COMMENTS ON PROPOSED AMENDMENTS TO GOODS AND SERVICES TAX BILL 2009

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Prepared by

TECHNICAL COMMITTEE -- INDIRECT TAX (TC-IT)

Unit B-13-2, Block B, 13th Floor, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990 Email: secretariat@ctim.org.my

COMMENTS ON PROPOSED AMENDMENTS TO GOODS AND SERVICES TAX (GST) BILL 2009

No.	Current Provision	Proposal	Rationale
1.	**Clause 2** **Interpretation** New provision.	"person" includes individual, corporation, Federal Government, State Government, statutory body, local authority, society, trade union, co-operative society, joint venture, trust, partnership and any other body, organization, association or group of persons, whether corporate or unincorporated;	It is important to define the meaning of "person" so that the meaning of "person" becomes clear. **CTIM comments:** **We are of the view that the proposed definition is too wide. For the purpose of clarity, it is suggested that the definition be more specific. For example, the draft bill restricts joint venture (JV) to JV in petroleum related activity. The amendment appears to bring all other JVs, trusts and unincorporated bodies into the scope. This may create issues if entities or persons including those not necessarily recognized by law are entitled to GST registration. In the UK, trusts (other than trust fund) eg. family trust, are generally excluded from the scope of GST.**
2.	**Clause 13** **Imported services** New provision	(5) Notwithstanding subsection (1), where goods are imported into Malaysia under a lease agreement from a person who does not belong to Malaysia, tax shall be charged on the goods.	The amendment is to be consistent with the Customs Act 1967 on the treatment of leased goods imported into Malaysia. Hence, the supply of imported services does not apply to leased goods from foreign parties. GST shall be charged on the importation of leased goods into Malaysia **CTIM comments:** **Para 1(1)(b) of First Schedule to GST Bill 2009 stipulates that the transfer of the possession of**

Unit B-13-2, Block B, 13th Floor, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990 / 2161 3207 Email: secretariat@ctim.org.my

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			goods is a supply of services. We are of the view that the imported leased goods are only taxed on importation as goods and subsequent lease payments should not be treated as import of services under Para 1(1)(b) and subject to reverse charge under Clause 13(1). **We propose that First Schedule subparagraph 1(1)(b) be amended such that imported leased goods under Clause 13(1) are excluded from the scope of deemed supply of services under subparagraph 1(1)(b) to avoid double tax. Where the leased goods does not come into Malaysia, the deemed service provision may apply.**
3.	**Clause 15** **Value of Supply** (3) Where the supply is for a consideration not in money, the value of the supply shall be taken to be the open market value of that consideration (5) Where the supply is not for a consideration, the value of the supply shall be taken to be the open market value of that supply.	(3) Where the supply is for a consideration not in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that consideration. (5) Where the supply is not for a consideration, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that supply.	The amendment clarifies the meaning of value of supply to be the open market value less tax and not the open market value. **CTIM is of the view that for the purpose of clarity, the "tax" needs to be specified. Alternatively, the word "tax chargeable" be replaced by the phrase "any tax chargeable under any Malaysian law except excise duty".**

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	(7) For the purposes of this section, the value of the supply of goods shall include excise duty paid or is to be paid where applicable.	(7) For the purposes of this section, the value of the supply of goods or services shall include excise duty paid or is to be paid where applicable.	The word "services" is inserted so that the value of supply of services will not include other duty/tax such as entertainment duty, stamp duty or gaming tax. **CTIM comments:** **We are of the view that the value of the supply of services should not include excise duty as excise duty applies to only goods. The inclusion of the word "service" should not be required.** **Since this provision is to disallow the inclusion of other duty /tax, it may be preferable to exclude other duty/tax under a different law with exception of excise duty.**
4.	**Clause 17** **Zero-rated supply** (9) Where any goods specified in the order made under subsection (4) are imported into Malaysia, no tax shall be chargeable on their importation.	~~(9) Where any goods specified in the order made under subsection (4) are imported into Malaysia, no tax shall be chargeable on their importation.~~	With the deletion, any person importing selected goods which are zero-rated will be granted relief from paying GST under clause 57 when the goods are imported into Malaysia. **CTIM comments:** **CTIM would like to seek further clarification from Royal Malaysian Customs (RMC) on the background and rationale of the amendment. CTIM is of the view that unless the government intends to have a separate list of zero-rated items for imported goods, the amendment appears to be redundant.** **If there is a separate list on zero rated items for**

Unit B-13-2, Block B, 13th Floor, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
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			imported goods that are given relief, RMC should ensure that the list is not different from the local zero rated goods. Otherwise, Malaysia's trading partners may object to the move which can be seen to be discriminatory in nature. If for example, local rice is zero rated but rice imported from Thailand is not.
5.	**Clause 18** **Exempt supply** (7) Where any goods specified in the order made under subsection (2) are imported into Malaysia, no tax shall be chargeable on their importation.	~~(7) Where any goods specified in the order made under subsection (2) are imported into Malaysia, no tax shall be chargeable on their importation.~~	With the deletion, any person importing exempt goods will be granted relief from paying GST under clause 57 when the exempt goods are imported into Malaysia. **CTIM comments:** **Same as comments in item 6.**

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6.	**Clause 19** **Registration of taxable person** New provision	(3) This part shall not apply to any person who--- *(a)* has no business establishment or other fixed establishment in Malaysia; *(b)* has no such establishment in any country and his usual place of residence is not in Malaysia; or *(c)* has such establishment both in Malaysia and elsewhere and his establishment which is most directly concerned with the supply is not in Malaysia, and for the purposes of paragraphs *(a)*, *(b)* and *(c)*, a fixed establishment in Malaysia or in any country includes a branch or an agency through which a person carries on a business in Malaysia or in that country, as the case may be.	It is a policy decision not to register a person who does not belong in Malaysia under the GST law. **CTIM comments:** **This policy decision appears to differ from other established international GST jurisdictions eg. Singapore, Australia and UK, where non-resident companies can register for GST. We are concerned that this policy may hinder Malaysia from becoming an attractive international business hub. This is because if non-resident companies incurring GST in Malaysia cannot be registered to claim input tax credit they may consider operating from other countries who do allow registration for non-resident companies.**

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	Clause 37 **Accounting Basis** (2) Notwithstanding subsection (1), the Director General may, upon application in writing by any registered person and subject to the prescribed conditions, approve the registered person to account for tax solely on a payment basis.	(2) Notwithstanding subsection (1), the Director General may, upon application in writing by any registered person and subject to the prescribed conditions, approve the registered person to account for tax ~~solely~~ on a payment basis.	With the deletion, accounting for GST is not solely to be based on payment basis. There are some exceptions on leasing and other transactions where accounting for GST is based on invoice basis. **CTIM comments:** **This would introduce a hybrid accounting method for GST which would cause complications.**
7.	**Clause 38** **Credit for input tax against output tax** New provision	(13) Notwithstanding any provision of this Act, where any taxable person fails to comply with subsection 21(1) or 21(3) — *(a)* no refund shall be made under subsection (3) if the amount of credit exceeds the output tax for the period he should have been registered; or	With the new provision, it will discourage any person from late registration. **CTIM comments:** **Sub-section 13(a) – We would like to clarify in a situation where the taxable person is in a constant refund position (e.g. export business), does this mean that although it would not be entitled to any GST cash refund, it would still be allowed to offset**

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		(b) the taxable person shall not be entitled to any credit of input tax under subsection (1) if he fails to include such credit in the return referred to in paragraph 41(2)*(a)*.	**this against other GST payments?** **Sub-section 13(b) refers to "paragraph" 41(2)(a). We would like to confirm that it should be refer to "section" instead.** **We appreciate that the purpose of the new provision is to discourage any person from late registration. However, the law would appear to be too harsh if genuine cases of late registration and late claims have no avenue for claiming any input tax credit. We propose this clause be reviewed so that it does not unduly penalize the taxable person.** **CTIM would also like to clarify whether there would still be an avenue for a taxable person to file an amended or corrected GST returns after filing the GST return?**
8.	**Clause 47** **Recovery of tax, etc as a civil debt** (1) Without prejudice to any other remedy and notwithstanding any appeal against any decision of the Director General under section 132, any tax due and payable, any penalty payable and any surcharge accruing under this Act may be recovered by the Minister as a civil debt	(1) Without prejudice to any other remedy and notwithstanding any appeal against any decision of the Director General under section 132, any tax due and payable, any penalty payable ~~and~~ any surcharge accruing, any fee or any other moneys payable under this Act may be recovered by the Minister as a civil debt due to the Government.	The insertion enables Customs to recover costs incurred by Customs such as fee charged by a consultant or other professionals including travelling and accommodation costs in respect of an advance ruling made. **CTIM comments:** In subsection (1) of this provision, there appears to be a typo due to the non-inclusion of a comma "," after the cancellation of the word "and". Kindly review whether it

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	due to the Government. (4) In any proceedings to recover the tax, penalty or surcharge under subsection (1), the production of a certificate signed by the Director General that any tax, penalty or surcharge and the amount shown thereof as due in any return, assessment or notice made under this Act from a person named therein and giving the address of the person and purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of the assessment and shall be sufficient authority for the court to give judgment for that amount. (5) Any penalty or surcharge imposed under this Act shall, for the purposes of this Act and the Limitation Act 1953 [*Act 254*], the Limitation Ordinance of Sabah [*Sabah Cap. 72*] and the Limitation Ordinance of Sarawak [*Sarawak Cap. 49*], as the case may be, be recoverable as if it	(4) In any proceedings to recover the tax, penalty, ~~or~~ surcharge, fee or other moneys under subsection (1), the production of a certificate signed by the Director General that any tax, penalty, ~~or~~ surcharge, fee or other moneys and the amount shown thereof as due in any return, assessment or notice made under this Act from a person named therein and giving the address of the person and purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of the assessment and shall be sufficient authority for the court to give judgment for that amount. (5) Any penalty ~~or~~ surcharge, fee or other moneys imposed under this Act shall, for the purposes of this Act and the Limitation Act 1953 [*Act 254*], the Limitation Ordinance of Sabah [*Sabah Cap. 72*] and the Limitation Ordinance of Sarawak [*Sarawak Cap. 49*], as the case may be, be recoverable as if it were tax due and payable under this Act and accordingly subsection 6(4) of the Limitation Act 1953,	is intentional that the phrase "any fee or any other moneys payable" is inconsistent with other parts of this Section which states "fee or other moneys". Section 47 relates to **recovery of tax** which includes penalty, surcharge or any other money. However, the intention of the amendment appears to be to **recover consultant or professional charges in respect of advance rulings.** CTIM would like to seek further clarification on the rationale of the amendment. CTIM is of the view that ideally **equal treatment should be granted to taxpayers,** otherwise the provision would discourage appeals. It would be more equitable to let the Court/ Tribunal decide a fair allocation of the costs. The provision also appears to exclude the power of review by the Court. . There is a typo at subsection (5); there are no commas "," after the cancellation of the words "or".

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	were tax due and payable under this Act and accordingly subsection 6(4) of the Limitation Act 1953, section 3 of the Limitation Ordinance of Sabah and section 3 of the Limitation Ordinance of Sarawak, as the case may be, shall not apply to the penalty or surcharge.	section 3 of the Limitation Ordinance of Sabah and section 3 of the Limitation Ordinance of Sarawak, as the case may be, shall not apply to the penalty ~~or~~ surcharge, fee or other moneys.	
9.	**Clause 59** **Bad debt relief** (2) Where the person referred to in subsection (1)— *(a)* has not received any payment in respect of the taxable supply, the person may make a deduction or claim for the whole of the tax paid; or *(b)* has received part of the payment in respect of the taxable supply, the person may make a deduction or claim for an amount calculated in accordance with the following formula:	(2) Where the person referred to in subsection (1)— *(a)* has not received any payment in respect of the taxable supply, the person may make a ~~deduction or~~ claim for the whole of the tax paid; or *(b)* has received part of the payment in respect of the taxable supply, the person may make a ~~deduction or~~ claim for an amount calculated in accordance with the following formula:	The word "deduction" is deleted because a claimant can only make a claim for his bad debt. He cannot make a deduction. **CTIM comments:** **CTIM would like to confirm if this means that the claim for bad debt relief would be treated as an input tax credit rather than a deduction against output tax in the GST return.**

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10.	**Clause 71** **Warehousing scheme** (7) For the purposes of this section— *(a)* *(b)* *(c)* *(d)* *(e)* *(f)* *(g)* "warehouse" means —	(7) For the purposes of this section— *(a)* *(b)* *(c)* *(d)* *(e)* *(f)* *(fa)*"petroleum supply base" means a supply base approved by the Minister and licensed as a supply base under the Customs Act 1967 to supply goods and services specifically to the petroleum	With the amendments any petroleum supply base can be treated as warehouse that can be subject to the warehousing scheme. **CTIM comments:** **We propose consideration to be given for corresponding amendments to be made to the Customs Act or Free Zone Act.** **New proposal:** **Clause 71(4)** **Consideration to be given to remove last sentence or add in similar para in Customs Act 1967 "…***or any other warehouse approved by the Director General until all warehouse rent and other charges due in*

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	(i) any customs warehouse; (ii) any licensed warehouse; (iii) any duty free shop; (iv) any inland clearance depot.	upstream industry. *(g)* "warehouse" means — (i) any customs warehouse; (ii) any licensed warehouse; (iii) any duty free shop; (iv) any inland clearance depot; (v) any petroleum supply base.	*respect thereof have been paid"*

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11.	**Clause 78** **Advance ruling** New provision	(5) The Director General may, at any time, withdraw any advance ruling made under subsection (1) by giving a notice in writing of such withdrawal to the person to whom the ruling applies.	The amendment provides an enabling provision in the Act to allow the Director General to withdraw any issued advance ruling. **CTIM comments:** **We propose consideration to be given to provide clarity on the effective date for the withdrawal of the ruling and to ensure there is adequate notice of withdrawal and a proper cut-off. Any withdrawal should not be retrospective. In addition, the reason of withdrawal should be indicated in the notice of withdrawal.**
12.	**Clause 132** **Right of appeal** (2) The appeal shall be made to the Tribunal within thirty days from the date the disputed decision was made known to the aggrieved person in the prescribed form together with the prescribed fee. New Provision	(2) The appeal shall be made to the Tribunal within thirty days from the date the disputed decision was made known to the aggrieved person or within any such extension of time that may be granted by the Tribunal. (2A) An appeal under subsection (2) shall be made in such manner and form as the Tribunal may determine together with a prescribed fee.	The amendment allows the Tribunal to grant an extension of time for an application to appeal. **CTIM would like to seek confirmation on the following:** **Where there is a dispute on GST between the RMC and the taxable person, the taxable person may appeal to the DG of Customs and Excise for a review under Section 130. If the taxable person disputes with the DC's review, he may then appeal under Section 132(2) to the Customs Appeal Tribunal (CAT) within thirty days from the date the RMC's decision (made under Section 130) was made known to him.** The amendment proposes to include the form and

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			manner to make application for an appeal.
13.	**Clause 162** **Supply of goods or services within or between designated area** (1) For the purposes of this Act, a taxable supply made within or between the designated areas are disregarded for tax purposes with respect to accounting for output tax. (2) Notwithstanding subsection (1), tax shall be charged by any taxable person on any supply of freight services between designated areas.	Notwithstanding section 9, no tax shall be charged on any taxable supply made within or between the designated areas unless the Minister otherwise directs in an order under section 167. Delete subclause (2).	It is a policy decision that no tax should be charged on supplies made within or between designated areas. The supplies made should not be disregarded. **CTIM would like to seek confirmation that the treatment of taxable supply made within or between the designated areas are similar that of out of scope supply.** Subclause (2) is deleted because any supply of freight services will be subjected to tax and listed in the Designated Area Order.
14	**Clause 174 Tax Agent** (1) No person shall be permitted to act in Malaysia on behalf of any person for any matter under this Act unless he is a tax agent. (2) Any person may apply for an approval to be a tax agent to the Minister if— *(a)* in the case of an individual,	(1) No person shall be permitted to act in Malaysia on behalf of any person for any matter under this Act unless he is a tax agent provided that this subsection shall not prevent any other person to represent any party to an appeal under section 147. (2) An individual who has his usual place of residence in Malaysia may apply to the Minister for approval to be a tax agent in accordance with the prescribed conditions.	The amendment allows a solicitor or tax agent to represent a person at a hearing of an appeal before a Tribunal. The amendment disallows a company to be a tax agent.

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	he has his usual place of residence in Malaysia; or *(b)* in the case of a company, a firm, a society, an association or other body of persons, it is incorporated or otherwise legally constituted in Malaysia. (3) The Minister may approve an application under subsection (2) and if it is approved, the approval shall, unless sooner revoked, be valid for a minimum period of twenty-four months beginning from the date of the approval.	(3) The Minister may approve an application under subsection (2) and if it is approved, the approval shall, unless sooner revoked, be valid for--- *(a)* a minimum period of twenty-four months beginning from the date of the approval; or *(b)* any other period as may be determined by the Minister.	**CTIM would like to recommend that subsections (2) and (3) are made consistent with the requirements Section 153 of the Income Tax Act 1967.** The amendment allows the Minister to approve any other period if the tax agent's application is approved.

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15.	**Clause 184** **Payment of sales tax when person not registered** (1) Notwithstanding subsection 182(1), any person who is licensed under the Sales Tax Act 1972 and is not registered under this Act shall be required to account and pay for sales tax on the goods held on hand on the appointed date— *(a)* which are acquired free from sales tax under section 9 of the Sales Tax Act 1972; or *(b)* where a deduction of sales tax has been made for goods purchased under section 31a of the Sales Tax Act 1972. (2) The person referred to in subsection (1) is not required to account for sales tax on the finished and semi finished goods held on the appointed date	1) Notwithstanding subsection 182(1), any person who is licensed under the Sales Tax Act 1972 and is not registered under this Act shall be required to account and pay for sales tax on the goods held on hand on the appointed date— (*1*) which is exempted from sales tax under section 10 of the Sales Tax Act 1972; *(a)* which are acquired free from sales tax under section 9 of the Sales Tax Act 1972; or *(b)* where a deduction of sales tax has been made for goods purchased under section 31a of the Sales Tax Act 1972. (2) The person referred to in subsection (1) shall be required to account for sales tax on the finished and semi finished goods held on the appointed date	The amendment is to require a sales tax licensee who is not registered for GST to pay sales tax on goods acquired free from sales tax under section 10 of the Sales Tax Act 1972. Sales tax licensees who are not registered for GST is required to account for sales tax on the finished and semi-finished goods in the return for the last taxable period. Similar provision under the Sales Tax Act 1972 when ceased to be a sales tax licensee. **CTIM comments:** **Currently, exempted equipment disposed off after more than 10 years are not subject to duty/tax. We propose consideration to be given in extending the same concession for GST.** **The work-in-progress (WIP) comprises goods at different stages of production and there may not have open market value for each of the semi-finished products. For ease of administration and compliance, CTIM would like to suggest that the basis of valuation acceptable by the RMC for semi-**

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			finished goods be made public.
16.	**Clause 191** **Contract with no opportunity to review** (2) Where a supply is made before the earlier of the following, that is— *(a)* five years …..; or *(b)* when …….: Provided that— (A) the supplier and recipient of the supply are registered persons; and (B) the supply is a taxable supply;	(2) Where a supply is made before the earlier of the following, that is— *(a)* five years …..; or *(b)* when …….: Provided that— (A) the supplier and recipient of the supply	The amendment is to provide another condition where the provisions under this clause are only applicable when the recipient of the supply is entitled to a credit for the whole of the tax on the supply. **CTIM comments:** **With the new condition, all partially exempt businesses will not enjoy this concession. Effectively, the onus is on the supplier of the goods or services. While the supplier is able to verify conditions (A) and (B) without consulting the customer, condition (C) would require the supplier to verify with its customers whether they are partially exempt.** **CTIM is of the view that this may pose a compliance difficulty to the taxable person. It would be time consuming and practically difficult, particularly in the following situations:** **(i) If the contracts are voluminous, then there will**

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		are registered persons; and (B) the supply is a taxable supply; and (C) the recipient of the supply is entitled to credit under section 38 for the whole of the tax on the supply.	**be additional administrative burden to verify with each and every customer their partial exemption status** **(ii) Even if (i) is possible, the partial exempt status of the customer may change over the time. It would appear to be too burdensome for the supplier to check on the status with the customer each and every time a supply is made during the non-reviewable contract period.** **In view that GST is not meant to impose additional costs or burden on businesses, CTIM proposes that the amendment be deleted.**
17.	**Clause 194** **Refund of sales tax for goods held on hand** (1) Subject to subsection (3), a person is entitled to a special refund equal to the amount of sales tax in respect of the goods held on hand subject to the following conditions: *(a)* the claimant …..; *(b)* the claimant ……; *(c)* the goods are taxable under the Sales Tax Act 1972 and the sales tax has been charged or paid; and *(d)* the claimant ……..	(1) Subject to subsection (3), a person is entitled to a special refund equal to the amount of sales tax in respect of the goods held on hand subject to the following conditions: *(a)* the claimant …..; *(b)* the claimant ……; *(c)* the goods are taxable under the Sales Tax Act 1972 and the sales tax has been	The word “charged” is deleted because a person is entitled to a special refund if he has paid sales tax.

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	(2) In the case where— *(a)* the goods ……; *(b)* the goods …..; and *(c)* the invoice ……, he is entitled to a special refund equal to twenty percent of the amount shown on the invoice multiplied by the applicable sales tax rate subject to the following conditions: (A) the claimant is a registered person under section 20 as at the appointed date; and (B) the claimant on the appointed date holds goods for the purposes of making a taxable supply. (3) Where the claimant is entitled to a special refund under subsection (1) and the sales tax he has been charged is unpaid to the supplier at the end of the period of six months from the date of invoice, he shall repay the amount as his output tax in	~~charged~~ or paid by the claimant; and *(d)* the claimant …….. (2) In the case where— *(a)* the goods ……; *(b)* the goods …..; and *(c)* the invoice ……, he is entitled to a special refund equal to twenty percent ~~of the amount shown on the invoice~~ of the invoiced value of the goods he holds on the appointed date multiplied by the applicable sales tax rate subject to the following conditions: (A) the claimant is a registered person under section 20 as at the appointed date; and (B) the claimant on the appointed date holds goods for the purposes of making a taxable supply; and (C) the claimant has paid the amount due as shown on the invoice. (3) Where a claim for special refund has been made under subsection (1) and subsequently the claimant returns the goods to the licensed manufacturer or	The amendment prevents a taxable person from benefitting special refund to more than the person's entitlement. **CTIM comments:** **Item (C) should be "invoiced value" of the goods as the invoice may contain amount other than for sale of taxable goods.** The requirement to repay tax at the end of six months from the date of invoice if the claimant has not paid the sales is deleted because a person is not entitled to a special refund if he has not paid sales tax. A new subclause (3) is inserted to require the claimant who has claimed the special refund and subsequently return

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	the return for taxable period following the end of the six months period. 4) The special refund shall not apply to— *(a)* goods which ……; *(b)* goods which ……; *(c)* goods held ……..; *(d)* goods on which sales tax has been paid under the Sales Tax Act 1972 before the appointed date and subsequently to be exported after the appointed date where a claim for drawback on the sales tax paid is to be made under section 29 of the same Act.	supplier, he shall account the amount of special refund as his output tax. (4) The special refund shall not apply to— *(a)* goods which ……; *(b)* goods which ……; *(c)* goods held ……..; *(d)* goods on which sales tax has been paid under the Sales Tax Act 1972 before the appointed date and subsequently to be	the goods to account the special refund as his output tax. **CTIM comments:** **For clarity purpose, CTIM suggest that Customs to reconsider the wordings 'return' as it may be misinterpreted to include returns for re-worked or repair.** The amendment corrects the situation for special refund not to apply on goods on which sales tax has been paid and subsequently exported on the appointed date where drawback has yet to be made. Special refund is also not allowed on goods where the claimant is allowed to claim sales tax deduction under section 31A of the Sales tax Act 1972. **CTIM comments:** **We propose Customs to consider amending as follows:** ***(e)* goods on which the claimant *has claimed* sales tax deduction under section 31A of the Sales Tax Act 1972**

Unit B-13-2, Block B, 13th Floor, Megan Avenue II, No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: +603-2162 8989 Fax: +603-2162 8990 Email: secretariat@ctim.org.my

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		exported on or after the appointed date where a claim for drawback on the sales tax paid is to be made under section 29 of the same Act; *(e)* goods on which the claimant is allowed to claim sales tax deduction under section 31A of the Sales Tax Act 1972.	
18.	**Clause 195** **Claim for special refund** (1) Any claim for a special refund under section 194 shall be notified to the officer of goods and services tax in a form as may be determined by the Director General not later than six months from the appointed date.	(1) Any person who is entitled to a special refund under section 194 shall only be eligible to make one claim and such claim shall be made in a form as may be determined by the Director General not later than six months from the appointed date.	It is a policy decision to allow only one claim for special refund. **CTIM comments:** **We are of the view that taxpayers should be allowed a reasonable time period to make the claim with unlimited amount of claims.**
19.	**Clause 196** **Offsetting unpaid sales tax or penalty against special refund** Notwithstanding any provision of this Act or any other written law, where any person has failed to pay, in whole or in part, any amount of sales tax due and payable or penalty payable under the Sales Tax Act 1972 (referred to as unpaid tax in this section), the Director General may	Notwithstanding any provision of this Act or any other written law, where any person has failed to pay, in whole or in part, any amount of sales tax due and payable or penalty payable under the Sales Tax Act 1972 (referred to as unpaid tax in this section), the Director General may set off, against that unpaid tax ~~or penalty~~, any	The amendments are to avoid redundancies and to include situation where set off is made for a part of the unpaid sales tax. **CTIM comments:** **We propose to also delete from the title the word**

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Tel: +603-2162 8989 Fax: +603-2162 8990 Email: secretariat@ctim.org.my

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	set off, against that unpaid tax or penalty, any amount or any part of any special refund to that person under this Act and shall treat any amount set off as payment received from that person	amount or any part of any special refund to that person under this Act and shall treat any amount set off as payment or part payment received from that person.	**"penalty" to be consistent with the paragraph.** Notwithstanding …, in whole or in part, any amount of sales tax due and payable or ~~penalty~~
20.	**Clause 197** **Adjustment for sales tax deduction made under section 31B of Sales Tax Act 1972** (1) Where a manufacturer who has been licensed under the Sales Tax Act 1972 is eligible to deduct sales tax under section 31b of the same Act and regulation 19c of the Sales Tax Regulations 1972 [*P.U. (A) 55/1972*], the amount of sales tax paid may be counted as his input tax provided that he is registered under this Act. (2) Where a purchaser who is registered under this Act has claimed a special refund for goods held on	**Clause 197** **Taxable goods purchased before appointed date and returned on or after appointed date** Where --- *(a)* a manufacturer who has been licensed under the Sales Tax Act 1972 sold taxable goods on which sales tax has been paid before the appointed date to a customer; and *(b)* a customer subsequently returns the same goods to the licensed manufacturer on or after the appointed date and within three months from the date of sale, the amount of sales tax refunded by the licensed manufacturer may be treated as his input tax provided that he is registered under this Act. Delete subclause (2)	The amendment allows sales tax licensee who is registered under GST to claim input tax on the amount of sales tax refund on goods sold before the appointed date and subsequently returned during the GST period. **CTIM comments:** **The original provision is wider to cover section 19c. However, the proposed changes restrict to only goods returned. Please clarify if this is the intention.** Subclause (2) is deleted because it is transferred to subclause 194(3).

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	hand and subsequently returns the goods to the licensed manufacturer, he shall account the amount of special refund as his output tax.		
21.	New provision	**Clause 197A** **Taxable service provided before appointed date and terminated on or after appointed date** Where --- *(a)* a supplier who is licensed under the Service tax Act 1975 makes a taxable supply of services which spans the appointed date or begins on or after the appointed date; *(b)* service tax on such supply of services has been paid before the appointed date; and *(c)* a customer subsequently terminates such supply of services on or after the appointed date, the amount of service tax refunded by the service tax licensee may be treated as his input tax provided that he is registered under this Act.	The new provision provides similar tax treatment for contra system under services tax as provided for under the sales tax deduction. **CTIM comments:** **We are of the view that consideration is to be given for the provision to allow all circumstances as provided under section 21A of the Service Tax Act 1975.**

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Tel: +603-2162 8989 Fax: +603-2162 8990 Email: secretariat@ctim.org.my

COMMENTS ON PROPOSED AMENDMENTS TO GOODS AND SERVICES TAX (GST) BILL 2009

No.	Current Provision	Proposal	Rationale
22.	**First Schedule - Paragraph 1(3) Transfer** (3) In the case of land, the alienation, transfer or surrender under title is a supply of goods.	(3) In the case of land, the alienation, transfer or surrender under title is a supply of goods including any transfer which stipulates that the property will pass at some time in the future.	The amendment proposes to include cases where the title of land is passed at some time in the future to be regarded as a supply of goods **CTIM Comments:** **CTIM would like to seek confirmation that the phrase "*the property will pass*" means "*the legal title will pass*". It is suggested that for the purpose of clarity, CTIM suggests that the phrase be amended as "*the legal title of the property will pass*" for greater clarity.**
23.	**First Schedule - Paragraph 2** **Treatment or Process** 2. The production of goods by applying a treatment or process to another person's goods is a supply of services.	2. Any treatment or process which is being applied to another person's goods is a supply of services	The amendment is to do away with the requirement to produce new goods in order for the supply to be treated as a supply of services when any treatment or process is being applied to another person's goods. **CTIM comments:** **We are of the view that the proposed amendment does not give the clarity as is the original provision.**
234.	**First schedule – Paragraph 4** **Transfer of business assets** (6) Where tax charged on any goods which is excluded from any credit	(6) Notwithstanding paragraph 1, where a taxable person who is in the business of making a taxable supply of goods has	The amendment clarifies the situation where a supply will be treated as a supply of goods if there is a change of use in the goods. The change of use occurs when

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	under subsection 38(12) and a taxable person is making a taxable supply of the goods, any use of the goods by him in the course or furtherance of the business shall be treated as a supply of goods. (9) Subparagraph (8) does not apply to any goods where the person who ceases to be a taxable person can show to the satisfaction of the Director General— *(a)* that no credit for input tax in respect of the supply or importation of the goods has been allowed to him; and *(b)* that the goods were not acquired by him as part of the assets of a business which was transferred to him as a going concern by another taxable person.	claimed input tax under section 38 and there is a change of use of such goods which results in the goods being excluded from any credit under subsection 38(12), the use of such goods by him, whether for a consideration or not, shall be treated as a supply of goods. ~~(9) Subparagraph (8) does not apply to any goods where the person who ceases to be a taxable person can show to the satisfaction of the Director General—~~ ~~*(a)* that no credit for input tax in respect of the supply or importation of the goods has been allowed to him; and~~ ~~*(b)* that the goods were not acquired by him as part of the assets of a business which was transferred to him as a going concern by another taxable person.~~	input tax has been claimed because the goods are intended for making taxable supplies and subsequently the goods are used for which input tax are excluded from any credit. **CTIM comments:** **Subpara (8) should also be amended since (9) is deleted.** **We suggest Customs to provide rationale for deleting (9).**
25.	**First Schedule – Paragraph (5)** **Supply of services to connected persons** Where a supply of services is made not for a consideration by a taxable	Subject to subparagraph 4(3), where a supply of services is made not for a consideration by a taxable person to a connected person as referred to in the Third Schedule not being an employee and the connected person is not entitled to a credit	The amendment clarifies that any private use of business asset for no consideration is a supply of services. The phrase “not being an employee”. Is deleted because the scope of connected person does not include employee.

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Tel: +603-2162 8989 Fax: +603-2162 8990 Email: secretariat@ctim.org.my

No.	Current Provision	Proposal	Rationale
	person to a connected person as referred to in the Third Schedule not being an employee and the connected person is not entitled to a credit under section 38 on the supply, the supply to the connected person is a supply of services.	under section 38 on the supply, the supply to the connected person is a supply of services.	**CTIM comments:** **It appears that supply of free services to employees will be subject to GST on the basis that it is for private use. We suggest Customs to consider exceptions for food and accommodation.**
26.	**Second Schedule** New provision	**Paragraph (6)** **Insurance indemnity payment** 6. Any supply of goods between an insurer or takaful operator and an insured in the course of setting a claim under the insurance policy or contract of takaful shall be treated as neither a supply of goods nor a supply of services.	It is a policy decision that the insurance indemnity payment is treated as neither a supply of goods nor a supply of services **CTIM comments:** **We are of the view that there will be instances where policy owners and insured persons are different persons.** **We propose to use indemnity settlement instead of payment.** **CTIM would like also to clarify that based on the current amendment whether the Insurer can claim the input credit or deemed credit if the indemnity settlement is in-kind rather than in cash.**

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COMMENTS ON PROPOSED AMENDMENTS TO GOODS AND SERVICES TAX (GST) BILL 2009

No.	Current Provision	Proposal	Rationale
27.	**Third Schedule** New provision	**Paragraph 8** **Value of betting and gaming supplies** Where a taxable supply of services is made by a person licensed under any written law involving betting, sweepstakes, lotteries, gaming machines or games of chance, the value of supplies shall be determined in accordance with the following formula --- $\frac{100}{100 + C} \times (A-B)$ where A is the consideration received for the supplies less any tax or duty under this Act and any other written law except excise duty imposed under Excise Act 1976; B is amount of money (if any) received by persons (other than the person making the supply and persons acting on his behalf) participating successfully in the betting, sweepstakes, lotteries gaming machines or games of chance, as the case may be; and C is the rate of tax fixed under section 10.	It is a policy decision that the value of betting and gaming supplies is determined on the net margin which is the difference between the consideration received (less gaming tax or pool betting duties) and prize payout. **CTIM Comments:** **CTIM would like to seek clarification that where B > A, how will the GST calculated?**

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