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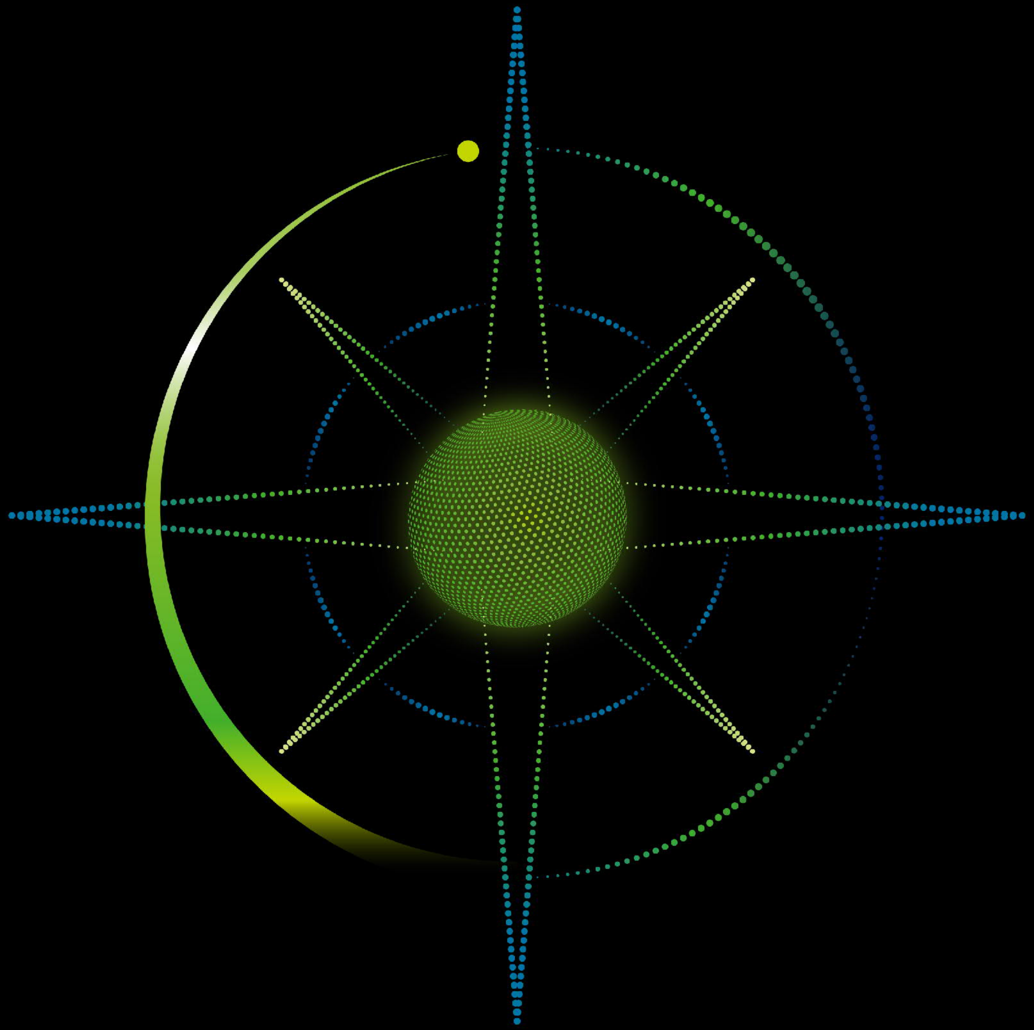

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Tan Wei Chuan and Cheng Ai Ling I 21 November 2023

MAKING AN IMPACT THAT MATTERS since 1845

Capital Gains Tax

Corporate Tax

Capital Gains Tax ("CGT")

What we know Budget 2023 and Budget 2024 Speech

Current

- No CGT is imposed on disposal of capital items except for Real Property Gains Tax ("RPGT") on gains arising from disposal of real properties or shares in real property companies ("RPC").
- Gains arising from revenue transactions are subject to tax under Income Tax Act, 1967 ("the Act").

Proposed

CGT on disposal of shares of a company incorporated in Malaysia not listed on the stock exchange.

Effective: 1 March 2024

Exemption

Exemption is to be granted for the disposal of unlisted shares in relation to:

- Initial Public Offering approved by Bursa Malaysia
- Restructuring within the same group
- Venture capital company

Corporate Tax

Capital Gains Tax (“CGT”)

What have been provided Finance (No.2) Bill 2023 – amendments to ITA 1967

1. Section 2 Interpretation “capital asset” means movable or immovable property including any rights or interests thereof
2. Section 4(aa) gains or profits from the disposal of capital asset
3. Section 4B Non-business income…other than gains or profits where subsection 24(1) applies
4. Section 15C
5. Chapter 9, Part III (prevails over other foregoing chapters where there is any inconsistency)
6. Section 77A(1B)
7. Part XXI, Schedule 1
8. Para 38, Schedule 6:

DTA

(1) Gains or profits from the disposal of a capital asset situated in Malaysia.

(2) The exemption under subparagraph (1) shall not apply to—

(a) disposal of shares of a company incorporated in Malaysia not listed on the stock exchange; and

(b) disposal of shares under section 15C.

Effective

1 January 2024

Corporate Tax

Capital Gains Tax ("CGT") - Chapter 9 Part III, Part XXI Schedule 1

Taxable persons:

- Company
- Limited Liability Partnership
- Co-operative society
- Trust Body (including unit trust)

"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

"shares" means all or any of the following:

(a) stock and shares;

(b) loan stock and debentures;

(c) a member's interest in a company;

(d) any option or other right in, over or relating to shares as defined in (a) to (c)

Tax rates

Capital asset acquisition date	CGT rate
Before 1 January 2024	• 10% on the chargeable income from the disposal of the capital asset, OR • 2% of gross on the disposal price of the capital asset
From 1 January 2024	10% on the chargeable income from the disposal of the capital asset

Date of disposal and acquisition

Any written agreement?	Date of disposal and acquisition
Yes	Date of the agreement*
No	Date of completion of the disposal

*Subject to conditional contract (i.e. approval by Government or State Government)

Corporate Tax

Capital Gains Tax (“CGT”) - Chapter 9 Part III, Section 77A(1B)

Reporting

Submission of the prescribed form through e-Filing must be done for each disposal transaction and CGT payment should be made within 60 days from the date of disposal

Deemed MV, valuation report

Computation adjusted income (treated as chargeable income)

Disposal consideration (reduced by expenditure w&e incurred for enhancing, preserving value, defending title, incidental costs) deduct acquisition consideration (less incidental costs, compensation, insurance for any kind of damage or injury, deposit forfeited)

Acquisition consideration

Losses

- Ascertained by reference to each disposal separately and treated as a separate source of gains or profits
- Capital losses are deductible against the same source of income and against the subsequent disposal of capital asset only
- Unabsorbed capital losses can be carried forward for a limited period of 10 consecutive YAs

Corporate Tax

Capital Gains Tax (“CGT”) – Section 15C

Gains deemed to be derived from Malaysia

Gains or profits accruing to a person in a year of assessment on the disposal of capital asset which is a share of a controlled company incorporated outside Malaysia (“Foreign Co”) shall be deemed to be derived from Malaysia where at the date of acquisition of the shares of Foreign Co, the Foreign Co owns real property situated in Malaysia or shares of another controlled company (“RPC”)* or both where the defined value of the real estate or shares of RPC or both is more than 75% of the value of the Foreign Co’s total tangible assets

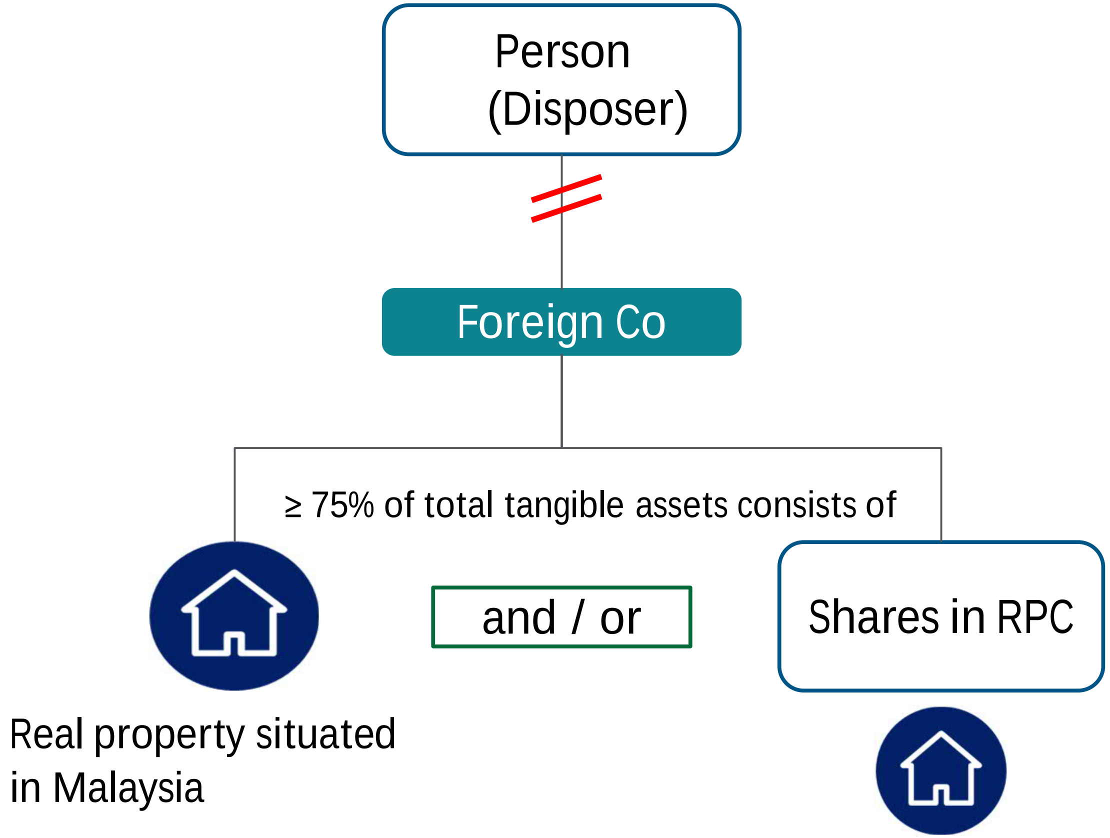
* the defined value of the real property situated in Malaysia owned by RPC is not less than 75% of the value of its total tangible asset

Effective: 1 January 2024

Corporate Tax

Capital Gains Tax (“CGT”) – Section 15C

Illustration - Gains deemed to be derived from Malaysia



Capital Gains Tax (“CGT”) – Section 15C

Section 15C

(3) The shares of the relevant company (i.e. Foreign Co in earlier slides) in this section

shall be deemed to be acquired—

(a) on the date the defined value of real property or shares or both owned by the relevant company is in accordance with subsection (2); or

(b) on the date of acquisition of the shares of the relevant company.

(4) For the purposes of this section, the acquisition price of shares of the relevant company shall—

(a) where paragraph (3)(a) applies, be deemed to be equal to a sum determined in accordance with the formula:

$$\frac{A}{B} \times C$$

Where A…

(b) where paragraph (3)(b) applies, be determined in accordance with paragraph 65E(2)(b) or

subsection 65E(8).

Corporate Tax

Capital Gains Tax ("CGT") – Section 15C

Part XXI, Schedule 1

…income tax shall be charged for a YA on the income of a company, limited liability partnership, trust body or co-operative society from the disposal of capital asset referred to in paragraph 4(aa) at the following rates:

(a) in relation to a disposal of capital asset situated in Malaysia which was acquired before 1 January 2024…

(b) in relation to a disposal of capital asset situated in Malaysia which was acquired on or after 1 January 2024 at the rate of 10 per cent…

(c) in relation to a disposal of capital asset other than a disposal under paragraphs (a) and (b), at the applicable rate to the company, limited liability partnership, trust body or co-operative society as specified under Part I or IV on every ringgit of the chargeable income from the disposal of the capital asset.

Corporate Tax

Capital Gains Tax ("CGT") – Section 15C

Section 77A(1B)

Notwithstanding subsections (1), (3) and (4), every company, limited liability partnership, trust body or co-operative society who disposes of capital asset shall, within sixty days (or such other period the Director General may allow on a written request being made to him) of the date of disposal of that asset, furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 152A...

Corporate Tax

Capital Gains Tax ("CGT") – Sections 3 and 4(aa)

Foreign source CGT

Scope

Taxes are levied on gains from disposal of all types of capital assets situated outside Malaysia and received in Malaysia.

Tax rate

The applicable tax rate is the prevailing income tax rates of the respective taxpayer categories.

Exemptions (??)

Met economic substance:

- Employ sufficient number of employees with the necessary qualifications
- Making adequate operating expenses

Effective: 1 January 2024

Corporate Tax

Corporate Tax

Filing of Estimate of Tax Payable and Special Allowances for Small Value Assets for Micro, Small and Medium Sized Companies (“MSMEs”)

Proposed

MSMEs resident and incorporated in Malaysia that have more than 20% of ordinary paid-up share capital owned by companies incorporated outside Malaysia or individuals who are not Malaysian citizens are not eligible to enjoy –

- Exemption from filing tax estimates for a period of 2 YAs from the YA in which the MSME commences operation;
- Special allowance for small value assets without a restriction of RM20,000.

Effective

YA 2024

Corporate Tax

Revision of Estimate of Tax Payable by a Company, LLP, Trust body or Co-operative society

Current

Revision of estimate of tax payable can be made in the 6^{th}, 9^{th} or both months of the basis period for a YA.

Proposed

To expand by allowing a company, LLP, trust body or co-operative society to revise its estimate of tax payable in the 11^{th} month of the basis period.

Effective

YA 2024

Corporate Tax

Mandatory Electronic Delivery of Information and Document via Malaysian Income Tax Reporting System ("MITRS")

Proposed

Companies and other than companies are required to provide information and furnish document through the MITRS

Deadline

Submit within 30 days after the deadline for submission of the return form

Penalty under Section 120 of the Income Tax Act 1967

Liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding 6 months, or both.

Effective

YA 2025

Corporate Tax

Interpretation of Foreign Taxes and Foreign Income

Current	Proposed
Section 2(1) of the Act FOREIGN TAX Any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia and in relation to paragraph 132(4)(d) or section 132A includes other taxes of every kind imposed by or under the laws of that territory	FOREIGN TAX Any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia in which the same income arose and in relation to paragraph 132(4)(d) or section 132A includes other taxes of every kind imposed by or under the laws of that territory
Paragraph 16, Schedule 7 of the Act FOREIGN INCOME Income derived from outside Malaysia or in the case of bilateral credit, includes income derived from Malaysia charged to foreign tax	FOREIGN INCOME In relation to— (a) unilateral credit, income derived from outside Malaysia charged to foreign tax; (b) bilateral credit, income derived from outside Malaysia and from Malaysia, charged to foreign tax

Effective: YA 2024

Corporate Tax

Review of Conditions for Approval for Institutions / Organisations / Funds Approved under Section 44(6) of the Act

<table>
<tr><th rowspan="2"></th><th rowspan="2">Current</th><th colspan="2">Proposed</th></tr>
<tr><th>Option 1</th><th>Option 2</th></tr>
<tr><td>Conditions after obtaining approval under Section 44(6) of the Act :
i. Utilisation of accumulated funds (business purpose)
ii. Threshold of charitable activity expenditure</td><td>Up to 25%
At least 50%</td><td>Up to 25%
At least 50%</td><td>> 25% and up to 35%
At least 60%</td></tr>
<tr><td>Breach of conditions</td><td>Approval under Section 44(6) of the Act will be withdrawn.</td><td colspan="2">• The institutions / organisations / funds will not be eligible for tax exemption in the YA the breach of conditions occurred.
• Approval under Section 44(6) of the Act will not be withdrawn to ensure donors remain eligible for tax deductions on contributions made to the institutions / organisations / funds throughout the approval period.</td></tr>
</table>

Effective: YA 2024

Corporate Tax

Exemption of Income Tax for Institutions, Organisations or Funds Approved under Section 44(6) of the Act

Current

Pursuant to Paragraph 13(1)(a), Schedule 6 of the Act

The income of an institution, organisation or fund approved under Section 44(6) of the Act is exempted from income tax so long as the approval remains in force.

Proposed

The income of an institution, organisation, or fund approved under Section 44(6) of the Act for a year of assessment is exempted from income tax as long as it complies with the conditions of approval

Effective: YA 2024

Corporate Tax

Tax Deduction under Section 44(6) of the Act for Contributions to Approved Institutions, Organisations or Funds that Implements Educational Programmes including Sports Education

Proposed

- Expansion of tax deduction of up to 10% of the aggregate income of individuals or companies to cover contributions to institutions, organisations or funds approved under Section 44(6) of the Act that implement educational programmes including sports education in collaboration with Ministry of Education.

Effective: YA 2024

Real Property Gains Tax

Real Property Gains Tax ("RPGT")

Implementation of RPGT's self-assessment system

Current	Proposed
The filing of RPGT returns is under an official assessment by the IRB	Introduction of RPGT's self assessment system

Effective

1 January 2025

How does this impact taxpayers?

- Disposer is required to calculate his/her own tax in the RPGT return form
- The submitted RPGT return form is deemed to be a notice of assessment that is considered to have been served on the taxpayer by the IRB on the date the return is furnished by the taxpayer
- The assessment can be amended by submitting an amended RPGT return form within 6 months from the due date of the RPGT return form
- Documents to be retained for a period of 7 years from the end of the YA in which the assessment was raised

Real Property Gains Tax

Acquisition / disposal of shares in a real property company ("RPC")

Current	Proposed
Acquisition of shares in a RPC will be deemed to be an acquisition of chargeable assets whilst a disposal of shares in a RPC is deemed to be a disposal of chargeable assets that is subject to RPGT.	Acquisition / disposal of shares in a RPC by a company, LLP, trust body or co-operative society will no longer be deemed to be an acquisition / disposal of a chargeable asset for RPGT purposes as this will be caught under CGT.

Effective

1 January 2024

Stamp Duty

Stamp Duty

Definition of 'writing or written'

Current	Proposed
• Instrument include "every written documents" • The current definition of "instrument" does not clarify whether electronic instruments meet the interpretation of the "instrument".	To include the definition of writing or written to include "any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form"

Effective

1 January 2024

Stamp Duty

Evidence for instruments executed outside of Malaysia

Current	Proposed
• Instruments which are executed outside of Malaysia should be brought for stamping within 30 days from the date when it is first received in Malaysia. • As evidence of when it was first received in Malaysia, a copy of the post office stamp or the airway bill will need to be provided. • The current provision doesn't clarify the verification in respect of receipt of instruments executed outside of Malaysia and received in Malaysia via electronic transmission.	• Instruments executed outside Malaysia concerning any matter in Malaysia are subject to stamping within 30 days of acceptance via electronic medium. • Any receipt of instrument in Malaysia via electronic transmission may be verified via a copy or the printout of the electronic transmission.

Effective

1 January 2024

Stamp Duty

Stamp duty for foreign currency loan

	Current	Proposed
Instrument under Item 27(a)(ii)	Instrument where the loan is a foreign currency loan or the financing was made according to the syariah in currencies other than RM	
Stamp duty	Duty at the rate of 0.5% but capped at RM2,000	Duty at the rate of 0.5% without any capped amount

Effective

1 January 2024

Stamp Duty

Stamp duty for transfer of property ownership involving the renunciation of rights to another eligible beneficiary

Current	Proposed
Eligible beneficiary renunciates his/her rights to another eligible beneficiary or non-beneficiary shall be subject to ad-valorem stamp duty of 1% to 4%.	The instrument for transfer of any property by way of release or renunciation by an eligible beneficiary to another eligible beneficiary entitled under the same estate shall be subject to a nominal stamp duty of RM10.

Effective

For instrument executed from 1 January 2024

Stamp Duty

Stamp duty for transfer of property to non-citizen individuals & foreign companies

Current	Proposed
Instrument for transfer of property in Malaysia is subject to ad-valorem stamp duty of 1% to 4%.	A flat stamp duty rate of 4% will be imposed on instruments for transfer of any property to non-citizen individuals (excluding Malaysian permanent residents) and foreign companies.

Effective

For instrument executed from 1 January 2024

Stamp Duty

Exercise of Original Jurisdiction by High Court in Stamp Duty Appeals

Proposed

Existing provision will be amended to clarify that the High Court shall exercise "original jurisdiction" while hearing an appeal of the duty payer on the assessment raised by the Collector of Stamp Duty.

Effective

1 January 2024

Stamp Duty

Termination of Use of Digital Franking Machine and Postal Franking Machine & Abolishment of the Use of Adhesive Stamps

Overall Objective	Proposed	Consequences
To fully implement online stamping through the Stamp Assessment and Payment system.	• Termination of the use of digital franking machine and postal franking machine. • Termination of the use of adhesive stamps.	The Stamp Act 1949 will be amended to clarify that the documents/agreements which have been stamped using the Revenue Stamps method after 31 December 2023 are invalid as proof of being stamped.

Effective

1 January 2024

Others

Implementation of Global Minimum Tax (“GMT”)

What is GMT?
An international taxation rule to ensure that multinational enterprises (“MNEs”) pay a fair share of tax wherever they operate and generate profits.

Proposed amendments:
New

- Domestic Top Up Tax (“DTT”)
- Multinational Top Up Tax (“MTT”)

In following legislations:

- Income Tax Act 1967
- Petroleum (Income Tax) Act 1967
- Labuan Business Activity Tax Act 1990

Effective
To be implemented in year 2025

GMT

Who is involved?

1. MNE group includes at least one entity or permanent establishment (“PE”) that is not located in the same jurisdiction as the Ultimate Parent Entity (“UPE”) with
2. Annual consolidated group revenue of at least EUR 750 million in at least two of the four immediately preceding fiscal years.

Who is excluded?

- Government bodies and international organizations
- Non-profit organization
- Pension fund
- An investment fund that is a UPE
- Real estate investment vehicle which is a UPE

What is the rate?
Minimum effective tax rate = 15%