



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

PUBLIC RULING NO. 04/2017

ISSUANCE AND HOLDING OF SECURITIES

DATE OF ISSUE: 12 DECEMBER 2017



DIRECTOR GENERAL'S PUBLIC RULING

In accordance with section 76 of the Goods and Services Tax 2014, the Director General issues a Public Ruling No. 04/2017 which sets out the interpretation of the Director General of Customs for the application of the Goods and Service Tax Act 2014 in relation to issuance and holding of securities. Where a change in legislation or case law (the law) affects the content of a Public Ruling, such change overrides the Public Ruling.

This Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

Director General of Customs

Royal Malaysian Customs Department

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1. WHAT IS THIS RULING ABOUT

This ruling clarifies the GST treatment on the issuance and holding of securities.

2. LEGISLATIVE CONTEXT

2.1 Under Item 8, Second Schedule of the Goods and Services Tax (Exempt Supply) Order 2014, the transfer of ownership of any securities or derivatives relating to securities is an exempt supply. This provision specifies the treatment of trading of securities including shares. However, the GST treatment for the issuance and holding of securities is not covered in the Second Schedule.

2.2 The issue relating to this Ruling is the eligibility to claim input taxes on acquisitions made relating to the issuance and holding of securities which was made for the purpose of an economic activity as specified under subsection 2 (1) of the Goods and Services Tax Act 2014 (GSTA 2014). Input tax is defined under subsection 2 (1) of the GSTA 2014, as follows—

“input tax” means –

- (a) tax on any supply of goods or services to a taxable person; and*
- (b) tax paid or to be paid by a taxable person on any importation of goods,*

and the goods or services are used or are to be used for the purposes of any business carried on or to be carried on by the taxable person:

Provided that where the goods or services are used or are to be used partly for the purposes of any business carried on or to be carried on by the taxable person and partly for other purposes, tax on the supply and importation shall be apportioned so that only so much as is attributable to the purposes of his business is counted as his input tax.

3. RULING AND EXPLANATION

Definition

For the purposes of financial services under this Ruling-

- (a) **“securities”** means –
 - (i) debt securities in the form of bonds, sukuk, debentures, notes or other similar financial instruments representing or evidencing indebtedness; or
 - (ii) equity securities in the form of shares or loan stock;
- (b) **“derivatives”** means any agreement or financial instrument of which its market value, delivery or payment obligations are derived from, referenced to or based on, but not limited to, underlying securities or commodities, assets, liabilities, rates, indices or any of its combination, whether or not a standardized derivative or an over-the-counter derivative;
- (c) **“issuance of shares”** means the authorization and delivery of shares for sale to the public by a corporation for the purpose of raising capital;
- (d) **“holding of shares”** means the act of owning the shares by a shareholder for the purpose of investment.

4. GST IMPLICATION ON THE ISSUANCE AND HOLDING OF SHARES, OTHER FINANCIAL INSTRUMENTS OR SECURITIES.

Issuance of shares, other financial instruments or securities

4.1 For the purpose of GST, the issuance of shares by a taxable person is not a supply of service when it is intended to raise capital for the purpose of the business. Thus, the issuance of shares, other financial instruments or securities other than unit trust by a taxable person for the purpose of raising capital is not a supply.

4.2 In the Austria case of **KRETZTECHNIK AG V FINANZAMT LINZ, CJEJ CASE C-465/03; 2005 STC 1118; 2005 1 WLR 3755**, a company based in Austria issued new shares. The company claimed the input tax on the related costs. The tax

authorities disallowed the input tax deduction as it is related to the exempt supply of shares. The company won, it was decided by ECJ that the issuance of new shares did not constitute a supply and input tax incurred in relation to a share issue is recoverable at the company's residual rate, provided that the transaction took place for a business purpose, such as raising capital for the business.

Holding of shares for investment

4.3 For the purpose of GST, the holding of shares for investment is not a supply as there is no guaranteed consideration (dividends) directly relating to the supply. The share issuer does not promise any payment of dividends to the shareholder.

Example 1

Invest Asia Sdn. Bhd. bought 3 lots of Suria Sun Bhd. shares in January 2016. For year ending December 2016, Suria Sun did not declare any dividends to its shareholders. Even though Invest Asia holds the shares in year 2016, it did not receive any dividend for the year 2016. The holding of shares is not a supply since there is no guaranteed consideration and it is not subject to GST.

Holding of other financial instruments or securities for investment

4.4 For the purpose of GST, the holding of debt securities such as bonds [Item 7, Second Schedule of the GST (Exempt Supply) Order 2014] is treated as an exempt supply as the bond holder is promised a return on investment in the form of interest payments (coupon) as agreed between both parties in the contract.

Example 2

BF Furniture invests in par value corporate bonds:

- *par value of RM100,000;*
- *8% annual coupon; and*
- *maturity of 10 years.*

BF Furniture will receive a total of RM8,000 (RM100,000 x 8%) of interest per year for the next 10 years. Since most bonds issuer pays interest semi-annually, BF

Furniture will receive two payments of RM4,000 per year for 10 years. When the bond matures after 10 years, BF Furniture will be able to get back RM100,000 from this investment.

GST implications:

- a) As the holding of bonds is an exempt supply, the interest payments are not subject to GST.*
- b) The redemption of the bond at maturity is not a supply.*

'Share or debts buy back'

4.5 Where there is a 'share buyback programme' or a 'company purchase of own shares' or 'debt buy back' by a company of its own debts, the share buyback or debt buy back by the company is not a supply but the subsequent resale of such shares or debts by the company is to be treated as a company trading in securities and hence be considered making exempt supplies.

Input tax

4.6 Any input tax on the costs attributable to the following is claimable provided that the purpose of issuance and holding thereof is to increase the company's capital and investment for the benefit of its economic activity in general:

- (a) issuance and holding of shares for the purpose of raising capital and investment respectively;
- (b) issuance of debt securities for the purpose of raising capital; and
- (c) 'share buyback programme' or 'debt buy back' by a company of its own shares or debts.

4.7 Any input tax on the costs attributable to the holding of bonds, debentures, notes or other similar instruments is not claimable as it is attributable to an exempt supply.

Example 3

Zara Link Sdn. Bhd, a GST registered manufacturing company, decides to expand its business and requires capital to do so. Zara Link decides to issue shares to generate capital to finance its extended business operations. Zara Link incurred GST on the supply of management services acquired from a Share Issuing House.

GST implications:

- a) The issuance of shares is not a supply and not subject to GST.*
- b) Zara Link is entitled to claim the input tax incurred because the activity performed is for the purpose of raising capital for the expansion of Zara Link's business. Refer to the first rule of apportionment that is the definition of input tax under section 2 of the GST Act 2014.*

Example 4

Street Stock Sdn. Bhd. bought 10 lots of CXX shares at RM4.50 per share on 21 October 2017 amounting to RM45,000. On 3 November 2017 he sells 10 lots of the shares at RM4.61 per share amounting to RM46,100. Street Stock earns an income of RM1,100 as spread on the selling of the shares.

GST implications:

- a) Street Stock is making a supply of services i.e. the trading of shares and the consideration for the supply is the spread earned of RM1,100.*
- b) The supply of services is an exempt supply under Item 8 of the Second Schedule of the Goods and Services Tax (Exempt Supply) Order 2014.*
- c) The input taxes incurred on brokerage commission and clearing fees that Street Stock acquired is not claimable.*

5. DATE OF EFFECT

This Public Ruling takes effect from the date of issue.

6. REFERENCES

References were made to the followings:

- (i) Goods and Services Tax Act 2014.
- (ii) Goods and Services Tax (Exempt Supply) Order 2014.
- (iii) Austria Case Law; KRETZTECHNIK AG V FINANZAMT LINZ, CJEU CASE C-465/03; 2005 STC 1118; 2005 1 WLR 3755 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/>)