

COMMENTS ON GOODS AND SERVICES TAX (GST) GUIDE

IMPORT

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TECHNICAL COMMITTEE -- INDIRECT TAX (TC-IT)

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GOODS AND SERVICES TAX (GST) GUIDE**

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PREAMBLE

The Technical Committee-Indirect Tax (TC-IT) of the Chartered Tax Institute of Malaysia (CTIM) would like to commend the Royal Malaysian Customs (RMC) for engaging the public to provide feedback on the draft Goods and Services Tax (GST) Guide – Import.

GENERAL COMMENT

1. Reference to the GST Act, relevant Gazette Orders, and GST Guides

CTIM is of the view that wherever relevant, the guide should indicate the statutory reference, i.e. provisions of the GST Act and the relevant GST Gazette Orders and Regulations. This will allow readers, including taxable persons, agents, tax advisers, academician, etc. to understand the framework of GST clearly and facilitate compliance.

SPECIFIC COMMENTS

The following are the views and comments of CTIM for the consideration by the authorities.

Paragraph 2.2: Importation of services

Under the GST Act, “Imported services” means any services that are made by a supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia to a recipient who belongs to in Malaysia and such services are consumed in Malaysia. **(Section 2, GST Act 20XX)**

When services are imported **from outside Malaysia and supplied to a recipient in Malaysia**, being taxable supplies if made in Malaysia, the recipient of the supply shall account and pay GST if such imported services are for the business purposes and consumed in Malaysia. **(Section 13, GST 20XX)**

Generally, the GST legislation provides for the supplier to charge GST on taxable supplies he makes to the recipient. However, in the case of imported services, the GST liability shifts from the supplier to the recipient if the recipient’s fixed or business establishment or his usual place of residence is in Malaysia. Hence, the recipient is liable to account GST on the supply made for the purpose of any business carried on by him. **For further information, please Readers are advised to** refer to “Guide On Imported Services” **for further explanation.**

CTIM’s Comment: Importation of services involves several relatively complicated concepts. To avoid confusion, CTIM suggests that paragraph 2.2 should be brief and concise and made reference to the relevant provisions of the Act and Statutory Order as well as the “Guide for Imported Services”. As such we suggest the amendment as above.

Paragraph 5.0: Liability of GST on Imported Goods

Importer or owner of the imported goods as defined under the Customs Act 1967 is liable to pay GST and customs duty, if any, at the time of importation or at the time when the goods are

released for home consumption. However, if the importer or owner of the imported goods appoints an agent who is a taxable person to act on his behalf, and the owner is not a taxable person, then the goods is deemed to be imported by the agent. In such a case, the agent is liable for GST **and customs duty, if any**, on the imported goods.

CTIM's Comment: For consistency with the first sentence of the paragraph, we propose the amendment as indicated (words in blue).

Paragraph 6.1.1: Valuation determined for customs purposes

Value of the goods or transaction value, which is generally shown on the invoice, plus adjustments **to be included** such as freight, insurance, packing, commission and brokerage, assist, royalty, proceeds and other charges and expenses associated with the transportation of goods have arrived in the country of importation but not costs incurred after importation.

CTIM's Comment: CTIM proposes the amendment as indicated (words in blue).

Paragraph 6.2: Value of supply for goods under the Warehousing Scheme

If there is more than one supply (for imported goods) within a warehouse, then only the last supply is subject to GST **because it triggers the duty point**, i.e. **when the goods are released from Customs control or removed from warehouse**. The intermediate supplies within the warehouse are disregarded for GST purposes. **The last supply is subject to GST because it triggers the duty point.**

However, GST is payable on any supply made in a warehouse if the goods supplied are used or for consumption in the warehouse.

The value of the supply is treated as including any duties (whether customs duty or excise duty or both, if any). The tax on the supply must be paid at the duty point, together with the duty (if any). For further information, please refer to "GST Guide on Warehousing Scheme".

CTIM's Comment: CTIM proposes the amendment as indicated (words in blue).

Paragraph 7.0: Temporary import

Generally, goods imported temporarily are subject to GST. However, a relief may be given under Goods and Services Tax (Relief) Order 20XX on certain goods imported temporarily for certain purposes such as exhibition, propaganda, repairs etc.

Goods that qualify as temporarily imports may also be **brought into imported** under A.T.A. Carnet issued by the Chamber of Commerce of the respective country or the competent authority. Under this facility, GST and customs duties will **not be collected be suspended**.

Goods approved for temporary imports need to be exported within 3 months **or such longer period as approved by the Director General**. If the goods are not exported within time limit, or sold in the domestic market, transferred or disposed off locally, GST and customs duty will be collected in full as the goods will no longer entitle for the relief.

CTIM's Comment: CTIM proposes the amendment as indicated (words highlighted in yellow and words in blue).

Paragraph 8.0: FREQUENTLY ASKED QUESTIONS

Paragraph 8.6: If my company does not belong in Malaysia, can my company appoint an agent in Malaysia to import and supply goods on my behalf?

Yes, as a company that does not belong in Malaysia you can appoint an agent in Malaysia, to import and supply goods on your behalf. If the goods are supplied by the agent on your behalf **and the value of total supply exceeds the prescribed threshold**, the supply shall be deemed to be made by your agent. **Since there is no prescribed threshold, any importation of goods is subject to GST.** Therefore, your agent is liable to account for GST on the importation of goods as well as on the supplies that he made on your behalf. The deemed supply that your agent made must not include any supply that he made in his own name. *Responsibility of GST payment and keeping separate records for each principal lies with the agent.*

CTIM's Comment: CTIM proposes the answer provided be amended as indicated (words highlighted in yellow and words in blue).

Paragraph 8.7: As an agent who acts for an overseas principal whose total value of turnover does not exceed the prescribed threshold, do I have to declare importation of goods on behalf of my overseas principal under my own name?

Yes, because such importation is deemed to be your own importation. Furthermore, any importation is subject to GST **whether you have reached the** **as there is no** prescribed threshold **or not.**

CTIM's Comment: CTIM proposes the answer provided be amended as indicated (words highlighted in yellow and words in blue).

Paragraph 8.9:

DEF Sdn Bhd has imported 2,000 units of LED TV from Korea with a price of RM2,000,000. The consignment arrived at Port Klang on 1 October 2010. The description and quantity of the goods specified in the Bill of Lading and invoice are the same as those imported. Before the goods are released from customs control 500 units of LED TV valued at RM500,000 were found short landed. Notice of short landed was issued to the supplier and followed by short landed certificate from the shipper. The balance of the goods will be shipped within a period of one month. How does DEF Sdn Bhd pay the GST and customs duties for the short landed goods?

GST and customs duties, if any, is chargeable on the value of the **whole** **full consignment of** goods (including the short landed goods) as stated in the invoice and Bill of Lading upon arrival in Malaysia. Thus, GST and customs duties, if any, will not be charged when the short landed goods arrived later. DEF Sdn Bhd is required to produce the supporting documents and evidence such as K1, invoice, Bill of Lading, Short Landed Certificate, letter from supplier and other documents as requested by the proper officer of customs at the point of import.

CTIM's Comment: CTIM proposes the answer provided be amended as indicated (words highlighted in yellow and words in blue).

Paragraph 8.11: A local company would like to lease a machinery from an overseas company for a few years **under finance lease**. Is there any 'GST implication on the leased goods?

Importation value is determined by the rule of valuation as prescribed under the Customs (Rules of Valuation) Regulations 1999. The value is the transaction value of the goods, that is, the price paid or payable for the goods when sold for export to Malaysia, adjusted in accordance with regulation 5 of the same Regulations. In this case, the imported goods are leased from overseas. Thus, there is no transfer of ownership and no sale has taken place **yet**. Therefore, transaction value does not apply in the case of leased goods.

The importation value must then be determined by the order of application of the rule of valuation as stated in regulation 3.....

CTIM's Comment: **CTIM proposes the answer provided be amended as indicated (words in blue).**

What are the definitions for finance lease and operating lease for GST purposes? CTIM would also like to seek clarification on whether this treatment is for finance lease only or include operating lease.