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Indirect Tax

GST Chat
All you need to know

Issue 09.2017

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Greetings from Deloitte Malaysia's Indirect Tax Team

Greetings, dear readers, and welcome to the September issue of GST Chat.

Subsequent to the implementation of the Tourism Tax (TTx) in Malaysia this month, we have now received news that the Malaysian GST will soon be expanded to cover digital services provided by foreign service providers.

The announcement was made by the Director General of the Royal Malaysian Customs Department (RMCD), Dato' Subromaniam Tholasy at the recent GST conference held by the Malaysian Institute of Accountants (MIA). This expansion is in line with what we are seeing globally where a number of countries in our region are already implementing these rules. Look out for our update once more information comes to light.

Another interesting mention from Dato' Subromaniam was that an Assisted Compliance Assurance Programme is in the pipeline for Malaysia. It is unclear at this stage as to whether this would be modelled on the programme run by the Inland Revenue Authority of Singapore (IRAS) that shares the same name. So another development to watch out for.

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

- A businessman who was recently reported to be facing seven charges of making fraudulent claims amounting to RM745,838 was handed another five counts of similar offences as he was alleged to have made additional fraudulent GST-03 tax returns amounting to an additional RM363,769 in false statements. He has pleaded not guilty to these charges and is set for a mention on 12 October 2017;
- The RMCD are expecting to exceed their collection target of RM42 billion for the year, and have also commenced a recruitment drive to hire more customs officers. In considering that joint audits between the RMCD and the Inland Revenue Board (IRB) have commenced, we are expecting a further escalation of audits.

I hope you will find this month's GST chat helpful and please do not hesitate to contact us if you have any queries, comments or require our assistance.

Kind regards,

Tan Eng Yew
GST and Customs Country Leader

1. RMCD Grapevine

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Input tax claim on goods under Regulation 46 of the GST Regulations 2014

We understand from our correspondence with the RMCD that exceptional claims for input tax in relation to goods provided under Regulation 46 of the GST Regulations 2014 will be based on the depreciated amount at the time the claim was made and not following the original amount incurred during purchase. We are of the opinion that this should not be the case, as it is not stated in the law and the whole amount of input tax paid during purchase should be claimable under the Regulation.

Outstanding amounts owed to the RMCD

Separately, we understand from the RMCD that they had recently initiated an operation whereby the enforcement team will request to meet and discuss with GST registrants who have late payment of outstanding amounts which exceed RM500,000 arising from any source (i.e., GST return payable amounts, penalty payments, refund paybacks, etc.). We further note that outstanding payments exceeding RM50 would be automatically blacklisted on the RMCD's system and may be subject to further action from the RMCD.

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2. GST Technical Updates

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Amendment to the Goods and Services (Exempt Supply) Order 2017

With effect from 1 September 2017, healthcare services provided by any facility managed by any university established under the Universities and University Colleges Act 1971 or the University Teknologi MARA Act 1976 would be treated as an exempt supply, as amended in item 18 in the Second Schedule of the GST (Exempt Supply) (Amendment) Order 2017.

Furthermore, the words "by the registered or licensed healthcare facilities" have been removed from the items describing provision of food services to patients and any mortuary services.

Deloitte comments

The amendment will affect universities that provide healthcare services as these services are now considered as exempt supplies and as such GST would no longer be charged on these services. This would be welcomed from a pricing perspective by students. However, it would also affect the input tax recovery rates for the impacted universities.

On the other hand, the removal of the words "by the registered or licensed healthcare facilities" from the prescribed items is a mere deletion of repetitive words and does not affect the GST treatment for the parties involved.

General Guide as at 24 August 2017

Example 22 was updated to reflect the late payment penalty rules and rates as provided in the Finance Act 2017 effective from 1 January 2017. In the previous guide, the penalty was calculated based on a percentage of the amount of tax due and payable. In the revised guide, the penalty is calculated based on a percentage of the amount of tax remain unpaid.

Further, the rate of late payment penalty has been updated as per the table below:-

Period	**Late payment penalty**
First 30 days	10% of tax remaining unpaid
30 – 60 days	25% of tax remaining unpaid
60 – 90 days	40% of tax remaining unpaid

Deloitte comments

The updated example reflects the amendments provided in the Finance Act 2017. It is clearer now that the late payment penalty is imposed on tax remaining unpaid.

Guide on Insurance and Takaful as at 18 August 2017

Clarifications were made to the deemed input tax credits in the revised guide, which are summarised below:-

a) Deemed Input Tax Credit ("DITC") is still claimable in cases where the insured event occurs after the policyholder becomes a registered person until the end of the policy term. Upon renewal of the policy or inception of a new policy, DITC would no longer be applicable. (Example 2)

b) DITC is not allowed on any cash settlement for insurance and takaful relating to payment for repair and maintenance of passenger motor vehicles as defined in the Regulations since it is blocked under the Regulations. (Paragraph 21)

c) DITC is allowed on the actual amount of cash payment made by the insurer or takaful operator related to standard rated supply such as industrial equipment or vehicles which are not a passenger motor car. (Paragraph 31 and 32)

d) DITC is allowed for cash payment in relation to settlement of a claim by a third party depending on the GST registration status of the policy holder instead of the recipient of the cash payment (i.e., third party) and the other conditions provided in Regulation 47(2A) of the GST Regulations 2014. (Paragraph 25)

e) DITC is not allowed when the policyholder is a GST registered person. (Example 12)

In relation to Example 16 on the reinsurance contracts (i.e., facultative business – non-proportional), it is assumed that the relevant parties have agreed that the premium is a GST-exclusive amount and that GST is calculated separately and added on top of the premium and that the relevant parties have a Self-Billed Invoice (SBI) agreement that meets the requirements of Section 33 of GST Act 2014. Further, correction is made to Example 17 in the previous guide where the insurer will issue tax invoice detailing the supply of reinsurance. The revised guide corrects the error by stating that the insurer issues a self-billed invoice.

Paragraph 58 was also amended to state that insurance or takaful services covering a risk outside Malaysia is a zero-rated supply and input tax is claimable for making such a supply. Previously, it was indicated that these supplies are not subject to GST.

In the previous guide, the services provided by the insurance agents or brokers for a non-resident principal (insurer or takaful operator) is considered as a taxable supply and subject to GST at standard rate. In Question 41 under the Frequently Asked Questions ("FAQ") of the revised guide, the services may be considered as zero-rated if the service directly benefits a person who belongs outside Malaysia and the contract is with a person who belongs outside Malaysia and meets the requirements under paragraph 12 of the Zero Rated Order.

FAQ 46 indicated that an insurance company can fund an insurance agent’s expenses in recognition of the volume of business generated by him. The funding is subject to certain criteria and approval by the insurance company. This funding is known as soft commission. The previous guide did not provide an explanation on soft commission.

FAQ 47 clarified that where profit commission is shared with the agents who meet certain targets, it is considered as a supply made to the insurer or takaful operator.

FAQ 55 confirmed that incidental exempt financial supplies are not applicable for insurer or takaful operator as provided under Regulation 41 of the GST Regulations 2014.

Deloitte comments

There are a number of clarifications provided for DITC in the revised guide, particularly on the GST registration status of the policyholder and the emphasis of cash settlement insurance and takaful relating to payment for repair and maintenance of passenger motor vehicles, on which deemed input tax claim is not allowable. Insurers or takaful operators should update the DITC claiming process to comply to the requirement accordingly.

We also noted that the RMCD has provided their view on the definitions of soft commission and profit commission. Insurers or takaful operators should review their incentives provided to their agents or partners to determine the GST treatment of these commissions.

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3. GST Technical Committee Meeting Update

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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 meeting on 30 March 2017 to deal with several technical issues where clarification was needed. The meeting minutes were recently circulated on 12 July 2017. Based on the review of the minutes, several issues still remain unclear and need to be addressed by the RMCD.

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 is included below.

Item 1 – GST Return
Disclosure under Field 11 (Zero Rated Export Supplies) of the GST-03 Return

Section 41(1) of the GST Act 2014 ("GST Act") provides that every taxable person shall, in respect of his taxable period, account for the tax in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following the end of his taxable period to which the return relates.

The RMCD clarified that the disclosure period for exported goods whereby the invoice was issued in the current taxable period but the Form K2 was dated in the subsequent period, the disclosure period for the exported goods will be the period in which the invoice is issued, with the amount disclosed to be as per the value of goods in the tax invoice.

Deloitte comments

We agree with the RMCD's view that the amount is to be disclosed in the taxable period in which the tax invoice is issued, consistent with the provision of time of supply.

Disclosure under Field 16 (Value of Capital Goods Acquired) of the GST-03 Return

The RMCD clarified that the value to be disclosed in Field 16 should include the value of imported services which is being capitalised as part of the capital goods.

Deloitte comments

We agree with the RMCD's view that the value of imported services should be disclosed in Field 16 if the value of such imported services is capitalised as part of the capital goods.

Item 2 – Value of Digital Products in Tangible Mediums

Section 16 of the GST Act provides that the value of goods imported into Malaysia shall be the sum of the value of the goods for the purposes of customs duty, amount of customs duty and the amount of excise duty paid or to be paid on the goods.

The RMCD clarified that the value of the importation of the digital products in a tangible medium for GST purposes would be the value of both the digital products and its carrier medium.

Deloitte comments

We note that the RMCD's response differs from that of the WTO RMCD valuation, which only takes into account the price of the carrier medium for the calculation of customs duty, thus differing from the provision of the law as outlined under Section 16(a) of the GST Act 2014.

Further clarification should be sought from the RMCD on how the value of the tangible and intangible asset which is incorporated in the carrier medium will be determined should their response be adopted and how this will affect any customs duties to be imposed.

Item 3 – New Reverse Charge Rule effective 1 January 2017

The time of supply for accounting and reporting of reverse charge on imported services has been changed to the date (1) when any invoice is received from the overseas supplier, or (2) when payment is made to the overseas supplier, whichever is earlier.

The RMCD clarified that the meaning of "invoice received" will be determined on a case-by-case basis, with possible examples of "received date" being the date the invoice is emailed, faxed, scanned, stamped with a company stamp or the system date. The RMCD will consider the posting dates subject to the following conditions:

a) It can be proven during a RMCD audit;
b) It cannot be changed without prior approval from the RMCD; and
c) Any changes to the method used by companies requires a fresh application.

Deloitte comments

We are agreeable with the stance taken by the RMCD that the method adopted by the company should be consistent and it can be proven during a RMCD audit. Businesses are advised to adopt a consistent method in recognising the "received date"

as there could be additional administrative work involved for application of change of method, despite no further guidance in this area.

Item 3 – Interpretation of "Consumed in Malaysia"

We outline below examples of transactions which may be considered as imported services to clarify the RMCD's interpretation of "consumed in Malaysia" for reverse charge purposes:

Example 1

An employee of a Malaysian company was sent to attend a training in Singapore. The staff member was physically in Singapore for the training and the invoice was sent to the Malaysian company.

The RMCD does not view the above transaction as an imported service.

Example 2

An employee of a Malaysian company stayed in a hotel in Singapore and the invoice for the stay is issued to the Malaysian company.

The RMCD does not view the above transaction as an imported service.

Example 3

A Malaysian company organises a marketing event in Singapore. The marketing team of the Malaysian company are physically in Singapore to coordinate and manage the event. During that period, the Malaysian company has also engaged the services of a Singaporean publicity company to provide services to the marketing team.

The RMCD does not view the above transaction as an imported service.

Example 4

A Malaysian company engages the services of a stock broker in Singapore to trade in shares listed in the Singapore stock exchange. The shares are traded in Singapore and the Malaysian company does not have any presence in Singapore.

The RMCD views the above transaction as an imported service.

Deloitte comments

We agree with the views of the RMCD in relation to the examples provided. The services in Examples 1, 2 and 3 directly benefited employees of the company who are physically outside of Malaysia at the time services are rendered and therefore are not imported services. As for Example 4, it is possible that the RMCD has regarded the services rendered to have directly benefitted the company in Malaysia that does not have a presence in Singapore, hence it

is consumed in Malaysia and considered to be imported services.

Item 6 – Tax Invoice Received by Recipient

Section 38(9) of the GST law prescribes that unless as the Director General may otherwise allow – where a person fails to pay his supplier the consideration or any part thereof for the supply of any goods or services made by his supplier to him at the end of the period of six months following the date of supply and where the taxable person has credited under subsection (1) or been refunded under subsection (3) the input tax to which the consideration or the part thereof which he failed to pay relates, the taxable person shall account an amount equal to the input tax which shall be deemed as his output tax. This is commonly known as repayment of ITC.

Clarification is sought regarding the taxable period in which a taxable person is entitled to claim input tax if the taxable person receives a tax invoice dated 1 June 2016 on 25 January 2017 but only makes payment for the tax invoice on 8 February 2017, assuming that the person is filing a monthly GST return.

The RMCD clarified that the taxable person is entitled to the input tax credit in January 2017 because the date he holds the tax invoice is 25 January 2017.

Deloitte comments

We agree with the RMCD's view that the taxable person would be entitled to the input tax credit on 25 January 2017 as it is the date the taxable person holds the tax invoice even though payment is made in the subsequent taxable period. The scenario, however, stopped short at clarifying if repayment of ITC needs to be done in the January 2017 period as the current requirement has that adjustments need to be made at the expiry of the sixth month from the date of supply The current provision of the law does not define the date of supply referred previously. Having said that, from the perspective of the person receiving the supply, it can be viewed that the supply was only made to the acquirer based on the date of the tax invoice. Further clarification should be sought from the RMCD in relation to this matter.

Item 8 – Input Tax Credit

Under paragraph 59 of the Guide on Input Tax Credit, it is stated that any services related to capital goods are not claimable unless it is capitalised according to the standard accounting principal in Malaysia, before the date the business is required to be registered for GST. In this respect, the RMCD clarified that it is applicable to all goods on-hand, including inventory held for re-sale and capital expenditure, as at the effective date of registration to fall under the ambit of Regulation 46 of the GST Regulations. However, approval from the DG must be obtained prior to claiming input tax credit on such capital expenditure.

Deloitte comments

We agree with RMCD's view that Regulation 46 of the GST Regulations would include inventory held for re-sale and capital expenditure to the extent that the goods have not been used partially or incorporated into some other goods (i.e., inventory bought for the production of another type of goods). As Regulation 46 requires a taxable person to obtain the DG's approval prior to the claiming of such input tax, this view is consistent with the provision in the law.

Item 9 – Directors

In response to a clarification sought during the previous technical meeting in relation to the provision of free services to directors of companies who are considered as connected persons under Paragraph (2)(1)(a) of Schedule 3 of the GST Act 2014, RMCD clarified that the directors are considered to be employees, thus free services to them are not a supply and are not subject to GST.

The RMCD further clarified that only directors who are employed by the Company (i.e., under a contract of employment) will be treated as an employee. As such, any free services provided to the director would not trigger any GST implications in relation to being a connected person.

Deloitte comments

We agree with the RMCD's view that a director who is employed by the Company (i.e., has an employment contract) is an employee of the company and that free services to employees would not trigger any GST implications in relation to being a connected person. Businesses, however, should review the impact on directors that have no formal contracts or service engagements.

Item 11 – Recovery and Penalty

In the previous technical meeting, clarification was sought on how Section 41(8) of the GST Act 2014 would apply for amendments to the GST return in 2015 or 2016 where this section might apply (it is to be noted that this section of the Act only came into effect on 1 January 2016 and amendments to it came into effect on 1 January 2017). At that time, the RMCD informed that they were awaiting a decision from MOF.

The RMCD has now clarified that there were no penalties imposed in 2016. However, should there be any penalties imposed, the penalties will be based on the full tax amount. With effect from 1 January 2017, the penalties will be calculated based on the unpaid balance.

Deloitte comments

We would consider the imposition of penalties on the full tax amount, regardless of the interpretation taken, to be harsh and unreasonable. We are hopeful that leniency can be shown and in particular in cases of voluntary disclosed liabilities.

Item 12 – Transfer of Going Concern (TOGC)

1. In relation to the effective date of TOGC, the RMCD clarified that in the event TOGC is subject to approval, the effective date of TOGC will be the date when all conditions have been fulfilled and notification is made to them.

2. In relation to whether TOGC would still apply if the transferor does not transfer the amount due from customers (account receivables) and the amount due to suppliers (account payables) in relation to the business to the transferee, the RMCD clarified that the transfer would still be considered as a TOGC if part of the business is sold or transferred and that part of the business can operate independently and that all other conditions are met.

3. In the previous technical meeting, the RMCD clarified that the supplier must account for output tax and the recipient can claim input tax if he is a registered person if TOGC is incorrectly treated as a standard supply and whether RMCD will disallow the claiming of input tax credit by the transferee under such circumstances. Upon further clarification, the RMCD stressed that the TOGC rules are mandatory and it is not an option for the transferor or transferee to opt out.

Deloitte comments

We agree with the RMCD's view above. It is worth noting the emphasis by the RMCD that TOGC is mandatorily applied when the conditions are met and the parties involved should not transact with GST.

Item 13 – Leasing of an orchard

For supply of rights to harvest fruits (may be zero-rated/standard-rated fruits) by a GST registered person to a wholesaler, the RMCD has clarified that the supply of rights to harvest fruits is treated as a supply of services and should be subject to GST at 6%. The RMCD further indicated that the GST treatment may differ according to the terms and conditions in the contract entered between the GST registered person and the wholesaler.

Deloitte comments

We are agreeable with RMCD's view of treating the supply of rights to harvest fruit as services and GST should be charged on the supply and the treatment may differ based on the contents of the contractual agreement.

Further to the above, we are of the view that in the event the contract states that the supply refers to the sale of the fruits instead of the supply of rights to harvest, the GST treatment may depend on the GST treatment of the fruit (whether the fruit is standard-rated or zero-rated).

Item 14 – Approved Toll Manufacturer Scheme ("ATMS")

1. Under section 72 of the GST Act 2014, where the ATMS approval is granted, the supply of services comprising any treatment or processing of goods supplied to a person who belongs in a foreign country would be disregarded. One of the ATMS conditions is the need to export at least 80% of the finished goods.

   The RMCD clarified that where a toll manufacturer who is located in a Free Industrial Zone (FIZ) dropships more than 20% of the finished goods to the customer of the overseas principal within the FIZ, the toll manufacturer would not be eligible for ATMS. Accordingly, any treatment or processing services made by the toll manufacturer to the overseas principal will subject to 6% GST.

   The RMCD further clarified that the overseas principal cannot be GST registered (via its appointed agent) if the supply made is 100% drop shipment in FIZ as the value such supply are excluded from the calculation of taxable turnover.

   <u>Deloitte comments</u>

   Given such a view, from the overseas principal's standpoint, this will effectively increase their cost by 6% as the overseas principal would not be eligible to claim the input tax credit. We have been involved in cases where the RMCD has allowed a particular toll manufacturer to treat the 80% on a "per contract basis", as opposed to a company as a whole. If you are impacted by this view, we would be happy to talk to you about our experience in this area.

2. Prior to the implementation of GST, there are companies which were given approval for ATS and were advised by the RMCD that it is not necessary to apply for ATMS. Recently, the RMCD has requested the aforesaid companies to pay 6% GST on their toll manufacturing business. The concerned companies seek concessions from the RMCD but the RMCD has indicated that the appeal has to be made to Ministry of Finance ("MOF").

   <u>Deloitte comments</u>

   Though the RMCD has indicated that it is not necessary to apply for ATMS, we highly recommend that as a prudent approach, ATMS approvals should be obtained before treating the supplies of services to overseas principal as disregarded. Nonetheless, we are of the view that the appeal to MOF would require extensive amount of justifications and supporting documents, without which it would be difficult to obtain a favourable response from MOF.

Item 15 – Approved Trader Scheme ("ATS")

1. Pertaining to the suggestion of developing a client charter on the renewal of ATS/ATMS license in order to provide certainty to the ATS/ATMS companies, the RMCD acknowledged it. Further, the RMCD has indicated that the renewal of ATS licence should be made 3 months before the expiry date instead of 6 months before the expiry. Also, the RMCD has indicated that this would be incorporated into the guide for renewal of the ATS licence.

   Deloitte comments

   ATS holders should take note of the RMCD's comments on the revised period to renew the licence. As the guidance would be incorporated in writing, this should provide ATS holders a clearer guidance on this matter.

2. Company A, which holds a Manufacturing, Licensed Manufacturing Warehouse ("LMW") and ATS license, is involved in the manufacturing of electronic products and provision of value-added services on re-manufacturing of products. Recently, Company A was only allowed to suspend the import GST on goods that belonged to Company A at the point of importation, and used directly for manufacturing of electronic products. The RMCD clarified that ATS/ATMS holders are allowed to suspend GST on consigned goods from the overseas principal.

   Deloitte comments

   Based on the clarification provided, the RMCD is of the view that the company needs to be a holder of both ATS and ATMS in order to suspend GST on consigned goods from an overseas principal. We do not agree with the RMCD's view as the ATS conditions (under regulation 88) does not require the taxable person to be an ATMS holder as well. Hence, we are of the view that this requires further clarification from the RMCD. We recommend ATS holders who face similar issues to write in to the RMCD to seek clarification and proposed actions.

Item 16 – Import

1. Under the Guide on Import as at 25 January 2017, for movement of goods from bonded warehouse to Principal Customs Area ("PCA"), GST has to be charged on the tax invoice and only duties, if any, will be charged in the K1/K9 form. A question was raised on whether businesses should consider who acts as Importer of Record (IOR) before determining whether GST is applicable.

   The RMCD has clarified that with the recent amendments to the Warehousing Scheme under section 70 of the GST Act 2014, no GST shall be charged on the tax invoice effective 1 January 2017 as GST will be charged on K1/K9 form as if the goods were imported into Malaysia. The RMCD further clarified that the buyer would be the IOR and is required to declared such goods in Customs import declaration form.

Deloitte comments

Please note that the Guide on Import has been removed from the RMCD's web portal. Nonetheless, the RMCD's view that GST should not be charged on the tax invoice seems to be consistent with the amendments made towards section 70 of the GST Act 2014.

2. Under the Guide on Import as at 25 January 2017, for local sales from FIZ, the supply is treated as a local supply and should be subject to GST where only duties will be charged upon importation. With the amendments to the Free Zones under section 162 of the GST Act 2014 effective 1 January 2017, the RMCD commented that no GST shall be charged on the local sales of goods made by FIZ companies as GST will be charged as if the goods were imported into Malaysia when the goods move to a PCA. The RMCD further clarified that the buyer is required to declare the goods in the Customs import declaration form and is subject to pay duties (if any) and GST on such importation of goods. Also, the RMCD has indicated that the Guide on Import will be amended accordingly.

   Deloitte comments

   In view of the amendments made under section 162 of the GST Act 2014, we agree with the RMCD that no GST shall be charged on the local sales of goods by the FIZ company.

3. For overpayment of GST made by a non-GST registered person on importation of goods, the RMCD clarified that such person may claim his excess GST paid from the RMCD via the submission of JKED no.2 form (drawback).

   Deloitte comments

   Pursuant to the clarification from the RMCD, non-GST registered taxpayers should take note of this avenue and claim any excess paid GST accordingly. However, considering that this is not written in any guide, businesses may face difficulty with the claim process.

Item 17 – Credit Note / Debit Note

In the event of a return shipment from FZ to LMW/PCA, there would be GST imposed as if it were importation of goods. As this is a return shipment, there would be a credit note issued with GST adjusted. There are concerns as the receiving company seems to be paying GST twice. Hence, there is a request for the RMCD to consider suspending the GST for return shipments from FZ to LMW/PCA.

The RMCD clarified that any credit note issued by PCA/LMW companies is subject to GST; goods returned from FIZ to PCA/LMW needs to be declared in K1 and GST is due and payable. This indicates that there will not be any suspension of GST for the return shipment.

Deloitte comments

In the RMCD's response, we note that the RMCD did not clarify whether the credit note issued by PCA/LMW companies to FCZ is subject to adjustment in the GST return. In this context, we are of the view that the credit note issued by PCA/LMW companies to FCZ should also be subject to GST considering there was GST charged in the tax invoice.

In addition to the above, we are of the view that there is no double payment of GST as the credit note is effectively reducing the tax liability of the LMW/PCA company. In this context, we are agreeable with the RMCD's view.

Item 19 – Licensed manufacturing warehouse ("LMW")

1. It is an industrial practice for LMW companies to bill their projects based on staggered payment basis. Accordingly, for K9 form declarations prior to the implementation of GST, LMW companies would issue a "commercial invoice" for 100% of the supply value and this was acceptable by the RMCD. Subsequent to the implementation of GST, the RMCD requested the "tax invoice" to be issued on 100% of the supply value for K9 form declaration purposes, where in the case of staggered payments above, LMW companies face difficulties in fulfilling the RMCD requirement to issue a "tax invoice" on 100% of the supply value.

   The RMCD indicated that they will be looking into this matter and discussing with Bahagian Perkastaman.

   Deloitte comments

   We understand that with the RMCD's clarification, LMW companies would have cash flow concerns as there is a need to account for GST on 100% of the supply value. In this context, the LMW companies may consider to issue a credit note at a later stage to adjust the value of supply.

   Nonetheless, it seems that the RMCD has considered the current industrial practice and the difficulties involving the administrative requirement of LMW. Further, as the RMCD would be discussing this matter with Bahagian Perkastaman, LMW companies should expect a response from the RMCD which may result in a change to the administrative requirement of LMW.

2. There were concerns that on the GST treatment for sale of goods to an overseas company where the goods are moved from LMW to PCA, GST is applicable. In this instance, since the overseas company is not a registered person, it would not be able to claim such ITC and thus, would factor such cost into the selling price to its customer in PCA. Furthermore, GST would be again imposed at the RMCD control station upon removal of goods from LMW.

   The RMCD clarified that in scenarios where the sale of goods to the overseas company would be subject to GST.

In the event, where the overseas company further sold the goods to another overseas company or its customer located in PCA, where the goods are moved from LMW to PCA, the RMCD indicated that such supply should not be subject to GST unless the value of supply exceeds the GST registration threshold. Also, pertaining to movement of goods from LMW to PCA, the RMCD clarified that only Customs duty, if any, will be charged and declared in K9.

Deloitte comments

We are agreeable with the RMCD's view on the above and this seems to be consistent with the previous verbal communications provided. Nonetheless, pertaining to the RMCD's view on the sale of goods from an overseas company to another overseas company or to its customer located in PCA where the goods are moved from LMW to PCA, we wish to point out that the RMCD is viewing that the supply of goods is made in Malaysia. Accordingly, where the value of such supply exceeds RM500,000, the overseas company would need to register for GST by appointing a local agent.

Item 24 – Tax invoice

The RMCD clarified that any receipt/document including POS-generated invoice can be treated as a full tax invoice if it contains all the prescribed particulars. Therefore, businesses may claim the ITC in full with those documents.

Deloitte comments

We agree with the RMCD's view that any document containing the prescribed particulars under regulation 22 of the GST Regulations 2014 should be treated as a full tax invoice considering the current legislation does not govern the format/layout of a full tax invoice.

Item 25 – Rebate

Subsequent to an importation of goods, where there are quantity rebates provided by the overseas supplier by issuance of cheque payment to the registered person (in accordance with the purchase agreement), the RMCD clarified that there are no GST implications on such quantity rebate.

Deloitte comments

Depending on the terms and conditions stated on the purchase agreement, we are of the view that there may be potential GST implications although the RMCD clarified there are none. Where the purchase agreement indicates that there are supply of services in return for the rebate, it could be construed as a taxable supply and there would be GST implications. Where our assistance on such matters are required, please feel free to reach out to us and we would be glad to assist you accordingly.

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4. Mistakes and Punitive Actions Under the GST Legislation

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Steps businesses can take to mitigate penalties and correcting errors

The launch of the Customs Blue Ocean Strategy ("CBOS") and the recent agreement between the RMCD and IRB to conduct joint audits has meant that taxpayers should be more aware of their level of GST compliance.

The best way to mitigate penalties is to put in adequate controls to detect errors early. This should not just be limited to at the time of preparation of the GST Return as that can be too late. There should be controls at the business and operational level to ensure that transactions are being correctly booked and the correct documentation is being issued and retained. It is important that the business processes documentation reflects the relevant GST processes and controls and are regularly reviewed and updated.

The Tax and Finance team should stay updated of any changes in Law or guidance that impacts the business and that should be communicated to any impacted stakeholders in the business. If there were technical positions that had previously been taken, these should be periodically reviewed to determine if the positions are still acceptable. Where appropriate, regular training should be conducted for all impacted personnel not only to serve as 'refresher on GST' but also to reinforce the risks for getting it wrong.

In addition, there should be a regular review of transactions including a check of the source documents to verify the GST treatment. It is advisable to at least have a more comprehensive assessment of GST compliance including GST processes every few years, or sooner if there are major changes to the Law or business processes.

Businesses should also explore the use of technology and automation to reduce compliance risk - this can include automating the preparation of the GST return or identification of GST errors and risks.

Ultimately, being a transaction tax, GST does not allow the chance to hit rewind and go back to fix an error. So we all need to work hard to get it right the first time.

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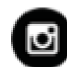

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