

Part disposal and the receipt of capital sums

CLEARER: RPGT on part disposal of property explained

RICHARD THORNTON

A part disposal takes place where, on making a disposal, the owner retains a part of or an interest in the asset. In this case, the acquisition price together with any permitted additions to or deductions from the acquisition price are apportioned between what is disposed of and what remains. No basis is specified beyond the statement that the apportionment is to be on whatever basis is most appropriate.

The disposal of part of a land holding is a part disposal. Also, the receipt of capital sums of the following kinds, without anything being disposed of, is treated as a part disposal:

- sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights;
- sums received as consideration for use or exploitation of assets.

Example 1:

On January 31, 2013 the owner of a piece of reserve land received a lump sum of RM25,000 from a quarrying company for the right to extract sand for a period of years. No royalties are payable.

This is a capital sum received for the exploitation of the land and must be dealt with as a part disposal.

It is ascertained that the owner, an individual, inherited the land and it was transferred to him two and half years ago when its market value was RM65,000. The market value of the land on January 31, 2013, as burdened by the obligation to the quarrying company, is RM100,000.

The tax can be computed as follows: See Table 1

Apportionment of the acquisition price in the above calculation is done by applying as a fraction the amount of the part disposal consideration over that sum plus the value of what remains. This is a commonly used method.

An individual is entitled to an exemption on each chargeable gain of RM10,000 or 10 per cent of the chargeable gain, whichever is greater. However, the full exemption is not always available when a chargeable gain arises on a part disposal. Previously, the exemption was denied altogether if the disposal was 'part of a larger asset' at the date of disposal. Those words have now been removed and replaced by a formula based on land areas which is designed to give the



taxpayer a partial exemption on a part disposal. In the above example, the full amount is deducted as no land areas are available.

Example 2:

Alex, a resident individual, bought a piece of land measuring 5,000 sq ft on March 1, 2009 and constructed two identical houses on it. One house (House No 1) was occupied by Alex himself. The other house (House No 2) was occupied by his widowed sister until her death in December 2012.

On January 15, 2013, Alex made a gift of House No 2 to his niece, which was effected by partitioning the land into two equal areas and registering the part containing House No 2 in the name of Alex's niece. This is a part disposal by Alex and, as a gift to his niece, it is deemed to take place at market value. Alex's chargeable gain on the disposal is RM120,000.

On the disposal of a single asset in similar circumstances, Alex would have been entitled to an exemption of RM12,000 (10 per cent of RM120,000 being greater than RM10,000) but as he has only partly disposed of an asset, his exemption will be RM6,000 (2,500/5,000 (the relative land areas) x RM12,000). The tax payable is calculated at 10 per cent, the effective rate applicable from January 1, 2013 to a gain on the disposal of an asset more than two and less than five years after acquisition. The tax payable is RM11,400 (10% x (RM120,000 - RM6,000) = RM114,000).

The new/modified exemption raises some issues:

- As there is no provision for restriction of the exemption on the complete disposal of the remaining part of the asset, will a full exemption be given even if the second disposal takes place soon after the first or will the authorities try to resist what they might regard as a 'double dip'?
- How will the apportionment be made, if at all, when it is not possible to base it on land areas (as in the first example above) or when apportionment based on land areas is not appropriate?

Receipts of the following kinds are not treated as part disposals. They are deducted from the acquisition price:

- compensation for damage or injury to the asset or for its destruction or dissipation or for any depreciation or risk of depreciation;
- receipts under insurance policies for damage or injury to the asset or for its destruction or depreciation;
- forfeiture of a deposit in connection with the intended transfer of the asset.

Richard Thornton is the author of 100 Ways to Save Tax in Malaysia for Property Investors and 100 Ways to Save Tax in Malaysia for Individuals as well as several other books in the 100 Ways to Save Tax series published by Sweet & Maxwell Asia (www.sweetandmaxwellasia.com). To order, please call 03-5633 0622 or e-mail: smamy.marketing@thomsonreuters.com.

Richard is also the co-author with Thenesh Kannaa of Manual of Capital Allowances and Charges published by CCH.



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Table 1

	RM
Capital sum received	25,000
Less: acquisition price $RM65,000 \times 25,000/125,000$	(13,000)
Chargeable gain	12,000
Less: exemption (being greater than 10% of the chargeable gain)	(10,000)
	2,000
Tax payable at 10% (effective rate) (disposal within the third year after acquisition)	200

PROPERTY Q&A

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Q/A 1

Ali J@Selayang: I own and stay in a single-storey terrace house. A few years ago, I started a small local "kueh" business from home with my wife. Do we have to apply for any necessary permits from the authorities or convert our property from residential to commercial?

RED: The business you are in is a "cottage industry business". Depending on the magnitude of the volume of business and the surrounding neighbourhood, you may or may not face issues with the Local Authority.

You may wish to check with the Local Authority whether there is any zoning restriction for the conduct of such "cottage industry business" and if approval is required, the manner how such an application may be submitted.

Generally, the Local Authority may be flexible where the volume of business conducted at residential premises is small in volume and does not pose health risks to the neighbourhood like the presence of flies and rodents, etc.

As each Local Authority has its own policies relating to the granting of approval, no hard and fast answer may be provided here. **By Tan Kim Soon** (tkimsoon@gmail.com)

Q/A 2

Firdaus @Semenyih: I own an apartment unit and the loan has been settled in full. All documents were submitted to the bank's lawyer for the discharge of charge. Three years have passed and the lawyer kept replying that they are checking with the Land Office. I have seen other cases in the same block that took only 6-9 months for the title to be issued. Please advise.

RED: Your question did not say whether the apartment has been issued with a strata title or not. That may be the reason the lawyer is taking some time in taking care of your file. The lawyer may need to discharge your property and register it on the title. This process may take some time. It might take years to register a discharged strata title. If this is the case, it can be said the Land Office is the 'problem'.

However, three years is a long time. It is better to ask the lawyer to explain the chronology of your file. Write expressly asking this and ask for all the details. If your letter is not answered satisfactorily, you can file a complaint against the lawyer. **By Khairul Anuar bin Shaharudin, lawyer**

Ask the RED expert: Please fax your questions to: 03-2283 1700 or email to nstred@nstp.com.my