

THIRD SCHEDULE

[SECTION 15]

VALUE OF SUPPLY OF GOODS OR SERVICES

Open market value

1. (1) The open market value of any supply of goods or services being a supply freely offered and made between persons who are not connected persons shall be in the following order:

- (a) the open market value of any supply of goods or services shall be equal to the consideration in money which the supply of those goods or services would generally fetch if it were to be a supply freely offered and made between persons who are not connected persons and supplied substantially under the same circumstances at or about the same time in Malaysia;
- (b) where the open market value of any supply of goods or services cannot be determined under subparagraph (a), the open market value shall be the value of a similar supply in Malaysia, being a supply freely offered and made between persons who are not connected persons;
- (c) where the open market value of any supply of goods or services cannot be determined under subparagraph (a) or (b), the open market value shall be determined based on the information and data available in Malaysia which provides a sufficiently objective approximation of the consideration in money which could be obtained for the supply of those goods or services.

(2) Where a taxable person making the supply is connected with the person to whom the supply is made, and—

- (a) the value of a supply made by a taxable person for a consideration in money or for a consideration not wholly consisting of money is less than its open market value; and
- (b) the supply is a taxable supply and the person to whom the supply is made is not entitled to credit under section 38 for the whole or any part of the tax on the supply,

the value of the taxable supply of goods and services shall be taken to be its open market value.

(3) For the purposes of subparagraph (1)(b), “similar supply” means any other supply of goods or services that closely represents the supply being valued in respect of materials, components, parts and characteristics and are functionally and commercially interchangeable with the supply being valued having regard to the quality and reputation of the other supply and the supply being valued.

(4) For the purposes of this Act, “open market value” shall be taken to be an amount, with the addition of the tax chargeable.

Connected persons

2. (1) A person shall be deemed to be connected if—

- (a) they are officers or directors of one another’s business;
- (b) they are legally recognized partners in business;
- (c) any one person directly or indirectly owns, controls, or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (d) one of them directly or indirectly controls the other;
- (e) both of them are directly or indirectly controlled by a third person;
- (f) together they directly or indirectly control a third person; or
- (g) they are members of the same family.

(2) A person shall be deemed to be members of the same family if—

- (a) they are connected by blood relationship within the fourth degree of relationship;
- (b) they are married to one another or if one is married to a person who is connected within the fourth degree of relationship to the other; or
- (c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

(3) A trustee in a settlement is connected with—

- (a) any individual who in relation to the settlement is a settlor;
- (b) any person who is connected with such an individual; and
- (c) a body corporate which is connected with that settlement.

Token, stamp (other than postage stamp) or voucher

3. Where a right to receive goods or services for a monetary value stated on any token, stamp (other than postage stamp) or voucher is granted for a consideration, the consideration shall be disregarded except to the extent, if any, it exceeds the monetary value.

Business assets

4. Where there is a supply of goods by virtue of—

(a) subparagraph 5(1) of the First Schedule, not for a consideration; or

(b) subparagraph 5(8) of the First Schedule,

the value of the supply shall be the open market value.

Foreign exchange

5. Where any sum relevant for determining value is expressed in a currency other than ringgit, it is to be converted into ringgit at the selling rate of exchange prevailing in Malaysia at the time when the supply takes place or in the case of the importation of goods, at the rate of exchange determined by the Director General at the time applicable for the calculation of customs duty or excise duty and valuation.

Value of supply based on retail price under certain circumstances

6. (1) Where—

(a) the whole or part of a business carried on by a taxable person consists in supplying to a number of persons goods to be sold, whether by them or others, by retail; and

(b) those persons are not taxable persons,

the Director General may by notice in writing to the taxable person direct that the value of any such supply by him after the giving of the notice or after such later date as may be specified in the notice shall be taken to be its open market value on a sale by retail.

(2) A notice under subparagraph (1) may be varied, withdrawn or cancelled by the Director General by a further notice given in writing.

Value of supply of goods from a person licensed under section 65A of the Customs Act 1967 or operating in a free industrial zone under paragraph 10(1)(b) of the Free Zones Act 1990

7. Where a taxable supply of goods is made by a person licensed under section 65A of the Customs Act 1967 or a person operating in a free industrial zone under paragraph 10(1)(b) of the Free Zones Act 1990 to any person who is not licensed under section 65A of the Customs Act 1967 or to any person not operating in a free industrial zone under paragraph 10(1)(b) of the Free Zones Act 1990, the value of the goods shall be the value as determined under section 16.

Value of betting and gaming supplies

8. (1) Where a taxable supply of services is made by a person licensed under any written law involving bettings, sweepstakes, lotteries, gaming machines or games of chance, the value of supply shall be determined in accordance with the following formula:

$$\frac{100}{100 + C} \times (A - b)$$

where A is the total amount received for the supply less any tax or duty under any other written law except excise duty;

B is the amount of money, if any, payable to any person participating successfully in the bettings, sweepstakes, lotteries, gaming machines or games of chance; and

C is the rate of tax fixed under section 10.

(2) Where the value of supply determined under paragraph (1) is negative, such value shall be treated as nil.