



Why the RPGT 2010 Guidelines?

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1. Purpose of the 2010 Guidelines

Much confusion has been created by the recent amendments to the **RPGT Act**. The purpose of the issuance of the **2010 Guidelines** is to clarify the effects of the various amendments made to the **RPGT Act** with effect from 1-1-2010.

The most significant change is that a flat rate of 5% gains tax is payable on the chargeable gain for any disposal **within** 5 years of purchase/acquisition. A further development is that no gains tax is payable **after** 5 years of purchase. [See **RPGT (Exemption) (No.2) Order 2009 [PU(A) 486]**

It is now clear that, commencing from 1 January 2010, a fixed rate of 5% gains tax is only payable for any disposal **within the first 5 years** of purchase/acquisition. The latest exemption of payment of gains tax for any disposal **after** 5 years of purchase is an outcome of an appeal by civil society, particularly the umbrella organization of the Chinese Associations *Hua Zong*.

Guidelines effective from 1-1-2010

In January 2010, the Inland Revenue Board (IRB) issued a set of new Guidelines on the latest amendments to the **Real Property Gains Tax Act 1976**. The Guidelines are known as the **Garis Panduan Cukai Keuntungan Harta Tanah [referred to as the "RPGT 2010 Guidelines" in this article]**.

The Guidelines begin with the brief history of the RPGT Act. Numerous examples are given to illustrate the application of the recent amendments to the RPGT Act 1976, showing how the flat rate of 5% gains tax is to be calculated.

A cumbersome formula $A/B \times C$ is employed to calculate the amount of "gain exempt from tax". It is a roundabout way of finding out first the amount of "gain exempt from tax" based on Schedule 5 (Rates of Tax) of the 1976 Act, before working out the amount of 5% gains tax payable. For practical purposes, the flat rate 5% gains tax payable can easily be calculated by using a simple formula of: "**chargeable gain x 5%**".

The cumbersome formula of $A/B \times C$ is of no practical significance to the parties and their respective solicitors, because the amount of "gain exempt from tax" calculated according to Schedule 5 (Rates of Tax) does not concern them.

The sliding scale of rates of gains tax payable ranges from 30% to 5% for any disposal is of no consequence to the parties concerned, since currently a flat rate of 5% gains tax has been imposed. [In passing, the original Schedule of Rates of Tax has been slightly amended: **s56, Finance (No.2) Act 2010]**

2. Brief history of RPGT Act 1976

There was no Real Property Gains Tax before the end of 1975. The **Speculation Tax Act 1974** was introduced on 6 December 1973 to restrain speculative activities in landed properties. It was replaced by the **Real Property Gains Tax Act 1976 (RPGT Act)** on 7 November 1975. About 13 years later, from 21 October 1988, the real property gains tax was extended to cover "real property companies".

With a view to encouraging development of the national economy, in 2007, the Minister of Finance, by **Real Property Gains Tax (Exemption) Order 2007 [PU(A) 146/2007]**, granted full exemption of any disposal of real property from payment of gains tax. For about 2 ½ years (1.4.2007 - 31.12.2009), no gains tax was payable on any disposal of real property. The tax-free period ended on 31-12-2009. [See **Real Property Gains Tax (Exemption) Order 2009 [PU(A) 376]**].

The latest **Real Property Gains Tax (Exemption) (No.2) Order 2009 [PU(A) 486]** provides that, any disposal **after 5 years** of purchase/acquisition is exempt from payment of RPGT. The Order takes effect this year, that is, from 1 January 2010. In other words, gains tax at the flat rate of 5% is payable for the **first 5 years** of purchase, but **after 5 years** of purchase, no gains tax is payable for any disposal of real property.

One will note that since 2007, 4 pieces of legislation relating to the amendments of the **RPGT Act 1976** have been enacted, namely:

- (1) **RPGT (Exemption) Order 2007 [PU(A) 146/2007]**
- (2) **Finance (No.2) Act 2010**
- (3) **RPGT (Exemption) Order 2009 [PU(A) 376/2009]**
- (4) **RPGT (Exemption) (No.2) Order 2009 [PU(A) 486/2009]**

3. Cumbersome formula for calculating gains tax payable

Before the end of 2009, the Prime Minister announced full exemption of any disposal **after 5 years** of purchase/acquisition from payment of gains tax.

Any disposal **within 5 years** of purchase/acquisition still attracts a flat rate of 5% gains tax, but not the sliding scale of rates ranging from 30% to 0% under Schedule 5 (Rates of Tax) of the **RPGT Act**.

A special formula **A/B x C** is introduced to calculate the amount of “**chargeable gain exempt from tax**”. The formula applies to any disposal on or after 1-1-2010.

“**A**” stands for “**gain exempt from tax**” under Schedule 5. It is the result of “*full amount of gains tax payable on the chargeable gain*”, calculated according to Schedule 5 of the **RPGT Act 1976**, reduced by the “amount of 5% gains tax payable”. In other words, “A” = “full amount of gains tax payable – 5% gains tax”.

For example, if the rate of tax payable is 30% under Schedule 5, **gain exempt from tax** is: chargeable gain x 30% - chargeable gain x 5% = 25%].

“**B**” stands for the “*full amount of gains tax payable on the chargeable gain*” under Schedule 5. For example, if a property was sold within one year of the purchase, the rate of tax is 30%, and the gains tax payable = chargeable gain x 30%.

“**C**” stands for the “*full amount of chargeable gain*”. The full chargeable gain is the result of “disposal price – acquisition price”. For example, disposal price 300,000 – acquisition price 100,000 = full chargeable gain 200,000]

The formula A/B x C therefore amounts to :

$$\frac{A \text{ (gain exempt from tax)}}{B \text{ (gains tax payable under Schedule 5)}} \times C \text{ (chargeable gain)}$$

If the disposal is in the 3rd year, the rate of tax is 20% under Schedule 5, the formula for “**chargeable gain exempt from tax**” operates as follows:

$$\frac{\text{chargeable gain} \times 20\% - \text{chargeable gain} \times 5\%}{\text{chargeable gain} \times 20\%} \times \text{chargeable gain}$$

Using the example given above, the full chargeable gain is 200,000 [disposal price 300,000 – acquisition 100,000 = gain 200,000]. If the chargeable gain is 200,000, and the tax rate is 20%, the formula works out in the following manner:

Step 1: Gain exempt from tax :

$$\frac{200,000 \times 20\% - 200,000 \times 5\%}{200,000 \times 20\%} \times 200,000$$

$$= \frac{15}{20} \times 200,000 = \mathbf{150,000} \text{ [gain exempt from tax]}$$

Step 2: Taxable gain :

$$\text{total gain } 200,000 - \text{gain exempt from tax } 150,000 = \mathbf{50,000}$$

Step 3: Gains tax payable under Schedule 5

$$= 50,000 \times 20\% = \mathbf{10,000}$$

As mentioned earlier, the cumbersome formula is rather long-winded and confusing. A simple formula can be used : “**chargeable gain x 5%**”. You will get the same result (RM10,000) by using the simple formula: Chargeable gain 200,000 x 5% = **10,000**.

4. Room for improvement

The procedure for taxpayers to pay gains tax, instead of being simplified, has been made more cumbersome. The forms used are more detailed and complex, akin to the income tax returns. A cumbersome formula is introduced. It is a roundabout way of arriving at the 5% gains tax payable. The taxpayers are compelled to work out the amount of gains exempt from tax under Schedule 5 of the **RPGT 1976** for any disposal on or after 1-1-2010.

This is contrary to the modern trend of making efforts to simplify the process for payment of tax by taxpayers in many countries (e.g. Australia, Singapore, etc.).

When the authorities concerned prepared the CKHT forms and laid down the cumbersome procedure for calculation of tax payable, they do not have the interests of taxpayers at heart. They seem to have their own interests in mind. The introduction of the cumbersome formula for working out the amount of chargeable gain exempt from tax is a case in point. It is solely for the benefit of the authorities concerned, but at the expense of the taxpayers.

The Inland Revenue Board is compelling the taxpayers to print their own CKHT forms, which ought to have been supplied by the authorities concerned. Initially, the use of photocopies of the forms were not allowed. This was a decision that defies logic in view of the advanced modern technology available.

The consumer-unfriendly approach (which is akin to hostile approach) adopted by the authorities concerned towards taxpayers is uncalled for. It causes unnecessary inconvenience to the taxpayers. It certainly does not facilitate easy payment by taxpayers towards public coffers.

Most of the countries claimed to be subscribing to democracy are adopting taxpayer-friendly policies. It is time for the authorities concerned in this country to change their unfriendly attitude towards taxpayers who are in fact making an invaluable contribution to the well-being of the national economy.

Instead of the cumbersome formula for finding out the "gain exempt from tax" for any disposal of real property, one wonders why a much simpler formula is not suggested for calculating the flat rate of 5% gains tax payable for disposal of real property.

The cumbersome formula is a circuitous way of arriving at the 5% gains tax payable. It starts with the calculation of the "gain exempt from tax" under Schedule 5 of the RPGT Act. Then the "taxable gain" is worked out. Only at the last stage, that the "gains tax payable under Schedule 5" is arrived at.

The same result can be easily arrived at by using a simple formula: "chargeable gain multiplied by 5%"

The "gain exempt from tax" is not the concern of the seller and the buyer. They are only concerned with the flat rate of 5% gains tax payable on the disposal of the property. The simple formula would have served the purpose.

The authorities concerned should seriously consider the fact that they are public servants serving the needs of the public at large (including the taxpayers making contributions to the well-being of the national economy).

They are not the erstwhile colonial masters. They should refrain from having the undesirable mindset of the erstwhile colonial masters in devising inconsiderate ways and means of achieving their own interests, or furthering their ulterior motive, at the same time showing total disregard for the unnecessary heavy load of burden imposed on the citizenry.

In the interests of the taxpayers, it is incumbent upon the authorities concerned to simplify the CKHT forms as soon as possible, discard the cumbersome formula and permit the use of the simple and straightforward formula to work out the 5% gains tax payable for any disposal of real property.

There are numerous uncertainties in the procedure that need clarifications. Among other things, in a clear-cut case of a seller suffering loss instead of having any gain in the disposal of his property, he is uncertain whether it is necessary to have the retention sum of 2% of the purchase price [even if the value of the property concerned has been duly assessed in time by the Valuation Office]. The recent amendments to the RPGT Act 1976 are silent on this. If common sense prevails, the remitting of the 20% of the purchase price to the Inland Revenue Board in the case of the seller suffering loss ought not to be required.



"The true function of the Court is to ensure that justice is rendered to all who suffer wrong done to them. They should not seek redress in vain. Else, Courts of Law are not Courts of Justice."

- Tan Sri H.T. Ong
1973 (2) MLJ xli

