



Indirect Tax

GST Chat

All you need to know

Issue 2.2017

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Greetings from the Deloitte Malaysia Indirect Tax Team

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



It is a brand new month, fresh off the Chinese New Year celebrations, and with this comes several new developments. The Royal Malaysian Customs Department ("RMCD") has recently announced a GST collections target of RM42 billion for 2017, from the estimated 431,000 GST registered companies.

The RMCD have indicated that they will continue with the current approach of educating businesses to better understand the GST system. They have also highlighted that they will continue their efforts in identifying companies which should be registered for GST but have not done so, in particular those online and digital businesses.

We have found some other recent news and developments that may interest you:

- Managing Director Datuk Wira Ameer Ali Mydin said the operator of Mydin hypermarkets nationwide had suffered losses due to the weakening ringgit as most of its products were imported, and not due to the implementation of GST.
- A school in Subang Jaya is to be investigated by the Education Ministry over allegedly collecting GST for its computer classes on behalf of the computer company that conduct the classes, after complaints filed by parents.

Kind regards,

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1. GST Technical Updates

Revised Guides

[Transfer of Business as a Going Concern \(TOGC\) Guide – as at 6 January 2017](#)

A new FAQ No. 3 has been added to the revised guide to clarify that for any goods being transferred as part of a TOGC, and where the transferor was previously entitled to input tax credit on those goods, output tax has to be accounted for by the transferee on any subsequent supply of the goods for free.

Deloitte comments

The addition is aligned with the deemed supply provision described in Paragraph 5(4) of the First Schedule of GST Act 2014.

This clarifies that there is no exception (to the deemed supply) on goods that have been transferred as part of a TOGC even though the transferee does not appear to claim any input tax credit on the goods. This is consistent with the principle of continuity as the transferee is deemed to have incurred and is entitled to input tax credit on the initial acquisition. More crucially, businesses involved in TOGC should ensure that the documentations and records are sufficient for the transferee to identify such liability to account for output tax. However, practically and commercially, identifying this information may pose a challenge. To be prudent, if such goods are given free, it may be safer to make the assumption that GST applies.

[Tax Invoice and Records Keeping Guide – as at 6 January 2017](#)

Tax invoice and credit/debit note for zero-rated and exempt supplies

A new Paragraph 61 has been added to the guide to emphasise that a tax invoice that includes zero-rated or exempt supply, must have clear indication that there is no GST payable on the items. The value of each type of supply must be totalled separately as well. Alternatively, separate invoices can be issued for zero-rated or exempt supplies. Along with the newly added Paragraph 80, this requirement is also applicable to credit or debit notes issued for such mixed supplies.



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Deloitte comments

The addition is aligned with Regulations 22(g) of GST Regulations 2014 that each type of supply for standard-rated, zero-rated or exempt, must be distinguished in the tax invoice. The RMCD has further required that the total value to be determined separately, and this applies to the credit and debit note as well.

Pro-forma invoice and credit note without GST adjustment

New Paragraphs 65 and 66 have been added to clarify that any pro-forma invoice that is issued, albeit containing full details as that of tax invoice, shall not be regarded as evidence to claim input tax. Additionally, pro-forma invoice that is issued must be clearly marked with the words 'THIS IS NOT A TAX INVOICE'. Similarly, credit notes issued for non-GST adjustment purpose should also be marked as 'THIS IS NOT A CREDIT NOTE FOR GST'.

Deloitte comments

In accordance with Regulations 38 of GST Regulations 2014, input tax credit is claimable only upon receiving a valid tax invoice. The required remark is a good and practical reminder for the recipient not to claim input tax credit based on a pro-forma invoice. Businesses may adopt the best practice of inserting additional remarks as provided in the guide, wherever practical.

Valuation Guide – as at 18 January 2017

Minor amendments to some wordings and formula are made in the revised guide, with no significant changes in the content or treatment.

2. Changes to the Goods and Services Tax Orders

Amended Orders

[Goods and Services Tax \(Exempt Supply\)\(Amendment\) Order 2016](#)

Exempt supplies made by the joint management body and management corporation

Effective from 1 January 2017, the recovery of the following expenses made by the joint management body ("JMB") and management corporation ("MC") from the owners of a building for residential purposes held under a strata title is treated as part of the management and maintenance services provided, which are exempted from GST:

- group insurance cost;
- assessment tax; and
- quit rent.

Other amendments

The First Schedule of Goods and Services Tax (Exempt Supply) Order 2014 has been amended where:

- the words "any supply of investment precious metal as specified in sub item 4(1) other than a supply pursuant to paragraph 3 of the First Schedule to the Act" in item 3 has been deleted; and
- the words "the investment precious metals are as follows" in sub item (4)(1) have been replaced with "any supply of the following investment precious metal for the purpose of investment".

The Second Schedule of Goods and Services Tax (Exempt Supply) Order 2014 has been amended where:

- the word "chartered" in sub item 22(a)(i) has been replaced with "charter"; and
- the words "Railways Act 1991[Act 463]" and "rail" in sub item 22(b) have been replaced with "Land Public Transport Act 2010 [Act 715]" and "railway".



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In the past, the recovery of insurance cost, assessment tax and quit rent by a JMB would be treated as reimbursement of expenses (i.e. taxable supplies) and the JMB would be required to register for GST if the total value of its annual taxable supplies exceeded the registration threshold of RM500,000. The JMB would have also been required to issue a tax invoice and charge GST to the unit owners. With this change in view, JMBs should review the total value of their respective annual taxable turnover to determine if they fall below the threshold required for registration. If they fall below the limit, the JMB may wish to consider de-registering for GST if the administrative work outweighs the benefits of GST recovery.

Goods and Services Tax (Zero-Rated Supply) (Amendment) (No. 3) Order 2016

Goods for use on voyage or flight

Goods for use as stores, ship spares or as merchandise for retail sale to persons carried on a voyage or flight from a place outside Malaysia in a ship or aircraft in the past, qualified as zero-rated supplies. However, effective 1 January 2017, such items have been removed from the said order and hence subject to GST at standard rate.

Other amendments

Item 6(1) in the First Schedule of Goods and Services (Zero-Rated Supply) Order 2014 has been amended to clarify that the supply of treated water to a domestic consumer is treated as zero-rated supply if they are provided by:

- (a) Any person who is licensed under the Water Services Industry Act 2006;
- (b) Any person who is exempted from the licensing requirements under section 5 of the Water Services Industry Act 2006;
- (c) Any person who is licensed under the Water Ordinance 1994 [Sarawak Chapter 13]; or
- (d) Any person who is licensed under the Sabah Water Supply Enactment 2003.

Furthermore, several updates have been made to the goods prescribed in the Appendix to the Goods and Services (Zero-Rated Supply) Order 2014, as below.

Tariff Code	Current	Amended
0306.11.000 (frozen)	Rock lobster and other sea crawfish (<i>Palinurus spp.</i> , <i>Panulirus spp.</i> , <i>Jasus spp.</i>)	other sea crawfish (<i>Palinurus spp.</i> , <i>Panulirus spp.</i> , <i>Jasus spp.</i>)
0306.12.000 (frozen)	Lobster (<i>Homarus spp.</i>)	Removed
0306.15.000 (frozen)	Norway lobsters (<i>Nephrops norvegicus</i>)	Removed
0306.21.190/900 (not frozen)	Rock lobster and other sea crawfish (<i>Palinurus spp.</i> , <i>Panulirus spp.</i> , <i>Jasus spp.</i>)	other sea crawfish (<i>Palinurus spp.</i> , <i>Panulirus spp.</i> , <i>Jasus spp.</i>)
0306.22.190/900 (not frozen)	Lobster (<i>Homarus spp.</i>)	Removed
0306.25.190/900 (not frozen)	Norway lobsters (<i>Nephrops norvegicus</i>)	Removed
1902.19.400	wet mi kuning and dry mi kolok only	dry mi kolok only
1902.19.900	laksa and kue tiaw only	wet laksa, wet kue tiaw and wet mi kuning only
1905.90.300	plain white bread and plain wholemeal bread only	plain white bread, plain wholemeal bread and plain whole wheat bread only
1905.90.900	plain white bread and plain wholemeal bread only	plain white bread, plain wholemeal bread and plain whole wheat bread

Deloitte Comments

Businesses involved in inbound voyages on ships or aircraft, or trading of food items as described above, should take note and review the treatment of their products to ensure the correct GST is charged.

3. Branch to offshore HQ – Is there a supply?

There are many foreign branches operating in Malaysia, most notably in the offshore financial services hub of Labuan. Since the introduction of GST, there has been the question of, whether for GST purposes, the branch is a separate entity from the overseas headquarters. This is important for determining if there is a supply between the branch and the HQ and if any services provided between branch and the overseas headquarters would be within the scope of GST?

There can be a variety of cross charges between a branch and an HQ. In many cases, this can be under a cost plus mark-up services arrangement.

According to the Malaysia Companies Act 2016, a foreign company can set up a branch in Malaysia and shall be registered under the name as registered in its place of origin. From a legal standpoint, the branch has no separate legal existence from the parent company. From a GST standpoint, it would be considered to have a fixed establishment for the purposes of GST registration, and to the extent that services are performed through that fixed establishment, it would fall within the scope of GST. However, anything performed through the establishments elsewhere would fall outside of the scope of the Malaysian GST. It is unclear whether by virtue of having this establishment inside and outside of Malaysia would make the branch a separate 'person' for the purposes of the GST.

The RMCD view on this is also unclear as there is no published guidance addressing this issue, and whether individual opinions have been sought from RMCD either in writing or during audit, there have been conflicting views given. As a consequence, we have seen different positions being applied by branches, with some choosing to treat such transactions as within scope whilst others treating it as out of scope.

Those operating under a branch structure should continue to monitor for any developments in this area. If RMCD decide on a position that a branch to HQ transaction is outside of the scope, it may require those branches who only transact with HQ to deregister from GST as they would no longer be making any taxable supplies in Malaysia.



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