

ABDULLAH CHAN

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At a Glance – The Malaysian Goods and Services Tax Act 2014.

First and foremost, the Goods and Services Tax Act 2014 (“**GST Act**”) was gazetted on 19 June 2014 and will come into effect on 01 April 2015 (“**effective date**”). The GST Act will replace the current Sales Tax Act 1972 and Service Tax Act 1975 (collectively, “**Sales and Service Tax Acts**”) in Malaysia.

How does it work?

The Goods and Services Tax (“**GST**”) is a consumption based tax on goods and services (as opposed to a direct tax, such as income tax, real property gains tax and stamp duty). The rate of tax is fixed at 6%. The scope of the GST Act¹ will apply to goods or services supplied in Malaysia, and on any importation of goods into Malaysia.

Any person who would be making a taxable supply is liable to be registered under the GST Act². A taxable supply means a supply of goods or services which are standard rated supply and zero rated supply but does not include exempt supply. As such, in order for GST to be charged on goods and services, these goods and services have to be made by a taxable person. A taxable person is defined in the GST Act to mean any person who is or is liable to be registered under the GST Act.

For this purpose, the GST Act further provides that a person is a taxable person if he makes a taxable supply of goods or services, it is done in the course or furtherance of a business (to be distinguished from one-off transactions or hobbies), it is carried out in Malaysia and whose total amount of taxable supplies for a period of 12 months or less exceeds the prescribed threshold of RM500,000. In the event the taxable turnover is less than RM500,000 for a period of 12 months or less, it is not mandatory for such person to be registered under the GST Act and accordingly not permitted to charge or collect GST on the supply of goods or services. Such person, however, has the option to voluntarily register as a taxable person. The deadline for registration is 31 December 2014.

The Transition Period

Part XIX (Transitional Provisions) of the GST Act makes it clear that no tax will be charged or levied on a supply of goods or services before the effective date. For the purposes of determining the taxable period to which output tax or input tax is attributable, where before the effective date, payment is received in connection with the supply of goods or services on or after the effective date, the payment is taken to have been received on the effective date. Where an invoice is issued for the supply of goods or services which will be made on or after the effective date, the invoice is taken to have been issued on the effective date. Such payment received or such amount stated in the invoice shall be deemed to be inclusive of GST for the purposes of determining the value of the supply. Any person who contravenes this provision commits an offence.

Notwithstanding the above, where a person is licensed under the Sales and Service Tax Acts is a taxable person under the GST Act and has issued an invoice on which sales tax or service tax is charged, or has

¹ Section 9 of the GST Act

² Section 184(1) of the GST Act.

received payment of sales tax or service tax, before the effective date, no GST shall be chargeable on the supply of goods or services made on or after the effective date to the extent covered by the invoice.

Where there is a written contract identifying the supply and the consideration of the supply with no opportunity to review and was entered into not less than 2 years before the effective date, and such supply is made before 5 years after the effective date or when a review opportunity arises, whichever the earlier, the supply made thereunder shall be treated as zero-rated supply³ (i.e. the rate of tax is nil). This is however provided that the supplier and recipient of the supply are registered persons, it is a taxable supply and the recipient is making wholly taxable supply.

In respect of a supply agreement made for a period or progressively over a period whether or not at regular intervals and such period commences before the effective date and ends on or after the effective date, the portion of the supply which is attributed to the part of the period on or after the effective date shall be chargeable to GST.

The general penalty imposed upon conviction under the GST Act for any person who commits an offence where no penalty has been expressly provided is a fine not exceeding RM30,000 or imprisonment for a term not exceeding 2 years, or both.

Article Written By:

ELIZABETH HUANG TING TING
SENIOR ASSOCIATE

LL. B. (Hons.)

E: elizabethhuang@abdullahchan.my

T: +603 2035 6883 ext 2309

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³ Whereby the businesses are not permitted to collect any GST on their supplies but are entitled to claim tax credit on tax inputs used in the course of furtherance of the business.