

GST CASE STUDY
FOR
CONDOMINIUM MANAGEMENT COMMITTEE

██████████ MANAGEMENT CORPORATION

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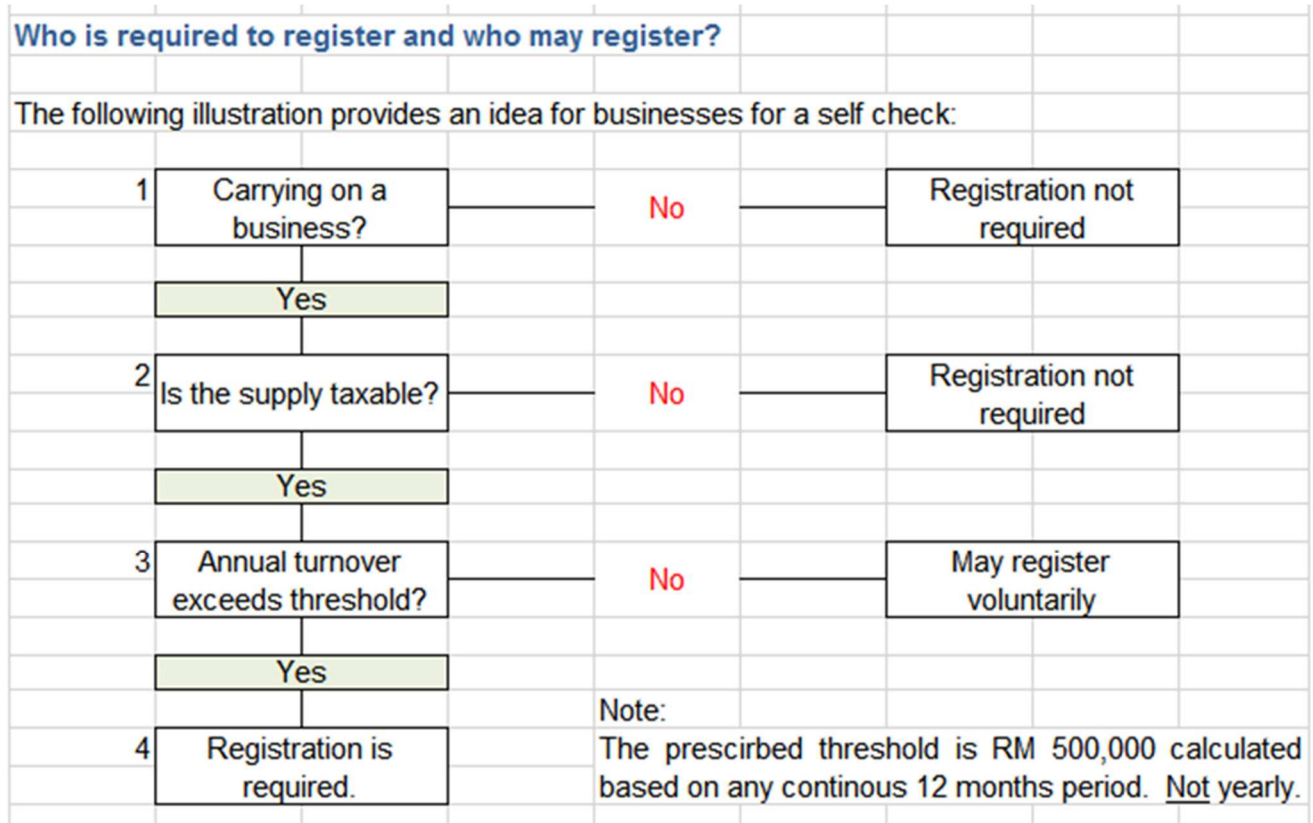
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THE CHART TO DETERMINE MANDATORY REGISTRATION

To determine whether an individual or an organization is required to register for GST, we use the flowchart below as a guide.



Mandatory registration only happen when conditions 1, 2 and 3 is satisfied – that person must be carrying on a business and making taxable supplies over RM500,000 within twelve months.

However, for those who satisfy condition 1 and 2 but not exceeding RM500,000 may register voluntarily.



INTERPRETATION OF “BUSINESS”

There are two landmark law case that are used by the customs in determining whether or not a person is carrying out a business:

1. Lord Fisher’s Business test
 - a. Is the activity a serious undertaking or work earnestly pursued?
 - b. Is the activity actively pursued with reasonable or recognisable continuity?
 - c. Is the activity conducted in a regular manner and on sound and recognised business principles (business like nature)?
 - d. Is the activity concerned with the making of supplies for a consideration?
 - e. Is the activity concerned with the making of supplies of a kind commonly made by commercial organisations?

2. Morrison’s Academy Boarding Houses Association
 - a. no justification for the necessity of “commercial element” in these activities

And, “Business” is defined in the GST Act as:

In this Act, “business” includes any trade, commerce, profession, vocation or any other similar activity, whether or not it is for a pecuniary profit.

Without ... the following are deemed to be carrying on of a business:

The provision by a club, association, society, management corporation, joint management body or organization (for a subscription or other consideration) of the facilities or benefits available to its members or parcel proprietors, as the case may be...

- Goods and Services Tax Act 2014

For the case of Condominium Management Committee:

It passes all Lord Fisher’s Business Test and the fact that the committee is a non-profit organization and cannot perform any investing activities cannot be used to argue that they are not carrying out a business.

Profit element is disregarded clearly in the GST act and condominium joint management body is explicitly deemed to carrying on a business in the act.



INTERPRETATION OF “SUPPLIES”

“Supplies” is defined in the GST Act as:

... ”supply” means all forms of supply, including supply of imported services, done for a consideration and anything which is not supply of goods but is done for a consideration is a supply of services.

- *Goods and Services Tax Act 2014*

And, the gazette released by the Ministry of Finance also implies management fees are taxable supplies by stating:

... The supply of services to owners in a low and low medium cost housing held under strata title by the joint management body and management corporation.

- *Goods and Services Tax (Exempt Supply) Order 2014*

This statement indirectly imply few facts:

- i) Management fee is a supply
- ii) Any management fees not provided for low cost or medium cost condominiums are taxable supplies
- iii) Any management fees not provided for low cost or medium cost condominiums are standard rated 6% as it is not mention in the zero rated supply order.

For the case of Condominium Management Committee:

It is clear that management fees are taxable supply, however, contribution towards sinking fund isn't. It is still dubious whether contribution towards sinking funds should be subjected to GST or not.

However, since contribution funds are subsumed in management fees, the whole management fee is currently taxable.



IS THE MANAGEMENT COMMITTEE LIABLE TO REGISTER?

For the case of Condominium Management Committee:

A management committee is deemed as a business under the GST Act, and further confirmed by Lord Fisher's Business Test. There's no way to argue using the standpoint of the committee is in fact not for profit.

The committee satisfied the first condition.

As management fees are taxable supplies, it is clear that the management committee is supply taxable supplies in Malaysia.

The committee satisfied the second condition.

Lastly, the determining factor is the total management fees collected yearly. Should the total management fees exceed RM500,000, the management committee have to register, else, they can voluntarily register.

The committee satisfied the third condition (if fees >RM500,000).

However, it is not clear whether contribution for sinking funds should be included in the calculations or not. For more details, see last page.

For now, the management committee is liable to register for GST.



ACCOUNTING BASIS

There are two accounting basis that are used in accounting for GST, it is important to know the difference between each ones:

1. The default “Invoice Basis”
2. The alternative “Cash/Payment Basis”

	Invoice Basis	Payment Basis
Advantages	<p>Able to claim Input Tax before payment is made to supplier.</p> <p>Easy to account for sales and purchases transactions.</p>	<p>Ideal for businesses dealing solely on cash basis.</p> <p>Facilitate cashflows.</p> <p>Allows long term credits given to customers.</p>
Disadvantages	<p>Have to account for output tax before payment is received from customers.</p> <p>Cashflow problems may occur.</p>	<p>Can only claim input taxes when payment is made to suppliers.</p> <p>More troublesome to track payments compared to Invoice basis. (<i>Refer part VIII</i>)</p>

In summary:

Invoice Basis is where the person accounts for GST when Tax Invoice is issued, regardless payment have been received or not.

On the other hand, Payment Basis is where the person accounts for GST only when payment have been received.

For the case of Condominium Management Committee:

Taking into account of difficulties in collecting fees from the resident, should the management follow the default invoice basis, the management have to account and pay GST to the customs regardless whether payments have been received or not.

This will cause problems on cash flow and it is obvious the ideal accounting basis for condo management is “Payment Basis”



DIFFERENCE BETWEEN ZERO RATE AND EXEMPT

There are different implications and treatments for different category of supplies. They are tabulated as below:

		Taxable?	GST Rate	Eligibility to claim input tax?
(i)	Standard Rated	Yes	6%	Yes
(ii)	Zero Rated	Yes	0%	Yes
(iii)	Exempt	No	NA	No
(iv)	Out of Scope*	No	NA	No

Take for example:

The committee decided to repaint the condominium. The cost of the repainting job (input) is RM 10,600 including 6% GST. The committee receives management fees (output) of RM 10,000 before GST. All management fees are spent.

1. In the case the management fees are standard rated (input tax fully claimable):

			RM
Output Tax	10,000 x 6% =	600	
Input Tax	10,000 x 6% =	600	
Net		-	

Net effect = GST paid by residents RM600 through management fees

2. In the case the management fees are exempted (input tax not claimable):

			RM
Output Tax	10,000 x 0% =	-	
Input Tax	10,000 x 0% =	-	
Net		-	

Net effect = GST paid by residents RM600 through RM600 GST paid to the painter not being claimable.



DIFFERENCE BETWEEN ZERO RATE AND EXEMPT (CON'T)

3. In the case the management fees are zero rated (input tax fully claimable):

		RM
Output Tax	$10,000 \times 0\% =$	-
Input Tax	$10,000 \times 6\% =$	600
Net		<u>(600)</u>

Net effect = No GST been paid by residents as RM600 GST paid to painter was claimed back.

For the case of Condominium Management Committee:

The best rate for management fees will be zero rated, as these will alleviate the residents from paying any GST on all services.

The second best rate for management fees will be exempted, as this will eliminate bad debt issues, and the residents will save any GST compliance cost such as engaging a tax agent etc. But they still pay GST indirectly.

The least one would be standard rate where the residents pays GST directly, and incur GST compliance cost.



BAD DEBT RELIEF

This section is only relevant in the event the condominium management failed to obtain permission for the Director General to account for GST using “Payment Basis”.

Under invoice basis, the person have to account and pay GST to government regardless payment have been received. However, if the payment remained unpaid after 6 months, output tax paid to the government can be claimed back.

However, to claim bad debt relief, the committee must make sure:

- 1) The debt have not been repaid any amount (void if partial payment received) during the six month period or the debtor became insolvent.
- 2) Sufficient efforts have been made to recover
- 3) And to account and pay the GST should the amount is later recovered

For the case of Condominium Management Committee:

It is very difficult to prove to the customs that “sufficient efforts” have been made as the resident is still occupying the condo, and normally “sufficient efforts” involve a lawyer letter and at least two notices.

Additionally, it is difficult to keep track which resident did not pay, which invoice been claimed bad debt relief and amount subsequently recovered to account for output tax.



WHAT TO FIGHT FOR

For the case of Condominium Management Committee:

The facts to be raised are:

- **The default accounting basis aka “Invoice basis” will cause serious cash flow issue as collections are difficult as not all residents pay promptly.**
- **With the management fees becoming exempted, the government still recover the same amount of GST.**
- **If management fees are standard rated, residents have to pay GST to the government upfront even if the sits as sinking fund for a long time, and subsidies those who don’t pay or late in paying the management fees**
- **GST compliance cost is a burden**

What to fight for (by priority):

- 1) **Management fees to be zero rated**

If (1) failed

- 2) **Management fees to be exempted**
- 3) **Exemption from registering**

If (2) and (3) failed

- 4) **“Payment Basis”**

If (4) failed

- 5) **Longer intervals for filling**
- 6) **Lenient on bad debt reliefs claim**

If everything failed, then it may be worthwhile to argue for separation of contribution to sinking fund and management fees. Making management fees to be standard rated and contribution is merely a monetary deposit in nature thus is out of scope supply (doing so will also reduce the amount used to determine whether threshold of RM500,000 is hit).