



LAWS OF MALAYSIA

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Act 639

FINANCE ACT 2004

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FINANCE ACT 2004

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LAWS OF MALAYSIA

Act 639

FINANCE ACT 2004

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LAWS OF MALAYSIA**Act 639****FINANCE ACT 2004**

An Act to amend the Income Tax Act 1967, the Petroleum (Income Tax) Act 1967, the Real Property Gains Tax Act 1976 and the Stamp Act 1949.

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ENACTED by the Parliament of Malaysia as follows:

CHAPTER I**PRELIMINARY****Short title**

1. This Act may be cited as the Finance Act 2004.

Amendments of Acts

2. The Income Tax Act 1967 [*Act 53*], the Petroleum (Income Tax) Act 1967 [*Act 543*], the Real Property Gains Tax Act 1976 [*Act 169*] and the Stamp Act 1949 [*Act 378*] are amended in the manner specified in Chapters II, III, IV and V respectively.

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

3. (1) Sections 4, 5, 6, and subparagraph 7(*b*)(ii) and sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 27, 28, 29, 30, 31 and 32 have effect for the year of assessment 2005 and subsequent years of assessment.

(2) Paragraph 7(a) has effect for the year of assessment 2001 and subsequent years of assessment.

(3) Subparagraph 7(b)(i) and sections 20, 21 and 22 have effect for the year of assessment 2004 and subsequent years of assessment.

(4) Sections 24, 25 and 26 shall come into operation on 1 January 2005.

(5) Paragraph 33(a) has effect for the year of assessment 2003 and subsequent years of assessment.

(6) Paragraph 33(b) is deemed to have come into operation on 11 September 2004.

Amendment of section 2

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

(a) in subsection (1)—

(i) by inserting after the definition of “business” the following definition:

‘ “Central Bank” means the Central Bank of Malaysia established under section 3 of the Central Bank of Malaysia Act 1958 [*Act 519*];
and

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

‘ “Securities Commission” means the Securities Commission established under section 3 of the Securities Commission Act 1993 [*Act 498*];
and

(b) in subsection (8) by substituting for the words “in accordance with the principles of Syariah” the words “approved by the Central Bank or the Securities Commission, as a scheme which is in accordance with the principles of Syariah where such disposal is strictly required for the purpose of complying with those principles but which will not be required in any other schemes of financing”.

Amendment of section 6

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

(a) in paragraph (h) by substituting for the full stop at the end of that paragraph a semicolon; and

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

“(i) subject to section 109D but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a non-resident unit holder which consists of income distributed by the unit trust referred to in section 61A at the appropriate rate as specified under Part X of Schedule 1.”.

Amendment of section 6A

6. Subsection 6A(3A) of the principal Act is amended by substituting for the words “four hundred” the words “five hundred”.

Amendment of section 34

7. Section 34 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsections:

“(3A) The reference to the debt which is partly irrecoverable under paragraph (2)(b), shall be deemed, in the case of a bank, to include all interest in respect of a loan or credit facility accrued from the date that such loan or facility is classified as non-performing loan in accordance with the relevant guidelines issued by the Central Bank.

(3B) For the purpose of subsection (3A), “bank” means a bank or a finance company or a banking and finance company licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989 [Act 372] or Islamic Banking Act 1983 [Act 276], or an institution prescribed under the Development Financial Institutions Act 2002 [Act 618]”; and

(b) in subsection (6)—

(i) by substituting for paragraph (m) the following paragraph:

“(m) an amount equal to the expenditure, not being capital expenditure, incurred by a company in the relevant period for the purpose of obtaining accreditation for a laboratory or as a certification body, as evidenced by a certificate issued by the Department of Standards Malaysia:

Provided that the expenditure incurred in the relevant period shall be deemed to be incurred by that company in the basis period for the year of assessment in which the certificate is issued;” and

(ii) by inserting after paragraph (m) as amended the following paragraph:

“(ma) an amount twice the amount of the expenditure, not being capital expenditure, incurred by a company in the relevant period for the purpose of obtaining certification for recognized quality systems and standards, and halal certification, evidence by a certificate issued by a certification body as determined by the Minister:

Provided that the expenditure incurred in the relevant period shall be deemed to be incurred by that company in the basis period for the year of assessment in which the certificate is issued;”.

Amendment of section 44

8. Section 44 of the principal Act is amended—

(a) in paragraph (1)(d) by substituting for the words “or (11)” the words “, (11) or (11A)”; and

(b) by inserting after subsection (11) the following subsection:

“(11A) There shall be deducted pursuant to this subsection from the aggregate income of a company for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to the payment of *zakat perniagaan* which is paid in the basis period for that relevant year to an appropriate religious authority established under any written law or any person authorized by such religious authority:

Provided that—

- (a) the amount to be deducted pursuant to this subsection shall not exceed one-fortieth of the aggregate income of the company in the relevant year; and
- (b) the company is not an offshore company.”.

Amendment of section 45A

9. Section 45A of the principal Act is amended by substituting for the word “two” the word “three”.

Amendment of section 46

10. Subsection 46(1) of the principal Act is amended—

- (a) in paragraph (e), by substituting for the word “five” the word “six”; and
- (b) in paragraph (i), by substituting for the word “five” the word “seven”.

Amendment of section 47

11. Paragraph 47(1)(b) of the principal Act is amended by substituting for the word “two” the word “three”.

Amendment of section 49

12. Section 49 of the principal Act is amended—

- (a) in subsection (1) by substituting for the word “five” the word “six”; and
- (b) in subsection (1A) by substituting for the word “five” the word “six”.

Amendment of section 61

13. Section 61 of the principal Act is amended—

- (a) in the proviso to subsection (1A) by substituting for the words “exempt income” the words “income exempt from tax, other than income exempt under section 61A,”; and
- (b) by inserting after subsection (1A) the following subsection:
 - “(1B) Any income which is distributed by a unit trust to a unit holder under subsection (1A) shall be deemed to be derived from Malaysia.”.

New section 61A

14. The principal Act is amended by inserting after section 61 the following section:

“Exemption of Real Estate Investment Trust or Property Trust Fund

61A. (1) The total income of a unit trust for a year of assessment which is equivalent to the amount of income distributed to the unit holder in the basis period for that year of assessment which is ascertained by reference to the unit holder’s share of that income shall be exempt from tax.

(2) In this section, “unit trust” means a unit trust which is approved by the Securities Commission as Real Estate Investment Trust or Property Trust Fund.”.

Amendment of section 63A

15. Section 63A of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) This section shall not apply to a unit trust referred to in subsection 61A(2).”.

Amendment of section 63B

16. Section 63B of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a unit trust referred to in subsection 61A(2).”.

New section 63c

17. The principal Act is amended by inserting after section 63B the following section:

“Special treatment on rent from the letting of real property of a Real Estate Investment Trust or Property Trust Fund

63c. (1) The provision of this section shall apply notwithstanding any other provisions of this Act.

(2) Where in the year of assessment, income of a unit trust consists of a rent from the letting of real property, the amount of the rent shall be treated as gross income of a unit trust from a source consisting of a business for that year of assessment.

(3) In ascertaining, for a year of assessment, the adjusted income of a unit trust from a source referred to in subsection (2), any deductions to be made under this Act in arriving to that income, in respect of that source for the basis period for that year of assessment shall only be allowed against the gross income from that source but—

(a) where the amount of the deduction exceeds the gross income from that source for that year of assessment, the excess shall be disregarded for the purposes of this Act; and

(b) where that source does not produce any income, the deduction from the gross income of that unit trust from that source of income shall not be allowed.

(4) In ascertaining, for a year of assessment, the statutory income of a unit trust from a source referred to in subsection (2), any allowances for that year of assessment under Schedule 3 in respect of that source shall only be available against the adjusted income of that source and if 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 be given in full to any allowance for that year of assessment in relation to that source, that allowance which has not been so made shall not be made to the unit trust for any subsequent years of assessment.

(5) For the purposes of this section, “unit trust” has the same meaning assigned to it under subsection 61A(2).”.

Special provision relating to section 63c

18. Notwithstanding section 63c of the principal Act as introduced by section 17 of this Act, sections 43 and 44 of the principal Act shall apply to a unit trust dealt with in section 63c of the principal Act in respect of its adjusted loss (if any) or an allowance which is deemed to be made to that unit trust under paragraph 75 of Schedule 3 of the principal Act, which adjusted loss or allowance of the unit trust is ascertained prior to the coming into operation of section 17 of this Act.

New section 63d

19. The principal Act is amended by inserting after section 63c the following section:

“Income of a unit trust from the letting of real property is not income from a business

63d. Subject to of section 63c but notwithstanding any other provisions of this Act, income of a unit trust which consists of rent from the letting of real property shall not be treated as income from a source consisting of a business.”.

Amendment of section 77

20. Section 77 of the principal Act is amended—

(a) by substituting for subsection (1) excluding the proviso to that subsection the following subsection:

“(1) Every person, other than a company, trust body or co-operative society to which section 77A applies, shall for each year of assessment furnish to the Director General a return in the prescribed form—

(a) in the case of that person who is carrying on a business, not later than 30 June in the year following that year of assessment; or

(b) in any other case than the case in paragraph (a), not later than 30 April in the year following the year of assessment.”; and

(b) by inserting after subsection (1) as amended by this Act the following subsection:

“(1A) Where subsection 45(2) applies, a reference to a person under paragraph 1(a) includes a reference to an individual where his wife or her husband who elects, as the case may be, is carrying on a business.”.

Amendment of section 86

21. Subsection 86(1) of the principal Act is amended by substituting for the word “April” the word “June”.

Amendment of section 103

22. Subsection 103(12) of the principal Act is amended—

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

(b) by substituting for paragraph (b) the following paragraph:

“(b) in the case of a person referred to under paragraph 77(1)(a), 30 June in the year following the year of assessment; and”;

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

“(c) in any other case other than the cases referred to in paragraphs (a) and (b), 30 April in the year following the year of assessment.”.

New section 109D

23. The principal Act is amended by inserting after section 109C the following section:

“Deduction of tax on the distribution of income of a unit trust

109D. (1) This section shall only apply to income of a unit trust which is exempt under section 61A.

(2) Where a unit trust (in this section referred to as the payer) distributes income to a non-resident unit holder which is deemed to be derived from Malaysia, the payer shall upon distributing the income, deduct therefrom tax at the rate applicable to such income and shall within one month after distributing such income, render an account and pay the amount of that tax to the Director General:

Provided that the Director General may—

- (a) give notice in writing to the payer requiring him to deduct and pay tax at any other rates or to distribute the income without deduction of tax; or
- (b) under special circumstances, allow extension of time for the amount of tax deducted to be paid over.

(3) Where the payer fails to pay any amount due from him under subsection (2), that amount which he fails to pay shall be increased by an amount equal to ten per cent of the income liable to deduction of tax under that subsection and the total sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(4) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer—

- (a) the Director General shall, in the manner provided by section 110, apply that amount towards payment

of the tax charged on the unit holder to whom the payer distributes income to which that amount relates; and

(b) if the payer has not deducted that amount in distributing the income under subsection (2) with respect to which that amount relates, he may recover that amount from that unit holder as a debt due to the payer.

(5) Section 110 shall apply *mutatis mutandis* to tax deducted under this section.”.

New section 111B

24. The principal Act is amended by inserting after Part VII the following Part:

“PART VIIA

FUND FOR TAX REFUND

Establishment of Fund for Tax Refund

111B. (1) There is hereby established a fund, to be known as the Fund for Tax Refund (in this section referred to as “the Fund”) which shall be specified in and incorporated into the Second Schedule to the Financial Procedure Act 1957 [*Act 61*].

(2) There shall be paid from time to time into the Fund such amount of tax collected under this Act as may be authorized by the Minister.

(3) The moneys of the Fund shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 111 of this Act.

(4) The Fund shall be administered by the Accountant General of Malaysia.

(5) Notwithstanding the provisions of subsection (2) and the Financial Procedure Act 1957, the Minister may from time to time authorize the payment into the Consolidated

Revenue Account in the Federal Consolidated Fund of all or any part of the moneys of the Fund.”.

New section 111c

25. The principal Act is amended by inserting after section 111B the following section:

“Non applicability of section 14A of the Financial Procedure Act 1957

111c. Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 111.”.

Amendment of section 151

26. The principal Act is amended by substituting for section 151 the following section:

“Procedure for making refunds and repayments

151. Where the Director General is authorized or required by this Act to make any refund or repayment, he shall certify the amount of the sum to be refunded or repaid and cause the refund or repayment to be made forthwith.”.

Amendment of Schedule 1

27. Schedule 1 of the principal Act is amended by inserting after Part IX the following Part:

“PART X

Notwithstanding Part I, income tax shall be charged on the income of a non-resident unit holder consisting of income distributed to that unit holder referred to in section 109D which is derived from Malaysia at the rate of 28% of gross.”.

Amendment of Schedule 3

28. Schedule 3 of the principal Act is amended—

(a) in paragraph 3—

(i) by renumbering that paragraph as subparagraph 3(1);

- (ii) in subparagraph 3(1) as renumbered, by substituting for the words “paragraphs 3A to” the word “paragraph”; and
- (iii) by inserting after subparagraph 3(1) the following subparagraph:

“(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the amount of the purchase price of that building.”;

(b) by deleting paragraphs 3A, 4 and 5; and

(c) in paragraph 35—

- (i) by substituting for the colon at the end of the paragraph a full stop; and
- (ii) by deleting the proviso to the paragraph.

Special provision relating to paragraph 3 of Schedule 3

29. Notwithstanding paragraph 3 of Schedule 3 to the principal Act as amended under paragraph 28(a) of this Act, where the amount of qualifying building expenditure has been determined pursuant to paragraph 3, 3A, 4 or 5 of the principal Act before the coming into operation of the amendment to those paragraphs under section 28 of this Act, that amount of qualifying building expenditure shall continue to apply for the purposes of that Schedule.

Special provision relating to paragraph 35 of Schedule 3

30. Notwithstanding paragraph 35 of Schedule 3 to the principal Act, where prior to the coming into operation of the amendment to that paragraph under paragraph 28(c) of this Act, a person has incurred capital expenditure on the construction or the purchase of a building which is used as an industrial building, no charge (if any) shall be made on that person under paragraph 35 Schedule 3 to the principal Act as amended if the building is disposed off after the basis period for a year of assessment which is the fiftieth year of assessment after the year of assessment in the basis year in which that building was constructed.

Amendment of Schedule 4A

31. Schedule 4A of the principal Act is amended by inserting after paragraph 8 the following paragraph:

“9. The Minister may prescribe any capital expenditure incurred by a person in his business as qualifying farm expenditure and the amount of deduction in respect of that qualifying farm expenditure which would otherwise fall to be made to him under paragraph 4.”.

Amendment of Schedule 4C

32. Schedule 4C of the principal Act is amended in paragraph 2(a) by substituting for the word “2005” the word “2010”.

Amendment of Schedule 6

33. Schedule 6 of the principal Act is amended—

(a) in subparagraph 25(1)—

- (i) in subparagraph (a), by deleting the word “or” at the end of that subparagraph;
- (ii) in subparagraph (b), by substituting for the full stop at the end of that subparagraph the words “; or ” ; and
- (iii) by inserting after subparagraph (b) the following subparagraph:

“(c) if the retirement takes place on reaching the compulsory age of retirement pursuant to a contract of employment or collective agreement at the age of 50 but before 55 and that employment has lasted for ten years with the same employer or with companies in the same group:

Provided that the sum shall not exceed an amount ascertained by multiplying the sum of six thousand ringgit by the number of completed years of service in that employment.”; and

(b) by inserting after paragraph 33 the following paragraph:

“33A. Interest paid or credited to any company not resident in Malaysia, other than such interest accruing to a place of business in Malaysia of such company—

(a) in respect of securities issued by the Government;
or

(b) in respect of Islamic securities or debenture issued in Ringgit Malaysia, other than convertible loan stock, approved by the Securities Commission.”.

CHAPTER III

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

34. (1) Section 35 has effect for the year of assessment 2003 and subsequent years of assessment.

(2) Section 36 has effect for the year of assessment 2005 and subsequent years of assessment.

(3) Sections 37, 38 and 39 have effect for the year of assessment 2006 and subsequent years of assessment.

Amendment of section 2

35. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 2 by substituting for the definition of “petroleum operations” the following definition:

‘ “petroleum operations” means—

(a) searching for and winning or obtaining of petroleum in Malaysia by or on behalf of any person for his own account or on a joint account with any other person by any drilling, mining, extracting or other like operations or process, in the course of a

business carried on by that person engaged in such operations, and all operations incidental thereto, and any sale or disposal by or on behalf of that person of petroleum so won or obtained, and includes the transportation within Malaysia by or on behalf of that person of petroleum so won or obtained to any point of sale or delivery or export, but does not include—

- (i) any transportation of petroleum outside Malaysia;
 - (ii) any process of refining or liquefying of petroleum;
 - (iii) any dealings with products so refined or liquefied; or
 - (iv) service involving the supply and use of rigs, derricks, ocean tankers and barges; and
- (b) any sale or disposal by Petroleum Nasional Berhad within Malaysia of petroleum obtained from outside of Malaysia and includes the transportation within Malaysia by, or on behalf of, Petroleum Nasional Berhad of such petroleum to any point of sale or delivery within Malaysia;’.

Amendment of section 18

36. Paragraph 18(1)(h) of the principal Act is amended—

- (a) by substituting for the semicolon at the end of the paragraph a colon; and
- (b) by inserting the proviso to that paragraph as follows:

“Provided that this paragraph shall not apply if the payer has paid the amount of deduction of tax and the increased amount which is equal to ten per cent of that deduction which are due and payable under the provisions of that law;”.

Amendment of Second Schedule

37. The Second Schedule of the principal Act is amended—

(a) in paragraph 3—

- (i) by renumbering that paragraph as subparagraph 3(1);
- (ii) in subparagraph 3(1) as renumbered, by substituting for the words “paragraphs 3A to” the word “paragraph”; and
- (iii) by inserting after subparagraph 3(1) the following subparagraph:

“(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the purchase price of that building.”;

(b) by deleting paragraphs 3A, 4 and 5; and

(c) in paragraph 18—

- (i) by substituting for the colon at the end of that paragraph a full stop; and
- (ii) by deleting the proviso to that paragraph.

Special provision relating to paragraph 3 of Second Schedule

38. Notwithstanding the provision of paragraph 3 of Second Schedule to the principal Act as amended under paragraph 37(a) of this Act, where the amount of qualifying building expenditure has been determined pursuant to paragraph 3, 3A, 4 or 5 of the principal Act prior to the coming into operation of the amendment to those paragraphs under section 37 of this Act, that amount of qualifying building expenditure shall continue to apply for the purposes of that Schedule.

Special provision relating to paragraph 18 of Second Schedule

39. Notwithstanding the provision of paragraph 18 of Second Schedule to the principal Act, where prior to the coming into

operation of the amendment under paragraph 37(c) of this Act, a person has incurred capital expenditure on the construction or the purchase of a building which is used as an industrial building, no charge (if any) shall be made on that person under paragraph 18 of Second Schedule to the principal Act as amended if the building is disposed off after the basis period for a year of assessment which is the fiftieth year of assessment after the year of assessment in the basis year in which that building was constructed.

CHAPTER IV

AMENDMENT TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendment to the Real Property Gains Tax Act 1976

40. This Chapter is deemed to have come into operation on 11 September 2004.

Amendment of Schedule 2

41. The Real Property Gains Tax Act 1976 is amended in Schedule 2 in subparagraph 3(g) by substituting for that subparagraph the following subparagraph:

“(g) the disposal of any chargeable asset pursuant to a scheme of financing approved by the Central Bank or the Securities Commission as a scheme which is in accordance with the principles of Syariah, where such disposal is strictly required for the purpose of compliance with those principles but which will not be required for any other schemes of financing.”.

CHAPTER V

AMENDMENT TO THE STAMP ACT 1949

Commencement of amendment to the Stamp Act 1949

42. This Chapter is deemed to have come into operation on 11 September 2004.

Amendment of First Schedule

43. The Stamp Act 1949 is amended in the First Schedule under the heading “*GENERAL EXEMPTIONS*”, by inserting after paragraph 5 the following paragraph:

“6. An instrument executed pursuant to a scheme of financing approved by the Central Bank or the Securities Commission as a scheme which is in accordance with the principles of Syariah, where such instrument is an additional instrument strictly required for the purpose of compliance with those principles but which will not be required for any other schemes of financing.”

LAWS OF MALAYSIA

Act 639

FINANCE ACT 2004

LIST OF AMENDMENTS

Amending law

Short title

In force from

– NIL –

LAWS OF MALAYSIA**Act 639****FINANCE ACT 2004**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
	- NIL -	
