



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

**GUIDE
ON
TRUSTEE SERVICES**

Publication

Date Published: 4 January 2016.

The Guide on Trustee Services as at 15 May 2013 is withdrawn and replaced by the Guide on Trustee Services revised as at 4 January 2016.

Copyright Notice

Copyright 2015 Royal Malaysian Customs Department.

All rights reserved. Subject to the Copyright Act, 1987 (Malaysia).

The Guide may be withdrawn, either wholly or in part, by publication of a new guide. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form, including on-site for commercial purposes without written permission from the Royal Malaysian Customs Department (RMCD). In reproducing or quoting the contents, acknowledgment of source is required.

Disclaimer

This information is intended to provide a general understanding of the relevant treatment under Goods and Services Tax and aims to provide a better general understanding of taxpayers' tax obligations. It is not intended to comprehensively address all possible tax issues that may arise. While RMCD has taken the initiative to ensure that all information contained in this Guide is correct, the RMCD will not be responsible for any mistakes and inaccuracies that may be contained, or any financial loss or other incurred by individuals using the information from this Guide. All information is current at the time of preparation and is subject to change when necessary.

CONTENTS

INTRODUCTION.....	1
Overview of Goods and Services Tax (GST)	1
GST TREATMENT FOR THE INDUSTRY	1
Nominee Services.....	4
Islamic Trustee Services.....	4
Islamic Estate Planning	7
Input Tax Credit.....	7
FREQUENTLY ASKED QUESTIONS	8
INQUIRY	10

INTRODUCTION

1. This industry guide is prepared to assist businesses in understanding matters with regards to GST treatment on trustee services.

Overview of Goods and Services Tax (GST)

2. Goods and Services Tax (GST) is a multi-stage tax on domestic consumption. GST is charged on all taxable supplies of goods and services in Malaysia except those specifically exempted. GST is also charged on importation of goods and services into Malaysia.

3. 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.

4. 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.

GST TREATMENT FOR THE INDUSTRY

5. Trustee Services can be classified into Public Trustee Services and Private Trustee Services.

A. Public Trustee Services

A Public Trustee is a statutory body set up to help manage estates of the deceased and also acts as a custodian trustee. Public trustee is appointed by way of will or settlement of trust. In Malaysia, Amanah Raya Berhad (ARB) is the public trustee. Under GST, Public Trustee services are subject to GST at a standard rate.

B. Private Trustee Services

Private Trustee Services consist of Individual Services and Institutional services.

1. Individual Services

(i) Estate and Legacy management

The trustee provides advisory services while making arrangements for the protection, preservation and provision of a person's total assets through the application of estate planning tools.

(ii) Estate Planning Services

Estate planning is actually about empowerment i.e. the management of estates and distribution of assets of a deceased. The components of estate planning include will writing services, custody services and executor services.

(a) Will writing services

A will is a written legal document signed by the testator in the presence of witnesses and takes effect only after the demise of the testator. Under the GST, will writing is subject to GST at a standard rate.

A trustee may appoint agents to market will writing. The agents are paid commissions for the services rendered. The agents are required to charge GST on their commissions at a standard rate.

(b) Custodian services

The trustee provides custodian services for safe keeping of the will. Custodian services are subject to GST at a standard rate.

(c) Executor services

The Executor has full power to undertake the administration of the estate after the grant of probate has been obtained. The executor services are subject to GST at a standard rate.

Trustee's services include the application for the grant of probate and a processing fee is charged to the beneficiaries. The processing fee for probate is subject to GST at a standard rate.

A testator may appoint a trust corporation as executor for their will and the trust corporation will charge an acceptance fee for their services pegged from one to two per cent of the value of the asset per annum. Acceptance fee is subject to GST at a standard rate irrespective of whether it is an Islamic or conventional trust.

(iii) Trust Management

Trust management manages assets entrusted by the donor for the future use of beneficiaries. It also ensures that management of assets is done in accordance to the mandate specified in the trust deed. For the purposes of GST, trust management services are subject to GST at a standard rate.

Withdrawal of cash deposited into a trust account by a donor is subject to a withdrawal fee. Withdrawal fee is subject to GST at a standard rate. However, dividends paid for monies invested in a trust account are not subject to GST.

2. Institutional Services

To ensure the protection of the investors and members of the public in general, professional trustees are appointed in various schemes of a commercial nature such as Unit Trust Funds, Real Estate Investment

Trusts (REITs), Private Debt Securities, Sinking Funds, Time Sharing Schemes, Club/Associations, Retirement and Employee Funds. An annual trustee fee is charged to the fund. Under GST, trustee services are subject to GST at a standard rate.

Nominee Services

6. The trustee also provides nominee services to clients and act as nominees, agents or trustees for the beneficiaries. Nominee services are subject to GST at a standard rate.

Islamic Trustee Services

(a) Trust and Trustee

In Islam, trustee is a person, body or corporation who is to be in charge of the entrusted asset with honest management. Islamic trustee services are subject to GST at a standard rate.

(b) Islamic Trust

There are three types of Islamic trust.

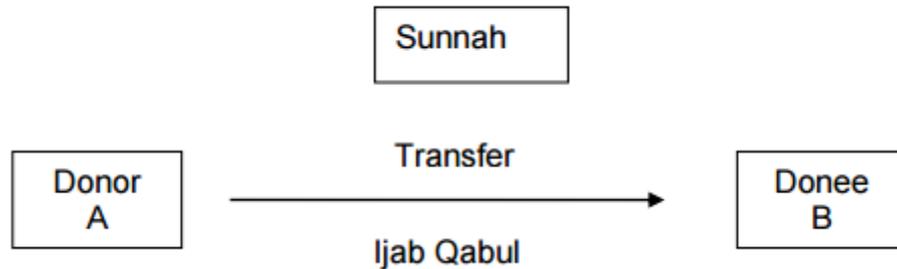
i. Hibah

Hibah is a voluntary gift or transfer of ownership or conveyance of the asset made without any valuable consideration or condition from the Donor to the Donee. The asset will be held in trust by the trustee.

When a taxable person (GST registered person) donates assets to another person it is a taxable supply and subject to GST at a standard rate. However, if an individual who is not registered under GST donates assets to another person it is not a taxable supply and therefore it is not subjected to GST. Diagram A below illustrates the structure of hibah trust involving the sunnah and contractual stage.

Diagram 1: Structure of Hibah Trust

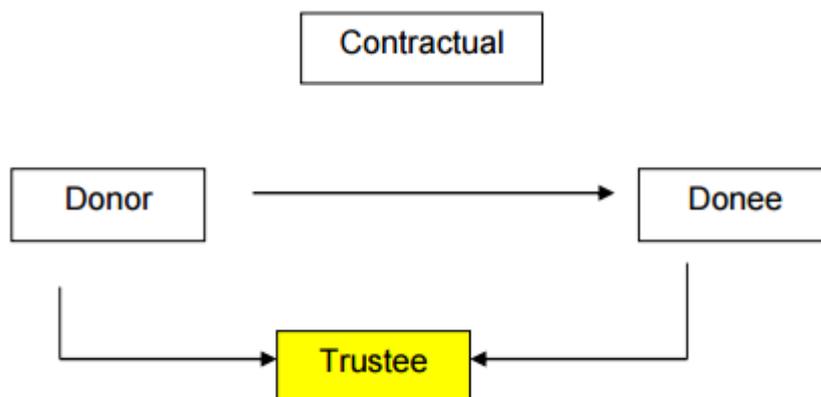
Stage 1



In this stage, hibah is a pronouncement or an act which means giving and receiving of hibah either verbally or in any manner which carries the meaning of giving away of property ownership without repayment. If Donor A, a registered person transfers assets worth RM5,000 to Donee B, it is a taxable supply and A has to account for the GST. However, if A, an individual donates the assets worth RM5,000 to Donee B he is not liable to charge GST since he is not registered. Please refer to Diagram B as follows:

Diagram 2: Structure of Hibah Trust

Stage 2

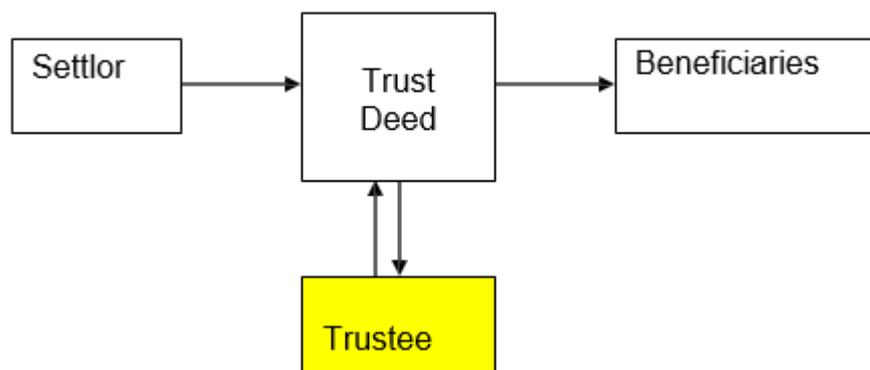


In the contractual stage, the Donor will entrust the trustee to preserve, manage and eventually distribute the assets for the benefit of the Donee. The trustee services are subject to GST at a standard rate.

ii. Gift

Gift trust is voluntary, irrevocable and applicable to all transfer of assets without any valuable consideration. It is an intervivos trust and must be accepted by the Beneficiary. The transfer of asset as a gift by a taxable person is subject to GST if the cost is more than RM500. Diagram C below illustrates gift trust.

Diagram 3: Structure of a Gift Trust



In this case, the donor creates an Irrevocable Trust under the principle of gift on the sum mentioned and will appoint a trustee for the deposit sum to be held in trust for the benefits of the beneficiary. The trustee services are subject to GST at a standard rate.

iii. Waqaf

Waqaf is basically a religious endowment, a property giving revenues as regulated by Islamic law.

Waqaf's legal definition includes two conditions. The first condition is to dedicate one's property rights to any public service and prevention of its re-ownership by others. The second condition is the perpetuity of this dedication. The management services in generating revenues from the assets donated is subject to GST at a standard rate.

iv. Waqaf via Trustee

The Donor or Settlor appoints the trustee via a Trust Deed to set up a trust fund for the benefit of the ultimate intended beneficiaries. When the Donor, a taxable person, gives away the asset, it is taxable supply and therefore is subject to GST. The trustee service is also subject to GST at a standard rate.

Islamic Estate Planning

(a) Wasayah Writing Services and Custodian of Wasayah

Wasayah is a legal documentation which outlines on how you wish your assets to be distributed upon demise. Like will writing, Wasayah writing service is subject to GST at a standard rate.

Wasayah can be drawn and kept with a trustee. Custodian service is subject to GST at a standard rate.

(b) Executor (Wasi)

The wasi of the wasiyah is the manager of the estate appointed by the testator (musi). The musi can appoint the trustee as wasi for the wasiyah. Like executor services, wasi services are subject to GST at a standard rate.

Input Tax Credit

7. Since trustee services are standard rated supplies, any input tax incurred in rendering the services is claimable.

FREQUENTLY ASKED QUESTIONS

Time of Supply

Q1. Upon signing an agreement with a trustee, an institution has to pay a down payment of 30% of the consultancy fees for any services rendered by the trustee. When is the GST due for the prepayment of consultancy fees?

A1. For the prepayment of consultancy fees, GST is due whichever occurs earlier i.e. the date the tax invoice is issued or the date when payment is received during the taxable period even though the trustee services are not rendered yet.

Intercompany services

Q2. As a trustee, I outsource to my subsidiary company to manage the investment activities of the fund. What is the GST treatment on the management services supplied by my subsidiary company?

A2. The subsidiary company will be required to charge GST on the management services at a standard rate to the fund.

Q3. My subsidiary company requires Information Technology (IT) support from my trustee company. What is the GST treatment on the IT services supplied by my trustee company?

A3. Your trustee company is required to charge GST on the IT services. If the trustee company is a member approved under GST group registration, the services rendered will be disregarded and no GST is due on the IT services supplied.

Trustee for common fund

Q4. All monies received from an estate, trust or power of attorney forms part of the Public Trustee's Common Fund. The Trustee charged management fees to this common fund for administering and managing the fund.

Are the management and trustee fees charged to the common fund subject to GST?

- A4. Any management and trustee fee charged to the common fund is subject to GST at a standard rate.

Input tax credit

Q5. I incur GST on trustee services, management services and commissions in holding a trust. Can I claim input tax on the GST incurred?

- A5. A trust is treated differently from the trustee. If the trustee makes wholly taxable supplies e.g. rental of building then the trustee can claim input tax on GST paid as input. However, if the trustee makes wholly exempt supplies e.g. investment it is not entitled to claim any input tax credit.

Free gifts and sponsorship to clients

Q6. A trustee may provide free gifts to clients for opening up a trust account. What is the GST treatment on free gifts given to clients?

- A6. Under gift rule, a gift for business purposes where the total cost (goods) to the donor is not more than RM500 is not a supply for GST purposes. Therefore, it is not subject to GST. If the cost is more than RM500, it is subject to GST and you have to account for output tax.

Q7. A trustee company sponsor hampers for clients' annual dinner or family day. What is the GST treatment on sponsorship of goods?

- A7. Sponsorship of goods is subject to gift rule.

INQUIRY

1. For any inquiries for this guide please contact:

Sector IV

GST Division

Royal Malaysian Customs Department

Level 3 – 7, Block A, Menara Tulus,

No. 22, Persiaran Perdana, Presint 3,

62100 Putrajaya.

Email: gstsector4@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