

GST (Amendment) Bill 2020

In this issue, we provide updates on salient proposed amendments to the GST Act – Missing Trader Fraud and anti-avoidance rules.

GST (Amendment) Bill released for public consultation

This year's GST (Amendment) Bill saw the Inland Revenue Authority of Singapore (IRAS) strengthening its power to combat Missing Trader Fraud as well as enhance anti-avoidance rules to deal with specific tax planning arrangements.

Combating Missing Trader Fraud

Missing Trader Fraud is a scheme where the seller charges and collects GST from customers, then absconds with the GST charged on the sales while businesses along the supply chain continue to claim refunds of the GST on their purchases from the IRAS.

The "modus operandi" of Missing Trader Fraud syndicates typically involves goods which are small but high in value such as mobile phones and memory cards. These goods are exported and re-imported to Singapore and the cycle carries on, much like a carousel.

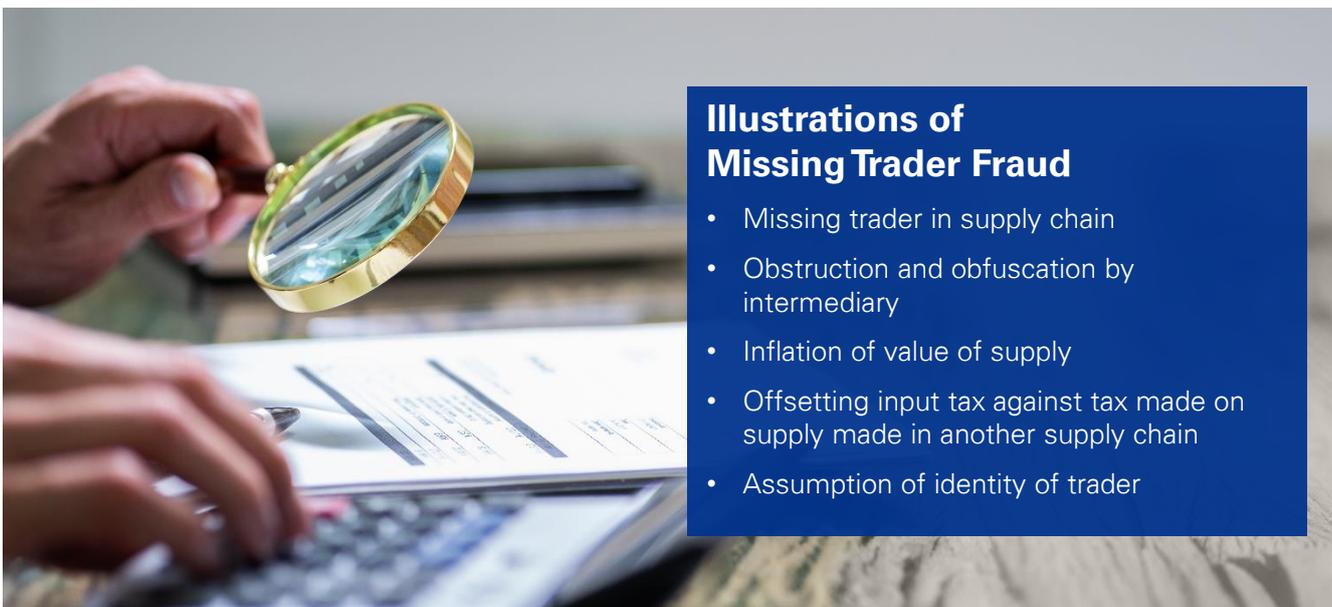
The IRAS has encountered Missing Trader Fraud (or carousel fraud) for several years now. In August 2016, the IRAS conducted a two-day islandwide operation wherein 43 individuals were investigated after the raid¹. At least two news articles featuring this fraud were then published in *The Straits Times*, alerting businesses to be vigilant about arrangements that present seemingly good profit with ready sellers and buyers and a guaranteed return, and not to be unwittingly complicit in such fraudulent arrangements.

The proposed provision affords the IRAS the power to deny input tax credit to businesses on the basis that they should have known that their purchase was from such syndicates, regardless of whether this leads to revenue loss or otherwise.

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1. <https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Tax-Crime/2016/IRAS-Investigating-43-Individuals-on-Suspected-GST-Carousel-Fraud/>



Illustrations of Missing Trader Fraud

- Missing trader in supply chain
- Obstruction and obfuscation by intermediary
- Inflation of value of supply
- Offsetting input tax against tax made on supply made in another supply chain
- Assumption of identity of trader

Illustrations of this arrangement are provided so that businesses are aware of how such arrangements are designed. Specifically, five illustrations are provided: missing trader in supply chain; obstruction and obfuscation by intermediary; inflation of value of supply; offsetting input tax against tax made on supply made in another supply chain; and assumption of identity of trader. The common vein running through these illustrations is an arrangement involving two or more suppliers and a fraudster who absconds with the GST, thereby leaving businesses with GST to be claimed from the IRAS.

The proposed provision deems that businesses should have known that the purchase is part of a fraudulent arrangement and denies their input tax credit if the circumstances connected with the purchase carries reasonable risk of a fraudulent arrangement, and

- a) the business has not taken reasonable steps to ascertain if this is part of a fraudulent arrangement; or
- b) the business has taken reasonable steps:
 - i. but concluded that this purchase is not part of a fraudulent arrangement and the conclusion is not what a reasonable person would have concluded;
 - ii. but could not conclude if the purchase is part of a fraudulent arrangement and proceeded with the transaction; or
 - iii. but has not concluded that this purchase is not part of a fraudulent arrangement and proceeded with the transaction (this is even if a reasonable person would have concluded that the purchase is not part of a fraudulent arrangement).

Circumstances connected with purchase

The circumstances as provided in the Amendment Bill include the following:

- a) The supplies in question are not within the nature of the business ordinarily carried on by the taxable person.
- b) The value of the supplies in question are substantially in excess of the value of the assets of the business carried on by the taxable person or the risks required to be borne by the taxable person for the supply.
- c) The reasonableness or commerciality of the supplies in question are questionable. For instance, where there is a ready supplier to the taxable person and a ready buyer from the taxable person for the same goods or services in circumstances where the need for the taxable person as an intervening supplier is unnecessary.
- d) The consideration for the supply to the taxable person, and for any supply by the taxable person to a buyer, are pre-determined, or the profit of the taxable person is guaranteed.
- e) The arrangement for payment of the consideration for the supply to the taxable person does not accord with usual business practices.
- f) The taxable person has little or no knowledge of or past dealings with the supplier to the taxable person or the buyer from the taxable person, or both.

Apart from denying the input tax credit, a surcharge of 10% would be imposed on the amount of input GST denied despite any objection to the additional assessments raised. There will also be a 5% charge on the surcharge if it is not paid within one month after the date that the written notice of the surcharge is served. In addition, the IRAS has the power to withhold any refund requested pending investigation of the input tax claim.

Besides this, under the proposed amendment, the IRAS has the power to seize goods involved in such fraudulent arrangements to aid in the investigation, as well as deny a person the right to register for GST on account of revenue protection – this includes the power to impose conditions for compulsory GST registration.

Hence, in order to avoid being involved in such fraudulent arrangements and risk input tax credit being denied, businesses must now undertake the necessary due diligence checks and follow-up actions (including arriving at a conclusion that a reasonable person would have concluded) before making purchases – this is especially so if the circumstances connected with the purchase is similar to those described above. Adequate documentation of such checks and how the conclusion was reached must be maintained to defend the right of input tax credit.



Implications to businesses

Once the proposed amendments to the GST Act is passed in Parliament and take effect from 1 January 2021, businesses would need to critically review their GST controls – in particular those involving input GST claims – as well as introduce controls where they are not targeted to deal with such fraudulent arrangements.

Any new business opportunity must be deliberated (including specific checks if the purchase is connected with the circumstances described above). Steps to onboard new vendors and customers should be heightened and not just stop at ascertaining credit worthiness. Additional steps in reviewing the background of directors, major shareholders, as well as the ultimate owner or holding company of proposed vendors and customers may now be necessary as well.

If you have been approached and/or presented with a business deal which you feel is too good to be true, “think thrice” as the Chinese proverb goes, lest any GST paid to the supplier is at risk of not being recoverable.

Anti-avoidance rules

The current anti-avoidance provision allows the Comptroller the discretion to disregard or vary arrangements that are carried out with tax avoidance as one of their main purposes instead of bona fide commercial reasons. In such cases, the Comptroller is to make relevant tax adjustments to counteract any tax avoidance under that arrangement/s.

To enhance anti-avoidance rules and provide certainty to businesses of their tax liability, the proposed amendments would:

- i. include GST avoidance arrangements that would result in an earlier entitlement to input GST claims or unjustified bad debt relief claims;
- ii. confine the tax adjustments under the anti-avoidance rules to a statutory time limit of 5 years;
- iii. clarify that taxpayers are required to pay the additional GST from the adjustment within one month from the date the notice of adjustment is served; and
- iv. remove the discretion for the Comptroller to make adjustments in order to disregard or vary an arrangement i.e. once the Comptroller is satisfied that an arrangement was done with the intent of avoiding tax, the Comptroller will be required to make the adjustment.

In addition, a surcharge of 50% of the amount of additional tax would be imposed, to be paid within one month after the date in which a written notice is served despite any objection to the adjustment. A 5% late payment penalty will also be applicable if the surcharge is not paid on time.

Implications to businesses

While businesses would welcome the 5-year open period in which the IRAS can make the adjustment, the IRAS would have greater power to adjust the GST in any of the scenarios above. This can include an earlier claim of bad debt relief, which can be a common oversight for businesses.

How we can help

Now that the IRAS has strengthened its power through the amendment of law to combat the Missing Trader Fraud scheme and in tackling anti-avoidance rules, businesses, including those accorded with Assisted Compliance Assurance Programme (ACAP), should check to be sure that their GST controls are adequate given this slew of proposed amendments.

With these proposed amendments, it begs the question for businesses which have unfortunately been caught in such arrangements and have had their input tax withheld or denied, what is their entitlement of input tax credit under the current legislation. This is especially worth asking since

these amendments would only take effect from 1 January 2021.

Please contact us if you need assistance in understanding the implications of these proposed amendments on your business, or to review the adequacy of your GST controls for compliance with the expectations of the IRAS on steps and the conclusion that a “reasonable person” should arrive at. If you are registering your company for GST under compulsory basis, we would be happy to assist if the IRAS imposes additional conditions.

On the other hand, if you are considering an overarching framework to contain your tax risk, look no further. The IRAS is targeting to launch the Tax Governance Policy Framework (TGP) in early 2021. This principle-based framework will serve to guide large businesses in establishing good tax governance for both corporate income tax and GST, with the controls described above incorporated. Not only will this present a holistic tax governance solution; extended grace period for voluntary disclosure of errors in corporate income tax, GST and withholding tax is also accorded. We would be pleased to provide further details.

It is never too late to be ready to combat Missing Trader Fraud along with the IRAS and not be a victim of fraudulent arrangements. KPMG in Singapore is here to support you in such efforts.

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