CHARTERED TAX INSTITUTE OF MALAYSIA

# MEMORANDUM ON ADDITIONAL ISSUES ARISING FROM FINANCE BILL 2018 & ITS SUBSEQUENT AMENDMENTS

**Date: 19 December 2018**

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**Chartered Tax Institute of Malaysia**

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## 1. Proposed Amendments to the Real Property Gains Tax Act 1976

### 1.1 New paragraph 2A, Schedule 2 [w.e.f. 1 January 2019]

*"For the purposes of this Schedule, where a disposal is subject to tax under Part 1 of Schedule 5, references to 1 January 1970 shall be construed as references to 1 January 2000."*

### Amendment of paragraph 13(2), Schedule 3 [w.e.f. 1 January 2019]

*"Where the acquisition by the disposer referred to in subsubparagraphs (1)(a) and (b) was made prior to 1 January ~~**1970**~~ **2000**, in applying the formula specified in subsubparagraphs (1)(a) and (b) there shall be substituted for the acquisition price of the total area of the land referred to in subsubparagraph (1)(a) and the acquisition price of the land with the residence referred in subsubparagraph (1)(b) the market value of the land as at 1 January ~~**1970**~~ **2000**."*

**Comments:**

The Real Property Gains Tax Act 1976 ("the Act") was passed by Parliament in 1975 and it came into force on 7 November 1975. The Act provides in Schedule 2 that where an asset which is disposed of, was acquired by the disposer prior to 1 January 1970 the market value of the asset as at 1 January 1970 shall be substituted for the consideration and incidental costs incurred in the acquisition of the asset. The date of 1 January 1970 ("or the base year") was adopted in the Act so as to provide some degree of fairness of reasonableness to the disposer in determining the acquisition of the disposer. The gap between the base year and the date of the coming into force of the Act was about 6 years.

During the last 40 years, individuals who own assets have been aware that they are exempt from the payment of Real Property Gains Tax ("RPGT") on chargeable gain arising from the disposal of the asset which they have held or owned for more than 5 years.

However, in the 2019 Budget Speech, the Minister of Finance had announced the increase in the RPGT rate of tax from 0% to 5%. This amendment to the Act would come into force on 1 January 2019. For this proposed amendment, the disposer of the asset shall be deemed to have acquired the asset on 1 January 2000. In our view, it is unreasonable to use this date as the base year for the imposition of tax on the disposer who is a resident individual. The gap between 1 January 2000 and 1 January 2019 is 19 years. During this period, property prices have increased significantly. The base year should be 1 January 2013. This would reduce the substantial increase in the chargeable gain. In addition, the Malaysian House Price Index published by the Ministry of Finance (please see the attachments in the Appendix) would show that house prices dropped in the period 1997 to 1999 because of the Asian Financial Crisis. In January 2000, the property sector had not recovered. As such, it is not reasonable to use 1 January 2000 as the base year for the determination of the acquisition price of the asset. In fact it is more equitable to use 1 January 2013 as the base year to be in tandem with the precedent set when the Act was introduced in 1975. The gap between 1 January 2013 and 1 January 2019 is 6 years which is similar to that when the Act was introduced (please refer to the first paragraph above).

**MOF's comment :**

The proposal needs further study.

YB Minister has taken into consideration the burden of rakyat and has agreed that for the acquisition of assets before year 2000, the market price on 1.1.2000 would be used as the acquisition price for the disposal of property by Malaysian and permanent resident individual tax payer. However, MOF will bring this issue to Minister's attention and highlight the concern of tax payer.

## 2. Proposed Amendments to the Labuan Business Activity Tax Act 1990

### 2.1 Deletion of S.7 – Tax charged upon Election [w.e.f. 1 January 2019]

~~*"(1) Notwithstanding section 4, a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity may, within a period of three months (or any extended period as may be allowed by the Director General) from the commencement of a year of assessment, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand ringgit.*~~

~~*(2) A Labuan entity shall, when exercising an election under subsection (1), file a statutory declaration in the prescribed form with the Director General.*~~

~~*(3) Section 5 shall not apply to a Labuan entity which elects to be charged to tax under subsection (1)."*~~

**Comments:**

The above deletion of S.7 of the Labuan Business Activity Tax Act ("LBATA") 1990 with effect from 1 January 2019 means that from 1 January 2019, a Labuan entity carrying on a Labuan business activity will no longer have the option to elect to pay tax at RM20,000 with effect from 1 January 2019.

Does the above abolishment of the election to pay tax at RM20,000 apply to the Labuan entity's business activity income only from the period on or after 1 January 2019? If affirmative, as the Labuan entity's return (i.e., statutory declaration and a return of its profits) is filed on a preceding year basis under the LBATA, a Labuan entity that is submitting its return for the year of assessment ("YA") 2019 in respect of its basis period ended 2018 (due 31 March 2019) should be able to elect under S.7 of the LBATA to be taxed at RM20,000. The Labuan entity will no longer have the option to elect to pay tax at RM20,000 when submitting its return for YA 2020 in respect of its basis period ending on or after 1 January 2019.

Please confirm that our understanding is correct.

**IRBM's comment:**

The Labuan entity with basis period begin on or after 1 January 2019 will no longer have the option to elect to pay tax at RM20,000 when submitting its return for YA 2020. However, they can make a choice to pay tax of RM20,000 for YA 2019 for which the basis period ending on or before 31 December 2018.

In IRBM's opinion, the 3% mandatory tax rate will commence for Labuan Entities in YA 2020 whose basis period begin on or after 1 January 2019. This is pending policy decision from Ministry of Finance.

**APPENDIX**

**Malaysian House Price Index (1990 – 2001) published by the Ministry of Finance**

# Indeks Harga Rumah Malaysia

## *The Malaysian House Price Index*

Kementerian Kewangan Malaysia

Jabatan Penilaian & Perkhidmatan Harta
*Valuation & Property Services Department*

SEPARUH KEDUA / H2 TAHUN 2001 | Jul - Dis 2001 | *SECOND HALF / H2 2001*

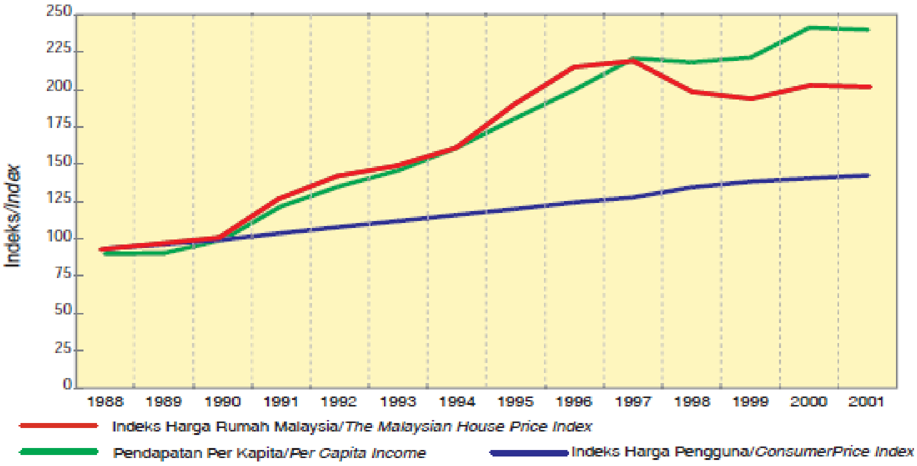
Kandungan



## Harga Rumah Menuju Kestabilan

### *House Prices Nearing Stabilisation*

**Graf 1** INDEKS HARGA RUMAH MALAYSIA DAN INDEKS-INDEKS LAIN
*The Malaysian House Price Index And Other Indices*
*1990 = 100*

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**Jadual 1 INDEKS HARGA RUMAH MALAYSIA DAN INDEKS-INDEKS LAIN**
***The Malaysian House Price Index And Other Indices***

| Tahun/Bulan *Year/Month* | IHRM | | Indeks Harga Pengguna *Consumer Price Index** | | Pendapatan Per Kapita *Per Capita Income*** | |
|---|---|---|---|---|---|---|
| | *Index* | *Annual Change (%)* | *Index* | *Annual Change (%)* | *Index* | *Annual Change (%)* |
| 1988 | 92.2 | - | 94.1 | - | 90.7 | - |
| 1989 | 96.1 | 4.3 | 97.0 | 3.0 | 91.1 | 0.5 |
| 1990 | 100.0 | 4.1 | 100.0 | 3.0 | 100.0 | 9.8 |
| 1991 | 125.5 | 25.5 | 104.4 | 4.4 | 122.3 | 22.3 |
| 1992 | 140.7 | 12.2 | 108.5 | 3.9 | 135.7 | 11.0 |
| 1993 | 147.5 | 4.9 | 112.4 | 3.6 | 146.2 | 7.8 |
| 1994 | 159.3 | 8.0 | 116.5 | 3.7 | 161.5 | 10.5 |
| 1995 | 188.5 | 18.4 | 120.5 | 3.4 | 181.2 | 12.2 |
| 1996 | 212.8 | 12.9 | 124.8 | 3.6 | 200.0 | 10.4 |
| 1997 | 216.8 | 1.9 | 128.2 | 2.7 | 220.8 | 10.4 |
| 1998 | 196.4 | -9.4 | 134.9 | 5.2 | 218.3 | -1.1 |
| 1999 | 191.8 | -2.3 | 138.7 | 2.8 | 221.4 | 1.4 |
| 2000 | 200.8 | 4.7 | 140.9 | 1.6 | 241.3 | 9.0 |
| 2001 | 199.7 | -0.6 | 142.9 | 1.4 | 239.9 | -0.6 *** |

| Tahun/Bulan *Year/Month* | *Index* | *Annual Change (%)* |
|---|---|---|
| 1997 Jan - Jun | 215.7 | 6.1 (1.2) |
| Jul - Dec | 217.6 | 2.1 (0.9) |
| 1998 Jan - Jun | 197.3 | -8.5 (-9.3) |
| Jul - Dec | 190.2 | -12.6 (-3.6) |
| 1999 Jan - Jun | 173.6 | -12.0 (-8.7) |
| Jul - Dec | 192.4 | 1.2 (10.8) |
| 2000 Jan - Jun | 198.5 | 14.3 (3.2) |
| Jul - Dec | 202.4 | 5.2 (2.0) |
| 2001 Jan - Jun | 200.3 | 0.9 (-1.0) |
| Jul - Dec | 199.3 | -1.5 (-0.5) |

* Jan - Dis, Jabatan Perangkaan / *Jan - Dec Statistics Department Malaysia*

***Kementerian Kewangan Malaysia/ Ministry of Finance Malaysia*

*** *Anggaran /Estimate*

*Figures in parenthesis relate to the percentage change in price index over the last six months.*