

D.R. 6/2019  
AMENDMENT IN COMMITTEE  
SERVICE TAX (AMENDMENT) BILL 2019

ENGLISH LANGUAGE TEXT

The Bill is amended in subclause 6(d), in the proposed subsection 11(5), by substituting for the words "with effect from" the word "after".

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EXPLANATORY STATEMENT

Subclause 6(d) of the Bill is amended to make paragraph 11(3)(c) of the Act to not be applicable to a service which is prescribed as a taxable service after 1 September 2018.

A BILL

*i n t i t u l e d*

An Act to amend the Service Tax Act 2018.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Service Tax (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions or Parts of this Act.

(3) Notwithstanding subsection (2), the Minister may, by notification in the *Gazette*, appoint the effective date for the charging and levying of service tax on digital services under this Act.

**New section 1A**

2. The Service Tax Act 2018 [Act 807], which is referred to as the “principal Act” in this Act, is amended by inserting after section 1 the following section:

**“Territorial and extra-territorial application**

**1A.** (1) This Act and its subsidiary legislation shall apply both within and outside Malaysia.

(2) Notwithstanding subsection (1), this Act and its subsidiary legislation shall apply to any person of whatever nationality or citizenship, beyond the geographical limits of Malaysia and the territorial waters of Malaysia, if the person—

(a) is a foreign service provider; or

(b) is registered under section 56C as a foreign registered person.”.

**Amendment of section 2**

3. Subsection 2(1) of the principal Act is amended—

(a) in the definition of “designated areas”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”;

(b) in the definition of “special areas”, by substituting for the words “and the Joint Development Area” the words “the Joint Development Area, and a petroleum supply base licensed under section 77B of the Customs Act 1967”;

(c) by inserting after the definition of “registered person” the following definition:

‘ “foreign registered person” means any foreign service provider who is registered under section 56c;’

(d) by inserting after the definition of “taxable person” the following definition:

‘ “Pangkor” means the Pangkor Island, Mentagor Island, Giam Island, Simpan Island, Tukun Terindak Island, Pelanduk Island, Anak Pelanduk Island, Landak Island, Batu Orang Tua and Batu Jambal;’;

(e) by inserting after the definition of “senior officer of service tax” the following definitions:

‘ “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;

“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;’; and

(f) by inserting after the definition of “imported taxable service” the following definition:

‘ “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;’.

**Amendment of section 9**

4. Section 9 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Notwithstanding paragraphs (1)(a) and (b), where taxable service is provided by a taxable person and payment for such service is made to any machine or device operated by coins, tokens or the like, the value of such taxable service shall be as prescribed.”.

**Amendment of section 10**

5. Subsection 10(1) of the principal Act is amended by deleting the word “provided”.

**Amendment of section 11**

6. Section 11 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) The Director General may, upon application in writing by any registered person and subject to such conditions as he deems fit, approve the service tax in respect of the taxable service provided by the registered person to be due at the time the invoice is issued.”;

(b) in subsection (2), by substituting for the words “of the invoice for the taxable service provided,” the words “the taxable service was provided, the”;

(c) by inserting after paragraph (3)(a) the following paragraph:

“(aa) where any taxable service is provided by any registered person and payment for such taxable service is made to any machine or device operated by coins, tokens or the like, the service tax required to be accounted shall be due on the day when the coins, tokens or the like are collected from such machine or device;” and

(d) by inserting after subsection (4) the following subsection:

“(5) Paragraph (3)(c) shall not apply to a service which is prescribed as a taxable service with effect from 1 September 2018.”.

### **Amendment of section 12**

7. Section 12 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign service provider.”.

### **Amendment of section 13**

8. Section 13 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) This section shall not apply to a foreign service provider.”.

### **Amendment of section 14**

9. Section 14 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign service provider.”.

### **Amendment of section 15**

10. Section 15 of the principal Act is amended by inserting after subsection (11) the following subsection:

“(12) This section shall not apply to a foreign registered person.”.

**Amendment of section 16**

**11.** Section 16 of the principal Act is amended by inserting after subsection (10) the following subsection:

“(11) This section shall not apply to a foreign registered person.”.

**Amendment of section 17**

**12.** Section 17 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) This section shall not apply to a foreign registered person.”.

**Amendment of section 18**

**13.** Section 18 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign registered person.”.

**Amendment of section 19**

**14.** Section 19 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign registered person.”.

**Amendment of section 20**

**15.** Section 20 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 21**

**16.** Section 21 of the principal Act is amended—

(a) in subsection (1), by inserting after the word “shall” the words “, within one year from the date the taxable service was provided or such extended period as may be approved by the Director General,”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Notwithstanding subsection (1), the Director General may, upon request in writing by a registered person and subject to such conditions as he deems fit, approve an invoice to not be issued if the Director General is satisfied that it will not be appropriate for the registered person to issue an invoice.”;

(c) by inserting after subsection (3) the following subsection:

“(3A) Notwithstanding subsection (3), where the payment for taxable services are made to any machine or device operated by coins, tokens or the like, the amount of payment shall include the amount of service tax chargeable.”; and

(d) by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 22**

**17.** Section 22 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 23**

**18.** Section 23 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 24**

**19.** Section 24 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) This section shall not apply to a foreign registered person.”.

**Amendment of section 25**

**20.** Section 25 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 26**

**21.** Section 26 of the principal Act is amended—

(a) by renumbering the existing subsection (7) as subsection (8);

(b) by renumbering the existing subsection (8) as subsection (7);

(c) in subsection (9)—

- (i) by substituting for the words “subsection (7)” the words “subsection (8)”; and
- (ii) by substituting for the words “paragraph (8)(c)” the words “paragraph (7)(c)”;

(d) in subsection (10)—

- (i) by substituting for the words “The court” the words “In addition to any fine imposed by the court under subsection (8), the court”;
- (ii) by substituting for the words “subsection (7)” the words “subsection (8)”; and
- (iii) by substituting for the words “subsection (8)” the words “subsection (7)”;

(e) in subsection (11)—

- (i) by substituting for the words “subsection (7)” the words “subsection (8)”; and
- (ii) by substituting for the words “subsection (8)” the words “subsection (7)” wherever appearing; and

(f) by inserting after subsection (11) the following subsection:

“(12) This section shall not apply to a foreign registered person.”.

### **Amendment of section 26A**

**22.** Section 26A of the principal Act is amended—

- (a) by renumbering the existing subsection (3) as subsection (4);
- (b) by renumbering the existing subsection (4) as subsection (3);
- (c) in subsection (3) as renumbered, by deleting the word “taxable”;

(d) in subsection (5)—

- (i) by substituting for the words “subsection (3)” the words “subsection (4)”; and
- (ii) by substituting for the words “paragraph (4)(c)” the words “paragraph (3)(c)”;

(e) in subsection (6)—

- (i) by substituting for the words “The court” the words “In addition to any fine imposed by the court under subsection (4), the court”;
- (ii) by substituting for the words “subsection (3)” the words “subsection (4)”; and
- (iii) by substituting for the words “subsection (4)” the words “subsection (3)”; and

(f) in subsection (7)—

- (i) by substituting for the words “subsection (3)” the words “subsection (4)”; and
- (ii) by substituting for the words “subsection (4)” the words “subsection (3)” wherever appearing.

### **Amendment of section 27**

**23.** Section 27 of the principal Act is amended—

(a) in subsection (1)—

- (i) in subparagraph (a)(iii), by deleting the word “or” at the end of the subparagraph;
- (ii) by inserting after paragraph (a) the following paragraphs:

“(aa) any foreign service provider fails to apply for registration under section 56c;

(ab) any foreign registered person—

- (i) fails to furnish a return under section 56H; or
- (ii) furnishes a return which appears to the Director General to be incomplete or incorrect; or”;
- (iii) by substituting for the words “or 26A(4)” the words “, 26A(4) or 56I(2)”;
- (iv) by substituting for the words “by the taxable person or” the words “by the taxable person or foreign registered person or the”;

(b) in paragraph (5)(b), by inserting after the words “a taxable person” the words “or foreign registered person”.

#### **New section 27A**

**24.** The principal Act is amended by inserting after section 27 the following section:

#### **“Offsetting unpaid tax against refund**

**27A.** Notwithstanding any provision of this Act, where any person has failed to pay, in whole or in part—

- (a) any amount of service tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under this Act;
- (b) any amount of service tax due and payable, any surcharge accruing, or any penalty or other money payable under the Service Tax Act 1975 [Act 151];
- (c) any amount of sales tax due and payable, any surcharge accruing, or any penalty or other money payable under the Sales Tax Act 1972 [Act 64];
- (d) any amount of sales tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under the Sales Tax Act 2018 [Act 806];

- (e) any amount of goods and services tax due and payable, any surcharge accruing, or any penalty or other money payable under the Goods and Services Tax 2014 [Act 762];
- (f) any amount of customs duty, or any surcharge accruing, or any penalty, fee or other money payable under the Customs Act 1967; or
- (g) any amount of excise duty, or any surcharge accruing, or any penalty, fee or other money payable under the Excise Act 1976 [Act 176],

the Director General may offset, against the unpaid amount referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), any amount or any part of any amount refundable under this Act to that person and the Director General shall treat the amount offset as payment or part payment received from that person.”.

### **Amendment of section 28**

**25.** Section 28 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “taxable service” the words “or digital service” wherever appearing; and
- (b) in subsection (3)—
  - (i) in paragraph (a), by substituting the words “or 22” the words “, 22 or 56G”;
  - (ii) in paragraph (b), by inserting after the words “taxable service” the words “or digital service” wherever appearing; and
  - (iii) in paragraph (c), by inserting after the words “registered person” the words “or foreign registered person”.

**Amendment of section 29**

**26.** Section 29 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the words “**taxable person**” the words “**or foreign registered person**”; and
- (b) by inserting after the words “taxable person” the words “or foreign registered person” wherever appearing.

**Amendment of section 31**

**27.** Subsection 31(1) of the principal Act is amended—

- (a) in paragraph (a), by inserting after the words “26(4)” the words “or 26A(1)”; and
- (b) in paragraph (b), by inserting after the words “26(8)” the words “or 26A(4)”.

**Amendment of section 32**

**28.** Section 32 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “subsection 26(8)” the words “or 26A(4)”; and
- (b) by inserting after section (3) the following subsection:
  - “(4) This section shall not apply to a foreign registered person.”.

**Amendment of section 34**

**29.** Section 34 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by inserting after the words “taxable service” the words “or digital service”; and
  - (ii) by inserting after the word “provided” the words “or any imported taxable service acquired”;

(b) in paragraph 3(a)—

- (i) by inserting after the words “taxable service” the words “or digital service”; and
- (ii) by inserting after the word “provided” the words “or any imported taxable service acquired”; and

(c) in subsection (4)—

- (i) by inserting after the words “any taxable service” the words “or a foreign registered person provides any digital service”;
- (ii) by inserting after the words “the registered person” the words “or the foreign registered person”; and
- (iii) by substituting for the words “on such taxable service” the words “on such taxable service or digital service”.

### **Amendment of section 35**

**30.** Section 35 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

### **Amendment of section 36**

**31.** Section 36 of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1); and
- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 39**

**32.** Section 39 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign registered person.”.

**Amendment of section 40**

**33.** Section 40 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) This section shall not apply to a foreign registered person.”.

**New section 40A**

**34.** Part VII of the principal Act is amended by inserting before section 41 the following section:

**“Non-application of Part VII**

**40A.** This Part shall not apply to a foreign registered person.”.

**New section 46A**

**35.** Part VIII of the principal Act is amended by inserting before section 47 the following section:

**“Non-application of Part VIII**

**46A.** This Part shall not apply to a foreign registered person.”.

**New section 51A**

**36.** Part IX of the principal Act is amended by inserting before section 52 the following section:

**“Non-application of Part IX**

**51A.** This Part shall not apply to a foreign registered person.”.

**New Part IXA**

**37.** The principal Act is amended by inserting after Part IX the following part:

“PART IXA

DIGITAL SERVICES

**Imposition of service tax on digital services**

**56A.** (1) Notwithstanding any provision of this Act, service tax shall be charged and levied on any digital service provided by a foreign registered person to any consumer.

(2) The value of digital services on which the service tax is payable shall be the value charged by the foreign registered person.

(3) Service tax on digital services shall be charged and levied at the rate fixed in accordance with subsection 10(2) by reference to the value charged by the foreign registered person.

(4) The service tax charged on the digital service provided to the consumer shall be due at the time when the payment for the digital service is received by the foreign registered person.

(5) Any foreign registered person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Liability to be registered**

**56B.** (1) The Minister may prescribe the total value of digital services for the purpose of registration of a foreign service provider under this Part.

(2) Any foreign service provider who provides any digital service to a consumer is liable to be registered at the following time, whichever is the earlier:

- (a) at the end of any month, where the total value of all digital services provided by him in that month and the eleven months immediately preceding that month has exceeded the total value of the digital service prescribed under subsection (1); or
- (b) at the end of any month, where there are reasonable grounds for believing that the total value of all digital services provided by him in that month and the eleven months immediately succeeding that month will exceed the total value of the digital service prescribed under subsection (1).

(3) The total value of all digital services provided by a foreign service provider to a consumer in the month and the eleven months immediately preceding that month referred to in paragraph (2)(a) shall be disregarded if—

- (a) the registration of the foreign service provider was cancelled, otherwise than under subsection 56F(3), during that period; and
- (b) the Director General is satisfied that before the registration of the foreign service provider was cancelled, the foreign service provider had given all information required by the Director General in order to determine whether or not to cancel the registration.

### **Application for registration of foreign service provider**

**56c.** (1) Any foreign service provider who is liable to be registered under subsection 56B(2) shall apply to the Director General for registration in the prescribed form not later than the last day of the month following the month in which he is liable to be registered as referred in paragraph 56B(2)(a) or (b).

(2) Upon receipt of the application under subsection (1), the Director General may approve the registration from such date as he may determine and subject to such conditions as he deems fit.

(3) The Director General shall register the foreign service provider under subsection (1) with effect from the first day of the month following the month in which the application under subsection (1) is made or from such earlier date as the Director General may determine but such date shall not be earlier than the date the foreign service provider becomes liable to be registered.

(4) Any foreign service provider who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Cessation of liability to be registered**

**56D.** Any foreign registered person shall cease to be liable to be registered where—

- (a) the Director General is satisfied that he ceases to provide digital services; or
- (b) he has been registered under subsection 13(2) or (4).

### **Notification of cessation of liability**

**56E.** (1) A foreign registered person who—

- (a) ceases to provide digital services; or
- (b) has been registered under section 13,

shall notify the Director General in writing of that fact and the date of cessation within thirty days from the date of cessation.

(2) Any foreign registered person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Cancellation of registration**

**56F.** (1) Where a foreign registered person makes a notification under section 56E, the Director General may cancel the foreign registered person's registration from the date the foreign registered person ceased to be liable to be registered under section 56D or from such later date as the Director General may determine if Director General is satisfied that the foreign registered person can be deregistered.

(2) Where there is no notification made under section 56E and the Director General is satisfied that a foreign registered person has ceased to be liable to be registered under section 56D, the Director General may cancel the registration of the foreign registered person from the date the foreign registered person ceased to be liable to be registered under section 56D or from such later date as the Director General may determine.

(3) Where the Director General is satisfied that on the day on which a foreign service provider was registered, such foreign service provider was not liable to be registered under section 56C or has ceased to be liable to be registered under section 56D, the Director General may cancel the registration of such foreign service provider with effect from the date as determined by the Director General in the notification in writing to such foreign service provider.

### **Issuance of invoice**

**56G.** (1) Every foreign registered person who provides any digital service shall issue an invoice or a document containing prescribed particulars to the consumer in respect of the transaction.

(2) The invoice or document referred to in subsection (1) may be issued electronically or in paper form.

(3) Any foreign registered person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Taxable period and accounting for service tax**

**56H.** (1) The taxable period for a foreign registered person shall be a period of three months ending on the last day of any month of any calendar year.

(2) A foreign registered person may apply in writing to the Director General for a taxable period other than the period as determined under subsection (1).

(3) The Director General may, upon receiving any application under subsection (2)—

(a) allow the application and the taxable period shall be the period as applied for;

(b) refuse the application and the taxable period shall remain as determined under subsection (1); or

(c) vary the length of the taxable period.

(4) A foreign registered person shall, in respect of his taxable period, account for the service tax due in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following the end of his taxable period to which the return relates.

(5) Where a taxable period has been varied under paragraph (3)(c) and notwithstanding subsection (4), the return shall be furnished not later than the last day of the month following the end of the varied taxable period.

(6) The return referred to in subsections (4) and (5) shall be furnished whether or not there is service tax to be paid.

(7) Any foreign registered person who—

(a) contravenes subsection (4) or (5); or

(b) furnishes an incorrect return,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Payment of service tax**

**56i.** (1) Any foreign registered person shall, in respect of the taxable period, pay to the Director General the amount of service tax due and payable not later than the last day of the month following after the end of his taxable period to which the return relates.

(2) Where any service tax due and payable is not paid wholly or partly by the foreign registered person after the last day on which it is due and payable under subsection (1) and no prosecution is instituted, the foreign registered person shall pay—

(a) for the first thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (1), a penalty of ten percent of the amount of service tax remains unpaid;

(b) for the second thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (1), an additional penalty of fifteen percent of the amount of service tax remains unpaid; and

(c) for the third thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (1), an additional penalty of fifteen per cent of the amount of service tax remains unpaid.

(3) Any foreign registered person who fails to pay the Director General the amount of service tax due and payable under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) Subject to subsection (6), prosecution for the offence under subsection (3) may be instituted after the expiry of the period specified in paragraph (2)(c).

(5) In addition to any fine imposed by the court under subsection (3), the court may order that any foreign registered person who is convicted for the offence under subsection (3) to pay the penalty as specified in subsection (2).

(6) No prosecution for the offence under subsection (3) shall be instituted against the foreign registered person who has paid the amount of service tax due and payable and the penalty specified under subsection (2) within the period specified in subsection (2).

### **Duty to keep records**

**56j.** (1) Every foreign registered person shall keep complete and true records written up to date of all transactions which affect or may affect his liability to service tax, including the following records:

- (a) all records of provision of digital service by the foreign registered person including invoices and receipts; and
- (b) all other records as the Director General may determine.

(2) Any record kept under this section shall be preserved for a period of seven years from the latest date to which the record relates.

(3) 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.

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

(5) Any foreign registered person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Service of notice, etc, on foreign registered person**

**56k.** Every notice, direction or any other document required by this Act to be served on a foreign registered person may be served by electronic service under section 87.”.

### **Amendment of section 65**

**38.** Section 65 of the principal Act is amended—

(a) in paragraph (b), by inserting after the word “return” the words “or declaration”; and

(b) in paragraph (c), by inserting after the word “return” the words “, declaration”.

### **Amendment of section 68**

**39.** Section 68 of the principal Act is amended—

(a) by inserting after paragraph (b) the following paragraph:

“(ba) any service acquired by any person in Malaysia from any person who is outside Malaysia is not liable to service tax chargeable under this Act;” and

(b) by deleting the words “in the prosecution”.

**New section 69A**

**40.** The principal Act is amended by inserting after the section 69 the following section:

**“Imprisonment for non-payment of fine**

**69A.** Notwithstanding sections 283 and 284 of the Criminal Procedure Code, the period of imprisonment imposed by any court in respect of the non-payment of any fine under this Act, or in respect of the default of a sufficient distress to satisfy any such fine, shall be such period of such description, as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum period as follows:

- (a) where the fine does not exceed five thousand ringgit, the maximum period shall be two months;
- (b) where the fine exceeds five thousand ringgit but does not exceed ten thousand ringgit, the maximum period shall be four months;
- (c) where the fine exceeds ten thousand ringgit but does not exceed twenty thousand ringgit, the maximum period shall be six months,

with two additional months for every ten thousand ringgit after the first twenty thousand ringgit of the fine.”.

**Amendment of section 71**

**41.** Section 71 of the principal Act is amended—

- (a) in paragraph (1)(b), by inserting after the word “return,” the words “declaration,”; and
- (b) in subsection (4), by substituting for the words “where the return” the words “or declaration, as the case may be, which”.

**Amendment of section 75**

**42.** Section 75 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**taxable person**” the words “**any person**”;
- (b) in subsection (1), by inserting after the words “taxable person,” the words “or any person other than a taxable person who, in carrying on his business, acquires any imported taxable service, or any foreign registered person”; and
- (c) in subsection (2)—
  - (i) by substituting for the words “a taxable person” the words “the person referred to in that subsection”; and
  - (ii) in paragraphs (a) and (b), by deleting the word “taxable” wherever appearing.

**Amendment of section 76**

**43.** Paragraph 76(a) of the principal Act is amended by inserting after the words “taxable person” the words “or foreign registered person”.

**Amendment of section 81**

**44.** Section 81 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) This section shall not apply to a foreign registered person.”.

**Amendment of section 82**

**45.** Section 82 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 83**

**46.** Section 83 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 84**

**47.** Section 84 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 86**

**48.** Section 86 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) This section shall not apply to a foreign registered person.”.

**New section 86A**

**49.** The principal Act is amended by inserting after section 86 the following section:

**“Service of summons**

**86A.** (1) Every summons issued by a court against any person in connection with any civil or criminal proceedings under this Act may be served on the person named therein—

(a) by delivering the summons to the person or any adult member of his family or any of his servants residing with him at his usual or last-known place of residence;

- (b) by leaving the summons at his usual or last-known place of residence or business in an envelope addressed to the person;
- (c) by sending the summons by registered post addressed to the person at his usual or last-known place of residence or business; or
- (d) where the person is a company, a limited liability partnership, a firm, a society, an association or other body of persons—
  - (i) by delivering the summons to the secretary or other like officer of the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business; or
  - (ii) by sending the summons by registered post addressed to the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business.

(2) Any summons sent by registered post to any person in accordance with subsection (1) or by delivering the summons to the person or to any adult member of his family or any of his servant residing with him shall be deemed to be duly served on the person.

(3) When a summons issued by a court is served, an affidavit of the service purporting to be made before an officer duly authorized to administer an oath shall be admissible in evidence.”.

### **Amendment of section 91**

**50.** Subsection 91(2) of the principal Act is amended—

- (a) in paragraph (2)(d), by inserting after the word “returns” the words “, declarations”;

(b) in paragraph (2)(k), by deleting the word “or” at the end of the paragraph;

(c) in paragraph (2)(l)—

(A) by substituting for the full stop at the end of the paragraph the words “; or”; and

(B) by inserting after paragraph (l) the following paragraph:

“(m) all matters relating to digital services.”.

### **Registration before effective date**

**51.** (1) A foreign service provider who provides digital services before the coming into operation of Part IXA as introduced in section 37 of this Act (“Part IXA”) shall be liable to be registered under this Act if there are reasonable grounds for believing that the total value of his digital services provided in the month of the coming into operation of Part IXA and eleven months immediately succeeding such month will exceed the total value of digital service as prescribed under section 56B as introduced in section 37 of this Act.

(2) Any foreign service provider who is liable to be registered under subsection (1) shall apply to the Director General to be registered as a foreign registered person and the application shall be made three months before the date of coming into operation of Part IXA.

(3) The Director General may register the foreign service provider under subsection (1) with effect from the effective date appointed under section 1 of this Act or from a later date as the Director General may determine.

(4) Any foreign service provider who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Digital services provided before commencement date**

**52.** (1) Where any digital service is provided before the date of coming into operation of Part IXA as introduced in section 37 of this Act (“Part IXA”) and the provision of the digital services is spanning after the date of coming into operation of Part IXA, service tax shall be charged on the proportion of the digital service which is attributed to the part of the period after the date of coming into operation of Part IXA.

(2) Where any payment is received before the date of coming into operation of Part IXA in connection with the provision of digital services that will be provided on or after the date of coming into operation of Part IXA, no service tax shall be charged on the payment received.

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Service Tax Act 2018 (“Act 807”).

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act. *Clause 1* also empowers the Minister to appoint the effective date for the charging and levying of service tax on digital services under the proposed Act.

3. *Clause 2* seeks to introduce a new section 1A into Act 807 to provide for territorial and extra-territorial application of Act 807 and its subsidiary legislation.

4. *Clause 3* seeks to amend section 2 of Act 807 to amend the definitions of “designated areas” and “special areas”, and to provide for new definitions of “foreign registered person”, “Pangkor”, “foreign service provider”, “consumer” and “digital service”.

5. *Clause 4* seeks to amend section 9 of Act 807 to introduce a new subsection (1A). The proposed subsection (1A) provides that the value of service tax in relation to taxable services where payment for the taxable services are made to a machine or device operated by coin, tokens or the like shall be as prescribed by the Minister through regulations.

6. *Clause 5* seeks to amend subsection 10(1) of Act 807 to make the provision applicable to imported taxable services.

7. *Clause 6* seeks to amend section 11 of Act 807.

*Subclause 6(a)* seeks to introduce a new subsection (1A). The proposed subsection (1A) seeks to empower the Director General, upon application, to approve service tax in respect of the taxable services provided by a registered person to be due at the time the invoice is issued. The approval granted may be subject to such conditions as the Director General deems fit.

*Subclause 6(b)* seeks to amend subsection (2) to provide that where the whole or any part of the payment for any taxable service provided by the registered person is not received from the customer within a period of twelve months from the date the taxable service was provided, the service tax shall be due on the day following that period of twelve months.

*Subclause 6(c)* seeks to introduce a new paragraph (*aa*) into subsection (3). The proposed paragraph (*aa*) deals with the time when service tax is due for taxable services which payment for the taxable services is made to any machine or device operated by coin, token or the like.

*Subclause 6(d)* seeks to introduce a new subsection (5) to provide that the taxable service referred to in paragraph (3)(c) shall not be applicable to a service which is prescribed as a taxable service with effect from 1 September 2018.

8. *Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 30, 31, 32, 33, 44, 45, 46, 47 and 48* amend sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 35, 36, 39, 40, 81, 82, 83, 84 and 86, respectively, and *subclauses 16(d), 21(f) and 28(b)* amend sections 21, 26 and 32, respectively, and *clauses 34, 35 and 36* introduce new sections 40A, 46A and 51A, respectively, to provide that those sections shall not apply to a foreign service provider or foreign registered person, as the case may be.

9. *Clause 16* seeks to amend section 21 of Act 807.

*Subclause 16(a)* seeks to amend subsection (1) to provide that an invoice in respect of any taxable service shall be issued within one year from the date of the taxable service was provided or such extended period as may be approved by the Director General.

*Subclause 16(b)* seeks to introduce a new subsection (1A) into section 21. The proposed subsection (1A) seeks to empower the Director General, upon request in writing, to approve an invoice not to be issued by a registered person if the Director General is satisfied that it will not be appropriate for the registered person to issue an invoice.

*Subclause 16(c)* seeks to introduce a new subsection (3A). The proposed subsection (3A) seeks provide that the amount of payment for taxable services which are made to any machine or device operated by coins, tokens or the like shall include the amount of service tax chargeable.

10. *Clause 23* seeks to amend section 27 of Act 807 to provide that the Director General may assess the amount of service tax due and payable, and the penalty payable, in respect of a foreign service provider who fails to apply for registration under section 56C or fails to furnish a return under section 56H.

11. *Clause 24* seeks to introduce a new section 27A into Act 807 to provide that where a refund of service tax under Act 807 is due to a person who has failed to pay any amount of service tax, sales tax, customs duty, etc., the Director General may offset the amount of such refund against the amount such person has failed to pay.

12. *Clause 25* seeks to amend section 28 of Act 807 to provide for the recovery of any service tax due and payable, any surcharge accruing, or any penalty, fee or other money payable, under Act 807, in respect of digital services, as a civil debt due to the Government.

13. *Clause 26* seeks to amend subsection 29 of Act 807 to empower the Director General to collect service tax, surcharge, penalty, fee or other money from any person holding money for or owing money due to a foreign registered person.

14. *Clause 27* seeks to amend subsection 31 of Act 807 to provide for measures to prevent any person other than a taxable person who, in carrying on his business acquires any imported taxable service, from leaving Malaysia if the Director General has reason to believe that such person is about or likely to leave Malaysia without paying any service tax due and payable, any surcharge accrued, or any penalty or fee payable, by him, or any other money recoverable from him.

15. *Clause 28* seeks to amend section 32 of Act 807 to provide that where payment by instalments of any service tax due and payable or penalty by a person other than a taxable person who, in carrying on his business, acquires any imported taxable service is allowed by the Director General, the penalty imposed under subsection 26A(4) of Act 807 shall cease to be calculated from the date the payment by instalments is allowed.

16. *Clause 29* seeks to amend section 34 of Act 807 to empower the Minister to exempt any person or class or person from payment of the whole or any part of the service tax which may be charged and levied on any imported taxable service acquired or digital services provided.

17. *Clause 37* seeks to introduce a new Part IXA into Act 807 containing new sections 56A, 56B, 56C, 56D, 56E, 56F, 56G, 56H, 56I, 56J and 56K.

The proposed section 56A seeks to provide that service tax shall be charged and levied on any digital service provided by a foreign registered person to any consumer.

The proposed section 56B seeks to empower the Minister to prescribe the total value of digital services for the purpose of determining the liability to be registered under the proposed Part IXA. The proposed section also seeks to provide for the time when a foreign service provider who provides digital services is liable to be registered.

The proposed section 56C seeks to require any foreign service provider who is liable to be registered under the proposed section 56B to apply for registration as a foreign registered person to the Director General in the prescribed form.

The proposed section 56D deals with the cessation of liability to be registered under Act 807.

The proposed section 56E seeks to require any foreign registered person to notify the Director General in writing within thirty days from the date of cessation if he ceases to provide digital services or has been registered under section 13 of Act 807.

The proposed section 56F deals with cancellation of registration of a foreign registered person and the effective date of such cancellation.

The proposed section 56G seeks to require a foreign registered person who provides any digital service to issue an invoice containing the prescribed particulars to the consumer in respect of the transaction.

The proposed section 56H seeks to provide for a taxable period of a foreign registered person and the power of the Director General to vary the taxable period. The proposed section further requires the foreign registered person to account for service tax due in a return in respect of his taxable period and to furnish the return to the Director General.

The proposed section 56I provides that a foreign registered person shall pay to the Director General the amount of service tax due and payable by him in respect of the taxable period to which a return relates.

The proposed section 56J seeks to impose a duty on a foreign registered person to keep complete and true records of all transactions in relation to his service tax liability.

The proposed section 56K deals with the service of notices, directions or other documents required under Act 807 on a foreign registered person.

18. *Clause 38* seeks to amend section 65 of Act 807 to provide that any certificate signed by the Director General relating to any declaration under paragraphs 65(b) and (c) to be *prima facie* evidence of the fact stated in the certificate.

19. *Clause 39* seeks to amend section 68 of Act 807 to introduce a new paragraph (*ba*) into section 68. The proposed paragraph (*ba*) provides that where any dispute arises in any prosecution as to whether any service acquired by any person in Malaysia from any person who is outside Malaysia is not liable to service tax chargeable under Act 807, the burden of proof of such dispute shall lie on the accused.

20. *Clause 40* seeks to introduce a new section 69A into Act 807 to provide for the period of imprisonment to be imposed by any court for non-payment of fines.

21. *Clause 41* seeks to amend section 71 of Act 807.

*Subclause 41(a)* seeks to amend paragraph (*b*) of subsection 71(1) to make it an offence for any person who intends to evade, or assists other person to evade, service tax by making a false statement or entry in any declaration.

*Subclause 41(b)* seeks to amend subsection (4) to make it an offence for any person who assists in, or advises with respect to, the preparation of any declaration which results in an understatement of the liability for service tax of another person.

22. *Clause 42* seeks to amend section 75 of Act 807 to prohibit a person from transacting any business on behalf of a foreign registered person, or a person other than a taxable person who, in carrying on his business, acquires any imported taxable service except on matters with regard to any refund, remission, exemption or any other matters as approved by the Director General.

23. *Clause 43* seeks to amend section 76 of Act 807 to deal with offences committed by an employee of a foreign registered person.

24. *Clause 49* seeks to introduce a new section 86A into Act 807. The proposed section 86A deals with the manner of service of summons.

25. *Clause 50* seeks to amend section 91 of Act 807 to empower the Minister to prescribe any matters relating to digital services.

26. *Clauses 51* and *52* deal with transitional provisions consequential to the implementation of service tax on digital services.

27. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

*FINANCIAL IMPLICATION*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.