

**MINIT MESYUARAT BIL 5/2015**  
**JAWATANKUASA TEKNIKAL ISU PELAKSANAAN GST**

**1. KETERANGAN AM**

Tarikh : 17 September 2015  
Masa : 9.00 pagi  
Tempat : Bilik Mesyuarat, Bahagian GST  
Aras 4 ,MenaraTulus

**2. KEHADIRAN**

<b>BIL.</b>	<b>NAMA PEGAWAI</b>	<b>AGENSI</b>
1.	Dato' Haji Zulkifli bin Yahya Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
2.	Tuan Tan Sim Kiat Tim. Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
3.	Tuan Ahmad Maher bin Abd Jalil Tim. Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
4.	Puan Rokiah binti Embong Tim. Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
5.	Pn Tengku Aini Baldri binti Engku Mansor Tim. Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
6.	Puan Teh Kheng Ean Tim. Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
7.	Puan Azizah binti Kechik Tim. Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia
8.	Puan Fauziah binti Abu Zarim Penolong Kanan Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia

9.	Puan Sakenah Begum binti Md Nazir Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
10.	Puan Nur Hanisah Dukes binti Abdullah Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
11.	Tuan Jifridin bin Che Daud Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
12.	Puan Raizam binti Mustapha Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
13.	Puan Maimon binti Zaid Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
14.	Puan Almirulita binti Mohd Yusoff Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
15.	Tuan Faizulnudin bin Hashim Penolong Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia
16.	Puan Aminah binti Abd Manap Penolong Kanan Pengarah Kastam II Bahagian GST	Jabatan Kastam Diraja Malaysia
17.	Tuan Baharudin Abdul Rahman Penolong Kanan Pengarah Kastam II Bahagian GST	Jabatan Kastam Diraja Malaysia
18.	Tuan Khairul Nizam bin Othman Penolong Kanan Pengarah Kastam II Bahagian GST	Jabatan Kastam Diraja Malaysia
19.	En David Lai	CTIM
20.	En Wan Heng Choon	CTIM
21.	En Koh Siok Kiat	CTIM
22.	En Lim Kok Seng	CTIM
23.	En SM Thanneermalai	CTIM
24.	Dr Veerinderjeet Singh	MIA

25.	Puan Azlina binti Zakaria	MIA
26.	En Abd Aziz bin Abu Bakar	MATA
27.	Raja Dato' A Aziz Musa	FMM
28.	Puan Shamini Sakthinathan	FMM
29.	En Beh Tok Koay	MICPA
30.	En Raja Kumaran	MICCI
31.	Encik Poh Wan Kh'ng	ACCCIM
32.	Encik Lee Hooi Seng	ACCCIM
33.	Encik Paul Seo	FMFF
34.	Encik Alvin Chua	FMFF
35.	Puan Norizan binti Ramli Pen Kanan Pengarah Kastam I Bahagian GST	Jabatan Kastam Diraja Malaysia <i>Sekretariat</i>
36.	Tuan Osman bin Abd Karim Pen Kanan Pengarah Kastam II Bahagian GST	Jabatan Kastam Diraja Malaysia <i>Sekretariat</i>
37.	Tuan Norudin bin Ya'acob Pen Pengarah Kastam Bahagian GST	Jabatan Kastam Diraja Malaysia <i>Sekretariat</i>

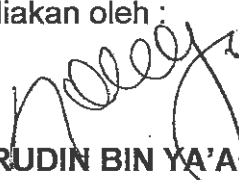
BIL	UCAPAN Y.BHG DATO' PENERUS	TINDAKAN	
3.	<p>Ucapan alu-aluan Yg.Bhg. Dato' Penerus</p> <p>Pengarah Kastam Bahagian GST, Dato' Haji Zulkifli bin Yahya memulakan mesyuarat dengan ucapan salam dan selamat pagi serta ucapan terima kasih di atas kehadiran ahli mesyuarat.</p> <p>Y.Bhg Dato' telah memberi penekanan ke atas dua perkara semasa ucapan permulaan mesyuarat iaitu pembayaran dan tuntutan bayaran balik (<i>refund</i>).</p> <p>Pembayaran GST boleh dibuat melalui tiga saluran iaitu bayaran secara <i>online</i>, bayaran secara manual dan bayaran melalui bank. Apa yang penting bagi bayaran secara <i>online</i> ialah keperluan jalur lebar (<i>band width</i>) internet ialah 1MB.</p> <p>Dari segi bayaran <i>refund</i>, Y.Bhg Dato' memaklumkan peratusan yang telah selesai bagi bulan April ialah 97.2%, Mei (92.3%), Jun (77.7%) dan Ogos sebanyak 28.6%</p>	Makluman	
4. PENGESAHAN MINIT MESYUARAT			
Minit Mesyuarat telah disahkan sebulat suara oleh ahli mesyuarat			
5. PERBINCANGAN PERKARA BERBANGKIT			
BIL	PERKARA BERBANGKIT / ISU	ULASAN/STATUS	TINDAKAN
	5.1 Isu oleh Malaysian Institute of Accountants		
	a) Rebate income received by freight forwarders	Jawapan telah disediakan oleh Sektor V. Rujuk Lampiran 1B	Makluman
	b) Storage provided by freight companies who are not port or airport operators.	Sila rujuk Lampiran 1B	Makluman

	c) Handling services	Sila rujuk Lampiran 1B	Makluman
	<b>5.2 Isu oleh Federation Malaysian Manufacturing</b>		
	<b>PERKARA BERBANGKIT / ISU</b>	<b>ULASAN / STATUS</b>	<b>TINDAKAN</b>
	<p><b>A. OUTSTANDING ISSUES</b></p> <p>1. Claim of input tax within 6 years from the date of supply or importation</p> <p>Maklum balas telah diberikan oleh Sektor VII seperti berikut :</p> <p>Reference is made to Regulation 38 of the GST Regulations 2014. The taxpayer is allowed to claim input tax he has incurred in the taxable period the tax invoice he holds is posted into his accounts payable (i.e. posting date) or within a period of 12 months from the date he holds the tax invoice, whichever is earlier.</p> <p><b>B. NEW ISSUES</b></p> <p>1. Confusion on the GST treatment for Shipping Line and Freight Forwarder Charges</p> <p>Wakil FMM memaklumkan Sektor V telah mengeluarkan <i>comprehensive list</i>. Senarai tersebut telah dihantar kepada ahli-ahli untuk diedarkan kepada pelanggan.</p>	<p>Ahli mesyuarat telah mencadangkan supaya perkataan <i>may allow</i> yang terdapat dalam Peraturan 38 Peraturan GST 2014 ditafsir dan disiarkan dalam <i>DG's Decision</i>.</p> <p>Y.Bhg Dato' bersetuju supaya DG's decision dikeluarkan mengenai perkara ini.</p> <p>PKPK I Sektor V Tuan Faizulnudin memaklumkan senarai tersebut dalam proses untuk <i>upload</i> ke dalam sistem.</p>	<p>Sektor VII</p> <p>Makluman</p>

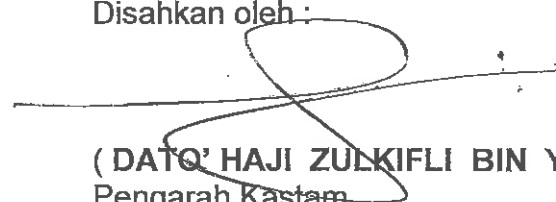
	2. Delays in approval of the list of the raw materials /components /accessories and machines to be imported under the ATS.	Jawapan adalah seperti di butiran 3, Lampiran A2	Makluman
<b>6.</b>	<b>PERBINCANGAN ISU BARU</b>		
	<b>6.1 ISU OLEH MALAYSIAN INSTITUTE OF ACCOUNTANTS (MIA)</b>		
	<b>PERKARA BERBANGKIT/ ISU</b>	<b>ULASAN / STATUS</b>	<b>TINDAKAN</b>
	<p><i>1. Disbursements</i></p> <p>Isu yang dibangkitkan adalah berkaitan dengan profesion guaman dan perundangan. Tidak ada keseragaman bagi sesuatu caj. MIA perlukan satu resolusi mengenai perkara ini</p> <p><i>2. Input tax credit (ITC)</i></p> <p>ITC mempunyai layanan yang berbeza bagi perkhidmatan berkadar <i>standard</i> dan perkhidmatan dibawah kategori <i>out of scope</i>. Justru, Jabatan Kastam hendaklah menjelaskan perkara ini kepada <i>public</i> melalui saluran tertentu seperti <i>website</i> dan sebagainya.</p>	<p>Y. Bhg Dato' akan memberikan maklumbalas kepada MIA</p> <p>Y.Bhg Dato' bersetuju bahawa ITC adalah isu yang bersifat teknikal.</p> <p>MIA dikehendaki berbincang dengan Sektor VII untuk selesaikan isu-isu yang berbangkit berkaitan dengan ITC dan membuat cadangan kepada MOF.</p>	<p>Sektor I</p> <p>22 Dec 2015 - <i>Assessed</i> DG Dec 16/15</p> <p>MIA &amp; Sektor VII</p>
	<b>6.2 ISU OLEH THE MALAYSIAN INSTITUTE PUBLIC ACCOUNTANTS (MICPA)</b>		
	<b>PERKARA BERBANGKIT/ ISU</b>	<b>ULASAN / STATUS</b>	<b>TINDAKAN</b>
	1. Property Management <i>Joint Management Bodies</i> (JMB) dan <i>Management Corporation</i> (MC)	Jawapan telah diberikan dalam mesyuarat yang lalu. Sila rujuk Lampiran B	Makluman

	2. Designated Area PKPK I Tuan Faizulnudin telah mengemukakan beberapa persoalan kepada MIA diantaranya <i>wet leasing</i> dan <i>dry leasing</i>	Sila rujuk Lampiran B	Makluman
	3. Imported Services	Sila rujuk Lampiran B	Makluman
	4. Reimbursement	Jawapan adalah seperti di Lampiran B.	Makluman
<b>7</b>	<b>ISU BARU</b>		
	7.1 Isu oleh MICPA	- Sila rujuk Lampiran A1	
	7.2 Isu oleh FMM	- Sila rujuk Lampiran A2	
	7.3 Isu oleh FMFF	- Sila rujuk Lampiran A3	
	7.4 Isu oleh PWC	- Sila rujuk Lampiran A4	
	7.5 Isu oleh MIA	- Sila rujuk Lampiran A5	
<b>8.</b>	<b>PENUTUP</b>		
	<p>Y Bhg. Dato' merakamkan ucapan terima kasih kepada semua ahli yang hadir dan telah memberikan input yang amat baik. Y. Bhg Dato' berpuas hati dengan perbincangan pada hari ini dan berharap mendapat sokongan yang baik dan berterusan daripada sektor perniagaan</p> <p>Mesyuarat ditangguhkan pada jam 12:45 tengahari.</p>		

Disediakan oleh :

  
**( NORUDIN BIN YA'ACOB )**  
 Penolong Pengarah Kastam  
 Bahagian GST  
 Ibu Pejabat  
 Setiausaha

Disahkan oleh :

  
**( DATO' HAJI ZULKIFLI BIN YAHYA )**  
 Pengarah Kastam  
 Bahagian GST  
 Ibu Pejabat  
 Pengerusi





No	Issues	CTIM's Proposal	Feedback from Customs
1.	<p><b><u>Claim For Bad Debt Relief</u></b></p> <p>Para (iii) of item 3 of DG's Decision No. 1/2014, as amended, states that  <i>"if the bad debt relief is not claimed immediately after the expiry of sixth month, then the taxable person has to notify the Director General (DG) within 5 days after the expiry of sixth month on his intention to claim at a later date."</i></p> <p>The requirement involves tracking of outstanding debts and inform the DG on time. It is burdensome and does not enhance administrative efficiency.</p> <p>Furthermore, S58(1)(b) of the GST Act 2014 only allows a claim to be made if "...sufficient efforts have been made by him to recover the debt."</p>	<p>To waive the requirement to inform DG on the intention to claim the bad debt relief at a later stage and allow taxable person to claim bad debts relief as and when they deem that sufficient efforts have been made to recover the debt.</p> <p>Alternatively, as debtor turnover period varies depending on industry practice and company policy, RMCD may consider allowing flexibility for companies to "claim bad debt relief" based on the respective companies bad debt policy (in respect of GST bad debt relief), say aging of 12 months, 18 months or 24 months.</p>	<p><b>Sektor VII</b></p> <p>The taxable person need to notify only once and we will respond in writing of his obligations to claim at a later stipulated date</p> <p>This obligation will then also apply should a similar situation arise.</p> <p>Standard Format to claim Bad Debt need to be developed.</p> <p>We are in the process of developing the Standard Procedure for Bad Relief Claim in TAP.</p>
2	<p><b><u>Foreign Exchange Rates</u></b></p> <p>Para (ii) of Item 6 of DG's Decision No. 1/2014, as amended, states that  <i>"In the case of local supply including imported services or export of goods, where the supplier and the buyer are both making wholly taxable supplies and both are businesses registered for GST</i>  <i>a) .....</i>  <i>b) .....</i>  <i>c) ..... and</i>  <i>d) .....</i></p> <p>Where either the supplier or buyer is not GST registered or making wholly taxable supplies, which exchange rate is applicable?</p>	<p>Businesses be allowed to use the exchange rate as listed in Para (ii)(a) of the DG's Decision No. 1/2014, regardless of the GST status (i.e. whether the company is registered or not etc.) as long as the exchange rate used is consistent with the business practices.</p>	<p><b>Sektor VII</b></p> <p>Businesses are NOT ALLOWED to use the exchange rate as listed in Para (ii)(a) of the DG's Decision No 1/2014.</p> <p>RMCD will use the exchange rate determined by DG of Customs as specified in Item 5, Third Schedule of GST Act 2014</p>

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3	<p><b><u>Reimbursement and Disbursement</u></b></p> <p>Further to clarification provided in the DG's Decision 5/2015, there are still confusion in practice.</p> <p>A Malaysian bank pays RM10,000 for the service of a consultant established in Country B.</p> <p>(i) <u>Scenario 1</u></p> <p>The consultant incurs RM1,000 on international flight and RM530 (inclusive of GST) on accommodation in Malaysia. Both of these are paid by the consultant and is subsequently billed to the bank.</p> <p>(ii) <u>Scenario 2</u></p> <p>The Bank arrange and pay directly RM1,530 for the international flight and hotel accommodation and receive the tax invoices.</p>	<p>CTIM would like to seek RMCD's confirmation on the following :</p> <p>(i) The RM1,530 constitutes a reimbursement and reverse charge is applicable.</p> <p>Kindly note that the \$1,530 already includes GST \$30 charged by the hotel to the foreign consultant. No one is in the position to claim input tax credit. This treatment results in double taxation on hotel accommodation in Malaysia and also a tax on tax.</p> <p>(ii) Reverse charge is applicable on RM10,000 only. In addition, the bank can claim ITC of RM30 on the hotel accommodation.</p> <p>We propose a more comprehensive guidance giving more examples to illustrate the GST treatment for reimbursement and disbursement under the different scenario be issued. For example,</p> <p>a) Recovery of expenses which are ancillary to or part of the primary supply with no markup;</p> <p>b) Recovery of expenses which are not ancillary or forming part of any primary supply. Is there a difference if such recovery is at cost or with mark-up?</p>	<p><u>Sektor VII</u></p> <p><u>Scenario 1:</u></p> <p>The costs incurred by the foreign consultant for his acquisitions (flight and accommodation) in Malaysia is not claimable as he is not registered for GST in Malaysia. Unlike those incurred in his country.</p> <p>The supply of services by the foreign consultant to be consumed in Malaysia by a recipient in Malaysia is a supply of imported services. Hence, the reverse charge mechanism applies.</p> <p><u>Scenario 2:</u></p> <p>The acquisitions made by the bank must be for the purpose of making a taxable supply in the <u>course and furtherance of his business</u>. If the acquisition attributes to the making of an exempt supply, no ITC is claimable. (ITC of RM30 not claimable)</p> <p>In both cases, the criteria established under Item 6, DG's Decision 5/2015 needs to be examined carefully. The issue of recovery of expenses with mark up or at cost is only one of the many areas to be examined.</p> <p>Ancillary simply means secondary to the principal. In the case of scenario 1 above, principal incurred any expenses (including ancillary expenses e.g. flight and accommodation) in performing the primary</p>

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			<p>supply to the client, it will only be treated as a reimbursement for GST purposes if fulfills the criteria for reimbursement in Item 6, DG's Decision 5/2015.</p> <p>Note:</p> <ol style="list-style-type: none"> <li>1. It would be difficult for RMCD to establish whether an expense is ancillary or not to the primary supply.</li> <li>2. Should the consultant have the right to alter the consideration of the supply, it will be treated as a reimbursement.</li> </ol>
4	<p><b><u>Secondment of Employees</u></b></p> <p>Section 2 of the GST Act 2014 states that "services means anything done or to be done including the granting, assignment or surrender of any right or the making available of any facility or benefit but excludes supply of goods or money". Secondment of employees is considered as a supply of services. The Seconding company is required to impose GST on the cost recovery.</p>	<p>We propose that RMCD consider granting administrative concession to exclude secondment arrangement from constituting a supply made by the Seconding Company, except for companies in the business of providing human resources.</p> <p><b><u>Basis for concession</u></b></p> <p>It is common for multinationals to second staff with specific expertise to local subsidiaries to meet operational needs, e.g. to administer special machinery or programme, etc. Imposing GST on secondment of employees may impede the transfer of know-how to Malaysia. A point to note is that secondment is not a supply in S'pore for GST purposes, subject to conditions.</p>	<p><b><u>Sektor VII</u></b></p> <p>The entity enters into agreements to charge the recipient the anticipated costs of employing the seconded employees during the duration of the secondments.</p> <p>The supply made by the entity to the recipient is in the course or furtherance of its business i.e. a business activity</p> <p>Hence, the 'secondment services' as agreed by parties to an agreement will be treated as a taxable supply or reimbursement and subject to GST at a standard rate.</p>

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5	<p><b><u>GST Inclusive Price</u></b></p> <p>Section 9(5) of the GST Act 2014: <i>"Where any registered person displays, advertises, publishes or quotes in any manner the price of any supply of goods or services he makes or intends to make, such price shall include the tax that is chargeable on the supply unless the DG approves otherwise under subsection (7)."</i></p> <p>Section 9(7) of the GST Act 2014: <i>"The DG may approve in writing an application made under subsection (6) and where an approval has been granted, the registered person shall display, advertise, publish or quote the price exclusive of tax with the words 'Price payable is exclusive of tax'"</i></p> <p>The above requirement is meant to have a wide application to ensure the public is not misled on price quoted / displayed. However, the wording "quotes in any manner" is too wide and may include terms specifically agreed between bilateral parties in a contract. This would disrupt ordinary business transactions and create confusion on the legal application of contractual terms.</p>	<p>We propose for RMCD to restrict this section to prices which are displayed publicly. For bilateral agreements, the parties involved can agree to a GST exclusive price and this can be reflected without the requirement to obtain prior approval from Customs.</p> <p>This issue was specifically dealt with in the S'pore GST Regulations. Non-public price can be in GST exclusive form.</p>	<p><b>Sektor VII</b></p> <p>Tax inclusive prices are in compliance with section 8 of the Price Control and Anti Profiteering Act 2011 and section 9 of the GST Act 2014.</p> <p>ALL prices must be quoted <b>INCLUSIVE</b> of GST with no exceptions. The GST component, must be shown as a separate item in the total.</p> <p>Rather than have the recipient/buyers questioning whether the price is inclusive or exclusive, especially when a contract is silent or a display is silent, the government policy to adopt an inclusive pricing will benefit ALL.</p> <p>However, in the DGs Decision 1/2015 item 3 states that the price may be displayed exclusive if the supply is made to a registered person with a qualifying statement below:</p> <ul style="list-style-type: none"> <li>(i) goods and services are subject to GST at 6% ; and</li> <li>(ii) the price payable is exclusive of GST</li> </ul> <p>This would not be misleading or deceptive.</p> <p>Prices may be indicated exclusive of tax at an outlet or through advertisement from which all of your business is with business customers registered for GST.</p>

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6	<p><b><u>Claim Of Input Tax Credit (ITC)</u></b></p> <p>Reg 38.(1) of GST Regulations 2014 provides that  <i>"Subject to subregulations (2) and (3), any taxable person claiming input tax by deducting from the output tax that is due from him under section 38 of the Act shall do so on the return furnished by him for the taxable period in which he holds,—</i>            (a) <i>if the claim is in respect of a supply from another taxable person, —</i>                (i) <i>a tax invoice in his name which is required to be provided under section 33 of the Act; or</i>                (ii)            (b) .....            (c) ...            ....."</p> <p>Reg 38.(4)(a) further provides that  <i>"Where any claim of input tax has not been made in the taxable period in which the taxable person holds the document mentioned in subregulation (1) or (3), the Director General may allow such person to make the claim within six years from the date of supply to or importation by him;"</i></p> <p>In order to be eligible to claim the ITC, a taxable person shall <u>claim the input tax incurred in the taxable period in which he holds the tax invoice</u> (or documents provided in the regulation and any other documents directed by the Director General), issued under his name.</p> <p><b>(a) Tax Invoices Issued Under The Name Of The Employee</b></p>	<p>(a) We would like to seek confirmation from RMCD on the concession. (The existing GST</p>	<p><i>Sektor VII</i></p> <p>Reg.38(1)(a)(ii) clearly stated that the maximum amount of input tax to be claimed is not more than RM30 for a tax invoice which does not contain the name and address of</p>

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	<p>Based on the verbal clarification obtain from Customs officers in the Hand-Holding Programme held on 23 &amp; 24 October 2014, a registered person is eligible for input tax credit for tax invoices issued under the name of the employee in respect of expenses incurred during business trips if the company is able to provide a letter to prove that the employee is requested by the company to incur the expenses. (e.g. online purchase of hotel accommodation or air tickets).</p> <p><b>(b) Claiming ITC In The Same Taxable Period</b></p> <p>In practice, the staff claim's policy of most businesses would require its staff who have incurred expenses on behalf of the business in the course of carrying out his/her official duties to submit his/her claim within the stipulated timeframe e.g. one (1) to three (3) months (depends the size of company) along with the original supporting expenses records for the company's approval and disbursement.</p> <p>Common types of expenses involved are as follow:-</p> <ul style="list-style-type: none"> <li>▪ Local travelling expenses (including air fare &amp; etc);</li> <li>▪ Event expenses;</li> <li>▪ Hotel accommodation during their official visits in/outside of Malaysia;</li> <li>▪ Telephone bills;</li> <li>▪ Petrol expenses;</li> <li>▪ Car park expense; and</li> <li>▪ Other business expenses.</li> </ul> <p>It is impractical and not cost-effective for businesses to change the policy for staff claim and for the Human Resource and Finance team to process the voluminous receipts on time.</p>	<p>legislations and guides does not reflect such concession).</p> <p>(b) In light of the practical challenge faced by most of the businesses in claiming the ITC in the <b>same taxable period</b> in which the expenses incurred by staff, CTIM would like to propose for RMCD to allow ITC related to expenses incurred by staff on behalf of the company <b>be claimed in the taxable period when payment is made by Registered Business to its staff</b> instead of being based on the date of tax invoices issued to the Registered Business.</p> <p>(c) We propose that RMCD allow</p>	<p>the recipient.</p> <p>Based on Item 2, DG's Decision 2/2014, the taxable person is only allowed to claim input tax incurred on mobile phone expenses billed to his employee as long as the expenses are reimbursed and accounted as business expenses.</p> <p><i>Sektor VII</i></p> <p>If the taxable person has not claimed the input tax incurred in the period he hold the valid tax invoice, he may claim on the earlier of:</p> <p>(a) the date or time of posting the tax invoice into the company Accounts Payable; or</p> <p>(b) one year from the date he holds the tax invoice.</p>

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	<p><b>(c) Utility Bill Under The Name Of Landlord</b></p> <p>In the case of rented property, many of the utility bills/invoices are in the name of the landlords, who may not be registered for GST. Based on the current GST rules, the tenants (i.e. registered persons) are not able to recover the input tax incurred on such utilities bills as the invoices are not under their names.</p> <p>However a GST registered tenant is allowed to claim ITC using utility invoices / bills which are in the name of the landlord until <u>31/3/2016, subject to the following conditions</u> –</p> <ul style="list-style-type: none"> <li>(i) The property owner is not a GST registered person;</li> <li>(ii) There must be a tenancy agreement signed by the property owner and the tenant;</li> <li>(iii) There must be a clause in the tenancy agreement or a written declaration signed by both the tenant and property owner in a separate document stating that "the input tax on the electricity and water invoices / bills can only be claimed by the tenant. However, if the property owner becomes GST registered person, the tenant is not allowed to claim the input tax using such invoices / bills."</li> <li>(iv) The tenant must keep records of the input tax claimed for the electricity and water invoices / bills under the name of landlord; and</li> </ul> <p>The tenant shall stop claiming ITC using utility invoices / bills under the name of the property owner once the landlord becomes a GST registered person. In this case the normal GST rules apply where the landlord will have to issue a tax invoice and charge GST to the tenant. The tenant can use the tax invoice</p>	<p>businesses to claim input tax on utility bills issued under the name of the landlord if the registered person is able to prove that the premises are being occupied by the registered person for business purposes.</p>	<p><b>Sektor 1</b></p> <p>Regulation 38, GST Regulations 2014:</p> <p>38(1) subject to subregulations (2) &amp; (3), any taxable person claiming input tax by deducting from the output tax that is due from him under section 38 of the Act shall do so on the return furnished by him for the taxable period in which he holds,-</p> <ul style="list-style-type: none"> <li>a) if the claim is in respect of a supply from another taxable person,-</li> <li>(i) a tax invoice in his name which is required to be provided under section 33 of the Act; or</li> <li>(ii) a tax invoice which does not contain the name and address of the recipient where approval has been given by the Director General under paragraph 33(3)(a) of the Act provided that the maximum amount of input tax to be claimed is not more than thirty ringgit</li> </ul>

No	Issues	CTIM's Proposal	Feedback from Customs
	<p>for claiming the ITC.</p> <p>Whilst the registered person can seek to change the names under those utilities bills to their names, such exercise is inconvenient due to the administrative processes of the authority, short rental period, or change in tenancy, etc.</p> <p><b>(d) Carry Forward of Input Tax Credits for Offset Against Future GST payable</b></p> <p>The RMCD allows input tax credits to be 'carried forward' and offset against future GST payable. However, we note that the credit balance will not be automatically used to offset against the following month's GST liability pending approval/audit by Customs. In these situations, the taxable person is still required to pay GST in the following month, resulting in serious cash flow problems.</p> <p>There have been cases where the taxpayer has NOT made an election to carry forward the ITC, but when the refund is subsequently paid more than one month later, Customs have automatically deducted from the refund amount, the tax payable amount from the <u>subsequent</u> taxable period, notwithstanding that the taxpayer has <u>already paid</u> the tax for that month. The taxpayer would then need to make a request for the amount of the refund unpaid, further delaying getting the refund back and adding to cashflow issues.</p>	<p>(d) This needs to be addressed from a policy perspective. The requirement of specific approval or a prior audit before the offset is permitted negates the facility.</p> <p>Customs need to clarify if this is a policy or practice across the board going forward, as it is not equitable to deduct from the refund, tax that has already been paid.</p>	<p><i>Unit Pulangbalik dan Peralihan</i></p> <p>a) If the taxpayer has carried forward balance in the account, allowed to offset with future GST payable on condition the refund of input tax credit has been approved.</p> <p>b) For amount automatically deducted and at the same time the taxpayer has already paid the tax for that taxable period, taxpayer can request in writing to RMCD to claim back the excess amount that the tax payer has paid to RMCD. (Cross Period Offsetting)</p> <p>Configuration has been done to GENTAX, can only offset if refund has been approved.</p>
7	<p><b><u>Fixed Input Tax Recovery ("FITR") – Labuan Offshore Branch</u></b></p> <p>Regulation 52 of the GST Regulations 2014 provides</p>	<p>Whether Regulation 52 is applicable to a Labuan Bank set up as a Branch of a Malaysian Bank</p>	<p><i>Sektor IV</i></p> <p>Regulation 52 is not applicable to a Labuan Bank set up as a Branch of a Malaysian Bank</p>



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	that any person referred to in Regulation 51 is allowed to a fixed rate of input tax credit on the total input tax incurred in a taxable period excluding input tax allowed under regulation 48.	(carrying on Offshore Banking activities) <u>and</u> licensed under Labuan Financial Services and Securities Act 2010.  If not applicable, can the Labuan Bank register and file for GST separately from the Malaysian Bank?	(carrying on Offshore Banking activities) <u>and</u> licensed under Labuan Financial Services and Securities Act 2010.  The offshore bank is <b>not</b> allowed to register separately under section 30 since the bank is a mixed supplier.
8	<p><b><u>Method For Recovery Of Input Tax For Free Gifts</u></b></p> <p>Under para 25, Guide on Tax Invoice and Record Keeping (as at 20 May 2015) <i>"a tax invoice in respect of zero rated and deemed supplies must be issued for the purpose of claiming input tax when the customer who is a registered person requested for it"</i>.</p> <p>The tax invoice issued to the customers for recovery of the deemed output tax may not comply with the valid tax invoice requirement under Regulation 22 of the GST Regulations 2014.</p> <p><b><u>Third Schedule of the GST Act 2014</u></b></p> <p>Determination of value of deemed supplies (gifts) (Open market value vs. cost price.)</p> <p>Supply between manufacturer and distributor has a different "market value" from a supply between retailer and consumer. To account for output tax, whether to base it on the lower market value or cost price.</p>	<p>CTIM proposes that RMCD provides samples of valid tax invoice in respect of free goods given to customers.</p> <p>To account for output tax based on cost price (common in many other jurisdictions)</p>	<p><b>Sektor VII</b></p> <p>If total cost of the gift to the donor is more than RM500, GST needs to be accounted and input tax is claimable by the donor on the input tax he incurs for the purchase.</p> <p>A tax invoice is not to be issued for a disposal of goods in the form of gifts when the donor accounts for output tax. The recipient of the gift is not entitled for any claim of input tax.</p> <p>Paragraph 24 states that a tax invoice is not required to be issued when a registered person makes a supply without consideration on which tax is charged.</p> <p>Amendments will be made to paragraph 25 of the related guide to clarify this.</p> <p><b>Sektor VII</b></p> <p>Paragraph 4 of the 3<sup>rd</sup> Schedule GST Act 2014, provides for the OMV to be used on disposal of goods for no consideration</p>

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9	<p><b><u>Application of Gift Rule</u></b></p> <p>Para 5(2)(a), First Schedule, GST Act 2014 stipulates that "a gift of goods made in the course or furtherance of the business made to the same person in the same year where the total cost to the donor is not more than RM500" is not a supply of a good by the person.</p> <p>In order for taxpayers to comply with this Para, significant effort have to be made to track and monitor gifts given away.</p>	<p>To simplify compliance and reduce costs of doing business, CTIM proposes that the Para be amended so that threshold of RM500 be applied on cost of each gift rather than accumulated costs of gifts made during the period.</p> <p>Singapore GST gift rule only applies to value of gifts.</p>	<p>Sektor VII</p> <p>We follow DG's decision 2/2014, item 4</p> <p>How to determine the GST on gift?</p> <p>i) Para 5(2)(a) of the First Schedule of GSTA 2014: No GST will be charged on gift made in the course or furtherance of business to the same person in the same year where the total cost of the gift to the donor does not exceed RM500. If the total cost to the donor is more than RM500, GST need to be accounted for and input tax is claimable.</p> <p>ii) The word 'year' in paragraph 5(2) (a) of the First Schedule of GSTA 2014 refers to 'tax year' (financial year).</p> <p>iii) Gift bought by a taxable person from a non-GST registered person worth more than RM500 and given free without consideration is not subject to GST but no input tax is claimable as the gift is acquired without tax.</p>
10	<p><b><u>Expediting Refund Of ITC</u></b></p> <p>During the implementation of GST, RMCD committed to refund the ITC within 14-28 days of filing the GST returns. It is noted that a significant number of taxpayers have had their refunds withheld "pending audit". However, there is no official audit notification or date for the audit visit. The practice has a serious impact on the cash flow of businesses</p>	<p>To expedite the refund process, CTIM proposes that the refund be made before audit unless there is a clear indication of fraud. The RMCD should use the audit process to ensure compliance and impose penalty on defaulter.</p> <p>Where the RMCD intends to audit a</p>	<p><i>Unit Pulangbalik dan Peralihan</i></p> <p>Once the account is verified, Regulation 67(1) of the GST Regulation 2014 will not be applicable. It will no longer be 14 working days for online submission and 28 working days for manual submission. Regulation 67(2) will be applicable once the account is verified.</p>

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		taxpayer, it should inform him by letter.	
11	<p><b><u>Directors</u></b></p> <p><b>(1) <u>Directors As Connected Persons</u></b></p> <p>Para 2(1)(a), Third Schedule, GSTA 2014 states that</p> <p><i>"A person shall be deemed to be connected if –</i>  <i>(a) they are officers or directors of one another's business."</i></p> <p>Clarification is sought on the meaning of the above:-</p> <p>(i) Director A is a director of Company X, and is a connected person to Company X; or</p> <p>(ii) Director A and Director B are both directors in Company X and Company Y. Therefore Director A and Director B are connected persons.</p> <p><b>(2) <u>Director Fee and Regulation 9</u></b></p> <p>Regulation 9(1) of the GST Regulations 2014 provides that</p> <p><i>"This regulation applies in relation to the supplies mentioned in regulations 4, 5, 8 or 10 where the supplies are made in the following circumstances:</i></p> <p><i>(a) The person making the supply is connected with the person to whom the supply is made; and</i></p> <p><i>(b) The person to whom the supply is made is not entitled to credit under section 38 of the Act for the whole or any part of the tax on the supply."</i></p> <p>Regulation 9(3) further states that</p> <p><i>"Where this regulation applies, goods or services shall, to the extent that they have not been treated as supplied by</i></p>	<p>Please clarify.</p> <p>If a non-executive director is a connected person and director's fee is determined at the AGM held after the end of the financial year, would Regulation 9(3) apply to the director's fee?</p> <p>If so, how will the directors' fees be quantified for GST purposes every 3 months as required by Regulation 9?</p>	<p><b>Sektor VII</b></p> <p>Para 2(1)(a). Third Schedul, GST Act 2014 states that <i>"they are officers or directors of one another's business"</i></p> <p>Connected person is between companies and not between the persons itself.</p> <p>For example:</p> <p>Director A and Director B are both directors in Company X and Company Y. Therefore Company X and Company Y are connected persons.</p> <p>As mentioned above, a person who becomes director in a company, both of them are not considered as connected person. Therefore , Regulation of the GST Regulations 2014 would not apply in the given Scenario 1</p>

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	<p><i>virtue of the regulations specified in subregulation (1) and to the extent that they have been provided, be treated as separately and successively supplied at the end of the period of 3 months after the supplies commenced and thereafter at the end of each subsequent period of 3 months."</i></p>		
12	<p><b><u>GST Treatment for Property Developer</u></b></p> <p><b><u>(a) Provision of Construction Services to Land Owner</u></b></p> <p>The original item 7 of DG 4/2014 and the Property Developer Guide dated 30/3/15 suggested that the developer is supplying construction services to the land owner and must charge GST to the land owner and account the GST accordingly. However, this GST treatment is not provided in the amended item 7 of DG 4/2014 issued on 31 March 2015.</p> <p>Similarly, the Guide to Property Developer issued on 30 March 2015 has not been updated with the DG's Decision accordingly.</p> <p><b><u>(b) Sale of Bare Land</u></b></p> <p>According to Paragraph 19(C) of the Guide on Property Developer as at 31 March 2015, GST treatment on the bare land shall be based on usage according to the land title issued by the Authority.</p>	<p>(a) CTIM would like to seek confirmation from RMCD that the requirement to charge GST on the deemed supply of construction services to the land owner by the developer in all joint developments (for all joint development / JV models including the 3 scenarios (a), (b) and (c) as shown in the Property Developer Guide on page 19) is no longer applicable as this has been superseded by the above DG Decision.</p> <p>(b) However, in the event where the land owner of a commercial land has obtained development order from the relevant authority to build residential property on his land, if he wishes to sell his bare land to 3<sup>rd</sup> party, shall it be an exempt supply or standard rated supply?</p> <p>Does it have any difference in GST treatment if the development order obtained is for mixed property (i.e. commercial and residential property together)?</p>	<p><b>Sektor III</b></p> <p>(a) Yes, the requirement to charge GST on the deemed supply of construction services to the landowner by the developer is no longer applicable as the amendment of Item 7 of DG's Decision 4/2014 issued on 31 March 2015 has superseded the earlier decision.</p> <p>(b) For the sale of vacant/bare land, the usage of the land is in accordance to the land title issued by the relevant authority.</p> <p>Regardless what type of the development order received by the landowner, as there is still no development works done on the vacant/bare land, therefore the usage will be determined by its land title.</p>

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13	<p><b><u>GST Registration</u></b></p> <p>Section 20(3) requires businesses to register for GST at the end of any month where the total value of all his taxable supply in 12 consecutive months has exceeded or will exceed the threshold. Section 21(1) requires the business to notify the DG by applying for registration within 28 days after the month end. Under Section 21(2), the DG shall register the business with effect from the first day of the following month in which the 28 day falls or from such earlier date as may be agreed between the DG and him, but such date shall not be earlier than the date he becomes liable to be registered.</p> <p>A company was incorporated on 8 August 2015 and has applied for GST registration on 17 August 2015, expecting its taxable supplies to exceed RM500,000 in the first month (August). The DG approved the application on 2 September 2015 and register the business with effect from 1 October 2015.</p> <p>The "time lag" may cause practical difficulties, e.g. the first invoice was issued on 17 August and the amount is considerably in excess of RM500,000?</p> <p>If the company issues an invoice for taxable supplies prior to 2 September 2015 and the supplies straddle the date officially registered (2 September 2015), would the invoice be deemed inclusive of GST for supplies after 2 September 2015, given that a portion of the supply will take place on or after 2 September? Could the company claim the relevant input tax incurred before 2 September 2015?</p>	<p>CTIM proposes that where there are reasonable grounds to believe that the newly incorporated company would be making taxable supplies exceeding RM500,000 immediately, the RMCD should allow registration with effect from the incorporation date.</p>	<p><i>Unit Penguatkuasaan Pendaftaran</i></p> <p>Refers to question :</p> <p>a) If the company issues an invoice for taxable supplies prior to 2 September 2015 and the supplies straddle the date officially registered (2 September 2015), would the invoice be deemed inclusive of GST for supplies after 2 September 2015, given that a portion of the supply will take place on or after 2 September?</p> <p>Section 33 (1) Goods and Services Tax Act 2014, <b>every registered person</b> who makes any taxable supply of goods or services shall issue a tax invoice.</p> <p>Section 9 (2) Goods and Services Tax Act 2014 states that tax shall be charged on any supply of goods or services made in Malaysia where it is a taxable supply made by a <b>taxable person</b> in the course or furtherance of any business carried on by him.</p> <p>Therefore, tax shall not be charged and levied on any supply of goods or services or importation of goods made before the effective date / commencement date as stated in approval letter.</p> <p>b) Could the company claim the relevant input tax incurred before 2 September 2015?</p> <p>Regulation 46(1) Goods and Services Tax Regulation 2014 subject to subregulation</p>

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			<p>(2) stated that the Director General may authorize a taxable person to treat as if it were input tax, any tax paid on the supply of goods to the taxable person before the date with effect from which he was, or was required to be registered, or paid by him on imported goods before that date, for the purpose of a business which was carried on or was to be carried on by him at the time of such supply or payment.</p> <p>According Regulation (2) Goods and Services Tax Regulation 2014, no tax may be treated as if it were input tax in respect of—</p> <p>(a) goods which had been supplied or consumed;</p> <p>(b) goods which have been used partially or incorporated into some other goods; or</p> <p>(c) goods held for other than business use, by the person referred to in subregulation (1) before the date with effect from which such person was, or was required to be, registered.</p>
14	<p><b><u>Voluntary GST Registration For Pre-Commencement Of Business</u></b></p> <p>Item 5, DG's Decision No.2/2014 states that  <i>"(i) A person who intends to make any taxable supplies</i></p>	<p>CTIM proposes that Item 5 of DG's Decision No.2/2014 be reviewed. For instance, where the companies can prove that they are genuine businesses with intention to operate</p>	<p><i>Unit Penguatkuasaan Pendaftaran</i></p> <p>Item 5 of DG's Decision No.2/2014 already be reviewed and will be amendment on</p>

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	<p><i>can apply for voluntary registration if he can satisfy that he is committed to do business by submitting the following documents:</i></p> <p>.....and</p> <p>ii) <i>The total taxable supply is expected to exceed the threshold within 12 months from the date of application."</i></p> <p>However, where there are reasonable grounds for believing that the total taxable supplies is expected to exceed the threshold in that month and the eleven months immediately succeeding the month, the person is actually liable to be registered mandatorily as required under section 20(3)(b) of GST Act. Hence, Voluntary registration under Section 24 would only apply to cases which fall outside section 20(3)(b) i.e. in cases when total taxable supply is expected to exceed the threshold only after eleven months immediately succeeding the month. Kindly confirm if this understanding is correct.</p> <p>In addition, businesses may need to register for GST due to various commercial reasons. An existing business operating below the threshold is allowed to register voluntarily under Section 24 of the GST Act 2014. Condition (ii) practically denies or delays registration by pre-commencement businesses operating below threshold, particularly those industries that requires heavy initial outlay and have a long gestation period. This will stifle business activity and increase start-up costs. It may hinder our economy growth. Whilst we understand the need to monitor registrations to avoid false refund claims, preventing or delaying registration of bona fide businesses may not be a suitable way.</p>	<p>in Malaysia (e.g. have actual contracts/ agreements signed), application for voluntary registration be allowed.</p> <p>In the event that no taxable supply is expected within the first 2 years and the total taxable supply is only expected to exceed the threshold in the 3 year (e.g. build and sell commercial development), please confirm that the person may apply for voluntary registration in order to claim the input tax incurred at the initial stage although taxable supply is only expected at a later stage. What are the conditions to be fulfilled, if any?</p> <p>In this connection, CTIM recommends that businesses be informed of the reason for refusal where application for voluntary registration is rejected and that the item (c) of Fourth Schedule to GST Act 2014 be removed to facilitate application for review.</p> <p>In a related matter, CTIM would like to seek clarification whether the deemed input tax credit provided in regulation 46 (input tax credit on pre-registration expenses on goods) required any approval to be made to the Director General? (if so, please indicate the detail procedures.)</p>	<p>details ii) :-</p> <p><i>The taxable supply be made within 12 months from the date of application.</i></p> <p>Note : The companies can prove that they will making taxable supply (actual contracts/agreements signed)</p> <p>If the person cannot prove that they will making taxable supplies within 12 months, they must apply for approval from the Director General. This application will be reviewed case by case.</p>

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15	<p><b><u>Filing of GST Return 03</u></b></p> <p><b>(1) Revision of GST-03 Explanatory Notes</b></p> <p>We note that RMC has frequently updated the GST-03 explanatory notes in response to feedback from businesses, associations and professional bodies. CTIM would like to commend on RMCD on its prompt action to update the public.</p> <p>Such changes/clarification generally would result in consequential adjustments to the system used by the business for its GST reporting. Businesses have to consult their system vendors to modify and test the system and the process takes time and require additional costs.</p> <p>Currently, the practice of updating is by replacing the existing Explanatory Notes with the latest version. No public announcement is made. The only reference for public to verify the version involved would be based on the date (as displayed in the file name) of such softcopy of explanatory notes.</p> <p>As businesses and tax agents would need to keep abreast with changes in reporting requirements and to understand the type of information to be disclosed and its implications, timely notification is important for compliance.</p> <p>The current GST-03 Guidelines and the relevant GST Guides still need to be enhanced to facilitate GST Tax Return preparers to correctly complete the Return. There are some practical problems which need to be addressed.</p> <p><b>(2) <u>Negative values in Field 5(b) or Field 6(b) of Form GST-03</u></b></p>	<p><b>(1)</b> In view that most of the technical clarification/explanation for GST-03 reporting requirements will impact the type of information to be disclosed in the GST-03 forms and failure to comply with the requirement may result in the company submitting incorrect returns and facing fines and penalties in the future, CTIM proposes that the RMCD indicate the issue date and the effective date of amendment (i.e. the date the amendment is expected to be implemented in the GST-03 by the registrant, taking into account sufficient lead time required to allow the registrant to make necessary changes to the information system) in every version of its updates without imposing penalty.</p> <p><b>(2)</b> CTIM suggests that the RMCD</p> <ul style="list-style-type: none"> <li>allows negative values in Field 5(a) and 5(b) to be included in the amount reported in Field 6(a)</li> </ul>	<p><i>Unit Penguatkuasaan Pendaftaran</i></p> <p>RMCD still in discussions with the MOF</p> <p>(2) If there is negative values in Field 5(a) and 5(b), the companies have to apply approval for adjustment from</p>



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	<p>A negative value may arise in Field 5(b) or Field 6(b) of Form GST-03 where:</p> <p>(a) <u>Negative amounts in Field 5(a) and Field 5(b)</u> In a taxable period where there is no taxable supplies being made (i.e. no output tax) but a credit note is issued to adjust for the consideration on the taxable supply made in the previous taxable period.</p> <p>(b) <u>Negative amounts in Field 6(a) and Field 6(b)</u> In a taxable period where there is no taxable acquisition (i.e. no input tax) but a credit note is received from the supplier to adjust for the consideration on the taxable supply acquired in the previous month.</p> <p>The Form GST-03 and the system in Taxpayer Access Point ("TAP") currently cannot accept negative values for the above 2 Fields.</p> <p>(3) <u>Correction of errors to the GST-03</u> Regulation 69 provides that amendments to the GST-03 must be made within such time as the officer of GST may require and any person who contravenes this regulation commits an offence.</p> <p>(4) <u>The following are some other ambiguities</u></p> <ul style="list-style-type: none"> <li>Field 5a - mixed suppliers should report the full value of acquisitions relating to residual input tax - or should only report the claimable portion?</li> <li>Field 6a - The disclosure figures confined only to those which are attributable to making taxable supplies? (Field 16 has been revised to include only capital assets which are attributable to taxable</li> </ul>	<p>and 6(b) respectively.</p> <ul style="list-style-type: none"> <li>allows negative values in Field 6(a) and 6(b) to be included to the amount reported in Field 5(a) and 5(b) respectively.</li> <li>reconsiders the proposal to defer reporting negative values in either fields until there are positive values in subsequent taxable periods as it is inequitable and inconsistent with the principles set out in sub-regulations 25(1) &amp; (2) of the GST Regulations 2014.</li> </ul> <p>(3) CTIM would like to seek confirmation from the RMCD that currently the RMCD will not enforce the timeline requirement and the taxable person can make amendments anytime they find an error without penalty. However, compound may still imposed on error made.</p> <p>If affirmative, CTIM would request the RMCD issue a notice in writing to ensure transparency and consistency in practice. Any subsequent change in practice will be announced to the public before implementation and enforced prospectively, taking into</p>	<p>Director General. The companies have to apply manually and each application must be accompanied by supporting documents such as credit note, debit note and invoice. Online application via TAP will be updated in the future.</p> <p>(3) RMCD soon will make enforcement on those who contravenes this regulation commits an offence.</p> <p>(4) We are updating Guide On Filling GST-03</p> <ul style="list-style-type: none"> <li>Field 5a - mixed suppliers should report the full value of acquisitions relating to residual input tax - or should only report the claimable portion? <b>Only report the claimable portion</b></li> <li>Field 6a - The disclosure figures confined only to those which are</li> </ul>

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	<p>supply.)</p> <ul style="list-style-type: none"> <li>Should supply of goods to designated area be reported in <b>Field 10</b> or <b>11</b>?</li> <li>What kind of services in Second Schedule of the Zero-Rated Supply Order should be reported in <b>Field 11</b>? Which ones relate to <b>Field 10</b>?</li> <li><b>Field 11</b> - the technical committee 2/2015 minutes requires export of goods to be declared at K2 value, which means that foreign currency will be converted using Customs weekly export rate. This may contradict the requirement of section 15 of the Act. Kindly clarify. Also, please confirm that the time of supply rules in sec 11 applies, and thus the reporting would not be based on K2 dates.</li> <li><b>Field 12</b> - There is confusion whether ES43 should be included, and whether ES43 is applicable to businesses other than "active mixed suppliers" such as property developers, hospitals, universities etc.</li> <li><b>Field 14</b> - the value reported should be K1 values or the values from the foreign supplier's invoices.</li> <li><b>Field 16</b> - Clarification is required on whether the value of all capital asset values acquired or only those valued at greater than RM100k should be included. Should purchases without GST be included (e.g. relieved acquisition of medical equipment by a hospital)? Can the taxable person choose to report the blocked acquisition as well?</li> </ul> <p>Sometimes a business will decide to capitalise an asset long after its actual acquisition. Clarification is required regarding the time at which the capital</p>	<p>account the time required for system software adjustments.</p> <p>If this is not so, clarification is required as to the time frame for making amendments to the GST-03.</p>	<p>attributable to making taxable supplies? (Field 16 has been revised to include only capital assets which are attributable to taxable supply.) <b>Yes, disclosure figures confined only to those which are attributable to making taxable supplies</b></p> <ul style="list-style-type: none"> <li>Should supply of goods to designated area be reported in <b>Field 10</b> or <b>11</b>? <b>Field 11</b></li> <li><b>Field 11</b> - the technical committee 2/2015 minutes requires export of goods to be declared at K2 value, which means that foreign currency will be converted using Customs weekly export rate. This may contradict the requirement of section 15 of the Act. Kindly clarify. Also, please confirm that the time of supply rules in sec 11 applies, and thus the reporting would not be based on K2 dates.</li> </ul> <p><b>Subject to 3<sup>rd</sup> schedule</b></p> <p><b>Foreign exchange : When the supply takes place or in the case of the importation of goods, at the rate of exchange determined by the DG at the time applicable for the calculation of customs duty or excise duty and valuation</b></p> <ul style="list-style-type: none"> <li><b>Field 12</b> - There is confusion whether</li> </ul>

No	Issues	CTIM's Proposal	Feedback from Customs
	<p>asset value should be brought into account.</p> <ul style="list-style-type: none"> <li>Field 17 - e.g. If a tax invoice is raised for RM106k (RM100k + GST RM6k) and no payment is received within 6 months, is the value reported in cell 17 RM6k or RM106k?</li> </ul>		<p>ES43 should be included, and whether ES43 is applicable to businesses other than "active mixed suppliers" such as property developers, hospitals, universities etc. <b>ES43 should be included</b></p> <ul style="list-style-type: none"> <li>Field 14 - the value reported should be K1 values or the values from the foreign supplier's invoices. <b>K1 values</b></li> <li>Field 16 - Clarification is required on whether the value of all capital asset values acquired or only those valued at greater than RM100k should be included. Should purchases without GST be included (e.g. relieved acquisition of medical equipment by a hospital)? Can the taxable person choose to report the blocked acquisition as well?</li> </ul> <p>Sometimes a business will decide to capitalise an asset long after its actual acquisition. Clarification is required regarding the time at which the capital asset value should be brought into account.</p> <p><b>Acquisition of taxable capital asset need to declare</b></p> <p><b>Block input tax are not required to declare</b></p> <ul style="list-style-type: none"> <li>Field 17 - e.g. If a tax invoice is raised for RM106k (RM100k + GST</li> </ul>

No	Issues	CTIM's Proposal	Feedback from Customs						
			RM6k) and no payment is received within 6 months, is the value reported in cell 17 RM6k or RM106k?  Total value of bad debt relief inclusive tax						
16	<p><b><u>Exemption From Registration</u></b></p> <p>Some companies have applied for the exemption from GST registration on the basis that they are making zero-rated supplies but have yet to obtain a decision from Customs after a number of months. The reason for application for exemption is the high compliance costs on the businesses. These companies are getting anxious because in the event that their application is denied, then they have little time to prepare themselves for GST-compliance.</p>	CTIM suggests the RMCD prioritise the processing of exemption applications to resolve the issue as soon as possible.	<p><i>Unit Penguatkuasaan Pendaftaran</i></p> <p>Officers need to verify the application.</p> <p>Statistics as at 26 March 2016 :</p> <table><tr><td>Processed</td><td>: 26,431</td></tr><tr><td>Pending</td><td>: 527</td></tr><tr><td>Total</td><td>: 26,958</td></tr></table>	Processed	: 26,431	Pending	: 527	Total	: 26,958
Processed	: 26,431								
Pending	: 527								
Total	: 26,958								
17	<p><b><u>Importation Of Goods</u></b></p> <p>For the importer who does not qualify for ATS or other facilities/reliefs which allow suspension of GST, the importation of goods of high value incurs huge import GST, causing serious cash flow problems. Although the GST paid is claimable, refunds at present are not processed within 14 days, and in practice are only coming through at a later time (in many instances around 2.5 months later). Additional financing may be required to pay for the GST, thus increasing the cost of importation and costs of doing business.</p>	<p>This issue has a severe impact on importers, particularly during this time of falling Ringgit exchange rate against major trading currencies.</p> <p>In certain jurisdictions, import GST payments may be deferred until the GST return filing date. The RMCD may consider the adoption of a similar facility in Malaysia.</p>	<p><i>Sektor VII</i></p> <p>RMCD is not considering to defer payment of GST on importation to GST Return filing date. However, Department is working to the very best in processing the input tax refund to relieve the severe impact on business cash flow.</p>						

No	Issues	CTIM's Proposal	Feedback from Customs
18	<p><b><u>Zero-Rated and Exempt Goods and Services</u></b></p> <p>Overseas Holdco (OH) engages an overseas audit firm A to audit all the companies in the Group worldwide. A engages Malaysian audit firm M to audit OH's subsidiary in Malaysia (S). M reports to and invoices A. However, the work is performed locally in Malaysia.</p> <p>The direct beneficiary of the work in the first instance is A for business purposes. Therefore, zero-rating takes effect under item 13. However, as S receives an indirect benefit, confusion exists in the market place regarding the authority for zero-rating.</p> <p>If OH sends an employee to Malaysia to oversee M carrying out the audit services, would the existence of one employee result in the company being present in Malaysia (i.e. NOT "outside Malaysia" when the services are performed.)</p> <p>(1) At present, where there are areas of doubt, the taxpayer has to obtain confirmation of tariff code from the Customs and then take that to the GST section of RMCD to obtain confirmation as zero-rating.</p>	<p>It would facilitate the tax agents/public if more clarification and examples can be provided on the types services that are zero-rated under items 11, 12 and 13 of the GST (Zero-Rated Supply) Order 2014 and its Amendment, in particular on how to deem if a service benefits someone belonging to Malaysia.</p> <p>(1) In addition, the GST section in every Customs station should have an expert in tariff codes to confirm the zero-rating.</p>	<p><i>Unit Panel Teknikal</i></p> <p>Based on the scenario given, the services being supplied by M (Malaysia co) directly benefits A (oversea audit firm). Pursuant to Item 13 of the GST (Zero Rated Supply) Order 2014, services which are supplied under a contract which directly benefit a person wholly in his business capacity and belongs in a country other than Malaysia, provided that it is not directly supplied in connection with land situated in Malaysia or goods which are in Malaysia at the time the services are performed is subject to zero rate.</p> <p>The existence of one employee will not result in the company being present in Malaysia.</p> <p>As regards to the examples, it would not be possible for Customs to cover all situations. (RMCD will update its guide from time to time)</p> <p>Taxpayer are required to enquire with Bahagian Perkhidmatan Teknik (Penjenisan) situated in every Customs station to seek clarification on tariff codes and subsequently get the confirmation of the zero rating GST treatment from GST office in station. However if there is uncertainty, inquiries can be referred to HQ</p>
19	<p><b><u>Issue of Credit Note/Debit Note Before Filing of GST Return</u></b></p> <p>Section 35 of the GST Act 2014 provides that</p>	<p>In practice, customers would generally refuse to make payment or delay the payment when the outstanding sum is incorrect, unless</p>	<p><i>Unit Panel Teknikal</i></p> <p>S.35 – requires adjustment to be made by a taxable person to issue credit or debit note under the prescribed circumstances</p>

No	Issues	CTIM's Proposal	Feedback from Customs
	<p><i>"Where any taxable supply is made by or to any registered person which involves the issuance and receipt of credit note or debit note under the prescribed circumstances and conditions, the registered person, whether he is the supplier or recipient of the taxable supply, shall make adjustments in his returns accordingly and the credit note and debit note shall contain the prescribed particulars."</i></p> <p>Regulation 25(1) of the GST Regulations 2014 provides that</p> <p><i>"A person making or receiving a supply shall issue a credit note or debit note where, <u>after</u> the return for the supply has been furnished to the Director General, there is a change to the consideration for the supply--</i></p> <p>(a) <i>due to a change in the rate of tax in force under Section 10 of the GST Act 2014 or a change in the descriptions of the zero-rated or exempt supply under Section 17 or 18 of the GST Act 2014, as the case may be; or</i></p> <p>(b) <i>due to any adjustment in the course of business."</i></p> <p><b>Example:</b></p> <p>XYZ Sdn Bhd is a GST registrant having a monthly taxable period. Its GST return for the August 2015 taxable period is only due for submission on 30<sup>th</sup> September 2015.</p> <p>On 3<sup>rd</sup> August 2015, XYZ Sdn Bhd had issued a tax invoice for a supply of goods costing RM1,060 (GST inclusive). Subsequent to the issuance of the said tax invoice, XYZ Sdn Bhd realised that it had made a mistake and over-charged its customer for an amount of RM106 (GST inclusive). XYZ Sdn Bhd then</p>	<p>the credit/debit note is issued the soonest to rectify the errors/mistakes.</p> <p>In this respect, CTIM would like to propose that the regulation be amended to allow registrant to issue a credit/debit note for the purpose of making the necessary adjustment in the course of business.</p> <p>In the meantime, CTIM would like to seek administrative concession from RMCD to allow the registrant to issue a credit note /debit note for the purpose of making the necessary adjustment in the course of business even though its GST return has not been furnished to RMCD yet.</p>	<p>The circumstances are prescribed under reg.25(1)(a) or (b).</p> <p>The objective of this requirement is to ensure that the taxable person furnish a true return and –</p> <p>(a) pay the true output; and</p> <p>(b) claim the true input;</p> <p>Section 35 GSTA and Reg. 25 only determine when to do adjustment for the purpose of GST. These provisions do not prohibit businesses to issue credit note or debit note at any time during the course of business before return is furnished as this is a business practice. If the credit note or debit note is issued in the same taxable period before return is furnished, no adjustment to be made. Subsequently, if the credit note or debit note was issued later after the return has been furnished, adjustment to the return has to be made accordingly.</p>

No	Issues	CTIM's Proposal	Feedback from Customs
	proceeded to issue a credit note for RM106 to its customer on 7 <sup>th</sup> August 2015.		
20	<p><b><u>GST Guide On Retailing</u></b></p> <p><b>Promotional discount</b> where the goods are not all shipped at the same time – this is a common business situation where for whatever reason goods are short shipped (goods out of stock / transport vehicle is full) it is not possible for companies to deliver all of the items at once (e.g. buy 3 get 1 free but can only ship the 3 at the moment).</p> <p>The understanding is that Customs will not accept a zero value invoice. However, the complete amount of GST would already have been charged on the original invoice. The second shipment is merely a delivery to make good on the short shipment.</p> <p>Shall this be an issue as 1 invoice can be issued with multiple DOs? Alternatively, a nominal fee could be imposed (e.g. RM1).</p>	<p>CTIM is of the view that zero value invoice for the free goods would not be treated as a gift given that it relates to the original invoice. It should not be deemed as a supply if the zero value invoice can be referenced to the original invoice which the free goods relate.</p>	<p><i>Sektor II</i></p> <p>Goods sold under promotional strategy such as 1 extra unit for every 3 units of product purchased is treated as a discount since effectively the customer is receiving 4 products for the price of 3, equating to a discount of 1 product. Therefore, the cost amounting to the price of 3 units is treated as a consideration for 4 units and the output tax is based on the amount of consideration (price of 3 units) as long as the 4 units are shown in the same Tax Invoice. In case where the free 1 extra unit of product is not available at the time of supply, then the tax invoice should state that the free 1 extra unit will be sent at a later time. The document (<b>DO of short shipped goods</b>) issued for the 1 extra unit at a later time must be related to the Tax Invoice issued earlier. In this case you do not have to issue a new invoice because the 1 extra unit is already included in the invoice issued earlier.</p>
21	<p><b><u>GST guide on E-commerce</u></b></p> <p>Will Malaysia follow the OECD guidelines to prevent double taxation and unintended non-taxation resulting from inconsistencies in the application of indirect tax to international trade?</p> <p>How is the supplier defined as belonging in Malaysia (e.g. Malaysian IP address or other definition)?</p>	<p>Malaysia should comply with the Organisation for Economic Cooperation and Development(OECD) guidelines to mitigate the possibility of double taxation.</p>	<p><i>Sektor V</i></p> <p>This issue will be forwarded to Technical Panel Unit.</p> <p>Detail answer will be sent to CTIM</p>

No	Issues	CTIM's Proposal	Feedback from Customs
22	<p><b><u>GST Transitional Guide</u></b></p> <p>Credit notes with respect to supplies under sales / service tax</p> <p>For how long – what time period – can clients issue invoices with sales tax or credit notes showing sales / service tax?</p>	<p>There should not be a time period for issuance of credit note as there are unforeseen circumstances that may require the issuance of credit note for goods or services provided under the previous regime. This should be allowable if both the buyer and the sellers agree to the issuance.</p>	<p>Caw Kawalan Kemudahan Fasilitasi dan Konsultasi</p> <p>Director General's Decision 1/2015 :Taxable persons under Sales Tax Act or Service Tax Act:</p> <p>(b) issue invoice or debit note which imposes sales tax or service tax not later than 28/4/2015.</p>
23	<p><b><u>Lease Over Land Entered Into Before 1 April 2015</u></b></p> <p>A lease over land is treated as supply of services under First Schedule of GST Act 2014. A lease entered into before 1 April 2015 which spans 1 April 2015 appears to be taxable by apportioning the lease premium received before 1 April 2015.</p> <p>Section 188 provides that a supply of services under an agreement for a period which begins before 1 April 2015 and ends on or after 1 April 2015 shall be taken to be made continuously and uniformly throughout the period of that agreement. Section 183(3) provides that for supply of services rendered after 1 April 2015 but the amount was invoiced or received before 1 April 2015, the amount shall be deemed to be inclusive of GST.</p> <p>Based on the above, lessors of those leases entered into before 1 April 2015 would have to bear the amount of GST on the lease payment for the period after 1 April 2015 if they cannot zero rate the supply under section 187 or amend the consideration to take into account the GST chargeable.</p> <p><u>Example 1</u></p>	<p>CTIM suggests that RMCD provide relief from GST under section 56(3)(b) for lease of land entered into before 1 April 2015 with the following conditions:</p> <ol style="list-style-type: none"> <li>full amount of the lease payment must be made before 1 April 2015; and</li> <li>duration of the lease must be for 5 years or more.</li> </ol>	<p><i>Sektor III</i></p> <p>There is no legal provision that provide GST relief for the lease of land entered into before 1 April 2015.</p> <p>The power to grant GST relief is under the power of Minister i.e. Ministry of Finance (MOF) by virtue of Section 56 of the GSTA.</p> <p>We suggest CTIM extends the suggestion to MOF</p>



No	Issues	CTIM's Proposal	Feedback from Customs								
	<p>Company A leased land to Company B for 20 years on 1 January 2000 for RM2,400,000. Company A is a registered person while Company B is not, and as such, Company A cannot zero rate the supply of the lease services under section 187. The GST chargeable that would have to be borne by Company A is RM32,264 which is arrived at below:</p> $\frac{(240 - 183)}{240} \times \frac{6}{106} \times \text{RM2,400,000} = \text{RM32,264}$ <p><u>Note:</u></p> <p>a) 1 Jan 2000 to 31 Mar 2015 = 183 months</p> <p>b) 20 years = 240 months</p> <p><u>Example 2:</u></p> <p>Company X leased land for a petrol station to Company Y for a premium of RM5,000,000 paid on 1 April 2010 for a 30 year period commencing on 1 April 2010. Assume that the transaction qualifies for zero rating under section 187. The premium per month is:</p> $\frac{\text{RM5,000,000}}{30 \times 12} = \text{RM13,889}$ <table><tr><th>Premium attributable to period:</th><th><u>GST treatment</u></th></tr><tr><td>1. before 1 April 2015</td><td>Not taxable</td></tr><tr><td>2. 1 April 2015 to 31 March 2020</td><td>Zero rated</td></tr><tr><td>3. 1 April 2020 to 31 March 2040</td><td>Taxable at standard rate as tax inclusive under section 183</td></tr></table>	Premium attributable to period:	<u>GST treatment</u>	1. before 1 April 2015	Not taxable	2. 1 April 2015 to 31 March 2020	Zero rated	3. 1 April 2020 to 31 March 2040	Taxable at standard rate as tax inclusive under section 183		
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No	Issues	CTIM's Proposal	Feedback from Customs
24	<p><b><u>Issuance Of Tax Invoice For Non-Taxable Supplies</u></b></p> <p>Section 33(10) of the GST Act, 2014 stipulates that  <i>"No invoice showing an amount which purports to be a tax shall be issued –</i>  <i>(a) By any person –</i>  <i>(i) On any supply of goods or services which is not a taxable supply;</i>  <i>(ii) On any zero-rated supply; or</i>  <i>(b) By any person who is not a registered person."</i></p> <p>Para 3 of Item 3, DG's Decision 6/2015 however, prohibits the issue of tax invoice for an out of scope supply or an exempt supply.</p>	<p>Some Customs approved accounting systems cannot issue non-tax invoices even if the invoice is for a non-taxable supply. This creates complications for the taxpayer having to maintain invoice records outside the system because the DG's Decision prohibits them from issuing tax invoice for non-taxable supplies.</p> <p>The prohibition also complicates the audit of GST compliance and management because the company invoice cannot have a single serial number.</p> <p>It must be noted that the law only prohibits tax invoices to be issued with GST amounts for non-taxable supplies</p> <p>CTIM proposes that Item 1(3) of DG's Decision 6/2015 be amended to allow invoices to be issued in the GST tax invoice format (without showing the amount of GST).</p>	<p>Unit Panel Teknikal</p> <p>This issue will be forwarded to Timbalan Ketua Pengarah Kastam (Perkastaman/GST)</p>

No.	Issue	Recommendation / Clarification Sought	MAKLUMBALAS
1.	<p><b>Property Management</b></p> <p>Guide on Property Management (28/4/15)</p> <p>JMB and MC in residential buildings are exempted from GST registration as stipulated in para 20 of GST (Exempt Supply) Order. However, they are required to register if they make taxable supply of services to any person who is not the parcel owner of such residential property and the annual taxable turnover exceeds the GST threshold.</p>	<p>Please clarify whether JMB and MC of residential buildings are treated as making taxable supplies to parcel owners for the following :-</p> <p>(a) Insurance for the building;</p> <p>(b) Water and electricity under bulk meters (refer page 16 and 17 of the Guide)</p> <p>(c) Quit rent</p> <p>If so, is the JMB or MC required to register if the value of these taxable supplies to parcel owners exceeds RM500k?</p>	<p>JMB or MC is not making any supply of the item (a) – (c). The insurance of the building, bulk meter utilities bills, and quit rent is charged to JMB or MC. Therefore, they are acting as a principal and later they recover the expenses from the parcel owner. The recovery of expenses is treated as reimbursement. Reimbursement is subject to GST.</p> <p>The JMB or MC is required to be registered under Sec. 20, of GST Act 2014 if the his annual taxable turnover exceeds RM500,000.00.</p>
2.	<p><b>Designated Area</b></p> <p>a) Leasing of vessel by a DA Company to another DA Company for use in PCA;</p> <p>b) Leasing of vessel by a DA Company to a PCA Company for use in DA only.</p> <p>Response from MICPA after questioning by Tuan Faizulnudin bin Hashim are as follows :</p>	<p>Clarification is sought whether leasing of vessel as stated in the issue are supply within DA (no GST).</p>	

No.	Issue	Recommendation / Clarification Sought	MAKLUMBALAS												
	<p>a. Leasing of a vessel by a Designated Area (DA) Company to another DA Company for use in PCA and leasing of vessel by a DA Company to a PCA Company for use in DA only are dry leasing arrangements (i.e. bareboat charter)</p> <p>b. The Company can also provide proof that the vessel is used in DA based on the Vessel Daily Report ("VDR") which will state the area where the vessel operated.</p>														
	<p><b>Response from Tn Faizulnudin bin Hashim :</b></p> <p>Dry Leased</p> <ul style="list-style-type: none"> <li>- A supply of a means of transport</li> </ul> <table border="1"> <thead> <tr> <th>Lessor belongs in</th><th>Leesee belongs in</th><th>Vessel used by lessee in</th><th>GST Treatment</th></tr> </thead> <tbody> <tr> <td>DA</td><td>DA</td><td>PCA</td><td> <p>If the vessel is already in PCA, 6% GST chargeable on the monthly lease payment.[Sec. 157 GSTA]</p> <p>If the vessel is to be imported into PCA from DA, GST 6% will be imposed on the importation [Sec. 156(a) GSTA]. However there is no GST chargeable on the monthly lease payment.</p> </td></tr> <tr> <td>DA</td><td>PCA</td><td>DA</td><td>No tax chargeable, provided that the vessel is wholly used in DA[Sec. 155 GSTA]</td></tr> </tbody> </table>			Lessor belongs in	Leesee belongs in	Vessel used by lessee in	GST Treatment	DA	DA	PCA	<p>If the vessel is already in PCA, 6% GST chargeable on the monthly lease payment.[Sec. 157 GSTA]</p> <p>If the vessel is to be imported into PCA from DA, GST 6% will be imposed on the importation [Sec. 156(a) GSTA]. However there is no GST chargeable on the monthly lease payment.</p>	DA	PCA	DA	No tax chargeable, provided that the vessel is wholly used in DA[Sec. 155 GSTA]
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	Wet leased - A supply of transportation service.																		
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3.	<b>Imported services</b>  Imported services of zero rated supplies if made in Malaysia (e.g. Overseas HQ charged Malaysia company postal service performed in relation to international mail).	Clarification is sought as to whether any output tax should be accounted for the imported services (since it is zero rated not standard rated supply if made in Malaysia)?	Need further clarification and full facts.																
	<b>Questions asked by Puan Kho Wun Lin :</b>  1. Who is the service supplier and is the service supplier in Malaysia or overseas; and 2. Who is charging who and any intermediaries in between.  <b>Response from Tan Yu Yin, MICPA :</b>  The Holding Company (with headquarters in the UK) incurred postal services charges for mailing / despatch of documents / parcels within the UK and to Malaysia on behalf of the Malaysian Co. The mailing services is provided by the UK Royal Mail and billed to the UK Holding Company. The UK Holding Company subsequently allocated and on-charge the costs incurred on behalf of the Malaysian Co. to the Malaysian Co.																		

No.	Issue	Recommendation / Clarification Sought	MAKLUMBALAS
	<p>Clarification is therefore sought as to whether any output tax should be accounted for the abovementioned services (since it is zero rated not standard rated supply if made in Malaysia) for the reimbursement by the Malaysian Co to the UK Holding Company.</p> <p><b>Response from Sector V :</b>  Cost recovery by Holding Co in UK for postal services in relation to services in UK is out of scope as the services are consumed outside Malaysia and the supplier is an oversea person. Services acquired from overseas which directly connected to goods oversea and consumed oversea is an out of scope supply.</p> <p>As for the payment made by Malaysian company to the Holding Co in UK in relation to international mail, it is treated as imported services, it is zero rated under Item 21, Second Schedule of GST (Zero Rated Supply) Order 2014.</p>		
4.	<p><b>Reimbursement</b></p> <p>a) Medical services provided by a private hospital to group of companies are exempt supplies. When the hospital bills to the holding co, no GST is applicable, When holding onwards bill to its subsidiaries, is it subject to 6% GST?;</p> <p>b) For electricity bill – incurred before 1 April 2015 but recharge after 1 April 2015, is it subject to 6% GST?</p> <p>c) TNB collect 1% charges as SEDC – this is an out of scope supply as payable to the Ministry, when a company recharge the electricity and the 1% charge, is the whole amount subject to GST?</p> <p>d) 1% Renewable Energy (RE) Fund collected by TNB on behalf of Sustainable Energy Development</p>	<p>Please clarify whether 6% GST is applicable regardless of the original GST status of the supply when recovery/rebilling do not meet the criteria of a disbursement.</p> <p>If so, under what circumstances can a concession be given such that the original GST status be maintained in view of how certain industries interact with the Authorities in terms of payment?</p>	

No.	Issue	Recommendation / Clarification Sought	MAKLUMBALAS
	<p>Authority (SEDA) for the RE Fund. SEDA is an agency under the Ministry of Energy, Green Technology and Water.</p> <p>e) Quit rent charges to developer is out of scope supply and land title is in developer's name, when developer rebills to purchaser, it should also be subject to 6%, right? But the Developer Guide date stated that supply of quit rent by a developer is not a supply</p>		<p>Generally, quit rent is charged by local authority to developer under developer's name is out of scope supply. Later, the developer recover the expenses from the land owner is a supply. Such supply is a supply of service. Therefore, the reimbursement is subject to GST. Hence, the property guide will be updated soon.</p>
	<p><b>Response from Puan Raizam,PKPK I Sector 1</b></p> <p>In relation to (a) to (d) in the case where such cost is be incurred in registered person's capacity as a paying agent for a particular client. Hence, such registered person does not have the legal obligation to pay for the goods or services or be a party to a contract and does not have discretion to alter the nature or value of supplies made between his purchaser and the third party supplier but are authorized by his purchaser to make payment to the third party supplier on his behalf. As such, no GST is eligible on the subsequent disbursement by the client. A recovery of a payment, the registered person incurred by him in his capacity as paying agent on behalf of another party in order to discharge its payment obligation is treated as a disbursement. A disbursement does not constitute a supply and is not subject to GST.</p> <p>For the purposes of GST, payment to the third party will be treated as disbursements if:</p> <ul style="list-style-type: none"> <li>(a) The disbursement is made by the person as an agent on behalf of the client;</li> <li>(b) The client actually received the goods or services;</li> <li>(c) The client is the person responsible to pay;</li> </ul>		

No.	Issue	Recommendation / Clarification Sought	MAKLUMBALAS
	<p>(d) The payment is authorised by the client;</p> <p>(e) The client knew that the goods and services paid for is provided by the third party;</p> <p>(f) The payment is itemised;</p> <p>(g) The person claims the exact amount from the client; and</p> <p>(h) The payment is clearly additional to the supplies the person makes to the client.</p>		<p>However, the registered person must charge their clients GST when billing if an item is reimbursement for GST purposes. For the purpose of GST, the term "reimbursement" refers to the recovery of an expense that registered person incur as a principal from another party. Thus, if the expenses paid to a third party have been incurred by the registered person in the course of making his own supply of goods or services to his client and the payment was part and parcel of the whole of the services rendered by him to his purchaser, it will constitute part of the whole services rendered and become part of the consideration payable. A reimbursement, may be subjected to GST if it is consideration for a supply of goods or services. The registered person are entitled to input tax incurred on goods or services procured by them if the subsequent recovery of such expenses constitutes a taxable supply.</p>



# LEGISLATION CHANGE

Lampiran B1 - MICCI

No.	GST Matter	Relevant legislation	Current legislation	Proposed amendment	Rational for proposed change
1	Price display	Section 9(5)	Where any registered person displays, advertises, publishes or quotes in any manner the price of any supply of goods or services he makes or intends to make, such price shall include the tax that is chargeable on the supply unless the Director General approves otherwise under subsection (7).	To insert a new subsection (5A) which states that: "Subsection (5) shall not apply to any display, advertisement, publication or quotation which is intended solely for the purpose of making the supply to a taxable person and which is in a form not ordinarily available for distribution to the public."	A registered person should be allowed the flexibility of quoting the price of his supply exclusive of GST to another taxable person especially when the price quotation is not ordinarily available to the general public.
<p><i>Response from RMCD - Unit Panel Teknikal</i></p> <p>Tax inclusive prices are in compliance with section 8 of the Price Control and Anti Profiteering Act 2011 and section 9 of the GST Act 2014.</p> <p>ALL prices must be quoted <b>INCLUSIVE</b> of GST with no exceptions. The GST component, must be shown as a separate item in the total.</p> <p>Rather than have the recipient/buyers questioning whether the price is inclusive or exclusive, especially when a contract is silent or a display is silent, the government policy to adopt an inclusive pricing will benefit ALL.</p> <p>However, in the DGs Decision 1/2015 item 3 states that the price may be displayed exclusive if the supply is made to a registered person with a qualifying statement below:</p> <ul style="list-style-type: none"> <li>(i) goods and services are subject to GST at 6% ; and</li> <li>(ii) the price payable is exclusive of GST</li> </ul> <p>This would not be misleading or deceptive.</p> <p>Prices may be indicated exclusive of tax at an outlet or through advertisement from which all of your business is with business customers registered for GST.</p>					

No.	GST Matter	Relevant legislation	Current legislation	Proposed amendment	Rational for proposed change
2.	Joint venture	section 69	Currently only registered persons who participate in a petroleum-related activity under a venture can apply to DG of Customs to be deemed as a joint venture.	To allow registered persons who are involved in property development to apply to be deemed as a joint venture.	Joint venture should not be restricted to petroleum-related activity because joint ventures in property development are also very common.
<p><i>Response from RMCD - Sector III</i></p> <p>Section 69 GSTA is only applicable to Joint venture in petroleum upstream industry under production sharing contract (PSC) signed with Petroliaam Nasional Bhd (PETRONAS). It is not extended to the property sector because the conditions and mechanism of operations stipulated under PSC do not jive with the property JV contract.</p> <p>However, under the item 7, DG's Decision 4/2014 (amended on 21/3/2015) has elaborated on the role of the JV in property development. In property development, the parties involved in JV is treated as two separate persons with separate business. They incurred separate acquisitions and make separate supplies. Hence, they are liable to be registered separately, submit different returns, tax invoices and liabilities and claim their own input tax credit. Therefore, they are not jointly and severally liable on any of the cause of action.</p> <p>Therefore, there is no necessity to have a new GST provision to allow JV in property development.</p>					
3.	Penalty regime	Part XI - s88-98 of GSTA	Absence of clear procedure for submission of amendment returns or de minimis for submission of errors.	Errors less than a) RM5,000 and b) 1% of 5(b) figure can be submitted in next GST return.	No clarity on procedure or implications of incorrect GST return.
<p><i>Response from RMCD - Unit Panel Teknikal</i></p> <p>The procedure for submission of amendment returns can be referred in the GST Guide on Amendment Return GST -03 available on the GST portal. RMCD is in the process of updating the procedure</p>					

No.	GST Matter	Relevant legislation	Current legislation	Proposed amendment	Rational for proposed change
4.	Blocked input tax	Regulation 36(b) & (f)	Insurers blocked from claiming input tax credit on medical and motor car expenses.	Exception to Regulation 36(b) & (f) - does not apply to insurers	Genuine business cost to insurers
<p><i>Response from RMCD – Sector IV</i></p> <p>Insurers are not allowed to claim deemed input tax credit as provided under regulation 47(2A) since the cash payments made are related to supplies which credit for input tax is disallowed under regulation 36. This means that insurers are not able to claim any input tax incurred on any cash payment made to the insured or third parties which is related to blocked input tax under regulation 36(b)</p>					

NO	ISSUE	RECOMMENDATION / CLARIFICATION SOUGHT	RESPONSE
1.	<p>Transfer of Going Concern</p> <p>a) The date of transfer of business can be defined differently under a sale and purchase agreement. For the purpose of GST, does it mean that the transfer date is the:</p> <ul style="list-style-type: none"> <li>• Date of the agreement;</li> <li>• Date when the agreement is effective;</li> <li>• Date when the transferee has the rights to start transferring the assets/business to the transferor? (this date could be 4-6 months after the date of the agreement); or</li> <li>• Date when the business transfer is completed?</li> </ul> <p>b) Does the transfer of business need to be transferred under one agreement only? For commercial and legal reasons, the transfer may not necessarily be under one agreement. It could be done under one master agreement, with connected or subsidiary/secondary agreements (for example, one master sale and purchase agreement with one secondary agreement for the transfer of employees).</p> <p>c) Where a sale of business does not meet the TOGC criteria, how should the sale of business be valued for the purposes of GST?</p> <ul style="list-style-type: none"> <li>• Is GST to be imposed on the value of</li> </ul>		<p><i>Sektor VII</i></p> <p>Response to (a):</p> <p>The transfer date is the date when the agreement is effective unless there is a clause stating terms of transfer, etc. at a later date.</p> <p>This may be difficult to monitor and control:</p> <ul style="list-style-type: none"> <li>• Date when the transferee has the rights to start transferring the assets/business to the transferor? (this date could be 4-6 months after the date of the agreement); or</li> <li>• Date when the business transfer is completed</li> </ul> <p>Response to (b):</p> <p>The transfer of business need not have to be only one agreement.</p> <p>Response to (c):</p> <p>The selling price stipulated in the agreement of sale.</p>

NO	ISSUE	RECOMMENDATION / CLARIFICATION SOUGHT	RESPONSE
	<p>assets only? If so, is the value of assets at book value or market value? Or;</p> <ul style="list-style-type: none"> <li>Is GST to be imposed on the value of the business i.e. net value after assets minus liabilities (including intangibles)?</li> </ul>		
2.	<p>Issuance of tax invoice for Disregarded and Relief Supplies</p> <p><b>Section 75(1)</b>  “A holder of a Capital Markets Services Licence and holders of a Capital Markets Services Representative’s Licence shall be treated as a single entity for the purposes of registration under this Act..”</p> <p><b>Section 75(3)(b)</b>  “any taxable supply of goods or services in carrying on a business of dealing in securities or dealing in derivatives between members and lead member of the single entity shall be <b>disregarded</b>” (emphasis added)</p> <p><b>Director General’s Decision 6 2015 Item 1 Decision 2</b>  “For the taxable supply which is disregarded or granted relief, the tax element in the tax invoice must be presented as ‘NIL’ and specified as ‘disregarded’ or ‘relief’”</p>	<p>Question:</p> <p>Whether the requirement to issue tax invoice for disregarded supplies extend to Single Entity arrangement, ie. between Capital Markets Services Licence and Capital Markets Services Representatives for activities under the capacity of a single entity?</p>	<p><i>Sektor VII</i></p> <p>The requirement to issue tax invoice for disregarded supplies extends to Single Entity arrangement under section 75.</p> <p>Paragraph 75(3)(b) indicates that the supply between the holder of a Capital Markets Services Licence and the holder of a Capital Markets Services Representative’s Licence in carrying on the business of dealing in securities or derivatives, is a disregarded supply.</p>
3.	<p>1. Imported Services</p> <p>i. Would reverse charge be applicable to services procured from a non-resident supplier whereby the services are performed outside Malaysia? Examples /</p>		<p><i>Sektor V</i></p> <p>Imported services means any services by a supplier who belongs in a country other than Malaysia or who</p>

NO	ISSUE	RECOMMENDATION / CLARIFICATION SOUGHT	RESPONSE
	<p>scenarios include:-</p> <ol style="list-style-type: none"> <li>a. Purchase of air ticket from Singapore to Jakarta through an overseas travel agent;</li> <li>b. Freight services from Amsterdam to Labuan procured through an overseas freight forwarder;</li> <li>c. Repair and maintenance of vessel in Indonesia by an overseas supplier;</li> <li>d. Medical expenses for staff incurred at a Singapore clinic/hospital/medical centre.</li> </ol> <p>ii. Where services are procured from a non-resident supplier which is invoiced to Company A but the liability to pay lies with Company B, would reverse charge be applicable to Company A or Company B?</p>		<p>carries on business outside Malaysia, to a recipient who belongs in Malaysia, and the services are consumed in Malaysia.</p> <ol style="list-style-type: none"> <li>i. a. air ticket from Singapore to Jakarta, the services is consumed outside Malaysia, thus, reverse charge is not applicable.</li> <li>b. the transport services end in Malaysia (Labuan), thus, the reverse charge is applicable. However, the transport services in relation to goods from a place outside Malaysia to the first entry point in Malaysia is zero-rated supply (item 4(c), Second Schedule, GST (Zero-Rated Supply) Order 2014).</li> <li>c. the repair and maintenance services are directly in connection to goods and the goods (vessel) is outside Malaysia (in Indonesia) when the services are performed. Therefore, reverse charge is not applicable.</li> </ol>

NO	ISSUE	RECOMMENDATION / CLARIFICATION SOUGHT	RESPONSE
			<p>d. the medical services is performed and consumed in Singapore, thus for the medical expenses incurred at a Singapore clinic/ hospital/ medical centre, reverse charge is not applicable.</p> <p>ii. The invoice is addressed to Company A. Thus reverse charge is applicable to Company A, not Company B.</p>
4.	<p>Reverse charge for fully taxable persons.</p> <p>Many countries do not require registered persons who are fully taxable to perform reverse charge, as it has no net GST impact and only imposes an administrative burden on the taxpayers.</p>	<p>Is there scope for the Director General to release in its next document a concession whereby fully taxable persons may forego accounting for reverse charge altogether? For example, in New Zealand, only those who make an average of less than 95% taxable supplies are required to self-account under reverse charge. This is in recognition of the fact that there would be net GST impact for fully taxable persons as they would generally be entitled to full input tax claim on the self-accounted imported service.</p>	<p><i>I Sektor VII</i></p> <p>This issue had been discussed. Reverse charge applies also to other than taxpayers (not registered for GST) and also taxpayers which are mixed suppliers. In such cases, there is a GST impact to be considered. The GST treatment has to be streamlined for all transactions.</p>

NO	ISSUE	RECOMMENDATION / CLARIFICATION SOUGHT	RESPONSE
5.	<p>Clarification of supplies subject to reverse charge</p> <p>Section 13(1) provides that imported services which would be "taxable supplies" If it were made in Malaysia will be subject to reverse charge. "Taxable supplies" is defined to be both zero rated and standard-rated supplies. It is non sensical require reverse charge to be performed with respect to supplies which would qualify for zero-rating.</p>	<p>Can this be amended in the Act, and in the interim, can the Director General release in its next document which provides a concession whereby imported services which would be zero-rated are not required to be self-accounted for?</p>	<p><i>Unit Panel Teknikal</i></p> <p>Imported services needs to be accounted for using the reverse charge mechanism in relation to zero rated supply. This acts as a control mechanism to avoid abuse with respect to supplies that is standard rated but subsequently declared as zero rated.</p>



## **PINDAAN**

### **ISU OLEH FEDERATION MALAYSIAN MANUFACTURING (MUKA SURAT 5)**

Isu : Claim of input tax within 6 years from the date of supply or importation

Ulasan/status : Perkara ini telah diputuskan dalam DG's Decision 8/2015 bertarikh 2.11.2015

Tindakan : Makluman

### **ISU OLEH MALAYSIAN INSTITUTE OF ACCOUNTANTS (MUKA SURAT 6)**

Isu : Disbursements

Ulasan/status : *Guide on Legal Practitioners* telah diterbitkan pada 22 Disember 2015

21. Section 3 of the Solicitors' Remuneration Order 2005 states that the following shall not include as the remuneration of the solicitor:

- (a) fees payable on the registration of documents requiring registration;
- (b) stamp duties or fees;
- (c) counsel's fees, auctioneer's or valuer's fees;
- (d) travelling or accommodation expenses;
- (e) fees paid on searches;
- (f) costs of extracts from any register or record;
- (g) other disbursements reasonably and properly paid and incurred (which shall be itemized in any bill of costs rendered by the solicitor to the client);
- (h) the cost of any extra work;
- (i) fees relating to any business of a contentious nature;
- (j) fees relating to any proceeding in any court; and
- (k) Miscellaneous expenses not exceeding RM50.

22. Generally, the legal practitioner refers a 'disbursements' as money which they have to pay to the third party with the matter they are dealing on behalf of the client. These may include court fees, fees for medical or other expert reports or search fees in a property transaction. However for GST purposes, disbursements are defined more narrowly as further explained in the following paragraphs.

23. Legal practitioners may recover any expenses incurred on the supply and charge GST on the reimbursement. If the client incurred the expenses directly, it would be treated as disbursement and no GST shall be charged. Please refer to specific Guide on Supply.

24. In general, to determine whether it is a disbursement for GST purposes, registered professional must fulfilled all the following criteria:

- (a) Incur expenses as an agent acting on behalf of the client;
- (b) The client is the recipient of the supply (invoice is in the client's name);
- (c) The client is the person responsible to pay for the supply;
- (d) The payment is authorized by the client;

- (e) The client knew that the supply is made by a third party;
- (f) The exact amount is claimed from the client and the agent has no right to alter or add on the value of the supply; and
- (g) The payment is clearly an additional to the supply made to the client

25. If the criteria in para 24 is not fulfilled, such supply may be treated as reimbursement and subject to GST at a standard rate.

#### **ISU OLEH MALAYSIAN INSTITUTE OF ACCOUNTANTS (MUKA SURAT 6)**

Isu : Input tax credit (ITC)

Ulasan/Status :

Wakil MIA memaklumkan perkara ini akan dikemukakan ke Bahagian Kewangan untuk tindakan lanjut. MIA akan mengadakan perbincangan dengan Sektor 7 sebaik sahaja Bahagian Kewangan memberikan keputusan.

Tindakan : Makluman