



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON AGENTS

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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
GENERAL PRINCIPLES OF AGENCY	1
TYPES OF AGENT AND THEIR LIABILITIES	2
Agents acting on behalf of the principals	2
Agents who act in their own name.....	5
An agent importing goods on behalf of a non-taxable person.....	6
An agent acting on behalf of a person who does not belong in Malaysia	8
Importation of goods by a GST registered foreign principal.....	10
FREQUENTLY ASKED QUESTIONS	10
INQUIRY	13
FURTHER ASSISTANCE AND INFORMATION ON GST	13
APPENDIX 1	14
AMENDMENTS	15

INTRODUCTION

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

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 (GSTA) 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.

GENERAL PRINCIPLES OF AGENCY

5. An agent is generally an intermediary who is authorized by another party to do something on that party’s behalf (**principal**) in arranging supplies of goods or services. The supplies that he arranges are made by or to the client he represents.

6. Under the general principles of agency, a principal cannot avoid his liability to account for GST on his supplies or to pay GST on his purchases by using an agent. The agent only facilitates the sales in return for an agreed amount as a commission for his agency services.

7. Sometimes persons who carry on a business on their own account use the

word “agent” and “agency” to describe their trading style. For example:-

- (a) motor vehicle agents, distributors and sole concessionaries who usually trade as principals on their own account; and
- (b) travel agents and employment agencies are not usually agents in all their activities

8. To act as an agent, you must have contractual agreement with your principal **to act on his behalf** in relation to a particular transaction concerned. This may be a written or oral agreement, or merely inferred from the way you and your principal conduct your business affairs. Whatever form this relationship takes, the following conditions must be satisfied:-

- (a) it must always be clearly established between you and your principal, and you must be able to show to the Royal Malaysian Customs (RMC) that you are arranging the transactions for your principal, rather than trading on your own account;
- (b) you will not be the owner of any of the goods, or use any of the services which you buy or sell for your principal; and
- (c) you will not alter the nature or value of any of the supplies made between your principal and third parties.

TYPES OF AGENT AND THEIR LIABILITIES

Agents acting on behalf of the principals

9. Generally, the liability on the supply of agent’s own services to his principal will not always be the same as the liability on the supply between his principal and the third parties. If an agent is registered for GST, he must always charge GST on his commission irrespective of the status of his principal. If the agent arranges for the supply or delivery on behalf of his principal, the supply is actually made by the principal and not by him. Therefore, his principal is liable to account for GST and eligible to claim input tax credit.

10. An agent, may sometimes take a minor role in a transaction and simply

introduce his principal to potential customers or buyers (**third parties**). At other times, he may be more closely involved. The agent might:

- (i) receive or deliver goods,
- (ii) hold a stock of goods for his principal; or
- (iii) make or receive payment

11. Whatever the situation or transaction would be, provided that the invoicing for the supply is between the principal and the customer the only supply for GST purposes being made by the agent will be the provision of services to his principal. In other words, a tax invoice must be issued by the principal for the supply that he made to his customer. If the agent is a registered person, he must also issue a tax invoice for the supply of services that he made to his principal.

Example 1

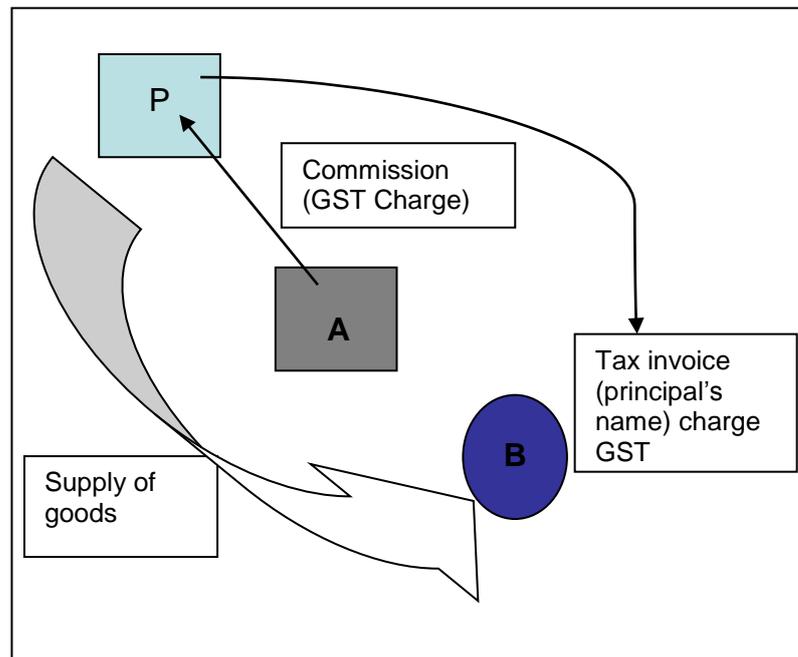
Awang Sdn. Bhd. (principal), a GST registered person, engages Razali Sdn. Bhd., who is also a GST registered person, as an agent to sell speed boats on his behalf.

Each speed boat is sold at RM100,000.00 and Razali Sdn. Bhd. charges Awang Sdn. Bhd. a commission of 10% exclusive of GST.

Awang Sdn. Bhd. accounts for GST on RM100,000.00 as output tax for the boat sold ($RM100,000.00 \times 6\% = \mathbf{RM6,000.00}$)

Razali Sdn. Bhd. on the other hand must account for GST on his commission i.e. $10\% \times RM100,000 \times 6\% = \mathbf{RM600.00}$.

Figure 1: The scenario for Example 1 can be illustrated as below



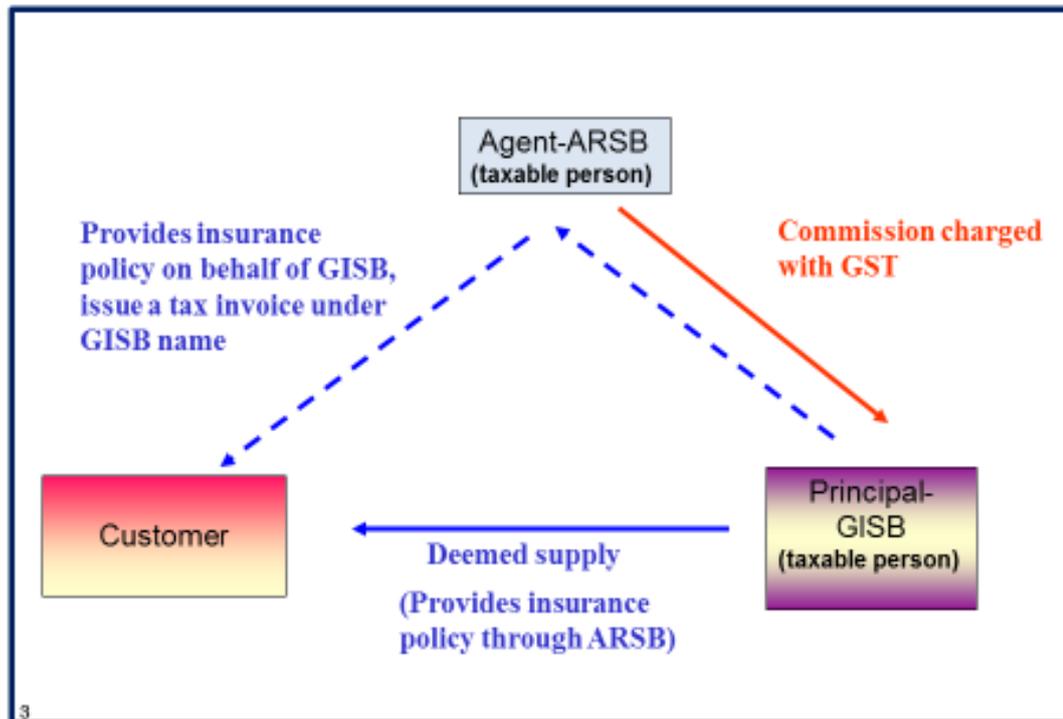
Awang Sdn. Bhd. (P) makes taxable sale to the customer (B) via Razali Sdn. Bhd. (A) who facilitates the sale

Example 2

Global Insurance Sdn. Bhd. (principal) is a GST registered Insurance Company who engages AR Sdn. Bhd. (agent) as an agent to sell motor vehicle and general insurance on his behalf.

Global Insurance Sdn. Bhd. (GISB) takes full liability of the supply made by AR Sdn. Bhd. (ARSB) to the customer. ARSB will issue a tax invoice under GISB's name and charge GST to his customer for sale of motor policy. ARSB will remit payment and GST received from the customer to GISB. GISB has to account GST for the taxable supply made by his agent.

Figure 2: The scenario for Example 2 can be illustrated as below:



Agents who act in their own name

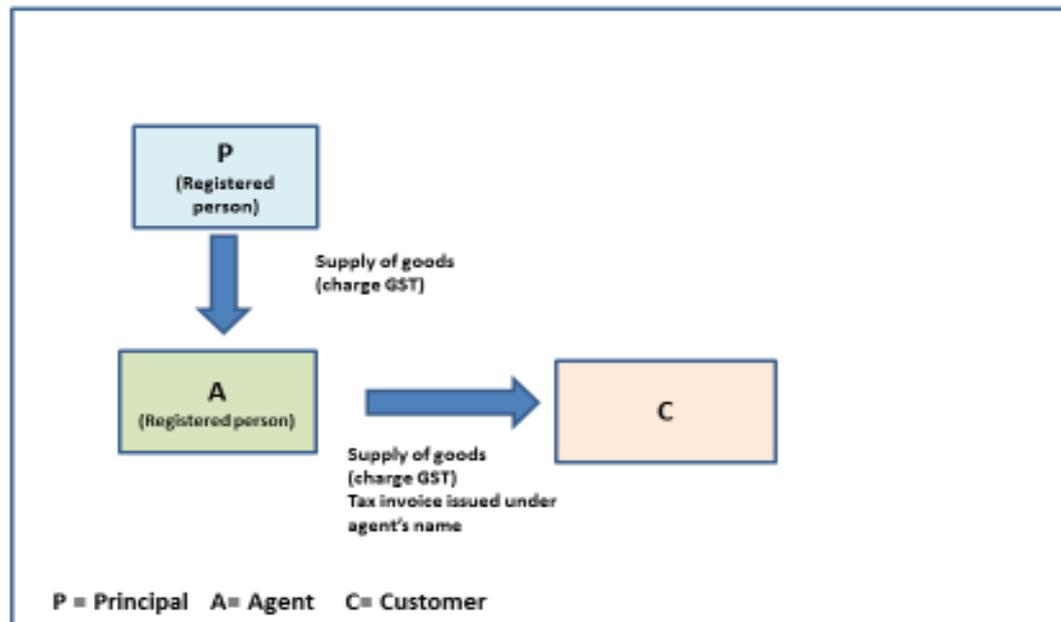
12. When an agent supplies goods or services on behalf of the principal where he uses his own name, the supply of goods or services by the principal through the agent, would be treated as a supply to the agent and as a supply by the agent. This means that the agent will be treated as a normal taxable person and is obliged to issue tax invoice if the agent is a registered person. Therefore, in this arrangement there would be two supplies – supply by the principal to the agent and supply by the agent to his customer.

13. Sometimes agents may be authorized by their principals to enter into contracts with a third party on their behalf. In such cases, particularly if the principal wishes to remain unknown, the agents may receive and issue invoices **in their own name** for the supplies concerned.

14. An agent who acts in such a capacity is usually referred to as an **undisclosed agent** or a **commissionaire or an independent agent**. Sometimes in commercial reality, the transactions arranged by agents remain between the principal and the third party involved. For the GST purposes, the liability to account for the tax remains

with the agent and not the principal. The agent may treat the supply as his supply. This scenario may be illustrated in **Figure 3** as follows:

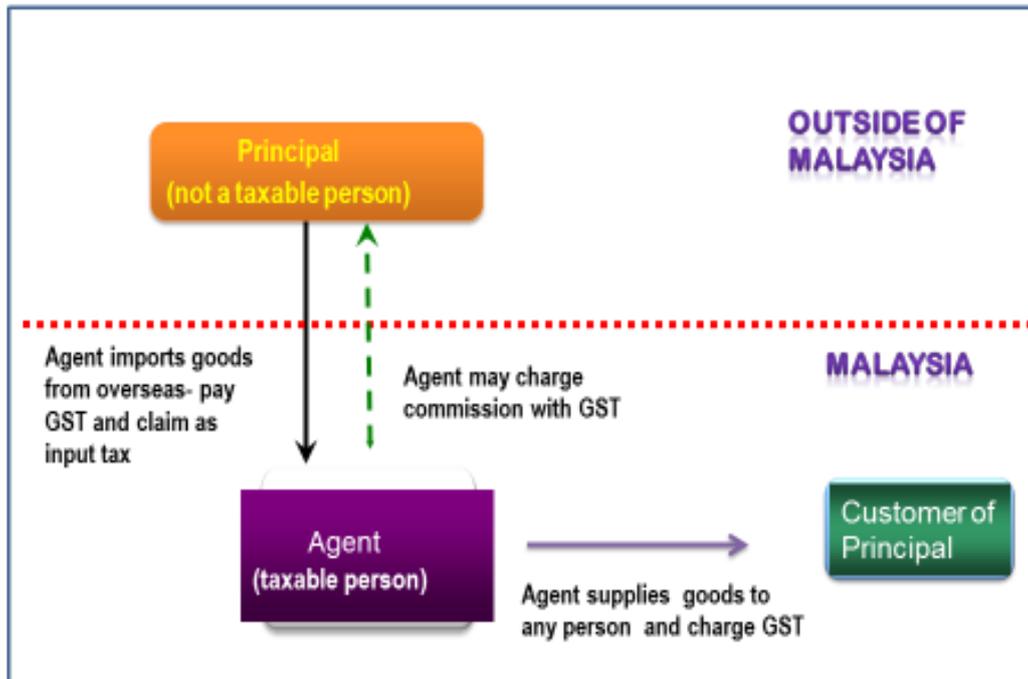
Figure 3: An Agent acts as an undisclosed agent or a commissionaire or an independent agent



An agent importing goods on behalf of a non-taxable person.

15. Sometimes there is a situation where an agent who is a GST registered person imports goods **on behalf** of a non-taxable person, who does not belong in Malaysia. In such a case, the agent will be treated as the principal importing the goods irrespective of whether he is called an agent or not and GST on importation is claimable. However, if an agent is not a registered person, GST imposed on the goods during importation is not claimable but there is no GST chargeable on the subsequent local supply. This scenario can be illustrated in **Figure 4** as below:

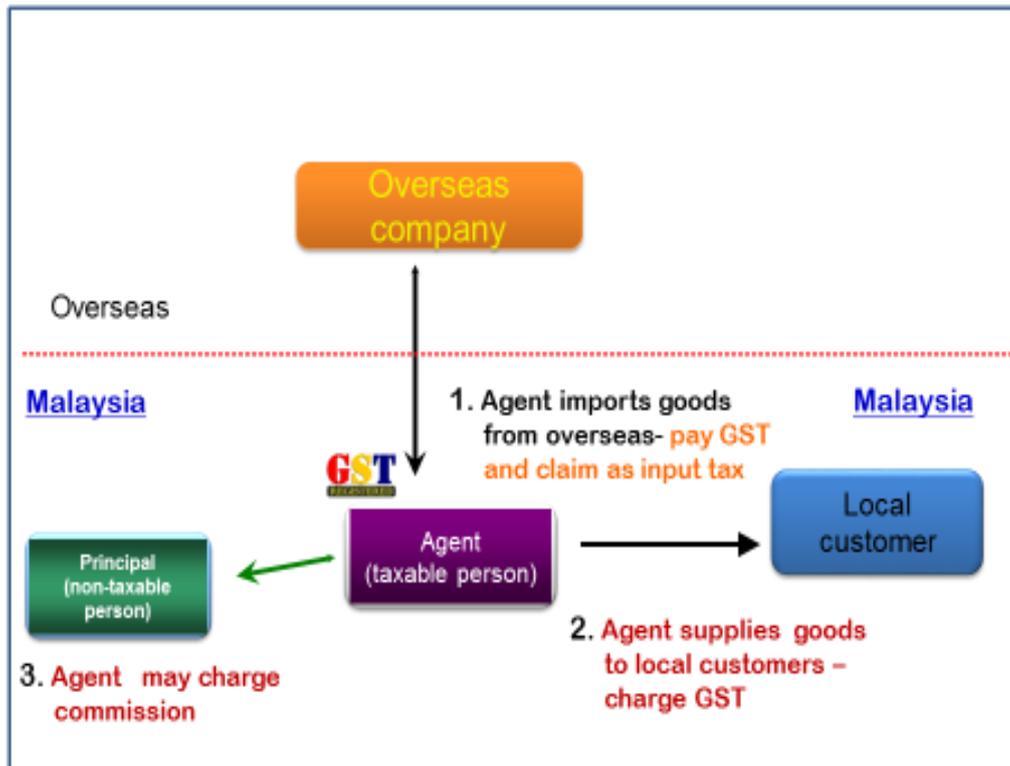
Figure 4: An agent (GST registered person) acts on behalf of a non-taxable person who does not belong in Malaysia for importation of goods



16. A person is treated as not belonging in Malaysia if he does not fulfill any of the condition as stipulated under the provision of GST law in the Act.

17. Similar treatment applies for a situation where a principal is not a taxable person but belongs in Malaysia. In other words, importation of goods by an agent who is a registered person acting on behalf of a local principal who is not a taxable person where the agent import in his own name, the importation is regarded as being carried by the agent. This means that the agent can claim GST paid on importation but has to charge GST on the subsequent local supply. This scenario can be illustrated in **Figure 5** as below:

Figure 5: An agent (GST registered person) acts on behalf of a non-taxable person who is in Malaysia for importation of goods



An agent acting on behalf of a person who does not belong in Malaysia

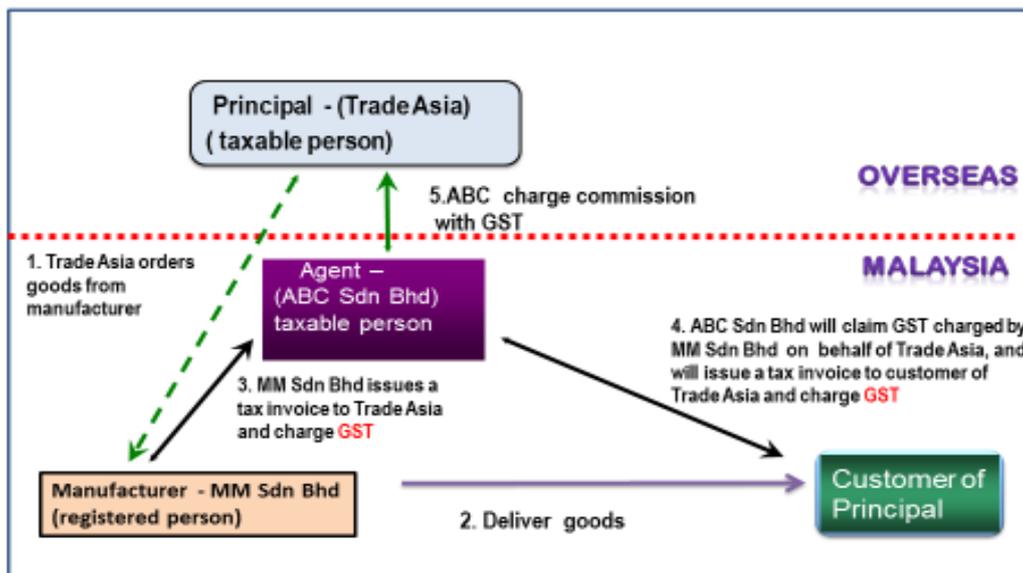
18. Any person who does not belong in Malaysia may register for GST if he makes taxable supplies in Malaysia. However, the registration must be made through an agent appointed by him. The appointed agent must make an application for the overseas principal and the agent must show proof of his appointment and supporting documents such as agreement between him and his principal and authorization letter from the principal. The agent must have an address and telephone number in Malaysia where he can be contacted. A GST registration number will be assigned in the name of the overseas principal and not in the name of his appointed agent.

19. An agent acting on behalf of his principal who does not belong in Malaysia is responsible and accountable for his principal's tax liabilities. The agent must submit GST return and make payment on any tax due and payable on any supplies made

by his principal. Any input tax incurred by the principal in relation to the taxable supply that he makes in Malaysia can be claimed by his agent. The agent also has to issue tax invoices on any supply that his principal made in Malaysia.

20. An agent may represent more than one principal where each principal must have his own separate account. This means that an agent has to submit GST return for each and every principal that he represents. If the agent is a taxable person, he must also have his own account and hence must submit his return for any supply that he made in his own name. This situation may be illustrated in **Figure 6** as below:

Figure 6: An agent acting on behalf of an overseas principal who is registered for GST



Example 3

Trade Asia is a non-resident company (registered under GST) and has appointed ABC Sdn. Bhd. as an agent to act on his behalf.

- 1. Trade Asia orders goods from a manufacturer (MM Sdn. Bhd. - registered person) in Malaysia.*
- 2. Trade Asia directs the manufacturer to deliver the goods to his customers in Malaysia.*
- 3. MM Sdn. Bhd. will issue a tax invoice to Trade Asia and charge*

GST.

4. *ABC will claim GST charged by MM Sdn. Bhd. on behalf of Trade Asia. ABC will issue tax invoices on behalf of his overseas principal to the buyers and charge GST.*
5. *If the agent is a taxable person, he must charge GST on the commission to his overseas principal.*

ABC has to keep all transaction records for supplies made by his overseas principal in Malaysia and will remit GST to the Government by submitting GST return.

*Example of a tax invoice is shown in **Appendix 1**.*

Importation of goods by a GST registered foreign principal

21. Subsection 65(6) GSTA provides that an agent appointed by a person who does not belong to Malaysia to act on his behalf shall be liable for the tax and the other requirements imposed under the GSTA as if he is the person who does not belong in Malaysia.
22. Only importer, consignee or owner of the goods imported can claim input tax in relation to importation of goods. (Refer regulation 38(1)(d) GSTR).
23. For purpose of importing goods into Malaysia by the foreign principal, the appointed agent under section 65(6) GSTA can appear as the importer in Customs Form No.1 and c/o the name of the foreign principal. Based on the Customs Form No. 1, the foreign principal may issue an authorization letter to the appointed agent for claiming input tax on his behalf.

FREQUENTLY ASKED QUESTIONS

Q1. As an agent, how am I involved with GST?

- A1. As an agent, you will usually be involved in at least two separate supplies at any one time:
- (a) The supplies made between your principal and the third party; and

- (b) The supply of your own services to your principal, for which you will charge a fee or commission. The normal GST rules apply to your services as an agent.

Q2. As an agent, do I have to charge and account for GST?

- A2. As an agent, you are providing a supply of services to the principal and the third party. Generally, you do not own the goods you deal with. Hence, the sale of the goods is not your supplies. Your supply of services is a taxable supply. Therefore, if you are registered for GST, you are required to account for GST on the commission you received. However, if you are not a registered person, you cannot charge GST on the services that you provide.

Q3. As an agent, how do I calculate my turnover for registration purposes?

- A3. The calculation of your turnover will be on:
- (a) the value of services to the principal (i.e. commission charges).
 - (b) the value of taxable supplies that you make in your own name, but **excludes** the value of supplies arranged for the principal (since the supply is actually made by the principal).

Q4. Can tax invoices be issued by agents?

- A4. When an agent sells goods and services on behalf of a principal, the supplier for GST purposes is the principal and not the agent. Therefore, if the principal is a registered person, the tax invoice must be issued by the principal.

Q5. Do I have to apply to RMC if I want to act as an agent for my overseas principal who is liable under the GST Act?

- A5. If an overseas principal is liable under the GST Act, he has to be registered through an agent appointed by him. Therefore, as a person appointed by the overseas principal, you must apply to RMC to be such agent. You need to submit supporting documents such as an authorised letter from the overseas principal. Upon such registration, you will be held accountable for GST liabilities and need to file returns on behalf of the overseas principal. You will

also have to keep separate records for the overseas principal. If you are a taxable person yourself, you must also register yourself separately.

Q6. Who is accountable for GST if I import and supply the goods locally on behalf of my overseas principal who is not a taxable person?

A6. If you are importing and supplying the goods on behalf of an overseas principal who is not a taxable person, the goods will be treated as imported by you if you declare the goods in your own name. However, the subsequent supply is considered as a supply made by you. You are accountable for GST and you must charge output tax on the sales if you are a GST registered person and may claim GST paid on the imported goods.

INQUIRY

1. For any inquiries for this guide please contact :

Sector VII
GST Division
Royal Malaysian Customs Department
Level 3 – 7, Block A, Menara Tulus,
No. 22, Persiaran Perdana, Presint 3,
62100 Putrajaya.

Email : gstsector7@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

AMENDMENTS

No.	Date	Heading/Subheading/Paragraph	Description
1.	04.11.2015	i. Paragraph 21	New subheading