



LAWS OF MALAYSIA

REPRINT

Act 445

LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

**LABUAN OFFSHORE BUSINESS ACTIVITY TAX
ACT 1990**

Date of Royal Assent 22 August 1990

Date of publication in the *Gazette* 30 August 1990

PREVIOUS REPRINT

First Reprint 2001

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ACT 1990**

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

An Act to provide for the imposition, assessment and collection of tax on offshore business activity carried on by an offshore company 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 Offshore 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 Offshore Companies Act 1990 [Act 441];

“Labuan” means the Federal Territory of Labuan;

“licensed Malaysian offshore bank” has the meaning assigned to it by the Offshore Banking Act 1990 [Act 443], which is an office of a Malaysian bank;

“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;

“offshore banking business” has the meaning assigned thereto by the Offshore Banking Act 1990 [Act 443];

“offshore business activity” means an offshore trading or an offshore non-trading activity carried on in or from Labuan in a currency other than the Malaysian currency by an offshore company with non-residents or with another offshore company, but does not include shipping operations:

Provided that—

- (a) in relation to an offshore company carrying on an offshore banking business, such activity may be carried on with residents and, where permitted under subsection 20(2) of the Offshore Banking Act 1990, transactions may be carried on in Malaysian currency;
- (b) in relation to an offshore company carrying on an offshore insurance business, such activity may be carried on with residents and, where permitted under subsection 21(2) of the Offshore Insurance Act 1990 [Act 444], transactions may be carried on in Malaysian currency;
- (c) in relation to the holding of investments by an offshore company in a domestic company, such holding may be in Malaysian currency;
- (d) in relation to an offshore company carrying on a money-broking business, such activity may be carried on with residents where permitted under paragraph 7(3)(a) of the Offshore Companies Act 1990;

- (e) in relation to an offshore company carrying on an offshore leasing business, such activity may be carried on with residents where permitted under paragraph 7(3)(a) of the Offshore Companies Act 1990; or
- (f) the Minister may approve the carrying on of such activity with residents or such transactions in Malaysian currency;

“offshore company” means an offshore company incorporated under the Offshore Companies Act 1990, and includes a foreign offshore company registered under that Act, a licensed Malaysian offshore bank, an offshore limited partnership and an offshore trust;

“offshore insurance business” has the meaning assigned thereto by the Offshore Insurance Act 1990;

“offshore limited partnership” has the meaning assigned to it in the Labuan Offshore Limited Partnerships Act 1997 [*Act 565*];

“offshore non-trading activity” means an activity relating to the holding of investments in securities, stock, shares, loans, deposits and immovable properties by an offshore company on its own behalf;

“offshore trading activity” includes banking, insurance, trading, management, licensing or any other activity which is not an offshore non-trading activity;

“offshore trust” has the meaning assigned thereto by the Labuan Offshore Trusts Act 1996 [*Act 554*];

“person” includes a company, 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 an offshore company carries on both an offshore trading activity and an offshore non-trading activity, it shall be deemed to be carrying on an offshore 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 an offshore business activity carried on by an offshore company; or
- (b) *(deleted by Act 624)*;
- (c) an offshore insurance business carried on by a Malaysian offshore insurer as defined under the Offshore Insurance Act 1990, which is a branch of a Malaysian insurer.

PART II

CHARGEABILITY TO TAX

Scope of Charge

Offshore business activity chargeable to tax

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

Tax based on Return

Offshore 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 an offshore company carrying on an offshore business activity which is an offshore trading activity for the basis period for that year of assessment.

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

Filing of statutory declaration and return of profits

5. An offshore company carrying on an offshore business activity which is an offshore 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 offshore company concerned.

Tax charged upon Election

Election

7. (1) Notwithstanding section 4, an offshore company carrying on an offshore business activity which is an offshore trading activity may, 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, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand ringgit.

(2) An offshore company shall, when exercising an election under subsection (1), file a statutory declaration in the prescribed form with the Director General.

(3) Section 5 shall not apply to an offshore company which elects to be charged to tax under subsection (1).

Absence of basis period

8. (1) Notwithstanding sections 4 and 7, where an offshore company carrying on an offshore business activity which is an offshore trading activity does not have a basis period for a year of assessment, the offshore company shall be charged for that year of assessment to tax of twenty thousand ringgit.

(2) An offshore company chargeable to tax under subsection (1) for a year of assessment shall, within a period of three months (or any extended period as may be allowed by the Director General) from the commencement of that year of assessment, file a statutory declaration in the prescribed form with the Director General.

Tax rebate

8A. (1) A rebate shall be granted to an offshore company upon tax charge under section 4, 7 or 8 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 offshore company 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

Offshore non-trading activity

9. Notwithstanding section 3, an offshore company carrying on an offshore business activity which is an offshore 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 offshore non-trading activity

10. An offshore company carrying on an offshore business activity which is an offshore 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. An offshore company shall—

(a) 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 —

(i) tax to be charged for that year of assessment; or

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

(b) at the time of filing the statutory declaration under section 7 or 8, make full payment of —

(i) the tax charged for that year of assessment; or

(ii) the tax 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 paragraph 11(a) and the amount assessed by the Director General under section 6, the offshore company shall pay the difference or the Director General shall refund the excess, as the case may be.

Notice of demand

13. (1) Where an offshore company 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 offshore company.

(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. An offshore company 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 an offshore company 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 Offshore 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; and
- (g) in the case of a partnership, the partner or partners.

PART VI

SUPPLEMENTAL

Administration

The Director General

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

Delegation of Director General's functions

18. (1) Any function of the Director General under this Act may be performed by a Deputy Director General, an Assistant Director General, a Senior Assistant or Assistant Director, of Inland Revenue referred to in 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 five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power of Minister to make regulations

21. The Minister may make regulations generally for the purpose of carrying out, or giving effect to, the provisions of this Act and in particular, but without prejudice to the foregoing, for prescribing such forms as are required by this Act to be prescribed or as he may deem necessary.

*Miscellaneous***Power to call for information**

22. (1) The Director General may by notice in writing require any person to furnish such information or particulars as may be required by him for the purposes of this Act.

(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 three thousand ringgit.

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 7, 8 or 10,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand 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 statutory declaration

25. Where any person wilfully or negligently makes an incorrect or false statutory declaration under section 5, 7, 8 or 10, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand 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 offshore company 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.

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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

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LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
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
8A	Act 631	Year of assessment 2004 and subsequent years of assessment
10A	Act A815	Year of assessment 1992 and subsequent years of assessment
	Act 591	Year of assessment 1999 and subsequent years of assessment
11	Act 631	Year of assessment 2004 and subsequent years of assessment
16	Act 624	Year of assessment 2004 and subsequent years of assessment
26	Act 624	Year of assessment 2004 and subsequent years of assessment

