

TO ALL MEMBERS

TECHNICAL

Direct Taxation

PUBLIC RULING 1/ 2017 – INCOME TAX TREATMENT OF GOODS AND SERVICES TAX PART 1 – EXPENSES

Lembaga Hasil Dalam Negeri Malaysia (LHDNM) has issued the above Public Ruling (PR) dated 8 June 2017. (Please refer to our [e-CTIM TECH-DT 43/2017](#) dated 13 June 2017).

Goods and Services Tax

Paragraphs 1 to 5 deal with the broad contextual framework of Goods and Services Tax (GST) and explain the mechanisms (as provided for in the Goods and Services Tax Act 2014 (GSTA)) by which GST is implemented.

The following table shows the headings and sub-headings of paragraphs 1 – 5 and provides a broad outline of the contents of these paragraphs:

Paragraph #	Heading
1	Objective
2	Relevant Provisions of the Law
3	Interpretation
4	Introduction (includes a diagram entitled “Summary of how GST works”)
5	Basic Concepts of Goods and Services Tax
5.1	Imposition and scope of GST
5.2	Supply of goods and services
5.3	In the course of furtherance of any business
5.4	GST Registration
5.5	Taxable person
5.6	Made in Malaysia
5.7	Imported Goods and Services
5.8	Taxable period
5.9	Mechanics of GST
5.10	Input Tax

Income Tax Treatment

The explanation of the income tax treatment of GST paid or to be paid as input/output tax commences from paragraph 6.

The following is a summary of the contents of paragraph 6 – 10:

Paragraph # & Heading	Summary (Sections cited refer to sections of the ITA, unless otherwise stated.)
6 – Income Tax Provisions Related to the Goods and Services	<ul style="list-style-type: none"> • Expenses wholly and exclusively incurred in the production of gross income from a source is deductible under S33(1) of the Income Tax Act 1967 (ITA), but this is subject to specific prohibitions under S39(1). • S39(1)(o) and 39(1)(p) of the ITA (effective from YA 2015) address the treatment of GST in relation to the acquisition of goods and services for the purpose of making taxable supplies under the GSTA. • GST paid or to be paid –

Tax	<ul style="list-style-type: none"> - as input tax by a person who is registered under the GSTA and eligible to claim the tax credit, or is liable to be registered but has failed to do so, is not deductible [S39(1)(o)]. - as output tax which is borne by a person who is registered or liable to be registered under the GSTA is not deductible [S39(1)(p)]. • If an adjustment is made by the RMCD upon discovery that a mistake was made in claiming input tax credit (see para. 6.2.1 for examples of such adjustments), S91(6) of the ITA provides that where in a basis period for a YA, an adjustment is made in respect of GST paid or to be paid as input tax under the GSTA, the DGIR may at any time, as may be necessary to give effect to such adjustment, <ul style="list-style-type: none"> - make an assessment or a reduced assessment for the YA to which the adjustment relates, or - if the YA to which the adjustment relates cannot be ascertained, for the YA in which the Director General discovers the adjustment. • If adjustments to output tax is made by RMCD: – <ul style="list-style-type: none"> Para. 6.3 provides examples of some adjustments – (a) which would not have any impact on income tax by virtue of S39(1)(p) of the ITA. (One example is where output tax is assessed by RMCD as output tax declared is understated.) (b) which may give rise to an assessment or additional assessment (e.g. where output tax is assessed by RMCD on output tax attributable to under-declared sales.) <p>(Please refer to paragraphs 6.3.1 and 6.3.2 of the PR for full explanation.)</p>		
7 – Income Tax Treatment on the Expenditure for GST incurred on the Acquisition of Goods and Services	<ul style="list-style-type: none"> • A GST-registered person (“GRP”) who incurs GST on purchases of goods and service for the purpose of making taxable supplies is eligible to claim input tax credit from the RMCD, therefore this GST (input tax) is not part of the cost of the business and is not a deductible expense under S39(1)(o). • For a person engaged in a business of making exempt supplies, GST paid/ to be paid as input tax on the purchase of goods and services cannot be claimed from the RMCD under the GSTA. The input tax is absorbed as a cost of business. Generally, input tax incurred in this case is deductible under S33(1) of the ITA, but deductibility is still subject to the prohibitions of S39(1). This also applies to blocked input tax which is not claimable under the GSTA. (See also para. 7.12.) • It is reiterated that when GST is incurred on purchases used to make an exempt supply, the cost of the purchase or acquisition for business purposes to which GST incurred is attributable (which may be deductible under S33(1)) must be examined to ensure that no prohibition under S39(1) is applicable, and if none, then the GST incurred is deductible. • The following are found under paragraph 7.5 of the PR: <ul style="list-style-type: none"> (i) A flow chart which shows the process of determining income tax deduction for input tax; (ii) An example to illustrate GST treatment and income tax treatment. 		
	<p>The following examples of GST credits and income tax treatment for GRPs making taxable supplies are provided under paragraph 7. (Note: The last column indicates deductibility under the relevant section of the ITA. Please refer to the PR for the explanation for applying the relevant provision.)</p>		
Example #	<table> <tr> <th data-bbox="411 1951 1214 2033">Case Illustrated</th><th data-bbox="1214 1951 1449 2033">Deductible (D) / Not deductible (ND)</th></tr> </table>	Case Illustrated	Deductible (D) / Not deductible (ND)
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7.6	<table> <tr> <td data-bbox="411 2033 1214 2078">1 A GRP makes standard rated taxable supplies</td><td data-bbox="1214 2033 1449 2078">ND [S39(1)(o)]</td></tr> </table>	1 A GRP makes standard rated taxable supplies	ND [S39(1)(o)]
1 A GRP makes standard rated taxable supplies	ND [S39(1)(o)]		

	2	A GRP makes zero-rated taxable supplies	ND [S39(1)(o)]
7.7	3	A GRP fails to claim input tax	ND [S39(1)(o)]
7.8	4	GST credits after a person is liable to register for GST:	
		1.4.2015 – 31.5.2015 (prescribed threshold not achieved)	D [S33(1)]
		On 1.6.2015 (achieved threshold and registered with RMCD)	ND [S39(1)(o)]
7.9	5	Acquisition of goods by a person liable to register for GST but fails to do so	
		1.4.2015 – 31.5.2015 (prescribed threshold not achieved)	D[S33(1)]
		On 1.6.2015 (achieved threshold but failed to register with RMCD)	ND [S39(1)(o)]
7.10	6	A person voluntarily registering for GST	ND [S39(1)(o)]
7.11	<ul style="list-style-type: none"> A mixed supplier (one who makes both taxable and exempt supplies) : <ul style="list-style-type: none"> can claim only the proportion of residual input tax that is attributable to taxable supplies under the GSTA; can claim the full amount of the residual input tax incurred, as well as any GST (input tax) attributable to exempt supply, if the amount of exempt supply fulfils the de minimis rule. (Refer to para. 7.11.2 for the meaning of <i>de minimis</i> rule.) 		
	7	A GRP makes mixed supplies and the <i>de minimis</i> rule for exempt supply is fulfilled. (Shows the computation required to be made to determine whether the <i>de minimis</i> rule is fulfilled.)	ND [S39(1)(o)]
	8	A GRP makes mixed supplies and the <i>de minimis</i> rule is not fulfilled. (Refer to para. 7.11.3 for the explanation relating to the claim for GST (input tax including residual input tax) under the GSTA and the annual adjustment that must be made when the claim involves residual input tax.).	Input tax attributable to exempt supply and the proportion of residual input tax attributable to exempt supply is deductible under S33(1) [subject to the prohibitions under S39(1)] Also subject to the effect of annual adjustment when the actual amount of input tax credit not claimable from RMCD is known.
7.12	Credit in respect of GST on input tax on certain acquisitions of goods and services are specifically prohibited (refer para. 7.12.2 for list) and is referred to as blocked input tax .		Refer also to Appendix 2
Examples of blocked input tax	9	GST incurred by GRP on passenger cars hired for business purposes	D [S33(1)] [subject to the restriction of S39(1)(k)]
	10	GST incurred by GRP on club membership subscriptions	D [S33(1)]
	11	GST incurred by GRP on entertainment provided to a potential customer	ND [does not come within S33(1)]
Examples that do not fall under blocked input tax	12	GST incurred by GRP on entertainment provided to existing clients	ND [S39(1)(o)]
	13	GST incurred by GRP on cars that form part of the stock in trade	ND [S39(1)(o)]
7.13	14	Adjustments are made to input tax credit under the GSTA by RMCD as a result of mistakes in claiming input tax credit	ND [does not come within S33(1)]

		under GSTA	
7.14	15	A simplified tax invoice ("STI") is issued to the GRP (The maximum amount of input tax credit that can be claimed with a STI is only RM30 if the invoice does not have the name and address of the recipient).	The full amount of input tax credit is ND [S39(1)(o)]
8 – Output Tax		If output tax is borne by a GRP or a person liable to be registered under the GSTA on deemed supplies (goods and services supplied for no consideration), this output tax is not deductible under S39(1)(p).	
Example #		Case Illustrated	D / ND
	16	GST (output tax) on lucky draw prize (mini ipad) for customer, borne by a GRP	ND [S39(1)(p)]
	17	GST (output tax) borne by a company on goods purchased by customers during a sales promotion	ND [S39(1)(p)]
9 – Reverse Charge Mechanism for Imported Services		Where services are imported (being a taxable supply if made in Malaysia) for the purpose of any business, the recipient of the supply is required to account for GST on the supply made to him, i.e. GST liability shifts from the supplier to the recipient. This is known as the reverse charge mechanism. Para. 9.1 explains the rules relating to the recipient's liability for output tax and claim for input tax credit under the reverse charge mechanism.	
Example #		Case Illustrated	D / ND
9.2	18	A GRP acquires imported services for making taxable supplies.	ND [S39(1)(p)]
9.3	19	A non-GRP acquires imported services for making mixed supplies.	D [S33(1)]
10 – Other issues related to GST		The issues dealt with are – <ul style="list-style-type: none"> • Claim for bad debt relief from RMCD. (Output tax (paid on debts that have gone bad) that cannot be recovered is not deductible under S34(2).) • Documentation required to be kept to substantiate a claim for IT deduction for input tax incurred but non-claimable under the GSTA. 	
Appendix 1		GST Credits and Income Tax Treatment	
Appendix 2		Blocked Input Tax and Income Tax Treatment	

Members may read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [PR](#) so that we may raise them to the LHDNM.

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