



Indirect Tax

GST Chat

All you need to know

Issue 04.2017

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Greetings from Deloitte Malaysia's Indirect Tax Team

Hello everyone and welcome to another instalment of GST Chat!



In April we saw the announcement of a new indirect tax with the introduction of the Tourism Tax bill. The tax will apply to operators of accommodation premises in Malaysia and will be collected from those who stay in the premise. Although a lot of the mechanics are still unclear, the introduction of this tax will pose some challenges for the operators. My fellow Indirect Tax Partner, Senthuran Elalingam has recently been quoted in the news media sharing his thoughts. We have provided links to these articles [here](#) under the Media Interview section of our GST Chat webpage.

In this month's edition of GST Chat, we continue with our commentary on issues highlighted in the Technical Meeting 3/2016. We have also included an update on recent changes to the National Essential Medicines List and the Controlled Drug list and also the Customs and Excise Duties Orders.

Here are some other recent news and developments that may interest you:

- In order to reduce leakages in national revenues, the Royal Malaysian Customs Department ("RMCD") will soon send reminders to an estimated 70,000 GST-registered companies that have been identified to have submitted incorrect GST declarations. The RMCD will provide a grace period to these companies to amend their declarations and will take legal action should the errors be left unrectified.
- Sabah State RMCD Director Datuk Dr Janathan Kandok has indicated that 187 companies in the state have been audited and the offences committed included not keeping records, not submitting the GST-03 form, failing to pay on time and not giving accurate information.

I hope you will find the information here beneficial and do contact us if you have any queries, comments or require our assistance.

Kind regards,

Tan Eng Yew
GST and Customs Country Leader

1. GST Technical Committee Meeting Update

The GST Technical Committee ('the Committee') was formed to resolve and bring clarity to various technical issues faced by businesses. The Committee comprises various industry associations, professional bodies and senior officers of the RMCD and convened its last meeting on 29 September 2016 to deal with several technical issues where clarification was needed. The meeting minutes were recently circulated on 16 December 2016. Based on the review of the minutes, several issues still remain unclear and need to be addressed by the RMCD.

Issue 1 – Claim for bad debt relief

The RMCD clarified that any taxable person who wishes to claim bad debt relief after the six-month period is only required to notify the RMCD once through the TAP portal. After such notification, the taxable person is required to claim bad debt relief 12 months after the taxable period in which the output tax has been paid or date when the bad debt is written off, whichever is earlier.

The RMCD also reiterated that it is a policy made by the DG whereby bad debt relief is only allowed where the supply is made by a GST-registered person to another GST-registered person.

Deloitte Comments

The application of a 12-month requirement on the claiming of bad debt relief is onerous and not supported by the Law. Nonetheless, it is expected that the RMCD auditors would enforce the proposed approach and unless a taxpayer is willing to challenge this position to appeal, the recommended approach



Everlyn Lee
Director
Penang Office



Irene Lee
Associate Director
KL Office



Diamond Khanted
Manager
KL office



Sachin Vishwanath
Manager
Penang Office

would be to comply. The same applies to the limitation on claiming relief to only situations where the customer is GST-registered, which is also inconsistent with the Law.

Issue 3 - Directors as Connected persons

Para 2(1)(a) Third Schedule of GST Act 2014 states that "persons shall be deemed to be connected if they are officers or directors of one another's business...".

The RMCD has clarified that connected persons are between companies and not between the individuals itself.

The RMCD further clarified that "director" is treated as an employee and free service is not a supply and is not subject to GST. As there has been no distinction made among the types of directors (i.e., executive directors, non-executive directors, etc), we would recommend that clarification be sought from the RMCD in relation to the classification of these directors.



Naresh Srinivasan
Assistant Manager
KL Office



Tem Kok Seong
Senior
KL Office

Deloitte Comments

The RMCD's clarification that directors are treated as employees and not deemed as connected persons brings much clarity on the issue. Consideration should be given to the treatment adopted in the past GST returns to determine whether an amendment needs to be made if the deemed GST output tax accounted for previously is substantial.

On another note, the RMCD has also clarified that provision of accommodation free of charge to the employee by the employer is related to an exempt supply as opposed to "not a supply". This continues to be an area of confusion and we hope that the RMCD will address this issue quickly.

Issue 4 – Input tax credit (ITC) claim on services for pre-commencement of business

Regulation 46 allows claims of ITC on goods acquired prior to GST registration; however, no such concession exists for services. The RMCD was asked to explain the rationale behind the disallowance of ITC on services and whether the position could be changed.

To the above, the RMCD has stated that the present policy does not cater for ITC incurred on services. Regulation 46 applies to goods only.

Deloitte Comments

The RMCD is applying the Law as it stands. However, a start-up business could incur a significant amount of service costs and disallowing the ITC could further burden the new businesses. As such, the RMCD should revisit this and consider to broaden the concession to cover services as well. On the other hand, businesses taking on new ventures should explore tax planning opportunities to manage this risk better.

Issue 10 – Supply of Development Rights

The RMCD treats the provision of development rights related to residential development as an exempt supply notwithstanding that it is not a supply specifically exempted under Second Schedule to the GST (Exempt Supply) Order 2014. The rationale provided by RMCD is that it is a right over the land that is for residential use based on the Development Order from the public authority and is therefore exempt.

Deloitte Comments

We are of the view that the basis adopted by RMCD is not supported by the current GST law and it adds complication to the GST treatment on such transactions. The RMCD should reassess the basis of treating the supply of such rights and provide further clarity to the property development players.

Issue 12 – Exports to Designated Areas (DA)

The supplier from a Principal Customs Area (PCA) who makes a supply of goods to a DA will be entitled to zero-rate the supply if the supply can be supported by a K2 form. K3 form is only applicable for GST paid goods.

Deloitte Comments

The RMCD Guide on Designated Area as at 1 January 2017 provides that the supply of goods from Malaysia to DA will qualify for zero-rating if the movement is supported with a K2 form which states the supplier's name and address as the consignor and the recipient's name and address in DA as the consignee, with supporting documents such as invoice, packing list, etc.

Businesses should take note of the above clarification issued by the RMCD and ensure that a K2 form is used (instead of K3 form) for supply of goods from Malaysia to DA in order to apply the zero-rating treatment.

In light of that, it is clear that a K3 form is not the right documentation to substantiate zero-rating for GST, and it seems more relevant for declaring movements of GST paid goods or other dutiable goods, in accordance with RMCD clearing procedures. More clarification should be sought to fulfil the administrative requirements.

Issue 14 – Indirect export (back to back)

In a scenario where a local supplier (A) supplies goods to a local customer (B) who then arranges for the export of those goods, the local supplier (A) must charge GST. This is because the local customer (B) is the one who is listed on the K2 form as the exporter.

Deloitte Comments

Businesses should take note of the RMCD's view on indirect export where the ultimate person whose name is declared in the export form, i.e., K2 form would be considered as the exporter and the supply by him would be eligible for zero-rating. We would agree with the RMCD's view that where the ownership of goods has transferred within Malaysia, the supply should be treated as standard-rated and the subsequent export should then be zero-rated. However, in scenarios where the ownership is not transferred and the exporter is merely clearing the export on behalf (due to licence restriction, for instance), the current interpretation of the RMCD may not be in favour of the business arrangement.

Issue 15 – Redemption of reward points under loyalty program to customer

A clarification was sought from the RMCD with regards to the GST treatment for redemption of loyalty points in monetary form (i.e., cash or cheque).

The RMCD clarified that redemption of loyalty points in monetary form (i.e., cash or cheque) is not subject to GST.

Deloitte Comments

We agree with the RMCD's view that the redemption of loyalty points in monetary form is not subject to GST as these are simply payments of cash and do not constitute a consideration for any supply.

Issue 16 – Disclosure under field 10 (total value of local zero-rated supplies) or 11 of GST-03 form (total value of export supplies) for adjustments via Credit Note or Debit Note.

In scenario where a Credit Note is issued in the current taxable period for zero-rated supplies relating to previous taxable periods, it may result in negative value in field 10 or 11 in the GST-03 form when the credit amount is greater than the zero-rated supplies. The RMCD has clarified that:

- (i) The value should be based on K2 forms and not the invoice value.
- (ii) When the Credit Note is issued, no adjustment needs to be done as the Credit Note cannot relate to the Customs forms, which cannot be amended after the goods are released from RMCD control.

- (iii) Since there are no adjustments to be done in the GST-03 form, there will be no set-off balance (negative amount from the issuance of the Credit Note) reported.

Where a supplier issues a Debit Note to increase the consideration of a prior export supply of goods, the RMCD has taken the view that this adjustment should be subject to 6% GST on the basis that the adjustment cannot relate to a K2 form.

Deloitte Comments

The RMCD had provided that the value to be declared in the GST-03 form should follow the K2 form. This is in slight contrast with the current GST legislation which does not address it as such.

Not making adjustments on Credit Notes issued for previous export supply to avoid negative values in GST-03 form may seem convenient, it may, however, result in confusion for the businesses, especially in applying tax codes and GST reporting as it deviates from the ordinary practice of aligning the adjustment tax code to the initial invoice's. A pragmatic approach should be taken to allow negative value disclosure in the GST-03 form as it reflects the actual business transactions. The RMCD should also consider the practicality of substantiating all values in field 10 or 11 with a Customs form – there are simply many other transactions that could operate without one and yet are required to be disclosed in this field.

On the other hand, treating a Debit Note adjustment for an export supply as standard-rated is technically incorrect. Again the justification that it is not supported by a K2 form reflects the impracticality of this notion. The RMCD should assess if the adjustment is genuinely related to goods that are already exported from Malaysia and if so, the zero-rated treatment should prevail.

Issue 18 – Reimbursement

Two scenarios involving a centralised procurement centre that incurs expenses on behalf of companies in the group were presented for the purposes of confirming the GST treatment. The scenarios are as follows:

- (i) Centralised postage services. The procurement company will recover from the respective group company the postage services acquired based on actual expenses incurred for each company every half yearly.

Type of supply

- For local postal service – standard-rated reimbursement;
- For postal service performed in relation to international mail, it is a zero-rated reimbursement

Time of supply

Whether the recovery of postal expenses could be treated as continuous supply and time of supply would be earlier of tax invoice issued or payment received.

The RMCD agreed with the GST treatment set out above. Although the RMCD required further time to assess the time of supply issue, they agreed that in the interim the services could be treated as continuous supplies.

- (ii) The procurement company will purchase materials on a group basis to take advantage of bulk purchase discount. The respective companies in the group would then be billed based on actual goods distributed to each on a half yearly basis.

Type of supply - Can it follow the original GST treatment for supply of goods, i.e., if the original goods acquired were zero-rated, the reimbursement would also be zero-rated.

Time of supply

Account for output tax based on general time of supply rule when the goods are delivered.

The RMCD agreed with the view that GST treatment of the reimbursement should follow the same treatment as the earlier supply. The output tax should be accounted for based on the general time of supply rule, i.e., earlier of payment, invoice or the goods being made available.

Deloitte Comments

We continue to see shifting views on the treatment of reimbursement. From this development, it seems that the GST treatment of the earlier (original) supply has a bearing on the GST treatment for the subsequent reimbursement, and this is a welcome move. We expect to see further official guidance on this matter.

Issue 21 – Foreign Exchange

- (i) Exchange rates policy remains as per what is set out in the DG's Decision 1/2014. In particular:
- The exchange rate in para ii (a) and (b) of item 6 is only applicable to wholly taxable transactions between GST registered persons. In all other scenarios, the supplier must use the prevailing selling exchange rate in Malaysia (i.e., the rate provided by Bank Negara Malaysia) at the time of supply, unless they have received specific approval from the RMCD to use an alternative rate.
 - Item 5, Third Schedule of the GST Act 2014, only the RMCD can determine the exchange rate for importation of goods.

Deloitte Comments

Many businesses have misunderstood the concession provided in DG's Decision 1/2014, and have applied it more broadly than the RMCD had allowed. The concession in the DG's concession does not apply to traders who make exempt

supplies or provide services to overseas customers. Businesses should take advantage of the specific approval process to apply for alternative exchange rates when the selling rate is not suitable.

Issue 23 – Employee Benefits

The RMCD has previously expressed their view that the provision of accommodation to employees whether or not for a consideration (and whether or not under employee benefit) is an exempt supply.

A clarification was sought on the treatment of utilities, repair, construction, security and cleaning charges associated with the accommodation that were separately charged by employer to employee or provided free of charge. Further, a question was asked whether the supply of accommodation should be reported in field 12 – total value of exempt supplies in the GST-03 form.

The RMCD responded that it was not normal practice for an employer to recover the costs from the employee by way of separate charge. As a consequence, all recoveries should be treated as exempt supply. However, the employer is not required to declare in field 12 of the GST-03 form.

Deloitte Comments

In our view, the requirement to not disclose such supplies as exempt supplies on the GST-03 form is likely to cause more confusion than convenience for businesses as this is in contrast with the current requirement to disclose all exempt supplies made.

Issue 24 – Time of Supply of Development rights

The supply of a right by the land owner to the property developer to use the land is a supply of services. Based on the DG's decision 4/2014 item 7, the land owner is required to account for GST on the supply of rights to use the land based on the land owner's entitlement, at the earlier of when the payment is received or tax invoice is issued.

The RMCD has clarified that the time of supply should be earlier of payment received from the developer, issuance of invoice by the land owner or upon receiving vacant possession if the consideration to the land owner involves completed property (in kind). We further understand that the DG's Decision 4/2014 item 7 will be amended soon for this update.

Deloitte Comments

There are uncertainties on the issue of basic tax point for the supply of rights based on the above clarification. Due to the impending changes to be made to the above DG's decision, we recommend that a written confirmation be obtained from the RMCD to ensure certainty in the GST treatment for the supply of rights in the meantime. A detailed review of the joint

venture agreement between land owner and property developer should be made prior to making the representation to the RMCD to determine the GST treatment.

Issue 25 – GST returns – GST-03 form

The RMCD has clarified the following items in the GST-03 form:

- (i) Item 16 – total value of capital goods acquired excluding GST
 - If input tax is not claimed, value of capital assets need not be reported
 - If advance payment is made for acquisition of capital goods, the value of advance payment should be included in item 16

- (ii) Item 14 – Total value of goods imported under Approved trader scheme
 - Value of imported capital goods declared in item 14 need not be reported in item 16

Deloitte comments

This is inconsistent with the guidelines provided by the RMCD in their guide in filing the GST-03 form [here](#).

Issue 26 – K1 endorsement for input tax claims

K1 is a prescribed form for imported cargo. When a company pays the GST, an Official Receipt will be issued by the RMCD. These documents are sufficient as evidence to substantiate a claim of input tax. The RMCD system would have recorded the K1 transaction (paperless transaction) and therefore no endorsement is required.

Deloitte Comments

Businesses should take note that K1 endorsement may not be required for the RMCD clearance with paperless transactions. On the other hand, it is also clear that the K1 form and the Official Receipt from RMCD remains as important documentation to substantiate any claims of import GST. Businesses are reminded to keep good records as supporting documents.

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2. Update of the National Essential Medicines List and the Controlled Drug list

In order to expand the scope of zero rating to cover more drugs and medicines, the RMCD has revised the National Essential Medicines List (Suffix X & Suffix N) and the Control Drug List (Suffix A). Many new additions have been made to expand the scope of zero-rating on drugs and medicines, in the continued efforts by the Government to balance the cost of healthcare.



Diamond Khanted
Manager
KL Office

The updated list could be found in the links below:

- [The National Essential Medicines List \(Suffix N\)](#)
- [The National Essential Medicines List \(Suffix X\)](#)
- [The Control Drug List \(Suffix A\)](#)

Deloitte Comments

The changes in the list could warrant a review of the products and their treatment by businesses in this industry. Correct tax coding should be made and businesses should also consider any transitional adjustments for the change in rate of these products.

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3. Changes to the Customs and Excise Duties Orders

In order to be aligned with the implementation of the Customs Duties Order 2017* (which resulted in changes, especially the usage of a 10-digit tariff code system and additional category of items), the following orders have been replaced.

Previous Order	New Order
Excise Duties Order 2012	<u>Excise Duties Order 2017</u>
Customs (Prohibition of Imports) Order 2012	<u>Customs (Prohibition of Imports) Order 2017</u>
Customs (Prohibition of Exports) Order 2012	<u>Customs (Prohibition of Exports) Order 2017</u>
Customs Duties (Goods of ASEAN Countries Origin) (AHTN and ATIGA) Order 2012	<u>Customs Duties (Goods of ASEAN Countries Origin) (AHTN and ATIGA) Order 2017</u>

***Note:** The new Orders above came into effect on 1 April 2017.

In relation to this, you may refer to this [link](#) for our earlier newsletter discussing the implementation of the Customs Duties order 2017.

Additionally, the Customs Duties Order 2017 has also been amended vide the Customs Duties (Amendment) Order 2017.

Deloitte Comments

Given the above changes, businesses need to ensure the correct HS codes and product description are declared. Businesses should also need to assess the impact of these changes on any upcoming importations, especially where excise duty or import/export restrictions or duty exemption are of concern. Additionally, communication may need to be established with relevant parties such as freight forwarders/customs agents for any changes in the declaration process of goods as a result of the implementation of the Orders above.



Nicholas Lee
Manager
KL Office



**Atika Hartini
Suharto**
Assistant Manager
KL Office

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Contact us



Tan Eng Yew

**GST & Customs
Country Leader**

etan@deloitte.com

+603 7610 8870



Senthuran Elalingam

**Asia Pacific Indirect
Tax Clients, Markets &
Industries Leader**

selalingam@deloitte.com

+603 7610 8879



Koh Siok Kiat

**Indirect Tax Clients &
Markets Leader**

sikoh@deloitte.com

+603 7610 8886



Chandran TS Ramasamy

GST & Customs Director

ctsramasamy@deloitte.com

+603 7610 8873



Wong Poh Geng

**GST & Customs
Director**

powong@deloitte.com

+603 7610 8834



Ha Kok Fei

Associate Director

kha@deloitte.com

+603 7610 8190



Irene Lee Ah Kam

Associate Director

irlee@deloitte.com

+603 7610 8825



Wendy Chin

Senior Manager

wechin@deloitte.com

+603 7610 8163

Name	Email address	Telephone
Diamond Khanted Manager	dkhanted@deloitte.com	+603 7610 8618
Jeet Oza Manager	jeoza@deloitte.com	+603 7610 7827
Nicholas Lee Manager	nichlee@deloitte.com	+603 7610 8361
Naresh Srinivasan Assistant Manager	nasrinivasan@deloitte.com	+603 7610 7862
Leong Wan Chi Assistant Manager	wanleong@deloitte.com	+603 7610 8549
Atika Hartini Suharto Assistant Manager	asuharto@deloitte.com	+603 7610 7986

Other Offices

Name	Email address	Telephone
Susie Tan Johor Bahru	susietan@deloitte.com	+607 222 5988
Everlyn Lee Penang	evelee@deloitte.com	+604 218 9913
Vincent Ng Melaka	ving@deloitte.com	+606 281 1077
Terrence Mooi Ipoh	tmooi@deloitte.com	+605 254 0288
Kane Bong Kuching & Kota Kinabalu	kbong@deloitte.com	+608 246 3311



Get in touch



Deloitte Tax Services Sdn Bhd

Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr. Ismail
60000 Kuala Lumpur,
Malaysia.

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