



## **LAWS OF MALAYSIA**

### **ACT 445**

#### **LABUAN BUSINESS ACTIVITY TAX ACT 1990** *Incorporating latest amendment – Act A1614 of the year 2020*

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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.

[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.

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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, excluding any activity which is an offence under any written law; :

[*Subs. Act 812.s.72*];

"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" [*Deleted Act 812.s.72*]

"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 non-trading activity" Ins. Act A1366:s.4; Am. Act 785:s.38*]

"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" [*Deleted Act A1614.s.2(a)*];

[*Ins. Act A1614:s.2(a)*][w.e.f 11 February 2020]

"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*]

“Special Commissioners” means the Special Commissioners of Income Tax appointed under section 98 of the Income Tax Act 1967.

[*Ins. Act A1614:s.2(b)*][w.e.f year of assessment 2020 and subsequent year]

"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) [Deleted]

[*Ins. Act A1366; Deleted Act 812.s.73*]

**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.

[Subs. Act 812:s.74]

(1A) A Labuan entity carrying on a Labuan business activity which fails to comply with regulations made under subsection (1) for a basis period for a year of assessment shall be charged to tax at the rate of twenty four per cent upon its chargeable profits for that year of assessment.

[Ins. Act A1614:s.3][w.e.f year of assessment 2020 and subsequent year]

(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]

## **Residence**

**3B.** For the purposes of the double taxation arrangements effected under section 132 of the Income Tax Act 1967—

(a) a Labuan entity carrying on a business or businesses is resident in Malaysia for the basis period for a year of assessment if at any time during that basis period the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia; and

(b) any other Labuan entity is resident in Malaysia for the basis period for a year of assessment if at any time during that basis period the management and control of its affairs are exercised in Malaysia by its directors, partners, trustees or other controlling authority.

[Ins. Act A1614:s4][w.e.f year of assessment 2020 and subsequent year]

### *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) Subject to this Act, 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 A1614:s.5;] [w.e.f year of assessment 2020 and subsequent year]

(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 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 plant variety, and other like rights, whether or not registered or registrable.

[*Ins. Act 812:s.75*]

### **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 and additional assessment.**

6. (1) 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 accordance with section 6A for that year of assessment and shall serve a notice of assessment on the Labuan entity concerned in accordance with section 6B.

(2) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax, may in that year or within five years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable profit and tax or in the additional amount of tax, in which according to the best of the Director General’s judgment, the assessment with respect to that person ought to have been made for that year.

[*Ins. Act A1614:s4*][w.e.f year of assessment 2020 and subsequent year]

(3) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax in consequence of the Director General’s determination pursuant to subsection 17D(3), may in that year or within seven years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable profit and tax or in the additional amount of tax, in which according to the best of the Director General’s judgment, the assessment with respect to that person ought to have been made for that year.

[*Ins. Act A1614*]

(4) The Director General where it appears to him that—

(a) any form of fraud or wilful default has been committed by or on behalf of any person; or

(b) any person has been negligent,

in connection with or in relation to tax, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

[*Ins. Act A1614:s.6*] [w.e.f year of assessment 2020 and subsequent year]

### **Form and making of assessments**

**6A** (1) An assessment made under section 6 shall—

(a) be made in the appropriate prescribed form;

(b) indicate, in addition to any other material included therein, the appropriate year of assessment and the amount or additional amount of chargeable profits and the tax charged thereon or the amount of tax or additional tax, as the case may be; and

(c) specify in the appropriate space in that form the date on which that form was duly completed.

(2) Where the form under subsection (1) appears to have been duly completed, the assessment shall, until the contrary is proved, be presumed to have been made on the date so specified.

[*Ins. Act A1614:s.4*][w.e.f year of assessment 2020 and subsequent year]

### **Notice of assessment**

**6B.** (1) As soon as may be after an assessment has been made under section 6, the Director General shall cause a notice of assessment to be served, personally or by post on the chargeable Labuan entity in respect of whom the assessment was made.

(2) Where the tax charged under an assessment is increased on appeal to the Special Commissioners or a court, then, as soon as may be after the appeal has been decided there shall be served, personally or by post on the chargeable Labuan entity in respect of whom the assessment was made a notice of increased assessment.

(3) A notice served under subsection (1) or (2) shall indicate, in addition to any other material included therein—

(a) in the case of a notice served under subsection (1), the year of assessment and the amount or additional amount of the chargeable profits and the tax charged;

(b) in the case of a notice served under subsection (2), the year of assessment and the amount of the increase in the tax charged; and

(c) in either case—

(i) the place at which payment is to be made;

(ii) the increase for late payment imposed by subsection 13a(2); and

(iii) any right of appeal which may exist under this Act.

[*Ins. Act A1614:s4*][w.e.f year of assessment 2020 and subsequent year]

### **Finality of assessment**

**6C,** (1) The assessment made, agreed to or determined, shall be final and conclusive for the purposes of this Act, where—

(a) no valid notice of appeal against an assessment has been given under section 99 of the Income Tax Act 1967 within the time specified by that section or any extension of time granted;

(b) an agreement has been come to with respect to an assessment pursuant to subsection 101(2) of the Income Tax Act 1967; or

(c) an assessment has been determined on appeal and there is no right of further appeal.

(2) Nothing in subsection (1) shall prejudice the exercise of any power conferred on the Director General by section 6.

[*Ins. Act A1614:s4*][w.e.f year of assessment 2020 and subsequent year]

### **Right of appeal**

**6D.** (1) A person aggrieved by an assessment made on him may appeal to the Special Commissioners against the assessment in the same manner as an appeal against an assessment of income tax made under the Income Tax Act 1967, and sections 99, 100, 101

and 102 of the Income Tax Act 1967, as far as they are applicable and with the necessary modifications, shall apply to an appeal against an assessment made under this Act as if—

(a) every reference in those sections to income tax or to tax were a reference to Labuan business activity tax; and

(b) every reference in those sections to income were a reference to chargeable profits.

(2) Schedule 5 to the Income Tax Act 1967 shall apply with necessary modifications in relation to the procedures of hearing of appeals to the Special Commissioners and to the procedures of hearing of further appeals.

[*Ins. Act A1614:s4*][w.e.f year of assessment 2020 and subsequent year]

### *Tax Charged upon Election*

#### **Election.**

#### **7. [Deleted]**

[*Am. Act A1366:s.11; Deleted Act 812:s.76*]

#### **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.

[*Am. Act A1366:s.12; Subs. Act 812:s.77*]

#### **Tax rebate**

**8A.** (1) A rebate shall be granted to a Labuan entity upon tax charged 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.

[*Ins. Act 631:s.25; Am. Act A1366:s.13; Am Act 812:s78*]

**PART III  
NON-CHARGEABILITY TO TAX**

**Labuan non-trading activity.**

**9. (1)** Notwithstanding section 3, the profits of 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 under this Act for that year of assessment.

[Am. Act A1614:s.8;] [w.e.f 1 January 2019]

(2) For the avoidance of doubt, the profit of a Labuan entity carrying on a Labuan business activity which is a Labuan non-trading activity referred to in subsection (1) 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.

[Ins. Act A1614:s.8;] [w.e.f 1 January 2019]

(3) Any income derived from intellectual property right referred to in subsection (2) is subject to tax under the Income Tax Act 1967.

[Ins. Act A1614:s.8;] [w.e.f 1 January 2019]

(4) In this section, “intellectual property right” has the same meaning assigned to it under subsection 4(5).

[Ins. Act A1614:s.8;] [w.e.f 1 January 2019]

**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, 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.

[*Am. Act A1366:s.16;*]

[*Subs. Act 631:s.26 Subs. Act 812:s.79*]

### **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.

[*Am. Act A1366:s.17 Am. Act 812:s.80;*]

### **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.

## **Tax due and payable**

**13A.** (1) Where an assessment is made under section 6, the tax payable under the assessment shall, on the service of the notice of assessment under section 6b, be due and payable on the person assessed at the place specified in that notice whether or not that person appeals against the assessment.

(2) Where any tax due and payable under subsection (1) has not been paid within thirty days after the service of the notice, so much of the tax as is unpaid upon the expiration of that period shall without any further notice being served be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.

*[Ins. Act A1614:s.9][w.e.f year of assessment 2020 and subsequent year]*

## **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]

### **Power to disregard certain transactions**

**17C.** (1) The Director General may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such adjustments as he thinks fit, including the computation or re-computation of the chargeable

profit, or the imposition of liability to tax, or make such assessment or additional assessment in respect of any person as may be necessary in consequence of his exercise of the powers, with a view to counteracting the whole or any part of any such direct or indirect effect of the transaction, where he has reason to believe that any transaction has the direct or indirect effect of—

(a) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable by any person or suffered by any person;

(b) relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;

(c) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by this Act; or

(d) hindering or preventing the operation of this Act in any respect.

(2) In exercising his powers under this section, the Director General may require by notice any person to pay to him within the time specified in the notice the amount of tax that would be deducted by that person under this Act in consequence of his exercise of those powers.

(3) Without prejudice to the generality of subsections (1) and (2), the powers of the Director General conferred by this section shall extend—

(a) to the charging with tax of any person or persons who if not for any adjustment made by virtue of this section would not be chargeable with tax or would not be chargeable with tax to the same extent; and

(b) to the charging of a greater amount of tax than would be chargeable if not for any such adjustment.

(4) Where in consequence of any adjustment made under this section an assessment is made, a right to repayment is refused or a return of a repayment of tax is required, the particulars of the adjustment shall be given with the notice of assessment, with the notice refusing the repayment or with the notice requiring the return of a repayment, as the case may be.

(5) Transactions—

(a) between persons one of whom has control over the other; or

(b) between persons both of whom are controlled by some other person,

shall be deemed to be transactions of the kind to which subsection (1) applies if in the opinion of the Director General those transactions have not been made on terms which might

fairly be expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length.

(6) For the purposes of this section—

(a) a person shall be taken to have control over the other in the same manner as provided under section 139 of the Income Tax Act 1967 as far as it is applicable and with the necessary modifications; and

(b) “transaction” means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or entered into orally or in writing, whether before or after the commencement of this Act, and includes a transaction entered into by two or more persons with another person or persons.

[*Ins. Act A1614:s.10*][w.e.f year of assessment 2020 and subsequent year]

### **Power to substitute the price on certain transactions**

**17D.** (1) This section shall apply notwithstanding section 17c and subject to any regulations prescribed under this Act.

(2) Subject to subsection (3), where a person in the basis period for a year of assessment enters into a transaction with an associated person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that person shall determine and apply the arm's length price for such acquisition or supply.

(3) Where the Director General has reason to believe that any property or services referred to in subsection (2) is acquired or supplied at a price which is either less than or greater than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length, the Director General may in the determination of the chargeable profit of the person, substitute the price in respect of the transaction to reflect an arm's length price for the transaction.

(4) The transactions referred to in subsection (2) shall be construed as a transaction between—

(a) persons one of whom has control over the other; or

(b) persons both of whom are controlled by some other person, in this section referred to as “third person”.

(5) Without prejudice to the generality of paragraph 17c(6)(a), for the purpose of subsection (4), “control” refers to persons one of whom owns shares of the other person, or a third person who owns shares of both persons, where the percentage of the share capital held in either situation is twenty per cent or more and—

(a) the business operations of that person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks or copyrights, provided by the other person or a third person;

(b) the business activities, such as purchases, sales, receipt of services, provision of services, of that person are specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or

(c) where one or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.

(6) In this section, “transaction” has the same meaning assigned to it under paragraph 17c(6)(b).

[*Ins. Act A1614:s.10*][w.e.f year of assessment 2020 and subsequent year]

### **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.**(1) The Minister may make regulations-

[Renumbering by Act A1532:s.2]

(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.

[*(b) Am. Act A1532:s.2; Am. Act A1555:s.2; Am. Act A1577:s.2*]

(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.

[21. Subs. Act 761:s.51; Subs. Act 785:s.39 (2); Ins. Act A1532:s.2]

### **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.

[Ins.Act 761/2014]

### *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.

[*(1) Subs. Act A1366; Am. Act 742:s.33; Am. Act 773:s.45*]

(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, 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

[(a) Am. Act 742:s.34; Am. Act 773:s.46]

(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;

["mutual administrative assistance arrangement" Ins. Act 773:s.46]

"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.

[22A. Ins. Act A1366:s.24; (2) Subs. Act 742:s.34]

### **Power to call for specific returns and production of books**

22B. For the purpose of obtaining full information for ascertaining whether or not a person is chargeable to tax or for determining his liability, the Director General may by notice in writing require that or any other person—

- (a) to complete and deliver to the Director General within a time specified in the notice, not being less than thirty days from the date of service of the notice, any return specified in the notice;
- (b) to attend personally before the Director General and produce for examination all books, accounts, returns and other documents which the Director General deems necessary;
- (c) to make a return in accordance with paragraph (a) and also to attend in accordance with paragraph (b); or
- (d) to provide in writing such information or particulars which the Director General deems necessary.

[*Ins. Act A1614:s.11*][w.e.f year of assessment 2020 and subsequent year]

### **Power to call for statement of bank accounts, etc.**

**22C.** The Director General may by notice in writing require any person to furnish within a time specified in the notice, not being less than thirty days from the date of service of the notice, a statement containing particulars of—

- (a) all banking accounts, being accounts which are in existence or have been in existence at any time during a period to be specified in the notice,—
  - (i) in his own name or in the name of a wife or dependent child of his or jointly in any such names;
  - (ii) in which he is or has been interested jointly or solely; or
  - (iii) on which he has or has had power to operate jointly or solely;
- (b) all savings and loan accounts, deposits, building society accounts and co-operative society accounts in regard to which he has or has had any interest or power to operate jointly or solely during that period;
- (c) all assets which he and any wife or dependent child of his possess or have possessed during that period;
- (d) all sources of his and the gross income from those sources; and
- (e) all facts bearing upon his present or past chargeability to tax.

*[Ins. Act A1614:s.11][w.e.f year of assessment 2020 and subsequent year]*

**Power to access buildings and documents, etc.**

**22D.** (1) For the purposes of this Act, the Director General shall at all times have full and free access to all lands, buildings and places and to all books, documents, objects, articles, materials and things and may search such lands, buildings and places and may inspect, copy or make extracts from any such books, documents, objects, articles, materials and things without making any payment by way of fee or reward.

(2) Where the Director General exercises his powers under subsection (1), the occupiers of such lands, buildings and places shall provide the Director General or an authorized officer with all reasonable facilities and assistance for the exercise of his powers under this section.

(3) The Director General may take possession of any books, documents, objects, articles, materials and things to which he has access under subsection (1) where in his opinion—

- (a) the inspection of them, the copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them;
- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings instituted under or in connection with this Act.

(4) A list of all things seized in the course of a search made under this section and of the places in which they are respectively found shall be prepared by the officer making the search and signed by him.

(5) Where in the opinion of the Director General it is necessary for the purpose of ascertaining the chargeable profit from a business for any period to examine any books, accounts or records kept otherwise than in the national language or English, the Director General may by notice in writing require any person carrying on the business during that period to furnish within a time specified in the notice, not being less than thirty days from the date of service of the notice, a translation in the national language or English of the books, accounts or records in question.

[Ins. Act A1614:s.11][w.e.f year of assessment 2020 and subsequent year]

### **Duty to keep documents for ascertaining chargeable profit and tax payable**

**22E.** (1) Every person who is required to furnish a return of his profits for a year of assessment under this Act shall keep and retain in safe custody sufficient documents for a period of seven years from the end of that year of assessment for the purposes of ascertaining his chargeable profit and tax payable.

(2) Where a person referred to in subsection (1) has not furnished a return as required under this Act for a year of assessment, that person shall keep and retain the documents referred to in subsection (1) that relate to that year of assessment for a period of seven years after the end of the year in which the return is furnished.

(3) The Director General may waive all or any of the requirements under subsection (1) in respect of any profit.

(4) Any person who is required by this section to keep documents and—

(a) does so electronically, shall retain the document in an electronically readable form and shall keep the documents in such a manner as to enable the documents to be readily accessible and convertible into writing; or

(b) has originally kept documents in a manual form and subsequently converts those documents into an electronic form, shall retain those documents prior to the conversion in their original form.

(5) All documents that relate to any profit in Malaysia shall be kept and retained in Malaysia.

(6) For the purposes of this section, “documents” means—

(a) statement of profits; and

(b) invoices, vouchers, receipts and such other documents as are necessary to verify the particulars in a return.



*[Ins. Act A1614:s.11][w.e.f year of assessment 2020 and subsequent year]*

## **Prosecution**

**22F.** No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

*[Ins. Act A1614:s.11][w.e.f year of assessment 2020 and subsequent year]*

## **Offences and penalty.**

**23.** Any person who -

(a) fails to file a statutory declaration and return of profits under section 5;

(b) fails to file a statutory declaration under section 10 ; or

(c) (c) fails to comply with a notice given under sections 22B, 22C or subsection 22D(5),

*[Ins. Act A1614:s.12][w.e.f year of assessment 2020 and subsequent year]*

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 Am. Act 812:s.81]*

## **Compounding of offences.**

**24.** (1) The Director General may, with the consent in writing of the Public Prosecutor, at any time before a charge is being instituted, compound any offence committed by any person under section 22 or 23 by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Director General of a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

(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 such extended time as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any document or thing seized in connection with the offence may be released by the Director General, subject to such terms as the Director General thinks fit.

(4) All sums of money received by the Director General under this section shall be paid into and form part of the Consolidated Fund.

*[Subs. Act A1614][w.e.f 11 February 2020]*

**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.

*[Am. Act A1366:s.26;Am. Act 812:s.81]*

**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 assessment issued under section 6 or 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.

*[Am. Act A1614:s.14][w.e.f year of assessment 2020 and subsequent year]*

**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<br>[P.U.(B) 63/2010                              |
| Act 742        | Finance Act 2012   | 28-01-2011  |
| Act 761        | Finance Act 2014   | 24-01-2014<br>[Section 50 of Finance Act 2014]              |
| <u>Act 773</u> | Finance Act 2015   | 31 December 2015  |
| <u>Act 785</u> | Finance Act 2017   | 17 January 2017: s. 38;<br>22 October 2016: s. 39           |
| 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  |
| Act 812        | Finance Act 2018   | 1 January 2019  |
| Act A1614      | Labuan Business Activity Tax (Amendment) Act 2020          | Refer to Act  |