



COMMENTS ON REVISED LIST OF TAXABLE AND NON-TAXABLE ITEMS UNDER SECOND SCHEDULE TO THE SERVICE TAX REGULATIONS, 1975

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COMMENTS ON REVISED LIST OF TAXABLE AND NON-TAXABLE ITEMS UNDER SECOND SCHEDULE TO THE SERVICE TAX REGULATIONS, 1975

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Comments on Revised List of Taxable and Non-Taxable Items Under Second Schedule to the Service Tax Regulations, 1975

GENERAL COMMENTS

1. Serial number / index which specifically highlight changes between the revised list and the old list

We are of the view that the issuance of “Revised” *List of Taxable and Non-Taxable Items under Second Schedule to the Service Tax Regulations, 1975* would be more impactful if Customs could provide a serial number / index which highlights the differences between the revised list and the list issued earlier. This will allow taxpayers to easily identify the sections/groups which contain changes, rather than go through every single page and make a comparison.

2. Clarification (principle-based)

The Institute would like to propose that clarification (principle-based) be provided, i.e. the general principle applied for each group of the Second Schedule to the Service Tax Regulations, 1975 to be provided as this will give a clear picture on how the taxability of the services has been considered.

In addition to the above, it would also be good if the rationale for the change in treatment on the types of services provided could be shared with the taxpayers.

3 English Translation

It would be helpful if the Customs could provide the English translation of such guidelines to facilitate compliance and discussion.

SPECIFIC COMMENTS

1. Group A: Hotels

Reference	Types of services	Taxable status
Page 2, Item 1 (a) and (b)	<p>(a) Penyediaan bilik bagi tempat menginap atau tempat tidur termasuk sewaan jangka panjang yang disediakan oleh hotel, motel, <i>inn</i>, <i>resthouse</i>, <i>resort</i>, dan lain-lain yang mempunyai 26 bilik dan ke atas.</p> <p>(b) Penyediaan bilik bagi tempat menginap atau tempat tidur termasuk sewaan jangka panjang yang disediakan oleh <i>homestay</i> dan <i>chalet</i> yang mempunyai 26 unit dan ke atas.</p> <p><i>Nota: Penyediaan bilik beserta dengan kelengkapan yang disediakan dalam bilik</i></p>	Taxable Taxable

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	<i>berkenaan seperti penghawa dingin, tuala, pengering rambut, sabun, syampu dan seumpamanya.</i>	
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Comments:

The Institute would like to seek clarification on the interpretation of “sewaan jangka panjang”. We also would like to suggest that the Customs provide some examples for guidance and clarity.

2. Group A: Hotels

Reference	Types of services	Taxable status
Page 2, Item 4	<i>Serviced apartment yang diurus oleh hotel atau mana-mana operator yang mempunyai 26 <u>unit</u> dan ke atas.</i>	Taxable

Comments:

Based on the law the above should be 26 rooms instead of 26 units. We would like to seek clarification on the scope of units.

3. Group A: Hotels

Reference	Types of services	Taxable status
Page 3, Item 9	(a) Perkhidmatan kesihatan. Contoh : <u>urut badan, urut kaki, spa</u> (sauna selain portable sauna). (b) <u>Perkhidmatan urut</u> yang disediakan oleh kedai gunting rambut, salon rambut dan salon kecantikan.	Taxable Non-taxable

Comments:

The Institute would like to seek clarification on how to differentiate between the services (a) and (b) since one is taxable and the other is non-taxable but in fact the same services are being provided. We would like to suggest that Customs provide a clear interpretation on this to avoid confusion.

4. Group A: Hotels

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Reference	Types of services	Taxable status
Page 3, Item 12	Perkhidmatan <i>valet</i> (upah kepada jockey yang menjaga kenderaan) sekiranya upah tidak di akaunkan sebagai pendapatan syarikat.	Non-taxable
Page 3, Item 13	Bayaran perkhidmatan <i>valet</i> yang diakaunkan sebagai pendapatan syarikat.	Taxable

Comments:

The Institute would like to seek clarification on the difference in treatment of the items 12 and 13 above and the rationale behind the different treatment. Is it the intention of Customs to treat income from valet services provided by a company as a business income, and hence the services provided is taxable? Where the valet service is not provided by a company, it is deemed as a non-business activity and hence the services provided are not taxable. If so, it appears to be very arbitrary as business services can also be provided by a sole proprietor. We would like to suggest that Customs provide a clear interpretation and the underlying principles on this so that both taxpayers and taxable persons will have a better understanding.

5. Group B1: Restaurants located in a hotel having more than 25 rooms

Reference	Types of services	Taxable status
Page 5, Item 4	Perkhidmatan <i>valet</i> (upah kepada jockey yang menjaga kenderaan) sekiranya upah tidak di akaunkan sebagai pendapatan syarikat.	Non-taxable
Page 5, Item 5	Bayaran perkhidmatan <i>valet</i> yang diakaunkan sebagai pendapatan syarikat.	Taxable

Comments:

Same comments as per No.4 above.

6. Group B2: Restaurants located in a hotel having 25 rooms or less

Reference	Types of services	Taxable status
Page 6, Item 4	Perkhidmatan <i>valet</i> (upah kepada jockey yang menjaga kenderaan) sekiranya upah tidak di akaunkan sebagai pendapatan syarikat.	Non-taxable
Page 6, Item 5	Bayaran perkhidmatan <i>valet</i> yang diakaunkan sebagai pendapatan syarikat.	Taxable

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Comments:

Same comments as per No.4 above.

7. Group C: Restaurants located outside Hotel

Reference	Types of services	Taxable status
Page 7, Item 4	Perkhidmatan <i>valet</i> (upah kepada <i>jockey</i> yang menjaga kenderaan) sekiranya upah tidak di akaunkan sebagai pendapatan syarikat.	Non-taxable
Page 7, Item 5	Bayaran perkhidmatan <i>valet</i> yang diakaunkan sebagai pendapatan syarikat.	Taxable

Comments:

Same comments as per No.4 above.

8. Group D: Night Clubs, Dance Halls, Cabarets, Health Centres, Massage Parlours, Public Houses, and Beer Houses

Catering services

Reference	Types of services	Taxable status
Page 9, Item 1	(a) Penyediaan atau penjualan makanan, minuman atau keluaran tembakau. (b) Penyediaan perkhidmatan katering sahaja.	Taxable Non-taxable

Comments:

How would the RMC propose to differentiate between items 1(a) and 1(b) above, i.e. catering services v. selling of food and beverages? We would suggest that the RMC clarify on the difference in treatment and the underlying principles together with illustrated examples so that both taxpayers and taxable persons will have a better understanding to ensure compliance.

9. Group E: Private Clubs

Catering Services

Reference	Types of services	Taxable status
Page 11, Item 1	(a) Penyediaan atau penjualan makanan, minuman atau keluaran tembakau. (b) Penyediaan perkhidmatan katering sahaja.	Taxable Non-taxable

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	(c) Penyediaan makanan, minuman atau keluaran tembakau oleh operator restoran yang bukan operator kelab.	Taxable if the threshold reach RM3 million
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Comments:

The Institute would like to seek clarification on the difference in treatment of the items 1(a), (b) and (c) above and the rationale behind the different treatment.

It appears to be very arbitrary for item 1(a) and 1(c) because if the club operator provides food and beverages himself, the service is subject to service tax. However, if he outsourced the services to an outsider, the same services provided by the outsider are not taxable unless its annual turnover exceeds 3 million.

Consider a club which appoints an operator to manage the Club House but retains the exclusive right to sell soft drinks. The Operator then outsources the food stalls and sells liquor and beer himself. What is the tax position of the club that sells the soft drinks, and the operator who sells liquor and beers? Who is considered to be the Club operator?

We would suggest that the RMC provide clarification on the difference in treatment and the underlying principles so that both taxpayers and taxable persons will have a better understanding and be able to comply. Some examples are required to illustrate the operation of the Regulations.

Reference	Types of services	Taxable status
Page 11, Item 4	Perkhidmatan <i>valet</i> (upah kepada <i>jockey</i> yang memberi perkhidmatan <i>valet</i>).	Non-taxable
Page 12, Item 5	Bayaran upah kepada <i>jockey</i> yang memberi perkhidmatan <i>valet</i> yang tidak diasingkan dari caj parkir.	Taxable

Comments:

Same comments as per No.4 above.

10. Group G: Other service provider - Insurance

Reference	Types of services	Taxable status
Page 18, Item 2	Pemindahan hak milik <ul style="list-style-type: none"> i. Pemunya polisi individu memindahkan hak polisi individunya kepada organisasi perniagaan (tanpa mengira sebab). ii. Pemunya polisi individu memindahkan hak polisi individunya kepada bank atau institusi 	Taxable Non-taxable

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	<p>kewangan sebagai cagaran/jaminan.</p> <p>iii. Pemunya polisi individu yang mewakili organisasi perniagaan memindahkan hak polisi individunya kepada bank atau institusi kewangan sebagai cagaran/jaminan.</p> <p>iv. Hak polisi <i>keyman</i> dipindah kepada orang ketiga (kepada sesiapa yang bukan <i>keyman</i>).</p> <p>v. Hak polisi <i>keyman</i> dipindahkan kepada <i>keyman</i> itu sendiri dan premium dibayar oleh syarikat.</p>	Taxable
		Taxable
		Taxable

Comments:

Individual insurance policy indicated in items ii and iii above may be the same insurance policy but attract different tax treatment. CTIM suggests that the Customs clarify the underlying principle for the different tax treatment and the mechanism to identify them.

11. Group G: Other service provider - Communication

Reference	Types of services	Taxable status
Page 22, Item 4	<p>(a) Perkhidmatan telefon awam yang menggunakan kad dan kad kredit.</p> <p>(b) Penggunaan telefon awam yang menggunakan syiling.</p>	<p>Taxable</p> <p>Non-taxable</p>

Comments:

Item 4(b) of the above states that for public payphones using coins, the services is non-taxable. CTIM would like to seek clarification from the RMC on the underlying principle for the different treatment between items 4(a) and 4(b) above. We are of the view that the service tax treatment on provision of telecommunication services through public payphones should be consistent based on the type of services provided, irrespective of the mode of payment, i.e. payment made through card, credit card or coins.

12. Group G: Other service provider - Communication

Reference	Types of services	Taxable status
Page 22, Item 6	Perkhidmatan internet seperti TmNet Streamyx.	Non-taxable

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Comments:

The Institute is of the view that the citing of the above example appears to be restrictive as it only mentioned TmNet Streamyx. We would like to seek confirmation that the non-taxable status will also be extended to all internet services, including data plan, accessed through mobile broadband devices.

13. Group G: Other service provider - Forwarding Agent

Reference	Types of services	Taxable status
Page 24, Item 1	(a) Perkhidmatan dokumentasi (Semua borang kastam). (b) Perkhidmatan dokumentasi manifes.	Taxable Non-taxable

Comments:

The Institute is of the view that items (a) and (b), above appear to be contradictory. Item (a) mentioned that all documentation services for all Customs' forms are taxable whereas item (b) states that manifest documentation is non-taxable. Please clarify.

14. Group G: Other service provider - Employment Agencies

Reference	Types of services	Taxable status
Page 36, Item 1	Penyediaan perkhidmatan membekal pekerja di dalam Malaysia. i. Mana-mana orang yang menyediakan perkhidmatan mencari pekerjaan kepada orang yang memerlukan pekerjaan. Cth: agensi pekerjaan atau syarikat yang bukan agensi pekerjaan swasta tetapi aktivitinya menyediakan perkhidmatan pekerjaan disenaraikan dalam MAA. Contoh: Syarikat ABC mempunyai sekumpulan graduan baru yang telah berdaftar untuk mendapatkan kerja. Syarikat tersebut akan mencari pekerjaan untuk mereka. ii. Agensi pekerjaan yang menyediakan perkhidmatan mencari atau membekalkan pekerja kepada orang lain. Agensi pekerjaan tersebut tidak menguruskan hal-hal seperti gaji, SOCSO, EPF, perubatan, tempat tinggal, pengangkutan, insurans dan lain-	Taxable

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	<p>lain.</p> <p>Contoh:</p> <p>Syarikat yang memerlukan pekerja mendaftar dengan Syarikat ABC. Syarikat ABC akan mencari dan membekalkan pekerja yang dikehendaki.</p> <p>Ciri-ciri perkhidmatan membekalkan pekerja kepada orang lain adalah:</p> <ul style="list-style-type: none"> i. Pekerja dibekalkan kepada majikan sebagai pekerja tetap. ii. Majikan bertanggungjawab atas semua bayaran gaji dan kebajikan pekerja. iii. Pekerja diambil untuk menjalankan tugas-tugas yang ditentukan oleh majikannya. <p>Contoh:</p> <ul style="list-style-type: none"> • Agensi pekerjaan membekalkan 4 orang jurutera kepada Syarikat minyak XYZ. Jurutera tersebut menjadi pekerja tetap dan melaksanakan tugas-tugas kejuruteraan di syarikat minyak XYZ. Semua bayaran termasuk gaji dan kebajikan jurutera ditanggung oleh syarikat minyak XYZ. • Agensi pekerjaan yang membekalkan pembantu rumah. 	
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Comments:

From our understanding, the original intention as per Budget 1998 was to catch only employment agencies.

Therefore, the Institute is of the view that Customs should revisit the original intention and consider limiting the taxability to only provision of employment services by employment agencies licensed under the Malaysian Private Agencies Act 1981. This will facilitate compliance by the industry, and enforcement by the authorities.

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In addition to the above, we are of the view that the use of words such as “mencari” (Item 1(i)) or “membekalkan” (Item 1(ii)), will create more confusion as the industry would have to consider whether they are “mencari” or “membekalkan” for the purpose of charging service tax.

Reference	Types of services	Taxable status
Page 37, Item 2 (a)	<p>Perkhidmatan membekal pekerja untuk bekerja dengan orang lain bagi satu tempoh masa.</p> <p>Contoh:</p> <p>Syarikat A yang menyediakan perkhidmatan <i>call centre</i> membekalkan pekerjanya untuk mengendalikan <i>call centre</i> syarikat B bagi suatu tempoh masa tertentu.</p>	Non-taxable

Comments:

The Institute would like to seek confirmation whether the condition of “for a period of time” as per item 2(a) above will also apply for item 1.

15. Group G: Other service provider - Employment Agencies

Reference	Types of services	Taxable status
Page 38, Item 3	<p>Penempatan pekerja secara sementara (secondment of staff) dimana secondment of staff adalah bukan untuk tujuan perniagaan.</p> <p>Contoh:</p> <p>Syarikat A dan B adalah di bawah satu kumpulan syarikat. Pekerja syarikat A dihantar bekerja secara sementara dengan syarikat B. Penempatan pekerja ini adalah untuk pembelajaran, pembangunan kerjaya, melaksanakan tugas-tugas khas yang memerlukan kemahiran atau menyelesaikan sesuatu projek di syarikat B.</p>	Non-taxable

Comments:

The service tax (Amendment)(No.2) Regulations 2002 [P.U.(A) 509/2002 excludes “*secondment of staff*” from the provision of employment services, without restricting it to non-business purposes. This view is further confirmed by the RMC in its letter to CTIM [ref. KE.HF(126)664/01/019/(61)] dated 12 July 2012, in which it was indicated that *secondment of employees or supplying/outsourcing employees for a specific period of time by an agreement is not subject to service tax under item (i), Group G of the Second Schedule to the Service Tax Regulations 1975*.

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We would therefore suggest the above amendment so as to bring it in line with the service tax law.

16. Group G: Other service provider - Management

Reference	Types of services	Taxable status
Page 60, Item 7 (b)	Penganjuran program latihan bukan perkhidmatan bercukai.	Non-taxable

Comments:

The Institute would like to seek clarification on the following:

- 1) It appears that only organizing training programme on non-taxable services will not attract service tax. This implies that organizing training programme on taxable services will attract service tax. The Institute is of the opinion that service tax is levied on the type/nature of the services and not on the content of the service. Hence, the subject matter should not be a factor to determine the taxability of a particular service. Clarification is required as to whether organizing training programme is taxable for service tax purposes, irrespective of the content of the training programme. It is suggested that Customs consider whether training per se is a taxable service rather than relying on the subject matter of the training.
- 2) It appears that the list only excludes organizing of training programme from service tax. It is not clear whether the provision of training is also excluded from service tax. Clarification is required as to what constitutes organizing training programme.
- 3) Based on the above, CTIM proposes the amendment as indicated above.