COMMENTS ON GOODS AND SERVICES TAX (GST) GUIDE

REGISTRATION

31 May 2013

Prepared by:

TECHNICAL COMMITTEE -- INDIRECT TAX (TC-IT)

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

COMMENTS ON GOODS AND SERVICES TAX (GST) GUIDE

REGISTRATION

Contents

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

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 Institute to provide feedback on the draft Goods and Services Tax (GST) Guide – Registration.

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, academicians, etc. to understand the framework of GST clearly and thereby facilitate compliance.

SPECIFIC COMMENTS

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

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

REGISTRATION

1. INTRODUCTION

This guide provides information pertaining to the requirement and procedure for registration under the Goods and Services Tax Act (GST). It is recommended that you read the GST General Guide before reading this guide as this guide requires a fair understanding of the general concept of GST.

1.1 General concept of goods and services tax

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 chargeable on the importation of goods and services into Malaysia.

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, it is ultimately passed on to the final consumer. Therefore, the tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements.

In Malaysia, a person who is registered under the Goods and Services Tax Act 201X is known as a registered person. A registered person is required to charge output tax on his taxable supply of goods and services made to his customers. He is allowed to claim input tax credit on any GST incurred on his purchases which are inputs to his business. Thus, this mechanism would avoid double taxation and only the value added at each stage is taxed.

2. REGISTRATION OF GOODS AND SERVICES TAX

2.1 Who shall register under GST?

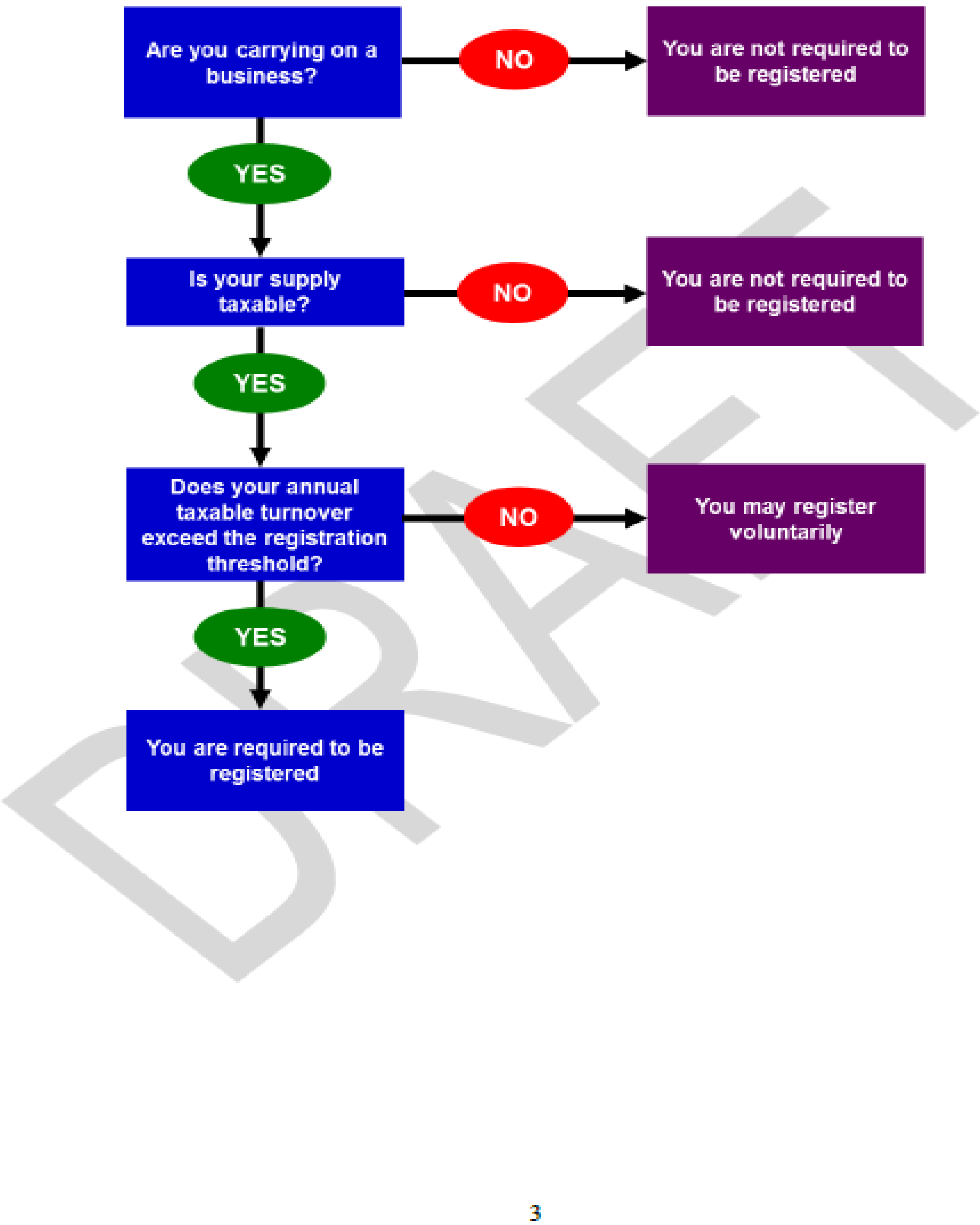
Any person who makes a taxable supply for business purposes and the taxable turnover of that supply exceeds the threshold of RM500,000 is required to be registered for GST.

However, business with taxable turnover of RM500,000 and below may apply for voluntary registration.

CTIM's Comments:

Since the first criterion to determine whether registration for GST is required is whether the seller is carrying on a business, it may be useful that the Guide explain what constitutes "carrying on a business" and indicate what is not considered as carrying on a business.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my



<u>**CTIM's Comments:**</u>

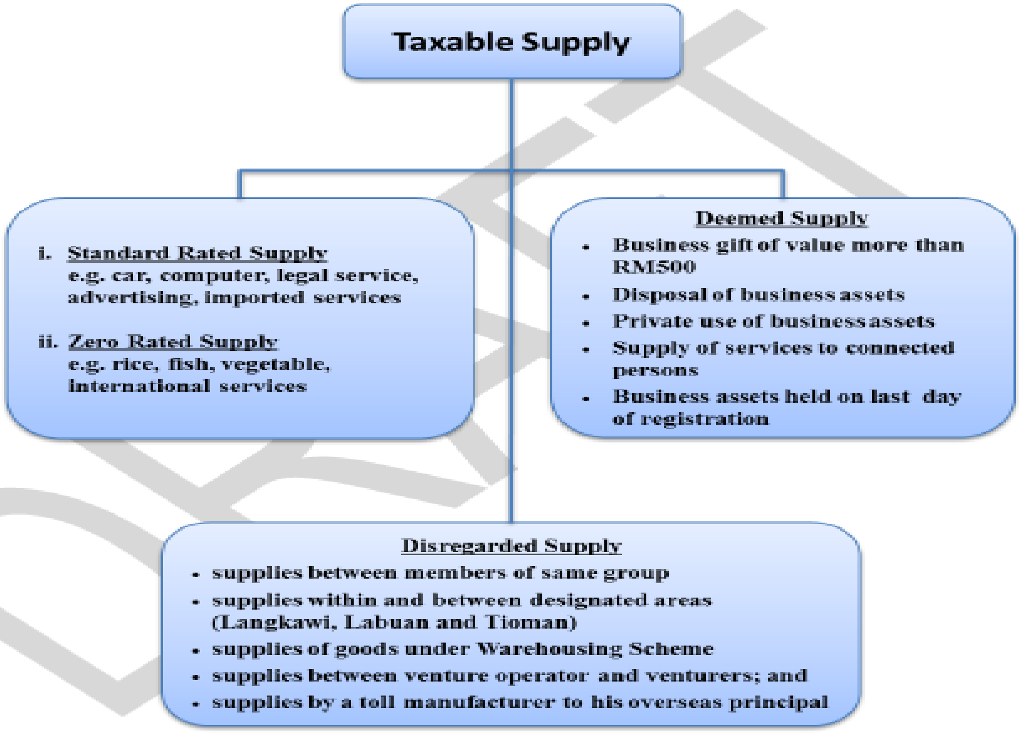
To make the illustration clearer, the Box "You may register voluntarily" may be re-phrased as "You are not required to register but you may choose to register voluntarily."

We propose that a title, such as *"Flowchart to determine requirement for GST registration"* be provided for the above chart.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

2.2 What is a taxable supply?

A taxable supply is a supply with consideration and it includes standard-rated and zero-rated supply. Supply without consideration can also be deemed to be a supply. However, certain taxable supplies are not regarded as supplies for GST purposes.



4

CTIM's Comments:

Para 2.2 is not clear and may confuse the user. We suggest that the term "supply" should be explained first and then indicate the parameters for determining whether a supply is a taxable supply.

Deemed Supply

We are of the view that the meaning and implication of *"supply of services to connected person"* may not be well understood. For clarity, we propose to insert the following note after the phrase *"supply of services to connected person"*:

"Refer to Para 2, Third Schedule and Para. 5, First Schedule of the draft GST Bill 2009, for the definitions of "connected persons" and "supply of services to connected persons" respectively.

Diagrammatic illustration:

The current presentation creates confusion about the rate of GST for deemed supply, as it appears that the items specified are neither zero-rated nor standard rated.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

We suggest that the diagram start with "what is a supply and deemed supply', then distinguish between taxable supply, exempt supply and out of scope supply. Finally, the taxable supply could be further divided into zero-rated and standard-rated supply and disregarded supply.

2.3 What is taxable turnover?

Taxable turnover means the total value of taxable supplies for a period of twelve months excluding the amount of GST.

2.4 How to determine taxable turnover for GST registration?

The determination of taxable turnover for GST registration purpose has to include all supplies of goods and services which are taxable, i.e. standard rated supply, zero rated supply, deemed supply as well as disregarded supply.

However, the following supplies will not be included:
i. capital assets disposed;
ii. imported services;
iii. disregarded supplies made in relation to Warehousing Scheme; and
iv. disregarded supplies made within or between designated areas.

<u>*Example 1*</u>

Syarikat Dickson Sdn. Bhd. makes the following supplies:
a) Standard rated supply – RM300,000;
b) Zero rated supply – RM250,000;
c) Disposal of capital goods – RM200,000;
d) Disregarded supply made within Langkawi – RM200,000; and
e) Disregarded supply made to members of the same group – RM100,000

Syarikat Dickson Sdn. Bhd. is required to apply for GST registration because its total taxable turnover of RM650,000 has exceeded the threshold, i.e. supplies covering (a), (b) and (e).

<u>*Example 2*</u>

Syarikat PD Sdn. Bhd. is an electrical goods supplier. This supplier also performs installation works for customers and charges installation fees for the service.
The calculation of taxable turnover is determined by the total value of electrical goods supplied and installation fees charged.

<u>*Example 3*</u>

A car workshop has to include labour charges as well as cost of parts replaced to determine its total taxable turnover:

Total labour charges – RM 200,000
Total parts sold – RM 350,000

5

<u>CTIM's Comments:</u>

We propose the following amendments (*<u>underlined italics</u>*):

Item 2.4, Second paragraph, 1st sentence -- "However, the following *<u>taxable</u>* supplies will not be included:"

Example 3 --- "A car workshop has to include labour charges as well as ~~cost of parts~~ *<u>sale value of parts</u>* replaced to ……..."

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

This workshop is required to apply for registration because the total taxable turnover of RM 550,000 has exceeded the threshold.

Example 4

A transport company provides express bus and tour bus services which are exempt and standard rated supplies respectively. Determination of taxable turnover will only include supply of tour bus services.

For GST registration purpose, the method to use for computing taxable turnover depends on the business set-up, e.g. sole-proprietorship, partnership or company.

Category of Person	Taxable Turnover
A company	the value of all taxable supplies made by that company
A company with divisions or branches	the value of all taxable supplies from all divisions and branches
A sole proprietor/ an individual	the value of all taxable supplies of his business
A partnership	the value of all taxable supplies by the partnership
A single taxable person	the value of all taxable supplies by the business entities registered as a single taxable person
A joint venture	the value of all taxable supplies made by the joint venture

Example

A sole proprietor has 2 sole-proprietorship businesses (Business A and B). In the past 12 months, the taxable turnover of Business A is RM150,000 and for business B is RM400,000.

To compute his taxable turnover for GST registration purpose, he needs to combine the taxable turnover for Business A and Business B.

Taxable Turnover : RM150,000 + RM400,000 = RM550,000

As the combined taxable turnover is RM550,000 he must register for GST.

6

CTIM's Comments:

We propose the following amendments (*underlined italic*):

- **Item 2.4 - Example 4: For GST registration purpose, the method to use for computing taxable turnover depends on the ~~business set-up~~ *category of person.***

This is to bring it in line with the table following (which summarises various computing methods for each category of person) and item 3.3 of the *GST General Guide (Draft)*.

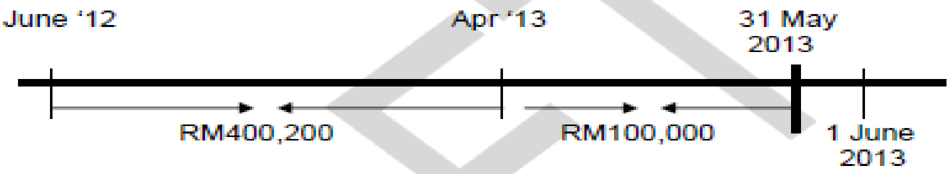
The table should be given a title or number for easy reference.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

2.5 How to determine the twelve months period?

The taxable turnover for a period of twelve months can be determined based on either the historical or the future method. The historical method is based on the value of the taxable supplies in any month plus the value of the taxable supplies for the eleven months immediately before that month. The determination is explained as in *Diagram 1*.

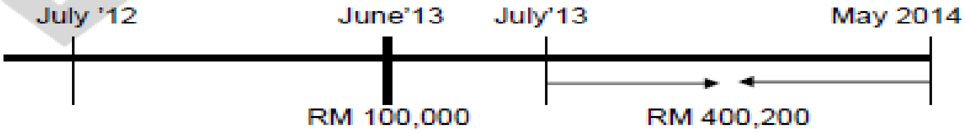
Diagram 1: Historical Method



At the end of May 2013, the value of taxable supplies for the month of May is RM100,000 and the value of taxable supplies for the eleven months backward (i.e. from June 2012 to April 2013) is RM400,200. The total value (annual taxable turnover) of all taxable supplies is RM500,200. The taxable turnover has exceeded the threshold starting from 1 June 2013 and the business is liable to be registered for GST within twenty eight days from this date, i.e. 1 June 2013.

For the future method, the taxable turnover is based on the value of taxable supplies in any month plus the expected value of taxable supplies for the eleven months immediately after that month. A business will have reasonable grounds to expect its taxable turnover to exceed the threshold if it has signed a written contract to supply taxable goods or services. The determination of future method is explained as in *Diagram 2*.

Diagram 2: Future Method



If at the end of June 2013, the value of taxable supplies for the month of June is RM100,000 and his supplies for the preceding eleven months (i.e. from July 2012

7

CTIM's Comments:

- **Item 2.5 -**

For purpose of clarity, we propose the following note be added after Diagram 1:

> ***"The effective date for GST registration is 1 July 2013 (first day of the following month after the end of the twenty eight-day liability) since the annual taxable turnover has exceeded the threshold limit on 31 May 2013."***

Similarly, the following note should be provided after Diagram 2:

> ***"The effective date for GST registration is 1 August (first day of the following month after the end of the twenty-eight day liability) since the annual taxable turnover has exceeded the threshold limit on 30 June 2013."***

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

to May 2013) does not reach the threshold, he must look at the expected turnover from July 2013 to May 2014. Since his taxable supplies for the month of June 2013 is RM100,000, if he reasonably expects his turnover for the next eleven months (i.e. from July 2013 to May 2014) to be more than RM400,000, then he is liable to be registered for GST within 28 days from the end of the month of June 2013, i.e. from 1 July 2013 to 28 July 2013.

Question 1

Currently my business is not liable to be registered for GST because my total taxable turnover is below RM500,000. Am I required to apply for registration if my company has succeeded in obtaining a contract worth RM1 million to supply computers for the next one year?

You are required to apply for registration because you have reasonable grounds to expect your taxable supplies to exceed the threshold.

Question 2

The total taxable supplies of Company A for a period of 10 months has exceeded RM500,000. Is the company required to apply for registration now or has it to wait until the end of twelve-month period?

The company is liable to be registered because it has exceeded the registration threshold and it does not have to wait until the end of twelve-month period.

3. EFFECTIVE DATE OF REGISTRATION

The effective date of registration is on the first day of the following month after the end of the twenty eight days liability.

Example 1

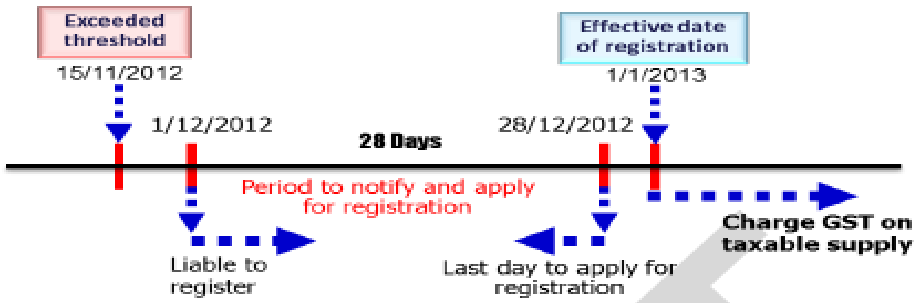
The sales turnover of ABC Furniture Sdn. Bhd. has exceeded RM500,000 on 15.11.2012. ABC Furniture Sdn. Bhd. must apply for GST registration within the period from 1.12.2012 to 28.12.2012. The effective date of GST registration will be on 1.1.2013 and it has to charge GST on the sales of furniture starting from 1.1.2013.

8

CTIM Comments

Since the reference points of Historical Method and Future Method are different, will the Customs adopt Future Method in an audit to penalise a taxable person who uses Historical Method? This needs to be clarified in the Guide to clear the doubt of the taxpayers.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my



Example 2

The total annual taxable turnover of a company has exceeded the threshold of RM500,000 on 28.1.2013. This company is not allowed to charge GST from this date because it has yet to be registered. It will only be a GST registered person from the effective date of GST registration and can start charging GST from that date. The company must take the following actions:

1.2.2013 – 28.2.2013	*apply for registration*
1.3.2013	*start charging GST i.e. effective date of registration*

4. HOW TO REGISTER

4.1 Do I have to fill any form when applying to register?
You have to complete registration form **GST-01**. Application can be made either on-line or manually by submitting to the nearest Customs office.

4.2 Where can I get the GST form?
GST-01 registration form is available at the nearest Customs office or you may download from the GST website, i.e. www.gst.customs.gov.my.

4.3 Do I have to attach supporting documents when submitting GST-01 registration form?
Documents relating to business or company registration are required to be submitted only upon request by Customs.

4.4 Will Customs issue a GST license if my application is approved?
Upon successful application, you will receive an approval letter which informs you of your GST registration number and effective date of GST registration. A license in the form of hard copy will not be issued.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

5. RESPONSIBILITIES OF A REGISTERED PERSON

5.1 **As a registered person, what are my responsibilities?**
A registered person must comply with the requirements under GST legislation as follows:
- i. account for GST on taxable supplies made and received, i.e. output tax and input tax respectively;
- ii. submit GST return (GST-03) and pay tax not later than the last day of the following month after the taxable period;
- iii. issue tax invoice on any supply unless as allowed by Customs;
- iv. inform Customs of the cessation of business within thirty days from the date of business cessation;
- v. inform Customs on any changes of address, taxable activity, accounting basis and taxable period; and
- vi. keep adequate records of his business transactions relating to GST in the National or English language for seven years.

5.2 **If I am not making any sales for a particular taxable period, do I still need to submit GST return?**
If you do not have any business transaction for a taxable period, you are still required to submit a nil return, i.e. to fill in 'zero' in the respective column.

5.3 **What is the implication if a registered person fails to pay tax due within the stipulated period?**
If a registered person fails to pay tax due within the stipulated period, penalty will be imposed according to the following table:

Tax remains unpaid	Rate of penalty
1 – 30 days	5%
31 – 60 days	10%
61 – 90 days	13%
91 – 120 days	16%
121 – 150 days	19%
151 – 180 days	22%
181 days or more	25%

10

CTIM's Comments:

Penalty on the "failure to submit the GST return" has not been mentioned in the above. We propose that a new clause be inserted (i.e. 5.4) to specify the penalty on failure of submission of the GST return.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

6. REGISTRATION FOR TRANSFER OF BUSINESS AS A GOING CONCERN (TOGC)

The transfer of business as a going concern from one taxable person to another taxable person is not treated as a supply for GST purpose. Hence, the transferor is not required to account for output tax on business assets transferred, and there is no input tax to be claimed by the transferee. TOGC is a facility provided for both the transferor and the transferee to alleviate cash flow problem.

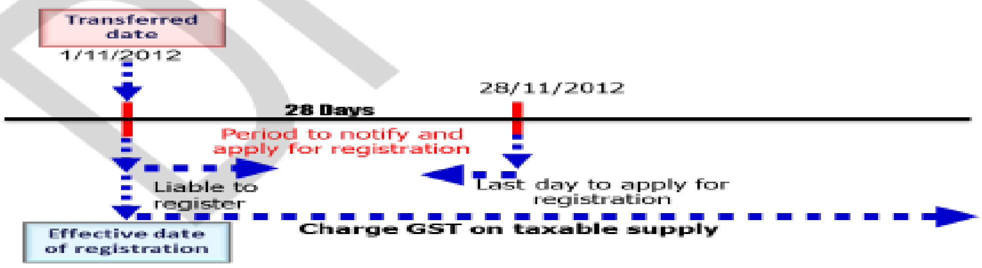
The transfer of business can be considered as a transfer of going concern if:

i. the transferor is a taxable person;
ii. the transferee must be a taxable person or will be a taxable person immediately after the transfer of business;
iii. the transfer of business must be accompanied by a transfer of business assets and to be used in carrying on the same kind of business; and
iv. if only part of the business is transferred, then that part of the business must be capable of separate operation.

The transferee must apply for registration within twenty eight days from the date of transfer of business. The effective date of TOGC registration is from the date of the transfer. The transferor must apply for deregistration if he ceases making taxable supply or ceases business after the business is being transferred.

Example 1

A sole proprietorship business is transferred to Company A on 1.11.2012. Company A must apply for GST registration within twenty eight (28) days i.e. from 1.11.2012 to 28.11.2012. The effective date of GST registration for Company A will be on 1.11.2012.



CTIM's Comments:

- **Item 6 - 3rd paragraph: *"The transferee must apply for registration within twenty eight days from the date of transfer of business".***

For purpose of clarity, we suggest that Customs provide further explanation - that the registration is required if the transferee has not registered at the time of transfer. If the transferee is already registered, he is not required to apply for a new registration.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 2

Referring to the above example, the sole proprietor has to apply to cancel his GST registration if he ceases to make any taxable supply.

Example 3

Company A transfers its business to Company B whereby both companies are GST-registered persons. Company B is not required to apply for a new registration for the transferred business, and it is allowed to carry on both businesses using the existing GST registration number of Company B.

7. REGISTRATION OF PERSONS MAKING ZERO-RATED SUPPLIES

A person who makes wholly zero-rated supplies must be registered for GST if the value of the annual taxable turnover exceeds RM500,000. However, he may request for approval from Customs to be exempted from registration. The effect of the exemption from registration to a person making wholly zero-rated supplies is that, the exempted person cannot claim input tax credit on any input tax incurred in furtherance of his business. The rationale of giving such an exemption is to provide an option to such a person whether to register or not for GST as his compliance costs may outweigh the benefits of claiming input tax credit.

Example 1

Company A makes wholly zero-rated supplies and is eligible to apply for exemption from registration using GST-Adm3 form - "Application For Goods and Services Tax Registration Exemption".

Example 2

Referring to the above example, if Company A is granted exemption from GST registration, it will not be eligible to claim input tax incurred on its business purchases of goods and services.

8. REGISTRATION OF AN AGENT

Registration of an agent under GST is as follows:

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Condition	Determination of Taxable Turnover	Liability to Register
1. Agent acting on his own name	value of taxable supplies he made (including agent's commission received)	register if exceeds the threshold
2. Agent acting on behalf of local principal	agent's commissions received (value of taxable supplies on behalf of local principal to be excluded)	register if exceeds the threshold
3. Agent acting on his own name and acting on behalf of local principal	value of taxable supplies he made in his own name, **and** agent's commissions received (value of taxable supplies on behalf of local principal to be excluded)	register if exceeds the threshold
4. Agent acting on behalf of non-resident	**Situation 1** value of taxable supplies he made in his own name **and** agent's commissions received (value of taxable supplies on behalf of the non-resident to be excluded) **Situation 2** value of taxable supplies he made in his own name is below threshold but value of taxable supplies made by the non-resident in Malaysia exceeds the threshold. **Situation 3** value of taxable supplies he made in his own name exceeds threshold and value of taxable supplies made by the non-resident in Malaysia also exceed the threshold.	**Situation 1** register if exceeds the threshold non-resident is not required to be registered **Situation 2** agent to register on behalf of the non-resident as non-resident is not liable to be registered under the GST Act. The GST liability of the non-resident will fall on the agent **Situation 3** agent to register in its own name and also to register on behalf of the non-resident

(For further information regarding Agent, please refer to the GST Guide on Agent)

13

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

9. VOLUNTARY REGISTRATION

A person may apply for voluntary registration even though the value of his taxable supplies does not exceed the prescribed threshold of RM500,000. A person can also be registered if he intends to make any taxable supplies provided he can satisfy the Customs that he is committed to doing business.

A person making wholly exempt supplies is not allowed to be registered voluntarily under GST. If he makes wholly out of scope supplies, he may be allowed to register subject to Customs' approval. A person who is registered voluntarily will remain registered for a period of not less than two years.

Since a voluntarily registered business needs to remain registered for a period of not less than two years, it is advisable to perform a cost and benefit analysis before registering for GST. Factors which require careful consideration are as follows:

i. a GST registered business has to comply with certain responsibilities which may increase its administrative costs, e.g. filing of GST returns, pay tax in a timely manner to avoid penalty, keep proper business and accounting records;

ii. training of staff to ensure correct charging and claiming of GST;

iii. change of price displays and invoices to reflect tax-inclusive prices. Any price displays, advertisements, publications or quotations in respect of goods and services made to the public must be inclusive of GST. Therefore, the business may need to incur costs to reprint price displays and tax invoices;

iv. to ascertain the GST status of suppliers, i.e. whether GST registered or otherwise. If the suppliers are GST registered, a business will benefit from GST registration because it will be able to claim GST incurred on the purchase of goods and services. However, if the suppliers are not GST registered, the business cannot claim any GST since the suppliers do not charge GST; and

v. to determine whether to pass on the amount of GST to the customers i.e. increase the price to include GST amount, or absorb GST to maintain the business competitiveness.

Example

	Before GST Registration	After GST Registration
Sale price of goods	RM100	RM104 (inclusive of GST RM4)

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

	Before GST Registration	After GST Registration
GST paid to Customs	RM0	RM4
Net profit (price less GST paid to Customs)	RM100	RM100

In this illustration, the business may lose customers when it increases the price to include GST.

or

	Before GST Registration	After GST Registration
Sale price of goods	RM100	RM100 (inclusive of GST RM3.85)
GST paid to Customs	RM0	RM3.85
Net profit (price less GST paid to Customs)	RM100	RM96.15

This illustration shows that registering for GST will result in a reduction of the business net profit because GST is absorbed by the business.

10. REGISTRATION OF SOCIETIES OR SIMILAR ORGANISATION

Societies and similar organisations refer to any club type organisation irrespective of whether it is registered under Companies Commission, Registrar of Societies, Commissioner of Sports or any act of Parliament.

Club type organisation can be public interest organisation, non-profit organisation or any organisation gazetted under the relevant Ministries. Examples of societies and similar organisations are trade union, professional association, trade association and recreation club.

Societies, non-profit organisations, charities or cooperatives are required to be registered if their supplies of taxable goods and services exceed the prescribed threshold.

15

CTIM's Comments:

We are of the view that the examples of Item 9 - Voluntary Registration, do not take into consideration the input tax credit and the impact of output tax on the various customers and therefore the conclusion may not be accurate. The fact that the output tax of the seller will be the input tax credit of the buyer, will affect the seller's product market acceptance, as a non-registrant will be unable to provide input tax credit for the buyer.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Person	Supply	Liability
Societies, non-profit organisations, charities, cooperatives	Supplies of goods and services for the purpose of business	Register if the value of taxable turnover exceeds threshold

(For further information, please refer to GST Guide on Societies or Similar Organisations)

10.1 A rehabilitation centre sells souvenirs and rattan baskets made by its inmates. Is this centre required to be registered under GST?
It is required to be registered if the annual taxable sales value exceeds RM500,000.

10.2 A non-profit organisation provides sport and recreation facilities for the community free of charge. Is it required to register for GST?
Supply of sport and recreation facilities is taxable under GST and the organisation has to register for GST if its annual taxable turnover exceeds the prescribed threshold. However, if the facilities are provided wholly free of charge, then GST is not chargeable and it is not required to register.

10.3 Muzium Kesenian, a non-profit organisation, charges a fee for admittance to its premise. The museum also derives income from selling gifts and souvenirs, and rental of its eatery outlets. Is this museum required to be registered?
To determine whether the museum is required to be registered or otherwise, it has to take into consideration all taxable supplies, i.e. admittance fees, sales of gifts and souvenirs, and rental income in determining the annual turnover. If the annual turnover exceeds RM500,000 then it is required to apply for registration.

11. PERSONAL REPRESENTATIVE

A personal representative is a person who has been appointed to carry on a business activity on behalf of a taxable person who has died, goes into liquidation or receivership, becomes bankrupt, or becomes incapacitated. A personal representative is not required to apply for new registration but he must inform in writing to the Customs within twenty one days from the date of appointment as a personal representative.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 1

Encik Ali, a sole proprietor has appointed his brother to manage his business on his behalf while he is recuperating from his illness. Encik Ali's brother has to inform in writing to Customs regarding Encik Ali's condition within twenty one days from the date he is appointed to run the business.

Example 2

Encik Samy and Encik Singh from an accounting firm are appointed as the joint receivers for Company A. Both the receivers will act as the personal representatives of Company A until another person is registered in respect of the said business.

12. GROUP REGISTRATION

Group registration is a facility that allows two or more related companies to register as a group for GST purposes. The pre-requisite conditions for group registration are:

i. each company must be making wholly taxable supplies. However, where a company is making incidental exempt supplies, the company is also allowed to be a member of the group *(Please refer to GST General Guide for details on incidental exempt supplies)*;
ii. each company must be GST registered individually before they register as a group;
iii. company holding more than 50% of the issued share capital is considered as having controlling power over the other companies; and
iv. all members of the group shall be jointly and severally responsible for the payment of tax.

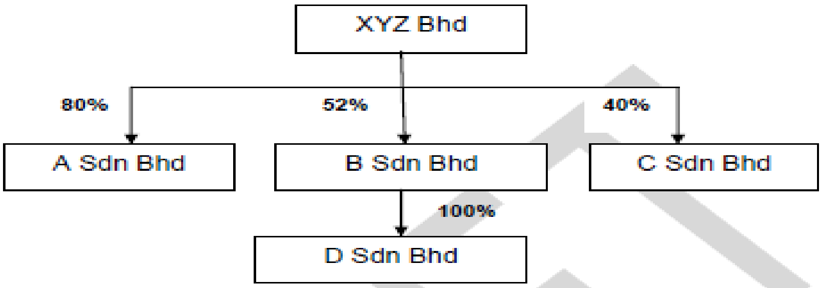
Inter-company charges on supply between members of a group will be disregarded. However, supplies from any member of a group to companies which are not members of the group are considered supplies for GST purposes, and therefore are subject to GST.

12.1 Control

For the purpose of group registration, a company is considered to have control over another company either directly or indirectly through subsidiaries by holding more than 50% of the issued share capital of the other company.

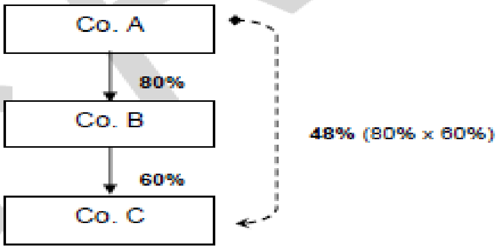
Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 1



XYZ Bhd has direct control over A and B, and also controls D indirectly through B. Companies XYZ, A, B and D can register for GST as a group. Since C is not controlled by XYZ, therefore it is not eligible as a group member.

Example 2

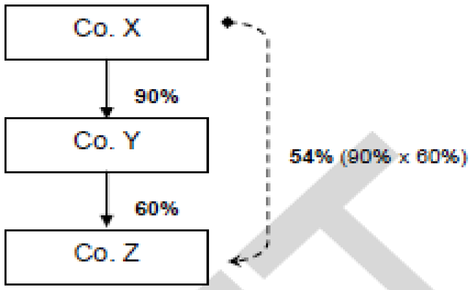


Company A has direct control over company B (80%) but it has no control over company C (48%). For GST registration purpose, companies A and B can form a group but company C is not eligible to be a group member.

18

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 3

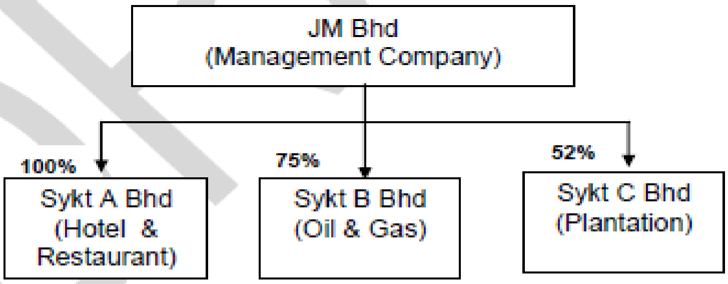


In this example, company X has direct control over company Y (90%) and indirect control over company Z (54%). For GST registration purpose, companies X, Y and Z can form a group.

12.2 Type of taxable supplies

Group registration is allowed regardless of the type of taxable supplies made by companies within the same group provided that the companies are making wholly taxable supplies.

Example 1

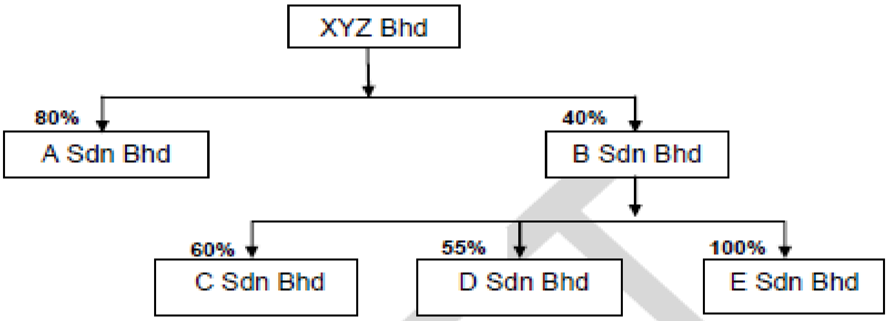


Companies JM, A, B and C are eligible to apply for group registration even though they carry out diversified business activities as they fulfill the following conditions:

- *i. making wholly taxable supply;*
- *ii. each company is registered under GST; and*
- *iii. the holding company (JM Bhd) controls more than 50% of the issued share capital of each of the other companies in the group.*

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 2

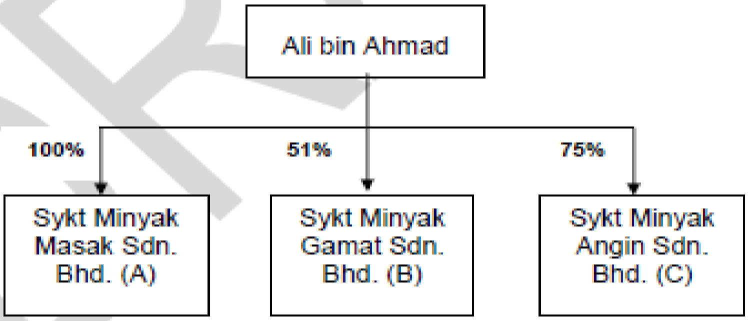


In this example, company B is not eligible to be a group member with XYZ and A because XYZ has no control over B. However, since B has control over C, D and E, they are eligible to form a group for GST registration purpose.

12.3 Individual and partnership

Individual or partnership is not eligible to be a member of a group. However, companies controlled by individual or partnership may register as a group.

Example 1



Ali bin Ahmad owns three companies A, B and C. A, B and C are allowed to register as a group. Ali bin Ahmad is not eligible to be a member of the group.

CTIM's Comments:

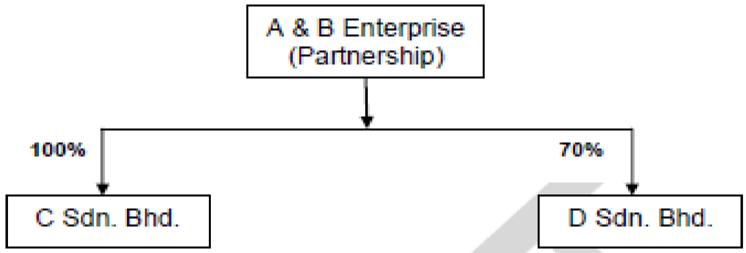
The Institute would like to seek clarification whether the residential status of the individual who controls the group of companies has an impact on the admission as a group? If so, whether the residential status is confined to citizenship status or tax residence status? In item 12.3, Example 1 above, whether the group treatment will be allowed if Ali bin Ahmad is

(i) A non-Malaysian citizen

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

(ii) A non-resident (for tax purposes) in Malaysia

Example 2

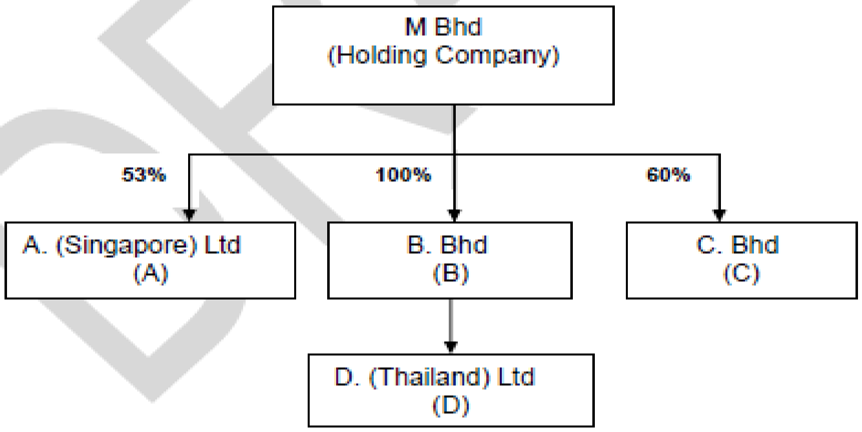


Companies C and D are eligible to register as a group for GST purpose. A & B Enterprise which is a partnership business is not allowed to be a member of the group.

12.4 Foreign company

Foreign companies which are not established in Malaysia cannot become members of a group. However, for the purpose of eligibility for group registration, their subsidiaries or registered branches in Malaysia can be considered as members of a group.

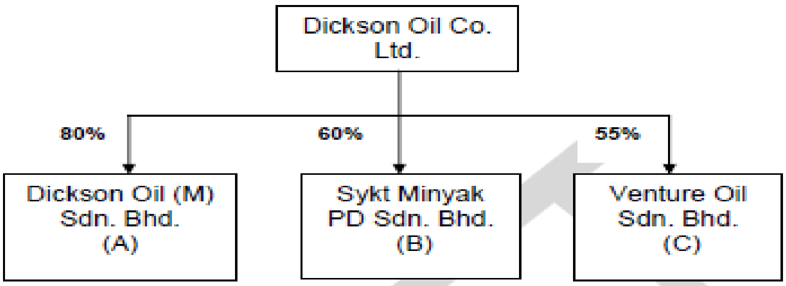
Example 1



Companies M, B and C can form a group for GST registration purpose. However, A and D cannot become members of the group because these are foreign companies.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 2



Dickson Oil Co. Ltd. owns three companies in Malaysia. For the purpose of GST registration, only A, B and C are allowed to register as a group. Dickson Oil Co. Ltd. is not eligible to be a member of the group because it is a foreign company.

12.5 Supply outside Malaysia

Companies incorporated in Malaysia are allowed to be members of a group even though they make taxable supplies outside Malaysia.

Example

A manufacturer of motor vehicle parts in Japan has established an operational headquarter in Malaysia. The manufactured parts are supplied to motor vehicle assemblers in Thailand and India direct from Japan. The operational headquarter can be a member of a group of companies in Malaysia.

13. REGISTRATION OF PARTNERSHIP

The registration of a partnership for the purpose of business will be in the name of the firm. The same persons can form separate partnerships for separate businesses, and the registration will be in the names of the respective firms.

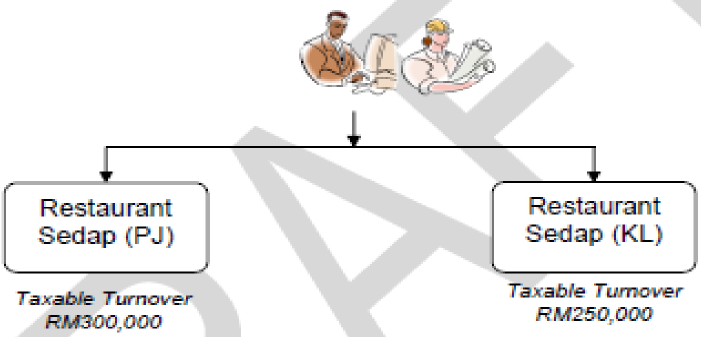
The calculation of taxable turnover to determine whether a partnership is required to be registered or otherwise is based on the value of all taxable supplies by the partnership.

Computing taxable turnover for partnership business depends on the following situations:

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

No	Partners	Firm	Business	Taxable Turnover
1.	Same persons	Same name	Same business	Combine turnover of all partnership businesses
2.	Same persons	Same name	Different business	Combine turnover of all partnership businesses
3.	Same persons	Separate name	Different business	Every partnership business calculates its own turnover

Example 1



Encik Ali and Encik Ahmad have two partnership businesses operating restaurants in PJ and KL. The taxable turnover of restaurant PJ is RM300,000 and the taxable turnover of restaurant KL is RM250,000.

To compute the taxable turnover for GST registration purpose, Ali and Ahmad have to combine the total taxable turnover of the two partnership businesses totaling RM550,000.

As the combined taxable turnover has exceeded the prescribed threshold, these partnerships will be registered under a single registration number.

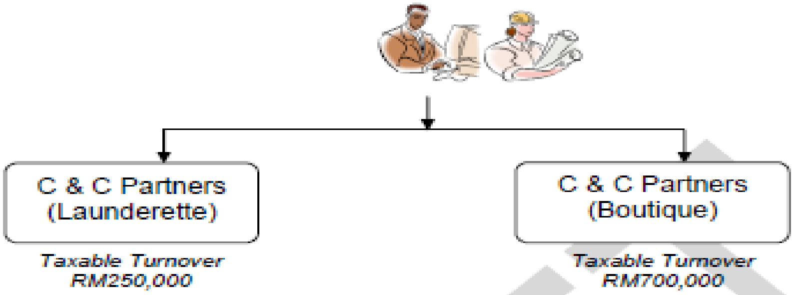
23

CTIM's Comments:

- **Item 13 - Example 1**

We are of the view that, for the ease of understanding of the above example, instead of indicating Restaurant Sedap (PJ) and Restaurant Sedap (KL), we propose that Customs consider stating that the Restaurant Sedap has 2 branches i.e. in PJ and KL.

Example 2

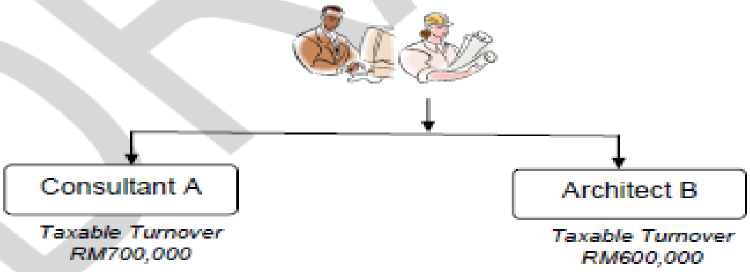


Chong and Cindy have two partnership businesses, C & C Partners, operating a laundry shop and a boutique. The taxable turnover of the laundry business is RM250,000 and that of the boutique is RM700,000.

The taxable turnover of both partnership businesses has to be combined to determine the liability for GST registration.

Since the combined taxable turnover of RM950,000 has exceeded the prescribed threshold, these two partnership businesses will be registered under a single registration number.

Example 3



Mary and Peter are partners and have two partnership businesses i.e. Consultant A (consultancy services) and Architect B (architectural services). The taxable turnover of Consultant A is RM700,000 and that of Architect B is RM600,000. Both partnerships carry on different businesses and operate under separate names. Under this situation, the computation of taxable turnover for registration purpose will be done separately.

24

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Since both partnerships have exceeded the prescribed threshold, they will be registered under two separate registration numbers.

Example 4

Ali & Samy
(Business A)

Taxable Turnover
RM400,000

Ali & Chong
(Business B)

Taxable Turnover
RM650,000

Ali and Samy are partners of an accounting firm. Ali also has another partnership business with Chong.

For GST registration purpose, Ali will compute the taxable turnover for the two partnership businesses separately. In this example, Business A is not required to be registered. However, Business B is liable to apply for registration since its taxable turnover has exceeded the prescribed threshold.

A partner is liable for any tax due and payable by the partnership unless he notifies in writing to the Director General that he has ceased to be a partner.

14. JOINT VENTURE

Registration of joint venture for GST purpose only applies to petroleum upstream activity under the Production Sharing Contract (PSC).

Upstream activities include exploration, exploitation, development and production of crude oil and gas. These activities are under taken and managed through PSC between PETRONAS Carigali Sdn. Bhd. and a number of international oil and gas companies.

PSC arrangement is considered as a joint venture for GST purpose, and the respective PSC contractors are known as venturers, whilst the operator of the joint venture is known as a venture operator.

PSC requires the contractors to enter into a Joint Operating Agreement (JOA) which provides for the rights, obligations and liabilities of each contractor in the PSC.

25

CTIM's Comments:

- **Item 14**

It is mentioned in the above that registration of joint venture for GST purpose only applies to petroleum upstream activity under the Production Sharing Contract (PSC). CTIM proposes that Customs consider including the property developer and construction industries as well, for registration of joint venture for GST.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

All venturers must be registered individually before the joint venture registration can be considered.

Application to register joint venture shall be made in GST-02 and GST-02A forms, and the application must be made not less than ninety days before the commencement of the joint venture operation.

In the application, the venturers must nominate one of the venturers or appoint a joint operating company (JOC) to be a venture operator. For the purpose of GST, JOC will be treated as a taxable person. The registration of the joint venture will be in the name of the venture operator or JOC, and the venture operator or JOC is required to maintain a separate account for the joint venture. If there is any changes in the joint venture e.g. inclusion or removal of any venturer, the venture operator has to inform Customs not less than thirty days before the date of such changes.

15. REGISTRATION OF BRANCHES OR DIVISIONS

A business which operates through branches or divisions has to aggregate the total taxable supplies of all the branches and divisions to determine whether it is liable to be registered.

Once registered, all the branches and divisions are required to charge and account for GST even though any of the branch or division has not exceeded the threshold.

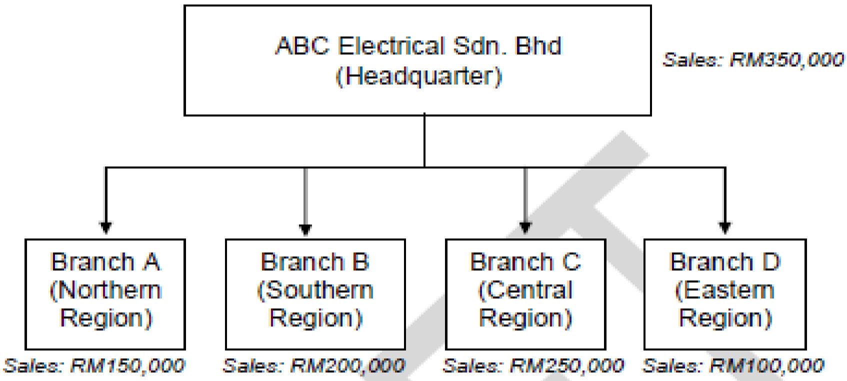
A registered person having branches or divisions may apply to register its branches or divisions individually under the name of those branches or divisions. Registration of branches or divisions may be considered if:

i. the registered person and all the branches or divisions are making wholly taxable supplies;
ii. the registered person is not a member of a group;
iii. it is difficult to submit a single return for all the branches or divisions;
iv. each branch or division maintains a separate account;
v. such branch or division is separately identifiable by reference to the nature of the business or its location; and
vi. every separately registered branch or division has the same taxable period.

Application for branch registration has to be made by the registered person using form GST-01.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example



To determine the taxable turnover for GST registration purpose, ABC Electrical Sdn. Bhd has to combine the taxable turnover of all branches.

Total taxable turnover :
RM350,000 + RM150,000 + RM200,000 + RM250,000 + RM100,000 = <u>RM1,050,000</u>

As the combined taxable turnover of RM1,050,000 has exceeded the prescribed threshold, ABC Electrical Sdn. Bhd. has to apply for GST registration.

Branch or division which is registered separately will be given an individual GST registration number. A separately-registered branch or division is required to submit its own GST return and pay tax separately to Customs. GST tax invoice will be issued by the individual branch or division. However, the headquarter is still responsible for any tax due and payable by the separately-registered branch or division.

16. SINGLE TAXABLE PERSON

A single taxable person means two or more business entities which have been directed by the Director General to be registered under one registration number. Two or more business entities can be considered as a single taxable person when they artificially separate their business activities for the purpose of tax avoidance. To determine artificial separation of business, the following factors have to be taken into account:

i. financial link;
ii. economic link; and
iii. organisational link.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Financial link refers to:
- i. financial support given by one party to another;
- ii. one party not financially viable without the support from another party; or
- iii. common financial interest in the proceeds of the business

Economic link refers to:
- i. seeking to achieve the same economic objectives;
- ii. activities of one party benefit the other party; or
- iii. supplying to the same circle of customers

Organisational link refers to:
- i. common management;
- ii. common employees;
- iii. common premises; or
- iv. common equipments

All persons directed by the Director General to register as a single taxable person have to nominate the name to be used for the registration within fourteen days from the date of the direction. Failing which, registration will be named as specified by the Director General.

The effective date for single taxable person registration is the date as specified in the direction.

Example

X runs a restaurant business and sells food only whereas Y sells beverages. Both businesses share the same premise, employ the same employees and serve common customers. The total sales of food per year is RM400,000 and that of beverages is RM150,000.

In this example, both businesses are not liable to be registered since their annual taxable turnover is below the prescribed threshold. However, it is obvious that the business activities of X and Y are intentionally separated in order to avoid from the requirement to be registered. Both businesses fulfill the requirement to be registered as a single taxable person because of financial, economic and organisational links such as sharing the same premise, having common customers, employing the same workers and utilizing common facilities such as chairs, tables, telephone and utilities. As such, Customs will direct X and Y to be registered under one registration number.

28

CTIM's Comments:

- **Item 16 –"The effective date for single taxable person registration is the *date as specified in the direction*.**

It is unclear whether the registration will take effect prospectively or retrospectively. Section 23(1) of the *Draft GST Bill (page 33),* stipulates that

"23(1) Without prejudice to section 20, where the Director General is satisfied that any separation of business activities is artificial resulting in an avoidance of tax, he may make a direction directing that the persons named in the direction be treated as a single taxable person carrying on the activities of the business described in that

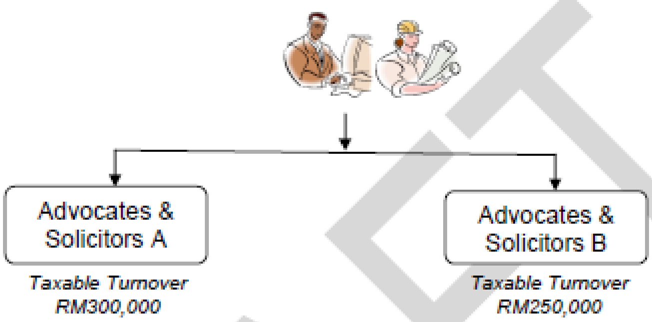
Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

direction and that single taxable person shall be liable to be registered with effect from the <u>date specified in the direction</u>."

For clarity purposes, we propose that Customs consider providing clarification in this guide that the effective date of the registration should take effect on a moving forward basis.

Two or more partnership businesses with the same composition of partners may be directed to be registered as a single taxable person if there are proofs of financial, economic and organisational links between the partnerships.

Example



Encik Samy dan Encik Muthu own two partnership businesses providing legal services. Legal firm A has a taxable turnover of RM300,000 and legal firm B has a taxable turnover of RM250,000.

In this example, if it is proven that there are financial, economic and organisational links between the two legal firms, then these two partnership businesses will be directed to be registered as a single taxable person since the combined turnover of RM550,000 has exceeded the prescribed threshold.

17. CESSATION OF LIABLITY TO BE REGISTERED

The liability for GST registration will end when a person:

i. ceases to make a taxable supply; or
ii. ceases to have the intention of making a taxable supply; or
iii. ceases to make or ceases to have the intention of making a supply outside Malaysia which would be a taxable supply if made in Malaysia; or
iv. the value of taxable supplies for a period of twelve months succeeding will not exceed the prescribed threshold i.e. taxable turnover for the next twelve months will not exceed the registration threshold.

To determine whether the taxable turnover for the next twelve months will exceed the registration threshold or otherwise, the registered person is also required to ascertain the total taxable turnover for the preceding twelve months.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example

ABC Enterprise is a GST registered person providing cleaning services. It has ceased business due to financial problems. Therefore, the liability to be a registered person has ceased.

A taxable person is still liable to be registered even though his annual taxable turnover for the next twelve months is not expected to exceed the prescribed threshold if during that twelve months period he has stopped making taxable supplies for a period of thirty days or more.

Example

The total taxable turnover of a karaoke lounge is RM350,000 for the past twelve months ending June 2012. The karaoke lounge has temporarily stopped business for two months starting from July 2012 to August 2012 to carry out some renovation works. This karaoke lounge has estimated that the taxable turnover for the next twelve months i.e. July 2012 to June 2013 to be RM200,000. In this case, the karaoke lounge is still liable to be registered, and as such, it cannot apply to cancel its GST registration.

18. NOTIFICATION OF CESSATION OF LIABILITY TO BE REGISTERED

A registered person who has ceased business or has ceased making a taxable supply is required to notify Customs within thirty days from the date of such occurrence.

A registered person who has notified his cessation of liability to be registered has to continue to fulfill his obligations as a registered person i.e. to charge GST and submit GST returns, until the approved effective date of cancellation of his GST registration.

19. CANCELLATION OF REGISTRATION

A registered person may apply to cancel his registration if his liability to be registered has ceased. The registration of any person may also be cancelled by Customs if it is found that the person is not liable or eligible to be registered.

Application for registration cancellation can be made by completing and submitting the form GST-Adm4 either on-line or manually to the nearest Customs' office.

The registered person will be notified of the approval and the effective date of registration cancellation.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

20. LATE REGISTRATION

A person who is liable to be registered but fails to do so must immediately apply for registration. The effective date of registration will be the date the person applies to be registered.

Example 1

The annual taxable turnover of Company A has exceeded threshold on 15 May 2012. This company is required to apply for registration within twenty eight days beginning 1 June 2012 to 28 June 2012, and it should have been registered effective from 1 July 2012. However, the application for GST registration is done only on 1 September 2012. In this case, the effective date of registration for Company A is on 1 September 2012.

A penalty will be imposed based on the tax which should have been paid from the date a taxable person should have been registered to the date he is registered, and this period is referred to as the late registration period. Penalty rates will be imposed according to the following table.

Tax remains unpaid	Rate of penalty
1 – 30 days	5%
31 – 60 days	10%
61 – 90 days	13%
91 – 120 days	16%
121 – 150 days	19%
151 – 180 days	22%
181 days or more	25%

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

Example 2

Referring to Example 1, the late registration period is from 1 July 2012 to 31 August 2012. Assuming Company A has made taxable supplies amounting to RM100,000 for this period, the amount of penalty to be imposed on Company A is as follows:

Assuming GST at a rate of 4 % :

Amount of tax payable	*: RM100,000 x 4 % = RM4,000*
Late registration period	*: 1.7.2012 – 31.8.2012 (62 days)*
Rate of penalty	*: 13%*
Amount of penalty payable	*: RM4,000 x 13 % = RM520*
Total amount payable	*: RM4,000 + RM520 = RM4,520*

A person who fails to register shall be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding three years or to both.

21. TYPE OF GST FORMS

Forms for GST registration are as follows:

i.	**GST – 01**	Application for goods and services tax registration
ii.	**GST – 02**	Application for group / joint venture registration
iii.	**GST – 02A**	Details of group / joint venture member registration
iv.	**GST – Adm3**	Application for goods and services tax registration exemption
v.	**GST – Adm4**	Application for cancellation of goods and services tax registration / special scheme

22. FURTHER INFORMATION

If you require any further information regarding GST, please contact our officer at any of our GST office or call toll free line No. 1800 XX XXXX. You can also visit our website at http//www.gst.customs.gov.my.

32

CTIM's Comments:

- **Item 20 – Late registration**

It is not mentioned in the above whether a person who has made a late registration can recover the input tax credit. There is also no clarification whether he can back-charge the GST during the period he becomes liable to be registered, especially to GST registered customers.

Based on *GST General Guide (draft)* (page 56; item 10.8.3: Late Registration), it is mentioned that any taxable person is entitled to claim input tax incurred (up to a maximum period of 6 years) in making taxable supplies during the period he becomes liable to be registered.

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my

We also wish to refer to the *Proposed Amendment to GST Bill* 2009, Clause 38 (Credit for input tax against output tax) on the new provisions due to the insertion of subsection 13, which states that:

"(13) Notwithstanding any provision of this Act, where any taxable person fails to comply with subsection 21(1) or 21(3) —

(a) no refund shall be made under subsection (3) if the amount of credit exceeds the output tax for the period he should have been registered; or

(b) the taxable person shall not be entitled to any credit of input tax under subsection (1) if he fails to include such credit in the return referred to in paragraph 41(2)(a). "

CTIM would like to propose that the Customs consider including the above clarification on the new Clause 38(13) as well in this draft guidelines for better explanation.

- **Example 2**

CTIM is of the view that calculation of the penalty for late registration should be based on "GST inclusive". Hence, the penalty calculation is as follows:

Amount of tax payable	***: RM100,000 x 4/104 = RM3,846***
Late registration period	***: 1.7.2012 – 31.8.2012 (62 days)***
Rate of penalty	***: 13%***
Amount of penalty payable	***: RM3,846 x 13% = RM500***
Total amount payable	***: RM4,000 + RM500 = RM4,500***

Unit B-13-1 (Unit 1-5), 13th Floor, Block B, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990, 2161 3207 Email: technical@ctim.org.my