

ISSUES AND CUSTOMS FEEDBACK

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
1.	GST Treatment of Reimbursement	CTIM (1)	<p>While item no 6, DG's Decision 5/2015 (as at 6 June 2016) provides guidance on when a transaction should be treated as a reimbursement as opposed to a disbursement, it does not provide guidance on the GST treatment for reimbursements. In view of this, there is inconsistency in application by taxpayers and RMCD.</p> <p>While reimbursement is treated as a new supply (recovery supply), there is uncertainty as to whether the nature of the new supply (recovery supply) should take the character of the original supply or it should be treated as a standalone supply independent of the character of the original supply.</p> <p><i>For example, a holding company (Co B) purchased a group life insurance policy from an insurance company (Co C) for its own and its local subsidiary employees. The claimant i.e. the holding company invoiced its subsidiary (Co. A) to recover the portion of the insurance premium attributable to the employees under the subsidiaries' employment.</i></p>	<p>(i) Instead of issuing a GST Guide, RMCD is in the midst of issuing a Public Ruling on Reimbursement and Disbursement. Public Ruling is expected to be completed in October 2017.</p> <p>(ii) In relation to the example on insurance premium, the reimbursement should be treated as a supply of arranging services and subject to GST at 6% if the condition in Item No. 6 DG' Decision 5/2015 is not fulfilled.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>It is unclear whether the nature of the recovering supply should take the character of the original supply (i.e. re-supply of insurance services) or it should be treated as a supply of arranging services (i.e. arranging for insurance cover.). It is important to provide clarity on RMCD's position on this to ensure consistency in application by taxpayers.</p> <p>CTIM was informed in March last year that RMCD will be issuing a <i>GST Guide on Reimbursement</i>. We would like to enquire the progress of the Guide and when will it be issued as many businesses are looking forward to the Guide for certainty and to ensure compliance. In the meantime, CTIM would request for RMCD's feedback on the example to facilitate compliance and ensure consistency.</p>	
		FMM (2)	<p>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.</p> <p>The Customs Department is requested to accelerate and upload the guide on reimbursement and disbursement with examples and the GST treatment to be applied. We would like to request for an update on this.</p>	Public Ruling is expected to be completed in October 2017.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
2.	New GST Guides and DG's Decisions	CTIM (2)	<p>(a) We have received feedback from members that they are facing difficulties in advising their clients on how to deal with revisions to the RMCD's GST Guides. The concern is that advice previously given by GST agents may be affected by subsequent changes in the Guides and future GST audits may seek to impose penalties based on the revised Guides. Moving forward, there will be new Guides/ Guidelines and even Public Rulings issued as well as amendments to the DG's Decisions and GST Guides made from time to time, arising from a change in GST compliance process and procedures or clarification by RMCD on the interpretation on legislation. Such change will have an impact on GST compliance by the taxpayers.</p> <p>For example, the change may affect business contracts, which last for a period of time. It may also result in additional conditions to be fulfilled, which businesses may not be able to accommodate without some time for adjustments.</p> <p>Since GST compliance is closely linked to the management and accounting system software. Any change in GST compliance process will require adjustment in the</p>	<p>(i) RMCD has uploaded through GST Portal on changes in the Guides and legislation. RMCD is in the process of notifying professional bodies through email.</p> <p>(ii) Any amendment to GST Act & GST Regulations is to be effective immediately according to the enforcement date. For GST Guide, it will take effect retrospectively but taxpayer have the avenue to appeal on a case to case basis.</p> <p>(iii) Draft of new legislation is subject to confidentiality. However, RMCD may engage with professional bodies on the gist of the proposed amendment.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>software which may take some time. The length of time required to adjust the software depends on the resources of the external software providers, the scope of the change, the sophistication of the software, etc.</p> <p>In the Focus Group on Paying Taxes (FGPT), a subcommittee of PEMUDAH, such issues were discussed several times and some consensus were reached but have not yet been implemented.</p> <p>(b) In addition, there may be instances of errors, ambiguities, accidental omissions, or contradictions found in or among various GST Guides, or email reply given by the RMCD. In subsequent audit by the RMCD, the GST registrants will be found to be non-compliant when clarifications have been made or the new rules were in force by then.</p> <p>In addition, there may be instances of errors, ambiguities, accidental omissions, or contradictions found in or among various GST Guides, or email reply given by the RMCD. In subsequent audit by the RMCD, the GST registrants will be found to be non-compliant when clarifications have</p>	

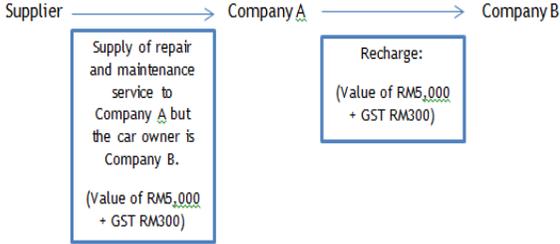
NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>been made or the new rules were in force by then.</p> <p>CTIM is of the view that these issues will be perpetual since there will always be changes in the law and DG's Decision, Guidelines or Guides. Therefore it is pertinent that RMCD lay down a clear policy to address the gap caused by such changes.</p> <p>CTIM would therefore suggest that the RMCD consider the following proposals to facilitate better communication of future changes with GST agents:</p> <p>(i) RMCD to notify professional bodies, relevant trade associations and members of this Committee by email on any new release of DG's Decisions, GST Guides, Guidelines, etc. including their amendments/ revisions, announcements. <i>This is to ensure an effective and efficient communication of changes to the relevant stakeholders on a timely basis.</i></p> <p>(ii) DG's Decisions, GST Guidelines and Guides, including their amendments, to be effective only 6 months after they are uploaded in the website. They should not be effective retrospectively. <i>DG's Decisions, Guides, Guidelines, etc. are issued when there is a need for it. If the law</i></p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p><i>requires explanation or clarification, it implies that the law is not clear to the public. Hence, a grace period is required to allow adjustment by those who have not interpreted the law in the same way as the RMCD.</i></p> <p><i>In addition, most SMEs purchased GST compliant software accredited by the RMCD and customized for their own needs. Any changes in the GST compliant procedure and process would result in adjustment of the electronic system to ensure validation and control mechanism. This would mean that businesses would have to wait for the software vendors to update their GST compliant package and then re-customise it to the needs of each business.</i></p> <p>(iii) In addition, penalty should not be imposed on any violation as a result of the changes within 6 months after the changes were made available to the public.</p> <p><i>This is to allow sufficient time for changes in software and other business adjustments.</i></p> <p>(iv) If the laws are not clear, RMCD should not penalize businesses who interpret the law differently from the RMCD.</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>CTIM is of the view that the GST registrant making decision in accordance with the RMCD Guide or replies as mentioned, should not be penalised for non-compliance in the GST audit exercise carried on later until 6 months after the issue of relevant new Guide. We seek RMCD to consider our proposal.</p> <p>The draft of new legislation and new interpretation of existing law should be tabled at Technical Committee on-GST Implementation and professional bodies for discussion at least 3 months before finalization.</p> <p>CTIM would suggest that the above proposals if agreed by RMCD, be uploaded on the GST portal to promote transparency fairness and a level playing field.</p>	
3.	Input Tax	CTIM (3)	<p><u>Claim of ITC in respect of Simplified Tax Invoice</u> Input tax claimed on simplified tax invoice was rejected on the basis that the simplified tax invoice was not approved by RMCD earlier. Item 5 of DG's Decision 1/2005 states that <i>"DG pursuant to section 33(3)(a) of GSTA gives his approval (blanket) to any registered person who makes a supply to end consumer (not businesses), to exclude following particulars in their tax invoices-</i></p>	Claiming of input tax by a buyer who holds a simplified tax invoice which is not covered under Item 5 of DG's Decision 1/2015 and not approved by the DG is not allowed.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p><i>(a) the word 'tax invoice' (reg. 22(a) GSTR);</i> <i>(b) name and address of the recipient (reg.22(e) GSTR);</i> <i>(c) the total amount payable exclusive of tax."</i></p> <p>Regulation 38(1)(a)(ii) of Goods and Services Regulations 2014 stipulates as follows:</p> <p>38(1) Subject to subregulations (2) and (3), any taxable person claiming input tax by deducting from the output tax that is due from him under section 38 of the Act shall do so on the return furnished by him for the taxable period in which he holds,—</p> <p>(a) if the claim is in respect of a supply from another taxable person,—</p> <p>(i) <i>a tax invoice which does not contain the name and address of the recipient where approval has been given by the Director General under paragraph 33(3)(a) of the Act provided that the maximum amount of input tax to be claimed is not more than thirty ringgit;</i></p> <p>It would be impractical to require the businesses to verify whether the seller had prior DG's approval to issue simplified tax invoice on following grounds:</p> <p>a) Since Regulation 38 has already restricted the amount of input tax to be claimed to a maximum of RM30, it would not be cost</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>effective to reject a claim on input tax claim on simplified tax invoice. Furthermore, any abuse by the supplier could be discovered and be penalized under a GST audit.</p> <p>b) It is impractical for businesses to find out whether a simplified tax invoice had obtained DG's prior approval since blanket cover is given.</p> <p>c) Even if there is an abuse, the wrong doer is the supplier who issued the simplified tax invoice, not the customer who bought the goods and services. Hence, the supplier should be penalized instead of the recipient. In view of the above reasons, CTIM would suggest that claim of input tax on simplified tax invoice be automatically allowed unless there is suspected fraud as shown from the RMCD risk analysis report.</p>	
		MICPA (4)	<p><u>Disallowance of input tax</u></p> <p>Regulation 36(b) of GST Regulations 2014:-</p> <p>“the supply of goods or services relating to repair, maintenance and refurbishment of a passenger motor car”</p>	Association have brought up the issue to MOF and the decision by MOF is still pending.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			 <p>Supplier → Company A → Company B</p> <p>Supply of repair and maintenance service to Company A but the car owner is Company B. (Value of RM5,000 + GST RM300)</p> <p>Recharge: (Value of RM5,000 + GST RM300)</p> <p>Company A and B are related companies in a Group.</p> <p>Company A incurred repair and maintenance charges for passenger motor car owned by Company B. A received a tax invoice from the supplier for said services provided with value of RM 5,000 and GST of RM 300.</p> <p>Subsequently, Company A recharged Company B (the owner of the passenger motor car) with similar value for the expenses incurred on behalf.</p> <p>We would like to seek clarifications on the following:-</p> <ol style="list-style-type: none"> 1. Whether Company A is entitled to claim input tax incurred in relation to repair and maintenance of passenger motor car owned by Company B (i.e. GST RM300)? 	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>2. Whether input tax incurred by Company B in relation to repair and maintenance of passenger motor car charged by Company A is blocked?</p> <p>3. Would the answers above differ if Company A charge Company B with a mark-up?</p> <p>Given the facts are similar to the above example; however, the passenger motor car is registered in the name of Company B's staff.</p> <p>We would like to seek clarifications on the following:-</p> <p>1. Whether Company A is entitled to claim input tax incurred in relation to repair and maintenance of passenger motor car incurred for Company B (i.e. GST RM300)?</p> <p>2. Whether input tax incurred by Company B in relation to repair and maintenance of passenger motor car charged by Company A is blocked?</p> <p>3. Would the answers above differ if Company A charge Company B with a mark-up?</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
4.	Para 5, FIRST SCHEDULE of the GST Act 2014 - Transfer, etc., of business assets	CTIM (5)	<p>5(1) - <i>Subject to subparagraph (2), where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, the transfer or disposal is a supply of goods by the person.</i></p> <p>Where a GST-registered property investor is deceased and the estate (real property) is transferred to the beneficiary, there is some concern whether Para 5(1) of the First Schedule will apply, i.e., the transfer be construed as a deemed supply under Para 5(1) CTIM is of the view that such transfers which are effected by law and not by the person carrying on the business, should be treated as neither a supply of goods nor a supply of services and included in the Second Schedule of the GST Act 2014 accordingly. We look forward for the law to be clarified on this aspect to enhance improvement in GST compliance.</p>	<p>(i) Where property is transferred to a beneficiary, this is a deemed supply. GST must be charged if it is a commercial property. There is no provision to state that such transfer is not a supply.</p> <p>(ii) RMCD is working on Public Ruling to cater this issue.</p>
5.	Mitigation of Penalty under Voluntary Disclosure	CTIM (6)	In the Special Address by the Prime Minister on 2016 Budget Recalibration, it was announced that to enhance the efficiency and amount of tax collection the Government will double compliance and auditing efforts on tax evaders;	(i) Provision for offences and penalties are provided under Part XI of the GST Act. For offences under subsection 41(7), which is failure to pay tax within time, the rate of

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>while special consideration will be given on relaxation for penalty on taxpayers to encourage them to come forward and declare their past years' income.</p> <p>Whilst the IRB has already implemented reduced penalty rates to encourage voluntary disclosure, similar reductions in GST penalty rates has not yet been introduced by the RMCD. In view of the complexity of the GST system in Malaysia and the high number of new GST registrants which are small and medium sized businesses since implementation on 1 April 2015, there may still be many businesses which are in the learning stage and are not fully in compliance with the GST Act 2014.</p> <p>Most businesses are compliant taxpayers who are willing to comply with the law but may have made bona fide errors in filing. Some of them are willing to make good by volunteering additional GST payments to the RMCD but are deterred by the high penalties.</p> <p>CTIM proposes that the GST Audit Framework should provide clear examples of the penalties for the different types of GST offenses e.g. late payment, incorrect returns etc. In addition, CTIM would recommend that reduced penalty rates be given for voluntary disclosure made within say, 24 months to</p>	<p>penalty will be imposed according to subsection 41(8).</p> <p>(ii) Voluntary disclosure will still be subject to penalty. However the DG may remit the penalty under Section 62 on a case by case basis.</p> <p>(iii) However, RMCD is the midst of preparing the report on voluntary disclosure to be forwarded to the RMCD top management.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>encourage honest taxpayers to voluntarily disclose or self-amend their mistakes before a GST audit. This may increase GST revenue collection and decrease the burden for GST audits.</p> <p>Without the incentive, those who have made errors unintentionally may not volunteer corrections of the mistakes in fear of having to suffer high penalties.</p>	
6.	Disposal of Capital Assets subject to GST	CTIM (7)	<p>S.20(6) of the GST Act 2014 provides that – <i>“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 due to cessation of business; ”</i></p> <p>Following the amendment to S.20(6)(a), sale of capital goods, including sale due to relocation of business, downsizing, asset replacement, financing arrangements, etc. would be included in the determination of threshold for registration for GST.</p> <p>This would bring many small businesses, SMEs and property investors into GST net, contrary</p>	<p>(i) RMCD will determine the meaning of cessation of business on a case by case basis</p> <p>(ii) Therefore, company may or may not register as result of any disposal of assets pursuant to the determination by RMCD on the status of cessation.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>to the objective of not to burden small businesses by having a threshold.</p> <p>Registration of small businesses would not only burden these businesses, but also bring a host of administration and practical issues, such as requests for immediate deregistration after the sale of capital assets, claims of input tax and charge of output tax during the short registration period, etc. Unlike sale of stock, sale of capital asset is not routine sale and it would be difficult to anticipate when such sales would occur. Because sale of capital assets often involve large sums of money, even if terms and conditions are agreed by both parties and conditional sale agreement signed, sale would still be conditional on the acquirer successfully obtaining a financing facility.</p> <p>Therefore it may be practically difficult to register for GST in time and charge the output tax on the capital asset sold. Late registration would easily occur resulting in penalties.</p> <p>CTIM would like to emphasise that cessation of business is a 'matter of fact' and may not necessarily lead to liquidation (which is strictly not a condition in the amended legislation). A company may cease its business and remain dormant without liquidation. Furthermore, if a company has more than one</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			business, and decides to cease its less profitable business and retain its other business, RMCD should clarify whether it would accept that the disposal of capital assets relating to the ceased business would be treated as disposal due to cessation of business i.e., if the company is not liquidated.	
7.	SECOND SCHEDULE [Section 4] of the GST Act 2014 - Matters To Be Treated As Neither A Supply Of Goods Nor A Supply Of Services	CTIM (8)	<p><i>Supply of Land in Compliance With Requirement of Written Law, Government or Local Authority</i></p> <p><i>Para 8(1) Any supply of land by a developer or an owner of the land to the Federal Government, a State Government, a local authority or any other person in compliance with the requirement of any written law, the Federal Government, State Government or local authority for the purposes of providing public amenities and public utilities whether for no consideration or at nominal value shall be treated as neither a supply of goods nor supply of services.</i></p> <p><i>(2) For the purposes of subparagraph (1), public amenities and public utilities means the amenities and utilities provided in the layout plan for a project which has been approved by the relevant local authority.</i></p>	<p>(i) The input tax incurred on such development such as land, access roads, lamps, mosque, TNB station, etc. that will be handed over to the government is not claimable (P.U.(A) 368 and 369)</p> <p>(ii) However, input tax incurred on such supplies may be recovered if :</p> <p>a) the planning permission is approved before 1.1.2017;</p> <p>b) a certificate sign by an authorised person certifying the project has completed not less than 10% within 12 months period from the granted planning permission date, and;</p> <p>c) if a) and b) above fulfilled and subject to Sec. 38 and 39 GSTA, the amount of input tax incurred can be claimed within 36 months from the granted planning permission date.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>This amendment would result in additional financial burden on companies, particularly the developers, if they are not able to claim input tax on necessary expenditure incurred for their development business.</p> <p>CTIM would like to seek clarification from the authorities on its interpretation whether input tax credit can be claimed on the following:-</p> <p>a) development costs such as access roads, lamps, mosque, TNB station, etc.</p> <p>b) land</p> <p>If input tax credit on the above are not claimable, CTIM would encourage the authorities to re-consider and allow input tax credit to be claimed on all infrastructure cost, as denial of input tax credit on such assets would be contrary to the spirit of GST, and the government's pledge that GST is a tax on the end consumer and not be a cost/burden to businesses.</p>	<p>(iii) Besides that, P.U.(A) 368 and 369 will only take effect on and after 1.1.2017, therefore subject to Sec. 38 and 39 GSTA, the amount of input tax incurred on such supplies can be claimed up to 31.12.2016.</p> <p>(iv) RMCD maintains the current provision.</p>
8.	Payment of Tax	CTIM (9)	<p>Section 41(1) and (4) of the Goods and Services Tax Act 2014 provide that:</p> <p><i>Every taxable person shall, in respect of his taxable period, account for the tax in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following after the end of</i></p>	<p>(i) RMCD confirms that there is an administrative concession to remit the penalty where the registrants can provide evidence that the cheque was paid to the bank on or before the due date.</p> <p>(ii) The mechanism for the remission of penalty:</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p><i>his taxable period to which the return relates.</i></p> <p><i>Any taxable person who is required to furnish a return under this section shall pay to the Director General the amount of tax due and payable by him in respect of the taxable period to which the return relates not later than the last day on which he is required to furnish the return.</i></p> <p>Regulation 65(2) of the Goods and Services Tax Regulations 2014 further provides that: 65(2) <i>“Tax, penalties and other charges shall be deemed to be paid when the payment is received by the Director General: Provided that—</i> <i>(a) where any cheque, bank draft, postal order or money order is received by the Director General and is not paid on presentation, the amount shall be deemed not to have been received notwithstanding any receipt given until such amount is duly paid to the Director General; where payment is made through a bank, the amount shall be deemed not to have been received until such amount is lodged to the credit of the Director General.</i></p> <p>For the purpose of comparison, we also reproduce Regulation 14(2) of the Service Tax Regulations 1975 (repealed) as below:-</p>	<p>a) Application in writing shall be submitted to the controlling station.</p> <p>b) Documents as proof of payment shall be submitted together with the application letter.</p> <p>(iii) RMCD takes note of the proposal and may review the proposal to amend Reg 65(2).</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p><i>“Service tax and penalties shall be deemed to be paid when payment is received by the proper officer at his office in accordance with paragraph (1):</i></p> <p><i>Provided that where any cheque or bank draft received by the proper officer and lodged to the credit of the Accountant General is not paid on presentation, the amount thereof shall be deemed not to have been received (notwithstanding any receipt given therefor) until such cheque or bank draft is honoured or the amount is otherwise duly paid to the proper officer.”</i></p> <p>The similar provisions are also found in Regulation 13(2) of the Sales Tax Regulations 1972 (repealed).</p> <p>CTIM is of the view that this has placed an extra burden on the businesses as they have only less than one month to prepare the account, verify and made necessary adjustment to the GST treatment and arrange for the amount of GST to be paid.</p> <p>Regulation 65(2) is different from the provision in other tax legislation which specify the payment of tax on due date and define the due date of payment. Such approach is in line with normal commercial practice where payment</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>made to the recipient or authorised agent of the recipient will deemed received by the recipient. When the agent (bank) will credit the payment into the recipient account is a matter between the agent and the recipient. In any case, it is a matter of one or two day time.</p> <p>Such approach has been practised in other taxes collection for many years and has not created any significant compliance issue. This is because the authority, such as RMCD will always has a recourse to the taxpayer if the cheque was not honoured. Further the businesses are here for long term and they cannot run away! Every month they have to file their return to RMCD and pay their due.</p> <p>The suggestion that require registrant pay earlier has increased operation burden for businesses and hence costs of doing business to meet the tight deadline of compliance.</p> <p>We understand that currently the RMCD has made a administrative concession to remit the penalty where the registrants can provide evidence that the cheque was paid to the bank on or before the due date. Kindly confirm the concession.</p> <p>To ensure smooth compliance, we propose that the Regulation 65(2) be amended as follows:</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>65(2) <i>“Tax, penalties and other charges shall be deemed to be paid when the payment is received by the Director General: due and payable on the due date;</i> <i>Provided that—</i> <i>(a) where any cheque, bank draft, postal order or money order is received by the Director General and is not paid on presentation honoured, the tax, penalties and other charges shall be deemed not to have been received treated as not paid notwithstanding any receipt given until such amount is duly paid to has been issued by the Director General;</i> <i>where payment is made through a bank, the amount shall be deemed not to have been received until such amount is lodged to the credit of the Director General.</i></p>	
9.	Selling of excess inventory	MICCI (1)	<p>Contract Manufacturers are facing a unique problem with the implementation of GST. Majority of their customers are based outside of Malaysia. They, the contract manufacturers purchase components according to their customers’ requirements, add the value-add (labour) and export the finished products. Excess material is charged to their customers, as the raw material is physically based in Malaysia. When customer orders are cancelled or components are made obsolete due to engineering changes the customer is required</p>	<p>(i) <u>Supply of raw materials inventory or semi-finished goods to customers</u></p> <p>Supply goods where such goods is not exported is subject to GST at 6%.</p> <p>(ii) <u>Buying back the raw materials inventory or semi-finished goods from customers</u></p> <p>Where goods belong to the customer is supplied back to the supplier, the customer who is GST registered person is liable to</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>under contract to purchase the excess material. However, because of Geography and logistics, the customers usually requests that the excess material is stored on site until it is next needed. If and when such excess material is required, it has to be bought again by the Contract Manufacturer from the customer.</p> <p>The issue arises because the excess material (inventory) is now stored in Malaysia. The Contract Manufacturer then has to charge their customer inclusive of GST. However when it is eventually used and exported to the customers concerned, they are unable to claim the GST charged for the excess material used, since the customer is not GST registered in Malaysia. Therefore the 6% GST is non-recoverable by the customer.</p> <p>From a business ethics standpoint the customer is charged 6% extra due to GST. This then makes it very difficult to sell back excess inventory.</p> <p>Request that MICCI KL will bring the matter up to the Royal Customs Department and other Government Agencies involved, such that excess raw material that will eventually be used for products to be exports will be exempt from GST.</p>	<p>charge GST and issue a tax invoice to the supplier. If the customer is not a GST registered person, no GST is chargeable on the supply. If the value of the supply made by the customer to the supplier is more than RM500,000, he is liable to be GST registered person.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
10.	GST implications arising from salary deduction from foreign workers, specifically for accommodation costs and immigration levy under Minimum Wage Policy	MICCI (2)	<p><u>Background</u> Most manufacturing companies in Malaysia employ foreign workers due to shortage of manpower, and the employment of these foreign workers are approved by the Ministry of International Trade and Industry and the Immigration Department.</p> <p>With the implementation of the Minimum Wage Policy in Malaysia with effect from 1 Jan 2013 (or 1 July 2013), the Department of Labour Peninsular Malaysia issued two (2) directives dated 9 April 2013. These directives granted permission to the employers to deduct from the foreign workers' salary the following payments, subject to the monthly deduction does not exceed 50% of their total salary: Foreign workers levy, where the employment pass is under the name of the employer, and the amount to be deducted is to be pro-rated monthly for a period not exceeding 12 months Accommodation cost not exceeding RM50 per month (this does not include electricity bill, water bill, security, facilities, and other accommodation maintenance costs)</p> <p><u>Issues</u> With the implementation of GST, these companies now face 2 major problems:</p>	<p>(i) Company may claim the input tax incurred related to exempt supply if the company fulfills the De Minimis Rule.</p> <p>(ii) Recovery of levy payment that was paid on behalf of foreign workers is considered as reimbursement under GST.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p><u>Exempt supply</u> arising from the salary deduction for accommodation cost. Generally, the landlords enter into contract with Employers to safeguard the landlords interest and reduce hassle dealing with the foreign workers)</p> <p><u>Reimbursement (subject to 6% GST)</u> arising from recovery of levy payment that was paid on behalf of foreign workers. The receipts issued by the Immigration Department are in the name of the Employer, and not the names of each of the foreign workers.</p> <p><u>Request</u></p> <p>It is not the intention of these Employers to provide exempt supplies, because the provision of accommodation is incidental to ensure that their manufacturing operations are not disrupted due to labour shortage. Moreover, as Employers, they are required to provide basic decent accommodation for the foreign workers to ensure that the wellbeing and safety of these foreign workers are taken care of, and to minimise any social problems to the community.</p> <p>The good intention of the Department of Labour Department to help companies manage with the Minimum Wage Policy, by allowing</p>	

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>salary deductions of the accommodation cost and levy, are meant to mitigate the increasing costs of living in Malaysia had resulted in adverse GST effects and increased cost of doing business here to these manufacturing companies.</p> <p>In addition, companies approved with the Approved Trader Scheme (ATS) are not allowed to provide <u>any exempt supply</u> (even if the cost for provision of accommodation falls within the de minimis limit of average of RM5,000 per month, which would equate to 100 foreign workers).</p> <p>As such, we would like to seek the RMCD's consideration for the following:</p> <ul style="list-style-type: none"> • To disregard the salary deduction of RM50 per month for accommodation cost, from being regarded as provision of "exempt supply" To allow the recovery of levy payment as disbursement (not subject to GST) even though receipt/tax invoice is issued in the name of the Employer. 	
11.	Reverse Charge	MICPA (1)	<p>Is withholding tax subject to reverse charge? We would like to seek clarification on whether withholding tax under the attached scenarios (see Appendix A) is subject to reverse charge?</p>	<p>(i) Yes. It is subject to reverse charge.</p> <p>(ii) Treatment on withholding tax relevant will be incorporated in the GST General Guide.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
12.	GST return	MICPA (2)	<p>The Institute proposes that Customs provide a written guidance. Whether return of goods to overseas supplier (no supply) needs to reported in GST-03</p> <p>Taxpayer may export certain goods to overseas due to warranty, goods exchange, goods return or temporary exported for repair, etc. Such movement of goods to overseas does not constitute a supply as there is no sale and the taxpayer does not expect any consideration in return. Nonetheless K2 form is still required for such movement of goods to overseas.</p> <p>It is unclear whether export of such nature (where there is no supply) needs to be declared as value of goods exported in field 11 of the GST-03 form.</p> <p>(i) The guide on GST-03 form dated 6 August 2015 has indicated that field 11 is to be filled with Total Values of Export Supplies, which shall state the “value of all exported goods and services ...”. It is unclear if the sentence meant the value of all the “export supplies” or value of all the “<u>exported goods including such goods that are not supplies</u>” per se.</p>	<p>When the goods are returned, due to warranty, goods exchange, goods return or temporary exported for repair, it has to be declared in Field 11 on the value of all exported goods. RMCD will further review GST-03 Form.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>(ii) In connection of the above, different advice had been received from the RMCD officers. Some officers insisted that the values in field 11 should match to all K2 forms by the company, regardless if the goods are supplied (sold) or other reasons (goods returned). On the other hand, some officers opined that the goods returned are not supply per se and thus does not need to be disclosed in field 11.</p> <p>The Institute would appreciate the Customs clarification on this issue.</p>	
		MICPA (7)	<p>Refer to:</p> <p>Issue 1 -Meeting Papers for 1/2017) – Disclosure under Field 11 – Zero Rated Supplies Issue 16 – Minutes of Meeting 3/2016 – Disclosure under Field 10 or 11 – Zero Rated Supplies</p> <p><u>Feedback from RMCD</u></p> <p>On issue 1:</p> <p>The disclosure period should be based on the date of invoice issued and the value reported in GST-03 is also based on the invoice. Reporting GST-03 is based on the accounting software which only captures the value of invoices.</p>	<p>Latest decision has been made in Minit Mesyuarat Jawatankuasa Teknikal Isu Pelaksanaan GST Bil 1/2017 (refer para 5.1)</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			<p>On issue 16:</p> <p>Value reported in GST-03 returns should be based on K2 Forms.</p> <p>Please clarify as to whether the disclosure in the GST-03 returns should be based on the information on the tax invoice issued or based on the information on the K2 Forms.</p>	
13.	Tax Invoice	MICPA (5)	<p>Refer to DG Decision 1/2015 (item 5) and paragraph 36 of the Guide on Tax Invoice and Record Keeping as at 6 January 2017:</p> <p>“DG pursuant to Section 33(3)(a) of the GSTA gives his approval (blanket) to any registered person who makes a supply to end consumer (not businesses), to exclude following particulars in their tax invoices:-</p> <p>(a) The word ‘tax invoice’; (b) Name and address of the recipient;</p> <p>The total amount payable exclusive of tax.”</p> <p>Please clarify as to whether it will still be treated as a simplified tax invoice if the word “tax invoice” remain but exclude the following information:-</p>	<p>It may be treated as simplified tax invoice if it fulfil the Item 5, DG’s Decision 1/2015. Otherwise, need approval letter from DG.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
			(a) Name and address of the recipient; (b) The total amount payable exclusive of tax.	
		MICPA (6)	<p>Refer to paragraph 37 of the Guide on Tax Invoice and Record Keeping as at 6 January 2017:</p> <p>“Simplified tax invoice can be used to claim input tax. In the case of an approved tax invoice without the name and address of the recipient, the allowed input tax amount claimable is RM30.00 or less. If the GST amount is more than RM30.00, he can only claim the input tax up to a limit of RM30.00 using this invoice. Therefore, he must request for a tax invoice <u>with the name and address</u> of the recipient to enable him to claim the full input tax if it is more than RM30.00”</p> <p>We would like to seek clarifications as to whether the simplified tax invoice can be used to claim:</p> <p>(i) Full GST input tax if the Company name is indicated in full in the said simplified tax invoice.</p> <p>(ii) Up to RM30.00 GST input tax if the employee name is indicated in the said simplified tax invoice.</p>	<p>(i) Full tax invoice is required to claim the full amount of ITC.</p> <p>(ii) Maximum input tax claimable is RM30.00 on simplified tax invoice.</p>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTION	FEEDBACK FROM CUSTOMS
14.	Delays in Special Refund	FMM (3)	<p>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 March 31, 2015. Upon receiving the approved refund from Customs, stock costs and thus selling prices had to be reduced and this was in line with the Price Control and Anti-Profiteering (Amendment) Act (PCAPA) 2014.</p> <p>It has been brought to the Federation of Malaysian Manufacturers (FMM)'s attention that many companies have yet to receive their sales tax refunds despite making necessary submissions more than 1 year. Some companies have only received partial approval from Customs. The delay in the refunds is affecting the cash flow of our member companies.</p> <p>We have also officially met with MOF and the Customs Department on May 5, 2017. The Customs Department has agreed to review the application from the companies that were only granted partial refund.</p> <p>We would like to request for an update from the Customs Department on the review of the applications from the companies that were only granted partial refunds.</p>	Currently, 44 applications have been forwarded to Bahagian Pematuhan for further review on the costing.

