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LAWS OF MALAYSIA**Act 693****FINANCE ACT 2009**

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.

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ENACTED by the Parliament of Malaysia as follows:

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

1. This Act may be cited as the Finance Act 2009.

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) Paragraph 45(a) has effect for the year of assessment 2008 and subsequent years of assessment.

(2) Sections 4, 6, 7, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 29, 38, paragraphs 42(a) and (b), paragraphs 43(b), (c), (d), (e) and (f), paragraph 45(b), paragraphs 46(a), (c), (d), (f) and (g) and subparagraphs 46(e)(i) and (ii) have effect for the year of assessment 2009 and subsequent years of assessment.

(3) Sections 8, 9, 26, 28, 30, 31, 33, 34, 35, 36, paragraph 43(a), section 44, paragraph 46(b) and sections 47, 48, 49 and 50 come into operation on the coming into operation of this Act.

(4) Sections 5, 10, 15, 25, 37, 39, 40 and 41 and paragraph 42(d) come into operation on 1 January 2009.

(5) Paragraph 42(c) has effect from 1 January 2009 to 31 December 2011.

(6) Subparagraph 46(e)(iii) has effect for the year of assessment 2009 and 2010.

(7) Section 32 has effect for the year of assessment 2010 and subsequent years of assessment.

Amendment of section 2

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 2 by inserting after the definition of “aggregate income” the following definition:

‘ “amended return” means an amended return made in accordance with section 77B;’.

Amendment of section 6

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

- (a) in paragraph (i), by substituting for the words “only for a period of five years commencing from the year of assessment 2007” the words “, in respect of subparagraphs (a) and (c) of that Part for a period of three years from the year of assessment 2009 and in respect of subparagraph (b) of that Part for a period of five years commencing from the year of assessment 2007”;
- (b) by substituting for the full stop at the end of paragraph (j) a semicolon; and
- (c) by inserting after paragraph (j) the following paragraph:
 - “(k) subject to section 109F but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a non-resident person charged under paragraph 4(f) at the appropriate rate as specified under Part XIII of Schedule 1.”.

Amendment of section 6A

6. Subsection 6A(2) of the principal Act is amended by substituting for the words “three hundred and fifty” wherever they appear the words “four hundred”.

Amendment of section 7

7. Section 7 of the principal Act is amended by inserting after subsection (1A) the following subsection:

“(1B) Notwithstanding subsection (1), where a person who is a citizen and—

- (a) is employed in the public services or service of a statutory authority; and
- (b) is not in Malaysia at any day in the basis year for that particular year of assessment by reason of—
 - (i) having and exercising his employment outside Malaysia; or
 - (ii) attending any course of study in any institution or professional body outside Malaysia which is fully-sponsored by the employer,

he is deemed to be a resident for the basis year for that particular year of assessment and for any subsequent basis years when he is not in Malaysia.”.

Amendment of section 15

8. Paragraph 15(a) of the principal Act is amended by substituting for the words “or a State Government” the words “, a State Government or a local authority”.

Amendment of section 15A

9. Subparagraph 15A(i) of the principal Act is amended by substituting for the words “or a State Government” the words “, a State Government or a local authority”.

New section 15B

10. The principal Act is amended by inserting after section 15A the following section:

“Derivation of gains or profits in certain cases

15B. Gross income in respect of gains or profits to which paragraph 4(f) applies shall be deemed to be derived from Malaysia—

- (a) if responsibility for the payment of such gains or profits lies with the Government, a State Government or a local authority;
- (b) if responsibility for the payment of such gains or profits lies with a person who is a resident for that basis year; or
- (c) if the payment of such gains or profits is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.”.

Amendment of section 25

11. Section 25 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “subsection (1A)” the words “or (2A)”;
- (b) in subsection (2), by substituting for the words “section 3 and subsection (5)” the words “section 3 and subsections (2A) and (5)”;
- (c) by inserting after subsection (2) the following subsection:

“(2A) Where gross income from an employment in relation to director’s fee or bonus is receivable in respect of

the whole or part of the relevant period, that gross income shall, when received in any relevant period, be treated as the gross income of the relevant person for the second mentioned relevant period.”; and

- (d) in subsection (3), by substituting for the words “or (2)” the words “, (2) or (2A)”.

Amendment of section 32

12. Section 32 of the principal Act is amended—

- (a) in subparagraph (1A)(b)(i), by substituting for the words “Bursa Malaysia” the words “any stock exchange”; and
- (b) by inserting after subsection (3) the following subsection:

“(4) For the purposes of this section, the amount of gross income from the employment mentioned in paragraphs (2)(a), (b) and (3)(c) shall not include the amount of gross income in respect of any right to acquire shares in a company ascertained under subsection (1A).”.

Amendment of section 34

13. Paragraph 34(6)(h) of the principal Act is amended by inserting after the words “housing,” the words “conservation or preservation of environment, enhancement of income of the poor,”.

Amendment of section 34A

14. Section 34A of the principal Act is amended—

- (a) in subsection (1)—

- (i) by substituting for the words “research—” the words “research approved by the Minister.”; and
- (ii) by deleting paragraphs (a) and (b);
- (b) in subsection (2), by substituting for the words “paragraph (1)(a)” the words “subsection (1)”;
- (c) by deleting subsection (3).

Amendment of section 39

15. Paragraph 39(1)(j) of the principal Act is amended by inserting after the words “section 109B” the words “or 109F”.

Amendment of section 44

16. Section 44 of the principal Act is amended—

- (a) in subsection (6), by substituting for the proviso the following proviso:

“Provided that the amount to be deducted from the aggregate income for the relevant year in respect of any gift of money made to any institution or organization approved for the purposes of this section by the Director General shall not exceed—

- (a) in the case of a person other than a company, seven per cent of the aggregate income of that person in the relevant year; or
- (b) in the case of a company, ten per cent of the aggregate income of that company in the relevant year.”;

- (b) in subsection (11B), by substituting for the proviso the following proviso:

“Provided that the amount to be deducted pursuant to this subsection shall not exceed—

- (a) in the case of a person other than a company, the difference between the amount of seven percent of the aggregate income of that person in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11c) for that relevant year; or
 - (b) in the case of a company, the difference between the amount of ten per cent of the aggregate income of that company in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11c) for that relevant year.”; and
- (c) in subsection (11c), by substituting for the proviso the following proviso:

“Provided that the amount to be deducted pursuant to this subsection shall not exceed—

- (a) in the case of a person other than a company, the difference between the amount of seven percent of the aggregate income of that person in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11B) for that relevant year; or
- (b) in the case of a company, the difference between the amount of ten per cent of the aggregate income of that company in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11B) for that relevant year.”.

Amendment of section 44A

17. Subsection 44A(1) of the principal Act is amended by substituting for the words “fifty per cent” the words “seventy per cent”.

Amendment of section 53

18. Section 53 of the principal Act is amended—

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

“(3) In this section, “trade association” means any association of persons, of partnerships or of persons and partnerships formed with the main object of—

(a) safeguarding or promoting the business of its members; or

(b) developing and advancing the profession of its members.”; and

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

“(4) Notwithstanding any other provisions of this Act, a trade association shall, for the purposes of this section, be deemed to be a body of persons and not a partnership.”.

New section 53A

19. The principal Act is amended by inserting after section 53 the following section:

“Club, association or similar institution

53A. (1) This section shall apply to a body of persons which carry on a club, association or similar institution other than a trade association to which section 53 applies.

(2) Any income of the body of persons from transaction with members and any outgoing or expenses or capital allowances attributable to such income shall be disregarded for the purpose of this Act.

(3) The gross income of a body of persons for the basis period for the year of assessment shall include the amount of gross income for that period from the investment made out of any of the fund of the body of persons.

(4) The body of persons shall maintain a separate account in respect of income derived from its members and non-members.

(5) Where the amount of outgoing or expenses to be allowed or capital allowances to be made to the body of persons are common to income from transaction with members and non-members, the amount of outgoing or expenses that shall be allowed or capital allowances that shall be made to that body of persons in respect of income relating to transaction with non-members shall be an amount as determined by applying the method as may be prescribed under this Act.

(6) In this section, “members”, in relation to a body of persons, means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.”.

Amendment of section 54A

20. Section 54A of the principal Act is amended—

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

“(1A) Where subsection (1) applies, a person who is entitled to an allowance under Schedule 3 and who has not made any claim under paragraph 77 of that Schedule in respect of such allowance, the amount of such allowance shall be deemed to have been made to him for the purpose of ascertaining his statutory income under subsection (1).”; and

- (b) in paragraph (2)(a), by inserting after the words “capital allowances claimed” the words “or deemed to have been made under subsection (1A)”.

New section 77B

21. The principal Act is amended by inserting after section 77A the following section:

“Amendment of return

77B. (1) Where for a year of assessment a person has furnished a return in accordance with subsection 77(1) or 77A(1), that person may make amendment to such return in an amended return as prescribed by the Director General in respect of the amount of tax or additional tax payable by that person on the chargeable income or on the amount of tax which has been or would have been wrongly repaid to him.

(2) An amended return under subsection (1) shall only be made after the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1), but not later than six months from that date.

(3) For the purposes of this section, the amended return shall—

- (a) specify the amount or additional amount of chargeable income and the amount of tax or additional tax payable on that chargeable income;
- (b) specify the amount of tax payable on the tax which has or would have been wrongly repaid to him;
- (c) specify the increased sum ascertained in accordance with subsection (4); or
- (d) contain such particulars as may be required by the Director General.

(4) The tax or additional tax payable under subsection (1) shall—

- (a) if the amended return is furnished within a period of sixty days after the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1), be increased by a sum equal to ten per cent of the amount of such tax or additional tax; or
- (b) if the amended return is furnished after the period of sixty days from the due date for the furnishing of the return in accordance with subsection 77(1) or 77A(1) but not later than six months from that date, be increased by a sum which shall be determined in accordance with the following formula:

$$B + [(A + B) \times 5\%]$$

where A is the amount of such tax payable or additional tax payable; and

B is ten per cent of the amount of such tax payable or additional tax payable,

and the amount of the increased sum shall constitute part of the amount of tax or additional tax payable under subsection (1).

(5) The amendment under subsection (1) shall only be made once.

(6) Where—

(a) a return for a year of assessment has been furnished in accordance with subsection 77(1) or 77A(1); and

(b) the Director General has made an assessment for that year of assessment under section 91,

no amendment shall be allowed under this section.”.

New section 91A

22. The principal Act is amended by inserting after section 91 the following section:

“Deemed assessment on the amended return

91A. (1) Where a person has furnished an amended return in accordance with section 77B for a year of assessment, the Director General shall be deemed to have made, on the day on which the amended return is furnished, an assessment or additional assessment in respect of that person—

(a) in the amount of tax or additional tax payable on the chargeable income; or

(b) in the amount of tax which has been or would have been wrongly repaid,

the tax or additional tax and the chargeable income being the respective amounts as specified in the amended return.

(2) For the purpose of this Act, where the Director General is deemed to have made an assessment or additional assessment under subsection (1)—

- (a) the amended return referred to in that subsection shall be deemed to be a notice of assessment or additional assessment; and
- (b) the deemed notice of assessment or additional assessment shall be deemed to have been served on the person on the day on which the Director General is deemed to have made the assessment or additional assessment.”.

Amendment of section 93

23. Section 93 of the principal Act is amended by substituting for the words “subsection 90(1)” the words “subsections 90(1) and 91A(1)”.

Amendment of section 96

24. Subsection 96(1) of the principal Act is amended by substituting for the words “subsection 90(1)” the words “subsections 90(1) and 91A(1)”.

New section 97A

25. The principal Act is amended by inserting after section 97 the following section:

“Notification of non-chargeability

97A. (1) Where in ascertaining the chargeable income of a person, it appears to the Director General that no assessment shall be made in respect of that person for any year of assessment by reason of no adjusted income, statutory income,

aggregate income or total income, he may notify that person in writing that no assessment shall be made for that year of assessment and the computation with regard to it.

(2) Where a person is dissatisfied with the notification made by the Director General under subsection (1), he may within thirty days from the date of being so notified, appeal to the Special Commissioners as if the notification were a notice of assessment and the provisions of this Act relating to appeals shall apply accordingly with such necessary modifications.

(3) If no notice of appeal against a notification made by the Director General under subsection (1) has been given within the time specified under that subsection or any extended period thereof, the notification shall be final and conclusive for the purposes of this Act.

(4) Nothing in this section shall prejudice the exercise of any power conferred on the Director General by section 91.”.

Amendment of section 98

26. Subsection 98(3) of the principal Act is amended by substituting for the words “one of those persons to be the Chairman” the words “from amongst those persons a Chairman and such number of Deputy Chairman”.

Amendment of section 103

27. Section 103 of the principal Act is amended—

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

“(1A) Where an assessment or additional assessment has been made under section 91A, the tax or additional tax payable under the assessment shall be due and payable on the day the amended return is furnished

whether or not that person appeals against the assessment or additional assessment:

Provided that where the amended return is furnished within a period of sixty days after the due date and the amount of tax due and payable has not been paid within the period of sixty days from the due date, so much of the tax as is unpaid upon the expiration of that period shall without any further notice being served be further increased by a sum equal to five per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.”; and

- (b) in subsection (9), by inserting after the words “sum under subsection” the words “(1A),”.

Amendment of section 104

28. Section 104 of the principal Act is amended—

- (a) in paragraph (1)(b), by substituting for the words “103(3), (4), (5), (6), (7) or (8)” the words “103(1A), (3), (4), (5), (6), (7) or (8), or subsection 107B(4) or 107C(10)”;
- (b) in paragraph (1)(c), by substituting for the words “or 109B(2),” the words “, 109B(2) or 109F(2),”; and
- (c) in subsection (6)—
- (i) by substituting for the full stop at the end of the definition of “immigration officer” a semicolon; and
- (ii) by inserting after the definition of “immigration officer” the following definition:

““person” includes any person who is a director within the meaning of section 75A.”.

Amendment of section 106

29. Subsection 106(3) of the principal Act is amended by substituting for the words “subsection 103(3)” the words “subsection 103(1A), (3)”.

Amendment of section 107A

30. Section 107A of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

Amendment of section 107B

31. Section 107B of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) Notwithstanding the foregoing subsections, where the amount of instalments unpaid or the amount of the difference in tax is increased by a sum under subsection (3) or (4), as the case may be, the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

Amendment of section 107C

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

- (a) in subsection (4A), by substituting for the words “Where a company” the words “Subject to subsections (4B) and (4C), where a company”;

- (b) by inserting after subsection (4A) the following subsections:

“(4B) The provision of subsection (4A) shall not apply to a company referred to in that subsection if more than—

- (a) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
- (b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or
- (c) fifty per cent of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

(4C) For the purpose of subsection (4B), “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.”;

- (c) in subsection (8), by inserting after the word “(7)” the words “but subject to subsection (8A)”; and
- (d) by inserting after subsection (8) the following subsection:

“(8A) Where the Director General directs a company to make payment by instalments under subsection (8) before the sixth month of the basis period for a year of assessment of that company, the total amount of that instalments shall be deemed for the purpose of this section to be the estimate of tax payable by that company for that year of assessment:

Provided that, subject to any revision under subsection (7), that instalments shall be payable in accordance with subsections (8) and (9).

(8B) Where subsection (8A) applies and for a year of assessment, a company has furnished a revised estimate under subsection (7), reference to the amount of instalments which is payable in subsection (7) shall be construed as reference to the amount of instalments which is payable under subsection (8) prior to the revised estimate.”.

Amendment of section 109

33. Section 109 of the principal Act is amended—

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

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

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

“(3A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

Amendment of section 109B

34. Section 109B of the principal Act is amended—

- (a) in subsection (1), by substituting for the proviso to that subsection the following proviso:

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

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

“(3A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

Amendment of section 109D

35. Section 109D of the principal Act is amended—

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

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

- (b) by inserting after subsection (4) the following subsection:

“(4A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (2) is increased by a sum under subsection (3), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

Amendment of section 109E

36. Section 109E of the principal Act is amended—

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

“(3) The Director General may in relation to subsection (2) under special circumstances allow extension of time for the amount of tax deducted to be paid over.”; and

(b) by inserting after subsection (6) the following subsection:

“(7) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (2) is increased by a sum under subsection (4), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.”.

New section 109F

37. The principal Act is amended by inserting after section 109E the following section:

“Deduction of tax from gains or profits in certain cases derived from Malaysia

109F. (1) Where any person (in this section referred to as “the payer”) is liable to make payments to a non-resident in relation to any gains or profits falling under paragraph 4(f) which is derived from Malaysia, he shall upon paying or crediting such payments deduct therefrom tax at the rate applicable to such payments, and (whether or not that tax is so deducted) shall within one month after paying or crediting such payments 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.

(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be increased by a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

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

- (a) the Director General shall, in the manner provided by section 110, apply that amount towards payment of the tax charged on the person to whom the payer was liable to pay the payments to which the amount relates; and
- (b) if the payer has not deducted that amount in paying the payment under subsection (1) with respect to which the amount relates, he may recover that amount from that person as a debt due to the payer.

(4) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

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

Deletion of section 130

38. The principal Act is amended by deleting section 130.

New section 138c

39. The principal Act is amended by inserting after section 138B the following section:

“Advance Pricing Arrangement

138c. (1) Subject to this section and any rules prescribed under this Act, on the application made to the Director General by any person who carries out a cross border transaction with an associated person—

- (a) the Director General may enter into an advance pricing arrangement with that person; or
- (b) in the case where section 132 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) persons one of whom has control over the other;
- (b) individuals who are relatives of each other; or

(c) persons both of whom are controlled by some other person.

(4) In this section, “relative” and “transaction” have the same meanings assigned to them under subsection 140(8).”.

New section 140A

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

“Power to substitute the price and disallowance of interest on certain transactions

140A. (1) This section shall apply notwithstanding section 140 and subject to any rules prescribed under this Act.

(2) Subject to subsections (3) and (4), where a person in the basis period for a year of assessment enters into a transaction with an associated person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that person shall determine and apply the arm’s length price for such acquisition or supply.

(3) Where the Director General has reason to believe that any property or services referred to in subsection (2) is acquired or supplied at a price which is either less than or greater than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm’s length, he may in determination of the gross income, adjusted income or adjusted loss, statutory income, total income or chargeable income of the person, substitute the price in respect of the transaction to reflect an arm’s length price for the transaction.

(4) Where the Director General, having regard to the circumstances of the case, is of the opinion that in the basis period for a year of assessment the value or aggregate of all

financial assistance granted by a person to an associated person who is a resident, is excessive in relation to the fixed capital of such person, any interest, finance charge, other consideration payable for or losses suffered in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive, be disallowed as a deduction for the purposes of this Act.

(5) The transactions or the financial assistance referred to in subsection (2) or (4) respectively, shall be construed as a transaction or financial assistance between—

- (a) persons one of whom has control over the other;
- (b) individuals who are relatives of each other; or
- (c) persons both of whom are controlled by some other person.

(6) In this section, “relative” and “transaction” have the same meanings assigned to them under subsection 140(8).”.

Amendment of section 154

41. Subsection 154(1) of the principal Act is amended—

- (a) in paragraph (eb), by inserting after the words “or 138B” the words “, or to any arrangement under section 138C”; and
- (b) by inserting after paragraph (ec) the following paragraph:

“(ed) implementing and facilitating the operation of section 140A;”.

Amendment of Schedule 1**42.** Schedule 1 to the principal Act is amended—

(a) in Part 1—

(i) by substituting for paragraph 1 the following paragraph:

“1. Except where paragraphs 1A, 2, 2A and 3 provide otherwise, income tax shall be charged for a year of assessment upon the chargeable income of every person at the following rates:

Chargeable Income	RM	Rate of Income Tax
For every ringgit of the first	2,500	0 per cent
For every ringgit of the next	2,500	1 per cent
For every ringgit of the next	15,000	3 per cent
For every ringgit of the next	15,000	7 per cent
For every ringgit of the next	15,000	12 per cent
For every ringgit of the next	20,000	19 per cent
For every ringgit of the next	30,000	24 per cent
For every ringgit exceeding	100,000	27 per cent”;

(ii) in paragraph 1A, by substituting for the words “28 per cent” the words “27 per cent”;

(iii) in paragraph 2A, by substituting for the words “paragraph 3” the words “paragraphs 2B, 2C and 3”;and

- (iv) by inserting after paragraph 2A the following paragraphs:

“**2B.** The provisions of paragraph 2A shall not apply to a company referred to in that paragraph if more than—

- (a) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by a related company;
- (b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the first mentioned company; or
- (c) fifty per cent of the paid up capital in respect of ordinary shares of the first mentioned company and the related company is directly or indirectly owned by another company.

2c. For the purpose of paragraph 2B, “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.”;

- (b) in Part IV, in column “Rate of income tax”—

- (i) by substituting for the words “3 per cent” the words “2 per cent”; and
- (ii) by substituting for the words “28 per cent” the words “27 per cent”;

- (c) in Part X—

- (i) in subparagraph 1(a), by substituting for the words “15%” the words “10%”; and
- (ii) in subparagraph 1(c), by substituting for the words “20%” the words “10%”; and

- (d) by inserting after Part XII the following Part:

PART XIII

Notwithstanding Parts I and II but subject to Parts X, XI and XII, income tax shall be charged on the income of a non-resident person consisting of gains or profits falling under paragraph 4(f) which is derived from Malaysia at the rate of 10% of gross.”.

Amendment of Schedule 3**43. Schedule 3 to the principal Act is amended—****(a) by inserting after paragraph 2c the following paragraph:**

“**2d.** For the purpose of paragraph 1, the capital expenditure incurred by a person on the provision of machinery or plant shall not include any amount paid to a non-resident person in consideration of services rendered in connection with the installation or operation of that machinery or plant, if tax has not been deducted therefrom and paid to the Director General under paragraph 109B(1)(a) of the Act:

Provided that this paragraph shall not apply if the person has paid the amount referred to in subsection 109B(2).”;

(b) by inserting after subparagraph 19A(2) the following subparagraphs:

“(3) The proviso to subparagraph (1) shall not apply to a company resident in Malaysia which has a paid up capital in respect of ordinary shares of two million and five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment.

(4) A company referred to in subparagraph (3) shall not include a company where more than—

- (a) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company is directly or indirectly owned by a related company;
- (b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the second mentioned company; or

- (c) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company and the related company is directly or indirectly owned by another company.

(5) For the purpose of subparagraph (4), “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.”;

- (c) in paragraph 36—

- (i) by substituting for the full stop at the end of the paragraph a colon; and
 - (ii) by inserting the following proviso:

“Provided that this paragraph shall not apply in respect of any amount incurred under paragraph 67c.”;

- (d) in the title before paragraph 37B, by deleting the words “*or training*”;

- (e) in paragraph 37B—

- (i) by deleting the words “, industrial training or training”;
 - (ii) by substituting for the colon a full stop;
 - (iii) by deleting the proviso;
 - (iv) in subparagraph (a), by inserting after the semi colon the word “or”; and
 - (v) by deleting subparagraphs (b) and (d); and

- (f) by inserting after paragraph 67B the following paragraph:

“**67c.** (1) For the purpose of this Schedule, where—

- (a) a person has incurred qualifying plant expenditure in respect of an asset for the purposes of a business of his and in the basis period for a year of assessment the asset is disposed of; and
- (b) pursuant to any written law or agreement, that person is subsequently required to dismantle and remove the asset and restore the site on which the asset is located,

the residual expenditure under paragraph 68 of this Schedule shall be deemed to include any amount incurred for dismantling and removing the asset and restoring the site.

(2) Notwithstanding paragraph 61, in this paragraph “disposed of” means discarded, destroyed or ceased to be used for the purposes of the business.

(3) This paragraph shall not apply if the asset which has been dismantled and removed is subsequently used for any other business of that person or any other person.

(4) The amount incurred in subparagraph (1) shall not include any amount paid to a non-resident which are subject to section 109B, if tax has not been deducted therefrom and paid to the Director General under that section:

Provided that this paragraph shall not apply if the person has paid the amount referred to in subsection 109B(2).”.

Amendment of Schedule 5

44. Paragraph 1 of Schedule 5 to the principal Act is amended—

- (a) in subparagraph (2), by inserting after the word “Chairman” the words “or Deputy Chairman”;
- (b) by substituting for subparagraph (3) the following subparagraph:

“(3) Two or more hearing of appeals may be heard concurrently at any one time.”; and

- (c) by inserting after subparagraph (3) the following subparagraph:

“(4) If the Chairman or Deputy Chairman has not been appointed or is not present at the hearing 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.”.

Amendment of Schedule 6

45. Schedule 6 to the principal Act is amended—

- (a) in paragraph 25c—
- (i) by substituting for the words “or service excellence award” the words “, service excellence, innovation or productivity award”; and
 - (ii) by substituting for the words “one thousand ringgit” the words “two thousand ringgit”; and
- (b) in subparagraph 28(1), by substituting for the words “Without prejudice to the provisions of section 130, income of” the words “Income of”.

Amendment of Schedule 7A

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

- (a) by substituting for the words “twelve months” wherever they appear in paragraphs 1, 1A and 1C the words “thirty-six months”;
- (b) by substituting for paragraph 1B the following paragraph:
- “**1B.** (1) Where a company has incurred capital expenditure in respect of an asset for the purposes of a qualifying project and that asset is acquired by a person (in this paragraph referred to as “the acquirer”)

from that company or from any other person (in this paragraph referred to as “the disposer”) and at the time of the acquisition—

- (a) the disposer of the asset is a person over whom the acquirer of the asset has control;
- (b) the acquirer of the asset is a person over whom the disposer of the asset has control;
- (c) some other person has control directly or indirectly over the disposer and acquirer of the asset; or
- (d) the acquisition is effected in consequence of a scheme of reconstruction or amalgamation of companies,

this Schedule shall not apply to the acquirer in respect of the asset.

(2) In this paragraph—

“asset” means a factory, plant or machinery referred to in paragraph 1, or plant, machinery or building referred to in the definition of “capital expenditure” in paragraph 9;

“control”, in relation to a company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first mentioned company are conducted in accordance with the wishes of that person.”;

- (c) in paragraph 2A, by substituting for the words “two years” the words “five years”;
- (d) by substituting for subparagraph 7(b) the following subparagraph:
 - “(b) for the period prescribed under the relevant provisions of the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product for which the company has been granted approval for investment tax allowance under the relevant provisions of that Act;”;
- (e) in paragraph 8—

- (i) in subparagraph (a), by deleting the words “or processing”;
- (ii) by deleting subparagraph (b);
- (iii) by substituting for subparagraph (d) the following subparagraph:

“(d) a project undertaken by a person—

- (i) in transforming his business of rearing chicken and ducks from an opened house to a closed house system; or
- (ii) in expanding his existing business of rearing chicken and ducks in a closed house system,

as verified by the Minister responsible for agriculture and agro-based industry.”;

(f) in paragraph 9—

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

“ “manufacturing” means—

- (a) conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials;
- (b) assembly of parts into a piece of machinery or products; or
- (c) mixing of materials by a chemical reaction process including biochemical process that changes the structure of a molecule by the breaking of the intra molecular bonds or by altering the spatial arrangement of atom in the molecule,

but does not include—

- (aa) the installation of machinery or equipment for the purpose of construction;
- (bb) a simple packaging operations such as bottling, placing in boxes, bags and cases;
- (cc) a simple fixing;
- (dd) a simple mixing of any products;
- (ee) a simple assembly of parts;
- (ff) any activity to ensure the preservation of products in good condition during transportation and storage;
- (gg) any activity to facilitate shipment and transportation;
- (hh) any activity of packaging or presenting goods for sale; or
- (ii) any activity that may be prescribed by the Minister, notwithstanding the above interpretation;’;

(ii) by substituting for the full stop at the end of the definition of “operation” a semicolon; and

(iii) by inserting after the definition of “operation” the following definition:

‘ “simple” generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.’; and

(g) in paragraph 11, by substituting for the words “twelve months” wherever they appear the words “thirty-six months”.

PART II

SAVINGS AND TRANSITIONAL PROVISIONS

Application of this Part

47. (1) Sections 48, 49 and 50 shall be read together with and be in addition to the provision of sections 45, 46 and 51 of the Finance Act 2007 [*Act 683*] respectively.

(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.

Statement to Director General

48. (1) Notwithstanding that no dividend is paid by a company pursuant to subsection 40(1) of the Finance Act 2007 the company shall, within 7 months following the close of the accounting period which constitutes the basis period of the company for the 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 of the Finance Act 2007 or section 49 at the end of that basis period.

(2) The failure of a company to comply with subsection (1) shall be 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.

(4) Where in relation to a year of assessment 2008, 2009, 2010, 2011, 2012, 2013 or 2014 a company fails to render a statement in accordance with this section or section 45 of the Finance Act 2007 the Director General may compute the amount of excess referred to in section 48 of the Finance Act 2007 or section 49 and shall serve on the

company a written requisition in the prescribed form calling upon the company to pay an amount equal to that excess and an amount of an increase not exceeding the amount equal to that excess, and the amount equal to that excess and the increase on 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.

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

Amount in excess of 108 balance

49. (1) Where the amount of tax discharged, remitted or refunded under section 46 of the Finance Act 2007 exceeds the 108 balance or revised 108 balance, as the case may be, the excess shall be a debt due from the company to the Government and that debt shall be due and payable on the last day of the seventh month (in this section referred to as “due date”) from the date following the close of the accounting period of the company to which the tax is discharged, remitted or refunded.

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

(3) This section shall apply where no dividend is paid pursuant to section 40 of the Finance Act 2007.

(4) This section shall apply notwithstanding the company has exercised an irrevocable option under section 50 of the Finance Act 2007.

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

Set-off for tax deducted

50. A person is not entitled to a set-off in accordance with section 51 of the Finance Act 2007 if the dividend paid to that person is not paid in cash.

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

51. This Chapter comes into operation on 1 January 2009.

Amendment of section 2

52. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in section 2—

- (a) in the definition of “duly stamped”, by substituting for the proviso the following proviso:

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

- (b) by inserting after the definition of “small and medium enterprise” the following definition:

‘ “stamp certificate” means a certificate that is issued electronically in respect of any instrument chargeable with duty denoting the amount of duty paid in respect of that instrument;’.

Amendment of section 7

53. Section 7 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Subject to any rules made under paragraph 82(*b*), all duties with which any instruments are chargeable under this Act shall be paid, and payment shall be indicated on such instrument by—

- (*a*) means of an adhesive stamp;
- (*b*) affixing an official receipt to such instrument; or
- (*c*) attaching a stamp certificate to such instrument.”.

New section 11A

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

“Replica

11A. (1) Where a replicate of an instrument is presented to the Collector, the replicate of such instrument shall not be deemed to be duly stamped unless it can be shown to the satisfaction of the Collector that all the facts and circumstances affecting the liability of the original instrument to duty, and the amount of the duty chargeable thereon has been paid.

(2) For the purpose of subsection (1), the Collector shall indorse on the replicate of the instrument that full and proper duty with which the original is chargeable had been paid upon payment of a fee of one hundred ringgit for each replicate of an instrument.”.

Amendment of section 12

55. The principal Act is amended by substituting for section 12 the following section:

“**12.** The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor) shall not be deemed to be duly stamped unless—

- (a) it is stamped as an original instrument;
- (b) it appears by a certificate indorsed by the Collector on the duplicate or counterpart that full and proper duty has been paid on the original instrument; or
- (c) there is denoted on the stamp certificate issued for the duplicate or counterpart that payment of the stamp duty has been paid in respect of the original instrument.”.

Amendment of section 36

56. Section 36 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) All instruments chargeable with duty and executed by any person in Malaysia (except an instrument which by virtue of section 47 cannot be stamped after execution) shall be brought to the Collector and the Collector shall assess the duty, if any, with which in his judgment the instrument is chargeable.”.

Amendment of section 37

57. Section 37 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “is in his opinion one of a description chargeable with duty,”;
- (b) in subsection (2), by deleting the words “in his opinion”; and
- (c) by inserting after subsection (4) the following subsection:

“(5) This section shall only apply to instrument where indorsement is required to be made on that instrument pursuant to any written law.”.

Amendment of section 40

58. Section 40 of the principal Act is amended by substituting for the words “When the opinion of the Collector with respect to the amount of duty with which an instrument is chargeable has been required” the words “Where an instrument is brought to the Collector pursuant to subsection 36(1)”.

Amendment of section 48

59. The principal Act is amended by substituting for section 48 the following section:

“48. The payment of any penalty prescribed under section 43 or 47A shall be denoted on the instrument concerned—

- (a) by a stamp duly cancelled;
- (b) by means of an impressed stamp;
- (c) by affixing an official receipt to the instrument; or
- (d) by attaching a stamp certificate to the instrument, and shall be certified by the Collector.”.

New section 50A

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

“Error in assessment, etc.

50A. No assessment shall be affected by—

- (a) any erroneous or under assessment of the duty or penalty by the Collector; or
- (b) the failure to assess that duty or penalty by the Collector,

and the correct amount of duty or penalty due on the instrument shall be debts due to the Government and shall be recoverable by any of the ways and means in force for the time being for the recovery of debts due to the Government.”.

Amendment of section 57

61. Section 57 of the principal Act is amended—

- (a) in paragraph (f)—
 - (i) by substituting for the colon at the end of subparagraph (v) a semicolon; and
 - (ii) by inserting after subparagraph (v) the following subparagraph:
 - “(vi) in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed.”;
- and

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

“(aa) that the application for relief is made within two months from the date the instrument of transfer is rejected by the Registrar of Titles; or”.

Amendment of section 59A

62. Section 59A of the principal Act is amended by inserting after the words “official receipt” the words “or a stamp certificate”.

New sections 77A and 77B

63. The principal Act is amended by inserting after section 77 the following sections:

“Electronic medium

77A. (1) For the purposes of this Act, the Collector may by an electronic medium allow a registered person, without the need for the instrument to be presented to the Collector—

- (a) to obtain an assessment of stamp duty and any penalty, if any, on an instrument;
- (b) to pay stamp duty and any penalty, if any, on an instrument by electronic funds transfer or otherwise, in accordance with the assessment;
- (c) to obtain a stamp certificate in relation to the assessment; or
- (d) to obtain an indorsement of stamp duty in a case where section 37 applies.

(2) In this section, “registered person” means any person who applies to the Collector to register to use the electronic medium.

(3) All conditions and specifications relating to the use of electronic medium shall be determined by the Collector.

Electronic assessment and stamping of instruments

77B. (1) For the purposes of this Act, the issue of a stamp certificate for an instrument shall state an assessment of a duty and any penalty, if any, in relation to the instrument.

(2) A registered person must, on receipt of a stamp certificate issued for the instrument by the Collector, immediately attach the stamp certificate to the instrument.”.

Amendment of section 82

64. Section 82 of the principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) to prescribe the stamp certificate and official receipt to be issued under this Act for the payment of stamp duty, to provide for matters relating to issue and validity of the stamp certificate and official receipt;”.

Amendment of First Schedule

65. The First Schedule to the principal Act is amended by substituting for item 22(1) the following item:

Item	Description of Instrument	Proper Stamp Duty
“22	BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE	

Item	Description of Instrument	Proper Stamp Duty
	AGREEMENT OR INSTRUMENT of any kind whatsoever:	
(1)	(a) being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), for the term of life or any other indefinite period	
	for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable	RM1.00
	(b) for any sum or sums of money, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.	The same <i>ad valorem</i> duty as a charge or mortgage for such total amount.”.

CHAPTER IV

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

66. This Chapter has effect for the year of assessment 2010 and subsequent years of assessment.

Amendment of section 16

67. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 16(7B) by

inserting after the words “housing,” the words “conservation or preservation of environment, enhancement of income of the poor,”.

New section 41A

68. The principal Act is amended by inserting after section 41 the following section:

“Notification of non-chargeability

41A. (1) Where in ascertaining the chargeable income of a chargeable person, it appears to the Director General that no assessment shall be made in respect of that person for any year of assessment by reason of no adjusted income, statutory income, assessable income or chargeable income, he shall notify that person in writing that no assessment shall be made for that year of assessment and the computation with regard to it.

(2) Where a chargeable person is dissatisfied with the notification made by the Director General under subsection (1), he may within thirty days of being so notified, appeal to the Special Commissioners as if the notification were a notice of assessment and the provisions of this Act relating to appeals shall apply accordingly with such necessary modifications.

(3) If no notice of appeal against a notification made by the Director General under subsection (1) has been given within the time specified under that subsection or any extended period thereof, the notification shall be final and conclusive for the purposes of this Act.

(4) Nothing in this section shall prejudice the exercise of any power conferred on the Director General by section 39.”.

Amendment of Second Schedule

69. The Second Schedule to the principal Act is amended by inserting after paragraph 2 the following paragraph:

“**2A.** For the purpose of paragraph 1, the capital expenditure incurred by a chargeable person on the provision of machinery or plant shall not include any amount paid to a non-resident person in consideration of services rendered in connection with the installation or operation of that machinery or plant which tax is deductible under the provision of the law for the time being in force in Malaysia relating to income tax, if tax has not been deducted therefrom and paid to the Director General in accordance therewith:

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

Amendment of Third Schedule

70. Paragraph 1 of the Third Schedule to the principal Act is amended—

(a) in subparagraph (2), by inserting after the word “Chairman” the words “or Deputy Chairman”;

(b) by substituting for subparagraph (3) the following subparagraph:

“(3) Two or more hearing of appeals may be heard concurrently at any one time.”; and

(c) by inserting after subparagraph (3) the following subparagraph:

“(4) If the Chairman or Deputy Chairman has not been appointed or is not present at the hearing 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.”.

CHAPTER V

AMENDMENT TO THE LABUAN OFFSHORE BUSINESS ACTIVITY
TAX ACT 1990

**Commencement of amendment to the Labuan Offshore Business
Activity Tax Act 1990**

71. This Chapter is deemed to have effect for the year of assessment 2009 and subsequent years of assessment.

Amendment of section 3A

72. Subsection 3A(2) of the Labuan Offshore Business Activity Tax Act 1990 is amended by inserting after the words “the Director General” the word “within”.

LAWS OF MALAYSIA

Act 693

FINANCE ACT 2009

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 719	Finance Act 2011	09-01-2009
	-	
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LAWS OF MALAYSIA**Act 693****FINANCE ACT 2009****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
48	Act 719	09-01-2009
49	Act 719	09-01-2009
