

MINIT DIALOG BERSAMA CTIM

CUKAI KEUNTUNGAN HARTA TANAH DAN DUTI SETEM

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1. Real property gains tax

1.1. Interest excluded in RPGT computation

Paragraph 6(1)(c), Schedule 2 of the Real Property Gains Tax Act 1976 has been amended. Interest paid on capital employed to acquire an asset will no longer be regarded as an incidental cost of acquisition or disposal of the asset.

In practice, the interest costs incurred for construction of plant and machinery or building are capitalised and capital allowances/industrial building allowances are claimed as part of the qualifying expenditure of the plant and machinery or building.

The Chartered Tax Institute of Malaysia (CTIM) would like to confirm that there will be no changes to the tax treatment for interest costs capitalised as part of the construction cost of plant and machinery/building for capital allowance/industrial building allowance purposes.

Jawapan LHDNM

Ya, tidak ada perubahan dari segi layanan cukai bagi isu yang dibangkitkan di atas.

1.2. Remittance of 2% of total consideration retained by the acquirer to the IRB.

Section 21B of the RPGTA stipulates that "where on a disposal to which Section 13 applies, the consideration consists of wholly or partly of money, the acquirer shall retain the whole of that money or a sum not exceeding 2% of total value of the consideration, whichever is the less (RPGTA Sec 21B amount) and he shall within sixty days after the date of such disposal pay that amount to the Director General of IRB (DGIR)."

CKHT 3 – Declaration of no chargeable gain

As a concession, the IRB has issued Form CKHT 3 to allow disposer of property to declare that there is no chargeable gain and the acquirer hence is waived from withholding the 2 % proceeds and submit to the IRB within 60 days. However, Form CKHT 3 only caters for 3 situations:-

- Chargeable asset has been held for more than 5 years
- Election made for exemption under Section 8 / Para 9 Schedule 3 of the RPGT Act in respect of disposal of private residence.
- Disposal of chargeable asset by way of gift without consideration under Para 12, Schedule 2 of the RPGT Act.

CTIM suggests that CKHT 3 be amended to accommodate the following situations where there is no RPGT implication, e.g.:

- *disposal of chargeable assets to REITs or PTFs under the RPGT [Exemption] (No. 4) Order 2003]*

Jawapan LHDNM

Lembaga Hasil Dalam Negeri Malaysia telah mengeluarkan persetujuan berkaitan pengecualian REIT daripada pegangan dan remitan 2% harga pelupusan. Pilihan boleh dibuat dalam borang CKHT3

- *no gain no loss situations (under Para 3 of Sch 2)*

Jawapan LHDNM

Permohonan boleh dikemukakan ke Jabatan Dasar Percukaian . Layanan akan diberikan secara “case-by-case basis”

- *transfer of assets between companies in same group (Para.17, Sch. 2)*

Jawapan LHDNM

Permohonan boleh dikemukakan ke Jabatan Dasar Percukaian . Layanan akan diberikan secara “case-by-case basis”

- *RPGT loss on transfer of property*

Jawapan LHDNM

Permohonan boleh dikemukakan ke Jabatan Dasar Percukaian . Layanan akan diberikan secara “case-by-case basis”

1.3. Disposal of shares in real property company (RPC)

Item C4 of CKHT 1B only provides 1 box for date of acquisition of shares. In many situations, the shares could have been acquired by the disposer on different dates. Form needs to be able to cater for more than 1 acquisition date.

The form only allows for the filing of one disposal. Hence if a person disposes shares in a few RPCs to one buyer, there is a need to fill and file a few forms.

CTIM suggest that the form be amended to cater for disposal of shares with different dates of acquisition and shares in multiple RPCs.

Jawapan LHDNM

Pelupusan sedemikian masih perlu dilaporkan dalam borang berasingan.

1.4 Conditional contract

Para 16, Sch 2 of RPGTA 1976 stipulates that “where a contract for the disposal of an asset is conditional and the condition is satisfied (by the exercise of a right under an option or otherwise), the acquisition and disposal of the asset shall be regarded as taking place at the time the contract was made, unless—

- (a) the acquisition or disposal requires the approval by the **Government** or an authority or committee appointed by the **Government**, the date of disposal shall be the date of such approval; or
- (b) the approval referred to in subparagraph (a) is conditional, the date of disposal shall be the date when the last of all such conditions is satisfied.”

CTIM would like to clarify with the IRB the meaning of “Government”. As the land is generally comes under the purview of State authority, will the requirement of approval by State Council or State land office be considered as approval by the Government?

Jawapan LHDNM

Federal Government termasuk State Government, memandangkan hal-hal bersangkutan tanah adalah di bawah bidang kuasa pihak berkuasa negeri.

1.5 Payment of RPGT

Based on the RPGT Guidelines (Page 4: Example 3) the date of disposal will be the date of the JV agreement. Therefore the land owner will be required to file his RPGT return within 60 days and IRB will raise an assessment. However, the land owner will not be getting the 10 units until it is completed and will not have the money to pay the tax when an assessment is raised.

CTIM would suggest that the IRB grant the landowner a stand-over on the payment of RPGT under such circumstances?

Jawapan LHDNM

Pada masa kini, tidak ada perubahan dari segi layanan pembayaran cukai. Penagguhan cukai tidak perlu bagi isu yang dibangkitkan di atas. Ejen Cukai atau peguam perlu memberikan nasihat kepada landowner kesan dari segi percukaian ke atas perjanjian usaha sama (JV). Ejen Cukai atau peguam boleh mencadangkan supaya balasan daripada JV “should be partly in cash or in-kind”.

1.6 Allowable RPGT Loss

Paragraph 33(d), Schedule 2 of the Real Property Gains Tax Act 1976 stipulates that A loss suffered in respect of a disposal shall not be allowable if the disposal is a disposal of a chargeable asset under paragraph 34A. However, item 3.4 of the RPGT Guidelines seems to go a step further to indicate that an allowable loss (from real property transaction) can only be set-off against the chargeable gains arising from another real property (not RPC shares).

However this is not provided in the legislation. CTIM is of the view that the legislation allows for the setting-off of allowable loss against any chargeable gains (RP or RPC shares).

Jawapan LHDNM

Buat masa kini, tidak dibenarkan untuk setting-off of allowable loss against any chargeable gains (RP or RPC shares).

2. Stamp Duty

Item 22, 1st Schedule of the Stamp Act 1949

22. BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:

- (1) (a) being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), for the term of life or any other indefinite

period

for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable (Stamp Duty is) RM1.00

- (b) for any sum or sums of money, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.1. (Stamp Duty is) the same *ad valorem* duty as a charge or mortgage for such total amount

- a) *Would a royalty/licensing agreement or any other agreement with a consideration fall within the ambit of Item 22(b)?*

Jawapan LHDNM

Ya, duti boleh dikenakan di bawah butiran 22(b) Akta Setem 1949

- b) *If so, what is the duty if the agreement does not state the amount of consideration (e.g. sum subject to mutual agreement)?*

Jawapan LHDNM

Sekiranya tiada balasan dinyatakan dalam Perjanjian, maka Perjanjian disetemkan dengan duti sebanyak RM10 di bawah Item 4 Jadual Pertama.

Bagaimana pun, mutual agreement yang menyatakan amaun balasan, akan dikenakan duti di bawah Item 22(1)(b).