



ROYAL MALAYSIAN CUSTOMS

MALAYSIA GOODS AND SERVICES TAX (GST) GUIDE

GST GUIDE ON AUCTIONEER (DRAFT)

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DRAFT

1. INTRODUCTION

This Industry Guide is prepared to assist you in understanding the Goods and Services Tax and its implications on Auctioneer.

1.1. Overview of Goods and Services Tax (GST)

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.

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, it is ultimately passed on to the final consumer. Therefore, the tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements

In Malaysia, a person who is registered under the Goods and Services Tax Act 20XX is known as “registered person”. A registered person is required to charge output tax on his taxable supply of goods and services made to his customers. He is allowed to claim input tax credit on any GST incurred on his purchases which are inputs to his business. Thus, this mechanism would avoid double taxation and only the value added at each stage is taxed.

2. BACKGROUND

In Malaysia, services provided by auctioneers have progressed over the years, especially in the properties and used vehicle sectors. They do not only provide auctioning services but also render incidental services such as advertising, assessment, consultation on price and short term storage services. These services are taxable supplies under the GST Act 20XX and if an auctioneer has achieved the prescribed threshold he is obliged to register as a GST registered person.

3. TERMINOLOGY

For the purpose of this guide, the following terms have the meaning as assigned to it:-

3.1. Auction

An auction refers to the offer to sell goods or property by an auctioneer to the members of the public to bid for the goods or property put up for sale and the person making the highest bid will be given the right to purchase the said goods or property. In certain

cases, goods may be sold by way of a tender. Goods that are normally sold in an auction include antiques, land and properties, collectible items such as stamps, coins and fine art as well as used goods like cars and machineries.

3.2. Auctioneer

This term refers to a person who acts as an agent to sell goods or property in an auction. An auctioneer may be an individual, a company or an auction house established for the purpose of carrying out auction, who would receive a commission or fee for carrying out the auction. Typically, an auctioneer may charge commission to both the buyer and seller. In Malaysia, auctioneers are regulated by the respective state authorities.

4. SUPPLY CHAIN IN THE AUCTION INDUSTRY

The supply chain in an auction would basically involve four parties, namely:-

4.1. The owner

The owner is the person who owns the property or goods that were put up for auction. In this guide, the owner of the goods put up for auction would be referred to as the "owner".

4.2. The auctioneer

Another important party in the auctioning chain of supply is the auctioneer. As explained above, the auctioneer merely acts as agent to dispose off any property or goods through an auction on behalf of the principal. However, almost all auctioneers would be acting in their own name and without disclosing the identity of the owner. Therefore, under the general rule for agents, auctioneers would be regarded as the principals making the supplies. However, section 66(4)(b) of the GST Act 20XX regard supplies made by an auctioneer acting on his own name as supplies made by the principal who is a taxable person. However, the auctioneer whether or not he is a taxable person, shall be liable for tax payable on the supply if the goods are acquired from a taxable person.

4.3. The financier

The financier is a person or institution which had provided a loan or credit facility to finance the purchase of a property or goods. Due to default in payment by the buyer or borrower, such property or goods would be repossessed by the financier who would dispose off the property or goods to recover the loan. The financier would come into picture when the auctioned goods are financed and repossessed by

the financier. In this guide, the person or institution which provides the financing and later repossessed the property or goods to recover a loan would be referred to as the “financier”.

4.4. The bidder

A person who has successfully bid for a property or goods in an auction would be referred to as the “bidder” in this guide.

5. GST LIABILITY IN THE AUCTION SUPPLY CHAIN

5.1 Ownership of Goods

Ownership of goods sold under an auction never passes to the auctioneer. This is because the auctioneer only acts as an agent for the owner or financier. Although goods will be auctioned on behalf of an owner or a financier, the auctioneer will be held responsible to account for tax if the auctioned goods belong to a taxable person.

5.2 Output Tax on Auctioned Goods

5.2.1 The GST status of the owner would determine whether goods that were auctioned off should be charged output tax. If the owner is a taxable person, any goods auctioned on his behalf would be subjected to output tax.

5.2.2 If the owner is not a taxable person, then no output tax is due on the goods that were auctioned off.

5.2.3 If the auctioneer is not a taxable person, but the owner is a taxable person, output tax is still chargeable. However, commission charged by the auctioneer is not subject to tax.

5.3 Input Tax on Auctioned Goods

The auctioneer cannot claim input tax credit on the goods that were auctioned off as the input tax credit would have been claimed by the owner at the time he acquired the goods.

5.4 Output Tax on Commission

Services rendered by an auctioneer to an owner or financier are taxable supplies. Thus, commissions earned by an auctioneer would be liable for output tax if the auctioneer has reached the prescribed threshold. The auctioneer in such a case must register himself as a GST registered person.

5.5 Input Tax Credit on Incidental Services

An auctioneer, who is a GST registered person, is allowed to claim tax credit on any GST incurred by him which is incidental to his business as an auctioneer.

The treatment of GST on taxable goods that are auctioned off and commission earned by an auctioneer can be summarized as below:-

5.6 GST Treatment and Payment on Taxable Goods Auctioned on Behalf

SCENARIO	STATUS OF OWNER	OUTPUT TAX	AUCTIONEER	PAYMENT FORM
1	TAXABLE PERSON	CHARGEABLE	REGISTERED PERSON	GST RETURN
2	TAXABLE PERSON	CHARGEABLE	NON-REGISTERED PERSON	PRESCRIBED FORM
3	NON-TAXABLE PERSON	NOT CHARGEABLE	REGISTERED PERSON	-
4	NON-TAXABLE PERSON	NOT CHARGEABLE	NON-REGISTERED PERSON	-

Scenario 1:

When the owner is a taxable person, output tax is chargeable on the auctioned goods. If the auctioneer is a registered person, he will account for the output tax on the auctioned goods in his GST Return.

Scenario 2:

When the owner is a taxable person, output tax is chargeable on the goods. If the auctioneer is not a registered person, he will account for the output tax on the auctioned goods in a prescribed form.

Scenario 3:

When the owner is a non-taxable person, no output tax is due. The auctioneer need not account for output tax on the auctioned goods even though he is a registered person.

Scenario 4:

When both the owner and auctioneer are non-taxable persons, no output tax is due on the auctioned goods.

(Note: No GST is required to be imposed on any goods that are prescribed as exempt supply goods or where its input tax is blocked (not claimable) when such goods are auctioned off.)

5.7 GST Treatment on Services Provided By an Auctioneer

SCENARIO	STATUS OF AUCTIONEER	INPUT TAX	OUTPUT TAX
1	A REGISTERED PERSON	CLAIMABLE	CHARGEABLE
2	A NON-REGISTERED PERSON	NOT CLAIMABLE	NOT CHARGEABLE

Scenario 1:

When the auctioneer is a registered person, he can claim input tax credit on GST incurred on incidental expenses. He also has to account for output tax on all services provided by him, for example to the owner, buyer and financier.

Scenario 2:

When the auctioneer is a non-registered person, he cannot claim input tax on expenses incurred by him in his business. He also needs not to account for output tax on the services provided by him to the owner or financier.

6. FREQUENTLY ASKED QUESTIONS

6.1 I am an auctioneer as well as a GST registered person. What are those incidental expenses which I can claim input tax credits?

All business acquisition made incidental to the services provided by you as an auctioneer, such as utilities, professional fees, rental and other overhead expenses are entitled to input tax claim.

6.2 Can GST paid on capital assets like building and office equipments regarded as input tax, and when can it be claimed?

If you are a GST registered person, GST paid on capital assets is also allowable as input tax credits. The input tax claim can be made in the taxable period in which the capital asset is acquired.

6.3 I am an auctioneer acting as an agent under my own name. Must I pay GST on goods that my principals send to me for auction?

Goods supplied to you for auctioning are disregarded for the purpose of GST, meaning you do not have to pay any GST on such supplies. However, when such goods are subsequently auctioned off and if the owner of the goods (seller) is a taxable person, output tax has to be accounted by you.

6.4 Who should account for output tax on the goods sold in an auction if the owner of the goods is a taxable person?

The auctioneer is liable to issue tax invoices under his own name and account for output tax on behalf of his principal who is a taxable person.

6.5 I am an auctioneer who is not GST registered, if I auction goods belonging to taxable person, can I issue tax invoice?

No, you cannot issue tax invoice even if you are auctioning goods belonging to a taxable person if you are acting in your own name. However, you have to issue a document containing the particulars of the tax chargeable and this document will be treated as a tax invoice provided by the taxable person.

6.6 As an auctioneer, am I required to find out the GST status of the owner of goods before I auction goods on his behalf?

Before you agree to auction goods for anybody, you must first inquire his GST status. You can counter-check his GST status from our GST website. Determining the GST status of owner of goods is necessary as you are liable to account for output tax on any goods which you auction on the owner's behalf if he is a taxable person.

6.7 Is the auction price of goods inclusive of GST?

Auction price can be exclusive or inclusive of GST. If the goods to be auctioned are taxable goods, you as the auctioneer must inform the bidders before the auction that the goods are subject to payment of GST and whether the goods are inclusive or exclusive of GST. If you wish to include GST in the auction price, it should be made clear

to the bidders the auction price would be GST inclusive and the tax invoice should indicate the price is inclusive of GST.

6.8 In an auction when is the time of supply for the auctioned goods?

The time of supply is the time when the auctioneer issues the tax invoice or goods are handed over to the successful bidder or when the payment received whichever is the earlier.

6.9 What is the GST treatment on a deposit that is forfeited when the successful bidder failed to pay the balance of payment before the stipulated date?

Such deposit is deemed to be a payment made on a taxable supply if such payment is meant for payment of the auctioned goods. Output tax is chargeable on the deposit forfeited. Any commission derived from the part payment by the auctioneer is also a taxable supply.

6.10 In certain cases, bidders to an auction may be required to furnish a certain amount of deposit to the auctioneer. Would such deposit attract GST?

Deposit paid as a condition to an auction does not attract GST until the deposit become part of the payment made by the successful bidder to the auctioneer.

6.11 What is the GST treatment on entry fees (a sum of money paid by the owner to the auctioneer to auction goods) if the auction is unsuccessful?

If goods put up for auction is not sold and the entry fee is forfeited, the auctioneer has to account output tax on the forfeiture because it is a payment for services rendered by the auctioneer.

6.12 I am an auctioneer and if I purchase goods directly from an owner, would the purchase attract GST?

Even though you are an auctioneer, any purchase of goods made by you from the owner would be treated as a normal taxable supply and output tax is chargeable by the seller who is a taxable person (GST registered person).

6.13 I am an auctioneer and if I purchase goods from a non-taxable person, do I have to charge GST when I auctioned the goods?

In this circumstance, you are not acting as an auctioneer, but as a normal taxable person. Therefore, if you are a registered person, you have to account for output tax when the goods are sold.

6.14 If a governmental department carries out the auction of its own vehicles, would that attract GST?

GST Act does not apply in relation to supplies made by Government departments as they are treated as out of scope supplies.

6.15 Are vehicles that are owned by the Government but auctioned by a professional auctioneer still regarded as out of scope supplies?

Yes, as the Government is the one who is making the supplies of the vehicles.

6.16 In furtherance to question 6.15, would the commission charge to the Government, being an out of scope supplies attract GST?

Commissions charged by an auctioneer to the Government for the auction of vehicles or any other goods are still subject to output tax as the commissions are charged by the auctioneer for the services rendered.

6.17 I was engaged by a non-resident who is not liable for GST to auction his goods in Malaysia. What is the GST implication on the goods imported and its subsequent sales through an auction?

If you are importing and supplied for a non-resident person, you are deemed to be the principal importing the goods. You have to pay GST on the goods that were imported on behalf of your principal. If you are a registered person, you can claim input tax credit on the GST paid for the importation, and you must account for output tax on the goods that are subsequently auctioned by you. For further details, please refer to guide on Agent.

6.18 I am an auctioneer and owned a warehouse licensed under section 65 of the Customs Act 1967. What is the GST implication on goods that I brought from overseas and stored in the licensed warehouse while waiting to be auctioned?

GST on the goods is suspended when the goods are stored in your licensed warehouse. GST would only be due and payable when the goods are brought into principal customs area by the successful bidder or any other person.

6.19 In furtherance to Question 6.18, how does the successful bidder account for GST and on what value should he declare?

The successful bidder has to pay GST and any other taxes using a Customs No. 1 form. The price that he bid and paid for the goods in the auction would be treated as last supply including any duty and taxes payable. *Please refer to guide on Warehousing Scheme for details.*

6.20 I was engaged by a non-resident from overseas to auction his goods in Malaysia, but currently the goods are located outside Malaysia. What is the GST implication on the goods if I manage to auction them?

Goods located overseas would not be subjected to output tax even if they are auctioned here (in Malaysia). GST on the auctioned goods would be imposed at the time of importation when the successful bidder brings the goods back into Malaysia.

6.21 Must I account for output tax on commission charged to my overseas client if the auction is carried out on his behalf in Malaysia, but the auctioned goods remains overseas?

Services performed for a non-resident in relation to land and goods situated outside Malaysia is treated as international services. You may zero-rate the commission to the non-resident.

6.22 What are those supplies that must be included by an auctioneer when determining his threshold?

Normally for an auctioneer, the commissions earned by him would form the basis of his turnover in calculating the threshold. However, if the auctioneer is also making taxable supplies other than those related or incidental to his profession as an auctioneer, such other turnovers would be included in the calculation of his threshold for GST purposes.

7. ACCOUNTING

An auctioneer who is registered under the GST must maintain and preserve proper records and accounting on all goods that he receives and auctioned off on behalf of his principals for at least 7 years. All accounting records must be supported by related original documents and must be kept in accordance with the principles of Standard Accounting Practices adopted in Malaysia and provides a good audit trail. A good accounting system required of an auctioneer includes;

- (a) quantity and description of each goods or properties that he auctioned on behalf of each individual principal;

- (b) the auctioned price of each goods or properties that he has auctioned off;
- (c) entry fee or commission he receives for each goods or properties that he has auctioned off;
- (d) charges on incidental services provided to each individual principal;
- (e) details of output tax charged and input tax claimed.

8. OTHER RELEVANT GUIDE FOR AUCTIONEERS

As an auctioneer the following guides may be of interest to you:-

- (a) GST registration;
- (b) Agents; and
- (c) Repossessed goods.

9. FURTHER INFORMATION

If you require any further information regarding GST, please contact our officer at any of our GST office or call toll free line No. 1800 XX XXXX. You can also visit our website at <http://www.customs.gov.my>.