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GST Chat
All You Need to Know

Issue 8.2016

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Greetings from the Deloitte Malaysia Indirect Tax team

Hello Everyone! and Selamat Hari Merdeka. Welcome to the August edition of GST Chat!

Two months from the 2017 Budget, we are expecting and are hearing that there will be changes to the GST rules. How substantial and impactful these changes will be are unclear. Where there are industry specific issues to be addressed, now is perhaps the time to engage the authorities if Law change is needed. So it is important to stay connected to the consultation process through your industry association.



We are also continuing to see greater and greater audit activity from the Royal Malaysian Customs Department (RMCD). Whilst the initial audits were focused on refund verifications, as RMCD has managed to get greater comfort around the refund process we are seeing more expanded 'field' and 'systems' audit. These forms of audit can cover greater areas of risk and of course the potential for wider penalties to be imposed.

The RMCD will launch the Customs Blue Ocean Strategy Operation (Ops CBOS) in phases from Sept 1 to audit companies registered for the GST. Director General of Customs, YBhg Dato' Sri Khazali Ahmad said about 50,000 companies were identified for the first phase of the audit to ensure that they were on the right track.

Here are some other interesting developments and news from the past month:

- The Johor Bahru branch of the Malaysia Consumers Protection Association (PPPM) has handed over a memorandum to protest against the proposal to repeal the Price Control and Anti-Profiteering Act 2011.
- The Government will not increase GST rate although a revenue shortfall of RM 30 billion is expected this year from the oil and gas industry, said the Second Finance Minister Datuk Johari Abdul Ghani
- A petrol station operator was fined RM 72,000 for failing to submit GST Returns.

Happy Reading!!

Till we meet again.

Kind regards,

Tan Eng Yew

GST and Customs Country Leader – Deloitte Malaysia

1. GST technical updates



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Notification on GST 03 return amendment

In accordance with regulation 69 of the GST Regulations 2014, with effect from 23 August 2016, the rules on amendments to the GST Return have been changed as follows:

1. There will be no limit on return amendments up until the due date for submission of the return.
2. Amendments are allowed once within 30 days for monthly tax filers or 90 days for quarterly tax filers after the last day of submission of return. Amendments outside of this period or further amendments require approval by an RMCD GST officer.
3. Amendments can be made through Taxpayer Portal (TAP)
4. Return amendments which are not approved by a GST officer are considered invalid and the previously filed figures would remain

Deloitte's view

This confirms in writing the previous announcement (refer to our June edition dated 28 June 2016) that was made by the then Head of the GST Unit at RMCD, Dato` Subromaniam at the National GST conference earlier this year.

The amendments to the GST Return process provide RMCD with a greater control of the amendment process and make it far more onerous for taxpayers to amend GST Returns. The concerns for RMCD are understandable as they want to have greater oversight but it needs to be balanced with cost for the taxpayer and RMCD. A concession should be provided to allow for amendments to correct small errors without approval or allow for these errors to be corrected in subsequent returns. The current process could have a negative effect of discouraging taxpayers from seeking to correct errors or simply tie up resources from both sides.

GST Guides

The guides issued by RMCD are merely stating the general views adopted by RMCD. They are not rulings and are neither binding on the RMCD or on any party that follows the practices recommended by the guides.

Revised Guide

[Transitional Rules Guide – as at 12 August 2016](#)

With Regards to the transitional guide, RMCD has removed the paragraphs 55, 56 and Example 13, which dealt with reviewable contracts and how to determine when a review opportunity arises. In the earlier guide it was stated that for a review opportunity to arise there must be a 'total' review and not of a specific part or parts of the consideration payable under the agreement.

Deloitte's view

This may imply RMCD have taken the view that a total review of the consideration is not necessary for a contract to qualify as a reviewable contract, hence even if a partial review of the consideration arises it could qualify whole contract as reviewable contract. It is unclear as to what extent the consideration must be reviewable (e.g. more than 50%), and as a consequence, we would recommend reviewing any such positions taken previously and addressing whether such a position is sustainable given the change in view taken by RMCD.

[Guide on Payment of GST](#)

Taxpayers are now able to pay GST liabilities through ATMs and Cash Deposit Machines (CDMs) at the branches operated by RHB, Alliance Bank, Hong Leong Bank and Bank Islam

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2. ATS – Importer Vs Owner?



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There are handful of interesting issues on the Approved Trader Scheme (ATS) facility that we are aware of and seen happening, one of them is on importation of goods from a bonded warehouse by an ATS approved person. GST payable on the imported goods is suspended for ATS approved persons on the condition that he must be the importer on record. In RMCD's view, the suspension of GST only applies to goods that are imported from overseas and not for locally acquired goods that are imported from either the bonded warehouse or a Free Commercial Zone ("FCZ").

One common issue is whether the importer of record must be the owner of the goods? We have observed that in some scenarios where goods are supplied between a trading company ("supplier") and ATS holder ("buyer"), the title of the goods ("ownership") is transferred at the business place of the buyer in the Principal Customs Area. The goods were imported/taken out from the bonded warehouse or FCZ by the supplier on Delivered at Place (DAP) incoterms. In this situation, the buyer would generally not own the goods until it is delivered at his business premise (though this would need to be reviewed against the legal contract and other conditions that may be imposed). It is unclear whether the concession provided to ATS holders for the suspension of import GST upon importation from a bonded warehouse was intended to extend to goods not owned or possessed by the ATS holder at the time of import.

RMCD have taken the view that it was intended to apply and that it should be the seller (i.e. the non-ATS holder) who must clear the goods for import and pay the import GST. Under such an arrangement the parties would suffer cash flow inefficiencies as they are effectively paying GST at import and then upon the subsequent transfer of ownership once the goods arrive at the buyer's location.

In our view, there are alternative arguments to the RMCD position that the ATS holder cannot be the importer on record. If you have been faced with such a scenario with the RMCD, it may be worth further discussion and analysis. Moving forward, commercially the parties should consider what other options they might have to restructure their arrangement to remove this cash flow risk.

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