



GST1/M4-0005920-9/YYP

19 December 2006

THE LAW SOCIETY OF SINGAPORE  
39 South Bridge Road  
Singapore 058673

**By Fax (6533 5700) & Mail**

Tel : 1800 - 356 8633

Fax : 6351 3553

Attention: Mr Alvin Chen

Dear Sir,

### **GOODS AND SERVICES TAX (GST) ON LIMITED LIABILITY PARTNERSHIP (LLP)**

I refer to your letters dated 13 and 15 December 2006.

We are informed that the Legal Profession (Amendment) Act 2005 (Act 41 of 2005), which allows lawyers to form LLPs, was effected on 4 December 2006 and the Legal Profession (LLP) Rules 2006 will come into effect on 1 January 2007. In this regard, the society is seeking clarifications on behalf of its members, on GST issues and treatments relating to the conversion of law partnerships to law LLPs.

(1) Classification of LLP

According to Section 4(1) of the LLP Act 2005, "a LLP is a body corporate which is formed by being registered under this Act and which has legal personality separate from that of its partners". For GST purposes, a LLP is also treated as a body corporate and therefore not regarded as a partnership under Section 31 of the GST Act.

(2) GST Registration for LLP

LLP is a separate legal entity. In this regard, it will have to separately apply for GST registration if it is liable to register for GST or it wishes to become GST-registered voluntarily.

For GST purposes, the conversion from any existing GST-registered businesses to LLP will necessitate the following procedures

- (a) deregistration of the existing GST-registered businesses (GST F9); and
- (b) registration of the LLP (GST F1 with a latest copy of ACRA business profile)

The LLP will be given a new GST registration number upon successful GST registration.



(3) Effective Date of GST Registration

In the case of a conversion/transfer, the GST-registered person (i.e. the law partnership) is obliged to inform the Comptroller in writing of his intention to transfer the business 30 days prior to the date of transfer. If the notification is received within the stipulated timeframe, the GST registration for the law LLP may take effect on the same date as the transfer date. Failing which, the Comptroller may register the law LLP after the transfer date.

(4) Charging GST on Transfer of Assets and Business

By virtue of section 8(1) of the GST Act, GST is chargeable on any supply of goods or services made by a taxable person in the course or furtherance of his business, unless the supply is not a taxable supply or is not treated as a supply for GST purposes.

Please note that the transfer of assets and business from a law partnership to a law LLP is subjected to the prevailing rate of GST unless the transfer satisfies **ALL** the conditions listed below:

- (a) The transfer of the assets is pursuant to a transfer of the business or part thereof to the transferee (A mere transfer of capital assets would not satisfy this condition unless it has the effect of putting into the possession of the transferee a business.)
- (b) The business or part thereof must be a going concern at the time of the transfer.
- (c) The assets to be transferred must be intended for use by the transferee in carrying on the same kind of business.
- (d) The assets must not be assets, which the transferor had obtained by way of a transfer pursuant to the transfer of a business or part thereof which had been treated as not a supply under the GST (Excluded Transactions) Order
- (e) The transferee must be a GST registered person at the time of the transfer. If the annual value of the taxable supplies of the transferee exceeds or is reasonably expected to exceed S\$1 million immediately after the transfer, the transferee is required to notify the Comptroller of his liability to register **30 days before the date of the transfer**.
- (f) There must be no closure of the business immediately after the transfer, except for such temporary closure as may be necessary to put the business in operation under the new ownership.
- (g) In the case where only part of the business is transferred, that part must be capable of being operated independently.

More details can be found in the attached Guide on Transfers of Going Concern.



INLAND REVENUE  
AUTHORITY  
OF SINGAPORE



(5) Issuance of Credit Note by LLP

The LLP is allowed to issue credit note(s) to adjust the original invoice(s) previously raised by law partnership, provided the clients have already been informed of the change of business constitution.

For more information on GST, please visit our website at <http://www.iras.gov.sg> or contact us at 1800 356 8633.

Yours faithfully

YEO YAN PENG MICHELLE (MS)  
TAX OFFICER  
GOODS AND SERVICES TAX DIVISION  
for COMPTROLLER OF GOODS AND SERVICES TAX

# **GOODS AND SERVICES TAX**

## **TRANSFER OF BUSINESS AS A GOING CONCERN**



**INLAND REVENUE  
AUTHORITY  
OF SINGAPORE**

Published by  
Inland Revenue Authority of Singapore

Published 1<sup>st</sup> Edition 1 September 2005  
2<sup>nd</sup> Edition 10 October 2005

© Inland Revenue Authority of Singapore

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

## CONTENTS

	PAGE
INTRODUCTION	1
EXCLUDED TRANSACTIONS	1
CLAIMING INPUT TAX CREDITS ON TOGC EXPENSES	2
REPAYMENT OF INPUT TAX DEEMED DEDUCTED	3
RECORD-KEEPING	3
APPENDIX 1 – AN EXTRACT OF THE GOODS AND SERVICES TAX (EXCLUDED TRANSACTIONS) ORDER	4

## Transfer Of Business As A Going Concern

### INTRODUCTION

1. This guide sets out:
  - (a) The conditions for a supply of assets to be treated as an excluded transaction;
  - (b) The GST treatment for the recovery of input tax incurred on expenses relating to a transfer of business as a going concern (referred in this guide as TOGC); and
  - (c) The GST obligations of the transferor and the transferee in a TOGC.
2. This e-tax guide replaces the 30 May 1998 publication "Transfer of a Business as a Going Concern for the Purpose of GST".
3. The GST Act provides that GST is chargeable on any supply of goods or services made by the taxable person in the course or furtherance of his business. A taxable person who transfers or disposes the assets of his business, whether or not for a consideration, is making a supply. He has to account for GST on such transfer or disposal of his business assets.
4. However, certain supplies of assets pursuant to a transfer of business or part thereof as a going concern are treated as excluded transactions, i.e. they are treated neither a supply of goods nor a supply of services, in the GST (Excluded Transactions) Order. Hence, GST is not chargeable on the supply. This is referred to as excluded transaction in this e-tax guide.

### EXCLUDED TRANSACTIONS

5. Administratively, the Comptroller is prepared to treat a supply of assets to be an excluded transaction if it satisfies **ALL** the conditions listed below:
  - (a) The supply of assets is made in relation to a transfer of the business or part thereof to the transferee. A mere transfer of the assets would not satisfy this condition unless it has the effect of putting the transferee into the possession of a business. In general, this condition is satisfied where the transferee takes over all assets and liabilities of the business.
  - (b) The assets to be transferred must be intended for use by the transferee in carrying on the same kind of business of the transferor.
  - (c) In the case where only part of the business is transferred, that part must be capable of being operated independently.
  - (d) The business or part thereof must be a going concern at the time of the transfer. In other words, there must be no closure of the business

## Transfer Of Business As A Going Concern

immediately after the transfer, except for such temporary closure as may be necessary to put the business in operation under the new ownership.

- (e) The transferee must be a GST registered person at the time of the transfer. If the annual value of the taxable supplies of the transferee exceeds or is reasonably expected to exceed S\$1million immediately after the transfer, the transferee has the liability to register for GST<sup>1</sup>. In such instances, the transferee is required to notify the Comptroller of his liability to register **30 DAYS** before the date of the transfer.
  - (f) Both the transferor and transferee must maintain sufficient records on the transferred assets. The records should provide information on the description and value of each asset or class of assets transferred. In addition, both transferor and transferee must be able to reconcile the difference of the values of assets before and immediately after the transfer of business with the value of the transferred assets.
6. Where the business is transferred to a taxable person who is treated as a member of a group under section 30 of the GST Act, **at least one** of the following conditions must also be satisfied before the transfer of business can qualify as an excluded transaction:
- (i) The members of the group are all fully taxable persons during the prescribed accounting period in which the assets are transferred, and during any longer period to which regulations under section 20(4)(b) of the GST Act relate and in which the assets are transferred;
  - (ii) The assets to be transferred are held by the transferor for more than 3 years; or
  - (iii) The transferor is not entitled to any input tax credit on the assets to be transferred.
7. When the supply of assets satisfies the conditions in paragraphs 5 and 6, it is treated as an excluded transaction. The transferor will not need to charge and account for GST on the supply of assets. It is not necessary for the transferor to seek approval from the Comptroller.

### **CLAIMING INPUT TAX CREDITS ON TOGC EXPENSES**

8. Input tax on expenses relating to a TOGC (henceforth known as "TOGC expenses") is allowable to both the transferor and transferee, subject to the conditions for input tax claims provided in the GST Act. Some examples of TOGC expenses are professional fees paid by the transferee to conduct due diligence on the transferred business and the legal fees paid by the transferor

---

<sup>1</sup> Paragraph 1 of the First Schedule to the GST Act provides that a person who makes taxable supplies but is not registered is liable to be registered at the end of any quarter where his taxable supplies in that quarter and the 3 quarters immediately preceding that quarter has exceeded S\$1million; or at any time if there are reasonable grounds for believing that the total value of his taxable supplies in the period of 12 months then beginning will exceed S\$1million.

## Transfer Of Business As A Going Concern

---

to draft the transfer agreement.

9. Transferee

If the transferee acquires assets by way of an excluded transaction and the assets are to be used exclusively to make taxable supplies, the GST incurred on TOGC expenses should be attributed to those taxable supplies and can be recovered in full. Conversely, if the assets of the acquired business are to be used exclusively to make exempt supplies, none of the input tax on the expenses attributable to the TOGC can be recovered. However, if the assets are to be used in making both taxable and exempt supplies, the input tax incurred on TOGC expenses is residual input tax and must be apportioned in accordance with the partial exemption method applicable to the transferee.

10. Transferor

If the transferor sells his assets by way of an excluded transaction, the GST incurred on the TOGC expenses should be treated as the general business overheads of the transferor. Accordingly, the input tax on such expenses is claimable as input tax of the transferor, subject to the input tax rules and apportionment provided in the GST Act.

### **REPAYMENT OF INPUT TAX DEEMED DEDUCTED**

11. In a TOGC, the transferee is deemed to have incurred and deducted input tax credits on the value of supply of the transferred assets. The implication is that if the transferee were to change or form an intention to change the usage of the transferred assets from making taxable supplies to making exempt supplies within 6 years from the date of transfer of business, the transferee must repay to the Comptroller any input tax deemed deducted.

### **RECORD-KEEPING**

12. GST-registered persons are required to keep their business records for at least 7 years under section 46 of the GST Act. In the case of a TOGC, the transferor is expected to hand over to the transferee any records of the transferred business that are required to be kept for GST purposes. The transferee takes over the obligation to keep and preserve business records on the date of transfer of business.

## Appendix 1

### An Extract of the Goods and Services Tax (Excluded Transactions) Order

2. Except in the circumstances referred to in paragraph 3, the following supplies by a person of assets of his business shall be treated as neither a supply of goods nor a supply of services:-
  - (a) the supply to a person to whom he transfers his business as a going concern -
    - (i) where the assets are to be used by the transferee in carrying on the same kind of business whether or not as part of any existing business, as that carried on by the transferor; and
    - (ii) where, in a case in which the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person; and
  - (b) the supply to a person to whom he transfers part of his business as a going concern -
    - (i) where that part is capable of separate operation;
    - (ii) where the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor in relation to that part; and
    - (iii) where, in a case in which the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person.
3. (1) Subject to sub-paragraph (2) -
  - (a) where a business, or part of a business, carried on by a taxable person is transferred as a going concern to another taxable person treated as a member of a group under section 30 of the Act; and
  - (b) where on the transfer of the business or part thereof, assets of the business are transferred to that taxable person,

then paragraph 2 shall not apply to the transfer of such assets and accordingly, tax shall be chargeable on the supply in accordance with the Act.

- (2) This paragraph shall not apply if -
  - (a) the members of the group are entitled to credit for the whole of the input tax on supplies to them and acquisitions and importations by them -

- (i) during the prescribed accounting period in which the assets are transferred; and
  - (ii) during any longer period to which regulations under section 20(4)(b) of the Act relate and in which the assets are transferred;
- (b) the Comptroller is satisfied that the assets were assets of the taxable person transferring more than 3 years before the day on which they are transferred; or
- (c) the Comptroller is satisfied that the person by whom the asset is transferred has not received any credit for input tax arising on the supply to him or acquisition or importation by him of the asset.