

Are we ready for the demise of GST?



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On May 10, Prime Minister Tun Dr Mahathir Mohamad began the journey to uphold the election manifesto to abolish the Goods and Services Tax within the first 100 days of his term. The first step was taken when the standard rate of the GST was changed from 6% to 0% beginning June 1. This journey will soon see the comeback of the Sales and Services Tax (SST), which Malaysians were familiar with before the introduction of the GST on April 1, 2015.

GST is still a relatively new tax in Malaysia, hence the inevitable teething problems, from areas of uncertainty in the interpretation and application of the legislation to various changes in the laws and requirements within a short period of time, to address concerns with the GST regime. It is perceived that the country is not yet ready for GST and this tax has been blamed, fairly or otherwise, as one of the reasons for the increase in the cost of living of the rakyat.

With its imminent abolishment, many are still unaware of the tax's impact on business and the current taxation in Malaysia. The government's move to abolish GST raises various questions and concerns, including the following:

- How will GST registrants manage their monthly GST compliance activities?
- How will the Royal Malaysian Customs Department (Customs) enforce and manage GST audits?
- What will happen to GST refund cases pending with Customs?
- What is the process for GST deregistration?

What businesses should expect

It is important to note that while the GST rate has been reduced from 6% to 0%, the provisions of the GST Act are still in effect. Technically, parliament needs to convene before the GST Act can be repealed and a new law legislated.

To help companies understand and manage their GST obligations during this transition period, Customs has issued a guide in the form of frequently asked questions to address the common concerns of taxpayers. These FAQs deal with issues such as the cancellation of

GST registrations, refund applications, GST audits and return submissions.

- **GST compliance requirements**
Although the GST rate has been changed to 0% effective June 1, companies are still required to adhere to the submission of GST returns. In other words, registered persons are still required to submit GST-03 returns for the relevant taxable periods, until further notice.

Companies that do not submit their GST returns or pay their GST liabilities by the prescribed deadlines will be exposed to compounds and penalties under Section 41 of the GST Act. While companies may apply for remission of penalties, approvals will be at the sole discretion of the director-general of Customs.

In addition to the submission of GST returns, registered persons are still required to issue tax invoices for their taxable supplies, up until the GST law is abolished.

- **Refund application**

With the change in the GST rate from 6% to 0% leading up to the eventual abolishment of the tax, it is expected that the majority, if not all, of the GST registered persons will be in a GST refund position beginning June 1. This list of refund applicants will be added to the thousands of GST refund cases that were still pending Customs' approval as at May 31. Thus, companies may be concerned whether they will be able to receive these GST refunds, considering that the tax will be abolished soon and the government will not have new GST revenue from which to pay out refunds.

This concern is addressed in the Customs' FAQs, where it provides that it will still process input tax claim (ITC) applications as usual. However, any refund application may be subject to the verification process to be conducted by Customs refund officers. Customs verification procedures may become more stringent, with a more detailed review being undertaken.

For those registered persons with carried-forward input tax balances in the Taxpayers Access Point (TAP) portal, Customs will allow the refund of such balances, provided that the registered person submits an application through TAP and follows the normal refund procedures.

- **GST deregistration**
Until the GST law is abolished

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ished, registered persons are required to remain registered until further notice. Cancellation of registration is not required unless such companies cease to be a registered person. However, upon the abolishment of GST, it is expected that Customs will require all existing registrants to deregister from GST.

• GST audits

Even if the GST is abolished, all existing GST audit cases shall continue and will be completed by Customs. In addition, all pending investigations and proceedings on companies for failure to submit GST returns

or pay GST shall proceed.

It is pertinent to note that GST audits can be expected upon deregistration and can take place up to six years from the date on which the tax was due and payable, or from the date on which the refund was made, as the case may be, even though the law may have been abolished.

Hence, companies should retain full records of all transactions, including supporting documents relating to their GST liability, for a period of seven years, as required under the GST legislation.

• Saving provisions of the GST Act

Notwithstanding the impend-

ing repeal of the GST Act 2014, any liabilities incurred, GST due, overpaid or erroneously paid under the GST Act may be collected, refunded, remitted or enforced as if the Act had not been repealed.

Customs is expected to release a transitional guide from GST to SST to address related issues. This may include guidance on the furnishing of the return for the last taxable period prior to GST being abolished.

What is next?

As Malaysia bids farewell to GST, the deregistration process as well as mandatory GST audits are expected to start in September — si-

multaneously with the proposed introduction of the SST.

The Customs may focus on certain key areas when conducting its GST audit procedures, including the following:

• Time of supply

With the transition of the GST rate from 6% to 0%, audits are expected to be focused on the correct application of the time of supply rules to ensure that supply transactions are reported in the correct period.

• Application of Section 66 of the GST Act

The application of Section 66 has been a hot topic of discussion among registrants during the GST transition. As it stands, it is highly probable that Customs will look into more details in respect of the application of the correct GST rates for supplies spanning the change in rates to ensure that the appropriate rates of tax have been applied on these transactions.

• Timely submission of returns and payment of GST liabilities

There have been some misconceptions among registrants concerning the submission of GST returns after June 1, with some taxpayers assuming they no longer need to submit returns because the rate is now 0%. Thus, Customs will be particularly focused on monitoring and enforcing compliance as the GST era comes to a close.

In addition to the aforementioned key areas, the following GST compliance issues may also be looked into by Customs during the deregistration audit:

- Incorrect classification of standard-rated supplies as zero-rated, exempt, out of scope or supplies given relief
- Reimbursements versus disbursements
- Incorrect treatment of "gifts"
- Failure to account for GST under the "reverse charge mechanism"
- Claiming of input tax on invalid tax invoices and "blocked" transactions
- Insufficient documentation on export or import transactions
- Incomplete or inaccurate disclosure of information in the GST returns

How can businesses prepare for these changes?

Even if the GST law is subsequently abolished, taxpayers should note that obligations for GST, including record-keeping requirements, are likely to remain for a period of seven years. Thus, companies should continue to comply with their GST reporting requirements and to carry out periodic reviews as part of their overall GST risk management processes, as a detailed GST audit may be

expected upon the filing of the final GST return.

It is also crucial for companies to identify risk areas, control deficiencies and areas of non-compliance, and address them accordingly prior to the actual GST audit. Companies should also ensure that they are able to fully comply with the GST record-keeping requirements and with the transitional matters in relation to the change of the GST rate from 6% to 0%.


Companies might consider undergoing a mock GST audit, comprising an extensive review and validation process, to be prepared for an audit. The mock audit can be done internally, or companies may consider outsourcing the review to external parties. It is also advisable to preserve the internal business processes and knowledge relating to GST in order to ensure the availability of information in case of an audit. In particular, companies should ensure that all GST-related information and documents are carefully stored and can be easily retrieved upon request from Customs. This should include documentation such as internal memoranda or external advice clearly documenting the rationale for the relevant GST treatments, particularly in relation to complex issues or transactions, or transactions with unclear GST treatment. If appropriate policies and procedures are not put in place to document such matters and to properly store GST-related information, issues could arise during GST audits. For example, in the event of the resignation or movement of personnel currently handling GST matters, the company will not be able to respond to queries raised by Customs.

With the proposed introduction of SST, certain key aspects have to be considered during the transition from GST to SST, including:


- Transition from GST to SST in terms of reporting and compliance
- Impact on businesses' accounting and finance software during the transition and going forward
- Pricing impact on businesses
- Effective communication with stakeholders

Lastly, companies should monitor any announcements from the government with regard to any tax changes and developments that may impact the business, and companies must adopt a nimble mindset to successfully manage the fluid indirect tax environment. E

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