



KEMENTERIAN KEWANGAN MALAYSIA
KOMPLEKS KEMENTERIAN KEWANGAN
NO. 5, PERSIARAN PERDANA, PRESINT 2
PUSAT PENTADBIRAN KERAJAAN PERSEKUTUAN
62592 PUTRAJAYA

Tel. : 03-8000 8000
Faks : 03-8882 3893
03-8882 3894
Web : www.treasury.gov.my

MOF.TAX(S)700-2/1/125 (8)

| April 2021

Datuk Chin Chee Kee
Pengerusi,
Association of Labuan Trust Companies Malaysia,
Level 1, Lot 7, Block F, Saguing Commercial Building,
Jalan Patau-Patau,
87000 Wilayah Persekutuan Labuan.

Faks: 087-419755

YBhg. Datuk,

ASSOCIATION OF LABUAN TRUST COMPANIES (ALTC)
**- LABUAN BUSINESS ACTIVITY TAX (REQUIREMENTS FOR LABUAN
BUSINESS ACTIVITY) REGULATIONS 2018 AND RELATED MATTERS**

Dengan hormatnya saya merujuk kepada surat YBhg. Datuk rujukan ALTC/MOF-01/2020 bertarikh 9 Julai 2020 dan rujukan: ALTC/MOF-02/2020 bertarikh 2 Oktober 2020 mengenai perkara di atas.

2. Adalah dimaklumkan bahawa YB Menteri Kewangan memutuskan maklumbalas ke atas perkara yang dibangkitkan oleh Association of Labuan Trust Companies (ALTC) adalah seperti di **Lampiran 1** untuk makluman dan tindakan ALTC selanjutnya.

Sekian, terima kasih.

"PRIHATIN RAKYAT: DARURAT MEMERANGI COVID-19"

"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah,

(CHE NAZLI JAAPAR)

Setiausaha Bahagian Cukai

b.p. Ketua Setiausaha Perbendaharaan.

s.k. Timbalan Ketua Pegawai Eksekutif (Dasar)
Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil, Persiaran Rimba Permai
Cyber 8, 63000 Cyberjaya
SELANGOR DARUL EHSAN
(u.p.: Pn Salamatunnajan Besah
Pengarah, Jabatan Dasar Percukaian)

Lampiran 1

**Isu Yang Dibangkitkan Oleh Association of Labuan Trust Companies Malaysia (ALTC)
Bagi Rejim Percukaian Labuan Di Bawah LBATA 1990**

Bil	Isu Berbangkit	Keputusan YB Menteri Kewangan
1.	<i>To provide ALTC with clarity on the way forward by having the amendments published in a gazette.</i>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>Pindaan P.U (A) 392/2018 dan P.U.(A) 375/2018 telah diwarta melalui P.U. (A) 375/2020 dan P.U. (A) 376/2020 pada 24 Disember 2020.</p>
2.	<p><i>The clarification notes/pronouncement that were issued does not cover all the other trading entities such as general/good trading/consultancy/IT services etc.</i></p> <p><i>Labuan entities carrying on non-listed activities are to be taxed under ITA 1967 and not LBATA 1990 contrary to Malaysian law and well-established taxing principles, and universally held international taxation principles. Non listed activities would continue to be taxed under LBATA 1990 at 3% if the activities fall under the definition of "Labuan Trading Activity".</i></p>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>ALTC diminta untuk merujuk kepada perundangan yang sah di mana <i>pronouncement</i> yang dibuat oleh LFSA adalah tidak sah selagi mana ianya tidak diwartakan mengikut saluran perundangan.</p> <p>Aktiviti <i>general trading and services</i> tidak dimasukkan sebagai salah satu aktiviti Labuan kerana aktiviti ini tidak termasuk dalam aktiviti Pusat Perniagaan dan Kewangan Antarabangsa Labuan. Bagi aktiviti perniagaan yang tidak tersenarai adalah secara automatik tertakluk kepada pengenaan cukai pendapatan di bawah ACP 1967.</p> <p>Insentif galakan cukai untuk aktiviti perdagangan ada ditawarkan di bawah Akta Cukai Pendapatan 1967 melalui insentif percukaian Hab Prinsipal dan Syarikat Perdagangan Antarabangsa Malaysia (MITC) tertakluk kepada syarat yang ditetapkan.</p>
3.	<i>In the event that a Labuan entity received more than one income, each of the income would have to comply with the substance requirement separately.</i>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>Jenis aktiviti yang dijalankan adalah tertakluk kepada lesen yang diluluskan. Selaras dengan perundangan sedia ada, syarat substantif adalah berdasarkan kepada setiap aktiviti perniagaan yang dijalankan oleh entiti Labuan dan bukannya ke atas syarikat. Oleh itu, entiti Labuan yang mempunyai dua aktiviti yang berbeza perlu mematuhi syarat substantif yang ditetapkan.</p>

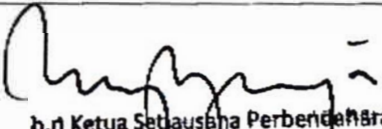
The amendments to P.U. (A) 392/2018 and P.U.(A) 375/2018 were gazetted through P.U. (A) 375/2020 and P.U. (A) 376/2020 on 24 August 2020.

The ALTC is required to refer to the legal provisions where the pronouncement made by the LFSA is invalid as long as it is not gazetted in accordance with the legal channels.

General trading and services activities are not included as one of the Labuan activities as these activities are not included in the activities of the Labuan International Business and Financial Centre.

Tax incentives for trading activities are offered under the Income Tax Act 1967 through the Principal Hub and Malaysian International Trading Company (MITC) tax incentives subject to the conditions.

The type of activity carried out is subject to the approved license. In accordance with the existing legislation, the substantive requirements are based on each licensing activity carried out by the Labuan entity and not on the company. Therefore, Labuan entities that have two different activities must comply with the substantive conditions set.


 b.p Ketua Setiausaha Perbendaharaan
 Bahagian Cukai
 Perbendaharaan Malaysia

Lampiran 1

Bil	Isu Berbangkit	Keputusan YB Menteri Kewangan
4.	<i>To allow a transition period so that the full implementation be done only in 2021.</i>	Permohonan tidak diluluskan. <i>The application was not approved.</i>
5.	<i>To consider that those that fall out of the scope of Labuan Business Activity to continue doing business in Labuan with a preferential tax rate such i.e 5% instead of 24% under Income Tax Act 1967.</i>	Permohonan tidak diluluskan. <i>The application was not approved.</i>
6.	<i>For investment holding companies, there is no need for full time employee to be in Labuan due to the passive nature of their business and activity.</i>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>Aktiviti <i>Pure Equity Holding</i> telah dikecualikan daripada pematuhan syarat pekerja sepenuh masa (FTE) di Labuan melalui perundangan subsidiari P.U. (A) 177/2020. Di bawah Akta Kewangan 2020, syarat FTE telah digantikan dengan syarat <i>Management & Control</i> di Labuan. P.U. (A) 177/2020 akan dipinda supaya selaras dengan Akta Kewangan 2020 melalui pindaan peruntukan seksyen 2B, LBATA 1990.</p> <p>Aktiviti <i>Non-Pure Equity Holding</i> adalah tertakluk kepada syarat substantif yang ditetapkan di bawah P.U.(A) 392/2018 dan P.U (A) 375/2020. Penetapan syarat substantif untuk aktiviti <i>Non-Pure Equity Holding</i> adalah selaras dengan piawaian antarabangsa yang telah ditetapkan di bawah FHTP, BEPS Action 5, OECD.</p>
7.	<i>The use of criminal penalties is also not appropriate for financial centre, particularly one like Labuan where fraud is not rampant. It is also makes it impossible for service providers like resident secretaries and resident directors to function as they are put at risk to being penalised and being made criminally liable for merely carrying out their functions. ALTC is also extremely concerned over the draconian penal provisions as the officers responsible for compliance under LBATA include secretaries and resident directors who are</i>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>Penalti dan kompaun yang dikenakan adalah untuk menangani isu ketidakpatuhan dan pelarian cukai di bawah LBATA 1990. Sekiranya tiada pelanggaran atau ketidakpatuhan dilakukan, maka tiada perkara yang perlu dibimbangkan oleh entiti Labuan bagi menjalankan aktiviti perniagaannya. Oleh itu, entiti Labuan dinasihatkan untuk sentiasa mematuhi undang-undang yang ditetapkan oleh Kerajaan dari semasa ke semasa.</p>

Pure Equity Holding's activities have been exempted from compliance with the full-time employee (FTE) requirement in Labuan through subsidiary legislation P.U. (A) 177/2020. Under the Finance Act 2020, the FTE requirement was replaced by the Management & Control requirement in Labuan. P.U. (A) 177/2020 will be amended to be in line with the Finance Act 2020 through the amendment of the provisions of section 28, LBATA 1990. Non-Pure Equity Holding activities are subject to substantive conditions set out under P.U.(A) 392/2018 and P.U(A) 375/2020. The setting of substantive requirements for Non-Pure Equity Holding activities is in line with international standards that have been set under FHTP, BEPS Action 5, OECD.

The penalties and compounds imposed are to address the issue of non-compliance and tax evasion under LBATA 1990. If no violation or non-compliance is committed, then there is nothing for the Labuan entity to worry about in carrying out its business activities. Therefore, Labuan entities are advised to always comply with the laws set by the Government from time to time.


b.p. Ketua Setiausaha Perbendaharaan
Bahagian Cukai
Perbendaharaan Malaysia

Lampiran 1

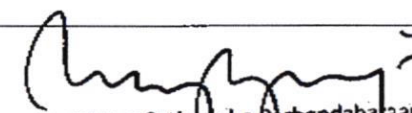
Bil	Isu Berbangkit	Keputusan YB Menteri Kewangan
	<p><i>provided for appointment as such by Labuan trust companies.</i></p> <p><i>To consider the compound rates and to only impose reasonable compounds and penalties for Labuan entities in line with the compound imposed under ITA 1967. In the ITA 1967 scenario, the compounds and penalties ranges from RM200 to RM20,000 or 300% of tax undercharged.</i></p>	<p><i>The penalties and compounds imposed are to address the issue of non-compliance and tax evasion under LBATA 1990. If no violation or non-compliance is committed, then there is nothing for the Labuan entity to worry about in carrying out its business activities. Therefore, Labuan entities are advised to always comply with the laws set by the Government from time to time.</i></p>
8.	<p><i>The requirement of having at least an officer of a managerial capacity be changed or amended to employees with the necessary qualification without having to designate their position. This requirement will in fact be in line with BEPS Action 5 stipulations.</i></p>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>Syarat FTE tidak menetapkan sama ada FTE adalah ditahap managerial atau tidak tetapi hendaklah bersesuaian dengan aktiviti perniagaan yang dijalankan.</p>
9.	<p><i>The substance requirement does not apply with regard to stamp duty, which is a different tax from the income tax administered under ITA 1967 or LBATA 1990.</i></p>	<p>Permohonan tidak diluluskan. <i>The application was not approved.</i></p> <p>Entiti Labuan hendaklah mematuhi syarat substantif yang ditetapkan bagi melayakkannya mendapat kadar cukai <i>preferential rate</i>, pengecualian cukai pegangan dan pengecualian duti setem di bawah rejim percukaian Labuan.</p>
10.	<p><i>To consider to renew incentives for individual working in Labuan that expired in year of assessment 2020.</i></p>	<p>Isu yang dibangkitkan tidak berbangkit. <i>The issues raised did not arise</i></p> <p>Pengecualian cukai pendapatan ke atas bayaran fi pengarah yang dibayar kepada Pengarah Entiti Labuan yang bukan warganegara Malaysia telah diwartakan melalui P.U (A) 6/2021 pada 12 Januari 2021 sehingga tahun taksiran 2025.</p>
11.	<p><i>To define what constitutes "dormant" to Labuan entity.</i></p>	<p>Entiti Labuan dinasihatkan untuk berhubung dengan LHNDM bagi layanan cukai ke atas syarikat <i>dormant</i> Labuan.</p>

The FTE conditions do not stipulate whether the FTE is at the managerial level or not but must be appropriate to the business activities carried out

Labuan entities must comply with the substantive conditions set out to qualify for preferential rate tax, withholding tax exemption and stamp duty exemption under the Labuan taxation regime

Income tax exemption on the payment of director's fees paid to Labuan Entity Directors who are not Malaysian citizens was gazetted through PU(A) 6/2021 on 12 January 2021 until the year of assessment 2025.

Labuan entities are advised to liaise with LHNDM for tax treatment on Labuan dormant companies


 b.p. Ketua Setiausaha Perbendaharaan
 Bahagian Cukai
 Perbendaharaan Malaysia