



## TAX FLASH

May 2024 (Special Edition)

### **Capital Gains Tax – Guidelines on Tax Treatment on Gains from the Disposal of Foreign Capital Assets Received from Outside Malaysia**

Effective 1<sup>st</sup> January 2024, Capital Gains Tax ["CGT"] is imposed on gains from disposal of capital assets by companies, limited liability partnerships ["LLP"], co-operative societies and trust bodies. Capital assets include:-

- Shares in a company incorporated in Malaysia not listed on the Stock Exchange (as defined in the Capital Markets and Services Act 2007) ["Unlisted Shares"];
- Shares in a controlled company incorporated outside Malaysia which (i) owns real property situated in Malaysia where 75% threshold condition applies; or (ii) owns shares of another controlled company which owns real property situated in Malaysia where 75% threshold condition applies; or (iii) owns both real property and shares of another controlled company where 75% threshold condition applies, ["Section 15C Shares"]; and
- Moveable and immovable property situated outside Malaysia ["Foreign Capital Assets"].

The amendments of the relevant provision in the Income Tax Act 1967 ["ITA 1967"] through the Finance (No. 2) Act 2023 and Income Tax (Amendment) Act 2024 provide that gains from disposal of capital assets on or after 1<sup>st</sup> January 2024 are treated as taxable income under Section 4(aa) of the ITA 1967 subject to the following tax rates:-

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

Capital Asset	CGT Rate
Unlisted Shares / Section 15C Shares <ul style="list-style-type: none"> <li>• Acquired before 1<sup>st</sup> January 2024</li> <li>• Acquired on or after 1<sup>st</sup> January 2024</li> </ul>	<ul style="list-style-type: none"> <li>• 2% of gross disposal price or 10% of chargeable income</li> <li>• 10% of chargeable income</li> </ul>
Foreign Capital Assets, upon receipt of the gain in Malaysia	Prevailing income tax rates

### Disposal of Unlisted Shares / Section 15C Shares

For disposal of Unlisted Shares and Section 15C Shares during the period from 1<sup>st</sup> January 2024 to 29<sup>th</sup> February 2024, exemption from payment of CGT from gains from the disposal thereof has been granted through the Income Tax (Exemption) (No. 7) Order 2023 and Income Tax (Exemption) (No. 2) Order 2024 respectively. The IRB has issued the Guidelines for CGT on Unlisted Shares to explain the tax treatment on disposal of Unlisted Shares and Section 15C Shares. Kindly refer to our [Tax Flash – April 2024](#) issue for further information.

### Disposal of Foreign Capital Assets

In line with Malaysia’s commitment to comply with international tax best practices, gains from the disposal of Foreign Capital Assets will be subject to CGT when received in Malaysia by a resident person.

To align with the exemption granted to foreign-sourced income received in Malaysia by a resident, the [Income Tax \(Exemption\) \(No. 3\) Order 2024](#) [“the Exemption Order”] has been gazetted to provide exemption from CGT on gains from the disposal of Foreign Capital Assets received in Malaysia by a company, LLP, trust body and co-operative society resident in Malaysia from 1<sup>st</sup> January 2024 to 31<sup>st</sup> December 2026. The Exemption Order provides that a company, LLP, trust body and co-operative society resident in Malaysia is granted exemption from payment of income tax in respect of gains or profits from the disposal of capital assets arising from outside Malaysia that are received in Malaysia in the basis period for a year of assessment. To be eligible for this exemption, the company, LLP, trust body and co-operative society must comply with the conditions imposed by the Minister of Finance as specified in the guidelines issued by the Director General of Inland Revenue under Section 134A of the ITA 1967, which include the following:-

- employ an adequate number of employees in Malaysia; and
- incur an adequate amount of operating expenditures in Malaysia.

It is noteworthy that the Exemption Order specifically excludes the gains or profits from the disposal of intellectual property rights if the company, LLP, trust body and co-operative society is the owner or licensee of the intellectual property rights.

“**Intellectual property rights**” means any rights, whether or not registered or registrable, arising from:-

- a patent;
- utility innovation and discovery;
- copyright;
- trade mark and service mark;
- industrial design;
- layout-design of integrated circuit;
- secret processes or formulae and know-how;
- geographical indication and the grant of protection of a plant variety; or
- other similar rights.

Additionally, the above Exemption Order shall not be applicable to a person carrying on the business of banking, insurance, sea transport or air transport.

Following the above, the [Guidelines on Tax Treatment on Gains From the Disposal of Capital Assets Received From Outside Malaysia \(updated on 26<sup>th</sup> April 2024\)](#) [“the Guidelines”] has been issued by the Inland Revenue Board [“IRB”] to clarify the treatment and exemption criteria for gains from the disposal of Foreign Capital Assets received in Malaysia.

The salient points of the abovementioned Guidelines include:-

#### **i. Foreign Capital Assets**

- Examples of Foreign Capital Assets are as follows:-
  - Immovable property that is physically situated outside Malaysia such as buildings and land;
  - Movable property that is physically situated outside Malaysia such as machinery, vehicle, fixtures, fitting, painting and plant;
  - Intellectual property rights situated outside Malaysia owned by the owner or licensee of the right who is a resident in Malaysia such as copyright, patent, research and development, computer software and trademark; and
  - Shares issued by a company incorporated outside Malaysia that are not under the ambit of Section 15C of the ITA 1967.

#### **ii. Tax Exemption Criteria – Compliance with Economic Substance Requirements**

- Gains from the disposal of Foreign Capital Assets received in Malaysia are eligible for tax exemption from 1<sup>st</sup> January 2024 to 31<sup>st</sup> December 2026 provided that the economic substance requirements are complied with by the taxpayers.
- The economic substance requirements are as follows:-
  - taxpayers must employ adequate number of employees with necessary qualifications to carry out the specified economic activities in Malaysia; and
  - taxpayers must incur adequate amount of operating expenditure for carrying out the specified economic activities in Malaysia.
- The determination of any minimum threshold value for the appropriate economic substance requirements is based on:-
  - the number of employees, considering the type of activity involved (whether it is a capital-intensive or labour-intensive industry);
  - whether the employees works full-time or part-time; and
  - whether the office premises has been used to carry out related activities or whether the premises is sufficient for those activities.
- For the purpose of economic substance requirements, a service director who is employed based on a contract of service can be considered as employee, whereas a non-service director is not considered an employee.
- The outsourcing of specific economic activities to an outsourcing entity can be considered for economic substance requirements adequacy purposes provided that:-
  - the specific economic activities are carried out by the outsourcing entity in Malaysia;
  - the person implements sufficient monitoring and control;
  - the outsourcing entity should apply the transfer pricing rules for performing the specific economic activities;
  - the number of qualified employees employed and the total operating expenses incurred by the outsourcing entity in Malaysia are equivalent (*sic*) to the level of specified economic activities carried out by the outsourcing entity; and
  - there is no double counting if the outsourcing entity provides services to more than one person.

### iii. Foreign Tax Credit

- A bilateral or unilateral tax credit pursuant to Section 132 and Section 133 of the ITA 1967 can be claimed if the gain from the disposal of Foreign Capital Assets received in Malaysia is chargeable to tax outside Malaysia.

### iv. Tax Reporting

- The gains from the disposal of Foreign Capital Assets received in Malaysia in the basis period for a year of assessment must be reported in the income tax return form specifying:-
  - the type and amount of the gain;
  - the country where the gain arises;
  - the amount of tax imposed by the foreign country on the gain; and
  - any other required information.

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