

TO ALL MEMBERS

TECHNICAL

INDIRECT TAX

Secondment Of Employees And Outsourcing/Supply Of Employees Is Not Subject To Service Tax

Employment services were first prescribed as taxable services under Service Tax (Amendment) (No. 4) Regulations 1997 [P.U. (A) 413/1997] with effect from 1 January 1998. The description of the taxable employment services was "provision of all types of employment services". The description of taxable employment services was subsequently amended by Service Tax (Amendment) (No. 2) Regulations 2002 [P.U. (A) 509/2002], with effect from 1 Jan 2003, as follows:

"Provision of all types of employment services excluding –

- (i) provision of employment services in the form of secondment or supplying employees to work for another person for a period of time; or
- (ii) provision of employment services for employment outside Malaysia."

However, administratively, Royal Malaysian Customs (RMC) had decided that "secondment of employees **with** administrative fee/charge/mark-up imposed" is subject to service tax. This was disputed by businesses and a dialogue was held on 16 December 2011 among the RMC, CTIM and the representatives from the industry associations to discuss the matter. The dialogue urged the RMC to re-consider the above administrative decision.

Upon re-assessment of the disputed issue, the RMC has recently issued an official letter indicating 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.*
- Relevant employment agencies may apply to their respective RMC Branches to cancel their service tax licences.
- All service taxes levied and collected from the customers by the relevant employment agencies must be paid over to the RMC.

Members may view the [RMC letter](#) on the Institute's website.

Disclaimer

This document is only meant for members of the Chartered Tax Institute of Malaysia (CTIM) only. Although the CTIM has taken all reasonable care in the preparation and compilation of the information contained in the CTIM e-circular, the Institute / each party providing the material displayed herein expressly disclaim all and any liability or responsibility to any person(s) for any errors or omissions in the contents of the CTIM e-circular or for anything done or omitted to be done by any such person in reliance whether wholly or partially, upon the whole or any part of the contents of the CTIM e-circular.