



Tax Espresso – Special Alert

Exemption from Capital Gains Tax and Tax on Foreign-Source Income for Unit Trusts

Introduction

On 20 September 2024, the following exemption orders have been gazetted to grant a qualifying unit trust resident in Malaysia an exemption from capital gains tax (CGT) (from 1 January 2024 to 31 December 2028) and tax on foreign-source income received in Malaysia from outside Malaysia (from 1 January 2024 to 31 December 2026):

- Income Tax (Unit Trust) (Exemption) Order 2024 [[P.U.\(A\) 249/2024](#)]; and
- Income Tax (Unit Trust in relation to Income Received in Malaysia from Outside Malaysia) (Exemption) Order 2024 [[P.U.\(A\) 250/2024](#)]

Key points

Income Tax (Unit Trust) (Exemption) Order 2024 [[P.U.\(A\) 249/2024](#)]

Exemption

A qualifying unit trust resident in Malaysia is exempted from CGT in respect of any gains or profits from the disposal of the following shares:

- shares of a company incorporated in Malaysia, which are not listed on the stock exchange (unlisted shares); and
- shares of a controlled company incorporated outside Malaysia, which owns real property situated in Malaysia or shares of another controlled company, subject to meeting the 75% threshold conditions which are deemed to be derived from Malaysia under Section 15C of the Income Tax Act 1967 (ITA) [Section 15C shares].

The disposal of shares shall be made between the period of **1 January 2024 and 31 December 2028**.

The qualifying unit trust shall not include a unit trust which is approved by the Securities Commission as a Real Estate Investment Trust or Property Trust Fund listed on Bursa Malaysia.

Loss from disposal of shares

Any loss from the disposal of shares shall be set off against the gains from subsequent disposals in accordance with Sections 65E(5) and 65E(6) of the ITA.

Non-application

This Exemption Order shall not apply to a disposal of shares where gains or profits from the disposal of shares are chargeable to tax as a business income under Section 4(a) of the ITA.

Income Tax (Unit Trust in relation to Income Received in Malaysia from Outside Malaysia) (Exemption) Order 2024 [P.U.(A) 250/2024]

Exemption

Effective from **1 January 2024 to 31 December 2026**, a qualifying unit trust is exempted from the payment of income tax in respect of the gross income from all sources of income under Section 4 of the ITA which is received in Malaysia from outside Malaysia (foreign-source income) in the basis period for a year of assessment (YA).

The qualifying unit trust shall be a unit trust resident in Malaysia managed by a management company and the qualifying unit trust has income received in Malaysia from outside Malaysia but does not include a unit trust which is approved by the Securities Commission as Real Estate Investment Trust or Property Trust Fund listed on Bursa Malaysia.

“Management company” means a company licensed by the Securities Commission by which or on whose behalf a unit of a qualifying unit trust—

- (a) has been or is proposed to be issued, or offered for subscription or purchase;
- or
- (b) in respect of which an invitation to subscribe or purchase has been made,

and includes any person for the time being, who is exercising the functions of the management company.

The qualifying unit trust or the management company of the qualifying unit trust shall, in the basis period for a YA, comply with the conditions imposed by the Minister as specified in the guidelines issued by the Director General of Inland Revenue under Section 134A of the ITA, which shall include the following conditions:

- **Option A:**
 - The foreign source income of the qualifying unit trust has been subjected to tax in the country of origin; and
 - The highest rate of tax (headline tax) in the country of origin is not less than 15%; or
- **Option B:**
 - The management company of the qualifying unit trust complies with the economic substance requirements (i.e., employ an adequate number of employees in Malaysia and incur an adequate amount of operating expenditure in Malaysia).

Any deduction in relation to the income exempted shall be disregarded for the purpose of ascertaining the chargeable income of the qualifying unit trust.

Non-application

This Exemption Order shall not apply to a qualifying unit trust carrying on the business of banking, insurance, sea transport, or air transport.

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