

# One Year Post-GST: Snapshot of Key Industry Issues and Current GST Challenges

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## GST IMPACT ON PROPERTY TRANSACTIONS

Types of supplies for the **property developer**:

Types of supply	Output tax	Input tax
<b>Commercial Properties</b> (Standard Rated)	6%	Claimable
<b>Residential Properties</b> (Exempted)	No GST charged	Not claimable

## GST IMPACT ON PROPERTY TRANSACTIONS

Types of supplies for the **contractor**:

Types of supply	Output tax	Input tax
<p><b>Commercial Properties</b></p> <p><b>AND</b></p> <p><b>Residential Properties</b> (Standard Rated)</p>	<p>6%</p>	<p>Claimable</p>

## MEASURES TAKEN BY THE GOVERNMENT

- Price Control Anti-Profiteering Act 2011 (PCAP)
- To ensure that local traders and suppliers do not unreasonably increase prices of goods and services due to the GST implementation in Malaysia.
- Enforcement undertaken by the Ministry of Domestic Trade, Cooperatives and Consumerism



## GST REGISTRATION

### Our Understanding:

- Voluntary registration – there is a need to prove threshold will be breached within 12 months of application.

### Key GST considerations

- The 12 month restriction is not practical for long term developments i.e. build and sell / lease
- If I can't register, how can I claim input tax incurred on services before registration?



## JOINT DEVELOPMENT

Our Understanding:

*Panel Decision 4/2014 Item 7:*

- Land Owner makes a supply of rights to use the land to the Property Developer. The consideration is the Land Owner's entitlement under the Joint Land Development Agreement ("JLDA")
- If the development consists of commercial properties – subject to GST at standard rate
- If the development consists of residential properties – not subject to GST
- If it is a mixed development – only the commercial component is subject to GST



## JOINT DEVELOPMENT

### Key GST Considerations:

- The Land Owner's entitlement is often determined / paid out after the accounts are closed.
- What is the value on which GST is charged at the time of supply?
- Will the Land Owner have to fund the GST payable on its supply of rights?



## RESIDENTIAL PROPERTIES WITH FURNISHING

Our Understanding:

*RMC's Land and Property Development Guide:*

- The supply of residential property with basic fittings stipulated in Schedule G or H of the Housing Development (Control and Licensing Act) 1966 is an exempt supply.
- Anything else provided outside the Schedule is subject to GST at standard rate i.e. kitchen cabinets, air-conditioning, furniture, etc.





## RESIDENTIAL PROPERTIES WITH FURNISHING

### Key GST Considerations:

- Property Developers will have to account for GST, either as a separate supply or a gift.
- If it is treated as separate supplies, there will be a need to issue a tax invoice and quantify the amount to be charged to the buyers. Is this feasible as the buyer will know the price of the add-ons?
- If it is treated as a gift, there will be a need to account for GST on the open market value of the items. What is the open market value?



## GST-INCLUSIVE PRICE AND THE SECONDARY MARKET

Section 9 (5) GST Act 2014 (GST-inclusive):

“Where any registered person **displays, advertises, publishes or quotes** in any manner the price of any supply of goods or services he makes or intends to make, **such price shall include the tax** that is chargeable on the supply unless the Director General approves otherwise under subsection (7).”



## GST-INCLUSIVE PRICE AND THE SECONDARY MARKET

### Our Understanding:

- Prices of most commercial properties listed by sellers/agents on property portals and newspapers are NOT inclusive of GST.

### Key GST Considerations:

- General penalty of a fine not exceeding RM30,000 or to imprisonment for a term not exceeding two years or to both.



## DISPOSAL OF ASSETS MADE BY A COMPANY

RMC'S Guide on Land and Property Development:

- Any disposal of commercial properties is a taxable supply. When a company dispose off its assets in the form of commercial property, it will be subjected to GST.
- If a business entity which is not registered by virtue of its annual turnover has not exceed the registration threshold, disposes any commercial property with the value exceeding the value of threshold, the entity is **required to register for GST and charged GST on the supply.**



## DETERMINATION OF TAXABLE SUPPLIES THRESHOLD

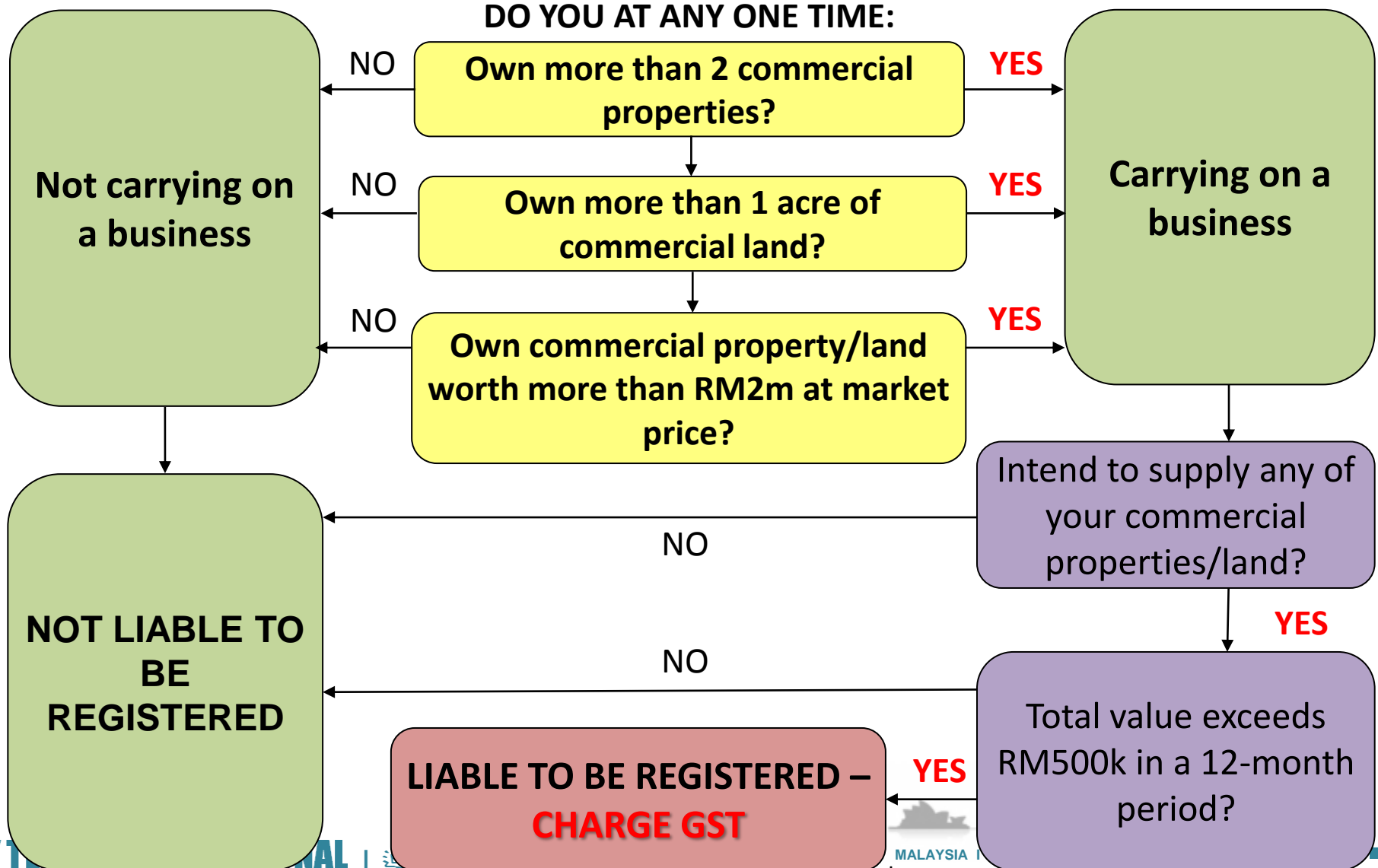
*[Section 20(6) GST Act]*

Calculated on all taxable supplies made by any person, for a period of twelve months excluding the value of:-

- a) supplies outside the GST scope;
- b) disposal of **capital assets**;
- c) imported services;
- d) disregarded supplies made in relation to:
  - Approved Toll Manufacturer Scheme,
  - Warehousing Scheme, or
- e) Supplies made within or between designated areas



## INDIVIDUAL OWNERSHIP OF COMMERCIAL PROPERTIES



## INDIVIDUAL OWNERSHIP OF COMMERCIAL PROPERTIES

### Key GST Considerations:

- The RMC's approach to determining if a person is running a 'business' is too simplistic. 'Business indicators' (Lord Fisher) test is disregarded.
- Does not take into consideration the person's intention in owning the property - business acumen vs. holding for investment?
- Executors liquidating assets (commercial properties) of a deceased subject to GST?



## LOANS AND FINANCING

- Financial institutions have differing policies on financing the GST-element of the purchase of a commercial property.
- Where the financial institutions do not finance, commercial property buyers will have to cough up additional cash for GST payment.





## LOANS AND FINANCING

	Bank Financing	Own Financing
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Purchase Price (GST-Inclusive)	<u>1,060,000</u>	
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If GST-element is financed (say, 80%):

If GST-element is NOT financed:

## CERTAIN LEAKAGES OF INPUT TAX CLAIM FOR THE BUYER

- All stakeholders need to play their part to help plug the leakages in the input tax claim system for the commercial property buyer.

Tax invoice is not under the borrower's (ie. the property buyer) name, so the buyer is unable to claim the input tax incurred.

TAX INVOICE  
NO. GST.00 [REDACTED]  
DATE: 8<sup>th</sup> June 2015.....

TAX INVOICE NO. [REDACTED] /15  
BILL NO:

MALAYAN BANKING BERHAD (3813-K)

Our Ref: [REDACTED]

Particulars	Disbursements	Costs
Re: Borrower: [REDACTED]		
Financier: MALAYAN BANKING BERHAD (3813-K)		
Facility: 1. Term Loan 1 (TL 1) of Ringgit Malaysia [REDACTED] only		
2. Term Loan 2 (TL 2) of Ringgit Malaysia [REDACTED] only		
3. [REDACTED]		
Property: [REDACTED]		
		6% GST
For our professional charges for preparing:-		
1 Facilities Agreement	15,790.00	
2 Charge	1,000.00	
3 Guarantee	3,000.00	
4 Entry of Private Caveat	200.00	
5 Withdrawal of Private Caveat	150.00	
6 Form 34	200.00	
	20,440.00	1,226.40

## CONCLUSION

- GST has introduced a new set of challenges for the property industry.
- Besides the issues highlighted above, there will be many practical and administrative issues that may not have been unearthed yet.
- Through continuous dialogue with all the stakeholders in the property industry and with the cooperation of the government, the confusion and uncertainty with GST will settle over time.



## THANK YOU

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