Tax e-Alert
@08 Nov 2023

2024 Budget: Further Clarifications in Finance (No. 2) Bill 2023

Incidental to the 2024 Budget, the Finance (No. 2) Bill 2023 was tabled in the parliament yesterday. The 231-page document represents the longest Finance Bill in recent history as it carries pertinent details of various tax reforms such as implementation of e-Invoicing, introduction of Capital Gains Tax, implementation of Global Anti-Base Erosion ("GloBE") Model Rules (OECD Pillar 2), Global Minimum Tax and self-assessment regime for Real Property Gain Tax ("RPGT").

This e-Alert summarises the key details in the Finance Bill.

1. Implementation of e-Invoice

In line with the earlier announcements, electronic invoicing is set to be implemented in phases as follows:

Taxpayer's Annual Turnover	Mandatory Implementation Date
More than RM100 million	1st August 2024
RM25 million to RM100 million	1st January 2025
All other taxpayers	1st July 2025

The Finance Bill provides further clarifications as follows:

- The general framework does not confine the application to only companies. Further, entities under the purview of Labuan Business Activity Tax Act 1990 (LBATA) are also within the scope of mandatory e-Invoicing requirements. The Director General of Inland Revenue ("DGIR") has the power to further prescribe or limit the requirements to certain type of taxpayers.

- The requirement applies for *'each transaction in respect of any goods sold or services performed'*. Hence, the requirement to issue e-Invoice also applies to transactions which are not directly attributable to 'revenue' for accounting purposes.

- The requirement to issue *self-billed e-Invoice* applies in respect of *acquisition of goods or enjoyment of services*. From the specific guidelines issued by the Inland Revenue Board of Malaysia ("IRBM"), the requirement to issue self-billed e-Invoice applies in respect of acquisition from *foreign vendors* and *payments to individuals* whom are not carrying on a business.

- Affirmation that businesses may consolidate transactions into a 'consolidated transaction invoice'. This is particularly relevant for businesses engaged in Business-to-Consumer (B2C) transactions with the exception of certain sectors such as car dealers, jewellery shops, betting, construction and payments to agents, dealers and distributors (e.g. multi-level marketing).

- The provisions of Personal Data Protection Act ("PDPA") would not apply on e-Invoicing transactions.

At this juncture, there is no express provision that mandates the possession of e-Invoicing to substantiative tax deduction in respect of business expenses or personal reliefs.

What's Next?

While the legal framework is ready, businesses should look forward for the Software Development Kit ("SDK"), which is expected to be released by the end of this year.

In the meantime, businesses should ensure preparedness on the business aspects such as formation of committees to oversee implementation, performance of business impact assessment, assessment of data quality and preliminary impact assessment on business flows. Should you need more guidance, feel free to reach out to us at thenesh@tratax.my

2. Implementation of eXtensible Business Reporting Language (“XBRL”)-based reporting system

A new provision, Section 82B, is proposed to be included in the Income Tax Act 1967 (“ITA”), which mandates submission of information via electronic medium to the tax authority within thirty (30) days from the due date of furnishing income tax returns.

It is apparent that this new provision is in line with the implementation of the Malaysian Income Tax Reporting System (MITRS), which is an *online platform to submit Tax Working Sheets*.

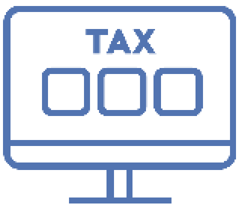
MITRS is developed using XBRL format, an international standard for sharing business reporting digitally. XBRL uses eXtensible Markup Languange (“XML”) format to organize and exchange business information electronically.

The effective date for the new law is 1st January 2024. From our various interactions with the tax authority, it appears that this may be effective from year of assessment 2025.

3. Capital Gains Tax (CGT)

The wordings of the Finance Bill further clarifies the following:

1. The scope of taxable assets is not only limited to shares of unlisted companies. Instead, the term ‘capital assets’ is assigned with a wider definition that refers to *all movable and immovable poperties* (including any rights or interests thereof). This is in line with the European Union (“EU”)’s Code of Conduct Group (CoCG). From our various interactions with the tax authority, we understand that:



- For capital gains arising from disposal of foreign assets; the wider scope of 'capital assets' applies.
- For capital gains arising from disposal of domestic assets; the scope would be limited to shares, debentures, loan stock, options and member's interests, with an exemption for companies listed in the Malaysian stock exchange.

2. CGT applies only in respect of disposals made by a company, limited liability partnership, trust body or co-operative society. It or in other jurisdictions.

3. CGT does not apply to disposal made by individuals.

4. The tax rate for CGT is not always 10%, but varies as follows:

Type of Asset	Acquisition Date	Tax Rate
Domestic	On or after 1st January 2024	10% of chargeable income (i.e. net gain)
Domestic	Prior to 1st January 2024	Either 10% of net gain or 2% of gross disposal price
Foreign	Regardless	Prevailing tax rate (i.e 24% if the disposer is a company)

5. Any gain arising from disposal of a foreign company which derives at least 75% of its value from real properties in Malaysia (or shares of Real Property Company ("RPC")) which is deemed to be derived from Malaysia, will be subject to tax (10% of net gain, or where applicable, 2% of gross) even if the disposer is a foreign company. In such a case, the CGT applies regardless of whether the gain is remitted into Malaysia.

6. A separate return is required to be furnished by the disposer within sixty (60) days from the date of disposal. At the time of writing, it is not clear whether a return is also required to be submitted within such time for disposal of foreign assets, amid such gain not being subject to tax until the time of remission into Malaysia.

7. Based on the information available at this juncture, there is no requirement for the acquirer to submit any return or withhold any part of the consideration for taxes. The disposer is required to pay the taxes within 60 days from the date of disposal.

8. The date of disposal is generally based on the date of agreement, except where the disposal is conditional upon Government's approval. Where there is no written agreement, the date of completion is taken, based on definitions consistent with the RPGT Act 1976.

9. CGT is not required to be included as part of the corporate tax estimates (CP204) for the purposes of advance tax payments/instalments.

10. Computational aspects:

- CGT is taken as a separate source of income.
- The computation of disposal price and acquisition price is generally based on the RPGT concepts.
- Any losses incurred are only permitted to be offset against future CGT within a 10-year period (Note: no carry-back allowed even if there is another disposal of capital asset earlier in the same year).

11. The transaction value (for disposal and acquisition respectively) is replaced by market value in the following cases:

- Transaction otherwise than by way of bargain made at arm's length, in particular by way of gift.
- The disposal is made for a consideration that cannot be valued.
- Transfer of assets to trustee for the creditors in consideration of debt.
- Transfer of business for a lump sum consideration.
- Transaction between connected persons (as defined).

12. Further, IRBM may determine the market value in the following scenarios:

- The parties to the transaction are unable to agree on its market value.
- There is only one party for the disposal.
- The DGIR is of the opinion that the market value agreed on by the parties is incorrect.

13. For exchange of assets, the market value of the asset is received by the disposer is taken as the consideration for disposal.

Although 1st March 2024 was announced as the effective date for CGT on domestic assets in the Budget announcement, the Finance Bill stipulates 1st January 2024 as being the effective date for these provisions. The 1st of January 2024 appears to be in line with the EU's CoCG requirements and the timeline committed by both Hong Kong and Singapore in relation to CGT.

It is possible that Malaysia may implement CGT on foreign assets effective 1st January 2024 and on domestic assets effective 1st March 2024.

What's Next?

The Finance Bill outlines only changes to the changes the ITA. The legislation for CGT would also include subsidiary legislation, i.e. rules, regulations and exemption orders. Industry players should watch the space for developments.

Also, the IRBM may issue guidelines to facilitate implementation of this new tax regime.

4. Changes to be effective in 2025

The Finance Bill also contains various new provisions that takes effect in year 2025 on the following matters:

- Implementation of domestic top-up tax and multinational top-up tax in relation to GLoBE Model Rules (OECD Pillar 2).
- Implementation of self-assessment for RPGT.

While the legal provisions pertaining to the GLoBE rules are principally similar to the OECD/G20 text, some differences are noted. Taxpayers interested to know more about these changes are welcome to contact us via email.

IMPORTANT NOTES:

For the avoidance of duplication, matters addressed in the previous e-Alerts on 14th October 2023 are not repeated in this e-Alert. If you have not received the previous e-Alert, kindly email corp@tratax.my to obtain a copy.

The information in this Tax e-Alert is generic in nature and is not intended to be comprehensive. Strictly no liability assumed. Kindly seek case-specific advice prior to action.

With Best Regards

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Complimentary Webinar

To know more, register for our Complimentary Webinar on Further Tax Measures in Finance Bill on 23rd November 2023 at 09:00 to 10:30 at https://us06web.zoom.us/webinar/register/WN_EeyBIsQrQuSY8hJmZid6Cg#/registration