



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON LEGAL PRACTITIONERS

Publication

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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 |
| Time of supply | 2 |
| Value of Supply..... | 3 |
| Tax Invoices..... | 3 |
| Particulars of a tax invoice..... | 4 |
| Clients Account..... | 5 |
| Deposit and Advance Payment..... | 6 |
| Disbursements and Reimbursement..... | 7 |
| Costs Awarded By Court | 8 |
| Input Tax Credit | 8 |
| FREQUENTLY ASKED QUESTIONS | 11 |
| INQUIRY | 21 |
| FURTHER ASSISTANCE AND INFORMATION ON GST | 21 |
| AMENDMENTS | 22 |

INTRODUCTION

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

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. In Malaysia, a legal practitioner in Malaysia may be an advocate or solicitor. A legal practitioner provides services as a general practitioner, or specializes in one or more areas of law. These include probate, matrimonial, employment, company, commercial, litigation and conveyance law.

6. The supply of services to an employer by a legal practitioner by virtue of being an employee is outside the scope of GST. A legal practitioner who is employed as an employee is not required to be registered under GST in respect of services supplied by him.

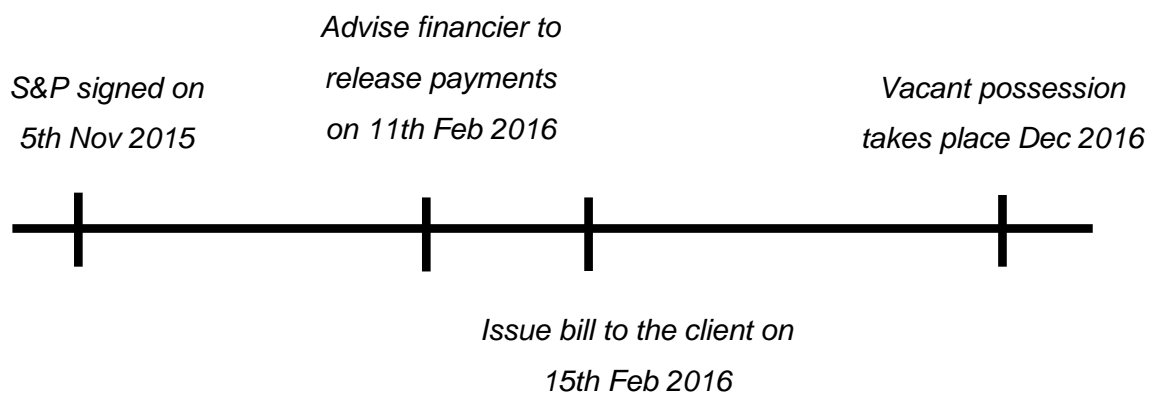
7. Basically, supply of services by a legal practitioner covers services that are listed under Order 59 rules 7 of Rules of Court 2012. Such services includes taking instruction from client for hearing, considering the facts and law, attending and corresponding with clients, etc.

Time of supply

8. In general, the time of supply of services as prescribed under Section 11 of the GST Act 2014. The basic tax point is when services are performed. A service is considered “performed” when the work is done or completed by the provider of services.

9. Once the services have been completed, the provider of services is liable to account for GST at the earliest of when payment is received or when tax invoice is issued within 21 days from the basic tax point i.e. services are performed.

Example 1:



Fairuz has a legal firm. He was appointed by the client to prepare the legal document for buying a house in Penang. The sale and purchase agreement was signed on 5th November 2015 by the client. In order to complete the transaction, it involves conducting land search, preparing S&P, Form 14A, loan documentation, stamping, registration and finally advising the financier to release the purchase payment. His firm will issue the bill in two stages i.e. when preparing S&P and transfer and preparing loan documentation. When the bill is issued to the client i.e. the services are performed. In this case, the basic tax point is 15th February 2016.

Value of Supply

10. The value of a supply is the value on which GST is chargeable. The amount of GST is the value multiplied by the tax rate. Subject to Section 15 and The Third Schedule of GST Act 2014, *the* value of supply depends on whether there is a consideration or not. A consideration is any form of payment in money or in kind, including anything which is itself a supply. If there is no consideration and it is a deemed supply then the value of the supply is the open market value.

11. When a GST registered professionals publishes, displays, advertise or quotes in any manner the price of his services it shall be inclusive of GST as required under Section 9(5) of the GST Act 2014. Otherwise, he is required to apply to the Director General for approval if he intends not to published the price inclusive of GST as required under Section 9(6) and (7) of the same act. If he contravence the provision, he commits an offence. Please refer to specific Guide on Valuation.

Tax Invoices

12. The value of the services rendered by a legal practitioner is indicated in the bill of costs under Legal Profession Act 1976. The bill of cost for taxation between advocate and solicitor and client shall be drawn in the manner of Order 59 rules 7 Rules of Court 2012. The bill of cost is an itemized list of expenses a prevailing party in a lawsuit or action needs to pay for services procured from a lawyer. It can have varying level of detail, and should describe the nature of work done by the legal practitioner for the client and any other expenses incurred. Recoverable cost may include copying fee, filing fee and court expenses fee.

13. For the purposes of GST, section 33 of Goods and Services Act 2014 requires every registered person who makes any taxable supply of goods or services in the course or furtherance of any business in Malaysia to issue a tax invoice. A tax invoice is a document containing certain information about the supply that has been made and is similar to a commercial invoice except for some additional details. This document is important as it is an essential evidence to support a customer's claim for deduction of input tax. The supplier must keep a copy and the original copy should be retained by the recipient. Only a GST registered person is allowed to issue a tax invoice.

14. A bill of cost under Order 59 rules 7 of Rules of Court 2012 and Legal Profession Act 1976 can only be treated as a tax invoice under section 33 of GST Act 2014 if it fulfills the characteristics and particulars as prescribed in Regulation 22 of GST Regulation 2014. For further information on tax invoice, please refer to the GST Guide on Tax Invoice and Records Keeping.

Particulars of a tax invoice

Example 2: A sample of tax invoice

| Messrs Ahmad Hassan Advocates & Solicitors No. 123, 2nd Floor, Jalan Chain Ferry, Taman Inderawasih, 13600 Prai, Pulau Pinang Tel : 04-567 8951 Fax : 04-567 8951 email : ahmadhassan@yahoo.com | | | | | |
|---|---|-----------------|--|--------------|------------------------|
| Client : muhammad fatch bin ahmad & nora elina binti fahmi Our Ref : AH/G/2513/CONY/15 Purchase Price : RM120,000.00 Property : D-2-7, MELATI Apartment, Lrg 2/5, Tmn Inderawasih, 13600 Prai, Penang | | | TAX INVOICE NO. : AH/G/2513/CONY/15 DATE : 27/4/2015 GST NO. 001842528222 TERMS SPA | | |
| NO | DESCRIPTION | SUB TOTAL RM | CODE | GST 6% RM | TOTAL RM |
| 1 | professional charges for the preparation of | | SR | | |
| | a) Transfer in Form 14A (MOT) | 1,200.00 | | 72.00 | |
| | b) Preparing Sale and Purchase Agreement | 200.00 | | 12.00 | |
| | c) Preparing Charge | - | | | |
| | d) Preparing Facility Agreement | - | | | |
| | e) CKHT 2 (RM300.00 x 2 persons) | 600.00 | | 36.00 | |
| | f) Entry and Withdrawal Private Caveat | - | | | |
| | | <u>2,000.00</u> | | 120.00 | 2,120.00 |
| 2 | Disbursement | | SR | | |
| | a) Stamping Fees on S&P | 40.00 | | | |
| | b) Stamping Fees on Facility Agreement | - | | | |
| | c) Stamping Fees on Murabahah Sale Contract | - | | | |
| | d) Stamping Fees on Purchase Undertaking | - | | | |
| | e) Stamping Fees on Agency Letter | - | | | |
| | f) Stamping Fees on Charge | - | | | |
| | g) Stamp Duty On Transfer (esteemed) | 1,400.00 | | | |
| | h) Registration Fees on Transfer (esteemed) | 250.00 | | | |
| | i) Registration Fees on Charge | - | | | |
| | j) Registration Fees on Entry Private Caveat | - | | | |
| | k) Registration Fees on Withdrawal Private Caveat | - | | | |
| | l) Title Searc Fees | 60.00 | | | |
| | m) Purchase Loan Document | - | | | |
| | n) Bankruptcy Search | - | | | |
| | o) Statutory Declaration | 42.00 | | | |
| | p) Transport | 100.00 | | 6.00 | |
| | q) Printing | 60.00 | | 3.60 | |
| | r) Miscellaneous | 60.00 | | 3.60 | |
| | | <u>2,012.00</u> | | 13.20 | 2,025.20 |
| TOTAL AMOUNT DUE | | | | | <u><u>4,145.20</u></u> |
| RINGGIT MALAYSIA: FOUR THOUSAND ONE HUNDRED FORTY FIVE AND SEN TWENTY | | | | | |
| Yours Faithfully | | | | | |
| | | | | | |
| <i>Authorised Signer</i> | | | | | |
| ALL PAYMENTS BY CHEQUE MUST BE CROSSED "ACCOUNT PAYEE ONLY" AND MADE PAYABLE TO "AHMAD HASSAN" | | | | | |

Clients Account

15. Generally, the money paid by client will be kept in an account specifically maintained for client distinct from that of the firm. Any expenses used for the firm's purpose must be from the firm's account which is also known as the office account. Withdrawal from client's account is prohibited if it is to be channeled for the firm's purpose, except of course the legal fees which belongs exclusively to the solicitors as their remuneration.

16. Section 78 of the Legal Profession Act 1976 requires the advocates and solicitors to open and keep the accounts of client's money and provides for the opening and keeping by every advocate and solicitor who is a sole trustee, or who is co-trustee with one or more of his partners, clerks or servants, of an account at a bank for moneys of any trust of which he is such a sole trustee or co-trustee. The client's account also provides the keeping by every such advocates and solicitor of accounts containing particular and information as to moneys received, held or paid by him for or on account of any such trust.

17. Solicitors' Accounts Rules 1990 prohibits any money other than money that is allowed to pay into a client account. Normally, below are the funds that must be deposited into the client's account:

- (a) trust money
- (b) money to replace any sums which may by mistake or accident have been drawn from the account in contravention of sub rule (2) of rule 8 of the Solicitors' Accounts Rules 1990;
- (c) such money belonging to the solicitor as may be necessary for the purpose of opening or maintaining the account; and
 - (i) Fund paid by the client to the legal practitioner to defray anticipated costs that will arise during the course of representation such as deposition cost, witness fee and filing fee.
 - (ii) payments made in the beginning of a representation against which charges for the representation are credited as accrue. Fee advances that are deposits to secure payment of fees to be

earned by the legal practitioners in the future. These funds should be held in client account until fees are earned and client is billed. However fee in criminal representation need not to be deposited into the trust account because it is normally to be earned when paid, and such fee normally be deposited into operating account.

- (d) a cheque or draft received by the solicitor which under rule 5 of Solicitors' Accounts Rules 1990, he is allowed to split but he chose not to split.

For understanding purposes, no GST is triggered as the money is received on behalf of the client.

Deposit and Advance Payment

18. Advance payment is also known as a retainer fee. It is a payment that a client makes to his legal practitioner before he starts his works. It is similar as down payment and allows the legal practitioner to draw funds for various fees required as the case proceeds. Usually, the money from a retainer fee is placed in a separate account from the legal practitioner's accounts. This ensures that he will not use the money for his own purposes before services rendered.

19. Another common type of payment is the contingency fee, where a legal practitioner is paid by taking a percentage of the client's monetary award, after the client wins the case or obtain a settlement with the other party. The legal practitioner receives nothing if the client loses the case or fails to get a settlement. Contingency fee is the most common form of payment for plaintiff seeking representation in personal injury litigation, employment matters and even medical negligence cases where the legal practitioners are entitled to a percentage of the settlement or trial award, usually in the amount of one third. However, by virtue of section 112(1)(b) of Legal Profession Act 1976 contingency fee is not allowed in Malaysia.

20. Generally most deposit payment or advance payment represent consideration as the amount paid over is intended by the parties to the contract for the fees of services rendered. Such payment is subject to GST and must be accounted. However, if the deposit or advance payment whether refundable or not refundable or in the form of security given, in respect of any supply of services which is not part of the consideration for the supply is not subject to GST.

Disbursements and Reimbursement

21. Section 3 of the Solicitors' Remuneration Order 2005 states that the following shall not include as the remuneration of the solicitor:

- (a) fees payable on the registration of documents requiring registration;
- (b) stamp duties or fees;
- (c) counsel's fees, auctioneer's or valuer's fees;
- (d) travelling or accommodation expenses;
- (e) fees paid on searches;
- (f) costs of extracts from any register or record;
- (g) other disbursements reasonably and properly paid and incurred (which shall be itemized in any bill of costs rendered by the solicitor to the client);
- (h) the cost of any extra work;
- (i) fees relating to any business of a contentious nature;
- (j) fees relating to any proceeding in any court; and
- (k) Miscellaneous expenses not exceeding RM50.

22. Generally, the legal practitioner refers a 'disbursements' as money which they have to pay to the third party with the matter they are dealing on behalf of the client. These may include court fees, fees for medical or other expert reports or search fees in a property transaction. However for GST purposes, disbursements are defined more narrowly as further explained in the following paragraphs.

23. Legal practitioners may recover any expenses incurred on the supply and charge GST on the reimbursement. If the client incurred the expenses directly, it would be treated as disbursement and no GST shall be charged. Please refer to specific *Guide on Supply*.

24. In general, to determine whether it is a disbursement for GST purposes, registered professional must fulfilled all the following criteria:

- (a) Incur expenses as an agent acting on behalf of the client;

- (b) The client is the recipient of the supply (invoice is in the client's name);
- (c) The client is the person responsible to pay for the supply;
- (d) The payment is authorized by the client;
- (e) The client knew that the supply is made by a third party;
- (f) The exact amount is claimed from the client and the agent has no right to alter or add on the value of the supply; and
- (g) The payment is clearly an additional to the supply made to the client

25. If the criteria in para 25 is not fulfilled, such supply may be treated as reimbursement and subject to GST at a standard rate.

Costs Awarded By Court

26. The Judge has power to make an order after judgment. Then the Court may award the costs may be to one or both parties in a lawsuit, or they may be waived. Normally, the costs awarded is compensatory in nature thus the GST shall not be charged.

Input Tax Credit

27. Generally, input tax is the GST incurred by a taxable person on business purchases or acquisition of goods and services for the purpose of making a taxable supply in the course or furtherance of business. These business purchases and acquisitions would include:-

- (a) goods or services purchased or acquired locally; and
- (b) goods or services imported.

28. Claim for input tax can be made in the return for the taxable period in which the supply or importation takes place by offsetting against the output tax. A refund will be made to the claimant if the amount of input tax is more than the amount of output tax.

29. If input tax is not claimed in the taxable period in which he is supposed to claim, then such input tax can be claimed within six (6) years after the date of the supply to or importation by the taxable person.

Claiming bad debt relief

30. A taxable person may claim bad debt relief subject to the requirements and conditions set forth under Section 58 of the GSTA 2014 and the person has not received any payment or part of the payment in respect of the taxable supply from the debtor after the sixth month from the date of supply.

31. The bad debt relief may be claimed if –

- (a) requirements under Section 58 GSTA and Part X of GST Regulations 2014 are fulfilled; and
- (b) the supply is made by a GST registered person to another GST registered person; and

32. Pursuant to Section 58 GSTA, the GST portion of the bad debt will be recovered subject to certain conditions:

- (a) The tax is already paid;
- (b) The whole or any part of the consideration for the supply has been written off as bad debts or provided for as doubtful debts;
- (c) The claimant has not received any payment 6 months after the supply has been made; and
- (d) The claimant has made sufficient efforts to recover the debt.

33. The bad debt relief shall be claimed immediately in the taxable period after the expiry of the sixth month from the date of supply.

34. If the bad debt relief is not claimed by the supplier in the immediate taxable period immediately after the expiry of the sixth month, then the taxable person has to

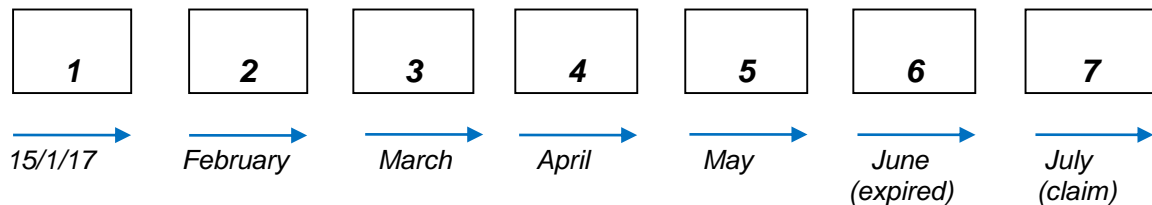
notify the Director General (DG) within 30 days after the expiry of the sixth month on his intention to claim at a later date.

35. A GST registered person who has made the input tax claim but fails to pay his supplier within six months from the date of supply shall account for output tax immediately after the expiry of the sixth month (Section 38(9) GSTA)

36. The word 'month' in Section 58 refers to calendar month or complete month –

Example 3:

Invoice issued at 15th January 2017. For monthly taxable period, the sixth month expires at the end of June and the bad debt relief shall be claimed in July taxable period.



FREQUENTLY ASKED QUESTIONS

Place of Supply

Q1. If I provide legal services to an entity outside Malaysia and billed to the recipient in Malaysia, do I have to account for GST?

A1. A supply of legal services to an entity outside Malaysia but billed to a recipient in Malaysia is regarded as exported services and it is zero-rated supply as the services is performed outside Malaysia. There is no GST on the supply.

Example 4:

A legal counsel AB provided legal advice to an accused person, BC who was detained and faced prosecution overseas. This provision of legal advice is regarded as a supply of export services even though payment for the services was made in Malaysia by BC's employer.

Q2. If a foreign legal practitioner registered in Singapore, provides legal services in Malaysia, who has to account for GST?

A2. The supply of legal services in Malaysia by a foreign legal practitioner is regarded as a supply of imported services. Such person does not have to charge GST. However, the recipient of the services who received the service for the business carried on by him is required to account for it by using a reverse charge mechanism.

If the supply is made for non-business purposes, the recipient is not liable to account GST on the supply of imported services he receives.

Q3. What is the GST treatment on the supply of legal services provided by legal practitioner in Principal Customs Area (PCA) to a recipient in Designated Area (Langkawi, Tioman or Labuan)?

A3. A supply of legal services by legal practitioner registered in the Principal Customs Area to a recipient in Designated Area is a standard rated supply.

Q4. What is the GST treatment on the supply of legal services provided by legal practitioner in the Designated Area to a recipient in the Principal Customs Area?

A4. Services rendered by legal practitioner in the Designated Area to a recipient in the Principal Customs Area are subjected to GST. The legal practitioner would be required to register and account for the GST subject to the GST registration threshold.

Q5. Are legal services provided within and between Designated Areas subject to GST?

A5. The legal services rendered within and between the Designated Areas are not subject to GST.

Charges, Fees and GST

Q6. Do I have to account for GST for all charges and fees imposed?

A6. All charges and fees, excluding disbursements imposed for services provided will be subject to GST. These include fees in respect of contentious or non-contentious business, preparing and completing agreements, conducting and completing transactions, preparing filing or witnessing of miscellaneous documents. It also includes charges such as miscellaneous expenses, cost of extra work, travelling or accommodation expenses, allowances for the time of the solicitor and his clerk and all usual and necessary attendances and charges for normal copying and stationary.

Q7. Do I have to issue tax invoices for the above charges and fees?

A7. Yes, you have to issue a tax invoice for the charges and fees imposed that are subjected to GST. If your client who is a GST registered person, he also can claim the input tax incurred.

Q8. Do I have to account for GST for services provided for free of charge?

A8. No. If the service provided is free of charge, there is no consideration received and therefore there is no supply. Thus, there is no liability to account for GST.

Q9. Is GST imposed on the interest charged on late payment?

A9. The interest charge on late payment is not subject to GST as it is an out of scope supply.

Registration

Q10. Who is liable to be registered?

A10. All legal practitioners who practice either as a sole proprietor or in partnership are required to be registered for GST if the total value of taxable supplies exceeds the GST registration threshold in the past 12 months or in the next 12 months or part thereof.

Q11. What constitutes the value of taxable supplies for purpose of registration?

A11. The annual turnover value of taxable supplies includes the following:

- (a) All fees;
- (b) other charges incurred by legal practitioners excluding disbursements referred to in paragraph 13-16; and
- (c) Deemed supplies such as private use of business assets and disposal of business gifts.

Q12. If my annual turnover of taxable supplies does not exceed the GST registration threshold, can I apply to be registered?

A12. Yes, you may apply for voluntary registration.

Q13. Is there any condition for voluntary registration?

A13. Yes, once registered you must remain registered for a minimum of two years.

Branch and Division

Q14. My establishment has two branches. How do I determine the turnover of the business?

A14. The combined turnover of the two branches will be regarded as the turnover of the business.

Example 5:

A & Co has two branches in Kuala Lumpur and Johor Bahru. The branch in Kuala Lumpur has a turnover of RM250, 000 while the branch in Johor Bahru has a turnover of RM 270,000. The combined turnover of the company is RM 520,000. A & Co is compulsory to register because the total turnover is exceeded RM500,000.

Q15. Can I register my branches separately?

A15. You can apply to register your branches separately subject to certain conditions and requirements as referred to in General Guide.

Example 6:

Based on the above example A & Co may register in Kuala Lumpur and a separate branch in Johor Bahru. Both branches will be given a separate GST registration number.

Q16. What are the conditions and requirements if I want to register my company separately?

A16. This approval is subject to the following conditions and requirements;

- (a) Every separately registered branch has the same taxable period.
- (b) Every branch has a separate account and management.
- (c) It is likely to cause difficulty for taxable person to submit a single return.
- (d) All branches must be registered although one branch is below threshold.
- (e) Each branch will be given a separate GST number and make their own return. However, the main branch remains accountable for all GST liability for all branches.

Time of Supply and Accounting Period

Q17. When do I have to account for GST?

A17. As a legal practitioner, if you not performed the services completely , you have to account for GST on the services at the earliest of the following:

- (a) The date of receipt of payment; or
- (b) The date of issue of a tax invoice.

However, upon completion of services and you issued a tax invoice within 21 days, you account GST based on the date of invoice.

Example 7:

AB & Co provided legal services to a client B. The legal services were provided in February over a period of time and finally completed on 15th May. The invoice has to be issued within 21 days from the date of completion of services that is on or before 5th June. AB & Co has to account for GST based on the invoice date.

Q18. What is the consequence if I fail to issue a tax invoice within 21 days from the date of completion of services?

A18. If you fail to do so within 21 days, the time of supply will revert back to the date that you completed the services. (basic tax point)

Example 8:

J & Co provided legal services to a client D. The legal service was provided over a period of time and was completed on 15th May. The invoice was issued one month after on 15th June. The tax point shifts back to 15th May. GST has to be accounted for the taxable period covering 15th May.

Q19. As a contracted legal practitioner to a construction company, I receive regular payment on a standing retainer. When do I have to account for GST?

A19. You account for GST on the earlier of the following:

- (a) The date of receipt of payment from the construction company; or
- (b) The date you issue a tax invoice.

Client Account

Q20. As a legal practitioner, I have to maintain my client's accounts. Do I have to account for GST on money deposited into the client's account?

A20. No, you do not have to account for GST because the amount received is not payment for a supply. However, you have to account for GST when the money is transferred from the client's account to your office accounts for payment of services rendered to your client.

Deposit and Advance Payment

Q21. Is GST chargeable on deposits I receive from my client?

A21. If the deposit forms part of payment of the total consideration payable by the recipient, GST will be charge at the time of payment of the deposit. On the other hand, if the deposit is used for security and fully refunded upon completion of services, no GST will be chargeable.

Q22. Is an advance payment subject to GST?

A22. Yes, because it was a part of payment for your supply unless the advance payment is refundable. You should account for GST on the date of receipt of payment

Q23. What is the GST implication on contingency fee (if any)?

A23. For the purposes of GST, the contingency fee is subject to GST based on the percentage received by legal practitioner. The legal practitioner is liable to account for GST on the earlier of the following:

- (a) when he receives any percentage of the client's monetary award; or

- (b) on the date of issue of a tax invoice.

Bad Debts

Q24. What will happen if my client (registered person) does not pay me after I have issued a tax invoice for my legal services to him?

A24. You can claim a bad debt relief on the output tax you had paid in respect of the supply provided you have:

- (a) not received any payment in the period 6 months from the date of the supply made; and
- (b) made sufficient efforts to recover the debt.

The relief must be claimed immediately in the taxable period after the expiry of the sixth month from the date of supply. Please refer to the Director General's Decision No: 1/2014 at the GST website for further information.

Other Outputs

Q25. What is the GST treatment for non-billed income such as oath fees received by the legal firm or by individual solicitor under GST?

A25. Non-billed income such as oath fees received in respect of oaths administered by a solicitor in sole practice or a partner in a legal firm are regarded as consideration for a supply of taxable services supplied in the course of business and subject to GST at a standard rate.

Disbursements

Q26. What are the conditional requirements of disbursements for GST purpose?

A26. For GST purpose, a legal practitioner may only treat a payment on behalf of a client for goods and services to a third party as a disbursement if **all** of the following conditions are satisfied:

- (a) The legal practitioner acted for his client when paying the third party.

- (b) The client actually received and used the goods or services provided by the third party.
- (c) The client knows that the goods or services would be provided by the third party.
- (d) The client authorized the legal practitioner to make payment on his behalf.
- (e) The client was responsible for paying the third party.
- (f) The payment is separately itemized when invoicing the client.
- (g) The legal practitioner recovers only the exact amount which he paid to the third party.
- (h) The goods and services paid for are clearly additional to the supplies which the legal practitioner makes to the client.

Q27. Can general expenses qualify as disbursements?

A27. General expenses such as telephone, telex, fax, postage, advertising, and stationery charges are incurred in the course of providing services to the client and not to be treated as disbursements.

Some firms may have a policy to charge separately for the cost of telephone calls, e.g. for international calls or for the cost of a conference call. Although charges may be itemized separately on the tax invoice, such charges are regarded as part of the cost of providing the supply of legal services to your client and these charges would attract GST.

Q28. Is travel and accommodation expenses regarded as disbursements for a legal practitioner?

A28. Recovery of travelling and accommodation expenses incurred by a legal practitioner in the performance of his services is treated as a reimbursement and subject to GST at standard rate.

This may include accommodation and travelling expenses such as flight, taxi and train fares, toll charges and car parking. Such expenses are incurred in the course of providing a supply of services to a client. If these expenses are borne by the legal practitioner, it may be recovered as the consideration paid by the client including the expenses.

Such expenses cannot be treated as reimbursements as the expenses were on the services supplied to the legal practitioner rather than to the client. The charge made by the legal practitioner was part of the total consideration for all the services supplied to the client and cannot be divided for the purposes of calculating GST.

Q29. Are disbursements excluded from the value of the supply of services?

A29. Yes, such disbursements are excluded from the value of supply of services. Example 2 above illustrates this.

Q30. Can payment on reports by third party be regarded as disbursement?

A30. Payment on such reports is regarded as reimbursements and subject to GST because that payment is part of the cost in providing services to the client (general expenses). However, payment on such report can be regarded as disbursement if the tax invoice is issued under the client's name.

Q31. Can witness fees paid by the legal practitioner be regarded as a disbursement?

A31. Yes, as the payment was made on behalf of the client not subject to GST.

Overseas Telecommunications

Q32. In supplying my legal services directly connected with real property in Australia, I have to make calls to my overseas client. Are these calls subject to GST at a zero rate?

A32. The legal services that you provide to your overseas client may be zero rated but the charges you incur on telephone calls is subject to GST at a standard rate.

Transitional Provisions

Q33. How do I account for GST on the value of legal services if the services were performed spanning GST implementation?

A33. Any legal services performed before 1 April 2015 is not subject to GST but if performed on or after that date is subject to GST at standard rate. You are required to apportion such services. For example the apportionment can be made by way of time spent, transactions or number of court appearances subject to approval by the Director General of Customs.

Example 8

Apportionment by number of court appearances

LM & Co has been appointed as litigation lawyers for RZ to act as his lawyer in the Magistrate Court. The lawyers attended court a total of 5 times, that is 3 times before and 2 times after commencement date of GST. After completion of services, LM& Co lodged claim for his services amounting RM10,000.00.

Total court appearance days = 5 times

Court appearances after GST implementation = 2 times

GST liable = $2 / 5 \times RM10,000.00 \times 6\% = RM240.00$.

LM & Co has to account for GST of RM240.00.

Q34. Is the payment that I received after commencement of GST for legal services performed before GST implementation subject to GST?

A34. No, payment received after commencement of GST for services provided before GST implementation is not subject to GST.

INQUIRY

1. For any inquiries for this guide please contact :

Sector III

GST Division

Royal Malaysian Customs Department

Level 3 – 7, Block A, Menara Tulus,

No. 22, Persiaran Perdana, Presint 3,

62100 Putrajaya.

Email: gstsector3@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. | 3.01.2015 | i. FAQ A3 | Correction |