



Indirect Tax

GST Chat

All you need to know

Issue 10.2016

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Greetings from Deloitte Malaysia Indirect Tax Team

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

All the excitement of Budget 2017 has come and gone. We saw some changes from a GST perspective. But more in the way of fine-tuning the existing rules than making comprehensive changes.



We have issued our **GST Special Alert – Proposed amendments in Finance Bill 2016 to GST Act 2014** which highlighted the key amendments and issues in the Finance Bill and Budget 2017 Appendices.

Aside from Budget 2017, the most recent significant development is the announcement by The Royal Malaysian Customs Department (RMCD) on the full waiver or reduction of penalties in relation to 2015 and 2016 income years.

Some of you may be thinking if this is too good to be true, or whether making a disclosure would give rise to further audits. My advice would be to take advantage of the opportunity.

We witnessed substantial increase in audit activity nationwide with the launch of the Customs Blue Ocean Strategy Operation (Ops CBOS). So, it is a matter of if and when you are audited. The RMCD has also made it clear that they intend to impose full penalties for errors captured after the concession period.

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

- Malaysia has recently dropped to the 23rd spot in the World Bank's ease of doing business ranking among 190 economies from the 22nd spot held by Malaysia last year which are partly due to issues related to the implementation of the Goods and Services Tax (GST).
- RMCD has released a notification outlining that GST returns are only allowed one amendment either within 30 days (for monthly taxable period) OR 90 days (for quarterly taxable period) after the last day of submission of return. Any subsequent amendments can only be done after attaining an approval from RMCD.
- The RMCD has also issued a notification stating that the GST payment for overseas principal cannot be made through direct debit. It was further mentioned that beginning 3 September 2016, payments via direct debit will not be processed during weekends and public holidays.
- A famous restaurant outlet was recently apprehended by RMCD for not issuing GST receipts but charging GST to customers.
- The RMCD is confident that the GST revenue target of RM 39 billion is still achievable despite a 30% decline in consumption tax collection in the second quarter of 2016.

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,

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1. GST Technical updates

- Removal of Guides for further updates
- Revised employee benefits guide
- Concession on penalty for short payments

Removal of Guides

[Removal of Guides for further updates](#)

RMCD has removed the following Guides from their official website:-

- Guide on Import (last update made dated 12 May 2016)
- Guide on Land and Property Development (last update made dated 7 September 2016)

Although the Guides have been removed, we would recommend that taxpayers continue to rely on the most recent version until the new guidance is issued. Once the new guides are made available, we will cover these in subsequent editions of GST Chat.

Revised Guide

Employee Benefit Guide – as at 29 September 2016

[New Additions to the Employee Benefit Guide](#)

A new paragraph 8 was added to clarify that input tax incurred in provision of employee benefits (EB) which relate to an exempt supply such as the provision of accommodation and transportation, is not claimable. Example 2 and FAQ



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No. 2 are also updated corresponding to this treatment.

On the other hand, Example 15 has been amended to clarify that a director *employed* by the company is not considered a connected person and thus any provision of free services is not considered a supply and output tax need not be accounted.

Deloitte comments

It appears that the RMCD is scrutinising the EB provided to the employees and the eligibility of the input tax claims. While there is an argument to support the input tax restriction (being disallowed as they are attributed to exempt supplies), there are also contrary arguments that such acquisitions relate to the broader business activity undertaken either in whole or in part i.e. it relates to generating the taxable sale revenue by the business. This remains a debatable issue and we hope to see further development on this.

With regards to whether a director of a company is classified as connected person, we are agreeable with the interpretation as Para 2(1) in the Third Schedule of GST Act 2014 does not define an employee or director of a company to be a related person.

[Concession on GST Penalty For Timely Settlement Of Tax Arrears](#)

The RMCD has issued an announcement on its official web portal that introduces concession to GST registrant who settle their outstanding tax payments. The payment deadlines are as below:

- (1) Outstanding tax in the year 2015 is to be paid before 31 October 2016
- (2) Outstanding tax in the year 2016 is to be paid before 31 December 2016

The purpose of such concession is to encourage GST registrants to file their returns and settle their tax arrears with reduced tax penalty, and for the RMCD to recover uncollected taxes.

If a GST registrant fails to make payment within the prescribed period, the maximum penalty will be imposed as below:

- (1) RM 20,000 for outstanding tax not paid for the year 2015
- (2) RM 25,000 on outstanding tax not paid for the year 2016

Deloitte comments:

The RMCD's message is clear – pay the right amount of tax as they fall due or face consequences. This is evident with many GST cases that has made it to the press with the offenders hit with hefty penalties. Businesses should be aware of the downside risks of not taking advantage of the concession period given the extensive audit program launched by the RMCD.

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2. GST Technical Committee Meeting Update Part 2: 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. It 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 has been recently circulated on 5 September 2016 and from a review of them, 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 still remain relevant for the 2015 and 2016 income years.

In continuation to our sharing in the previous Chat, we have summarised below some other important issues raised along with the RMCD's response and our analysis on the responses provided by the RMCD.

Item 10 - Supply of Land

The RMCD has clarified that Deed of Assignment (DOA) for the purpose of obtaining loan and subsequently reassigning back to the borrower, does not involve transfer of ownership of the property and hence is not treated as a supply. GST is not applicable.



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Deloitte comments

This view seems to deviate from the GST Act (Paragraph 2(1)(d) of the 1st Schedule) that mentions a transfer of any interest in land under a DOA, is considered a supply of goods. It is perhaps a consequence of the fact that there may not be separate consideration provided for the DOA in this context, however, the RMCD should further clarify the matter.

Item 12 – Property Management

The RMCD has clarified the following issues:

1. The supply of management and maintenance service to the residential parcel owner is an exempt supply. Such service includes insurance services and sinking fund.
2. The supply of utility by the Joint Management Body (JMB) or Management Corporation (MC) to the parcel owner is treated as a reimbursement for GST purposes. Hence –
 - a. the onward supply of water is a standard rated supply
 - b. the supply of electricity for the 1st 300 kw is a zero rated supply, thereafter is chargeable at a standard rate.
3. Quit rent is treated as a cost recovery (disbursement) by MC from the parcel owner.

Deloitte comments

From the RMCD's response, we note the following:

1. Recovery of quit rent is not a supply as it could be viewed as the obligation of the particular parcel owner and that the MC is making the payment on behalf. With this stance, the RMCD will need to amend the GST Guide on Land and Property (dated 18 April 2016) accordingly for consistency.
2. For recovery of electricity, the RMCD has treated the recovery the first 300kw as a zero rated supply. This appears to be a deviation from the general reimbursement treatment adopted by the RMCD that treats all reimbursement as a standard rated supply regardless the nature of the underlying supply (e.g. recovery of medical services (exempt) as a reimbursement will be subject to GST at standard rate). While we welcome the notion of assessing the underlying nature of the reimbursement supply, the RMCD should issue a clear guidance on the treatment for reimbursements.

Item 13 – Other issues in the Guide on Land and Property Development

Several issues were brought up on this agenda - we have summarised them as below:-

1. The RMCD has clarified that non-basic furniture and fittings (those not listed in Schedule G and H of the Housing Development (Control and Licensing) Act 1966) is to be treated as a separate taxable supply made by the developer instead of tied-in goods, free gifts or composite supply. The supplier is required to account for output on

such supply when the furniture and fitting is made available or invoice (from progress billing) has been issued, whichever is earlier.

Deloitte comments

The RMCD should consider that the non-basic furniture and fittings are not free gifts but are rather items included as part of the sale to entice buyers, and are often priced into the sale. However, by requiring the developer to issue a tax invoice in relation to these items creates an administrative burden. RMCD should look to relax this requirement and not require a tax invoice to be issued to buyers unless specifically requested.

2. The RMCD acknowledged that there is no specific definition for long term accommodation for the purpose of GST except for a reference made to Contract Act 1950. However, if the service apartment is used as a commercial residential premise, rented out with a central management body, has multiple occupancy, offers short term stay with services such as cleaning, laundry, telephone, utilities, the provision of such accommodation in commercial service apartment are subject to GST at standard rate.

Deloitte comments

We agree with the RMCD that in the absence of definition of long term, the period of accommodation is not relevant in the determination of taxability. The above conditions as provided by the RMCD should be applied to determine whether the commercial service apartment is a taxable supply.

3. Where a solicitor received any payment on behalf of the vendor/developer, the RMCD clarified that the payment is considered received by the developer notwithstanding that the sum received is kept by solicitor and developer has yet to receive the money.

Deloitte comments

We agree with the RMCD's view that the time of supply is the earlier of payment or tax invoice issued. The sum that is kept by the solicitor is not a requirement under the GST Act. So strictly speaking, developers need to address this practice where the solicitor is required to hold the money and release it at a later date, with the relevant authority, perhaps the Housing Development Authority and not the RMCD.

4. The RMCD clarified that the value of the supply for surrender of public utilities and amenities to the authorities for no or minimal consideration, is based on the transaction value and the time of supply is at the earlier of payment or tax invoice issued. The RMCD did not mention the date of handover of infrastructure in considering the time of supply.

Deloitte comments

Since the infrastructure surrendered is for nominal or no consideration, the developer may not receive any payment at all. If no payment received and no invoice is issued by developer, there should not be a requirement to account for GST based on transaction value since time of supply is not established. Strictly, a tax invoice should be allowed to be issued for the nominal consideration or a tax invoice showing Nil value for cases where there is no consideration. RMCD should specify the criteria to determine the transaction value for the infrastructure surrendered for developers to follow and apply consistently.

Item 14 – Is individual supply of commercial property deemed carrying on a business?

The RMCD appears to take the view that as long as there is "intention to sell/supply", an individual can be regarded as carrying on business if the individual fulfils the criteria with respect to ownership of commercial property. This is notwithstanding the fact that such transaction may likely be a one off transaction without any business intention.

Deloitte comments

The section in the Guide on Land and Property Development that describes this issue, was suspended until further notice. We are certain the RMCD is looking at this issue closely and having received feedback from the industry, there could be further development in this space. Our view is that ~~the current~~ RMCD's current view is not supported by the Law and that a business purpose needs to be proven and even where one exists, where the particular property is a capital asset, the sale of that asset would not create a GST registration requirement (sale of capital assets are excluded from the turnover calculation to determine GST registration).

Item 17 – claim on input tax credits for the surrender of land and building to local authority for no consideration or for a minimal value

The RMCD has clarified that where any taxable person has not made any taxable supply during a taxable period or any previous taxable period, the input tax claim is subject to conditions the DG as he deems fit to impose. The RMCD further emphasised that input tax which relates to public amenities and utilities is claimable only with respect to commercial properties.

Deloitte comments

The RMCD's stand is not provided under the GST law and the decision has yet to be published in the DG's Decision, and not mentioned in the Guide on Land and Property Development. However, in any disagreement to the DG's decision to disallow the input tax claim, taxpayer may appeal to the GST Appeal Tribunal within 30 days from the date the disputed decision was made known to taxpayer.

Item 20 – Input tax claiming

Several issues were discussed on this topic, we have summarised below.

1. The RMCD has allowed claiming of input tax on hybrid car battery, despite this being part of repair and maintenance expenses for passenger cars which are blocked under Regulation 36.
2. Albeit the Regulation 36 is worded such that any personal accident insurance payment is only blocked if provided to the employees, RMCD reminded that any such expenses incurred for other persons may not be claimed as input tax credit if it is not done in the course and furtherance of the business.
3. When reimbursing blocked expenses (e.g personal accident insurance) from company A to company B, GST needs to be charged and company B has to block the input tax claiming as well. It is unclear if company A can claim the input tax at the first instance.

Deloitte comments

The treatment on input tax claiming for hybrid cars, seems to be inconsistent with the regulations. It is unclear if there is special directive from the Government to allow claiming on this class of vehicles in promoting green energy. The RMCD should clarify any such special concessions.

The current view of disallowing input tax credit from both the person seeking reimbursement (company A) and the receiving person (company B), would effectively result in "tax on tax" as the 6% is charged on top of the GST included in the initial expenses. We are of the view that when company A reimburse the expense from company B, A should be allowed to claim the ITC as the input taxes are incurred for the subsequent taxable supply (the reimbursement). ITC should then be blocked at B if it pertains to a blocked expense in Regulation 36. Tax neutrality would be achieved at A since there is no value adding on the recharges.

The RMCD should relook into the treatment of reimbursement, and adopt the principle of assessing the GST treatment based on the on the underlying transactions, and the extent of value added by the party seeking reimbursement.

Item 21 – Employee Benefits (EB)

The RMCD has responded to some queries on EB matters, including the hotly debated staff accommodation and the furniture that accompanies it. We have summarised their responses as below.

1. GST input tax on expenses related to employee benefits is claimable only if it is stated in the contract of employment and the tax invoice must comply with the prescribed particular.
2. Provision of furniture as part of staff accommodation, if purchased from non-registered person, is not treated as a deemed supply. In other instances, output tax needs to be accounted for.

3. The RMCD has confirmed that provision of accommodation to staff is an exempt supply and any expenses including utilities, repairs, construction, security and cleaning services need to be blocked from claiming input tax. This is consistent with other suppliers supplying similar supplies.

Deloitte comments

The RMCD's responses reinforced the notion that furniture is provided to employees where input tax is incurred is deemed as a supply and hence output tax needs to be accounted for as per the DG's Decision 8/2015. The central argument for this issue remains unanswered: whether the provision of accommodation and furniture to the employees are treated as for their private use and not for the furtherance of the business. We do not agree to this view, for the fact that the RMCD should consider that in certain industries such as plantation and construction, accommodation and basic furnishing are the bare essential necessities to be provided to the employees and this is incurred entirely for the purpose and furtherance of business; hence it should not be deemed as a supply.

On the other hand, the RMCD should consider that the provision of accommodation, along with all relevant costs incurred, are for the ultimate purpose of making taxable supplies (constructing commercial properties, planting of palm oil fruits, etc). The businesses are not engaged in providing residential accommodation and this by no means form part of the business activities. The provision of housing and accommodation should not be regarded as an exempt supply. Alternatively, the RMCD should consider treating this as incidental exempt residential supply where the ITC claim is allowed.

Item 22 – GST voluntary registration matters

In another contentious issue, the RMCD has maintained its decision that voluntary registration will only be granted to new business who are making taxable supplies within a period of twelve months. RMCD may only consider to approve, on a case by case basis, businesses that have been required by their buyers to be a GST registrant whose taxable turnover would exceed the threshold in the future.

Deloitte comments

Despite numerous and overwhelming appeals from the business community for the RMCD to repeal the requirement of making taxable supplies within twelve months, the RMCD is adamant in maintaining this position. While we understand the RMCD's concerns of unscrupulous parties abusing the system, we disagree that such a restriction imposed across the board is fair to the businesses, in particular to the industries with long gestation period such as property development, plantation, hotel and mining companies. The RMCD should not deny registration from these special industries as it would bring about financial disadvantage and disincentives to the bona fide business who require heavy outlay of capital. The RMCD should allow these companies on board, and perhaps, impose

more stringent scrutiny on each month's GST return to detect and prevent fraudulent claims of GST.

3. Amendments to Customs and Excise Duties Exemption Order

- Customs Duties (exemption) (amendment) (No. 3) Order 2016
- Excise Duties (Exemption) (Amendment) Order 2016



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New Orders

Customs Duties (Exemption) (Amendment) (No. 3) Order 2016
Excise Duties (Exemption) (Amendment) Order 2016

Imposition of Anti-Dumping Duty on Cellulose Fibre Reinforced Cement Flat and Pattern Sheets

The Ministry of Finance vide The Customs (Anti-Dumping Duties) (Administrative Review) Order 2016 (P.U.(A)239), has reduced the percentage of anti-dumping duty on the import of cellulose fibre reinforced cement flat and pattern sheets (Product) from Mahaphant Fibre-Cement Public Company Limited, Thailand (Company).

Item No	(3) Goods Exempted	(4) Conditions
6	Un-denatured Ethyl Alcohol	(a) Imported or purchased from a licensed manufacturer (b) Imported or purchased solely to be used in manufacture of Compounded Hard Liquor (c) Any other conditions as the Director General may deem fit to impose

The rate of anti-dumping duty has been reduced from 31.14% to 19.74%. The reduced rate would be effective from 14 September 2016 to 29 March 2019.

Imposition of Anti-Dumping Duty on Steel Products

Preliminary investigations into the import of steel wire rods in hot rolled alloy or non-alloy and deformed bars in coils, regular or irregular wound coils ("Steel Products"), reveal that local steel millers have faced a decline in profit margins with cheaper steel products from various other countries flood the Malaysian Market.

In attempt to protect the domestic steel industry, the Ministry of Finance has imposed provisional anti-dumping duty of 13.9% on the Steel Products imported from 42 major countries for the period 27 September 2016 to 14 April 2017(Customs (Provisional Safeguard Duties No.2) Order 2016 P.U.(A) 242).

As the duties imposed are provisional anti-dumping duties the same shall be guaranteed by a security amount which is equal to the amount of duties levied.

Amended Orders

Amendments in Excise Duty Exemption Order

The Excise Duty (Exemption) Order 2013 ("Exemption Order") grants exemption from payment of excise duty to various goods.

The Exemption Order has been amended by the Excise Duties (Exemption) (Amendment) Order 2016 (P.U.(A)251) with effect from 10 October 2016. Item 6 of the Schedule of Part I of the Exemption Order which previously provided exemption to eligible persons on all intoxicating liquors has now been amended as below:

Amendments made in the Customs (Prohibition of Exports) Order 2012

The Customs (Prohibition of Exports) Order 2012 ("Prohibition of Exports Order") has been amended by the (Prohibitions of Exports) (Amendment) (No. 3) Order 2016, with effect from 1 October 2016. with the following changes:

Item 2 of the First Schedule in the Prohibition of Exports Order which previously referred to all kinds of natural sands (excluding silica sands, silica flour, silica bond and filter sands) has been removed and Items 1 and Items 8 have been substituted as below:

Item	(2) Description of Goods	(3) Chapter/Heading/ Subheading
1	Minerals (excluding salt, iron pyrites, sulphur, natural graphite, quartz, cement and natural borates)	Chapter 25 (excluding 2501.00 000-25.04, 25.06, 25.23 and 25.28)
8	All kinds of natural sands	25.08

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