

FINANCE BILL (NO. 2) 2013

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A BILL

i n t i t u l e d

An Act to amend the Income Tax Act 1967, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967, the Real Property Gains Tax Act 1976 and the Labuan 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 (No. 2) Act 2013.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*], the Real Property Gains Tax Act 1976 [*Act 169*] and the Labuan 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, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 25, 26 and 30 have effect for the year of assessment 2014 and subsequent years of assessment.

(2) Sections 6, 20, 23, 24, 27, 28, 29, 31 and 32 come into operation on the coming into operation of this Act.

Amendment of section 2

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 2(1)—

(a) by inserting after the definition of “co-operative society” the following definition:

‘ “deferred annuity” means deferred annuity contracted on or after 1 January 2014 issued by insurers licensed under the Financial Services Act 2013 [*Act 758*] or takaful operators registered under the Islamic Financial Services Act 2013 [*Act 759*], and contains the Retirement Saving Standards approved by the Central Bank;’;

(b) by inserting after the definition of “partnership” the following definition:

‘ “permanent total disablement” has the same meaning assigned to it in the Employees’ Social Security Act 1969 [*Act 4*];’; and

(c) by inserting after the definition of “Securities Commission” the following definition:

‘ “serious disease” means acquired immunity deficiency syndrome, Parkinson’s disease, cancer, renal failure, leukaemia or other similar diseases;’.

New section 4c

5. The principal Act is amended by inserting after section 4B the following section:

“Gains or profits from a business arising from stock in trade parted with by any element of compulsion

4c. For the purpose of paragraph 4(a), gains or profits from a business shall include an amount receivable arising from stock in trade parted with by any element of compulsion including on requisition or compulsory acquisition or in a similar manner.”.

Amendment of section 6

6. Subsection 6(1) of the principal Act is amended by substituting for paragraph (l) the following paragraph:

“(l) subject to section 109G but notwithstanding any other provisions of this Act, income tax shall be charged for a year of assessment upon the income of an individual consisting of the total amount received in respect of withdrawal from a deferred annuity or a private retirement scheme where such withdrawal is made by that individual before reaching the age of fifty-five (other than by reason of permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia) at the appropriate rate as specified under Part XVI of Schedule 1.”.

Amendment of section 18

7. Section 18 of the principal Act is amended in the definition of “entertainment”, by inserting after the words “an employee of his” the words “, with or without any consideration paid whether in cash or in kind, in promoting or”.

Amendment of section 21A**8.** Section 21A of the principal Act is amended—

- (a) in subsection (3), by substituting for the words “other than 31 December” the words “in a basis year”; and
- (b) by substituting for subsection (4) the following subsection:

“(4) Subject to subsections (5) and (6), where a company, limited liability partnership, trust body or co-operative society commences operation on a day in a basis year for a year of assessment (hereinafter referred to as the “first year of assessment”) and makes up its account—

- (a) for a period of less than twelve months ending on a day in that basis year, that period shall constitute the basis period for the first year of assessment;
- (b) for any period of months ending on a day in the immediately following basis year (hereinafter referred to as the “second basis year”), that period shall constitute the basis period for the year of assessment (hereinafter referred to as the “second year of assessment”) immediately following the first year of assessment, there shall be no basis period in relation to any of its sources of income for the first year of assessment; or
- (c) for a period of more than twelve months ending on a day in the basis year immediately following the second basis year, that period shall constitute the basis period for the year of assessment immediately following the second year of assessment and there shall be no basis period in relation to any of its sources of income for the first year of assessment and the second year of assessment.”.

Amendment of section 24

9. Subsection 24(1) of the principal Act is amended—

(a) in paragraph (a), by deleting the words “(or parted with on requisition or compulsory acquisition or in similar manner)”; and

(b) by inserting after paragraph (a), the following paragraph:

“(aa) any stock in trade parted with by any element of compulsion including on requisition or compulsory acquisition or in a similar manner, in or before the relevant period;”.

Amendment of section 29

10. Section 29 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) For the purposes of this section, where gross income from a source in Malaysia of the relevant person consists of interest that relates to a loan—

(a) between persons one of whom has control over the other; or

(b) between persons both of whom are controlled by some other person,

the relevant person is deemed to be able to obtain on demand the receipt of such interest when such interest is due to be paid to the relevant person in the relevant period.”.

Amendment of section 33

11. Section 33 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) For the purposes of paragraph (1)(a) and subsection (2), where any sum payable for a basis period for a year of assessment is not due to be paid in that period, the sum shall when it is due to be paid be deducted in arriving at the adjusted income of a person for that period.”.

Amendment of section 39

12. Section 39 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Notwithstanding any provision of this Act, where a person is required under section 81 to furnish to the Director General any information within the time specified in a notice or such other time as may be allowed by the Director General, and that information concerns wholly or in part a deduction claimed by that person in arriving at the adjusted income of that person from any source for the basis period for a year of assessment, no deduction from the gross income from that source for that period shall be allowed in respect of such claim if the person fails to provide such information within the time specified in that notice or such extended time as allowed by the Director General.”.

Amendment of section 44

13. Subsection 44(7) of the principal Act is amended in the definition of “organization”—

- (a) in subparagraph (c)(i), by inserting after the word “improvement” the words “, purchase”;
- (b) in subparagraph (c)(i)(A), by inserting after the word “constructed” the words “or purchased”; and
- (c) in subparagraph (c)(i)(B), by inserting after the word “constructed” the words “or purchased”.

Amendment of section 46

14. Subsection 46(2) of the principal Act is amended by deleting the definition of “serious disease”.

Amendment of section 49

15. Section 49 of the principal Act is amended—

- (a) in paragraph (1D)(a), by substituting for the words “any deferred annuity” the words “premium for deferred annuity”; and

- (b) in subsection (3), by inserting after the words “subsection (1)” the words “and (1D)”.

Amendment of section 60AA

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

- (a) in subparagraph (5)(b)(vi), by deleting the word “and” at the end of that subparagraph;
- (b) in subparagraph (5)(b)(vii), by substituting for the full stop at the end of that subparagraph the words “; and”;
- (c) by inserting after subparagraph (5)(b)(vii) the following subparagraph:
- “(viii) management expenses incurred by him in that period in connection with his general business.”;
- (d) in subparagraph (7)(b)(vi), by deleting the word “and” at the end of that subparagraph;
- (e) in subparagraph (7)(b)(vii), by substituting for the full stop at the end of that subparagraph the words “; and”;
- (f) by inserting after subparagraph (7)(b)(vii) the following subparagraph:
- “(viii) management expenses incurred by him in that period in connection with his general business.”;
- (g) in subparagraph (9)(b)(ii), by deleting the word “and” at the end of that subparagraph;
- (h) in subparagraph (9)(b)(iii), by substituting for the full stop at the end of that subparagraph the words “; and”;
- (i) by inserting after subparagraph (9)(b)(iii) the following subparagraph:
- “(iv) commission payable and discounts allowed by him in that period in connection with his general business.”;
- (j) in subparagraph (10)(b)(ii), by deleting the word “and” at the end of that subparagraph;

- (k) in subparagraph (10)(b)(iii), by substituting for the full stop at the end of that subparagraph the words “; and”; and
- (l) by inserting after subparagraph (10)(b)(iii) the following subparagraph:
 - “(iv) commission payable and discounts allowed by him in that period in connection with his general business.”.

Amendment of section 60F

17. Subsection 60F(1) of the principal Act is amended by substituting for the words “dividend (whether exempt or not), interest” in the explanation for C in the formula the words “dividend and interest (whether such dividend or interest is exempt or not)”.

Amendment of section 60H

18. Subsection 60H(4) of the principal Act is amended by substituting for the words “dividend and interest (whether exempt or not)” in the explanation for C in the formula the words “dividend and interest (whether such dividend or interest is exempt or not)”.

Amendment of section 63B

19. Subsection 63B(1) of the principal Act is amended by substituting for the words “dividend (whether exempt or not), interest” in the explanation for C in the formula the words “dividend and interest (whether such dividend or interest is exempt or not)”.

Amendment of section 75A

20. Paragraph 75A(2)(b) of the principal Act is amended by substituting for the words “more than fifty” the words “not less than twenty”.

Amendment of section 77A

21. Section 77A of the principal Act is amended—

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

“(1A) For the purposes of this section, a company shall furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 152A.”; and

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

“(4) The return furnished by a company under this section shall be based on accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the Companies Act 1965.”.

New section 77c

22. The principal Act is amended by inserting after section 77B the following section:

“Deduction of tax as final tax

77c. (1) Notwithstanding section 77, where for a year of assessment an individual—

(a) has income only in respect of gains or profits from an employment other than gains or profits in respect of the use or enjoyment of benefits provided by his employer under paragraph 13(1)(b) or (1)(c);

(b) deductions have been made by his employer in accordance with subsection 107(2) in respect of such gains or profits;

(c) the individual is employed by the same employer for a period of twelve months in that year of assessment;

- (d) such deductions are not borne by his employer for that year of assessment; and
- (e) that individual whose husband or wife has not made an election pursuant to section 45,

the individual may elect not to furnish a return for a year of assessment to the Director General in accordance with section 77.

(2) Where subsection (1) applies and no return for a year of assessment has been furnished by an individual in accordance with section 77—

- (a) an individual is deemed to have made an election under that subsection;
- (b) the total amount of tax deducted referred to under paragraph (1)(b) shall be deemed to be the amount of tax payable of that individual for that year of assessment; and
- (c) no assessment shall be made by the Director General in respect of that individual for that year of assessment.

(3) Notwithstanding subsections (1) and (2), the Director General shall have the power to make an assessment under subsection 90(3) or section 91 for any year of assessment and where an assessment is made by the Director General, the amount which is deemed to be the tax payable under paragraph (2)(b) shall be disregarded.”

Amendment of section 99

23. Section 99 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) This section shall not apply to an assessment made under subsection 90(1) or section 91A, except where a person in respect of such assessment is aggrieved by the public ruling made under section 138A.”

Amendment of section 102

24. Section 102 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “subsection (3)” the words “subsection (1A) or (3)”; and
- (b) by inserting after subsection (1) the following subsection:

“(1A) Where a person has made an application to invoke a mutual agreement procedure pursuant to an arrangement made under section 132 and the ground in which the application is made is similar with the appeal filed under this Act—

- (a) no appeal shall be sent forward to the Special Commissioners until the determination of the mutual agreement procedure;
- (b) the person may within thirty days from the determination of the mutual agreement procedure request to the Director General in writing to forward such appeal to the Special Commissioners; and
- (c) the Director General shall within three months after receiving the request send the appeal forward to the Special Commissioners.”.

Amendment of section 107C

25. Subsection 107C(4A) of the principal Act is amended—

- (a) in paragraph (a), by deleting the word “or” at the end of that paragraph;
- (b) in the proviso to paragraph (b), by substituting for the full stop at the end of that proviso the words “; or”; and
- (c) by inserting after paragraph (b) the following paragraph:

“(c) where the company has no basis period for that year of assessment and for the immediate following year

of assessment, for that year of assessment and the immediate two following years of assessment:

Provided that at the commencement of the operation and at the beginning of the immediate two following years of assessment the paid up capital of the company in respect of ordinary shares is two million five hundred thousand ringgit and less.”.

Amendment of section 109E

26. Subsection 109E(1) of the principal Act is amended by inserting after the words “section 60AA” the words “where such profits have been claimed as a deduction under subparagraph (3)(b)(ii), (4)(b)(ii), (5)(b)(vii) or (7)(b)(vii) of that section”.

Amendment of section 109G

27. Section 109G of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “contribution made to” the words “a deferred annuity or”;
- (b) by substituting for subsection (1) the following subsection:

“(1) Where a person (in this section referred to as “the payer”) makes payment to an individual (in this section referred to as “the recipient”) in relation to a withdrawal from a deferred annuity or a private retirement scheme before reaching the age of fifty-five (other than by reason of permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia) from a fund administered by that payer under a deferred annuity scheme or a private retirement scheme, the payer shall upon paying the amount, deduct from that amount, tax at a rate applicable to such payment, and (whether or not tax is so deducted) shall within one month after paying the amount render an account and pay the amount of that tax to the Director General:

Provided that the Director General may under special circumstances allow extension of time for the amount of tax deducted to be paid over.”; and

(c) by substituting for subsection (5) the following subsection:

“(5) In this section, “payer” refers to—

- (a) in the case of a deferred annuity, a life insurer or takaful operator licensed under the Financial Services Act 2013 or the Islamic Financial Services Act 2013; or
- (b) in the case of a private retirement scheme, a private retirement scheme provider as approved under section 139Q of the Capital Markets and Services Act 2007 to provide and manage a private retirement scheme.”.

New section 132B

28. The principal Act is amended by inserting after section 132A the following section:

“Mutual administrative assistance arrangement

132B. (1) Notwithstanding section 132 or 132A, if the Minister by statutory order declares that—

- (a) arrangements specified in the order have been made by the Government with the government of any territory outside Malaysia with a view to the mutual administrative assistance in tax matters which includes simultaneous tax examinations, automatic exchange of information or tax administrations abroad; and
- (b) it is expedient that those arrangements should have effect,

then, so long as the order remains in force, notwithstanding anything in any written law, those arrangements shall have effect in relation to tax under this Act or other taxes of every kind under written law.

(2) Any order made under this section shall be laid before the Dewan Rakyat.”.

Amendment of section 140

29. The principal Act is amended by inserting after subsection 140(2) the following subsection:

“(2A) In exercising his powers under this section, the Director General may require by notice any person to pay to him within the time specified in the notice the amount of tax that would be deducted by that person under this Act in consequence of his exercise of those powers.”.

New section 140B

30. The principal Act is amended by inserting after section 140A the following section:

“Special provision applicable to loan or advances to director

140B. (1) Without prejudice to the generality of section 140A and subject to this section, where in a basis period for a year of assessment, a company makes any loan or advances of any money from the internal funds of the company to a person who is a director of that company, the company shall be deemed to have a gross income consisting of interest from such loan or advances for that basis period.

(2) For the purposes of subsection (1), the interest for the basis period for that year of assessment shall be the aggregate sum of interest for all calendar months in the basis period and the sum of interest for each calendar month shall be determined in accordance with the following formula:

$$\frac{1}{12} \times A \times B$$

where A is the total amount of loan or advances outstanding at the end of the calendar month; and

B is the average lending rate of commercial banks published by the Central Bank at the end of the calendar month or where there is no such average lending rate, such other reference lending rate as may be prescribed by the Director General.

(3) Where in respect of a loan or advances referred to under subsection (1), interest is charged by the company and the total amount of interest charged and payable by the director to that company for the basis period for a year of assessment—

(a) is more than the aggregate sum of interest under subsection (2) for that basis period, this section shall cease to apply; or

(b) is less than the aggregate sum of interest under subsection (2) for that basis period, this section shall apply and the total amount of interest which is charged and payable to the company for that basis period shall be disregarded.

(4) For the purposes of this Act, “director” has the same meaning assigned to it under subsection 75A(2).”.

Amendment of Schedule 1

31. Schedule 1 to the principal Act is amended by substituting for Part XVI the following Part:

“PART XVI

Notwithstanding Part I, income tax shall be charged for a year of assessment on the total amount received by an individual in respect of withdrawal from a deferred annuity or a private retirement scheme where such withdrawal is made before that individual reaches the age of 55 (other than by reason of permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia) at the rate of 8 per cent on every ringgit of that contribution withdrawn.”.

Amendment of Schedule 3

32. Schedule 3 to the principal Act is amended—

(a) by inserting after paragraph 38A the following paragraph:

“**38B.** Paragraphs 39 and 40 shall apply where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012 and the partnership or that company disposes of an asset to that limited liability partnership in relation to which an initial or annual allowance has been made or would have been made, if claimed by the partnership or the company.”;

(b) in paragraph 40, by inserting after the words “38A,” the words “38B,”; and

(c) by inserting after paragraph 76 the following paragraph:

“**76A.** Where in a year of assessment a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, the limited liability partnership shall not be entitled to an allowance under this Schedule in relation to an asset which is transferred to that limited liability partnership for that year of assessment unless for that year of assessment no allowance in relation to that asset has been claimed by the partners of that partnership or that company in accordance with paragraph 77.”.

CHAPTER III

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

33. This Chapter commences on the coming into operation of this Act.

Amendment of section 9

34. Section 9 of the principal Act is amended by substituting for subsection (7) the following subsection:

“(7) For the purpose of subsection (6), the person mentioned in subsection (1) shall keep and retain the books, records and documents in connection with the issue of such instruments referred to in paragraph 1(a), (b) or (c) for a period of seven years from the year in which such instruments are issued.”.

Amendment of section 47A

35. Subsection 47A(2) of the principal Act is amended by substituting for the words “paragraph 9(1)(c)” the words “subsection 9(3)”.

CHAPTER IV

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

36. (1) Sections 37, 38, 40, 42 and 43 shall have effect for the year of assessment 2014 and subsequent years of assessment.

(2) Sections 39 and 41 come into operation on the coming into operation of this Act.

Amendment of section 2

37. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 2(1), in the definition of “entertainment” by inserting after the words “an employee of his” the words “, with or without any consideration paid whether in cash or in kind, in promoting or”.

Amendment of section 30

38. Section 30 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) The return furnished by the chargeable person under this section shall be based on accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the Companies Act 1965.”.

Amendment of section 46

39. Section 46 of the principal Act is amended—

(a) in subsection (1), by inserting after the words “Subject to subsection” the words “(1A) or”; and

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

“(1A) Where a person has made an application to invoke a mutual agreement procedure pursuant to an arrangement under section 65A and the ground in which the application is made is similar with the appeal filed under this Act—

- (a) no appeal shall be sent forward to the Special Commissioners until the determination of the mutual agreement procedure;
- (b) the person may within thirty days from the determination of the mutual agreement procedure request to the Director General in writing to forward such appeal to the Special Commissioners; and
- (c) the Director General shall within three months after receiving the request send the appeal forward to the Special Commissioners.”.

New Chapter 1A

40. The principal Act is amended by inserting after section 71 the following Chapter:

“Chapter 1A—Ruling

Advance Pricing Arrangement

71A. (1) Subject to this section and any rules prescribed under this Act, on the application made to the Director General by any chargeable person who carries out a cross border transaction—

- (a) the Director General may enter into an advance pricing arrangement with that chargeable person; or
- (b) in the case where section 65A applies, the competent authorities may enter into an advance pricing arrangement,

in order to determine the transfer pricing methodology to be used in any future apportionment or allocation of income or deduction to ensure the arm's length transfer prices in relation to that transaction.

(2) An application under subsection (1) shall be made in the prescribed form and shall contain particulars as may be required by the Director General.

(3) The transactions referred to in subsection (1) shall be construed as a transaction between—

- (a) companies one of which has control over the other; or
- (b) companies both of which are controlled by some other person.

(4) In this section, “transaction” has the same meaning assigned to it under subsection 72(7).

(5) In the case of a petroleum agreement, chargeable person referred to under subsection (1) shall refer to the person in that agreement that enters into a transaction with another company where it has control in accordance with subsection (3).”.

Amendment of section 72A

41. Section 72A of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) In the case of a petroleum agreement, chargeable person referred to under subsection (2), (3) or (4) shall refer to the person in that agreement that enters into a transaction with another company where it has control in accordance with subsection (5).”.

Amendment of section 83

42. Subsection 83(1) of the principal Act is amended by inserting after paragraph (ba) the following paragraph:

“(bb) providing for the scope and procedure applied in relation to any arrangement made under section 71A;”.

Amendment of First Schedule

43. Paragraph 3A of the First Schedule to the principal Act is amended—

(a) in subparagraph (1), by substituting for the proviso to that paragraph the following proviso:

“Provided that—

- (a) the original parties to the petroleum agreement are the same; and
 - (b) the amount of qualifying exploration expenditure of the first mentioned chargeable person is from an agreement area where chargeable petroleum is not being produced.”;
- and

(b) by substituting for subparagraph (2) the following subparagraph:

“(2) The amount of qualifying exploration expenditure incurred by the first-mentioned chargeable person to be allowed as deduction against the gross income of the second-mentioned chargeable person shall be determined in accordance with the following formula:

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

- where
- A is the gross income of the second-mentioned chargeable person from a petroleum operation;
 - B is the total gross income of the second-mentioned chargeable person from petroleum operations; and
 - C is the qualifying exploration expenditure; and

in the case where the qualifying exploration expenditure exceeds the amount of gross income of petroleum operations or the gross income in respect of a petroleum operation of the second-mentioned chargeable person, the excess of the expenditure shall be allowed to be deducted from the gross income of that petroleum operations for the subsequent years of assessment of the second-mentioned chargeable person and any excess thereof shall not be used by another chargeable person in another petroleum agreement where the original parties to the petroleum agreement are the same.”.

CHAPTER V

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

44. (1) Sections 45, 46, 47 and 48 come into operation on the coming into operation of this Act.

(2) Section 49 shall have effect from 1 January 2014.

Amendment of section 14

45. Section 14 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) For the purpose of subsection (5), “tax payable” means the amount of tax charged on the chargeable gain excluding any allowable loss referred to under subsection 7(4).”.

Amendment of section 15

46. Section 15 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) For the purpose of subsection (4), “tax payable” means the amount of tax charged on the chargeable gain excluding any allowable loss referred to under subsection 7(4).”.

Amendment of section 29

47. Section 29 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) For the purpose of subsection (3), “tax which is payable” means the amount of tax charged on the chargeable gain excluding any allowable loss referred to under subsection 7(4).”.

Amendment of Schedule 1

48. Subsubparagraph 5(4)(b) of Schedule 1 to the principal Act is amended by substituting for the words “more than fifty” the words “not less than twenty.”.

Amendment of Schedule 5

49. Schedule 5 to the principal Act is amended—

(a) in Part I, in the column “Category of disposal”—

- (i) in item no. 1, by substituting for the word “two” the word “three”;
- (ii) in item no. 2, by substituting for the word “third” the word “fourth”;
- (iii) in item no. 3, by substituting for the word “fourth” the word “fifth”; and
- (iv) in item no. 4, by substituting for the word “fifth” the word “sixth”;

(b) in Part I, in the column “Rate of tax” in item no. 4, by substituting for the words “5 per cent” the word “Nil”; and

(c) in Part II, in the column “Category of disposal”—

- (i) in item no. 1, by substituting for the word “two” the word “three”;
- (ii) in item no. 2, by substituting for the word “third” the word “fourth”;
- (iii) in item no. 3, by substituting for the word “fourth” the word “fifth”; and
- (iv) in item no. 4, by substituting for the word “fifth” the word “sixth”.

CHAPTER VI

AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY
TAX ACT 1990

**Commencement of amendments to the Labuan Business Activity
Tax Act 1990**

50. Sections 51 and 52 come into operation on the coming into operation of this Act.

Amendment of section 21

51. The Labuan Business Activity Tax Act 1990, which is referred to as the “principal Act” in this Chapter, is amended by substituting for section 21 the following section:

“Power to make regulations

21. The Minister may make regulations generally for the purpose of carrying out, or giving effect to, the provisions of this Act.”.

New section 21A

52. The principal Act is amended by inserting after section 21 the following section:

“Forms

21A. The Director General may prescribe such forms as are required by this Act to be prescribed and such other forms as he considers ought to be prescribed in connection with the operation of this Act, in such manner as seems to him to be appropriate and may authorize the use of a suitable substitute for any form so prescribed.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 (“Act 53”), the Stamp Act 1949 (“Act 378”), the Petroleum (Income Tax) Act 1967 (“Act 543”), the Real Property Gains Tax Act 1976 (“Act 169”) and the Labuan Business Activity Tax Act 1990 (“Act 445”).

It is to be noted that any reference in Act 53 and Act 378 to the “Banking and Financial Institutions Act 1989 [Act 372]” or the “Insurance Act 1996 [Act 553]” shall be construed as reference to the “Financial Services Act 2013 [Act 758]” by virtue of paragraph 272(h) of Act 758 and that any reference to the “Islamic Banking Act 1983 [Act 276]” or the “Takaful Act 1984 [Act 312]” shall be construed as reference to the “Islamic Financial Services Act 2013 [Act 759]” by virtue of paragraph 283(h) of Act 759.

AMENDMENTS TO THE INCOME TAX ACT 1967

Chapter II of this Bill seeks to amend the Income Tax Act 1967.

1. *Clause 4* seeks to amend section 2 of Act 53 to introduce three new definitions of “deferred annuity”, “permanent total disablement” and “serious disease” into Act 53 as a consequence of the amendment to paragraph 6(1)(l) of Act 53.

These amendments have effect for the year of assessment 2014 and subsequent years of assessment.

2. *Clause 5* seeks to introduce a new section 4c into Act 53 to clarify that any amount receivable by a person from the disposal of its stock in trade by any element of compulsion such as compulsory acquisition or forced sale is treated as gains or profits from a business.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

3. *Clause 6* seeks to amend paragraph 6(1)(l) of Act 53. The proposed amendment provides that income tax is charged on the total amount of withdrawal from a private retirement scheme or a deferred annuity by an individual before the age of fifty-five except by reason of permanent total disablement, serious disease, mental disability, death or permanently leaving Malaysia.

This amendment comes into operation on the coming into operation of this Act.

4. *Clause 7* seeks to amend the definition of “entertainment” under section 18 of Act 53 to clarify that the expenses incurred by a person for the purpose of promoting his business with or without consideration falls within the definition of “entertainment”.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

5. *Clause 8* seeks to amend subsection 21A(3) of Act 53. The proposed amendment provides that in relation to any change of the accounting period of a company, limited liability partnership, trust body or co-operative society in a basis period for a year of assessment, the Director General is empowered to direct the basis period of such company, limited liability partnership, trust body or co-operative society.

Clause 8 further seeks to amend subsection 21A(4) of Act 53. The proposed amendment provides that where a company, limited liability partnership, trust body or co-operative society commences its operation in a basis year for a year of assessment and makes up its account for a period of less than twelve months ending on a day immediately following the year of assessment or for a period of more than twelve months ending on a day in the basis year immediately following the second basis year, such period shall constitute the basis period for the year of assessment, respectively.

These amendments have effect for the year of assessment 2014 and subsequent years of assessment.

6. *Clause 9* seeks to amend subsection 24(1) of Act 53 as a consequence of the introduction of a new section 4c and insertion of a new paragraph 24(1)(aa) into Act 53. The proposed amendment clarifies that where a debt owing to a person in a relevant period from any of its stock in trade is disposed of by any element of compulsion that includes compulsory acquisition or forced sale, the amount of debt owing is treated as the gross income of that person from a business in that relevant period.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

7. *Clause 10* seeks to insert a new subsection 29(3) into Act 53. With the amendment, a person is deemed to be able to obtain on demand the receipt of interest from a loan transaction involving persons one of whom has control over the other or between persons both of whom are controlled by some other person, in the basis period for a year of assessment where such interest is due to be paid by such person in the basis period for that year of assessment.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

8. *Clause 11* seeks to insert a new subsection 33(4) into Act 53. The proposed amendment seeks to clarify that a person is only eligible to claim for deduction in respect of interest from money borrowed when such interest is due to be paid. However, the deduction would be given in the year the interest is payable.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

9. *Clause 12* seeks to insert a new subsection 39(1A) into Act 53. With the amendment, a person is required to furnish information as requested by the Director General to justify the person's claim for deduction in arriving at its adjusted income. The notice is issued by the Director General in accordance with section 81 of Act 53 and deduction claimed by such person shall not be allowed if that person fails to furnish the information requested within the time specified in the notice or such other period as may be allowed by the Director General.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

10. *Clause 13* seeks to amend subsection 44(7) of Act 53 to extend the application of subsection 44(6) of Act 53 to a person for any gift of money made to an organization which is established and maintained exclusively to administer and augment a fund established and held solely for the purchase and use of a building in Malaysia for the purposes of religious worship or the advancement of religion and such building is also open to public.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

11. *Clause 14* seeks to delete the definition of “serious disease” in subsection 46(2) of Act 53 as a consequence of the introduction of the said definition into section 2 of Act 53.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

12. *Clause 16* seeks to insert subsubparagraphs 60AA(5)(b)(viii) and (7)(b)(viii) into Act 53 to clarify that the management expenses incurred by a takaful general business is allowed to be deducted in arriving at the adjusted income of that takaful general business in order to be consistent with the treatment adopted by the conventional insurance business.

Clause 16 further seeks to insert subsubparagraphs 60AA(9)(b)(iv) and (10)(b)(iv) into Act 53 to provide that commission payable or discounts allowed by the operator in connection with the operator’s general business is allowed as a deduction in arriving at the adjusted income of the operator.

These amendments have effect for the year of assessment 2014 and subsequent years of assessment.

13. *Clause 20* seeks to amend paragraph 75A(2)(b) of Act 53. With the amendment, any director and other person who is concerned in the management of the company’s business and, either on his own or with one or more associates within the meaning of section 139(7) of Act 53, is the owner or able directly through the medium of other companies or by any other indirect means to control, not less than twenty per cent of the ordinary share capital of the company shall be jointly and severally liable for the payment of tax during the period in which the tax is liable to be paid by the company.

This amendment comes into operation on the coming into operation of this Act.

14. *Clause 21* seeks to insert a new subsection 77A(1A) into Act 53 to provide that a company must furnish its return by way of an electronic medium or electronic transmission.

Clause 21 further seeks to insert a new subsection 77A(4) into Act 53 to provide that a company must submit its return based on audited accounts prepared by a professional accountant.

These amendments have effect for the year of assessment 2014 and subsequent years of assessment.

15. *Clause 22* seeks to insert a new section 77C into Act 53. With the new amendment, an individual who satisfies the conditions as set out in that section which among others includes that the individual has only employment income other than gains or profits in relation to the use or enjoyment of benefits provided by his employer in the basis year for a year of assessment and his employment income is deducted in accordance with subsection 107(2) of Act 53, is not required to furnish a return under section 77 of Act 53.

This amendment has effect for year of assessment 2014 and subsequent years of assessment.

16. *Clause 23* seeks to insert a new subsection 99(4) into Act 53 to clarify that an appeal to the Special Commissioners of Income Tax by giving a notice prescribed under Act 53 to the Director General is not applicable to the deemed assessment made under subsection 90(1) or section 91A of Act 53. However, if a person is aggrieved by the deemed assessment made under the sections as a result of complying with the public ruling issued by the Director General in accordance with Act 53, that person may also invoke the appeal procedure as provided for under section 99.

This amendment comes into operation on the coming into operation of this Act.

17. *Clause 24* seeks to insert a new subsection 102(1A) into Act 53 to provide that an appeal filed by a person under section 99 of Act 53 will not be forwarded to the Special Commissioners of Income Tax in the case where that person invoked a mutual agreement procedure as provided for under a double taxation arrangement to resolve the same ground of appeal as in the appeal under section 99. The appeal under section 99 is only forwarded to the Special Commissioners of Income Tax upon the finalization of the mutual agreement procedure and on the request made by the person within the period as stipulated under the new subsection.

This amendment comes into operation on the coming into operation of this Act.

18. *Clause 25* seeks to insert a new paragraph 107C(4A)(c) into Act 53 as a consequence of the amendment to section 21A of Act 53. With the amendment, a company is not required to furnish an estimate under section 107C during which the company has no basis period in a year of assessment in the year it commences its operation and two immediately following year of assessment, if the company at the commencement and at the beginning of those years of assessment the company has a paid up capital in respect of ordinary shares of two million five hundred thousand ringgit and less.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

19. *Clause 26* seeks to amend subsection 109E(1) of Act 53. With the amendment, a takaful operator is required to deduct tax for the profits distributed or credit out of family fund, family re-takaful fund or general fund to a participant if the operator has claimed the profits distributed as a deduction under section 60AA of Act 53.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

20. *Clause 27* seeks to amend subsection 109G of Act 53 as a consequence of the amendment to paragraph 6(1)(l) of Act 53.

This amendment comes into operation on the coming into operation of this Act.

21. *Clause 28* seeks to introduce a new section 132B into Act 53 to provide that if the Minister by statutory order declares that arrangements specified in the order have been made between the Government of Malaysia with the government of any territory outside Malaysia with a view to a mutual administrative assistance in tax matters, which amongst others includes automatic exchange of information, then, those arrangements so long as the order remains in force shall have effect in relation to tax under Act 53 or other taxes of every kind under written law.

This amendment comes into operation on the coming into operation of this Act.

22. *Clause 29* seeks to introduce a new subsection 140(2A) into Act 53. The proposed amendment empowers the Director General in exercising his powers under section 140 of Act 53 to require a payer to remit the withholding tax which would be deducted under Act 53 within the time specified in the notice.

This amendment comes into operation on the coming into operation of this Act.

23. *Clause 30* seeks to introduce a new section 140B into Act 53. The proposed amendment seeks to provide that when a company gives any loan or advances from its internal fund to a director of that company, the company is deemed for the basis period to have interest income from such loan or advances. The sum of interest is calculated based on the formula as provided for under the section and the rate for the interest is based on the average lending rate of commercial banks published by the Central Bank at the end of the calendar month or such other reference lending rate as prescribed by the Director General. This section shall not apply to interest imposed by the company which is more than the total sum of interest deemed under subsection 140B(2) of the Act.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

24. *Clause 31* seeks to amend Part XVI of Schedule 1 as a consequence of the amendment to paragraph 6(1)(l) of Act 53.

This amendment comes into operation on the coming into operation of this Act.

25. *Clause 32* seeks to insert a new paragraph 38B into Schedule 3 Act 53. It clarifies that where a partnership or a company is converted into a limited liability partnership pursuant to section 29 or 30 of the Limited Liability Partnerships Act 2012 [Act 743] and disposes an asset to that limited liability partnership, the provisions of paragraphs 39 and 40 of Schedule 3 is applicable to that asset.

Clause 32 further seeks to amend paragraph 40 of Schedule 3 of Act 53 as a consequence of the introduction of paragraph 38B into Act 53.

Clause 32 also seeks to insert a new paragraph 76A into Schedule 3 Act 53. The amendment provides that where a partnership or a company is converted into a limited liability partnership pursuant to section 29 or 30 of the Limited Liability Partnerships Act 2012 in the year of assessment, that limited liability partnership is not allowed to claim allowance for the year of assessment relating to the asset that is transferred for that year of assessment if the partner or the company has claimed allowance under paragraph 77 of that Schedule.

This amendment comes into operation on the coming into operation of this Act.

AMENDMENTS TO THE STAMP ACT 1949

Chapter III of this Bill seeks to amend the Stamp Act 1949. This Chapter commences on the coming into operation of this Act.

26. *Clause 34* seeks to amend subsection 9(7) of Act 378 to provide that a person who is authorized by the Collector of Stamp Duty to compound duty on specific instruments must keep records in connection with the issue of such instruments for a period of seven years for purposes of inspection by the Collector.

27. *Clause 35* seeks to amend subsection 47A(2) of Act 378 to provide that the Collector may reduce or remit any further amount payable under subsection 9(3) of the Act.

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Chapter IV of this Bill seeks to amend the Petroleum (Income Tax) Act 1967.

28. *Clause 37* seeks to amend the definition of “entertainment” under section 2 of Act 543 to provide that the expenses incurred by a person for the purpose of promoting his business with or without consideration falls within the definition of “entertainment”.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

29. *Clause 38* seeks to amend section 30 of Act 543. With the amendment, the return furnished by the chargeable person must be based on audited account prepared by a professional accountant.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

30. *Clause 39* seeks to insert a new subsection 46(1A) into Act 543 to provide that an appeal filed by a chargeable person under section 46 of Act 543 will not be forwarded to the Special Commissioners of Income Tax in the case where that person invokes a mutual agreement procedure as provided for under a double taxation arrangement to resolve the same ground of appeal as in the appeal under section 46 of the Act. The appeal under section 46 of the Act is only forwarded to the Special Commissioners of Income Tax upon the finalization of the mutual agreement procedure and on the request made by the chargeable person within the period as stipulated under the new subsection.

This amendment comes into operation on the coming into operation of this Act.

31. *Clause 40* seeks to introduce a new Chapter 1A and section 71A into Act 543. With the proposed amendment, a chargeable person may make an application to the Director General for an advance pricing arrangement. In a case where it involves a double taxation arrangement under section 65A of Act 543, a chargeable person may apply for an advance pricing arrangement to be entered into by the competent authorities of both Governments. The application must be made in the prescribed form and subject to any rules prescribed by Act 543.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

32. *Clause 41* seeks to amend section 72A of Act 543 by introducing a new subsection 72A(7) into the Act. The proposed amendment is to clarify that the party to a petroleum agreement shall be the chargeable person for the purpose of determining a transfer pricing and thin capitalization transaction.

This amendment comes into operation on the coming into operation of this Act.

33. *Clause 42* seeks to amend subsection 83(1) of Act 543 by introducing a new paragraph 83(1)(bb) into the Act. The proposed amendment is to empower the Minister to make rules pertaining to the scope and procedure of advance pricing arrangement issued by the Director General of Inland Revenue.

This amendment has effect for the year of assessment 2014 and subsequent years of assessment.

34. *Clause 43* seeks to amend the proviso to subparagraph 3A(1) to the First Schedule of Act 543 to clarify that only the qualifying exploration expenditure incurred by a chargeable person under a petroleum agreement from an agreement area where chargeable petroleum is not being produced can be deducted against the gross income of another chargeable person in another petroleum agreement where the original parties to the petroleum agreement are the same.

Clause 43 further seeks to amend subparagraph 3A(2) of the Act to provide that if the qualifying exploration expenditure exceeds the gross income of another chargeable person, the excess of the expenditure shall only be allowed to be deducted against the gross income of that chargeable person for subsequent years of assessment.

These amendments have effect for the year of assessment 2014 and subsequent years of assessment.

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Chapter V of this Bill seeks to amend the Real Property Gains Tax Act 1976.

35. *Clauses 45, 46 and 47* seek to amend subsections 14(5), 15(4) and section 29 of Act 169 to clarify that payment or penalty to be made under those subsections shall be computed on the amount of tax payable before any deduction of allowable loss.

These amendments come into operation on the coming into operation of this Act.

36. *Clause 48* seeks to amend subsubparagraph 5(4)(b) of Schedule 1 of Act 169. With the amendment, any director and other person who is concerned in the management of the company's business and, either on his own or with one or more associates within the meaning of subparagraph 5(5) of Schedule 1 of Act 169, is the owner or able directly through the medium of other companies or by any other indirect means to control, not less than twenty per cent of the ordinary share capital of the company shall be jointly and severally liable for the payment of tax during the period in which the tax is liable to be paid by the company.

This amendment comes into operation on the coming into operation of this Act.

37. *Clause 49* seeks to amend Part I and Part II of Schedule 5 to Act 169 to provide for a new category of disposal and rate of tax on the disposal of a chargeable asset made by an individual who is a citizen and a permanent resident of Malaysia and a company.

This amendment comes into operation on 1 January 2014.

AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY TAX ACT 1990

Chapter VI of this Bill seeks to amend the Labuan Business Activity Tax Act 1990. This Chapter commences on the coming into operation of this Act.

38. *Clause 51* seeks to amend section 21 of Act 445 as a consequence of the introduction of the new section 21A into Act 445.

39. *Clause 52* seeks to introduce a new section 21A into Act 445. With the proposed amendment, the Director General may prescribe a form as required by the Act and may authorize the use of a suitable substitute for such prescribed forms.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)2901]