

DECISION BY DIRECTOR GENERAL, ROYAL MALAYSIAN CUSTOMS

Effective date: 2 November 2015

NO	ISSUES	DECISION
1.	<p>Employee Benefit</p> <p>(1) Whether supply of accommodation with furniture to an employee without consideration is considered as employee benefit?</p>	<p>(i) Employee benefit is a supply of goods or services by the employer to the employees for free of charge and it must be stated in the contract of employment. The supply made under employee benefit is considered as used for the purpose of business and the input tax incurred by the employer on such goods or services is claimable except for the supply which relates to an exempt supply or block input tax.</p> <p>(ii) Employee benefit includes supply of accommodation or residential housing to the employee for free of charge but does not include furniture.</p> <p>(iii) Supply of accommodation under employee benefit which relates to an exempt supply under the GST (Exempt Supply) Order 2014 is considered as used for the purpose of business. The employer is not required to account for GST on the supply of accommodation and is not entitled to claim the input tax incurred on the acquisition of the accommodation.</p>

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		<p>(iv) However, in the case where –</p> <p>(a) the supply of accommodation is inclusive of furniture, the supply of furniture whether or not for consideration is subject to GST. The employer is liable to account for GST accordingly and is entitle to claim input tax incurred on the acquisition of the furniture.</p> <p>(b) the supply of accommodation to the employee, benefit of the employee’s family irrespective whether it is furnished or unfurnished, the employer is blocked from claiming the input tax incurred.</p>
2.	Whether the equipment provided by the employer in relation to safety and security requirement under the Occupational Health and Safety Act 1994 is considered as employee benefit?	<p>(i) Safety and security equipment provided by an employer to the employee for free of charge is considered as employee benefit as long as it is stated in the contract of employment.</p> <p>(ii) In the case where the employer supplies safety and security equipment for free of charge to the employee and the supply is not stated in the contract of employment, such supply will not be considered as employee benefit. Therefore, the employer is liable to account for the GST and entitle to claim the input tax incurred on the purchase of such equipment. However, where –</p> <p>(a) the supply of such equipment involves transfer or change of ownership to the employee, such supply is</p>

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		<p>subject to gift rule under item 5(2)(a) of First Schedule of GSTA 2014; or</p> <p>(b) the equipment is subsequently returned to the employer as business asset, the employer is not required to account for the GST.</p>
3.	<p>To what extent a person is considered as holding a tax invoice as mentioned in paragraph 38(4)(a) of GST Regulations (GSTR) 2014?</p>	<p>(i) Paragraph 38(4)(a) of GSTR 2014 provides that if a registered person did not claim for the input tax in the taxable period, in which he holds tax invoice, the Director General may allow such person to claim the input tax within 6 years from the date of supply to or importation by him.</p> <p>(ii) For the purpose of claiming input tax in accordance with paragraph 38(4)(a) of GSTR 2014, a taxable person is considered to hold a tax invoice on the earlier of:</p> <p>(a) the date or time of posting the tax invoice into the company Accounts Payable; or</p> <p>(b) one year from the date he holds the tax invoice.</p>