

Real Property Gains Tax at a glance



by Yang Pei Keng

1. What is the current rate of RPGT (as from 1-1-2012)?

The current rate of the Real Property Gains Tax (“RPGT”) was proposed by the Minister of Finance cum Prime Minister Najib Razak through the 2012 Budget, which was delivered last year, on 7 October 2011.

Under the 2012 Budget, with effect from 1 January 2012, the RPGT has been increased to 10% (from 5%) for the sale of any real property within the **first 2 years of the purchase or acquisition**. The rate of 5% within the 3rd year, 4th year and 5th year remains unchanged. After 5 years of the purchase, any disposal of real property will not be subject to RPGT.

The following chart will show the rates of RPGT applicable with effect from 1 January 2012:

Rates of RPGT with effect from 1 January 2012

Within year 1	...	...	10%
Within year 2	...	...	10%
Within year 3	...	...	5%
Within year 4	...	...	5%
Within year 5	...	...	5%
After 5 years of acquisition			nil

Such changes in the rates of RPGT were gazetted by a statutory order. It is to be noted that the rates only apply to any sale or disposal of any property with effect from **1 January 2012**.

Rates are applicable to all disposers

The present rates of RPGT apply to all and sundry, regardless of citizenship. It is immaterial whether the seller is a citizen, a non-citizen, a permanent resident, or a company. Everyone enjoys the same rates of RPGT.

No distinction is being made between citizens or non-citizens. For example, A Singaporean selling any property in Malaysia will pay the same rates of RPGT as any citizen. The company (whether local or foreign) also enjoys the same rates of RPGT.

RPGT is also payable in the case of a “real property company” (“RPC”). A real property company is a company holding real property, owning at least 75% of its tangible assets in the form of real property [land, houses, shops, shoplots, etc.]. If another company holds shares in such real property company, such holding company is also deemed to be a real property company.

If you trace the history of RPGT for the past 17 years (1995-2012), you will notice that the rates of RPGT have always been changing, depending on the economic conditions of the country.

2. Rates of RPGT before 1-1-2012

Before the year 2012, a flat rate of 5% RPGT was payable if the property was sold or disposed of within 5 years of acquisition. In other words, if you sold your property, whether within year 1, year 2, year 3, year 4 or year 5 of your purchase or acquisition of the property, you had to pay a flat rate of 5% RPGT only.

But, if you sold your property after holding it for more than 5 years (that is from year 6 onwards), you did not have to pay any RPGT at all.

3. 2007-2009: Total exemption of RPGT

Because of the economic downturn, total exemption of RPGT was allowed for a period of nearly 2 years (from 1.4.2007 to 31.12.2009). But RPGT was not abolished as such, but total exemption was allowed. The government had in mind to re-introduce RPGT when the property market improved.

Before allowing the total exemption during the period 2007- 2009 (by virtue of an the Exemption Order issued by the Minister of Finance in 2007) much higher rates of RPGT were payable.

The government had no intention of abolishing the RPGT once and for all. That is why, only exemption was given.

4. 2010 – flat rate of 5% RPGT was imposed

In 2009, when the market property improved, a flat rate of 5% RPGT for disposal of property **within the first 5 years of purchase or acquisition** was imposed. After 5 years (that is, from year 6 onwards), no RPGT was payable on the sale of any property.

The relevant authorities did not impose higher sliding scale rates of RPGT for the time being. Higher rates of RPGT will be imposed at a time when they consider appropriate.

5. Comparison of rates of RPGT for the past 17 years [1995 to 2012]

For ease of reference, the fluctuation of the rates of RPGT for the past 17 years, from 1995 to 2012, is shown by way of the following schedules:

A. Disposal by an individual [citizen or permanent resident]

<u>Date</u>	<u>Year1</u>	<u>year2</u>	<u>year3</u>	<u>year4</u>	<u>year5</u>	<u>year6</u>	<u>year7</u> →
27.10.95-31.3.07	30%	30%	20%	15%	5%	nil	nil
1.4.07-31.12.09	nil	nil	nil	nil	nil	nil	nil
From 1.1.2010	5%	5%	5%	5%	5%	nil	nil
From 1.1.2012	10%	10%	5%	5%	5%	nil	nil

B. Disposal by an individual [non-citizen or non-permanent resident]

<u>Date</u>	<u>Year1</u>	<u>year2</u>	<u>year3</u>	<u>year4</u>	<u>year5</u>	<u>year6</u>	<u>year7</u> →
27.10.95-31.3.07	30%	30%	30%	30%	30%	5%	5%
1.4.07-31.12.09	nil	nil	nil	nil	nil	nil	nil
From 1.1.2010	5%	5%	5%	5%	5%	nil	nil
From 1.1.2012	10%	10%	5%	5%	5%	nil	nil

C. Disposal by a company

<u>Date</u>	<u>Year1</u>	<u>year2</u>	<u>year3</u>	<u>year4</u>	<u>year5</u>	<u>year6</u>	<u>year7</u> →
27.10.95-31.3.07	30%	30%	20%	15%	5%	5%	5%
1.4.07-31.12.09	nil	nil	nil	nil	nil	nil	nil
From 1.1.2010	5%	5%	5%	5%	5%	nil	nil
From 1.1.2012	10%	10%	5%	5%	5%	nil	nil

One will note that for **citizens and permanent residents**, RPGT is payable only for the first 5 years. From year 6 onwards, no RPGT is payable.

But in the early years (that is, before 1 April 2007), any sale or disposal of property by a **non-citizen, a non-permanent resident, or a company**, was always subject to RPGT, no matter how long the property had been kept.

For instance, the property might have been kept for 6 years or more, or even decades. The length of time of holding or keeping the property was immaterial. Such imposition of RPGT was hardly consistent with the concept of fighting speculative activities. Any property kept for more than 5 years should be regarded as an investment, not speculation.

6. Exemption of RPGT for certain transactions

In certain transactions, exemption of RPGT is allowed under the RPGT Act 1976. Listed below are some of such transactions:

1. Exemption of RM10,000 or more

An individual is given an exemption of RM10,000 of the gain (or 10% of the chargeable gain, whichever is greater). In other words, for every transaction, the minimum exemption is RM10,000; there could be exemption of a greater amount, depending on the amount of chargeable gain. Chargeable gain is the gain liable to payment of RPGT. For example, if the chargeable gain is RM200,000, the exemption will be RM20,000 (i.e. $200,000 \times 10\% = 20,000$)

2. Gifts

A gift between husband and wife, parent and child (or vice versa), or grandparent and grandchild (or vice versa) is exempt from RPGT. This would mean that any transfer in consideration of 'love and affection' between close family members just mentioned is exempt from RPGT. But a word of caution: A transfer between brother and sister is **not** exempt from RPGT.

3. Private residence :

Every citizen or permanent resident is entitled to a once-in-a-lifetime exemption of RPGT if he disposes of his residential property when he elects in writing for exemption at the time of disposal. It need not be the first residential property [i.e. a dwelling house] that is sold or disposed of.

You may elect or choose one of the most expensive transactions for this once-in-life time exemption if it is subject to RPGT. The law has been made more stringent: you have to elect for exemption at the time when you submit the gains tax form to the Inland Revenue Board.

Before this recent amendment to the RPGT Act, you could elect for exemption even after assessment of RPGT payable had been done, That is, at the time when you received the notice of assessment from the Board requesting for payment of RPGT.

4. **“No gain no loss” transactions** (see para 3 Schedule 2):

The following are, inter alia, no-gain-no-loss transactions:

- (1) When a person dies, and his properties devolve to his personal representatives (executors or administrators) or trustees or legatees.
- (2) When a property is subject to compulsory acquisition. That is to say, when the property is acquired by the relevant authorities, and you have been paid compensation. The compensation you received is not subject to RPGT.
- (3) Any transfer between spouses, that is, between husband and wife (or vice versa).
- (4) When an individual transfers his property to his nominee who has no vested interests in the property.
- (5) When an individual (or an individual jointly with his wife or with a connected person) transfers his property to a company controlled by the individual (or by an individual jointly with his wife or with a connected person) for a consideration consisting substantially of shares in that company. “Substantially” means “more than 75%”.
- (6) Certain transfers between companies. For example, transactions within the same group of companies, or transactions for the purpose of reorganization, reconstruction, or amalgamation, etc., are also exempt from RPGT [See para 17 Schedule 2]



Judge okays use of Facebook to serve legal claims

LONDON: Status update: You're sued. Legal authorities said on Tuesday that a High Court judge in England has approved the use of Facebook to serve legal claims.

Lawyers in a commercial dispute were last week granted permission to serve a suit against a defendant via the popular social networking site.

Justice Nigel Teare permitted the unconventional method of service during a pretrial hearing into a case which pits two investment managers against a brokerage firm they accuse of overcharging them.

A former trader and an ex-broker, Fabio De Biase and Anjam Ahmad, are also alleged to have been in on the scam.

Jenni Jenkins, who represents Ahmad, said lawyers in the case had been trying to track De Biase in order to serve him with legal documents. She said that a copy of the suit was left at his last known address, but that it wasn't clear whether he was still living there.

The lawyers didn't have his email address, so they applied for permission to send him the claim through Facebook.

Jenkins, an associate with London-based law firm Memery Crystal, said the lawyers were confident that de Biase's account was still active.

“The counsel told the judge that someone from the firm had been monitoring the account and they'd seen that he's recently added two new friends, which made the judge chuckle.”

De Biase was given extra time to respond to the claim “to allow for the possibility that he wasn't accessing his account regularly,” she added.

Ordinarily, British legal claims are served in hard copy — either in person, by mail, or by fax —although unconventional means are occasionally employed if the people involved are hard to pin down.

The Judicial Office for England and Wales confirmed on Tuesday that Teare had allowed lawyers to serve their claim through Facebook. **AP**