



Indirect Tax Perspective \Rightarrow everything

GST Chat All you need to know

Issue 1.2015

In this issue

[GST Compliance and Audit](#)

[Anti-Profitereing Rules – How Does Your Business Keep out of Trouble?](#)

[Timing of Input Tax Credit Claims – When Do You ‘Hold’ a Tax Invoice?](#)

[A note of good wishes from the Deloitte Indirect Tax Team](#)

Related links:

[Other tax Information](#)

Contact us:

[Deloitte Contacts](#)

Greetings from Deloitte Malaysia’s GST services group

Hello everyone and our best wishes to those who are currently fasting in this month of Ramadan.

Welcome to *GST Chat*, Deloitte Malaysia’s newsletter on Indirect Tax developments in GST and Customs. We would like to give you some of our insights on what we see as pressing issues for businesses in the world of Indirect Tax.

As we approach the 100 day mark since the commencement of GST, we can look back with some sense of relief at clearing some major hurdles in crossing over to GST. There is still uncertainty and much work to be done in the months ahead to stay on top of things of course. We will focus on some of industry news and compliance issues in update section below.

Some interesting facts since the introduction of GST:

- Customs have reported the collection of GST on imports totalled RM3.37 billion, while the domestic net collection is



RM2.95 billion. Customs have set an annual collection target of RM 20.7 billion;

- Nearly 400,000 businesses have registered for GST;
- Just over 800 new customs officials have been recruited to handle GST;
- Deloitte's efforts to give our clients guidance on how to handle anti-profiteering challenges

We hope you enjoy our newsletter and look forward to many more in the future.

Regards,

Tan Eng Yew

Indirect Tax Country Leader – Deloitte Malaysia

[Back to top](#)

GST Compliance and Audit

Although most businesses were able to file their first GST returns on time, many still struggled to meet the deadline of 1 June 2015 for filing and payment. Due to the number of late filers, Malaysian Customs granted a grace period, which expired on 14 June. Any remaining businesses that had failed to file by this date could be subject to audit action.

In terms of Customs compliance, we have seen numerous instances of audit activity, in particular the conduct of GST refund verification exercises. These verification exercises are, we understand, not comprehensive audits, but more of telephone / email queries with standard information requests. At this stage, we believe many businesses in a refund position have been sent questionnaires seeking copies of source documents to verify refund claims. We understand that this is intended to cover all GST registered businesses in the first month, but it remains to be seen if this is a practice that is continued beyond the initial few months for all businesses.

For businesses that have received an enquiry from Customs for documentation to verify refunds, our suggestion would be to prepare appropriately. You should use this as an opportunity to undertake a detailed and thorough review of all the documents to ensure there are no errors (e.g. invalid invoices, double claims etc.). Voluntarily disclosing errors to Customs could mitigate the imposition of penalties and a pro-active approach should reflect positively on your approach to GST compliance.

Given these refund verification exercises, there have been delays in the payment of refunds to some businesses, as refunds are apparently being held until the completion of the review. However, we are already seeing evidence of refunds being paid to some businesses, which is a positive sign.

We have also seen issues arising from businesses that have elected to 'carry forward' refunds. The expectation had been that amount carried forward would be immediately offset against future liabilities, however, in practice this seems to not be the case. Customs have indicated that their systems are unable to track prior month's refunds that have been retained, and this may need to be indicated on the GST Return and subject to verification before being offset.

From an administrative point of view, please note that we understand Customs have also issued notices to all GST registrants stating that any bank account to which a refund is to be paid must be in the name of the GST registrant. Businesses should ensure that they comply with this request to avoid possible delays in payment of refunds.

In addition to GST refund verification exercises, we are seeing more general information audits taking place. In these audits, Customs have sent out general questionnaires in relation to the operation of the business, including the systems used and processes followed for GST. These may partly be information gathering exercises for Customs but are obviously also useful to highlight compliance gaps or errors. Again we suggest that you take care in how you respond to such queries, as short or incomplete responses may result in further questions or a more detailed review being conducted.

[Back to top](#)

Anti-Profiteering Rules – How Does Your Business Keep out of Trouble?

When the Malaysian Government introduced complex Anti-Profiteering measures just after Christmas last year, it is fair to say it took many businesses by surprise.

Anti-Profiteering enforcement action is in the news and almost a standard feature of front page business reporting in Malaysia over the past months. As of 8 June 2015, we understand that nearly 22,000 complaints had been lodged with 1,902 cases being investigated and more than 52 cases making their way to the courts. Having seen the reputational damage that court actions can bring, businesses are generally becoming more aware of their obligations but in many instances could do more to ensure that they are in compliance, particularly if they are intending to increase prices.

Deloitte has been proactive in reaching out to the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC)- the Ministry tasked with administering the Regulations; and has established a trusted working relationship with the operational heads and key members of the enforcement team. We have reached out to many of you to highlight areas of concern to the MDTCC and give you insights on the impact of the Regulations on the legitimate conduct of business.

In light of these changes, Deloitte also organised a conference to help businesses better understand the requirements and the impact of the new measures. Deloitte was able to invite several senior officers from MDTCC as guest speakers, so that they could provide first-hand information on the new measures. The event was attended by over 160 participants from a wide spectrum of industries; media was also invited to cover the event.

The success of this conference has led to invitations for Deloitte to deliver similar training sessions to different audiences for and on behalf of MDTCC. An initial training session that was arranged by the project team and Ian Clarke, Tax Partner, was delivered to about 30 MDTCC enforcement and legal officers. Bruce Hamilton (GST Director on long-term secondment from Deloitte Australia) was also asked to assist MDTCC with the planning and conduct of training for another 40 prosecutors and Justices who would be hearing the cases brought to the Malaysian courts.

Watch this space for details of events and conferences we are running in the next few months on the latest in relation to the enforcement of the Anti-Profitteering rules, as well as keeping abreast of the latest developments in relation to GST and Customs Duty.

[Back to top](#)

Timing of Input Tax Credit Claims – When Do You ‘Hold’ a Tax Invoice?

It is often said that GST registrants have 6 years in which to claim an input tax credit in relation to a tax invoice. However, the GST Law contains a major caveat which is often missed - in particular GST Regulation 38(4)(a) which requires that a business to claim an input tax credit in the month in which it ‘hold the tax invoice’. If you do not claim in the month you hold the tax invoice you are able to claim within 6 years provided the Director General allows you to do so.

At the time of writing there is to our knowledge no published guidance as to what Malaysian Customs considers to be the point when you are taken to ‘hold’ a tax invoice nor is there guidance on the circumstances in which the Director General would allow a claim in a subsequent month if a taxpayer fails to claim in the month in which they first held the invoice.

Based on our own discussions with Customs we understand that the prevailing Customs’ view is that invoice is taken to be held in the month in which it is received by the business (normally evidenced by the receipt stamp). Based on common practices, a large number of businesses are unlikely to be able to claim all their invoices in the month of receipt. This can be due to a number of factors including the businesses’ own approval process for the invoice, average processing times and simply late submission of invoices.

As such businesses will need to monitor this issue and ensure that, where possible, invoices are claimed in the month of receipt. We understand that further Customs guidance will be issued to clarify this matter and are hopeful that it would remove much of the heartache and confusion. Another case, dear reader, of “watch this space”.

[Back to top](#)

A note of good wishes from the Deloitte Indirect Tax Team

As a final point we salute you all for the hard work you have put in to prepare your businesses for the GST – well done and keep up the excellent efforts! The Deloitte Indirect Tax Team remain at your disposal to assist you navigate the ongoing choppy waters of GST – our team now comprises over 70 full-time indirect tax consultants with a mix of local and international expertise, including our Southeast Asia and Asia Pacific Indirect Tax Leader, two Directors from Deloitte Australia on a long-term secondment and a former head of the GST unit at Australian Treasury.

We look forward to continuing to work with you on GST and Customs Duty issues!



We invite you to explore other tax related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

[Back to top](#)

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[Back to top](#)

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