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TaXavvy

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Royal Malaysian Customs
Department's Panel
Decisions 2/2014
– Goods and Services Tax
Frequently Asked Issues



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Goods and Services Tax (“GST”) Frequently Asked Issues

The Royal Malaysian Customs Department (“RMCD”) has uploaded their panel decisions on the following GST Frequently Asked Issues on to their portal:

- 1) “Passenger motor car” under Reg. 34 of the GST Regulations 2014
- 2) Claiming input tax on business expenses billed to employees
- 3) Taxable period of person who annual taxable supplies is less than RM5 million
- 4) Gift rule
- 5) Voluntary registration for pre-commencement of business
- 6) Supply of goods to company branch in designated area
- 7) Agent and foreign principal
- 8) Claiming special refund for goods held on hand on 1/4/2015

The above panel decisions can be downloaded from the official portal of the Royal Malaysian Customs Department’s portal (<http://gst.customs.gov.my>). This issue of TaXavvy will highlight the impact of the above decisions and our comments on them.

No.	Issue	Comments
1	“Passenger motor car” under Reg. 34 of the GST Regulations 2014	<ul style="list-style-type: none"> • Sub-regulation 34(g) of the GST Regulations 2014 provides that the Director General (“DG”) of Customs may approve any motor car which is used exclusively for the purposes of business to be excluded from the definition of “passenger motor car” (which will have the input tax being disallowed). • The RMCD has listed down the types of motor cars which the DG may approve and the conditions that must be fulfilled in order to obtain the approval. • The RMCD has also provided a few examples of motor cars which the DG may not approve. No basis or reason is provided by the RMCD as to why the DG may not approve these examples of motor cars. However, if a business has a strong case or argument for its motor car under these categories to be approved, it should still write to the DG to apply for approval.
2	Claiming input tax on business expenses billed to employees	<ul style="list-style-type: none"> • Sub-regulation 38(1)(a)(i) of the GST Regulations 2014 provides that a registered person claiming input tax must hold a tax invoice under his name. • However, it appears that the RMCD is making a concession treatment of allowing input tax on mobile phone expense to be claimed by a registered person even if the tax invoice is in the name of the employees. • For the other types of expenses (e.g. parking, travelling, entertainment, hotel accommodation), the RMCD has confirmed that the tax invoice which is in the name of the employees cannot be used to claim input tax by the registered person. • In this regard, a registered person should ensure that his employees who incur business expenses on his behalf and subsequently being reimbursed should insist from the suppliers that the tax invoices be issued under the registered person’s name and not the employees’ names.

No.	Issue	Comments
3	Taxable period of person whose annual taxable supplies is less than RM5 million	<ul style="list-style-type: none"> The RMCD has decided that the first taxable period of the person whose annual taxable supplies is less than RM5 million should coincide with the financial year of the business and this is provided in section 40(4) of the GST Act 2014 where the DG is empowered to reassign a taxable period that he deems fit to a taxable person.
4	Gift rule	<ul style="list-style-type: none"> The RMCD has decided that the 'year' referred to in Para 5(2) of the First Schedule of the GST Act 2014 is the 'tax year' (financial year). With this decision, businesses should find it easier in tracking the total cost of their gifts to each person each year. The RMCD has confirmed that if a gift worth more than RM500 is purchased from a non-GST registered person and is given out for free (without consideration) by a taxable person, that taxable person does not need to account for output tax. This decision has corrected the error in paragraph 19 Example 11 of the GST Guide on Employee Benefits (as at 21 July 2014). The RMCD has also confirmed that if the total cost of gifts per person per year exceeds RM500, the taxable person must account for output tax on the total cost of the gifts in the taxable period it exceeds RM500.
5	Voluntary registration for pre-commencement of business	<ul style="list-style-type: none"> The RMCD has provided some examples of documents which may be used by a person to prove that he is or about to carrying on a business which has taxable supply of expected to exceed the threshold for registration. The condition of the total taxable supply of the business must be expected to exceed the threshold within 12 months from the date of the application does not seem to be supported by law.
6	Supply of goods to company branch in designated area ("DA")	<ul style="list-style-type: none"> The RMCD has clarified that in situation where XYZ Company (not in DA) purchases goods from ABC Company and request ABC Company to send the goods to XYZ Company's branch in DA, there must be documentary evidence to support that goods are moved or shipped to DA in order for the supply to be zero-rated. Otherwise, the supply must be standard-rated. It appears that this treatment is only for supply of goods to company's branch in DA and should be contrasted with the treatment in Item No. 5(iii) of RMCD's Panel Decision 1/2014 where the supply of goods is to the company's customer in DA.
6	Agent and foreign principal	<ul style="list-style-type: none"> The RMCD has clarified that in situation where a foreign principal who does not belong in Malaysia appointed a local agent under section 65(5) of the GST Act 2014, the local agent can act as importer of goods for the foreign principal (i.e. local agent's name can appear on Customs Form No.1) and claim the input tax on behalf of the foreign principal provided the foreign principal issue an authorisation letter to the local agent.
7	Claiming special refund for goods held on hand on 1/4/2015	<ul style="list-style-type: none"> The RMCD provides clarifications on how the special refund can be claimed.

Let's talk

GST / Indirect tax	Name	Email	Telephone
Kuala Lumpur			
	Wan Heng Choon	heng.choon.wan@my.pwc.com	+60(3) 2173 1488
	Raja Kumaran	raja.kumaran@my.pwc.com	+60(3) 2173 1701
	Dato' Tan Kwong Jin	kwong.jin.tan@my.pwc.com	+60(3) 2173 1808
	Nicolaos Giannopoulos	nicolaos.giannopoulos@my.pwc.com	+60(3) 2173 0833
	Hanita Ahmad	hanita.ahmad@my.pwc.com	+60(3) 2173 0202
	Yap Lai Han	lai.han.yap@my.pwc.com	+60(3) 2173 1491
Penang / Ipoh	Tony Chua	tony.chua@my.pwc.com	+60(4) 238 9118
Johor Bahru	Benedict Francis	benedict.francis@my.pwc.com	+60(7) 222 4448
Melaka	Teh Wee Hong	wee.hong.teh@my.pwc.com	+60(3) 2173 1595
	Au Yong	paik.hup.au@my.pwc.com	+60(6) 282 6169
Labuan	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828

You may also get in touch with your regular PwC contact.

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