

# FINANCE BILL 2008

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A BILL

*i n t i t u l e d*

An Act to amend the Income Tax Act 1967, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967 and the Labuan Offshore Business Activity Tax Act 1990.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

**Short title**

1. This Act may be cited as the Finance Act 2008.

**Amendment of Acts**

2. The Income Tax Act 1967 [*Act 53*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*] and the Labuan Offshore Business Activity Tax Act 1990 [*Act 445*] are amended in the manner specified in Chapters II, III, IV and V respectively.

CHAPTER II

PART I

AMENDMENTS TO THE INCOME TAX ACT 1967

**Commencement of amendments to the Income Tax Act 1967**

3. (1) Paragraph 45(*a*) has effect for the year of assessment 2008 and subsequent years of assessment.

(2) Sections 4, 6, 7, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 29, 38, paragraphs 42(a) and (b), paragraphs 43(b), (c), (d), (e) and (f), paragraphs 45(b), paragraphs 46(a), (c), (d), (f) and (g) and subparagraphs 46(e)(i) and (ii) have effect for the year of assessment 2009 and subsequent years of assessment.

(3) Sections 8, 9, 26, 28, 30, 31, 33, 34, 35, 36, paragraph 43(a), section 44, paragraph 46(b) and sections 47, 48, 49 and 50 come into operation on the coming into operation of this Act.

(4) Sections 5, 10, 15, 25, 37, 39, 40 and 41 and paragraph 42(d) come into operation on 1 January 2009.

(5) Paragraph 42(c) has effect from 1 January 2009 to 31 December 2011.

(6) Subparagraph 46(e)(iii) has effect for the year of assessment 2009 and 2010.

(7) Section 32 has effect for the year of assessment 2010 and subsequent years of assessment.

### **Amendment of section 2**

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 2, by inserting after the definition of “aggregate income” the following definition:

‘ “amended return” means an amended return made in accordance with section 77B;’.

### **Amendment of section 6**

5. Subsection 6(1) of the principal Act is amended—

(a) in paragraph (i), by substituting for the words “only for a period of five years commencing from the year of assessment 2007” the words “, in respect of subparagraphs (a) and (c) of that Part for a period of three years from the year of assessment 2009 and in respect of subparagraph (b) of that Part for a period of five years commencing from the year of assessment 2007”;

(b) by substituting for the full stop at the end of paragraph (j) a semicolon; and

(c) by inserting after paragraph (j) the following paragraph:

“(k) subject to section 109F but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a non-resident person charged under paragraph 4(f) at the appropriate rate as specified under Part XIII of Schedule 1.”.

#### **Amendment of section 6A**

6. Subsection 6A(2) of the principal Act is amended by substituting for the words “three hundred and fifty” wherever they appear the words “four hundred”.

#### **Amendment of section 7**

7. Section 7 of the principal Act is amended by inserting after subsection (1A) the following subsection:

“(1B) Notwithstanding subsection (1), where a person who is a citizen and—

(a) is employed in the public services or service of a statutory authority; and

(b) is not in Malaysia at any day in the basis year for that particular year of assessment by reason of—

(i) having and exercising his employment outside Malaysia; or

(ii) attending any course of study in any institution or professional body outside Malaysia which is fully-sponsored by the employer,

he is deemed to be a resident for the basis year for that particular year of assessment and for any subsequent basis years when he is not in Malaysia.”.

#### **Amendment of section 15**

8. Paragraph 15(a) of the principal Act is amended by substituting for the words “or a State Government” the words “, a State Government or a local authority”.

**Amendment of section 15A**

9. Subparagraph 15A(i) of the principal Act is amended by substituting for the words “or a State Government” the words “, a State Government or a local authority”.

**New section 15B**

10. The principal Act is amended by inserting after section 15A the following section:

**“Derivation of gains or profits in certain cases**

**15B.** Gross income in respect of gains or profits to which paragraph 4(f) applies shall be deemed to be derived from Malaysia—

- (a) if responsibility for the payment of such gains or profits lies with the Government, a State Government or a local authority;
- (b) if responsibility for the payment of such gains or profits lies with a person who is a resident for that basis year; or
- (c) if the payment of such gains or profits is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.”.

**Amendment of section 25**

11. Section 25 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “subsection (1A)” the words “or (2A)”;
- (b) in subsection (2), by substituting for the words “section 3 and subsection (5)” the words “section 3 and subsections (2A) and (5)”;
- (c) by inserting after subsection (2) the following subsection:

“(2A) Where gross income from an employment in relation to director’s fee or bonus is receivable in respect of the whole or part of the relevant period, that gross income shall, when received in any relevant period, be treated as the gross income of the relevant person for the second mentioned relevant period.”; and



- (d) in subsection (3), by substituting for the words “or (2)” the words “, (2) or (2A)”.

### **Amendment of section 32**

**12.** Section 32 of the principal Act is amended—

- (a) in subparagraph (1A)(b)(i), by substituting for the words “Bursa Malaysia” the words “any stock exchange”; and
- (b) by inserting after subsection (3) the following subsection:

“(4) For the purposes of this section, the amount of gross income from the employment mentioned in paragraphs (2)(a), (b) and (3)(c) shall not include the amount of gross income in respect of any right to acquire shares in a company ascertained under subsection (1A).”.

### **Amendment of section 34**

**13.** Paragraph 34(6)(h) of the principal Act is amended by inserting after the words “housing,” the words “conservation or preservation of environment, enhancement of income of the poor,”.

### **Amendment of section 34A**

**14.** Section 34A of the principal Act is amended—

- (a) in subsection (1)—
- (i) by substituting for the words “research—” the words “research approved by the Minister.”; and
- (ii) by deleting paragraphs (a) and (b);
- (b) in subsection (2), by substituting for the words “paragraph (1)(a)” the words “subsection (1)”;
- (c) by deleting subsection (3).

### **Amendment of section 39**

**15.** Paragraph 39(1)(j) of the principal Act is amended by inserting after the words “section 109B” the words “or 109F”.

**Amendment of section 44****16.** Section 44 of the principal Act is amended—

(a) in subsection (6), by substituting for the proviso the following proviso:

“Provided that the amount to be deducted from the aggregate income for the relevant year in respect of any gift of money made to any institution or organization approved for the purposes of this section by the Director General shall not exceed—

(a) in the case of a person other than a company, seven per cent of the aggregate income of that person in the relevant year; or

(b) in the case of a company, ten per cent of the aggregate income of that company in the relevant year.”;

(b) in subsection (11B), by substituting for the proviso the following proviso:

“Provided that the amount to be deducted pursuant to this subsection shall not exceed—

(a) in the case of a person other than a company, the difference between the amount of seven per cent of the aggregate income of that person in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11c) for that relevant year; or

(b) in the case of a company, the difference between the amount of ten per cent of the aggregate income of that company in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11c) for that relevant year.”; and

(c) in subsection (11c), by substituting for the proviso the following proviso:

“Provided that the amount to be deducted pursuant to this subsection shall not exceed—

(a) in the case of a person other than a company, the difference between the amount of seven per

cent of the aggregate income of that person in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11B) for that relevant year; or

- (b) in the case of a company, the difference between the amount of ten per cent of the aggregate income of that company in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11B) for that relevant year.”.

#### **Amendment of section 44A**

17. Subsection 44A(1) of the principal Act is amended by substituting for the words “fifty per cent” the words “seventy per cent”.

#### **Amendment of section 53**

18. Section 53 of the principal Act is amended—

- (a) by substituting for subsection (3) the following subsection:

“(3) In this section, “trade association” means any association of persons, of partnerships or of persons and partnerships formed with the main object of—

- (a) safeguarding or promoting the business of its members; or
- (b) developing and advancing the profession of its members.”; and

- (b) by inserting after subsection (3) the following subsection:

“(4) Notwithstanding any other provisions of this Act, a trade association shall, for the purposes of this section, be deemed to be a body of persons and not a partnership.”.

**New section 53A**

19. The principal Act is amended by inserting after section 53 the following section:

**“Club, association or similar institution**

**53A.** (1) This section shall apply to a body of persons which carry on a club, association or similar institution other than a trade association to which section 53 applies.

(2) Any income of the body of persons from transaction with members and any outgoing or expenses or capital allowances attributable to such income shall be disregarded for the purpose of this Act.

(3) The gross income of a body of persons for the basis period for the year of assessment shall include the amount of gross income for that period from the investment made out of any of the fund of the body of persons.

(4) The body of persons shall maintain a separate account in respect of income derived from its members and non-members.

(5) Where the amount of outgoing or expenses to be allowed or capital allowances to be made to the body of persons are common to income from transaction with members and non-members, the amount of outgoing or expenses that shall be allowed or capital allowances that shall be made to that body of persons in respect of income relating to transaction with non-members shall be an amount as determined by applying the method as may be prescribed under this Act.

(6) In this section, “members”, in relation to a body of persons, means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.”.

**Amendment of section 54A**

20. Section 54A of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) Where subsection (1) applies, a person who is entitled to an allowance under Schedule 3 and who

has not made any claim under paragraph 77 of that Schedule in respect of such allowance, the amount of such allowance shall be deemed to have been made to him for the purpose of ascertaining his statutory income under subsection (1).”; and

- (b) in paragraph (2)(a), by inserting after the words “capital allowances claimed” the words “or deemed to have been made under subsection (1A)”.

### **New section 77B**

**21.** The principal Act is amended by inserting after section 77A the following section:

#### **“Amendment of return**

**77B.** (1) Where for a year of assessment a person has furnished a return in accordance with subsection 77(1) or 77A(1), that person may make amendment to such return in an amended return as prescribed by the Director General in respect of the amount of tax or additional tax payable on the chargeable income or on the amount of tax which has been or would have been wrongly repaid to him.

(2) An amended return under subsection (1) shall only be made after the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1), but not later than six months from that date.

(3) For the purposes of this section, the amended return shall—

- (a) specify the amount or additional amount of chargeable income and the amount of tax or additional tax payable on that chargeable income;
- (b) specify the amount of tax payable on the tax which has or would have been wrongly repaid to him;
- (c) specify the increased sum ascertained in accordance with subsection (4); or
- (d) contain such particulars as may be required by the Director General.

(4) The tax or additional tax payable under subsection (1) shall—

- (a) if the amended return is furnished within a period of sixty days after the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1), be increased by a sum equal to ten per cent of the amount of such tax or additional tax; or
- (b) if the amended return is furnished after the period of sixty days from the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1) but not later than six months from that date, be increased by a sum which shall be determined in accordance with the following formula:

$$B + [(A + B) \times 5\%]$$

where A is the amount of such tax payable or additional tax payable; and

B is ten per cent of the amount of such tax payable or additional tax payable,

and the amount of the increased sum shall constitute part of the amount of tax or additional tax payable under subsection (1).

(5) The amendment under subsection (1) shall only be made once.

(6) Where—

- (a) a return for a year of assessment has been furnished in accordance with subsection 77(1) or 77A(1); and
- (b) the Director General has made an assessment for that year of assessment under section 91,

no amendment shall be allowed under this section.”.

**New section 91A**

**22.** The principal Act is amended by inserting after section 91 the following section:

**“Deemed assessment on the amended return**

**91A.** (1) Where a person has furnished an amended return in accordance with section 77B for a year of assessment, the Director General shall be deemed to have made, on the day on which the amended return is furnished, an assessment or additional assessment in respect of that person—

- (a) in the amount of tax or additional tax payable on the chargeable income; or
- (b) in the amount of tax which has been or would have been wrongly repaid,

the tax or additional tax and the chargeable income being the respective amounts as specified in the amended return.

(2) For the purpose of this Act, where the Director General is deemed to have made an assessment or additional assessment under subsection (1)—

- (a) the amended return referred to in that subsection shall be deemed to be a notice of assessment or additional assessment; and
- (b) the deemed notice of assessment or additional assessment shall be deemed to have been served on the person on the day on which the Director General is deemed to have made the assessment or additional assessment.”.

**Amendment of section 93**

**23.** Section 93 of the principal Act is amended by substituting for the words “subsection 90(1)” the words “subsections 90(1) and 91A(1)”.

**Amendment of section 96**

24. Subsection 96(1) of the principal Act is amended by substituting for the words “subsection 90(1)” the words “subsections 90(1) and 91A(1)”.

**New section 97A**

25. The principal Act is amended by inserting after section 97 the following section:

**“Notification of non-chargeability**

97A. (1) Where in ascertaining the chargeable income of a person, it appears to the Director General that no assessment shall be made in respect of that person for any year of assessment by reason of no adjusted income, statutory income, aggregate income or total income, he may notify that person in writing that no assessment shall be made for that year of assessment and the computation with regard to it.

(2) Where a person is dissatisfied with the notification made by the Director General under subsection (1), he may within thirty days from the date of being so notified, appeal to the Special Commissioners as if the notification were a notice of assessment and the provisions of this Act relating to appeals shall apply accordingly with such necessary modifications.

(3) If no notice of appeal against a notification made by the Director General under subsection (1) has been given within the time specified under that subsection or any extended period thereof, the notification shall be final and conclusive for the purposes of this Act.

(4) Nothing in this section shall prejudice the exercise of any power conferred on the Director General by section 91.”.



**Amendment of section 98**

**26.** Subsection 98(3) of the principal Act is amended by substituting for the words “one of those persons to be the Chairman” the words “from amongst those persons a Chairman and such number of Deputy Chairman”.

**Amendment of section 103**

**27.** Section 103 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

“(1A) Where an assessment or additional assessment has been made under section 91A, the tax or additional tax payable under the assessment shall be due and payable on the day the amended return is furnished whether or not that person appeals against the assessment or additional assessment:

Provided that where the amended return is furnished within a period of sixty days after the due date and the amount of tax due and payable has not been paid within the period of sixty days from the due date, so much of the tax as is unpaid upon the expiration of that period shall without any further notice being served be further increased by a sum equal to five per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.”; and

(b) in subsection (9), by inserting after the words “sum under subsection” the words “(1A),”.

**Amendment of section 104**

**28.** Section 104 of the principal Act is amended—

(a) in paragraph (1)(b), by substituting for the words “103(3), (4), (5), (6), (7) or (8)” the words “103(1A), (3), (4), (5), (6), (7) or (8), or subsection 107B(4) or 107c(10)”;

(b) in paragraph (1)(c), by substituting for the words “or 109B(2),” the words “, 109B(2) or 109F(2),”; and

(c) in subsection (6)—

(i) by substituting for the full stop at the end of the definition of “immigration officer” a semicolon; and

(ii) by inserting after the definition of “immigration officer” the following definition:

‘ “person” includes any person who is a director within the meaning of section 75A.’.

### **Amendment of section 106**

**29.** Subsection 106(3) of the principal Act is amended by substituting for the words “subsection 103(3)” the words “subsection 103(1A), (3)”.

### **Amendment of section 107A**

**30.** Section 107A of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

### **Amendment of section 107B**

**31.** Section 107B of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) Notwithstanding the foregoing subsections, where the amount of instalments unpaid or the amount of the difference in tax is increased by a sum under subsection (3) or (4), as the case may be, the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

**Amendment of section 107C**

**32.** Section 107C of the principal Act is amended—

(a) in subsection (4A), by substituting for the words “Where a company” the words “Subject to subsections (4B) and (4C), where a company”;

(b) by inserting after subsection (4A) the following subsections:

“(4B) The provision of subsection (4A) shall not apply to a company referred to in that subsection if more than—

(a) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;

(b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or

(c) fifty per cent of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

(4C) For the purpose of subsection (4B), “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.”;

(c) in subsection (8), by inserting after the word “(7)” the words “but subject to subsection (8A)”;

(d) by inserting after subsection (8) the following subsection:

“(8A) Where the Director General directs a company to make payment by instalments under subsection (8) before the sixth month of the basis period for a year of assessment of that company, the total amount of

that instalments shall be deemed for the purpose of this section to be the estimate of tax payable by that company for that year of assessment:

Provided that, subject to any revision under subsection (7), that instalments shall be payable in accordance with subsections (8) and (9).

(8B) Where subsection (8A) applies and for a year of assessment, a company has furnished a revised estimate under subsection (7), reference to the amount of instalments which is payable in subsection (7) shall be construed as reference to the amount of instalments which is payable under subsection (8) prior to the revised estimate.”.

### **Amendment of section 109**

**33.** Section 109 of the principal Act is amended—

(a) in subsection (1), by substituting for the proviso the following proviso:

“Provided that the Director General may under special circumstances allow extension of time for tax deducted to be paid over.”; and

(b) by inserting after subsection (3) the following subsection:

“(3A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

**Amendment of section 109B**

**34.** Section 109B of the principal Act is amended—

(a) in subsection (1), by substituting for the proviso to that subsection the following proviso:

“Provided that the Director General may under special circumstances allow extension of time for tax deducted to be paid over.”; and

(b) by inserting after subsection (3) the following subsection:

“(3A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

**Amendment of section 109D**

**35.** Section 109D of the principal Act is amended—

(a) in subsection (2), by substituting for the proviso the following proviso:

“Provided that the Director General may under special circumstances allow extension of time for tax deducted to be paid over.”; and

(b) by inserting after subsection (4) the following subsection:

“(4A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (2) is increased by a sum under subsection (3), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

**Amendment of section 109E**

36. Section 109E of the principal Act is amended—

(a) by substituting for subsection (3) the following subsection:

“(3) The Director General may in relation to subsection (2) under special circumstances allow extension of time for the amount of tax deducted to be paid over.”; and

(b) by inserting after subsection (6) the following subsection:

“(7) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (2) is increased by a sum under subsection (4), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

**New section 109F**

37. The principal Act is amended by inserting after section 109E the following section:

**“Deduction of tax from gains or profits in certain cases derived from Malaysia**

**109F.** (1) Where any person (in this section referred to as “the payer”) is liable to make payments to a non-resident in relation to any gains or profits falling under paragraph 4(f) which is derived from Malaysia, he shall upon paying or crediting such payments deduct therefrom tax at the rate applicable to such payments, and (whether or not that tax is so deducted) shall within one month after paying or crediting such payments render an account and pay the amount of that tax to the Director General:

Provided that the Director General may under special circumstances allow extension of time for the amount of tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be increased by a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(3) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer—

(a) the Director General shall, in the manner provided by section 110, apply that amount towards payment of the tax charged on the person to whom the payer was liable to pay the payments to which the amount relates; and

(b) if the payer has not deducted that amount in paying the payment under subsection (1) with respect to which the amount relates, he may recover that amount from that person as a debt due to the payer.

(4) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

(5) Section 110 shall apply *mutatis mutandis* to tax deducted under this section.”.

### **Deletion of section 130**

**38.** The principal Act is amended by deleting section 130.

### **New section 138c**

**39.** The principal Act is amended by inserting after section 138B the following section:

#### **“Advance Pricing Arrangement**

**138c.** (1) Subject to this section and any rules prescribed under this Act, on the application made to the Director General

by any person who carries out a cross border transaction with an associated person—

- (a) the Director General may enter into an advance pricing arrangement with that person; or
- (b) in the case where section 132 applies, the competent authorities may enter into an advance pricing arrangement,

in order to determine the transfer pricing methodology to be used in any future apportionment or allocation of income or deduction to ensure the arm's length transfer prices in relation to that transaction.

(2) An application under subsection (1) shall be made in the prescribed form and shall contain particulars as may be required by the Director General.

(3) The transactions referred to in subsection (1) shall be construed as a transaction between—

- (a) persons one of whom has control over the other;
- (b) individuals who are relatives of each other; or
- (c) persons both of whom are controlled by some other person.

(4) In this section, “relative” and “transaction” have the same meanings assigned to them under subsection 140(8).”.

### **New section 140A**

**40.** The principal Act is amended by inserting after section 140 the following section:

#### **“Power to substitute the price and disallowance of interest on certain transactions**

**140A.** (1) This section shall apply notwithstanding section 140 and subject to any rules prescribed under this Act.



(2) Subject to subsections (3) and (4), where a person in the basis period for a year of assessment enters into a transaction with an associated person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that person shall determine and apply the arm's length price for such acquisition or supply.

(3) Where the Director General has reason to believe that any property or services referred to in subsection (2) is acquired or supplied at a price which is either less than or greater than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length, he may in determination of the gross income, adjusted income or adjusted loss, statutory income, total income or chargeable income of the person, substitute the price in respect of the transaction to reflect an arm's length price for the transaction.

(4) Where the Director General, having regard to the circumstances of the case, is of the opinion that in the basis period for a year of assessment the value or aggregate of all financial assistance granted by a person to an associated person who is a resident, is excessive in relation to the fixed capital of such person, any interest, finance charge, other consideration payable for or losses suffered in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive, be disallowed as a deduction for the purposes of this Act.

(5) The transactions or the financial assistance referred to in subsection (1) or (4) respectively, shall be construed as a transaction or financial assistance between—

- (a) persons one of whom has control over the other;
- (b) individuals who are relatives of each other; or
- (c) persons both of whom are controlled by some other person.

(6) In this section, “relative” and “transaction” have the same meanings assigned to them under subsection 140(8).”.

**Amendment of section 154**

**41.** Subsection 154(1) of the principal Act is amended—

(a) in paragraph (eb), by inserting after the words “or 138B” the words “, or to any arrangement under section 138C”; and

(b) by inserting after paragraph (ec) the following paragraph:

“(ed) implementing and facilitating the operation of section 140A;”.

**Amendment of Schedule 1**

**42.** Schedule 1 to the principal Act is amended—

(a) in Part 1—

(i) by substituting for paragraph 1 the following paragraph:

“1. Except where paragraphs 1A, 2, 2A and 3 provide otherwise, income tax shall be charged for a year of assessment upon the chargeable income of every person at the following rates:

Chargeable Income	RM	Rate of Income Tax
For every ringgit of the first	2,500	0 per cent
For every ringgit of the next	2,500	1 per cent
For every ringgit of the next	15,000	3 per cent
For every ringgit of the next	15,000	7 per cent
For every ringgit of the next	15,000	12 per cent
For every ringgit of the next	20,000	19 per cent
For every ringgit of the next	30,000	24 per cent
For every ringgit exceeding	100,000	27 per cent”;

(ii) in paragraph 1A, by substituting for the words “28 per cent” the words “27 per cent”;

- (iii) in paragraph 2A, by substituting for the words “paragraph 3” the words “paragraphs 2B, 2C and 3”; and
- (iv) by inserting after paragraph 2A the following paragraphs:

“**2B.** The provisions of paragraph 2A shall not apply to a company referred to in that paragraph if more than—

- (a) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
- (b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or
- (c) fifty per cent of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

**2C.** For the purpose of paragraph 2B, “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.”;

- (b) in Part IV, in column “Rate of income tax”—
  - (i) by substituting for the words “3 per cent” the words “2 per cent”; and
  - (ii) by substituting for the words “28 per cent” the words “27 per cent”;
- (c) in Part X—
  - (i) in subparagraph 1(a), by substituting for the words “15%” the words “10%”; and
  - (ii) in subparagraph 1(c), by substituting for the words “20%” the words “10%”; and
- (d) by inserting after Part XII the following Part:

“PART XIII

Notwithstanding Parts I and II but subject to Parts X, XI and XII, income tax shall be charged on the income of a non-resident person consisting of gains or profits falling under paragraph 4(f) which is derived from Malaysia at the rate of 10% of gross.”.

**Amendment of Schedule 3****43.** Schedule 3 to the principal Act is amended—

(a) by inserting after paragraph 2c the following paragraph:

“**2d.** For the purpose of paragraph 1, the capital expenditure incurred by a person on the provision of machinery or plant shall not include any amount paid to a non-resident person in consideration of services rendered in connection with the installation or operation of that machinery or plant, if tax has not been deducted therefrom and paid to the Director General under paragraph 109B(1)(a) of the Act:

Provided that this paragraph shall not apply if the person has paid the amount referred to in subsection 109B(2).”;

(b) by inserting after subparagraph 19A(2) the following subparagraphs:

“(3) The proviso to subparagraph (1) shall not apply to a company resident in Malaysia which has a paid up capital in respect of ordinary shares of two million and five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment.

(4) A company referred to in subparagraph (3) shall not include a company where more than—

- (a) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company is directly or indirectly owned by a related company;
- (b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the second mentioned company; or
- (c) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company and the related company is directly or indirectly owned by another company.

(5) For the purpose of subparagraph (4), “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.”;

(c) in paragraph 36—

- (i) by substituting for the full stop at the end of the paragraph a colon; and

(ii) by inserting the following proviso:

“Provided that this paragraph shall not apply in respect of any amount incurred under paragraph 67c.”;

(d) in the title before paragraph 37B, by deleting the words “*or training*”;

(e) in paragraph 37B—

(i) by deleting the words “, industrial training or training”;

(ii) by substituting for the colon a full stop;

(iii) by deleting the proviso;

(iv) in subparagraph (a), by inserting after the semi colon the word “or”; and

(v) by deleting subparagraphs (b) and (d); and

(f) by inserting after paragraph 67B the following paragraph:

“67c. (1) For the purpose of this Schedule, where—

(a) a person has incurred qualifying plant expenditure in respect of an asset for the purposes of a business of his and in the basis period for a year of assessment the asset is disposed of; and

(b) pursuant to any written law or agreement, that person is subsequently required to dismantle and remove the asset and restore the site on which the asset is located,

the residual expenditure under paragraph 68 of this Schedule shall be deemed to include any amount incurred for dismantling and removing the asset and restoring the site.

(2) Notwithstanding paragraph 61, in this paragraph “disposed of” means discarded, destroyed or ceased to be used for the purposes of the business.

(3) This paragraph shall not apply if the asset which has been dismantled and removed is subsequently used for any other business of that person or any other person.

(4) The amount incurred in subparagraph (1) shall not include any amount paid to a non-resident which are subject to section 109B, if tax has not been deducted therefrom and paid to the Director General under that section:

Provided that this paragraph shall not apply if the person has paid the amount referred to in subsection 109B(2).”.

**Amendment of Schedule 5**

**44.** Paragraph 1 of Schedule 5 to the principal Act is amended—

(a) in subparagraph (2), by inserting after the word “Chairman” the words “or Deputy Chairman”;

(b) by substituting for subparagraph (3) the following subparagraph:

“(3) Two or more hearing of appeals may be heard concurrently at any one time.”; and

(c) by inserting after subparagraph (3) the following subparagraph:

“(4) If the Chairman or Deputy Chairman has not been appointed or is not present at the hearing of the appeals, the Special Commissioners present at the hearing of the appeals shall choose one of their number, who shall be a person with experience of the kind mentioned in subparagraph (1), to preside at the hearing.”.

**Amendment of Schedule 6**

**45.** Schedule 6 to the principal Act is amended—

(a) in paragraph 25c—

(i) by substituting for the words “or service excellence award” the words “, service excellence, innovation or productivity award”; and

(ii) by substituting for the words “one thousand ringgit” the words “two thousand ringgit”; and

(b) in subparagraph 28(1), by substituting for the words “Without prejudice to the provisions of section 130, income of” the words “Income of”.

**Amendment of Schedule 7A**

**46.** Schedule 7A to the principal Act is amended—

(a) by substituting for the words “twelve months” wherever they appear in paragraphs 1, 1A and 1C the words “thirty-six months”;

(b) by substituting for paragraph 1B the following paragraph:

**“1B.** (1) Where a company has incurred capital expenditure in respect of an asset for the purposes of a qualifying project and that asset is acquired by a person (in this paragraph referred to as “the acquirer”) from that company or from any other person (in this paragraph referred to as “the disposer”) and at the time of the acquisition—

- (a) the disposer of the asset is a person over whom the acquirer of the asset has control;
- (b) the acquirer of the asset is a person over whom the disposer of the asset has control;
- (c) some other person has control directly or indirectly over the disposer and acquirer of the asset; or
- (d) the acquisition is effected in consequence of a scheme of reconstruction or amalgamation of companies,

this Schedule shall not apply to the acquirer in respect of the asset.

(2) In this paragraph—

“asset” means a factory, plant or machinery referred to in paragraph 1, or plant, machinery or building referred to in the definition of “capital expenditure” in paragraph 9;

“control”, in relation to a company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first mentioned company are conducted in accordance with the wishes of that person.”;

(c) in paragraph 2A, by substituting for the words “two years” the words “five years”;

(d) by substituting for subparagraph 7(b) the following subparagraph:

“(b) for the period prescribed under the relevant provisions of the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product for which the company has been granted approval for investment tax allowance under the relevant provisions of that Act;”;

(e) in paragraph 8—

- (i) in subparagraph (a), by deleting the words “or processing”;

- (ii) by deleting subparagraph (*b*);
- (iii) by substituting for subparagraph (*d*) the following subparagraph:

“(*d*) a project undertaken by a person—

- (i) in transforming his business of rearing chicken and ducks from an opened house to a closed house system; or
- (ii) in expanding his existing business of rearing chicken and ducks in a closed house system,

as verified by the Minister responsible for agriculture and agro-based industry.”;

(*f*) in paragraph 9—

- (i) by inserting after the definition of “incurred” the following definition:

‘ “manufacturing” means—

- (*a*) conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials;
- (*b*) assembly of parts into a piece of machinery or products; or
- (*c*) mixing of materials by a chemical reaction process including biochemical process that changes the structure of a molecule by the breaking of the intra molecular bonds or by altering the spatial arrangement of atom in the molecule,

but does not include—

- (*aa*) the installation of machinery or equipment for the purpose of construction;
- (*bb*) a simple packaging operations such as bottling, placing in boxes, bags and cases;
- (*cc*) a simple fixing;
- (*dd*) a simple mixing of any products;
- (*ee*) a simple assembly of parts;
- (*ff*) any activity to ensure the preservation of products in good condition during transportation and storage;



(gg) any activity to facilitate shipment and transportation;

(hh) any activity of packaging or presenting goods for sale; or

(ii) any activity that may be prescribed by the Minister, notwithstanding the above interpretation;’;

(ii) by substituting for the full stop at the end of the definition of “operation” a semicolon; and

(iii) by inserting after the definition of “operation” the following definition:

‘ “simple” generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.’; and

(g) in paragraph 11, by substituting for the words “twelve months” wherever they appear the words “thirty-six months”.

## PART II

### SAVINGS AND TRANSITIONAL PROVISIONS

#### **Application of this Part**

**47.** (1) Sections 48, 49 and 50 shall be read together with and be in addition to the provision of sections 45, 46 and 51 of the Finance Act 2007 [*Act 683*] respectively.

(2) Where there is any inconsistency between any provision of this Part and any provision of the principal Act, that provision of the principal Act shall be void to the extent of the inconsistency.

#### **Statement to Director General**

**48.** (1) Notwithstanding that no dividend is paid by a company pursuant to subsection 40(1) of the Finance Act 2007 the company shall, within 7 months following the close of the accounting period which constitutes the basis period of the company for the year of assessment 2008, 2009, 2010, 2011, 2012, 2013 or 2014 (if applicable), furnish to the Director General a statement in the

prescribed form containing particulars as may be required for the purpose of determining the 108 balance or revised 108 balance, or any excess under section 48 of the Finance Act 2007 or section 49 at the end of that basis period.

(2) The failure of a company to comply with subsection (1) shall be an offence under subsection 120(1) of the principal Act.

(3) A statement under this section may be furnished to the Director General in accordance with section 152A of the principal Act.

(4) Where in relation to a year of assessment 2008, 2009, 2010, 2011, 2012, 2013 or 2014 a company fails to render a statement in accordance with this section or section 45 of the Finance Act 2007 the Director General may compute the amount of excess referred to in section 48 of the Finance Act 2007 or section 49 and shall serve on the company a written requisition in the prescribed form calling upon the company to pay an amount equal to that excess and an amount of an increase not exceeding the amount equal to that excess, and the amount equal to that excess and the increase on that amount shall be a debt due from the company to the Government and that debt shall be payable forthwith to the Director General upon the service of the requisition.

### **Amount in excess of 108 balance**

**49.** (1) Where the amount of tax discharged, remitted or refunded under section 46 of the Finance Act 2007 exceeds the 108 balance or revised 108 balance, as the case may be, the excess shall be a debt due from the company to the Government and that debt shall be due and payable on the last day of the seventh month (in this section referred to as “due date”) from the date following the close of the accounting period of the company to which the tax is discharged, remitted or refunded.

(2) Where any amount of debt due and payable under subsection (1) has not been paid by the due date, the amount of debt unpaid shall, without any further notice being served, be increased by an amount equal to ten per cent of the debt so unpaid, and the amount unpaid and the increase on amount unpaid shall be a debt due from the company to the Government and that debt shall be payable immediately to the Director General.

(3) This section shall apply where no dividend is paid pursuant to section 40 of the Finance Act 2007.

(4) This section shall apply notwithstanding the company has exercised an irrevocable option under section 50 of the Finance Act 2007.

### **Set-off for tax deducted**

**50.** A person is not entitled to a set-off in accordance with section 51 of the Finance Act 2007 if the dividend paid to that person is not paid in cash.

## CHAPTER III

### AMENDMENTS TO THE STAMP ACT 1949

#### **Commencement of amendments to the Stamp Act 1949**

**51.** This Chapter comes into operation on 1 January 2009.

#### **Amendment of section 2**

**52.** The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in section 2—

(a) in the definition of “duly stamped”, by substituting for the proviso the following proviso:

“Provided that a stamp certificate or official receipt for the proper amount or amount of initial duty may be attached or affixed to any instrument in lieu of the stamp, and the instrument shall be deemed to be duly stamped;” and

(b) by inserting after the definition of “small and medium enterprise” the following definition:

“stamp certificate” means a certificate that is issued electronically in respect of any instrument chargeable with duty denoting the amount of duty paid in respect of that instrument;’.

**Amendment of section 7**

**53.** Section 7 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Subject to any rules made under paragraph 82(b), all duties with which any instruments are chargeable under this Act shall be paid, and payment shall be indicated on such instrument by—

- (a) means of an adhesive stamp;
- (b) affixing an official receipt to such instrument; or
- (c) attaching a stamp certificate to such instrument.”.

**New section 11A**

**54.** The principal Act is amended by inserting after section 11 the following section:

**“Replica**

**11A.** (1) Where a replicate of an instrument is presented to the Collector, the replicate of such instrument shall not be deemed to be duly stamped unless it can be shown to the satisfaction of the Collector that all the facts and circumstances affecting the liability of the original instrument to duty, and the amount of the duty chargeable thereon has been paid.

(2) For the purpose of subsection (1), the Collector shall indorse on the replicate of the instrument that full and proper duty with which the original is chargeable had been paid upon payment of a fee of one hundred ringgit for each replicate of an instrument.”.

**Amendment of section 12**

**55.** The principal Act is amended by substituting for section 12 the following section:

**“12.** The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor) shall not be deemed to be duly stamped unless—

- (a) it is stamped as an original instrument;

- (b) it appears by a certificate indorsed by the Collector on the duplicate or counterpart that full and proper duty has been paid on the original instrument; or
- (c) there is denoted on the stamp certificate issued for the duplicate or counterpart that payment of the stamp duty has been paid in respect of the original instrument.”.

### **Amendment of section 36**

**56.** Section 36 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) All instruments chargeable with duty and executed by any person in Malaysia (except an instrument which by virtue of section 47 cannot be stamped after execution) shall be brought to the Collector and the Collector shall assess the duty, if any, with which in his judgment the instrument is chargeable.”.

### **Amendment of section 37**

**57.** Section 37 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “is in his opinion one of a description chargeable with duty,”;
- (b) in subsection (2), by deleting the words “in his opinion”;
- and
- (c) by inserting after subsection (4) the following subsection:

“(5) This section shall only apply to instrument where indorsement is required to be made on that instrument pursuant to any written law.”.

### **Amendment of section 40**

**58.** Section 40 of the principal Act is amended by substituting for the words “When the opinion of the Collector with respect to the amount of duty with which an instrument is chargeable has been required” the words “Where an instrument is brought to the Collector pursuant to subsection 36(1)”.

**Amendment of section 48**

**59.** The principal Act is amended by substituting for section 48 the following section:

“**48.** The payment of any penalty prescribed under section 43 or 47A shall be denoted on the instrument concerned—

- (a) by a stamp duly cancelled;
- (b) by means of an impressed stamp;
- (c) by affixing an official receipt to the instrument; or
- (d) by attaching a stamp certificate to the instrument,

and shall be certified by the Collector.”.

**New section 50A**

**60.** The principal Act is amended by inserting after section 50 the following section:

“**Error in assessment, etc.**

**50A.** No assessment shall be affected by—

- (a) any erroneous or under assessment of the duty or penalty by the Collector; or
- (b) the failure to assess that duty or penalty by the Collector,

and the correct amount of duty or penalty due on the instrument shall be debts due to the Government and shall be recoverable by any of the ways and means in force for the time being for the recovery of debts due to the Government.”.

**Amendment of section 57**

**61.** Section 57 of the principal Act is amended—

(a) in paragraph (f)—

- (i) by substituting for the colon at the end of subparagraph (v) a semicolon; and
- (ii) by inserting after subparagraph (v) the following subparagraph:

“(vi) in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed:”; and

(b) in the proviso, by inserting after paragraph (a) the following paragraph:

“(aa) that the application for relief is made within two months from the date the instrument of transfer is rejected by the Registrar of Titles; or”.

### **Amendment of section 59A**

**62.** Section 59A of the principal Act is amended by inserting after the words “official receipt” the words “or a stamp certificate”.

### **New sections 77A and 77B**

**63.** The principal Act is amended by inserting after section 77 the following sections:

#### **“Electronic medium**

**77A.** (1) For the purposes of this Act, the Collector may by an electronic medium allow a registered person, without the need for the instrument to be presented to the Collector—

- (a) to obtain an assessment of stamp duty and any penalty, if any, on an instrument;
- (b) to pay stamp duty and any penalty, if any, on an instrument by electronic funds transfer or otherwise, in accordance with the assessment;
- (c) to obtain a stamp certificate in relation to the assessment; or
- (d) to obtain an indorsement of stamp duty in a case where section 37 applies.

(2) In this section, “registered person” means any person who applies to the Collector to register to use the electronic medium.

(3) All conditions and specifications relating to the use of electronic medium shall be determined by the Collector.

### **Electronic assessment and stamping of instruments**

**77B.** (1) For the purposes of this Act, the issue of a stamp certificate for an instrument shall state an assessment of a duty and any penalty, if any, in relation to the instrument.

(2) A registered person must, on receipt of a stamp certificate issued for the instrument by the Collector, immediately attach the stamp certificate to the instrument.”.

### **Amendment of section 82**

**64.** Section 82 of the principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) to prescribe the stamp certificate and official receipt to be issued under this Act for the payment of stamp duty, to provide for matters relating to issue and validity of the stamp certificate and official receipt;”.

### **Amendment of First Schedule**

**65.** The First Schedule to the principal Act is amended by substituting for item 22(1) the following item:

Item	Description of Instrument	Proper Stamp Duty
“22	BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:	
	(a) being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), for the term of life or any other indefinite period	
	for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable	RM1.00



Item	Description of Instrument	Proper Stamp Duty
(b)	for any sum or sums of money, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.	The same <i>ad valorem</i> duty as a charge or mortgage for such total amount.”.

## CHAPTER IV

### AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

#### **Commencement of amendments to the Petroleum (Income Tax) Act 1967**

**66.** This Chapter has effect for the year of assessment 2010 and subsequent years of assessment.

#### **Amendment of section 16**

**67.** The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 16(7B) by inserting after the words “housing,” the words “conservation or preservation of environment, enhancement of income of the poor,”.

#### **New section 41A**

**68.** The principal Act is amended by inserting after section 41 the following section:

##### **“Notification of non-chargeability**

**41A.** (1) Where in ascertaining the chargeable income of a chargeable person, it appears to the Director General that no assessment shall be made in respect of that person for any year of assessment by reason of no adjusted income, statutory income, assessable income or chargeable income, he shall notify that person in writing that no assessment shall be made for that year of assessment and the computation with regard to it.

(2) Where a chargeable person is dissatisfied with the notification made by the Director General under subsection (1), he may within thirty days of being so notified, appeal to the Special Commissioners as if the notification were a notice of assessment and the provisions of this Act relating to appeals shall apply accordingly with such necessary modifications.

(3) If no notice of appeal against a notification made by the Director General under subsection (1) has been given within the time specified under that subsection or any extended period thereof, the notification shall be final and conclusive for the purposes of this Act.

(4) Nothing in this section shall prejudice the exercise of any power conferred on the Director General by section 39.”.

### **Amendment of Second Schedule**

**69.** The Second Schedule to the principal Act is amended by inserting after paragraph 2 the following paragraph:

“**2A.** For the purpose of paragraph 1, the capital expenditure incurred by a chargeable person on the provision of machinery or plant shall not include any amount paid to a non-resident person in consideration of services rendered in connection with the installation or operation of that machinery or plant which tax is deductible under the provision of the law for the time being in force in Malaysia relating to income tax, if tax has not been deducted therefrom and paid to the Director General in accordance therewith:

Provided that this paragraph shall not apply if the chargeable person has paid the amount of deduction of tax and the increased amount which equal to ten per cent of that deduction which are due and payable under the provisions of that law.”.

### **Amendment of Third Schedule**

**70.** Paragraph 1 of the Third Schedule to the principal Act is amended—

(a) in subparagraph (2), by inserting after the word “Chairman” the words “or Deputy Chairman”;

(b) by substituting for subparagraph (3) the following subparagraph:

“(3) Two or more hearing of appeals may be heard concurrently at any one time.”; and

(c) by inserting after subparagraph (3) the following subparagraph:

“(4) If the Chairman or Deputy Chairman has not been appointed or is not present at the hearing of the appeals, the Special Commissioners present at the hearing of the appeals shall choose one of their number, who shall be a person with experience of the kind mentioned in subparagraph (1) to preside at the hearing.”.

## CHAPTER V

### AMENDMENT TO THE LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

#### **Commencement of amendment to the Labuan Offshore Business Activity Tax Act 1990**

**71.** This Chapter is deemed to have effect for the year of assessment 2009 and subsequent years of assessment.

#### **Amendment of section 3A**

**72.** Subsection 3A(2) of the Labuan Offshore Business Activity Tax Act 1990 is amended by inserting after the words “the Director General” the word “within”.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 (“Act 53”), the Stamp Act 1949 (“Act 378”), the Petroleum (Income Tax) Act 1967 (“Act 543”) and the Labuan Offshore Business Activity Tax Act 1990 (“Act 445”).

#### AMENDMENTS TO THE INCOME TAX ACT 1967

Chapter II of this Bill seeks to amend the Income Tax Act 1967.

2. *Clause 5 and paragraph 42(d)* seek to amend section 6 and introduce a new Part XIII into Schedule 1 of Act 53 to provide for the rate of tax on a non-resident person in respect of gains or profits falling under paragraph 4(f) of Act 53.

*Clause 10* seeks to introduce a new section 15B into Act 53 to provide for circumstances where gains or profits falling under paragraph 4(f) of Act 53 are deemed to be derived from Malaysia.

*Clause 15* seeks to amend paragraph 39(1)(j) of Act 53 to disallow deduction for a person who fails to withhold the amount of tax of the non-resident in respect of the income falling under paragraph 4(f) of Act 53.

*Clause 37* seeks to introduce a new section 109F into Act 53 to provide for the mechanism to withhold the tax of the non-resident in respect of the income falling under paragraph 4(f) of Act 53.

These amendments come into operation on 1 January 2009.

3. *Clause 6* seeks to amend section 6A of Act 53 to provide for an increase in the amount of rebate to be allowed to an individual that has a chargeable income not more than thirty-five thousand ringgit from three hundred and fifty ringgit to four hundred ringgit.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

4. *Clauses 7, 38 and paragraph 45(b)* seek to amend section 7 and subparagraph 28(1) of Schedule 6 of Act 53 as a consequence of the deletion of section 130 of Act 53. With these amendments, an individual who is a citizen and employed in the public services or in the service of a statutory authority is deemed to be a resident for the period he is absent from Malaysia by reason of his employment or study in any institution or professional body.

These amendments have effect for the year of assessment 2009 and subsequent years of assessment.

5. *Clauses 8 and 9* seek to amend sections 15 and 15A of Act 53 respectively to provide that any payment by a local authority to a non-resident in respect of interest or royalty under section 15 or special classes of income under section 15A is deemed to be derived from Malaysia.

These amendments come into operation on the coming into operation of this Act.

6. *Clause 11* seeks to amend section 25 of Act 53 to allow director's fee or bonus to be taxed in the basis period in which the director's fee or bonus is received.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

7. *Paragraph 12(a)* seeks to amend section 32 of Act 53. Prior to the amendment, the market value of the shares for the purposes of ascertaining the gross income of a person from an employment in respect of any right to

acquire shares in a company refers only to shares listed on Bursa Malaysia. The proposed amendment extends the application of the section to shares listed on any stock exchange.

*Paragraph 12(b)* seeks to insert a new subsection (4) into section 32 of Act 53 to provide that the gross income in respect of any right to acquire shares in a company shall be excluded in computing the gross income of a person from the employment pertaining to the use and enjoyment of living accommodation under paragraph 13(1)(c) of Act 53.

These amendments have effect for the year of assessment 2009 and subsequent years of assessment.

8. *Clause 13* seeks to amend paragraph 34(6)(h) of Act 53 to extend the scope of deduction in respect of community project to include project for conservation or preservation of environment and enhancement of income of the poor.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

9. *Clause 14, paragraphs 43(d) and (e), and subparagraph 46(d)(ii)* are amended as a consequence to the deletion of section 31A of the Promotion of Investments Act 1986 [Act 327] with effect from 31 August 2007.

These amendments have effect for the year of assessment 2009 and subsequent years of assessment.

10. *Clause 16* seeks to amend subsections 44(6), (11B) and (11c) of Act 53 to provide that the maximum amount allowed as a deduction to a company in respect of any gift of money to any approved institution or organization, for sports activity or project of national interest is increased from seven per cent to ten per cent of the aggregate income.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

11. *Clause 17* seeks to amend section 44A of Act 53 to provide that the amount of adjusted loss that can be transferred by a company to a related company is increased from fifty per cent to seventy per cent of the loss.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

12. *Clause 18* seeks to amend section 53 of Act 53 to clarify that trade associations includes any association formed with the main object of developing and advancing the profession of its members. In short, professional bodies are trade associations for the purposes of Act 53.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

13. *Clause 19* seeks to introduce a new section 53A into Act 53. The proposed new section seeks to provide for a tax treatment in respect of a body of persons which carry on club, association or similar institution where income from members and any expenses related to the income will be disregarded. Contrary to that, income from transaction with non-members will be taxed including the income of the body of persons from investment activity. The body of persons is required to prepare a separate account in respect of income derived from its members and non-members.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

14. *Clause 20* seeks to amend section 54A of Act 53 to provide that in ascertaining the statutory income of a person who carries on the business of transporting passengers or cargo, or letting out on charter ship owned by him, capital allowance is deemed to have been made to him even though he chose not to make a claim under paragraph 77 of Schedule 3 of Act 53.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

15. *Clause 21* seeks to introduce a new section 77B into Act 53 to enable a person to furnish an amended return. A person may amend his return not later than 6 months from the due date of filing his return and the amendment can only be done once. The tax payable in the amended return will include an increase amount of which amount depends on the time the amended return is furnished. If the return is furnished within 60 days from the due date, the increased sum will be an amount of ten per cent of the amount of tax or additional tax. If the amended return is furnished after the period of 60 days from the due date, but not later than six months from that date, the increased sum shall be computed in accordance with the formula in that section.

*Clause 22* seeks to introduce a new section 91A into Act 53 as a consequence of the introduction of a new section 77B into Act 53. With the amendment, an amended return furnished pursuant to section 77B of Act 53 shall be deemed to be a notice of assessment or additional assessment and the said notice of assessment or additional assessment shall be deemed to be served on the date the amended return is furnished.

*Clause 27* seeks to amend section 103 of Act 53 to insert a new subsection (1A). Amongst others, it seeks to provide that tax payable under an assessment pursuant to section 91A of Act 53 is due and payable on a day the amended return is furnished. In the case where the amended return is furnished after a period of 60 days from the due date and the tax due and payable is not paid, the amount unpaid shall be increased by five per cent.

*Clause 29* seeks to amend subsection 106(3) of Act 53 as a consequence to the introduction of subsection 103(1A) of Act 53.

These amendments have effect for the year of assessment 2009 and subsequent years of assessment.

16. *Clause 25* seeks to introduce a new section 97A into Act 53. The new section enables a person to appeal to the Special Commissioners of Income Tax within 30 days from the date he is notified by the Director General that no assessment is made against him. For the purpose of the appeal, the notification is deemed to be a notice of assessment. Where a person fails to appeal against the notification, that notification shall be final and conclusive for the purpose of Act 53.

This amendment comes into operation on 1 January 2009.

17. *Clause 26* seeks to amend subsection 98(3) of Act 53 to empower the Yang di-Pertuan Agong to appoint Deputy Chairman from amongst the Special Commissioners of Income Tax.

*Clause 44* seeks to amend paragraph 1 of Schedule 5 to Act 53 as a consequence of the amendment made in *clause 26*. The amendment will enable the Deputy Chairman to preside at any hearing before the Special Commissioners, making it possible for hearing to be conducted concurrently and the Deputy Chairman will preside at the hearing.

These amendments come into operation on the coming into operation of this Act.

18. *Paragraph 28(a)* seeks to amend paragraph 104(1)(b) of Act 53 to empower the Director General to issue a certificate to restrain a person from leaving Malaysia if he fails to pay the increased sums under subsections 103(1A), 107B(4) and 107C(10) of Act 53.

*Paragraph 28(b)* seeks to amend paragraph 104(1)(c) of Act 53 to empower the Director General to issue a certificate on a person who fails to pay the withholding tax of a non-resident person due under subsections 109B(2) and 109F(2) of Act 53.

*Paragraph 28(c)* seeks to empower the Director General to issue a certificate on a person who is a director within the meaning of section 75A of Act 53.

These amendments come into operation on the coming into operation of this Act.

19. *Clauses 30, 31 and paragraphs 33(b), 34(b), 35(b) and 36(b)* seek to amend sections 107A, 107B, 109, 109B, 109D and 109E of Act 53 respectively, to allow the Director General to remit the whole or any part of the increased sums under those sections.

These amendments come into operation on the coming into operation of this Act.

20. *Clause 32* seeks to amend section 107C of Act 53. With the amendment, the flexibility for company not to furnish estimate for 2 years of assessment upon commencement of business will not apply to a company that controls or being controlled directly or indirectly by another company which has a paid up capital of more than two million five hundred thousand ringgit in respect of ordinary shares.

This amendment has effect for the year of assessment 2010 and subsequent years of assessment.

21. *Clause 39* seeks to introduce a new section 138c into Act 53. With the proposed provision, a person may make an application to the Director General for an advance pricing arrangement. In a case where it involves the double taxation agreement under section 132 of Act 53, a person may apply for an advance pricing arrangement to be entered into by the competent authorities of both Governments. The application must be made in the prescribed form and subject to any rules prescribed by Act 53.

This amendment comes into operation on 1 January 2009.

22. *Clause 40* seeks to introduce a new section 140A into Act 53. The amendment provides for a special provision relating to a transaction between related parties in particular on the matter pertaining to the determination transfer pricing and thin capitalization. With the amendment, the Director General may substitute the price in a related transaction if the transaction was not made at arm's length. With regard to thin capitalization, portion of the interest that relates to the amount of financial assistance which is excessive will be disallowed as a deduction. The laws regulating such transaction are further subject to rules prescribed by the Minister under section 154 of Act 53.

This amendment comes into operation on 1 January 2009.

23. *Clause 42* seeks to amend Schedule 1 to Act 53. *Subparagraphs (a)(i)* and *(ii)* seek to introduce a new tax rate for a person other than those mentioned under paragraphs 1A, 2, 2A and 3 of Part I of Schedule 1 to Act 53 and further seeks to amend paragraph 1A to reduce the tax rate for income of a non-resident from 28 per cent to 27 per cent. *Subparagraph (a)(iv)* seeks to introduce new paragraphs 2B and 2C to provide that the preferential tax rate will not apply to a company that controls or being controlled directly or indirectly by another company which has a paid up capital of more than two million and five hundred thousand ringgit in respect of ordinary shares.

*Paragraph (b)* seeks to amend Part IV of Schedule 1 to Act 53 to provide for a reduce in a tax rate for income of a co-operative society.

These amendments have effect for the year of assessment 2009 and subsequent years of assessment.

*Paragraph (c)* seeks to amend Part X of Schedule 1 to Act 53 to provide that the tax rate on any income distributed by a unit trust to a unit holder which is a foreign institutional investor is reduced from 20 per cent to 10 per cent and income distributed to a unit holder who is not a resident is reduced from 15 per cent to 10 per cent.

This amendment has effect from 1 January 2009 to 31 December 2011.



24. *Clause 43* seeks to amend Schedule 3 to Act 53, Paragraph (a) seeks to insert a new paragraph 2D into Schedule 3. With the proposed amendment, the capital expenditure incurred by a person on the provision of machinery or plant shall not include an amount paid to a non-resident in connection with the installation or operation of that machinery or plant if tax has not been deducted in respect of that amount. However, if the tax that has not been deducted is subsequently paid to the Director General, the restriction as proposed in the amendment is not applicable.

This amendment comes into operation on the coming into operation of this Act.

*Paragraph (b)* seeks to insert subparagraphs 19A(3), (4) and (5) into Schedule 3 to Act 53 to provide that the restriction on the special allowances for small value asset is no longer applicable for a company which has a paid up capital in respect of ordinary shares of two million and five hundred thousand ringgit and less. However if the company controls or being controlled directly or indirectly by another company which has a paid up capital of more than two million and five hundred thousand ringgit in respect of ordinary shares, the restriction shall apply.

*Paragraph (f)* seeks to introduce a new paragraph 67C into Schedule 3 to Act 53. The proposed amendment provides that for the purpose of ascertaining the residual expenditure of a person under paragraph 68, it shall include the cost for dismantling and removing the asset, and restoring the site. The requirement to dismantle and remove the asset, and restore the site must be pursuant to any written law or agreement. However, the cost shall be allowed only if the asset which has been dismantled and removed is not used for any other business of the person or any other person.

These amendments have effect for the year of assessment 2009 and subsequent years of assessment.

25. *Clause 45* seeks to amend Schedule 6 to Act 53. Paragraph (a) seeks to amend paragraph 25C to provide that perquisite on awards given to employee is extended to innovation or productivity awards. The amount of perquisite which is exempt is increased from one thousand ringgit to a maximum of two thousand ringgit.

This amendment has effect for the year of assessment 2008 and subsequent years of assessment.

26. *Clause 46* seeks to amend Schedule 7A to Act 53 Paragraph (a) seeks to amend paragraphs 1, 1A and 1C of the Schedule. With the amendment, the allowance under the Schedule will only be enjoyed by the company if the company has been in operation for a period of more than three years.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

*Paragraph (b)* seeks to amend paragraph 1B to provide that where in respect of an asset, a company has enjoyed an allowance under the Schedule, no allowance will be made under the Schedule to any person who acquired the asset if the person who acquired and the person who disposed of the asset is one of whom has control over the other or both the acquirer and the disposer are controlled by the same person.

This amendment comes into operation on the coming into operation of this Act.

*Subparagraph (e)(iii)* seeks to amend subparagraph 8(d). With the amendment, the definition of “qualifying project” is extended to a project undertaken for expanding an existing business of rearing chicken and ducks in a closed house system.

This amendment has effect for the year of assessment 2009 and 2010.

*Paragraph (f)* seeks to amend paragraph 9 to provide for a definition of “manufacturing” under the Schedule.

This amendment has effect for the year of assessment 2009 and subsequent years of assessment.

27. Part II of this Chapter contains the savings and transitional provision and shall be read together with and be in addition to the provision of sections 45, 46 and 51 of the Finance Act [Act 683].

This Part comes into operation on the coming into operation of this Act.

#### AMENDMENTS TO THE STAMP ACT 1949

Chapter III of this Bill seeks to amend the Stamp Act 1949. This Chapter comes into operation on 1 January 2009.

28. *Clause 52* seeks to amend section 2 of Act 378. The proposed amendment seeks to introduce the definition of “stamp certificate” and to amend the definition of “duly stamped” as a consequence of the introduction of payment of stamp duty through the electronic medium.

29. *Clause 53* seeks to amend section 7 of Act 378 to introduce a new mode of payment of stamp duty on instrument by way of electronic medium. This is in addition to adhesive stamp and affixing official receipt to such instrument. Through the system, a stamp certificate may be obtained through electronic medium and it is then attached to an instrument as evidence of duty paid.

*Clauses 58, 59 and 62* are amended as a consequence of the amendment to section 7 of Act 378.

30. *Clause 54* seeks to introduce a new section 11A into Act 378. With the proposed amendment, the Collector may indorse on a replicate of an instrument where he is satisfied that full and proper duty on the original has been paid. A processing fee of one hundred ringgit is payable for each application.

31. *Clause 55* seeks to amend section 12 of Act 378 to provide that the duplicate or counterpart of an instrument shall be deemed not to be duly stamped unless the duty is denoted on the stamp certificate if the duplicate or counterpart of that instrument is stamped by way of electronic medium.

32. *Clause 56* seeks to amend section 36 of Act 378 to abolish the adjudication fee of ten ringgit and all instruments must be brought to the Collector for the assessment of duty.
33. *Clauses 57* and *58* seek to amend sections 37 and 40 of Act 378 respectively as a consequence of the amendment to section 36.
34. *Clause 60* seeks to introduce a new section 50A into Act 378 to provide that no error shall affect an assessment. The Collector may recover the correct amount of duty and penalty due notwithstanding the error in the assessment.
35. *Clause 61* seeks to introduce a new subparagraph (vi) to paragraph 57(f) of Act 378 to empower the Collector to give relief for a stamp used for any instrument where the transaction could not be carried out by parties by reason that the sale and purchase agreement is cancelled, annulled or rescinded. This *clause* also seeks to introduce a new paragraph (aa) into the proviso to paragraph 57(f) of Act 378 to provide that an application for relief must be made within 2 months from the date the instrument of transfer is rejected by the Registrar of Titles.
36. *Clause 63* seeks to introduce a new section 77A into Act 378 to allow a person to pay stamp duty by way of electronic medium. However, that person must first register with the Collector in order to enable him to obtain the assessment. He may pay by electronic funds transfer in which a stamp certificate is issued and that certificate must be attached to the instrument. Notwithstanding that, a stamp certificate may also be obtained if the person pays the duty assessed at the stamp office. In a case where there is no chargeable duty on the instrument, the Collector may indorse electronically that such instrument is not liable to duty. This *clause* also seeks to introduce a new section 77B into Act 378 to provide that a stamp certificate is issued to the registered person when stamp duty and penalty, if any, has been paid.
37. *Clause 64* seeks to introduce a new paragraph 82(aa) into Act 378 to empower the Minister to prescribe the stamp certificate and official receipt.
38. *Clause 65* seeks to amend item 22(1) of the First Schedule to Act 378 to impose *ad valorem* duty on loans, services and equipment lease agreements.

#### AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Chapter IV of this Bill seeks to amend the Petroleum (Income Tax) Act 1967. This Chapter has effect for the year of assessment 2010 and subsequent years of assessment.

39. *Clause 67* seeks to amend subsection 16(7B) of Act 543 to extend the scope of deduction in respect of community project to include project for conservation or preservation of environment and enhancement of income of the poor.

40. *Clause 68* seeks to introduce a new section 41A into Act 543. The new section enables a person to appeal to the Special Commissioners of Income Tax within 30 days from the date he is notified by the Director General that no assessment is made against him. For the purpose of the appeal, the notification is deemed to be a notice of assessment. Where a person fails to appeal against the notification, that notification shall be final and conclusive for the purpose of Act 543.

41. *Clause 69* seeks to insert a new paragraph 2A into the Second Schedule to Act 543. With the proposed amendment, the capital expenditure incurred by a person on the provision of plant or machinery shall not be allowed for deduction if that person fails to withhold the payment for services rendered in connection with the installation or operation of that plant or machinery.

42. *Clause 70* seeks to amend paragraph 1 of the Third Schedule to Act 543 to provide for the appointment of Deputy Chairman of the Special Commissioners of Petroleum Income Tax.

#### AMENDMENT TO THE LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

Chapter V of this Bill seeks to amend the Labuan Offshore Business Activity Tax Act 1990. This Chapter has effect for the year of assessment 2009 and subsequent years of assessment.

43. *Clause 72* seeks to amend subsection 3A(2) of Act 445 to provide that an offshore company which elects to be charged to tax under the provisions of Act 53 must make the election in the prescribed form within 3 months after the beginning of the basis period for a year of assessment.

#### GENERAL

44. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

#### FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U<sup>2</sup>) 2654]