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12-2018

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Citation

OOI, Vincent. GST contract review. (2018).

Available at: https://ink.library.smu.edu.sg/sol_research/2827

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GST contract review—overview

Tax lawyers are often asked to review a commercial contracts from a Goods Services Tax (“**GST**”) perspective. This note focuses on contracts for the supply of services or goods, and not a contract for the sale and purchase of a business.

Understanding the GST consequences of the contract

The contract that you are asked to review will usually contain a GST clause, but it is insufficient to look only at that clause. As further explained in Practice Note: [How to review a commercial contract for GST purposes](#), you should also review the whole contract so that you can establish:

- What is being supplied, i.e. the nature of the goods or services at the heart of the contract because this can affect whether the supply is a standard-rated, a zero-rated or an exempt supply;
- Who is making the supply, looking not only at the parties to the contract but also whether another person or persons may be required or permitted to make or receive a supply under the contract;
- Where the supply is being made, in the technical GST sense, rather than the commercial sense (see further – Practice Note: [GST place of supply rules—where is a supply made?](#));
- When the supply is being made, again in the technical GST sense (see further – Practice Note: [GST time of supply rules—when is a supply made?](#));
- What the value of the consideration for the supply is, which is usually expressed in monetary terms but could also include obligations to do or supply something in return; and
- Whether the supplies under the contract are being made between members of a [GST Group](#) (in which case GST considerations may be less important because supplies between GST group members are ignored for GST purposes)

Once you have established the answers to these questions you will be able to work out:

- Whether GST will be due on the supplies under the contract, and
- If it is due:
 - How much is due;
 - When will it be due (for which see Practice Note: [How and when must a business pay GST?](#)); and
 - Which of the parties must account for such GST (i.e. whether the [reverse charge](#) or customer accounting mechanisms are applicable)

For a checklist of these points, see: [GST contract review—checklist](#).

Drafting considerations

With those answers in mind, you should then look again at the GST clause in the contract (assuming there is one) in order to identify:

- How the risks associated with GST are, in the current version of the contract, allocated between the parties to the contract, in particular:
 - a. Whether the consideration under the contract is expressed to be inclusive or exclusive of GST; and
 - b. Who is liable for any [penalties](#) and [interest](#) for the late payment of GST; and
- Whether the current allocation in the contract is to the advantage or disadvantage of your client and/or reflects your client's instructions and bargaining position

In most cases, it is important to ensure:

- When acting for the supplier of goods or services, the consideration for the goods or services is specified in the contract to be exclusive of GST and any GST is payable by the recipient in addition to the consideration; and
- When acting for the recipient of goods or services, the supplier is (at the very least) obliged to provide a [GST invoice](#) to the recipient so that the recipient may [recover](#) its input GST (to the extent the recipient is itself making GST rateable supplies)

If you conclude that the current contractual provisions are inappropriate (or there are no GST provisions in the contract at all), you will need to amend the contract and negotiate any amendments with the lawyers representing the other parties to the contract.

For a precedent GST clause to be included in a commercial contract for the supply of goods and/or services, see Precedent: [GST clause—commercial contract](#).

How to review a commercial contract for GST purposes

This Practice Note sets out a sensible approach to reviewing a commercial contract (such as an intellectual property licence agreement) for GST purposes.

It does not seek to deal with reviewing a contract for GST purposes in relation to contracts for the sale of a business and whether such a sale is a [transfer of a going concern](#).

Conducting a proper review of any commercial contract for GST purposes has two essential stages:

- Determining the GST treatment of any supply of goods or services to be made pursuant to the contract; and
- Determining how the contract allocates the liability for any such GST between the contracting parties and whether it matches your client's requirements.

This Practice Note focuses on the first question, i.e. determining the GST treatment of the supply of goods and services made pursuant to the contract in question, and makes it clear that it is important to review the whole contract rather than simply negotiating the GST clause in a vacuum. The [GST clause—commercial contract](#) and its drafting notes deal with the second of these two questions.

When reviewing a contract to determine the GST treatment of a supply of goods or services, you must answer the following questions:

- What is being supplied?
- Who is making the supply?
- Where is the supply made?
- When is the supply made?
- What is the value of the supply?
- Is the supply made between members of a GST group?

A summary of how you should approach these questions is set out below.

What is being supplied?

The nature of the goods or services being supplied will, as discussed in greater detail below, have an impact on:

- The place of supply of the goods or services; and
- Whether the supply is standard-rated, zero-rated or an exempt supply.

As a starting point, you should carefully review how the contract describes the goods and services supplied. It should be clear, from the terms of the contract, what is being supplied. It is commonplace, particularly in more complicated arrangements, for the goods and services supplied to be itemised in a schedule to the contract.

You should, however, carefully review the entire contract in order to determine whether the contract allows for the goods and services supplied to be changed. In such circumstances, you would need to advise your client that if the goods and services are changed, the GST treatment may also change and further advice will be needed at that time.

As explained further [below](#), GST is only due on (a) supplies of goods or services made in Singapore where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him, and (b) the importation of goods into Singapore. The nature of the services being supplied can have an impact on the place the supply is deemed to have been made.

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), ss 8\(1\) and 8\(4\).](#)

Even if you can determine that no GST is due on the supplies made under the contract in question, you should be aware that countries other than Singapore may also levy sales taxes on a supply in their jurisdiction (e.g. GST in Australia). In these circumstances, you should discuss with your client whether they wish to instruct counsel in the relevant jurisdiction to assess the local sales tax implications.

While the majority of goods or services are subject to GST at the standard rate, there are a number of important exceptions to this.

The supply could be:

- Zero-rated (i.e. subject to GST at a rate of 0%); or

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), ss 21- 21C.](#)

- Exempt from GST (for which, see Practice Note: [Exemptions from GST](#)).

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), s 22, Schedule 4 Part I.](#)

You should also be aware that supplies may also be “out of scope supplies” or “non-supplies”.

Supplies which do not fall within the charging provision of the GST Act are referred to as “out of scope supplies” and GST is not chargeable on such supplies. “Out of scope supplies” include supplies which are: 1) not made in Singapore; 2) not made by a taxable person; 3) not made in the course or furtherance of any business carried on by the taxable person; or 4) disregarded for GST purposes due to specific statutory provisions.

Payments made pursuant to certain transactions may not be made in consideration for a supply. Such transactions are “non-supplies” and are outside the scope of the GST Act. The Minister may make an order to treat a transaction as a “non-supply”. Examples of “non-supplies” include the following situations (subject to conditions): 1) transfer of business as a going concern; 2) transfer or assignment of title to goods comprised in a hire-purchase agreement; 3) settlement payments; 4) free services; 5) self-supply; and 6) disbursements.

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\) s 10\(3\)\(c\), Sch 2 para 7\(1\)\(a\).](#)

[Goods and Services Tax \(Excluded Transactions\) Order \(Cap 117A, O 2, 2001 Ed\), para 4\(1\).](#)

Where multiple supplies are being made between the same parties, the question arises as to the GST treatment of such supplies, in particular, whether those supplies should be treated as several single supplies or a composite supply. This can be significant if some types of supply are standard-rated and others are not.

The GST treatment of such supplies is complicated and is discussed in more detail in Practice Note: [GST on composite supplies](#). In essence, where it would be artificial to separate the supplies (e.g. where one supply is ancillary to a dominant supply), it is likely that there will be a single composite supply for GST purposes.

References:

British Airways plc v Customs and Excise Comrs [1990] STC 643.

Card Protection Plan v Customs and Excise Comrs Case C-349/96, [1999] STC 270

When there is any doubt over whether the supplies under the contract in question are subject to GST or at what rate they are subject to it, you should:

- Raise the doubts with your client; and
- Following your client's wishes, make any adjustment to the [GST clause](#) in the agreement as is necessary to allocate the risks associated with these issues

Who is making the supply?

In most cases, it will be readily apparent from the face of the contract who is making the supply in question (i.e. one or more of the contracting parties). However, you should look out for terms which stipulate that a contracting party may:

- Substitute another supplier for itself and/or assign or novate the contract to another supplier, in which case you should:
 - Highlight this to your client, explaining that the GST consequences may vary if the new supplier is in some way different from the existing supplier (e.g. based in a different country); and
 - Make any necessary adjustments to the contract, e.g. requiring any replacement supplier to be based in the same country as the existing supplier; or
- Make payment for a supply made by a third party, in which case you will need to carefully consider the GST treatment of such tripartite arrangements, for which, see Practice Note: [GST tripartite supplies—third party consideration](#).

Where the supplies are being made by more than one supplier, it will be important to match up the supplies with the appropriate supplier for the purposes of answering the remaining questions in this Practice Note.

Where is the supply made?

Once you have identified the nature of the supplies and who is making them, it is possible to work out where the supply is made. This will be most relevant where one or more of the suppliers or recipients is located outside Singapore.

The GST place of supply rules are complicated, and in order to know for certain where goods or services are supplied, you will need to know precisely the nature of the goods or services being supplied and who is supplying them. For more detail on the place of supply rules, see Practice Note: [GST place of supply rules—where is a supply made?](#)

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), s 13.](#)

[IRAS e-Tax Guide, "GST: Guidelines on Determining the Belonging Status of Supplier and Customer" \(published on 25 May 2016\).](#)

Singapore Supplier

Where goods or services are supplied by a Singapore-based supplier to a non-Singapore-based recipient it may be the case that the place of that supply is outside of Singapore for GST purposes, and therefore the supply will be zero-rated.

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), ss 21- 21C.](#)

When is the supply made?

The question of when a supply is made can be important because it determines the prescribed accounting period in which the supply has taken place, and output tax will have to be accounted for in that prescribed accounting period. Usually, the time of supply is at the earlier of the: 1) time of payment; or 2) time of issue of tax invoice. For more detail on the time of supply rules, see Practice Note: [GST time of supply rules—when is a supply made?](#)

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), s 11\(2\).](#)

[IRAS e-Tax Guide, “GST: Time of Supply Rules” \(published on 31 December 2013\).](#)

What is the value of the supply for GST purposes?

In most commercial contracts, the consideration for a supply will be in cash and the price (or a means of calculating it by reference to a formula) will be set out in the contract. In these situations, the value of the supply for GST purposes is straightforward—it will be taken to be such amount as, with the addition of any GST chargeable, is equal to the cash consideration. Where the supply is not for a consideration or is for a consideration not wholly consisting of money, the value will generally be its open market value.

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), ss 17\(2\) and \(3\).](#)

The important point to remember is that where the supply of goods or services is for a consideration for money, the price stipulated in the contract is, without more, inclusive of any GST due. In order to ensure that the cash consideration is exclusive of GST, and that a customer is contractually obliged to pay the supplier an amount equal to any GST on the supply in addition to the price stipulated, the contract needs to make this clear, as explained in the [precedent GST clause](#).

It should be clear from the terms of the contract what the consideration to be provided is. However, care should be taken to ensure the parties to the contract are not agreeing to make further payments, or provide additional goods or services, that are directly linked to the supply being made, as these are further amounts of consideration for the supply for GST purposes. If there are such additional provisions, you should make your client aware that they constitute additional consideration for GST purposes and will therefore increase the amount of GST due.

Are the parties to the contract within a GST group?

Companies are not automatically treated as a group for GST purposes. Rather, in order to be treated as a group for GST purposes, the relevant companies must apply for group registration.

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), s 30.](#)

Generally, two or more companies are eligible to be treated as members of a group if, *inter alia*, each of them has an established place of business in Singapore, and one of them controls each of the others. For greater detail, see Practice Note: [GST groups](#)

[Goods and Services Tax \(General\) Regulations \(Cap 117A, Rg 1, 2008 Ed\), regs 3 and 4.](#)

[IRAS e-Tax Guide, “GST: General Guide on Group Registration” \(Second Edition\) \(published on 5 April 2016\).](#)

The consequence of being registered as a group is that supplies between the members of the group are ignored for GST purposes. As a result, if the supplier and recipient under a contract are part of the same GST group, GST will cease to be a serious consideration.

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), s 30.](#)

[IRAS e-Tax Guide, "GST: General Guide on Group Registration" \(Second Edition\) \(published on 5 April 2016\).](#)

If they are not part of the same GST group (but meet the qualifying conditions to be treated as part of a group), applying to be treated as members of a group can reduce unnecessary GST cost (i.e. input GST that may not be [recoverable](#)) in intra-group contracts.

This is particularly relevant when you are dealing with an outsourcing contract, where GST grouping is commonly used to avoid the provider of outsourced services having to charge GST on the services provided.

As members of a GST group are jointly and severally liable for GST liabilities of the group, this will obviously be a factor to consider when deciding whether to apply to be treated as members of a GST group.

References:

[Goods and Services Tax Act \(Cap 117A, 2005 Ed\), s 30.](#)

[IRAS e-Tax Guide, "GST: General Guide on Group Registration" \(Second Edition\) \(published on 5 April 2016\).](#)

It is also important to consider the wider context of the parties' respective businesses when deciding whether to apply to be treated as members of a GST group (for greater detail, see Practice Note: [What are the consequences of GST grouping?](#)).

GST contract review—checklist

This Checklist is designed to help you focus on the points you need to consider when reviewing a commercial contract (such as an intellectual property licence) for GST purposes. A detailed analysis of these points is provided in Practice Note: [How to review a contract for GST purposes](#).

This Checklist is split into the two main steps for reviewing a contract for GST purposes:

- Decide whether GST is due under the contract, and
- Determine how the contract allocates liability between the parties

Decide whether GST is due under the contract

In order to make this determination, you will need to have concluded on all of the following questions:

Question	Context	Lawyer's notes
<i>Determine the subject matter of the contract, i.e. what is being supplied?</i>	This should be apparent from the contract itself, usually in:	
	<ul style="list-style-type: none"> • The definitions section of the contract, where the subject matter of the contract is a defined term; or 	
	<ul style="list-style-type: none"> • A separate schedule to the contract, where the contract is more complicated 	
	<p>Even if it seems obvious, you should take the time to discuss with your client so as to better understand what is being supplied.</p> <p>Some important considerations:</p> <ul style="list-style-type: none"> - Whether contract allows for the goods and services to be changed - Whether foreign counsel is required in circumstances where sales tax may be levied in another jurisdiction 	
<i>Determine who the parties to the contract are, i.e. who is making the supply?</i>	In most cases, determining who the parties to a contract are should be apparent from the face of the contract. However, you should:	
	<ul style="list-style-type: none"> • Confirm with your client that there is no nominee arrangement in place; and 	

	<ul style="list-style-type: none"> Examine the contract to determine whether it: 	
	<ul style="list-style-type: none"> - Allows for payment of consideration to a third party; and/or 	
	<ul style="list-style-type: none"> - Contains a substitution or assignment clause 	
<i>Determine in what jurisdiction the supply is being made, i.e. where is the supply to be made?</i>	The GST place of supply rules are complicated and are explained in detail in Practice Note: GST place of supply rules—where is a supply made? You will need to answer the following questions:	
	Where it is a supply of goods, are the goods being removed from or to Singapore?	
	Where it is a supply of services:	
	<ul style="list-style-type: none"> Is it a supply of services to which special rules apply? 	
	<ul style="list-style-type: none"> If it is not a special service: 	
	<ul style="list-style-type: none"> - Where does the recipient of the services belong? 	
	<ul style="list-style-type: none"> - Where does the supplier of the services belong? 	
	You should determine with your client where they belong for GST purposes. Where your client operates in more than one jurisdiction, you will need to determine the jurisdiction from which they are making, or receiving, the supplies under this contract.	
<i>Determine when the supply is made, i.e. the time of supply</i>	In determining when a supply is made for GST purposes, you will need to confirm with your client:	
	<ul style="list-style-type: none"> When the consideration is to be paid under the contract, and whether periodic payments are to be made; 	
	<ul style="list-style-type: none"> When is the subject matter of the contract to be performed; 	
	<ul style="list-style-type: none"> When will a GST invoice (if any) be issued by the supplier; and 	
	<ul style="list-style-type: none"> Whether a deposit is to be paid <p>For more details, see Practice Note: GST time of supply rules—when is a supply made?</p>	
<i>Determine the value of the supply</i>	You will need to confirm:	
	<ul style="list-style-type: none"> Whether the consideration is to be paid in cash; 	

	<ul style="list-style-type: none"> Whether goods or services are being provided in exchange (a 'barter agreement'); and 	
	<ul style="list-style-type: none"> Where more than one goods or service is being supplied, whether the contract provides an apportionment of the consideration 	
<i>Determine whether the parties to the contract are members of a GST group</i>	You should determine whether the supplier and recipient of goods or services under the contract are, or have been, treated as part of the same GST group.	

Determine how the contract allocates liability between the parties

Once you have determined whether GST is due under the contract then you will need to consider how the contract you are reviewing allocates liability for such GST. The detail of the drafting and a negotiating guide are found in the [GST clause—commercial contract](#).

The following are the steps you need to take in order to start that process:

Question	Context	Lawyer's notes
<i>Determine whether the contract is inclusive or exclusive of GST</i>	Unless the contract expressly states otherwise, the consideration will be inclusive of GST. You should:	
	<ul style="list-style-type: none"> Confirm with your client whether the consideration should be exclusive of GST; and 	
	<ul style="list-style-type: none"> Determine how the contract is currently drafted and amend it if necessary 	
<i>Determine whether the customer is contractually liable for any GST</i>	This is <u>not</u> the same question as whether the contract is inclusive or exclusive of GST. The liability to account for any GST under the contract will generally sit with the supplier. A contract that is GST exclusive usually includes an additional clause that requires the customer to pay an amount in respect of any GST due over to the supplier. The supplier will usually insist on this and the recipient may insist that the obligation to pay only arises on receipt of a valid GST invoice.	
<i>Determine whether any GST warranties (or indemnities) are necessary</i>	Consider whether there are any particular GST risks for your client, for example, a concern over whether the conditions of a prescribed scheme (e.g. the Approved Contract Manufacturer and Trader Scheme) are met. If so, you should advise your client as to:	
	<ul style="list-style-type: none"> The nature of these risks; and 	
	<ul style="list-style-type: none"> Whether specific warranty (or even indemnity) protection is needed in the contract to protect your client 	
<i>Determine who is liable for any interest or penalties</i>	If the GST due is not correctly accounted for, there will be interest to pay. Penalties may also be imposed. You should:	

	<ul style="list-style-type: none">• Consider whether the contract allocates responsibility for such interest and penalties; and	
	<ul style="list-style-type: none">• Take instructions from your client as to whether that allocation reflects the commercially agreed position	

GST clause—commercial contract

1 GST

1.1 Definitions

In this clause: **IRAS**

means the Inland Revenue Authority of Singapore

GST

means Singapore Goods and Services Tax (together with any replacement or equivalent tax)

GSTA

means the [Goods and Services Tax Act \(Cap 117A, 2005 Ed\)](#)

1.2

[The consideration set out in clause *[insert clause reference]* of this Agreement for any supply made by the *[Supplier]* under the provisions of this Agreement shall be exclusive of any GST which is due in relation to such supply. The *[Purchaser]* shall pay to the *[Supplier]*, within *[three Business Days]* of receipt of a valid GST invoice, in addition to the consideration for the supply, an amount equal to any GST due in respect of such supply. OR

The consideration for any supply made by the *[Supplier]* under the provisions of this Agreement shall be exclusive of GST. The *[Supplier]* agrees to provide the *[Purchaser]* within *[three Business Days of [insert relevant date, e.g. start date of contract term]]* a valid GST invoice in respect of such GST. The *[Purchaser]* agrees to use all reasonable endeavours to recover such GST from IRAS as input tax. The *[Purchaser]* further agrees to pay to the *[Supplier]* an amount equal to any GST it recovers from IRAS as input tax within *[three Business Days]* of receipt of such input tax from IRAS. For the purposes of this clause [1.2] recover includes the obtaining of a refund, repayment or credit for input tax. OR

The consideration for any supply made by the *[Supplier]* under the provisions of this Agreement shall be inclusive of GST. For the avoidance of doubt, the *[Supplier]* is liable for any GST due in relation to any supply made under the provisions of this Agreement.]

1.3

- The *[Purchaser]* warrants that:
- 1.3.1 the place of business through which it will receive the supply made under this Agreement is in Singapore; and
 - 1.3.2 it is registered for GST in Singapore with GST registration number *[insert number]*.

1.4

The [*Purchaser*] agrees to pay to the [*Supplier*] an amount equal to any interest or penalties which the [*Supplier*] is liable for in relation to any GST in respect of any supply made under this Agreement [provided that this clause 1.4 shall not apply to the extent that such liability only arises from a failure by the [*Supplier*] to account for GST to IRAS after the [*Purchaser*] has paid an amount equal to such GST to the [*Supplier*]].