

Joint Memorandum

Of

Appeal To The Government Of Malaysia

Not To Reinstate The Real Property Gains

Tax

From 1st January 2010

Submitted to:

Ministry of Finance

26th November 2009

Joint Memorandum Of Appeal To The Government Of Malaysia Not To Reinstate The Real Property Gains Tax From 1st January 2010

We, the under-signed, representing affected stake-holders from the broad spectrum of the property industry encompassing developers, contractors, builders, industrialists, consultants, house-buyers and property investors wish to hereto submit our joint memorandum and petition to the Government of Malaysia to review and withdraw the proposed re-imposition of the Real Property Gains Tax effective as from 1st January 2010.

(A) The Facts With Regards To Real Property Gains Tax (RPGT)

In the tabling of the Budget for 2010 on the 23rd October 2009, it was announced that with effect from 1st January 2010, the RPGT shall forthwith be imposed at the fixed rate of 5% on gains realised from the disposal of real property and without regards to the period of holding as well as to whether the property is individual or company owned.

(B) The Grounds For Appeal To Repeal And Waive The Proposed Reimposition of RPGT

- 1. The RPGT Act evolved from the original Land Speculation Tax Act 1974 which was meant to curb excessive speculation in the property market.**
- 2. It was only less than 3 years ago when the RPGT was waived as part of the general liberalisation of the economy in Malaysia to attract more FDIs and be more competitive with the region and globally.**
- 3. It was barely a year ago that on 4th November 2008 the Government had announced the RM7b stimulus package and therein the housing industry was identified as one of the major pillars to promote economic recovery due to its high impact with some 140 cross-linked industry and an established multiplier effect of 5.2 times.**

- 4. This sudden and unexpected re-imposition without any reason such as inordinate property speculations further illustrate the flip-flop policies that the Malaysian government have been repeatedly accused of. This flip-flopping is detrimental to the climate for investments especially FDIs. Investors will lose further confidence in the sincerity of the Government in welcoming FDIs.**
- 5. There is no sign of any speculations nor any bubble forming in the property industry to warrant the re-imposition of the RPGT.**
- 6. Investors who invested after April 2007 after the waiver of RPGT will now feel mis-represented and their reactions will be most damaging for the image of our country. This is especially so as their investments in properties are just about to be completed and handed over within the 3 years.**
- 7. The proposed RPGT at a flat rate of 5% without regards to the holding period and differentiation between individuals or companies holding is deemed more punitive than the legislated RPGT rates as detailed in Schedule 5 of Act 169 and goes against the grain of the original objective of curbing speculation .**
- 8. The 5% RPGT levy across the board is deemed inequitable as this bears no cognizance to the time and cost of holding the real property and that the said tax is based on a simplistic formula, that is, the cost of procurement versus revenue from sale.**
- 9. This charge is compounded by the proposed collection mechanism of the RPGT whereby the purchaser shall withhold 2% of the purchase price and undertakes to remit the corresponding amount to IRB thereby requiring a subsequent documentation for cross-settlement between the sellers and IRB within the prescribed time period. This effectively represents as a new level of bureaucracy for all transactions in the secondary market and is deemed not people-centric as many Malaysian who are not fully learned would find this bureaucracy cumbersome.**
- 10. The need for this bureaucratic process would require professionals to prepare, submit, monitor and complete the cross-settlement. The experience with Inland Revenue Board for refund has been most frustrating and takes an average of 3 years. The professional fees for this long process will add to additional consequential cost of a property transaction.**
- 11. The continuing retention of the professional to handle the bureaucratic process will be absolutely necessary by foreign investors who are**

overseas. The average 3 year wait for cross-settlement and refund will badly reflect our inefficiency especially in the eyes of foreign investors.

12. These are significant circumstances where the withholding and remittance of the 2% of the sale price is greater than the computed 5% tax on capital gain. There are also possibilities that there is no gain or even losses. The pre-payment to Inland Revenue Board of the 2% of the sale price will be punitive and tantamount to interest free deposits with the Inland Revenue Board until refund is obtained.
13. More importantly is the fact that the proposed RPGT will be felt more by the middle-lower and lower income bracket real property owners who have shallow pockets and that the 5% levy is substantive to their wealth regardless of the RM10,000.00 or 10% exemption so provided.
14. In all hitherto campaigns to market Malaysian properties overseas under the banner of 'Malaysia My Second Home', Malaysian Property Incorporated or by individual efforts of housing developers, these marketing campaigns had been hinged on the fact that Malaysia had since April 2007 provided a RPGT waiver. These efforts are just beginning to yield results and the sudden unexpected reversal of the waiver will completely destroy the credibility of all the promotion and marketing efforts.
15. At this juncture of a 'green shoots' and fragile Malaysian economic recovery following a world-wide recession, the prudence of transforming this fiscal tool into a monetary policy so as to broaden the tax base and help balance the Nation's budget deficit is questionable.
16. The said proposal would take away one of the biggest selling points in the marketing of Malaysian properties overseas and local investments in properties as a store of wealth and also the well being of the 140 supporting industries of the property development industry.
17. It is our view that the implementation of the proposed RPGT would encounter insurmountable administrative difficulties as individuals are generally not highly meticulous in their document filing and may not be in possession of corresponding contracts of sale and purchase agreements that were executed in the yester-years. In instances whereby the holders of the real estate had been inherited there will not be adequate records to support maintenance and renovations and other expenses in defense of the property and titles and in such circumstances they will be penalised in the computation of the gains at time of disposal.

- 18. There are many circumstances where properties have to be sold due to financial circumstances, relocation or upgrading and, as commonly necessary in Malaysia, to sell off property holdings to finance the education of our children, the imposition of the RPGT is an unfair additional burden.**
- 19. In most circumstances, investments in properties are long term investments. The imposition of the RPGT effectively discriminates against property investments in favour of the more volatile and foot-loose investments in stocks and shares and other financial instruments.**
- 20. The stake-holders in the property industry were not consulted and we firmly believe that the proposed re-imposition of the RPGT is mis-conceived and mis-guided.**
- 21. We wish to appeal to the Government to reconsider and rescind the proposed re-imposition of the RPGT. We strongly believe that the revenue expected to collect from the RPGT will be insignificant compared to the damage to our country's image and credibility and re-enforces our flip-flop policies record.**

Memorandum Jointly Submitted by:

- (A) The Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM)**
- (B) Real Estate and Housing Developers Association, Malaysia (REHDA)**
- (C) International Real Estate Federation (FIABCI) Malaysia Chapter**
- (D) Master Builder Association Malaysia (MBAM)**
- (E) National House Buyers Association (HBA)**
- (F) Pertubuhan Akitek Malaysia (PAM)**
- (G) Building Materials Distributors Association of Malaysia (BMDAM)**
- (H) The Institution of Engineers Malaysia (IEM)**
- (I) Balai Ikhtisas Malaysia, BIM (Malaysian Professional Centre)**
- (J) Malaysian Institute of Estate Agents (MIEA)**
- (K) Chartered Institute of Building Malaysia (CIOB)**

(L) All Petaling Jaya Selangor Residents Associations Association Coalition (APAC)

(M) Association of Consulting Engineers Malaysia (ACEM)

(N) Property Management Association of Malaysia (PMAM)

Collated by Dato' Teo Chiang Kok, Chairman of ACCCIM Construction and Property Committee.

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