

# A7 REAL PROPERTY GAINS TAX

A7.1

## IMPLEMENTATION OF SELF ASSESSMENT FOR REAL PROPERTY GAINS TAX

### Existing Legislation

Presently, gains from the disposal of chargeable assets (i.e. real property or shares in real property companies, as defined) under the Real Property Gains Tax Act 1976 are assessed formally. Pursuant to Section 13 of the Real Property Gains Tax Act 1976, the acquirer and disposer are required to file real property gains tax (RPGT) returns in the prescribed forms relating to the acquisition and disposal of chargeable assets to the Inland Revenue Board (IRB) within 60 days from the date of acquisition and disposal respectively. The RPGT returns will then be processed by the IRB after which an assessment notice or a certificate of non-chargeability will be issued to the taxpayer (i.e. disposer).

### Proposed Legislation

It is proposed that the Real Property Gains Tax Act 1976 be amended to include provisions in relation to the implementation of the self-assessment for RPGT.

The proposed implementation of self-assessment for RPGT is in line with the self-assessment system for income tax. Some of the notable procedures relating to RPGT returns and assessments are as follows:

- (a) Taxpayer is required to calculate his own tax liability in the RPGT return;
- (b) The submitted RPGT return is deemed to be a notice of assessment made by the Director General of Inland Revenue (DGIR) and is deemed to have been served on the taxpayer on the day the RPGT return is submitted;
- (c) The deemed assessment can be amended by submitting an amended RPGT return within 6 months from the due date for submission of the RPGT return and the amendment can only be done once;
- (d) The amended return to the DGIR shall include the following information:
  - The additional chargeable gains and the amount of additional tax payable;
  - The amount of tax payable which has or would have been wrongly repaid to the taxpayer;
  - The increased sum equal to 10% of the additional tax payable; and
  - Other particulars as may be required by the DGIR;
- (e) The tax or additional tax payable under the deemed assessment shall be due and payable within the period of 60 days from the date of disposal;
- (f) The tax or additional tax payable under the deemed assessment made on the amended return shall be due and payable on the day the amended return is furnished;
- (g) Taxpayer may apply for relief on an assessment within 5 years after the end of the year of assessment within which the assessment was made;
- (h) The DGIR may by notice in writing request the taxpayer to provide all books, accounts, returns, statement of bank accounts and other documents deemed necessary for audit purposes; and
- (i) Documents must be kept for a period of 7 years from the end of the year of assessment the taxpayer is required to furnish a return (i.e. deemed assessment). If the taxpayer fails to furnish a return, he shall keep records for a period of 7 years after the end of the year in which the return is furnished for the purpose of ascertaining his chargeable gain and tax payable.

## Reference

Section 13, Section 14, Section 15, Section 17, Section 19, Section 20 and Section 21 and new Section 13A, Section 15A, Section 16A, Section 19A, Section 28A, Section 28B and Section 28C of the Real Property Gains Tax Act 1976.

## Effective Date

1 January 2025.

## Likely Tax Effects and Implications

The proposed implementation of the self-assessment system is in line with the Government's aspiration to modernise the tax system. Taxpayers will be required to determine their own RPGT liability and file RPGT returns accordingly. This proposal would shift the responsibility to taxpayers to ensure that their RPGT obligations are complied with.

A7.2

## REVIEW OF REAL PROPERTY GAINS TAX APPLICABLE TO ACQUISITION AND DISPOSAL OF SHARES IN REAL PROPERTY COMPANIES

### Existing Legislation

Presently, pursuant to Schedule 2 Paragraph 34A of the Real Property Gains Tax Act 1976, an acquisition of shares in a real property company (as defined) shall be deemed to be an acquisition of a chargeable asset, and where such shares are subsequently disposed of, such a disposal shall be deemed to be a disposal of a chargeable asset notwithstanding that at the time of disposal of such shares the relevant company is not regarded as a real property company.

### Proposed Legislation

It is proposed that the acquisition and subsequent disposal of shares in a real property company by a company, limited liability partnership, trust body or co-operative society will not be subject to assessment under the Real Property Gains Tax Act 1976 effective 1 January 2024. However, a Labuan entity carrying on a business activity under Section 2B of the Labuan Business Activity Tax Act 1990 remains subject to assessment under the Real Property Gains Tax Act 1976 for the disposal of a chargeable asset.

In line with the above proposal, it is also proposed that Schedule 2 Paragraph 1(1) of the Real Property Gains Tax Act 1976 be amended to introduce the definition of "co-operative society" and "trust body". "Co-operative society" means any co-operative society registered under Co-operative Societies Act 1993 and "trust body" has the meaning assigned to it under the Income Tax Act 1967.

## Reference

Schedule 2 Paragraph 1(1) and new Paragraph 34A(5A) of the Real Property Gains Tax Act 1976.

## Effective Date

1 January 2024.

## Likely Tax Effects and Implications

The above proposal is a consequential amendment to avoid the double taxation on gains or profits on disposal of shares in real property companies by the abovementioned categories of taxpayers, as a result of the proposed introduction of capital gains tax under the Income Tax Act 1967 effective 1 January 2024.

## **EXTENSION OF CATEGORY OF PERSONS AUTHORISED IN WRITING TO FURNISH ANY PRESCRIBED FORM FOR REAL PROPERTY GAINS TAX PURPOSES**

### **Existing Legislation**

Presently, pursuant to Section 57A(3) of the Real Property Gains Tax Act 1976, a person may give an authorisation in writing to a tax agent, an advocate and solicitor of the High Court of Malaya or an advocate of the High Court of Sabah and Sarawak to furnish on his behalf any prescribed form under the Real Property Gains Tax Act 1976 through electronic medium or by way of electronic transmission.

### **Proposed Legislation**

It is proposed that the category of persons authorised in writing to furnish any prescribed form on behalf of a person for Real Property Gains Tax (RPGT) purposes be extended to include a nominee.

### **Reference**

Section 57A(3) of the Real Property Gains Tax Act 1976.

### **Effective Date**

1 January 2025.

### **Likely Tax Effects and Implications**

The above proposal seeks to extend the category of persons authorised in writing to furnish any prescribed form for RPGT purposes through electronic medium or by way of electronic transmission on behalf of a person to include a nominee.