

PALAU GOODS AND SERVICES TAX REGULATIONS

EXPLANATORY NOTES

101. Short Title

This Regulation provides for the short title of the Regulations. Once promulgated, the Regulations may be cited as the Palau Goods and Services Tax Regulations.

102. Authority

This Regulation sets out the legal authority for the Regulations. The Regulations are promulgated pursuant to Section 1296 of Title 40, which provides that the Minister may promulgate Regulations that are necessary to give effect to Chapter 12 of Title 40. In particular, Regulations may be promulgated with respect to supplies and input tax credits. Part 3 of the Regulations sets out the application of the PGST to particular types of supplies.

103. Definitions

Sub-regulation (a) sets out definitions of terms used in the Regulations. A term has the meaning set out in this Regulation unless the context requires otherwise. Sub-regulation (b) provides that a term used in the Regulations that is defined in Title 40 has the meaning in Title 40 unless context requires otherwise. The definition may be a specific PGST definition in Section 1202 of the Act or a definition in the general definition provisions in Chapter 10 of Title 40.

The following terms are defined in sub-regulation (a):

Act

“Act” is defined to mean the Palau Goods and Services Tax Act in Chapter 12 of Title 40. The Act imposes Palau Goods and Services Tax (PGST) on: (i) taxable supplies made by a registered person; (ii) supplies of imported services made to a registered person; and (iii) taxable imports by any person.

Electronic distribution platform

This term is relevant to Regulation 310, which provides for supplies of remote services made through an electronic distribution platform.

“Electronic distribution platform” is defined to mean a website, internet portal, gateway, store, marketplace, or other similar platform that is operated electronically through which a supplier makes a supply of remote services through another person (the operator of the electronic distribution platform) to a third person (the recipient) but does not include a marketplace or distribution platform that solely processes payments. Examples of an electronic distribution platform are the App Store, Google Play, Uber, eBay, and Airbnb.

Lay-by Sale Agreement

This term is relevant to Regulation 302, which provides for the PGST treatment of supplies made under a lay-by agreement.

“Lay-by Sale Agreement” is defined to mean an agreement for the sale and purchase of goods where three conditions are satisfied:

- (1) The purchase price is payable by the making of at least one additional payment after the payment of a deposit for the goods.
- (2) The purchaser takes possession of the goods only after payment in full is made for the goods. Until that time, the goods remain in the possession of the seller.
- (3) The seller transfers ownership of the goods to the purchaser at the time that the purchaser takes possession of the goods.

If any of these conditions is not satisfied, the agreement for the sale and purchase of goods is not a lay-by agreement and the normal time of supply and value of supply rules under the Act apply.

Prepaid telecommunications product

This term is relevant to Regulation, which provides for the PGST treatment of supplies of prepaid telecommunications products made through agents and intermediaries.

“Prepaid telecommunications product” is defined to mean a card or similar item that entitles the holder to receive telecommunications services up to its face value. The definition expressly includes a phone card, prepaid card, recharge card, or any other form of prepayment of telecommunications services. The key requirement for an item to be a prepaid telecommunications product is that the holder is entitled to receive supplies of telecommunications services up to the face value of the item. It is expressly provided that an item is a prepaid telecommunications product whether issued physically as a card or electronically.

“Telecommunications services” is defined in Section 1202(48) of the Act.

Returnable container

This term is relevant to Regulation 303, which provides for the PGST treatment of deposits paid in respect of returnable containers.

“Returnable container” is defined to mean a bottle, vat, keg, or any other form of container or packaging in which goods are supplied in respect of which the supplier retains ownership and the recipient of the supplier is required to return to the supplier. Examples are bottles in which soft drinks are supplies or kegs in which beer is supplied to hotels and restaurants.

A container or packaging in which goods are supplied is only a returnable container where ownership of the container or packaging remains with the supplier and the recipient of the supply is required to return the container or packaging after using the goods.

Second-hand goods and second-hand goods supplier

These terms are relevant to Regulation 301, which provides for the PGST treatment of supplies of “second-hand goods” by a registered person who is a “second-hand goods supplier”.

“Second-hand goods” is defined to mean goods that have been previously owned and used in Palau by an unregistered person, i.e., goods that have previously been supplied in Palau to end consumers. The definition includes only to second-hand goods previously used in Palau as these are goods that are likely to have already been subject to PGST in the supply chain.

“Second-hand goods supplier” means a registered person whose business includes the re-supply, by way of sale or exchange, of second-hand goods in substantially the same state as they were in when acquired.

Tax fraction

This term is relevant to the rules in Part 3 of the Regulations applicable to particular types of supplies.

“Tax fraction” is defined to having the meaning in Section 1235(f) of the Act. This is the fraction calculated according to the formula:

$$r/(100 + r)$$

In the formula, “r” is the PGST rate. At the time of enactment of the Act, the PGST rate is 10%, so the tax fraction is $10/110$. In broad terms, the tax fraction is the proportion of a PGST-inclusive amount for a supply that represents the PGST payable on the supply. In effect, the PGST is $1/11^{\text{th}}$ of a PGST-inclusive amount. For example, if a PGST-inclusive amount is \$110, the tax fraction of that amount is \$10 ($110 \times 10/110$).

TIN

This term is relevant to the VAT documentation requirements in Part 5 of the Regulations.

“TIN” is defined to mean the Taxpayer Identification Number of a registered person.

Voucher

This term is relevant to several Regulations in Part 3 of the Regulations applicable to particular types of supplies.

“Voucher” is defined to mean any voucher, token, stamp, coupon, or similar article that can be redeemed by the holder only for supplies of goods or services in accordance with its terms. The definition expressly includes a prepaid telecommunications product (separately defined in Regulation 103) but excludes a postage stamp. An item is a voucher if its only operation is to be redeemed for goods or services.

201. Register of Registered Persons

This Regulation provides for a register of registered persons.

Sub-regulation (a) obliges the Director to establish and maintain a register containing the name and business address of all registered persons. The registrar must be made available to the public. This is an important transparency measure to ensure that persons can determine whether the business they are dealing with is PGST registered.

Sub-regulation (b) obliges the Director to ensure that the information relating to a registered person on the register referred to in Sub-regulation (a) is kept up to date. For example, the Director should revise the register where a registered person has advised the Director of a change in name or business address under Section 1224(b) of the Act.

Sub-regulation (c) obliges the Director to remove the name of a person whose registration is cancelled under Section 1225 of the Act from the register referred to in Sub-regulation (a). The person’s name must be removed from the date of effect of cancellation of the person’s registration.

202. Obligations of Registered Persons

This Regulation mainly clarifies the obligations of registered persons in relation electronic operations. The Regulation applies for the purposes of Section 1224 of the Act, which specifies the obligations of registered persons.

Sub-regulation (a) is relevant to the application Section 1224(a) of the Act, which obliges a registered person to display their PGST registration certificate (original or certified copies) at all physical places of business. In addition to this, sub-regulation (a) obliges a registered person to specify their PGST registration details on any website through which the person carries on business.

Sub-regulation (b) is relevant to the application of Section 1224(b) of the Act, which obliges a registered person to notify the Director of certain changes to their name or business operations. Sub-regulation (b) requires a registered person to also notify the Director of any changes to: (i) the person’s electronic mail (email) address; or (ii) the bank account details of the person’s business. Sub-regulation (c) provides that the notification of these changes must be in writing and lodged with the Director within 21 days of the change occurring.

A registered person who fails to comply with the obligations in Sub-regulation (a) and (b) commits an offense under Section 1287(a)(4) of the Act. A person convicted of an offense under

Section 1287(a)(4) of the Act is liable for a fine not exceeding ten thousand dollars (\$10,000), or a term of imprisonment not exceeding 5 years, or both a fine and imprisonment.

203. Application for a Refund of Excess Input Tax Credits on Cancellation of Registration

This Regulation provides for the treatment of excess input tax credits of a person whose PGST registration is cancelled.

Sub-regulation (a) provides that a person whose registration is cancelled under Section 1225 of the Act may apply to the Director for a refund of any excess input tax credit of the person that has been carried forward under 1262 of the Act. This overrides the normal 2-month carry forward period in Section 1261(a)(1) of the Act and is necessary because the person ceases to be a registered person on cancellation of registration. An application under Sub-regulation (a) must be in writing and lodged with the Director at the same time as the person's final PGST return is required to be filed under Section 1225(f)(2) of the Act. This includes any extension of time that the Director may allow for the filing of the final PGST return.

Sub-regulation (b) sets out a time limit for the making of a refund of an excess input tax credit. Sub-regulation (b) applies where the Director is satisfied that a person who has lodged an application under Sub-regulation (a) has an unapplied excess input tax credit at the time that the person's registration is cancelled. In this case, Sub-regulation (b) obliges the Director to refund the excess within 30 days after the person filed the application. This aligns with the period specified in Section 1262(a)(2) of the Act for the making of refunds of excess input tax.

Sub-regulation (c) applies where, at the date on which the person's final return is required to be filed under Section 1225(f)(2) of the Act, the person has an excess input tax credit in respect of which an application for a refund has not been made in accordance with Sub-regulation (a). In this case, Sub-regulation (c) provides that the excess credit lapses and is no longer refundable to the person.

Consequently, a person who has an excess input tax credit at the time the person's registration is being cancelled must apply for a refund of the excess credit by the date on which the person's final return is required to be filed under Section 1225(f)(2) of the Act. Failure to do so results in a loss of the excess credit.

301. Supplies of Second-hand Goods

This Regulation provides for the PGSAT treatment of supplies of second-hand goods.

The business of a registered person may involve the supply of second-hand goods (e.g., used cars or second-hand books). This involves goods that have previously been through the distribution chain re-entering the distribution chain. As second-hand goods have previously been in the distribution chain, PGST will have been previously charged on those goods. A person who deals in second-hand goods is likely to buy the goods mainly from unregistered persons (i.e., consumers). As such, a registered person dealing in second-hand goods will not be able to claim an input tax credit for the PGST previously paid on the goods under the normal rules for

claiming input tax credits (Section 1241 of the Act). For this reason, a special input tax credit rule is provided in respect of a taxable supply of second-hand goods by a registered person.

The input tax credit rule is stated in Sub-regulation (b). Sub-regulation (a) specifies that the following conditions must be satisfied for the input tax credit rule in Sub-regulation (b) to apply:

- (1) There must be a “second-hand goods supplier”. This is defined in Regulation 103 to mean a registered person whose business includes the re-supply, by way of sale or exchange, of second-hand goods in substantially the same state as they were in when acquired. If the goods are remodeled into other goods, the ordinary operation of the Act applies so that input tax credits can be claimed in respect of the other inputs used in remodeling the goods. The Regulation applies only when the registered person’s business involves the sale or exchange (such as a trade-in in case motor vehicles) of second-hand goods. It does not apply when the supplier’s business involves the lease of second-hand goods. The normal input tax credit rules apply in that case.

Only a registered person can be a “second-hand goods supplier” as defined in Regulation 103.

- (2) There must be “second-hand goods”. This is defined in Regulation 103 to mean goods that have been previously used in Palau by an unregistered person, i.e., goods that have previously been supplied to end consumers. The section applies only to second-hand goods previously used in Palau.
- (3) The second-hand goods supplier must have acquired the second-hand goods from an unregistered person. If the goods are acquired from another registered person, then the normal input tax credit rules apply.
- (4) The second-hand goods supplier has not imported the goods. This is consistent with the definition of “second-hand goods” as goods that have been previously used in Palau. An import of second-hand goods is a taxable import (as the goods have not previously been consumed in Palau) with PGST payable by the importer. The normal input tax credit rules apply where second-hand goods have been imported.
- (5) The second-hand goods supplier has not acquired the goods in an exempt or zero-rated supply, i.e., a supply in respect which no PGST would otherwise be payable if the supplier were registered.
- (6) The second-hand goods supplier has made a taxable supply, by way of a sale or exchange, of second-hand goods. This means that the supply must be made in Palau in the course or furtherance of the carrying on of a business and is not an exempt supply.
- (7) The second-hand goods were re-supplied by the registered person in substantially the same state as they were in when purchased by the registered person.

If these conditions are satisfied, Sub-regulation (b) provides for three things:

- (1) The second-hand goods supplier is treated as having acquired the goods in a creditable acquisition (paragraph (1)). The acquisition of the second-hand goods would not otherwise be a creditable acquisition as defined in the Act because the goods were not acquired from a registered person.
- (2) The registered person making the supply of second-hand goods is deemed to have paid an amount of input tax in respect of the acquisition of the goods equal to the tax fraction of the price paid for the goods (paragraph (2)). “Price” is defined in Section 1204 of the Act. “Tax fraction” is defined in Regulation 203 to have the same meaning as under Section 1235(f) of the Act, namely the fraction calculated according to the formula:

$$r/(100 + r).$$

In the formula, “r” is the PGST rate. At the time of enactment of the Act, the PGST rate is 10%, so the tax fraction is $10/110$. The tax fraction of the price paid by the registered person for the second-hand goods is, in effect, the PGST embedded in the second-hand goods when acquired by the registered person.

- (3) The registered person is allowed an input tax credit for the deemed input tax calculated under Paragraph (2) in the PGST period in which the time of supply of the second-hand goods by the second-hand goods supplier occurs (paragraph (3)). The time of supply is determined under Section 1232 of the Act. This means that the allowance of the input tax credit is delayed until the second-hand goods supplier re-supplies the goods. This is intended to ensure that all the conditions in Sub-regulation (a) are satisfied, particularly the requirement that the goods are re-supplied in substantially the same state as they were in when acquired by the second-hand goods supplier.

Example

Cars Ltd is a dealer in second-hand cars and a registered person for PGST. Cars Ltd purchased a car from Harry (an unregistered person) for \$10,000 on 1 January 2023 and sold the car to George in a taxable supply for \$12,000 on 1 May 2023. The value of the taxable supply made by Cars Ltd to George is the price for the supply (Section 1235(a) of the Act) and Cars Ltd is liable to account for PGST of \$1,200 (based on a PGST rate of 10%) on the supply. Sub-regulation (b) provides that Cars Ltd is entitled to an input tax credit equal to the tax fraction of the price paid by Cars Ltd for the car, i.e., \$909 ($\$10,000 \times 10/110$). Cars Ltd is allowed the input tax credit in the PGST period in which the time of resupply of the car by Cars Ltd occurs. Under Section 1223(a) of the Act, this is the earlier of time of invoice or payment. Consequently, Cars reports a net PGST payable for the car equal to \$91 ($\$1,200 - \909).

Sub-regulation (c) applies when a second-hand goods supplier acquires second-hand goods (referred to as “traded-in goods”) as part payment for a supply that the supplier makes to an unregistered person. In this case, through the definition of “price” in Section 1204(a)(2) of the

Act, the fair market value of the traded-in goods is taken into account twice. First, it is taken into account as part of the price paid by the person who traded-in the goods for the supply from the second-hand goods supplier. Second, it is taken into account for the purposes of calculating the deemed input tax credit allowed to the second-hand goods supplier under Sub-regulation (b). The purpose of Sub-regulation (c) is to ensure that the fair market value is the same for both purposes.

Example

Cars Ltd sells both new and used cars. Cars Ltd sells a new car to George and accepts part payment in cash and part by way of the trade-in of George's old car. The price for the supply of the new car by Cars is the sum of the money paid and the fair market value of the traded-in car (Section 1204 of the Act). The price that Cars Ltd has given for the traded-in car is equal to the fair market value of that car. This is the amount taken into account in determining the deemed input tax credit allowed in relation to the traded-in car. The deemed input tax credit is allowed when Cars Ltd subsequently re-supplies George's traded-in car.

A second-hand goods supplier receiving a supply of second-hand goods from a non-registered person must keep a record of the supply containing the information specified in Sub-regulation (d). This is subject to the *de minimis* rule in Sub-regulation (e) under which a record is not required to be kept if the price paid in money for the second-hand goods does not exceed \$50.

302. Lay-by Sale Agreements

This Regulation provides for the PGST treatment of goods supplied under a lay-by agreement.

The Regulation applies to a "lay-by agreement", which is defined in Regulation 1003 to mean an agreement for the sale and purchase of goods where three conditions are satisfied:

- (1) The purchase price is payable by the making of at least one additional payment after the payment of a deposit for the goods.
- (2) The purchaser takes possession of the goods only after payment in full is made for the goods. Until that time, the goods remain in the possession of the seller.
- (3) The seller transfers ownership of the goods to the purchaser at the time that the purchaser takes possession of the goods.

If any of these conditions is not satisfied, the agreement for the sale and purchase of goods is not a lay-by agreement and the normal time of supply and value of supply rules under the Act apply.

Sub-regulation (a) specifies a time of supply rule for a supply of goods under a lay-by agreement. It is provided that the supply of goods occurs on the date the goods are delivered to the purchaser (i.e., the time of delivery is the sole time of supply rule for lay-by sales). This overrides the normal time of supply rule for goods in Section 1232(a) of the Act, namely the

earlier of: (i) the date the invoice for the supply is issued; or (ii) date of payment for the supply (including a part payment). Under the rule in Section 1232(a) of the Act, the first payment under the lay-by agreement would crystallize the time of supply. Thus, the effect of Sub-regulation (a) is to delay the time of supply under a lay-by agreement until the time of delivery of the goods. This is justified on the basis that there is no change in both possession and ownership of the goods until delivery.

Sub-regulations (b) and (c) apply where a lay-by agreement is cancelled and the seller retains any amount paid by the purchaser, or recovers an amount from the purchaser, under the agreement. This may occur, for example, if the purchaser fails to pay the full amount due by the end of the term of the lay-by agreement (such as 3 months). The situation can arise, therefore, whereby the seller obtains part payment for the goods but retains ownership of the goods because of cancellation of the lay-by agreement. In this situation, the following is treated as having occurred:

- (1) The cancellation of the lay-by agreement is treated as a supply of services by the seller (Sub-regulation (b)). The service is keeping the opportunity open for the customer to purchase the goods.
- (2) The supply is treated as taking place at the time of cancellation of the agreement (Sub-regulation (b)).
- (3) If the seller is a registered person, the value of the supply is the amount retained or recovered by the seller reduced by the tax fraction of that amount (Sub-regulation (c)(1)). This means that the amount retained or recovered is treated as a PGST-inclusive amount. This assumes that each amount paid under the lay-by agreement is in part the price for the goods and in part the PGST payable on the ultimate supply of the goods.

If the supplier is not a registered person, the value of the supply is the amount retained or recovered (Sub-regulation (c)(2)). There is no adjustment for PGST because the seller is not a registered person and, therefore, does not charge PGST on the supply of the goods. The valuation rule may be relevant, though, in determining whether the seller satisfies the registration threshold.

The application of Sub-regulations (2) and (3)(a) are illustrated by the following example.

Example

Roy enters into a lay-by agreement with Retailer to purchase a computer for a price of \$10,000 plus \$1,000 in PGST. Retailer is registered for PGST purposes. Roy pays a deposit of 1,100 (10% of the PGST-inclusive price) on signing the agreement and is required to pay the balance within six months after the agreement is signed. Roy makes a further payment of \$1,100 but fails to make any further payments and Retailer cancels the agreement. Under the terms of the agreement, Retailer retains the \$2,200 paid by Roy.

There is no supply or recognition of output tax at the time the lay-by agreement is entered into (Sub-regulation (a)). This is because the time of supply under a lay-by agreement is the time of delivery of the goods. On cancellation of the lay-by agreement, Sub-regulation (b) treats Retailer as having made a supply of services to Roy. Under Section 1234(a) of the Act, the supply of services takes place in Palau because Retailer's place of business is in Palau. The supply of services is a taxable supply (as defined in Section 1202 of the Act). Sub-regulation (b) treats the supply as occurring at the time of cancellation of the lay-by agreement. As Retailer is registered, Sub-regulation (c)(1) provides that the value of the supply is the amount paid by Roy reduced by the tax fraction of that amount. The amount paid is \$2,200 and the tax fraction of that amount is \$200 ($\$2,200 \times \frac{10}{110}$). Thus, the value of the deemed supply is \$2,000 ($\$2,200 - \200). Retailer must report \$200 of output tax in the PGST period in which the agreement is cancelled. The \$2,200 paid by Roy is treated as \$2,000 as part payment of price and \$200 as the PGST on the part payment of the price.

303. Deposits

This Regulation provides for the PGST treatment of deposits paid in respect of supplies of goods or services.

Sub-regulation (a) provides that the price for a supply does not include a deposit paid or payable in connection with the supply until the supplier applies the deposit in payment for the supply. This applies regardless of whether or not the deposit is refundable.

Sub-regulation (b) provides an exception to Sub-regulation (a) applicable to a supply of goods in a returnable container. In this case, Sub-regulation (b) provides that a deposit paid or payable for a returnable container in which the goods are supplied is included in the price of the supply of goods.

“Returnable container” is defined in Regulation 103 to mean a bottle, vat, keg, or any other form of container or packaging in which goods are supplied in respect of which the supplier retains ownership and the recipient of the supply is required to return to the supplier. Examples are bottles in which soft drinks are supplied or kegs in which beer is supplied to hotels and restaurants. A container or packaging in which goods are supplied is only a returnable container where ownership of the container or packaging remains with the supplier and the recipient of the supply is required to return the container or packaging after using the goods.

It is provided in Sub-paragraph (b) that a deposit for a returnable container includes any amount, however described, payable by the recipient of a supply as security for the return of the container. An amount is a deposit for a returnable container regardless of whether it is included in the price for the goods or separately charged.

A returnable container is considered inseparable from the goods they contain. Further, it is often the case that returnable containers are not returned so that the supplier ends up retaining the deposit. For these reasons, the amount of the deposit is included in the price for the supply of the

goods. The repayment of the deposit on return of the container is an adjustment event under Section 1251(f) of the Act applicable where PGST has been over-charged.

Sub-regulations (d) – (f) apply to the forfeiture of a deposit to which Sub-regulation (a) applies. Sub-regulation (d) applies where a supplier has received a deposit in connection with a supply of goods or services and the deposit is forfeited to the supplier. In this case, the forfeiture of the deposit is treated as a separate supply of services by the supplier at the time of forfeiture of the deposit. The service is keeping the opportunity open for the customer to purchase the goods. Sub-regulation (d) does not apply a deposit on a returnable container or a deposit paid under a lay-by agreement. The deposit for a returnable container is included in the price for the supply of the goods included in the container under Sub-regulation (b). Regulation 302 applies to a forfeited deposit under a lay-by agreement (Sub-regulation (f)).

Sub-regulation (e) provides for the value of the Sub-regulation (d) deemed supply of services. Where the supplier is a registered person at the time of forfeiture of the deposit, the value of the supply is the forfeited amount reduced by an amount equal to the forfeited amount multiplied by the tax fraction. This assumes that the forfeited amount is a PGST-inclusive amount.

Where the supplier is not a registered person, the value of the supply is the total amount of the forfeited deposit. There is no adjustment for PGST because the seller is not a registered person and, therefore, does not charge PGST on the supply of goods and services. However, the valuation rule may be relevant in determining whether the seller satisfies the registration threshold.

304. Supplies of Rights and Options

This Regulation provides for the PGST treatment of supplies of rights and options.

Special rules are needed for rights and options because they effectively split a single consumption transaction into two separate supplies. The first is a supply of services comprising the grant of the right or option (see definition of “supply of services” in Section 1202 of the Act) to acquire goods or services. A price may or may not be charged for this supply. Subsequently, there is a separate supply made at the time when the right or option is exercised and the goods or services are transferred. The total value of the consumption is, in effect, the sum of the amounts paid in each of the two transactions. If a person acquires a right or option for a price but does not exercise or use the right or option, the person has nonetheless benefited from the holding open of the availability or possibility of acquiring the thing to which the right or option relates. This is a supply of services. The value of this supply of services is the price paid for the right or option.

Sub-regulation (a) provides that the Regulation applies where two conditions are satisfied:

- (1) There is supply of a right or option. As noted above, the grant of a right or option is a “supply of services” as defined in Section 1202 of the Act.

- (2) Another supply (referred to as the “subsequent supply”) is made on the exercise of the right or option. This would ordinarily be a supply of goods but may a supply of an intangible asset (which is a supply of services).

The supply of a right or option is a taxable supply if it is made in Palau in the course or furtherance of a business carried on by the person who has granted the right or option and is not an exempt supply.

If the conditions in Sub-regulation (a) are satisfied and the supply of the right or option is a taxable supply, Sub-regulation (b) limits the price for the subsequent supply to any additional amount paid for the subsequent supply. In the absence of Sub-regulation (b), there would be over-taxation if the amount paid for the right or option was counted also as part of the price for the subsequent supply on exercise of the right or option.

Example

Zachary (a registered person) grants Everton an option to purchase commercial premises in Palau owned by Zachary. The option price is \$1,000 and the exercise price is \$200,000. The grant of the option is a supply of services by Zachary made in the course or furtherance of Zachary’s business carried on in Palau and, therefore, the grant of the option is a taxable supply. The value of the supply is the price paid for the option (\$1,000). The PGST payable on grant of the option is \$100 (1,000 x 10%).

Everton subsequently exercises the option and Zachary transfers the premises to Everton. The transfer of the premises to Everton on exercise of the option is a separate supply of goods (see the definition of goods in Section 1202 of the Act) for a price equal to the exercise price (\$200,000). Sub-regulation (b) applies because the grant of the option is a taxable supply. Under Sub-regulation (b), the option price is not included in the price for the supply of the commercial premises. The value of the supply is the price paid for the premises (\$200,000). The PGST payable on the transfer is \$20,000 (\$200,000 x 10%).

The total price paid by Everton for the premises is \$201,000 with a total PGST payment of \$20,100 (i.e., \$201,000 x 10%).

Sub-regulation (c) applies where the conditions in Sub-regulation (a) are satisfied and: (i) the grant of the right or option is not a taxable supply (e.g., the grant of the right or option may be an exempt supply of financial services); and (ii) the subsequent supply on exercise of the right or option is a taxable supply. In this case, Sub-regulation (c) provides that the price for the subsequent supply includes the price given for the supply of the right or option.

305. Vouchers

This Regulation provides for the PGST treatment of certain types of vouchers.

The Regulation applies to a “voucher” as defined in Regulation 103, namely any voucher, token, stamp, coupon, or similar article that can be redeemed by the holder only for supplies of goods or services in accordance with its terms. The definition expressly includes a “prepaid telecommunications product” (defined in Regulation 103 definition and Regulation 306) but excludes a postage stamp. An item is a voucher if its only operation is to be redeemed for goods or services.

Sub-regulation (a) and (b) alter the basic operation of the Act for vouchers that satisfy the following conditions:

- (1) The holder of the voucher is entitled, on redemption, to receive supplies of goods or services up to a monetary amount stated on the voucher. This will not cover a voucher that is for a specified supply even if there is a monetary value stated on the voucher. For example, John’s video shop may rent new release videos for \$5 each. John may sell customers a book of ten vouchers for \$45 entitling the customer to rent ten new release videos. This is not a “voucher” to which Sub-regulation (a) applies because the customer is entitled to a specified supply of services, namely the rental of videos. The transaction is simply a prepayment (at a discount) for the rental of the ten new release videos and the time of the supply is the time of payment (Section 1232 of the Act).
- (2) The voucher must be issued for an amount in money. The amount does not have to equal the monetary value of the voucher. It may be more or less than the monetary value (see the example below). A voucher issued for no amount is not within the terms of Sub-regulation (a). Such a voucher may effectively offer a discount or provide for a supply for no value.

If these conditions are satisfied, Sub-regulation (a) provides that the issue of the voucher is not a supply. This means that the only supply is the supply of goods or services on redemption of the voucher.

Sub-regulation (b) provides that, if the voucher is redeemed for a taxable supply made by a registered person, the amount in money given for the voucher comprises two amounts: (i) the amount in money given for the voucher reduced by the tax fraction of that amount (this is effectively the price for the supply); and (ii) the tax fraction of the amount in money given for the voucher (this is effectively the PGST payable in respect of the supply). In other words, the amount in money given for the voucher is treated as a PGST-inclusive amount. Sub-regulation (b) does not apply if the voucher is redeemed for a taxable supply that zero-rated supply and, in this case, the whole amount of the voucher is applied towards the price for the supply (as is also the case where the voucher is redeemed for an exempt supply).

The application of Sub-regulations (a) and (b) is illustrated by the following examples.

Examples

John purchases a gift voucher from Retailer (a registered person) for \$110. John gives the voucher to his father, Fred, as a birthday present. Fred presents the

voucher to Retailer in purchase of goods with a price of \$100 and PGST payable of \$10 ($\$100 \times 10\%$). Thus, Fred provides no further amount for the supply of the goods.

The gift voucher is a “voucher” as defined in Regulation 1003. As the voucher can be used to acquire any goods sold by Retailer, the conditions in Sub-regulation (a) are satisfied and the issuing of the voucher is not a supply. This is because the supply of goods on redemption of the voucher may be a taxable supply subject to PGST at the 10% rate, an exempt supply, or a zero-rated supply. As the voucher is used to pay for a taxable supply that is not a zero-rated supply, Sub-regulation (b) provides that the voucher given for the taxable supply comprises two amounts: (i) the part of the voucher representing the price for the taxable supply being \$100 ($\$110 - (\$110 \times \frac{10}{110})$); and (ii) the part of the voucher representing the PGST payable on the taxable supply being \$10 ($\$100 \times 10\%$). As no further amount was paid on redemption, the price of the taxable supply is \$100 and the PGST payable is \$10. The voucher is used to pay for these amounts in full.

Suppose instead that Fred used the voucher as part payment for goods. The price of the goods purchased is \$200 and the PGST payable is \$20 ($\$200 \times 10\%$). In this case, the total amount given for the supply includes the \$110 given by John for the voucher and the additional \$110 paid by Fred. Sub-regulation (b) provides that the voucher given for the taxable supply comprises two amounts; (i) the part of the voucher representing the price for the taxable supply being \$100 ($\$110 - (\$110 \times \frac{10}{110})$); and (ii) the part of the voucher representing the PGST payable on the taxable supply being \$10 ($\$100 \times 10\%$). Fred pays an additional \$100 as price for the goods and \$10 in PGST on that amount.

Suppose instead that the voucher had a monetary value of \$110 but was purchased by John for \$99 (10% discount). Fred uses the voucher to purchase goods with a price of \$100 and PGST payable of \$10. Sub-regulation (b) provides that the voucher given for the taxable supply comprises two amounts; (i) the part of the voucher representing the price for the taxable supply being \$90 ($\$99 - (\$99 \times \frac{10}{110})$); and (ii) the part of the voucher representing the PGST payable on the taxable supply being \$9 ($\$90 \times 10\%$). As no further amount was paid on redemption, the price of the taxable supply is \$90 and the PGST payable is \$9. This means that the goods have been purchased by Fred at a discount.

Similarly, if the voucher had a monetary value of \$110 but was purchased by John for \$121, then John has paid a premium for the voucher. Fred uses the voucher to purchase goods with a price of \$100 and PGST payable of \$10, Sub-regulation (b) provides that the voucher given for the taxable supply comprises two amounts; (i) the part of the voucher representing the price for the taxable supply being \$110 ($\$121 - (\$121 \times \frac{10}{110})$); and (ii) the part of the voucher representing the PGST payable on the taxable supply being \$10 ($\$110 \times 10\%$).

It was stated above that Sub-regulations (a) and (b) alter the basic operation of the Act as it applies to the class of vouchers mentioned in Sub-regulation (a). In the absence of these provisions, Regulation 304 would apply and the supply of the voucher would be treated as a supply of services (namely, the grant of a right to acquire goods or services). This supply takes place at the earlier of the time of invoice or payment for the voucher. The value of the supply would be the price given for the voucher. The supply of goods or services on redemption of the voucher would be a separate supply. The price of that supply would include only the additional price (if any) given for the supply. The reason why this treatment does not apply is that, at the time of issue of the voucher, it is not known whether the voucher will be used to acquire taxable, exempt, or zero-rated supplies. The nature of the transaction is fundamentally different from the example above of discount coupons issued for the rental of videos as it is known at the time of issue that the vouchers can be used only to rent the videos (i.e., for a taxable supply).

Sub-regulation (c) applies where a voucher referred to in Sub-regulation (a) expires without being used or fully used. Paragraph (1) treats the unused amount of the voucher as a separate supply of services by the person who supplied the voucher. The supply of services is treated as having occurred at the time that the voucher expired.

Paragraph (2) provides for the value of the deemed supply of services. The value of the supply depends on whether or not the supplier of the voucher is registered. Where the supplier of the voucher is a registered person, the value of the supply is the unused amount of the voucher reduced by an amount equal to the unused amount multiplied by the tax fraction. This assumes that the unused amount is a PGST-inclusive amount.

Where the supplier of the voucher is not a registered person, the value of the supply is the unused amount of the voucher. There is no adjustment for PGST because the supplier is not a registered person and, therefore, does not charge PGST on supplies made. However, the valuation rule may be relevant in determining whether the supplier satisfies the registration threshold.

306. Vouchers for a Supply by a Third Person

This Regulation applies to certain vouchers issued by a registered person for use in the acquisition of goods or services from a third person.

The Regulation applies to vouchers satisfying the following conditions (as set out in Sub-regulation (a)):

- (1) The voucher is issued by a registered person for no charge.
- (2) The voucher entitles the holder to a discount on the price of goods or services supplied by a person other than the registered person who issued the voucher.
- (3) The voucher is redeemed for a taxable supply, other than a zero-rated supply. If the voucher is redeemed for a taxable supply that zero-rated supply, the whole amount of the voucher is applied towards the price for the supply (as is also the case where the voucher is redeemed for an exempt supply)

If these conditions are satisfied, Sub-regulation (b) provides that the price of the taxable supply on redemption of the voucher includes the monetary value of the voucher reduced by the tax fraction of that amount. Sub-regulation (c) provides that the registered person who issued the voucher is entitled to an input tax credit equal to the amount paid to the supplier multiplied by the tax fraction of that amount. This means that the amount of the voucher is treated as a PGST-inclusive amount. The credit is allowed in the PGST period in which the amount is paid to the supplier.

Example

Manufacturer provides John with a voucher that can be used to purchase any of Manufacturer's products. The monetary value of the voucher is \$110. John uses the voucher in part payment of the purchase price for goods purchased from Retailer (a registered person) for a price of \$200 and PGST payable of \$20. John pays the balance \$110. Retailer presents the voucher to Manufacturer who pays Retailer the monetary value of the voucher. The effect of Sub-regulation (b) is that the price for the supply includes the PGST-exclusive amount of the voucher, i.e., \$100 ($\$110 - (\$110 \times \frac{10}{110})$). The PGST component of the voucher is \$10 ($\$100 \times 10\%$).

When Manufacturer reimburses Retailer, Sub-regulation (c) allows Manufacturer an input tax credit for the PGST component of the voucher, namely \$10 in the PGST period in which Manufacturer pays the amount to Retailer.

307. Prepaid Supplies of Telecommunications Services

This Regulation provides for the PGST treatment of prepaid telecommunications products issued by a telecommunications services supplier when the products are supplied to customers through a distributor or agent.

The effect of the Regulation is that a telecommunications services supplier pays PGST on the value added by its distributors or agents, in the same way as if they had been employees of the telecommunications services supplier rather than undertaking independent business activities. It can be expected that the telecommunications services supplier will take this into account in setting the amount of the discount given, or commission paid, to distributors and agents. This treatment applies regardless of whether the distribution chain involves selling and on-selling prepaid telecommunications products or selling them through intermediaries who act as agents. This treatment is necessary because some distributors may be unregistered for PGST and, therefore, some part of the face value of the product may not be subject to PGST if each transaction is dealt with separately under the Act.

Sub-regulation (a) specifies the supplies to which the Regulation applies. Two types of supplies are specified:

- (1) A supply of a prepaid telecommunications product by a supplier of telecommunications services.

“Prepaid telecommunications product” is defined in Regulation 103 to mean a card or similar item that entitles the holder to receive telecommunications services up to its face value. The definition expressly includes a phone card, prepaid card, recharge card, or any other form of prepayment of telecommunications services. The key requirement for an item to be a prepaid telecommunications product is that the item entitles the holder to receive supplies of telecommunications services up to the face value of the item. It is expressly provided that an item is a prepaid telecommunications product whether issued physically as a card or electronically.

“Telecommunications services” has the meaning in Section 1202(48) of the Act and includes providing access to both phone and internet networks.

It is expressly provided in Sub-regulation (b) that the Regulation does not apply to a supply of a prepaid telecommunications product by one supplier of telecommunications services to another supplier of telecommunications services. The normal operation of the Act applies to such a supply.

- (2) A supply of a prepaid telecommunications product by a person acting as the distributor or agent (“telecommunications intermediary”) of a supplier of telecommunications services for the supply of prepaid telecommunications products.

The reference to a “distributor” is a reference to a person who purchases and on-sells a prepaid telecommunications product. As the product has a face value, a distributor will have purchased the product at a discount from the face value of the product. The difference between the purchase and sale prices is the distributor’s profit. The person may purchase the product from the supplier of telecommunications services or from another distributor of such products.

The reference to an “agent” is a reference to a person who acts as agent of the supplier of telecommunications services in the sale of prepaid telecommunications products. This is a person who sells the product on behalf of their principal and not in their own right. The agent’s remuneration is an agency fee.

Sub-regulation (c) applies where a supplier of telecommunications services supplies a prepaid telecommunications product at a discount to a telecommunications intermediary. In this case, it is provided that the price for the supply is calculated by ignoring the discount. In other words, the price for the supply is the face value of the product.

Sub-regulation (d) applies where a telecommunications intermediary buys and on-sells a prepaid telecommunications product (i.e., acts as a distributor of such products). It is provided that the sale of the product by the distributor is not a supply for the purposes of the Act and, similarly, the acquisition of the product by the distributor is not an acquisition for the purposes of the Act.

The effect of Sub-regulations (c) and (d) is that intermediate transactions in prepaid telecommunications products are ignored. This is because the supplier of telecommunications

services is treated as having supplied the product for its face value. As stated above, this avoids some part of the face value of the product not being subject to PGST because a telecommunications intermediary is unregistered.

Example

Telco sells recharge cards for mobile phones to SuperTel (a distributor) at a 12.5% discount. SuperTel on-sells the recharge cards to smaller distributors, including Joseph, at an 8% discount. Joseph sells the cards to customers (mobile phone users) for their face value. When Telco sells a recharge card with a face value of \$100 to SuperTel for \$87.50 (taking account of the 12.5% discount), the price for the supply under Sub-regulation (c) is the face value of the card, \$100 and the PGST payable by Telco is \$10.

No PGST is payable by SuperTel when it on-sells the recharge cards to Joseph for \$92 nor by Joseph when he on-sells the cards to consumers for \$100, as these sales are not treated as supplies. The PGST payable on the value added by SuperTel and on the value added by Joseph has already been paid by Telco when it paid PGST of \$10 on the sale of the card to SuperTel based on the face value of the card.

Sub-regulation (e) applies when a supplier of telecommunications services supplies a prepaid telecommunications product through a telecommunications intermediary who acts as agent (rather than a reseller) for the supplier of telecommunications services. In this case, as the intermediary is acting as agent of the supplier of telecommunications services, the supplier of telecommunications services is the person selling the product. Sub-regulation (e) provides that the price of the supply of the product is calculated without taking into account the commission paid to the intermediary.

Example

Telco sells recharge cards for mobile phones (at face value) through SuperTel (as agent), who receives a 12.5% commission. SuperTel engages smaller businesses, including Joseph, to act as its agent in distributing the recharge cards to consumers. When Telco sells a recharge card to a mobile phone user with a face value of \$100 through the agency of SuperTel and Joseph, the price of the supply is the face value of the card \$100 and the PGST payable is \$10.

SuperTel receives a commission for supplying services to Telco for acting as agent to distribute the recharge card. For each \$100 recharge card sold, the commission is \$12.50. In turn, SuperTel pays Joseph a commission for acting as its sub-agent. For each \$100 recharge card sold, Joseph receives a commission of \$4.5. Neither SuperTel nor Joseph makes a taxable supply when supplying agency services in relation to the distribution of the recharge cards. Telco pays the PGST on the value added by the agency services provided by SuperTel and Joseph when it sells the card.

308. Tourism Products and Services

This Regulation provides for the price of supplies of tourism products or services wholly or partly paid for by a voucher or coupon.

The Regulation provides that the price for a supply of a tourism product or service includes the value of any voucher or coupon provided for the supply unless PGST was paid on acquisition of the voucher or coupon. Regulation 305 does not apply because the voucher or coupon is for a specific supply. This means that Regulation 304 applies with PGST payable on the issue of the voucher or coupon. However, the voucher or coupon may be issued by an unregistered supplier (including a foreign supplier) so no PGST was payable on issue of the voucher or coupon. In this case, Regulation 308 makes clear that the price for the supply of a tourism product or service includes the value of any voucher or coupon provided by the customer for the supply. There is an exception where PGST was paid on acquisition of the voucher or coupon.

“Tourism products or services” has the meaning in Section 1212(d) of the Act, which includes accommodation, meals, transport, tours, and other tourism-related activities in Palau.

309. Employee Benefits

This Regulation provides for the treatment of fringe benefits provided to an employee by an employer who is a registered person (“registered employer”).

Goods or services provided by a registered employer to an employee as an employee fringe benefit are subject to PGST because the employer is making a supply of the goods or services to the employee. In this case, the employee is the final consumer of the goods or services comprising the benefit provided by the employer and PGST is payable unless the provision of the benefit to the employee is an exempt or zero-rated supply.

Sub-regulation (a) applies where a registered employer makes a taxable supply to an employee as part of the employee’s remuneration. In this case, Sub-regulation (a) provides that the taxable supply is treated as having been made for a price equal to the fair market value of the supply. Sub-regulation (a) applies only when the supply of the employee benefit is a taxable supply. It will not apply where the supply of the employee benefit is an exempt supply, such as a low interest loan provided by an employer to an employee, which is an exempt supply of financial services.

“Employee” and “employer” are defined in Section 1002(i) and (j) of Title 40 respectively. In broad terms, “employee” means an employee within the ordinary meaning and includes the holder of an office. “Fair market value” is defined in Section 1005 of Title 40.

Sub-regulation (a) is expressed to be subject to Sub-regulation (b), which applies in two classes of case. Sub-regulation (b) applies where a registered employer makes a taxable supply to an employee and the employer is not entitled to an input tax credit in respect of a creditable acquisition to make the taxable supply to the employee. In this case, the value of the supply of the benefit to the employee is treated as nil. This avoids the double taxation that would arise if a

registered employer was both: (i) denied an input tax credit for the acquisition of the goods or services supplied as an employee benefit to an employee; and (ii) required to charge output tax on the supply. An example of where Sub-regulation (b) may apply is where an employer acquires a gym membership for an employee. Section 1242(a)(2) of the Act denies the employer a credit for any input tax paid in relation to the acquisition of the membership.

310. Supplies Involving Agents

This Regulation clarifies the PGST treatment of supplies involving agents.

Sub-regulation (a) provides that a supply made by a person as agent for another person (principal) is treated as a supply made by the principal.

Subs-regulation (b) provides that a supply made to a person as agent for another person (principal) is treated as a supply made to the principal.

In broad terms an agent is a person who is authorized, expressly or by implication, to act for another person (principal). Under normal agency rules, a supply is made by the principal to the third party, but through the intermediary of the agent. The rules in Sub-regulations (a) and (b) are consistent with general law principles of agency but have been included out of abundant caution.

Sub-regulation (c) provides for an exception to the rules in Sub-regulation (a) and (b). It is provided that Sub-regulations (a) and (b) do not apply to a supply of services by an agent to the agent's principal. This is treated as a supply of services by the agent. For example, if a car owner sells their car through the agency of a used car dealer, the effect of Sub-regulation (a) is that the sale of the car is made by the owner to the purchaser. PGST is only charged on this supply where the owner is registered and sells the car in the course of a business carried on by the owner. The supply of agency services by the used car dealer to the owner of the car is a separate supply. If the use car dealer is registered for PGST, the dealer must charge PGST on the supply of agency services.

PGST is a tax on final consumption in Palau. While the transportation of goods may be physically supplied in Palau, the costs of the transportation embodied in the transported goods means that the transportation services should be treated as consumed where the goods are finally consumed. This means that there should be no PGST impact on the price of goods exported from Palau and no impact on the net cost of goods imported into Palau.

To claim an input tax credit for PGST on domestic transportation of exported or imported goods, the non-resident exporter or importer must be registered for PGST. This may be a viable option for a non-resident person with significant dealings with Palau. However, it is not a viable option for non-residents with only occasional dealings with Palau. In the latter case, the uncredited PGST is embedded in the cost of the goods.

Sub-regulation (d) provides a mechanism for a registered person who is the Palau agent of a non-resident, non-registered, principal to credit input tax incurred on the principal's behalf directly in relation to the export or import of goods. This avoids the PGST component of domestic

transportation charges, cargo fees, insurance, or similar charges becoming a cost to the overseas exporter or importer where the costs are incurred through a Palau agent.

Sub-regulation (d) sets out the following conditions that must be satisfied for the agency rule to apply:

- (1) A registered person makes a taxable supply that is not a zero-rated supply. The agency rule does not apply if the supply is a zero-rated supply as there is no PGST charged on a zero-rated supply.
- (2) The taxable supply is made to an agent acting for, or on behalf of, another person who is the principal for the purposes of the supply.
- (3) The agent is a registered person. The rule applies where the agent is a registered person as only registered persons can claim an input tax credit.
- (4) The principal is a person outside Palau who does not carry on a business through a fixed place in Palau.
- (5) The principal is not a registered person.
- (6) The taxable supply is made directly in connection with the export, or the arranging of the export, of goods from Palau to a place outside Palau, including the transportation of the goods in Palau as part of the export. Alternatively, the taxable supply is made directly in connection with the import, or the arranging of the import, of goods into Palau from a place outside Palau, including the transportation of the goods in Palau as part of the import. The direct connection requirement limits the application of the agency rule to services closely related to the transportation of the goods.
- (7) The agent and the principal agree, in writing, that Sub-regulation (d) applies to the taxable supply.

Where the conditions in Sub-regulation (d) are satisfied, Sub-regulation (d) provides that the Act applies to the taxable supply as if the taxable supply is made to the agent and not the principal. This allows the agent to claim any input tax credits in relation to the taxable supply made to the principal.

311. Supply of Remote Services through an Electronic Distribution Platform

This Regulation applies where a supply of remote services is made through an electronic distribution platform.

The Regulation applies where the conditions in Sub-regulation (a) are satisfied, namely:

- (1) A supplier (referred to as the “underlying supplier”) makes a supply of remote services (defined in Section 1202(38) of the Act) through an electronic distribution platform.

“Electronic distribution platform” is defined in Regulation 103 to mean a website, internet portal, gateway, store, distribution platform, or other similar platform that is operated electronically through which the underlying supplier makes a supply of remote services electronically through another person (the operator of the marketplace) to a third person (the recipient) but does not include a platform that solely processes payments.

- (2) The electronic distribution platform is operated by a person who does not have a fixed place of business in Palau.
- (3) The recipient of the supply is a resident of Palau as determined under Section 1234(c) of the Act.
- (4) The recipient of the supply is not a registered person. If the recipient of the supply is a registered person, the reverse charge rule in Section 1211(a)(2) of the Act applies.

Where these conditions are satisfied, Sub-regulation (b) provides that, for the purposes of Act, the supply is treated as being made by the operator of the electronic distribution platform rather than the underlying supplier. However, Sub-regulation (c) provides that Sub-regulation (b) does not apply if the underlying supplier is registered for PGST. In this case, the underlying supplier accounts for PGST on a taxable supply of remote services.

312. Sale of property of a debtor

This Regulation applies where the property of a debtor is sold by a creditor.

Sub-regulation (a) provides that the Regulation applies where a creditor supplies the property of a debtor to a third person in full or partial satisfaction of a debt owed by the debtor to the creditor. In this case, the following applies in relation to the supply:

- (1) The supply by the creditor to the third person is treated as if it had been made by the debtor (Paragraph (1)). It is expressly provided that the nature of the supply (e.g., taxable, exempt, or zero-rated) is to be determined on the assumption that the debtor made the supply.
- (2) The creditor is liable to pay the PGST payable on the supply unless the debtor provides the creditor with a written statement that the supply is not subject to PGST (Paragraph (2)). Sub-paragraph (b) provides that the statement provided by a debtor must set out the reasons why the supply is not subject to PGST. The supply may not be subject to PGST, for example, because it is an exempt or zero-rated supply, or the debtor may not be a registered person.

Even if a debtor has not supplied a statement under Sub-regulation (b) to the creditor, Sub-regulation (c) allows the creditor to nevertheless treat the supply as not subject to PGST if there are reasonable grounds for believing that the supply would not be subject to PGST if the supply had been made by the debtor. For example, the debtor is not a registered person.

Sub-regulation (d) provides that the PGST payable by a creditor under Sub-regulation (a)(2) must be paid in priority to: (i) the satisfaction of the debt to which the supply relates; and (ii) the return to the debtor, or any other person, of any part of the proceeds that is surplus to the debt.

Sub-regulation (e) makes clear that a creditor making a supply of the property of a debtor is not entitled to a credit for any input tax incurred by the creditor against the output tax referred to in Sub-regulation (a)(2). This is because the supply is treated under Sub-regulation (a) as a supply made by the debtor and not the creditor.

Sub-regulation (f) provides that a creditor who is not a registered person but who is required to pay PGST by operation of Sub-regulation (a) must file a return and pay the PGST within 30 days after the end of the PGST period in which the supply occurred (as determined under Section 1232 of the Act).

401. Apportionment of Input Tax Credits

This Regulation provides for the apportionment of input tax credits where a registered person makes a creditable acquisition partly to make taxable supplies and partly to make other supplies (particularly exempt supplies).

Section 1241(a) of the Act provides that a registered person is allowed a credit for input tax paid by the person in respect of a creditable acquisition made by the person to the extent that the acquisition is for the purpose of making taxable supplies. The words “to the extent” contemplate apportionment where a creditable acquisition has been made partly to make taxable supplies and partly for some other purpose (such as making exempt supplies or for private purposes).

Sub-regulation (a) provides an apportionment rule where a registered person makes a creditable acquisition partly to make taxable supplies and partly to make other supplies (such as exempt supplies or out of scope supplies). In this case, the amount of the input tax credit allowed for such creditable acquisitions is calculated according to the following formula:

$$A \times B/C$$

where:

- A** is the total amount of input tax paid in respect of creditable acquisitions made by the registered person during the PGST period partly to make taxable supplies and partly to make other supplies.
- B** is the total value of taxable supplies made by the registered person during the PGST period. The value of a supply is determined under Section 1235 of the Act.
- C** is the total value of all supplies (taxable, exempt, and other supplies) made by the registered person during the PGST period. The value of a supply is determined under Section 1235 of the Act.

This rule will be mainly relevant to registered persons who partly make taxable supplies and partly make exempt supplies, such as a financial institution. The rule also applies where a creditable acquisition is acquired by a registered person partly for use in making taxable supplies and partly for use in making out of scope supplies (i.e., supplies made outside Palau). The general apportionment rule in Section 1241(a) of the Act applies where a creditable acquisition is acquired partly for use in making taxable supplies and partly for private purposes.

Sub-regulation (b) provides for two rules of administrative convenience. Sub-regulation (b)(1) applies where the fraction B/C in Sub-regulation (a) is 0.95 or more (i.e., where 95% or more of the value of total supplies made by a registered person during the PGST period are taxable supplies). In this case, the registered person is allowed a credit for the full amount of input tax in respect of creditable acquisitions made partly to make the taxable supplies and partly to make the other supplies. This may apply, for example, where a registered person makes small amounts of exempt financial supplies through arrangements with customers under which they are given time to pay subject to the payment of a credit charge.

Sub-regulation (b)(2) applies where the fraction B/C in Sub-regulation (a) is less than 0.05 (i.e., where less than 5% of the value of total supplies made by a registered person during the PGST period are taxable supplies). In this case, the registered person is denied a credit for the full amount of input tax in respect of creditable acquisitions made partly to make the taxable supplies and partly to make the other supplies.

501. Content of a PGST Invoice

This Regulation provides for the contents of a PGST invoice.

Section 1271(a) of the Act obliges a registered person making a taxable supply to another registered person to issue the other person with a PGST invoice for the supply. Sub-regulation (a) provides for the content of a PGST invoice.

A PGST invoice must contain the following particulars:

- (1) The words “**PGST INVOICE**” in a prominent place.
- (2) The name, address, and TIN of the supplier.
- (3) The name, address, and TIN of the recipient of the supply (if the price of the supply is more than \$300).
- (4) The individualized serial number and the date on which the PGST invoice is issued.
- (5) A description of the goods supplied (including quantity or volume) or services supplied and the date on which the supply was made.
- (6) The price for the supply and the amount of PGST charged.

Section 1237(b) of the Act provides that a registered person liable for reverse charge PGST under Section 1211(a) and (d) of the Act is obliged to prepare a recipient-created PGST invoice in respect of the supply of imported services received by the person. Sub-regulation (b) provides for the content of a recipient-created invoice.

A recipient-created invoice must contain the following particulars:

- (1) The words “**RECIPIENT-CREATED PGST INVOICE**” in a prominent place.
- (2) The name, address, and TIN of the recipient of the supply of imported services.
- (3) The name and address of the supplier.
- (4) The individualized serial number and the date on which the recipient-created PGST invoice is issued.
- (5) The description of the imported services and the date on which the supply was made.
- (6) The price for the supply and the amount of PGST charged.

502. Content of credit note and debit note

This Regulation provides for the contents of credit and debit notes.

Section 1272(a) of the Act applies where a registered person has made a taxable supply to another registered person and an adjustment event has occurred in relation to the taxable supply and the PGST charged in respect of the supply exceeds the amount that properly chargeable after taking into account the adjustment event (i.e., PGST has been over-charged). In this case Section 1272(a) of the Act obliges the registered person who made the taxable supply to provide the registered person who received the supply with a credit note. Sub-regulation (a) provides for the content of a credit note.

A credit note must contain the following particulars:

- (1) The words “**CREDIT NOTE**” in a prominent place.
- (2) The name, address, and TIN of the supplier.
- (3) The name, address, and TIN of the recipient of the supply.
- (4) The individualized serial number and the date on which the credit note is issued.
- (5) A brief description of the circumstances giving rise to the issuing of the credit note, including information sufficient to identify the taxable supply to which the credit note relates.

- (6) The price shown on the PGST invoice for the supply, the correct amount of the price, the difference between those two amounts, and the amount of PGST that relates to the difference.

Section 1272(b) of the Act applies where a registered person has made a taxable supply to another registered person and an adjustment event has occurred in relation to the taxable supply and the PGST charged in respect of the supply exceeds the amount that properly chargeable after taking into account the adjustment event (i.e., PGST has been under-charged). In this case Section 1272(a) of the Act obliges the registered person who made the taxable supply to provide the registered person who received the supply with a debit note. Sub-regulation (b) provides for the content of a debit note.

A debit note must contain the following particulars:

- (1) The words “**DEBIT NOTE**” in a prominent place.
- (2) The name, address, and TIN of the supplier.
- (3) The name, address, and TIN of the recipient of the supply.
- (4) The individualized serial number and the date on which the debit note is issued.
- (5) A brief description of the circumstances giving rise to the issuing of the debit note, including information sufficient to identify the taxable supply to which the debit note relates.
- (6) The price shown on the PGST invoice for the supply, the correct amount of the price, the difference between those two amounts, and the amount of PGST that relates to the difference.

601. Contents of Notice of Assessment Served on Recipient of a Supply

This Regulation provides for the contents of a notice of assessment served by the Director under Section 1285(b) of the Act.

Section 1285(a) of the Act empowers the Director to assess the recipient of a supply for any PGST payable in respect of the supply where a registered person, as a result of misrepresentation or fraud by the recipient of the supply, has incorrectly treated the supply as an exempt or zero-rated supply. The assessment can include any late payment interest and penalty payable as a result of the incorrect treatment of the supply

The Regulation provides that a notice of an assessment served on the recipient of a supply under Section 1285(b) of the Act must include the following information:

- (1) The reasons for the assessment.

- (2) The amount of PGST assessed.
- (3) The amount of interest and penalty, if any, payable as a result of the incorrect treatment of the supply.
- (4) The PGST period to which the assessment relates.
- (5) The due date for payment of the tax, interest, and penalty.
- (6) The manner of seeking review of the assessment.
- (6) Any other information the Director considers necessary to include in the notice of assessment.

701. Application of PGST to Partnerships and Incorporated Bodies

This Regulation provides for the application of the PGST to partnerships and unincorporated bodies of persons.

The rules in the Regulation apply expressly to partnerships. However, Sub-regulation (d) provides that the Regulation applies also to an unincorporated body of persons on the basis that the references in the Regulation to “partnership” include also an unincorporated body and the references to “partner” include a member of an unincorporated body. The discussion below focuses on the application of the Regulation to partnerships, but the discussion is equally relevant to unincorporated persons.

Sub-regulation (a) specifies a number of mechanical rules to facilitate the application of PGST to a partnership as a separate person. Sub-regulation (a) provides for the following:

- (1) A partnership is treated as a person separate from the partners of the partnership. This follows from the definition of “person” in Section 1003(8) of Title 40 but is included here for completeness.
- (2) The registration of the partnership is separate from the registration of any of its partners in respect of any business separately carried on by a partner . Consequently, if a partner of a partnership has a business (other than the activity of the partnership), this is treated as a separate business for PGST registration purposes. However, if the partnership and the partner are associates as defined in Article 1004 of Title 40, then the annual value of taxable supplies made by the partnership and the partner may be combined in determining whether each satisfies the registration threshold (Section 1221(d) of the Act).
- (3) The liability for PGST in respect of taxable supplies made by, or supplies of imported services made to, a partnership is determined and calculated in respect of the business of the partnership independently of any business carried on by any of the partners.

- (4) Any refund under Section 1262 of the Act relating to partnership's business is payable to the partnership.
- (5) The duties and obligations imposed by the Act on a partnership as a registered person are separate from the duties and obligations imposed on any of its partners in relation to a separate business of the partner.

As a partnership is not a legal person separate from the partners of the partnership, legally, a change in the composition of the partnership may result in the dissolution of the partnership and the establishment of a new partnership. Sub-regulation (b) avoids this outcome by providing a rule of convenience to allow the continuity of the body despite a change in composition of the body.

Sub-regulation (b) applies where:

- (1) There is a change in the membership of a partnership.
- (2) The change results in the dissolution of the existing partnership and creation of a new partnership.
- (3) The new partnership continues to carry on the same business as the old the partnership.

Where these conditions are satisfied, Sub-regulation (b) provides that, for all purposes of the Act, the dissolved partnership and the new partnership are treated as the same partnership, unless the Director, having regard to the circumstances of the change in the composition of the partnership directs otherwise by notice in writing.

Sub-regulation (c) obliges the partners in a partnership to which Sub-regulation (b) applies to notify the Director, in writing, of the change within fifteen (15) days of the change occurring. By virtue of Sub-regulation (d), this applies also to a change in the composition of the membership of an unincorporated body.

702. Death, Insolvency, or Liquidation of Registered Person

This Regulation provides for a continuity rule for deceased, liquidated, or sequestered estates.

The Regulation provides for the following:

- (1) The transfer of the assets of a business of a registered person to an executor, trustee, liquidator, or receiver in relation to the registered person is not a supply. In other words, the transfer of the asset is ignored and no PGST is charged in respect of the transfer.
- (2) Anything done by the executor, trustee, liquidator, or receiver in relation to the business of the registered person is treated as done by the registered person. This includes anything done in termination of the business.

703. Mortgagee-in- possession

This Regulation applies where a mortgagee takes possession of the business property of a mortgagor who is a registered person.

The Regulation applies if a mortgagee takes possession of land or other property previously mortgaged by a mortgagor who is a registered person and, while in possession of the land or property, the mortgagee carries on the business previously carried on by the mortgagor in relation to the land or other property. In this case, the Regulation provides that the mortgagee is, to the extent of, and for the duration that it carries on that business, treated as the mortgagor.

704. Trustee

This Regulation applies to a person who is a trustee of multiple trusts.

The Regulation provides that a person who is a trustee in more than one capacity is treated for the purposes of the Act as a separate person in relation to each of those capacities. This is declaratory of the position at general law and has been included out of abundant caution.

705. Variation of Price on a Change in Application of PGST

This Regulation provides legislative authority for a variation in the price of a supply where there has been a change in the application of the PGST to the supply.

Sub-regulation (a) applies where the following conditions are satisfied:

- (1) A registered person has entered into an agreement for a supply goods or services.
- (2) Subsequent to the registered person entering into the agreement either: (i) PGST is imposed on the supply (e.g., on commencement of the Act or an exempt supply is changed to a taxable supply); or (ii) there is an increase in the PGST rate applicable to the supply.

If these conditions are satisfied, Sub-regulation (a) provides that the registered person making the supply under the agreement can recover the newly-imposed PGST or the increased amount of PGST from the recipient of the supply. This is in addition to the amounts already payable under the agreement. This right exists despite anything to the contrary in any agreement or law.

Sub-regulation (b) applies where the following conditions are satisfied:

- (1) A registered person has entered into an agreement for a supply goods or services.
- (2) Subsequent to the registered person entering into the agreement either: (i) the PGST imposed on the supply is withdrawn (e.g., the supply is changed to an exempt supply); or (ii) there is a decrease in the PGST rate applicable to the supply.

If these are satisfied, Sub-regulation (b) provides that the registered person making the supply under the agreement must reduce the amount payable by the recipient by the amount of PGST withdrawn or the decreased amount of PGST. This obligation applies despite anything to the contrary in any agreement or law.

Sub-regulation (c) applies where -regulation (a) or (b) applies to a supply of goods or services that is subject to a fee, charge, or other amount prescribed by, or determined pursuant to, an Act, regulation, or measure having the force of law. In this case, Sub-regulation (c) provides that the fee, charge, or other amount may be adjusted for the change in the application of PGST to the supply. If PGST is imposed on the supply, the fee, charge, or other amount can be increased by the amount of PGST imposed. If the PGST rate applicable to the supply is increased, the fee, charge, or other amount can be increased by the additional PGST payable. If PGST is withdrawn, the fee, charge, or other amount must be decreased by the amount of PGST withdrawn. If the PGST rate applicable to the supply is reduced, the fee, charge, or other amount must be reduced by the reduction in the PGST payable in respect of the supply.

Sub-regulation (c) is subject to Sub-regulations (d) and (e). Sub-regulation (d) provides that Sub-regulation (c) does not apply if the fee, charge, or other amount has already been altered to take account of the imposition, increase, decrease, or withdrawal of PGST. Further, Sub-regulation (e) provides that Sub-regulation (c) cannot be used to justify a further increase or require a further decrease, as the case may be, in a fee, charge, or other amount calculated as a percentage or fraction of an amount that represents the price for a taxable supply.

PART 8

TRANSITIONAL PROVISIONS

§ 706. Compulsory PGST registration of new businesses

Sub-regulation (a) makes it clear that this Regulation only applies to a person who is not compulsorily required to register under Section 1221 because that person is unable work out their total annual average value of taxable supplies made by the person in the four (4) period referred to in Paragraph 1221(a)(1) or (2) of the Act.

Sub-regulation (b) obliges a person that Sub-regulation (a) applies to apply for registration at the beginning of any period of twelve months if there are reasonable grounds to expect that the total value of taxable supplies made by the person in that period will be equal to, or exceed, the registration threshold. If a person commences to conduct a business and there are reasonable grounds to believe that the person will exceed the registration threshold in the first year of operation, the person must apply for registration on commencing business and not wait until the registration threshold is actually exceeded.

Sub-regulation (c) obliges a person to apply for registration at the end of any period (not exceeding 12 months) if the total value of taxable supplies made by the person in that period is equal to or exceeds the registration threshold. This is a continuing test and unregistered persons close to the registration threshold will need to calculate the total value of taxable supplies at the end of each month to check whether the person is required to apply for registration.

Consequently, unregistered persons must keep the level of their business activities under continuous review. The test period is a period of up to twelve months (paragraph (2) refers to any 12-month “or lesser period”). The obligation to apply for registration arises as soon as the registration threshold is exceeded within that twelve-month period. Thus, if a person exceeds the registration threshold after nine months, the person must apply for registration at the end of the nine-month period rather than waiting until the end of the twelve-month period.

This Regulation will not apply to any person who can work out their total annual average value of taxable supplies made by the person in the four (4) period referred to in Paragraph 1221(a)(1) or (2) of the Act. Accordingly, if a person carries on business and remains under the threshold, once they can establish a 4 year average for their taxable supplies, they will be subject to the rules set out in Section 1221 of the Act.