### Imposition and scope of sales tax

- Taxable goods* manufactured in Malaysia by a registered manufacturer and sold, used or disposed of by him; or
- Imported into Malaysia by any person

*The list of taxable goods subject to sales tax and goods exempted would typically be in the Subsidiary Legislations (i.e. Regulations and Orders) which are yet to be made available.

### Determination of sale value of taxable goods

- In the case of taxable goods:
  - Sold by a taxable person; or
  - Manufactured by a taxable person and
    - used by him otherwise than as materials to manufacture taxable goods; or
    - disposed of by him otherwise than by sale

  The sale value is based on the Regulations (yet to be made available)

- In the case of taxable goods imported, the sale value is the sum of:
  - Value of the taxable goods for the purpose of customs duty
  - Amount of customs duty, paid or to be paid
  - Excise duty, paid or to be paid

- In the case where any registered manufacturer receives taxable goods from any person to be manufactured and subsequently return the goods so manufactured to such person:

  The sale value is the amount that the manufacturer charges for work performed by him (subject to approval of the DG)

As sales tax is a single stage tax, it would be important to ensure that the value charged is correct, and to some extent obtain agreement from RMCD where necessary. Under charging of sales tax attract fines/penalties.

<table>
<thead>
<tr>
<th>Sales tax due</th>
<th>Date comes into operation</th>
<th>Date to be appointed by the Minister (effective date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufactured in Malaysia</td>
<td></td>
<td>- At the time the taxable goods are sold, disposed of otherwise than by sale, or first used otherwise than as materials in the manufacture of taxable goods, by the taxable person</td>
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<tr>
<td>Petroleum</td>
<td></td>
<td>- As Minister determines</td>
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<td>Anti avoidance (within 1 June 2018 to immediately before the effective date and the taxable goods are delivered on or after the effective date)</td>
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<td>- The sale deemed to have been made on the date such taxable goods are delivered</td>
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<td></td>
<td></td>
<td>- Payment/ invoice deemed to have been received/ issued on the date the taxable goods are delivered</td>
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<tr>
<td><strong>Invoices</strong></td>
<td>The prescribed format is to be prescribed by the Minister. Businesses should look out for the prescribed format (typically be in the Subsidiary Legislations) to ensure invoice issued from the effective date is in compliance. Otherwise, it is an offence subject to penalty of not exceeding RM30,000 or not exceeding 2 years jail or both, per offence.</td>
<td></td>
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<tr>
<td><strong>Late registration</strong></td>
<td>An offence subject to fine not exceeding RM30,000 or not exceeding 2 years jail or both, per offence.</td>
<td></td>
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</tbody>
</table>
| **Late submission of return and incorrect return** | An offence, on conviction, liable to a fine:  
- not exceeding RM50,000  
- not exceeding 3 years imprisonment  
- or both |
| **Late payment of sales tax** | Liable to a fine:  
- not exceeding RM50,000  
- not exceeding 3 years imprisonment  
- or both  
| **No prosecution** | Liable to a penalty:  
- 1st 30 days – 10% of sales tax unpaid  
- 2nd 30 days – 15% of sales tax unpaid  
- 3rd 30 days – 15% of sales tax unpaid |
| **Evasion of sales tax** | First offence – fine not less than 10 times and not more than 20 times the amount of sales tax or not exceeding 5 years imprisonment or to both  
Subsequent offence – fine not less than 20 times and not more than 40 times the amount of sales tax or not exceeding 7 years imprisonment or to both  
This is similar to the GST legislation and it appears that RMCD is coming down hard on offenders. |
| **Power to assess** | 6 years |
| **Audit certificate** | The DG may require a registered person to submit annually an audit certificate signed by a public accountant, in relation to the records required to be kept. |
| **Exemption** | The Minister may exempt:  
- any class of persons from registration  
- any goods or class of goods from the whole or any part of the sales tax |
| Drawback | - Sales tax paid by a person in respect of taxable goods (except petroleum) subsequently exported may be claimed back. The detailed drawback procedures should be set out in the Regulations to be released. Businesses, including non-sales tax registrant, should look into the possibility of utilising drawbacks to minimise cost. |
| Refund of sales tax, etc overpaid or erroneously paid | - A claim for refund of overpayment/erroneous payment/entitlement to refund must be made to the Director General (“DG”) within one year from the time such event occurred. Businesses need to ensure such claims are made in the prescribed form before the time bar. Under GST, the time bar to make the claim was 6 years. |
| Customs ruling | - Customs ruling can be applied for:  
  (a) The determination of taxable goods  
  (b) The determination of a taxable person  
  (c) The principles to be adopted for the purposes of determination of sale value of taxable goods  
  (d) Any other matters as determined by the DG  
  In view that this is a new tax, businesses may consider applying for ruling to obtain certainty. |
| Savings and Transitional Registration | - Manufacture taxable goods (exceeding threshold) before the effective date  
  (i) Existing GST registrants – deemed registered on effective date  
  (ii) Apply for registration before effective date, deemed registered on effective date  
  (iii) Apply for registration within 30 days of effective date. Registration will be effective from 1st day of the following month of application  
  Existing GST registrants should monitor and check if RMCD has automatically registered them for sales tax to ensure no late registration penalty. |
Progressive or periodic agreement (period begins before 1 June 2018 and ends after the effective date)

- The proportion of the sale attributed to the part of the period after effective date is subject to sales tax
- Sales under warranty (and the value of the warranty is included) – not subject to sales tax on the replacement
- However, where GST has been paid on the sale of goods to the extent covered by the invoice – not subject to sales tax

*It is important to track sales that straddles the effective date to avoid incorrect application of sales tax.*

KPMG’s observation

- The clauses in the Sales Tax Bill 2018 appears to combine some of the provisions in the GST Act 2014 and the previous Sales Tax Act 1972. Hence, it is important for businesses not to assume that internal systems developed for previous sales tax regime is robust enough to meet the requirements of the new Sales Tax legislation.

- Although the Sales Tax Bill 2018 is the principle legislation, details are in the subsidiary legislations which have not been released yet. Of importance are the Exemption Orders which would set out various exemptions and facilities available for businesses, to minimise cost. It has been announced that the approval for manufacturer’s raw materials and components exemption for the first month would be automatic, but businesses would still need to make an application, and identify raw materials and components which qualify for the exemption. Details of the information and supporting documents (if any) that needs to be submitted online has not been released yet but businesses should start preparing (based on prior applications) to prevent last minute rush which could lead to errors and penalties.

- The absence of branch/ division registration (unlike the GST regime and proposed service tax regime) appears to suggest that registration is on an entity basis. Hence a business with multiple factories in different locations would now need to streamline their record-keeping and reporting to ensure correct filing of sales tax returns for the entire business.

- The fines/ penalties provision under the Sales Tax Bill is heavier than the previous service tax regime. In addition, the 6 years period of assessment by RMCD and the 6 years period for RMCD to demand for sales tax short paid or erroneously refunded (it was 3 years previously) reflects RMCD’s commitment to ensure compliance is adhered to.