KPMG

Tax alert

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Goods and Services Tax Board of Review case – GHY v The Comptroller of Goods and Services Tax on input tax claim

In this Tax Alert, we discuss the recent Goods and Services Tax (GST) Board of Review (BOR)'s decision which upheld the Comptroller of GST (the Comptroller)'s decision in denying the input tax claim of the Appellant on its purchase of goods from a local supplier on the grounds that it failed to prove that goods were purchased and traded.

Background

This case involves a Singapore wholesale trade company which purchased digital cards and flash drives - "Osperia" Micro Secure Digital Cards and "Osperia" flash drives ("the goods") from a local supplier. These goods were onward sold to two Malaysian customers ("Customers").

The trading arrangement came through an intermediary who introduced the Customers who wanted to purchase the goods. The intermediary provided the contact of a supplier, S, to the Appellant for the purchase of these goods. The mark-up in prices for the Appellant was between 0.96% and 2.88%. The payment from one of the Customers was in cash while the other was via a bank transfer by another Singapore company.

The supplier delivered the goods to the Appellant who then paid via bank transfer and arranged for export on or around the same day through a logistics service provider. Of the 30 supplies purchased from S across 5 months in 2016, the Appellant's director and one of its administrative staff both confirmed that they jointly received the first two supplies while the Appellant's director also confirmed that he had tested goods from the first supply for functionality and determined that they conformed to technical specifications required for storage. The subsequent 28 supplies were received by the administrative staff alone, who had taken photographs of the boxes and the packaged products within (although the actual product packaging was not opened and inspected). The amount of input GST involved and denied by the Comptroller was about S$1.34 million.

The Comptroller's position

The sudden spike in the value of zero-rated supplies and input tax claim triggered an IRAS audit in 2016. The IRAS traced the origins of the goods to a Singapore company as well as the supplier of the goods to whom S purchased from. From the IRAS audit, the sole directors of both the companies were unaware of these transactions. So, from the evidence collated from the IRAS audit which involved tracing to the origins and the Customers, the IRAS was not convinced that the goods existed and were indeed traded. Thus, the Comptroller denied the input tax claim on the basis that there was no conclusive evidence of supply and that these were not genuine business transactions.

Key issues

The key issues before the BOR concerned whether there were actual purchases of goods from the local supplier, S, and actual supplies of these goods to the Customers.

GST legislation

The GST legislation provides for an input tax claim where there is an actual supply of goods or services to the GST-registered business which uses the goods or services for the making of taxable supplies and there is a document, tax invoice, to support the claim. When the goods are supplied to an overseas customer and exported, these supplies can be zero-rated. Since output tax is zero, the input tax could be claimed as a refund.

Amidst the recent rise in missing trader fraud cases (please refer to our earlier tax alert), the law has been enhanced in 2021 to combat such fraud by denying the input tax where the GST-registered business knew or should have known the purchase was part of any arrangement to cause loss of public revenue (whether or not the loss was in fact caused) - commonly referred to as “the knowledge principle”. A penalty can also be imposed on the business which is complicit in such an arrangement.

The Appellant’s argument

The Appellant mounted an argument that as long as a supply of goods was made in the course of business and that the goods were exported, it is entitled as a matter of law to the refund of input tax from the Comptroller, amongst other arguments. There was no statutory duty placed on a GST-registered trader to trace the source of goods beyond its immediate business to claim input tax, nor was it a market practice to do so as this happened before 2021. Neither was there any e-tax guides before the introduction of the additional provision that required the tracing of the goods to source nor conduct due diligence of the suppliers. As long as it maintained tax invoices that showed the purchases and documents on the export of goods, input tax credit should be due.

GST Board of Review’s decision

The GST Board of Review upheld the Comptroller’s decision as the Board was in agreement with the Comptroller’s observation that there were “red flags that seriously cast doubt on the veracity of the transactions”. For instance, there was a lack of business rationale behind the transactions on account of earning a margin without having to take on any risk, a deal “too good to be true”. The cash transaction was another red flag, amongst others.

Key observations and takeaways

From this BOR case, to claim the input tax from purchases, the maintenance of a tax invoice along with the usual commercial documents is now insufficient. The business should carry out due diligence of the suppliers and trace the goods to the origins or the manufacturer. If a deal presented to you is too good to be true, it is indeed so and notwithstanding GST has been paid to the supplier, you may not be entitled to the input tax claim. Such is the requirement even before the introduction of the provision on the additional condition of the knowledge principle discussed earlier.

With a spate of fraudulent arrangements involving missing traders (“MTF”), including one involving precious metals such as gold bars that was shared by the IRAS in its website recently, businesses were urged to be more vigilant to these frauds and to turn away from deals which promised instant profits and risk-free.

If a new business arrangement comes along, before embarking on it, you should identify the MTF indicators, carry our due diligence checks to address or mitigate the risks and take the necessary precaution not to be complicit in any MTF arrangement. Apart from the denial of input tax, there is stiff penalty including surcharge of 10% of the tax involved, jail term and heavy fine.

How we can help

If you are not aware of the new condition for input tax claim nor set up a robust due diligence process when onboarding new suppliers or customers, you should prioritise this and implement such a process soon. The stiff penalty should be a strong deterrent.

As your committed tax advisor, please contact us when you are designing such a process and we would be pleased to guide you and highlight the salient controls to mitigate such risks.

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