



## TAX FLASH

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### Guidelines on Capital Gains Tax for Unlisted Shares

The Inland Revenue Board ["IRB"] has recently issued the *Guidelines on Capital Gains Tax ["CGT"] for Unlisted Shares* dated 1<sup>st</sup> March 2024 (in *Bahasa Malaysia*) to provide guidance and clarification regarding the CGT treatment on gains or profits from the disposal of unlisted shares of companies incorporated in Malaysia and shares of controlled companies incorporated outside Malaysia which owns real property situated in Malaysia or shares of another controlled company or both.

Salient points of the abovementioned Guidelines include:-

#### i. Taxable Person

- Company, limited liability partnership ["LLP"], trust body and co-operative society, including Labuan entities that are subject to tax under the Income Tax Act 1967 ["ITA 1967"].

- [Moore Malaysia](#)
- [Moore Global](#)
- [Inland Revenue Board](#)

## ii. Imposition of CGT

- Gains or profits from the disposal of capital assets are included under the classes of income chargeable to tax under Section 4(aa) of the ITA 1967.
- CGT is charged on gains or profits from the disposal of capital assets which consists of:-
  - unlisted shares of companies incorporated in Malaysia; or
  - shares of controlled companies incorporated outside Malaysia which owns real property situated in Malaysia or shares of another controlled company or both pursuant to Section 15C of the ITA 1967.
- The scope of charge of CGT is on shares of equity in nature such as ordinary shares, preference shares, redeemable preference shares, convertible bonds or long-term debentures of equity in nature. Among others, the features of shares of equity in nature are:-
  - the shareholder's right to receive dividend is not fixed;
  - the shareholder's right in the residual assets ranks after settlement of other claims in a liquidation;
  - the shares have no maturity date; and
  - the shares carry voting rights.
- Gains from the disposal of capital assets is not a source of business income under Section 4(a) of the ITA 1967 except in a situation where Section 24(1) of the ITA 1967 applies.
- Gains from the disposal of capital assets is taxable in the basis period of a year assessment in which the disposal of the capital assets takes place. Each disposal of capital asset should be ascertained separately and treated as a separate source of profits from the disposal of capital asset.

## iii. Acquisition Price and Disposal Price of Capital Assets

- Disposal Price
  - The disposal price is the amount or value of the disposal consideration in the form of money or money's worth for the disposal of capital assets less any expenditure related to the disposal.
  - The calculation of the disposal price (in accordance with the Section 65E(2)(a) of the ITA 1967) can be summarised as follows:-

	RM	RM
The amount or value of the consideration in money or money's worth for the disposal of capital assets		XX
Less: Allowed Expenditure		
(a) Expenses incurred wholly and exclusively on capital asset at any time after the acquisition by or on behalf of disposal for the purpose of enhancing or preserving the value of the capital asset, i.e. expenditure which reflected in the state or nature of the capital asset at the time of disposal	XX	
(b) Expenses incurred wholly and exclusively on capital asset at any time after the acquisition of the capital asset by the disposer in establishing, preserving or defending its title or rights over the capital asset	XX	
(c) Incidental costs that are wholly and exclusively for the disposal of the capital asset i.e. fees, commission or remuneration paid for the professional services of any valuer, accountant, agent or legal adviser, cost of advertising to find a buyer and cost incurred in making valuation or ascertaining market value of the capital asset.	XX	XX
Disposal Price		XX

- Acquisition Price
  - The acquisition price is the amount or value of the acquisition consideration in the form of money or money's worth for the acquisition of capital assets including the incidental costs of acquisition.

- The calculation of the acquisition price (in accordance with the Section 65E(2)(b) of the ITA 1967) can be summarised as follows:-

	RM	RM
The amount or value of the consideration in money or money's worth for the acquisition of capital assets		XX
Add: Incidental costs for acquisition i.e. fees, commission or remuneration paid for the professional services of any valuer, accountant, agent or legal adviser, costs of transfer (including stamp duty) and cost of advertising to find a seller		XX
		XX
Less:		
(a) Compensation received for damage, injury, destruction, dissipation or depreciation or risk of depreciation of the assets	XX	
(b) Any sum received under an insurance policy due to damage or injury or the loss, destruction or depreciation of the assets	XX	
(c) Any sum forfeited as a deposit received made in connection with an intended transfer of the capital assets	XX	XX
Acquisition Price		XX

- Computation of Adjusted Income or Adjusted Loss
  - If the disposal price of the capital asset exceeds the acquisition price, there is an adjusted income.
  - If the disposal price of the capital asset is less than the acquisition price, there is an adjusted loss.
- Chargeable Income
  - The amount of adjusted income shall be treated as the chargeable income from the source of gains or profits from the disposal of capital assets for a year of assessment. If there is an adjusted loss from the disposal in the current year of assessment, the adjusted loss shall be allowed as a deduction to reduce the adjusted income in the subsequent disposal of capital assets.

#### iv. Unabsorbed Losses

- Adjusted loss from the disposal of capital assets is only allowed to be deducted from the adjusted income of subsequent disposals of capital assets carried out in the same basis period for a year of assessment in which the disposal was made (Section 65E(5) of the ITA 1967).
- Current year adjusted loss that cannot be absorbed can only be carried forward to be deducted from the adjusted income of same source for a period of 10 consecutive years of assessment (Section 65E(6) of the ITA 1967).
- The 10 consecutive years of assessment commences immediately following the relevant year of assessment the adjusted loss takes place. Any remaining adjusted loss that cannot be absorbed after the end of the 10 years of assessment shall be disregarded.

#### v. Transfer of Capital Assets to Trading Stock

- If a capital asset acquired or held by the liquidator is classified as an investment or non-current asset in his business is taken into the trading stock/inventory, there shall be deemed to be a disposal of the capital asset on the date that capital asset is taken into the trading stock (Section 65F(6)(a) of the ITA 1967).
- The disposal price is the market value of the capital asset on the date it is taken into the trading stock (Section 65F(6)(b) of the ITA 1967).
- If the value of capital assets taken into the trading stock exceeds the acquisition price of the capital asset, then the difference is a taxable profit.

#### **vi. Disposal of Share of a Controlled Company Incorporated Outside Malaysia According to Section 15C of the ITA 1967**

- Gains or profits arising from the disposal of capital asset which is a share of a controlled company ["relevant company"] incorporated outside Malaysia shall be deemed to be derived from Malaysia and subject to CGT if the relevant company owns real property situated in Malaysia or shares of another controlled company or both, where:-
  - the defined value of real property situated in Malaysia (including any right or interest thereof) owned by the relevant company is not less than 75% of the value of its total tangible assets;
  - the defined value of shares of another controlled company owned by the relevant company is not less than 75% of the value of its total tangible assets, provided that the defined value of real property situated in Malaysia owned by another controlled company is not less than 75% of the value of its total tangible assets; or
  - the defined value of real property situated in Malaysia pursuant to Section 15C(2)(a) of the ITA 1967 and shares of another controlled company pursuant to Section 15C(2)(b) of the ITA 1967 owned by the relevant company is not less than 75% of its total tangible assets.[Section 15C(2) of the ITA 1967]
- This treatment also applies to the disposal of shares in Real Property Company ["RPC"] (according to Paragraph 34A of Schedule 2 of the Real Property Gains Tax 1976 ["RPGT Act 1976"]) commencing from 1<sup>st</sup> January 2024 and thereafter. Therefore, any holding of RPC shares before 1<sup>st</sup> January 2024 will be subject to CGT under the ITA 1967 for taxpayers i.e. company, LLP, trust body and co-operative society.
- If the share of the controlled company incorporated outside Malaysia does not meet the criteria of capital asset under Section 15C of the ITA 1967, its status shall need to be determined on any other date when it subsequently acquires real property situated in Malaysia or shares in another controlled company or both by reference to Section 15C(2) of the ITA 1967 mentioned above.
- Holding of shares in RPC under the RPGT Act 1976 is considered as holding of the shares which is a capital asset.

#### **vii. Claim of Foreign Tax Credit**

- A disposer who has been taxed abroad (either by imposition of withholding tax or income tax) related to gains or profits on disposal of unlisted shares of companies incorporated in Malaysia pursuant to Section 15C of the ITA 1967 may claim a bilateral tax credit under Section 132 of the ITA 1967 (subject to Double Taxation Agreement between Malaysia and countries where foreign taxes apply).

#### **viii. CGT Rates**

- The rates of CGT charged on gains from the disposal of capital asset are provided in Part XXI of Schedule 1 of the ITA 1967, determined based on the date of acquisition of capital assets as follows:-
  - Capital assets acquired before 1<sup>st</sup> January 2024:-
    - 10% on chargeable income from disposal of capital assets; or
    - 2% of gross disposal price of capital assets."**gross disposal price**" refers to the disposal consideration amount stated in the sale and purchase agreement.
  - Capital assets acquired from 1<sup>st</sup> January 2024:-
    - 10% on chargeable income from disposal of capital assets.

#### **ix. CGT Filing**

- Taxpayers who dispose of capital assets must submit the CGT return form through e-Filing ["Form e-CKM"] within 60 days from the date of disposal.
- Pursuant to Section 77B of the ITA 1967, taxpayers are allowed to make amendments to the CGT return form that has been submitted to the DGIR within 6 months after the deadline for the submission of the CGT return form.
- Tax payments must be made within 60 days from the date of disposal.

## Tax Exemption for MSC Status Companies in Respect of Statutory Income from Core Income Generating Activities

Subsequent to the launching of the Malaysia Digital ["MD"] initiative on 4<sup>th</sup> July 2022 which is a rebranding of the Multimedia Super Corridor ["MSC"] Malaysia first introduced in 1996, the Malaysia Digital Economy Corporation has issued the following:-

- Guidelines on MD status dated 30<sup>th</sup> June 2022 on grant of MD status; and
- Guidelines on Transition of MSC Malaysia Status Company to MD Status Company dated 29<sup>th</sup> December 2022.

Following the above, the IRB has recently issued the amended *Income Tax (Exemption) (No.10) 2018 (Amendment) Order 2024* ["amendment Order"] to amend the Income Tax (Exemption) (No. 10) Order 2018 which provides for tax exemption to a qualifying company i.e. a MSC status company in respect of 70% or 100% of the statutory income derived from the core income generating activities for a period of 5 years beginning from the date determined by the Minister.

Salient amendments of the above Order include:-

- The requirement of location where core income generating activities are carried out has been removed (effective 25<sup>th</sup> March 2022) in line with the Guideline on Transition of MSC Malaysia status company to MD Status Company dated 29<sup>th</sup> December 2022. The MSC Malaysia status company is allowed to operate and undertake the approved activities in any location within Malaysia.
- If a qualifying company has any related company which has been granted an exemption in respect of the core income generating activities, the qualifying company shall not be eligible for the exemption in respect of the same core income generating activities.
- A qualifying company may surrender the exemption granted by notice in writing to the Minister and the surrender of exemption shall have effect—
  - on the date the approval of the award of the MSC status is granted to the qualifying company; or
  - in the case where the exemption period has commenced—
    - on the date the application for surrender of the exemption is received by the Minister; or
    - on the first day in the basis period for the year of assessment in which the application for surrender of the exemption is received by the Minister.

The amendment Order shall have retrospective effect from 1<sup>st</sup> January 2019 [apart from item (i) above].

**Note:** For further information relating to the above, kindly refer to our *Tax Flash – February 2019* and *Tax Flash – March 2023* issues.

## Tax Corporate Governance Framework – Updated Guidelines and Frequently Asked Questions

The IRB has recently issued a *media release* on 5<sup>th</sup> March 2024 to inform that the following has been made available on the IRB's website:-

- *Tax Corporate Governance Framework ["TCGF"] Guidelines (as at 23<sup>rd</sup> February 2024);*
- *Frequently Asked Questions (as at 23<sup>rd</sup> February 2024); and*
- *TCGF published on 11<sup>th</sup> April 2022 (Bahasa Malaysia version).*

The updates in the TCGF Guidelines cover the aspects of monitoring, effectiveness of tax control framework, reporting control testing and reporting tax governance, control and risk management.

**Note:** For further information relating to the TCGF, kindly refer to our *Tax Flash – September 2022 (Special Edition)* issue.

## Guide on Maintenance or Repair Services

The Royal Malaysian Customs Department [“RMCD”] has published the [Guide on Maintenance or Repair Services](#) [“the M&R Guide”] dated 29<sup>th</sup> March 2024 (currently only made available in *Bahasa Malaysia*) which replaced the guide issued previously on 26<sup>th</sup> February 2024.

The provisions for group relief as outlined in Paragraphs 32 and 33 of the M&R Guide dated 26<sup>th</sup> February 2024 have been retracted. Following this, services related to maintenance or repair will no longer qualify for group relief purposes.

**Note:** For further details, kindly refer to our [Tax Flash – March 2024 \(Special Edition\)](#) issue.

## Guide on Logistics Services

The RMCD has published the [Guide on Logistics Services](#) [“the Logistics Guide”] dated 5<sup>th</sup> April 2024 (currently only made available in *Bahasa Malaysia*) which replaced the guide issued previously on 26<sup>th</sup> February 2024.

The Logistics Guide provides further clarification on the service tax exemptions granted by the Minister of Finance [“MOF”] and the service tax treatment on logistics services in Designated Areas and Special Areas.

**Note:** For further details, kindly refer to our [Tax Flash – March 2024 \(Special Edition\)](#) issue.

## Guide on Approved Major Exporter Scheme (AMES)

The RMCD has published the [Guide on Approved Major Exporter Scheme \(AMES\)](#) [“the AMES Guide”] dated 29<sup>th</sup> March 2024 (currently only made available in *Bahasa Malaysia*) to provide clear guidance on the full sales tax exemption facility to approved traders and manufacturers in Malaysia whose activities are export-oriented.

## Service Tax Policy No. 3/2024 (Amendment No. 1) – Determination of Service Tax Rate for Provision of Multiple Taxable Services by the Same Service Provider

The [Service Tax Policy No. 3/2024 \(Amendment No. 1\) – Determination of Service Tax Rate for the Provision of Multiple Taxable Services by the Same Service Provider](#) [“STP 3/2024 (Amendment No. 1)”] dated 29<sup>th</sup> March 2024 (currently only made available in *Bahasa Malaysia*) has been published. The salient points extracted from the STP 3/2024 (Amendment No. 1) are as follows:-

- The following service tax rates shall apply in respect of the sales of the following drinks or the imposition of the following fees/charges by the registered person under Groups A to E to First Schedule of the Service Tax Regulations 2018 [“SET Regulations 2018”]:-

Sales or Imposition of:-	Service Tax Rate
Alcoholic drinks (including temperance drink)	8%
Non-alcoholic drinks (ready-to-drink beverages in bottles/packs/cans /boxes and their equivalent)	6%
Alcoholic drinks provided in package (e.g. buffet/banquet)	6%
Corkage fee	8%
Provision or sales of snacks, fruits or and their equivalent	Not subject to service tax
Service charge	Not subject to service tax

- These changes will be applied retrospectively effective 1<sup>st</sup> March 2024. Should there be any collection of service tax from customers prior to this date, the registered person is required to remit the amount collected to the RMCD. Any refund of service tax collected under this circumstance will not be permitted.

**Note:** For further details, kindly refer to our *Tax Flash – March 2024 (Special Edition)* issue.

## Service Tax Policy No. 4/2024 – Enhancement of Service Tax Treatment on Logistics Services

The *Service Tax Policy No. 4/2024 – Enhancement of Service Tax Treatment on Logistics Services* [“STP 4/2024”] dated 29<sup>th</sup> March 2024 (currently only made available in *Bahasa Malaysia*) has been published. The salient points extracted from the STP 4/2024 are as follows:-

- The taxable person under Item 1(b) to Column (1) of Group J : Logistics Services to First Schedule of the SET Regulations 2018 has been removed and combined with Item 1(a) to Column (1) of Group J.
- The scope of business-to-business exemption for Group J is extended to cover provision of services under the same item.
- The meaning of “same item” refers to the division of services as listed below:-

Item	Services
1(a)	<ul style="list-style-type: none"> <li>• Logistics services including all or part of the supply chain of logistics management services, warehousing or warehousing management services, freight forwarding services, port or airport services, shipping services, aviation services or cold chain facilities services; and</li> <li>• Delivery, distribution or transportation of goods services. <i>[Note : previously categorised under Item 1(b)]</i></li> </ul>
1(c)	Delivery, distribution or transportation of goods, documents or packages services through E-Commerce platforms including acting on behalf of any person
1(d)	Courier services licensed under Section 10 of the Postal Services Act 2012 [Act 741]
2	Any person who is approved to act as a customs agent under Subsection 90(2) of the Customs Act 1967

- The Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) Order 2018 has been amended to extend the service tax exemption to logistics services provided within/between designated areas and special areas. Please note that this exemption excludes Customs agent services which will remain to be taxable services and subject to service tax.
- The MOF has further approved the following services as not subject to service tax:-
  - Door-to-door goods delivery services which involve:-
    - goods delivery services from a place outside Malaysia to a place in Malaysia or from a place in Malaysia to a place outside Malaysia without going through a third party;
    - goods delivery services by the same network service provider from the same consignor to the recipient;
    - goods delivery using the same airway bill / bill of lading / consignment note from the consignor to the recipient; and
    - use of the same invoice for shipping charges from consignor to consignee (i.e. single billing invoice).
  - Logistics services related to transit activities, i.e. goods that arrive in Malaysia for onward transportation to another place outside Malaysia through land/sea/air transport modes.
  - Ocean freight charges for all goods delivered by sea mode, limited to the following routes/destinations:-
    - Peninsular Malaysia to Sabah/Sarawak/Labuan;
    - Sabah/Sarawak/Labuan to Peninsular Malaysia; and
    - Between Sabah, Sarawak and Labuan.

- These changes will be applied retrospectively effective 1<sup>st</sup> March 2024. Should there be any collection of service tax from customers prior to this date, the registered person is required to remit the amount collected to the RMCD. Any refund of service tax collected under this circumstance will not be permitted.

On a separate note, the MOF has published the [Media Release on Service Tax Exemptions for the Logistics Sector and Maintenance Services](#) dated 31<sup>st</sup> March 2024 to clarify the similar matters as mentioned above.

### **Service Tax Policy No. 5/2024 – Service Tax Treatment on Maintenance Services in relation to Residential Houses**

The [Service Tax Policy No. 5/2024 – Service Tax Treatment on Maintenance Services in relation to Residential Houses](#) [“STP 5/2024”] dated 1<sup>st</sup> April 2024 (currently only made available in *Bahasa Malaysia*) has been published. The salient points extracted from the STP 4/2024 are as follows:-

- The service tax treatment in respect of maintenance services (including repairs) for residential premises are as follows:-

<b>Services</b>	<b>Service Tax Treatment</b>
Maintenance services (including repairs) of goods/equipment (i.e. moveable items) at the residential premises	Subject to service tax
Maintenance services (including repairs) of goods/equipment fixed/attached to the structure of the building provided directly to the owner or occupant of the residential premises	Not subject to service tax
Sinking Fund related to residential premises charged by any developer, joint management body or management corporation	Not subject to service tax

- The service tax treatment in respect of warranty are as follows:-

<b>Services</b>	<b>Service Tax Treatment</b>
Warranty provided for free during the purchase of goods	Not subject to service tax
Extension of warranty with additional fee	Subject to service tax

- These changes have retrospective effect from 1<sup>st</sup> March 2024.

On a separate note, the RMCD has published the [Media Release on Service Tax Exemptions for the Logistics Sector and Maintenance Services](#) dated 31<sup>st</sup> March 2024 to clarify the similar matters as mentioned above.

For other issues of our Tax Flash, please go to:  
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