



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON EMPLOYEE BENEFITS

Publication

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The Guide on Employee Benefits as at 2 November 2015 is withdrawn and replaced by the Guide on Employee Benefits revised as at 6 April 2016.

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Disclaimer

This information is intended to provide a general understanding of the relevant treatment under Goods and Services Tax and aims to provide a better general understanding of taxpayers' tax obligations. It is not intended to comprehensively address all possible tax issues that may arise. While RMCD has taken the initiative to ensure that all information contained in this Guide is correct, the RMCD will not be responsible for any mistakes and inaccuracies that may be contained, or any financial loss or other incurred by individuals using the information from this Guide. All information is current at the time of preparation and is subject to change when necessary.

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INTRODUCTION

1. This industry guide is prepared to assist businesses in understanding matters with regards to GST treatment on Employee Benefits. The Guide explains the GST treatment for goods and services provided by a GST-registered person to employees as employee benefits. Specifically, it highlights the circumstances to claim the GST incurred on employee benefits and whether GST is to be accounted for when these benefits are given free to employees.

Overview of Goods and Services Tax (GST)

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

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

4. In Malaysia, a person who is registered under the Goods and Services Tax Act 2014 is known as a “registered person”. A registered person is required to charge GST (output tax) on his taxable supply of goods and services made to his customers. He is allowed to claim back any GST incurred on his purchases (input tax) which are inputs to his business. Therefore, the tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements.

GENERAL OPERATIONS OF THE INDUSTRY

Employee Benefits

5. Employee benefits are referred to any goods or services provided free to employees. Employee benefits (EB) include any right, privilege, service or facility provided free of charge to employees. Goods and services acquired and given as employee benefits are considered as used “for the purpose of business”.

6. There are two situations that can be classified as employee benefits:
- (a) given or provided by an employer to an employee; or
 - (b) given or provided by another person on behalf of the employer to employee.

7. Generally, a taxable person is entitled to claim GST incurred on goods and services acquired by him which is used for the purpose of his business in the making of taxable supplies and the taxable person is required to account for output tax on the supplies. Similar treatment applies to employee benefits. However, for employee benefits, anything that is stated in a contract of service of employees, contract of employment or company policy such as in company's handbook to be given free to the employees, output tax need not be accounted for irrespective of its value. Input tax incurred in the acquisition of goods or services is claimable.

8. Further, if it is not stated in the contract of employment, taxable goods provided free to the employees are subject to GST (subject to gift rule of RM500). Input tax incurred in the making of the taxable supply is claimable. However, for those zero rated, exempted or blocked input tax goods, output tax need not be accounted for on such gift of goods. Input tax incurred for zero rated goods given free is claimable but NOT for exempted and blocked input tax goods.

Gift rule

9. Any goods worth RM500.00 or less given to the same person in the same year is not a supply and hence is not subject to GST. There is no restriction on the series of gift as long as the total value on the series of gift given to same person in the same year does not exceed RM500.00.

RECOVERY OF INPUT TAX ON EMPLOYEE BENEFITS

10. If the taxable person acquires any goods or services and provides them as employee benefits to the employees, the goods and services acquired are then considered as used "for the purpose of business". Therefore, GST incurred on these purchases may be claimed by the taxable person as input tax except for the following:

- (a) the acquisition or purchases relates to the making of an exempt supply under the GST (Exempt Supply) Order 2014.
- (b) the goods or services acquired have been charged with GST but the tax incurred is specifically disallowed (block input tax).

Disallowance of input tax

11. GST incurred on certain acquisition cannot be claimed if it is classified as 'blocked' input tax under the GST Regulations 2014. In such a case, any input tax incurred by any taxable person cannot be claimed even though the taxable goods and services are acquired for business purposes. A taxable person is not allowed to claim input tax incurred on any of the following:

- (a) the supply to or importation by him of a passenger motor car;
- (b) the supply of goods or services relating to repair, maintenance and refurbishment of a passenger motor car;
- (c) the hiring of passenger motor car;
- (d) club subscription fee;
- (e) medical and personnel accident insurance premium;
- (f) medical expenses;
- (g) family benefits; or
- (h) entertainment expenses to a person other than employees or existing customers except entertainment expenses incurred by a person who is in the business of providing entertainment.

Flow Chart for Input Tax Credit is illustrated in **Appendix 1**.

ACCOUNTING FOR OUTPUT TAX ON EMPLOYEE BENEFITS

GST payable on supplies of employee benefits

12. The provision of an employee benefit can be a supply. The supply of an employee benefit may be made by a taxable person as an employer, an associate or another party (subject to an arrangement with the taxable person). The recipient of the supply may be either an employee or an associate of the employee

13. Generally, a taxable person is required to account for output tax on goods or services given as employee benefits because it is regarded as for business purpose. In some cases, output tax must be accounted for on the provision of goods to the employee, even if no consideration is charged. Such situations arise when business goods are given free to the employees or the goods are allowed to be temporarily used free of charge for their private purposes. Deemed supply where goods are given free as gifts to or for temporary private use by employees

14. In the case of services, there is no liability to account for output tax for any services provided free to employees because it is not regarded as a supply. However, any service provided free to a connected person is a supply of services. Please refer to paragraph 6 of the First Schedule of the Act.

Consideration

15. One of the requirements for a supply to be a taxable supply is that 'you make the supply for *consideration'. The services of an employee can be consideration for the supply of an employee benefit to that employee. Consideration for the supply of an employee benefit may also take the form of a payment or contribution made by the recipient of the benefit. It is only this consideration that is taken into account in working out the amount of GST on the supply of an employee benefit.

Example 1:

AB Cleaning Services Company has provided free cleaning service to the home of his employees. Services provided free is not a supply and therefore output tax need not be accounted for.

Example 2:

A manufacturing company provides transport to his workers for free. The company leases few buses from a transport company. The provision of free transportation is not a supply and therefore is not subject to GST. However, the rental of the buses is standard rated and this input tax incurred can be claimed since it is business expenses.

However, if the company provides transport with charge, it is an exempt supply and therefore input tax incurred in renting the buses cannot be claimed.

Example 3:

AB Cleaning Services Company has provided free cleaning services to the home of his business partner. In this case, services provided free is deemed to be a supply because it is provided free to the connected person and therefore is subject to GST.

16. For goods, output tax needs to be accounted for on goods given free except on the following:
- (a) Goods given free to employees as stated in the contract of employment;
 - (b) Exempt supply (refer to GST (Exempt Supplies) Order 2014);
 - (c) Zero rated supply (refer to GST (Zero-rated Supplies) Order 2014);
 - (d) Supply of goods under gift rule; or
 - (e) Supplies where the recovery of input tax were disallowed under the GST Regulations 2014.

Goods given free to employees as stated in the contract of employment

17. Any goods given free to employees as stated in the contract of employment is not a supply and hence not subject to GST. The taxable person is not required to account for output tax on the gift. Input tax incurred is claimable. If the goods are given free to the employees which are not stated in the contract of employment but only

stated in company policy such as company's handbook, they must be specific as example below.

Example 4:

A firm provides uniform to his employees. GST charged by the registered tailor is claimable. Output tax needs not be accounted by the firm on the provision of uniform for free to his employees.

Example 5:

A manufacturing company has a policy as stated in its handbook that any employee who has served for the company for a period of ten years is entitled for a 10gm of gold pendant. The company does not have to account for output tax on the gift. GST incurred on the purchase of 10gm gold pendant is claimable.

Exempt supply

18. Any goods given free as employee benefits that come under Goods and Services Tax (Exempt Supplies) Order 2014 are not subject to GST. However, any input tax incurred is not claimable since it is an exempt supply.

Example 6:

A housing developer has given a house worth RM100,000.00 to one of his employees for her excellent performance. The developer does not have to account for GST on the gift because it is an exempt supply. Any input tax incurred is not claimable.

Zero rated supply

19. A taxable person who gives goods that come under Goods and Services Tax (Zero Rated Supplies) Order 2014 to his employees is not required to account for GST. However, any input tax incurred is claimable.

Example 7:

A sugar refiner gives 10kg sugar to all his employees for celebration of Hari Raya, Chinese New Year, Deepavali or Christmas every year. The gift is not subject to GST but input tax incurred is claimable.

Supply of goods under gift rule

20. Supply of goods for free where the cost of the goods is not more than RM500 given to the same person in the same year is not subject to GST. This rule is applicable to all including from employer to employee and also from a taxable person to a person connected to him. However, input tax incurred is claimable.

Example 8:

Company XY Sdn Bhd purchased 15 hampers worth RM200/hamper to be given to each of his employees. The company does not have to account for output tax. However, input tax incurred on the purchase worth RM3,000.00 is claimable.

Example 9:

Company CX Sdn Bhd has purchased a watch worth RM400.00 and gave it to one of the director's son. The gift is not subject to GST because its value is less than RM500.00 (gift rule) but input tax incurred on the purchase is claimable.

Example 10:

Property Niaga Sdn Bhd (PNSB) purchased safety equipment for their employees' usage in compliance with OSHAS law and regulations that requires every manufacturing company to provide such safety equipment e.g. helmet, boots, jacket, etc. Such supplies are not stated in the employees' employment contract.

As long as the employer retains ownership of the safety equipment, it continues to be an asset of the company and the employer does not have to account for output tax. However, if PNSB gives the safety equipment

outright to the employees (without consideration) and recognizes them as expenses in the company's accounts, then PNSB is required to account for output tax subject to the free gift rules.

Supply of accommodation

21. EB includes or covers the supply of accommodation or residential housing to the employee provided free of charge but excludes the supply of furniture for use in those premises.

22. Supply of accommodation under EB is an exempt supply under the GST (Exempt Supply) Order 2014 and is considered as used for the purposes of business. The employer is not required to account for GST on the supply and is not entitled to claim the input tax incurred on the acquisition of the accommodation.

23. However, in the case where-

- (a) The supply of accommodation includes the supply of furniture, the supply of furniture whether or not for consideration is subject to GST at a standard rate. The employer is liable to account for GST accordingly and is entitled to claim input tax incurred on the acquisition of the furniture;
- (b) The supply of accommodation to the employee and to the employee's family (family benefits) irrespective of whether it is furnished or unfurnished, the employer is blocked from claiming the input tax incurred as provided under Regulation 36(g) of the GST Regulations 2014.

Supply of safety and security equipment required under the Occupational Health and Safety Act 1994

24. Safety and security equipment provided by an employer to the employee for free of charge is considered as an employee benefit as long as it is stated in the contract of employment.

25. In the case where the employer supplies safety and security equipment for free of charge to the employee and the supply is not stated in the contract of employment, such supply will not be considered as employee benefit. Therefore, the employer is

liable to account for the GST and entitle to claim the input tax incurred on the purchase of such equipment.

26. However, where –

- (a) the supply of such equipment involves transfer or change of ownership to the employee, such supply is subject to gift rule under item 5(2)(a) of the First Schedule of GSTA 2014; or
- (b) the equipment is subsequently returned to the employer as business asset, the employer is not required to account for the GST.

Supplies where the recovery of input tax were disallowed under the GST Regulations 2014

27. A taxable person is not allowed to claim input tax incurred on goods that he purchased where the input tax is disallowed as a credit under GST Regulations 2014. However, the subsequent supply of such goods by the taxable person is regarded as not a supply and thus it is not subject to GST. In the case of employee benefits, the employer who is a taxable person does not have to account for GST on the goods given free to his employees.

Example 11:

A company has given one of his employees a company car which had been used for five years by the company and on which the input tax incurred on the car is disallowed as a credit. The company does not have to account for output tax on the gift because it is not a supply.

Flow Chart for Output Tax is illustrated in **Appendix 2**.

GOODS AND SERVICES ACQUIRED FROM NON-REGISTERED PERSON

28. Goods or services if purchased from traders who are not GST registered persons are not subject to GST. Therefore, no input tax is to be claimed on the acquisition. When the goods are given free to employees, it is not subject to GST even the cost of the goods is more than RM500.00.

Example 12:

CC Sdn Bhd has purchased a 32" LED television worth RM1,000.00 from AA Enterprise who is not registered for GST. CC Sdn Bhd is not required to account for output tax on the gift to his employee.

EMPLOYEE BENEFITS GIVEN FOR THE BENEFIT OF SOLE-PROPRIETOR, PARTNERS, DIRECTORS OR PERSONS CONNECTED TO THE TAXABLE PERSON

29. Any goods or services given or provided free by a taxable person to a person who is connected to the taxable person or for the benefits of sole proprietor or directors of the company is deemed as a supply and hence the taxable person is required to account for output tax on such supply based on open market value. For services, please refer to paragraph 6 of the First Schedule of the GST Act whereas for goods paragraph 5(1) of the First Schedule is applicable. Nevertheless, gift rule is still applicable for any goods worth not more than RM500.00. This means output tax need not be accounted for goods where the cost of the goods is not more than RM500.00 given to the person who is connected to the taxable person, a sole proprietor or directors of the company.

Example 13:

A Company purchased a laptop worth RM1,500 and gave the laptop to a director's son as a gift. GST on the laptop must be accounted for by the company since the value of the goods is more than RM500.00.

Example 14:

A company purchased a laptop worth RM1,500 three years ago. Currently the company has given the laptop to one of his business partners. For the purpose of accounting GST, the company has to use open market value of the goods.

Example 15:

ABC Cleaning Services Company provided free cleaning service to the home of his director. The provision of free services is deemed to be a supply and hence output tax has to be accounted for by the company based on open market value of such supply.

BUSINESS GOODS USED FOR NON-BUSINESS PURPOSES

30. A taxable person is required to account for output tax on any use of business goods put to private use or used for non-business purpose such as the usage of goods free of charge by employees because it is deemed to be a supply of services even though the usage is for no consideration provided that the taxable person is entitled to input tax credit on the goods. Please refer to paragraphs 5(3) and 5(4) of the First Schedule of the GST Act.

Example 16:

A manufacturing company allows one of his employees to use the company's lorry without any charge when the employee wants to transport his household goods to his new house. The use of lorry by the employee is a supply of services and therefore the company has to account for output tax on such supply based on open market value of the supply.

VALUE OF EMPLOYEE BENEFITS

Determination of the Value of Employee Benefits

31. If goods are given free by a taxable person who is not subject to gift rule or to a person who is connected to the taxable person, the value is to be based on open market value which is inclusive of GST. For the definition of 'open market value' please refer to the Schedule 3 of the GST Act 2014 and for further details please refer to the Guide on Valuation.

32. The value of supply would be based on the following order of hierarchy;

- (a) Value of identical goods;

- (b) Value of similar goods;
- (c) Cost of producing; or
- (d) Cost of acquisition,

taking into account the age and condition of the goods which are given free.

RECORDS

33. A taxable person is required to maintain complete and up-to-date documents such as invoices, employment records, and any documents related to employee benefits given to employees. The record must be made available to the Director General upon request. These records must be kept for seven (7) years.

FREQUENTLY ASKED QUESTIONS

Recovery of Input Tax

Q1. AB Cleaning Services Company provided free cleaning service to the home of his employees. Can the company claim input tax on purchase of the equipment used for providing the cleaning service?

A1. Yes, the cleaning services company can claim input tax that he incurred on the acquisition of the equipment used for providing the free services.

Q2. A manufacturing company provided transportation (worker bus) for free to his workers. If the company rent a few buses for the transportation, can the company claim for input tax incurred on the rental?

A2. Yes, the manufacturing company can claim input tax that he incurred on the rental of the buses as it is his business expenses.

Q3. A firm gives a trip to Pulau Redang to one of his staffs for excellent performance. Can the firm claim input tax that he incurred on the purchase of the package?

A3. Yes, the company can claim the input tax incurred on the purchase of the package.

Q4. Company A purchased 10 hampers worth RM2,000 to be given to his workers. Can the company claim input tax incurred on the acquisition?

A4. Yes, the company can claim the tax that he incurred on the purchase of the goods.

Q5. What document must I use to claim input tax on goods and services given as employee benefits?

A5. You can claim input tax incurred on goods and services which you acquired and given free to your employees as long as you hold the relevant document such as tax invoice on your acquisition.

Q6. If the tax invoice is addressed to the employee, can input tax be claimed?

A6. No, except for in the case on **Q8**.

Q7. Can a company claim GST incurred on training for his staff?

A7. Yes, GST incurred is claimable if the training is provided in the course and furtherance of business.

Q8. Can a company claim input tax on hand phone usage which is in the employee's name?

A8. Yes, only hand phone bill under employee's name, input tax incurred is claimable provided that the company can prove that the expense is for business purpose borne by the company, i.e. appear in the company's account and/or stated in the policy of the company.

Disallowance of input tax

Q9. Is GST incurred on purchase of corporate membership in recreational club claimable?

A9. No, because GST incurred on club membership fee is blocked under GST Regulations 2014.

Q10. Can a company claim GST incurred on food and beverages (F&B) for annual dinner?

A10. Yes, provided that the function is attended by the employees of the company only. However, if the function is also attended by family members of the employees, apportionment has to be made accordingly. GST incurred can only be claimed on those attributable to employees.

Q11. I purchased a car and registered under my company's name for business use including for employees official use. Can I claim input tax incurred on the car acquired?

A11. Generally input tax incurred on any acquisition of passenger motor car for company use is not allowed to be claimed. However, if the car is exclusively used for business purpose, you are allowed to claim the input tax subject to

approval and conditions imposed by the Director General. In such a case, the car can be identified, for example, there is a company logo and/or name attached on the car. However, if the car is used for non-business purpose, output tax needs to be accounted for on the usage of the car because it is deemed to be a supply of services.

Q12. Can input tax be claimed when a company pays for medical expenses for his employees?

A12. Normally a company has private clinic as its panel. Medical expenses paid by the company to the private clinic for his employees are not subject to GST because it is exempted. However, if the employees get alternative medical treatment such as homeopathy, Ayurveda, acupuncture or reflexology, this kind of expenses is standard rated. If the company pay such expenses for his employee, input tax incurred is NOT claimable as it is blocked under the GST Regulations 2014. Similarly for expenses borne by the company on one off purchase of medical equipment such as wheel chair for a specific employee. Input tax incurred by the company is also not claimable.

Q13. My company leases a service apartment for an expatriate employed by the company for 5 years. The benefit of residential housing is provided to the expatriate as part of his contract of employment. Is the lease subject to GST and is my company making a supply of services to the expatriate?

A13. The lease is an exempt supply and the company is not making a supply of services to the expatriate.

In the event a fee is charged to the expatriate, the company is making an exempt supply which is exempted from charging GST. However, if the lease is a hotel, inn, boarding house or similar establishment of sleeping accommodation, the lease will be a taxable supply and the company is not allowed to claim input tax incurred.

Output tax

Q14. Under what instances do I have to account for output tax on employee benefits?

A14. Basically for goods, any goods given free to employees are subject to GST. However, under the gift rule, if the cost of the goods to the donor does not exceed RM500.00 and given free to the same employee in the same year, you (as the donor) do not have to account for output tax. If the cost is more than RM500.00, you have to account for output tax except for those that come under Blocked Input Tax Recovery or anything to be given free to employees as stated in your contract or policy. On the other hand, for services, you do not have to account for GST as long as the services are provided free to your employees except for services of using business assets whether or not for a consideration.

Q15. As a taxable person, should I account for output tax if I provide free accommodation to my employees?

A15. No, you need not to account for output tax since free accommodation is not a supply.

Q16. As a taxable person, should I account for output tax if I give goods for free such as a home theatre system to my employees?

A16. Yes, as a taxable person you must account for output tax on goods given free to your employees. However, you do not have to account for the tax if the value of the goods does not exceed RM500.00 (gift rule).

Q17. Should output tax be accounted for if employees temporarily use business goods free of charge for their private use?

A17. Yes, the taxable person is required to account for output tax on any use of business goods put to private use because it is deemed to be a supply of services even though the usage is for no consideration.

Q18. Can a taxable person avoid accounting for output tax when he gives free goods to his employees if he did not claim input tax when he actually entitled to claim the input tax?

A18. A taxable person is still required to account for output tax when the goods are given free to employees as employee benefits even though he did not claim input tax incurred on the goods.

Q19. Is monetary rewards given as employee benefits to employees subject to GST?

A19. Any employee benefits given in the form of money is not subject to output tax since money is neither goods nor services.

Q20. If I supply free meal to my employees in the company's canteen, do I have account for output tax?

A20. No, free meal given to employees is not subject to GST because it is not a supply.

Q21. If I provide car and housing loan to my employees as employee benefits, do I have to account for output tax?

A21. You do not have to account for output tax on such loan as they are exempt supplies.

Q22. Are shares given free to employees subject to GST?

A22. Shares given to employees are an exempt supply. Therefore, you do not have to account for output tax.

Q23. As part of my company policy, RM50 is deducted from each foreign worker's monthly salary as reimbursement of accommodation cost provided to them. What is the GST implication on the reimbursement of accommodation cost?

A23. The reimbursement is treated as an exempt supply.

Q24. Every month, a company deducts the employees' salary and remits payments to ASB, Tabung Haji, Zakat and Trade Union subscription, etc. No service fee or other charges are imposed for making the deductions and remitting to the various parties. Does the company have to issue tax invoices for the deductions and charge GST on the amount deducted?

A24. Such deductions can be treated as a disbursement by the company and does not required the issuance of a tax invoice.

Q25. Does a company have to issue a tax invoice on goods given free where output tax has to be accounted for on the gift?

A25. The company does not have to issue a tax invoice on the gift for the purpose of accounting for output tax. It is sufficient to account for the tax in the company's accounting record and relevant GST return.

Value of supply on employee benefits

Q26. What is the value of supply that should be taken to determine GST if a company provides employee benefits to his employees at a subsidized or discounted price?

A26. Where employee benefits are provided to employees at a subsidized or discounted price, the value of supply for calculation of GST is based on the subsidized price or discounted price.

Q27. When business assets are temporarily used free of charge by employees for their private use, how do I determine the value?

A27. In determining the output tax on the supply of services of business assets put to private use, it is to be based on the open market value of the services provided.

INQUIRY

1. For any inquiries for this guide please contact :

Sector VII

GST Division

Royal Malaysian Customs Department

Level 3 – 7, Block A, Menara Tulus,

No. 22, Persiaran Perdana, Presint 3,

62100 Putrajaya.

Email: gstsector7@customs.gov.my

FURTHER ASSISTANCE AND INFORMATION ON GST

2. Further information on GST can be obtained from :

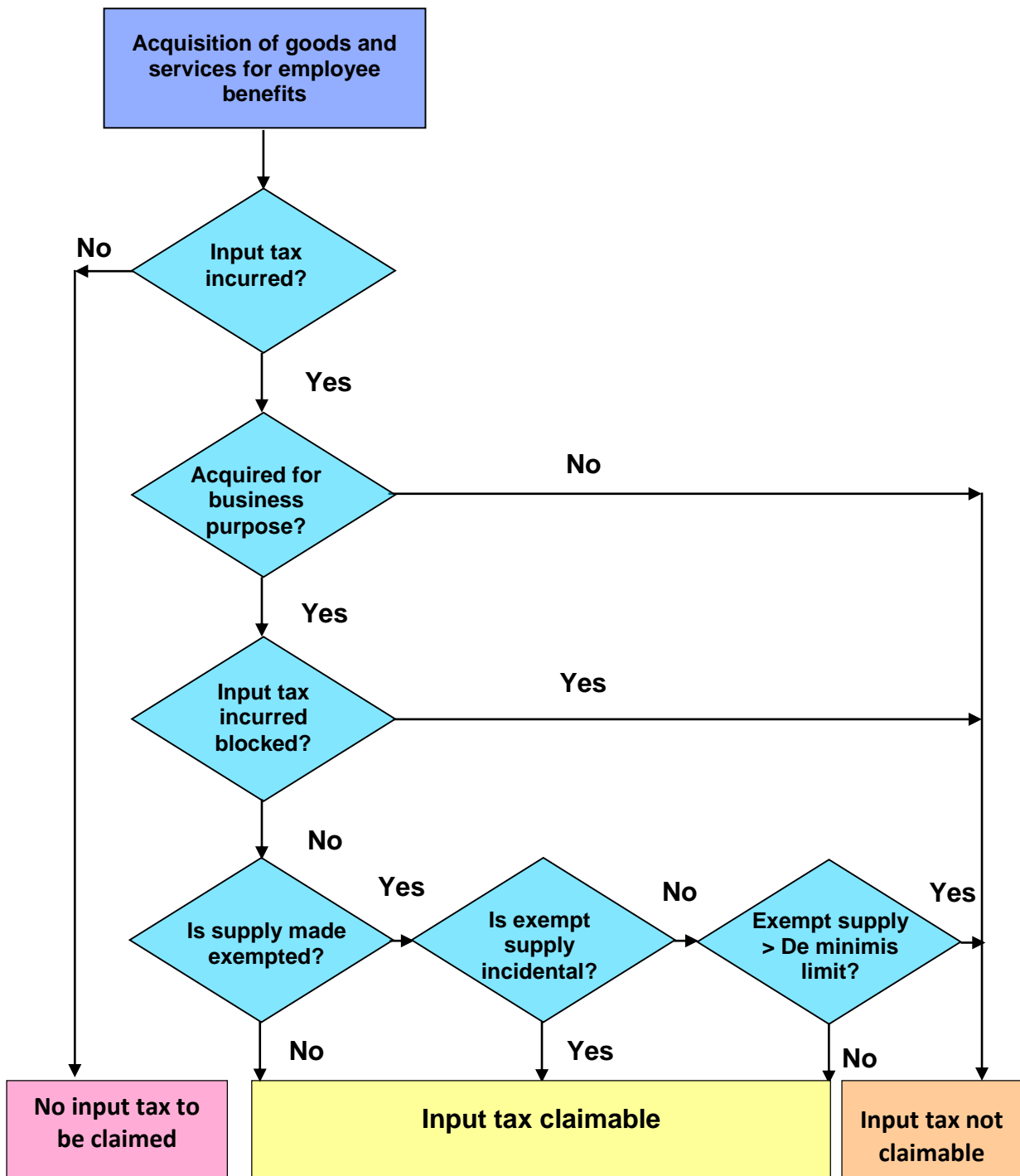
(a) GST website : www.gst.customs.gov.my

(b) Customs Call Center :

- Tel : 03-7806 7200 / 1-300-888-500
- Fax : 03-7806 7599
- Email: ccc@customs.gov.my

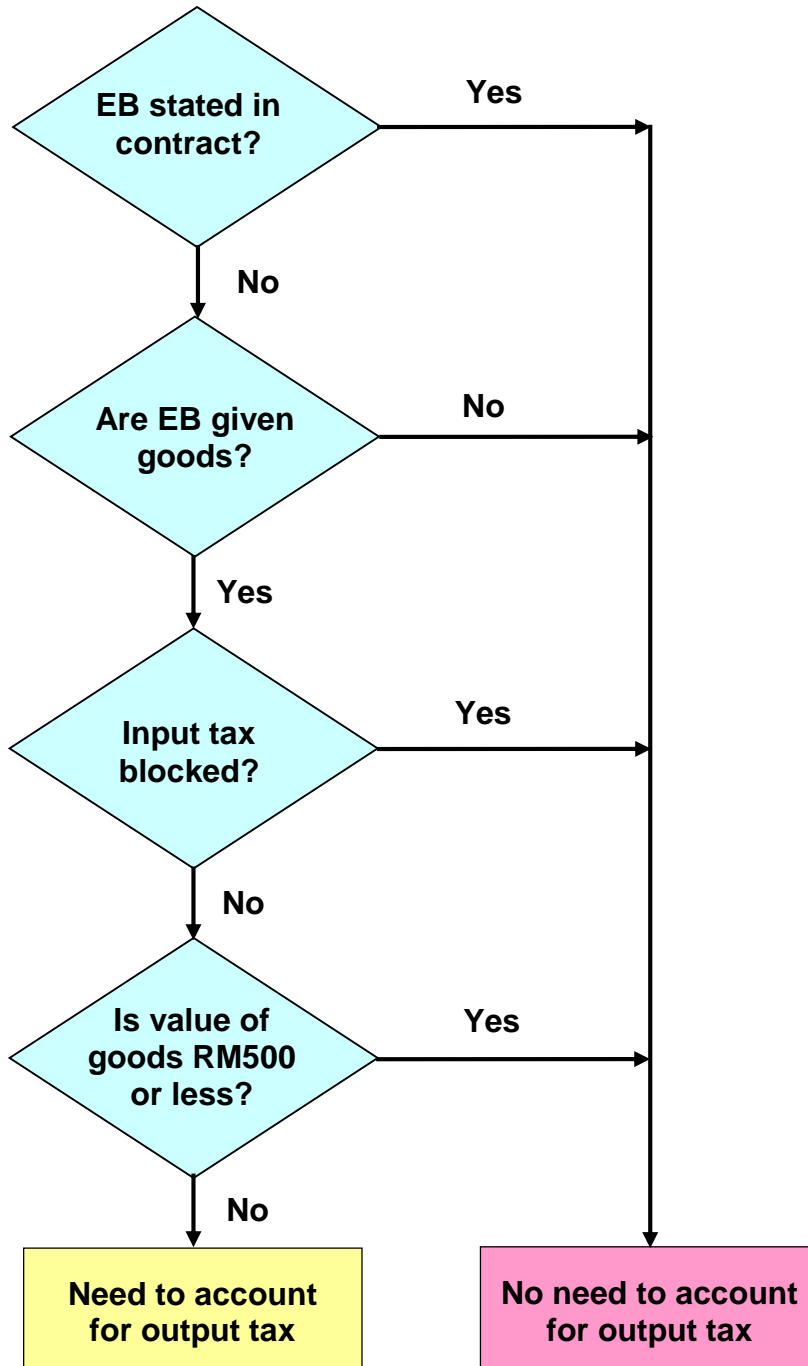
APPENDIX 1

Input Tax Credit



APPENDIX 2

Output Tax Liability



AMENDMENTS

| No | Date | Heading/ Sub – heading/ Paragraph | Description |
|-----------|-------------|---|--------------------|
| 1 | 18.6.2015 | Introduction/ Paragraph 1 | New update |
| 2 | 18.6.2015 | Recovery of input tax on employee benefits/ Paragraph 10 | New update |
| 3 | 18.6.2015 | GST payable on supplies of employee benefits/ Paragraph 12 | New addition |
| 4 | 18.6.2015 | GST payable on supplies of employee benefits/ Paragraph 13 | New update |
| 5 | 18.6.2015 | Consideration/ Paragraph 15 | New sub-heading |
| 6 | 18.6.2015 | Supply of goods under gift rule/ Paragraph 20/ Example 10 | New example |
| 7 | 18.6.2015 | Frequently Asked Questions/ Q13-A13, Q23-A23 and Q24-A24 | New addition |
| 8 | 18.6.2015 | Inquiry & Further Assistance & Information on GST | New Update |
| 9 | 30.10.2015 | Recovery of input tax on employee benefits/ Paragraph 10 | New update |
| 10 | 30.10.2015 | Frequently Asked Questions/ Q24-A24 | New update |
| 11 | 2.11.2015 | Supply Of Accommodation/ Paragraph 21-24 | New Addition |
| 12 | 2.11.2015 | Supply Of Safety And Security Equipment Required Under The Occupational Health And Safety Act 1994/ Paragraph 24-26 | New Addition |
| 13 | 5.4.2016 | Supply of goods under gift rule/ Paragraph 20/ Example 10 | New Addition |