



LAWS OF MALAYSIA

REPRINT

Act 323

FINANCE (NO. 2) ACT 1985

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

FINANCE (NO. 2) ACT 1985

Date of Royal Assent ... 31 December 1985

Date of publication in the *Gazette* ... 9 January 1986

PREVIOUS REPRINT

First Reprint ... 2001

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FINANCE (NO. 2) ACT 1985

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LAWS OF MALAYSIA

Act 323

FINANCE (NO. 2) ACT 1985

An Act to amend the Income Tax Act 1967, the Supplementary Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Share (Land Based Company) Transfer Tax Act 1984 and the Petroleum (Income Tax) Act 1967 and to provide for matters connected therewith.

[]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

CHAPTER I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Finance (No. 2) Act 1985 and shall have effect or be deemed to have effect as provided in this Act.

Amendments of Acts

2. The Income Tax Act 1967 [Act 53], the *Supplementary Income Tax Act 1967 [Act 54], the Real Property Gains Tax Act 1976 [Act 169], the **Share (Land Based Company) Transfer Tax Act 1984 [Act 310] and the ***Petroleum (Income Tax) Act 1967 [Act 45 of 1967] are amended respectively in the manner specified in Chapters II, III, IV, V and VI respectively.

*NOTE—The Supplementary Income Tax Act 1967 [Act 54] has since been repealed by the Finance Act 1993 [Act 497]—see section 16 of Act 497.

**NOTE—The Share (Land Based Company) Transfer Tax Act 1984 [Act 310] has since been repealed by the Finance Act 1988 [Act 364]—see section 26 of Act 497.

***NOTE—The Petroleum (Income Tax) Act 1967 [Act 45 of 1967] has since been revised in December 1995 as the Petroleum (Income Tax) Act 1967 [Act 543].

CHAPTER II

AMENDMENTS TO THE INCOME TAX
ACT 1967**Commencement of amendments to the Income Tax Act 1967**

3. (1) Except for paragraphs 4(a), 4(b), 4(d), 6(a), 6(b), 7(b), 7(c), sections 8, 17, 18, 19, 22, 23 and paragraph 24(b) the provisions of this Chapter shall have effect for the year of assessment 1986 and subsequent years of assessment.

(2) Paragraph 4(d) shall have effect for the year of assessment 1984 and subsequent years of assessment.

(3) Section 23 shall have effect for the year of assessment 1985 and subsequent years of assessment.

(4) Paragraphs 6(a), 6(b), 7(b), 7(c) and section 22 shall have effect for the year of assessment 1987 and subsequent years of assessment.

(5) Paragraphs 4(a), 4(b), sections 8, 17 and 19 shall be deemed to have come into force on 25 October 1985.

(6) Paragraph 24(b) shall be deemed to have come into force on 25 October 1985:

Provided that in the case where a long-term loan agreement—

- (i) was entered into and the money lent or deposited in Malaysia was remitted to Malaysia before 25 October 1985 or was entered into and for which permission was given by the Controller of Foreign Exchange under the Exchange Control Act 1953 [*Act 17*] on or before 25 October 1985; and
- (ii) the terms, conditions or duration of that long-term loan have not been altered in any manner on or after 25 October 1985,

the interest paid or credited on such loan shall continue to be exempt for the duration of the loan notwithstanding the withdrawal of the exemption provided for in paragraph 31 of Schedule 6 to the Income Tax Act 1967.

(7) Section 18 shall come into force on 1 January 1986.

Amendment of section 2

4. Section 2 of the Income Tax Act 1967, which in this Chapter is referred to as “the principal Act”, is amended—

(a) by substituting for the interpretation of “approved loan” in subsection (1), the following:

“ ‘approved loan’ means any loan or credit made to the Government, State Government (including any loan or credit made to a person other than the Government or State Government where the loan or credit is guaranteed by the Government or State Government), local authority or statutory body by a person not resident in Malaysia where the loan or credit agreement was executed in Malaysia or where the loan or credit agreement was executed outside Malaysia with the prior approval of the Minister;”;

(b) by deleting the interpretation of “long-term loan” in subsection (1);

(c) by deleting the interpretation of “shareholders’ funds” in subsection (1); and

(d) by inserting immediately after subsection (6), the following new subsection (7):

“(7) Any reference in this Act to interest shall apply, *mutatis mutandis*, to gains or profits received and expenses incurred, in lieu of interest, in transactions conducted in accordance with the Syariah.”.

Amendment of section 3A

5. Section 3A of the principal Act is amended by substituting for paragraph (a), the following:

“(a) a company, two million ringgit;”.

Amendment of section 5

6. Section 5 of the principal Act is amended—

(a) by substituting for the full stop at the end of subsection (1), a colon;

(b) by inserting the following new proviso to subsection (1):

“Provided that in ascertaining the chargeable income of an individual resident in Malaysia there shall be excluded the income consisting of interest accruing in or derived from Malaysia and received from a person referred to in subsection 109c(4) in respect of interest paid or credited to that individual.”; and

(c) by substituting for subsection (3), the following:

“(3) In ascertaining the chargeable income of any person for the purpose of section 3A there shall not be taken into account any statutory income or adjusted loss in respect of petroleum operations by a petroleum company and dividends paid by a petroleum company out of its income derived from its petroleum operations within the meaning of the Petroleum (Income Tax) Act 1967 [*Act 45 of 1967*].”.

Amendment of section 6

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

- (a) by deleting the words “or long-term loan” in subparagraph (b)(i);
- (b) by substituting for the full stop at the end of paragraph (e), a semi-colon; and
- (c) by inserting immediately after paragraph (e), the following new paragraph (f):

“(f) subject to the provisions of section 109c but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of an individual resident in Malaysia which consists of interest (other than interest exempt from tax under this Act or any order made thereto) accruing in or derived from Malaysia and received from a person referred to in subsection 109c(4) at the appropriate rate as specified under Part VI of Schedule 1.”.

Amendment of section 13

8. Subsection 13(1) of the principal Act is amended by substituting for the proviso to subparagraph (b)(ii), the following:

“Provided that the benefit or amenity enjoyed under this subparagraph is confined only to the employee and members of his immediate family.”.

Amendment of section 18

9. Section 18 of the principal Act is amended—

(a) by inserting immediately after the interpretation of “harvesting”, the following new interpretation of “insurance”:

“insurance” includes a takaful scheme pursuant to the Takaful Act 1984 [Act 312];’; and

(b) by inserting immediately after the interpretation of “plantation”, the following new interpretation of “premiums”:

“premiums”, in relation to insurance, includes contributions or instalments payable under a takaful scheme pursuant to the Takaful Act 1984;’.

Amendment of section 44

10. Section 44 of the principal Act is amended—

(a) by substituting for the full stop at the end of subsection (6), a colon; and

(b) by inserting immediately after subsection (6), the following new proviso:

“Provided that where the statutory income from an employment, pension or profession falls to be assessed in the name of an individual’s wife for the relevant year pursuant to subsection 45(4), there shall be deducted from such statutory income or the aggregate of such statutory income, as the case may be, an amount equal to any gift of money of the kind mentioned in this subsection, made by her in the basis year for that year.”.

Amendment of section 45

11. Section 45 of the principal Act is amended—

(a) by inserting immediately after the words “income from employment” in subsection (4), the words “, from pension granted on optional retirement from employment under any written law”;

(b) by substituting for subsection (5), the following:

“(5) Notwithstanding any other provisions of this Act, where under subsection (4) the wife’s income from an employment, pension or profession falls to be assessed for a year of assessment in her name—

(a) her total income falling to be aggregated with that of her husband under subsection (2) for that year of assessment shall be reduced by the amount of statutory income from such employment, pension or profession and she shall be treated as having no chargeable income for that year of assessment in regard to that part of her total income which is aggregated with that of her husband; and

(b) the income assessed in her name shall be the amount of statutory income from such employment, pension or profession or the aggregate of such statutory income, as the case may be, reduced by any deduction falling to be made pursuant to subsection 44(6).”;

(c) by inserting immediately after the words “income from employment” in subsection (6), a comma and the word “pension”.

Amendment of section 47

12. Section 47 of the principal Act is amended by inserting immediately after the words “income from her employment” in subsection (4), a comma and the word “pension”.

Amendment of section 48

13. Subsection 48(1) of the principal Act is amended by inserting immediately after the words “income from her employment” in the proviso, a comma and the word “pension”.

Amendment of section 49

14. Subsection 49(1) of the principal Act is amended by inserting immediately after the words “income from her employment” in the proviso, a comma and the word “pension”.

Amendment of section 50

15. Section 50 of the principal Act is amended by inserting immediately after the words “from her employment” in subsection (4), a comma and the word “pension”.

New section 60AA

16. The principal Act is amended by inserting immediately after section 60A, the following new section 60AA:

“Application of sections 60 and 60A to a takaful business

60AA. The provisions of sections 60 and 60A shall apply, *mutatis mutandis*, to a takaful business carried on pursuant to the Takaful Act 1984.”.

Amendment of section 109

17. Section 109 of the principal Act is amended by deleting the words “or long-term loan” in subsection (1).

New section 109c

18. The principal Act is amended by inserting immediately after section 109B, the following new section 109C:

“Deduction of tax from interest paid to a resident

109c. (1) Where any person (in this section referred to as “the payer”) is liable to pay interest (other than interest exempt from tax under this Act or any order made thereto) accruing in or derived from Malaysia to an individual resident in Malaysia, he shall upon paying or crediting such interest deduct therefrom tax at the rate applicable to such interest, and (whether or not that tax is so deducted) shall within one month after paying or crediting the interest 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 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 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 and 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 individual as a debt due to the payer.

(4) In this section “person” refers to a bank licensed under the *Banking Act 1973 [*Act 102*] or the Islamic Banking Act 1983 [*Act 276*], a finance company licensed under the **Finance Companies Act 1969 [*Act 6*], a registered co-operative society, Bank Pertanian Malaysia, Lembaga Urusan dan Tabung Haji, Malaysia Building Society Berhad, or any other institution that may be approved by the Minister.”.

Amendment of section 136

19. Section 136 of the principal Act is amended—

(a) by substituting for the full stop at the end of subsection (4), a colon; and

(b) by inserting immediately after subsection (4), the following new proviso:

“Provided that the Director General may by writing under his hand authorize any Senior Assistant or Assistant Directors of Inland Revenue (subject to any exceptions or limitations contained in the authorization) to exercise his function under section 123.”.

*NOTE—The Banking Act 1973 [*Act 102*] has since been repealed by the Banking and Financial Institutions Act 1989 [*Act 372*]*—see* section 128 of Act 372.

**NOTE—The Finance Companies Act 1969 [*Act 6*] has since been repealed by the Banking and Financial Institutions Act 1989 [*Act 372*]*—see* section 128 of Act 372.

Amendment of Part II of Schedule 1

- 20.** Item 1 of Part II of Schedule 1 to the principal Act is amended—
- (a) by deleting the words “or long-term loan”; and
 - (b) by substituting for the words “15%” under the column “Rate of income tax”, the words “20%”.

Amendment of Part III of Schedule 1

- 21.** Schedule 1 to the principal Act is amended by substituting for Part III, the following:

“
PART III

Excess profit tax shall be charged for each year of assessment at the rate of:

- (1) In the case of a company 3 per cent
- (2) In the case of any other person ... 5 per cent.”.

New Part VI of Schedule 1

- 22.** Schedule 1 to the principal Act is amended by inserting immediately after Part V, the following new Part VI:

“
PART VI

Notwithstanding Part I, income tax shall be charged on the income of an individual resident in Malaysia consisting of interest (other than interest exempt under this Act or any order made thereto) accruing in or derived from Malaysia and received from a person referred to in section 109C at the rate of 5% of gross.”.

Amendment of Schedule 3

- 23.** Schedule 3 to the principal Act is amended by inserting immediately after paragraph 67, the following new paragraph 67A:

“**67A.** Where pursuant to an agreement with the Government a person incurs capital expenditure on the construction, reconstruction, extension or improvement of any public road

and ancillary structures which expenditure is recoverable through toll collection, the road and ancillary structures as regards such expenditure shall, for the purposes of this Schedule, be treated as a building and the provisions of this Schedule relating to industrial building shall apply, *mutatis mutandis*, to such building:

Provided that—

- (a) the balance of residual expenditure under paragraph 68 of this Schedule shall be reduced by the amount of any compensation received; and
- (b) the disposal value of the asset shall be taken to be zero when the agreement expires or is terminated.”.

Amendment of Schedule 6

24. Schedule 6 to the principal Act is amended—

- (a) by inserting immediately after paragraph 30, the following new paragraph 30A:

“**30A.** Gratuity or pension derived from Malaysia and paid to a person resident for the basis year for a year of assessment under any written law applicable to the President or Deputy President of the Senate, Speaker or Deputy Speaker of the House of Representatives, Speaker of the State Legislative Assembly, member of the Senate, member of the House of Representatives or member of the State Legislative Assembly:

Provided that—

- (a) the exemption in respect of pension shall apply only when the person has attained the age of fifty-five or if the Director General is satisfied that such person ceased to be President, Deputy President, Speaker, Deputy Speaker or member due to ill-health; and
- (b) where such person is eligible for exemption in respect of pension under this paragraph and also under paragraph 30 of this Schedule, exemption shall be applicable only to the higher or the highest pension payable, as the case may be.”; and

(b) by deleting paragraph 31.

Amendment of Schedule 7A

25. Schedule 7A to the principal Act is amended by substituting for the word “seven” in subparagraph 2(b), the word “ten”.

CHAPTER III

AMENDMENT TO THE *SUPPLEMENTARY INCOME TAX ACT 1967

Commencement of amendment to the Supplementary Income Tax Act 1967

26. The provisions of this Chapter shall have effect for the year of assessment 1986 and subsequent years of assessment.

Deletion of Parts II and IV

27. The Supplementary Income Tax Act 1967 is amended by deleting the whole of PART II and PART IV.

CHAPTER IV

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

28. (1) Except for paragraphs 39(a), (c), (d), (e), (g) and (l) the provisions of this Chapter shall come into force on 1 January 1986.

(2) Paragraphs 39(a), (c), (d), (e) and (l) shall be deemed to have come into force on 1 July 1983.

(3) Paragraph 39(g) shall come into force on 1 January 1986 except the provisions of subsection 15B(2) contained therein shall be deemed to have come into force on 1 July 1983.

*NOTE—The Supplementary Income Tax Act 1967 [Act 54] has since been repealed by the Finance Act 1993 [Act 497]—see section 16 of Act 497.

Amendment of section 2

29. The Real Property Gains Tax Act 1976, which in this Chapter is referred to as “the principal Act”, is amended by substituting for the interpretation of “assessment” in section 2, the following:

‘ “assessment” means any assessment or additional assessment made under this Act;’.

Deletion of section 12

30. The principal Act is amended by deleting section 12.

Amendment of section 13

31. Section 13 of the principal Act is amended by substituting for subsections (1) and (2), the following:

“(1) Every chargeable person who disposes of a chargeable asset and every person who acquires the asset so disposed of shall, within one month (or such further period as the Director General may allow on a written request being made to him) of the date of disposal of that asset, make a return—

- (a) specifying in respect of the asset disposed of the acquisition price, the disposal price and the gain or loss on the disposal;
- (b) furnishing all information necessary to determine the acquisition price and disposal price of the asset disposed of; and
- (c) where the market value of the asset is to be taken for the purposes of this Act, submit a written valuation of the asset by a valuer.

(2) Every nominee shall, within one month (or such further period as the Director General may allow on a written request being made to him) of the date of disposal by him of a chargeable asset on behalf of any person, make a return specifying—

- (a) the name and address of the person on whose behalf the disposal was made;

- (b) the asset disposed of; and
- (c) the date on which he first began to hold that asset as nominee for that person.”.

Amendment of section 14

32. Subsection 14(1) of the principal Act is amended—

- (a) by deleting the word “or” at the end of paragraph (a);
- (b) by substituting for the full stop at the end of paragraph (b), a semi-colon and the word “or”; and
- (c) by inserting immediately after paragraph (b), the following new paragraph (c):
 - “(c) reduce an assessment made for the year of assessment for which the return was made, in giving effect to paragraph 7(4)(a).”.

Amendment of section 16

33. Section 16 of the principal Act is amended by substituting for subsection (1), the following:

- “(1) Where in a case to which section 13 applies—
- (a) the consideration on the disposal of a chargeable asset consists of another asset (whether chargeable or not);
 - (b) there is a failure by both the disposer and the acquirer to submit a return to the Director General in the prescribed form as required under section 13; or
 - (c) the consideration on the disposal of a chargeable asset is for the purposes of the Act the market value of the asset,

the Director General may make on the acquirer an assessment of an amount equal to the amount of the tax payable by the disposer and shall include in the assessment a sum equal to ten per cent of that amount, which shall be deemed to be an increase of the kind mentioned in subsection 21(4).”.

Amendment of section 17

- 34.** Section 17 of the principal Act is amended—
- (a) by renumbering subsection 17(1) as section 17; and
 - (b) by deleting subsection (2).

New sections 21A and 21B

- 35.** The principal Act is amended by inserting immediately after section 21, the following new sections 21A and 21B:

“Certificate of clearance

21A. The Director General shall send to both the disposer and the acquirer a certificate of clearance in the prescribed form—

- (a) on payment being made in accordance with section 21; or
- (b) where he is satisfied that no chargeable gain has arisen, on being so satisfied.

Requisition to acquirer

21B. (1) Where on a disposal to which section 13 applies, the consideration consists wholly or partly of money—

- (a) the acquirer shall, until he receives the Director General’s certificate of clearance under section 21A, retain the whole of that money (subject to the reservation that the money retained shall not exceed a sum calculated at the rate at which the tax is for the time being chargeable, on the total value of the consideration);
- (b) the Director General may, at any time, before he sends the certificate of clearance, serve upon the acquirer a written requisition in the prescribed form calling upon him to pay the whole or any part of the sum retained under paragraph (a) (or, where the acquirer has failed to comply with that paragraph, the sum which should have been so retained) within a time specified in the requisition;
- (c) in a case where paragraph (b) applies, the acquirer shall deliver the sum stated in the requisition to the Director General within the time specified in the requisition.

(2) A requisition issued under this section shall be deemed to be an assessment for the purposes of this Act.

(3) An acquirer who is required under this section to deliver to the Director General a sum which he should have, but has not retained under paragraph (1)(a), shall, on complying with the requisition, be deemed for the purposes of subsection 16(3) to have been assessed in the sum under subsection 16(1) and to have paid that sum in pursuance of that assessment.”.

Amendment of section 24

36. Section 24 of the principal Act is amended—

(a) by substituting for the words “subsection 12(7)” in subsection (2), the words “subsection 21B(3)”;

(b) by substituting for the word “assest” in subsection (2), the word “asset”; and

(c) by substituting for the words “section 12” in subsection (7), the words “section 21B”.

Amendment of section 27

37. Section 27 of the principal Act is amended by deleting the words “a notification under section 12 or” in subsection (1).

Amendment of section 29

38. Section 29 of the principal Act is amended by deleting the words “fails to give the notification required by section 12 or” wherever they appear in subsections (1) and (3).

Amendment of Schedule 2

39. Schedule 2 to the principal Act is amended—

(a) by inserting immediately after the interpretation of “connected person” in subparagraph 1(1), the following new interpretation of “Islamic bank”:

““Islamic bank” has the meaning assigned to it under the Islamic Banking Act 1983;”;

(b) by inserting immediately after subparagraph 1(3), the following new subparagraph (4):

“(4) For the purposes of this Schedule, “a consideration consisting substantially of shares” means a consideration consisting of not less than seventy-five per cent of shares.”;

(c) by inserting immediately after subparagraph (4), the following new subparagraph (5):

“(5) Any reference in this Schedule to interest shall apply, *mutatis mutandis*, to expenses incurred in lieu of interest, in transactions conducted in accordance with the Syariah.”;

(d) by substituting for the full stop at the end of subparagraph 3(f), a semi-colon;

(e) by inserting immediately after subparagraph 3(f), the following new subparagraph (g):

“(g) the disposal of an asset by a person to an Islamic bank under a scheme where that person is financed by such bank in accordance with the Syariah.”;

(f) by substituting for subparagraph 4(3), the following:

“(3) Where an asset, which is disposed of, was acquired by the disposer prior to 1 January 1970, the market value of the asset as at 1 January 1970 shall be substituted for—

(a) the consideration and incidental costs of the kind mentioned in subparagraph (1);

(b) the market value of the asset as at the date of transfer of ownership of the asset mentioned in subparagraphs 19(1) and (3A);

(c) the amount of the legacy or the market value of the asset as at the date of transfer of ownership of the asset, whichever is the lower, mentioned in subparagraph 19(2); or

(d) the value of the asset for estate duty purposes referred to in subparagraph 19(3),

as the case may be, and the sum of the kind referred to in subparagraphs (1)(a), (b) or (c) which relates to the period prior to 1 January 1970 shall be disregarded.”;

(g) by inserting immediately after paragraph 15, the following new paragraphs 15A and 15B:

“Date of disposal in particular cases

15A. A disposal of an asset shall be deemed to take place—

- (a) in the case of a gift of an asset on death, on the date of transfer of ownership of the asset to the recipient;
- (b) in the case where a legatee accepts an asset in place of a money legacy, on the date of transfer of ownership of the asset to the legatee;
- (c) in the case where an asset of a deceased person is transferred to a legatee by his executor (irrespective of whether he himself is the legatee or not) or by the trustee of a trust created under his will, on the date of transfer of ownership of the asset to the legatee.

Date of acquisition in specific cases

15B. (1) Where an asset of a deceased person is disposed of (otherwise than to a legatee) by his executor or by the trustee of a trust created under his will such executor or trustee shall be deemed to have acquired it on the date of death of the deceased person.

(2) Where an asset is acquired with a financing facility provided by an Islamic Bank in accordance with the Syariah, the acquirer shall be deemed to have acquired the asset on the date of the agreement for the acquisition of the asset entered into between the acquirer and a person other than such Islamic bank or, in the case where the asset is owned by such bank, on the date of the agreement for the acquisition of the asset entered into with the bank.”;

- (h) by inserting immediately after the words “a company resident in Malaysia” in the proviso to subparagraph 17(1), the words “which is being restructured under such scheme”;
- (i) by substituting for the words “the value of the asset for estate duty purposes” in subparagraph 19(1), the words “the market value of the asset as at the date of transfer of ownership of the asset to the recipient”;
- (j) by substituting for the words “the value of the asset for estate duty purposes” in subparagraph 19(2), the words “the market value of the asset as at the date of transfer of ownership of the asset to the legatee”;
- (k) by inserting immediately after subparagraph 19(3), the following new subparagraph (3A):

“(3A) Subject to subparagraph 4(3), where an asset of a deceased person is transferred to a legatee by his executor (irrespective of whether he himself is the legatee or not) or by the trustee of a trust created under his will, there shall be deemed to be an acquisition of the asset by the legatee at an acquisition price equal to the market value of the asset as at the date of transfer of ownership of the asset to the legatee less the sum of the kind referred to in subsubparagraph 4(1)(a), (b) or (c) received by or forfeited, as the case may be, to that legatee.”; and

- (l) by inserting immediately after subparagraph 19(6), the following new subparagraph (7):

“(7) Where an asset is acquired by a person (hereinafter referred to as “the acquirer”) with a financing facility provided by an Islamic bank in accordance with the Syariah, the acquisition price of the asset shall be the amount or value of the consideration given by or on behalf of the acquirer to the person disposing that asset other than such Islamic bank or in the case where the asset is owned by such bank, the amount or value of the consideration given to the bank, for the acquisition of the asset (together with the incidental costs to him of the acquisition) less the sum of the kind referred to in subsubparagraph 4(1)(a), (b) or (c) received by or forfeited, as the case may be, to that acquirer.”.

Amendment of Schedule 3

40. Schedule 3 to the principal Act is amended by inserting the following new proviso to subparagraph 3(1):

“Provided that where an individual is not a citizen and not a permanent resident but the wife is a citizen or a permanent resident this paragraph shall not apply.”.

Amendment of Schedule 4

41. Schedule 4 to the principal Act is amended by substituting for paragraph 2, the following:

“**2.** An amount of five thousand ringgit or ten per cent of the chargeable gain, whichever is greater, in respect of a chargeable gain accruing to an individual who is a citizen or an individual who is not a citizen but is a permanent resident, on the disposal of a chargeable asset which is not or was not part of a larger chargeable asset at the time of the disposal:

Provided that in the case of a disposal by a co-proprietor of his share of the chargeable asset, such disposal shall not be regarded as a disposal of part of a larger chargeable asset for purposes of this paragraph.”.

CHAPTER V

AMENDMENTS TO THE *SHARE (LAND BASED COMPANY) TRANSFER TAX ACT 1984

Commencement of amendments to the Share (Land Based Company) Transfer Tax Act 1984

42. The provisions of this Chapter shall be deemed to have come into force on 19 October 1984.

Amendment of section 2

43. Section 2 of the Share (Land Based Company) Transfer Tax Act 1984, which in this Chapter is referred to as “the principal Act”, is amended—

(a) by inserting immediately after the interpretation of “company” in subsection (1), the following new interpretation of “controlled company”:

“ “controlled company” has the meaning assigned to it under the Income Tax Act 1967;”;

*NOTE—The Share (Land Based Company) Transfer Tax Act 1984 [Act 310] has since been repealed by the Finance Act 1988 [Act 364]—see section 26 of Act 497.

- (b) by substituting for the interpretation of “disposal” in subsection (1), the following:

“disposal”, in relation to a chargeable asset, means the sale, conveyance, transfer, exchange, assignment, settlement, delivery or alienation (including by way of an amalgamation, take over, merger or reconstruction of a company or companies), of shares:

Provided that the following shall not be regarded as a disposal:

- (a) issue of loan stock or debentures; and
- (b) conversion of loan stock or debentures into shares;’;

- (c) by inserting immediately after the interpretation of “disposal” in subsection (1), the following new interpretations of “industrial estate” and “interposed company”:

“industrial estate” means an area of land designated as such by the State Authority;

“interposed company” means a subsidiary under section 5 of the Companies Act 1965 [*Act 125*];’;

- (d) by substituting for the interpretation of “land based company” in subsection (1), the following:

“land based company” means a company owning land in Malaysia as one of the assets at the time of disposal of shares in the company, or a company though not owning land by itself holds an interest in shares (directly or through one or more interposed companies) in a company which owns land in Malaysia as one of the assets at the time of disposal of shares:

Provided that a company shall not be considered a land based company where land is used wholly and exclusively for its factory, office, hotel building (including land in use as golf course, tennis court, children’s playground) or business premises where no part of the premises is let out, and the land so used is in the judgment of the Director General not excessive to normal requirements but commensurate with the

size of the factory, office, hotel building or business premises, or where the land so used is land in an industrial estate; and

Provided further that a company is deemed to hold an interest in shares in a land based company—

- (a) directly if it holds more than twenty per cent of the aggregate of the nominal amount of voting shares of that land based company; or
- (b) through one or more interposed companies if the interposed company or any interposed company (where there are more than one interposed company) holds more than twenty per cent of the aggregate of the nominal amount of voting shares of that land based company;’;
- (e) by inserting immediately after the interpretation of “Special Commissioners” in subsection (1), the following new interpretation of “State Authority”:
 - ‘ “State Authority” has the meaning assigned to it under the National Land Code [*Act 56 of 1965*];’;
- (f) by inserting immediately after the interpretation of “tax” in subsection (1), the following new interpretation of “voting share”:
 - ‘ “voting share” means a voting share under the Companies Act 1965;’; and
- (g) by inserting immediately after subsection (2), the following new subsection (3):
 - “(3) References in this section to a factory, office or business premises shall be deemed to include social and recreational facilities for employees and living accommodation for employees other than directors (not being service directors) of a controlled company.”.

Amendment of section 4

44. Section 4 of the principal Act is amended by inserting immediately after the words “chargeable assets” in line 9, the words “in that land based company”.

New section 4A

45. The principal Act is amended by inserting immediately after section 4, the following new section 4A:

“Transfer of chargeable assets in any scheme of reorganization, etc.

4A. Subject to this section, where with the prior approval of the Director General—

- (a) a chargeable asset is transferred for any consideration between companies in any scheme of reorganization, reconstruction or amalgamation; or
- (b) a chargeable asset is disposed of by a liquidator of a company and the liquidation of the company was made under a scheme of reorganization, reconstruction or amalgamation, and the transferee company is resident in Malaysia, the transfer shall not be treated as a disposal:

Provided that no approval shall be given for any transfer or disposal of a chargeable asset in any scheme under subparagraph (a) or (b) unless the Director General is satisfied that such a chargeable asset is transferred or disposed of to implement any such scheme directly connected with any transfer of ownership of a chargeable asset in Malaysia to a company resident in Malaysia which is being restructured in compliance with Government policy on capital participation in industry.”.

Amendment of section 5

46. Section 5 of the principal Act is amended by inserting immediately after the words “such approval” at the end of the proviso thereto, the words “or, where such approval is conditional, the date when the condition or last of the conditions is satisfied”.

Amendment of section 9

47. Section 9 of the principal Act is amended by inserting immediately after the words “one month of the date of disposal” in subsection (2), the words “(or such further period as the Director General may allow on a written request made to him)”.

Amendment of section 44

48. Subsection 44(2) of the principal Act is amended by substituting for the word “except” in the proviso, the word “exempt”.

Amendment of section 45

49. Section 45 of the principal Act is amended by inserting immediately after the words “any disposal of shares” in subsection (1), the words “the value of which is five hundred thousand ringgit or more”.

Amendment of Schedule 2

50. Schedule 2 to the principal Act is amended—

(a) by substituting for paragraph 3, the following:

“**3.** Disposals of chargeable assets in a land based company between a person and his nominee or trustee where such person is absolutely entitled as against the nominee or trustee or between nominees or trustees where the beneficial ownership of the chargeable asset is not changed by such disposals:

Provided that this paragraph shall not apply to a settlement referred to in subsection 20(3).”; and

(b) by inserting immediately after paragraph 3, the following new paragraph 4:

“**4.** Disposals of chargeable assets in a land based company by the Government, a State Government or a local authority.”.

CHAPTER VI

AMENDMENTS TO THE *PETROLEUM (INCOME TAX)
ACT 1967

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

51. (1) Except for section 52, the provision of this Chapter shall be deemed to have effect for the year of assessment 1985 and subsequent years of assessment.

*NOTE—The Petroleum (Income Tax) Act 1967 [Act 45 of 1967] has since been revised in December 1995 as the Petroleum (Income Tax) Act 1967 [Act 543].

(2) Section 52 shall be deemed to have come into force on 1 January 1980.

Amendment of section 2

52. Subsection 2(1) of the Petroleum (Income Tax) Act 1967, which in this Chapter is referred to as “the principal Act”, is amended by inserting immediately after the interpretation of “natural gas”, the following new interpretation of “partnership”:

‘ “partnership” means an association or arrangement of any kind (including, but not limited to, joint ventures, syndicates and cases where a party to the association or arrangement is itself a partnership) between parties who have agreed to combine any of their rights, powers, property, labour or skill for the purposes of carrying on petroleum operations and sharing any petroleum production or any profit derived therefrom;’.

Amendment of section 22

53. Subsection 22(1) of the principal Act is amended by inserting immediately after the words “a State Government”, the words “, a local authority”.

LAWS OF MALAYSIA
Act 323
FINANCE (NO. 2) ACT 1985

LIST OF AMENDMENTS

Amending law	Short title	In force from
	- NIL -	

LAWS OF MALAYSIA**Act 323****FINANCE (NO. 2) ACT 1985**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
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– NIL –

