

**LABUAN OFFSHORE FINANCIAL
SERVICES AUTHORITY****FACSIMILE TRANSMITTAL SHEET**

TO: CHAIRMAN

FROM: SIMERAH JALLAH

COMPANY: LIIA

DATE: 24 JULY 2008

FAX NUMBER: 087- 426 652

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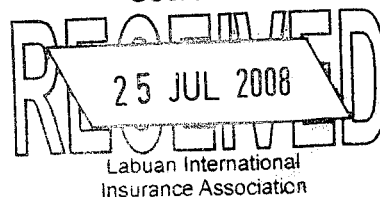
TEL NUMBER: 087 - 439 400

RE: 1. GUIDELINE ON THE TAX TREATMENT FOR OFFSHORE COMPANY WHICH
MAKE AN ELECTIONS UNDER SECTION 3A OF THE LABUAN OFFSHORE
BUSINESS ACTIVITY TAX ACT 1990; AND

2. ELECTION FORM BY AN OFFSHORE COMPANY

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY☐ PLEASE RECYCLE

Secretariat



LEVEL 17, MAIN OFFICE TOWER, FINANCIAL PARK LABUAN, JALAN MERDEKA,
87000 FEDERAL TERRITORY OF LABUAN, MALAYSIA

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**LEMBAGA PERKHIDMATAN KEWANGAN LUAR PESISIR LABUAN
(LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY)**

Circular No.: 96/2008/ALL

23 July 2008

Chairman
Association of Labuan Trust Companies
Labuan International Insurance Association
Association of Offshore Banks
Labuan Offshore Investment Banks

Dear Sir/Madam,

- 1) GUIDELINE ON THE TAX TREATMENT FOR OFFSHORE COMPANY
WHICH MAKE AN ELECTIONS UNDER SECTION 3A OF THE LABUAN
OFFSHORE BUSINESS ACTIVITY TAX ACT 1990; AND**
- 2) ELECTION FORM BY AN OFFSHORE COMPANY**

As you are aware, Labuan offshore companies may make an irrevocable election under Income Tax Act 1967(ITA) with effect from year of assessment 2008. We are pleased to inform you that the related Guideline and form have been gazetted on 14 July 2008. A copy of the Guideline and gazette is attached for your perusal.

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, 1st Floor, Podium Level
Kompleks Ujana Kewangan, Jalan Merdeka
87000 Wilayah Persekutuan Labuan

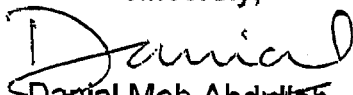
Telephone: 087-415331 or 087-417292

For your information, the Form 8 can be obtained from IRBM Labuan branch.

Please be guided accordingly and kindly disseminate this circular to your members.

Thank you.

Yours sincerely,


Danial Mah Abdullah
Deputy Director-General
30/12/0



INLAND REVENUE BOARD OF MALAYSIA
TECHNICAL DEPARTMENT,
TECHNICAL DIVISION,
12TH FLOOR, BLOCK 9,
GOVERNMENT OFFICE COMPLEX,
JALAN DUTA, P.O. BOX 11833,
50758 KUALA LUMPUR

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
1st 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 2nd 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 7th 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:

Classes of Income		Derivation
Section	Type	Section
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.

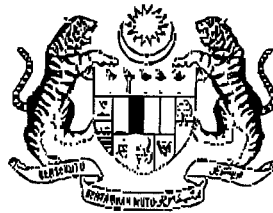
12.2 An offshore company may apply for an advance ruling to the IRBM on the tax treatment in respect of any proposed arrangement. The details

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

Date: April 2008

c.c. LHDN.01/35/(S)/42/51/360 klt. 3



MALAYSIA

Warta Kerajaan
SERI PADUKA BAGINDA
DITERBITKAN DENGAN KUASA

HIS MAJESTY'S GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY

Jil. 52
No. 14

14hb Julai 2008

TAMBAHAN No. 75
PERUNDANGAN (A)

P.U. (A) 245.

AKTA DUTI HIBURAN 1953

PERINTAH DUTI HIBURAN (Pengecualian) (No. 20) 2008

PADA menjalankan kuasa yang diberikan oleh subsubperenggan 12(1)(b) Akta Duti Hiburan 1953 [*Akta 103*], Menteri membuat perintah yang berikut:

Nama

1. Perintah ini bolehlah dinamakan **Perintah Duti Hiburan (Pengecualian) (No. 20) 2008**.

Pengecualian

2. Persembahan *The Man Who Planted Trees* yang akan diadakan di The Actors Studio, Bangsar Shopping Centre, Kuala Lumpur pada 7 Oktober 2008 hingga 19 Oktober 2008 dikecualikan daripada duti hiburan.

Dibuat 27 Jun 2008

[Perb.(8.09)248/39/2-1 Vol. 19(S.K.3); PN(PU²)174/VIII]

Bagi pihak dan atas nama Menteri Kewangan

DATO' HAJI AHMAD HUSNI BIN MOHAMAD HANADZLAH
Timbalan Menteri Kewangan

P.U. (A) 248.

2530

P.U. (A) 248.

AKTA CUKAI AKTIVITI PERNIAGAAN LUAR
PESISIR LABUAN 1990PERATURAN-PERATURAN CUKAI AKTIVITI PERNIAGAAN LUAR PESISIR LABUAN
(BORANG-BORANG) (PINDAAN) 2008

PADA menjalankan kuasa yang diberikan oleh seksyen 21 Akta Cukai Aktiviti Perniagaan Luar Pesisir Labuan 1990 [Akta 445], Menteri membuat peraturan-peraturan yang berikut:

Nama

1. Peraturan-peraturan ini bolehlah dinamakan Peraturan-Peraturan Cukai Aktiviti Perniagaan Luar Pesisir Labuan (Borang-borang) (Pindaan) 2008.

Pindaan Jadual

2. Peraturan-Peraturan Cukai Aktiviti Perniagaan Luar Pesisir Labuan (Borang-borang) 1991 [P.U. (A) 157/1991], dipinda dalam Jadual dengan memasukkan selepas Borang 7 borang yang berikut:

"BORANG 8/FORM 8

AKTA CUKAI AKTIVITI PERNIAGAAN LUAR PESISIR LABUAN 1990

LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

(Seksyen 3A/Section 3A)

No. Fail/File No.

PEMILIHAN OLEH SUATU SYARIKAT LUAR PESISIR

ELECTION BY AN OFFSHORE COMPANY

*Saya/Kami
*I/We

(Pegawai yang bertanggungjawab dengan pematuhan/Officer responsible for compliance)

*No. Kad Pengenalan/No. Passport
*NRIC No./Passport No.bagi pihak
on behalf of

(Nama syarikat luar pesisir/Name of offshore company)

2531

P.U. (A) 248.

membuat suatu pemilihan yang tidak boleh dibatalkan bahawa apa-apa keuntungan bagi ** tempoh asas bagi tahun taksiran [] dan tempoh-tempoh asas yang berikutnya dikenakan cukai mengikut Akta Cukai Pendapatan 1967 [Akta 51].

*make an irrevocable election that any profit for the ** basis period for the year of assessment [] and subsequent basis period to be charged to tax in accordance with the Income Tax Act 1967 [Act 51].*

[]
Tandatangan pegawai yang bertanggungjawab dengan pematuhan
Signature of officer responsible for compliance

[]

Tarikh/Date

[]

Jawatan/Designation

- * Potong mana-mana yang tidak berkenaan/* *Delete whichever is not applicable*
- ** Tempoh asas bagi suatu tahun taksiran mengikut Seksyen 2 Akta Cukai Aktiviti Perniagaan Luar Pesisir Labuan 1990 (berasaskan tahun sebelum)/
Basis period in relation to a year of assessment in accordance with Section 2 of the Labuan Offshore Business Activity Tax Act 1990 (preceeding year basis).

Dibuat 24 Jun 2008

[Perb.(c)0.217(SJ. 18) Vol. 4(SK.9)(11); LHDN.01/35/(S)/42/231-17.8;
PN(PU²)491]

TAN SRI NOR MD BIN YAKOP
Menteri Kewangan Kedua

LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

LABUAN OFFSHORE BUSINESS ACTIVITY TAX (FORMS) (AMENDMENT) REGULATIONS 2008

In exercise of the powers conferred by section 21 of the Labuan Offshore Business Activity Tax Act 1990 [Act 445], the Minister makes the following regulations:

Citation

1. These regulations may be cited as the Labuan Offshore Business Activity Tax (Forms) (Amendment) Regulations 2008.

P.U. (A) 248.

2532

Amendment of Schedule

2. The Labuan Offshore Business Activity Tax (Forms) Regulations 1991 [P.U. (A) 157/1991], is amended in the Schedule by inserting after Form 7 the following form:

"BORANG 8/FORM 8

AKTA CUKAI AKTIVITI PERNIAGAAN LUAR PESISIR LABUAN 1990

LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

(Sekyen 3A/Section 3A)

No. Fail/File No.

PEMILIHAN OLEH SUATU SYARIKAT LUAR PESISIR

ELECTION BY AN OFFSHORE COMPANY

* Saya/Kami
* I/We

(Pegawai yang bertanggungjawab dengan pematuhan/Officer responsible for compliance)

* No. Kad Pengenalan/No. Passport
* NRIC No./Passport No.

bagi pihak
on behalf of

(Nama syarikat luar pesisir/Name of offshore company)

membuat suatu pemilihan yang tidak boleh dibatalkan bahawa apa-apa keuntungan bagi ** tempoh asas bagi tahun taksiran dan tempoh-tempoh asas yang berikutnya dikenakan cukai mengikut Akta Cukai Pendapatan 1967 [Akta 51].

make an irrevocable election that any profit for the ** basis period for the year of assessment and subsequent basis period to be charged to tax in accordance with the Income Tax Act 1967 [Act 51].

Tandatangan pegawai yang bertanggungjawab dengan pematuhan
Signature of officer responsible for compliance

Tarikh/Date

Jawatan/Designation

* Potong mana-mana yang tidak berkenaan/* Delete whichever is not applicable

2533

P.U. (A) 248-249.

** Tempoh asas bagi suatu tahun taksiran mengikut Seksyen 2 Akta Cukai Aktiviti Perniagaan Luar Pesisir Labuan 1990 (berasaskan tahun sebelum)/

Basis period in relation to a year of assessment in accordance with Section 2 of the Labuan Offshore Business Activity Tax Act 1990 (preceeding year basis). "

Made 24 June 2008

[Perb.(c)0.217(SJ. 18) Vol. 4(SK.9)(11); LHDN.01/35/(S)/42/231-17.8;
PN(PU²)491]

TAN SRI NOR MD BIN YAKOOP
Second Minister of Finance

P.U. (A) 249.

AKTA KASTAM 1967

PERINTAH KASTAM (NILAI-NILAI) (MINYAK KELAPA SAWIT) (No. 28) 2008

PADA menjalankan kuasa yang diberikan oleh seksyen 12 Akta Kastam 1967 [Akta 235], Menteri membuat perintah yang berikut:

Nama dan permulaan kuat kuasa

1. Perintah ini bolehlah dinamakan Perintah Kastam (Nilai-Nilai) (Minyak Kelapa Sawit) (No. 28) 2008 dan hendaklah mula berkuat kuasa bagi tempoh 14 Julai 2008 hingga 20 Julai 2008.

Pemungutan dan pembayaran duti kastam

2. Bagi maksud pemungutan dan pembayaran duti-duti kastam, menurut peruntukan-peruntukan Perintah Duti Kastam 2007 [P.U. (A) 441/2007], nilai bagi tiap-tiap satu barang berduti yang dinyatakan dalam ruang (1) dan (2) Jadual mengikut unitnya yang tersebut dalam ruang (3) hendaklah nilai yang dinyatakan dalam ruang (4) Jadual tersebut.

CUSTOMS ACT 1967

CUSTOMS (VALUES) (PALM OIL) (No. 28) ORDER 2008

IN exercise of the powers conferred by section 12 of the Customs Act 1967 [Act 235], the Minister makes the following order:

Citation and commencement

1. This order may be cited as the Customs (Values) (Palm Oil) (No. 28) Order 2008 and shall have effect for the period from 14 July 2008 to 20 July 2008.