

In this issue, we discuss the new GST e-Tax Guide “Guidelines on Determining the Belonging Status of Supplier and Customer” issued by the Inland Revenue Authority of Singapore (IRAS) and updates to the “Partially Exemption and Input Tax Recovery” Guide.

### Relevance of belonging status concept

The belonging status concept is important in determining if a supply of services is made in Singapore as well as in determining if services provided qualify as international services and thus, zero-rated.



### Basic rule

The GST legislation provides rules on determining the belonging status of a supplier and customer. A supplier and customer will be treated as belonging in Singapore if:

1. he only has a business establishment (BE) or fixed establishment (FE) in Singapore;
2. he does not have a BE/FE in any country but his usual place of residence is in Singapore. The usual place of residence of a body corporate is the place of incorporation or place of its legal constitution; or
3. he has a BE/FE both in and outside Singapore and the establishment that is most directly concerned with supplying the services (from supplier’s perspective) or the establishment where services are most directly used (from customer’s perspective) is in Singapore.

### Analysis of belonging status

If a person has BEs/FEs in multiple countries, it is necessary to determine the establishment that is **most** directly concerned with supplying or using the services. This is to be determined based on facts.

A person who acts through an agent in another country may have in that other country a BE/FE through the agency. In this case, it is important to determine if the agent is a dependent agent.

The new e-Tax Guide provides guidance on a number of aspects in analysing the belonging status of a person which we summarised below.

Aspect	Summary of Guidance
<p><b>a) When will a person be treated to have a BE in a country?</b></p>	<p>If any of the following is met:</p> <ul style="list-style-type: none"> <li>• Main seat of economic activity is in that country;</li> <li>• Carry on business through a branch in that country; or</li> <li>• Carry on business through a dependent agent in that country.</li> </ul> <p>Main seat of economic activity is a place where essential decisions concerning the general management of the company are made and the functions of the central administration are carried out. Thus, there can only be one BE and it is usually the head office, headquarter or principal place of business.</p>
<p><b>b) What constitutes a dependent agent?</b></p>	<p>A two-test approach is provided.</p> <p>Test 1: Does the person exercise comprehensive control over the agent?</p> <p>Test 2: Does the agency bear any entrepreneurial risk?</p> <p>Where a person carries on business through an agent and exercises comprehensive control over the agency and the agency does not bear any entrepreneurial risk, then the agent constitutes a dependent agent for the person.</p>

Aspect	Summary of Guidance
c) <b>When will a person be treated to have an FE in a country?</b>	<p>An FE exists in a country when -</p> <ul style="list-style-type: none"> <li>• there are human and technical resources present in that country to provide (or receive) services; and</li> <li>• these are present with a degree of continuity and permanency, i.e. for more than 183 days in any 12-month period.</li> </ul>
d) <b>Which BE/FE is most directly concerned with supply?</b>	<p>The supplier must examine the tasks and functions carried out by each BE/FE and evaluate the significance of each role.</p> <p>Where a supplier is unable to do this, the IRAS has provided for the use of proxies instead. The establishment that contributes or incurs more than 50% in respect of the following proxies would be treated as the establishment that is most directly concerned with the supply.</p> <ul style="list-style-type: none"> <li>• Revenue contribution</li> <li>• Costs incurred</li> <li>• Time spent in performing supply?</li> </ul>
e) <b>How to determine customer's BE/FE?</b>	<p>A supplier must look at his contract to identify and determine the belonging status of the contractual customer and any separate direct beneficiary* of services.</p> <p><i>*The GST e-Tax Guide Clarification on "Directly in Connection With" and "Directly Benefit" refers.</i></p> <p>The following administrative guidelines are provided to ease compliance in determining the belonging status of his customer:</p> <ul style="list-style-type: none"> <li>• Verify directly with customer</li> <li>• Obtain written declaration from customer that it does not have branch, agency, office, factory, warehouse or personnel in Singapore</li> <li>• Check if customer is incorporated or registered in Singapore against ACRA's one-stop online service portal</li> <li>• Check if customer has indicated a Singapore address in any of the following: <ul style="list-style-type: none"> <li>• Letterhead</li> <li>• Website</li> <li>• Corporate email</li> <li>• Business directory websites (e.g. Yellow pages)</li> <li>• Contract, purchase orders and other correspondence</li> </ul> </li> </ul> <p>When in doubt, the supplier should standard-rate his supplies unless the customer can prove that he belongs outside Singapore.</p>

### Our comments

The IRAS has now laid down steps for GST-registered businesses to determine whether the customer belongs outside Singapore, such as verifying directly with the customer or checking where the customer is incorporated. Despite this verification, if there is reasonable basis to believe that the declaration from the customer is incorrect or there is conflicting information, the IRAS advises that the standard-rate should apply. The onus is upon the supplier as the

service provider to ensure that the right GST treatment is adopted. Hence, GST-registered businesses should start reviewing processes and designing controls on supplies of international services to ensure compliance now.

While the additional guidelines and examples provided in this Guide illustrate when a supplier and a customer belong in Singapore, there are areas where judgment is required, in particular where facts do not fall squarely in one situation or in any of the examples provided.

Besides, with these guidelines, overseas companies doing business in Singapore through an agent should now determine if the agent is a dependent agent, and if so, whether the overseas companies would consequently be liable for GST registration and the collection of GST in Singapore. The IRAS can assess and collect tax for the past five years. Hence, ensuring GST compliance is definitely not an area that overseas companies having business transactions in Singapore can ignore.

### Incidental exempt supply

The GST legislation provides for certain exempt supplies made in the course of a business' taxable activities can be treated as incidental to the taxable supplies. This allows the GST incurred that is not directly attributable to the making of taxable supplies nor exempt supplies (commonly referred to as residual input tax) to be claimed in full if this is the only exempt supply made. Any GST incurred that is directly attributable to the making of these exempt supplies is still not claimable unless certain qualifying conditions are met. Some examples of incidental exempt supplies include interest on inter-company interest bearing loans and a one-off disposal of shares arising from merger or acquisition or restructuring.

Previously, no specific guidance was available from the IRAS as to what could be considered as incidental. Hence, IRAS' prior approval would have to be sought. In the updated Guide, the IRAS provides a number of conditions to allow businesses to self-assess whether the exempt supplies could be treated as incidental, dispensed with the need to seek approval, unless the situation is not within the Guide.

### Guidelines

Broadly, businesses are allowed to treat an exempt supply as incidental to its taxable business if:

- The value of such exempt supplies does not exceed 5% of total supplies;
- Such supplies in totality would not be considered a separate business;
- Minimal resources are required to make such supplies; and
- The regularity of occurrence of such transactions is not frequent.



### Our comments

For predominantly taxable businesses incurring some input tax restriction due to exempt supplies, there is an opportunity to now assess if additional GST would be recoverable. Whilst the conditions may be met in each GST accounting period, businesses should assess this at the end of a longer period and be mindful of such an assessment moving forward.

We would discuss in greater details on how these two Guides affect your business and your GST compliance in our upcoming GST seminar on 20 July 2016. Please look out for our Evite.

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