



LAWS OF MALAYSIA

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Act 644

FINANCE ACT 2005

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FINANCE ACT 2005

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LAWS OF MALAYSIA**Act 644****FINANCE ACT 2005**

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An Act to amend the Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967 and the Labuan Offshore Business Activity Tax Act 1990.

[]

ENACTED by the Parliament of Malaysia as follows:

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

1. This Act may be cited as the Finance Act 2005.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Real Property Gains Tax Act 1976 [*Act 169*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*] and the Labuan Offshore Business Activity Tax Act 1990 [*Act 445*] are amended in the manner specified in Chapters II, III, IV, V and VI 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, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 24, 32, 33, 34, 35, 36 and 37 have effect for the year of assessment 2006 and subsequent years of assessment.

(2) Sections 23 and 30 come into operation on 1 January 2006.

(3) Section 25 is deemed to have come into operation on 1 October 2005.

Amendment of section 19

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 19(5) by deleting the words “, 4A”.

Amendment of section 25

5. Section 25 of the principal Act is amended—

(a) in subsection (1), by substituting for the word “Where” the words “Subject to subsection (1A), where”; and

(b) by inserting after subsection (1) the following subsection:

“(1A) The gross income from an employment in respect of any right to acquire shares in a company of the kind to which paragraph 13(1)(a) applies, shall where the right is exercised, assigned, released or acquired in the relevant period be treated as gross income of the relevant person for that relevant period.”.

Amendment of section 32

6. Section 32 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A)(a) Where in the relevant period a relevant person acquired any right to acquire shares in a company of the kind to which paragraph 13(1)(a) applies, under his name or in the name of his nominee or agent, the amount in respect thereof to be included in his gross income from the employment shall be—

(i) the market value of the shares where the right shall be exercised, assigned, released or acquired on a specified date or where the right shall be exercised,

assigned, released or acquired within a specified period, the first day of that period; or

- (ii) the market value of the shares on the date of the exercise, assignment, release or acquisition of the right,

whichever is the lower less the amount paid for the shares.

(b) In this subsection, “market value” means—

- (i) in the case of a company listed on Bursa Malaysia, the average price of the shares which is ascertained by averaging the highest and the lowest price of the shares for the day; or
- (ii) in any other case, the net asset value of the shares for the day.”.

Amendment of section 39

7. Paragraph 39(1)(e) of the principal Act is amended—

- (a) by inserting the word “or” at the end of subparagraph (ii);
- (b) by substituting for the words “; or” at the end of subparagraph (iii) a full stop; and
- (c) by deleting subparagraph (iv).

Amendment of section 43

8. Subsection 43(1) of the principal Act is amended—

- (a) by substituting for the words “The aggregate” the words “Subject to this Act, the aggregate”; and
- (b) in paragraph (c), by deleting the words “or 4A”.

Amendment of section 44

9. Section 44 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (b), by substituting for the words “, 4A, 4B or 4C” the words “or 4B”;

- (ii) in paragraph (c), by deleting the word “and” at the end of that paragraph;
 - (iii) in paragraph (d)—
 - (A) by substituting for the word “thereafter” the word “next”; and
 - (B) by substituting for the full stop at the end of that paragraph the words “; and”; and
 - (iv) by inserting after paragraph (d) the following paragraph:
 - “(e) thereafter, by any deduction falling to be so made pursuant to section 44A.”;
- (b) by inserting after subsection (5) the following subsections:
- “(5A) The amount ascertained under subsection (4) or (5) for any relevant year in respect of a company shall be disregarded for the purposes of section 43 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for that relevant year in which such amount is ascertained were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which such amount would otherwise be deductible under that section and such amount disregarded shall not be allowed as a deduction in subsequent years of assessment.
 - (5B) For the purpose of subsection (5A)—
 - (a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—
 - (i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same persons; and
 - (ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same persons; and
 - (b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company.

(5C) In subsection (5B), “ordinary share” means any share other than a share which carries only a right to any dividend which is of—

- (a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or
- (b) a fixed rate per cent of the profits of the company.

(5D) Where there is a substantial change in the shareholders of a company referred to in subsection (5A), the Minister may under special circumstances exempt that company from the provisions of that subsection.”; and

- (c) in subsection (8), by substituting for the words “and in respect of contributions to public libraries” the words “, to public libraries”.

Special provision relating to section 44

10. (1) Notwithstanding the provisions of section 43 of the principal Act and subsection 44(5A) of the principal Act as introduced by section 9 of this Act, any amount ascertained under subsection 44(4) or (5) of the principal Act in respect of a company for any year of assessment preceding the year of assessment 2006 shall be disregarded for the purpose of section 43 of the principal Act unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment 2005 were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which such amount would otherwise be deductible under section 43 of the principal Act and such amount disregarded shall not be allowed as a deduction in subsequent years of assessment.

(2) For the purpose of subsection (1)—

- (a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—
 - (i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same persons; and

- (ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same persons;
- (b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company; and
- (c) where the basis period of a company for the year of assessment 2005 ends on or after 1 October 2005, the last day of the basis period for that company for the year of assessment 2005 shall be deemed to be 30 September 2005.

(3) Where there is a substantial change in the shareholders of a company referred to in subsection (1), the Minister may under special circumstances exempt that company from the provisions of that subsection.

(4) In this section, “ordinary share” has the same meaning assigned to it under subsection 44(5C) of the principal Act.

New section 44A

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

“Group relief for companies

(1) Subject to this section, a company (referred to in this section as a “surrendering company”) may surrender not more than fifty per cent of its adjusted loss in the basis period of a year of assessment to one or more related companies (referred to in this section as a “claimant company”):

Provided that the surrendering company and the claimant company shall be resident in the basis year for that year of assessment and incorporated in Malaysia.

(2) Subsection (1) shall apply if for any year of assessment—

(a) the surrendering company and the claimant company—

- (i) are related companies throughout the basis period for that year of assessment and the twelve months period immediately preceding that basis period;

- (ii) have paid-up capital in respect of ordinary share of more than two million five hundred thousand ringgit at the beginning of the basis period for that year of assessment;
 - (iii) have twelve months basis period ending on the same day;
 - (iv) make an irrevocable election to surrender or claim an amount of adjusted loss in the return furnished for that year of assessment under section 77A; and
 - (v) are subject to tax at the appropriate rate as specified in paragraph 2 of Part I of Schedule 1; and
 - (b) the claimant company has a defined aggregate income for that year of assessment.
- (3) For the purpose of this section, a surrendering company and claimant company are related companies if at least—
- (a) seventy per cent of the paid-up capital in respect of ordinary shares of the surrendering company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the claimant company;
 - (b) seventy per cent of the paid-up capital in respect of ordinary shares of the claimant company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the surrendering company; or
 - (c) seventy per cent of the paid-up capital in respect of ordinary shares of the surrendering company and claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.
- (4) Subject to subsection (5), any amount of adjusted loss surrendered under this section for any year of assessment—
- (a) shall be the amount or aggregate amount of the adjusted loss or the excess of that amount of the surrendering company for that year of assessment as ascertained under subsection 44(4) or (5);
 - (b) shall be allowed to a claimant company as a deduction in ascertaining the total income of the claimant company in accordance with subsection 44(1); and

(c) shall not exceed the defined aggregate income of the claimant company for that year of assessment.

(5) Where the amount of adjusted loss is—

- (a) surrendered to more than one claimant company, the adjusted loss shall be fully deducted in accordance with subsection (4) to the first claimant company before any excess of the adjusted loss is surrendered and deducted in accordance with that subsection to the second claimant company and so on; or
- (b) claimed by a claimant company from more than one surrendering company, the adjusted loss surrendered from the first surrendering company shall be deducted in accordance with subsection (4) to that claimant company before the adjusted loss is surrendered from the second surrendering company be deducted in accordance with that subsection to that claimant company and so on.

(6) For the purpose of subsection (5), the surrendering company and the claimant company shall ascertain the order of priority in respect of the adjusted loss surrendered or claimed but if that loss cannot be effected in accordance with the order of priority specified by any surrendering company or claimant company the amount of adjusted loss surrendered or claimed shall be dealt with in such manner as the Director General thinks reasonable and proper.

(7) Notwithstanding that a company to which subsection (3) applies, owns at least seventy per cent of the paid-up capital in the other company, it shall not be treated to have satisfied that subsection unless additionally in the year of assessment the first mentioned company is beneficially entitled to at least seventy per cent of—

- (a) any residual profits of the other company, available for distribution to that other company's equity holders; and
- (b) any residual assets of the other company, available for distribution to that other company's equity holders on a winding up.

(8) Notwithstanding any other provision of this section, where—

- (a) a claimant company has made an election under subsection (2), that company shall not in that year elect to surrender its adjusted loss to any other claimant company; or
- (b) a surrendering company has made an election under subsection (2), that company shall not in that year elect to claim any adjusted loss from any other surrendering company.

(9) Where—

- (a) in the basis year for a year of assessment the Director General discovers that the adjusted loss as mentioned in subsection (4) ought not to have been deducted in arriving at the total income of the claimant company, the Director General may in that year or within six years after its expiration make an assessment or additional assessment in respect of that company in order to make good any loss of tax; or
- (b) the surrendering company gives an incorrect information in the return furnished under section 77A in respect of the amount of adjusted loss surrendered, the Director General may require the surrendering company to pay a penalty equal to the amount of tax which had or would have been undercharged by the claimant company in consequence of the incorrect information.

(10) The provisions of this section shall not apply to a company for a basis period for a year of assessment where the period during which that company—

- (a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;
- (b) is exempt from tax on its income under section 54A, paragraph 127(3)(b) or subsection 127(3A);
- (c) has made a claim for a reinvestment allowance under Schedule 7A;

- (d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2001;
- (e) has made a claim for deduction under the Income Tax (Deduction For Cost of Acquisition of Proprietary Rights) Rules 2002;
- (f) has been granted a deduction under the Income Tax (Deduction For Cost of Acquisition of a Foreign Owned Company) Rules 2003; or
- (g) has made a claim for deduction under any rules made under section 154 and those rules provide that this section shall not apply to that company.

(11) For the avoidance of doubt—

- (a) the amount of adjusted loss surrendered under this section shall be disregarded for the purpose of ascertaining the aggregate income of the surrendering company under section 43; and
- (b) the provisions of this Act shall apply to any adjusted loss of the surrendering company which is not surrendered under this section.

(12) In this section—

“commercial loan” means any borrowing which entitles the creditor to any return which is of only—

- (a) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or
- (b) of a fixed rate per cent of the profits of the company;

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

“equity holder” means any holder of ordinary share in the claimant or surrendering company or any creditor of that company in respect of any non-commercial loan;

“non-commercial loan” means any borrowing other than a commercial loan;

“ordinary share” means any share other than a share which carries only a right to any dividend which is of—

- (a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or

(b) a fixed rate per cent of the profits of the company;

“residual assets” means net assets of the claimant or surrendering company after distribution made to—

(a) creditors of that company in respect of commercial loans; and

(b) holders of shares other than ordinary share,

and where that company has no residual asset, a notional amount of one hundred ringgit is deemed to be the residual assets of the company;

“residual profits” means profits of the claimant or surrendering company after deducting any dividend which is of—

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares of that company; or

(b) a fixed rate per cent of the profits of that company,

but before deducting any return due to any non-commercial loan creditor which is not of—

(i) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(ii) a fixed rate per cent of the profits of that company,

and where that company has no residual profit, a notional amount of one hundred ringgit is deemed to be the residual profits of that company.”.

Amendment of section 45A

12. Section 45A of the principal Act is amended—

(a) in paragraph (a), by substituting for the words “total income; or” the words “source of income;”;

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

“(b) the husband has no total income which can be aggregated with that of his wife; or”; and

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

“(c) an election has been made by the husband under paragraph 45(2)(b),”.

Amendment of section 46

13. Subsection 46(1) of the principal Act is amended by substituting for paragraph (f) the following paragraph:

“(f) an amount limited to a maximum of five thousand ringgit on fees expended in that basis year by that individual on himself for any course of study up to tertiary level in any institution or professional body in Malaysia recognized by the Government or approved by the Minister, as the case may be, undertaken for the purpose of acquiring law, accounting, technical, vocational, industrial, scientific or technological skills or qualifications;”.

Amendment of section 48

14. Section 48 of the principal Act is amended—

(a) by substituting for subsection (3) the following subsection:

“(3)(a) Where for a year of assessment any individual is entitled under paragraph (1)(b), (c) or (d) to a deduction specified under paragraph (2)(a) or (b), as the case may be, in respect of a child over the age of eighteen years and the child is receiving full-time instruction at a university, college or other establishment (similar to a university or college) of higher education, or is serving under articles or indentures with a view to qualifying in a trade or profession, then there shall be allowed—

- (i) in the case where that individual is entitled under paragraph (1)(b) or (c) to a deduction, in substitution for deduction specified under paragraph (2)(a), a deduction of four times of the amount of deduction specified under that paragraph (2)(a); or
- (ii) in the case where that individual is entitled under paragraph (1)(d) to a deduction, in addition to a deduction specified under paragraph (2)(b), a further deduction of four thousand ringgit:

Provided that in the case of a child who is receiving full-time instruction outside Malaysia, it shall be in respect of an award of degree (including a degree at Master or Doctorate level) or the equivalent of a degree.

(b) For the purpose of paragraph (a), the instruction and educational establishment referred to in that paragraph shall be approved by the relevant government authority.”; and

(b) by deleting subsection (6).

Amendment of section 60

15. Section 60 of the principal Act is amended—

(a) in subparagraph (3A)(b)(ii), by deleting the words “ (subject to any adjustment as the Director General may think fit to make in accordance with the provisions of this Act)”;

and

(b) in subparagraph (4A)(b)(ii), by deleting the words “ (subject to any adjustment as the Director General may think fit to make in accordance with the provisions of this Act)”.

Amendment of section 60F

16. Section 60F of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

“(1A) Notwithstanding any other provision of this Act, where in any year of assessment income of an investment holding company consists of—

(a) income from the holding of investment, it shall not be treated as income from a source consisting of a business; or

(b) income other than income from the holding of investment, it shall be treated as gains or profits under paragraph 4(f).

(1B) If it is shown that it has been established as between the Director General and the company for any tax purposes that the company is an investment holding company for the basis period for any year of assessment it shall be presumed until the contrary is proved that the company is an investment holding company for the purpose of this Act for the basis period for every subsequent year of assessment.

(1c) This section shall not apply to an investment holding company referred to in section 60FA.”; and

(b) in subsection (2), in the definition of “investment holding company”, by substituting for the words “wholly in the making of investments and whose income” the words “mainly in the holding of investments and not less than eighty per cent of its gross income (whether exempt or not)”.

New section 60FA

17. The principal Act is amended by inserting after section 60F the following section:

“Investment holding company listed on Bursa Malaysia

60FA. (1) The provisions of this section shall apply notwithstanding any other provisions of this Act.

(2) Where an investment holding company is a company resident for the basis year for a year of assessment and listed on the Bursa Malaysia in the basis period for that year of assessment, income of that investment holding company from the holding of investment in that basis period shall be treated as gross income of that investment holding company from a source or sources consisting of a business for that year of assessment.

(3) For the purpose of subsection (2)—

(a) in ascertaining for a year of assessment the adjusted income of an investment holding company from a source referred to in that subsection, any amount of deduction to be made under this Act in arriving at that income shall only be allowed against the gross income from that source but—

(i) where in that year of assessment that source does not produce any income, any deduction in respect of that source shall be disregarded for the purposes of this Act; or

(ii) where that amount of 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) in ascertaining for a year of assessment the statutory income of an investment holding company from a source referred to in that subsection, any allowance for that year of assessment falling to be made to that company under Schedule 3 in respect of that source shall only be available against the adjusted income of that person from 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 that company for subsequent years of assessment.

(4) If it is shown that it has been established between the Director General and the company for any tax purposes that the company is an investment holding company for the basis period for any year of assessment it shall be presumed until the contrary is proved that the company is an investment holding company for the purpose of this Act for the basis period for every subsequent year of assessment.

(5) In this section, “investment holding company” has the same meaning assigned to it under section 60F.”.

Special provision relating to section 60_{FA}

18. Notwithstanding the provision of section 60_{FA} of the principal Act as introduced by section 17 of this Act, the provisions of sections 43 and 44 of the principal Act shall apply to an investment holding company dealt with in section 60_{FA} of the principal Act in respect of its adjusted loss, if any, or allowance which is deemed to be made to that investment holding company under paragraph 75 of Schedule 3 of the principal Act of which adjusted loss or allowance is ascertained prior to the coming into operation of section 17 of this Act.

Amendment of section 75A

19. Section 75A of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Notwithstanding anything contrary to this Act or any other written law—

- (a) where any tax is due and payable under this Act by a company, any person who is a director of that company during the period in which that tax is liable to be paid by that company; or
- (b) where any debt is due and payable from an employer under any rules made pursuant to section 107 and the employer is a company, any person who is a director of that company during the period in which the debt is liable to be paid by that company,

shall be jointly and severally liable for such tax or debt, as the case may be, that is due and payable and shall be recoverable under section 106 from that person.”.

Amendment of section 91

20. Section 91 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) Where in a year of assessment—

- (a) any assessment made in respect of a person for any year of assessment has been determined by the court on appeal or review; or
- (b) any exemption, relief, remission or allowance granted to a person for any year of assessment pursuant to any provision of this Act or any other written law in respect of income of that person which is subject to tax under this Act has been withdrawn, revoked or cancelled for failing to comply with any condition imposed in granting such exemption, relief, remission or allowance,

the Director General may in the first mentioned year of assessment or within six years after its expiration make an

assessment in respect of that person for any year of assessment for the purpose of giving effect to the determination, revocation, withdrawal or cancellation, as the case may be.”.

Amendment of section 95

21. The principal Act is amended by substituting for section 95 the following section:

“Discharge of double assessments

95. Where two or more assessments have been made with respect to a person on the same income for the same year of assessment, the Director General may discharge such of those assessments as need to be discharged in order to ensure that the income is charged to tax only once for that year.”.

Amendment of section 107C

22. Section 107C of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) The estimate of tax payable for a year of assessment shall not be less than eighty-five per cent of the revised estimate of tax payable for the immediately preceding year of assessment or if no revised estimate is furnished, shall not be less than eighty-five per cent of the estimate of tax payable for the immediately preceding year of assessment.”.

Amendment of section 111B

23. Subsection 111B(3) of the principal Act is amended by inserting after the words “of this Act” the words “or any other refund or payment required to be paid out of the Fund as provided by any other written law”.

Amendment of section 125

24. Subsection 125(2) of the principal Act is amended by substituting for the words “subsection 112(3)” the words “subsection 44A(9), 112(3)”.

Amendment of section 127

25. Section 127 of the principal Act is amended—

- (a) in paragraph (3)(b), by deleting the words “person or”; and
- (b) by inserting after subsection (3) the following subsection:

“(3A) The Minister may, in any particular case exempt any person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.”.

Amendment of section 134

26. Section 134 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) The Minister shall, after consulting the Director General of Inland Revenue, appoint, by notification in the *Gazette*—

- (a) two or more Deputy Directors General of Inland Revenue;
- (b) State Directors, Directors, Deputy Directors, Principal Assistant Directors and Assistant Directors of Inland Revenue;
- (c) Head of Revenue Solicitor, Deputy Revenue Solicitors, Senior Revenue Counsels and Revenue Counsels; and
- (d) such other officers as may be necessary and expedient for the due administration of this Act,

from amongst the employees of the Inland Revenue Board of Malaysia.”.

Amendment of section 136

27. Section 136 of the principal Act is amended—

- (a) by substituting for subsection (2) the following subsection:

“(2) Any officer appointed under paragraphs 134(2)(b) and (c), may exercise any function of the Director

General under this Act (not being a function exercisable by statutory order or a function exercisable under section 152) except his function under section 44, subsection 137(1) and section 150.”;

(b) by deleting subsections (3) and (4); and

(c) in subsection (5), by substituting for the words “under subsection (4) by Senior Assistant or Assistant Directors of Inland Revenue” the words “under subsection (2) by the appointed officers”.

Amendment of section 146

28. Section 146 of the principal Act is amended in subsection (1) by deleting the words “, the Director of Inland Revenue, Sabah, or the Director of Inland Revenue, Sarawak,”.

Amendment of section 147

29. Section 147 of the principal Act is amended by deleting the words “, to the Director of Inland Revenue, Sabah, to the Director of Inland Revenue, Sarawak,”.

Amendment of section 153

30. Subsection 153(3) of the principal Act is amended—

(a) by deleting paragraph (a); and

(b) in paragraph (b), by deleting the word “other”.

Special provision relating to section 153

31. Notwithstanding the provision of section 153 of the principal Act, where a professional accountant has been authorized under any written law to be an auditor of companies and the authorization is given for a period which begins prior to the coming into operation of the amendment to that section under section 30 of this Act, that professional accountant shall continue to be a tax agent for the purposes of the principal Act until the expiration of that period.

Amendment of Schedule 3**32.** Schedule 3 of the principal Act is amended—

- (a) by deleting paragraph 2B;
- (b) by inserting after paragraph 19 the following paragraph:

“Special allowances for small value assets

19A. (1) Where in the basis period for a year of assessment a person for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset or assets, the value of each asset being not more than one thousand ringgit, and at the end of the basis period he was the owner of the asset and it was in use for the purposes of the business, there shall be made in lieu of the amount of the allowance which would otherwise fall to be made to him under paragraph 10 or 15, an allowance equal to the amount of that expenditure for that year of assessment:

Provided that where the total qualifying plant expenditure in respect of such asset for each year of assessment exceeds the amount of ten thousand ringgit, the total allowance that shall be made in respect of that expenditure under this paragraph shall be equal to such amount.

(2) Allowance under paragraph 10 or 15 in respect of the qualifying plant expenditure referred to in subparagraph (1)—

- (a) shall be made a person if that person has not made a claim in respect of that expenditure under that subparagraph; or
 - (b) shall not be made to that person in respect of that expenditure which has been given allowance under that subparagraph.”
- (c) in paragraph 75, by substituting for the word “Where” the words “Subject to paragraph 75A, where”; and
 - (d) by inserting after paragraph 75 the following paragraphs:

“75A. Any allowance or aggregate amount of allowances for a year of assessment which has not been so made to a company as ascertained under paragraph 75 shall not be made to that company for the purposes of this Schedule and section 42 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment in which that allowance or that aggregate amount has not been so made were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under this Schedule and available for the purposes of that section and that allowance or that aggregate amount which but for this paragraph would have been made to the company in a year of assessment shall be disregarded for subsequent years of assessment.

75B. (1) For the purpose of paragraph 75A—

- (a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—
 - (i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and
 - (ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same person;
- (b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company; and
- (c) any allowance or aggregate amount of allowances which has not been so made for any year of assessment referred to in that paragraph shall consist of an allowance falling to be made under this Schedule for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75.

(2) In this paragraph, “ordinary share” has the same meaning assigned to it under subsection 44(5C).

75c. Where there is a substantial change in the shareholders of a company referred to in paragraph 75A, the Minister may under special circumstances exempt that company from the provisions of paragraph 75A.”.

Special provision relating to paragraph 75A

33. (1) Notwithstanding the provisions of section 42 of the principal Act, paragraph 75 of Schedule 3 to the principal Act and paragraph 75A of that Schedule as introduced by section 32 of this Act, any allowance or aggregate amount of allowances which has not been so made to a company as ascertained under paragraph 75 for any year of assessment preceding year of assessment 2006 shall not be made to that company under that Schedule for the purpose of section 42 of the principal Act unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment 2005 were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under that Schedule and available for the purpose of section 42

of the principal Act and that allowance or that aggregate amount which but for this subsection would have been made to that company in a year of assessment shall be disregarded for subsequent years of assessment.

(2) For the purpose of subsection (1)—

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of the ordinary shares in the company is held by or on behalf of the same person;

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company;

(c) the amount of allowance which has not been so made for any year of assessment referred to in that subsection shall consist of an amount of allowance falling to be made under Schedule 3 to the principal Act for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75 of that Schedule; and

(d) where the basis period of a company for the year of assessment 2005 ends on or after 1 October 2005, the last day of the basis period for that company for the year of assessment 2005 shall be deemed to be 30 September 2005.

(3) Where there is a substantial change in the shareholders of a company referred to subsection (1), the Minister may under special circumstances exempt that company from the provisions of that subsection.

(4) In this section, “ordinary share” has the same meaning assigned to it under subsection 44(5c) of the principal Act.

Deletion of Schedule 4A

34. The principal Act is amended by deleting Schedule 4A.

Deletion of Schedule 4c

35. The principal Act is amended by deleting Schedule 4c.

Amendment of Schedule 6

36. Schedule 6 of the principal Act is amended—

- (a) in paragraph 32, by substituting for the word “six” the word “ten”; and
- (b) in paragraph 35, by inserting after the word “Interest” the words “or discount”.

Amendment of Schedule 7A

37. Schedule 7A of the principal Act is amended by inserting after paragraph 6 the following paragraph:

“**6A.** Where in the case of a business of a person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods.”.

Saving and transitional provisions

38. Where any person—

- (a) has made an election in respect of a capital expenditure incurred for the purposes of an approved agricultural project under Schedule 4A; or
- (b) has been given an approval in respect of an approved food production project under Schedule 4c,

prior to the coming into operation of sections 4, 7, 9, 34 and 35 of this Act, all provisions of the principal Act before being amended under those sections shall continue to apply for the purpose of paragraphs (a) and (b).

CHAPTER III

AMENDMENTS TO THE REAL PROPERTY GAINS TAX
ACT 1976**Commencement of amendments to the Real Property Gains Tax Act 1976**

39. (1) Sections 40, 48 and 49 are deemed to have come into operation on 1 October 2005.

(2) Sections 42 and 43 come into operation on 1 January 2006.

(3) In the national language text, section 47 is deemed to have come into operation on 11 September 2004.

Amendment of section 9

40. The Real Property Gains Tax Act 1976, which is referred to as the “principal Act” in this Chapter, is amended in section 9—

(a) in subsection (3), by deleting the words “person or”; and

(b) by inserting after subsection (3) the following subsection:

“(3A) The Minister may in any particular case exempt any person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.”.

Amendment of section 15

41. Section 15 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Where in a year of assessment—

(a) any assessment made in respect of a person for any year of assessment has been determined by the court on appeal or review; or

(b) any exemption granted to any person under this Act has been withdrawn for failing to comply with any condition imposed in granting such exemption,

the Director General may, in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that person for any year of assessment for the purpose of giving effect to the determination or withdrawal, as the case may be.”.

Amendment of section 24

42. Subsection 24(6) of the principal Act is amended—

(a) in paragraph (b), by substituting for the comma at the end of that paragraph a full stop; and

(b) by deleting the words “and the sum required for making the repayment shall be charged to the Consolidated Fund”.

New section 24A

43. The principal Act is amended by inserting after section 24 the following section:

“Fund for Tax Refund

24A. (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), 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 24.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 24.”.

Amendment of section 45

44. Section 45 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) Any officer appointed under the law relating to income tax may exercised any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under sections 46 and 57).”;

- (b) by deleting subsections (3) and (4); and
- (c) in subsection (5), by substituting for the words “under subsection (4) by a Senior Assistant or Assistant Director” the words “under subsection (2) by the appointed officers.”.

Amendment of section 55

45. Section 55 of the principal Act is amended in subsection (1) by deleting the words “, the Director of Inland Revenue, Sabah or the Director of Inland Revenue, Sarawak,”.

Amendment of section 56

46. Section 56 of the principal Act is amended by deleting the words “, to the Director of Inland Revenue, Sabah, to the Director of Inland Revenue, Sarawak,”.

Amendment of Schedule 2

47. In the national language text, the principal Act is amended in Schedule 2, by substituting for subparagraph 3(g) the following subparagraph:

“(g) pelupusan mana-mana aset yang boleh dikenakan cukai menurut suatu skim kewangan yang diluluskan oleh Bank Negara atau Suruhanjaya Sekuriti sebagai suatu skim yang mengikut prinsip Syariah, jika pelupusan itu menghendaki secara ketat bagi maksud mematuhi prinsip itu tetapi yang tidak dikehendaki bagi mana-mana skim kewangan yang lain.”.

Amendment of Schedule 3

48. Schedule 3 of the principal Act is amended by deleting paragraph 3.

Saving and transitional provisions

49. Where prior to the coming into operation of the amendment to paragraph 3 of Schedule 3 to the principal Act under section 48 of this Act an individual is exempt on any gain accruing

in respect of the disposal of a private residence under section 8 of the principal Act of which residence—

(a) owned by the wife of that individual—

- (i) the election which has been made by that individual under paragraph 9 of Schedule 3 to the principal Act shall be disregarded for the purposes of the principal Act; and
- (ii) there shall be no further exemption in respect of the disposal of any other private residences of the wife of that individual;

(b) owned by that individual—

- (i) the wife of that individual is entitled to an exemption in accordance with paragraph 9 of Schedule 3 to the principal Act; and
- (ii) there shall be no further exemption in respect of the disposal of any other private residences of that individual; or

(c) owned by that individual and his wife jointly, there shall be no further exemption in respect of the disposal of any other private residences of that individual and his wife.

CHAPTER IV

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

50. (1) Sections 51, 52, 53, 55 and 56 are deemed to have come into operation on 1 October 2005.

(2) Section 54 comes into operation on 1 January 2006.

Amendment of section 21

51. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in subsection 21(2) by deleting the words “or three ringgit as the case may require”.

Amendment of section 43

52. The principal Act is amended by substituting for paragraph 43(5)(b) the following paragraph:

“(b) if it is stamped after the expiration of thirty days after it has been received in Malaysia, on payment in addition to the stamp duty of a penalty of—

- (i) twenty-five ringgit or five per centum of the amount of the deficient duty, whichever sum be the greater, if the instrument is stamped within three months after the time for stamping;
- (ii) fifty ringgit or ten per centum of the amount of the deficient duty, whichever sum be the greater, if the instrument is stamped later than three months but not later than six months after the time for stamping; or
- (iii) one hundred ringgit or twenty per centum of the amount of the deficient duty, whichever sum be the greater, in any other case.”.

Amendment of section 80

53. Section 80 of the principal Act is amended—

(a) in subsection (1), by deleting the words “instrument or”;

(b) by inserting after subsection (1) the following subsection:

“(1A) The Minister of Finance may in any particular case—

- (i) exempt from duty any instrument which would otherwise be chargeable under this Act; or

(ii) reduce or remit the duties with which any instrument is chargeable.”; and

(c) in subsection (2), by deleting the words “any instrument or”.

New section 80A

54. The principal Act is amended by inserting after section 80 the following section:

“Fund for Tax Refund

80A.(1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of duty collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of any duty or any other payment required to be made by the Collector under this Act.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund of any duty or any other payment required to be made under this Act.

(4) Where the Collector is authorized or required by this Act to make any refund of any duty or any other payment required under this Act, he shall certify the amount of the sum to be refunded or paid and cause the refund or payment to be made forthwith.”.

Amendment of First Schedule

55. The First Schedule of the principal Act is amended in item 22 by inserting after subitem (5) the following subitem:

“(6) Being the security for securing the payment of RM10.00”.
or repayment of money for the purchase of goods (within the meaning given under the First Schedule of the Hire Purchase Act 1967) in accordance with the Syariah principle of *Al Bai Bithaman Ajil*.

Amendment of Fifth Schedule

56. The Fifth Schedule of the principal Act is amended in paragraph 8 by substituting for the words “Kuala Lumpur Stock Exchange” the words “Bursa Malaysia”.

CHAPTER V

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

57. Sections 60 and 64 come into operation on 1 January 2006.

Amendment of section 2

58. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in paragraph 2(1)(a), in the definition of “authorized officer” by substituting for the words “(1), (2), (3) or (4)” the words “(1) or (2)”.

Amendment of section 39

59. Section 39 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) Where in a year of assessment—

- (a) any assessment made in respect of any chargeable person for any year of assessment has been determined by the court on appeal or review; or
- (b) any exemption granted to any chargeable person under this Act has been withdrawn for failing to comply with any condition imposed in granting such exemption,

the Director General may in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that chargeable person for any year of assessment for the purpose of giving effect to the determination or withdrawal, as the case may be.”.

New section 50A

60. The principal Act is amended by inserting after section 50 the following section:

“Fund for Tax Refund

50A. (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), 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 50.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 50.”.

Amendment of section 69

61. Section 69 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) Any officer appointed under the law relating to income tax may exercise any function of the Director General under this Act (not being a function exercisable by a statutory order or a function exercisable under subsection 70(1) and section 82).”;

(b) by deleting subsections (3) and (4); and

(c) in subsection (5), by substituting for the words “under subsection (4) by Senior Assistant or Assistant Director of Inland Revenue” the words “under subsection (2) by the appointed officers.”.

Amendment of section 77

62. Section 77 of the principal Act is amended in subsection (1) by deleting the words “, the Director of Inland Revenue, Sabah, or the Director of Inland Revenue, Sarawak,”.

Amendment of section 78

63. Section 78 of the principal Act is amended by deleting the words “, to the Director of Inland Revenue, Sabah, to the Director of Inland Revenue, Sarawak,”.

Amendment of section 81

64. The principal Act is amended by substituting for section 81 the following section:

“**81.** 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.”.

CHAPTER VI

AMENDMENT TO THE LABUAN OFFSHORE BUSINESS
ACTIVITY TAX ACT 1990**Amendment of section 18**

65. The Labuan Offshore Business Activity Tax Act 1990 is amended in subsection 18(1) by substituting for the words “a Deputy Director General, an Assistant Director General, a Senior Assistant or Assistant Director, of Inland Revenue referred to in” the words “any officer appointed under”.

LAWS OF MALAYSIA

Act 644

FINANCE ACT 2005

LIST OF AMENDMENTS

Amending law

Short title

In force from

—NIL—

LAWS OF MALAYSIA

Act 644

FINANCE ACT 2005

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
	-NIL-	

