MahWengKwai & Associates

ADVOCATES AND SOLICITORS

Speaker
MARILYN TEH
Senior Associate

Speaker
AZILA AMIRUDDIN
Paralegal

Moderator
AARON LIEW
Associate

Wed 8 February 2023
3:00pm (GMT +8)

mwka.com/talks

MWKA ONLINE TALKS

Understanding Real Property Gains Tax

DATO

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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 26 lawyers and 19 staff.

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Trusted by small medium enterprises (SMEs), family businesses and individuals since 1985.

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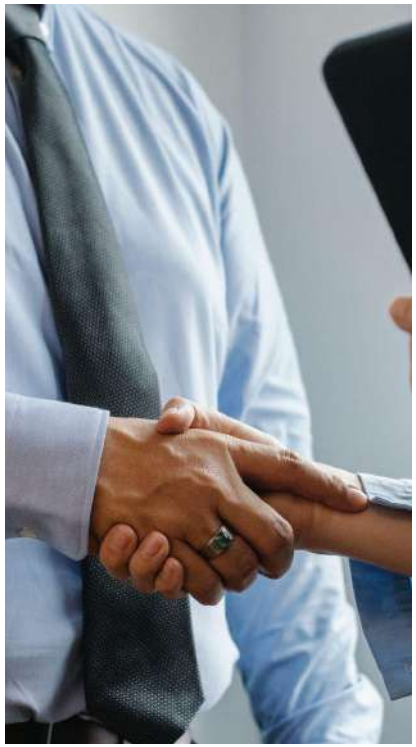
Our Services

Corporate



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Employment

Individuals & Families

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Our Practice Groups

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MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
  - 11.1.2023: Foreign Companies in Malaysia : Branch Office, Representative Office or Local Subsidiary?
- Upcoming MWKA Online Talk:
  - 22.02.2023: Personal Loans

Marilyn Teh

Senior Associate

- Senior Associate in our Conveyancing Department.
- Bachelor of Laws (Honours) from Multimedia University (MMU) and Master of Commercial Law (MCL) from Universiti Malaya (UM).
- Admitted to the Malaysian Bar in 2017.
- Areas of practice include acquisitions and disposals of real property either by individual or corporate, loan documentations for various financiers and drafting various kinds of contracts.

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Azila Amiruddin

Paralegal

- Paralegal in our Conveyancing Department.
- Bachelor of Legal Studies (Honours) from University of Technology Mara (UITM)
- Currently pursuing CLP.
- Areas of practice include acquisitions and disposals of real property either by individual or corporate, loan documentations for various financiers and drafting various kinds of contracts.

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Talk Points

- What is RPGT?
- Applying for RPGT Exemptions
- Reducing RPGT with Allowable Loss
- RPGT from Development Joint Ventures
- RPGT and the Real Property Company

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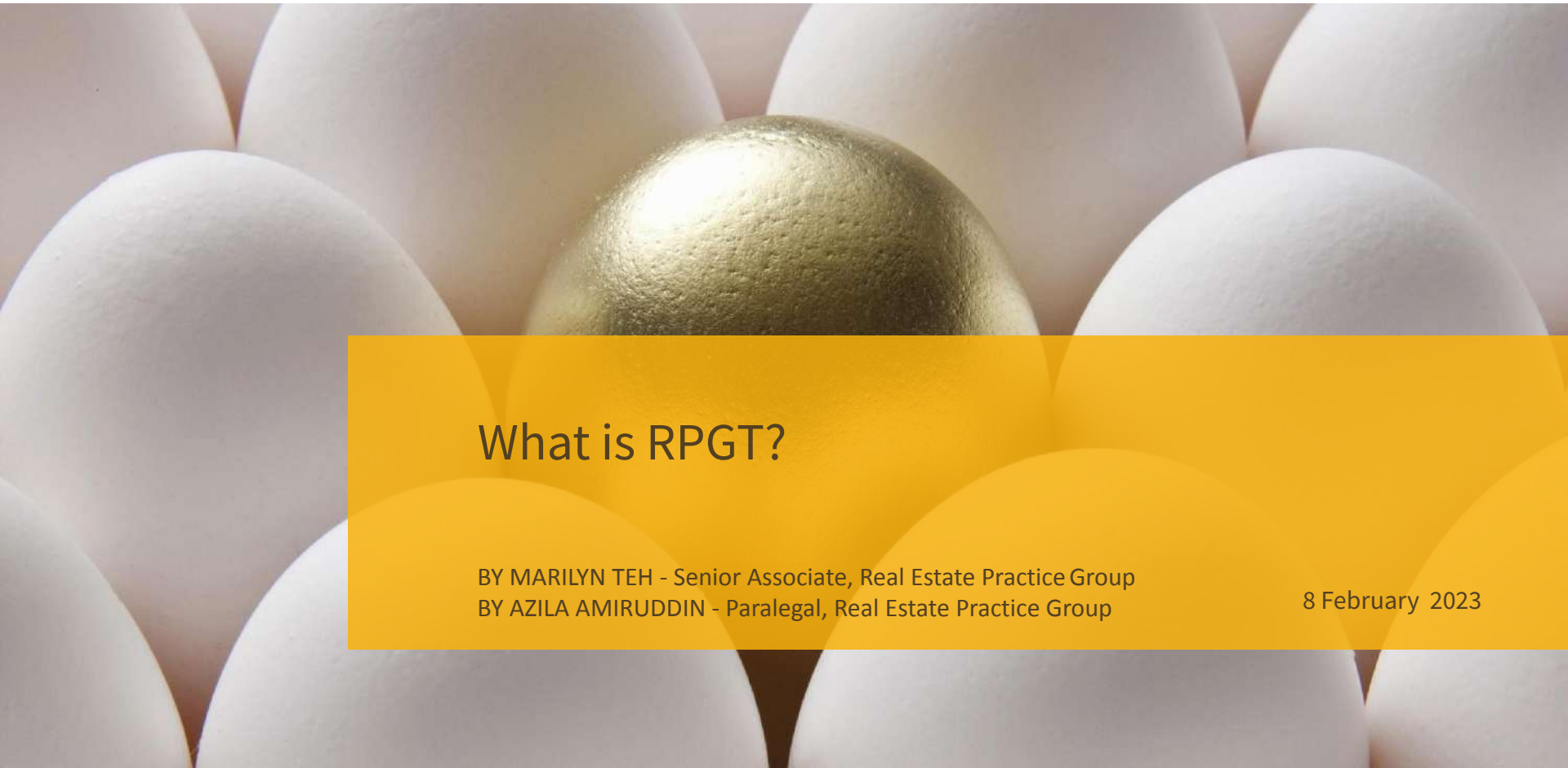

What is RPGT?

BY MARILYN TEH - Senior Associate, Real Estate Practice Group
BY AZILA AMIRUDDIN - Paralegal, Real Estate Practice Group

8 February 2023

Real Property Gains Tax (RPGT)

- A tax that has levied by the Lembaga Hasil Dalam Negeri (LHDN) on the chargeable gains that has been derived from the disposal of real property or shares in Real Property Companies (RPC).
- Section 2 of the Real Property Gains Tax Act 1976 ("RPGT Act") - real property : any land situated in Malaysia and any interest, option or other right in or over such land.
- Section 7 of the RPGT Act - chargeable gains : disposal price exceeds the acquisition price.
- Levied on the gains made from the difference between the disposal price and the acquisition price.

Chargeable Person

- Section 2 of the RPGT Act - Person chargeable with tax
- Section 6(1) of the RPGT Act - Every person whether or not resident in Malaysia shall be chargeable with RPGT in respect of the chargeable gain
- Section 2 of the RPGT Act - “Person” - a company, partnership and corporation

Date of Disposal

- Paragraph 15 of Schedule 2 of the RPGT Act
  - On the date of the written agreement; OR
  - If no written agreement - on the date of completion of disposal of asset - the date on which ownership is transferred by the disposer OR the date on which the whole of the amount of the consideration has been received by the disposer.

Exception

- Paragraph 16 of Schedule 2 of the RPGT Act
  - Conditional contract - where the acquisition or disposal requires approval by the Government - date of the approval

RPGT Rates

Disposal	Citizens/PR	Non-Citizens	Companies
Less OR Equal to 3 years	30%	30%	30%
Less OR Equal to 4 years	20%	30%	20%
Less OR Equal to 5 years	15%	30%	15%
Year 6th and Beyond	0%	10%	10%

How to Calculate RPGT

RPGT = Chargeable Gain x RPGT Rate

Chargeable Gain = Sale Price - Acquisition Price

Example : A, a Malaysian Citizen bought a property in 2020 at the price of RM1,000,000.00 and in 2022, A is selling off the property at the price of RM1,500,000.00.

Chargeable Gain = RM1,500,000.00 - RM1,000,000.00

= RM 500,000.00

Tax imposed = RM500,000.00 x 30% = **RM150,000.00**

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Incidental Costs

- Paragraph 6(1) of Schedule 2
  - Fees, commission or remuneration paid for the professional services of any surveyor, valuer, accountant, agent or legal advisors;
  - cost for transfer (including stamp duty paid);
  - cost of advertising to find a seller (when acquiring the asset);
  - cost of advertising to find a buyer (when disposing the asset);
  - cost reasonably incurred in making any valuation or in ascertaining market value
  - cost incurred to increase the market value of the property (fixtures)

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Applying for RPGT Exemptions

BY MARILYN TEH - Senior Associate, Real Estate Practice Group
BY AZILA AMIRUDDIN - Paralegal, Real Estate Practice Group

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RPGT Exemptions

1. **<u>Once-in-a-lifetime exemption</u>**
   - An individual who is a Malaysian citizen or a permanent resident will be given a once-in-a-lifetime exemption on any chargeable gain - Section 8 of Schedule 3
   - Conditions
     - Real Property must be a residential property or part of the building is used for residential
     - Disposer elects to utilize such exemption to his/her disposal

RPGT Exemptions

2. **<u>Paragraph 3 of Schedule 2 -</u> Disposal Price Deemed To Be Equal To Acquisition Price**

- Devolution of a deceased person's asset on his executor or legatee or trustee
- Transfer of asset between husband and wife
- Transfer of asset to a company controlled by individual or his wife or both or with connected person
- the conveyance or transfer of an asset by way of security
- gifts made to the Government
- the disposal as a result of a compulsory acquisition
- the disposal of any chargeable asset pursuant to a scheme of financing approved by the Central Bank or the Securities Commission

RPGT Exemptions

3. **<u>Paragraph 12 of Schedule 2 - Gifts</u>**

- Disposal of by way of a gift shall be deemed to be a disposal at the market value

- However, if the gift is between:

  i) husband and wife,

  ii) parents and children,

  iii) grandparents and grandchildren,

the donor shall be deemed to have received no gain and suffered no loss on the disposal.

RPGT Exemptions

4. **P.U. (A) 360/2018 of the Real Property Gains Tax (Exemption) Order 2018**

This order comes in operation on 1 January 2019

- Individual who is Malaysian
- Disposal of chargeable asset other than shares
- Disposal in the sixth year after the date of acquisition
- Consideration is not more than RM200,000.00

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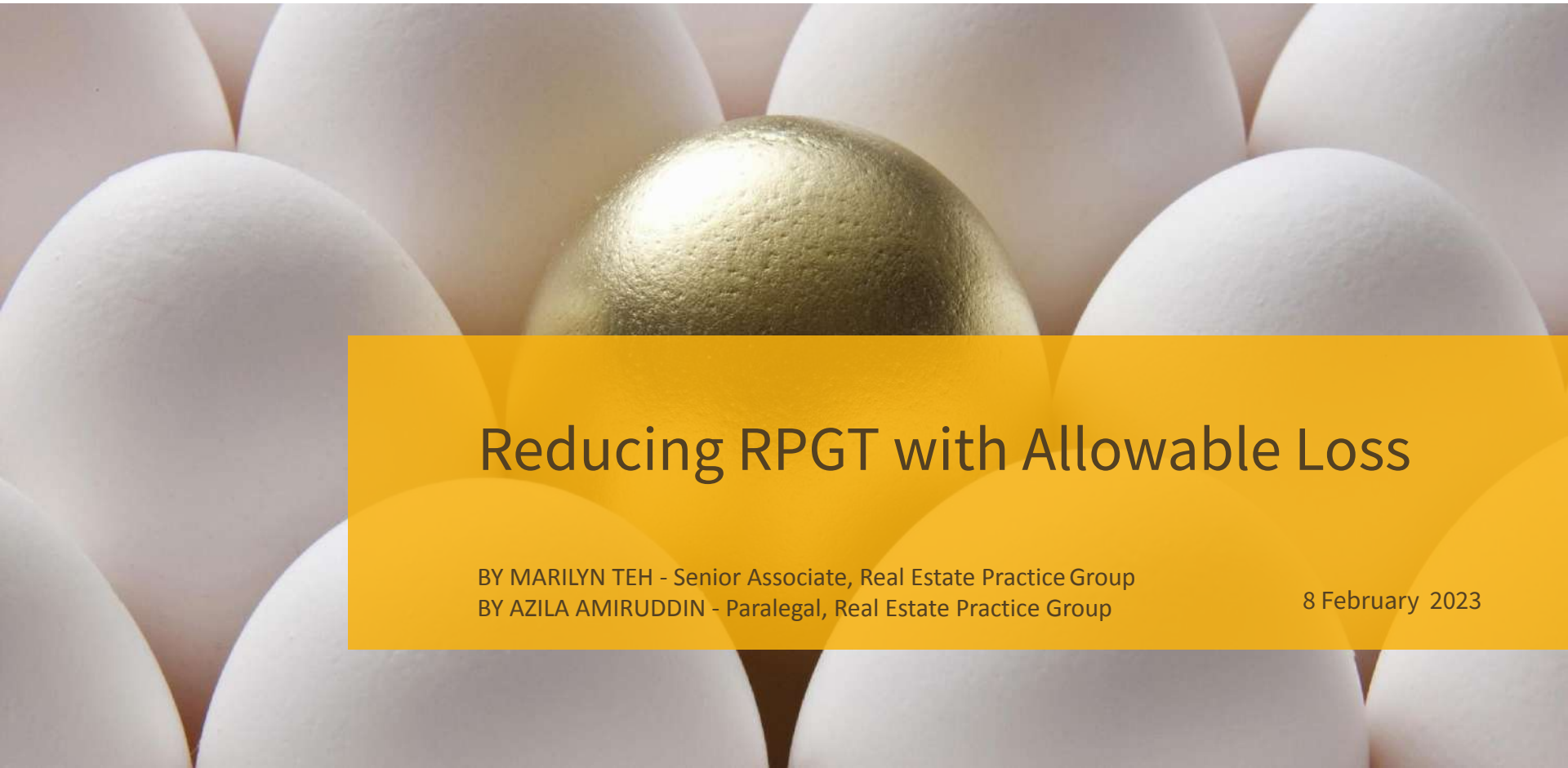

Reducing RPGT with Allowable Loss

BY MARILYN TEH - Senior Associate, Real Estate Practice Group
BY AZILA AMIRUDDIN - Paralegal, Real Estate Practice Group

8 February 2023

Reducing RPGT with Allowable Loss

- **Section 7(2) of the RPGT Act** - loss suffered on the disposal of a chargeable asset which if it has been a gain, would have been chargeable with RPGT

- **Section 7(4)(a) of the RPGT Act** - Where there is more than one transaction of real property in a year of assessment, the allowable loss from one transaction may be used to set-off against another transaction that yields a chargeable gain.

- **Section 7(4)(b) of the RPGT Act** - Unabsorbed loss may be carried forward to the subsequent year(s) of assessment until it is fully absorbed.

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RPGT from Joint Venture with Developer

BY MARILYN TEH - Senior Associate, Real Estate Practice Group
BY AZILA AMIRUDDIN - Paralegal, Real Estate Practice Group

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RPGT from Joint Venture with Developer

Disposal of land by landowner

- Date of disposal - date of JV Agreement
- Disposal price - market value of the land on the date of disposal

Disposal of units received from the developer by the landowner

- Date of acquisition - date of JV Agreement
- Acquisition price :

$$\frac{\text{Selling price fixed by the developer in respect of the units disposed of}}{\text{Total selling price fixed by the developer in respect of all units received from the developer plus cash consideration received}} \times \text{Market value of the land on the date of the joint venture agreement}$$

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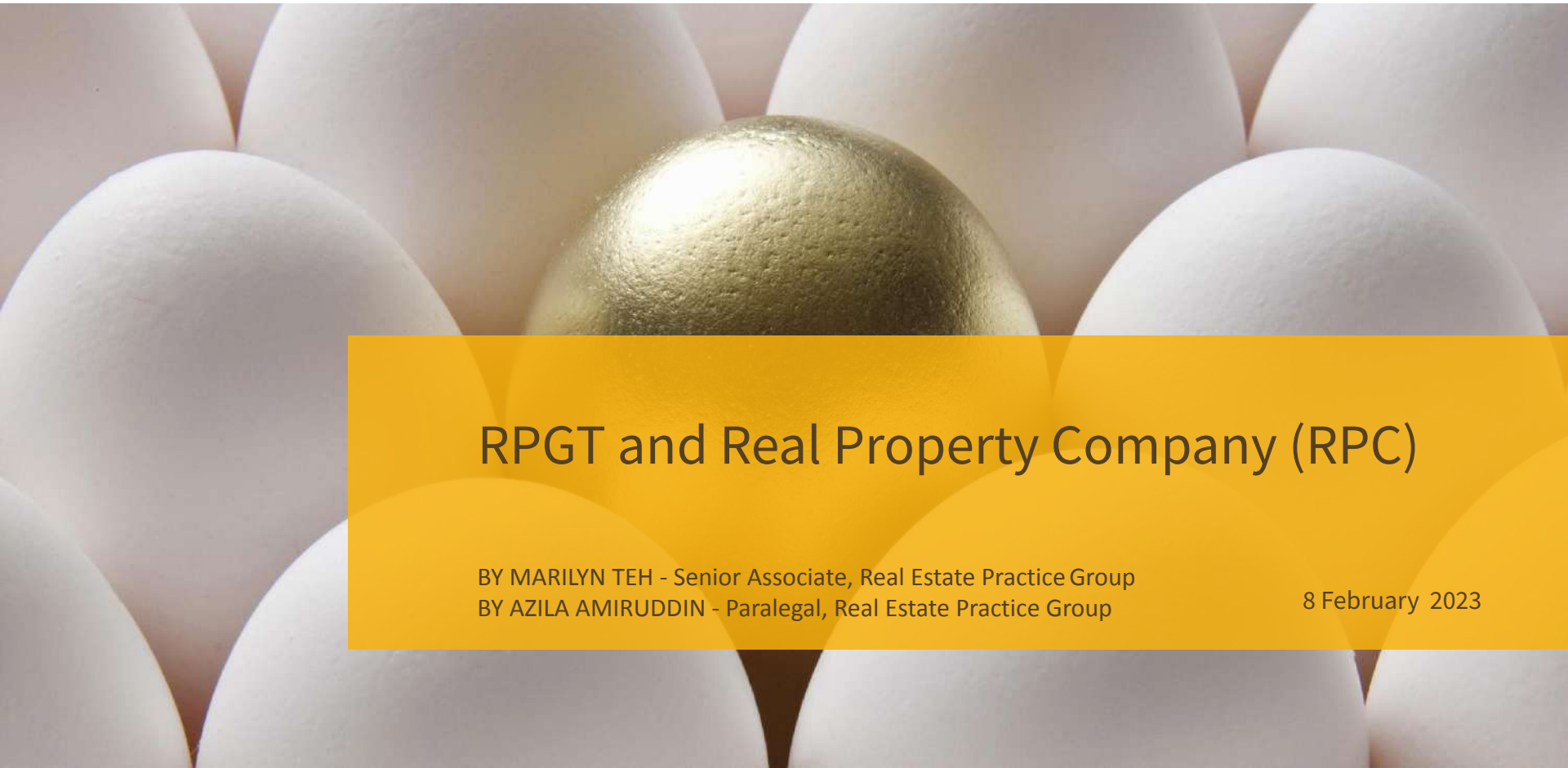

RPGT and Real Property Company (RPC)

BY MARILYN TEH - Senior Associate, Real Estate Practice Group
BY AZILA AMIRUDDIN - Paralegal, Real Estate Practice Group

8 February 2023

RPGT and Real Property Company (RPC)

What is a Real Property Company (RPC)?

- Real property of the company makes up to 75% of the **total tangible assets** and is a **controlled company** OR owns shares in another RPC;
- Controlled company - company that has lesser than 50 members and controlled by not more than 5 persons
- Once RPC shares, always RPC shares (regardless if RPC later becomes non-RPC)
- Paragraph 34A(6) of Schedule 2

Total Tangible Asset

It is the aggregate of the defined value of the real property and shares in the RPC and the value of other tangible assets (e.g. cash, debtors, fixed assets, stocks and pre-payments).

- Current liabilities of the company would be excluded from the calculation.

Question : Is Intellectual Property like patents or copyright included?

Cessation of RPC

Once a controlled company is determined to be a RPC on a given date, it remains to be a RPC and 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

When a RPC disposes a real property or RPC shares, it is necessary to ascertain whether the remaining real property and/or RPC shares continue to make up at least 75% of its total tangible asset

Acquisition Date

If a company was already in existence before 21 October 1988, and on 21 October 1988 it was determined to be a RPC, the shareholders of the company are deemed to have acquired RPC shares on 21 October 1988.

If the shares are acquired at a time when the company is not a RPC, the shares are deemed acquired on the date when the company subsequently becomes a RPC.

Questions?

Upcoming topics

Date (Day)	Topic Title	Speaker(s)
22.2.2023	The 101 Friendly Loans	Hannah Patrick and Jeremy Balang

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Complimentary Consultation

Schedule a complimentary 30 minute video-consultation with our lawyers by filling up the form at

https://mahwengkwai.com/schedule-a-meeting/

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Thank you!

Notice: This presentation does not constitute legal advice and its contents should not be relied upon as such. The facts and circumstances of each and every case will differ and therefore will require specific legal advice. Feel free to contact us for complimentary legal consultation.