

Revised Budget 2023 Announcement

Capital Gains Tax

What should businesses expect from the Budget 2023 announcement on Capital Gains Tax?



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Introduction

What is Capital Gains Tax?

In the tabling of the Revised Budget 2023, our Prime Minister and Finance Minister, YAB Dato' Seri Anwar bin Ibrahim announced the introduction of Capital Gains Tax ("CGT") on the disposal of unlisted shares by companies beginning 2024.

Generally, Malaysia does not impose CGT except for gains arising from the disposal of real property in Malaysia which may be subject to Real Property Gains Tax ("RPGT") at a maximum RPGT rate of 30%.

So, what is CGT?

Basically, CGT is a tax levied on capital gains accruing from disposals of investments, i.e. shares, bonds, cryptocurrencies, precious metals, real properties, etc. The tax will be levied at the point of disposal of the investments.

Although CGT in general covers a wide group of assets, the proposed CGT in Malaysia as announced in the Revised Budget 2023 will only be imposed on capital gains from the disposal of unlisted shares by companies.

As a comparison, some ASEAN countries that have already implemented CGT and their respective tax rates are as follows:

Country	Headline corporate CGT rate (%)
Thailand	Subject to standard corporate income tax (CIT) rate 20%
Indonesia	Subject to standard CIT rate 22%
Vietnam	Subject to standard CIT rate 20%
Cambodia	Subject to standard CIT rate 20%
Myanmar	10% for non-oil and gas sector; 40% to 50% for oil and gas sector

What can you expect from the Revised Budget 2023 announcement on Capital Gains Tax?

In line with the Government's continuous efforts to raise revenue collections and reduce our country's fiscal deficit, our esteemed Finance Minister has proposed to introduce CGT at a "low tax rate" on the gains from disposal of unlisted shares by companies beginning in the year 2024. It is hoped that the government will stay true to the proposal as announced to only impose CGT at a "low tax rate" on unlisted shares that are disposed by companies.

Though it will lead to an increase in revenue collections for the country, the introduction of CGT is expected to also have some adverse impact on the economy as the introduction of CGT on disposal of unlisted shares by companies will have a direct impact on corporate restructurings, Mergers and Acquisitions ("M&A"), Initial Public Offerings ("IPO") and might also potentially impact inbound investments.

However, these adverse impacts are expected to be for the short term as companies will have to gradually come to accept and adapt to CGT in the longer term.

Subsequent to the Revised Budget 2023 announcement, our esteemed Finance Minister had made an announcement on 8 March 2023 during his keynote speech at Invest Malaysia 2023 providing further clarification on the introduction of CGT as follows:



The implementation of CGT will be reviewed thoroughly with extensive engagements with stakeholders;



Assurance that the proposed CGT will not be imposed on gains from disposal of listed shares; and



Disposals of unlisted shares through an approved initial public offering (IPO) will not be subject to the proposed CGT.

This further update from our Finance Minister is timely to provide comfort to businesses and investors.

What can you expect from the Revised Budget 2023 announcement on Capital Gains Tax? (cont.)



Photo source: The Edge Markets

Furthermore, economists expect an increase in the number of companies going for IPO in the coming years and the exclusion from CGT on disposals of unlisted shares through an approved IPO will provide relief to these companies as a listing exercise cannot be rushed for completion before the implementation of CGT.

Meanwhile, companies that are looking to restructure their corporate shareholding structures or going for M&A deals should consider bringing forward their plans to be executed in the year 2023 to avoid the added tax burden from CGT, where possible.

Notwithstanding, there is still a lot of uncertainty surrounding the implementation of CGT which we hope the Government will review thoroughly and address accordingly before rolling out CGT in full. One matter being discussed is whether the government will only impose CGT on unlisted shares acquired on or after 1 January 2024 in line with the implementation date, etc.

If not, now is the time for companies to review their corporate plans and perhaps look at possible ways to mitigate the impact of CGT in the future.

To quote Winston Churchill -

“ He who fails to plan is planning to fail ”

Uncertainties on the Implementation of CGT

What type of shares will be subject to CGT, e.g. ordinary shares only or includes preference shares?

What will be the tax rate for CGT?

What are the filing requirements?

Are losses available for carry forward to future years?

Will there be double taxation issue where gains are subject to both CGT and other taxes, such as corporate income tax, withholding tax and RPGT?

Will CGT replace RPGT for disposal of Real Property Company shares?

Will long term investments (e.g. held for more than 5 years) be subject to CGT?

Any exemptions given for sales of shares within a group without any real gains e.g. group restructuring exercise?



Actions Required

What Should Companies Do?

Businesses should proactively review their group's corporate plans in the coming years and assess whether there are any opportunities for restructuring of the group's corporate structure, divestment of companies or undertake any other corporate exercises that may involve the transfer of unlisted shares.

How Crowe Can Assist You

Tailored Solutions to Meet Your Needs

In addition to reviewing the group's corporate plans and highlight transactions that may be impacted by CGT, we will also provide insights on the potential tax implications such as:

- To comment on the potential impact of CGT (when more information is provided by the Government).
- To highlight other potential tax implications, i.e. RP GT, stamp duty, corporate income tax, etc.
- To recommend tax efficient methods to meet the group's objectives.

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