

AIAC CIPAA CIRCULAR 5A

CIRCULAR ON THE PROCEDURE FOR IMPLEMENTATION OF SALES AND SERVICES TAX IN CIPAA PROCEEDINGS ADMINISTERED BY THE AIAC

On 1st September 2018, the Sales and Service Tax (the "SST") was implemented pursuant to the Service Tax Act 2018. According to the Service Tax Regulations 2018, which carry into effect the provisions of the *Service Tax Act 2018*, the rate of tax is fixed at 6%.

The SST is applicable to the provision of services by the AIAC and also by adjudicators in relation to all adjudication proceedings administered pursuant to the *Construction Industry Payment and Adjudication Act 2012* (the "CIPAA"), the *Construction Industry Payment and Adjudication Regulations 2014* (the "Regulations"), and the AIAC Adjudication Rules & Procedure.

The procedure for the collection of SST will be as follows. Upon the adjudicator issuing a direction pursuant to Rule 9(2) of the AIAC Adjudication Rules & Procedure ordering the parties to deposit with the AIAC the full adjudicator's fees and expenses and the AIAC Administrative Fee, the AIAC will collect these fees, being the full cost of the adjudication, by way of an advance security deposit ("ASD").

The ASD will include any SST payable on both the adjudicator's fee as well as the AIAC Administrative Fee. The ASD will be collected in equal shares from the parties by the AIAC. No fees shall be payable to the adjudicator at this stage.

Adjudicators shall note that where the Standard Schedule of Fees pursuant to Regulation 6 of the Regulations is adopted, the SST component of the adjudicator's fee is embedded in the fee calculation set out in Schedule 1 of the Regulations. However, SST needs to be added to the AIAC Administrative Fee in this instance. Where the Recommended Schedule of Fees pursuant to AIAC CIPAA Circular 02 is adopted, SST will need to be added to both the adjudicator's fee as well as the AIAC Administrative Fee.

Payments requested by the AIAC in MYR can be made by cheque made out to the Asian International Arbitration Centre or to the following account:

Account Name: Asian International Arbitration Centre
Account Number: 5143 5680 7190
Bank Name: Malayan Banking Berhad
Bank Address: Ground & Mezzanine Floors,
Wisma Genting, Jalan Sultan
Ismail, 50250 Kuala Lumpur
SWIFT Code: MBBEMYKL

Once the adjudication decision has been delivered on the Parties within the stipulated timeframe, the AIAC will request the adjudicator to issue tax invoices reflecting the full adjudicator's fees and expenses as well as any SST payable. The tax invoices shall be issued in the parties' names and delivered to the AIAC. The AIAC will subsequently forward the tax invoices to the parties.

If the adjudicator is registered in Malaysia for the purposes of SST, SST will be payable on their fees. If the adjudicator is not registered, the party will need to account for the SST directly to the Department of Customs.

The AIAC, after the adjudication decision has been delivered, shall issue tax invoices reflecting the AIAC Administrative Fee as well as the SST payable. The tax invoices will be issued in the parties' names and delivered to the parties.

The security deposits already paid by the parties will be entirely set off against the costs of the adjudication in satisfaction of the tax invoices issued by the adjudicator and the AIAC.

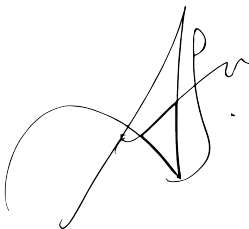
Any additional or supplementary deposits that may become payable over the course of proceedings will be collected in the same way. Tax invoices will be issued in the parties' names by the relevant service provider (being the adjudicator or the AIAC), including SST, with the deposit thereafter collected by the AIAC. If the service provider is not registered for SST, SST will not be included.

Should proceedings be completed prior to the delivery of the adjudication decision, the adjudicator may direct reasonable costs to be paid, including reasonable fees and expenses of the adjudicator, which may include SST if the adjudicator is SST registered. The adjudicator shall issue tax invoices reflecting those reasonable fees and expenses. In the event there is any difference between those reasonable costs and any tax invoice previously issued then a corresponding credit note will need to be issued by the adjudicator.

Any unexpended balance will then be refunded to the parties.

This Circular supersedes AIAC CIPAA Circular 05 issued on 1st June 2015.

Dated this 1st January 2021.



Tan Sri Datuk Suriyadi Bin Halim Omar
Director