



# **ROYAL MALAYSIAN CUSTOMS**

## **GOODS AND SERVICES TAX**

### **GUIDE ON REPOSSESSION**

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## **INTRODUCTION**

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

### **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 OPERATIONS OF THE INDUSTRY**

5. Repossession is governed by the Hire Purchase Act 1967. Repossession is normally effected when the buyer defaults in his payment to the financier. The lender/ financier then can take back the asset/ property/ goods from the buyer.

6. Repossession is generally used to refer to financial institution taking back the asset/ property/ goods that was either used as collateral or rented or leased in transaction. This is usually done in accordance with a purchase contract or credit contract, in which the hirer agrees that the financier may repossess the asset/ property/ goods if the hirer defaults in his payment to the financier. The act of

repossession is not a supply for GST purposes.

7. Notice will be given to the hirer when there arrears in the payment for the financed goods. After the initial notice, a final notice would be issued to the hirer to settle the payment within a stipulated period. If no payment received before the expiry of stipulated period the financier would normally repossess the goods in question.

8. Usually, the lender/ financier may contract the work of repossession out to a repossession agent. This agent is usually registered with the Association of Hire Purchase Company of Malaysia. There are also persons appointed by the courts to seize and sell land and property and they are called bailiffs.

9. The agent then will surrender back the goods to the lender/ financier and charge commission on the services provided to the financier. These services are taxable supplies and subject to the GST if the agent is a registered person.

## **SUPPLY CHAIN IN THE REPOSSESSION INDUSTRY**

10. The supply chain in a repossession of goods would basically involve two parties, namely:-

### **(a) The hirer**

The hirer is the person who initially owns the property or goods which were later been taken back by the financier/ lender. Normally, he would have obtained a loan to finance the purchase of the said property or goods or have charged the property or goods as collateral, for example through hire purchase, leasing or mortgage, but due to default in servicing his loan, such property or goods would be repossessed by the financier.

### **(b) The financier**

The financier is a person or an institution who has provided a loan or credit facility to finance the purchase of a property or goods. Due to default payment by the hirer, such property or goods would be repossessed by the financier who would sell or auction off the property

or goods to recover the loan. 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 “repossessor”.

### **Ownership of Goods**

11. Ownership of goods which have been taken from the hirer never passes to the reposessor. Based on subsection 65(5) of the GSTA, when the reposessor sells the goods he is deemed to have sold the goods on behalf of the hirer and has to account for output tax if the owner of the goods (hirer) is a taxable person. In other words, the taxable person whose goods has been repossessed does not have to account for any output tax on the sale of the repossessed goods.

### **Disposal of Repossessed Goods**

12. Disposal of goods which have been repossessed by the lender/ financier can be done by two means:

**(a) Own disposal**

The financier himself can sell off the goods in satisfaction of the debt owed. From the proceeds of the sale he usually net off whatever outstanding balance together with any other incidental expenses.

**(b) Through auctioneer**

The lender/ financier appoints an auctioneer to auction the goods on behalf of them. For details please see Guide on Auction Services.

## **GST TREATMENT ON SUPPLY OF REPOSSESSED GOODS**

### **Output Tax on Supply of Repossessed Goods**

13. The status of the owner (hirer) would determine whether the supply of repossessed goods should be charged output tax. However, the liability to charge output tax on supply of repossessed goods lies with the reposessor (financier). If the owner of the goods is a taxable person, the financier must, irrespective of whether he is registered for GST or not, account for output tax on the supply of goods that are

repossessed. On the other hand, if the owner is not a taxable person, then the financier need not have to account for output tax on such supply.

14. GST is not chargeable if the goods are exempt or if the recovery of input tax is disallowed.

15. The treatment of GST on supply of goods that are repossessed can be further illustrated and summaries in the diagrams below:-

**Table 1: GST Treatment on Supply of Goods that are repossessed**

Scenario	Status of Hirer	Output Tax	Financier	Payment Form
1	Taxable Person	Chargeable	Registered Person	GST-03
2	Taxable Person	Chargeable	Non Registered Person	GST-04
3	Non Taxable Person	Not-Chargeable	Registered Person	-
4	Non Taxable Person	Non-Chargeable	Non Registered Person	-

**Scenario 1:**

When the owner is a taxable person, output tax is chargeable on the supply of repossessed goods. If the financier is a registered person, he will account for the output tax in the GST-03 form.

**Scenario 2:**

When the owner is a taxable person, output tax is chargeable on the supply of repossessed goods. If the financier is not a registered person, he will account for the output tax in the GST-04 form.

**Scenario 3:**

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

#### **Scenario 4:**

When both the owner and financier are non-taxable persons, no output tax is due. Issuance of document treated as 'Tax Invoice'.

16. When a repossessed goods which belongs to the taxable person has been supplied by the financier, the goods is deemed to be supplied by the hirer. However, the financier is liable to charge and account for output tax, whether or not he is a registered person. In both cases, the financier must charge output tax by issuing a document containing the particulars of the tax chargeable which is treated as a tax invoice issued by the hirer. Such document may in the form of normal invoice or statement of sale.

#### **Input Tax on Repossessed Goods**

17. The reposessor cannot claim input tax on the goods that were repossessed as the input tax would have been claimed by the owner at the time he acquired the goods. He, however, may claim any other incidental input tax in supplying or selling the repossessed goods.

#### **Output Tax on Commission**

18. Usually the reposessor may engage an agent to repossess the goods from the hirer. The services rendered by the repossession agent to a financier are taxable supplies. Thus, commissions earned by the agent would be liable for output tax if he is a taxable person. The agent in such a case must register himself as a GST registered person if his annual turnover exceeds the threshold and hence must charge GST on his services to the financier.

#### **RECORD AND ACCOUNTING**

19. The reposessor who is registered under GST must maintain and preserve proper records and accounting on all goods that he repossessed for at least seven years. All accounting records must be supported by related original documents and must be kept in accordance with the principles of Generally Accepted Accounting Practices adopted in Malaysia and should provide a good audit trail. A good accounting system required of the reposessor includes;

- (a) Quantity and description of each goods or properties that he repossessed;
- (b) Incidental expenses incurred in the repossession of goods; and
- (c) Details of output tax charged and input tax claimed.

For further details on requirement to keep record, please refer to the Guide on Tax Invoice and Record Keeping.

## FREQUENTLY ASKED QUESTIONS

**Q1: I am a person appointed by a bank to repossess goods from a hirer. What is my GST liability?**

A1: Although you may repossess the goods, you are not the actual reposessor. You are only acting as an agent for the bank. Your GST registration status would depend on your total fees earned as well as any other taxable supply you make if any, for the purposes of determination of threshold. If your total turnover exceeds prescribed threshold you need to register for GST. Once registered, you must charge GST on any taxable supply that you make.

**Q2 How about repossession carried out by a court bailiff acting on a court order. Does such repossession attract GST?**

A2 The court bailiff also acts as an agent on behalf of the party who succeeded in obtaining judgment from the court. Whether the goods or property repossessed by him attracts GST would also be determined by the GST status of the owner of the said goods or property. The fee the bailiff charges for his service would not be subjected to output tax as he is only carrying out his judicial duties as a bailiff. Such supply is regarded as an out of scope supply for the GST purposes.

**Q3 In the act of repossession when does the point of supply arise for repossessed goods?**

A3 The act of repossession is not treated as a supply. However, when the repossessed goods are sold, the point of supply is the time when the sale takes place and the supply shall be deemed to be made on behalf of the taxable person.

**Q4: As a reposessor must I need to know more about other aspects of GST?**

A4: The following guides may be of interest to you:

- (a) Guide on Registration;
- (b) Guide on Agents;

- (c) Guide on Auction Services; and
- (d) Guide on Tax Invoice and Record Keeping.

## **INQUIRY**

1. For any inquiries for this guide please contact :

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No. 22, Persiaran Perdana, Presint 3,

62100 Putrajaya.

Email: [gstsector7@customs.gov.my](mailto: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](http://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](mailto:ccc@customs.gov.my)

## AMENDMENTS

No.	Date	Heading/Subheading/Paragraph	Description
1.	20.05.2015	i. Paragraph 11	Section 66(5) change to Section 65(5)
		ii. Table 1, Scenario 1, Payment Form	GST Return change to GST-03
		iii. Table 1, Scenario 1, Payment Form	Prescribed Form change to GST-04