

MALAYSIAN CAPITAL GAINS TAX ON GAINS FROM DISPOSAL OF CAPITAL ASSETS IN MALAYSIA (SINGAPORE'S PERSPECTIVE)

29 JANUARY 2024

WHO IT APPLIES TO AND ON WHICH TYPE OF CAPITAL ASSETS

With effect from 1 January 2024, Malaysia will impose capital gains tax ("CGT") on gains derived by companies, limited liability partnerships, co-operatives and trust bodies ("herein referred to as Chargeable Person") from the disposal of the following capital assets:

- a) Unlisted shares of a company incorporated in Malaysia *; and
- b) Shares of a controlled company incorporated outside Malaysia where the controlled company owns substantial (i.e. where the defined value of the real property situated in Malaysia is 75% or more of the value of its total tangible asset) and/or shares in another controlled company owning substantial real property situated in Malaysia "herein collectively referred to as RP holding CFC". The disposal gains on these shares are deemed derived from Malaysia.

* Under the Income Tax (Exemption)(No. 7) Order 2023, however, a 2-month exemption from CGT is given for capital gains on disposal of unlisted shares of a company incorporated in Malaysia, effectively deferring the imposition of CGT on item a) above to 1 March 2024.

DEFINITIONS

"Disposal" means to sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares.

"Capital assets" mean movable or immovable property, including any rights or interest thereof.

"Shares" mean all or any of the following:

- a) Stock and shares in a company;
- b) Loan stock or debentures issued by a company or any other corporate body incorporated in Malaysia;
- c) A member's interest in a company not limited by shares whether or not it has a share capital; and
- d) Any option or other right in, over or relating to shares as defined in paragraph a) to c) above.

"Controlled company" means a company having 50 or less members and controlled by not more than 5 persons.

CAPITAL GAINS TAX RATE

The CGT rate for disposal of capital assets situated in Malaysia depends on when these capital assets were acquired:

Acquired **before 1 January 2024** : 10% on the chargeable income (i.e. net capital gains) OR
2% on the gross disposal price
(Taxpayer to elect)

Acquired **on or after 1 January 2024** : 10% on the chargeable income (i.e. net capital gains)

For disposal of capital assets situated outside of Malaysia, the CGT rate is the prevailing (currently 24%) tax rate.

HOW TO COMPUTE THE DISPOSAL GAIN

The disposal gain of the Chargeable Person is computed as follows:

DISPOSAL CONSIDERATION (<i>NET PROCEEDS</i>)	<p>Consideration in money or money's worth for the disposal of the capital asset at the time of disposal <i>LESS</i>:</p> <ul style="list-style-type: none"> i) The amount of any expenditure wholly & exclusively incurred on the capital asset at any time after its acquisition by or on behalf of the Chargeable Person making the disposal for the purpose of <u>enhancing or preserving the value of the capital asset being expenditure reflected in the state or nature of capital asset at the time of disposal</u>; ii) The amount of any expenditure wholly & exclusively incurred at any time after the acquisition of the capital asset by the Chargeable Person to <u>establishing, preserving or defending its title to, or to a right over, the capital asset</u>; and iii) The <u>incidental costs</u> to the Chargeable Person on making the disposal (E.g.: agent commission, cost of transfer & stamp duty, valuer/account/legal fees and cost of advertising.)
LESS:	
ACQUISITION CONSIDERATION (<i>NET COSTS</i>)	<p>Consideration in money or money's worth for the acquisition of the capital asset (together with the incidental costs) <i>LESS</i>:</p> <ul style="list-style-type: none"> i) Any sum received by the Chargeable Person by way of <u>compensation for any kind of damage/injury to the asset or for the destruction/dissipation of the asset or for any depreciation/risk of depreciation of the asset</u>; ii) Any sum received by the Chargeable Person under a <u>policy of insurance for any kind of damage/injury to or the loss/destruction/depreciation of the asset</u>; and iii) Any sum forfeited to the Chargeable Person as a <u>deposit made in connection with an intended transfer of the capital asset</u>.

DATE OF DISPOSAL

When there is a written agreement	The date of disposal will be taken to be on the date of such written agreement.
When there is no written agreement	<p>The date of disposal will be taken to be the date of completion of the disposal which is deemed to be the earlier of:</p> <ul style="list-style-type: none"> i) The date on which the ownership of the capital asset disposed of is transferred by the person who disposes the capital asset; or ii) The date on which the whole of the amount or value of the consideration for the transfer has been received by the person who disposes the capital asset.

When the disposal is subject to approval by the Malaysian Government or State Government	The date of disposal will be taken to be the date of such approval. If the approval by the Malaysian Government or State Government is conditional, the date will be the “date when the last of all such conditions is satisfied”.
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EXEMPTIONS

During the Malaysian Budget 2024 announcement, it was mentioned that companies undergoing restructuring of shares within the same group and IPO exercises approved by Bursa Malaysia may be exempted from the above capital gains tax regime. However, these were not legislated at the time of writing this newsletter.

MALAYSIAN ADMINISTRATIVE REQUIREMENTS

As the Chargeable Person disposing the Malaysian capital assets, you are obligated to inform the Inland Revenue Board of Malaysia in the prescribed form within 60 days from the date you dispose of any unlisted Malaysia shares and/or RP holding CFC shares and pay the capital gains tax liability due to the Malaysian government.

FOREIGN TAX CREDIT CLAIMS IN SINGAPORE

If a Singapore company receives capital gains which has been subject to the above said Malaysian capital gains tax and the gain is taxed again in Singapore upon receipt as income under Section 10L of the Singapore Income Tax Act, IRAS allows the company to claim double tax relief, unilateral tax credit or elect for the foreign tax credit pooling for the Malaysian-sourced capital gains tax suffered in Malaysia.

The foreign tax credit claim is subject to the condition that the Singapore company is ascertained to be a Singapore tax resident company in the basis year when the Malaysian-sourced capital gain is received in Singapore. The foreign tax credit claim is based on a formula and the amount allowed by IRAS is usually, lower than the actual foreign tax suffered. The foreign tax credit may be claimed within 4 years after the year of receipt.

DOES IT APPLY TO INDIVIDUALS?

When the foreign capital gains arising from the disposal of Malaysian assets are assessable as income in Singapore, it will be exempted under Section 13(1)(zu) of the Singapore Income Tax Act.

HOW WE CAN HELP

If you have disposed or is contemplating of disposing unlisted Malaysia shares and/or RP holding CFC shares which may fall within the ambit of Malaysian CGT, please let us have information so that we may assist you in your tax and financial statements reporting requirements.

Disclaimer

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