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A BILL

intituled

An Act to provide for the imposition, assessment and collection of tax on offshore business activity carried on by an offshore company in or from Labuan and for matters connected therewith.

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BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Labuan Offshore Business Activity Tax Act 1990 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint. Short title and commencement.

(2) This Act shall have effect for the year of assessment 1991 and subsequent years of assessment.

2. (1) In this Act, unless the context otherwise requires— Interpretation.

"basis period", in relation to a year of assessment, means the accounting period or periods ending in the calendar year immediately preceding that year of assessment;

"Director-General" means the Director-General of Inland Revenue referred to in section 134 of the Income Tax Act 1967; Act 53.

"Labuan" means the Federal Territory of Labuan;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"official" means a person having an official duty under, or employed in carrying out, the provisions of the Income Tax Act 1967;

Act . "offshore banking business" has the meaning assigned thereto by the Offshore Banking Act 1990;

"offshore business activity" means an offshore trading or an offshore non-trading activity carried on in or from Labuan in a currency other than the Malaysian currency by an offshore company with non-residents or with another offshore company, but does not include shipping and petroleum operations:

Provided that—

- (i) in relation to an offshore company carrying on an offshore banking or offshore insurance business, such activity may be carried on with residents;
- (ii) in relation to an offshore banking business, transactions may, where permitted under subsection (2) of section 20 of the Offshore Banking Act 1990, be carried on in Malaysian currency; and
- (iii) in relation to an offshore insurance business, the reinsurance of domestic insurance business may be transacted in Malaysian currency;

Act . "offshore company" means an offshore company incorporated under the Offshore Companies Act 1990, and includes a foreign offshore company registered under that Act and an offshore trust;

Act . "offshore insurance business" has the meaning assigned thereto by the Offshore Insurance Act 1990;

"offshore non-trading activity" means an activity relating to the holding of investments in securities, stock, shares, loans, deposits and immovable properties by an offshore company on its own behalf;

"offshore trading activity" includes banking, insurance, trading, management, licensing or any other activity which is not an offshore non-trading activity;

"offshore trust" means a trust created in Labuan where the settlor and the beneficiaries are non-residents;

"person" includes a company, a partnership, a body of persons and a corporation sole;

"resident" means—

- (a) in relation to a natural person, a citizen or a permanent resident of Malaysia; or
- (b) 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 (2) of section 43 of the Exchange *Act 17.* Control Act 1953;

"year of assessment" means calendar year.

(2) Where an offshore company carries on both an offshore trading activity and an offshore non-trading activity, it shall be deemed to be carrying on an offshore trading activity.

(3) For the avoidance of doubt, it is declared that the provisions of the Income Tax Act 1967 shall apply in respect of—

- (a) an activity other than an offshore business activity carried on by an offshore company;
- (b) an offshore banking business carried on by a licensed Malaysian offshore bank as defined under the Offshore Banking Act 1990, which is an office of a Malaysian bank; or
- (c) an offshore insurance business carried on by a Malaysian offshore insurer as defined under the Offshore Insurance Act 1990, which is a branch of a Malaysian insurer.

PART II

CHARGEABILITY TO TAX

Scope of Charge

Offshore
business
activity
chargeable to
tax.

3. Subject to this Act, an offshore company carrying on an offshore business activity shall be charged to tax in accordance with this Act for each year of assessment in respect of that offshore business activity.

Tax Based on Return

Offshore
trading
activity.

4. (1) Tax shall be charged at the rate of three per cent for a year of assessment upon the chargeable profits of an offshore company carrying on an offshore business activity which is an offshore trading activity for the basis period for that year of assessment,

(2) The chargeable profits of an offshore company carrying on an offshore business activity which is an offshore trading activity for a year of assessment shall be the net profits as reflected in the audited accounts in respect of such offshore trading activity of the offshore company for the basis period for that year of assessment.

Filing of
statutory
declaration
and return
of profits.

5. An offshore company carrying on an offshore business activity which is an offshore trading activity shall, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of a year of assessment, file a statutory declaration and a return of its profits for that year of assessment in the prescribed forms to the Director-General.

Assessment.

6. Upon receipt of a return of its profits referred to in section 5 for a year of assessment, the Director-General shall make an assessment in the prescribed form for that year of assessment and shall serve a notice of assessment, personally or by post, on the offshore company concerned.

Tax Charged upon Election

Election.

7. (1) Notwithstanding section 4, an offshore company carrying on an offshore business activity which is an

offshore trading activity may, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of a year of assessment, elect, in the prescribed form, to be charged for that year of assessment to tax of twenty thousand ringgit.

(2) An offshore company shall, when exercising an election under subsection (1), file a statutory declaration in the prescribed form with the Director-General.

(3) The provisions of section 5 shall not apply to an offshore company which elects to be charged to tax under subsection (1).

8. (1) Notwithstanding sections 4 and 7, where an offshore company carrying on an offshore business activity which is an offshore trading activity does not have a basis period for a year of assessment, the offshore company shall be charged for that year of assessment to tax of twenty thousand ringgit.

Absence of basis period.

(2) An offshore company chargeable to tax under subsection (1) for a year of assessment shall, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of that year of assessment, file a statutory declaration in the prescribed form with the Director-General.

PART III

NON-CHARGEABILITY TO TAX

9. Notwithstanding section 3, an offshore company carrying on an offshore business activity which is an offshore non-trading activity for the basis period for a year of assessment shall not be charged to tax for that year of assessment.

Offshore non-trading activity.

10. An offshore company carrying on an offshore business activity which is an offshore non-trading activity shall, within a period of three months (or any extended period as may be allowed by the Director-General) from the commencement of a year of assessment, file a statutory declaration in the prescribed form with the Director-General.

Statutory declaration of offshore non-trading activity.

PART IV

PAYMENT AND RECOVERY OF TAX

Payment of
tax.

11. An offshore company shall—

- (a) at the time of filing of the statutory declaration and return of its profits for a year of assessment under section 5, make full payment on account of tax to be charged for that year of assessment; or
- (b) at the time of filing the statutory declaration under section 7 or 8, make full payment of the tax charged for that year of assessment.

Payment of
difference and
refund.

12. Where there is a difference between the amount paid under paragraph (a) of section 11 and the amount assessed by the Director-General under section 6, the offshore company shall pay the difference or the Director-General shall refund the excess, as the case may be.

Notice of
demand.

13. (1) Where an offshore company fails to comply with section 11 or 12, the Director-General shall issue a notice of demand to be served personally or by post on the offshore company.

(2) The Director-General shall, in issuing the notice of demand, increase the tax or balance of tax unpaid by ten per cent and such amount shall be recoverable as tax due.

(3) The tax payable under the notice of demand shall be paid upon service of the notice of demand.

Recovery by
suit.

14. (1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government.

(2) The Director-General and all authorized officers shall be deemed to be public officers authorized by the Minister under subsection (1) of section 25 of the Government Proceedings Act 1956, in respect of all proceedings under this section.

Act 359.

(3) An "authorized officer" means an official authorized by the Director-General for the purposes of this section.

PART V

RESPONSIBILITY FOR COMPLIANCE

15. An offshore company shall be the person assessable and chargeable to tax imposed by this Act. Person chargeable.

16. Responsibility for doing all acts and matters required to be done by or on behalf of an offshore company for the purposes of this Act shall lie jointly and severally with— Officers responsible for compliance.

- (a) the manager or other principal officer in Malaysia;
- (b) the resident director as defined in the Offshore Companies Act 1990;
- (c) the secretary;
- (d) in the case of a trust, the trustee or trustees;
- (e) any person (however styled) performing the functions of any of the persons mentioned in the foregoing paragraphs; and
- (f) in the case of a company under liquidation or receivership, the liquidator or receiver, as the case may be.

PART VI

SUPPLEMENTAL

Administration

17. The Director-General shall have the care and management of the tax. The Director-General.

18. (1) Any function of the Director-General under this Act may be performed by a Deputy Director-General, an Assistant Director-General, a Senior Assistant or Assistant Director, of Inland Revenue referred to in section 134 of the Income Tax Act 1967. Delegation of Director-General's functions.

(2) The Director-General may in writing delegate any of his functions under this Act to any other official.

Power of
Minister
to give
directions.

19. The Minister may give to the Director-General directions of a general character (not inconsistent with this Act) as to the performance of the functions of the Director-General under this Act; and the Director-General shall give effect to any direction so given.

Return of
profits, etc.,
to be
treated as
confidential.

20. (1) Any return of profits, statutory declaration or information made or received for the purposes of this Act shall be treated as confidential and shall not be communicated or disclosed to any person except for the purposes of this Act.

(2) Where any official, whether during his employment or thereafter, contravenes subsection (1), he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power of
Minister to
make
regulations.

21. The Minister may make regulations generally for the purpose of carrying out, or giving effect to, the provisions of this Act and in particular, but without prejudice to the foregoing, for prescribing such forms as are required by this Act to be prescribed or as he may deem necessary.

Miscellaneous

Power to
call for
information.

22. (1) The Director-General may by notice in writing require any person to furnish such information or particulars as may be required by him for the purposes of this Act.

(2) Where any person, without reasonable excuse, fails to comply with the notice mentioned in subsection (1), he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit.

Offences and
penalty.

23. Any person who without reasonable-excuse—

- (a) fails to file a statutory declaration and return of profits under section 5; or
- (b) fails to file a statutory declaration under section 7, 8 or 10,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

24. (1) The Director-General may, in a case where he deems it fit and proper to do so, compound any offence committed by any person under section 22 or 23, by making a written offer to such person to compound the offence by paying to the Director-General within such time as may be specified in the offer such sum of money as may be specified in the offer, which shall not exceed fifty per cent of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

Compounding of offences.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or during such extended period as the Director-General may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence, has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made.

25. Where any person wilfully or negligently makes an incorrect or false statutory declaration under section 5, 7, 8 or 10, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Penalty for false declaration.

EXPLANATORY STATEMENT

This Bill seeks to provide for the imposition, assessment and collection of tax on offshore business activities carried on by offshore companies in or from Labuan.

2. *Part I* seeks to provide for preliminary matters including the definitions of certain words used in the Bill. *Clause 2(3)* makes it clear that where an offshore company derives any income from an activity

which is not an offshore business activity, that income shall be subject to the Income Tax Act 1967. Where an office of a domestic bank or a branch of a domestic insurance company carries on an offshore banking or offshore insurance business, the income from such businesses shall also be subject to the Income Tax Act 1967.

3. *Part II* deals with chargeability to tax. *Clause 3* is a general provision seeking to limit the scope of charge to only an offshore business activity carried on by an offshore company.

4. *Clauses 4 to 6* relate to the imposition of tax by return of profits. *Clause 4* proposes to impose tax at the rate of three per cent for a year of assessment on the chargeable profits of an offshore company carrying on an offshore trading activity. The chargeable profits will be based on the audited net profits as declared in the return of profits filed by the offshore company under *clause 5*. *Clause 5* also requires an offshore company to file a statutory declaration. An offshore trading activity includes banking, insurance, trading, management, licensing or any other activity which is not an offshore non-trading activity. *Clause 6* empowers the Director-General to assess the tax based on the return of profits.

5. *Clause 7* seeks to allow an offshore company carrying on an offshore trading activity to elect to be assessed at a fixed rate of twenty thousand ringgit for a year of assessment. The election must be made within three months (or such extended period as allowed by the Director-General) from the commencement of the year of assessment. Where an offshore company so elects, it is required to file a statutory declaration to the Director-General.

6. *Clause 8* requires an offshore company which does not have an accounting period for a year of assessment to pay tax of twenty thousand ringgit and to file a statutory declaration to the Director-General within three months (or such extended period as allowed by the Director-General) from the commencement of the year of assessment.

7. *Part III* deals with non-chargeability to tax in respect of an offshore company carrying on an offshore non-trading activity. *Clause 10* requires the company to file a statutory declaration to the Director-General within three months (or such extended period as allowed by the Director-General) from the commencement of the year of assessment. An offshore non-trading activity refers to the holding of investments in the form of securities, stock, shares, loans, deposits and landed properties owned by that company.

8. *Part IV* sets out the provisions for the payment and recovery of tax. *Clause 11* requires an offshore company carrying on an offshore trading activity to make full payment of its tax upon filing of a return or statutory declaration, as the case may be. *Clause 12* provides for payment of any difference in tax and refund of overpayment. *Clause 13* provides for imposition of penalty upon non-payment of tax. *Clause 14* provides for the recovery of tax by civil proceedings.

9. *Part V* deals with the responsibility for compliance of the provisions of the Bill. *Clause 15* provides that the offshore company will be the person chargeable to tax under the Bill. *Clause 16* details the persons responsible for compliance of the provisions of the Bill on behalf of offshore companies.

10. *Part VI* deals with administration and miscellaneous matters. *Clause 17* provides that the Director-General will have the care and management of tax imposed by the Bill. *Clause 18* pertains to delegation of the Director-General's functions. *Clause 19* empowers the Minister of Finance to give directions to the Director-General in the performance of his functions. *Clause 20* pertains to secrecy provisions. *Clause 21* empowers the Minister of Finance to prescribe regulations where necessary to facilitate the operation of the Bill. *Clause 22* empowers the Director-General to call for information from an offshore company for the purposes of the Bill. *Clause 23* contains the penal provisions for non-compliance with certain provisions of the Bill. *Clause 24* provides for the compounding of offences and *clause 25* contains the penal provisions for filing an incorrect or false statutory declaration.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained. [PN. (U²) 1614.]

