



GST Chat

All you need to know

Issue 12.2017

- [1 GST Technical Committee Meeting update](#)
- [2 GST Case Appeal Summaries](#)

[Deloitte contacts](#)

Greetings from Deloitte Malaysia's Indirect Tax Team

Greetings everyone and welcome to the December instalment of GST Chat.

Time flies and we suddenly realise that we are drafting the last edition for the year! It has been an eventful year for GST as we have seen many developments in industry-specific issues, policy issues and GST disputes cases to name a few. To top it off, the Royal Malaysian Customs Department ("RMCD") has issued the long awaited Public Rulings (PR), with four issues published to date. We will continue to analyse and share our thoughts on new PRs in our future editions.



Here are some recent news that may interest you:

- The Second Finance Minister Datuk Seri Johari Abdul Ghani has recently announced that a commercial plane purchased by Malaysia Airlines will be the first "big-ticket item" to receive GST relief when imported, as announced in the Budget 2018 speech.
- In a written reply, which was circulated to the media during the Dewan Rakyat sitting on 20 November 2017, the Ministry of Finance explained that the current GST rate of 6% was fixed after a detailed study was made to ensure it was at the most appropriate rate for Malaysia.

As we come to the tail end of 2017 and welcome 2018, we would like to thank you, our readers, for your continuous support of our monthly newsletter. We appreciate the views and feedback received from you throughout the year and rest assured we will continue to bring you the latest updates in the GST space.

The Deloitte GST team would like to wish you and your loved ones "Seasons Greetings and a Happy New Year".

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 meeting on 13 October and 30 October 2017 to deal with several technical issues where clarification was needed. The meeting minutes were circulated in recent months. Based on the review of the minutes, several issues still remain unclear and need to be addressed by the RMCD.

As a continuation from our previous edition, we have summarised below some of the important issues raised along with RMCD's responses.

Input tax claims on simplified tax invoice

There are situations where input tax claimed on simplified tax invoice were rejected on the basis that the issuance of simplified tax invoice by the supplier was not approved by the RMCD.

The RMCD has clarified that input tax claimed by a buyer who holds a simplified tax invoice which is not covered under item 5 of DG Decision 1/2015 and not approved by the DG under Section 33(3) is not allowed.

Item 5 of the DG's Decision 1/2015 states that the DG pursuant to Section 33(3) (a) of GST Act gives his approval (blanket) to any registered person who makes a supply to end consumer (not businesses), to exclude the following particulars in their tax invoices:-

- a) The word tax invoice;
- b) The name and address of the recipient; and
- c) The total amount payable exclusive of tax.

Deloitte Comments

The RMCD's feedback appears to suggest that an application to the RMCD for the issuance of simplified invoice must be made by the supplier and approval must be obtained prior to the issuance of simplified invoice notwithstanding the approval (blanket) provided under Item 5 of the DG's decision 1/2015.



Vincent Ng
Manager
Melaka Office



Tiffany Lee
Tax Assistant
KL Office



Hykarl Sufardi
Tax Assistant
KL Office

The RMCD's stand to disallow any input tax claimed by businesses based on simplified tax invoices that are not approved by the DG is unreasonable as it is impractical to require businesses to verify and obtain confirmation that the simplified tax invoice issued by the supplier is approved by DG. The avenue to do so is also unclear.

To avoid the potential disallowance of input tax claims on simplified invoice, businesses should consider obtaining full tax invoices instead of simplified invoices. Businesses that issue simplified invoices are encouraged to obtain approval from the RMCD to issue simplified tax invoice, to avoid complications, now that the policy on such is unclear.

GST implication on transfer of property by a deceased GST-registered property investor

The RMCD has clarified that the transfer of real property from a deceased property investor to a beneficiary would be treated as a deemed supply under Para 5(1) of the First Schedule of the GST Act 2014. As such, GST must be accounted for, if it is a commercial property. The RMCD also confirmed that there is no provision to state that such a transfer is not a supply and is currently working on a Public Ruling to cater to this issue.

Deloitte Comments

To the extent the property investor is GST-registered and the commercial property constitutes his business asset, we would agree with the RMCD's view that, where it is a commercial property, this would fall under the ambit of what is considered a deemed (taxable) supply under Para 5(1) of the First Schedule. The GST on the deemed supply should be accounted for by the personal representative of the deceased GST-registered property investor.

Disposal of Capital Assets subject to GST

S.20 (6) (a) of the GST Act 2014 provides that in determining the total value of taxable supplies threshold of RM500,000 for GST registration purposes, the sales of fixed assets due to cessation of business shall be excluded. This is effective 1 January 2017 where prior to that, all sales of fixed assets or capital assets were excluded from the threshold.

Sale of capital goods including sale due to relocation of business, downsizing, asset replacement, financing arrangement, etc. would now be included in the determination of threshold for registration for GST. Small businesses, e.g., SMEs need to be aware that the threshold for GST registration is RM500,000 inclusive of the above sale of capital goods.

As to how to determine whether the sale of assets is due to cessation of business, RMCD will treat each cessation of business on a case to case basis.

Deloitte Comments

Small businesses who are currently not GST-registered may be liable to be registered in the event of a sale of capital assets that breach the threshold for GST registration. Registration of small business would result in additional administrative burden as well as cost including certain practical issues impacting the small businesses.

The RMCD should also clarify the meaning of "cessation of business", e.g., temporary versus permanent cessation and what documents are required to prove such cessation business.

Payment of Tax

Under Regulation 65(2) of the Goods and Services Tax Regulations 2014, the payment of tax, penalties and other charges by any cheque, bank draft, postal order or money order shall not be deemed to have been received by the Director General (DG) until such amount is duly paid to the DG and where it is made through the bank, until such amount is lodged to the credit of the DG.

In the event where businesses are unable to make the necessary payment within the stipulated period (thus incurring a penalty), the RMCD clarified that there is an administrative concession to remit the penalty where the registrants can provide evidence that the cheque was paid to the bank on or before the due date. The RMCD further added that the proposal to amend Regulation 65(2) of GSTR 2014 would be reviewed.

Deloitte Comments

The concession announced above is a welcome move as it helps to alleviate the operational burden on businesses and increased costs associated to unintentional late payment of GST. Nevertheless, businesses should review their existing arrangements in preparing their GST-03 returns to ensure that GST payment is made well before the stipulated deadlines. In the event of appeal for remission of the penalty, the application should be submitted to the controlling RMCD station.

GST Implications arising from salary deduction from foreign workers, specifically for accommodation costs and immigration levy under the Minimum Wage Policy

In line with the implementation of the Minimum Wage Policy by the Government, employers are allowed by the Government to deduct certain expenses from the foreign workers' salary.

The table below reflects these deductions and the RMCD's opinion on the GST implication:

Deduction from Foreign Workers' Salary	GST Implication of the deduction
Accommodation cost not exceeding RM50 per month	<p>Exempt supply arising from salary deduction for accommodation cost, as landlords enter into direct contract with the employers.</p> <p>Company may claim the input tax incurred related to the exempt supply if the company fulfils the De Minimis Rule.</p>
Foreign workers levy (where employment pass is under the name of the Employer)	Reimbursement (subject to 6% GST) on recovery of the levy payment paid on behalf of the foreign workers. Receipts issued by the Immigration Department are in the name of the Employer (not the individual foreign worker).

Deloitte Comments

While the GST treatments are in line with the law, it poses practical issues to the businesses that may become mixed suppliers and also affect those with Approved Trader Scheme (ATS) licence.

In view of the fact that GST should not be an additional cost to business and, and the fact that Malaysia industries rely heavily on foreign workers, we are of the view that the RMCD should re-consider to allow the treatment of recovery for accommodation cost as incidental exempt supplies, as the quarters are more of a necessity than intention to derive business income. This should also not affect the conditions for ATS licence.

Reverse Charge

In the technical meeting, the RMCD has confirmed that withholding tax will be subject to reverse charge GST. However, the manner of calculation is yet to be confirmed (i.e., should the value be 'grossed up' or otherwise). The GST treatment will be incorporated in the GST General Guide upon finalisation by the RMCD. In addition, the RMCD did not indicate a tentative date as to when it will be finalised.

Deloitte Comments

We understand that the RMCD is leaning towards the view that where the Malaysian entity chooses to 'bear' the cost of withholding tax on a service fee paid to a non-resident, reverse charge GST should apply on the amount borne (i.e., the service fee should be 'grossed up' by the amount borne).

Return of exported goods to overseas

GST-registered business may return certain goods to an overseas supplier due to warranty, goods exchange, goods return or temporary exported for repair. Such movements of goods overseas do not constitute a supply as there is no sale and the business does not expect any consideration in return.

The RMCD has provided feedback that the value of all exported goods, including the above goods returned to overseas supplier, has to be declared in Field 11 of the GST-03. This appears to be in line with the requirement to complete K2 form for such movement of goods overseas.

Deloitte Comments

As the RMCD will review the GST-03 submitted, taxpayers should ensure that proper documentations are in place to support the value declared in Field 11 of the GST-03 during a GST audit by RMCD.

The word "Tax invoice" is stated in the Simplified Tax Invoice

The DG pursuant to Section 33(3) (a) of the GST Act 2014 gives his approval (blanket) to any registered person who makes a supply to end consumer (not businesses), to exclude following particulars in their tax invoices:-

- a) The word 'tax invoice';
- b) Name and address of the recipient;
- c) The total amount payable exclusive of tax.

The RMCD has clarified that a simplified tax invoice can still have the word "tax invoice" stated in a simplified tax invoice. Such simplified "tax invoice" will still be given the same treatment as an ordinary simplified tax invoice (without the word "tax invoice") if it complies with DG Decision 1/2015 (item 5) and approval in writing from DG is obtained for the issuance of the simplified tax invoice

Deloitte Comment

With the feedback presented from the RMCD above, companies should check and ensure that the necessary approval from the DG for the issuance of simplified tax invoice has been obtained.

Validity of Tax Invoice

In order to be eligible for input tax credit, the GST-registered person must hold a valid tax invoice. A valid tax invoice should contain the GST-registered person's full name and address as registered with the RMCD. The RMCD's approval is required should the GST-registered person chooses to use the abbreviated company's name on the tax invoice when making purchases.

Deloitte Comments

The approval application process would only create additional administrative work for the RMCD and businesses. The RMCD should adopt a pragmatic approach to allow tax invoice with recipient's name and address that is reasonably recognisable as the company, for the purpose of input tax claiming. The RMCD can conduct audit on suspicious tax invoice used for input tax claims.

Issuance of Tax Invoice

When a GST-registered person fails to include its customer's name and address in the tax invoice, the RMCD is of the view that the GST-registered person failed to issue tax invoice containing the prescribed particulars, and hence is non-compliant under subsection 33(2)(b) of the GST Act 2014.

Deloitte Comments

The RMCD should view this on case-by-case basis. In practice, a customer, in some cases, may be reluctant to provide the company's name and address to be included in the tax invoice, and without approval to issue simplified tax invoice, the GST-registered supplier would resort to issue one without the particulars. It would not be fair to penalise the registered person for this.

Transaction of Members within Group

Under group registration, in the circumstances where a member of a group provides loan to another member of the group, the interest income received from the member should be disclosed in field 12 (total value of exempt supplies) of the representative member's GST return.

Deloitte Comments

We agree with the RMCD's view that the incidental exempt financial supplies should be reported in field 12 of the representative member's GST return, as according to the GST Act, only taxable supply of goods or services by a member of the group to another member of the group is disregarded.

Relief Supplies

The relief from charging or payment of tax on goods shall take effect in respect of goods supplied by a registered person, where the relief is subject to the production of a certificate, at the time the certificate is produced to the registered person.

If a supply is made under an agreement for a period or progressively, the GST relief certificate can be issued to the supplier at each progressive supply. For the supply of utility, the certificate is allowed to be issued once a year to the supplier. For the supply without a contract, the certificate must be issued to the supplier based on either the time the goods is removed, payment is received or tax invoice is issued.

The RMCD has clarified that it is not the supplier's responsibility to verify the validity of the certificate as in whether it is signed by a designated person or not.

Deloitte Comments

We agree that in fairness, it should not be the supplier's responsibility to verify the validity of the GST relief certificate produced by the buyer. Nonetheless the supplier should exercise due diligence in ensuring the certificate of GST relief is bona fide.

2. GST Tribunal Case Appeal Summaries

Late Registration Penalty

On 16 April 2015, the Appellant (taxpayer) applied to be registered under section 21 when it signed a contract worth RM 600,000.00 on 14 April 2015, which was dated 31 March 2015.



Lim Chong Wei
Tax Assistant
KL Office

The RMCD approved the application and the effective date of the registration was 16 April 2015. However, in the letter dated 24 May 2015, the RMCD imposed a penalty of RM1,500.00 for late registration without giving any reason.

The Appellant applied to be registered on 16 April 2015. Therefore, it does not matter if the date of the agreement contract was dated 31 March 2015 or was signed on 14 April 2015, the RMCD should not in the first place impose any penalty for late registration because the registration was done within 28 days from the end of the month, within the period allowed by the Act.

The Respondent (RMCD) agreed to waive the penalty of RM1,500.00 on the Appellant.

Margin Scheme

The Appellant (taxpayer) is in the business of buying and selling second-hand vehicles and registered under Section 20 of the GST Act 2014.

As a second-hand vehicle dealer, the Appellant is eligible to apply for the margin scheme under Section 59 of the GST Act. The Appellant applied for the scheme via Taxpayer Access Point (TAP) System on 20 May 2015 and the approval was granted on 29 May 2015.

On 31 May 2015, the Appellant submitted the GST Form 03 for taxable period April 2015 and paid GST amount of RM5,258.52. According to the Appellant, if the formula of the margin scheme is taken into consideration, the amount of GST to be paid to the RMCD for that month is only RM262.84. As such, the Appellant asked for the refund of RM4,995.68.

The Tribunal decided that the Appellant has no right to the refund because the approval for the marginal scheme is only granted on 29 May 2015, to be applied prospectively. The appeal was dismissed and DG's decision upheld.

De-registration of GST Account

The Appellant (taxpayer) is in the business of providing beauty care services and selling beauty products. The Appellant applied to be registered voluntarily with the threshold amount of RM303,000.00 on 24 December 2014; the application was approved and the effective date of the registration was 1 April 2015.

On 23 July 2015, the RMCD received the Appellant's application to de-register under Section 26 of the GST Act.

The appeal was dismissed on following reasons:-

1. In this case, the Appellant has made the application to de-register within two years from its effective date of a voluntary registration;
2. The Appellant is still operating and is still making taxable supplies; and
3. The Appellant's output tax records and the Appellant's payments to RMCD shows that the Appellant has no problem to fulfil its obligation as a GST registrant.

Late Registration Penalty

On 4 March 2015, the Appellant (taxpayer) applied to be registered via Taxpayer Access Point (TAP) by declaring the threshold amount of RM200,000.00. On 9 April 2015, the Appellant's application was rejected on the ground of unreasonable taxable amount.

On 21 May 2015, the Appellant applied for the rejection to be reviewed and subsequently on 9 October 2015, RMCD allowed the Appellant to resubmit the application.

On 11 October 2015, the Appellant reapplied to be registered via Taxpayer Access Point (TAP) by declaring the taxable supply amount of RM2,882,880.00 indicating that the threshold was met on 22 March 2015. The Appellant had successfully registered on 1 April 2015. However, the RMCD imposed a late registration penalty of RM10,500.00 on the basis that the Appellant only apply for registration on 11 October 2015.

The Tribunal decided that 4 March 2015 has to be taken as the date of application to be registered under GST Act 2014 as the application was made via TAP and the registration form does not specify or differentiate between normal registration and voluntary registration.

The Tribunal decided that based on the facts of this case, it is clear that the RMCD allowed for the application to be reviewed and when the RMCD allowed the review on 9 October 2015, the decision shows that the original application to be registered on 4 March 2015 is allowed. The only difference between the two registrations is the threshold amount declared. Besides, the second application is based on the original application on 4 March 2015. The Tribunal allowed the late registration penalty to be set aside.

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



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



Irene Lee

Associate Director

irlee@deloitte.com

+603 7610 8825



Wendy Chin

Senior Manager

wechin@deloitte.com

+603 7610 8163



Nicholas Lee

Senior Manager

nichlee@deloitte.com

+603 7610 8361

Name	Email address	Telephone
Leong Wan Chi Manager	wanleong@deloitte.com	+603 7610 8549
Naresh Srinivasan Assistant Manager	nasrinivasan@deloitte.com	+603 7610 7862
Atika Hartini Suharto Assistant Manager	asuharto@deloitte.com	+603 7610 7986
Emeline Tong Su Wei Assistant Manager	emtong@deloitte.com	+603 7610 8733
Wendy Grace Wong Assistant Manager	wendygwong@deloitte.com	+603 7610 8795

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.

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 to learn more about our global network of member firms.

Deloitte provides audit & assurance, consulting, financial advisory, risk advisory, tax & legal and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 264,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

About Deloitte in Malaysia

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

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. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2017 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.