



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

**GUIDE
ON
LAND AND PROPERTY
DEVELOPEMENT**

Publication

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INTRODUCTION

1. This industry guide is prepared to assist businesses in understanding matters with regards to GST treatment for land and property. This guide will explain the GST principle applicable to property development and to illustrate some of GST issues pertaining to mixed development. This guide also explains the types of land and properties which qualify for exemption.

OVERVIEW OF GOODS AND SERVICES TAX (GST)

2. Goods and Services Tax (GST) is a multi-stage tax on domestic consumption. GST is charged on all taxable supplies of goods and services in Malaysia except those specifically exempted. GST is also charged on importation of goods and services into Malaysia.

3. Payment of tax is made in stages by the intermediaries in the production and distribution process. Although the tax would be paid throughout the production and distribution chain, only the value added at each stage is taxed thus avoiding double taxation.

4. In Malaysia, a person who is registered under the Goods and Services Tax Act 2014 (GSTA) is known as a “registered person”. A registered person is required to charge GST (output tax) on his taxable supply of goods and services made to his customers. He is allowed to claim back any GST incurred on his purchases (input tax) which are inputs to his business. Therefore, the tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements.

TERMINOLOGY

5. The following words have these meanings in this guide unless the contrary intention appears:

- (a) **“Certificate issued by the authorized person”** means any certificate issued by the authorized person under any written law in Malaysia.
- (b) **“Certificate of Completion and Compliance (CCC)”** means any certificate given or granted under the Street, Drainage and Building Act

1974 [Act 133] and any by-laws made under that Act certifying that the housing accommodation has been completed and is safe and fit for occupation but does not include partial certificate of completion and compliance.

- (c) **“Certificate of Fitness for Occupation (OC)”** means any certificate issued under the various Enactments or Ordinances or By-laws for the purpose therein.
- (d) **“Easement”** means any right granted by one proprietor to another, in his capacity as such and for the beneficial enjoyment of his land in accordance with Section 282 NLC.
- (e) **“General use of land”** means the use of land for the purpose of burial ground, playground or religious building.
- (f) **“Land owner’s entitlement”** means the land owner’s right to receive any consideration (right to an economic benefit) granted by the land development agreement entered by the parties.
- (g) **“Lease”** means a registered lease or sub-lease of alienated land for a tenure exceeding three years in accordance with Section 221 NLC.
- (h) **“License to occupy land”** means a legal agreement between the licensor and licensee giving licensee the non-exclusive right to occupy the property for a defined length of time. The fact that the occupation is non-exclusive means that the landlord (licensor) or another tenant can also occupy the property.
- (i) **“Liquidated Damages”** (also referred to as liquidated and ascertained damages) are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g. late performance).

Under Schedule G and H of Housing Development (Control And Licensing) Regulations 1989 requires a property developer to complete and deliver the property to the house purchaser within 24 calendar

months (36 months for condominiums) or any other period approved by the relevant authorities and if the property developer fails to deliver such property within such stipulated time, he is liable to pay to the purchaser a sum (10%) calculated at a rate specified in the sales and purchase agreement as liquidated damages (LAD) until the purchaser takes vacant possession of such building. Hence, the construction contract normally stipulates that the contractor is required to deliver the completed construction work within the period stipulated in the construction contract. Failure to deliver the completed construction work within the stipulated time will result in such contractors being liable to pay the client (property developer) liquidated damages for the period during which the relevant works remain incomplete.

- (j) **“Non-residential”** means commercial
- (k) **“Occupation Permit (OP)”** means temporary occupation permit and partial occupation permit” mean such permits given or granted under the Building Bylaws contained in the Fourth Schedule of the Sarawak Buildings Ordinance 1994.

(Basically, OP, in the case of Sarawak or OC, in the case of Sabah, is a document issued by a local government agency or building department certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy. Similarly to CCC in West Malaysia, the purpose of obtaining OP or OC is to prove that, according to the law, the house or building is in liveable condition. Generally, such a certificate is necessary to be able to occupy the structure for everyday use, as well as to be able to sign a contract to sell the space and close on a mortgage for the space.

OP or OC is evidence that the building complies substantially with the plans and specifications that have been submitted to, and approved by, the local authority).

- (l) **“Person”** includes a body of persons, corporate or unincorporated.

- (m) **“Progress billing”** means a series of invoices prepared at different stages in the process of development, in order to seek payment for the percentage of work that has been completed.
- (n) **“Progress payment”** means an amounts billed for work performed on properties sold in respect of property development activities, whether or not they have been paid. They may also be known as progressive payments. This method of payment is a schedule when (according to project milestones or specified dates) contractors will be paid for the current progress of installed work.
- (o) **“Property developer”** means a company, an individual, a partnership, a co-operative society, a body of persons, who or which engages in or carries on or undertakes or causes to be undertaken property development. It also includes housing developers licensed under Housing Development (Control and Licensing) Act 1966. It should be differentiated from contractors although they may act as contractors as well.
- (p) **“Property development”** refer to the business of acquiring land for the purpose of developing, constructing or causing to be constructed there on and selling completed residential, commercial or industrial building, whether as a whole or by parcel therein and development and sell of vacant lots for the construction of such building thereon.
- (q) **“Residential properties”** means a land or a building that:
 - (i) is occupied as a residence; or
 - (ii) is intended to be occupied, and is capable of being occupied, as a residence.
- (r) **“Retention of an amount”** also known as “retention sum” means the amount of progress payment which is not paid until the conditions specified in the contract for the payment of such amounts have been met or until defects have been rectified.

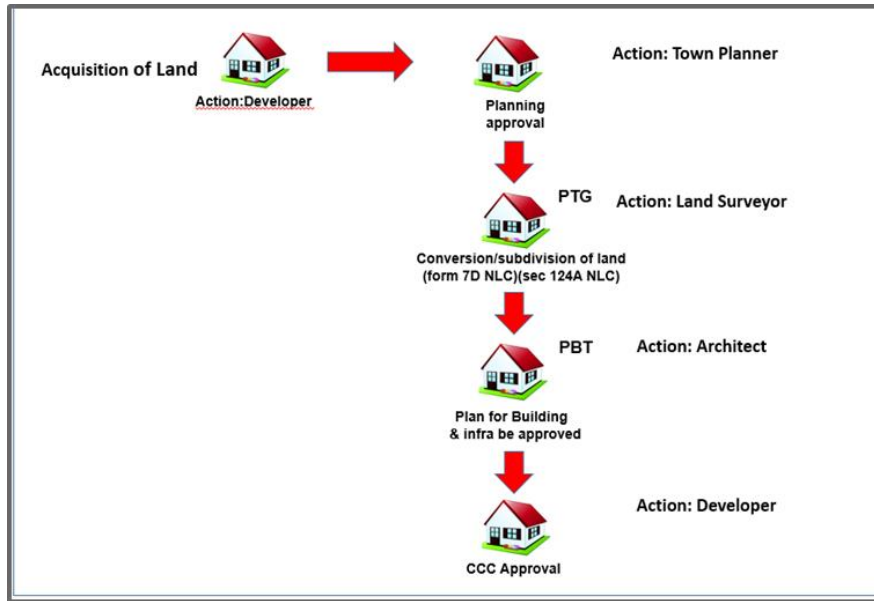
- (s) **“Sub-sale”** includes the subsequent sale of a property before the title of the property is transferred to the buyer.
- (t) **“Tenancy”** means a tenancy or sub-tenancy of alienated land for a tenure not exceeding three years in accordance with Section 223 NLC.
- (u) **“Unincorporated Joint Venture”** is a type of business arrangement in which multiple entities come together using a contract as a basis for governing the collective relationship, but without creating some sort of corporation arrangement in order to pursue the joint venture. The Unincorporated Joint Venture agreement usually states the parties will severally liable proportionate to their interest during the Unincorporated Joint Venture. Parties are treated independently for tax purposes.

GENERAL OPERATION OF INDUSTRY

6. A property developer is a person or company that engages in or carries on or undertakes or causes to be undertaken property development. It also includes housing developers licensed under Housing Development (Control and Licensing) Act 1966. Property developers should be differentiated from contractors although they may act as contractors as well.

7. Generally, the land and property development process in Malaysia has five stages:

- (a) Acquisition of Land;
- (b) Application for Planning Approval;
- (c) Application for Conversion and Subdivision of Land;
- (d) Application for Building Plan Approval;
- (e) Application for Certificate of Completion and Compliance (CCC), Certificate of Fitness for Occupancy (OC) or Occupation Permit (OP)



GST TREATMENT FOR THE INDUSTRY

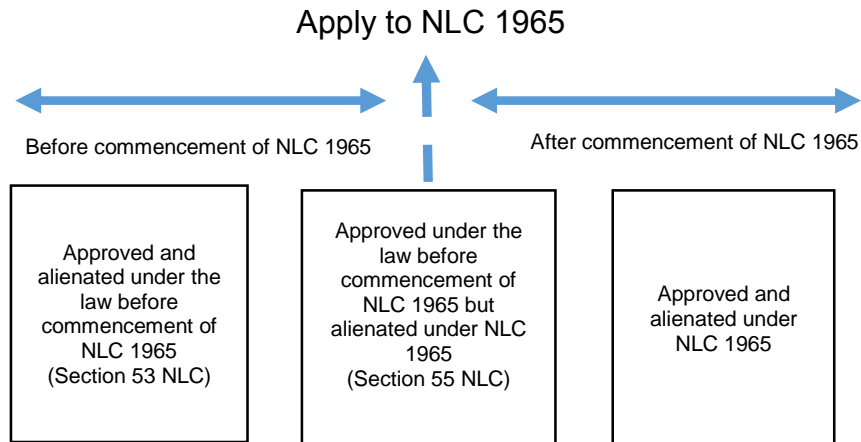
8. For the purpose of GST treatment, this guide adopts the definition and principles provided for under the National Land Code (NLC) 1965, Sabah Land Ordinance 1930 and Sarawak Land Code 1958.

9. The term “land” refers as the surface of the earth and all substances forming that surface and these include everything attached to it, whether on or below the surface. It also includes structures that are attached to the earth or permanently fastened to anything attached to the earth. Hence, applying the definition under these legislations, for the GST purposes, the term “land” includes land and building.

10. Section 52 of NLC provides that the usage of the land can be categorized as agricultural, building and industrial. All supply of land is taxable unless it is exempted under the GST (Exempt Supply) Order 2014. Generally, the GSTA exempt the supply of land for agriculture and residential building while the supply of land for industrial and commercial building is subject to GST.

11. Any land approved and alienated before the commencement of NLC 1965 would be subjected to the provision of **Section 53 of the NLC**. Meanwhile usage of land approved before NLC 1965 but alienated after NLC would be subjected in the **Section 55 NLC**.

CATEGORY USAGE



USAGE OF LAND UNDER SECTION 53 NLC

12. If a land is not subject to any category of land used and there is no express conditions applicable to the land; Section 53 of NLC provides that

- (a) If the land title is issued by the land office under category country, village or town, then the implied land use is agriculture. (Section 53(2) NLC)
- (b) If the land title issued by land registrar under category;
 - (i) village land then the land use is agriculture. (Section 53(2) NLC)
 - (ii) country and town land then the land use is neither agriculture nor industrial. (Section 53(3) NLC)

Use of Land Alienated Before Commencement of NLC 1965

'NIL' CATEGORY OF LAND AND 'NIL' EXPRESS CONDITION			
LAND ADMINISTRATOR	VILLAGE LAND	COUNTRY LAND	TOWN LAND
LAND OFFICE (PTD)	AGRICULTURE	AGRICULTURE	AGRICULTURE
LAND REGISTRAR (PTG)	AGRICULTURE	*NEITHER AGRICULTURE NOR INDUSTRIAL	*NEITHER AGRICULTURE NOR INDUSTRIAL

Note:

* When a land is categorized neither for agriculture nor industrial it is implied that the land is to be used for building.

Usage of Land under Section 55 NLC

13. If a land is not subject to any category of land used and there is no express conditions applicable to the land; Section 55 of NLC provides that

- (a) If the land title is issued by the land office or land registrar under category of village the implied land use is agriculture (Section 55(2) NLC)
- (b) If the land title is issued by the land office or land registrar under category of town or country the implied land use is building (Section 55(2) NLC)

Use of Land Approved Before But Alienated After Commencement of NLC 1965

'NIL' CATEGORY OF LAND AND 'NIL' EXPRESS CONDITION			
LAND ADMINISTRATOR	VILLAGE LAND	COUNTRY LAND	TOWN LAND
LAND OFFICE (PTD)	AGRICULTURE	* BUILDING	* BUILDING
LAND REGISTRAR (PTG)	AGRICULTURE	* BUILDING	* BUILDING

Note:

* When a land usage is categorized under building it can either be for commercial or residential. The final building category shall be determined by the local authority.

SUPPLY OF LAND AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

14. Supply of land can either be in the form of goods or services as prescribed under para 2 of the First Schedule, GSTA.

Supply of Land as Supply of Goods

15. Para 2(1) the First Schedule, GSTA states that:

“In the case of land, any transfer of ---

- (a) the whole right of ownership in land;***
- (b) land under an agreement for the sale of the land;***
- (c) land under an agreement which expressly stipulates that the ownership of the land will pass at some time in the future;***
- (d) any interest under Deed of Assignment; or***
- (e) any strata title,***

is a supply of goods”

16. Any supply made under para 2(1) includes any transfer of ownership in land by way of sale, gift, will etc. whether through an agreement or not and whether the ownership transfer immediately or in future. It also include transfer of strata title under a deed of assignment. All of the above transfers are supplies of goods whether or not the instrument of transfer is through memorandum of transfer or deed of assignment.

Supply of Land as Supply of Services

17. Para 2 (2) of the First Schedule of the GSTA provides that any lease, tenancy, easement, license to occupy land or transfer of undivided share in land is a supply of services.

18. Generally, any supply of land by making a grant of an interest in, right over or licence to occupy land in return for a payment or consideration is a supply of services. Such supply does not involved any transfer of ownership of the land/property.

GST TREATMENT ON THE USAGE OF LAND

19. The imposition of GST on land transaction will be based on its usage, either for residential or non-residential. Generally, any sale, lease or rent of non-residential land will be subjected to GST. The input tax incurred on the non-residential portion is fully recoverable by the registered person. Meanwhile, transactions involve on the land for sale, lease or rent used for residential, agricultural or general use is exempted from GST. The input tax incurred on the residential portion is non-recoverable by the supplier.

Treatment on the Mixed Use Development of Land

20. Any development of land for mixed use requires approval by the relevant authority such as the local authority and the Ministry of Urban Wellbeing, Housing and Local Government (KPKT). The Development Order (*Surat Kebenaran Merancang*) issued by the local authority will indicate the type of land development, either residential, commercial or both. For any residential development, KPKT requires the developer to obtain an Advertising Permit Development License (APDL).

21. Some illustrations of mixed use development are as follows:
- (a) A township development which consists of both commercial and residential properties.
 - (b) Development of SOHO or service apartment together with shopping complex on a commercial land.
22. For mixed use development, GST shall be imposed by the registered person on the part of the non-residential portion only.
23. On the other hand, any supply of rental services on the mix used land will be subject to GST on the commercial portion. If the rental is not split into commercial and residential portion, the registered person will be required to identify the value of the commercial portion based on open market value.

Determination of the Usage

24. Determination of the usage of the land or building is as follows:
- (a) The actual use of the property, its design features and the essential characteristic and attributes of the property (whether for newly completed or existing property); or
 - (b) In the case of vacant/bare land, the usage is in accordance to the land title issued by the relevant Authority.
25. For the purpose of para 24(a), any conversion of the usage of land must be supported with related document such as:
- (a) Title;
 - (b) Sales and Purchase Agreement (SPA);
 - (c) Lease / Tenancy Agreement (if any);
 - (d) Quit Rent;
 - (e) Any other relevant document(s)

26. For the purpose of para 24(b), any conversion of the title of land shall be made by the owner himself to the relevant authority as in accordance with the Section 124 and 124A of NLC.

27. If there is any change in use of the land or building, the registered person is advised to apply for a conversion to the relevant authority.

EXEMPT SUPPLY

28. Item 1 and 2 of the First Schedule of the GST (Exempt Supply) Order 2014 states that the following supply of goods is exempted from GST:

“1. (1) Any land used or intended to be used to the extent of it being used or intended to be used for residential or agricultural purposes, or general use.

(2) The land referred to in sub item (1) which is used –

(a) to the extent for agriculture purposes does not include land being used for hunting and fishing activities; or

(b) for residential purposes includes any parking facilities which is ancillary to the supply of residential building.

2. Any building or premises to the extent of it being used for residential purposes designed or adapted for use or intended to be used as dwelling excluding hotel, inn, boarding house or similar establishment of sleeping accommodation.”

29. Item 19 of the Second Schedule of the GST (Exempt Supply) Order 2014 states that the supply of services as below is exempted from GST.

“19. The grant of any interest or right over land or of any license –

(a) to occupy land or building for residential purposes where the land or building is designed or adapted, for use or intended to be used as dwelling excluding hotel, inn, boarding house or similar establishment of sleeping accommodation;

(b) to occupy land for agricultural purposes excluding the grant of any interest or right over land or license to occupy land to the extent the land is being used for hunting and fishing activities;

(c) to occupy land for or intended for general use.”

Residential

30. A piece of vacant land is treated as residential if the category used is “building” and the express condition in the document title is “*Residential*”. Residential land is a subset of land used for building and includes any vacant residential land, residential building, flat, or tenement used or to be used principally for residential purposes. Any supply for residential purposes is exempted from GST.

31. However, there are buildings used for residential purposes which do not require approval by the Housing Development Act 1966 such as Workers’ Dormitories or Students’ Hostel. For GST purpose, such buildings are treated as residential property if:

- (a) the main purpose (based on approved use) is for accommodation;
- (b) there is permanency to the use or the proposed use of the building for accommodation purpose by a person.

32. The exemption of the residential property also covers the basic features and fittings as described under the Fourth Schedule, Schedule G or H of the Housing Development (Control and Licensing) Act 1966. These include structure, brick, door, window, fencing, electrical installation etc. whereby without such basic features and fittings, the property will be unfit for dwelling. However, such exemption is only given if the basic features and fittings are ordinary installed.

33. Non-basic features and fittings beyond those listed in the Schedule G and H which is installed and supplied in the residential property is subjected to GST. The developer is required to account for GST on the additional features and fittings. For example if a basic supply of the floor finishing of cement as stated in the Sale and Purchase Agreement is upgraded to flooring tiles, the tiles will be subjected to GST.

34. In the case of strata building used as a residential property, any supply of parking facilities (for the use and enjoyment as a residence), whether sold or lease, which is ancillary to the supply of residential building is exempted under Item 1 of First Schedule and Item 19 of Second Schedule of the GST (Exempt Supply) Order 2014. However, any additional parking facilities which is not supplementary to the supply of the residential property will not be treated as ancillary to the building. As such the supply of this additional parking facilities is subjected to GST.

35. As illustration if a standard Sales and Purchase Agreement (SPA) of a supply of residential property is packaged with two parking lots, the whole supply is exempted. An additional parking lot which is not ancillary to this supply will be subjected to GST.

36. Any parking facilities being sold or lease to non-residence of the Strata Building is however subject to GST.

37. The exemption of the supply of or any building used for residential or dwelling purpose and grant of any interest or rights over land or any license to occupy land or building does not include hotel, inn, boarding house or similar establishment of sleeping accommodation. This exclusion covers the grant of any interest in right over or license to occupy holiday accommodation.

38. However, the exclusion in para 37 does not include premises or boarding house that is used to provide accommodation to students in connection with an education institution such as residential colleges on university campuses. In other word, this accommodation is also exempted.

Agriculture Land

39. Agricultural land means any land used for agricultural purposes. Any supply of land used or intended to be used to the extent of it being used or intended to be used for agricultural purposes will be exempted from GST. Such exemption is extended to the portion of the agricultural land used for building(s) that fulfilled the implied conditions stipulated under Section 115(4) of NLC 1965.

Example 1:

ABC Plantation Sdn Bhd provides quarters for his workers and sets up an administrative office in the oil palm plantation/factory. Providing only a portion of agricultural land as quarters for workers and administrative office does not change the usage of the land from agricultural to commercial or residential.

40. Item 19(b) of the Second Schedule of the GST (Exempt Supply) Order 2014 also provides for the exceptions from the imposition of GST on the grant of any interest or right over land used or any license to occupy land for agriculture purposes. As a result of such exemption, any supply of services related to such land and building shall not be subject to the imposition of GST.

41. However, Item 19(b) of the Second Schedule of the GST (Exempt Supply) Order 2014 excludes such land being used for hunting and fishing activities. Thus, the grant of any interest or right over land used or any license to occupy land for hunting and fishing activities is a taxable supply and is subject to GST.

Example 2:

Juliza leases a piece of agriculture land from ZBZ for the purpose of developing a pond for fishing activities. The lease by ZBZ is a taxable supply.

Juliza also leases another piece of agriculture land from ABB for the breeding of tilapia fish for the purpose local market consumption. The lease by ABB is an exempt supply.

42. Any lease of agriculture land under the NLC is a supply of services and is exempted from GST. However, such lease must be differentiated from Crop Lease (“*Pajakan Hasil*”) as the treatment is standard rated.

Land for General Use

43. Basically land for general use means the use of land for the purpose of burial ground, playground or religious building as defined under Item 5(a) First Schedule GST (Exempt Supply) Order 2014.

44. Item 1(1) First Schedule, GST (Exempt Supply) Order 2014 prescribed any supply of land for general use will be treated as an exempt supply of goods.

45. Item 19(c) Second Schedule, GST (Exempt Supply) Order 2014 also treated the supply of right to occupy land or intended for general use as exempt supply of services. Hence, any supply of services involving land for general use will be exempted regardless whether it is used wholly or partly for that purpose.

Land or Building for Burial Purpose

46. The supply of land is regarded as an exempt supply if the usage of the land, whether wholly or partly, is for burial purposes.

47. Any land use for burial ground or crematoria requires an approval from the relevant local authority as required under the Local Government Act 1976. An exemption will be given to the approved area of the land use for such purpose including the building use for funeral parlor, columbarium, administrative purpose, and parking facilities.

48. For any services in relation to ceremonial and tribute, disposition of remains or memorialization, refer to Guide on Bereavement Care Services Industry.

Land for Playground

49. Any land use for playground refers to recreation grounds, playing fields and children's playgrounds constructed for the enjoyment and recreation of the resident of such area but exclude amenities such as public parks, gardens, esplanades, open spaces etc. The supply of such land is exempted from GST.

Land or Building for Religious Purpose

50. Religious building can be construed as a building used or intended to be used for religious purposes. Any land use for religious worship requires an approval from the relevant local authority as required under the Local Government Act 1976. Such land use is treated to be an exempt supply and the exemption is extended to cover administrative building, parking facilities and recreational area within the approved area.

STANDARD RATED SUPPLY

51. Generally, the sale, lease or rent of land other than land for residential, agricultural or general use is subjected to GST. It is to be treated as either taxable supply of goods or services depending on the type of transaction. Where it involves the transfer of ownership of such land, it is a taxable supply of goods and where it involves the grant of any interest or right over land or of any license to occupy such land, it is a taxable supply of service. The GST is chargeable on such supply and shall be accounted as output tax in the GST returns.

52. This treatment covers land with the category title 'industrial' and 'building' as stated in Section 116 (4) NLC 1965 excluding building for residential purposes as in Section 116 (4)(a) NLC.

53. This standard rated treatment also covers:

- (a) any agricultural land used for hunting and fishing activities (as excluded from Para 1(2)(a) First Schedule of the GST (Exempt Supply) Order 2014); or
- (b) any building designed or adapted for use as hotels, inns, boarding house or similar establishment of sleeping accommodation (as excluded from Para 2 First Schedule of the GST (Exempt Supply) Order 2014).

54. Item 5(b) of the GST (Exempt Supply) Order 2014 defines similar establishment as "*premises provided with sleeping accommodation, whether with or without the provision of lodging or facilities for the preparation of food, which is used or held out*

as being suitable for the use of visitors or travellers". Any transaction involving sale, lease or rental of such similar establishment is subject to GST.

Parking Facilities

55. Any supply of commercial land or building used for parking facilities which is ancillary to the commercial premise is treated as a single supply and will be subjected to GST at standard rate. In order to determine such parking facilities is for commercial use, the conditions as follows must be fulfilled:

- (a) the parking is within or in the premises used for commercial activity, reasonably close or within a complex (for example, an industrial park made up of separate units with a "communal" car park for the use of tenants of the units and their visitors), and
- (b) it is used or intended to be used for the commercial premises.

56. However, the supply of parking facilities that is not ancillary to the supply of non-residential land it is treated as two (2) separate supplies:

- (a) supply of non-residential land
- (b) supply of parking facilities

GST is chargeable on such supplies at standard rate. The property developer or the owner of the land or building are required to charge and account for GST when such land or parking facilities is supplied.

57. In the case involving leasing or letting of a non-residential land or building, the supply of such parking facilities is a supply of services and subject to GST regardless whether such land or building is leased under an agreement that includes the provision of parking facilities or such agreement includes an obligation on the tenant to accept a later grant of parking facilities if or when they become available or not. Such supplies are treated as two separate supplies as below:

- (a) supply of leasing of the commercial property
- (b) supply of parking facilities

and GST is chargeable.

Small Office Home Office (SOHO)

58. The taxability of any property will depend on the approved use of the building as stated in the Approved Layout Plan and Development Order (*Surat Kebenaran Merancang*) issued by the local authority. If the building is approved solely for “residential use”, the sale and lease of the property will be exempted. In contrast, if the building is approved solely for “commercial use”, the sale and lease of the property will be subjected to GST.

59. Nevertheless, when a development order is approved by the local authority for a mixed development such as SOHO, the building is intended for a dual purposes of both commercial and residential.

60. Generally for the GST treatment, SOHO is treated as a commercial property as it is developed on a commercial land and as such it is subjected to GST. SOHO can ONLY be treated as residential and exempted from GST if the following conditions are fulfilled:

- (a) Development Order (*Surat Kebenaran Merancang*) is issued for mixed development purposes i.e. for “commercial” and “residential” by the relevant local authority;
- (b) approved layout plan and approved layout building is for dwelling purpose;
- (c) The Housing Development License and the Sale and Advertisement Permit is issued under the Housing Development Act (Control and Licensing) 1966 by the Ministry of Urban, Wellbeing, Housing and Local Government; or under the Housing Development (Control and Licensing) Ordinance 2013 by Ministry of Housing Sarawak or under the Housing Development (Control and Licensing) Enactment 1978 by Ministry of Local Government and Housing Sabah; and
- (d) the property developer and the buyer enter into a sale and purchase agreement for a property governed under the Housing Development Act

(Control and Licensing) 1966 by the Ministry of Urban, Wellbeing, Housing and Local Government; or under the Housing Development (Control and Licensing) Ordinance 2013 by Ministry of Housing Sarawak or under the Housing Development (Control and Licensing) Enactment 1978 by Ministry of Local Government and Housing Sabah.

Service Apartment

61. Service apartments sold for residential purpose is an exempt supply and not subject to GST. However, the GST treatment on secondary sale of the service apartment would depend on the design, usage or intended usage of the apartment, whether for commercial or residential purpose.

62. Service apartments used for commercial residential premises, rented out with central management, multiple occupancy, short term stay offering services such as cleaning, laundry, telephone, utilities are subject to GST. However, the provision of long term accommodation under a lease or rental agreement will be exempted.

Disposal of Assets

Disposal of Assets made by a Company

63. Any disposal of commercial properties is a taxable supply. When a company dispose-off its assets in the form of commercial property, it will be subjected to GST.

64. If a business entity which is not registered by virtue of its annual turnover has not exceed the registration threshold, disposes any commercial property with the value exceeding the value of threshold, the entity is required to register for GST and charged GST on the supply.

Note : * Paragraph 65 to 69 of the Guide on Land and Property Development as at 1 April 2016 are suspended until further notice.

Owning and Sharing of Property(ies) by an Individual

65. In the case of an individual having more than one property and one of the properties is jointly owned by other individual/person, the GST treatment for the properties must be treated separately.

Example 3:

Ali who owned 1 non-residential property stand as a single person (entity). If Ali jointly owned any non-residential property with another person (Muthu), the joint ownership stands as a separate person (entity). If Ali further co-shared a non-residential property with another joint ownership (Muthu and Ah Chong), Ali, Muthu and Ah Chong stand alone as another separate person (entity).

As an illustration,

- (a) Ali owns 1 shop lot in his own name*
- (b) Ali also owns an office lot co-shared in the name of Ali and Muthu*
- (c) Ali also owns a factory lot co-shared in the name of Ali, Muthu and Ah Chong*

In the above scenario, for the purpose of GST treatment, Ali is not considered to own 3 commercial properties and Muthu is not considered to own 2 commercial properties. Separately, Ali owns 1 property; Ali and Muthu (as 1 person) own 1 property and Ali, Muthu and Ah Chong (as another person) own 1 property.

Each separate person will need to undergo the registration test in Table 1 for the purpose of GST taxability.

Supply under GST (Relief) Order 2014

66. By virtue of Section 56 of the GST Act 2014, The Minister of Finance may relieve any person or class of person from the payment of the whole or any part of tax which may be charged and levied on any taxable supply or may relieve any taxable person or class of taxable person from charging and collecting tax on any taxable supply.

67. The following persons specified in the First Schedule of GST (Relief) Order 2014 are relieved from the payment of tax on their acquisition of land or property subject to the conditions as specified in column 4 of the First Schedule:

- (a) Item 1 : The Yang di-Pertuan Agong
- (b) Item 2 : The Ruler of any State including the Ruling Chiefs of Negeri Sembilan, and the Yang Dipertua Negeri of Melaka, Pulau Pinang, Sabah and Sarawak
- (c) Item 3 : Federal or State Government Department

Note : * Item 8 and Item 26 of the First Schedule of GST (Relief) Order 2014 which have previously listed under Guide on Land and Property Development as at 1 April 2016 are being remove as the relief on those items are to be considered on case to case basis.

68. Recipients under the First Schedule are required to get the person designated in Column 5 of the Schedule to sign the Certificate of Goods and Services Tax Relief (CoGSTR) and to issue the CoGSTR to the supplier before the relief takes effect.

69. Item 2, Second Schedule of GST (Relief) Order 2014 relieves any property developer or land owner from charging and collecting tax on any supply of land for the purpose of providing public amenities and public utilities to the government, local authority or any other person in compliance of the requirement by the Government or local authority. The relief facility is only applicable if the building plan is approved by local authority and such project has been approved and fulfilled all the conditions required by the respective relevant authority as listed below:

- (a) Department of Town and Country Planning;
- (b) Public Works Department;
- (c) Department of Drainage and Irrigation; and
- (d) Fire and Rescue Department.

70. The developer or the land owner is required to sign and issue the CoGSTR as required under the Second Schedule of GST (Relief) Order 2014 and shall produce it to the GST officer of the controlling station as stipulated under Para 2(3), GST (Relief) Order 2014.

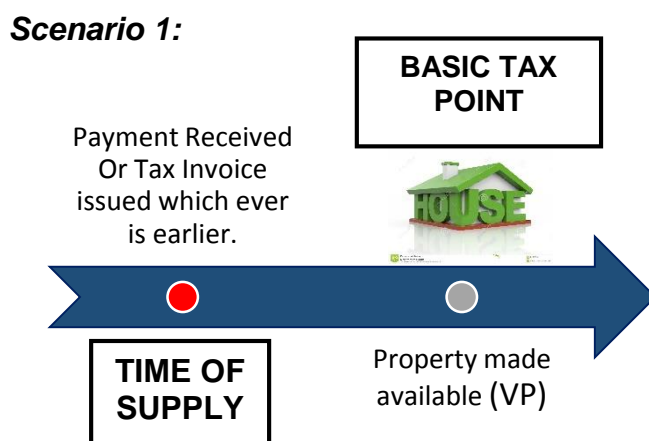
71. Any person who has been granted relief from payment or charging shall keep records and accounts of the land or property acquired or supplied for inspection by any senior officer of GST at any time.

TIME OF SUPPLY

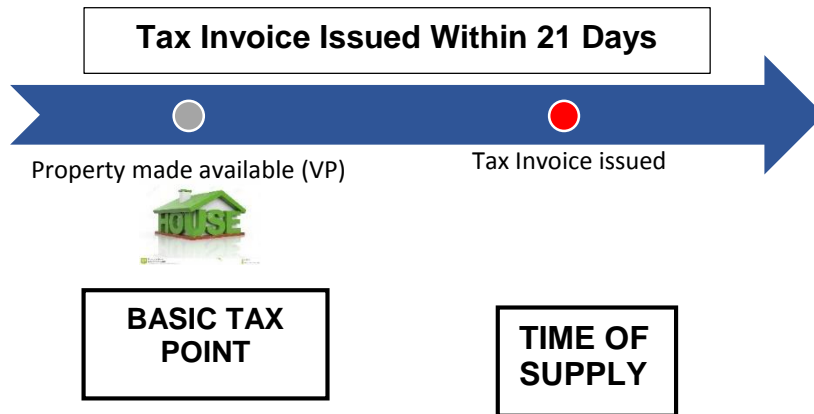
Time of Supply for Goods

72. In general, the basic tax point for the supply of land is when the land is made available. If the payment is received or tax invoice is issued before the land is made available, the time of supply is on the date of the payment received or tax invoice issued, whichever is the earlier. The phrase “made available” refers to when vacant possession (VP) is granted or when the document title (Memorandum of Transfer [Form 14A]) is transferred to the purchaser upon legal completion.

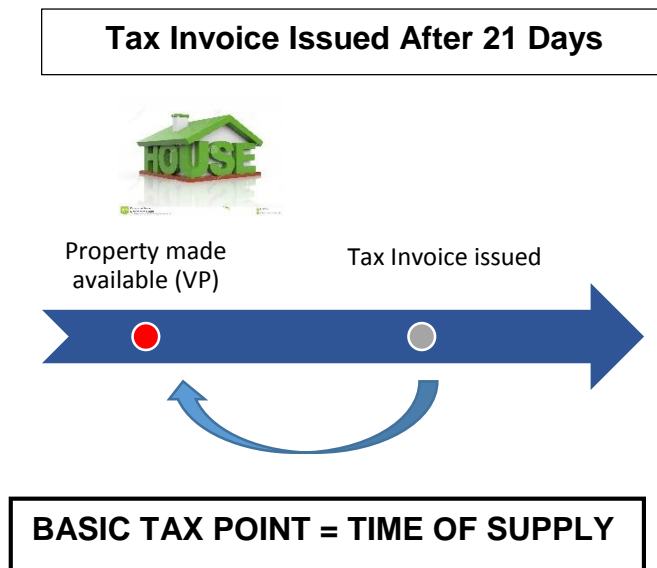
73. Hence, when the land is made available, the supplier (seller) shall issue a tax invoice within 21 days from the basic tax point. The time of supply will be on the date of issuance of the tax invoice. This is regardless of any payment received within the 21 day period. If a tax invoice is not issued within 21 days, then the time of supply will revert to the date when the land is made available or basic tax point.



Scenario 2:



Scenario 3:

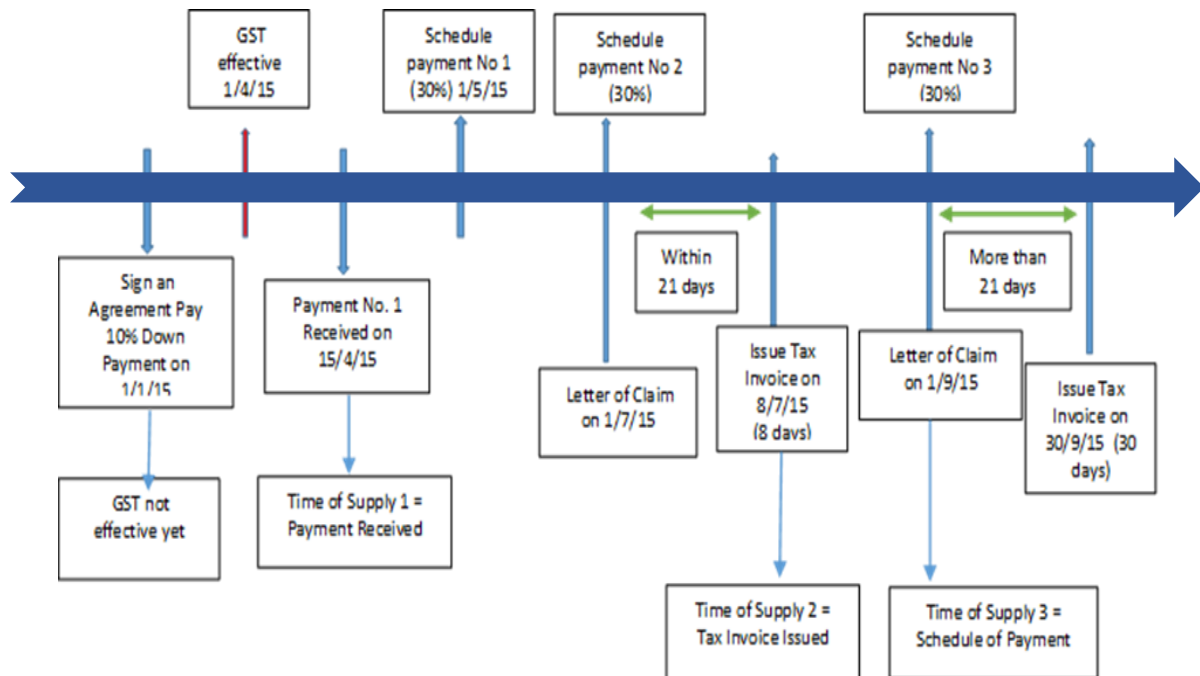


Specific Time of Supply Rules

74. When a consideration for the supply of land is payable periodically or from time to time as prescribed under Regulation 4, GST Regulations 2014 (GSTR), the time of supply of the land is treated as separately and successively supplied at the time when part of the consideration is received or the tax invoice is issued, whichever is the earlier. Thus, the basic tax point of such supply is according to the schedule of payments as specified in the agreement. Therefore, tax invoice shall be issued within 21 days after the basic tax point or the schedule payment is due. If the payment is

received or tax invoice is issued before the basic tax point, the time of supply is at the earliest of either the payment is received or tax invoice is issued.

Diagram 1: Specific Time of Supply Rules



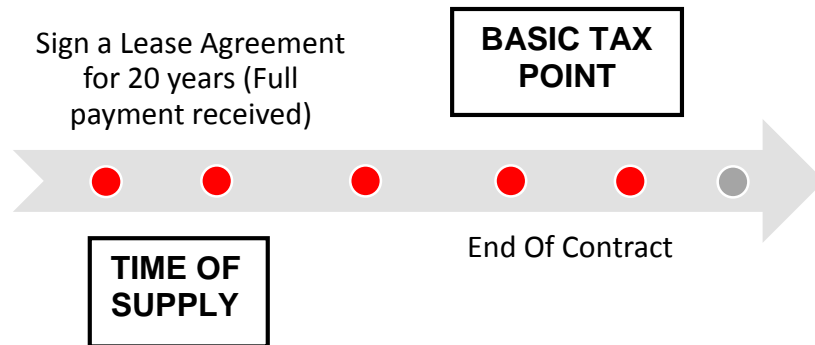
Time of Supply for Services.

75. The time of supply for services is prescribed under Subsection 11(3) of the GSTA. The basic time of supply for services is when the services is performed.

76. Under Regulation 8 of the GSTR, where the supply of services is supplied on a continuous basis for a consideration such as easement, license to occupy the land, rental or lease of a non-residential property, the time of supply in these cases is at the earlier of:

- (a) the payment is received; or
- (b) the supplier issues a tax invoice.

Scenario 4:



VALUE OF SUPPLY

77. The value of supply of goods or services shall be determined in accordance with Section 15 and The Third Schedule of the GSTA. The value of supply in most circumstances depends on the value of the consideration for the supply. A consideration is any form of payment whether in money or in kind, including anything which is itself a supply.

78. If the supply is for a consideration fully in money, the consideration is actually made up of the value of the supply with the addition of the tax chargeable. (Consideration = Value of Supply + GST Value). For example, if the consideration for the sale of a commercial land is RM2,120,000, the value of supply of the land is equivalent to RM2,000,000 with 6% GST amounting to RM120,000.

(Consideration of RM2,120,000 = RM2,000,000 + RM120,000)

When a consideration received is in kind (not in money), the value of the supply shall be an amount with addition of the tax chargeable. Such value with the addition of tax chargeable is to be taken as the open market value.

E.g. A land owner jointly develop a land with a developer and in return he received 5 units of shop lots. Assume the open market value for the shop lots is RM742,000 each

(Value of supply RM700,000 + GST RM42,000). The land owner shall account RM210,000 for GST [(5 units X RM742,000) X 6/106].

Consideration of:

$$\begin{aligned} \text{RM742,000} \times 5 \text{ units} &= (\text{Value of Supply} + \text{GST}) \times 5 \text{ units} \\ &= (\text{RM700,000} + \text{RM42,000}) \times 5 \text{ units} \\ &= \text{RM 3,710,000} \end{aligned}$$

79. For the supply where the consideration is partly in money and partly in kind, the value of supply is to be the amount with addition of the tax chargeable, equal to the aggregate of the amount of money and the open market value of the consideration.

E.g. In a joint development between a land owner and a developer, the land owner supplies land to the developer. The developer has agreed that in consideration the land owner will receive RM530,000 and 10 units of shop lots at the value of RM742,000 each. Then the land owner is required to account for the output tax based on:

- (a) Consideration in money: $\text{RM530,000} \times \text{GST } 6/106 = \text{RM30,000}$
- (b) Consideration in kind: $10 \text{ units} \times \text{Open Market Value (RM742,000)} \times \text{GST } 6/106 = \text{RM420,000}$

Therefore, GST due and payable is RM450,000 (RM30,000 + RM420,000)

80. If the land or property is disposed or transferred as a gift and the value of the gift is more than RM500 per person per year or the land or property is put for private use as stipulated under paragraph 5 First Schedule of the GSTA, the taxable person shall account for output tax on the supply. The value of the supply is the open market value as indicated under the Third Schedule of the GSTA.

81. However, supply of services with no consideration is implied as not a supply. E.g. if a commercial property is 'lease out' for free to a non-connected person, this free leasing is not a supply. Nevertheless, it is a supply of taxable service if the lease is rendered with no consideration to a connected person as stipulated under paragraph

6 First Schedule of the GSTA. The value of the supply is the open market value as indicated under the Third Schedule of the GSTA.

82. When a GST registered developer or land owner publishes, displays, advertises or quotes in any manner the price of his goods or services, it shall be inclusive of GST as required under Section 9(5) of the GSTA. Otherwise, he is required to apply to the Director General for approval if he intends not to publish the price inclusive of GST as required under Section 9(6) and (7) of the same act. If he contravenes the provision, he commits an offence. Refer to Specific Guide on Valuation.

INPUT TAX

83. Generally, input tax is the GST incurred by a taxable person in the course or furtherance of business on the purchases or acquisition of goods and services for the purpose of making a taxable supply. These business purchases and acquisitions would include goods or services:

- (a) purchased or acquired locally; and
- (b) imported.

84. The GST registered person may claim the input tax incurred in a particular taxable period by offsetting it against the output tax of the same taxable period. A refund will be made to the claimant if the amount of input tax is more than the amount of output tax, provided that all conditions under Section 38 of the GSTA is fulfilled.

85. For the property developer, any input tax incurred in the purchases of goods and services in the course or furtherance of his business in developing non-residential properties is claimable.

86. On the other hand, input tax incurred in the development of residential properties is not recoverable. This will include any purchases of basic features and fittings listed under the following:

- (a) Peninsular of Malaysia – Part IV (Clause 13) of the Schedule G or H of the Housing Development (Control and Licensing) Act 1966

- (b) Sarawak – Fourth Schedule (Clause 12) of the Form B or (Clause 13) of the Form C of the Housing Development (Control and Licensing) Ordinance, 2013.
- (c) Sabah – Third Schedule of the Schedule G or H of the Housing Development (Control and Licensing) Enactment 1978.

87. Nevertheless, the input tax incurred on non-basic features and fittings beyond those that are listed above and are provided with the residential property is claimable as these extra fittings are taxable supply which is subject to GST.

88. While input tax which is wholly attributable to taxable supply is claimable and input tax which is wholly attributable to an exempt supply is not recoverable, any input tax which is not directly attributable to either taxable or exempt supply (known as *residual input tax*) requires apportionment and only the portion related to taxable supply is claimable. Examples of the residual input tax for the mix supply developer includes rental, utilities charges, professional fees, telephone bills etc. Refer further to the Specific Guide on Input Tax Credit for further clarification. To apportion the residual input, Regulation 39 of the GSTR provides a standard formula to compute the amount of input tax which a mixed supplier shall be entitled to claim. Refer to GST Guide on Partial Exemption for further clarification.

89. Besides the standard method provided under Regulation 39 (4), the mixed supplier may opt for an alternative method to apportion his residual input tax incurred. However, it is subject to approval by the Director General of Customs. The mixed supplier is required to write in officially to the Director General of Customs together with supporting documents as below:

- (a) Company's background and business activity;
- (b) Declaration whether company is making/has made any supply (whether exempt or taxable);
- (c) List of taxable supply(s) and its value (actual or projection) ;
- (d) List of exempt supply(s) and its value (actual or projection) ;

- (e) List of residual general expenses attributable to taxable and exempt supply and its value;
- (f) Simulation of input tax apportionment using standard method (indicate whether using actual or projection value) ;
- (g) Simulation of input tax apportionment using alternative method (indicate whether using actual or projection value); and
- (h) Other related supporting document.

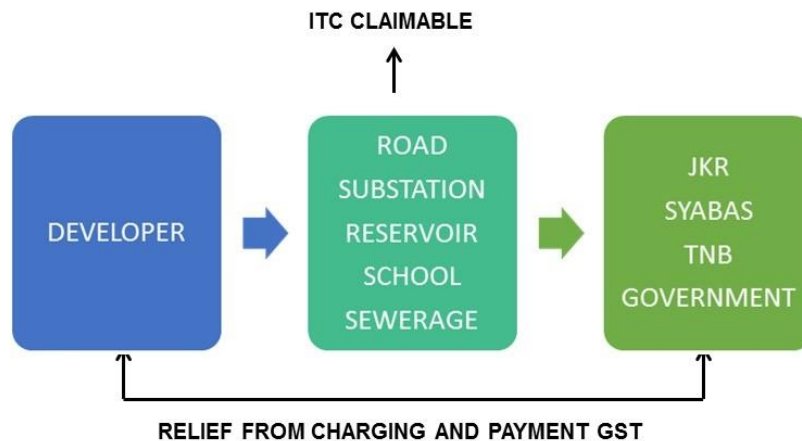
90. In respect of each taxable period, the residual input tax may be recovered only when there is a taxable supply (output). If in that particular taxable period, there is no output tax, thus the residual input tax incurred is not claimable. This situation applies to both standard and alternative method.

91. While any input tax attributable to exempt supply is not claimable, in the case of exempt supply of land for general use, Regulation 42 of the GSTR however treats input tax attributable to this supply of land as being attributable to taxable supply. This allows the GST registered person who supply land for the purpose of general use (burial ground, playground or religious building) to claim such input tax if the following conditions are fulfilled:

- (a) Such supply is made by a taxable person to public body (government, state government, local authority or statutory body); and
- (b) The supply of goods is in compliance with the requirement enforced by the public body;

92. Any supplier who is supplying land or building to recipients who are given relief under First Schedule of GST (Relief) Order 2014 and any developer or land owner who is being relieved from charging his supply of land under Second Schedule of GST (Relief) Order 2014 may recover the input tax incurred in such supply.

NON SUPPLY



93. Land under charge (mortgage) or lien is not a supply. When a borrower charges the land title to the lender to obtain a loan, it is regarded as security to secure for a loan. During this period when the land is under charged, there is no transfer of ownership of the land. Therefore, it is not a supply.

94. However, if there is a default in repayment of the loan by the borrower to the lender, any transfer of land under charge (mortgage) or lien is a supply of goods. Para 2(3) of the First Schedule of the GSTA provides:

“Where there is a default in payment under a security relating to land, the transfer of such land shall be treated as supply of goods”.

95. When the borrower fails to honour the loan, by virtue of Paragraph 5(7) in the First Schedule of the GSTA, the land is deemed to be supplied to the lender by the borrower in the course or furtherance of his business. The lender will sell the land under the power of sale in satisfaction of debt or foreclosures on the land of the borrower. Section 65(5) of the GSTA provides that when the lender, whether or not he is a taxable person sells the land in satisfaction of the debt owed by the borrower who is a taxable person, he shall be liable for the tax due and payable on the supply.

96. If the lender is a taxable person he shall account the GST for the sale of land in his GST-03 return. On the other hand, if he is not is a taxable person he shall account the GST in the GST-04 return and disclosed the details of the sale in the GST-04A Form.

97. In the case of caveat of land, entering or withdrawal of caveat is not a supply by the lender nor the borrower. A caveat is entered by a person who has interest in the land. It is a formal notice of an unregistered interest in the land as provided under the Torrens system of land title. Once a caveat is lodged on the registered document of title, it prevents the registrar from recording any dealing affecting the estate or the interest claimed. The caveat shall continue in force until it is cancelled by the Registrar by way of his own motion, or on an application or court order.

98. Normally, in the case of strata title building, the Development Order (*Surat Kebenaran Merancang*) and Approved Layout Plan issued by the authority requires the property developer to provide such public amenities or utilities such as gymnasium, swimming pool, mosque or multi-purpose hall in the common area of the strata building. When the developer hand over the basic amenities or utility in common area of the strata building to the Joint Management Body (JMB) or Management Corporation (MC), the supply is treated as a non-supply because such supply is intended for the use and enjoyment of the parcel owners.

99. By virtue of the Strata Management Act 2013, property developer is not required to be registered and the supply of his services is treated as not a business when:

- (a) He is responsible to maintain and manage the land, building and common area (by virtue of Section 9 of the Act);or
- (b) He is required to manage the maintenance fund and run of the completed development

during the interim period before a JMB or MC is formed.

100. Such management and maintenance services in this period is not a supply and any input in relation to it is not claimable. These services on the strata building done

by the property developer during the interim period is due to JMB or MC has not been established.

101. Such treatment also applies to Sabah and Sarawak even though The Strata Management Act 2013 is not applicable in Sabah and Sarawak.

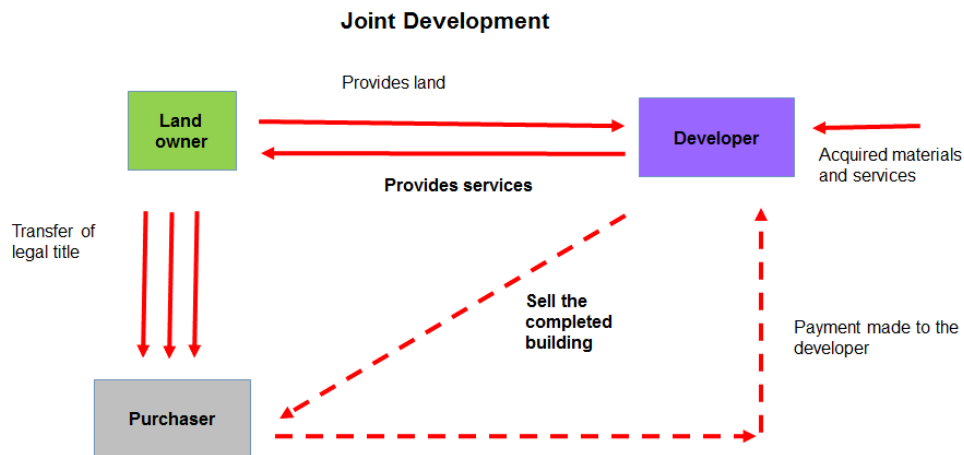
JOINT DEVELOPMENT (JV)

102. In Malaysia, JV is commonly used in property development where two or more persons undertake to develop a specific piece of land. JV is usually formed through the legal procedures of creating a memorandum of understanding, a joint venture agreement, any ancillary agreements, and obtaining regulatory approval.

103. Section 69 of the GSTA is only applicable to joint venture in petroleum upstream industry under Production Sharing Contract (PSC) signed with Petroliam Nasional Bhd (PETRONAS). It is not extended to the property sector because the conditions and mechanism of operations stipulated under PSC do not jive with the property JV contract.

104. However, under the Item 7, DG's Decision 4/2014 (amended on 31/3/2015) has elaborated on the role of the JV in property development. In property development, the parties involved in JV is treated as two separate persons with separate business. They incurred separate acquisitions and make separate supplies. Hence, they are liable to be registered separately, submit different returns, tax invoices and liabilities and claim their own input tax credit. Therefore, they are not jointly and severally liable on any of the cause of action.

105. The illustration below shows the common "tripartite agreement" between the land owner, property developer and purchaser.



106. Generally under the JV Agreement, the land owner does not participate in the development activity(s). The land owner provides land and gives the rights to use his land under the Power of Attorney Act 1949 (ACT 424). He is entitled to a consideration in a form of kind or monetary as stipulated in the agreement.

107. If the developer is given the whole ownership for the supply of land it is treated as a supply of goods. If the land is used or intended to be used for residential purposes it is treated as an exempt supply under the Item 1 First Schedule of GST (Exempt Supply) Order 2014. However, if he is given the grant of any interest or rights over the land such supply is treated as a supply of services. Similarly, if the land which is hold in possession by the developer is for residential purpose it is treated as an exempt supply under the Item 19 Second Schedule of GST (Exempt Supply) Order 2014.

108. The property developer is supplying development services and shall on its own cost and expenses be responsible for the works in connection with the development project.

109. The parties (if registered) are subject to:

- (a) file two (2) separate (land owner and developer) GST-03 return;
- (b) issue separate tax invoice for the supplies; and
- (c) make his own acquisitions and input tax claim (if any).

110. The GST treatment below is applicable in the case of JV agreement between a land owner and a property developer in relation to commercial, mix development and residential development as prescribed under the Item 7, DG's Decision 4/2014.

Types of Joint Venture in Malaysia

111. In Malaysia, there are many types of joint development. The common JV model and the GST treatment are as below.

Model 1: Joint development under land development agreement entered by the land owner and property developers.

(a) In Relation to Commercial Properties

- (i) Joint development under land development agreement entered by the land owner and property developers.

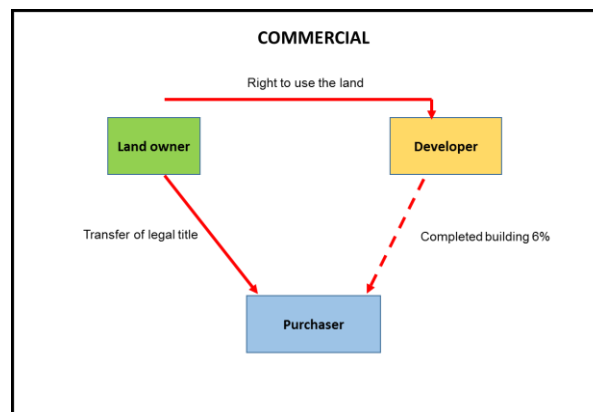
In this joint development, usually the land owner enters into JV agreement with a property developer where such agreement allows the property developer by virtue of Power of Attorney Act the right to develop the land into non-residential or residential property. The Power of Attorney (PA) gives the contractual/beneficiary or equitable right (depend on terms and agreement entered by parties) to the property developer (as the contractual/beneficiary or equitable owner) to construct the buildings, market and collects the money from the purchaser even though the legal title is still held by the land owner. The land owner will receive his portion of the proceeds as the consideration.

- (ii) For the purpose of GST, by giving the right to use or develop such property to the developer, the land owner is making the supply of services to the property developer. Such supply is subject to GST. Here, as the result of such JV agreement, the property developer is the contractual/beneficial or equitable owner of such land even though the legal ownership of the land will finally be transferred

by the land owner to the purchaser (by completing the Form 14A as required by the NLC).

- (iii) The land owner who is a GST registered person must issue a tax invoice and charge GST to the developer on the supply of right to develop the land or on the supply of land and account for the GST. The value is based on the amount of land owner's entitlement (as per the terms of such land development agreement entered by parties). The time of supply is at the earlier of the payment is received or a tax invoice is issued as required under section 11(3) of the Act.
- (iv) For example, under the agreement both parties agreed to build 100 units of shop office. The agreement stipulates the agreed profit sharing is 30:70 where the land owner will get 30 units of the shop office and a sum amount of money and the property developer received 70 units of the shop office. For the purposes of GST, land owner shall charge and account for GST on the supply of right to use or develop the land or supply of land based on the value of the 30 units of the shop office and a sum of money received. The time of supply is when the land owner receive the money and the vacant possession of each of the 30 units of the shop office.
- (v) The Power Attorney Act 1949 (ACT 424) allows the developer to deal with the property including to sell the property on behalf of the land owner. Normally, JV agreement allows the developer to collect the money from the purchaser. As the person holding whether a contractual, beneficiary or equitable right, the property developer is empower to deal with the property. Hence, the property developer (if registered) is allowed to issue a tax invoice on the supply of the completed property under his name at the transaction value and account for the GST. The time of supply for the transaction is at the earlier of the payment is received or the tax invoice is issued.

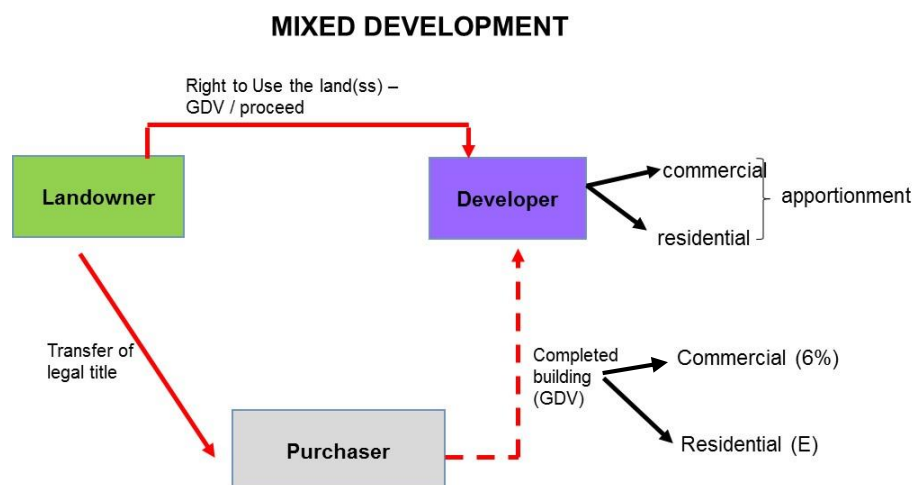
- (vi) The developer may claim the GST paid on his acquisition of rights to use the land or supply of land from the land owner and the cost incurred in all inputs that are directly used for the development of the commercial properties.
- (vii) In addition, if the land owner appoints the developer to sell the 30 units of shop office on his behalf, the developer must issue a tax invoice under his name, charge GST to the purchaser and account for the output tax. In this case, the time of supply is as determined under Regulation 4 of the GSTR.
- (viii) The property developer is also required to issue a tax invoice on the supply of marketing services to the landowner and account for GST on the commission he received. The time of supply for such services is when the services is performed.



- (b) In Relation to Mixed Supplies (Commercial and Residential Properties)
 - (i) If the parties established the approved use of the land is for the development of both residential and commercial (supported by Development Order (*Surat Kebenaran Merancang*) and Approved Master Layout Plan as documentary evidences), the land owner must issue a tax invoice detailing both residential and commercial portion of the transaction. He is required to charge

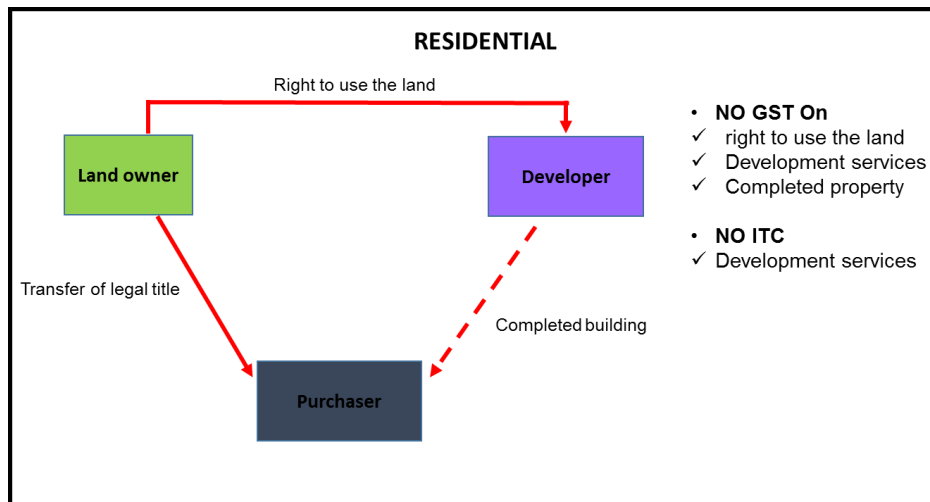
GST on the commercial portion to the developer and account for the GST. The value is based on the amount of land owner's entitlement (as per the terms of the agreement entered by the parties) for the supply of rights to use the land or the supply of the land which relates to commercial portion only based on land acreage or square meter. The time of supply is when a payment is received or tax invoice is issued whichever is earlier.

- (ii) The developer must issue a tax invoice under his name, charge GST to the end buyer on the supply of the developed commercial properties at the transaction value and account for the GST accordingly. The time of supply is when a payment is received or tax invoice is issued whichever is earlier.
- (iii) The developer can claim input tax incurred in relation to those inputs directly used for the supply of the commercial properties but he cannot claim the input tax incurred in relation to those inputs directly used for the supply of the residential properties. Hence, he must apportion the input tax for residual inputs incurred for both residential and commercial properties based on apportionment formula (refer to Guide on Partial Exemption).



- (iv) For example, under a JV agreement both parties agree to build 70 units of houses and 30 units of shop office. The agreement stipulates the agreed profit sharing is 30:70 and the land owner will get 20 units of the houses, 10 units of shop office and a sum amount of money and the property developer received 50 units of the houses and 20 units of shop office. Since the approved use of land is established by parties and supported by the Development Order (*Surat Kebenaran Merancang*) and Approved Layout Plan on the supply of right to develop the land (PA), the land owner shall charge GST to the developer based on the amount of land owner's entitlement which relates to commercial portion only.
- (v) As the property developer is empowered to deal with the property, he is required to issue a tax invoice under his name on the supply of both completed residential and commercial property, at the transaction value and account for the GST on the commercial portion.
- (vi) The property developer can claim the input tax incurred in relation to those inputs which is directly used for the supply of the 30 units of the shop office. The input tax for the supply of 70 units of the houses is not claimable. The property developer must apportion the input tax incurred for residual inputs of both residential and commercial properties based on apportionment formula.
- (vii) In addition if the property developer is appointed by the land owner to sell his entitlement (30 units of completed buildings i.e. 20 units of the houses, 10 units of shop office), the developer must issue a tax invoice under his name on the sale of the non-residential properties, charged GST to the purchaser and account for the output tax. The property developer is required to issue a tax invoice to the land owner on the supply of marketing services and account GST for the commission received (if any). The time of supply for such services is when the services is performed as determined under Section 11(3) of the Act.

- (c) In relation to residential development, GST treatment is as below:
- (i) The land owner (if registered) cannot charge GST to the developer on the supply of rights to use the land or supply of land since it is an exempt supply. No tax invoice shall be issued to the developer on such supply.
 - (ii) The sale of residential property to the purchaser by the developer is an exempt supply. As such no GST is chargeable and no input tax attributable to the exempt supply is claimable.
 - (iii) If the landowner is entitled for part of the developed properties and the property developer markets the properties on behalf of the land owner, the property developer must charge GST on the marketing services that he rendered to the land owner. The property developer cannot claim input tax incurred for the supply of the residential properties.
 - (iv) If the residential property is furnished with non-basic features and fittings beyond those listed in the Schedule G or H of Housing Development Act 1966, such supply is subjected to GST. The developer is required to charge GST to both land owner and purchasers. He is required to account for output tax on the additional features and fittings when the vacant possession of the property is given. The input tax incurred for the supply is claimable.
 - (v) In all circumstances, the selling price of the property includes the value of the features and fittings furnished. By virtue of Section 9(5) of the GSTA, such price quoted, displayed, advertised or published by the developer shall include the tax that is chargeable on any taxable item incorporated or affixed into the property.



(d) In relation to land usage that is not established

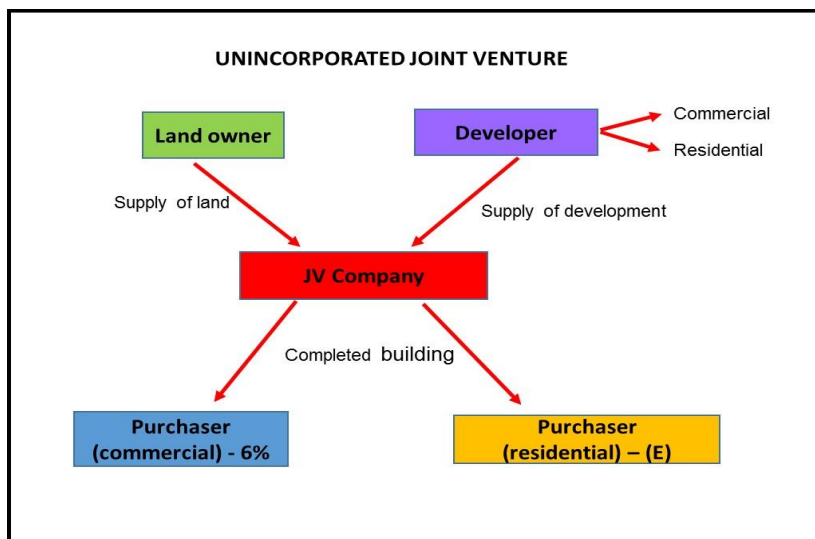
- (i) In the case where the approved used of land has not been established by the parties (There is no development order and the JV agreement is silent on the approved used of the land), if the category of the land title and its expressed condition is building, the land owner (if registered) shall charge GST to the property developer based on the amount of land owner's entitlement (as per the terms of such land development agreement entered by parties) for the supply of rights to use the land or the supply of land. The time of supply is when a payment is received or tax invoice is issued whichever is earlier, as regulated under Section 11(3) of the GSTA.

Model 2: Land owner and developer set up an unincorporated joint venture to develop the land.

- (a) Under this model, the land owner and the property developer team up as one entity to form an unincorporated JV. The supply is made by the unincorporated JV and it is required to be registered for GST.
- (b) The land owner is granting the right for the unincorporated JV to develop the land. The ownership of the land still belongs to the land owner. Therefore,

- (i) in the case of non-residential property, such land owner is required to charge the unincorporated JV and account for GST on the full amount of the consideration of the supply of right to develop the land. Supply of right to use or develop the land is a supply of services. Hence, the time of supply is when the service is performed as according to Section 11(3) of the Act.
 - (ii) in the case of residential property, the land owner is not required to charge GST to the unincorporated JV on the supply of right since the land is intended to be used for residential purposes.
 - (iii) if the land is intended to be used for mixed-development, the land owner is required to apportion the value of the supply of right to use the land and charge GST on the commercial portion of the land.
- (c) Meanwhile, the property developer who is providing development services is also required to charge the unincorporated JV and account for GST on such supply. The value of such development services is at Gross Development Cost (GDC). The time of supply is when the services is performed.
- (d) The unincorporated JV as the person holding a contractual/beneficiary or equitable right (depend on the JV agreement between the parties) over the land, can claim input tax credit on:
- (i) acquisition of rights to use the land or supply of land from the land owner;
 - (ii) the cost of development services charged by the developer; and

- (iii) other cost incurred under the name of the unincorporated JV in relation to those directly used for the development of the commercial properties.
- (e) As contractual/beneficiary or equitable owner, the unincorporated JV has the right to obtain the full ownership of such property or the property interest. Hence, the unincorporated JV is allowed to issue a tax invoice on the supply of the completed property under its name at the transaction value and account for the GST.



112. Other types of JV illustrations are as below:

Scenario 5:

A GST registered land owner (AA) enters into an agreement with BB Developer (BB) to develop the land. Parties agree to develop mixed development and joint venture agreement be signed by the parties. AA agrees to issue PA to BB allowing BB to deals with the land. Then, BB enters another JV agreement with a financial institution (CC) and such financial institution agreed to jointly finance the project. BB markets the property directly to both purchasers of the residential and the commercial properties. The legal title is finally issued and transferred by AA directly to the purchasers.

There are 2 separate supplies involving 2 separate JV agreements:

(a) First Supply

(i) Supply of right to develop the land (PA) by the land owner (AA)

In the case where:

- the approved used of land is established by the Parties (supported by *Surat Kebenaran Merancang* and Approved Master Layout Plan as documentary evidences), AA shall issue a tax invoice and charge GST to BB based on the amount of AA's entitlement (as per the terms of the agreement entered by parties) for the supply of rights to use the land or the supply of land which relates to commercial portion only; and
- if the approved used of land has not been established by the Parties, AA shall issue the tax invoice and charge GST to BB based on the amount of AA's entitlement (as per the terms of such land development agreement entered between AA and BB) for the supply of rights to use the land or the supply of land.

In both scenario AA is liable to account for the GST.

(ii) BB as the person holding whether a contractual/beneficiary or equitable right (depending on the JV agreement between the parties) over the land can claim input tax incurred in relation to those inputs directly used for the supply of the commercial properties. BB cannot claim any input tax incurred in relation to those inputs directly used for the supply of the residential properties. BB must apportion the residual input tax incurred for both residential and commercial properties based on apportionment formula.

(iii) Supply of the property by BB to the purchaser

Even though the legal title of land is held by AA, by entering the JV agreement and through the PA, BB is the contractual/beneficiary or equitable owner of the land. The provision under the JV agreement allows BB to deal with, market and sell the property. BB has to charge the GST to the purchaser on the commercial portion based on the selling price.

(b) Second Supply

The funding of the project by CC is a financial supply which is exempted through the GST (Exempt Supply) Order 2014. No GST will be imposed on such supply made by CC to BB. However, the processing fee for the provision of fund is taxable and subject to GST.

Scenario 6:

In the JV agreement involves land owns by the Government, usually the government will give the right to use the land to a specific government entity incorporated to handle special government dealings [Special Purpose Vehicle (SPV)] which is usually a Statutory Body or a Government Linked Company. The GST treatment on such supply is out of scope.

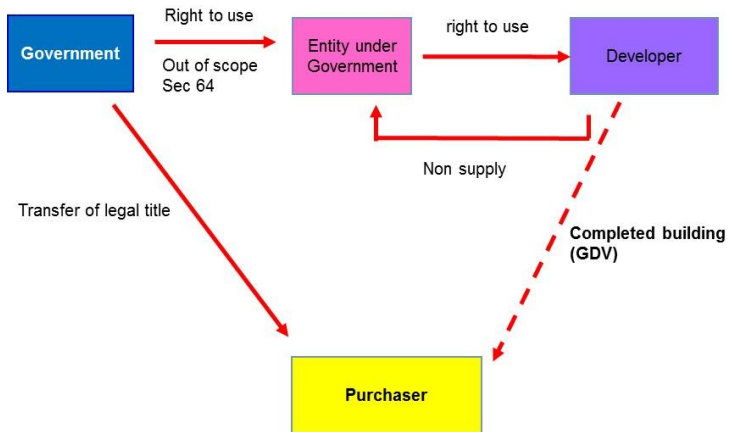
After obtaining the right to use the land from the government, the SPV will proceed to deal with the land. The SPV is not a government define under Section 64 of GSTA. As such if the SPV annual taxable turnover exceeded the prescribed threshold, it is required to be registered for GST.

The SPV will enter a JV agreement with a developer to develop such land through a PA. The JV agreement will stipulate the parties' entitlement e.g. profit sharing ratio of 40:60. The SPV will surrender the land to the developer for development and in return it will receive a portion of the profits from the development of the lands.

The GST treatment for JV agreement involving the SPV and the developer is as follows:

- (a) the supply of right to develop the land (PA) by the SPV to the developer is a taxable supply (if the land is to be used for commercial development). However the Minister may grant a specific relief for such supply through the provision under Section 56(3) GSTA.
- (b) the property developer as the person holding a contractual or beneficiary right (depend on the JV agreement between the parties) over the land, can claim input tax credit on:
 - (i) acquisition of rights to use the land or supply of land from the SPV (if taxable);
 - (ii) in the case of commercial development, all costs incurred in relation to the development.
 - (iii) in the case of mixed development, any costs incurred in relation to those inputs directly used for the supply of the commercial properties. Such property developer must apportion the input tax incurred for both residential and commercial properties (residual) based on apportionment formula and input tax incurred in relation to those inputs directly used for the supply of the residential properties are not claimable; and
 - (iv) in the case of residential development, any input tax incurred in relation to those inputs directly used for the supply are not claimable.
- (c) As the person holding contractual/beneficiary or equitable right, the property developer are empowered to deal with the property. Hence, in the case of commercial property, the property developer is allowed to issue a tax invoice on the supply of the property under his name, charge and account the GST based on the selling price.

JV WITH THE GOVERNMENT (TAXABLE)



FREQUENTLY ASKED QUESTIONS

Registration

Q1. As a property developer, I supply both commercial and residential property. Am I liable to be registered?

A1. As property developer, you are making both taxable and exempt supply. Any supply of commercial property is a taxable supply whereas supply of residential property is an exempt supply. Hence, you are required to be registered under GST if your annual taxable turnover from the supply of commercial property has exceeded the threshold of RM500,000 in the past 12 months or within the future 12 months period.

Q2. I am a property developer who develops fully residential property. Do I need to be registered?

A2. Supply of residential property is an exempt supply. Since you are making wholly exempt supply, you are not liable to be registered. However, you may apply for registration if you are supplying any land for :

- (a) general use to any public body where the supply is made in compliance with the requirement enforced by any public body (as per Regulation 42 of the GSTR)
- (b) providing public amenities and public utilities to the Government, local authority or any authorized person in compliance of any requirement by the Government or local authority (as per Item 2, Second Schedule GST (Relief) Order 2014).

Since you do not make any taxable supply, you may apply for voluntary registration.

Place of Supply

Q3. If I am registered in designated area (Langkawi, Labuan and Tioman) and making a supply of non-residential property in Langkawi, do I have to account for GST?

A3. No tax will be charged if the supply of goods is made within or between the designated areas.

Q4. If my office is registered in the designated area and supply non-residential property in Johor, do I have to account for GST?

A4. Yes, these supplies are subject to GST.

Q5. If a local developer in Penang who develop and sell shop lots in the designated area, is the supply subject to GST?

A5. No, the supply takes place in Designated Area therefore no tax will be charged.

Time of Supply and Accounting Period.

Q6. When and how do I account for GST on the supplies of uncompleted non-residential property under progressive payment contracts?

A6. You have to account for GST at the various stages of the progressive/scheduled payment as stipulated in the agreement at the earlier of the following:

- (a) when tax invoice is issued; or
- (b) when payment is received as provided in the Regulation 4 of the GSTR

Example 4:

A purchaser enters into an agreement to buy a commercial building which is under construction. The price of the building is RM318,000 (inclusive of GST). The payment is scheduled for four successive interval payment and the respective amounts to be paid are as follows:

Scheduled payment period	Amount (<i>inclusive of GST</i>)	GST-03 Submission Period (Monthly/Quarterly) GST Due and Payable
1 st payment (1 April 2016)	RM 42,400.00	31 May 2016 / 31 July 2016 RM2,400.00
2 nd payment (1 July 2016)	RM 63,600.00	31 Aug 2016 / 31 Oct 2016 RM3,600.00
3 rd payment (1 October 2016)	RM 84,800.00	30 Nov 2016 / 31 Jan 2017 RM4,800.00
4 th payment (1 January 2017)	RM 127,200.00	28 Feb 2017 / 30 April 2017 RM7,200.00

The property developer subsequently issues a tax invoice at each successive period. The GST chargeability is as follows:

1st interval (1 April 2016)

Tax invoice = RM 40,000.00

GST (40,000 X 6%) = RM 2,400.00

2nd interval (1 July 2016)

Tax invoice = RM 60,000.00

GST (60,000.00 X 6%) = RM 3,600.00

3rd interval (1 October 2016)

Tax invoice = RM 80,000.00

GST (80,000.00 x 6%) = RM 4,800.00

4th interval (1 January 2017)

Tax invoice = RM 120,000.00

GST (120,000.00 x 6%) = RM 7,200.00

The property developer is required to account for GST based on the date of the tax invoice is issued or payment is received, whichever is the earlier. The GST submission period is illustrated in the table as above.

Q7. On 9 April 2015, MS Developers has signed a Sale and Purchase Agreement to purchase a piece of industrial land (2 acres) worth RM10 million with ZMM Sdn Bhd wherein the conditions precedent agreed by the parties are as follows:

- (a) Upon signing the SPA, MS Developers is required to pay 10% down payment. The remaining 90% of the balance payment shall be paid within 90 days.**
- (b) Vacant possession of the land will be surrendered by ZMM Sdn Bhd only after a change in ownership of the land has been approved by the authorities.**

What is the time of supply for this transaction?

A7. In general, the basic tax point for the supply of land is when the land is made available. The time of supply for the sale of the industrial land is when the land is made available to the buyer or the transfer is granted or when the document title (Memorandum of Transfer [Form 14A]) is transferred to the purchaser upon legal completion.

In this case, if ZMM Sdn Bhd issues a tax invoice or receive payment before the land is made available to MS Developer then the time of supply for this transaction is the time when ZMM Sdn Bhd issues a tax invoice or receive payment whichever is the earlier. Hence, upon signing the SPA, MS Developer made the 10% down payment on 9 April 2015, ZMM Sdn Bhd is required to account for GST on such payment that he received. The time of supply is on

the date of the payment received. Meanwhile, the basic tax point for the balance sum of 90% is on the of the 90 days term (i.e 5 July 2015). However, if MS Developer made payment on 15 June 2015, the time of supply changes to the date when he received the payment (i.e 15 June 2015).

If the 90 days term is due and within 21 days, ZMM Sdn Bhd issue a tax invoice then the time of supply is on the date of the tax invoice. However, if he issue the tax invoice after 21 days from the 90 days term due then the time of supply is revert to the date of basic tax point (5 July 2015).

Q8. We are the township developer who has an on-going project for 50 units shop office with the individual title issued. Upon the completion of loan documentation, we shall effect the transfer of title (MOT) to the purchaser/owner even though the property is still under construction. Will the date of the transfer of title for the property be treated as the time of supply?

A8. In this scenario, even though the transfer of title is effected, vacant possession of the building is not yet surrendered. The time of supply of uncompleted non-residential property under progressive payment contracts is provided under Regulation 4 of the GSTR. You have to account for GST, at the various stages of the progressive/scheduled payment based on the time of supply which is earlier of the following:

- (a) when tax invoice is issued; or
- (b) when payment is received.

Booking Fee, Tender and Contract Deposits

Q9. Do I have to account for GST on receipt of payment for a booking fee?

A9. If the booking fee forms part payment of the total consideration payable by the recipient, GST will be chargeable at the time of payment of the booking fee. On the other hand, if the deposit is used as security and will be fully refunded upon completion of services, no GST will be chargeable.

Q10. Are tender and contract deposits subjected to GST?

A10. Below are some of the scenarios involving tender and contract deposits:

(a) Sale of tender documents

A non-refundable payment which is a consideration for the sale of tender documents is subject to GST and tax has to be accounted for at the earlier of when payment is received or tax invoice is issued.

(b) Security deposit

Security deposit is a payment of deposit which is taken as a security against the contract of service provided. If the terms of the contract requires the deposit to be refunded upon the completion of the contract, the deposit is not a consideration for a supply and thus not subject to GST.

(c) Deposit as advance payment

A deposit paid in advance which is intended to be used to offset against the future payments (partly or fully) once the supply has been made, falls within the scope of GST and tax has to be accounted for at the earlier of when payment is received or tax invoice is issued.

Example 5:

A property developer, DZ Sdn Bhd, calls for main contractors to tender for a large scale project in Puchong. Interested tenderers have to purchase the tender documents containing details of the project (e.g. plans, specifications, schedule of quantities) for a fee of RM250. This fee is non-refundable and is subject to GST as it is a sale of tender documents. GST is chargeable and has to be accounted at the earlier of when payment is received or tax invoice is issued.

DZ Sdn Bhd then awards the building contract to the main contractor, MS Sdn Bhd. MS Sdn Bhd is required to submit a security deposit in the form of a banker's guarantee of 5% of the contract sum for non-

performance. This deposit will be refunded upon the completion of the contract. This security deposit received by the developer is not subject to GST as there is no supply made.

Since this is a large-scale project, DZ Sdn Bhd is contracted to give MS Sdn Bhd an advance payment (akin to a deposit) which will be used to offset against future progress payments. GST should be charged on this advance payment. GST has to be accounted by MS Sdn Bhd at the earlier of payment received or tax invoice is issued.

Q11. RZM Developer Sdn Bhd has received a 10% booking fee for the purchase of one unit of shop lot from Mohamad. Tax invoice has been issued and output tax has been accounted for. However, Mohamad decided to cancel the purchase and such booking fee is forfeited by RZM Developer. What is the GST treatment on booking fee?

A11. Forfeited booking fee related to the cancellation of sale and purchase of the property is regarded as compensation and is not a supply. Therefore, it is not subject to GST.

Tax Invoice

Q12. In the case of JV, can a property developer issue a tax invoice on behalf of the landowner to the purchaser?

A12. Yes, if property developer is a registered person. The property developer as the contractual/beneficial or equitable owner of the property shall issue the tax invoice to the purchaser on the sale of non-residential property regardless whether the landowner as the legal owner is a registered person or not.

Q13. Before the GST era, when I sell the commercial property to the purchaser, I issue the invoice to the finance institution. Is the same practice applicable to such sale which effects from 1 April 2015?

A13. No, because if the tax invoice is issued under the Bank's name, the purchaser cannot claim the ITC. Therefore, the tax invoice must be issued in the purchaser's name. A registered person claiming input tax must hold a valid

document (tax invoice) under his name which is required to be provided under Section 33 of the GSTA (refer Section 33 of the GSTA and Regulation 38(1)(a)(i) of the GSTR).

Supplies

Q14. In the case of land and property, what are the supplies subject to GST?

A14. All supplies involving the sale and lease of non-residential property are subject to GST. The property developer who is registered under Section 20 of the GSTA is liable to charge GST on such supply and account for GST as output in the GST return.

Example 6:

DEF Developer Sdn Bhd carries out a mixed development project incorporating 200 units of residential houses, 20 units of commercial building and 10 units of industrial building. The sale of the 20 commercial and 10 industrial units are subject to GST. The sale of the 200 residential houses is exempt from GST.

Q15. In the course of undertaking a property development project, I have to surrender part of my land/property back to the State Authority for no monetary considerations to be used for the educational, religious, charitable or public purpose. These supplies include roads, police station, schools, recreational areas and other public amenities. Are these supplies subject to GST?

A15. There are two types of supplies here:

- (a) Supply of land for the purpose of a playground or religious building. Item 1, First Schedule of the GST (Exempt Supply) Order 2014 states that such supply of land i.e. for general use is an exempt supply. Thus, the property developer cannot charge GST to the State Authority on such supply. However, Regulation 42 of the GSTR treats the input tax attributable to the exempt supply of such land for general use as being attributable to taxable supplies. As such, the property developer is

allowed to recover any input tax attributable to such supply if the supply is made in compliance with the requirements enforced by Federal Government, State Government, local authority and statutory body.

- (b) Supply of land for the purpose of public utilities and public amenities such as roads, police station, schools and others. Such supply is a taxable supply and GST is chargeable. However, since this supply is made to the State Authority which is in compliance of the requirement by the State Authority for the purpose of providing public amenities and public utilities, then the property developer is relieved from charging GST to the State Authority. This relief is provided under Item 2 in the Second Schedule of the GST (Relief) Order 2014. The developer is allowed to claim ITC under Section 39(1)(a) of the GSTA.

Q16. How do I claim the input tax in relation to the facilitation under Regulation 42 and Item 2 in the Second Schedule of the GST (Relief) Order 2014?

A16. In both cases, input tax incurred on any purchase or acquisition of goods and services for the purpose of making such supply under Regulation 42 or the Relief Order is claimable by offsetting against the output tax and Section 39 of the GSTA is applicable. The value of taxable acquisitions and the amount of input tax claimable must be declared in Item 6(a) and 6(b) of GST-03 return. You must also indicate the value of your supplies in the relevant fields of GST-03 :

- (a) the value of supply of land for general purpose in relation to Regulation 42 of the GSTR in item 12 of GST-03 return.
- (b) the value of supply of land relief under the Relief Order in Item 13 of GST-03 return.

Q17. I provide administrative services such as endorsement of deed of assignment. Is such administrative fee subject to GST?

A17. Yes, administrative fee incurred such as endorsing the deed of assignment is subject to GST because administrative services are standard rated supplies.

Q18. I charge interest for late payment. Is this interest payment subject to GST?

A18. No. Interest in relation to late payment is regarded as a penalty and is not a supply. Therefore, it is not subject to GST.

Q19. Merah Developer sells only 180 units of residential condominium. In the contract, it will supply two free car park for each sale of residential unit, with an option to sell the extra car park @ RM18,000 each. Is this to be treated as a composite supply? How do I treat the input tax in respect of the car park?

A19. Item 1, First Schedule of the GST (Exempt) Order 2014 states that any supply of land used for residential purposes is an exempt supply. Under sub-item (1)(b) states that supply of residential property will include any supply of parking facilities which is ancillary to the supply of residential building. Hence, the sale of the two car parks included in the contract is an exempt supply since it is an ancillary to the standard supply of the condominium. However, the sale of extra car parks at RM18,000 each is subject to GST as it is not ancillary to the sale of condominium. Therefore, input tax incurred in the construction of the car park must be apportioned accordingly since only input tax attributable to the supply of the extra car parks is claimable.

Q20. Merah Developer sells 500 units of non-residential properties consist of shop lots and office building. In the contract, it will supply two free car park, with an option to sell the extra car park @ RM25,000 each. Is this to be treated as a composite supply? How do I treat the input tax in respect of the car park?

A20. The supply of non-residential properties are standard rated supply. The supply of two free car park is treated as a composite supply is already chargeable under the supply of non-residential properties. The sale of extra car park at RM25,000 each to the owner is a separate supply and it is also standard rated. Input tax incurred in the construction of the car park is claimable.

Q21. Merah Developer sells the building with mixed development includes 500 units of residential condominium and 200 units of shop lots. In the contract, it will supply two free car park, with an option to sell the extra car park @ RM20,000 each. Is this to be treated as a composite supply? How do I treat the input tax in respect of the car park?

A21. Any supply of parking facilities which is ancillary either to the sale of residential or non-residential properties is to be treated as composite supply. Hence, any supply of car park ancillary to the sale of residential condominium as stipulated in the standard supply to all buyers is an exempt supply and thus the input tax is non-claimable. On the other hand, any supply of car park ancillary to the sale of the shop lot as stipulated in the standard supply to all commercial properties buyers is a standard rated supply and thus the input tax is claimable.

However, any supplies of extra car parks which is additional (non-ancillary) to the supply of residential or commercial properties is subject to GST. Merah Developer is required to apportion the input tax incurred on the construction of the car park based on apportionment formula.

Q22. XYZ Developer sells only 200 units of residential condominium. In the contract, it will supply four units air-conditioner, one new refrigerator and free club membership. Is this to be treated as a composite supply? How do I treat the input tax in respect of the following:

(a) air-conditioner and refrigerator; and

(b) free club membership?

A22. The supply of residential condominium is an exempt supply. Based on the above scenario, the supply of the air-conditioner and refrigerator are standard rated supplies and subjected to GST because these are not basic fittings as stipulated under Part IV, Schedule G or H of the Housing Development (Control and Licensing) Act 1966. Treatment for input tax are as follows:

(a) If XYZ Developer supplies such goods without any consideration to the buyer, XYZ Developer has to account for GST based on open market

value and the input tax incurred in the making of such supplies is claimable.

- (b) Free club membership is a supply of services. However in this instance, supply of free club membership by XYZ Developer to the purchaser is the supply of services. If it is given free (without any consideration) it is not a supply.

Input Tax Credit

Q23. Is the input tax incurred for the entire property development incorporating residential, commercial and industrial units recoverable?

A23. Input tax incurred on purchasing goods and services which is used or will be used wholly in making taxable supplies is recoverable. You should identify the inputs that are directly attributable in making non-residential and industrial buildings (taxable supplies) and claim input tax on that portion only. Input tax used for making residential property (exempt supply) is not claimable. Input tax used for making both commercial and residential property (taxable and exempt supplies) required to apportion accordingly.

Example 7:

DEC Developer Sdn Bhd carries out a development project consisting of 1,000 units of residential houses and 200 units of high rise commercial lots. The developer identified the lifts to be used in commercial building. The input tax incurred on the purchase of lifts can be fully recovered. Input tax incurred on professional services acquired for making both residential and commercial building is required to be apportioned accordingly. Please refer to Guides on Partial Exemption for further information.

Besides, any input tax incurred on land used for playground, religious building, burial ground (land for general use) and other common area is claimable if the supply is to be handed over to the federal or state government, local authority or statutory body.

Q24. In the course of undertaking a property development project, on direction of the State Authority, I have to perform upgrading work for no considerations. What is the GST treatment on this supply?

A24. The upgrading work done is a supply of services. Supply of services done for no consideration is not a supply. However, since this upgrading work is done in the course of furtherance of the business, the input tax incurred is claimable.

Q25. Residual input tax is input tax for making both exempt and taxable supply. How do I apportion the claim of the residual input tax?

A25. Residual input tax relates or incurred to both taxable and exempt supplies. It should be apportioned to determine the portion of input tax that is recoverable. For example, the rental, utilities bill of the developer office, machines etc. that attributes to the development of the residential and commercial buildings may be apportioned for the input tax incurred. To apportion it the partial exemption rules applies.

Example 8:

DEF Developer Sdn Bhd carries out a development project consisting of 200 units of residential houses, 20 units of commercial building and 10 units of industrial building. (These units are regarded as the main development). For the relevant taxable period, the value of the residential houses is RM5,000,000 and the value of the commercial and industrial buildings is RM3,000,000. In the course of carrying out this project, the developer also supply basic amenities such as roads, footpaths, drains and communal parking. The residual input tax incurred in supplying these development is RM40,000 in that taxable period. The residual input tax recoverable in that taxable period (using the turnover method) is as follows:

Value of Supplies	Amount
Total value of taxable supplies	RM3,000,000.00
Total value of exempt supplies	RM5,000,000.00
Residual input tax incurred	RM 40,000.00

Input tax recoverable:

$$\begin{aligned}
 &= \text{Residual Input Tax} \times \frac{\text{Total Value of Taxable Supplies}}{\text{Total Value of Taxable Supplies} + \text{Total Value of Exempt Supplies}} \\
 &= \text{RM}40,000.00 \times \frac{\text{RM } 3,000,000.00}{\text{RM } 8,000,000.00} \\
 &= \text{RM}15,000.00
 \end{aligned}$$

Input tax recoverable is **RM 15,000.00**

**Please refer to Guides on Partial Exemption for further information.

Q26. ABC Developer sells residential properties only. It was contracted to sell a condominium to Ms. Lela together with additional fittings and renovation at the selling price of RM1 million. The costs incurred by the developer for the supplies are as follows:

Description	Cost (RM)
The condominium unit	460,000
Renovation to extent kitchen	40,000
Italian sofa set	25,000
Refrigerator	7,500
Curtain set	12,500
Legal fee (free to Ms. Lela)	5,000
Total Cost	550,000

Can ABC claim the input tax incurred on the purchase of the above supplies?

A26. Under Item 2 of the GST (Exempt Supply) Order 2014, any supply of residential property is exempted from GST. Therefore, ABC developer cannot charge GST to Ms Lela for the sale of the condominium and thus any input tax incurred on the cost of RM460,000 is not claimable since it is attributable to the exempt supply.

At the same time, ABC also provide renovation services to Ms. Lela. This supply of services is a separate supply and subject to GST. Since this is a taxable supply, the input tax incurred on the cost of RM40,000 (if any) is claimable.

The supply of sofa, refrigerator and curtain are supply of goods which are taxable. The input tax incurred in relation to these goods is claimable.

The supply of services by the lawyer to the developer is a taxable supply regardless whether it relates to commercial or residential property. The lawyer has to charge GST on the legal fees for his supply. However, since the legal fee is incurred on the sale of a residential property, the input tax on the fees is not recoverable by the developer since it is attributable directly to the exempt supply.

In the above scenario, ABC is a mixed supplier as he supplies both taxable and exempt supply. The input tax on any residual inputs incurred will need to be apportioned as required under the Regulation 39 of the GSTR.

Q27. Can I claim the input tax on speculative supplies such as consultant/professional fees, finder's fees and feasibility studies, which are incurred in the course of investigating potential projects?

A27. Speculative supplies such as consultant/professional fees, finder's fees, feasibility studies are inputs to business. If the taxable person is making wholly taxable supplies, he can claim all the input tax incurred. On the other hand if he is a mixed supplier, he should apportion the input tax claim.

Example 9:

RZM Development Sdn Bhd intends to develop a piece of land into the residential property. A valuer is engaged to perform a valuation of the land and to perform a legal and ground site investigation. Based on the report prepared by the Valuer, RZM bought the land and start the development project. Later in the middle of the development, he may make changes for the change in use of the development from residential property to commercial property. Then the input tax on cost incurred is claimable.

Q28. If a residential building is converted into non-residential use such as showroom, is it possible for me to claim the input tax?

A28. The supply of residential building is exempted from GST. However, if the developer converts the usage of such residential building to non-residential use such as showroom, then the building is treated as a taxable supply. The input tax which is not recoverable earlier becomes claimable since it is now attributable to a taxable supply. The subsequent supply of the building after conversion is subject to GST.

Q29. Maju Developer develops a building consisting of 40 units shop-houses (ground floor) and residential apartments (1st, 2nd & 3rd floor). Apart from apportionment of input tax based on the selling price/progress billing what other methods of apportionment is acceptable to Customs?

A29. The supply of shop houses is a taxable supply and supply of residential apartments is an exempt supply. The standard method for apportionment is based on the turnover method. Under the turnover method, the residual input tax is multiplied with a taxable portion. The taxable portion is derived from the value of taxable supplies divided with the value of total supplies made in the taxable period.

Besides using the standard method, other alternative methods such as floor space, input cost, transactions, output quantities and man hours may be used. However, the developer must get prior approval from the Director General of Customs to use the alternative method of apportionment before using it. The

Director General of Customs may approve the application if the alternative method is found to be more fair and equitable. The property developer shall start using the alternative method beginning from the date specified in the approval letter from the Director General.

Please refer to the GST Guide on Partial Exemption for further details about the apportionment rules.

Gift Rules

Q30. What is the GST treatment on gift given free by the property developer to the purchaser?

A30. Paragraph 5(2)(a) of the First Schedule of the GSTA provides that GST is not chargeable on gift made in the course or furtherance of business to the same person in the same year where the total cost of the gift to the donor does not exceed RM500. However if the total cost to the donor is more than RM500, GST need to be accounted for based on the total value of the gift and input tax is claimable.

In the case where the gift worth more than RM500 was bought by a taxable person from a non-GST registered person and given as a gift without consideration, no input tax is claimable as the gift is acquired without tax. Determination of RM500 per person per year is the aggregate of all gifts given in the tax year. If the total cost exceeds RM500, it is subjected to GST (account for output tax).

Example 10:

Mr. Abu purchases 2 units of commercial properties from RZM Development Sdn. Bhd. RZM Development Sdn Bhd agreed to give a laptop worth RM3,000 to Mr. Abu as a gift. Such supply of laptop is subject to GST because its value is more than RM500 (gift rule) and input tax incurred on the purchase of laptop is claimable.

Damages and Out of Court Settlement

Q31. What is the GST treatment for damages and out of court settlements?

A31. Damages and out of court settlements which are paid for the breach of warranty or delays in completion of a contract, are compensatory in nature. Hence such settlements cannot be treated as taxable supply and GST need not be charged for such recovery. However if the settlement is made for the payment of some rectification works undertaken by the purchaser then GST is chargeable for such settlements since such payments is made for a taxable supply.

Liquidated Damages

Q32. Are liquidated damages such as delay in completion of work subject to GST?

A32. No, liquidated damages due to delay in completion of the construction project is not subjected to GST.

Example 11:

The main contractor, ABC Construction Sdn. Bhd, did not complete the building project by the stipulated completion date stated in its contract with its developer, XYZ Development Sdn Bhd. It is required to pay liquidated damages to XYZ Development Sdn Bhd at a rate of RM3,000 per calendar day (including Sundays and public holidays) for every day where the completion of the project is delayed. Such liquidated damages are not subjected to GST as it is compensatory in nature.

Rectification of Defect

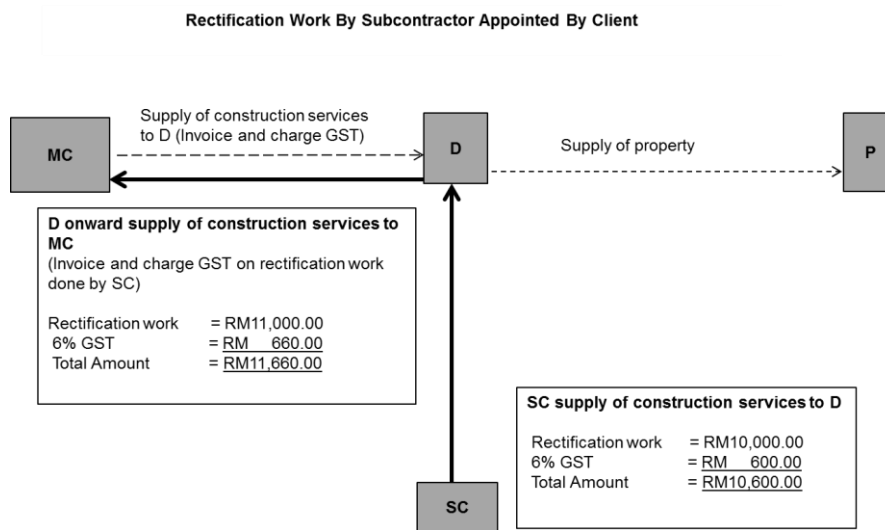
“Rectification of Defect” is one of the provisions in the construction contract. It is allowed even after the issuance of Certificate of Compliance and Completeness (CCC) and the purchasers will take possession of the properties, if there are defects in the new units that need rectification. Such contract stipulates that the main contractor is required to carry out such rectification

works during the defect liability period. Hence, such rectification of defect is compensatory in nature, and cannot be treated as taxable supplies.

Q33. Under the contract, the main contractor is required to carry out rectification works during the defect liability period. However, since the main contractor did not want to rectify this defect, another contractor is hired by developer to rectify the poor workmanship done by the main contractor and as a result additional cost is incurred. What is the GST treatment on this?

A33. Generally, if the main contractor does not perform the rectification works, the developer may engage another contractor to do the job and subsequently deduct such costs from any payment due to the main contractor.

Scenario 7:



If the developer ("D") hires another sub-contractor ("SC") to do the rectification, the sub-contractor ("SC") is supplying his construction service to ("D"). If the sub-contractor ("SC") is registered for GST, he has to charge ("D") GST on the rectification works performed. ("D") then onward supply this construction services to the main contractor ("MC"). ("D") have to charge "MC" GST on the said works.

At times, the purchaser may engage his own contractor to do the rectification and claim compensation for the costs or deduct the amount from any payment due to the developer. The property developer in turn deduct such amount from any payment due to the main contractor. In either situation, the property developer is making a supply of rectification works to the main contractor. The property developer has to charge and account for GST on the amount he claimed or deducted from the main contractor.

Scenario 8:

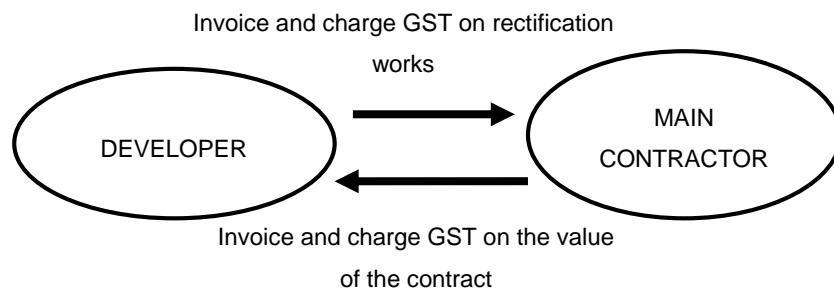
If the purchaser ("P") hires his own sub-contractor ("SC") to rectify the defects, there is a supply from the purchaser ("P") to developer ("D") because the purchaser ("P") is making good the defects that should have been done by ("D"). If the purchaser ("P") is registered for GST, he has to charge ("D") GST on the cost of the rectification works carried out by his subcontractor ("SC"). ("D") will in turn onward supply this construction service to the main contractor ("MC") and charge him GST accordingly.

The property developer can recover the amount for rectification of defect in 2 ways:

- (a) Deduct the cost of rectification work from the retention sum. Such supplies will be treated as two separate supplies. One supply is from the main contractor for completing the entire job (though not entirely to the developer's satisfaction) on the full value of the contract (including the retention sum). Another supply is from the property developer to the main contractor for the full value of the rectification works because the property developer repairs the defects that should have been done by the main contractor.

- (b) Claim payment from the main contractor.

The property developer may go to court to seek payment from the main contractor for the rectification cost, or this may be agreed by an out-of-court settlement. Such payment is subject to GST as it is in relation to taxable supplies made from the property developer to the main contractor for repairing the defects which should have been rectified by the main contractor. The main contractor should still charge GST the developer on the full value of its supply, and the property developer should charge GST to the main contractor for the rectification works, similar to (a).



Q34. What is the GST treatment if the compensation only relates to the poor work done and does not involves any rectification works?

A34. If no rectification work is to be carried out and the property developer is only claiming compensation from the main contractor for the poor work quality, such compensation is not subjected to GST as there is no supply made. The main contractor will still have to bill the developer for the full value of the contract including the retention sum.

Transitional Issues

Q35. Does the contract signed before the GST implementation date liable for GST?

A35. If the contract is on supplying an exempt supply, then it is not subjected to GST. On the other hand, if the supply is a taxable supply, then the supply of goods or services made on or after the implementation date is subjected to GST even though the contract is signed before the implementation date.

Q36. Is any agreement signed within the transitional period liable for GST?

A36. Generally, any supply made after 1 April 2015 is subject to GST. If the agreement to supply commercial property is signed prior to 1 April 2015 and such property is delivered before GST implementation, then it is not subjected to GST. However, if the property is made available on or after the GST implementation date, the supply of the property will be subjected to GST. This applies to either properties under construction or completed property. The phrase “*made available*” means that vacant possession of such property have been delivered by the vendor.

Q37. What is vacant possession?

A37. Vacant possession is referring to a legal obligation to ensure that a property is in a state fit to be occupied at a given point in time. Vacant possession is an essential element of any land transaction which includes the right to occupy the property and the obligation will normally appear as an express term in the land agreement. If the vacant possession is required to be given, the property is empty of occupancy and the purchaser is able to assume and enjoy immediate and exclusive possession, occupation and control of it. It must also be empty of chattels, although the obligation in this respect is likely only breached if any chattels left in the property substantially prevent or interfere with the enjoyment of the right of possession of a substantial part of the property.

The obligation to give VP has been breached if:

- (a) Where people are in lawful possession of the property under a lease or licence. For vacant possession to be given, there must not be anyone else with a right to possession of the property. This means that vacant possession will not be given if anyone has lease or an occupational licence in respect of the property even if they are not in fact in possession of it
- (b) Where squatters were in unlawful occupation of the property (*Cumberland Consolidated Holding Ltd v Ireland [1946], obiter dicta*).

- (c) Where something is left in the property that substantially interferes with the physical enjoyment of the property but which may be removed e.g. large quantities of rubbish left inside the property (*Cumberland Consolidated Holding Ltd v Ireland [1946]*) or a large number of chattels such as furniture and personal goods (*Scotland v Solomon [2002]*) or indeed people carrying out repair works required to comply with lease obligations (*NYL Logistics (UK) Ltd v Ibrend Estates BV [2011]*).
- (d) Where something exists that is a legal obstacle to the enjoyment of the property, such as an order to requisition the property (*Cook v Taylor [1942]*).

In addition, for the purpose of GST, the vacant possession of the property be deemed as delivered if:

- (i) Building is completed and CCC be issued by the Authorised person where vacant possession means completion of the individual units up to the stage of electrical cabling is ready for connection to the Property.
- (ii) The key of the building and a notice for such delivery of vacant possession be issued to the purchaser. Upon that the purchaser take such delivery; and
- (iii) Full payment for such supply of goods is made to the developer.

Hence, failure to make full payment means no vacant possession of such property delivered and such developer only give right to occupy the property only.

Q38. I have sold a shop lot worth RM1 million. I have received the full payment and S&P signed before 1 April 2015 but the vacant possession is handed over on the 5 April 2015? Is the property subjected to GST?

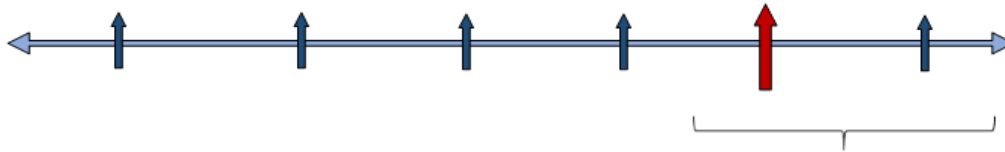
A38. Supply of land or property made:

- (a) under agreement for a period or progressively over a period, whether or not at regular intervals and that period begins before the effective date

and ends on or after the effective date the proportion of the supply which is attributed to the part of the period on or after the effective date shall be chargeable to tax (refer Section 188 of the GSTA);

Example 12:

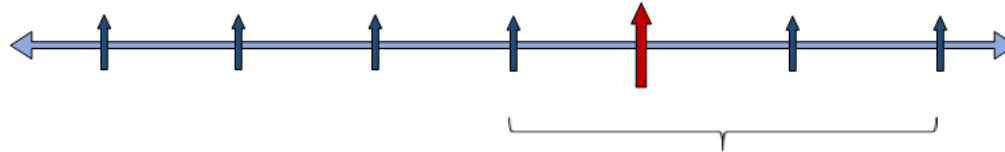
01/01/14	01/03/14	01/08/14	01/03/15	01/04/15	
Agreement for supply of building value at RM700,000 (progressive payment start from 01/03/14 and full payment is on 01/12/14)	1 st payment (RM200,000)	2 nd payment (RM300,000)	Full payment (RM300,000)		Hand over vacant possession/key



This portion is not subject to GST as the full payment before effective date is made based on the agreement.

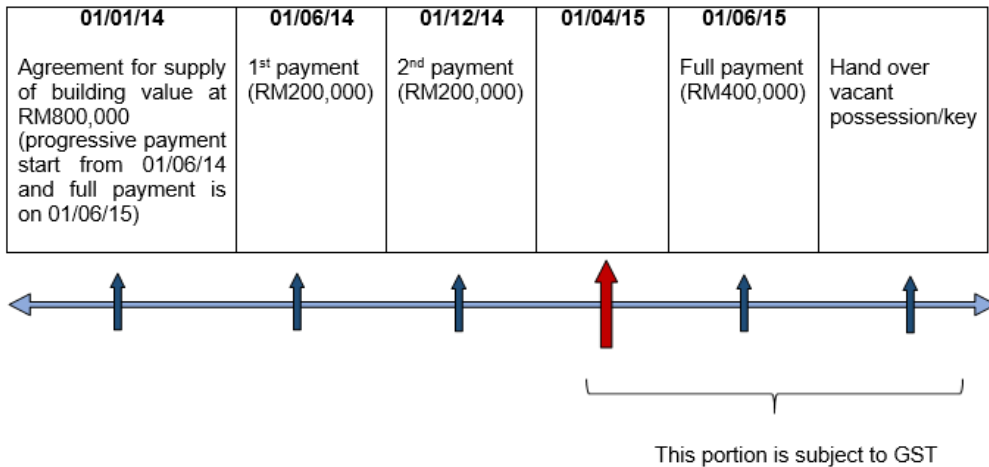
Example 13:

01/01/14	01/02/14	01/07/14	01/12/14	01/04/15	01/05/15	
Agreement for supply of building value at RM600,000 (progressive payment start from 01/02/14 and full payment is on 01/05/15)	1 st payment (RM100,000)	2 nd payment (RM100,000)	3 rd payment (RM100,000) (instead of paying RM100,000, the buyer make a full payment of RM400,000)		4 th payment (RM300,000)	Hand over vacant possession/key



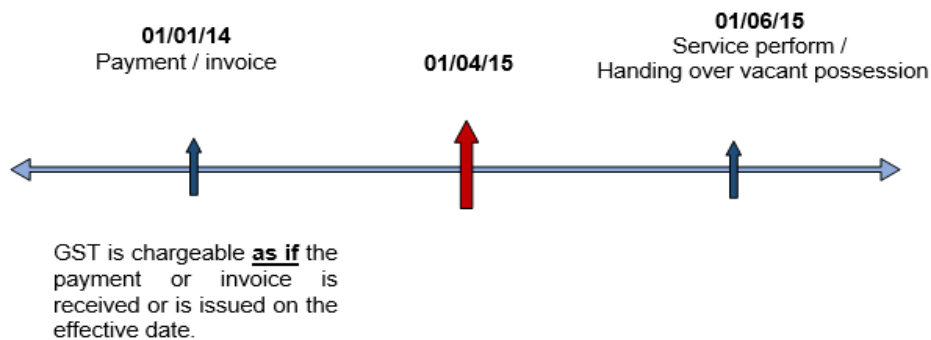
RM300,000 paid on 01/12/14 is subject to GST because according to the agreement the full payment should be made on 01/05/15.

Example 14:



- (b) under agreement but not for a period or progressively over a period or not under agreement, where any payment received or invoice issued before effective date and the supply is on or after effective date, GST is chargeable as if the payment or invoice is received or issued on the effective date (Section 183 of the GSTA)

Example 15:



Q39. What are the consequences if I do not make a provision to include the element of GST in my contract?

A39. Failure to include the GST provision may make the property developer unable to charge GST to the client because the price stated in the contract is deemed to be the consideration including GST paid to the developer.

Q40. Do I have to account for GST on non-residential property completed before implementation of GST but sold after the GST implementation?

A40. Non-residential property completed before GST implementation but sold only after GST implementation period will be subjected to GST. Completed commercial property refers to property issued with a Certificate of Completion and Compliance (CCC).

Q41. Developer A commenced its project construction on 1 January 2012 and is expected to be completed on 31 July 2015. All the properties consisting of retail lots and service apartments, are sold in the year 2012 and scheduled for progress billings up to July 2015. Some of the properties are sold with interior design complete with finishing. Whether the progress billings and contractors' claims after 1 April 2015 are subjected to GST? Does the billings on interior design complete with finishing after 1 April 2015 subjected to GST too?

A41. The portion of goods (retail lots and service apartments) that have been supplied before the GST implementation date are not subjected to GST. The portion that is supplied after GST implementation date such as the progress billing and interior design complete with finishing will be subjected to GST. Developer A is required to account for GST on such supplies.

However, the portion of construction services charges by the contractor is also subject to GST if it is supplied after the GST implementation date. Developer A may claim the GST incurred as his input tax credit on the commercial portion only.

Q42. On 1 July 1992, land owner RZM Sdn Bhd have entered into leasing agreement under section 222 of NLC where MS Sdn Bhd be given the right to occupy such non-residential land for a period of 65 years and will end on 30 June 2057. The value of the lease was RM78 million. The whole agreed payment to be paid to RZM Sdn Bhd upon signing such agreement and submitting Form 15A of NLC to the land office. Whether such payment received is subjected to GST?

A42. Any supply of lease is supply of services and subject to GST if such supply is relates to non-residential land or building. Basically, GST treatment for spanning period is based either on:

- (a) If the contract has no provision to review or to change/renegeotiate the consideration for supply of leasing services, then Section 187 of the GSTA is applicable.

The contract of leasing services entered into not less than two years before 1 April 2015. The supply of services shall be treated as zero-rated supply for 5 years after the effective date; or when a review of opportunity arises; whichever is the earlier.

Provided that:

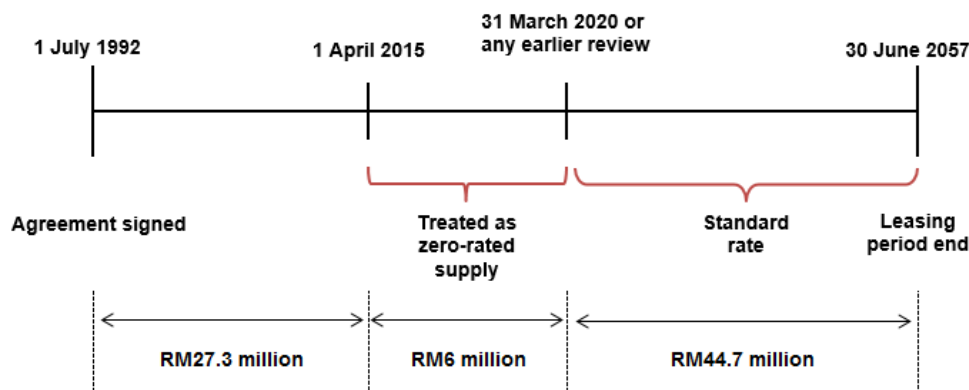
- (i) the supplier and recipient of the supply are registered persons;
- (ii) the supply is a taxable supply; and
- (iii) the recipient is making wholly taxable supply

However, if the parties have an opportunity to review the contract, the supply of leasing services will be subject to GST when the first review opportunity arises and in the case where no review opportunity arises, such supply will subject to GST after the expiry of the five year period from 1 April 2015 .

Or

- (b) Application of Section 188 of the GSTA

Supply of leasing services for a term of 65 years by RZM Sdn Bhd to MS Sdn Bhd is a continuous supply spanning the GST commencement date. Under Section 188 of the Act, the portion of supply made before 1 April 2015 is not subject to GST but the supply made on or after 1 April 2015 is subject to GST. The supply is taken to be made on a continuous and uniform basis throughout the period. In this case, RZM Sdn Bhd as a taxable person makes a continuous supply of services spanning 1 April 2015, then RZM Sdn Bhd have to apportion the supply and account for GST accordingly.



Value of leasing agreement : RM78 million

Scenario 1 : Section 187 GSTA is applicable

GST : RM44.7 million x 6% = RM2.682 million

Scenario 2 : Section 188 GSTA is applicable

GST : RM50.7 million x 6% = RM3.042 million

Q43. MS Sdn Bhd is a developer which is GST registered and RZM is a land owner which is not a GST registered. Parties have entered into an agreement under the Power of Attorney (PA) in year 2013 (before the implementation of GST). MS Sdn Bhd is given the beneficiary rights to develop the land into the non-residential property and the land title will only be transferred to the end buyers upon the completion of the project via strata title. In return, RZM is paid with consideration of RM600,000. RZM is liable for RPGT on the sales of consideration upon disposal of land in 2013. However, such project is only completed in January 2016 (after the implementation of GST). Does RZM need to register and account for GST on output and what is the GST treatment on such arrangement?

A43. RZM is the legal owner of such non-residential property. By entering into the joint venture agreement with MS Developer, RZM is supplying his right to use the non-residential land to MS Developer. Section 11(3) of the GSTA provides time of supply for services is when the services are performed. Hence, regardless whether such joint venture be entered before 1 April 2015, such supply of services by RZM only completed upon the transferred of such land title to the end buyer. Thus, supply of such right to use the non-residential land is a taxable supply and since the value of land owner's entitlement is more than prescribed turnover, RZM is liable to register under Section 20 of the GSTA.

RZM must charge GST to MS Developer on such supply of right to use the land and account for the GST based on the amount of his entitlement received as stated in the JV agreement.

MS Developer as the person holding a beneficiary right over the land can claim the input on his acquisition of rights to use the land from RZM and the cost incurred in relation to those directly used for the development of the commercial properties;

As the person holding the beneficiary right MS Developer has right to deal with the property. Hence, MS Developer is allowed to issue a tax invoice on the supply of the completed property under his name at the transaction value and account for the GST. If MS Developer charged commission on the sale of such completed property, he is required to issue tax invoice and account for the commission received.

Q44. In relation to Q44 if there is supply goods or services by RZM, can RZM account for output via GST-04 form without be registered under Section 20 of the Act?

A44. No. Furnishing of declarations and payment of tax by person other than a taxable person via GST-04 form only limited to any person other than a taxable person is liable for tax under Subsection 13(3), Section 58, Paragraph 65(4)(b), Subsections 65(5) and 72(5) of the GSTA.

Other Issues

Q45. Whether any transfer of land or building under leasehold title is regarded as supply of services?

A45. Any transfer of land or building whether freehold or leasehold land is treated as a supply of goods.

Q46. What is the GST treatment on joint ownership of land?

A46. Where there are more than one person owning a piece of land or a building or jointly own a building, they will be treated as a single person (for GST purpose).

They are required to register for GST as joint owners or partnership even though they are not partners in any respective law, if they have the intention to supply such properties. For the purpose of GST, the partners or the joint owners of a property are jointly and severally liable for GST.

Q47. What is the GST treatment if the land title indicates the land usage categorisation and the express condition as “NIL”?

A47. For any land title which indicates the usage categorisation and the express conditions as “NIL”, Section 53 of NLC provides that if the title is issued by the Land Office, such land is under the category of either country, village or town and the implied land use is agriculture. Supply of such agriculture land is exempted from GST.

If the land title is issued by the Land Registrar and the land is classified under the village land, such land is implied for agriculture purpose. Thus it is exempted from GST. If the land is classified under country or town land, such land is implied neither for agriculture nor industrial. In other words, the land is used for building purpose. For the GST treatment, the building purpose whether for commercial or residential is to be determined by the local authority. If the building is for commercial purpose it is subjected to GST and if for residential purpose it is exempted from GST.

Q48. Does the property developer have to issue tax invoice on any supply of land to the government, local authority or any other person for the purpose of providing public amenities and public utilities under Item 2, Second Schedule of GST (Relief) Order 2014?

A48. Yes, such supply is a taxable supply and a tax invoice must be issued. The tax invoice should indicate the GST amount as “NIL” and include the clause:

“Relief under Item 2, Second Schedule of GST (Relief) Order 2014”

The developer is required to issue a certificate of GST relief (CoGSTR) to the related government body for its safekeeping.

Q49. Can the supply of residential properties made by the developer without a housing development license under Housing Development Act 1966 be treated as supply of services?

A49. Any housing developer who intends to supply residential properties for more than 4 units in Peninsular Malaysia and Sabah or more than 8 units in the case of Sarawak is required to obtain the housing development license under Section 5(3) of the Housing Development Act 1966. Regardless whether they obtained any license to develop, the supply of such property by the developer can either be a supply of goods or services depending on the ownership of the land.

If the developer enters into agreement with the land owner and requires the developer to construct a property for the land owner and subsequently market the properties for the land owner, the developer is making two separate supply of services namely the construction services and marketing services. Both services by the developer to the land owner are subject to GST. In this case, the sale of properties is actually made by the land owner to the purchaser and this supply is a supply of goods which is exempted from GST.

On the other hand, if there is a land development agreement between a land owner and a developer (Parties) to develop a land under the Power of Attorney (PA), the land owner is supplying the beneficial rights to the developer to develop the land, market and sell the properties. Such supply of services by the land owner to the developer in relation to the development and sale of the residential properties is exempted from GST.

Since the developer is given the rights to sell the properties to the purchaser, the sale by the developer is a supply of goods which is exempted from GST.

Q50. RZM Development Sdn Bhd is a housing developer who develops residential property on its own land. Its business activities is extended for development of properties on land owns by other person either on a joint venture basis. What is the GST treatment?

A50. The supply of residential property by RZM Development Sdn Bhd developed on his own land is a supply of goods. If the developer develops other landowner's

land on a joint venture basis, such supply is a supply of goods provided that the parties entered into an agreement under the Power of Attorney (PA). Under the PA, RZM Development as the beneficiary owner of the land has the beneficiary right to deal with the land. Thus, the sale of residential property by RZM Development Sdn Bhd is an exempt supply. No output tax is chargeable on the sale of the residential property and no input tax credit is claimable.

Q51. MS is a land owner who enters into a joint venture agreement with RZM Development Sdn Bhd to develop an agricultural land into non-residential properties. In the agreement, parties agreed that the conversion of the land usage is done by RZM Development. Is GST accountable on such supply of right to use the land?

A51. Yes, by entering into the joint venture agreement between MS and RZM Development Sdn Bhd, the Power of Attorney gives RZM Development Sdn Bhd the rights as the beneficiary owner of the land while MS is still holding the legal title of the land. Therefore, MS is supplying services to RZM Development Sdn Bhd. Section 11(3) of the GSTA provides that the time of supply for services is when the services are performed. Hence, regardless whether such conversion of the land is done by RZM Development Sdn Bhd or not, MS is supplying his right to use the land for commercial purpose to RZM Development Sdn Bhd and such supply is a taxable supply. MS must charge GST to RZM Development Sdn Bhd on the supply of right to use the land and account for the GST based on the amount of his entitlement as stated in the JV agreement. MS shall account for the GST as and when the consideration is received.

Q52. What is the GST treatment on the sale of completed residential property together with free interior design service?

A52. There are 2 supplies involve:

- (a) Supply of residential property is an exempt supply under Item 1 of GST (Exempt Supply) Order 2014.
- (b) Supply of interior design is a supply of services. It involves the process of shaping the interior space of the property. Such services is a taxable

supply and subject to GST. The developer is liable to account for GST on the open market value of such supply. If the services is given for free, it is not subject to GST except it is supplied to connected person.

Q53. Are the contribution fees to utility providers subject to GST?

A53. Contribution fees are payments required to be made by the developers to the utility providers for the provision of water, sewerage, electricity and telecommunication services. The property developer is mandatorily required to supply such facilities to ensure such services are made available for all property development project. The property developer who runs the project is required to pay contribution charges for infrastructure works such as trunking, cabling, etc.

The GST treatment on the contribution fee is a standard rated supply. This is due to the supply made by the service provider to the developer. For example, in the case of “Tenaga Nasional Berhad (TNB)”, the amount of contribution fee paid due to the charges for the planting of the cable in order to supply the electricity to the development area. TNB are required to issue a tax invoice and charge GST to the developer.

The property developer can claim GST incurred on the contribution fees for non-residential properties only.

Q54. A property developer wants to convert the land title from agriculture to commercial. He needs to pay the conversion premium which is imposed by the State Authority. Is the conversion premium imposed subject to GST?

A54. No, the conversion premium imposed by the State Authority is not subject to GST since the supply is made by the State Authority. Such supply is an out of scope supply by virtue of Section 64 of the GSTA.

Q55. What is GST treatment on long lease or subleasing of the Property?

A55. Any supply of leasing services is supply of services and subject to GST if such supply relates to commercial land or property. Hence, GST is chargeable on any supply of leasing services made after 1 April 2015.

The time of supply for long term lease is as provided under Regulation 8 of the GSTR. Regulation 8 provides that where services are supplied for a continuous period for a consideration the whole or part of which is determined or payable periodically or from time to time, the services shall be separately and successively supplied at the earlier of:

- (a) Whenever a payment in respect of the supplies is received
- (b) Whenever the supplier issues a tax invoices relating to the supplies.

However, leasing of land or building for residential purposes or land for agriculture purposes is exempted from GST under the Item 19 (a) and (b), Second Schedule, GST (Exempt Supply) Order 2014.

The same treatment is applicable to the subsequent supply of such leasing made by the lessee. In this case, the lessee becomes a lessor.

Q56. What is GST treatment on supply of right to occupy the building for residential purposes which is fully furnished?

A56. Supply of right to occupy or leasing of the building for residential purposes is an exempt supply. If it is furnished and there is no fee charge on the furniture, the whole lease amount is not subject to GST. However, if there is a separate fee charge on the furniture whether in the same or separate lease agreement then the lease of the furniture is subject to GST.

Q57. ABC Sdn Bhd “wakaf” (voluntary charitable endowment) a commercial land to Majlis Agama Islam. Then Majlis Agama Islam awarded a contract to XYZ Sdn Bhd to develop a mosque on the land. What is GST treatment on the wakaf by ABC and the developing services by XYZ?

A57. There are 2 supplies involve:

- (a) Supply of “*wakaf*” land by ABC to Majlis Agama Islam

Any supply of “*wakaf*” land is determined by title of the land. If the land title is for agriculture or residential purpose, such supply of land is exempted from GST. Meanwhile, if the land title is for commercial or industrial purpose, it is subjected to GST.

Therefore, any supply/surrendered of wakaf land by a person who is carrying on a business to Majlis Agama Islam is required to account for GST. Since the supply is without any benefits whatsoever to donor, the supply is to be treated in accordance to “business gift rule” and the value of the supply is determined at the open market value.

This treatment is also applicable to other charitable donors.

- (b) Supply of development services by XYZ to Majlis Agama Islam

For the supply of the development of the mosque by the new wakaf land owner (Majlis Agama Islam), he is required to obtain an approval by the relevant authorities before the development take place. For the purpose of GST, any supply of development services to construct the mosque is subject to GST. Since XYZ is appointed by the Majlis Agama Islam to construct the mosque, he is required to issue a tax invoice and charge GST to Majlis Agama Islam on the supply.

Q58. What is the GST treatment on the amalgamation of land?

A58. Amalgamation of land is the process of combining two or more adjoining pieces of alienated land. A proprietor who owned two or more adjoining land under his name may make an application to amalgamate such land. Originally, the land are held under numerous separate document of titles and will be revoked after a new single title is issued. Since there is no transfer of ownership, the amalgamation of the land is not a supply and not subject to GST.

Q59. Do I have to account for GST if my project is abandoned?

A59. If your project is abandoned and you do not make any taxable supply, therefore you do not have to account for GST. However, if you received any payment or issued any tax invoice during this period, you are required to account for the GST. If you had issued a tax invoice and accounted for the output tax but did not received any payment from a registered person within a period of 6 months, you may recover the GST amount paid as a bad debt relief. The bad debt relief is subject to conditions as prescribed under Section 58 of the GSTA and Part X of the GSTR.

Q60. I make payment to my contractor to compensate him for losses due to temporary suspension of work. Is the payment paid for temporary suspension of work subject to GST?

A60. Any payment to the contractor due to the temporary suspension of work is not subject to GST. Such payment is a compensatory in nature and not a supply.

Q61. MFS Developer supply materials, utilities and workers to contractors for use in his project. Can MFS contra the value of the materials, utilities and workers with the value of the construction services?

A61. No. For the GST purposes, contra payment is not allowed because the supplies are regarded as two different supplies made by two different suppliers i.e. MFS and the contractors. MFS supply materials, utilities and workers to the contractors while the contractors supply construction services to MFS. Both MFS and the contractors are required to issue a tax invoice, charge and account for the output tax accordingly on their supplies.

Q62. Due to the poor sales, Tinggi Developer is unable to sell off the 20 units of shop lots. Out of that they decided to keep 10 units of shop-houses as its fixed asset/investment properties for rental income. How would Tinggi Developer treat the input tax claimed earlier on the changes made? Is converting an inventory to investment property will be interpreted as taken for own use and considered as a deemed supply?

A62. Input tax claimed during the shop lots development period by the GST registered person is allowable. After the decision made to keep such shop lots as your fixed assets and use it to generate the rental income, both supplies (shop lots and rental) are still a taxable supply. Thus, there is no transfer of ownership taken place and adjustment on the input tax claimed is not required. The proportion claimed is still in the course or furtherance of your business. However, if the shop lots is used for making an exempt supply e.g. for residential purpose, the input tax claim requires adjustment accordingly.

If any of the unsold shop lots are used by the connected person without any consideration received, it will be treated as deemed supply. If the supply to the connected person is with consideration, you have to account for the output tax. The calculation of the output tax for both scenario (with or without consideration) shall be at the open market value of the supply.

Q63. Developers for high rise residential building usually have the following types of billings. What is the GST treatment for the following billing item?

No.	Billing Items
1.	Forfeiture sum
2.	Area variance
3.	Extra package billing
4.	Car park billing
5.	Administration fee
6.	Contra adjustment (debit)
7.	Reversal – discount allowed
8.	TNB deposit
9.	JBA deposit
10.	Quit rent
11.	Assessment

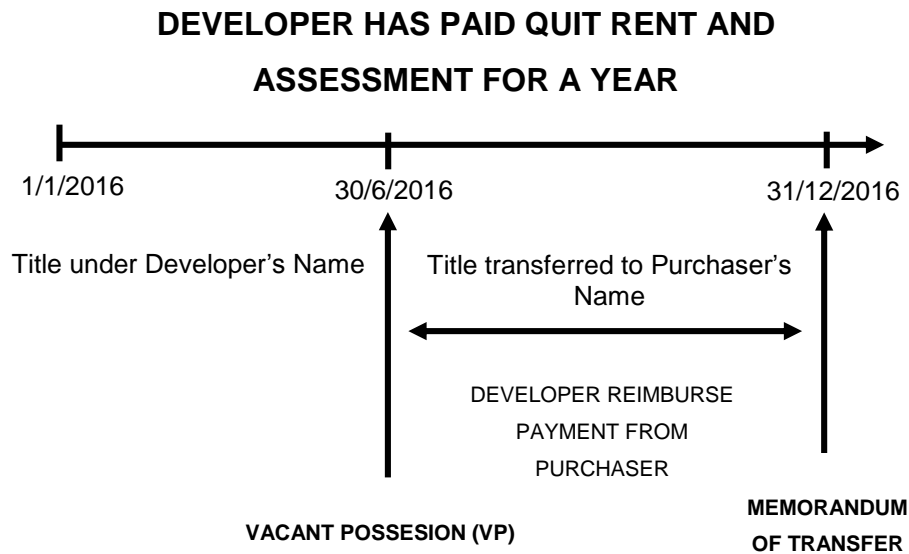
A63. The GST treatments for the above billing items are as follows:

- (a) The forfeiture sum is the money received due to the breach of contract.

Therefore, if the money received as a deposit for the purpose of security and the money does not form as part of the consideration, it is not subject to GST. If such money is forfeited, there is no GST implication.
- (b) Area variance, extra package billing and administration fee are subject to GST at standard rate.
- (c) Contra adjustment is not allowed in GST. The transaction should be treated as two separate supplies. Accounting for GST based on the difference (contra) is not allowed. Refer to Q62 for illustration.
- (d) Any reversal or discount given on the supply made is allowable. GST will be based on the amount after discount.
- (e) Deposit for supplies of water and electricity is not subject to GST if the money received is for the purpose of security and does not form as part of consideration.
- (f) Quit rent and assessment is charge by the local authority and it falls under Regulatory and Enforcement (R&E) function. Therefore, it is an out of scope supply. Hence, no GST will be imposed.

In relation to (e) and (f), if the title of the property has been transferred to the purchaser's name through Memorandum of Transfer (MOT) before Vacant Possession is given, the recovery of quit rent and assessment incurred by property developer will be treated as disbursement if he is acting as paying agent. A disbursement does not constitute a supply and is not subject to GST.

However, if the recovery of quit rent and assessment by the developer who acts under his own name will be treated as reimbursement. The developer is required to charge and account for the output tax on the supply. For example from the illustration below:



Q64. ZMM Developer Bhd appoints MS Surveyor Sdn Bhd to perform a land surveying activities. MS Surveyors Sdn Bhd has issued a bill statement (letter of fee) informing that the fee payable is inclusive of 6% GST. ZMM has to issue the banker's cheque in favor of the Board of Licensed Land Surveyor including 6% GST. The Board then returns the 6% GST to MS Surveyors Sdn Bhd for onward payment to Customs. The Board only released the survey fee to the surveyor upon confirmation when the survey has been completed. Since survey fee is deposited to such Board, can ZMM Developer Sdn Bhd claim input tax on this taxable supply? When can ZMM claim the input tax?

A64. Land surveying activities is a supply of services. Therefore, the basic time of supply for services is when the services is performed as prescribed under Section 11(3) of the Act. MS Surveyor as the service provider has to account for GST at the earlier of the payment is received or a tax invoice is issued. Under this scenario, MS Surveyor Sdn Bhd has received the payment but being held by the Board of Licensed Land Surveyor as required by the Licensed Land Surveyor legislation. Instead of issuing 'Bill of Statement', MS Surveyor is required to issue a tax invoice prescribe under Section 33 GSTA and account for the output tax.

ZMM Developer Bhd may claim the input tax incurred on the land surveying activities provided that he holds a valid tax invoice issued by MS Surveyors. Any input tax incurred in the course or furtherance of business can be claimed accordingly within the taxable period allowed.

Q65. What is the GST treatment on the service apartment and the shop houses which will be used for partially commercial and residential?

A65. Generally, the GST treatment of land or building is based on its usage. Service apartment will be treated as residential property if it is designed or adapted for use or intended to be used as dwelling purpose. Therefore, the supply is exempted from GST. However, if the service apartment is used for commercial purpose such as hotel, inn or similar establishment of sleeping accommodations, it will be subjected to GST.

Meanwhile, supply of the shop houses by the property developer to the purchaser is a supply of commercial property. It is subject to GST at standard rate.

If the property is used partially for commercial and partially for residential, the rules for usage of the property will be applicable. The supplier (owner of the land or building) is required to apportion its usage according to the apportionment method as prescribed under the Regulation 39 of the GSTR. For example, if one floor is used for commercial and the other floor is for residential, the commercial usage is subject to GST while the residential will be exempted from GST. Please refer to Guide on Partial Exemption.

Q66. I owned a commercial property and lease it to a tenant. The tenancy agreement takes effect on 1 January 2016 but I have given him a 3 months grace period for him to setup his business without charging any rental. What is the GST treatment for the first 3 months free rental charges?

A66. Leasing of commercial property is a supply of services and subject to GST. If the rental services is given for free, it is not subject to GST. However, if the commercial property is rented out to the connected person without any

consideration received, you have to account for the output tax based on the open market value.

Q67. I am a developer who build and sell completed commercial property to the purchaser under an agreement for a period that begins before 1 April 2015 and ends on 31 October 2015.

- (a) What is the GST treatment of such supply?**
- (b) How to determine the value of such supply if it is subject to GST?**

A67. The GST treatment of such supply is as below:

- (a) Supply of commercial property (build and sell) by the developer to the purchaser under an agreement for a period or progressively over a period, whether or not at regular intervals and that period begins before the effective date and ends on or after 1 April 2015, the proportion of the supply which is attributed to the part of the period on or after 1 April 2015 shall be chargeable to tax. (refer to Section 188 of the GSTA)
- (b) Only the value of the proportion of the supply which is attributed to the part of the period on or after 1 April 2015 shall be chargeable to tax.
- (c) To determine the value of the supply, the developer must ensure that the method he uses is consistent with the industry practice and acceptable under the General Accepted Accounting Principles (GAAP).

INQUIRY

1. For any inquiries for this guide please contact:

Sector III

GST Division

Royal Malaysian Customs Department

Level 3 – 7, Block A, Menara Tulus,

No. 22, Persiaran Perdana, Presint 3,

62100 Putrajaya.

Email: gstsector3@customs.gov.my.

FURTHER ASSISTANCE AND INFORMATION ON GST

2. Further information on GST can be obtained from :

- (a) GST website : www.gst.customs.gov.my

- (b) Customs Call Center :

- Tel: 03-7806 7200 / 1-300-888-500
- Fax : 03-7806 7599
- E-mail: ccc@customs.gov.my

AMENDMENTS

No.	Date	Heading/Subheading/Paragraph	Description
1.	18.4.2016	Paragraph 65 to 69 of the Guide on Land and Property Development as at 1 April 2016	Suspension
2.		Paragraph 67	Item 8 and Item 26 removed
3.		FAQ Q24&A24 of the Guide on Land and Property Development as at 1 April 2016	Deletion
4.		FAQ Q44	Correction
5.		FAQ A60	Correction