INCOME TAX ISSUES ARISING FROM THE IMPLEMENTATION OF GOODS AND SERVICES TAX

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(6 March 2015)

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INCOME TAX ISSUES

1. Deemed output tax

(i) Description:

Gifts to employees, customers, etc. are deductible if Section 33(1) and Section 39(1)(l) provisions are fulfilled.

GST treatment:

Pursuant to the GST gift rule, there may be instances that output GST would be applicable on products given away free of charge (subject to GST if gifts valued above RM500 are given to the same person in the same year).

The Company will bear the output GST on the gifts in order to maintain good relations with the recipient of the free product (customer).

Our request:

On free gifts, CTIM would like the tax authorities to confirm that output GST borne by the Company shall be treated as tax deductible if such expenses that attract GST are tax deductible under Section 33(1) and (e.g. tax deductibility rules on sample must be met) under Section 39(1)(l) of the Income Tax Act 1967 (ITA).

(ii) There may be other situations where the taxpayer bears the GST instead of charging their customers the GST (e.g. transitional contracts, free services/goods given to associates, etc.).

Our request:

CTIM would like the tax authorities to confirm that the output GST borne by the taxpayer shall be tax deductible if the expense itself is a deductible expense under the ITA.

2. Input taxes which are not claimable or which are partially claimable as input tax credits

Under the GST legislation, businesses will incur applicable GST input taxes on their purchase of goods and services. Some or all of such input taxes may not be claimable or may be partially claimable as input tax credits (ITC) by the businesses and thus become part of their cost of business (i.e. revenue expense), for example, where the businesses are financial institutions, small enterprises whose annual turnovers do not exceed RM500,000 or enterprises involved in exempt supply of goods and services. Please refer to the table below for more details.

Input Tax	Examples
Is not claimable	The input tax incurred is not allowed an ITC claim because the recipient of the goods is not GST registered or is a supplier of exempt supplies.

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Input Tax	Examples
Is partially claimable	The input tax claim of a company is apportioned because the taxable person is a mixed supplier which results in ITC being partially claimable.
Is foregone	In a situation where the staff claims are made via an electronic system, the claimant would claim the total expense inclusive of GST, if applicable and select the relevant options available in the electronic system. The system will capture the expense and input tax thereon separately. The expense is charged to the expense general ledger (GL) while the input tax is debited to the balance sheet (BS). The amount in the BS would be cleared when the company claims the ITC in its GST return. However, there are inherent risks of claimants not selecting the right options resulting in the input tax being calculated when there is no GST e.g. international air ticket. Over-claim of ITC may result in heavy penalties. As a risk mitigation action, taxpayer may consider foregoing the claim of ITC and debit the input tax to the expense GL.
Is blocked	Staff benefits like club subscription, hospitalization insurance, medical treatment, food & beverage for family day are tax deductible. Customs duties incurred on purchase of motor vehicle qualifies for capital allowances (CA). Input tax on staff benefits like club subscription, hospitalization insurance, medical treatment, food & beverage for family day are not claimable as ITC. Input tax on purchase of company car is also not claimable as ITC pursuant to Regulation 36 of the GST Regulations 2014.
Is fixed input tax recoverable	Financial institutions such as banks that provide taxable supply and exempt supply can only claim a portion of their input tax in accordance with a formula provided under Section 52 of the GST Act 2014 (i.e. only a fraction of the input tax is claimable as ITC against its output tax). The remaining balance of input tax that is not claimable is to be borne by the banks.

Our request:

CTIM would like the tax authorities to confirm that the amount of GST input taxes on tax deductible expenses which cannot be claimed or recovered by businesses such as in the above examples shall be given a tax deduction under Section 33(1) of the ITA.

Based on similar grounds, where the amount of GST input taxes on capital expenditure which qualify for capital allowance, reinvestment allowance or investment tax allowance cannot be claimed or recovered, CTIM would like the tax authorities to confirm that such amount of GST input taxes be given the same tax treatment as the qualifying capital expenditure.

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CTIM has also compiled a comparison of the income tax treatments in several countries on such GST input taxes in the attached Appendix for your reference in order to provide further support for its proposed income tax treatments.

3. Capital goods adjustment

For mixed suppliers, the input tax claimed in the taxable period would be a provisional amount. In this regard, mixed suppliers are required to perform a capital goods adjustment annually (see Guide on Capital Goods Adjustment (draft as at 15 November 2013) – Paragraph 43 of pages 16 and 17). The impact of this adjustment would be as follows:

- Mixed suppliers may claim back additional input tax from the Customs Department and this would be an “income” to them.
- Mixed suppliers may pay additional input tax to the Customs Department and this would be an “expense” to them.

Our request:

Input tax on ‘tax-deductible’ expenses

a) If mixed suppliers are able to claim back additional input tax from the Customs Department, would the claim received be taxable income? If so, when would it be taxable?

b) If mixed suppliers are required to pay additional input tax to the Customs Department, would this be a deductible expense? If yes, when would it be tax deductible?

Input tax on capital assets

c) CTIM would like to propose that, in respect of capital allowance, the mixed suppliers be given the option of either:-

   - Treating the additional input tax claimed back from the Customs Department as a taxable income and the additional input tax paid to the Customs Department as a deductible expense in the year of the capital goods adjustment; or

   - Adjusting the residual expenditure of the relevant capital asset by reducing it where additional input tax is claimed back or increasing it where additional input tax is paid in the year of the capital goods adjustment.

4. Additional GST output tax imposed during a Customs audit

Our request:

In the event that the Custom Department discovers that additional GST output tax is required to be paid during a Customs audit, CTIM would like the tax authorities to confirm that the additional GST output tax can be claimed as a tax deduction. This is on the grounds that the additional GST output tax is an additional cost of doing business (as opposed to a tax).

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5. Effects of GST on the quantum of withholding tax

(i) Where imported services are supplied to a GST registered person, the recipient is required to account for GST as though it is a supply made to and by him under the GST reverse charge mechanism.

Example 7 (PR No. 1/2014 – Withholding Tax on Special Classes of Income)

Jet Engineering (M) Sdn Bhd, entered into an agreement with Jet Engineering Services (Asia) Pte Ltd, a Singapore company. The Singapore company would provide specialist or technical personnel to carry out engineering inspection and rectification works in Port Dickson, Kuantan and Melaka for a period of 2 months. The fees agreed were RM300,000.

The fees of RM300,000 are subject to withholding tax at 10% as the services were wholly performed in Malaysia.

If the transaction occurs after 1 April 2015, Jet Engineering (M) Sdn Bhd would have to account for the GST output tax for the RM 300,000 paid (i.e. RM 300,000 X 6% = RM 18,000).

Our request:

CTIM would like the tax authorities to confirm the withholding tax of 10% will be calculated based on RM 300,000 as the non-resident's income is RM 300,000.

(ii) A GST registered person may claim his input tax against his output tax; provided he is making wholly taxable supplies. If the payer is not GST-registered, the GST paid in respect of the 'imported services' is not recoverable from output tax and thus increasing his costs. However, whether or not the payer is GST registered would not affect the non-resident's income.

Our request:

CTIM would like the tax authorities to confirm that the withholding tax treatment above does not depend on whether the payer is a GST registered person or not.

6. Interaction of GST with Stamp Duty

In valuation of goods and services, it is unclear whether stamp duty will be imposed on the basis of "consideration" where the consideration is inclusive of GST.

Our request:

CTIM is of the view that stamp duty should be imposed on the consideration exclusive of GST as the GST is already borne by the consumers. Any imposition of stamp duty on the GST portion would be tantamount to tax on tax. For clarity, CTIM would request for a provision to be inserted in the Stamp Act 1949 to exclude the imposition of stamp duty on GST.

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7. Interaction of GST with Real Property Gains Tax (RPGT)

In determining the chargeable gain for RPGT purposes, it is unclear whether the "consideration" for computing the acquisition price would be inclusive or exclusive of GST and whether this is dependent on the ability to claim input tax credit.

Our request:

CTIM would like the tax authorities to clarify how GST (e.g. on the sale of commercial property) would be treated in a RPGT computation. For clarity and where appropriate, CTIM would request for a provision to be inserted in the Real Property Gains Tax Act 1979.

8. Deduction on cost incurred for filing of GST returns

Businesses would need to file monthly GST returns and they may engage a GST tax consultant to file on their behalf.

Our comment:

CTIM is of the view that the expenses, whether incurred in-house or paid to the GST consultant, for filing of GST returns is a deductible expense under Section 33(1) of the ITA based on the following grounds:

- GST is a consumption tax and is not an income tax;
- The filing of GST returns is part of the process which have to be adopted in order to do business;
- The expenses are incurred in the course of producing income and not after producing income; and
- The expenses are revenue in nature (it does not result in a capital benefit), not private expenses and are not non-deductible expenses under Section 39 of the ITA.

9. Deduction on expense incurred on audit fee for special refund of sales tax for goods held on hand

Businesses are required to engage an external auditor to perform a physical stock take and furnish an audit certificate for the purpose of claiming the special refund on goods held on hand on 1 April 2015 under Section 191 of GST Act 2014.

Our comment:

CTIM is of the view that the above-mentioned audit certification fee is a deductible expense under Section 33(1) of the ITA based on the following grounds:

- The audit certification is part of the process which have to be adopted in order to do business;
- The audit certification fee is incurred in the course of producing income and not after producing income; and

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- The audit certification fee is revenue in nature as the special refund on goods held on hand would be a taxable income.

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APPENDIX

Input taxes which are not claimable or which are partially claimable as input tax credits – Comparison of income tax treatment in several countries

Australia	Germany	Singapore	United Kingdom (UK)
Under the Income Tax Assessment Act 1997 in Australia, a taxpayer must first determine the amount of deduction it is entitled to on GST cost based on its income tax deduction rules. Thereafter, the taxpayer is required to reduce the said income tax deduction by the amount of input tax credit to which the taxpayer is entitled.	The German Income Tax Act (also applicable for corporations) provides that VAT that is due under the law by the taxpayer and where input tax is not claimable, forms part of the assessment basis for income tax , ie., it is deductible for corporate income tax purposes. This does not depend on the reason (i.e. blocked, apportionment due to exempt supplies etc.).	The general rules of deduction applies, i.e. if the expense is a tax deductible item, any irrecoverable input tax relating to the expense would be deductible unless the input tax is specifically disallowed under the Income Tax Act as follows:- • Where the taxpayer is required to be registered under the GST Act but has failed to do so, or • Where the taxpayer is entitled to claim the input tax credit. A similar treatment is adopted for capital allowances if the irrecoverable input tax relates to an asset that qualifies for capital allowances. The irrecoverable input tax will be treated as part of the qualifying expenditure for capital allowances purposes.	For irrecoverable Value Added Tax (VAT) in the UK the tax treatment is to look at the underlying expense to which the VAT relates. Where the expense is not tax deductible the irrecoverable VAT is also disallowed a tax deduction. Where the expense is allowable, the irrecoverable VAT is allowed a tax deduction. A similar treatment is adopted for capital allowances. If the irrecoverable VAT relates to an asset that qualifies for CA's then the irrecoverable VAT will be lumped into the qualifying cost. Otherwise its (capital) non qualifying expenditure.

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