

Briefing Session: Compliance with Labuan Leasing Policy

18 April 2018

Key areas

- I. Preamble**
- II. Updates: OECD's assessment on Labuan**
- III. Minimum expectation on substance requirements**
- IV. Other updates on operational matters**

Leasing developments... *intensified international fiscal standards*

The OECD's BEPS initiatives to realign fiscal rules globally...

Action 5: Forum on Harmful Tax Practices (FHTP)

⇒ address harmful tax practices to ensure tax regime across countries committed to the inclusive framework for BEPS implementation are equitable, transparent and substantive

Key determining factors

	Ring fencing	Substantial activities	Transparency
Labuan Leasing			



Ring fencing factor

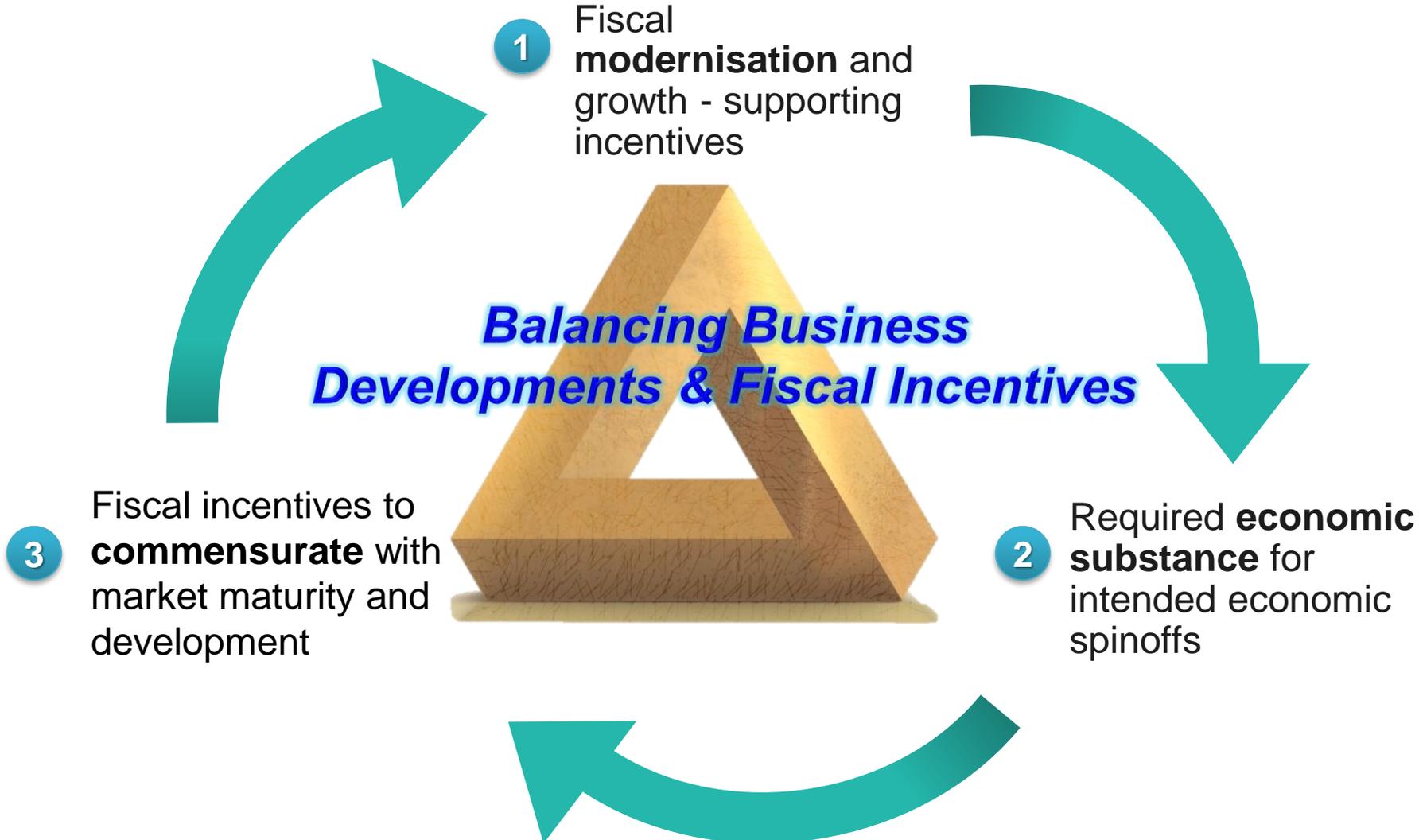
- Not permitted to transact in Ringgit Malaysia
- No approvals required for transactions with non-residents



Substantial activities factor

- No substantial activities requirements

Leasing developments... *national economic aspiration*



Leasing developments... *Labuan economic developmental pursuit*

Promote vibrancy and livability in Labuan island

1 Substance Policy

- *Labuan entities to **establish substantive commercial presence** in Labuan island to warrant for Labuan's tax incentive.*
- *Beyond key FIs, substantial business requirements are **being expanded to other Labuan entities.***

2 Focus on real economic activities

- *Labuan IBFC supports for **real economic activities** within the Island.*
- *Spur **economic spinoff** to fuel the Island's future development.*

Key substance requirements in Labuan

1. Physical operational office
2. Substantial business activities
3. Employment
4. Annual business spending

Intended outcome

1. Critical mass within the island
2. Increased local talent to support the expanding Labuan IBFC
3. Enhanced livability and infra-support in the Island
4. Labuan island connectivity



Areas of Revisions...*changes needed to conform to international standards & best practices*

Pre
Dec 2017

Existing policies (status quo)

- LFSA's prior approvals: ❶ subsequent leasing transactions ❷ new appointment or change of directorship and shareholding
- Opening of bank account in Labuan and/or Malaysia
- Record keeping in Labuan

Post
Dec 2017

Enhanced policies

- Harmonised requirements (R & NR dealings)
- Physical office establishment requirement
- Stamping of leasing agreement(s)

New policies

- Substantial activities
- Employment
- Annual business spending



*Updates on OECD FHTP's assessment
on Labuan leasing regime*

Updates on OECD's 49th meeting of FHTP...

49th Meeting: Forum on Harmful Tax Practices (4 - 6 April 2018)

- ⇒ Attended by 150 members of the BEPs inclusive framework
- ⇒ Assessment on Tax Regime

FHTP have agreed on the amendments made by Labuan FSA:

- ✓ *Removal of currency restrictions*
- ✓ *Harmonised requirements for leasing with non-residents & residents*
- ✓ *Imposition of substance requirements*

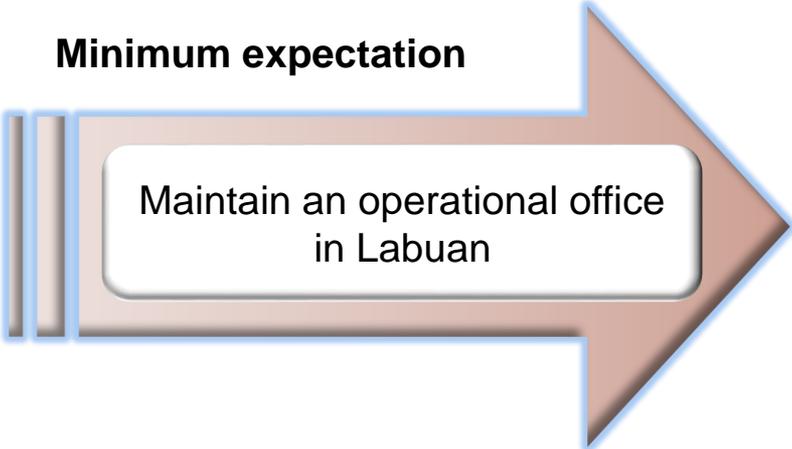
Labuan leasing regime is concluded as not harmful



Minimum expectations on substance requirements & other operational updates

Substance expectations for Labuan leasing companies... (a) Operational office

Minimum expectation



Policy allowance

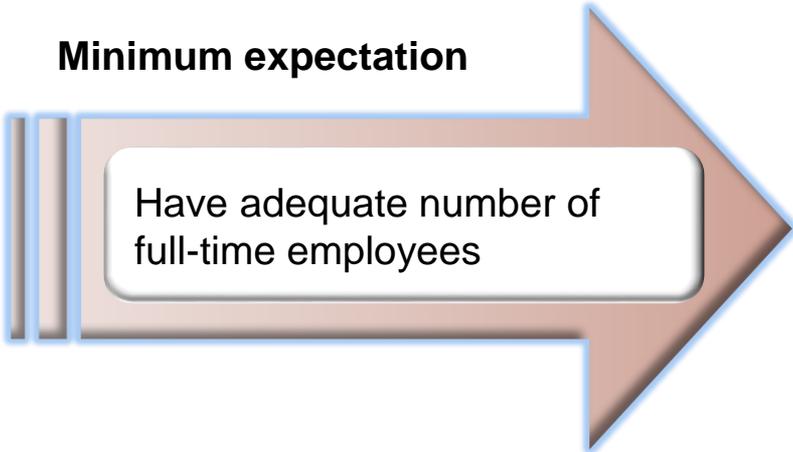
- *allow to rent premises*
- *dedicated office space which is independent from office of other entity(s) with visible signage*

No	Scenario	Clarification
1	Can leasing company rents an office space provided by the Labuan trust companies or other service provider(s)?	<i>Yes. The office space must be properly segregated and “china-wall” partitioned.</i>
2	For a Malaysian-owned leasing company, can the office be shared in Labuan?	<i>Yes, as they are related companies.</i>

Substance expectations for Labuan leasing companies... (b) Employment

Policy allowance

Minimum expectation



- *minimum of 2 staff stationed at its Labuan office*
 ⇒ *Phased implementation: allow for 1 staff until 2021*

No	Scenario	Clarification
1	Can the leasing company's full time employee work elsewhere instead of the office in Labuan?	<i>No. The Labuan office is expected to be manned during working hours to manage or carry out the leasing activities.</i>
2	Can the employee serve both the leasing company and its other entities within the group?	<i>Yes, as long as the office is in Labuan.</i>

Substance expectations for Labuan leasing companies... (c) Key leasing activities

Minimum expectation

Core income generating activities

- a. Identify & acquire of assets
- b. Solicit & negotiate leasing terms
- c. Mgmt of leased assets including financing
- d. Professional services, e.g. legal and tax

Basic functions

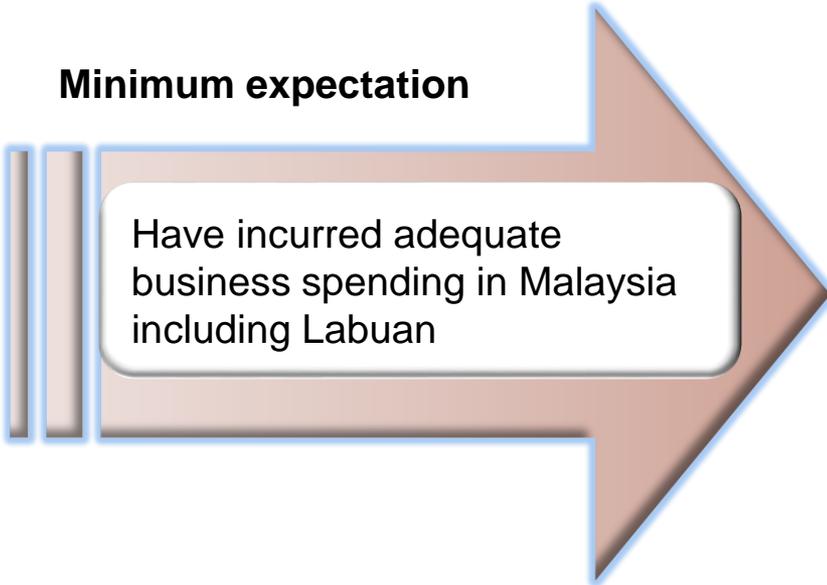
- a. Compliance to statutory requirements
- b. Accounting and record keeping
- c. Board meeting

Policy allowance

- *Depending on the business model of the leasing companies ⇒ at minimum, the basic functions must be carried out from the Labuan office.*
- Other examples of activities:
 - ⇒ *signing of leasing agreements, strategic business discussions and decision making etc.*

No	Scenario	Clarification
1	Is it obligatory for all the listed activities to be carried out in Labuan office?	<i>LFSA expects the core income generating activities to be carried out from the Labuan Office depending on the business nature of the individual leasing companies.</i>
2	Can a leasing company hire a service provider to undertake certain business activities?	<i>Any core income generating activities undertaken by a third party requires LFSA's prior approval.</i>

Minimum expectation



Policy allowance

- *Min of USD50,000 p.a.*
 - *any business spending incurred related to the leasing business in Malaysia including Labuan*
- ⇒ *may include statutory fee, service providers' fees, defraying payment such as office rental and staff salary*

No	Scenario	Clarification
1	Is lease rental considered as local spending?	<i>Lease rental paid to counterparties in Malaysia are locally paid expenses and may be considered as local business spending.</i>

Other operational clarifications

LFSA's prior approval

In the event of a sale of asset or a novation, is LFSA's prior approval needed?

- a. *Disposal or sale of asset only requires notification to LFSA.*
- b. *Novation is considered as a new lease arrangement and requires LFSA's prior approval.*

Does renewal of lease agreement with the same lessee, but reduced leased asset, require LFSA's prior approval?

Notification is suffice

Is LFSA's prior approval needed for each work order issued pursuant to an approved master leasing agreement to utilise the leased asset?

No notification or approval is required if there is no contractual changes to the approved leasing transactions i.e. approved leased asset & lessee specified under the master agreement.

Does the change of shareholding refers to both direct and indirect shareholdings?

Only changes of direct shareholdings require LFSA's prior approval.

Is there any other criteria for approval on the appointment of director other than "Fit and Proper Person"?

Fit and proper person requirements apply to all key functionalities of Labuan licensees including Board, senior management and relevant officers of Labuan leasing companies.

Stamping of documents

Is the leasing agreement required to be physically stamped at IRB office, Labuan branch?

E-stamping is available to facilitate the industry players at <https://stamps.hasil.gov.my>



CONTACT US

query.leasing@labuanfsa.gov.my



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