

A BILL

*intituled*

An Act to amend the Income Tax Act 1967.

[ ]

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

**Short title and commencement**

1. (1) This Act may be cited as the Income Tax (Amendment) Act 2009.

(2) Sections 2, 3 and 4 are deemed to have effect for the years of assessment 2008, 2009 and 2010.

(3) Sections 5 and 6 have effect for the year of assessment 2009 and subsequent years of assessment.

(4) Section 7 is deemed to have come into operation on 1 July 2008.

**Amendment of section 44**

2. The Income Tax Act 1967 [Act 53], which is referred to as the “principal Act” in this Act, is amended in subsection 44(1)—

(a) in paragraph (d), by deleting the word “and” at the end of that paragraph;

(b) in paragraph (e)—

(i) by substituting for the word “thereafter” the word “next”; and

(ii) by substituting for the full stop at the end of that paragraph the words “; and”; and

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

“(f) thereafter, by any deduction falling to be so made pursuant to section 44B.”.

### **New section 44B**

3. The principal Act is amended by inserting after section 44A the following section:

#### **“Carry-back losses**

**44B.** (1) In this section—

“adjusted loss” means the amount or aggregate amount of the adjusted loss of a person from a source of his or the excess of that amount for the basis period for a year of assessment as ascertained under subsection 44(4) or 44(5);

“defined aggregate income”, in relation to a year of assessment, means the aggregate income of the person for that year reduced by any deduction made pursuant to paragraphs (a), (b), (c), (d), and (e) of subsection 44(1);

“immediately preceding”, in relation to a year of assessment, means—

- (a) for the year of assessment 2009, the year of assessment 2008; and
- (b) for the year of assessment 2010, the year of assessment 2009.

(2) Subject to subsection (6), this section shall apply if—

- (a) the basis period of a person for the year of assessment 2009 or 2010 and the basis period for the year of assessment immediately preceding the year of assessment 2009 or 2010 ends on the same day; and
- (b) that person is subject to tax at the appropriate rate as specified in paragraph 1, 1A, 2 or 2A of Part I of Schedule 1.

(3) Subject to this section, where a person has made an irrevocable election under subsection (4), the amount of the adjusted loss of that person from a source of his for the basis period for a year of assessment 2009 or 2010, other than the adjusted loss surrendered by that person pursuant to section 44A, shall be allowed as a deduction in ascertaining the total income of that person for a year of assessment immediately preceding the year of assessment 2009 or 2010, in accordance with subsection 44(1).

(4) For the purpose of subsection (3), a person shall make an irrevocable election, either for the year of assessment 2009 or 2010, in the return furnished for the year of assessment 2009 or 2010 to deduct an amount of the adjusted loss from a source of his for the basis period for that year of assessment in ascertaining the total income of that person for the year of assessment immediately preceding the year of assessment 2009 or 2010.

(5) The amount of adjusted loss of a person from a source of his for the basis period for a year of assessment 2009 or 2010 to be deducted pursuant to subsection (3)—

(a) shall not exceed one hundred thousand ringgit; or

(b) where the amount of the defined aggregate income for the year of assessment immediately preceding the year of assessment 2009 or 2010 is less than one hundred thousand ringgit, shall not exceed the amount of the defined aggregate income.

(6) The provisions of this section shall not apply to a person if during the basis period for a year of assessment 2009 or 2010 and the basis period for a year of assessment immediately preceding the year of assessment 2009 or 2010, that person—

(a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;

(b) is exempt from tax on its income under section 54A, paragraph 127(3)(b) or subsection 127(3A), or tax paid or payable by that person for that year of assessment is remitted under section 129;

- (c) has made a claim for a reinvestment allowance under Schedule 7A;
- (d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [P.U. (A) 55/2006];
- (e) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002 [P.U. (A) 63/2002];
- (f) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of a Foreign Owned Company) Rules 2003 [P.U. (A) 310/2003];
- (g) has made a claim for deduction under any rules made under section 154, other than the rules specified in paragraphs (d), (e) and (f), and those rules made under section 154 provide that this section shall not apply to that person;
- (h) is an investment holding company under section 60FA;
- (i) carries on insurance business under section 60, inward re-insurance business under section 60A or offshore insurance business under section 60B;
- (j) carries on takaful business under section 60AA; or
- (k) in the case of an individual, has no source consisting of a business.

(7) Where in the basis year for a year of assessment the Director General discovers that the adjusted loss referred to in subsection (3) ought not to have been deducted in arriving at the total income of a person for the year of assessment immediately preceding the year of assessment 2009 or 2010, the Director General may in the first-mentioned year or within six years after its expiration—

- (a) make an assessment or additional assessment in respect of that person in order to make good any loss of tax; and
- (b) require that person to pay a penalty equal to the amount of tax, which had or would have been undercharged by that person, pursuant to an assessment made under paragraph (a).

(8) For the avoidance of doubt—

- (a) the amount of adjusted loss which has been allowed as a deduction pursuant to this section shall be disregarded for the purpose of ascertaining the aggregate income of a person for a year of assessment immediately following the year of assessment 2009 or 2010 under subsection 43(2); and
- (b) the provisions of this Act shall apply to the balance of the adjusted loss (if any) of a person which has not been allowed as a deduction pursuant to this section.”.

**Effect of 108 balance and revised 108 balance on deduction under section 44B of the principal Act**

4. Notwithstanding the provisions of section 46 of the Finance Act 2007 [Act 683], any amount of tax refunded in respect of any tax discharged for the year of assessment preceding the year of assessment 2009 as a consequence of any deduction allowed in accordance with section 44B of the principal Act, shall not reduce the 108 balance or revised 108 balance of a company under section 46 of the Finance Act 2007.

**New section 46B**

5. The principal Act is amended by inserting after section 46 the following section:

**“Deduction for individual on interest expended**

**46B.** (1) Subject to this section, in the case of an individual who is a citizen and resident for the basis year for the relevant year, there shall be allowed for that relevant year personal deduction in respect of interest expended in that basis year by the individual to finance the purchase of a residential property:

Provided that—

- (a) the purchase of the residential property is limited to only one unit;

- (b) the Sale and Purchase Agreement for the purchase has been executed on or after 10 March 2009 but not later than 31 December 2010; and
- (c) the individual has not derived any income in respect of that residential property.

(2) Subject to subsection (3), there shall be allowed to that individual a deduction for a maximum amount of ten thousand ringgit for each basis year for a year of assessment for a period of three consecutive basis years beginning from the basis year in which the interest referred to in subsection (1) is first expended by that individual.

(3) Where—

- (a) two or more individuals are each entitled to claim deduction for the relevant year under this section for interest expended in respect of the same residential property; and
- (b) the total amount of interest expended by those individuals in the basis year for that relevant year exceed the amount of deduction allowable for that relevant year under subsection (2),

there shall be allowed to each of those individuals for that relevant year an amount to be determined in accordance with the following formula:

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

- where
- A is the total amount of deduction allowed under subsection (2) for that relevant year;
  - B is the total interest expended in the basis year for that relevant year by that individual; and
  - C is the total interest expended in the basis year for that relevant year by all such individuals.

(4) For the purposes of subsection (1), any amount expended by the wife or the husband in the relevant year—

(a) where subsection 45(2) applies, shall be deemed to have been expended by the husband of the wife who elects or by the wife of the husband who elects, as the case may be; or

(b) where the wife or the husband has no total income, shall be deemed to have been expended by the husband of that wife or the wife of that husband, as the case may be:

Provided that where paragraph 45(2)(b) applies or where the husband has no total income, any amount expended by the husband shall be deemed to have been expended by the wife who has been allowed a deduction under section 45A.

(5) For the purposes of this section, “residential property” means a house, condominium unit, apartment or flat which is built as a dwelling house.”.

### Amendment of Schedule 3

6. Schedule 3 of the principal Act is amended—

(a) by inserting after paragraph 8 the following paragraph:

*“Qualifying renovation or refurbishment expenditure*

**8A.** (1) Subject to this Schedule, qualifying renovation or refurbishment expenditure for the purposes of this Schedule is capital expenditure incurred by a person on renovation or refurbishment of a premises which is used for the purpose of a business of his.

(2) For the purposes of this Schedule, the qualifying renovation or refurbishment expenditure shall be an amount incurred by a person between the period from 10 March 2009 to 31 December 2010 and the total amount of expenditure for that period in respect of all of his sources consisting of a business shall not exceed one hundred thousand ringgit.

(3) Qualifying renovation or refurbishment expenditure does not include—

- (a) expenditure which is qualifying plant expenditure for the purposes of this Schedule;
- (b) expenditure which is qualifying agriculture expenditure for the purposes of this Schedule;
- (c) expenditure which is qualifying forest expenditure for the purposes of this Schedule; and
- (d) expenditure which is qualifying mining expenditure for the purposes of Schedule 2.

**8B.** For the purpose of paragraphs 8A and 32B of this Schedule renovation or refurbishment expenditure shall be an expenditure prescribed by the Minister.”;

(b) by inserting after paragraph 32 the following paragraphs:

*“Renovation or refurbishment allowances*

**32A.** (1) Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying renovation or refurbishment expenditure, there shall be made to him in relation to the source consisting of that business for that year and the immediate following year of assessment an allowance equal to one-half of that expenditure.

(2) No renovation or refurbishment allowances shall be made to a person for a year of assessment and a business of his, if at the end of the basis period for that year of assessment the premises which has been renovated or refurbished is not in use by that person for the purpose of his business.

**32B.** Subject to paragraph 8A, where a person incurs between the period from 10 March 2009 to 31 December 2010 capital expenditure on renovation or refurbishment of a premises which is used for the purpose of a business and such capital expenditure qualifies both as qualifying renovation or refurbishment expenditure and qualifying building expenditure, that person shall elect to claim an allowance in respect of that capital expenditure as qualifying renovation or refurbishment expenditure, or qualifying building expenditure.”;

(c) in paragraph 54, by inserting after the words “qualifying forest expenditure” the words “or qualifying renovation or refurbishment expenditure”; and



- (d) in paragraph 71, by substituting for the words “(except by reason of the death of that person), the Director General may direct” the words “, except by reason of the death of that person or any other reasons as the Director General thinks appropriate,”.

### Amendment of Schedule 6

7. Schedule 6 of the principal Act is amended in subparagraph 15(1) by substituting for subparagraph (b) the following subparagraph:

“(b) in the case of a payment made in connection with a period of employment with the same employer or with companies in the same group, in respect of so much of the payments as does not exceed an amount ascertained by multiplying the sum of ten thousand ringgit by the number of completed years of service with that employer or those companies:

Provided that this subparagraph shall apply to the payment made in respect of an individual who has ceased employment on or after 1 July 2008.”.

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### EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 (“Act 53”).

1. *Clause 2* seeks to amend section 44 of Act 53 to provide for the adjusted losses to be carried back as a deduction in arriving at the total income of a person.

This amendment is deemed to have effect for the years of assessment 2008, 2009 and 2010.

2. *Clause 3* seeks to introduce a new section 44B into Act 53. The proposed provision enables a person to carry-back its adjusted loss for the year of assessment 2009 or 2010 to the immediate preceding year of assessment. Any person may make an irrevocable election to carry-back the adjusted loss in a return furnished for the year of assessment 2009 or 2010 and the total amount of adjusted loss to be carried back for both years is limited to a maximum amount of one hundred thousand ringgit.

This amendment is deemed to have effect for the years of assessment 2008, 2009 and 2010.

3. *Clause 4* seeks to provide for the effect of 108 balance and revised 108 balance as provided in section 46 of the Finance Act 2007 [Act 683] on the deduction relating to carry-back losses under the new section 44B of Act 53 as introduced in *clause 3*.

This provision clarifies that if a company elects to carry-back its adjusted losses under the new section 44B of Act 53, the amount of 108 balance or revised 108 balance of that company under section 46 of the Finance Act 2007 shall not be reduced by the deduction of tax relating to carry-back losses.

This amendment is deemed to have effect for the years of assessment 2008, 2009 and 2010.

4. *Clause 5* seeks to introduce a new section 46B into Act 53. The new provision seeks to provide for a deduction for individuals in respect of interest expended to finance the purchase of one unit of residential property. With this amendment, an individual is eligible to a personal deduction limited to a maximum amount of ten thousand ringgit of the interest expended for each year of assessment for three consecutive basis years starting from the year the interest is first expended.

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

5. *Clause 6* seeks to introduce new paragraphs 8A, 8B, 32A and 32B into Schedule 3 of Act 53. With the proposed amendments, any person incurring qualifying renovation or refurbishment expenditure on or after 10 March 2009 but not later than 31 December 2010 on any premises used for the purpose of his business shall be allowed to claim an allowance equal to one-half of that expenditure for a year of assessment and the immediate year following that year of assessment. However, the total qualifying expenditure incurred on or after 10 March 2009 but not later than 31 December 2010 must not exceed one hundred thousand ringgit.

*Paragraph (c)* of *clause 6* seeks to amend paragraph 54 of Schedule 3 of Act 53 as a consequence of the new paragraphs 8A, 8B, 32A and 32B of Schedule 3 of Act 53.

The current paragraph 71 of Schedule 3 of Act 53 provides that if a person incurs qualifying plant expenditure in respect of an asset which he owned for a period of less than two years, balancing charge equal to any allowance of the qualifying plant expenditure shall be made against that person except by reason of death of that person. *Paragraph (d)* of *clause 6* seeks to amend this provision to include other reasons as the Director General thinks appropriate.

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

6. *Clause 7* seeks to amend subsubparagraph 15(1)(b) of Schedule 6 of Act 53 to increase the amount exempt for payment received by an individual in respect of loss of employment including payment under a separation scheme or in consideration of any covenant entered into by an employee restricting his right to take up other employment of the same or similar kind, from six thousand ringgit to ten thousand ringgit. The proposed amendment shall apply to an employee who has been retrenched from 1 July 2008.

This amendment is deemed to have come into operation on 1 July 2008.

*FINANCIAL IMPLICATIONS*

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

[PN(U<sup>2</sup>)2691]