

Tax Regime in Labuan

1. Labuan entities are given the option to elect to be taxed under the local Income Tax Act, 1967 ("ITA") or under the existing preferential tax regime of Labuan Business Activity Tax Act, 1990 ("LBATA").
2. Labuan entities electing to pay tax under the ITA (such election shall be irrevocable) as provided for under Section 3A of LBATA are taxed at the prevailing local tax rate (currently at 24%) and governed by all the provisions of the ITA.
3. Labuan entities that comply with the requirement of **Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021** ("*Substance Regulations*") and its amendments and those that elect to pay tax under ITA will enable the Labuan entities to have more certainty to the benefits of the double tax agreements which Malaysia has signed with over 72 treaty partners. The double tax agreements would render the withholding tax on the dividends and interest paid much reduced. There are also exemptions in place whereby all **dividends income** of a company received will be tax exempt (Para 28, Schedule 6 of the ITA). Similarly **dividends received** by the shareholders of the LEs will be tax exempt.
4. Although the election to pay tax under ITA will subject the Labuan entities to 24% tax, with proper application of the relevant exemption provisions there creates a situation whereby the **dividend income** of the Labuan entities and the **dividend received** from a LE are not subject to any tax in Malaysia.
5. Malaysia (including Labuan) is a member of the Global Forum on Transparency and Exchange of Information for Tax of Economic Cooperation and Development ("OECD"). This membership means Malaysia (including Labuan), has met with the criteria set by the OECD that allow for the exchange of information for tax purposes in accordance with Article 26 of OECD's Model Tax Convention.
6. Action 5 of the "Inclusive Framework on Base Erosion and Profit Shifting" issued by OECD consists of two parts. One part relates to preferential tax regimes, where a peer review is undertaken to identify features of such regimes that can facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions. The second part includes a commitment to transparency through the compulsory spontaneous exchange of relevant information (Country by Country Reporting and Common Reporting Standard) on taxpayer-specific rulings which, in the absence of such information exchange, could give rise to Base Erosion and Profit Shifting ("BEPS") concerns.
7. Malaysia is a signatory to the Inclusive Framework. Signatory jurisdictions will have to implement and support the review of the four BEPS minimum standards, on harmful tax practices, tackling tax treaty abuse, country-by-country (CbC) reporting, and improvements to cross-border tax dispute resolution mechanisms. Therefore compliance with the Substance Regulations would mean compliance with the requirements of Action 5 of the Inclusive Framework.

8. A Labuan entity has to ensure that it is a Labuan entity as defined under Section 2B of LBATA in order to enjoy the tax rate of 3% on chargeable audited net profit. To qualify the entity shall, for the purpose of the Labuan business activity, have:
- (a) an adequate number of full-time employees in Labuan; and
 - (b) an adequate amount of annual operating expenditure in Labuan,
- as prescribed by the Minister by regulations made under Section 21 of LABATA.
9. The following entities are considered as Labuan entities:
- (a) A Labuan company;
 - (b) A Labuan foundation established and registered under the Labuan Foundations Act 2010;
 - (c) A Labuan Islamic foundation established and registered under the Labuan Islamic Financial Services and Securities Act 2010;
 - (d) A Labuan Islamic partnership as defined in the Labuan Islamic Financial Services and Securities Act 2010;
 - (e) A Labuan limited partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010;
 - (f) A Labuan limited liability partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010;
 - (g) A Labuan Islamic trust as defined in the Labuan Islamic Financial Services and Securities Act 2010;
 - (h) A Labuan trust as defined in the Labuan Trusts Act 1996;
 - (i) A Malaysian Islamic bank licensee as defined in the Labuan Islamic Financial Services and Securities Act 2010;
 - (j). A Malaysian bank licensee as defined in the Labuan Financial Services and Securities Act 2010;
 - (k). Any Labuan financial institutions as defined in the Labuan Financial Services Authority Act 1996;
 - (l). Any person declared by the Minister to be a Labuan entity under subsection 2B(2);

10. **Under Schedule 1 of the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 (“Substance Regulations 2021) [APPENDIX 1] which was gazetted on 19 November 2021 and come into operation on 1 January 2019 a Labuan entity carrying on a **Labuan trading activity** shall have the number of full-time employees and an amount of annual operating expenditure as follows:**

(1) No.	(2) Labuan entity carrying on a Labuan trading activity	(3) Minimum number of full time employees in Labuan	(4) Minimum amount of annual operating expenditure in Labuan (RM)
1.	Labuan insurer, Labuan reinsurer, Labuan takaful operator or Labuan retakaful operator	3	200,000
2.	Labuan underwriting manager or Labuan underwriting takaful manager	4	100,000
3.	Labuan insurance manager or Labuan takaful manager	4	100,000
4.	Labuan insurance broker or Labuan takaful broker	2	100,000
5.	Labuan captive insurer or Labuan captive takaful –		
	(a) Labuan first party captive insurer or Labuan first party captive takaful; or	2	100,000
	(b) Labuan third party captive insurer or Labuan third party captive takaful.	3	100,000
6.	Labuan bank, Labuan investment bank, Labuan Islamic bank or Labuan Islamic investment bank	3	200,000
7.	Labuan trust company	3	120,000
8.	Labuan leasing company or Labuan Islamic leasing company which has –		
	(a) not more than 10 related Labuan leasing companies or Labuan Islamic leasing companies;	2 for each group of Companies	100,000 for each Labuan leasing company or Labuan Islamic leasing Company
	(b) 11 to 20 related Labuan leasing companies or Labuan Islamic leasing companies;	3 for each group of Companies	100,000 for each Labuan leasing company or Labuan Islamic leasing Company

	<p>(c) 21 to 30 related Labuan leasing companies or Labuan Islamic leasing companies;</p> <p>Or</p> <p>(d) more than 30 related Labuan leasing companies or Labuan Islamic leasing companies</p>	<p>4 for each group of Companies</p> <p>1 additional employee for each group of companies for each increase of 10 related Labuan leasing companies or Labuan Islamic leasing companies</p>	<p>100,000 for each Labuan leasing company or Labuan Islamic leasing Company</p> <p>100,000 for each Labuan leasing company or Labuan Islamic leasing company</p>
9.	Labuan credit token company or Labuan Islamic credit token company	2	100,000
10.	Labuan development finance company or Labuan Islamic development finance company	2	100,000
11.	Labuan building credit company or Labuan Islamic building credit company	2	100,000
12.	Labuan factoring company or Labuan Islamic factoring company	2	100,000
13.	Labuan money broker or Labuan Islamic money broker	2	100,000
14.	Labuan fund manager	2	100,000
15.	Labuan securities licensee or Labuan Islamic securities licensee	2	100,000
16.	Labuan fund administrator	2	100,000
17.	Labuan company management	2	100,000
18.	Labuan International Financial Exchange	2	120,000
19.	Self-regulatory organisation or Islamic self-regulation organisation	2	120,000
20.	<p>Labuan entity that carries on any one or more of the following business activity:</p> <p>(a) administrative services;</p> <p>(b) accounting services;</p> <p>(c) legal services;</p> <p>(d) backroom processing services;</p> <p>(e) payroll services;</p> <p>(f) talent management services;</p> <p>(g) agency services;</p> <p>(h) insolvency related services;</p> <p>(i) management services other than Labuan company management under item 17</p>	1	50,000

11. **Under the Schedule 2 of Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 (“Substance Regulations 2021”) [APPENDIX 1] which was gazetted on 19 November 2021 and come into operation on 1 January 2019 a Labuan entity carrying on a **Labuan non-trading activity** shall have the number of full-time employees and an amount of annual operating expenditure as follows:**

(1) No.	(2) Labuan entity carrying on a Labuan non-trading activity	(3) Minimum number of full time employees in Labuan	(4) Minimum amount of annual operating expenditure in Labuan (RM)
1.	Labuan entity that undertakes investment holding activities other than pure equity holding activities	1	20,000
2.	Labuan entity that undertakes pure equity holding activities	Exempted under the Labuan Business Activity Tax (Exemption) Order 2020 [PU(A) 177/2020]	20,000

12. The Labuan Business Activity Tax (Exemption) Order 2020 [PUA 177/2020] [APPENDIX 2] and Labuan Business Activity Tax (Exemption) 2020 (Amendment) Order 2021 [APPENDIX 3] exempts a Labuan entity carrying on a Labuan business activity related to pure equity holding from the application of subparagraph 2B(1)(b)(ii) (A) of the Act which states that:

“Section 2B. Labuan entity.

(1) *The Labuan entities-*

- (a) *shall be as specified in the Schedule; and*
- (b) *shall, for the purposes of the Labuan business Activity -*
- (i) *in relation to a Labuan trading activity-*
- (A) *have an adequate number of full time employees in Labuan; and*
- (B) *have an adequate amount of annual operating expenditure in Labuan,*
as prescribed by the Minister by regulations made under this Act;
and
- (ii) *in relation to a Labuan non-trading activity-*
- (A) *have an adequate number of full time employees in Labuan;*
- (B) *have an adequate amount of annual operating expenditure in Labuan; and*
- (C) *comply with any condition in relation to control and management in Labuan,*
as prescribed by the Minister by regulations made under this Act.”;

That means if a Labuan entity carrying on a Labuan business activity related to pure equity holding, it would not have to employ any full-time employee but should incur RM20,000 annual operating expenditure in Labuan in order to qualify under the Substance Regulation 2021.

In addition, subparagraph 2B(1)(b)(ii)(C) of the Act requires that the said pure equity holding Labuan entity must comply with any condition in relation to control and management in Labuan. This means the Labuan pure equity holding entity must have a Board of Director meeting once every year in Labuan to determine importance business operations at the Board meeting in order to comply with control and management in Labuan.

13. For the purpose of complying with the management and control requirements in Labuan by Labuan entities that undertake pure equity holding activities, the following requirements shall be observed:
- (a) To comply with Para 5.5 of Inland Revenue Board's Public Ruling No. 5/2011 (Residence Status of Companies and Bodies of Person) dated 16 May 2011 (Replaced by Para 5.7 of PR 9/2019 dated 6/12/2019 which is similar) [\[APPENDIX 4\]](#);
 - (b) Have its registered office in Labuan;
 - (c) Appoint Labuan trust company as resident secretary in Labuan; and
 - (d) Keeps its accounting and business records including minutes of meeting in Labuan.
14. Para 5.5 of IRB Public Ruling No. 5/2011 (Replaced by Para 5.7 of PR 9/2019 dated 6/12/2019 which is similar) states that:
- (a) Management and control is the key factor used to ascertain the residence status of a company in Malaysia¹. The management and control refers to the controlling authority which determines the policies to be followed by the company. The management and control is considered to be exercised where the directors meet to conduct the company's business/affairs irrespective of where the company might be incorporated. The management and control of a business of a company would depend upon how the business is managed. If, at any time during the basis year for a year of assessment at least one meeting of the board of directors is held in Malaysia/(Labuan) concerning the management and control of the company, even though all other meetings are held outside Malaysia/(Labuan) then the company is resident in Malaysia/(Labuan) for that basis year.

¹ Note: should be in Labuan for Labuan pure equity holding entities

- (b) The location of the trading activities or the place of physical operations may not necessarily be the place of management and control. A company engaged in trading activities in Malaysia/(Labuan), will not be resident in Malaysia/(Labuan), if it is found that not only the trading activities, e.g. manufacturing or producing and selling are controlled abroad but also that the meetings of the shareholders and directors, at which all its important affairs are conducted and controlled, are also held abroad.
 - (c) The appointment of a local director or local board of directors in Malaysia/(Labuan) does not determine the residence status of a company. If the controlling authority is exercised by the directors who are at the company's head office overseas, then the company is not a resident in Malaysia/(Labuan).
 - (d) Control by the directors determines the management and control of a company. The directors exercise their powers in the management of the company's affairs by virtue of the powers conferred upon them under the Articles of Association. On the other hand, control by the shareholders is not relevant for the determination of the management and control as shareholders exercise their power over the company by virtue of their voting power at formal meetings of shareholders.
 - (e) The residence status of a director does not determine the residence status of a company.
15. The Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020 ("ND Rules 2020") [\[APPENDIX 5\]](#) which was gazetted on 23 December 2019 prescribed that the following types of payment made by a resident will not be allowed for deduction under Section 39(1)(r) of the ITA when computing for the Malaysian resident entity's income tax liability:

No.	Type of payment	Amount not allowed for deduction
1.	Interest payment	25% (including all payments relating to financing e.g. commission, facility & upfront fees)
2.	Lease rental	25% of the amount of payment
3.	Other payments	97% of the amount of payment

In addition, the ND Rules 2020 are not applicable to the following:

- (a) Transactions between Labuan International Commodity Trading Company (LITC) and Malaysian residents;
- (b) Transactions between Labuan entities that have opted to pay tax under Income Tax Act 1967 (ITA) and Malaysian residents; and
- (c) Transactions between Labuan entities that are paying taxes under ITA and Labuan entities that are paying taxes under Labuan Business Activity Tax Act 1990 whether the LE had complied with the SR or not.

The effective date for the above changes is from 1 January 2019.

However, with effect from 1 January 2021, transactions between Labuan entities that do not comply with SR (ie whether paying tax at 3% or 24% under LBATA) and residents will be subject to the ND Rules 2020, and 97% of the amount of payment by residents will be disallowed.

16. "Resident" means resident in Malaysia for the basis year for a year of assessment (YA) by virtue of section 8 and subsection 61(3) of the ITA.

Section 8. Residence: companies and bodies of persons.

- (1) *For the purposes of this Act-*
- (a) *a Hindu joint family is resident in Malaysia for the basis year for a year of assessment if its manager or karta is resident for that basis year;*
 - (b) *a company or a body of persons (not being a Hindu joint family) carrying on a business is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia; and*
 - (c) *any other company or body of persons (not being a Hindu joint family) is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its affairs are exercised in Malaysia by its directors or other controlling authority.*
- (1A) *Notwithstanding subsection (1), for the purposes of this Act-*
- (a) *a limited liability partnership carrying on a business is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia;*
 - (b) *any other limited liability partnership is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its affairs are exercised in Malaysia by its partners;*
 - (c) *a business trust is resident in Malaysia for the basis year for a year of assessment if the trustee manager of that business trust is resident in Malaysia and a trustee manager of a business trust is resident for the basis year for a year of assessment if-*
 - (i) *the trustee manager in his capacity as such carries on such business trust in Malaysia; and*
 - (ii) *the management and control of the business of such business trust is exercised in Malaysia;*

Section 61(3) Trust Generally

- (3) *Notwithstanding any other provision of this Act, a trust body shall be regarded as resident for the basis year for a year of assessment if, but only if, any trustee member of that body is resident for that basis year:*
Provided that where-
- (a) *the trust was created outside Malaysia by a person or persons who were not citizens;*
 - (b) *the income of that trust body for that basis year is wholly derived from outside Malaysia;*
 - (c) *the trust is administered for the whole of that basis year outside Malaysia; and*
 - (d) *at least one-half of the number of the member trustees are not resident in Malaysia for that basis year, that trust body shall not be regarded as resident in Malaysia for that basis year.*

17. Under S 16A of LBATA:

- (1) Where any tax is due and payable under LBATA by a company, any person who is a resident director of that company during the period in which that tax is liable to be paid by that company, shall be jointly and severally liable for such tax that is due and payable and shall be recoverable from that person.
- (2) “director” means any person who-
 - (a) is occupying the position of director, by whatever name called, including any person who is concerned in the management of the company’s business; and
 - (b) is, either on his own or with one or more associates, the owner of, or able directly or through the medium of other companies or by any other indirect means to control, not less than twenty per cent of the ordinary share capital of the company.
- (3) For the purposes of paragraph (2)(b) above, “associate” means, in relation to a person-
 - (a) in any of the following relationships to that person, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner;
 - (b) the trustee or trustees of a settlement in relation to that person is, or any such relative of his, living or dead, as is mentioned in paragraph (a) of this definition is or was, a settlor;
 - (c) where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein.”.

18. Labuan International Commodity Trading Company (“LITC”)

- (1) “Labuan International Commodity Trading Company” means a Labuan company which-
 - (a) is incorporated or registered under the Labuan Companies Act 1990;
 - (b) is licensed under section 92 of the Labuan Financial Services and Securities Act 2010;
 - (c) maintains a registered office in Labuan but is allowed to establish its business operational office anywhere in Malaysia; and
 - (d) undertakes a qualifying activity under the Global Incentives for Trading programme;
- (2) Under the Labuan Business Activity Tax (Requirements for Labuan International Commodity Trading Company) Regulations 2021 (“LITC Regulations 2021”) [\[APPENDIX 6\]](#), a LITC which is a Labuan entity carrying on a Labuan business activity shall in a basis period for a year of assessment fulfill the following requirements:
 - (a) have at least three full-time employees; and
 - (b) have an annual operating expenditure of at least three million ringgit (RM3,000,000.00).

- (3) Where the LITC has not more than five related companies to carry on the qualifying activity, that LITC shall-
- (a) have not less than three full-time employees including at least two of them are full-time employees in its business operational office in Labuan in a group of companies; and
 - (b) incur an annual operating expenditure of at least three million ringgit (RM3,000,000.00) in Malaysia including at least one hundred thousand ringgit (RM100,000.00) therefrom is incurred in Labuan for each company.
- (4) Subject to (3) above, where the LITC has more than five related companies to carry on the qualifying activity, that LITC shall also have an additional full-time employee in its business operational office in Labuan for every addition of up to five related companies in a group of companies.
- (5) For the purpose of the LITC Regulations 2021, companies are deemed to be in the same group where-
- (a) two or more companies are related companies;
 - (b) a company is so related to another company which is itself so related to a third company;
 - (c) the same person is holding more than fifty per cent of the shares in each of two or more companies; or
 - (d) each of two or more companies is so related to at least one of two or more companies to which paragraph (c) applies.
- (6) In the LITC Regulations 2021:
- “qualifying activity” means the trading of physical products and related derivative instruments in relation to-
- (a) petroleum and petroleum-related products including liquefied natural gas;
 - (b) minerals;
 - (c) agriculture products;
 - (d) refined raw materials;
 - (e) chemicals;
 - (f) base minerals; or
 - (g) coal;
- “Global Incentives for Trading” means a programme of incentives for a LITC to use Malaysia as its international trading base to undertake a qualifying activity;
- “related companies” means companies that are deemed to be related to each other in accordance with of section 4 of the Labuan Companies Act 1990.
- (7) LITC which complies with the Substance Regulations 2021 in a year of assessment shall be subject to tax at 3% of its audited net profits under LBATA. Any LITC that can not fulfil the requirements of Substance Regulations 2021 in a year of assessment shall be subject to tax at 24% of the net audited profits under LBATA.

19. In summary, under LBATA:

- (a) “Labuan business activity” means a Labuan trading or a Labuan non-trading activity **carried on in, from or through Labuan**, excluding any activity which is an offence under any written law.

There is no more restriction on a LE carrying on business activity with Malaysia residents and the LE can also carrying business in Ringgit Malaysia.

However, please refer to Para 15 on the restriction placed on the domestic Malaysian resident entities on the payments made to Labuan entities.

- (b) **Only having been determined as a Labuan entity under the Substance Regulations** (by complying with the prescribed number of full-time employees and minimum annual operating expenditures in Labuan and carrying on a PRESCRIBED Labuan business activities as listed therein) then this entity *shall qualify to be taxed under LBATA* and shall be considered as a *qualified Labuan entity*. *[Section 2B(1) of LBATA]*
- (c) (i) A **qualified Labuan entity** that carries out a *Labuan business activity which is a Labuan trading activity* (includes banking, insurance, trading, management, licensing, shipping operations or carries out administrative, accounting and legal services including backroom processing, payroll services, talent management, agency services, insolvency related services and management services other than company management services any other activity which is not a Labuan non-trading activity) shall be charged to tax at the rate of **three (3) percent** upon its chargeable profits for that year of assessment. *[Section 4(1) of LBATA]*
- (ii) *However, Labuan trading activities do not include any income derived from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right. Any income derived from intellectual property right is subject to tax under the Income Tax Act 1967. [Section 4(3) and 4(4) of LBATA]*
- (iii) “intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout -design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable. *[Section 4(5) of LBATA]*
- (d) A **qualified Labuan entity** that carries out a *Labuan business activity which is a Labuan non-trading activity* (an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf) for the basis period for a year of assessment **shall not be charged to tax** for that year of assessment. *[Section 9(1) of LBATA]*

- (e) A **qualified Labuan entity** that carries out BOTH a *Labuan business activity which is a Labuan trading activity and a business activity which is a Labuan non-trading activity* for the basis period for a year of assessment the entity shall be charged to tax at the rate of **three (3) percent** upon its chargeable profits for that year of assessment. *[Section 2(2) of LBATA]*
- (f) A **Labuan entity** which is *carrying on a Labuan business activity as specified in the SR* but **fails to comply** with Substance Regulations for a basis period for a year of assessment shall be charged to tax at the rate of **twenty four (24) percent** upon its chargeable profits for that year of assessment. A **Labuan entity** that carries out BOTH a *Labuan business activity which is a Labuan trading activity and a business activity which is a Labuan non-trading activity* but **fails to comply** with Substance Regulations for the basis period for a year of assessment the entity shall be charged to tax at the rate of **twenty four (24) percent** upon its chargeable profits for that year of assessment. *[Section 2B(1A) of LBATA]*
- (g) When a Labuan entity is carrying on many categories of business activities, then each category of business activity will be considered a separate source and each category on itself has to comply with the Substance Regulations in order to be taxed at the preferential rate of 3% of the chargeable profits.

The Labuan entity besides lodging LE1, LE4, or LE5 has to submit an appendix to analyse the separate category of income and the net profits for each category if this is not shown in the audited accounts.

- (h) A Labuan entity will be taxed under ITA if the entity received income during the financial year:
- (1) which is NOT a Labuan business activity (a Labuan trading or a Labuan non-trading activity) carried on in, from or through Labuan); or
 - (2) from business activities which fall outside the categories stated in the Substance Regulations; or
 - (3) from an intellectual property right [Section 4(3) and (4) of LABATA]; or
 - (4) from a foreign branch whose business activities are not carried on in, from or through Labuan; or
 - (5) from foreign investments which are not carried on in, from or through Labuan;

The above income shall be taxed under the ITA as in accordance with Section 2(3) of Labuan Business Activity Tax Act, 1990, ("LBATA") it is declared that the provisions (as per Clause 16 below) of the Income Tax Act, 1967 ("ITA") shall apply in respect of an activity other than a Labuan business activity carried on by a Labuan entity. *[Section 2(3) of LBATA]*.

20. A Labuan entity may make an irrevocable election in the prescribed form that any profit of the Labuan entity for any basis period for a year of assessment and subsequent basis period to be charged to tax in accordance with the Income Tax Act 1967 in respect of that Labuan business activity under Section 3A of LBATA.

If the Labuan entity makes an election under Section 3A then all the provisions of the ITA shall apply including that the entity shall:

- (a) be taxed on a current year basis;
- (b) provide estimated income within three months of commencing operations;
- (c) be subject to tax audit and tax investigation provisions; and
- (d) be taxed at the prevailing corporate tax rate for income derived from activities within Malaysia.

21. A LITC which complies with the Substance Regulations 2021 in a year of assessment shall be subject to tax at 3% of its audited net profits under LBATA. Any LITC that can not fulfil the requirements of Substance Regulations 2021 in a year of assessment shall be subject to tax at 24% of the net audited profits under LBATA.

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WARTA KERAJAAN PERSEKUTUAN

*FEDERAL GOVERNMENT
GAZETTE*

PERATURAN-PERATURAN CUKAI AKTIVITI
PERNIAGAAN LABUAN (KEHENDAK BAGI AKTIVITI
PERNIAGAAN LABUAN) 2021

*LABUAN BUSINESS ACTIVITY TAX (REQUIREMENTS FOR
LABUAN BUSINESS ACTIVITY) REGULATIONS 2021*

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

LABUAN BUSINESS ACTIVITY TAX ACT 1990

LABUAN BUSINESS ACTIVITY TAX
(REQUIREMENTS FOR LABUAN BUSINESS ACTIVITY) REGULATIONS 2021

IN exercise of the powers conferred by paragraph 21(1)(a) read together with paragraph 2B(1)(b) of the Labuan Business Activity Tax Act 1990 [Act 445], the Minister makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021**.

(2) Except for regulation 3, these Regulations are deemed to have come into operation on 1 January 2019.

(3) Regulation 3 is deemed to have come into operation on 1 January 2021.

Requirements for Labuan business activity

2. A Labuan entity carrying on a Labuan business activity shall have the number of full time employees and the amount of annual operating expenditure—

(a) in relation to a Labuan trading activity, as specified in the First Schedule;
and

(b) in relation to a Labuan non-trading activity, as specified in the Second Schedule,

in the basis period for a year of assessment.

Control and management in Labuan

3. For the purpose of item 2 of Second Schedule, a Labuan entity carrying on a Labuan business activity shall comply with the conditions in relation to control and management in Labuan as follows:

- (a) meeting of the board of directors is convened in Labuan at least once a year;
- (b) the registered office of the Labuan entity shall be situated in Labuan;
- (c) the secretary of the Labuan entity appointed under the Labuan Companies Act 1990 [Act 441] shall be resident in Labuan; and
- (d) the accounting and business records including the minutes of meeting of the Labuan entity's board of directors shall be kept in Labuan.

Provisions relating to the company

4. For the purposes of company as specified in the First Schedule and Second Schedule—

- (a) a company shall be deemed to be related to another company in accordance with section 4 of the Labuan Companies Act 1990; and
- (b) where—
 - (i) two or more companies are related within the meaning of section 4 of the Labuan Companies Act 1990;
 - (ii) a company is so related to another company which is itself so related to a third company;
 - (iii) the same person is holding more than fifty per cent of the shares in each of two or more companies; or
 - (iv) each of two or more companies is so related to at least one of two or more companies to which subparagraph (iii) applies,

all these companies are deemed to be in the same group.

Revocation

5. The Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [*P.U. (A) 392/2018*] is revoked.

FIRST SCHEDULE

[Regulation 2 and 4]

(1) No.	(2) <i>Labuan entity carrying on a Labuan trading activity</i>	(3) <i>Minimum number of full time employees in Labuan</i>	(4) <i>Minimum amount of annual operating expenditure in Labuan (RM)</i>
1.	Labuan insurer, Labuan reinsurer, Labuan takaful operator or Labuan retakaful operator	3	200,000
2.	Labuan underwriting manager or Labuan underwriting takaful manager	4	100,000
3.	Labuan insurance manager or Labuan takaful manager	4	100,000
4.	Labuan insurance broker or Labuan takaful broker	2	100,000
5.	Labuan captive insurer or Labuan captive takaful—		
	(a) Labuan first party captive insurer or Labuan first party captive takaful; or	2	100,000
	(b) Labuan third party captive insurer or Labuan third party captive takaful	3	100,000

(1) No.	(2) <i>Labuan entity carrying on a Labuan trading activity</i>	(3) <i>Minimum number of full time employees in Labuan</i>	(4) <i>Minimum amount of annual operating expenditure in Labuan (RM)</i>
6.	Labuan bank, Labuan investment bank, Labuan Islamic bank or Labuan Islamic investment bank	3	200,000
7.	Labuan trust company	3	120,000
8.	<p>Labuan leasing company or Labuan Islamic leasing company which has—</p> <p>(a) not more than 10 related Labuan leasing companies or Labuan Islamic leasing companies;</p> <p>(b) 11 to 20 related Labuan leasing companies or Labuan Islamic leasing companies;</p> <p>(c) 21 to 30 related Labuan leasing companies or Labuan Islamic leasing companies; or</p> <p>(d) more than 30 related Labuan leasing companies or Labuan Islamic leasing companies</p>	<p>2 for each group of companies</p> <p>3 for each group of companies</p> <p>4 for each group of companies</p> <p>1 additional employee for each group of companies for each increase of 10 related Labuan leasing companies or Labuan Islamic leasing companies</p>	<p>100,000 for each Labuan leasing company or Labuan Islamic leasing company</p> <p>100,000 for each Labuan leasing company or Labuan Islamic leasing Company</p> <p>100,000 for each Labuan leasing company or Labuan Islamic leasing company</p> <p>100,000 for each Labuan leasing company or Labuan Islamic leasing company</p>

(1) No.	(2) <i>Labuan entity carrying on a Labuan trading activity</i>	(3) <i>Minimum number of full time employees in Labuan</i>	(4) <i>Minimum amount of annual operating expenditure in Labuan (RM)</i>
9.	Labuan credit token company or Labuan Islamic credit token company	2	100,000
10.	Labuan development finance company or Labuan Islamic development finance company	2	100,000
11.	Labuan building credit company or Labuan Islamic building credit company	2	100,000
12.	Labuan factoring company or Labuan Islamic factoring company	2	100,000
13.	Labuan money broker or Labuan Islamic money broker	2	100,000
14.	Labuan fund manager	2	100,000
15.	Labuan securities licensee or Labuan Islamic securities licensee	2	100,000
16.	Labuan fund administrator	2	100,000
17.	Labuan company management	2	100,000
18.	Labuan International Financial Exchange	2	120,000

(1) No.	(2) <i>Labuan entity carrying on a Labuan trading activity</i>	(3) <i>Minimum number of full time employees in Labuan</i>	(4) <i>Minimum amount of annual operating expenditure in Labuan (RM)</i>
19.	Self-regulatory organisation or Islamic self-regulation organisation	2	120,000
20.	<p>Labuan entity that carries on any one or more of the following business activity:</p> <p>(a) administrative services;</p> <p>(b) accounting services;</p> <p>(c) legal services;</p> <p>(d) backroom processing services;</p> <p>(e) payroll services;</p> <p>(f) talent management services;</p> <p>(g) agency services;</p> <p>(h) insolvency related services;</p> <p>(i) management services other than Labuan company management under item 17</p>	2	50,000

SECOND SCHEDULE

[Regulation 2 and 4]

(1) No.	(2) <i>Labuan entity carrying on a Labuan non-trading activity</i>	(3) <i>Minimum number of full time employees in Labuan</i>	(4) <i>Minimum amount of annual operating expenditure in Labuan (RM)</i>
1.	Labuan entity that undertakes investment holding activities other than pure equity holding activities	1	20,000
2.	Labuan entity that undertakes pure equity holding activities	Exempted under the Labuan Business Activity Tax (Exemption) Order 2020 [P.U. (A) 177/2020]	20,000

Made 19 November 2021

[MOF.TAX (S) 700-2/1/76; PN(PU2)491/IV]

TENGGU DATUK SERI UTAMA ZAFRUL BIN TENGGU ABDUL AZIZ
Minister of Finance



2 Jun 2020
2 June 2020
P.U. (A) 177

WARTA KERAJAAN PERSEKUTUAN

*FEDERAL GOVERNMENT
GAZETTE*

PERINTAH CUKAI AKTIVITI PERNIAGAAN LABUAN
(PENGEQUALIAN) 2020

*LABUAN BUSINESS ACTIVITY TAX (EXEMPTION)
ORDER 2020*

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

LABUAN BUSINESS ACTIVITY TAX ACT 1990

LABUAN BUSINESS ACTIVITY TAX (EXEMPTION) ORDER 2020

IN exercise of the powers conferred by subsection 26(1) of the Labuan Business Activity Tax Act 1990 [Act 445], the Minister makes the following order:

Citation and commencement

1. (1) This order may be cited as the **Labuan Business Activity Tax (Exemption) Order 2020**.

(2) This Order is deemed to have come into operation on 1 January 2019.

Exemption

2. The Minister exempts a Labuan entity carrying on a Labuan business activity related to pure equity holding from the application of subparagraph 2B(1)(b)(i) of the Act.

Made 29 May 2020

[Perb.MOF.TAX(S)700-2/1/76; PN(PU2)491/IV]

TENGGU DATO' SRI ZAFRUL BIN TENGGU ABDUL AZIZ
Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 26(2) of the Labuan Business Activity Tax Act 1990]



23 Disember 2021
23 December 2021
P.U. (A) 466

WARTA KERAJAAN PERSEKUTUAN

*FEDERAL GOVERNMENT
GAZETTE*

PERINTAH CUKAI AKTIVITI PERNIAGAAN LABUAN
(PENGEQUALIAN) 2020 (PINDAAN) 2021

*LABUAN BUSINESS ACTIVITY TAX (EXEMPTION) 2020
(AMENDMENT) ORDER 2021*

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

LABUAN BUSINESS ACTIVITY TAX ACT 1990

LABUAN BUSINESS ACTIVITY TAX (EXEMPTION) 2020 (AMENDMENT) ORDER 2021

IN exercise of the powers conferred by subsection 26(1) of the Labuan Business Activity Tax Act 1990 [*Act 445*], the Minister makes the following order:

Citation and commencement

1. (1) This order may be cited as the **Labuan Business Activity Tax (Exemption) 2020 (Amendment) Order 2021**.

(2) This Order is deemed to have come into operation on 1 January 2021.

Amendment of paragraph 2

2. The Labuan Business Activity Tax (Exemption) Order 2020 [*P.U. (A) 177/2020*] is amended in paragraph 2 by substituting for the words “subparagraph 2B(1)(b)(i)” the words “subsubparagraph 2B(1)(b)(ii)(A)”.

Made 20 December 2021
[MOF.TAX (S) 700-2/1/76; PN(PU2)491/IV]

TENGGU DATUK SERI UTAMA ZAFRUL BIN TENGGU ABDUL AZIZ
Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 26(2) of the Labuan Business Activity Tax Act 1990]

APPENDIX 4



INLAND REVENUE BOARD OF MALAYSIA

**RESIDENCE STATUS OF COMPANIES
AND BODIES OF PERSONS**

PUBLIC RULING NO. 9/2019

Translation from the original Bahasa Malaysia text

DATE OF PUBLICATION: 6 DECEMBER 2019



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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 (ITA) provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

1. Objective

This Public Ruling (PR) provides an explanation on the determination of the residence status of companies and bodies of persons.

2. Relevant Provisions of the Law

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are section 8 and subsection 61(3).

3. Interpretation

The words used in this PR have the following meaning:

3.1 "Body of persons" means an unincorporated body of persons (not being a company), including a co-operative society, a club, an association, a trust and a Hindu Joint Family but excluding a partnership.

3.2 "Non-resident" means other than a resident in Malaysia by virtue of section 8 and subsection 61(3) of the ITA.

3.3 "Hindu Joint Family" means what in any system of law prevailing in India is known as a Hindu Joint Family or coparcenary.

3.4 "Person" includes a company, a body of persons, a limited liability partnership and a corporation sole.

3.5 "Resident" means resident in Malaysia for the basis year for a year of assessment (YA) by virtue of section 8 and subsection 61(3) of the ITA.

3.6 "Company" means a body corporate and includes any body of persons established with a separate legal entity by or under the laws of a territory outside Malaysia and a business trust.

4. Significance of Residence Status

4.1 Residence status is a question of fact and it is one of the main criteria that determines the tax treatment and tax consequences of a company or body of persons.

4.2 A resident and a non-resident company in Malaysia is taxed in the same manner in respect of any gains or profits accrued in or derived from Malaysia.

- 4.3 The distinct differences in the tax treatment of a resident and non-resident company are as follows:

Item	Resident	Non-Resident
Scope of charge	<p>a) Companies carrying on business of banking, insurance, shipping and air transport - income is taxable on a world income scope.</p> <p>b) Other companies - income accrued in or derived from Malaysia.</p>	Income accrued in or derived from Malaysia.
Business income	Taxable if deemed derived from Malaysia.	Taxable on business income accruing in or derived from Malaysia if there is a permanent establishment in Malaysia.
Derivation of dividends	<p>Dividends distributed by a resident company are deemed derived from Malaysia.</p> <p>With the introduction of the single-tier system with effect from 1.1.2008, single-tier dividends are exempt from tax in Malaysia.</p> <p>Beginning from 1.1.2014, all dividends distributed by a resident company are exempt from tax in Malaysia.</p>	Dividends distributed by a non-resident company are not deemed derived from Malaysia.
Section 108 ITA account	A resident company was required to deduct tax under section 108 ITA from dividends deemed derived from Malaysia under the imputation system.	Not applicable.

Item	Resident	Non-Resident
	With the introduction of the single tier system which was fully implemented on companies from 1.1.2014, section 108 ITA is no longer applicable.	
Able to enjoy tax treaty benefits	Applicable.	Applicable.
Double taxation relief	Applicable.	Not Applicable.
Incentives available under ITA and Promotion of Investment Act 1986	Applicable.	Not Applicable.
Tax rates	<ol style="list-style-type: none"> 1) As specified in paragraph 2 of part I, Schedule 1, ITA. 2) Tax rate for companies with a paid up capital in respect of ordinary shares of RM2.5 million and less at the beginning of the basis period (as provided under paragraph 2A of part I, Schedule 1, ITA) is as follows: 	As specified in paragraph 2 of part I, Schedule 1, ITA.

Item	Resident	Non-Resident
	<p>i) for every ringgit of the first RM500,000 - 17% with effect from the year of assessment 2019; and</p> <p>ii) for every ringgit exceeding RM500,000 - 25% for the year of assessment 2015 and 24% for the subsequent years of assessment.</p> <p>However, pursuant to paragraph 2B of part I, Schedule 1, ITA which was introduced with effect from the year of assessment 2009, a company will not qualify for the above preferential tax rates if more than 50% of the paid up capital in respect of ordinary shares of -</p> <p>a) that company is owned directly or indirectly by a related company;</p> <p>b) the related company is owned directly or indirectly by that company; or</p> <p>c) that company and the related company is owned directly or indirectly by another company.</p>	

Item	Resident	Non-Resident
	<p>Related company means a company whose paid up capital in respect of ordinary shares exceeds RM2.5 million at the beginning of the basis period for a year of assessment.</p> <p>3) The tax rate applicable for an insurer from inward re-insurance business or offshore insurance business is as specified in paragraph 3, part I of Schedule 1, ITA.</p> <p>4) The tax rate applicable for a life fund other than income arising from life re-insurance business and inward life re-insurance business, of a resident or non-resident insurer is as specified in part VIII of Schedule 1, ITA.</p> <p>5) The tax rate applicable for a family fund referred to in section 60AA of the ITA other than income arising from family solidarity re-takaful business and inward family solidarity re-takaful business, of a resident or non-resident operator is as specified in part XII of Schedule 1, ITA.</p>	

Item	Resident	Non-Resident
Withholding tax	Not applicable.	<p>Certain receipts may be subject to withholding tax such as:</p> <ul style="list-style-type: none"> i) Interest¹ (except as exempted) (withholding tax under section 109 of the ITA - final tax at the rate as specified in part II of Schedule 1, ITA); ii) Royalties¹ (withholding tax under section 109 of the ITA - final tax at the rate as specified in part II of Schedule 1, ITA); iii) Special classes of income¹ under section 4A of the ITA (withholding tax under section 109B of the ITA - final tax at the rate as specified in part V of Schedule 1, ITA); iv) Service portion of contract payments (withholding tax under section 107A of the ITA); v) Distribution of income from a Real Estate Investment Trust¹ (REITs) exempted under section 61A of the ITA (withholding tax under section 109D of the

Item	Resident	Non-Resident
		<p>ITA - final tax at the rate as specified in part X of Schedule 1, ITA);</p> <p>vi) Distribution of income of a family fund, family re-takaful or general fund under section 60AA of the ITA (withholding tax under section 109E of the ITA at the rate as specified in part XI of Schedule 1, ITA); and</p> <p>vii) Other income¹ falling under paragraph 4(f) of the ITA (withholding tax under section 109F of the ITA - final tax at the rate as specified in part XIII of Schedule 1, ITA).</p>

¹Reference has to be made to the relevant agreements for the avoidance of double taxation for any variation in tax rates, if applicable.

4.4 The distinct differences in the tax treatment of resident and non-resident bodies of persons are as follows:

Category	Resident	Non-Resident
Hindu Joint Family	<p>Personal relief of RM9,000 can be claimed.</p> <p>Taxed at scale rates which are applicable to resident individuals in accordance with paragraph 1 of part I, Schedule 1, ITA.</p>	<p>Personal relief is not applicable.</p> <p>Taxed in accordance with the general provisions of the ITA applicable to non-residents and at the rate of tax as specified in paragraph 1A of part I, Schedule 1, ITA.</p>

Category	Resident	Non-Resident
Trade Association	Income tax exemption is applicable to the statutory income derived from members' subscription fees. Taxed at scale rates which are applicable to resident individuals in accordance with paragraph 1 of part I, Schedule 1, ITA.	Income tax exemptions are not applicable. Taxed in accordance with the general provisions of the ITA applicable to non-residents and at the rate of tax as specified in paragraph 1A of part I, Schedule 1, ITA.
Trust Body	Tax rate is as specified in paragraph 2, part I of Schedule 1, ITA.	Taxed in accordance with the general provisions of the ITA applicable to non-residents and at the rate of tax as specified in paragraph 1A of part I, Schedule 1, ITA.
Co-operative Societies	Taxed at scale rates which are applicable to a Co-operative Society as specified in part IV of Schedule 1, ITA.	Taxed in accordance with the general provisions of the ITA applicable to non-residents and at the rate of tax is as specified in paragraph 1A of part I, Schedule 1, ITA.
Clubs, Association, Societies	Taxed at scale rates which are applicable to resident individuals in accordance with paragraph 1 of part I, Schedule 1, ITA.	Taxed in accordance with the general provisions of the ITA applicable to non-residents and the rate of tax is as specified in paragraph 1A of part I, Schedule 1, ITA.

5. Determination of Residence Status of Companies and Bodies of Persons

Companies and bodies of persons must meet certain criteria to be considered a resident in Malaysia. Section 8 of the ITA provides for the determination of residence status in respect of Hindu Joint Family, companies or bodies of persons (except trust bodies), limited liability partnership and business trust whereas subsection 61(3) of the ITA provides for the determination of residence status of a trust body.

5.1 Residence status of a Hindu Joint Family

Pursuant to paragraph 8(1)(a) of the ITA, a Hindu Joint Family is resident in Malaysia for the basis year for a year of assessment if the manager or karta is resident for that basis year. As such, if the manager or karta is a non-resident, the Hindu Joint Family is deemed a non-resident in Malaysia.

5.2 Companies or bodies of persons carrying on a business

Pursuant to paragraph 8(1)(b) of the ITA, a company or a body of persons (not being a Hindu Joint Family) carrying on a trade or business is resident in Malaysia for the basis year for a year of assessment if at any time during the basis year the management and control (as explained in paragraph 5.7 of this PR) of its business or of any one of its businesses are exercised in Malaysia.

Example 1

Jet Ltd, a company incorporated in Hong Kong has businesses in Hong Kong, Singapore and Malaysia. All the businesses of the company are managed and controlled by the head office in Hong Kong except for a brief period in the year 2018 when the management and control was exercised in Malaysia. This is because one of the board of directors meeting was held in Kuala Lumpur, where important policy decisions were made, on 28.6.2018 which falls in the basis year for the year of assessment 2018.

Jet Ltd is resident in Malaysia for the basis year for the year of assessment 2018 as the management and control which involved important policy making decisions was exercised in Malaysia in 2018. Therefore the income derived from the business carried on in Malaysia is subject to tax in Malaysia for the year of assessment 2018.

Note:

If the company is not a resident in Malaysia, it would still be taxable on its income derived from Malaysia. Non-resident companies and persons other than resident companies carrying on the business of banking, insurance or sea or air transport are exempted from tax on income derived from sources outside Malaysia and received in Malaysia.

Example 2

Simon Inc., was incorporated in the USA on 2.1.2000 and shortly after its incorporation, it registered as a foreign company in Malaysia on 2.3.2000. Simon Inc. (Malaysia) then commenced the business of provision of management and consultancy services in Malaysia. Its revenue was largely from fees charged for management, consultancy and other services provided to a related company, Simon (Malaysia) Sdn Bhd.

The Board of Directors of Simon Inc. (Malaysia) comprised of an American citizen who held the post of the president and 4 Malaysians who held the posts of a general manager, director (2 persons) and an accountant. However, the management and control of Simon Inc. (Malaysia) has been carried on in the USA since incorporation by the board of directors in the USA.

The financial accounting period of Simon Inc. (Malaysia) is the calendar year. The company claimed to be a resident in Malaysia in the year of assessment 2018 as the board of directors meeting was held in Kuala Lumpur on 30.11.2018. An audit finding indicated that a board of directors meeting was not held on the said date but a promotional and marketing session was held instead.

Since a board of directors meeting was not held in Malaysia on 30.11.2018, the management and control of the company was not exercised in Malaysia in the year of assessment 2018. Therefore, Simon Inc. (Malaysia) is not a resident in Malaysia for the year of assessment 2018.

5.3 Any other company or body of persons

Pursuant to paragraph 8(1)(c) of the ITA, any other company or body of persons (not being a Hindu Joint Family) is resident in Malaysia for the basis year for a year of assessment if at any time during the basis year the management and control (as explained in paragraph 5.7 of this PR) of its affairs are exercised in Malaysia by its directors or other controlling authority, e.g. a board of management / directors. As for investment holding companies, the management and control of its affairs includes the management and important decisions in respect of investments.

Example 3

Smart Holdings Sdn Bhd (SHSB), an investment holding company was incorporated in Malaysia on 2.1.2006. SHSB is wholly owned by Smart Holding Ltd, the holding company in the British Virgin Islands. This holding company is wholly owned by Smart Construction Holding Ltd, the ultimate holding company in Bermuda.

The board of directors of SHSB comprises of 7 directors, 5 of whom are citizens and residents of Hong Kong while the remaining 2 are Malaysians. The board of directors meetings are held in both Hong Kong and Malaysia. The meetings that were held in Hong Kong were only attended by the 4 directors from Hong Kong who have vast experience in investment and finance. Meetings were also held in Malaysia but were attended by the 2 Malaysian directors and communication with the directors from Hong Kong were through video conferencing and telephone. From the minutes of the meetings, it was noted that all decisions regarding investments, share management, finance and administration of SHSB were resolved in Hong Kong by the 4 directors in Hong Kong. The meetings held in Malaysia merely reported what had been decided in Hong Kong.

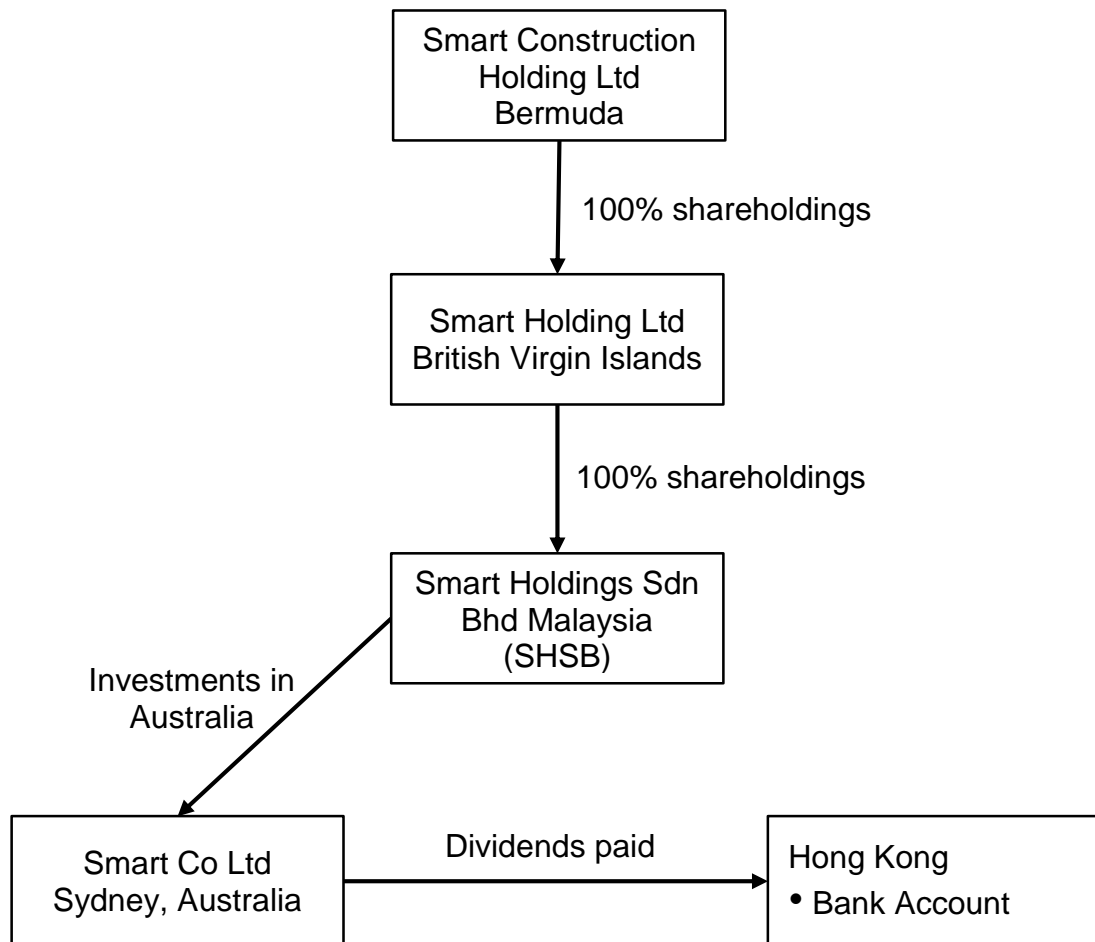
SHSB does not have a business premise in Malaysia. Its dividend income is from investments in an Australian company, Smart Co. Ltd in Sydney and interest income is from fixed deposits in various countries. None of SHSB's income has been remitted to Malaysia. SHSB does not have a bank account in Malaysia and all its income has been remitted to a bank account in Hong Kong.

SHSB claimed to be a resident in Malaysia from the year of assessment 2006 onwards as the management and control of its affairs were exercised in Malaysia by its directors.

Note:

If SHSB is a tax resident of Malaysia, the dividend income from Australia should be subject to tax at 15% on gross in accordance with Article 10 of the Double Taxation Avoidance Agreement (DTAA) between Malaysia and Australia instead of the 30% tax rate levied by the Australian Tax Authorities based on the Australian domestic tax laws.

The above situation can be summarised as follows:



Although SHSB claimed that there were board of directors meeting held in Malaysia but the meetings were not related to policy decisions that had to be followed by SHSB. All the decisions relating to investments, share management, finance and administration were made by the directors in Hong Kong at the board of directors meeting held in Hong Kong. As such, the management and control of the affairs of SHSB are not considered exercised in Malaysia and SHSB is not a tax resident of Malaysia from the year of assessment 2006.

5.4 Residence status of a subsidiary or a branch of a foreign company in Malaysia

Foreign corporations normally extend their business activities to Malaysia by incorporating a subsidiary in Malaysia or registering a branch in Malaysia. The residence status of subsidiaries of foreign corporations would be determined by paragraphs 8(1)(b) and 8(1)(c) of the ITA. Branches of foreign corporations in Malaysia are generally treated as non-residents in Malaysia unless it can be established that the management and control of its affairs or businesses or any one of the foreign corporation's businesses is exercised in Malaysia.

In other words, Malaysian branches of foreign corporations are controlled and managed by their overseas parent corporation and would generally be treated as non-residents in Malaysia. However, if a foreign corporation with a Malaysian branch claims that it is a tax resident of Malaysia, it has to be proven to the satisfaction of the Director General of Inland Revenue Malaysia that the management and control of its affairs, businesses or any one of the foreign corporation's businesses is exercised in Malaysia.

5.5 Residence status of a Limited Liability Partnership (LLP)

An LLP may be set up to carry on business or investment activities. The resident status of an LLP carrying on these activities are determined as follows:

- (i) Pursuant to paragraph 8(1A)(a) of the ITA, an LLP carrying on a business is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia; and
- (ii) Pursuant to paragraph 8(1A)(b) of the ITA, any other LLP is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its affairs are exercised in Malaysia by its partners.

Where a foreign LLP expands its business activities to Malaysia, the resident status is determined by virtue of paragraph 8(1A)(a) and 8(1A)(b) of the ITA.

For more information, please refer to PR No. 5/2015 titled Taxation of Limited Liability Partnership which can be downloaded from the Inland Revenue Board Malaysia's official portal at www.hasil.gov.my.

5.6 Residence status of a business trust

A business trust is resident in Malaysia for the basis year for a year of assessment if the trustee manager of that business trust is resident in Malaysia. The trustee manager is resident for the basis year for a year of assessment if –

- (i) the trustee manager in his capacity as such carries on the business of such business trust in Malaysia; and
- (j) the management and control of the business of such business trust is exercised in Malaysia.

For more information, please refer to PR No. 10/2013 titled Taxation of Business Trust which can be downloaded from the Inland Revenue Board Malaysia's official portal at www.hasil.gov.my.

5.7 Management and control

- (i) Management and control is the key factor used to ascertain the residence status of a company in Malaysia. The management and control refers to the controlling authority which determines the policies to be followed by the company. The management and control is considered to be exercised where the directors meet to conduct the company's business / affairs irrespective of where the company might be incorporated. The management and control of a business of a company would depend upon how the business is managed.

If, at any time during the basis year for a year of assessment at least one meeting of the board of directors is held in Malaysia concerning the management and control of the company, even though all other meetings are held outside Malaysia, then the company is resident in Malaysia for that basis year.

Example 4

The facts are the same as in Example 1.

The management and control is considered exercised in Malaysia on 28.6.2018 when the board of directors held their meeting in Kuala Lumpur. Although only one board of directors meeting was held in Malaysia in the year of assessment 2018, Jet Ltd. is considered a resident in Malaysia as the management and control was exercised in Malaysia in the basis year for the year of assessment 2018.

Example 5

Brad Inc was incorporated in the United States of America and operates in Malaysia through a branch since 2015. The financial accounting period of Brad Inc. ends on 31 December annually. For the years 2016 to 2018, all the board of directors meetings were held in Malaysia. All the important policy decisions of the foreign company were made during the board of directors meetings.

The management and control of Brad Inc which involved important policy decisions was exercised in Malaysia for the years 2016 to 2018 as all the board of directors meetings were held in Malaysia. Therefore, Brad Inc is resident in Malaysia for the basis year for the years of assessment 2016 to 2018. As such, the income derived from the business carried on in Malaysia is subject to tax in Malaysia for the years of assessment 2016 to 2018.

- (ii) The location of the trading activities or the place of physical operations may not necessarily be the place of management and control. A company engaged in trading activities in Malaysia will not be resident in Malaysia if it is found that not only the trading activities, e.g. manufacturing or producing and selling are controlled abroad but also that the meetings of the shareholders and directors, at which all its important affairs are conducted and controlled, are also held abroad.

Example 6

Ching Mart Stores Inc. is a Chinese retail store dealing with luxury products in China. It has set up a business in Kuala Lumpur that deals with trading activities but the management and control is exercised by the parent company in China.

Although the physical operations of the company was carried on in Malaysia but the management and control of the company was exercised outside Malaysia. Therefore, the company is not a resident in Malaysia.

- (iii) The appointment of a local director or local board of directors in Malaysia does not determine the residence status of a company. If the controlling authority is exercised by the directors who are at the company's head office overseas, then the company is not a resident in Malaysia.

Example 7

The facts are the same as in Example 2 except that the 2 local directors from Malaysia are not involved with policy decisions that control and direct the company. The 2 directors merely perform formal functions delegated by the controlling directors who are in the USA.

Although 2 local directors from Malaysia have been appointed to be on the board of directors but the policies and decisions are all made by the board of directors at the head office in USA. Therefore, the management and control is not exercised in Malaysia and the company is not a resident in Malaysia.

- (iv) Control by the directors determines the management and control of a company. The directors exercise their powers in the management of the company's affairs by virtue of the powers conferred upon them under the Articles of Association or as stipulated under the Companies Act 2016. However, control by the shareholders is not relevant for the determination of the management and control as share-holders exercise their power over the company by virtue of their voting power at formal meetings of shareholders.
- (v) The residence status of a director does not determine the residence status of a company.

5.8 Residence status of trust bodies

Pursuant to subsection 61(3) of the ITA, a trust body is deemed a resident in Malaysia for the basis year for a year of assessment only if any trustee of the trust is a resident in that basis year. However, a trust body will not be regarded as a resident if:

- (i) the trust was created outside Malaysia by a person or persons who were not citizens;
- (ii) the income of that trust body for that basis year is wholly derived from outside Malaysia;
- (iii) the trust is administered for the whole of that basis year outside Malaysia; and
- (iv) at least one-half of the number of the member trustees are not resident in Malaysia for that basis year.

6. Residence Status to Continue Once Established

Pursuant to subsection 8(2) of the ITA, when it has been established by the Director General of the Inland Revenue Board Malaysia that a company is resident in Malaysia for a given year of assessment, that company is considered a resident in Malaysia for each subsequent year of assessment until the contrary is proved.

Example 8

Rich Ltd, a company incorporated in Taiwan has its business in Taiwan, Singapore and Malaysia. The financial accounting year of the company is 30 June. All major decisions affecting the company are made at the Board of Directors meetings, all of which are held in Taiwan except for one which is held in Kuala Lumpur on 15.5.2018.

As there was one Board of Directors Meeting held in Kuala Lumpur on 15.5.2018, the management and control is considered exercised in Malaysia and the company is resident in Malaysia for the year of assessment 2018. It will continue to be considered a resident in Malaysia for the year of assessment 2019 and subsequent years of assessment until the contrary is proved.

7. Dual Residence Status and Double Taxation Avoidance Agreements

7.6 Malaysia has entered into agreements with a number of countries that avoid double taxation by allocating taxing rights over bilateral income flows between the respective treaty partners.

7.7 Dual residence is avoided between Malaysia and countries with which Malaysia has tax treaties. These treaties provide a tie-breaker residence article to determine a single country of residence. The provision of the tie breaker varies from treaty to treaty.

7.8 The Article on residence is normally Article 4 of the DTA which states the test for residence and the tie breaker for dual residence. The tie breaker test in an agreement provides that a dual resident be treated solely as a resident of the treaty partner country for purposes of the agreement. The terms of the relevant DTA should be referred to when determining tax liability. However, Malaysian resident status is still applicable for purposes of the general application of the domestic law, so that the income of companies and bodies of persons remain assessable to Malaysian tax.

8. Required Documentation to Determine the Residence Status of a Company

When trading and management and control are exercised outside Malaysia but certain directors' meetings are held in Malaysia, the following documentation may assist to determine the company's residence status:

- (i) Articles and Memorandum of Association, constitution or as stipulated under the Companies Act 2016 to ascertain where the company is registered and whether or not there are any provisions regarding residence in the articles;
- (ii) if the articles do give a place of management and control, whether the articles are being implemented;
- (iii) the company's letter head;
- (iv) minutes of directors' meetings that indicates where the meetings were held and what decisions relating to management and control were taken; and
- (v) minutes of general meetings that shows where such meetings have been held and what transpired at these meetings.

9. Updates and Amendments

Amendments																			
<p>This PR replaces the PR No. 5/2011 dated 16 Mei 2011.</p>	<p>The contents of this PR have been amended and updated as follows:</p>																		
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 20%;">Paragraph</th> <th>Explanation</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">3</td> <td>Paragraph 3 is amended</td> </tr> <tr> <td style="text-align: center;">4.3</td> <td> <p>Explanation of item “Derivation of Dividends” is amended.</p> <p>Item “Section 108 ITA account to franked dividend” in previous PR is amended.</p> <p>Explanation of item “Tax rates” is amended.</p> </td> </tr> <tr> <td style="text-align: center;">5.2</td> <td>Example 1 and 2 are updated.</td> </tr> <tr> <td style="text-align: center;">5.4</td> <td>Paragraph 5.4 is amended.</td> </tr> <tr> <td style="text-align: center;">5.5</td> <td>New paragraph 5.5 inserted.</td> </tr> <tr> <td style="text-align: center;">5.6</td> <td>New paragraph 5.6 inserted</td> </tr> <tr> <td style="text-align: center;">5.7</td> <td> <p>Previous paragraph 5.5 renumbered as paragraph 5.7.</p> <p>Example 4 is updated.</p> <p>A new Example 5 is inserted.</p> <p>Examples 5 and 6 in the previous PR are renumbered as Examples 6 and 7.</p> <p>Example 7 in previous PR is amended and renumbered as Example 8.</p> </td> </tr> <tr> <td style="text-align: center;">5.8</td> <td>Previous paragraph 5.6 renumbered as paragraph 5.8.</td> </tr> </tbody> </table>	Paragraph	Explanation	3	Paragraph 3 is amended	4.3	<p>Explanation of item “Derivation of Dividends” is amended.</p> <p>Item “Section 108 ITA account to franked dividend” in previous PR is amended.</p> <p>Explanation of item “Tax rates” is amended.</p>	5.2	Example 1 and 2 are updated.	5.4	Paragraph 5.4 is amended.	5.5	New paragraph 5.5 inserted.	5.6	New paragraph 5.6 inserted	5.7	<p>Previous paragraph 5.5 renumbered as paragraph 5.7.</p> <p>Example 4 is updated.</p> <p>A new Example 5 is inserted.</p> <p>Examples 5 and 6 in the previous PR are renumbered as Examples 6 and 7.</p> <p>Example 7 in previous PR is amended and renumbered as Example 8.</p>	5.8	Previous paragraph 5.6 renumbered as paragraph 5.8.
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10. Disclaimer

The examples in this PR are for illustration purposes only and are not exhaustive.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**



24 Disember 2020
24 December 2020
P.U. (A) 376

WARTA KERAJAAN PERSEKUTUAN

*FEDERAL GOVERNMENT
GAZETTE*

KAEDAH-KAEDAH CUKAI PENDAPATAN
(PEMOTONGAN YANG TIDAK DIBENARKAN BAGI
PEMBAYARAN KEPADA SYARIKAT LABUAN OLEH
PEMASTAUTIN) 2018 (PINDAAN) 2020

*INCOME TAX (DEDUCTIONS NOT ALLOWED FOR
PAYMENT MADE TO LABUAN COMPANY BY RESIDENT)
RULES 2018 (AMENDMENT) 2020*

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

INCOME TAX ACT 1967

INCOME TAX (DEDUCTIONS NOT ALLOWED FOR PAYMENT MADE TO LABUAN COMPANY BY RESIDENT) RULES 2018 (AMENDMENT) 2020

IN exercise of the powers conferred by paragraphs 39(1)(r) and 154(1)(b) of the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

Citation and commencement

1. (1) These rules may be cited as the **Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 (Amendment) 2020**.

(2) These Rules are deemed to have come into operation on 1 January 2019 except for rule 2 which comes into operation on 1 January 2021.

Amendment of rule 2

2. The Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 [P.U. (A) 375/2018] which is referred to as the “principal Rules” in these Rules, are amended—

(a) by renumbering the existing rule 2 as subrule 2(1); and

(b) by inserting after the renumbered subrule 2(1) the following subrule:

“(2) For the purpose of these Rules, “Labuan company” means a Labuan entity referred to in paragraph 2B(1)(a) of the Labuan Business Activity Tax Act 1990 [Act 445].”.

Amendment of Schedule

2. The Schedule to the principal Rules is amended—

(a) by substituting for the heading of the Schedule the following heading:

“

(1)	(2)	(3)
<i>No.</i>	<i>Type of payment</i>	<i>Amount not allowed for deduction</i> ”;

(b) in item 1, under column (3), by substituting for the words “33% of the amount of payment” the words “25% of the amount of payment (including payment in connection with financing in respect of commission, facility fee and advance fee)”; and

(c) in item 2, under column (3), by substituting for the words “33%” the words “25%”.

Made 23 December 2020

[Perb: MOF.TAX (S) 700-2/1/76; PN(PU2)80/C]

DATO' SRI TENGKU ZAFRUL BIN TENGKU ABDUL AZIZ
Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 154(2) of the Income Tax Act 1967]



27 Disember 2021
27 December 2021
P.U. (A) 482

WARTA KERAJAAN PERSEKUTUAN

*FEDERAL GOVERNMENT
GAZETTE*

PERATURAN-PERATURAN CUKAI AKTIVITI
PERNIAGAAN LABUAN (KEHENDAK BAGI SYARIKAT
PERDAGANGAN KOMODITI ANTARABANGSA
LABUAN) 2021

*LABUAN BUSINESS ACTIVITY TAX (REQUIREMENTS FOR
LABUAN INTERNATIONAL COMMODITY TRADING
COMPANY) REGULATIONS 2021*

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

LABUAN BUSINESS ACTIVITY TAX ACT 1990

LABUAN BUSINESS ACTIVITY TAX (REQUIREMENTS FOR LABUAN INTERNATIONAL
COMMODITY TRADING COMPANY) REGULATIONS 2021

IN exercise of the powers conferred by paragraph 21(1)(a) read together with paragraph 2B(1)(b) of the Labuan Business Activity Tax Act 1990 [Act 445], the Minister makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Labuan Business Activity Tax (Requirements for Labuan International Commodity Trading Company) Regulations 2021**.

(2) Subregulation 3(1) is deemed to have come into operation on 1 January 2019 until 31 December 2020.

(3) Subregulations 3(2) and 3(3) are deemed to have come into operation on 1 January 2021.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“qualifying activity” means the trading of physical products and related derivative instruments in relation to—

- (a) petroleum and petroleum-related products including liquefied natural gas;
- (b) minerals;
- (c) agriculture products;
- (d) refined raw materials;
- (e) chemicals;
- (f) base minerals; or
- (g) coal;

“Global Incentives for Trading” means a programme of incentives for a Labuan International Commodity Trading Company to use Malaysia as its international trading base to undertake a qualifying activity;

“Labuan International Commodity Trading Company” means a Labuan company which—

- (a) is incorporated or registered under the Labuan Companies Act 1990 [Act 441];
- (b) is licensed under section 92 of the Labuan Financial Services and Securities Act 2010 [Act 704];
- (c) maintains a registered office in Labuan but is allowed to establish its business operational office anywhere in Malaysia; and
- (d) undertakes a qualifying activity under the Global Incentives for Trading programme;

“related companies” means companies that are deemed to be related to each other in accordance with of section 4 of the Labuan Companies Act 1990.

Requirements for Labuan International Commodity Trading Company

3. (1) A Labuan International Commodity Trading Company which is a Labuan entity carrying on a Labuan business activity shall in a basis period for a year of assessment fulfill the following requirements:

- (a) have at least three full-time employees; and
- (b) have an annual operating expenditure of at least three million ringgit (RM3,000,000.00).

(2) Where the Labuan International Commodity Trading Company has not more than five related companies to carry on the qualifying activity, that Labuan International Commodity Trading Company shall—

- (a) have not less than three full-time employees including at least two of them are full-time employees in its business operational office in Labuan in a group of companies; and
- (b) incur an annual operating expenditure of at least three million ringgit (RM3,000,000.00) in Malaysia including at least one hundred thousand ringgit (RM100,000.00) therefrom is incurred in Labuan for each company.

(3) Subject to subregulation (2), where the Labuan International Commodity Trading Company has more than five related companies to carry on the qualifying activity, that Labuan International Commodity Trading Company shall also have an additional full-time employee in its business operational office in Labuan for every addition of up to five related companies in a group of companies.

(4) For the purpose of these Regulations, companies are deemed to be in the same group where—

- (a) two or more companies are related companies;
- (b) a company is so related to another company which is itself so related to a third company;
- (c) the same person is holding more than fifty per cent of the shares in each of two or more companies; or
- (d) each of two or more companies is so related to at least one of two or more companies to which paragraph (c) applies.

Made 21 December 2021

[MOF(R)100-1/2/7JLD.3; MOF.TAX(S)700-2/1/154; LHDN.AYA.600-12/1(29)-175; PN(PU2)491/IV]

TENGGU DATUK SERI UTAMA ZAFRUL BIN TENGGU ABDUL AZIZ
Minister of Finance