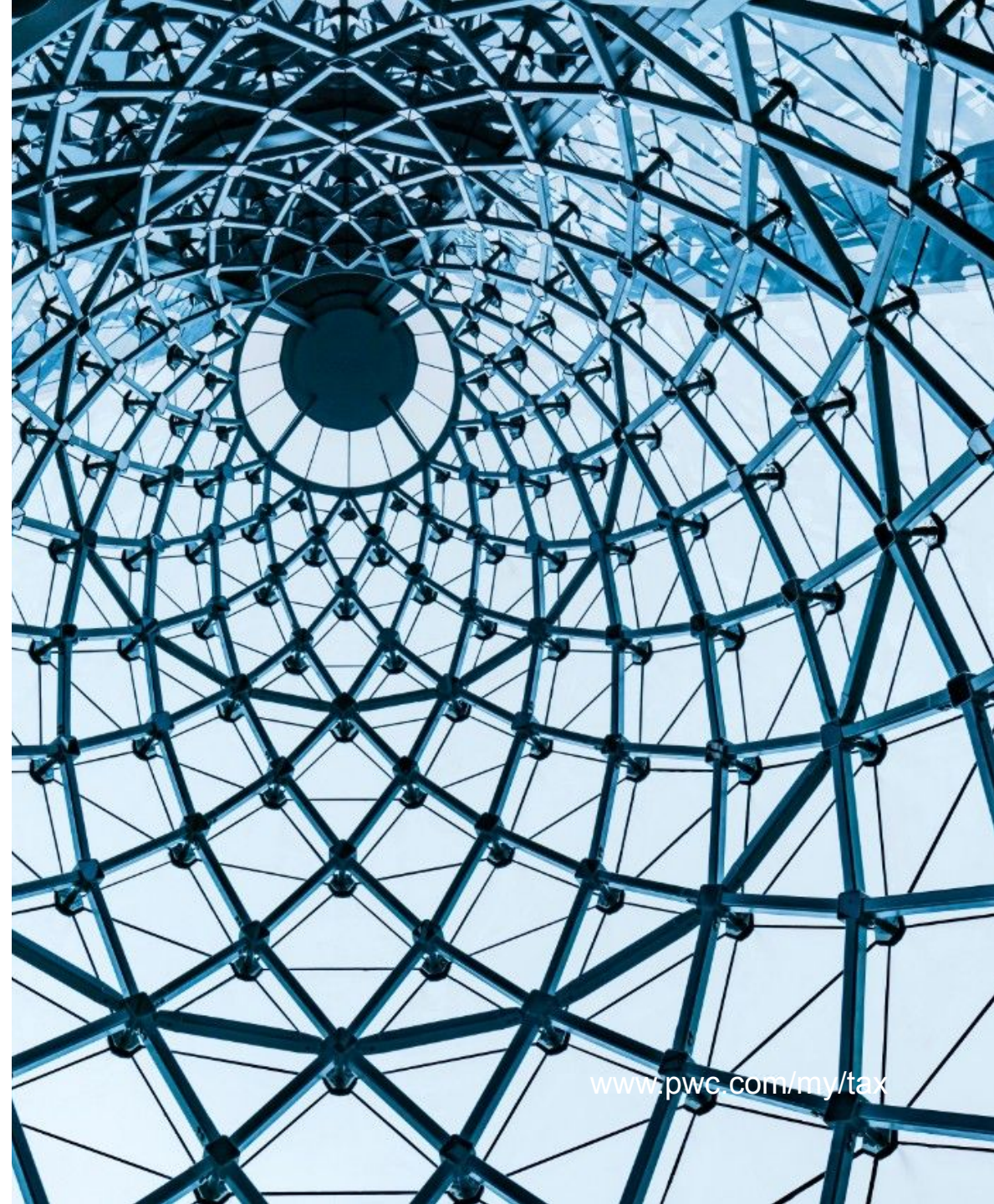




TaXavvy

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Tax Amendment Bills of 2019



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Labuan Business Activity Tax (Amendment) Bill 2019

The Labuan Business Activity Tax (Amendment) Bill 2019 (“Labuan Bill”) proposes amendments to the Labuan Business Activity Tax Act 1990 (LBATA 1990) to enable Labuan entities to comply with the international requirements, in particular the requirements of the Forum on Harmful Tax Practices (FHTP).

The key proposal brought about by the Labuan Bill are outlined here.



Compliance with substantial activities requirements

The Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 specify the following substantial activities requirements:

- minimum number of full time employees in Labuan, and
- minimum amount of annual operating expenditure in Labuan

A Labuan entity is required to comply with the above requirements in order to enjoy the preferential tax rate of 3% under the LBATA 1990.

Proposed

A Labuan entity which does not comply with the above substantial activities requirements will be taxed at the rate of 24% on its chargeable profits for a year of assessment (YA) under the LBATA 1990 and not under the Income Tax Act 1967 (ITA 1967). Chargeable profits of a Labuan entity are the net profits as reflected in its audited accounts.

[Effective from YA 2020]

Treatment of royalty and other income from intellectual property right

Currently a Labuan entity carrying out Labuan non-trading activity is not subjected to tax. Non-trading activities include the holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan.

Proposed

- Royalty income or other income from the commercial exploitation of an intellectual property right are excluded from the profits of a Labuan entity carrying on Labuan non-trading activity.
- Such royalty income and other income from intellectual property right will be subject to tax under the ITA 1967.

[Effective from 1 January 2019]

Determination of residence status

Currently the LBATA 1990 does not have specific provision on the determination of residence status of a Labuan entity.

Proposed

For purposes of double taxation arrangements under section 132 of the ITA 1967, the residence status of a Labuan entity for a YA, will be determined as follows:

Entity	Qualifying criteria for Malaysian residence
Labuan entity* carrying on business(es)	Management and control of its business(es), at any time during the basis year for a YA, is exercised in Malaysia.
Other Labuan entities*	Management and control of its affairs, at any time during the basis year for a YA, are exercised in Malaysian by its directors, partners, trustees or other controlling authority.

* company, partnership, limited liability partnership, trust, banks, financial institutions and foundations registered / established / defined under the relevant Labuan legislations.

[Effective from YA 2020]



Administration and enforcement

The Labuan Bill has also proposed the following new provisions and consequential changes to facilitate the administration and enforcement of taxation of Labuan entities. These provisions are similar to those under the ITA 1967.

Assessment and collection

- Making, serving and raising of assessments or additional assessments.
- Determination of finality of assessments.
- Tax due and payable upon service of notice.
- Increase in tax by a sum equal to 10% of the unpaid tax, for late payment of taxes.

[Effective from YA 2020]

Appeals

- Right to appeal against an assessment and appeal procedures.

[Effective from YA 2020]

Anti-avoidance

- Power of the Director General of Inland Revenue (DGIR) to disregard, vary and make adjustments to transactions.
- Power of DGIR to substitute prices in related party transactions.

[Effective from YA 2020]

Access to information, premises and record keeping

- Power of the DGIR to call, access, inspect records, premises, and such others as necessary to conduct audit and investigation.
- Taxpayer's duty to keep records.

[Effective from YA 2020]

Prosecution and compounding of offences

The prosecution of any offence under the LBATA 1990 will now require the written consent of the Public Prosecutor before it may be instituted.

[Effective from YA 2020]

The compounding of any offence under the LBATA 1990 will also require the written consent of the Public Prosecutor and all sums of money for compounded offences will form part of the Consolidated Fund.

[Effective a day after the Labuan Bill is gazetted as law]



Income Tax (Amendment) Bill 2019 and Petroleum (Income Tax) (Amendment) Bill 2019

The Income Tax (Amendment) Bill 2019 (“ITA Bill”) introduces changes in relation to income tax appeals. Similar changes are also introduced for petroleum income tax appeals by the Petroleum (Income Tax) (Amendment) Bill 2019 (“PITA Bill”).

Reduction to the quorum of Special Commissioners of Income Tax (SCIT) hearing

In the interest of improving the efficiency of tax appeals, it is proposed that the Chairman of the SCIT may decide for a tax appeal to be heard by one SCIT sitting alone. Currently, a tax appeal is required to be heard by a quorum of three SCIT.

This change will be effective a day after the respective bills have been gazetted as law (“effective date”). However, hearings which are pending before the SCIT prior to the effective date shall not be affected by the changes and shall continue to be heard by a quorum of three SCIT.



Procedure for appeals to the High Court (HC)

Currently, a party who is dissatisfied with the decision of the SCIT (“Deciding Order”) can appeal against the decision to the HC by requesting the SCIT to state the case to the HC. The request must be made in writing within 21 days after the service of the Deciding Order.

Both the ITA Bill and the PITA Bill set out the procedures required in filing an appeal to the HC as follows:

Within 21 days after the service of the Deciding Order

- File the **Notice of Appeal** (NoA) with the Secretary of the SCIT
- Forward a copy of the NoA to the Registry of the HC
- Forward a duplicate copy of the NoA to every other party to the appeal
- Apply in writing to the Secretary of the SCIT for the notes of the proceedings and grounds of decision to be prepared

Procedures for appeals to the HC (cont'd)

Within 60 days from the date of filing of the NoA to the Secretary of the SCIT ("60-day period")

Prepare and file to the HC a **record of appeal** which shall contain:

- A duplicate copy of the NoA
- Statement of facts and issues
- Memorandum of appeal
- SCIT's Deciding Order
- Duplicate copy of notice of cross appeal, if any
- Other documents relevant to the appeal
- SCIT's notes of proceedings and grounds of decision, if they are ready within the 60 days period

After the 60-day period

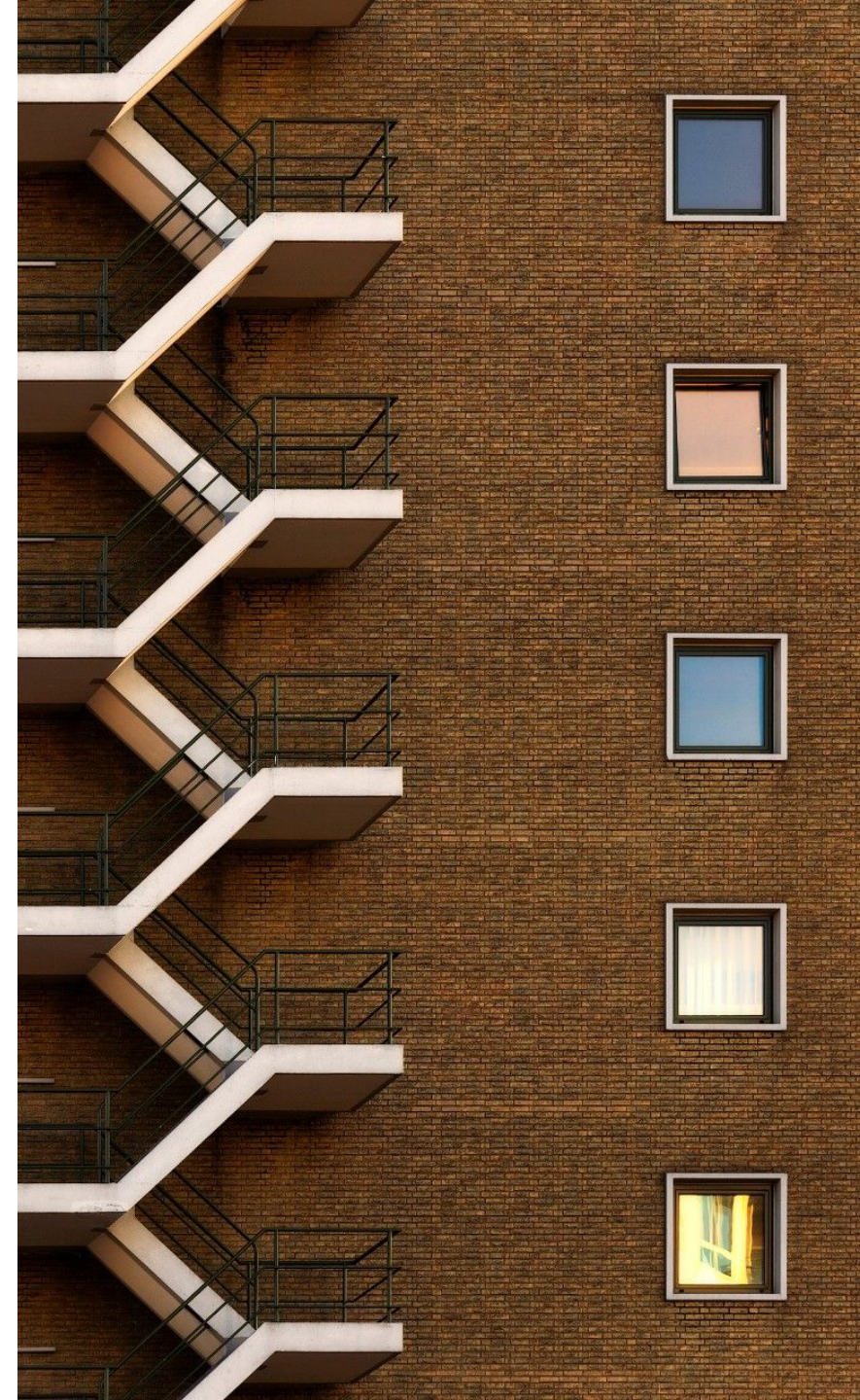
- File the SCIT's notes of proceedings and grounds of decision, if they were not ready within the 60-day period

Other matters in relation to appeal to HC

The amendments also set out the requirements in relation to the following:

- Contents of the memorandum of appeal
- Supplementary record of appeal
- Index of documents in the record of appeal
- Procedures for inclusion (and objection) of documents into the record of appeal

These proposals will be effective a day after after the respective bills have been gazetted as law ("effective date"). However, it shall not affect appeals to the HC before the effective date.



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