ISSUES AND CUSTOMS FEEDBACK

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
1.	**Insolvency Administration – Priority of Debt**	MICPA(1) Appendix I	Section 31(4) of the GST Act provides that "Notwithstanding any written law to the contrary, the personal representative carrying on the business referred to in subsection (1) shall, before disposing any of the assets of that taxable person, **set aside a sum out of the assets as appears to the Director General to be sufficient to pay for any tax and penalty**, if any, that is or will thereafter become due and payable or payable, as the case may be, in respect of any taxable supply of goods or services that have been supplied by that taxable person before the personal representative is deemed to be a taxable person carrying on the business in the interim and the personal representative shall pay for the tax and penalty." However, section 292 of the Companies Act 1965 provides for the priority of unsecured debts in a winding up where the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired shall rank at the sixth priority.	(i) Have to account for GST for any supply made as long as they are still registered. (ii) Specific guide for personal representative will be prepared soon.

			Further, section 213 of the Companies Act 1965 provides that the provisions of this Part (Part X - Winding Up) relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Government.	
2.	**Insolvency Administration - Liability to be Registered**	MICPA (2) Appendix I	Section 20(6)(a) of the GST Act provides that: "In determining the value of any person's supplies for the purposes of subsections (3) and (4), the following supplies shall be excluded: (a) supplies of goods that are capital assets of the business in the course or furtherance of which they are supplied or to be supplied;" Please clarify: 1) the definition of capital assets referred to in section 20(6) (a). 2) where a business has ceased due to (i) closing down of production lines, (ii) liquidation of companies or (iii) downsizing of operations, etc. and such capital assets are disposed of subsequent to the cessation, we would like to clarify whether the value of sales of such capital assets shall be excluded in determining the value of supplies for the purposes of sections 20(3) and (4).	(i) For the purpose of Section 20(6)(a) GSTA, value of any capital assets disposed due to cessation of business will not be included in determining the value of supplies with regard to Section 20(3) and 20(4) for the purpose of registration. (ii) Cessation of business referred in para (i) above, include business under liquidation, winding up and bankruptcy. However it will not include downsizing of operations or temporary closing down of productions or business which does not lead to cessation of making taxable supply.

3.	**Insolvency Administration - Liability to be Registered**	MICPA (3) Appendix I	1) Section 20(3)(a) of the GST Act provides that, a person who is not registered who makes any taxable supply is liable to be registered: (a)at the end of any month, where the total value of all his taxable supplies in that month and the eleven months immediately preceding the month has exceeded the amount of taxable supply specified under subsection (1). 1) Please clarify the definition of taxable supplies as to whether they include supplies made prior to 1 April 2015 which will be taxable supplies in nature if made on and after 1 April 2015. 2) Please clarify as to whether section 20(3)(a) of GST Act should be read together with section 22 of the GST Act. In the event that a person is liable to be registered under section 20(3)(a) (historical method) but has ceased its liability to be registered under section 22, for example: (a) a person's taxable turnover from 1/4/2015 to 18/11/2015 exceeded RM500,000 and as such, he is liable to be registered at the end of November 2015; but	Specific guide for personal representative including insolvency administration will be prepared soon.

			(b) The expected taxable turnover from 1/12/2015 to 30/11/2016 is less than RM500,000 due to expiry of a major contract and the person intends to wind up its business. As such, he has ceased its liability to be registered at the end of November 2015. Under the above circumstances, we would like to seek clarification as to whether section 22 shall prevail i.e. that person will not be liable to be registered. If he is still liable to be registered, it would seem to be odd for him to apply for GST registration and immediately apply for GST-deregistration.	
4.	**Insolvency Administration - Deemed Supply Prior to De-Registration**	MICPA (4) Appendix I	Para 5(8) and 5(9) of 1st Schedule of GST Act provide that a taxable person has to account for output tax via **deemed disposal on** goods forming part of the business assets if he was entitled for the input tax. The output tax is to be accounted for immediately before he ceases to be a taxable person. Since **no credit for input** tax has been allowed on goods acquired prior to 1/4/2015, please confirm that such goods will not be subject to GST prior to de-registration.	Specific guide for personal representative including insolvency administration will be prepared soon.
5.	**Insolvency Administration – Personal**	MICPA (5) Appendix I	It is understood that a personal representative ("PR") is not required to apply for a new registration but he must inform the RMCD in writing within 21 days from the date of the	Specific guide for personal representative including insolvency administration will be prepared soon.

	Representatives deemed to be Taxable Persons		event that he has begun to carry on the business, the nature of the incapacity and the date when it began. Further, any requirement to pay tax on the PR carrying on the business shall apply to him to the extent of the assets over which he has control. Please clarify: (a) whether the PR will have to pay tax to the extent of the assets over which he has control by submitting the GST-return of the taxable person using its existing GST registration number; (b) whether the PR can claim input tax credit attributable to the taxable supply of the assets over which he has control; (c) whether the PR can claim input tax credit allowable for the taxable person relating to other assets not within the PR's control including those input tax credit incurred by the taxable person before the appointment of the PR; (d) In the event of two PRs being appointed in two different capacities (e.g. a receiver and manager appointed under receivership and a liquidator appointed under liquidation administration), whether both of them are required to	

			account and pay for the taxable supply made for the taxable person (to the extent of the assets over which they have control) by submitting GST returns using the taxable person's existing GST registration number individually.	
6.	**Insolvency Administration - Personal Representatives deemed to be Taxable Persons** .	MICPA (6) Appendix I	Section 31(4) provides that the personal representative ("PR") carrying on the business referred to in subsection (1) shall, before disposing any assets of that taxable person, set aside a sum out of the assets as appears to the DG to be sufficient to pay for any tax and penalty/ (a) Please clarify the meaning of "carrying on the business": (i) If the taxable person has ceased business operation before the appointment of the PR, is the PR still considered carrying on the business of the taxable person? (ii) Whether a receiver appointed over a specific charged asset under debenture is considered carrying on the business of the taxable person? In this case, the receiver will have control over only those specific assets and not all the assets of the taxable person and he will also have no control over the management of the company (taxable person) including its whole business	Specific guide for personal representative including insolvency administration will be prepared soon.

			operation. Please note that this appointment is different from a Receiver and Manager who will have control over the management and assets of the company. (b) Please clarify the meaning of "disposing any assets of that taxable person". Does it mean: (i) Sale or supply of tangible assets? (ii) Recovery of any assets, including debtors and cash at bank? (iii) Distribution of assets to creditors and/or shareholders?	
7.	**Insolvency Administration - Personal Representatives deemed to be Taxable Persons**	MICPA (7) Appendix I	Section 31(5) of the GST Act provides that the personal representative ("PR") carrying on the business referred to in subsection (1) who fails to comply with subsection (4) shall be personally liable to pay for the tax or penalty, that is or will thereafter become due and payable or payable, as the case may be. Please clarify the personal liability of a liquidator in the following scenario: A liquidator is appointed after the receivership of a company (a taxable person but has yet to be registered) is uplifted. The receiver and manager previously appointed had disposed of some assets under his control during the	Specific guide for personal representative including insolvency administration will be prepared soon.

			receivership but did not account for the output tax. In such circumstances, whether only the previous receiver and manager shall be personally liable for the tax liability during his period as PR or the liquidator will also be personally liable for the output tax liability of the previous receiver and manager? If the liquidator is not aware of the taxable status of the Company (i.e. liable to be registered) and thus no amount was set aside by the liquidator for such tax liability, will he still be held to be personally liable?	
8.	**Insolvency Administration - Personal Representatives – Insufficient Records**	MICPA (8) Appendix I	In practice, when a personal representative ("PR") is appointed for a person who dies, goes into liquidation or receivership, becomes bankrupt or becomes incapacitated, the PR may not have access to or unable to locate the documents or the person may not have maintained proper documents for the PR to determine if the person is a taxable person. Please clarify the administrative procedures to be taken by the PR in determining whether the person is a taxable person other than to check its GST registration status online	Specific guide for personal representative including insolvency administration will be prepared soon.
9.	**Receiver Appointed under a Fixed Charge over Specific Asset**	MICPA (3) New Issues	Upon the appointment of a "receiver and manager" or a "liquidator", they would have control over the management and/or operations of a company. However, a receiver	(i) Receiver appointed under a fixed charge over specific asset ("Receiver") is tasks to dispose of the

			appointed under a fixed charge over specific asset will have control over only the specific asset and not all the assets of the company and have no control over the management and/or the operations of the company. Under section 65(5) of the GST Act:- (5) Where goods are deemed to be supplied by a taxable person pursuant to subparagraph 5(7) of the First Schedule, any person, whether or not he is a taxable person, who sells the goods in satisfaction of any debt owed by that taxable person, shall be liable for any tax due and payable on the supply. Please clarify whether the receiver appointed under a fixed charge over specific asset, who is appointed by the chargee (i.e. bank), is the person who should pay and account for the GST output tax in his own GST return. Alternatively, should the bank as chargee account for the GST output tax in the bank's GST return. It is noted that a receiver appointed under a fixed charge over specific asset is not a personal representative of the company pursuant to section 31 of the GST Act as he has no control over the management and/or operations of the company. Since the disposal of asset by the receiver is in satisfaction of the debt owed to the bank by the company (a taxable person), the bank should therefore be liable for the GST output tax on the sale and should account for the GST output tax in the bank's GST return.	asset and handover the proceeds to the bank. (ii) The company is a taxable person and the owner of the asset. The disposal by the Receiver results in: a) A taxable supply subject to GST at a standard rate; b) The Receiver shall issue a sale document bearing the particulars as spelt out in Regulation 24 (Receiver's letterhead); c) The Receiver accounts for GST for the sale in his GST-03 if he is a taxable person or GST 04/4A if he is not a taxable person; and d) The Receiver must furnish a statement of sale to the company (taxable person) with prescribed particulars. (iii) The buyer can claim input tax with this document (Reference: Subsections 33(8) and 65(5), Regulations 24 and 64).

			Please confirm the above	
10.	**Supply of Land**	MICPA(9) Appendix I	Paragraph 2(1)(d) of the 1st Schedule of the GST Act provides that in the case of land, any transfer of any interest under Deed of Assignment is a supply of goods. Please clarify in the case where a deed of assignment is executed to give security for a loan (assigned by borrower to the bank) and subsequently a deed of receipt and reassignment (assigned by bank back to the borrower) is executed to release the security once the loan is settled, are both the above assignments considered supply of goods which are subject to GST or they are not to be treated as supply of goods since the execution of deed of assignment and deed of receipt and reassignment are for security purposes.	DOA for the purpose of obtaining loan and subsequently reassign back to the borrower which does not involve transfer of ownership of the property is not treated as a supply.
11.	**GST Treatment for Property Developer**	CTIM (10)	(a) <u>Provision of Construction Services to Land Owner</u> 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. Similarly, the Guide to Property Developer issued on 30 March 2015 has not been updated with the DG's Decision accordingly.	(i) Amended item 7 of DG 4/2014 takes effect from 31/3/2015. Therefore, the requirement as stated under the Property Developer Guide as at 30/3/2015 is no longer applicable and being replaced by the Land and Property Development Guide as at 18/4/2016. (ii) Land owner is required to account for the output tax on the land owner's entitlement at the earlier of when the payment is received or tax invoice is issued.

			(b) <u>Land Development Agreement – Supply of rights by the land owner</u> Based on DG's decision 4/2014 relating to the GST treatment on property development JVs, the land owner is required to account for GST on the supply of rights to use the land to the developer based on the land owner's entitlement. As stated in para 48 of the Guide on Property Developer (Guide) issued on 30 March 2015 that the time of supply is when the supply of rights to use the land taken place i.e. **the date of the Agreement**. Although many of the principles set out under this Guide has been superseded by DG's decision 4/2014, this Guide remains on the GST Portal. (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.** (b) In practice, the consideration for the supply of rights to use of the land is payable by developer to the landowner in stages. As the supply of rights to use the land is a supply of "services" over the entire development period, CTIM would request for RMCD to kindly confirm that the time of supply	If the consideration of the transfer of the land is payable periodically or from time to time the time of supply is at the time of the consideration is received or tax invoice is issued, whichever is the earlier. (Regulation 4)

			of rights to use the land may be interpreted as the earlier of the date of the following and that the GST may be accounted for in stages:- i. Date of payment for the supply; or ii. Date of tax invoice is issued. In addition, CTIM would recommend that the Guide on Property Developer on the GST Portal be removed (or clearly tagged as "superseded") to avoid confusion.	
12.	**Property Management**	MICPA(2) Appendix II	The RMC's response as stated in Lampiran B (MICPA) issue no. 1 of the Minutes of GST Technical Issues Committee Meeting No. 5/2015 held on September 17, 2015: "JMB or MC is not making any supply of the item (a) – (c) [i.e. insurance, water and electricity and quit rent]. 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. The JMB or MC is required to be registered under Sec. 20, of GT Act 2014 if his annual taxable turnover exceeds RM500,000." The above reply is not in line with the latest Guide on Property Management dated 27 January 2016 (the "Guide") where:- 1. For insurance –	(i) The management and maintenance service to the residential parcel owner is an exempt supply. Such service includes insurance services and sinking fund. (ii) The supply of utility by the JMB or MC to the parcel owner is treated as a reimbursement for GST purposes. Hence - a) the onward supply of water is a standard rated supply b) the supply of electricity for the 1st 300 kw is a zero rated supply. (iii) Quit rent is treated as a cost recovery (disbursement) by MC from the parcel owner.

			A17 of the Guide states that the "JMBs or MCs as the person who is responsible to insure the building and apply insurance money for rebuilding and reinstatement of the building cannot impose any GST on their supply of services to the residential parcel owner"; 2. For bulk meters in residential properties A18, scenario 3 (i.e. bulk meters in residential properties) of the Guide states that for electricity, "JMB or MC will issue a tax invoice to the parcel owner. The parcel owner is entitled for zero rating for the 1st 300 kw of electricity supply and will charge GST as standard rate for supply exceeding 300 kw." A19 of the Guide states that for water, "JMBs or MCs will subsequently invoice the residential parcel owner and charge GST at standard rate for the onward supply of the water. The service of arranging the water supply for the residential parcel owner by the JMB or MC is a taxable supply. The zero rating provided in the Zero Rated Supply Order 2014 is only applicable to supply of treated water by a person who is licensed under the Water Services Industry Act 2006."	

			We understand from the latest Guide the following:- 1. For building insurance, JMB or MC is making supply of services of the management and maintenance to the residential parcel owners thus is making exempt supply. 2. For utilities (i.e. electricity or water), **JMB or MC is making onward supply of utilities**. As such, JMB or MC is able to zero rate the supply of electricity for the 1st 300 kw to domestic consumer. However, since JMB or MC is not a person who is licensed under the Water Services Industry Act 2006, the onward supply of water is a standard rated supply that cannot be zero rated. Please clarify that the supplies above by JMB or MC are no longer treated as reimbursement that is subject to GST. As for quit rents, since it is an obligation of the landowners to pay for the quit rents, except for the common areas, JMB or MC is making quit rent payment on behalf of the landowners and recovering the same pending the issuance of strata titles, please clarify if this can be treated as disbursement and not reimbursement for GST purposes.	
13.	**Guide on Land and Property Development (revised as at April 18, 2016)**	MICPA (6) New Issues	The exemption of the residential property also covers the basic fixtures and fittings as described under the Fourth Schedule, Schedule G or H of the Housing Development (Control	(i) Fixtures and fittings which is not described under the Fourth Schedule, Schedule G or H of the Housing Development (Control and

			and Licensing) Act 1966. GST exemption is only given if the basic fixtures and fittings are those ordinarily installed such that the property is fit for dwelling. Non-basic fixtures and fittings beyond those listed in the Schedule G and H which are installed and supplied in the residential property is subjected to GST. The developer is required to account for GST on the additional fixtures and fittings. Please confirm whether the additional fixtures and fittings given can be treated as tied-in goods of the principal supply, free gifts or composite supply? Please also clarify when is the time of supply for the developer to account for GST on the additional fixtures and fittings given? In the case of non-basic fixtures and fittings which can only be installed after vacant possession of the property is given, please confirm that GST should only be accounted for when the non-basic fixtures and fittings are installed into the property. RMCD to provide further guideline.	Licensing) Act 1966 will be subject to GST. Hence, the non-basic fixtures and fittings is to be treated as a separate taxable supply made by the developer and not treated as tied-in goods of the principal supply, free gifts or composite supply . The supplier is required to account for output tax on such supply. (ii) The time of supply is described under Section 11 GSTA 2014. Basically, the time of supply of the goods is at the time when the goods made available to the purchaser. However, where before the goods made available to the purchaser, ~~if~~ the supplier issue a tax invoice or received any payment in respect of it (the installation of fixtures and fittings is described on the progress billing) the time of supply shall be on the date of the tax invoice is issued or the date of the payment received, whichever is the earlier. (iii) If the supply of the non-basic fixtures and fittings is installed after VP and no payment is received or tax invoice being issued, the time of supply shall be on the date when the goods were made available. The same scenario can be applied as item (ii) above.

		MICPA (8)	Para. 62 of the above Guide reads as follows: *The provision of long term accommodation in commercial service apartment under a lease or rental agreement will be an exempt supply* Please clarify what is the duration of long term? Does it refer to the meaning of "lease" i.e. a tenure which is more than 3 years under S221 of the National Land Code (NLC) From business perspective, regardless of the duration, accommodation in commercial service apartment should be a standard rated supply. Please confirm.	(i) Currently, there is no specific definition for long term accommodation for the purpose of GST in Malaysia. (ii) 'Lease' as defined under Section 221 of the NLC is different from lease of long term accommodation as the lease under NLC will involve the instrument of Form 15A. (iii) Hence, the long term accommodation lease refers to a tenancy agreement or rental agreement for dwelling purposes which is covered by the Contract Act 1950 for a tenure not exceeding 3 years. (iv) If the service apartment used as a commercial residential premise, rented out with a central management body, has multiple occupancy, offers short term stay with services such as cleaning, laundry, telephone, utilities: - subject to GST at a standard rate.
		MICPA (9)	Further to the Guide (revised as at April 18, 2016) issued, please clarify: 1) when is the time of supply in cases where a percentage of payment is to be kept by the	(i) When a solicitor received any payment on behalf of the vendor/supplier, the payment **is considered received by the vendor**. The vendor is required to

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<td>solicitor for a number a years. In this case, the purchaser has paid but supplier has not received the money

2) what value to use and timing of reporting in the case where supply with no or nominal consideration such as land supplied by property developer or land owner for public utilities and amenities purposes.</td>
<td>issue a tax invoice and account for the output tax. The time of supply is at the earlier of payment is received or tax invoice is issued.

(ii) In the case where supply with no or nominal consideration such as land supplied by property developer or land owner for public utilities and amenities purposes the value of the supply is based on the transaction value. The time of supply is at the earlier of payment is received or tax invoice is issued.</td>
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<tr>
<td>14.</td>
<td>Carrying on business -Individual Commercial Property</td>
<td>MICCI (2)</td>
<td>RMCD to repeal their decision under Item 6, DG's Decision 4/2014 with retrospective effect.

RMCD's interpretation of the meaning of business under Section 3 of the GST Act 2014 should be closely aligned with that in other international jurisdictions to avoid onerous tasks.</td>
<td>(i) The person holding the commercial property has the intention to carry on a business.

(ii) This in line with other jurisdictions such as Australia, UK, Belgium.</td>
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<td>15.</td>
<td>GST Relief for LMW</td>
<td>MICPA (10)
Appendix I</td>
<td>Reference is made to item no. 3 of the Relief by Minister of Finance : 2/2015 as summarised below:

<table>
<tr><td>Description of Transaction</td><td>GST Treatment</td></tr>
<tr><td>3.1 Supply of goods to another</td><td>LMW company is relieved from charging GST on the supply of</td></tr>
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<td>(i) Item 3.1 Relief by Minister of Finance 2/2015 is given exclusively for the supply of goods between one LMW entity to another LMW entity. This relief is not applicable to the supply of good to/from IPC (even though this IPC business process is conducted within LMW entity) to/from another LMW entity.</td>
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<tr><td>LMW company</td><td>goods (s.56(3)(b) GSTA)</td></tr>
<tr><td>3.2 Supply of goods to FIZ company or vice versa</td><td>LMW company or FIZ company is relieved from charging GST on the supply of goods (s.56(3)(b) GSTA)</td></tr>
</table>

For an LMW Company that has been granted approval to conduct IPC within LMW, please clarify whether GST relief would also apply to the IPC transactions.
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(ii) Supply of goods between LMW to its own IPC within one single entity is not a supply for GST purpose.
<table>
<tr><th></th><th>Supply of goods</th><th>Relief (s.56(3)(b) GSTA)</th></tr>
<tr><td>1</td><td>LMW licensee/entity to another LMW licensee/entity</td><td>Applicable</td></tr>
<tr><td>2</td><td>LMW licensee/entity to another LMW's IPC and vice versa</td><td>Not applicable</td></tr>
<tr><td>3</td><td>IPC to another IPC</td><td>Not applicable</td></tr>
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<td>MICPA (11)
Appendix I</td>
<td>For some commercial reasons, LMW Co. A does not wish to exercise the relief. Instead it will treat the supply of goods to another LMW Co. B as taxable and charges GST at 6% if LMW Co. B agrees to such arrangement.
Please clarify:</td>
<td>(i) This relief is mandatory. Relief by Minister 2/2015 is provided to alleviate negative cash flow implication due to the supply of goods between these LMWs.</td>
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</table>

			1) Is the GST relief mandatory or can LMW Co. A be given an option not to exercise the GST relief pursuant to the Relief by the Minister of Finance: 2/2015 so long LMW Co. B agrees with the arrangement? 2) If optional, would the Customs dispute the input tax credit (ITC) claimed by LMW Co. B based on the valid tax invoice with 6% GST issued by LMW Co. A. Will Customs dispute the ITC claim on the basis that the supply is a relief supply?	(ii) The recipient who has not paid the tax deemed to have incurred and claimed input tax on the supply.
		MICPA (10) New Issues	According to RMCD Johor, GST relief on supply of goods from LMW company to another LMW company only apply to the supply of finished goods permitted under LMW license. In cases where the LMW company supply goods other than his finished goods, GST @ 6% shall be charged. This include supply of scrap and other billing for additional part added into value added activities by the LMW company. In the Consultative Panel between Customs and the Private Sectors held on 5 May 2016, Customs HQ has informed that all goods supplied from one LMW to another LMW should be given GST relief. Thus, it appears that the verbal guidance given by JB Customs is not in line with the Minister's Relief 2/2015.	Supply of any goods including scrap and manufacturing waste from one LMW company to another LMW company are relieved from GST under section 56(3)(b) GST Act 2014 by Minister of Finance (Relief by Minister 2/2015).

			Please clarify.	
16.	**Applicability of Item 3.1 of Relief by Minister of Finance: 2/2015 on Drop Shipment**	MICPA(12) Appendix I	For commercial reason, LMW Co. A can only supply its finished goods via its trading company to all its local customers (including the LMW Company, i.e. LMW Co. B). The goods will be delivered directly from LMW Co, A to LMW Co. B. Invoices will be issued by LMW Co. A to its trading company and by the trading company of LMW Co. A to LMW Co. B. Please clarify whether LMW Co. A is able to apply the GST relief on its invoice to its trading company on the basis that the goods are removed from LMW Co. A to LMW Co. B. Additionally, please clarify whether sale from LMW Co. A to its trading company but goods delivered from LMW Co. A to LMW Co. B is treated as exported sale for LMW Co. A.	(i) Item 3.1 Relief by Minister of Finance 2/2015 is not applicable on the supply of goods from LMW Co. A to trading company even though the movement of goods is from LMW Co. A to LMW Co. B. (ii) Supply of goods from LMW Co. A to the trading company is a local sale which subject to GST. Value of the goods supplied is as specified under Para 7 Schedule 3 GST Act 2014 and shall be the value determined under section 16 GST Act 2014. Supply of goods from trading company to LMW Co. B is also subject to GST.
17.	**GST (Relief) Order 2014 : Item 2, Schedule 2 – Developer or Land Owner**	MICPA (11) New Issues	The GST Relief Order above provides that any surrender of land and building to local authority for no consideration or for a minimal value is relieved from GST. On this basis, a road or any infrastructure which is being built and subsequently for	(i) Under, Item 2, Second Schedule, GST (Relief) Order 2014, the supply of land by the developer or land owner to the government for purpose of providing public amenities and public utilities for no consideration or for a nominal value is subject to

			transfer to the local authority for no consideration / at minimal value is relieved from GST. Meaning the road and infrastructure are taxable supplies but have been granted GST relief. Hence any GST incurred should be fully claimable regardless the GST status (taxable, mixed or exempt) of the development to which the infrastructure relates. However, a property developer in JB had been informed by RMCD HQ that input tax is claimable for GST incurred on infrastructure that is related to taxable supply i.e. commercial property. ITC is not claimable if the infrastructure is for residential. We request RMCD to clarify the issue and provide written guidance.	condition as stated under column 4 of the Schedule. The head of the developer or the land owner is required to issue a COGSTR to enable them to obtain the relief. (ii) However, where any taxable person has made no taxable supply during a taxable period or any previous taxable period, the input tax claim is subjected to condition impose by the DG as he deems fit. (iii) ITC relates to public amenities and utilities is claimable only with respect to commercial properties.
18.	**Paragraph (j) of Regulation 41 of the GST Regulations 2014 (IHC)**	MICPA (13) Appendix I	Pursuant to Goods and Services Tax (Amendment) (No. 2) Regulations 2015, it is noted that with effect from January 1, 2016, the treatment of input tax attributable to exempt financial supplies as being attributable to taxable supplies is no longer applicable to an Investment Holding Company (IHC). As such, all IHC will need to apportion input tax credit accordingly for common expenses that are attributable to both taxable and exempt supplies.	(i) IHC refers to a company whose principal activity is the making of investments. It owns investments such as properties, shares of other companies and holds assets in an investment portfolio such as securities for the purpose of maximizing income and capital appreciation.

			Request is made for: 1) A clear definition of an IHC; and 2) The types of supplies that determine that a company is an IHC.	
		CTIM (2)	Whether interest income received by a holding company is considered as separate income or incidental income? *Investment holding company* (IHC) is now included in the list of businesses for which Regulation 40 shall not apply. Regulation 40 stipulates the treatment of input tax attributable to exempt financial supplies as being attributable to taxable supplies. **<u>Issue</u>** There is no definition of IHC in GST legislation. However, were informed that RMC's interpretation of IHC is Holding Companies with MSIC code 6420. **<u>Proposal</u>** Kindly confirm that the definition of IHC adopted by RMC is Holding Companies with MSIC code 6420.	(i) Same as above. (ii) MSIC Code 6420 can be used for IHC.
19.	**Section 13(4) of the GST Act 2014** **- Imported Services**	MICPA(14) Appendix I	Pursuant to Finance Act 2015 (Act 773) gazetted on December 30, 2015, Section 13(4) of the GST Act 2014 is amended to read as follows:	(i) Businesses have to account for output tax in relation to imported services on the date when the invoice is issued regardless of the date the invoice is received.

			"(4) Notwithstanding section 11 and for the purposes of subsection (1), the time of supply of imported services shall be treated to have been made at the following dates whichever is earlier: (a) The date when any payment is made by the recipient; or (b) The date when any invoice is issued by the supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia." Section 13(4) of the GST Act 2014 is previously read as follows: *"Notwithstanding section 11 and for purpose of subsection (1), the time of supply of imported services shall, to the extent covered by any payment by the recipient, be treated to have been made when the supplies are paid for."* In practice, there are instances where companies in Malaysia only receive invoices from the overseas service providers several months after the date of issuance of the invoice. When this arises, will the company be considered as late in paying the output tax? Due to the timing of receipt of invoice from the overseas supplier, it is proposed that Customs consider allowing output tax to be accounted	(ii) If the output tax on these invoices is not accounted for according to the relevant taxable period, the GST return has to be amended.

			for at the earlier of invoice receipt date or payment date. Further, as the amendment of Section 13(4) of the GST Act 2014 came into effect on January 1, 2016, all invoices received from the overseas supplier prior to January 1, 2016 should not be subject to the new amendment.	
		MICPA (3) Appendix II	The response from Sector V of the RMC as stated in Lampiran B (MICPA) issue no. 3 of the Minutes of GST Technical Issues Committee Meeting No. 5/2015 held on September 17, 2015: Payment made by Malaysian Company to the Holding Co. in relation to international mail is treated as imported services. Hence, zero rated under Item 21, Second Schedule of GST (Zero Rated Supply) Order 2014. Please confirm if this should be reported in Field 11 as export supply of an international service?	It should be reported in Field 11 of GST-03.
		CTIM(1)	Background A local person who receives invoices from an overseas supplier of service has to do self-accounting for GST, i.e. the local person has to	RMCD takes note on the proposal and will consider reviewing the provision.

			declare the GST payable (output tax) in the GST return. Currently, item 2 of DG's Decision 1/2014 (Accounting For GST On Imported Services) has indicated that a GST registered person "**may** account for output tax based on the date of invoice if it is issued earlier than the date of payment". This provides some flexibility. If the local person is a GST registrant making fully taxable supplies, he may claim the GST paid as a corresponding credit. Under Regulation 38(1)(e), he may claim the input tax credit if he holds a document stating that he has made payment to the foreign service supplier for the services consumed. Since the local recipient may account for the output tax of the imported service at the time of payment, the net effect is that there should be no GST cash outflow burden to the business. However, the amended Section 13(4) of the GST Act 2014 (GSTA) stipulates that *the time of supply of imported services **shall be** treated to have been made at the **earlier of**:* *(a) the date when any payment is made by the recipient; or* *(b) the date when any invoice is issued by the supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia.* Subsequently, Regulation 38(1)(e) of GSTR was amended as follows	

			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,— *"(e) if the claims is in respect of imported services –* *(i) a document stating that the claimant has made payment for the services consumed, if the time of supply is the time referred to in paragraph 13(4)(a) of the Act; or* *(ii) the invoice issued in the name of claimant by a supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia, if the time of supply is the time referred to in paragraph 13(4)(b) of the Act."* **<u>Issue</u>** The amendment of GSTA requires reverse charge to be made at **the earlier** of the following:- - Date when payment is made; or - Date when an invoice is issued by the supplier overseas. <u>Feedback from Members</u> ***(i) Difficulty in Compliance*** *There is difficulty in determining "the date when an invoice is issued". Assuming it refers to the date printed on the invoice (i.e. invoice date). In practice, there is a gap in time from the invoice date to the time it is finally received and the*	

			amount posted into the system. Such time gap may have crossed one or more taxable periods. If the invoice is received in the month after the invoice date, then the recipient is at risk of making a late declaration for reverse charge and faces the consequential penalty of understating of output tax. (It must be noted that the invoice received have to go through the due process of verification and approval before the amount can be entered into the books/posted into the accounting system and the amount can then be picked up for the purpose of completing the GST return.) It is unfair to require the time of supply to be the date of the invoice as the date of invoice and the date of receipt of invoice are beyond the control of the local person. ***(ii) Increase in the Cost of Compliance*** *Businesses may not make payment immediately upon receipt of invoices. For example, there may be a dispute in the vendor's invoice. The recipient is still required to account for output tax first and made adjustment later, posing an administrative burden of tracking on the recipient.* *Where the reverse charge tracking has been automated based on payment basis, this change will require significant modification to systems and processes around reverse charge and tracking. This will result in additional administrative burden, thus increasing the cost of compliance.*	

			Proposal CTIM proposes Section 13(4) of the GSTA be amended to allow reverse charge entry to be made ***either on:*** • *the date invoice is received; or* • *the date when payment is made.* *Pending the proposed amendment to the law, RMCD consider administratively allows reverse charge to be charged on either of the above dates*	
20.	**Regulation 36 (Blocked input tax)**	MICPA(1) Appendix II	The RMC's response as stated in Lampiran A5 (MIA) issue no. 2 of the Minutes of GST Technical Issues Committee Meeting No. 5/2015 held on September 17, 2015: GST incurred on battery for hybrid cars are not blocked input tax under Regulation 36(6) of the GST Regulations 2014. Please clarify whether battery for non-hybrid cars and all other passenger motorcars should also not be considered as "repair and maintenance" that are blocked under Regulation 36(6) of the GST Regulations 2014.	Battery for non-hybrid cars and all other passenger motorcars are blocked from any claim of input tax under Regulation 36 of the GST Regulations 2014.

		MICPA (2) New Issues	Regulation 36(e)(iii) reads as follows:- *(e)* any payment or contribution towards any insurance contracts or takaful certificates— (iii) against any personal accident in which the insured or participant is a person employed by the taxable person, It appears from the above that the taxable person is not blocked from claiming input tax in respect of persons who are not employed by him. And, when the taxable person subsequently recovers such contributions from the related companies as reimbursement, these related companies should then be blocked from claiming the put tax on these expenses. However, if the character of these expenses has changed when the taxable person recovers such expenses as reimbursement from the related companies (i.e. no longer personal accident contribution), these expenses should then not be blocked and the related companies should be able to claim the input tax incurred, It is unclear whether input tax incurred for group personal accident contribution is blocked in respect of persons who are not employed by the taxable person e.g. persons employed in other related companies of the group.	(i) If the person is not employed by the taxable person, the claim may not be allowed if it is not done in the course and furtherance of his business. (ii) As the contributions are recovered as reimbursements and shown separately when you invoice your customers they're known as 'recharges', and not disbursements. You'll have to charge GST on them whether you paid any GST or not. The related companies are not allowed any credit under section 38 of the GST Act 2014. (iii) If the acquisition (a service provided to your business and not to your customer) forms part of the taxable person's own supply to the related companies, GST is calculated by the supplier on its own services. a) e.g. an airline ticket that you buy to visit a client or to travel to a job, if you recharge the cost to your client you must charge GST because the flight was for you, not for the client b) e.g. a bank transfer fee paid when transferring money from your business account to a client's account - even though the bank's fee is exempt from GST, if you

			Please clarify the correct GST treatment.	recharge the fee you must charge GST, because it was for a service provided to your business and not to your customer **NOTE:** Need to examine the policyholder/person insured of the insurance contract or takaful certificate. Group PA contribution is only meant for persons employed by a taxable person i.e. a taxable person - an employer is able to take up group PA only for his employees and not other persons employed by other related companies. Under Regulation 36 it is blocked.

21.	**Employee Benefits**	MICPA(15)	1) Professional Subscription Fees For subscription paid to professional bodies by a member who is an individual, the professional bodies will only issue tax invoice in the individual's name. Deducing from A6 and A8 of the Guide on Employee Benefits (revised as at November 2, 2015), if the professional fee paid by the individual is an employee benefit stated in the HR policy, the individual's employer will not be able to claim the GST incurred. 2) Employees Benefits stated in HR Policy For other employee benefits that are stated in the HR policy such as optical expenses incurred by the employees where tax invoices are issued by the supplier in the name of the employee c/o Company's name, are such tax invoices suffice for the employer to claim ITC? 3) DG Decision 8/2015 – item 1 Decision (iv)(a) states that:- "In the case where the supply of accommodation is inclusive of furniture, the supply of furniture whether or not for consideration is subject to GST. The employer is liable to account for GST	(i) Professional Subscription Fees (a) Employee benefit must be stated in the contract of employment. Any supply made under employee benefit is considered as made for the purpose of business. (b) For the purpose of claiming input tax, the invoice must be under the name of the taxable person (employer) in accordance to Reg. 38. (ii) Employees Benefits stated in HR Policy (a) Input tax claim is allowable if the tax invoice issued fulfills all the particulars under Section 33 GSTA and Reg. 38 GSTR. (iii) DG Decision 8/2015 – item 1 Decision (iv)(a) (a) Agreed with Example 1. It is an exempt supply (b) Please refer para 3, Item 4, DG's Decision 2/2014 :- Gift bought by a taxable person from a non-registered person worth more than RM 500 and

			accordingly and is entitled to claim input tax incurred on the acquisition of the furniture." Please clarify whether the invoice which only shows the name of the employee should be allowed input tax claim if: 1) The tax invoices contain all the particulars as prescribed under the GST legislation; and 2) The benefit is an employee benefit stated in the HR policy. Please clarify whether the invoice which only shows the name of the employee c/o the company / employer's name should be allowed input tax claim if: 1) The tax invoices contain all the particulars as prescribed under the GST legislation; and 2) The benefit is an employee benefit stated in the HR policy. Please clarify whether the furniture referred to in the said decision is only for the furniture owned by the employer where input tax was incurred on the basis that it is a deemed supply of service due to non-business use of company's asset.	given free without consideration is not subject to GST but no input tax is claimable as the gift is acquired without tax. .

			Example 1: In the case where the employer rent a fully furnished accommodation for its employee, the supply of accommodation inclusive of furniture whether or not for consideration is considered exempt supply by the employer. Example 2: In the case where the employer purchase the furniture from a non-registered person where no input tax was incurred, the supply of accommodation inclusive of furniture to employee for free is not a deemed supply	

		MICPA (5) New Issues	Item 1(iii) of the DG's Decision 8/2015 reads as follows: *Supply of accommodation under employee benefit which relates to an exempt supply under the GST (Exempt Supply) Order 2014 is considered as used for the purpose of business. The employer is not required to account for GST on the supply of accommodation and is not entitled to claim the input tax incurred on the acquisition of the accommodation.* Supply of accommodation without a consideration is not a supply and hence it should not be considered as an exempt supply. As supply made under employee benefit is considered as used for the purpose of business, hence the input tax incurred associated with the accommodation by the employer should be entitled to input tax credit claim. Given the above, since the accommodation is considered as used for the purpose of business, please clarify should the free accommodation provided as employee benefits still be considered as an exempt supply? Please also clarify should the input tax credit incurred associated with the accommodation such as utilities, repair, construction, security and cleaning charges be blocked? It is proposed that RMCD reconsider the decision to block input tax credit incurred associated with the accommodation as it is a	(i) The supply of accommodation to the employees whether for a consideration or not and whether or not it is an employee benefit, is an exempt supply under item 19 of the GST (Exempt Supply) Order 2014. Hence, input tax credit incurred associated with the accommodation such as utilities, repair, construction, security and cleaning charges are blocked. This is consistent with the treatment of tax on other suppliers who are in the business of providing such similar supplies. (ii) RMCD takes note on the proposal.

			substantial cost to businesses particularly for the plantation, agriculture, manufacturing, construction, oil and gas industries that provide free accommodation on site for their employees.	
		MICPA (6)	Item 1(iv) of the DG's Decision 8/2015 reads as follows: *If the supply of employee accommodation is inclusive of furniture, the supply of furniture whether or not for a consideration is subject to GST. The employer is liable to account for GST accordingly and is entitled to claim input tax incurred on the acquisition of the furniture.* Based on the DG's Decision, please clarify whether the free furniture is a supply of free goods or deemed supply of services and how to arrive at the value to account for GST? In the case where the furniture is an asset of the employer, the granting of right for the employees to use the furniture is a supply of service. Hence if the employer does not charge the employees for the usage of the furniture, please confirm that no GST should be applicable.	Under consideration.
22.	**Registration** **-Voluntary registration** **-Group deregistration**	CTIM (3)	Section 20(3)(b) provides that "*any person who is not registered who makes any taxable supply is liable to be registered at the end of any month, where there are reasonable*	No change will be made to Item 5 of DG's Decision No.2/2014 and RMCD will issue guidance on situations where the DG will invoke Section 38(7).

			grounds for believing that the total value of all his taxable supplies in that month and the eleven months immediately succeeding the month will exceed the amount of taxable supply specified under subsection (1)." Section 24(1) further provides that "*Where any person who is not liable to be registered satisfies the Director General that he is carrying on a business and he —* *(a) makes a taxable supply including a taxable supply which is disregarded under this Act; or* *(b) intends to make a taxable supply,* *in the course or furtherance of that business, the Director General may, if the person applies in the prescribed form and subject to such conditions as the Director General deems fit to impose, register the person from such date as the Director General may determine and the person shall remain registered for a period of not less than two years or such other shorter period.*" Item 5, DG's Decision No.2/2014 states that "(i) *A person who intends to make any taxable supplies can apply for voluntary registration if he can satisfy that he is committed to do business by submitting the following documents:* *……and* ii) *The first taxable supply is made within 12 months from the date of application."*	

			Consequently, some taxable persons who have registered for GST under Section 20 have been informed that they will be de-registered and/or their registration cancelled. **<u>Issue</u>** Restriction in **voluntary registration** denies businesses with long gestation period from claiming relevant input tax credits thereby increasing the cash flow burden and cost of start-ups. It is unrealistic to expect taxable supplies to be made with a period of 12 month under all circumstances. Businesses may need to register for GST due to various commercial reasons. Experiences from other countries show that businesses, particularly the SMEs who supply to large multinationals, are required to be GST registrants by the multinationals. Certain industries, such as property developers, hotel operators, plantations companies, mining companies require heavy initial outlay and have a long gestation period of more than 12 months. Hence, the introduction of voluntary registration under Section 24 of the GSTA 2014 to address the complexity of business requirements by allowing registration of an existing business operating below the threshold. Condition (ii) of DG's Decision practically denies or delays registration of new start-ups which require heavy initial outlay and have a	

			long gestation period. It is also inconsistent with the Government policy to encourage property developers to adopt built then sell strategy. Whilst we understand the need to monitor registrations to avoid false refund claims, etc. the 12 month-period should not be taken as mandatory to prevent or delay registration or **even cancel the registration of bona fide businesses**. The DG's Decision may stifle business activity and increase start-up costs, causing hindrance to our economy growth. **CTIM Proposal** a) Item 5 of DG's Decision No.2/2014 be reviewed to remove the restriction in time period for registration. In the event that no taxable supply is expected within the first 12 months and the total taxable supply is only expected to exceed the threshold, say in 3 years (e.g. build and sell commercial development), RMCD will allow the person to apply for voluntary GST registration. If affirmative, RMC could issue Guides on the conditions and procedures to register under such circumstances, and illustrate with some examples. To enhance clarity for compliance, it is suggested that the DG issue guidance on situations where the DG will invoke **Section 38(7).**	

		FMM (1) Addendum	Many companies with taxable turnover of less than RM500, 000 have attempted to register voluntarily through the MyGST portal but their registration was rejected. Businesses with less than RM200, 000 in taxable turnover were advised to write in to the Customs Director General to request approval for voluntary registration. However, we understand that in some cases these requests were rejected by the Customs Department. We understand that businesses with taxable turnover of less than RM200, 000 are rejected for voluntary registration as many of these businesses register and then attempt to deregister in the next month. However, we would like to request the Customs Department to approve voluntary registration on a case by case basis especially (i) for companies who have been requested by their buyers to be a GST registrant and (ii) companies with future taxable turnover that will eventually meet the GST threshold.	JKDM will consider to approve voluntary registration on a case by case basis for these category of companies – (i) companies who have been requested by their buyers to be a GST registrant; and (ii) companies with future taxable turnover that will eventually meet the GST threshold.
		MICPA (12) New Issues	Amongst the conditions to be eligible voluntary registration, the person must made the first taxable supply within 12 months from the date of application. Due to the nature of business such as construction of properties where it is not a norm to make taxable supply within 12 months from date of application, need clarity on the criteria that is being applied to enterprises that	(i) Decision remains. (ii) RMCD takes note of the proposal.

			are seeking to register voluntarily, where the taxable supplies will only be made some time after the arbitrary 12 month period. • What requirements will need to be satisfied for them to register voluntarily, • What restrictions will be placed on their being able to claim input tax credits, and • If only allowed after they commence making taxable supplies- over what period will they be able to claim refunds due. • Also what mechanism will exist for tracking refunds due? Based on Item 5 of DG's decision 2/2014, it appears that as long as the business is able to produce supporting documents to demonstrate that taxable supply will be made, RMCD should consider to adopt the "12 month" requirement based on merit of each case. For example, for a new manufacturing business which requires a period of more than 12 months to construct and to get the factory ready for commercial use or for property who can only derive taxable supply after a development period of more than 12 months, RMCD should not impose the "12 months requirements" on them. We seek the RMCD's clarification on the above.	
		FMM (2) New Issue	There are no clear guidelines on group deregistration. Businesses have requested the	Application for group deregistration can be made through TAP.

			Customs Department to deregister their 'group registration' but have not received any reply from the Customs Department. To develop clear guidelines on group deregistration and enable the TAP system to accommodate 'Group Deregistration'.	
23.	**Recovery And Penalty For Late Payment Of GST**	CTIM (4)	The following amendments were introduced by the Finance Act 2015 (Act 773): *(8) Where any tax due and payable is not paid by any taxable person after the last day on which it is due and payable under subsection (4) and no prosecution is instituted, the taxable person shall pay—* *(a) for the first thirty days period that the tax is not paid after the expiry of the period specified under subsection (4), a penalty of five percent of the amount of tax due and payable;* *(b) for the second thirty days period that the tax is not paid after the expiry of the period specified under subsection (4), an additional penalty of ten percent of the amount of tax due and payable; and* *(c) for the third thirty days period that the tax is not paid after the expiry of the period specified under subsection (4), an additional penalty of ten percent of the amount of tax due and payable, subject to a maximum penalty of*	(i) Section 41(8) provides penalties for failure/ late payment of tax due and payable. (a) The wording 'not paid by any taxable person after the last day on which it is due and payable' refers to tax which is due and payable and not the outstanding / remaining balance. Therefore, the penalty under Sec 41(8) is calculated based on the amount due and payable regardless of any payments made. (b) The penalty applies to taxable period which is due in January 2016 (ii) RMCD takes note of the proposal.

			twenty-five percent of the amount of tax due and payable. *(9) Subject to subsection (11), prosecution for the offence under subsection (7) may be instituted after the expiry of the period specified in paragraph (8)(c).* *(10) The court may order that any taxable person who is convicted for the offence under subsection (7) shall pay the penalty as specified in subsection (8).* *(11) No prosecution for the offence under subsection (7) shall be instituted against the taxable person who has paid the amount of tax due and payable and the penalty specified under subsection (8) within the period specified in subsection (8).* **<u>Feedback from members</u>** ***(i) Confirmation sought*** We would like to seek confirmation from the RMCD on the following: (a) that S. 41(8) is only applicable to cases where there is a default in payment of GST and not applicable cases for incorrect return which is covered under S. 88. We are of the view that since the liability for GST is self-assessed, S.41(8) is a provision for late payment and not for incorrect GST returns. (b) that the penalty is calculated based on the shortfall in GST (i.e. amount of GST remained unpaid) as stated in the GST return	

			form and not based on the total amount of actual GST. (c) that the provision is effective only for GST return on taxable period commencing **after 31 December 2015**. ***(ii) Operation of the new S.41(8)*** CTIM wishes RMCD to confirm that the maximum total penalty applicable under Section 41(8) is 25% ~~of tax due and payable.~~ If so, for the purposes of clarity, CTIM proposes to include the following paragraph after Section 41(8)(c), at the end of S.41(8) for clarity :- *"Provided that the total penalty imposed under this subsection shall not exceed twenty-five percent of the unpaid amount of the tax due and payable."*	
24.	**Supply of Zero Rated Services / International services**	CTIM (5)	Second Schedule to GST (Zero-rated Supply) Order 2014 list out Supply of Services Determined as Zero-rated Supply. It includes the following with some restrictions: *Services supplied under a contract with a person who belongs in a country other than Malaysia and <u>which directly benefit a person who belongs in a country other than Malaysia</u> who is outside Malaysia at the time the services are performed. (*Para 12) *following services which are supplied under a contract with and which <u>directly benefit a person</u> wholly in his business capacity (and not*	This issue has been submitted to JKDM Legal Division for further clarification.

			in his private or personal capacity) and who is in that capacity belongs in a country other than Malaysia (Para13): • *services of engineers, lawyers, accountants and other similar consultancy services, data processing and provision of information, not being services which are supplied directly in connection with* ➢ *land situated in Malaysia or any improvement to such land or* ➢ *goods which are in Malaysia at the time the services are performed, other than goods for export outside Malaysia* • *testing of a sample goods taken from or forming part of* ➢ *goods which are outside Malaysia at the time the services are performed or* *goods for export outside Malaysia.* <u>Scenario 1</u> Overseas Holdco (**OH**) engages an overseas marketing consultancy firm **M** to design a market strategy for the group worldwide. **M** appoints a local company (**L**) to conduct market survey in Malaysia. The result of the survey will benefit a Malaysian subsidiary **(S)**. **L** reports to and invoices **M**. The work of **L** is performed locally in Malaysia. The direct beneficiary of the survey in the first instance is **M** for business purposes. Therefore, zero-rating takes effect under item 13. However, as **S** only receives an indirect benefit, CTIM would like to confirmation from RMCD	

			that in this example, the zero-rating applies under item 13. **<u>Comments</u>** In addition to confirming CTIM's interpretation above, it would facilitate the tax agents/ public if more clarification and examples can be provided on the type of services that are zero-rated under items 11, 12 and 13 of the GST (Zero-Rated Supply) Order 2014 and its Amendment.	
		MICPA (1) New Issues	Item 13 of the Second Schedule of the GST (Zero Rated Supply) Order 2014 reads as follows:- 13. Notwithstanding item 12, the following services which are supplied under a contract with and which directly benefit a person wholly in his business capacity (and not in his private or personal capacity) and who in that capacity belongs in a country other than Malaysia: (a) services of engineers, lawyers, accountants and other similar consultancy services, not being services which are supplied directly in connection with— (i) land situated in Malaysia or any improvement to such land; or (ii) goods which are in Malaysia at the time the services are performed, other than goods for export outside Malaysia; There is no guidance as to what services are included under the "other similar consultancy services". Please clarify what services are included under "other similar consultancy services".	<u>T</u>his issue has been submitted to JKDM Legal Division for further clarification.

			For example, do such consultancy services include the following:- 1. IT consultancy services; 2. Human resources (HR) consultancy services; 3. Event management services; 4. Recruitment services; 5. Services as defined in the Professional Services Guide.	
		MICPA(13) New Issue	It would be much appreciated if the RMCD could consider issuing Specific Guides for Imported Services and International Services respectively as both of these involve relatively complex concepts.	Sector V will prepare a specific guide on this issue.
25.	**GST Inclusive Price**	CTIM (6)	Section 9(5) of the GST Act 2014: "*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)*." Section 9(7) of the GST Act 2014: "*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) Tax inclusive prices are in compliance with Section 8 of the Price Control and Anti Profiteering Act 2011 and Section 9 of the GSTA 2014. (ii) All price must be quoted INCLUSIVE of GST with no exceptions, The GST component, must be shown as a separate item in the total. 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

			The provision is meant to ensure the public is not misled on price quoted / displayed. However, the wording "quotes in any manner" is too wide and may cover 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. CTIM proposes that this section is restricted **only 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. This issue was specifically dealt with in the Singapore GST Regulations. Non-public price can be in GST exclusive form.	adopt an inclusive pricing will benefit all. (iii) However, in DG's 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; (a) goods and services are subject to GST at 6%; and (b) the price payable is exclusive of GST This would not be misleading or deceptive. (iv) 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.
26.	**Treatment of Cross Border Supply**	CTIM (7)	Section 17(1)(b) of GSTA 2014 states that "A zero-rated supply is any supply of goods if the goods are exported." Hence, a registered person is entitled to zero rate supplies under Section 17(1)(b) where he causes the goods to be exported notwithstanding that he may not be the legal owner of the goods. This has been evidenced by the DG in Item 2 of DG's Decision 4/2015. However, a Malaysian supplier (MCo 1) sell goods to a third party overseas customer (TP1)	(i) The GST treatment is as per Item 2, DGs Decision 4/2015. (ii) GST officers have to abide with DG's Decision. The issue is too remote. However if there is non-compliance of the officers on the DG Decision's, complain can be made to JKDM HQ with full facts.

			based on ex-factory [Incoterms?]. TP1 instructs MCo1 to export the goods to its customer outside Malaysia (TP2). Form K1 is in the name of MCo1. Some RMCD officers have taken the view that the transaction is a **standard rated supply** on the grounds that the supply between MCo1 and TP1 is made in Malaysia and only TP1 is entitled to **zero rate** the export of the goods. **<u>CTIM's Proposal</u>:** We are of the view in line with the principle laid down in item 2 of the DG's Decision 4/2015, the transactions between MCo1 and TP1 as well as MCo1 to TP2 in the scenario should be zero-rated. We seek RMCD's confirmation and suggest that RMCD standardise the GST treatment, publish the decision accordingly for transparency and consistency.	
27.	**Input Tax Claim** **-Carry Forward of Input Tax Credits for Offset Against Future GST payable** **-Rejection of old Business Registration Number (BRN) number** **-Late refund ITC**	CTIM (8)	It is the RMCD's policy to disallow input tax credits to be 'carried forward' and offset against future GST payable. However, we note that the credit balance would not be automatically refunded. In such situations, businesses would be faced with a cash flow burden. . This policy needs to be reviewed together with the refund policy following the decision. The requirement of specific approval or a prior audit before the offset goes against the intention that GST is to be self-assessed.	(i) 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. (ii) For amount automatically deducted and at the same 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 taxpayer has paid to RMCD (Cross Period

				Offsetting) or can be made through TAP Configuration has been done to GENTAX, can only offset if refund has been approved.
		FMM (2)	The TAP system requires taxpayers to key in their SSM Business Registration Number (BRN) number when filing returns. Many businesses key in the old five (5) digit BRN number instead of the new six (6) digit number resulting in the delays in refunding the input tax claims. Customs should be able to accommodate the old Business Registration Number (BRN) number.	FMM response – not an issue anymore.
		FMM (6)	Although the Customs Department have highlighted that on the average, 60% of the input tax credit (ITC) is refunded within 14 days from date of filing their returns online as stipulated in the GST Regulations, it has been brought to FMM's attention that some businesses that have filed GST returns online take at least two (2) to six (6) months to receive their ITC claims. In some cases, businesses that have filed their GST returns in August have yet to receive their ITC claims. FMM would like to urge the Customs Department to refund the input tax credit (ITC) within 14 days from date of filing their returns online as stipulated in the GST Regulations and	To verify the refund claim, UPP only conduct verification and not post audit. For the purpose of verification the officer will issue a letter to request further information. Subsequently, JKDM will give the reasons for the delay.

			to conduct a post audit thereafter if required. In the case where Customs are not able to refund the ITC within 14 days, the Customs Department should revert to the company concerned on the reasons for the delay.	
		FMM (4) New Issue	The Customs Department has issued a letter to all exporters to request them to notify in their K2 and K8 form that 'a claim for input tax under the GST Act 2014' will be made by the exporter. The directive also states that random physical checks will be made to validate the exports. We would like to seek clarification from Customs on the rationale of this directive. We would also like to stress that the Customs Department should focus on post audit assessment and not impede trade by imposing random physical checks on exports	This is to expedite the refund processing. Random checks is required to ensure compliance and only genuine businesses that export goods physically is eligible for zero rating.
28.	**Special Refund under Section 190**	CTIM (11)	Some GST registrants have been informed that refunds will not be made under the section if they cannot demonstrate that there is a reduction in price of the goods and/or services supplied by them. The accounting bodies have discussed and agreed the work to be carried out and the certification necessary to support a claim for the special refund.	(i) Pricing information is required as per JKDM policy. (ii) Publishing figures of collection/ refunds is under the direction of Ministry of Finance (MOF). (iii) JKDM is doing its best to expedite the processing subject to the availability of the required documents. The verification process is to ensure no refund is wrongly allowed. Despite certification by company/ external

			The Institute would like to seek clarification whether there is such a policy. Pricing is influenced by many factors and is determined by market forces. The market demand of goods and services supplied and the fluctuations of the costs of raw materials, components, and production and incidental services etc. all have impact on the final pricing of the product. In fact, under current tough market conditions, a taxable person may have already borne/absorbed the increase in costs which more than off-set the benefit of a sales tax refund. Moreover, pricing mechanism can be re-positioned upon obtaining a sales tax refund. The special refund is to relief GST registrants who have already suffered sales tax on the components/raw materials without corresponding input tax credit to offset against output GST during the transition to the GST regime, giving rise to increased cost on the component/raw materials. Bearing in mind GST is not supposed to burden the businesses, special refund is given in place of input tax. In addition, Section 190 and 191 stipulate the conditions for a person entitled to a special refund, the amount of refund, and conditions where the refund is not applicable and the procedures and the manner in which the refund is claimed and paid. There is no requirement that compel the claimant to	auditors, JKDM auditors have detected cases such as – (a) a refund was applied for items not subject to sales tax; (b) amount of refund applied was more than actually paid; (c) proof of payments did not tally; (d) false receipts were forwarded; (e) wrong refund rate method applied (100% vs 20%); (f) other ineligibility conditions.

			reduce the price of goods and services supplied.	
		FMM (5)	Section 190 of GST Act 2014 allows GST registrant to claim special refund for the sales tax paid for goods held on hand on the 31st March 2015. Upon receiving the approved refund from Customs, stock costs and thus selling prices has to be reduced and this is in line with the Price Control and Anti-Profiteering (Amendment) Act (PCAPA) 2014. Companies have complained that they have yet to receive their sales tax refund despite making necessary submissions more than 8 months ago. Customs during audits are requiring companies to show evidence that the prices of goods have reduced before remitting the special refund. The onus of proving that a company has made excessive profit from the special refund is by Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) which is the agency enforcing the PCAPA. The GST Act and its related regulation does not have any provision that requires businesses to pass on full offset of any net tax adjustment. We would like to seek clarification from Customs on the reasons for the delay in the special refunds.	RMCD is doing its best to expedite the processing subject to the availability of the required documents. The verification process is to ensure no refund is wrongly allowed. Despite certification by company/ external auditors, JKDM auditors have detected cases such as – (a) a refund was applied for items not subject to sales tax; (b) amount of refund applied was more than actually paid; (c) proof of payments did not tally; (d) false receipts were forwarded; (e) wrong refund rate method applied (100% vs 20%); (f) other ineligibility conditions.

			We request for Customs to expedite the approval of the special refunds based on the perimeters outlined in the GST Act.	
		MICCI (1)	Any requests for pricing information left to the Ministry of DomesticTrade, Co-operatives and Consumerism and not RMCD. RMCD to publish statistics on the percentage of applicants and amount of refund already awarded compared to total claims. RMCD to accelerate the process for awarding the special refunds and to publicly set a deadline (e.g. by 31 March 2016) when taxpayers can expect to be awarded their monies (or first instalment, if on an instalment basis). Where RMCD have requested for additional supporting documents, to revert to taxpayers within one month on whether the refund has been accepted.	(i) Pricing information is required as per JKDM policy. (ii) Publishing figures of collection/ refunds is under the direction of Ministry of Finance (MOF). (iii) JKDM is doing its best to expedite the processing subject to the availability of the required documents. The verification process is to ensure no refund is wrongly allowed. Despite certification by company/ external auditors, JKDM auditors have detected cases such as – (a) a refund was applied for items not subject to sales tax; (b) amount of refund applied was more than actually paid; (c) proof of payments did not tally; (d) false receipts were forwarded; (e) wrong refund rate method applied (100% vs 20%); (f) other ineligibility conditions.

29.	**Directorship**	CTIM (9)	Regulation 9(1) of the GST Regulations 2014 provides that "*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:* *(a) The person making the supply is connected with the person to whom the supply is made; and* (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*." Regulation 9(3) further states that "*Where this regulation applies, goods or services shall, to the extent that they have not been treated as supplied by 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*." **Clarification sought**: (1) Director Fee and Regulation 9 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?	(i) Para 2(1)(a),Third Schedule , GST Act 2014 states that "they are officers or directors of one another's business. Connected person is between companies and not between the persons itself. (ii) For example: Director A and Director B are both directors in Company X and Company Y. Therefore Company X and Company Y are connected persons. (iii) As mentioned above, person who becomes director in a company, both of them are not considered as connected person. Therefore, the said Regulations would not apply in the given Scenario 1.

			If so, how will the directors' fees be quantified for GST purposes every 3 months as required by Regulation 9? <u>(2) Directors As Connected Persons</u> Para 2(1)(a), Third Schedule, GSTA 2014 states that "*A person shall be deemed to be connected if* – (a) *they are officers or directors of one another's business*." Clarification is sought on the meaning of the above:- (i) Director A is a director of Company X, and is a connected person to Company X; or Director A and Director B are both directors in Company X and Company Y. Therefore Director A and Director B are connected persons.	
30.	**GST Return** **-Declaration of return** **-Amendment of return**	MICPA (4) New Issues	The explanatory note to item 16 reads as follows:- *State the actual total value of capital goods acquired. Examples are purchase of lorry and office building.* *The acquisition value of capital assets is in accordance with accounting principal interpretation but does not include the acquisition of capital assets in the category:* *i. Blocked input tax.* *ii. Acquired from persons other than the taxable person.* *iii. Acquisition of motor vehicles which subject to GST under the Margin Scheme.*	(i) The value should be GST exclusive. (ii) K1 value (Section 16 GSTA 2014). (iii) If input tax is not claimed by taxable person, value of capital assets need not be reported in Item 16. The value to be reported should be full value.

			In respect of imported capital goods acquired from overseas (i.e. non-taxable person), it is unclear whether such imported capital goods should be included in item 16. If such capital goods are to be included, what value should be reported in the item 16 if the value of the goods based on the K1 importation form and the value capitalized as fixed assets in the accounts are different. Based on the explanatory note that item 16 should include the acquisition value of capital assets in accordance with accounting principle interpretation, we are of the view that all capital goods should be included in item 16 except those specifically excluded. Please clarify : 1) If the value reported in item 16 should be GST exclusive or inclusive 2) in the case of imported capital goods acquired from overseas, what value should be reported in item 16 if the value of the goods based on the K1 importation form and the value (in accordance with accounting principle interpretation) capitalised as fixed assets in the accounts are different 3) if the input tax on any capital goods acquired locally or from overseas is not	

			claimed by the taxable person, should the value of such goods (capitalised as fixed assets) be reported in item16; and If the capital assets are used for mixed supplies, the value to be reported should be the full value or the taxable portion only.	
		MICPA(14)	Regulation 69(1) states that *"if a person make an error in any return or declaration furnished under the Act, he shall correct it in such a manner and within such time as the officer of goods and services tax may require"* The GST Guide on Amendment Return GST 03 provides guidance on how to submit an amended return via TAP portal. It is proposed that RMCD consider the following: 1) Provide concession for amendment to be made in the next GST 03 where certain criteria are met; 2) Set criteria in which filing an amended GST 03 is mandatory; 3) Provide guidance in cases where errors made may affect more than one accounting period	Amendment return can be made once within 30 days after the subsequent taxable period ends (monthly filing) and 90 days (quarterly filing). Second amendment will be subject to verification.
		MICPA (15)	Please clarify: 1) Field 6a – for claim of taxable portion of the residual input tax for a mixed supplier,	(i) Field 6(a) full amount Field 6(b) only claimable portion

			the value to be reported should be 100% or the taxable portion (say 60% of IRR) 2) Field 10 – does it only include local supply of goods specified in the First Schedule of the GST (Zero-Rated Supply) Order 2014 or it may include certain services specified in the Second Schedule of the same Order if the services are performed in Malaysia or / and to person belonging in Malaysia 3) Field 11 – is this field made up of a) all exports of goods; and b) all services specified in the Second Schedule of the GST (Zero Rated Supply) Order 2014? Clarification is required as there is no definition of "International Services" found in the GST Act 2014 nor the Order 4) Which field should goods "exported" or sold to the Designated Areas be reported under? 5) Which field should supplies made within Designated Areas and between Designated Areas be reported under? We also would like to suggest: 1) Field 12 - For RMCD to provide guidance with illustration / examples on the value and timing for the reporting of exempt financial services such as:	(ii) Field 10 includes:- - Local supply of goods specified in the First Schedule of the GST (Zero Rated Supply) Order 2014 - Services specified in the Second Schedule of the GST (Zero Rated Supply) Order 2014 (iii) Both (a) and (b) International services are standard rated supplies except specified in the Second Schedule of the GST (Zero Rated Supply) Order 2014. (iv) Field 10-ZRL (v) Out of scope supplies- No need to declare (vi) These examples will be considered in the next upcoming amendment to the guide (vii) This will depend on what you charge

			a) Loans and deposits resulting in interest income b) Exchange of currencies resulting in gain or loss c) Sales of securities resulting in gain or loss d) Factoring of debtors 2) Field 13 - for the value in respect of land supplied by property developer or land owner for public utilities and amenities purposes to be reported at zero cost or nominal sum of RM1 as these lands may have no value due to its usage.	
31.	**Public Rulings**	MICCI (3)	RMCD to publish or convert GST Guides into prescribed GST Public Rulings with adequate legal footing. GST Public Rulings will promote transparency between the authorities and taxpayers. Further, legal remedial action can be afforded to both parties should there be differences in interpretation of the GST Act 2014 Taxpayers are currently unsure of how much reliance can be placed on GST Guides and commentary by RMCD. Binding GST Public Rulings will provide assurance to taxpayers and the business community at large.	Since the implementation of GST is only at its early stages, RMCD is still in the process of updating the procedure and GST guidelines. RMCD has taken into consideration and may issue GST Public Ruling in the future.
32.	**Bad Debt Relief**	MICCI (4)	They are concerns on the extra conditions for claiming bad debt relief, i.e. debtor must be registered persons and setting an arbitrary	Noted on the proposal.

			time period to claim the relief (6-12 months). These additional conditions were not requirements of law and not reflective of commercial reality. **The fact that customers were not registered for GST should not preclude the seller from claiming a relief on bad debts.** The purpose and intention of bad debt relief is to grant relief to the seller from paying uncollected GST. In either case, whether the customer is registered or not, they would not be able to claim input tax on their debts as well. Hence the registration status of the customer is not relevant and should not be a criteria for bad debt relief.	
33.	**Customs audit**	MICCI (5)	MICCI members shared that in cases where they had refunds on a monthly basis, every month was audited and each month by a different team. This creates significant administrative and operation disruption to businesses having to respond to multiple audit teams at the same time. It was proposed that Customs should adopt an approach whereby they audit one or two months only, and if there are no irregularities or the refund are due to the nature of the business then Customs should accept the results and not audit subsequent months without good reason.	Effective April 2016, the refund verification is conducted by GST refund officers according to industry. With better understanding of the industry, this new approach should gradually resolved the matter.

			It was also suggested that Customs could consider the IRB's approach to audits where only one team was in charge of one company. This would eliminate the need for taxpayers to liaise with multiple teams on the same issue concurrently. The members appreciate and understand that Customs is learning from experience on their audit approach, and we also seek Customs' understanding that we wish to support them with minimal disruption to business operations.	
34.	**Reimbursement and Disbursement**	FMM (1)	Customs has issued a DG's decision on the GST treatment for Reimbursement and Disbursement. However, there is still confusion on differentiating between reimbursement and disbursement of expenses. Develop a guide on reimbursement and disbursement citing examples and the GST treatment to be applied.	A guide on reimbursement and disbursement is currently in the process of being updated.
		FMM (1) New Issue	Some companies practise Vendor Managed Inventory where goods are exported and stored at an overseas warehouse (using manually prepared shipping invoice) and invoice is issued to the customer as and when the customer requires the goods from the warehouse. The time of supply is considered to be the time of export. However, the ERP system is not able to capture the transaction based on the	(i) Under VMI agreement, when goods are exported and stored at an overseas warehouse, the exporter (supplier) retains the title of the goods until the goods are appropriated by the customer and the consideration is determined by exporter (supplier). (ii) In accordance with regulation 6(1) GST Regulations 2014 (Supplier's

			shipping invoice. The ERP system (GST module) will only capture the transaction when the invoice is issued to the customer and the ownership of the goods is transferred to the customer (could be 2-3 months from export date). Customs to consider the time of supply similar to consignment sales (in this case an overseas transaction) to simplify the accounting process for exporters.	goods in possession of the recipient), the basic time of supply of the goods under this VMI agreement shall be treated as taking place at the earlier of the following dates: (a) he date of appropriation by the customer; (b) the date when a tax invoice is issued; or (c) the date when a payment is received by the exporter (supplier). (iii) Consequently within twenty one days after appropriation of the goods, the exporter (supplier) issues a tax invoice in respect of the goods appropriated, the time of supply shall be the time the invoice or tax invoice is issued.
35.	**Rounding up of Exchange Rate**	FMM (3)	Businesses that have transactions in foreign currency are required to convert the currency to MYR based on the prevailing exchange rate. As the exchange rate is issued in many decimal points, some businesses may round up or down the exchange rate to the nearest decimal point to facilitate calculation and payment of GST. However, there are concerns that the Customs Department may not accept the business decision on the rounding up or down.	Businesses are allowed to round up or down on the total of input or output but not on the exchange rate.

			Customs to issue a DG's decision on the rounding up/down of the exchange rate.	
36.	**Requirement to Retain Documents for 6 Years**	FMM (4)	The GST Act requires documents to be retained for 6 years for the purpose of audit but the ink on thermal paper receipts and invoices generated by the POS system dissipates in a matter of months. Request for further advice from Customs on the way forward.	The business are advised to convert the receipt and invoices into electronic form. Section 36(4) GSTA allows record which is in manual form to be converted into electronic form as long as its original form is retained prior to conversion.
37.	**Errors in the TAP system**	FMM (5)	Complaints have been received on technical problems when utilising the TAP system. For example: i. A taxpayer had deregistered their branch in Ipoh. There was no outstanding amount in the branch account. However, after the deregistration of the branch, the input tax refund credited into their HQ account was wrongly transferred by Customs to the Ipoh branch account. Due to this transfer, there is an outstanding balance in the HQ account and a credit balance in the Ipoh branch; ii. Following an audit, a company paid for a short payment of sales tax to Customs over the counter. However Customs had already at the same time use the companies GST refund to offset the short payment as the taxpayers	(i) Customs are constantly updating the system. This issue may be too remote. We cannot specify a contact person for specific industries. If the issue really happens FMM has to provide detailed information. (ii) Contact person for system is Unit Pengurusan Sistem MyGST.

			account was not updated on the payment made over the counter; and iii. A taxpayer submitted their returns over the TAP system successfully. However, after a few weeks, the Customs Department has reverted to the taxpayer to inform them that the returns have not been submitted and to ensure that the GST returns are submitted within a 14 day period to avoid penalties. From a follow-up made by the company with Customs, it was noted that the returns that were submitted were still hanging in the TAP system and had not been transmitted to Customs. Customs Department to constantly update the system and to enable the system to automatically prompt the taxpayer in the case where their submission is still hanging or pending. There should also be a person in charge in the Customs Department for FMM members to approach in the case of errors concerning their GST accounting and TAP system.	
38.	**GST Treatment on Roasted and Raw Coffee Bean and Dates**	FMM (3) New Issue	The roasted coffee beans and coffee powder are zero-rated while raw coffee beans for processing are standard rated. Thus manufacturers that import raw coffee beans to be processed to become roasted coffee beans and powder have a less competitive advantage	The raw coffee bean is subject to GST 6%. It is a policy decision by MOF. In the case of fresh dates, supply of fresh dates is subject to GST at 0% similar to GST

			over importers of roasted coffee beans and powder. Similarly during the festive season, businesses purchasing dates in large quantities from major distributors are being imposed with GST while no GST is imposed on mandarin oranges.	treatment on supply of fresh mandarin oranges.
39.	**Sales to Transit Passengers at Airport Airside to be Treated as Exports**	FMM (7) New Issue	Based on the guidelines of Duty Free Shop (DFS), all airside retailers will need to apply for a DFS license in order to sell to their transit passengers without GST. Prior to the implementation of the GST, locally manufactured goods by a member company, Royal Selangor International Sdn Bhd were not subject to sales tax or import duty and therefore the company was not required to obtain a DFS license, and were given approval not to charge GST on sales to foreign transit or departing passengers who are not Malaysians at the Airport Airside who are not Malaysians. Based on the Customs Act 1967 and the latest DFS guide, Royal Selangor International Sdn Bhd the company is eligible to apply for the status of the DFS for selling basic metal products. However, the company has failed to obtain the DFS license because it is unable to meet the 30% bumiputera equity as stipulated in the Perintah Tetap Kastam (PTK) issued based on the instructions from MOF. Royal Selangor Pewter is a brand that is known throughout the world and has been operating for over 130 years in Malaysia. FMM has written an official letter to MOF dated July 27,	JKDM has brought the matter to MOF and will inform the decision to Royal Selangor Pewter.

			2015 for an exemption of the equity conditions in the license application for DFS in all airside shops. To date we have not received a response from MOF on this matter. As an alternative to exemption on equity conditions of the DFS license, we would appreciate Customs consideration to treat sales by Royal Selangor International Sdn Bhd at airside shops to transit and departing passengers both foreigners and Malaysians as sales outside the PCA. The sales should be treated as export and zero rated as the goods whether sold to tourists or Malaysians are deemed to have left the country when they cleared Immigration and Customs. Based on the above, we request Customs to zero rate sales to transit passengers as per Item 4 of the First Schedule of the GST (Zero Rated Supply) Order 2014 which stipulates 'Goods… or as merchandise for sale by retail to persons carried on a voyage or flight to or from a place outside Malaysia in a ship or aircraft'. The Airside of airports are in reality 'outside' of Malaysia.	