



Indirect Tax

GST Chat

All you need to know

Issue 11.2016

In this issue

- 1 [GST Announcement – Additional requirement on TAP \(Taxpayer Access Point\)](#)
- 2 [Changes to the Goods and Services Tax Orders & Customs and Excise Duties Orders](#)
- 3 [GST Technical Committee Meeting Update Part 3: Providing clarity or further confusion?](#)
- 4 [Impact of Budget 2017 on Businesses in Free Zones and Bonded Warehouse](#)
- 5 [What GST Adjustments should businesses be aware of?](#)

[Other tax information](#)

[Deloitte Contacts](#)

Greetings from the Deloitte Malaysia Indirect Tax Team

Hello everyone and welcome to the November edition of GST Chat!

The month of October has been an impactful month with the announcement of National Budget 2017 and further amendments to various GST legislations. Also, we caught glimpses of the initial effects of the Customs Blue Ocean Strategy Operation on GST registrants across Malaysia.



In this edition of GST Chat, we will be looking at the recent amendments to the GST relief order, zero rated supply order and other changes to the Customs and Excise Duties Orders. This includes changes to the GST treatment on certain supplies in Designated Areas and changes to the import duties and excise duties in Duty Free Islands.

Another amendment to take note is in regards to the use of a new prescribed device to capture GST data. The Minister of Finance II, Datuk Johari Abdul Ghani has provided a bit more information and has shared that the device would be able to link the cash register machines of traders to the Royal Malaysian Customs Department (RMCD)'s systems. That would mean every transaction will be automatically declared to the RMCD and there would be no room for traders to avoid declaration of collection to the RMCD.

Here are some other recent news and developments that may interest you:

- A fast food company was recently fined RM 9,000 for failure to submit their GST returns.
- The Port Klang Authority (PKA) reached out to the Government to amend the Free Zone Act 1990 following the replacement of Sales and Service Tax (SST) with the GST. PKA chairman Tan Sri Kong Cho Ha stated that there were complaints from businesses that GST was imposed for services at the Port Klang Free Zone (PKFZ), that should actually be exempted.

I hope you will find the information here beneficial and do contact us if you have any queries, comments or require our assistance.

Kind regards,

Tan Eng Yew

GST and Customs Country Leader – Deloitte Malaysia

1. GST Announcement – Updating branch and outlet information on TAP (Taxpayer Access Point)

New Requirement

[Taxpayer to update outlet or branch address through TAP](#)

On 26th October 2016, RMCD announced that all taxpayers who have an outlet or branch are required to update their respective address via the Taxpayer Access Point (TAP) with immediate effect. The RMCD has provided a guideline on how to update the outlet or branch details via TAP. The RMCD guidelines can be found [here](#).

Deloitte comments

While the RMCD did not explain the rationale for this requirement, we believe that they are addressing the dilemma of companies having branches and outlets nationwide on which address to use when issuing tax invoice.

On the other hand, a registered person who receives a tax invoice with the branch address that is different from the registered address on TAP, may still be able to claim the input tax credits if the branch address is already on TAP record.

This could be a pragmatic approach to enable input tax claims for businesses who receive tax invoices with various addresses. The RMCD should provide further clarification on this.

[Back to top](#)



Goh Shi Ying

Supervisor
Melaka office

2. Changes to the Goods and Services Tax & Customs and Excise Duties Orders

Amended Orders

- *Goods and Services Tax (Imposition of Tax for Supplies in respect of Designated Areas) (Amendment) Order 2016*
- *Customs Duties (Labuan) Order 2016*
- *Customs Duties (Langkawi)(Amendment) Order 2016*
- *Customs Duties (Tioman)(Amendment) Order 2016*
- *Excise Duties (Labuan) Order 2016*
- *Excise Duties (Langkawi) Order 2016*
- *Excise Duties (Tioman)(Amendment) Order 2016*



Nicholas Lee

Manager
Kuala Lumpur office



Wendy Grace Wong

Senior
Kuala Lumpur office

[Imposition of GST, Import and Excise Duties on Intoxicating Liquors, Tobacco Products and Cigarettes Imported into Labuan, Langkawi and Tioman](#)

The supply of wine, spirit, beer, malt liquor, tobacco and tobacco products to Labuan, Langkawi and Tioman referred to as Designated Areas ("DA") under the GST legislation or the importation of such goods into the DA is added to the list of goods that are subject to GST at the rate fixed under the GST Act.

These products imported into Labuan, Langkawi and Tioman referred to as the Duty Free Islands under the Customs legislation were in the past, exempted from import and excise duties. However, effective 1 November 2016, the Ministry of Finance has imposed import duties and excise duties on the imports of intoxicating liquors, tobacco products and cigarettes imported into the Duty Free Islands vide the above Orders.

[Other amendments](#)

The Customs Duties (Langkawi) Order 1986 has been amended where the words "*ikan bilis*" in paragraph 2 have been replaced with "*anchovies*"

[Deloitte Comments](#)

Businesses should take note and implement new procedures and processes and in particular manage any cash flow costs as a consequence of the imposition of GST, import duties and excise duties at customs clearance.

Amended Orders

Goods and Services Tax (Zero-Rated Supply) (Amendment) (No. 2) Order 2016

[Goods that are Not Zero Rated](#)

Exceptions have been made for the zero rating of goods supplied to a DA from Malaysia (other than from another DA), with effective from 1 November 2016.

The exceptions are as below:-

- (a) Petrol, diesel and liquefied petroleum gas;
- (b) Wine, spirit, beer and malt liquor;
- (c) Tobacco and tobacco products; and
- (d) Motor Vehicle supplied to Tioman.

[Deloitte Comments](#)

This would ensure consistency with the imposition of GST on imports on these goods from outside of Malaysia.

Amended Orders

- *GST (Relief) (Amendment) Order 2016*
- *Customs Duties (Exemption)(Amendment)(No 4) Order 2016*
- *Excise Duties (Exemption)(Amendment)(No. 2) Order 2016*

[Relief and Exemption from Importing One Motor Vehicle](#)

With effective from 1 November 2016, the driver or rider is given relief from the payment of GST and exempted from customs duties/excise duties on the acquisition of one motor vehicle or one motor cycle registered in and transported from Labuan or Langkawi and subsequently returned to Labuan or Langkawi.

The "**30 days per trip**" restriction on the period that the motor vehicle / motor cycle may remain in the principal customs area has been removed while the maximum period not exceeding "**90 days in a year**" should still be observed.

[GST Relief, Import Duty and Excise Duty Exemption on Imports of Intoxicating Liquors into Labuan, Langkawi and Tioman by Public/Beer House Operators](#)

The Ministry of Finance has granted, effective 1 November 2016, import and excise duty exemption for the imports of intoxicating liquors by persons licensed under paragraph 35(1)(a) or (b) of the Excise Act 1976 to operate a public house or beer house in the Labuan, Langkawi and Tioman vide the amendment Orders above (subject to specific conditions below).

(4) Conditions	(5) Certificate to be signed by
(i) That prior approval of a proper officer of customs must be obtained by the licensed person;	The person approved by the Director General
(ii) The goods are imported into, and deposited in, a bonded warehouse in Labuan, Langkawi or Tioman;	
(iii) The goods are used directly in the licensed person's business at the licensed person's premises;	
(iv) That the licensed person shall keep records or accounts of the goods purchased and that such records and accounts be made available for inspection by a proper officer of customs at any time; and	
(v) That the licensed person shall pay the duties on any goods that cannot be accounted for.	

Part I of the Schedule to the Customs Duties (Exemption) Order 2013 and Excise Duties (Exemption) Order 2013 have been amended to include the above as item 118 and 34 respectively.

In addition, relief on the payment of GST on the acquisition of the below goods are added into item 32 to 38 of the First Schedule of the GST (Relief) (Amendment) Order 2016:-

- a) Wine, spirit, beer or malt liquor
- b) Tobacco and tobacco products

Subject to certain conditions, the relief is given to the below persons that are licensed under:-

- Section 65D of the Customs Act 1967 to operate a **duty free shop** in a DA
- Section 65 of the Customs Act 1967 to operate a **licensed warehouse** in a DA
- Paragraph 35(1)(a) or 35(1)(b) of the Excise Act 1976 to operate a **public house or to operate a beer house** in a DA

In item 3 of the Second Schedule of the GST (Relief) (Amendment) Order 2016, "Duty free shop licensed under the Customs Act 1967" is substituted by "Persons licensed under section 65D of the Customs Act 1967 to operate a duty free shop in Malaysia other than a designated area" for relief from charging GST on all goods supplied at a duty free shop (subject to certain conditions)

Deloitte Comments

Effective from 1 November 2016, the sale of alcohol and tobacco within the DAs will now be subject to tax except for those sold in approved establishments (duty-free shops, licensed warehouse, and pubs and beer houses).

Whilst being unfortunate for many visitors and tourists to the region, these changes will pose some challenges for businesses in ensuring they remain compliant with the GST requirements.

[Back to top](#)

3. GST Technical Committee Meeting Update Part 3: Providing clarity or further confusion?

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 last meeting on 30 June 2016 to deal with several technical issues where clarification was needed. The meeting minutes was recently circulated on 5 September 2016. Based on the review of the minutes, several issues still remain unclear and need to be addressed by the RMCD.

As these minutes pre-date the recent Budget and Finance Bill, it is likely that some of these issues are no longer applicable on a go-forward basis. However, any changes that are made to the Law do not apply retrospectively and these issues may still remain relevant for the 2015 and 2016 tax years.

As a continuation from our previous edition, we have summarised below some of the important issues raised along with RMCD's responses. Our analysis on RMCD's responses included below.



Vincent Ng

Assistant Manager
Melaka office



Goh Shi Ying

Supervisor
Melaka office

Item 29 - Directorship

Referring to Paragraph 2(1)(a) of the Third Schedule of the GST Act 2014, a person shall be deemed to be connected if they are officers or directors of one another's business. In such a case, the RMCD is of the view that only the companies are connected to each other, not the directors or officers of the companies.

The RMCD has also expressed that when a person becomes the director of a company, the person would not be considered as a connected person to the company or vice versa.

Deloitte comments

The RMCD seems to take a general stand that the director is not a person connected to the company.

However, we need to caution that under the Paragraph 2(1)(c) of the Third Schedule of the GST Act 2014, a person shall be deemed to be connected if any one person directly or indirectly owns, controls, or holds five per cent or more of the outstanding voting stock or shares of both of them.

In other words, a director may be regarded as a connected person to the companies to which he or she directly or indirectly owns, controls, or holds five per cent or more of the outstanding voting stock or shares of both of them apart from the companies in this situation are regarded as connected to each other. We are of the opinion that further clarification should be sought from the RMCD to provide clarity on this matter.

Item 34 – Time of Supply

The RMCD has clarified that for a company who uses a Vendor Managed Inventory (VMI) where goods are exported and stored at an overseas warehouse, provided that the company (exporter) retains the title of the goods until the goods are appropriated by the recipient and the consideration is determined by the exporter at the time of appropriation of goods, the time of supply would be the earlier of the following dates:

1. the date of appropriation by the recipient;
2. the date when a tax invoice or a self-billed invoice is issued; or
3. the date when a payment is received by the exporter (supplier).

Where the exporter issues tax invoice or a self-billed invoice is issued within 21 days after the date of appropriation of goods by the recipient, the time of supply would follow the date of the tax invoice or self-billed invoice issued.

Deloitte comments

We agree with the RMCD's view on the time of supply for the above scenario which would not be based on the date of exportation of goods as at that time, the ownership of the goods has not been transferred to the recipient.

From the perspective of furnishing the Field 11 of GST-03 returns, it seems that the company would need to report the value of export supplies following the time of supply mentioned above, not based on the date and total value of the Form K2 issued by the RMCD at the time of exportation of goods.

In view that Field 11 should be filled up based on the total exportation value declared in Form K2, in this case, the company would need to ensure that all the supporting documents are readily available to justify the value and timing difference between the Field 11 and Form K2.

Item 35 – Rounding up of Exchange Rate

As exchange rate is issued in many decimal points, some businesses may round up or down the exchange rate to the nearest decimal point to facilitate calculation and payment of GST. The RMCD has clarified that businesses are allowed to round up or down on the total of input or output tax but not the exchange rate.

Deloitte comments

RMCD seems to have taken a firm stand that businesses are not allowed to round up or down the exchange rate. Although rounding up the exchange rates may seem immaterial at a glance but should the transactions be of large amounts, continuing this action may lead to over / under-reporting of GST. Businesses should be aware of the implication of this action.

Item 36 – Requirement to Retain Documents for 6 Years

The GST Act requires documents to be retained for 7 years for the purpose of audit but the ink on thermal paper receipts and invoices generated by the POS system dissipates in a matter of months.

The RMCD has further advised businesses to convert the receipt and invoices into electronic form. The RMCD further made reference to Section 36(4) of GST Act 2014 which states that where the record is originally in a manual form and is subsequently converted into an electronic form, the record shall be retained in its original form prior to the conversion.

Deloitte comments

From the RMCD's response, businesses would still have to retain the receipts and invoices for a period of 7 years although the receipts and invoices have been converted and stored in an electronic form. This method may not be cost efficient for businesses.

[Back to top](#)

4. Impact of Budget 2017 on Businesses in Free Zones and Bonded Warehouse

Even before the GST to effect, the export and manufacturing industry has pushed the RMCD and the Ministry of Finance to rationalize and align the GST treatment for businesses operating in the free zones and bonded warehouses.

The Budget provided some good news to these businesses, resolving several administrative issues. However, there remains several other issues which still needs further consideration.

Free Industrial Zones (FIZ) now share the same status as Free Commercial Zones (under a new combined 'free zone') and no GST is due and payable upon importation into the zone. For companies operating in the FIZ, eliminating the requirement to pay importation GST for goods imported into the zone is a welcome step. This not only reduces several administrative complexities for the businesses operating in the free zones but also eliminates the need for FIZ companies to apply for the Approved Trader Scheme (ATS).

In addition to the above, the requirement to pay GST on supply of approved goods within and between free zones and approved (bonded) warehouses no longer applies. Additionally, supplies made within a free zone is no longer counted for the purpose of determining the threshold for GST registration, hence foreign entities operating within the free zones and bonded warehouse may no longer be required to register.

Although there remains some uncertainty over the fate of the companies operating as a Licensed Manufacturing Warehouse (LMW). RMCD has repeatedly indicated that LMW companies would not be considered as an approved warehouse for the purposes of Warehousing Scheme under section 70. However, with the announcement of recent Budget and analysis of the Budget speech, it appears that LMW companies could be eligible for the benefits granted under the Warehousing Scheme. However, we need to wait and see on the practical implementation by RMCD.

An area which has not been dealt with in the recent Budget was the imposition of GST on services performed on goods in Malaysia which are eventually exported. This not only creates additional costs for non GST registered multinational



Everlyn Lee

Director
Penang office



Shaleen Goel

Assistant Manager
Penang office

companies but also hampers the competitiveness of Malaysia in comparison to our neighbours who are vying for the same foreign investment and have accorded zero rating on such services.

[Back to top](#)

5. What GST Adjustments should businesses be aware of?

As we approach the end of 2016, many businesses, especially multinational companies make annual adjustments in their books of account and seek to finalise various outstanding transactions.

Analysing the impact of GST on such adjustments has become more critical than ever, in view of the introduction of late payment penalties earlier this year coupled with the facts that the RMCD is aggressively undertaking audits and it's raising demands to meet the year's revenue target.



Jeet Oza

Manager
Kuala Lumpur office

The commonly observed adjustments made by businesses which could potentially have a GST impact are:

- Adjustments to the value of transactions in the form of year-end volume rebates & discounts
- Correction / revision of transactions due to wrong quantity, pricing errors, specification errors, damaged goods, sales return etc.
- Adjustments towards value of intangibles, such as royalties, trademark, license fees etc. (usually calculated on value of sales in local area or some other similar parameter)
- Adjustment due to change in tax treatment pursuant to a decision / confirmation being rendered by the RMCD

The above adjustments are generally made by issuing, either a credit note or debit note. Businesses must be mindful of the fact that the issuance of such debit notes / credit notes may change the taxable value or tax treatment of the underlying transaction which may alter the business's GST liability. In some cases, certain adjustments may also retrospectively affect a business's liability, requiring the business to amend its GST returns filed for previous taxable periods.

Apart from the above commonly observed adjustments, there are also instances where there may not be an underlying invoice or financial document, as a result, making it difficult for businesses to track and identify any transactions or subsequent adjustments that may trigger a GST impact.

Examples of such transactions may include:

- Transfer pricing adjustments made at year end which have the effect of changing the value of imported goods or services
- Business assets put into private use
- Bad debt relief and recovery
- Supply of free services to overseas related entities
- Receipt of advances, forfeiture of deposits etc.
- Review opportunities of long term contracts

Businesses are advised to undertake a review or mock audit of their business transactions, financial processes and documentation to ensure that there are no potential exposures due to GST. Also, undertaking mock audits would give decision makers some idea of whether the business is ready for a full-fledged GST Audit or not.

At Deloitte Malaysia, we have a team of professionals with in-depth local and international experience to assist clients with such audits and reviews. Our team would be more than happy to share our insights and experiences with you.

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

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[Back to top](#)

Contact us



Robert Tsang
South East Asia
Indirect Tax Leader
robtsang@deloitte.com
 (+65) 6530 5523



Tan Eng Yew
Country GST &
Customs Leader
etan@deloitte.com
 (+60 3) 7610 8870



Senthuran Elalingam
Asia Pacific Indirect
Tax Clients, Markets
& Industries Leader
selalingam@deloitte.com
 (+60 3) 7610 8879



Wong Poh Geng
Director
powong@deloitte.com
 (+60 3) 7610 8834



Chandran TS
Ramasamy
Director
ctsramasamy@deloitte.com
 (+60 3) 7610 8873



Irene Lee Ah
Kam
Associate
Director
irlee@deloitte.com
 (+60 3) 7610 8825



Ha Kok Fei
Associate Director
kha@deloitte.com
 (+60 3) 7610 8190

Name	Title	Email address	Telephone
Wendy Chin	Senior Manager	wechin@deloitte.com	(+60 3) 7610 8163
Diamond Khanted	Manager	dkhanted@deloitte.com	(+60 3) 7610 8618
Jeet Oza	Manager	jeoza@deloitte.com	(+60 3) 7610 7827
Nicholas Lee	Manager	nichlee@deloitte.com	(+60 3) 7610 8361
Sachin Vishwanath	Manager	savishwanath@deloitte.com	(+60 3) 7610 8395
Leong Wan Chi	Assistant Manager	wanleong@deloitte.com	(+60 3) 7610 8549

Other Offices

Name	Title	Email address	Telephone
Johor Bahru Susie Tan	Senior Manager	susietan@deloitte.com	(+60 7) 222 5988
Penang Everlyn Lee	Director	evelee@deloitte.com	(+60 4) 218 9913

Melaka Vincent Ng	Assistant Manager	ving@deloitte.com	(+60 6) 281 1077
Ipoh Terrence Mooi	Senior Manager	tmooi@deloitte.com	(+60 5) 254 0288
Kuching & Kota Kinabalu Kane Bong	Senior Manager	kbong@deloitte.com	(+60 8) 246 3311



Get in touch



Deloitte

Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr. Ismail
60000 Kuala Lumpur, Malaysia

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