

LABUAN BUSINESS ACTIVITY TAX (AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO IMPROVE INTERNATIONAL TAX COMPLIANCE AND TO IMPLEMENT THE FOREIGN ACCOUNT TAX COMPLIANCE ACT) REGULATIONS 2022

PU (A) 280
24 August 2022

In exercise of the powers conferred by paragraph 21(1)(b) of the Labuan Business Activity Tax Act 1990 [Act 445], the Minister makes the following regulations:

CITATION

- 1** These regulations may be cited as **Labuan Business Activity Tax (Automatic Exchange of Financial Account Information between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act) Regulations 2022**.

APPLICATION

- 2(1)** These Regulations shall have effect for and in connection with the implementation of provisions on the obligations arising under the Agreement.
- 2(2)** These Regulations shall apply to any Labuan entity stated in the Schedule to the Act which is a Malaysian Financial Institution as defined under subparagraph 1(l) of Article 1 of the Agreement.

INTERPRETATION

- 3(1)** In these Regulations—

“Funds” means Broad Participation Retirement Funds and Pension Funds of an exempt beneficial owner;

“FATCA” means the Foreign Account Tax Compliance Act;

“Malaysian Financial Institution” means—

- (a) any Financial Institution resident in Malaysia, but excluding any branch of such Financial Institution that is located outside Malaysia; and
- (b) any branch of a Financial Institution not resident in Malaysia, if such branch is located in Malaysia;

“Reporting Malaysian Financial Institution” means any Labuan entity which is a Malaysian Financial Institution;

“information” means the required information in relation to U.S. Reportable Accounts described in Articles 2 and 3 of the Agreement;

“return” means a return stating the information in the format as may be determined by the Director General;

“Agreement” means the Agreement between the Government of Malaysia and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act signed on 21 July 2021 as published in the Gazette of the Government of the Federation as P.U. (A) 278/2022 on 1 September 2022.

- 3(2)** Words and expressions which are not defined in these Regulations shall have the same meaning as assigned to them in the Agreement.

DUE DILIGENCE OBLIGATIONS

- 4(1)** Every Reporting Malaysian Financial Institution which is not a Non-Reporting Malaysian Financial Institution shall identify U.S. Reportable Account and accounts held by Non-Participating Financial Institution from the Financial Accounts maintained by the Reporting Malaysian Financial Institution by applying the due diligence procedure as specified in Annex I to the Agreement.
- 4(2)** Every Reporting Malaysian Financial Institution shall establish, maintain and document the due diligence procedure referred to in subregulation (1).
- 4(3)** The Financial Account referred to in subregulation (1) shall not include any Accounts Excluded from Financial Accounts as defined in section V of Annex II to the Agreement.

REPORTING OBLIGATION

- 5(1)** Every Reporting Malaysian Financial Institution shall—
- (a) in respect of the calendar year 2014 to calendar year 2022, furnish a return to the Director General, on or before 30 June 2023; and
 - (b) in respect of every following calendar year, furnish a return to the Director General, on or before 30 June of the year following the end of the calendar year to which the return relates.
- 5(2)** The return shall set out the required information that is maintained by the Reporting Malaysian Financial Institution at any time during the relevant calendar year.
- 5(3)** If a Reporting Malaysian Financial Institution—
- (a) applies the due diligence procedure specified in Annex I to the Agreement for a calendar year; and
 - (b) found that no account is identified as a U.S. Reportable Account,

the Reporting Malaysian Financial Institution shall furnish to the Director General a return which provides that the Reporting Malaysian Financial Institution does not maintain such U.S. Reportable Account in respect of that calendar year.

- 5(4)** Every Reporting Malaysian Financial Institution shall comply with all the applicable registration requirements on the IRS FATCA registration website.
- 5(5)** Any person required under these Regulations to provide information to the Director General, shall at such times and frequency and in such form and manner as may be determined by the Director General, provide him with such information.
- 5(6)** A Reporting Malaysian Financial Institution is not exempt from providing the information as required under these Regulations by reason that the Reporting Malaysian Financial Institution has the obligation not to collect, use or disclose such information.

FURNISHING OF RETURN

- 6** A return shall be furnished on an electronic medium or by way of electronic transmission in the format as may be determined by the Director General.

USE OF INFORMATION BY DIRECTOR GENERAL

- 7** All information provided or obtained under these Regulations may be used by the Director General for any purpose connected with the administration of the Act and the Income Tax Act 1967 [Act 53].

PAYMENT TO NON-PARTICIPATING FINANCIAL INSTITUTION

- 8(1)** A Reporting Malaysian Financial Institution shall identify payment which is made in the calendar year 2015 and calendar year 2016 by the institution to Non-Participating Financial Institution by applying the due diligence procedure as specified in Annex I to the Agreement.
- 8(2)** For the purpose of this regulation—
- (a) subregulation (1) applies only when the payment is made to a Non-Participating Financial Institution as an account holder;
 - (b) a Reporting Malaysian Financial Institution shall—
 - (i) in respect of the calendar year 2015 and calendar year 2016, furnish a return to the Director General on or before 30 June 2023; and
 - (ii) report to the Director General all payment made to Non-Participating Financial Institution without the need to distinguish the nature of the payment and whether they are U.S. or non-U.S. sourced.
- 8(3)** In these Regulations—
- (a) “payment” includes amount credited to a Financial Account of a Non-Participating Financial Institution; and
 - (b) the return referred to in paragraph 2(b) shall set out the names and the aggregate amount of payment made to each Non-Participating Financial Institution for the reporting years 2015 and 2016.
- 8(4)** A Reporting Malaysian Financial Institution—

- (a) that fulfills the description under subparagraph 1(d) of Article 4 of the Agreement shall withhold thirty percent of any U.S. Source Withholdable Payment to any Non-Participating Financial Institution; and
- (b) that comes within the terms of subparagraph 1(e) of Article 4 of the Agreement shall make a disclosure of information to the Director General in accordance with the requirements of that subparagraph.

8(5) Paragraph 5 of Article 4 of the Agreement shall apply to Reporting Malaysian Financial Institution.

8(6) If for a calendar year no payment is identified as referred to in subregulation (1), the Reporting Malaysian Financial Institution shall prepare and provide a return to the Director General for the calendar year stating that fact.

NON-REPORTING MALAYSIAN FINANCIAL INSTITUTION AND EXEMPT BENEFICIAL OWNER

9(1) Non-Reporting Malaysian Financial Institution is exempted from complying with these Regulations.

9(2) Notwithstanding subregulation (1), an exempt beneficial owner other than Funds who derives payment with respect to an obligation held in connection with a commercial financial activity of a type engaged by a Specified Insurance Company, Custodial Institution or Depository Institution may be treated as a Reporting Malaysian Financial Institution to the extent of such commercial financial activity engaged by it.

9(3) A registered deemed-compliant Foreign Financial Institution may be required by the Director General to submit—

- (a) annual return if any U.S. Reportable Account is discovered; or
- (b) NIL return if there is no U.S. Reportable Account.

9(4) A registered deemed-compliant Foreign Financial Institution referred to in subregulation (3) and in the Agreement is—

- (a) a Malaysian Financial Institution which has been properly allocated with a Global Intermediary Identification Number by the IRS for the purpose of FATCA; and
- (b) a financial institution as described in section III of Annex II to the Agreement.

ACCOUNTS THAT ARE NOT U.S. REPORTABLE ACCOUNTS

10(1) Accounts that fulfill the description in section V of Annex II to the Agreement are excluded from the definition of Financial Account and are not U.S. Reportable Account.

10(2) Any account maintained by a Financial Institution for an exempt beneficial owner is not a U.S. Reportable Account.

RECORDS

- 11(1)** Every Reporting Malaysian Financial Institution shall keep and retain in safe custody records that the Reporting Malaysian Financial Institution obtains or creates for the purpose of complying with these Regulations, including self-certification and records of documentary evidence.
- 11(2)** For the purpose of this regulation, every Reporting Malaysian Financial Institution required by these Regulations to keep and retain in safe custody records shall—
- (a) if retained in electronic format, shall be readable for the retention period referred to in subregulation (3); and
 - (b) upon request of the Director General, provide an English translation, if the Reporting Malaysian Financial Institution obtains or creates the records in a language other than the English language.
- 11(3)** Every Reporting Malaysian Financial Institution shall retain those records for a period of at least seven years following—
- (a) in the case of a self-certification, the last day on which a related Financial Account is opened; and
 - (b) in any other case, the end of the last calendar year to which the record relates.

SERVICE PROVIDERS

- 12(1)** A Reporting Malaysian Financial Institution may appoint a third party as its agent to carry out the obligations imposed on it under these Regulations.
- 12(2)** Where a third party is appointed by a Reporting Malaysian Financial Institution in accordance with subregulation (1), the Reporting Malaysian Financial Institution shall—
- (a) at all times, have access to and be able to produce, where so requested by the Director General, the records and documentary evidence used to identify and report on U.S. Reportable Account; and
 - (b) be responsible for any failure of that third party to carry out the obligations of the Reporting Malaysian Financial Institution and regulations 13 and 17 shall apply to the Reporting Financial Institution notwithstanding that—
 - (i) the actions were the action of that third party; or
 - (ii) the failure to act was the failure by that third party to act.

POWERS OF DIRECTOR GENERAL

- 13** The Director General may—
- (a) exercise all the powers vested in him under the Act to administer and enforce compliance with the provisions of the Agreement and these Regulations;

- (b) by notice, require a Malaysian Financial Institution to furnish to him within a time specified in the notice with such information including copies of any relevant books, records or other documents as the Director General may reasonably require for any purpose relating to the administration or enforcement of these Regulations;
- (c) at all times have full and free access to enter any premises or place of business of a Malaysian Financial Institution for the purpose of—
 - (i) administering and implementing compliance with the provisions of the Agreement and these Regulations;
 - (ii) examining the procedures put in place by the Malaysian Financial Institution for the purpose of ensuring compliance with that Malaysian Financial Institution's obligations under these Regulations; and
- (d) make extracts from or copies of all or any part of the books, records or other documents or other materials made available to him or require that copies of books, records or other documents be made available to him for any purpose relating to the administration or enforcement of these Regulations.

INCORRECT RETURN

- 14** Any person who makes an incorrect return on behalf of himself or another person by omitting the information required to be provided in accordance with these Regulations, unless he satisfies the court that the incorrect return was made in good faith, shall be guilty of an offence and shall, on conviction, be liable to a fine of not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.

INCORRECT INFORMATION

- 15** Any person who gives any incorrect information on behalf of himself or another person in relation to any information required to be provided in accordance with these Regulations, unless he satisfies the court that the incorrect information was made in good faith, shall be guilty of an offence and shall, on conviction, be liable to a fine of not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.

FAILURE TO COMPLY WITH THESE REGULATIONS

- 16(1)** Any person who fails to comply with these Regulations shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding two years or to both.
- 16(2)** Where a person has been convicted of an offence under subregulation (1), the court may make a further order that the person shall comply with the relevant provision of these Regulations under which the offence has been committed within thirty days or such other period as the court deems fit, from the date the order is made.

ANTI-AVOIDANCE

- 17** The Director General may, without prejudice to such validity as it may have in any other respect for any other purpose, disregard or vary the arrangement or the practice and make such adjustments as he thinks fit with a view to counteracting the whole or any part of any such direct or indirect effect

of the arrangement or the practice if the Director General has reason to believe that any person has entered into any arrangement or engages in a practice which has the direct or indirect effect of—

- (a) relieving any person from any liability which has arisen or which would otherwise have arisen to furnish to the Director General a return;
- (b) causing any person to evade or avoid any obligation which is imposed or would otherwise have been imposed under these Regulations; or
- (c) hindering or preventing the operation of these Regulations in any respect.