Indirect Tax

GST Chat
All you need to know

Issue 08.2017
In this issue

Greetings from Deloitte Malaysia's Indirect Tax Team

Greetings dear readers and welcome to the August issue of GST Chat.

This month we finally saw some movement on the much talked about Tourism Tax (TTx) with the release of key legislation and also the launch of the official portal by the Royal Malaysian Customs Department ('RMCD'). Importantly, we now have a confirmed start which is 1 September 2017. For those of you who did not receive our earlier alert on this topic, look out for our article below.

Here are some recent news and developments that may interest you:

- It was reported that according to Tourism and Culture Minister Dato' Seri Nazri Aziz, so far 3,200 providers of accommodation have been automatically registered for Tourism Tax via importation of GST registration information submitted.

- The Second Finance Minister Datuk Johari Abdul Ghani has said that the Government would take steps to improve the GST so that it is more efficient. He also stated that there must be tighter enforcement to ensure non-compliant traders pay GST so that it is fair to traders and people who pay.

I hope you will find this month's GST chat a reading pleasure and do not hesitate to contact us if you have any queries, comments or require our assistance.

Kind regards,

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1. RMCD clarification on various matters

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Penalties on GST filing

During the GST Audit & Investigation Seminar organised by the Malaysian Institute of Accountants late last month, Ms. Annie Thomas from the RMCD had mentioned that the penalty for late GST filing would be applied in the following manner:-

- First offence – RM1,000
- Second Offence – RM2,000
- Third Offence – Subject to Court Action

It was informed that the offences above are compoundable under Section 121 of the GSTA 2014. It is important to note that these penalties relate to the actual failure to file on time. If there is an underpayment arising due to late payment then the late payment penalties (range of 10% - 40% can apply).

Clarification on input tax credit from bill of demands

Based on our recent discussions and meetings, the RMCD have reaffirmed their position that GST payable arising from a result of a bill of demand (BOD) would not be eligible as input tax credit. This situation typically arises from the under-declaration on the value of importation of goods and resulting in the under-declaration of GST, and is subsequently adjusted during an audit. When there are such payments being recovered by the RMCD, the company may not be entitled to an input tax credit. On the other hand, if a disclosure of such under declarations are done on a voluntary basis, the company may seek a concession from the RMCD to allow such input tax credit to be claimed. Having said that, it is unlikely that there will be a revision of the valid documents, initially issued, to reflect these changes.

Based on our interpretation of the Law, a taxable person is entitled to an input tax credit if they hold valid documents (i.e., form K1).

Nevertheless, it is important that taxpayers take note of the RMCD view and try to ensure that errors are detected early and corrected prior to an audit.

Clarification on Group 2 of Ministers Relief 1/2017

- We have received further clarification on the conditions to qualify for Group 2 of the Minister's Relief 1/2017 which provides a specific relief on the supply of services provided directly in connection with goods for export to an overseas customer:-Condition (c) states that the overseas customer must not have a fixed establishment in Malaysia, including an agency. The RMCD has verbally clarified that the "agency" also refers to overseas persons who are registered through a local agent under Section 65 of the GST Act 2014. The rationale of disallowing the relief in these cases is that the overseas business (through its agent) is able to claim the GST paid as input tax.

- Condition (e) requires the goods to be exported within 60 days after the completion of service. The RMCD had verbally clarified that the 60 days are counted from the end of the contract period. It does not mean that goods can only be located in the free zone or bonded warehouse for 60 days.

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2. GST Technical Updates

GST Treatment on Recovery of Cost of Repairs for Manufacturer under Warranty

The RMCD has made an announcement click here that from 1 July 2017, any charges made by a local distributor to overseas manufacturers with respect to repair of goods covered under a warranty (provided by the overseas manufacturers) would no longer be subject to GST.

In order to access the concession, local distributors are required to seek written approval from the RMCD and are subject to complying with the following conditions:

- To provide the RMCD with a copy of the contract with the overseas manufacturer nominating the local entity as the official distributor and also the official entity who will be undertaking repair works
- Copy of documents related to warranty claims made to the overseas manufacturer

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The relevant goods under warranty were part of the distributor's business assets (as trading stock)

- There are no mark-ups on the repair cost recovered
- The local distributor is required to retain the following documents pertaining to the recharge:
  - Invoices issued to the local distributor with respect to repair costs incurred
  - Invoices issued by the local distributor to the overseas manufacturer containing details of the local distributor's acquisition of repair costs
  - Proof of payment from overseas manufacturer to local distributor for the repair cost charged
  - Warranty contract with customers which includes terms and conditions of the warranty and the warranty's coverage
  - Repair order form (or similar) signed by the customer

Deloitte Comments

The RMCD currently views the recharge for repair costs in Malaysia to be subject to GST, resulting in a GST cost to the overseas manufacturer (as the GST paid is not claimable since they are not GST-registrants in Malaysia).

The concession announced above is a welcome move as it helps to alleviate the cost of repair services made to overseas manufacturer. This concession was a result of feedback from the industry to improve the cost of these services and ensure pricing competitiveness in the region.

In this regard, businesses should review their existing arrangements to ascertain whether they would fall within the ambit of the concession and to assess what steps may need to be taken to apply or access the concession.

Revised Guide on Warehousing Scheme – as at 15 June 2017

The latest Guide on Warehousing Scheme issued on 15 June 2017 replaces the previous version published on 1 January 2017.

Paragraph 13 was amended to state that the area of Inland Clearance Depot (ICD) is not a "designated area". Other amendments noted from the guide are the standardisation of the word of "licensed warehouse" instead of just "warehouse".

Deloitte Comments

This appear to be more of rewording for clarity, and there are no changes on GST treatment noted from the revised guide.

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3. Tourism Tax to roll out in Malaysia

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On 1 August 2017, through a notice published by the Attorney General's Chambers, the Second Minister of Finance, Datuk Seri Johari Bin Abdul Ghani has stated that the Tourism Tax would take effect on 1 September 2017. A number of the administrative provisions that govern the operation of the tax include the registration provisions that take effect on 1 August 2017. The Tourism Tax Regulations 2017 (Regulations) were also gazetted on 1 August 2017. The Orders covering the rate of tax and exemptions were also gazetted 23 August 2017.

To coincide with the release of the key legislative provisions, the RMCD also launched its Tourism Tax portal (MyTTx).

The portal allows taxpayers to do the following:

1. Register for the Tourism Tax (TTx) through an online application
2. Access copies of the TTx Legislation, Regulations and Orders
3. Access copies of the various forms and documentation including a sample copy of the TTx Return (TTx-03)
4. Access newly published RMCD guides in relation to the TTx that cover:
   a. Registration
   b. General guidelines of the rules
   c. Guidelines on completing the various forms (i.e., returns, refunds and bad debt relief)

The Regulations contain some useful information relating to process for registration, filing of returns, making of payments and the claiming of refunds and bad debt relief. It also contains sample copies of the registration form and the Tourism Tax Return (TTx-03).

Now that the registration portal is open, accommodation operators are required to complete the online registration through the above portal. It is our understanding that those operators that are currently registered with the Ministry of Tourism and Culture have been automatically registered. We have noted that a number of operators have received registration confirmations despite not yet applying for registration. This is consistent with the powers granted to the Director General of the RMCD that allow him to register those providers who are already in the system.

For those operators who have not yet registered or been notified by the RMCD of their registration, it becomes important to complete the registration form as soon as possible. Failure to do can result in a fine of up to RM30,000 or a compound of up to RM15,000.

Some of the key exemptions include:

- Homestays and kampong stays that are approved and registered with the Ministry of Tourism and Culture;
- Accommodation premises provided to a person for education, training or welfare purposes;
- Operator operating accommodation with less than four rooms;
- Employer operating accommodation to accommodate employees;
- Rooms provided to Malaysian nationals and permanent residents.

RMCD have kicked off a national series of training and consultation sessions with operators. We expect these to be conducted in a similar fashion to what transpired when the GST was introduced, with RMCD officers walking through key aspects of the tax and addressing operational and administrative issues.

For our events related to indirect taxes, please click here.

We invite you to explore other tax related information at:
http://www2.deloitte.com/my/en/services/tax.html

To subscribe to our newsletter, please click here.

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