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GST Chat
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Greetings from the GST Team of Deloitte Malaysia

Hello everyone and Selamat Hari Merdeka. Welcome to the August edition of GST Chat which covers the latest news and updates in the world of Indirect Tax.

In our last edition, we spoke about negative consumer sentiment coming out of the GST, and now we are seeing greater economic challenges with the falling ringgit. However, a number of recent studies have shown a stabilisation in consumer spending and a general settling of the market apprehension around the GST, with other factors such as the fall in the value of the Ringgit taking over. It is too early to tell whether this more relaxed sentiment regarding the GST would continue given the current economic climate, but at least there is a silver lining.

On the GST technical front, we continue to see further Royal Malaysian Customs Department (RMCD) activity and more guidance being issued. We discuss this in further detail in our GST technical update section further below. We have also seen an uptrend in GST dispute activity and understand that there are already quite a number of cases before the GST Tribunal. Please refer to GST Dispute Resolution section at the end for further details in relation to our new service offering.

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

- A recent survey highlighted that GST has adversely hit 85% of firm’s cash flow mainly due to delays in input tax refund from customs

- To date, the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) has issued more than 1,800 notices to businesses to justify prices, and many of the cases have been taken to the court to determine the basis of the price hikes

- The RMCD has indicated that the reason why some GST refunds have been delayed is due to simple filing errors and discrepancies in the company's profile and banking information. However, in the same report, they indicated that they had, to date, cleared around 90% of the GST refund claims

We hope you enjoy our August edition and best wishes again from myself and the Deloitte GST Team.

Regards,
Tan Eng Yew
GST and Customs Country Leader – Deloitte Malaysia

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1. Recent Technical Updates

By Diamond Khanted (Manager – GST) [Deloitte Kuala Lumpur]

Director General (DG) Decisions

DG Decisions (Officially referred to as Director General of Customs Decisions) are guidance issued by RMCD setting out its view in relation to various GST matters. Whilst these are not public rulings, they provide insights into the view and approach taken by RMCD, another one was released last month.

We have provided links to the relevant DG Decision and highlighted some of the key issues covered.

DG's Decision 7/2015 (27 July 2015)

- Until 31 March 2016, a GST Registered Person (the tenant) is allowed to claim an input tax credit on electricity and water invoices/bills which are in the name of the property owner subject to fulfilment of specified conditions (further details can be found in the link above)

- No date has been specified as the date for commencement of the treatment under the DG decision and hence, it is not clear whether the input tax credit on the tax invoices which are issued before the 27th July 2015 can be claimed or not. It is however possible to argue in some cases that as the law has not changed since 1 April 2015, it should apply from that date unless the DG decision specifies otherwise. If this affects you, we would suggest that we look at your precise circumstances in order to assess the risk.

GST Guides

New Guides

Guide on GST 04 online submission

- Unregistered businesses in Malaysia are subject to a reverse charge on any imported services into Malaysia where the supply would be taxable if made in Malaysia. At the end of the month following the month of invoice or payment for the imported service, the business needs to file a GST-04 return with RMCD and make payment. This new guide contains a step by step process for the submission of the GST 04.

Revised Guides

Guide on Tertiary Education

Supply Guide

Please find some of the key additions made in the revised supply guide below

- Land for general use will also cover "playground and religious building"

- A new paragraph has been added for ‘reimbursement’ providing criteria for reimbursement, along with new examples.
- A new paragraph for ‘disbursement’ has been included providing criteria to qualify for disbursement.

Guide on Approved Trader Scheme

- RMCD have extended the due date for submission of monthly report (i.e. Lampiran B - 0 P.T. GST Bil 2B) to GST office (controlling station) within 15 days after the end of the taxable period including varied taxable period. It previously needed to be submitted within 10 days after the end of the taxable period.

Guidelines to fill GST 03 form

- Field 5a, 6a – The value of goods or services issued through credit notes shall be “subtracted” from or received a debit notes shall be “added” in the standard rated supply in columns 5(a) or 6(a).

- Field 6a & 6b: for simplified invoice, 6a should be up to RM 500 and 6b is RM30 only, means only the claimable portion needs to be reported in 6a & 6b.

- Field 13: This includes supplies in Minister Relief and Relief Order 2nd Schedule only.

- Field 16 that some more capital assets are to be excluded ‘State the actual total value of capital goods acquired’. For example purchase of lorry, office building etc.

  The acquisition value of capital assets is in accordance with accounting principal interpretation but does not include the acquisition of capital assets in the category:

  i. Blocked input tax.
  ii. Acquired from persons other than the taxable person.
  iii. Acquisition of motor vehicles which subject to GST under the Margin Scheme.

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2. Industry Focus: Insurance - the case of the disappearing Deemed Input Tax Credit

By Senthuran Elalingam (GST Director and GST FSI Leader) [Deloitte Kuala Lumpur]

The application of the Malaysian GST continues to evolve and change for a number of industries, none more obviously than the insurance industry. Days before GST implementation, insurers having progressed to a working framework for the industry in line with the GST law at that time, found it significantly changed with the introduction of amended legislation. The lasting effects of this change are still not known by the industry, but it could possibly result in either a significant reduction in profitability, an increase in premiums or both.

So what was the cause of this pain? The majority of insurance policies are taxable under the Malaysian GST with few exceptions (e.g. life insurance). Under the original model, insurers on taxable policies were able to claim a special credit (referred to as "Deemed Input Tax Credit" or DITC for short) on cash payments to policy holders who are not registered for GST or are specifically blocked from claiming a credit on the premiums for those policies. However, just days before the start of GST, the Government amended the GST Regulations to severely limit the ability for insurers to recover a DITC. In practice, as a result of the amendment, many insurers are now simply not claiming any DITCs.

So what is the rationale for the original concession? Insurance is essentially the transfer of risk from one party, the insured, to another, the insurer, in exchange for payment of a premium. It is a generally accepted principal that the 'value add' an insurer provides (or their 'margin') is the total of their premium minus the total claims they pay out. The DITC regime operates to allow a credit to insurers when certain payments are made to settle a claim (cash payments) to ensure that only the insurers' value add/margin is taxed throughout the supply chain.

To further explain, in the case of a taxable insurance policy with a policyholder that is not GST registered, final consumption of the insurance occurs, as the 6% GST charged on the premium is not recoverable by the insured. When the insurer pays a cash payment to the claimant, this has the effect of reducing the insurer's margin. Without a DITC being offered to the insurer the GST system has collected the full amount of GST on the premium but no concession is afforded to the insurer to recognise the claim payments it has made.

The policy intention for including a DITC in a GST regime that taxes insurance is to remove 'double taxation' or over taxation for insurance policies. It is for this reason, that similar models have been implemented in most other GST / VAT jurisdictions that tax this type of insurance.

Against this background, the last minute exclusion of this concession is all the more puzzling both from a tax policy perspective, but also from a social perspective. Insurance is very much viewed by Malaysians as a necessity. In particular health and medical coverage ensures that a peace of mind and affordable care exists for the majority of us and our families. Like any business where costs increase, revenue must increase or a business soon ceases to exist. As such we are left with two inevitable scenarios, in that this last minute amendment to the GST law results in either:

- premiums increasing and the peace of mind currently afforded to many Malaysians becomes financially beyond their reach; or
- private insurers reduce the scope of their product offerings or, worse still, exit the Malaysian market, and these essential services become the responsibility of the government which is unlikely to be what was intended.

Either of these outcomes, would likely work against the Government's aspirational goal of insurance penetration to 75% of the population by 2020.

On a slightly more optimistic note, there is ongoing dialogue between the industry association and the regulators on whether this decision can be revisited now that the implications are starting to be fully understood. The writer is hopeful that over time we would see this concession being rolled back, though perhaps not in the immediate future.

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3. Common Errors in Special Sales Tax Refund

By Vivek Mehta (Manager – GST) and Diamond Khanted (Manager – GST) [Deloitte Kuala Lumpur]

Under the GST Act, a special refund of sales tax is available on stock of goods held on hand as at 1 April 2015 (commencement date of GST) subject to certain conditions. Eligible registered persons are allowed to make a single claim that needs to be filed with Customs within six months from the start of GST (being 30 September 2015).

Since only a single claim can be made, it is crucial that it is done correctly to avoid the application being rejected by Customs. Based on our practical experience, here are some of the grey areas we are seeing in the making of such applications:

- Payment reference number

  The sales tax refund certificate requires a business to include the payment method and reference as one of the mandatory fields. The payment reference should refer to the official receipt number issued by RMCD for payment of sales tax. The issue here is that the RMCD official payment receipts contain multiple numbers such as Siri no, no. Pendaftaran etc. and all of these appear to be unique numbers. This makes it difficult to identify the valid receipt number for including in the sales tax refund certificate. There have been divergent views regarding which is the valid receipt number out of all these to be included in sales tax refund certificate. Deloitte has assisted several clients in getting requisite clarifications from RMCD and is able to assist in this area.

- Value of goods – for imports

  In many, if not most cases the value of goods received from overseas supplier as stated in the invoice received from overseas supplier would differ from the value adopted by RMCD in the import form (Form K1). Also values captured in accounting systems generally follow the invoice basis rather than the import forms.

  Similar issue arise in cases where the exchange rate used for conversion of invoice values are different from the exchange rate used by Customs for conversion in import forms / documents.

  In such a situation claimants would need to establish what value should be included in the sales tax refund certificate – should it follow the value provided in invoice from overseas supplier or customs declared value in the import forms? Further, it is also a need to be assessed whether the basis suggested by Customs is convenient for the business to follow – is there a room for flexibility?

- Stock units

  It is common for business to follow their own units of measurement in internal accounting systems as against the units of measurement based on import documents or HSN code. For e.g. business may be importing an article whose unit of measurement as per K1 form (HSN) is in Kgs., but under accounting system the business follows internal unit of measurement such as no. of units. Hence, for every 5kgs imported, business records 2 units in accounting system weighing 2.5 kg. each.

  One of the field in the sales tax refund certificate requires a business to state the number of stock units in hand as on 1 April 2015. RMCD have indicated that units reported should follow the source import documents. Therefore going back to the above example business is expected to report in kg. (based on import form) and not in units as captured in accounting system.

  The important question here is that what happens if the businesses are unable to trace back the stock in hand as on 1 April 2015 to its original unit of measurement based on source importation documents? Can the business still claim a refund? Is RMCD flexible enough to allow a different basis for reporting unit of measurement? Deloitte has assisted several clients facing the same dilemma and has been able to reach a balanced outcome.

- Importer on record

  It is a common practice for business to appoint a freight forwarder to clear their imported goods through customs. In these scenarios, often the import documentation shows the importer on record in the K1 form as being the freight forwarder and not the owner of goods i.e. real person who is importing the goods.

  In these cases, the issue is whether business can claim a refund on the basis of a K1 import form which actually reflects the freight forwarder as the importer on record?

Given the examples of the issues identified above, it is important to engage with RMCD in advance and get clarity on the information to be included in the certificate so as to avoid on the possibility of the claim being rejected. This may also require that the business obtain any necessary pre-approvals to follow a particular method / process for preparation of refund certificate.

Deloitte has been instrumental in filing and reviewing refund claims for several clients. For further details please click here or contact the writers of this article.

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4. Ambiguity regarding GST treatment of reimbursement of expenses

By Ha Kok Fei (Associate Director – GST) / A.S. Saicharan (Deputy Manager – GST) [Deloitte Kuala Lumpur]

Ambiguity regarding the taxation of reimbursements or recovery of expenses has added more complexities to the existing woes of registered persons.

One area where both taxpayers and the RMCD appear to be having some difficulty is in drawing a distinction between 'reimbursements' and 'disbursements' of expense. Though RMCD has issued a DG Decision (5/2015) in this regard, the distinction primarily depends on whether the expenses are incurred by a principal or an agent acting on behalf of a client. However, making this distinction in practice is still a challenge for many taxpayers.

The correct determination is of very significance when the recipient would be unable to recover any GST as an input tax credit (i.e. exempt or unregistered parties), as an incorrect identification of the charge can result in actual additional cost.

Overlay this concern with the wide scope of the term 'consideration', the complex valuation rules and the volume of litigation in other countries with respect to GST treatment on recovery or recharge of expenses, suggests that a detailed and exhaustive guidance from RMCD would be welcomed.

As there is a very thin line of differentiation between reimbursement and disbursement, it is very important for large businesses to distinguish the recharges made by the companies to its related parties and apply the correct GST treatment. Having dealt with this issue on numerous occasions, our team, along with the author, are well placed to assist clients that may be facing these concerns.

5. Publications and Media

Our Deloitte GST team have been active in assisting in spreading the GST message. Here are some articles/views that were published during the past month

- Radio Dialogue - GST and its effect on Malaysia's Inflation – BFM 89.9 The Business Station (18 August 2015)
  Radio interview featuring the Deloitte Malaysia Head of Tax, Yee Wing Peng that examines the need for a GST in Malaysia, how it can improve tax revenues for the country and also how the GST has impacted the retail industry. The full interview can be heard here.

- Published in the International Tax Review (23rd June 2015) 'Assessing the post-GST environment in Malaysia' by Senthuran Elalingam, GST Director which may be read here.

- Published in the Focus Malaysia (31st July 2015) ‘Property sector still grappling with GST issues’ by Tan Eng Yew, GST Executive Director and Senthuran Elalingam, GST Director which may be read here.

6. GST Dispute Resolution and Litigation.

As GST is new, there is still considerable uncertainty as taxpayers and Malaysian Customs are still trying to work out how the law applies to business transactions. To seek clarification or certainty on applicability of the GST law, we note that the tax payers are now resorting to dispute resolution. This uncertainty has contributed to over 200 appeals being filed before the GST Tribunal since June 2015.

Making a decision to appeal is not a simple one, and it is important that businesses not only understand their rights of appeal but also what alternative avenues exists. We understand that there are several appeals filed before the tribunal that have been rejected on application, due to various technical defects including the matters being not-appealable. It is therefore equally important that the taxpayers are well-versed with the technical and procedural requirements, before approaching the tribunal.

To ensure that our clients are adequately supported in GST Dispute Resolution Area, Deloitte have recently launched a GST Dispute Resolution offering, providing access to our team of experienced legal and GST professionals to assist you with any GST disputes. Our team has been assembled from GST and legal professionals who have practical in-depth experience in managing indirect tax disputes in Malaysia and abroad. To find out more about the team and what assistance we can provide, please click here for details.

We hope that you have enjoyed this edition of the GST Chat and for now, we bid you farewell.

For our past and upcoming events related to indirect taxes, please click here.

We invite you to explore other tax related information at:

http://www2.deloitte.com/my/en/services/tax.html

To subscribe to our newsletter, please click here.

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Contact Us

Kuala Lumpur Office

Robert Tsang

APAC & SEA GST Leader
robtsang@deloitte.com
(+65) 6530 5523

Tan Eng Yew

Country GST Leader
etan@deloitte.com
(+60 3) 7610 8870

Fan Kah Seong

Executive Director
kfan@deloitte.com
(+60 3) 7610 8859

Bruce Hamilton

Director
bruhamilton@deloitte.com
(+60 3) 7610 8844

Wong Poh Geng

Director
powong@deloitte.com
(+60 3) 7610 8834

Senthuran Elalingam

Director
selalingam@deloitte.com
(+60 3) 7610 8879

Bonny Wei Teik Teo

Associate Director
bteo@deloitte.com
(+60 3) 7610 8683

Irene Lee Ah Kam

Associate Director
irlee@deloitte.com
(+60 3) 7610 8825

Ha Kok Fei

Associate Director
kha@deloitte.com
(+60 3) 7610 8190

Shaishav Udani

Associate Director
sudani@deloitte.com
(+60 3) 7610 8683

Name	Title	Email Address	Telephone
Wendy Poh Lynn Chin	Senior Manager	wechin@deloitte.com	(+60 3) 7610 8163
Ankur Jain	Manager	jankur@deloitte.com	(+60 3) 7610 8659
Vivek Mehta	Manager	vivekmehta@deloitte.com	(+60 3) 7610 8575
Diamond Khanted	Manager	dkhanted@deloitte.com	(+60 3) 7610 8618
Jeet Oza	Manager	jeoza@deloitte.com	(+60 3) 7610 7827
Nicholas Lee	Manager	nichlee@deloitte.com	(+60 3) 7610 8361
Shaivya Panwar	Assistant Manager	shpanwar@deloitte.com	(+60 3) 7610 8618
Freya Ahuja	Assistant Manager	fahuja@deloitte.com	(+60 3) 7610 8767
Leong Wan Chi	Assistant Manager	wanleong@deloitte.com	(+60 3) 7610 8549
Annie Leong	Assistant Manager	kleong@deloitte.com	(+60 3) 7610 8170

Other branches

Name	Title	Email Address	Telephone
Johor Bahru **Susie Tan**	Senior Manager	susietan@deloitte.com	(+60 7) 222 5988
Evelyn Lee	Director	evelee@deloitte.com	(+60 4) 218 9913
Melaka **Terence Ng**	Associate Director	terenceng@deloitte.com	(+60 6) 281 1077
Ipoh **Terrence Mooi**	Senior Manager	tmooi@deloitte.com	(+60 5) 254 0288
Kuching & Kota Kinabalu **Kane Bong**	Manager	kbong@deloitte.com	(+60 8) 246 3311

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