



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON ENTERTAINMENT INDUSTRY

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CONTENTS

INTRODUCTION	1
Overview of Goods and Services Tax (GST)	1
GENERAL OPERATION OF THE ENTERTAINMENT INDUSTRY	1
Background	1
GST TREATMENT ON THE ENTERTAINMENT INDUSTRY	4
FREQUENTLY ASKED QUESTIONS	6
INQUIRY	21
FURTHER ASSISTANCE AND INFORMATION ON GST	21

INTRODUCTION

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

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.

GENERAL OPERATION OF THE ENTERTAINMENT INDUSTRY

Background

5. The entertainment industry in Malaysia covers a vast spectrum of activities. It includes the activities of using intellectual, artistic, musical and physical or other personal skills by performing or presenting to an audience.

6. Under the Entertainment Duty Act 1953 (Act 103), “entertainment” includes any exhibition, performance, amusement, game or sport, or any other activity as may be

declared to be entertainment by the Minister of Finance under subsection (2), to which persons are admitted for payment.

7. According to the Entertainment (Federal Territory of Kuala Lumpur) Act 1992 (Act 493), “entertainment” includes:-

- (a) plays, operas, pantomimes, variety acts, performance of music, singing, dancing, beauty contests, demonstrations, displays and parades, in which living persons take part;
- (b) displays of fireworks, set pieces, commemorative decorations and representation of real or mythical creatures;
- (c) circuses and exhibition of animal;
- (d) exhibition of models, reading matter, pictures, photographs or of statuary or other forms of representation of human or animal figures;
- (e) exhibition of cinematograph films, video movies and puppet-shows;
- (f) reproduction or cinematograph otherwise than in association with a cinematograph film, by means whatsoever other than telephony or radio telephony, or any music, song or speech;
- (g) machines and devices by the manipulation of which chances are given of obtaining prizes in money or kind;
- (h) pin-ball and video game;
- (i) sporting contests of any kind between a number of animal or persons;
- (j) organized competitions at game of skill or chance;
- (k) trade fair consisting of the exhibition, advertisement or sale of products industries or of materials;
- (l) any combination of any of above forms of entertainment; or

- (m) any other entertainment which the minister may, from time to time by order in the gazette, declare in any place to which members of the public are admitted with or without payment of money or other consideration.

8. For the purpose of this guide, entertainment excludes the activities under sub paragraph 7(g) and 7(j) above.

9. The main types of entertainment activities include:

- (a) music;
- (b) movies and film;
- (c) television shows;
- (d) radio;
- (e) humor/comedy;
- (f) comics and animation;
- (g) theatre;
- (h) amusement and theme parks;
- (i) books and literature;
- (j) magic shows; and
- (k) performing arts.

10. The main players in entertainment industry include:

- (a) artist;
- (b) dancer;
- (c) musician;
- (d) cameraman;

- (e) makeup artist;
- (f) promoter;
- (g) director;
- (h) composer.

GST TREATMENT ON THE ENTERTAINMENT INDUSTRY

11. All goods and services supplied by an entertainment provider in the course or furtherance of business are taxable supplies and subject to GST.

- (a) Examples of goods supplied are:
 - (i) food and beverages;
 - (ii) compact disc/ dvd/ cassettes;
 - (iii) musical instruments;
 - (iv) film rolls;
 - (v) photos; and
 - (vi) props.
- (b) Examples of services supplied are those by:
 - (i) performers;
 - (ii) musical bands;
 - (iii) make-up artists;
 - (iv) hair stylists;
 - (v) choreographers;
 - (vi) event managers;
 - (vii) promoters;

- (viii) besides;
- (ix) rental (equipments, costume etc.); and
- (x) advertising.

12. The above list is not exhaustive. Any payment in relation to the supply of goods or services in the entertainment industry, such as admission fees, royalties, commissions, sales of goods etc. is subject to GST.

FREQUENTLY ASKED QUESTIONS

Self-employed /Freelance

Q1. What is the GST liability of a freelance performer / entertainer?

A1. If you are a freelance performer/entertainer such as a dancer, singer, comedian, musician, magician and guest relation officer (GRO), you are considered as a self-employed person and liable to be registered if your turnover exceeds the prescribed threshold.

Any fee charged for services provided by you is subject to GST at a standard rate.

Q2. I am a self-employed musician and contracted with a symphony orchestra group. Do I have to account for GST?

A2. If you are contracted to perform in Malaysia, you need to account for GST on the payment received for the services rendered if you are GST registered person.

Q3. What if the performer is an employee of the production company?

A3. If the actual performer is the employee of a production company, then the company (employer) has to account for the GST for any payment received.

Q4. What expenses can I claim if I am an artist who is GST registered?

A4. As an artist who is GST registered, you are entitled to claim input tax credit for GST incurred on purchases of goods or services in the course or furtherance of your business.

Examples are:

- (a) coaching classes;
- (b) wardrobe and cosmetic for plays;
- (c) props;

- (d) technical and professional supports; and
- (e) musical and electronic instruments.

Q5. Can I claim the GST for work-related clothing and accessories?

A5. Claiming of GST on the acquisition of ordinary clothing is disallowed because ordinary clothing can be worn by the entertainer privately and regarded as for private use.

The input tax on clothing used solely as stage costumes is claimable, for example, GST paid on wig purchased by a professional musician to be worn for his show.

You can claim the tax paid for hairdressing specifically to maintain a certain image. You can also claim the GST paid for stage make-up, including tax paid for cleansing materials for make-up.

Q6. I am providing different types of services as an entertainer, motivator, coach/ instructor, choreographer and event management organizer. Do I need to register for GST separately?

A6. No, you do not need to register for GST separately if those services are provided under the same entity. Under GST Act, registration is based on person (entity) and not on the type of businesses. Person includes an individual, a sole proprietor, a firm, a company, a society, a body of persons, public authority, local authority, statutory body and every other juridical person or an unincorporated body or persons.

Non-resident

Q7. What is the GST treatment on the actor / celebrity who is a non-resident who makes an appearance in Malaysia?

A7. Any appearance by an entertainer in his / her recognized profession such as an actor, artist and sportsman will be within their scope of professionalism.

It covers promotional activities, advertising and endorsement of goods or services and may include a photo shoot, TV or radio interview or other appearances. The appearance does not have to be in front of an immediate audience. It includes work of film, video, radio and live or recorded television.

Consideration for appearance may include cash or in kind. Examples of consideration are:

- (a) appearance fees;
- (b) achievement bonus;
- (c) exhibition income;
- (d) box office percentage;
- (e) TV rights;
- (f) broadcasting/media fees;
- (g) tour income;
- (h) tournament winnings;
- (i) prize money;
- (j) advertising income; and
- (k) endorsement fees

All types of consideration listed above are subject to GST at a standard rate.

Q8. I am a foreign professional singer and was invited by X Company to perform at a charity event for a charge. What is the GST treatment on the payment received?

A8. The supply of your service in Malaysia is taxable supply. However, for a non-resident who has no business or fixed establishment in Malaysia, then your agent has to account for GST under the reverse charge mechanism.

Q9. I am invited to perform in Malaysia. My fees will be paid to me outside of Malaysia. Am I liable to GST in Malaysia?

A9. No. You are not liable to pay GST for services rendered in Malaysia. Your agent has to account for GST under the reverse charge mechanism.

Q10. What is the GST liability for the non-resident promoters?

A10. Non-resident promoters supplying services in Malaysia must have a local counterpart to account for GST on the reverse charge mechanism.

Q11. AZ, a foreign entertainment company, makes direct arrangements with BZ, a local resort company, to perform in Malaysia by renting a venue and facilities from BZ. AZ has also appointed a ticket agent to manage the sales of tickets. What is AZ's liability under GST?

A11. The GST treatment is as follows;

AZ is required to appoint a local promoter as their agent to account for whatever tax liability including GST. GST will be accounted by way of reverse charge mechanism.

BZ has to account for GST on the supplies of facilities provided to AZ such as renting of rooms and halls.

Ticketing agent has to account for GST on the commission made on the sales of tickets, if he is a GST registered person.

Note: Foreign entertainment company needs to get approval for filming and performance by foreign artists through a local agency known as PUSPAL (Central Agency for Application of Filming and Performance by Foreign Artistes) under the Ministry of Communications and Multimedia Malaysia (KKMM).

Q12. I am inviting foreign artistes to perform at my private function where I bear all the costs that include traveling expenses, accommodation, meals and professional fees. Do I have to pay GST on these services?

A12. Inviting foreign artistes to perform at private function is not subject to GST because it is not meant for furtherance of business. However, if you are the promoter / agent involved in the entertainment business then you are liable to account for GST on any payments received at a standard rate.

Dances

Q13. What is the GST treatment on the supply of services by dancers?

A13. Dances include all public dances, that is, functions or gatherings which include dancing and which are open to the public on payment of an admission charge, or on pre-purchase of a ticket (for example, cabarets, discos, socials and dances organised by sports clubs).

Supplies of dancing services in the course or furtherance of business are subject to GST. It does not include private dinner dances, where admission is not open to the public.

Royalty

Q14. Music Authors' Copyright Protection (MACP) collects royalties for the composers, lyricists and producers, whereas, Public Performance Malaysia (PPM) collects royalties for the recording companies and Performers and Artistes Rights Malaysia (PRISM) collects royalties for the musicians and singers whether in the recording studio or in public (for example in discotheques, lounges, shopping complexes, pubs, etc.), broadcasted by TV or radio stations or communicated to the public by way of cable, internet, video or music on demand, etc).

All royalty charges collected are distributed annually, (less only a deduction for all actual administration costs incurred) to its members.

Are these types of royalties subject to GST?

A14. Payment of royalty is considered as payment for a right to use the intellectual property or trade mark. Therefore, all types of royalties are subject to GST. MACP, PPM, PRISM as GST registered persons are required to issue a tax

invoice to the recipient of royalties. The recipient of the royalties has to account for GST if he is a GST registered person.

Q15. Music Authors' Copyright Protection Bhd (MACP) also charged license fee to public music (entertainment outlets, concert halls, etc.) Is the license fee subject to GST?

A15. The license fee charged by MACP is subject to GST at a standard rate. MACP will have to charge and account for GST.

Q16. Are fees paid to a foreign play originator for a show perform in Malaysia subject to GST?

A16. Yes, the fees paid are subject to GST because the services are deemed to be imported services. This treatment is also applicable to fees paid to foreign designers or owners of fashion shows, patent rights, franchise and other creative works performed in Malaysia. The recipient must account GST by reverse charge mechanism.

Q17. What is the GST treatment on the royalty paid by MACP to the overseas copyright protection agency?

A17. The royalty paid to the overseas agency is subject to GST at standard rate. MACP representing the interest of overseas copyright protector agency, need to account for GST by way of reverse charge mechanism. Such supply shall be treated as a supply by the recipient on imported services.

E-Commerce

Q18. My company provides down load music/movie/game services and plays it through multimedia equipment. Do such services attract GST?

A18. Download music/movie/game services are taxable supplies. The company who receives the services from overseas must account the GST by reverse charge mechanism. Supplies from local providers are subject to the normal rule of GST.

For GST, all supplies of digitized products are treated as services. As with all supplies, it is the nature of what is being provided that determines the treatment for GST. Most electronically supplied services, including digitized products and all radio and TV broadcasting services subject to GST follows where the services are effectively consumed and enjoyed.

Broadcast

Q19. Is payment received for a right to broadcast any live entertainment or performance subject to GST?

A19. Yes, the right to broadcast in Malaysia is a taxable supply and therefore subject to GST at a standard rate. If the right to broadcast is given to overseas clients or company, then it is considered as a zero rated supply.

For further information please refer to the GST Guide on Telecommunication Services.

Q20. An event management company co-organizes reality show with a broadcaster and a telecommunication provider. What is the GST treatment and how is GST to be accounted on this arrangement?

A20. Under the GST rule, whatever consideration received in return for a taxable supply will create a GST liability. There are a number of transactions in organizing a reality show. Each of the transaction has to be identified in determining the appropriate GST treatment. For a reality show aired on television, there will be normally media planning, hiring of the venue, advertisements, the right to broadcast, admission charges, charges by the telecommunication company on SMS sent by the viewers. All these activities are subject to GST at a standard rate.

Sponsorship

Q21. My company is an entertainment company involved in live telecasting of reality programs (entertainment shows). I received cash sponsorship for live telecasting of an entertainment program. What is the GST treatment on this sponsorship?

A21. Cash sponsorship is a non-supply. However, if there is a material benefit provided to the sponsor in return of the sponsorship received such as advertising during commercial break of the telecast, then the sponsorship is considered as a consideration in return of the advertising services. Therefore, you have to account GST on the sponsorship (amount) received.

Q22. I receive sponsorship in kind - airline ticket, hotel accommodation and ground transport etc. - for live telecasting of a reality programs. Who will account for GST and who is entitle to claim the input tax credit?

A22. Sponsorship in kind will be subject to GST. Sponsorship given with conditions attached to it, such as advertising the name or brand of the sponsor, is a taxable supply. The sponsor need to account GST on the ticket/ rooms / clothing sponsored. On the other hand, if the receiver provides advertisement services in return for the sponsorship, the receiver must account GST for the supply of the advertisement services. Input tax credit can be claimed by the sponsor on the GST paid by him. The receiver can also claim ITC on purchases if he is a GST registered person.

Admission charges

Q23. Admission charges for a live theatrical or musical performance are subject to Entertainment Duty. What is the liability under the GST Act?

A23. The value for GST purpose is excluding of Entertainment Duty.

Example 1:

<i>Admission ticket</i>	:	<i>RM3.00</i>
<i>Entertainment Duty 25%</i>	:	<i>RM0.75</i>
<i>GST (RM3.00 X 6%</i>	:	<i>RM0.18</i>
<i>Total cost</i>	:	<i>RM3.93</i>

Q24. What is the GST treatment for admission charges to discotheques, nightclub and public houses?

A24. Any admission charges for entertainment to discotheques, nightclub and public houses is subject to GST at a standard rate.

Cinema

Q25. Who should account for GST on tickets sold at cinemas?

A25. Price of tickets sold at cinemas should include GST. The cinema operators are acting as ticketing agents for the production house and must collect and account GST on any tickets sold by them.

Agents

Q26. An event promoter may use agents to sell tickets on his behalf. What is the GST treatment?

A26. Promoters and ticket agents may also use a network of distributors, such as local music stores, to ensure a broad distribution of tickets. The actual sale of a ticket by a promoter, a ticket agent or distributor is the supply to the customer of the right to admission to an event.

The agent or distributor who sells a ticket is liable to account for GST on the ticket price. Booking charges, if part payment, will become part of the ticket price. Commission charges have to be accounted separately by the receiver of the commission if he is a GST registered person.

Q27. What is the GST treatment on advance ticket sales?

A27. Payments received in advance of the supply of goods or services are liable to GST at the time the payment is made. This also applies to sales of tickets for live theatrical and musical events, which are sold prior to the date of event. GST must be accounted for in the taxable period in which the sale is made and not when the event takes place.

If an event is cancelled, the promoter, ticket agent or distributor may refund the full amount of the ticket, including GST, to the purchaser. Adjustment can be made through the GST return in the taxable period in which the credit note is issued.

Q28. What is GST treatment for advance payments by the promoter to performers?

A28. Advance payments by promoters to performers are subject to GST at the time of payment made.

Q29. Istana Budaya organize a musical concert which is partly sponsored by telecommunication company. In return of the sponsorship, Istana Budaya instructs the telecommunication company to sell tickets to its clients at a subsidized price as part of a marketing program. Is the sponsorship that Istana Budaya receives subject to GST?

A29. Yes, sponsorship received is subject to GST because admission at subsidized rate is considered as benefit in return.

Q30. I am a promoter who hires theatre, facilities and equipment from government agencies and local authority. What is the GST treatment on the charges paid for these services?

A30. Services provided by federal and state government agencies are out of scope and therefore are not subject to GST. However, services provided by local authorities and statutory bodies are subject to GST except for their regulatory and enforcement function under their act.

Charges and advance fees, which are part payment for hiring theatre, facilities and equipments from local authorities and statutory bodies, are also subject to GST.

Q31. I run a private club offering entertainment services. How should I account for membership fees paid by my customers?

A31. If you charge a membership fee for joining your club, then you must charge GST on the amount of the fees paid by club members.

Free Gifts and Samples

Q32. Certain entertainment outlets carry out promotional activities in their premises where some merchandise are given free of charge to their customers. What is the GST treatment on merchandise given free?

A32. Merchandises given free for promotional purposes are not subject to GST, provided the cost of the merchandise is not more than RM500.00 per person in a year.

Q33. A program is organized to promote a recording artist. The production house or the promoter distributes samples of CDs and VCD of the artist's album to the public free of charge. What is GST treatment on this sample?

A33. These CDs and VCD can be regarded as free gifts under the gift rule.

Gaming and Amusement Machines

Q34. My club operates some gaming machines besides providing family recreational and sporting activities. What is my tax liability under the GST Act?

A34. Gaming and betting are taxable supplies and therefore subject to GST. Other supplies provided by the club such as wine, food, souvenirs, tobacco and cigarettes, etc. are subject to GST. Membership subscription and admission charges, if any, are also subject to GST. Hence, you have to account for GST on these supplies.

Q35. Are amusement machines subject to GST?

A35. GST is chargeable on the supply of amusement machines whether the operator of the machine installs it on his own or another person's premises such as in a club. Examples of amusement machines are video games (but not video poker machines) and juke boxes.

An amusement machine is one in which there is no prize in any circumstances, or the prize is dependent purely on the player's level of skill or knowledge such

as quiz machines. These 'skill with prizes' (SWP) machines, are not gaming machines because winning is not dependent on chance.

Q36. What is the GST liability of the supplies involved in amusement machine transactions?

A36. There are a number of supplies involved in dealings connected with amusement machines. These are the supply of:

- (a) **the use of the machine** - when it is made available to a player;
- (b) **the hire of the machine** - when an owner rents a machine out, either for a fixed rental charge or for a share of the profits; and
- (c) **a license to trade** - when the owner of the premises allows a machine to be sited on his premises.

These supplies are subject to GST at a standard rate.

Q37. Who must account for GST on machine takings?

A37. The GST registered person who supplies the use of the machine to the public must account for GST on the takings. There can only be one person who does this and it will usually be the person who exercises day-to-day control over the machine and is entitled to the takings.

The person who supplies the use of an amusement machine to the public will be either the:

- (a) **site occupier**, if the machine is purchased, hired or rented by the occupier of the premises on which it is sited; or
- (b) **owner of the machine** where the owner of the machine pays rent to the occupier of the premises on which the machine is sited. If the machine is operated on a profit share basis, the supplier of its use to the public will be the person who controls its operation.

Theme Park

Q38. Customers are required to purchase a theme park card in order to enjoy rides at the theme park. The card can be topped up as and when needed.

What is the GST treatment on this card?

A38. The sale and subsequent top-up amount are treated as monetary voucher and not subject to GST at the time of purchase or top up. GST would only be imposed when the card is used on any rides at the theme park as the fare for the rides would be GST inclusive.

Q39. The value of the top-up card is inclusive of a refundable deposit which will be refunded upon returning of the top-up card. Does this refundable deposit attract GST?

A39. Refundable and forfeited deposits are not subject to GST because it is not a consideration for a supply.

Q40. A theme park operator allows another person to place his amusement machine to be operated in his theme park on a profit sharing basis. How and who should account GST on the takings derived from the operation of the machine?

A40. The operator who is licensed to operate the amusement machines has to account for GST on the takings of the amusement machine. There will be no GST implication on the profit sharing between the operator and the machine owner.

Q41. Do membership subscription which entitle members to free admissions into a theme park / trade fairs attract GST?

A41. Yes, the membership subscription attract GST because it is a payment for rights to acquire taxable supplies.

Film

Q42. What is the GST treatment on filming covering more than one country?

A42. Only filming in Malaysia is subject to GST. Production Company A from Malaysia does filming in Sabah, Indonesia and Thailand for a client. The company have to apportion the costs of production and charge the client GST on the filming cost performed in Sabah only.

Q43. What is the GST treatment on the supply of services provided by actors in the filming done locally and overseas?

A43. The supply of services provided by actors in the film done locally are subject to GST while a supply of services provided by actors acting overseas are zero-rated.

Q44. What is the GST implication on film supplied by a production house?

A44. A production house is liable to account GST on payment received for the supply of film whether through outright sale or term sales.

Q45. What is the GST implication on exported film and rights supplied to overseas?

A45. All films and rights exported to overseas markets are zero-rated.

Q46. Does FINAS need to account GST on the sponsorship / grant received from FILEM NEGARA to make a film?

A46. Sponsorship / grant received in the form of cash without any benefit to the sponsor is a non-supply therefore it is not subject to GST.

Other Matters

Q46. Would any fees charged for cultural, artistic, tourism, entertainment services rendered outside of Malaysia subject to GST?

A47. Any fees charged for services rendered outside of Malaysia are zero-rated.

Q47. Some costs incurred by an overseas headquarters of a recording company here in promoting the sales of album, for example TV advertisement costs, will be proportionately charged to the recording

company in Malaysia. Would these charges attract GST? If yes, who is to remit the GST?

A48. Costs incurred by such overseas headquarters in promoting sales, e.g. TV advertisement, charged to the recording company in Malaysia are not subject to GST if the services are provided outside Malaysia and are considered as zero rated supplies.

If the services are provided in Malaysia, it is subject to GST irrespective who pays for the advertisement. The services are considered as imported services and the recording company would have to charge and account for the GST on reverse charge mechanism.

Q48. Public Performance Malaysia (PPM) also appoints commission-based agents to carry out its copyright licensing activities. Would such commission paid out be subject to GST and do such agents have to issue a tax invoice to PPM?

A49. Commission paid to agents is subject to GST if the agent is a GST registered person. The agent should issue a tax invoice to PPM and account for GST on the commission received.

Q49. PPM contributes monthly to RIM on behalf of RIM members for funding of administrative and anti-piracy operation expenses. Would this contribution be considered as supply between members of a group and disregarded for GST purposes?

A50. Contribution in money for funding of administrative and anti-piracy expenses is not a supply and is not subject to GST.

Q50. Would copyright damages received by RIM members, RIM, PPM and / or RIM COP from copyright infringers pursuant to enforcement action attract GST?

A51. Consideration from copyright damages received are not subject to GST as it is a compensation.

INQUIRY

1. For any inquiries for this guide please contact:

Sector IV

GST Division

Royal Malaysian Customs Department

Level 3 – 7, Block A, Menara Tulus,

No. 22, Persiaran Perdana, Presint 3,

62100 Putrajaya.

Email: gstsector4@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
- E-mail: ccc@customs.gov.my