20th IRAS-SCTP GST Dialogue – Summary of Discussion
Date: 5 May 2023
Time: 2.30pm – 4.15pm
Venue: Discovery Room, Basement 1, Revenue House

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1. New topics

Technical and administrative issues (discussed at the Dialogue)

Technical and administrative issue (via IRAS' written response)

2. Any Other Matters

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Technical and Administrative Issues (Discussed at the Dialogue)		
1.	**GST Refund Payment Made to Another Bank Account Other Than the Taxable Person's Bank Account**	**Background** Regulation 2 of the GST (Mode of Payment for Refunds) Regulations 2021 states that: *"2(1) A refund to a taxable person under the Act (including any refund or payment under section 90 of the Act) is to be made by transferring the funds for the refund to a bank account mentioned in paragraph (2) through any of the following means:* *(a) telegraphic transfer;* *(b) the electronic direct debit mechanism known as GIRO;* *(c) the electronic fund transfer service known as PayNow.* *(2) For the purpose of paragraph (1), the bank account must be in the name of the taxable person or a person authorised by the taxable person to receive the funds on behalf of the taxable person.* *(3) A refund under paragraph (1) may be made through any means not mentioned in that paragraph if —* *(a) the taxable person —* *(i) has made reasonable attempts to open a bank account for the purposes of receiving the refund through a means mentioned in paragraph (1), but has been unable to open any such bank account; and* *(ii) has made reasonable attempts to find a person to authorise to receive, on behalf of the taxable person, the refund into a bank account in the name of that person through a means mentioned in paragraph (1), but has been unable to find any such person; or* *(b) due to any system failure, the funds for the refund cannot be transferred to a bank account mentioned in paragraph (2) through a means mentioned in paragraph (1)."*

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		Businesses (e.g. shipping industry) which set up multiple special purpose vehicles (SPVs) to each hold one asset may only have only one bank account held by the holding company which makes/receives payment on behalf of the SPVs. Such businesses are likely to request for the GST refund due to the SPVs to be made to the holding company who is able to receive GST refund via telegraphic transfer, GIRO and PayNow. However, it is noted that there were cases where the IRAS required the taxable person to fulfil the requirements under Regulation 2(3) in reviewing the request to allow the GST refund to be made to the authorised person. This is notwithstanding that Regulation 2(2) already empowers the Comptroller to refund to "a person authorised by the taxable person" as long as the modes of payment fall within those prescribed in Regulation 2(1) (i.e. telegraphic transfer, GIRO and PayNow). Regulation 2(3) is specifically carved out to cater to taxable person who can only receive refunds though payment modes <u>not</u> specified in Regulation 2(1). Therefore, the requirements in Regulation 2(3) should not be applicable as the person authorised by the taxable person is able to receive the refund via telegraphic transfer, GIRO and PayNow. Furthermore, Regulation 2(2) does not require the taxable person to fulfill any conditions for the purpose of authorising another person to receive the GST refund. **<u>Suggestion/ Clarification</u>** SCTP sought IRAS' clarification on the rationale and agreement not to impose the requirements in Regulation 2(3) given that the authorised person is able to receive the GST refund via telegraphic transfer, GIRO and PayNow. **<u>Outcome</u>** IRAS clarified that the GST (Mode of Payment for Refunds) Regulations 2021 ("the Refund Regulations") was enacted to mandate electronic GST refunds via telegraphic transfer, GIRO and PayNow. There was no change in IRAS' practice of not giving GST refunds to a person other than the GST-registered person, unless there is an exceptional reason to do so. Although regulation 2(2) of the Refund Regulations empowers IRAS to give the GST refund to a person authorised by the registered person, IRAS would first establish a genuine need to divert the GST refund to the third party on a case-by-case basis, regardless of the mode of refund. This is part of IRAS' risk control measures. Hence, IRAS would ask for additional

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		information and supporting documents, including reason(s) for the registered person not being able to set up its own bank account to receive the GST refund directly. This is <u>not</u> to verify whether the conditions in regulation 2(3) of the Refund Regulations are met. On SCTP's query on whether IRAS would accede to third party refund requests for genuine business scenarios (such as the above-mentioned scenario regarding SPVs in the shipping industry where the bank account is normally held in the name of their holding companies), IRAS assured SCTP that such requests would be considered, subject to the above-mentioned fact-finding process. SCTP acknowledged the need to maintain adequate control mechanism for the refund process, but urged IRAS to take a calibrated approach so that the refund process will not be made overly cumbersome for taxpayers with genuine need to divert GST refund to a third party.
2.	**Requirement to Submit GIRO and Banker's Guarantee for Voluntary Registration**	**<u>Background</u>** In relation to voluntary registration, Paragraph 8(3) of the First Schedule to the GST Act states that: *"… (3) The Comptroller may at any time, if the Comptroller thinks fit —* *(a) impose any condition on the registration of the person; and* *(b) vary, add to or remove any condition so imposed…."* It is noted that the legislation provides IRAS the flexibility to vary its requirements on businesses that are applying to register for GST on a voluntary basis. Currently, the requirements for GST voluntary registration include: a. Submission of a GIRO application form for the payment or refund of GST, and b. Provision of a bank guarantee, if required by the Comptroller.

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		In practice, some taxpayers may have difficulty opening a bank account in Singapore that has GIRO facilities due to additional regulatory requirements applicable to banks. As a result, the taxpayer's application for GST registration may be withheld on the basis that they are unable to submit a GIRO application form. **<u>Clarification</u>** If an applicant were to be in a payment position but fails to pay IRAS its tax liability, this non-payment of taxes would be covered by the bank guarantee that the Comptroller had imposed up-front. Thus, having submitted a bank guarantee to the Comptroller should minimise any revenue loss to the IRAS in such situations. Consequently, for businesses that are in a refund position but have no GIRO arrangement with IRAS, it is noted that GST refunds can be received via Corporate Paynow by default, which would solve the issue of businesses opening a bank account in Singapore that has no GIRO facilities. For businesses that do not have or is unable to open a bank account in Singapore, they can apply to IRAS for their refunds to be issued via telegraphic transfer to their overseas bank account, where the taxable person bears all bank charges and foreign exchange losses. SCTP is of the view that the GIRO application on its own should not hold up the GST voluntary registration. In this regard, it is suggested that IRAS considers waiving the requirement to submit a GIRO application form if the voluntary registrant can provide a bank guarantee and provides details of other means of payment mode for the GST refunds. **<u>Outcome</u>** IRAS shared that GIRO is a cost-effective and operationally efficient payment method that allows for convenient and seamless end-to-end flow of transactions for both IRAS and the registered party. Taxpayers on GIRO are automatically granted an extended payment due date of 1.5 months after the prescribed accounting period. Once the GIRO application has been processed by the bank, it can be used for both payment and refunds. Based on IRAS' records, about 80% of GST payments are via GIRO. As the requirement for businesses to adopt GIRO as a payment method has ensured high payment compliance for GST, IRAS will continue to push for GIRO payments to keep the cost of GST collection low.

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		IRAS was of the view that the opening of a business bank account with GIRO should not pose a challenge for local taxpayers given the large number of participating banks (there were 45 GIRO participating banks at the time of the Dialogue). IRAS has also sought verbal confirmation from a local bank which represented that it takes about a week to process a GIRO application for a business entity, provided the necessary supporting documents are given to the bank. For overseas taxpayers, should there be business reasons for not opening a business bank account with the GIRO participating banks, IRAS advised that the alternative would be for them to pay GST or receive GST refunds through the business bank accounts of their section 33(1) agents. IRAS clarified that the requirement to submit a guarantee is determined on a case-by-case basis and is meant to protect revenue for any additional risk that the Comptroller of GST assess may exist. The requirement to sign up for GIRO on the other hand is to ensure a higher certainty of regular tax collection for the voluntary group of GST-registered entities. Hence, even when a guarantee is furnished to IRAS, IRAS is unable to consider SCTP's suggestion to do away with the need to require a voluntary registrant to sign up for GIRO. IRAS added that if a local business does not maintain a local bank account, it begs the question of legitimacy or viability of the business in Singapore. IRAS also questioned how the voluntary registrant would be able to provide a guarantee in the first place if it was not able to open a local bank account. Given the revenue concern, IRAS is hesitant to allow such an entity to voluntarily register for GST. Also, SCTP further shared that based on the experiences of the clients of the GST Committee members, many entities such as newly incorporated businesses, or entities that are not required to be registered with the Accounting and Corporate Regulatory Authority of Singapore (ACRA) (e.g. a university) and cost-plus businesses (which provide support services to their holding companies), do face practical difficulties when applying for a local bank account. It is not uncommon for banks to take a long time (up to a few months) to perform their Know-Your-Client (KYC) checks on the applicants. The application requirements or conditions are also stringent and can be difficult to comply with. So it is not due to a lack of trying on the part of the local business to open a local bank account but a case of the rigid checks that the bank takes to open the account which can take up to months. In some cases, the banks are quite inflexible (e.g. insisting on knowing the ultimate beneficial owner of a partnership when in truth, there is no ultimate beneficial owner in a partnership structure).

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		To manage the long timeline that banks take to approve bank account applications, SCTP suggested that IRAS considers granting a probational registration for the GST applicants (subject to the GST applicants submitting a GIRO application form before the filing due date). In response, IRAS shared that it is reluctant to allow businesses without a bank account ready to register for GST. From a control perspective, IRAS would question why a company is unable to set up a bank account if it is legitimate and whether such a company should be allowed to collect GST. SCTP explained that it is common for newly incorporated businesses to operate via trust accounts where they get service providers to make payments on their behalf. In the case of foreign MNCs, the local Singapore entity may not have an authorised signatory residing in Singapore and accordingly, they may prefer not to open a bank account. Separately, SCTP suggested that IRAS contact the Association of Banks in Singapore (ABS) to further understand the process and help to request for the banks' assistance to expedite their review of the GIRO applications from businesses. IRAS highlighted that there was a limitation to what IRAS was able to facilitate or assist with, given the absence of specific case details. SCTP further shared that where a section 33(1) agent is a related entity of the overseas registrant, it may be a plausible solution for the overseas registrant to pay GST or receive GST refunds through the agent's business bank account. However, this may not be workable in a case where the section 33(1) agent is an unrelated person such as a service provider of the overseas registrant. The service provider may open a trust bank account to handle monies for transactions made on behalf of the overseas principal. However, the trust bank account is still held in the name of the service provider, who would be reluctant to allow its own bank account to be used for GIRO to pay for the overseas principal's taxes. SCTP suggested that where a voluntary registrant is genuinely unable to open a local bank account in its name, IRAS could consider an alternative option such as requesting for say a 5-year banker's guarantee (or other forms of financial guarantee) from the registrant. Given the above difficulties shared by SCTP, IRAS is prepared to explore alternative options for overseas registrants such as requesting for a banker's guarantee from a local bank. On the other hand, IRAS opined that it is reasonable to expect local

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		entities to maintain a bank account in their domestic country to support their business operations and as such, the alternative option to use banker's guarantee from local bank will not be available for local registrants given the revenue concern. Where businesses need more time to sign up for GIRO and have an urgent need to register the business for GST, IRAS would consider such requests on a case-by-case basis to approve their voluntary GST registration first before their GIRO applications are approved by the banks. *[**Afternote:** SCTP shared that it is possible for a voluntary registrant to provide IRAS with a banker's guarantee, if necessary, even if the company has yet to be able to open a bank account in Singapore. Such an occurrence has taken place in the past.]*
3.	**Declaration When e-filing GST Return and GST Application on Behalf of Clients**	**Background** Authorised third parties, such as tax agents can log in via myTax Portal to e-file the F5 Return and make an application for GST registration on behalf of a client. Towards the end of e-filing process, the third party is required to make the following declaration: 1. GST F5 return (see screenshot below taken from IRAS' video): - *"I declare that the information given above is true and complete"*; and - *"I understand that penalties may be imposed for the submission of an incorrect return and / or provision of false information to the Comptroller of GST"*

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		From 3 Jan 2022, GST refunds will only be made via electronic means (GIRO or PayNow). Please sign up for GIRO or PayNow to receive timely GST refunds. Declarant Information ☑ I declare that the information provided in this return is true and complete.* ☑ I understand that penalties may be imposed for the submission of an incorrect return and/or provision of false information to the Comptroller of GST. * 2. Application for GST registration (see screenshot below taken from myTax Portal): - *"I declare that all the details and information given in this application is true and complete. I understand that any false / incorrect declaration can result in revocation / cancellation of my client's GST registration, should my client be registered."*; and - *"I will fulfil the responsibilities of a GST-registered person and avoid being involved in Missing Trader Fraud Arrangement."* ☐ I declare that all the details and information given in this application are true and complete. I understand th any false/ incorrect declaration can result in revocation/cancellation of my client's GST registration, should my client be registered.* ☐ I will fulfil the responsibilities of a GST-registered person and avoid being involved in Missing Trader Fraud arrangement .*

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		Suggestion The use of "I" in the above declaration may not be appropriate if the e-filing of the GST F5 Return or GST registration is carried out by a third party such as the tax agent. As a third-party agent filing on behalf of company, it is the client's responsibility to maintain the company's accounts, systems and accounting records as well as tax compliance obligations. In this regard, SCTP requests the IRAS to review the above declaration such that where the e-filing of the GST F5 Return or GST registration application is carried out by the appointed tax agent, the declaration should be made in the name of the company, partnership or sole-proprietorship (as the case may be) by updating "I" to "The Company" or "My client" similar to that of the e-filing of withholding tax. It is noted that SCTP has previously provided a similar feedback at the GST Dialogue on 3 Oct 2018 (Page 22 and 23, S/N 10: "Declaration when e-filing GST return on behalf of clients" refers), where IRAS has agreed to consider rephrasing the declaration section when it next reviews the forms e-Services before it decides on any changes. **Outcome** IRAS informed SCTP that it is reviewing SCTP's suggestion and will provide an update to SCTP at the next IRAS-SCTP GST Dialogue.
4.	**GST Treatment for the Sales of Early Turnover Scheme ("ETS") Papers**	**Background** The e-Tax Guide "GST: Guide for Motor Vehicle Traders" provides guidance for GST registered businesses selling new and/or second hand motor vehicles and addresses the GST treatment applicable to motor vehicle traders and provides illustrate of the GST computations for sale of motor vehicles for the better understanding. The Early Turnover Scheme (ETS) encourages the replacement of older diesel goods vehicles and buses with cleaner, more environmentally friendly models. Under the ETS, instead of bidding for a new Certificate of Entitlement (COE), vehicle buyer enjoy discounted Prevailing Quota Premium (PQP) for COE when replacing existing eligible vehicle with a more

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		environmentally friendly model. Any COE rebate from the older vehicle will be transferred to the COE value of the replacement vehicle. ETS is now extended till 31 Mar 2025. In practice, when motor vehicle traders scrap eligible vehicles under ETS, some do not use it for their own commercial purpose to buy environment friendly vehicle but instead sell away the ETS paper to another motor vehicle trader at a discount. While GST treatment for the replacement of vehicle under the ETS is addressed in the e-Tax Guide, the GST treatment for the trading of the ETS papers among the motor vehicle traders and the timing differences between the sales of vehicle bodies and sales of ETS paper which can span across different GST quarters are not covered. Since the GST treatment is not addressed in the e-Tax Guide, it is noted that motor vehicle traders have been adopting different method to account for GST (e.g. Gross-Margin Scheme for Sale of Second-Hand Vehicles, Discounted Sales Price Scheme for Sale of Second-Hand Vehicles or charge transactions at prevailing GST rate). **Suggestion** IRAS' clarification is sought on (i) the GST treatment for the trading of the ETS papers among the motor vehicle traders; and (ii) the timing differences between the sale of vehicle bodies and the sale of ETS papers (which may span across different months or quarters). **Outcome** IRAS explained the GST implications for a scenario involving the sale of "ETS Paper" between motor vehicle dealers illustrated below.

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		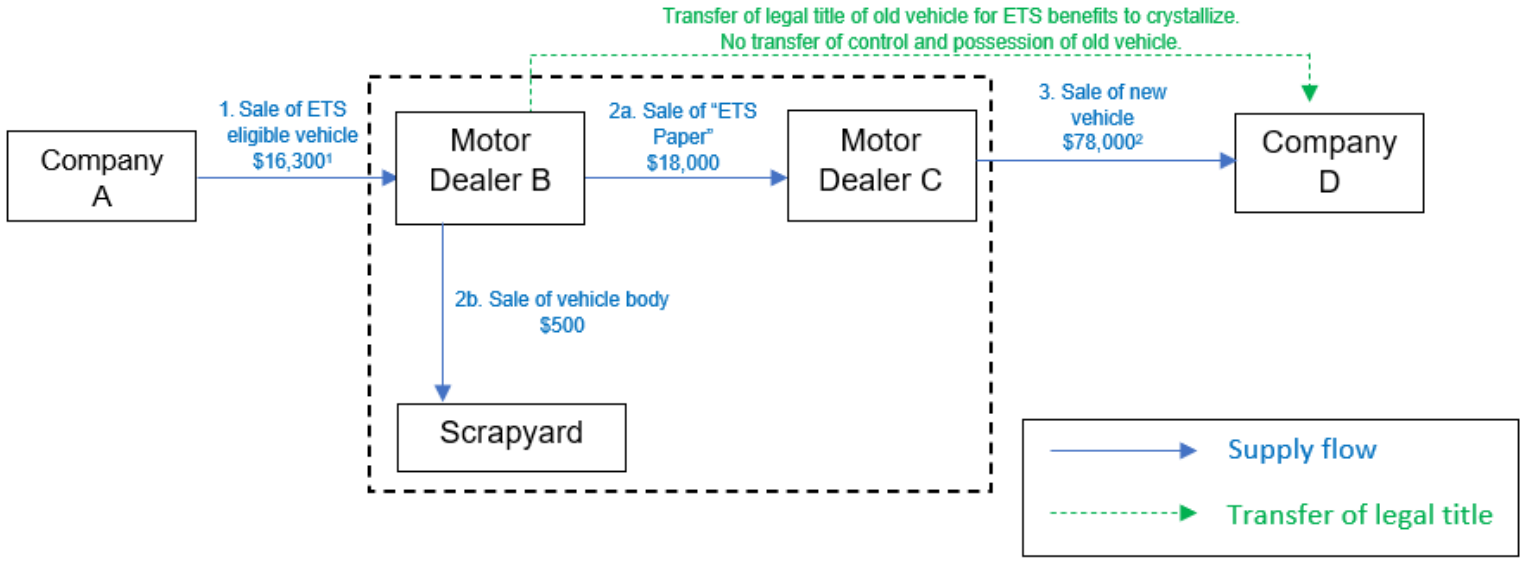 Assuming Company A, Motor Dealer B ("Dealer B") and Motor Dealer C ("Dealer C") are all GST-registered businesses, the transactions and corresponding GST treatment are as follows: ***Transaction (1):*** Company A sells an ETS eligible vehicle to Dealer B at $16,300 (including GST), transfers legal title and delivers the old vehicle to Dealer B. Company A applies the Discounted Sale Price Scheme to charge and account for GST on the sale of used vehicle to Dealer B (i.e., 8/208 x $16,300).

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		Transaction (2a): Dealer B sells the "ETS Paper" to Dealer C at $18,000 (before GST), comprising the face value of the COE rebate from the old vehicle of $16,000 and a mark-up of $2,000. To pass on the ETS benefit, Dealer B will transfer legal title of the old vehicle to Dealer C. As Dealer C is only buying the "ETS Paper" and not the old vehicle from Dealer B, Dealer B does not transfer the control and possession of the old vehicle to Dealer C. To account for the sale of ETS paper, Dealer B must charge and account for GST on the mark-up of $2,000, which is the amount in excess of the face value of the COE rebate. The GST accountable by Dealer B will be $160 (i.e., 8% GST x $2,000). Alternatively, if Dealer B sells the "ETS Paper" without any mark-up (i.e., selling price equals to the face value of the COE rebate of $16,000) or at a discount below the face value of the COE rebate (e.g. $15,000), no GST is accountable. ***Transaction (2b):*** Dealer B separately sells the old vehicle body to a scrapyard at $500 (before GST). Dealer B must also account GST of $40 (i.e., 8% x $500) on the sale of vehicle body to the scrapyard. ***Transaction (3):*** Dealer C then sells a new replacement vehicle to Company D at $78,000 (including GST). To pass on the ETS benefit, Dealer C will transfer legal title of the old vehicle to Company D so that the latter can deregister the old vehicle and register the new vehicle with a discounted Prevailing Quota Premium (PQP) for COE. Dealer C does not transfer control and possession of the old vehicle to Company D. Dealer C will account for GST on the excess after deducting vehicle taxes from the selling price of the new vehicle (i.e., 8/108 x ($78,000 – Additional Registration Fee – Registration Fee – Road Tax – COE Rebate – Discounted PQP)). ***Time of Supply (for Dealer B)*** As Dealer B makes two separate supplies of "ETS Paper" and vehicle body to two different buyers, the time of supply will apply to each respective supply. It is therefore natural for there to be timing differences in accounting for GST on the sale of "ETS Paper" and vehicle body; such timing differences in accounting for GST on the sale of "ETS Paper" and vehicle body does not matter.

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5.	**GST Transitional Period Treatment for Local Hoteliers on Booking via Online Travel Agents Acting as Agent**	**Background** With the advent of technology and emergence of online travel agents (or "OTAs"), the online travel booking market has grown significantly over the years. OTAs offer customers a platform where they can seamlessly book and purchase travel products without the need to directly approach a travel agent and/or travel product supplier. Generally, OTAs facilitate the booking and payment of the hotel room on behalf of the traveller in the capacity of an agent. In practice, it is noted that IRAS has advised such OTAs (acting as agents for local hotels) to report the GST on the consideration paid by the guest at the GST rate applicable when the booking is made via the OTA platform, despite that the actual supply by the hotel has not taken place (i.e. delivery of service) and the hotel has yet to receive the consideration (i.e. receipt of payment) from the OTA until the stay has completed. This practice may lead to issues during the transitional period for GST Rate Change (e.g. 7% in year 2022 to 8% in year 2023) as booking in year 2022 could be make for the hotel stay that happens in year 2023. **Clarification** IRAS' clarification is sought on the time of supply from the hotel's perspective (i.e. whether the supply takes place when payment is made to the OTA or when the stay is completed). **Outcome** The issue relates to when payment is considered as received by the hotel for the purpose of determining the time of supply ("TOS") for its provision of hotel stay, i.e., whether the hotel's TOS is triggered (i) when an online travel agent ("OTA") collects payment from the customer, or (ii) when the OTA passes the payment to the hotel. From the hotel's perspective, assuming no invoice was issued to the customer, TOS is triggered when the hotel receives payment from the OTA (and not when the customer makes payment at the point of booking). In the scenario where the OTA collects payment from the customer at 7% GST before rate change for a hotel stay taking place after rate change and the OTA passes the payment to the hotel after rate change, the hotel will have to account for GST at 8% and absorb the additional GST payable (i.e. computed based on a tax fraction of total consideration).

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		As an administrative concession, IRAS will treat the hotel's TOS as triggered when the OTA collects payment from the customer at 7% GST before rate change (notwithstanding that the hotel stay will only take place after the rate change), provided that the hotel is able to substantiate with supporting documents (e.g. system notification or email confirmation from the OTA) that the customer has already made full payment to the OTA before rate change. However, if the hotel is unable to obtain the required information/ supporting document from the OTA, or if the hotel issues an invoice showing 8% GST charged (and is unable to issue a credit note or reinvoice at 7% GST for the hotel stay), it will have to charge and account for GST at 8% (i.e., 8/108 x total consideration received by the hotel). *[**Afternote:** SCTP shared that in practice, it is unlikely for a hotel to issue a 7% GST tax invoice after the hotel stay in 2023 as the hotel's POS system would have been updated to issue tax invoices at 8% following the GST rate change on 1 January 2023. In response, IRAS clarified that if the hotel wishes to take up the administrative concession, it will have to make the necessary adjustment to show the 7% GST rate on its invoice to the customer.]* Separately, SCTP questioned why the above GST treatment comes under an administrative concession and not as the default GST treatment based on GST principles. This was compared to the default GST treatment in the insurance industry where the insurance premium is considered as received by an insurer when payment is collected from the policyholder by an insurance agent or broker on behalf of the insurer, instead of when the insurer subsequently receives the payment from the agent or broker. The insurer is required to estimate its output tax due in instances where it is unable to determine upfront the actual amount of insurance premiums collected by the agent or broker (which are not yet handed over to the insurer) when filing the insurer's GST returns. SCTP suggested that the same TOS principle (i.e., treat payment as being received by the principal when payment is collected by its agent from the customer) should be consistently applied to the OTA scenario above and other scenarios involving payments collected from customers by agents on behalf of principals. In other words, this should be the default GST treatment and there is no need to grant any concession to achieve the same GST outcome for the hotels. IRAS explained that the GST treatment for the insurance industry is peculiar to the industry as the insurance agent or broker is capable of binding the insurer to an insurance contract when it arranges an insurance contract with the policyholder for the

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		insurer. As such, the insurance agent or broker is generally perceived as an extension of the insurer's business. Hence, payments received by the insurance agent or broker are treated as received by the insurer. *[**Afternote:** IRAS highlighted that Section 66(1) of the Insurance Act provides that "Where a contract of insurance is arranged or effected by an insurance intermediary, payment to the insurance intermediary of moneys payable by the insured to the insurer under or in relation to the contract (whether in respect of a premium or otherwise) is a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment." Therefore, taking the view that the insurer had received payment once the insured had paid to the intermediary is consistent with the Insurance Act.]* On the other hand, OTAs generally do not represent themselves as agents for the hotels and act as service providers to provide a platform for customers to book hotel stays. Hence, OTAs are not perceived as an extension of the hotels and the default date when payment is considered as received by the hotels (in the absence of any concession) would be when the hotels actually receive payment from the OTAs. This is consistent with payments made through AXS and SAM Machines which are treated as received by a taxable person on the date these establishments transfer the money to the taxable person. While some OTAs may collect payments as the principal (such that they buy and onsell the hotel stays), IRAS opined that such cases are rare. SCTP highlighted that it can be difficult for businesses to distinguish between agents who represent their principals to bind the principals in contracts with customers and agents who act as third-party service providers. As there are various types of agents and the business arrangements can be structured very differently, it was agreed that the GST treatment by way of administrative concession above should be confined to the OTA scenario surfaced (i.e., where payment is received from the customer by the OTA before rate change and the OTA passes the payment to the hotel after rate change). This GST outcome is also consistent with other rate change scenarios where payments made by customers before rate change would generally be recognised for the purpose of determining the TOS and the applicable GST rate.
6.	**Service Standard and Extension of Penalty Waiver**	**<u>Clarification</u>** It is noted that IRAS has taken a longer time (i.e. more than 6 months) to respond to the ACAP reports submitted. IRAS' clarification is sought on whether there has been a change in the service standard for ACAP.

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	Deadline for Assisted Compliance Assurance Programme (ACAP)	Separately, to encourage more companies to participate in ACAP, it is suggested that IRAS considers extending the waiver of penalties for voluntary disclosure of non-fraudulent errors under ACAP for businesses which apply for ACAP participation beyond the current deadline of 31 Mar 2024. **Outcome** IRAS shared that ACAP cases are generally complex and IRAS officers would require more time to review them, especially if there are many errors disclosed. There was also an influx of cases in recent years due to the clustering of reports arising from extensions of time sought during the COVID-19 pandemic and an increase in the ACAP take-up rate. IRAS is working closely with ACAP Reviewers to expedite the review of the cases on hand. The ACAP deliverables were also revamped to minimise the need for follow-up clarification. For a majority of the cases, ACAP Reviewers can expect to hear from IRAS within 8 months. Reviewers may contact the ACAP team to request for urgent cases to be expedited. On SCTP's suggestion for IRAS to consider extending the waiver of penalties for voluntary disclosure of non-fraudulent errors under ACAP for businesses which apply for ACAP participation beyond the current deadline of 31 Mar 2024, IRAS informed SCTP that it is reviewing the waiver and will communicate the outcome before the expiry date.
7.	**GST Treatment on Conditional Rebate**	**Background** In the GST Dialogue on 15 May 2017, SCTP had expressed its view that the discount offered by MLM companies to its members does not constitute a non-monetary consideration for services provided by the members. It is noted that the IRAS did not agree to SCTP's view. The IRAS' view on the conditional discount/rebate is reflected on its webpage (see screenshot below). Based on the IRAS webpage on "GST on discounts and rebates" , conditional rebates given to customers in return for meeting certain obligations are regarded as a separate supply of services made by the customer (and subject to GST if the customer is GST-registered). Where applicable, the GST-registered customer is required to account for GST at 8/108 of the cash rebate received and issue a tax invoice to the supplier. This is even if the rebate is based on customer's purchase volume.

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		This above-mentioned position is premised on the basis that the act of meeting obligations set by the supplier tantamount to performance of services by the customer to the supplier and the rebates payable by the supplier constitute a consideration in return for these services, and hence, there is a supply from the customer to the supplier. **2. Conditional rebates given to customers** When your customer needs to **meet certain obligations** imposed by you (e.g. undertake advertising and marketing activities) to be entitled to a rebate, your customer is providing a separate supply of services to you. This is so even if the rebate is based on your customer's purchase volume. Your customer, if GST-registered, should account for GST at 8/108 of the cash rebate received and issue a tax invoice to you. In the recent High Court case *Herbalife International Singapore Pte Ltd v Comptroller of Goods and Services Tax* [2023] *("Herbalife")*, the High Court laid down two requirements for determining whether the undertaking of obligations by members of Herbalife constitutes non-monetary consideration in return for the rebate/discount offered by Herbalife on its sale of nutritional products to the members. These requirements are as follows: a) whether the undertakings were independent of, and not ancillary to the supply of the nutritional products; b) whether the undertakings provided a benefit which goes beyond the monetary transaction in question. The High Court took the view that the undertaking of obligations by the members are part of the regular terms of trade which "would not ordinarily be independent of, and not ancillary to" the supply of goods. The High Court therefore ruled that undertakings by the members do not constitute non-monetary consideration in return for the rebate/discount on the sale of nutritional products by Herbalife. **Clarification** Following the High Court decision, it is suggested that the IRAS updates its website to provide clarity to taxpayers on the circumstances under which conditional rebate/discount given by suppliers to the customers or payment by the suppliers to the

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		customers would not constitute a non-monetary consideration made by the customers to the suppliers and to provide examples to facilitate taxpayers in understanding the application of the GST rules. **Outcome** IRAS explained that the High Court's decision in the *Herbalife* case pertains to specific arrangements in the direct selling industry and the facts such as contract terms which are specific to the case. The crux lies in determining what circumstances and nature of contract terms can be considered as **regular** terms of trade. Whether the undertaking of obligations by the customer constitutes non-monetary consideration for the sale of goods or for a separate supply of services made by the customer to the supplier in return for rebates is a question of fact, depending on the specific arrangement. In determining whether a separate supply is made by a customer, IRAS would generally fall back on the principles governing the meaning of a supply as provided for under section 10(2)(a) of the GST Act. Where the arrangement involves tangible benefits (e.g. advertising services) furnished by the customer to its supplier in return for a "rebate", the customer would be regarded as making a separate supply to the supplier. If GST-registered, the customer should account for GST on its supply of services accordingly, while the supplier should account for GST on the full price of goods sold given that the rebate is not essentially a discount. In other words, the GST treatment on conditional rebates published on IRAS' website continues to apply. On SCTP's suggestion to provide more guidance on when the undertaking of obligations could constitute non-monetary consideration, IRAS replied that it will undertake a holistic review on the "direct selling" business model, taking into account the differing arrangements within the industry. After the review is completed, IRAS will consider updating its website to provide more guidance. SCTP pointed out that the principle laid down in the *Herbalife* case not only applies to multi-level marketing or "direct selling" business models; it should also apply to all other industries. SCTP sought clarification on whether common contractual obligations undertaken by the customer such as ensuring that the supplier's goods are properly displayed or kept in the original

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		condition for sale would constitute tangible benefits that give rise to a separate supply made by the customer in return for the rebate. IRAS acknowledged SCTP's point and explained that generally IRAS would not impute a value to such general terms of trade so as to treat them as constituting tangible benefits for a separate supply by the customer. Nevertheless, each case has to be assessed on its own merits. Businesses can write to IRAS should they need advice on whether a separate supply exists in a specific scenario encountered. This would also facilitate IRAS' review on conditional rebates.
Technical and Administrative Issue (via IRAS' Written Response)		
8.	**Feedback on IRAS' Webpage on "International Services"**	**Background** It is observed that subsequent to the amendment of Section 21 of the GST Act passed under the GST (Amendment) Act 2021, IRAS' webpage on "Providing International Services" has not been updated to replace the previous "extract of Section 21 of the GST Act". Specifically, with effect from 1 January 2022, the zero-rating provisions for advertising services have been changed and no longer considers the location of promulgation for the advertising services under Section 21(3)(u) and instead uses the default customer's "belonging status" under Section 21(3)(j). However, the "extract of Section 21 of GST Act" on the webpage (see screenshot below) currently reflect the old Section 21 of the GST Act (prior to 1 January 2022). **List of International Services – An Excerpt of the GST Act (with effect from 1 Jan 2020)** In accordance with **section 21(3) of the Goods and Services Tax (GST) Act**, a supply of services shall be treated as a supply of international services where the services or the supply are for the time being of any of the following described below. If your supply of services qualifies as international services, you may zero-rate (charge GST at 0%) your supply. Although no tax is charged on the supply, it shall in all other respects be treated as a taxable supply.

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		(u) Subject to section 21(4D), services comprising either of or both — (i) the supply of a right to promulgate an advertisement by means of any medium of communication; and (ii) the promulgation of an advertisement by means of any medium of communication, where the Comptroller is satisfied that the advertisement is intended to be substantially promulgated outside Singapore; The current Section 21(3)(u) states: *"…(u) subject to subsection (4D), services supplied **before 1 January 2022** comprising either of or both —* *(i) the supply of a right to promulgate an advertisement by means of any medium of communication; and* *(ii) the promulgation of an advertisement by means of any medium of communication,* *where the Comptroller is satisfied that the advertisement is intended to be substantially promulgated outside Singapore;…"* **Clarification** It is suggested that IRAS updates the above-mentioned webpage to avoid confusion for taxpayers. **IRAS' Response (via Email on 3 May 2023)** IRAS thanked SCTP for the feedback and informed that the IRAS webpage on "Providing International Services" has been updated.

IRAS-SCTP GST Dialogue
Agenda: Item 2
Subject: Any Other Matter

No.	Topics	Discussion
1.	**Migration of Application Form for GST Advance Ruling to the FormSG Platform**	IRAS informed that it has moved its application form for GST Advance Ruling to the FormSG platform. IRAS has updated its website materials on the GST advance ruling system and the link to the FormSG application form is published on IRAS' website.

This document is exclusively intended for SCTP members as general guidance only.
Members are advised to check for updates concerning tax changes regularly.