



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON TRANSFER OF BUSINESS AS A GOING CONCERN

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CONTENTS

INTRODUCTION.....	1
Overview of GST.....	1
TERMINOLOGY.....	1
SCOPE OF THIS GUIDE	2
GST TREATMENT FOR TOGC.....	3
Concept of TOGC	3
Purpose of the TOGC provision	4
CONDITIONS FOR TOGC.....	4
REGISTRATION OF TRANSFEROR AND TRANSFEREE TO BE ELIGIBLE FOR TOGC TREATMENT.....	6
Transferor	6
Transferee.....	6
CANCELLATION OF REGISTRATION AS A RESULT OF TOGC.....	8
TRANSFER OF BUSINESS NOT WITHIN THE SCOPE OF TOGC	8
TOGC RULES ARE COMPULSORY.....	10
CONSEQUENCES OF INCORRECTLY TREATING A TRANSFER AS A TOGC..	10
NOTIFICATION OF TOGC BY THE TRANSFEROR.....	10
NOTIFICATION OF TOGC INVOLVING SELF-BILL APPROVED PERSON	11
TRANSFEROR'S DUE DILIGENCE ON TOGC	11
TRANSFEROR WHO IS CANCELLING HIS REGISTRATION DUE TO TOGC AND HAS BUSINESS ASSETS THAT ARE NOT TRANSFERRED	12
TRANSFEREE'S OBLIGATIONS TO FURNISH RETURN ON AND AFTER THE DATE OF TRANSFER	12
Liability under section 41 of the GSTA 2014.....	12
TRANSFEREE'S RIGHT ON CREDIT FOR INPUT TAX	12
DEEMED SUPPLIES OF GOODS OR SERVICES ACQUIRED BY WAY OF TOGC	13

STATUS OF SPECIFIC GST APPROVALS	14
STATUS OF APPROVED PAYMENT BASIS IN CASE OF TOGC.....	14
KEEPING OF BUSINESS RECORDS	14
TOGC INVOLVING GST GROUP REGISTRATION.....	15
CAPITAL GOODS ADJUSTMENT (CGA) UNDER TOGC.....	15
RELATED INFORMATION FOR PARTIES INVOLVED IN TOGC.....	18
FREQUENTLY ASKED QUESTION.....	19
INQUIRY	20
FURTHER ASSISTANCE AND INFORMATION ON GST	20
APPENDIX A	21
AMENDMENTS	23

INTRODUCTION

1. This industry guide is prepared to assist businesses in understanding matters with regard to Goods and Services Tax (GST) treatment on Transfer of Business as a Going Concern (TOGC).

Overview of GST

2. 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.

TERMINOLOGY

5. The terminology employed in this guide has the meanings as defined below:
- (a) “**business**” is defined under section 3 of the GSTA as including any trade, commerce, profession, vocation or any other similar activity, whether or not it is for a pecuniary profit.
 - (b) “**business assets**” are any assets of a business whether movable or immovable and include trading stock, machinery, furniture, fixture and fittings and premises.
 - (c) “**agreement**” is the contract for the sale or transfer of a going concern

and may include one agreement or more. It could be done under one master agreement, with connected or subsidiary/secondary agreements (for example, one master sale and purchase agreement with one secondary agreement for the transfer of employees).

- (d) **“date of transfer/transfer date”** is the effective date of transfer of the going concern that is provided in the agreement of sale. It excludes the following dates:
- (a) the date of the agreement,
 - (b) the date when the agreement is effective,
 - (c) the date when the transferee has the rights to start transferring the assets/business to the transferor; or
 - (d) the date when the business transfer is completed.

SCOPE OF THIS GUIDE

6. This guide includes the following:-
- (a) Conditions that are imposed on the transfer of business assets qualifying as a TOGC;
 - (b) GST obligations imposed on the transfer or of business assets under the TOGC;
 - (c) The GST obligations of the transferee of business assets after the TOGC is effected; and
 - (d) Input tax incurred on expenses incidental to the TOGC that are claimable by both the transferor and transferee.

GST TREATMENT FOR TOGC

Concept of TOGC

7. The transfer of a business or part of a business which comes within the scope of TOGC is treated as neither a supply of goods nor a supply of services. Thus, there would be no output tax charged or received by the transferor on such transfer of business. On the other hand, the transferee is deemed to have incurred input tax on the supply and at the same time claimed the deemed input tax. So, in reality there is no payment of GST by the transferee to the transferor for the transfer of business or part of a business under the TOGC. The transfer of non-business assets of a taxable person is not a TOGC.

8. Under TOGC, the principle of continuity upholds. This means that if there is any input tax incurred which has not been claimed by the transferor on the date of transfer, it is claimable by the transferee. However, if there is any output tax which has not been accounted for and paid by the transferor on the date of transfer, it becomes the liability of the transferee to account and pay for the tax.

9. TOGC may involve the transfer of a whole or part of a business as a going concern from a taxable person to another taxable person and in the case where only part of the business is transferred, that part of the business must be able to operate on its own. Below are examples of common transfers, but the list is not exhaustive:

- (a) The business assets of a taxable person are taken over by another taxable person due to death or retirement;
- (b) A taxable person sells his business assets or part of his business to another taxable person who carries on the business as a going concern;
or
- (c) The assets may be transferred to a new legal entity such as, a sole proprietor may take on a partner, or form a company.

10. For there to be a transfer capable of being treated as a TOGC it must include the transfer of business assets. Where the assets are transferred from one person to another, the transfer may, subject to the fulfilment of the conditions, be covered by the

TOGC provisions. For TOGC provisions to apply it is important that the assets, whatever they are and however many are to be transferred, put the purchaser in possession of a business, rather than simply assets.

Purpose of the TOGC provision

11. TOGC is a facility provided to both the transferor and transferee involved in the transfer or sale of business. The TOGC provision under section 68 of the GSTA was introduced for the following purposes:-

- (a) the transferee need not have to pay output tax on the transferred assets and thus alleviate his cash flow burden;
- (b) the transferor does not have to account for output tax on the transferred assets; and
- (c) it could safeguard government revenue on the output tax which the transferor may default in paying when he ceased business.

CONDITIONS FOR TOGC

12. A transfer of business assets can only be regarded as a TOGC when certain conditions are met. Such conditions include:-

- (a) On the transfer date, the transferor must be registered for GST while the transferee is either already a registered person or he is a person who is liable to be registered under subsection 20 (4) of GSTA. Please refer to Guide on Registration for further details;
- (b) The transferee shall be treated as having carried on such business before as well as after the transfer and any taxable supplies made by the transferor shall be treated as supplied by the transferee;
- (c) In the case where only part of the business is transferred to a transferee who is not a GST registered person, then only that part of the business that is transferred shall be taken as having carried on by the transferee before as well as after the transfer for the purpose of computing the prescribed threshold. This may include records, customers, liabilities

and assets;

- (d) The business transferred must be a going concern before and immediately after the transfer. Any business which has actually ceased operation on or before the transfer date does not qualify for TOGC. However, a short period of break or temporary closure immediately after the transfer to facilitate the smooth transfer might be permissible;
- (e) The assets necessary for the carrying on the business must be transferred to the transferee. The transferee must use the transferred assets to continue with the same kind of business of the transferor;
- (f) If only part of the business is sold or transferred, that part of business must be capable of separate operation. However, for the new owner, it does not matter whether the transferred business will be operated separately from any other businesses that he is already operating. There must be an actual or current operation. The agreement to dispose of a business yet to commence or a dormant business is not a going concern. The business transferred to the transferee must be in the capacity to continue;
- (g) Business or part of the business transferred as a going concern shall be an income earning activity on the transfer date. This income earning activity includes income earned from leasing activity. Examples of non-income earnings include interests and dividends earned;
- (h) If a transferor has not really taken much risks in putting a 'business' together and cannot enjoy much, or any, reward from the operation of that business, then there may not be a going concern in his hands to have a transfer of; and
- (i) If a registered person has not yet made any taxable supplies, the transfer of the business might not be a transfer of a 'going concern'. However, where sufficient preparatory work has been undertaken prior to making taxable supplies, there may be a business capable of being transferred as a going concern.

REGISTRATION OF TRANSFEROR AND TRANSFEREE TO BE ELIGIBLE FOR TOGC TREATMENT

Transferor

13. The transferor is a registered person under Section 20 of the GST Act 2014 (mandatory registration) or registered under Section 24 of the GST Act 2014 (voluntary registration).

Transferee

14. The transferee must be liable to be registered as a result of the TOGC. He is liable to be registered on the date of transfer under section 20 of the GSTA 2014 if:

- (a) the total value of all his taxable supplies in the period of twelve (12) months immediately prior to the transfer date has exceeded the prescribed threshold of RM 500,000; or
- (b) there are reasonable grounds for believing that the total value of all his taxable supplies in the period of twelve (12) months beginning from the date of transfer has exceeded the prescribed threshold of RM 500,000.

15. For item 14(b) above, instances of reasonable grounds are as below, but the list is not exhaustive:

- (a) The value of taxable supply of the previous business exceeds the prescribed threshold of RM 500,000.00 annually and with other things being equal or held constant, the transferee believes he could make taxable supplies exceeding the prescribed threshold.
- (b) There is business and business assets being sold to the transferee where the value of annual taxable supply of the previous business exceeds the prescribed threshold of RM 500,000.00 and with other things being equal or held constant, he believes that the total value of all his taxable supplies in the period of twelve (12) months beginning from the transfer date will exceed the threshold of RM 500,000.

16. On instances above, the value of annual taxable supply that he will be making could be taken account in the calculation of total value of all his annual taxable supplies. The transferee has to inform RMCD on what are the reasonable ground(s) he holds to and provide necessary document(s) to support it when required.

17. Hence, the transferee is a person who is:

- (a) registered under Section 20 of the GST Act 2014 (mandatory registration) before the date of transfer;
- (b) registered under section 24 of the GST Act 2014 (voluntary registration) before the date of transfer and receives a transfer of business as a going concern in which the total value of his annual taxable supplies including the value of taxable supplies of that transfer of business as a going concern exceeds the threshold of RM 500,000;
- (c) before the transfer date he is not a registered person but on the date of transfer, he is liable to be registered under Section 20 of the GST Act 2014 (mandatory registration) where the total value of all taxable supplies in the period of twelve (12) months immediately before the date of transfer has exceeded the threshold value RM 500,000 or the value of all taxable supplies in the period of twelve months from the date of transfer will exceed the threshold value of RM 500,000;
- (d) registered under section 24 of the GST Act 2014 is eligible to do TOGC where the transferee is taking over entire business of the transferor and as the result of the transfer, the total value of his taxable supplies which previously under the prescribed threshold, is now exceeded the prescribed threshold of RM 500,000 in the period of twelve (12) months beginning from the transfer date;
- (e) registered under section 24 of the GST Act 2014 is eligible to do TOGC where if only part of the business is being transferred, the transferee must look at the value of taxable supplies of that part of business for him to take into account and as a result of the transfer, his total value of his taxable supplies which is previously under the prescribed threshold, has

now exceeded the prescribed threshold of RM 500,000 in the period of twelve (12) months beginning from the transfer date;

- (f) a recipient of business assets of a taxable person who has retired or died where the value of annual taxable supplies of that business exceeds the threshold value of RM 500,000; or
- (g) an owner of a business entity with an annual taxable supply exceeding the threshold value of RM 500,000 has changed his business entity, for example change of business entity from a partnership business entity to a company business entity.

18. The transferee who is liable to be registered shall apply to be registered within twenty eight (28) days from the date of transfer.

19. If the transferee is applying for registration by using Form GST-01, he is required to fill up items no. 25, 26, 27 & 28 of Part C: Details of Registration. However, if he is registering online, under "Registration Details", he must tick the option "Registration is the result of a transfer of going concern", and furnish information of Source Business GST No. and Source Business Name.

CANCELLATION OF REGISTRATION AS A RESULT OF TOGC

20. If the transferor is ceasing to make a taxable supply or is no longer registerable as a result of the TOGC, then he must send a notification of cessation of his liability to be registered to RMCD and apply for cancellation of registration. Please refer to the Guide on Registration for further details.

TRANSFER OF BUSINESS NOT WITHIN THE SCOPE OF TOGC

21. There are instances where the transfer of a business does not come within the scope of TOGC, such as follows:-

- (a) A mere sale or transfer of capital assets

A sale or transfer of capital assets which does not result in the purchaser taking over the business of the seller is not a TOGC.

- (b) Transfer of shares which do not change the entity of the business.

A mere transfer of shares from one shareholder in a limited company to another shareholder or person does not constitute a TOGC as the ownership of the business assets still remains within same business entity. Likewise, any change in a partnership shall not be taken into account for the purpose of GST. Thus, the TOGC provisions would not be applicable to a change in the partnership of a firm.

- (c) A series of immediate consecutive transfers of the same business.

A purchaser of a business who made an immediate sale of the business to another party is deemed to have not carried out the business of the first vendor. This would make both his purchase and subsequent sale to be outside the scope of TOGC. Consequently, the normal rules of GST would apply to both his purchase and subsequent sale. See example below.

Example 1:

Ahmad acquired a business from Ali and immediately transferred the business to Akmal. Under this instance, Ahmad is considered as not carrying out the business of Ali, and the TOGC provisions would not apply. This would make Ahmad's purchase from Ali subject to output tax. Ahmad's subsequent transfer of the business to Akmal would also attract GST.

- (d) The assets of the part of the business transferred are not directly used by the transferee to make supplies but rather used as capital asset of his business.

Example 2:

A property owner, who is in the business of leasing commercial properties, sold part of his property and the purchaser then converts the commercial building he acquired as his business premises.

TOGC RULES ARE COMPULSORY

22. TOGC rules and conditions are mandatory to follow. It is not optional where the transferor or transferee may decide to opt out (even though the transferor and transferee met all the conditions for TOGC). Therefore, it is very important to establish from the outset whether the business is being sold as a TOGC. If the business transfer is a TOGC, the transferor shall not charge GST to the transferee. On the contrary, if a business being sold is not a TOGC, the transferor is required to charge GST to the transferee on the transfer of business assets and account for output tax. Incorrect treatment could result in corrective actions by RMCD which may attract a penalty.

23. Subsequently, Regulation 21(e) of the GSTR 2014 requires the transferor (registered person) to immediately (by the date of transfer) notify the RMCD in writing of the business being sold as a TOGC, failing which he commits an offence.

CONSEQUENCES OF INCORRECTLY TREATING A TRANSFER AS A TOGC

24. If the transferor and transferee proceed on the basis that the transfer of assets is a TOGC (and therefore no GST is charged on the transfer) but it is subsequently found not to have been a TOGC:

- (a) a supply of the assets will have taken place at the date of transfer (time of supply);
- (b) GST will be due from the transferor (seller) to RMCD by reference to the nature of assets transferred;
- (c) the transferor must issue a GST tax invoice to the transferee (buyer);
and
- (d) the transferor must pay any penalties due for late payment of GST

NOTIFICATION OF TOGC BY THE TRANSFEROR

25. The transferor must notify RMCD by the date of transfer of any business sold or transferred in accordance to Regulation 21 of the GST Regulations 2014

irrespective of whether the transferor continues his business or ceases business on the date of transfer.

26. The sales and purchase agreement is to be attached with the notification of TOGC. A clause or declaration is to be inserted in the agreement that the sale of the business is a TOGC. If it is not to be incorporated in the sales and purchase agreement, a separate declaration is required. It must state that:

- (a) Both parties agreed that the business being transferred is a going concern;
- (b) Both parties comply with section 68 of the GSTA 2014 and the first item of the Second Schedule of the GSTA 2014; and
- (c) The agreement/ clause/ declaration will be void if later RMCD finds that it is not a TOGC.

27. The content of the notification is provided in **Appendix A**.

NOTIFICATION OF TOGC INVOLVING SELF-BILL APPROVED PERSON

28. The supplier and the recipient shall notify each other if either one of them transfers his business as a going concern.

TRANSFEROR'S DUE DILIGENCE ON TOGC

29. The transferor shall transfer all the essential and necessary assets to the transferee for him (the transferee) to be able to carry on the business, of which without those essential and necessary assets, the transferee cannot continue the same kind of business as him. If the transferor fails to do so, then the transfer of business could not be concluded as a TOGC.

30. The transferor must ensure that he has transferred to the transferee any license(s) related to the operation of the business that is being transferred as a going concern, of which without the license, the transferee cannot operate the business lawfully. If the license(s) are not able to be transferred, it must be surrendered to the transferee.

TRANSFEROR WHO IS CANCELLING HIS REGISTRATION DUE TO TOGC AND HAS BUSINESS ASSETS THAT ARE NOT TRANSFERRED

31. Any transferor who ceases to be a taxable person after the date of transfer, any goods forming part of the assets of the business carried on by him which have not been transferred shall be deemed to be supplied in the course of furtherance of his business immediately before he ceases to be a taxable person (de-registered). Therefore, he has to account for output tax on that supply and the value of that supply (those business assets not being transferred) shall be the open market value.

TRANSFeree'S OBLIGATIONS TO FURNISH RETURN ON AND AFTER THE DATE OF TRANSFER

Liability under section 41 of the GSTA 2014

32. The transferor's liability to submit returns, account or pay tax under section 41 of the GSTA 2014 existing at the date of transfer becomes the liability of the transferee.

33. Any return furnished or tax accounted for or paid by the transferor shall be treated as having been made by the transferee.

TRANSFeree'S RIGHT ON CREDIT FOR INPUT TAX

34. Any right of the transferor for a credit for input tax or a refund of tax shall become the right of the transferee whether the credit for input tax exist or not at the transfer date.

35. If a transferor has made a claim for the credit for input tax or refund of tax before the date of transfer, it shall be treated as having been made by the transferee.

36. For the transferee, the input tax on costs that relates wholly to the acquisition of assets acquired as a result of a transfer of a going concern, will be recoverable to the extent that they will be used in making taxable supplies.

37. Both the transferor and transferee may incur incidental expenses on the transferring of business, such as fees paid for due diligence on the transferred

business and legal fees for the preparation and to seal the transfer or sale and purchase agreement. Despite supplies made under TOGC being treated as neither a supply of goods nor services, both the transferor and transferee may claim input tax credit incurred on expenses incidental to the transfer of business as follows:-

- (a) the transferee can claim the full amount of input tax incurred if the acquired assets are used to make wholly taxable supplies;
- (b) if the transferee uses the transferred assets to make mixed supplies, then he has to apportion the input tax claim accordingly based on the apportionment method adopted;

38. When business assets transferred as a TOGC are used to make only exempt supplies, the transferee is not entitled to claim any input tax incurred on expenses incidental to the transfer.

DEEMED SUPPLIES OF GOODS OR SERVICES ACQUIRED BY WAY OF TOGC

39. Where goods and services are transferred as part of a TOGC, and the previous business has had entitlement to input tax on those supplies, output tax has to be accounted for on any subsequent free supply of those goods or services.

Example 3:

Company A is a parent company with Company B and Company C as its subsidiaries. Company A, B and C are not in a group registration. Company B purchases few units of lorries worth RM 318,000.00 (inclusive of GST) and leases it to Company A and Company B had claimed RM 18,000.00 as its input tax. Company B then transfers its business to Company C as a TOGC where Company C acquires all the business assets (including the lorries) and now Company C continues to lease the lorries to Company A. After some time, Company C stops leasing the lorries and gives the lorries for free to Company A. Company C has to account for tax at open market value even though no output was chargeable on that disposal and Company C did not have the benefit of input tax when the goods (lorries) were acquired.

STATUS OF SPECIFIC GST APPROVALS

40. If any specific approvals have been given to transferor – for example, self-billing, simplified tax invoice, a partial exemption special method, special schemes (Approved Trader Scheme, Approved Toll Manufacturer Scheme, etc.) they may in many cases end when the business to which they relate is transferred to another person. Generally, such specific approvals **are not transferred** to the transferee and therefore transferee need to re-apply for approval.

41. Any amount of GST suspended (if any) which relates to the assets being transferred has to be accounted for and paid by the transferor before the date of transfer.

STATUS OF APPROVED PAYMENT BASIS IN CASE OF TOGC

42. In case where the transferor was an approved person to account for tax on payment basis, transfers a business to a transferee who is a person liable to be registered under Section 20 (4) of GSTA on the date of transfer, the transferee shall continue to account for and pay the tax on supplies made and received by him on or after the date of transfer as if he were the transferor who was given the approval to account for tax on a payment basis. Thus, unlike any other specific approvals given, the transferee does not need to apply to Director General to account for tax on payment basis.

KEEPING OF BUSINESS RECORDS

43. Under TOGC, records must be kept as follows:
- (a) both the transferor and the transferee must keep complete records on the transferred assets;
 - (b) the transferor shall transfer, unless otherwise permitted by the proper officer of customs, all records relating to the transferred business as required under subsection 68(1) of the GSTA;
 - (c) the transferee shall keep and preserve such records in accordance with

section 36 of GST Act 2014; and

- (d) Where the transfer involves only a part of a business and the related record could not be possibly separated, the transferor must keep certified true copies of all records and documents related to the transferred business to the transferee in lieu of the original records and documents.

TOGC INVOLVING GST GROUP REGISTRATION

44. The general provisions that govern GST group registration also apply to supply or acquisition of business assets as a TOGC by members of a GST group as follows:

- (a) any transfer of business assets between members of the same GST group is treated as a disregarded supply and there would be no GST implication;
- (b) any transfer of business assets as TOGC by any group member is deemed to be made by the representative member of the group;
- (c) any acquisition of business assets under a TOGC by any group member is deemed to have been acquired by the representative member of the group.

45. Transfer of business asset to an entity who is a member of a GST group who will only make supplies to other members of the GST group cannot be considered to be a TOGC for GST purposes.

CAPITAL GOODS ADJUSTMENT (CGA) UNDER TOGC

46. If the sale constitutes a TOGC, no CGA adjustment is required by the transferor, as the transferee takes over the requirement to the CGA adjustments over the remainder of the intervals which began with the original purchase.

47. The general provisions under the CGA are applicable to a TOGC. Under the CGA, annual adjustments to input tax claims has to be made on any capital items that are used to make mixed supplies if the proportional use of the capital items varies from year to year. When any capital item that falls within the CGA are transferred as a

TOGC, the transferee is obliged to continue with the adjustments on the transferred capital item(s) for the remainder of the adjustment periods.

48. The tax interval applying to a capital item at the time of its transfer would end on the last day of the transferee's tax year that encompasses the date of transfer. Each subsequent interval, if any, shall end on the last day of the transferee's annual tax year. See example below:

Example 4:

ABC transferred some business assets to XYZ as a TOGC on 25th March 2016. ABC's second tax interval for the transferred assets would end on 30th September 2016 while XYZ's current tax year would only end on 31st December 2016. Thus, the second interval for the transferred assets shall end on 31st December 2016. The third, fourth and fifth interval for the transferred assets would end on 31st December 2017, 31st December 2018 and 31st December 2019 respectively.

49. The obligations of both the transferor and transferee in respect of any capital items transferred under a TOGC are as follows:-

- (a) the transferor must notify the transferee of any capital items that are still covered under the CGA;
- (b) the transferor must provide all details and the necessary records and accounts to the transferee to continue with the necessary adjustments;
- (c) the transferee, on the other hand, is required to confirm with the transferor whether the business that is being transferred includes any capital items that are still covered by the CGA;
- (d) the transferee has to continue making adjustments to any capital items that are still covered by the CGA for the remaining adjustment period, unless there is no proportional change in the use of the capital items to make taxable and exempt supplies for the remaining adjustment period;
- (e) the transferee has to pay additional input tax if the proportional use of

the capital items to make exempt supplies increases during the remaining adjustment periods. On the reverse situation, the transferee is able to claim or recover more input tax credit on the capital items;

- (f) when the usage of any transferred capital items subsequently change from making wholly taxable supplies to wholly exempt supplies, the transferee has to repay the input tax (deemed deducted at the time of transfer) to the Director General of Customs;
- (g) when the usage of any transferred capital items subsequently change from making wholly taxable supplies to mixed supplies, the transferee has to carry out annual adjustment to the deemed input tax claim on the transferred capital items for any remainder intervals and repay the input tax based on the adjustments made to the Director General of Customs. See example below.

Example 5:

Assuming the transfer of items as a TOGC takes place on 1.1.2016. The capital items have been capitalized by the transferor on 1.1.2015. The usage of the capital items change from making wholly taxable supplies to mixed supplies for the year 2017 (80%), 2018 (50%) and 2019 (70%). The total value of the capital items at the time of transfer is RM1,250,000. The deemed input tax claimed is RM75,000 (RM1,250,000 X 6 %). Adjustments that the transferee has to make are shown in the table below:

Table 1: Adjustment in TOGC

Interval (year)	Rate of Taxable use (%)	Adjustment (%)	Computation	Adjustment (RM)
1 (2015)	100%	-	-	-
2 (2016)	100%	-	-	-
3 (2017)	80%	80% - 100%	$\frac{50,000}{5} \times (-20\%)$	(2,000)
4 (2018)	50%	50% - 100%	$\frac{50,000}{5} \times (-50\%)$	(5,000)
5 (2019)	70%	70% - 100%	$\frac{50,000}{5} \times (-30\%)$	(3,000)

Note:

- (a) For the second interval (tax year 2016), no adjustment is required to be made by the transferee as the capital items are used to make wholly taxable supplies.
- (b) For the tax year (interval) 2017, 2018 and 2019, the transferee has to make adjustment to the deemed input tax claimed and repay to the Director General of Customs, input tax amounting to RM2,000.00, RM5,000.00 and RM3,000.00 respectively.

RELATED INFORMATION FOR PARTIES INVOLVED IN TOGC

50. The following guides may be of interest to you:-

- (a) Guide on Registration;
- (b) Guide on CGA; and
- (c) Guide on Partial Exemption.

FREQUENTLY ASKED QUESTION

Q1. I am not registered for GST and am in the process of taking over a business from a friend. Despite the takeover, my annual turnover is not expected to exceed the prescribed threshold for GST registration. Can I apply for voluntary registration and treat the take over as a TOGC?

A1. No, you required to be registered under section 20 of the GSTA 2014 at the time the business is transferred.

Q2. PC Distro is a distributor for X brand laptop in Malaysia. As a distributor, PC Distro acts as an agent who supplies X brand laptop to computer companies. PC Distro plans to sell its business to PC Ret Sdn. Bhd., but instead of supplying the X brand laptop to computer companies, PC Ret Sdn. Bhd. will sell X brand laptop to end consumers through its' various stores located nationwide. Can this business sale be regarded as a TOGC?

A2. This business transfer cannot be considered as a TOGC as PC Ret Sdn. Bhd. does not continue with the 'same' kind of business as PC Distro, that is, PC Distro was in a business of distributorship where products were being supplied to businesses while PC Ret Sdn. Bhd. is in the business of retailing where products are being supplied to end consumer.

Q3. Where goods are transferred as part of a TOGC, and a previous business has had entitlement to input tax on those supplies, is output tax still due on any subsequent free supply of those goods by the purchaser?

A3. Where goods are transferred as part of a TOGC, and a previous business has had entitlement to input tax on those supplies, output tax is chargeable on any subsequent free supply of those 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
- E-mail: ccc@customs.gov.my

CONTENT OF NOTIFICATION OF TOGC

1. **Details of Transferor**
 - (a) Business Name;
 - (b) Business Trading Name (if any);
 - (c) Business address;
 - (d) Company Registration Number;
 - (e) GST Registration number;
 - (f) Email address; and
 - (g) Contact Number.
2. **Details of Transferee**
 - (a) Business Name;
 - (b) Business Trading Name (if any);
 - (c) Business address;
 - (d) Company Registration Number;
 - (e) GST Registration number (if any);
 - (f) Email address; and
 - (g) Contact Number.
3. **Description of transfer of business**
 - (a) What are items/goods/assets that were sold/disposed/transferred to the transferee?;
 - (b) Brief explanation / mechanism how the transfer of business is made; and
 - (c) (provide diagram(s) if the transfer is complicated/complex e.g. involving group of companies / organization restructuring).
4. **Purchase Price / Consideration (if any):** RM X, XXX.XX
5. **Date of transfer:** dd / mm / yyyy
6. **MSIC code:** which relates to the business transferred: XXXXX (5-digits MSIC code). For reference, please go to : <http://msic.stats.gov.my/>

7. To attach:
- (a) *Sales and purchase agreement/ business cum asset purchase agreement that have been signed by both parties (i.e. transferor and transferee) – **if any**;
 - (b) **TOGC agreement/ declaration that have been signed by both parties;
 - (c) Any other documents related to the transfer of business – **if any**; and
 - (d) E.g.: Ownership transfer (SSM documents), Vesting orders, copy of transfer of license, etc.

Important Note:

* The purchase price/ consideration indicated in the sales and purchase agreement must be of the purchase price exclusive of goods and services tax (GST).

** There should be clause(s) written in the sales and purchase agreement stated that: The supply of business assets to be made is a supply of a going concern ; and

- (i) The business that is to be transferred will be a business being transferred as a going concern
- (ii) in accordance with Section 68 of Goods and Services Act 2014 and First Item of Second Schedule of Goods and Services Act 2014.

If it is not provided or incorporated in the sales and purchase agreement, then a separate TOGC agreement / declaration signed by both parties is required.

This notification has to be submitted on or immediately after the date of transfer as required under paragraph 21(1)(e) of the GST Regulations 2014

Notification to be sent to: The Director General of Customs Malaysia,
Royal Malaysian Customs Department,
Level 4, Block A, Menara Tulus,
No. 22, Persiaran Perdana,
Precinct 3, 62100 Putrajaya.
(Attention to: Sector VII, GST Division)

AMENDMENTS

No	Date	Heading / Sub – heading / Paragraph	Descriptions
1.	6.1.2017	FAQ No. 3	New addition