



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON GOVERNMENT, LOCAL AUTHORITY AND STATUTORY BODY

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INTRODUCTION

1. This guide is prepared to assist you in understanding the Goods and Services Tax (GST) and its implications on the government sector.
2. This guide should be read together with section 64 of the GST Act 2014 and its relevant subsidiary legislations, namely the Goods and Services Tax Regulations 2014, Goods and Services Tax (Application to Government) Order 2014 and Goods and Services Tax (Relief) Order 2014.

Overview of Goods and Services Tax (GST)

3. GST is a multi-stage tax on domestic consumption. GST is charged on all taxable supplies of goods and services in Malaysia made in the course or furtherance of business in Malaysia except those specifically exempted. GST is also charged on the importation of goods and services into Malaysia.
4. Payment of tax is made in stages by the intermediaries in the production and distribution process. Although the tax would be paid throughout the production and distribution chain, only the value added at each stage is taxed thus avoiding double taxation.
5. In Malaysia, a person who is registered under the Goods and Services Tax Act 2014 is known as a “registered person”. A registered person is required to charge GST (output tax) on his taxable supply of goods and services made to his customers. He is allowed to claim back any GST incurred on his purchases (input tax) which are inputs to his business. Therefore, the tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements.

OVERVIEW OF THE GOVERNMENT SECTOR

Federal Government and State Governments

6. For GST purpose, the government sector is categorized into the Federal Government and the State Governments.

7. The Federal Government consists of all ministries together with the various departments and commissions that are set up under the respective ministries. The Federal Territories of Kuala Lumpur, Labuan and Putrajaya are included under the Federal Government. Ministries are the highest bodies in the federal administrative machinery. Each ministry is responsible for formulating, planning, controlling and coordinating government policies pertaining to its functions. It is also the responsibility of the ministry to control departments and statutory bodies under it. Government departments are the second highest agencies responsible for implementing government policies. Usually the functions of a department are related to certain policy determined by the Government. The daily activities of a government department involve direct rendering of services to the public. The services rendered include security, social development and other social services.

8. The State Governments consist of 13 states led by the chief ministers. It consists of the state secretary's office with its various divisions, the various state departments and district offices. The state governments deal with matters as assigned to it under the Federal Constitution.

9. The Federal Government and State Governments basically carry out regulatory and enforcement (R&E) functions. All activities carried out are not within the scope of GST (out of scope).

Local Authorities

10. Local authorities are established under the Local Government Act 1976 (*Act 171*) and the respective state ordinance and by-laws. Each local authority is a separate legal entity from the Federal or State Government or other local authorities. They are responsible on the local affairs based on the powers set by the federal government or state governments. They carry out their functions in accordance with the law provided. Their area of administration is according to the population size and can be within the city, municipal or district. As such the local authority can be the City Hall/Council, Municipal Council or the District Council. Generally, the local authorities are responsible for numerous services related to housing, waste management, taxation, land assessment, the cleanliness of the environment, public amenities/facilities, social obligation and development of their local jurisdictions.

Examples of local authorities are Kuala Lumpur City Hall, Shah Alam City Council, Kajang Municipal Council and Gerik District Council.

Statutory Bodies

11. The setting up of a statutory body is governed by laws. Statutory bodies are established with the objective of implementing certain duties and responsibilities in line with government objectives. They act as public regulatory bodies carrying out R&E functions of the government. Examples of statutory bodies are Bank Negara Malaysia, Malaysian Industrial Development Authority (MIDA), Securities Commission, Malaysian Communications and Multimedia Commission (MCMC) and Companies Commission of Malaysia.

Government Linked Companies (GLCs)

12. Government-Linked Companies (GLCs) are business entities that are owned by the government or having government interest. For GST purpose, GLCs are not regarded as under the Government sector. GST is applied to GLCs as any other business entity. Examples of government linked companies are Malaysia Building Society Bhd., KLCC Properties Holding, Malaysia Airlines and Petronas.

OVERVIEW ON REGULATORY AND ENFORCEMENT (R&E)

13. Section 64(1)(b) of Goods and Services Tax Act 2014 provides that the Act is not applicable to local authorities and statutory bodies in respect of the R&E functions. They are deemed to carry out R&E functions if;

- (a) The local authority or statutory body is given the authority by any written law for the appropriate benefits or have connection with the implementation of regulatory functions and enforcement; and
- (b) The supply made by the local authority or statutory body is not the same or similar to a supply made by any other taxable person and as such is non-competitive.

14. In performing the R&E functions, the local authority or statutory body imposes fees, levies, taxes, or cess and takes action against those who default or fail to comply with the relevant laws.

GST TREATMENT ON GOVERNMENT, LOCAL AUTHORITY AND STATUTORY BODY

GST Treatment on Supplies by Government

15. An important concept under GST is the concept of supply made in the course or furtherance of a business which is not directly applicable to the Federal Government or State Governments as they are more involved in carrying out statutory functions and not so much business activities. Government exists to regulate laws enacted by Parliament or the State Assembly.

16. Government supplies for the purpose of GST are classified as supplies made by ministries, departments, commissions and agencies under the Federal Government and State Governments which have legal standing. These supplies are wholly funded by tax, borrowings or grants which normally do not have a direct link to the supplies.

17. The government's R&E functions focus more on issues concerning social risks and regulation such as issues of health, safety, welfare, working conditions, and the environment.

18. Besides R&E functions, government's supplies are often supplied as an obligation for meeting the needs of the general interest and not having an industrial or commercial character. The supplies are normally given free or at a nominal charge with no profit element. An example is the outpatient treatment at government hospitals.

19. In general, the government activities are not business oriented, section 64 of the GST Act 2014 provides that the Act shall not apply in relation to any supply of goods or services made by:

- (a) the Federal Government and State Governments, unless the Minister otherwise directs by order published in the Gazette; or
- (b) any local authority and statutory body in respect of its R&E functions.

20. With the above provision, supplies made by the Federal Government and State Governments are treated as out of scope supplies unless the supplies are specified in the GST (Application to Government) Order 2014. The term out of scope means that the supplies are not within the ambit of the GST Act 2014 and are therefore not subject to GST.

21. Under the GST (Application to Government) Order 2014, the following supplies are subject to GST;

- (a) Supplies of treated water by;
 - (i) Public Works Department, Perlis;
 - (ii) Public Works Department, Sarawak; and
 - (iii) Sabah State Water Department.
- (b) Any supply made by the Malaysian Broadcasting Department in relation to:
 - (i) advertising space or advertising time on radio or television;
 - (ii) letting out broadcasting equipments and facilities.
- (c) Supplies made by the Prisons Department of Malaysia in relation to goods and services by the prisoners.
- (d) Any supply made by the Sabah State Railway Department in relation to transportation of goods.

22. The Government department as specified in the GST (Application to Government) Order 2014 have to be registered under the GST Act once their annual turnover of taxable supplies in a period of twelve months exceed RM500, 000. Once registered, such Government department have to comply with the various obligations required of a registered person under the Act. This includes proper keeping of records of transactions made, the issuance of tax invoice for any supplies made, the submission of GST returns according to the taxable period granted, the payment of

GST and the claiming of input tax credit. (*For further information, please refer to the GST General Guide*).

GST Treatment on Government Acquisitions

23. All acquisitions or purchases of goods made by the Federal Government and State Governments will be given relief from the payment of GST except for petroleum and motor cars as provided in the GST (Relief) Order 2014 or by virtue of section 56(3) of the GST Act 2014 where the Minister may, in any particular case and subject to such conditions as he deems fit to impose, relieve the Federal Government or State Governments from the payment of GST. However, no relief from the payment of GST is given for the acquisition of services by the government. GST paid on the acquisition of such services are not claimable as Federal Government and State Governments are not GST registered persons unless they are the Government department specified in the GST (Application to Government) Order 2014. (*For more information, please refer to Relief Guide Item 3, First Schedule, Goods and Services Tax (Relief) Order 2014*).

GST Treatment on Government's Grants and Subsidies

24. The Government gives financial aid in the form of grant and subsidy to certain sectors of the economy such as subsidy for diesel, fertilizer, rice, research grant, etc. Grants and subsidies are normally distributed through Government agencies or appointed parties (e.g. Persatuan Nelayan Kebangsaan (NEKMAT)). The GST treatment on Government grants and subsidies are either out of scope or are regarded as non-supplies (in case of grants in cash) and hence are not subject to GST.

GST Treatment on Supplies by Local Authorities and Statutory Bodies

25. Local authorities and statutory bodies are normally involved in making mixed supplies and supplies in relation to R&E functions. It is a question of business or non-business supply. Mixed supply occurs when the supply consists of both taxable and exempt supply. Renting out of halls, sport facilities, are examples of taxable supplies. Renting out flat dwellings is an example of exempt supply. (*Please refer to the GST (Exempt Supply) Order 2014 for a full list of the exempt supplies*).

26. If the local authorities and statutory bodies provide supplies as stated clearly in their state ordinance and by-laws, which are R&E functions, they are deemed to be making a non-business supply and such supply is treated as out of scope of GST. If private or business supplies are also offered, the normal GST rules will apply.

27. If the R&E functions are outsourced to third parties, the supply of goods and services are subject to GST such as garbage collection and sewerage services. In this case the company appointed by the Local Authority has to charge GST on the services provided to the Local Authority. The Local Authority, if a registered person, is entitled to claim back input tax incurred.

GST Treatment on Acquisitions by Local Authorities and Statutory Bodies

28. All acquisitions or purchases made by local authorities and statutory bodies, whether for their taxable supplies, exempt supplies or supplies in relation to their R&E functions, are subject to GST. For the purpose of input tax credit, the GST incurred in making taxable supplies and supplies in relation to their R&E functions can be claimed back. The local authority or statutory body has to be a GST registered person to be entitled to the input tax credit.

29. Some examples of R&E functions and taxable supplies of the local authority are as in the Appendix 1.

GST Treatment on Revenue Collected by Government, Local Authorities and Statutory Bodies

30. Government, local authorities and statutory bodies receive income on certain supplies they make to the public, such as fees collected for issuance of permits, licenses and registration and revenue from:

- (a) cess received from timber concessions given out to logging companies;
- (b) royalties collected on rights given to petroleum companies to explore and to exploit for gas and crude oil;
- (c) levies charged on vehicles leaving the country;
- (d) the fee for tendering and changing of vehicles' registration number; and

- (e) the application fee for land caveat.

31. Such income received by Government, statutory bodies and local authorities for making supplies which are R&E functions are regarded as out of scope supplies and is not subject to GST.

FREQUENTLY ASKED QUESTIONS

Federal and State Governments

Q1. If a government department disposes off its assets (office equipments or land or building), is the disposal of asset subject to GST?

A1. All Government assets, including capital assets, disposed off to the public are regarded as out of scope supplies, hence not subject to GST. If it is disposed through a third party e.g. auctioneer, the services provided by the auctioneer are subject to GST.

Q2. Are licenses issued by a government department subject to GST?

A2. No, licenses issued by a government department are not subject to GST because licenses are issued as R&E functions.

Q3. What are the responsibilities of the government department whose supplies are listed in the GST Government (Application to Government) Order 2014?

A3. The department, which makes the taxable supply, must register with the Royal Malaysian Customs as a GST registered person if the turnover of the taxable supply exceeds the prescribed threshold of RM500,000 within 12 months (past or future). Once registered, the department must charge GST on the taxable supplies made and account for the tax collected to Royal Malaysian Customs.

Q4. Can a supplier claim input tax on taxable supplies made to the Government who is given relief from the payment of GST?

A4. The supplier can claim input tax on these supplies because the supplies are regarded as taxable supplies.

Q5. Do I have to issue a tax invoice for GST on relief goods supplied to government department?

A5. If you are a GST registered person, you have to issue a tax invoice for such supplies as these are taxable supplies. In order for you not to charge and collect GST on supplies of goods made to government department, they shall submit the Certificate of GST Relief (CoGSTR) to you at the time of acquisition of goods is made.

Q6. Can a trader who do not reach the threshold making taxable supplies to the government department and claim ITC?

A6. Any GST registered person is eligible to claim input tax on the taxable supplies made by him in the course or furtherance of the business.

Local Authorities and Statutory Bodies

Q7. The local authority provides development plan for any person who wishes to have it in his possession and charges payment for it. Is the payment subject to GST?

A7. It is subject to GST as the act of providing the development plan is not R&E functions.

Q8. Is assessment rate collected by a local council subject to GST?

A8. No, assessment rate collected by local council is not subject to GST since it is form of R&E functions of the local council.

Q9. The local authority imposed fine for improper parking, hawker trading without license or late payment of quit rent. Are the fines imposed subject to GST?

A9. Fine is not a supply and is not subject to GST.

Q10. A local authority provides billboards for companies to advertise their products or services. Is the provision of such billboards subject to GST?

A10. The charge to the company which relates to the issuance of permit/ license to advertise is treated as an out of scope supply and is not subject to GST.

However, charges imposed by the local authority for the use of the billboards for advertisement are subject to GST.

Q11. The local authority leases out lots used for wet market to the traders. Is the lease fee subject to GST?

A11. The local authority is making a supply of right to use the lots in the wet market. This is a business activity and it is subject to GST.

Q12. Dewan Bandaraya outsourced street lighting services to a third party. What would be the GST treatment on such outsourced supply?

A12. Street lighting services is part of the R&E functions carried out by Dewan Bandaraya. However, if a third party is contracted to undertake the street lighting services, the third party is actually making a taxable supply to Dewan Bandaraya and it is subject to GST.

Q13. Does a sub-contractor need to charge GST to the main contractor who has been contracted to carry garbage collection on behalf of a local authority?

A13. The sub-contractor, if he is a GST registered person, must charge GST on the services he provides to the main contractor because the sub-contractor is actually making a taxable supply to the main contractor. If the main contractor is a GST registered person, he should charge GST to the local authority for the services supplied.

Q14. What is the GST treatment on property owned by the local council which is disposed to the public?

A14. If the asset is used for making taxable supply and the local council is a GST registered person, GST has to be charged and accounted for such asset that being disposed.

Q15. What is the GST treatment for renting out badminton hall, community hall, etc by a local council?

A15. Rental is not related to R&E functions, hence it is subject to GST.

Q16. Does a local authority need to register its divisions that make taxable supplies separately?

A16. There is no need for local authority to register its divisions separately. *(For further information, please refer to GST Guide on Registration).*

Q17. Does a statutory body which makes wholly out of scope supply need to be registered under the GST Act?

A17. Statutory body which makes wholly out of scope supply is not required to be registered under the GST Act. This rule also applies to a statutory body that makes both out of scope supply and exempt supply. However, if statutory body makes both out of scope supply and taxable supply, the statutory body is required to be registered. *(For further information, please refer to GST Guide on Registration).*

Q18. Are examination fees for admission to the profession charged by statutory bodies e.g. Board of Engineers (BEM), Board of Architect (BAM) etc. subject to GST?

A18. Examination fees which relate to R&E functions are out of scope supplies.

Q19. What is the GST treatment on registration fees paid by architects to Board of Architects Malaysia (BAM) to enable them to practice in their field?

A19. Registration/Membership fees which relate to R&E functions are out of scope supplies.

Q20. A statutory body holds conventions, seminars or conferences for members and the general public who have to pay admission fees to attend these events. What is the GST treatment on these admission fees?

A20. The admission fees paid to attend conventions, seminar or conferences supplied by a statutory body are taxable supplies. Therefore, GST is charged on the admission fees.

Grants, Subsidies and Royalties (Government's Supplies)

Q21. Are grants given by Government through a government department subject to GST?

A21. Supplies made by the Federal Government or State Governments are out of scope supplies. Therefore grant given by the Government is regarded as non-supply and not subject to GST.

Q22. What is the GST treatment on research grant given by the Government?

A22. Outright grant given by the Government is regarded as non-supply and not subject to GST. If in return for the grant the Government receives benefits in the form of research patent rights as a consideration, the patent right is a taxable supply. The receiver of the grant, if he is a GST registered person, he must account GST on the grant for the patent rights supplied to the government.

INQUIRY

1. For any inquiries for this guide please contact :

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GST Division
Royal Malaysian Customs Department
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No. 22, Persiaran Perdana, Presint 3,
62100 Putrajaya.

Email : gstsector1@customs.gov.my

FURTHER ASSISTANCE AND INFORMATION ON GST

2. Further information on GST can be obtained from :

(a) GST website : www.gst.customs.gov.my

(b) Customs Call Center :

- Tel : 03-7806 7200 / 1-300-888-500
- Fax : 03-7806 7599
- Email : ccc@customs.gov.my

APPENDIX 1

SERVICES CATEGORIZED AS REGULATORY AND ENFORCEMENT BY LOCAL AUTHORITIES

Examples of R&E services by local authority.

1. Development

- (a) Approval of planning permission (layout plan); new and revised;
- (b) Approval of planning permission (landscape plan);
- (c) Approval to plan (erection of building);
- (d) Approval to plan (change of the name of parks and addresses);
- (e) Approval to plan (Approvals of extension of period);
- (f) Approval to plan (change the usage of building from residential to business and nursery / kindergarten);
- (g) Approval to plan (Billboard);
- (h) Approval to plan (street name, building and name of parks);
- (i) Approval on additional work on existing building;
- (j) Permission to store construction materials on the road reserves and public areas;
- (k) Permit land work & land transport;
- (l) Approval of development order;
- (m) Approval of building plans;
- (n) Approval for infrastructure plans (road & drainage);
- (o) Approval for street lighting plan;
- (p) Approval for land work plan.

2. Issuance of License

Business License

- (a) Temporary hawker license;

- (b) Hawker's license – night market / morning market;
- (c) Stalls / markets license;
- (d) Shops and advertisements license;
- (e) Restaurant license;
- (f) Factory license;
- (g) Permit to place chairs / tables on road shoulders.

3. Composite License

- (a) Dog license;
- (b) License / permit to become a garbage removal contractor;
- (c) License to store hazardous materials (oil, gas, chemicals);
- (d) Permanent amusement license / permit;
- (e) Temporary entertainment license / permit (stage shows and non-permanent film show).

4. Advertising License

- (a) Permanent advertising license;
- (b) Temporary advertising permit;
- (c) Approval of temporary advertising billboards / unipole permit.

SERVICES CATEGORIZED AS TAXABLE SUPPLY BY LOCAL AUTHORITY

Examples of taxable services by local authority;

- (a) Auditorium rental;
- (b) Hall rental;
- (c) Rental of sports facilities;
- (d) Stall rental;
- (e) Rental of equipments e.g. tables, chairs and tents;
- (f) Sales of plants (flowers);
- (g) Rental of parking lot.