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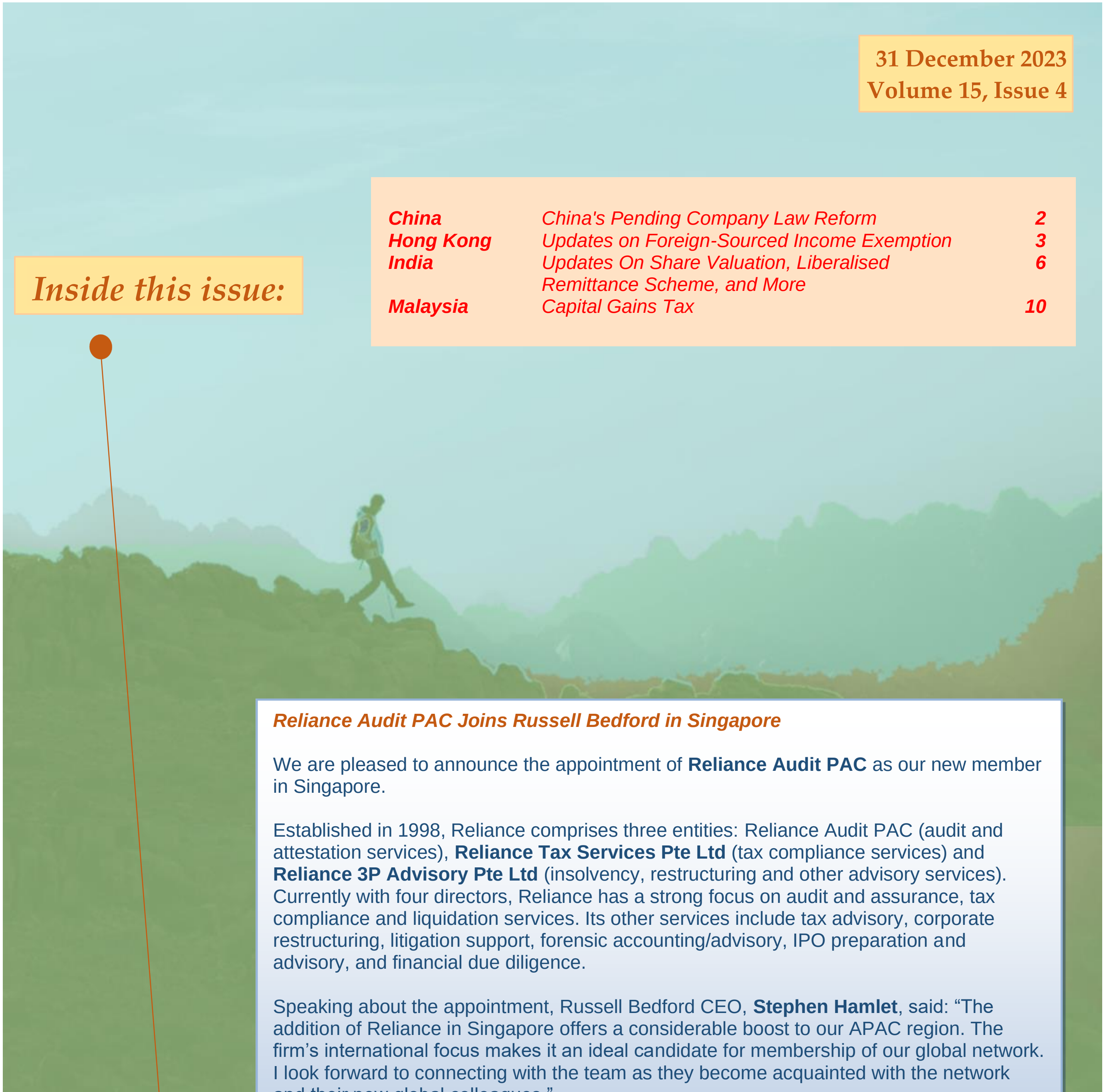

Inside this issue:

Reliance Audit PAC Joins Russell Bedford in Singapore

We are pleased to announce the appointment of **Reliance Audit PAC** as our new member in Singapore.

Established in 1998, Reliance comprises three entities: Reliance Audit PAC (audit and attestation services), **Reliance Tax Services Pte Ltd** (tax compliance services) and **Reliance 3P Advisory Pte Ltd** (insolvency, restructuring and other advisory services). Currently with four directors, Reliance has a strong focus on audit and assurance, tax compliance and liquidation services. Its other services include tax advisory, corporate restructuring, litigation support, forensic accounting/advisory, IPO preparation and advisory, and financial due diligence.

Speaking about the appointment, Russell Bedford CEO, **Stephen Hamlet**, said: “The addition of Reliance in Singapore offers a considerable boost to our APAC region. The firm’s international focus makes it an ideal candidate for membership of our global network. I look forward to connecting with the team as they become acquainted with the network and their new global colleagues.”

TAN Eng Soon, Managing Director at Reliance, added: “We are delighted to join the Russell Bedford network, which is an exciting move towards developing our firm, while improving service delivery to our international clients. We look forward to engaging with our global counterparts and learning about the benefits and services available via the network, while contributing to its continued success.”

CHINA

CHINA'S PENDING COMPANY LAW REFORM: PREPARING FOR THE KEY CHANGES

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Executive summary

China is in the process of finalising amendments ("Third Draft") to its new Company Law which are likely to be implemented in the near future. The changes affect many critical aspects of corporate establishment, operations and governance, including imposing greater personal liability for directors, supervisors and management and requiring mandatory employee involvement in the governance of large companies. Investors considering setting up a Chinese company should be considering the pending changes to capital contribution requirements. This article summarises 8 of the key changes listed as below:

" Investors considering setting up a Chinese company should be considering the pending changes to capital contribution requirements."

1. *Capital contribution accelerated*

   One of the most striking changes in the Third Draft is the requirement that shareholders of a limited liability company ('LLC') will be required to make the entire contribution to the registered capital of the company that they have subscribed for within 5 years of the LLC's incorporation. This is a stark deviation from the current provision in the Company Law, which allows shareholders to decide when and how they will contribute their subscribed capital in full. Since this subscription-based regime was introduced in 2013, investors have been afforded significant flexibility in the timing of the capital contribution, which may have attracted further investment. However, many investors have deliberately delayed their capital contribution.

2. *Capital reduction*

   In the case of a capital reduction, the Third Draft requires that all shareholders shall reduce their capital contributions in proportion to their shareholding ratios in the company, unless otherwise provided in other applicable laws. If this provision forms part of the finalised law, the current practice where a certain shareholder, sometimes financial investor, exits from the company by way of disproportionate capital reduction, will be illegal. Presumably this will affect investments made by financial investors such as private equity, or where particular early-exit provisions are included in the investment agreements or shareholders agreements.

3. *No mandatory supervisor*

   Under the current Company Law, a company (LLC or CLS) is required to appoint a board of supervisors (or a single supervisor). Under the Third Draft, supervisors are no longer mandatory for small companies. Further, as an alternative to the supervisor, the company may choose to set up an audit committee under the board of directors to assume the functions of the board of supervisors or supervisor.

4. *Legal representative*

   The pool of candidates from which a company can select its legal representative is significantly broadened under the Third Draft. Currently, the Company Law requires the chairman of the board of directors or the manager to be the legal representative of the company. The Third Draft will permit the legal representative to be any director of the company or the manager, to the extent that the legal representative will execute company affairs on behalf of the company.

CHINA

(Continued)

5. *Employee representatives on the board?*

The Third Draft removes the restriction on the maximum number of directors sitting on the board of directors (currently capped at 13 directors). However, a company with more than 300 employees must have employee representatives elected by the employees' congress on its board of directors, unless at least one-third of the company's board of supervisors (if any) are employee representatives.

6. *Personal liability*

One of the most notable changes under the Third Draft is the greater personal liability imposed on directors, supervisors and management ('DSMs'). For example,

(i) DSMs shall compensate the company if they abuse their affiliation with the company and cause losses to the company;

(ii) directors shall compensate the company for losses caused by their negligence in identifying delayed or deficient capital contributions from shareholders and causing losses to the company;

(iii) DSMs must compensate the company on a joint and several basis for losses caused by a shareholder withdrawing capital after contribution;

(iv) DSMs providing financial assistance to a third party to acquire the shares of the company must compensate the company for any losses caused; and

(v) all DSMs responsible for losses caused by a company distributing profits before making up for losses and allotting provisions for the statutory reserve must compensate the company.

"One of the most notable changes under the Third Draft is the greater personal liability imposed on directors, supervisors and management ('DSMs')."

FOREIGN-SOURCED INCOME EXEMPTION - UPDATES

HONG KONG

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We reported in our December 2022 newsletter the implementation of Foreign-sourced Income Exemption (FSIE) regime in Hong Kong that became effective from 1 January 2023 (2023 regime). Under the 2023 regime, specified foreign-sourced passive income is chargeable to profits tax subject to exception as discussed below.

The purpose of the 2023 regime is to align Hong Kong with international standards to grant preferential tax treatments in exception situations only, i.e. where either the economic substance requirement, the participation requirement or the nexus requirement is satisfied.

Expansion of Scope of Disposal Gain

The specified foreign-source passive income under the 2023 regime includes interest, dividend and IP income. As the European Union (EU) has promulgated an update guidance on FSIE regimes to require such regimes to cover gains from disposal of all types of assets, the Hong Kong FSIE codes are subject to updating too. The Hong Kong updates are effective from 1 January 2024 (2024 regime) and shall:

- expand the list of specified foreign-source passive income to include disposal gain on all properties (in addition to disposal of interest in equity in the 2023 regime); and
- provide for relief of disposal gain arising from intra-group transfer.

Under the expanded scope of the 2024 regime, foreign-sourced income when received or deemed received in Hong Kong by a Multi-national Entity (MNE) carrying on business in Hong Kong shall be chargeable to Hong Kong profits tax, except that tax exemption shall apply if one the following requirements is satisfied to the relevant income / gain.

Exception (only one needs to be satisfied)	Specified foreign sourced income received in HK					
	Interest	Dividend	Disposal gain			General IP income (e.g. royalty)
			Non-IP assets		IP assets	
			Equity interest	Others		
• **Economic substance requirement**	✓	✓	✓	✓		
• **Participation requirement**		✓	✓			
• **Nexus requirement**					✓	✓

"Non-IP disposal gain received by a Trader … This exclusion is to reconcile the fact that a Trader shall conduct trading of property assets actively, and such disposal gain should not be characterized as passive income."

The three exception requirements are discussed in detail in our December 2022 newsletter. Readers are welcome to contact us for this back issue or for further discussion.

Similar to the 2023 regime, under the 2024 regime, certain specified entities such as licensed banks, insurers, taxpayers chargeable to tax at concessionary tax rate, etc. shall be outside the scope of the FSIE regime.

Non-IP disposal gain received by a Trader shall also be out scoped under the 2024 regime. In this respect, a Trader is defined as an entity that sells, or offers to sell, property in the entity's ordinary course of business. This exclusion is to reconcile the fact that a Trader shall conduct trading of property assets actively, and such disposal gain should not be characterized as passive income.

Loss sustained on specified foreign-source income is dealt with as follows:

- General loss arising from qualifying IP income net of expenses relating to qualifying IP asset may be off-set against the MNE's assessable profits for the year of assessment in which the proceeds are received in Hong Kong, or for carry-forward if not so set-off;

- Loss from disposal of non-IP asset may be set off against the MNE's assessable profits for the year of assessment in which the proceeds are received in Hong Kong, or for carry-forward if not so set-off. However, these set-offs must be applied against assessable profits derived from specified foreign-sourced income that is chargeable to profits tax under the FSIE regime.

Intra-Group Transfer Relief

The intra-group transfer relief covers all foreign-sourced disposal gains received in Hong Kong from sale of asset within a group and shall defer the tax charge until the time the asset leaves the group, subject to the following conditions:

- The selling entity and the acquiring entity are at the time of the sale both chargeable to Hong Kong profits tax; and
- The selling entity and the acquiring entity are at the time of sale associated with each other.

Two entities are regarded as "associated" if:

- One entity has at least 75% of direct or indirect beneficial interest of the other entity or is directly or indirectly entitled to exercise or control the exercising of at least 75% of the voting rights of the other entity; or
- A third entity has at least 75% of direct or indirect beneficial interest of each of the two entities or is directly or indirectly entitled to exercise or control the exercising of at least 75% of the voting rights of each of them.

"The intra-group transfer relief covers all foreign-sourced disposal gains received in Hong Kong from sale of asset within a group and shall defer the tax charge until the time the asset leaves the group..."

There are other miscellaneous provisions dealing with expense incurred by the selling entity, foreign tax credit for the acquiring entity for foreign tax paid by the selling entity on the deferred disposal gain, and attribution of qualifying or non-qualifying R&D expenditure incurred by the selling entity to the acquiring entity.

If the intra-group transfer relief applies, the selling party is deemed to have sold the asset at a deemed consideration giving rise to neither gain nor loss for taxation purposes, whereas the acquiring entity is deemed to have acquired the asset at the said deemed consideration and on the same date of the selling party. In an illustrative example provided by the Inland Revenue Department, the deemed consideration is determined at the historic cost of the asset to the selling entity plus expenses it incurred relating to the intra-group asset sale.

As specific anti-abuse measures, the intra-group transfer relief will be revoked if within 2 years after the asset transfer:

- The selling entity and acquiring entity ceased to be chargeable to profits tax; or
- The selling entity and the acquiring entity ceased to be associated.

Upon withdrawal of the intra-group transfer relief, the deferral of taxation of the relevant disposal gain would cease to apply and the gain will be subject to the FSIE regime as if it was received in Hong Kong in the assessment year of the relief withdrawal. The tax cost base of the acquiring entity will be reset appropriately as if the relief measure was not previously granted.

INDIA

UPDATES ON SHARE VALUATION, LIBERALISED REMITTANCE SCHEME, GST RULES, RESERVE BANK OF INDIA AND MINISTRY OF CORPORATE AFFAIRS

Sharp & Tannan

Chartered Accountants

1. Direct taxes

1.1 Changes to Rule 11UA of the Income-tax Rules, 1961

The Finance Act, 2023, brought in an amendment to bring the consideration received from non-residents for the issue of shares by an unlisted company within the ambit of section 56(2)(viib) of the Income-tax Act, 1961 ('the Act'), which provides that if such consideration for issue of shares exceeds the Fair Market Value ('FMV') of the shares, it shall be chargeable to income-tax under the head 'Income from other sources'.

Accordingly, Rule 11UA of the Income-tax Rules 1961 ('the Rules') for valuation of shares for the purposes of section 56(2)(viib) of the Act stands modified.
The key highlights of the changes in Rule 11 UA are:

a) In addition to the two methods for valuation of shares, namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method, available to residents under Rule 11UA, five more valuation methods are made available for non-resident ('NR') investors, namely,

- Comparable Company Multiple Method,
- Probability Weighted Expected Return Method,
- Option Pricing Method,
- Milestone Analysis Method,
- Replacement Cost Method.

"…if such consideration for issue of shares exceeds the Fair Market Value ('FMV') of the shares, it shall be chargeable to income-tax under the head 'Income from other sources'."

b) Where any consideration is received for the issue of shares from any non-resident entity notified by the central government, the price of the equity shares corresponding to such consideration may be taken as the FMV of the equity shares for resident and non-resident investors, subject to the following:

   i. To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity, and

   ii. The consideration has been received by the company from the notified entity within ninety days before or after the date of issue of shares which are the subject matter of valuation.

c) On similar lines, price matching for resident and non-resident investors would be available with reference to investment by Venture Capital Funds or Specified Funds.

d) Valuation methods for calculating the FMV of Compulsorily Convertible Preference Shares ('CCPS') have also been provided.

e) A safe harbour of 10% variation in value has been provided.

The notified Rule provides for the expansion of the valuation methodologies to include globally accepted methodology and provides a broad parity to resident and non-resident investors.

1.2 Liberalised Remittance Scheme

Sub-section (1G) of section 206C of the Act provides for Tax Collection at Source ('TCS') on:

i. foreign remittance through the Liberalised Remittance Scheme ('LRS') and
ii. sale of overseas tour program packages.

An individual can freely remit upto INR 7 lakhs (approx. US$ 8,395) per annum for all purposes and through any mode of payment. With effect from 1 October 2023, the following TCS rates will apply.

Nature of payment	TCS rate
LRS for education financed by loan	0.5% above INR 7 lakh
LRS for medical treatment/ education (other than financed by loan)	NIL upto INR 7 lakh, 5% above INR 7 lakh
LRS for other purposes	Nil upto INR 7 lakh, 20% above INR 7 lakh
Purchase of overseas tour program package	5% till INR 7 lakh, 20% thereafter

"An individual can freely remit upto INR 7 lakhs (US$ 8,395) per annum for all purposes and through any mode of payment."

Note: Transactions through International Credit Cards while being overseas would not be counted as LRS and hence would not be subject to TCS.

2. Indirect taxes/ Goods and Services Tax ('GST')

2.1 Taxability and valuation of personal and corporate guarantee

Rule 28 of Central GST Rules ('CGST Rules') has been amended by inserting sub-rule (2) to provide that the value of supply of services by a supplier to a recipient who is a related person, by way of providing a corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be:

– 1% of the amount of such bank guarantee offered, or
– actual consideration

whichever is higher.

This will cover the cases where one of the two 'related companies' provide corporate guarantee to a bank/financial institution. Such a provision of a corporate guarantee will be treated as a 'supply of service'.

This also applies to corporate guarantees given by a holding company to its subsidiary or vice versa (as they are related persons).

It is pertinent to note that such a guarantee given without any consideration will still qualify as a 'supply of service' and the value shall be derived by using the above formula.

Personal guarantees given by directors/promoters without any consideration will not attract any GST.

2.2 Supplies to SEZ units/developers for authorized operations eligible for IGST refund

Presently, notification 1/2023-Integrated Tax, dated 31 July 2023 allows export of goods and services (other than those restricted) by the supplier on the payment of integrated GST ('IGST') and thereafter allows the supplier to claim the IGST refund. The said notification is now amended to also allow the said refund to suppliers supplying such goods/services to Special Economic Zone ('SEZ') units, and SEZ developers, on the payment of integrated tax.

3. Reserve Bank of India ('RBI') updates

3.1 Appointment of whole-time directors - Private banks and wholly owned subsidiaries of foreign banks

On the background of the growing complexity of the banking sector and given the ongoing and emerging challenges, it was felt necessary by RBI to establish an effective senior management team in the banks. RBI has hence advised private banks and wholly owned subsidiaries of foreign banks to have at least two Whole Time Directors ('WTD's), including the MD & CEO, on their Boards. A circular indicating the above requirement was issued on 25 October 2023 and the banks must submit their proposals to RBI for the appointment of WTD within four months, i.e., on or before 25 February 2024.

The said circular does not apply to payment banks and local area banks.

3.2 Reserve Bank of India (Managing Risks and Code of Conduct in Outsourcing of Financial Services) Directions, 2023

"RBI has hence advised private banks and wholly owned subsidiaries of foreign banks to have at least two Whole Time Directors ('WTD's), including the MD & CEO, on their Boards."

RBI-regulated entities ('RE's), i.e., commercial banks, financial institutions, non-banking financial companies, cooperative banks and credit information companies increasingly use 'outsourcing' of various functions. It exposes them to various risks. In order to have all the current instructions on 'outsourcing of financial services' at one place, RBI, on 26 October 2023, issued the draft directions concerning the managing of risks and the code of conduct in outsourcing of financial services.

The directions do not allow the outsourcing of the core functions by the REs to the service provider and those must be retained by the RE itself, such as:

- policy formulation and decision-making functions like determining compliance with KYC norms
- according sanctions for loans
- management of investment portfolio
- compliance function
- internal audit function

The directions set out various chapters on the materiality of outsourcing, regulatory and supervisory requirements, risk management practices for outsourcing, offshore outsourcing of financial services, etc. It is expected that RBI will issue the final directions shortly, after considering the stakeholders' comments in the allotted timeframe.

4. Ministry of Corporate Affairs ('MCA') updates

With effect from 27 October 2023, the Companies (Management and Administration) Rules, 2014 are amended to provide that every company shall designate a person who shall be responsible for furnishing and extending co-operation for providing information to the Registrar of Companies ('ROC') or any other authorised officer with respect to beneficial interest in shares of the company.

For the said purposes, a company may designate any of the below-mentioned persons for providing the information:

a) A company secretary ('CS')
b) Any other key managerial personnel ('KMP')
c) In case of absence of both (a) and (b), then every director can be designated.

Till the time any of the above persons are designated, the following persons will be deemed to be designated:

a) CS
b) every managing director/manager (in case no CS is appointed) or
c) every director (in absence of CS, managing director/manager)

The company needs to furnish the details of the above-mentioned persons in its annual returns. Changes in the aforesaid persons must be intimated to the ROC in e-form GNL-2.

"…every company shall designate a person who shall be responsible for furnishing and extending co-operation for providing information to the Registrar of Companies ('ROC') or any other authorised officer with respect to beneficial interest in shares of the company."

MALAYSIA

CAPITAL GAINS TAX

In Malaysia, proceeds from the sale of capital / investment assets are usually not taxed, except for the gains from disposal of real property or shares in a real property company. The tax imposed on such gains, known as the Real Property Gains Tax, can range from 30% to 10% or even 0%, based on the duration of ownership.

As proposed in the Finance Bill 2023, Capital Gains Tax ("CGT") will be introduced with effect from 2024. We set out below the details of this new CGT proposal:

1) Malaysian sourced income

	Details
Type of capital asset	▪ Unlisted shares (including Real Property Company shares which will no longer be taxed under the Real Property Gains Tax Act)
Chargeable person	▪ Company ▪ Limited liability partnership ▪ Cooperative society ▪ Trust body
CGT Rates	Asset acquired before 1 March 2024 ➢ 10% on net gain or 2% on gross disposal consideration Asset acquired from 1 March 2024 ➢ 10% on net gain
Date of disposal	▪ With agreement – date of agreement ▪ Without agreement – date of completion of disposal
Basis period	▪ Year of Assessment ("YA") the disposal takes place ▪ Reporting to be done for each disposal transaction via a prescribed CGT Form
Market value	Consideration for acquisition or disposal will be deemed to be equal to market value of the capital asset but the Director General of Inland Revenue has power to determine the market value under certain circumstances.
Allowable expenses	Expenses related to the acquisition or disposal of capital assets
Losses	▪ Allowed for deduction against the gains from disposal of other capital assets ▪ Unabsorbed capital losses can be carried forward up to 10 YAs
Reporting and payment	▪ Reporting ➢ e-filing within 60 days from date of disposal ▪ Payment ➢ 60 days from date of disposal ▪ Records of disposal to be kept for 7 years
Exemption	▪ IPO exercise approved by Bursa Malaysia ▪ Internal restructuring within the same group ▪ Disposal of shares that are derived by venture capital company
Effective date	1 March 2024

2) Foreign sourced income

With effect from 1 January 2022, unless there are specific exemptions, income tax is applicable on foreign sourced income that is "revenue" in nature and received in Malaysia.

It is now proposed in the Finance Bill 2023 that starting from 1 January 2024, the scope of tax on foreign sourced income is being expanded to include any profits from the sale of all forms of foreign capital assets that are received in Malaysia.

Chargeable foreign sourced income is taxed on Malaysian tax residents at the relevant chargeable person tax rate(s) applicable to that taxpayer.

"With effect from 1 January 2022, unless there are specific exemptions, income tax is applicable on foreign sourced income that is "revenue" in nature and received in Malaysia."

3) Profits deemed derived from Malaysia

A new Section 15C of the Income Tax Act 1967 is proposed to be introduced, where any gains from the disposal of shares in a controlled company incorporated outside Malaysia (foreign company) shall be deemed to be derived from Malaysia if the foreign company owns either of the following:

a. real property situated in Malaysia; or
b. shares in another controlled real property company; or
c. both (a) and (b).

This provision shall apply where the defined value of (a), (b) or (c) is more than 75% of the value of the total tangible assets of the foreign company.

A controlled company is defined as a company not having more than 50 members and controlled by not more than 5 persons.

While the effective date of this provision is 1 March 2024, the applicable scope of taxable persons, and tax rate(s) and administration information have yet to be made available by the tax authority.

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