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TaXavvy Xtra

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Tax Laws

The Goods and Services Tax Bill 2014

Further to the Prime Minister's announcement on 25 October 2013, the Goods and Services Tax Bill 2014 ("the 2014 Bill") was tabled in Parliament on 31 March 2014. This issue of TaXavvy will consider some of the key changes set out in the 2014 Bill compared to the Goods and Services Tax Bill 2009 ("the 2009 Bill").

Highlights

- Requirement for taxable person to quote GST-inclusive prices in all price displays
- GST will be charged on the value of imported leased goods and not on the lease payments
- Change in penalty regime for late payment of tax due to late registration
- Requirement to issue tax invoice within 21 days from the basic tax point deleted
- Criteria for self-billing arrangements have been legislated
- Late payment penalty of 25% on tax outstanding deleted
- Power granted to Minister of Finance to determine the fixed rate of recovery for input tax claims
- Non-residents making taxable supplies exceeding the registration threshold is required to appoint an agent to account for GST
- Joint venture provisions are restricted only to petroleum-based activities
- Free Commercial Zones are recognised as places outside Malaysia.
- Amendment of transition rules for settlement of service tax
- Relief from GST for supplies spanning effective date s where sales tax and service tax has been received or invoiced.
- Goods and services redeemed under vouchers after the effective date will also qualify for transitional relief .
- Supply of goods and services under an Islamic Financial Arrangement is to be treated as neither a supply of goods nor services
- Introduction of rules for the taxation of gaming supplies

Please note that this document contains preliminary views which may be subject to change upon clarification from the authorities and our further analysis

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Comparison of changes

2014 Bill (Clause)	2009 Bill	2014 Bill
2	None	"Islamic Financial Arrangement" refers to a written contract relating to a supply of financing in accordance with the principles of Syariah. <u>Comment:</u> Any Islamic financial arrangement must be documented by way of contract.
9(5)	None	Where any registered person displays, advertises, publishes or quotes in any manner the price of any supply of goods or services he makes or intends to make, such price shall include the tax that is chargeable on the supply unless the Director General of Customs ("DG") approves otherwise under subsection (7). <u>Comment:</u> This provision introduces the requirement to quote tax inclusive prices in all price displays.
9(6) to 9(8)	None	Taxpayer may apply to DG to vary the form and manner of disclosure or be exempted from the requirement to disclose tax inclusive prices. Failure to comply results in penalties.
13(5)	None	Where goods are leased from an overseas lessor, GST will apply on the importation of the goods. Any subsequent lease payments will not be subject to reverse charge. This provision raises the following questions: (1) Who will be liable to pay the GST on the importation of goods? (2) Who will be entitled to claim the import GST paid? (3) How should the CIF value of the goods be ascertained?
Deleted	Clause 14(2)	The criteria to determine where the recipient of a service belongs has been deleted. <u>Comment:</u> This appears to create a gap in applying any of the provisions of the Bill which considers where a recipient belongs, eg. in applying the zero rating provisions for international services.

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Comparison of changes

2014 Bill (Clause)	2009 Bill	2014 Bill
21(6)	Penalty was computed based on a percentage of tax not paid due to late registration	Penalty will now range from RM1,500 to RM20,000
33(1)	A tax invoice must be issued within 21 days from the basic tax point	This requirement has been deleted
33(5)	None	Criteria for self-billing arrangements have been legislated. Generally, both parties must consent in writing to the self-billing arrangement and the approval of DG must be obtained.
39(1)	None	The amount of input tax allowable has been expanded to include a prescribed amount. Such prescribed amounts to be given effect in the Regulations to be made by the Minister of Finance. <u>Comment:</u> This provision appears to give the power to the Minister of Finance to determine a fixed rate of recovery of input tax in certain circumstances.
-	Late payment penalty subject to the maximum of 25% of tax payable	This penalty has been removed
45	None	Any refund of GST will be reduced by any Sales Tax or Service Tax outstanding.
65(5)	None	Where a person sells the asset of a taxable person in satisfaction of a debt, it will be the responsibility of the seller to account for GST.

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Comparison of changes

2014 Bill (Clause)	2009 Bill	2014 Bill
65(6)	Supply made in Malaysia by a non-resident taxable person through an agent acting on his behalf would be deemed to be made by the agent	Where the value of supplies made in Malaysia by a non-resident person exceeds the registration threshold (currently RM500,000) per year, the non-resident person must appoint an agent to account for GST for the supplies made in Malaysia by the non-resident person.
69(1)	-	No change – The availability of provisions for Joint Ventures to register for GST is still restricted to petroleum activities.
155, 156	Freight services between Designated Areas ("DA") are taxable.	Freight services between DAs are to be disregarded. Goods supplied from a DA to Malaysia will include goods imported under a leasing arrangement.
161,162, 163	None	Free Commercial Zones ("FCZ") are recognised for GST purposes and treated as a place outside Malaysia with the following treatment:- • No GST on goods imported into and supplied within the FCZ • No requirement to account for GST where the goods are used in an FCZ for approved activities under the Free Zone Act 1990 • GST must be accounted for when the goods are removed from the FCZ into Principal Customs Areas <u>Comment:</u> The proposed amendment does not appear to cover the Free Industrial Zones.

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Comparison of changes

2014 Bill (Clause)	2009 Bill	2014 Bill
182	Any person licensed under Service Tax Act 1975 is required to furnish the return for the last taxable period and pay all service tax (due and not due)	Any person licensed under Service Tax Act 1975 is required to furnish the return for the last taxable period and pay service tax that is due and payable. <u>Comment:</u> Subject to approval, the provision amends the transition rules to allow a service tax licensee to defer accounting for service tax until the service tax has been received or where the service tax invoice is more than 12 months.
183(4)	None	Where a person who is licensed for sales tax or service tax makes a supply spanning the GST effective date, no GST needs to be accounted in respect of goods and services supplied after the effective date if : 1. The goods and services and the applicable taxes have been invoiced before 1 April 2015; or 2. Payment of sales tax and service tax has been received in respect of the supply.
195	Goods or services redeemed after the effective date under a voucher issued before the effective date are chargeable to GST	Goods or services redeemed after the effective date under a voucher issued before the effective date will not attract GST, provided the conditions in Clause 183(4) above are satisfied. <u>Comment:</u> It may be a challenge to track the redemption of goods and services to qualify for the relief.

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Comparison of changes

2014 Bill (Paragraph)	2009 Bill	2014 Bill
1st Schedule Para 5(6)	None	Where input tax credit is claimed on the basis that a motor vehicle is purchased exclusively for business use, and there is a subsequent change in the use of the motor vehicle, it will be deemed as supply of goods and GST must be accounted for at the Open Market Value at the time of change of use.
2 nd Schedule Para 5	None	Any supply of goods and services under an Islamic Financial Arrangement will be treated as neither a supply of goods or services, except for the provision of financing. <u>Comment:</u> GST incurred on disregarded supplies are recoverable under clause 39(1)(a). It is not clear whether input tax is recoverable in respect of something that is “neither a supply of goods nor a supply of services”.
2 nd Schedule Para 6	None	Insurance settlement in goods will be treated as neither supply of goods or services. <u>Comment:</u> This provision effectively removes the exposure of insurers to the “gift rule” when making settlements in kind.
3 rd Schedule Para 8	None	For the purposes of determining the value of GST chargeable, the value of gaming supplies shall be the total amount received for the supply less certain taxes and payouts.

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