ISSUES AND CUSTOMS FEEDBACK

<table>
<tr><th>NO.</th><th>ISSUE</th><th>ORGANIZATION/ QUESTION NUMBER</th><th>QUESTIONS</th><th>FEEDBACK FROM CUSTOMS</th></tr>
<tr><td>1.</td><td>GST Return</td><td>MICPA (1)</td><td>
<u>Disclosure under Field 11 – Zero Rated Supplies</u>

We would like to seek clarification as to the <u>disclosure period</u> if the tax invoice was issued in the current taxable period but Form K2 was dated in subsequent taxable period.
For example:-
<table>
<tr><th>Particular</th><th>As per Tax Invoice</th><th>As per Form K2</th><th>Taxable period</th></tr>
<tr><td>Date of Issue</td><td>31.10.2016</td><td></td><td>October 2016</td></tr>
<tr><td>Date of Receipt</td><td></td><td>31.10.2016</td><td>October 2016</td></tr>
<tr><td>Date of Export</td><td></td><td>1.11.2016</td><td>November 2016</td></tr>
</table>
Please clarify:

(a) Whether the disclosure period should be based on date of tax invoice issued or based on date of Form K2?
(b) If based on date of Form K2, whether the disclosure period should be based on date of
</td><td>
(i) Should be based on 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 value of invoices.

(ii) The Return/ Payment Unit will update the GST-03 guidelines.
</td></tr>
</table>

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			export as per field 5 or date of receipt as per field 10 of Form K2? We propose that Customs clarification on the above reporting requirement is incorporated into the GST 03 Guidelines.	
		MICPA (14)	Issue No. 25: GST Return Minutes of GST Technical Issues Committee Meeting No. 3/2016 [MICPA (15)] Declaration of total value of capital goods acquired. Please further clarify as to whether field 16 of the GST return (i.e. total value of capital goods acquired) should include value of imported services accounted for by the taxable person via reverse charge mechanism and being capitalised as part of the capital goods in accordance with the standard accounting principal in Malaysia.	The imported services that is being capitalized as part of the capital goods should be included in field 16 of GST return.
2.	Value of Digital Products in Tangible Medium	MICPA (2)	Based on the GST Guide on e-Commerce Services, delivery of digital products through tangible mediums is regarded as supply of good. On this basis, importation of software on carrier media would also be treated as an importation of good. Under WTO customs valuation, the customs value of imported carrier media bearing data or instruction	The value for GST purposes includes the tangible or intangible asset which is incorporated in the carrier medium.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			would be based on the cost or value of the carrier medium. For GST, please clarify would the value of digital products in tangible medium be also based on the Customs valuation principles. We propose that Customs clarification on the above be incorporated into the GST Guide on e-Commerce Services.	
3.	New Reverse Charge Rule with effect from 1 January 2017	MICPA (3)	Under the new reverse charge rule (Section 13 of the GST Act 2014), it is unclear whether "the date when any invoice is received from the supplier" refers to e.g. date of receipt of physical invoice from overseas or date of receipt of scanned invoice from overseas or date when the invoice is accepted for posting into the Accounts Payable. For domestic purchases, a taxable person is considered to hold a tax invoice on the date of time of posting of the tax invoice into the company's Accounts Payable. For domestic purchases, a taxable person is considered to hold a tax invoice on the date of time of posting of the tax invoice into the company's Accounts Payable or one year from the date he holds the tax invoice. Please clarify:	(i) The meaning of invoice received will be determined on a case by case basis. Some possible examples are email, fax, scan, company stamp date, system date. (ii) RMCD will consider the posting date subject to conditions as follows:- (a) it can be proven during Customs a audit; (b) it cannot be change without prior approval from Customs; and (c) any changes to the method used by companies, requires a fresh application.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			(a) Which date does "the date when any invoice is received from the supplier" refer to? (b) Whether the same approach can be followed as for domestic purchases [Item 3, DG's Decision 8/2015 refers].	
		MICCI (3)	The definition of imported services means any services by a supplier who belong in a country other than Malaysia or who carries on business outside Malaysia, to a recipient who belongs in Malaysia, and the services are <u>consumed in Malaysia</u>. We would like to seek clarification on Customs' interpretation of "consumed in Malaysia". Does the location of consumption refer to the location the services were received (benefit of the service enjoyed) or the location of the service recipient (billing location of the service recipient)? We are of the opinion that the former is applicable as illustrated in the following examples. We hope Customs can comment and offer clarity on this situation so that we can apply reverse charge correctly. <u>Example 1</u>. Training in Singapore attended by Malaysian staff. The training is conducted in Singapore, and the staff was physically in Singapore to attend the training. The invoice is billed to the Malaysian company. We are of the opinion that the services consumed in Singapore as the staff was in	(i) Example 1: Imported services is not applicable. (ii) Example 2: Imported services is not applicable. (iii) Example 3: Imported services is not applicable. (iv) Example 4: Imported services is applicable. (v) Noted on the recommendation.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			Singapore to attend the training, hence reverse charge is not applicable even though the invoice was to the Malaysian company. Example 2. Malaysian staff staying at a Singapore hotel. The invoice is billed to the Malaysian company. We are of the opinion that the services were consumed in Singapore because the staff was occupying the room in Singapore, hence reverse charge is not applicable even though the invoice was to the Malaysian company. Example 3. Malaysian company organizes a marketing event in Singapore. The marketing team is in Singapore to coordinate and manage the event. The Malaysian company engages a Singapore publicity company to provide services to the marketing team. We are of the opinion that the services were consumed in Singapore as the event was held in Singapore and the services were received by the marketing team in Singapore, hence reverse charge is not applicable even though the invoice was to the Malaysian company. Example 4. Malaysian company engages stockbroker in Singapore to trade in shares listed in Singapore. The trades are executed in Singapore, and the Malaysian company does not have a presence in Singapore. We are of the opinion that reverse charge	

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			is applicable on the brokerage charges as the services were consumed in Malaysia. We also would like to request that Customs issue a specific guide on Reverse Charge and various applications to help the layman user understand how and when reverse charge should be applied. The present information in the supply and input tax guides are insufficient.	
		MIA (7)	"Imported Service" is defined as "any services by a supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia, to a recipient who belongs in Malaysia, and the services are **consumed in Malaysia**" (Section 2, Goods and Services Tax Act 2014). The definition of "consumed in Malaysia" is not provided under the Act but in the General Guide, it refers to "any service which is used, utilised, or enjoyed in Malaysia". In the event that the imported services is a **taxable supply** under Malaysian GST legislation and is supplied to recipient for **the purpose of business**, Section 13 of the Act requires the recipient to treat the imported services as: - supply made by the recipient in the course or furtherance of business;	(i) Explanation on imported services has been provided in the GST General Guide. (ii) …" Service "consumed in Malaysia" in relation to imported service means any service which is used, utilised, or enjoyed in Malaysia. It also includes intangible and intellectual properties such as trademarks, rights, patents, licence, good will, etc….."

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			- supply is a taxable supply. The shift of responsibility for charging GST is also known as "reverse charge mechanism". **Issues to be highlighted:** ▪ The definition of "consumed" is rather confusing and open to interpretation. Generally, the GST impact to a taxable person (who is making fully taxable person) is neutral – the output tax and input tax is offset with each other (unless the input tax is subject to Regulation 36 disallowance of input tax and incurred in making exempt supplies). However, there is a net impact in case the recipient is either non-taxable or a mixed supplier. In order to remove any ambiguity and bring about clarity, the meaning of 'consumed' in Malaysia should be clearly explained under the Act.	
4.	Foreign Exchange Rates	MICPA (4)	Item 6 of DG's Decision 1/2014 allows the use of exchange rates from various sources and different types of exchange rates for cross-border transactions but only if both parties are registered. We understand that the concession is to facilitate businesses. However, by limiting the concession to only GST registrants, Malaysian taxpayers who export	JKDM will take note and will review such requirement and make necessary amendments in the Guide.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			goods (where the overseas customers are not GST registrants) or import services (where overseas suppliers are not Malaysian GST registrants) would not be eligible for this concession and have to continue writing in to Customs for approval. To facilitate propose cross-border transactions, it is proposed that the requirement for "both parties are GST registered" to be revoked.	
5.	Amendments to Customs Form K1/K2	MICPA (5)	Sub-regulations (2) and (3) to Regulation 38 of GST Regulations require the claimant of input tax for GST paid at importation to be stated as the importer in the Form K1 and not the agent's name. To evident export of goods (to qualify for GST at zero rate), the Form K2 must be in the name of the exporter and not the forwarding agent. There are no provisions in the Customs Act 1967 and the GST legislation to allow amendments to Customs Form K1/K2 to rectify errors such as wrongly declared the agent's name as importer / exporter in Form K1/K2 respectively. It is proposed that Customs introduce a procedure to allow amendments to the Forms K1/K2.	Current procedures will remain unchanged and JKDM has no intention to review the current procedures in the near future.

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6.	Tax Invoice Received by Recipient after Six Months from the Date of Issuance	MICPA (7)	In view of section 38(9) of the GSTA, we would like to seek clarification as to whether the taxable person is entitled to claim for the input tax incurred for tax invoice received after 6 months from the date of issuance pending payment for the same. For example, Company A received a tax invoice dated 1/6/2016 on 25/1/2017 and made payment for the same on 8/2/2017. Please advise if Company is entitled for the input tax credit in January 2017 (i.e. when he received the valid tax invoice) or February 2017 (i.e. when he made the payment to the supplier).	The company is entitled for Input tax credit in January 2017 because the date he holds tax invoice is 25/1/2017. (Para 38 of GST Regulations 2014)
7.	Paragraph 63 of Finance Act 2017 – Amendment to Second Schedule	MICPA (8)	Supply of land in compliance with requirement of written law, Government or local authority shall be treated as neither a supply of goods nor supply of services. We would like to clarify if it is possible for the supplier to claim for the input tax incurred for such supply of commercial land since the input tax was incurred in the course or furtherance of its business of making taxable supplies of its commercial properties for the development. If not how to apportion the input tax incurred for services acquired for the whole commercial development if it is not directly or specifically	(i) Subject to Item 8, Second Schedule, (w.e.f.1/1/2017) any supply of land in compliance with requirement of written law, Government or local authority shall be treated as neither a supply of goods nor supply of services. (ii) Any input tax incurred in the acquisition of goods and services for the development of the commercial property is fully claimable. However, any input tax incurred in the acquisitions which are directly for the development of public amenities and

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			incurred for the land to be surrendered to the Government or local authority.	public utilities (infra.) is not claimable by virtue of the new amendment. (iii) Usually input tax incurred which cannot directly be attributable for these public amenities and public utilities are site clearance & earthwork. These input tax are used for the whole development of land (i.e. commercial and public amenities and utilities) and need to be apportion accordingly. (iv) The most suitable and reasonable apportion for such input tax is based on the acreage usage of the land by using portion the commercial and public amenities and utilities based on development order/planning order. (v) The registered person can only claim the portion of the input tax for the commercial property only. **Example 1:** Input tax incurred on earthwork = RM 100,000.00 Total development of land = 10 acre Acreage on commercial property = 6 acres

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
				Acreage on infra = 4 acres To determine input tax that attribute to the taxable supply base on the usage, the company need to apportion for the commercial only. Therefore, input tax on earthwork claimable = $$\boldsymbol{RM\ 100,000.00 \times \frac{6}{10} = RM\ 60,000.00}$$ The company is allowed to claim **RM 60,000.00 in full.**
8.	Input Tax Credit	MICPA (9)	<u>Amendment to Guide on Input Tax Credit on 23/11/2016)</u> Reword of Paragraph 40 (now paragraph 43). The phrase "The registered person can claim his input tax without matching his purchases with the suppliers made" was deleted. Please clarify the rationale for deleting the phrase "The registered person can claim his input tax without matching his purchases with the supplies made". Is RMCD going to introduce the matching concept in the near future?	This is merely editorial amendment to the Guide. Current policy remains unchanged.

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		MICPA (11)	<u>Minutes of GST Technical Issues Committee Meeting No. 3/2016 [MICPA (9)]</u> The RMCD's response to issue 2 of MICPA (9): (i) Any services related to capital goods are not claimable unless it is capitalized before the date you are required to be registered. For the purpose of claiming under Regulation 46, the registered person must apply to DG for approval. Feedback from RMCD updated in Guide on Input Tax Credit (as at 4/1/2017): Para 59: Any services related to capital goods is not claimable under Regulation 46 of GST Regulations 2014 unless it can be capitalized according to the standard accounting principal in Malaysia, before the date the business is required to be registered for GST. Please further clarify as to whether it is only applicable to the capital goods (i.e. assets in capital nature) or it is for all goods in hand including inventory held for sale. For example, a property developer for commercial property is required to be registered on 1 January 2019. The property developer incurred GST on services provided by contractors in building the commercial properties during the period from 1	(i) Regulation 46 is applicable to all goods in hands (as at 1 Jan 2019) including inventory held for re-sale and Capital expenditure. (ii) Capital expenditure may be allowed for ITC subject to review and approval by the DG.

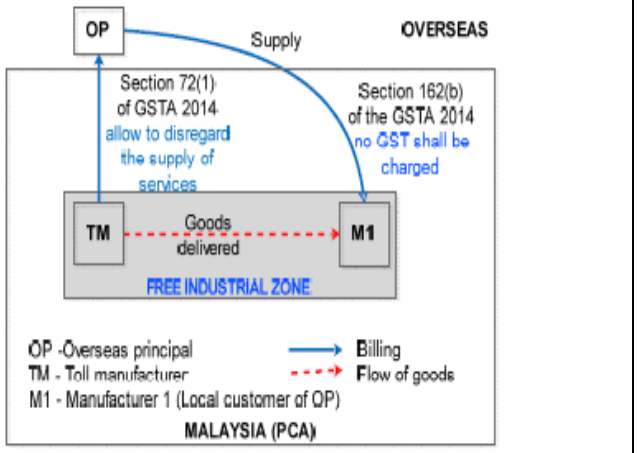
NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			January 2016 to 31 December 2018. These services were capitalized as part of the commercial building in inventory held for sale before 1 January 2019. We would like to seek clarification as to whether the property developer is allowed to apply to DG for claiming of such GST incurred on services acquired prior to 1 January 2019.	
9.	Directors	MICPA (10)	Issue No. 3: Directors Minutes of GST Technical Issues Committee Meeting No. 3/2016 [MICPA (8)] The RMCD's Response: (i) Director is treated as employee and free service is not a supply and not subject to GST. (ii) Para. 29 on the guide on Employee Benefit is still applicable but RMCD agree that the example given in Item 15 of the Guide is not correct and therefore will be amended soon. To seek further clarification of the following: (a) Whether it is only the director employed by the company (i.e. under contract of employment) is considered employee thus no longer considered as a connected person to his company. As such,	(i) Only director employed by the company (i.e. under contract of employment) is considered as employee. Thus, free service to the director (i.e. employee) is not a supply and not subject to GST. (ii) Guide on Employee Benefit is already updated as at 23 Jan 2017.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			free service to the director (i.e. employee) is not a supply and not subject to GST. (b) Since Para 29 of Guide on Employee Benefit dated 6/4/16 (now Para 30) is still applicable, does it mean that the director of a company is still considered a connected person to the company or is he not an employee of the company? Please confirm as to whether free service to a director under contract for employment who is not an employee of the company (i.e. he is a supplier who will issue tax invoice to the company for his service as a director) is a deemed supply. If yes, please advise in which subparagraph of the third schedule of the GST Act 2014 that states that a director is considered a connected person to his company. If no, in what circumstances would a free service to a director to be deemed supply as stated in Para 29 of the Guide on Employee Benefit dated 6/4/16?	
10.	Employee Benefit	MIA (8)	GST Guide on Employee Benefits (revised as at 10 November 2016) In Paragraph 8 of this Guide, Customs has indicated that for certain employee benefits which relate to an exempt supply such as the provision of	For further clarification on this issue, please refer to FAQ no. 28 of the Guide on Employee Benefits.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			accommodation and transportation, the input tax incurred on the acquisition which relates to accommodation is not claimable. This statement is not aligned with Appendix 1 of the same Guide on Employee Benefits whereby based on the decision tree, the input tax credit is not claimable only if the exempt supply is more than the De minimis limit. In addition, Section 39(2) of the Goods and Services Tax Act 2014 has mentioned that input tax attributable to any exempt supply shall be treated as input tax attributable to a taxable supply if the exempt supply is less than the prescribed value.	
11.	Recovery and Penalty for Late Payment of GST	MICPA (12)	<u>Issue No. 5: Recovery and Penalty for Late Payment of GST</u> <u>Minutes of GST Technical Issues Committee Meeting No. 3/2016 [MICPA (5)]</u> Issue raised: We would like to seek clarification on the following scenarios:- <u>Scenario 1:</u> A taxable person with monthly taxable period is to amend its Jan 2016's GST-03 on 15 August 2016. The tax due and payable will be amended from RM100,000 to RM150,000. The taxable person had	No penalties was imposed on 2016. However, the penalty was based on full amount and not on the balance outstanding. As at 1 Jan 2017, penalties are calculated based on balance outstanding. Please refer to Section 41(8) of the GSTA.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			paid in February 2016 the RM100,000 GST due and payable initially reported by the due date. <u>Scenario 2:</u> A taxable person with monthly taxable period is to amend its May 2015's GST-03 on 1 August 2016. The tax due and payable will be amended from RM100,000 to RM150,000. The taxable person had paid in June 2015 the RM100,000 GST due and payable initially reported by the due date. RMCD's response: Waiting for MOF's decision We would like to follow-up on MOF's decision.	
12.	TOGC	MICPA (13)	<u>Issue No. 20: Transfer of Going Concern</u> <u>Minutes of GST Technical Issues Committee Meeting No. 3/2016 [MICPA (5)]</u> RCMD's response to issue 2 of MICPA (5): Actual date when the transfer is completed. Such date must be specified in the contract. The effective date of TOGC is the date when the transfer is completed. However, where the transfer is subject to an approval, the date of TOGC will be the date when all conditions has been fulfilled and notification is made to Customs. RMCD's response to issue 3 of MICPA (5):	(i) Yes. (ii) The transfer may be considered as TOGC, if part of the business is sold or transferred and that part of the business is capable of separate operation and all other conditions is fulfilled. (iii) TOGC rules and conditions are mandatory to follow. It is not optional where the transferor or transferee may decide to opt out, even though the transferor and transferee met all the conditions for TOGC.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			Supplier must account for output tax and recipient can claim input tax if he is a registered person. Please further clarify on the following: (a) Must the transferor transfer the amount due from customers and amount due to suppliers in relation to the business to the transferee in a TOGC? If such assets and liabilities still remain with the transferor as agreed in the agreement, can the transfer be considered a TOGC if it fulfills all other conditions? (b) With reference to the feedback from RMCD to issue 3, we understand that when a transferor wrongly treated a TOGC as stand rated taxable supply, the transferor must account for output tax and the transferee can claim input tax if he is a registered person. As such, does it mean that the transferor and transferee can opt to treat the transfer as standard rated taxable supply even if it fulfills all conditions as a TOGC.	
13.	Leasing of an orchard	MIA (4)	A GST registered person supplies of fresh fruit bunches (ffb), a standard rated supply. In addition, the registered person also entered into an agreement with a durian wholesaler for the latter to harvest the durian and maintain the durian tree.	Supply of rights to harvest fresh fruits for a consideration is treated as a supply of services and subject to GST 6%.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			In consideration of the surrendering of right to the proceeds of durian, the wholesaler will pay a fixed sum of payment to the GST registered person in one lump sum upon entering the agreement. The issue is whether the GST registered person needs to pay GST on such payment received from the wholesaler even though durian is a zero-rated item under First Schedule of the GST (Zero-Rated Supply) Order 2014.	However, the treatment may differ subject to the terms and conditions spelt out in the contract.
14.	ATMS	FREPENCA (1)	Condition of 80% exports under Approved Toll Manufacturer Scheme. Reference made to Figure 24 on page 20 of Guide on Free Zone as at 1 January 2017. 	(i) Application for ATMS approval under regulation 91(1)(b) the taxable person shall export at least eighty per cent of the finished goods. (ii) If the TM dropship more than twenty per cent, he fails to comply with regulation 91 and therefore he is not eligible for ATMS. In this case, any services on value added by TM to OP is standard rated. (iii) OP's agent (for drop shipment & export) can be registered if he makes taxable supply even though it is exported. (iv) If his supply is 100% drop shipment OP cannot be registered. The value is

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			Seeking clarification on where more than 20% of the goods are drop shipped by TM to M1 (a person in a Free Zone) in the illustration provided - whether would it be considered to comply with the condition for Approved Toll Manufacturer Scheme. If not, please provide solution as to whether the OP in this case can be registered for GST.	excluded from the calculation of turnover. ATMS no longer valid.
		FMM (3)	<u>Appeal on GST not collected due to the complication/misconception on the Approved Toll Manufacturing Scheme (ATMS)</u> Prior to the implementation of the GST, our member companies were given approval for Approved Trader Scheme (ATS) and were advised by Customs officers that it is not necessary to apply for the Approved Toll Manufacturing Scheme (ATMS). However recently, Customs has requested these companies to pay the 6% GST from its toll manufacturing business for the importation of supplier owned inventory or services performed or contract manufacturing even though they have not collected the amount from the customers. These companies have been requested to apply for the ATMS in order to suspend GST. Before granting them the ATS or ATMS, the companies are required to account for the GST incurred for the last two years.	Appeal has to be made to MOF.

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15.	ATS	FMM (4)	<u>Renewal of ATS/ATMS License</u> The Customs Department has informed that the renewal of the ATS license would be possible 6 months prior to expiry. Members with ATS license are advised to submit their renewal applications as soon as possible as they would be subject to a thorough vetting process. In order to provide certainty to the ATS/ ATMS companies, a client charter should be developed on the renewal of the ATS or ATMS license.	(i) Noted on the recommendation. (ii) RMCD will incorporate in the Guide for renewal of the ATS license, it should be made 3 months before the expiry date and not within 6 months before the expiry.
		MICCI (2)	Company A has been approved by MIDA the Manufacturing Licences for electronic products, and for re-manufacturing of products. Company A have also been approved the LMW licence for manufacturing of electronic products, and approval from Customs Headquarters for value-added services of re-manufacturing of products. Company A applied for the Approved Trader Scheme (ATS), and had been using the ATS for GST suspension on imported raw materials/components, machinery/equipment and goods under the remanufacturing activities. However, recently Company A was only allowed to use their ATS to suspend the GST on raw	(i) The treatment is different on the importation of goods by a LMW company who is an ATS holder or ATS/ ATMS holder. (ii) If a company is approved under ATS/ATMS, they are allowed to suspend GST on consigned goods from overseas principal using the ATS.

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<tr><td></td><td></td><td></td><td>materials/components that belonged to them at the time of import, and used for the direct manufacturing of electronic products.

Company A has a manufacturing licence issued by MIDA for the manufacturer of electronic products and a LMW licence issued by Customs under Section 65A Custom Acts.

ATS only suspends the payment of GST at time of import, the approved person is required to declare the amount of GST suspended in his GST03 Returns. Therefore, there is not leakage of GST.

An ATMS approved toll manufacturer is also granted an ATS to enable him to import his goods which does not belong to the ATMS importer, so why is there a different treatment LMW.</td><td></td></tr>
<tr><td>16.</td><td>Import</td><td>FREPENCA (2)</td><td>Reference made to Table 3 of Guide on Import as at 25 January 2017.

<table><tr><th>Supply or Removal From</th><th>To</th><th>Customs Forms</th><th>GST Treatment (ATS not applicable)</th></tr><tr><td>Bonded Warehouse</td><td>PCA</td><td>K1/K9</td><td>GST to be charged in tax invoice.
Only custom duties to be charged in K1/K9.</td></tr></table>
Under Sl. No. 1 - Supply or removal from Bonded Warehouse to PCA - seeking clarification on "GST to</td><td>(i) Based on the amendment to the Warehousing Scheme under Section 70 of the GSTA 2014 which is effective on 1.1.2017, the supply of goods (irrespective of imported goods or local goods which is allowed to be deposited in the bonded warehouse) within the bonded warehouse is to be disregarded.

(ii) The movement of such goods from the bonded warehouse to PCA is treated as if</td></tr>
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<tr><td></td><td></td><td></td><td>be charged in tax invoice". Should we consider whether which party acts as IOR before determining whether GST is to be charged?</td><td>importation to Malaysia. Therefore, the buyer would be the importer on record and is required to declare the goods in customs import form. The goods is subject to customs duty (if any) and GST on import.

(iii) Hence, no GST charged in the tax invoice in the bonded warehouse effective 1.1.2017.</td></tr>
<tr><td></td><td></td><td>FREPENCA (3)</td><td>Reference made to Table 4 of Guide on Import as at 25 January 2017.

<table><tr><th>Local Sales From</th><th>Customs Forms</th><th>GST Treatment (ATS not applicable)</th></tr><tr><td>FIZ</td><td>K1</td><td>For GST purposes the supply is treated as local supply and subject to GST and to be charged in the tax invoice.
However, supply by FIZ to another FIZ or LMW, the local supply is given relief from charging GST under paragraph 56(3)(b) GST Act 2014.
Only Customs duties to be charged in K1.</td></tr></table>
Under Sl. No. 1 - Local sales from FIZ - seeking clarification on the words "the supply is regarded as a local supply" and "GST to be charged in tax invoice" - the Customs Forms prescribed is K1 which would constitute an import into PCA from FIZ. Should we consider whether supply is made in the FIZ (ie No GST to be charged) by reference to the IOR named in the K1?</td><td>(i) Based on the amendment to the Free Zone under Section 162(b) of the GSTA 2014 which is effective on 1.1.2017, the supply of goods (local sales) within or between free zone made by the FIZ company is not subject to GST. However, the movement of goods to principal customs area (PCA) is as if importation into Malaysia. The buyer is required to declare the goods in Customs Import Form and subject to pay customs duty (if any) and GST on import.

(ii) Therefore, no GST charged in the tax invoice for the local sales of goods made by FIZ companies effective on 1.1.2017. The Guide on Import will be amended accordingly.</td></tr>
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		FREPENCA (4)	Reference made to FAQ no. 6 of Guide on Import as at 25 January 2017. Seeking as to how can a non-GST registered person receive back the excess GST paid which is not his liability.	Non-registered person may claim his excess GST paid from JKDM under drawback via JKED no. 2.
17.	Credit Note /Debit Note	FREPENCA (5)	Return shipment from FZ to LMW or PCA required to pay GST at Customs Clearance and FZ Company issue Credit Note inclusive of GST thus the receiving company will have to pay double GST for return shipment Will Customs consider suspend the GST for Return shipment from FZ since Credit Note already have GST 6%.	Supply of goods made by PCA including LMW to FIZ is subject to GST. The movement of goods from PCA/LMW to FIZ is required to be declared in K2 form. Such goods returned to PCA/LMW is required to be declared in K1 form and GST is due and payable. In such situation, any Credit Note issued by PCA/LMW companies to FIZ which relates to GST paid (tax invoice issued) is subject to adjustment in the GST return.
18.	Ex –work charges	FMFF	<u>Ex-Works charges (overseas) for import into Malaysia</u> There will be instances where a local freight forwarder company is contracted by overseas forwarder to handle the Ex-Works shipment from overseas. The local freight forwarder (A) is contracted to handle the Ex-Works from overseas to importer's premises in Malaysia.	Customs will review the matter

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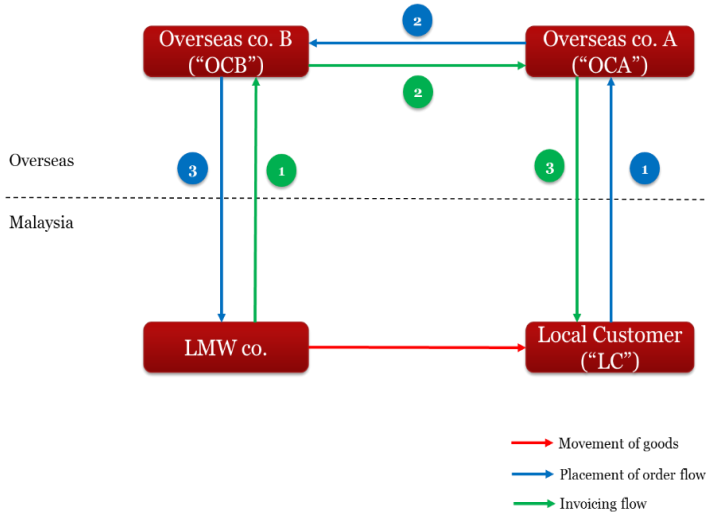
			Freight Forwarder (A) may contract the job to his overseas partner who bills Freight Forwarder (A) for his services overseas. At Malaysia, Freight Forwarder (A) marks up the bill and then bills to another local Freight Forwarder (B) who acts directly for the importer. Is the bill from Freight Forwarder (A) to Freight Forwarder (B) subject to GST?	
19.	LMW	FMM (1)	<u>Submission of K9 requires Tax Invoice in replacement of Commercial Invoice</u> LMW companies bill for their projects based on staggered payment basis and their customers are issued tax invoice based on these staggered payments i.e. down payment, factory acceptance test, user site acceptance test and etc. Previously, for K9 declarations, Customs accepts commercial invoice for 100% of the value. LMW companies are able to issue such invoices as there are no GST implications. However with the GST implementation, Customs is requesting tax invoices for 100% of the value for the K9 declarations. For the above case of staggered payments, companies will have difficulties fulfilling Customs requirement for a 100% tax invoice. It is important for importers to retain the correct and valid documents to comply with the Customs Regulations and future compliance audits.	This issue is KIV and to be discussed with Bahagian Perkastaman.

NO.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			We would like to seek clarification on the proper method of invoicing involving K9 movement.	
		MICCI (1)	 In practice, it is common that businesses in Malaysia would provide a supply of goods to an overseas company and deliver the goods to a local customer on behalf of the overseas company. As the goods are removed from a place in Malaysia to another place in Malaysia, such supply is regarded as a supply in Malaysia and thus, subject to GST at 6%. In this instance, the overseas company, who is a not a GST registered person in Malaysia, would not be able to claim input tax credit and would factor such cost into their selling price and pass down along the supply chain.	(i) LMW supplied goods to OCB is subject to GST at 6% based on Customs value (CV). (ii) OCB supplied goods to OCA is not subject to GST unless the value of supply made in Malaysia by OCB is exceeded GST threshold. (iii) OCA supplied goods to LC is not subject to GST unless the value of supply made in Malaysia by OCA is exceeded GST threshold. (iv) Goods remove from LMW to LC is required to be declared in K9 and **only subject to Customs duty** (if any). The value to be declared is based on the invoice issued by OCA to LC. There is no GST for delivery of goods from LMW to LC.

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			Furthermore, in the event the goods are removed from a LMW facility into Principal Customs Area ("PCA"), GST at 6% would again be imposed upon the removal of goods. As a result, GST would be imposed twice on the same goods. As such, we would like seek clarification from RMCD on whether GST can be imposed once at the point the goods are removed from the LMW facility into PCA.	
20.	Delivered at Place (DAP) Incoterm on GST	FMM (2)	<u>Complication/misconception of</u> Delivered at Place (DAP) <u>Incoterm on GST</u> Reference is made to DG's Decision No. 4/2015. The supply made by LC to LB will qualify for an out of scope supply, subject to compliance with the following conditions – (a) There is proof that the transfer of ownership of the goods took place outside Malaysia before the goods are imported into Malaysia (through shipping document or incoterm); (b) LC and LB must keep and maintain documents – Purchase order, invoice proof of payment and etc. As the shipper in the Bill of Landing is the overseas party, this has resulted in LMW companies clearing the goods using ATS. At the same time the shipper is made to pay the 6% GST on the suppliers invoice as it is a taxable supply since the transfer of ownership of	Customs will review further.

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			the goods took place in Malaysia based on the incoterm- Delivered at Place (DAP). Hence, GST has been accounted twice for the same transaction. We seek clarification on the right treatment for such transactions where transfer of ownership in terms of incoterms and the physical movement/ shipping documents of the goods do not match. In such cases, we would like to clarify if the shipping documents supersede Incoterms or vice versa?	
21.	International services	MIA (1)	Export of services / International services For GST purposes, a supplier is treated as belonging in Malaysia if there is a business establishment or fixed establishment in Malaysia. A fixed establishment includes a branch or an agency through which a person carries on a business (Section 14 of the Goods and Services Tax Act 2014 refers). The list of exported services that could be zero-rated is covered/provided under the Second Schedule of the GST (Zero-Rated Supply) Order 2014. The supply of exported services is not automatically zero-rated based on the interpretation of Section 17 of the Goods and Services Tax Act 2014. There are certain prescribed conditions to be fulfilled in order to be able to zero-rate exported/international services and the said services must also be listed in the Zero Rated Order.	The proposal is currently under review.

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			In Singapore, the wordings in relation to the zero-rating for exports and international services reads: "Subject to this section and sections 21A, 21B and 21C, a supply of goods is zero-rated only if the goods are exported and a supply of services is zero-rated only if the services are international services" (Section 21(1) of GST Act). Notwithstanding that, it should be noted that the description/nature of the international services in this instance must also be defined in the Singapore GST Act in order to qualify for zero-rating. We are of the view that most jurisdictions adopt the similar principle for zero-rating of international services so as to ensure that there is a proper control in place. As for goods, it will be easier to control and monitor based on the export declaration form and etc whereas in the case of services, it would be difficult to prove. Generally and among others, businesses could zero rate the supply of the international services provided that the following prescribed conditions are satisfied: • services supplied under a contract who belongs in another country; • the services directly benefit the person who is outside Malaysia at the time the services are performed; and	

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			• the services are not directly in connection with land or goods in Malaysia. We are of the view that all exports (whether in form of goods or services) should be zero-rated. • In this regard, we wish to seek RMCD's clarification on the above matter.	
22.	Second-hand commercial property transactions	MIA (2)	We would like to seek clarification as to why an existing commercial property owner is liable to charge GST on the supply of commercial properties that meet the conditions as stated in Item No. 6 of the DG decision No. 4/2014 (amendment) with effect from 28 October 2015, when the existing owner is actually not adding any value on the existing property. We understand that the Customs Department holds the view that the supply of commercial property is taxable. This in line with other jurisdictions such as the UK and Australia. However, according to the Customs Department's ruling, each time the commercial property is transacted (as long as the seller meets the conditions as stated in the said DG decision No. 4/2014 (amendment)), the seller must charge GST on the sale of property. Example: In 2016, a shop owned by 2 individuals, i.e. A & B, was sold to another 2 individuals, i.e. C & D, for RM3 million.	(i) Supply of commercial property is a taxable supply and subject to GST. Under Section 4 GST Act 2014, supply means all form of supply done for consideration. Section 3(1) GST Act 2014 has define business included any trade whether or not for a pecuniary profit. Item No. 6 of the DG decision No. 4/2014 (amendment) deemed the individual commercial property owner as carrying on a business. (ii) However, if the individual has registered for the purpose of selling the commercial property, any taxable supply made by him is subject to GST. (iii) On other hand, if after selling the commercial property, he deregistered, he is liable to register again if the conditions under Item 6, DG's decision No. 4/2014 (amendment) are met.

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			Sector III of RMCD clarified that: i. A property owned by 2 individuals is considered as an entity, not two individuals. Therefore, as an entity, the value of the property as stated in the said DG decision No. 4/2014 (amendment), the GST is to be charged on the sale. ii. The purchasers, i.e. C & D, are not currently GST registered persons. Therefore, they are not able to claim input tax credit. RMCD had further clarified that the RMCD will not approve the registration if the entity is not generating RM500,000 threshold. As such, we would like to clarify whether the purchasers can apply for voluntary registration? iii. RMCD is fully aware that when C & D want to sell the same property a few years later, C & D would be required to charge GST on the next purchaser, and the same goes on to the next and future transactions.	(iv) C and D may apply for voluntary registration if they can meet the following conditions : a) Documentary evidence to prove the intention to carry out the business and making taxable supply such as contract, sales and purchase agreement. b) Time period base on contract document, government approval or other business documentary evidence or based on business practice, experience or industrial sector studies.
23.	Joint Venture Development	MIA (5)	For joint venture development, normally the construction project will be carried out in phases and over a few years. The landowner will sign Power of Attorney with the developer whereby the latter will be responsible for	(i) If in the agreement, the payment is to be made periodically, then Regulation 4 applies. In the event if in the agreement, the payment is other than periodically (upfront) then Section 11 applies.

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			the conversion of the land from agriculture to commercial. Clarifications sought are as follows: a. Should the GST by landowner be charged upfront on the whole entitlement of his GDV or issued tax invoice according to phases? b. Should landowner charge GST upon signing of Power of Attorney when the land is categorized as agriculture land or treated as an exempt supply? c. What is the time of supply in such a scenario for a developer, either before conversion or after conversion to commercial usage.	(ii) Even though at the point of signing the PA the land has not been converted from agriculture to commercial, the intended use as indicated in JDA is for the purpose of commercial development, the supply of the land is a taxable supply. The time of supply is as in (i). (iii) No issue.
24.	Tax Invoice	MIA (3)	The current rules that a Tax Receipt generated from the point of sale (POS) is deemed a Simplified Tax Invoice and is good for only sales of up to RM500 in shopping centres. Above this amount, another computer generated Full Tax Invoice needs to be printed. This is very impractical and inconvenient. Since written invoices are not acceptable, printed invoices from any machine, be it the POS or computer printer generated should be acceptable. Imagine customers waiting for computer generated invoices to be issued which may cause unnecessary delays and queues.	Any receipt / document including POS invoice can be a full tax invoice if it has all the required particulars. Therefore, GST incurred is allowable for ITC in full.

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			What is the difference between a POS computer-driven printed receipt and a computer printer generated invoice? The Institute would recommend that the RMCD accepts POS invoices for sales above RM500 provided full details are printed in the POS receipt.	
25.	Rebate	MIA (6)	A GST registered person imported goods from overseas and GST upon importation was duly made by the registered person. In accordance with the purchase agreement, quantity rebate was given by the overseas supplier to the registered person by issuance of cheque payment to the registered person. The issue is whether GST is applicable for the rebate given by the overseas supplier for quantity rebate.	No GST implications.