

Preferential Land Taxation Treatment for Special Properties in Malaysia

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Key words: land taxation, property tax administration, land administration system

SUMMARY

Land administration system in such country among others provides a good platform especially to the state or local government to introduce a land taxation using the available information on land tenure and value. In Malaysia, tax on land ownership has been formalized in land administration system since the introduction and implementation of National Land Code in 1965. Despite of different rates being taxed on different usage and classification of land, there are certain conditions where the tax amount of land receives a preferential treatment based on social contract that has been ruled out in Federal Constitution during Independence Day. Thus, this paper reviews the background of the special properties that receive those preferential treatments for their land tax. This paper also reviews the challenges that have been faced by the government on these special properties and suggest potential opportunities for improvement. Method of data collection is done by using desk research approach from secondary sources. The findings provide strong support for future land legislation policy reforms in local land taxation system.

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1. INTRODUCTION

Land tax is part of property tax that is collected by most of the government worldwide especially by subnational, state and local government. Currently it seems become more important as most central governments are struggling with world economic instability that results in federal's budget cut. This incident obviously affects budget allocation from central government to subnational government that largely been used to accommodate the administration and development cost. With this constrains, subnational government has no choice but to depends on local revenue especially from property tax collection as it provides stable revenue in a long term.

2. LAND ADMINISTRATION IN MALAYSIA

Land administration system in Malaysia has gone quite a long journey of time. The pre-independence (before 31st August 1957) Malay states had already practiced the customary laws namely Adat Temenggung and Adat Perpatih that consist several regulations that related to land ownership and land law. Among regulations on land law that have been found those days including rules that similar with the land taxation when land occupier needs to surrender or pay 1/10 of the proceeds of land to the State's Ruler. This is documented in the Laws of Melaka (Risalat Hukum Kanun 1523), Pahang Digest 1596, Kedah Digest 1605, Johor Digest and the 99 Laws of Perak (Awang, 1987). After the British occupation, common law and equity principles were introduced into the Federated Malay States ('FMS') as the new sources of land law, in addition to the local customary land tenure (Maidin et al., 2008). The laws governing the registration of lands in these FMS were mostly influenced by the Torrens system that marked the beginning of a new regime of the registration of title law akin to the Torrens system in Australia on the basis of the Real Property Act 1857 of South Australia. From those Customary Land Administration system, Malaysian land tax system has gone through a process of evolutionary and assimilation with the application of the Torrens System embedded in the National Land Code (NLC) 1965 (Johari et al., 2014).

Torrens System was first introduced in Australia in 1864 to increase the efficiency and effectiveness of land administration with a fixed scheme where equity (Sulaiman, 1997) is excluded (Sihombing, 1977). In the present day, land tax administration in Malaysia is seen to be well structured and more dynamic. With the Federal Constitution as the highest law in force, it clearly outlined the relationship between federal, state and local government in Malaysia. Every three level of this government, they have been allocated with the power to collect certain taxes. For example, the power to collect income tax for individuals and companies falls under the jurisdiction of federal government, land tax or quit rent is under the state government, while local authority for the assessment tax. At the Federal level, the Ministry of Water, Land and Natural Resources oversee the Department of Director General of Land and Mines, which observe and monitors the planning and implementation of land administration policy including land tax revenue of each state in Malaysia. Meanwhile, at the state level each state has its own

assembly of administrative mechanisms. Since the land administration is a state matter, the federal government or local authority has no direct control over matters pertaining to land tax. Land offices in state governments have the authority to collect land taxes from landowners. Every district in the state has established its own district land office by the state government to functioning as a state government's machinery in implementing land policies, laws and processing all matters related to land. These district land offices are headed by the Land Administrator with their own administration structure. This signifies that the state government has exclusive power in terms of managing their lands. Within the overall context of land resource management, land administration is concerned with three main components; i) the ownership, ii) taxation and iii) use of the land (Steudler, 2004).

2.1 Land Ownership in Malaysia

Land ownership in Peninsular Malaysia is governed by NLC 1965. Since the law is based on the Torrens System, where "the registration is everything", ownership is evidenced by having name on the title. Under this system, property right is certified by the registered titles which establishes and acknowledges the ownership of an indefeasible interest to land and guarantees that the person shown on the title displayed in a land register is the right proprietor. There are three methods to own a land, namely as: i) by dealings; which is through purchase followed by the name transfer on the title and registration at the relevant land registry; ii) inheritance from one's parents or ancestors; or iii) acquiring the land through 'alienation' by State Authority. Land ownership carries with its certain duties, basically they are: i) paying the annual quit rent to the State Authority; and ii) complying with all the express and implied conditions affecting the land.

2.2 Land Taxation in Malaysia

In Malaysia, taxation systems are norms classified according to the level of governments. As an example, in taxes on property, federal government is responsible on real property gains tax and stamp duty and the state government in charge on quit rent. Another classification of taxes known as property tax or assessment tax are imposed by the local authorities through its provisions as stated in the Local Government Act (LGA) 1976. Tax levied on real estates in Malaysia can be categorized into two different taxes; taxes on acquisition and transfer of real estate, and taxes on possession and operation of real estate. The category of taxes are listed in in Table 1.

Table 1 Basic Features of Land and Property Taxes

| Category | Types of Taxes | Government | Act |
|--|-----------------------------|------------|---|
| Taxes on acquisition and transfer of real estate | Stamp duty | Federal | Stamp Duty Act 1949 |
| | Real property gains tax | Federal | Real Property Gains Tax Act 1976 |
| Taxes on possession and operation of real estate | Quit rent/land tax | State | National Land Code 1965 State Land Rules |
| | Property tax/assessment tax | Local | Local Government Act 1976 |

Table 1 shows the basic features of each tax. Taxes on acquisition and transfer of real estate refer to stamp duty and real property gains tax. Federal governments use real property gains tax and stamp duty primarily for revenue raising but they also act as a mechanism to control inflation in the property market. Taxes on possession and operation of real estate refer to quit rent and assessment tax. Quit rent is under the control of the state authority, while property tax is a local authority's responsibility.

3.0 LAND TAX BASE AND RATES

Land taxation is universal and different countries are adopting different methods on assessing and administering the tax (Skouras, 1980). In general, as stated by Wald (1959) there are three distinct assessment methodologies been used for land tax in countries all over the world as shown in Table 2.

Table 2. Land Tax Assessment Methodologies (Wald, 1959)

| Category | Sub-Category |
|-----------------|------------------------|
| Land area-based | a. Uniform Rates |
| | b. Classification |
| Value-based | a. Annual Value |
| | b. Capital Value |
| Income-based | a. Charge/ Levy |
| | b. Gross Income |
| | c. Net Income |
| | d. Marketable Products |

Obviously in Malaysia, such geographical features like location and characteristic (Balasubramanian, 2014) of land have an influence in determination of land tax rate as it is calculated based on the physical factors of land (Muhammad Yusuf, 2010). According to Section 51 (2) NLC 1965, a parcel of land that is above the shore-line shall be classified either as a town land or village land or country land which is related to the location. As for Section 52 NLC 1965, in related to the characteristic of the land, the use of land is categorized into three

to be known respectively as agriculture, building or industry. Additionally, Section 115, 116 and 117 of NLC 1965 have listed specified purposes for each category of land.

A tax for parcel of land is determined upon title's registration process once it is being alienated. Based on Section 79 NLC 1965, apart from period of alienation and premium rate to be paid for the land, the determination of area or location for classification, category of usage and size of the plot must be made first upon registration of the land. These are part of the processes of registration that will include the amount of the tax on the title. This tax is levied on landowners who is responsible for the payment and cannot be transferred to the tenant or anyone else.

Land tax in Negeri Sembilan is determined by classification, location, category and usage of land as prescribed. These steps of determination are simplified in Figure 1 below.

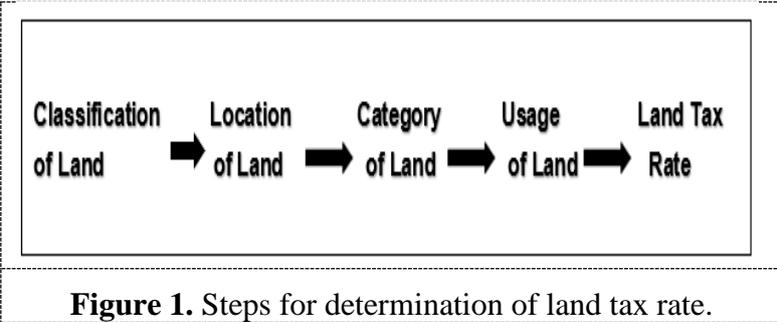


Figure 1. Steps for determination of land tax rate.

These steps of determination are outlined in National Land Codes 1965 when such a parcel of land is going to be registered upon alienation where all those steps are actually parts of the information stated on the ownership document (title grant). Besides that, the amount of land tax that should be paid to State Authority also stated on the title grant.

4.0 CONTEXT OF PREFERENTIAL LAND TAXATION TREATMENT

Special property refers to property that is appropriate for one type of use or limited use (Throupe et al., 2015) and not easily converted to other uses (Finch & Casavan, 1996). This type of property has unique design or layout, uses special construction materials, or other features that limit the property's utility for purposes other than the one for which it was built. It can be a building with limited uses and marketability, such as a hotel, religious institutions, theatre, school, oil and gas station or public utility.

Table 3 provides an outlook of special properties tax structure based on Negeri Sembilan Land Rules 2002. It shows that different category and land usage will determine such tax rate for the land. Note that the table only shows the land tax in Seremban district as an example, as there are more than one districts been listed under Negeri Sembilan Land Rules 2002.

Table 3. Land Tax Rates in Seremban, Negeri Sembilan

| Usage Category | Land Usage | Rates (RM) |
|--|--|--|
| Building | Residential | 0.39 /sq metre (minimum RM84 /lot) |
| | Business | 0.63 /sq metre (minimum RM110 /lot) |
| | Office | 0.27 /sq metre (minimum RM110 /lot) |
| | Education / Research / Training / Library / Institution / Museum | 0.27 /sq metre (minimum RM110 /lot) |
| | Private higher educational institution | 0.32 /sq metre (minimum RM127 /lot) |
| | Health | 0.27 /sq metre (minimum RM110 /lot) |
| | Private Hospital | 0.56 /sq metre (minimum RM110 /lot) |
| | Sport | 115 /hectare |
| | Club/Association/ Organisation | 0.24 /sq metre (minimum RM100 /lot) |
| | Golf Course | 150 /hectare |
| | Welfare | 0.24 /sq metre (minimum RM56 /lot) |
| | Religious Institution | 0.24 /sq metre (minimum RM56 /lot) |
| | Security | 0.24 /sq metre (minimum RM56 /lot) |
| | Tourism / Recreation | 0.37 /sq metre (minimum RM104 /lot) |
| | Transportation / Communication | 0.24 /sq metre (minimum RM100 /lot) |
| | Oxidation pond / Garbage disposal | 0.24 /sq metre (minimum RM56 /lot) |
| | Cemetery | 315 /hectare |
| | Private Cemetery | 600 /hectare |
| | Land Without Category and Condition | 0.63 /sq metre (minimum RM110 /lot) |
| | Industrial | Industry |
| Petroleum pipe-line Homestead | | 0.81 /sq metre (minimum RM174 /lot) 2000 /hectare |
| Agriculture | Long term cultivation: (below 3 hectares) | 65 /hectare |
| | 3 up to 9 hectares | 80 /hectare |
| | 10 hectares and above | 90 /hectare |
| Federal Land (Land Without Category and Condition) | Public purpose (e.g. hospital, school etc) | 0.72 /sq metre (minimum RM165 /lot) |

According to Section 4 NLC 1965, customary law can be practiced and will be acknowledged by NLC. Through this section, the Customary Tenure Enactment 1909, the laws on *Adat Perpatih* in Negeri Sembilan which has been codified since the early 20th century can be practice for inherited land in Negeri Sembilan. The enactment set the base for the preservation

of customary law which has been practiced by the *Adat Perpatih* community in Negeri Sembilan since time immemorial. Other than customary land, Malay Reserve Land 1914 has been enacted by British to restricting the government land in Malay reserve from being disposed of from non-Malays and to prevent Malay reserve land from any private dealings between Malay and non-Malays. The Malay Reserve Land 1914 has been implemented in Negeri Sembilan in 1915 to stop Malays from losing their Land. Malay reservation land can be said to represent land within the boundary of a state, which at law can only be owned or transferred to Malay (Ali, 2002). Both customary land and Malay reserve land have their own restricted market therefore the rates of the tax land are lower and protected from external market as stated in Table 4 below.

| Usage Category | Rates (RM) |
|------------------------|--|
| Malay Reservation Land | Half of the annual rent for residential building |
| Customary Land | |

5.0 CONCLUSION

Land taxes contribute significant revenues to the Malaysian state governments. However, land law provides for preferential treatments to certain categories of property accordingly. There is special tax treatments for religious building, education institution and public purposes.

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BIOGRAPHICAL NOTES

Mohd Zahirin ADNAN obtained his B.Sc in Financial Mathematics from Universiti Malaysia Terengganu. He holds his M.Sc in Land Administration and Development at Universiti Teknologi Malaysia. He is an Administrative and Diplomatic Officer of Malaysia and has been posted in various departments including Land and District Offices and also State of Negeri Sembilan's Director of Land and Mining Department as Land Administrator and Deputy Director. He is currently a Ph.D candidate of Land Administration and Development at Universiti Teknologi Malaysia with his research focusing on land tax administration.

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