

5 OCTOBER 2026

CAPITAL GAINS TAX 2026: IRB UPDATES CGT GUIDELINES TO REFLECT LEGISLATIVE AMENDMENTS – REVIEW OF CORPORATE ACTIONS WARRANTED FOR CGT COMPLIANCE

by Chris Toh Pei Roo and Jay Fong Jia Sheng

On 21 September 2026, the Inland Revenue Board of Malaysia (“**IRB**”) published the revised Guidelines on Capital Gains Tax for Unlisted Shares (“**2026 Guidelines**”),¹ replacing the earlier Guidelines dated 21 July 2025 (“**2025 Guidelines**”).²

The 2026 Guidelines principally update the IRB’s guidance to reflect amendments made to the Income Tax Act 1967 (“**ITA**”), including the expanded meaning of “disposal” which took effect from 1 January 2026. They also provide further interpretative and administrative guidance on matters such as the date of disposal, nominee arrangements, the scope of shares subject to capital gains tax (“**CGT**”), and the treatment of certain non-sale corporate actions.

[1] Guidelines on Capital Gains Tax for Unlisted Shares dated 21 September 2026 (“2026 Guidelines”), available [\[here\]](#).

[2] Paragraph 18 of the 2026 Guidelines @ page 36.

KEY LAWYERS

DATO' NITIN NADKARNI
Consultant
nn@lh-ag.com



JASON TAN JIA XIN
Partner
tjx@lh-ag.com



IVY LING YIENG PING
Partner
il@lh-ag.com



CHRIS TOH PEI ROO
Partner
tpr@lh-ag.com



Importantly, not every change in the 2026 Guidelines reflects a corresponding amendment to the ITA. Certain positions represent the IRB's interpretation of how the statutory CGT regime should operate. While the Guidelines indicate the IRB's intended administrative approach, they do not themselves amend the law and must be read consistently with the relevant provisions of the ITA.

In particular, taxpayers that have undertaken corporate actions falling within the amended definition of "disposal" since 1 January 2026 should review whether the relevant CGT return and tax payment were made within the applicable 60-day period. Where the CGT treatment previously adopted may not be consistent with the amended law, taxpayers should also consider whether an amendment to the return under section 77B of the ITA, or other steps, may be required.

The principal changes are summarised below.

A. Key Changes at a Glance

The key changes between the 2025 Guidelines and the 2026 Guidelines may be summarised as follows:

Topic	2025 Guidelines	2026 Guidelines	Nature / Source of Change
Meaning of "disposal"	To sell, convey, transfer, assign, settle or alienate, by agreement or by force of law, including a reduction of share capital and a share buy-back	Expanded to include extinguishment of rights on dissolution or winding up, conversion of shares, redemption of shares, and the cessation of ownership of a capital asset [para. 3.2(c)]	Legislative amendment - Section 65C, amended by Section 10 of the Finance Act 2025
Nominees	Not addressed	A disposal by a nominee is regarded as a disposal by the beneficial owner. A transfer to a nominee, and its retransfer to the beneficial owner, is not regarded as a disposal (para. 4.2)	New legislative provision explained in the 2026 Guidelines - Section 76A ITA, inserted by Section 13 of the Finance Act 2025

Topic	2025 Guidelines	2026 Guidelines	Nature / Source of Change
Shares within scope	Expressly list ordinary shares, preference shares, redeemable preference shares ("RPS"), convertible bonds and long-term borrowings which are equity in nature	RPS are no longer expressly listed, while the other descriptions and equity characteristics are retained (para. 6.3)	Change in IRB guidance; no corresponding amendment to the statutory definition or scope identified
Date of completion	Date of transfer, or date the whole consideration for the transfer of ownership is received, whichever is earlier	Extends to the date ownership ends and the date rights are extinguished on dissolution or winding up. Consideration may be in cash or in kind (para. 7.2)	Legislative amendment - Section 65F(3) ITA, amended by Section 12 of the Finance Act 2025
Compliance with written law	Not addressed	For a transfer of ownership, cessation of ownership or extinguishment of rights on dissolution or winding up, completion is deemed to occur when all requirements under any written law have been complied with (para. 7.3)	Legislative amendment - Section 65F(3A) ITA, inserted by Section 12 of the Finance Act 2025
Date and price for non-sale events	No specific guidance on determining the date and price for such events; the general disposal rules applied	Taxpayers are referred to separate "Special Guidelines" ³ for the relevant tax treatment (paras. 7.4 and 8.2)	Administrative guidance consequential to the expanded statutory definition of "disposal"

[3] Paragraphs 7.4 and 8.2 of the 2026 Guidelines @ pages 7 and 9. The 2026 Guidelines refer to "Special Guidelines in relation to the tax treatment on gains or profits from such disposal" but do not identify them further, whether by title, date or reference number.

B. Legislative Amendment – Expanded Meaning of “Disposal”

The Three Limbs

The 2026 Guidelines adopt the expanded definition of “disposal” in Section 65C of the ITA, which is now set out in three limbs:⁴

- (a) to sell, convey, transfer, assign, settle or alienate, whether by an agreement or any written law;
- (b) an extinguishment of any rights due to the dissolution or winding up of a company; or
- (c) a reduction of share capital, conversion of shares, redemption of shares, purchase by a company of its own shares or ownership of the capital asset ends.

Under the 2025 Guidelines, the meaning of “disposal” was essentially confined to the matters now reflected in the first limb, together with a reduction of share capital and a share buy-back.

The expanded definition is therefore **significantly wider**. A disposal may now arise even though the shareholder does not sell its shares to another person. The final words, “ownership of the capital asset ends”, are broadly framed and may operate as a residual catch-all limb.

Corporate Actions Within Scope

In practice, the expanded definition is expressly relevant to:

- (a) redemptions of shares;
- (b) conversions of one class of shares into another;
- (c) reductions of share capital;
- (d) share buy-backs; and
- (e) dissolution or winding up.

Depending on the circumstances, it may also be relevant to other events resulting in the cessation of ownership, including strike-offs and distributions made in the course of a liquidation.

Effective Date

The amendment to Section 65C came into operation on 1 January 2026.⁵ Unlike the earlier CGT amendments in the Income Tax (Amendment) Act 2024, which were expressly deemed to have come into operation on 1 January 2024,⁶ the Finance Act 2025 does not give the expanded definition retrospective effect.

[4] Paragraph 3.2(c) of the 2026 Guidelines @ page 3; Section 65C of the Income Tax Act 1967.

[5] Section 3(4) read with Section 10 of the Finance Act 2025.

[6] Section 1(3) of the Income Tax (Amendment) Act 2024.

This is also consistent with the IRB's response to the Joint Memorandum on the Budget 2026 and Tax Bills 2025 ("**Joint Memorandum Response**"). The Joint Memorandum sought confirmation that events, such as share conversions, which are included in the new definition of "disposal" from 1 January 2026 but were not included in the earlier definition, would not trigger CGT under the earlier definition. The IRB confirmed that this understanding was correct.⁷

C. Date of Disposal

General Rule

A CGT return must be filed, and the tax paid, within 60 days from the date of disposal.⁸

Where there is a written agreement, the disposal takes place on the date of the agreement. Where there is not, it takes place on the date of completion, which is the earlier of:⁹

- (a) the date ownership of the capital asset is transferred by the disposer, the ownership of the capital asset by disposer ends, or the rights are extinguished due to the dissolution or winding up of a company; or
- (b) the date on which the whole amount or value of the consideration for the disposal, whether in cash or in kind, is received by the disposer.

Reflecting the new Section 65F(3A) of the ITA, the Guidelines further state that, in relation to a transfer of ownership, the ending of ownership or an extinguishment of rights due to dissolution or winding up, the completion date is deemed to be on the date on which all requirements under any written law have been complied with.¹⁰

Many of the newly covered events may take place without a conventional written agreement between a disposer and an acquirer. In those circumstances, identifying the correct completion date becomes important in determining when the 60-day period begins.

Winding Up

Separately, in the Joint Memorandum Response,¹¹ the IRB has clarified that the date of disposal for a winding up is the earlier of:

- (a) the date on which all capital distributions from the winding up have been received by the disposer; or
- (b) the date the statement of the final meeting and the statement of account are finalised.

[7] Joint Memorandum on Issues Arising from 2026 Budget Speech & Tax Bills 2025 dated 11 December 2025, prepared by the Chartered Tax Institute of Malaysia, the Malaysian Institute of Accountants, the Malaysian Institute of Certified Public Accountants and the Malaysian Institute of Chartered Secretaries and Administrators, together with the responses of the IRB and the Ministry of Finance, available [here](#), paragraph 1.1, item 1 @ page 4.

[8] Paragraphs 16.1 and 16.3 of the 2026 Guidelines @ page 35.

[9] Paragraphs 7.1 and 7.2 of the 2026 Guidelines @ pages 6 to 7; Section 65F(3) of the Income Tax Act 1967.

[10] Paragraphs 7.3 of the 2026 Guidelines @ page 7; Section 65F(3A) of the Income Tax Act 1967.

[11] Joint Memorandum Response, paragraph 1.1, item 9(b) @ page 10.

On the IRB's stated administrative position, the date of disposal therefore does not arise merely upon the commencement of the winding-up process or the receipt of an interim distribution. The position may therefore be summarised as follows:

Stage	CGT position
Special resolution to wind up	Does not by itself constitute the date of disposal. The winding-up process commenced, but the shareholder's rights have not yet been extinguished.
Interim distribution	Does not by itself constitute a separate date of disposal. The distribution forms part of the consideration received in connection with the winding up.
All capital distributions received, or statement of the final meeting and statement of account finalised, whichever is earlier	Date of disposal. The 60-day period to file the CGT return and paying the tax begins.
Dissolution	On the IRB's stated position, the disposal would already have arisen at the earlier stage.

Conversion

The date of disposal for a share conversion is less clear.

Although a conversion of shares is expressly included within the amended definition of "disposal", the 2026 Guidelines do not separately specify the date of disposal for such a transaction. Instead, paragraph 7.4 refers taxpayers to the "Special Guidelines" in relation to the tax treatment of gains or profits arising from a conversion.

Where a conversion results in ownership of the relevant capital asset ending, paragraphs 7.2 and 7.3 may be relevant in determining the date of completion, including the date on which all requirements under any written law have been complied with. The precise date will, however, depend on the legal effect and statutory requirements of the particular conversion.

Pending further clarification, taxpayers should therefore consider the legal steps by which the particular conversion takes effect in determining the applicable date of disposal and the commencement of the 60-day filing and payment period.

Referral to Separate “Special Guidelines”¹²

For an extinguishment of rights due to dissolution or winding up, a reduction of share capital, conversion of shares, redemption of shares, share buy-back and other circumstances where ownership of the capital asset ends, the 2026 Guidelines refer taxpayers to separate “Special Guidelines” in relation to the tax treatment of gains or profits from such disposals.¹³

The 2026 Guidelines otherwise provide that the disposal price of a capital asset is the amount or value of the consideration in money or money’s worth for the disposal, after deducting the relevant expenditure. They further provide general guidance on the determination of market value, including the use of a reasonable and appropriate share valuation method such as the net tangible assets (“NTA”) method.¹⁴ The computation of the gain or loss nevertheless remains governed by Section 65E of the ITA.

Administrative Positions of the IRB Set Out in the Joint Memorandum Response

These treatments are not set out in the amended statutory definition itself. However, the Joint Memorandum Response provides the following indications of the administrative treatment which the IRB intends to adopt for certain non-sale events:¹⁵

- (a) **Amount received:** For a redemption, conversion or liquidation, the IRB states that the amount or value of the consideration or distribution received may be used as the disposal consideration.
- (b) **Distributions in kind:** Where the disposal is in specie, the market value of the asset distributed is used as the disposal consideration.
- (c) **Distributions of shares in specie:** Where a company in liquidation distributes shares which it holds in another company to its shareholder, two disposals arise: the liquidating company’s disposal of the distributed shares to the shareholder, and the shareholder’s disposal of its shares in the liquidating company. In the example considered, the market value of the shares distributed is used as the disposal price for both disposals.
- (d) **Class conversions:** The IRB considers a conversion of one class of shares into another within the same company to constitute a disposal. In the circumstances considered in the Joint Memorandum Response, where the conversion takes place without consideration, the IRB regards it as a “no gain no loss” transaction, such that the CGT payable is nil. The original acquisition price of the converted shares is carried forward as the acquisition price of the new class of shares.
- (e) **Winding up without a distribution:** Where no distribution is received by the shareholder, the IRB’s position is that the disposal consideration is nil. Where an adjusted loss arises, the loss may be carried forward in accordance with the ITA.

[12] The 2026 Guidelines refer to “Special Guidelines in relation to the tax treatment on gains or profits from such disposal” but do not identify them further, whether by title, date or reference number.

[13] Paragraphs 7.4 and 8.2 of the 2026 Guidelines @ pages 7 and 9.

[14] Paragraphs. 8.3 and 8.4, Example 5 of the 2026 Guidelines @ pages 9 to 10.

[15] Joint Memorandum Response, paragraph 1.1, items 3(a), 3(b), 7, 9(a)(i) and 9(a)(ii) @ pages 4 to 10.

Connected Persons

Separately, Section 65E(8)(e) of the ITA provides that the consideration for the disposal of a capital asset is deemed to be equal to its market value where the disposal is a transaction between connected persons.¹⁶ The 2026 Guidelines reproduce this position in paragraph 8.6(e).

However, in response to a specific query as to whether section 65E(8) and the market-value rules apply to redemptions, conversions and liquidations, the IRB stated that such transactions are subject to Section 65E(11)(b), under which the amount or value of the consideration or distribution received may be used as the disposal consideration. Where the disposal is in specie, the market value of the asset distributed is used.

The applicable valuation rule should therefore be considered by reference to the nature and circumstances of the particular non-sale event.

D. Scope of Shares: RPS and Hybrid Instruments

Change to Paragraph 6.3

Paragraph 6.3 of the 2025 Guidelines described the scope of CGT as covering shares which are “equity in nature”, and expressly listed ordinary shares, preference shares, redeemable preference shares (“**RPS**”), convertible bonds and long-term borrowings which are equity in nature.

The 2026 Guidelines omit the express reference to RPS, while retaining the references to ordinary shares, preference shares, convertible bonds and long-term borrowings which are equity in nature.¹⁷ The same four characteristics of shares with equity in nature are also retained. The 2026 Guidelines do not explain the reason for the omission. Importantly, paragraph 6.3 continues to use the words “such as”, and continues to refer generally to “preference shares”.

The characteristics identified in paragraph 6.3, read together with the IRB’s *Garis Panduan Layanan Cukai Bagi Instrumen Hibrid* dated 19 June 2024 (“**Hybrid Instrument Guidelines**”), may be summarised as follows:

[16] Section 65E(8)(e) of the Income Tax Act 1967; paragraph 8.6 of the 2026 Guidelines @ page 11.

[17] Paragraph 6.3 of the 2025 Guidelines @ pages 3 to 4; paragraph 6.3 of the 2026 Guidelines @ page 5.

Criterion	Equity Characteristics (para. 6.3)	Features Pointing Away from Equity
Dividend	Right to receive dividends is not fixed	Right to the distribution or profit is fixed
Ranking on liquidation	Right to residual assets after the claims of other claimants have been settled	Right to repayment of the principal amount on liquidation
Maturity	No maturity date	Has a maturity date
Voting rights	Has voting rights	No voting rights

Shares which are Liabilities in Nature

The change should also be read together with the Joint Memorandum Response. The IRB expressly confirmed that a disposal transaction involving shares which are liabilities in nature are not subject to CGT, and that CGT is imposed on gains from the disposal of shares which are **equity in nature**. The IRB referred taxpayers to the Hybrid Instrument Guidelines for this purpose.

In our view, the omission of RPS from paragraph 6.3 does not, without more, exclude RPS from the CGT regime.¹⁸

The ITA defines a “share,” in relation to a company, to include stock other than debenture stock¹⁹, while the amended definition of “disposal” in Section 65C expressly includes a “redemption of shares”. Further, paragraph 6.3 of the 2026 Guidelines continues to include “preference shares” among the examples of shares which may be equity in nature. Whether a particular RPS falls within the CGT regime should therefore be considered by reference to the statutory provisions, paragraph 6.3 and the terms and characteristics of the particular instrument, rather than the omission of the express reference to RPS alone.

Consistent with the Hybrid Instrument Guidelines, an RPS with features such as a fixed return, a fixed or mandatory redemption date and an enforceable right to repayment may point towards a debt or liability character. Conversely, features such as participation in residual returns, absence of a maturity date, voting rights or exposure to the risks and returns of the issuer may point towards an equity character. No single feature is determinative, and each instrument should be analysed on its own terms.

[18] Joint Memorandum Response, paragraph 1.1, item 2 @ page 4. In its response, the IRB also refers to the Garis Panduan Layanan Cukai Bagi Instrumen Hibrid dated 19 June 2024.

[19] Section 2(1) of the Income Tax Act 1967.

Where an RPS is treated as equity and therefore falls within CGT, the redemption constitutes a disposal by the holder. The IRB has confirmed that, for a redemption of ordinary or preference shares, the amount of consideration received is regarded as the amount or value of the disposal consideration, while the acquisition price of each share follows its respective acquisition price.²⁰ Accordingly, all else being equal, an RPS acquired and subsequently redeemed for the same amount should ordinarily not give rise to a gain.

Hybrid Instruments

Paragraph 6.3 also continues to describe **convertible bonds and long-term borrowings which are “equity in nature”** as falling within the scope of CGT.

This formulation is not new to the 2026 Guidelines. The 2025 Guidelines contained the same references to convertible bonds and long-term borrowings which are equity in nature.

No corresponding legislative amendment has been identified which expressly extends the statutory meaning of “share” to all convertible bonds or long-term borrowings. Paragraph 6.3 therefore reflects the IRB’s interpretative position as to the scope of shares which are equity in nature.

The Hybrid Instrument Guidelines similarly provide that the determination of whether a hybrid instrument is equity or debt should be based on the substance of the instrument rather than its legal form alone, having regard to the legal rights and obligations created by the instrument, the relevant facts and circumstances and the applicable characteristics. They also state that accounting treatment is not necessarily determinative for tax purposes.

Accordingly, the CGT treatment of a hybrid or debt instrument should be considered by reference to the statutory provisions and the legal and economic characteristics of the instrument. Paragraph 6.3 indicates the IRB’s interpretative position but does not itself amend the statutory scope of CGT.

E. Nominee Arrangements

The 2026 Guidelines provide guidance on the operation of the new Section 76A of the ITA in relation to nominee arrangements.

Under Section 76A, where a capital asset is held by a person as nominee for a company, limited liability partnership, trust body or co-operative society, the ITA applies as if the capital asset were vested in that company, limited liability partnership, trust body or co-operative society, and any act of the nominee is treated as the act of that person.

Further, where the capital asset is acquired from or disposed of to the nominee by that company, limited liability partnership, trust body or co-operative society, the acquisition or disposal is disregarded for the purposes of the ITA.

[20] Joint Memorandum Response, paragraph 1.1, item 9(c) @ page 11.

Consistent with these provisions, the 2026 Guidelines explain that any act or disposal of a capital asset by the nominee is regarded as an act or disposal by the beneficial owner, while the transfer of ownership of the capital asset to the nominee by the beneficial owner, and its subsequent retransfer to the beneficial owner, are not regarded as disposals.

The Guidelines describe a nominee as a party that holds a specific right of the capital asset on behalf of the beneficial owner and acts on the beneficial owner's instructions. Example 1 proceeds on the basis of a nominee agreement under which the nominee is merely the registered owner, while the capital, rights to profit and risks remain with the beneficial owner.

Taxpayers relying on this treatment should therefore ensure that the nominee arrangement is properly documented and that the legal documentation and economic substance are consistent with the beneficial ownership asserted.

F. What Should Taxpayers Do?

Taxpayers should consider the following practical steps:

1. Review corporate actions since 1 January 2026

Identify redemptions, conversions, capital reductions, share buy-backs, liquidations and other events which may fall within the amended statutory definition of "disposal".

The analysis should begin with the amended ITA rather than merely asking whether the event is listed in the Guidelines.

2. Review CGT compliance and consider any necessary remedial steps

For each disposal, determine the applicable date of disposal and confirm whether the CGT return was filed and tax paid within the applicable 60-day period.

Where a return previously filed requires correction, consider whether an amended return may be made under section 77B of the ITA, which permits an amendment within six months after the filing deadline.²¹

Where no return was filed because the transaction was previously treated as falling outside CGT, taxpayers should consider whether a filing or other appropriate remedial step is required.

3. Track liquidations in progress

Maintain records of:

- the date each capital distribution is received; and
- the date the statement of the final meeting and statement of account are finalised.

On the IRB's stated position in the Joint Memorandum Response, the earlier of those two dates determines the date of disposal.

[21] Paragraph 16.2 of the 2026 Guidelines @ pages 35 to 36.

4. Review preference and hybrid instruments

Review the terms of each RPS, convertible instrument and other potentially equity-like instrument against both:

- the statutory definition and charging provisions; and
- the characteristics identified by the IRB in paragraph 6.3.

This is particularly important before any redemption, conversion or restructuring.

5. Document nominee arrangements

Ensure that any nominee agreement clearly records the beneficial ownership arrangement and accurately reflects where the capital, profit rights and risks lie.
Pasted text

6. Maintain valuation support

For connected-person intra-group transactions in particular, retain contemporaneous support for the value adopted.

G. Our Comments

The 2026 Guidelines principally bring the IRB's guidance into line with the amendments introduced by the Finance Act 2025, particularly the expanded statutory definition of "disposal" and the revised rules for determining the date of disposal.

Importantly, however, not every position appearing in the 2026 Guidelines represents a change in law. Certain matters — including aspects of the treatment of RPS and other equity-like instruments, and the application of the statutory timing rules to particular corporate actions — reflect the IRB's interpretation or administrative approach. Those positions must ultimately be considered against the provisions of the ITA.

Further clarification would be useful on several practical issues, particularly the date of disposal where a share conversion involves a resolution followed by subsequent statutory lodgements, the treatment of RPS under paragraph 6.3, and the valuation and tax treatment of non-sale intra-group transactions.

For taxpayers, the immediate practical issue is the expanded statutory definition of "disposal" which took effect from 1 January 2026. Companies which have undertaken redemptions, conversions, capital reductions, share buy-backs, winding up or other relevant corporate actions since that date should review whether those transactions gave rise to a disposal, whether the correct disposal date and consideration were adopted, and whether the applicable CGT filing and payment obligations were complied with.

Where necessary, taxpayers should consider whether an amended return, filing or other remedial step is now required.

Should you have any questions on the above, or require assistance on any capital gains tax matter, please contact our Tax, Customs & Trade team at tax@lh-ag.com, Chris Toh Pei Roo (tpr@lh-ag.com), or Jay Fong Jia Sheng at (fjs@lh-ag.com).

Authors



**CHRIS TOH
PEI ROO**
Partner
LHAG
tpr@lh-ag.com



**JAY FONG
JIA SHENG**
Senior
Associate
LHAG
fjs@lh-ag.com

Head Office

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122

Johor Office

Suite 21.01
21st Floor, Public Bank Tower
No.19, Jalan Wong Ah Fook
80000 Johor Bahru, Johor
Tel: +607 278 3833
Fax: +607 278 2833

Penang Office

51-12-E, Menara BHL Bank,
Jalan Sultan Ahmad Shah,
10050 Penang
Tel: +604 299 9668
Fax: +604 299 9628

Email

enquiry@lh-ag.com

Website

www.lh-ag.com