

## Client Alert

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## New Requirements for Disclosure on Subsidiaries and Related Companies Based in Labuan

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### Introduction

The Inland Revenue Board of Malaysia ("IRB") has recently included a new requirement that is applicable to Malaysian companies when preparing and filing their annual tax returns under the Income Tax Act 1967. This new requirement mandates the disclosure of subsidiaries or related companies incorporated under the Labuan Companies Act 1990 with effect from the year of assessment 2016.

Additionally, there has been an increasing scrutiny by the IRB into the use of such Labuan companies by Malaysian companies or their foreign counterparties in cross-border transactions.

### Background

Labuan was designated by the Malaysian Government with effect from 1 October 1990 as an International Business and Finance Centre. This was aimed at promoting the development of Labuan activities such as banking, insurance, investment holdings, trust, petroleum and shipping operations. To this end, the Malaysian Government introduced a separate legal framework governing such commercial activities in Labuan.

With the attractive incentives for businesses and the favourable tax regime in Labuan, it is not surprising that many companies have restructured and incorporated Labuan as part of their business structure.

However, in recent years, the IRB has ramped up its scrutiny of such structures to see if these have caused a tax leakage. The IRB typically focuses its audits on Malaysian entities involved in Labuan transactions using the general anti-avoidance provision, Section 140 of the Income Tax Act 1967.

In a noteworthy Court of Appeal case that was decided recently<sup>1</sup>, the taxpayer argued successfully that its Labuan structure is legitimate. Please refer to our previously issued Client Alert discussing the implications of this landmark case, which was circulated last year, January.

## The Attacks Continue Unabated

However, this Court of Appeal decision has not deterred the IRB from targeting Labuan structures. The IRB has been asking extensive and detailed questions in recent audits.

## Implications of Disclosure Requirement

The new disclosure requirement represents yet another step by the IRB in its scrutiny of Labuan companies. All Malaysian companies are now required to declare whether they have a subsidiary or a related company in Labuan when filing their tax returns. If answered affirmatively, the company must declare the name of the Labuan entity, its registration number and its Labuan income tax number. This would immediately alert the IRB to a potential audit target.

## Conclusion

It would be prudent for taxpayers with Labuan structures to put in place proper litigation risk management and robust document trails at an early stage. This would be helpful in the event that the IRB decides to commence an audit or investigation on the company.

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<sup>1</sup> The taxpayer was represented by Wong & Partners

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