

e-CTIM No.38/2009

21 August 2009

**TO ALL MEMBERS**

**TECHNICAL**

**Indirect Tax**

**1. Minutes of the Customs-Private Sector Consultative Panel Meeting No. 1/2009**

The Royal Malaysian Customs (RMC) has recently released the minutes of the Customs-Private Sector Consultative Panel Meeting No.1/2009 held on 15 July 2009.

Some of the issues discussed during the meeting were:

- criteria for the approval of public bonded warehouse licence (issue no. 6),
- proposal for on-line payment of service tax (issue no. 12),
- duty payment with the surety of bank guarantee (issue no. 19),
- delay in announcement of the ASEAN tariff reduction (issue no. 25),
- delay in issuance of Customs ruling – service tax (issue no. 26),
- refund of service tax on bad debts (issue no 28),
- review of definition of taxable services in the Second Schedule of the Service Tax Regulations 1975 (issue 29),
- proposal to pay sales tax from the 10<sup>th</sup> to the 15<sup>th</sup> of every month (issue no. 30),
- payment of sales tax by telegraphic transfer (issue no. 31),
- proposal to increase the threshold from RM100,000 to RM 200,000 for the imposition of sales tax (issue no. 35), and
- abuse of licensed manufacturing warehouse (LMW) status (issue no.37).

Members can view the minutes at the Institute's website.

**2. Guidelines on refund of excise duty on returned damaged goods**

Section 28 of the Excise Act 1976 stipulates that no dutiable goods shall be consumed or made use of in, or removed from, a place licensed under Section 20 or from a public excise warehouse or a licensed warehouse or excise control except upon payment of duty thereon or under bond for deposit in another public excise or licensed warehouse or for export to outside Malaysia.

Where dutiable goods are damaged, destroyed or, by unavoidable accident, lost at any time before removal from excise control, the Director General may, pursuant to Section 14(1) of the EA, remit the whole or any part of the excise duty payable thereon.

Locally manufactured goods on which excise duty has been fully settled and these goods have left the customs area cannot claim refund on excise duty paid when they are returned to the factory later due to damage or inferior quality. Pursuant to Section 11(2)(b), the Minister is empowered to consider or approve a refund of excise duty levied on local manufactured goods and impose such conditions as he may deem fit.

The guidelines set out the procedures and conditions for application of such refund. Applicants for refund should submit two sets of applications; one to the Tax Analysis Division of Treasury, and another to the Internal Tax Division of the RMC. Members may view the document issued by the RMC containing the detailed requirements at the Institute's website or at the website of the Royal Malaysian Customs at <http://www.customs.gov.my/documents/Bahagian%20CD/garis%20panduan%20mengenai%20hutang%20lapuk%20dan%20hutang%20ragu%20di%20bawah%20akta%20cukai%20perkhidmatan%20dan%20akta%20cuk.pdf>

### **3. Guidelines on refund of bad and doubtful debts under Service Tax Act 1975 and Sales Tax Act 1972**

Section 31C of Sales Tax Act 1972 stipulates that a person may claim a refund of the sales tax paid in respect of taxable goods if the sales tax has been paid by him on or after 1 January 2003 and the sales tax payable to him has been provided in his accounts as doubtful debt or has been written off in his accounts as bad debt. In addition, the Director General of RMC must be satisfied that all reasonable efforts have been made by such person to recover the sales tax. The refund must be claimed within 6 years from the year in which the sales tax was paid.

The Act defines "bad debts" as the outstanding amount of the payment in respect of the sale of taxable goods including the sales tax which is due to the person but has not been paid to, and is irrecoverable by the person; and "doubtful debts" as a provision made with respect to the outstanding amount in the person's accounts consistent with the generally accepted accounting principles.

Regulation 19D of the Sales Tax Regulations 1972 further stipulates that a payment is deemed to be irrecoverable if the whole or any part of it has been written off in the seller's accounts as bad debt and the purchaser

- a) has been filed for bankruptcy or is an adjudged bankrupt,
- b) has been placed under receivership,
- c) has voluntarily wound up or has been ordered by the court to wound up,
- d) has been filed a claim in court by the seller to recover the payment, or
- e) has not paid for the whole or any part of the payment after 6 months from the date such sales tax was paid.

Section 21B of the Service Tax Act 1975 and Regulation 16A of the Service Tax Regulations 1975 have similar provisions as the above.

The guidelines clarify the following:

- i) Refund is available to person who has ceased to be a taxable person under the following circumstances:
  - a) that the person has ceased to manufacture taxable goods/provide taxable services, or the person has been granted exemption from licensing or the annual sales turnover is below the threshold,
  - b) that the person has manufactured taxable goods/provided taxable services without licence and has paid the tax but was unable to claim back from his clients,
- ii) Proof of reasonable efforts taken to recover the debts:
  - a) For tax owed below RM500, at least 2 registered reminder letters were sent to the debtors;
  - b) For tax owed between RM500 – RM10,000, notice of claims was sent to debtor through a law firm;
  - c) For tax owed above RM10,000, statement of claims against the debtor was filed in the court
- iii) Documents required to facilitate the claim of refund:

- a) Letter of application for refund,
  - b) Prescribed form for claim of service tax/sales tax refund (Form JKED 2),
  - c) Statement of claims,
  - d) Copy of sales invoices
  - e) Form CJP 1 and any documentary evidence that the applicant has paid the relevant tax, such as copy of ledgers, bank statements, receipts, etc.
  - f) Records or document that substantiate reasonable efforts have been taken to recover the debts
  - g) Records to show that the uncollectable tax has been written off in the accounts,
  - h) Declaration by a registered accountant that the amount has been debited as bad debt for claims of refund amounting to RM10,000 and below. For claims of refunds above RM10,000, such a declaration should be made by a certified /chartered accountant.
  - i) Other relevant documentary evidence that the debts are irrecoverable, such as court order that the debtor is declared bankrupt or is under receivership or liquidation, court paper for applicant who has filed a notice claim in the court, board of directors resolution for voluntary winding up, etc.
- iv) An application for refund should be made for each debtor. In view that the number of customers is huge for the telecommunications industry but the amount of each debt is small, the applicant may apply to the Director General of RMC for special treatment in respect of individual accounts.
- v) Where the application for special treatment is approved, the following actions are considered as reasonable efforts taken to recover these debts:
- a) sending reminder letters
  - b) reminding the customer through Interactive Voice Reminder,
  - c) suspending the service to customer temporarily (Temporary Out-of-Service),
  - d) calling or meeting the customer to recover the debts,
  - e) terminating the service to the customer and send the final bill.

Members who wish to know the detailed requirements may view the document at the Institute's website or at the website of the RMC at

<http://www.customs.gov.my/documents/Bahagian%20CD/garis%20panduan%20mengenai%20hutang%20lapuk%20dan%20hutang%20ragu%20di%20bawah%20akta%20cukai%20perkhidmatan%20dan%20akta%20cuk.pdf>

## **Stamp duty**

### **4. Stamp duty on construction contract instruments**

With effect from 1 January 2009, service agreement instruments including construction contracts are subject to stamp duty at the ad valorem rate of RM5 for every RM1,000 or part thereof. In view that construction projects generally involve multiple tiers multiple levels of stamp duty at ad valorem rate are levied on the same project. The Ministry of Finance (MOF) has reviewed the situation and in exercising his powers under Section 80(2) of the Stamp Act 1949 has agreed and issued the following guideline:

- i) For contracts awarded by the Government where the agreement is signed between the Government and the principal contractor, the contract is exempted from stamp duty. Stamp duty at ad valorem rate will be levied on second level contracts (i.e. contracts between the principal contractor and the sub-contractors). Stamp duty for contracts at the third and subsequent levels will be fixed at RM50.00, and any stamp duty paid in excess will be remitted.
- ii) For contracts awarded by any party other than the Government; stamp duty at ad valorem rate will be levied on the contract between such party and principal contractor.

Stamp duty for contracts at the second and subsequent levels will be fixed at RM50.00, and any stamp duty paid in excess will be remitted.

- iii) For projects that are cancelled by the parties who had offered the contracts, and stamp duty for all such contract had been paid, only the stamp duty at the ad valorem rate will be refunded. Stamp duty at the fixed rate of RM50.00 will not be refunded.

The remission of stamp duty is effective from 15 July 2009. In view that the remission order cannot be gazetted immediately, approval of remission stamp duty meanwhile will be given under Section 80(1A) of Stamp Act 1949 on a case by case basis.

Members may view the guidelines at the Institute's website or at the MOF's website at [http://www.treasury.gov.my/index.php?option=com\\_content&view=category&id=83&Itemid=196&lang=my](http://www.treasury.gov.my/index.php?option=com_content&view=category&id=83&Itemid=196&lang=my) <[http://pull.xmr3.com/p/21562-494044-8BDB/81865455/clickto2\\_gory-id=83-Itemid=196-lang=my.html](http://pull.xmr3.com/p/21562-494044-8BDB/81865455/clickto2_gory-id=83-Itemid=196-lang=my.html)>

## **5. Change of revenue stamps**

The Stamp Office has recently informed that beginning from 31 July 2009, the old revenue stamps cannot be used. Members of the public may exchange the old revenue stamps with the new ones from 1 August 2009 till 31 December 2009 at Stamp Offices or service centres in the branches of Inland Revenue Board.

## **Direct Tax**

### **6. Income Tax (Deduction for Cost of Training for Employees) Rules 2009 [P.U.(A) 261/2009]**

Effective from year of assessment 2009 until year of assessment 2012, the cost of the following training incurred by a person for the purposes of upgrading and developing the technical skills of his employees shall be allowed a deduction in addition to any deduction allowable under Section 33 of the Income Tax Act 1967 (the Act).

The eligible training are training approved by the Minister and under the programme of

- (a) post graduate course in information technology and communication, electronics or life sciences;
- (b) post basic course in nursing or allied healthcare; or
- (c) aircraft maintenance engineering course.

The Rules shall not apply to person who has made a claim to HRDF.

### **7. Income Tax (Exemption) (No.3) Order 2009 [P.U.(A) 262/2009]**

Effective from 30 August 2008 until 31 December 2012, income received by a non-resident person under Section 4A(ii) of the Act in relation to the following training conducted by him for the purpose of upgrading and developing the technical skills of any employee of a person resident in Malaysia, shall be exempt and Section 109B of the Act shall not apply.

The eligible training are training approved by the Minister and under the programme of

- (a) post graduate course in information technology and communication, electronics or life sciences;
- (b) post basic course in nursing or allied healthcare; or
- (c) aircraft maintenance engineering course.

## **PUBLICATION**

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