

# CORPORATE MIGRATION: MEETING THE NEED FOR SUBSTANCE

## THE AGE OF TAX TRANSPARENCY

The full implementation of the Common Reporting Standard (CRS) by Organisation for Economic Co-operation and Development body (OECD) in 2018 is aimed at preventing tax evasion by implementing the process of global automatic exchange of information between CRS-participating jurisdictions.

CRS requires financial institutions licensed in a jurisdiction that have signed up to this protocol, to report financial accounts held directly or indirectly by account holders, both individuals and incorporated entities, that are deemed foreign entities in that said jurisdiction.

This enhanced level of corporate transparency brings with it a greater focus on the concept of economic substance and the way substance may be created. Thus, being able to create substance is a key element to consider when selecting a jurisdiction to redomicile to.

## MEETING THE NEED FOR SUBSTANCE

Substance is a common tax concept used in assessing cross-border tax situations that calls into question the level of operational activity and decision-making process which is conducted in a particular jurisdiction.

In general, a company needs to demonstrate that it has presence via its functional structure such as a physical office, staff administering the day-to-day operations of the company and the necessary operating tools or equipment, in order to evidence substance in that jurisdiction.

In addition, domestic management staff should have basic decision-making authority to run the business and key decisions are made by the board of directors while physically present in that said jurisdiction. Without such arrangements, it is possible that tax authorities would conclude that key decisions are made outside the jurisdiction where the company is operating, hence creating a lack of economic substance.

Simply put, tax residency will not be automatically assumed even if a company is registered in a particular jurisdiction.

## WHAT IS CORPORATE MIGRATION OR RE-DOMICILIATION?

Corporate migration or re-domiciliation occurs when a company undergoes a relocation process from one jurisdiction to another, while retaining its legal identity.

The company does not need to go through a liquidation process and there is no need to transfer its assets and liabilities to a newly incorporated company. Nor it is necessary to liquidate the original company to avoid possible tax and other statutory implications in the country of origin.

## WHY SHOULD A COMPANY RE-DOMICILE?

There are various reasons for a company to re-domicile. Among them are:

- Creating tax and economic substance;
- Enjoying the benefits of double tax treaties;
- Access to modern infrastructure;
- Availability of talent;
- Access to capital markets and financing;
- Political and social stability;
- Lower operating cost;
- Aligning its place of registration with its shareholders' base; and
- Availability of business-friendly legislation

## WHY IS LABUAN IBFC THE IDEAL CHOICE FOR RE-DOMICILIATION?

- It is a well-regulated international business and financial centre conforming to international standards and practices;
- It is legislated by common law framework. It offers a comprehensive suite of legislation enabling companies to create tailor-made solutions for business growth and innovation;
- It offers the simplest and lowest tax rate in Asia; only 3% of net audited income or a flat rate of MYR20,000 to be elected annually for trading activities and 0% tax on non-trading activities;
- No foreign exchange control, stamp duty, capital gains, inheritance, withholding and government services tax applies;
- Zero tax on foreign director's fee. In fact, 50% of the total salary earned by a foreign staff holding managerial and above position in Labuan company is exempted from tax;
- It has access to more than 80 Malaysian double tax treaties, one of the largest double tax treaty jurisdictions in Asia, making Labuan the ideal choice for international tax planning;
- It is strategically located, with connections to all key markets in Asia and easily accessible by international or domestic flights;
- It shares a similar time zone with most countries in Asia, making it an ideal place to deal with Asian businesses;
- A jurisdiction designated as a Federal Territory of Malaysia; which ranks 25th out of 138 economies by the Global Competitiveness Report 2016-2017, released by the Switzerland-based World Economic Forum;
- Supported by modern and comprehensive infrastructure to enable business growth. Labuan entities may establish marketing and/or co-location office in Kuala Lumpur and Johor Bahru;
- Businesses in Labuan can access to a large pool of highly skilled workforce in Malaysia with good command of English, Chinese and Bahasa Malaysia. Work permit and dependent visa(s) to stay in Labuan and/or Malaysia may be applied too;
- Significantly lower operating and maintenance costs as compared to other jurisdictions, i.e. company registration, renewal, professional, legal, accountant and audit fees, office rental; and
- Labuan Company is recognised and accepted by Singapore Exchange Limited (SGX), Hong Kong Exchange (HKEX) and Australia Securities Exchange (ASX) for public offering.

## PRE-APPROVAL

A foreign company may, prior to applying for the re-domiciliation registration as a Labuan company, request that such registration be pre-approved in principle by Labuan Financial Services Authority.

Once pre-approved, a certificate confirming the approval will be issued and the applicant has 12 months from the date of the certificate to complete the re-domiciliation.

## REQUIRED DOCUMENTATION FOR PRE-APPROVAL APPLICATION

- Notice of Board Resolution;
- Memorandum & Articles from the country of origin (in English);
- Consent of Shareholders/Debenture Holders/Creditors;
- Consent of transfer by the origin jurisdiction;
- Letter of Declaration/Affidavit by Director;
- Certified Copy of Certificate of Incorporation from its country of origin;
- Certified Copy of the Register of Directors;
- Certified Copy of the Register of Members;
- Certified Copy of Discontinuance of Deregistration Certificate from country of origin;
- Statutory Declaration of Compliance; and
- Other supporting document upon request.

## CONTACT

For further information, please visit [www.labuanibfc.com](http://www.labuanibfc.com) or email [businessdevelopment@libfc.com](mailto:businessdevelopment@libfc.com).

Further reference can be made to the following legislation and guidelines available at [www.labuanibfc.com](http://www.labuanibfc.com).



FOR MORE INFORMATION, LOG ON TO [WWW.LABUANIBFC.COM](http://WWW.LABUANIBFC.COM)

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