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Recent tax developments in Malaysia

Introduction

For businesses, recent tax developments in Malaysia for 2024/25 may well mark a chapter in which changes in fiscal policies are starting to feel relentless. A new capital gains tax has been introduced, more categories of services now fall under the service tax regime, and the Pillar Two global minimum tax is in effect. At the time of writing, many businesses are also bracing for yet another round of expansion in the scope of service tax – even as the recent general hike in service tax from 6 per cent to 8 per cent remains fresh in memory.

Alongside new taxes, the tax administration has been intensifying efforts on the compliance front. Transfer pricing scrutiny is expected to increase. Audits on stamp duty, which were previously unheard of, are now becoming a common occurrence. Meanwhile, a major push to curb tax leakage is underway through the implementation of e-invoicing, which is being progressively rolled out to nearly all businesses. The introduction of the self-assessment system for stamp duty and real property gains tax – aimed at alleviating the administrative burden on the tax administration – heightens the risk of penalties for taxpayers who misconstrue the law.

Alongside the tightening tax landscape, the government has introduced targeted incentives to stimulate investment – most notably for Forest City in Johor. As part of efforts to revitalise the large-scale development, Forest City has been designated as a Special Financial Zone, offering full tax exemption for the Single Family Office Scheme, preferential tax rates for selected industry players, relaxed visa requirements, and various regulatory facilitation measures. The initiative forms part of the government's wider economic strategy to enhance competitiveness and regional connectivity in southern Malaysia.

Broad details on recent key tax developments in Malaysia are set out in the remaining sections.

New capital gains tax regime

Any gain or profit arising from the disposal of capital assets by a company, limited liability partnership, cooperative society or trust body (hereinafter referred to as the 'CGT chargeable person') is now subject to the new capital gains tax (CGT) regime under the Income Tax Act 1967. 'Capital asset' means capital asset, including any rights or interests thereof, in the form of:

- movable property situated in Malaysia, being shares in a locally incorporated company that are not listed on the stock exchange; or
- movable or immovable property situated outside Malaysia.

The applicable tax rate is dependent on the type of capital asset:

- in relation to shares in a non-listed Malaysian company, or section 15C shares in a foreign-incorporated controlled company,[1] the applicable tax rate on the disposal depends on the acquisition date of the shares;

    - for shares acquired before 1 January 2024, the taxpayer may elect either one of the following tax rates:
        - 10 per cent of the chargeable income (ie, the net gain per the prescribed computation method) arising from the disposal; or
        - 2 per cent of the gross disposal price of the shares.
    - for shares acquired from 1 January 2024 onwards, the tax rate is 10 per cent of the chargeable income arising from the disposal; and
- in relation to other types of capital assets – ie, foreign capital assets that are not section 15C shares – the applicable tax rate on the disposal is the prevailing income tax rate for the relevant CGT chargeable person (generally 24 per cent in the case of companies). For such assets, the tax is only triggered if the gains arising from the disposal are received in Malaysia.

The legislation provides for the deduction of capital losses from the subsequent disposal of capital assets. Any unabsorbed capital losses can be carried forward for up to ten consecutive years of assessment.

To mitigate the impact of the capital gains tax regime, certain exemptions are available to CGT chargeable persons resident in Malaysia, subject to the fulfilment of prescribed conditions.

- Exemptions are available in respect of gains or profits derived from the disposal of unlisted local shares as part of:
    - a group restructuring involving companies within the same group; or
    - a restructuring in connection with an initial public offering.
- For CGT chargeable persons with economic substance in Malaysia, an exemption is also available in respect of gains or profits derived from the disposal of capital assets (other than intellectual property rights) arising from abroad that are received in Malaysia. However, this exemption does not extend to a CGT chargeable person carrying on the business of banking, insurance, sea transport, or air transport.

These exemptions are time-bound.

Following the enactment of the capital gains tax regime, gains arising from the disposal of shares in a real property company by a CGT chargeable person will no longer be subject to the real property gains tax regime. The exception is for a Labuan entity that is taxed under the Labuan Business Activity Tax Act 1990 (as opposed to the Income Tax Act 1967). Such Labuan entity would continue to be subject to real property gains tax in relation to the disposal of shares in a real property company.

Expansion of the service tax regime

Pursuant to the Service Tax (Amendment) Regulations 2024, the scope of taxable services has been expanded to include certain logistics services that were not previously classified as taxable services, as well as brokering and underwriting services beyond those related to financial services, and general repair and maintenance services. The amended regulations came into effect on 26 February 2024 – just three days after the gazette date.

Notwithstanding this, following the Service Tax Policy No 1/2024 that was released shortly after, pre-existing registered persons were exempt from charging service tax on these newly taxable services during the period from 26 February 2024 to 29 February 2024.

Effective 1 March 2024, the service tax rate was increased from 6 per cent to 8 per cent for most taxable services. The 6 per cent rate now only applies to food and beverage services, telecommunications services, parking space services, and logistics services.

New transfer pricing guidelines

The Transfer Pricing Guidelines 2024 signal policy shifts on several fronts. Notably, under the latest Guidelines, the following categories of taxpayers are not required to prepare contemporaneous transfer pricing documentation (CTPD):

1. an individual who does not carry on a business;
2. an individual carrying on a business (including via a partnership) who only engages in domestic controlled transactions;
3. a person who enters into controlled transactions the total of which does not exceed MYR1m; or
4. a person who enters solely into domestic controlled transactions with another person where both parties:
    a) do not enjoy tax incentives;
    b) are taxed at the same headline tax rate; or[2]
    c) do not suffer losses for two consecutive years prior to the controlled transactions.

Although not required to prepare CTPD, the Guidelines state that these categories of taxpayers must still have documentation to support and prove the determination of arm's length price.

The thresholds triggering the requirement to prepare full CTPD have also been revised. Taxpayers may opt to only prepare a minimum rather than full CTPD if neither of the following applies:

- the taxpayer has gross business income exceeding MYR30m and engages in cross-border controlled transactions totalling MYR10m or more annually; or
- the taxpayer provides, or receives, controlled financial assistance exceeding MYR 50m annually.

Further, the tax administration now recognises a simplified approach for low value-adding intragroup services (LVAS). Its stance is as follows:

- LVAS are supportive services that do not form part of the core business of the multinational enterprise group (MNE). LVAS do not use, or result in, unique and valuable intangibles, nor do they involve the assumption of significant risks. Examples of services likely to qualify as LVAS include those related to accounting, human resources, information technology, legal and general administration;
- in determining the arm's-length charge for LVAS under the simplified approach, a 5 per cent profit mark-up is applied to all costs in the pool (including direct, indirect and operating expenses relating to the LVAS), excluding any pass-through costs. This mark-up is to be used for all LVAS;
- where the service rendered intragroup is also of a kind provided to an unrelated party, the simplified approach does not apply. In such cases, reliable internal comparables are expected to be available for determining the arm's-length charge; and

- the simplified approach may be used to determine the arm's-length charge paid to a Malaysian LVAS service provider. It may also be similarly used for charges paid to a foreign LVAS service provider, provided that the foreign service provider adopts the OECD simplified approach in its jurisdiction.

In addition, the tax administration has issued guidance outlining its position on the treatment of pass-through costs. It expects certain attributes to be present before it considers that third-party costs incurred by an intermediary person on behalf of its group members or independent customers qualify as pass-through costs. Chief among these is the requirement that the intermediary does not undertake any value-added functions nor assume any risks.

Despite the latest Guidelines having been released on 24 December 2024, it is stated that they take effect from the year of assessment 2023 onwards. They supersede the Transfer Pricing Guidelines 2012.

Pillar Two Global Anti-Base Erosion (GloBE) Rules
The GloBE rules in Malaysia came into effect on 1 January 2025. The GloBE rules apply to constituent entities that are members of an MNE with annual revenue of €750m or more as specified in the consolidated financial statements of the ultimate parent entity in at least two of the four consecutive financial years immediately preceding the tested financial year. The country has adopted both the income inclusion rule and the qualified domestic minimum top-up tax:

- a multinational top-up tax is imposed on an ultimate parent entity (or in certain cases, an intermediate parent entity) located in Malaysia if a low-taxed constituent entity below that entity is located in a jurisdiction where the effective tax rate of the MNE there is less than 15 per cent; and
- a domestic top-up tax is imposed on a low-taxed constituent entity located in Malaysia if the effective tax rate of the MNE in Malaysia is less than 15 per cent.

Every constituent entity of an in-scope MNE is required to file an information return and a top-up tax return in the prescribed form no later than 15 months from the last day of the reporting financial year. The filing of the information return by a constituent entity may be dispensed with where filing has been made by an ultimate parent entity or a designated filing entity.

The deadline for payment of the multinational top-up tax or domestic top-up tax is the last day of the 15th month from the close of the reporting financial year. Where any tax is not paid within this deadline, so much of the tax as is unpaid will automatically be increased by a sum equal to 10 per cent of the tax so unpaid, unless payment by instalments is granted by the tax administration.

Broadening of the income tax exemption for dividends received from abroad
Income Tax (Exemption) (No 6) Order 2022 exempts a qualifying person – who is not carrying on the business of banking, insurance, sea transport or air transport – from the payment of income tax in respect of dividend income received in Malaysia from abroad, provided that certain conditions are met.

In 2024, amendments were made to the statutory order on the definition of a 'qualifying person' and the conditions that must be met for the exemption.

Following the amendment, the list of qualifying persons is now expanded to include a Labuan company resident in Malaysia that has elected to be taxed under the Income Tax Act 1967 (instead of the Labuan Business Activity Tax Act 1990). This is in addition to the following persons resident in Malaysia:

- an individual who has dividend income received in Malaysia from abroad in relation to a local partnership business;
- a limited liability partnership which is registered under the Limited Liability Partnerships Act 2012; and
- a company which is incorporated or registered under the Companies Act 2016.

This amendment is deemed to take effect from the year of assessment 2022.

Further, after the amendment, there are now two alternative ways for a qualifying person to be eligible for the income tax exemption on dividends received from abroad. Meeting the pre-existing 'participation exemption requirements' is no longer the sole route. The other way is to satisfy the requirements on economic substance.

The participation exemption requirements are met when the dividend income has been subjected to tax in the country of origin, and the highest headline tax rate in that country is not less than 15 per cent.

This amendment is deemed to take effect on 1 January 2024.

E-invoicing

The government is mandating most businesses to issue, and in certain circumstances self-bill, e-invoices to serve as proof of income and expense. All e-invoices are transmitted to the tax administration for real time validation. Following validation, they are stored in the tax administration's database. This system is designed to reduce tax leakages.

The implementation of e-invoicing is being carried out in phases. At the time of writing, the staggered implementation dates are as follows:

No.	Taxpayer segment	Date of implementation
1.	Taxpayers with an annual turnover or revenue of more than MYR100m	1 August 2024
2.	Taxpayers with an annual turnover or revenue of more than MYR25m and up to MYR100m	1 January 2025
3.	Taxpayers with an annual turnover or revenue of more than MYR5m and up to MYR25m	1 July 2025
4.	Taxpayers with an annual turnover or revenue of more than MYR1m and up to MYR5m	1 January 2026
5.	Taxpayers with an annual turnover or revenue of up to MYR1m	1 July 2026

At present, the government has indicated that e-invoicing will not be made mandatory for taxpayers with an annual turnover or revenue below MYR500,000.

Self-assessment system for real property gains tax
Prior to 1 January 2025, a notice of assessment for real property gains tax would only be issued after the tax administration had examined the relevant tax return, which must be submitted within 60 days from the date of disposal of the chargeable asset.

Effective this year, the official assessment system is replaced with a self-assessment system, whereby the return submitted is deemed to be a notice of assessment made by the tax administration. The deemed notice of assessment is treated as having been served on the taxpayer on the day the return is submitted. The return may be amended once within six months from the due date for its submission. Any additional tax under the amended return would be subject to a 10 per cent increase.

Self-assessment system for stamp duty
Similarly, for stamp duty, the government is doing away with the formal adjudication process for chargeable instruments. Amendments to the Stamp Act 1949 to accommodate the self-assessment regime will come into effect on 1 January 2026. During the 2025 Budget, the Minister of Finance indicated that the self-assessment regime would be introduced in stages as follows.

No.	Phase	Effective date	Type of instruments
1.	Phase 1	1 January 2026	Instruments or agreements related to rental or lease, general stamping, and securities
2.	Phase 2	1 January 2027	Instruments of transfer of property ownership
3.	Phase 3	1 January 2028	Instruments or agreements other than the above

Policy considerations for an equitable tax system
While the government's commitment to strong fiscal discipline is commendable, this pursuit must not overshadow the core principle of fairness in its dealings with taxpayers. Malaysians deserve to be treated not merely as subjects of compliance, but as partners in the nation-building process. So too do the investors who have placed their confidence and capital in the country.

To foster this partnership, a clear and predictable policy environment is essential for businesses. Businesses must be given sufficient lead time to adapt to new tax measures. Last-minute legislative rollouts, such as in the case of the Service Tax (Amendment) Regulations 2024, can impose significant burdens on businesses that are already grappling with operational and economic pressures. To minimise disruption to taxpayers, assessing whether transitional rules are needed should be standard practice when implementing any legislative change.

Meaningful engagement with stakeholders can significantly enhance the quality of legislation. While public consultation during the early stages of policy development appears to be relatively common, a critical opportunity is usually missed: inviting feedback on the draft legislative text itself before it gets enacted. The result is a lost opportunity to address practical implementation issues before businesses are required to comply. Although laws can

be amended after they come into force, doing so only in response to emerging issues leads to unnecessary confusion and costs – repercussions that could have been avoided through more timely action.

Fairness is especially crucial as the government shifts more responsibility onto taxpayers. With the move to self-assessment for real property gains tax and stamp duty, taxpayers must now interpret legislation that is often complex and sometimes open to differing views. Under self-assessment, taxpayers who make reasonably arguable interpretations should not face punitive sanctions, even if such interpretations are later held erroneous by the courts. Having already shouldered the heavy compliance burden, taxpayers deserve just and balanced treatment.

Ultimately, a principled and fair tax administration is more than a mark of good governance – it is a reflection of the nation's maturity and culture. Building shared prosperity for the country should not come at the expense of fundamental values.

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[1] That is, shares in a foreign-incorporated controlled company that satisfy the prescribed statutory test for having derived substantial underlying value from Malaysian real property at any time during the holding period of the relevant CGT chargeable person.

[2] The use of the word 'or' (as opposed to 'and') in the Guidelines for item (4) has always struck the author as odd. On its face, it suggests that a category (4) taxpayer is relieved of the obligation to prepare CTPD if any one of conditions (a), (b), or (c) is met. Yet the incentive to engage in transfer pricing is only substantially mitigated when all three conditions are concurrently satisfied. For example, there remains an incentive for one party to transfer price to another related party that is taxed at a lower headline rate, even if neither party enjoys tax incentives. In the course of a recent webinar attended by the author, a senior revenue officer remarked that all of conditions (a) to (c) must, in fact, be fulfilled before a category (4) taxpayer is regarded as exempt from the requirement to prepare CTPD. If this reflects the official position, the tax administration would do well to amend the word 'or' to 'and' in the relevant part of the Guidelines to better reflect its intent.