

Finance Bill 2016 – Implications on key proposed amendments to GST Act, 2014

Until we have further detail, it is assumed that the proposed amendments identified below will have effect from 1 January 2017.

Section	Current Position	Proposed Amendments	Comments
2	The GST Act defines a 'free commercial zone' in Section 161. There is presently no definition of 'free zone' in the GST Act.	A definition for 'free zone' is inserted. The definition follows the meaning in Section 2(1) of the Free Zones Act, 1990, i.e. any part of Malaysia declared to be a free commercial zone or a free industrial zone	Please refer to our comments for changes affecting Part XV
13	For imported service, GST has to be accounted for by way of reverse charge on a date, earlier of issuance of supplier's invoice or date of receipt of payment.	The reverse charge accounting and reporting is to be done earlier of the following:- – date that the supplier's invoice is received or – date of payment	<ul style="list-style-type: none"> • The relevant SOPs and systems (if applicable) have to be changed to comply with the new requirement. • It is not clear when the invoice is treated as to be "received". • Having said that, the Customs DG's Decision provides some guidance whereby a tax invoice is treated as being "held" for the purpose of claiming input tax credit to be earlier of the :- -date of posting of the invoice; or -a year from the day the invoice is held, (i.e. received). • Practically speaking, we would suggest that taxpayers follow the same principles to determine when the invoice was 'received'.
20(6)(a)	Supplies of capital assets of business is to be excluded when computing the GST registration threshold	The value of capital assets which are to be excluded is to be restricted only to the supplies of capital assets taking place "due to cessation of business"	<ul style="list-style-type: none"> • The value of capital assets has to be included in computing GST registration threshold except where the supply is due to the cessation of business. • Generally, capital assets would be of high value and hence more businesses would be required to register for GST due to the proposed amendment. • In the situation of a person who is not registered, such as fully exempt supplier, and wishes to dispose of a capital asset above RM500,000, the supplier would be required to register and charge GST on the supply and thereafter deregister itself if no further taxable supplies are made.

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			<ul style="list-style-type: none"> • Ultimately, consideration also needs to be given not only on the value of the capital asset but also whether a business is being conducted. For e.g. a passive investment or a person merely holding land may not have a business intention. If there is no business being conducted then requirement to register should not arise.
20(6)(f)		<p>The supplies made within or between free zones is excluded when computing the GST registration threshold.</p> <p>However, supplies prescribed by the Minister of Finance by order made under section 163 (1) has to be included in the computation</p>	<p>Please refer to our comments in Part XV</p> <p>A person who has no presence in Malaysia and only makes supplies within and between free zones would not be eligible to register for GST purposes</p>
33(10)	<p>Section 33(10) deals with certain prohibitions in relation to the content of invoices issued by:</p> <p>(a) Any person; and (b) Unregistered person</p>	<ul style="list-style-type: none"> • It is proposed that a registered person shall not issue an invoice containing an element of GST for a supply which is not a taxable supply or zero-rated supply • Also, an unregistered person shall not issue an invoice which purports to be a tax invoice or contains any element of GST. 	<ul style="list-style-type: none"> • A registered person is not allowed to issue a tax invoice with GST in relation to supplies that are not taxable supplies, e.g. exempt supplies. • An unregistered person is not allowed to issue a tax invoice or issue an invoice containing an element of GST.
34A and 34B	-	<p>The Minister may prescribe a registered person to provide Customs any information with regards to the supply made and payment received by him through a prescribed device.</p> <p>Customs may also approve a person to install and service the prescribed device.</p>	<p>The proposed amendment makes it mandatory for prescribed registered persons to provide information using a prescribed device.</p> <p>It also seeks to regulate the persons who are installing, servicing and maintaining the prescribed devices.</p> <p>The use of Government mandated systems for the issuance and processing of invoices is not a new one. It is unclear whether the system proposed is similar to the China Golden Tax System which requires businesses to buy the specific system (and the invoices) from the authorities, or if it is more the use of</p>

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			approved POS system. Taxpayers should look to closely monitor developments in this area.
41	<p>The current late payment penalty regime is as follows:</p> <p>First 30 days – 5% 31- 60 days – additional 10% 61- 90 days – additional 10%</p> <p>The maximum penalty is 25%.</p> <p>The penalty is imposed on tax due and payable</p>	<p>The late payment penalty is proposed to be changed as follows:</p> <p>First 30 days – 10% 31- 60 days – additional 15% 61- 90 days – additional 15%</p> <p>The maximum penalty proposed is 40%</p> <p>The penalty is proposed to be imposed on tax remaining unpaid</p>	<p>The amendment increases the rates of penalty on the late payment of GST. It also brings clarity that the penalty is to be imposed on the amount of GST that remains unpaid. This is a welcome decision, as under the previous wording, Customs were of the view that the penalty could be imposed on the entire tax liability for the period.</p>
42	<p>Certain non-taxable persons are required to furnish a GST declaration and pay GST. This includes a person who has been granted bad debt relief and subsequently recovers the debt after he has ceased to be a taxable person.</p>	<ul style="list-style-type: none"> • A person who has been granted bad debt relief is no longer required to furnish a declaration when he subsequently recovers the debt after he has ceased to be a taxable person. • A non-taxable person who has been granted GST relief under section 56 but fails to comply with the conditions of the relief or where the relief has been revoked, has to furnish a declaration and pay the tax accordingly. • A late payment penalty will be imposed for the failure or delay to furnish the declaration. The amount of penalty is the same as that set out in Section 41(8). 	<ul style="list-style-type: none"> • The decision to remove the need to account for GST on bad debt recovered appears 'concessionary' as ultimately there is a loss in GST revenue to the Government. Administratively speaking, it would be hard for Customs to track and audit such taxpayers in any event. • However, the decision to require taxpayers who have been previously granted relief to pay GST may prove equally difficult. • The declaration in GST 04 is currently the form used for making declarations under section 42. It is expected this form would be used.

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56	<p>For a person granted Ministerial relief of GST under Section 56, there is:-</p> <ul style="list-style-type: none"> • No requirement to account for tax if the relief is subsequently revoked • No refund of tax where a person granted GST relief has paid the tax 	<p>The following has been proposed:-</p> <ul style="list-style-type: none"> • A person granted Ministerial relief of GST under Section 56 has to account for tax upon revocation of GST relief Allowed to apply for refund of tax paid where GST relief is subsequently granted 	<p>A person granted GST relief would have to comply with the new requirements. The ability to obtain a refund of any GST paid in relation to GST relief (possibly in instances where the GST relief application was pending approval) is a positive outcome for taxpayers.</p>
57	<p>A refund of GST is available for tax, surcharge, penalty, fee or any other money overpaid or erroneously paid.</p>	<p>The refund facility will be extended to cases:</p> <ul style="list-style-type: none"> • Where tax, penalties or surcharges were remitted under section 62(3), or • Where tax is paid and GST relief is subsequently granted <p>A claim has to be made within 6 years.</p>	<p>The availability of a refund claim has been extended to cover a broader range of overpayments. This is an encouraging move as it means that taxpayers who have been requested by Customs to pay upfront on penalty decisions while seeking a remission can subsequently get a refund of these amounts if they are successful.</p>
70	<p>The GST Warehousing Scheme generally operates as follows:</p> <ul style="list-style-type: none"> • GST on goods imported and deposited into certain bonded warehouses covered by the Warehousing Scheme ("bonded warehouse") is suspended • Supplies of goods between the bonded 	<p>The proposed amendments to the Warehousing Scheme is as follows:</p> <ul style="list-style-type: none"> • GST is not applicable to goods that have been approved by Customs to be deposited in the bonded warehouses generally • Supplies of taxable goods made within or between the bonded warehouses is disregarded • The concept of last supply and duty point will be abolished. GST is payable on the removal of goods as if imported into Malaysia 	<p>The following are some key impact of the proposed amendments to the Warehousing Scheme:</p> <ul style="list-style-type: none"> • GST suspension is now applicable on the deposit of goods approved by Customs (as opposed to just imports). In line with the Budget proposal not to impose GST on goods deposited into bonded warehouses from, inter alia Principal Customs Area (PCA) consisting of Licensed Manufacturing Warehouse (LMW) and Excise Warehouse and Free Industrial Zones (FIZ), such goods should be expected to be approved by Customs. • The wording of the amendment however specifies that suspension is only in respect on imported goods deposited in the warehouse. The proposed new section 162A (1) on free

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	<p>warehouses are disregarded</p> <ul style="list-style-type: none"> Supplies of goods within the bonded warehouses is disregarded, except for the last supply where goods are removed before the duty point The last supply is deemed to take place at the duty point, and the value is deemed to include the duty, and GST payable 	<ul style="list-style-type: none"> GST is not be due and payable where goods are removed with the approval of Customs: <ul style="list-style-type: none"> for export; for deposit to another bonded warehouse; to a free zone; or to a designated area (DA). <p>GST is however proposed to be payable on goods prescribed by Regulations</p>	<p>zones deems goods removed from free zones into Malaysia as import and the proposed new section 162A(2)c) suspends GST on the removal of the goods from free zones to the bonded warehouse under section 70. This proposed amendment is in line with the 2016 Budget proposal to suspend GST on goods from, inter alia, FIZ that are deposited into the bonded warehouse under the Warehousing Scheme.</p> <ul style="list-style-type: none"> The goods that are deposited bonded warehouses with GST suspension in the Warehousing Scheme would be disregarded when supplied within or between the bonded warehouses covered by the Warehousing Scheme. Abolishment of the last supply rule is a welcome one as it makes it clear that tax would only apply upon importation of goods into the PCA. The imposition of GST on goods removed from the bonded warehouse as if imported arguably would means the value for GST purposes is no longer based on the value of the last supply but instead be the customs value of imported goods would be applicable, based on the Customs Valuation Rules. <p>Generally, the customs value is the last transacted sale of goods sold for export to Malaysia where the buyer is in Malaysia. Therefore, the customs value may not necessarily be the same as the value of the last supply.</p> <p>This has greater consistency with normal import rules and is a good outcome for importers.</p>
156(a)	GST is due and payable on goods "supplied" from DA to Malaysia as if the supply were importation	The concept of goods "supplied" will be changed to "removal" instead	The proposed amendment provides that GST is due and payable on removal of goods from DA to Malaysia instead of the supply of the goods.

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			On that basis, GST should be imposed on physical removal of goods from DA to Malaysia even if there is no supply (i.e. sale or transfer of ownership)
156(a) & (aa)	GST is due and payable on goods from DA to Malaysia as if it is an importation.	<ul style="list-style-type: none"> • Where goods move from a DA to another DA through the PCA, GST is proposed to be suspended. • GST on goods removed from DA to a free zone is to be suspended • GST on goods removed from DA to a bonded warehouse under the Warehousing Scheme is to be suspended <p>The Minister is proposed to be empowered to prescribe situations where the suspension is not granted in the above situations under the proposed amendment to section 160.</p>	The amendment streamlines the GST treatment by granting suspension movement of goods from DA to another customs bonded area. Importantly, it ensures that the GST suspension remains on the goods until such time it is finally entered into the PCA. This is a positive outcome and should ensure many businesses who participate in these special zones remain outside of the GST system and are not hit with an unrecoverable GST
Part XV (Sec 161, 162 and 163)	Part XV covers some definitions and the GST treatment in respect of Free Commercial Zones (FCZ)	Part XV is proposed to be expanded to apply to free zones i.e. FCZ and FIZ	The current GST treatment for FCZ is extended to FIZ, in line with the Budget proposal to streamline the GST treatment for all free zones.
162(b)	GST is due and payable on all goods supplied or removed from FCZ to Malaysia as if the supply or removal were importation.	It is proposed that no GST shall be charged on any supply of "taxable goods" made within or between free zones.	<ul style="list-style-type: none"> • Under the current provision, GST is due and payable on goods supplied from or within FIZ but GST relief is generally granted by the Minister of Finance on goods supplied from FIZ to FIZ. • With the proposed amendment such GST relief is no longer required.
162A	-	The proposed section 162A (2) allows the suspension of GST on the removal of goods from a free zone through the	The amendment streamlines the GST treatment by granting suspension movement of goods from DA to another customs bonded area

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		<p>PCA, where the goods are meant to be delivered to the following:</p> <ul style="list-style-type: none"> - A free zone - A designated area - A warehouse under section 70 (Warehousing Scheme). <p>The Minister is proposed to be empowered to prescribe situations where the suspension is not granted, under the proposed amendment to section 163.</p>	
162B	-	<p>GST shall be charged by a taxable person whose principal place of business is located in a free zone on any taxable supply of goods or services made "within Malaysia".</p>	<ul style="list-style-type: none"> • The proposed amendment extends the current GST treatment applicable to businesses in the DA making taxable supplies within Malaysia, to the free zones. <p>Customs should clarify the meaning of supplies of goods and services "within Malaysia". Similar wording currently exists in the context of DAs and is also unclear.</p>
Paragraph 8, Second Schedule	-	<p>The supply of land by a developer or owner to the Federal Government, State Government, Local Authority or any other person in compliance with the requirement of law for the purposes of public amenities & utilities is treated as neither a supply of goods nor a supply of services.</p> <p>The above treatment is applicable whether or not the supply is for a consideration or a nominal value.</p>	<ul style="list-style-type: none"> • Currently, the supply of such land is a taxable supply but granted GST relief under item 2, Second Schedule to the GST (Relief) Order 2014. • With the proposed amendment to treat such supply of land as neither a supply of goods nor a supply of services (i.e. out of scope), it is likely that the said GST relief would be repealed. • The issue is on the entitlement to claim input tax credit ("ITC") in relation to the surrender of such land with public amenities like roads, sewerage pipes etc. • There is case law in other tax jurisdictions which potentially support the claim of ITC in relation to an out of scope activity to the extent the ITC could be regarded in relation to an overhead of any overall taxable business activity.