



## Indirect Tax

### GST Chat

All you need to know

#### Issue 9.2016

In this issue

- 1 [GST Technical updates](#)
- 2 [GST Technical Committee Meeting Update: Providing clarity or further confusion?](#)
- 3 [Restructure of Duty/GST free cigarette and alcohol sales in duty free islands](#)

[Other tax information](#)

[Deloitte Contacts](#)

**Greetings from Deloitte Malaysia  
Indirect Tax Team**

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



After the launch of Customs Blue Ocean Strategy Operation (Ops CBOS) on Sept 1, we have seen a significant rise in audit activities from Royal Malaysian Customs Department (RMCD). About 50,000 companies have been identified by RMCD for audit in its first phase of this operation. In conjunction with this, the RMCD has also released a new guide setting out the procedures and processes it intends to adopt during a GST audit. We have provided a link to the new guide in our technical section below but will include our analysis in next months' edition.

Since the announcement of GST audits we have seen a number of taxpayers take the opportunity to go back and review their past GST returns and disclosures and assess their audit readiness. It is an important step to be prepared and to be ready as there can be a significant cost for getting it wrong.

In regard to ATS renewal process, the application for renewal must be submitted within 6 months pending for renewal. Any application which is submitted after expiry of approved period would be treated as new application. Further the renewal processing takes time as there is a need for an audit. GST would have to be paid for the period after expiry of ATS till renewal is granted. Separately now foreign companies being GST registered with local agents would also be allowed ATS benefit.

There is no expectation that the October budget will contain a rate change for GST but it is expected that there will be some tweaking of the rules. Look out for more in our Budget updates and our November edition of GST Chat.

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

- In what is said to be the first such case in the country, two men have gone to trial of making fraudulent claims of GST totalling RM945,123. They could be fined up to a maximum of twenty times the tax amount or be jailed for up to five years or both
- The Johor Customs Department said the state had the third highest GST collection in the country at RM3bil.

We hope you find this month's edition informative. We would welcome your thoughts and feedback.

Kind regards,

**Tan Eng Yew**

GST and Customs Country Leader – Deloitte Malaysia

## 1. GST technical updates

### **New Guide**

#### **[Guide on Audit framework for GST](#)**

RMCD has recently released a new guide on audit procedures to be adopted by RMCD officials during the course of conducting GST audits. This guide highlights processes to be adopted by Customs officers while conducting audit, documents which are required to be audited, responsibilities and obligations of the person being audited, appeals to be made etc.



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#### **[Removal of Guide on Accounting Software Enhancement towards GST Compliance](#)**

On 20th July 2016, the revised Guide on Accounting Software Enhancement towards GST Compliance as at 11 September 2014 had been replaced by a new version of guide in RMCD's website. From the latest revised guide, it had mentioned that the value of disregarded supply such as supply between group members under group registration, supply of goods within warehousing scheme and supply of value added services to overseas principal under ATMS scheme has to be declared under field 13 of GST-03 return with the effective date of August 2016 taxable period onwards.

However, an announcement had been published on the 29th August 2016 on RMCD's website that the entire guide has been removed for the purpose of amendment and improvement. Further, it states that disregarded supplies "GS" (supplies within Designated Areas) should NOT be declared in the GST-03 return. As of today, the guide has not yet been replaced.

The guidance provided by RMCD for account code is merely guidance only and not a requirement under the Law i.e. businesses are free to use their own account codes provided they can appropriately identify the different types of supplies. However, there are important requirements in relation to GST reporting of relief and disregarded supplies that must be followed. We recommend businesses to continue monitoring the progress and for reporting purposes, rely upon the most recent version of the guide.

[Back to top](#)

## 2. GST Technical Committee Meeting Update: 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 issue where clarification was needed. The minutes of that meeting have been recently been circulated on 5 September 2016 and from a review of them, several issues still remain unclear and need to be addressed by RMCD.

We have summarised below some of the important issues raised along with RMCD's response and our analysis on the responses provided by RMCD. We will cover more issues in the October edition of GST Chat.



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### **Item 15 – GST Relief for LMW**

#### Query A

Supplies made between LMW companies are currently granted relief via item no. 3 of the Relief by Minister of Finance 2/2015 (Minister's Relief). In practice, a LMW company with approval from the RMCD, can operate as an IPC whilst retaining its LMW status. Questions arise as to whether the sale of goods manufactured by a LMW to another company with LMW status but for IPC purposes could enjoy GST relief.

RMCD had responded that GST should typically apply for such sales.

#### Deloitte Comments

The usage of 'LMW company' in the context of Minister's Relief does imply that the application of GST relief does not discriminate even if the goods are supplied from a LMW to an IPC provided it's a supply made between LMWs. It would be worth discussing the extent to which such GST relief can be applied, until such time more clarity is given for the existing descriptions of the Minister's Relief.

#### Query B

Amidst discussions on whether GST relief should apply on a particular supply, a question was asked as to whether a company (whose supplies are entitled for GST relief) can choose to charge GST at 6% based on its customer's consent. Additionally, whether such GST charged is claimable as input tax by that said customer.

RMCD responded saying that it would be mandatory to apply the GST relief to the supply provided it applies. However, the question still remains as to whether input tax claims for GST charged supplies (which were granted GST relief) would be disputed.

#### Deloitte Comments

It would be a matter, from the perspective of the GST law, whether the application of GST relief is compulsory. Additionally, provided input tax claims are made based on valid tax invoices, disputes should not arise – increasing the importance of maintaining proper and valid documentation i.e. a valid tax invoice. However, we do see a possibility that RMCD would query such claims.

#### Query C

Concern was raised as to whether the GST relief for supplies made between LMW companies under the Minister's Relief would still apply on scrap/manufacturing waste supplied by one LMW to another.

RMCD concurs that on the application of GST relief for such scenario.

#### Deloitte Comments

We are agreeable with RMCD since this is in fact a supply made between LMW companies.

### **Item 16 – Applicability of Item 3.1 of Relief by Minister of Finance: 2/2015 on Drop Shipment**

The issues discussed here mainly relate to:

- Whether GST relief applies on a supply of goods made by a LMW company to a local non-LMW company despite delivery of the goods is made directly to the premises of another LMW company; or
- That such supply should be considered as an export.

In which RMCD expressed that GST relief should not apply for the transaction above nor does it qualify as an export.

#### Deloitte Comments

We understand that RMCD's response to the issues seem consistent with the provision of the Minister's Relief – a supply between LMW companies must be established for the supply to be granted GST relief. Additionally, unlike common Customs practice, it is important to understand the extent of 'Malaysia' in the context of GST since 'export' involves bringing the goods out of Malaysia.

### **Item 18 – Investment Holding Company**

In considering that IHC's are now considered to be mixed suppliers, question was asked as to what defines an IHC and what types of supplies an IHC would make.

RMCD's response was that an IHC refers to a company whose principal activity is the making of investments. It owns investments such as properties, shares of other companies and holds assets in an investment portfolio such as securities for the purpose of maximizing income and capital appreciation. It

was also noted that holding companies with the MSIC Code 6420 can be classified as IHCs.

#### Deloitte Comments

It is important to note that in RMCD's view, not all holding companies would qualify as an IHC, but only ones whose "principal activity is the making of investments." Careful analysis of the activities of your holding company should be undertaken to assess what activities it is performing and what its principal business activity relates. Furthermore, the MSIC code can be a factor and this needs to be carefully considered and assessed against the activities of the holding company.

#### **Item 23 – Recovery and penalty for late payment of GST**

Issue was raised on penalty introduced for late payment of GST after 1 Jan 2016. Clarification were sought on the following :-

- that Sec 41(8) is only applicable to cases where there is a default in payment of GST and not applicable cases for incorrect return which is covered under Sec 88
- that the penalty is calculated based on the shortfall in GST (i.e. amount of GST remained unpaid) as stated in the GST return

In response, RMCD clarified that penalty for failure/ late payment of tax due and payable is calculated based on the amount due and payable regardless of any payments made.

#### Deloitte Comments

We do not agree with RMCD's interpretation that penalties are to be calculated on the tax due and not on unpaid tax. The words "tax due and payable" in (a), (b) and (c) should not be read in isolation to the opening words of Section 41(8) which refers to "tax due and payable is not paid".

#### **Item 25 – GST Inclusive Price**

Sec 9(5) of GST Act, 2014 deals with display of price inclusive of GST. The provision is meant to ensure the public is not misled on price quoted / displayed. However, the wording "quotes in any manner" is too wide and may cover terms specifically agreed between bilateral parties.

It was proposed that this section is restricted only to prices which are displayed publicly. For bilateral agreements, the parties involved can agree to a GST exclusive price and this can be reflected without the requirement to obtain prior approval from RMCD.

In response to the above, RMCD stated that all prices must be quoted INCLUSIVE of GST with no exceptions. The GST component, must be shown as a separate item in the total. Rather than have the recipient/ buyers questioning whether the price is inclusive or exclusive, especially when a contract is silent or a display is silent, the government policy to adopt an inclusive pricing will benefit all. Prices may be indicated exclusive of tax at an outlet or through advertisement from which all of your business is with business customers registered for GST.

#### Deloitte Comments

We are of the view that the DG decision issued is restrictive as it allows the prices to be displayed exclusive of GST only if the

supply is made to a registered person. In our view, for all the B2B transactions/ bilateral party transactions under a contract, irrespective of the fact whether the recipient of the supply is a registered person or not, the supplier should be allowed to display prices exclusive of GST.

### **Item 26 – Treatment of cross border supply**

Sec 17(1)(b) of GST Act 2014 states that "A zero-rated supply is any supply of goods if the goods are exported." Hence, a registered person is entitled to zero rate supplies under sec 17(1)(b) where he causes the goods to be exported notwithstanding that he may not be the legal owner of the goods. This has been evidenced by the DG in item 2 of DG's Decision 4/2015.

However, a Malaysian supplier (MCo 1) sell goods to a third party overseas customer (TP1) based on ex-factory [Incoterms]. TP1 instructs MCo1 to export the goods to its customer outside Malaysia (TP2). Form K1 is in the name of MCo1.

Some RMCD officers have taken the view that the transaction is a standard rated supply on the grounds that the supply between MCo1 and TP1 is made in Malaysia and only TP1 is entitled to zero rate the export of the goods.

#### Deloitte Comments

We are of the view in accordance with Sec 17 of the GST Act read with item 2 of the DG's Decision 4/2015, the transactions between MCo1 and TP1 as well as MCo1 to TP2 in the scenario mentioned above should qualify for zero-rating. RMCD has concurred with the stated view and have clarified that GST officers have to abide with DG's Decision.

### **Item 28 – Special refund under section 190**

It has been nearly a year since the companies have made their claim for special sales tax refund and still many of the refunds claim are pending approval from Customs or have been rejected. One of the most common reason for rejection given by the Customs is that there is increase the prices of goods. Lately, we have seen that CITM and MICPA have raised issues to RMCD on delay of refund and also on the reasons for rejection of refund claims. Further, CITM has also highlighted that there is no requirement under GST Act, 2014 that compel the claimant to reduce the price of goods and services supplied.

In response to above issues raised, RMCD has stated that pricing policy is governed by JKDM and JKDM is doing its best to expedite the processing subject to the availability of the required documents. JKDM auditors have detected cases such as :-

- (a) a refund was applied for items not subject to sales tax;
- (b) amount of refund applied was more than actually paid;
- (c) proof of payments did not tally;
- (d) false receipts were forwarded;
- (e) wrong refund rate method applied (100% vs 20%);
- (f) other ineligibility conditions.



#### Deloitte Comments

The main reason for rejecting sales tax refund is price increase. If the person can demonstrate that the price has not been increased due to introduction of GST then there are high chances of getting an approval, provided all other documents and details are correct. Further if there is a price increase which is due to other reasons such as increase in cost of purchases, economic condition then it is advisable to maintain proper trails and documents to substantiate price rise. However, we do agree with the concerns raised by the various accounting associations that no such requirement exists under the Law and it is unreasonable for RMCD to impose such a requirement to restrict refunds.

[Back to top](#)

### 3. Restructure of Duty/GST free cigarette and alcohol sales in duty free islands

Currently any person can buy unlimited cigarettes and alcohol free of duty and GST for consumption in the duty free islands of Langkawi, Labuan and Tioman.

However, according to the news reported by Bernama on 9 September 2016, beginning 1 November 2016, the RMCD intends to set a limit on the quantity of cigarettes and alcohol that can be purchased without payment of duty and GST for consumption in the duty-free islands.

Meaning purchasers who buy such goods in excess of the limit will need to pay import duty and GST though the goods are consumed in the duty-free islands. With the proposed change, it appears that businesses in the duty-free islands will be liable for GST registration if their annual taxable sales breach RM500,000, and unfortunately for those on holidays and on business trips to those islands, will no longer enjoy GST and duty-free cigarettes and alcohol to the same extent.

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[Back to top](#)



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