

DECISION BY DIRECTOR GENERAL OF ROYAL MALAYSIAN CUSTOMS

BIL.	ISSUES	DECISION
1.	<p>Small Office Home Office (SOHO)</p> <p>The classification of residential property will be based on the design features and essential characteristics and attribute of the property.</p> <p>If SOHO meets the above criteria, is the sale of SOHO apartment classified as a residential property?</p>	<p>(i) Under Paragraph 2, First Schedule of the GST (Exempt Supply) Order 2014 (P.U (A) 271/2014), any buildings or premises being used for residential purposes, designed or adapted for use or intended to be used as dwelling is exempted.</p> <p>(ii) SOHO can be classified as a residential property if the development of such property comply with the requirement of the Housing Development (Control and Licensing) Act 1966 and Housing Development (Control and Licensing) Rules 1989 as follows –</p> <p>(a) letter of planning approval (Surat Kebenaran Merancang) is issued under “residential”;</p> <p>(b) approved layout plan and approved layout building is for dwelling purpose;</p> <p>(c) the sale and advertisement permit is issued under the Housing Development Act (Control and Licensing) 1966; and</p> <p>(d) the developer and the buyer enter into a sale and purchase agreement enforced under the Housing Development Rules (Control and Licensing) 1989.</p>
2.	<p>Supply of commercial property (build & sell) by the developer to the purchaser under an agreement for a period that begins before the effective date and ends on or after</p>	<p>(i) Supply of commercial property (build and sell) by the developer to the purchaser under an agreement for a period or progressively over a period, whether or not at regular intervals and that period begins before the effective date and ends on or after 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</p>

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	<p>the effective date.</p> <p>(i) What is the GST treatment of such supply?</p> <p>(ii) How to determine the value of such supply if it is subject to GST?</p>	<p>s.188 GSTA).</p> <p>(ii) Only the value of 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.</p> <p>(iii) To determine the value of the supply, the developer must ensure that the method he uses is consistent with the industry practice and acceptable under the General Accepted Accounting Principle (GAAP)</p>
3.	<p>Eligibility for deemed Input Tax under Regulation 47 of the GST Regulations 2014 (P.U (A) 190/2014).</p>	<p>(i) Where an insurer or takaful operator has fulfilled the conditions under sub regulations 47(1), (2) and (3), he is entitled to credit of input tax deemed incurred known as “deemed input tax”.</p> <p>(ii) The insurer or takaful operator is not entitled to credit of deemed input tax when an insurer or takaful operator makes a cash payout to a policyholder/insured or a third party where the cash payout relates to an acquisition of goods or services, which is an exempt supply, zero rated supply, a supply not within the scope of GST or the credit is disallowed under regulation 36.</p>
4.	<p>Claiming special refund of sales tax goods held on hand on 1/4/2015.</p> <p>(i) A person claiming a special refund equal to twenty per cent of the value of the goods hold on the effective date must prove that he has paid the amount as shown on the invoice (refer section 190(2)(C) GSTA). Whether the date of payment is before or after the effective date?</p>	<p>(i) Under section 190 GSTA, a person is entitled for a special refund (100% or 20%) if the goods he holds on hand are taxable under the Sales Tax Act 1972 and the sales tax charged on such goods or the amount shown on the invoice has been paid by the claimant before 1st April 2015. However, if there is a credit term given by the supplier, the special refund is allowed to be claimed only if the total value of the invoice is paid before 30th May 2015.</p> <p>(ii) The following goods do not qualify for a special refund:</p> <p>(a) goods which have been sold and subsequently repurchased (buy back) by the supplier or returned to the supplier before 1st April 2015;</p> <p>(b) petrol Ron 95 and diesel; AND</p>

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	<p>(ii) Does the special refund apply to sales tax goods purchased on 5 March 2015 and paid on 4 April 2015 by reason of 30 days credit term given by the supplier?</p> <p>(iii) Whether the following goods which are taxable under the Sales Tax Act 1972 which are held on hand on 1/4/2015 and sales tax has been paid before 1/4/2015 are eligible for special refund –</p> <p>(a) Unsold stock returned by buyer to the seller.</p> <p>(b) Petrol and Diesel.</p> <p>(c) Zero rated goods.</p>	<p>(c) The goods listed under the GST (Zero Rated Supply) Order 2014.</p> <p>(iii) Special refund is allowed for unsold stock returned by customer (before 1st April 2015) being the result of delivery of wrong quantity, poor or defective quality of goods or erroneous despatch of un-contracted goods in accordance with Regulation 19C of the Sales Tax Regulations 1972.</p>
5.	Whether a debit note is allowed to be issued in order to recover the GST amount during transitional?	<p>(i) Tax shall not be charged and levied on any supply of goods or services or importation of goods made before the effective date (s.183(1) GSTA).</p> <p>(ii) S. 183(3) GSTA provides that the value of the supply under subsection (2) GSTA, the payment received or any amount stated in the invoice issued shall be deemed to be inclusive of tax.</p> <p>(iii) For the purpose of GST, credit note or debit note is allowed to be issued by any registered person to another registered person only when there is a change in consideration for the supply either due to change of rate of tax in force under s.10 GSTA, a change in the descriptions of the zero rated or exempt supply</p>

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		<p>under section 17 or 18 of the Act or adjustment in the course of business (s.35 GSTA and reg. 25 GSTR)</p> <p>(iv) During transitional period, a value of supply is deemed to be inclusive of GST. If a debit note is issued after the effective date in order to recover the amount shown on the debit note would be deemed to be part of the total consideration for the supply.</p> <p>Example;</p> <p>Invoice issued before effective date for the supply after effective date amounting to RM1000. Debit note raised after effective date RM60.00. Total GST is computed as follows –</p> <p>$6/106 \times RM1060 = RM59.99$</p>