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Director General of Custom's
decision on GST frequently
asked issues 2/2015 and
decision amendment 1/2015



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The Royal Malaysian Customs Department (RMCD) has uploaded the Director General's (DG) Decision 2/2015 on to their portal (<http://gst.customs.gov.my>). Decisions have been made on the following Goods and Services Tax (GST) frequently asked issues (FAI):

1. Small Office Home Office (SOHO).
2. Supply of commercial property (build & sell) by a developer to a purchaser under an agreement for a period that begins before the effective date and ends on or after the effective date.
3. Eligibility for deemed input tax under Regulation 47 of the GST Regulations 2014 (P.U. (A) 190/2014)
4. Claiming special refund of sales tax for goods held on hand on 1 April 2015.
5. Whether a debit note is allowed to be issued in order to recover the GST amount during transitional period.

In addition, the RMCD has also uploaded Amendment 1/2015 to amend their earlier decisions on the following:

- Item 3 of Panel Decision on FAI 1/2014 – Claiming bad debt relief.
- Item 6 of Panel Decision on FAI 1/2014 – Foreign exchange.
- Item 1(iii) of Panel Decision on FAI 2/2014 – Motor cars used exclusively for business purposes as approved by the DG.
- Item 4 of Panel Decision on FAI 2/2014 – Gift rule.

Frequently Asked Issues 2/2015

No	Issue	PwC comments
1	Small Office Home Office (SOHO)	<p>The DG has clarified that SOHO can be classified as a residential property if the development of such property complies with the requirements of the Housing Development (Control and Licensing) Act 1966 and Housing Development (Control and Licensing) Rules 1989 as follows:</p> <ol style="list-style-type: none"> (a) letter of planning approval (Surat Kebenaran Merancang) is issued under "residential", (b) approved layout plan and approved building layout is for dwelling purposes, (c) the sale and advertising permit is issued under the Housing Development Act (Control and Licensing) 1966, and (d) the developer and the buyer enter into a sale and purchase agreement enforced under the Housing Development Rules (Control and Licensing) 1989.

No	Issue	PwC comments
2	Supply of commercial property (build & sell) by a developer to a purchaser under an agreement for a period that begins before the effective date and ends on or after the effective date	<p>The DG has decided that the GST treatment under section 188 of the GST Act 2014 applies to a supply of commercial property (build and sell) by a property developer to a purchaser under an agreement for a period that begins before 1 April 2015 and ends on or after 1 April 2015.</p> <p>As such, only the value of the proportion of the supply which is attributed to the part of the period on or after 1 April 2015 shall be chargeable to GST.</p> <p>However, it is unclear what the DG is referring to with the phrase “supply of commercial property (build and sell)”. It appears that this may not refer to the Build-Then-Sell concept because Item 8 of the Panel Decision on FAI 4/2014 has already addressed the issues arising from that. It may be referring to the Sell-Then-Build concept which is a common practice currently.</p>
3	Eligibility for deemed input tax under Regulation 47 of the GST Regulations 2014 (P.U. (A) 190/2014)	<p>The DG has decided that an insurer or a takaful operator is not entitled to the deemed input tax credit under Regulation 47 of the GST Regulations 2014 if the cash payout from the insurer or takaful operator to a policy holder / insured or a third party is related to an acquisition of goods or services which is any of the following:</p> <ul style="list-style-type: none"> (a) an exempt supply, (b) a zero-rated supply, (c) a supply not within the scope of GST, or (d) a supply which the input tax is disallowed under Regulation 36 of the GST Regulations 2014.
4	Claiming special refund of sales tax for goods held on hand on 1 April 2015	<p>The DG has decided that if there is a credit term given by the supplier, the special refund of sales tax under section 190 of the GST Act 2014 is allowed to be claimed if the total value of the invoice is paid <u>before 30 May 2015</u>.</p> <p>The DG has also decided that the special refund will not be given for the following goods:</p> <ul style="list-style-type: none"> • goods which have been sold and subsequently repurchased by the supplier or returned to the supplier before 1 April 2015. • RON 95 petrol and diesel. • goods listed under the GST (Zero Rated Supply) Order 2014. <p>However, the special refund is allowed for unsold stock returned by customer before 1 April 2015 due to delivery of wrong quantity, poor or defective quality of goods, or erroneous despatch of uncontracted goods in accordance with Regulation 19C of the Sales Tax Regulations 1972.</p>

No	Issue	PwC comments
5	Whether a debit note is allowed to be issued in order to recover the GST amount during transitional period	<ul style="list-style-type: none"> The DG has confirmed that the amount shown on the debit note which is issued on or after 1 April 2015, to adjust for invoices issued before 1 April 2015, is deemed to be part of the total consideration of the supply.

Decision amendment 1/2015

No	Amendment	PwC comments
1	Item 3 of Panel Decision on FAI 1/2014 – Claiming bad debt relief	<p>Previously, the DG required any registered person who is entitled to claim bad debt relief, but wished to claim the relief at a date later than immediately after the expiry of the 6th month, to apply for approval.</p> <p>The DG has amended sub-item 3(iii) to change the above requirement to merely notifying him within 5 days after the expiry of 6th month if the registered person intends to claim the relief at a later date.</p> <p>It appears that the new requirement to notify is not one-off and must be done in each taxable period where the registered person is entitled to a new bad debt relief, but wish to defer the claim to a later date.</p>
2	Item 6 of Panel Decision on FAI 1/2014 – Foreign exchange	<p>The DG has allowed for the following exchange rates to be used in addition to the prevailing exchange rate (selling rate) corresponding to the time of supply:</p> <ul style="list-style-type: none"> the monthly average rate of the previous month corresponding to the time of supply. the month-end average rate corresponding to the time of supply. the month end selling rate corresponding to the time of supply. the opening selling rate of the month corresponding to the time of supply. the average rate of the highest rate plus (+) the lowest rate of the previous month corresponding to the time of supply. the hedged exchange rate with banks corresponding to the time of supply. <p>However, the DG has imposed a new condition that both the supplier and the buyer in a transaction must be making wholly taxable supplies and registered for GST if the above exchange rates are to be used.</p>

No	Amendment	PwC comments
3	Item 1(iii) of Panel Decision on FAI 2/2014 – Motor cars used exclusively for business purposes as approved by the DG	<p>The DG has inserted a new sub-item (d) into the list of motor cars which he may approve as being used exclusively for business purposes.</p> <p>However, the examples stated therein (i.e. business of leasing of cars and taxi rental business) do not seem to be appropriate because the motor cars used in these businesses should be excluded from the definition of “passenger motor car” under sub-regulation 34(1)(a) of the GST Regulations 2014.</p> <p>It remains unclear as to what kind of motor cars would fall under the category of sub-item (d) above.</p>
4	Item 4 of Panel Decision on FAI 2/2014 – Gift rule	<p>The DG has amended the example to confirm that the output tax to be accounted for the gift should be based on the open market value of the gift.</p> <p>The cost of the gift is used to determine whether sub-paragraph 5(2)(a) of the First Schedule of GST Act 2014 is applicable.</p>

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