Recovery of Expenses: Disbursement vs Reimbursement

by Ivy Ling Yieng Ping

1. It is common for a GST-registered business to incur expenses while making a supply of goods or services to clients. Generally, these expenses will be recovered subsequently from the clients. However, the commercial contract between the parties, more often than not, is silent on how the recovery of expenses should be treated for the purposes of GST.

2. This may create confusion, resulting in the recovery of expenses being given the wrong GST treatment (either GST is wrongfully charged or no GST has been charged when it should be) and ultimately resulting in the filing of an incorrect GST return.

GST consequences of disbursement and reimbursement

3. If the recovery of expenses amounts to a disbursement, it is not considered as supply made by the GST-registered business. Rather, the repayment of money is made by the client as a principal to the business who acts as an agent for a charge that the agent has satisfied on behalf of the principal. Thus, such recovery is outside the scope and is not subject to GST. Accordingly, the business is not entitled to claim any GST incurred by way of input tax deduction. The input tax entitlement, if any, belongs to the principal, i.e. the client to whom the tax invoice is issued.

4. If the recovery of expenses amounts to a reimbursement, it will be considered as a separate supply made by the business to the client. Thus, the business is entitled to deduct any input tax incurred if the reimbursement is a taxable supply. At this point, it is important to note that the recovery of an expense that amounts to a reimbursement does not result in GST being automatically chargeable by the business when it issues a tax invoice to recover the expense. The GST treatment of such recovery is still required to be determined in accordance with the subject matter of the expense recovered. Pursuant to s 9(3) of the Goods and Services Tax Act 2014 (“GST Act”), GST chargeable on any supply of goods or services is a liability of the person making the supply and becomes due and payable at the time of supply. On the premise that the recovery of an expense is a reimbursement, the business, as the supplier, bears the legal burden to ensure that the correct GST treatment has been applied when it recovers these expenses from the client.

5. However, before it determines the GST treatment, the business must first determine whether the recovery of such expenses amounts to a disbursement or reimbursement.

Underlying principle

6. For the purposes of GST, the recovery of expenses by a business may be treated as a disbursement or a reimbursement, depending on whether the expense is incurred by the business as a principal or as an agent. The underlying principle is that if the business incurred the expense as a principal, recovery will amount to a reimbursement; the contrary applies if the business incurred the expense as an agent acting on behalf of its client.¹

¹ See the UK cases of Rowe & Maw (a firm) v Commissioners of Customs & Excise (1975) 1 BVC 51 and National Transit Insurance Co Ltd v Commissioners of Customs & Excise (1974) 1 BVC 37, which are persuasive legal authorities in Malaysia
Relevant provisions under GST Act

7. Besides the underlying principle, also of relevance is s 65(1)-(3) of the GST Act, which sets out the rules in relation to an agency and principal relationship. Section 65(1) provides that where goods or services are supplied by an agent acting on behalf of a principal, the supply shall be deemed to be made by the principal and not by the agent. Similarly, s 65(2) states that where goods or services are supplied to an agent acting on behalf of a principal, the supply shall be deemed to be made to the principal and not to the agent. Finally, s 65(3) states that where goods or services are supplied through an agent acting in his own name, the supply shall be treated as a supply to the agent and as a supply by the agent. Section 65(3) normally applies to cases involving an undisclosed principal.

8. The author is of the view that the GST provisions above are consistent with the underlying principle set out in paragraph 6 above, and that they do not, in any way, change or alter the underlying GST principle.

Approach taken by Royal Malaysian Customs Department

9. The differences between disbursement and reimbursement were first addressed by the Director General (“DG”) of the Royal Malaysian Customs Department (“Customs”) in Item 6 of Decision 5/2015. Item 6(3) sets out the criteria for recovery of expenses to be treated as a disbursement or a reimbursement in a table consisting of seven different criteria each. At the material time, there was no indication that all the criteria must be fulfilled before a business can treat a particular recovery of expenses as a disbursement or reimbursement. Quoting the words used in Item 6(3), it states:

“In general, the criteria for disbursement and reimbursement for GST purposes are as follows —“

10. The table published by the DG of Customs under Item 6(3) of Decision 5/2015 is reproduced below:

<table>
<thead>
<tr>
<th>No</th>
<th>Disbursement</th>
<th>Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Incur expenses as an agent acting on behalf of the client.</td>
<td>Incur expenses as a principal.</td>
</tr>
<tr>
<td>(ii)</td>
<td>The client is the recipient of the supply (invoice is in the client’s name).</td>
<td>The client is not the recipient of the supply (invoice is in the principal’s name).</td>
</tr>
<tr>
<td>(iii)</td>
<td>The client is the person responsible to pay for the supply.</td>
<td>The principal is the person responsible to pay for the supply.</td>
</tr>
<tr>
<td>(iv)</td>
<td>The payment is authorised by the client.</td>
<td>The payment is not authorised by the client.</td>
</tr>
<tr>
<td>(v)</td>
<td>The client knew that the supply is made by a third party.</td>
<td>The client has no knowledge that the supply is made by a third party.</td>
</tr>
<tr>
<td>(vi)</td>
<td>The exact amount is claimed from the client and the agent has no right to alter or add on the value of the supply.</td>
<td>The principal has the right to alter or add on the value of the supply.</td>
</tr>
<tr>
<td>(vii)</td>
<td>The payment is clearly an additional to the supply made to the client.</td>
<td>The payment is for the supply made to the client.</td>
</tr>
</tbody>
</table>

Subsequent amendment to DG’s decision

11. In October 2015, an amendment was made to the aforementioned decision. With effect from 28 October 2015, a registered person must fulfil all the above criteria for a recovery of expenses to be treated as a disbursement or a reimbursement for GST purposes. The amendment effectively resulted in some of the recovery of expenses that did not fulfil all the criteria as a disbursement nor a reimbursement to be left in a limbo.

12. This led to a subsequent amendment by the DG of Customs to remove all the criteria for reimbursement without replacement. With effect from 6 June 2016, a registered person must fulfil all the above criteria for disbursement for a recovery of expense to be treated as such for GST purposes. This clearly indicates that any recovery of expenses that does not satisfy all the above seven criteria for disbursement should be treated as reimbursement for GST purposes. The amendment serves to avoid the potential grey area where a recovery of expenses does not fall under either disbursement or reimbursement, which creates ambiguity. However, the criteria laid out under Item 6(3) of Decision 5/2015 are not at all practical to follow.

---

2 GST Act, s 65(1)-(3)
4 Ibid, para 3
5 Ibid.
The problem

13. While serving as useful indicators, some of the criteria imposed are not an accurate reflection of the underlying legal principle of disbursement and reimbursement, and the strict application of the above criteria may, in certain circumstances, result in rigidity and absurdity. In particular, criterion (ii), which requires the invoice to be in the client’s name, is not at all times, consistent with business practices and strict imposition of such criteria would cause unnecessary burden to businesses.

14. A typical example can be seen in the case of a legal firm which often makes payments on behalf of its client, such as court filing fees, registration fees at land offices, land search fees and fees payable to the Commissioner for Oaths. Based on the amended Item 6(3) of Decision 5/2015, if the recovery of an expense does not fulfill all seven criteria set out above, it should be treated as a “reimbursement”. References are also made to paragraphs 24 and 25 of the latest Guide on Legal Practitioners8 (“Legal Practitioners’ Guide”) issued by Customs. It is observed in paragraph 24 that Customs has taken the position that, if the criteria listed in the paragraph (same criteria as that of disbursement provided in the table above) have not been fulfilled, the recovery of an expense may be treated as a “reimbursement” and is therefore subject to GST at standard rate. Based on this analogy, the recovery of expenses by the legal firm for expenses such as court filing fees, registration fees at land offices, land search fees and fees payable to the Commissioner for Oaths will fall within the definition of a “reimbursement” by the very reason that the official receipts of these expenses are issued directly to the legal firm, instead of the client that the firm represents.

15. The author is of the view that it is the contractual and legal obligation between the parties that distinguishes a disbursement from a reimbursement. The fundamental principle remains this: Whether recovery of an expense amounts to a disbursement or a reimbursement depends on whether the expense is incurred by the business as a principal or an agent. In the example above, where the legal firm is merely acting as a “paying agent” for its client, the recovery of such expenses should be regarded as disbursement for the purposes of GST, regardless of whether the recovery fulfills all the criteria laid out in Item 6 of Decision 5/2015 or paragraph 24 of the Legal Practitioners’ Guide for that matter.

16. As there is currently no case law precedent on what constitutes a disbursement or a reimbursement, we shall draw references from the approach taken in Singapore and in the UK to support the proposition stated in paragraph 15 above.

Approach taken by Inland Revenue Authority of Singapore

17. In Singapore, there is yet to be case precedent addressing disbursement and reimbursement. However, the Inland Revenue Authority of Singapore (“IRAS”) did on 3 May 2013 publish an extensive e-Tax Guide on the reimbursement and disbursement of expenses9 (“the SG Guide”).

18. Prior to the SG Guide, recovery of expenses was considered reimbursement as long as it did not meet the following conditions for disbursement:10

(a) The other party is responsible for paying the supplier;

---


10 Ibid, p 1, para 2.4
(b) The other party knows that goods or services would be provided by that supplier;

c) The other party authorised you to make the payment on his behalf;

d) The other party is the recipient of the goods or services;

e) The payment is separately itemised when you invoice the other party;

(f) You recover only the exact amount paid to the supplier; and

g) The goods or services paid for are clearly additional to the supplies you make to the other party.11

19. Since 30 June 2013, however, the IRAS has taken the position that one has to first establish whether he has acted as a principal or agent in purchasing the goods or services and incurring the expenses in the first place when it comes to determining whether recovery of an expense is a disbursement or reimbursement.12

20. The general rule, as per the SG Guide, is that one is acting as a principal in procuring the goods or services if he contracts with the supplier in his own name or capacity.13 In the event that the contractual relationship is unclear, the IRAS has published a set of indicators for one to determine on balance whether he is acting as a principal or agent.14 It is recognised that the above indicators based on the underlying principal-agent relationship will be more useful in differentiating between a disbursement and reimbursement in comparison to conditions for disbursement previously published. Below is the set of indicators as published by the IRAS:15

<table>
<thead>
<tr>
<th>Indicators</th>
<th>You are a principal if...</th>
<th>You are an agent if...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractual liability and assumption of responsibilities and risks</td>
<td>You have contracted for the supply of goods or services in your own name or capacity.</td>
<td>You have arranged for the supply of goods or services on behalf of another party and you are not a party to the contract.</td>
</tr>
<tr>
<td>Legal obligations to make payment payment arrangement</td>
<td>You have the legal obligation to make payment for the goods or services. For example, the third party supplier’s tax invoice is issued in your own name.</td>
<td>You do not have the legal obligation to pay for the goods or services but is authorised by another party to make payment to the third party supplier on his behalf. For example, the third party supplier’s tax invoice is issued in the other party’s name.</td>
</tr>
<tr>
<td>Alteration to the nature and value of supplies</td>
<td>You can alter the nature or value of supplies and make decision on the value of expense to recover.</td>
<td>Unless authorised to do so by the other party, you cannot alter the nature or value of supplies made between the other party and the third party supplier.</td>
</tr>
<tr>
<td>Identities of parties and transaction involved</td>
<td>You are the only party known to the third party supplier, and The other party does not know the cost incurred by you on the purchase of goods or services from the third party supplier.</td>
<td>The third party supplier knows the identity of the other party; and The other party knows the exact cost incurred by you in the purchase of goods or services from the third party supplier.</td>
</tr>
<tr>
<td>Ownership of goods (if the recovery relates to goods)</td>
<td>You own the goods. You do not own the goods as the goods are for the other party.</td>
<td>You do not own the goods as the goods are for the other party.</td>
</tr>
</tbody>
</table>

21. Although there are some similarities between the indicators above and the criteria laid out in Item 6(3) of Decision 5/2015, it is clear from the wording of the SG Guide that one does not need to satisfy all indicators, although these should be applied objectively.16 In addition, they do not require the invoice of the third-party supplier to be issued in the client’s name before it can be treated as a disbursement. Rather, it is given as an example to ascertain whether the legal obligations to make payment or arrangement lie with the business that recovers the expenses. It is the author’s view that the IRAS has shifted from what was previously a restrictive interpretation of disbursement and reimbursement to a more liberal one that allows the underlying principle to be applied to the commercial substance of the business arrangement. This would ensure that GST law is consistent and not at odds with the commercial realities.

---

11 Id
12 Ibid, p 1, para 3.1
13 Ibid, p 1, para 3.2
14 Ibid, p 1, para 3.3
15 Ibid, p 1, para 3.3
16 Ibid, p 1, para 3.3
22. The author is of the view that the criteria for the invoice to be issued in the name of the client is only relevant when the client needs to deduct input tax credit. The party to whom an invoice is issued can be a strong supporting document as to its contractual liability to make payment. However, it should not be a mandatory criterion to determine whether a recovery of expense is a disbursement. The key issue to determine disbursement or reimbursement remains whether the party seeking to recover the expense is incurring it in the capacity of a principal or an agent. The underlying legal and contractual obligation cannot be altered by mere incidence of an invoice, especially in circumstances where an invoice is issued to a party out of commercial convenience. Further illustration on this point can be seen in the UK case of Barratt Goff discussed below.

23. In order to examine this underlying principle, it is imperative to consider the position of the UK courts, which have long recognised the principal-agent relationship as the key issue to determining a disbursement or reimbursement.

**Position of UK courts**

24. The principle that the recovery of expense will amount to a reimbursement if the supplier incurred the expense as a principal is perhaps best illustrated in the leading High Court case of Rowe & Maw (a firm) v Commissioners of Customs & Excise.¹⁷

25. *Rowe & Maw* concerned a firm of solicitors who were engaged to act on behalf of a client in criminal proceedings. A representative of the firm attended Crown Court and incurred cost on rail fare. When the firm submitted its bill to the client, the rail fare was included under the heading “disbursement” and no VAT was added to the amount paid. Besides the rail fare to Crown Court, also considered was the separate expenditure of air fare incurred by the solicitor in travelling from London to Rotterdam in connection with the sale of share capital in a company. The firm contended that the rail fare was not a taxable supply of legal services since it was not payment supplied to the client directly, but merely a recovery of sums incurred on the client’s behalf.

26. The court decided that in both instances, the travel expenditure constituted a service supplied to the solicitor and not expenditure for service supplied to the client. Wien J, adopting the VAT tribunal’s views, delivered the following judgment:

“… By way of an example, I would say that in many cases a solicitor has to pay out on behalf of his client disbursements which he certainly pays out as an agent. One had in the course of argument the question of stamp duty on a conveyance or an assignment. That is clearly a disbursement made on behalf of the client and would not attract VAT, because it was a pure disbursement as agent for a principle. But where one gets the case of a solicitor charging as a disbursement, because he is so obliged to do by virtue of the solicitors’ Account Rules, something which is not strictly a payment that client has asked for, either expressly or impliedly, but is part of the whole legal services rendered by the solicitor for which there is a consideration, then it seems to me that one must come the conclusion that there is a taxable supply of legal services which cannot be split up except for accounting purposes.”

Bridge J, concurring with Wien J’s judgment, explained:

“… On the one hand, a solicitor (like any other agent) may purchase goods or services for his client, as for instance when paying stamp duty, court fees, or buying, say, a travel ticket to enable the client to travel. The goods or services purchased are supplied to the client not to the solicitor who merely acts as an agent to make the payment. Naturally no VAT is payable (if the goods or services in question are

¹⁷ (1975) 1 BVC 51
themselves exempt or zero-rated) because such payments form no part of the consideration for the solicitor’s own services to his client. But on the other hand, quite different considerations apply where the goods or services purchased are supplied to the solicitor, as here in the form of travel tickets, to enable him effectively to perform the service supplied to his client, in this case to travel to the place where the solicitor’s service is required to be performed. In such case, in whatever form the solicitor recovers such expenditure from his client, whether as a separately itemised expense or as part of an inclusive overall fee, VAT is payable because the payment is part of the consideration which the client pays for the service supplied by the solicitor.

“The same principles and the same distinction would apply to the case of any other professional man or agent...”

27. Rowe & Maw decides on the expenditure that can be regarded as a disbursement and expenditure that cannot be treated as a disbursement for VAT purposes. In the subsequent case of Trustees of the Nell Gwynn House Maintenance Fund v Customs and Excise Commissioners, the UK House of Lords was asked to consider whether the trustee of a leased block of flats was making arrangements for the services of the maintenance staff to be provided to the lessor and the tenant, or making the provision of services of the maintenance staff to the lessor and the tenant.

28. In Nell Gwynn, the trustee who managed a group of apartments sought to argue that they were merely arranging for the services of maintenance staff to be provided to the lessors and the tenants. Accordingly, the payments to the maintenance staff should be treated as disbursement as the payments were merely recovery for expenses paid out in the name and for the account of the lessor and the tenants.

29. The House of Lords held that the trustee supplied the services of staff rather than merely arranging for them to be supplied in return for contribution paid by the lessor and the tenants. The trustee entered into contracts of employment with the individual members of staff who were not independent contractors, nor employees of the landlords or the tenants. In delivering the judgment, Lord Slynn adopted Sir Christopher Slade’s reasoning on disbursement in the Court of Appeal:

“... VAT law draws a clear distinction in principle between:

(i) the case when the relevant expenses paid to a third party C have been incurred by A in the course of making his own supply of services to B and as part of the whole of the services rendered by him to B; and

(ii) the case where specific services have been supplied by the third party C to B (not A) and A has merely acted as B's known and authorised representative in paying C.

Only in case (ii) can the amounts of the payments to C qualify for treatment as disbursements for VAT purposes, and on this account as constituting no part of the consideration for A's own services to B ...

30. Nell Gwynn illustrated a clear distinction in principle between the scenarios where:

(a) the relevant expenses paid have been incurred in the course of making the supplier’s own supply of services to the client and as part of the whole of the services rendered by him to the client; and

(b) the case where specific services have been supplied by an external supplier to the client,
not to the supplier, and the supplier has merely acted as the client’s known and authorised representative in paying the service.

31. It is clear from Lord Slynn’s judgment that only in scenario (b) above that the recovery of expenses would not constitute part of the consideration of a supplier’s own services to his clients and can qualify for treatment as disbursements for VAT purposes.

**Position taken by HMRC**

32. In the UK, the stand taken by Her Majesty’s Revenue and Customs ("the HMRC") on disbursement and reimbursement of expenses is set out in paragraph 25.1.1 of the HMRC VAT Notice 700,20 which states:

“You may treat a payment to a third party as a disbursement for VAT purposes if all the following conditions are met:

- you acted as the agent of your client when you paid the third party
- your client actually received and used the goods or services provided by the third party (this condition usually prevents the agent’s own travelling and subsistence expenses, phone bills, postage, and other costs being treated as disbursements for VAT purposes)
- your client was responsible for paying the third party (examples include estate duty and stamp duty payable by your client on a contract to be made by the client)
- your client authorised you to make the payment on their behalf
- your client knew that the goods or services you paid for would be provided by a third party
- your outlay will be separately itemised when you invoice your client
- you recover only the exact amount which you paid to the third party
- the goods or services, which you paid for, are clearly additional to the supplies which you make to your client on your own account

All these conditions must be satisfied before you can treat a payment as a disbursement for VAT purposes.”

33. Although the HMRC has similarly required all conditions for disbursement to be fulfilled, the author observes that the UK authority does not require the invoice of the third-party supplier to be issued in the client’s name before it can be treated as a disbursement. Rather, a broader and general requirement of “your client actually received and used the goods or services provided by the third party” is adopted by the HMRC instead. This approach is more consistent with the principal-agent relationship discussed in the case law above and affords a better degree of flexibility for businesses to manage their affairs in an ever-changing and dynamic environment. The very fact that a third-party’s invoice has been issued in the client’s name can only be a supporting document to prove that the client is indeed the recipient of the supply. However, it should not be a pre-condition for a recovery to be treated as a disbursement.

34. Nevertheless, the conditions laid out by the HMRC are not without criticism. The UK Law Society, in its practice note published on 10 March 2011,21 had pointed out that the HMRC placed to much reliance on the first and last bullet points.22 It was also noted that the HMRC took the view that if the payment relates to legal services provided by a law firm, such as a medical report, which is also used by the firm, then the HMRC would regard this as an integral part of the provision of the legal services to the client and such recovery of expenses cannot be treated as a disbursement for VAT purposes.23

21 ‘VAT on disbursements’ can be accessed at <http://www.lawsociety.org.uk/support-services/advice/practice-notes/vat-on-disbursements/>
22 Ibid, para 3.1
23 Ibid
However, the HMRC’s argument was rejected by the UK Tax Tribunal judge in *Barratt Goff & Tomlinson v The Commissioners for Her Majesty’s Revenue & Customs (“Barratts”).*24

35. *Barratts* concerned the HMRC’s assessment of a Nottingham law firm which specialises in personal injury and clinical negligence claims. During a control visit in June 2008, the firm, Barratt Goff & Tomlinson (“BGT”) raised a query with the visiting VAT officer about the VAT treatment of expenses it incurred in obtaining general practitioner and hospital records and medical expert reports, saying that it had received conflicting advice from the Association of Personal Injury Lawyers. The officer explained that the treatment of expenses depended on whether they satisfied the conditions for treatment as disbursement laid out in paragraph 25.1.1 of Notice 700 (see the same conditions set out in paragraph 32 above).

36. On 22 August 2008, BGT was informed that due to the fact that it perused the records and reports as an integral part of the legal services it provided, the conditions contained in paragraph 25.1.1 of Notice 700, in particular, the first and the last bullet points, were not satisfied and the expenses it incurred could not be treated as disbursements. As a result, BGT was liable to pay VAT. The Law Society, unusually, sought to support BGT’s case before the appeal to the First-Tier Tax Tribunal.

37. The tribunal judge held in favour of BGT and ruled that the expenses recovered are disbursements and thus, outside the scope of VAT:

“… First, in stating the decisive test for including amounts in the value of the supplies concerned, she [the Advocate-General] determined that the consideration relevant for determining the taxable amount is whether the person making the supply in *De Danske* of the vehicle paid the duty, i.e. the amount concerned, ‘in his own name and on his own account’. Since that person is the one making the payment, almost certainly from his own bank account, clearly the account on which payment is drawn plays no part in determining the meaning of the phrase ‘in his own name’. In my judgment, the fact that the invoice raised by whoever makes supplies to Barratts records on it the name of Barratts’ client (a fact I infer from the whole of the evidence) is sufficient to satisfy the ‘in his own name’ requirement. As to the additional ‘on his own account’ requirement, again in my judgment, it is satisfied if the service is provided by Barratts as agents for and on behalf of the client, as I find it to be.

57. The further requirement for an amount paid to qualify as a disbursement identified by the Advocate-General is that the amount paid is entered into ‘a suspense account’. Such an account is defined as one which items are temporarily entered until their proper place is determined. I am in no doubt that Barratts’ office account, i.e. the account containing the firm’s own money as opposed to that of its clients, out of which, on the basis of Mr Tomlinson’s evidence, I infer all relevant payments are made, qualifies as ‘a suspense account’.”

38. In *Barratts*, the UK tribunal considered a number of English authorities, but decided the case based on the decision of the European Court of Justice in *De Danske Bilimportører v Skatteministeriet.*25 The tribunal agreed with the BGT that it was administrative convenience that dictated the normal practice of the solicitor paying for the documents and re-charging the client for the cost. The client needed the medical documents to establish the
extent and the type of his injuries. The correct analysis was that, for VAT purposes, the medical records and reports were supplied to the client, who permitted the solicitor to make relevant use of them. The solicitor’s whole legal service was the analysis and the use of the medical records and reports — and not the act of obtaining them. The solicitor paid to obtain the medical documents in the interest of the client and not in its own interest.

39. Barratts is a reminder that even well-established guidelines by the HMRC are not necessarily an accurate reflection of the underlying legal principles.

40. Accordingly, businesses should always be guided by the principle of the principal-agent relationship when determining whether a recovery of expenses amounts to a disbursement or a reimbursement. While the conditions provided in Item 6 of Decision 5/2015 may serve as useful consideration to determine whether the recovery of an expense is a disbursement or a reimbursement, it is the author’s view that businesses do not need to satisfy all criteria laid out in Item 6 and it is the contractual and legal obligation between the parties that differentiates disbursement from reimbursement. If a business does not contract with a third-party provider in his own name or capacity (not as a principal), the recovery of expenses would generally be regarded as a disbursement for GST purposes.

41. It should be borne in mind that none of the panel decisions, the amendment to the DG’s decisions or the GST Guides is issued based on power conferred on the DG of Customs as a public ruling under s 76(1) of the GST Act. Nor were these documents issued by the Minister of Finance pursuant to s 177. As such, they have no force of law as they are merely publications of Customs’ policy based on their interpretation of the GST Act and their internal policy on administrative matters.

42. To enforce a strict list of criteria for disbursement, failing which a recovery of expense shall be treated as reimbursement, is, in the author’s view, a blatant disregard of the fundamental principle of the principal-agent relationship. Such rigid interpretation would result in more costs for businesses and industries, most notably in the legal profession. The higher cost would have an impact, particularly where the clients are businesses with exempt supplies or individuals who are unable to recover the GST paid as input tax credit. At the time of writing, it is understood that the Malaysian Bar Council has taken up this issue with Customs to avoid unnecessary increase in the cost of pursuing legal actions especially in the case of individuals where the interest of justice is concerned.27

**Conclusion**

43. It is important to differentiate between disbursement and reimbursement as the GST consequences and treatment for each varies. As a matter of good practice, all GST-registered businesses should be crystal clear on the contractual terms and relationships with a third-party supplier and have a GST clause in place so as to avoid any future disputes. In the event of such dispute, one should resort to the underlying principle of the principal-agent relationship.

**About the author**

Ivy Ling Yieng Ping (il@lh-ag.com) is an associate with the Tax, GST and Customs Practice at Lee Hishammuddin Allen & Gledhill. She is presently involved in a number of appeals before the GST Tribunal together with S Saravana Kumar (sks@lh-ag.com), who is a partner with the firm’s Tax, GST and Customs Practice.