

# **GOODS AND SERVICES TAX**

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



INLAND REVENUE  
AUTHORITY  
OF SINGAPORE

Published by  
Inland Revenue Authority of Singapore

Published on 01 Sep 2005

First revision on 10 Oct 2005

Second revision on 29 Feb 2008 (Revision highlighted in paragraph 1.2)

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### 1 INTRODUCTION

- 1.1 This guide primarily 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 on purchases that straddle the date of transfer and expenses relating to a transfer of business as a going concern (referred to in this guide as TOGC);
  - (c) The GST treatment for the repayment of input tax deemed deducted when the transferee changes or intends to change the usage of transferred assets; and
  - (d) The GST obligations of the transferor and the transferee in a TOGC.
- 1.2 This e-tax guide replaces the 10 Oct 2005 publication “Transfer of a Business as a Going Concern”.
- 1.3 The GST Act provides that GST is chargeable on any supply of goods or services made by a 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.
- 1.4 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 as neither a supply of goods nor a supply of services, in the GST (Excluded Transactions) Order. Hence, GST is not chargeable on the transfer. This is referred to as an excluded transaction in this e-Tax Guide.

### 2 EXCLUDED TRANSACTIONS

- 2.1 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 will not qualify as a transfer of business unless it has the effect of putting the transferee in possession of a business<sup>1</sup>. In general, a “business” is one that carries on continuous activities that are mainly concerned with making supplies to its

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<sup>1</sup> More details on the term “business” can be found in the e-Tax Guide “GST on Non-Business Receipts – The Business Test and Effect on Input Tax Claims”, which is available from [www.iras.gov.sg](http://www.iras.gov.sg) > Quick Links > e-Tax Guides > GST.

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customers for a consideration. The business should not have objects in the public domain or of political, religious, philanthropic or patriotic nature. Example: the transferee is in possession of a business when he takes over the business assets and liabilities such as goodwill, premises, fixture & fittings, staff, on-going contracts (e.g. tenancy, maintenance) and outstanding debts and taxes.

This condition can still be satisfied even if the transfer of assets occurs in phases or on different dates due to commercial reasons, which the Comptroller acknowledges as valid and genuine<sup>2</sup>.

Example: the transferee is unable to obtain regulatory clearance on the transfer of product registration license on time to operate the transferred business on the transfer date. Both parties signed an agency agreement with the following terms:

- the transferor is to operate the business as an agent, on behalf of the transferee;
- the transferor is to cease operating the business immediately after the license is processed;
- the transferor is to separate the transactions on behalf of the transferee and maintain separate books on the transferred business

**(b) The assets to be transferred must be intended for use by the transferee in carrying on the same kind of business as the transferor.**

The transferor is required to verify the transferee's intention with regard to the use of transferred assets. The transferee's intention may be presented via an undertaking, a business contract or a sale and purchase agreement. Where the transferee intends to use the assets to carry out a different kind of business, the transferor must charge GST on the supply of assets.

The Comptroller does not impose a minimum timeframe in which the transferee must continue to operate the transferred business in order to satisfy this condition. This is because business continuity varies amongst different types of businesses and is influenced by commercial and economic factors.

The transferee can be a taxable person with no previous interest in the transferred business. This means that the transferee need not be engaged in the same kind of business as the transferor prior to the transfer. Example: an electronics company can diversify its business by acquiring a restaurant chain.

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<sup>2</sup> The Comptroller will assess each case based on the validity of the commercial reason(s) and strength of all material facts furnished.

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- (c) In the case where only part of the business is transferred, that part must be capable of being operated independently.**

It is irrelevant whether the transferee operates the part business together with or separately from his other businesses.

- (d) The business or part thereof must be a going concern at the time of the transfer.**

There must not be any 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.

The business or part thereof can be unprofitable or is trading under the control of a judicial manager or receiver. Example: a company acquires and revives a dying or mismanaged business.

- (e) The transferee must be a GST registered person at the time of the transfer.**

Even if the transferee is not liable to be registered<sup>3</sup>, the transferee has to be registered voluntarily at the date of transfer in order to satisfy the condition.

- (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.

2.2 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:

- (g) 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**

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<sup>3</sup> Please refer to the e-Tax Guide on “Do I Need to Register?”, which is available from [www.iras.gov.sg](http://www.iras.gov.sg) > Quick Links > e-Tax Guides > GST, for more information on GST registration liability.

<sup>4</sup> Paragraph 1(2) of the First Schedule to the GST Act provides that a transferee who is not registered at the time of transfer is liable to be registered at that time if his taxable supplies in the quarter of the time of transfer and the 3 quarters immediately preceding that quarter has exceeded S\$1million; or 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.

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**under Section 20(4)(b) of the GST Act relate and in which the assets are transferred;**

- (h) The assets to be transferred are held by the transferor for more than 3 years; or**
- (i) The transferor is not entitled to any input tax credit on the assets to be transferred.**

2.3 When the supply of assets satisfies the conditions in paragraphs 2.1 and 2.2, 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.

2.4 When the supply of assets fails to qualify as an excluded transaction but is made between members of the same GST group registration, the supply shall then be disregarded under Section 30 of the GST Act<sup>5</sup>.

### 3 EXAMPLES OF EXCLUDED TRANSACTIONS

#### 3.1 Transfer of a property rental business

3.1.1 Seller "X" is a GST registered trader that owns several non-residential properties and derives rental income from leasing out the units of these properties. Buyer "Y" is also a GST registered trader (or will be a GST-registered trader before or on the transfer date) and is not a member of any GST group under Section 30 of the GST Act.

3.1.2 X enters into an agreement with Y to sell one of its non-residential properties. The terms of the sale and purchase agreement include the following:

- (a) the sale of property includes existing plant, equipment, fixtures and fittings owned by X;
- (b) Y undertakes to continue the business of letting to tenants after the transfer;
- (c) the vacant units in the property will be transferred to Y;
- (d) the existing occupation agreement (tenancy and license) including rental, fee and security deposits collected will be transferred to Y. Y will discharge and fulfill all obligations of X under the original tenancy and license agreements;

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<sup>5</sup> Members under the same GST group registration are treated as a single entity and supplies made between the members are disregarded.

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- (e) the building maintenance contracts will either be assigned or novated to Y and Y will take over the deposits (cash and guarantee) and refund the deposits to service providers in accordance to contractual terms;
  - (f) the sale includes works-in-progress such as upgrading of lifts. Y will take over the contractual obligations and be responsible for making payment or refunding deposits to the relevant service providers; and
  - (g) Y is liable to pay property tax on the property transferred.
- 3.1.3 By taking over the entire building together with the existing tenancy and licensing agreements, security deposits, building maintenance and works contracts, Y is in possession of the property rental business. As Y derives similar rental income from let-out units after the transfer, Y is carrying on the same kind of business as X. Since Y is also able to satisfy all other qualifying conditions (e.g. Y is GST-registered on the date of transfer), the transfer of property rental business from X to Y qualifies as an excluded transaction.

### 3.2 Transfer of assets to a new legal entity

- 3.2.1 A transfer of business, or part thereof can arise from a pure change of legal constitution of the entity. Here, law firm “A” is a GST registered, partnership business. A’s existing partners decided to convert the partnership business into a limited liability partnership (LLP). On the transfer date, the LLP becomes GST registered, takes over A’s assets and liabilities and continues to operate the same business.
- 3.2.2 The transfer qualifies as an excluded transaction as **all** the business’ assets, operations and processes are passed over and continued in the same manner by a new GST-registered entity.

## 4 **EXAMPLE OF NON-EXCLUDED TRANSACTIONS**

### 4.1 Transfer of Shares

- 4.1.1 Where the shares of a limited company are transferred from one person or another, there is no TOGC if the assets still belong to the limited company (i.e. no change in the ownership of assets).

## 5 **CLAIMING INPUT TAX CREDITS**

### 5.1 On purchases that straddle the date of business transfer

- 5.1.1 During the transitional period of the business transfer, the transferee may receive tax invoices, import permits or shipping documents that are issued in the transferor’s name. Administratively, the Comptroller will allow the

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transferee to claim input tax on these purchases that straddle the transfer date, provided all of the following conditions are satisfied:

- (a) the transferor undertakes in writing that he will not claim input tax on the purchases and this undertaking is maintained by the transferee for record-keeping purposes;
- (b) the transferee has notified all suppliers of the transferred business or the change in business ownership;
- (c) the transferee will pay for the purchases and maintain payment evidences;
- (d) the purchases are for the transferee's business and he can satisfy all other input tax claims conditions specified in Section 19 of the GST Act; and
- (e) the transferee has taken over all rights and liabilities pertaining to the purchases.

5.1.2 The transitional period refers to a period not more than 6 months from the transfer date. If the transfer date was 01 Apr 2007, the transferee may claim input tax on tax invoices issued to transferor that are dated up till 30 Sep 2007.

### 5.2 On TOGC expenses

5.2.1 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 to draft the transfer agreement.

#### Transferee

5.2.2 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 attributable to the making of taxable supplies 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.

#### Transferor

5.2.3 If the transferor sells his assets and the transaction qualifies as an excluded transaction, the GST incurred on the TOGC expenses may be treated as the

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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 attribution rules applicable to his business.

### 6 REPAYMENT OF INPUT TAX DEEMED DEDUCTED

#### 6.1 What is this section about?

6.1.1 In a TOGC, the transferee is deemed to have incurred and deducted input tax credits on the value of supply of the transferred assets. If the transferee changes or forms an intention to change the usage of the transferred assets from making taxable supplies to making exempt supplies within a specified period from the date of transfer of assets under TOGC, the transferee must repay to the Comptroller any input tax deemed deducted.

6.1.2 For the purpose of this section, the following terms are used.

Date of Transfer	:	Date of transfer of assets under TOGC
The Change	:	Refers to the situation where the transferee changes or forms an intention to change the usage of the transferred assets
Date of Change	:	Refers to the date where transferee changes or forms an intention to change the usage of the transferred assets
The 2 <sup>nd</sup> Change	:	Refers to the situation where the transferee subsequently changes or forms an intention to change the usage of the transferred assets after The Change
Date of 2 <sup>nd</sup> Change	:	Refers to the subsequent date where transferee changes or forms an intention to change the usage of the transferred assets after the Date of Change

#### 6.2 When is repayment required?

6.2.1 Generally, the Comptroller will require repayment of input tax deemed deducted on the assets transferred when:

- (a) There is a distinct change in business activities of the acquired business by the transferee;
- (b) The change in business activities resulted in a **change in usage of the acquired assets** in any one of the four circumstances below:

No.	Assets transferred are to be used in carrying on the same kind of business as that carried on by the transferor in making	&	during a period of 6 years after date of transfer of assets, transferee uses or forms an intention to use the assets in making
1	Taxable supplies	to	Exempt supplies
2	Taxable supplies	to	Both taxable and exempt supplies
3	Both taxable and exempt supplies	to	Exempt supplies

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4	Both taxable and exempt supplies	to	Both taxable and exempt supplies but the proportion of taxable supplies to exempt supplies reduces
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(c) This change occurs within:

- (i) **6 years** after the Date of Transfer, where the Date of Transfer occurs in a prescribed accounting period ending before 01 Jan 2007; or
- (ii) **5 years** after the Date of Transfer, where the Date of Transfer occurs in a prescribed accounting period ending on or after 01 Jan 2007.

6.3 What is the amount of input tax deemed deducted?

6.3.1 The input tax deemed deducted is the input tax that would have been incurred had the transfer of assets not qualify as an excluded transaction.

Input tax deemed deducted	=	GST rate at the Date of Transfer	x	Value of assets transferred as at date of transfer
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6.4 What is the amount to be repaid?

6.4.1 The amount of input tax to be repaid to the Comptroller should be derived using the formula below:

Input tax to be repaid	=	Input tax deemed deducted	x	Change in ratio of taxable supplies to total supplies	x	$\frac{\text{Remaining number of accounting periods}}{\text{Total number of accounting periods in 6 years}}$
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Component	Description
Change in ratio of taxable supplies to total supplies	<u>For 1<sup>st</sup> adjustment</u>
	1      –      Ratio of taxable supplies to total supplies in the accounting period in which The Change occurs
	<u>For subsequent adjustments</u>
	Ratio of taxable supplies to total supplies in the accounting period in which The Change occurs      –      Ratio of taxable supplies to total supplies in the accounting period in which The 2 <sup>nd</sup> Change occurs

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Component	Description
Remaining number of accounting periods	<u>For 1<sup>st</sup> adjustment</u> Total number of accounting periods in 5 or 6 years (where applicable) less number of accounting periods from the Date of Transfer to the Date of Change (Inclusive of both dates).
	<u>For subsequent adjustments</u> Total number of accounting periods in 5 or 6 years (where applicable) less number of accounting periods from the Date of Transfer to the Date of 2 <sup>nd</sup> Change (Inclusive of both dates).

### 6.5 How should repayment be made?

6.5.1 The transferee should repay the input tax in the accounting period in which the change in use of the asset occurs or when the intention is formed. The amount to be repaid should be deducted from Box 7 (Input tax and refund claims) of the GST return.

6.5.2 An example of repayment of input tax deemed deducted is provided in Appendix 1.

### 6.6 When is repayment NOT required?

6.6.1 Repayment of input tax is not required when there is a reduction in the proportion of taxable supplies to exempt supplies due to normal fluctuation of business transactions.

6.6.2 However, where the reduction in the proportion of taxable supplies to exempt supplies is due to a distinct change in business activities that resulted in a change in use of assets, repayment of input tax will be required as explained in paragraph 6.2 above.

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### 7 RECORD-KEEPING

- 7.1 Under Section 46 of the GST Act, GST-registered persons are required to keep their business records for 5 years if they pertain to prescribed accounting periods ending on or after 01 Jan 2007. For records before 01 Jan 2007, they must be kept for 7 years.
- 7.2 In the case of a TOGC, the transferor is required 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.
- 7.3 If the transferor wishes to retain records of the transferred business, he is required to seek waiver from the Comptroller under Section 34(b) of the GST Act. Generally, the Comptroller is prepared to waive the requirement and allow the transferor to maintain records if:
- (a) It involves a partial transfer and the transferor needs the records to fulfil other regulatory requirements such as filing income tax returns;
  - (b) It involves a partial transfer and the transferor has difficulties segregating the records as they relate to both the transferred business and the transferor's remaining business; or
  - (c) The transferor is involved in a legal suit and records are required to be admitted as evidence in court.

To seek waiver, the transferor is required to write to the Comptroller with a brief description on the transfer and state the reason for wanting to maintain the records. In addition, both the transferor and transferee must jointly undertake<sup>6</sup> to do the following:

- (i) The transferee will obtain any information and make available any business and accounting records from the transferor that relate to the transferred business upon request by the Comptroller;
- (ii) The transferor will make available to the transferee all records or information that relate to the transferred business to enable the transferee to comply with any request by the Comptroller for such records or information;
- (iii) The transferor will preserve all relevant business records and adhere to any other statutory duties provided under Section 46 of the GST Act; and
- (iv) The transferor will notify the Comptroller of its intention to cease its remaining businesses, within 30 days from the date such an intention

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<sup>6</sup> The principal officers of transferor and transferee are required to sign the joint undertaking.

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is formed, and hand over to the transferee all records in its possession that relate to the transferred business.

Copies of the joint undertaking must be provided to the Comptroller as supporting document for waiver request and to the transferee as part of its record-keeping obligations.

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### APPENDIX 1

#### Worked example for repayment of input tax

Company A transferred its general insurance business to Company B on 04 Apr 2004. The only asset transferred was the office building valued at \$1 million on the Date of Transfer. Company B acquired the assets to carry on the same general insurance business carried on by Company A prior to the transfer. Assume that the transfer qualifies as an excluded transaction.

Company B subsequently obtains a life insurance license from MAS on 06 Jun 2007. Company continues to use the assets to carry on its life insurance business.



Company's B supplies		
Accounting period	1/4/04 – 30/06/04	1/04/07 – 30/6/07
Value of taxable supplies	\$1,500,000	\$ 100,000
Value of exempt supplies	\$ 150,000	\$1,900,000
Value of total supplies	\$1,650,000	\$2,000,000
Proportion of taxable supplies to exempt supplies	10.00	0.05

There is a distinct change in business activities on 06 Jun 2007, which is within 6 years after the date of transfer of the assets on 04 Apr 2004 (occurs in a prescribed accounting period ending before 01 Jan 2007). This change in business activities results in a change in use of assets such that there is a reduction in the proportion of taxable supplies to exempt supplies. Company B is required to repay input tax deemed incurred and deducted on the assets transferred.

The computation of the input tax repayable is computed below.

Amount of input tax deemed deducted	GST rate x Value of assets = 5% x \$1m = \$50,000
Change in ratio of taxable supplies to total supplies	1 – ratio of taxable supplies to total supplies in the accounting period in which The Change occurs = 1 – (100,000/2,000,000) = 0.95
Remaining number of accounting periods	Total number of accounting periods in 6 years – number of accounting periods from the Date of Transfer to the Date of Change (inclusive of both dates) = (6 x 4) – 13 = 11

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Amount of input tax to be repaid	$  \begin{aligned}  &\text{Input tax to be repaid} = \text{Input tax deemed deducted} \times \text{Change in ratio of taxable supplies to total supplies} \times \frac{\text{Remaining number of accounting periods}}{\text{Total number of accounting periods in 6 years}} \\  &= \$50,000 \times 0.95 \times \frac{11}{24} \\  &= \underline{\underline{\$21,770.83}}  \end{aligned}  $
How the input tax should be repaid	Company B should deduct the amount of \$21,770.83 from Box 7 (Input tax and refund claims) of the GST return for the period ended 30 Jun 2007.