



Indirect Tax

GST Chat

All you need to know

Issue 1.2017

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Greetings from the Deloitte Malaysia Indirect Tax Team

Wishing everyone a happy New Year and welcome to the January 2017 edition of GST Chat.



With a new year comes new beginnings, as we introduce to you the newest member of our GST team, Mr Koh Siok Kiat. Mr Koh joins as our Indirect Tax Clients and Markets Leader and will focus on assisting clients across Malaysia with GST and customs issues. He brings with him more than 30 years of working experience in indirect tax including his years of experience with the Royal Malaysian Customs Department (RMCD). He is well recognised for his expertise and is frequently sought out for his views on various industry and technical forums. We are certainly grateful for having him on board.

On the GST compliance front, RMCD have said that they intend to take a lighter approach to audits this year with more time spent understanding businesses and helping them with their problems. With that said, there is the expectation that there will be an increase in audit activity as part of the continuation of the Customs Blue Ocean Strategy (CBOS) launched last September. We also understand that a focus for RMCD this year will be on businesses that fail to file GST returns or pay GST on time.

It is clear from this that GST compliance activities would remain the central theme for this year, and business should continue to remain focused, especially as the concession period for penalties has finished.

We also issued 3 special alerts this month to reflect our views on key legislative updates issued in the past month. You can find these through the following links:

[Issue 1](#) , [Issue 2](#) , [Issue 3](#)

Separately, here are some other recent news and developments that may interest you:

- Customs expect an increase of RM3 billion in GST revenue for the year 2017. This increase is expected to be from additional collections obtained from businesses that have not been compliant.
- The RMCD has recorded 6,379 false declarations of goods at ports nationwide, involving RM633 million in taxes this year.
- A Kedah UMNO delegate has proposed the setting up of a Goods and Services Tax Board, which would be tasked to manage and collect the gains from the taxation system.

Kind regards,

Tan Eng Yew

GST & Customs Country Leader – Deloitte Malaysia

1. GST Technical Updates

Revised Guides

[Designated Area Guide – as at 1 January 2017](#)

The guide on Designated Area (DA) was updated largely to reflect the changes arising from the Finance Act 2017 and other relevant GST orders. We have highlighted some of the major changes in the following paragraphs.

Paragraph 10 was updated to reflect the change in concept of goods being “supplied” versus “removed” from the DA. The goods removed from a DA to another DA through the Principal Customs Area (PCA) are treated as an importation into Malaysia and subject to GST. However, suspension of GST would be given for such movement of goods, similar to goods removed from a DA to a free zone and warehouses under Warehousing Scheme through PCA. FAQ 13 was also added to illustrate this.

Paragraph 20 was updated to clarify that the service provided by a service provider in a DA to Malaysia or a service provider from Malaysia to a DA is regarded as local supply and subject to tax under Section 156(b) of the GSTA.

New paragraphs 23 to 25 were added to clarify the entitlement to an input tax credit for taxable supplies made within or between DAs. Notably any input tax incurred in relation to taxable supplies is claimable, including taxable supplies not subject to GST. However, input tax incurred in relation to exempt supply and mixed supplies is subject to exclusion or apportionment.

Lastly, the RMCD removed the FAQ No. 18, which was dealing with the issue on imported services that was not GST-chargeable.

Deloitte Comments

The GST treatment for movement of goods between DA and PCA, free zones and certain warehouses may have changed fundamentally; however, suspension of GST at different points may give rise to the same current GST effect. Nonetheless, businesses should review any such transactions and determine the appropriate GST treatment for reporting purposes.

Another welcome clarification is on the ability to claim input tax credits on taxable supplies made within and between DAs.



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Although no GST is charged on such supplies within and between DAs, they are still considered as taxable supplies and input tax credits should rightfully be allowed.

Input Tax Credit Guide – as at 4 January 2017

An amendment to Paragraph 14(j) was made that has finally shed light to the interpretation of investment holding company (“IHC”), when considering certain exempt financial supplies to be incidental or otherwise. This has a critical impact on the claim ability of the related input tax credits and also if a business is considered as a mixed supplier. It is stated that an IHC refers to a company whose principal activity is in the making of investments, such as properties, shares of other companies and holds assets in an investment portfolio such as securities for the **purpose of maximising income and capital appreciation**. Exempt financial supplies made by a qualifying IHC are not treated as incidental and input tax must be apportioned.

We noted paragraph 26(c) and example 46 were removed confirming that deemed input tax is not claimable for insurance or takaful cash payments made pursuant to an insurance policy or takaful contract in relation to medical or personal accident insurance policy provided to the insured registered person, and the registered person is disallowed to claim any input tax (blocked input tax, e.g. medical expenses). This is consistent with the amendment to the law.

Also, new paragraphs 57 to 59 were added to provide further clarification on claiming of input tax on goods purchased before GST registration. A registered person must obtain approval from the Director General (DG) before a claim for input tax can be made under Regulation 46 of GST Regulations 2014 on goods acquired before registration. Furthermore, in the case of capital goods, they must have been capitalised according to the standard accounting principal in Malaysia before the date he is registered in order to be eligible to claim the input tax. Any GST incurred on services related to capital goods is not claimable under Regulation 46 of GST Regulations 2014 unless it can be capitalised according to the standard accounting principal in Malaysia before the date the business is required to be registered for GST.

Deloitte Comments

With the clearer definition of IHC in the guide, businesses can better assess the principal activity of their company to determine whether it falls within the meaning of IHC as per the RMCD’s interpretation. Subject to the *de minimis* rule, input tax incurred on making exempt financial supplies may be disallowed from claiming credits, and a mixed supplier may be required to carry out partial exemption calculations in relation to the residual input tax incurred. This, whilst not overly complex, remains an area prone to errors and unnecessary hassle for businesses that are not principally making exempt supplies but caught under this provision.

The removal of Paragraph 26(c) and example 46 are aligned with the Regulation 6(c) of the GST (Amendment) Regulations

2016 where insurance or takaful cash payment relating to the supply of medical or personal accident insurance or takaful which input tax is disallowed under the Regulation 36 of the GST Regulations 2014, would not be entitled for deemed input tax. Effective 1 January 2017, insurance companies ought to take note of this as there is less input tax that could be recovered in this area.

In relation to claiming of GST on pre-registration costs, this continues to be a difficult area. The confirmation that it would be possible to recover the GST on service costs that are capitalised is a positive outcome. However, the denial of input tax on pre-registration capital costs unless the items are capitalised pre-registration is problematic and is perhaps not supported by the law.

Kindly note that the recent updates in the law do not fully support the motion described in the guide. Kindly refer to our special alert [here](#) for further information.

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2. Exploring impacts of transfer pricing (“TP”) adjustments towards the valuation of goods for import declaration purposes

Companies may adjust the value of goods for cross border transactions due to TP reasons. The adjustment may be upward or downward and may impact the value of goods (for customs duties and GST/VAT purposes) that was initially declared by the importing company.

It is a common practice in some countries to obtain an upfront approval/ruling from the Customs Authorities for the valuation of imports which may potentially be impacted by TP adjustments. Nevertheless, TP seems to be the least explored area from a customs perspective at this stage in Malaysia.

It may only be a matter of time before RMCD formally adopts the approach taken abroad and request an upfront approval or ruling. Given that generally customs import values should be based on transaction values between related companies which are not influenced by their relationship, it would be important for companies to brace themselves to consider these aspects for import valuation purposes.

This is especially so when there is a rising trend of post-import valuation audits conducted by RMCD – even on import duty-exempted items, since GST is now imposed on most imported goods. Whether any additional GST or customs duties would need to be paid as a result for such adjustments also remains a matter of concern.



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3. Amendments to the Customs Duties

[Customs Duties \(Amendment\) \(No. 3\) Order 2016](#)

Effective 1 January 2017, the flat rate of import duty imposed on dutiable goods imported on/with or in the baggage of a person entering Malaysia for non-commercial use has been reduced from 30% to 10% with the amendment of the Customs Duties Order 2012.

The above excludes the imports of motor vehicles, alcoholic beverages, spirits, tobacco and cigarettes.

Please note that the Customs Duties Order 2012 shall be replaced by the Customs Duties Order 2017 effective 1 April 2017.



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[Customs Duties \(Goods Of ASEAN Countries Origin\) \(ASEAN Harmonised Tariff Nomenclature And ASEAN Trade In Goods Agreement\) \(Amendment\) \(No. 5\) Order 2016](#)

Effective 1 January 2017, the flat rate of import duty imposed on dutiable goods imported on/with or in the baggage of a person entering Malaysia for non-commercial use has been reduced from 30% to 10% regardless of preferential rates granted under the ASEAN Trade in Goods Agreement ("ATIGA").

The above excludes the imports of motor vehicles, alcoholic beverages, spirits, tobacco and cigarettes.

For our events related to indirect taxes, please [click here](#).

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