



MALAYSIAN INSTITUTE
OF ACCOUNTANTS

GST ISSUES

1. Issue No. 2(b) of Director General Decision's No. 3/2015 – Whether a full handwritten tax invoice can be issued by a registered person?

- a. It is stated in paragraph 1(d) that “beginning 1st October 2015, the registered person excluding ‘retailers’ must use a computer generated invoice or pre-printed invoice which is GST compliant”.

Issues – we wish to seek RMCD’s clarification on the definition of “pre-printed” invoice. Does it mean an invoice that is printed by printers with all GST compliance particulars printed except the description, quantity and values of sales. On the other hand, please confirm if the registered person can write these on the pre-printed invoices or has it to be computer printed?

- b. It is stated in paragraph 4 that “a GST registered person is not allowed to issue any handwritten tax invoices”.

Issues – We wish to seek RMCD’s clarification on the followings:

- i. What is the purpose of having pre-printed invoices?
- ii. Does it mean everybody must computerise his/her system?

ANSWER

For the time being, we accept both method ; i) pre printed invoices ii) computer generated invoice except for six(6)categories of retailers.(restaurants, sundry shop, pharmacy, entertainment outlet, hardware, bookstore)

2. Tax Invoice

Issue – We wish to seek the RMCD’s clarification whether the input tax can be claimed? Further, has RMCD approved such billing practices

Answer:

Refer paragraph 33(3)(b) GSTA – DG has the power to approve registered person to use document other than a tax invoice.

3. Flat Rate Scheme (FRS)

Some of businesses have informed that RMCD require that Farmers/Settlers have a minimum income level before they can register for the FRS. This is inconsistent with the GST Act, The GST Regulations and any GST Guides that RMCD have issued.

We understand that this is because RMCD does not want the administrative costs to outweigh any benefit that the registrants (Approved Persons) may derive. The whole purpose of the scheme is to give some cash back to the Farmers who have suffered input tax on the various purchases that have made. Ergo, the farmers who have suffered a greater proportion of input taxes when compared to their income levels are the most affected – i.e. the Farmers with the lowest income levels. The introduction of a minimum income threshold is counter-productive to the aim of helping such Farmers. Further, most of the administrative work under the scheme would be undertaken by the relevant authority as listed in the Third Schedule to the GST Regulations 2014. Any administrative controls by RMCD would be minimal.

We strongly suggest that the minimum income requirement be removed immediately and all Farmers may register for the scheme as soon as possible as they have already forgone 3 months of "income" due to this delay.

JAWAPAN

KPK diberi kuasa untuk meluluskan sesuatu permohonan di bawah Skim Kadar Rata di bawah Per. 97(4) Peraturan-Peraturan Cukai Barang dan Perkhidmatan 2014.

Penetapan suatu nilai ambang adalah bertujuan mengelakkan Orang Yang Diluluskan di bawah Skim Kadar Rata terpaksa menanggung kos pematuhan yang lebih tinggi dari rebat yang dikenakan keatas penjualan hasil pertanian/penternakan/perikanan kepada orang berdaftar.

Di antara sebab-sebab sesuatu permohonan telah ditolak adalah seperti berikut:

- 1) Nilai ambang yang kecil serendah RM50.00 setahun
- 2) Tidak memenuhi syarat di bawah Per.97(1)(a) Peraturan-Peraturan CBP 2014
- 3) Tidak memenuhi syarat di bawah per.97(1) (b)Peraturan-Peraturan CBP 2014
- 4) Tidak memenuhi syarat di bawah per.97(1) (d)Peraturan-Peraturan CBP 2014
- 5) Tidak memenuhi peruntukan di bawah seksyen 74(1),Akta CBP 2014
- 6) Tidak mematuhi kehendak peruntukan seksyen 74(1), Akta CBP 2014

- 7) Gagal mengemukakan dokumen sokongan seperti penyata kewangan/penyata pendapatan/lesen daripada pihak berkuasa yang ditetapkan
- 8) Pemohon gagal dihubungi /status diragui.

Sehingga 30 Jun 2015, hampir 90% dari jumlah permohonan telah diproses. Baki 10% perlu verifikasi oleh negeri-negeri, bertujuan bagi memastikan permohonan benar-benar layak. Skim Kadar Rata melibatkan hasil negara

Berhubung dengan nilai ambang, Jabatan ini akan mengkaji semula penetapan nilai ambang sekiranya perlu.

4. Zero Rated Order vs Sundry Goods List

There are some miss-matches between the Zero rated goods as contained in the Zero Rated Order and as listed in the Sundry Goods list, as the Zero rated order classifies goods based on the HS code classification whilst the Sundry Goods list seeks to interpret the Zero Rated Order into everyday household purchases without any reference to the HS code.

Further, the manner in which some goods have been zero rated – insertion of brackets with only that particular good(s) being zero rated amongst all others in its own classification code – has led to confusion from importers, traders and RMCD officials at import stations.

We wish to seek RMCD's clarification on this matter.

JAWAPAN

Such mismatches are due to the code sharing of some products, i.e. standard rated and zero-rated products sharing the same tariff code. Example:

Products classified under tariff code 1905.90 900 are "Other bread, ships' biscuits and other ordinary bakers' not containing added sugar, honey, eggs, fats, cheese or fruit" **BUT** GST (Zero-Rated Supply) Order 2014 **ONLY** allows **plain white bread and plain wholemeal bread to be zero-rated (in bracket in the ZR Order)**.

Therefore, wholemeal or white bread with nuts, raisins, oats, bran, etc. are standard rated supplies.

In addition, after the publication of this list (2.1.2015), there were subsequent amendments to the GST (Zero-Rated Supply) Order 2014 which resulted in some mismatches. E.g. exercise book is zero-rated in the list but is standard rated after the amendment. However, the Sundry List states that it is just a **guide and is subject to changes from time to time**.

GST Division, HQ is in the process of coming up with a second edition of the Sundry List.

Policy (MOF) determines the manner in which some goods have been zero rated – insertion of brackets with only that particular good(s) being zero rated.

5. Disbursements – Expenses incurred by the law firms on behalf of their clients which are subsequently on-charged to the clients

We understand from the General Guide, that payments to third parties will be treated as disbursements if the following conditions are fulfilled:

- a. The disbursements is made by the person (i.e. law firm) as an agent on behalf of the client;
- b. The client actually received the goods or services;
- c. The client is the person responsible to pay;**
- d. The payment is authorised by the client;**
- e. The client knew that the goods and services paid for is provided by the third party;
- f. The payment is itemised;
- g. The person claims the exact amount from the client; and
- h. The payment is clearly additional to the supplies the person makes to the client.

Based on item (c) above, we understand that the RMCD is a view that the invoices must be in the name of the client if the expenses are subject to GST in order for the client to be entitled for the input tax credit.

At present, certain payments are made to Governmental authorities (e.g. the Courts, etc) by law firms on behalf of their clients. Due to payment processes set up by these authorities, the invoices or receipts are issued to the law firms directly, rather than to their clients.

Please refer to the following examples of expenses which law firms incur directly for their clients where invoices/receipts are issued to the law firms:

- Court filing fees
- Bailiff fees
- Filing fee paid to Companies Commission of Malaysia
- Registration fees paid to Land office
- Filing fees in relation to registration of patents and trademarks paid to Intellectual Property Corporation of Malaysia via the 'MyIPO' portal.

The above is not a conclusive list, but is an indicative list of expenses incurred by law firms for their clients, where invoices / receipts would not be issued to the client, but will be issued by the authorities to the law firm. We are of the view that

the on-charge of the above expenses should be treated as a **disbursement** for GST purposes on the basis that the Firm merely acts as the client's known and authorised representative in paying the third party (i.e. the Courts, CCM, etc) and hence these costs, when recharged to clients should not be subject to GST, notwithstanding that the invoices are issued to the law firms. We would be grateful for your confirmation on this.

Also, please advise whether the RMCD will be providing any guidelines to distinguish the treatment of disbursements and reimbursements for GST purposes specifically for the legal practitioners, and to confirm that for disbursements, it is not essential that the invoice (from the 3rd party) be issued in the name of the client, as long as the law firm is the client's known and authorised representative acting on behalf of the client in incurring such costs.

Answer:

RMCD still study on this matter. There will be issue of wrong person will claiming input tax.

6. GST Refunds

For April returns filed end of May, refunds should have been paid by 14 June 2015 (for electronic filing). A lot of refunds have not been paid, and RMCD have indicated that they want to Audit the company first. We are also aware of instances where the notification of an audit by RMCD came verbally via phone calls. Further, we have numerous complaints of such planned audits being cancelled at the last minute because RMCD are suddenly unable to meet their own timelines. In the meantime, payment for the May GST returns will be due at the end of June and they will be a need to pay the net amount due when a refund is actually due from the earlier GST returns filed. This gives rise to adverse cash-flow positions and is bad for business.

Issue - In this regard, we wish to seek RMCD's clarification on the above matter.

JAWAPAN

Some common reasons are as follows :

- i. **Entries into GST-03 is incorrect or incomplete**
- ii. **The claim is subject to desk review**
- iii. **The business did not comply with the GST requirement (claim blocked input, special refund, exempt input)**
- iv. **Bank information is not complete**
- v. **Unable to reach tax payer for verification**

50% have been approved within 14 days.

7. Export of Services – Items 12 and 13 of the Zero Rated Supply Order

What is meant by 'directly in connection with' and what is 'goods'. For instance, if a consultant advises a foreign client about general withholding tax matters, we are of the view that it should be zero-rated as this does not relate to land or goods in Malaysia.

What if a consultant advises a foreign client on shares in a Malaysia company? This issue would also arise in the classification of Intellectual property – is it a good?

Issue - We wish to seek RMCD's confirmation whether the Intellectual property/shares in the context of Items 12 and 13 of the Zero Rated Supply Order would be classified as goods.

JAWAPAN

Directly in connection with' in the context of services refers to

- Supply of services which is closely aligned with the **SPECIFIC** goods or land that it is appropriate to treat the location of the goods or land as the place of consumption.

'Goods' means any forms of movable or immovable tangible property but excluding money (legal tender) under circulation.

Treatment of Intellectual property / shares in the context of items 12 and 13 of the Zero Rated Supply Order:

- Intellectual property is not a goods since it is not tangible.
- For the purpose of item 12 & 13, If the services is related to the **SPECIFIC** goods in Malaysia then it is standard rated
- Services directly in connection with shares issued and traded in Malaysia cannot be zero rated because of the exclusion under item 12. 'Share' is a capital market product.

8. Input Tax Credit

Is there any clarity for GST registered businesses on the claiming of the full input tax suffered against supplies which are standard rated and supplies which are out of scope. Our view is that full input tax suffered can be claimed. Some believe there is a need for attribution of the input tax against the supplies which are standard rated. There is confusion on the matter and we wish to seek RMCD's clarification.

Issue - We wish to seek RMCD's confirmation whether the input tax attributable to out of scope supplies (for a fully taxable supplier) is fully claimable.

Answer:

RMCD need further information -