

DECISION BY DIRECTOR GENERAL OF ROYAL MALAYSIAN CUSTOMS

BIL.	ISSUES	DECISION
1.	<p>Small Office Home Office (SOHO)</p> <p>The classification of residential property will be based on the design features and essential characteristics and attribute of the property.</p> <p>If SOHO meets the above criteria, is the sale of SOHO apartment classified as a residential property?</p>	<p>(i) Under Paragraph 2, First Schedule of the GST (Exempt Supply) Order 2014 (P.U (A) 271/2014), any buildings or premises being used for residential purposes, designed or adapted for use or intended to be used as dwelling is exempted.</p> <p>(ii) SOHO can be classified as a residential property if the development of such property comply with the requirement of the Housing Development (Control and Licensing) Act 1966 and Housing Development (Control and Licensing) Rules 1989 as follows –</p> <p>(a) letter of planning approval (Surat Kebenaran Merancang) is issued under “residential”;</p> <p>(b) approved layout plan and approved layout building is for dwelling purpose;</p> <p>(c) the sale and advertisement permit is issued under the Housing Development Act (Control and Licensing) 1966; and</p> <p>(d) the developer and the buyer enter into a sale and purchase agreement enforced under the Housing Development Rules (Control and Licensing) 1989.</p>

BIL.	ISSUES	DECISION
2.	<p>Supply of commercial property (build & sell) by the developer to the purchaser under an agreement for a period that begins before the effective date and ends on or after the effective date.</p> <p>(i) What is the GST treatment of such supply?</p> <p>(ii) How to determine the value of such supply if it is subject to GST?</p>	<p>(i) Supply of commercial property (build and sell) by the developer to the purchaser under an agreement for a period or progressively over a period, whether or not at regular intervals and that period begins before the effective date and ends on or after the effective date the proportion of the supply which is attributed to the part of the period on or after the effective date shall be chargeable to tax. (refer s.188 GSTA).</p> <p>(ii) Only the value of the proportion of the supply which is attributed to the part of the period on or after the effective date shall be chargeable to tax.</p> <p>(iii) To determine the value of the supply, the developer must ensure that the method he uses is consistent with the industry practice and acceptable under the General Accepted Accounting Principle (GAAP)</p>
3.	<p>Eligibility for deemed Input Tax under Regulation 47 of the GST Regulations 2014 (P.U (A) 190/2014).</p>	<p>(i) Where an insurer or takaful operator has fulfilled the conditions under sub regulations 47(1), (2) and (3), he is entitled to credit of input tax deemed incurred known as “deemed input tax”.</p> <p>(ii) The insurer or takaful operator is not entitled to credit of deemed input tax when an insurer or takaful operator makes a cash payout to a policyholder/insured or a third party where the cash payout relates to an acquisition of goods or services, which is an exempt supply, zero rated supply, a supply not within the scope of GST or the credit is disallowed under regulation 36.</p>

BIL.	ISSUES	DECISION
4.	<p>Claiming special refund of sales tax goods held on hand on 1/4/2015.</p> <p>(i) A person claiming a special refund equal to twenty per cent of the value of the goods hold on the effective date must prove that he has paid the amount as shown on the invoice (refer section 190(2)(C) GSTA). Whether the date of payment is before or after the effective date?</p> <p>(ii) Does the special refund apply to sales tax goods purchased on 5 March 2015 and paid on 4 April 2015 by reason of 30 days credit term given by the supplier?</p> <p>(iii) Whether the following goods which are taxable under the Sales Tax Act 1972 which are held on hand on 1/4/2015 and sales tax has been paid before 1/4/2015 are eligible for special refund –</p> <p>(a) Unsold stock returned by buyer to the seller.</p>	<p>(i) Under section 190 GSTA, a person is entitled for a special refund (100% or 20%) if the goods he holds on hand are taxable under the Sales Tax Act 1972 and the sales tax charged on such goods or the amount shown on the invoice has been paid by the claimant before 1st April 2015. However, if there is a credit term given by the supplier, the special refund is allowed to be claimed only if the payment of the sales tax or value of the invoice is made before 30th May 2015.</p> <p>(ii) The following goods do not qualify for a special refund:</p> <p>(a) goods which have been sold and subsequently repurchased (buy back) by the supplier or returned to the supplier before 1st April 2015;</p> <p>(b) petrol Ron 95 and diesel; AND</p> <p>(c) The goods listed under the GST (Zero Rated Supply) Order 2014.</p> <p>(iii) Special refund is allowed for unsold stock returned by customer (before 1st April 2015) being the result of delivery of wrong quantity, poor or defective quality of goods or erroneous despatch of un-contracted goods in accordance with Regulation 19C of the Sales Tax Regulations 1972</p>

BIL.	ISSUES	DECISION
	<p>(b) Petrol and Diesel.</p> <p>(c) Zero rated goods.</p>	
5.	<p>Whether a debit note is allowed to be issued in order to recover the GST amount during transitional?</p>	<p>(i) Tax shall not be charged and levied on any supply of goods or services or importation of goods made before the effective date (s.183(1) GSTA).</p> <p>(ii) S. 183(3) GSTA provides that the value of the supply under subsection (2) GSTA, the payment received or any amount stated in the invoice issued shall be deemed to be inclusive of tax.</p> <p>(iii) For the purpose of GST, credit note or debit note is allowed to be issued by any registered person to another registered person only when there is a change in consideration for the supply either due to change of rate of tax in force under s.10 GSTA, a change in the descriptions of the zero rated or exempt supply under section 17 or 18 of the Act or adjustment in the course of business (s.35 GSTA and reg. 25 GSTR)</p> <p>(iv) During transitional period, a value of supply is deemed to be inclusive of GST. If a debit note is issued after the effective date in order to recover the amount shown on the debit note would be deemed to be part of the total consideration for the supply.</p>

BIL.	ISSUES	DECISION
		<p>Example;</p> <p>Invoice issued before effective date for the supply after effective date amounting to RM 1000. Debit note raised after effective date RM 60.00. Total GST is computed as follows –</p> <p>$6/106 \times \text{RM}1060 = \text{RM}59.99$</p>

AMENDMENT TO GST FREQUENTLY ASKED ISSUES (FAI) NO: 1/2015

NO.	DECISION NO.	AMENDMENT
1.	1/2014 Claiming bad debt relief.	<p>Item 3 is amended as follows –</p> <p>(a) by substituting sub item 3(iii) as follows –</p> <p style="padding-left: 40px;">(iii) “If the bad debt relief is not claimed immediately after the expiry of sixth month, then the taxable person has to notify the Director General (DG) within 5 days after the expiry of sixth month on his intention to claim at a later date”.</p>
2	1/2014 Foreign Exchange Can businesses use any exchange rate for transaction involving foreign currency?	<p>Item 6 is amended by substituting with a new item(iii) as follows –</p> <p>(i) Paragraph 5 of 3rd Schedule of the GSTA requires business to convert the foreign exchange into ringgit –</p> <p style="padding-left: 40px;">(a) In the case of a supply including imported services, at the selling rate of exchange prevailing in Malaysia at the time the supply takes place; or</p> <p style="padding-left: 40px;">(b) In the case of importation of goods, at the rate of exchange determined by DG at the time applicable for the calculation of customs duty or excise duty and valuation. Therefore, for imported goods, irrespective whether the importer is GST registered or not, he must use the exchange rate determined by the DG;</p>

NO.	DECISION NO.	AMENDMENT
		<p>(ii) In the case of local supply including imported services or export of goods, where the supplier and the buyer are both making wholly taxable supplies and both are businesses registered for GST –</p> <p>(a) the businesses may use any of the following exchange rates published by –</p> <p>(aa) Bank Negara Malaysia (BNM) ;</p> <p>(bb) any commercial banks in Malaysia or any other banks registered under BNM;</p> <p>(cc) news agencies e.g. Bloomberg, Reuters, Oanda, ASWJ, XE, Strikeiron;</p> <p>(dd) any foreign central banks e.g. European Central Bank and Federal Reserve Bank of New York, Korean Exchange Bank.</p> <p>(b) The exchange rate from any of the published rates in sub paragraph (ii) (a) above must be –</p> <p>(aa) the prevailing exchange rate (selling rate) corresponding to the time of supply;</p> <p>(bb) the monthly average rate of the previous month corresponding to the time of supply;</p> <p>(cc) the month-end average rate corresponding to the time of supply;</p> <p>(dd) the month end selling rate corresponding to the time of supply;</p> <p>(ee) the opening selling rate of the month corresponding to the time of supply;</p> <p>(ff) the average rate of the highest rate plus (+) the lowest rate of the previous month corresponding to the time of supply; or</p> <p>(gg) the hedged exchange rate with banks corresponding to the time of supply;</p> <p>(c) The exchange rate as in sub paragraph (ii) (a) and (b) must be used consistently for internal business reporting and accounting purposes and used for at least one year from the end of the accounting period in which the method was first used.</p>

NO.	DECISION NO.	AMENDMENT
		<p>(d) If a GST registered person wants to use an exchange rate other than the rates as in sub paragraph (ii) (a) and (b) above, he must apply in writing to the Director General for his approval.</p>
3.	<p>FAI 2/2014 Motor cars used exclusively for business purposes as approved by the DG.</p>	<p>Item 1(iii) is amended by substituting with a new item(iii) as follows-</p> <p>(iii) Motor cars used exclusively for business purposes which the Director General may approve are –</p> <p>(a) Test Drive car - a car used for a limited period in order to assess its performance and reliability.(Only for car dealers);</p> <p>(b) Cars used for security purposes – a car used by security officers only for patrol in the company's compound to protect the business premise;</p> <p>(c) Cars used in providing technical assistance - a car used mainly in providing technical assistance to company's clients e.g. maintenance services, breakdown services, repair services; or</p> <p>(d) Serve as an integral part in the running of a business (cannot continue business without them). It is a business that requires the use of passenger motor cars e.g. leasing of cars, taxi rental business;</p> <p>AND</p> <p>(e) The cars in (a), (b), (c), (d) or (e) above must fulfil all the following conditions –</p> <p>(aa) the motor car is registered in the name of the company;</p> <p>(bb) the motor car is not let on hire;</p>

NO.	DECISION NO.	AMENDMENT																																	
		<p>(cc) there is no intention to make the motor car available for private use;</p> <p>(dd) the motor car is kept at business premises, used for business trips and must not be taken home overnight by any employee; AND</p> <p>(ee) the business's name or company's LOGO must be printed on the body of the car.</p>																																	
4.	FAI 2/2014 Gift Rule	<p>Item 4 is amended by substituting the example with a new example as follows:</p> <p>Example: Company ABC give gifts to his employee A in 2015 as follows:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">DATE</th> <th style="text-align: center;">COST</th> <th style="text-align: center;">OMV</th> <th style="text-align: center;">GST</th> <th style="text-align: center;">TIME OF SUPPLY</th> </tr> </thead> <tbody> <tr> <td rowspan="4" style="text-align: center;">1st scenario</td> <td style="text-align: center;">Apr 2015</td> <td style="text-align: center;">RM200</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Jun 2015</td> <td style="text-align: center;">RM200</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Nov 2015</td> <td style="text-align: center;">RM300</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Total</td> <td style="text-align: center;">RM700</td> <td style="text-align: center;">RM742</td> <td style="text-align: center;">GST 6/106 X RM742 = RM42</td> <td style="text-align: center;">Nov 2015</td> </tr> <tr> <td style="text-align: center;">2nd Scenario</td> <td style="text-align: center;">May 2015</td> <td style="text-align: center;">RM800</td> <td style="text-align: center;">RM848</td> <td style="text-align: center;">GST 6/106 X RM848 = RM48</td> <td style="text-align: center;">May 2015</td> </tr> </tbody> </table>		DATE	COST	OMV	GST	TIME OF SUPPLY	1st scenario	Apr 2015	RM200				Jun 2015	RM200				Nov 2015	RM300				Total	RM700	RM742	GST 6/106 X RM742 = RM42	Nov 2015	2nd Scenario	May 2015	RM800	RM848	GST 6/106 X RM848 = RM48	May 2015
	DATE	COST	OMV	GST	TIME OF SUPPLY																														
1st scenario	Apr 2015	RM200																																	
	Jun 2015	RM200																																	
	Nov 2015	RM300																																	
	Total	RM700	RM742	GST 6/106 X RM742 = RM42	Nov 2015																														
2nd Scenario	May 2015	RM800	RM848	GST 6/106 X RM848 = RM48	May 2015																														