

TECHNICAL

Direct Taxation

LEGISLATIVE PROCESS TO AMEND EXISTING TAX INCENTIVES – COMPLYING WITH FHTP

Further to our [e-CTIM TECH-DT 10/2019](#) dated 11 February 2019 (which contained information on recently gazetted legislations made under the Promotion of Investments Act 1986) (P.U. (A) [332/2018](#), [335/2018](#) and [336/2018](#)), the following are legislations enacted under the Income Tax Act 1967 (“ITA”) and the Labuan Business Activity Tax Act 1995 (“LBATA”) which were gazetted in December 2018 (reported in our [e-CTIM TECH-DT 100/2018](#) dated 28 December 2018 and [e-CTIM TECH-DT 3/2019](#) dated 9 January 2019).

(#)	P.U.(A) & gazette date	Citation	Commencement
1.	356/2018 (27/12/2018)	Income Tax (Exemption) (No. 5) Order 2018	From YA 2018 till YA 2020
2.	375/2018 (31/12/2018)	Income Tax (Deductions Not Allowed For Payment Made to Labuan Company By Resident) Rules 2018	From 1/1/2019
3.	383/2018 (31/12/2018)	Income Tax (Requirements For Insurer Carrying On Re-Insurance Business) Rules 2018	From YA 2019
4.	392/2018 (31/12/2018)	Labuan Business Activity Tax (Requirements For Labuan Business Activity) Regulations 2018	From 1/1/2019

The following are brief summaries of the purpose of each statute:

(#) P.U.(A)	Purpose			
(1.) 356/2018	<p>Exempts a company from the payment of income tax in a basis period for a year of assessment (YA) in respect of the statutory income derived from a business of providing fund management services for Sustainable And Responsible Investment Fund (SRIF) in Malaysia [para. 3(1)].</p> <ul style="list-style-type: none">- “Company” means a fund management company which is<ul style="list-style-type: none">(a) resident in Malaysia;(b) incorporated under the Companies Act 2016;(c) licensed under the Capital Markets and Services Act 2007 (CMSA) or registered with the Securities Commission Malaysia (SCM) as a venture capital management corporation or a private equity management corporation.- The SRIF referred to above must also fulfil the requirements set out in the guidelines relating to SRIF issued by the SCM under the CMSA.			
(2.) 375/2018	<p>For the purpose of S39(1)(r) of the ITA, the prescribed amount that is not allowed for deduction for the types of payment made by a resident to a Labuan company is as specified in the Schedule (as shown below):</p> <table><tr><th>No.</th><th>Type of payment</th><th>Amount not allowed for deduction</th></tr></table>	No.	Type of payment	Amount not allowed for deduction
No.	Type of payment	Amount not allowed for deduction		

	<ol style="list-style-type: none"> 1. Interest payment 33% of the amount of payment 2. Lease rental 33% of the amount of payment 3. Other payments 97% of the amount of payment <p>[Rule 2]</p>
(3.) 383/2018	<p>For the purpose of S60A(3) of the ITA, an insurer who carries on a re-insurance business for the relevant YA must meet with the following requirements:</p> <ol style="list-style-type: none"> (a) Has at least 10 full time employees in Malaysia; and (b) Incurs an annual operating expenditure of at least RM 4,000,000 in Malaysia. <p>- "Full time employees" means high-skilled staff who are managers, professionals, technicians or associate professionals involved in formulating, planning, organizing and executing policies, conducting research or applying scientific methods.</p> <p>[Rule 2]</p>
(4.) 392/2018	<p>The requirements for a Labuan entity carrying on a Labuan business activity are specified in the Schedule. These requirements pertain to –</p> <ol style="list-style-type: none"> 1) Minimum number of full time employees in Labuan (column (3) of table); 2) Minimum amount of annual operating expenditure in Labuan (in RM) (column (4)). <p>- The first ranges from 2 (for Holding Company) to 4 (for Labuan insurance manager or Labuan takaful manager).</p> <p>- The second ranges from RM50,000 (for Holding Company) to RM3,000,000 (for Labuan International Commodity Trading Company).</p> <p>(Please refer to the Regulations for full details.)</p>

Members may read the above enactments in full at the official website of the [Attorney General's Chambers](#).

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