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LAWS OF MALAYSIA**Act 445****LABUAN BUSINESS ACTIVITY TAX ACT 1990**

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LAWS OF MALAYSIA**Act 445****LABUAN BUSINESS ACTIVITY
TAX ACT 1990**

An Act to provide for the imposition, assessment and collection of tax on a Labuan business activity carried on by a Labuan entity in or from Labuan and for matters connected therewith.

[1 October 1990, P.U. (B) 589/1990]

BE IT ENACTED by Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I**PRELIMINARY****Short title**

1. (1) This Act may be cited as the Labuan Business Activity Tax Act 1990.

(2) This Act shall have effect for the year of assessment 1991 and subsequent years of assessment.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“basis period”, in relation to a year of assessment, means the accounting period or periods ending in the calendar year immediately preceding that year of assessment;

“Director General” means the Director General of Inland Revenue referred to in section 134 of the Income Tax Act 1967 [*Act 53*];

“domestic company” has the meaning as in the Labuan Companies Act 1990 [*Act 441*];

“Labuan” means the Federal Territory of Labuan;

“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;

“Labuan company” means a Labuan company incorporated under the Labuan Companies Act 1990, and includes a foreign Labuan company registered under that Act;

“Labuan non-trading activity” means 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;

“Labuan trading activity” includes banking, insurance, trading, management, licensing, shipping operations or any other activity which is not a Labuan non-trading activity;

“Minister” means the Minister for the time being charged with the responsibility for finance;

“official” means a person having an official duty under, or employed in carrying out, the provisions of the Income Tax Act 1967;

“person” includes a corporation, a partnership, a body of persons and a corporation sole;

“resident” means—

- (a) in relation to a natural person, a citizen or a permanent resident of Malaysia; or
- (b) in relation to any other person, a person who has established a place of business, and is operating, in Malaysia,

and includes a person who is declared to be a resident pursuant to subsection 43(2) of the *Exchange Control Act 1953 [*Act 17*];

“shipping operations” means the transportation of passengers or cargo by sea or the letting out on charter of ships on a voyage or time charter basis;

“year of assessment” means calendar year.

(2) Where a Labuan entity carries on both a Labuan trading activity and a Labuan non-trading activity, such entity shall be deemed to be carrying on a Labuan trading activity.

(3) For the avoidance of doubt, it is declared that the provisions of the Income Tax Act 1967 shall apply in respect of—

- (a) an activity other than a Labuan business activity carried on by a Labuan entity; and
- (b) (*Deleted by Act 624*);
- (c) (*Deleted by Act A1366*);
- (d) a Labuan business activity carried on by a Labuan entity which makes an election under section 3A.

* *NOTE*—Exchange Control Act 1953 [*Act 17*] has been repealed by the Financial Services Act 2013 [*Act 758*] with effect from 30 June 2013.

Designated Labuan business activity

2A. (1) The Minister may, on the recommendation of the Director General, in writing, designate any activity carried on by any Labuan entity to be a Labuan business activity.

(2) (*Deleted by Act 812*).

Labuan entity

2B. (1) The Labuan entities—

(a) shall be as specified in the Schedule; and

(b) shall, for the purpose of the Labuan business activity, have—

(i) an adequate number of full time employees in Labuan; and

(ii) an adequate amount of annual operating expenditure in Labuan,

as prescribed by the Minister by regulations made under this Act.

(2) The Minister may, upon the recommendation of the Director General, by order published in the *Gazette*, amend the Schedule including for the purposes of declaring any other person as a Labuan entity.

PART II

CHARGEABILITY TO TAX

Scope of Charge

Labuan business activity chargeable to tax

3. Subject to this Act, a Labuan entity carrying on a Labuan business activity shall be charged to tax in accordance with this Act for each year of assessment in respect of that Labuan business activity.

Labuan business activity chargeable to Income Tax Act 1967 upon election

3A. (1) Notwithstanding any other provision of this Act, a Labuan entity carrying on a Labuan business activity 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.

(2) The election referred to in subsection (1) shall be made and furnished to the Director General within three months after the beginning of the basis period for a year of assessment:

Provided that for the basis period ending on a day in the year of assessment 2008, the election under this section may be made and furnished before 1 August 2008.

Tax based on Return

Labuan trading activity

4. (1) Tax shall be charged at the rate of three per cent for a year of assessment upon the chargeable profits of a Labuan entity carrying on

a Labuan business activity which is a Labuan trading activity for the basis period for that year of assessment.

(2) The chargeable profits of a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity for a year of assessment shall be the net profits as reflected in the audited accounts in respect of such Labuan trading activity of the Labuan entity for the basis period for that year of assessment.

(3) For the avoidance of doubt, the net profits referred to in subsection (2) shall 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.

(4) Any income derived from intellectual property right referred to in subsection (3) is subject to tax under the Income Tax Act 1967.

(5) For the purpose of this section, “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.

Filing of statutory declaration and return of profits

5. A Labuan entity carrying on a Labuan business activity which is a Labuan trading activity shall, within a period of three months (or any extended period as may be allowed by the Director General) from the commencement of a year of assessment, file a statutory declaration and a return of its profits for that year of assessment in the prescribed forms to the Director General.

Assessment

6. Upon receipt of a return of its profits referred to in section 5 for a year of assessment, the Director General shall make an assessment in the prescribed form for that year of assessment and shall serve a notice of assessment, personally or by post, on the Labuan entity concerned.

Tax charged upon Election

7. *(Deleted by Act 812).*

Absence of basis period

8. Where a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity does not have a basis period for a year of assessment, the Director General may direct that the basis period for that year of assessment and subsequent years of assessment to include a period or periods (which may be of any period) as specified in the direction.

Tax rebate

8A. (1) A rebate shall be granted to a Labuan entity upon tax charge under section 4 for each year of assessment for any *zakat* which is paid in the basis period for that year of assessment to, and evidenced by a receipt issued by, a Labuan Islamic religious authority.

(2) Where the total amount of the rebate under subsection (1) exceeds the tax charged (before any such rebate) for any year of assessment, the excess shall not be paid to the Labuan entity or available as a credit to set off his tax liability for that year of assessment or any subsequent year.

PART III

NON-CHARGEABILITY TO TAX

Labuan non-trading activity

9. Notwithstanding section 3, a Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity for the basis period for a year of assessment shall not be charged to tax for that year of assessment.

Statutory declaration of Labuan non-trading activity

10. A Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity shall, within a period of three months (or any extended period as may be allowed by the Director General) from the commencement of a year of assessment, file a statutory declaration in the prescribed form with the Director General.

10A. (*Deleted by Act 591*).

PART IV

PAYMENT AND RECOVERY OF TAX

Payment of tax

11. A Labuan entity shall, at the time of filing of the statutory declaration and return of its profits for a year of assessment under section 5, make full payment on account of—

- (a) tax to be charged for that year of assessment; or
- (b) tax to be charged for that year of assessment after reduction of rebate under section 8A.

Payment of difference and refund

12. Where there is a difference between the amount paid under section 11 and the amount assessed by the Director General under section 6, the Labuan entity shall pay the difference or the Director General shall refund the excess, as the case may be.

Fund for Tax Refund

12A. (1) There shall be paid from time to time into the Fund for Tax Refund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The moneys of the Fund referred to in subsection (1) shall be applied for the making of a refund under section 12.

(3) Section 14A of the Financial Procedure Act 1957 [*Act 61*] shall not apply to any refund made under section 12.

Notice of demand

13. (1) Where a Labuan entity fails to comply with section 11 or 12, the Director General shall issue a notice of demand to be served personally or by post on the Labuan entity.

(2) The Director General shall, in issuing the notice of demand, increase the tax or balance of tax unpaid by ten per cent and such amount shall be recoverable as tax due.

(3) The tax payable under the notice of demand shall be paid upon service of the notice of demand.

Recovery by suit

14. (1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government.

(2) The Director General and all authorized officers shall be deemed to be public officers authorized by the Minister under subsection 25(1) of the Government Proceedings Act 1956 [*Act 359*], in respect of all proceedings under this section.

(3) An “authorized officer” means an official authorized by the Director General for the purposes of this section.

PART V

RESPONSIBILITY FOR COMPLIANCE

Person chargeable

15. A Labuan entity shall be the person assessable and chargeable to tax imposed by this Act.

Officers responsible for compliance

16. Responsibility for doing all acts and matters required to be done by or on behalf of a Labuan entity for the purposes of this Act shall lie jointly and severally with—

- (a) the manager or other principal officer in Malaysia;
- (b) the resident director as provided in the Labuan Companies Act 1990;
- (c) the secretary;
- (d) in the case of a trust, the trustee or trustees;
- (e) any person (however styled) performing the functions of any of the persons mentioned in the foregoing paragraphs;

- (f) in the case of a company under liquidation or receivership, the liquidator or receiver, as the case may be;
- (g) in the case of a partnership, the partner or partners;
- (h) in the case of a Labuan limited partnership established under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [Act 707] or a Labuan Islamic limited partnership established under Part X of the Labuan Islamic Financial Services and Securities Act 2010, the general partner or partners;
- (i) in the case of a Labuan limited liability partnership established under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 or a Labuan Islamic limited liability partnership established under Part X of the Labuan Islamic Financial Services and Securities Act 2010, the designated partner or partners; and
- (j) in the case of a Labuan foundation, its officer or officers.

PART VI

SUPPLEMENTAL

Administration

The Director General

17. The Director General shall have the care and management of the tax.

Power of Director General to issue guidelines

17A. (1) The Director General may, generally in respect of this Act or in respect of any particular provision of this Act, issue guidelines

as the Director General deems expedient or necessary to clarify the provisions of this Act or to facilitate compliance of the law or any other matter relating to this Act.

(2) The Director General may revoke, revise or amend the whole or any part of any guidelines issued under this section.

Advance ruling

17B. (1) Subject to this section or any regulations made under this Act, on the application made by any person, the Director General shall make an advance ruling on the application of any provision of this Act to the person and to the arrangement for which the ruling is sought.

(2) An application under subsection (1) shall be made in the form to be made available by the Director General and shall contain particulars as may be required by the Director General.

(3) The Director General may at any time withdraw any advance ruling made under subsection (1) by giving a notice in writing of such withdrawal to the person to whom the ruling applies.

(4) Notwithstanding any other provisions of this Act, where an advance ruling applies to any person in relation to an arrangement and the person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the person and that arrangement in accordance with the ruling.

(5) An advance ruling on any of the provisions of this Act shall apply to a person in relation to an arrangement if the provision is expressly referred to in the ruling and for the basis period for year of the assessment for which the ruling applies.

(6) A ruling made under subsection (1) shall not apply to a person in relation to an arrangement if—

- (a) the arrangement is materially different from the arrangement stated in the ruling;

- (b) there was a material omission or misrepresentation in, or in connection with the application of the ruling;
- (c) the Director General makes an assumption about a future event or another matter that is material to the ruling, and that assumption subsequently proves to be incorrect; or
- (d) the person fails to satisfy any of the conditions stipulated by the Director General.

Delegation of Director General's functions

18. (1) Any function of the Director General under this Act may be performed by any officer appointed under section 134 of the Income Tax Act 1967.

(2) The Director General may in writing delegate any of his functions under this Act to any other official.

Power of Minister to give directions

19. The Minister may give to the Director General directions of a general character (not inconsistent with this Act) as to the performance of the functions of the Director General under this Act; and the Director General shall give effect to any direction so given.

Return of profits, etc., to be treated as confidential

20. (1) Any return of profits, statutory declaration or information made or received for the purposes of this Act shall be treated as confidential and shall not be communicated or disclosed to any person except for the purposes of this Act.

(2) Where any official, whether during his employment or thereafter, contravenes subsection (1), he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million

ringgit or to imprisonment for a term not exceeding two years or to both.

Power of Minister to make regulations

21. (1) The Minister may make regulations—

- (a) generally for the purpose of carrying out, or giving effect to, the provisions of this Act;
- (b) for the purpose of implementing or facilitating the operation of an arrangement having effect under section 132, 132A, 132B or 132C of the Income Tax Act 1967.

(2) The regulations made under this section may prescribe a penalty of a fine not exceeding one million ringgit or imprisonment for a term not exceeding two years or both for any contravention or failure to comply with any of the provisions of the regulations.

Forms

21A. The Director General may, in such manner as seems to him to be appropriate, prescribe such forms as are required by this Act to be prescribed and such other forms as he considers ought to be prescribed in connection with the operation of this Act and authorize the use of a suitable substitute form for any form so prescribed.

Miscellaneous

Power to call for information

22. (1) For the purpose of this Act, the Director General may by notice in writing require any person to furnish such information or particulars as may be required by him or for compliance with any double taxation arrangements, tax information exchange arrangements or mutual administrative assistance arrangement referred to in subsection 22A(2) entered into by the Government of Malaysia.

(2) Where any person, without reasonable excuse, fails to comply with the notice mentioned in subsection (1), he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

Disclosure of information in certain circumstances

22A. (1) Section 20 shall not prevent —

(a) the disclosure of information in respect of double taxation arrangements, tax information exchange arrangements or mutual administrative assistance arrangement to a duly authorized servant or agent of the Government with whom such arrangements have been made where such information is required to be disclosed under such arrangements; and

(b) the disclosure of information upon a request from any tax authority of any Government of any territory outside Malaysia.

(2) For the purpose of subsection (1) —

“double taxation arrangement” means an arrangement between the Government of Malaysia and the Government of any territory outside Malaysia under section 132 of the Income Tax Act 1967;

“mutual administrative assistance arrangement” means an arrangement between the Government of Malaysia with the Government of any territory outside Malaysia with a view to the mutual administrative assistance in tax matters which includes simultaneous tax examinations, automatic exchange of information or tax administrations abroad under section 132B of the Income Tax Act 1967;

“tax information exchange arrangements” means an arrangement between the Government of Malaysia and the Government of any territory outside Malaysia under section 132A of the Income Tax Act 1967.

Offences and penalty

23. Any person who without reasonable excuse—

- (a) fails to file a statutory declaration and return of profits under section 5; or
- (b) fails to file a statutory declaration under section 10,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.

Compounding of offences

24. (1) The Director General may, in a case where he deems it fit and proper to do so, compound any offence committed by any person under section 22 or 23, by making a written offer to such person to compound the offence by paying to the Director General within such time as may be specified in the offer such sum of money as may be specified in the offer, which shall not exceed fifty per cent of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or during such extended period as the Director General may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made.

Penalty for false declaration

25. Where any person wilfully or negligently makes an incorrect or false statutory declaration under section 5 or 10, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Exemption by Minister

26. (1) The Minister may, by order published in the *Gazette*, exempt any Labuan entity from all or any of the provisions of this Act either generally or in respect of any chargeable profits of that company.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

Service of documents

27. Any document, other than a notice of demand issued under section 13, required to be served on a Labuan entity for the purposes of this Act, shall be deemed to be properly served on the Labuan entity by leaving it at, or sending it by post to, the registered office of the Labuan entity.

Procedure where none laid down

28. In the event that any act or procedure is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down either in this Act or the regulations made under this Act, an application may be made to the Director General for directions as to the manner in which the act or procedure may be done or taken, and any act or procedure done or taken in accordance with his directions shall be a valid performance of such act or procedure.

SCHEDULE

[Section 2B]

LABUAN ENTITY

1. A Labuan company
 2. A Labuan foundation established and registered under the Labuan Foundations Act 2010 [*Act 706*]
 3. A Labuan Islamic foundation established and registered under the Labuan Islamic Financial Services and Securities Act 2010
 4. A Labuan Islamic partnership as defined in the Labuan Islamic Financial Services and Securities Act 2010
 5. A Labuan limited partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010
 6. A Labuan limited liability partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010
 7. A Labuan Islamic trust as defined in the Labuan Islamic Financial Services and Securities Act 2010
 8. A Labuan trust as defined in the Labuan Trusts Act 1996 [*Act 554*]
 9. A Malaysian Islamic bank licensee as defined in the Labuan Islamic Financial Services and Securities Act 2010
 10. A Malaysian bank licensee as defined in the Labuan Financial Services and Securities Act 2010
 11. Any Labuan financial institutions as defined in the Labuan Financial Services Authority Act 1996 [*Act 545*]
 12. Any person declared by the Minister to be a Labuan entity under subsection 2B(2)
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LAWS OF MALAYSIA**Act 445****LABUAN BUSINESS ACTIVITY TAX
ACT 1990**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A815	Labuan Offshore Business Activity Tax (Amendment) Act 1992	Year of assessment 1992 and subsequent years of assessment
Act 544	Finance Act 1996	Year of assessment 1996 and subsequent years of assessment
Act 557	Finance Act 1997	Year of assessment 1997 and subsequent years of assessment
Act 591	Finance (No. 2) Act 1998	Year of assessment 1999 and subsequent years of assessment
Act 624	Finance (No. 2) Act 2002	Year of assessment 2004 and subsequent years of assessment

Amending law	Short title	In force from
Act 631	Finance Act 2003	Year of assessment 2004 and subsequent years of assessment
Act 644	Finance Act 2005	01-01-2006
Act 683	Finance Act 2007	Year of assessment 2009 and subsequent years of assessment
Act 693	Finance Act 2009	Year of assessment 2009 and subsequent years of assessment
Act 702	Finance Act 2010	01-01-2010
Act A1366	Labuan Offshore Business Activity Tax (Amendment) Act 2010	11-02-2010
Act 742	Finance Act 2012	28-01-2011
Act 761	Finance Act 2014	24-01-2014
Act 773	Finance Act 2015	31-12-2015
Act 785	Finance Act 2017	17-01-2017; 22-10-2016
Act A1532	Labuan Business Activity Tax (Amendment) Act 2017	19-05-2017
Act A1555	Labuan Business Activity Tax (Amendment) (No. 2) Act 2017	30-12-2017

Labuan Business Activity Tax

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Amending law	Short title	In force from
Act A1577	Labuan Business Activity Tax (Amendment) Act 2018	28-12-2018
Act 812	Finance Act 2018	01-01-2019

LAWS OF MALAYSIA

Act 445

**LABUAN BUSINESS ACTIVITY TAX
ACT 1990**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
Long title	Act A1366	11-02-2010
1	Act A1366	11-02-2010
2	Act 544	Year of assessment 1996 and subsequent years of assessment
	Act 557	Year of assessment 1997 and subsequent years of assessment
	Act 591	Year of assessment 1999 and subsequent years of assessment
	Act 624	Year of assessment 2004 and subsequent years of assessment
	Act 683	Year of assessment 2009 and subsequent years of assessment
	Act A1366	11-02-2010
	Act 785	17-01-2016
	Act 812	01-01-2019
2A	Act A1366	11-02-2010
	Act 812	01-01-2019
2B	Act A1366	11-02-2010
	Act 812	01-01-2019
3	Act A1366	11-02-2010
3A	Act 683	Year of assessment 2009 and subsequent years of assessment

Section	Amending authority	In force from
	Act 693	Year of assessment 2009 and subsequent years of assessment Act A1366 11-02-2010
4	Act A1366 Act 812	11-02-2010 01-01-2019
5	Act A1366	11-02-2010
6	Act A1366	11-02-2010
7	Act A1366 Act 812	11-02-2010 01-01-2019
8	Act A1366 Act 812	11-02-2010 01-01-2019
8A	Act 631 Act A1366 Act 812	Year of assessment 2004 and subsequent years of assessment 11-02-2010 01-01-2019
9 – 10	Act A1366	11-02-2010
10A	Act A815 Act 591	Year of assessment 1992 and subsequent years of assessment Year of assessment 1999 and subsequent years of assessment
11	Act 631 Act A1366 Act 812	Year of assessment 2004 and subsequent years of assessment 11-02-2010 01-01-2019
12	Act A1366 Act 812	11-02-2010 01-01-2019
12A	Act 702	01-01-2010
13	Act A1366	11-02-2010

Section	Amending authority	In force from
15	Act A1366	11-02-2010
16	Act 624	Year of assessment 2004 and subsequent years of assessment
	Act A1366	11-02-2010
17A	Act A1366	11-02-2010
17B	Act A1366	11-02-2010
18	Act 644	01-10-2006
20	Act A1366	11-02-2010
21	Act 761	24-01-2014
	Act 785	22-10-2016
	Act A1532	19-05-2017
	Act A1555	30-12-2017
	Act A1577	28-12-2018
21A	Act 761	24-01-2014
22	Act A1366	11-02-2010
	Act 742	28-01-2011
	Act 773	31-12-2015
22A	Act A1366	11-02-2010
	Act 742	28-01-2011
	Act 773	31-12-2015
23	Act A1366	11-02-2010
	Act 812	01-01-2019
25	Act A1366	11-02-2010
	Act 812	01-01-2019
26	Act 624	Year of assessment 2004 and subsequent years of assessment
	Act A1366	11-02-2010
27-28	Act A1366	11-02-2010
Schedule	Act A1366	11-02-2010
