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Project Title: THE FEASIBILITY OF INTRODUCING A CAPITAL GAINS TAX IN MALAYSIA

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Abstract: In the modern world, taxation remains a major source of revenue to governments which enables them to carry out the legitimate function of discharging financial obligations toward their citizens. Government resources are various. As the return for the privilege of membership of an organized society, every citizen is required to contribute fairly in the form of tax payment. From immemorial times, the contribution from taxes for the well functioning of government has been acknowledged. Currently the Malaysian Government derives its revenues principally from a number of sources but capital gains tax is restricted to gains accruing from the transfer of real property or shares in a real property company. In the overall scheme of capital gains tax this is a very narrow approach, justifiable in developing countries in the 1960's. Hence, from the analysis of the theoretical framework of capital gains taxation as levied in many countries around the world to a scrutiny of the system of capital gains tax in Australia and Canada in particular, this paper seeks to examine the establishment of a method of introducing a comprehensive system of capital gains taxation in Malaysia.

Keywords: Capital gains tax, Malaysia, Justification, Extension of RPGT.

Introduction: The progression of an organized society to a sovereign nation as a state requires as a necessity revenue from taxes which was originally only needed as a means of disbursing general expenses of a ruling state. The modern system of taxation aims at enhancing the revenue yield to be used for the benefit of its citizen at large, and in the collection of revenue it attempts to promote equity and fairness among taxpayers as well as the efficiency of the overall tax system. It is in this spirit that many countries around the world have implemented capital gains taxation as a way of reducing tax avoidance schemes and of establishing equity among taxpayers. It should be noted that some of the Common Law countries are reluctant in introducing such a system of taxation. In fact, some have simply rejected it based on the source-concept, which originated in Great Britain in the late eighteenth century revolving around the idea that only income derived from identifiable sources should be taxed and not the source itself. In other words, since capital gains originate from the source itself, there should be no tax on it. In some specific cases, the tax is introduced within a very narrow scope, Malaysia being a good example. Capital gain is defined as the increase in the capital value of an asset that can be land, a house, an object of art, shares and so on while capital gains tax is the tax imposed on the increase in the value of the asset. The prospect of introducing a full capital gains tax in Malaysia was mooted in the early 1964. However, a comprehensive system of capital taxation has never been introduced. The current method of taxing gains is strictly limited to gains realized on the disposal of real property or shares in real property companies enforced by the Real Property Gains Tax Act (RPGT) of 1976 which originated after the repeal of the Land Speculation Act 1974. This evidences the intention of introducing capital gains taxation, primarily to root out speculation involving real property transactions and certainly to align with international standards and above all establish a fair, equitable and efficient tax system. Four decade after this initiative, the system of taxing capital gains has not evolved from its narrowest base while a system of full capital gains taxation toward increased revenue yield and as well establishing equity and efficiency among taxpayers remains evasive.

Objectives:

- To analyse the legal framework of capital gains tax with reference to its revenue raising function.
- To examine the possibility of imposing capital gains tax in Malaysia through the extension of the Real Property Gains Tax Act
- To examine the relative merits ofimposition under the accrual and the realisation method

Material and Method:

- Doctrinal analysis of what constitutes capital gains distinct from income gains with reference to case law.
- Reliance on the current literature to assess the importance of introducing a comprehensive syatem of capital gains tax in Malaysia

Results and Discussion:

The present law on capital gains tax embodied in the Real Property Gains Tax Act is inadequate. Its objective is to cool and stabilise the property market. Gains on other capital items such as increase in price of securities, work of art, gold and diamond jewellery go untaxed. This together with the rise in the price of real property has resulted in the accumulation of capital wealth in the hands a segment of the population defying fairness and vertical equity as one of the canons of taxation. It is suggested that the imposition of tax on capital gains would address this imbalance and provide the state with more resources in its economic development. Since the Real Property Gains Tax Act already exist to discourage speculation in the real estate market, it can easily be extended to the taxation of other forms of capital gains.

Future plans for research

The special treatment of capital gains within the taxation framework.