



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.

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 201X 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.

GENERAL OPERATIONS OF THE INDUSTRY

5. Real estate refers to land and everything attached to it, whether on or below the surface. Land includes buildings, trees, vegetation and other structures and objects in, under or over it. Real property is the rights to use real estate and includes activities concerned with ownership, use and transfers of immovable property.

6. This industry guide involves activities of property developers, including housing developers licensed under Housing Developers (Control and Licensing) Act 1966, and any person engaged in or undertaking a property development.

GST TREATMENT FOR THE INDUSTRY

7. The supply of land used for agricultural, residential (including residential house such as link house, semi-detached house, detached house, apartment including serviced apartment and condominium) or general purpose such as burial, playground and religious is exempt from GST. The supply of land and building used for commercial, administrative and industrial purpose such as shop lots, office, retail business, small office home office (SoHo), small office virtual office (SoVo), small office flexible office (SoFo), factories, hotel, motel, inn, hostel and warehouses is subject to GST.

8. The classification of land and building is based on the usage at the condition as below:–

- (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) Vacant / bare land to be treated based on usage according to the title.
- (d) Change in use of the property such as change in used of residential house to be converted to commercial premise is subject to standard rate based on the following:
 - (i) The premise is registered with the relevant authorities;

- (ii) The owner himself applies for change of use; or
- (iii) Evidenced by the sales and purchase agreement

9. Any transfer of the whole right of ownership in land, land under an agreement for the sale of such land, land under an agreement which expressly stipulates that the ownership of such land will pass at some time in the future, any interest under Deed of Assignment or any strata title is a **supply of goods**.

10. Any lease, tenancy, easement, license to occupy land or transfer of undivided share in land is a **supply of services**.

11. Where there is a default in payment under security relating to land, the transfer of such land shall be treated as a supply of goods. Changes in the land title such as the replacement of title with strata title or subdivision is not regarded as a supply.

12. The sale and disposal of property involving a transfer of ownership or title is regarded as a supply of goods. In the case of taxable supply, GST is charged on the whole value of the property when the land is made available to the purchaser that is the date of conveyance. However, in the case of property under construction involving progressive payment, the supply is treated as separately and successively supplied, and GST is charged whenever a part of the consideration is received or whenever the developer issues a tax invoice relating to that supply, whichever is the earlier. Where the transaction involves a transfer of possession such as lease and rental of property, it is regarded as a supply of services. GST is imposed on each successive lease or rental payment. GST is charged whenever the consideration is received or whenever the developer issues a tax invoice relating to that lease or rental.

13. All supplies where charges and fees imposed by the Government related to real estate such as quit rent, premium, survey fees (conducted by Survey Department),

registration of titles and other payment are regarded as out of scope. The assessment rates imposed by the local authorities is also out of scope of GST.

14. The treatment of any land transaction with a building or structure attached, will depend on its usage. If a residential building is built on the commercial land title, it will be treated as residential and such transaction is exempted from GST. However, if the residential building has been used for commercial purposes, GST is charged on the sale of this building.

15. Any input tax incurred on the purchase of land and development of **non-residential** properties is claimable provided that you are a GST registered person and the property is used for:

- (a) furtherance of your business,
- (b) leased out for the purpose of business, or
- (c) developed into non-residential properties for the purpose of sale or lease.

16. The time of supply for the sale of uncompleted non-residential property under progress payment by developers is based on the various stages of the progress or scheduled payment based on tax invoice issued or payment is received, whichever the earlier.

17. Developers are allowed to claim an input tax directly attributable in making taxable supplies as they normally provide mixed supplies. Input tax on goods and services which are not directly attributable to making taxable and exempt supply is regarded as residual input that needs to be apportioned accordingly. **(For further details, please refer to Guide on Partial Exemption)**

18. Where a development project involves both residential housing and commercial building, the residual input tax that can be claimed are GST incurred on utilities, rental, office equipments and stationeries etc., infrastructural and recreational works such as landscaping, community hall, car park facilities, playgrounds and incidental services.

19. In order to secure the purchase of the property, developers are allowed to collect deposit or booking fees. Deposit or booking fees given in respect of a supply is not regarded as payment and is not subject to GST. However, if the developer applies such deposit or booking fees as consideration or part payment, then they are subject to GST.

20. Land that is under charge (mortgage), lien or caveat is not a supply. When a developer charge the land title to the lender to obtain a loan, it is regarded as security for payment of debt. The same treatment is applicable in the case of a lien where such as actions are not regarded as a supply and not subject to GST. When the lender sells land under power of sale in satisfaction of debt or foreclosures on the land of the developer, the developer is regarded as making a supply and the tax will be accounted by the lender. Entering or lifting of caveat is not a supply by lender or borrower.

21. Land or goods which form part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, the transfer or disposal is a supply of goods by the person except where the person who is carrying on a business is not entitled to credit on the supply or importation of goods. Such goods are not entitled to credit because the input tax is blocked or the goods are used for making exempt supply.

22. Under normal conditions, the parties involved in the joint development of land in Malaysia would not qualify as a joint venture under GST.

23. Usually, a land owner will have contracts with a developer. The developer will take power of attorney for land owner over all aspects of the development of constructing the buildings, market and sell the separate lots but the title is still held by land owner. The land owner sells the developed lots and pays a proportion of the proceeds to the developer. The land owner supplies the property while the developer provides services to the land owner.

FREQUENTLY ASKED QUESTIONS

Registration

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

A1: Supply of commercial property is a taxable supply. If your annual turnover involving the commercial property exceeds the threshold in the past 12 months or within the future 12 months, then you are liable to be registered. Taxable supplies include the sale, lease, disposal and rental of non-residential property.

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.

Supplies

Q3: What are the supplies subject to GST in the real estate industry?

A3: The supplies which are subjected to GST include the supply of all types of land except land for residential, general use or agricultural land whether or not including housing / building (Land includes building).

Example 1:

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 100 residential houses is exempt from GST. The classification of type of building is determined by the condition of use as stated or to be stated in the document of title.

Q4: 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?

A4: No, these are non-supplies and hence GST is not chargeable to the property which will be handed over to the government or local authority as a relief is given under item XX of the GST (Relief) Order 201X.

Q5: I also have to transfer the infrastructure of utility services such as substations, sewerage treatment plant and water tank to the respective

utilities provider for a purely nominal charge. Are these transfers / supplies subject to GST?

A5: Yes, these transfers are subject to GST but the developers will be given relief from charging under the GST (Relief) Order 201X. They are transferred to the utilities providers at a purely nominal charge. The utility providers are hence forth required to maintain this infrastructure.

Q6: In relation to the question above, what constitutes my taxable and exempt supplies?

A6: Your supply consist of supplies of the main development that you charge your purchasers. Your taxable supply is the sale of the commercial buildings. Your exempt supply is the sale of your residential housing.

Q7: I provide administrative services such as provide endorsement of deed of assignment. Are such administrative fees subject to GST?

A7: Yes, administrative fees incurred such as endorsing the deed of assignment are subject to GST because administrative fees are standard rated supplies.

Q8: I charge interest for late payment. Is this interest payment subject to GST?

A8: Interest payment related to late payment is regarded as a penalty and is considered to be out of scope. Therefore, it is not subject to GST.

Q9: Is the conversion premium imposed by the Federal and State Authority subject to GST?

A9: No, the conversion premium and all other premium and fees imposed by the Federal and State Authority related to real estate is regarded as out of scope and is not subject to GST.

Q10: Merah Developer sells only 180 units of condominium. In the contract, it will supply two free car park lots, with option to sell extra car park @ RM18,000 each, free club membership, four units air-conditioner and one new refrigerator. Is this to be treated as a composite supply? How do I treat the input tax in respect of the:

- (a) car park building cost,**
- (b) air conditioner and refrigerator,**
- (c) construction cost of club house,**
- (d) overhead expenses (site office rental, utilities, etc.)**

A10: The supply of a residential condominium is an exempt supply. The selling of extra car park at RM18,000 each, four units of air conditioner and one new refrigerator are standard rated supplies and subject to GST. Free club membership is not a supply. Input tax on club membership cannot be claimed because it is blocked. Subsequent supply of club membership is not a supply. Giving free car park is a supply of goods and it is deemed to be a supply even though there is no consideration.

Input tax with respect to car park building cost, air conditioner, refrigerator and construction cost for a club house can be claimed because it is used for making a taxable supply. Meanwhile, input tax incurred on overhead expenses (site office rental, utilities) for purpose of making exempt supply of residential property cannot be claimed.

Time of Supply and Accounting Period.

Q11: When and how do I account for GST for supplies of uncompleted non-residential property under progressive payment contracts?

A11: You have to account for GST at the various stages of the progressive / scheduled payment based on the earlier of the following:

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

Example 2:

A purchaser enters into an agreement to buy a commercial building which is under construction. The sales price of the building is RM300,000. 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

Tax invoice = RM 60,000.00

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

3rd interval

Tax invoice = RM 80,000.00

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

4th interval

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 you are on a monthly taxable period, if you issue a tax invoice on 1st April, you have to account for GST in your April GST return.

Q12: Do I have to account for GST on receipt of payment for a booking fee?

A12: You do not have to account for GST on receipt of payment of booking fee because is not regarded as part payment for the supply of real property. However, if you receive payment upon signing of Sales and Purchase Agreement, that payment will form part payment for the sale of real property and will be subject to GST.

Q13: When do I have to account for GST on the sale of a completed non-residential property?

A13: If the contract requires a purchaser to pay upon signing of Sales and Purchase (S&P) Agreement and a final payment, you have to account for GST:

At the stage when S & P is signed:

GST should be accounted at the earlier of the following:

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

At the transfer stage:

GST should be accounted at the earliest of the following:

- (a) when a tax invoice is issued;
- (b) when payment of the balance of the purchase price is received;
- (c) when the property is made available to the purchaser; or
- (d) when the transfer is effected.

Q14: Usually a property developer will issue progress billing after 1 or 2 days of architects certificate being issued. However, there are in certain occasions where the progress billing is being issued after more than 21 days from the date of the architect's certificate. In this case, when do I have to account for GST?

A14: The time of supply for the developer is based on the date of the invoice or payment received, whichever is the earlier. In the case of progress billing, the developer accounts for GST according to the date of invoice issued, or date of payment received, whichever the earlier. It is not tied to the architect's certificate.

Place of Supply

Q15: 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?

A15: Yes, all non-residential property disposed in Malaysia by you will be subjected to GST.

Q16: If I am registered in designated area (Langkawi, Labuan and Tioman) and making a supply on non-residential property in Langkawi, do I have to account for GST?

A16: No tax will be charged if the supplies are made within or between the designated areas.

Q17: If my office is registered in the designated area and I supply non-residential property outside the designated area, do I have to account for GST?

A17: Yes, these supplies are subject to GST.

Q18: If a local developer in Malaysia supplies non-residential property in the designated area, is the supply subject to GST?

A18: Yes, the supply is subject to GST. However, if the developer makes residential property in the designated area, he is regarded as making an exempt supply.

Input Tax Credit

Q19: Is the input tax incurred for the entire property development incorporating residential, commercial and industrial units recoverable?

A19: 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 to making taxable supplies and claim that portion. In this case, only the input tax for inputs used wholly in making commercial and industrial buildings are recoverable. Other residual input tax is apportioned between taxable and exempt supplies.

Example 3:

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 has identified the lifts to be used in commercial building. The input tax incurred on the purchase of lifts can be fully recovered. The input tax on professional fees incurred such as architect's fee has to be apportioned accordingly.

Q20: Can I claim input tax for the incidental supplies of the main development project such as landscaping, roads, school, police station and other public amenities?

A20: Yes, you can claim input tax incurred on such works which is attributable to the supply of the main development (making commercial, industrial buildings and residential houses). However, you can only recover the input tax claim which is attributable to taxable supplies of commercial and industrial buildings. You cannot recover input tax attributable to the supply of residential house because it is an exempt supply.

Q21: Is the entire residual input tax incurred on goods or services recoverable?

A21: Only the portion of residual input tax which is attributable to making taxable supplies is recoverable.

Q22: In relation to the answer above, how should I claim my residual input tax?

A22: The residual input tax that relates to both taxable and exempt supplies should be apportioned to ascertain the portion of input tax that is recoverable.

Example 4:

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
Value of residual supplies	RM 80,000.00
Total value of taxable supplies	RM 3,000,000.00
Total value of exempt supplies	RM 5,000,000.00
Residual input tax incurred	RM 40,000.00

Residual input tax recoverable:

$$= \text{Input Tax} \times \frac{\text{Total Value of Taxable Supplies}}{\text{Total Value of Taxable and Exempt Supplies}}$$

$$= \text{RM 40,000.00} \times \frac{\text{RM 3,000,000.00}}{\text{RM 8,000,000.00}}$$

$$= \text{RM 15,000.00}$$

The residual input tax recoverable is RM 15,000.00

Note: In the case of property under construction, the total value of taxable supplies and exempt supplies refer to the Gross Development Value of the whole project. The property developer will have to make adjustment on the input tax claim if there is a change in the value of taxable and exempt supplies over time.

(For further details, please refer to the Guide on Partial Exemption)

Q23: ABC Developer sells residential properties only. It contracted to sell a condominium to Ms. Lela. The developer incurred cost of the condominium as follows:

Description	RM	Type of supply
Condominium unit	400,000	Exempt rate
Renovation	30,000	Standard rate
Sofa set	10,000	Standard rate
Refrigerator	3,500	Standard rate
Curtain set	1,800	Standard rate
Legal fee (free)	3,000	Standard rate
Total	448,300	

Can we consider ABC Developer as a mixed supplier and claim the input tax incurred? What if the construction cost for the renovation and the condominium itself cannot be easily separated?

A23: Yes, ABC Developer can be treated as a mixed supplier and can claim input tax relating to all the standard rated supplies above except for the legal fee. Input tax for the legal fee cannot be claimed because it is in respect of an exempt supply of the property. Legal fee is not imposed by the developer because the developer is not the one who make the supply of the legal service. The developer has to segregate the cost of the renovation and the cost of the condominium separately

so that partial exemption can be applied. **Please refer to the Guide on Partial Exemption.**

Q24: Can I claim input tax on speculative supplies which are incurred in the course of investigating potential projects?

A24: Where the land has not been acquired, the input tax incurred on speculative supplies such as consultant / professional fees, finders fees, feasibility studies should be regarded as residual input tax, and input tax can be claimed accordingly.

Q25: If a residential building is converted into non-residential use, is it possible for me to claim the input tax?

A25: Residential building is exempted from GST. However, if the residential building owner converted the residential building to commercial use then the building will be subjected to GST and the input tax claim is allowable. Any sales of the building after the conversion is subjected to GST.

Q26: Maju Developer is building 40 units of shop-houses (ground floor) and residential apartments (1st, 2nd & 3rd floor) on top of the shop-houses. Apart from apportionment of input tax based on the selling price, what other methods of apportionment is acceptable to Customs? If a property developer has sold out everything, can he used a fixed percentage every month to apportion instead of monthly apportionment and subject to longer period adjustment (12 months).

A26: The standard method of the apportionment is based on the turnover method. Under the turnover method, the percentage of recoverable residual input tax for a

taxable period is calculated by dividing the value of taxable supply with the total value of all 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 alternatives method of apportionment before he can use such method. The Director General of Customs may approve the application if the alternative method is found to be more fair and equitable. The developer shall only start to use the alternative method beginning from the date specified in the approval letter from the Director General.

In cases where the developer has sold out everything, he can use the previous year's partial exemption baseline. For a new developer who has not generated any sales, he can apportion his residual inputs using expected sales and when later he has generated sales, he will have to make adjustments whether to claim more or pay back input tax under claimed or over claimed. The apportionment rules that are provided for are more fair and equitable as it allows adjustment based on actual input incurred and output to be accounted for.

(For further details, please refer to the Guide on Partial Exemption)

Q27: For township development, infrastructure costs will be incurred upfront for future phases as well as input tax. In the event if future development plan has changed from residential to commercial or a delay in the launching of development, can the developer claim back the input tax in view of the different timing of the input tax and output tax (maybe at an interval of 3 years or more).

A27: The developer can claim the input tax at the time when the plan has changed from residential to commercial. However, if the time when the plan has changed from residential to commercial occurs more than 6 years later, the developer cannot claim the input tax incurred earlier.

Retention Amount

Q28: When can my client claim input tax on retention sum?

A28: When the retention sum is released to you or when you issue him a tax invoice whichever the earlier.

Liquidated Damages

Q29: Do liquidated damages involving late delivery charges have any GST implication?

A29: No, liquidated damages involving late delivery charges do not have GST implications because they are not payment for a supply.

Q30: If I have to pay liquidated damages and at the same time charge the client for another supply, can I set the amount off each other?

A30: No, you cannot reduce the value of your taxable supplies by setting the amounts off each other because they are in respect of two different supplies. You have to account separately. In case the supply to the client is taxable, you have to charge GST in respect of the supply.

Transitional Issues

Q31: Are contracts signed before the GST implementation liable for GST?

A31: Taxable property completed and delivered after the GST implementation date is subject to GST even though the contracts were signed before the GST implementation date.

Q32: Are contracts signed which span the transitional period (pre and post GST implementation date) liable for GST?

A32: Property constructed or made available before GST implementation is not subject to GST. However the taxable property to be constructed or delivered after GST implementation date will be subjected to GST. In other words, for semi completed property, GST is applicable only on the portion on the uncompleted property. A recognized person such as an architect would have to verify the portion of completed property.

Q33: What are the consequences if I do not make a provision to include the element of GST in my contract?

A33: Failure to include the GST provision may result in the developer being unable to recover the GST from the client.

Q34: How do I calculate GST on value of building if the building was constructed during the time spanning GST implementation?

A34: 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 before 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.

Example 5:

(GST to be implemented on 1 April 2015)

KL Sdn Bhd signs a contract with JK Sdn Bhd to buy a commercial building. The contract is scheduled to begin on 16 April 2014 and completed by 30 April 2015. Under the contract of agreement, KL Sdn Bhd will receive an amount as provided under the progress payment schedule. KL Sdn Bhd will invoice JK Sdn Bhd on 15th of each month. On 15 April 2015, KL Sdn Bhd lodges a claim amounting to RM 200,000.00 for value added to the building between 16 April to 15 April 2015

The GST due for value added of building after GST implementation is as follows:

$$\text{GST} = \text{RM } 200,000.00 \times 15/30 \times 6\% = \text{RM}6,000.00$$

Total period involved in valuation = 30 days

Period after GST implementation = 15 days

Q35: Do I have to account for GST on property completed before implementation of GST but sold it after the GST implementation?

A35: Property completed before GST implementation but sold only after GST implementation period will be subject to GST. Completed property refers to property issued with a Certificate of Practical Completion or a Certificate of Completion and Compliance.

Q36: Project A commenced its 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. Are the progress billings and

contractors' claim after 1 April 2015 are subject to GST? Are the billings on interior design complete with finishing after 1 April 2015 subject to GST too?

A36: The portion of goods (retail lots and serviced apartment) that have been supplied before the implementation date of GST are not subject to GST. The portion that is to be supplied after GST implementation will be subject to GST. Progress billing for the portion of goods to be supplied after GST implementation will be subject to GST. The portion of construction services supplied after GST implementation date will be subject to GST. Similarly, the portion of interior design complete with finishing supplied after GST implementation date will be subject to GST.

Other Issues

Q37: Do I have to account for GST if my project is abandoned?

A37: During the period the project is abandoned, you may not be making a taxable supply in respect of the abandoned property 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 the GST as bad debt relief.

Q38: 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 requested by me subject to GST?

A38: Payment for compensation for losses to contractor due to temporary suspension of work requested by you is not subject to GST.

Q39: 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 I supply to the contractor from value of the construction services supplied to me?

A39: No. These two are regarded as two different supplies. You have to charge GST for the full value of the materials, utilities and workers service supply to the contractor. Similarly the contractor has to charge you the full value of the construction services supplied to you.

Q40: In the Property Development Industry, it is very common that the developer incurred purchases of building material such as steel bars, ready-mixed concrete, cement, and etc. or makes payment directly to sub-contractor on behalf of main contractor. There are various method of recovery of these expenses paid on behalf. Will Customs issue any guide on reimbursement and disbursement of expenses?

A40: Customs will issue a ruling regarding the issue on reimbursement and disbursement of expenses. It is common in the real property and construction industry to incur expenses that you on-charge to your customer. Such on-charging of expenses are reimbursements and GST is chargeable on the recovery of these expenses if you are GST-registered. This is so even if you were to on-charge on a cost-to-cost basis or if the expenses were incurred without GST.

The recovery of expenses will be treated as disbursement and will not be subject to GST only if it satisfies the following conditions:

- (a) Your customer is responsible for paying the third party;

- (b) Your customer knows that the goods or services would be provided by a third party;
- (c) Your customer authorised you to make the payment on his behalf; that is, you acted as an agent of the customer when paying the third party;
- (d) Your customer received and used the goods or services provided by the third party;
- (e) The payment is separately itemised when you invoice your customer;
- (f) You recover only the exact amount you paid to the third party; and
- (g) The goods or services paid for are clearly additional to the supplies which you make to the customer.

Q41: 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?

A41: 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.

Q42: 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
a.	Forfeiture sum
b.	Area variance, extra package and car park billing, administrative fee
c.	Contra adjustment (debit)
d.	Reversal – discount allowed
e.	TNB and JBA deposit
f.	Quit rent and assessment

A42: The GST treatment 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, car park 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 on 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.

Q43: Landholding Sdn. Bhd. is a GST registered property developer and Fieldland Sdn. Bhd. a land owner who jointly develop a commercial property. How is the GST treatment and when is the time of supply?

A43: In the joint development scenario, the property developer will develop the belonging to the land owner based on an agreement whereby the developer will take the power of attorney for land overall aspects of the development of the land. The land owner will sell the developed lots and pay a proportion of the proceeds to the developer. In the joint development agreement, the two parties are regarded as two separate entities. The value and time of supply in relation to the transactions may be based on a few possible scenarios:

Scenario 1 - *The developer provide services to land owner. In return, the land owner pays wholly in money to the developer.*

The value of supply is the consideration on the money received. The time of supply is when the payment is received or tax invoice is issued or at the end of the services performed, whichever is the earlier.

Scenario 2 - *The developer provides services to the land owner. In return the land owner gives land to developer.*

The value of supply for the developer is based on the open market value of the land received. The time of supply is when the land is made available, or transfer effected, whichever is the earlier.

Scenario 3 - *The developer provide services to the land owner. In return the land owner pays partly in money and partly in kind to the developer.*

The value of supply is based on the on the consideration on money received, and the open market value of the consideration (not in money) received.

The time of supply for services is when payment is received or tax invoice is issued or on the completion of the services performed, whichever is the earlier.

Q44: What is the GST treatment on the service apartment and the shop houses which will be used as partially commercial and partially residential?

A44: 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

24. Any feedback or comments will be greatly appreciated. Please email your feedback or comments to either Mohd Hisham B. Mohd Nor (*m_hisham.nor@customs.gov.my*) or Aminul Izmeer B. Mohd Sohaimi (*izmeer.msohaimi@customs.gov.my*)

FURTHER ASSISTANCE AND INFORMATION

25. Further information can be obtained from:

- (a) GST Website : www.gst.customs.gov.my
- (b) GST Hotline : 03-88822111
- (b) Customs Call Centre :
 - Tel : 03- 7806 7200/ 1-300-888-500
 - Fax : 03- 7806 7599
 - E-mail : *ccc@customs.gov.my*