



Indirect Tax

GST Chat

All you need to know

Issue 3.2017

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Greetings from the Deloitte Malaysia Indirect Tax Team



Hello everyone and welcome to a fresh new month and another edition of GST Chat.

In this month's edition we will reflect back on the learnings from the recent National GST Conference 2017. I had the pleasure of participating in one of the sessions, and it certainly a good event for sharing and learning. You can read about what was discussed in our article below.

On the topic of sharing and learning, we are pleased to announce that Malaysian content is now available on the Deloitte Tax@Hand application. The application is available to download on Google Play and Apple Store and contains a significant amount of tax content from across the globe. You will be able to access our GST Chat articles and updates from the app, as well as other tax updates from Malaysia.

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

- The Royal Malaysian Customs Department (RMCD) has started imposing late payment penalties on any GST Returns where the payment has been received late. The penalties appear to be system generated and are quite significant. Taxpayers have reported being hit with a 10% penalty on the tax due for being late on payment by as little as one day. Our understanding is that RMCD are taking a strict position on waivers and are unlikely to waive penalties unless it can be provided that the RMCD were at fault;
- In line with efforts to promote prompt payment of GST and electronic filing, the Customs have recently launched a GST E-payment seminar which aimed to educate GST registrants on the benefits of e-filing and remitting paperless GST payments.
- RMCD have launched their pilot project to install a dongle to every cash register which allows transaction data to be captured and reported to RMCD. Installation of devices commenced in the middle of this month with approximately 5,000 retailers participating in the pilot

Kind regards,

Tan Eng Yew
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1. GST Technical Updates

Revised Guides

[General Guide – as at 13 February 2017](#)

Paragraph 101 of the amended guide has been updated for consistency with the changes in time of supply for imported services, in particular for non-registered persons. Declaration and payment of GST have to be made no later than the last day of the subsequent month from the earlier of payment date or the foreign invoice received date.

Paragraph 188 on the mechanism to claim input tax has been updated to provide clarity on the duration to recover the input tax not claimed in the taxable period where the taxable persons hold the tax invoice. The RMCD has removed the words “claim within (6) six years from the date of supply to or importation by him”, replaced with “the DG may allow such claim at the earlier of the date the tax invoice is posted into the company Accounts Payable or one year from the date the tax invoice was held”.

The definition of passenger motor vehicle (for the purpose of blocked input tax administration) in Paragraph 192 was amended to provide a consistent interpretation of passenger motor vehicle, in line with the changes made in the Input Tax Credit Guide earlier. A passenger motor car means “a vehicle that is legally licensed and constructed, modified or adapted for the purpose to carry or capable to transport and commonly available or used on public roads in Malaysia. The specification and features of a passenger motor car is to have seats of not more than nine passengers including the driver and the unladen weight does not exceed three thousand kilograms”.

Paragraph 198 that elaborated on the financial institutions whose exempt supply does not qualify as incidental exempt financial supplies, was amended to be in sync with Regulation 41 of the GST Regulations 2014. Specifically, item (h) – “person who supplies goods and provides finance under agreement which expressly stipulates that the property will pass at some time in the future” was removed. Additionally, item (j) was added to elaborate the meaning of investment holding company



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who also could not treat the exempt financial supplies as incidental.

We noted also that Paragraph 199 on the refund of input tax section has been amended to substitute the words "twenty-eight (28) working days for manual GST submission" with "within the time practicable". This implies that the RMCD could defer any GST refund should they require additional time to process. This amendment stopped short of mentioning the refund period for manual submission; however, according to the GST Regulations, the refund duration of 28 days should be applicable.

Paragraph 202(c)(ii), (iii) and (iv) on the treatment of input tax incurred prior to GST registration has been updated. The amendment provides greater consistency with the Input Tax Credit Guide, and confirms that a registered person may claim the input tax incurred on goods (including capital goods) that he holds at the time of registration based on the amount approved by DG. The capital goods must also be capitalised in accordance with the standard accounting principle in Malaysia for any input tax claim. Furthermore, Paragraph 202(d)(ii) was also amended to remove the wording on claiming such input tax within 6 years from which a taxable person *should have been registered*, in consistence with the amendment in the GST regulations.

Paragraph 203(a) on the input tax claim in relation to Transfer of Going Concern (TOGC) was amended slightly to reinforce that the input tax can only be claimed if it is attributable to taxable supplies.

Deloitte Comments

The general guide was updated to mostly reflect the changes arising from the recent changes in the legislation, and also to be consistent with the other specific GST guides. While most of the changes are self-explanatory, we would highlight the amendment in Paragraph 188 where a taxable person (seemingly) can no longer claim any unclaimed input tax within six years from the date of supply. The guide implies that the input tax can only be claimed when the invoice is posted into the accounts or one year from the date of receiving – effectively cutting down the claim period to 12 months at most. While Regulation 38(4) allows for six years to claim, these conditions imposed here could very well be the policy that the DG may practice in exercising his discretion to allow any of such claims. However, this policy could only go so far as limiting a taxpayer from claiming the input tax in subsequent periods and cannot prevent the taxpayer from amending the past return in which the invoice was posted and claiming the input tax. Nevertheless, wherever practical, businesses should endeavour to claim any input tax promptly.

Supply Guide – as at 13 February 2017

Paragraph 14 that describes imported services was further elaborated to state that "if the imported services relates to a regulatory and enforcement function, the recipient such as a

statutory body will not have to account and pay GST on those services acquired”.

Paragraph 75(q) has also been updated to state that the time of supply for imported services is when the supplies are paid for by the recipient or the **date of invoice** from his supplier if it is received earlier than the date of payment. This is effective 1 January 2017.

Deloitte Comments

The words used in paragraph 14 are ambiguous and confusing. It is unclear if the *services* that relate to regulatory and enforcement function such as application of work permit, immigration charges by a foreign service provider are not subject to reverse charge, or if it is only any *recipient* who is involved in regulatory and enforcement function that would not be subjected to reverse charge. In view of this uncertainty, businesses should take caution when treating the imported services.

The update in paragraph 75(q) on time of supply for imported services is not aligned with the revised Section 13(4)(b) of the GST Act 2014. The Act provides that the time of supply shall be the earlier of the **received date** of the supplier’s invoice, or the date of payment. Our view would be to follow the wording in the Law which requires “received date” and not invoice date.

Import Guide – as at 25 January 2017

The latest Guide on Import had been issued on 25 January 2017 to supersede the version on 12 January 2017; however, the link to the document was removed. We do not see any notice or reason of revocation, and are unsure if this was intentional or just a mistake. Nonetheless we have attached the hyperlink here for your reference.

http://gst.customs.gov.my/en/rg/SiteAssets/specific_guides_pdf/IMPORT_25012017.pdf

In this latest guide, FAQ 7 was updated to clarify the timeframe and requirements for taxpayers to pay any amount of GST short paid during importation, and the manner to claim the GST paid as input tax credit. The taxpayer is required to apply to the GST Division Headquarters within fourteen days from the date of payment of the GST short paid, stating the reasons along with other information and proof. Only upon the approval by DG can the taxpayer make adjustments in their GST return following the approval date.

Changes in GST treatment

The guide on Import was updated to reflect the changes in the latest Finance Act 2017. The changes are

1. Table 1: GST on supply or removal of goods from the FCZ to FIZ is suspended (previously only suspended with ATS).
2. Table 2: GST on supply or removal of imported goods from a bonded warehouse to FIZ is suspended (previously only suspended with ATS).

3. Table 3: GST on supply or removal of goods that belong to LMW or FIZ companies from a bonded warehouse to FIZ is suspended (previously relieved under Para 56(3)(b) of the GST Act 2014).

The matrix on transaction type, movement type and GST chargeable status in the Appendix 1 and 2 has also been amended to reflect the updates.

Deloitte Comments

The update on FAQ 7 outlines clear instructions for taxpayers to claim input tax credits on any additional GST paid after importation. We assume that the procedure is to involve a manual application to the RMCD as we have not seen any corresponding forms or facility in the Taxpayer Access Point (TAP).

The changes in GST treatment for the supply or removal of goods into FIZ, are in line with the amendments brought forth in the Finance Act 2017 for Section 161 and Section 162A(2) of the GST Act 2014.

Free Zone Guide – as at 1 January 2017

The RMCD had released the Free Zone Guide that serves to replace the Free Commercial Zone Guide dated 5 January 2016. Following the amendment made through the Finance Act 2017, 'free zone' (FZ) would now include 'free commercial zone' (FCZ) and 'free industrial zone' (FIZ). Nonetheless the Guide on FIZ dated 5 January 2016 is still present in the RMCD portal; we presume it would be taken down for update soon.

The following summarises the general GST treatment for Free Zone:

Event	GST Treatment	Reference
Import of goods into FZ **	No tax shall be due and payable	Section 162(a)
Supply of goods from PCA to FZ **	Standard rate	Free Zone Guide as at 1 January 2017
Supply of goods within FZ**	Disregarded	Section 162(b) Previously relieved
Removal of goods from FZ to PCA	GST payable upon importation	Section 162A(1)
Removal of goods from FZ to FZ/DA/BW through PCA	Suspended	Section 162A(2)
Export of goods from FZ	Zero rate	Section 17(1)(b)

**Application may depend on specific business scenarios.

The guide has laid down rather comprehensive scenarios of goods movement involving FZ and other parts of Malaysia or overseas that provide good reference. We have summarised some key points from the guide that may require your attention.

1. Imported goods that are removed from the place of import (not FCZ) to PCA is subject to GST as importation, but suspended if the goods are removed into FCZ.
2. Movement of goods within FCZ is not chargeable to GST; however, the taxable person has to issue tax invoice with nil GST and insert a clause "Supply of goods within FCZ under Section 162(b) of GSTA 2014". This scenario includes the situation where the FCZ company sells the goods to overseas company or local company in PCA, who sells the goods onward to another company in FCZ but the goods are delivered directly from the FCZ company. The goods essentially moved within the zone. The overseas company or PCA company is also not required to charge GST; however, the requirement to issue tax invoice with the additional clause mentioned earlier, is applicable if they are GST registrant.
3. Movement of goods from FCZ to PCA is not the supply of FCZ company, but to be treated as importation into PCA. Hence, the FCZ company is not required to charge GST; however, tax invoice with the additional clause is still required. We have noted the additional clause mentioned "Section 162(b) of the GSTA 2014", which is actually not applicable in this case. There could be some typographical mistakes in the guide.

The requirement above applies also to an overseas company or PCA company (if registered) that purchases the goods from the FCZ company and sell onward to another PCA company, but the goods are removed from the FCZ company directly.

4. Goods from PCA that are brought into FCZ for outright export is zero rated.

The treatment for FIZ varies slightly – we provide here the notable differences.

1. GST on goods imported into FIZ is waived only if the FIZ is located in a FCZ at port or airport, as provided in Paragraph 37. If the goods are removed from the place of import (not FIZ) into FIZ, GST is applicable for the importation, and FIZ company with ATS can suspend the payment of import GST.
2. Movement of goods between FIZ, either directly or under dropshipment arrangement involving a third party (overseas or local), no GST shall be charged but the seller has to issue tax invoice with the additional clause "Supply of goods within a FIZ under Section 162(b) of GSTA 2014."

3. The invoicing requirement above is also applicable to movement of goods from FIZ to PCA, either directly or under dropshipment arrangement, albeit the GST is imposed upon importation.
4. Goods that are removed from FIZ to PCA for subcontracting work, albeit no transfer of ownership, is subject to GST. Nonetheless the GST relief under item 16B of the GST Relief Order 2014 is applicable.
5. Goods that are brought into FIZ for subcontracting work and subsequently returned to the PCA, are subject to GST as importation.
6. Processed goods under an ATMS arrangement that was delivered from the toll manufacturer in FIZ to PCA, is subject to GST as importation.

Deloitte Comments

The guide provides good examples on the movement of goods involving FCZ and FIZ, in line with the changes in the GST Act 2014. One should appreciate that the treatment focuses on the movement of goods, rather than the "supply" per se. It is also worth noting that while the changes seek to streamline the GST treatment involving the FCZ and FIZ, there are still differences in terms of the treatment for FCZ and FIZ. It is advisable to scrutinise your transactions to ascertain the proper treatment.

The imposition of GST on the processed goods that moved from the toll manufacturer in FIZ to a person in PCA (item 6 on FIZ above), could potentially result in double taxation. This is because under Section 72(2) of the GST Act 2014, the recipient has to self-account for the GST for the goods, while GST is imposed again upon the importation declaration. A further clarification should be sought for this scenario.

Businesses are given three months from 1 January 2017 to make all the necessary compliance adjustments following the changes, such as updating the invoices presentation to factor in the additional clause (Q&A 22).

[Guide on Accounting Software Enhancement towards GST Compliance – as at 02 March 2017](#)

The accounting software guide was refreshed after its revocation shortly after its release in August 2016. We have summarised some of the key changes that may affect you in the paragraphs below.

Some recommended "new" tax codes were removed in this guide, as below:

TX-ER	Input tax allowed on the acquisition of goods or services by local authority or statutory body
IM-CG	Import of goods with GST incurred for a capital goods acquisition
IM-RE	Import of goods with GST incurred that is not directly attributable to taxable or exempt supplies (Residual input tax)
OS-ER	Out-of-scope supplies for Enforcement and Regulatory functions
OS-OV	Out-of-scope supplies between overseas country with other overseas country

Meanwhile, some new tax codes were recommended:

OS-TXM	Out-of-scope supplies made outside Malaysia which will be taxable if made in Malaysia
NTX	Supplies with no tax chargeable (such as supply within free zones and Designated Areas (DA))

There are several important changes to the GST tax code and GST-03 return form mapping, which need to be taken into account for accurate reporting.

Tax Code	New Mapping
NTX	Field 10 (Total Value of Local Zero-Rated Supplies)
ZDA	Field 11 (Total Value of Export Supplies) <i>(Previously mapped to field 10)</i>
GS	Not required to be disclosed <i>(Previously proposed to be mapped to field 13 but suspended)</i>

The formula for apportionment and De Minimis Rule described in Appendix 5 was updated with the new tax codes suggested in this guide. There has been no change to the principle of calculations. There are two methods suggested for the apportionment calculation, where one could choose depending on how the data is segregated with additional tax codes.

Deloitte Comments

The recommendation on tax codes remains a mere recommendation and it is not compulsory for businesses to follow strictly. However, proper planning and usage of tax codes could help in GST reporting and apportionment calculations for the mixed suppliers. Some of the tax codes such as TX-NC (GST incurred but business chooses not to claim the input tax) could be useful not only for GST, but also for corporate tax computation, as the input tax is likely not allowed as tax deduction (needs to be "added back").

On the other hand, the new requirement to disclose certain supply values in the GST return form ought to be adhered to, despite the Guide on GST-03 form having not been updated. Businesses should look into this as soon as possible and make the necessary changes.

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2. Impact of GST Public Rulings

At various conferences and forums, RMCD has indicated that it is their intention to issue a number of GST Public Rulings this year. Our understanding is that these Public Rulings would progressively replace the existing Director General's Panel Decisions or "DG's Decisions" as more commonly known.

So what does this change in approach mean for taxpayers? In short there are some positives but also some shortcomings.

If we first look at the positives, a Public Ruling is actually binding on the Director General whereas the DG Decisions are not. Pursuant to section 76(3) of the GST Act, where a person interprets and applies the GST Law according to the ruling, the RMCD is required to uphold it and cannot apply that provision differently to the ruling. This provides taxpayers much greater protection and comfort when applying those provisions.

Another positive is that Public Ruling will actually set out a particular fact pattern and the technical analysis for the Director General's view. One of the challenges with the current set of DG's Decisions is that they do not contain any detailed analysis that would allow them to be applied to a broader range of arrangements and thus creates ambiguity and confusion. The more detailed Public Rulings will provide taxpayers with at least a set of principles that they can apply more broadly.

However, there is a downside. Whilst the DG's Decisions are perhaps the fast food to the fine dining Public Rulings, like fast food they come out very quickly and are easy to consume. Given the extent of work required to produce a Public Ruling, we cannot expect them to come out as frequently as DG's Decisions and this can be problematic for taxpayers needing quick answers and solutions.

No doubt RMCD is in a difficult position, in needing to provide both clarity and timeliness. However, one hopes that the Director General can allow for both by continuing to issue both DG's Decisions and Public Rulings. We of course realise that much like fast food, the DG's Decisions may not be the best thing for us; however, Malaysians will still be craving it in some shape or form.



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3. Updates from the National GST Conference

The National GST conference was held earlier this month and was attended by over 1,000 participants.

The speakers for the event included the Deputy Minister of Finance I (Dato' Wira Othman Aziz), senior officials from RMCD, the Chairman of the GST Tribunal and various Indirect Tax Leaders from various Accounting Firms (including Tan Eng Yew from Deloitte). The theme of the conference was 'Managing the GST Ecosystem' and the conference focused on the current status of GST, including touching on topics such as:

- Meeting GST challenges head on – Perspective from RMCD and private sector;
- GST audits;
- OECD – International VAT/GST Guidelines;
- GST tax cases updates – Malaysian view point; and
- GST impact on domestic demand – Budget implications.

Whilst there was a significant amount of dialogue and content, we have summarized some of the key messages from the event:

- After exceeding the revenue collection target from 2016, the GST collections target set for RMCD this year would be RM42 billion;
- RMCD has acknowledged that whilst they are not meeting the 14 working day turnaround for refunds, this is improving. They hope to meet this requirement for 85% to 90% of refund claims by 2017;
- The number of GST registrants had increased from 430,000 to 435,000 which exceeded the original target. We would expect that this figure would increase with increased audit activity and the focus of RMCD this year to target online businesses who they believe should be registered;
- RMCD acknowledged that there are areas for improvement and efforts are being made to rectify this. Some of the areas highlighted include the inconsistency of views provided by different RMCD officers on GST treatment and lack of resourcing;
- Businesses that are subject to an audit would be given 30 days to rectify any mistakes found. Whether additional penalties are imposed would be decided on a case-by-case basis, e.g. if the errors arose due to an honest mistake and not serious fraud. Leniency in audit is most welcome but more structure is required on when penalties would be remitted to give taxpayers more certainty;



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- Due to the uncertainty surrounding when to use a particular Customs declaration form for importation and exportation of goods, the RMCD are contemplating publishing additional guidance on the Customs portal to assist taxpayers;
- RMCD is now considering relaxing its position on voluntary GST registration for companies who do not have any or only limited taxable activity in the first 12 months of commencing business. This is a welcome move, however, it is unclear when and how this change in approach would be implemented;
- Malaysia is looking to follow suit with other countries globally to introduce new rules to tax non-resident digital service providers who provide services to Malaysian consumers. It is likely that these new rules would result in these foreign service providers registering for Malaysian GST and charging GST on these services. Businesses who are involved in this space, or perhaps provide a platform for offshore digital providers to sell products to Malaysian consumers should take note of this development;
- GST Tribunal may develop a portal to upload all case judgments made by the Tribunal without publishing the identities of the involved parties; and
- As a follow up to the announcement in the Budget and the amendments to the GST Legislation, the RMCD has launched the GST 'dongle' for retailers on a trial basis. The dongle is intended to capture GST transaction data from point of sale systems operated at retailers. The trial which will be undertaken at selected premises in the Klang Valley would serve to monitor the effectiveness of the device before it is rolled out more broadly.

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