



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

PUBLIC RULING NO. 03/2017

GIFT RULES

DATE OF ISSUE: 1 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. 03/2017 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 gift rules. 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This Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.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

Published by

Royal Malaysian Customs Department

Published on 1 December 2017

First edition on 1 December 2017

© Royal Malaysian Customs Department.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording without the written permission of copyright holder. Such written permission from the publisher must be obtained before any part of this publication is stored in a retrieval system of any nature.

CONTENTS

1.	WHAT IS THIS RULING ABOUT	1
2.	LEGISLATIVE CONTEXT	1
3.	RULING AND EXPLANATION	3
	Definition	3
	Determination of GST treatment on gift	3
4.	GST APPEAL TRIBUNAL CASE	10
	BPCL vs DG OF CUSTOMS (Case No 14 of 2015)	
5.	DATE OF EFFECT	11
6.	REFERENCES	11

1. WHAT IS THIS RULING ABOUT

This Ruling clarifies the GST treatment on gift rules.

2. LEGISLATIVE CONTEXT

2.1 The provisions related for this ruling are as follows;

- (i) section 11 (7) of the Goods and Services Tax Act (GSTA) 2014,
- (ii) section 15 (1) and (5) of the GSTA 2014,
- (iii) Para 5, First Schedule of the GSTA 2014 and
- (iv) Para 4, Second Schedule of the GSTA 2014.

(i) Section 11 (7), GSTA 2014

(7) Where there is a supply of goods by virtue only of a transfer or disposal of business assets under subparagraph 5(1) of the First Schedule, the time of supply is at the time when the goods are transferred or disposed of.

(ii) Section 15, GSTA 2014

(1) Subject to the Third Schedule, the value of any supply of goods or services shall be determined in accordance with this section.

(5) Where the supply is not for a consideration, the value of the supply, shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that supply.

(iii) First Schedule - Matters to be treated as a supply of goods or a supply of services

Para 5 - Transfer, etc., of business assets

(1) Subject to subparagraph (2), where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person

carrying on the business so as no longer to form part of those assets, whether or not for a consideration, the transfer or disposal is a supply of goods by the person.

(2) Subparagraph (1) does not apply where the transfer or disposal is –

- a) a gift of goods made in the course or furtherance of the business made to the same person in the same year where the total cost to the donor is not more than five hundred ringgit; or*
- b) a gift, to an actual or potential customer of the business, of an industrial or commercial sample in a form not ordinarily available for sale to the public.*

(3) Whereby or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of goods is a supply of services.

(4) Subparagraphs (1) and (3) shall not deem anything done not for a consideration as a supply except where the person who is carrying on a business is entitled to credit under section 38 on the supply or importation of the goods.

(5) The supply of goods in subparagraph (1) or the supply of services in subparagraph (3) is to be treated as made in the course or furtherance of the business, and in the case of a business carried on by an individual –

- a) subparagraph (1) shall apply to any transfer or disposal of goods in favour of himself personally; and*
- b) subparagraph (3) shall apply to goods used or made available for use by himself personally.*

Second Schedule - Matters to be treated as neither a supply of goods nor a supply of services

Para 4 - Supplies excluded from any credit

Where the whole or any part of tax charged on any supply or importation of goods is excluded from any credit under subsection 38(12), the subsequent supply of the same goods shall be treated as neither a supply of goods nor a supply of services.

3. RULING AND EXPLANATION

3.1 Definition

For the purposes of this Ruling:

- (a) "gift" means a supply of goods without consideration (free) which involves a donor and a recipient whether for business purposes or not for business purposes including samples;
- (b) "year" means the taxable year that is the financial year of the taxable person's business, the taxable year begins on;
- (c) "donor" means the taxable person who supply the gifts;
- (d) "recipient" means any person who receives the gifts;
- (e) "goods" means any kinds of movable or immovable goods including money as defined under section 2 of the GSTA 2014;
- (f) "cost" means
 - i. In the case of the local goods, includes the purchase price of goods inclusive of delivery cost and/ or assembling cost excluding GST;
 - ii. In the case of imported goods, the value as declared in the Customs Form No.1 excluding GST.
- (g) "open market value" (OMV) means value which is determined under item 1, Third Schedule of the GSTA 2014.

3.2 Determination of GST treatment on gift.

- 3.2.1 There are matters to be taken into consideration to determine the GST treatment in the supply of goods or services as gifts.

- 3.2.2 Under Para 5(2)(a), First Schedule of GSTA 2014, the transfer or disposal of business assets as gifts are not subject to GST if;
- a. the acquisition cost of goods by the donor does not exceed RM500;
 - b. the supply of gifts is done within one year; **and**
 - c. the gifts are given to the same recipient.

In addition to the above provision, if the supply of gifts does not qualify under the outlined conditions, then that supply of gifts will become a supply or transfer of business asset under para 5(1), First Schedule, GSTA 2014.

- 3.2.3 Under Para 5(2)(b), First Schedule of GSTA 2014, any gifts in the form of samples not ordinarily available for sale to the public for business purposes also not subject to GST.

- 3.2.4 The following examples explain the GST treatment on the gifts;

- (a) **Gifts less than RM500 to the same employee in a year, the employer need not have to account for the GST.**

Example 1

Venture Sdn. Bhd bought hampers at the cost of RM100 each to give to every employee for the four main celebrations each year. The total cost of hampers to every employee is RM400. Since the cost of hampers to each employee did not exceed RM500 a year, then no output tax need to be accounted by Venture Sdn Bhd on the distribution of the hampers.

- (b) **Gifts more than RM500 to an employee in a year, the employer need to account for the output tax.**

Example 2

Company WNL Sdn. Bhd. gives a digital camera acquired at RM700 as a gift to an employee who has worked for 15 years in the company. The gift is not stated in the employment contract. Therefore, WNL Sdn. Bhd. as a GST registered

person has to account for an output tax of RM42 on the gift because the cost of the digital camera is more than RM500.

(Calculation:- RM700 x 6% = RM42)

- (c) Gifts less than RM500 to existing or potential clients is not subject to GST.**

Example 3

Junor Enterprise buys hampers at a cost of RM250 each to be given as gifts to its selected existing or potential clients for each Hari Raya celebration. Junor Enterprise need not have to account for the output tax on the gifts to existing or potential clients because the purchasing costs is not more than RM500 for each existing or potential clients.

- (d) Gifts of more than RM500 to clients are subject to GST.**

Example 4

Syarikat Aril Furniture Sdn Bhd gives a gift of sofa set at a cost of RM1,000 to a furniture designer company, Zaki Designer Enterprise. As a taxable person, Syarikat Aril Furniture Sdn Bhd needs to account for the output tax of RM60 on the gift because the sofa set costs more than RM500.

(Calculation:- RM1,000 x 6% = RM60)

3.2.5 Determination of the value of gifts where no proof of purchase can be provided.

The value of gifts will be determined based on the open market value (OMV) which is outlined under section 15(5), GSTA 2017. Therefore, the open market value of the supply is equal to the value of the gifts including the amount of tax chargeable.

Example 5

Syarikat ABC gives gifts to employee A in the year of 2015 as follows:

	<i>Date</i>	<i>Cost (RM)</i>	<i>OMV (price+GST)</i>	<i>GST calculations (GST rate = 6%)</i>	<i>Time of supply</i>
First Scenario	April 2015	200		<i>para 5(2)(a), 1st. schedule</i>	
	June 2015	200		<i>para 5(2)(a), 1st. schedule</i>	
	Nov 2015	300		<i>para 5(1), 1st. schedule</i>	<i>Sec. 11(7)</i>
	Total	700	742	$6/106 \times \text{RM}742 = \text{RM}42$	Nov 2015
Second Scenario	May 2015	800	848	$6/106 \times \text{RM}848 = \text{RM}48$	May 2015

Syarikat ABC need to account for the output tax of RM42 on the gifts given out for the taxable period of November 2015 in the first scenario and another RM48 of output tax in the taxable period of May 2015 in the second scenario.

In the first scenario, the taxable period is determined through the time of supply which is provided under section 11(7), GSTA 2014. Therefore, the time of supply for supply of gifts is when the time the gifts are transferred or disposed of. Since the supply of gifts covers a series of transfer in April, June and November 2015, then the time of supply for the supply of gifts is considered as taken place in November 2015.

The time of supply is not in April 2015 or June 2015 because at that time both supplies still do not fall under para 5(1) First Schedule, GSTA 2014. When both supplies are made they still fall in the category of gifts under para 5(2)(a) First Schedule, GSTA 2014. However the provision of gifts covers the supply of gifts for one year to the same recipient. Therefore, when the company supplies the last gift in November 2015, para 5(2)(a) is no longer applicable in this case. The supply will revert to para 5(1) of the Act. Hence, the time of supply is in November 2015 as stated in section 11(7), GSTA 2014.

In the second scenario the time of supply is considered as taken place in May 2015.

3.2.6 Gifts in the form of cash, vouchers and cheques are neither supplies of goods nor services

Example 6

Syarikat FAY Trading gives cash of RM1,000 to every employee as a token of appreciation. Gifts of cash is neither a supply of goods nor services and the company need not have to account for the output tax on the gift.

3.2.7 Gifts of sample

Industrial or commercial sample of goods given to clients or buyers or potential clients which is in the form not for sale to the public, is not subject to GST, subject to the following conditions;

- i. the goods are marked with the sign “not for sale” or “sample” or any other signs which conveys the same meaning and the size of the package is much more smaller from the packaging size in the market; or
- ii. the goods are machines replicas which may have the same limited functions compared to the specifications of the actual machines.

Example 7

A shampoo production company, Haneem Hair Care Sdn Bhd has a new product of shampoo. The company gives free shampoo samples in pocket size packages which is smaller than the market size and printed the word “not for sale” to the public in the shopping mall and grocery stores for promotion purposes.

The company need not have to account for the output tax on the gifts of samples distributed.

Example 8

Fauzi Kitchen Manufacturing Sdn Bhd, a taxable person under GST, installs an oven which can measure quantity of the dough mixture to bake bread. The oven is a replica of the actual oven which has all the functions but do not have the motor and compressor. The oven is not in the form ready for sale to the public and given free to customer as a commercial sample. The gift of oven is not subject to GST and the company need not have to account for any output tax on the gift.

3.2.8 Transfer of sole proprietor's goods to himself

Transfer or disposal of goods to himself by a sole proprietor is a supply of goods under Item 5(5)(a), First Schedule, GSTA 2014.

Example 9

Chan Trading Company, a sole proprietor and GST registered person, buys a laptop for the company's usage. After 3 years, Mr. Chan disposes the laptop to himself. This disposal is considered as a supply under GST. Chan Trading Company need to account for the output tax based on the OMV of the disposal of the laptop.

Example 10

Nizam Trading Company is a GST registered sole proprietor which runs a business of selling mineral water. Encik Nizam's family took 100 bottles of mineral water for own use every month. The disposal of the mineral water for his family is a supply of goods and subject to GST. Nizam Trading Company need to account for the output tax on the consumption of the mineral water.

3.2.9 Acquisition of gifts without input tax

Under Para 5(4) of First Schedule, GSTA 2014, gifts of goods without consideration is not deemed as a supply if the acquisition of the goods is of the following-nature;

- i. goods acquired from a non-taxable person,
- ii. goods acquired of an exempt supply,
- iii. goods acquired free of charge.

Example 11 (acquisition from a non-taxable person)

Bong Trading gives a watch to every excellent employee. The watch was acquired from a non GST registered person at a price of RM1,200. The free gift is not a supply and not subject to GST because the acquisition does not involve any input tax. Hence the company need not to account for any output tax on the gift.

Example 12 (acquisition from an exempt supply)

Syarikat Seven Sdn. Bhd. bought a residential apartment for RM250,000 as gift to the company's director. The acquisition of the residential apartment is not subject to GST since the acquisition is of an exempt supply. Therefore, no output tax should be accounted for the supply of the gift.

Example 13 (acquired free)

Syarikat JKL Sdn. Bhd. gives refrigerator as a gift to employee who is going to be retired. The refrigerator was acquired free from a supplier. Therefore, the company need not have to account any output tax on the supply of the refrigerator.

3.2.10 Input tax not claimed on the acquisition of gifts

Goods or services acquired with costs more than RM500 but the input tax incurred was not claimed and the goods or services are given as gifts. In this case, if the donor is a taxable person, he still needs to account for the output tax on the supply of goods or services as gifts.

Example 14

KL Transport Sdn Bhd gives a pair of specially tailored suit to every driver on the company's anniversary. Every specially tailored suit costs RM800 including GST. The company did not claim the input tax incurred. Even though the input tax is not claimed, the company still need to account for the output tax of RM45.28 for every pair of suit.

(Calculation :- $6/106 \times RM800 = RM45.28$)

3.2.11 Disallowance of input tax on the acquisition of gifts

Goods for which input tax is disallowed and given away as a gift subsequently is not a supply. Therefore, the donor did not need to account for the output tax on the gift.

Example 15

Khairul Garment Manufacturing Sdn Bhd bought a passenger motorcar which is blocked input for the company's usage. After 5 years, the company decides to give the company car to the company's manager who will retire as a token

of appreciation for his loyal services to the company. The gift is without consideration and is not subject to GST. Therefore, the company does not have to account for the output tax on the gift.

4. GST APPEAL TRIBUNAL CASE

BPCL (Appellant) vs DIRECTOR GENERAL OF CUSTOMS (Respondent), CASE NO.14/2015

Facts of the case:

The Appellant engaged in supplying engine oil to the independent Distributor, who in turn supply the engine oil to the Consumer. Due to market conditions and commercial reasons, the Appellant undertakes market promotions to either protect or increase the market share of the engine oil. The Appellant set up various types of promotions such as tied in promotion, ad-hoc promotion and non-tied in promotion. These promotions involve the Appellant giving the BP branded free gifts (t-shirts and umbrellas) to the consumer through the Distributor.

This appeal was filed against the decision of the DG's Decision dated 10 August 2015 as follows;

2.1 supply of BP branded goods for no additional consideration where supplied for brand advertising.

Issues:

- i) Was there deemed supply made by the Appellant in respect of the free gifts?
- ii) Was the free gifts subject to be accounted for GST?
- iii) Was the DG's decision dated 15th August 2015 correct?

Decision:

As regards to the first issue, the Tribunal decides that the gifts are the business assets of the Appellant who was carrying out the business which were transferred to the Distributor for disposal to BP's customer when they buy the BP product. Since there is no consideration given (being a free gift) it is therefore deemed supply under Para 5 (1),

First Schedule of GSTA 2014 and the Appellant must account the output tax based on the value of the goods.

As regards to the second issue, since the free gifts are deemed supply by virtue of Para 5(1), the supply is subject to be accounted for GST.

For the third issue, the Tribunal finds that the Appellant has failed to prove that the DG has made a wrong decision in deciding that the gift rule applies.

Reference of the Tribunal case;

The full report of this Tribunal case can be accessed through the following website;

<http://www.treasury.gov.my/index.php/en/tax/tax-cases-decision/decision-by-gst-appeal-tribunal-trcbp.html>

5. DATE OF EFFECT

The Director General's Decisions cited below are withdrawn and replaced with this Public Ruling which takes effect from the date of its issuance:

- i. Item 4, Director General's Decision 2/2014,
- ii. Item 2, Director General's Decision 1/2015, and
- iii. Item 5, Director General's Decision 5/2015.

6. REFERENCES

References were made to the followings;

- (i) Goods and Services Tax Act 2014.
- (ii) Goods and Services Tax Regulations 2014.
- (iii) Goods and Services Tax (Exempt Supply) Order 2014.
- (iv) Tribunal Case Law No. 14 of 2015, Goods and Services Tax Appeal Tribunal.