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GST Chat

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

January 2018

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Key takeaways:

1. *GST Filing – Introduction of Bi-monthly (two month) Filing*
2. *Amendments to the Goods and Services Tax Orders*
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Greetings from Deloitte Malaysia's Indirect Tax Team

Wishing you and your family a Happy New Year and welcome to the January 2018 edition of GST Chat. Thank you for your continuous support and feedback over the years, and we look forward to working with you in 2018.

With the new year comes new updates, and the Royal Malaysian Customs Department ("RMCD") has posted amendments to the Zero Rated Supply Order, Exempt Supply Order and the GST Regulations.

The RMCD had also launched a new initiative known as the Malaysia GST Compliance Assurance Programme or MyGCAP. MyGCAP is a self-compliance programme aimed to encourage businesses to voluntarily register for GST, manage GST risk and improve compliance within an effective and robust control framework. GST registrants with the MYGCAP status are eligible for concessions such as quick refunds and automatic approvals for renewals of special schemes without verification. MyGCAP is expected to commence in the 2nd quarter of this year.

We have also seen some key administrative and compliance changes announced. First and foremost, the RMCD will now allow taxpayers to file bi-monthly (i.e., every two months) subject to getting approval. This is a major change and can certainly ease some of the administrative burden that businesses are facing with GST compliance. We cover this in detail further below.

The RMCD has also announced that any new applications for GST Registration made via TAP will be processed within 24 hours. This is also a welcome change as we have seen many businesses face challenges over the past few years getting their registration applications approved in time.

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

- The RMCD Director-General Datuk Seri Subromaniam Tholasy stated that Malaysia reportedly lost RM2.5 billion in taxes in the past three years to unscrupulous shipping agents, forwarding agents and freight forwarders who use fake information in official documents in attempts to smuggle items. In connection with this, 20 forwarding agents have had their licences revoked;
- The world of GST / VAT continues to grow, with the United Arab Emirates and the Kingdom of Saudi Arabia introducing a VAT regime on 1 January 2018. They are expected to be followed by the remaining four Gulf States within the next 2 years.

I hope 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 and Customs Country Leader

1. GST Filing – Introduction of Bi-monthly (two month) Filing

In an unexpected but welcome development, the RMCD has announced that it would now be possible for GST registrants to file every two months as opposed to the current monthly or quarterly returns.

As of now there is very limited information available on the criteria for approval; the following minimum criteria have been set:

1) Applicable only for registrants with a monthly taxable period;
2) Registrants under cash basis industries such as retailing are not allowed to apply;
3) All applications will be subject to the Director General (DG)'s conditions and approval.

All applications for the above must be made via the Taxpayers Access Point (TAP), and there is a guide available at the following link on how to make this application:
http://gst.customs.gov.my/en/rg/SiteAssets/TAP_GuideBiMonthlyApplication16118.pdf

As it is unclear yet whether the DG would be approving all applications or if there are any other criteria involved in assessing such applications, applicants should not automatically assume that their application would be approved.

Each taxpayer should assess based on their own individual circumstances whether bi-monthly filing is appropriate for them, but some consideration should be given to the administrative cost savings from switching from monthly filing as well as the cash flow benefits in filing and paying every two months. However, a taxpayer who is often in a refund position (e.g., exporters) may wish to continue on a monthly filing basis to ensure that they are paid refunds quickly.

Brought to you by:

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2. Amendments to the Goods and Services Tax Orders

Goods and Services Tax (Exempt Supply) (Amendment) (No.2) Order 2017

Effective 1 January 2018, the provision of management and maintenance services (including the recovery of group insurance cost, assessment tax and quit rent) by the developer to the owners of strata-titled residential buildings is exempted from GST.

Deloitte Comments

Before the Goods and Services Tax (Exempt Supply) (Amendment) (No.2) Order 2017 came into effect, the Guide on Property Management: Joint Management Bodies (JMBs) and Management Corporations (MCs) dated 22 April 2016 stated that the provision of management and maintenance services by a developer is not treated as a supply, regardless of whether such services are performed for a commercial or a residential property, provided:

(a) he is responsible to maintain and manage the land, building and common area; or

(b) he is required to manage the maintenance fund and running of the completed development

during the developer's management period before a joint management body or management corporation is established.

However, effective 1 January 2018, developers (if GST-registered) should take note that the supply of such services to the owners of the strata-titled residential building is regarded as an exempt supply and such supply needs to be reported in the GST-03 return accordingly. Similarly, any positions taken with respect to input tax recovery on costs should also be revisited.

Goods and Services Tax (Zero-Rated Supply) (Amendment) (No.3) Order 2017

Amendment to Item 27 of the GST (Zero-Rated Supply) Order 2014

Effective 1 January 2018, the supply of online services for reading materials under the tariff codes 49.01, 49.02, 4905.91.00 00 and 4911.99.90 00 are zero-rated.

The tariff codes and their relevant descriptions are as follows:

Tariff codes	Description
49.01	**Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.**
49.02	**Newspapers, journals and periodicals, whether or not illustrated or containing advertising material.**
49.05 4905.91.00 00	**Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed.** - Other: - - In book form

49.11 4911.99.90 00	**Other printed matter, including printed pictures and photographs.** - - - Other (Official government publications, that is, official, parliamentary and administrative documents published in their country of origin only)

<u>Deloitte Comments</u>

With the said amendment**,** all goods in online version under HS Heading 49.01 and 49.02 are subject to 0% GST with effect from 1 January 2018.

For HS heading 49.05, except globes, all goods in online version that are classifiable under HS heading 49.05 are also subject to 0% with effect from 1 January 2018.

For HS heading 49.11, only official government publications (that is, official, parliamentary and administrative documents published in their country of origin) in online version are subject to 0% with effect from 1 January 2018.

<u>Although the wording of the Order refers to "online services relating to" these particular goods, our understanding is that the intention of the provisions is to cover digital versions of these items.</u>

Amendment to Appendix to First Schedule of GST (Zero-Rated Supply) Order 2014

In the same amendment order, goods under HS codes 4901.91.00 00, 4901.99, 4902.10.00 00 and 4902.10 00 00 and 4902.10.00 00 have been deleted from the GST (Zero-Rated Supply) Order 2014.

Tariff codes	Description
49.01 4901.91.00 00 4901.99	**Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.** - Other: - - Dictionaries and encyclopedias, and serial instalments thereof - - Other:
49.02 4902.10.00 00 4902.90.90 00	**Newspapers, journals and periodicals, whether or not illustrated or containing advertising material.** - Appearing at least four times a week (newspapers only) - - Other (newspapers only)

Deloitte Comments

With the said amendment**,** all goods classifiable respectively under 49.01 (printed books, brochures, leaflets and similar printed matter, whether or not in single sheets) and 49.02 (newspapers, journals and periodicals, whether or not illustrated or containing advertising materials) are subject to 0% GST with effect from 1 January 2018.

This is a welcome change and boost to the print media industry in the country, as now the sale of these products will be effectively 'free of GST'.

Brought to you by:

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3. New Public Rulings

Public Ruling No. 3/2017 on Gift Rule

Public Ruling No. 3/2017 was released on 1 December 2017 and provides further clarity on the RMCD's views on the application of the gift rules.

The Public Ruling provided definitions of the key terms in the context of gifts, of particular interest, "goods" is defined to include money.

Specific examples were provided to cover the following treatments:

a) Gifts with cost over or below RM500 to an employee or third party in a year
b) Determination of value of gifts where no proof of purchase is provided
c) Gifts in the form of cash vouchers and cheques
d) Gift of product samples
e) Transfer of a sole proprietor's goods to himself (personal use)
f) GST treatment on goods acquired without GST, or that the GST is deliberately not claimed, or disallowed (blocked).

Effective date

The following DG's Decisions are withdrawn and replaced with the Public Ruling No. 3/2017 with effect from 1 December 2017:

i. Item 4 of DG's Decision 2/2014;
ii. Item 2 of DG's Decision 1/2015; and
iii. Item 5 of DG's Decision 5/2015.

Deloitte Comments

Generally speaking, this Public Ruling summarised the points mentioned in abovementioned DG's Decisions and did not shed any new insights. However, the one change that is likely to cause confusion is the definition of "goods" to include "money". This is not consistent with Section 2 of the GST Act 2014, which excludes "money" except for:

a) a bank note or coin before it becomes legal tender in Malaysia or in any other country; or
b) a collector's piece, investment article or item of numismatic interest.

It is also unclear how a gift of 'money' that is not one of the above items could fall under the gift rule, and as a consequence, the RMCD should elaborate further on this point in its ruling.

Public Ruling No. 04/2017 - Issuance and Holding of Securities

On 12 December 2017, the RMCD published a Public Ruling on the issuance and holding of securities. The Public Ruling explains the following in detail:

Definition of issuance and holding of securities

As the above are not defined under any GST law, the RMCD has provided the following definition in the Public Ruling:

- "issuance of shares" means the authorisation and delivery of shares for sale to the public by a corporation for the purpose of raising capital,
- "holding of shares" means the act of owning the shares by a shareholder for the purpose of investment.

GST treatment for issuance of shares, other financial instruments or securities

The RMCD views the issuance of shares as not a supply (out-of-scope) if the intention is to raise capital for the purpose of the business. Reference has been made to European VAT case law to support this position.

GST treatment for holding of shares for investment

The RMCD has stated that the holding of shares is not a supply as there is no promise of dividend payments to the shareholder. Therefore, dividends earned (if any) from the holding of the shares is not subject to GST (out-of-scope).

GST treatment for holding of other financial instruments or securities for investment

The RMCD has clarified that holding of other securities such as bonds is treated as an exempt supply as the bond holder is promised a return on investment in the form of coupon payments.

GST treatment on share or debts buyback

The RMCD has clarified that a share or debts buyback is not a supply but the subsequent sale of the shares or debts is treated as an exempt supply.

Input tax

Any input tax incurred for the following is claimable by the company provided that the purpose is to increase the company's capital and also investment for the benefit of its business:

- Issuance and holding of shares for the purpose of raising capital and investment respectively;
- Issuance of debt securities for the purpose of raising capital; and
- Shares or debts buyback programme by a company of its own shares or debts.

However, the RMCD clarified that any input tax incurred in relation to the holding of bonds, debentures, notes or similar instrument is not claimable since it is attributable to an exempt supply.

Effective date

The Public Ruling takes effect from the date of issue.

Deloitte Comments

We welcome the clarification from the RMCD that the issuance and holding of shares are treated as out-of-scope while the holding of bonds is treated as exempt.

Whilst most businesses have relied upon the incidental financial supply rules to support input tax credit claims in relation to the activities covered under the Public Ruling, this is certainly a welcome development for businesses that fall outside of this concession – in particular, those in the financial services sector and investment holding companies.

As a consequence, we would recommend that those impacted businesses review their methodology for claiming input tax and assess whether any changes should be made.

Brought to you by:

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4. GST Technical Updates

<u>Concession by Minister of Finance on the GST treatment for Recovery of Repair Cost in relation to Goods under Warranty from Overseas Manufacturers (Revised 22 December 2017)</u>

The introduction of this concession was covered in the August 2017 edition of GST Chat. The concession was revised on 22 December 2017 and the changes are as stated below:

1) Application to Director General is not required as long as the conditions are satisfied.

2) This concession is being expanded to cover any recovery of repair cost made by the franchisee, supplier and sub-dealer.

3) The condition that the repair of goods needs to be performed by the local distributors has been removed.

4) If there is a mark-up on the repair expenses (that is not due to currency exchange rate) and such mark-up exceeds the permitted limit as stated in the contract, GST 6% is applicable on the recovery of repair expenses;

5) The franchisee, supplier, distributor or sub-dealer has to maintain the following additional documents for audit purposes:

   i. Appointment contract/agreement as a franchisee, supplier, distributors, or sub-distributors to supply the products from overseas manufacturer in Malaysia;
   ii. Contract/agreement with overseas manufacturer on the recovery of repair cost.

<u>Deloitte Comments</u>

This is a positive development as it reduces the hassle faced by many of the claimants who previously had to submit a written application to the RMCD to access the concession. Nevertheless, businesses should still assess that their particular circumstances fall within the concession before applying it.

<u>Guide on Fund Management as at 20 December 2017</u>

The updated guide clarifies the following:

Gains or proceeds received from redemption of unit trust by an investment holding company (IHC)

Unit trust gains in the form of the spread between the value at redemption and placement of unit trust is the consideration for the making of an exempt supply. If an IHC engages in such activity, it is treated as an exempt supply and Regulation 40(2) (g) of the GST Regulations 2014 does not apply to the IHC.

Deloitte Comments

We agree with the RMCD's view that unit trust gains should be treated as an exempt supply by an IHC. However, we disagree with the RMCD's view that just because the IHC engages in such activity, Regulation 40(2) (g) does not apply to the IHC. This is because Regulation 41(j) has stated that IHC's are excluded from applying anything under Regulation 40 (incidental exempt financial supplies) as a whole.

Separately, the RMCD has not clarified where a loss is incurred (when the redemption amount is lower than the placement amount), would the amount be reported as a negative exempt supply or reported as nil.

Guide on Commercial Banking as at 19 December 2017

The updated guide clarifies the following:

Zero-rated supply

The RMCD has included a paragraph to state that zero rating is also applicable to banking services supplied under a contract with customers who belong in a country other than Malaysia which directly benefits the customer if the customer is outside of Malaysia at the time the services are rendered.

Also, the RMCD has clarified that the supply of loan by a Labuan incorporated company (under the Labuan Financial Services and Securities Act 2010) to finance a project overseas can be zero-rated. The zero rating is applicable to the provision of the loan (interest) and also the fee portion of the loan facility.

Deloitte Comments

This update reinforces the view that exported financial services can qualify for zero rating under the Malaysian GST and should not be treated as exempt activity. Impacted businesses should review how such transactions have been reported on their system as well as review and assess any impact to input tax recovery rates.

Updates to Appendix 1 – List of supplies

Items under 4.3.16 – Recovery of non-performing loans

The recovery of fees and charges relating to non-performing loans (NPL) is treated as reimbursement and should be subject to GST instead of out-of-scope.

Deloitte comments

The RMCD's change in view would mean that the service providers (i.e., lawyers, auctioneers, etc.) in relation to the NPL are contracting directly with the banks in principal capacity. The banks then recharge these expenses to the customers as a form of reimbursement.

As these charges are unlikely to be paid by the customers, banks should consider applying bad debt relief for any charges in relation to the NPL. If the banks decide to absorb the GST for these charges, there would be implications from an income tax standpoint.

Items 4.8.6, 5.1.6 and 5.2.4 – Interest on late instalment

Interest on late instalment is now treated as out-of-scope as it is punitive in nature.

Deloitte comments

We concur with the RMCD's view as this is consistent with any other charges that are punitive in nature such as late payment charges.

Items under 7.3 – Insurance services

The following commissions earned from insurance companies are now subject to GST instead of out-of-scope:

- Persistency Bonus Commission
- Production Bonus Commission
- Profit Commission

Deloitte comments

The above amendments are consistent with the updated Insurance and Takaful guide as at 2 November 2017. Since these commissions are usually determined by the insurance companies, banks should ensure they are included in their self-billing agreements and self-billed invoices are issued where possible.

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