



PORTCULLIS TRUSTNET

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MALAYSIA TAX UPDATE

Labuan excluded from Malaysia-Indonesia Double Tax Agreement

On 15 July 2010, the Protocol Amending the Agreement between Malaysia and Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income (“Protocol”) came into force.

The Protocol takes effect from 1 September 2010.

Under Articles 1, 2 and 3 of the Protocol, the withholding rates for dividends, interest and royalties will be reduced from the existing 15% to 10%.

However, Labuan will not be able to enjoy the benefits of such reduced withholding rates as it is specifically excluded from the Double Taxation Agreement between Malaysia and Indonesia (“DTA”). According to Article 5(1) of the Protocol, “the benefits of the Agreement shall not be available in respect of the carrying on of any offshore business activity under the Labuan Offshore Business Activity Tax Act 1990”.¹

The Protocol also provides in Article 4 that the dividends provisions under the DTA shall not affect oil and gas production sharing contracts entered into between the Indonesian government and Malaysian entities.

The existing DTA between Malaysia and Indonesia has been in force since 1987, although it has been signed by the respective parties on 12 September 1991. A copy of the DTA (excluding amendments introduced by the Protocol) can be viewed by clicking on the following link:

<http://www.hasil.gov.my/lhdnv3e/documents/PerjanjianPengelakanPercukaaianDuaKali/Indonesia.pdf>

A copy of the Protocol can be viewed by clicking on the following link:

http://www.hasil.gov.my/lhdnv3e/documents/PerjanjianPengelakanPercukaaianDuaKali/Protocol_Indonesia.pdf

¹ With effect from 11 February 2010, the “Labuan Offshore Business Activity Tax Act 1990” (LOBATA) was amended by the “Labuan Offshore Business Activity Tax (Amendment) Act 2010”. Amongst other changes, the LOBATA’s title was amended to “Labuan Business Activity Tax Act 1990” and the word “offshore” referred to in various parts of the legislation was deleted and replaced by the word “Labuan”.