

Tax e-Alert

27 SEPTEMBER 2018

Key Features Of The RPGT Guidelines 2018

The Inland Revenue Board of Malaysia (**IRB**) recently released its updated Real Property Gains Tax (**RPGT**) Guidelines (**the Guidelines**) dated 13.6.2018, which supersede the previous guidelines dated 18.6.2013. These guidelines aim to provide guidance to taxpayers on the calculation of RPGT and the responsibilities of both the acquirer and disposer of real property in a transaction, taking into account the amendments to the RPGT Act 1976 made by the Finance (No 2) Act 2017 and other amending legislation since 2013. Significant features of the Guidelines are highlighted below.

Contact persons:

Datuk D. P. Naban
Senior Partner,
Tax, SST & Customs Practice
+603-6208 5858
dpn@lh-ag.com

S. Saravana Kumar
Partner,
Tax, SST & Customs Practice
+603-6208 5813
sks@lh-ag.com

Rate of tax

Effective from 1.1.2018, RPGT has been extended to apply to executors of the estate of a deceased person who is not a citizen nor a permanent resident. Disposals of chargeable assets by such executors will be subject to RPGT at the rate of 30% for disposals within five years after the date of acquisition of the chargeable asset, and 5% for disposals in the sixth year after the date of acquisition of the chargeable asset or thereafter.

Allowable losses

From 1.1.2014, allowable losses for the disposal of an asset (not including the shares of a real property company) are deductible from the chargeable gains of the taxpayer in a year of assessment. The loss from the disposal of an asset can be deducted from the chargeable gains from the disposal of other assets in the same year or following years until the loss has been completely absorbed. This is allowed even though the disposal of the asset occurred more than five years after acquisition.

Transfer of real property as a gift

The transfer of real property as a gift or in consideration of love and affection is deemed to be a disposal at the market price of the real property.

**CHAMPIONING
TAXPAYERS**

We represent taxpayers. Be it tax litigation, advisory or structuring,
we focus on clarity, certainty and solutions.
Make us your confidante today.

However, if the giver and recipient are husband and wife, parent and child, or grandparent and grandchild, the RPGT Act 1976 provides the following tax treatment:

(a) Giver

From 1.1.2017, if the giver is a Malaysian citizen, then he is deemed not to receive any gains and to bear no losses.

(b) Recipient

If the gift occurred five years from the date of acquisition of the asset, the recipient is deemed to receive the asset at the acquisition price paid by the giver, including allowable expenses incurred by the giver.

Transfer of assets to a controlled company

Under Paragraph 3(1)(b) of Schedule 2 of the RPGT Act, where an asset is transferred between spouses or to a company controlled by the spouses, the disposal price of the asset shall be deemed to be equal to the acquisition price. However, effective from 1.1.2018, this only applies where the asset transferred is owned by a Malaysian citizen.

Aborted disposal

The Guidelines have introduced a procedure to deal with aborted disposals or sale transactions. Paragraph 23 of the Guidelines provides that in the event that a disposal or sale transaction is aborted after the RPGT return has been submitted or after payment has been made, the disposer or acquirer must inform the IRB and provide the following documents:

- (a) Agreement for aborting the sale;
- (b) Stamp duty refund letter with supporting documents; or
- (c) Any other official document that could prove the abortion of the disposal/sale transaction.

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitting

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

Payment of RPGT

From 1.1.2015, the acquirer must retain the whole monetary consideration or a sum of 3% of the total value of the consideration, whichever is lower, and pay this to the Director-General of Inland Revenue within 60 days from the date of disposal of the asset.

However, for transactions involving non-residents and non-permanent residents or involving the disposal of the estate of a deceased person who is a non-resident or non-permanent resident, the acquirer must retain the whole monetary consideration or a sum of 7% of the total value of the consideration, whichever is lower. This is effective from 1.1.2018.

Contact persons:

Datuk D. P. Naban

Senior Partner,
Tax, SST & Customs Practice
+603-6208 5858
dpn@lh-ag.com

S. Saravana Kumar

Partner,
Tax, SST & Customs Practice
+603-6208 5813
sks@lh-ag.com

Observations

The updated Guidelines are generally consistent with the provisions of the RPGT Act 1976 while providing some examples to illustrate the application of the legal provisions.

Nevertheless, it is important to note that the Guidelines published by the IRB are merely instructive and not law. If taxpayers find the IRB's interpretation of the RPGT Act 1976 erroneous or inconsistent with case law, then they should seek further legal advice from tax solicitors to preserve their rights. Similarly, if the IRB's practices are contrary to the RPGT Act and onerous, taxpayers may also seek legal advice.

If you have queries on matters pertaining to RPGT, we are available to assist you. Please contact our tax partners Datuk [D P Naban](#) or [S Saravana Kumar](#) at tax@lh-ag.com

**Published by the Tax, SST & Customs Practice,
Lee Hishammuddin Allen & Gledhill**

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitting

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

