



LAWS OF MALAYSIA

ACT 445

LABUAN BUSINESS ACTIVITY TAX ACT 1990 *Incorporating latest amendment - Act A1366 of year 2010*

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**LAWS OF MALAYSIA
ACT 545**

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.

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

[Am. Act A1366.s.2]

BE IT ENACTED by the 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, and commencement.

1. (1) This Act may be cited as the Labuan Business Activity Tax Act 1990 and shall come into force on such date as the Minister may, by notification in the Gazette, appoint.

[Am. Act A1366.s.3]

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

Note:

(2) Where, on and after the date of the coming into operation of this Act, a reference is made in any written law to the Labuan Offshore Business Activity Tax Act 1990, such reference shall be construed as a reference to the Labuan Business Activity Tax Act 1990.

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];

[*Am. Act 544:s.27*] [*Am. Act A1366.s.4*]

"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 in a currency other than Malaysian currency, by a Labuan entity with non-resident or with another Labuan entity:

Provided that —

(a) in relation to a Labuan entity carrying on any business under Parts VI and VII of the Labuan Financial Services and Securities Act 2010 [Act] and under Parts VI and VII of the Labuan Islamic Financial Services and Securities Act 2010 [Act], such activity may be carried on with residents, and where permitted, may be carried on in the Malaysian currency;

(b) in relation to the holding of investments by a Labuan entity in a domestic company, such holding may be with residents and in the Malaysian currency;

(c) subject to paragraph (f), in relation to the holding of debt obligations by a Labuan entity in a domestic company, such holding may be in the Malaysian currency;

(d) in relation to the shipping operations, the operations may be carried out in Labuan or outside Malaysia;

(e) subject to paragraph (f), in relation to the carrying on of such activity with the residents under subsection 7(4) of the Labuan Companies Act 1990 [Act 441], such activity may be carried on in the Malaysian currency; and

(f) in relation to the carrying on of any other transactions, such transactions may be carried on with the residents or in the Malaysian currency as approved by the Minister under section 2A of this Act;

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

"Labuan entity" means the entity specified in the Schedule;

“Labuan non-trading activity” means an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties 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;

[*Ins. Act A1366.s.4*]

"licensed Malaysian offshore bank " [*Deleted Act A1366.s.4*];

"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" [*Deleted Act A1366.s.4*];

"offshore business activity" [*Deleted Act A1366.s.4*];

"offshore company" [*Deleted Act A1366.s.4*];

"offshore insurance business" [*Deleted Act A1366.s.4*];

"offshore limited partnership " [*Deleted Act A1366.s.4*];

"offshore non-trading activity" [*Deleted Act A1366.s.4*];

"offshore trading activity" [*Deleted Act A1366.s.4*];

"offshore trust" [*Deleted Act A1366.s.4*];

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

[*Am. Act A1366.s.4*];

"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 a charter of ships on a voyage or time charter basis;

[*Ins. Act 591:s.17*]

"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;

[*Subs. Act A1366.s.4*];

(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 Labuan business activity carried on by an a Labuan entity; and

[*Am. Act 624:s.38; Am. Act 683:s.71; Am. Act A1366.s.4*];

(b) [Deleted by Act 624:s.38].

(c) [Deleted Act A1366.s.4];

(d) a Labuan entity carried on by a Labuan entity which makes an election under section 3A;

[*Ins. Act 683:s.71; Am Act A1366:s.4*];

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) In designating a Labuan business activity under subsection (1), the Minister may approve the carrying out of such activity with residents or in the Malaysian currency.

[*Ins. Act A1366:s.5*];

Labuan entity.

2B. (1) The Labuan entities shall be as specified in the Schedule.

(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.

[*Ins. Act A1366:s.5;*]

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.

[*Am. Act A1366:s.6;*]

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.

[*Am. Act A1366:s.7;*]

(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:

[*Am. Act 693:s.72*]

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.

[*Ins. Act 683:s.72*]

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.

[Am. Act A1366:s.8;]

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.

[Am. Act A1366:s.9;]

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

Election.

7. (1) Notwithstanding section 4, a Labuan entity carrying on a Labuan business activity which is a Labuan 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) A Labuan entity shall, when exercising an election under subsection (1), file a statutory declaration in the prescribed form with the Director General.

(3) The provisions of section 5 shall not apply to a Labuan entity which elects to be charged to tax under subsection (1).

[Am. Act A1366:s.11;]

Absence of basis period.

8. (1) Notwithstanding sections 4 and 7, 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 Labuan entity shall be charged for that year of assessment to tax of twenty thousand ringgit.

(2) A Labuan entity 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.

[*Am. Act A1366:s.12;*]

Tax rebate

8A. (1) A rebate shall be granted to a Labuan entity upon tax charged 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 Labuan entity or available as a credit to set off his tax liability for that year of assessment or any subsequent year.

[*Ins. Act 631:s.25; Am. Act A1366:s.13;*]

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.

[*Am. Act A1366:s.14;*]

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.

[*Am. Act A1366:s.15;*]

10A. [Deleted.]

[*Ins. Act A815: s.2; Deleted by Act 591:s.18*]

**PART IV
PAYMENT AND RECOVERY OF TAX**

Payment of tax.

11. A Labuan entity shall—

[Am. Act A1366:s.16;]

(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 of 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.

[Subs. Act 631:s.26]

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 Labuan entity shall pay the difference or the Director General shall refund the excess, as the case may be.

[Am. Act A1366:s.17;]

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.

[*Ins. Act 702:s.58*]

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.

[*Am. Act A1366:s.18;*]

(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.

[*Am. Act A1366:s.19;*]

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 [Act 441];

[Am. Act A1366:s.20;]

(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;

[Am. Act 624:s.39]

(f) in the case of a company under liquidation or receivership, the liquidator or receiver, as the case may be;

[Am. Act 624:s.39; Am. Act A1366:s.20;]

(g) in the case of a partnership, the partner or partners.

[Ins. Act 624:s.39]

(h) in the case of a Labuan limited partnership established under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2009 [Act] or a Labuan Islamic limited partnership established under Part X of the Labuan Islamic Financial Services and Securities Act 2009, 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 2009 or a Labuan Islamic limited liability partnership established under Part X of the Labuan Islamic Financial Services and Securities Act 2009, the designated partner or partners; and

(j) in the case of a Labuan foundation, its officer or officers.

[Ins. Act A1366:s.20;]

**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.

[Act A1366:s.21]

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[Act 53].

[Am. Act 644:s.65]

(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.

[Am. Act A1366:s.21]

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) 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 entered into by the Government of Malaysia;

[*Subs. Act A1366:s.23*]

(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.

[*Am. Act A1366:s.23*]

Disclosure of information in certain circumstances.

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

(a) the disclosure of information in respect of double taxation arrangements to a duly authorised 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), a “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.

[*Ins. Act A1366:s.24*]

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

[Am. Act A1366:s.25]

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, 7, 8 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.

[Am. Act A1366:s.26]

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.

[Ins. Act 624:s.40; Am. Act A1366:s.25]

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.

[Ins. Act A1366:s.28]

28. Procedure where none laid down.

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.

[Ins. Act A1366:s.28]

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).

[*Ins. Act A1366:s.29*]

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
Act 631	Finance Act 2003	Year of assessment 2004 and subsequent years of assessment
Act 644	Finance Act 2005	Year of assessment 2006 and subsequent years of assessment
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 [P.U.(B) 63/2010