



MALAYSIAN INSTITUTE OF ACCOUNTANTS



JOINT FEEDBACK - IRB'S PROPOSAL ON RPGT SELF-ASSESSMENT SYSTEM (SAS)

30 September 2013

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1.0 Preamble

Following the Briefing on RPGT-Self Assessment System (SAS- RPGT) held on 11 September 2013, the Chartered Tax Institute of Malaysia (CTIM), the Malaysian Institute of Accountants ("MIA"), and the Malaysian Institute of Certified Public Accountants ("MICPA") (collectively referred to herein as "the Institutes") are pleased to provide their feedback on the proposals made by the Inland Revenue Board (IRB).

2.0 General Comments

The Institutes have chosen to take a holistic approach when reviewing the matter at hand and are of the view that any proposal adopted has to take into consideration the potential effects on practical application of the new SAS provisions. The slides provided by the IRB only convey the bare outline of the self-assessment *process* for RPGT while the important details of the *legal framework* have not been revealed as yet. We are of the view that more pertinent comments can be made only when the latter is made known.

2.1 Awareness Programme for SAS- RPGT

The Institutes welcome the IRB's initiatives to implement self-assessment system for real property gains tax (RPGT) with effect from year of assessment 2015.

To facilitate the smooth implementation of SAS- RPGT, the Institutes propose that an awareness programme to educate the public on SAS- RPGT be undertaken by the IRB.

2.2 Public Rulings for SAS-RPGT

Under the proposed SAS- RPGT, taxpayers will be required to determine their own real property gains tax (RPGT) liability and file RPGT returns accordingly. In the circumstances, clear guidance to taxpayers on their RPGT obligations and the determination of RPGT under the SAS- RPGT will assist them to comply with the requirements of the Real Property Gains Tax Act, 1976 (RPGT Act).

For the reasons above, the Institutes welcome the proposal to issue Public Rulings on RPGT as soon as possible to provide the necessary guidance to taxpayers.

3.0 Specific Comments

Based on the slides provided, the feedback from the Institutes is as follows:-

3.1 Determination of Whether A Case is Chargeable to Tax under Income Tax Act 1967 (ITA) or RPGT Act 1976

In Slide No.8, it states that:

"3. Kaedah Melapor Dan Pengiraan Cukai (sambungan)

iii. Penentuan sama ada kes dikenakan cukai di bawah ACP atau Akta CKHT.

☐ Mewujudkan peruntukan untuk memberi kuasa kepada Ketua Pengarah bagi membangkitkan taksiran di bawah cukai pendapatan.

☐ Contoh: Jika berlaku 3 kali pelupusan dalam tahun yang sama atau 3 tahun berturut-turut kes akan ditaksir di bawah Cukai Pendapatan. "

Comments:

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The Institutes wish to point out that numerous tax cases in the past (both in Malaysia and other Commonwealth countries) have established the principle that to determine whether a gain or profit from the disposal of an asset is liable to income tax or capital gains tax (RPGT in Malaysia), the relevant badges of trade should be carefully examined to ascertain whether the asset constitutes an investment or trading asset of the taxpayer. A gain on disposal of an investment is capital in nature and a profit on disposal of a trading asset is revenue in nature. Where the asset constitutes a chargeable asset under the RPGT Act in Malaysia, the capital gain is liable to RPGT and the revenue profit is liable to income tax. Additionally, a profit from an adventure in the nature of trade is also liable to income tax.

It will be noted that all the relevant badges of trade should be considered and there is no single test to arrive at the conclusion.

The badges of trade include the following:

- (a) The subject matter of the transaction;
- (b) Length of ownership;
- (c) Frequency of similar transactions;
- (d) Work done on the property;
- (e) Circumstances responsible for the realization; and
- (f) Whether a profit motive was present.

In view of the above, the Institutes are of the opinion that it will not be appropriate to determine whether a case is chargeable to tax under ITA or RPGT Act solely on the basis of frequency of transactions alone, i.e. whether there are three or more transactions in the same year or three years consecutively. For the same reason, the Institutes are of the view that the proposed provision stated in the Slide No. 8 is not appropriate.

3.2 Valuation of the Chargeable Asset

In Slide No. 9, the point reads as follows:

"4. Nilai Pasaran

- i. Menerima nilai mengikut yang dilaporkan oleh pelupus.*
- ii. Tindakan susulan audit akan dilakukan jika nilai yang dilaporkan adalah tidak munasabah."*

Comments:

It was explained at the briefing that the Director General of IRB (DG) will generally accept the valuation given by the disposer. In the event where the valuation is not satisfactory, an audit will be carried out by DG.

In addition, the Institutes are made to understand that the DG will accept the valuation by an independent valuer so long as the difference between the valuation given by the independent valuer and that given by Jabatan Penilaian Perkhidmatan Harta (JPPH) does not exceed 30%.

The Institutes are of the view that where the transaction is between unrelated parties, the actual value of the transaction should be treated as the market value unless there are reasons to believe that the transacted value has been suppressed.

In addition, the scope of "incorrect returns" under section 30 of the RPGT Act needs to be clarified/reviewed such that where a RPGT return is made in good faith by relying on independent professional valuation, penalties should not be imposed under this section. In this respect, the Institutes suggest that for the purpose of clarity and consistency, guidance

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be provided in the proposed public ruling on RPGT as to the circumstances under which independent professional valuations will be accepted.

3.3 Notice of Assessments

In Slide No. 6, it is indicated that

“2. *Penghantaran Borang*

.....

ii *Pengemukakan sebelum/pada tarikh ditetapkan*

- ☐ *Taksiran disifatkan bagi borang yang diterima pada/sebelum tarikh ditetapkan (due date).*
- ☐ *Notis Taksiran (Kes Kena Cukai)/Sijil Tidak Kena Cukai akan dikeluarkan.*
- ☐ *Tarikh akhir bagi membuat bayaran adalah 60 hari selepas tarikh pelupusan.*

iii *Pengemukakan selepas tarikh ditetapkan*

- ☐ *Taksiran akan dibangkitkan. Notis taksiran/Sijil Tidak Kena Cukai akan dikeluarkan.*
- ☐ *Tarikh akhir bayaran adalah 30 hari dari tarikh Notis Taksiran.*

..... “

Similarly In Slide no. 7, the first point reads as follows:

“3. *Kaedah Melapor Dan Mengira Cukai*

i. *Taksiran atas pelupusan aset kedua dalam tahun yang sama.*

- ☐ *Taksiran pertama akan disifatkan dan Notis Taksiran akan dikeluarkan.*
- ☐ *Pelupusan seterusnya juga disifatkan dan Notis Taksiran akan dikeluarkan.”*

Comments:

In line with the principle of self-assessment, taxpayers will self-assess their tax liabilities. As such, a filed RPGT return would be deemed to be a Notice of Assessment. However, the IRB has indicated during the briefing that it would issue notices of assessment initially because the RPGT filing is not an annual filing.

The Institutes are of the view that the successful implementation of a self-assessment system for RPGT entails a suitable period for education prior to its introduction so that taxpayers get clarity and understanding before the system commences. With set process and procedure in place, there would be no need to issue any notice of assessment. This will also allow for the legislative provisions to be drafted accordingly.

3.4 Filing of CKHT Return - Declaration

In slide No.8, the point reads as follows:

“3. *Kaedah Melapor Dan Pengiraan Cukai (sumbungan)*

iii

iv *Tandatangan*

- ☐ *Pengemukakan borang CKHT*
 - *Memberi kuasa kepada peguam untuk menandatangani borang CKHT bagi pihak pelupus dan/ atau pemeroleh.”*

Comments:

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The above refers to lawyers being allowed to file CHKT returns on behalf of taxpayers.
The Institutes would like to seek confirmation that tax agents will not be excluded.