



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON LEGAL PRACTITIONERS

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INTRODUCTION

1. This industry guide is prepared to assist businesses in understanding matters with regards to GST treatment on Legal Practitioners.

Overview of Goods and Services Tax (GST)

2. Goods and Services Tax (GST) is a multi-stage tax on domestic consumption. GST is charged on all taxable supplies of goods and services in Malaysia except those specifically exempted. GST is also charged on importation of goods and services into Malaysia.

3. Payment of tax is made in stages by the intermediaries in the production and distribution process. Although the tax would be paid throughout the production and distribution chain, only the value added at each stage is taxed thus avoiding double taxation.

4. In Malaysia, a person who is registered under the Goods and Services Tax Act 20XX is known as a “registered person”. A registered person is required to charge GST (output tax) on his taxable supply of goods and services made to his customers. He is allowed to claim back any GST incurred on his purchases (input tax) which are inputs to his business. Therefore, the tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements.

GST TREATMENT FOR THE INDUSTRY

5. In Malaysia, a legal practitioner in Malaysia can be an advocate or solicitor. A legal practitioner provides services as a general practitioner, or specializes in one or more areas of law. These include probate, matrimonial, employment, company, commercial, litigation and conveyance law.

6. The supply of services to an employer by a legal practitioner by virtue of being an employee is outside the scope of GST. A legal practitioner who is employed as an employee is not required to be registered under GST in respect of services supplied by him.



FREQUENTLY ASKED QUESTIONS

Place of Supply

Q1: If I provide legal services to an entity outside Malaysia, and bill to the recipient in Malaysia, do I have to account for GST?

A1: A supply of legal services to an entity outside Malaysia but billed to a recipient in Malaysia is regarded as exported services. The supply is regarded as zero rated. There is no GST on the supply

Example 1

A legal council A provided legal advice to an accused person, B who was detained and face prosecution overseas. This provision of legal advice is regarded as a supply of export services even though payment for the services was made in Malaysia by B's employer.

Q2: If a foreign legal practitioner registered outside Malaysia, provides legal services in Malaysia, who has to account for GST?

A2: The supply of legal services in Malaysia by a foreign legal practitioner is regarded as a supply of imported services. The recipient of the services has to account for it. However, if the recipient of the services is an individual, he is not required to account for it.

Q3: What is the GST treatment on the supply of legal services provided by legal practitioner in Principal Customs Area (PCA) to a recipient in Designated Area (Langkawi, Tioman or Labuan)?

A3: A supply of legal services by legal practitioner registered in the Principal Customs Area to a recipient in Designated Area is a zero rated supply. The legal practitioner charge GST on a zero rate on the supply.

Q4: What is the GST treatment on the supply of legal services provided by legal practitioner in the Designated Area to a recipient in the Principal Customs Area?

A4: Services rendered by legal practitioner in the Designated Area to a recipient in the Principal Customs Area is subjected to GST. The legal practitioner would



be required to register and account for the GST subject to the GST registration threshold.

Q5: Are legal services provided within and between Designated Area subject to GST?

A5: The legal services rendered within and between free ports are not subject to GST. They are disregarded supplies for GST purposes.

Charges, Fees and GST

Q6: Do I have to account for GST for all charges and fees imposed?

A6: All charges and fees, excluding disbursements imposed for services provided will be subject to GST. This include fees in respect of contentious or non-contentious business, preparing and completing agreements, conducting and completing transactions, preparing filing or witnessing of miscellaneous documents. It also includes charges such as miscellaneous expenses, cost of extra work, travelling or accommodation expenses, allowances for the time of the solicitor and his clerk and all usual and necessary attendances and charges for normal copying and stationary.

Q7: Do I have to issue tax invoices for the above charges and fees?

A7: Yes, you have to issue a tax invoice for the charges and fees imposed that are subjected to GST. Your client who is a GST registered person can claim the GST as input tax.

Q8: Do I have to account for GST for services provided free of charge?

A8: No, where services are provided free of charge, there is no consideration received and therefore there is no supply. There is no liability to account for GST.

Q9: Is GST imposed on the interest charged on late payment?

A9: The interest charge on late payment is not subject to GST as it is an out of scope supply.

Tax Invoices

Q10: What is a tax invoice?



A10: A tax invoice is an invoice that is issued pursuant to Section 34 of the GST Act and it has certain characteristics and particulars as follows:

- (a) GST registration number;
- (b) Invoice number;
- (c) The words "Tax Invoice" stated;
- (d) The date of issue;
- (e) Name and address of supplier;
- (f) Name and address of client/ recipient;
- (g) Particulars and description of the transaction; and
- (h) GST liability expressed inclusively or exclusively.

Q11: Can you show me a sample of tax invoice?

A11: Yes. This is a sample tax invoice:

Example 2

TAX INVOICE				
XYZ Co.		Invoice No : 00007/1		
Address : No. 1, Kelana Jaya.		GST Registration No. : PJ9991601		
Date :				
To : ABC Sdn. Bhd., Petaling Jaya.				
No.	Particulars	Charges / Fees (RM)	GST Rate (%)	GST Amount (RM)
1	Legal services for period 1st to 30th May	10,000	6	600
2	Hotel	200	6	12
3	Transport	100	6	6
Total Charges		10,300	6	618
Total Due		10,918		

Please refer to the GST Specific Guide on 'Tax Invoice and Record Keeping for further examples

Registration

Q12: Who is liable to be registered?

A12: All legal practitioners who practice either as a sole proprietor or in partnership are required to be registered for GST if the total value of taxable supplies exceeds the GST registration threshold in the past 12 months or in the next 12 months or part thereof.

Q13: What constitutes the value of taxable supplies for purpose of registration?

A13: The annual turnover value of taxable supplies includes the following:

- (a) all remunerations
- (b) other charges incurred by legal practitioners excluding disbursements referred to in paragraph 10; and
- (c) deemed supplies such as private use of business assets and disposal of business gifts.

Q14: If my annual turnover of taxable supplies does not exceed the GST registration threshold, can I apply to be registered?

A14: Yes, you may apply for voluntary registration.

Q15: Is there any condition for voluntary registration?

A15: Yes, once registered you must remain registered for a minimum of two years.

Branch and Division

Q16: My establishment has two branches. How do I determine the turnover of the business?

A16: The combined turnover of the two branches will be regarded as the turnover of the business.



Example 3

A & Co has two branches in Kuala Lumpur and Johor Bahru. The branch in Kuala Lumpur has a turnover of RM250,000 while the branch in Johor Bahru has a turnover of RM150,000. The combined turnover of the company is RM400,000. A & Co is required to register if the registration threshold is RM300,000.

Q17: Can I register my branches separately?

A17: You can apply to register your branches separately subject to certain conditions and requirements as referred to in General Guide.

Example 4

Based on the above example A & Co may register in Kuala Lumpur and a separate branch in Johor Bahru.

The Johor Bahru branch will be given a separate GST number and submit its GST returns to the GST office in Johor Bahru.

Q18: What are the conditions and requirements if I want to register my company separately?

A18: This approval is subject to the following conditions and requirements;

- (a) Every separately registered branch has the same taxable period.
- (b) It is likely to cause difficulty for taxable person to submit a single return.
- (c) All branches must registered although one branch is below threshold.
- (d) Each branch will be given a separate GST number and make their own return. However, the main branch remains accountable for all GST liability for all branches.

Time of Supply and Accounting Period

Q19: When do I have to account for GST?

A19: As a legal practitioner, if you had not performed the services, you have to account for GST on the services at the earliest of the following:

- (a) The date of receipt of payment; or



(b) The date of issue of a tax invoice.

However, upon completion of services and you issued a tax invoice within 21 days, you account GST based on the date of invoice.

Example 5

AB & Co provided legal services to a client B. The legal services were provided in February over a period of time and finally completed on 15th May. The invoice has to be issued within 21 days from the date of completion of services that is on or before 5th June. AB & Co has to account for GST based on the invoice date.

Q20: What is the consequence if I fail to issue a tax invoice within 21 days from the date of completion of services?

A20: It is mandatory that a tax invoice be issued within 21 days after completion of services to ensure all GST registered clients receive it to enable them to claim the input tax credit. However, if you fail to do so within 21 days, your tax point will revert back to the date you completed performance of your services.

Example 6

J & Co provided legal services to a client D. The legal service was provided over a period of time and was completed on 15th May. The invoice was issued one month after on 15th June. The tax point shifts back to 15th May. GST has to be accounted for the taxable period covering 15th May.

Q21: As a permanent legal adviser, I receive regular payment on a standing retainer. When do I have to account for GST?

A21: You account for GST on the earlier of the following:

- (a) The date of receipt of payment; or
- (b) The date of issue of a tax invoice.

Q22: As a legal practitioner, I have to maintain client's accounts. Do I have to account for GST on money deposited into the client's account?

A22: No, you do not have to account for GST because the amount received is not payment for a supply. However, you have to account for GST when the

money is transferred from the client's account to the office account for payment of services rendered to your client.

Deposit and Advance Payment

Q23: Is GST chargeable on deposits received from the recipient?

A23: If the deposit forms part payment of the total consideration payable by the recipient, GST will be chargeable at the time of payment of the deposit. On the other hand, if the deposit are used as security and will be fully refunded upon completion of services, no GST will be chargeable

Q24: Is advance payment subject to GST?

A24: Yes, because it was payment for your supply. If the part of the advance payment were refunded because of discount of services, GST will be imposed on the part which is the payment of the services.

Q25: When do I account for GST on advance payment?

A25: You have to account for GST on the date of receipt of payment.

Bad Debts

Q26: What will happen if my client does not pay me after I have issued tax invoice after completion of my legal services?

A26: You can claim bad debts relief on the output tax paid in respect of taxable supplies. The GST portion of the bad debt will recovered subject to certain conditions:

- (a) the tax is already paid;
- (b) the whole or any part of the consideration for the supply has been written off as bad debts or provided for as doubtful debts ;
- (c) the claimant has not received any payment 6 months after the supply has been made; and
- (d) the claimant has made sufficient efforts to recover the debt.

Other Outputs



Q27: What is the GST treatment for non-billed income such as oath fees received by the legal firm or by individual solicitor under GST?

A27: Non-billed income such as oath fees received in respect of oaths administered by a solicitor in sole practice or a partner in a legal firm are regarded as consideration for services supplied in the course of business, and thus are subject to GST. However, where the firm allows the individual to retain the fees in a personal capacity, the fees will not be subject to GST.

Disbursements

Q28: What are the conditional requirements of disbursements for GST purpose?

A28: A legal practitioner may only treat a payment on behalf of a client for goods and services to a third party as a disbursement for GST purpose if the following conditions are satisfied:

- (a) the legal practitioner acted for his client when paying the third party.
- (b) the client actually received and used the goods or services provided by the third party.
- (c) the client knows that the goods or services would be provided by the third party.
- (d) the client authorized the legal practitioner to make payment on his behalf.
- (e) the client was responsible for paying the third party.
- (f) the payment is separately itemized when invoicing the client.
- (g) the legal practitioner recovers only the exact amount which he paid to the third party.
- (h) the goods and services paid for are clearly additional to the supplies which the legal practitioner makes to the client.

Q29: What items or reimbursements can be regarded as disbursements for GST purpose?



A29: Only payments made on behalf of the client involving the following can be regarded as disbursements for GST purposes. These include:

- (a) non-taxable disbursements including exempt and out of scope supplies and supplies by non-taxable person.
- (b) disbursements involving payments made to taxable persons.

Disbursements include statutory fees such as stamp duties, estate duties, court fees, land registry fees and payment for expert witness, professional services of third party.

Q30: Can general expenses qualify as disbursements?

A30: General expenses such as telephone, telex, postage, advertising, and stationery charges are incurred in the course of providing services to the client. They are not to be treated as disbursement for GST purposes.

Q31: Can travel and accommodation expenses be regarded as disbursements?

A31: Travel and accommodation expenses are incurred in the course of providing a supply of services to a client. If this is borne by the legal practitioner, it can be recovered as the consideration paid by the client will include these expenses.

Q32: Are disbursements excluded from the value of the supply of services?

A32: Yes, such disbursements are excluded from the value of supply of services. The example below illustrates how you exclude disbursements from the value of supply of services.

Example 8

TAX INVOICE				
ABC CO.			Invoice No : 00018/1	
Address : No. 1, Ampang.			GST Registration No. : KL9991608	
Date :				
To : MCC Sdn. Bhd., Kuala Lumpur.				
No.	Particulars	Charges / Fees (RM)	GST Rate (%)	GST Amount (RM)



1	Legal services for purchase of KL Apartment	3,000	6	180
	Total Charges	3,000	6	180
Total Charges inc. GST		3,180		
2	Disbursements :			
	a) Land Registry Fees	50		
	b) Stamp Duty	1,000		
Total Due		4,230		

Q33: Can payment on reports by third party be regarded as disbursement?

A33: If the legal practitioner acquires the report for his own use (analyses or comments on it), payment on such reports are not regarded as disbursements. They are part of the cost in providing services to the client (general expenses). However, if the legal practitioner merely passes on the report to the client, payment on such reports can be regarded as disbursements.

Q34: How do I treat disbursements?

A34: You have 2 options:

- (a) Exclude the disbursement when calculating GST on the main supply. In this case, you pass on the disbursement to the client. You and the client are not allowed to claim input tax; or
- (b) Treat the legal practitioner as principal for the disbursement. In this case, the legal practitioner pays for the supply and charges the client for the goods and services. Whether GST is imposed or not by the legal practitioner will depend on the nature of the supply by the third party. The legal practitioner and the client can claim the related input tax.

Overseas Telecommunications

Q35: In supplying my legal services, I have to make calls to my overseas client. Are these calls zero rated?

A35: The services that you provide to overseas client will be zero rated but the charges on telephone bill that you receive will be standard rated. However because the calls were made for making taxable supply, you can claim input tax credit.

Input Tax Credit

Q36: Who is entitled to recover the GST if someone else pays for my services?

A36: Only the recipient of the service or goods is entitled to recover the GST. If your client pays for your hotel accommodation, you can claim the GST if the invoice is issued in your name.

Q37: Can I claim input tax on job development?

A37: Yes. You may incur such expenditure / input tax in the course of prospecting for business opportunities, and you can claim the input tax.

Costs Awarded By Court

Q38: What is the GST treatment on costs awarded to the legal practitioners?

A38: The costs awarded to the legal practitioners will subject to GST if the payments were consideration of the services.

Transitional Provisions

Q39: Can I claim input tax incurred on service tax for services procured before the commencement of GST?

A39: No, you cannot claim input tax on service tax incurred before the commencement of GST because the services were performed and consumed before the commencement of GST.



Q40: How do I account for GST on the value of legal services if the services were performed spanning GST implementation?

A40: You must make apportion the legal service, which you perform before and after GST implementation. GST is only chargeable for legal service rendered after GST implementation. Apportionment can be by way of time spent, transactions or number of court appearances.

Example 9

Apportionment by number of court appearances

LM & Co has been appointed as litigation lawyers for RZ to act as his lawyer in the Magistrate Court. The lawyers attended court a total of 5 times, that is 3 times before and 2 times after commencement date of GST. After completion of services, LM& Co lodged claim for his services amounting RM10,000.

Total court appearance days = 5 times

Court appearances after GST implementation = 2 times

GST liable = $2 / 5 \times RM10,000 \times 6\% = RM240$.

LM & Co has to account for GST of RM240.

Q41: Is the payment I received after commencement of GST for services performed before GST implementation subject to GST?

A41: No, payment received after commencement of GST for services provided before GST implementation is not subject to GST.

FEEDBACK OR COMMENTS

7. Any feedback or comments will be greatly appreciated. Please email your feedback or comments to either Mohd Hisham B. Mohd Nor (m_hisham.nor@customs.gov.my) or Aminul Izmeer B. Mohd Sohaimi (izmeer.msohaimi@customs.gov.my).

FURTHER INFORMATION

8. Further information can be obtained from:



- (a) GST Website: www.gst.customs.gov.my
- (b) GST Hotline: 03-88822111
- (c) Customs Call Centre:
 - Tel : 03-78067200/ 1-300-888-500
 - Fax : 03-78067599
 - E-mail : ccc@customs.gov.my

