

## **New GST rules could be costly to developers**

*By Tham Lih Jiun and Wong Poh Geng*

Developers who construct commercial and residential developments often have to provide public amenities and utilities to be handed over to the Government for free. Currently, such a hand over is treated as a supply - subject to GST by the developer to the government - but is granted special relief, so no GST needs to be paid on the hand over to the Government. Based on the current GST rules, any GST paid on purchases that are used for business activities and that are subject to GST can be claimed back as a credit. As the hand over of amenities and utilities is still within the scope of supply for GST purposes, the developers are able to get a credit or a refund from Customs of the GST paid, when they file a GST return.

However, the Budget 2017 has proposed to treat such a hand over as outside the scope of supply for GST purposes. This has a profound implication on the cost of business to the developers, as building certain public amenities and utilities including roads, police stations, schools, parks and reservoirs and electricity substations can be costly. In addition, there is a 6% GST payable on the purchases made in building these public facilities. When the hand over of these items is treated as outside the scope of supply, the claiming of GST credit on the cost of building these items would no longer be available.

Prohibiting the GST credit claim may appear to go against the spirit of the GST, which was not intended to be a cost to business. This is especially the case for those who develop commercial properties, are entirely subject to GST, and are required under the development plan to provide public amenities and utilities.

When claims for GST credits are denied, it will become a business cost to the developers. Furthermore, it is understandable if the Government may not want to give residential property developers the ability to recover full credits on the handover. This is because a residential property developer would not normally be entitled to recover any credits on a residential development due to the GST exempt status afforded to the residential property. Therefore, it may be more acceptable to take a position which allows the developer to claim a GST credit on the provision of public amenities and utilities that relate to taxable supplies, such as commercial developments. In Australia, such a hand over of public facilities is granted a GST credit claim.

We look forward to receiving more information on the rationale and reasons for this proposed change, whilst the industry players and the profession would be keen to provide their views and inputs on the impact of the new GST rules and its inconsistency with the fundamentals of the GST principles. One hopes that with more dialogue and consultation, both the industry and the authorities can arrive at a more business friendly solution that grants GST credit claims on public facilities handed over related to taxable development and possibly, as a concession, extend that to residential developments, as well.

Until such time, and in anticipation of the new rules becoming effective, impacted developers will need to quantify the amount of these additional costs, as the costs are not only high, but also unplanned and can ultimately impact the overall profitability of the project. Such additional costs may be passed on to the property buyers. The new rules may be introduced at a very difficult time for the industry, with developers in recent years already battling rising costs, a tough lending environment and a tougher economic outlook. From the outset of GST implementation, the requirements for developers were already quite challenging, due to the complexity of the structures used by the industry. Because of this complexity, there has been many dialogues between the industry and the Customs over the past 18 months. As a direct result of these dialogues, there have been a number of rewrites to the GST guidance for developers.

As owning properties with quality public amenities and utilities continue to be part of the dreams and aspirations of many Malaysians, the Government taking into consideration the relaxation of GST rules will lighten the burden of developers and provide a respite to both developers and property buyers.

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