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GST Chat

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

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings and welcome to the April edition of GST Chat.

This month, we saw further details released on the Malaysian GST Compliance Assurance Program (MyGCAP), with the Royal Malaysian Customs Department ("RMCD") releasing their General Guide for the program. Please refer to our Special Alert on this from the following [link](#). We will provide you with more details on this new program as and when details come to light.



Separately, the RMCD have announced that an application for remission of late payment penalties can now be made via the Taxpayer Portal or TAP. Previously, the application for remission could only be made through the submission of an official letter to the RMCD. As a consequence, the introduction of electronic applications now makes the process more expedient, though more guidance on when remission would be granted would also be useful.

Here are some recent news that may be of interest to you:

- Tan Sri Abdul Wahid Omar, the chairman of Permodalan Nasional Berhad (PNB) has stated that the GST has helped reduce Malaysia's dependency on oil and gas revenue by 15%. He further stated that in 2009, the national fiscal deficit from the Gross Domestic Product (GDP) was at 6.4%, but after the introduction of the GST in 2015, it recorded a decrease to 3.2%. The fiscal deficit is expected to further reduce to 2.8% this year.
- The Director General of Customs, Datuk Seri Subromaniam Tholasy has given his assurance that there are currently no plans to review the GST Zero-Rated Supply list in the near future. The Director General is of the view that the current list sufficiently caters to the needs of the lower income. He proceeded to comment that any future changes to the list will be subjected to the government's decision, however any proposed changes should be made cautiously as to avoid disruption to various businesses especially at retail level.

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.

Best regards,

Tan Eng Yew

Indirect Tax Country Leader

1. GST filing – Bi-monthly (two-month) taxable period

Further to the RMCD announcement in January that taxpayers can apply to file bi-monthly, we have now practical experience on how these applications have been processed. In particular we have noted that:

- The application process would take a minimum of 14 working days;
- The RMCD would request supporting documents such as financial statements and Profit and Loss statements for review; and
- The RMCD will confirm the application by way of a letter that would contain the effective date from which bi-monthly returns could be filed.

In addition to the specific pre-requisites (Click [here](#) for our previous write up on the bi-monthly taxable period), prior to making an application, businesses should assess the cost and benefits of adopting a bi-monthly taxable period before applying.

We have outlined below a few points that may aid you in determining if the bi-monthly taxable period is for you:

Benefits

- Possible administrative cost reductions as taxpayers (or their accountants) will only need to prepare and review GST filings for declaration on a two-month cycle as opposed to a monthly cycle;
- Taxpayers regularly in a payable position, would benefit from an alleviated cash flow as payment for GST is due on a two-month cycle as opposed to a monthly cycle; and
- Additional time to identify and correct errors, especially for errors occurring in the first month of the two-month period.

Potential costs

- The requirement to adjust established processes to shift from monthly to bi-monthly, including sample checking, reconciliations and data collation from systems for preparation of GST Returns;
- If taxpayer is often in a refund position, it may take a longer time for the taxpayer to receive its refunds under a bi-monthly filing regime; and

Further consideration of other factors that are peculiar to the GST-registered company should be taken into account when deciding whether to apply for the change to bi-monthly taxable period.

Brought to you by:



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2. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement involving 11 countries in the Pacific region comprising Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam. The Agreement was previously known as the Trans-Pacific Partnership (TPP) and was signed by 12 countries, including the US, in February 2016. However, a presidential memorandum was signed by Donald Trump in January 2017 to withdraw the US from the TPP.

The CPTPP will incorporate the original TPP Agreement, with the suspension of 22 provisions (which mostly cover rules over intellectual property). CPTPP negotiations were concluded on 23 January 2018 in Tokyo, Japan while the revamped deal was signed on 8 March 2018 in Santiago, Chile.

The CPTPP requires the ratification of at least six member countries to come into force and once it has been ratified by those six countries, it will take 60 days for the benefits of the deal to come into effect. Malaysia, however, is not likely to be among the first countries to ratify the CPTPP by early 2019 as it would need to amend 18 laws required by year-end to implement the trade deal – which is unlikely to be possible at this stage. The laws to be amended cover governance, environment, labour, intellectual property rights and Customs tax.

Deloitte comments

The implementation of the CPTPP should open up new markets for Malaysia such as Mexico and Peru. Nevertheless, pending the CPTPP coming into effect, businesses should monitor the progress of this agreement and strategise how its benefits can be reaped, especially from an import duty mitigation perspective.

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3. GST Technical Committee Meeting updates

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 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 the RMCD's responses.

Input tax claim for travel insurance

Travel insurance that covers flight delay, loss of property and theft in this case is treated as general insurance. The RMCD has provided clarification that the GST incurred for the premium paid for the insurance is claimable provided the business can show it is for a business purpose.

Deloitte comments

The RMCD are of the opinion that travel insurance is considered to be a type of general insurance, hence the premium is subject to GST at a standard rate. If the company is able to show evidence that the travel insurance incurred by an employee is in the furtherance of business, then the GST paid on the premium is claimable. However, as the RMCD has specifically identified travel policies that cover "flight delay, loss of property and theft", this implies that any policy that includes medical coverage would not be recoverable as a blocked item under the GST Regulation 36.

Input tax claim for 4-wheel drive vehicles (off-road passenger cars)

The RMCD are of the view that off-road vehicles are blocked passenger motor cars and the GST on related expenses are not recoverable. An off-road vehicle is a 4-wheel drive vehicle that is not to be used on public roads as no road tax is paid to the Road Transport Department ("JPJ"). This would mean that the usage of these off-road vehicles are strictly confined to areas such as construction sites, logging camps, and forest plantation estates that are located in remote areas.

Examples of these four-wheel vehicles are:

- 1) Toyota Hilux
- 2) Toyota Landcruiser
- 3) Mitsubishi Triton

Deloitte comments

Subsequent to the clarification above, it is safe to assume that GST is only recoverable on vehicles with special purposes, e.g., tractors and lorries.

Rejection of input tax claims due to delay in response

During refund verification exercises, the RMCD may request companies to provide documentation within 7 days. Where a company fails to submit or submits late, the claim would automatically be rejected. The RMCD has indicated it does allow companies to seek extensions, but would not issue

any warning letters before rejecting claims.

Deloitte comments

The onus is on the taxpayer to respond to the RMCD within the timeframe set. It is important for businesses to regularly check the taxpayer portal and email accounts for any correspondence from RMCD and act on it quickly.

Input tax claims in relation to Out of Scope supplies

The RMCD has provided clarification that any input tax incurred in relation to an activity that is not a supply (Out-of-Scope) for the purpose of GST is not claimable. In the event where a company is making out of scope supplies, such as late payment charges, penalties or issuance of shares, any input tax incurred attributable to these supplies will not be claimable for GST.

Deloitte comments

The interpretation taken by the RMCD is inconsistent with the practice in other jurisdictions and in practice would be difficult to apply. From a technical standpoint, it is arguable that costs relating to activities out of scope would form part of general business costs, and would be recoverable based on the input tax recovery rate for that business.

Selling of excess inventory

Contract Manufacturers ('CM') purchase raw materials, perform a value-add service and subsequently export the finished products to overseas customers. In the event where there is excess material, the overseas customers are required to purchase these materials. Where excess material (inventory) is stored in Malaysia, the CM is still required to charge their overseas customers (inclusive of GST).

As the overseas customers are not GST-registered in Malaysia, the GST becomes an unrecoverable cost.

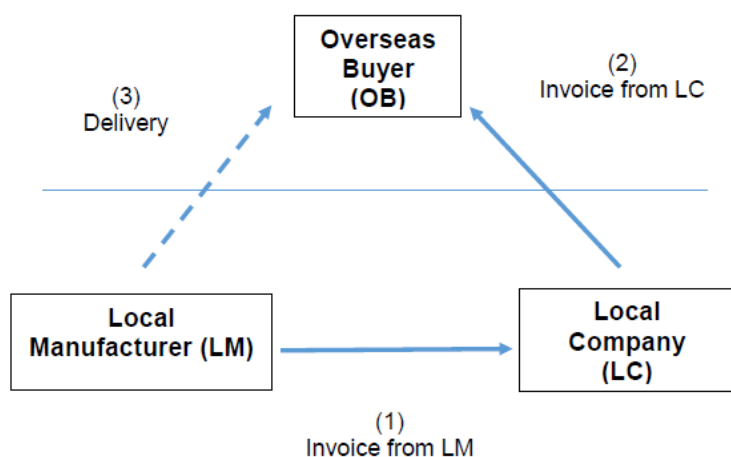
The RMCD has clarified the following:

- I. Supply of raw materials inventory or semi-finished goods to customers
Supply of goods where the goods are not exported is subject to 6% GST.
- II. Buying back the raw materials inventory or semi-finished goods from overseas customers
Where goods belonging to the customer is supplied back to the CM, the customer who is a GST-registered person is liable to charge GST and issue a tax invoice to the CM. If the customer is not a GST-registered person, no GST is chargeable on the supply. If the value of the supply made by the customer is more than RM500,000, he is liable to register for GST.

Deloitte comments

From a technical standpoint we are in agreement with the view expressed by the RMCD. However, we would consider that where the excess goods are ultimately exported, the treatment be allowed to revert to zero-rating and for an appropriate adjustment to be made.

Zero-rating for indirect export of goods



The above scenario was described under item 2 of DG's Decision 4/2015, whereby a local company (LC) purchased goods from a local manufacturer (LM) and request LM to export the goods to his overseas buyer (OB).

The supply will qualify for a zero rate subject to compliance with conditions. Amongst other, Para 1(b) states that LM must keep and maintain the following documents:

- (i) Export document such as K2/K8 where it is stated that the consignor is LM and the consignee is OB; and
- (vi) (bb) Bill of lading / airway bill stating OB as the consignee;
- (vi) (cc) Bill of lading / airway bill indicating under column "Notify Party" the details of OB or his representative and LC as the owner of the goods.

There are some international trade scenarios whereby the above conditions cannot be met by the Carrier as below:

Scenario 1

- i) When OB is paying via a Letter of Credit/Bank Guarantee, the Bill of Lading issued by the Carrier does not allow OB to be stated as Consignee. Instead, the name of OB's Foreign Bank will be stated as the Consignee, since the Bank holds title to the consignment during transportation to its destination.
- ii) If OB intends to on-sell the goods to another overseas buyer, "Consignee" in the Bill of Lading issued by the Carrier would be stated as "To Order".

Scenario 2

- i) Where goods are exported by land, there is no Bill of Lading issued. Instead, a Packing List or other similar documentation will be issued by the Forwarder or Trucking company. However, in the absence of a Bill of Lading issued, facts and other evidence/documentation would be sufficient to show that is an export, in addition to Form K2.

It was requested that the RMCD allow some flexibility in these requirements, as long as Form K2 as prescribed by law and other facts shows that the goods have in fact been physically exported out of Malaysia.

In the RMCD's reply, the notified party can be shown as c/o in the Consignee field after the name of the consignee in the Export K2/K8 Form. For example:

Consignor: Local Manufacturer (LM)

Address: LM's address

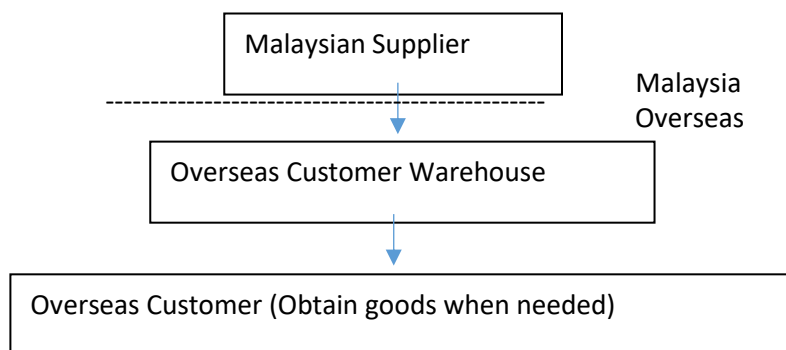
Consignee: Overseas buyer (OB) c/o Local company (LC)

Address: OB's address

Deloitte comments

The RMCD's reply does not address the issues with the Bill of Lading as described in both the scenarios above. In the absence of clarifications, the conditions according to Para 1(b) are to be met in order to qualify for a zero-rating.

Treatment for goods sent to overseas warehouse of foreign customer but not sold yet (no invoice issued) at the time of export



A supplier will initially send the goods from Malaysia to an overseas customer's warehouse located outside of Malaysia without the transfer of ownership. Tax invoices will only be issued when the customer collects the goods from their warehouse when needed. When the customer collects the goods, the goods are supplied from outside of Malaysia to outside of Malaysia.

A K2 export declaration is issued for the goods exported to Customer's warehouse overseas.

Clarifications requested from the RMCD and their replies are as follows:-

Clarification requested on: RMCD's reply:	
<p>a) The classification of supply and time of supply for Malaysian supplier.</p>	<p>Subparagraph 5(1) of the First Schedule of the GST Act 2014 was quoted, where goods forming part of the assets of a business are transferred or disposed of...so as no longer to form part of those assets,... the transfer or disposal is a supply of goods by the person.</p> <p>In view of this, the RMCD has stated that no supply of goods has taken place if there is no transfer or disposal of goods forming part of the assets of a business even though the goods have been exported.</p>
<p>(b) Whether this is an out of scope supply as the transfer of ownership takes place outside of Malaysia.</p>	<p>The RMCD quoted Section 174 (1) of the GST Act 2014 and Section 2(1) of the Custom Act 1967- "export" ...means to take or cause to be taken out of Malaysia, by land, sea or air or to place any goods in a vessel, conveyance or aircraft for the purpose of such goods being taken out of Malaysia.</p> <p>The RMCD also quoted Section 12 (2) of the GST Act 2014 - Where the supply of any goods involves their removal from a place in Malaysia to another place in Malaysia, the goods shall be treated as supplied in Malaysia if the goods are in Malaysia and where the supply of goods involves their removal from a place outside Malaysia to another place outside Malaysia, the goods shall be treated as supplied outside Malaysia.</p> <p>Based on the above provisions, the RMCD views exported goods (goods which are already outside Malaysia), supplied outside Malaysia as an out of scope supply since it is a removal of goods from a place outside Malaysia (Overseas Customer Warehouse) to another place outside Malaysia (Overseas Customer).</p>

<p>(c) For the electronics industry, the goods being supplied are usually specific to each customer's needs and any leftover goods will be bought by the customer. Whether the delivery of the goods should be considered an export, given that the customer had already agreed to buy all of the goods including the leftover.</p>	<p>The RMCD stated that the goods are considered an export if it is proven with prescribed export form.</p> <p>If the customer had already agreed to buy all of the goods including the leftover outside Malaysia, the transfer or disposal of the goods is still viewed as an out of scope supply as it is a supply outside Malaysia.</p>
<p>(d) The GST treatment of goods sent to the overseas warehouse of foreign customer before transferring of ownership of goods.</p>	<p>The RMCD views that the transfer to overseas warehouse of the foreign customer is not a supply until it becomes certain that the supply has taken place, which will then be considered as an out of scope supply.</p>

Deloitte comments

The RMCD's reply has differentiated between a supply and a movement of goods in which a supply only takes place when there is a transfer or disposal of goods forming part of the assets of a business. Even though the goods have been exported, the movement of goods without a transfer or disposal of goods is not considered a supply. We agree with this interpretation.

Ministers Relief – Claims for repairs under a warranty to a foreign manufacturer

The Minister of Finance has agreed that repair costs under a warranty claim made by a distributor from an overseas manufacturer, will be considered as a "cost recovery" and is not subject to GST, subject to meeting certain conditions. Amongst the aforesaid conditions, issues raised for the RMCD's consideration are as follows:-

1. Condition (a) requires the company to submit a written application. However, the process for making the application is not made clear; whether an application is required in every period that a claim is made and would GST need to be charged pending approval by RMCD.
2. Condition (e) states that there must be no element of mark-up in the claim.

It has been proposed that:

- a) no prior approval is required to reduce the administrative burden and cost. The warranty claims can be verified by the RMCD as part of their audit process. If an approval is required, a one-off application should be made for all Agreements entered into by the particular entity.

- b) the terms of the contractual agreement between parties is to be used as evidence to support that the warranty claim is to be made with no mark-up as it may be difficult to reconcile the costs of the parts to the amount claimed due to forex differences and duties incurred.

On the above proposals and issue raised, the RMCD is awaiting the decision from MOF.

GST treatment under MOF's Relief Order 2/2015

Company A with a LMW status invoices an overseas company but deliver the goods to a company located in FIZ.

Under the MOF's Relief Order 2/2015, the supply of goods from LMW Company to FIZ Company is relieved from charging GST under the GST Act S.56(3)(b). However, the RMCD requires a tax invoice to be issued and 6% GST charged based on the RMCD's value, as the supply of goods made by an LMW company to the overseas buyer is considered as a drop-shipment of goods to FIZ company in Malaysia and thus, subject to 6% GST.

It is proposed that the goods which are supplied or delivered to the FIZ should be granted a relief under the MOF's Order 2/2015 regardless of whether the goods are invoiced to the overseas customer.

In the RMCD's feedback, they have quoted Item 3.2 in the Relief by Minister 2/2015 (effective 15 July 2015) that states the supply of goods from an LMW company to an FIZ company or vice versa is relieved from charging GST on the supply of goods. (s. 56(3)(b) GSTA). They are of the opinion that the goods are not supplied but only delivered to the FIZ, hence Item 3.2 in the Relief by Minister 2/2015 is not applicable. LMW is making supply to OC (overseas company) and the OC should pay GST on the customs value of the goods.

Deloitte's comments

The RMCD's reply has once again differentiated between a supply and a movement of goods (removal of goods). The RMCD has emphasised that it should be the supply of goods from an LMW company to an FIZ company that is relieved from charging GST and not merely on the movement of goods from an LMW company to a FIZ company.

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