

THE MALAYSIAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
(INSTITUT AKAUNTAN AWAM BERTAULIAH MALAYSIA)

SUBMISSION OF ISSUE

No.	Issue	Recommendation / Clarification Sought	MAKLUMBALAS
1	<p>Is GST applicable when goods originating from PCA are removed from a public bonded warehouse back to the PCA?</p> <p>It has been brought to our Member's attention that in Penang, some of the public bonded warehouses (PBW) allow the storage of locally manufactured goods which are subsequently sold in the local market.</p>	<p>Please clarify whether GST is applicable for removal of own goods from a PBW back to the PCA.</p>	<p>RMCD seeks further clarification</p>
2	<p>Exempt Supplies declared by Company with ATS</p> <p>A company in JB has been told by the Customs official that their ATS will be withdrawn as the company has declared exempt supplies in Field 12 of the GST 03 Form.</p> <p>The exempt supplies declared consist of incidental exempt financial supplies such as interest from deposit placed with bank and realised foreign gain and loss.</p>	<p>As the exempt supplies declared is incidental to the ATS' business activities and is not made by a company which is a restricted person (reference is made to Regulations 40 and 41 of the GST Regulations 2014), kindly confirm that the declaration of the incidental exempt financial supplies by the ATS holder is in order.</p>	<p>Pn. Tengku Aini / Pn. Wahizam</p>

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3	<p>How to repay short-payment of GST</p> <p>Short payment of GST may arise due to price adjustment after goods are imported into Malaysia, reclassification of the HS codes, etc.</p>	<p>Clarification is sought for the following category of taxpayers:</p> <p>a) For a taxable business, can he be allowed not to repay the short-payment of GST as he will not claim the input tax credit?</p> <p>b) For a non-taxable person, must the short-paid GST be repaid to the Customs at the import station where the goods were imported? If yes, please clarify on the mechanism as to how the shortfall of GST can be paid, the timeline for such remittance and vide which Form.</p>	<p>Any short paid must be paid to import station and you claim.</p> <p>Any short paid must be paid to import station and you claim.</p>
4	<p>Apportionment method under partial exemption</p> <p>The Guide on Partial Exemption dated November 21, 2014 provided the following formula:</p> $r = [(t-o) / (s-o)] \times 100\%$ <p>Where:-</p> <p>R : is the recoverable percentage of residual input tax,</p>	<p>Clarification is sought whether the value of "t" should also include all adjustments that are made in relation to the "t" supplies, such as credit note / debit note and all adjustments made towards bad debts (i.e. bad debts relief and bad debts recovered for the taxable period).</p>	<p>Yes ,the value of "t" should also include all adjustments that are made in relation to the "t" supplies, such as credit note / debit note and all adjustments made towards bad debts except bad debts relief .</p>

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	<p>T : is the total value (exclusive of GST) of taxable supplies (including supplies made outside Malaysia which would be taxable if made in Malaysia, deemed taxable and disregarded supplies) made in the taxable period,</p> <p>O : is the total value (exclusive of GST) for all excluded supplies,</p> <p>S : is the total value (exclusive of GST) of taxable (including supplies made outside Malaysia would be taxable if made in Malaysia, deemed taxable and disregarded supplies) and exempt supplies made in the taxable period.</p> <p>There are certain value of supplies that are excluded from the above standard method of apportionment which are:-</p> <p>a) The value of any supply of capital assets used by the taxable person for the purposes of his business. If an asset or part of an asset is disposed of as Transfer of Going Concern (TOGC), such value are excluded as well.</p> <p>b) The value of any supply made by a recipient in accordance with the Approved Toll Manufacturer Scheme under Section 72 of the Act,</p> <p>c) The value of any supply referred as incidental exempt supplies in the Regulations that are made by the person where such supply is incidental</p>		

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	<p>to one or more of his business activities, The value of any exempt supply of land for general use made by a taxable person to any public body where that supply of goods by the taxable person is made in compliance with the requirement enforced by any public body</p> <p>d) Value of any supply of imported services.</p>		
5	<p>Business test for individual (Commercial Property)</p> <p>a) Guide on Property Developer (30.3.15) Individual <u>in his possession owns</u> more than two commercial properties or commercial land exceeding 1 acre is considered carrying out business if intended to make supply of goods</p> <p>b) Panel Decision 4 Individual <u>supply of goods in a 12 months period</u> more than two commercial properties or commercial land exceeding 1 acre is considered carrying out business</p>	<p>Clarification is sought as the Guide (released later than the Panel Decision) appears to be different from the Panel Decision.</p>	<p>1. In the case of non-residential land or property, any individual is treated as carrying out a business if he has at any one time in his ownership, more than 2 commercial properties or more than one acre of commercial land.</p> <p>If ---</p> <p>(a) the total value of supply for the properties he owned exceed the prescribed threshold; and</p> <p>(b) he has the intention to supply such non-residential properties;</p> <p>then he is liable to be registered. Therefore any supply of such</p>

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			<p>property is subject to GST.</p> <p>2. Any individual is also be treated as making a supply of taxable service if:-</p> <p>(a) he is supplying any lease, tenancy, easement, licence to occupy or rent ; and</p> <p>(b) his annual turnover has exceeded the prescribed threshold in the 12 months period.</p> <p>All input tax incurred in the course or furtherance of such business is claimable commencing from the date he is registered.</p> <p>'at any one time' means in his possession owns more than 2 commercial property within a period of 12 months commencing on or after the effective date.</p>
6	<p>Land Development Agreement between Land Owner and Developer</p> <p>Amendment to DG's Decision 3/2015 (25/5/2015)</p>	<p>Clarification is sought as to whether can the developer (if registered) claim in full the</p>	<p>If the approved use of the land has not been established, the supply is a taxable supply.</p>

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	<p>In relation to mixed supplies, if the approved use of land has not been established by the parties, the land owner (if registered) must issue tax invoice and charge GST to the developer based on the amount of land owner's entitlement for the supply of rights to use the land or the supply of land and account the GST.</p>	<p>input tax incurred on the acquisition of rights to use the land or the acquisition of land since the approved use of land has not been established (subsequently adjust due to change of use once the use has been established)?</p>	<p>The input tax incurred can be recovered in full. However, once the use has been established you are required to make an adjustment due to change of use as regulated in Regulation 44 or 45, of GST Regulation 2014.</p>
7	<p>Property Management</p> <p>Guide on Property Management (28/4/15)</p> <p>JMB and MC in residential buildings are exempted from GST registration as stipulated in para 20 of GST (Exempt Supply) Order. However, they are required to register if they make taxable supply of services to any person who is not the parcel owner of such residential property and the annual taxable turnover exceeds the GST threshold.</p>	<p>Please clarify whether JMB and MC of residential buildings are treated as making taxable supplies to parcel owners for the following :-</p> <ul style="list-style-type: none"> (a) Insurance for the building; (b) Water and electricity under bulk meters (refer page 16 and 17 of the Guide) (c) Quit rent <p>If so, is the JMB or MC required to register if the value of these taxable supplies to parcel owners exceeds RM500k?</p>	<p>JMB or MC is not making any supply of the item (a) – (c). The insurance of the building, bulk meter utilities bills, and quit rent is charged to JMB or MC. Therefore, they are acting as a principal and later they recover the expenses from the parcel owner. The recovery of expenses is treated as reimbursement. Reimbursement is subject to GST.</p> <p>The JMB or MC is required to be registered under Sec. 20, of GST Act 2014 if the his annual taxable turnover exceeds RM500,000.00.</p>
8	<p>Designated Area</p> <ul style="list-style-type: none"> a) Leasing of vessel by a DA Company to another DA Company for use in PCA; b) Leasing of vessel by a DA Company to a PCA Company for use in DA only. 	<p>Clarification is sought whether leasing of vessel as stated in the issue are supply within DA (no GST).</p>	<p>This issue will be forward to Panel Technical Meeting</p>

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9	<p>Imported services</p> <p>Imported services of zero rated supplies if made in Malaysia (e.g. Overseas HQ charged Malaysia company postal service performed in relation to international mail).</p>	<p>Clarification is sought as to whether any output tax should be accounted for the imported services (since it is zero rated not standard rated supply if made in Malaysia)?</p>	<p>Need further clarification and full facts.</p>
10	<p>Reimbursement</p> <p>a) Medical services provided by a private hospital to group of companies are exempt supplies. When the hospital bills to the holding co, no GST is applicable, When holding onwards bill to its subsidiaries, is it subject to 6% GST?;</p> <p>b) For electricity bill – incurred before 1 April 2015 but recharge after 1 April 2015, is it subject to 6% GST?</p> <p>c) TNB collect 1% charges as SEDC – this is an out of scope supply as payable to the Ministry, when a company recharge the electricity and the 1% charge, is the whole amount subject to GST?</p> <p>d) 1% Renewable Energy (RE) Fund collected by TNB on behalf of Sustainable Energy Development Authority (SEDA) for the RE Fund. SEDA is an agency under the Ministry of Energy, Green Technology and</p>	<p>Please clarify whether 6% GST is applicable regardless of the original GST status of the supply when recovery/rebilling do not meet the criteria of a disbursement.</p> <p>If so, under what circumstances can a concession be given such that the original GST status be maintained in view of how certain industries interact with the Authorities in terms of payment?</p>	<p>a) –d) will be bring to the next meeting</p>

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	<p>Water.</p> <p>e) Quit rent charges to developer is out of scope supply and land title is in developer's name, when developer rebills to purchaser, it should also be subject to 6%, right? But the Developer Guide date stated that supply of quit rent by a developer is not a supply</p>		<p>Generally, quit rent is charged by local authority to developer under developer's name is out of scope supply. Later, the developer recover the expenses from the land owner is a supply. Such supply is a supply of service. Therefore, the reimbursement is subject to GST. Hence, the property guide will be updated soon.</p>
11	<p>Interest on trade debt</p> <p>A trading company sells goods to customer, where interest will be charged by the trading company to the customer in case the customer default or late in paying the trade debt.</p> <p>Interest at a certain % is charged on the outstanding trade debt, not on any provision of financial supplies (eg loan) made by the trading company to the customer.</p>	<ol style="list-style-type: none"> 1) Please confirm that the interest charged on the outstanding trade debt is a provision of credit for trade debt receivable and hence, is a provision of an incidental exempt financial supply as specified under Regulation 40(2)(f) of the GST Regulations 2014. 2) Please confirm that on the basis that the provision of the incidental exempt supply is incidental to one or more of the trading company's business (Regulation 40(1) of the GST Regulations 2014 refers), the input tax attributable to such provision is to be treated as attributable to a taxable supply. 	<p>It is not financial supply. It is a penalty for late payment which is out of scope.</p> <p>Cannot claim input tax.</p>

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	<p><u>Issue 1 :</u></p> <p>From the perspective of the Trading Company, since there is no financial supplies (eg loan) made by the Trading Company to the trade debtor, and the interest income was derived from charging on the outstanding trade debt only, hence, the interest income should not be viewed as Incidental Exempt Financial Supplies. Please advise.</p> <p><u>Issue 2 :</u></p> <p>If it is not an incidental exempt financial supplies, would it be viewed as Exempt Supply or Taxable Supply?</p> <p><u>Issue 3 :</u></p> <p>If the interest income is treated as an Exempt Supply, the claiming of input tax credit of the Trading Company will be subjected to partial exemption?</p>		<p>Issue 1</p> <p>In this case interest is charged on the outstanding trade/commercial debt not on the provision of any financial supply, hence, the interest income should not be viewed as incidental exempt financial supply for claiming input tax.</p> <p>Issue 2</p> <p>It is considered as late payment penalty/charge which is an out of scope supply</p> <p>Issue 3</p> <p>Not subject to partial exemption.</p>