

# Role of Real Estate Valuation Surveyors in the Malaysian National Taxation

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## Abstract

This paper discussed involvement and role of Valuation Surveyors or Real Estate Valuers in the process of determination of real estate values for national taxation purposes. Valuation Surveyors either in public or private sectors have their own role and functions. Besides that, the position of Valuation Surveyors whether in public or private sectors depends on who instructed them to carry out a valuation exercise. Analysis and evaluation on secondary data were acquired from previous studies, publications, reports and other related journals. The authors also make necessary analysis and evaluation through the provisions as stated in the written laws in Malaysia such as Stamp Act 1949, Real Property Gain Tax Act 1976, Local Government Act 1976, National Land Code 1965 and Income Tax Act 1967. Therefore, the relevant laws and regulation have clearly stated the requirement of valuation surveyors in order to assist the relevant authorities to determine the capital value of chargeable assets (mainly in the form of real estate) before the duties and charges determined by the agencies such as the Inland Revenue Board, Land Offices and local authorities. At the end of this paper, the authors will summarize the types of taxes valuation that require the Valuation Surveyors to determine capital value or rental value.

*Keywords:* Valuation Surveyors and Taxations

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## 1.0 Introduction

The Valuation Surveyors also known as the Real Estate Valuers is one of the professional members recognized in Malaysia. Role and functions and also its expertise belongings to the valuation surveyors as stated in the Malaysian written law currently enforced. The valuation surveyors provide the services in term of property values and professional advice on real estate valuation of land, buildings, plants and machineries, and also the valuation of business in Malaysia. A statutory body which was established under the Valuers, Appraisers and Estate Agents Act 1981 giving the powers and authorities to the body known as the Board of Valuers, Appraisers and Estate Agents to implement and execute their powers as stated in the the Act 242.

The existence of valuation surveyors can be trace back since the Malacca Malay Sultanate era in 14<sup>th</sup> century where the position of *Penghulu* (Chieftain) and *Penghulu Bendahari* (Ancient position of the Ministry of Finance) play their role as appointed officers by the Malay Native Ruler (*Sultan*) to collect the revenue from the people who were living in the empire and colonies. However, the modern position of the valuation surveyor was introduced by the British after their occupation on Penang Island and Seberang Perai Colonies in 1790's from the Sultan of Kedah. The first valuation unit established by the British East Indies Company (EIC) in Penang executes their function to determine the annual value of property holding located within the George Town Administrative Area managed by the Sanitary Board which was formed by the EIC (Mohd Hasrol Haffiz dan Mohd Farid, 2011).

In the national taxation context, the role and functions of valuation surveyor looks very significant in order to contribute the national public revenues. The valuation surveyor who was appointed is responsible to assess and value the assets (fixed and/or current) for specified purposes. In addition, the Malaysian taxation is classified into two main types known as the Direct and Indirect taxes. However, the involvement of valuation surveyor in the Malaysian taxation preferred to the valuation processes to determine amount of real property to be taxed such as for the purposes of Rating Assessment, Real Property Gain Tax, Stamp Duty and Income Tax. The basis of valuation based on the Capital Value and Rental Value subjected to the types of tax will be charged by the relevant authorities.

## 2.0 Definition of Valuation Surveyor/Real Estate Valuer

The valuation surveyor is one of the professional members who are expertise in determine the value of real property either in term of capital value of rental value for specified purposes (Marcinkas & Galiniene, 2005 and Emirzon *et. al.*, 2005). The valuation is also the main character or player and gives professional advice to the authorities, publics and organizations in development of national economy (Marcinkas *et. al.*, 2005 and Hoyt,

2002). According to Kummerow (2010) and Joni (2002), the existence of valuation surveyor is required in order to fulfill the needs of a professional member who are trained to determine the value and able to make the forecasting on all aspects related to the value of real property. The valuers are able to differentiate the characteristics of real estate value through the knowledge they have (Babawale & Oyalowo, 2011). The ability of a valuation surveyor during his/her duty could be examine how he/she is able to determine the value of real estate while taking into account all aspects and factors which able influence the property. The valuer are able to combine both art and science characteristics in arriving at the value of real property (Żróbek & Grzesik, 2013). The expertise and ability of a valuation surveyor could be acquired through the training and education followed by him/her at the higher education center (Elliott & Warrant, 2005).

In summary, the valuation surveyor is one of the professional members in the built environment industry who gives huge contribution in the national economy sector. The involvement of valuation surveyor in the financial industry in term of professional valuation services give their name stated as the one of the policy maker to appropriate national fiscal policy. The expert knowledge belongs to the valuation surveyor in valuation of assets had make them to be the reference not only the government but the organization and the public who recognized the valuation surveyor in order to know the current value of real property.

### **3.0 Valuation Surveyors in Malaysia**

#### **3.1 The history of valuation surveyors in Malaysia**

A valuation surveyor is one of the oldest professions in Malaysia and it had emerged before the exploration and colonialism by the European to the Malay World. The position *Penghulu Bendahari* (Treasurer) and *Penghulu* (Chieftain) appointed by the *Sultan* were responsible to collect revenues and taxes from the peoples who domicile in the administrative areas and territories. The modern valuation surveyor profession was introduced by the British after their occupation of the Penang Colony in 1786. The urbanization process in Penang makes the British East Indies Company to establish a Sanitary Board responsible to manage and maintain the urban facilities and amenities provided. In order to acquire the fund, the British introduced the assessment tax where every holdings located within the town boundry will be assessed. The British governments also brought the valuation officers on contract basis from London to value and assess the annual value of each holding located within the Georgetown Sanitary Board (Mohd Hasrol Haffiz & Mohd Farid, 2011). The expansion of valuation surveyor profession was influenced by varying law provisions mainly related to the taxation and land acquisition exercises. These provisions were passed by the Colonial Legislative Council. During the early period, the British government also established the body known as the Royal Institution of Chartered Surveyor (RICS) Malaya Branch. The valuation surveyor was known as the General Practice Surveyor. In 1907, the Assessors Enactment was passed to establish the important roles of valuation surveyor during the colonial era (Royal Institution of Surveyors Malaysia, 2014).

In 1967, the Surveyors Registration Act 1967 was gazetted where the general practice surveyors were placed together with others surveyor professions in Malaysia. This act provides the guidelines, registration process, role and functions and also the disciplinary matters in relation to the surveyor professions. And, in 1981, a new statute known as the Valuers and Appraisers Act 1981 (Act 242) was passed by the parliament which between specified the role and functions of valuation surveyor in Malaysia. However, in 1986, the Act 242 was reviewed and amended where the profession of real estate agency includes together with valuers and appraisers profession and the act was known as the Valuers, Appraisers and Estate Agents Act 1981.

This act provide the provisions related to the establishment a new board known as the Board of Valuers, Appraisers and Estate Agents with responsible all matters related to the valuation surveyors, property managers, real consultations and real estate agencies practice. After the implementation of the act, the real estate consultations professions has not subject to the provisions as stated in the Surveyors Registration Act 1967 (Lembaga Penilai, Pentaksir dan Ejen Harta-Tanah Malaysia, 2014; Mohd Hasrol Haffiz & Mohd Farid, 2011 and Mohammed Yunus A Rahman & Abdul Rahman Mohammed Noor, 2010).

#### **3.2 Real Estate Consultation sectors in Malaysia**

In Malaysia, there are two main sectors in relation to the services i.e. public and private sectors (Kamalahasan, 2012). Public sector referred to the government services provided to the public either no charge or minimum charge. Beside that, the private sector also provides the services to public but it is subject the professional fees and charges as prescribed in the acts or other medium of information. (Fernandez, 2011). In the valuation surveyor profession context, the public valuers referred to the valuation officers who serve in the Department of Valuation and Property Services (*Jabatan Penilaian dan Perkhidmatan Harta*) which as a federal government agency under

the Minister of Finance. The other public valuers also identified at the local government level known as the Department of Valuation and Property Management (*Jabatan Penilaian dan Pengurusan Harta*) who are responsible at local council areas. The private valuers are revolving its role through its functions in the valuation and real estate consultation firms who were registered with the Commission of Company Malaysia (CCM) and the Board of Valuers, Appraisers and Estate Agents, Malaysia. The private valuers play their function as the valuation executive or real estate consultants which provide the services to public mainly for bankers, institutional, corporate bodies, agencies and others. Basically, the real estate consultant firms must be led by the Registered Valuers who are registered with the Board of Valuers, Appraisers and Estate Agents after they had fulfilled the mandatory requirements as provided by the Act 242 and the rules.

#### **4.0 The Malaysian Taxation System**

##### **4.1 The importance of taxation systems to the national development**

Tax is one of the public revenue collected by the government either in federal, state or local governments. The tax is the main income for the government in order to provide the services through the management and development expenditures (Tanzi & Shome, 1992). Without appropriate revenue, the government is unable to provide the services, infrastructures and to improve the ability and efficiency the public delivery to the peoples (Dillinger, 1988 and Kelly & Zainab, 2000). Eventhough, the tax looks as a burden to the individuals, households and the organizations, it is very important to government as a medium to generate income for the development of public services and infrastructures (Almy, 2001). In general, the Islamic Administrative System, the tax plays its role to aid the low income society and also to provide the facilities to the peoples either Muslim or non-Muslim communities.

##### **4.2 Tax classification in Malaysia**

In general, the taxes are divided into direct and indirect taxation. Direct taxation is a type of tax to be charge on individuals or organizations without transferring to the third party or other. Meanwhile, the indirect taxation referring to a tax which imposed to the individuals or organizations but it can be transfers to the other parties. In summary, the Malaysian Taxation Systems are classified according to the level of governments. As example, the federal taxes are provided under the parliamentary acts such as the income tax, real property gain tax, goods and services tax, excise duty and many more. The second one is the state duties which passed through the state enactments by the State Legislation Council such as Quit Rent, Irrigation charge and others. And the last classification of taxes known as local charges are imposed by the local authorities through its provisions as stated in the by-laws and the Local Government Act 1976. The examples of local charges are the rates, licenses and others.

#### **5.0 The role and function of the valuation surveyor in the Malaysian Taxation System**

##### **5.1 Federal Taxes**

The valuation surveyor is an individual who are directly involving the determination process to the national fiscal policy in term of the determination of capital value and rental value of fixed and current assets. In the services scope, the valuation surveyor practice is being under supervision of the Malaysian Ministry of Finance. As discussed before, the Board of Valuers, Appraisers and Estate Agents is a statutory body established under the Act 242 where the committee members of board are mainly among the registered valuers who are currently serving with the Department of Valuation and Property Services (*Jabatan Penilaian dan Perkhidmatan Harta – JPPH*) and the private practice. In arriving the amount of duties and charges of the assets, the Inland Revenue Board (*Lembaga Hasil Dalam Negeri – LHDN*) is an agency responsible to collect the tax whether from individuals or corporations as provided by the law. Three types of federal taxes collected by LHDN such as income tax, real property gain tax and stamp duty. In the implementation context, LHDN will instruct the valuation surveyor generally who served with JPPH to value the chargeable assets. Normally this is done after the transaction of property such as transfer, lease or other types of transaction registered at the land office. All these taxes are related to the real property. Eventhough, the value of real property which was transacted stated in the form and registered at the land office, LHDN needs the valuation surveyor services from JPPH to determine the current capital value of the asset in order to review the current capital value. After LHDN confirm that transaction value in line with the current market value, the duties and charges will imposed.

In summary, the real property gain tax (RPGT) will be imposed to the disposers who are individuals, organizations or foreigners. The tax rates are subject to the provision as stated under Schedule 5 of the Real Property Gain Tax

Act 1976 where the ad-valorem rate used depend on the ownership term of real estate by the disposer since the acquisition date until its disposition date. The following table shows the current ad-valorem tax rate (effective from 1<sup>st</sup> January 2014) which currently applicable in the determination of RPGT rates:-

**Table 1 : The current RPGT rates**

Disposition after	Tax rate by the disposer groups		
	Citizens and Permanent Residents	Companies	Non-Citizens
Less than 2 years	30%		30%
3 years	20%		
4 years	15%		
5 years	5%		
After 5 years	-	5%	5%

Source: The Real Property Gain Tax Act 1976 (Amended 2013)

The RPGT Act 1976, also include the needs of valuation surveyor to carry out valuation exercise in order to determine the value of property as stated under the Section 2 of the Act “Valuer means any person lawfully carrying on the business of valuing or appraising the value of real property”.

The Stamp duty is another form of federal tax which is imposed on the acquirer who acquired the property from the disposer. The provision related to the duty is stated under the Stamp Act 1949. This provision purposely to ensure the transaction of real property between the seller and buyer is validated and also to secure the purchaser right after the transaction process. As same with RPGT, the duty used an ad-valorem basis dan to be charge subject to the value of transacted real property. The rate is stated under Item 32(a), First Schedule, Stamp Act 1949 as follows :-

**Table 2 : The rate of stamp duty for real estate transaction**

The Acquisition Price	Rates
First RM100,000	1%
RM100,001 – RM500,000	2%
RM500,001 and onwards	3%

Source: Stamp Act 1949 (As amended 2013)

Besides that, in arriving the amount of RPGT and Stamp Duty is also carry out by the private valuation surveyors if the amount determined by public valuers mainly from JPPH is not satisfied by the clients. The clients can be instructing the private valuers to determine purposely to compare the amount between public and private valuers. In other words, this exercise will be carried out by the private valuers purposely for review and objection process. And the third federal tax that needs the valuation surveyor advice is the income tax (Noor Sharoja & Mazni, 2008).

However, for this exercise, the valuer only determines the capital value of asset and income generated from the rented asset. This exercise looks different with the other federal taxes where the valuer indirect involves the valuation process. In such cases, the private valuers directly communicate with the corporate companies who are hiring the services to determine the value of asset for such purposes and normally at the end financial year (Gray, 1995).

The needs of valuation surveyor in stamp duty valuation purposes are specifically provided under the Section 36A (2), Stamp Act 1949, “The application made under subsection (1) shall contain particulars or evidence deemed necessary to prove the facts affecting the liability of the instrument to duty and any valuation report, prepared by a person privately practising as a valuer, on the market value of the immovable property shall for the purposes of this section be sufficient evidence for the Collector to make an assessment on the initial duty for which the instrument is chargeable”. Whilst the provision as stated in the Section 36AA (2), Stamp Act 1976, “For the purposes of subsection (1), the Collector shall, prior to the market value of the immovable property being ascertained by a valuer employed by the Government for the purpose of subsection 36B(1A), ascertained the market value in advance for which the instrument referred to in that subsection is chargeable”.

Both subsections as provided by the Stamp Act 1949 above clearly stated that the important valuation surveyor in public and private sectors in order to assists the public and the government to determine the value of real property. The valuation workings for the above-mentioned purposes according to the provision as stated in the relevant provisions are as follows:

Given the following information

Type of Property	:	300 ha agricultural land planted with oil palm
Consideration	:	RM1,200,000.00
Valuation by JPPH	:	RM1,500,000.00
Date of Transaction	:	15 July 2015
Acquisition Date	:	10 May 2013
Acquisition Price	:	RM800,000.00

a) Amount of RPGT – The tax will be charged to the disposer

Disposal Price	=	RM1,500,000.00
Less : Acquisition Price	=	RM800,000.00
Chargeable Gain	=	RM700,000.00
Multiply by : RPGT@20%	=	RM140,000.00
Less : Exemption @ 10%	=	RM14,000.00
<b>Amount of RPGT</b>	=	<b>RM126,000.00</b>

Note :

LHDN choose the value determined by JPPH because the Market Value is higher than disposal price. This provision is stated in the Real Property Gain Tax Act 1976 (Amended)

b) Amount of Stamp Duty – The duty will be charged to the Acquirer

Value determined by JPPH	=	RM1,500,000.00
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Therefore, the amount of stamp duty as follows:-

1%	X	RM100,000.00	=	RM1,000.00
2%	X	RM400,000.00	=	RM8,000.00
3%	X	RM1,000,000.00	=	RM30,000.00
<b>Amount of duty</b>			=	<b>RM39,000.00</b>

## 5.2 The Assessment Rate

The assessment rate is a tax charged by the local authorities to all holdings located within the local authority administrative area as gazetted in the State Government Gazettee (Mahamad, 1996). The assessment rate is the largest contribution to the local authorities fund in Malaysia. The assessment rate provides the public financial sources for urban management and development in its administrative boundaries. The imposition of assessment rates as provided in the Chapter 15, Local Government Act 1976. This provision is stated in the Section 127 to 164 which describe and specified the characteristics and enforcement methods for all holdings or properties which is located in the town or urban boundaries. Basically, the rates are imposed based on the Annual Value or Improved Value (for the State of Johor only) as defined in the Section 2, Local Government Act 1976 (as amended) :-



Figure 1 : Sample of Assessment Rate Receipt. Source: *Majlis Perbandaran Manjung* (Manjung Municipal Council), 2012

In summary, the local authorities have a specific department or section which responsible to all matters related to the rating assessment valuation known as the Department of Valuation and Property Management. This department had adequate staffs or officers to execute their functions as valuation administrators and procedure. In order to execute their role in the valuation process for rating assessment purposes, the local authorities in Malaysia are under supervising and monitoring by the Local Governments Section which is a unit under the administration of the Secretary of State Government Office. Therefore the rates that may impose to the property owners are different and it depends on the types and categories of land use. The proposed rates suggested by the local authorities must be approved by the State Government through the Gazette. For that, the Department of Valuation and Property Management only involve the valuation process in order to determine the Annual Value or Improved Value for every holding located within the local government administrative boundaries. According to the definition of Annual Value and Improved Value as stated under the Section 2, Local Government Act 1976 as follows :

Table 3 : The definition of Annual Value and Improved Value

Annual Value	Improved Value
“the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes”	“the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining, for sale and purchase of the holding”

The example of valuation workings to determine the Annual Value which is commonly applied by the local authorities in Malaysia except for the State of Johor as follows :-

Net Rental (per annum)	=		RM36,000.00
Add : Property Outgoings			
i. Repairing	=	RM5,000.00	
ii. Insurance	=	RM1,000.00	
iii. Management	=	RM1,500.00	
iv. Quit Rent and Assessment	=	RM5,000.00	RM12,500.00
Gross Rental (per annum) or Annual Value			RM48,500.00
<b>Multiply by : Rates @ 6%</b>			<b>RM2,910.00 per annum</b>

Figure 2 : Sample of Rating Assessment Valuation

The valuation surveyor is an important person who executes their role and functions to advise and determine the value of real property for specified purposes including for taxation as requested by any levels of government not only in the local context but could expand to national and international context. As one of the professional bodies in Malaysian context, the valuation surveyor provides their services with professional advice in relation to the real estate sector. The professional services as provided by the valuation surveyor including the recommendation and

value of real property in order to assist the interested persons in term of capital and rental values of tangible and intangible assets for the purposes as requested. The role of valuation surveyor not only involves assets owned by authorities but they can offer their services to public especially for those who are dissatisfied with the amount of value which was determined by the authorities such as the amount taxes, charges or duties. Basically, this exercise carries out by the private valuers and be an advisor to the client and the solicitor if the case needs the hearing in the public courts. In term of taxation context, the role of valuation surveyor is very significant where both parties either the authority and public really need their professional advice and recommendation in order to determine the fair value of real property. In general, the clash between the government and the rights would be emerged where any parties who are not satisfied the decision made by other parties. As a result, the unsatisfied parties may proceed the appeal through public court and the decision will be made by the judge where his consideration will be based on the suggestion and recommendation suggested by the professional valuation surveyor. The decision will make both parties satisfied through the decision decided by the judge. Basically, the types of taxation commonly need the professional services from the valuation surveyor which comprises the federal taxes, states duties and local authorities' charges. The involvement of valuation surveyor is only their exercise in order to determine the value of assets. The basis of valuation commonly applied by the valuation surveyor is depending on the methods based on the market, cost and income approaches and principles.

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