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**LHDNM.01/35/42/51/84**

**GUIDELINE ON THE TAX TREATMENT FOR OFFSHORE  
COMPANY WHICH MAKE AN ELECTIONS UNDER SECTION 3A  
OF THE LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990**

**1. INTRODUCTION**

In the light of greater global competition, Malaysia needs to ensure that Labuan remains competitive as an international business financial centre. Hence, to enhance Labuan competitiveness and attractiveness, the Government has made an announcement during the 2008 Budget that Labuan offshore companies be given the option to be taxed under the Income Tax Act 1967(ITA) with effect from year of assessment 2008.

**2. RELEVANT PROVISIONS**

In order to give effect to that announcement, the relevant provisions under the ITA and the Labuan Offshore Business Activity Tax Act 1990 (LOBATA) have been amended as follows:

- (a) Section 3B of the ITA is to allow an offshore company which has made an election under section 3A of the LOBATA to be charged to tax in accordance with the ITA in respect of its offshore business activity; and
- (b) Section 3A of LOBATA is to allow an offshore company carrying on an offshore business activity to make an irrevocable election in the prescribed form. Upon that election, any profit of the offshore company in respect of the offshore business activity for a year of assessment and subsequent years of assessment will be charged to tax in accordance with the ITA.

### **3. OBJECTIVE**

This guideline is to provide a better understanding of the tax treatment of an offshore company.

### **4. DEFINITION**

For the purpose of this guideline, the terms are defined as follows:

“offshore business activity” has the meaning assigned thereto by the LOBATA;

“offshore company” has the meaning assigned thereto by the LOBATA;

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

“offshore trust” has the meaning assigned thereto by the Labuan Offshore Trust Act 1996.

### **5. ELECTION PROCEDURE**

5.1 The election shall be made and furnished to the Director General of Inland Revenue (DGIR) within three (3) months after the beginning of the basis period for a year of assessment. For an offshore company where its basis period ending on a day in the YA 2008, the election may be made and furnished before 1 August 2008. The election shall be effective for that basis period for a year of assessment (for which the election was made) and subsequent basis periods.

5.2 The LOBATA imposes tax on a preceding year basis. The ITA on the other hand imposes tax on a current year basis. Therefore, the accounting period for which the election is made may refer to a different year of assessment under those Acts.

5.3 An offshore company may make an irrevocable election in the prescribed Form 8 and submit the form to the following branch:

Inland Revenue Board of Malaysia (IRBM)  
Labuan Branch  
Unit E.004 & E.005  
1<sup>st</sup> Floor, Podium Level  
Kompleks Ujana Kewangan  
Jalan Merdeka  
87000 Wilayah Persekutuan Labuan

Telephone: 087-415331 or 087-417292

## **6. COMPLIANCE REQUIREMENT**

Upon election, an offshore company is required to comply with the provisions under the ITA in the year of assessment in which the election was made and for the subsequent years of assessment. Amongst others, an offshore company is required to:

- a) file an estimate of tax payable, if any, by completing Form CP204 and furnish to the DGIR not later than 30 days before the beginning of the basis period for that year of assessment;
- b) make payments by instalment on a monthly basis, commencing from the 2<sup>nd</sup> month of the basis period for the year of assessment of which that estimate has been furnished;
- c) pay their final tax liability by the 7<sup>th</sup> month from the date following the close of the company's accounting period;
- d) keep documents for ascertaining chargeable income and tax payable; and
- e) subject to tax audit.

## **7. SCOPE OF TAXATION OF AN OFFSHORE COMPANY**

An offshore company will be charged to tax in accordance with the ITA. In the case of an offshore company which is resident in Malaysia;

- a) carrying on the business of banking, insurance or sea or air transport for the basis year for a year of assessment, will be taxed on income from wherever derived i.e., he is chargeable to tax on his world income; or
- b) carrying on other than the business mentioned in paragraph 7(a) above, will be taxed only on income accruing in or derived from Malaysia.

## **8. RESIDENCE STATUS OF AN OFFSHORE COMPANY**

An offshore company resident's status shall be determined as follows:

- 8.1 an offshore company that carrying on a business or business as stipulated under paragraph 8(1)(b) of the ITA;
- 8.2 an offshore company that does not carrying on a business as stipulated under paragraph 8(1)(c) of the ITA; or

- 8.3 an offshore trust shall be regarded as a Malaysian resident if, but only if, any trustee member of the offshore trust is resident in Malaysia for the basis period for a year of assessment. There are exceptions under which a trust shall not be regarded as a resident in Malaysia, which are detailed in subsection 61(3) of the ITA.

For example, the management and control of the affairs of a company are normally exercised at the place where the directors hold their meetings irrespective of where the company might be registered. Full enquiries shall be made as to the company's residence position in all cases where it is possible that certain transaction director's meeting has been held in Malaysia even though, generally, trading and management and control are exercised outside Malaysia. Consideration should be given to:

- Memorandum and Articles (M & A) of association to discover where the company is registered and whether or not there are any provisions regarding residence in the M & A.
- If M & A do give a place of management and control, are the M & A being implemented?
- Letter headings of a company as to its place of business.
- Minutes of directors' meetings to indicate where the meetings were held and what decisions relating to management and control were taken.
- Minutes of general meetings to discover where such meetings have been held and what transpired at these meetings.

## **9. DETERMINATION OF SOURCE OF INCOME**

- 9.1 Any gross income from a business shall be deemed to be derive from Malaysia, amongst others –
- (a) so much of that gross income from business is not attributable to operations of the business carried on outside Malaysia.
  - (b) If the business consists wholly or partly of the manufacturing, growing, mining, producing or harvesting in Malaysia of any article, product, produce or other thing, the income derived from Malaysia is –
    - (i) the gross income from any sale of the article, product, produce or other thing taking place outside Malaysia in the course of carrying on the business; or

- (ii) an amount equal to the market value of the article, product, produce or other thing at the time of its export if the article is exported in the course of carrying on the business.

9.2 Other than the above, the following sections as described in the table below determines the derivation of business and other types of income:

<b>Classes of Income</b>		<b>Derivation</b>
<b>Section</b>	<b>Type</b>	<b>Section</b>
4(a)	Gains or profits from a business	12
4(b)	Gains or profits from an employment	13(2)
4(c)	Dividends	14
4(c)	Interest	15
4 (d)	Royalties	15
4A	Special classes of income	15A

## **10. EXEMPTION FROM TAX UNDER THE ITA**

### **Exemption under Schedule 6 Paragraph 28 of the ITA**

Income of any person (other than a resident company or a resident offshore company carrying on the business of banking, insurance or sea or air transport) for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia shall be exempt from tax.

## **11. REPATRIATION**

Upon election, an offshore company shall be subject to single-tier system. Under the single-tier system, dividends distributed by an offshore company to shareholders (whether resident or not) is exempt from tax in Malaysia.

## **12. ADVANCE RULINGS**

12.1 An advance ruling is a written statement by the DGIR to a person giving an interpretation on how any provisions of the Act applies to a proposed arrangement described in an application.

12.2 An offshore company may apply for an advance ruling to the IRBM on the tax treatment in respect of any proposed arrangement. The details

of the application for an advance ruling such as the scope, procedures and fees imposed are set out in the Guidelines on Advance Rulings, which can be obtained from IRB website at the address <http://www.hasil.gov.my/>.

Technical Division  
Technical Department  
Inland Revenue Board of Malaysia

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