



# Capital Gains Tax

Exemption for group restructuring and  
initial public offering



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KPMG in Malaysia

# Capital Gains Tax

## What's now and then

Capital Gains Tax (“CGT”) had been in place effective from 1 January 2024, impacting companies, limited liability partnerships (“LLPs”), trust bodies and co-operative societies. To minimize the adverse impact on the initial public offerings (“IPOs”) market and corporate restructuring exercise, it was proposed in the 2024 Budget that exemptions will be given, subject to conditions.

Since then, companies that are looking to restructure their corporate shareholding structure or are planning for an IPO have been waiting for the issuance of the exemption orders to have a clearer picture on the conditions imposed for the CGT exemption. The Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 and the Income Tax (Initial Public Offering) (Exemption) Order 2024 [collectively known as Exemption Orders] have now been gazetted.



## Required conditions for the CGT exemption

CGT exemption can be given to companies, LLPs, trust bodies or co-operative societies on the chargeable income from gains arising from the disposal of unlisted shares of a Malaysian company under a scheme for restructuring of companies in the same group or in relation to restructuring of any company for the purpose of an IPO. The conditions of the respective Exemption Orders have been summarized as follows:

| Type of corporate exercise                   | CGT exemptions  |
|--|---|
| Restructuring of companies in the same group | <p><b>Qualifying disposer</b></p> <ul style="list-style-type: none"> <li>Companies, LLPs, trust bodies or co-operative societies</li> </ul> <p><b>Qualifying acquirer</b></p> <ul style="list-style-type: none"> <li>Acquirer company that is a resident in Malaysia</li> </ul> <p><b>Qualifying disposal</b></p> <ol style="list-style-type: none"> <li>Disposal of unlisted shares of a company incorporated in Malaysia within the period from 1 March 2024 to 31 December 2028;</li> <li>The disposal results in an increase of efficiency in the operation of the qualifying disposer, or the qualifying acquirer, or both;</li> </ol> |

| Type of corporate exercise | CGT exemptions |
|----------------------------|----------------|
|----------------------------|----------------|

Restructuring of companies in the same group (cont'd)

#### Qualifying disposal (cont'd)

- iii) The consideration for the disposal shall consist of shares in the qualifying acquirer, or not less than 75% of shares in the qualifying acquirer and the balance of a money payment. The shares in the qualifying acquirer shall be issued to the qualifying disposer; and
- iv) Fulfill any other conditions as specified in the guidelines to be issued by the Director General of Inland Revenue (“DGIR”).

Subject to item (iv) above, the qualifying disposer shall apply in writing to the DGIR after the period of 3 years from the date of disposal of shares.

#### Non-application

- Disposal of shares where the gains are chargeable to tax as business income under Section 4(a) of the Income Tax Act, 1967 (“the Act”)
- Disposal of shares in respect of restructuring of any companies for the purpose of an IPO and the application for the IPO has been made to the Securities Commission or Bursa Malaysia Securities Berhad (exemption may be available under a separate exemption order as summarized below)
- Disposal of shares where a tax exemption has been granted under paragraph 127(3)(b) or subsection 127(3A) of the Act

#### Determination of acquisition price for the qualifying acquirer for subsequent disposal of shares

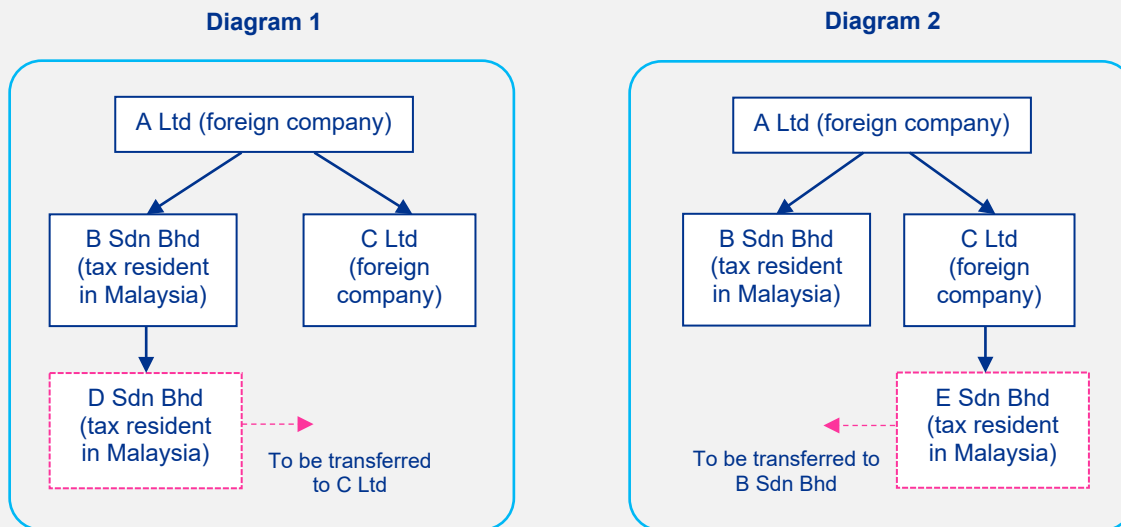
- It shall be taken to be the acquisition price of the qualifying disposer plus any allowable expenses incurred by the qualifying disposer under subparagraphs 65E(2)(a)(i) and (ii) of the Act

#### Preliminary observation

- The exemption is limited to disposal of shares to an acquirer company that is resident in Malaysia. As illustrated in Diagram 1, the disposal of shares of D Sdn Bhd from B Sdn Bhd to C Ltd could not qualify for the exemption. On the other hand, under Diagram 2, the disposal of shares of E Sdn Bhd from C Ltd to B Sdn Bhd may be exempted from CGT, provided that all other prescribed conditions are met.

## Type of corporate exercise

## CGT exemptions

Preliminary observation (cont'd)

In this respect, careful consideration is needed during corporate restructuring for a multinational enterprise group, to avoid the added tax burden from CGT, where possible.

- One of the main conditions for the exemption is to prove that there is an increased in operational efficiency, which is similar to the conditions in the stamp duty relief under Section 15A and no-gain-no-loss treatment for real property gains tax. Nonetheless, further guidance is needed from the Inland Revenue Board (“IRB”) on the required documentation to make such justification and the timeline given in achieving the operational efficiency.
- At least 75% of the consideration for the acquisition shall consists of shares in the qualifying acquirer to the qualifying disposer. In other words, if the shares in the qualifying acquirer are issued to the shareholders of the qualifying disposer, the exemption does not apply.

If the consideration does not consist of wholly of shares, the balance shall be in money payment.

Clarification is required from the IRB, as to whether:

- The qualifying acquirer must increase its share capital for the acquisition, or there is flexibility for the qualifying acquirer to issue treasury shares.
  - Money payment covers contra entry i.e. amount receivable is offset against amount payable due to bilateral relationship.
- It remains to be seen what are the additional conditions to be imposed in the guidelines to be issued by the DGIR, such as the qualifying disposer and qualifying acquirer must remain in the same group for a period of time.
  - The qualifying disposer is required to apply in writing to the DGIR after the period of 3 years from the date of disposal of shares. This brings the question of the rationale behind such requirement. Does this imply that, the qualifying disposer is required to pay the necessary CGT upfront and subject to meeting the conditions stipulated in the IRB’s guidelines, apply for exemption and CGT refund from the DGIR after 3 years period?

We hope that the exemption mechanism can be clarified in the IRB’s guidelines.

| Type of corporate exercise | CGT exemptions |
|----------------------------|----------------|
|----------------------------|----------------|

Restructuring of any company for an IPO

#### Qualifying disposer

- Companies, LLPs, trust bodies or co-operative societies

#### Qualifying disposal

- i) Disposal of unlisted shares of a company incorporated in Malaysia within the period from 1 March 2024 to 31 December 2028;
- ii) The qualifying disposer shall apply for the IPO under the Capital Market and Services Act 2007 within the period of 1 year from the date of the disposal of shares to the Securities Commission for the purpose of listing on the Main Market, or to Bursa Malaysia Securities Berhad for the purpose of listing on the ACE Market and LEAP Market; and
- iii) The approval for the above IPO application shall be obtained on or before 31 December 2028.

The qualifying disposer shall apply in writing to the DGIR within the period of 1 year from the date of approval for the application of the IPO.

#### Non-application

- Disposal of shares where the gains are chargeable to tax as business income under Section 4(a) of the Act
- Disposal of shares where an application for exemption has been made under the Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024
- Disposal of shares where a tax exemption has been granted under paragraph 127(3)(b) or subsection 127(3A) of the Act

#### Preliminary observation

- Similar concern arises as to whether the qualifying disposer is required to pay the necessary CGT upfront and subject to meeting the prescribed conditions, apply for exemption and CGT refund from the DGIR within 1 year after the approval for the application of the IPO is granted.

We hope that the exemption mechanism can be clarified in the IRB's guidelines.

Despite the above exemption given, companies, LLPs, trust bodies and co-operative societies are still required to comply with the CGT filing requirement.

It should also be noted that, where the disposal of shares, be it for the purpose of restructuring exercise or IPO, made within the period from 1 March 2024 to 31 December 2028 results in a loss instead of a gain, such loss shall be disregarded and is permanently lost.

## What to consider next?

Affected taxpayers that have carried out the group restructuring exercise or IPO exercise and have filed the CGT returns, before the issuance of the Exemption Orders, may need to revisit their tax position. Where all the prescribed conditions have been fulfilled, these taxpayers may write in to the DGIR to apply for CGT exemption within the prescribed timeline, and subsequently, apply for a tax refund.

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