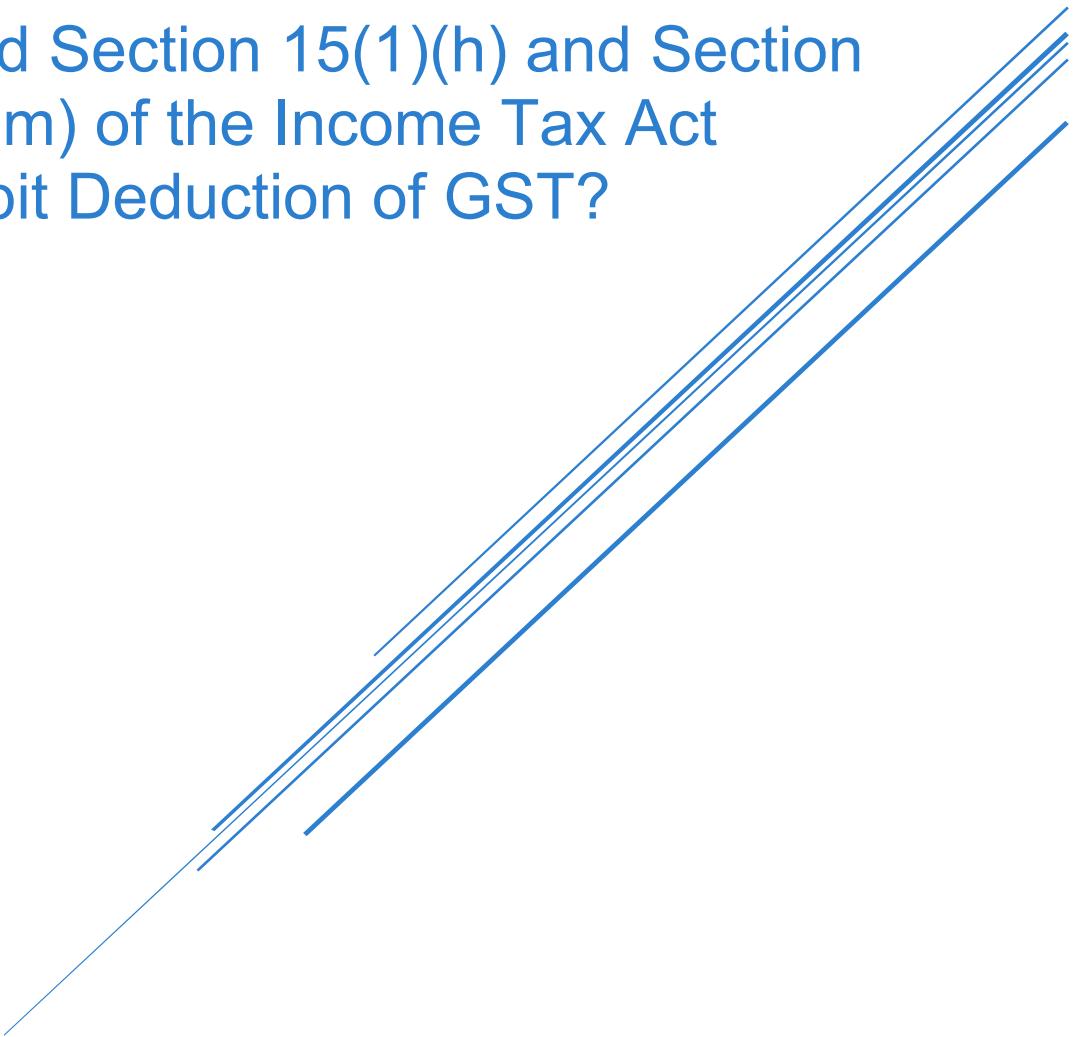


VIEWPOINT: SCTP TECHNICAL EXPERTS PANEL

Should Section 15(1)(h) and Section
15(1)(m) of the Income Tax Act
Prohibit Deduction of GST?



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Should Section 15(1)(h) and Section 15(1)(m) of the Income Tax Act Prohibit Deduction of GST by a GST-registered Business for the Purpose of Ascertaining His Income for Income Tax Purposes?

Introduction

1. Where a person who is carrying on a trade or business, is not registered or not liable to register under the Goods and Services Act 1993 (“the GST Act”), the GST that he incurs forms part of the outgoings and expenses incurred in the production of his income and would be deductible under section 14(1) of the Income Tax Act 1947 (“the Income Tax Act”).
2. However, where the person is registered or liable to register under the GST Act, the deduction of any GST that he may bear is restricted by section 15(1)(h) and section 15(1)(m) of the Income Tax Act. Those provisions work to deter non-compliance with procedures under the GST Act, by denying deduction of any GST which may be paid or borne by the taxable person as a result of non-compliance with GST procedures.
3. In this article, it is submitted that section 15(1)(h) and section 15(1)(m) which were inserted into the Income Tax Act some 30 years ago in 1994 and 1995 respectively, have to be amended especially with the 2012 introduction of paragraph 5(4) of the Second Schedule to the GST Act¹ which provides the GST-registered person with the choice of not claiming input tax with respect to goods that he acquires and which may be given away to customers or staff, as a means for the Comptroller of GST to collect GST on those goods².

Income Tax Provisions

4. The income tax statutory provisions pertaining to GST as mentioned above, insofar as are material read as follows:

Section 15(1)(h):

“any amount paid or payable in respect of goods and services tax by the person if the person, being required to be registered under the Goods and Services Tax Act 1993, has failed to do so, or if the person is entitled under the Act to credit that amount of tax as an input tax.”

Section 15(1)(m):

“any amount of output tax paid or payable under the Goods and Services Tax Act 1993 which is borne by the person if the person is registered as a taxable person under the Act, ...”

¹ By way of the GST (Amendment of the Second Schedule) Order 2012, S 487/2012.

² In paragraph 4.4 of the IRAS e-Tax Guide entitled “GST: Fringe Benefits” (13th edition, 31 October 2025) it is stated that “...if you choose not to claim input tax credit for the GST incurred on the goods, you do not need to account for output tax when you subsequently give the goods to your employees even if the cost of the goods is more than \$200.”

5. Section 15(1)(h) which was introduced in 1994, seeks to deny deduction of GST not claimed by a GST-registered person when he is entitled to do so³. Essentially the policy underlying section 15(1)(h), is that the taxable person should seek to claim input tax within the mechanism provided by the GST Act and not resort to claiming a deduction under the Income Tax Act in respect of the GST incurred which should be claimed as input tax. In fact, it is not envisaged that a sensible taxable person would forgo an input tax claim in full under GST procedures and instead claim an income tax deduction on the GST incurred, as the income tax route would at best “clawback” only 17%⁴ of the GST incurred. Nonetheless, section 15(1)(h) was inserted into the Income Tax Act to block any income tax deduction, should a taxable person choose not to claim the input tax. Section 15(1)(h) also denies income tax deduction on the GST incurred, where a person ought to be registered for GST on account of its taxable turnover exceeding the registration threshold but fails to do. The policy here is to penalise the person who does not comply with the requirements of the GST Act regarding its registration for GST purposes.
6. Section 15(1)(m) on the other hand was introduced in 1995 to deny deduction of output tax which is borne by a GST-registered person. The expense of output tax which is denied deduction under section 15(1)(m), may be that borne by the GST-registered person, (a) where he absorbs GST in an incorrect way⁵, and (b) where he gives away for free, goods on which input tax has earlier been claimed, triggering the deemed supply rule in paragraph 5(1) of the Second Schedule to the GST Act⁶.

³ See “Absorption of GST” in Chapter XXV Interaction with Income Tax and Other Taxes, at page 667 of the book Goods and Services Tax – Law & Practice (2nd Edition) by Charles Lim Aeng Cheng, Leung Yew Kwong and Chia-Tern Huey Min

⁴ The rate of 17% is the prevailing income tax rate for profits of a company, under the Income Tax Act 1947.

⁵ The GST-registered person “absorbs” GST when he charges a price inclusive of GST. See the article published by the IRAS in the publication known as “Compass” on 17 April 1995 (Vol 3 No 2) Issue 13 - Interpretation and Practice Note). Briefly, when \$100 is collected for a sale, the correct way of absorbing GST is to treat the entire sale price of \$100 collected as inclusive of GST, and the output tax should be 9/109 of \$100 (\$8.26). The incorrect way of absorbing GST is to add GST of 9% on top of the sale price of \$100 collected and treat the \$9 as GST borne by the GST-registered business resulting in an expense of \$9. The \$9 of GST borne by the GST-registered person as an expense is not deductible under section 15(1)(m).

⁶ See “Deemed Supply” in Chapter XXV Interaction with Income Tax and Other Taxes, at page 666 of the book, Goods and Services Tax – Law & Practice (2nd Edition) by Charles Lim Aeng Cheng, Leung Yew Kwong and Chia-Tern Huey Min

Grounds for Submission

7. The grounds for a consideration for the legislative amendment of section 15(1)(h) and section 15(1)(m) are as follows:

(i) Parity of treatment on business expenses

There are various categories of GST incurred which are blocked from input tax claim under regulation 26 of the GST (General) Regulations, and they pertain to expenses incurred for staff benefit, such as those incurred for family days, club subscription and medical treatment⁷ for employees. Hence, the taxable person is not entitled to claim input tax for such supplies. Section 15(1)(h) however does not deny the deduction of such GST incurred, since the person is *not* entitled under the GST Act to credit that amount of GST as an input tax.

That being the case, the GST incurred forms part of the expenses of the GST-registered person and the GST as part of those expenses, is deductible under section 14(1) of the Income Tax Act as the expenses are wholly and exclusively incurred in the production of his income. As may be seen, where GST incurred is denied input tax claim, there is at least some relief for the GST-registered person in form of deduction for income tax purposes, in respect of the GST incurred for those expenses.

However, there are other output tax borne by the GST-registered person upon triggering the deemed supply rule in paragraph 5(1) of the Second Schedule to the GST Act, in respect of expenses incurred for staff benefit, which are denied income tax deduction. Examples of such output tax in respect of deemed supplies for staff benefit such as the giving away of: (1) goods that cost more than \$200 each⁸; (2) long service awards and (3) lucky draw prizes.

The output tax borne by the GST-registered person for such deemed supplies is denied deduction under section 15(1)(m). Even if the GST-registered person were to forego the claim of input tax for those goods (as a means for the Comptroller to collect GST on those goods) which are the subject of deemed supplies, the input tax is still denied deduction under section 15(1)(h), as the GST-registered person is entitled to claim the input tax but chooses not to do so. Such non-deductibility of GST incurred also applies where there are deemed supplies under paragraph 5(1) of the Second Schedule to the GST Act, for clients and business associates, such as those involving the giving away of goods that cost more than \$200 each, lucky draw prizes and festive food hampers.

In comparison, for businesses which are not registered and not liable to be registered for GST, any GST incurred would have been deductible for income tax purposes. To remove disparity of treatment amongst categories of business expenses and between GST-registered and non-GST registered businesses, the provisions of section 15(1)(m) and section 15(1)(h) should be reviewed.

⁷ An exception has been made for medical expenses which are obligatory under the provisions of the Work Injury Compensation Act 2019 and any collective agreement within the meaning of the Industrial Relations Act 1960 where GST incurred is claimable.

⁸ The \$200 limit which does not trigger a deemed supply under paragraph 5(1) of the Second Schedule to the GST Act, is provided in paragraph 5(2).

(ii) Corresponding amendment to section 15(1)(h) following amendment to deemed supply rule

The deemed supply rule has been revised in 2012 with the insertion of paragraph 5(4) into the Second Schedule to the GST Act, following feedback from the GST-registered businesses to ease compliance of the rule. Paragraph 5(4) insofar as is material, reads as follows:

Neither sub-paragraph (1) nor sub-paragraph (3) requires anything which a person carrying on a business does otherwise than for a consideration in relation to any goods to be treated as a supply except in a case where —

- (a) credit for input tax has been allowed to that person in whole or in part in respect of the supply of those goods or anything comprised in them to, or the importation of those goods or anything comprised in them by or for, the person;

With the coming into operation of paragraph 5(4), the deemed supply rule in paragraph 5(1) does not operate except where input tax credit has earlier been claimed on the goods. Where the GST-registered person chooses not to claim the input tax on the goods, there is no deemed supply on the subsequent disposal of the goods under paragraph 5(1)⁹. With the coming into operation of paragraph 5(4) and the GST-registered person chooses not to claim input tax on the goods acquired, section 15(1)(m) no longer applies, since there is no deemed supply and no output tax will be borne by the GST-registered person.

However, the input tax which is not claimed so as not to trigger the deemed supply rule, is denied deduction on account of section 15(1)(h), as the GST-registered person has chosen not to claim the input tax. For a harmonious of operation of the GST and income tax provisions (since the advent of paragraph 5(4)), where GST provisions allow the non-claiming of input tax as a means of collection of GST by the Comptroller), it is submitted that a legislative amendment of section 15(1)(h) is opportune, to allow a deduction of the input tax which is not claimed in such circumstances.

(iii) GST borne by GST-registered business should have a single point of adverse impact

GST may be effectively collected by denying the input tax or by deeming a supply triggering an output tax which has to be borne. With the insertion of paragraph 5(4) of the Second Schedule to the GST Act in 2012, the GST legislation has provided businesses with the avenue of the self-denial of input tax claim, as an alternative and effective means for the collection of GST (instead of triggering an output tax by way of a deemed supply).

The GST borne, whether by way of output tax paid or input tax denied, represents a cost to the business. Where the input tax is blocked by regulation 26, section 15(1)(h) does not deny income tax deduction of the GST borne by the GST-registered person. Under such circumstances, the GST-registered person is not subject to “double jeopardy”.

⁹ See also paragraph 4.4 of the IRAS e-Tax Guide entitled “GST: Fringe Benefits” (13th edition). See footnote 2.

It is submitted that it is good policy not to subject the GST treatment to an additional layer of penalisation under the income tax regime (by denying income tax deduction), whether the input tax is blocked by regulation 26 or is a matter of voluntary non-claim to take advantage of paragraph 5(4) as offered by the GST legislation. It will be unduly harsh to subject the GST-registered businesses to a “double jeopardy” where the businesses choose the alternative route offered by paragraph 5(4).

Conclusion

8. To achieve parity of GST deductibility across businesses - between a GST-registered business and a non-GST registered business as well as across different categories of business expenses, and on the ground where GST cost should not be subject to “double jeopardy”, a review of the provisions of section 15(1)(m) and 15(1)(h) will be opportune.