RPGT: I'm Back!

The Facts

Real Property Gains Tax (RPGT) was first introduced to the public on 6 December 1973 as a precautionary step taken by the Government to prevent the speculation on the immovable property by the speculator. RPGT was later enhanced with the introduction of Real Property Gains Tax Act 1976 (RPGT ACT 1976) to tax on any gains arising from the disposal of chargeable assets which include immovable properties such as flats, condominiums, houses, apartments etc or any interest, option or other rights in or over land or shares in a real property company (RPC).

In order to stimulate the weak property market sentiment, the Government had allowed for an exemption on RPGT for any capital gains arising from the disposal of properties or RPC shares after 31 March 2007. This exemption has now been lifted from 2010 onwards. Effectively, RPGT is now back and has taken effect from 1 January 2010 with refinements which can be summarised as follows:-

- The rate has been reduced from as high as 30% depending on the holding period of the chargeable assets, to a flat rate of 5% of the chargeable gain if the disposal is made within five (5) years from the date of acquisition. No RPGT on any gains arises from disposal of chargeable assets if the holding period is more than five (5) years.
- The purchaser, on behalf of the seller is required to remit two percent (2%) of the agreed purchase consideration within sixty (60) days from the date of sale and purchase agreement (SPA) for the chargeable assets with holding period less than five (5) years to the Inland Revenue Board (IRB) in order to avoid ten percent (10%) penalty being imposed on the seller. However, the 2% rules shall not be applicable for the following circumstances:-
  - Chargeable assets are disposed of after five (5) years from the date of acquisition;
  - An election to claim tax exemption under Section 8 of RPGT Act 1976 in respect of the disposal of one private residence by an individual taxpayer; or
  - Chargeable assets are disposed of by way of a gift between husband and wife, parent and child or grandparent and grandchild, where the acquisition price shall be deemed equal to disposal price (No Gain No Loss).
- Previously, tax relief for loss on disposal of chargeable assets is calculated by taking the amount of allowable loss from the disposal of the chargeable assets and multiply with the applicable rate of RPGT. At present, allowable loss arising from the disposal of chargeable assets within five (5) years from the date of acquisition can be utilised directly to reduce the chargeable gains from subsequent disposal and need not to multiply with the applicable rate of RPGT. Any unutilised allowable loss can be carried forward for future chargeable gain until it is fully utilised. However, no allowable loss arising from the disposal of chargeable assets after five (5) years from the date of acquisition can be brought forward for utilisation against any chargeable gain in the future.
- A tax relief brought forward from disposals of chargeable assets made prior to 1 April 2007 is allowed to be utilised for deduction from RPGT assessed from disposals made after 31 December 2009;
- Interest expenses incurred on loan taken to finance the chargeable assets are no longer be regarded as incidental cost to the acquisition price of the chargeable assets. Thus, it will increase the chargeable gain when the chargeable assets are disposed of;
- The tax exemption enjoyed by an individual taxpayer has been increased rom RM5,000 to RM10,000 or 10% of the chargeable gain whichever is higher;
- RPGT return (CKHT Form) is to be furnished to the IRB within 60 days from the date of disposal of the chargeable assets.

A Practical Consideration

In normal practice (before 1 April 2007), it was usually agreed between the parties that the seller's solicitor had to keep the retention sum of 5% of the purchase consideration, pending the outcome of the assessment by the IRB on the RPGT payable. Upon the receipt of the notice of assessment, the seller's solicitors immediately remit the RPGT payable to the IRB and refund the balance of the retention sum to the seller.

However, current practice, the 2% of the purchase consideration will be retained by the IRB after the period of 60 days from the SPA date. It may trigger undesirable consequence to the seller when the SPA is mutually terminated by the seller and purchaser after 60 days without any compensation. In this regard, the seller may have difficulty to refund 10% of the purchase consideration as deposit received upon signing the SPA as 2% of the purchase consideration had been remitted to the IRB. As such, the seller has to ensure that they are able to refund 2% of the purchase consideration to the purchaser while pending refund from the IRB. The refund can only be processed within thirty (30) days after complete documents are forwarded to the IRB.

The Perception

The unexpected re-introduction of the RPGT will be a restrainer on the property markets as property investors would have different views with this reimposition of RPGT. The question is, how far do property investors accept the "on and off" imposition of RPGT? Still, the reality is that we live with the fact that the RPGT is here to stay.