



GOING OR GONE REGIONAL? STRUCTURING YOUR BUSINESS EXPANSION VIA LABUAN IBFC

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Agenda

- **Labuan IBFC Legislative Framework**
- **Labuan Company**
- **Labuan IBFC Tax Regime**
- **Malaysia Double Tax Agreements (DTAs)**
- **Leasing**
- **Labuan Holding Company**
- **Common Reporting Standard (CRS)**
- **Base Erosion and Profit Shifting (BEPS)**



Labuan IBFC: Legislative Framework

Comprehensive Legislation

New Acts introduced in 2010	Existing Acts enhanced in 2010
Labuan Financial Services and Securities Act 2010	Labuan Business Activity Tax Act 1990
Labuan Islamic Financial Services and Securities Act 2010	Labuan Financial Services Authority Act 1996
Labuan Foundations Act 2010	Labuan Trusts Act 1996
Labuan Limited Partnerships & Limited Liability Partnerships Act 2010	Labuan Companies Act 1990

Anti-Money Laundering and Anti-Terrorism Financing Act 2001

An Act to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences and to provide for the forfeiture of terrorist property and property involved in, or derived from, money laundering and terrorism financing offences, and for matters incidental thereto and connected therewith.



LABUAN COMPANY

Labuan Companies Act 1990 (Act 441) governs every Labuan company.

Defined in S.1(2) of the Labuan Companies Act 1990:

- “Labuan company” means a company incorporated or registered under this Act;
- “Foreign Labuan company” means a foreign company registered under Part VII;
- “Labuan protected cell company” means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of Part VIIIB of this Act;
- “Labuan trust company” means a corporation registered as a Labuan trust company under the Labuan Financial Services and Securities Act 2010 (Act 704)

Defined in S.1(2) of the Labuan Companies Act 1990:

- “Domestic company” means a company incorporated under the Companies Act 1965
- “Foreign company” means a company, corporation, society, association or other body incorporated outside Malaysia; or an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the society, association or body duly appointed for that purpose, and which does not have its head office or principal place of business Malaysia

Characteristics of a Labuan Company

Characteristics:

- It must have a resident secretary
- Minimum one director (either individual or corporate entity)
- It may issue shares of different classes and of different rights
- Amalgamation by merging 2 or more companies into 1 is allowed
- No par value and treasury shares are allowed

- Can own controlling stakes in a Malaysian domestic company
- Can apply to Labuan FSA to set up marketing offices in KL or Iskandar Malaysia to carry out its marketing activities
- May carry on any licensed activity with a resident under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.



Labuan IBFC: Tax Regime

Labuan Tax Framework

Labuan Business Activity

- Income subject to LBATA
- Enjoys favourable tax treatment

Non-Labuan Business Activity

- Income subject to tax under Income Tax Act 1967
- Tax rate at 25% on Malaysian source income

Labuan Business Activity:

A Labuan Trading or Labuan non-trading activity, carried out in, from or through Labuan in foreign currency, by a Labuan entity with non-residents or with another Labuan entity.

Favorable Tax Treatments:

- Labuan Trading activity: 3% of audited net profits or RM20,000 upon election
- Labuan Non-trading activity – 0% tax
- Withholding tax exemptions
- Stamp duty exemption
- Personal tax exemption for foreign managers and directors

Definition of Resident

Labuan Non-Trading Activity

- Holding of investments in securities, stock, shares, loans, deposits or any other properties by a Labuan entity on its own behalf

Labuan Trading Activity

- Banking, insurance, trading, management, shipping operations, licensing or any other activity which is not Labuan non-trading activity

Definition of Resident

Resident for the purposes of LBATA means:

- In relation to a natural person, a citizen or a permanent resident of Malaysia; or
- 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.

Section 7(6) – Transactions allowed with Malaysian Resident

- MY resident hold shares in Labuan company
- Holding of shares, debt obligations or other securities in MY company
- Licensed banking, insurance or financial business
- Lease of properties for office or staff accommodation
- Administrative and statutory requirements
- Makes or maintains deposits

Lifting of notification in June 2010 – liberalization which facilitates setting up of Labuan International Company by Malaysian companies and individuals for non-Ringgit business and transactions.

Special Tax Exemptions

Income received from a Labuan entity exempted from income tax up to YA 2020:

- 100% foreign directors' fees
- 50% foreign managers' employment income
- 50% on housing and Labuan Territory allowances for Malaysian citizen employees
- 65% statutory income of any person providing qualifying professional services such as legal, accounting, financial and secretarial services, rendered in Labuan by that person to a Labuan entity

Special Tax Exemptions

Income received from a Labuan entity exempted from income tax:

- Dividends
- Profits and capital distribution
- Interests*
- Royalties
- Service fees
- Other gains:
 - ✓ Lease rentals on movable properties received from a licensed Labuan leasing company exempted from income tax.

**other than interest accruing to a business carried on by a person licensed under the Malaysian Banking and Financial Institutions Act 1989, Islamic Banking Act 1983, Insurance Act 1996 or Takaful Act 1984.*

Special Tax Exemptions

Stamp duty exemption

- On all instruments executed by a Labuan entity in connection with a Labuan business activity
- On its memorandum of articles/constituent documents
- On transfer of shares in a Labuan Company

No Withholding Tax

Advance Tax Ruling

- Apply to the Director General of Inland Revenue
- Granted on actual proposed transactions and not on completed transactions

Exceptions

Description	Tax Treatment
Labuan Chargeable Company - Elect to be taxed under ITA	Tax under Income Tax Act 1967
Labuan Holding Company - Co-located in Kuala Lumpur	Must elect to be taxed under Income Tax Act 1967
Labuan International Commodity Trading Company (LITC)	Tax at 3% of audited net profits under LBATA (not allowed to elect to pay RM20,000) LNG trading licensed before 31 Dec 2014 - First 3 years 100% tax exemption

Tax Considerations: Labuan IBFC

Business Purpose	Substance	Beneficial Ownership
<ul style="list-style-type: none"> • Strategically located in Asia • Member of ASEAN • An established trade and investment location globally • Infrastructure and support services readily available 	<ul style="list-style-type: none"> • Operational and commercial substance available • Local expertise available • No minimum or maximum substance requirements thus flexible to fit business needs • Co-location office option 	<ul style="list-style-type: none"> • Directors' discretion to distribute dividends • Separate corporate legal persona distinct from shareholders • Proper documentation in place

Critical tax considerations in the current tax environment

International standards and influence
- Transparency and disclosure

Benefits of Labuan to Malaysia

Labuan Marketing Office

Labuan co-location office for
Labuan banks and insurance

Labuan co-location office for
Labuan holding company

Labuan International
Commodity Trading Company
(LITC) offices

Labuan Onshore Offices

Onshore Offices	Applicable to	Permitted Activities
Marketing offices in KL and/or Iskandar Malaysia	All Labuan companies	Facilitate meetings with clients and potential clients
Co-location office in any part of Malaysia	Labuan banks and Labuan insurance	Banking activities, Labuan insurance and takaful business
Co-location office in KL	Labuan companies that elect to be taxed under the Income Tax Act (ITA)	Holding of investments, group management services, managing surplus, providing credit facilities to related parties, trading or invoicing activities outside Malaysia
Operating office in any part of Malaysia	Labuan International Commodity Trading Company	Trading of commodities with non-residents (Trading of petroleum, petroleum-related products and coal are allowed to deal with residents)

Comparison of Offshore and Onshore Company in Malaysia

Feature	Labuan Company	Malaysian Domestic Company
Regulator	Labuan FSA	Companies Commission of Malaysia – SSM
Shares	Foreign currency	Ringgit Malaysia (MYR)
Min. Shareholder	1 (individual/corporate)	2 (individual) 1 (corporate)
Min. Director	1 (individual/corporate)	2 (individual only)
Secretary	Labuan Trust Company	1 (individual only)
Auditor	Not compulsory except for licensed entity	Compulsory

Comparison of Offshore and Onshore Company in Malaysia

Feature	Labuan Company	Malaysian Domestic Company
Exchange Control	Non-resident	Resident
Tax	May elect to pay tax under LBATA or ITA	Income Tax Act (ITA)
Name	Ltd., Plc, (L) Bhd., PT etc	Sdn. Bhd., Bhd
Location Base	In, from or through Labuan. Can be in Malaysia where permitted	No restriction

The Global Incentives for Trading (GIFT) programme

- LITC must be established and licensed by the Labuan FSA
- Allowed to establish its operational office(s) anywhere in Malaysia
- All commodities specified under LITC except petroleum, petroleum-related products and coal, is to deal only with non-residents in any currency other than Ringgist
- Annual fee – RM40,000

Trading of physical and related derivative instruments of:

- Chemicals
- Base minerals
- Refined raw materials
- Agriculture products
- Petroleum and petroleum-related products

Labuan International Commodity Trading Company (GIFT Programme)

Requirements after 5 years from the date of license:

- Minimum annual turnover of USD100 million;
- Minimum annual business spending of RM3 million payable to Malaysian residents; and
- To employ at least 3 professional traders with a minimum salary of RM15,000 per month

LITCs will be subject to a corporate tax rate of:

- 3% of chargeable profits under the Labuan Business Activity Tax Act 1990
- A LITC set up purely as an LNG trading company would be entitled to a 100% income tax exemption on chargeable profit for the first 3 years
- Thereafter, will be subject to the abovementioned 3% corporate tax rate

Labuan International Commodity Trading Company (GIFT Programme)

Other Tax Exemptions:

- 100% exemption on director fees paid to non-Malaysian director of the LITC
- 50% exemption on gross employment income of Non-Malaysian professional, managerial staff including traders with the LITC
- Exemption on dividends received by or from the LITC
- Exemption on royalties received from the LITC
- Exemption on interest received by resident or non-resident from the LITC
- Stamp duty exemption on all instruments for Labuan business activities, M&A of Labuan company and transfer of shares

Election to be taxed under the ITA

Section 3A - Labuan business activity chargeable to the ITA upon election.

(1) Notwithstanding any other provision of this Act, a Labuan company 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.



MALAYSIA DOUBLE TAXATION AGREEMENTS (DTAs)

Malaysia Double Taxation Agreements (DTAs)

- Currently, Malaysia has 80 ratified DTAs
- To date, 14 countries have excluded Labuan from their DTAs with Malaysia:

Countries that exclude Labuan in their DTAs with Malaysia

Australia	Germany	South Africa
Japan	Netherlands	Sweden
India	Luxembourg	United Kingdom
South Korea	Republic of Seychelles	Indonesia
Chile	Spain	

Malaysia Double Taxation Agreements (DTAs) (Cont'd)

Labuan Certificate of Residence (COR)

- Definition of 'resident':
 - In relation to a natural person, citizen, permanent resident of Malaysia; or
 - 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
- Enables a Malaysian tax resident to claim tax benefits under the DTA and avoid being taxed twice on the same income

Malaysia Double Taxation Agreements (DTAs) (Cont'd)

Labuan Certificate of Residence (COR) (Cont'd)

- Application should be submitted to the Inland Revenue Board (IRB) Labuan Branch and the COR granted is valid for 1 year of assessment
- Management and control must be exercised in Malaysia
 - ✓ Board of directors meeting held in Malaysia
 - ✓ Decisions made in the meeting should show that 'control' is being exercised



LEASING

Leasing Through a Labuan Company

Out-Out

- Foreign lessor and foreign lessee

Out-In

- Foreign lessor and Malaysian lessee

In-In

- Malaysian lessor and Malaysian lessee



Labuan Leasing Company Structure

Structure

- Set up Labuan Leasing Co to lease the movable property from the foreign lessor, and to sublease to the Malaysian Lessee

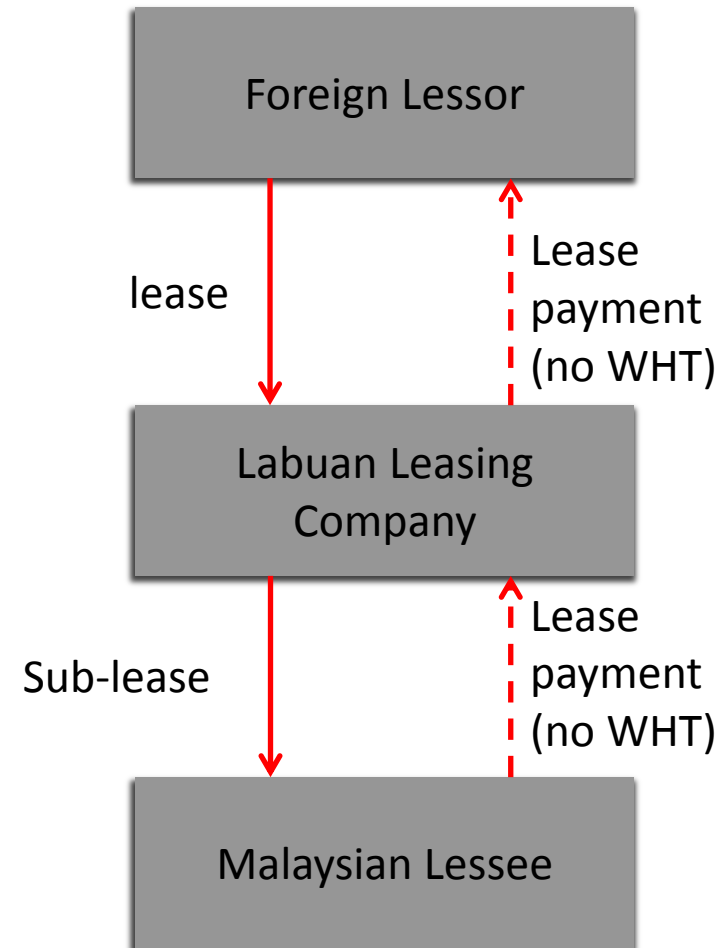
Advantages

- No stamp duties on the back-to-back lease arrangement
- No WHT on lease payments to Labuan leasing company
- No WHT on lease payments to the foreign lessor
- Labuan Leasing Co is subject to tax at 3% of its audited net profits or upon election, RM20,000

Labuan Leasing Company Structure

Business purpose

- Labuan is an established location in oil support industry
- Ease and proximity to infrastructure i.e. international financiers, insurance, shipping agents, etc
- Proximity to customers
- Segregation and protection of other core assets from leasing creditors
- Ring fencing for funding purposes





LABUAN HOLDING COMPANY

Labuan Holding Company

	Singapore	Hong Kong	Labuan
Corporate Income Tax	17% - territorial and remittance basis	CIT Rate 16.5% - territorial and remittance basis	3% on net profits / RM20,000
Withholding Tax	Dividends – No WHT Interest – 15% Royalties – 10%	Dividends – No WHT Interest – No WHT Royalties – 4.5%	N/A
Capital Gains Tax	N/A	N/A	N/A
Stamp Duty	Ad valorem duty - documents relating to immoveable properties and shares in Singapore	Ad valorem duty - documents relating to immoveable properties and shares in Singapore	Exemptions available

Labuan Holding Company

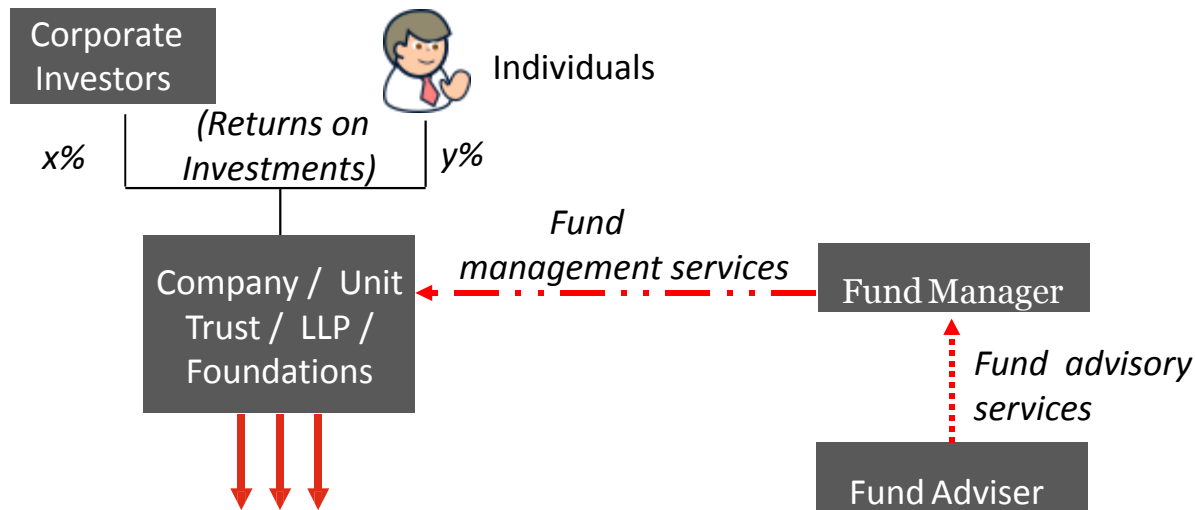
	Singapore	Hong Kong	Labuan
GST / VAT	7% GST	NIL	<ul style="list-style-type: none"> •Overseas transactions – No GST •Within Labuan – No GST •Transactions with Malaysia – 6% GST
Access to DTAs	81 DTAs in force	43 DTAs in force	80 ratified DTAs, 14 countries have excluded Labuan

Substance in Labuan

- Goods
- Services
- People
- Intangibles
- Finance
- Functions, assets and risks
- Business flow

Wealth / Fund Management

- There are several structures that can be employed by fund managers to hold and manage funds on behalf of investors, catering to the investor's specific needs and requirements.
- Examples of such structures could involve investors holding shares in a company, a unit holder in a unitized trust, a limited (liability) partner in a partnership, or a beneficiary in a foundation. These can be illustrated as follows:



Investments e.g. equity, bonds, unit trusts, properties etc.

Wealth / Fund Management (Cont'd)

	Singapore	Labuan
Corporate Income Tax	17% - territorial and remittance basis	3% on net profits / RM20,000
Capital Gains Tax	N/A	
Withholding Tax	Dividends – No WHT Interest – 15% Royalties – 10%	No WHT
GST / VAT	7% GST	Overseas transactions – No GST Within Labuan – No GST Transactions with Malaysia – 6% GST

Wealth / Fund Management (Cont'd)

	Singapore	Labuan
Stamp Duty	Ad valorem duty - documents relating to immovable properties and shares in Singapore	Exemptions available
Tax Incentives	<ul style="list-style-type: none"> •4 incentives for funds – tax exemption on specified income •1 incentive for fund managers – reduced CIT rate 10% 	N/A
Access to DTA	81 DTAs in force	80 ratified DTAs, 14 countries have excluded Labuan
Tax Administration		
i. Required to file tax returns?	Yes	Yes – statutory declarations
ii. Required to submit accounts?	Yes (except SMEs)	Not required if company pays flat tax rate of RM20,000



COMMON REPORTING STANDARD (CRS)

BASE EROSION AND PROFIT SHIFTING (BEPS)

Conclusion - Why Labuan?

- Strategic location
- Simple, clear and straightforward tax system
- Favourable tax benefits for the businesses as well as non-citizen individuals
- Access to Malaysia DTAs
- One-stop Regulatory Authority – Labuan FSA
- Ease of set up of Labuan entities
- Compliance with International Standards
- Lower cost of operations (as compared to Hong Kong and Singapore)



Labuan IBFC

International Business
and Financial Centre, Malaysia

Thank You

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