TAX AND INVESTMENTS IN MALAYSIA

Here are some of the tax concerns of your investments, especially for emerging investment vehicles.

By Shanthini Parama Dorai

Most investors swear by the saying "Never put all your eggs in one basket". They usually invest in various types of investment vehicles by putting more money into safer types of investments rather than the riskier ones. Previously, most Malaysians chose shares, unit trusts, real estates, fixed deposits and bonds as the main vehicle to grow their money. Over the last few years, a range of new investment vehicles have emerged in Malaysia, namely, cryptocurrencies, peer-to-peer (P2P) financing, robo-advisors and equity crowdfunding.

As the saying goes, there are two things you cannot avoid in life – death and taxes. This article aims to explore the tax concerns when investing into certain types of investment vehicles in Malaysia, with a greater focus on these popular, emerging investment vehicles:

SHARES

When investing in shares or stocks, investors may focus on investing either for dividend yields or capital gains. Any capital gains on shares are not subject to tax under the Malaysian Income Tax Act, 1967 (ITA).

However, if the activity of trading in shares is frequent enough, the Malaysian Inland Revenue Board (IRB) may treat the gain as a revenue gain which will be taxable. Alternatively, dividends distributed by a company is taxed at the company's level as a final tax. Hence, dividend yields are exempted from tax in the hands of the shareholders.

UNIT TRUSTS

The return on investment for unit trust holders is usually in the form of income distribution or capital appreciation which is derived from the pool of assets supporting the unit trust fund. Generally, unit holders are subject to tax on their share of the total taxable income of the unit trust.

The distribution received by the unit holders are net of tax. In this regard, unit holders are advised to check their dividend statements to identify the Section 110 tax credit. Unit holders are entitled to utilise this tax credit to offset against any income tax payable by them. In the event the tax credit exceeds the tax liability of the unit holder, the excess will be refunded to the unit holders.

> "Companies facilitating home working, such as software enablers, will see their longer-term growth prospects boosted."

The Angel Tax Incentive is a government approved programmed designed to bridge the early stage investment gap by encouraging qualified individual investors to invest in early stage technology start-ups in Malaysia, to boost the growth of start-ups. These investors are given tax incentives in return for providing the funding which will help reduce the risk related to early phase investments

To claim the Angel tax incentive, you need to be accredited angel investor. Are you eligible?

- Accredited angel investors who invested in a certified technology-based start-up (Investee Company)
- There must be NO familial ties between angel investor and investee
- Accredited angel investor must hold investment for a period of two years before claiming for tax exemption:
  - ◆ Year 1 - Invest
  - ◆ Year 2 - Claim tax deduction (during filing of tax returns for year 2)
- Accredited angel investors must hold not more than 30% of the issued of shared capital of the investee company.
- Investments below RM5,000 are not eligible for the tax incentive. Claims can only be made up to the maximum of RM500,000.
- All investment must be made in cash, in full and not in kind and there must be no obligation by the investee to pay back angel investors
- Shareholding must be reflected in the Shareholders' agreement or any other relevant documents acceptable at Cradle's discretion
- Share issued to the accredited angel investor must be in the form of ordinary shares only

(Source: cradlefund.com.my)

EQUITY CROWDFUNDING

Start-ups and small-to-medium enterprises often use equity crowdfunding to raise funds from the public. The term "angel investor" is usually related to equity crowdfunding. An angel investor is generally a high net-worth individual who invests in start-ups.

In Malaysia, angel investors are accorded tax incentives in terms of a tax exemption of up to RM500,000 per year in the second year of assessment following the year of assessment in which an investment is made. Prospective angel investors are required to apply to the Malaysian Business Angel Network (MBAN) to ensure that the eligibility criteria are met and to accredit them as angel investors (see Public Ruling 12/2020, IRB).

CRYPTOCURRENCIES

The IRB has mentioned that all cryptocurrency transactions will fall within the ambit of the ITA. The IRB referred to Section 3 of the ITA where any gains from trading in cryptocurrencies will be taxed if it is revenue in nature for the investor. Therefore, gains made by occasional trading in cryptocurrencies should be viewed as capital gains and under the local tax law, capital gains are not taxed.

With that said, the Malaysian tax authorities have recently updated its Guideline on Taxation of Electronic Commerce Transactions in 2019 to include digital currency under its scope of charge. This now effectively allows the IRB to collect revenues generated by cryptocurrency trading. With the absence of any provisions in the Malaysian tax law on taxing virtual assets, investors involved in digital currency activities are strongly advised to keep their transaction records and any relevant documents for seven years in case of a tax audit.

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P2P FINANCING

P2P financing is akin to traditional borrowing with the exception of a financial intermediary such as a bank or financial institution. Therefore, the subject of concern in P2P financing will be the interest earned. So will the interest income be subject to tax? Yes, the interest earned is taxable for both Malaysian resident and non-resident investors.

What is the tax treatment on your P2P interest earned? While Malaysian resident investors will need to declare the interest earned as interest in their annual income tax returns, the P2P financing operators will directly deduct 15% withholding tax at source for non-resident investors.

ROBO-ADVISORS

Certain investors prefer to simply let a third party handle the investment aspect of their money. This is possible with the existence of robo-advisory platforms which use algorithms to allow an investor's portfolio management to be automated. Robo-advisor platforms typically invest in exchange traded funds (ETFs) which are a compilation of stocks, bonds and other investments. Furthermore, most robo-advisor platforms in Malaysia tend to focus on foreign ETFs.

Investors should be aware that the dividend yields from trading in foreign ETFs may be subject to withholding tax depending on the jurisdiction of the ETF. The distributions received from the foreign ETFs will be exempted from tax in Malaysia as it is considered a foreign source of income.

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