

Contact Persons:

18 MAY 2018

Tax, GST & Customs

GST Removed — LHAG Answers Pressing Questions

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As part of its election manifesto, the new government will go ahead in removing goods and services tax (**GST**) from 1.6.2018, albeit by adopting a zero rating mechanism. The following *Gazette* orders were issued to give effect to this (all with effect from 1.6.2018):

- Goods and Services Tax (Rate of Tax) (Amendment) Order 2018
- Goods and Services Tax (Zero-Rated Supply) (Revocation) Order 2018
- Goods and Services Tax (Relief) (Revocation) Order 2018
- Goods and Services Tax (Imposition of Tax for Supplies in respect of Free Zones) (Revocation) Order 2018
- Goods and Services Tax (Application to Government) (Revocation) Order 2018
- Goods and Services Tax (Imposition of Tax for Supplies in respect of Designated Areas) (Revocation) Order 2018.

At this point, it is unclear as to how the new government will implement the sales and services tax. It could be by way of reintroducing the repealed Sales Tax Act 1972 and Service Tax Act 1975, or a new law could be tabled altogether.

The zero-rating approach is likely a temporary measure to enable the immediate removal of GST. However, until the GST Act 2014 is repealed, it remains valid law, and the government is not doing away with the GST compliance requirements such as the filing of returns and issuance of tax invoice.

These are some of the pressing questions that we anticipate:

- 1. Must GST registered persons account for GST during this period?**

Yes, until the GST Act 2014 is repealed, the existing GST law is still

applicable. All GST registered businesses should continue to file GST returns, although there is unlikely to be any output tax accountable.

2. Can GST registered persons still claim input tax credits during this taxable period?

Yes. Although all supplies are either zero-rated or exempted, there may be late tax invoices issued by suppliers in respect of the supplies made before 1.6.2018. For these tax invoices, the GST registered persons would still be able to claim input tax credits incurred to make taxable supplies in their GST returns in accordance with the existing GST law.

3. What should businesses do if you receive an assessment and/or penalty imposed by Customs during this period?

If you disagree with the assessment and/or penalty imposed by Customs, and in order to preserve your rights of appeal, you should file an appeal based on the existing avenues provided under the current GST Act 2014.

If the decision is not precluded from the jurisdiction of the GST Appeal Tribunal under Schedule 4 of the GST Act 2014, you can either:

- (a) file a review application under Section 124(1) of the GST Act 2014 within 30 days of being notified of the notice of assessment/ decision to impose penalty; or
- (b) file an appeal directly to the GST Appeal Tribunal under Section 126 of the GST Act within 30 days if the decision is made by the Director General of Customs.

If you are aggrieved by a decision that falls under Schedule 4 of the GST Act 2014, you may commence judicial review proceedings.

4. Is the assessment and/or penalty imposed by Customs under the GST Act 2014 enforceable after the abolition of GST?

The current GST Act 2014 has “savings provision” for the repealed Sales Tax Act 1972 and Service Tax Act 1975, which allow Customs to enforce and collect sales and services tax incurred by taxpayers before 1.4.2015 as if the Acts had not been repealed.

We anticipate that the new Act to repeal the GST Act 2014 will have similar savings provision for Customs to collect, refund or remit GST or to enforce the GST Act as if it had not been repealed.

5. Can Customs continue to conduct GST audits after the GST Act 2014 is abolished?

As above, with the savings provision, Customs will be able to continue to conduct GST audits even after the GST Act 2014 has been repealed.

6. What would happen to the existing GST appeals filed before the GST Appeal Tribunal?

As above, with the savings provision, the existing appeals before the Tribunal will continue to be disposed of based on the relevant GST law prevailing at the time, unless the new Act provides otherwise.

7. What will happen to GST refunds that are still due from Customs after the abolition of GST?

As above, with the savings provision, Customs would have to refund the GST owing to the taxpayer according to the GST law prevailing at the time even after GST is abolished. If it refuses or delays in doing so, you may have a basis on which to commence civil proceedings and, among others, pray that the refund is made with interest.

8. Do contracts/agreements entered into during this period need to incorporate clauses on GST?

Yes. However, the contract clause should be drafted in a manner so as to include any indirect tax which may be applicable in the event GST is abolished.

9. Would you have to pay GST now for a supply made after 1.6.2018?

Yes. Section 66(2) of the GST Act 2014 provides that when the GST rate fixed under Section 10 of the GST Act 2014 is changed, the old rate, i.e. 6%, would be applicable to the higher of the following amounts:

- (i) Full payment or part payment received before 1.6.2018; or
- (ii) Value of the supply of goods where the goods are wholly or partly removed or made available or the services are wholly or partly performed before 1.6.2018.

The new rate (i.e. 0%) would only be charged on the difference, if any, between the amount of whole supply and the above.

For example, assuming that the value of a table is RM100, total GST payable now at 6% is RM6, and that the seller has received RM50 as part payment for the table, here are the possible scenarios:

Scenario 1

The table will only be delivered after 1.6.2018. The balance of RM50 will only be paid after 1.6.2018.

The seller will still need to charge and account for GST at the rate of 6% on the RM50 received now (i.e. RM3). The balance of RM50 received after 1.6.2018 will be charged with the new GST rate of 0%.

Scenario 2

The seller delivered the table before 1.6.2018. The balance of RM50 will only be paid after 1.6.2018.

Although the balance of RM50 is only received after 1.6.2018, where

the value of the actual supply made before 1.6.2018 is higher than the payment received, based on Section 66(2) of the GST Act, the old rate of 6% would be applicable to the value of actual supply made before 1.6.2018.

In this case, as the value of the table, i.e. RM100, is higher than the part payment received, i.e. RM50, the seller would need to charge and account for GST at the rate of 6% on the RM100 (i.e. RM6).

If you have reason to believe that you or your business will be affected by this recent development, we are available to assist you.

Please contact our tax partners [Datuk D P Naban](#) or Mr [S Saravana Kumar](#) at tax@lh-ag.com, and we will champion your cause.

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Published by the Tax, GST & Customs Practice Group

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