

GST Special Alert – 1/2017

Key Amendments to GST Orders and Implications

The amendments below are effective from 1 January 2017.

Regulation	Current Position	Amendment	Comments
42	Input Tax Credit (ITC) is claimable in respect of the supply of land for general use	Regulation 42 is deleted. ITC is no longer claimable in respect of the supply of land for general use.	<p>The supply of land for general use is an exempt supply, but was granted special treatment as to where input tax credit was claimable. This special treatment has been withdrawn. Land for general use covers burial, playground or religious buildings.</p> <p>The development cost related to this land would increase as a consequence. This would mostly impact developers that make these supplies to hand over to the Government as part of new development projects.</p> <p>Please also refer to our comments on the transitional provision below.</p>
46	Director General may authorise claims of ITC from a date a person was registered or was required to be registered.	The words "or was required to be registered" has been removed.	Regulation 46 deals with the claim of input tax credits on GST paid on goods acquired prior to the effective date of GST registration, subject to the fulfilment of certain criteria.

			<p>The words removed by the amendment do not seem to alter the above treatment.</p> <p>It is important to note that the exceptional claim of input tax has to be pre-approved by Customs.</p>
47	<p>There is an ambiguity between sub regulation 2A(b) and sub regulation 3(c), whether Deemed Input Tax Credit ("DITC") on cash payment by an insurer is claimable on any supply where ITC is disallowed ("ITC blocked expenses")</p>	<p>Sub regulation 47(3)(c) is deleted.</p>	<p>The amendment makes it clear that insurers are not entitled to a DITC on any cash payments under a policy relating to expenses that would otherwise be blocked from input tax recovery (e.g. medical expenses).</p> <p>Although few insurers were claiming DITCs, this further narrows the ability to recover a DITC since the rules were changed just prior to the commencement of GST.</p>
62	<p>Form GST 04 is the declaration required to be furnished by a person other than a taxable person, e.g. for repayment to Customs of bad debt recovered by a person who has ceased to be a taxable person. [Regulation 62]</p>	<p>Where a person who has ceased to be a taxable person claims bad debt relief and subsequently receives payment after he ceases to be a taxable person, he no longer has to make a declaration in the form GST 04.</p> <p>However, the obligation to repay the GST involved appears to still exist for</p>	<p>This amendment to regulation 62 of the GST Regulations, 2014 is made pursuant to the amendment to Sec 42 of the GST Act, 2014 relating to the declaration by a non-taxable person.</p> <p>This amendment removes the requirement to make a declaration in form GST 04 by a person who has ceased to be registered for GST.</p>

	<p>A person who has ceased to be a taxable person is required to include the GST subsequently recovered in respect of a bad debt relief claimed, in the form GST 03 in the last taxable period during which he was registered.</p> <p>[Regulation 72(1)(b), Regulation 62].</p>	<p>such a person, via the form GST 03 filed for the last taxable period before deregistration.</p>	<p>However, it is not clear if such a person is still required to retrospectively include the GST recovered in his return for the last taxable period during which he was registered.</p>
82, 84	<p>GST paid on liquor, tobacco and tobacco products was not eligible for Tourist Refund Scheme (TRS) and operators of approved TRS outlets could not wholly sell liquor, tobacco and tobacco products.</p>	<p>Such goods are now eligible for TRS and operators of approved outlets can wholly sell such goods subject to fulfilment of other existing conditions specified under regulation 82.</p>	<p>This is a relaxation of TRS for the benefit of tourists and operators that wholly sell such goods.</p>
First Schedule	<p>The First Schedule lists out the Approved Financial Institutions that are eligible for the Fixed Input Tax Recovery (FITR).</p>	<p>The Malaysian Industrial Development Finance Berhad (MIDF) is included as an Approved Institution.</p>	

<p>Second Schedule</p>	<p>The Second Schedule lists out the Approved Malaysian Airports Under the TRS.</p>	<p>The Langkawi International Airport is included as an Approved Airport for the purpose of TRS.</p>	
<p>Transitional provision</p>	<p>Regulation 42 allows for input tax credit relating to exempt supply of land for general use.</p>	<p>With the deletion of regulation 42, a transitional provision has been enacted.</p> <p>Under the transitional provision, input tax incurred by a registered person before or after 1 January 2017 in relation the supply of land for general use is claimable provided it is subject to all the following conditions:</p> <ul style="list-style-type: none"> (a) the planning permission has been granted by the relevant local authority before 1 January 2017; (b) a certificate signed by any authorised person under any written law, certifying that the value of development works has been completed not less than ten percent within twelve months from the date of granting of the planning permission, is obtained; and 	<p>There are potential ambiguities arising from the transitional provision including:</p> <ul style="list-style-type: none"> (a) the meaning of input tax "incurred" (The meaning of "input tax incurred" could be in line with the timing under regulation 38 of the GST Regulations, 2014 for input tax credit to be claimed when the taxable person holds the tax invoice or import declaration in relation to the input tax.) (b) whether the transitional provision applies retrospectively to input tax claimed and/or entitled to be claimed as credit before 1 Jan 2017 in relation to the exempt supply of land for general use, particularly where the conditions in the transitional provision have not been fulfilled.

		<p>(c) the amount of input tax claimable under sections 38 and 39 of the GST Act, 2014 is incurred within thirty-six months from the date the planning permission is granted.</p> <p>(2) For the purposes of this regulation, "general use" means the use of land for the purpose of burial ground, playground or religious building.</p>	
Goods and Services Tax (Imposition of Tax for Supplies in respect of Free Zones)			
	-	GST is imposed on the supply of wine, spirit, beer, malt liquor, tobacco and tobacco products within and between Free Zones	In spite of GST being applicable on the supply of such goods within such areas, qualified travellers could still purchase such goods at duty free shops located at airports, ports and borders.
Goods And Services Tax (Relief)(Amendment)			
Item 14 of First Schedule	Goods from the Principal Customs Area (PCA) may be sent to a Designated Area (DA) for repair or reprocessing and subsequently returned to PCA without GST, subject	<p>The goods sent to the DA has to be returned within six months from the date the goods were sent to the DA.</p> <p>In addition, the Director General of Customs may impose conditions upon approval.</p>	<p>Businesses need to monitor the timeline imposed in respect of goods sent to the DAs for repairs or reprocessing.</p> <p>Also, the Customs may impose additional conditions when approving the relief.</p>

	to certain conditions. There is no time limit imposed.		
Item 15 of First Schedule	Goods may be imported into the PCA for repair and subsequently re-exported, subject to certain conditions.	The goods imported has to be re-exported within six months from the date the goods were imported. In addition, the Director General of Customs may impose conditions upon approval.	Businesses need to monitor the timeline imposed in respect of goods sent to the designated areas for repairs or reprocessing. Also, Customs may impose additional conditions when approving the relief.
Item 19, Item 20 of First Schedule	Pallets and empty containers including bottles, drums, flexi bags and cylinders exported and subsequently reimported were granted relief from GST. Similarly, pallets and empty containers including bottles, drums, flexi bags and cylinders imported for the purpose of refilling with goods and subsequently re-exported is granted relief from payment of GST	Other reusable packaging material is also included in the list of pallets and empty containers which are granted relief under Item 19 and 20.	This is a positive move as it expands the list of goods granted GST relief upon re-import or re-export.

Item 21 of First Schedule	Filled containers including bottles, drums, flexi bags and cylinders on their second and subsequent importation in case of foreign manufactured containers, imported with their content intended for local use and subsequently re-exported empty.	Other reusable packaging material is also included in the list of filled containers which are granted relief under item 21.	This is a positive move as it expands the list of goods granted GST relief upon re-import or re-export.
Item 33 of First Schedule	Operators of Duty Free Shops (DFS) are entitled to GST relief on alcohol and tobacco products purchased and removed from Free Commercial Zones (FCZ).	Operators of DFS are entitled to GST relief on such goods purchased and removed from Free Zones (FZ).	Technically, the relief has been expanded to cover such goods purchased and removed from free industrial zones (FIZ), in line with the harmonisation of GST treatment between FIZ and FCZ.
Item 36 of First Schedule	Operators of public and private warehouses in DAs are entitled to GST relief on alcohol and tobacco products purchased and removed from FCZs.	Operators of public and private warehouses in designated areas entitled to GST relief on such goods purchased and removed from FZs.	Technically, the relief has been expanded to cover such goods purchased and removed from FIZ, in line with the harmonisation of GST treatment between FIZ and FCZ.
Item 2 of Second Schedule	Supply of land by the developer or land owner to the government, local	Item 2 has been deleted.	This amendment is pursuant to the amendment in the Finance Act 2017 which treats such supply of land as

	<p>authority or any other person in compliance with the requirement by the Government or local authority, for the purpose of providing public amenities and public utilities for no consideration or for a nominal value, is granted relief from GST</p>		<p>neither a supply of goods nor a supply of services (out of scope).</p> <p>Developer or land owner would not have to charge GST on such out of scope supply of land.</p> <p>However, it would mean ITC in relation such out of scope supply would potentially not be claimable. Refer to transitional provision below.</p>
<p>Transitional Provision in relation to supply of land for public amenities and public utilities</p>	<p>-</p>	<p>A new transitional provision in relation to deletion of Item 2 is introduced, which states that any input tax incurred by any developer or owner of a land before or after 1 Jan 2017 in relation to the (out of scope) supply of land for public amenities and public utilities effective 1 Jan 2017, is claimable subject to all the following conditions:</p> <p>(a) the project for the public amenities or public utilities has been approved before 1 Jan 2017 and has fulfilled the conditions specified by various authorities.</p>	<p>There are potential ambiguities arising from the transitional provision including:</p> <p>(a) the meaning of input tax "incurred"</p> <p>(b) whether the transitional provision applies retrospectively to input tax claimed and/or entitled to be claimed as credit before 1 Jan 2017 in relation to the out of scope supply of such land effective 1 Jan 2017.</p>

		<p>(b) the layout plan has been approved by the relevant local authority before 1 Jan 2017.</p> <p>(c) the planning permission has been granted by the relevant local authority before 1 Jan 2017.</p> <p>(d) a certificate signed by any authorised person under any written law, certifying that the value of development works has been completed not less than ten percent within twelve months from the date of the granting of planning permission, is obtained.</p> <p>(e) the amount of input tax claimable under sections 38 and 39 of the Act is incurred within thirty-six months from the date the planning permission is granted.</p>	
<p>Goods and Services Tax (Imposition of Tax for Supplies in respect of Designated Areas)</p>			
<p>Paragraph 2</p>	<p>Tax shall be imposed on, inter alia:- a) the supply of petrol, diesel and liquefied petroleum gas to or within or between the designated areas....</p>	<p>The words "to or" has been removed under sub paragraph (a) and (e).</p> <p>Under sub paragraph (f), the word "supply" has been substituted with "importation", and the words "to the</p>	<p>GST would be chargeable at standard rate on the supply from Malaysia to DA's of the following goods as per the Goods and Services Tax (Zero-Rated Supply) (Amendment) (No 2) Order 2016:- a) The supply of petrol, diesel and liquefied petroleum gas to the designated areas.</p>

	<p>e) the supply of motor vehicles to or within or importation of motor vehicles into Tioman</p> <p>f) the supply of wine, spirit, beer, malt liquor, tobacco and tobacco products to the designated areas or the importation of such goods into the designated areas.</p>	<p>designated areas or the importation of such goods” have been deleted.</p>	<p>e)The supply of motor vehicles to Tioman.</p> <p>f) The supply of wine, spirit, beer, malt liquor, tobacco and tobacco products to the DAs.</p>
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