

FINANCE (NO. 2) BILL 2011

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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 Real Property Gains Tax Act 1976, the Labuan Business Activity Tax Act 1990 and the Finance Act 2009.

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ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance (No. 2) Act 2011.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Stamp Act 1949 [*Act 378*], the Real Property Gains Tax Act 1976 [*Act 169*], the Labuan Business Activity Tax Act 1990 [*Act 445*] and the Finance Act 2009 [*Act 693*] are amended in the manner specified in Chapters II, III, IV, V and VI respectively.

CHAPTER II

PART I

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 4, 6, 7, 9, 11, 12, 24 and 25, paragraphs 26(a) and (c), sections 27 and 28 have effect for the year of assessment 2012 and subsequent years of assessment.

(2) Section 5 comes into operation from 1 January 2012 until 31 December 2016.

(3) Sections 8, 13, 14, 16, 17, 20 and 22 come into operation on 1 January 2012.

(4) Section 10 comes into operation from the year of assessment 2012 until the year of assessment 2021.

(5) Section 21 has effect from the year of assessment 2013.

(6) Sections 15, 18 and 19 come into operation on the coming into operation of this Act.

(7) Section 23 comes into operation on the coming into operation of the Inland Revenue Board of Malaysia Act 1995 [*Act 533*].

(8) Paragraph 26(b) is deemed to have effect from the year of assessment 2011.

Amendment of section 2

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended—

(a) in subsection 2(1)—

- (i) in the definition of “approved scheme”, by inserting after the words “Employees Provident Fund” the words “, private retirement scheme”; and

- (ii) by inserting after the definition of “prescribed” the following definition:

‘ “private retirement scheme” means a retirement scheme approved by the Securities Commission in accordance with the Capital Markets and Services Act 2007 [Act 671];’; and

- (b) in subsection 2(8), by substituting for the words “or the Labuan Offshore Financial Services Authority” the words “, the Labuan Financial Services Authority or the Malaysia Co-operative Societies Commission”.

Amendment of section 6

5. Paragraph 6(1)(i) of the principal Act is amended by substituting for the words “three years from the year of assessment 2009” the words “five years from the year of assessment 2012”.

Amendment of section 6A

6. Paragraph 6A(2)(c) of the principal Act is amended in the proviso by inserting after the words “Part XIV” the words “or XV”.

Amendment of section 34B

7. Subsection 34B(4) of the principal Act is amended—

- (a) by substituting for paragraph (c) the following paragraph:

“(c) a “contract research and development company” and a “research and development company” have the same meaning assigned thereto in section 2 of the Promotion of Investments Act 1986 and fulfills the conditions specified by the relevant Ministry;” and

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

“(d) a “related company” has the meaning assigned to it in section 2 of the Promotion of Investments Act 1986.”.

Amendment of section 39

8. Section 39 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Paragraphs (1)(f), (i) and (j) shall not apply if for a year of assessment a person is exempt under paragraph 127(3)(b) or subsection 127(3A) or the Promotion of Investments Act 1986, in respect of all income of that person from all sources not being exemption on income equal to capital expenditure incurred.”.

Amendment of section 45

9. Section 45 of the principal Act is amended by substituting for subsection (5) the following subsection:

“(5) The election referred to in subsection (2) shall be made in a return furnished in accordance with subsection 77(1).”.

Amendment of section 49

10. Section 49 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a), by deleting the words “or deferred annuity”; and
- (ii) in paragraph (b), by substituting for the words “or the Employees Provident Fund as the case may be” the words “(other than a private retirement scheme)”;

- (b) in subsection (1A)—
- (i) by deleting paragraph (a); and
 - (ii) in paragraph (b), by deleting the words “or where paragraph (a) applies, shall not exceed seven thousand ringgit”; and

- (c) by inserting after subsection (1C) the following subsections:

“(1D) In the case of an individual resident for the basis year for a year of assessment who has—

- (a) paid any deferred annuity; or
- (b) made or suffered the making of a contribution to a private retirement scheme,

there shall be allowed for that year of assessment a deduction of the aggregate amount of the payments or contribution or both or a deduction of three thousand ringgit whichever is the less.

(1E) For the purposes of subsection (1D), where subsection 50(2) or (3) applies, the total deduction under that subsection shall not exceed three thousand ringgit.”.

Amendment of section 54A

- 11.** Section 54A of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “the statutory income” the words “seventy per cent of the statutory income of that person”; and
- (b) by substituting for subsection (2) the following subsection:

“(2) Notwithstanding the provisions of this Act—

- (a) the income derived from each Malaysian ship referred to under subsection (1) shall be treated as income from a separate and distinct business source of that person;

- (b) the adjusted loss (if any) of the person for any year of assessment in respect of a source consisting of a Malaysian ship shall not be available as a deduction in arriving at the total income of that person for that year of assessment;
- (c) an amount of statutory income of a person from a source consisting of a Malaysian ship referred to in paragraph (b) which is exempt under this section for the following year of assessment shall be reduced by the adjusted loss referred to in that paragraph, and if by reason of insufficiency or absence of that statutory income, the amount of adjusted loss which has not been so utilized shall further reduce the amount of statutory income of that person from that source which is exempt under this section for any subsequent years of assessment until the amount of adjusted loss is fully utilized; and
- (d) an amount of statutory income of a person for a year of assessment from a source consisting of a Malaysian ship which is not exempt under this section shall be deemed to be the total income of that person.”.

Amendment of section 60

12. Section 60 of the principal Act is amended—

- (a) by substituting for subsection (10A) the following subsection:

“(10A) Notwithstanding subsections (10), 43(2) and 44(2), any adjusted loss of the life fund for the basis period for a year of assessment of an insurer shall only be available as a deduction against the statutory income of the life fund of the insurer for subsequent years of assessment until fully utilized.”; and

- (b) by inserting after subsection (10C) the following subsection:

“(10D) In arriving at the total income of an insurer for a year of assessment, the adjusted loss from a source or sources of an insurer for that year of

assessment other than from a source consisting of a life fund, shall be available as deduction against the aggregate statutory income (excluding the statutory income from a source consisting of a life fund) of an insurer, and any unabsorbed loss ascertained under subsection 44(4) or (5) for that year of assessment shall not be deducted against the statutory income of the life fund of the insurer for the subsequent years of assessment.”.

Amendment of section 67

13. Section 67 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) For the purposes of subsection (4), where a representative is a person appointed as an agent under section 68, the Director General may, by way of a notice in writing, require the representative to remit to him any accessible moneys for the purpose of payment of any tax due from the principal or for any debt so due referred to in that subsection, notwithstanding that no assessment in respect of such tax has been made in the name of the representative:

Provided that the accessible moneys shall not include any moneys held by the representative in his custody and control on behalf of the principal.”.

Amendment of section 80

14. Section 80 of the principal Act is amended by inserting after subsection (1A) the following subsection:

“(1B) The Director General in exercising his powers under subsection (1) shall have access to computerized data whether stored in a computer or otherwise, which shall include being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of the computerized data.”.

Amendment of section 81

15. Section 81 of the principal Act is amended—

- (a) by renumbering the section as subsection (1);
- (b) in subsection (1), by inserting after the word “possession” the words “or control”; and
- (c) by inserting after subsection (1) the following subsections:

“(2) Without prejudice to section 120, in ascertaining the chargeable income of a person under this Act, the Director General may wholly or partly disregard any information or particulars produced by that person after the expiry of the time as specified in the notice referred to in subsection (1).

(3) Notwithstanding the provisions of this Act or any other written law, any information or particulars disregarded pursuant to subsection (2) shall not be used by any person to dispute the assessment made under this Act including in any proceeding before the Special Commissioners or court.”.

New section 83A

16. The principal Act is amended by inserting after section 83 the following section:

“Duty to furnish particulars of payment made to an agent, etc.

83A. (1) Every company shall for each year prepare and provide to each of its agent, dealer or distributor a copy of the form prescribed by the Director General containing—

- (a) particulars of payment (whether in monetary form or otherwise) made during that year of assessment to that agent, dealer or distributor;
- (b) name and address of that agent, dealer or distributor; and
- (c) such other particulars as may be required by the Director General.

(2) For the purpose of subsection (1), the prescribed form shall be provided to the agent, dealer or distributor not later than 31 March in the year immediately following the year mentioned in that subsection.

(3) The company shall keep and retain the prescribed form in safe custody and shall make it readily accessible to the Director General.

(4) In this section, “agent”, “dealer” or “distributor” means any person who is authorised by a company to act as its agent, dealer or distributor, and who receives payment (whether in monetary form or otherwise) from the company arising from sales, transactions or schemes carried out by him as an agent, dealer or distributor.”.

Amendment of section 97A

17. Section 97A of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Where in ascertaining the chargeable income of a person, it appears to the Director General that—

(a) no assessment shall be made in respect of that person for any year of assessment by reason of—

(i) absence of adjusted income, statutory income, aggregate income or total income of a person from any of his sources of income; or

(ii) exemption granted to that person under this Act or the Promotion of Investments Act 1986; or

(b) assessment has been made in respect of that person, but that person has no statutory income from a source consisting of a business,

the Director General may notify that person in writing—

(i) in respect of paragraph (a), that no assessment shall be made for that year of assessment and provide a computation with regard to it; or

- (ii) in respect of paragraph (b), the adjustment, if any, made in respect of that source consisting of a business and provide a computation with regard to it.”.

Amendment of section 106

18. Section 106 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) The Director General may in his discretion for any good cause shown remit the whole or any part of the interest on judgment debt awarded by the court to the Government in any civil proceedings under this section.”.

New section 107D

19. The principal Act is amended by inserting after section 107C the following section:

“Advance payment by instalments

107D. (1) Notwithstanding section 107B or 107C, where for any year of assessment—

- (a) a person makes default in furnishing a return in accordance with subsection 77(1) or 77A(1); or
- (b) the Director General has reason to believe that a person makes an incorrect return by omitting or understating any income or gives an incorrect information in relation to any matter affecting his own chargeability to tax,

the Director General may direct that person to make payment by instalments on account of tax which may be payable by that person for that year of assessment at such times and in such amounts as the Director General may direct.

(2) The direction shall be in the form prescribed under this Act and may be issued before the making of an assessment or composite assessment under this Act.

(3) The Director General may, on an application made by the person within thirty days after the service on that person of such direction, vary the amount to be paid by instalments on account of tax and the number of instalments.

(4) The direction issued under subsection (1) shall cease to have effect when an assessment or composite assessment is made under this Act for the year of assessment in respect of which the direction was issued and any amount paid pursuant to the direction shall be applied towards payment of tax payable under that assessment.”.

Amendment of section 109E

20. Subsection 109E(4) of the principal Act is amended by substituting for the words “an amount equal to ten per cent of the income liable to deduction of tax under that subsection and the total sum” the words “a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum”.

New section 111D

21. The principal Act is amended by inserting after section 111C the following section:

“Compensation for over-payment of tax

111D. (1) Subject to this section and subsection 111(4A), an amount of compensation may be payable to a person if the amount refunded to that person for a year of assessment under section 111 is made after—

- (a) ninety days from the date a return for that year of assessment is required to be furnished under this Act, in the case of return furnished by way of electronic transmission; or
- (b) one hundred and twenty days from the date a return for that year of assessment is required to be furnished under this Act, in any other case.

(2) For the purposes of this section—

- (a) the “amount refunded” refers to tax paid in accordance with section 107, 107_B or 107_C for a year of assessment in excess of tax payable, if any, for that year of assessment as specified in a return furnished under section 77 or 77_A; and
- (b) the amount of compensation shall be determined in accordance with the following formula:

$$A \times \frac{\bar{B}}{C} \times 2\%$$

where A is the amount refunded under section 111 for a year of assessment;

B is the number of days beginning from the first day after the period specified under paragraph (1)(a) or (b), as the case may be, until the day that amount is made to a person; and

C is the number of days in a year.

(3) Without prejudice to sections 91 and 113, where the Director General discovers that the whole or part of the compensation—

- (a) is wrongly paid to a person, the Director General may require from that person a return of such amount already paid; or
- (b) ought not to have been paid to that person by reason of an incorrect return or incorrect information furnished by that person, the Director General may require from that person a return of such amount already paid and that amount shall without any further notice be increased by a sum equal to ten per cent of that amount which ought not to have been paid,

and the amount of compensation wrongly paid or ought not to have been paid and the sum increased shall be recoverable as if it were tax due and payable under this Act.

- (4) This section shall not apply—
- (a) if a person fails to furnish return for a year of assessment in accordance with section 77 or 77A;
 - (b) in respect of excess of amount payable referred to in subsections 111(1A) and (1B); or
 - (c) if a person appeals against an assessment under section 99.”.

Amendment of section 120

22. Paragraph 120(1)(b) of the principal Act is amended by inserting after the words “subsection 83(1A)” the words “or 83A(1)”.

Amendment of section 134

23. Section 134 of the principal Act is amended—

- (a) in subsection (1A), by substituting for the words “section 6A” the words “subsection 6A(1)”;
- (b) by inserting after subsection (1A) the following subsection:

“(1B) The deputy chief executive officers of the Inland Revenue Board of Malaysia appointed under subsection 6A(2) of the Inland Revenue Board of Malaysia Act 1995 shall be the Deputy Directors General of Inland Revenue.”; and

- (c) in subsection (2)—
 - (i) by substituting for the words “Minister” the words “Inland Revenue Board of Malaysia”; and
 - (ii) by deleting paragraph (a).

Amendment of Schedule 1

24. Schedule 1 to the principal Act is amended by inserting after Part XIV the following Part:

“PART XV

1. Notwithstanding Part I, income tax shall be charged for a specified year of assessment on the chargeable income of an approved individual under the Returning Expert Programme in respect of having or exercising employment with a person in Malaysia at the rate of 15 per cent on every ringgit of that chargeable income.
2. In this Part—
 - (a) an approved individual and the specified year of assessment referred to in paragraph 1; and
 - (b) where the individual has income from a source other than the employment referred to in paragraph 1 or where subsection 45(2) applies, the chargeable income of the individual referred to in that paragraph,

shall be as determined by the Minister by rules made under this Act.”.

Amendment of Schedule 4B

25. Paragraph 5 of Schedule 4B to the principal Act is amended by deleting the words “or 4A”.

Amendment of Schedule 7A

26. Schedule 7A to the principal Act is amended—

- (a) in the proviso to paragraph 3, by deleting the words “where the qualifying project is located within the States of Sabah, Sarawak, the Federal Territory of Labuan, Perlis, the Eastern Corridor of Peninsular Malaysia and such other areas which the Minister may from time to time determine or”;

(b) in paragraph 7—

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

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

(ii) in subparagraph (d), by substituting for the words “the period” the words “the basis period”; and

(iii) by substituting for subparagraph (e) the following subparagraph:

“(e) for the basis period for which the company has been granted approval under section 31C of the Promotion of Investments Act 1986 prior to the coming into operation of section 37 of the Promotion of Investments (Amendment) Act 2007 [Act A1318] in respect of a manufacturing activity or manufactured product for the period prescribed under paragraph 31E(2)(b) of that Act.”; and

(c) in paragraph 9—

(i) by deleting the definition of “Eastern Corridor of Peninsular Malaysia”; and

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

‘ “factory” means portion of the floor areas of a building or an extension of a building used for the purposes of qualifying project to place or install plant or machinery or to store any raw material, or goods or materials manufactured prior to sale:

Provided that in respect of portion of the building or extension of the building used for the storage of raw material, or goods or materials, or both, it shall not be more than one-tenth of the total floor areas of that building or extension;’.

PART II

SAVINGS AND TRANSITIONAL PROVISIONS

Application of this Part

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

Balance of allowances and adjusted loss of a person in respect of a Malaysian ship

28. (1) Subject to subsection (2), the balance of allowances in respect of any Malaysian ship for a year of assessment 2011 referred to under paragraph 54A(2)(a) of the principal Act prior to the amendment of that paragraph under section 11 of this Act, shall be made to a person in ascertaining the statutory income of that person for the year of assessment 2012 from a source consisting of that ship only.

(2) For the purpose of subsection (1), where the balance of allowances referred to in that subsection is in respect of more than one Malaysian ships, such balance of allowances shall be apportioned to each of the ships in accordance with the following formula:

$$\frac{A}{B} \times C$$

where A is the gross income of a person in respect of a Malaysian ship for the year of assessment 2011;

B is the total gross income of a person in respect of all Malaysian ships for the year of assessment 2011;
and

C is the balance of allowances for the year of assessment 2011 in respect of any Malaysian ship referred to under paragraph 54A(2)(a) of the principal Act prior to the amendment of that paragraph under section 11 of this Act,

and the amount apportioned to each of the ships shall be made to that person in ascertaining the statutory income of that person from a source consisting of the same ship in the year of assessment 2012, and if by reason of an insufficiency or absence of that statutory income of that person from that source, effect cannot be given or cannot be given in full to any of the apportioned sum, so much of the sum which has not been so made shall be made in arriving at the statutory income of that person from that source for the year of assessment 2013 and so on for subsequent years of assessment until the whole amount of the apportioned sum is fully made to that person.

(3) Subject to subsection (4), the balance of adjusted loss in respect of any Malaysian ship for the year of assessment 2011 referred to under paragraph 54A(2)(b) of the principal Act prior to the amendment of that paragraph under section 11 of this Act, shall be deducted against the statutory income of a person which is exempt for the year of assessment 2012 from a source consisting of that ship only.

(4) For the purpose of subsection (3), where the balance of adjusted loss referred to in that subsection is in respect of more than one Malaysian ships, such balance of adjusted loss shall be apportioned to each of the ships in accordance with the following formula:

$$\frac{A}{B} \times C$$

where A is the gross income of a person in respect of a Malaysian ship for the year of assessment 2011;

B is the total gross income of a person in respect of all Malaysian ships for the year of assessment 2011; and

C is the balance of loss for year of assessment 2011 in respect of any Malaysian ship referred to under paragraph 54A(2)(b) of the principal Act prior to the amendment of that paragraph under section 11 of this Act,

and the amount apportioned to each of the ships shall be deducted against the statutory income of that person which is exempt from a source consisting of the same ship in the year of assessment 2012 and if by reason of an insufficiency or absence of that statutory income, effect cannot be given or cannot be given in full to any of the apportioned sum, so much of the sum which has not been so deducted shall be deducted against the statutory

income of that person from that source which is exempt for the year of assessment 2013 and so on for subsequent years of assessment until the whole amount of the apportioned sum is fully deducted.

CHAPTER III

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

29. This Chapter commences on the coming into operation of this Act.

Amendment of section 9

30. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in section 9—

- (a) in the shoulder note, by inserting after the words “in that behalf” the words “or rights subscription forms supplied by Bursa Malaysia”;
- (b) in subsection (1)—
 - (i) by deleting the word “and”; and
 - (ii) by inserting after the words “of insurance,” the words “and Bursa Malaysia to compound for the payment of duty on unstamped rights subscription forms,”;
- (c) by substituting for paragraph (a) the following paragraph:
 - “(a) that the said cheques, contract notes, policies of insurance or rights subscription forms be drawn or drawn up and issued on forms to be supplied or adopted by the said banker, dealer, insurer or Bursa Malaysia;”;
- (d) by substituting for paragraph (b) the following paragraph:
 - “(b) that the said banker, dealer, insurer or Bursa Malaysia do levy upon or charge to the person to whom such cheques, contract notes, policies of insurance or rights subscription forms are issued the stamp duty mentioned in the First Schedule;”;

(e) by substituting for paragraph (c) the following paragraph:

“(c) that the said banker, dealer, insurer or Bursa Malaysia do pay on the 1st day of each calendar month in each year to the Collector the amount due and collected thereon as duties on such unstamped cheques, contract notes, policies of insurance or rights subscription forms, and where he fails to pay the amount due on each date specified or within fourteen days immediately thereafter, he shall in addition to the amount due pay a further amount of two hundred ringgit or ten per centum of the amount due whichever is the greater and any amount due shall be recoverable as a debt due to the Government;”;

(f) in paragraph (d), by substituting for the words “or insurer” the words “, insurer or Bursa Malaysia”;

(g) by substituting for subsection (2) the following subsection:

“(2) Cheques, contract notes, policies of insurance or rights subscription forms drawn or drawn up and issued on forms supplied or adopted by such banker, dealer, insurer or Bursa Malaysia in accordance with this section shall be deemed to be duly stamped.”;

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

“(3) Where a banker, dealer, insurer or Bursa Malaysia has been authorized to compound for the payment of duty on unstamped cheques, contract notes, policies of insurance or rights subscription forms as provided in subsection (1), the Collector or any person authorized by him in writing, may at all reasonable times, inspect any stocks of unstamped cheques, contract notes, policies of insurance or rights subscription forms held by the banker, dealer, insurer or Bursa Malaysia and any books, records and documents kept by him in connection with the issue of such cheques, contract notes or policies of insurance, or supply of such rights subscription forms.”; and

- (i) by substituting for subsection (4) the following subsection:

“(4) For the purpose of subsection (3), the banker, dealer, insurer or Bursa Malaysia shall keep and retain the books, records and documents in connection with the issue of such cheques, contract notes or policies of insurance, or supply of such rights subscription forms for a period of seven years from the year in which such cheques, contract notes, policies of insurance are issued or rights subscription forms are supplied.”.

Amendment of First Schedule

- 31.** The First Schedule to the principal Act is amended—

- (a) in subitem 2(iii), by deleting the words “or of the Malayan Railway”;
- (b) in subitem 2(iv), by deleting the words “or of the Malayan Railway”;
- (c) in item 23—
- (i) in paragraph (a), by deleting the words “or of the Malayan Railway”; and
- (ii) by substituting for paragraph (b) the following paragraph:
- “(b) Bond for securing the refund to Government of amounts overpaid to persons appointed by Government officers to receive their salary or allowance when absent on leave.”;
- (d) in item 32, under “*Exemptions*”, in subparagraph (b)(v), by deleting the words “or of the Malayan Railway”;
- (e) in paragraph 1, under “GENERAL EXEMPTIONS”, by deleting the words “or the Malayan Railway” wherever appearing; and
- (f) in paragraph 6, under “GENERAL EXEMPTIONS”, by inserting after the words “the Labuan Financial Services Authority” the words “, the Malaysia Co-operative Societies Commission”.

Amendment of Second Schedule

32. The Second Schedule to the principal Act is amended—

(a) by substituting for item 19 the following item:

“19	ANY BOND furnished to the Director General of Immigration in connection with the grant of any pass or permit issued under the Immigration Act 1959/63 [Act 155]	An immigration officer”; and
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(b) by inserting after item 19 the following item:

“19A	EMPLOYMENT CONTRACT issued to the Immigration Department for the purpose of securing a pass	An immigration officer”.
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CHAPTER IV

AMENDMENT TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendment to the Real Property Gains Tax Act 1976

33. This Chapter has effect from the year of assessment 2012.

Amendment of Schedule 2

34. The Real Property Gains Tax Act 1976 is amended in subparagraph 3(g) of Schedule 2 by inserting after the words “Central Bank” the words “, the Labuan Financial Services Authority, the Malaysia Co-operative Societies Commission”.

CHAPTER V

AMENDMENT TO THE LABUAN BUSINESS ACTIVITY TAX
ACT 1990**Commencement of amendment to the Labuan Business Activity
Tax Act 1990**

35. This Chapter is deemed to have come into operation on 28 January 2011.

Amendment of section 22A

36. The Labuan Business Activity Tax Act 1990 is amended in section 22A—

(a) in paragraph (1)(a), by inserting after the words “double taxation arrangements” the words “or tax information exchange arrangements”; and

(b) by substituting for subsection (2) the following subsection:

“(2) For the purpose of subsection (1)—

“double taxation arrangement” means an arrangement between the Government of Malaysia and the Government of any territory outside Malaysia under section 132 of the Income Tax Act 1967;

“tax information exchange arrangements” means an arrangement between the Government of Malaysia and the Government of any territory outside Malaysia under section 132A of the Income Tax Act 1967.”.

CHAPTER VI

AMENDMENT TO THE FINANCE ACT 2009

Commencement of amendment to the Finance Act 2009

37. This Chapter has effect from 1 January 2012 to 31 December 2016.

Amendment of section 3

38. The Finance Act 2009 is amended in subsection 3(5) by substituting for the words “31 December 2011” the words “31 December 2016”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 (“Act 53”), the Stamp Act 1949 (“Act 378”), the Real Property Gains Tax Act 1976 (“Act 169”), the Labuan Business Activity Tax Act 1990 (“Act 445”) and the Finance Act 2009 (“Act 693”).

AMENDMENTS TO THE INCOME TAX ACT 1967

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

1. *Clause 4* seeks to amend subsection 2(1) of Act 53. The proposed amendment seeks to extend the definition of approved scheme to include private retirement scheme.

Clause 4 further seeks to introduce a new definition of “private retirement scheme” which is a retirement scheme as approved by the Securities Commission under the Capital Markets and Services Act 2007 [*Act 671*].

Clause 4 also seeks to amend subsection 2(8) of Act 53 to provide that the scheme of financing referred to in that subsection is extended to the scheme of financing which is approved by the Malaysia Co-operative Societies Commission in accordance with the principles of Shariah in addition to instrument approved by the Central Bank, Securities Commission and Labuan Financial Services Authority.

These amendments have effect for the year of assessment 2012 and subsequent years of assessment.

2. *Clause 5* seeks to amend paragraph 6(1)(i) of Act 53 to extend the tax rate of 10% on any income distributed by a unit trust to a unit holder which is a foreign institutional investor and a unit holder who is not a resident for a period of five years from the year of assessment 2012.

This amendment comes into operation on 1 January 2012 until 31 December 2016.

3. *Clause 6* seeks to amend the proviso to paragraph 6A(2)(c) of Act 53 as a consequence of the insertion of Part XV of Schedule 1 to Act 53.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

4. *Clause 7* seeks to amend paragraph 34B(4)(c) of Act 53. The proposed amendment seeks to clarify that only a “contract research and development company” and a “research and development company” as defined in the Promotion of Investments Act 1986 and which have complied with the conditions set by the relevant Ministry are eligible to claim for double deductions under section 34B of that Act.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

5. *Clause 8* seeks to introduce a new subsection 39(3) into Act 53. With the proposed amendment, paragraphs 39(1)(f), (i) and (j) of Act 53 are not applicable to a payer who fails to withhold tax of a non-resident under section 107A, 109 or 109B of the Act in the case where the income of the payer from all of his sources is fully exempt under the Promotion of Investments Act 1986, paragraph 127(3)(b) or subsection 127(3A) of Act 53.

This amendment comes into operation on 1 January 2012.

6. *Clause 9* seeks to amend subsection 45(5) of Act 53 to clarify that an individual is allowed to make an election in a return which is furnished in accordance with subsection 77(1) of the Act to be assessed in the name of his or her spouse.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

7. *Clause 10* seeks to amend paragraph 49(1)(a) of Act 53. With the proposed amendment, a resident individual is eligible for a deduction of the aggregate amount of payment or contribution made under subsection 49(1) up to RM6,000 which does not include payment of deferred annuity.

Clause 10 further seeks to introduce new subsections 49(1D) and (1E) into Act 53 to provide that a resident individual is eligible for an additional amount of deduction up to RM3,000 in respect of total payment of deferred annuity and contribution made to a private retirement scheme approved by the Securities Commission.

These amendments have effect from the year of assessment 2012 until the year of assessment 2021.

8. *Clause 11* seeks to amend section 54A of Act 53. Prior to the amendment, the statutory income of a resident person who carries on the business of transporting passengers or cargo, or letting out on a charter of a Malaysian ship owned by him is exempt from tax. With the proposed amendment, the statutory income of that person from each of his Malaysian ship is treated as a separate source and seventy per cent of his statutory income from each ship is exempt from tax. The balance of thirty per cent of the statutory income is taxed and deemed to be the total income of that person. Any adjusted loss from the operation of a Malaysian ship for a year of assessment is carried forward and allowed to reduce the exempt income of the person from the same ship in the subsequent years of assessment until it is fully utilized.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

9. *Clause 12* seeks to amend subsection 60(10A) of Act 53. Prior to the amendment, any unabsorbed business loss from the business of a life fund and other business of an insurer is allowed to be set off against the statutory income of the life fund of that insurer. With the proposed amendment, only the adjusted loss from the business of a life fund for a year of assessment is allowed to be deducted against the statutory income of the life fund of that insurer for the subsequent years of assessment until it is fully utilized.

Clause 12 further seeks to introduce a new subsection 60(10D) into Act 53. With the proposed amendment, the adjusted loss from the business of a life fund of an insurer for a year of assessment is not allowed to be deducted against the aggregate of statutory income from other sources other than the life fund for the relevant year of assessment and any unabsorbed business loss from sources other than the business of a life fund for the relevant year of assessment is not allowed to be deducted against the statutory income of the life fund of that insurer for subsequent years of assessment.

These amendments have effect for the year of assessment 2012 and subsequent years of assessment.

10. *Clause 13* seeks to introduce a new subsection 67(4A) into Act 53. With the proposed amendment, the Director General is empowered to appoint an agent without making an assessment on the agent to recover tax due from a principal from any accessible moneys held by the agent. The accessible moneys do not include moneys held in the custody and control of the agent on behalf of the principal.

This amendment comes into operation on 1 January 2012.

11. *Clause 14* seeks to introduce a new subsection 80(1B) into Act 53 to clarify that the Director General has access to the computerized data stored in a computer.

This amendment comes into operation on 1 January 2012.

12. *Clause 15* seeks to amend section 81 of Act 53. With the proposed amendment, the Director General is empowered to request from any person to provide any information or document which is under the control or possession of that person within or outside the territorial jurisdiction of Malaysia.

Clause 15 further seeks to introduce a new subsection 81(2) into Act 53 to provide that the Director General is empowered to disregard any information or particulars produced after the expiry of the time specified in the notice issued by the Director General.

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

13. *Clause 16* seeks to introduce a new section 83A into Act 53. With the proposed amendment, a company must prepare and send a copy of the prescribed form to its agent, dealer or distributor containing particulars of payment made in monetary form or otherwise and other particulars as required by the Director General not later than 31 March for each year. The company must keep the original copy of the prescribed form to be made readily accessible to the Director General.

This amendment comes into operation on 1 January 2012.

14. *Clause 17* seeks to amend subsection 97A(1) of Act 53. Prior to the amendment, the Director General may issue a notification to inform that no assessment is made against a person if that person has no income in a year of assessment and that notification is deemed to be a notice of assessment for purpose of appeal to the Special Commissioners of Income Tax. With the proposed amendment, the Director General may issue a notification in the case where no assessment is made on the person due to exemption under the Act or the Promotion of Investments Act 1986, or where there is an assessment in respect of income of the person from non-business source but there is no statutory income from his business source. That notification is also deemed to be a notice of assessment for purpose of appeal to the Special Commissioners of Income Tax.

This amendment comes into operation on 1 January 2012.

15. *Clause 18* seeks to introduce a new subsection 106(4) into Act 53 to empower the Director General to remit interest on judgment debt awarded by the court.

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

16. *Clause 19* seeks to introduce a new section 107D into Act 53. With the proposed amendment, the Director General is empowered to direct a person to make payment by instalments on account of tax in a prescribed form where he has reason to believe that that person fails to furnish a return under the Act or makes an incorrect return or gives incorrect information in regard to his chargeability to tax. The direction may be issued to the person before the making of an assessment or composite assessment.

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

17. *Clause 20* seeks to amend subsection 109E(4) of Act 53 to provide that penalty for failure to pay the deduction of tax under that subsection is equal to ten per cent of any amount unpaid.

This amendment comes into operation on 1 January 2012.

18. *Clause 21* seeks to introduce a new section 111D into Act 53. With the proposed amendment, a person is entitled to a compensation if refund for over-payment of tax payable is made after ninety days from the date a return is furnished under the Act by way of electronic transmission or one

hundred and twenty days from the date the return is furnished by way other than electronic transmission. The amount of compensation is calculated in accordance with the formula specified in that section and the compensation shall only be applicable to over-payment of tax payable in respect of a return furnished under section 77 or 77A. If the compensation is wrongly paid or ought not to have been paid to that person, that person is required to repay that amount to the Director General together with a penalty of ten per cent on the amount which ought not to have been paid.

This amendment comes into operation for the year of assessment 2013 and subsequent years of assessment.

19. *Clause 22* seeks to amend paragraph 120(1)(b) of Act 53 as a consequence of the introduction of section 83A into Act 53 as regards to failure by a company to furnish particulars of payment (whether in monetary form or otherwise) made to its agent, dealer or distributor.

This amendment comes into operation on 1 January 2012.

20. *Clause 23* seeks to amend subsection 134(1A) of Act 53 as a consequence of the amendment to section 6A of the Inland Revenue Board of Malaysia Act 1995 [Act 533].

Clause 23 further seeks to amend subsection 134(2) of Act 53 to provide that the appointment of officers under that subsection is by the Inland Revenue Board of Malaysia.

These amendments come into operation on the coming into operation of the amendment to section 6A of the Inland Revenue Board of Malaysia Act 1995 [Act 533].

21. *Clause 24* seeks to introduce a new Part XV into Schedule 1 to Act 53. With the introduction of the new Part, an employment income of an approved individual who is a resident is taxed at the rate of 15%. The Minister will determine the approved person by rules made under this Act.

This amendment comes into operation for the year of assessment of 2012 and subsequent years of assessment.

22. *Subclause 26(a)* seeks to amend proviso to paragraph 3 of Schedule 7A of Act 53. The proposed amendment seeks to delete qualifying project located within the States of Sabah, Sarawak, the Federal Territory of Labuan, Perlis, the Eastern Corridor of Peninsular Malaysia and such other areas which the Minister may from time to time determine from the application of that proviso.

This amendment comes into operation for the year of assessment 2012 and subsequent years of assessment.

Subclause 26(b) seeks to amend subparagraphs 7(b), (d) and (e) of Schedule 7A of Act 53 to provide that a company which in the basis period is granted approval for investment tax allowance under the Promotion of Investments Act 1986, which tax relief period has not ended under the Investment Incentives Act 1968 or qualifies for investment tax credit under the Investment Incentives Act 1968, or is granted approval for manufacturing activity or manufactured product, is not eligible for reinvestment allowance during that period.

These amendments come into operation for the year of assessment 2011 and subsequent years of assessment.

Subclause 26(c) seeks to introduce a new definition of “factory” into paragraph 9 of Schedule 7A of Act 53. With the proposed amendment, a company is eligible to claim for reinvestment allowance on capital expenditure incurred on a building or an extension of the building used for the purposes of qualifying project if it is used to place plant or machinery or to store any raw material, or goods or materials manufactured prior to sale. However, in the case where part of the building or extension is used for the storage of raw material, goods or materials, the part of the building or extension used for such storage must not be more than one-tenth of the total floor areas of that building or extension.

This amendment comes into operation for the year of assessment 2012 and subsequent years of assessment.

MISCELLANEOUS

Part II of Chapter II of this Bill seeks to provide savings and transitional provisions in respect of amendments to the Income Tax Act 1967.

23. *Clause 28* seeks to provide that any balance of allowance for the year of assessment 2011 which is determined based on the formula under that clause shall be made to a person in ascertaining the statutory income of that person in respect of a Malaysian ship for the year of assessment 2012. Any unabsorbed allowance to be carried forward must be utilized against the adjusted income of the person for the year of assessment 2013 and subsequent years of assessment from the same ship.

Clause 28 further seeks to provide that any adjusted loss for the year of assessment 2011 which is determined based on the formula under that clause is to be carried forward and must be utilized against the statutory income which is exempt for the following year of assessment 2012 and subsequent years of assessment in respect of the same ship.

These amendments have effect for the year of assessment 2012 and subsequent years of assessment.

AMENDMENTS TO THE STAMP ACT 1949

Chapter III of this Bill seeks to amend the Stamp Act 1949.

24. *Clause 30* seeks to amend section 9 of Act 378. With the proposed amendment, the power to compound for payment of duty stamp as regards to instrument of rights subscription forms is given to Bursa Malaysia.

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

25. *Subclauses 31(a), (b), (c), (d) and (e)* seek to amend the First Schedule of Act 378 due to the incorporation of Malaysian Railway as Keretapi Tanah Melayu Berhad.

Subclause 31(f) seeks to amend paragraph 6 under GENERAL EXEMPTIONS to the First Schedule of Act 378. With the amendment, an instrument which is executed pursuant to a scheme of financing approved by the Malaysia Co-operative Societies Commission in accordance with the principles of Shariah is exempt from stamp duty.

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

26. *Clause 32* seeks to amend the Second Schedule of Act 378. With the amendment, an immigration officer is empowered to cancel adhesive stamp in respect of instrument relating to any bond or permit issued under the Immigration Act 1959/63 [Act 155] and also instrument of employment contract issued to the Immigration Department.

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

AMENDMENT TO THE REAL PROPERTY GAINS TAX ACT 1976

Chapter IV of this Bill seeks to amend the Real Property Gains Tax Act 1976.

27. *Clause 34* seeks to amend the Second Schedule of Act 169. With the proposed amendment, a disposal price relating to any disposal of a chargeable asset shall be deemed to be equal to acquisition price if such disposal is made pursuant to a scheme of financing approved by the Labuan Financial Services Authority and the Malaysia Co-operative Societies Commission in accordance with the principles of Shariah.

This amendment has effect from the year of assessment 2012.

AMENDMENT TO THE LABUAN BUSINESS ACTIVITY TAX ACT 1990

Chapter V of this Bill seeks to amend the Labuan Business Activity Tax Act 1990.

28. *Clause 36* seeks to amend paragraph 22A(1)(a) of Act 445 to allow for the disclosure of information relating to tax information exchange agreement entered into between the Government of Malaysia with the Government of any territory outside Malaysia.

This amendment is deemed to have come into operation on 28 January 2011.

GENERAL

29. Other amendments not specifically dealt with in this Statement are minor and consequential in nature.

FINANCIAL IMPLICATIONS

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

[PN(U2)2826]