



德勤马来西亚中国服务部

不动产处置利得税收

介绍

近年来，无论是来自中国的个人还是企业都在大举投资马来西亚的不动产市场。根据报导，最近三年来，中国投资者在马来西亚共计已投资 21 亿美元的不动产。投资者们面对的共同问题是此类型投资的所得是否需要马来西亚纳税。答案是在马来西亚处置不动产所获得的收益会被征收所得税或不动产利得税，这两种税是互不相容的。当出售不动产所得被征收所得税后，其不会再次被征收不动产利得税。这也说明了所得税的适用优先于不动产利得税。

由于适用税率不同，投资者需充分了解所适用税种是否正确，从而确保有效管理税务风险。

所得税率(2017 估税年度)

如果来源于贸易活动或具有贸易性质的投资，处置不动产的所得将缴纳所得税，适用税率如下:-

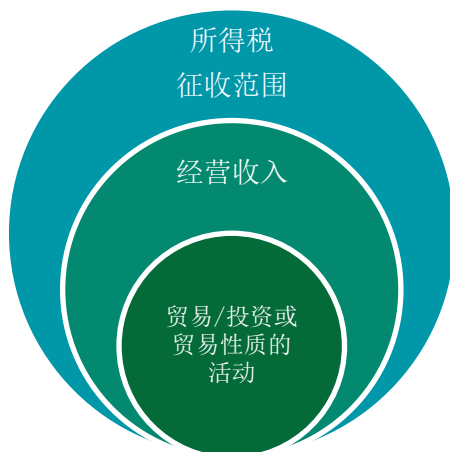
纳税人种类	税率
公司	24%
个人(税收居民)	最高 28%
个人(非税收居民)	一律 28%

不动产利得税 (2017 估税年度)

不动产利得税适用于投资者出售以长期投资为目的而持有的不动产所获得收益，所适用的不动产利得税率如下:-

在以下时间内出售不动产	公司	个人 (公民/ 永久 居民)	个人(非公民- / 非永久居民)
购买不动产之日起第 3 年		30%	30%
购买不动产之日起第 4 年		20%	
购买不动产之日起第 5 年		15%	
购买不动产之日起第 6 年及以后	5%	0%	5%

征收所得税



1976 年所得税法对“收入”征收所得税。收入种类包括经营收入。“经营”的定义为专业、职业、贸易和生产制造，贸易/投资或贸易性质的活动，但是不包括就业。源于贸易投资或具有贸易性质活动的出售不动产所得将被征收所得税。基于此，需评估特定交易的贸易特征以判断其是否适用所得税。

贸易活动特征

以下列举了一些要常规的评估要素。需要注意的是，不能仅凭借单一的要素确定是否构成贸易性质的活动。在得出结论之前，应该全面衡量所有相关的要素与事实。

序	要素	描述
1	追求利润的动机	<ul style="list-style-type: none"> 利润驱动为贸易活动的特征。 例如：投机性收购并以快速获利作为处置目标。
2	交易的数量	<ul style="list-style-type: none"> 重复和系统性的交易为贸易活动的特征。 例如：在过去 10 年*获取或处置 8 项资产*。
3	资产的性质	<ul style="list-style-type: none"> 投资性资产，个人使用以及经营中使用资产（例如：厂房设备）通常不视为贸易活动。
4	存在相似贸易交易和利益	<ul style="list-style-type: none"> 与现有贸易类似的交易为贸易活动的特征。
5	资产的变动	<ul style="list-style-type: none"> 为使资产更具市场价值而对其维修，装饰和改进等，构成贸易性质活动的特征。 例如：对土地的细分或获得土地发展权。

6	出售的方式	<ul style="list-style-type: none"> 以一种贸易组织/平台采用的典型方式进行资产转让，构成贸易性质活动的特征。
7	资金的来源	<ul style="list-style-type: none"> 用借贷资金购买资产为贸易性质活动的特征。
8	买卖之间的时间间隔	<ul style="list-style-type: none"> 短期持有资产为贸易性质的特征。例如：资产持有时间小于五年。
9	获取的方式	<ul style="list-style-type: none"> 继承资产和受赠资产通常不被认为贸易性质活动。

* 尽管上述数字源自某些先例和我们在税务审计方面的经验，但仅供一般参考。

征收不动产利得税

处置以长期投资为目的而持有不动产产生的利得应征收不动产利得税。

《1976年不动产利得税法》条款2(1)将利得定义为：-

“利得”是指

- (a) *根据所得税法征收或豁免的所得或获利以外的所得，或者*
- (b) *在单位信托的情况下，不属于所得税法征收范围的所得；*

所得税和不动产利得税之间的关系

如前所述，所得税优先于不动产利得税适用。当一项所得适用所得税，其不会再适用不动产利得税，即使内陆税收局对于具有争议的所得已出具不动产利得税评估/豁免通知时，也是如此。原因在于此种情况下不动产利得税是“自始无效的”，所以以上通知将自动失效。此外，“一事不再理”原则将不适用，因此内陆税收局仍然能够针对争议性所得征收所得税。法庭也一贯支持上述立场。

总结

很多时候，内陆税收局在不动产处置多年以后发起的税务审计行动对于那些受误导而未适用税务处理的投资者而言无疑是一种成本高昂的教训。当投资者因为内陆税收局发出不动产利得税评估/豁免通知而认为应该适用并适用不动产利得税时，情况则更加复杂。鉴于上述税务风险，我们建议中国投资者在购买和出售马来西亚不动产时寻求专业的咨询意见。



Deloitte Malaysia

Chinese Services Group Publication

Taxation of gains arising from disposal of real properties

Introduction

Chinese investors, both corporates and individuals, invested heavily in real properties in Malaysia. As reported, a total investment of USD2.1 billion was made over the last three years. The common question raised by an investor is whether the gains from the investment would be subject to tax in Malaysia. We would like to inform that gains arising from disposal of real properties in Malaysia may be subject to income tax or real property gains tax (RPGT) – the two are mutually exclusive. Where a gain is chargeable to income tax, it would not be subject to RPGT again. This effectively establishes the primacy of income tax over RPGT.

As the tax rates differ, investors should be aware of the correct type of tax that is applicable to ensure the tax exposure is properly managed.

Income tax rates (Year of assessment 2017)

Gains arising from disposal of real properties are subject to income tax if it arises from a trading activity or an adventure in the nature of trade. The tax rates applicable would be:

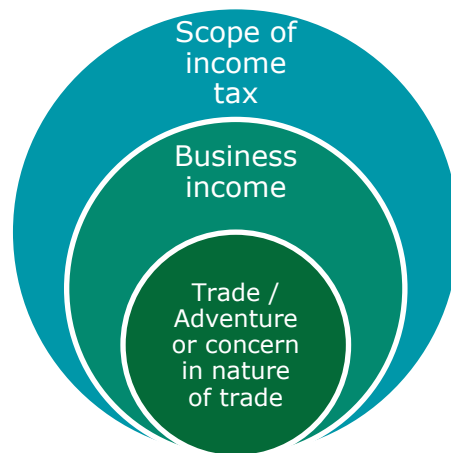
Type of Taxpayer	Rate
Company	24%
Individual (resident)	28% maximum
Individual (non-resident)	28% flat rate

RPGT rates (Year of assessment 2017)

RPGT is applicable on the gains from the disposal of real property where the intention of the investor of holding the real property is for long-term investment purposes. The RPGT rates are as follows:

Date of Disposal of Real Property Within	Company	Individual (Citizen / Permanent Resident)	Individual (Non-citizen / Non-permanent Resident)
3 rd year from date of acquisition		30%	30%
4 th year from date of acquisition		20%	
5 th year from date of acquisition		15%	
6 th year from date of acquisition or thereafter	5%	0%	5%

Imposition of Income Tax



The Income Tax Act, 1976 imposes income tax on 'income'. Among the types of income covered is business income. 'Business' is defined to *include profession, vocation and trade and every manufacture, adventure or concern in the nature of trade, but excludes employment*. Should the gain from disposal of real properties arise in the investor's adventure or concern in the nature of trade, it should be subject to income tax. For this purpose, the badges of trade of a particular transaction has to be assessed to determine its subjectivity to income tax.

Badges of Trade

Below are some of the routinely assessed elements. It is crucial to bear in mind that no single element forms a decisive pointer to the existence of a trade or otherwise. All the relevant elements should be weighed against the facts of the case prior to forming a conclusion.

No	Element	Description
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1	Profit-seeking motive	<ul style="list-style-type: none"> • Profit-driven activity is indicative of trading activity. • E.g., speculative acquisition and disposal with the sole aim of quick gains.
2	Number of transactions	<ul style="list-style-type: none"> • Repeated and systematic transactions are indicative of trading activity. • E.g., acquisition and disposal of eight* properties in the past 10* years.
3	Nature of asset	<ul style="list-style-type: none"> • Assets for investment, personal enjoyment and use in a trade (e.g., plant and machinery) do not usually indicate trading activity.
4	Existence of similar trading transactions or interests	<ul style="list-style-type: none"> • Transactions that are similar to those of an existing trade imply trading activity.
5	Changes to the asset	<ul style="list-style-type: none"> • Changes such as repairs, modifications and improvements to make it more marketable are indicative of trading activity. • E.g., subdividing a large plot of land or obtaining development order.
6	The way the sale was carried out	<ul style="list-style-type: none"> • Disposal in a way typical of trading organisation indicates trading activity.
7	The source of finance	<ul style="list-style-type: none"> • Acquisition of the asset using borrowed money is indicative of trade.
8	Interval of time between purchase and sale	<ul style="list-style-type: none"> • Short holding period of asset is indicative of trading activity. E.g., assets held for less than five* years.
9	Method of acquisition	<ul style="list-style-type: none"> • An asset that is inherited or received as a gift is less likely to be the subject of trade.

*Although the above numbers are based on certain precedents and our experience with tax audit cases, they are merely for general knowledge.

Imposition of RPGT

Chargeable gains arising from disposal of real properties held for investment purposes may be subject to RPGT. Section 2(1) of the Real Property Gains Tax Act, 1976 (RPGTA) defines gain' for the purpose of RPGTA as:

- (a) *gain other than gain or profit chargeable with or exempted from income tax under the income tax law;*
or
(b) *in the case of a unit trust, gain not treated as income under the income tax law;*

Relationship between income tax and RPGT

As mentioned earlier, income tax prevails over RPGT. Where a gain is chargeable to income tax, it would not be subject to RPGT again. The aforesaid remains true although the Inland Revenue Board (IRB) has issued RPGT notices of assessment / exemption certificates for the disputed gains. As those gains are *void ab initio* for RPGT purposes, the RPGT notices of assessment / exemption certificates are automatically invalidated. The legal principle of *res judicata* is not applicable, hence the IRB is not prevented from raising income tax assessments on the disputed gains. The courts have consistently upheld the above position.

Conclusion

Often times, the initiation of IRB's audit many years after the disposals serves as a rude, and costly, awakening to misguided investors. This is further compounded by the Inland Revenue Board's apparent endorsement of RPGT treatment adopted by investors when it issues notices of RPGT assessment / exemption certificates. Due to the impactful tax exposure described above, Chinese investors are advised to seek proper professional advice at the points of acquisition and disposal of real property in Malaysia.

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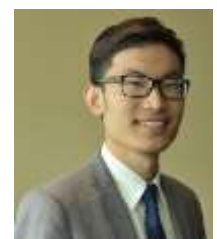
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