AN INTRODUCTION TO LEASING IN LABUAN

Over the years, Labuan International Business and Financial Centre’s (Labuan IBFC) leasing sector has grown in tandem with the region’s economic growth, as demand for capital equipment has showed no sign of abating in order to meet the demands of a developing region.

The ease through which leasing transactions can be structured, along with access to a highly efficient tax framework has no doubt worked in Labuan IBFC’s favour as it is now home to more than 400 leasing companies, all of which are reaping the benefits of structuring leasing arrangements via Labuan IBFC. Companies from the oil and gas industry, airlines, shipping and other large corporations are structuring their leasing arrangements via Labuan IBFC’s efficient tax regime and business-friendly regulatory environment.

Regulated and licensed by Labuan Financial Services Authority (Labuan FSA), Labuan leasing companies enjoy an ideal balance of fiscal neutrality and certainty, allowing for effective management of their operational cost.

In addition, it is cost-efficient to create economic substance on Labuan island, where there is a large English educated population and an extensive array of services providers.

WHY LABUAN IBFC?

- It has one of the most competitive and flexible fiscal regimes in Asia.
- It boasts a modern suite of robust legislative provisions.
- It has been declared as a white-listed jurisdiction by the Organisation of Economic and Co-operation and Development (OECD) and complies to all international provisions on effective exchange of tax information and transparency.
- It has access to the Malaysian Double Taxation Network spanning more than 80 countries.
- It is strategically located in the heart of Asia Pacific, sharing its time zone with many major Asian cities.
- As part of Malaysia, Labuan is a member of the ASEAN trade bloc, including the ASEAN Economic Community.
- Labuan Financial Services Authority as the single supervisory and regulatory authority.
- It offers an international ship registry for foreign-owned ships in Labuan.
- It is home to the world’s first omnibus Islamic Finance legislation which encompasses all requirements for Shariah-compliant financial services, including Shariah-compliant leasing solutions (known as Ijarah).
- Has in place stringent anti-money laundering and counter-terrorist financing regulations.
THE BENEFITS OF SETTING UP A LABUAN LEASING STRUCTURE

**Profit Tax**
Leasing activities fall within the definition of Labuan business activity and specifically as Labuan trading activity. As such, pursuant to the provisions of the Labuan Business Activity Tax Act 1990 (LBATA), the Labuan leasing company is taxable at a rate of 3% on chargeable net profits as per the audited accounts or an election to pay a flat tax of MYR20,000.

**Withholding Tax Savings**

**Payments out of Labuan**
- No withholding tax on payments made by a Labuan Company on:
  - Dividends
  - Interests
  - Royalties
  - Technical fees
- This provision applied regardless whether the payments are made to a resident of Malaysia or non-resident of Malaysia.

**Payments into Labuan**
- A Labuan Company if managed and controlled from Labuan is considered as a tax resident of Malaysia and thus payment of lease rental by a Malaysian Domestic company to a Labuan Company is not subject to any withholding tax.
- Payment of lease rental from a company based in other jurisdictions to a Labuan Company may be subject to some form of withholding tax. It is necessary to check the legislation of the jurisdiction concerned to ascertain this. Furthermore, it is important to note that Labuan as part of Malaysia has access to a large number of beneficial Double Taxation Agreements.

**Tax deduction for lease**
- Lease rental paid by a Malaysia Domestic Company to a Labuan Company is a tax-deductible expense of the Malaysian Domestic Company.
- For company based in other jurisdictions, it is necessary to refer to the relevant legislation concerned. Treatment of lease rental may be subject to different considerations.

**Receipt of dividend from Labuan Company**
- Malaysian resident entities receiving dividends declared by the Labuan Company to shareholders is tax-exempt from Malaysian corporate tax [Income Tax (Exemption) (No.22) Order 2007 of the Malaysian Income Tax Act, 1967].
- Non-Malaysian resident entities receiving dividends from a Labuan Company are advised to refer to Malaysia’s list of Double Taxation Agreements signed with the relevant jurisdiction to ascertain the preferential treatment.

**Other tax savings**
Labuan IBFC does not impose a tax on capital gains, wealth, stamp duty or import duty. In addition, Labuan IBFC provides 50% tax abatement for expatriate professionals and managers, and 100% exemption for director’s fees received by non-citizen directors.

With banking facilities based on both conventional and Islamic principles offered by Labuan banks, coupled with a low tax regime and the inclusion of Labuan IBFC in most of the Double Taxation Agreements that Malaysia is a signatory to, Labuan IBFC stands out as a prominent leasing hub in the Asian region.
Notes:

- Subject to prior approval from the Labuan Financial Services Authority, leases may be arranged for Malaysian resident.
- A Labuan Company is subject to payment of annual license fee of MYR60,000 on the lease of assets to Malaysian residents but not on leases to non-Malaysian resident entities.
- The lease rental paid by the Malaysian resident entity to the Labuan Company is a tax deductible expense for the Malaysian resident.
- Profits declared as dividends out of retained earnings to the Malaysian resident shareholder(s) by the Labuan Company will not be subject to further Malaysian corporate tax [Income Tax (exemption) (No. 22) Order 2007].
- Further variations include a leasing arrangement entered into by a Malaysian resident entity that leases assets from a Labuan Company owned by a foreign subsidiary or associate of the Malaysian resident entity.

EXAMPLE OF AIRCRAFT FINANCING VIA LEASING STRUCTURE
LABUAN LEASING APPLICATION FEES

All licensees are required to pay to Labuan FSA an annual licence fees on or before 15 January of each year.

Annual Fee
- MYR60,000 (Lease to Malaysian Resident)
- No fee imposed for lease to Non-Malaysian Resident

Each Subsequent Leasing Transaction
- MYR20,000 (Lease to Malaysian Resident)
- No fee imposed for lease to Non-Malaysian Resident