Malaysia | Tax, Indirect Tax | January 2016

# Indirect Tax
Perspective = everything

GST Chat
All you need to know

Issue 1.2016

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Greetings from the Deloitte Malaysia Indirect Tax team

Greetings all as we welcome you to first edition of GST Chat for 2016.

Although we are only a few weeks into 2016, we have seen a lot happen already, including the implementation of new measures announced in last years' Budget and the Finance Bill. The most notable of these changes were the change in the GST recognition rules for imported services and the introduction of new Penalty provisions for late payments. Both of these came into effect on 1 January upon the passing of the Finance Act 2015.

In addition, on 28 January the Prime Minister announced adjustments to the Budget 2016, largely as a result of the need with the implications of the low oil price on the Budget. In the event that there are any announcements on GST we will address them in a GST Alert.

The Royal Malaysian Customs Department (RMCD) have also been active this month, having updated and revised 17 GST Guides. We have devoted a significant amount of this month's edition into covering these revisions, as they reflect RMCD's thinking on the transactions in those sectors.

On the RMCD GST audit front we have observed a continued increase in activity and a greater focus placed on GST documentation. Whilst we have not seen the imposition of penalties at the large taxpayer level, there have been cases of penalties imposed. Most recently a Char Kway Teow restaurant was fined RM 9,000 for not collecting GST of 95 sen on a sale!

For those of you struggling to keep up with all the changes that have come through in the past 10 months, we are delighted to announce a National series of half day GST Workshops covering the changes to date with some practical insights. You can find further details in our upcoming events section.

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

- The Prime Minister Datuk Seri Najib Tun Razak has ruled out any increase in the 6% GST rate;
- RMCD has commenced an operation to track down businesses that have not yet registered for GST
- The GST rebate scheme for prepaid mobile users that was announced in the budget, began on 1 January and will apply for one year. The scheme is limited to Malaysian nationals only.
- Touch 'n Go Sdn Bhd said there will be no additional GST imposed on Touch‘n Go reloads. They denied the notice circulating on social media that a 6% GST charge would be imposed on all reloads.

I hope you enjoy our January edition, and I look forward to chatting with you next month.

Kind regards,

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1. GST Technical Updates

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Revised GST Guides

RMCD has issued a number of revised guides. In most cases the amendments are set out in the appendix to each guide, although this approach has not been consistently followed by RMCD.

In reviewing the guides, it is always important to note that although they have value in indicating RMCD's thinking on a topic, they are nothing more than a guide – they are not the law. Where the Guides may not correctly reflect the treatment set out in the law, then you should be wary of relying on them, as it is quite possible for RMCD to release a revised Guide at any time.

Apart from the minor changes such as rearranging the order of the paragraphs and slight changes in some examples and the insertion of new examples for clarity, the following changes have been noted:

- **Freight Transportation**

  Additions have been made to reflect the zero rating of the following services:-
  - Loading, unloading, handling services or storage of goods carried or to be carried in a ship or aircraft provided by (a) a port operator, (b) airport operator & (c) a person authorized by Minister.
  - Loading, unloading and handling services in relation of transportation of goods by the same supplier as part of the international freight transportation.

  Further a new paragraph was inserted to indicate that the general freight transportation services in designated areas (DA) is not subject to GST. However freight transportation between DAs or from Malaysia to DA or vice versa is subject to GST at standard rate.

  Deloitte Comment

  The amendments made are mainly for clarification purposes. Please note that the storage and warehousing services (in relation to transportation of goods by the same supplier as part of the international freight transportation) shall still be standard rated because only loading, unloading and handling services are specifically subject to zero rate.

- **Passenger Transportation**

  The following additions/amendments have been made:-

  – Passenger transportation by a Government department is an out of scope supply.

  – Example 39 provides the GST treatment of domestic flight in conjunction with international passenger transportation. Additional conditions have been inserted to provide that GST shall be zero rated, if the domestic transportation is provided by the same carrier as international transportation, subject to following conditions:

  a) The stopover is less than 24 hours; and

  b) The whole journey is under the same ticket number.

Deloitte Comment

We recommend that the airlines need to review these conditions before qualifying the services in respect of domestic flight in conjunction with international passenger transportation as zero rated. It is to be noted that the above mentioned conditions although not prescribed in the GST (Zero-Rated Supply) Order 2014, are to be applied in deciding on which supplies may be treated as zero-rated supplies.

- **Warehousing Scheme**

  The following clarifications on Inland Clearance depot (ICD) are included:

  – Definition of the terms 'Inland Clearance Depot', 'in transit' and 'Licensed Carrier' and the general Operations of ICD per para 13 and 14.

  – Treatment of GST on movement of goods into an ICD

  For imported goods, a declaration must be made in the Customs no.8 (K8) form for transporting them to an ICD. The goods must be forwarded by road through a licensed carrier or by rail. GST on the goods is suspended when the goods are stored in the ICD. However, services provided for moving the goods are subject to GST. GST incurred on such services may be claimed as input tax credit. For further details please refer to page 7 of the Guide.

  – Treatment of GST on the removal of goods from an ICD:
    - The export of goods is zero-rated subject to the fulfilment of necessary conditions.
    - If the goods are removed from an ICD for local consumption, such removal is considered as an import of goods and GST will be collected by Customs.
    - If the goods are removed from one ICD to another ICD, GST is suspended.
    - Value-added activities are not allowed on warehoused goods in an ICD. If any value-added activities need to be carried out on the goods, then such goods must be removed to a bonded warehouse.

  An ICD operator can apply for GST registration if the following criteria are complied with:
    - activities are carried out in the course or furtherance of a business, **and**
    - it is making taxable supplies in Malaysia and the value of supplies has reached/is expected to reach the prescribed threshold for the past or future 12 months.

  Documentation to be kept by the ICD operator are prescribed in Para 30 and Para 31 of the Guide. Furthermore, several new questions are inserted in the guide for clarifications on ICD.

- **Other Guides**

In addition to the above, the following guides have also been revised, but no major changes were made:-

- E–Commerce
- Bereavement Care Services Industry
- Accommodation Premises and Similar Establishment
- Societies and Similar Organization
- Hire Purchase and Credit Sale
- Postal and Courier Services
- Approved Toll Manufacturer Scheme
- Legal Practitioners
- Webhosting
- Manufacturing
- Approved Trader Scheme
- Duty Free Shop
- Forestry Industry
- Leasing
- Professional Services
- Trustee Services
- Shipping Industries

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2. GST Financial Services Guides Update

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Customs recently revised the Guides below affecting the financial service industry:

1) Commercial Banking (CB)
2) Investment Banking (IB)
3) Development Financial Institutions (DFI)
4) Islamic Banking (ISB)

We have summarized some of the revision points below. But please note that most of these revision points were already common knowledge at the industry level. It is good that RMCD have now published them officially for the first time.

- Insertion of a new section on DA which states that a non-DA based Malaysian bank that operates a branch in a DA is required to charge GST on their services to DA clients. This is on the basis that the branch is simply an extension of the main operation on the mainland. However services supplied by banks incorporated in DA to customers in DA continue to be disregarded supplies for GST purposes.

  Deloitte Comment

  This view has previously been shared by RMCD to the industry in discussions, however, this is the first instance it has been represented in a Guide.

- Development Financial Institutions (DFIs) have been defined to include those institutions set out in the First Schedule of the GST Regulations 2014 as against previous definition which included other approved institution established under any Act of Parliament or State Ordinance.

- Further the list of approved institutions has been modified to exclude the Malaysian Industrial Development Finance Berhad ("MIDF"), Lembaga Tabung Haji ("LTH") and Credit Guarantee Corporation Malaysia Berhad ("CGC").

- A new section on Related Agency [Bursa Malaysia Securities Clearing Sdn Bhd (BMSC)] is included in the IB guide. This section deals with the supplies made by BMSC and their GST implications.

  Deloitte Comment

  Whilst there is nothing new in here, this has been published officially for the first time.

FAQs / GST classification:

Development Financial Institutions

- Previously, funding to Malaysian entrepreneurs for the purpose of setting up or expanding a Malaysian restaurant overseas was treated as a zero-rated supply. In the revised Guide, it is stated that the provision of a loan is an exempt supply, whereas the processing fee imposed is subject to GST at standard rate. This seems to be based on the fact that the services are provided to a person belonging in Malaysia and services are not directly in connection with any land / goods outside Malaysia. [FAQ 2 in the DFI guide]

  Deloitte Comment
  We are of the view that one of the essential condition for a service to qualify for zero-rating under Section 12 of the GST (Zero-Rated Supply) Order 2014, is that the services must be supplied to a person who belongs outside Malaysia. In this particular scenario, funding is provided to a Malaysian entrepreneur and hence that condition is not met. Therefore the Guide has been amended correctly to reflect this scenario.

Islamic Banking

- Under treasury services (IB Guide) - A buyer instructing a dealer's representative to buy shares is amended from an '*exempt supply*' to '*not a supply* '.

  Deloitte Comment
  We are of the view that this amendment correctly reflects the nature of these buy transactions – because the dealer's representative merely buys the shares (as an agent) on behalf of the buyer and there is no supply between the buyer and the representative.

- FAQ 24 has been amended to consider GST treatment for a scenario where the client purchases overseas shares through a local stock broker – the overseas stock broker charges a commission to the local stock broker and the local stock broker charges a commission to the client. It is stated that:
  - The local stock broker will have to account for GST on the commission paid to the overseas stock broker (reverse charge); and
  - The commission charged by the local stock broker to the client is standard rated and will be subject to GST.

  In the earlier guide – it was mentioned that the commission charged by both the local stock broker and the overseas stock broker will be zero-rated.

  Deloitte Comment
  We agree with the amended reply to this FAQ. Commission charged by the overseas broker to the local broker will be subject to reverse charge as these are taxable services imported and consumed in Malaysia. The local broker should, however be entitled to an input tax credit for the GST reverse charged. The commission charged by the local broker to the client should be standard rated on the basis that the services are provided to a local person and not a person who belongs outside Malaysia. (Para 12 of the GST (Zero-Rated Supply) Order 2014).

- Added FAQ 26 to state that the transfer of ownership of futures contracts, or derivatives relating to commodities, is exempt and not subject to GST. However, settlement of futures contracts by way of physical delivery of commodities is subject to GST at a standard rate.

  Deloitte Comment
  This is consistent with the interpretation of the Law.

- Amended the answer to FAQ 31 in the new guide to state that IBs are required to use FITR for claiming ITC (and not follow apportionment method as mentioned in the old Guide).

Commercial Banking

- The fees charged on the replacement for the loss of ATM cards is not subject to GST as it is considered a penalty. The initial guidance had considered these supplies as standard rated. [FAQ12].

  Deloitte Comment
  We agree with the amended view.

- Confirmation commission on Letter of Credit (LC) relating to export of goods is treated as zero-rated as it relates to export of goods outside of Malaysia. In the earlier Guide, this was classified as standard rated supply on the basis that the service is performed in Malaysia [FAQ 19 in the CB guide].

- Interchange fees charged by issuing bank to acquiring bank are taxable.

  Deloitte Comment
  Customs have confirmed the previously agreed and accepted view (through industry dialogue) that LC services in relation to export of goods would be zero-rated and interchange services would be taxable.

Islamic Banking

- Shariah advisory fees have been included as an example of standard rated supply and the clause in the old Guide stating that Shariah advisory fee is not subject to GST has been deleted accordingly.

  Deloitte Comment
  This would imply that the Shariah Advisory Council of Bank Negara Malaysia (SAC) is not part of Government. This would be consistent with the treatment for Bank Negara Malaysia itself which treated as a taxable person.

New / Modified Appendix

An appendix has been added at the end of IB, CB and ISB guide which provides a detailed listing of products / services supplied and corresponding GST treatment. These lists are essentially similar to the lists that were agreed with the respective associations for these industries.

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

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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 17 September 2015 to deal with several technical issue where clarification was needed. The minutes of that meeting have been recently been circulated and from a review of them, several issues still remain unclear and need to be addressed by the RMCD. A few issues have also been overtaken by events with resolution to the issues being addressed in the Budget 2016.

We have summarized a few of the more important issues below as it is not practical to deal with them all here:

- **Short payment of GST on import of goods**: - Short payment of GST on import of goods should be made using form AM115 and can be reflected in the GST return for the ensuing taxable period.

- **Delay in processing of refund**: Delayed refunds have posed cash flow difficulties for many businesses. RMCD has stated that it is committed to processing refunds on time, however, it believes that most refunds have been delayed due to procedural and technical errors made by tax payers. Such errors include, filing incorrect returns, not responding to RMCD's audit queries, providing incorrect contact details during registration etc.

  It has also clarified that Government is unlikely to provide for payment of interest on delayed refunds.

  Deloitte Comment

  Clearly businesses should review their GST declarations and forms carefully before submission, and ensure that any query from the RMCD is dealt with promptly. If any business still has concerns with delays in the receipt of refunds, we would be pleased to review the circumstances and assist.

- **Waiver of penalties during the initial period**: The RMCD has indicated that it is aware of the teething troubles encountered by businesses in complying with uncertainties of the newly introduced GST regime. Consequently, it stated that it does not intend to impose penalties on businesses for minor errors made in returns or minor delays in the filing of returns.

  Deloitte Comment

  This statement now appears to be redundant in light of the amendments to the GST Act w.e.f. 1 January 2016 which provide for penalties for delayed payment or delayed filing of returns. In any event it is advisable that businesses carefully review their compliance obligations to mitigate the imposition of any penalties. In any event, please note that what RMCD consider to be a 'minor' error, or delay, is likely to be far smaller than most businesses would understand it to mean. We can assist further, if you have any queries.

- **Issuance of tax invoice for supplies covered by Ministers Relief**: There has been some ambiguity with the treatment of supplies subject to ministerial relief under the GST Act. RMCD has clarified that such supplies are inherently taxable supplies and consequently, a taxable person is required to issue a tax invoice with the GST component indicated as 'Nil'. It is advisable that the invoice also indicate that the Minister's relief has been claimed on the GST on the supply. The value of such supplies should also be included in the taxable turnover for purposes of calculating the partial reversal of input tax credit according to Regulation 39(4) of the GST regulations.

  RMCD has clarified that developers are required to issue tax invoices showing a Nil or nominal value of supply for tax invoices for free infrastructure given to local authorities.

- **Claiming of ITC on motor car expenses**: RMCD has specified that maintenance, repair and refurbishment expenses for a motor car are blocked. However, ITCs may be claimed on expenses for insurance, fuel consumption, purchase/recharge of batteries for hybrid cars, and parking services.

  Deloitte Comment

  The eligibility of ITCs on car modifications/alterations to suit specific business activities is still unclear and clarification needs to be sought. The issue of motor cars affected by these provisions is still a difficult one, and you should contact us if you need further clarification.

- **Import of zero-rated services**: There is considerable ambiguity on the applicability of reverse charge on import of services which are otherwise zero-rated if provided within Malaysia. Given the technical nature and complexity involved in this issue, the RMCD was not able to provide an all pervasive solution that can be applied in a uniform manner for such transactions. However, the RMCD has indicated that they would consider the underlying nature of the service to determine the applicability of zero rate. Consequently, if the underlying service qualifies for zero rate in Malaysia, the same would not attract reverse charge if imported from outside Malaysia. Having said this, we are still expecting a more concrete and clear solution regarding the treatment of such transactions.

- **Reimbursements for common utilities in apartments / condos**: Management and maintenance services provided by a joint management body or management committee (collectively referred to as 'property manager') to its apartment owners are exempt. However, the property manager pays various levies and charges for the building as a whole including insurance charges, bulk water & electricity and quit rent charges etc. Such charges are recovered proportionately from the apartment owners.

  The issue is whether GST applies to the recovery of the proportionate charges by the property manager from the apartment owners. RMCD considers that the property manager is acting as principal and the recovery of such charges are reimbursements and therefore taxable supplies made by the property manager.

  Deloitte Comment

  RMCD should reconsider this view as payment of the statutory levies or charges is the primary obligation of the apartment owners and, unless the agreements between the two parties indicates otherwise, the management is only paying it on behalf of the apartment owners.

- **Reimbursements in general context**: There are several instances where exempt services are procured by a taxable person on behalf of another person. Therefore, the question is whether GST is applicable on the recovery of an amount paid where the underlying supply is exempt or zero-rated. Given the large degree of variations in commercial arrangements regarding reimbursements, RMCD was not able to provide a satisfactory solution that can be applied as a standard for all transactions involving reimbursements.

RMCD has indicated that if the transaction meets the criteria of a disbursement, the same would not attract GST. If this is not the case, then it would be considered to be a reimbursement and therefore liable to GST irrespective of whether the underlying supply is exempt or not.

Deloitte Comment

RMCD appears not to have considered transactions which are in substance disbursements but due to their commercial arrangement may not fulfill certain procedural requirements for disbursements, in that the non-fulfillment of such procedural requirements should not change the inherent character and nature of the transaction.

As mentioned above, we have only covered the important issues discussed in the Committee. Look out for our upcoming editions as we will be covering new issues and covering any new developments relating to Malaysian GST. If you have any GST/Indirect tax related concerns and are interested in discussing or learning more about any specific issue, please do not hesitate to reach out us. We would be happy to assist you with any query.

We hope that you have enjoyed this edition of the GST Chat and for now. See you again in the next month edition!

For our past events related to indirect taxes, please click here.

We invite you to explore other tax related information at:
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