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Act 364

FINANCE ACT 1988

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LAWS OF MALAYSIA

Act 364

FINANCE ACT 1988

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LAWS OF MALAYSIA**Act 364****FINANCE ACT 1988**

An Act to amend the Income Tax Act 1967, the Petroleum (Income Tax) Act 1967 and the Real Property Gains Tax Act 1976 and to repeal the Share (Land Based Company) Transfer Tax Act 1984.

[]

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**

1. This Act may be cited as the Finance Act 1988.

Amendments and repeal of Acts

2. (1) The Income Tax Act 1967 [*Act 53*], the Petroleum (Income Tax) Act 1967 [*Act 543*] and the Real Property Gains Tax Act 1976 [*Act 169*] are amended in the manner specified in Chapters II, III and IV respectively.

- (2) The Share (Land Based Company) Transfer Tax Act 1984 [*Act 310*] is repealed in the manner specified in Chapter V.

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

3. (1) Except for paragraphs 14(*b*) and (*e*), this Chapter shall have effect for the year of assessment 1989 and subsequent years of assessment.

(2) Paragraphs 14(*b*) and (*e*) shall have effect for the year of assessment 1990 and subsequent years of assessment.

Amendment of section 18

4. Section 18 of the Income Tax Act 1967, which in this Chapter is referred to as “the principal Act”, is amended by inserting, immediately after the definition of “economic rent”, the following new definition of “entertainment”:

‘ “entertainment” includes—

- (a) the provision of food, drink, recreation or hospitality of any kind; or
- (b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a),
by a person or an employee of his in connection with a trade or business carried on by that person;’

New section 38A

5. The principal Act is amended by inserting, immediately after section 38, the following new section 38A:

“Limitation on deduction of entertainment expenses

38A. Where an employee’s gross income from an employment under subsection 13(1) includes for the basis period for a year of assessment any entertainment allowance, the amount of expenses deductible under subsection 33(1) in respect of entertainment by the employee, shall not exceed the amount of such entertainment allowance included in that gross income.”.

Amendment of section 39

6. Subsection 39(1) of the principal Act is amended—

- (a) by deleting the word “or” at the end of subparagraph (e)(ii);
- (b) by substituting for the comma at the end of subparagraph (e)(iii) a semicolon and inserting, immediately thereafter, the word “or”;

(c) by inserting, immediately after subparagraph (e)(iii), the following new subparagraph (iv):

“(iv) qualifying farm expenditure for the purposes of Schedule 4A,”;

(d) by substituting for paragraph (h) the following:

“(h) any sum paid by way of a bonus to an employee in excess of—

(i) two thousand ringgit; or

(ii) two-twelfths of his wages or salary plus a proportionate increase, if any, of that sum which is not more than twice the percentage increase of the net profits before taxation of the business of that basis period over such net profits, if any, of the preceding basis period,

whichever is the greater;”;

(e) by deleting the word “or” at the end of paragraph (j);

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

(g) by inserting, immediately after paragraph (k), the following new paragraphs (l) and (m):

“(l) any expenses incurred in the provision of entertainment including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

Provided that this paragraph shall not apply to the following expenses:

(i) the provision of entertainment to his employees except where such provision is incidental to the provision of entertainment for others;

- (ii) the provision of entertainment by a person who carries on a business which consists of or includes the provision for payment of entertainment to clients or customers of that business and that entertainment is provided for payment by the clients or customers in the ordinary course of that business;
 - (iii) the provision of promotional gifts at trade fairs or trade or industrial exhibitions held outside Malaysia for the promotion of exports from Malaysia;
 - (iv) the provision of promotional samples of products of the business of that person; or
 - (v) the provision of entertainment for cultural or sporting events open to members of the public, wholly to promote the business of that person; or
- (m) notwithstanding subparagraph (l)(i), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia.”.

Amendment of section 43

7. Section 43 of the principal Act is amended by inserting, immediately after the words “Schedule 4” in paragraph (l)(c), the words “or 4A”.

Amendment of section 44

8. Section 44 of the principal Act is amended by inserting, immediately after the words “Schedule 4” in paragraph (1)(b), the words “or 4A”.

Amendment of section 108

9. Section 108 of the principal Act is amended—

- (a) by inserting, immediately after subsection (2), the following new subsection (2A):

“(2A) Notwithstanding any other provision of this Act, where a dividend is paid, credited or distributed with or without deduction of tax during the basis year

for the year of assessment 1989, the amount of the dividend received by the shareholder shall be deemed to be a dividend of such a gross amount as after deduction of tax at the rate of thirty-five per cent would be equal to—

- (a) the amount in fact paid or credited; or
- (b) where the dividend consists of property other than money, the amount of the market value of that property at the time of the dividend's distribution,

and a sum equal to the difference between that gross amount and the amount mentioned in paragraph (a) or (b), as the case may be, shall be deemed to have been deducted from the dividend as tax.”;

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

“(4A) In any case where tax has been deducted at the rate of forty per cent on any dividend paid, credited or distributed during the basis year for the year of assessment 1989 to which subsection (2A) applies, the difference between the amount of tax deducted at forty per cent from such dividend and the amount deemed to have been so deducted under that subsection shall be carried forward as a balance in accordance with subsection (6).”.

Amendment of section 110

- 10.** Section 110 of the principal Act is amended by inserting, immediately after subsection (1), the following new subsection (1A):

“(1A) Notwithstanding subsection (1), where tax on any dividend paid, credited or distributed during the basis year for the year of assessment 1989 has been deducted at the rate of forty per cent, the tax to be set off under subsection (1) shall be the sum deemed to be the tax deducted from such dividend under subsection 108(2A).”.

Amendment of Schedule 1

11. Schedule 1 to the principal Act is amended by substituting for the figure “40” in paragraph (2) of Part I the figure “35”.

New Schedule 4A

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

“

SCHEDULE 4A

[Sections 43 and 44]

CAPITAL EXPENDITURE ON APPROVED
AGRICULTURAL PROJECTS

1. Subject to this Schedule, qualifying farm expenditure for the purposes of this Schedule is capital expenditure within the meaning of paragraph 2, incurred by a person for the purposes of a business of that person consisting of the carrying on of an approved agricultural project, within the period stipulated by the Minister for the purposes of this Schedule, in respect of which expenditure that person would have been entitled to an allowance under Schedule 3 but for an election under this Schedule.

2. Subject to paragraph 1, qualifying farm expenditure is capital expenditure incurred for the purposes of an approved agricultural project on—

- (a) the clearing and preparation of land;
- (b) the planting (but not replanting) of a crop relating to an approved agricultural project;
- (c) the construction on a farm of a road or bridge;
- (d) the construction on a farm of a building used for the purposes of an approved agricultural project which is carried out on that farm or the construction on that farm of a building provided for the welfare and accommodation of persons employed in that project and which, if that project ceased to be carried out, is likely to be of little or no value to any person except in connection with the working of another farm; or
- (e) the construction of a pond or the installation of an irrigation or drainage system which is used for the purposes of an approved agricultural project.

3. A person who has incurred qualifying farm expenditure may elect to claim within three months after the beginning of the year of assessment in the basis period in which that business commenced or within such further period as the Director General may allow, a deduction to be made under this Schedule:

Provided that—

- (a) this paragraph shall not apply where the total area of the land utilised for the approved agricultural project is below the hectareage stipulated by the Minister for the purposes of this Schedule;
- (b) where a person has made an election for a deduction under this Schedule in respect of an approved agricultural project he shall not be entitled to make a further election in respect of another project relating to the same crop or product.

4. Subject to this Schedule, there shall be deducted for a year of assessment under subsection 44(1) an amount equal to so much of the qualifying farm expenditure as was incurred in the basis period for the year of assessment (in this Schedule that year of assessment being referred to as “the relevant year”).

5. A person entitled to a deduction in respect of any expenditure relating to an approved agricultural project under this Schedule shall not be entitled to a deduction in connection with another approved agricultural project in respect of the same expenditure.

6. Where by reason of the fact that there is for the relevant year no or no sufficient defined aggregate, a deduction which would otherwise be made under subsection 44(1) pursuant to this Schedule cannot be made or can be made only in part, the deduction (or where the deduction can be made only in part, so much of the deduction as cannot be made) shall be made for the first year of assessment (being a year of assessment subsequent to the relevant year) for which in computing the total income there is a defined aggregate, and so on for the years of assessment subsequent to that first year until the whole amount of the deduction has been made.

7. Where a person who has incurred qualifying farm expenditure and claimed a deduction in respect of such expenditure under this Schedule, receives an amount as consideration for the disposal of an asset in relation to which such qualifying farm expenditure was incurred, the amount so received shall be added under paragraph 43(1)(c) in ascertaining his aggregate income for the year of assessment in the basis period in which that amount was received:

Provided that—

- (a) the amount so added shall not exceed the total deductions allowed in relation to that asset under this Schedule;
- (b) this paragraph shall not apply where in the case of an asset in relation to which an agricultural allowance would have been made to him under Schedule 3 but for a claim under this Schedule, the disposal takes place after the end of ten years commencing from the date on which the qualifying farm expenditure in relation to that asset was incurred.

8. (1) In this Schedule—

“approved agricultural project” means an agricultural project which is approved by the Minister by statutory order in the *Gazette* for the purposes of this Schedule;

“asset” means an asset in relation to which qualifying farm expenditure has been incurred;

“defined aggregate”, in relation to a year of assessment, means the aggregate income for that year reduced by a deduction made pursuant to subsection 44(2) or Schedule 4.

(2) The period and minimum hectareage in relation to an approved agricultural project for purposes of this Schedule shall be stipulated by the Minister in a statutory order in the *Gazette*.”.

Amendment of Schedule 6

13. Schedule 6 to the principal Act is amended by substituting for paragraph 13 the following:

“13. (1) Subject to this paragraph, the income, other than dividend income, of—

- (a) a charitable institution, trust body of any trust or body of persons, if the institution, trust body or body of persons in question is established in Malaysia for charitable purposes only and approved by the Director General for the purposes of this paragraph;
- (b) a building fund approved under subsection 44(6) or a religious institution or organization which is not operated or conducted primarily for profit and which is established in Malaysia exclusively for the purposes of religious worship or the advancement of religion.

(2) An institution, a trust body or body of persons referred to in subparagraph (1)(a)—

- (a) shall apply for approval from the Director General; and
- (b) shall apply its income, whether exempt or otherwise, solely for its charitable purposes or charitable objects within Malaysia and the amount so applied in a year of assessment shall not be less than seventy per cent (or such percentage as may be permitted by the Director General) of such income for the basis period for that year of assessment.

- (3) Where a business is carried on by an institution, a trust body, body of persons or an organization referred to in subparagraph (1) the income from the business shall be exempt from tax if—
- (a) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, trust body, body of persons or organization; or
 - (b) the work in connection with the business is mainly carried on by persons for whose benefit the institution, trust body, body of persons or organization was established.”.

Amendment of Schedule 7A

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

- (a) by substituting for the words “twenty-five” in paragraph 1 the word “forty”;
- (b) by inserting, immediately before the existing proviso in paragraph 1, the following new proviso:

“Provided that in the case of a small scale company as defined under subsection 33(4) of the Promotion of Investments Act 1986 [*Act 327*] there shall be given to the company a reinvestment allowance of fifty per cent of that expenditure.”;

- (c) by inserting, immediately after the word “Provided” in the existing proviso in paragraph 1, the word “further”;
- (d) by substituting for the word “ten” in subparagraph 2(b) the word “twelve”; and
- (e) by inserting, immediately after the figure “33,” in subparagraph 7(c), the figure “33A,”.

CHAPTER III

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

15. This Chapter shall have effect for the year of assessment 1989 and subsequent years of assessment.

Amendment of section 2

16. Subsection 2(1) of the Petroleum (Income Tax) Act 1967, which in this Chapter is referred to as “the principal Act”, is amended—

(a) by substituting for subparagraph (ii) in the definition of “chargeable person” the following:

“(ii) in relation to each petroleum agreement, any other person carrying on petroleum operations thereunder;”;

(b) by inserting, immediately after the definition of “disposal” and “disposed of”, the following new definition of “entertainment”:

“entertainment” includes—

(a) the provision of food, drink, recreation or hospitality of any kind; or

(b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a),

by a chargeable person or an employee of his in connection with petroleum operations carried on by that chargeable person;”;

(c) by inserting, immediately thereafter, the following new subsections (2), (3) and (4):

“(2) For the purposes of this Act, where a person, other than Petroleum Nasional Berhad, carries on petroleum operations under more than one petroleum agreement, he shall be regarded as a separate chargeable person in respect of each of those agreements.

(3) Where a partnership is succeeded by another at any time during the period of its petroleum agreement, and at least one of the original parties to that agreement who was a member of the succeeded partnership is a member of the succeeding partnership, both partnerships shall be treated for the purposes of this Act as one continuing partnership.

- (4) For the purposes of this Act—
- (a) (i) where a partnership carries on petroleum operations under two or more petroleum agreements and the areas under those agreements are contiguous, the petroleum operations in those areas shall be treated as being carried on under one petroleum agreement; and
 - (ii) agreement areas which would otherwise be contiguous with each other shall be treated as being contiguous with each other notwithstanding that any part of those agreement areas has been surrendered to Petroleum Nasional Berhad; or
- (b) where prior to 21 October 1988 a partnership has more than one petroleum agreement and there is no change in the members of the partnership after that date in respect of those petroleum agreements, that partnership shall be regarded as carrying on petroleum operations under one petroleum agreement.”.

Amendment of section 4

17. Section 4 of the principal Act is amended by inserting, immediately after subsection (2), the following new subsection (3):

“(3) For the avoidance of doubt, it is hereby declared that for the purposes of this Act, the chargeable income from petroleum operations of any person other than Petroleum Nasional Berhad shall be ascertained by reference to each petroleum agreement separately.”.

Amendment of section 10

18. The principal Act is amended by substituting for section 10 the following:

“Chargeable petroleum delivered to refinery or gas processing plant

10. Where in the relevant period any chargeable petroleum of the relevant chargeable person is delivered to a refinery in Malaysia for refining or to a gas processing plant in Malaysia for processing by or on behalf of that chargeable person, an

amount equal to the market value of the chargeable petroleum shall be treated as gross income of that chargeable person for that period.”.

Amendment of section 16

19. Section 16 of the principal Act is amended by deleting the proviso in subsection (4).

Amendment of section 18

20. Subsection 18(1) of the principal Act is amended—

(a) by substituting for paragraph (l) the following:

“(l) any sum paid by way of a bonus to an employee in excess of—

(i) two thousand ringgit; or

(ii) two-twelfths of his wages or salary plus a proportionate increase, if any, of that sum which is not more than twice the percentage increase of the net profits before taxation of the chargeable person from petroleum operations of that basis period over such net profits, if any, of the preceding basis period,

whichever is the greater; or”;

(b) by substituting for the full stop at the end of paragraph (m) a semicolon and inserting, immediately thereafter, the word “or”; and

(c) by inserting, immediately after paragraph (m), the following new paragraphs (n) and (o):

“(n) any expenses incurred in the provision of entertainment including any sums paid to an employee of that chargeable person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

Provided that this paragraph shall not apply to the expenses incurred in the provision of entertainment to his employees except where such provision is incidental to the provision of entertainment for others; or

- (o) notwithstanding the proviso to paragraph (n), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia.”.

Amendment of Schedule 1

21. Schedule 1 to the principal Act is amended by substituting for the word “one-twentieth” in subparagraph 5(2) the word “three-twentieths”.

Amendment of Schedule 2

22. Schedule 2 to the principal Act is amended—

- (a) by substituting for the word “six” in subsubparagraph 12(1)(a) the word “ten”;
- (b) by substituting for the words “subparagraph (b)” in subparagraph 41(a) the words “subparagraphs (b) and (c)”;
- (c) by substituting for the full stop at the end of subparagraph 41(b) a semicolon;
- (d) by inserting, immediately after subparagraph 41(b) , the following new subparagraph (c):
 - “(c) subject to subparagraph (b), where an asset of the kind to which subparagraph 2(2) applies is disposed of, the disposal value shall be deemed to be an amount which bears the same proportion to the disposal value ascertained under subparagraph (a) as the qualifying plant expenditure ascertained under paragraph 2(2) bears to the qualifying plant expenditure ascertained under subparagraph 2(1).”;
- (e) by substituting for the comma at the end of subparagraph 51(c) a semicolon and inserting, immediately thereafter, the word “or”;
- (f) by inserting, immediately after subparagraph 51(c) , the following new subparagraph (d):
 - “(d) the asset is used for the purposes of petroleum operations under more than one petroleum agreement,”; and

- (g) by inserting, immediately after the words “carried on in Malaysia” in paragraph 51, the words “or wholly for the purposes of petroleum operations under one petroleum agreement”.

CHAPTER IV

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

23. This Chapter shall be deemed to have come into force on 21 October 1988.

Amendment of Schedule 2

24. Schedule 2 to the Real Property Gains Tax Act 1976, which in this Chapter is referred to as “the principal Act”, is amended—

- (a) by substituting for the full stop at the end of subparagraph 33(c) a semicolon and inserting, immediately thereafter, the word “or”;
- (b) by inserting, immediately after subparagraph 33(c), the following new subparagraph (d):
- “(d) the disposal is a disposal of a chargeable asset under paragraph 34A.”; and
- (c) by inserting, immediately after paragraph 34, the following new paragraph 34A:

“Acquisition and disposal of shares in real property companies

34A. (1) An acquisition of shares in a real property company (hereinafter referred to in this paragraph as “the relevant company”) shall be deemed to be an acquisition of a chargeable asset, and where such shares are disposed of, such a disposal shall be deemed to be a disposal of a chargeable asset notwithstanding that at the time of disposal of such shares the relevant company is not regarded as a real property company.

(2) The chargeable asset in this paragraph shall be deemed to be acquired—

- (a) on the date the relevant company becomes a real property company; or
- (b) on the date of acquisition of the chargeable asset:

Provided that where that relevant company acquires additional real property or shares or both the defined value of which is equivalent to or exceeds fifty per cent of the defined value of the real property or shares or both it already owns, then the date of acquisition of the chargeable asset shall be deemed to be the date of acquisition of the additional real property or shares or both.

(3) Notwithstanding paragraphs 4 and 9, the chargeable asset in this paragraph shall be deemed to be acquired at an acquisition price equal to a sum determined in accordance with the formula

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

where *A* is the number of shares deemed to be a chargeable asset;

B is the total number of issued shares in the relevant company at the date of acquisition of the chargeable asset; and

C is the defined value of the real property or shares or both owned by the relevant company at the date of acquisition of the chargeable asset.

(4) Notwithstanding paragraph 5, the disposal price of the chargeable asset in this paragraph is the amount or value of consideration in money or money's worth for the disposal of the chargeable asset.

(5) This paragraph shall not apply to an acquisition or a disposal of any shares under paragraph 34.

(6) For the purposes of this paragraph—

“controlled company” means a controlled company as defined under the Income Tax Act 1967;

“defined value” means the market value of real property or the acquisition price of shares as determined under subparagraph (3);

“real property company” means—

- (a) a controlled company which, as at 21 October 1988, owns real property or shares or both, the defined value of which is not less than seventy-five per cent of the value of its total tangible assets; or
- (b) a controlled company to which subparagraph (a) is not applicable, but which, at any date after 21 October 1988, acquires real property or shares or both whereby the defined value of real property or shares or both owned at that date is not less than seventy-five per cent of the value of its total tangible assets:

Provided that where at any date the company disposes of real property or shares or both whereby the defined value of real property or shares or both owned at that date and thereafter is less than seventy-five per cent of the value of its total tangible assets, that company shall not be regarded as a real property company as from that date;

“shares” refers to shares owned in a real property company;

“value of its total tangible assets” means the aggregate of the defined value of real property or shares or both and the value of other tangible assets.”.

Amendment of Schedule 3

25. Schedule 3 to the principal Act is amended—

(a) by substituting for paragraph 4 the following:

“4. Subject to this Schedule, a private residence is a building or part of a building in Malaysia owned by an individual and occupied or certified fit for occupation as a place of residence.”; and

- (b) by deleting the words “and not more than ten per cent of the building is occupied primarily as a private residence” in subparagraphs 12(a) and (b).

CHAPTER V

REPEAL AND SAVING OF THE SHARE (LAND BASED COMPANY) TRANSFER TAX ACT 1984

Repeal and saving of the Share (Land Based Company) Transfer Tax Act 1984

26. The Share (Land Based Company) Transfer Tax Act 1984, which in this Chapter is referred to as “the Act”, is repealed with effect from 21 October 1988, but without prejudice to—

- (a) the right of the Director General to take any action which he was empowered to take under the Act to assess share transfer tax, or to enforce payment thereof, which at the date of the said repeal remains to be assessed or paid ;
- (b) the power of the Minister to exempt any person or class of persons from all or any of the provisions of the Act; or
- (c) the power of the Minister or the Director General to remit tax which is paid or payable under the Act.
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LAWS OF MALAYSIA

Act 364

FINANCE ACT 1988

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 420	Finance Act 1990	Chapter IV: 21-10-1988

LAWS OF MALAYSIA**Act 364****FINANCE ACT 1988****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
26	Act 420	21-10-1988
