

■ BY MAJELLA GOMES



GST: Proof Your Business Contracts

Contracts today must incorporate GST clauses in order to safeguard businesses.

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GST covers the supply of goods or services made in Malaysia, and all goods imported into Malaysia. These include any supply of good or services that may be taxable under GST, made by a taxable person in the course or furtherance of any business.

LAWYERS – and accountants – today must be competent and capable to advise their clients effectively, especially in the evolving area of GST regulations.

“There is a growing belief that professionals have to be aware of GST issues, and clients expect their contracts to have proper GST clauses,” said Vijey R Mohana Krishnan, Partner,

Raja Darryl & Loh at the recent GST Conference 2015. “Professionals who deal with contracts must know about it – and if you don’t, find someone who does. You owe a duty of care to your client. Some tax clauses in contracts can be two or three pages long, but there’s no guarantee that it covers everything!”

Krishnan highlighted three main

areas with regards to GST-proofing business contracts: the scope of GST, the need for a GST clause and contracts with no opportunity to review. Currently, GST covers the supply of goods or services made in Malaysia, and all goods imported into Malaysia. These include any supply of goods or services that may be taxable under GST, made by a taxable person in the course or furtherance of any business.

SCOPE OF GST

Due to this extremely broad scope, almost every transaction is subject to GST – even gifts worth more than RM500 – and it is therefore necessary to consider the GST implications of any transaction when negotiating and drafting contracts. The tax chargeable on any supply of goods or services must be paid by the person making the supply, and is payable when the goods or services are supplied.

“GST thus becomes the buyer’s responsibility (to pay),” he said, explaining further that if the contract is silent on GST, the consideration (i.e. the fee or price) will be regarded as inclusive of GST. “In order for the supplier to charge GST over and above

the price, there must be a specific clause in the contract which allows the supplier to do this,” he continued. “But in some cases, clauses can be so ambiguous that meanings are lost or ill-defined.” He cautioned the audience about ‘one size fits all’ clauses, saying that their ambiguity may make them void. Illustrating the need for a GST clause in contracts with the actual case of *Cityrose Trading Pte Ltd v Booth and Anor [2013]*, he stressed that courts have to be clear about how to deal with GST.

EFFECTIVE GST CLAUSES

He quoted several examples of how GST should be dealt with, saying that typical provisions in a GST clause should cover the effective date of GST and declare whether the price quoted is or is not exclusive of GST. “Where GST applies, consideration is increased based on the regrossing method,” he said. “If the regrossing method or formula is not applied, the supplier has to charge the applicable GST rate in addition to the price. In addition, the supplier has to show that he is licensed to do so, and must issue the required tax invoice.” He

also covered circumstances where approval from the Director-General could be obtained, and the appropriate notices that should be displayed when goods and services were subject to tax but the price payable was exclusive of GST.

CONTRACTS WITH NO OPPORTUNITY TO REVIEW

With regards to contracts with no opportunity to review, Vijey addressed the issue of long-term contracts which may have been entered into before the implementation of GST. “The parties to the contract may not have considered GST at the time of entering into the contract,” he explained. “In cases like these, Section 187 of the GST Act allows this type of contract to be treated as zero-rated supply for a period of five years from 1 April 2015, or until an opportunity to review the contract arises.” Cautioning that having tax-exempt supplies does not automatically mean that the business is totally exempt from GST, he stressed that the GST Act was the law. “Anything issued subsequently must therefore always comply with the Act,” he concluded. ■



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Vijey R Mohana Krishnan
Partner, Raja Darryl & Loh