



Indirect Tax Perspective ⇨ everything

GST Chat All you need to know

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Greetings from the GST Team of Deloitte Malaysia

Hi everyone, we are counting down to the last month of 2015, as we bring to you our November edition of GST Chat covering the latest updates in the Malaysian world of Indirect Tax. Following on from the budget announcements last month, we are still waiting on the date at which the Finance Bill will have passed the policy stage prior to being enacted as law. However, based on the announcements that have been made to date, issues are still hanging around on the difference in timing for accounting for input and output tax on imported services.



Here are some other interesting developments and news from the past month:

- The Royal Malaysian Customs Department (“RMCD”) has been actively conducting verification audits on special sales tax refund claims made by taxpayers. The audits have generally included review of the supporting documentation for the claims.
- The Second Finance Minister, Datuk Seri Ahmad Husni Hanaziah has stated that the government has no plans to increase the GST rate for the foreseeable future.
- As an outcome of the GST proposals in the Budget, we need to stay alert for the issuance of amended GST Regulations, as well as the amended Zero-rated, Exempt and Relief Orders.
- Look out for the effective date of many of the changes announced during the Budget, as we are not sure if a number of them can be properly implemented (both from a Government, as well as a business perspective) by 1 January 2016, which is supposedly the effective date.

The RMCD has also issued some new guidance this month and this is highlighted in our technical update section below. There have also been a number of changes to existing DG Decisions, and these do have some systems and practical effects.

New Appointment - Asia Pacific Indirect Tax Clients, Markets & Industries Leader

Senthuran Elalingam (GST Director, Kuala Lumpur Office) has recently been appointed as Deloitte’s Asia Pacific Indirect Tax CMI Leader. Senthuran, will be working with Deloitte member firms across Asia Pacific to ensure the delivery of solutions to clients which span across regions as demonstration of our ‘As One’ approach while retaining his focus as part of the Deloitte Malaysian team assisting Malaysian multinational clients manage their indirect tax risk in the countries they operate in.

We wish him well on his new appointment.

We hope you find our November edition useful and we always welcome your thoughts and feedback. Till next month, best regards from us, the Deloitte GST Team.

Regards,

Tan Eng Yew
GST and Customs Country Leader – Deloitte Malaysia

1. GST Technical Updates



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DG Decision 8/2015 issued on 2 November 2015

Three issues are addressed in the current DG Decision. They are:

- Employee Benefit – whether supply of accommodation with furniture to an employee without consideration is considered as employee benefit?
 - A supply made under the category of employee benefit is considered as used for the purpose of business and input tax is claimable unless the supply relates to an exempt supply or blocked input tax.
 - A supply of accommodation under employee benefit relates to an exempt supply. It is considered as used for the purpose of business, however input tax incurred (if any) on acquisition of accommodation is not claimable.
 - Where the accommodation includes furniture, deemed output tax of 6% would apply on the supply of the furniture and employer is entitled for input tax credit. However, if accommodation (be furnished or unfurnished) is for employee's family, the input tax is blocked.

Deloitte Comment: The basis for the Customs position is unclear as it is generally accepted that the lease of accommodation with furniture is neither a supply of goods nor a supply of services made to a 'connected person' and so should fall outside of the deeming provisions. (See our further comments below under the comments relating to [Item 6, DG decision 4/2014.](#))

The view that the supply of free accommodation is an exempt supply with the taxpayer have an inability to recover input tax will pose issues for employers as not only would this make them mixed suppliers for GST purposes (which has all sorts of other GST and registration implications), it will impact costs. It is to be noted that the DG decision does not specify anything on blocking of input tax credit on maintenance and management of accommodation, this leads to an open issue which has not been addressed. Businesses should review their positions and assess whether clarification should be sought from Customs.

We can assist should you wish to seek such clarification, and if necessary, this may be an issue that will need to be taken to the Tribunal. Should this be the case, we have a highly skilled team that currently has a number of cases before the Tribunal, and they can assist you.

- Whether equipment provided by an employer in relation to safety and security requirement under the Occupational Health and Safety Act 1994 is considered an employee benefit?

Safety and security equipment provided under employment contract as employee benefit, provided to employees as free of cost is not subject to GST. If the employment contract does not covers such equipment, then supply would be subject to GST.

It is important to note that if such equipment is provided on returnable basis (i.e. employee needs to return), then no GST should be accounted for.

Deloitte Comment: Businesses should review their employment contracts and handbooks to assess whether safety and security equipment are clearly identified as being provided to employees in the course of their employment. Alternatively they should provide that such equipment is to be returned to

the employer upon termination of the employment contract. You should however, expect that RMCD may wish to see some evidence that the policy regarding returns is in fact implemented

- To what extent a person is considered as holding a tax invoice as mentioned in paragraph 38(4) (a) of GST Regulations (GSTR) 2014?
 - Although the Law allows input tax credits to be claimed for a period of up to 6 years, where it is claimed in a month subsequent to when the business 'holds' the tax invoice, RMCD's view appears to be that it would require prior approval in order to do so
 - Customs have allowed businesses to make a claim without prior approval, provided the claim is made in the GST Return for the taxable period that corresponds to the earlier of:
 - a. The date in which the invoice is posted into the accounts payable system; or
 - b. A year from when the company first held the tax invoice

Deloitte Comment: This issue was mentioned in one of our earlier editions. Whilst not being a full relaxation of the rules, it does seem to provide businesses with some breathing space in relation to the recovery of input tax. Those who fall outside of the (earlier of the posting date / one year) concession will still need to apply to Customs for approval before making a claim.

Generally this will mean that you should have some valid reason as to why the claim was not made when first available. We would suggest that you are careful with how the reason is stated, as this could give rise to some form of audit if RMCD considers that it indicates a weak compliance system.

Item 3, DG Decision 1/2014 (amended on 28 October 2015) – Bad Debt Relief

The following amendments were made:-

New points (ii) & (v) has been added

(ii) The bad debt relief may be claimed if – (a) requirements under s.58 GSTA and Part X of GST Regulations 2014 are fulfilled; and (b) The supply is made by a GST registered person to another GST registered person; and

(v) A GST registered person who has made the input tax claims but fails to pay his supplier within six months from the date of supply shall account for output tax immediately after the expiry of the sixth month (s.38 (9) GSTA)

Deloitte Comment: With the above amendments the DG has clarified that claiming of bad debt relief is not mandatory and if a person wishes to claim bad debt relief they can do so by fulfilling conditions as prescribed.

In regard to making an input tax claim on outstanding amount for more than six months – the taxable person should account for output tax equivalent to the input tax claimed earlier immediately to the extent that payment has not been made. This should occur immediately after sixth months has expired.

Furthermore, the period to notify the DG for claiming bad debt relief at a later date i.e. not immediately after expiry of six months, has been extended from 5 days to 30 days.

Item 5, DG decision 2/2014 (amended 28 October 2015) – Voluntary Registration

Previously it was clarified that within 12 months from the date of application for voluntary registration, the total taxable supplies should exceed the required threshold.

However, from 28 October 2015 the above condition has been substituted with that set out below:-

“The first taxable supply is made within 12 months from the date of application”

As a result of this, once a person applies for voluntary registration, in the view of the Director General, such person should make its first taxable supplies within the ensuing 12 months. There is now no requirement that the taxpayer make supplies exceeding the threshold within the 12 month period.

Deloitte Comment: This is an issue that is causing major problems for a number of new start entities, particularly where major construction work that is to be undertaken makes it unlikely that any taxable supplies can be made within the required 12 month period. Taxpayers should consider challenging this potentially arbitrary rule that has been instituted by RMCD, as it is clearly not within the spirit of how GST should be administered by the Director General, and is contrary to basic principles of VAT/GST espoused by the OECD. We have a team that is well placed to assist any such entities.

Item 6, DG decision 4/2014 (amended 28 October 2015) – Individual supply of commercial property

Point (iii) has been substituted as follows:-

- (iii) *Any individual who is not a GST registered person is treated as carrying out a business if he at any one time owns –*
 - (a) *more than 2 commercial properties;*
 - (b) *more than one acre of commercial land; **OR***
 - (c) *commercial property or commercial land worth more than 2 million ringgit at market price;*
- (iv) *Any individual mentioned in paragraph (iii) is liable to be registered as a GST registered person if –*
 - (a) *he has the intention to supply any of his commercial properties or commercial land; **AND***
 - (b) *the total value of such supply exceeds the prescribed threshold in 12 months periods.*
- (v) *‘at any one time’ mentioned in paragraph (iii) means at any point of time in his lifetime commencing after the effective date.*
- (vi) *Any individual is treated as carrying out a business and making a supply of taxable service if:*
 - (a) *he is supplying any lease, tenancy, easement, licence to occupy or rent; **AND***
 - (b) *his annual turnover for such supply has exceeded the prescribed threshold in the period of 12 months.*

Deloitte Comment: As a result of above amendment one more criteria (i.e. (c)) has been added to determine when a person is considered as carrying out business of supply of commercial property. Additionally, it has been clarified that any kind of lease, easement, license to occupy or rent is considered as making taxable supply.

This appears to support our comments above regarding the supply of residential premises to employees – this will generally be made under a ‘*lease, tenancy, easement, license to occupy or rent*’, and although the supply is an exempt supply of residential premises if a consideration is charged, if none is charged, then, as a supply of services which is not made to connected persons, it should not be subject to the ‘Gift Rule’.

Item 6, DG Decision 5/2015 (amended on 28 October 2015) – Reimbursement & Disbursement

RMCD has made amendments to the effect that businesses has to fulfil all of the criteria set out for disbursement and reimbursement for GST purposes if it wishes to treat a transaction as being a ‘disbursement’ rather than a ‘reimbursement’.

Deloitte comment: We are generally of the view that, unless, for some reason the recipient of a supply is not able to claim input tax credits, it will be better to treat on-supplies as being a reimbursement, rather than being a disbursement. This will be the less risky option.

We would be pleased to advise further on this issue if it is of interest to you.

GST Relief Guide on Supply of Services made to Government

As the Guide is meant to deal with the supply of service to Government, RMCD has removed the clause relating to RON95 which is goods rather than services.

The amended Guide has specified types of services supplied to Government that can fall under GST relief. Relief has further been extended to the supply of services for projects which are under the Public Private Partnership.

Of importance to those business that deal with Government departments that seek to claim relief, the guide also mentions that they will be given a transition period till 31 December 2015 for not producing a relief certificate for their purchases. Post 31 December 2015, government department must produce a relief certificate on their acquisition of service.

This is a risk that rests on any supplier of services to Government where relief may be available. If you have any concerns, we would be pleased to assist.

GST Relief Guide on supply of goods made to Government

RMCD has also amended the Guide for businesses that are supplying goods to the Government. It provides a clearer picture on what are the goods that are subject to the relief, and the procedures involved for the Government's purchase. One important point to note was that RMCD has removed the requirement that suppliers are required to have the government's rubber stamp on the Relief Certificate for their purchase.

The amended guide provides clearer difference between goods and services for GST relief. In the amended version, RMCD has stated clearly that supply of goods under relief to Government is stipulated under item 3, First Schedule of the GST (Relief Supply) Order 2015. Some of the examples quoted are supply of fax machine; supply, deliver, assemble and testing of 35 units of CCTVs for the use of National Registration Department etc.

As for the supply of service to Government, the relief is stipulated under Section 56(3) of the GST Act 2014. These services refer direct dealings with the government and it includes rental, maintenance, cleaning services, etc. One of the example quoted is maintenance service on the Government's motor vehicles which includes supply of spare/replacement parts. The act of servicing the motor vehicle is considered as a service although there are parts being replaced. RMCD has indicated that there is no need to prepare separate tax invoices of such. However, it is not clear in the Guide whether a separate relief certificate is to be presented in order for the replacement of parts to be relieved from GST.

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2. GST – What does it mean for Risk Management?



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Before we start to look at particular Risk Management issues and how the RMCD are addressing their issues, we do need to consider the position of GST in the context of your business. Sure there are still areas of concern such as the reaction of RMCD to claims for refunds, claims for the special Sales tax credit, and the question of whether one makes 'wholly taxable supplies', amongst others. However, those are all issues that should, in time be resolved.

What will not be resolved, at least not in a final form, is the treatment of the on-going risks associated with complying with GST. This will require a completely different approach. In order to manage these risks, you will need to develop an in-house strategy to deal with the Risk Management. Broadly, your GST Risk strategy needs to include two main streams. Firstly, the day-to-day compliance requirement, this should be approached in a systematic way. Secondly, transaction planning for those 'once-off' transactions will need a different focus.

Underlying the requirement for an acceptable Risk Management Strategy for addressing the business' GST compliance requirements are a few fundamentals. These will be:

- Integrity in the compliance and reporting functions, including both systems and processes;
- Understanding where the GST risks are and the effect on your business;
- An ongoing focus on the compliance requirements including reporting deadlines, monitoring and reacting to any updates of legislation or regulations as well as any Ministerial Orders; and
- Ensuring that staff are updated and trained regularly.

Any GST Risk strategy for day-to-day compliance should at least include the following steps:

1. Testing the compliance system regularly to ensure that any changes in process, procedure, or the law that will impact it are identified and amended for the updated requirements.
2. Changes to the business should be considered, the processes updated and the impact on the reporting of GST must be addressed.
3. A single person should hold ultimate responsibility for on-going GST Risk Management of the GST processes and impact.
4. Affected staff should be trained in the impact of GST on their functions when joining the business, and attend regular refresher training on the impact of GST on their functions.

In addressing transaction planning concerns, the Risk Management Strategy requires that a senior person take responsibility. This will need to be a person that would be involved from the outset in the planning of any such transactions. Here, of particular concern, would be the following types of transactions:

1. Acquisitions of significant assets (this could be a capital asset to be constructed or imported, or acquisition of another company, or group of companies).
2. Sale of significant assets (for whatever reason, and this could involve the sale of shares in a company or group of companies).
3. Planning structural changes to the current business.
4. Undertaking Initial Public Offerings (IPOs), or any other form of capital raising.

At a basic level, all of these types of transactions involve a significant amount of planning, and also fairly complex documentation, contracts etc. What is essential is that this planning, and the documents that will be used, take account of the GST treatment and ensure that it is properly documented.

Each of these issues will be the subject of further commentary and articles in GST Chat. However, if you would like to discuss any specific concerns, please [contact us](#) and we would be glad to help.

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3. GST – What do you need to address as part of your year end?



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For most, this will be the first financial year end under a GST regime, and while you might normally consider the financial year end to be the season for auditors, accountants and corporate tax people, you will now also need to factor in some thoughts around the GST implications as well.

Without going into detail at this stage (we will deal with this in greater detail in the next GST Chat, we feel that it is important that we draw to your attention some (but not necessarily all) of the GST issues that you need to keep front on mind as you navigate your way through the year end season.

These issues will include the following:

- Stock write-offs
- Bad debt adjustments
- Longer period adjustments where making mixed supplies and not entitled to claim full input tax credits
- Disposal / write off of assets that had been used for making mixed supplies
- Ensuring that attribution of assets between exempt and taxable supplies correctly reflects the factual situation
- Have you got updated clarifications from RMCD on any contentious issues
- Year-end recharges made between group companies both within and outside Malaysia
- Long term contracts considered for zero rating - to check whether any review opportunity is arising
- Projects/contracts spanning over year end – to take note that GST is being accounted based on time of supply and not on the basis of revenue recognition
- Are you likely to breach the threshold for moving from a quarterly filing of GST returns to a monthly filing
- Have you agreed a budget for the on-going training of staff in GST to ensure that you maintain your good compliance record
- Have you finalized all of those uncertain issues that arose during the GST implementation, and if not, have you got a program in place to do so

All of these issues will need to be dealt with in one form or another. There will, no doubt be a number of other issues specific to your business – but as the saying goes ‘*you don’t know what you don’t know*’.

Probably the most important issue to bear in mind for the new year is that you need to find a budget in the accounts for risk management (see article above) and this will also need to include conducting some form of GST health check or process review.

The reason why we advocate this as being an essential part of the new business process is that one of the amendments being introduced as an outcome of the Budget 2015, is that Penalties will now be a reality if there is any shortfall in the amount of GST paid by taxpayers.

As we have mentioned above, we have a team that is well versed in these issues, and would be happy to take the stress off you in the busy year end season coming up.

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We hope that you have enjoyed this edition of the GST Chat and for now. See you again in the next month edition!

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