



Tax Espresso - Special Alert

Income Tax (Amendment) Bill 2024 and Labuan Business Activity Tax (Amendment) Bill 2024

Introduction

The House of Representatives passed the following amendment bills on 26 March 2024:

- Income Tax (Amendment) Bill 2024; and
- Labuan Business Activity Tax (Amendment) Bill 2024.

The proposed amendments in the respective bills are regarding capital gains tax (CGT), redefinition of the term "*revised estimate*" to include eleventh month revision and e-invoicing.

Capital Gains Tax

1. Redefinition of the term "*capital assets*"

Currently, the term "*capital asset*" is defined under Section 2(1) of the Income Tax Act 1967 (ITA) as "*moveable or immovable property including any rights or*

interests thereof'. Pursuant to Paragraph 38, Schedule 6 of the ITA, gains or profits from the disposal of a capital asset situated in Malaysia are exempted from tax except for the following:

- disposal of shares of a company incorporated in Malaysia not listed on the stock exchange (unlisted shares); and
- disposal of 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 ITA (Section 15C shares).

Proposal

It is proposed that the term "capital asset" be redefined as follows:

"capital asset" means—

*(a) movable or immovable property **situated outside Malaysia** including any rights or interests thereof; or*

*(b) **movable property situated in Malaysia which is a share of a company incorporated in Malaysia not listed on the stock exchange (including any rights or interests thereof) owned by a company, limited liability partnership, trust body or co-operative society.***

With the new definition of the term "capital asset", a consequential removal of the exemption under Paragraph 38, Schedule 6 of the ITA is proposed.

A consequential amendment to Part XXI of Schedule 1 of the ITA has also been proposed to clarify that the following tax rates apply to both gains or profits from the disposal of unlisted shares and Section 15C shares:

Acquisition Date of Unlisted Shares and Section 15C Shares	CGT Rate
Before 1 January 2024	Based on the taxpayer's election: <ul style="list-style-type: none">• 10% on chargeable income from disposal of unlisted shares and Section 15C shares; or• 2% of gross disposal price
On or after 1 January 2024	10% on chargeable income from disposal of unlisted shares and Section 15C shares

Effective: Upon coming into operation of the Income Tax (Amendment) Act 2024

Deloitte's comments:

Based on the existing Section 4(aa) of the ITA, the scope of charge is widely cast as gains or profits from the disposal of capital assets by any person. This scope of capital assets subject to income tax is narrowed by the exemption provided under the existing Paragraph 38, Schedule 6 of the ITA. Paragraph (b) of the new definition of "capital asset" clarifies that only the disposal of unlisted shares of companies incorporated in

Malaysia by a company, limited liability partnership, trust body or co-operative society is subject to CGT. Any disposal of such unlisted shares by other person (e.g., an individual) does not fall within the scope of charge to CGT under the ITA.

Paragraph (b) of the new definition of "capital asset" also clarifies that gains or profits from the disposal of other movable property or immovable property situated in Malaysia (e.g., a real property situated in Malaysia) would fall outside the scope of charge to CGT under the ITA.

2. Person subject to the scope of Section 15C shares

Currently, the imposition of CGT on gains or profits from the disposal of Section 15C shares applies to a "person". A "person" as defined under Section 2(1) of the ITA "includes a company, a body of persons, a limited liability partnership and a corporation sole". A "body of persons" means "an unincorporated body of persons (not being a company), including a Hindu joint family but excluding a partnership".

Proposal

It is proposed that Section 15C(1) of the ITA be amended such that the disposer of Section 15C shares is specified as a "company, limited liability partnership, trust body or co-operative society".

Effective: Upon coming into operation of the Income Tax (Amendment) Act 2024

Deloitte's comments:

Currently, the scope of chargeable person for the purpose of Section 15C shares is wider than the general scope of person chargeable to CGT. The proposed amendment to Section 15(1) of the ITA seeks to realign and clarify that the disposal of Section 15C shares by a person other than a company, limited liability partnership, trust body or co-operative society (e.g., an individual) is not subject to CGT.

3. Definition of the term "defined value" for the purpose of Section 15C shares

Currently, "defined value" means "the market value of real property or the acquisition price of shares of another controlled company as determined under subsection (2)" pursuant to Section 15C(5) of the ITA.

Proposal

It is proposed that the words "subsection (2)" in Section 15C(5) of the ITA be amended to "subsection (4)" to clarify that "defined value" means the market value of real property or the acquisition price of shares of another controlled

company as determined under Section 15C(4) of the ITA, instead of Section 15C(2) of the ITA.

Effective: Upon coming into operation of the Income Tax (Amendment) Act 2024

Deloitte's comments:

The proposed amendment to the term "defined value" is to be in line with the definition as provided in the [CGT Guidelines for unlisted shares dated 1 March 2024](#).

4. Definition of shares

Currently, the definition of "shares" for the purpose of CGT under Section 65C of the ITA is as follows:

"shares" means all or any of the following:

- (a) stock and shares in a company;*
- (b) loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;*
- (c) a member's interest in a company not limited by shares whether or not it has a share capital;*
- (d) any option or other right in, over or relating to shares as defined in paragraphs (a) to (c).*

Proposal

It is proposed that the definition of shares under Section 65C of the ITA be deleted. With the deletion, the existing definition of "shares" under Section 2(1) of the ITA is applicable for the purpose of CGT. Pursuant to Section 2(1) of the ITA, "share", in relation to a company, includes stock other than debenture stock.

Effective: Upon coming into operation of the Income Tax (Amendment) Act 2024

Deloitte's comments:

The meaning of shares for the purpose of CGT was also explained in the CGT Guidelines for unlisted shares dated 1 March 2024. The Inland Revenue Board of Malaysia (IRB) explained that shares which are subject to CGT are shares that have the nature of equity, such as ordinary shares, preference shares, redeemable preference shares, convertible bonds, or long-term borrowings with the nature of equity. Among the characteristics of shares with the nature of equity are the following:

- *The shareholder's right to receive dividends is not fixed;*

- *The shareholder's interest in the remaining assets ranks after other claimants' claims are resolved in a liquidation;*
- *The shares have no maturity date; and*
- *The shares carry voting rights*

Redefinition of the term "*revised estimate*" to include eleventh month revision

With effect from year of assessment (YA) 2024, Section 107C(7) of the ITA allows a company, limited liability partnership, trust body or co-operative society to furnish to the Director General a revised estimate of its tax payable for a YA in the sixth month, the ninth month or the eleventh month, or in all three months of the basis period for that YA.

However, there was no corresponding amendment to the definition of "revised estimate" under Section 107C(12) of the ITA to include a revised estimate in the eleventh month. Currently, pursuant to Section 107C(12), the term "*revised estimate*" means "*a revised estimate made in the ninth month of the basis period or if there is no revised estimate made in the ninth month of the basis period, the revised estimate made in the sixth month of the basis period*".

Proposal

For consistency, it is proposed that the definition of "*revised estimate*" in Section 107C(12) of the ITA be amended to include a revised estimate made in the eleventh month of the basis period.

Effective: YA 2024

e-Invoicing

1. Issuance of receipt to buyers

Currently, Section 82(2B) of the ITA requires a person which is eligible to issue a consolidated transaction invoice to issue a printed receipt to buyers for every sum received in that YA in respect of goods sold or services performed.

Proposal

It is proposed that the issuance of receipt to buyers may be made in any manner and not limited to a printed receipt.

Effective: 1 January 2024

2. e-Commerce platform provider to issue self-billed invoice

Proposal

It is proposed that Section 82C(6) of the ITA and Section 22DA of the Labuan Business Activity Tax Act 1990 (LBATA) be amended to specify that an e-Commerce platform provider is required to issue a self-billed invoice in

accordance with the conditions as may be imposed by the Director General of Inland Revenue and the invoice shall be treated as an electronic invoice.

Effective: 1 January 2024

To be enacted, the amendment bills are required to be passed by the Senate and receive royal assent from the king before the bills can be published in the official gazette.

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