GST FREQUENTLY ASKED ISSUES

NO.	ISSUES	DECISION

1.	**Reg. 34 GSTR (Goods and Service Tax Regulations 2014)**
	
	 Motorcar used exclusively for the business purpose as approved by the DG.
	
	 To what extend is the application of this provision in term of claiming input tax?
		i) Reg. 36 GSTR (Goods and Service Tax Regulation 2014), provides that a taxable person is not allowed to claim input tax in respect of –
		
		 (a) the supply to or importation by him of a passenger motorcar; or
		
		 (b) the hiring of motorcar;
		
		 ii) A '*passenger motor car*' is defined in reg. 34 GSTR as a motor car which is constructed or adapted for the carriage of not more than nine passengers inclusive of the driver and the unladed weight of which does not exceed three thousand kilograms **but does not include** any <u>motor car which is used exclusively for the purposes of business as may be approved by the Director General (reg. 34(e) GSTR)</u>.
		
		 iii) Motor cars used exclusively for business purposes which Director General may approve are –
		
		 (a) Test Drive car - a car used for a limited period in order to assess its performance and reliability.(Only for car dealers);
		
		 (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;
		
		 (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 and repair services*; AND*
		
		 (d) The cars must fulfil the following conditions –
		
		    (aa) the motor car is registered in the name of the company;
		
		    (bb) the motor car is not let on hire;
		
		    (cc) there is no intention to make the motor car available for private use;
		
		    (dd) the motor car is kept at business premises, used for business trips and must not be taken home overnight by any employee; AND

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			(ee) the motor car has the business's name
		iv)	There are motor cars exclusively used for business purpose which Director General may not approve, such as –
			(a) **Assigned Car**
			Assigned car is a car that is assigned to an individual for their full-time use within the parameters of the company's policies and procedures. It is a privilege given to the individual which comes with the post e.g. cars for directors.
			(b) **Pooled Car**
			Pooled cars are cars that are readily available exclusively for business use by a number of employees.
			(c) **Cars used in sales and marketing**
			The car is commonly used in retail business to promote sales and marketing e.g. cars used by salesman in marketing new products.
			(d) Demo or display car used to promote new model and usually display in a show room.
2.	**Claiming input tax on business expenses billed to employees.** Below are expenses usually billed to employees and not to the businesses, can the businesses claim the input tax and how? a) Car park and other travelling expenses incurred while visiting customers or on working trips; b) Mobile phone bill expenses for making business calls on a line registered in their own name; c) Entertainment meals with existing customers; d) Hotel accommodation while on outstation business trip;	i) ii) iii)	A registered person claiming input tax must hold a valid document (tax invoice) under his name which is required to be provided under section 33 GSTA (Goods and Service Tax Act 2014) (refer section 33 GSTA and reg.38(1)(a)(i) GSTR). Invoice under employees name cannot be used for claiming input tax EXCEPT for mobile phone bill expenses used for business purpose. A registered person can use the mobile phone invoice billed to his employee for claiming input tax as long as the expenses are reimbursed and accounted as business expenses.

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3.	**Taxable period –** What is the first taxable period for company with financial year end on 31st August and the revenue is below RM5 million, is it - a) 1st April 2015 to 30th June 2015, second period 1st July 2015 to 30th September 2015? OR b) 1st April 2015 to 31st May 2015, second period 1st June 2015 to 31st August 2015 (to match with financial year end)?	The first taxable period must coincide with financial year of the business. Therefore the taxable period will be on 1st April 2015 to 31st May 2015, second period is 1st June 2015 to 31st August 2015 and third period is 1st September to 30th November 2015;
4.	**Gift rule –** How to determine the GST on gift?	i) Para 5(2)(a) of the First Schedule of GSTA 2014: No GST will be charged on gift made in the course or furtherance of business to the same person in the same **year** where the total cost of the gift to the donor does not exceed **RM500**. If the total cost to the donor is more than RM500, GST need to be accounted for and input tax is claimable. ii) The word '*year*' in paragraph 5(2) (a) of the First Schedule of GSTA 2014 refers to '*tax year* '(financial year). iii) Gift bought by a taxable person from **a non-GST registered person** worth more than RM500 and given free without consideration **is not subject to GST** but no input tax is claimable as the gift is acquired without tax. iv) Determination of RM500 per person per year is the aggregate of all gifts given in the tax year. If the total cost exceeds RM500, it is subject to GST (account for output tax) as follows - **Example:** Company ABC give gifts to his employee A in 2015 as follows:

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NO.	ISSUES	DECISION
		<table><tr><td></td><td>**Date**</td><td>**Cost**</td><td>**GST**</td><td>**Time of Supply**</td></tr><tr><td rowspan="4">**1st Scenario**</td><td>Apr 2015</td><td>RM200</td><td></td><td></td></tr><tr><td>Jun 2015</td><td>RM200</td><td></td><td></td></tr><tr><td>Nov 2015</td><td>RM300</td><td></td><td></td></tr><tr><td>**Total**</td><td>**RM700**</td><td>GST 6% x RM700 = **RM42**</td><td>Nov 2015</td></tr><tr><td>**2nd Senario**</td><td>May 2015</td><td>**RM700**</td><td>GST 6% x RM700 = **RM42**</td><td>May 2015</td></tr></table> Company A has to account GST RM42 on the gift in November taxable period for the first scenario and May taxable period for the 2nd scenario.
5.	**Voluntary Registration for pre commencement of business**	i) A person who intends to make any taxable supplies can apply for voluntary registration if he can satisfy that he is committed to do business by submitting the following documents: (a) details of business arrangements (e.g. business plans, plants and location); (b) copies of contract for establishment of premises such as rental of premises / construction of pipelines/ purchase of equipment; (c) details of any patents; (d) details of business purchases; or (e) other documentary supporting evidence. **AND;** ii) The total taxable supply is expected to exceed the threshold within 12 months from the date of application.

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6.	**Supply goods to company branch in Designated Area** XYZ Company in Kuala Lumpur (not in Designated Area @ DA) purchases goods from ABC Company in Kuantan and request ABC Company to send the goods to his branch in Langkawi (Designated Area): What is the GST treatment on the goods send to Langkawi?	i)	Goods supplied to a Designated Area (Labuan, Langkawi and Tioman) from Malaysia (other than Designated Area) are zero rated supply (refer Item 3 First Schedule of GST (Zero Rate Supply) Order 2014).

		ii)	The supply made by ABC company to XYZ Company in Kuala Lumpur is a standard rated supply and not zero rated supply **unless** –
			
			(a) there is evidence showing –
			
			    (aa) the goods are moved or shipped directly to XYZ branch in Langkawi (DA);
			
			    (bb) the exporter or consignor in the export form or shipping documents is in the name of ABC Company and the goods are exported to or consigned to XYZ branch in Langkawi; and
			
			(b) the invoice issued by ABC Company to XYZ Company in Kuala Lumpur has indication that the '*goods have been directly shipped to XYZ branch in Langkawi'.*

7.	**Agent and foreign Principal** A foreign company making taxable supply in Malaysia has to appoint an agent to act on his behalf. The registration of a foreign principal will be under the name of such foreign principal. Who will be the importer and who is eligible to claim input tax In the case of a registered foreign principal importing goods for the purpose of making supply in Malaysia?	i)	Section 65(6) GSTA, provides that an agent appointed by a person who does not belong to Malaysia to act on his behalf shall be liable for the tax and the other requirements imposed under the GSTA as if he is the person who does not belong to Malaysia.
		ii)	Only importer, consignee or owner of the goods imported can claim input tax in relation to importation of goods. (refer reg.38(1)(d) GSTR).
		iii)	For the purpose of importing goods into Malaysia by the foreign principal, the appointed agent under section 65(6) GSTA can appear as the importer in Customs Form No.1 and care off @ c/o the name of the foreign principal. Based on the Customs Form No.1, the foreign principal may issue an authorisation letter to the appointed agent for claiming input tax on his behalf.
8.	**Claiming Special Refund for goods held on hand on 1/4/2015.**	i)	Any person who is entitled to a special refund for goods held on hand on 1/4/2015 under sec. 190 GSTA shall be eligible to claim once;

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	i) For goods held on hand on 1/4/2015, can a stock count be performed on a date other than 1/4/2015?	ii) The claim for special refund shall be made in a form as the DG may determine, not later than 6 months from 1/4/2015 (refer sec.191(1)GSTA);
	ii) Who should certify the claims for special refund?	iii) Any person claiming the special refund should perform a stock count on goods held on hand on 1/4/2015. However, if the stock count is not done on 1/4/2015, they are allowed to use the results of stock count which has been performed in the past 6 months from 1/4/2015 and then applying the roll forward method to arrive at the stock balances on 1/4/2015. Alternatively, a stock count can be performed in a period no later than 6 months after 1/4/2015 and then applying the roll backward method.
	iii) How to calculate the value of the goods held on hand on 1/4/2015?	Under all circumstances, a stock count must be performed within the stipulated time periods, otherwise no special refund will be approved.
		iv) If the amount of special refund is less than RM10,000, a chartered accountant as conferred by Malaysian Institute of Accountants should certify the amount of the special refund (sec. 191(2)(a)GSTA).
		If the amount of special refund is RM10,000 or more, an approved company auditor under section 8 of the Companies Act 1965 should certify the amount of the special refund (sec. 191(2)(b)GSTA). A Reasonable Assurance Report performed under the Malaysian Approved Standard on Assurance Engagements, ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* will need to be issued to support the special refund.
		v) The value of the goods held on hand on 1/4/2015 for purposes of the special refund can be ascertained as follows:
		a) Specific identification
		If the goods held on hand on 1/4/2015 can be attributed to invoice or Customs Form No. 1, based on specific description, series, no products, brands or other specific identification, such invoice or Customs Form No.1 shall be used.
		Example:
		Goods with serial number ABC123 and the related invoices are invoices issued

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		on 3rd February 2014 as the serial number of ABC123 appeared on the invoices. The value in such invoices can be used for the special refund. b) First in First out (FIFO) If the goods held on hand on 1/4/2015 can be directly associated with many invoices due to general product description, value on the latest invoice before the 1/4/2015 shall be used. If the quantity of goods held on hand exceeds the quantity stated in such invoice, the value for the remaining number of goods should be based on the quantity that can be covered in the previous invoices issued in sequence prior to the final invoice before the 1/4/2015. Example:

Total goods held on hand on 1st April 2015		Related Invoice			Sales Tax Paid
Description	Quantity	Date	Quantity	Price per unit (RM)	Per unit (RM)
Sandal	3000 unit	1st March 2015	800 unit	2.00	0.20
		15th Dec 2014	1,500 unit	1.80	0.18
		1st Jun 2014	2,500 unit	1.70	0.17
The value for claiming special refund – (800 X RM0.20) + (1,500 X RM0.18) + (700 X RM0.17) = RM549					

NO.	ISSUES	DECISION
	vi)	The value determined as in sub (v) can only be used when payment to the supplier has been made.

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		Example: From the above example, If the latest invoice before 1st April 2015 (1st March 2015) has not been paid by a taxable person, the value for claiming special refund will be - (1,500 X RM0.18) + (700 X RM0.17) = RM389