

# Challenges for the wealthy with private trusts



Inflation is a global and sustained trend in which the real value of investments under private trust is eroded with the loss in spending or purchasing power over the time.

A private trust arrangement may be good for the safeguarding of legal rights of assets but may not be an efficient arrangement that grows wealth under the trust arrangement. This is because participation and control of family members in the execution of the trust and assets management are minimal under the engagement of a third party as trustee and assets manager under the private trust arrangement.

In addition, service fees paid to the trustee and asset manager, which are charged based on a percentage of the market value of the assets, are increasing yearly due to inflation.

***A private trust company will solve the challenges above.***

Under the legal framework of a private trust company, the trustee of the private trust is a company established by the settlor to hold the settlor's assets and licensed to undertake full duties of the third-party trustee, in which the scope of the trustee services are limited to persons connected to the settlor.

In other words, the private trust company functions the same as the third-party trustee but the trustee fees are manageable while the assets will still be administered and executed based on the intent of the settlor as stipulated in the trust deed.



***A private trust company is a cost-effective solution for high-net-worth individuals or families living in areas where inheritance tax does not apply.***



As the trustee is holding multiple trust assets in different jurisdictions, this is a complicated situation as it deals with different tax treatments in multiple jurisdictions. Given that administrators which are to disburse monies and entitled allowances to the

beneficiaries may live in different countries, it also adds to the complexity in tax computations due to the various disbursements to different countries.

Hence, choosing the right jurisdiction to house a private trust company is the first and foremost important factor that determines the success of the private trust company.

Based on my experience dealing with high-net-worth clients from various countries, tax treatment is the key factor that determines the effectiveness of the trust structure. This is far more important than the efficiency in execution of the trust arrangement and the clarity of the regulatory framework that is governing the trust.

Choosing the right jurisdiction to house a trust company is an important decision that is worth spending time on in

terms of carrying out detailed research and gaining understanding on the topic. Basically, getting it right the first time!

Listed below are the associated details in setting up a Labuan private trust company.

## 1. About Labuan International Business and Financial Centre (Labuan IBFC)

Strategically located in the heart of Asia Pacific, Labuan IBFC has been a Federal Territory of Malaysia since 1984. It has functioned as an international centre for business and financial services since 1990.

Labuan IBFC is committed to ensuring a safe and secure business environment as a wholly-owned subsidiary of Labuan Financial Services Authority (Labuan FSA) under the governance of the Central Bank of Malaysia. It adheres to international standards, best practices and regulatory requirements set by the Organisation of Economic Co-operation and Development (OECD) and other global regulatory organisations.

Labuan IBFC has a comprehensive, modern and globally-recognised regulatory framework which ensures client confidentiality and complies with international standards.

For more information about Labuan IBFC, visit [www.labuanibfc.com](http://www.labuanibfc.com).

## 2. Labuan private trust company

A Labuan registered company or a foreign company registered in Labuan is allowed to establish a trust company for the purpose of managing a family private trust by obtaining approval for a private trust company license from Labuan FSA.

The annual licence fee of USD1,500 is payable to Labuan FSA upon the grant of registration of the Labuan private trust company and remains valid until 31st December of the year of approval.

The subsequent annual licence fee of USD1,500 is payable on or before 15th January of each calendar year.

## 3. Tax treatment for private trust company

The service revenue of the private trust company is taxed at 3% of the audited net profit based on the Labuan Business Activity Tax Act 1990. It is a straightforward tax submission system whereby a tax form will be filled up and attached with an audited account. In addition, expenses that are wholly and exclusively incurred for business are allowed tax deductions. Tax regulations require the tax returns to be filed by end-March of the following year. However, in actual practice, the submission is further extended

until May considering the time for the audit process.

In order to enjoy the 3% tax benefits, the Labuan private trust company is required to satisfy the substance requirements in Labuan by hiring three full-time employees in Labuan with a minimum of RM120,000 (equivalent to USD30,000 approximately) per year in annual operating expenditures in Labuan. This will qualify the private trust company for the said tax benefits.

The straightforward and simple tax treatment in Labuan IBFC offers certainty in taxation for a private trust company here.

## 4. Tax treatment for an asset holding company

Asset holding companies are a common structure set up to contain the legal rights of assets under the trustee or private trust company. A Labuan company undertaking asset holding activities is allowed to choose to be taxed under the Labuan Business Activity Tax Act 1990 or Income Tax Act 1967 based on the tax planning of the asset holding company.

Under the Labuan Business Activity Tax Act 1990, the holding company is subject to 0% corporate tax if the substance requirement of spending RM20,000 (equivalent to USD5,000) per year in annual operating expenditures in Labuan has been met. The tax return is only required to be submitted once a year, attached with an audited financial report.

Under the Income Tax Act 1967, the holding company is subject to a corporate tax rate of 24% of which the dividend proceeds and capital gains are tax exempted. The Labuan company that chooses to file its tax returns under domestic tax will be covered by double tax treaties signed by Malaysia. To date, Malaysia has signed more than 70 double tax agreements with the other countries.

The flexibility in tax treatment offered by Labuan provides the best planning options for asset-holding companies to deal with their complex asset-holding situation.

### About the author

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Sue was a recipient of the Most Outstanding Young CPA by MICPA in 2004 and was named as an 'Influential Leader' by AACSB Investment in 2020.

Reach out to Hans Advisory & Trust Co Ltd at [www.hansworldwide.com](http://www.hansworldwide.com), a licensed Labuan trust company by Labuan FSA to assist with the Labuan private trust company set up.