

NOTICE FOR LABUAN ENTITIES

AN UPDATE WITH REVISED SUBSTANCE ECONOMIC SUBSTANCE REQUIREMENTS FOR CERTAIN LABUAN ENTITIES THAT ARE IN SCOPE

Following our recent [Notice](#)¹ in connection with the update on the ESR pursuant to Labuan Business Activity Tax Act 1990 ('LBATA') and the subsequent Labuan Business Activity Tax Act (Requirements for Labuan Business Activity) Regulations 2018.

Pure equity and non-pure equity holding now further revised on their ESR

Labuan FSA had on Friday, 20th December 2019, issued clarification to their latest pronouncement ([LIC Pronouncement 2-2019](#))² that provided a revised ESR for certain Labuan entities that are in scope. The revised ESR also saw the substance requirements for “**pure equity holding**” and “**non-pure equity holding**” business activities further clarified as follows –

Labuan entities (Holding Company)	Existing ESR		Revised ESR	
	FTE ³	OPEX	FTE	OPEX
Pure equity holding	-	-	<ul style="list-style-type: none"> • Not required. • Instead to comply with management and control requirements 	RM20,000 (approx. USD5K)
Non-pure equity holding	2	RM50,000	1	RM20,000 (approx. USD5K)

For more details, including those that affected certain Labuan licensed entities which are in scope, please refer to the Labuan FSA's revised ESR in the [Clarification](#)⁴ statement as well as the [Schedules](#)⁵.

Status of trading entities still uncertain

As informed previously, Labuan FSA and the regulations are still ambiguous on the status of Labuan entities carrying on non-licensed trading activities whether they fall within the scope of substance.

At this point, we are still unable to advise you further if such entities are required to comply with the substance requirements. Further industry consultation is ongoing with Labuan FSA with respect to this issue.

Indicative direction on economic substance requirements for all Labuan entities

May we remind you and your clients that all Labuan entities are to comply with the economic substance requirements by the deadline. Labuan entities that deem non-compliant will be taxed at the higher tax rate of 24% under the soon to be enacted Labuan Business Activity Tax (Amendment) Bill 2019.

¹ Notice Labuan Entities (Ref. HMRKLB00219) dated 19th December 2019

² LIC Pronouncement 2-2019

³ FTE – full-time employee

⁴ Clarification to Labuan Investment Committee (LIC) Pronouncement 2-2019

⁵ Labuan Business Activity Tax Act (Requirements for Labuan Business Activity) Regulations 2018 (P.U. (A) 392) – please scroll down for English version

Proposed solutions for Labuan entities that carry on business activities of pure and non-pure equity holding

Based on the revised ESR for Holding Company i.e. pure and non-pure equity holding business activities, and in view of maintaining the preferential tax rate of 0%, the following recommendations may be implemented in order to comply with the substance requirements.

For **pure equity holding** entity, to undertake –

Exercise of management and control and meet the RM20K OPEX in Labuan

Option 1

- by holding board and members’ meetings, at least twice yearly, in Labuan to reflect that the entity undertakes its decision makings in, from and through Labuan; and
- cover all expenses including but not limited to company’s annual renewals, travelling, accounting services, etc. in Labuan.

Alternatively, Option 2

- to appoint a nominee resident director and shareholder to meet the ‘management and control’ requirements in Labuan, which may be outsourced to us;
- the nominees to hold board and members’ meetings, at least twice yearly, in Labuan to reflect that the entity undertakes its decision makings in, from and through Labuan;
- cover all expenses including but not limited to company’s annual renewals, travelling, accounting services and nominee services, etc. in Labuan.

For **non-pure equity holding** entity, to undertake –

Hire 1 full-time employee in Labuan and meet the RM20K OPEX

- by employing 1 full-time staff (with a minimum salary of RM1,200 per month) and cover expenses but not limited to staff payrolls, company’s annual renewals, accounting services, basic office premises rental (if necessary), etc. Again, these can be made available by us.

We reiterated that this is not a “one-size-fits-all” solution for compliance. Nevertheless, we are ready to meet the demand in order to provide solutions, tailored to your or your client’s needs. Outsourcing of certain activities such as human resources, nominee services, administrative and office premises (if necessary) will be made available by us to your or your client’s entities in order to keep the cost of meeting the substance requirements low, reasonable and controlled.

Further guidance to be issued by Labuan FSA

We anticipate that Labuan FSA will continue to issue further circular to the industry until the final codes or guidelines are ready. We will keep you updated with any new developments in connection with the ESR, in particular for trading business activities.

Please note that this notice is intended to update you with the revised changes affecting all Labuan entities. It should not be used or relied upon as a substitute for advice or a basis for formulating your or your client’s business decisions as to the tax and/or the economic substance requirements.

We urge that you contact us if you require further information or would like to discuss how the revised changes will impact your or your client’s business. Please contact us for more details and further consultation.

Thank you.

Yours faithfully,

Sukor Ashak
Managing Director
HMR Konsultan (Labuan) Ltd.