

From: Anizah Ahad
Sent: Monday, 22 December, 2014 4:04 PM
To: 'Veekean@ctim.org.m'
Cc: Nor'aini Ja'afar; Noraini Ismail; 'wai.kuan.phan@my.pwc.com'; 'kslim@ctim.org.my'; 'yamuna@ctim.org.my'; 'tiruselvam@ctim.org.my'
Subject: RE: Tax technical enquiries in respect of Labuan entities

Dear Sir,

As been ordered to refer your email dated 15 December 2014.

2. The following is your technical enquiries:

A. Tax Residence Certificate For Labuan Entity.

Kindly be advised, upon the application of tax residency for Labuan company, the following documents must be furnished for the consideration:-

- 2.1 **Form STM1** – Application form for CR. (This form is available and can be downloaded at Inland Revenue Board of Malaysia (IRBM) website:
<http://www.hasil.gov.my/>)
- 2.2 **Form 22 or 25 or 49** – Return Giving Particulars of Directors and Secretaries and Changes of Particulars.
- 2.3 **Form 27** – Annual Return of Labuan Company. Apply for Labuan companies incorporated for a year and more.
- 2.4 **Minutes of directors' meetings** (including the attendance list of the members of the meeting) to indicate where the meetings were held and what **decisions relating to management and control** of the business activity were taken. **(Board of Directors' meeting must be held in Malaysia)**
- 2.5 Photocopies of supporting documents showing the directors **entry to and exit from Malaysia (for non-citizen / non-resident)** as evidence for attending the Board of Director's Meeting.
- 2.6 **Letter of Authorized Representative** for director and corporate Director, to confirm that the authorized person entitled to exercise the same powers on behalf of the director or the corporate director which he/ she represents.
- 2.7 In the event that the company or applicant failed to finalized and submit tax returns for that particular year of assessment of which the company or applicant apply for CR, the application will not be processed for approval.
- 2.8 Kindly be advised the management and control of its businesses refers to the **important decisions in respect of the business activity itself** excluding decisions pertaining the following matters:-
 - a) statutory requirement under the companies legislation/ act – such as filing of statutory declaration and administration of directors and shareholders register book;

- b) statutory requirement under the ordinance of memorandum & article of association – such as appointment of directors, secretaries, auditors and other appointments.
- c) administration relating to submission of tax returns, tax residency application and audited accounts.
- d) any other matters not wholly and exclusively related to the businesses (such as the opening of bank accounts).

B. Income Tax (Exemption) Order 2007 and the policy decisions on the use Labuan by Malaysian entities.

3. LHDNM is not an authorized to give the answer since Ministry of Finance is the policy maker. However, LHDNM also the committee in the Kajian Semula Rejim Labuan.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

"BERSAMA MEMBANGUN NEGARA"

**ANIZAH BINTI AHAD
BAHAGIAN KONSULTASI GALAKAN CUKAI
JABATAN DASAR PERCUKAIAN
LEMBAGA HASIL DALAM NEGERI MALAYSIA**

☎ : 03-8313 8888 samb. 21735 | 📠 : 03-83137812

📞 : 1-300-88-LHDN (5436) (Pusat Khidmat Pelanggan)

🌐 : <http://www.hasil.gov.my>

ANDALAH WIRA NEGARA!

HASiL Teman Keceriaan Anda

**LABUAN FINANCIAL SERVICES AUTHORITY
(LEMBAGA PERKHIDMATAN KEWANGAN LABUAN)**

Your ref: TC-DT(II)/Ltr to LFSA.Technical Enquiry

Our ref: LFSA/BTDU/9115

Date: 3 July 2014

— KS .

Executive Director
Chartered Tax Institute of Malaysia
Unit B-13-2, Block B
13th Floor, Megan Avenue II
No. 12, Jalan Yap Kwan Seng
50450 Kuala Lumpur
(Attn: Mr. P Thomas Simon)

Dear Sir,

Technical Enquiries

We refer to your letter dated 25 June 2014 in regard to the above matter.

2. For your information, matters pertaining to taxation on Labuan entities are under the purview of Inland Revenue Board Malaysia (IRBM). In any case, we have extended a copy of your letter to the Tax Policy Division of IRBM for their perusal.

3. Meanwhile, if you require further clarification or additional information, please do not hesitate to contact En. Abdul Salam chandran at 087-591208 (email address: salam@labuanfsa.gov.my).

Thank you.

For and on behalf of Labuan FSA,



Abdul Salam Chandran
Deputy Director
Business and Tax Development Unit

Our Ref: TC-DT(II) /Ltr to LFSA.Technical Enquiry

25 June 2014

BY Fax & email
(Fax No. 087-453 442)

Encik Ahmad Hizzad Baharuddin
The Director General,
Labuan Financial Services Authority
Level 17, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 F.T. Labuan,
Malaysia

Dear Sir,

TECHNICAL ENQUIRIES

Good day to you.

The Chartered Tax Institute of Malaysia (CTIM) is a professional body representing the tax profession in the country. Our members are tax professionals, including tax advisers from the major tax consulting firms. In the course of their tax practice, members have encountered the following issues in relation to Labuan. We would be pleased if you could provide some clarification on the matters set out below.

1) Tax Residence Certificate

We would like to seek clarification on the procedures and information required for issuance of a tax residence certificate by the Inland Revenue Board (IRB) for Labuan companies. There has been some uncertainty over this issue and we would be grateful for clear guidelines as to the requirements of the IRB.

2) Income Tax (Exemption) Order 2007 ("the Order")

The Order is a key tax exemption in the context of Labuan companies and is relied upon extensively. We would like to seek clarification from the LFSA whether there is any intention to revise the Order following the changes enacted which permit a Labuan company to be taxed under the Income Tax Act, 1967. When the change was enacted in 2007 [via Finance Act 2007 (Act 683)], there was an indication from representatives from LFSA, that the order would be amended to exclude companies which elect to be taxed under the ITA.

Further, at present the Order applies to several types of payments, including dividends paid by a Labuan company and may therefore not necessarily apply to distributions from a limited liability partnership set up under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010. We would seek LFSA's views whether distributions from such limited liability partnerships will be included and if so, if the Order will be amended to reflect this.

3) Use of Labuan by Malaysian entity

As you would be aware, the IRB has expressed concerns regarding the use of Labuan companies by Malaysian entities from an anti-avoidance perspective. We would be pleased if LFSA could clarify whether there have been any policy decisions on the use of Labuan by Malaysian entities (e.g. for leasing).

We look forward to your favourable response.

Thank you and kind regards.

Yours sincerely,



P Thomas Simon
Executive Director
CHARTERED TAX INSTITUTE OF MALAYSIA