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**GST Chat**

Keeping you up to date on the latest news in the  
Indirect Tax world

*February 2018*

# Issue 2.2018

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# Greetings from Deloitte Malaysia's Indirect Tax Team

Hello everyone and welcome to the February edition of GST Chat.

As we welcomed the Chinese New Year over the past week, we would like to take this opportunity to wish all of you happiness, good health and prosperity!

Moving on to indirect tax developments, the Royal Malaysian Customs Department ("RMCD") has finally released details on what needs to be reported in the new item 15 (Other Supplies) in the GST Return. This represents a significant change and impacts in the January 2018 GST Return. You can read about it in more detail in our [special alert](#).



## Here is some recent news that may interest you:

- The RMCD have identified more than 5,000 companies that were involved in GST fraud. These companies had collected GST but had not remitted the GST collected to the RMCD. The Director General, Datuk Seri T. Subromaniam stated that the RMCD had opened investigation proceedings against all the companies involved, with a number already charged before the court. He did stress, however, that the RMCD's broader approach to taxpayers was through a customer-friendly strategy of 'compliance through education' as opposed to enforcement and punitive actions.
- Our Prime Minister Datuk Seri Najib Abdul Razak announced during his speech at the 36th World Customs Day held in Putrajaya that GST collections in 2017 were RM44 billion, RM3 billion higher than in 2016. He predicted that the GST collection for 2018 could hit RM45 billion.

I hope that you will find this month's GST Chat informative and please do not hesitate to contact us if you have any queries, comments or require our assistance.

Kind regards,

Tan Eng Yew  
GST & Customs Country Leader

# 1. Amendments to the Goods and Services Tax Regulation

## **Goods and Services Tax (Amendment) Regulations 2017**

### **Amendments to Regulation 39**

Regulation 42, which described the treatment of input tax attributable to exempt supply of land for general use as being attributable to taxable supplies, is deleted as per the Goods and Service Tax (Amendment) Regulations 2016, and as a result, the reference to Regulation 42 within Regulation 39(3)(c) has also been removed.

Effective: 1 January 2018

### **Amendments to Regulation 41**

Paragraph 41(j) was amended by substituting the words “investment holding company” with “company whose principal activity is the holding of investment including properties, shares of other companies or loans”.

Effective: 1 January 2018

#### Deloitte comments

The amendment makes it clear as to what companies fall under the provision. Companies that have the principal activity of holding investments including properties, shares or other companies or loans do not benefit from the concession provided by the ‘incidental financial supplies’ provision. It still remains unclear as to the intention of excluding these companies, and in particular companies that are investing in say taxable properties.

### **Amendments to Regulation 49**

The words “local authority” is removed from Regulation 49.

Effective: 1 October 2018

#### Deloitte comments

Regulation 49 has previously indicated that local authorities or statutory bodies are allowed to claim input tax on the acquisition of goods or services required to perform its regulatory and enforcement functions. With the amendment, local authorities are not allowed to claim any input tax on the acquisition of goods or services.

## **Amendment of Regulation 68**

Regulation 68 which discusses the manner of claiming a GST refund has been amended to be more specific as follows:

- a) By a registered person, by amending the return relating to the refund;
- b) By a non-registered person who has made a declaration, by amending the declaration relating to the refund; or
- c) By any person other than the person referred to in paragraphs (a) and (b), by using the JKDM form 2 as prescribed under the Customs Regulations 1977.

Effective: 1 January 2018

### Deloitte comments

This amendment has distinguished the manner of claiming a GST refund between applications made by a registered person and a non-registered person and any other person other than the aforementioned individuals.

## **Amendment of Fourth Schedule**

The Fourth Schedule has been amended to include "Bagan Datuk" as a district serviced by the Teluk Intan GST office.

Effective: 1 January 2018

## **Amendment of Fifth Schedule**

This amendment which comes into effect from 1 January 2018 replaces the existing item 15 which was the "Total Value of GST Suspended under item 14" to "Total Value of Other Supplies" in the GST-03 return.

The RMCD had also published an announcement on their website that "Other supplies" in the revised item 15 refer to all supplies other than supplies declared in the other items of the GST-03 return. Further guidance has been given in the Guide on Accounting Software Enhancement Towards GST Compliance dated 5 February 2018.

Effective: 1 January 2018

### Deloitte comments

Failure to adhere to the new reporting requirement above will result in an incorrect return being filed, which may result in a penalty being levied for an incorrect return filed as described under Section 88 of the GST Act 2014.

Therefore, businesses should relook at their tax coding of transactions and ensure that their current system is able to distinguish and capture the supplies as outlined above in order to be reported in item 15 of the GST-03 return. If applicable, businesses should also relook at the required file format in Appendix 6 for file importation into the GST-03 return on TAP website.

Please refer to our Special Alert for more information.

**Brought to you by:**



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## 2. New Public Ruling

### **Public Ruling No. 01/2018 – Supply of Commercial Residential Premise**

The Public Ruling, issued on 11 January 2018 by RMCD, is aimed at providing clarity in determining whether “commercial residential buildings or premises” built on commercial land are to be treated as residential (exempt supply) or commercial property (taxable supply).

The Public Ruling introduces the term “*commercial residential buildings or premises*”, which is defined as any multilevel strata title building developed on a commercial land for the purpose of either commercial or residential. Examples given include small office home office (SOHO), small office flexible office (SOFO), small office virtual office (SOVO), serviced apartment and commercial suite or other similar buildings.

#### **Sale of commercial residential premises**

The Public Ruling basically provides that the sale of commercial residential premises can be treated as “residential” and thus exempted from GST, based on the approved usage of the premises by the relevant local authorities.

The Ruling then sets out specific conditions that must be met which are based on the relevant approvals obtained and include Planning Permissions, Approved Layout Plans, Housing Development Licenses as well as Advertisement and Sales Permit and Sales and Purchase Agreement.

The subsequent sale/ second-hand sale of commercial residential premise will be based on the usage of the property at the time of the re-sale. However, if the building development is still in progress/ not completed at the time of the sub-sale, the GST treatment is based on the approved use of the property.

#### **Lease/ rent of commercial residential premises**

For any tenancy, lease or rent of a commercial residential premise, the Ruling provides that the GST treatment is to follow the purpose of the commercial residential premise. This means that if the commercial residential premise is used for residential purposes, the supply is an exempt supply, and if it is for commercial purpose, the supply is taxable.

Specific examples were provided in the Public Ruling that covers the above GST treatments.

#### **Effective date**

The Public Ruling takes effect on 11 January 2018, and thus the following DG’s Decisions are withdrawn and replaced by the Public Ruling:

- i. Item 1 of DG’s Decision 2/2015; and
- ii. Item 1 of the Amendment to DG’s Decision 2/2015.

## Deloitte comments

The Public Ruling attempts to expand on and provide more clarity to the earlier positions taken in DG's Decisions in terms of setting out the conditions that have to be met in determining the correct GST treatment for these premises.

The Ruling's requirements to look at the narrower "approved use" of the property as opposed to the GST (Exempt Supply) Order 2014 which provides for premises "...designed or adapted for use or intended to be used ...", could potentially give rise to conflicting treatments.

The Ruling specifically only covers the GST treatment for such premises built on commercial land, and not on such premises built on residential or any other approved land usage. For any other approved use, it implies then that the GST treatment will depend on the provisions of the law which is based on what it is "...designed or adapted for use or intended to be used". This could give rise to uncertain or inconsistent GST treatments and may require further confirmation from the RMCD.

It should also be noted that in the Ruling, it provides that the sub-sale of such premises is based on the usage at the time of the sub-sale. The first buyer needs to be mindful that where there is a change in use of the premises as a capital asset (e.g., change the use of the property from commercial to residential or vice versa), they would then be required to adjust the claim of any input tax on that premises at the point where the change occurs (i.e., capital goods adjustment).

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### 3. GST Technical Updates

#### **Guide on Accounting Software Enhancement Towards GST Compliance as at 5 February 2018.**

The updated guide clarifies the following:

#### **Appendix 3 (Recommended GST Tax Code Listings for Purchase and Supply)**

*The RMCD has made the following changes:*

- Introduction of a new tax code, **IM-CG** to reflect the importation of capital goods with GST incurred.
- **ZP** tax code is now for purchases where the GST treatment is other than standard rate (i.e., zero rate, relief, disregarded and exempt).
- With the inclusion of all the purchases in the tax code above, the RMCD has removed the tax code for exempt, relief and disregarded purchases (**EP, RP** and **GP**).

#### **Appendix 4 (Mapping of GST Tax Codes with GST-03 Return)**

Beginning January 2018 taxable period onwards, Field 15 – Total value of other supplies will comprise the following tax codes:

- **OS** - Out of scope supplies;
- **GS** - Disregarded supplies;
- **OS-TXM** - Out-of-scope supplies made outside Malaysia which will be taxable if made in Malaysia;
- **NTX** - Supplies with no tax chargeable such as supply of goods between Free Zone area and supply of goods and services within or between designated areas; and
- **SR-JWS** - Supply of goods under the Approved Jeweller Scheme (Section 73(2) of the GST Act 2014).

#### **Appendix 6 - File Format Definition for Taxpayer Access Point (TAP) File**

The RMCD has made changes to the standard file format fields required for importation into the GST-03 in the Taxpayer Access Point Website.

#### Deloitte comments

The most important update is in regard to Appendix 4. With the change made to item 15 in the GST-03 return, businesses are now required to report the total value of other supplies that are not subject to GST. Should the business fail to report the correct value, this may result in penalty for incorrect return under Section 88 of the GST Act 2014.

The RMCD may require this new information to examine in detail that all supplies made by the tax payer can be reconciled with the financial statements.

There is lack of clarity on certain transactions that can be 'out of the scope' of GST but are also not supplies, e.g., penalties, disbursements, and dividends. Another area that is unclear is

whether supplies made outside of Malaysia should be reported by non-resident GST registrants (either operating through a resident agent or local branch).

Where businesses are currently not able to update the tax code on the relevant transactions due to the tight deadline, we would recommend to use other sources of information such as the general ledger as an interim measure.

## **Guide on Warehousing Scheme as at 11 December 2017**

Paragraph 23 of the revised guide has indicated that the exportation of goods from a Customs-licensed warehouse can be zero-rated and declaration has to be made in the form Customs No.8 at the licensed warehouse.

### Deloitte comments

Businesses should take note that for goods exported from a Customs-licensed warehouse, declaration has to be made using the Form Customs No.8.

To substantiate export, businesses should also ensure that Customs No.8 Form is declared under the name of the company as exporter (and not its forwarding agent), whilst the Form Customs No.8, invoices and other relevant documentation are kept properly.

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## 4. Imposition of new Customs and Excise Duties (Exemption) Order

### New Orders:

- The Customs Duties (Exemption) Order 2017 [P.U. (A) 445/2017]
- The Excise Duties (Exemption) Order 2017 [P.U. (A) 444/2017]

The Customs Duties (Exemption) Order 2017 [P.U. (A) 445/2017] has replaced the Customs Duties (Exemption) Order [P.U. (A) 371/2013], with effect from 3 January 2018.

### The amendments, amongst others include:

- The usage of the 10-digit HS tariff code system instead of the previous 9-digit system
- Addition of new items for duty exemption and removal of certain items

The Excise Duties (Exemption) Order 2017 [P.U. (A) 444/2017], which will be effective from 3 January 2018, serves to replace the Excise Duties (Exemption) Order [P.U. (A) 379/2013]. The amendments, amongst others, include the addition of new conditions for excise duty exemption on alcohol and tobacco products. For more information, please refer to the Orders listed below:

Customs Duties (Exemption) Order 2017 -

[http://www.federalgazette.agc.gov.my/outputp/pua\\_20171229\\_P.U.%20\(A\)%20445%202017.pdf](http://www.federalgazette.agc.gov.my/outputp/pua_20171229_P.U.%20(A)%20445%202017.pdf)

Excise Duties (Exemption) Order 2017 -

[http://www.federalgazette.agc.gov.my/outputp/pua\\_20171229\\_P.U.%20\(A\)%20444%202017.pdf](http://www.federalgazette.agc.gov.my/outputp/pua_20171229_P.U.%20(A)%20444%202017.pdf)

### Deloitte comments

Given the above amendments, it would be crucial for businesses currently utilising the above Orders for import/excise duty exemption to reassess if the existing items being imported would still qualify for exemption. In addition, businesses can check if it would be possible to utilise the exemptions above for imports where duties were previously paid.

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