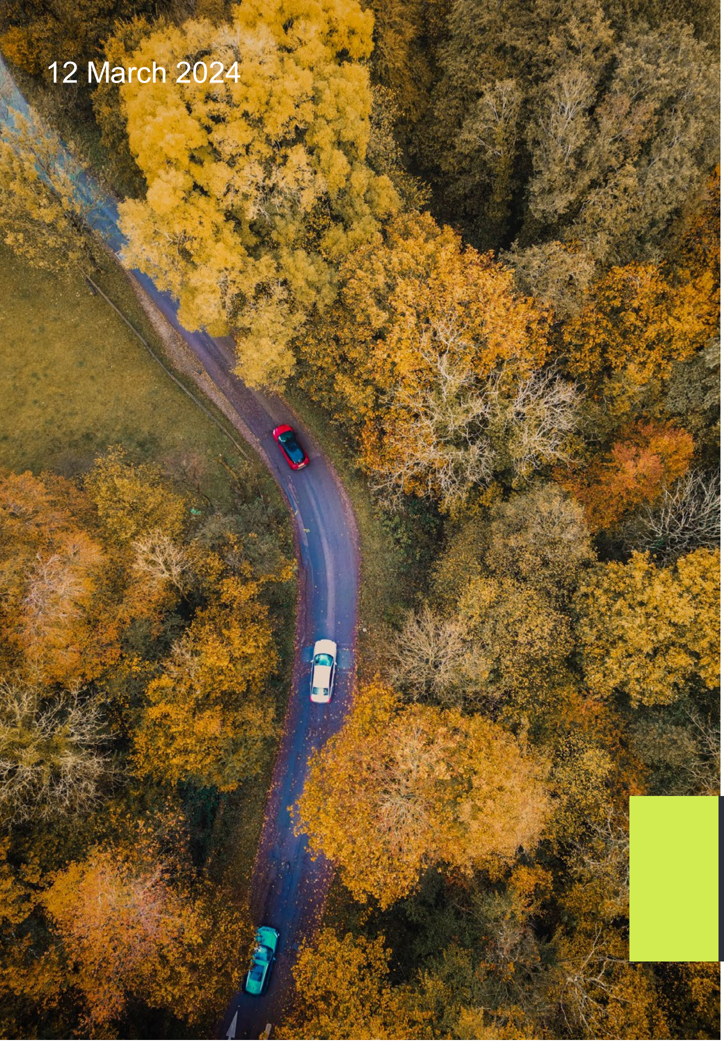
12 March 2024



TaxSnaps

Capital Gains Tax ("CGT") and 'economic substance'!

Following our earlier TaxSnaps on CGT (click HERE), an income tax exemption order has been issued recently, in connection with gains from disposal of capital assets situated outside Malaysia.

Let us go through the details of this exemption.

continued…

Disposal of capital assets situated outside Malaysia

Income Tax (Exemption) (No. 3) Order 2024

Under the abovementioned exemption order, the Minister **exempts** the following –

Company	Limited liability partnership	Trust body	Co-operative society

resident in Malaysia from the payment of income tax in respect of any gains or profits from the disposal of capital asset arising from outside Malaysia which is received in Malaysia in the basis period for a year of assessment ("YA").

Conditions

For the purposes of the above exemption; the company, LLP, trust body and 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"), which shall include the following conditions –

- Employ an adequate number of employees in Malaysia; and
- Incur an adequate amount of operating expenditures in Malaysia.

*Note: *The relevant guidelines have yet to be issued by the Inland Revenue Board Malaysia ("IRBM"). It is hoped that this guidelines will provide more information on the economic substance requirements, and whether there are additional conditions to qualify for the above exemption.*

Exemption period : From 1 January 2024 to 31 December 2026

Non-application

This exemption order shall not apply to a person carrying on the business of banking, insurance, sea transport or air transport.

Other points

- Any deduction in relation to the income exempted under this Exemption Order shall be disregarded for the purpose of ascertaining the chargeable income.

- Any gains or profits from the disposal of intellectual property rights shall be disregarded for the purposes of the above exemption.

Disposal of capital assets situated in Malaysia

Guidelines for CGT on unlisted shares ("CGT Guidelines")

As anticipated, the IRBM has issued CGT Guidelines (click HERE) recently to provide guidance on CGT treatment. However, the Guidelines only cover the CGT treatment for gains from the disposal of capital asset situated in Malaysia covering the following –

- Shares of a company incorporated in Malaysia not listed on the stock exchange
- Shares of a controlled company incorporated outside Malaysia which owns real property situated in Malaysia or shares of another controlled company or both, subject to certain conditions.

Selective points from the CGT Guidelines are as follows –

- CGT will be imposed on the gains from the disposal of capital assets and the taxable persons for CGT are company, LLP, trust body and co-operative society.
- CGT is imposed on the disposer in the basis period for the YA in which the disposal of the capital assets took place.
- The scope of CGT for disposal of capital assets situated in Malaysia is on shares with equity characteristics, such as ordinary shares, preference shares, redeemable preference shares, convertible bonds or long-term borrowings with more equity characteristics.
- Each disposal of capital assets shall be computed and reported separately.
- Losses arising from the disposal of capital assets are allowed a deduction against the gains from subsequent disposal of other capital assets.
  Accumulated capital losses can be carried forward to offset against future gains from the disposal of capital assets for a period of 10 consecutive YAs. After which, any unutilised capital losses will be disregarded.
- If a capital asset which is classified as investment or non-current asset in the books of the business, is subsequently taken into as trading stock or inventories; then, a disposal has taken place on the date the capital asset is taken into the trading stock. Any gain arising from such 'transaction' is subject to CGT.
- Disposer, who was also subject to foreign taxes on the gain on disposal of capital assets, can obtain relief from double taxation by way of bilateral credit pursuant to section 132 of the ITA (and subject to the provisions of the relevant tax treaty).
- Taxpayers do not need to account the gains from the disposal of capital assets for their annual tax estimates of tax payable under section 107C of the ITA.

Let us be of assistance to you

Do reach out to our team of tax experts for a discussion. As CGT is new in Malaysia, our team at Baker Tilly Malaysia would be able to provide professional advice on certain areas of CGT that require further analysis. For example, it would be advisable to study the CGT impact before remittance into Malaysia of foreign-sourced capital gains arising from disposal of all types of capital assets situated outside Malaysia.

bakertilly

Contact Our Experts

Mr Anand Chelliah
Managing Partner
Tax Services
E: anand.chelliah@bakertilly.my

Mr Yohan Francis Xavier
Executive Director,
International Tax & Transfer Pricing Services
E: yohan.xavier@bakertilly.my

Mr Marcus Tan
Executive Director
Tax Advisory Services
E: marcus.tan@bakertilly.my

Mr Murugan Anbanantham
Director
Technical & Tax Compliance
E: murugan.anbanantham@bakertilly.my

Ms Tay Siew Chu
Director
Tax Compliance
E: siewchu.tay@bakertilly.my

Ms Sandra Saw
Director, Tax Services
Tax Advisory & Indirect Tax Services
E: sandra.saw@bakertilly.my

Our Experts - Regional

Mr Huang Shze Jiun
Managing Partner
Johor Bahru
E: sj.huang@bakertilly.my

Ms Joanne Khor
Tax Director
Penang
E: joanne.khor@bakertilly.my

Mr Ni Chen Chuen
Tax Director
Sabah
E: chenchuen.ni@bakertilly.my

Ms Khoo Shaw Cbyn
Senior Managing Consultant,
Tax Services, Batu Pahat
E: shawcbyn.khoo@bakertilly.my

Ms Wong Poh Ling
Senior Managing Consultant
Tax Services, Seremban
E: pohling.wong@bakertilly.my

Our Offices

Kuala Lumpur Head Office
Baker Tilly Tower
Level 10 Tower 1 Avenue 5
Bangsar South City
59200 Kuala Lumpur

T: +603 2297 1000
F: +603 2282 9980

www.bakertilly.my

Penang
9-2, 9th Floor, Wisma Penang Garden 42,
Jalan Sultan Ahmad Shah
10050 Georgetown

T: +604 227 9258
F: +604 227 5258

Johor Bahru
38-2, Jalan Sri Pelangi 4
Taman Pelangi
80400 Johor Bahru

T: +607 332 6925 / 6926
F: +607 332 6988

Kota Kinabalu
1-3-1A, 3rd Floor
Block B, Kolam Centre Phase II
Jalan Lintas, Luyang
88300 Kota Kinabalu

T: +60 88 233 791
F: +60 88 249 691

Maleka
2, Ground Floor, Jalan PS 3
Plaza Semabok
Semabok
75050 Melaka

T: +606 282 6422
F: +606 283 7280

Batu Pahat
33, Jalan Penjaja 3,
Ground Floor
Kim's Park Business Centre
83000 Batu Pahat

T: +607 431 5403
F: +607 431 4840

Seremban
Level 2, Wisma Sim Du
37, Jalan Dato' Bandar Tunggal
70000 Seremban

T: +606 762 2518 / 763 8936
F: +606 763 6950

Segamat
125, Jalan Susur Pemuda 2
85000 Segamat

T: +607 932 1125
F: +607 931 1125

Labuan
1st Floor, U0509
Lazenda Commercial Centre Phase 11,
Jalan Tun Mustapha
87000 Labuan

T: +608 744 0800

Phnom Penh (Cambodia)
No. 87, Street 294
Sangkat Boueng Keng Kang I
Khan Chamkarmon
Phnom Penh, Cambodia

T: +855 2398 7100
F: +855 2398 7388