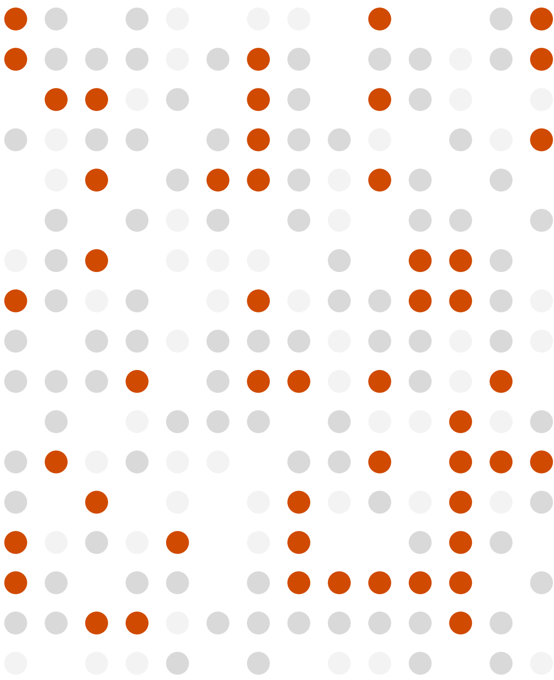


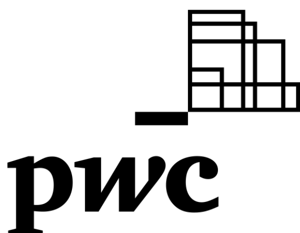
TaXavvy:

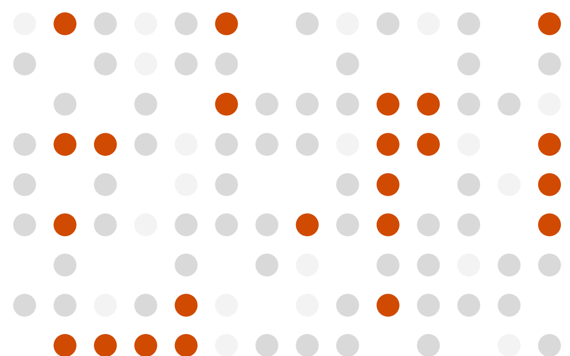
Budget 2024 Edition

[Finance (No. 2) Bill 2023]

9 November 2023

This edition is a continuation of our Budget 2024 Edition and highlights additional direct tax proposals based on the Finance (No. 2) Bill 2023





Inside this issue

Capital Gains Tax
Page 3

Real Property Gains Tax
Page 11

e-Invoicing
Page 14

Corporate Tax
Page 17

Tax Administration
Page 20

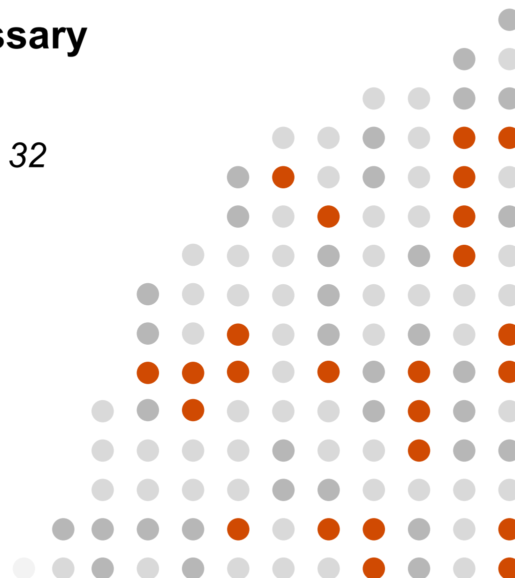
Stamp Duty
Page 23

Global Minimum Tax
Page 26

Petroleum Income Tax
Page 30

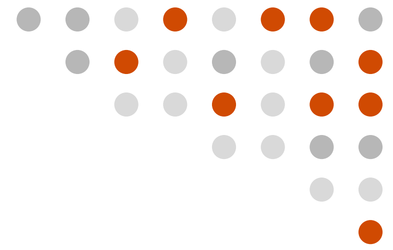
Glossary
Page 32

Please refer to our Indirect Tax Alert for updates on indirect taxes from the Finance Bill (subscribe here).



1 Capital Gains Tax

Capital Gains Tax



Further to the announcement in the Budget 2024, the Finance Bill has now provided additional details. Salient points are as follows:

Scope (taxable assets)

(1) Capital asset situated in Malaysia:
  a. Shares in unlisted companies incorporated in Malaysia
  b. Shares in foreign incorporated company deriving value from real property in Malaysia

(2) All types of capital assets situated outside Malaysia

Taxable persons

- Companies
- LLPs
- Co-operatives
- Trust bodies (including unit trusts)

Tax rates

(1) Capital asset situated in Malaysia

Acquisition date of capital assets	CGT rate	
	On net gain (chargeable income)	On gross disposal price
Before 1 January 2024	10% or	2%
From 1 January 2024	10%	Not applicable

(2) Gains from disposal of all types of capital assets situated outside Malaysia, remitted into Malaysia

Based on prevailing income tax rate of the taxpayer. For example:
- Companies, LLPs and trust bodies: 24% (headline)
- Co-operatives: 0% to 24% (scaled rates)

Comments

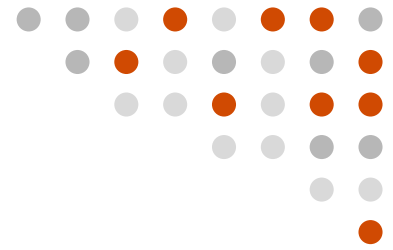
1. **Absence of transitional tax rate -** Unlike the transitional tax rate of 3% on gross income which was provided for a period of 6 months when foreign-sourced income was no longer exempted unconditionally for tax residents from 1 January 2022, no such transitional rate is provided this time.

2. **What is considered as received in Malaysia? -** Would this be based on the current IRB Guidelines on Tax Treatment in Relation to Income Received from Abroad (Amendment) dated 29 December 2022 ("IRB's Guidelines") which is based on amounts brought into Malaysia whether in cash or via electronic funds transfer?

Compliance requirements

- Tax returns are to be filed electronically within 60 days from the date of each disposal.
- The CGT is to be paid within 60 days from the date of disposal.
- Records of the disposal are to be kept for 7 years.

Capital Gains Tax



Effective date

With effect from 1 January 2024.

Comment

Although the Government has announced 1 March 2024 as the commencement date during the announcement of Budget 2024, the Finance Bill has indicated an earlier commencement date of 1 January 2024. No specific reason is stated under the Explanatory Statement to the Finance Bill for this commencement date. The earlier date may be required for meeting the commencement date under the EU Code of Conduct Group (Business Taxation) requirements in relation to foreign-sourced capital gains that is similarly adopted by other jurisdictions such as Singapore and Hong Kong SAR.

However, with respect to CGT in relation to unlisted shares in companies incorporated in Malaysia, it is currently premature to conclude that the earlier date of 1 January 2024 will similarly apply. The 1 March 2024 date could remain. Further clarification from the authorities will be required.

Exemptions / non-chargeability

The following exemptions / non-chargeability to CGT which was announced in Budget 2024 (including its accompanying Touchpoints) are not covered under the Finance Bill:

(1) Individuals

(2) Gains from disposal of shares related to:
- Initial public offering (IPO) exercise approved by Bursa Malaysia
- Restructuring of shares within the same group
- Venture capital companies

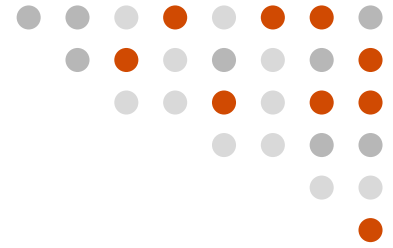
(3) Gains from disposal of foreign capital assets from outside Malaysia which meets economic substance requirements (ESR).

The above could be implemented via different instruments such as an exemption via subsidiary legislations to be gazetted by the MOF, etc.

Comments

The exemption from tax on remittance of gains from disposal of foreign capital asset conditioned on meeting ESR puts Malaysia on equal footing with other jurisdictions which are also following the EU Code of Conduct Group (Business Taxation) requirements. In this respect, it is hoped that the Government will review the current approach in evaluating the standard of meeting ESR. Based on the IRB's Guidelines, sufficient ESR (i.e. adequate number of employees and operating expenditure) will depend on the circumstances of each taxpayer (subjective). Whilst this approach provides the flexibility for the taxpayer to justify its case during an audit, it does not provide upfront certainty for taxpayers as the IRB does not generally provide pre-approval. In contrast, competing jurisdictions, such as Hong Kong SAR, provides pre-approval by way of Advance Ruling for taxpayers on whether ESR is met. Singapore for example, is looking at providing an more objective ESR test for pure-equity holding companies as companies which comply with the obligation to submit regular returns, and have operations managed and performed in Singapore.

Capital Gains Tax



Some new technical aspects

Taxed under ITA 1967
Although commonly referred to as "CGT", gains from the disposal of capital assets are treated as "income" and subject to income tax under the ITA 1967.

New class of income
A new class of income described as *"gains or profits from the disposal of capital asset"* will be introduced under a new section 4(aa) of the ITA 1967.

For this purpose, "capital asset" is broadly defined to mean *"moveable or immovable property including any rights or interest thereof".*

Separate source (non-business) for each disposal
Each disposal shall be computed separately and be treated as a separate source of gains or profits from the disposal of capital asset.

Current scope of taxable capital asset
Although capital asset is widely defined, the following exemptions will be given under a new paragraph 38 of Schedule 6, ITA 1967 to arrive at the current scope of taxable capital assets:

Gains or profits from disposal of a capital asset situated in Malaysia, except:

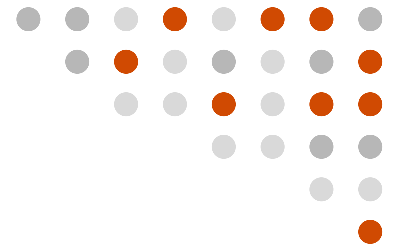
- Disposal of unlisted shares of companies incorporated in Malaysia
- Shares in foreign incorporated company deriving value from real property in Malaysia

Taxable events

Key taxable events include:

1. **Disposal** of unlisted shares of companies incorporated in Malaysia. Disposal is defined to mean:
   a. to sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law; and
   b. includes a reduction of share capital and purchase by a company of its own shares.

2. Gains from disposal of foreign assets **"received"** in Malaysia from outside Malaysia.



Computation of gain (with familiar features from RPGTA 1976)

A high-level computation of gains under CGT is as follows:

	Disposal consideration	Consideration in money or money's worth *less* expenditure incurred for enhancing / preserving value of assets, defending its title or right
Less:	Acquisition consideration	Consideration in money or money's worth *less* any receipt of compensation / insurance for damage / loss / depreciation of the asset or deposit forfeited.
Less:	Incidental cost of disposal or acquisition	Includes stamp duty, accounting and legal fees, valuer fees, cost of advertising and commission fees.
	Adjusted income	

The adjusted income (taxable gain) shall be treated as chargeable income of the company, LLP, trust body or co-operative society. Therefore, gains from disposal of capital asset will not rank for deductions such as approved donations.

Acquisition and disposal dates (with familiar features from RPGTA 1976)

Disposal date

Generally the date of disposal is to be determined as follows:

- Where there is a written agreement for the disposal, the date of such agreement.
- Where there is no written agreement, the date of completion of the disposal.

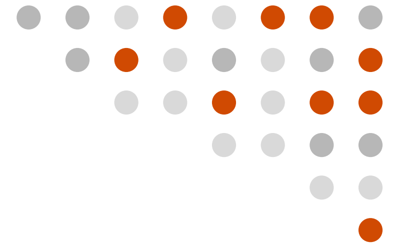
Acquisition date

The date of acquisition by the acquirer is deemed to coincide with the date of disposal by the disposer to the acquirer.

Conditional contracts

Where the disposal or acquisition is subject to approval from the Government or a State Government, the disposal or acquisition date will be the date of such approval, or where the approval is subject to conditions, the date of the last of all such conditions being satisfied.

Capital Gains Tax



Market value

Under certain circumstances, the consideration for acquisition or disposal will be deemed to be equal to the market value of the capital asset. These circumstances include (similar for RPGT purposes) disposals which are made:

- not at arm's length,
- by way of gift,
- wholly or partly for a consideration that cannot be valued,
- between connected persons.

Similar to the current provisions under the RPGTA 1976, the DGIR will determine the market value of the capital asset under certain circumstances. These include situations:

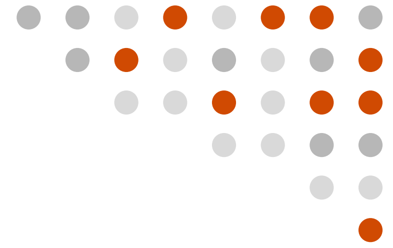
- Where the parties to the transaction are unable to agree on the market value.
- Where the DGIR is of the opinion that the market value of the capital assets, as agreed by the parties, is incorrect.

Treatment of capital losses

Capital losses is the excess of acquisition consideration and incidental costs over the disposal consideration. Capital loss may be used to offset against the gains from disposal of other capital assets.

Any capital losses accumulated can be carried forward up to 10 YAs to be offset against future gains from disposal of capital assets. Any capital losses not utilised after 10 YAs will be disregarded.

Capital Gains Tax



Disposal of shares in a foreign company deriving value from real property in Malaysia

A new provision will be introduced to subject the gains from the disposal of shares in a controlled company* that is incorporated outside Malaysia ("Foreign Co"), which derives its value from real property in Malaysia, to CGT.

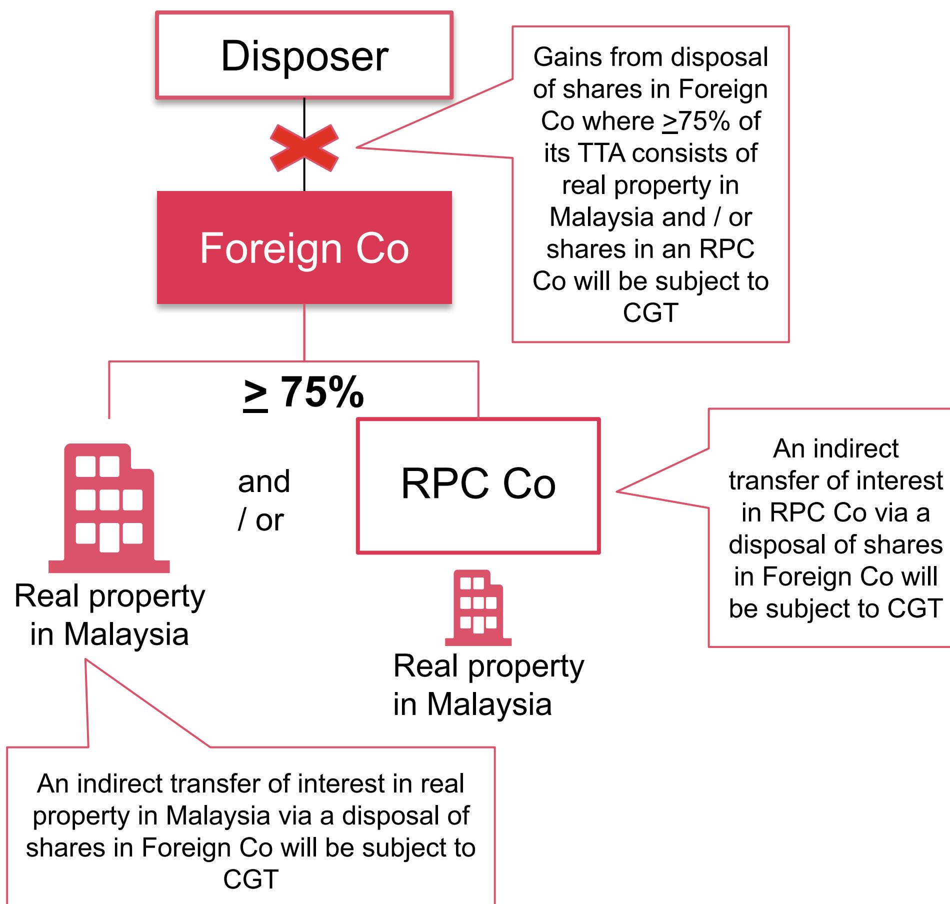
The gains from such disposal shall be deemed to be derived from Malaysia if, at the date of acquisition of shares of Foreign Co, Foreign Co owns:

(a) real property situated in Malaysia;
(b) shares in another controlled company (similar to a real property company under the RPGTA 1976) which owns real property situated in Malaysia where the market value of its real property is not less than 75% of its total tangible assets ("RPC Co"); or
(c) both (a) and (b) above,

and the market value of (a) and/or (b) is at least 75% of Foreign Co's total tangible assets (TTA).

** Generally means a company having not more than 50 members and controlled, in manners described under section 139 of the ITA 1967, by not more than 5 persons.*

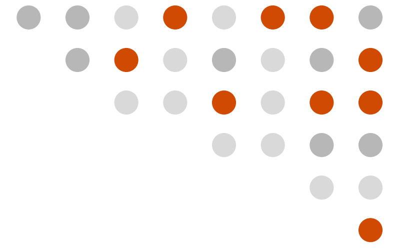
The above is diagrammatically depicted below:



Comment

The draft legislation did not provide any specific tax collection mechanism (e.g. withholding by acquirer) for cases where the disposer is a person who is located outside of Malaysia. Based on the existing reading, compliance will require the disposer to file the tax return and pay the CGT payable within 60 days from the disposal date.

Capital Gains Tax



Disposal by unit trusts

Currently, gains from realisation of investments is not treated as income of unit trusts. Therefore, it is not subject to income tax at the unit trusts. The non-taxability for the unit trust is extended to distributions to its unit holders, i.e. distributions received by unit holders out of such gains will likewise be non-taxable in the hands of the unit holders.

In line with the inclusion of trust bodies (which includes unit trusts) as one of the persons chargeable to CGT, it is proposed that the current treatment of excluding gains from realisation of investments as income of a unit trust will not be applicable to gains from disposal of unlisted shares and amounts received in Malaysia from disposal of foreign capital assets. In other words, those gains will be taxable moving forward.

(Effective from 1 January 2024*)

Comment

It is hoped that the government will consider providing tax exemption for the fund management industry to preserve its competitiveness. A tax exemption for individual unit holders on distributions in respect of realisation of unlisted shares by the unit trust will be in line with the government's objective of not subjecting individuals to CGT.

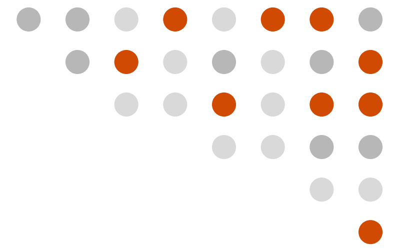
Gains from disposal of shares in an RPC under the RPGTA 1976 ("RPC shares")

Gains from disposal of RPC shares which are held by persons that are subject to CGT will be subject to CGT under the ITA 1967 from 1 January 2024* instead of RPGT. Other real properties disposed of, apart from RPC shares, will continue to be subject to RPGT. RPGT will continue to apply on disposal of RPC shares for individuals.

** Refer to comments under Effective date section.*

2 Real Property Gains Tax

Real Property Gains Tax



Implementation of self-assessment system (SAS) for RPGT

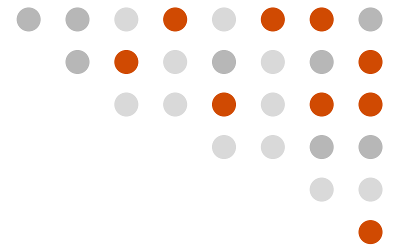
Similar to SAS for income tax, SAS will be implemented for RPGT with the following key features:

1. **RPGT return:** The disposer is required to calculate the RPGT payable for each disposal in the prescribed RPGT return. The due date for submission of the RPGT return is within 60 days of the date of disposal. The return may be furnished electronically.
2. **Deemed assessment:** The RPGT return furnished by the disposer is deemed to be an assessment made by the DGIR.
3. **Amendment of return:** A disposer who has understated its RPGT payable is eligible to amend the RPGT return by submitting an amended RPGT return within 6 months from the due date for submission of the RPGT return. The amended RPGT return is deemed to be an additional assessment made by the DGIR. The amended RPGT return may to be furnished electronically.

   The additional RPGT payable under amended RPGT return is subject to an increase of tax equal to 10% of the additional RPGT payable. The amendment can only be made once and is not applicable if the DGIR has raised an additional RPGT assessment after the RPGT return is submitted.

   In an event of audit, and where taxpayers did not submit the amended RPGT return, the RPGTA 1976 provides powers for the DGIR to impose a penalty of up to 100% of the additional RPGT payable.
4. **Additional assessment:** The DGIR may raise an additional assessment for any RPGT understatement within 5 years after the end of that YA. The time limit does not apply in cases of fraud, wilful default or negligence.
5. **Record keeping:** Documents for ascertaining chargeable gain and RPGT payable must be kept for a period of 7 years from the end of the YA in which the deemed assessment was raised.

(Effective from 1 January 2025)



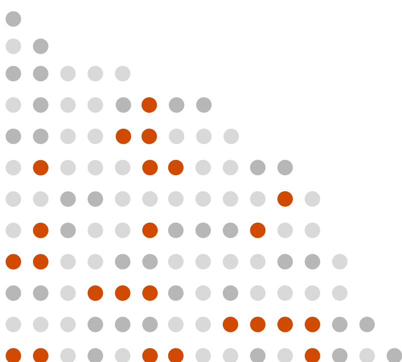
Implementation of self-assessment system (SAS) for RPGT (cont'd)

In addition to the above key features of SAS, the following amendments were also proposed to be made to the RPGTA 1976:

1. **Discharge of double assessments:** The DGIR will be empowered to discharge any assessments where 2 or more assessments have been made with respect to a person on the same gain in respect of the same chargeable asset for a YA to ensure that the gain is subject to RPGT only once for that year.
2. **Relief other than in respect of error or mistake:** A person who has furnished the RPGT return for a YA and paid the RPGT for the disposal but is eligible for an exemption, relief, remission, allowance or deduction where the law is published after the RPGT return is submitted, may apply to the DGIR for a relief of RPGT within 5 years after the end of that YA.

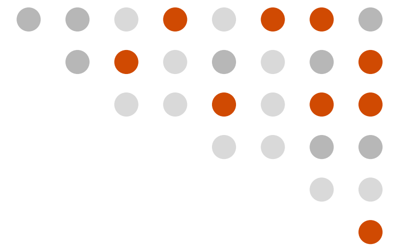
(Effective from 1 January 2025)

Existing	Proposed
Acquisition of shares in an RPC	
Acquisition of shares in an RPC is deemed to be an acquisition of a chargeable asset while disposal of shares in an RPC is deemed to be a disposal of a chargeable asset that is subject to RPGT.	Acquisition and disposal of shares in an RPC by the following persons will no longer be deemed to be an acquisition and a disposal of a chargeable asset for RPGT purposes (as these acquisitions and disposals will be subject to CGT): - company - LLP - trust body - co-operative society (Effective from 1 January 2024)



3 | e-Invoicing

e-Invoicing



Implementation of e-Invoice

During Budget 2024, the Government announced the revised timeline for implementation of e-Invoice, with further details provided during the IRB's National Tax Conference on Budget 2024. The full timeline for the implementation is outlined as follows:

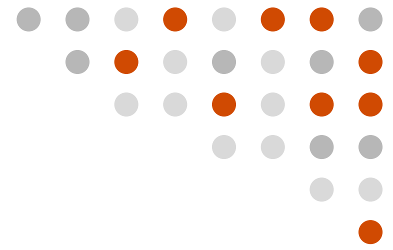
Implementation timeline (as proposed in Budget 2024)		
1 August 2024	**1 January 2025**	**1 July 2025**
Mandatory implementation for taxpayers with an annual turnover or income **in excess of RM100 million**	Mandatory implementation for taxpayers with an annual turnover or income **in excess of RM25 million to RM100 million**	For other categories of taxpayers, full implementation by 1 July 2025

To prepare businesses towards implementation of e-Invoice, the IRB has issued various guidelines (refer TaXavvy issues 15-2023, 20-2023 and 22-2023). The Finance Bill now sets out the legal provisions regulating e-Invoice under the following tax legislations:

- ITA 1967
- PITA 1967
- LBATA 1990

Key provisions to note are:

Definition of e-Invoice
An invoice or any document approved by the DGIR, issued by a person in respect of goods sold or services performed, which is electronically transmitted to and validated by the DGIR. (Effective from 1 January 2024)
Responsibility to issue e-Invoice
An e-invoice shall be issued for each transaction in a YA containing the prescribed information. The MOF shall prescribe the persons who shall be required to issue the e-invoice. (Effective from 1 January 2024)
Receipt issuance to buyers
• Businesses which implement e-invoicing are generally not required to issue receipts to buyers, unless the buyer requires the receipt. • Businesses which are eligible to issue consolidated e-invoice on a periodical basis are required to issue printed receipts to buyers. (Effective from 1 January 2024)



Implementation of e-Invoice (cont'd)

Disclosure to the Royal Malaysian Customs Department (RMCD)

The ITA 1967 and PITA 1967 subjects the DGIR and employees of the IRB (referred to as a "classified person" under the law) to a duty of confidentiality over information such as a tax return or other documents relating to the income of any person (referred to as "classified materials" under the law) which are made available for the purposes of the ITA 1967. Classified materials include tax returns, receipts, invoices, etc.

With the implementation of e-Invoice, it is proposed that the Director General of Customs and Excise (DGC) and / or officers of the RMCD under the DGC's supervision ("Customs Officers") be given access to e-invoices to the extent as is necessary for the proper exercise of the functions of the RMCD. For this purpose, the DGC and Customs Officers shall consequently be treated as classified persons and shall observe the same duty of confidentiality over the information obtained from the e-invoices.

(Effective from 1 January 2024)

Comment

With the use of the Tax Identification Number (TIN) in the e-Invoice, this represents an important step towards adopting TIN as a holistic single tax identifier.

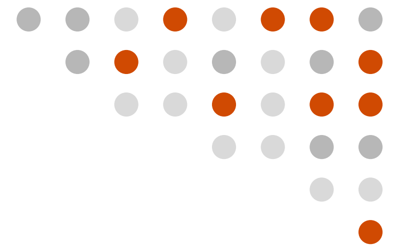
Offences

A fine of not less than RM200 and not more than RM20,000, or imprisonment not exceeding 6 months, or both, may be imposed on a taxpayer for the following offences:

- Failure to enter and submit e-invoice
- Failure to issue self-billed e-invoice
- Failure of the supplier to submit a consolidated transaction e-invoice

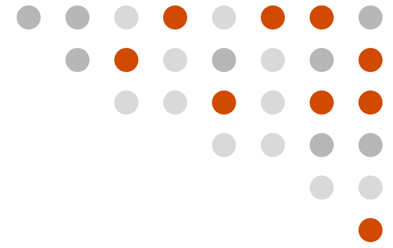
(Effective from 1 January 2024)

4 | Corporate Tax

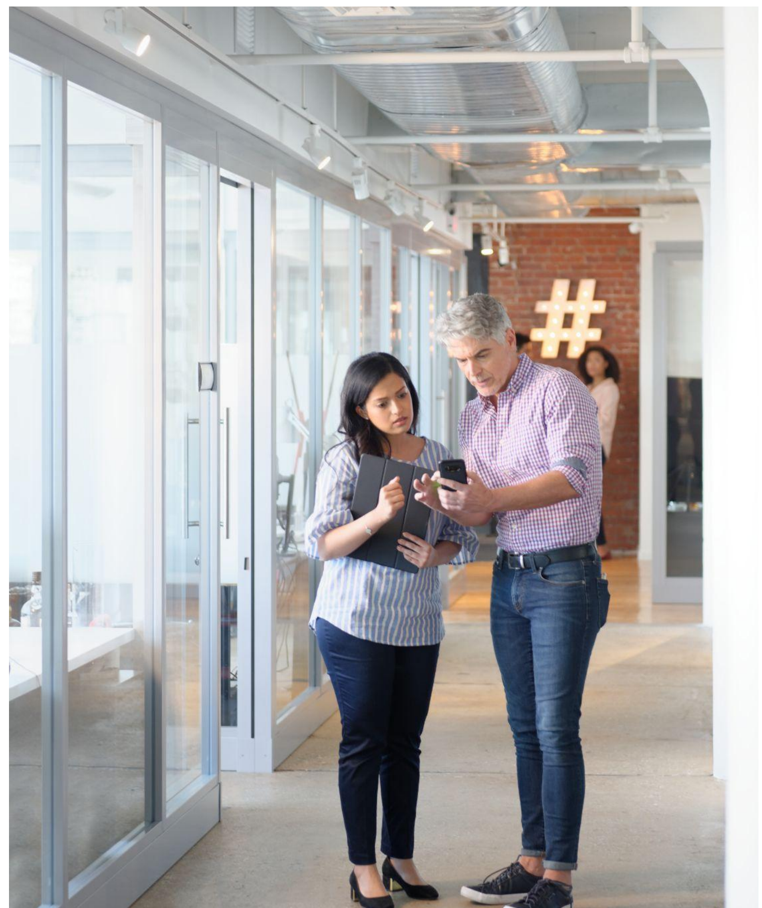


Existing	Proposed
Preferential tax treatments for MSMEs	
The following preferential tax treatments are available for MSMEs: • Exemption from filing estimate of tax payable (CP 204) for a period of 2 consecutive YAs from the commencement of operations. • ACA at the rate of 100% for a small value asset (valued not more than RM2,000 each) where the total claim at the ACA rate per YA for such assets is capped at RM20,000 unless the claimant is an MSME (there is no annual cap of RM20,000 for an MSME). Key shareholding conditions for a company to be considered as an MSME to qualify for the above treatments are: • At the beginning of the basis period for a YA, that company's paid-up capital in respect of ordinary shares is not more than RM2.5 million, and not more than: ○ 50% of the paid up capital in respect of ordinary shares of that company is directly or indirectly owned by another company which paid up share capital is more than RM2.5 million ("non-MSME"); ○ 50% of the paid up capital in respect of ordinary shares of a non-MSME is directly or indirectly owned by that company; or ○ 50% of the paid up capital in respect of ordinary shares of that company and a non-MSME is directly or indirectly owned by a third company.	An MSME is required to observe additional shareholding conditions in order to qualify for the preferential tax treatments where **not more than 20%** of the company's paid up capital in respect of ordinary shares, at the beginning of the basis period of a YA, is owned directly or indirectly by one or more: • companies incorporated outside of Malaysia; or • individuals who are not Malaysian citizens. (Effective from YA 2024) **Comment** The proposal is consistent with the additional shareholding conditions (also effective from YA 2024) which was introduced under Budget 2023 in respect of the preferential tax rates for MSMEs. Therefore, the additional shareholding conditions for the following preferential tax treatments from YA 2024 will be aligned: • Preferential tax rate of 15% for the first RM150,000 of chargeable income and 17% for chargeable income from RM150,001 to RM600,000. • Exemption from filing of CP 204 for 2 consecutive YAs from commencement of operations. • Non application of RM20,000 cap per YA for ACA claim on small value assets.

Corporate Tax

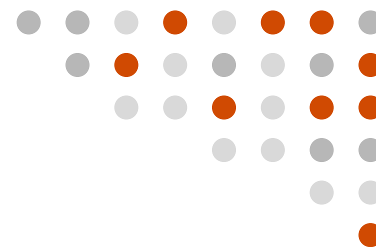


Existing	Proposed
Claim of double taxation relief	
Subject to conditions, a taxpayer is eligible to claim double taxation relief (referred to as "bilateral credit") against its Malaysian tax payable on income derived from outside Malaysia which has suffered foreign tax under a double tax agreement (DTA) with Malaysia. In cases where the foreign tax is imposed by a jurisdiction which does not have a DTA with Malaysia ("non-DTA jurisdiction"), the double taxation credit (referred to as "unilateral credit") is restricted to half of the foreign tax.	Unilateral credit will no longer be available for income that is treated as derived from Malaysia under the ITA 1967 that has suffered foreign tax from a non-DTA jurisdiction. (Effective from YA 2024)



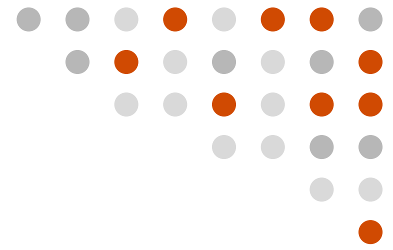
5 Tax Administration

Tax Administration



Existing	Proposed
Revision of estimate of tax payable	
A company, LLP, trust body or co-operative society is allowed to revise its estimate of tax payable for a YA in the 6th month, 9th month, or in both months of the basis period for that YA.	An extra chance of revising the estimate of tax payable for a YA will be allowed in the 11th month of the basis period for that YA, in addition to the first 2 revisions in the 6th month and/or 9th month. (Effective from YA 2024)
Appointment of employees to fill and submit electronic form on behalf	
Directors have the joint responsibility for doing all acts and things required under the ITA 1967 and PITA 1967 for a company including submission of electronic tax returns.	Specific provisions under the ITA 1967 and PITA 1967 will be introduced to provide powers for a director or other individuals, who are jointly responsible for doing all acts and things for a company or body of persons, to appoint employees to complete and submit prescribed forms, that are required to be submitted via electronic medium, on his behalf. (Effective from the coming into operation of the Finance Act)
Submission of financial statements and taxation worksheets	
From 1 September 2020, companies which are under the IRB's audit or investigation are encouraged to submit the required documents and tax worksheets through the Malaysian Income Tax Reporting System (MITRS). MITRS is an online platform developed using XBRL (eXtensible Business Reporting Language) format for the submission of tax worksheets electronically.	Businesses will be required to submit their financial statements and tax worksheets through MITRS within 30 days after the due date for submission of their income tax returns. Non-compliance is an offence under section 120 of the ITA 1967 where upon conviction, the person may be liable to: ● a fine of between RM200 to RM2,000; ● imprisonment for a term not exceeding 6 months; or ● to both fine and imprisonment. (Effective from YA 2025)

Tax Administration



<table>
<tr><th>Existing</th><th>Proposed</th></tr>
<tr><td colspan="2">Submission of prescribed forms by employers</td></tr>
<tr><td>Employers are allowed to submit the following forms manually or electronically:

● Form E - Return Form of Employer
● Form CP 21 - Notification Form by Employer of Employee’s Departure from Malaysia
● Form CP22 - Notification by Employer for New Employee
● Form CP22A - Notification for Cessation of Employment (Private Sector)
● Form CP22B - Notification for Cessation of Employment (Public Sector)</td><td>Mandatory electronic submission of the prescribed forms will be implemented as follows.

● Form E:
Effective from year ending 31 December 2023 and subsequent years

● Forms CP 21, CP22, CP22A and CP22B:
Effective from 1 January 2024</td></tr>
<tr><td colspan="2">Conditions for exemption from notifying DGIR on cessation of employment</td></tr>
<tr><td>Employers are required to notify the DGIR of employees ceasing employment through the furnishing of Form CP22A or Form CP22B.

However, an employer may be exempted from notifying the DGIR subject to the following conditions:

(1a) The employer has made monthly tax deduction (MTD) in respect of the employment income of the employee; or

(1b) The total monthly employment income of the employee is below the minimum MTD threshold

and

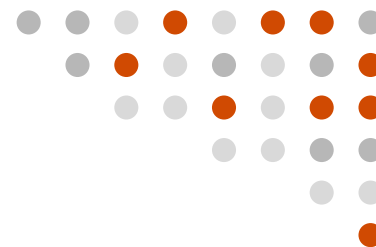
(2) It is known to the employer that the employee is not retiring from any employment (i.e. will continue to be employed).</td><td>The exemption will no longer be subject to the employer knowing that the employee will not retire from any employment.

Going forward, employers will be exempted from notifying the DGIR on the basis of meeting either condition (1a) or (1b).

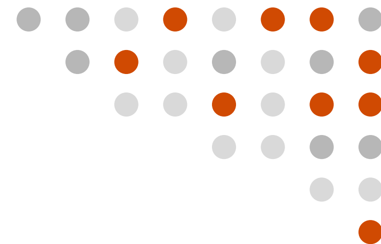
(Effective from 1 January 2024)</td></tr>
</table>

6 Stamp Duty

Stamp Duty



Existing	Proposed
Electronic instruments are instruments for stamping purposes	
For purposes of SA 1949, an instrument is defined to "include every written document".	To bring the SA 1949 up with times and with current trends of business conduct, the definition of "instrument" is augmented through a new definition of "writing" or "written" which includes any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form. With this, "instruments" will specifically include instruments that subsist in electronic form; that are written electronically. (Effective from 1 January 2024)
Proof of receipt of instruments executed outside Malaysia	
Dutiable instruments executed outside Malaysia are subject to stamping within 30 days after it has first been received in Malaysia. Proof of receipt in Malaysia is verified by the production of the envelope in which the instrument was received or of any accompanying letter, or by statutory declaration.	Similarly, to bring the SA 1949 in line with current trends of business conduct, proof of receipt in Malaysia is to be expanded to include receipt via electronic transmission, the proof of which is verified by the production of a copy or printout of the electronic transmission. Such instrument will be subject to stamping within 30 days after it has been received via the electronic transmission. (Effective from 1 January 2024)
Stamp duty for conventional loan agreements and syariah-compliant financing in foreign currency	
Malaysian ringgit loan agreements generally attract stamp duty at 0.5% (computed as RM5 for every RM1,000 or part thereof). However, the stamp duty for loan agreements which are in a foreign currency is capped at RM2,000.	The maximum limit of RM2,000 for foreign currency loan agreements will be abolished. With the removal, the stamp duty payable for foreign currency loan agreements will be aligned with Malaysian ringgit loan agreements which do not have the maximum duty payable of RM2,000. (Effective from 1 January 2024)

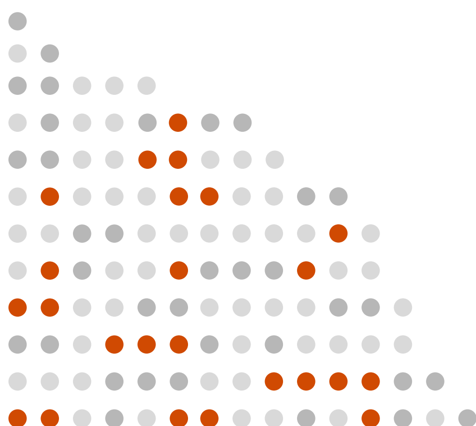


Cessation of use of digital franking machine, postal franking machine, and adhesive stamps

In line with the IRB's media statement on 21 August 2023 on the cessation of use of Hasil stamps and franking machines (refer to TaXavvy 18/2023) with effect from 1 January 2024, provisions under the SA 1949 in relation to digital franking machines, postal franking machines and adhesive / impressed stamps is to be amended / deleted accordingly.

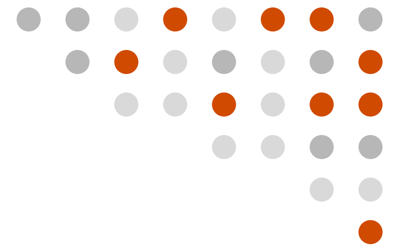
Stamping of instruments and payment of stamp duty will have to be done via the STAMPS portal at https://stamps.hasil.gov.my/

(Effective from 1 January 2024)



7 Global Minimum Tax

Global Minimum Tax



Further to the announcement in Budget 2024 of the expected implementation of GMT in year 2025, the Finance Bill will incorporate the legislative provisions of the GloBE rules including the Qualified Domestic Top-up Tax (QDTT) rules (collectively "GMT Rules") into the Malaysian tax legislations, i.e. the ITA 1967, PITA 1967 and LBATA 1990. The draft provisions which are closely aligned with the OECD Model Rules include:

- The Multinational Top-up Tax (MTT) under the Income Inclusion Rule (IIR) and QDTT on in-scope MNEs, commencing on or after 1 January 2025
- A substance-based income exclusion amount for all top-up taxes
- A minimum tax rate at 15%

Salient points are as follows:

Implementation

The GMT Rules come into effect from financial years commencing on or after 1 January 2025.

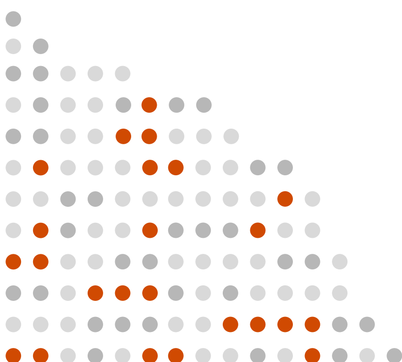
In-scope MNEs

The GMT Rules apply to all Constituent Entities (CE) of an MNE group which has at least one entity or permanent establishment that is not located in the same jurisdiction as its ultimate parent entity (UPE), and the UPE's consolidated financial statement revenue is EUR 750 million or more in at least 2 of the 4 financial years immediately preceding the tested financial year.

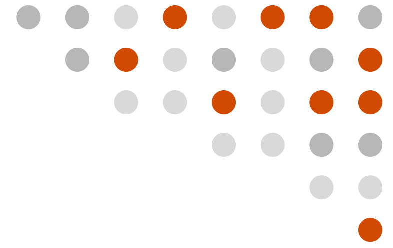
Exclusion

Exclusion from the application of the GMT Rules include:

- Government entities
- International organisations
- Non-profit organisations
- Pension funds
- Investment fund that is a UPE
- International shipping income
- Real estate investment vehicle that is a UPE
- Subject to conditions, an entity that is 85% or 95% owned by any of the above entities, except a Pension Services Entity



Global Minimum Tax



Enabling provisions

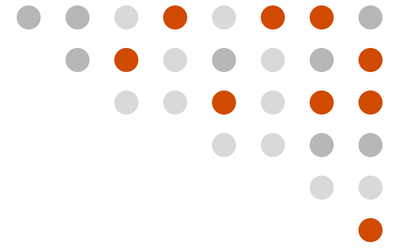
The ITA 1967, PITA 1967 and LBATA 1990 will be amended to include the GMT Rules through incorporation of new chapters relating to the MTT and QDTT such as:

- Interpretation
- Scope
- Imposition and General Characteristic of the Tax
- Income Inclusion Rule
- Computation of GloBE Income or Loss
- Computation of Adjusted Covered Taxes
- Computations of Effective Tax Rate and Top-up Tax
- Filing of GloBE Information Return (GIR)

Filing of GIR
GIR is to be furnished no later than 15 months after the last day of the Reporting Financial Year.

It is noted that for the first Reporting Financial Year, the transitional (extended) period of furnishing the GIR no later than 18 months (additional 3 months) after the last day of the Reporting Financial Year is not adopted.

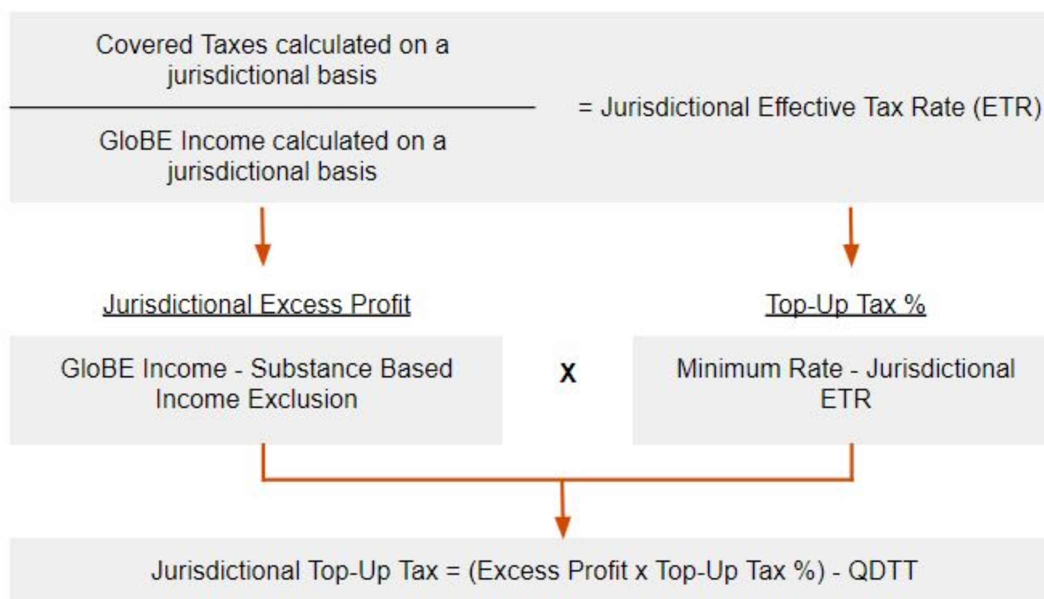
Global Minimum Tax



Below is a brief recap on the Globe Rules:

What are the GloBE Rules, generally
The GloBE Rules operate by including new taxing rights over undertaxed profits of any entity within an MNE group with global revenue of at least EUR 750 million per annum which are taxed below the globally agreed minimum tax rate of 15%. The GloBE Rules, which will impose a top-up tax (MTT) for the difference between the jurisdictional effective tax rate and the 15% minimum tax rate, operate mainly via the IIR to provide Malaysia with the ability to collect an allocation of top-up tax (via the MTT) where the group's UPE is located in Malaysia.
What is QDTT, generally
The OECD model rules included provisions for jurisdictions to introduce a QDTT as part of their local implementation of the Pillar Two rules. The key premise is to enable tax authorities to collect any incremental tax arising under the Pillar Two rules from domestic activities in their own jurisdiction, rather than such tax revenues being payable at the UPE's jurisdiction of residency under IIR rules. The intention is for a domestic top-up tax to be computed on broadly the same basis as the GloBE rules, such that it is considered 'qualifying' and can operate to prevent further tax being levied (or calculations being required) under the GloBE rules. Like the GloBE rules, the effective tax rate is calculated on a jurisdictional basis and, if necessary, 'topped-up' to an effective tax rate of 15%.

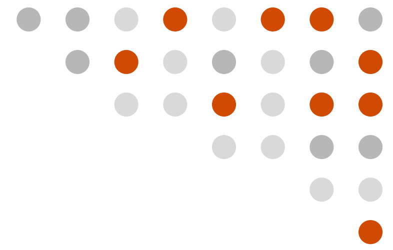
Determination of MTT:



Source: IRB

8 | Petroleum Income Tax

Petroleum Income Tax



Definition of “secondary recovery”

Chargeable persons under the PITA 1967 are eligible to claim ACA for qualifying expenditure incurred in relation to a secondary recovery project.

The definition of "secondary recovery" in the PITA 1967 was amended in YA 2017 where the definition of the project was expressed to be one that must be “carried out subsequent to the earlier recovery process”.

It is now proposed that “secondary recovery” means a method or process which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir which is carried out -

(a) subsequent to the earlier recovery process for the purposes of additional and accelerated recovery of those hydrocarbons; **or**

(b) for the initial recovery or extraction of those hydrocarbons

(Effective from YA 2024)

Determining a contiguous Production Sharing Contract (PSC)

Under the PITA 1967, where a partnership carries on petroleum operations under two or more PSCs and the areas under those PSCs are contiguous, the petroleum operations in those contiguous areas shall be treated as being carried on in a single PSC - a ‘contiguous PSC’.

It is proposed that the definition of a contiguous PSC under section 2(4)(a)(i) of the PITA 1967 be stated as PSCs entered by a partnership comprising of the same original parties, and approved by the DGIR.

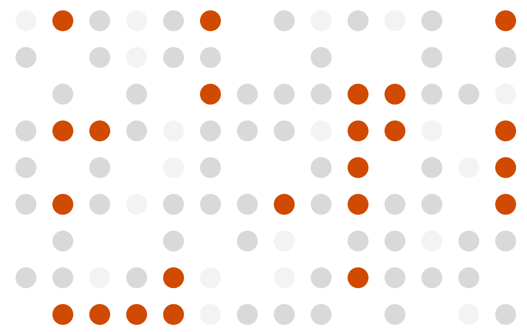
(Effective from YA 2024)

Contiguous PSC’s utilisation of tax attributes of a PSC which has expired / surrendered to PETRONAS

A provision is introduced to clarify that a contiguous PSC can continue to utilise the remaining tax attributes (e.g. unabsorbed allowances, incentives, etc) of a PSC which has expired or surrendered to PETRONAS.

(Effective from YA 2024)

Glossary



Abbreviation / acronym	Description
ACA	Accelerated capital allowance
CGT	Capital Gains Tax
DGIR	Director General of Inland Revenue
GMT	Global Minimum Tax
IRB	Inland Revenue Board
ITA 1967	Income Tax Act 1967
LBATA 1990	Labuan Business Activity Tax Act 1990
LLP	Limited Liability Partnership
MNE	Multinational Enterprise
MOF	Ministry of Finance
MSME	Micro, small and medium enterprise
OECD	Organisation for Economic Co-operation and Development
PITA 1967	Petroleum (Income Tax) Act 1967
RPC	Real property company
RPGT	Real Property Gains Tax
RPGTA 1976	Real Property Gains Tax Act 1976
SA 1949	Stamp Act 1949
YA	Year of assessment

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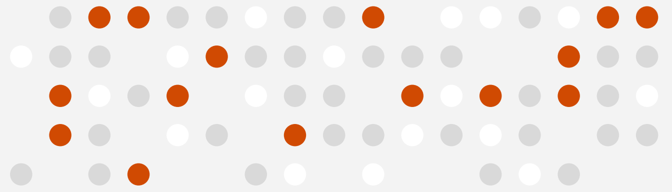

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