REAL PROPERTY GAINS TAX (Cont'd)
RPGT Format: Computation of tax

Disposal		RM	RM	Note
Sch 2	Consideration received (per SPA)		xxx	Date: Disposal
Para 5	(a) Less: Cost of enhancing / preserving value of asset(NOTE)		(xx)	Permitted expenses
	(b) Establish, preserve or defend title/right to asset(NOTE)		(xx)	Permitted expenses
	(c) Incidental costs of disposal		(xx)	Permitted expenses
	Disposal Price		xxx	
Acquisition				
Sch 2	Consideration paid	xxx		Date: Acquisition
	Add: Incidental costs	xx		
		xx		
Para 4	(a) Less: Compensation received	(xx)		
	(b) Insurance recoveries	(xx)		
	(c) Deposit (forfeited) received	(xx)		

For real property acquired prior to 1.1.2013, market value as at 1.1.2013 would be the deemed acquisition price(for Msian citizen and PR only)

NOTE: Must still reflect as at the date of disposal. If incurred prior to 1.1.1970(other than Msian citizen & PR), to exclude in determining the disposal price

REAL PROPERTY GAINS TAX (Cont'd)
RPGT Format: Computation of tax

Disposal		RM	RM	Note
	Acquisition Price		(xxx)	
Sec. 7	Chargeable gain / (allowable loss)		xxx	(xxx)
Sch 4	Exemption: greater of 10% or 10,000 (*)		(xx)	Apply to individual
	RPGT loss b/f (if any)		(xx)	
	Gain subject to RPGT		xxx .	
Sch 5	Disposal @ RPGT rate %			
	RPGT payable		xxx .	

March/June 2021 Q3(a) (iii)

(*) : For part disposal, the amount exempted

Higher of

$$= \frac{\text{Part of the area}}{\text{Total area}} \times \text{RM}10{,}000 \quad \text{OR} \quad 10\% \text{ of CG}$$

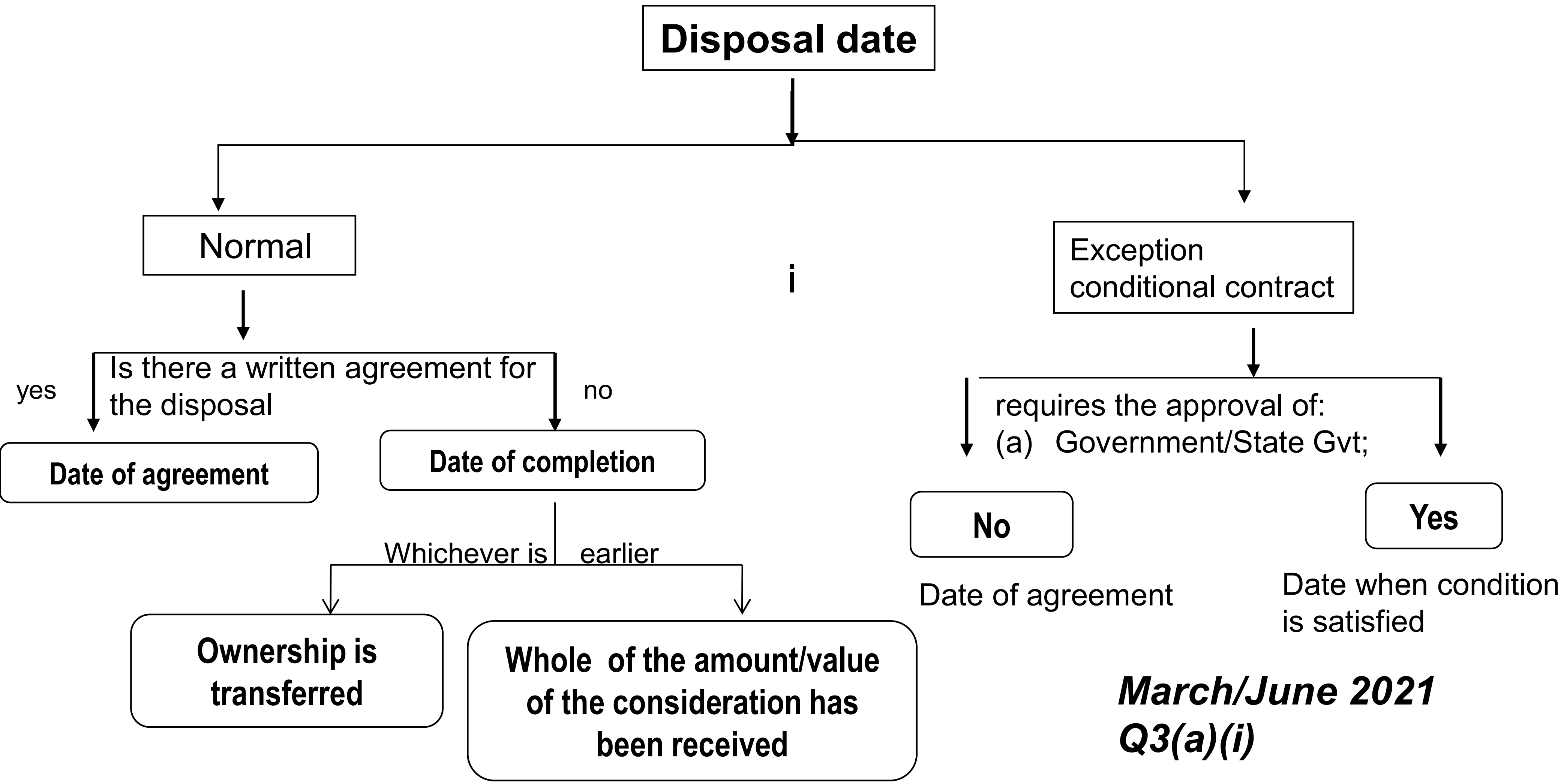
Disposal price = market value

- **A bargain not at arm's length or gift**
- **A disposal of real property for a consideration that cannot be valued;**
- **A disposal of real property in connection with loss of employment or gratuity payment**
- **Transfer of real property for satisfaction of debts**
- **Lump sum disposal of real property and other assets**
- **Where anti-avoidance applies**

NOTE: *For real property acquired **prior to 1.1.2013**, deemed acquisition price= market value as at 1.1.2013 . Permitted expenses incurred prior to 1.1.2013 would be disregarded.*

only for Msian citizen and PR

REAL PROPERTY GAINS TAX –The Determination of Disposal Date



March/June 2021 Q3(a)(i)

March/June 2021 Q3(a)(i)

Crab Sdn Bhd (Crab) is jointly owned by Udang Sdn Bhd (Udang) and Sotong Sdn Bhd (Sotong). In 2017, Crab decided to venture into a seafood restaurant business. Crab has never owned any real property in the past.

On 9 August 2017, Crab signed an agreement to acquire a piece of land in Penang, Malaysia for RM2 million, subject to two conditions: the approval from the State Government, and the release of the charge on the land by the bank. The approval from the State Government was obtained on 13 January 2018, while the bank release was given on 20 February 2018. The land title was transferred on 31 March 2018. Crab paid legal fees of RM50,000 in relation to the land acquisition.

On 10 January 2018, Sotong sold its shareholding to Udang.

Crab constructed a restaurant costing RM800,000 and purchased furniture for the restaurant for RM200,000. Crab took a loan to finance the restaurant construction and incurred annual interest of RM30,000. The stamp duty incurred on the loan agreement was RM80,000.

Unfortunately, due to losses, Crab decided to cease the restaurant business. It sold the restaurant property to a third party on 15 May 2021 for RM4 million (inclusive of furniture valued at RM150,000) even though the property was valued at RM4·5 million. Crab has unabsorbed income tax losses of RM2 million.

March/June 2021 Q3(a)(i)

Sharon signed a sale agreement on 15 April 2021 to acquire the entire shareholding of Wilm Sdn Bhd for RM500,000.

(a)(i) Determine, with supporting explanations, the date of acquisition of the land by Crab Sdn Bhd (Crab) for real property gains tax (RPGT) purposes.

(3 marks)

(a)(ii) Outline the RPGT implications arising from the transfer of shares in Crab by Sotong Sdn Bhd to Udang Sdn Bhd. Assume the tangible assets in Crab, other than the restaurant property, have never been more than RM500,000 since its incorporation until 2018.

(3 marks)

March/June 2021 Q3(a)(i)

3 (a) Crab Sdn Bhd (Crab)

(i) Where there is a written agreement, the date of acquisition for real property gains tax (RPGT) purposes is the date of the agreement, unless the agreement is conditional and requires approval by the Government or a State Government, in which case the date of acquisition shall be the date of such approval. Where the approval is conditional, the date of acquisition is the date when the last of all such conditions is satisfied.

In the present case, the agreement for the land acquisition was conditional, upon the approvals from the State Government and the bank. As the agreement is subject to approval from the State Government, the date of agreement cannot be taken as the date of acquisition.

For RPGT purposes, the date of acquisition would be the date of obtaining approval from the State Government, i.e. 13 January 2018, even though the agreement only became unconditional upon the bank approval on 20 February 2018. The timing on the transfer of land title is not relevant.

(ii) Sotong Sdn Bhd (Sotong) sold its shares in Crab to Udang Sdn Bhd on 10 January 2018. In determining the RPGT implications, first, we need to establish whether Crab is a real property company (RPC).

Crab had never owned any real properties in the past until the acquisition of land in Penang, Malaysia. As the date of acquisition of the land for RPGT purposes is determined to be 13 January 2018, Crab became an RPC at that point (since it would have breached the 75% threshold with its other tangible assets being not more than RM500,000).

When Sotong sold the Crab shares on 10 January 2018, Crab had not acquired the land, thus it was not an RPC. Therefore, the disposal of the shares in Crab by Sotong does not have any RPGT implications.

March/June 2021 Q3(a)(i)

(iii) **RPGT computation for disposal of restaurant property**

	RM'000	RM'000
Sale consideration (RM4 million – RM150,000) (note 1)		3,850
Less: Restaurant construction		(800)
Disposal price		3,050
Purchase consideration	2,000	
Add: Legal fee	50	
Add: Interest on loan	0	
Add: Stamp duty	0	
		(2,050)
Chargeable gain		1,000
Less: Loss (note 2)		0
Gains subject to RPGT		1,000
Acquisition date 13 January 2018		
Disposal date 15 May 2021		
RPGT payable (20%, i.e. fourth year of acquisition)		200

Notes:

1 In computing the disposal value for RPGT purposes, the furniture should be excluded as it generally does not fasten permanently to the building. Therefore, it cannot be regarded as part of the real property. While the sale consideration is below the market value as stated in the valuation report, as the disposal is between two independent parties, the actual consideration should be adopted and there is no provision in the law to empower the Inland Revenue Board (IRB) to substitute the actual consideration with the market value of the property.

2 The tax losses are related to income tax and cannot be cross utilised against the chargeable gain for RPGT purposes.

Transfer of fixed assets into stocks

- Deemed to be a disposal of a chargeable assets
- Disposal price = mkt value of the asset at the date of reclassification

Sept/Dec 2021 Q4(e)

March/June 2021 Q3(a)(i)

Parcel B

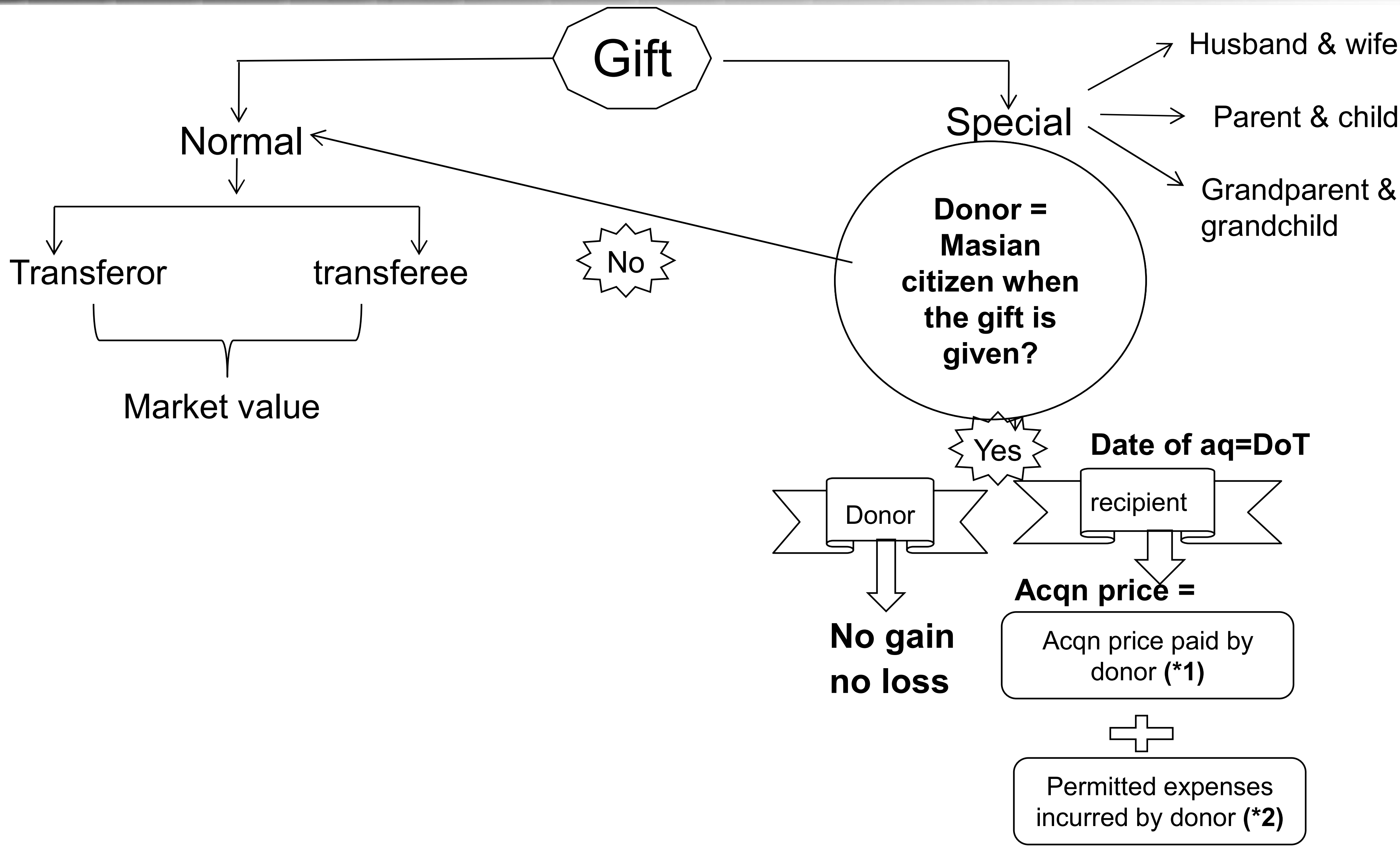
- BSB decided to go into the property development business; it transferred the land to its inventories on 31 July 2020. The market value of the land on 31 July 2020 was RM4 million.

(e) Tax implications arising from BSB's decision to transfer the land to inventories

When BSB decides to embark on the property development business, Parcel B is reclassified to inventories. Under the RPGT legislation, where the land is taken into trading inventory of the transferee company, i.e. BSB, and the market value at which the asset is so taken exceeds the acquisition price of the land inherited from the transferor company, the taking in shall be deemed as a disposal and the excess would constitute a chargeable gain accruing to BSB. In this respect, BSB would be required to file a RPGT return on the deemed disposal.

When computing the taxable income of the property development business, the value of the land transferred to inventories will be based on the market value as at the date of transfer.

Disposal by way of gift



Disposal by way of gift

Donor	
Consideration paid	x
+ incidental cost	x
	xx
-Compensation	(x)
Insurance	(x)
Forfeiture	(x)
Ap**(*1)**	xx
Renovation cost	x
Construction cost	x
Legal fee defending title	x
Permitted expenses**(*2)**	xx

RPGT RATE

	<= 3yrs	In the 4th year	In the 5th year	>5 year
Company	30%	20%	15%	10%
Individual(Msian citizen) , PR & others	30%	20%	15%	**0%**
Foreigner & not PR(NOTE)	30%	30%	30%	10%

Sept/Dec 2021 Q2©

Note*: Include an executor of the estate of a deceased person who is not a citizen or PR and a company not incorporated in Msia (foreign company)(WEF 1.1.2020)*

Sept/Dec 2021 Q4(a)

- On 3 January 2014, Musang King Sdn Bhd (MKSB) acquired two parcels of durian plantation lands, Parcel A and Parcel B, for RM2 million each.
- In 2016, MKSB incurred the following expenditure:
  - On Parcel A – Building a small store for RM50,000, which was destroyed in a fire in 2017; and
  - On Parcel B – Building a retaining wall to prevent flooding, for RM100,000.
- As part of an internal restructuring exercise to improve the group's operational efficiency, MKSB signed an agreement on 15 June 2018 to transfer Parcel A and Parcel B to MKSB's newly incorporated wholly-owned companies, Ace Sdn Bhd (ASB) and Blacktorn Sdn Bhd (BSB) respectively.
- The transfers were subject to State Government approval, which was obtained on 18 December 2019.
- Prior to the land acquisitions, both companies only had share capital of RM2 in cash with no other assets.
- The transfers were approved by the Inland Revenue Board (IRB) on 10 June 2018 as qualifying for the no-gain-no-loss provision.

Sept/Dec 2021 Q4(a)

Parcel A

- In January 2021, ASB engaged a third party contractor to replant the durian trees at a cost of RM200,000.
- The same contractor also carried out replanting at a cost of RM300,000 on an adjacent loss-making plantation owned personally by the ultimate shareholder of MKSB.
- The contractor has been instructed to invoice the entire replanting cost of RM500,000 in the name of ASB so that a higher amount could be claimed.
- On 30 June 2021, MKSB sold a 60% shareholding in ASB to a Malaysian citizen residing outside Malaysia for RM3 million, of which RM2 million was settled in cash. The balance of the consideration was settled in shares.
- On 20 November 2021, MKSB received a notice of real property gains tax (RPGT) assessment from the IRB for the year of assessment 2019. The assessment does not apply the no-gain-no-loss provision and subjects the chargeable gain, arising on the transfer of Parcel A from MKSB to ASB, to RPGT.

Sept/Dec 2021 Q4(a)

(a) With reference to the transfer of Parcel A and Parcel B by Musang King Sdn Bhd (MKSB) to AceSdn Bhd (ASB) and Blacktorn Sdn Bhd (BSB), state:

- **The qualifying conditions which need to apply for the no-gain-no-loss provision to be approved by the Inland Revenue Board (IRB);**
- **How to preserve the no-gain-no-loss status; and**
- **The basis for determining the acquisition date and acquisition price for ASB and BSB.**

(7 marks)

(b) As a tax advisor of ASB, with reference to the replanting cost of RM500,000, advise:

- **Whether the cost is tax deductible;**
- **Your position in relation to the value of the amount to be claimed; and**
- **The consequence if the company does not adhere to your advice.**

(3 marks)

Sept/Dec 2021 Q4(a)

(c) In relation to the sale of ASB shares by MKSB to the Malaysian citizen residing outside Malaysia:

(i) Compute the RPGT payable; and

(3 marks)

(ii) State the RPGT compliance requirements for MKSB and the non-Malaysian resident.

=(2 marks)

(d) Advise MKSB on the appeal procedure regarding the RPGT assessment dated 20 November 2021,and whether the company has a valid basis to appeal.

(3 marks)

(e) Explain the tax implications of BSB's transfer of Parcel B to inventories.

(2 marks)

Sept/Dec 2021 Q4(a)

4 Musang King Sdn Bhd (MKSB)

(a) No-gain-no-loss treatment

Conditions

In order for MKSB to qualify for no-gain-no-loss approval by the Inland Revenue Board (IRB), MKSB has to demonstrate to the IRB that it has satisfied the following conditions:

– The transfer of the land is between companies within the same group, i.e. with more than 50% shareholding. In this instance, MKSB, ASB and BSB are a 100% shareholding group;

– MKSB must be able to demonstrate that the transfer is to bring about greater efficiency in operations for the group;

– The consideration for the transfer consists of shares in the transferee company or substantially of shares (i.e. at least 75%) in the transferee company, with the balance in money payment; and

– The transferee companies, i.e. ASB and BSB, are resident companies in Malaysia.

Preservation of status

The IRB can withdraw the approval within three years from the disposal date if:

– The transfer was made wholly or partly for some purpose other than to achieve operational efficiency;
– The transferee company ceases to be in the same group of companies as the transferor company; or
– The transferee company ceases to be resident in Malaysia.

Therefore, to preserve the no-gain-no-loss status, the group must ensure that they do not breach any of the above.

Acquisition date and acquisition price

Under the no-gain-no-loss provision, the transferee company would be deemed to have acquired the land at an acquisition price equal to the acquisition price paid by the transferor company plus the permitted expenses incurred by the transferor company and less any compensation, recoveries or deposit received by or forfeited (as the case may be) by the transferor company. In other words, the transferee companies, i.e. ASB and BSB, would inherit the acquisition price of the transferor company (MKSB).

Sept/Dec 2021 Q4(a)

	ASB	BSB
Acquisition price	RM'000	RM'000
Original acquisition price incurred by MKSB	2,000	2,000
Add: Permitted expenses	0*	100
	2,000	2,100

* It should be noted that the store construction cost cannot form part of permitted expenses as at the time of disposal, the store is no longer reflected in the state of the property due to the fire.

The date of acquisition would be based on the date of the agreement, unless the transfer requires approval from the Government or State Government, in which case the date of acquisition would be deferred to the date when the governmental approval is obtained. In this case, notwithstanding the agreement date of 15 June 2018, as the State Government approval was only obtained on 18 December 2019, the date of acquisition of the land would be 18 December 2019.

Sept/Dec 2021 Q4(a)

(c) **Real property gains tax (RPGT) treatment on the sale of ASB shares**

(i) **RPGT payable on the sale of shares**

As ASB acquired the Parcel A land from MKSB on 18 December 2019, and prior to the acquisition of the land, ASB only had RM2 in assets, ASB became a real property company (i.e. the real property owned by the company is more than 75% of the total tangible assets of the company) on 18 December 2019.

	RM'000
Disposal price	3,000
Less: Acquisition price (60% x RM2,000,000)	(1,200)
Chargeable gain	1,800
RPGT payable at 30% (within three years of acquisition)	540

(ii) **Compliance requirements**

As the disposer, MKSB is required to:

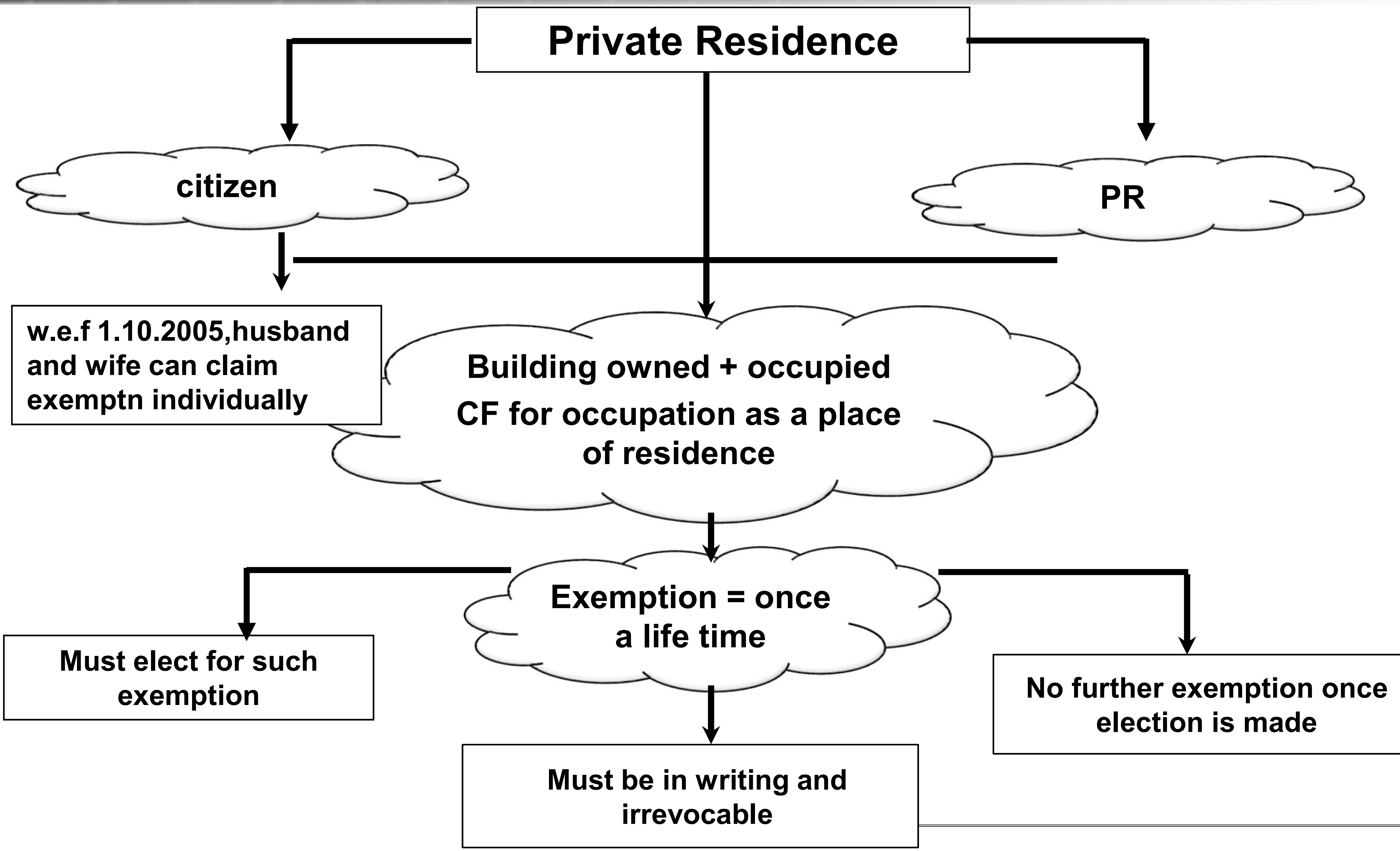
- File a RPGT return as a disposer within 60 days after the date of disposal;
- As RPGT is not under self-assessment, the IRB will issue an assessment for the RPGT liability, where the company is required to settle the RPGT payable, net of the tax withheld by the acquirer within 30 days from the date of the assessment.

As an acquirer, the non-Malaysian resident is required to:

- Furnish an acquirer's return within 60 days after the date of acquisition;
- Deduct and remit the lower of 3% of the total value of the consideration, i.e. RM90,000 (3% x RM3 million), or cash consideration, i.e. RM2 million, to the IRB within 60 days of the date of acquisition.

In this case, notwithstanding that the total consideration of the transfer is RM3 million, as the cash consideration received is RM2 million, the amount of RPGT to be deducted and remitted to the IRB by the non-Malaysian resident is RM90,000.

REAL PROPERTY GAINS TAX (Cont'd)



Payment of RPGT (from 1 January 2010)

Disposer

- ❑ Net of retention sum
- ❑ Within 30 days from the issuance of notice of assessment
- ❑ 10% penalty upon expiration of 30 days
- ❑ Remittance slip CKHT 501
- ❑ Submit CKHT form within 60 days of disposal

Sept/Dec 2021 Q4©(ii)

Acquirer

- ❑ **3%(note)** of total consideration or whole of money consideration, whichever is lower (where Form CKHT 3 is not applicable)
- ❑ Form CKHT 2A
- ❑ Within 60 days of date of disposal
- ❑ 10% penalty upon non compliance
- ❑ Remittance slip CKHT 502

Payment of RPGT (from 1 January 2010)

Note: ***7% for non citizen and non PR (NCNPR), including an executor of an estate of a deceased person who is NCNPR wef 1.1.2021***

Note : wef 1.1.2022, 5% for a company incorporated in Msia or a trustee of a trust or a body of persons registered under any written law in Msia for disposal of a chargeable asset within 3 years after the date of acquisition.

Disposer

Acquirer

Directors' liability

- **Jointly and severally liable for the RPGT or penalty of the company, during the period in which RPGT or penalty is liable to be paid by that company.**
- **Director =** anyone occupying the position of directors (by whatever name called) , including any person who is concerned in the management of the company's business

Is, either on his own or with one or more associates , the owner of , or able directly or through the medium of other companies or by any other indirect means to control, ***not less than 20% of the ordinary share capital of the company.***

Badges of Trade

Badges of Trade	**Analysis**	**Biz income •adventure in the nature of trade)**	**Capital Gains •no income tax •RPGT**
Profit seeking motive	Profit seeking motive to realise in (i) A financial year (ii) Several years	/	/
Acquisition methods/ Type of an asset/ Existence of trading interests in similar field	(i) In the ordinary course of biz(trading stock) (ii) Inherited/gift (iii) Personal enjoyment (iv) Income producing asset	/	/ / /
No. / Frequency of transaction	Many repetitive transactions	/	

June 2022 Q1e argument for and against RPGT v Income tax

Badges of Trade

Badges of Trade	Analysis	Biz income •adventure in the nature of trade)	Capital Gains •no income tax •RPGT
Organization of sales	•Formation of company •Use of marketing strategy & advertisement (disposal method) • reason for disposal ->Organization of seller ->Emergency needs/acqn by gvt/forced sale/buyer initiative	/ / /	 /
Modification of assets	Subdivision of land	/	
Interval between purchase and sale / period of ownership	Short term(<5 years) Long term	/	 /

Badges of Trade

Badges of Trade	Analysis	Biz income •adventure in the nature of trade)	Capital Gains •no income tax •RPGT
Method of finance	•Short term borrowing(overdraft) •Term loan/BBA	/	/
Accounting evidence	•Current asset •Immovable properties/PPE	/	/

June 2022 Q1e

(e) RPGT versus income tax

Explain to LB the potential stand which could be taken by the Inland Revenue Board (IRB) that the disposal of the stake in LTSB is an adventure in the nature of trade and hence subject to income tax.

State your arguments for and against the disposal of LTSB shares potentially being charged to income tax and state your considered conclusion.

Compute the potential income tax liability if the disposal of LTSB shares is deemed revenue in nature.

June 2022 Q1e

(e) RPGT versus income tax

Arguments for charge to income tax

- The short holding period (5 January 2018 to 1 July 2022) is a strong indicator of a profit-seeking motive.
- Taking up a share in LTSB to manage educational institutional premises was entirely unrelated to LB's plantation business.

The intention must have been a quick disposal to realise gains: hence revenue in nature and subject to income tax.

Arguments against charge to income tax (for capital gains treatment)

- It was a long-term investment with a joint venture partner, TUUK, to manage the properties, to start a new business in property management.
- The company (LTSB) has been run as a subsidiary.
- There has been no repetition of similar transactions in the past, and LB has no history of dealing in shares.
- There is no related interest.
- LB did not look for a buyer: it was approached by the real estate investment trust (REIT).
- LB will dispose of the shares for consideration mainly in the form of REIT units, so LB still maintains a strong connection with the business.

All the above arguments suggest that there was no profit-seeking motive when LB acquired the shares in LTSB.

Conclusion

On balance, the transaction is clearly one of capital investment, there was no profit-seeking motive, therefore the gains are capital in nature.

Computation of income tax if the disposal of LTSB shares is deemed revenue in nature

Refer to Appendix B.

REAL PROPERTY GAINS TAX (Cont'd)

Transaction of no gain no loss (Para 3 Sch 2)

- Devolution of the assets of a deceased person on his executor / legatee under a will / intestacy or on the trustee created under this will *(chart 9.1)*
- Transfer of assets → Between spouses, disposer= Msian citizen (wef 1.1.2018)

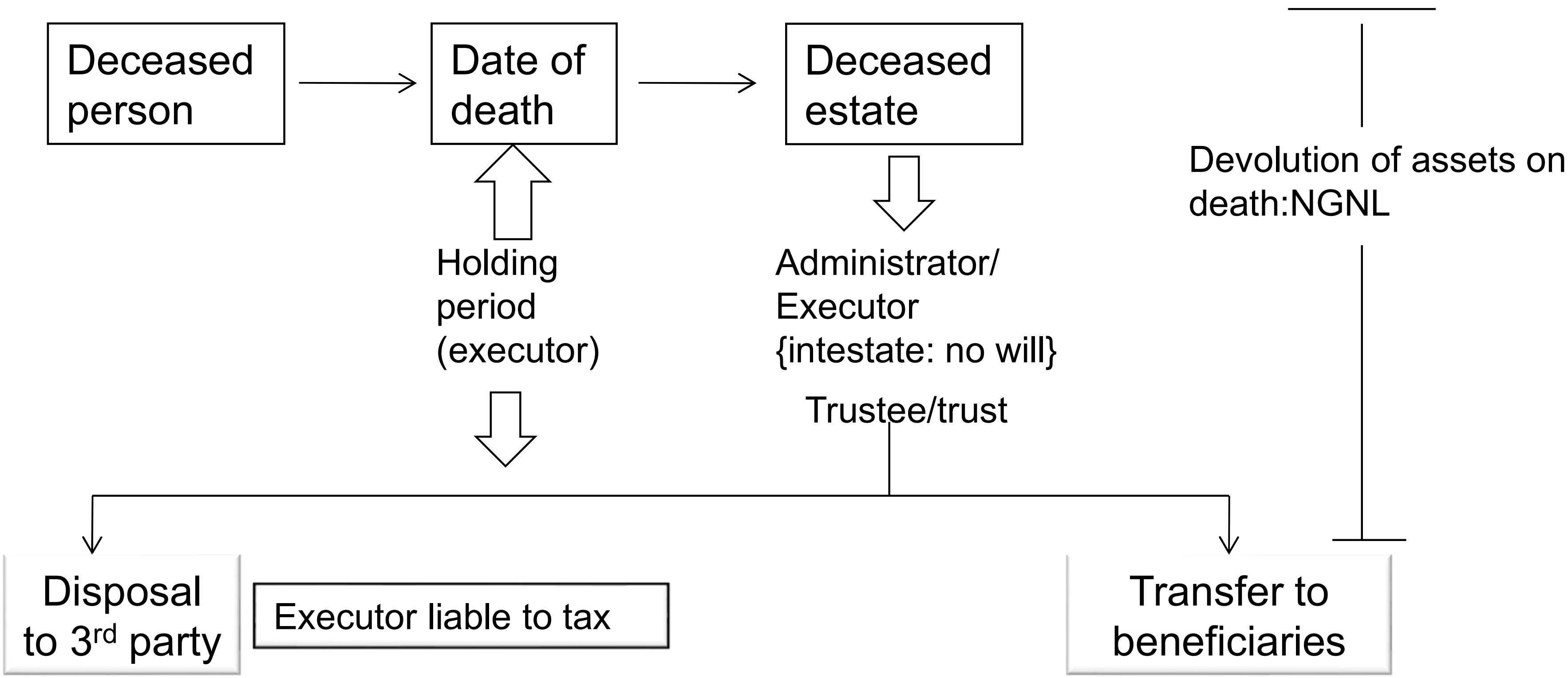
  (Chart 7.2 & 7.3) → Individual / wife/connected person(citizen) to a company controlled by the transferor ≥ 75 share + Bal. = cash
- Transfer to / from nominee / trustee
- Transfer by way of a security
- Gifts → Gvt / State gvt

  → Local authority / charity exempt from tax
- Disposal of an asset due to compulsory acquisition
- Disposal of an asset to Islamic Bank under a scheme → financed by such bank in accordance with the Syariah

Cost to the acquirer = Original cost to the disposer + Enhancement cost – Payment received

Date of acquisition = Date of transfer

Special Circumstances – Deceased Estate



Acqn date by executor	**Date of death**
Acqn price	Mkt value at date of death
Less:	Para4(1)(a)(b)© reced by executor
Holding period:	Date of death to disposal date
Sch 4 exemptn NA	

Note

Special Circumstances – Deceased Estate

RPGT Article (Part 3) as at 31.3.2019

Transfer to beneficiaries

Beneficiary: legatee

Gift of asset on death

Legatee accepts asset in lieu of money legacy

Date of transfer

Subsequent disposal will attract RPGT

Acqn date: Date of transfer

Holding period (beneficiary)

Acqn price: Mkt value at date of transfer

Less: Para 4(1)(a)(b)© received by B

Lower of

- Mkt value at date of transfer
- Money legacy

Less: Para 4(1)(a)(b)© received by legatee

Disposal date

Transfer of asset to companies by individual: Para 3(b)

WEF 1.1.2022 . extended to include transfer of assets owned by a nominee for the individual, a nominee for the wife of the individual or a nominee for both, or by a trustee for the individual, a trustee for the wife of the individual or a trustee for both

Chargeable asset

Real property/RPC shares

Owned by

Individual, wife, connected person
(must be citizen)(wef 1.1.2018)

Transferred to

Company

Controlled by indiv/wife/connected person **(NOTE)**

- Land transferred to trading stock
- = deemed disposal of CA
- = mkt value

Company's acqn price
= transferor's original acqn price + permitted exp

At pt of transfer:NGNL

Acqn date: Date of transfer

100% for shares

OR

- Min:75% for shares +
- Bal for money payment:
  - Cash
  - Debt(money owned by co)

Transfer of asset to companies by individual: Para 3(b)

- Min:75% for shares +
- Bal for money payment: Cash
  or
  Debt(money owed by co)

Shares=chargeable asset (*)

RPGT of the real property shifted to the shares exchanged

Para 3(b) shares

Acqn date:
Date of transfer

Acqn price:
Transferors' acqn price + permitted expenses incurred by him
- Money payment received by him

* Any subseq disposal of such shares = disposal of a chargeable asset by individual

RGPT Exemption for Companies

Sept/Dec 2021 Q4(a),(d)

Companies –NGNL situation

Compaliance wif Gvt policy on
←===== capital participatn(NEP)==→

1.Companies in the same group
2.Greater efficiency
3.>=75% consideratn in shares of transferee co

Para 17(1)(a)

1.Between companies
2.Scheme of reorganization reconstruction/amalgamation

Para 17(1)(b)

1.Liquidator
2.Scheme ofreorganization reconstruction/amalgamation

Para 17(1)(c)

← Transferee co –resident in M'sia →

← Approval may be withdrawn if:- →

(a) Transfer was for other purposes
(b) Transferee co ceases to be resident
(c) Transferee co ceases to be in the same group – for Para17(1)(a)

} <= 3 years from **the disposal date**

Acqn date → Date of transfer → The date when the transferor co 1st acquired the asset

Acqn price → Acqn price paid + permitted expenses incurred by the transferor co- money payment

Sept/Dec 2021 Q4(a),(d)

(d) **Appeal on the RPGT assessment**

If MKSB is aggrieved by the RPGT assessment, it can file an appeal in a prescribed form within 30 days after the date of the assessment. As the assessment was dated 20 November 2021, it would need to file the appeal by 20 December 2021.

As the shareholding in ASB of 60% was divested on 30 June 2021, ASB would cease to be in the same group of companies with the transferor company, i.e. MKSB. Even though the IRB approval for the transfer (10 June 2018) as well as the agreement for the transfer of land (15 June 2018) was obtained more than three years prior to the date of the divestment (30 June 2021), for RPGT purposes, the date of disposal of the Parcel A land is taken to be 18 December 2019 (as determined above).

Hence, ASB would cease to be a subsidiary of MKSB within three years of the date of disposal.

Based on this, the IRB is right to withdraw the no-gain-no-loss approval in relation to the transfer of Parcel A to ASB. Therefore, MKSB has no valid basis to appeal.

LEASE and OPTION

	Acquisition price
Lease	$\frac{\text{No of yrs unexpired term}}{\text{Full term of lease}} \times \text{Full premium}$ (Original price paid)
Sub-leases out of lease	$\frac{\text{Areas sub-leased}}{\text{Total area}} \times \frac{\text{Duration of sub-leased}}{\text{Whole duration}} \times \text{Premium paid}$

Determination of Real Property Company (RPC)

June 2002 Q1©
(d)

Sept/Dec 2021
Q4©(i)
March/June 2021
Q3(a) (ii)

Note

- Plant + equipment(NBV)
- Investment in shares(non RPC shares)
- Debtors(NBV)
- Cash + Bank(exclude overdraft)
- Stock
- Prepayments

RPC → Controlled company → Defined value

Controlled company:
- <=50 members(Sdn Bhd)
- Controlled by <=5 persons

Defined value:

→ A= Mkt value of land + Building + Investment in RPC shares } Defined value

→ B = A +Other tangible assets(Note)
= Total tangible assets
= exclude patents, trade marks, know how & goodwill
= exclude liabilities

→ A/B >= 75%

REAL PROPERTY GAINS TAX (Cont'd)

RPC

Acquisition date

(i)

- 21/10/88
- Date the company become RPC
- Date of purchase of RPC shares

(ii)

Disposal date
- Agreement date, completion of
  Conditional contract

REAL PROPERTY GAINS TAX (Cont'd)

RPC

(i) Acquisition price

a) Statutory formula

$$\frac{A}{B} \times C \qquad \text{(on the date company turns into RPC)}$$

A = no of shares in the co. which are deemed to be a chargeable asset
B = total no of shares issued by the co. at the deemed date of acquisition
C = the defined value of real property or RPC shares or both owned by the Company at the deemed date of acquisition, determined in the same manner at that date

b) An amount paid for share (if the Co. is already a RPC)

(ii) Disposal price

-- Consideration in money / money worth received from the disposal

(iii) Loss of RPC shares is not allowed to carry forward or set off in the current year

REAL PROPERTY GAINS TAX (Cont’d)

RPC

1. Para 3(b) precedes Para 34A, shares acquired under 3(b) will not be treated as RPC notwithstanding the company may be a RPC.

2. Once the RPC status is determined, the shares owned by the shareholders will remain as RPC even though the company ceased to be a RPC ie ‘once RPC shares, always RPC shares’

3. RPC status is determined at the point of acquisition of the shares and not disposal of the shares.

4. Once a controlled company is determined to be an RPC on a given date, it remains an RPC.There is no necessity to re-examine its RPC status thereafter unless the company:
   • ceases to be a controlled company;or
   •Disposes a real property or RPC shares

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1. Ladang Bhd (LB) is a plantation company incorporated and tax resident in Malaysia. It closes its accounts annually to 31 March. Toppe University UK (TUUK) intends to set up a branch in Malaysia called Toppe University Malaysia (TUM).
2. On 3 January 2018, LB entered into a joint venture with TUUK to set up a property management company to develop and manage the Malaysian branch campus of TUUK comprising lecture halls and buildings for food, sports and recreation outlets and other facilities. A joint venture company, Ladang Toppe Sdn Bhd (LTSB), was incorporated on 5 January 2018 for this purpose.
3. On incorporation, LTSB issued RM30 million of ordinary share capital for cash, of which 75% was purchased by LB and 25% by TUUK.
4. On 6 January 2018, LTSB acquired 100 acres of land from LB for the TUM campus site for RM20 million. This was wholly funded by a bank loan.
5. On 10 May 2019, LTSB acquired an additional one acre of land for RM1 million from LB to facilitate a more direct access to the external main road. On this date, LTSB's total tangible assets other than real property stood at RM5 million.
6. By 30 April 2020, LTSB had completed the construction and fitting out of all the campus buildings and facilities at a total cost of RM80 million, comprising the following:

	RM
Buildings for lecture halls	35 million
Buildings for other facilities	15 million
Plant and equipment	30 million

7. TUM obtained approval from the Minister of Higher Education in June 2020. Thereafter, TUM began offering courses to students. The first batch of students commenced their studies in April 2022.
8. LTSB derived rental income from the letting of the buildings to TUM and the operators of all the campus facilities. LTSB provided security, street-lighting and maintenance services to all its tenants.

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9. On 5 May 2022, IQ, an approved listed real estate investment trust (REIT), approached LB to buy its 75% stake in LTSB for RM260 million. If transacted, the sale consideration will be satisfied by RM170 million in IQ REIT units and RM90 million in cash.

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(c) **Real property company (RPC) status of LTSB**

(i) **Determination of RPC status**

LTSB is a controlled company because it is owned by two shareholders only, LB and Toppe University UK (TUUK).

Upon incorporation on 5 January 2018, LTSB's only asset is cash of RM30 million from the capital contribution. It was not an RPC on that date.

On 6 January 2018, LTSB acquired real property of 100 acres of land worth RM20 million. It is necessary to determine its RPC status on this date. Applying the 75% rule, it yields 40% (RM20 million out of total tangible assets of RM50 million [RM30 million + RM20 million] consisting of cash and property). It is therefore not an RPC on 6 January 2018.

On 10 May 2019, LTSB acquired an additional real property of one acre of land to improve its access to the main road. It is therefore necessary to re-assess the RPC status at this point. Applying the 75% rule, the outcome is 80·76% [(RM20 million + RM1 million)/RM21 million + RM5 million)]. LTSB therefore became an RPC on 10 May 2019.

On 30 April 2020, the completion of the buildings and the fittings on the land owned by LTSB represents an enhancement cost. It is not necessary to re-assess LTSB's RPC status.

(ii) **Acquisition date and acquisition price**

LB is deemed to have acquired RPC shares in LTSB on 10 May 2019 (i.e. the day LTSB became an RPC).

The acquisition price as at the date of acquisition is calculated as follows:

75% x RM21 million (i.e. defined value of real property) = RM15·75 million.

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Appendix A

Computation of real property gains tax (RPGT) arising on disposal of LTSB

	RM'000	RM'000
Disposal consideration (1 July 2022) (170 million + 90 million)		260,000
Less: Acquisition price (10 May 2019) [calculated in (c)(ii))]		(15,750)
Chargeable gain		244,250
Disposal in the fourth year		
RPGT at 20%	48,850	

Appendix B

Computation of income tax if the disposal of LTSB shares is deemed revenue in nature

	RM'000	RM'000
Disposal consideration		260,000
Less: Acquisition price (30 million x 75%)		(22,500)
Chargeable gain		237,500
Income tax at 24%	57,000	

Real Property Company (RPC)

- **Losses on disposal of shares in RPC**

- Cannot be deducted against chargeable gains arising from disposal of other chargeable asset and shares in RPC for a basis period
- Cannot be carried forward

Exemption – Paragraph 2 of Schedule 4

WEF 1.1.2022, for disposal of part of RPC shares, the amount exempted

Higher of

= <u>Part of RPC shares</u> x RM10,000 OR 10% of CG

Total number of issues

shares deemed to be CA