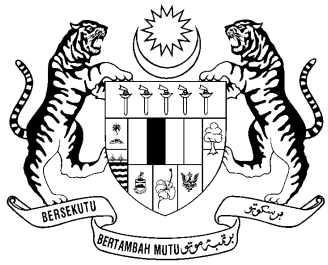

LAWS OF MALAYSIA

REPRINT

Act 420

FINANCE ACT 1990

Incorporating all amendments up to 1 January 2006

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FINANCE ACT 1990

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LAWS OF MALAYSIA

Act 420

FINANCE ACT 1990

ARRANGEMENT OF SECTIONS

CHAPTER III

AMENDMENT TO THE REAL PROPERTY GAINS TAX ACT 1976

CHAPTER IV

AMENDMENT TO THE FINANCE ACT 1988

LAWS OF MALAYSIA

Act 420

FINANCE ACT 1990

An Act to amend the Income Tax Act 1967, the Real Property Gains Tax Act 1976 and the Finance Act 1988, 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

1. This Act may be cited as the Finance Act 1990.

Amendments of Acts

2. The Income Tax Act 1967 [*Act 53*], the Real Property Gains Tax Act 1976 [*Act 169*] and the Finance Act 1988 [*Act 364*] are amended in the manner specified in Chapters II, III and IV, respectively.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Except for sections 7, 8, 13, 15 and 16 this Chapter shall have effect for the year of assessment 1990 and subsequent years of assessment.

(2) Sections 7, 8 and 15 shall be deemed to have effect for the year of assessment 1989 and shall have effect for subsequent years of assessment.

(3) Section 13 shall be deemed to have come into force on 1 January 1989.

(4) Section 16 shall have effect for the year of assessment 1991 and subsequent years of assessment.

Amendment of section 2

4. Section 2 of the Income Tax Act 1967, which is referred to in this Chapter as the "principal Act", is amended by inserting, after the definition of "approved loan", the following definition:

"approved operational headquarters company" has the meaning assigned thereto by section 60E;'.

Amendment of section 3A

5. Section 3A of the principal Act is amended by inserting, after the words "under section 4A", the words "and that of a unit trust".

Amendment of section 6

6. Section 6 of the principal Act is amended—

(a) in subsection (1), by substituting for the full stop at the end of paragraph *(f)* a semicolon; and

(b) in subsection (1), by inserting, after paragraph *(f)*, the following paragraph:

"*(g)* (i) subject to subparagraph (ii), income tax shall be charged for each year of assessment upon the chargeable income of an approved operational headquarters company in relation to the source consisting of the provision of qualifying services at the appropriate rate as specified under Part VII of Schedule 1;

(ii) the rate specified under Part VII of Schedule 1 shall apply only for a period of five years of assessment commencing from the year of assessment in the basis period in which the date of approval of the approved operational headquarters company falls:

Provided that where the Minister is satisfied that the company has by the end of the period met such requirements as may be specified by him at the time of approval, he may extend the period for a further period not exceeding five years of assessment.".

Amendment of section 19

7. Section 19 of the principal Act is amended, in subsection (5), by substituting for the words "3 and 4" the words "3, 4 and 4A".

Amendment of section 44

8. Section 44 of the principal Act is amended, in subsection (6), by substituting for the words "subsection (2) or Schedule 4 or both" the words "subsection (2), Schedule 4 or Schedule 4A".

New sections 60D and 60E

9. The principal Act is amended by inserting, after section 60C, the following sections:

"**Venture capital companies**

60D. (1) Where a venture capital company receives an amount in respect of gains from the disposal of shares in a venture company in the basis period for a year of assessment such amount shall be exempt from tax for that year of assessment:

Provided that where the disposal of shares in a venture company takes place two years after the date on which the shares in the venture company are listed for quotation in the official list of a stock exchange in Malaysia, the gains from such disposal shall not be exempt from tax.

(2) Paragraphs 5 and 6 of Schedule 7A shall apply *mutatis mutandis* to the amount exempt under subsection (1).

(3) Where a venture capital company incurs a loss in respect of a disposal of shares in a venture company in the basis period for a year of assessment, there shall not be made any deduction under subsection 43(2) or 44(2) in respect of such loss in computing the aggregate income or total income of the venture capital company, as the case may be.

(4) In ascertaining the total income of the venture capital company for the basis period for a year of assessment, there shall be deducted before any deduction falling to be made under paragraph 44(1)*(c)* an amount in respect of expenses incurred by that company during that period, which amount shall be determined in accordance with the formula

$$A \times \frac{B}{4C},$$

where *A* is the total of the permitted expenses incurred for that basis period;

B is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period; and

C is the aggregate of the gross income consisting of dividend (whether exempt or not), interest and rent, and gains made from the disposal of shares in a venture company (whether chargeable to tax or not) for that basis period:

Provided that where, by reason of an absence or insufficiency of aggregate income for that year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made to the venture capital company under this section for that year, that deduction which has not been so made shall not be made to the company for any subsequent year of assessment.

(5) In this section—

"permitted expenses" means expenses incurred by the venture capital company in respect of—

(a) directors' fees;

(b) wages, salary, allowances;

(c) management and advisory fees paid to fund managers;

(d) secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage; and

(e) rent and other expenses incidental to the maintenance of an office,

which are not deductible under subsection 33(1);

"venture capital company" means a company, incorporated in Malaysia, which—

(a) is resident in Malaysia for the basis year for a year of assessment;

(b) holds shares exclusively in a venture company, the shares in which are not listed for quotation in the official list of a stock exchange in Malaysia at the time of acquisition of such shares by that venture capital company; and

(c) is approved by the Minister for the purposes of this section;

"venture company" means a company incorporated in Malaysia, which—

(a) is resident in Malaysia for the basis year for a year of assessment; and

(b) is involved in any high risk venture or new technology in relation to a product or activity which the Minister is satisfied would promote or enhance the economic or technological development of Malaysia.

Approved operational headquarters company

60E. (1) Where an approved operational headquarters company carries on a business in Malaysia of providing qualifying services, and a business or businesses in Malaysia other than that of providing qualifying services, the business of providing such qualifying services shall be treated as a separate and distinct business and source of that company.

(2) The chargeable income in relation to the source consisting of the provision of qualifying services for a year of assessment shall be the statutory income from that source reduced by any deduction falling to be made pursuant to subsection 43(2) relating to that source.

(3) The chargeable income in relation to the source or sources other than the source consisting of the provision of qualifying services for a year of assessment shall be the statutory income from that source or the aggregate of the statutory income from each of those sources, as the case may be, reduced by any deductions falling to be made pursuant to subsections 43(2) and 44(1):

Provided that in so making the deductions under subsections 43(2) and 44(1), no regard shall be had to the adjusted loss, if any, from the source consisting of the provision of qualifying services.

(4) Where it appears to the Director General that the chargeable income of an approved operational headquarters company in relation to a source consisting of the provision of qualifying services ought not to have been charged to tax at the rate specified under Part VII of Schedule 1 by reason of the withdrawal of the approval of the operational headquarters company, he may, at any time within twelve years after the expiration of the year of assessment for which that rate was applied, make such additional assessments upon that company as appear to him to be necessary in order to counteract any benefit obtained under Part VII of Schedule 1.

(5) Dividends received by an approved operational headquarters company in the basis period for a year of assessment from a related company outside Malaysia shall be exempt from tax for that year of assessment:

Provided that the exemption—

(a) shall apply for a period of ten years of assessment commencing from the year of assessment in the basis period in which the date of approval of the operational headquarters company falls; and

(b) shall apply only to a company which is incorporated in Malaysia on or after the coming into force of this section.

(6) Paragraphs 5 and 6 of Schedule 7A shall apply *mutatis mutandis* to income exempt under subsection (5).

(7) For the purposes of this section—

"approved operational headquarters company" means a company—

(a) the entire issued share capital of which is held—

(i) by a foreign company or companies; or

(ii) by an individual or individuals who are not citizens at any time in the basis year for a year of assessment; or

(iii) by a foreign company or companies, and an individual or individuals who are not citizens at any time in the basis year for a year of assessment;

(b) which carries on a business in Malaysia of providing qualifying services to its offices outside Malaysia or to its related companies outside Malaysia; and

(c) which is approved by the Minister for the purposes of this section,

but does not include a company which carries on a finance business or which provides professional services;

"foreign company" means a foreign company as defined under the Companies Act 1965 [*Act 125*];

"qualifying services" means—

(a) services provided by an approved operational headquarters company to its offices outside Malaysia or to its related companies outside Malaysia in respect of—

(i) general management and administration;

(ii) business planning;

(iii) procurement of raw materials and components for use in the business of its offices outside Malaysia or its related companies outside Malaysia;

(iv) technical support;

(v) marketing control and sales promotion planning;

(vi) training and personnel management;

(b) provision of credit facilities to its offices outside Malaysia or its related companies outside Malaysia where the funds for providing such facilities are obtained from financial institutions in Malaysia; and

(c) research and development work carried out in Malaysia on behalf of its offices outside Malaysia or its related companies outside Malaysia;

"related company", in relation to an approved operational headquarters company, means a company—

(a) the operations of which are or can be controlled, either directly or indirectly, by the approved operational headquarters company;

(b) which controls or can control, either directly or indirectly, the operations of the approved operational headquarters company; or

(c) the operations of which are or can be controlled, either directly or indirectly, by a person or persons who control or can control, either directly or indirectly, the operations of the approved operational headquarters company:

Provided that a company shall be deemed to be a related company in relation to an approved operational headquarters company if—

(i) at least twenty per cent of its issued share capital is beneficially owned, either directly or indirectly, by the approved operational headquarters company; or

(ii) at least twenty per cent of the issued share capital of the approved operational headquarters company is beneficially owned, either directly or indirectly, by the first-mentioned company.".

Amendment of section 61

10. Section 61 of the principal Act is amended—

(a) in subsection (1), by substituting for the semicolon at the end of paragraph *(b)* a colon;

(b) in subsection (1), by inserting, below paragraph *(b)*, the following proviso:

"Provided that in the case of a unit trust, gains arising from the realization of investments shall not be treated as income of the trust body of the trust;";

(c) by inserting, after subsection (1), the following subsection:

"(1A) Notwithstanding paragraphs (1)*(c)* and *(d)*, a unit holder of a unit trust shall be assessed and charged to tax in respect of income equivalent to an amount ascertained by reference to his share of the total income of the unit trust for a year of assessment, distributed to him by the unit trust in the basis year for that year of assessment:

Provided that the unit holder shall not be assessed and charged to tax in respect of any amount distributed by the unit trust out of exempt income or the gains referred to in the proviso to paragraph 61(1)*(b)*.".

New sections 63A and 63B

11. The principal Act is amended by inserting, after section 63, the following sections:

"**Special deduction for qualifying capital expenditure**

63A. (1) In ascertaining the statutory income of a unit trust from a source consisting of the derivation of rent from the letting of real property for a year of assessment, there shall be deducted from the adjusted income from that source for that year of assessment an allowance made under subsection (2) in respect of qualifying capital expenditure.

(2) Where a unit trust has, for the purposes of deriving rent from the letting of real property, incurred qualifying capital expenditure in relation to an asset and at the end of the basis period for a year of assessment the unit trust was the owner of the asset and the asset was in use for that purpose, there shall be made to the unit trust in relation to that source for that year an allowance equal to one tenth of that expenditure:

Provided that where, by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or cannot be given in full to any allowance falling to be made for that year in relation to that source, that allowance which has not been so made shall not be made to the unit trust for any subsequent year of assessment.

(3) Where at the end of the basis period for any year of assessment the residual expenditure in relation to an asset in respect of which qualifying capital expenditure has been incurred is zero, or the asset is no longer owned or in use by the unit trust, no allowance shall be made to the unit trust for that year of assessment and subsequent years of assessment.

(4) For the purposes of subsection (2), qualifying capital expenditure shall be deemed to have been incurred on the day on which the machinery or plant is capable of being used for the purposes of deriving rent from the letting of real property.

(5) For the purposes of this section—

"qualifying capital expenditure" in relation to an asset is capital expenditure incurred on the provision of machinery or plant used for the purposes of deriving rent from the letting of real property, including—

(a) expenditure incurred on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof provided that such expenditure does not exceed seventy-five per cent of the aggregate of itself and any other expenditure (being qualifying capital expenditure); and

(b) expenditure incurred on preparing or levelling land in order to prepare a site for the installation of that machinery or plant provided that such expenditure does not exceed ten per cent of the aggregate of itself and any other expenditure (being qualifying capital expenditure);

"residual expenditure" at any date in relation to an asset in respect of which qualifying capital expenditure has been incurred by a unit trust shall be the total qualifying capital expenditure incurred on the provision of the asset before that date reduced by the allowance falling to be made in relation to that asset for any year of assessment before that date.

Special deduction for expenses

63B. (1) In ascertaining the total income of a unit trust for the basis period for a year of assessment, there shall be deducted before any deduction falling to be made under paragraph 44(1)*(c)* an amount in respect of expenses incurred by that unit trust during that period, which amount shall be determined in accordance with the formula

$$\frac{A \times B}{4C},$$

where *A* is the total of the permitted expenses incurred for that basis period;

B is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period; and

C is the aggregate of the gross income consisting of dividend (whether exempt or not), interest and rent, and gains made from the realization of investments (whether chargeable to tax or not) for that basis period:

Provided that—

(a) the amount of deduction to be made shall not be less than ten per cent of the total permitted expenses incurred for that basis period; and

(b) where, by reason of an absence or insufficiency of aggregate income for that year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made to the unit trust under this section for that year that deduction which has not been so made shall not be made to the unit trust for any subsequent year of assessment.

(2) For the purposes of this section—

"permitted expenses" means expenses incurred by the unit trust in respect of—

(a) manager's remuneration;

(b) maintenance of register of unit holders;

(c) share registration expenses;

(d) secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage,

which are not deductible under subsection 33(1).".

Amendment of section 110

12. Section 110 of the principal Act is amended by inserting, after subsection (9), the following subsection:

"(9A) Notwithstanding subsections (8) and (9), where income distributed by a unit trust is included in the aggregate income of a person for a year of assessment, the tax chargeable on the unit trust and attributable to the income included in the aggregate income of that person (or, where the trust is entitled to any relief under section 132 or 133, that tax less the amount of that relief) shall be set off against the tax charged on the chargeable income, if any, of that person for that year of assessment.".

Amendment of section 145

13. Section 145 of the principal Act is amended by substituting for subsections (3) and (4) the following subsections:

"(3) Where a person to whom there has been addressed a registered letter containing a notice under this Act—

(a) is informed that there is a registered letter awaiting him at a post office but refuses or neglects to take delivery of the letter; or

(b) refuses to accept delivery of that registered letter when tendered,

the notice shall be deemed to have been served upon him on the date on which he was informed that the letter was awaiting him or on which the letter was tendered to him, as the case may be.

(4) For the purposes of subsection (3) an affidavit by the officer in charge of a post office stating that to the best of his knowledge and belief—

(a) there has been delivered to the address appearing on a registered letter a post office notification informing the addressee that there is a registered letter awaiting him; or

(b) there has been tendered for delivery to the addressee a registered letter,

shall, until the contrary is proved, be evidence that the addressee has been so informed or that that registered letter has been tendered to him, as the case may be.".

New Part VII of Schedule 1

14. Schedule 1 to the principal Act is amended by inserting, after Part VI, the following Part:

"PART VII

Notwithstanding Part I, income tax shall be charged upon the chargeable income of an approved operational headquarters company in relation to the source consisting of the provision of qualifying services as defined under subsection 60E (7) at the rate of ..... 10 per cent.".

Amendment of Schedule 4A

15. Schedule 4A to the principal Act is amended by inserting, after paragraph 7, the following paragraph:

"7A. This Schedule shall not apply to a company—

(a) for the period during which the company—

(i) has been granted pioneer status under the Promotion of Investments Act 1986 [*Act 327*] in

respect of a promoted activity or promoted product and is applying or intends to apply for the grant of a pioneer certificates; or

(ii) has been granted pioneer certificate under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph 29(2)*(b)*, *(c)* or *(d)* of the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product for which the company has been granted approval under section 27 of that Act; or

(c) for the period during which that company, notwithstanding the repeal of the Investment Incentives Act 1968 [*Act 199*]—

(i) has been given approval under section 5, 12A or 12B of that Act and whose tax relief period has not ended; or

(ii) has been given approval under section 26 of that Act and incurs capital expenditure which qualifies for investment tax credit.".

Amendment of Schedule 7A

16. Schedule 7A to the principal Act is amended, in paragraph 7—

(a) by deleting the word "or" at the end of subparagraph *(c)*;

(b) by substituting for the full stop at the end of subparagraph *(d)* the words "; or"; and

(c) by inserting, after subparagraph *(d)*, the following subparagraph:

"*(e)* for the period prescribed under paragraph 31E(2)*(b)* of the Promotion of Investments Act 1986 in respect of a manufacturing activity or manufactured product for which the company has been granted approval under section 31C of that Act.".

CHAPTER III

AMENDMENT TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendment to the Real Property Gains Tax Act 1976

17. This Chapter shall be deemed to have come into force on 1 January 1989.

Amendment of section 2

18. Section 2 of the Real Property Gains Tax Act 1976 is amended by substituting for the definition of "gain" in subsection (1) the following definition:

'"gain" means—

(a) gain other than gain or profit chargeable with or exempted from income tax under the income tax law; or

(b) in the case of a unit trust, gain not treated as income under the income tax law;'.

CHAPTER IV

AMENDMENT TO THE FINANCE ACT 1988

Commencement of amendment to the Finance Act 1988

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

Amendment of section 26

20. The Finance Act 1988 is amended by substituting for section 26 the following section:

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

26. The Share (Land Based Company) Transfer Tax Act 1984 [*Act 310*], 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.".

LAWS OF MALAYSIA

Act 420

FINANCE ACT 1990

LIST OF AMENDMENTS

Amending law	Short title	In force from
– NIL –		

LAWS OF MALAYSIA

Act 420

FINANCE ACT 1990

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from

– NIL –

DICETAK OLEH
PERCETAKAN NASIONAL MALAYSIA BERHAD,
KUALA LUMPUR
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA