

## NEW ISSUES FOR MESYUARAT BIL. 5/2015

Lampiran A3 - FMFF

	Issue	Recommendation	Feed back from Customs.
1.	<p>Director General's decision 5/2015 dated 30/04/2015.</p> <p><b>Transport Services.</b></p> <p>Who can be considered as making a supply of transportation services under item 4, Second Schedule of GST (Zero-rated supply) Order 2014</p> <p>As per discussion at the GST Technical Committee Meeting on 09/07/2015, the interpretation was that the Freight Forwarder and Non-Vessel Operating Common Carrier (NVOCC) under (ii) and (iii) of the DG's decision was only entitled zero-rated tax treatment to supply of transport services only.</p> <p>Based on the narrow definition of item 4, the Freight Forwarder and NVOCC may not enjoy any direct benefit from the DG's decision as they do not operate the ship and may be unable to qualify as making a supply of transportation services.</p> <p>Many Shipping Lines operate on Vessel Sharing Agreements (VSA)</p>	<p>FMFF submits that DG's decision to include shipping lines operating in VSA should be similarly extended to NVOCCs and Freight forwarders. The decision could be considered when it includes reference to <b>item 5 "transport, loading, unloading and handling services as referred to in sub item 3(2) in relation to the transport of goods from a place in Malaysia to another place in Malaysia to the extent that those services are supplied by the same supplier as part of the supply of services to which sub item 4 (b) "from the last exit point in Malaysia to any place in other country" or (c) "from a place outside Malaysia to the first entry point in Malaysia" applies.</b> By expanding the scope to item 5 and item 3(2) the Freight Forwarder and NVOCC can enjoy zero-rated supply for their following services similar to Shipping lines. The charges for freight Forwarders to be zero-rated are:</p> <ol style="list-style-type: none"> <li>1. Terminal Handling charges</li> <li>2. LCL charges</li> <li>3. D/O and B/L fee</li> <li>4. EDI fee</li> </ol>	<p>Tuan Faizulnudin bin Hashim PKPK I Sektor V</p> <p>Sebelum keluarnya DG decision 5/2015, hanya <i>carrier</i> sahaja dianggap sebagai pembekal perkhidmatan pengangkutan antarabangsa di bawah butiran 4 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014.</p> <p>Setelah mendapat kelulusan dari Kementerian Kewangan, <i>NVOCC</i> dan <i>freight forwarder</i> dianggap sebagai pembekal perkhidmatan pengangkutan antarabangsa bagi tujuan butiran 4 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014.</p> <p>Butiran 3(2) Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014 merupakan <i>ancillary services</i>. Pembekal <i>ancillary services</i> perlu mengenakan GST ke atas perkhidmatan yang diberi disebabkan bekalan tersebut berlaku di Malaysia.</p>

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	<p>where each participating shipping line contributes an agreed number of ships to the service. The shipping line that provides the ship would be the transport operator. The other shipping lines in the VSA are given agreed number of slots/spaces in the ship. Therefore, they are not operating the ship or providing the transport. The DG's decision does not differentiate these participating shipping lines that do not actually operate the ship and they qualify under item 4, Second Schedule of GST of (Zero Rated Supply) Order 2014 as a supply of transport.</p>	<ol style="list-style-type: none"> <li>5. Agency fee</li> <li>6. Cost recovery charges/CRM</li> <li>7. Seal charges</li> </ol> <p>For NVOCCs, the following charges to be zero-rated:</p> <ol style="list-style-type: none"> <li>1. FCL –Terminal handling charges</li> <li>2. LCL fees</li> <li>3. EDI fees</li> <li>4. D/O and B/L fees</li> <li>5. Cost Recovery fee</li> <li>6. Agency Recovery Fee (FCL only)</li> <li>7. Agency fee</li> <li>8. Seal fees</li> </ol> <p>FMFF request GST Technical Committee/MOF to review its DG's decision 5/2015 to enable freight forwarders and NVOCCs operating as Principals to zero-rate their supply of services under item 5 of Second Schedule (Zero-Rated Supply) Order 2014. If this review is not made freight forwarders and NVOCCs will lose all their business to shipping lines who zero-rate their services and charges while Freight forwarders and NVOCCs standard rate the charges. For information more than 65% of freight on ships are arranged by Freight forwarders and NVOCCS while 100% of air freight is by freight forwarders, as General Sales Agent. For air freight, Airline sells to Forwarder and forwarder sells to another Forwarder, which Customs GST Sector V has deemed as zero-rated supply.</p>	<p>Walaubagaimanapun, <i>ancillary services</i> ini boleh dikenakan GST pada kadar sifar sekiranya ia dibekal oleh mereka yang layak di bawah butiran 3(1) Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014 atau ianya dibekal oleh pembekal yang sama di bawah butiran 5 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014.</p> <p>Sekiranya NVOCC atau <i>freight forwarder</i> juga menyediakan perkhidmatan pengangkutan <i>domestic</i> bersekali dengan perkhidmatan di bawah butiran 4 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014, mereka juga layak untuk mengenakan GST pada kadar sifar untuk ancillary services sepertimana peruntukan butiran 5 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014</p>

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2	<p><b>Port charges.</b> We refer to Sector V (transportation) advice that port charge is deemed as reimbursement and therefore a SR supply.</p> <p>The interpretation was that the port charge was issued in the name of the Forwarder and not in the name of the importer/exporter</p> <p>GST should not be increasing the cost or price of services in the logistics industry. We have thousands of Importers and exporters and it would be difficult for the Port/Terminal Operators to get all of them to open an account and manage their accounts. As such, Port and Terminal Operators warrant that Forwarding Agents representing their customer importers and exporters open an account with them. The port charges are invoiced directly to the forwarding Agents who then collect from their importers and exporters on a back to back basis. The original Port/Terminal invoices are submitted to the importers and exporters and there is no mark-up of the port charges.</p>	<p>In this regard, as the claim from the Forwarding Agent to the importer/exporter is on a back to back basis and supported by original copies of the Port/Terminal operators' invoices, this should not be regarded as reimbursement which is interpreted as a supply and hence SR but should be treated as disbursement, which is OS.</p> <p>Furthermore this is not a revenue to the Forwarding Agent.</p> <p>Also, it is the Port and Terminal's decision that the Forwarding Agent open an account with them rather than importers/exporters themselves.</p> <p>FMFF submits that GST Technical Committee/MOF review the tax treatment for Port charge from a reimbursement to disbursement.</p> <p>This will ensure that costs of logistics services do not increase because of GST.</p> <p>Also, there is no revenue earned in the supply.</p> <p>We also understand from the General Guide that payments to third parties will be treated as disbursements if the following conditions are fulfilled:</p> <ol style="list-style-type: none"> <li>The disbursement is made by the person as an agent on behalf of the client;</li> <li>The client actually received the goods or services;</li> <li>The client is the person responsible to pay;</li> </ol>	<p>Tuan Faizulnudin bin Hashim PKPK I Sektor V</p> <p>Pembekalan perkhidmatan ini hanya layak dikenakan atas kadar sifar oleh pengendali pelabuhan atau lapangan terbang atau orang yang diberi kuasa oleh Menteri Pengangkutan sepertimana peruntukan butiran 3(1) Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014.</p> <p>Perkhidmatan ini juga adalah berkadar sifar sekiranya perkhidmatan itu dibekalkan oleh pembekal yang sama sepertimana yang diperuntukan di bawah butiran 5 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014</p> <p>Dalam keadaan lain (cth. sebagai <i>recovery of cost</i>) atau pembekalan oleh pembekal yang <b>TIDAK LAYAK</b> di bawah butiran 3(1) atau 5 Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014, perkhidmatan tersebut adalah berkadar standard.</p> <p>Caj pelabuhan yang dikenakan kepada pengimport oleh agen penghantaran tidak boleh dianggap sebagai <i>disbursement</i> kerana transaksi ini tidak memenuhi kriteria <i>disbursement</i> seperti yang ditetapkan</p>

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		<p>d. The payment is authorised by the client;</p> <p>e. The client knew that the goods and services paid for provided by the third party;</p> <p>f. The payment is itemised</p> <p>g. The person claims the exact amount from the client</p> <p>h. The payment is clearly additional to the supplies the person makes to the client.</p> <p>Based on the General Guide, the Port charges should be treated as disbursement and not reimbursement.</p>	dalam <i>DG's decision</i> butiran 6, bil 5/2015
3.	<p>Warehouse and console Operators operating at Port Klang.</p> <p>The Warehouse operators and Console Operators lease space from the Port and Terminal operators to offer their services. The operators are licensed by Port Klang Authority who also sets and regulates the tariff the operators charge for their services. Services include loading, unloading, handling services or storage of goods in the warehouse.</p> <p>Sector V has informed that PKA was wrong in issuing a circular that the supply of services of warehouse operators and console operators as zero-rated are wrong based on the interpretation that only the Port or</p>	<p>Based on the amendment FMFF submits that the services of warehouse operators and Console operators are zero-rated as they are licensed by the Port Authority and tariffs are set and regulated by the Port Klang Authority.</p> <p>The Minister of Transport is the Minister in charge of Transport and Port Klang Authority is authorised by the Minister of Transport to license, sets rules and conditions to warehouse operators and console operators to operate at port Klang. The Port Klang Authority's functions and powers and regulatory authority are derived from the Port Authority Act 1963 and the Port Authority By-Laws 1965. Under these Act and By-laws, PKA has authorised the business of Warehouse operators and Console</p>	<p>Tuan Faizulnudin bin Hashim PKPK I Sektor V</p> <p>Pembekalan perkhidmatan ini hanya layak dikenakan atas kadar sifar oleh pengendali pelabuhan atau orang yang diberi kuasa oleh Menteri Pengangkutan sepertimana peruntukan butiran 3(1) Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014.</p> <p>Perkhidmatan ini adalah berkadar standard sekiranya perkhidmatan itu dibekalkan oleh pembekal selain daripada mereka yang dinyatakan di 3(1) Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014 atau</p>

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	<p>Airport operator who offers these services can be zero-rated. We refer to amendment of Second Schedule (Goods and Services Tax (Zero-Rated Supply) (Amendment) Order 2015. The principal Order is amended in the Second Schedule-</p> <p>(a) By substituting for sub item 3(1) the following sub item:</p> <p>(1) Loading, unloading, handling services or storage of goods carried or to be carried in a ship or aircraft in a port or airport by-</p> <p>(a) A port operator</p> <p>(b) Airport operator</p> <p>(c) Any person authorised by the Minister responsible for transport</p>	<p>operators in Port Klang. In this regard, as per the amendment to the Zero-rated supply Order 2014, FMFF submits to GST Technical committee/MOF that warehouse operators' services as follows should be zero-rated:</p> <p>(a) Terminal handling charges (b) LCL charges (c) EDI fee (d) B/L and D/O fee (e) Agency Fee (f) Cost Recovery charges/CRM.</p>	<p>perkhidmatan itu dilakukan mereka yang layak tetapi di luar kawasan pelabuhan.</p> <p>Seksyen 3(1) Port Authority Act 1963 menyatakan Lembaga Pelabuhan Klang adalah pengendali pelabuhan dan walaupun <i>warehouse operator</i> dilesenkan oleh Lembaga Pelabuhan Klang, <i>warehouse operator</i> bukanlah pengendali pelabuhan. <i>Warehouse operator</i> hanya layak sekiranya mereka diberi kuasa oleh Menteri Pengangkutan sepertimana Peruntukan 3(1)(c) Jadual Kedua, Perintah CBP (Bekalan Berkadar Sifar) 2014.</p>

