Indirect Tax Alert l Updated GST guidelines on transition [Update 23 May 2019]

Dear Clients,

Further to our below Alert, the Royal Malaysian Customs Department ("RMCD") have subsequently made additional revisions to the Guides covered below. The changes, whilst small, are quite critical as cut-off periods have now been included in relation to the compliance requirements contained in the Guide.

In particular, after 31st August 2020, a business is no longer required to make any GST-related adjustments, nor is the business allowed to issue any GST-related credit notes or debit notes. This would mean that from 1st September 2020, there would be no further GST reporting requirements.

The inclusion of a cut-off period is a welcome move and addresses a gap in the Law that repealed the GST, which failed to include one. This means that we now finally have some closure from the perspective of GST Reporting, even if it is 2 years from the actual repeal date of the GST. Businesses should still be mindful that GST Audits have not yet concluded and we may still see audit activity well into 2020, if not beyond.

Regards,

Deloitte Indirect Tax Team

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Indirect Tax Alert
Updated GST guidelines on transition

The Royal Malaysian Customs Department (RMCD) has recently published two new guides on their website, setting out their views on critical matters relating to Goods and Services Tax (GST) reporting over the transitional period leading up to the abolishment of GST and also the period since its abolishment. You can find links to the two guides here.

More importantly, both guides include wordings to provide further clarity that the views expressed in these guides supersede any views previously expressed. In the case of inconsistencies, the views in the new guides will prevail over any previously expressed views.

Tax invoice, debit note, credit note and retention payment after 1 September 2018 (Document Guide)

The RMCD first published the '*GST Guide on Tax invoice, DN, CN and retention payment after 1 Sep 2018*' on 19 April 2019. This guide was subsequently revised on 29 April 2019.

Some of the critical points provided in the Document Guide are as follows:

- A business that made a taxable supply prior to 1 September 2018 is still able to issue a tax invoice or an invoice after 1 September 2018 and is required to account for any GST in its final GST Return.

- Any GST that was due and payable, but not accounted for yet, must be accounted for by amending the final GST Return.

- A business is only entitled to claim input tax credits up until the date of filing the final GST Return (i.e. 29 December 201X), and any claims subsequent to that would not be allowed.

- Debit notes and credit notes can continue to be issued post 1 September 2018 on any change in consideration for taxable supplies made prior to 1 September 2018. For debit notes and credit notes issued after the filing of the final return, an adjustment of the final return is required, by both the issuing and receiving parties, no later than the final day of the month in which the debit or credit note is issued/received.

- Retention payments arising from construction contracts for work performed prior to 1 September 2018 would not be subject to GST where the invoice is issued or payment is

received in relation to the retention sum after 1 September 2018. In cases where GST was accounted for on retention sums received or invoiced after 1 September 2018, a credit note may be issued and an amendment should be made to the final GST Return.

Deloitte's view

The Document Guide represents a further shift in the RMCD opinion on interpreting the complex transitional rules contained in the GST Repeal Act. The requirements for accounting for and claiming GST after the repeal of the GST has continued to confuse many businesses. Unfortunately, the release of the Document Guide is unlikely to reduce this confusion.

The revised RMCD position, however, is consistent with our reading of the relevant provisions of the Goods and Services Tax (Repeal) Act 2018, in that it requires businesses to continue to account for GST after 29 December 2018 but denies any input tax claims subsequent to that date.

From a policy perspective, this treatment appears inconsistent with the notion of the GST not being a cost for business-to-business (B2B) transactions, and the underlying policy reasons for requiring payment of the GST, but the denial of the input tax credit does not seem clear.

The previous version of the Guide removed the ability for businesses to issue tax invoices after 1 September 2018 (a concession only given just prior to Christmas 2018) only to be reinstated days later in this most recent version of the Guide. Unfortunately, the concession or opportunity provided to businesses to apply to claim input tax after 29 December 2018 appears to be now closed.

One positive outcome is a shift in the earlier RMCD position on retention sums, with construction companies no longer obligated to pay GST on any amounts received or invoiced after 1 September 2018. Importantly, the RMCD are allowing those who had earlier paid to seek refunds of these amounts, and we would recommend businesses take immediate steps to claim these refunds. Likewise, those businesses who receive credit notes for retention sum invoices previously received and claimed should take steps to immediately pay back these amounts. The Guide indicates a penalty could be imposed and a remission application would be required. This again appears inconsistent with the policy intention of the GST to not be a cost to business.

Declaration and Adjustment after 1 September 2018 (Adjustment Guide)

The Adjustment Guide sets out the process for bad debt relief claims after 1 September 2018 and for adjustment of input tax claims where payment has not been made for 6 months.

Some of the critical points from the Adjustment Guide are as follows:

- The Guide confirms that the provisions covering bad debt relief provisions and the adjustment of input tax claims continue to operate after 1 September and businesses will need to continue to report and make adjustments through the final return.

- When determining the 'month' for the purposes of calculating the 6 months, refers to the month in which the invoice was issued, regardless of the 'issuance date'.

- For the purposes of determining 'sufficient efforts' to substantiate a claim for bad debt relief, the Guide provides that the following must be evidenced:

  (a) correspondence with debtors by issuing reminder notices and attempting mail or e-mail contact;
  (b) issuing a formal demand notice or any legal actions taken against the debtor; and
  (c) writing off the debt in his accounts.

Deloitte's view

Whilst the Adjustment Guide is largely consistent with the relevant provisions of the Law and the earlier guidance released by the RMCD, there are some critical changes from the earlier views.

Firstly, the RMCD no longer seem to have a requirement that the recipient of the taxable supply be (or have been) a GST registered person. This implies that the RMCD may now allow claims that were previously denied for supplies made to non-GST registrants and consumer/ retail clients.

Secondly, the requirements for 'sufficient efforts' have increased significantly. In the earlier guidance, the need for formal legal action or to have the debt written off were not required. These requirements are not in the Law, and are perhaps a way for the RMCD to put in place greater controls and restrictions on the claiming of the relief. Either way, we would recommend for businesses to take note and be prepared to substantiate any claims for the relief.

If you would like to discuss any of the above further, feel free to reach out to your usual Deloitte Indirect Tax contact or to any of the people listed below.

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Best regards,

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