



# Taxavvy

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## Amendment Bills



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## Amendment Bills

The following (collectively referred to as “Amendment Bills”) were tabled for first reading in Parliament on 25 March 2024:

- Income Tax (Amendment) Bill 2024
- Labuan Business Activity Tax (Amendment) Bill 2024

The amendments are in relation to capital gains tax, e-invoicing, and revision of estimate of tax payable.



### Capital Gains Tax (CGT)

#### Scope of taxable capital assets

##### Current

Capital assets for CGT purposes is broadly defined to mean “*moveable or immovable property including any rights or interest thereof*”.

Although widely defined, exemptions on gains or profits from disposal of a capital asset situated in Malaysia, except for the following, are given under paragraph 38 of Schedule 6, of the Income Tax Act 1967 (ITA 1967) [“the Exemptions”] to arrive at the scope of taxable capital assets:

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

##### Proposed

The definition of capital assets is to be substituted to directly set out the types of capital asset which is subject to CGT as follows:

- movable or immovable property situated outside Malaysia including any rights or interests thereof; or
- movable property situated in Malaysia which is a share of a company incorporated in Malaysia not listed on the stock exchange (including any rights or interests thereof) owned by a company, limited liability partnership (LLP), trust body or co-operative society.

With the new definition of capital asset, the Exemptions is proposed to be removed.

(Effective from coming into operation of the Amendment Act)

#### **PwC Comments**

*The broad definition of capital asset which covers both movable and immovable property is now applicable only for assets situated outside Malaysia.*

*For assets situated in Malaysia, the scope is now clearly defined as a share of a company incorporated in Malaysia not listed on the stock exchange. In addition, it also spells out that it refers to shares owned by a company, LLP, trust body or co-operative society. The law will therefore be clear that CGT does not apply to individuals on disposal of unlisted shares of companies incorporated in Malaysia.*

### Definition of shares

In the Guidelines for CGT on Unlisted Shares (“CGT Guideline”) dated 1 March 2024, the Inland Revenue Board (IRB) explains that shares which are subject to CGT are shares with “equity” features such as ordinary shares, preference shares, redeemable preference shares, convertible bonds or long-term borrowings with equity features. The CGT Guideline explains that “shares”, in relation to a company, include stock other than debenture stock. The IRB’s explanation is consistent with the definition of “shares” under section 2 of the ITA 1967. Example of equity features provided under the CGT Guidelines are:

- The shareholders’ right to receive dividend is not fixed
- The shareholders’ right to the residual assets of the company ranks after other claimants in a liquidation
- The shares have no maturity date
- The shares carry voting rights

In line with the CGT Guideline, it is now proposed that the following definition of shares under section 65C of ITA 1967 be deleted:

- “(a) *stock and shares in a company;*
- “(b) *loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;*
- “(c) *a member’s interest in a company not limited by shares whether or not it has a share capital;*
- “(d) *any option or other right in, over or relating to shares as defined in paragraphs (a) to (c)*”

The Amendment Bill explains that with the deletion, the following existing definition of shares under section 2 of the ITA 1967 is applicable for the purposes of computing CGT:

“**“share”**, in relation to a company, includes stock other than debenture stock ”

(Effective from coming into operation of the Amendment Act)

### Scope of section 15C shares

Currently, a disposer of section 15C shares which is subject to CGT is described as “a person”.

In line with the general scope of chargeable person for CGT, the disposer of section 15C shares which is subject to CGT is proposed to be specified as a “*company, LLP, trust body or co-operative society*”.

(Effective from coming into operation of the Amendment Act)

### “Defined value” for the purpose of section 15C shares

The CGT Guideline describes “defined value” as the “*market value of real property or acquisition price of shares of another controlled company as determined under **subsection 15C(4)\****”, as follows:

- (a) If section 15C shares were acquired before the foreign controlled company becomes a section 15C company, the acquisition price is deemed to be equal to a sum determined in accordance with the formula  $A/B \times C$ , where:
  - **A** “is the number of shares of the relevant company...”
  - **B** “is the total number of issued shares in the relevant company at the date of acquisition of the shares of the relevant company...”
  - **C** is the defined value of the real property or shares or both owned by the relevant company at the date of acquisition of the shares of the relevant company...”
- (b) If the foreign controlled company is already a section 15C company, on the actual date of acquisition of the section 15C shares, the acquisition price is equal to the consideration paid for the shares or, where applicable, market value.

\*The legislation will be updated to reflect the meaning of defined value as adopted in the CGT Guideline. Currently, the defined value is stated as “*market value of real property or the acquisition price of shares of another controlled company as determined under **subsection (2)***”.

(Effective from coming into operation of the Amendment Act)

## Other amendments

The other amendments from the Amendment Bills cover the following:

- e-Invoicing
- Revision of estimate of tax payable



### e-Invoicing

#### Receipt issuance to buyers

Businesses which are eligible to issue consolidated e-invoice on a periodical basis are required to issue receipt to buyers. Previously, the law had specified that such receipts to be in printed form. It is now proposed that the issuance of receipt may be made in any manner and is not limited to printed receipt.

(Effective from 1 January 2024)

#### e-Commerce platform provider to issue self-billed invoice

It is now proposed to be specified into the law (both the ITA 1967 and the Labuan Business Activity Tax Act 1990) that the e-Commerce platform provider is required to issue a self-billed invoice in accordance with the conditions and specifications as determined by the Director General of Inland Revenue.

This is in line with the industry specific FAQ on e-Invoice: Implementation of e-Invoice in Malaysia FAQ for e-Commerce, which has specified that the e-Commerce platform provider is responsible to assume the role of Issuer and issue a self-billed e-Invoice to record the merchant and / or service provider's (e.g. logistics provider) income earned from transactions concluded through the e-commerce platform.

(Effective from 1 January 2024)

### Revision of estimate of tax payable

Following the introduction to allow a third chance to submit a revision of estimate of tax payable for a year of assessment (YA) in the 11th month of the basis period for that YA, the definition of "revised estimate" is now amended to include the revised estimate made in the 11th month.

The amendment to the law is to allow for reference to revisions made in the 11th, 9th or 6th month, whichever the latest, when computing the estimate of tax payable for the following YA which must not be less than 85% of the latest revised estimate of tax payable for the immediately preceding YA.

(Effective from YA 2024)

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