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Asia Tax Insights – Malaysia

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Malaysia has introduced a significant change in its tax regime, imposing Capital Gains Tax (CGT) on gains from the disposal of capital assets effective from 1 January 2024. This move, based on the amendment of provisions in the Income Tax Act 1967, marks a substantial shift in the country's tax landscape. One of the key aspects of this new imposition is the inclusion of gains from the disposal of foreign capital assets received in Malaysia by residents, aligning Malaysia's tax laws with international tax best practices.

Implications of the CGT Imposition

The imposition of CGT brings several implications for taxpayers in Malaysia. Firstly, residents disposing of capital assets, whether domestic or foreign, will now be subject to CGT in Malaysia These includes companies, limited liability partnerships ("LLPs"), trust bodies, and co-operative societies receiving gains from the disposal of foreign capital assets.

The inclusion of LLPs, Trust Bodies, and Co-operative Societies in the tax regime demonstrates Malaysia's effort to create a level playing field for all types of entities when it comes to the taxation of gains from the disposal of foreign capital assets. This move is expected to promote fairness and equity in the tax system.

Guidelines on Tax Treatment on Gains from Disposal of Foreign Capital Assets

To provide clarity on the tax treatment, the Inland Revenue Board (IRB) issued the Guidelines on Tax Treatment on the ***Gains from the Disposal of Foreign Capital Assets Received from Outside Malaysia*** dated 27 March 2024. These guidelines aim to explain the tax treatment for residents disposing of foreign capital assets.

Here are the key points highlighted in the guidelines:

No.	Key Item	Description
1.	**Income tax return form (ITRF)**	Companies are required to declare their foreign capital gains in the Income Tax Return (ITRF) i.e. Form e-C.
2.	**Economic substance requirements (ESR)**	The guidelines outline key conditions for the CGT exemption related to Economic Substance Requirements (ESR). To qualify for the CGT exemption, the taxpayers must: - employ an adequate number of employees with the necessary qualifications to carry out the specified economic activities in Malaysia; and - incur an adequate amount of operating expenditure for carrying out the specified economic activities in Malaysia. Factors considered for each taxpayer include: - Number of employees, considering the capital / labour intensity requirements of the business; - Employment status of the employees, i.e. whether the employees work full-time or part-time; and - Sufficiency of the office premises that are used for the activity.

No.	Key Item	Description
3.	**Outsourcing specified economic activities**	Outsourcing of specified economic activities by a company, LLP, trust body and co-operative society to an outsourcing entity is permitted if the following conditions are met: i. Specified economic activities must be carried out by the outsourcing entity in Malaysia; ii. Sufficient monitoring and control must be implemented over the specified economic activities carried out by outsourcing entity; iii. Transfer pricing rules should apply to the outsourcing entity's charges for carrying out the specified economic activities; iv. The number of qualified employees employed, and the total operating expenses incurred by the outsourcing entity in Malaysia must be equivalent to the level of specified economic activities carried out by the outsourcing entity; and v. There should beno double counting if the outsourcing entity provides services to more than one person.
4.	**Service director and non-Service director**	A service director who is employed based on a contract of service is considered an employee. In contrast, a non-service director is not considered an employee.
5.	**Disposals before 1 January 2024**	Amounts received in Malaysia in respect of disposals made before 1 January 2024 are not taxable.
6.	**Meaning of "received in Malaysia"**	"Received in Malaysia" means "transferred or brought into Malaysia, whether in the form of cash or through electronic funds transfer or both.

No.	Key Item	Description
7.	**Foreign tax credit (FTC)**	Foreign Tax Credit (FTC), bilateral and unilateral credits can be claimed against Malaysian tax if the gains received in Malaysia have been subject to foreign tax.
8.	**Foreign capital assets**	Examples of foreign capital assets include immovable property (e.g. buildings and land) and movable property (e.g. paintings) physically situated outside Malaysia, as well as intellectual property and shares of companies incorporated outside Malaysia.
9.	**Expenses incurred for acquisition and disposal**	Expenses such as legal fees, appraiser fees, advertising, and expenses to increase or maintain capital value can be deducted when calculating the gains from the disposal of foreign capital assets that are chargeable to tax.

Key Takeaway

The introduction of Capital Gains Tax (CGT) in Malaysia presents a significant change in the country's tax landscape, aligning its practices with international standards. The Guidelines issued by the Inland Revenue Board (IRB) provide clarity on the tax treatment of gains from the disposal of foreign capital assets.

Moving forward, taxpayers should take a proactive approach by reviewing their investment strategies, business operations, and divestment plans to ensure compliance with the new tax regime. Seeking professional advice to optimise their tax positions and minimise liabilities will be crucial in navigating these changes effectively.

References

For more details, you may refer to the link below to access the IRB's Guidelines – Tax Treatment on Gains from the Disposal of Foreign Capital Assets Received from Outside Malaysia dated 27 March 2024.
https://www.hasil.gov.my/media/xh0fp0pt/20240327-tax-treatment-on-gains-from-the-disposal-of-foreign-capital-assets-received-from-outside-malaysia.pdf.

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