

TO ALL MEMBERS

## TECHNICAL

### Direct Taxation

#### **PUBLIC RULING 3/ 2017 – INCOME TAX TREATMENT OF GOODS AND SERVICES TAX, PART III – EMPLOYEE BENEFITS: GST BORNE BY AN EMPLOYER**

This Public Ruling (PR) is dated 17 July 2017. (Please refer to our [e-CTIM TECH-DT 51/2017](#) dated 28 July 2017.)

#### **Objective** (para. 1)

The objective is to explain the income tax treatment of GST, i.e. output tax accounted for and borne by the employer on goods or services given free as benefits to employees. The relevant provisions of the law are those found in the Income Tax Act 1967 (ITA) and the Goods and Services Tax Act 2014 (GSTA). (Para. 2 of PR.)

The following is a summary of the contents of the PR:

Paragraph # & Heading	Summary (Sections cited refer to sections of the ITA, unless otherwise stated.)
3 - Interpretation	Provides the meanings of words used in this PR. (These words are underlined below.)
4 – Employee Benefits (EB)	Benefits provided by an <u>employer</u> to an <u>employee</u> include the following: (a) Goods or services (G/S) given or provided free of charge; (b) Any rights, privilege, service or facility provided free of charge; (c) G/S provided by an employer or another person on behalf of the employer; and (d) G/S acquired by an employer and given to an employee as <u>employment</u> benefits. The G/S acquired are considered as used for the purposes of the business.
5 – Accounting for <u>Output Tax</u> on Employee Benefits	<ul style="list-style-type: none"> <li>Any EB provided by an employer who is registered or liable to be registered under the GSTA is regarded as a taxable supply. In general a GST registered employer is required to account for output tax on G/S given as EB.</li> <li>An employer has to account for output tax on the provision of goods to an employee (whether given to him or allowed for his temporary private use) even if no consideration is charged (free of charge). Such goods, given as gifts or for temporary private use by employees, are regarded as a deemed supply under the GSTA.</li> <li>However, no output tax need to be accounted for on certain goods given free to employees. These are listed in para. <a href="#">5.1(a) to (g)</a> of this PR. (Please refer.)</li> <li>Services provided free to employees are not regarded as a supply and employers need not account for output tax, except where services are provided for the benefit of sole proprietors, partners, directors of a company or persons connected to the taxable person (employer). For such, output tax must be accounted for based on the open market value of the services provided.</li> </ul>
6 – Income Tax Provisions	<ul style="list-style-type: none"> <li>S13(1A) (effective from YA 2015) provides that employment income under S13(1) (benefits in kind, perquisites or value of living</li> </ul>

Related to the Goods and Services Tax on Employee Benefits	<p>accommodation) will include any output tax under the GSTA which is borne by the employer.</p> <ul style="list-style-type: none"> <li>S39(1)(p) states that GST paid or to be paid as output tax borne by a person who is registered or liable to be registered under the GSTA is not deductible.</li> </ul>	
7 – Tax Treatment	<p>Where an employer provides goods or services free of charge to his employees as an EB, and output tax has to be accounted for, the amount of output tax borne by the employer must be reported in the employee's statement of remuneration (Form EA). This amount forms part of the employment income [under S13(1)] of the employee by virtue of S13(1A). However, it is taxable income only if the respective benefit in kind, perquisite or living accommodation, to which the output tax is attributed, is taxable.</p> <p>(Please also refer to <a href="#">PR No. 3/2005</a> and its <a href="#">Addendum</a>, <a href="#">PR No. 2/2013</a>, and <a href="#">PR No. 3/2013</a>)</p> <p>The following are examples found in the PR wherein the treatment under both the GSTA and ITA are explained. (Please refer to the PR for full details of the treatment under the GSTA and ITA.)</p>	
<b>Example #</b>	<b>Case illustrated</b>	<b>Benefit to be reported in the EA Form*</b>
1	GRP provides own products (zero-rated supplies) as gifts	- market value of benefit (sugar) given (reported in Pt. F as exempt benefit – up to RM1,000 only). Not required to be declared in Pt. B(1)(c) of Form EA.
2	GRP provides own products (standard rated supply) as gifts	- market value of gift (electrical product) given (reported as perquisite)
3	GRP provides own products (standard rated supply) worth more than RM500 in a year as gifts	- market value of gift (home theatre system) given including output tax (reported as perquisite) (Output tax borne by employer on each "gift" given is not deductible under S39(1)(p).)
4	GRP provides own product (exempt supplies) as gifts	- market value of benefit (apartment) given (reported as perquisite) (Employee eligible for exemption of up to RM2,000 under para. 25C of Sch. 6. This amount is to be declared in Pt. F of Form EA, the balance is to be declared as taxable income.)
5	GRP acquires goods from a non-GRP and gives them as gifts	- market value of gift (watch) given as excellent performance award (reported in Pt. F as exempt benefit under para. 25C of Sch. 6 (up to RM2,000 only). Not required to be declared in Pt. B(1)(c) of Form EA.
6	GRP provides free services to connected person (managing director of company)	- value of free services received (together with the output tax borne by the company) by the managing director (Output tax borne by the company is

			not deductible under S39(1)(p))
	7	Unfurnished living accommodation provided to an employee (which relates to exempt supply under the GST (Exempt Supply) Order 2014) by GRP	- value of living accommodation (benefit) (Under S13(1)(c), this is the value of the unfurnished accommodation.)
	* Please refer to the <a href="#">PR</a> for full details of treatment under the GSTA and the ITA.		

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](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any suggestions, concern or comments you may have on the [PR No. 3/2017](#) so that we may raise them to the LHDNM.

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