



GST Chat

All you need to know

Issue 11.2017

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Greetings from Deloitte Malaysia's Indirect Tax Team

Greetings everyone and welcome to the November instalment of GST Chat.



At the end of last month, we saw the release of Budget 2018 which included a number of GST specific developments. While there are some interesting and useful concessions, there have been very little details released to date. Most importantly, there were no major changes or amendments to the GST Law that were announced, and it would appear the expansion of our GST to cover offshore digital services is on hold for the time being.

For those of you who missed our GST Budget Updates in the Special Edition of Tax Espresso, we have reproduced the GST section further below.

Aside from the release of the Budget, the most significant development since our last edition was the release of the first two GST Public Rulings. We discuss the technical content further below, but they represent a major development. For one, we can finally see the technical basis for the positions taken by the Royal Malaysian Customs Department (RMCD) and this allows the potential for broader application. The other is that taxpayers can rely upon these rulings and are afforded protection under the Law. This represents a significant change from the previous 'DG Decisions' which afforded no such protection. Expect more of these rulings to be released in the near future.

Here are some recent news that may interest you:

- The Director General of the RMCD was reported as saying that the Government has lost more than RM100 million due to fraudulent GST claims. He urged businesses to rectify such claims before a large-scale audit operation is launched next year to target such offenders;
- RMCD has said it can achieve the target of an additional RM2 billion in Goods and Services Tax (GST) revenue in 2018 based on the projected increase in consumption, coupled with its strategies to ensure compliance.

I hope you will find this month's GST chat informative and please do not hesitate to contact our team if you have any enquiries, comments or assistance.

Kind regards,

Tan Eng Yew

GST and Customs Country Leader

1. GST - Budget 2018

The proposals in the budget are as follows:

Harmonisation of GST (zero-rated) treatment on reading materials

Magazines, journals, periodicals and comics have been proposed to be zero-rated. This is to harmonise with the GST treatment of books and newspapers which had been zero-rated previously.

Effective: 1 January 2018



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Harmonisation of GST-exempt treatment on management and maintenance services of stratified residential buildings

Currently:

- The supply of services of management and maintenance, including recovery of group insurance cost, assessment and quit rent, by joint management body (JMB) and management corporation (MC) to the owners of strata units of residential buildings, are treated as exempt supplies.
- However, such services provided by entities other than JMB and MC, e.g., housing developers, are not covered by the exemption.

It is proposed that such services supplied by housing developers are to be treated as exempt supplies.

Effective: 1 January 2018

GST relief on construction services for school buildings and places of worship

It is proposed that 100% GST relief be given on construction services for the construction of school buildings and places of worship that are financed through public donations.

The key conditions are as follows:-

- a) Invoice has not been issued for the construction services;
- b) Approval has been obtained under section 44(6) of the Income Tax Act 1967 for the construction fund of the schools and places of worship;

c) Approvals have been obtained for the development and construction of the schools and places of worship by Local Authorities, the Ministry of Education Malaysia or State Religious Councils (for surau or mosques);

d) Construction of school buildings including hall and sports facilities are directly used for teaching and learning purposes;

e) The relief does not apply to the purchase of commercial buildings; and

f) Construction services contract signed on or after 1 April 2017.

Effective: For applications submitted to the Ministry of Finance from 27 October 2017

GST relief on the importation of big ticket items

It is proposed that GST relief be granted on the importation of big ticket items such as aircrafts, ships and oil rigs by companies in the aviation, shipping and oil and gas industries.

The GST relief is only for an approved list of goods and subject to terms and conditions to be set by the Minister of Finance.

Effective: 1 January 2018

GST relief on importation of goods under lease agreements from designated areas

It is proposed that GST relief be granted on the movement (i.e., deemed importation) of goods from a Designated Area (i.e., Labuan, Langkawi and Tioman) to other parts of Malaysia (i.e., principal customs area or PCA) under a lease agreement, by a supplier in a Designated Area to a customer in PCA.

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The GST relief is only for an approved list of goods and subject to terms and conditions to be set by the Minister of Finance.

Effective: 1 January 2018

GST relief on handling services rendered to operators of cruise ships

It is proposed that cruise ship operators be given GST relief on handling services (e.g., stevedoring, loading, unloading and reloading and inspection of cargo) provided by sea port operators in Malaysia.

Effective: From 1 January 2018 to 31 December 2020

The merger of Customs Appeal Tribunal (CAT) and Goods and Services Tax Appeal Tribunal (GSTAT)

It is proposed that GSTAT and CAT be merged (the merged Tribunal will retain the name of CAT). Thereafter, any person aggrieved by the decision of the Director General of Customs on customs and GST matters may file their appeal with CAT.

Effective: 1 January 2019

Increase in the de minimis value for imports from RM500 to RM800 to establish Malaysia as the regional ecommerce hub.

The de minimis value for imports will be increased from RM500 to RM800 to establish Malaysia as the regional e-commerce hub.

Whilst this should mean that imports below the value would not be subject to duty or GST, the actual implications will be known upon release of the relevant order.

Effective: To be determined

Review of GST treatment for local authorities (proposed amendment to section 64 of the GST Act 2014)

Currently, only regulatory and enforcement functions of local authorities are out of scope (not subject to GST). It is proposed that all supplies by local authorities (not only regulatory and enforcement functions) are to be treated as "out of scope supply" and therefore not subject to GST.

In line with the above, local authorities are proposed to be given GST relief on acquisitions of all goods excluding petroleum, commercial buildings or land and imported motor cars.

Effective: 1 April 2018 or 1 October 2018 as opted by the local authorities [according to the Finance (No. 2) Bill 2017, the effective date is to be appointed by the Minister of Finance by notification in the Gazette]

2. GST Technical Updates

[Guide on Travel Industry as at 30 October 2017](#)

The updated guide clarifies the following:

Profit mark-up / service fee in relation to tour packages

The profit mark-up/service fee charged for international flight is subject to GST at zero-rate (if it is charged as a package). If any service fee is charged separately, it is subject to GST at the standard rate. Any commission received from airline is subject to GST at the standard rate.



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Deloitte Comments

We agree with the RMCD's view that commissions received from airlines and additional service charges would be subject to GST at the standard rate while the profit mark-up / service fee charged as part of an international tour package would be zero-rated.

Transportation of passengers as part of an international flight

1. Where passengers are transported by local air as part of an international flight, this service will be zero-rated, e.g., a connecting flight between Penang and KLIA en-route to New York, will be zero-rated if the supply is made only by an airline.
2. Domestic leg, if it is part of the international carriage and provided by 2 different suppliers (under code sharing) is subject to GST at zero-rate. For example, MAS Airlines issues a flight ticket from Kota Kinabalu to KLIA to London under a codeshare with Emirates Airlines.

Deloitte Comments

Our understanding is the first point is to highlight that both legs of the transportation need to be on an airline, and if, for example, the Penang to KLIA trip was made by bus, then the bus trip would not be eligible for zero-rating.

The second point is a useful clarification that the domestic leg of an international flight, including those offered by different airlines under code share arrangement, will be treated as zero-rate as well. We wish to clarify that if the local transit is supplied as a separate supply, it will be subject to GST at the standard rate, regardless whether it is with the same airline.

Deposit / Booking fee and cancellation fee

Any deposit paid for booking of an accommodation in Malaysia is considered as part of payment and subject to GST at standard rate. Any deposit received by hotels is recognised as a revenue and the money can be used for business purposes. The accommodation industry must issue a tax invoice for any deposit received from customers.

All cancellation fees are subject to GST at standard rate.

Deloitte Comments

The view expressed by the RMCD appears to be inconsistent with the GST Act, which allows deposits to be ignored as a payment for a supply until such time it is applied as a consideration for a supply. In the case of a deposit with a hotel, it is a security for performance and can be refunded in certain circumstances.

The imposition of GST on cancellation fees also appears to be at odds with the notion that there needs to be a supply for consideration. In the event of a cancellation, no supply has occurred and the nature of the fee could be similar to compensation or a penalty fee. However, without a clear understanding of the technical basis for the position, it is unclear whether the RMCD has taken the view that a supply does exist, and if so, what that supply is.

Service fees charged for the sale of airline tickets issued by IATA accredited agents

Question 1 of the Frequently Asked Question (FAQ) Section outlines that service charges charged for the sale of air tickets is subject to GST at standard rate for inbound and zero-rate for outbound air tickets provided that the sale of air ticket is in a lump sum. Any service fee charged separately from sale of international air ticket is subject to GST at standard rate.

Deloitte Comments

We agree that the service charges represent a fee for a separate supply to that of the airline ticket and the GST treatment of that supply needs to be assessed.

Heritage Charge and Tourism Tax

Question 18 of the FAQ section clarifies that heritage charge and tourism tax are not subject to GST.

Deloitte Comments

We agree with the views of the RMCD that heritage charge and tourism tax are not subject to GST, as the payment is not a consideration for any supply.

Deposit received for non-hotel room related activities

Question 26 of the FAQ section clarifies that where a deposit paid for a non-hotel room related activity is refundable, forfeitable, or act as a security for the supply by the hotel operator, it is not treated as consideration for such supplies, unless the deposit is specifically treated as part of the consideration of the supply when received by the hotel operator. The deposit made for hotel room bookings is not treated in the same manner as non-hotel related activities upon receipt of the deposit by the hotel operator.

Deloitte Comments

We agree with the views of the RMCD whereby deposits which are refundable, forfeitable, or act as a security for a supply are not a consideration for a supply unless they are specifically treated as part of a supply. However, we are unclear on the basis for distinguishing between hotel room activities and non-hotel room activities as we have mentioned earlier. We are of the view that the treatment should remain the same.

Revised Guide on Insurance and Takaful – as at 2 November 2017

The latest Guide on Insurance and Takaful issued on 2 November 2017 replaces the previous version published on 19 August 2017.

The revised guide clarifies that arranging services for the insurance of transportation of passengers or goods to cover risks relating to the international transportation is subject to GST at standard rate.

Note that the premium charged for services comprising the insuring of transportation of passengers or goods to cover risks relating to the international transportation is zero-rated.

Deloitte Comments

The update is consistent with the GST law. However, the arranging services may be considered as zero-rated if it fulfils the requirements provided on Item 12 of the GST (Zero-Rated) Order.

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3. Public Ruling on Penalties and Healthcare Services

[Public Ruling No. 01/2017 on Imposition of Penalty](#)

On 1 November 2017, the RMCD had issued a Public Ruling on the imposition of penalty for non-payment of tax due. The Ruling throws light on the following:

- a) The calculation of penalty on any late payment of tax; and
- b) The effect of non-payment of the tax and penalty imposed.

It is pertinent to note that section 41 of the GST Act prescribes that a taxable person shall pay the tax due and submit his GST return not later than the last day of the month following the end of the taxable period to which the return relates.

However, where the tax due is not paid within the time limit as prescribed above, it is subject to penalty at the following rates:

Period of delay	% of penalty
First 30 days from the last day when tax should have been paid	10% of the tax amount due or balance of tax amount remaining unpaid.
Second 30 days	15% of the tax amount due or balance of tax amount remaining unpaid.
Third 30 days	15% of the tax amount due or balance of tax amount remaining unpaid.

The ruling has provided various examples to showcase how penalties are calculated based on the rates mentioned in the table above under the following scenarios:

- a) Taxable person or non-taxable person does not pay tax at all
- b) Taxable person or non-taxable person paid tax partially
- c) Taxable person or non-taxable person, paid, tax partially and eventually paid the whole sum.



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Further, the ruling has also reiterated the consequences as envisaged under section 41 and 42 of the GST Act for non-payment of tax or penalty.

Deloitte Comments

In our view, the public ruling issued by RMCD is clarificatory in nature. By virtue of the examples provided in the ruling, it puts to rest the confusion that prevailed over the calculation of penalty.

Although the ruling has provided guidance on calculation of penalty on any late payment and the effect of it, the ruling does not provide a preferred method of payment of the late payment of tax and penalty.

[Public ruling No. 2/2017 \(Supply by healthcare professional\)](#)

The Public Ruling No. 2/2017 issued by Director General on 1 November 2017 provides clarifications on the GST treatment for the supply of services made by healthcare professionals.

Under item 18(1), Second Schedule of the GST (Exempt Supplies) Order 2014, the healthcare services provided by any private healthcare facility registered or licensed under the Private Healthcare Facilities and Services Act 1998 is an exempt supply.

Public Ruling No. 2/2017 clarified healthcare services provided by any healthcare professionals who are employees (contract of service) under the private healthcare facilities is an exempt supply while healthcare services provided by any healthcare professionals who are not employees (contract for service) under the private healthcare facilities is a standard rated supply made to the private healthcare facilities.

The above Public Ruling takes effect from 1 November 2017 and replaces Item 2, Panel Decision 3/2014.

Deloitte Comments

The clarifications and explanations provided in Public Ruling No. 2/2017 seems to be consistent with the explanation provided under Item 2 of Panel Decision 3/2014.

However, in our view, both Panel Decision 3/2014 and Public Ruling No. 2/2017 are not in accordance with GST (Exempt Supplies) Order 2014. We are of the view that the healthcare services provided by the healthcare professionals in any private healthcare facilities under the GST (Exempt Supplies) Order 2014 should be considered as exempt supplies, regardless whether such healthcare professionals are under contract of services or contract for services.

We invite you to explore other tax-related information at: <http://www2.deloitte.com/my/en/services/tax.html>

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