



# TaXavvy

Stay current. Be TaXavvy

Issue 31 - 2024 | 9 October 2024

## Capital gains tax (CGT) exemption for disposal of shares related to restructuring of companies scheme and initial public offering (IPO)

The Gazette Orders relating to the Budget 2024 proposal on exemption from CGT on gains from disposals of shares related to approved IPO and restructuring of companies within the same group were gazetted on 8 October 2024.

### The Gazette Orders

- **Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024:** CGT exemption for disposal of shares under a scheme for restructuring of companies in the same group to increase operational efficiency.
- **Income Tax (Initial Public Offering) (Exemption) Order 2024:** CGT exemption for disposal of shares related to company restructuring for an IPO.

### Highlights

Both Gazette Orders specify conditions and application procedures to qualify for the exemptions and are applicable for disposals made from 1 March 2024 to 31 December 2028.

The Gazette Order for restructuring of companies scheme includes requirements such as:

- Consideration for the disposal of shares to consist of shares in the acquirer company, or not less than 75% shares in the acquirer company with the balance in cash, and the shares shall be issued to the disposer.
- There are additional conditions which will be detailed in guidelines to be issued by the Inland Revenue Board ("IRB Guideline").
- Acquirer is a resident company.
- Similar to the exemption from real property gains tax (RPGT) for transfer of assets between companies in the same group, there are conditions to increase efficiency in operations.
- Requirement to obtain the IRB's approval.

The exemption for disposal of shares related to company restructuring for an IPO is also subject to the IRB's approval, and application for the IPO is required to be made to the Securities Commission / Bursa Malaysia within one year from the date of disposal.

### Salient points from the Gazette Orders

Other notable points from the Gazette Orders are as follows:

*Qualifying persons:* Companies, limited liability partnerships, trust bodies, and co-operative societies.

*Shares eligible for CGT exemption:* Shares of unlisted companies incorporated in Malaysia ("unlisted shares"). **Unless the IRB Guideline states otherwise when issued subsequently, the scope of the exemption does not appear to cover shares of a foreign controlled company deriving value from real property in Malaysia under section 15C of the Income Tax Act 1967 (ITA 1967).**

## Qualifying conditions:

### Restructuring for an IPO

- The shares disposed of are in relation to restructuring of any company for an IPO.
- Application for the IPO shall be made to the Securities Commission (for listing on the Main Market) or Bursa Malaysia (for listing on the ACE Market and LEAP Market) within one year from the date of the disposal of shares and the approval for such application shall be obtained on or before 31 December 2028.
- A written application is required to be made to the IRB within one year from the date of approval of the Securities Commission or Bursa Malaysia.
- The exemption does not change the requirement to file CGT returns.

### Restructuring of companies scheme

- The shares are acquired by a company resident in Malaysia. **Based on ITA 1967 and subject to further guidance from the IRB, a company includes 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.**
- The disposal is part of a restructuring scheme of companies in the same group to increase efficiency in the operation of the disposer, or the acquirer or both.
  - **Based on the ITA 1967 and subject to guidance from the IRB Guideline, companies in the same group would include those which are deemed to be related to each other under the Companies Act 2016.**
  - **The operational efficiency condition resembles the prevailing condition for exemption from RPGT for transfers between companies in the same group. Therefore, will the other conditions / covenants, including the requirement to remain in the same group of companies, be similarly prescribed in the IRB Guideline for the restructuring scheme.**
- The consideration for the disposal of shares shall comprise no less than 75% in shares of the acquirer company, with the remaining balance to be paid in cash, and the shares shall be issued to the disposer.
- In future disposal made by the acquirer, the acquirer is to adopt the disposer's acquisition price.
- In addition to the conditions set out in the Gazette Order, the exemption is subject to conditions imposed by MOF which will be detailed in the IRB Guideline. The full scope of the exemption conditions will be known once the IRB Guideline is issued.
- A written application is required to be made to the IRB three years after the disposal date.
- The exemption does not change the requirement to file CGT returns.

*Comment: The Gazette Order states that an application is to be made to the IRB after a period of three years from the date of the disposal of shares. Clarity on the approval and exemption timeline will be required from the IRB Guideline together with details on the rest of the conditions. A pertinent question is whether taxpayers can obtain prior approval, claim the exemption at the time of disposal, and thereafter observe the conditions/covenants for three years, failing which the exemption will be subsequently withdrawn (similar to intra-group exemption under RPGT). Alternatively, will the exemption only be granted retroactively upon fulfilment of the conditions at the end of the three-year period (outcome-based)? In other words, will taxpayers be required to file CGT returns and pay the CGT upfront, then claim the exemption later after meeting the conditions? The latter approach provides certainty but strains cash flow.*

---

Have questions?

Let's connect

Are you working on a critical tax issue? Our Tax team can help you achieve your tax objectives to strategically move your business forward. For more tax insights, please visit [www.pwc.com/my/tax](http://www.pwc.com/my/tax).



[unsubscribe from all PwC communications](#) | [unsubscribe from this list](#) | [update subscription preference](#) | [subscribe to TaXavy](#)

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2024 PwC. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details. Read about our commitment to your privacy [here](#).