



GUIDELINES

TAX TREATMENT ON GAINS FROM THE DISPOSAL OF FOREIGN CAPITAL ASSETS RECEIVED FROM OUTSIDE MALAYSIA

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INLAND REVENUE BOARD OF MALAYSIA

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1. INTRODUCTION

- 1.1 Capital Gains Tax (CGT) on gains from the disposal of capital assets is taxed in Malaysia from 1 January 2024 based on the amendment of provisions in Income Tax Act 1967 [Act 53] through the Finance Act (No. 2) 2023 [Act 851].
- 1.2 The imposition of CGT will include gains from the disposal of foreign capital assets received in Malaysia by a resident to be in line with Malaysia's commitment towards compliance with international tax best practices.
- 1.3 Prior to 1 January 2024, gains from the disposal of foreign capital assets received in Malaysia are not subject to tax.
- 1.4 CGT exemption on gains from the disposal of foreign capital assets received in Malaysia is subject to certain conditions based on P.U. (A) 75/2024.
- 1.5 The exemption in paragraph 1.4 does not apply to a resident carrying on the business of banking, insurance or sea or air transport.

2. OBJECTIVE

The objective of this guideline is to explain the tax treatment on gains from the disposal of foreign capital assets received in Malaysia by a resident.

3. PROVISIONS OF THE LAW

- 3.1 Section 2, 4, 4B, 61, paragraph 6(1)(q), Part XXI Schedule 1 and Schedule 7 under the Income Tax Act 1967 (ITA); and
- 3.2 The relevant subsidiary legislation referred to in this Guideline is the Income Tax (Exemption) Order (No. 3) 2024 [P.U.(A) 75/2024].

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4. INTERPRETATION

The terms used in this Guideline have the following meanings:

- 4.1 "Capital asset" means movable or immovable property including any rights or interests thereof.
- 4.2 "Trust body", in relation to a trust, means the trust body provided for by section 61 of the ITA
- 4.3 "Received in Malaysia" means transferred or brought into Malaysia whether in the form of cash or through electronic funds transfer; or both.
- 4.4 "Gains from the disposal of foreign capital assets" means an income under paragraph 4(aa) of the ITA derived from outside Malaysia.
- 4.5 "Co-operative society" means any co-operative society registered under any written law relating to the registration of co-operative societies in Malaysia.
- 4.6 "Bilateral tax credit" means tax credit in respect of income which is subject to Malaysian tax has been charged to foreign tax where the country who charged the tax has a Double Taxation Avoidance Agreement (DTA) with Malaysia under Section 132 of the ITA. Bilateral tax credit only applicable if the "Elimination of Double Taxation" article is covered in the relevant DTA.
- 4.7 "Unilateral tax credit" means tax credit for income subject to Malaysian tax that has been charged to foreign tax where the country who charged the tax does not have a DTA with Malaysia under Section 133 of the ITA.
- 4.8 "Resident" means resident in Malaysia for the basis year for a year of assessment by virtue of section 7, 8 or subsection 61(3) of the ITA.
- 4.9 "Electronic fund transfer" means bank transfer (e.g. credit transfer, debit transfer), payment card (debit card, credit card and charge card), electronic money (e-money), privately-issued digital assets (e.g. cryptoassets, stablecoins) and central bank digital currency (CBDC).
- 4.10 "Limited Liability Partnership" means a limited liability partnership registered under the Limited Liability Partnership Act 2012.
- 4.11 "Company" means a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia and a business trust;

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4.12 “Cash” means notes, coins and cheques.

5. CHARGEABLE PERSON

Effective from 1 January 2024, gains from the disposal of all types of foreign capital assets received in Malaysia by the following residents are subject to tax:

- (a) Company;
- (b) Limited Liability Partnership (LLP);
- (c) Trust Body; and
- (d) Co-operative Society.

6. CHARGEABLE GAINS FROM THE DISPOSAL

- 6.1 Gains from the disposal of foreign capital assets situated outside Malaysia are considered as taxable income under paragraph 4(aa) of the ITA subject to the prevailing tax rate.
- 6.2 Gains from the disposal of foreign capital assets received in Malaysia that are subject to tax refer to the disposal of foreign capital assets that occur on or after 1 January 2024.

Example 1

Company A, disposes of a building on 1 October 2023 in Country F. Gains from the disposal are received in Malaysia on 1 February 2024.

The gains from the disposal of the building is not subject to CGT since the disposal took place before 1 January 2024.

Example 2

Company B, disposes of a building on 15 January 2024 in Country G. Gains from the disposal are received in Malaysia on 1 October 2024.

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The gains from the disposal of the building is subject to CGT since the disposal took place after 1 January 2024.

6.3 Examples of foreign capital assets situated outside Malaysia are as follows:

- (a) Immovable property that are physically situated outside Malaysia such as buildings and land;
- (b) Movable property that are physically situated outside Malaysia such as machinery, vehicle, fixtures, fitting, painting and plant;
- (c) Intellectual property rights situated outside Malaysia owned by the owner or licensee of the right who is a resident in Malaysia such as copyright, patent, research and development, computer software and trademark;
- (d) Shares issued by a company incorporated outside Malaysia that are not subject to any provisions under the ITA.

6.4 In determining the gains from the disposal of foreign capital assets that are chargeable to tax, expenses wholly and exclusively incurred for the acquisition and disposal of capital assets can be allowed under paragraph 65E(2) ITA. For example, legal fees, appraiser fees, advertising, and expenses to increase or maintain capital value.

7. FOREIGN TAX CREDIT

7.1 Gains from the disposal of foreign capital assets received in Malaysia that are chargeable to tax outside Malaysia can claim a bilateral or unilateral tax credit under the provisions of sections 132 and 133 of the ITA.

7.2 A resident who is claiming the tax credits must keep record that foreign tax has been imposed on that particular income.

7.3 If the tax credit claimed for a year of assessment exceeds the Malaysian tax payable on gains from the disposal of foreign capital assets received in Malaysia, the excess tax credit shall be disregarded.

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Example 3

Megah Sdn. Bhd. (MSB), received RM300,000 as gains from the disposal of real property in Country M on 5 January 2024. The total tax paid in Country M was RM30,000 according to the 10% tax rate. MSB has brought a part of the gains of RM200,000 and received in Malaysia on 10 September 2024.

MSB also has statutory interest income from Malaysia amounting to RM500,000.

The computation of tax payable and tax credit of section 132 of the ITA that is eligible to be claimed by MSB for Year Assessment (YA) 2024 is as follows:

Details	RM	RM
Statutory income from the disposal of foreign capital asset		200,000
Statutory interest income		500,000
Aggregate Income/ Chargeable Income		700,000
Tax at the rate of 24%		168,000
Less: Section 132 tax credit	20,000 ¹	
Tax payable		148,000

Notes:

¹Computation:

- (i) The proportion of tax credit in respect of gains from the disposal of foreign capital asset:

$$= \frac{\text{Gains from the disposal of foreign capital asset received in Malaysia (RM)}}{\text{Gains from the disposal of foreign capital asset received in Malaysia (RM)}} \times \text{Amount of foreign tax paid (RM)}$$

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Total gains from the
disposal of foreign capital
asset (RM)

$$= \frac{200,000}{300,000} \times 30,000$$

$$= \text{RM}20,000$$

(ii) Bilateral kredit:

$$= \frac{\text{Statutory income from disposal foreign capital asset (RM)}}{\text{Total Income (RM)}} \times \text{Malaysian tax payable before bilateral credit (RM)}$$

$$= \frac{200,000}{200,000 + 500,000} \times 168,000$$

$$= \text{RM}48,000$$

Or

RM20,000

whichever is lower.

The bilateral credit allowed for YA 2024 is RM20,000.

Example 4

Kimanid Sdn. Bhd. (KSB), an investment holding company incorporated in Malaysia, close its account on 31 December 2024. KSB has not employed any employee since all business decisions are decided by holding company.

In YA 2024, KSB earns capital gains from the disposal of asset in Country S.

The income declared in the YA 2024 Income Tax Return Form (ITRF) are as follows:

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Details	RM
Gross rental income in Malaysia (Allowable rental expenses RM500,000)	3,005,000
Gains from the disposal of asset in Country S	100,000
Approved donations	5,000

Capital gains from Country S have been subject to tax as follows:

Country	Tax Rate (%)	Tax paid (RM)
Country S	10	10,000

Tax computation for KSB for YA 2024:

Details	RM	RM
Statutory rental income (Malaysia) (RM3,005,000 – RM500,000)		2,505,000
Statutory income from the disposal of foreign capital asset		100,000
Aggregate Income		2,605,000
Less: Approved donations		5,000
Total income/ Chargeable income		2,600,000
Tax at the rate of 24%		624,000
Less: Section 132 tax credit	10,000 ¹	
Tax payable		614,000

Notes:

¹**Computation:**

Bilateral credit:

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$$\begin{aligned}
 &= \frac{\text{Statutory income from the disposal of foreign capital asset (RM)}}{\text{(RM) Total income}} \times \text{Malaysian tax payable before bilateral credit (RM)} \\
 &= \frac{100,000}{2,600,000} \times 624,000 \\
 &= \text{RM24,000}
 \end{aligned}$$

Or

RM10,000

whichever is lower.

The bilateral credit allowed for the YA 2024 is therefore RM10,000.

8. TAX EXEMPTION

Gains from the disposal of foreign capital assets received in Malaysia are eligible for tax exemption from 1 January 2024 until 31 December 2026 if comply with the economic substance requirement as prescribed.

8.1 Qualifying Condition

8.1.1 The economic substance requirements are as follows:

Taxpayer's Category	Economic Substance Requirements
(a) Company; (b) LLP; (c) Trust Body; and (d) Co-operative society.	(a) employ adequate number of employees with necessary qualifications to carry out the specified economic activities in Malaysia; and (b) incur adequate amount of operating expenditure for carrying out the

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Taxpayer's Category	Economic Substance Requirements
	specified economic activities in Malaysia.

8.1.2 Due to the different operating methods between industries, the determination of any minimum threshold value for the appropriate economic substance requirements is based on the facts of a case. Factors that will be considered include:

- (a) the number of employees considering the type of activity involved, for example whether it is a capital or labor-intensive industry;
- (b) whether the employee works full-time or part-time; and
- (c) whether the office premises have been used to carry out related activities and whether the premises are sufficient for those activities.

8.1.3 Specified economic activities means:

- (a) Investment holding entity
 - i. Holding and managing its equity participation in other entities; or
 - ii. Making necessary strategic decisions in respect of any assets the entity acquires, holds or disposes of; and managing and bearing principal risks in respect of such assets.

(b) Other than investment holding entity

In the case of a company, LLP, trust body and co-operative society carrying out a trade, profession or business in Malaysia, specified economic activities referred to the business operations carried out.

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- 8.1.4 A service director who is employed based on a contract of service and not on a contract for service can be considered as an employee. Therefore, a non-service director is not considered as an employee.

Example 5

Tech Innovate Sdn Bhd (TISB) is a chip manufacturing technology company with a factory in Malaysia. In 2024, TISB employs 150 people and makes operating expenditures amounting RM1,000,000.

TISB sell software copyrights located in Country T to a company in that country with a disposal gain of RM500,000 received in Malaysia in February 2024. The total tax paid in Country T is RM40,000.

Gains from the disposal of foreign capital assets amounting RM500,000 are exempt from the imposition of CKM because TISB has met the economic substance requirements in Malaysia.

- 8.1.5 Outsourcing of specified economic activities by a company, LLP, trust body and co-operative society to the outsourcing entity is permitted if the following conditions are met:
- (a) Specified economic activities are carried out by outsourcing entity in Malaysia;
 - (b) A company, LLP, trust body and co-operative society have implemented sufficient monitoring and control over the implementation of specified economic activities by outsourcing entity;
 - (c) Outsourcing entity are generally expected to charge company, LLP, trust body and co-operative society for specified economic activities carried out subject to the application of transfer pricing rules;
 - (d) The number of qualified employees employed and the total operating expenses incurred by the outsourcing entity in Malaysia is equivalent to the level of specified economic activities carried out by the outsourcing entity; and

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- (e) There is no double counting if the outsourcing entity provides services to more than one company, LLP, trust body and co-operative society.

Example 6

Igrene Sdn Bhd (ISB) is a resident investment holding company in Malaysia which involved in the real estate sector. The company has not employed any employee.

The company's investment and asset management activities are outsourced by appointing Emerald Sdn. Bhd (ESB) to carry out the activities of ISB's investment and asset management functions. Monitoring and control are implemented on these outsourcing activities to ensure that economic substance requirements are met.

ISB sold a property in country Z with a disposal gain of RM700,000 in March 2024. The total tax paid in country Z is RM126,000. The gains on disposal of capital assets received in Malaysia in July 2024.

ISB has fulfilled all the conditions of outsourcing as stated in paragraph 8.1.6.

Therefore, ISB is considered to have economic substance in Malaysia and eligible for tax exemption for gains on the disposal of property received in Malaysia.

9. TAX REPORTING

- 9.1 Taxpayers must report the gains from the disposal of foreign capital assets received in Malaysia in the basis period for a year of assessment in the ITRF.
- 9.2 Although the taxpayer is eligible to claim tax exemption, the taxpayer must report the gains from the disposal of the foreign capital asset in the ITRF as follows:
- (a) Type and amount of foreign income;
 - (b) Country where the income arises;

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- (c) Amount of tax imposed by foreign country; and
- (d) Any information to be determined other than in paragraph 9.2 (a) to 9.2 (c).

10. RECORD KEEPING

- 10.1 Taxpayers must keep relevant documents in accordance with the provisions of Section 82 and Section 82A of the ITA 1967 which indicate that the income has been taxed outside Malaysia.
- 10.2 Supporting documents as mentioned in paragraph 9.2 should be kept for auditing purposes.
- 10.3 Based on the provisions of Paragraph 9, Schedule 7 of the ITA, any claim for bilateral credit for a year of assessment must be made in writing to Director General of Inland Revenue not more than two years after the end of the year of assessment.

11. DISCLAIMER

The examples in this Guideline are for illustrative purposes only and are not exhaustive.

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