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Capital gains tax exemptions for Initial Public Offerings and group restructuring exercises

Coverage of this alert

In the Budget 2024 speech, it was indicated that capital gains tax (CGT) exemptions would be provided for share disposals in connection with Initial Public Offerings (IPOs) approved by Bursa Malaysia, internal group restructuring, and venture capital related investments.

In this regard, the following were gazetted on 8 October 2024:

a) Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 [P.U.(A) 289]
b) Income Tax (Initial Public Offering) (Exemption) Order 2024 [P.U.(A) 290]

The Orders above are effective from 1 March 2024 to 31 December 2028.

Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 [P.U.(A) 289]

The Order exempts a company, limited liability partnership (LLP), trust body or co-operative society from income tax on gains or profits from the disposal of unlisted shares in a Malaysian-incorporated company, to an acquirer company which is tax-resident in Malaysia.

To qualify for the exemption:

a) The disposal of the unlisted shares shall be made between 1 March 2024 and 31 December 2028;
b) The disposal of the unlisted shares shall be made under a scheme for restructuring of companies in the same group to increase efficiency in the operation of the disposer and/or the acquirer company; and
c) At least 75% of the consideration for the disposal of shares shall consist of shares in the acquirer company and the balance in cash. The shares of the acquirer company must be issued to the disposer.

Here are some other key matters to note:

- Application for the exemption should be submitted to the Inland Revenue Board of Malaysia (IRBM) more than three years after the date of the disposal of the unlisted shares. Hence, it appears that the disposer would need to first file CGT returns and pay CGT within 60 days from the date of the disposal, and then apply for an exemption and seek a refund three years after the disposal. The Order does not state a time limit for the exemption application to be made.
- The disposer is required to comply with the conditions specified in guidelines to be issued under Section 134A of the Income Tax Act 1967 (ITA), which will be issued in due course.
- The requirement to substantiate that the restructuring scheme will result in operational efficiency also exists for the real property gains tax exemption for transfer of assets between companies in the same group, as well as the stamp duty relief for the transfer of property between associated companies. It is hoped that the guidelines will provide examples on what is meant by "increased efficiency" and how this can be demonstrated to the IRBM.
- The Order does not exempt a disposer from filing of CGT returns.
- Where the transaction would have qualified for this exemption if there had been a gain, but instead there is a loss on the disposal, the loss would be disregarded for tax purposes.
- If the shares are subsequently disposed by the acquirer, in calculating the CGT payable at that time the acquisition cost of the shares would be taken to be equivalent to the acquisition price of the disposer plus allowable expenses incurred by the disposer, pursuant to Section 65E(2)(a)(i) and (ii) of the ITA.

Non-application

The exemption under this Order would not be applicable to:

a) Gains or profits from the disposals of unlisted shares that fall under Section 4(a) of the ITA, as business income.
b) Disposal of unlisted shares relating to restructuring of any company for an IPO, where the application for IPO has been submitted to Securities Commission or Bursa Malaysia.
c) Where a tax exemption has been granted on the share disposal under other subsidiary legislations or by Ministerial exemption.

Income Tax (Initial Public Offering) (Exemption) Order 2024 [P.U.(A) 290]

The Order exempts a company, LLP, trust body or co-operative society from income tax on gains or profits from the disposal of unlisted shares in a Malaysian-incorporated company.

To qualify for the exemption:

a) The disposal of the unlisted shares shall be made between 1 March 2024 and 31 December 2028;
b) The disposal of the unlisted shares should be in relation to restructuring of any company for an IPO; and
c) The disposer of the unlisted shares is required to submit application for IPO for listing on the Main Market of Bursa Malaysia, Access, Certainty, Efficiency (ACE) Market or Leading Entrepreneur Accelerator Platform (LEAP) Market.

Here are some other key matters to note:

- The IPO application should be submitted within the period of one year from the date of the disposal of shares and the approval should be obtained by 31 December 2028.
- Application for the exemption should be submitted to the IRBM within one year after the date of the approval for the application of IPO. Hence, similar to the restructuring exemption, it appears that the disposer would need to first file CGT returns and pay CGT within 60 days from the date of the disposal, and then apply for an exemption and seek a refund.
- The Order does not exempt a disposer from filing of CGT returns.
- Where the transaction would have qualified for this exemption if there had been a gain, but instead there is a loss on the disposal, the loss would be disregarded for tax purposes.

Non-application

The Order would not be applicable to:

a) Gains or profits from the disposals of unlisted shares that fall under Section 4(a) of the ITA, as business source income.
b) A disposer who has made an application for exemption under the Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 discussed above, in respect of the same disposal of unlisted shares.
c) Where a tax exemption has been granted on the share disposal under other subsidiary legislation or by Ministerial exemption.

Observations

- The scope of the Orders does not specifically include gains or profits from the disposal of shares in a foreign controlled company which owns Malaysian real property directly or via another company and where such real property holdings exceed certain thresholds under Section 15C of the ITA.
- The exemption order for venture capital related investments has not yet been released.

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