



Indirect Tax

GST Chat

All you need to know

Issue 12.2016

In this issue

- 1 [GST Technical Updates](#)
- 2 [Property Developers: Recovery of GST on infrastructure costs from 1 January 2017](#)
- 3 [Supplies within or between Designated Areas- to claim or not to claim?](#)
- 4 [Changes to the Customs and Excise Duties Orders and Regulations](#)

[Other tax information](#)

[Deloitte Contacts](#)

Greetings from the Deloitte Malaysia Indirect Tax Team

Hello everyone and welcome to the December edition of GST Chat!



As expected, the Malaysian Finance Bill 2016 has been passed by both houses of Parliament, without amendment. This will include changes to the rules applied to reverse charge, free zones and the enhanced penalty provisions. If gazetted before the end of 2016, the changes will take effect on 1 January 2017. Until then, the Finance Bill 2016 still remains a Bill (if gazetted after 1 January 2017, its provisions that are effective 1 January 2017 would be considered having 'retrospective' effect).

This month's edition marks the last edition of GST chat for the year 2016 and what an eventful year it has been. We have seen many amendments to the GST rules and we have seen a more proactive Royal Malaysian Customs Department (RMCD) in its approach towards GST compliance audits. What we have learnt from these audits are that the businesses who remain focused on GST have managed to minimise errors. Whilst others who failed to comply have been required to pay back-taxes and penalties.

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

- The Auditor General had stated that the special refund scheme for the Goods and Services Tax was properly conducted by RMCD. However he noted some weaknesses, including inefficient management of special refund claims and lax reviewing and approving of applications.
- The Women, Family and Community Development Ministry is simplifying the procedures for people with disabilities to obtain GST relief for purchase of aid effective January 1 next year.
- The Finance Ministry has increased the excise duty for locally-produced hard liquor by 150%, which is expected to affect sales domestically.
- Cosmetics millionaire Datuk Seri Hasmiza Othman was imposed a fine of RM80,000 by the Sessions Court after pleading guilty to 16 counts of failing to submit her GST returns.

As we welcome 2017, we at Deloitte are expecting more of the same with more changes and more audits. However, rest assured that the GST chat team will continue to keep you updated with the latest developments in GST and Customs throughout 2017.

As always, do contact us if you have any queries, comments or require our assistance.

Till then, best wishes for the holiday season and Happy New Year from the Deloitte GST team. See you in 2017!

Kind regards,

Tan Eng Yew

GST and Customs Country Leader – Deloitte Malaysia

1. GST Technical Updates

Revised Guides

- Employee Benefit Guide
- Input Tax Credit Guide
- Tax Invoice and Records Keeping Guide – as at 5 December 2016



Cheong Yit Hui

Manager
Kota Kinabalu office



Kelvin Lim

Senior
Kota Kinabalu office

[Employee Benefit Guide – as at 10 November 2016](#)

The RMCD has recently updated Appendix 1 of the guide to clarify that incidental exempt supply should be in accordance to Regulation 40 of the GST Regulations 2014, in order to allow the claiming of input tax.

Deloitte comments

The addition is merely to clarify the definition and scope of incidental exempt supplies and is covered in the list of financial supplies provided in Regulation 40.

[Input Tax Credit Guide – as at 23 November 2016](#)

Example 5 has been updated to emphasize the applicability of reverse charge, when the imported services is *consumed* in Malaysia. This is to add clarity to the interpretation of imported services.

In the section on blocked input tax, the definition of “passenger motor car”, has been expanded to mean a vehicle which is legally licensed and constructed, or modified or adapted for the purpose to carry or capable to transport and is commonly available or used on public roads in Malaysia. A passenger motor car should have not more than nine seats, including the driver and an unladen weight of not more than three thousand kilograms.

In addition, a new paragraph 11 was added to clarify that the input tax incurred on insurance premium, petrol, diesel, NGV, parking and battery certified by a competent body recognised by the Director General of Road and Transport Department for use in electric motor car, is claimable if it is incurred for a passenger motor car registered in his own name. If the passenger motor car is owned or registered in the name of another entity, the input tax incurred for the aforementioned expenses is still claimable, except for the input tax on insurance premium. Nevertheless, the registered person must fulfil the following conditions:

- (a) The passenger motor car is used in his business and attributable to the taxable supply made by him;
- (b) The expenses are reimbursed and accounted as his business expenses; and
- (c) Holds a valid tax invoice on the expenses acquired.

The paragraph on motor cars used for business purposes, but may not be approved by RMCD for claiming input tax (i.e. assigned car, pooled car, car used in sales and marketing and demo or display car used to promote new model and usually display in a show room) was removed in the amended guide.

Paragraph 12(d) of the amended guide has stated that any input tax on expenses for use of club facilities such as green fees, buggy fees, rental of golf bag locker and dining at the club restaurants is claimable despite the fact that the joining fee, subscription fee, member fee and transfer fee are disallowed as input tax credit.

Input tax incurred on goods, including capital goods prior to registration (both voluntary and mandatory registration including late registration), may be claimed as input tax credit for the goods he holds at the time of registration based on the amount approved by RMCD. The input tax on capital goods held on hand can be claimed within 6 years from the date that the asset is acquired. In the earlier guide, a registered person was allowed to claim input tax on assets held on hand based on book value within 6 years from the date of registration, irrespective of when the assets is acquired; in the case of land and building, input tax claim on the open market value of the assets or book value, whichever is lower.

Deloitte comments

The clarification on input tax that is claimable on the vehicle running expenses is very much welcome. This also reinforces the interpretation that input tax will be disallowed only when incurred in relation to the purchase or importation of the car, and the repair, maintenance and refurbishment in connection to the car. The removal of the paragraph on the specific type of passenger motor cars which may not be approved by the RMCD as business use car, could be a sign that the RMCD is more open to consider on case-by-case basis possibly due to a number of appeals from the industry. We would encourage businesses to apply for approval from RMCD in order to allow input tax claims on passenger cars that are used exclusively for business purposes.

With the amendment on the input tax that is claimable on assets purchased pre-GST registration, it is implied that the RMCD intends to evaluate and determine the appropriate amount of input tax claim on assets based on the merit of each case. While this could be an understandable move, it may add difficulty to businesses to justify the value of assets at the point of GST registration and claim the input tax, if RMCD proposes otherwise.

[Tax Invoice and Records Keeping Guide – as at 5 December 2016](#)

New FAQ No.21 was added in the amended guide to answer the common question raised on the foreign exchange rate to be used when issuing a credit note. The RMCD has indicated that the same exchange rate used in the corresponding tax invoice should be used in the event that a credit note is subsequently issued.

Deloitte Comments

We agree with this approach and it is consistent with the practice in other countries.

2. Property Developers: Recovery of GST on infrastructure costs from 1 January 2017



**Wong Poh
Geng**

Director
Kuala Lumpur office

As of 1 January 2017, the rules relating to the handover of infrastructure, such as public amenities and utilities by a property developer, to the Government or approved bodies will change. Whilst previously, these were treated as taxable supplies subject to 'relief', under the new rules, they will be treated as "neither a supply of goods nor a supply of services". The immediate implication of this change is that the developer would no longer be entitled to claim, in the full, the GST paid on costs to construct the infrastructure that is being handed over. However, the issue of whether this is a full or a partial denial of input tax credits is still unclear.

According to recent statements made by the RMCD, the view of the Director General of Customs is that the costs incurred in relation to the infrastructure now relate to an 'out of scope' supply and as a consequence, no GST would be recoverable at all. This would equally apply to both commercial and residential developments, and is likely to be a significant cost.

The phrase 'out of scope' is one that is used very commonly, but it is not a term that is defined in the GST Act. It is also a commonly used term in other GST / VAT jurisdictions and it is intended to mean those supplies that fall outside of the scope of the GST. This can arise where some of the basic conditions of GST are not met, such as there is 'no consideration received', there is no 'place of supply in Malaysia', the supplier is not in business, or they are not GST registered.

The characterization of the type of supply is important for determining whether GST can be claimed or not. Section 39(1) of the GST Act, for a large part, only allows a taxpayer to recover input tax to the extent it relates to making taxable supplies (including zero-rated and disregarded supplies). It does provide for 'out of scope' supplies which are therefore entitled for GST input tax credits.

However, under the new rules, it is arguable that there is actually no supply made at all, i.e. the rules deem the entire activity to be a "non-supply". Some of you may ask, is there any difference? Well, our GST borrows heavily from foreign GST / VAT Law and these concepts have been discussed at length in the European courts. Firstly in the Court of Justice of the European Union (CJEU) case of Abbey National plc v C & E Commrs, the CJEU considered whether input tax credits were claimable in relation to a transfer of going concern (TOGC). A TOGC under the European VAT Law, as is the case in our GST Act, is regarded as a 'non-supply'. The CJEU took the view that the costs incurred by the seller in relation to transferring the business should be considered as part of its overheads and be claimed according to the nature of the seller's business (i.e. wholly taxable, wholly exempt or mixed supplier). In another CJEU case, Kretztechnik, the CJEU held that an issue of shares is not a supply, and the input tax on costs relating to the share issue can be claimed to the extent of the business's taxable supplies.

If such views can be applied to the case of property developers dealing with infrastructure, it would mean that the infrastructure costs would be treated as overheads / residual costs and be recoverable based on the overall project. For a commercial development, this would be fully recoverable, for a residential development there would be no GST recovered at all, and for a mixed development it would be based on the apportionment method used. Whilst this would still mean the developer is faced with more costs than before, it does reduce the impact.

Although foreign case law may not have precedence in Malaysia, there have been numerous instances where the Malaysian courts have considered the decisions of foreign courts. At the very least, the existence of these alternative views should form the basis for further discussions with the RMCD to see if their initial views can be changed.

3. Supplies within or between Designated Areas– to claim or not to claim?



Senthuran
Elalingam

Executive Director
Kuala Lumpur office



Sherilyn Shalini

Senior
Kuala Lumpur office

In comparison to its brother and sister GST / VAT systems in other parts of the world, the Malaysian GST has some of its own unique concepts. In addition to common terms like standard rated, exempt and zero-rated, we have terms such as 'disregarded' and 'relief'. For the GST rules covering the designated areas (DA) of Tioman, Langkawi and Labuan, we also have another unique phrase of "no tax shall be charged on any taxable supply". Previously, we would have classed these as 'disregarded' supplies as well, but from recent discussions with the RMCD, we understand that the term 'not subject to GST' is more appropriate. Though we note that in practice, most taxpayers still classify these as disregarded supplies and use the tax code "GS" that was prescribed in the Account Keeping Guide released by the RMCD.

In short, what does this all mean? Firstly, as the phrase suggests, you need not charge or collect GST. But what else? Is there a requirement to issue tax invoices, and report amounts in the GST-03? Is the supplier able to claim input tax credits on purchase? The short answer is yes, no and yes.

Supplies within a DA are still classed as taxable supplies and it is simply that "no tax" is charged. The Law still requires tax invoices to be issued for taxable supplies (excluding zero-rated supplies), and the RMCD have also taken this view. Failing to issue a tax invoice for these supplies could give rise to a penalty of up to RM 20,000 per invoice.

On the reporting side, the GST-03 does not require the reporting of such supplies, as there are no columns covering DA supplies or supplies 'not subject to GST'. Effectively, it is a non-reportable item.

In relation to claiming input tax credits, initially some had viewed supplies within a DA to be 'out of scope' and therefore not entitled to input tax recovery. However, this view would not be correct. As we have mentioned above, DA supplies are still taxable supplies - just that they are taxable supplies with no requirement to charge tax. The GST Act allows input tax credits to be claimed on purchases relating to those supplies, as section 39(1)(a) states that input tax is allowable in relation to "any taxable supply, including a taxable supply which is disregarded under this Act"(emphasis added). Recently, the RMCD have confirmed this interpretation and that input tax is indeed claimable.

Whilst the above currently only applies to the DA, the phrase "no tax shall be charged on any taxable supply" is also included in the proposed Law covering the new 'Free Zones'. The confirmation that input tax is available on these types of supplies is a welcome development for those operating in the Free Zones, as this Law will take effect from 1 January 2017.

4. Changes to the Customs and Excise Duties Orders and Regulations

Amended Orders

- Customs Duties (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) (No. 4) Order 2016
Customs (Amendment) (No. 5) Regulations 2016



Nicholas Lee

Manager
Kuala Lumpur office



Emeline Tong

Supervisor
Kuala Lumpur office

[Amendments to the operational certification procedure for the rules of origin for goods under the ASEAN Trade in Goods Agreement \(ATIGA\)](#)

The First Schedule to the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2012 has been amended where 'Annex 8 – Operational Certification Procedure for the Rules of Origin under Chapter 3' has been replaced. Notable changes include that the electronic Certificate of Origin (e-Form D) for ATIGA may be allowed and accepted in lieu of Form D in paper format and the e-Form D may be forwarded directly to the importer by the exporter or by the National Single Window (NSW) of the importing member state via the ASEAN Single Window (ASW).

The ASW is a regional initiative that connects and integrates NSWs of ASEAN member states. The objectives of ASW are to provide a secure IT infrastructure and legal framework that allows trade, transport and commercial data to be exchanged electronically among government agencies or trading communities in ASEAN.

The amendment above is effective on 2 December 2016.

Amendment Order

Customs Duties (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) (No. 4) Order 2016 [P.U. (A) 305/2016]

[Controls introduced for the export of duty unpaid cigarette and intoxicating liquor from Labuan, Langkawi or Tioman to places outside Malaysia](#)

The Customs Regulations 1977 has been amended to introduce the following controls on the exports by sea or by road of duty unpaid cigarette and intoxicating liquor (the Goods) from Labuan, Langkawi or Tioman to places outside Malaysia:

- The owner of the Goods or his agent must submit form Customs No. 2 to the relevant customs official at the place of export;
- The Goods must be moved in ISO containers; and
- The transportation of the Goods must be under the supervision of the proper officer of Customs.

For export by road, a security may be required to be furnished to the Customs.

The above has come into effect on 17 November 2016.

Amendment Order

[Customs \(Amendment\) \(No. 5\) Regulations 2016](#) [P.U. (A) 294/2016]

For our 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](#).

Contact us



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



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



Chandran TS
Ramasamy
Director
ctsramasamy@deloitte.com
 (+60 3) 7610 8873



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

Name	Title	Email address	Telephone
Wendy Chin	Senior Manager	wechin@deloitte.com	(+60 3) 7610 8163
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 Offices

Name	Title	Email address	Telephone
Johor Bahru Susie Tan	Senior Manager	susietan@deloitte.com	(+60 7) 222 5988
Penang Everlyn Lee	Director	evelee@deloitte.com	(+60 4) 218 9913
Melaka Vincent Ng	Assistant Manager	ving@deloitte.com	(+60 6) 281 1077
Ipoh Terrence Mooi	Senior Manager	tmooi@deloitte.com	(+60 5) 254 0288



Get in touch



Deloitte

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

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/my/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 225,000 professionals are committed to making an impact that matters. Deloitte serves 4 out of 5 Fortune Global 500® companies.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

About Deloitte in Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

© 2016 Deloitte Tax Services Sdn Bhd

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.