



Tax (Amendment) Bills 2019 Highlights

KPMG in Malaysia

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“The proposal to tax a Labuan entity carrying on a Labuan business activity which fails to comply with the substantive activities requirements under the Labuan Business Activity Tax Act 1990 (“LBATA 1990”) is a good move to overcome the switching of tax filing between LBATA 1990 and Income Tax Act 1967 (“the ITA”)”

Labuan Business Activity Tax (Amendment) Bill 2019

1 Non-Compliance with substantial activities requirements

Currently, a Labuan entity carrying on a Labuan business activity which fails to comply with **substantive activities requirements*** in a basis period for a Year of Assessment (“YA”) will be subjected to tax under the ITA.

It is proposed that a Labuan entity carrying on a Labuan business activity which fails to comply with **substantive activities requirements** for a basis period for a YA will be taxed at the rate of 24% on its chargeable profits (i.e. net audited profits excluding royalty income or other income derived from an intellectual property right) under the LBATA 1990.

The above proposal is effective from YA 2020.

* As stipulated under the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018.

2 Residence status of a Labuan entity

Currently, there is no provision in the LBATA 1990 to determine the residence status of a Labuan entity.

For the purpose of Double Taxation Arrangements, it is proposed that a Labuan entity is a resident in Malaysia for the basis year for a YA if the following criteria are met.

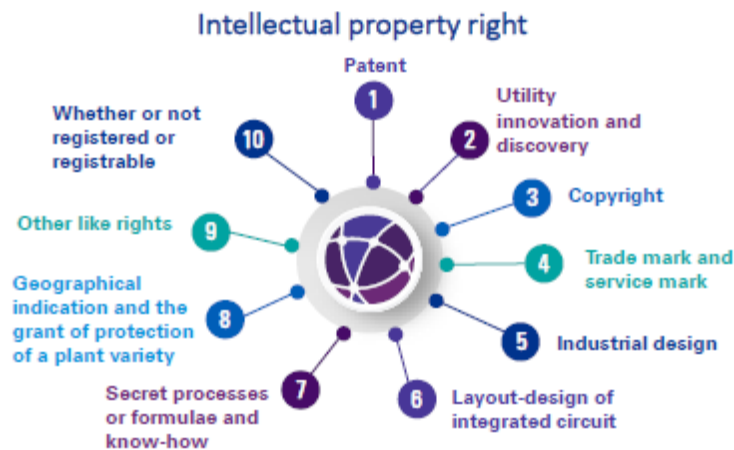
Type of Entity	Criteria
A Labuan entity carrying on a business or businesses	Management and control of its business(es), are exercised in Malaysia at any time during that basis year.
Any other Labuan entity	Management and control of its affairs are exercised in Malaysia by its directors, partners, trustees or other controlling authority at any time during that basis year

The above proposal is effective from YA 2020.

3 Review of tax treatment on royalty and other income from intellectual property right

Currently, the profit of a Labuan entity carrying on a **Labuan non-trading activity*** is not subjected to tax.

It is proposed that "profit" shall exclude any income derived from royalty or intellectual property right (as defined below) if it is receivable as consideration for the commercial exploitation of that right. Such income will be subjected to tax under the ITA; this is consistent with the tax treatment of a Labuan entity carrying on a Labuan trading activity.



The above proposal is deemed to have come into operation on 1 January 2019.

* refers to 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.

4 Tax Administration and Enforcement

To facilitate the tax administration and tax enforcement of proposed tax changes applicable to Labuan entities, the following new provisions (in line with provisions stipulated under the ITA) have been proposed:

Administration and Enforcement Provisions	Proposals
Assessment	<p>The Director General of Inland Revenue (“DGIR”) may make an assessment or additional assessment in that year or within 5 years (7 years for a transfer pricing adjustment) after its expiration where it appears to him that no or insufficient assessment has been made for the YA.</p> <p>The time barred provisions are not applicable when it appears to the DGIR that any form of fraud or willful default has been committed by or on behalf of any person or any person has been negligent.</p>
Collection	If the tax payable under a notice of assessment is not paid within 30 days after the service of the notice, a late payment penalty of 10% of the unpaid tax will be imposed.
Appeal	A person may appeal against an assessment in the same manner as an appeal against an assessment under the ITA.
Anti-avoidance & Transfer Pricing	<p>The DGIR may exercise his power to:</p> <ul style="list-style-type: none"> - disregard, vary and make adjustments to a transaction that has the direct or indirect effect of altering the incidence of tax, relieving any person from any liability to pay tax, evading or avoiding any duty or liability which is imposed or would otherwise have been imposed or hindering or preventing the operation of the LBATA 1990. - substitute prices in related party transactions if the transactions were not made at arm’s length.
Access to information and premises for tax audit/investigation	The DGIR may request for any information including specific returns, all books, statement of bank accounts and access to buildings for the purpose of inspecting the information and documents for ascertaining a person’s tax liability.
Record keeping	Generally, a taxpayer is required to keep records for at least 7 years from the end of the year of assessment.
Prosecution	No prosecution for an offence under LBATA 1990 shall be instituted without the written consent of the Public Prosecutor.
Compounding of offence	Written consent of the Public Prosecutor is required in compounding any offence under the LBATA 1990

The above proposals are effective from YA 2020 except for compounding of offence which is effective on the coming into operation of the Labuan Business Activity Tax (Amendment) Act 2019.

Income Tax (Amendment) Bill 2019 and Petroleum (Income Tax) (Amendment) Bill 2019

The proposals introduce changes in relation to income tax appeals.

1 Quorum of Special Commissioners of Income Tax (“SCIT”) Hearing

Currently, a tax appeal is required to be heard by a quorum of 3 Special Commissioners.

It is proposed that the Chairman of the SCIT may determine the sitting of an appeal to be heard by a Special Commissioner sitting alone if the Chairman deems it fit for the expeditious and efficient conduct of the appeal.

The above proposal is effective on the coming into operation of the Income Tax (Amendment) Bill 2019 and Petroleum (Income Tax) (Amendment) Bill 2019. However, hearings which are pending before the SCIT prior to the effective date shall continue to be heard by a quorum of 3 Special Commissioners.

2 Procedure for appeals to the High Court (“HC”)

Currently, a party who is aggrieved by a deciding order of the SCIT (“Deciding Order”) can appeal against the decision to the HC by requesting the SCIT to state the case to the HC. A written request must be made within 21 days after the service of the Deciding Order.

New provisions have been proposed to provide for the procedures for the filing of an appeal to the HC by the party aggrieved by a deciding order.

The proposals include the requirement of the appellant to file an appeal to the HC within 21 days from the decision of the SCIT and to prepare and file to the HC a record of appeal containing the prescribed items within 60 days from the date of filing of the notice of appeal.

The above proposals are effective on the coming into operation of the Income Tax (Amendment) Bill 2019 and Petroleum (Income Tax) (Amendment) Bill 2019. However, these proposals shall not affect appeals made to the HC before the effective date.

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