 1306/1309/1311

Email address: roszita.dim@customs.gov.my

zuraidah.zul@customs.gov.my

FURTHER ASSISTANCE AND INFORMATION ON SST

Further information on can be obtained from:

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

(ii) Customs Call Centre:

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