



SERVICE TAX 2018

**GUIDE ON:
EMPLOYMENT SERVICES**

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This information is intended to provide a general understanding of the relevant treatment under Service 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.

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INTRODUCTION

1. Service Tax is a consumption tax governed by the Service Tax Act 2018 and its subsidiary legislations. The Minister of Finance has appointed 1st September 2018 as the effective date for charging and levying of the service tax.
2. Service tax is imposed on prescribed services called “taxable services”.
3. Any person who is in carrying on his business provides taxable services and such services has exceeded the prescribed threshold are required to be registered under the Service Tax Act 2018. The person is to be known as a “registered person” and he is required to charge service tax on the taxable services made to his clients.
4. This guide is prepared to assist businesses in understanding matters with regards to service tax treatment on employment services.

IMPOSITION AND SCOPE OF TAX

5. With effect from 1 September 2018, the provision of employment services is subject to service tax as prescribed under column 1, Item 10, Group G, First Schedule, Service Tax Regulations 2018.

TERMINOLOGY

6. For the purpose of this guide, the words used have the following meaning:

“Employment” is a relationship between two parties, usually based on a contract where work is paid for, where one party, which may be a corporation, for profit, not-for-profit organization, co-operative or other entity is the employer and the other is the employee.

“Secondment of employees” means:

- (i) an employee is transferred temporarily by the employer to perform duties elsewhere for a certain period of time and after the completion of his duties the employee returns to the same employer to continue his employment;
- (ii) the employee will remain employed by the original employer and the continuity of the employment is remain continuous and unbroken.
- (iii) during the secondment period, the employee solely works for the seconded company;
- (iv) seconded company has the total control over the employee ; and
- (v) the remuneration and any other allowances will be paid by the seconded company either directly or indirectly and no other extra charges being imposed.

GENERAL OPERATIONS OF THE INDUSTRY

Scope of Employment Services

7. Employment services provided by any person is subjected to service tax. Employment services cover a variety of human resources services to clients. These services includes providing workers, providing employment-seeking services, assisting employers to identify suitable employees, providing human resources services and etc.

8. In general, the scope of employment service providers include;

- (i) Employment placement agencies identify employment vacancies, interview jobseekers, match their qualifications and skills to those being sought by employers for specific jobs and the placing for permanent employees.
- (ii) Temporary staffing agencies provide employees on a contract basis and

for a limited time, to clients in need of workers to supplement their labour force.

- (iii) Executive search agencies provide headhunting services which are searching, recruiting and placement services for clients with specific executive and senior management needs.
- (iv) Professional employer organizations provide human resources and human resources management services to their clients.

9. Employment services excludes secondment of employees.

SERVICE TAX TREATMENT ON EMPLOYMENT SERVICES

Taxable Employment Services

10. All types of employment services is subject to service tax. It includes:

- (i) Any services of providing regular employment services to employers.

Example 1

ABC Sdn Bhd provides 100 workers to a factory every months. ABC Sdn Bhd will charge the factory a lump sum amount for the provision of the employment services.

- (ii) Temporary providing employment activities to clients and in consideration a fee were charged to the clients.

Example 2

AX Construction Sdn Bhd provide temporary workers to TT Construction Sdn Bhd. AX Construction Sdn Bhd charge an amount based on man hour on daily basis of providing workers to TT Construction Sdn Bhd.

- (iii) Provide job services for customers outside Malaysia for jobs in Malaysia

Example 3

CC Entertainment (Malaysia) provide crews and actors to Bollywood Company who based in London to film a movie in Malaysia.

- (iv) provide employment services to complete the contract of employment with another company (third party).

Example 4

AA Company who has enter into a contract with a factory to supply 200 workers. AA Company has short of workers and request BB Man powers to provide 50 workers to fulfil the contract. BB Man Powers are providing workers to AA company and subsequently AA provides workers to the factory. Provision of service by BB to AA and AA to factory is a taxable service.

- (v) An individual job seekers are looking for a job trough an employment agency

Example 5

Ali is an individual who seek for a job in Kuala Lumpur trough an employment agency. The employment agency will charge Ali a fee and charge service tax on the services.

- (vi) An employer required an employment agency to recruit and conduct an interview on the potential employee for his company.

Example 6

GG Company appoint Zu Cari Kerja Agency to recruit and conduct an interview on the potential employees. Zu Cari Kerja Agency will advertise, interview and matching the potential candidate as required by GG company. Services provided by Zu Cari Kerja Agency is a taxable service.

- (vii) The provision of employment services from Malaysia to Special Area or Designated Area or vice versa.

Example 7

TSR Manufacturer situated in Petaling Jaya who provides workers to TSS factory in Free Industrial Zones. The provision of employment services from Malaysia to Special Area or Designated Area or vice versa are subject to service tax.

The above list is by no means an exhaustive list of all the taxable services provided by a registered person to his clients.

Non-Taxable Employment Services

11. The following employment services are excluded from the scope of service tax:
- (i) Secondment of employees

Example 8

Ali is an engineer who is under employment contract with ABC Company and has his expertise in engineering matters. He is seconded to DEF Company to give an engineering advisory to an ongoing construction project. DEF Company will take fully responsibility on Ali's salary, allowance, welfare and all others employment benefits. ABC Company allows DEF Company to pay such payment directly or via ABC Company (according to the employment agreement) to Ali without any markup. If there is a markup, the proportion of the markup is subject to service tax.

- (ii) Provision of employment services for jobs outside Malaysia

Example 9

HIJ Sdn. Bhd. has requested FGH Sdn. Bhd. to send fifteen of their workers to work in oil and gas company in Saudi Arabia for a period of time. FGH Sdn. Bhd. may claim for the worker's salary and other allowances and fees. After completion of the work, the workers will return to FGH Sdn. Bhd. Since the services is performed outside Malaysia, the supply of workers is not subjected to service tax.

Example 10

MNO Sdn Bhd are providing workers to work in PQR Farm Australia. The provision of employment services outside Malaysia is not in the scope of service tax.

- (iii) Provision of employment services between or within Special Area or Designated Area and between Special Area and Designated Area

Example 11

RST Manufacturer, a License Manufacturing Warehouse (LMW) who provides workers to TST factory in Free Industrial Zones. The provision of employment services between or within Special Area or Designated Area and between Special Area and Designated Area are not in the scope of service tax.

ACCOUNTING FOR SERVICE TAX ON EMPLOYMENT SERVICES

12. A registered person who provides taxable employment services shall issue an

invoice and charge service tax on the taxable service provided. A registered person shall charge service tax based on the actual value of taxable services provided.

Example 12

MNO Sdn Bhd provides domestic worker (local maids) to an individual employer. The total fee charged for providing the maid excluding statutory fee and disbursement is RM8,000. Therefore, the actual value of services provided is RM8,000 and the service tax payable is RM480 (RM8000 X 6%).

Example 13

JKL Sdn Bhd provides plantation worker to an individual employer to work in a farm. The total fee charged for providing the plantation worker is RM12,000 and RM840 for workers levy. Therefore, the actual value of services provided is RM12,000 and the service tax payable is RM720 (RM12000 X 6%). The recovery of cost on workers levy by the Immigration Department to the employers can be treated as disbursement and not subject to service tax.

13. Service tax is chargeable on employment services excluding of cost recovery under disbursement. The recovery of cost or a payment made by registered person on behalf of another party is termed as a “disbursement”. A disbursement does not constitute providing taxable services and hence, is not subject to service tax. (Please refer to Guide On Disbursement & Reimbursement)

Example 14

JKL Sdn Bhd has provided 25 workers to LMN Factory. The employment services fee is RM60,000 and RM3,600 service tax. As such, LMN Factory appointed ZXY Sdn Bhd to pay JKL Sdn Bhd on his behalf. ZXY Sdn Bhd will disbursed the amount RM63,600 (RM60,000 + RM3,600) and charge RM15,000 as their management fee. ZXY Sdn Bhd required to charge LMN Factory RM900 for service tax on the management fee, while the recovery of

cost for the amount of RM RM63,600 is treated as disbursement.

14. Subject to conditions, the following charges are allowed as disbursement and are not subjected to service tax:

- (i) Emolument
- (ii) Levy fees
- (iii) Fare to Malaysia
- (iv) Work permit
- (v) Insurance fees
- (vi) Mandatory medical screening for workers

15. If the above charges are itemized and recovered with a margin, such margin will be regarded as taxable services and subjected to service tax.

16. If employment services and recovery of expenses charges are not shown separately in the invoice issued to a client, then service tax is chargeable on the whole amount.

17. However, in a situation where a service provider charge fee on their services based on the worker's salary rate, such fee charge will not be treated as emolument and may subject to service tax.

Example 15

PQR Engineering Sdn Bhd provide their workers to reorganize a factory machines and equipment for a period of time. PQR Engineering Sdn Bhd charges fees to the factory based on the engineer's daily salary rate. The fees chargeable is subject to service tax, even though the fees chargeable is at the engineer's salary rate.

18. Service tax is required to be accounted for at the earlier of:

- (i) At the time when the payment is received for the taxable service provided;
- or

- (ii) On the day following the period of 12 months from the date of the invoice for the taxable services provided.

Example 16

RST Employment Agency has provided workers to QPN Construction Sdn Bhd on 2 October 2018 and received payment on 10 January 2019. RST Employment Agency shall account for service tax for January – February 2019 taxable period.

Example 17

RST Employment Agency also provides workers for a transportation company and has issued an invoice on 2 September 2018 for the services provided. Due to some issues on the billing, the payment is pending until the problem is solved. RST Employment Agency only received the payment on 3 March 2020. Since the payment is received after the 12 months periods end, he have to account for the service tax for September- October 2019 taxable period.

REGISTRATION AND RESPONSIBILITY OF A REGISTERED PERSON

19. An employment service provider whose total turnover for the period of 12 months (preceding or succeeding) exceeds the prescribed threshold of taxable services is required to be registered under the Service Tax Act 2018.

For further guidance and details on registration, please refer to the *Guide on Service Tax Registration*.

20. A registered person is responsible to :

- (i) Charge service tax on his taxable services;
- (ii) Issue invoice(s) to his customers in respect of any transaction relating to the provision of taxable services;
- (iii) Submit service tax return SST-02 via electronic and pay service tax before due date; and

(iv) Keep proper records with regards to his business for 7 years.

21. For further information with regards to responsibility of a registered person, please refer to the *General Guide on Service Tax* and relevant Specific Guide.

FREQUENTLY ASKED QUESTIONS (FAQs)

1. Q : **As a company providing employment services, how do I calculate my threshold for registration purposes?**

A : The calculation of your threshold includes:

- (i) Service fee, including arranging fee
- (ii) Commission or any type of consideration
- (iii) Additional charges or mark up
- (iv) Management fees
- (v) Consultation fees
- (vi) Training and coaching fees; and
- (vii) Other related charges

2. Q : **Does the service tax treatment on employment services will only be applicable to the employment agency?**

A : No, any taxable person who provides employment services as explained in this guide is applicable to Service Tax Act 2018, notwithstanding the type of business entity.

3. Q : **If a company within the same group of companies seconded their staff to another company within the same group and charge fees or received commission is subject to service tax?**

A : Secondment of staff is not under prescribed taxable service. Therefore, the recovery of the salary or emolument are not subject to service tax. However,

any additional fees, commission or mark-up charged will be subjected to service tax.

4. Q : **Does secondment of staff need to have contract or agreement?**

A : It is advisable that the parties involve in secondment of staff to provide documentation as a proof of providing services. Since the secondment of staff is not subject to service tax, the service provider (seconded) is required to keep a proper records for audit purpose. Such records includes contract, agreement or any relevant supporting documents.

5. Q : **As a holding company, should I account for service tax if I provide free employment services to my subsidiary?**

A : Yes, since you are providing employment services to your subsidiaries, service tax shall be accounted for at the actual value of services provided. If you are a connected person, service tax shall be accounted for based on the value which it would have been provided in the ordinary course of the business to a not connected person.

6. Q : **If I issue an invoice in detail (itemised), is service tax charged on the mark-up value or on the value of invoice?**

A : Service tax will be charged according to the actual value of taxable services provided but it excludes disbursement.

7. Q : **If I am providing employment services for job outside Malaysia, do I have to account for service tax?**

A : Employment services provided for job outside Malaysia is not subjected to service tax.

8. Q : **If I am providing employment services partly for job in Malaysia and partly for job outside Malaysia, how do I account for service tax?**

A : Service tax is only chargeable on the employment services made in Malaysia. You may use a reasonable method in determining the value of taxable employment services in Malaysia and account for the service tax.

9. Q : **Zul Cari Kerja Sdn Bhd (ZCK), a provider of employment services provides staff to be based at the client's premise. ZCK pays its staff a monthly salary of RM5,000 and charged the client RM15,000 [RM5,000 (advance first month staff salary) plus RM10,000 (employment service fee)]**

Miscellaneous expenses incurred by ZCK are as follows:

FOMEMA medical examination RM 150

Work Permit RM 50

From the situation given, how does ZCK account for service tax?

A : Supplying employees to work for another person for a period of time is a taxable service. Therefore, the actual value of services provided is RM15,000. Thus, service tax is calculated on: $RM15,000 \times 6\% = RM900$. Other miscellaneous fee such as FOMEMA medical examination fee and work permit (without any mark-up) is not a taxable service. It shall be itemised in the invoice or charged separately.

However, if ZCK issued an invoice in one lump sum without itemizing the non-taxable miscellaneous charges or disbursement fee, all of the charges will be subjected to service tax.

10. Q : **We are a Join Management Body (JMB) or Management Corporation (MC) who engage a registered property management company/ managing agent to manage and maintain our condominium. At the same time, the managing agent also required to provide employees to**

work and act on our behalf in the management office. Does the services provided by the managing agent is subject to service tax?

A : The managing agent provides management and employment services to the JMB/MC. Both services is a taxable services. Therefore, the managing agent shall charge JMB/ MC service tax on the provision of management and employment services.

11. Q : **My employment agency will provide training to the maids in our very own training centre and we ensure that they are well-trained before supply to the employers. Does the training is subject to service tax?**

A : Training services is subject to service tax. However, if the training services to the maids is part of the employment services provided by the employment agency, then the whole amount of fee charge to the employers are subjected to service tax.

12. Q : **Cari Kerja Sdn Bhd is a company who provides employment and human resource services to another company. Under an agreement, Cari Kerja Sdn Bhd is engaged to recruit and employ local or foreign workers to a factory. The appointment required the company to supply, manage (provide accommodation, transport, meal, etc) and placed the workers to work in the company as contractual workers. Does the employment and human resource services is subject to service tax?**

A : Cari Kerja Sdn Bhd provides workers to a factory and required to manage the workers on behalf of the factory. Therefore, the services provided by Cari Kerja Sdn Bhd is categorised under employment and management services. Both services are subjected to service tax.

13. Q : **My Employment Agency is located in Bukit Baru Melaka. We are required to provide workers to work in a factory located in Batu Berendam Free Zones and Langkawi for a period of time. Since the**

factory is in the special area and designated area, does the employment services subject to service tax?

A : Yes, the employment services provided by any registered person whose principal place of business located in Malaysia to a special area or designated area, vice versa, is subject to service tax.

In this case, Bukit Baru Melaka is located in Malaysia, while Batu Berendam Free Zones is located in special Area and Langkawi is in designated area. Therefore, your employment agency shall charge service tax on the provision of employment services to such factories.

14. Q : **A registered International Information Technology Services (ITS) company in Pangkor Island sent his employees to work with an Internet Base Company (IBC) in Langkawi to set up an internet business platform. ITS will charge IBC based on the worker salary and allowances scale with 10% mark up. Is the service subject to service tax?**

A : Pangkor Island and Langkawi are both situated in the designated area. Any taxable services provided between or within designated area and/or special area are not subject to service tax.

INQUIRY

For any inquiries relating to this guide, please contact:

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

FURTHER ASSISTANCE AND INFORMATION

Further information on service tax can be obtained from:

- (i) MySST website : <https://mysst.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: 05 August 2019

Para	Changes
Para 6	Renumbering and added new paragraph on Terminology
Para 8	Added new paragraph (v)
Para 9 -14, 18 & 19	Amendment and added new paragraph
Question 1	Inserted new answer in para iv, v & vi
Question 3	Deleted and replace with new Q & A
Question 4 – 6 & 9	Replace and reword with a new answer
Question 10 to 14	New Q & A