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BY EMAIL & POST

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YBhg. Dato',

Goods and Services Tax Bill 2014

We are pleased to inform Dato' that the Technical Committee-Indirect Tax (TC-IT) of the Chartered Tax Institute of Malaysia (CTIM) has done a preliminary review of the provisions in the Goods and Services Tax Bill 2014 and note that there are no significant matters of concern.

Nevertheless, we have included several issues which are listed in the Appendix attached. We will submit further feedback if we receive any important comments from our members and their clients.

Please do not hesitate to contact Mr K.S. Lim (email: kslim@ctim.org.my or technical@ctim.org.my or at tel. No. 03-2162 8989 or Mr SM Thanneermalai at 012-329 8485) should YBhg Dato' require further information.

Thank you.

Yours sincerely,
CHARTERED TAX INSTITUTE OF MALAYSIA



Mr SM Thanneermalai
President

General Comments :

1. Discretion of Director General of Customs and Excise (DGCE)

There are many provisions that require the discretion of DGCE. It is certainly not an effective and efficient way to administer the law as the DGCE will be bogged down with making the discretion. It also creates uncertainty and makes the GST regime complicated as many guidelines will be needed to ensure consistency, clarity and transparency.

Specific Comments

1. General and Imposition and Scope of Tax (Part III)

(a) Supply of imported services (GST on Goods imported under a lease agreement)

Section 13. (1) Where imported services, being a taxable supply if made in Malaysia, is supplied to a person (hereinafter referred to as the "recipient") for the purposes of any business carried on by him, the supply shall be treated as a supply made by the recipient in the course or furtherance of his business, and the supply is a taxable supply.

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(5) Notwithstanding subsection (1), when goods are imported into Malaysia under a lease agreement from a person who does not belong in Malaysia, tax shall be charged on the goods.

Comment : It is unclear that under Section 13(5), who will be liable to the GST on importation of goods, the lessee or the non-resident lessor, and who will be entitled to claim the import GST paid? Where the lessor is not registered for GST, there may be issue in appointing a local agent as there is no supply of goods made by the lessor in Malaysia. It is also unclear how the GST shall determine as there is no CIF value of the goods. If valuation is to be made by the Royal Malaysian Customs (RMC), CTIM would like to request for guideline on the basis of valuation to be released for clarity and enhance compliance.

(b) Notification of liability and registration (Penalty on Late Payment)

Section 21 (6) The late registration penalty and the late registration period referred to in subsection (5) shall be as prescribed and subject to an amount of not less than one thousand and five hundred ringgit for a period within thirty days and not exceeding an amount of twenty thousand ringgit for a period of more than three hundred and sixty days.

Comment : CTIM is of the view that the penalty on late payment of tax [S.21(6)] may not serve as a sufficient deterrence. The GST Bill 2009 provision of late payment penalties of up to 25% of the tax outstanding is more appropriate. The current provision may encourage the taxpayers to defer their GST payments beyond the stipulated deadline where the amount is big.

2. Special Cases and Rulings (Part VIII and IX)

(a) Joint venture (extension of scope of JV)

Section 69 (1) *Where two or more registered persons participate in a petroleum-related activity under a venture, evidenced contractually in writing, for the purposes of making taxable supply (hereinafter referred to as "venturers"), the venturers may apply to the Director General to be deemed as a joint venture.*

(2) *The venturers shall, in the application under subsection (1), nominate one of the venturers to be the venture operator or to appoint a joint operating company to be the venture operator.*

(3) *A joint operating company appointed under subsection (2) shall be deemed to be a taxable person for the purposes of the joint venture.*

(4) *Where a joint venture under subsection (1) has been approved, the joint venture shall be registered as a registered person and the registration shall be in the name of the venture operator.*

(5) *Where a joint venture has been registered under subsection (4)—*

(a) *the venture operator shall maintain a separate account for the joint venture;*

(b) *any taxable supply of goods or services for the purposes of carrying on a business of the joint venture between a venturer and the venture operator shall be disregarded;*

(c) *where—*

(i) *each venturer acquires any taxable supply of goods or services for the joint venture, the venturer shall claim the deduction of input tax on acquisitions made by him in respect of the joint venture;*

(ii) *the venture operator acquires any taxable supply of goods or services for the joint venture, the venturer shall claim the deduction of input tax on acquisitions made by him in respect of the joint venture;*

(d) *each venturer shall account and pay for tax on the supplies made by him in respect of the joint venture.*

(6) *The Director General may cancel the registration of a joint venture under subsection (4) if he deems fit for the protection of the revenue.*

(7) *All venturers of the joint venture shall be liable jointly and severally for any tax due from venture operator.*

(8) *Where the Minister prescribes any other activity to be deemed as a joint venture under section 177, this section shall apply mutatis mutandis to the prescribed activity.*

(9) *For the purposes of this section—*

(a) *"venture" means a contractual arrangement whereby two or more parties undertake an economic activity that is subject to joint control but does not include jointly controlled entities;*

(b) *"petroleum-related activity" means an upstream activity which begins with exploration including seismic and drilling activities and ends when the product (crude oil, natural gas or condensate) is allocated to the venturers;*

(c) any petroleum-related activity which is outsourced to a third party shall be taken as an activity undertaken and managed by the third party and not an activity undertaken and managed by the joint venture;

(d) “venturer” means a party to a joint venture and has joint control over that joint venture;

(e) “venture operator” means the person who operates or manages the joint venture.

(10) Any person who contravenes subsection (5) in respect of paragraph (d) commits an offence.

Comment : CTIM proposed that the provisions be extended to cover joint-venture in construction and property development industry to facilitate the economic activities. The Australian model extends the joint-ventures rules to cover construction industry and Singapore GST regime has no restriction on the scope of joint-venture.

Further the joint-ventures need status should be accorded according to the registration without the necessity of applying for approval from DGCE. This will reduce the administrative burden and facilitate compliance.

(3) Transitional Provisions (Part XIX)

(a) **Contract with no opportunity to review (Removing the restrictive conditions)**

Clause 187 (1) This section shall apply where—

(a) a written contract specifically identifies a supply and the consideration for the supply; and

(b) any supply is made pursuant to any contract with no opportunity to review entered into not less than two years before the effective date.

(2) Where a supply is made before the earlier of the following, that is—

(a) five years after the effective date; or

(b) when a review opportunity arises,

the supply made pursuant to a contract with no opportunity to review shall be treated as a zero-rated supply:

Provided that—

(A) the supplier and recipient of the supply are registered persons;

(B) the supply is a taxable supply; and

(C) the recipient is making wholly taxable supply.

(3) For the purposes of this section—

(a) “contract with no opportunity to review” means any written contract or agreement which has no provision for a general review of the consideration for the supply for such a period until a review opportunity arises;

(b) “review opportunity” means an opportunity that arises for the supplier under the contract, acting either alone or with the agreement of one or more of the other parties to the contract, to—

(i) change the consideration directly or indirectly because of the imposition of the tax;

(ii) *conduct, on or after the effective date, a general review, renegotiation or alteration of the consideration; or*

(iii) *conduct, before the effective date, a general review, renegotiation or alteration of the consideration that takes account of the imposition of the tax.*

Comment : With the conditions imposed under Clause 187(2)(A)-(C), particularly the recipient must be providing wholly taxable supplies, the effectiveness of the relief is significantly limited. CTIM suggests that the authority consider removing the conditions, in particular that recipient must be making wholly taxable supplies.

In addition, the restriction to contract entered into not less than two years before the effective date may not be appropriate as the implementation of GST is always an uncertainty until 25 October 2013. CTIM suggests that Clause 187(1) be amended to include contract entered into before 25 October 2013.

(4) GST Agent Licensing

(b) Holding out as tax agent by a company/firm

Tax agent

Clause 170 (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 141.*

(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*

(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; or*

(b) *any other period less than twenty-four months as the Minister may determine,*

beginning from the date of the approval.

(4) *A tax agent may apply for a renewal of an approval to the Minister before the expiry of approval period specified under subsection (3) and if the application for renewal is approved, the renewal shall, unless sooner revoked, be valid for the period as the Minister may determine.*

(5) *A fee as may be prescribed by the Minister by an order published in the Gazette shall be paid on the application for an approval under subsection (2) or renewal of an approval under subsection (4).*

(6) *A tax agent who transacts business on behalf of any person for any matter under this Act shall—*

(a) *produce a letter of authorization from the person whom he represents; and*

(b) *where any prescribed form is required to be submitted for the purposes of the matter being transacted, submit the form that*

has been signed by the person whom he represents, except where otherwise allowed by the Director General.

(7) Notwithstanding subsection (1), any person who is given permission to act as an agent under section 90 of the Customs Act 1967 shall be permitted to act in Malaysia on behalf of any person for any matter under this Act in relation to importation or exportation of goods, including transshipment.

(8) For the purposes of this section, "tax agent" means any professional accountant or any other person permitted by the Minister to act in Malaysia on behalf of any person for any matter under this Act.

(9) Any person who contravenes subsection (1) or (6) commits an offence.

Comments: Under Section 153(1) of the Income Tax 1967, a company, body of persons or partnership may hold itself out as a tax agent, if at the time of the holding out, any employee of the company, member of the body or partner in the partnership (whether or not that employee, member or partner is in Malaysia) is a tax agent. However, such provision is missing in this GST tax agent licensing provision.

Currently, many tax agents are operating under one company or one firm. Such provision would facilitate the tax agent in providing their services and allow them to offer a better services and protection to the client as a group. We would request the authority to insert such provision into the GST legislation so as to facilitate the GST tax agents in providing their services.