



ROYAL MALAYSIAN CUSTOMS

GOODS AND SERVICES TAX

PUBLIC RULING NO. 01/2018

SUPPLY OF COMMERCIAL RESIDENTIAL PREMISE

DATE OF ISSUE: 11 JANUARY 2018



DIRECTOR GENERAL'S PUBLIC RULING

In accordance with section 76 of the Goods and Services Tax 2014, the Director General issues a Public Ruling No. 01/2018 which sets out the interpretation of the Director General of Customs for the application of the Goods and Service Tax Act 2014 in relation to the supply of supply of commercial residential premise. Where a change in legislation or case law (the law) affects the content of a Public Ruling, such change overrides the Public Ruling.

This Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

Director General of Customs

Royal Malaysian Customs Department

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1. WHAT IS THIS RULING ABOUT

- 1.1. This ruling is to determine whether the supply of commercial residential building or premise on commercial land will be classified as either a residential or commercial property.
- 1.2. If the supply of commercial residential building or premise is determined as residential property, then the supply is exempted from GST.

2. LEGISLATIVE CONTEXT**Supply of Goods**

- 2.1 Under paragraph 2(1)(e) of the First Schedule of the Goods and Services Tax Act (GSTA) 2014, the transfer of any strata title is a supply of goods.
- 2.2 In addition to this, under Item 2 of the First Schedule of the Goods and Services Tax (GST)(Exempt Supply) Order 2014, the supply of any building or premises for residential purpose is an exempt supply. This also includes if the building or premises are designed or adapted for use or intended to be used as dwelling. However, it excludes hotel, inn, boarding house or similar establishment of sleeping accommodation.

Supply of Services

- 2.3 Under Item 19 of the Second Schedule of the GST (Exempt Supply) Order 2014, where a building is rented or leased out for residential purpose excluding hotel, inn, boarding house or similar establishment of sleeping accommodation, such supply is an exempt supply of service.

3. RULING AND EXPLANATION

Definition

3.1 For the purposes of this Ruling;

- a) **“Commercial residential building or premise”** means any multilevel strata title building developed on a commercial land for the purpose of either commercial or residential namely:
 - i. small office home office (SOHO),
 - ii. small office flexible office (SOFO),
 - iii. small office virtual office (SOVO),
 - iv. serviced apartment,
 - v. commercial suite, or
 - vi. any other building of similar nature.
- b) **“Commercial property”** means real estate developed for use by businesses.
- c) **“Mix development”** is an urban development that blends various functions such as residential, commercial, cultural, institutional or industrial uses. These functions are physically and functionally integrated which also provide pedestrian connections.
- d) **“Strata title building”** means a subdivision of building into parcel or multilevel blocks with individual titles to the parcel.
- e) **“Person”** includes a body of persons, corporate or unincorporated.
- f) **“Property developer”** means a company, an individual, a partnership, a co-operative society, a body of persons, who or which engages in or carries on or undertakes or causes to be undertaken property development. It also includes housing developers licensed under;
 - i. Housing Development (Control and Licensing) Act 1966;
 - ii. Housing Development (Control and Licensing) Ordinance 2013; or
 - iii. Housing Development (Control and Licensing) Enactment 1978.

A property developer differs from a contractor. However a property developer may also act as a contractor.

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- g) **“Property development”** refers to the business of acquiring land for the purpose of development, construction or caused to be constructed which will result in the sale of completed residential, commercial or industrial building, whether as a whole or by parcel.
 - h) **“Residential property”** means a land or a building that is:
 - i. occupied for residential purpose; or
 - ii. intended to be occupied for residential purpose.

4. GST TREATMENT ON SUPPLY OF COMMERCIAL RESIDENTIAL PREMISE

- 4.1 Commercial residential premise is a strata title property developed for residential purposes on a commercial land. It can function both as residential and commercial use if it is approved by the relevant Local Authority.
- 4.2 The supply of all commercial properties is treated as a taxable supply and subject to GST at standard rate.

Example 1

Developer Aman Sdn Bhd developed a project in a piece of commercial land in Serdang, Selangor which consists of three types of buildings that are;

- a) Tower A for SOHO,*
- b) Tower B for SOVO, and*
- c) Tower C for commercial suite and a shopping complex.*

*The planning permission is approved for commercial use by the local authority and the approved building layout does not comply with the requirement for dwelling. Therefore, the supply of such properties (Tower A, Tower B and Tower C) is **subject to GST at standard rate.***

- 4.3 However, the supply of commercial residential premise by the developer to the buyer can only be treated as residential and exempted from GST if **ALL** of the following conditions are fulfilled;
 - a) Planning Permission is approved and issued by any relevant local authority for mixed development purposes that is for both commercial and residential development.
 - b) Layout plan for the building is approved for dwelling purpose;

- c) The Housing Development Licence is issued under:-
- i. The Housing Development (Control and Licensing) Act 1966 (Act 118);
 - ii. The Housing Development (Control and Licensing) Enactment 1978 (Sabah); or
 - iii. The Housing Development (Control and Licensing) Ordinance 2013 (Sarawak);
- d) The Advertisement and Sale Permit, and Sale and Purchase Agreement is issued under:-
- i. The Housing Development (Control and Licensing) Regulation 1989;
 - ii. The Housing Development (Control and Licensing) Rules 2008 (Sabah); or
 - iii. The Housing Development (Control and Licensing) Regulations 2014 (Sarawak);

4.4 If the commercial residential premise is approved solely for “residential use”, the sale of the commercial residential premise is exempted from GST. On the other hand, if the premise is approved solely for “commercial use”, the sale of the commercial residential premise will be subjected to GST at standard rate.

Example 2

Developer A has launched a project which consists in the same building;

- a) *Tower A - Level 1 to 5 consists of shopping complex, and
- Level 6 to 10 consists of SOHO for residential purpose.*

The development is approved under mix development which consists of commercial and residential units. The developer has obtained:-

- b) *Level 1 to 5 consists of shopping complex;*
- i. the planning permission is approved under mix development (commercial and residential) from the relevant authority, and*
 - ii. an approved layout plan and the building plan is design for commercial purpose.*

The sale of shop lot units in the shopping complex is subject to GST at standard rate.

- c) *Level 6 to 10 consists of SOHO for residential purpose;*
- i. the planning permission is approved under mix development (commercial and residential) from the relevant authority,*
 - ii. an approved layout plan and the building plan is design for dwelling purpose,*
 - iii. a Housing Development Licence enforced under Housing Development (Control and Licensing) Regulations 1989, and*
 - iv. an Advertisement and Sale Permit to supply residential property and entered into a Sale and Purchase Agreement (Schedule H) enforced under Housing Development (Control and Licensing) Regulations 1989.*

The sale of SOHO units is an exempt supply and not subject to GST.

- 4.5 Sub sale or second hand sale of commercial residential premise will be subjected to GST at standard rated when the usage of that premise was originally used for a commercial activity at the time when the supply is made.

Example 3

Ali has purchased a SOHO which is use for residential purpose from Developer Y. Ali maintained the usage of the SOHO as residential. Two years later, he sells the SOHO to Ah Chong. The second hand sale of SOHO from Ali to Ah Chong is still an exempt supply.

Example 4

Alyah has purchased a SOHO which is used for residential purpose from Developer XYZ. Alyah works as a lawyer and used the SOHO for her business activity. Hence, the usage of the building has changed from residential to commercial use. Subsequently, she sells the SOHO to Martin. Due to the change of use, the supply of the SOHO is a taxable supply at 6%.

- 4.6 In the case where the building development is still in progress and has not been completed and sub-sale has taken place, the GST treatment is based on the approved use of the property. It is subject to GST at standard rate if the approved use is for commercial purpose and GST will be exempted if the approved used is for residential.

Example 5

Bakhtiar entered into a sale and purchase agreement (SPA) with Developer A to purchase a unit of SOHO on 10 July 2017. The approved use of the SOHO is for residential purpose.

On 10 September 2017, Bakhtiar decided to sell the unit of SOHO to Muthu. Since the building is still under construction, Bakhtiar transferred the whole interest of the SOHO under a Deed of Assignment (DOA) to Muthu.

The supply is an exempt supply of goods because the approved use of the SOHO is residential.

- 4.7 Any lease, tenancy or rent of commercial residential premise is a supply of service. If a commercial residential premise is for residential purpose, the supply is an exempt supply. On the other hand, if any lease, tenancy or rent of commercial residential premise is for commercial purpose, it is subject to GST at standard rate.

Example 6

Aini owns 3 units of SOHO and the approved use of the SOHOs are for residential. She entered into a tenancy agreement to rent out the SOHOs to Siva, Ah Kiat and Maher. Siva and Ah Kiat rented the SOHO for residential purpose while Maher used it as an office.

The supply of rental unit to Siva and Ah Kiat is an exempt supply while the unit rented to Maher is a taxable supply.

5. DATE OF EFFECT

This Public Ruling takes effect from the date of issue and replaces;

- i. Director General's Decision 2/2015, Item 1, and
- ii. Amendment to DG's Decision 2/2015, Item 1.

6. REFERENCES

References were made to the following:

- (a) National Land Code 1965
- (b) Sabah Land Ordinance (Cap.68)
- (c) Sarawak Land Code (Chapter 81)
- (d) Goods and Services Tax Act 2014
- (e) Goods and Services Regulation 2014
- (f) Goods and Services Tax (Exempt Supplies) Order 2014
- (g) Housing Development (Control and Licensing) Act 1966 (Act 118)
- (h) Housing Development (Control and Licensing) Regulations 1989
- (i) Housing Development (Control and Licensing) Ordinance 2013 (Sarawak)
- (j) The Housing Development (Control and Licensing) Regulations 2014 (Sarawak);
- (k) Housing Development (Control and Licensing) Enactment 1978 (Sabah)
- (l) The Housing Development (Control and Licensing) Rules 2008 (Sabah)
- (m) Interpretation Act 1948 and 1967 (Act 388)
- (n) Town and Country Planning Act 1976