REAL PROPERTY GAIN TAX (RPGT)

RPGT is charged on gains arising from the disposal/sale of real properties or shares in Real Property Companies (RPC). A RPC is a controlled company holding real property or shares in another RPC as a major asset, which is defined as valued more than 75% of the value of its total tangible assets.

Latest on RPGT

RPGT was temporarily exempted between 1 April 2007 and 31 December 2009. However, this exemption was withdrawn with effect from 1 January 2010, where the RPGT is subject to real property gain tax of 5% if the property was acquired within 5 years.

Currently with effective from 1 January 2012, the RPGT rates on the gains of disposal/sale of real properties or shares in RPC are reviewed as follows:

Holding Period	Real Property Gains Tax Rates		
	Companies	Individuals (Citizens & Permanent Residents)	Individuals (Non – Citizens)
Within 2 years	10%	10%	10%
Exceeding 2 until 5 years	5%	5%	5%
Exceeding 5 years	0%	0%	0%

Responsibilities of Sellers

The seller needs to submit the following documents to the Inland Revenue Board (IRB) within 60 days from the date of disposal and forward a copy to the buyer:

- The duly completed Form CKHT 1A (for disposal of property) or Form CKHT 1B (for disposal of shares in RPC);
- A copy of the Sale and Purchase Agreement for the disposal of the property;
- A copy of grant/title deed (if any);
- If the seller wants to claim the deduction of the allowable expenditures, he must also submit the bills for the expenses. The expenses which are generally allowed as deduction against the RPGT are legal fees, stamp duties, commissions paid to real estate agents, advertisements paid to find buyers etc; and
- The duly completed Form CKHT 3, if the disposal transaction is not liable to RPGT.

With effect from 1 January 2010, the interest paid to finance the acquisition of the chargeable asset will no longer be regarded as an incidental cost to the acquisition price of the chargeable asset.

Responsibilities of Buyers

The buyer is responsible to withhold 2% of the consideration price of the property or the whole sum if the cash part of the consideration is less than 2% (whichever amount is lesser). The buyer must remit the money to the IRB. The buyer needs to submit the following documents to the IRB within 60 days from the date of disposal and forward a copy to the seller:

- The duly completed Form CKHT 2A;
- A copy of the Sale and Purchase Agreement for the acquisition of the property;
- A copy of grant/title deed (if any); and
- The duly completed Form CKHT 3, if the disposal transaction is not liable to RPGT.

IRB Notices

The IRB will issue the Notice of Assessment (Form K) for the cases that attract RPGT ie there are gains arising from the disposal/sale of real properties or shares in Real Property Companies.

For cases that result in no RPGT payable, the IRB will issue Certificate of Settlement or "Sijil Perakuan Penyelesaian" (CKHT 5A).

Disposal Not Liable to RPGT

Even though a disposal/sale of real properties or shares in RPC is not liable to RPGT, the seller is still required to file the above mentioned RPGT Forms to IRB. Situations for disposal of real properties or shares in RPC, that are not liable to RPGT include:

- Disposal made after 5 years from the date of acquisition of the property;
- Gifts and transfer of real property between:
  - Husband and wife
  - Parent and child
  - Grandparent and grandchild
- Gains on disposal of residential property once in a lifetime for a Malaysian citizen or permanent resident of Malaysia. This situation requires the filing of the Exemption Form under Section 8 of RPGT Act 1967;
- The disposal of asset as a result of a compulsory acquisition under Malaysian Laws; and
- Transfer of asset between companies within the same Group of Companies, to bring about a greater efficiency in operation for a consideration consisting of not less than 75% shares in the transferee company and the balance of a money payment.

Payment of RPGT

The balance of RPGT payable is the Total RPGT payable less 2% RPGT withheld and remitted to the IRB. The balance of RPGT payable has to be paid within 30 days from the date of the Notice of Assessment (Form K). If the 2% withheld is more than the Total RPGT payable, the excess will be refunded to the seller.

Any payment made after 30 days from the issuance of Form K will be liable for penalty of 10%, without further notice from the IRB.

Exemption to Individual under Schedule 4 of RPGT Act 1967

With effect from 1 January 2010, the level of exemption available to individuals only, regardless of the nationality, was increased from RM5,000 to RM10,000 or 10% of the chargeable gains, whichever is higher. The exemption amount is deducted against the chargeable gain.

Allowable Loss

With effect from 1 January 2010, tax relief for loss on disposal was replaced by the claim of allowable loss arising from the disposal of chargeable assets against chargeable gains from subsequent disposals. The allowable loss can be carried forward until it is fully utilized. In other words, any un-utilized allowable loss can be carried forward for offset against future chargeable gain until it is fully utilized. Please refer to Example 2.

Sources:
1) RPGT Act 1976; and
2) RPGT Guideline issued on 5 May 2011

CALCULATIONS OF RPGT PAYABLE

Example 1:

Basic computation of RPGT, assuming RPGT rate of 5%

	RM	RM
Disposal price (1.1.2012)		15,000,000
Less:		
Legal fees	(150,000)	
Commission paid	(100,000)	(250,000)
		14,750,000
Acquisition price (1.1.2007)	6,000,000	
Add:		
Stamp duty on transfer	150,000	(6,150,000)
Chargeable gain		8,600,000
Less: Exemption under Schedule 4 of RPGT		
RM10,000 or 10% @ RM8,600,000 = RM860,000		
(whichever is higher & for individuals only)		(860,000)
Chargeable gain		7,740,000
RPGT @ rate 5%		**387,000**
Less: 2% remittance of disposal price		(300,000)
RPGT payable		87,000

Example 2:

Utilisation of allowable loss on property sold after 1 January 2010, assuming RPGT rate of 5%

	RM
Shop house A (Disposed on 1.1.2010)	
Disposal price	300,000
Less: Acquisition price	(500,000)
Allowable loss c/f	(200,000)
Shop house B (Disposed on 1.1.2011)	
Disposal price	500,000
Less: Acquisition price	(600,000)
Allowable loss c/f	(100,000)
Shop house C (Disposed on 1.1.2012)	
Disposal price	5,000,000
Less: Acquisition price	(3,000,000)
Gain on disposal	2,000,000
Less: Allowable loss b/f	(300,000)
Chargeable gain	1,700,000
RPGT @ rate 5%	**85,000**