



Tax Chat

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PR3/2019 – Business Expenses In Respect of Disabled Person

PR3/2019 – Business Expenses In Respect of Disabled Person

Since the year of assessment (YA) 1982, employers of disabled persons certified by the Department of Social Welfare are eligible to claim further deduction on the remuneration paid to disabled persons.

However, from YA 2019 onwards, the above deduction is extended to include remuneration paid to an employee who is physically or mentally disabled due to an accident or critical illness but is able to work within his capabilities as certified by the Medical Board of the Social Security Organisation (SOCSO).

To further explain on the above further deduction, the Inland Revenue Board of Malaysia (IRBM) issued [PR3/2019 – Business Expenses In Respect of Disabled Person](#) on 8 August 2019. PR3/2019 explains the tax treatment of business expenses incurred by a person for –

- (i) employing disabled persons as employees; and
- (ii) providing training to disabled persons who are not employees to enable them to seek employment.

The salient points highlighted in PR3/2019 are as follows:

Additional Deduction for the Employment of Disabled Persons

- ❖ Types of remuneration which will qualify for further deduction include any wages, salary, overtime payment, commission, tips, allowance, bonus or incentives, fees, perquisite, employee's share option scheme (ESOS) and tax borne by the employer.
- ❖ Benefits in kind under paragraph 13(1)(b) and the value of living accommodation under paragraph 13(1)(c) of the ITA will not qualify for the further deduction.

PR3/2019 – Business Expenses In Respect of Disabled Person

Double Deduction for Training a Disabled Person who is not an Employee

- ❖ The training programme must be–
 - (a) approved by the Minister of Finance and conducted in Malaysia; or
 - (b) conducted by a training institution which is approved by the Minister of Finance.
- ❖ The expenditure which qualifies for the double deduction includes the amount paid by a company to the training institution in respect of training programmes conducted by that training institution.
- ❖ Companies that contribute to the Human Resources Development Fund (HRDF) do not qualify for this double deduction.

Single Deduction under Section 34(6)(e) of the ITA

- ❖ Employers are allowed to claim a deduction for capital expenditure incurred for the purchase of any equipment or on the alteration and renovation of premises to assist the disabled employee.
- ❖ As provided under Section 34(8) of the ITA, any expenses which are eligible to be deducted under paragraph 34(6)(e) of the ITA, shall not be entitled to any deductions or capital allowances under Section 33 or Schedule 3 of the ITA respectively.

**SVDP – no further extension after
30 September 2019 deadline**

SVDP – no further extension after 30 September 2019 deadline

With the 30 September 2019 deadline looming, you are strongly encouraged to take advantage of the SVDP to declare any unreported income which covers the following years:



Individuals: up to the financial year ended **31 December 2017**

Companies: up to the financial year ended **31 March 2018**

Under the programme, a penalty of 15% is imposed for unreported income before 30 September 2019.

However, after 30 September 2019, a penalty of between 45% and 300% will be imposed for any unreported income discovered by the IRBM.



Am I eligible?

Yes, If you :

- have not registered for income tax number; or
- are registered but have not submitted tax returns; or
- have submitted tax returns but have not reported the correct information; or
- have failed to stamp executed documents.

Take advantage of SVDP, no extension after Sept 30, Guan Eng tells taxpayers

NATION

Monday, 12 Aug 2019

10:14 PM MYT

By R. SEKARAN



GEORGE TOWN: The Special Voluntary Disclosure Programme (SVDP) for unreported income will not be extended after Sept 30, says Lim Guan Eng.

Source: <https://www.thestar.com.my/news/nation/2019/08/12/take-advantage-of-svdp-no-extension-after-sept-30-guan-eng-tells-taxpayers>



Types of taxes covered?

- Corporate Income Tax
- Transfer Pricing
- Personal Income Tax
- Petroleum Tax
- Real Property Gains Tax
- Withholding Tax
- Stamp Duty

Gain on Disposal of Real Property in Malaysia – Capital Receipt or Revenue Receipt?

An article by Mervyn Ong,
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Gain on Disposal of Real Property in Malaysia – Capital Receipt or Revenue Receipt?

Many real property owners, whether an individual or a company, saw their worth increase significantly since the year 2010 due to the bull run in the real property market. Even though the real property market has somewhat started to cool down since 2017, many real property owners are still staring at substantial increases in their real property values. Those real property owners who are looking at cashing out now will see a substantial gain upon disposal of their real property. Now the question is this: is the gain on disposal of real property a capital receipt or a revenue receipt?

A layman's answer to that question would be capital receipt. Generally, Malaysia does not impose tax on capital receipts except in certain situations where the receipt arose from the disposal of real property or shares in a real property company, which is taxable under the Real Property Gains Tax 1976 (RPGTA), or where the capital receipt is treated as a revenue receipt.

“Even though the real property market has somewhat started to cool down since 2017, many real property owners are still staring at substantial increases in their real property values”.

Many of us are familiar with the RPGTA that imposes real property gains tax (RPGT) on gains arising from the disposal of real property in Malaysia or shares in a real property company. The RPGT rates vary from five per cent (5%) to thirty per cent (30%), depending on the holding period of the real property. However, not many are aware that the gain on the disposal of real property in Malaysia could be treated as a revenue receipt and hence, subject to income tax under the Income Tax Act 1967 (ITA) at the prevailing individual income tax rate [i.e. up to twenty eight per cent (28%)] or corporate income tax rate [i.e. twenty four per cent (24%)]. Now, the next question is, under what situation will the gain on the disposal of real property be treated as a revenue receipt instead of a capital receipt.

Generally, if the real property is an investment i.e. capital asset to a person, then the gain on the disposal of such real property is likely to be treated as a capital receipt. Conversely, if the real property is a stock-in-trade to a person, then the gain on the disposal of such real property will be treated as a revenue receipt.

Gain on Disposal of Real Property in Malaysia – Capital Receipt or Revenue Receipt?

In order to determine whether a real property is an investment or a stock-in-trade of a person, it is important to analyse the nature of activity carried on by that person. Normally, a person who acquires a real property for personal usage or long term holding to generate rental income is likely to hold that real property as an investment (i.e. property investor). On the other hand, a person who is in the business which deals with real property on a recurring basis is likely to hold that real property as a stock-in-trade (i.e. property developer or property dealer).

However, sometimes it could be difficult to determine the nature of the real property (i.e. investment or stock-in-trade) for a person due to the different nature of each transaction. Hence, one of the common methods employed by the Court in determining the nature of the real property for a person is by looking at the existence of badges of trade. A summary of the badges of trade is as follows:

Badges of trade	Comment	Likely to be	
		Revenue	Capital
Intention / profit seeking motive	Acquired for the purpose of quick resale	/	
	Acquired for investment purposes		/
Number of transactions	Single transaction		/
	Multiple and repeated transactions	/	
Nature of the real property	Yield rental income		/
	Does not yield rental income	/	
	For personal usage		/
	For trading activity	/	
Method of acquisition of real property	Inherited / gift		/
	Acquired in the ordinary course of business	/	

Gain on Disposal of Real Property in Malaysia – Capital Receipt or Revenue Receipt?

Badges of trade (cont.)	Comment	Likely to be	
		Revenue	Capital
Source of financing	Long term borrowings		/
	Short term borrowings	/	
Alteration, modification or improvement made to the real property	Subdivision of land	/	
	Conversion of land usage	/	
	Application for development order	/	
	No alteration, modification or improvement		/
Interval of time between acquisition and sale	Long period of ownership		/
	Short period of ownership	/	
Circumstances surrounding the sale	Organised sale	/	
	Forced sale		/
	Compulsory acquisition of real property by the Government		/

Notwithstanding the above, it should be noted that each badge of trade above should not be analysed remotely. All other factors involving the real property transaction must be taken into account as well, as it is inevitable that several badges of trade may exist in a single real property transaction.

Gain on Disposal of Real Property in Malaysia – Capital Receipt or Revenue Receipt?

As a general rule, the gain on the disposal of real property will likely be regarded as a revenue receipt if the gain arises from a business activity or if a number of badges of trade exist in the real property transaction. On the other hand, the gain on the disposal of real property will likely be regarded as a capital receipt if the gain arises from an investment activity or it cannot be ascertained that badges of trade exist.

As a conclusion, property transactions often involve significant amounts, hence tax inevitably becomes a key consideration. Whilst Malaysia has a generally simple income tax and real property gains tax regime, understanding the tax implications arising from property transactions tend to be challenging especially when the transactions being contemplated do not have clear characteristics of either 'investment' or 'trading'.

This article is written by Mervyn Ong, Director, Tax Advisory, Crowe KL Tax Sdn Bhd

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