



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

GUIDE ON PROPERTY DEVELOPER

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INTRODUCTION

1. This industry guide is prepared to assist businesses in understanding matters with regards to GST treatment on property developer. 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 explain 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 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) “**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;



- (b) **“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;
- (c) **“General use of land”** means the use of land for the purpose of burial ground, playground or religious building;
- (d) **“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 land;
- (e) **“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;
- (f) **“Certificate issued by the authorized person”** means any certificate issued by the authorized person under any written law in Malaysia.
- (g) **“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.
- (h) **“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) and if the 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 liquidated damages for the period during which the relevant works remain incomplete.

- (i) **“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.

GENERAL OPERATION OF THE 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 include housing developers licensed under Housing Developers (Control and Licensing) Act 1966. Developers should be differentiate from contractors although they may act as contractors as well.

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

- (a) Stage I: Acquisition of Land

Developers need land to develop their development project. The land which is to be developed may be:

- (i) owned by the developer itself;
- (ii) the developer purchase from interested land owner or through a joint venture agreement between them; or

(iii) land also can be acquired through alienation of land by the government.

(b) Stage II: Application for Planning Approval

The developer is required to draw up proposed layout plans and report in accordance with Town and Country Planning Act 1976, The Street, Drainage and Building Act 1974 and the technical department on the proposed developments project for approval purpose. Whether the proposed land be developed as residential or non-residential property, the developer are required to submit the proposed planning plans for approval. This step requires accessing permits by all stages of government and technical departments to ensure such project to continue smoothly.

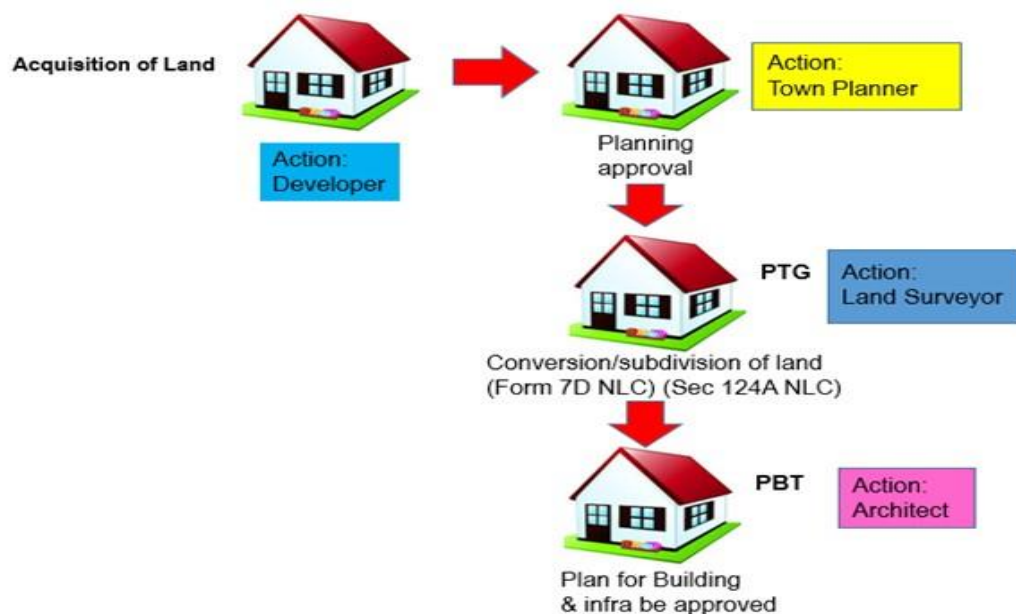
If the proposed planning approval is approved, “*surat kebenaran merancang*” (approved planning letter) will be issued. Upon receiving such planning approval, the developer may commence the development project according to the plans and conditions stipulated in the “*surat kebenaran merancang*” and approved layout plan.

(c) Stage III: Application for Conversion and Subdivision of Land

Upon receiving the planning approval, developer must apply for conversion (under section 124A of National Land Code) and subdivision of land as required under section 145 National Land Code 1965 (NLC). The written application must be submitted to the Land Administrator, together with the prescribed fee, a proposed layout plan including details of the sub-division of the land involved and the consent letter from other authorities or body of person whom have an interest in the land.

(d) Stage IV: Application for Building Plan Approval

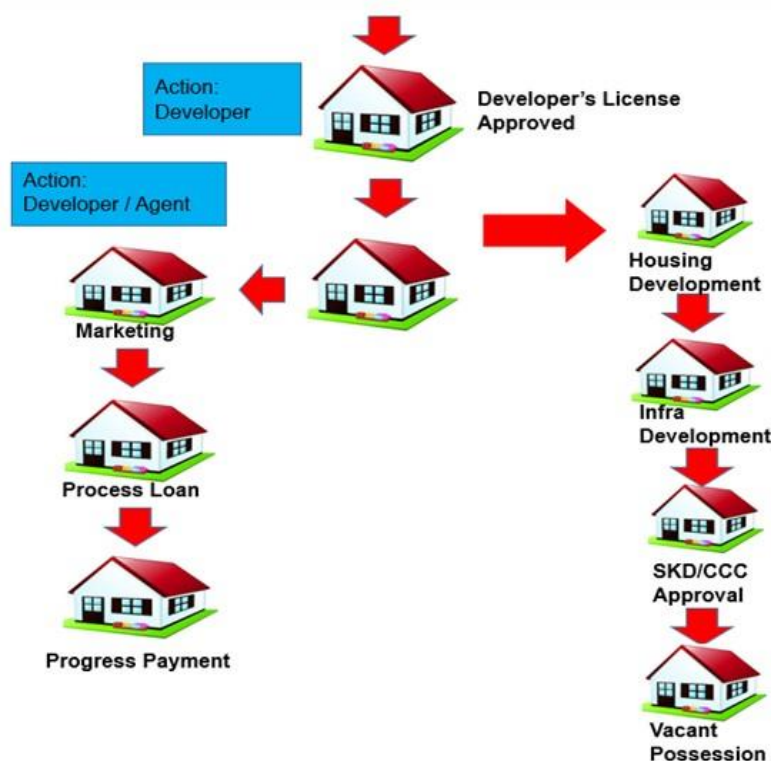
After receiving the qualified title, developers who intends to carry out building works shall appoint Qualified Persons (QPs) to submit the structural plans and the building plans to the Building & Construction Authority (BCA) according to the specifications and conditions required by Uniform Building By-Law (UBBL) Act 1984, The Road, Drainage and Building Act 1974, The Fire Services Act 1988 and The Local Government Act 1976 or any other requirement requires by other relevant authorities for approval. The approval for building plans and infrastructure and the development project will be issued by Local Authority if the specifications and conditions required by the technical department be fulfilled and the developer may be proceed with the development projects.



(e) Stage 5: Application for Certificate of Completion and Compliance (CCC)

The CCC will be issued by the project's Principal Submitting Person (PSP) to confirm that the building was built fit for occupation. The project will be supervised by the PSP. The CCC or vacant possession of the property will only be issued if departments below have certified, clearances and confirmation the supply / connection have been made:

- (i) **TNB** : confirmation of electricity supply
- (ii) **Water Authorities** : confirmation of water supply
- (iii) **Sewerage Service Department** : confirmation of connection to sewage treatment plant or mains
- (iv) **Department of Occupational Safety and Health** : clearance from factories and machinery department for lifts (if applicable)
- (v) **Fire and Rescue Department** : clearance for active firefighting systems (except for residential buildings not more than 18m height)
- (vi) **Roads & Drainage Department**



GST TREATMENT FOR THE INDUSTRY

8. Section 5 National Land Code 1965 (NLC) defines land as to includes-

- “(a) *that surface of the earth and all substances forming that surface;*
- (b) *the earth below the surface and all substances therein;*

- (c) *all vegetation and other natural products, whether or not requiring the periodical application of labour to their production, and whether on or below the surface;*
- (d) *all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface; and*
- (e) *land covered by water,”*

9. Section 4 of the Sabah Land Ordinance (Cap 68) and Sarawak Land Code 1958 have the same definition as section 5 of the National Land Code. Basically under these 3 laws, the phrase “*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. Land also includes structures that attached to the earth or permanently fastened to anything attached to the earth. Hence, for the GST purposes, the term “land” will includes land and building.

10. Section 52 of NLC provides that the usage of the land can be categorized as the followings:

- (a) Agricultural
- (b) Building (commercial and residential purposes)
- (c) Industrial

11. However, In the case of Penang and Malacca, section 81(3) of the National Land Code (Penang and Malacca titles) ACT 518 provides the provision for First grade Land. Such grants are issue by land administrator as being appropriate for urban development and the owner of such titles do not need to change the land use although they still need to seek the approval for subdivision. In contrast with “mukim grants”, where “mukim grants” is deemed to be country land and requires approval from the land authority to change its status if urban development is to be carried out. For the purposes of GST any transaction involving first grade land will be treated as non-residential land except such land will be used for residential purposes.

SUPPLY OF LAND OR PROPERTY AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

12. Under the GST, supplies of land can be either in the form of goods or services. A supply of goods includes any transaction of land involving the transfer of ownership of the land or transfer of any interests under deed of assignment. Any transfer of the strata title is also a supply of goods and GST applies unless such transaction is specifically exempted from tax.

13. Hence, the transfer of land will includes '*any transfer of the ownership of the land*' and any transfer of the possession of the land under an agreement to transfer ownership of such land or any transfer of land under an agreement which expressly stipulates that the ownership of such land will pass at some time in future is also regarded as supply of goods'. The term "*transfer of ownership*" is very broad and can encompass barter transactions and also more conventional sales transaction '*sale*' of land.

14. Para 2 of the First Schedule of the GST Act 2014 itemized the situations where the transfer of land is treated as supply of goods. Such Para 2(1) 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 tile,***
- is a supply of goods.***

Hence in the case of land, such land be treated as supply of goods if the sale transaction of land is effected (individual title the transfer instrument is in Form 14A as prescribed in the NLC.

GST law also treated any land under the agreement for the sale of the land is as a supply of goods. Any land under the agreement for sale of the land means a land under a contract of deed (agreement for deed, land instalment

contract or instalment sale agreement) where there is a contract between a seller and purchaser of the real property in which the seller provides financing to purchaser to purchase the property for an agreed –upon purchase price and the purchaser repays the loan in instalments. Under a contract of deed, the seller retains the legal right to the property and the purchaser are permit to take possession of the property. The seller are obligated to transfer the legal title of the land after the full purchased price has been paid. The purchaser need to proof that the transfer of such land be effected and possession of the land be transferred.

The transfer of any land under an agreement which expressly stipulates that the ownership of the land will pass at some time in the future also be treated as a supply of goods.

Para 2 of the First Schedule also treated the ownership of the strata parcel in the strata building be supplied (supply of goods) if there is a transfer of strata for such building and such transfer is a supply of goods.

In case where a deed of assignment is executed to buy a property or to give security for a loan, such supply is also be treated as a supply of goods. Hence, a deed of assignment is the instruments used to transfers all rights, title, and interests in respect of the land and under the previous sale and purchase agreement to the purchaser. Likewise, deed of assignment also be used as a security for loan, a deed of assignment assigns all rights, title, and interests in respect of the property and under the previous sale and purchase agreement to the owner's financier.

15. Para 2 (2) of the First Schedule of the GST Act 2014 provides that any lease, tenancy, easement, license to occupy land or transfer of undivided share in land is a supply of services. 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 granting right includes an assignment or surrender by leasing or a letting of land or surrendering an interest in land to the person who granted it .A lease is a transferable right granting the exclusive use of land to the lessee. In the case of easements, the supply of right over the land by granting the

owner of neighbouring land a right to make their land better or more convenient is also a supply of services.

16. On the other hand, a license to use the land, is typically a non-exclusive right to use the land for a specific purpose that is a personal right that survives only as long as the licensor holds legal title to the land. A license is usually not transferable by the licensee without the consent of the licensor.

USAGE OF LAND

17. The category of land transactions ordinarily regarded as taxable supplies are sales or leases of non-residential (commercial) land. The exceptions from the imposition of GST on land transactions involve the sale and lease of residential land, sale or lease of agricultural land or land for general use.

18. For GST purposes, any transaction involves land whether such land is a residential or non-residential property depends on the usage of such land. GST is chargeable on the sale or lease of non-residential land. The GST chargeable on the sale and leases shall be accounted as output tax in the GST returns. Any sale of non-residential land is taxable and the input tax incurred is fully recoverable by the business. The sale and lease of residential, agricultural or general used of land are exempted from GST.

19. Determination of the usage of the land is as follows:

- (a) The actual use of the property, design features and the essential characteristic and attributes of the property.
- (b) In the case of newly completed property which has not been used, the sale of the property will be based on the design features and the essential characteristic and attributes of the property.
- (c) In the case of vacant / bare land to be treated based on usage according to the land title issued by the Authority.

20. NLC requires the interested party to apply for conversion in use of the property. For GST purposes, the conversion in the usage of the land must be supported with the following:

- (a) The premise is registered with the relevant authorities and such land is used for non-residential;
- (b) The owner himself applies for change of use; or
- (c) Evidenced by the Sales and Purchase Agreement or any lease agreement in the case of land for leasing.

21. For GST purposes, the supply of the land be treated into 2 categories (i) exempt supply and (ii) standard rated supply depending on the usage of such land.

Exempt Supply

22. For the purpose of GST, any supply of goods involving land is treated as making an exempt supply if the usage of land, whether wholly or partly, is for residential, agricultural or general use. Item 1 and 2 of the First Schedule of the Exempt Supply Order 2014 provides such supplies of goods are exempted from GST.

23. First Schedule of GST (Exempt) Order 2014 states;

Item 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.*

Item 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.

24. In the case of supply of services, item 19 of the Second Schedule of the GST (Exempt) Supply Order 2014 regards such supply of any interest or right over the land or license is exempted from GST if the grant of such interest or right over the land or building used is for residential purpose or design or adapted or intended to be used for residential, agriculture purposes or for general use.

25. Item 19 of such Order states:

“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.”

(A) Residential purposes

(i) Any supply of residential land is exempted from GST. 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. A piece of vacant land is considered as residential if the condition used in the document title is “*Residential*”.

(ii) There are buildings which are not approved for “residential use” by Housing Development Act 1966 such as Workers’ Dormitories or Students’ Hostel but are used principally for residential purposes. These buildings could still be considered as

residential land for GST purposes if the following conditions are met:

- the main purpose of the building (based on approved use) is for accommodation; and
 - there is permanency to the use or the proposed use of the building for the purposes of accommodation by a person.
- (iii) In strata building used as a residential property, any supply of parking facilities (for the use and enjoyment as a residence) which is ancillary to the supply of residential building property will be exempted as stated under Item 1 of the GST (Exempt) Order 2014. Hence, developer cannot charged GST on the sale or lease of the parking facilities. Hence, such provision excludes parking facilities being sold to non-residence of the Strata Building.

(B) Agricultural land

Agricultural land means any land used for agricultural purposes. Any supply of land used for agricultural purposes will be exempted from GST. Such exemption is extended to the portion of the agricultural land used for administrative building.

Example 1

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

However, there are exceptions to Item 1 of the GST (Exempt) Supply Order 2014 where item 1 (a) provides that “Any land used or intended to be used to the extent of it being used or intended to be used for or agricultural purposes...” excludes land being used for hunting and fishing activities. Such provision excludes land used for hunting and fishing activities from the exception to impose GST.

Hence, any land being used for hunting and fishing activities is a taxable supply and all transaction related to such land used for hunting and fishing activities are subject to GST.

Example 2

ABB Kaki Pancing has a farm and used as a pool for fishing activities. RM 10 per entrance has been charged to every angler for his supply of services. Such supply is a taxable supply.

(C) Land for general use

Land for general use as defined under para 5 (a) of the Exempt Supply Order 2014 means the use of land are for the purpose of burial ground, playground or religious building. Any supply involving land for general used will be exempted regardless whether it is used wholly or partly for that purpose.

Standard Rate Supply

26. Generally, for GST purposes, the sale, lease or rent of all properties other than residential properties are subjected to GST. This treatment includes any land or property used as:-

- (a) designed or adapted for use as hotels, inns, boarding house or similar establishment of sleeping accommodation; or
- (b) any agricultural land used for hunting and fishing activities.

27. Para 5 (b) of the 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 lease, rental or sale of similar establishment is subject to GST.

28. Basically, the GST is chargeable on any supply of non-residential land regardless relates to the supply of goods or services. The GST is chargeable on such supply (the sale or lease of non - residential land) and shall be accounted as output tax in the GST returns.

29. The same treatment applies for provision of parking facilities supplied in the non-residential property. The developer or the owner of the building are required to charge GST when such parking facilities is sold or leased. The GST chargeable on such sale or lease shall be accounted as output tax in the GST returns. Hence these 2 determining factors must be fulfilled;-

- (a) the parking is within or on the premises, 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 intended to be used in conjunction with the commercial premises.

30. In the case involving leasing or letting of non-residential land, supply of such parking facilities is taxable supply regardless whether such land be lease 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. GST treat such supply as two separate supplies:-

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

31. In the case where such supply of parking facilities is ancillary to the supply of non-residential land, also GST treat such supply as 2 separate supplies:-

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

GST are chargeable on such supplies at standard rate.

32. For residential property which is used as home office (for example, Small Office Home Office), the taxability of the property will depend on the approved use of the building in the Approved Layout Plan and "*surat kebenaran merancang*". If the building is approved for "residential use", the sale and lease of the property will be

exempt. However, if the building is approved for non-residential use such as “office use”, the sale and lease of the property will be taxable.

NON SUPPLY

33. In general, in the West Malaysian land law concept of *jual janji* (literally to sell a promise) are acceptable. Under this concept, *jual janji* involves giving land as security to secure a loan, the borrower transfers his ownership of land to the lender, in exchange for loan as a consideration, and holds that land pending repayment. The lender is also entitled to profits of the land during the loan tenure. For the purposes of GST, supply of land under “*jual janji*” is not a supply. In the event the borrower defaults, the lender becomes absolutely entitled to the land in question, making the transaction a “*jual putus*” (“severed” sale), any transfer of ownership of such land which relates to a “*jual putus*” is a transfer of goods and GST is chargeable on such supply.

34. Similarly, land under charge (mortgage) or lien is not a supply. When a borrower charge the land title to the lender to obtain a loan, it is regarded as security to secure loan. Even though, the lender takes proceeds of the land pending repayment of the loan amount by the borrower, and the lender returns the land to the borrower upon full repayment of the loan. Hence, it is not a supply because during this period there is no transfer of ownership of such land. However, in the event there is default in payment under security relating to land, any transfer of land under charge, mortgage or lien is a supply of goods.

35. Hence in both scenarios, Para 2(3) of the First Schedule 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.”

In most scenario, in the event the borrower defaults, the lender will sell land under power of sale in satisfaction of debt or foreclosures on the land of the developer. For the purpose of GST, the developer is regarded as making a supply. Paragraph 5(7) in the First Schedule of the GST Act 2014 deem such goods be supplied by the

taxable person in the course or furtherance of his business and section 65(5) of the same Act required GST to be accounted by the lender.

36. The same principle applies in the case of caveat of land. Entering or lifting of caveat is not a supply by the lender or borrower. A caveat is a document that to give him/her a notice that he/she should discontinue certain proceeding until an opposing party was given opportunity to be heard. A caveat is entered by a person who has interest in the land. There are four types of caveat namely:

- (a) Registrar caveat
- (b) Lien holder caveat
- (c) Private caveat
- (d) Trust caveat

37. By entering into a caveat it will prevent the registration of any instrument of dealing presented prior to the entry so long as the registration of the instrument has not been completed and shall continue in force until it is cancelled by The Registrar by way of his own motion, or on an application or court order.

38. Also, non-supply concept is apply in the case of surrendering basic amenities or utility in common area of the strata building by the developer. Normally, the “*surat kebenaran merancang*” and approved layout plan issued by the Authority requires in the case of a strata title property such public amenities or utilities such as gymnasium, swimming pool, mosque or multi-purpose hall be provided by the developer. Such supply of goods to joint management body (JMB) or Management Corporation (MC) is treated as a non-supply because such supply intended to be supplied for the use and enjoyment of the parcel owner.

39. If the developer are involved in managing the maintenance fund and running of the completed development as required under the Building and Common Property (Maintenance and Management) Act 2007 or Strata Management Act 2013 before a Joint Management body or management corporation is formed (interim period), such developer are not required to be registered regardless of whether such supply of services be performed to residential properties or not. Such supply of goods or services be treated as non-supply.

JOINT DEVELOPMENT

40. Generally, the parties involved in the joint development of land in Malaysia would not qualify as a joint venture (JV) under GST law. Section 69 of the GST Act 2014 only allows such facilities be given to petroleum related industries.

41. For GST purposes, JV for property is not allowed because:-

- (a) JV must have at least two active members who actively participate in the venture activity. Even though, in property sector, there are two members involved i.e. the land owner and the developer, the land owner do nothing except giving consent under the Power Of Attorney Act 1949 (ACT 424) to the developer to develop the land, either for residential or commercial properties or both.
- (b) The property developer supply construction services to the land owner which constitute a taxable supply.

42. Generally, a JV project is a project undertaken jointly between a landowner and a property developer under an agreement to develop the property. Under the power of attorney, the development project required the landowner to allow his land to be used or developed by the property developer for a development and in return he receives:

- (a) a certain number of houses upon the completion of the project;
- (b) a certain percentage of the progress payments from the sale of the property built under the project;
- (c) the sales proceed from the property allotted to him and sold on his behalf by the property developer; or
- (d) the landowner and the property developer agree to some other arrangement under the JV project.

Type of Joint Development in Malaysia

43. JV are commonly used in real estate matters where two or more persons undertake to develop a specific piece of land. JV are usually formed through the



legal procedures of creating a memorandum of understanding, a joint venture agreement, any ancillary agreements, and obtaining regulatory approval. In Malaysia, there are many types of joint development being practise. The most acceptable model of JV in Malaysia are as follows:

(a) Profit-sharing system

JV between the owners of the land under a "profit-sharing system" with the developer. The sharing is based on the agreed ratio basis. For example, the sharing ratio is 20:80 which 20% will be given to the landowners and 80% is for the developers. Under the JV agreement, the developers do not need to pay for such land acquisition. Developers entirely at their own expense to build and complete the development of the land and give some percentage of the completed building to the landowner.

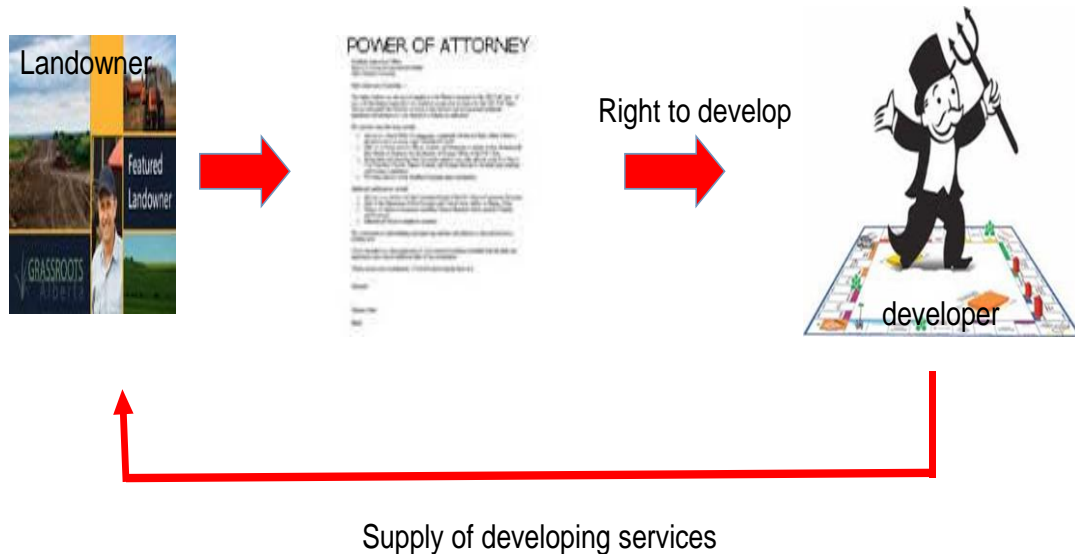
(b) The sharing of profits between the developer and the landowners

The land owner is the State Government and the JV agreement will involves the State Government and the developer. Assuming that the profit sharing ratio is 40:60. The owner will surrender the land to the developer for development and in return he will received a portion of the profits from the development of these lands.

(c) Return Guaranteed JV

In this type of JV, the developer will pay the consideration in cash. For example, the consideration pay-out is up to 30% to 40% higher than the price paid for land in instalments.

44. Under a JV project in property, it is a project undertaken jointly or under the power of attorney between a landowner and a property developer. Both have their own roles.



45. If the land owner is not a GST registered person, he does not play an active part in the development or has any permit to advertise or market the property. As an inactive person, he also may not be carrying on a business and not sharing any profit or losses on the project that they work on it.

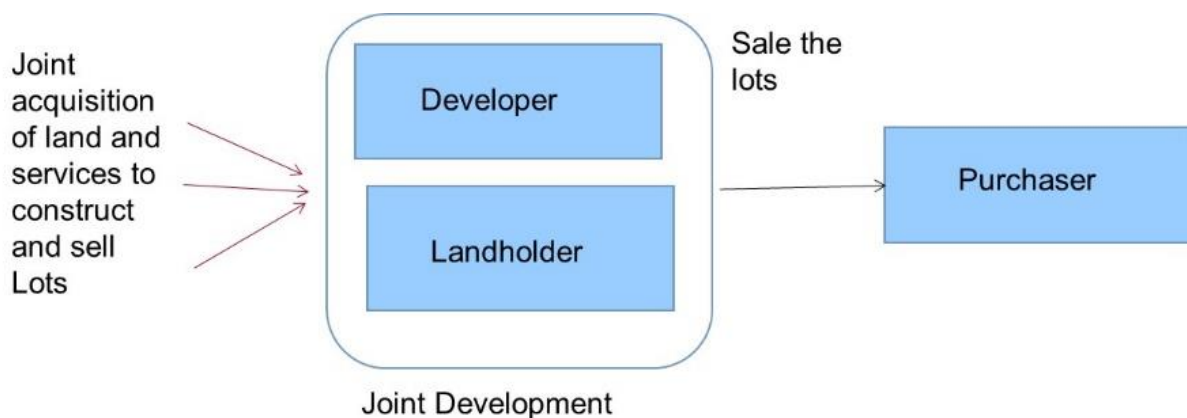
46. While on the developer side, he is a GST registered person. Normally, the JV agreement between the parties stipulates that such developer will supply the developing services and bear all the costs and expenses. Generally, power given under Act 424 allows the developer to act on behalf of land owner to deal with the land and develop the residential, non-residential property or both. Section 5 (3) of the Housing Development Act 1966 required the developer who develop more than 4 units of residential property to obtain a housing development license. Regulation 5 of Housing (Control and License) Development Regulation required such developer to apply a permit to sale and advertise. Hence, such law only authorised such registered developer to collect the money from the purchaser.

47. There are many models of JV have taken place. The GST treatment on the model chosen are as follows:

(a) Model 1: Joint acquisition of land and services to construct and sell the lots.

Under this model the JV are as follows:

- (i) A contractual agreement joining together two or more parties for the purpose of executing a particular business undertaking for a limited period and sharing the profits and losses,
- (ii) The parties will be carrying on a business jointly and making acquisitions and supplies jointly
- (iii) GST obligations to be borne jointly and severally. They act as one entity and subjected to:
 - One GST return with output tax and input tax credits
 - One tax invoice for supplies and acquisitions, and
 - Joint and several liability for GST.



(b) Model 2: Joint development under an agreement.

In this joint development, usually the land owner enters into JV agreement with a developer. The developer takes a power of attorney from land owner to develop the land into non-residential or residential property. The power of attorney give the beneficiary right to the developer to construct the buildings, market and collects the money from the purchaser even though the legal title is still held by land owner. The land owner will received a proportion of the proceeds.

For the purposes of GST, by giving the right to develop such property to the developer, the land owner is making the supply of services to the

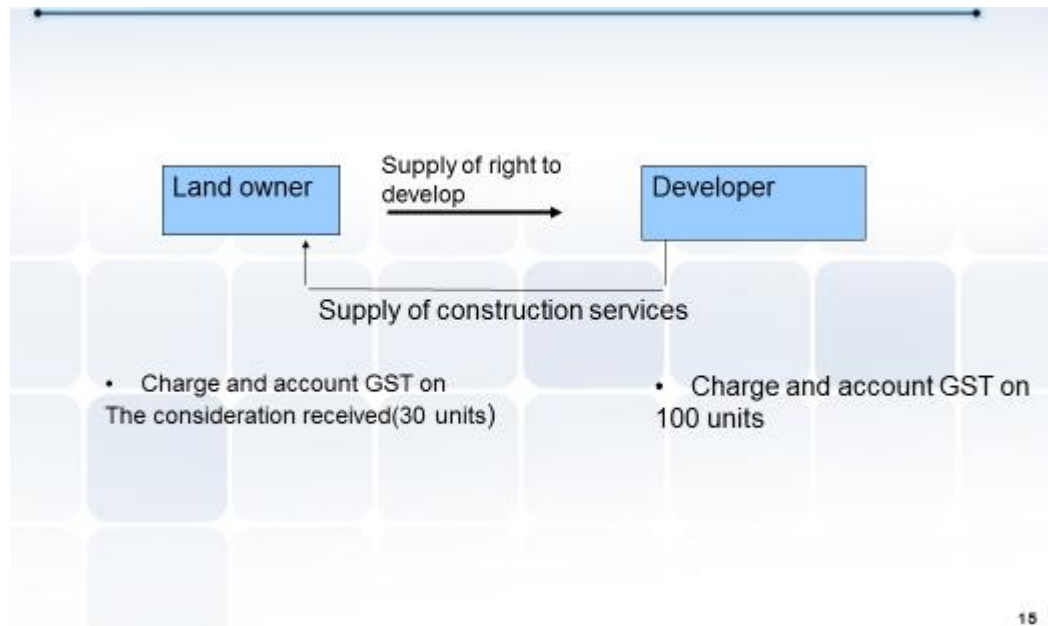
developer. Such supplies is subject to GST. Later, by transferring the developed lots to the purchasers (by completing the 14A forms as required by the NLC), such land owner is transferring his legal right over the land to the purchaser.

Therefore, when there is a JV, the GST treatment is as below:–

(i) Land owner

The land owner who is a GST registered person must 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 of such right to develop the land shall include all consideration received by the land owner. The land owner shall account for GST based on the consideration he received.

For example, under the agreement both parties agreed to build 100 units of shop houses. The agreement stipulates the agreed profit sharing is 30:70 where the land owner will get 30 units of the shop houses and a sum amount of money and the property developer received 70 units of the shop houses. For the purposes of GST, land owner shall charge GST on the supply of right to develop the land or supply of land at the GDV, account for GST based on the value of the 30 units of the shop houses and a sum of money (if any) received. If land owner is not GST registrant, no GST shall be charged on such supplies.



(ii) The Developer

The developer is supplying construction services to the land owner. The developer is required to charge GST on 100 units of shop houses to the land owner on the construction services and other services supplied to him at the gross development cost (GDC) and account for the GST. Since the JV agreement signed by both parties agreed that all costs (construction costs and other costs) will be incurred by the contractor, such costs be deemed to be supplied by him and no tax shall be issued to the land owner. The developer are require to account for output on such costs at GDC and claim the input incurred on such supply of services. The land owner cannot claim any input tax on such supply of construction services and other cost.

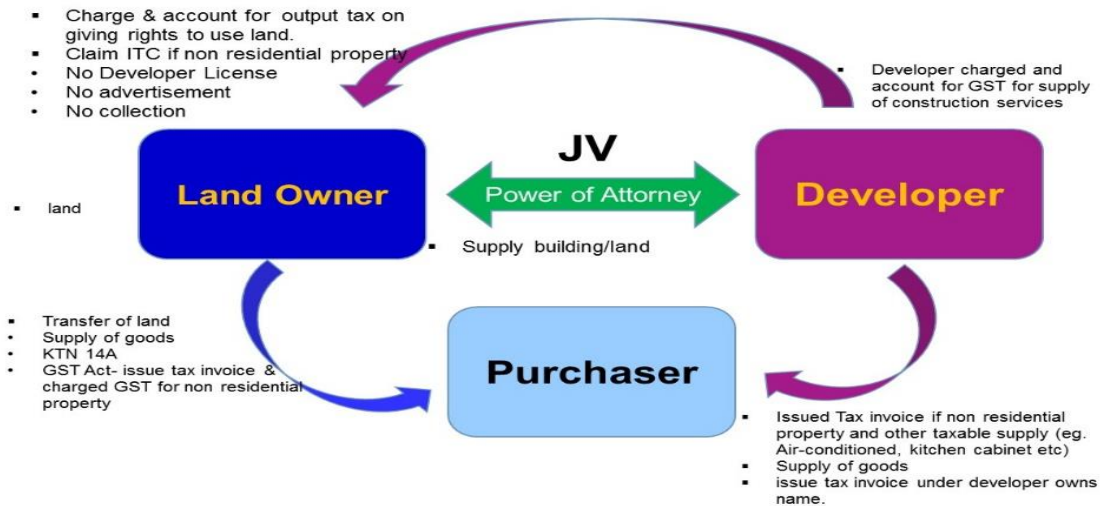
Based on the above example, the property developer shall account on output on the deem supply of construction services to the land owner. The time of supply for such services is when services is performed or in the case of payment to be made periodically as under Regulation 11 of the GST Act. In the case where the property developer also supply the marketing services or supply such property with items such as cabinet, air conditioner units, furniture, etc., such supplies is a taxable

supply and subject to GST. Such construction services and other services are be deemed to be supplied by him to the land owner and no tax shall be issued to the land owner .The developer are require to account for output at GDC and claim the input incurred on such supply of services. The land owner cannot claim any input tax incurred on such deeming supply of taxable goods (fitting and furniture) even it was attached to the land.

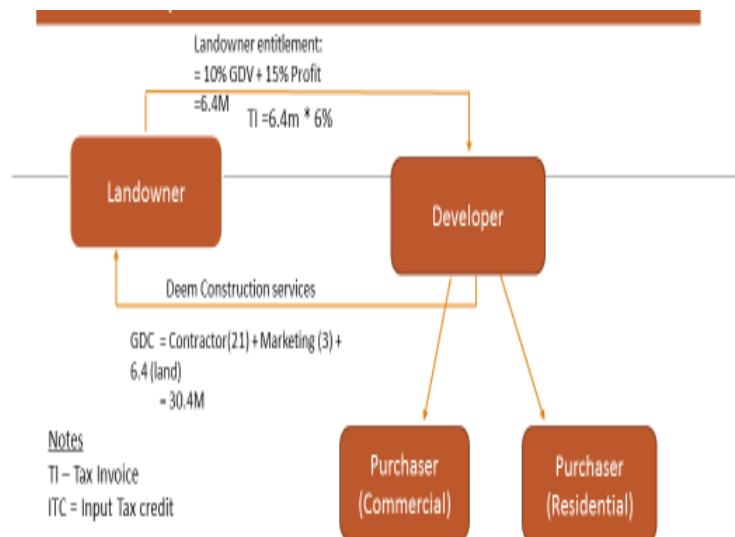
Legal title of the property is transferred from the land owner to the developer. ACT 424 allows the developer to deal with the property including to sell the property on behalf of the land owner. Normally, JV agreement allows the developer to collect the money from the purchaser. Hence, in the case where such property be transferred to the purchaser, the value of such property is at gross development value (GDV) and the developer have to charge GST on such sale of completed property. The developer shall account for the output tax on the sale of the property and the time of supply is when the goods made available to the purchasers that is on the date of issuance of the letter of vacant of possession.

If, the developer be appointed by the land owner to sell his profit sharing (30 unit of houses), the developer must issue a tax invoice under his name or on behalf of land owner, charged GST to the purchaser and account for output tax. The time of supply is also on the date of issuance of the letter of vacant of possession.

The developer also are required to issue a tax invoice and charge GST to the land owner on the sale of the buildings as a supply of services on the sale of the 30 unit shop houses. The time of supply is on the services is performed.



48. In summary, the GST treatment below is applicable in the case of JV agreement between a land owner and a property developer.



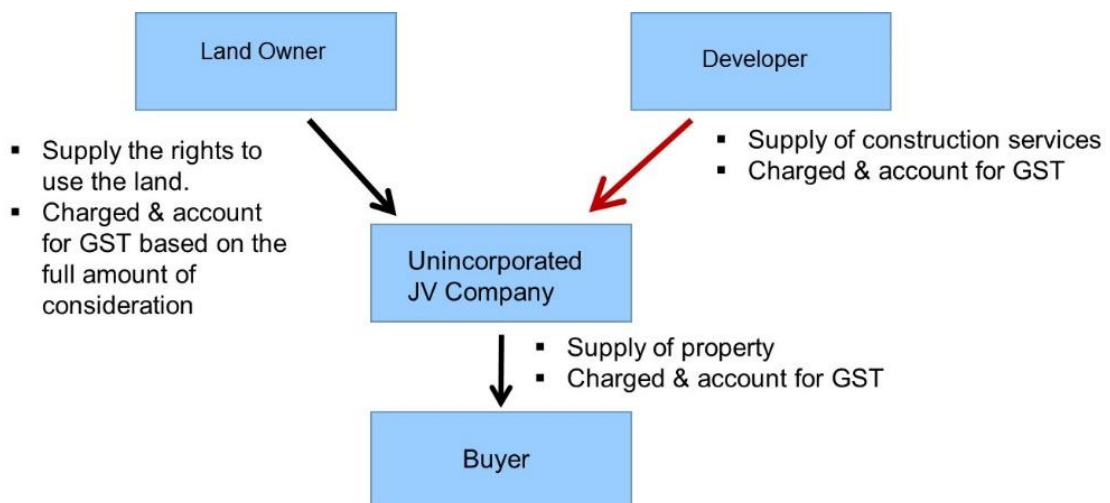
(c) Model 3: Land owner and developer to form up an unincorporated joint venture who acted as a company to develop the land.

Under this model 3, the land owner and the developer are forming up an unincorporated JV company. This unincorporated JV company stand as one entity. The GST treatment is the land owner are supplying the rights for the unincorporated JV Company to occupy his land. The land is still belongs to the land owner. Therefore, the land owner is required to charged and account for GST on the full amount of the consideration of the supply of right to develop the land. The time of

supply is when the supply of rights to use the land take place. That is on the date of the agreement.

Meanwhile, the developer who is providing construction services also required to charged and account for GST on the construction services to the unincorporated JV Company. The value of such construction services is at gross development cost (GDC). The time of supply is when the services is performed.

Then, if there is any sale of the lots take place, the unincorporated JV company are required to charge GST to the purchaser. The transaction value of the lots of the property is at gross development value (GDV). The time of supply also will be on the date of the vacant of possession issued.



49. Hence, generally JV in Malaysia will involve a few scenarios

Scenario 1

Ahmad is the legal owner and holds title in land and BA Sdn Bhd is the property developer. The Sales and Purchase Agreement (SPA1) is entered between Ahmad and BA Sdn Bhd where BA Sdn Bhd has agreed to pay Ahmad the contract sum in full, however the document of title will remain by Ahmad. Ahmad will grant a power of attorney (PoA) to BA Sdn Bhd and BA Sdn Bhd will construct, incur and pay for all the development. BA Sdn Bhd

also will sells commercial property . The Sale and Purchase agreement (SPA 2) is entered and signed by Ahmad, BA Sdn Bhd and purchaser for the property and BA Sdn Bhd issues progress billing to the purchaser and strata title/individual title is issued and transferred from Ahmad to purchaser.

(a) Land owner

The land owner who is a GST registered person must 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 shall include all consideration received by the land owner and such land owner shall account for GST based on the consideration he received.

(b) The developer

The property developer is supplying construction services to the land owner. The property developer is required to charge GST to the land owner on the construction services at gross development cost (GDC) and account the GST. However, since the JV agreement signed by both parties agreed that all costs (construction costs and other costs) will be incurred by the developer, such costs be deemed to be supplied by him and no tax shall be issued to the land owner. The developer are liable to account the GST on such supply of services.

The JV agreement also allows the property developer to deal with the property. Hence, the property developer are allows to issue a tax invoice on the supply of the completed property under his name or on behalf of the land owner to the buyer at the gross development value (GDV) and account for the GST. If he charged commission on the sale of such completed property, the property is required to issue tax invoice and account for the commission received.

Scenario 2

Land owner (AA) enters into an agreement with BB Developer to develop the land. The joint venture agreement be signed by the parties and AA agrees to issue PoA to BB. Then, BB have enter another JV agreement with Finance

*Institution and such finance Institution agreed to jointly finance the project.
Legal title is issued and transferred from AA to Purchaser.*

There are 2 separate supplies involving 2 separate JV agreements

(a) First supplies

- (i) Supply of right to develop the land (PoA) by the land owner (AA) where the land owner have to charge GST on the supply of right to develop the property and account for the output tax.
- (ii) Supply of the construction services where the property developer (BB) have to charge GST on such supply to AA at the gross development cost (GDC). However, since the JV agreement signed by both parties agreed that all costs (construction costs and other costs) will be incurred by the developer, such costs be deemed to be supplied by him and no tax shall be issued to the land owner. The developer are liable to account the GST on such supply of services. GST on the supply of the construction services have to be accounted by BB.
- (iii) Supply of the property by BB to the purchaser. The legal title of land is held by the land owner. Hence the supply of such completed building is by the land owner to the purchaser. In the of JV agreement the developers only have the beneficiary right over the land. The provision under the JV agreement also allows the property developer to deal with the property and the developer are allows to market, sell the property and also collects the moneys on behalf. Since the land owner (AA) is the register person, BB have to charge GST on such supply at the gross development value (GDV).
- (iv) If the property developer also sell the portion of the property that belong to the land owner, he has to charge the land owner on such supply of services

(b) Second supplies

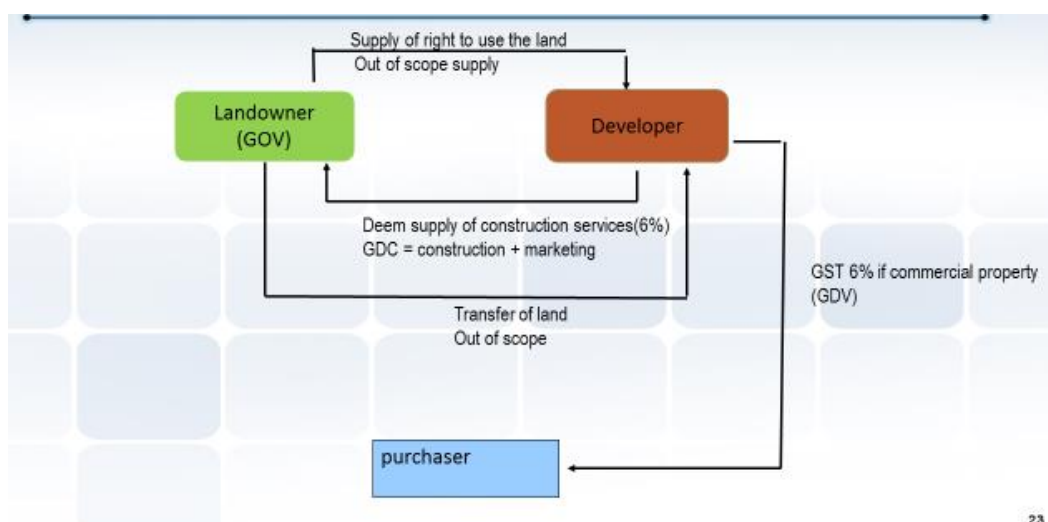
Supply of financial services which is exempt supply. No GST will be imposed on such supply. However, GST will be imposed on processing fee.

Scenario 3

If the parties in the JV agreement involves Government and the developers (assuming that the profit sharing ratio is 40:60) where the owner (Government) will surrender the land to the developer for development and in return he will received a portion of the profits from the development of these lands.

GST treatment for JV agreement involving government and developer is as below:-

- (a) Relief the supply of right to develop the land (PoA) by the Government to the developer.
- (b) Supply of construction services by the property developer to the Government. Since the JV agreement agreed that such cost will be incurred by the developer, such supply are deemed to be supplied by him and the developer have to account for GST on output in the return. The valuation for such supply is at gross development cost. NO tax invoice shall be issued to the land on such transaction.
- (c) Supply of the property by property developer to the purchaser. The property developer have to charge GST on such supply at the gross development value.



BUSINESS AND INDIVIDUAL SUPPLY COMMERCIAL PROPERTY

50. Section 9 of the GST Act requires a taxable person to charged GST on any taxable supply of goods or services in the course or furtherance of business on any taxable supply of goods or services made in Malaysia. Section 20 requires any person who make a taxable supply to be registered if his total taxable supply of the current month and the next eleven months exceeds RM500,000.

51. Section 3 of the GST Act 2014 defines business includes any trade, commerce, profession, vocation or any other similar activity whether or not for pecuniary profit. In determining whether an activity qualified as a business for GST purpose, the following criteria may be used:-

- (a) It is a serious undertaking or work earnestly pursued;
- (b) It is pursued with reasonable or recognizable continuity
- (c) It is conducted in a regular manner and on sound and recognized business principles (business-like nature);
- (d) It is predominantly concerned with making supplies for a consideration;
or
- (e) It is making supplies of a kind commonly made by commercial organizations.

52. In the case of land, any individual are treated as carrying out a business if he has-

- (a) in his possession more than 2 commercial properties or more than one acre of commercial land; and
- (b) the intention to supply such commercial properties as a supply of goods.

53. Any individual is also be treated as carrying out a business if he:-

- (a) is supplying any license to occupy, rights to use, lease, rent or easement; and

- (b) his annual turnover is exceeded the prescribe threshold in the 12 months period

TIME OF SUPPLY

Supply for Goods

54. Section 2(1) of the Goods and Services Act 2014 defines the goods as “any kind of movable and immovable property”. Normally, the general time of supply prescribed in section 11(2) of the GST Act 2014 is applicable to determine the time of supply of goods. In relation to land, the time of supply for supplying land is when the land is made available to the buyer at the earliest as follows:-

- (a) when the land is made available; or
- (b) when the payment is received.

The phrase “made available” referred to the time when the ownership of the land is transferred upon legal completion (vacant possession of the land be delivered).

55. For transfer of land, where the whole or part of the consideration for such transfer of land is payable **periodically or from time to time**, regulation 4 of the GST Regulations provides the time of supply is as below:-

- (a) at the time part of the consideration is received, or
- (b) the tax invoice relating to the transfer of land is issued.

whichever is the earlier.

56. Based on **Regulation 4, GST Regulations 2014**, for the sale of a property under development, normally, payments be collected progressively from time to time according to the schedule of payments specified in the agreement. The property is usually made available to the purchase for occupation after the issuance of CCC.

57. GST has to be accounted for at the earlier of when payment is received or when tax invoice relating to the transfer of land (whichever is applicable) is issued. The phrase “*relating to the transfer of land*” shows that the liability of the developer to

issue the tax invoice for each progressive payment until the property is made available (vacant possession (VP)) or the document title is erred to the purchaser upon legal completion) (whichever is earlier). Once the property is made available or transferred to the purchaser, developer are liable to account for GST for the remaining sale proceeds (regardless of whether the remaining sum for the property has been received in full) at the earliest of earlier of when payment is received or when tax invoice (whichever is applicable) is issued.

Supply for Services.

58. For supply of services, the time of supply for services prescribed under section 11 of the GST Act 2014 is applicable. The basic time of supply for services is when the services is performed. Please refer to the Guide on Supply for further reference on the time of supply of services.

59. On the other hand, if the supply of services is supplied on a continuous basis such as in the case of easement, license to occupy the land, let out, rental or lease of a non-residential property, the prescribed rule of time of supply for services prescribed in **regulation 8, GST Regulation 2014 applies**. The time of supply in this case is **whichever is the earlier of:-**

- (a) a payment in respect of the supplies is received; or
- (b) the supplier issues a tax invoice relating to the supplies.

INPUT TAX

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

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

61. Claim for input tax can be made in the return for the taxable period in which the supply or importation takes place by offsetting against the output tax. A refund

will be made to the claimant if the amount of input tax is more than the amount of output tax.

62. For developer, in the course or furtherance of any business any GST incurred in relation to the purchase or lease of any taxable supply as the input tax is claimable. This will include any lease or purchase of non-residential land or building and all taxable item other than listed under Part IV of the Schedule G or H of the Housing Development Act.

63. On the other hand, if the developer is making wholly exempt supply, the input tax incurred is not recoverable. However, the developer must apply for the apportionment method if he making both taxable and exempt supply (mix supply). This apportionment method used by the developer to recover his residual input tax incurred in the course or furtherance of his business. Input tax incurred on the taxable supply portion is claimable.

64. In the apportionment method, there is certain input tax is not directly attributed to either taxable or exempt supplies and it is known as residual input tax. Examples of residual input tax include input tax on rental, general overheads such as utilities charges, professional fees and telephone bills. The amount of residual input tax that can be claimed is only the proportion that is related to the taxable supply. This proportion is determined according to the ratio of the taxable supply based on the total supplies made by the taxable person in such taxable period. For further information on apportionment calculation, please refer to the Part VI of GST Regulations 2014 and *GST Guide on Partial Exemption*.

65. However, for the supply of land for general use, any input tax attributable to exempt supply of such land shall be treated as input tax attributable to taxable supply. The **Regulation 42 of the GST Regulations 2014** allows such input tax be claimed by the developer if the following conditions are fulfilled:-

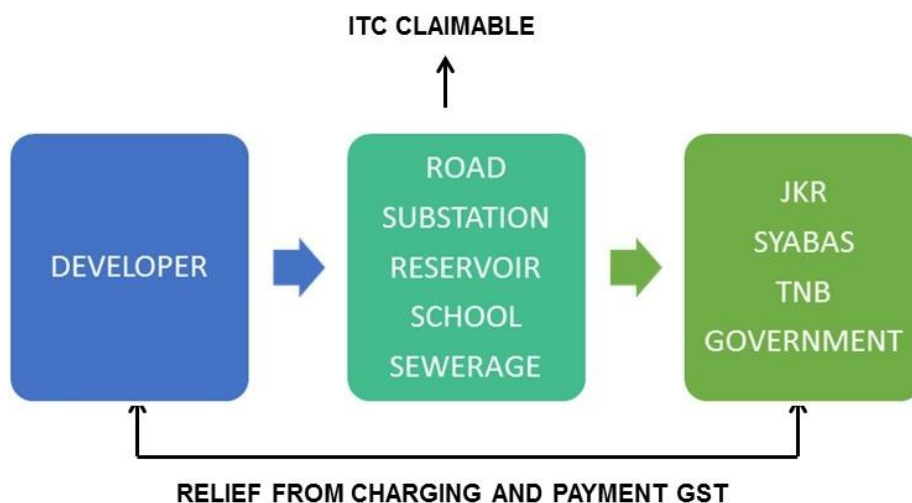
- (a) Such supply is made by a taxable person.
- (b) Supply of goods in compliance with the requirement enforced by the public body.

- (c) Such supply of goods is supplied to public body (government, state government, local authority and or statutory body).

Hence, such supply of land for the purpose of burial ground, playground or religious building must be specified in the approved lay out plan.

66. Basically, section 56 (1) of the GST Act 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. Para 2, Second Schedule of Relief Order 2014 relief the developer from charging and collecting tax on any supply of land for the purpose of providing public amenities and public utilities by the developer to the government, local authority or any other person and also relieve the Government, local authority or any other person from the payment of the whole or any part of the tax which may be charged. Section 56 (1) only applicable if the condition imposed under Para 2 be complied. Para 2 of the Second Schedule of GST (Relief) Order only relieved the tax be charged if such public amenities or utilities is supplied for no consideration or for a nominal value. However, the facilities under Para 2 is only applicable if such project has been approved and fulfilled all the conditions as below:-

- (a) Department of Town and Country Planning;
- (b) Public Works Department;
- (c) Department of Drainage and irrigation;
- (d) Fire and Rescue Department; and
- (e) the building plan is approved by the Local Authority.



FREQUENTLY ASKED QUESTIONS

Registration

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

A1. Supply of commercial property is a taxable supply whereas supply of residential property is an exempt supply. Taxable supplies include sale, lease and rental of commercial property. For a mixed supplier, if your supply of commercial property exceeds the threshold in the past 12 months or within the future 12 months, then you are liable to be registered.

Q2. If my annual turnover of taxable supplies does not exceed the threshold, can I apply to be registered?

A2. You may apply for voluntary registration, but once registered you must remain registered for a minimum of two years.

Please refer to Registration Guide for further details.

Q3. I am a developer who is doing fully residential property development. Do I need to be register?

A3. Yes, may apply for voluntary registration. Supply of residential property is an exempt supply and you are not entitled to claim input tax incurred on your acquisitions. However, if you are registered person, you are entitle to claim input tax:-

- (a) attributable on any exempt supplies of land for general use if it is made in compliance with the requirement enforced by any public body as provided under Regulation 42 of GST Regulation 2014.
- (b) on any supply of land to the government, local authority or any other person in compliance of the requirement by the government or local authority for the purpose of providing public amenities and public utilities as provided under Goods and Services Tax (Relief) Order 2014.

Place of Supply



Q4. If I am a developer registered in Malaysia and sell non-residential property in Malaysia, do I have to account for GST on my supplies?

A4. Supply of non-residential property by a developer in Malaysia is subject to GST. The developer are require to charge GST on the sale and lease of such properties and account for the GST as output tax in the GST returns

Q5. 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?

A5. No tax will be charged if the supply of goods is made within or between the designated areas.

Q6. If my office is registered in the designated area and supply non-residential property in Johor, do I have to account for GST?

A6. Yes, these supplies are subject to GST.

Q7. If a local developer in Malaysia supply non-residential property in the designated area, is the supply subject to GST?

A7. Yes, the supply is subject to GST. However, if the developer makes residential property in the designated area, he is making an exempt supply.

Time of Supply and Accounting Period.

Q8. When and how do I account GST for supplies of uncompleted non-residential property under progressive payment contracts?

A8. You have to **account for GST, as provided in regulation 4 of the GST Regulation 2014**, 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.

Example 3

A purchaser enters into an agreement to buy a commercial building which is under construction. The price of the building is RM300,000 not including GST.

The payment is scheduled for four successive interval payment and the respective amounts to be paid are as follows:

Scheduled payment period	Amount
1 st payment (1 April 2016)	RM 40,000.00
2 nd payment (1 July 2016)	RM 60,000.00
3 rd payment (1 October 2016)	RM 80,000.00
4 th payment (1 January 2017)	RM 120,000.00

The 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 = RM120, 000.00

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

The developer accounts for GST based on the date the tax invoice is issued. Assuming he is on a monthly taxable period, then if he issues a tax invoice on 1st April, he has to account for GST in the April GST return by 31st. May, 2016.

If he is in a quarterly taxable period his first submission of GST03 should be submitted by 31st July 2016 and the GST amount of RM2,400.

Q9. When do the developer has to account for GST on the sale of a completed non-residential property which involves lump sum payment?

A9. The sale of a completed non-residential property is a supply of goods. The time of supply for this transaction is the date when the developer should account GST on the supply. The time of supply for the sale of the completed non-residential property is when the property is made available to the buyer or the transfer is already in effect (either by vacant possession of the property already be delivered or document of title).

However if the developer issues a tax invoice or receive payment before the property is made available to the buyer then the time of supply for this transaction is the time when the developer issues a tax invoice or receive payment. On the other hand if the developer issues a tax invoice within 21 days after the property is made available, then the time of supply is the date of the tax invoice issued.

If the developer issues a tax invoice more than 21 days after the property is made available, then the time of supply is the date the property is made available to the buyer.

Booking Fee, Tender and Contract Deposits

Q10. Do I have to account for GST on receipt of payment for a booking fee?

A10. 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.

Q11. Are tender and contract deposits subjected to GST?

- A11. (a) The deposit for payment of contract documents is subject to GST because it involves the supply of goods.
- (b) No GST is payable, if the deposit serves as a security will be refunded.
- (c) Yes, if a deposit is intended to be used to offset against the future payments (partly or fully) once the supply has been made, GST is chargeable on such a deposit.

Example 4

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 GST 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 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 is 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 be asked 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.

Tax Invoice

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

A12. Yes if you are a registered person and the transaction involves the residential property, you can issue the invoice to the buyer. The developer cannot issue the tax invoice to the purchaser on the sale of non-residential property if the land owner is not a registered person.

Q13. Currently when I sell the commercial property to the purchaser, I issue the invoice to the finance institution .Is the same practice applicable for such sale which effect from 1st April 2015?

A13. No, because if the invoice issued on the Bank's name, the purchaser cannot claim the ITC. Therefore, the tax invoice must issue on 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 GSTA (Goods and Service Tax Act 2014) (refer section 33 GSTA and reg.38(1)(a)(i) 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 is subject to GST. The developer who are registered under section 20 of GST ACT 2014 are liable to charge GST on such supply and account for GST as output in the GST return.

Example 5

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 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 playground or religious building. Item 1 of the GST Supply (Exempt) Order 2014 states that supply of land for general use is exempt supply. Regulation 42 of the GST define “general use” means the use of land for the purpose of burial ground, playground and religious building. In the case of land for general use be supplied by the taxable person to the Federal Government, State Government, local authority and statutory body, such regulation allows

any input tax attributable to such supply be treated as input tax attributable to taxable supply if such supply be made in compliance with the requirement enforced by any Federal Government, State Government, local authority and statutory body.

- (b) Supply of land for the purpose of roads, police station, schools and other public amenities. Such supply is a taxable supply and basically, GST is chargeable. However since this supply is 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 such taxable person are relieved from charging GST to the state authority. This is stated under item 2 in the Second Schedule of the GST Relief Order 2014. Such taxable person are allows to claim ITC under section 39(1)(a) of the GST Act 2014.

Q16. I provide administrative services such as provide endorsement of deed of assignment. Are such administrative fees subject to GST?

A16. Yes, administrative fees incurred such as endorsing the deed of assignment are subject to GST because administrative services are standard rated supplies.

Q17. I charge interest for late payment. Is this interest payment subject to GST?

A17. Interest payment related to late payment is regarded as a penalty and is not a supply. Therefore, it is not subject to GST.

Q18. Merah Developer sells only 180 units of residential condominium. In the contract, it will supply two free car park, 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?

A18. Item 1 of the GST (Exempt) Order 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 includes any supply of parking facilities which is ancillary to the supply of residential building. Hence, the sale of extra car park at RM18,000 each to the owner of the residential property is an

exempt supply. Therefore input tax incurred in the construction of the car park cannot be claimed.

Q19. If Merah Developer sells 500 units of non-residential properties include 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?

A19. The supply of non-residential properties are standard rated supply. The sale of extra car park at RM25,000 each to the owner is also standard rated supply. Therefore input tax incurred in the construction of the car park is claimable.

Q20. If 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.

A20. The supply of residential condominium is an exempt supply and supply of shop lot is standard rated supply. The sale of extra car park at RM20,000 each to the owner of shop lot is also standard rated supply. But the sale of the extra car park at RM20,000 each to the owner of residential condominium is an exempt supply. Therefore input tax incurred in the construction of the car park, Merah Developer should do the apportionment.

Q21. 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?**

A21. 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 in Schedule H and /or G of the Housing Development (Control and Licensing) Act 1966. Treatment for input tax are as follows:-

- (a) If XYZ Developer supply the goods without consideration to the buyer, XYZ Developer has to account for GST on the supply of the goods. Therefore input tax incurred in making the supply is claimable.
- (b) Free club membership is a supply of service. However in this instance the supply of service is given free and therefore it is not a supply. Furthermore input tax on club membership cannot be claimed because it is a blocked input.

Input Tax Credit

Q22. Is the input tax incurred for the entire property development incorporating residential, commercial and industrial units recoverable?

A22. No, only the input tax on goods and services which are used or will be used wholly in making taxable supplies is recoverable. You should identify the inputs that are directly attributable in making taxable supplies and claim that portion. In this case, only the input tax incurred on inputs used wholly in making commercial and industrial buildings (commercial) is recoverable. Input tax used for making exempt supply is not claimable. Input tax used for making both taxable and exempt supplies should be apportioned.

Example 6

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).

However, under the Regulation 42 of GST Regulations 2014, input tax that is attributable to exempt supply of land for general use may also be treated as being attributable to taxable supplies. The terms of general use means that the usage of the land is for the purpose of burial ground, play ground or

religious building. The input tax incurred on these supplies is treated as attributable to taxable supply and it is claimable. However such supply of land for general use must be made by a taxable person to the federal or state government, local authority or statutory body.

On the other hand, supply of road, drainage, oxidation pond and others public amenities are taxable supply. In the case where such taxable supplies be supplied to the government, local authority or any other person in compliance of the requirement by the government, the GST Act allows input tax on such supplies be claimed by the developer who is the register under GST Act even though item 2 of the second schedule of the GST (Relief) Order 2014 relieved the developer is given relief from charging the output tax to the government local authority or any other person.

Q23. Can I claim input tax incurred on the upgrading works such as to widen the road and other public amenities that's belong to the government?

A23. The upgrading work done is a supply of services and subject to GST. You are required to charged and account for GST. Indeed, the services is supply to the government but such services is not given any relief in the GST (Relief) Order 2014. Therefore, the input tax incurred is claimable and you are required to charge GST on such supplies.

Q24. Residual input tax is input tax for making both exempt and taxable supply. How do I apportion the claim of the residual input tax?

A24. 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 7

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 residual inputs 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:

$$\begin{aligned}
 &= \text{Residual Input Tax} \quad \times \quad \frac{\text{Total Value of Taxable Supplies}}{\text{Total Supplies}} \\
 &= \text{RM40,000.00} \times \frac{\text{RM 3,000,000.00}}{\text{RM 8,000,000.00}} \\
 &= \text{RM15,000.00}
 \end{aligned}$$

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

Please refer to Guides on Partial Exemption for further information.

Q25. ABC Developer sells residential properties only. It contracted to sell a condominium to Ms. Lela. The cost incurred by the developer for the condominium is as follows:

Description	RM	Type of supply
The condominium unit	460,000	Exempt
Renovation to extent kitchen	40,000	Standard
Italian sofa set	25,000	Standard
Refrigerator	7,500	Standard
Curtain set	12,500	Standard

Legal fee (free)	5,000	Standard
Total	550,000	

A25. From the scenario given, there are three different supply. ABC Developer is supplying residential property which is exempted from GST. The developer cannot charge GST to the buyer. Therefore ABC cannot claim all the input tax incurred in making the exempt supply. However, if he fulfil the condition in regulation 42, the input tax incurred on the supplies such as road, playground, sewerage etc that will be handed over to the government may be recovered. This is because such supplies attribute to taxable supply.

At the same time the developer also supply renovation services, sofa, refrigerator and curtain. This is a separate supply from ABC to the buyer. These supply is a taxable supply. Such input tax is claimable. Here, the developer is considered as a mix supplier.

The third supply is the supply of services by the legal practitioner to the developer. However, the legal fee incurred is a supply made by the legal practitioner to the developer. He may charge GST to the developer and it becomes an input tax to the developer. If such supply is incurred on the sale of the residential property of which is an exempt supply, the input tax on such acquisition is not claimable.

Q26. Can I claim input tax on speculative supplies such as consultant / professional fees, finders fees and feasibility studies, which are incurred in the course of investigating potential projects?

A26. Speculative supplies such as consultant / professional fees, finders 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 8

RZM Development Sdn Bhd is intend to develop a piece of land into the residential property. A valuer be engaged to perform value 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 used of in used of the development from residential property to commercial property. Then the he may incurred cost and the input tax is claimable.

Q27. If a residential building build along the main road, and is converted into non-residential use (showroom), is it possible for me to claim the input tax?

A27. Residential building is exempted from GST. However, if the residential building owner converts the residential building to commercial use (showroom), then the building will be subjected to GST and the input tax claim is allowed. Any supply of the building after conversion is subjected to GST.

Q28. Maju Developer develop 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, what other methods of apportionment is acceptable to Customs?

A28. 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 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 approved the application if the alternative method is found to be more fair and equitable. The 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



Q29. What is the GST treatment on gift given free by the property developer to the purchaser?

A29. Paragraph 5(2)(a) of the First Schedule of GSTA 2014 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 and input tax is claimable.

In the case where the Gift was bought by a taxable person from a non-GST registered person worth more than RM500 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 such the tax year. If the total cost exceeds RM500, it is subjected to GST (account for output tax).

Example 9

Mr. Abu purchase 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.

However, no GST is chargeable on gift if such gift is given to the same year in the course of furtherance of the business if the total cost of the gift does not exceed RM500.

Damages and Out of Court Settlement

Q30. What is the GST treatment for damages and out of court settlements?

A30. Damages and Out of court settlements which are paid for the breach of warranty or delays in completion of contract, are compensatory in nature. Hence such settlement cannot be treated as taxable supply and GST need not be charged for such recovery. However GST is chargeable for settlements; payments made for taxable supplies

Liquidated Damages



Q31. Are liquidated damages such as delay in completion of work subject to GST?

A31. No, liquidated damages due to delay in completion of the construction project is not subjected to GST.

Example 10

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 the 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.

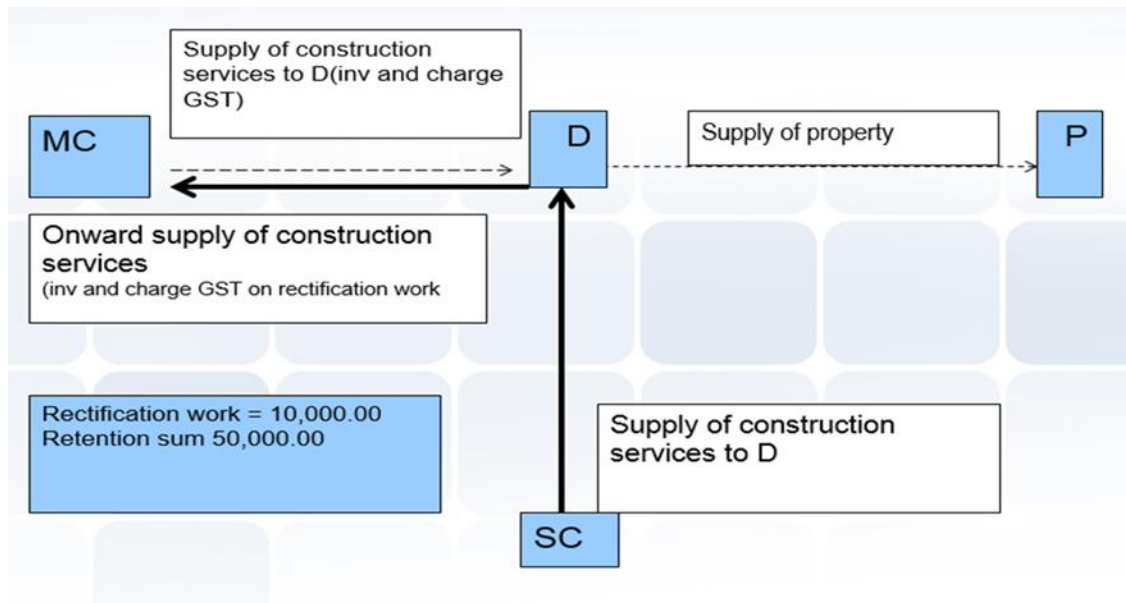
Rectification of defect

“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’s defects in the new units that needs 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 are compensatory in nature, and cannot be treated as taxable supplies.

Q32. 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?

A32. (a) 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 4



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.

- (b) 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 developer in turn deduct such amount from any payment due to the main contractor. In either situation, the developer are making a supply of rectification works to the main contractor. The developer have to charge and account for GST on the amount he claimed or deducted from the main contractor

Scenario 5

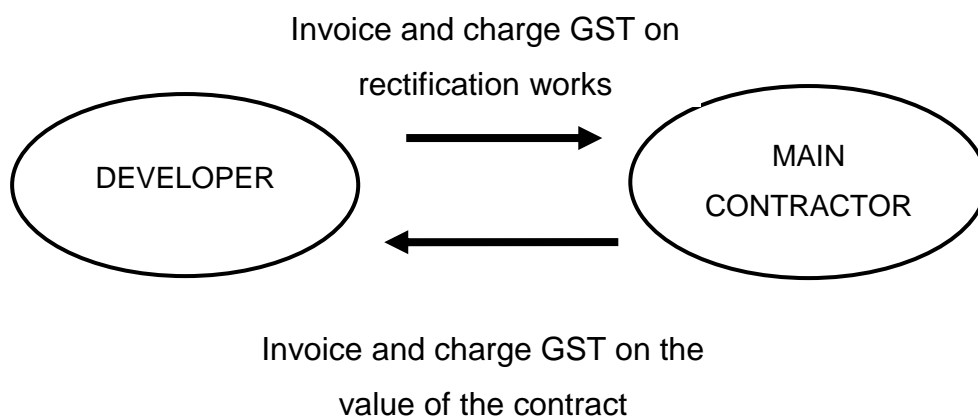
If the purchaser ("P") hires his own sub-contractor ("SC") to rectify the defects, there is a supply from the purchaser ("P") to developer ("D") because the purchaser ("P") is making good the defects that should have been done by ("D"). If the purchaser ("P") is registered for GST, he has to charge ("D") 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 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 developer to the main contractor for the full value of the rectification works because the developer repair the defects that should have been done by the main contractor.



- (b) Claim payment from the main contractor.

The 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 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 developer should charge GST the main contractor for the rectification works, similar to (a).

Q33. What is the GST treatment if the compensation only relates to the poor work done and does not involves any rectification works?

A33. If no rectification work is to be carried out and the developer is only claiming compensation from the main contractor for the poor work done, 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

Q34. Are contracts signed before the GST implementation date liable for GST?

A34. First of all look into the details of the contract. If the contract is about 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 made on or after the implementation date is subjected to GST even though the contract is signed before the implementation date.

Q35. Are contracts signed which span the transitional period (pre and post GST implementation date) liable for GST?

A35. Commercial property made available before GST implementation is not subjected to GST. However if the property is made available on or after GST implementation date, the supply of the property will be subjected to GST. This applies for completed constructed property or existing property. The phrase “made available” means that vacant possession of such property have been delivered by the developer.

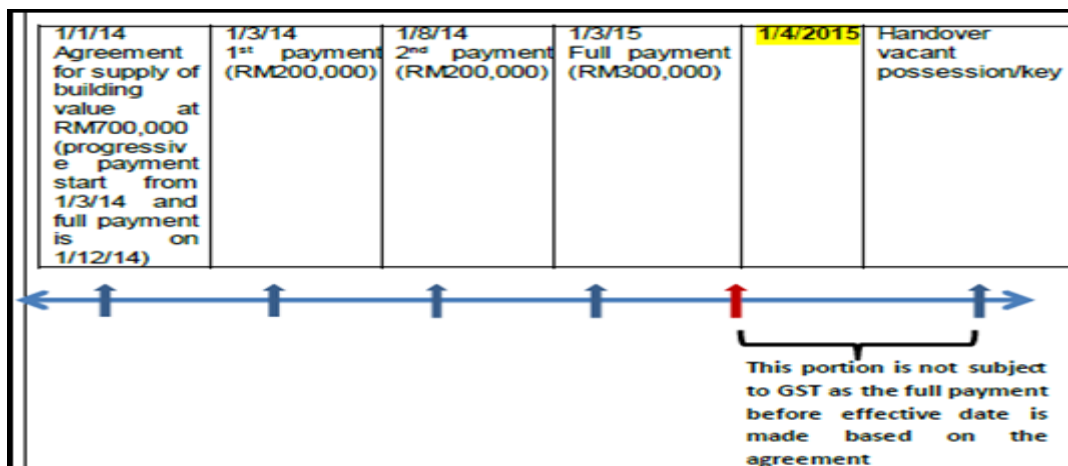
On the other hand, if the property is still under construction and there is a contract for a period or progressively over a period before and after the implementation date, GST is applicable only on the portion of the property under construction from 1st April 2015.

Q36. I have sold a shop lot worth RM1 million. I have made the full payment and S&P signed before 1st April 2015 but the key is handed over on the 5th April 2015? Is the property subjected to GST?

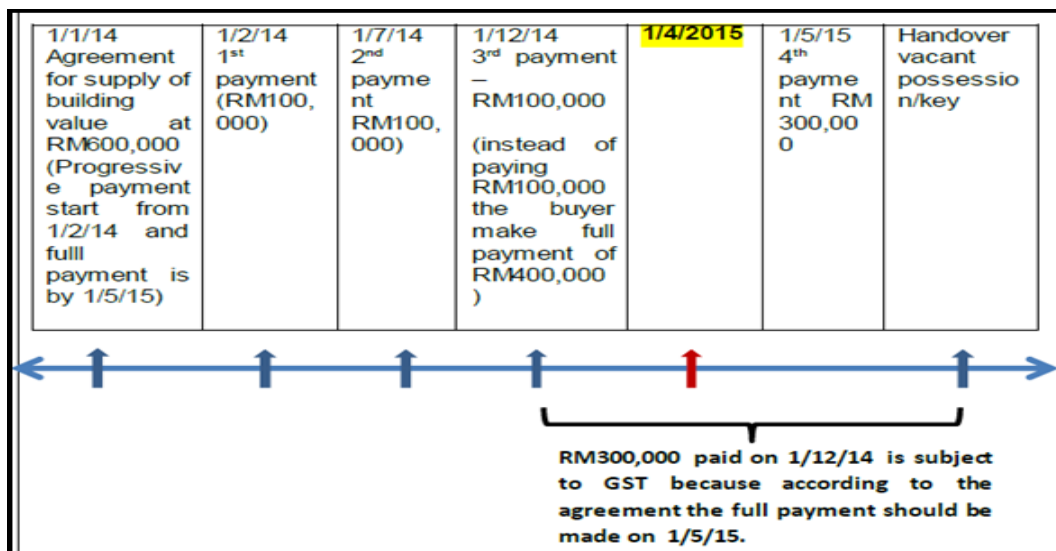
A36. Supply of land or property made:

- (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, GST Act 2014);

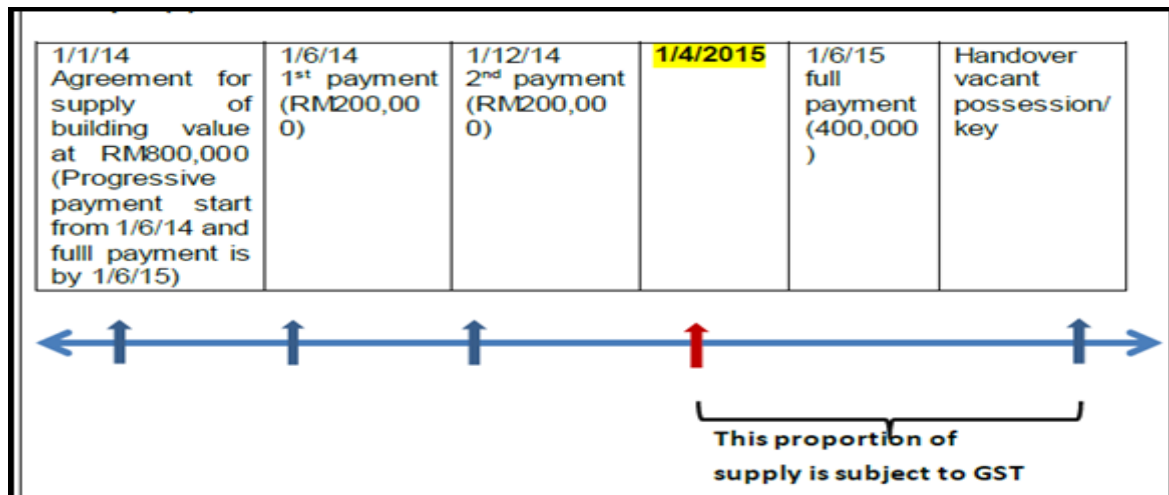
Example 11



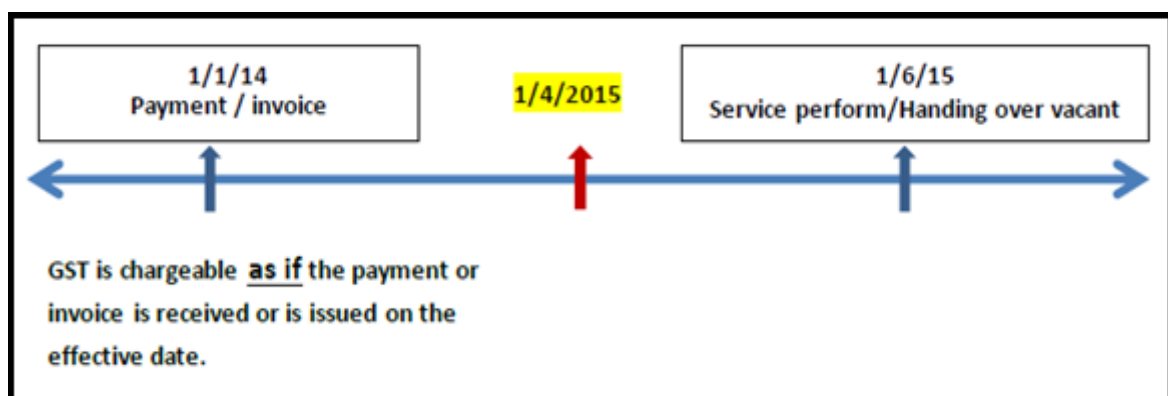
Example 12



Example 13



- (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 (s.183 GSTA).



Hence, such land is treated to be supplied if vacant possession be delivered before 1st of April 2015 regardless whether such supply is under section 183 or 188 of the Act.

Q37. What are the consequences if I do not make a provision to include the element of GST in my contract?

A37. Failure to include the GST provision may make the developer unable to recover GST from the client because the price stated in the contract is deemed to be the consideration paid to the developer. Consideration is value of property including GST.

Q38. How do I calculate GST on value of building if the building was constructed during the time spanning GST implementation?

A38. You must apportion the value of building pre and post GST. GST is only chargeable for the part of the building constructed after GST implementation. This value will include the value of all works incorporated into the building pre GST and post GST. A recognized person such as engineer and architect can verify the value of that part of building through the issuance of an interim certificate. This certificate issued by a recognized person under any written law may include any certificate issued by Construction Industry Payment and Adjudication Act (CIPAA) or Uniform Building By-Laws 1984 (UBBL) (written law in Malaysia).

Example 14

KL Contractor signs a contract with JK Developer to build a RM1,000,000 commercial building. The contract is scheduled to begin on 16 April 2014 and completed by 30 April 2015. Under the contract of agreement, KL Contractor will receive an amount as provided under the progress payment schedule. KL Contractor will invoice JK Developer on 15th of each month. By 1st of April 2015 KL Contractor has received RM800,000 from JK Developer on the construction services done and on 15 April 2015, KL Contractor lodges a claim amounting to RM 200,000.00 for the remaining value. How much should KL Contractor account for GST if the valuation on 1 April 2015 is RM900,000?

If the valuation is at RM900,000 then the remaining RM100,000 is subjected to GST. Therefore KL Contractor has only to account (RM100,000 x 6/106) RM5,660.38 to customs if he is GST registered.

Q39. Do I have to account for GST on non-residential property completed before implementation of GST but sold after the GST implementation?

A39. 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).

Q40. Developer A commenced its project construction on 1 January 2012 and is expected to be completed on 31 July 2015. All the products, consisting of retail lots and serviced apartment, are sold in the year 2012 and scheduled for progress billings up to July 2015. Some of the products are sold with interior design complete with finishing. Whether the progress billings and contractors' claim 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?

A40. The portion of goods (retail lots and serviced apartment) that have been supplied before the GST implementation date are not subjected to GST. The portion that is to be supplied after GST implementation will be subjected to GST. Progress billing for the portion of goods to be supplied after GST implementation shall include GST. The portion of construction services supplied after GST implementation date will be subjected to GST. Similarly, the portion of interior design complete with finishing supplied after GST implementation date will be subjected to GST.

Q41. On 1 July 1992, land owner RZM Sdn Bhd have entered into agreement into leasing agreement under section 222 of NLC where MS Sdn Bhd be given the right to occupy the land for 65 years will and end on 30 June 2057. The whole agreed payment be paid to RZM Sdn Bhd upon signing such agreement and submitting form 15A of NLC to the land office. Whether such payment received by subjected to GST?

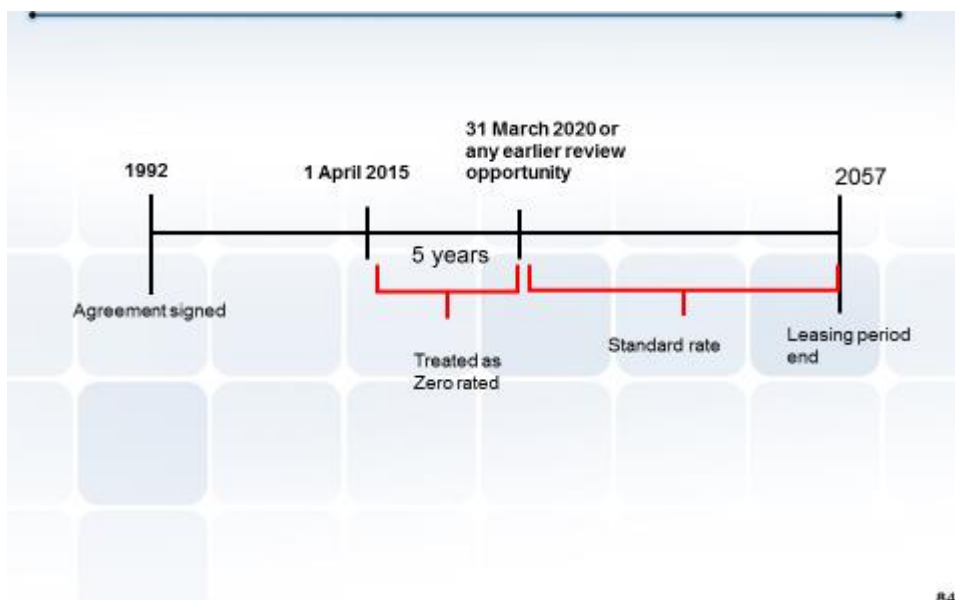
A41. Any supply of leasing services is supply of services and subject to GST if such supply is relates to commercial land or property. Basically, GST treatment for spanning period is based either on:-

- (a) contract has no provision for general review opportunity to change /renegotiate the consideration for such supply of leasing services(section 187 GST).

The provision of such leasing services under a reviewable contract entered into no less than two years before 1 April 2015 can only be zero-rated until its first opportunity after that date for review or for a period of five years after 1 April 2015, whichever is the earlier.

However this section is only applicable if:

- (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



Hence, 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 Act

Supply of leasing services for a term of 65 years by RZM Sdn Bhd to MS Sdn Bhd is a continuous supply of leasing services spanning the GST commencement. Section 188 of the Act allows only the portion of supply made before 1 April 2015 is not subject to GST. The proportion of 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.

Other Issues

Q42. What is vacant possession?

A42. Giving 'vacant possession' refers 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. It means that at the moment that 'vacant possession' is required to be given, the property is empty of people and that 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]*).

Hence, 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 be 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.

Q43. Is the capital contribution fee subject to GST?

A43. Capital contribution fee is payment required to be made by the developers to the utility providers for the provision of water, sewerage, electricity and telecommunication services. Developers are mandatorily required to supply such facilities to ensure such services are made available to all project. The developers who runs the project are required to pay capital contribution charges for infrastructure works such as trunking, cabling, etc. It is a voluntary basis to provide such facilities.

The GST treatment on the capital 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 time of supply is when the

services is performed or payment received or tax invoice is issued, whichever is the earlier.

Q44. A property developer wants to change 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?

A44. No, the conversion premium imposed by the State Authority is not subject to GST.

Q45. What is GST treatment on long lease or subleasing of the Property?

A45. Sections 221 to 223 of NLC allows the land owner to grant the right to lease the property for the maximum term up to 99 years if it relates to the whole of any alienated land and 30 years if it is relates to a part of alienated land only. A leasehold property is an ownership of a temporary right to hold land in which a lessee or a tenant holds rights of land by some form of title from a lessor or landlord. Although a tenant does hold rights to real property, a leasehold property is typically considered personal property. Until the end of the lease period the leaseholder has the right to remain in occupation as an assured tenant paying an agreed rent to the owner. It is a contract of leasing between a land owner and a tenant. For sub leasing of the property, NLC allows such right be granted for a term exceeding 3 years.

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

Q46. I get a project to build a mosque on the “wakaf land” and give it to the Majlis Agama Islam Negeri. What is GST treatment on such developing services? Does it subject to GST?

A46. There are 2 supplies involve:-

- (a) Supply of “wakaf land” which is use as commercial property to the Majlis Agama Islam Negeri is a taxable supply. GST have to be account by the taxable person who surrendered such land to Majlis

Agama Islam. On the application made by the taxable person, section 56 (3) of the GST Act allows the Minister subject to such condition relief Majlis Agama Islam from payment of the whole or part of GST charged or relieve the taxable person from charging and collecting GST on such supply of “*wakaf land*”.

- (b) Supply of mosque on the “*wakaf land*” is treated as a supply of land for the purposes of general use and falls under GST (Exempt) Order. Developer cannot imposed any GST on such supply. However, regulation 42 of The GST Regulation 2014 allows any input tax attribute to such supply to be treated as taxable supply and such taxable person be allowed to claim for ITC if such supplied be made to any public body and such supply of goods by the taxable person is made in compliance with the requirement enforced by any taxable person.

Q47. What is the GST treatment on the amalgamation of land?

A47. Amalgamation of land is the process of combining two or more adjoining pieces of alienated land. Originally the lands are held under separate document of titles, after the land are combined, they will be held under a single land title with all proprietors appearing in the title together with their shareholding. The other titles ceases to function. For the purposes, Application to amalgamate the land is not a supply and not subject to GST.

Q48. Do I have to account for GST if my project is abandoned?

A48. During the period the project is abandoned, you may not be making a taxable supply and therefore you do not have to account for GST. However, if you received any payment or issued any tax invoice during this period, you have to account for it. If you had issued a tax invoice and accounted for it but did not receive payment within 6 months, you can recover GST as bad debt relief.

Q49. 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?

A49. 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.

Q50. I supply materials and utilities and loan workers to contractors for use in my project. Can I contra the value of the materials, utilities and workers with the value of the construction services?

A50. No. These are regarded as two different supplies. You have to charge GST for the full value of the materials, utilities and workers services supplied to the contractor. Similarly the contractor have to charge you GST on the full value of the construction services.

Q51. Due to the poor sales, Tinggi Developer is unable to manage in selling off the 20 units of shop houses. Out of that they decided to keep 10 units of shop-houses as its fixed asset/investment properties for rental income. How does Tinggi Developer treat the input tax claimed earlier on the changes made? Is converting an inventory to investment property be interpreted as taken for own use and considered as a deemed supply?

A51. Input tax claimed earlier in respect of intending to make taxable supplies of selling (expected sales) commercial units need not be adjusted because the proportion claimed does not change as rental of commercial units entitles the developer to claim the same proportion of tax. Both are making taxable supplies.

Converting an inventory to investment property per se is not a supply. Renting out the property is a taxable supply. Using the property for business use without the consideration is not supply but input tax can be claimed because the property is used for purpose of business. However, if the property is used by a developer who makes mixed supply, the developer will have to pay back the input tax earlier claimed by making adjustments. Using the property for private use is considered as a deemed supply and the developer will have to account for output tax.

Q52. 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 Item
1.	Forfeiture sum

No.	Billing Item
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

A52. The GST treatments for the above billing item 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 consideration, it is not subject to GST. If such money is forfeited, there has no GST implication.
- (b) Area variance, extra package billing and administration fee is subject to GST at standard rate.
- (c) Generally, contra adjustment is not applicable in GST. There should be two separate supplies where the supplier issues and charges GST to the customer. If the customer is a registered person, he is allowed to claim the input tax. Accounting for GST based on the difference (contra) is not allowed.
- (d) The value for GST purpose of reversal or discount allowed will be reduced by the value of the discount given.

- (e) Deposit for supplies of water and electricity is not subject to GST if the money received is a deposit for purpose of security and does not form as part of consideration.
- (f) Quit rent and assessment are out of scope supply.

Q53. What is the GST treatment on the service apartment and the shop houses which will be used as partially commercial and partially residential?

A53. Generally, treatment of land to be based on the usage. Serviced apartment is treated as residential property. Therefore it is exempted from GST. Shop houses will be treated as partially commercial and partially residential if one floor is used for commercial and the other floor is for residential. You are required to do apportionment between the commercial and the residential usage. The commercial usage is subject to GST while the residential will be exempted from GST.

FEEDBACK OR COMMENTS

67. Any feedback or comments will be greatly appreciated. Please email your feedback or comments to gstsector3@customs.gov.my.

FURTHER INFORMATION

68. Further information can be obtained from:

- (a) GST Website: www.gst.customs.gov.my
- (b) GST Hotline: 03-88822111
- (c) Customs Call Centre:
 - Tel : 03-78067200/ 1-300-888-500
 - Fax : 03-78067599
 - E-mail : ccc@customs.gov.my

