Deloitte.

Malaysia | Tax, Indirect Tax | December 2015

Indirect Tax
Perspective = everything

GST Chat
All you need to know

Issue 7.2015

In this issue

Related links:

Other tax information

Contact us:

Deloitte Contacts

Greetings from the Deloitte Malaysia Indirect Tax team

Hello everyone and welcome to the last edition of GST Chat for the year. Some of you may be taking a break over the festive season but many will be picking up the pace in order to cater to the financial year end requirements. If you are taking a break, go safely and have a good break with your family.

2015 was the year that Malaysia finally introduced GST after many false starts. However, it quickly became clear that implementation was merely the start of the journey. Since April, we have seen countless amendments, both new and revised guidance and further concessions. The pace of change has continued this month, with more revised guides being released (discussed further below) and it will likely to continue into 2016 with a raft of amendments and other changes announced in the Budget coming into effect on 1 January. We sense that the pace won't change much next year, only the focus may shift.

As a great outcome to the end of what has been a long year, I would like to take this opportunity to congratulate our dispute resolution practice on its recent win before the Customs Appeal Tribunal. The appeal team led by Jeet Oza, was able to assist a pharmaceutical client in overturning a Royal Malaysian Customs Department (RMCD) decision on the tariff classification on certain over-the-counter pharmaceutical products. The details of the case are discussed further below, but it highlights that in this post-GST environment, RMCD continues to stay focused on duty and sales tax matters (pre-April transactions) in addition to GST.

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

- Customs have announced that they have collected over RM30billion in GST since April from over 400,000 GST registered taxpayers. The GST department has over 1,000 officers assigned to it.

- Dato' Subromaniam Tholasy (Deputy Director General for Customs) stated that they have currently 10 cases before the GST tribunal and several hundred investigations, but based on what we are seeing in the market place, there are quite a few more to come. The disputes so far have tended to be in relation to GST credit/debit notes not meeting requirements and businesses that have failed to update their systems to reflect changes in the zero-rating or exempt orders, and presumably charging GST incorrectly.

- The Deputy Minister of Domestic Trade, Cooperatives and Consumerism, Datuk Seri Ahmad Bashah Md Hanipah has said that to date a total of 1,759,385 checks have been conducted nationwide, and compound penalties of RM889,206 have been imposed on retailers under the Anti-Profiteering Regulations for profiteering.

While this gives you a sense of the activities that the Government have been undertaking, we hope that the articles below, and in our earlier GST Chat editions, will show you that we have not been relaxing since 1 April 2015. Indeed, as many of our clients will be able to attest, we have been hard at work on ensuring that the first year of GST passes as smoothly as possible.

We hope you enjoy our December edition, and from myself and the Deloitte team, we wish you a Merry Christmas and Happy New Year. We look forward to reconnecting in 2016.

Kind regards,

Tan Eng Yew
GST and Customs Country Leader – Deloitte Malaysia

1. GST technical updates

Tan, Wei Chuan
(GST Associate Director)
[Deloitte Penang]

Muhammad Hariz
(GST Semi Senior)
[Deloitte Kuala Lumpur]

Revised GST Guides

Malaysian Customs has issued updates for the following guides:

- Guide on Agents
- Guide on the Utility Industry (Electric)
- Guide on Agriculture, Fisheries and Livestock Industry
- Guide on Auction Services
- Guide on Postal and Courier Services (was previously included as part of the Guide on Web Hosting Services but is now issued as a separate guide with some amendments)
- Guide in Pre Tertiary Education
- Guide on Cooperatives

In most cases the amendments are set out in the Appendix to each Guide, though this approach has not been consistently followed by RMCD. Based on our review of the amendments, most are minor changes, but we note the following key changes:

Guide on Agents

- Additional wording has been inserted to cover the administrative process for when a foreign principal imports goods using a resident agent. The Guide states that the resident agent would be listed as the importer of record on the import documentation (K1 form) as “in the case of” the foreign principal. We note that this process was previously covered under item 7 of DG 2/2014.

Guide on the Utility Industry (Electric)

- A new paragraph has been inserted to give the Malaysian Customs view that bad debt relief would only be payable on taxable supplies where both the supplier and the customer are GST registered. This particular interpretation appears to be inconsistent with the intentions of the GST Law and is likely to have a wider ranging implications and create additional costs for businesses to comply. Whether the restriction is justifiable is also questionable.
- We recommend that you review your bad debt claims closely and assess what the impact is likely to be. We would be pleased to discuss the impact with you if that is required.

Back to top

2. GST – What do you need to address as a part of your year end?

Tan, Susie
(GST Senior Manager)
[Deloitte Johor Bahru]

Lee, Nicole
(GST Senior 2)
[Deloitte Ipoh]

As a continuation from last month, and the development of your Risk strategies, here is our second and final instalment on issues you need to focus on as part of your year-end processes.

- Intercompany recharges
  Businesses making year-end recharges (recovery of expenses) or cost allocations should consider the GST implications of these arrangements. Depending on the nature of the recharge and whether it constitutes a "reimbursement" or "disbursements", GST can apply.
  Other considerations include the 'valuation' of the recharge and whether a market value may need to be applied. In addition where the recharges are to offshore entities, you should consider whether such a recharge can be zero-rated.

- Zero-rated non-reviewable contracts
  Businesses that had taken advantage of the concession provided to non-reviewable long-term contracts under the GST transitional rules should take note of any upcoming 'review opportunities'. Under the transitional rules, contracts that certain prescribed conditions were eligible to be zero-rated. One of the critical conditions imposed was that should a 'review opportunity' arise, then the zero-rating would cease to apply.

  The question of what constitutes a 'review opportunity' can be difficult to identify, so take advice if you are uncertain – we can certainly assist, having seen where most of the pitfalls can occur. One of these is that contracts often have annual or year-end reviews, and care should be taken to determine whether such a review would create a 'review opportunity'.

- Projects/contracts spanning over year end
  For accounting reasons, businesses may seek to recognise income either in the current calendar year or the subsequent year. Whatever the preference, it is critical to note that the GST recognition principles differ from accounting principles, and that GST rules should be observed for GST reporting purposes. As RMCD may seek to reconcile financial statements with the GST reporting, it will be important to be in a position to justify the differing treatment.

- GST filing: Are you likely to breach the threshold for moving from a quarterly filing of GST returns to a monthly filing

Under GST law, the taxable period is determined based on the value of taxable supplies made i.e. if taxable supplies exceed RM 5 million then it should be monthly rather than quarterly. However, the question is “if my forecast turnover for next year is more/less than RM 5 million, what should I do? Do I need to change my filling period?” These are valid questions need to be considered regularly.

The GST law provides that for a change in taxable period, a notification needs to be made to RMCD, but it does not provide the time limit to notify. It is very important for businesses to project next year’s taxable supplies and to check whether they could breach the threshold of RM 5 million. If there is a strong likelihood, then a written notification needs to be made to RMCD for change in taxable period.

- Longer period adjustment for mixed suppliers and not entitled to claim full input tax credits
  Mixed suppliers at the end of each year are subjected to an adjustment known as an ‘annual adjustment’ or a ‘longer period adjustment’ for input tax credit on capital goods.
  Mixed suppliers are generally caught with the partial exemption rules whereby the residual input tax will need to be ascertained at each taxable period, it is important to note that the input tax claimed is merely a provision and has to be adjusted annually. Hence all the mixed suppliers at the year-end needs to be aware of adjustment to be made in second taxable period following the longer period. Should you have any difficulties with this adjustment, and how it should be calculated, we would be pleased to assist.

- Bad debt adjustment
  Throughout the year we have seen lot of developments on the conditions for claiming bad debt relief, lot of guidance have been issued on bad debt adjustments by RMCD. However, even after guidance issued by RMCD there are still ambiguities with regards to the claiming of bad debt relief.

  At the year-end it is important to check whether measures taken to claim bad debt relief have been properly undertaken, and consider how we can improve on them.
  - Relook at your debtor ageing balances at year end, and consider any possible adjustment for discounts or year-end payment incentive, etc.
  - Maintain a checklist for the type of actions to recover the debt that need to be taken;
  - Maintain a record of potentially doubtful debts in order to keep track of them on a monthly taxable period basis, and follow up on the need for notification to RMCD.

If you would like us to review your policies for GST purposes and the adherence to them, we would be pleased to provide the required level of guidance

Back to top

3. Reporting of Exempt Financial Supplies – why is it important and difficult at the same time!

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

Vivek Mehta
(GST Manager)
[Deloitte Kuala Lumpur]

The question of how to value financial services in a GST context has always been difficult to answer. The GST is intended to apply on a 'value add' principle, but how do you determine the value added for complex financial instruments such as derivatives or swaps? Due to the difficulty in identifying and ascribing a value, the majority of GST/VAT jurisdictions exempt financial services for GST, and Malaysia is no different.

However, for GST reporting purposes, RMCD still require businesses to report financial services in their GST Return, even where those financial services are incidental in nature. At present, there is very limited guidance on how businesses should be valuing financial services for reporting purposes, and as a consequence there have been diverging positions by GST registrants.

For those not operating in the financial services sector, it is purely a reporting issue with no impact on input tax recovery, though there is a risk that penalties could be imposed for the filing 'incorrect returns'. On the other hand, for those in the financial services sector, the values reported can directly impact the amount of input tax that can be recovered. Even the banks that benefit from a concessional fixed input tax recovery rate are impacted, as this rate is reviewed annually based on reported figures. If there is no consistency in the way figures are reported, it would make it very difficult to arrive at a rate that is representative for the sector and may risk pushing the rate to a figure much lower than it should be. For those outside of the major banks (e.g. securities houses, Labuan banks), the issue is even more current as it is impacting each and every return that needs to be filed.

To ease the administrative concerns for GST registrants, there should be greater effort taken to agree on an approach to valuation. Due to the complexity of the sector, it makes sense for this to be driven by business as opposed to the authorities who are still learning the nuances of the industry. Ultimately, greater consensus brings greater clarity and reduces the risk for all parties involved.

One thing that RMCD may wish to consider, is removing the requirement for non-financial institutions to report financial services. As we noted earlier, this is merely a reporting requirement and has no impact on the output or input GST figure. It creates an unnecessary cost for business and should be done away with.

[Back to top](#)

4.Customs Tribunal Appeal – Classification of pharmaceuticals products

Jeet Oza

(GST Manager)

[Deloitte Kuala Lumpur]

The RMCD has recently initiated a series of enquiries and audits on a number of non-GST related issues, including the tariff classification of goods.

There has been a specific focus on pharmaceutical and health care businesses engaged in importing or selling products such as medicaments and medicines that attract a nil rate of duty or tax (GST and previously sales tax). RMCD has taken the view that some of these products are not medicaments or medicines, but fall into one of the taxable categories (e.g. nutritional or dietary supplements).

The industry has generally treated these items as medicaments, but RMCD took the view that some of these were dutiable and taxable as food supplements. There is sufficient ambiguity in the Law to enable RMCD to form these views, and depending on the circumstances, there is a possibility that they have a reasonable case.

Having successfully defended a pharmaceutical company in just such a position, however, we can attest to the fact that RMCD are not necessarily correct when they take this position.
We recommend that impacted businesses review their product classifications to ensure that the positions taken are supportable. As this can be an expensive outcome from an incorrect classification, we would suggest that an independent or third party review may be required, and having recently gone through the process successfully, Deloitte Malaysia is well placed to assist any such businesses.

We hope that you have enjoyed this edition of the GST Chat and for now. See you again in the next month edition!

For our past 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.
Back to top

Contact Us

Kuala Lumpur Office

Robert Tsang
South East Asia Indirect Tax Leader
robtsang@deloitte.com
(+65) 6530 5523

Tan Eng Yew
Country GST & Customs Leader
etan@deloitte.com
(+60 3) 7610 8870

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

Senthuran Elalingam
Asia Pacific Indirect Tax Clients, Markets & Industries Leader
selalingam@deloitte.com
(+60 3) 7610 8879

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

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

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
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
Leong Wan Chi	Assistant Manager	wanleong@deloitte.com	(+60 3) 7610 8549

Other branches

Name	Title	Email Address	Telephone
Johor Bahru **Susie Tan**	Senior Manager	susietan@deloitte.com	(+60 7) 222 5988
Penang **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

Back to top

Deloitte Indirect Tax Homepage | Add Deloitte as a safe sender

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