LAMPIRAN A

ISSUES AND CUSTOMS FEEDBACK

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
1.	Licensed Manufacturing Warehouse (LMW)	FREPENCA (1) (Additional Issues)	Whether Licensed Manufacturing Warehouse to be treated as an approved warehouse under warehousing scheme pursuant to Section 70. To be treated as an approved warehouse pursuant to Appendix 15 of the budget speech and explanatory statement issued along with the finance bill.	Licensed Manufacturing Warehouse is licensed under Section 65 & 65A Customs Act for manufacturing activities. Section 70 only applies to warehouse licensed under section 65 of the Customs Act.
		FMFF (1)	Customs Officers (Bahagian Penggudangan) lack of clarity with regards to GST treatment on sales of LMW locally manufactured goods in the Bonded warehouse. We frequently anticipate issues with regards to the above matter, which concerns LMW finished goods deposited in our Bonded Warehouse & subsequently sold to traders in the PCA. The LMW company shall issue a tax invoice pursuant to Section 33 of the GST Act 20144 being "local sales" & the GST involved is charged to the invoice (referring to GST Import Guide Page 4/5 of Table 3 version12/1/2016). For the Customs clearance we declare K9, partial withdrawal, whereby we only need to pay the	(i) For warehousing purposes, any supply of imported goods in the warehouse is disregarded. (ii) Supply of local goods/ LMW finished goods deposited in the bonded warehouse which takes place in the warehouse, is subject to GST. (iii) Therefore where such goods is taken out from the warehouse, declaration is required to be made in K9. GST is not being captured in the Customs form but it is already being charged in the tax invoice. There is no issue GST is charged twice for a single transaction.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			duty as the GST is already charged to the invoice. However Customs officers are always disputing that the GST must be collected in the K9 form. If we do so then the GST is charged "twice" for a single transaction. Hence they ask written confirmation from GST section. It takes us so much time and effort to approach the GST section to clarify each time they query. Our request for a written confirmation to solve the issue once and for all is not entertained, as they prefer to speak to officers directly to clarify.	
2.	Approved Trader Scheme (ATS)	FREPENCA (2) (Additional Issues)	Can ATS being use to suspend GST for the importation of SOI (supplier owned inventory)/consignment. ATS can be used to suspend GST when importing SOI/consignment items so long as importer of Record (IOR) comply to all customs formalities and ensure that the goods will not go to any other entity/company apart from IOR.	ATS cannot be used to suspend GST on goods under SOI except under Reg 88(1)(e). However under Reg 88(1)(g) an application may be made to the Minister to allow such suspension.
		FREPENCA (1)	Update details of goods imported into ATS thru the TAP system. Exemption List (Lampiran C or D) is only valid for one month and for one time importation. **(approval by Customs in FIZ).** While Customs took appropriate 2-3 months to verify and	(i) Issues raised on the added goods with the approval of the GBP license should not exist because at the time of ATS application, company must declare all goods to be imported during the period of approval in the details of goods imported.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			approved it and only 1 application is allowed at a time. Due to customs verification and approval process delay, our Lampiran C & D already expired upon submission into GST TAP and our application is rejected. According to Pn Norhayati, material list need to upload and get approved in the GST TAP before import to entitle for GST suspension. They cannot approve the material list when the Lampiran C or D is expired during customs verification. For the expired Lampiran, we have to extend the validation and resubmit to TAP system for approval. We used to face ATS rejection for couple of reason example: Lampiran C & D with overdue date. Enchance the TAP System to allow more than one application at a time and speed up the verification process. Connect the Ucustom system with TAP system. Material approved in the Lampiran C or D direct link to TAP system. Allow the business to update TAP on self-declaration basis.	(ii) If there is any added goods which is not in the approval list by GBP Unit or the goods has just been approved, company must provide all documents during application to ensure smooth verification process. (iii) CKKFK do not allow self-declaration by business to ensure that all goods to be imported is eligible under this scheme. (iv) Currently, there is no multiple application in TAP. Business are required to follow the current procedure.
		MICPA (1)	Co. A has applied for Approved Trader Scheme (ATS) using its KL corporate office address and was granted ATS for its manufacturing activities carried out in LMW located in Gebeng, Kuantan.	Company may update the business address by making an application to GST Processing Centre.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			Since the implementation of GST, Co. A has been importing goods (not those prohibited under Reg. 89 of the GST Regulations 2014) via Subang airport with delivery orders stating Kuantan address and the goods were released without GST input tax charge upon the forwarder producing the ATS approval letter issued by Customs. However, recently, Co. A's goods cargo from Japan was being held by Subang airport customs officer citing the reason that the delivery address (Kuantan) is different from the ATS registration address (KL) and as such, ATS cannot be used to suspend the GST. The customs officer threatened to impose a compound of RM500 and requested Co. A to settle the GST on importation of goods before clearing the goods. Due to the urgent need of the goods, Co. A paid the GST in full despite the ATS approval letter to suspend the GST payment. Ref: Part XIV of GST Regulations 2014 The purpose of granting ATS is to allow an approved person who is an importer to suspend GST upon importation of goods into the country. Accordingly, GST would be suspended in the case of an approved person regardless of the correspondence address stated in ATS approval letter or the ports where the goods are cleared.	

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			Please confirm if the above understanding is in order.	
3.	Contract Manufacturer's claim on Material purchase price variance related to manufactured goods to be export	FREPENCA (5)	To be treated as zero rated on goods that going to be export just like our neighbouring countries in order for Malaysia to stay compatible.	Goods and Services Act 2014 Zero-rated supply 17(1) A zero-rated supply is – (a) any supply of goods or services determined to be a zero-rated supply by the Minister under subsection (4); and (b) any supply of goods <u>if the goods are exported</u> Manufactured goods that are going to be exported is not treated as a zero rated supply until the goods are exported. Therefore , the purchase price variance claim related to the manufactured goods to be exported is subject to 6% GST
4.	Contract Manufacturer's claim on Inventory Revaluation related to manufactured goods to be export	FREPENCA (6)	To be treated as zero rated on goods that going to be export just like our neighbouring countries in order for Malaysia to stay compatible.	Goods and Services Act 2014 Zero-rated supply 17(1) A zero-rated supply is – (a) any supply of goods or services determined to be a zero-rated supply by the Minister under subsection (4); and (b) any supply of goods <u>if the goods are exported</u> Manufactured goods that are going to be exported is not treated as a zero rated supply until the goods are exported. Therefore, the

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
				inventory revaluation claim related to the manufactured goods to be exported is subject to 6% GST.
5.	Section 65(6) GSTA 2014	MICPA (2)	Where a non-resident who does not belong in Malaysia makes taxable supply of goods in Malaysia, he is required to appoint a local tax agent to act on his behalf. The tax agent is liable for all the GST obligations. Where a non-resident provides services via its "fixed establishment" in Malaysia e.g. due to income tax registration for the permanent establishment, the non-resident will be considered as belonging in Malaysia and hence, required to register for GST when the registration threshold has been achieved. Currently there is no guideline on how a non-resident who provides services can be registered for GST. Ref: Section 65(6) of the GST Act 2014. We propose that Customs issue guidelines on how a non-resident who provides services in Malaysia can be registered for GST.	(i) Non-resident providing services via its fixed establishment is required to be registered for GST. (ii) Guideline on how a non-resident who provides services in Malaysia can be registered for GST will be prepared by Unit Penguatkuasaan Pendaftaran.
6.	Issuance of tax invoice by a registered person for non-taxable supply	MICCI (1)	Subclause 44(a) of Finance Bill 2016 seeks to amend subsection 33(10) of the GST Act 2014 to be as below:	The purpose of this provision is to disallow the registered person from issuing tax invoice which shown GST 6% is charged for zero rated supply or exempt supply.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			"(10) No invoice showing an amount which purports to be a tax shall be issued by any registered person— *(a) on any supply of goods or services which is not a taxable supply; or* *(b) on any zero-rated supply."* Explanatory Statement of the Bill states that the above amendment is to "*prescribe any person registered shall not issue any invoice which purports to be tax invoice or contain element of tax for a supply which is not taxable or zero-rated supply.*" This would mean that a registered person cannot issue a tax invoice for a zero-rated supply or an exempt supply (non-taxable supply) even if the tax invoice clearly shows that no GST is charged (e.g. a word 'Zero' or 'Exempt' is shown on the GST line of the tax invoice). By not allowing a registered person to issue tax invoice for zero-rated supply or exempt supply, a person who is making mixed supplies will be forced to introduce parallel invoicing systems for standard-rated, zero-rated and non-taxable supplies which could be prohibitively expensive and in some instances impossible. Please clarify that the proposed amendment to subclause 44(a) of the Bill does not intend to prohibit a registered person from issuing tax invoice for zero-rated or non-taxable supply as	

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			long as there is no GST being charged or shown in the tax invoice. However, if it is indeed the intention of the authority to disallow the issuance of tax invoice by a registered person for zero-rated and non-taxable supply, we would suggest that the subclause 44(a) of the Bill be amended accordingly to reflect the intention.	
7.	Supply of land in compliance with requirement of written law, Government or local authority	MICCI (2)	Clause 63 of Finance Bill 2016 seeks to include the following supply to be treated as neither a supply of goods nor a supply of services: *"**Supply of land in compliance with requirement of written law, Government or local authority*** *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.* *(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*	**Part 1:** We noted the recommendation. With this amendment, all GST incurred in providing public amenities is non recoverable. In some instance, inputs for the purpose of providing both infrastructure and taxable supplies (example commercial properties) would need to be apportioned. We appreciate if MICCI could provide us the VAT cases as mentioned in Para 2, Part 1. We see no relation of the issue with the Guide on Transfer of Business As A Going Concern (TOGC). However, GST incurred on incidental expenses which are directly attributable to a taxable property is recoverable in full.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			Part 1: We understand that with the above proposed insertion, Item 2, Second Schedule of the GST (Relief) Order 2014 will be deleted. We also understand that certain officers of the Royal Malaysian Customs Department (RMCD) may take the view that the input tax attributable to the above supply is not claimable because it is neither a supply of goods nor a supply of services. However, we wish to highlight that there are various VAT cases to support that if the input tax is attributable to a non-supply (e.g. free services, supply deemed as neither a supply of goods nor supply of services, etc.) and the expense is incurred for business purposes, that input tax should be treated as residual input tax of the registered person and allowed to be claimed either fully or partially (depending on the proportion of taxable supplies to the total supplies). In addition, we also wish to highlight that in paragraph 37 of RMCD's Guide on Transfer of Business As A Going Concern (as at 24 May 2016), it is stated that the transferor can claim input tax credit incurred on expenses incidental to the transfer of business (which is treated as	**Part 2:** The transitional issue has been addressed by a new proposed transitional order. We appreciate if MICCI can provide the VAT cases mentioned. **Part 3:** While "public amenities" in Clause 63 of the Bill does include public playground and religious building, there is no conflicting treatment with the proposed amendment of Clause 63 of the Bill since Regulation 42 of the GSTR 2014 is to be removed.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			neither a supply of goods nor a supply of services). **Part 2:** The above proposed amendment may result in a change in claim of input tax from fully claimable to possibly partially claimable and therefore there is a need to address the transitional issue of input tax incurred prior to 1 January 2017 but the land is transferred on or after 1 January 2017. There are many VAT cases which support that the right to claim the input tax arises when the expense is incurred and any subsequent legislative change in the nature of the supply to which the input tax credit was attributable would not alter the right to deduct at the time the cost was incurred. **Part 3:** Clause 63 of the Finance Bill 2016 proposes to make the surrender of public amenities and public utilities neither a supply of goods nor a supply of services. There is no definition of amenities in the GST Act, Finance Bill, National Land Code or Interpretation Acts. The OED defines an amenity as a "useful or desirable feature of a place". Based on the above definition, it appears that public playground and religious building may be included as public amenities.	

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			However, if public playground and religious building are included as public amenities and therefore being treated as neither a supply of goods nor a supply of services, that would be conflicting with the treatment prescribed in Regulation 42 of the GST Regulations 2014. Regulation 42 prescribes that input tax attributable to exempt supply of land for the purpose of burial ground, playground or religious building to be treated as attributable to taxable supplies. <u>Request</u>: Please confirm that the meaning of "public amenities" in clause 63 of the Bill do not include public playground and religious building.	
8.	Removal of goods from a free zone to another free zone through Malaysia	MICCI (3)	Clause 61 of Finance Bill 2016 seeks to insert a new section 162A as follow to the GST Act 2014: *"**Goods removed from a free zone including goods under lease agreement*** *162A. (1) Tax shall be due and payable upon all goods removed from a free zone to another free zone through Malaysia or from a free zone to Malaysia including any goods under lease agreement as if the removal were importation into Malaysia.*	(i) Where goods is removed from free zone to Principal Customs Area (PCA) including to another free zone, it is treated as if an importation into Malaysia. [New Section 162A(1)] (ii) However, removal of goods from free zone to another free zone, designated area or a warehouse under Section 70, the payment of GST is suspended. [New Section 162A(2)]

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			(2) Unless the Minister otherwise directs in an order under section 163, the payment of tax under subsection (1) shall be suspended on any goods removed from a free zone through Malaysia— *(a) to another free zone;* *(b) to a designated area; or* *(c) to a warehouse under section 70."* Subsection 162A(1) appears to be conflicting with subsection 162A(2)(a). When goods are removed from a free zone through Malaysia to another free zone, it is not clear whether GST should be payable under subsection 162A(1) or GST should be suspended under subsection 162A(2)(a). We understand that it is the intention of the authority to suspend the GST on goods removed from a free zone through Malaysia to another free zone. <u>Request</u>: Please confirm that GST on goods removed from a free zone through Malaysia to another free zone is suspended. Suggest to remove the words "*from a free zone to another free zone through Malaysia or*" from	

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			subsection 162A(1) to be as follow for clarity purpose: *"162A. (1) Tax shall be due and payable upon all goods removed from a free zone to Malaysia including any goods under lease agreement as if the removal were importation into Malaysia.*	
9.	New Requirement for claiming ITC for Goods Exported	CTIM (2)	GST Guide on Export (as at 12 August 2016) has introduced a new Para 9 which states that *9. To be eligible for input tax claim relating to goods that are exported, a registered person (exporter) must ensure that:-* *(a) prescribed customs form for export (K2 / K8) must have an endorsement on Remarks column in Sistem Maklumat Kastam (SMK) – "A claim for input tax under the GST Act 2014 will be made"; and* *(b) Customs Official Receipt.* CTIM would like to seek clarification from the RMCD on the following: (1) Is this a mandatory requirement? (2) What would be the consequences of K2/K8 forms that do not include the statement? (3) What is the rationale of this new procedure? CTIM noted that Sec 17 does not stipulate such a requirement. If the procedure is mandatory, then it would mean that the export is a standard-rated	Please refer to our response in Item 27, Issue 4, Minutes of the Mesyuarat Jawatankusa Teknikal Isu Pelaksanaan GST Bil 2/2016.

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			supply if the statement was not included in the K2/K8 form. This practice will distort the GST system and is detrimental to the export industry because it increases the costs of export arising from • administrative oversights which is inevitable where there are frequent exports • Additional costs of compliance due to adjustments. • delay in ITC refund	
10.	Post-importation adjustment	CTIM (3)	GST payable on importation may be increased subsequent to the importation due to RMCD's audit or voluntary disclosure by the importer. FAQ 7 (Page 15) of Import Guide (as at 24 June 2016), indicates that claim of input tax credit on GST paid in respect of post importation adjustment (short payment) is subject to DG's approval. However, the mechanism to seek such approval and the criteria for such approval is not explained. From a policy perspective, any GST paid qualifies as input tax credit (provided the criteria in Section 39 of the GST Act is met). CTIM would support the RMCD to penalize the delinquent importer with fines/penalty for underpayment of GST. There could be many circumstances resulting in under-declaration of GST:	Policy issue: Allowed to claim ITC for GST paid when a voluntary disclosure is made by or BoD issued to a delinquent importer. (a) The mechanism to seek DG's approval to claim input tax on short payment as a result of a voluntary disclosure by the registered person will be explained in the GST Import Guide. (b) However, it is a Department policy that when a Bill of Demand has been issued to a delinquent importer, he is disallowed from claiming the same said amount in the BoD as his input tax. The Department will include an express statement in the Bill of Demand that

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			• Incorrectly believe that the importation is not subjected to GST or is relieved from GST; • Clerical error, • Change of legislation by removing the goods/services imported from exempt supply to standard supply, etc. Hence the fines/penalty should vary based on the frequency of default, the delay in payment, etc. CTIM is of the view that to penalize the delinquent by disallowing a claim on input tax credit would distort the GST tax system and is too harsh a punishment. As a good practice, CTIM suggests that any audit finding letter issued by RMCD should include an express statement that allows the business to claim input tax credit upon payment of the GST in respect of post-importation adjustments.	disallows business to claim input tax upon payment of the GST.
11.	Time of Supply for Imported Services	CTIM (4)	*The Finance Bill 2016 (FB2016) proposes to amend S. 13(4) of GSTA 2014 as follows:* *S.13(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 the earlier:* *(a) the date when any payment is made by the recipient; or* *(b) the date when any invoice is ~~issued by~~ received from the supplier who belongs in a*	RMCD will issue a Public Ruling to explain the definition of "invoice received".

No.	ISSUE	ORGANIZATION/ QUESTION NUMBER	QUESTIONS	FEEDBACK FROM CUSTOMS
			country other than Malaysia or who carries on business outside Malaysia. The Institute welcome the proposed amendments. The Institute suggests that a flexible administrative definition of "invoice received" be provided by the RMCD to ensure that the amendment is practical for implementation by businesses. For consistency and practical reasons, the Institute would propose that the RMCD could consider accepting "the date or time of posting the tax invoice into the company Accounts Payable" as adopted in the Item 3, DG's Decision No.8/2015 on claiming Input Tax Credit, as the date "when any invoice is *received*" for the purpose of the above section.	
12.	Recovery And Penalty For Late Payment Of GST	CTIM (5)	The FB 2016 proposes to amend S. 41 & 42 to impose penalty on the amount of tax remain unpaid instead of the amount of tax due and payable. In addition the maximum penalty increases from 25% to 40. CTIM welcomes the proposed amendment. However, the maximum penalty of 40% is excessive. The Institute suggests that the current maximum penalty rate of 25% be maintained. Notwithstanding the penalty imposed, the Customs may still prosecute the	(i) The new penalty rate of 40% is not excessive. (ii) In the current provision, the penalty is imposed on the full amount of tax due even though the rate is lower. (iii) Below is a comparison of the calculation of penalty using the current provision and the new provision.

<table>
<tr><th>No.</th><th>ISSUE</th><th>ORGANIZATION/ QUESTION NUMBER</th><th>QUESTIONS</th><th>FEEDBACK FROM CUSTOMS</th></tr>
<tr><td></td><td></td><td></td><td>taxable person after 90 days to recover the tax together with the penalty</td><td><u>Current provision (GST Act 2014)</u>

<table><tr><td>Due date</td><td>:</td><td>August 2016</td></tr><tr><td>Tax due</td><td>:</td><td>RM 100,000</td></tr><tr><td>Tax paid</td><td>:</td><td>RM 50,000</td></tr><tr><td>Late</td><td>:</td><td>90 days</td></tr><tr><td>Penalty</td><td>:</td><td>25% x RM 100,000</td></tr><tr><td></td><td></td><td>= RM 25,000</td></tr></table>
<u>New provision (Finance Bill 2016)</u>

<table><tr><td>Due date</td><td>:</td><td>March 2017</td></tr><tr><td>Tax due</td><td>:</td><td>RM 100,000</td></tr><tr><td>Tax paid</td><td>:</td><td>RM 50,000</td></tr><tr><td>Late</td><td>:</td><td>90 days</td></tr><tr><td>Penalty</td><td>:</td><td>40 % x RM 50,000</td></tr><tr><td></td><td></td><td>= RM 20,000</td></tr></table></td></tr>
</table>