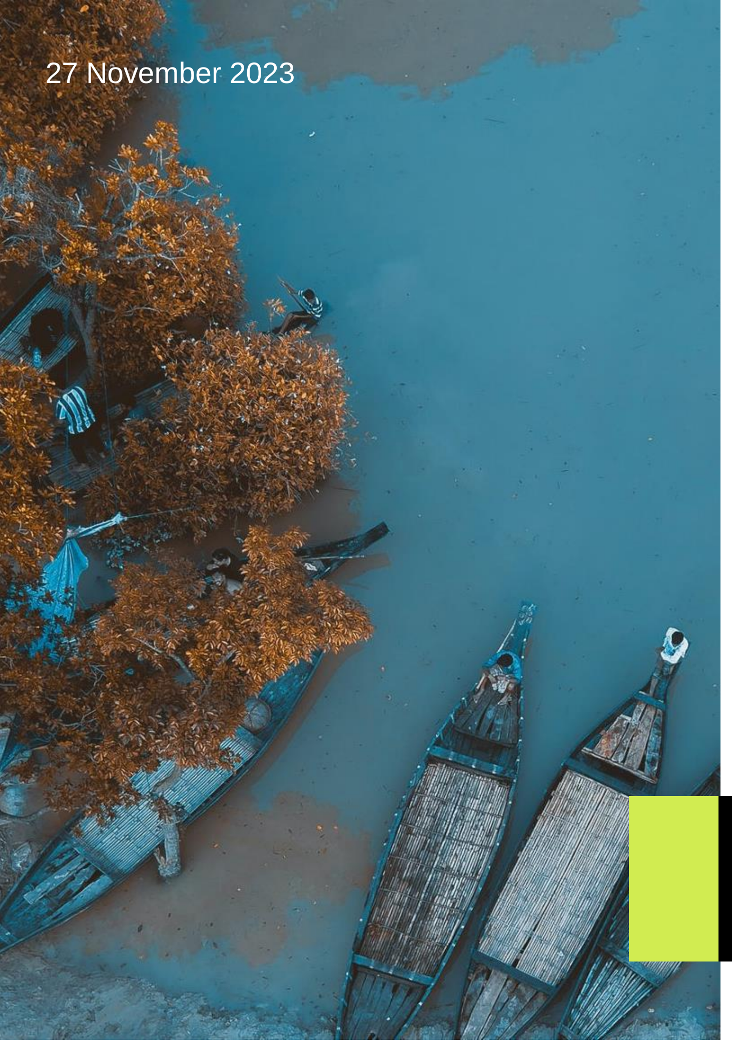
27 November 2023



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TaxSnaps

Capital Gains Tax ("CGT") implementation -

Is it 1 January 2024 or 1 March 2024?

Following our [first part (10.11.2023)] covering the Finance (No. 2) Bill 2023 proposals, and in continuing from where we left off, we will now cover CGT and key proposed amendments made to the Real Property Gains Tax Act 1976 ("RPGTA").

continued…

CGT

Is it 1 January 2024 or 1 March 2024?

It is proposed that a New Chapter 9 be inserted in the Income Tax Act 1967 (“ITA”) to cover gains or profits from the disposal of capital assets.

This Chapter 9 shall apply in ascertaining the **chargeable income** of the following –

- **company**
- **limited liability partnership (“LLP”)**
- **trust body**
- **co-operative society**

which receives gains or profits from the disposal of capital asset **on or after 1 January 2024.**

However, in a recent development, which is consistent with the 2024 Budget announcement made by the Finance Minister on 13 October 2023, the Ministry of Finance has clarified that:

- CGT is to be imposed with effect from **1 January 2024**
- Notwithstanding the above, CGT imposition on gains or profits from disposal of local companies’ unlisted shares will only commence from **1 March 2024**
  - taxpayers will be given exemption from reporting capital gains from disposal of local companies’ unlisted shares for the period from 1 January 2024 to 29 February 2024
  - this will be implemented by way of subsidiary legislation

Disposal of capital assets subject to CGT

- Situated in Malaysia
  - a) Shares of a company incorporated in Malaysia not listed on the stock exchange
  - b) 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

- Situated outside Malaysia
  - c) All types of capital assets
    (more clarification is required on the detailed rules governing the taxability of gains arising from disposal of capital assets situated outside Malaysia)

Note:

- ➢ Gains or profits from the disposal of capital assets situated in Malaysia is exempted from tax under Schedule 6 of the ITA, with the exception of categories (a) and (b) above.
- ➢ Capital asset means movable or immovable property including any rights or interests thereof

continued…

CGT *(cont')*

CGT rates

Disposal of capital asset	CGT rate
a) Capital asset (situated in Malaysia) acquired before 1 January 2024	**10%** of the chargeable income from the disposal of the capital asset; **OR** **2%** of gross on the disposal price of the capital asset
b) Capital asset (situated in Malaysia) acquired on or after 1 January 2024	**10%** of the chargeable income from the disposal of the capital asset
Disposal of capital assets other than a disposal under (a) and (b) above	At the **applicable rate** to the company, LLP, trust body or co-operative society as specified under the ITA on the chargeable income from the disposal of the capital asset

CGT administration

- CGT returns must be furnished electronically within 60 days from the date of the disposal of capital asset
- CGT must be paid within 60 days from the date of disposal of capital asset

Effective Date : From 1 January 2024
(except for certain disposal of capital assets to be effective at a later date as stated in subsidiary legislation in due course when gazetted)

Budget 2024 announcement

In the Budget 2024 announcement, it was proposed that CGT exemption be given for disposal of shares in relation to the following activities –

- Initial Public Offering (IPO) approved by Bursa Malaysia;
- Restructuring of shares within the same group; and
- Venture capital companies

Our comments

Individuals are not affected by the implementation of CGT. Individuals will continue to comply with the provisions under the RPGTA whereby real property gains tax is applicable for disposal of real property and disposal of real property company (RPC) shares by individuals.

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Real Property Gains Tax ("RPGT")

Implementation of Self Assessment System ("SAS") for RPGT

For income tax, the SAS was introduced in stages from the year of assessment (YA) 2001 starting with companies, and then for individuals from YA 2004. The SAS for income tax is seen as a success, and it also made way for electronic submission of tax returns, i.e. e-Filing instead of the traditional manual submission under the previous Official Assessment System.

After almost 20 years, it is proposed that SAS be implemented for RPGT. Below are the salient points pertaining to the said implementation –

RPGT return and deemed assessment

- Where a person has furnished a return, the Director General of the Inland Revenue ("DG") shall deem an assessment to have been made, on the day such return is furnished. Such **return** shall be **deemed** to be a **notice of assessment**
- The due date for submission of the return is within 60 days from the date of disposal of the asset.
- The RPGT shall be due and payable within 60 days from the date of disposal

Amendment of return

- A person may make amendment to the above return submitted, in the event the RPGT has been understated or an omission had occurred.
- The amended return shall only be made after the due date for the furnishing of the return, but **not later than 6 months** from such date.
- Additional tax payable under the amended return is subject to an increase of tax equal to 10% of the amount of additional tax.
- The **amended return** is **deemed** to be notice of assessment or **additional assessment**
- The tax or additional tax payable shall be due and payable on the day the amended return is furnished

Duty to keep documents

- Every person who is required to furnish a RPGT return shall **keep** and retain in safe custody **sufficient documents** for a period of **7 years** (from the end of the YA the person is required to furnish a return).

Effective Date : From 1 January 2025

continued…

CGT vs RPGT

Our comments

An acquisition of shares in a real property company shall be deemed to be an acquisition of a chargeable asset. Where such shares (RPC shares) are disposed of, such disposal shall be deemed to be a disposal of chargeable asset.

In other words, such disposal of RPC shares is subject to RPGT. However, with the implementation of CGT, RPGT on disposal of RPC shares is no longer applicable for the following persons –

- company
- LLP
- trust body
- co-operative society

RPGT on disposal of RPC shares is still applicable for those persons not mentioned above, i.e. individuals. In this connection, Paragraph 34A, Schedule 2 of the RPGTA which covers the RPGT treatment of acquisition and disposal of RPC shares, is still relevant.

RPGT allows for reducing rates of tax generally depending on length of ownership of the asset. This is not provided for under CGT as the proposals currently stand. It is hoped that the new measures will take into consideration the period of ownership of the capital assets concerned, in order to allow for some form of indexation relief for the cost of assets acquired.

More on other Finance (No. 2) Bill 2023 proposals in our next edition of TaxSnaps.

Let us be of assistance to you

Do reach out to our team of tax experts for a discussion on any of the abovementioned tax proposals. We would be more than happy to assist you.

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