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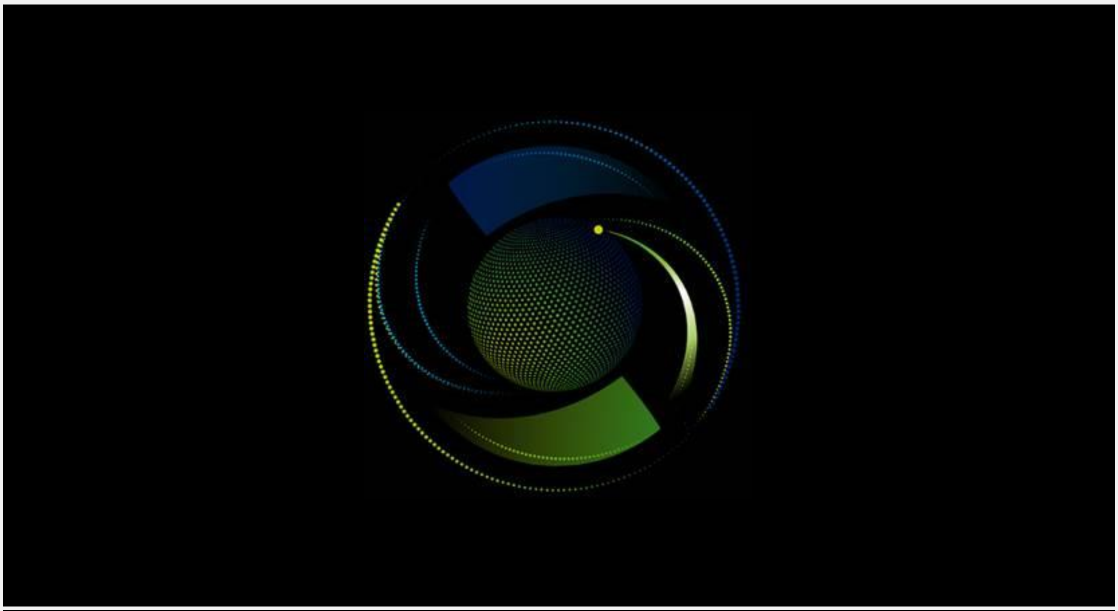

Tax Espresso – Special Alert

Capital Gains Tax (CGT) Exemption on gains from disposal of unlisted shares in relation to the Restructuring of Companies Scheme and Initial Public Offering (IPO)

Introduction

On 8 October 2024, two exemption orders were gazetted to provide capital gains tax (CGT) exemptions on gains or profits received from the disposal of unlisted shares (i.e., shares of a company incorporated in Malaysia which is not listed on the stock exchange) for the purposes of restructuring of companies in the same group and initial public offering (IPO):

- Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 [*P.U.(A) 289/2024*]; and
- Income Tax (Initial Public Offering) (Exemption) Order 2024 [*P.U.(A) 290/2024*]

Certain conditions must be fulfilled by the qualifying persons (i.e., companies, limited liability partnerships, trust bodies or co-operative societies) to qualify for the exemptions.

Background

In 2024, Malaysia introduced CGT on certain disposals of capital assets. For CGT purposes, capital assets include certain shares, as well as assets situated outside Malaysia.

Effective from 1 March 2024, CGT is implemented on the sale of unlisted shares by companies, limited liability partnerships, trust bodies and co-operative societies (disposers). Last year, the 2024 Budget announced that exemptions from CGT will be given on disposals of shares in relation to intragroup restructuring exercises and approved IPO. The above exemption orders were gazetted to give effect to these exemptions.

This article summarises the exemptions from CGT on disposals of shares in relation to intragroup restructuring exercises and approved IPO granted under the above exemption orders.

Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 [*P.U.(A) 289/2024*]

Exemption

A company, limited liability partnership, trust body or co-operative society (chargeable person) is exempted from CGT in respect of gains or profits received from the disposal of unlisted shares to an acquirer company resident in Malaysia in relation to the restructuring of companies in the same group.

For the purposes of the CGT exemption under P.U.(A) 289/2024, the chargeable person shall comply with the conditions and application procedures as follows:

(a) The disposal of shares shall be made between the period of **1 March 2024 and 31 December 2028**.

(b) The shares shall be disposed of under a scheme for restructuring of companies in the same group to increase efficiency in the operation of the company, limited liability partnership, trust body or co-operative society, or the acquirer company or both.

(c) The consideration for the disposal of shares shall consist of shares in the acquirer company or not less than 75% of shares in the acquirer company and the balance of a money payment, and the shares shall be issued to the company, limited liability partnership, trust body or co-operative society.

(d) The company, limited liability partnership, trust body or co-operative society shall apply in writing to the Director General after the period of 3 years from the date of the disposal of shares.

(e) The company, limited liability partnership, trust body or co-operative society shall comply with the conditions imposed by the Minister as specified in the guidelines issued by the Director General under Section 134A of the Income Tax Act 1967 (ITA).

Loss from disposal of shares

Where the company, limited liability partnership, trust body or co-operative society incurs any loss from the disposal of shares within the period from 1 March 2024 to 31 December 2028, such loss shall be disregarded for the purposes of Sections 65E(5) and 65E(6) of the ITA.

Determination of acquisition amount or value of consideration for subsequent disposal of shares by the acquirer company

If the acquirer company subsequently disposes of the shares, the acquisition amount or value of consideration determined for the shares shall be deemed to be equal to the amount or value of consideration determined under Section 65E(2)(b) of the ITA paid for the shares by the company, limited liability partnership, trust body or co-operative society plus the allowable expenses under Sections 65E(2)(a)(i) and 65E(2)(a)(ii) of the ITA incurred by the company, limited liability partnership, trust body or co-operative society.

Non-application

The exemption under P.U.(A) 289/2024 shall not apply to:

- a disposal of unlisted shares where gains or profits from the disposal of shares is chargeable to tax as a business income under Section 4(a) of the ITA;

- a disposal of shares by the company, limited liability partnership, trust body or co-operative society in respect of restructuring of any companies for the purposes of an IPO and the application for the IPO has been made to the Securities Commission or Bursa Malaysia Securities Berhad; or

- a company, limited liability partnership, trust body or co-operative society which a tax exemption has been granted under Sections 127(3)(b) or 127(3A) of the ITA, in respect of the same disposal of shares.

***Deloitte comment**: P.U.(A) 289/2024 states that an application is to be made in writing by the chargeable person to the Director General of Inland Revenue Board (IRB) after a period of 3 years from the date of the disposal of shares. It is hoped that further clarification will be provided in the guidelines (which will be issued by the IRB) on the application and approval procedures as well as details on the additional qualifying conditions to be imposed. At this moment, it is unclear whether the chargeable person can claim an exemption upon filing the CGT returns under the ITA, or pay the CGT upfront and get a refund when an application is made 3 years after the disposal of shares and approval for exemption is granted by the IRB subsequently. It is also unclear if there is any holding period for such shares to be held within the same group and whether subsequent disposal of such shares to resident related companies to increase efficiency in the operation, will be exempted from CGT.*

Income Tax (Initial Public Offering) (Exemption) Order 2024 [*P.U.(A) 290/2024*]

Exemption

A company, limited liability partnership, trust body or co-operative society (chargeable person) is exempted from CGT in respect of gains or profits received from the disposal of unlisted shares in relation to an IPO.

For the purposes of the CGT exemption under P.U.(A) 290/2024, the chargeable person shall comply with the conditions and application procedures as follows:

(a) The disposal of shares shall be made between the period of **1 March 2024 and 31 December 2028**.

(b) The shares shall be disposed of in relation to restructuring of any company for an IPO.

(c) The company, limited liability partnership, trust body or co-operative society shall apply for the IPO under the Capital Market and Services Act 2007 [*Act 671*] within the period of 1 year from the date of the disposal of shares –
  (i) to the Securities Commission for the purpose of listing on the Main Market; or
  (ii) to Bursa Malaysia Securities Berhad for the purpose of listing on the ACE Market and LEAP Market.

(d) The company, limited liability partnership, trust body or co-operative society shall obtain the approval for the application of the IPO, either on or before **31 December 2028**.

(e) The company, limited liability partnership, trust body or co-operative society shall apply in writing to the Director General within the period of 1 year from the date of approval for the application of the IPO to the Securities Commission or Bursa Malaysia Securities Berhad.

Loss from disposal of shares
Where the company, limited liability partnership, trust body or co-operative society incurs any loss from the disposal of shares within the period from 1 March 2024 to 31 December 2028, such loss shall be disregarded for the purposes of Sections 65E(5) and 65E(6) of the ITA.

Non-application
The exemption under P.U.(A) 290/2024 shall not apply to:

- a disposal of unlisted shares where gains or profits from the disposal of shares is chargeable to tax as a business income under Section 4(a) of the ITA;

- a company, limited liability partnership, trust body or co-operative society who has made an application for exemption under the Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 [*P.U.(A) 289/2024*] in respect of the same disposal of shares; or

- a company, limited liability partnership, trust body or co-operative society which a tax exemption has been granted under Sections 127(3)(b) or 127(3A) of the ITA in respect of the same disposal of shares.

***Deloitte comment**: Similarly, P.U.(A) 290/2024 states that an application is to be made in writing by the chargeable person to the Director General of IRB. Such application shall be made within the period of 1 year from the date of approval for the application of the IPO to the Securities Commission or Bursa Malaysia*

Securities Berhad. Albeit no guideline is to be issued by the IRB and no further conditions are to be imposed for the exemption from CGT under P.U.(A) 290/2024, sufficient details on the application and approval procedures should be provided by the authorities to guide a chargeable person. Again, at the moment, it is not clear whether the chargeable person can claim an exemption upon filing the CGT returns under the ITA, or pay the CGT upfront and get a refund when an application is made within the period of 1 year from the date of approval for the application of the IPO and approval for exemption is granted by the IRB subsequently.

Get in touch

For any queries or assistance, please reach out to your usual Deloitte contact.