



**Bar Malaysia
Malaysian Bar**

www.malaysianbar.org.my

15 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2026 1313, 2034 2825, 2072 5818
Email : council@malaysianbar.org.my

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To Members of the Malaysian Bar

Sales and Services Tax in Effect from 1 Sept 2018

As you are aware, the Goods and Services Tax (“GST”) Act 2014 has been repealed, and the Sales and Services Tax (“SST”) legislation came into effect on 1 Sept 2018.

Please click on the links below to access the relevant legislation:

- (1) [Goods and Services Tax \(Repeal\) Act 2018](#)
- (2) [Sales Tax Act 2018](#)
- (3) [Service Tax Act 2018](#)
- (4) [Customs \(Amendment\) Act 2018](#)
- (5) [Free Zones \(Amendment\) Act 2018](#)

Please click on the links below to access the relevant SST subsidiary legislation:

- (1) [SST Regulations](#)
- (2) [SST Orders](#)

As far as the Royal Malaysian Customs Department (“Customs Department”) is concerned, there is no cut-off for the collection of any GST that was due and payable prior to the repeal of the GST Act 2014, but has not yet been accounted for, or has been overlooked. Please refer to section 4 of the [Goods and Services Tax \(Repeal\) Act 2018](#).

Please also refer to sections 6, 7 and 8 of the [Goods and Services Tax \(Repeal\) Act 2018](#) on certain relevant timelines relating to, among others, returns and input tax claims.

Accordingly, the software used by law firms must be able to accommodate the continuing applicability of GST in the prescribed circumstances, including issuing GST bills and keeping track of them “manually” (if need be) after 1 Sept 2018.

The question of whether disbursements and reimbursements might be subject to service tax, has arisen, as was the case with GST. The Service Tax Regulations (“STR”), in their **draft** form, had provided as follows, in respect of the incidence of service tax on legal services:

- (a) Provision of legal services including consultancy services on legal matters and other charges in connection to the provision of legal services excluding—
 - (i) provision of such services supplied in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia;
 - (ii) any statutory fees paid to government or statutory body.

According to the answer to Q3 of the FAQs in the Customs Department's Guide on Professional Services ("Guide") that had been published on 25 Aug 2018, and updated on 30 Aug 2018:

As a registered person, service tax is chargeable on the services provided based on the value of the services performed including all charges in respect of miscellaneous expenses, cost of extra work, commissions, travelling or accommodation expenses, reimbursement, charges for normal copying and stationeries etc. As a registered person, you are required to account for service tax when payment is received according to the taxable period.

However, as at the time of writing, it appears that the Guide, which had been listed [here](#) on the Customs Department's SST website, has been removed.

The final STR (P.U. (A) 214, gazetted on 29 Aug 2018, which is available [here](#)), now read as follows (see page 99):

- (a) Provision of legal services including incidental services to the legal services, and consultancy services on legal matters, excluding—
 - (i) provision of such services in connection with goods or land situated outside Malaysia or where the subject matter relates to a country outside Malaysia;
 - (ii) in relation to such services, provision of any service which requires the payment of any statutory fees to the Federal Government, or any State Government or statutory body.

You would notice the difference in language in the **draft** STR, and the gazetted STR, in respect of the inclusion of the phrase "including incidental services to the legal services" in the latter.

In respect of the incidence of service tax on legal services, the updated Guide (dated 30 Aug 2018, but which, as at the time of writing, appears to have been removed from the Customs Department's SST website) appears to restate the position in the earlier Guide (dated 25 Aug 2018), which is based on the **draft** — and not the final — STR.

Members may wish to seek the advice of competent tax professionals on this and related matters.

Please refer to the Customs Department's SST website at <https://mysst.customs.gov.my/> for the latest guidelines and updates that may be issued on the new SST, and transitional GST-related compliance issues. Members should bear in mind that the Customs Department may issue guidelines or updates that may modify or contradict those previously issued.

Please note that this update is not intended, nor should it be assumed, to be exhaustive of all the issues relating to the introduction of SST.

Thank you.

Anand Raj
Chairperson
Tax Subcommittee of the Corporate and Commercial Law Committee