



GUIDELINE ON TAX TREATMENT FOR LABUAN ENTITIES WITH DORMANT STATUS

1. OBJECTIVE

The objective of this guideline is to provide clarification on the tax treatment of Labuan entities with dormant status under the Labuan Business Activity Tax Act 1990 [Act 445] as prescribed through the Labuan Investment Committee (LIC) Pronouncement 1-2019 and 2-2019 dated 19.06.2019 and 11.12.2019 respectively.

2. EFFECTIVE DATE

This guideline shall be deemed to be effective from the year of assessment 2020 and subsequent years of assessment.

3. LABUAN ENTITY WITH DORMANT STATUS

3.1. Labuan entity is considered dormant if it:

- a. has never commenced operations since the date of its incorporation;
- b. has previously been in operation or carried on business but has now ceased operations or business; or
- c. it does not have any significant accounting transaction for one financial year before the occurrence of substantial change in its equity shareholding (i.e. 50% or more). This means that there is no recording entry in the company accounts other than the minimum expenses for compliance with stipulated statutory requirement. The minimum expenses referred to are as follows:
 - (i) filing of the company's annual return under Labuan Companies Act 1990 to the Labuan Financial Services Authority (LFSA);
 - (ii) secretarial fee for filing of company's annual return as per subparagraph (i);
 - (iii) tax filing fee;

- (iv) audit fee; and
- (v) audit fee; and.

Example 1:

NAT (Labuan) Ltd. was established on 01.03.2020. However, NAT (Labuan) Ltd. is still not fully operational and only incurs expenses for filing annual return of RM500 per year. NAT (Labuan) Ltd. does not incur any expenses other than the expenses of filing such annual return. Therefore, NAT (Labuan) Ltd. is a dormant Labuan entity for the purposes of Act 445.

- 3.2. Labuan entity is NOT considered as dormant if it owns shares, real properties, fixed deposits and other similar investments including income such as rents, interest, etc. (if any) received by virtue of the mentioned ownership.

Example 2:

HCT (Labuan) Ltd. (year ended 31 December) is an investment holding company which was incorporated on 25.01.2005 under the Labuan Companies Act 1990. A sole subsidiary of HCT (Labuan) Ltd., YMH Co. Ltd. has completed its liquidation in November 2020. HCT (Labuan) Ltd. plans to begin liquidation in the second quarter of 2021. HCT (Labuan) Ltd. is not considered dormant in the year of assessment (YA) 2021 as it still holds shares in YMH Co. Ltd. until the company completes its liquidation in November 2020.

4. SUBSTANTIVE REQUIREMENT

Labuan entities which are dormant or struck off, including those under winding up proceeding or under liquidation process, which do not derive any source of income need not comply with substantial activity requirements. However, if Labuan entities resume operations, substantial requirements must be complied with until the last date of the accounting period.

Example 3:

Tvios (Labuan) Ltd. was established on 01.03.2021 and carries on business activities as a leasing company. The accounting period for the company is 01.03.2021 – 28.02.2022. Tvios (Labuan) Ltd. did not conduct any business activities until 01.09.2021. At the end of the accounting period, the net profit as per the audited accounts was RM300,000.

Based on the facts, Tvios (Labuan) Ltd. is deemed as a dormant company for a period from 01.03.2021 until 31.08.2021. As the operation of the business commenced on 01.09.2021, it must comply with the substantial requirement of a sufficient number of full-time employees in Labuan from 01.09.2021. Meanwhile, the requirement for an adequate amount of annual operating expenses of Labuan entities must be complied with before or no later than 28.02.2022.

5. RESPONSIBILITIES OF LABUAN ENTITY WITH DORMANT STATUS

The responsibilities of Labuan entities which are dormant under Act 445 are as follows:

Labuan Entities	Documents to be Submitted
Dormant / under liquidation process	<ul style="list-style-type: none">▪ Form LE1▪ Audited accounts (if any) / management accounts

LEMBAGA HASIL DALAM NEGERI MALAYSIA

Date: 20 October 2022

C.c: LHDN.01/35/(S)/42/51/360