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Act 683

FINANCE ACT 2007

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Act 683

FINANCE ACT 2007

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

[]

BE IT ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance Act 2007.

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*] and the Labuan Offshore Business Activity Tax Act 1990 [*Act 445*] are amended in the manner specified in Chapters II, III, IV and V respectively.

CHAPTER II

PART I

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 4, 5, 8, paragraphs 10(a) and (d), subparagraphs 12(a)(i) and (iv) in respect of paragraph 46(1)(l) of the Income Tax Act 1967, sections 14, 15, 17, 19, 20, 21, 23, 24, 25, 26, 27, 29, 33, 34, paragraphs 36(a) and (f) and sections 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 have effect for the year of assessment 2008 and subsequent years of assessment.

(2) Sections 6 and 22 come into operation on 1 January 2008.

(3) Subparagraphs 12(a)(ii), (iii) and (iv) in respect of paragraph 46(1)(k) of the Income Tax Act 1967, section 16 and paragraph 36(d) have effect for the year of assessment 2007 and subsequent years of assessment.

(4) Sections 7, 9, 11 and 13 are deemed to have effect for the year of assessment 2006 and subsequent years of assessment.

(5) Section 28 comes into operation on 1 August 2008.

(6) Section 32 is deemed to have come into operation on 21 February 2007.

(7) Paragraphs 36(b), (c) and (e) come into operation on 1 January 2014.

Amendment of section 3B

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 3B by inserting after the words “offshore company” the words “, other than an offshore company (in this Act referred to as “chargeable offshore company”)), which has made an election under section 3A of the Labuan Offshore Business Activity Tax Act 1990”.

Amendment of section 5

5. Subsection 5(1) of the principal Act is amended by substituting for the proviso to that subsection the following proviso:

“Provided that in ascertaining the chargeable income of—

- (i) an individual resident in Malaysia there shall be excluded the income consisting of interest accruing in or derived from Malaysia and received from a person referred to in subsection 109C(4) in respect of interest paid or credited to that individual; or
- (ii) a participant other than a participant which is a resident company there shall be excluded any income accruing in or derived from Malaysia and received from a takaful operator referred to in subsection 109E(2) in respect of such income paid or credited to that participant.”.

Amendment of section 6

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

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

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

“(j) subject to the provision of section 109E but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a participant, other than a participant which is a resident company, which consists of profits distributed or credited by an operator referred to in section 60AA at the appropriate rate as specified under Part XI of Schedule 1.”.

Amendment of section 27**7. Section 27 of the principal Act is amended—**

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

“(1A) Where gross income from a source in Malaysia of a company consists of any amount of discount or premium from the subscription or issuance of bond, as the case may be, and first becomes receivable in the relevant period, that amount shall be deemed to accrue over the whole period of the bond and the gross income of the company for the relevant period that relates to the period of the bond shall be a sum to be determined in accordance with the following formula:

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

- where
- | | |
|---|--|
| A | is the number of days in the relevant period that falls within the period of the bond; |
| B | is the total number of days of the whole period of the bond; and |
| C | is the total amount of discount or premium in respect of the bond: |

Provided that the Director General may allow the company to consistently apply any other formula which is in accordance with the generally accepted accounting principles applicable during the relevant period.”;

- (b) in subsection (2), by inserting after the words “subsection (1)” the words “or (1A)”; and
- (c) in subsection (3), by inserting after the words “subsection (1)” the words “or (1A)”.

Amendment of section 34

8. Subsection 34(6) of the principal Act is amended—

(a) in paragraph (e), by inserting after the word “equipment” the words “, or on the alteration or renovation of premises,”; and

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

“(ha) an amount equal to the expenditure incurred by a company on the provision of infrastructure in relation to its business which is available for public use, subject to the prior approval of the Minister:

Provided that where a deduction has been made under this paragraph, no further deduction of the same amount shall be allowed under subsection 44(6);”.

New section 34c

9. The principal Act is amended by inserting after section 34b the following section:

“Special provision applicable to adjusted income from a discount or premium

34c. (1) Notwithstanding section 33 but subject to this section, in ascertaining the adjusted income of a company from a source consisting of discount or premium, any expenses in respect of the discount or premium incurred on bond issued or subscribed, as the case may be, by that company is deemed to accrue to the company over the whole period of the bond and the amount to be deducted from the gross income from that source for the basis period for a year of assessment that relates to the period of the bond shall be a sum to be determined in accordance with the following formula:

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

where A is the number of days in the basis period for the year of assessment that falls within the period of the bond;

B is the total number of days of the whole period of the bond; and

C is the total amount of discount or premium incurred in respect of the bond:

Provided that the Director General may allow the company to consistently apply any other formula which is in accordance with the generally accepted accounting principles applicable during that basis period.

(2) Where any deduction in respect of expenditure referred to in subsection (1) is made under this section, no deduction in respect of that expenditure shall be made under section 33, 34, 34A or 34B.”.

Amendment of section 44

10. Section 44 of the principal Act is amended—

(a) in the proviso to subsection (6), by substituting for the word “company” wherever appearing the word “person”;

(b) in subsection (6A), by substituting for the words “Department of Museum and Antiquities” the words “Department of Museums Malaysia”;

(c) by inserting after subsection (6A) the following subsection:

“(6B) Where an institution or organization is aggrieved by the decision of the Director General in respect of an application made under subsection (6), the institution or organization may, within thirty days after being informed of the decision, appeal to the Minister and the Minister may make any decision as he considers fit.”; and

(d) in subsection (11A), by inserting after the words “offshore company” the words “excluding chargeable offshore company”.

Amendment of section 44A

11. Paragraph 44A(10)(d) of the principal Act is amended by substituting for the word “2001” the word “2006”.

Amendment of section 46

12. Section 46 of the principal Act is amended—

(a) in subsection (1)—

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

“(f) fees expended in that basis year by that individual on himself for—

(i) any course of study up to tertiary level, other than a degree at Masters or Doctorate level, undertaken for the purpose of acquiring law, accounting, Islamic financing, technical, vocational, industrial, scientific or technological skills or qualifications; or

(ii) any course of study for a degree at Masters or Doctorate level undertaken for the purpose of acquiring any skill or qualification,

in any institution or professional body in Malaysia recognized by the Government or approved by the Minister, as the case may be, and the total deduction under this paragraph is subject to a maximum amount of five thousand ringgit;”;

(ii) by deleting the word “and” at the end of paragraph (i);

(iii) by substituting for the full stop at the end of paragraph (j) the word “; and”; and

(iv) by inserting after paragraph (j) the following paragraphs:

(k) “an amount limited to a maximum of three thousand ringgit deposited in that basis year by that individual for his child into the Skim Simpanan Pendidikan Nasional account established under the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 [Act 566];

Provided that if any withdrawal is made from the account by that individual in that basis year, the amount deposited during that year shall be reduced by that withdrawal and regard shall be had only to the reduced amount subject to a maximum amount of three thousand ringgit; and

(l) an amount limited to a maximum of three hundred ringgit in respect of expenses expended or deemed expended under subsection (3) in that basis year by that individual for the purchase of sports equipment for any sports activity as defined under the Sports Development Act 1997 as evidenced by receipts issued in respect of the purchase.”; and

(b) in subsection (3), by substituting for the words “and (j)” the words “, (j), (k) and (l)”.

Deletion of section 46A

13. The principal Act is amended by deleting section 46A.

Amendment of section 54A

14. Subsection 54A(3) of the principal Act is amended—

(a) by inserting after the semicolon at the end of paragraph (d) the word “and”;

- (b) by substituting for the word “; and” at the end of paragraph (e) a full stop; and
- (c) by deleting paragraph (f).

Amendment of section 60AA

15. The principal Act is amended by substituting for section 60AA the following section:

“Takaful business

60AA. (1) This section shall apply for ascertaining the adjusted income for the basis period for a year of assessment from the takaful business of an operator.

(2) For the purposes of this section—

(a) subject to paragraph (b), where an operator carries on family solidarity business (in this section referred to as “family business”) in conjunction with general business, the family business and the general business shall be treated as separate takaful businesses;

(b) where an operator carries on—

(i) an inward re-takaful business, the inward re-takaful business and general business (excluding the inward re-takaful business and offshore takaful business) shall be treated as separate general businesses; and

(ii) an offshore takaful business, the offshore takaful business and the general business (excluding the offshore takaful business and inward re-takaful business) shall be treated as separate general businesses;

(c) where an operator carries on family business, the income of the fund established in respect of that business (in this section referred to as “family fund”)

shall be treated as a separate source of income from the income of the shareholders' fund in respect of the family business:

Provided that—

- (i) where the operator also carries on family solidarity re-takaful business, the family solidarity re-takaful business shall be a separate source from family business and shall be treated as a general business; or
 - (ii) where the operator also carries on inward family solidarity re-takaful business, the inward family solidarity re-takaful business shall be a separate source from family business and shall be treated as a general business;
- (d) where an operator carries on only family solidarity re-takaful business, that business shall be treated as a general business; and
- (e) where an operator carries on inward re-takaful business, offshore takaful business, family solidarity re-takaful business or general business (excluding those businesses), the income of the fund established in respect of each of the businesses (in this section referred to as “inward re-takaful fund”, “offshore fund”, “family re-takaful fund” and “general fund” respectively) shall be treated as a separate source of income from the income of the shareholders' fund in respect of those businesses.

(3) The adjusted income of the family fund, other than income arising from family solidarity re-takaful business, for the basis period for a year of assessment of an operator resident for the basis year for that year of assessment shall be ascertained by—

(a) taking the aggregate of—

- (i) the amount of gross income for that period from the investments made out of any of the operator's family funds; and

- (ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realization of the investments or any right arising from them; and

(b) deducting from that aggregate—

- (i) where subparagraph (a)(ii) is applicable for that period to gross proceeds receivable in connection with any investment or right, the cost of acquiring and realizing the investments or rights; and
- (ii) the proportion of profits from investments distributed or credited to the participant or to the shareholders' fund for that period out of any of the operator's family funds.

(4) The adjusted income of the family fund, other than income arising from family solidarity re-takaful business, for the basis period for a year of assessment of an operator not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia, be ascertained by—

(a) taking the aggregate of—

- (i) the amount of gross income for that period from the investments made (in Malaysia or elsewhere) out of the operator's Malaysian family funds; and
- (ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realization of the investments or any right arising from them; and

(b) deducting from that aggregate—

- (i) where subparagraph (a)(ii) is applicable for that period to gross proceeds receivable in connection with any investment or right, the cost of acquiring and realizing the investments or rights; and
- (ii) the proportion of profits from investments distributed or credited to the participant or to the shareholders' fund for that period out of any of the operator's Malaysian family funds.

(5) The adjusted income of the general fund in respect of general business for the basis period for a year of assessment of an operator resident for the basis year for that year of assessment shall be ascertained by—

(a) taking the aggregate of—

- (i) the amount of the gross contributions first receivable in that period in respect of general certificate, issued by him (less the amount of any contribution or contract received at any time in respect of such certificate or contract and returned by him during the period and the amount of *wakalah* fee which is attributable to the shareholders' fund);
- (ii) the amount of any other gross income for that period from that business (including any commission and any profit from investment held in connection with that business);
- (iii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (ii) applies and which are first receivable in that period in connection with the realization of the investments or any right arising from them;

- (iv) any amount recovered or recoverable by him in that period under re-takaful contracts made in connection with that business; and
 - (v) the amount of his reserve fund for unexpired risks at the end of the immediately preceding basis period; and
- (b) subject to subsection (12), by deducting from that aggregate the amount of—
- (i) claims incurred in that period in connection with his general certificate;
 - (ii) re-takaful contributions payable by him in that period in connection with that business;
 - (iii) commissions payable and discounts allowed by him in that period in connection with that business;
 - (iv) his reserve fund for unexpired risks at the end of that period;
 - (v) where subparagraph (a)(iii) is applicable for that period to gross proceeds receivable in connection with any investment or right, the cost of acquiring and realizing the investments or rights;
 - (vi) any fee other than *wakalah* fee attributable to the shareholders' fund; and
 - (vii) any share of profits distributed or credited to the participant or shareholders' fund for that period out of any of the operator's general fund.

(6) The adjusted income of the inward re-takaful fund, offshore fund or family re-takaful fund for the basis period for a year of assessment in respect of inward re-takaful business, offshore takaful business or family solidarity re-takaful business respectively of an operator resident for the

basis year for that year of assessment shall consist of an amount arrived at by applying subsection (5) and references in that subsection to—

- (a) “general certificate” shall be construed as references to “inward re-takaful contract”, “offshore takaful certificate” or “family solidarity re-takaful certificate”, as the case may be;
- (b) “general business” shall be construed as references to “inward re-takaful business”, “offshore takaful business” or “family solidarity re-takaful business”, as the case may be; and
- (c) “reserve fund for unexpired risks” and “operator” shall in the case of family solidarity re-takaful business be construed as references to “actuarial valuation reserve” and “family solidarity operator” respectively;

Provided that in the case of inward re-takaful business or offshore takaful business, no deduction shall be allowed on any share of profits distributed or credited to the participant or shareholders’ fund for that period out of any of the operator’s inward fund or offshore fund, as the case may be.

(7) The adjusted income of the general fund in respect of general business for the basis period for a year of assessment of an operator not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia be ascertained by—

- (a) taking the aggregate of—
 - (i) the amount of the gross contribution first receivable in that period in respect of Malaysian general certificate or contract, issued by him (less the amount of any contribution received at any time in respect of such certificate or contract and returned by him during the period and the amount of *wakalah* fee which is attributable to the shareholders’ fund);

- (ii) the amount of any other gross income for that period derived from Malaysia from that business (including any commission and any profit from investment, wherever made, held in connection with that business);
 - (iii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (ii) applies and which are first receivable in that period in connection with the realization of the investments or any right arising from them;
 - (iv) any amount recovered or recoverable by him in that period under re-takaful contracts made in connection with Malaysian general certificate of that business; and
 - (v) the amount of his reserve fund for unexpired risks relating to any such Malaysian general certificate at the end of the immediately preceding basis period; and
- (b) subject to subsection (12), by deducting from that aggregate the amount of—
- (i) claims incurred in that period in connection with his Malaysian general certificate;
 - (ii) re-takaful contributions payable by him in that period in connection with any such Malaysian general certificate;
 - (iii) commissions payable and discounts allowed by him in that period in connection with any such Malaysian general certificate;
 - (iv) his reserve fund for unexpired risks relating to any such Malaysian general certificate at the end of that period;

- (v) where subparagraph (a)(iii) is applicable for that period to gross proceeds receivable in connection with any investment or right, the cost of acquiring and realizing the investment or right;
- (vi) any fee other than *wakalah* fee attributable to the shareholders' fund; and
- (vii) any share of profits distributed or credited to the participant or to the shareholders' fund for that period out of any of the operator's Malaysian general fund.

(8) The adjusted income of the inward re-takaful fund, offshore fund or family re-takaful fund for the basis period for a year of assessment in respect of inward re-takaful business, offshore takaful business or family solidarity re-takaful business respectively of an operator not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia, consist of an amount arrived at by applying subsection (7) and references in that subsection to—

- (a) “Malaysian general certificate” shall be construed as references to “inward re-takaful contract”, “offshore takaful certificate” or “Malaysian family solidarity re-takaful certificate”, as the case may be;
- (b) “general business” shall be construed as references to “inward re-takaful business”, “offshore takaful business” or “family solidarity re-takaful business”, as the case may be; and
- (c) “reserve fund for unexpired risks” and “operator” shall in the case of family solidarity re-takaful business be construed as references to “actuarial valuation reserve” and “family solidarity operator” respectively:

Provided that in the case of inward re-takaful business or offshore takaful business, no deduction shall be allowed on any share of profits distributed or credited to the participant or shareholders' fund for that period out of any of the operator's inward fund or offshore fund, as the case may be.

(9) The adjusted income of the shareholders' fund, for the basis period for a year of assessment of an operator resident for the basis year for that year of assessment shall be ascertained by—

(a) taking the aggregate of—

- (i) the amount of gross income for that period from the investments made by the operator out of any of the shareholders' funds;
- (ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realization of the investments or any right arising from them;
- (iii) the amount of gross income for that period in respect of *wakalah* fee or any other fee receivable in connection with the family fund, general fund, inward re-takaful fund, offshore fund or family re-takaful fund;
- (iv) any amount of *qard* recovered by him in that period in connection with the family fund; and
- (v) the amount of gross income for that period in respect of profits from investments distributed or credited from family fund, or in respect of profits distributed or credited from general fund or family re-takaful fund; and

(b) deducting from that aggregate—

- (i) where subparagraph (a)(ii) is applicable for that period to gross proceeds receivable in connection with any investment or right, the cost of acquiring and realizing the investments or rights;

- (ii) so much of the amount of *qard* incurred in that period in connection with the family fund; and
- (iii) the amount of management expenses incurred by him in that period in connection with his family and general businesses.

(10) The adjusted income of the shareholders' fund, for the basis period for a year of assessment of an operator not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia be ascertained by—

(a) taking the aggregate of—

- (i) the amount of gross income for that period from the investments made by the operator out of any of the shareholders' funds;
- (ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realization of the investments or any right arising from them;
- (iii) the amount of gross income for that period in respect of *wakalah* fee or any other fee receivable in connection with the family fund, general fund, inward re-takaful fund, offshore fund or family re-takaful fund;
- (iv) any amount of *qard* recovered by him in that period in connection with the family fund; and
- (v) the amount of gross income for that period in respect of profits from investments distributed or credited from family fund, or in respect of profits distributed or credited from general fund or family re-takaful fund; and

(b) deducting from that aggregate—

- (i) where subparagraph (a)(ii) is applicable for that period to gross proceeds receivable in connection with any investment or right, the cost of acquiring and realizing the investments or rights;
- (ii) so much of the amount of *qard* incurred in that period in connection with the family fund; and
- (iii) the amount of management expenses incurred by him in that period in connection with his family and general businesses.

(11) The adjusted income as ascertained under subsections (9) and (10) shall be deemed to be the statutory income from that source.

(12) Where an operator carrying on general business has re-takaful the risks or part of the risks with a re-takaful operator who either does not carry on the business of takaful of that kind in Malaysia or does not re-takaful the risks through a branch in Malaysia, there may be deducted under subparagraph (5)(b)(ii) or (7)(b)(ii) in respect of such risks which are re-takaful only ninety-five per cent of the amount which would otherwise be deductible:

Provided that in the case where subsection (7) or (8) apply (other than in the case of family solidarity re-takaful business), the operator may elect that no deductions shall be made under subparagraph (7)(b)(ii) and if he does so—

- (a) the election shall be irrevocable and shall apply in relation to the basis period for the year of assessment for which it is made and for the basis periods for all subsequent years of assessment; and
- (b) amounts recoverable under re-takaful contracts shall be disregarded for the purposes of subparagraph (7)(a)(iv).

(13) Where an operator in connection with his family business or his general business receives any incidental gross income (not being a contribution on a certificate issued in the course of carrying on that family or general business) for which subsections (3) to (10) and subsection (12) do not provide, that income shall be treated as income of the operator falling under paragraph 4(f) and he shall be deemed to have a separate source in respect of it.

(14) Where under this section all such deductions as would be made in computing what would have been the adjusted income for the basis period for a year of assessment from takaful business of an operator if any such adjustment income had been ascertainable exceed the aggregate of the amounts from which those deductions would otherwise have been made, the amount of the excess shall be taken to be the amount of his adjusted loss from that business for that period.

(15) Notwithstanding subsection (14) and subsection 43(2), any unabsorbed losses of the family fund shall only be available for deduction against the statutory income for the basis period for a year of assessment and subsequent years of assessment in respect of the family fund of the operator.

(16) Notwithstanding paragraph 75 of Schedule 3, any unabsorbed allowances of the family fund shall only be available for deduction against the adjusted income for the basis period for a year of assessment and subsequent years of assessment in respect of the family fund of the operator.

(17) Allowances under Schedule 3 shall only be available for deduction against the adjusted income of the family fund and the balance of such allowances shall not be available as a deduction against the adjusted income of the shareholders' fund.

(18) Any income which is distributed or credited to a participant under this section shall be deemed to be derived from Malaysia.

(19) The chargeable income in respect of the family fund as determined under subsections (3) and (4) is subject to tax as specified under Part XII of Schedule 1.

(20) Where an operator carries on inward re-takaful business or offshore takaful business in conjunction with other takaful businesses, the part of the chargeable income for a year of assessment which is attributable to that inward re-takaful business or offshore takaful business shall consist of an amount which bears the same proportion to the chargeable income for that year of assessment of the operator as the part of the aggregate income which relates to the inward re-takaful business or offshore takaful business bears to the whole of the aggregate income for that year of assessment from all sources of the operator.

(21) The amount arrived at under subsection (20) shall be treated as his chargeable income for a year of assessment of an operator from inward re-takaful business or offshore takaful business for the purposes of paragraph 4 of Part I of Schedule 1.

(22) As soon as any amount of chargeable income from the inward re-takaful business or offshore takaful business of an operator, being a company resident for the basis year for a year of assessment, has been subject to income tax at the rate of five per cent—

- (a) the net amount of that income (after deduction of such tax) shall be credited to an account (that account and company being referred to as the exempt account and the relevant company respectively); and
- (b) paragraph 5 (except subparagraph (1) thereof) and paragraph 6 of Schedule 7A shall apply as if any reference in those paragraphs to any income exempted or which has become exempt under paragraph 3 were a reference to income credited to the exempt account.

(23) In this section—

“contribution” means takaful instalment payable by participants;

“family solidarity” means takaful business for the benefit of the individual and his family;

“general business” means any takaful business which is not family business;

“general certificate” means a certificate other than a family solidarity certificate;

“investment” includes any accretions thereto;

“inward re-takaful” means any re-takaful of a risk under a certificate where the risk is outside Malaysia and the original takaful certificate—

- (a) is issued by an operator not resident in Malaysia and not by a branch in Malaysia of such operator; or
- (b) is issued by a branch outside Malaysia of an operator resident in Malaysia,

and where any risk is in transit in Malaysia it shall be deemed to be outside Malaysia;

“inward re-takaful contract” means a Malaysian certificate in respect of inward re-takaful;

“Malaysian certificate” means any Malaysian certificate entered in the Register established by the operator pursuant to section 15 of the Takaful Act 1984;

“Malaysian family solidarity fund” means the fund in respect of Malaysian family certificate;

“offshore takaful” means takaful of a risk under a certificate where the risk is outside Malaysia and the takaful certificate is issued by a takaful operator resident in Malaysia or by a branch in Malaysia of a takaful operator not resident in Malaysia, and where any risk is in transit in Malaysia it shall be deemed to be outside Malaysia;

“operator” means a company which carries on takaful business, including a company that solely carries on re-takaful business;

“participant” includes, where a certificate has been assigned, the assignee for the time being and, where he is entitled as against the operator to the benefit of the certificate, the personal representative of a deceased participant;

“*qard*” means a benevolent loan made from the shareholders’ fund to the family fund to fulfill a short term financial need of the family fund which shall be repaid by the family fund;

“re-takaful” has the same meaning assigned to it under section 2 of the Takaful Act 1984;

“takaful” has the same meaning assigned to it under section 2 of the Takaful Act 1984;

“takaful business” has the same meaning assigned to it under section 2 of the Takaful Act 1984;

“takaful certificate” includes any contract of takaful for family solidarity business or general business whether or not embodied in or evidenced by an instrument in the form of a certificate, and references to issuing a certificate shall be construed accordingly;

“*wakalah* fee” means a fee in respect of a contract which gives the power to a person to nominate another person to act on his behalf based on agreed terms and conditions.

(24) For the purpose of this section, an operator’s reserve fund for unexpired risks at the end of a basis period shall consist of—

- (a) twenty-five per cent of the difference between the gross contributions first receivable by him in that period in respect of marine, aviation or transit certificates issued by him and the amount deducted under subparagraph (5)(b)(ii) or (7)(b)(ii); and
- (b) an amount calculated based on the method of computation as determined by the relevant authority regulating the takaful industry and which is consistently applied to contributions first receivable by him in that period in respect of other general certificates issued by him less the amount deducted under subparagraph (5)(b)(ii) or (7)(b)(ii).”.

New section 60I

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

“Company that establishes special purpose vehicle

60I. (1) For the purpose of this Act, where a company establishes a special purpose vehicle solely for the issuance of Islamic securities, any source of the special purpose vehicle and any income from that source shall be treated as a source and income of that company and such company shall have the right to receive and utilize any proceeds derived from the issuance of such Islamic securities.

(2) The special purpose vehicle is exempt from the responsibility of doing all acts and things required to be done under this Act.

(3) The company that establishes the special purpose vehicle shall keep and retain in safe custody records and documents in accordance with sections 82 and 82A for the purpose of ascertaining the chargeable income of the company from the source referred to in subsection (1).

(4) In this section—

“Islamic securities” means Islamic securities which adopt the principles of *mudharabah*, *musyarakah*, *ijarah* or *istisna*’ approved by the Securities Commission;

“special purpose vehicle” means a company incorporated under the Companies Act 1965 and established solely for the purpose of complying with the principles of *syariah* in the issuance of Islamic securities but excludes a company which issues asset-backed securities in a securitization transaction approved by the Securities Commission.”.

Amendment of section 67

17. Subsection 67(4) of the principal Act is amended by deleting the word “108,”.

Amendment of section 80

18. Section 80 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “books and other documents” the words “books, documents, objects, articles, materials and things”; and

(ii) by substituting for the words “books or documents” the words “books, documents, objects, articles, materials and things”; and

(b) in subsection (2), by substituting for the words “books or documents” the words “books, documents, objects, articles, materials and things”.

Amendment of section 107C

19. Section 107C of the principal Act is amended—

(a) in subsection (2), by inserting after the words “paragraph (4)(a)” the words “and subsection (4A)”;

(b) in subsection (4), by inserting after the word “company” wherever appearing the words “, other than a company to which subsection (4A) applies”; and

(c) by inserting after subsection (4) the following subsection:

“(4A) Where a company first commences operation in a year of assessment, subsections (1), (2) and (3) shall not apply to the company—

(a) for that year of assessment and the immediate following year of assessment; or

- (b) where the company has no basis period for that year of assessment, for the immediate two following years of assessment:

Provided that at the beginning of the basis period for the years of assessment referred to in paragraph (a) or for the two following years of assessment referred to in paragraph (b), the paid-up capital of that company in respect of ordinary shares is two million five hundred thousand ringgit and less.”.

Amendment of section 108

20. The principal Act is amended by substituting for section 108 the following section:

“Non-deduction of tax from dividend

108. Where a dividend is paid or credited by a company to any of its shareholders in the basis period for a year of assessment, the company shall not be entitled to deduct tax from such dividend paid or credited.”.

Amendment of section 109

21. Subsection 109(1) of the principal Act is amended by substituting for the words “33 or 35” the words “33, 33A, 33B, 35 or 35A”.

New section 109E

22. The principal Act is amended by inserting after section 109D the following section:

“Deduction of tax on the distribution of income of a family fund, etc.

109E. (1) This section shall only apply to profits distributed or credited out of family fund, family re-takaful fund or general fund under section 60AA.

(2) Where a takaful operator (in this section referred to as “the payer”) distributes or credits any amount of income to a participant other than participant which is a resident company which is deemed to be derived from Malaysia, the payer shall upon distributing or crediting the amount—

- (a) deduct from the proportion of that amount, tax at the rate applicable to that proportion; and
- (b) whether or not that tax is so deducted, within one month after distributing or crediting such amount, render an account and pay the amount of tax to the Director General.

(3) The Director General may in relation to subsection (2)—

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

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

(5) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer and if the payer has not deducted that amount in distributing the income under subsection (2) with respect to which that amount relates, the payer may recover that amount from that participant as a debt due to the payer.

(6) The proportion of amount referred to in subsection (2) shall be ascertained in accordance with the formula prescribed by the Minister.”.

Amendment of section 110

23. Section 110 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) Any tax which is deducted from any interest or royalty under section 109 or from any payment for services, technical advice, assistance, or rental or other income under section 109B (including any amount recovered by the Director General pursuant to subsection 109(2) or 109B(2) but excluding any increase thereof) shall, when the interest, royalty, or payment for services, technical advice, assistance, or rental or other income is gross income of a person from a source of his for the basis period for a year of assessment, be set off against the tax charged on his chargeable income, if any, for that year.”;

(b) by deleting subsection (1A);

(c) in subsection (2)—

(i) other than in subparagraph (b)(ii), by deleting the word “dividend,”; and

(ii) in subparagraph (b)(ii), by deleting the words “a dividend,”;

(d) in subsections (4), (5) and (7), by deleting the word “dividend,” wherever appearing; and

(e) by deleting subsection (13).

Deletion of section 110A

24. The principal Act is amended by deleting section 110A.

New section 110B

25. The principal Act is amended by inserting after section 110A the following section:

“Set-off for tax charged on actuarial surplus

110B. (1) Notwithstanding section 110, where for a basis period for a year of assessment an amount of actuarial surplus from the life fund of an insurer is transferred to the shareholders' fund pursuant to subsection 60(3A) or (4A), any amount of tax charged on the portion of that surplus shall be set off against the tax charged on the chargeable income from the shareholders' fund of that insurer in respect of the life business.

(2) Where—

(a) tax is set off under this section against the tax charged on the chargeable income of an insurer from its shareholders' fund in respect of life business for a year of assessment and the amount of the tax set-off exceeds the tax charged for that year, the excess shall be disregarded; or

(b) there is no tax charged for that year, so much of the amount of tax that would otherwise be set off but for the absence of such tax charged shall be disregarded.

(3) For the purposes of this section, tax charged on the chargeable income of an insurer from its shareholders' fund in respect of life business shall consist of an amount of tax before taking into account the tax set-off under section 110.

(4) The portion of the surplus referred to in subsection (1) shall be ascertained in accordance with the formula prescribed by the Minister.”.

Amendment of section 111

26. Section 111 of the principal Act is amended—

(a) in subsection (1A)—

(i) by substituting for the word “company” the word “person”; and

(ii) by inserting after the word “with” the words “subsection 77(1)”; and

(b) by deleting subsection (5).

Deletion of section 111A

27. The principal Act is amended by deleting section 111A.

Amendment of section 120

28. Subsection 120(1) of the principal Act is amended—

(a) by inserting after the semicolon at the end of paragraph (e) the word “or”;

(b) by substituting for the word “; or” at the end of paragraph (f) a comma; and

(c) by deleting paragraph (g).

Amendment of section 127

29. Subsection 127(5) of the principal Act is amended by deleting the word “108,” wherever appearing.

New section 142A

30. The principal Act is amended by inserting after section 142 the following section:

“Admissibility of electronic record

142A. (1) Notwithstanding any other written law, where in any proceedings under this Act an electronic record of—

(a) any prescribed form is furnished by way of electronic transmission under section 152A; or

- (b) any other document is stored or received by or communicated to the Director General on an electronic medium or by way of electronic transmission,

the electronic record or the copy or print-out of that electronic record shall be admissible as evidence of the facts stated or contained therein:

Provided that the record or the copy or print-out is—

- (i) certified by the Director General to contain all or any information furnished, stored, communicated or received on an electronic medium or by way of electronic transmission under this section; or
- (ii) otherwise authenticated in the manner provided in the Evidence Act 1950 for authentication of documents produced by computer.

(2) Where the electronic record of any form prescribed under this Act or any other document, or a copy or print-out of that record is admissible under subsection (1), it shall be presumed, until the contrary is proved, that the record or the copy or print-out accurately reproduces the content of that form or document.

(3) For the purposes of this Act, “electronic medium” includes a data, text, image or any other information stored, received or communicated by means of electronic, magnetic, optical, imaging or any other data processing device.”.

Amendment of section 152A

31. Section 152A of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) For the purposes of subsection (1), a person may authorize in writing a tax agent to furnish on his behalf any return in the prescribed form in the manner provided for in subsection (1).

(4) A return furnished in accordance with subsection (3) on behalf of any person shall be presumed to have been furnished on that person's authority, until the contrary is proved, and the person shall be deemed to be cognizant of its contents.

(5) Where subsection (3) applies —

(a) the person who authorizes the tax agent shall make a declaration in the form prescribed under this Act stating that—

(i) the tax agent is authorized to furnish a return to the Director General on his behalf; and

(ii) the information provided by him to the tax agent for the preparation of the return is true and correct;

(b) the tax agent shall make a declaration in the return furnished in accordance with subsection (1) stating that—

(i) the return is prepared in accordance with the information given by the person; and

(ii) he has received a declaration made by the person under paragraph (a);

(c) the person shall keep and retain in safe custody such return being the hard copy of the form so furnished and that copy shall be made under processes and procedures which are designed to ensure that the information contained in the return shall be the only information furnished in accordance with this section;

(d) the hard copy shall be signed by the person; and

(e) the hard copy in paragraph (c) and the declaration made under paragraph (a) shall be kept and retained for a period of seven years from the end of the year of assessment in which the return is furnished.

(6) Any form referred to in subsection (1) is deemed to have been furnished by a person to the Director General on the date on which acknowledgement of receipt of the form is transmitted electronically by the Director General to the person.”.

Amendment of section 153

32. Section 153 of the principal Act is amended by substituting for subsection (6) the following subsection:

“(6) An approval or renewal of an approval under this section shall be valid for—

- (a) a minimum period of twenty-four months beginning from the date of such approval or renewal; or
- (b) any other period as approved by the Minister which shall not be less than twenty-four months beginning from the date of such approval or renewal.”.

Amendment of Schedule 1

33. Schedule 1 to the principal Act is amended—

- (a) in Part I—
 - (i) in paragraphs 2 and 2A, by substituting for the words “27 per cent” wherever appearing the words “26 per cent for the year of assessment 2008 and 25 per cent for the subsequent years of assessment”; and
 - (ii) by inserting after paragraph 3 the following paragraph:

“**4.** Income tax shall be charged for a year of assessment on the chargeable income of an operator from inward re-takaful business or offshore takaful business at the rate of 5 per cent on every ringgit of the chargeable income.”;

(b) in Part X in subparagraph 1(b), by substituting for the words “27% of gross” the words “26% of gross for the year of assessment 2008 and 25% of gross for the subsequent years of assessment”; and

(c) by inserting after Part X the following Parts:

“Part XI

Notwithstanding Part I, income tax shall be charged on the income of—

- (a) a participant other than a participant which is a resident company consisting of income distributed to that participant referred to in section 109E which is derived from Malaysia at the rate of8% of gross; and
- (b) a participant which is a non-resident company consisting of income distributed to that participant referred to in section 109E which is derived from Malaysia at the rate of26% of gross for the year of assessment 2008 and 25% of gross for the subsequent years of assessment.

Part XII

Notwithstanding Part I and Part II, income tax shall be charged on the chargeable income of a family fund referred to in section 60AA, other than income arising from family solidarity re-takaful business and inward family solidarity re-takaful business, of a resident or non-resident operator at the rate of8 per cent.”.

Amendment of Schedule 3

34. Schedule 3 to the principal Act is amended—

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

“**38A.** (1) Paragraphs 39 and 40 shall apply where a company disposes of an asset in respect of industrial building to a unit trust in relation to which an initial or annual allowance has been made or would have been made, if claimed, to the company.

(2) For the purpose of this paragraph, “unit trust” has the same meaning assigned to it under section 61A.”; and

(b) in paragraph 40 by inserting after the word “38,” the word “38A,”.

Amendment of Schedule 5

35. Schedule 5 to the principal Act is amended—

(a) by substituting for subparagraph 1(3) the following subparagraph:

“(3) Two or more hearing of appeals may be heard concurrently at any one time, and if the Chairman of the Special Commissioners—

(a) is presiding at the hearing of one of the appeals, the Special Commissioners present at the hearing of the other appeals; or

(b) has not been appointed or is not present at the hearing of any of the appeals, the Special Commissioners present at the hearing of the appeals,

shall choose one of their number (who shall be a person with experience of the kind mentioned in subparagraph (1)) to preside at the hearing of the other appeal or appeals, as the case may be.”;

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

“**1A.** If any one of the Special Commissioners who has commenced hearing any of the appeals is unable to complete the hearing due to expiration of the term of his appointment or other reason, the hearing may, with the consent of both parties, be heard afresh or continued by the remaining Special Commissioners with another Special Commissioner.”;

(c) in subsubparagraph 17(1)(b), by inserting after the word “party,” the words “or may dismiss the appeal if the defaulting party is the appellant,”;

(d) in subsubparagraph 17(2)(a), by inserting after the word “decide” the words “or dismiss”; and

(e) by inserting after paragraph 23 the following paragraph:

“**23A.** For the purpose of paragraph 23, “deciding order” includes an order where the Special Commissioners dismiss an appeal under paragraph 17.”.

Amendment of Schedule 6**36.** Schedule 6 to the principal Act is amended—

(a) by inserting after paragraph 12A the following paragraph:

“12B. Any dividend paid, credited or distributed to any person where the company paying such dividend is not entitled to deduct tax under this Act and any expenses incurred in relation to such dividend shall be disregarded for the purpose of this Act.”;

(b) in subparagraph 13(1), by deleting the words “, other than dividend income,”;

(c) in paragraph 17—

(i) by substituting for the colon a full stop; and

(ii) by deleting the proviso;

(d) in subsubparagraph 25(1)(c)—

(i) by substituting for the colon a full stop; and

(ii) by deleting the proviso;

(e) in paragraph 26—

(i) by substituting for the colon a full stop; and

(ii) by deleting the proviso; and

(f) by inserting after paragraph 33A the following paragraph:

“33B. Interest paid or credited to any person in respect of Islamic securities originating from Malaysia, other than convertible loan stock—

(a) issued in any currency other than Ringgit; and

(b) approved by the Securities Commission.”.

Amendment of Schedule 7A

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

(a) by deleting subparagraph 5(7);

(b) in paragraph 7—

(i) by inserting after the semicolon at the end of subparagraph (d) the word “or”;

(ii) by substituting for the word “; or” at the end of subparagraph (e) a full stop; and

(iii) by deleting subparagraph (f); and

(c) in subparagraph 8(d)—

(i) by substituting for the full stop a colon; and

(ii) by inserting after subparagraph (d) the following proviso:

“Provided that this subparagraph shall not apply from the year of assessment 2011 and subsequent years of assessment.”.

PART II**SAVING AND TRANSITIONAL PROVISIONS****General provisions**

38. (1) The principal Act shall apply for the purposes of this Part unless otherwise provided.

(2) Where there is any inconsistency between any provision of this Part and any provision of the principal Act, that provision of the principal Act shall be void to the extent of the inconsistency.

Balance for credit

39. (1) For the purposes of this Part, the balance for the credit of a company as at 31 December 2007 (hereinafter referred to in this Part as “108 balance”) shall consist of—

- (a) the amount of the balance for the credit of that company at the end of the basis period for a year of assessment 2007 ascertained under subsection 108(8) of the principal Act prior to the coming into operation of this Act;
- (b) the amount of the balance for the credit of that company ascertained under section 23 of the Income Tax (Amendment) Act 2000 [*Act A1093*] as at 31 December 2007; and
- (c) where the basis period of the company for the year of assessment 2007 ends—
 - (i) on a day other than 31 December 2007, any tax paid during the period from the first day of the basis period of that company for the year of assessment 2008 to 31 December 2007; or
 - (ii) on 31 December 2007, the final instalment paid under section 107c of the principal Act in respect of that basis period.

(2) Except as provided in subparagraph (c)(ii), any tax paid or tax charged on any assessment or composite assessment made after 31 December 2007 shall not be added to the 108 balance or revised 108 balance.

(3) In this section, “tax paid” has the same meaning assigned to it in subsection 108(14) of the principal Act prior to the coming into operation of this Act.

Dividend paid by company

40. (1) Where—

- (a) a dividend is paid by a company to any of its shareholders at any time during the period from 1 January 2008 to 31 December 2013; and

- (b) the company has a 108 balance or revised 108 balance on the day before the dividend is paid,

and, if the dividend is deemed by virtue of section 14 of the principal Act to be derived from Malaysia, the company shall be entitled to deduct tax at the rate applicable to the company at the date the dividend is paid.

(2) The dividend paid under subsection (1) shall consist of dividend paid in cash in respect of ordinary shareholding.

(3) In this Part, “ordinary shareholding” means holding of share other than share which carries only a right to any dividend which is of a fixed amount or at a fixed rate per cent of the nominal value of the shares, or a fixed rate per cent of the profits of the company.

Dividend paid on or before 31 December 2007

41. Where the basis period of a company for the year of assessment 2007 ends on a day other than 31 December 2007 and the company paid dividend to its shareholders during the period from the first day of the subsequent basis period to 31 December 2007, then, if the dividend is deemed by virtue of section 14 of the principal Act to be derived from Malaysia, the company shall be entitled to deduct tax at the rate applicable to the company at the date the dividend is paid.

Tax deemed deducted

42. Where a company pays or distributes without deduction of tax a dividend from which it is entitled to deduct tax under this Part, the dividend shall be deemed to be dividend of such gross amount as determined in accordance with the formula—

$$\frac{1}{(1-A)} \times B$$

where A is the rate applicable to the company at the time of payment or distribution of dividend;

- B is the amount in fact paid or where section 41 applies and the dividend consists of property other than money, the amount of the market value of that property at the time of distribution of the dividend,

and a sum equal to the difference between that gross amount and the amount in B in the above formula shall be deemed to have been deducted from the dividend as tax.

Revision in tax rate

43. Notwithstanding any other provision of this Part, where a dividend is paid or distributed with or without deduction of tax under this Part, and there is a revision in the rate of tax for companies for any year of assessment (in this section referred to as the “revised rate”), the amount of the dividend received by the shareholder shall be deemed to be a dividend of such gross amount as determined in accordance with the formula—

$$\frac{1}{(1-A)} \times B$$

where A is the revised rate applicable to the company at the time of payment or distribution of dividend;

- B is the amount in fact paid or where section 41 applies and the dividend consists of property other than money, the amount of the market value of that property at the time of distribution of the dividend,

and a sum equal to the difference between that gross amount and the amount in B in the above formula shall be deemed to have been deducted from the dividend as tax.

Certificate to shareholder

44. Every company shall upon paying or distributing to a shareholder a dividend of a kind to which section 40 or 41 applies (whether tax is deducted therefrom or not) furnish the shareholder with a certificate setting forth in respect of the dividend—

- (a) the gross dividend paid to the shareholder;
- (b) the amount of tax—
 - (i) which the company is entitled to deduct under section 40 or 41; or
 - (ii) deemed to have been deducted by the company under section 42; and
- (c) the amount in fact paid or where section 41 applies and the dividend consists of property other than money, the amount of the market value of that property at the time of distribution of the dividend.

Statement to Director General

45. (1) Where—

- (a) section 40 applies, the company shall—
 - (i) within 30 days from the date dividend is paid to its shareholders, furnish to the Director General a statement in the prescribed form containing such particulars as may be required for the purpose of ascertaining the 108 balance or revised 108 balance; and
 - (ii) notwithstanding subparagraph (i), within 7 months following the close of the accounting period which constitutes the basis period of the company for year of assessment 2008, 2009, 2010, 2011, 2012, 2013, or 2014 (if applicable) furnish to the Director General a statement in the prescribed form containing particulars as may be required for the purpose of determining the 108 balance or revised 108 balance, or any excess under section 48 at the end of that basis period;

- (b) section 41 applies, the company shall within 30 days from 31 December 2007 furnish to the Director General a statement in the prescribed form containing such particulars as may be required for the purpose of ascertaining the 108 balance or any excess under section 48; or
- (c) the company is not entitled to deduct tax on dividend paid during the period from 1 January 2008 to 31 December 2013, the company shall within seven months following the close of the accounting period which constitutes the basis period of the company for year of assessment 2008, 2009, 2010, 2011, 2012, 2013, or 2014 (if applicable) furnish to the Director General a statement in the prescribed form containing particulars of such dividend paid.

(2) The failure of the company to comply with subsection (1) is an offence under subsection 120(1) of the principal Act.

(3) A statement under this section may be furnished to the Director General in accordance with section 152A of the principal Act.

Revised 108 balance

46. Where during the period from the first day of the basis period for year of assessment 2008 to 31 December 2013—

- (a) the tax charged on the chargeable income of a company for the year of assessment 2000 on a current year basis and prior year of assessment is discharged or remitted; or
- (b) any amount of tax paid by that company which has been taken into account for the purpose of computing the 108 balance is refunded,

the 108 balance of the company, shall on the day the tax is discharged, remitted or refunded, be reduced by such amount of tax discharged, remitted or refunded (in this Part referred to as “revised 108 balance”).

Reduction of 108 balance

47. Where a company has paid dividend to any of its shareholders—

(a) on any date during the period from the first day of the basis period for year of assessment 2008 to 31 December 2007, in the case where the basis period of a company for the year of assessment 2007 ends on a day other than 31 December 2007; or

(b) on any date during the period from 1 January 2008 to 31 December 2013,

from which tax has been deducted or deemed to have been deducted in accordance with this Part, the 108 balance or revised 108 balance shall be reduced first by the amount of tax so deducted or deemed to have been deducted in respect of paragraph (a) until the 108 balance or revised 108 balance is reduced to nil.

Dividend paid in excess of revised 108 balance

48. (1) Where section 41 or 46 applies and a company has deducted tax on any dividend paid to its shareholders in accordance with this Part, and the amount deducted exceeds the revised 108 balance, the excess shall be a debt due from the company to the Government and that debt shall be due and payable on the due date.

(2) Where any excess due and payable by a company under subsection (1) has not been paid by the due date, that excess as is unpaid upon the expiration of that date shall, without any further notice being served, be increased by an amount equal to ten per cent of the excess so unpaid, and the amount unpaid and the increase on the amount unpaid shall be a debt due from the company to the Government and that debt shall be payable forthwith to the Director General.

(3) In this section, “due date” means the last day of the seventh month from the date following the close of the accounting period of the company to which period section 41 or 46 applies.

(4) Any debt due under this section shall be recoverable as if it were tax due and payable under the principal Act.

Non-deduction of tax

49. (1) A company shall not be entitled to deduct tax from any dividend paid to its shareholder if—

- (a) as at 31 December 2007 the 108 balance of that company is nil;
- (b) as at any date from 1 January 2008 to 31 December 2013 the 108 balance or reduced 108 balance is reduced to nil pursuant to section 47; or
- (c) the company has exercised an irrevocable option under section 50.

(2) Where a company—

- (a) is not entitled to deduct tax under this section from a dividend paid to any of its shareholders; and
- (b) issues to any of its shareholders certificates which purport to show that an amount of tax has been deducted under this Part from dividend paid to the shareholders,

an amount equal to what would have been the total amount of tax deducted or deemed to have been deducted, if sections 40, 41 and 42 had been applicable, from the gross amount of the dividend (ascertained in accordance with section 42) paid to all its shareholders at the time that the dividend was paid to those shareholders shall be an amount due from the company to the Government and that amount shall be increased by an amount not exceeding the amount due; and the Director General shall serve on the company a written requisition in the prescribed form calling upon the company to pay the amount due and the increase on the amount due, and that amount shall be a debt due from the company to the Government and that debt shall be payable forthwith to the Director General upon the service of the requisition:

Provided that where the company satisfies the Director General that such certificate has been issued only to particular shareholders specified by the company, that debt shall be reduced to an amount ascertained by reference to the certificates issued to those particular shareholders.

(3) Where a company is not entitled to deduct tax on any dividend paid pursuant to subsection (1), the provisions of the principal Act shall apply to such dividend.

(4) Any debt due under this section shall be recoverable as if it were tax due and payable under the principal Act.

Option to disregard balance

50. Notwithstanding that a company has a 108 balance or revised 108 balance at any time during the period from 1 January 2008 to 31 December 2013, the company may in that period exercise an irrevocable option in the prescribed form not to deduct tax under section 40 and where such option is made, the company shall not be entitled to deduct tax under that section upon the exercise of the option.

Set-off under section 110

51. (1) Section 110 of the principal Act, prior to the amendment of that section under this Act, shall apply to a person other than an offshore company (excluding chargeable offshore company) in respect of any tax deducted under this Part:

Provided that that person shall not be entitled to any set-off under that section if—

- (a) in the case where section 40 applies, dividend is paid to that person during the period from the date that person acquires the shares from which such dividend is paid to the date of the disposal of such shares and that period is less than 90 days; or
- (b) the dividend paid is not in respect of dividend derived from ordinary shareholding.

(2) For the purpose of this section—

- (a) any reference in subsection 110(1) of the principal Act prior to the amendment of that section under this Act to “tax which is deducted from any dividend under section 108” shall be construed as references to “tax which is deducted from any dividend under section 40 or 41 of this Part”;

- (b) any reference in subsection 110(13) of the principal Act prior to the amendment of that section under this Act to “tax has been deducted under subsection 108(1) or deemed to have been deducted under subsection 108(2)” and “excess referred in subsection 108(6) or (9)” shall be construed as references to “tax which is deducted or would be deducted under section 40 or 41 of this Act” and “excess in section 48 of this Act” respectively; and
- (c) acquisition of shares referred to in paragraph (1)(a) shall not include acquisition of shares in the company listed on Bursa Malaysia.

108 balance or revised 108 balance after 31 December 2013

52. Notwithstanding any other provision of this Part, if the 108 balance or revised 108 balance of the company has not been utilized in part or in full as at 31 December 2013, such balance shall be disregarded.

Statutory income deemed total income

53. Where for the basis period for a year of assessment, gross income of a company is from a source consisting of dividend paid to that company under this Part, the statutory income of that company for that year in respect of that source is deemed to be the total income or part of the total income of that company for that year.

Debt discharge

54. A payment made in discharge or partial discharge of debt of the kind mentioned in sections 48 and 49 shall be regarded as a payment of tax for the purpose of section 111 of the principal Act.

Power to remit

55. Notwithstanding the foregoing sections of this Part, where—

(a) the excess is increased by an amount under section 48;
or

(b) the amount due is increased by an amount under section 49,

the Director General may in his discretion, for any good cause shown, remit the whole or any part of that amount and, where the amount remitted has been paid, the Director General shall repay the same.

Tax shall be deducted

56. Every company which has a 108 balance or revised 108 balance and has paid dividend at any time during the period from 1 January 2008 to 31 December 2013 shall deduct tax from the dividend in accordance with section 40 unless the company has exercised an irrevocable option under section 50.

Non-applicability

57. This Part shall not apply in respect of any dividend or part thereof which is debited to the exempt account or in respect of any dividend or part thereof which is exempt under subparagraph 5(6) of Schedule 7A of the principal Act.

CHAPTER III**AMENDMENTS TO THE STAMP ACT 1949****Commencement of amendments to the Stamp Act 1949**

58. This Chapter comes into operation on 1 January 2008.

Amendment of section 2

59. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in section 2 by substituting for the definition of “duly stamped” the following definition:

“ “duly stamped”, as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount or the amount of initial duty paid under paragraph 37(1)(c) and that such stamp has been affixed or used in accordance with the law for the time being in force:

Provided that an official receipt for the proper amount or amount of initial duty may be affixed to any instrument in lieu of the stamp, and the instrument shall then be deemed to be duly stamped;”.

New sections 36A and 36B

60. The principal Act is amended by inserting after section 36 the following sections:

“Initial duty

36A. (1) Notwithstanding section 36 but subject to section 36B, the Collector may, on an application made by any person in respect of an instrument for the transfer of an immovable property, assess the initial duty for which the instrument is chargeable.

(2) The application made under subsection (1) shall contain particulars or evidence deemed necessary to prove the facts affecting the liability of the instrument to duty and any valuation report, prepared by a person privately practising as a valuer, on the market value of the immovable property shall for the purposes of this section be sufficient evidence for the Collector to make an assessment on the initial duty for which the instrument is chargeable.

(3) For the purposes of this section, a person shall—

(a) pay a fee of ten ringgit; and

- (b) furnish in a form of a bank guarantee payable to the Collector, as security for payment of further duty chargeable on the instrument, if any, valid for a period of not less than six months, of which the value of the bank guarantee shall be determined in accordance with the following formula:

$$A - B$$

where A is the duty chargeable on such instrument based on the value of immoveable property where the value is ascertained in accordance with the following formula:

$$Y \times \frac{100}{65}$$

where Y is the market value of such property as submitted by that person;

B is the amount of duty chargeable on such instrument based on the market value submitted by that person.

Additional duty

36B. (1) Where section 36A applies and it appears to the Collector that based on the market value of the property as ascertained by a valuer employed by the Government, the proper amount of duty chargeable on the instrument is higher than the initial duty paid, he may within three months after the payment of the initial duty make an additional assessment on a person liable to pay such duty in the additional amount of duty chargeable.

(2) As soon as may be after the additional assessment has been made under subsection (1) the Collector shall cause a notice of additional assessment to be served on the person liable to pay duty in respect of such assessment.

(3) A notice of additional assessment shall be in appropriate form and shall indicate in addition to any other material included therein—

- (a) the proper amount of duty chargeable, the initial duty paid and amount of additional duty chargeable on the instrument;
- (b) the place at which payment is to be made;
- (c) the increased sum imposed under subsection (6); and
- (d) any right of appeal which may exist under this Act.

(4) The duty chargeable under an assessment shall be due and payable on the service of the notice of additional assessment to the person liable to pay the duty.

(5) Where duty due and payable under subsection (4) has not been paid within thirty days after the service of the notice of additional assessment—

- (a) the Collector shall call upon the bank guarantee furnished to satisfy that amount of duty payable; and
- (b) if the bank guarantee amount is insufficient to satisfy such amount, the remaining duty unpaid, shall without any further notice being served, be increased by an amount of ten per cent of such duty so unpaid.

(6) Where the proper amount of duty chargeable under subsection (1) exceeds the total sum of initial duty paid and bank guarantee furnished, by an amount of more than thirty per cent of that proper amount of duty chargeable, the difference between that amount and thirty per cent of the proper duty chargeable shall be increased by a sum equal to ten per cent of the amount of that difference.

(7) The amount of duty unpaid and the increased amount under paragraph (5)(b), and increased sum under subsection (6) shall be recoverable as a debt due to the Government.”.

Amendment of section 37

61. Section 37 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) When an instrument brought to the Collector under section 36 or 36A is in his opinion one of a description chargeable with duty, and—

- (a) the Collector determined that it is already fully stamped;
- (b) the duty assessed by the Collector under such section, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so assessed, has been paid; or

- (c) the initial duty assessed by the Collector has been paid,

the Collector shall certify by endorsement on such instrument that the full duty, or initial duty, stating the amount, with which it is chargeable, has been paid.”.

Amendment of section 38

62. Section 38 of the principal Act is amended by inserting after the word “36” the word “, 36A”.

Amendment of section 38A

63. Section 38A of the principal Act is amended—

- (a) by substituting for subsection (1) the following subsection:

“(1) Any person who is dissatisfied with an assessment or additional assessment of the Collector under section 36 or 36A may, by written notice (referred to in this Act as “notice of objection”), object to the assessment or additional assessment and apply to the Collector to review the assessment or additional assessment.”;

- (b) in subsection (2), by inserting after the word “assessment” wherever appearing the words “or additional assessment”;
- (c) in subsection (4), by inserting after the word “assessment” the words “or additional assessment”;
- (d) by substituting for subsection (6) the following subsection:

“(6) Where, on review, it appears to the Collector that the amount of duty originally or additionally assessed is excessive, he may cancel the original or additional assessment and make such other assessment in substitution of the original or additional assessment and shall serve on the person a notice of substituted assessment.”; and
- (e) in subsection (8), by inserting after the words “to an assessment” the words “or additional assessment”.

Amendment of section 39

64. Section 39 of the principal Act is amended—

- (a) in subsection (4), by inserting after the words “that the assessment” the words “or additional assessment”; and
- (b) in subsection (5), by inserting after the word “assessment” the words “or additional assessment”.

CHAPTER IV

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

65. Section 66 has effect for the year of assessment 2009 and subsequent years of assessment.

Amendment of section 16

66. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 16—

(a) in subsection (7A), by inserting after the word “equipment” the words “, or on the alteration or renovation of premises”; and

(b) by inserting after subsection (7B) the following subsection:

“(7BA) An amount equal to the expenditure incurred by a chargeable person on the provision of infrastructure in relation to his business which is available for public use, subject to the prior approval of the Minister:

Provided that where a deduction has been made under this paragraph, no further deduction of the same amount shall be allowed under subsection 22(1).”.

Amendment of section 22

67. Subsection 22(1A) of the principal Act is amended by substituting for the words “Department of Museums and Antiquities” the words “Department of Museums Malaysia”.

Amendment of section 33

68. Section 33 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “books and other documents” the words “books, documents, objects, articles, materials and things”; and

(ii) by substituting for the words “books or documents” the words “books, documents, objects, articles, materials and things”; and

(b) in subsection (2), by substituting for the words “books or documents” the words “books, documents, objects, articles, materials and things”.

Amendment of Third Schedule

69. The Third Schedule to the principal Act is amended—

(a) by substituting for subparagraph 1(3) the following subparagraph:

“(3) Two or more hearing of appeals may be heard concurrently at any one time, and if the Chairman of the Special Commissioners—

(a) is presiding at the hearing of one of the appeals, the Special Commissioners present at the hearing of the other appeals; or

(b) has not been appointed or is not present at the hearing of any of the appeals, the Special Commissioners present at the hearing of the appeal,

shall choose one of their number (who shall be a person with experience of the kind mentioned in subparagraph (1)) to preside at the hearing of the other appeals or appeals, as the case may be.”;

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

“**1A.** If any one of the Special Commissioners who has commenced hearing any of the appeals is unable to complete the hearing due to expiration of the term of his appointment or other reason, the hearing may, with the consent of both parties, be heard afresh or continued by the remaining Special Commissioners with another Special Commissioner.”;

(c) in subparagraph 15(b), by inserting after the word “party” the words “or may dismiss the appeal if the defaulting party is the appellant”; and

(d) by inserting after paragraph 21 the following paragraph:

“**21A.** For the purpose of paragraph 21, “deciding order” includes an order where the Special Commissioners dismiss an appeal under paragraph 15.”.

CHAPTER V**AMENDMENTS TO THE LABUAN OFFSHORE BUSINESS
ACTIVITY TAX ACT 1990****Commencement of amendments to the Labuan Offshore
Business Activity Tax Act 1990**

70. This Chapter has effect for the year of assessment 2009 and subsequent years of assessment.

Amendment of section 2

71. The Labuan Offshore Business Activity Tax Act 1990, which is referred to as the “principal Act” in this Chapter, is amended in subsection 2(3)—

- (a) by deleting the word “or” at the end of paragraph (a);
- (b) by substituting for the full stop at the end of paragraph (c) the word “; or”; and
- (c) by inserting after paragraph (c) the following paragraph:
 - “(d) an offshore business activity carried on by an offshore company which makes an election under section 3A.”.

New section 3A

72. The principal Act is amended by inserting after section 3 the following section:

“Offshore business activity chargeable to Income Tax Act 1967 upon election

3A. (1) Notwithstanding any other provision of this Act, an offshore company carrying on an offshore business activity may make an irrevocable election in the prescribed form that any profit of the offshore company for any basis period for a year of assessment and subsequent basis period to be charged to tax in accordance with the Income Tax Act 1967 in respect of that offshore business activity.

(2) The election referred to in subsection (1) shall be made and furnished to the Director General three months after the beginning of the basis period for a year of assessment:

Provided that for the basis period ending on a day in the year of assessment 2008, the election under this section may be made and furnished before 1 August 2008.

LAWS OF MALAYSIA

Act 683

FINANCE ACT 2007

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 719	Finance Act 2011	Year of assessment 2008 and subsequent years of assessment

LAWS OF MALAYSIA**Act 683****FINANCE ACT 2007****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
48	Act 719	Year of assessment 2008 and subsequent years of assessment
49	Act 719	Year of assessment 2008 and subsequent years of assessment
