



INLAND REVENUE BOARD OF MALAYSIA

**INCOME TAX TREATMENT OF
GOODS AND SERVICES TAX
PART III – EMPLOYEE BENEFITS:
GST BORNE BY AN EMPLOYER**

PUBLIC RULING NO. 3/2017

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

The objective of this Public Ruling (PR) is to explain the income tax treatment on goods and services tax (GST), that is, the output tax accounted for and borne by the employer on goods or services given free to its employees as a benefit.

2. Relevant Provisions of the Law

- 2.1 This PR takes into account laws which are in force as at the date this PR is published.
- 2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 2, 13, 24, 25, 32 and subparagraph 39(1)(p).
- 2.3 The Goods and Services Tax Act 2014 (GSTA) and its relevant subsidiary legislations.

3. Interpretation

The words used in this PR have the following meaning:

- 3.1 “Input tax” has the same meaning assigned to it in the GSTA. In simple terms, input tax refers to GST payable on business purchases and importation.
- 3.2 “Output tax” has the same meaning assigned to it in the GSTA. In simple terms, output tax is the GST charged on sales (inventory, capital assets, etc.), deemed supplies and imported services.
- 3.3 “Employer” in relation to an employment, means –
 - (a) where the relationship of master and servant subsists, the master;
 - (b) where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that that person and the employee may be the same person acting in different capacities.
- 3.4 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.
- 3.5 “Employee” in relation to an employment, means –
 - (a) where the relationship of master and servant subsists, the servant;
 - (b) where the relationship does not subsist, the holder of the appointment or office which constitutes the employment.

3.6 “Employment” means –

- (a) employment in which the relationship of master and servant subsists;
- (b) any appointment or office, whether public or not and whether or not that relationship subsists, for which remuneration is payable.

4. Employee Benefits

An individual under employment may be provided employee benefits by his employer. Employee benefits includes –

- (a) goods or services given or provided free of charge to an employee;
- (b) any rights, privilege, service or facility provided free of charge to an employee;
- (c) goods or services given or provided to an employee by an employer or another person on behalf of the employer; and
- (d) goods and services acquired by an employer and given to an employee as employee benefits. The goods and services acquired are considered as used for the purpose of the employer’s business.

5. Accounting for Output Tax on Employee Benefits

Any employee benefit provided by an employer who is registered or liable to be registered under the GSTA may be regarded as a taxable supply. In general, a GST-registered employer is required to account for output tax on goods or services given or provided as employee benefits, which are regarded as used for the purpose of the employer’s business.

5.1 Goods given free to employees

An employer has to account for output tax on the provision of goods to an employee even if no consideration is charged. This would include business goods that are given free to the employees or where the goods are allowed for the temporary private use by the employee free of charge. Such goods given free as gifts or for the temporary private use by employees would be a deemed supply under the GSTA. However, no output tax needs to be accounted for on goods given free on the following:

- (a) goods given free to employees as stated in the contract of employment, contract of service or company policy;
- (b) zero-rated supply;

- (c) exempt supply;
- (d) blocked input tax goods;
- (e) supplies where the recovery of input tax were disallowed under the GSTA;
- (f) supply of goods under gift rule where the cost of goods given to the same person is not more than RM500 in the same year; or
- (g) goods acquired from a non-GST registered person.

5.2 Services

For services provided free to employees, the employer need not account for output tax as such services are not regarded as a supply. However, where such services are provided for the benefit of sole proprietors, partners, directors of a company or persons connected to the taxable person (employer), output tax has to be accounted for based on the open market value of the services provided.

Please refer to the relevant GST legislation and Guide on Employee Benefits issued by the Royal Malaysian Customs Department (RMCD) for the latest information and updates regarding GST treatment for goods and services given free to employees. Further information can be obtained from the RMCD website at www.gst.customs.gov.my.

6. Income Tax Provisions Related to the Goods and Services Tax on Employee Benefits

6.1 Effective year of assessment 2015, a new subsection 13(1A) of the ITA was introduced to provide that employment income under subsection 13(1) of the ITA includes any amount of output tax under the GSTA which is borne by the employer. In other words, output tax paid by an employer in respect of benefits in kind, perquisites or value of living accommodation that is given or provided to an employee is considered as part of the benefits in kind, perquisites or value of living accommodation respectively.

6.2 Paragraph 39(1)(p) of the ITA stipulates that GST paid or to be paid as output tax which is borne by a person who is registered or liable to be registered under the GSTA is not deductible.

7. Tax Treatment

- 7.1 Where a person, being an employer gives or provides goods or services free of charge to its employee as an employee benefit, and output tax has to be accounted for, the amount of output tax borne by the employer is to be reported in the employees statement of remuneration from employment (Form EA). Pursuant to subsection 13(1A) of the ITA, the output tax borne by the employer under the GSTA shall be included as part of the gross employment income of the employee under subsection 13(1) of the ITA.
- 7.2 The output tax in respect of benefits in kind, perquisites or value of living accommodation received by an employee would only be taxable if the respective benefit in kind, perquisite or value of living accommodation is taxable. For further information, please refer to IRBM website for the following PR:
- (i) PR No. 3/2005 and addendum to PR No. 3/2005 entitled “Living Accommodation Benefit Provided for the Employee by the Employer”;
 - (ii) PR No. 2/2013 entitled “Perquisites from Employment”; and
 - (iii) PR No. 3/2013 entitled “Benefits in Kind”.
- 7.3 GST credits and income tax deductions for GST-registered person providing employee benefits

Example 1 - GST-registered person provides own products (zero-rated supplies) as gifts

A GST-registered sugar refinery gives 10 kg of sugar worth RM29 to each of its employees for their various festivities yearly.

Law	Tax Treatment
GSTA	The employer need not account for output tax on the sugar given free as an employee benefit because the product is a zero-rated supply.
ITA	The employer is required to report the market value (RM29) of the sugar, a consumable business product in Part F of the employee’s Form EA as this benefit is exempt from tax (up to a maximum of RM1,000) under the Income Tax (Exemption) Order 2009 [P.U.(A) 152/2009]. This exempt benefit is not required to be declared in Part B(1)(c) of the Form EA.

Example 2 - GST-registered person provides own products (standard-rated supply) as gifts

A GST-registered company manufactures electrical goods. The company gave each of its employees electrical goods worth RM300 as a gift during their respective festive seasons.

Law	Tax Treatment
GSTA	The employer need not account for output tax on the goods given free to the employees as the cost of the gift to each employee is less than RM500 in the year.
ITA	(a) The employer is required to report the market value of the electrical goods (RM300) given free as a perquisite in the employee's Form EA. (b) The employee would be taxed on the perquisite which is part of his gross income from employment.

Example 3 - GST-registered person provides own products (standard-rated supply) worth more than RM500 in a year as gifts

A GST-registered company manufactures home theatre systems. The company gave its employees a home theatre system each worth RM1,000 as a gift.

Law	Tax Treatment
GSTA	The employer has to account for output tax of RM60 on the product given free to each employee as the cost of the gift is more than RM500 in the year.
ITA	(a) The output tax of RM60 accounted for on each of the the home theatre system and borne by the company is not a deductible expense by virtue of paragraph 39(1)(p) of the ITA.

	<p>(b) The employer is required to report the market value of the home theatre system (RM1,060) as a perquisite in the employee's Form EA.</p> <p>(c) The employees would be taxed on the perquisite which is part of his gross income from employment.</p>
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Example 4 - GST-registered person provides own product (exempt supplies) as gifts

A GST-registered developer gives an apartment worth RM80,000 free of charge to one of its employees for her 20 years of long service.

Law	Tax Treatment - Employer
GSTA	The employer need not account for output tax for the free apartment which falls under the GST (Exempt Supply) Order 2014 [P.U.(A) 271/2014].
ITA	<p>(a) The employer is required to report the market value of the apartment (RM80,000) given free as a perquisite in the employee's Form EA.</p> <p>(b) The employee would be taxed on the perquisite which is part of his gross income from employment. As the employee is eligible for tax exemption of RM2,000 on the perquisite under paragraph 25C of Schedule 6 of the ITA, RM2,000 is to be declared in the Part F, whereas the remainder amount (RM78,000) is to be declared in the Form EA as taxable income.</p>

Example 5 - GST-registered person acquires goods from a non-GST registered person and gives them as gifts

A GST-registered company purchased 10 watches at RM1,200 each as gifts for 10 of its staff for their excellent performance.

Law	Tax Treatment
GSTA	The employer need not account for output tax as the watches are acquired from a person who is not a GST-registered person.
ITA	The employer is required to report the market value (RM1,200) of the watch for the excellent performance award in Part F of the employee's Form EA as this perquisite is exempt from tax under paragraph 25C of Schedule 6 of the ITA (up to a maximum of RM2,000). This exempt perquisite is not required to be declared in Part B(1)(c) of the Form EA.

Example 6 - GST-registered person provides free services to a connected person

A GST-registered cleaning services company provides free cleaning services to its managing director with controlling interest in the company.

Law	Tax Treatment
GSTA	The company has to account for output tax on the free services provided to its managing director who is a person connected to the GST-registered company. Such services are deemed as a taxable supply and GST is accounted for based on the open market value of the supply.
ITA	<p>(a) The output tax accounted for on the services provided to the managing director and borne by the company is not a deductible expense by virtue of paragraph 39(1)(p) of the ITA.</p> <p>(b) The managing director would be taxed on the value of the free services received (together with the output tax borne by the company).</p>

Example 7 - Living accommodation provided to an employee

A GST-registered company provided unfurnished living accommodation free of charge to its employees.

Law	Tax Treatment
GSTA	The supply of accommodation under employee benefit which relates to exempt supply under the GST (Exempt Supply) Order 2014 is considered as used for the purpose of business. The employer need not account for output tax since the free accommodation is not a taxable supply.
ITA	<p>(a) The employer is required to report the value of the living accommodation as a benefit in the employee's Form EA.</p> <p>(b) The employees would be taxed on the living accommodation benefit. The value of the benefit to be treated as gross income from employment under paragraph 13(1)(c) of the ITA is the value of the unfurnished accommodation.</p>

8. Application

The examples provided in this PR are not exhaustive. However, the same principle would apply to all employee benefits provided by an employer who is a GST-registered person or liable to be registered under the GSTA.

This PR is to be read together with PR No.1/2017 entitled "Income Tax Treatment of Goods And Services Tax Part 1 – Expenses" and other PR related to employee benefits mentioned in paragraph 7 above.

9. Acknowledgement

Some of the contents in this PR relating to Goods and Services Tax has been sourced from the guides issued by the RMCD. These guides are available on the RMCD website at www.gst.customs.gov.my.



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10. Disclaimer

The GST treatment stated in the examples in this PR are merely illustrations intended as a reference for the purpose of explaining the income tax treatment on GST. It is the prerogative of the RMCD to determine the GST treatment under the GSTA.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**