



LAWS OF MALAYSIA

Act 764

FINANCE (NO. 2) ACT 2014

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| Date of Royal Assent | ... | ... | 24 December 2014 |
| Date of publication in the <i>Gazette</i> | ... | ... | 30 December 2014 |

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Act 764

FINANCE (NO. 2) ACT 2014

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LAWS OF MALAYSIA

Act 764

FINANCE (NO. 2) ACT 2014

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

[]

ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance (No. 2) Act 2014.

Amendment of Acts

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

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 4, 5, 6, 7, 8, 9, 10, 12 and 16, subparagraphs 20(a)(i), (ii), (iii) and (v), subsubparagraph 20(a)(iv)(B), paragraph 20(b), section 21, paragraphs 22(b) and (c), and section 23 have effect for the year of assessment 2015 and subsequent years of assessment.

(2) Sections 11, 13 and 14, paragraph 15(a), sections 17, 18 and 19, subsubparagraph 20(a)(iv)(A) and paragraph 22(a) come into operation on the coming into operation of this Act.

(3) Paragraph 15(b) comes into operation on 1 January 2015.

Amendment of section 5

4. Section 5 of the Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended—

(a) in subsection (1)—

(i) in paragraph (f), by substituting for the colon at the end of that paragraph a full stop; and

(ii) by deleting the proviso to that subsection; and

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

“(1A) For the purpose of ascertaining the chargeable income of a person under subsection (1), any amount or income received by that person which is subject to deduction of tax under section 109C, 109E or 109G shall be excluded.”.

Amendment of section 29

5. Section 29 of the principal Act is amended—

(a) in subsection (3)—

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

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

“(aa) between individuals who are relatives of each other; or”; and

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

“(4) Subject to subsection (3) and for the purposes of this section, where a relevant person is entitled to any gross income—

(a) accruing in or derived from Malaysia to which section 25, section 27 other than subsection 27(1A), or section 28 applies;

(b) the amount of which relates to any transactions—

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

(ii) between individuals who are relatives of each other; or

(iii) between persons both of whom are controlled by some other persons; and

(c) the amount of which first becomes receivable to the relevant person in the relevant period,

the relevant person is deemed to be able to obtain on demand the receipt of such amount in the basis period immediately following the relevant period.

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

Amendment of section 46

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

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

Amendment of section 48

7. Paragraph 48(2)(b) of the principal Act is amended by substituting for the word “five” the word “six”.

Amendment of section 60

8. Section 60 of the principal Act is amended by inserting after subsection (4B) the following subsection:

“(4C) For the purposes of ascertaining the adjusted income of the life fund, shareholders’ fund or general business referred to in subsection (3), (3A), (4), (4A), (5) or (6), as the case may be, the cost of acquiring and realizing any investments or rights for the basis period for a year of assessment shall include expenses incurred in managing those investments or rights, and such expenses incurred shall be determined in accordance with the following formula:

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

| | | |
|-------|---|---|
| where | A | is the cost of acquiring any investments or rights which is realized in that period in respect of such fund or general business; |
| | B | is the total cost of acquiring all investments or rights held during that period in respect of such fund or general business; and |
| | C | is the total expenses incurred in that period for managing all investments or rights held during that period in respect of such fund or general business.”. |

Amendment of section 60AA**9. Section 60AA of the principal Act is amended—**

(a) in paragraph (5)(b)—

- (i) in subparagraph (iii), by inserting after the word “business” the words “carried out in accordance with the principle of *mudharabah*”; and
- (ii) in subparagraph (viii), by inserting after the words “general business” the words “carried out in accordance with the principle of *mudharabah*”;

(b) in paragraph (7)(b)—

- (i) in subparagraph (iii), by inserting after the words “Malaysian general certificate” the words “of that business carried out in accordance with the principle of *mudharabah*”; and
- (ii) in subparagraph (viii), by inserting after the words “general business” the words “carried out in accordance with the principle of *mudharabah*”;

(c) in subsection (9)—

(i) in paragraph (a)—

(A) in subparagraph (iii), by substituting for the words “family fund, general fund, inward re-takaful fund, offshore fund or family re-takaful fund” the words “general fund, inward re-takaful fund, offshore fund or family re-takaful fund, or any other fee receivable in respect of an investment fund from the family fund”;

(B) in subparagraph (iv), by deleting the word “and” at the end of that subparagraph; and

(C) by inserting after subparagraph (v) the following subparagraph:

“(vi) the amount of actuarial surplus from the family fund that is transferred to the shareholders’ fund; and”;

(ii) in paragraph (b)—

- (A) in subparagraph (iii), by substituting for the words “family and general businesses” the words “general business carried out in accordance with the principle of *wakalah*”; and
- (B) in subparagraph (iv), by inserting after the words “general business” the words “carried out in accordance with the principle of *wakalah*”;

(d) in subsection (10)—

(i) in paragraph (a)—

- (A) in subparagraph (iii), by substituting for the words “family fund, general fund, inward re-takaful fund, offshore fund or family re-takaful fund” the words “general fund, inward re-takaful fund, offshore fund or family re-takaful fund, or any other fee receivable in respect of an investment fund from the family fund”;
- (B) in subparagraph (iv), by deleting the word “and” at the end of that subparagraph; and
- (C) by inserting after subparagraph (v) the following subparagraph:

“(vi) the amount of actuarial surplus from the family fund that is transferred to the shareholders’ fund; and”; and

(ii) in paragraph (b)—

- (A) in subparagraph (iii), by substituting for the words “family and general businesses” the words “general business carried out in accordance with the principle of *wakalah*”; and

(B) in subparagraph (iv), by inserting after the words “general business” the words “carried out in accordance with the principle of *wakalah*”; and

(e) by inserting after subsection (10) the following subsection:

“(10A) For the purposes of ascertaining the adjusted income of the family fund, general fund or shareholders’ fund referred to in subsection (3), (4), (5), (7), (9) or (10), as the case may be, the cost of acquiring and realizing any investments or rights for the basis period for a year of assessment shall include expenses incurred in managing those investments or rights, and such expenses incurred shall be determined in accordance with the following formula:

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

where A is the cost of acquiring any investments or rights which is realized in that period in respect of such fund;

 B is the total cost of acquiring all investments or rights held during that period in respect of such fund; and

 C is the total expenses incurred in that period for managing all investments or rights held during that period in respect of such fund.”.

Amendment of section 60I

10. Section 60I of the principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) For the purposes of subsections (1) and (3), the company referred to in those sections shall include a unit trust which is approved by the Securities Commission as Real Estate Investment Trust or Property Trust Fund.”.

Amendment of section 75B

11. Section 75B of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) Where in a year of assessment, a partnership or a company has converted into a limited liability partnership in accordance with the Limited Liability Partnerships Act 2012—

- (a) every partner of the partnership shall continue to be personally assessable and chargeable to tax for that year of assessment and for any previous year of assessment before the conversion in respect of his chargeable income for any such year of assessment; and
- (b) the limited liability partnership shall be assessable and chargeable to tax for that year of assessment and for any previous year of assessment before the conversion in respect of the chargeable income of the company for any such year of assessment.

(4) Where the limited liability partnership is so assessable and chargeable under paragraph (3)(b), it shall be assessable and chargeable to tax in like manner and to the like amount as the company would have been assessed and charged to tax prior to the conversion.”.

Amendment of section 77C

12. Subsection 77C(1) of the principal Act is amended—

- (a) in paragraph (a), by deleting the words “other than gains or profits in respect of the use or enjoyment of benefits provided by his employer under paragraph 13(1)(b) or (1)(c)”; and
- (b) in paragraph (c), by deleting the words “for a period of twelve months”.

Amendment of section 91

13. Section 91 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax in consequence of the Director General’s determination pursuant to subsection 140A(3), may in that year or within seven years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General’s judgment, the assessment with respect to that person ought to have been made for that year.”.

Amendment of section 99

14. Subsection 99(4) of the principal Act is amended by inserting after the words “section 138A” the words “or any practice of the Director General generally prevailing at the time when the assessment is made”.

Amendment of section 107C

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

- (a) in subsection (4A), by inserting after the words “where a company” the words “resident and incorporated in Malaysia”; and
- (b) in subsection (12), in the definition of “due date” by substituting for the word “tenth” the word “fifteenth”.

New section 110c

16. The principal Act is amended by inserting after section 110b the following section:

“Set-off for tax charged on actuarial surplus under takaful business

110c. (1) Notwithstanding section 110, where for a basis period for a year of assessment an amount of actuarial surplus from the family fund of an operator is transferred to the

shareholders' fund pursuant to subparagraph 60AA(9)(a)(vi) or 60AA(10)(a)(vi), 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 operator in respect of the family business.

(2) Where —

- (a) tax is set off under this section against the tax charged on the chargeable income of an operator from its shareholders' fund in respect of family 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 operator from its shareholders' fund in respect of family 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 112

17. Subsection 112(1) of the principal Act is amended by substituting for the words “two thousand” the words “twenty thousand”.

Amendment of section 115

18. Subsection 115(1) of the principal Act is amended by substituting for the words “two thousand” the words “twenty thousand”.

Amendment of section 120

19. Subsection 120(1) of the principal Act is amended by substituting for the words “two thousand” the words “twenty thousand”.

Amendment of Schedule 1

20. Schedule 1 to the principal Act is amended—

(a) in Part I—

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

“**1.** Except where paragraphs 1A, 2, 2A, 2D, 3 and 4 provide otherwise, income tax shall be charged for a year of assessment upon the chargeable income of every person at the following rates:

| <i>Chargeable Income</i> | <i>RM</i> | <i>Rate of Income Tax</i> |
|--------------------------------|-----------|-------------------------------|
| For every ringgit of the first | 5,000 | 0 per cent |
| For every ringgit of the next | 15,000 | 1 per cent |
| For every ringgit of the next | 15,000 | 5 per cent |
| For every ringgit of the next | 15,000 | 10 per cent |
| For every ringgit of the next | 20,000 | 16 per cent |
| For every ringgit of the next | 30,000 | 21 per cent |
| For every ringgit of the next | 150,000 | 24 per cent |
| For every ringgit of the next | 150,000 | 24.5 per cent |
| For every ringgit exceeding | 400,000 | 25 per cent”; |

- (ii) in paragraph 1A, by substituting for the words “26 per cent” the words “25 per cent”;
- (iii) in paragraph 2—
 - (A) in subparagraph (f), by substituting for the full stop at the end of that subparagraph a comma; and
 - (B) by substituting for the words “26 per cent for the year of assessment 2008 and 25 per cent for the subsequent years of assessment” the words “25 per cent for the year of assessment 2015 and 24 per cent for the subsequent years of assessment”;
- (iv) in paragraph 2A—
 - (A) by inserting after the words “company resident” the words “and incorporated”; and
 - (B) in column “*Rate of income tax*”—
 - (AA) by substituting for the words “20 per cent” the words “20 per cent for the year of assessment 2015 and 19 per cent for the subsequent years of assessment”; and
 - (BB) by substituting for the words “26 per cent for the year of assessment 2008 and 25 per cent for the subsequent years of assessment” the words “25 per cent for the year of assessment 2015 and 24 per cent for the subsequent years of assessment”; and
- (v) in paragraph 2D, in column “*Rate of Income Tax*”—
 - (A) by substituting for the words “20 per cent” the words “20 per cent for the year of assessment 2015 and 19 per cent for the subsequent years of assessment”; and
 - (B) by substituting for the words “25 per cent” the words “25 per cent for the year of assessment 2015 and 24 per cent for the subsequent years of assessment”; and

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

- (i) by substituting for the words “20 per cent” the words “18 per cent”;
- (ii) by substituting for the words “22 per cent” the words “21 per cent”;
- (iii) by substituting for the words “24 per cent” the words “23 per cent”; and
- (iv) by substituting for the words “25 per cent” the words “24 per cent”.

Amendment of Schedule 3

21. Schedule 3 to the principal Act is amended —

(a) in subparagraph 8(1), by substituting for the words “incurred by a person” the words “incurred only by a person who has a concession or licence to extract timber”; and

(b) in subparagraph 19A(1) —

- (i) by substituting for the words “one thousand” the words “one thousand three hundred”;
- (ii) in the proviso to subparagraph 19A(1), by substituting for the words “ten thousand” the words “thirteen thousand”; and
- (iii) in the proviso to subparagraph 42(1), by substituting for the words “within three months (or within such further period as the Director General may allow) of the beginning of the year of assessment in the basis period for which that expenditure was incurred by notice in writing delivered to the Director General elect” the words “elect in a return for the basis period for a year of assessment in which the expenditure was incurred”.

Amendment of Schedule 6**22.** Schedule 6 to the principal Act is amended—

- (a) in paragraph 12B, by substituting for the words “of this Act” the words “of ascertaining the adjusted income of the person”;
- (b) in paragraph 20A, by inserting after the words “Central Bank of Malaysia” the words “and any adjusted loss from the investment in respect of the deferred annuity shall be disregarded for the purposes of the Act”; and
- (c) in paragraph 35A, by inserting after the words “Islamic Banking Act 1983” the words “, or any development financial institution regulated under the Development Financial Institutions Act 2002”.

Amendment of Schedule 7A**23.** Schedule 7A to the principal Act is amended—

- (a) in paragraph 2A—
 - (i) by renumbering the existing provision as subparagraph (1); and
 - (ii) by inserting after subparagraph (1) as renumbered the following subparagraph:

“(2) The allowance which is deemed to have not been given under subparagraph (1) shall be part of the person’s statutory income in the basis period for the year of assessment in which such asset is disposed of.”; and
- (b) by inserting after paragraph 4 the following paragraph:

“**4A.** Statutory income referred to in paragraphs 3 and 4 shall be construed as the amount of statutory income of a person from a source consisting of a business in respect of a qualifying project referred to in paragraph 8.”.

CHAPTER III

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

24. (1) Section 25 comes into operation on the coming into operation of this Act.

(2) Section 26 comes into operation on 1 January 2015.

Amendment of section 39

25. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 39 by inserting after subsection (4) the following subsection:

“(5) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a chargeable person chargeable to tax in consequence of the Director General’s determination pursuant to subsection 72A(3), may in that year or within seven years after its expiration make an assessment or additional assessment, as the case may be, in respect of that chargeable person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General’s judgment, the assessment with respect to that chargeable person ought to have been made for that year.”.

Amendment of section 49A

26. Subsection 49A(16) of the principal Act is amended in the definition of “due date” by substituting for the word “tenth” the word “fifteenth”.

CHAPTER IV

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

27. Sections 28 and 29 come into operation on 1 January 2015.

Amendment of section 21B

28. The Real Property Gains Tax Act 1976, which is referred to as the “principal Act” in this Chapter, is amended in subsection 21B(1) by substituting for the word “two” the word “three”.

Amendment of Schedule 2

29. Schedule 2 to the principal Act is amended—

(a) in subparagraph 4(3), by substituting for subsubparagraph (d) the following subsubparagraph:

“(d) the market value of the asset as at the date of the death of the deceased person referred to in subparagraph 19(3)”; and

(b) by substituting for paragraph 12 the following paragraph:

“Gifts

12. (1) Subject to subparagraph (2), where a donor disposes an asset by way of a gift to a recipient, the disposal shall be deemed to be a disposal at the market value of the asset.

(2) Where the donor and recipient referred to in subparagraph (1) are husband and wife, parent and child, or grandparent and grandchild—

(a) the donor shall be deemed to have received no gain and suffered no loss on the disposal;

(b) in the case of a donor who is not a citizen or permanent resident, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor; and

- (c) in the case of a donor who is a citizen or permanent resident and the gift is made within five years after the date of acquisition by the donor, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor.”.

