



# **LAWS OF MALAYSIA**

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TEXT OF REPRINT

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**Act 543**

## **PETROLEUM (INCOME TAX) ACT 1967**

*As at 1 January 2024*

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### **PETROLEUM (INCOME TAX) ACT 1967**

First enacted	... ..	1967 (Act No. 45 of 1967)
Revised	... ..	1995 (Act 543 w.e.f. 11 January 1996)
Latest amendment made by Act 851 which came into operation on	... ..	See Section 71 of Act 851

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# LAWS OF MALAYSIA

## Act 543

### PETROLEUM (INCOME TAX) ACT 1967

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**LAWS OF MALAYSIA****Act 543****PETROLEUM (INCOME TAX) ACT 1967**

An Act to impose a tax upon income from the winning of petroleum in Malaysia, to provide for the assessment and collection thereof and for purposes connected therewith.

*[28 September 1967]*

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**PART I****PRELIMINARY****Short title, extent and commencement**

1. (1) This Act may be cited as the Petroleum (Income Tax) Act 1967.
- (2) This Act shall extend throughout Malaysia.
- (3) This Act shall have effect for the year of assessment 1968 and subsequent years of assessment.

**Interpretation**

2. (1) In this Act, unless the context otherwise requires—

“adjusted income” means adjusted income ascertained in accordance with this Act;

“adjusted loss” means adjusted loss ascertained in accordance with this Act;

“approved scheme” means the Employees Provident Fund or any pension or provident fund, scheme or society approved by the Director General under any written law relating to income tax;

“assessable income” means assessable income ascertained in accordance with this Act;

“assessment” means any assessment or additional assessment made under this Act;

“authorized officer” means, within the scope of his authority—

- (a) an officer authorized by subsection 69(1) or (2) to exercise any function of the Director General; or
- (b) an officer authorized under subsection 69(5) to exercise or assist in exercising any such function;

“barrel” means 42 U.S. gallons or 9702 cubic inches, being equivalent to 34.9726 Imperial gallons;

“basis period”, in relation to a chargeable person and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 5;

“building” includes any structure erected on land (not being plant or machinery);

“cash payment” means such payment as may be made by Petroliam Nasional Berhad under section 4 of the Petroleum Development Act 1974 [*Act 144*];

“casinghead petroleum spirit” means any liquid hydrocarbons obtained in Malaysia from natural gas by separation or by any chemical

or physical process but before the same has been refined or otherwise treated;

“chargeable income” means chargeable income ascertained in accordance with this Act;

“chargeable person” means—

- (i) Petroliam Nasional Berhad,
- (ii) Malaysia-Thailand Joint Authority,
- (iii) in relation to each petroleum agreement, any other person carrying on petroleum operations thereunder,

severally;

“chargeable petroleum”, in relation to a chargeable person, means petroleum won or obtained by that chargeable person from his petroleum operations;

“chargeable tax” means chargeable tax ascertained in accordance with and imposed by this Act;

“company” means a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a place outside Malaysia;

“crude oil” means any oil won in Malaysia including oil extracted by destructive distillation from bituminous shales or other stratified deposits either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated;

“Director General” means the Director General of Inland Revenue referred to in section 67;

“disposal” and “disposed of”, in relation to petroleum owned by a chargeable person, mean respectively—

- (a) delivery, without sale, of that petroleum to a refinery for refining by or on behalf of that chargeable person, and
- (b) delivered, without sale, to a refinery for refining by or on behalf of that chargeable person;

“electronic invoice” has the meaning assigned to it in the Income Tax Act 1967 [*Act 53*];

“entertainment” includes—

- (a) the provision of food, drink, recreation or hospitality of any kind; or
- (b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a),

by a chargeable person or an employee of his, with or without any consideration paid whether in cash or in kind, in promoting or in connection with petroleum operations carried on by that chargeable person;

“Inland Revenue Board of Malaysia” means the Inland Revenue Board of Malaysia established under the Inland Revenue Board of Malaysia Act 1995 [*Act 533*];

“input tax” has the meaning assigned to it in the \*Goods and Services Tax Act 2014 [*Act 762*];

“Joint Development Area” has the meaning assigned thereto by the Malaysia-Thailand Joint Authority Act 1990 [*Act 440*];

“Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters and the airspace above such areas, and includes any area extending beyond the limits of the territorial waters of Malaysia,

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\*NOTE—The Goods and Services Tax Act 2014 [*Act 762*] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [*Act 805*] which comes into operation on 1 September 2018—see section 3 of Act 805.

and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living;

“market value”, in relation to any thing, means the price which that thing would fetch if sold in a transaction between independent persons dealing at arm’s length;

“Minister” means the Minister of Finance;

“natural gas” means gas obtained in Malaysia from bore holes and wells and consisting primarily of hydrocarbons;

“output tax” has the meaning assigned to it in the \*Goods and Services Tax Act 2014;

“partnership” means an association or arrangement of any kind (including, but not limited to, joint ventures, syndicates and cases where a party to the association or arrangement is itself a partnership) between parties who have agreed to combine any of their rights, powers, property, labour or skill for the purposes of carrying on petroleum operations and sharing any petroleum production or any profit derived therefrom;

“person” includes a company, a partnership or other body of persons and a corporation sole;

“petroleum” means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit including bituminous shales and other stratified deposits from which oil can be extracted;

“petroleum agreement” means an agreement for exploring, prospecting or mining for petroleum entered into between

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\*NOTE—The Goods and Services Tax Act 2014 [Act 762] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [Act 805] which comes into operation on 1 September 2018—see section 3 of Act 805.

Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority and any other person whereby the parties thereto share any petroleum production or any profit derived therefrom;

“petroleum operations” means—

- (a) searching for and winning or obtaining of petroleum in Malaysia by or on behalf of any person for his own account or on a joint account with any other person by any drilling, mining, extracting or other like operations or process, in the course of a business carried on by that person engaged in such operations, and all operations incidental thereto, and any sale or disposal by or on behalf of that person of petroleum so won or obtained, and includes the transportation within Malaysia by or on behalf of that person of petroleum so won or obtained to any point of sale or delivery or export, but does not include—
  - (i) any transportation of petroleum outside Malaysia;
  - (ii) any process of refining or liquefying of petroleum;
  - (iii) any dealings with products so refined or liquefied; or
  - (iv) service involving the supply and use of rigs, derricks, ocean tankers and barges; and
- (b) any sale or disposal by Petroliam Nasional Berhad within Malaysia of petroleum obtained from outside of Malaysia and includes the transportation within Malaysia by, or on behalf of, Nasional Berhad of such petroleum to any point of sale or delivery within Malaysia;

“prescribed” means prescribed by rules made under section 83 or, in relation to a form other than the form mentioned in subsection 71(1), prescribed under section 82;

“rent” includes any sum paid for the use or occupation of any premises or part thereof or for the hire of any thing;



“secondary recovery” means a method or process which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir which is carried out—

(a) subsequent to the earlier recovery process for the purposes of additional and accelerated recovery of those hydrocarbons; or

(b) for the initial recovery or extraction of those hydrocarbons;

“Secretary” means the Secretary to the Special Commissioners;

“Special Commissioners” means the Special Commissioners of Petroleum Income Tax referred to in section 42;

“statutory income” means statutory income ascertained in accordance with this Act;

“statutory order” means an order having legislative effect;

“stock in trade” of a chargeable person means his chargeable petroleum which he holds in his stock and which he has not—

(i) delivered to a plant for refining or liquefying;

(ii) exported; or

(iii) sold.

“tax” means the tax imposed by this Act;

“year of assessment” means calendar year.

(2) For the purposes of this Act, where a person, other than Petroliaam Nasional Berhad or the Malaysia-Thailand Joint Authority, carries on petroleum operations under more than one petroleum agreement, he shall be regarded as a separate chargeable person in respect of each of those agreements.

(3) Where a partnership is succeeded by another at any time during the period of its petroleum agreement, and at least one of the original parties to that agreement who was a member of the succeeded partnership is a member of the succeeding partnership, both partnerships shall be treated for the purposes of this Act as one continuing partnership.

(4) For the purposes of this Act—

- (a) (i) notwithstanding subsection (3), where a partnership carries on petroleum operations under two or more petroleum agreements and the areas under those agreements are contiguous, the petroleum operations in those areas shall be treated as being carried on under one petroleum agreement if all the members of that partnership are the same original parties to the petroleum agreements and approved by the Director General:

Provided that where a partnership is succeeded under subsection (3), this paragraph shall apply to an area under the petroleum agreement, including any expansion thereof which are contiguous prior to the succession of the partnership:

Provided further that where an area under a petroleum agreement is contiguous with agreement areas which are contiguous under existing petroleum agreements, that first mentioned area shall be treated as contiguous with the existing petroleum agreements areas for the purposes of this paragraph if the members of the partnership of the first mentioned petroleum agreement are the same as the original parties to the existing petroleum agreements; and

- (ii) agreement areas which would otherwise be contiguous with each other shall be treated as being contiguous with each other notwithstanding that any part of those agreement areas has been surrendered to

Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority; or

- (b) where prior to 21 October 1988 a partnership has more than one petroleum agreement and there is no change in the members of the partnership after that date in respect of those petroleum agreements, that partnership shall be regarded as carrying on petroleum operations under one petroleum agreement.

(5) For the purposes of this Act, the date of production in relation to a petroleum agreement with the Malaysia-Thailand Joint Authority means the date of first commercial production of petroleum under that agreement.

## PART II

### IMPOSITION OF THE TAX

#### **Charge of petroleum income tax**

3. (1) Subject to and in accordance with this Act, a tax to be known as petroleum income tax shall be charged for each year of assessment on the income of every chargeable person, being income derived by such chargeable person from petroleum operations.

(2) Notwithstanding any other provisions of this Act and for the purposes of the imposition of Domestic Top-up Tax or Multinational Top-up Tax and the implementation of the GloBE Rules, Part XI of the Income Tax Act 1967 shall also apply to a chargeable person who is a Constituent Entity that is a member of a Multinational Enterprise Group that has annual revenue of seven hundred and fifty million euro or more in the Consolidated Financial Statements of the Ultimate Parent Entity in at least two of the four consecutive Financial Years immediately preceding the tested Financial Year.

(3) Where one or more of the Financial Years of the Multinational Enterprise Group taken into account for the purposes of subsection (2) is of a period other than twelve months, for each of those Financial

Years the seven hundred and fifty million euro annual revenue is adjusted proportionally to correspond with the length of the relevant Financial Year.

(4) For the purposes of subsections (2) and (3), “Consolidated Financial Statement”, “Constituent Entity”, “Financial Year”, “GloBE Rules”, “Multinational Enterprise Group” and “Ultimate Parent Entity” have the meaning assigned to them in Part XI of the Income Tax Act 1967.

### **Manner in which chargeable income is to be ascertained**

**4.** (1) Subject to this Act, the chargeable income of a chargeable person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner:

- (a) first, the basis period for his petroleum operations for that year shall be ascertained in accordance with Chapter 1 of Part III;
- (b) next, his gross income for the basis period for that year shall be ascertained in accordance with Chapter 2 of that Part;
- (c) next, his adjusted income or adjusted loss for the basis period for that year shall be ascertained in accordance with Chapter 3 of that Part;
- (d) next, his statutory income for that year and his assessable income for that year shall be ascertained in accordance with Chapter 4 of that Part; and
- (e) next, his chargeable income for that year shall be ascertained in accordance with Chapter 5 of that Part.

(2) For the purposes of this Act, any income and any adjusted loss of a chargeable person from petroleum operations may be ascertained for any period notwithstanding that—

- (a) the chargeable person in question may have ceased to be engaged in petroleum operations prior to that period; or
- (b) in that period those petroleum operations may have ceased to produce gross income or may not have produced any gross income.

(3) Except where subsection 2(4) applies, for the avoidance of doubt, it is hereby declared that for the purposes of this Act, the chargeable income from petroleum operations of any person other than Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority shall be ascertained by reference to each petroleum agreement separately.

### PART III

#### ASCERTAINMENT OF CHARGEABLE INCOME

##### *Chapter 1—Basis periods*

#### **Basis periods**

**5.** (1) For the purposes of this Act, the accounting period ending on any day in a year of assessment shall constitute the basis period for that year of assessment.

(2) In this section “accounting period”, in relation to a chargeable person, means—

- (a) a period of twelve months commencing on the date of the first sale or disposal of chargeable petroleum by or on behalf of that chargeable person, whichever event shall be the earlier, or commencing on such date within the calendar month in which such event occurs as may be selected by that chargeable person with the approval of the Director General;
- (b) such shorter period commencing as aforesaid and ending either on a date selected by that chargeable person with the

approval of the Director General or on the date when that chargeable person ceases to be engaged in petroleum operations;

- (c) each subsequent period of twelve months during which that chargeable person is engaged in petroleum operations; or
- (d) any period of less than twelve months, being a period commencing on the day following the end of any such period of twelve months and ending on the date when that chargeable person ceases to be engaged in petroleum operations or on the date when that chargeable person ceases to derive income from its petroleum operations, whichever is the later.

(3) Notwithstanding subsection (1) where—

- (a) by virtue of subsections (1) and (2) there has been taken as the basis period for a year of assessment of a chargeable person an accounting period ending on any day in that year of assessment; and
- (b) there is a failure to make up the accounts of that chargeable person for an accounting period ending on the corresponding day in the year following that year of assessment,

the Director General may direct that the basis period for the year of assessment in which the failure occurs, or the basis periods for that year and the following year of assessment, shall consist of a period or periods (which may be of any length) as specified in the direction.

## *Chapter 2—Gross income*

### **Ascertainment of gross income**

**6.** Subject to this Act, the gross income of a chargeable person for the basis period for a year of assessment from his petroleum operations shall be the gross income for that period ascertained in accordance with

the following provisions of this Chapter (that chargeable person and that period being referred to in those provisions as the relevant chargeable person and the relevant period respectively).

**Natural gas and casinghead petroleum spirit sold, and crude oil sold and refined in Malaysia**

7. Where in the relevant period the relevant chargeable person sells his chargeable petroleum, the proceeds of that sale shall be treated as gross income of that chargeable person for that period—

- (a) if that chargeable petroleum consists of natural gas or casinghead petroleum spirit; or
- (b) if that chargeable petroleum consists of crude oil which is delivered by that chargeable person in Malaysia, and it is shown to the satisfaction of the Director General that such crude oil is refined in Malaysia.

**Crude oil sold and exported**

8. Where in the relevant period the relevant chargeable person sells his chargeable petroleum consisting of crude oil, the proceeds of that sale shall be treated as gross income of that chargeable person for that period—

- (a) if that chargeable person delivers such crude oil in Malaysia and it is not shown to the satisfaction of the Director General that such crude oil is refined in Malaysia; or
- (b) if that chargeable person exports such crude oil.

**Crude oil exported otherwise than on sale**

9. Where in the relevant period the relevant chargeable person exports his chargeable petroleum consisting of crude oil otherwise than on sale,

the market value of that crude oil shall be treated as gross income of that chargeable person for that period.

**Chargeable petroleum delivered to refinery or gas processing plant**

**10.** Where in the relevant period any chargeable petroleum of the relevant chargeable person is delivered to a refinery in Malaysia for refining or to a gas processing plant in Malaysia for processing by or on behalf of that chargeable person, an amount equal to the market value of the chargeable petroleum shall be treated as gross income of that chargeable person for that period.

**11.** *(Deleted by Act A353).*

**Casinghead petroleum spirit injected into crude oil**

**12.** References in sections 7, 8, 9 and 10 to crude oil include references to casinghead petroleum spirit which has been injected into crude oil.

**Miscellaneous receipts**

**13.** (1) Where in the relevant period the relevant chargeable person derives receipts of a revenue nature incidental to and arising from any one or more of his petroleum operations (other than activities mentioned in sections 7, 8, 9 and 10) the receipts shall be treated as gross income of that chargeable person for that period.

(2) Subject to this Act, where in the relevant period the relevant chargeable person receives in relation to the petroleum operations sums by way of—

- (a) insurance, indemnity, recoupment, recovery, reimbursement or otherwise—



- (i) where such sums are in respect of the kind of outgoings and expenses deductible in ascertaining the adjusted income of that relevant chargeable person from the petroleum operations; or
  - (ii) under a contract of indemnity; and
- (b) compensation for loss of income from the petroleum operations,

the receipts shall be treated as gross income of that relevant chargeable person for that relevant period.

**Receipts from disposal of assets vesting in Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority**

**13A.** (1) Where under an agreement between Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority and another chargeable person, who has incurred qualifying expenditure in respect of any asset within the meaning of the Second Schedule, the asset has vested in Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority, on the disposal of such asset within the meaning of paragraph 29 or 40 of that Schedule, as the case may be, in the relevant period the disposal value of that asset shall be treated as gross income of Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority for that period.

(1A) Subsection (1) shall not apply where a chargeable person (in this subsection referred to as the “disposer”) disposes of an asset in relation to which an initial or annual allowance has been made or would have been made, if claimed, to him (in this subsection referred to as the “asset”) and that asset continues to be used for petroleum operations by another chargeable person (in this subsection referred to as the “acquirer”) in another petroleum agreement under which the acquirer has not incurred qualifying expenditure in respect of that asset and at the time of the disposal—

- (a) the disposer of the asset is a company and the acquirer of the asset is a partnership in which the disposer is also a partner;
- (b) the disposer of the asset and the acquirer of the asset are the same partnership but operating under separate petroleum agreements;
- (c) the disposer of the asset and the acquirer of the asset are partnerships and all the partners in the partnership that is disposing of the asset are also partners in the partnership that is acquiring the asset; or
- (d) the disposer of the asset and the acquirer of the asset are the same company but operating under separate petroleum agreements.

(2) For the purpose of this section disposal value shall be taken to be an amount equal to the market value of the asset at the date of its disposal or, in the case of its disposal by way of sale, transfer or assignment—

- (a) an amount equal to its market value at the date of the sale, transfer or assignment, as the case may be; or
- (b) the net proceeds of the sale, transfer or assignment as the case may be,

whichever is the greater:

Provided that, where the asset is disposed of in such circumstances that insurance or compensation moneys are received in respect of the asset, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater.

**Sums recovered on account of debts, and debts released**

**14.** (1) Where a deduction has been made under subsection 16(2) in ascertaining the adjusted income of the relevant chargeable person for the basis period for a year of assessment, that basis period being prior to the relevant period, then—

- (a) if the deduction has been made in respect of a debt estimated to have become wholly irrecoverable, any sum recovered on account of the debt by that chargeable person in the relevant period shall be treated as gross income of that chargeable person for the relevant period; and
- (b) if the deduction has been made in respect of a debt estimated to have become partly irrecoverable and there has been received by that chargeable person in respect of the debt a sum (or an aggregate of sums) in excess of the amount of that part of the debt not estimated to have become irrecoverable, so much of that excess as is recovered by that chargeable person in the relevant period shall be treated as gross income of that chargeable person for the relevant period.

(2) Where—

- (a) a deduction has been made under subsection 15(1) or subsection 16(4) in computing the adjusted income of the relevant chargeable person for the basis period for a year of assessment (that basis period being prior to the relevant period) in respect of any outgoing or expense (including any sum payable, rent payable, expense incurred or rates payable of the kind described in paragraph 15(1)(a), (b), (c) or (d) or subsection 16(4), as the case may be); and
- (b) the whole or any part of a debt in respect of any such outgoing, expense, sum, rent, expense or rates is released in the relevant period,

the amount released shall be treated as gross income of the relevant chargeable person for the relevant period.

(3) Where during the relevant period—

- (a) recovered expenditure (within the meaning of the First Schedule) is recovered by or on behalf of the relevant chargeable person; and
- (b) the total recovered expenditure so recovered exceeds the aggregate of—
  - (i) the residual expenditure (within the meaning of that Schedule) at the date on which that period begins; and
  - (ii) the qualifying exploration expenditure (within the meaning of that Schedule) incurred by the relevant chargeable person during that period,

the amount of the excess shall be treated as gross income of the relevant chargeable person for the relevant period.

(4) Where—

- (a) a deduction has been made under subsection 16(4) in computing the adjusted income of the relevant chargeable person for the basis period for a year of assessment (that basis period being prior to the relevant period) in respect of any expenses of the kind described in subsection 16(4); and
- (b) the whole or any part of any such expenses is recovered in the relevant period,

the amount recovered shall be treated as gross income of the relevant chargeable person for the relevant period.

### *Chapter 3—Adjusted income and adjusted loss*

#### **Deduction in respect of outgoings and expenses**

**15.** (1) Subject to this Act, the adjusted income of a chargeable person for the basis period for a year of assessment shall be an amount

ascertained by deducting from the gross income of that chargeable person for that period all outgoings and expenses wholly and exclusively incurred during that period by that chargeable person in the production of the gross income, including—

- (a) subject to subsection (2), any sum payable for that period (or for any part of that period) by way of interest upon any money borrowed by that chargeable person and—
  - (i) employed in that period in the production of the gross income; or
  - (ii) laid out on assets used or held in that period for the production of the gross income:

Provided that any sum deductible under this paragraph shall not exceed the amount which in the opinion of the Director General would have been the fair amount of interest in a similar borrowing transaction made by independent parties dealing with one another at arm's length;

- (b) rent payable for that period (or for any part of that period) by that chargeable person in respect of any land or building or part thereof occupied by that chargeable person in that period for the purpose of producing the gross income;
- (c) expenses incurred during that period for the repair of premises, plant, machinery or fixtures employed in the production of the gross income or for the renewal, repair or alteration of any implement, utensil or article so employed (being one of a class of implements, utensils or articles which as a class have a working life under normal conditions of use of less than two years or are subject to substantial wastage or loss annually or more frequently), excluding the cost of reconstructing or rebuilding—
  - (i) any premises, buildings, structures or works of a permanent nature;
  - (ii) any plant or machinery (other than an implement, utensil or article of such a class); or

- (iii) any fixtures;
- (d) assessment rates payable for that period (or for any part of that period) by that chargeable person under any law relating to local authorities, in respect of any property used for his petroleum operations;
- (e) such other deductions as may be prescribed.

(2) Where a chargeable person, being a chargeable person to which paragraph (1)(a) applies in relation to gross income for the basis period for a year of assessment and in relation to borrowed money, has made (otherwise than for the purpose of producing that gross income) any loan of money or any investment in movable or immovable property, and the loan or any part thereof is outstanding at any time in that period or the investment or any part thereof is held by that chargeable person at any time in that period—

- (a) the total sum payable for that period or any part thereof by way of interest on that borrowed money, which qualifies for deduction under paragraph 15(1)(a), or any part of the total sum which so qualifies, shall be deemed to accrue evenly over that period or part thereof, and so much of that sum as is thus found to accrue during each calendar month shall be taken to be the monthly figure for the purposes of this subsection;
- (b) if at the end of any calendar month the aggregate of—
  - (i) the amount of the loan then outstanding if any; and
  - (ii) the cost of so much of the investment as is held at that time if any,

is less than the amount of that borrowed money, the monthly figure for that month shall be reduced by an amount which bears to that monthly figure the same proportion as that aggregate bears to the amount of that borrowed money;

- (c) if at the end of any calendar month the aggregate mentioned in the preceding paragraph is more than the amount of that borrowed money, the monthly figure for that month shall be reduced to nil; and
  - (d) the amount of the deduction to be made for that period in respect of that borrowed money shall be an amount consisting of the aggregate of—
    - (i) the monthly figures for all calendar months to which paragraph (b) or (c) applies, as reduced by either of those paragraphs; and
    - (ii) the monthly figures for the other calendar months.
- (3) In subsection (2) “calendar month”, in relation to a basis period or part thereof, means a period which is included in that basis period or part thereof and is either—
- (a) one of the twelve named months of the Gregorian calendar; or
  - (b) where the basis period or part thereof includes a part, but not the whole, of such a month, that part of that month.

**Deduction in respect of irrecoverable debt, contribution to approved scheme, intangible drilling expenses, certain capital expenditure and royalty**

**16.** (1) In ascertaining the adjusted income of a chargeable person for the basis period for a year of assessment, deductions shall be made from the gross income of that chargeable person for that period in accordance with the following subsections (the chargeable person, period and gross income in question being referred to in those subsections as the relevant chargeable person, the relevant period and the relevant gross income respectively).

(2) There shall be deducted in the case of any debt owing to the relevant chargeable person the amount of which has been included in

the relevant gross income or in the gross income of the relevant chargeable person for the basis period for a year of assessment prior to the year of assessment to which the relevant period relates—

- (a) if at the end of the relevant period the debt is reasonably estimated in all the circumstances of the case to be wholly irrecoverable, an amount equal to the amount of the debt;
- (b) if at the end of the relevant period the debt is reasonably estimated in all the circumstances of the case to be partly irrecoverable, an amount equal to so much of the debt as is estimated to be irrecoverable,

the deduction being in either case reduced by the amount of any deduction made under this subsection in respect of the debt for the basis period for a year of assessment prior to the year of assessment to which the relevant period relates.

(3) Where in the relevant period the relevant chargeable person has made a contribution to an approved scheme in respect of an employee of the relevant chargeable person, then—

- (a) if the employee's remuneration as determined under the rules, regulations, by-laws or constitution of that scheme for the period for which the contribution is made (that period being a period which coincides with or overlaps the relevant period) is deductible as a whole (or in parts aggregating the whole), in computing the adjusted income for any basis period or periods for a year or years of assessment, there may be deducted from the relevant gross income an amount equal to the contribution or nineteen per cent of the employee's remuneration as so determined for the period for which the contribution is made, whichever is the less;
- (b) if only a part or parts of that remuneration is or are so deductible, there may be deducted from the relevant gross income an amount equal to so much of the contribution or of that percentage of the remuneration (whichever of those amounts is the less) as bears to the whole of the contribution or to that percentage of the remuneration, as the case may



be, the same proportion as that part or the aggregate of those parts, as the case may be, bears to the whole of that remuneration:

Provided that, where on the first establishment of a scheme of the kind referred to above a special contribution is made thereto in the relevant period by the relevant chargeable person whereby any of its employees engaged in activities relating to the production of the relevant gross income or gross income of the relevant chargeable person for any basis period for a year of assessment (that basis period being prior to the relevant period) may qualify for the benefits under that scheme, the Director General may when approving that scheme authorize deductions in respect of that special contribution of such amounts (being amounts which in total are equal to or less than the special contribution) from the gross income of the relevant chargeable person for the basis periods for such years of assessment as he thinks fit.

(4) There shall be deducted from the relevant gross income all intangible expenses for drilling exploration, appraisal and development wells, whether productive or unproductive, incurred by the relevant chargeable person during the relevant period in exploration, development or production areas.

(5) There may be deducted from the relevant gross income such amounts in respect of capital expenditure as may be allowed for the relevant period pursuant to the First Schedule.

(6) There shall be deducted from the relevant gross income an amount equal to the cash payment made by the relevant chargeable person on petroleum which is won in the relevant period.

(7) *(Deleted by Act A353).*

(7A) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period on the provision of any equipment, or on the alteration or renovation of premises necessary to assist any disabled person employed by him in the production of his gross income.

(7B) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period on the provision of services, public amenities and contributions to a charity or community project pertaining to education, health, housing, conservation or preservation of environment, enhancement of income of the poor, infrastructure and information and communication technology, approved by 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).

(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).

(7C) There shall be deducted from the relevant gross income an amount equal to the expenditure incurred not being capital expenditure on land, premises, buildings, structures or works of a permanent nature or on alterations, additions or extensions thereof or in the acquisition of any rights in or over any property, by the relevant chargeable person in the relevant period on the provision and maintenance of a child care centre for the benefit of persons employed by him in his business.

(7D) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period in establishing and managing a musical or cultural group approved by the Minister.

(7E) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period for sponsoring any arts or cultural activity approved by the Ministry of Information, Communication and Culture:

Provided that the amount deducted shall not exceed two hundred thousand ringgit.

(7F) There shall be deducted from the relevant gross income an amount equal to the amount of the expenditure incurred by the relevant chargeable person in the relevant period on the provision of a scholarship to a student for any course of study leading to an award of a diploma, or degree (including a degree at a Masters or Doctorate level) or the equivalent of a diploma or degree undertaken at a higher educational institution established or registered under the laws regulating such establishment or registration in Malaysia or authorized by any order made under section 5A of the Universities and University Colleges Act 1971 [*Act 30*]:

Provided that the scholarship—

(a) shall only be given to a student—

- (i) who is receiving full-time instruction at such higher educational institution;
- (ii) who has no means of his own; and
- (iii) the total monthly income of whose parents or guardian, as the case may be, does not exceed five thousand ringgit; and

(b) shall not include payments other than payments required by such higher educational institution relating to the course of study, and educational aids and reasonable cost of living expenses during the student's period of study at such higher educational institution.

(7G) There shall be deducted from the relevant gross income an amount equal to the amount of the expenditure, not being capital expenditure, incurred by the relevant chargeable person in the relevant period for the purposes of obtaining certification for recognized quality systems and standards and evidenced by a certificate issued by a certification body as determined by the Minister:

Provided that the expenditure incurred in the relevant period shall be deemed to be incurred by the relevant chargeable person in the basis period for the year of assessment in which the certificate is issued.

(7H) There shall be deducted from the relevant gross income an amount equal to the expenditure incurred by the relevant chargeable person in the relevant period on the provision of practical training in Malaysia, in relation to his business, to an individual who is—

- (a) resident in the basis year for a year of assessment; and
- (b) not an employee of that person.

(8) Where any deduction in respect of any matter is capable of being made under this section, no deduction in respect of that matter shall be made under section 15.

### **Stock in trade**

**17.** (1) Notwithstanding any other provision of this Part, in ascertaining the adjusted income of a chargeable person for the basis period for a year of assessment, the value of the stock in trade of his petroleum operations at the beginning and the value of the stock in trade of his petroleum operations at the end of that period shall be taken into account in accordance with the following subsections (that chargeable person, that period and that stock in trade being referred to in those subsections as the relevant chargeable person, the relevant period and the stock respectively).

(2) Where the value of the stock at the end of the relevant period exceeds the value of the stock at the beginning of the relevant period, the total of all amounts otherwise deductible under sections 15 and 16 in ascertaining the adjusted income of the relevant chargeable person for the relevant period shall be reduced by the amount of the excess; and, where the value of the stock at the beginning of the relevant period exceeds the value of the stock at the end of the relevant period, the total of all amounts otherwise so deductible shall be increased by the amount of the excess.

(3) The value of the stock at the end of the relevant period shall be taken to be—

- (i) an amount equal to its market value at that time; or
- (ii) if the relevant chargeable person so elects, an amount equal to the total cost to him of acquiring the stock.

(4) The value of the stock at the beginning of the relevant period (other than the basis period for the first year of assessment for which the relevant chargeable person is chargeable to tax) shall be taken to be an amount equal to its value as ascertained under subsection (3) at the end of the basis period for the year of assessment immediately preceding the year of assessment to which the relevant period relates.

### **Deductions not allowed**

**18.** (1) Subject to any express provision of this Act, in ascertaining the adjusted income of any chargeable person for the basis period for a year of assessment no deduction from the gross income for that period shall be allowed in respect of—

- (a) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income;
- (b) any capital withdrawn or any sum employed or intended to be employed as capital;
- (c) any amount in respect of any payment to any pension, provident, savings, widows and orphans or other similar fund or society which is not an approved scheme;
- (d) *(Deleted by Act A353)*;
- (e) rent of, or cost of repairs to, any premises or any part thereof not used for the purpose of his petroleum operations;

- (f) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
- (g) any expenditure incurred in relation to petroleum operations, being expenditure which is qualifying expenditure for the purposes of the First Schedule or the Second Schedule and which but for this paragraph would be deductible in ascertaining the adjusted income;
- (h) interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of moveable property derived from Malaysia or contract payment to a non-resident contractor from which tax is deductible under the provisions 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—

- (i) this paragraph shall not apply if the payer has paid the amount of deduction of tax and the increased amount which is equal to ten per cent of that deduction which are due and payable under the provisions of that law; and
  - (ii) where such tax is deducted or such amount is paid after the due date for the furnishing of a return for a year of assessment that relates to such payment, the tax or amount so paid shall not prejudice the imposition of penalty under subsection 52(2) if a deduction on such payment is made in such return or is claimed in the information given to the Director General in arriving at the adjusted income of the payer;
- (i) (*Deleted by Act A381*);
  - (j) any amount of chargeable tax payable under this Act;

(k) any amount of income tax or of any identical or substantially similar tax;

(l) *(Deleted by Act 619)*;

(m) any sum paid by way of rentals in respect of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, in excess of fifty thousand ringgit:

Provided that if the motor vehicle has not been used by any person for any purpose prior to the rental and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit, any sum paid by way of rental in excess of one hundred thousand ringgit:

Provided further that the maximum amount of deduction in respect of the rentals of such motor vehicle in the year of assessment and subsequent years of assessment shall not in the aggregate exceed fifty thousand ringgit or one hundred thousand ringgit, as the case may be, in respect of that motor vehicle;

(n) a sum equal to fifty percent of any expenses incurred in the provision of entertainment including any sums paid to an employee of that chargeable person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

Provided that this paragraph shall not apply to the expenses incurred in the provision of entertainment to his employees except where such provision is incidental to the provision of entertainment for others;

(o) notwithstanding the proviso to paragraph (n), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia;

- (p) any amount paid or to be paid in respect of goods and services as input tax by the chargeable person if he is liable to be registered under the \*Goods and Services Tax Act 2014 and has failed to do so, or if he is entitled under that Act to credit that amount as input tax; or
- (q) any amount of output tax paid or to be paid under the \*Goods and Services Tax Act 2014 which is borne by the chargeable person if he is registered or liable to be registered under the Act.

(1A) Notwithstanding any other provisions of this Act, where a person is required under section 34 to furnish to the Director General any information within the time specified in a notice or such other time as may be allowed by the Director General, and that information concerns wholly or in part a deduction claimed by that person in arriving at the adjusted income of that person from any source for the basis period for a year of assessment, no deduction from the gross income from that source for that period shall be allowed in respect of such claim if the person fails to provide such information within the time specified in that notice or such extended time as may be allowed by the Director General.

(2) It is hereby declared that section 15 except in so far as it relates to expenses of the kind specified in paragraphs (1)(a) to (e) thereof, is not an express provision of this Act within the meaning of this section.

(3) Paragraph (1)(h) shall not apply if for a year of assessment a person is exempt under section 65C or the Promotion of Investments Act 1986 [*Act 327*], in respect of all income of that person from all sources not being exemption on income equal to capital expenditure incurred.

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\*NOTE—The Goods and Services Tax Act 2014 [*Act 762*] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [*Act 805*] which comes into operation on 1 September 2018—see section 3 of Act 805.



### **Adjusted loss**

**19.** Subject to this Act, where but for an insufficiency of gross income of a chargeable person for the basis period for a year of assessment from his petroleum operations there would have been an amount of adjusted income of that chargeable person for that period, the amount by which the total of all such deductions as would then have been allowed under the foregoing provisions of this Chapter in ascertaining that adjusted income exceeds his gross income for that period from his petroleum operations shall be taken to be the amount of his adjusted loss for that period.

## *Chapter 4—Statutory income and assessable income*

### **Statutory income**

**20.** Subject to this Act, the statutory income (if any) of a chargeable person for a year of assessment shall consist of—

- (a) the amount of his adjusted income (if any) for the basis period for that year, and
- (b) the amount of any balancing charge or the aggregate amount of the balancing charges falling to be made for that year under the Second Schedule,

reduced by the amount of any allowance or the aggregate amount of the allowances falling to be made for that year under that Schedule.

### **Assessable income**

**21.** (1) The assessable income of a chargeable person (in this section referred to as the relevant chargeable person) for a year of assessment (in this section referred to as the relevant year) shall consist of the amount of his statutory income for the relevant year reduced by any deduction falling to be made for the relevant year pursuant to subsection (2).

(2) Subject to subsection (3), there shall be deducted pursuant to this subsection from the statutory income of the relevant chargeable person for the relevant year the amount of any adjusted loss for the basis periods for the years of assessment preceding the relevant year, which has not been deducted from his statutory income for a year of assessment prior to the relevant year.

(3) A deduction of any adjusted loss under subsection (2) shall be made as far as possible from the statutory income for the first year of assessment after that for the basis period for which that loss is the adjusted loss, and, so far as it cannot be so made, then from the statutory income for the next year of assessment, and so on.

(4) *(Deleted by Act 79 of 1967).*

(5) *(Deleted by Act 79 of 1967).*

### *Chapter 5—Chargeable income*

#### **Chargeable income**

**22.** (1) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money made by that chargeable person in the basis period for that year of assessment to the Government, a State Government, a local authority or an approved institution or organization:

Provided that the amount to be deducted from the assessable income of a chargeable person for that year of assessment in respect of any gift of money made by that chargeable person to an approved institution or organization shall not exceed seven per cent of the statutory income from his petroleum operations.

(1A) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to the value, as determined by the Department of Museums Malaysia or the National Archives, of any

gift of artefact, manuscript or painting made by him in the basis period for that year of assessment to the Government or State Government.

(1B) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or contribution in kind (the value to be determined by the relevant local authority) made by him in the basis period for that year of assessment to the Government or State Government for the provision of facilities in public places for the benefit of disabled persons.

(1C) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or the cost or value (as certified by the Ministry of Health) of any gift of medical equipment made by him in the basis period for that year of assessment to any health care facility approved by that Ministry, and that amount shall not exceed twenty thousand ringgit.

(1D) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to the value of any gift of painting (to be determined by the National Art Gallery or any state art gallery) made by him in the basis period for that year of assessment to the National Art Gallery or any state art gallery.

(1E) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or cost of contribution in kind made by the relevant person in the basis period for that year for any sports activity approved by the Minister or to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997:

Provided that the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of seven per cent of the statutory income of the relevant person and the total amount that has been deducted pursuant to the proviso to subsection (1) and subsection (1F).

(1F) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or cost of contribution in kind made by the relevant person in the basis period for that year for any project of national interest approved by the Minister:

Provided that the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of seven per cent of the statutory income of the relevant person and the amount that has been deducted pursuant to the proviso to subsection (1) and subsection (1E).

(2) In this section, “approved institution” and “approved organization” means respectively an institution and an organization approved by the Director General for the purposes of the laws for the time being in force relating to income tax.

#### *Chapter 6—Special treatment*

#### **Power to direct special treatment in the computation of income from petroleum operations in certain cases**

**22A.** (1) Notwithstanding any other provision in this Part, where the Director General is satisfied that there is a need for some treatment in computing the gross income, adjusted income, statutory income and assessable income from petroleum operations, he may give directions and formulate regulations to be published in the *Gazette* for special treatment with respect to such petroleum operations:

Provided that no such directions and regulations shall have effect in relation to petroleum operations for any year of assessment with respect to which an assessment wholly or partly relating to income from that petroleum operations has become final and conclusive or is the subject of an appeal which has been sent forward to the Special Commissioners.

(2) Any direction given under subsection (1) with respect to the gross income, adjusted income, statutory income and assessable income from the petroleum operations may—

- (a) provide that the gross income to which it relates (or any part thereof) shall be taken to be gross income for such basis period or periods for such year or years of assessment with respect to that petroleum operations as may be specified in the direction; and
- (b) provide for special treatment with respect to the ascertainment of the adjusted income, statutory income and assessable income from that petroleum operations for the basis period or periods for any year or years of assessment.

#### PART IV

#### ASCERTAINMENT OF CHARGEABLE TAX

##### **Chargeable tax**

**23.** (1) The chargeable tax for each year of assessment of a chargeable person shall be an amount equal to thirty-eight per cent of his chargeable income for that year of assessment:

Provided that for the year of assessment 1976—

- (a) such chargeable tax shall be computed on the chargeable income ascertained for the period commencing on or after 1 April 1975, which overlaps the basis period for that year of assessment; and
- (b) the provisions of this section shall not apply to the chargeable income ascertained for the period ending on 31 March 1975, which overlaps the basis period for that year of assessment.

(2) Notwithstanding subsection (1), the chargeable tax for any year of assessment of a chargeable person on income derived from petroleum operations in the Joint Development Area shall be an amount equal to—

- (a) zero per cent of the chargeable income ascertained from income for any of the first eight years of production;
- (b) ten per cent of the chargeable income ascertained from income for any of the next seven years of production; or
- (c) twenty per cent of the chargeable income ascertained from income for any subsequent year of production:

Provided that where the chargeable income ascertained relates to income from two production periods, that chargeable income shall be apportioned to each of those periods (the apportionment being made in the proportion that the number of months of the relevant production period bears to the number of months of that basis period) and the chargeable tax shall be arrived at by applying the rate applicable to each of the relevant production periods to the chargeable income so apportioned.

(3) For the purposes of subsection (2), the “production period” means the number of years of production referred to in paragraph (2)(a), (b) or (c), as the case may be.

**24.** *(Deleted by Act A353).*

**25.** *(Deleted by Act A353).*

**26.** *(Deleted by Act A353).*

PART V

PERSONS CHARGEABLE

**Chargeability of tax on chargeable person and persons responsible on his behalf**

**27.** (1) Where under this Act the income of a chargeable person is assessable and chargeable to tax, that chargeable person shall, subject to this Part, be assessable and chargeable to tax in respect of that income.

(2) Responsibility for doing all acts and things required to be done by or on behalf of a company or body of persons for the purposes of this Act shall lie jointly and severally—

(a) in the case of a company, with—

- (i) the manager or other principal officer in Malaysia;
- (ii) the directors;
- (iii) the secretary; and
- (iv) any person (however styled) exercising the functions of any of the persons mentioned in the foregoing subparagraphs; and

(b) in the case of a body of persons, with—

- (i) the manager;
- (ii) the treasurer;
- (iii) the secretary; and
- (iv) the members of its controlling authority.

(3) The liquidator of a company which is being wound up shall not distribute any of the assets of the company to its shareholders unless

he has made provision (in so far as he is able to do so out of the assets of the company) for the payment in full of any tax which he knows or might reasonably expect to be payable by the company under this Act.

(4) Any liquidator who fails to comply with subsection (3) shall be liable to pay a penalty equal to the amount of the tax to which the failure relates.

(5) Subsection 64(2) shall apply to a penalty imposed by subsection (4) of this section as it applies to a penalty imposed by subsection 51(3) or 52(2).

### **Power to appoint agent**

**28.** (1) The Director General may, if he thinks fit, by notice in writing duly served appoint any person to be the agent of any chargeable person for all or any of the purposes of this Act; and, where any person is so appointed for all those purposes, he shall be assessable and chargeable to tax on behalf of that chargeable person.

(2) An appointment made under subsection (1) may be revoked by the Director General at any time.

(3) Where a person appointed under subsection (1) to be the agent of a chargeable person is aggrieved by the appointment, he may appeal under section 43 as if the notice of appointment served upon him were a notice of assessment.

### **Vicarious responsibility and chargeability**

**29.** (1) Subject to this Part, the following subsections shall apply where by or under the provisions of this Part a person (in this section referred to as the representative)—

- (a) is appointed to be the agent of a chargeable person;
- (b) is assessable and chargeable to tax on behalf or in the name of a chargeable person; or



- (c) is a person in whose name a chargeable person is assessable and chargeable to tax,

such a chargeable person being in this section referred to as the principal.

(2) The representative may require any person (including the principal, in so far as he is capable of complying with the requisition) who is in receipt or control of any income of the principal, and any person by whom any income is paid or payable to the principal, to supply to the representative full particulars of the income and any expenses connected therewith.

(3) Where the representative is assessable and chargeable to tax on behalf of the principal, the representative shall be assessable and chargeable to tax in like manner and to the like amount as the principal would be assessed and charged to tax; and, where the principal is assessable and chargeable in the name of the representative, the principal shall be so assessable and chargeable in like manner and to the like amount as he would be assessed and charged to tax if he were assessable and chargeable in his own name.

(4) The representatives shall be responsible for doing all such acts and things as are required by or by virtue of this Act to be done by him as representative or by the principal for the purposes of this Act and in particular for the payment of any tax due from him as representative or from the principal; and, in default of payment, any such tax (together with any penalty to which he as representative or the principal is or would be liable in respect of the default) shall be recoverable from the representative either as such or as if he were the principal, as the case may be:

Provided that the representative shall not be required to pay any such tax or penalty (or any other penalty incurred by the principal) otherwise than from the accessible moneys.

(5) Where by or by virtue of this Act anything is to be made or served on or given or done to the principal for the purposes of this Act, in lieu thereof the same may be made or served on or given or done to the representative:

Provided that nothing shall be done to the representative by way of any conviction or imposing upon him any fine in relation to an offence committed by the principal and in which the representative had no part.

(6) The representative—

- (a) may retain out of the accessible moneys so much as is necessary to pay any tax or penalty due from him as representative or from the principal; and
- (b) shall be and is hereby indemnified against all persons whatsoever for any payments made by him as representative in pursuance of this Act.

(7) In this section “the accessible moneys”, in relation to the representative and the principal, mean any moneys—

- (a) which from time to time are due from the representative to the principal or are held by the representative in his custody and control on behalf of the principal; or
- (b) being then moneys of or due to the principal, are obtainable on demand by the representative.

## PART VI

### RETURNS

#### **Return of income**

**30.** (1) Every chargeable person shall, with respect to the basis period for each year of assessment, furnish to the Director General a return in the prescribed form, within seven months from the date following the end of the basis period for that year of assessment.

(1A) For the purposes of this section, a chargeable person shall furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 82A.

(2) For the purposes of this section, a return for a year of assessment shall—

- (a) specify the chargeable income and the amount of tax payable (if any) on that chargeable income for that year; and
- (b) contain such particulars as may be required by the Director General.

(3) The return furnished by the chargeable person under this section shall be based on accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the \*Companies Act 1965 [*Act 125*].

### **Return on expenditure during exploration period**

**30A.** (1) Every chargeable person shall, for each exploration period, furnish to the Director General within seven months from the date following the end of that period a return in the prescribed form containing—

- (a) the amount of exploration expenditure incurred by that chargeable person in relation to petroleum operation in that period; and
- (b) such particulars as may be required by the Director General.

(1A) For the purposes of this section, a chargeable person shall furnish to the Director General a return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 82A.

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

- (a) the first exploration period of the chargeable person shall be the period that commences on the date the petroleum

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\*NOTE—The Companies Act 1965 [*Act 125*] has since been repealed by the Companies Act 2016 [*Act 777*] which comes into operation on 31 January 2017—see subsection 620(1) of Act 777.

agreement is signed, or on such other date as may be determined by the chargeable person with the approval of the Director General; and

- (b) each exploration period shall be a period of twelve months except in the case of the first exploration period or final exploration period, where the period may be less than twelve months.

(3) In this section, “exploration period” means a period or periods prior to the first basis period of the chargeable person.

### **Amendment of return**

**30B.** (1) Where for a year of assessment a chargeable person has furnished a return in accordance with subsection 30(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.

(1A) For the purposes of this section, a chargeable person shall furnish to the Director General an amended return in the prescribed form on an electronic medium or by way of electronic transmission in accordance with section 82A.

(2) An amended return under subsection (1) shall only be made after the due date for the furnishing of the return pursuant to subsection 30(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 increased sum ascertained in accordance with subsection (4); or

- (c) contain such particulars as may be required by the Director General.

(4) Where an amended return is furnished by a chargeable person under subsection (1), any amount of tax or additional tax payable by that person under the amended return shall be increased by a sum equal to ten per cent of that amount and the increased sum shall constitute part of such tax or additional tax payable by that person.

- (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 30(1); and
  - (b) the Director General has made an assessment for that year of assessment under section 39,

no amendment shall be made under this section.

### **Amendment of return on expenditure during exploration period**

**30C.** (1) Where for an exploration period a chargeable person has furnished a return in accordance with subsection 30A(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 exploration expenditure incurred by that chargeable person in relation to petroleum operations in the exploration period.

(2) An amended return under subsection (1) shall only be made after the due date for the furnishing of the return pursuant to subsection 30A(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 exploration expenditure incurred by that chargeable person in relation to petroleum operations in that period; or

- (b) contain such particulars as may be required by the Director General.

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

### **Power to call for specific returns and production of books**

**31.** For the purpose of obtaining full information for ascertaining whether or not a chargeable person is chargeable to tax, the Director General may by notice under his hand require any person—

- (a) to complete and deliver to the Director General within a time specified in the notice (not being less than thirty days from the date of service of the notice) any return specified in the notice;
- (b) to attend personally before the Director General and produce for examination all books, accounts, returns and other documents which the Director General deems necessary; or
- (c) to make a return in accordance with paragraph (a) and also to attend in accordance with paragraph (b).

### **Power to call for the statement of bank accounts, etc.**

**32.** The Director General may by notice under his hand require any chargeable person to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a statement containing particulars of—

- (a) all banking accounts—
  - (i) in which he is or has been interested; or
  - (ii) on which he has or has had power to operate, being accounts which are in existence or have been in

existence at any time during a period to be specified in the notice;

- (b) all facts bearing upon his present or past liability to tax.

**Power of access to buildings and documents, etc.**

**33.** (1) For the purposes of this Act the Director General shall at all times have full and free access to all lands, buildings and other places and to all books, documents, objects, articles, materials and things and may search such lands, buildings and places and may inspect, copy or make extracts from any such books, documents, objects, articles, materials and things without making any payment by way of fee or reward.

(1A) Where the Director General exercises his powers under subsection (1), the occupiers of such lands, buildings and other places shall provide the Director General or an authorized officer with all reasonable facilities and assistance for the exercise of his powers under this section.

(2) The Director General may take possession of any books, documents, objects, articles, materials and things to which he has access under subsection (1) where in his opinion—

- (a) the inspection of them, the copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them;
- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings instituted under or in connection with this Act.

(3) Where in the opinion of the Director General it is necessary for the purpose of ascertaining income from petroleum operations for any period to examine any books, accounts or records kept otherwise than in the National Language, he may by notice under his hand require any

chargeable person carrying on the petroleum operations during that period to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a translation in the National Language of the books, accounts or records in question:

Provided that in East Malaysia this subsection shall have effect as if the words “or English” were inserted after the words “National Language” wherever they occur.

### **Power to call for information**

**34.** The Director General may by notice under his hand require any person to give orally or in writing, as may be required, within a time specified in the notice (not being less than thirty days from the date of service of the notice), all such information concerning the income, assets or liabilities of a chargeable person as may be demanded of him by the Director General for the purpose of this Act:

Provided that, where that person is a public officer or an officer in the employment of a local authority or statutory authority, he shall not by virtue of this section be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

### **Duty to keep records**

**34A.** (1) Subject to this section, every chargeable person carrying on petroleum operation shall keep and retain in safe custody relevant records for a period of seven years from the end of the year to which any expenditure or income from that operation relates, to enable the Director General or an authorized officer to ascertain—

- (a) the expenditure for the exploration period from that operation; or
- (b) the income or the adjusted loss from that operation for the basis period for any year of assessment.



(2) Where a chargeable person referred to in subsection (1) has not furnished a return as required under this Act in relation to the exploration period or year of assessment, that chargeable person shall keep and retain the records referred to in subsection (1) for a period of seven years after the end of the year in which the return is furnished.

(3) Every chargeable person shall, for each exploration period or basis period for the year of assessment, make up accounts of his expenditure or profits or losses arising from his petroleum operations and those accounts which shall be audited by a professional accountant, together with a report made by that accountant shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the \*Companies Act 1965.

(4) Any chargeable person who is required by this section to keep records and—

- (a) does so electronically shall retain them in an electronically legible form and shall keep the records in such manner as to enable the records to be readily accessible and convertible into writing; or
- (b) has originally kept records manually and subsequently converts those records into electronic form shall retain those records prior to the conversion in their original form.

(5) All records that relate to any petroleum operation in Malaysia shall be kept and retained in Malaysia.

(6) For the purposes of this section—

“exploration period” has the same meaning assigned to it under section 30A; and

“records” includes—

- (a) books of account recording receipts and payments or income and expenditure; and

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\*NOTE—The Companies Act 1965 [Act 125] has since been repealed by the Companies Act 2016 [Act 777] which comes into operation on 31 January 2017—see subsection 620(1) of Act 777.

- (b) invoices, vouchers, receipts and such other documents as in the opinion of the Director General are necessary to verify the entries in any books of account.

### **Duty to issue electronic invoice**

**34B.** (1) Subject to this section, a person shall, in a year of assessment, issue an electronic invoice for each transaction in respect of any goods sold or services performed from petroleum operations by the person in that year of assessment.

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

- (a) the persons who shall issue the electronic invoice and the particulars to be included in the electronic invoice are as prescribed by the Minister under section 82C of the Income Tax Act 1967; and
- (b) the conditions and specifications under which an electronic invoice is to be issued shall be as determined by the Director General under the guidelines issued in accordance with section 134A of the Income Tax Act 1967.

(3) Any electronic invoice issued by a person in respect of goods sold or services performed under subsection (1) shall be transmitted electronically to and validated by the Director General.

(4) Where for any year of assessment a person is required to issue an invoice under any other written law in respect of goods sold or services performed from petroleum operations, the electronic invoice issued in accordance with subsection (1) including any other particulars as may be required shall be construed as an invoice issued under that law, provided that where the particulars of electronic invoice are inconsistent with the requirements for the issuance of invoice under that law, the electronic invoice shall only be valid and enforceable for the purposes of this Act.

(5) Where for any year of assessment an electronic invoice is issued in accordance with subsection (1), the Director General shall not be

liable for any loss or damage suffered by any person due to any error or omission arising, appearing in an electronic invoice provided that the error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Director General or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the issuance of the electronic invoice.

(6) Subject to the conditions as may be determined by the Director General, where for any year of assessment a person acquires any goods sold or enjoys any services performed, the person shall for that year of assessment issue a self-billed invoice in accordance with the conditions as may be imposed by the Director General and the invoice shall be treated as an electronic invoice.

(7) Where for any year of assessment a person makes an error or mistake in respect of any electronic invoice issued in accordance with this section, the person may for the purpose of rectifying the error or mistake issue a substitute electronic invoice within three days from the date of issuance of the defective electronic invoice.

(8) Where for any year of assessment any goods sold or services performed by a person from petroleum operations involves the issuance of credit note or debit note, the person issuing the credit note or debit note shall make adjustments in ascertaining his chargeable income for that year of assessment accordingly.

(9) A person may, in respect of any goods sold or services performed by him in any year of assessment, add any additional particulars to the electronic invoice under this section.

(10) The provisions of the Personal Data Protection Act 2010 [Act 709] shall not apply to any personal data processed for electronic invoice issued or transmitted to the Director General under this section and any other related provisions of this Act.

### **Power to call for further returns**

**35.** The Director General may give notice in writing to any person whenever he thinks fit requiring that person to furnish within

a reasonable time (to be specified in the notice) fuller or further returns respecting any matter as to which a return is required by or under this Act.

### **Returns deemed to be made with due authority**

**36.** A return purporting to be made pursuant to this Act by or on behalf of any person shall be presumed to have been made by that person or on his authority, as the case may be, until the contrary is proved; and any person signing such a return shall be deemed to be cognizant of its contents.

### **Change of address**

**37.** Every chargeable person who changes his address in Malaysia (being an address furnished by him to the Director General) for another address in Malaysia shall within three months inform the Director General of the change by notice in the prescribed form.

## **PART VII**

### **ASSESSMENTS AND APPEALS**

#### *Chapter 1—Assessments*

### **Assessments generally**

**38.** (1) Where a chargeable person has furnished a return under section 30 to the Director General for a year of assessment, the Director General shall be deemed to have made, on the day on which the return is furnished, an assessment in respect of that chargeable person relating to the amount of tax on the chargeable income based on the respective amounts as specified in the return.

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

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

(3) Where a chargeable person for a year of assessment has not furnished a return in accordance with section 30, the Director General may, according to the best of his judgment, determine the amount of the chargeable income of that person for that year and make an assessment accordingly:

Provided that the making of an assessment in respect of a chargeable person under this subsection shall not affect any liability otherwise incurred by that chargeable person by reason of his failure to deliver the return.

### **Assessments and additional assessments in certain cases**

**39.** (1) 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, may in that year or within five 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.

(2) Where the Director General discovers that the whole or part of any tax repaid to a chargeable person (otherwise than in consequence of an agreement come to with respect to an assessment pursuant to subsection 45(2) or in consequence of an assessment having been determined on appeal) has been repaid by mistake whether of fact or law, the Director General may make an assessment in respect of that chargeable person in the amount of that tax or that part of that tax, as the case may be:

Provided that no such assessment shall be made—

- (a) if the repayment was in fact made on the basis of, or in accordance with, the practice of the Director General generally prevailing at the time when the repayment was made; or
- (b) in respect of any tax, more than five years after the tax has been repaid.

(3) The Director General, where it appears to him that any form of fraud or wilful default has been committed by or on behalf of a chargeable person, or that any chargeable person has been negligent, in connection with or in relation to tax, may at any time make an assessment in respect of that chargeable person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

(4) Where in a year of assessment—

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

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

(5) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on the 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.

(6) Notwithstanding any other provisions of this Act, where in a basis period for a year of assessment, an adjustment is made in respect of the input tax paid or to be paid under the \*Goods and Services Tax Act 2014, the Director General may at any time, as may be necessary to give effect to such adjustment, make an assessment or a reduced assessment for the year of assessment to which the adjustment relates, or if the year of assessment to which the adjustment relates cannot be ascertained, for the year of assessment in which the Director General discovers the adjustment.

(7) Notwithstanding subsections (1) and (5), the Director General may at any time make an assessment or additional assessment, as the case may be, for a year of assessment in respect of a person, in the amount or additional amount of chargeable income and tax, in consequence of a mutual agreement procedure in the double taxation arrangement effected under section 65A.

### **Deemed assessment on the amended return**

**39A.** (1) Where for a year of assessment a chargeable person has furnished an amended return in accordance with section 30B, 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 relating to the amount of tax or additional tax payable on the chargeable income, based on the respective amounts as specified in the amended return.

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

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\*NOTE—The Goods and Services Tax Act 2014 [Act 762] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [Act 805] which comes into operation on 1 September 2018—see section 3 of Act 805.

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

### **Form and making of assessments, and notice of assessment**

**40.** (1) An assessment, other than an assessment under subsections 38(1) and 39A(1), shall—

- (a) be made in the appropriate prescribed form;
- (b) indicate, in addition to any other material included therein, the appropriate year of assessment and the amount or additional amount of chargeable income, and chargeable tax or the amount of tax or additional tax, as the case may be; and
- (c) specify in the appropriate space in that form the date on which that form was duly completed,

and, where that form appears to have been duly completed, the assessment shall, until the contrary is proved, be presumed to have been made on the date so specified.

(2) As soon as may be after an assessment, other than an assessment under subsections 38(1) and 39A(1), has been made, the Director General shall cause a notice of assessment to be served on the chargeable person in respect of whom the assessment was made.

(3) Where the tax charged under an assessment is increased on appeal to the Special Commissioners or a court, then, as soon as may be after the appeal has been decided there shall be served on the chargeable person in respect of whom the assessment was made a notice of increased assessment.



(4) Where subsection 43(2) applies as regards an agent and a chargeable person, any notice to be served under subsection (2) or (3) shall be served both on the agent and the chargeable person.

(5) A notice served under subsection (2) or (3) shall be in the prescribed form and shall indicate, in addition to any other material included therein—

- (a) in the case of a notice served under subsection (2), the year of assessment and the amount or additional amount of the chargeable income, and the chargeable tax;
- (b) in the case of a notice served under subsection (3), the year of assessment and the amount of the increase in the tax charged; and
- (c) in either case—
  - (i) the place at which payment is to be made;
  - (ii) the penalty for late payment imposed by subsection 48(4); and
  - (iii) any right of appeal which may exist under this Act.

### **Composite assessment**

**40A.** (1) Without prejudice to section 39, where a chargeable person—

- (a) makes default in furnishing a return in accordance with section 30;
- (b) makes an incorrect return by omitting or understating any income in respect of which he is required by this Act to make a return; or
- (c) gives any incorrect information in relation to any matter affecting his own chargeability to tax,

for any year or years of assessment (hereinafter referred to in this section as the “relevant year or relevant years”), the Director General and that chargeable person may come to an agreement in writing as to the payment by that chargeable person of a sum of money (hereinafter referred to in this section as the “total amount”) being—

- (i) the amount of tax which has been undercharged or not charged for the relevant year or relevant years in consequence of such default in furnishing a return or making an incorrect return or giving any incorrect information; and
- (ii) the amount of any penalty or penalties which that chargeable person may be required to pay for the relevant year or relevant years pursuant to subsection 51(3) or 52(2) or both (or where such penalty is abated or remitted under section 63, so much, if any, of the penalty which has not been abated or remitted).

(2) Where the Director General and a chargeable person have come to an agreement pursuant to subsection (1), the Director General may make a composite assessment in respect of that chargeable person in the total amount.

(3) As soon as may be after a composite assessment has been made, the Director General shall cause a notice of composite assessment to be served on the chargeable person in respect of whom the composite assessment was made.

(4) A notice served under subsection (3) shall be in the prescribed form and shall indicate in addition to any other material included therein—

- (a) the relevant year or relevant years;
- (b) the amount or aggregate amount of tax undercharged or not charged in the relevant year or relevant years;
- (c) the amount or aggregate amount of any penalty imposed by virtue of subsection 51(3) or 52(2) or both (or where such

penalty is abated or remitted under section 63, so much, if any, of the penalty which has not been abated or remitted); and

(d) the place at which payment of the total amount is to be made.

(5) The total amount shall be collected as if it were part of the tax payable by the chargeable person in respect of whom the composite assessment has been made.

(6) Notwithstanding any other provision of this Act—

(a) a composite assessment made under this section shall be final and conclusive for the purposes of this Act; and

(b) no appeal shall lie against the composite assessment.

### **Finality of assessment**

**41.** (1) Where—

(a) no valid notice of appeal against an assessment has been given under section 43 within the time specified by that section (or any extension thereof);

(b) an agreement has been come to with respect to an assessment pursuant to subsection 45(2); or

(c) an assessment has been determined on appeal and there is no right of further appeal,

the assessment as made, agreed to or determined shall be final and conclusive for the purposes of this Act.

(2) Nothing in subsection (1) shall prejudice the exercise of any power conferred on the Director General by section 39 or subsection 74(3).

**Notification of non-chargeability**

**41A.** (1) Where in ascertaining the chargeable income of a chargeable person, it appears to the Director General that—

- (a) no assessment shall be made in respect of the chargeable person for any year of assessment by reason of—
  - (i) absence of adjusted income, statutory income, assessable income or chargeable income of a chargeable person from any of his sources of income; or
  - (ii) exemption granted to that chargeable person under this Act,

the Director General may notify the chargeable person in writing that no assessment shall be made for that year of assessment and provide a computation with regard to it; or

- (b) assessment has been made in respect of the chargeable person, but the chargeable person has no statutory income from petroleum operations, the Director General may notify the chargeable person in writing of an adjustment, if any, made in respect of that petroleum operations and provide a computation with regard to it.

(1A) Where a chargeable person has furnished to the Director General a return for a year of assessment in accordance with subsection 30(1) and there is no chargeable income for that year of assessment, then if the chargeable person in respect of such return is aggrieved by any practice of the Director General generally prevailing at the time when the return is made—

- (a) the return shall be deemed to be a notification made by the Director General under subsection (1) on the day the return is furnished; and
- (b) the notification deemed to have been made under paragraph (a) shall be deemed to have been notified to the

chargeable person on the day on which the Director General is deemed to have made the notification.

(2) Where a chargeable person is dissatisfied with the notification made by the Director General under subsection (1) or the return which is deemed under paragraph (1A)(a) to be a notification made by the Director General, 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) or the return which is deemed under paragraph (1A)(a) to be a notification made by the Director General 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.

(5) Where a chargeable person has furnished to the Director General a return for a year of assessment in accordance with subsection 30(1) and there is no chargeable income for that year of assessment, then if the chargeable person in respect of such return alleges that—

- (a) there is an error or a mistake made by the chargeable person in that return, the chargeable person may make an application in writing to the Director General for an amendment to be made in respect of such return; or
- (b) the amount that has been computed in the return is inaccurate by reason of—
  - (i) any exemption, relief, remission, allowance or deduction granted for that year of assessment under this Act or any other written law published in the *Gazette* after the year of assessment in which the return is furnished;

- (ii) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
- (iii) a deduction not allowed in respect of payment of interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of movable property derived from Malaysia or contract payment to a non-resident contractor which is not due to be paid under the provisions of the law for the time being in force in Malaysia relating to income tax on the day the return is furnished,

the chargeable person may make an application in writing to the Director General for relief.

(6) The application under subsection (5) shall be made—

- (a) in respect of paragraph (5)(a), within six months from the date the return is furnished;
- (b) in respect of subparagraph (5)(b)(i) or (ii), within five years after the end of the year the exemption, relief, remission, allowance or deduction is published in the *Gazette* or the approval is granted, whichever is the later; or
- (c) in respect of subparagraph (5)(b)(iii), within one year after the end of the year the payment is made.

(7) On receiving an application under subsection (5), the Director General shall inquire into the matter and may make amendment in respect of the amount that has been computed in the return as appears to the Director General to be just and reasonable.

(8) No amendment shall be allowed under subsection (7) in respect of an error or a mistake as to the basis on which the non-chargeability of the applicant ought to have been computed if the return or statement containing the error or mistake was in fact made on the basis of or in

accordance with any practice of the Director General generally prevailing at the time when the return was made.

(9) An application under subsection (5) shall be as nearly as may be in the same form as a notice of appeal under section 43.

(10) Where the applicant is aggrieved by the Director General's decision on the application under subsection (5), the following provisions shall apply:

- (a) the applicant may, within six months after being informed of the decision, request in the prescribed form for the Director General to forward the application to the Special Commissioners;
- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 46; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.

## *Chapter 2—Appeals*

### **The Special Commissioners and the Secretary**

**42.** (1) For the purposes of this Act there shall be three or more Special Commissioners of Petroleum Income Tax and a Secretary to the Special Commissioners.

(2) The Special Commissioners appointed under the law relating to income tax shall be the Special Commissioners of Petroleum Income Tax.

(3) The Secretary to the Special Commissioners, appointed under the law relating to income tax shall be the Secretary to the Special Commissioners of Petroleum Income Tax.

**Right of appeal**

**43.** (1) A chargeable person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of assessment (or within such extended period as may be allowed under section 44) a written notice of appeal in the prescribed form stating the grounds of appeal and containing such other particulars as may be required by that form.

(2) Where an assessment has been made in respect of a person appointed under section 28 to be the agent of a chargeable person, the agent and that chargeable person shall for the purposes of this section and the other provisions of this Act relating to appeals each be treated as the person in respect of whom the assessment was made and, if they both appeal against the assessment, their appeals shall if possible be dealt with together.

(3) Where in a case to which section 29 applies the principal has appealed against an assessment, the representative, whether or not he himself has appealed or is entitled to appeal against the assessment and without prejudice to any other power conferred on him by subparagraph 12(c) of the Third Schedule, may represent and act generally on behalf of the principal for the purposes of the provisions of this Act relating to appeals ('the principal' and 'the representative' here having the same meaning as in section 29).

(4) This section shall not apply to an assessment made under subsection 38(1) or section 39A, except where a chargeable person in respect of such assessment is aggrieved by the public ruling made under section 71B or any practice of the Director General generally prevailing at the time when the assessment is made.

**Extension of time for appeal**

**44.** (1) A person seeking to appeal against an assessment after the expiration of the period to make an appeal under subsection 43(1), may within seven years after the end of that period, make to the Director General a written application in the prescribed form for an extension



of that period within which a notice of appeal against that assessment may be given under that subsection.

(2) On receipt of an application under subsection (1), the Director General—

- (a) if he is satisfied that for any reasonable cause the applicant was prevented from giving notice of appeal within the period provided by section 43, shall extend the period as he thinks proper in the circumstances and give written notice of the extension to the applicant; and
- (b) if he is not so satisfied, shall forward the application to the Secretary, together with a statement of the reasons for his dissatisfaction and his address for the purposes of the application.

(3) Where the Director General forwards an application and statement pursuant to paragraph (2)(b), he shall inform the applicant in writing that he has done so and shall furnish the applicant with a copy of the statement; and the applicant may, within twenty-one days of receiving the information and the copy, forward to the Secretary written representations as to the application and the statement.

(4) Any application and statement forwarded pursuant to paragraph (2)(b) and any representations forwarded pursuant to subsection (3) shall be brought by the Secretary to the attention of a Special Commissioner, who shall decide whether or not to extend as he thinks proper in the circumstances the period within which the notice of appeal may be given.

(5) The decision of one of the Special Commissioners refusing an application or granting an extension under subsection (4) shall be notified in writing by the Secretary to the applicant and the Director General, and shall be final.

**Review by Director General**

**45.** (1) On receipt of a notice of appeal under section 43, the Director General shall, within twelve months from the date of receipt of the notice of appeal, review the assessment against which the appeal is made and for that purpose may—

- (a) require the appellant to furnish such particulars as the Director General may think necessary with respect to the income to which the assessment relates and any other matter relevant to the assessment in the Director General's opinion;
- (b) require the appellant to produce all books or other documents in the appellant's custody or under the appellant's control relating to the petroleum operations to which the assessment relates or any other matter relevant to the assessment in the Director General's opinion;
- (c) summon any person who in the Director General's opinion is able to give evidence respecting the assessment to attend before the Director General; and
- (d) examine any person so attending on oath or otherwise.

(1A) Where the Director General requires a period longer than twelve months to carry out the review under subsection (1), the Director General may apply to the Minister for an extension of that period not later than thirty days before the expiry of the twelve month period.

(1B) On receipt of an application under subsection (1A), the Minister may grant such extension as he thinks proper and reasonable in the circumstances provided that such extension shall not exceed a period of six months from the date of expiry of the twelve month period.

(1C) The decision of the Minister under subsection (1B) shall be notified in writing to the Director General and shall be final.

(2) Where as the result of a review under subsection (1) the Director General and the appellant come to an agreement in writing either—

- (a) as the amount of the chargeable income and the tax or the amount of tax or additional tax; or
- (b) that there is no chargeable income or tax,

the assessment against which the appeal is made shall be treated as having been confirmed, reduced, increased or discharged in accordance with the agreement.

(3) Subject to subsection (5), where as the result of a review under subsection (1) the Director General and the appellant come to an oral agreement as to the matters mentioned in paragraph (2)(a) or (b) and the Director General serves a written confirmation of the agreement on the appellant, then, unless the appellant within a period of twenty-one days of being so served gives notice in writing to the Director General repudiating the agreement, the oral agreement as confirmed by the Director General shall be deemed to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period between the Director General and the appellant.

(4) Subject to subsection (5), where as the result of a review under subsection (1) the Director General makes to the appellant proposals in writing that the assessment should be confirmed, reduced, increased or discharged and the appellant neither accepts nor rejects the proposals, unless the appellant within a period of twenty-one days of being served with such proposals (or such further period as the Director General on the appellant's application may allow) gives notice in writing to the Director General rejecting the proposals, the proposals shall be deemed to have been accepted and to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period or further period, as the case may be, between the Director General and the appellant.

(5) Where by the operation of subsection (3) or (4) there is deemed to be an agreement within the meaning of subsection (2) between the Director General and the appellant, one of the Special Commissioners

on the application of the appellant made to the Special Commissioners within a period of thirty days after the agreement is deemed to come to may, after giving the Director General an opportunity to make oral or written representations, set the agreement aside if he thinks it just and equitable to do so in the circumstances.

(6) The decision of one of the Special Commissioners on an application under subsection (5) shall be notified by the Secretary in writing to the applicant and the Director General, and shall be final.

(7) References in this section to agreements come to between the Director General and the applicant and to confirmations and requests being served on the appellant included references to agreements come to between the Director General and a duly authorized person conducting correspondence or otherwise acting on behalf of the appellant in relation to the appeal and to confirmations and requests served on such a person.

(8) Where on an appeal against an assessment the tax charged under the assessment is increased by an agreement come to under subsection (2) or by an agreement deemed to become to under subsection (3) or (4) and not set aside under subsection (5), the Director General shall serve on the appellant a notice in the prescribed form which shall—

- (a) indicate, in addition to any other material included therein, the amount of the increase in the tax charged and the place of payment; and
- (b) have the same effect for the purposes of Part VIII as a notice of increased assessment.

(9) The notice mentioned in subsection (8) shall be served—

- (a) where an agreement is come to under subsection (2), as soon as may be;
- (b) where an agreement is come to under subsection (3) or (4) and is not set aside under subsection (5), as soon as may be after the expiry of the period mentioned in subsection (5)

or, if there is an unsuccessful application to the Special Commissioners under subsection (5), as soon as may be after the application has been refused.

### **Disposal of appeals**

**46.** (1) Subject to subsection (1A) or (3), the Director General may send an appeal forward to the Special Commissioners at any time within the twelve month period from the date of receipt of the notice of appeal or, if an extension under subsection 45(1B) has been granted, within the extended period if he is of the opinion that there is no reasonable prospect of coming to an agreement with the appellant in accordance with subsection 45(2) in respect of the appeal and if subsections 45(3) and (4) are not applicable; and, where he sends an appeal forward under this subsection, he shall give the appellant written notice that he has done so.

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

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

(2) *(Deleted by Act 608).*

(3) No appeal shall be sent forward to the Special Commissioners if the Director General and the appellant have or are deemed to

have come to an agreement in respect of it in accordance with subsection 45(2), (3) or (4).

(4) Where an appeal is sent forward to the Special Commissioners pursuant to this section, the appeal shall be sent forward in the manner provided by the Third Schedule and that Schedule shall have effect for regulating the hearing and determination of the appeal and otherwise as provided therein.

(5) Where an appeal has been sent forward to the Special Commissioners pursuant to this section—

(a) the Director General and the appellant at any time before the hearing of the appeal by the Special Commissioners is completed may come to an agreement of the kind mentioned in subsection 45(2) with regard to the assessment to which the appeal relates; or

(b) the appellant may at any time withdraw the appeal.

(6) Where the Director General and the appellant come to an agreement under paragraph 5(a), the Director General shall and the appellant may, send a true copy of the agreement to the Special Commissioners.

(7) Where the Special Commissioners are satisfied that the Director General and the appellant have come to an agreement under paragraph (5)(a) with regard to the assessment to which an appeal relates—

(a) the proceedings before the Special Commissioners relating to the appeal shall abate;

(b) the agreement shall have effect as if it had been come to under subsection 45(2); and

(c) subsections 45(8) and (9) shall apply accordingly.

(8) Where the Special Commissioners are satisfied that the appellant has withdrawn his appeal under paragraph (5)(b)—

- (a) the proceedings before the Special Commissioners relating to the appeal shall abate; and
  - (b) the assessment to which the appeal relates shall be final and conclusive for the purposes of this Act.
- (9) In this section, “appeal” means an appeal against an assessment.

### **Reference to the Price Review Committee**

**47.** (1) Subject to section 2 and without prejudice to the powers of the Director General to determine the amount of the chargeable income of a chargeable person for a year of assessment to the best of his judgment and to make an assessment accordingly, where the Director General is not satisfied with the determination of the market value of chargeable petroleum and he so notifies the chargeable person in writing, either the Director General or that chargeable person may refer the matter to the Price Review Committee (in this section referred to as the committee) established in accordance with the following subsections for determination of what ought to be the market value:

Provided that nothing in this subsection shall be so construed as to relieve any chargeable person from any obligation imposed upon him under Chapter 2 of Part VII.

(2) Subject to this section the committee shall consist of such person or persons as the chargeable person and the Director General may agree within twenty-one days from the date of service of the notification mentioned in subsection (1) on the chargeable person.

(3) Where the chargeable person and the Director General fail to come to an agreement in the manner provided in subsection (2), each of them shall have the right to appoint one member of the committee.

(4) Where the chargeable person within thirty days from the date of his acquiring the right to appoint one member of the committee under subsection (3) fails to exercise that right, the Director General shall have the right to appoint one member of the committee to act in the place of the member whom the chargeable person has failed to appoint.

(5) Where the Director General within thirty days from the date of his acquiring the right to appoint one member of the committee under subsection (3) fails to exercise that right, the chargeable person shall have the right to appoint one member of the committee to act in the place of the member whom the Director General has failed to appoint.

(6) The two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, shall within twenty-one days after their appointment jointly appoint a third member who together with the two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, shall form the committee, and who shall be the chairman of it.

(7) Where the two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, fail within twenty-one days after their appointment jointly to appoint a third member—

- (a) the chargeable person and the Director General shall have the right to request the Chief Justice of the Federal Court to appoint a third member; and
- (b) the third member appointed by the Chief Justice of the Federal Court shall together with the two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, form the committee and shall be the chairman of it.

(8) The committee shall make such rules governing the conduct of any reference to it as it shall think fit.

(9) The committee shall determine the matter referred to it under subsection (1) and its decision on the matter shall be final.

(10) Notwithstanding anything in this Act the Special Commissioners shall have no jurisdiction to hear or determine any matter which the committee has jurisdiction to hear and determine.



PART VIII

COLLECTION AND RECOVERY OF TAX

**Payment of tax**

**48.** (1) Except as provided in subsections (2) and (3), tax payable under an assessment for a year of assessment shall be due and payable on the due date whether or not the chargeable person appeals against the assessment.

(2) Where an assessment is made under subsection 38(3), section 39 or section 40A, or where an assessment is increased under subsection 45(2), the tax payable under the assessment or increased assessment shall, on the service of the notice of assessment or composite assessment or increased assessment, as the case may be, be due and payable on the chargeable person assessed at the place specified in that notice whether or not that chargeable person appeals against the assessment or increased assessment.

(3) Where an assessment or additional assessment has been made under section 39A, 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.

(4) Where any tax due and payable under subsection (1) has not been paid by the due date, so much of the tax as is unpaid upon the expiration of that date shall without any further notice being served be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.

(5) Subject to subsection (6), where any tax due and payable under subsection (2) has not been paid within thirty days after the service of the notice, so much of the tax as is unpaid upon the expiration of that period shall without any further notice being served be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.

(6) Where any tax is payable in accordance with subsection (2), the Director General may allow the tax to be paid by instalments in such amounts and on such dates as he may determine and in the event of default in payment of any one of the instalments on the date specified for payment the balance of the tax then outstanding shall be due and payable on that date and shall without any further notice being served be increased by a sum equal to ten per cent of that balance, and that sum shall be recoverable as if it were tax due and payable under this Act.

(7) Notwithstanding the foregoing subsections, where the tax due and payable is increased by a sum under subsection (4), (5) or (6), 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 that amount.

(8) For the purposes of this section, “due date” means the last day of the seventh month from the date following the end of the accounting period.

### **Tax payable notwithstanding institution of proceedings under any other written law**

**48A.** The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part.

### **Recovery by suit**

**49.** (1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government.

(2) The Director General and all authorized officers shall be deemed to be public officers authorized by the Minister under subsection 25(1) of the Government Proceedings Act 1956 [*Act 359*], in respect of all proceedings under this section.

(3) In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under subsection 48(4), (5) or (6).

### **Estimate of tax payable and payment by instalments**

**49A.** (1) Every chargeable person shall, with respect to the basis period for each year of assessment, furnish to the Director General an estimate of his tax payable for that year of assessment.

(2) Except as provided in paragraph (4)(a), the estimate of tax payable for a year of assessment shall be made in the prescribed form and furnished to the Director General not later than thirty days before the beginning of the basis period for that year of assessment.

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

(4) Where the first basis period for a year of assessment of a chargeable person is not less than six months—

(a) the estimate of tax payable for that year of assessment shall be made in the prescribed form and furnished to the Director General within three months from the beginning of that basis period; and

(b) subsections (2) and (3) shall apply to a chargeable person beginning from the second year of assessment.

(5) Where an estimate of tax payable for a year of assessment has been furnished in accordance with subsection (2)—

(a) the amount of estimate shall be paid to the Director General in ten equal monthly instalments;

- (b) each instalment shall be paid by the due date;
- (c) the first instalment may be made from the second month of the basis period for that year of assessment of that chargeable person;
- (d) all ten monthly instalments shall be made before the second month of the basis period immediately following the basis period for that year of assessment; and
- (e) the chargeable person shall indicate in the prescribed form referred to in subsection (2), the respective months in the basis period of that year of assessment or the following basis period, in which the ten monthly instalments shall be paid.

(6) Where an estimate of tax payable for a year of assessment has been furnished in accordance with paragraph (4)(a), the estimate of tax payable shall be paid to the Director General in equal monthly instalments determined according to the number of months in the basis period for that year of assessment and each instalment shall be paid by the due date beginning from the sixth month of the basis period for that year of assessment in respect of which that estimate has been furnished.

(7) A chargeable person may, in the sixth or the ninth month, or in both months of the basis period for a year of assessment, furnish to the Director General a revised estimate of his tax payable for that year in the prescribed form and—

- (a) where the revised estimate exceeds the amount of instalments which is payable in that year prior to that revised estimate, the difference shall be payable in the remaining instalments in equal proportion; or
- (b) where the amount of instalments which is payable in that year prior to that revised estimate exceeds the revised estimate, the remaining instalments shall cease immediately.

(8) Notwithstanding subsections (1), (3), (4), (5), (6) and (7), the Director General may direct any chargeable person to make payment by instalments on account of tax which is or may be payable by that chargeable person for a year of assessment at such times and in such amounts as the Director General may direct.

(9) Where the Director General directs a chargeable person to make payment by instalments under subsection (8) before the sixth month of the basis period for a year of assessment of that chargeable person, the total amount of that instalments shall be deemed, for the purpose of this section, to be the estimate of tax payable by that chargeable person 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 (11).

(10) Where subsection (9) applies and for a year of assessment, a chargeable person 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.

(11) Where any instalment amount due and payable has not been paid by the due date or on the date specified by the Director General, the amount unpaid shall, without further notice being served, be increased by a sum equal to ten per cent of the amount unpaid, and the amount unpaid and the increase on the amount unpaid shall be recoverable as if it were tax due and payable under this Act.

(12) Where the tax payable under an assessment for a year of assessment exceeds the revised estimate of tax payable for that year of assessment or if no revised estimate is furnished, the estimate of tax payable for that year of assessment, by an amount of more than thirty per cent of the tax payable under the assessment, then, without any further notice being served, the difference between that amount and thirty per cent of the tax payable under the assessment shall be increased by a sum equal to ten per cent of the amount of that

difference, and that sum shall be recoverable as if it were tax due and payable under this Act.

(13) Where for a year of assessment—

- (a) no estimate is furnished by a chargeable person, and no direction is given by the Director General to make payment by instalment under subsection (8);
- (b) no prosecution under section 58 has been instituted in relation to failure to furnish such estimate; and
- (c) tax is payable by that person under an assessment for that year of assessment,

such tax payable shall without any further notice be increased by a sum equal to ten per cent of the tax payable and that sum shall be recoverable as if it were tax due and payable under this Act:

Provided that if that person pays that sum or, where the sum is remitted under subsection (14), he shall not be liable to be charged on the same facts with an offence under section 58.

(14) Notwithstanding the foregoing subsections, where the estimate of tax payable for a year of assessment is increased by a sum under subsection (11), (12) or (13) 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.

(15) Nothing in this section shall prevent the collection of any tax from a person to whom this section applies in accordance with section 48 or the payment of that tax being enforced in accordance with section 49.

(16) For the purposes of this section—

“due date” means the fifteenth day of a calendar month;

“revised estimate” means a revised estimate made in the ninth month of the basis period or if there is no revised estimate made in the ninth month of the basis period, the revised estimate made in the sixth month of the basis period.

### **Refund of overpayments**

**50.** (1) Subject to this section, where it is proved to the satisfaction of the Director General that any chargeable person has paid tax for any year of assessment in excess of the amount payable under this Act, the chargeable person shall be entitled to have the excess refunded by the Government.

(2) No claim for repayment under this section shall be valid unless it is made within five years after the end of the year of assessment to which the claim relates.

(3) Nothing in this section shall operate—

- (a) to extend any time limit for appeal, validate any appeal which is otherwise invalid or authorize the revision of any assessment or other matter which has become final and conclusive; or
- (b) to compel the Government to refund the excess amount of tax paid (by deduction or otherwise) in respect of an assessment unless the assessment has been finally determined.

(4) Any amount of excess in respect of tax payable for a year of assessment which is to be refunded to a person under subsection (1) may be utilized by the Director General for the payment of any other amount of tax which is due and payable (including any amount of instalments which are due and payable) by that person under this Act, or under the Income Tax Act 1967 or the Real Property Gains Tax Act 1976.

(5) Where amount of excess in respect of a person is ascertained in accordance with subsection 111(4A) of the Income Tax Act 1967 or subsection 24(7A) of the Real Property Gains Tax Act 1976 such

excess shall be applied for the payment of tax which is due and payable (including any amount of instalments which are due and payable) by that person under this Act.

### **Fund for Tax Refund**

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

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 50.

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

## **PART IX**

### **OFFENCES AND PENALTIES**

#### **Failure to furnish return**

**51.** (1) Any person who makes default in furnishing a return in accordance with section 30 or 30A, shall, if he does so without reasonable excuse, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Where a person has been convicted of an offence under subsection (1), the court may make a further order that the person shall comply with the relevant provision of this Act under which the offence has been committed within thirty days, or such other period as the court deems fit, from the date the order is made.



(3) Where in relation to a year of assessment, a person makes default in furnishing a return in accordance with section 30 and no prosecution under subsection (1) has been instituted in relation to that default—

- (a) the Director General may require that person to pay a penalty equal to treble the amount of that tax which, before any set-off or repayment under this Act, is payable for that year; and
- (b) if that person pays that penalty (or, where the penalty is abated or remitted under section 63, so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

(4) The Director General may require a person to pay an additional amount of penalty in accordance with subsection (3) in respect of any additional tax which is payable by that person for a year of assessment.

(5) In any prosecution under subsection (1), the burden of proving that a return has been made shall be upon the accused person.

### **Incorrect returns**

**52.** (1) Any person who—

- (a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of a chargeable person; or
- (b) gives any incorrect information in relation to any matter affecting the chargeability to tax of a chargeable person,

shall, unless he satisfies the court that the incorrect return or incorrect information was made or given in good faith, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and shall pay a special penalty of double the amount of tax which has been undercharged in consequence of the incorrect return or

incorrect information or which would have been undercharged if the return or information had been accepted as correct.

(2) Where a person—

- (a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of a chargeable person; or
- (b) gives any incorrect information in relation to any matter affecting the chargeability to tax of a chargeable person, then, if no prosecution under subsection (1) has been instituted in respect of the incorrect return or incorrect information,

the Director General may require that person to pay a penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct; and, if that person pays that penalty (or, where the penalty is abated or remitted under section 63, so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

### **Wilful evasion**

**53.** (1) Any person who wilfully and with intent to assist a chargeable person to evade tax—

- (a) omits from a return made under this Act any income which should be included;
- (b) makes a false statement or entry in a return made under this Act;
- (c) gives a false answer (orally or in writing) to a question asked or request for information made in pursuance of this Act;

- (d) prepares or maintains or authorizes the preparation or maintenance of false books of account or other false records;
- (e) falsifies or authorizes the falsification of books of account or other records; or
- (f) makes use or authorizes the use of any fraud, art or contrivance,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall pay a special penalty of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected.

(2) Where in any proceedings under this section it is proved that a false statement or false entry (whether by omission or otherwise) has been made in a return furnished under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed until the contrary is proved to have made that false statement or entry with intent to assist a chargeable person to evade tax.

### **Obstruction of officers**

#### **54. Any person who—**

- (a) obstructs or refuses to permit the entry of the Director General or an authorized officer into any land, building or place in pursuance of section 33;
- (b) obstructs the Director General or an authorized officer in the exercise of his functions under this Act;
- (c) refuses to produce any book or other document in his custody or under his control on being required to do so by

the Director General or an authorized officer for the purposes of this Act;

- (d) fails to provide reasonable facilities or assistance or both to the Director General or an authorized officer in the exercise of his powers under this Act; or
- (e) refuses to answer any question relating to any of those purposes lawfully asked of him by the Director General or an authorized officer,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Breach of confidence**

**55.** (1) Any classified person who in contravention of section 71—

- (a) communicates classified material to another person; or
- (b) allows another person to have access to classified material,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) In this section, “classified material” and “classified person” have the same meaning as in section 71.

### **Offences by officials**

**56.** Any person having an official function under this Act who—

- (a) otherwise than on good faith, demands from any person an amount in excess of the tax or penalties due under this Act;

- (b) withholds for his own use or otherwise any portion of any such tax or penalty collected or received by him;
- (c) otherwise than on good faith, makes a false report or return (orally or in writing) of the amount of any such tax or penalty collected or received by him; or
- (d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Director General or any other person,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

#### **Unauthorized collection**

**57.** Any person who, not being authorized under this Act to do so, collects or attempts to collect tax or a penalty under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

#### **Failure to keep records**

**57A.** Any person who, without reasonable excuse, contravenes subsection 34A(1), (2), (3), (4) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than three hundred ringgit and not more than ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

#### **Failure to issue electronic invoice**

**57B.** Any person who, without reasonable excuse, contravenes subsection 34B(1) or (6), shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and

not more than twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**Other offences**

**58.** Any person who without reasonable excuse—

- (a) fails to comply with a notice given under section 31, 32, subsection 33(3), section 34 or 35;
- (b) fails to comply with section 37; or
- (c) fails to furnish an estimate in accordance with subsection 49A(2) or (3), or paragraph 49A(4)(a),

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

**Additional provisions as to certain offences**

**59.** (1) No proceedings for an offence under section 52, 54 or 58 shall be instituted more than twelve years after the offence was committed.

(2) Any person who aids, abets or incites another person to commit an offence under section 52, 54 or 56 shall be deemed to have committed the same offence and shall be liable to the same penalty.

**Tax payable notwithstanding institution of proceedings**

**60.** The institution of proceedings or the imposition of a penalty, special penalty, fine or term of imprisonment under this Part shall not relieve any person from liability for the payment of any tax for which he is or may be liable or from liability to make any return which he is required by this Act to make.

**61.** *(Deleted by Act A1028).*

**Power to compound offences**

**62.** (1) Where any person has committed any offence under this Act, the Director General may at any time before conviction compound the offence and order that person to pay such sum of money, not exceeding the amount of the maximum fine and any special penalty to which that person would have been liable if he had been convicted of the offence, as he thinks fit:

Provided that the Director General shall not exercise his powers under this section unless that person in writing admits that he has committed the offence and requests the Director General to deal with the offence under this section.

(2) Where under this section the Director General compounds an offence committed by any person and makes an order accordingly—

- (a) the order shall be made in writing under the hand of the Director General and there shall be attached to it the written admission and request referred to in subsection (1);
- (b) the order shall specify—
  - (i) the offence committed;
  - (ii) the sum of money ordered to be paid; and
  - (iii) the date on which payment is to be made or the dates on which instalments of that sum are to be paid, as the case may be,

and, where the order provides for payment by instalments and there is default in payment of any instalment, the whole of the balance then outstanding shall become due and payable forthwith;

- (c) a copy of the order shall be given, if he so requests, to the person who committed the offence;
- (d) that person shall not be liable to any prosecution or, as the case may be, any further prosecution in respect of the offence and, if any prosecution or further prosecution is brought, it shall be a good defence for that person to prove that the offence has been compounded under this section;
- (e) the order shall be final and shall not be subject to any appeal;
- (f) the order may be enforced in the same way as the judgment of a court for the payment of the amount stated in the order or the amount outstanding, as the case may be; and
- (g) the order shall, on production to any court, be treated as proof of the commission of the offence by that person and of the other matters set out therein.

### **Power to abate or remit penalties**

**63.** The Director General may abate or remit any penalty imposed under this Act except a penalty imposed on conviction.

### **Recovery of penalties imposed under Part IX**

**64.** (1) Special penalties imposed under subsection 52(1) or 53(1) shall be recoverable in the same way as fines imposed on conviction.

(2) Any penalty imposed on any person under subsection 51(3) or 52(2) shall be collected as if it were part of the tax payable by that person, but shall not be treated as tax so payable for the purposes of any provision of this Act other than section 49.



### **Jurisdiction of subordinate court**

**64A.** Notwithstanding any other written law, a subordinate court (as defined in the Third Schedule) shall have power to try any offence under this Act and on conviction to impose the full penalty therefor.

## **PART X**

### **REMISSION AND OTHER RELIEF**

#### **Remission of tax**

**65.** (1) The tax paid or payable by any chargeable person may be remitted wholly or in part by the Minister on grounds of justice and equity, and any tax so remitted shall not be regarded as tax payable for the purposes of any other provision of this Act.

(2) Where a chargeable person granted remission under subsection (1) has paid any of the tax to which the remission relates, he shall be entitled to have the amount which he has paid refunded to him as if it were an overpayment to which section 50 applies.

#### **Double taxation arrangements**

**65A.** (1) If the Minister by statutory order declares that—

(a) arrangements specified in the order have been made by the Government with the government of any territory outside Malaysia with a view to affording relief from double taxation in relation to tax under this Act and any foreign tax of that territory; and

(b) it is expedient that those arrangements shall have effect,

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

(1A) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.

(2) Where any arrangements have effect by virtue of this section, section 71 shall not prevent the disclosure to a duly authorized servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements.

(3) Any arrangements to which effect is given under this section may include—

- (a) provision for relief from tax with respect to any person of any particular class;
- (b) provision as to income which is not itself subject to double taxation; and
- (c) provision for exempting from tax any person or any person of any particular class or of exempting from tax (wholly or in part) the income of any person or any person of any particular class.

(4) For the purposes of this section, “foreign tax” means any tax on income derived from petroleum operations chargeable or imposed by or under the laws of a territory outside Malaysia.

(5) Any order made under this section shall be laid before the House of Representatives.

### **International obligations**

**65AA.** (1) Notwithstanding section 65A, if the Minister by statutory order declares that—

- (a) arrangements specified in the order have been made by the Government to give effect to Malaysia’s international

obligations in relation to tax under this Act or other taxes of every kind under any written law; and

(b) it is expedient that those arrangements should have effect,

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

(2) Where any arrangements have effect by virtue of this section, section 71 shall not prevent the disclosure to a duly authorized servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements.

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

### **Exemption to give effect to agreements in overlapping areas**

**65B.** (1) The Minister may, by statutory order, exempt from tax any chargeable person or exempt from tax the income (wholly or in part) of any chargeable person to give effect to any agreement or arrangement made by the Government with the government of any territory outside Malaysia for the joint exploration and exploitation of petroleum in overlapping areas.

(2) Any order made under subsection (1) shall be laid before the House of Representatives.

(3) Nothing in subsection (1) shall absolve or be deemed to have absolved the said chargeable person from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of this Act in respect of the income exempted under this section.

**Exemption from tax: general**

**65C.** (1) The Minister may, by statutory order, exempt any chargeable person from all or any of the provisions of this Act, either generally or in respect of any income of a particular kind.

(1A) The Minister may, in any particular case, exempt any chargeable person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

(3) Nothing in subsection (1) shall absolve or be deemed to have absolved the said chargeable person from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of this Act in respect of the income exempted under this section.

**Relief in respect of error or mistake**

**66.** (1) If any chargeable person who has paid tax for any year of assessment alleges that an assessment relating to that year is excessive by reason of some error or mistake in a return or statement made by him for the purposes of this Act and furnished by him to the Director General prior to the assessment becoming final and conclusive, he may within five years after the end of the year of assessment within which the assessment was made, make an application in writing to the Director General for relief.

(2) On receiving an application under subsection (1) the Director General shall inquire into the matter and, subject to this section, shall give by way of repayment of tax such relief in respect of the alleged error or mistake as appears to him to be just and reasonable.

(3) In determining any application under this section, the Director General shall have regard to all the relevant circumstances of the case and in particular—

- (a) shall consider whether the granting of relief would result in the exclusion from charge to tax of income of the applicant; and
- (b) for that purpose may take into consideration the chargeability of the applicant for years of assessment other than the year to which the application relates and assessments made upon him for those years.

(4) No relief shall be given under this section in respect of an error or mistake as to the basis on which the chargeability of the applicant ought to have been computed if the return or statement containing the error or mistake was in fact made on the basis of, or in accordance with, the practice of the Director General generally prevailing at the time when the return or statement was made.

(5) An application under subsection (1) shall be as nearly as may be in the same form as a notice of appeal under section 43; and, where the applicant is aggrieved by the Director General's decision on the application—

- (a) the applicant may, within six months after being informed of the decision, request in the prescribed form for the Director General to forward the application to the Special Commissioners;
- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 46; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.

### **Relief other than in respect of error or mistake**

**66A.** (1) Where any chargeable person has furnished to the Director General a return for a year of assessment in accordance with subsection 30(1) and has paid tax for that year of assessment alleges

that the assessment relating to that year of assessment is excessive by reason of—

- (a) any exemption, relief, remission, allowance or deduction granted for that year of assessment under this Act or any other written law is published in the *Gazette* after the year of assessment in which the return is furnished;
- (b) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
- (c) a deduction not allowed in respect of payment of interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of movable property derived from Malaysia or contract payment to a non-resident contractor which is not due to be paid under the provisions of the law for the time being in force in Malaysia relating to income tax on the day the return is furnished,

the chargeable person may make an application in writing to the Director General for relief.

(2) The application under subsection (1) shall be made—

- (a) in respect of paragraph 1(a) or (b), within five years after the end of the year the exemption, relief, remission, allowance or deduction is published in the *Gazette* or the approval is granted, whichever is the later; or
- (b) in respect of paragraph (1)(c), within one year after the end of the year the payment is made.

(3) On receiving an application under subsection (1), the Director General shall inquire into the matter and may give by way of repayment of tax such relief as appears to the Director General to be just and reasonable.

(4) An application under subsection (1) shall be as nearly as may be in the same form as a notice of appeal under section 43.

(5) Where the applicant is aggrieved by the Director General's decision on the application under subsection (1), the following provisions shall apply:

- (a) the applicant may, within six months after being informed of the decision, request in the prescribed form for the Director General to forward the application to the Special Commissioners;
- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 46; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.

## PART XI

### SUPPLEMENTAL

#### *Chapter 1—Administration*

#### **The Director General**

**67.** The Director General of Inland Revenue appointed under the law in force relating to income tax shall have the care and management of the tax.

#### **Power of Minister to give directions to Director General**

**68.** The Minister may give to the Director General directions of a general character (not inconsistent with this Act) as to the exercise of the functions of the Director General under this Act; and the Director General shall give effect to any directions so given.

**Delegation of Director General's functions**

**69.** (1) Any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under section 82) may be exercised by a Deputy Director General appointed under the law relating to income tax.

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

(3) *(Deleted by Act 644).*

(4) *(Deleted by Act 644).*

(5) The Director General may by writing under his hand authorize any public officer or any employee of the Inland Revenue Board of Malaysia (subject to any exceptions or limitations contained in the authorization) to exercise or assist in exercising any function of the Director General under this Act which is exercisable under subsection (2) by the appointed officers.

(6) Where a public officer or an employee of the Inland Revenue Board of Malaysia exercises any of the Director General's functions by virtue of any provision of subsections (1) to (5), he shall do so subject to the general supervision and control of the Director General.

(7) The delegation by or under any provision of subsections (1) to (5) of the exercise of any function of the Director General shall not prevent the exercise of that function by the Director General himself.

(8) References in this Act to the Director General shall be construed, in relation to any case where a public officer or an employee of the Inland Revenue Board of Malaysia is authorized by any provision of subsections (1) to (5) to exercise the functions of the Director General, as including references to that officer or employee.



**Identification of officials**

**70.** (1) Any person exercising the right of access or the right to take possession conferred by section 33 shall carry a warrant in the prescribed form issued by the Director General (or, in the case of a warrant issued to the Director General, by a Deputy Director General) which shall identify the holder and his office and shall be produced by the holder on demand to any person having reasonable grounds to make the demand.

(2) Where a person purporting to be a public officer or an employee of the Inland Revenue Board of Malaysia exercising functions under this Act produces a warrant in the form prescribed under subsection (1) or any written identification or authority, then, until the contrary is proved, the warrant, written identification or authority shall be presumed to be genuine and he shall be presumed to be the person referred to therein.

**Certain material to be treated as confidential**

**71.** (1) Subject to this section, every classified person shall regard and deal with classified material as confidential; and, if he is an official, he shall make and subscribe before the prescribed authority a declaration in the prescribed form that he will do so.

(2) No classified material shall be produced or used in court or otherwise except—

- (a) for the purposes of this Act or another tax law;
- (b) in order to institute or assist in the course of a prosecution for any offence committed in relation to tax or in relation to any tax or duty imposed by another tax law; or
- (c) with the written authority of the Minister or of the chargeable person to whose income or adjusted loss it relates.

(3) No official shall be required by any court—

- (a) to produce or disclose classified material which has been supplied to him or another official otherwise than by or on behalf of the chargeable person to whose income or adjusted loss it relates; or
  - (b) to identify the person who supplied that material.
- (4) Nothing in this section shall prevent—
  - (a) the production or disclosure of classified material to the Auditor General (or to public officers under his direction and control) or the use of classified material by the Auditor General, to such an extent as is necessary or expedient for the proper exercise of the functions of his office;
  - (aa) the production or disclosure of classified material in relation to electronic invoice to the Director General of Customs and Excise (or to the public officers under his direction and control) or the use of classified material in relation to electronic invoice by the Director General of Customs and Excise, to such an extent as is necessary or expedient for the exercise of his function;
  - (b) the Director General from publicizing, from time to time in any manner as he may deem fit, the following particulars in respect of a person who has been found guilty or convicted of any offence under this Act or dealt with under subsection 52(2), section 62 or 63—
    - (i) the name, address and occupation or other description of the person;
    - (ii) such particulars of the offence or evasion as the Director General may think fit;
    - (iii) the year or years of assessment to which the offence or evasion relates;
    - (iv) the amount of the income not disclosed;

- (v) the aggregate of the amount of the tax evaded and penalty (if any) charged or imposed;
- (vi) the sentence imposed or other order made:

Provided that the Director General may refrain from publicizing any particulars of any person to whom this paragraph applies if the Director General is satisfied that before any investigation or inquiry has been commenced in respect of any offence or evasion falling under section 52 or 53 that person has voluntarily disclosed to the Director General or to any authorized officer complete information and full particulars relating to such offence or evasion.

(5) In this section—

“another tax law” means any written law relating to income tax, estate duty, film hire duty, payroll tax or turnover tax and any other written law declared by the Minister by statutory order to be another tax law for the purposes of this section;

“classified material” means any return or other document made for the purposes of this Act and relating to the income or adjusted loss of any chargeable person and any information or other matter or thing which comes to the notice of a classified person in his capacity as such;

“classified person” means—

- (a) an official;
- (b) the Auditor General and public officers under his direction and control;
- (c) any person advising or acting for a person who is or may be chargeable to tax, and any employee of a person so acting or advising if he is an employee who in his capacity as such has access to classified material;
- (d) any employee of the Inland Revenue Board of Malaysia; or

- (e) any person who, for any reason, has by any means access to any information on an electronic invoice under this Act;

“official” means a person having an official duty under or employed in carrying out the provisions of this Act.

### *Chapter 1A—Ruling*

#### **Advance Pricing Arrangement**

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

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

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

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

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

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

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

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

### **Public ruling**

**71B.** (1) The Director General may at any time make a public ruling on the application of any provision of this Act in relation to any chargeable person or any type of arrangement.

(2) The Director General may withdraw, either wholly or partly, any public ruling made under subsection (1).

(3) Notwithstanding any other provisions of this Act, where a public ruling made under subsection (1) applies to any chargeable person in relation to an arrangement and the chargeable person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the chargeable person and the arrangement in accordance with the ruling.

## *Chapter 2—Powers to protect the revenue in case of certain transactions*

### **Power to disregard certain transactions**

**72.** (1) The Director General, where he has reason to believe that any transaction has the direct or indirect effect of—

- (a) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any chargeable person;
- (b) relieving any chargeable person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;

- (c) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by this Act; or
- (d) hindering or preventing the operation of this Act in any respect,

may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such adjustments as he thinks fit with a view to counteracting the whole or any part of any such direct or indirect effect of the transaction.

(2) In exercising his powers under this section, the Director General may—

- (a) treat any income of any person as the income of any other person;
- (b) make such computation or recomputation of any gross income, adjusted income or adjusted loss, statutory income, assessable income or chargeable income of any chargeable person as may be necessary to revise any chargeable person's liability to tax or impose any liability to tax on any chargeable person in accordance with his exercise of those powers; and
- (c) make such assessment or additional assessment in respect of any chargeable person as may be necessary in consequence of his exercise of those powers, nullify a right to repayment of tax or require the return of a repayment of tax already made.

(3) Without prejudice to the generality of the foregoing subsections, the powers of the Director General conferred by this section shall extend—

- (a) to the charging with tax of any chargeable person who but for any adjustment made by virtue of this section would not be chargeable with tax or would not be chargeable with tax to the same extent; and

- (b) to the charging of a greater amount of tax than would be chargeable but for any such adjustment.

(4) Where in accordance with this section the Director General requires from a chargeable person the return of the amount of a repayment of tax already made—

- (a) the Director General shall give to that chargeable person a notice of that requirement and the notice shall be treated as a notice of assessment for the purposes of any appeal therefrom, the provisions of Chapter 2 of Part VII applying with any necessary modifications; and
- (b) that amount shall be deemed to be tax payable under an assessment and section 48 and the other provisions of Part VIII shall apply accordingly.

(5) Where in consequence of any adjustment made under this section an assessment is made, a right to repayment is refused or a return of a repayment of tax is required, particulars of the adjustment shall be given with the notice of assessment, with the notice refusing the repayment or with the notice requiring the return of a repayment, as the case may be.

(6) Transactions—

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

shall be deemed to be transactions of the kind to which subsection (1) applies if in the opinion of the Director General those transactions have not been made on terms which might fairly be expected to have been made by independent companies engaged in the same or similar activities dealing with one another at arm's length.

(7) In this section, “transaction” means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or

entered into orally or in writing (whether before or after the commencement of this Act), and includes a transaction entered into by two or more companies with another company or companies.

(8) For the purposes of this Act, a person shall be taken to have control of a company—

- (a) if he exercises or is able to exercise or is entitled to acquire control (whether direct or indirect) over the company's affairs and in particular, without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire the greater part of the share capital or voting power in the company;
- (b) if he possesses or is entitled to acquire either—
  - (i) the greater part of the issued share capital of the company;
  - (ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed; or
  - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members; or
- (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.

(9) Where two or more persons together satisfy in respect of a company any of the conditions in subsection (8), they shall be taken to have control of the company.

(10) For the purposes of subsections (8) and (9) there shall be attributed to any person any rights or powers of a nominee for him, that



is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(11) Where the trustees of a trust are members of a controlled company, only one of those trustees shall be deemed to be a member thereof; and, where each of those trustees as such is a person of the kind mentioned in subsection (8) or (9), only one of those trustees shall be taken to be a person of that kind.

(12) For the purposes of subparagraph (8)(b)(iii) and paragraph (8)(c), any person who is a loan creditor of the company (otherwise than in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of a business of banking carried on by him) may be treated as a member, and the references to share capital may be treated as including loan capital.

(13) In this section, “member” includes in relation to a company, any person having a share or interest in the capital or income of the company, and for the purposes of subsection (8) a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire.

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

**72A.** (1) This section shall apply notwithstanding section 72 and subject to any rules prescribed under this Act.

(2) Subject to subsection (3) where a chargeable person in the basis period for a year of assessment enters into a transaction with another person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that chargeable 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, assessable income or chargeable income of the chargeable 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 a chargeable person who is a resident, is excessive in relation to the fixed capital of such chargeable 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 transactions or financial assistance between—

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

(6) In this section, "transaction" has the same meaning assigned to it in subsection 72(7).

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

### *Chapter 3—Miscellaneous*

#### **Evidential provisions**

**73.** (1) In a suit under section 49 the production of a certificate signed by the Director General giving the name and address of the

defendant and the amount of tax due from the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

(2) In criminal or civil proceedings under this Act any statement purporting to be signed by the Director General or an authorized officer which forms part of or is annexed to the information, complaint or statement of claim shall, until the contrary is proved, be evidence of any fact stated therein:

Provided that this subsection shall not apply to—

- (a) a statement of the intent of the accused person or other defendant; or
- (b) proceedings for an offence punishable by imprisonment.

(3) A transcript of any particulars contained in a return or other document relating to tax, if it is certified by the Director General or an authorized officer to be a true copy of the particulars, shall be admissible in evidence as proof of those particulars.

(4) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against that person in any proceedings against him for an offence under section 51, 52 or 53, or for the recovery of any sum due by way of tax or penalty, by reason only of the fact that he was or may have been induced to make the statement or produce the document by any lawful inducement or promise proceeding from the Director General or an authorized officer.

(5) (a) Save as provided in paragraph (b) nothing in this Act shall—

- (i) affect the operation of Chapter IX of Part III of the Evidence Act 1950 [*Act 56*]; or
- (ii) be construed as requiring or permitting any person to produce or give to a court, the Special Commissioners, the Director General or any other person any document, thing or information which by

that Chapter or those provisions he would not be required or permitted to produce or give to a court.

- (b) Notwithstanding any other written law, where any document, thing, matter, information, communication or advice consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions or dealings of any person (whether an advocate and solicitor, his client, or any other person), it shall not be privileged from disclosure to a court, the Special Commissioners, the Director General or any authorized officer if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by any practitioner or firm of practitioners in connection with any client or clients of the practitioner or firm of practitioners or any other person.
- (c) Paragraph (b) shall also apply with respect to any document, thing, matter, information, communication or advice made or brought into existence before the commencement of that paragraph.

### **Errors and defects in assessments, notices and other documents**

**74.** (1) No assessment, notice or other document purporting to be made or issued for the purposes of this Act shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Act or in accordance with the intent and meaning of this Act and—

- (a) in the case of an assessment, the person assessed or intended to be assessed or affected thereby is designated according to common intent and understanding; and
- (b) in any other case, the person to whom it is addressed and any other person referred to therein are so designated.

(2) An assessment purporting to be made or issued for the purposes of this Act shall not be impeached or affected by reason of a mistake therein as to—

- (a) the name of a chargeable person charged to tax;
- (b) the description of any income; or
- (c) the amount of chargeable income assessed or tax charged,

and a notice of assessment purporting to be so made or issued shall not be impeached or affected by any such mistake if it is served on the chargeable person in respect of whom the assessment was made or intended to be made [or served in accordance with subsection 29(5)] and contains in substance and effect the particulars contained in the assessment.

(3) Notwithstanding subsection (2), if the amount of tax charged by an assessment has been incorrectly calculated, the amount of tax charged as shown in the assessment and the notice of assessment may, if the Director General so directs, be taken to be the amount of tax which ought to have been charged if it had been correctly calculated.

(4) A notice of tax payable purporting to be issued for the purposes of this Act shall not be impeached by reason of a mistake therein as to the name of the person liable to pay the tax if the notice is served on that person.

### **Power to direct where returns, etc., are to be sent**

**75.** The Director General may by statutory order direct that any information, return or document required to be supplied, sent or delivered to the Director General for the purposes of this Act shall, subject to any conditions contained in the order, be supplied, sent or delivered to such public officer or to such address as may be specified in the order.

**Service of notices**

**76.** (1) Subject to any express provision of this Act, for the purposes of this Act notices may be served personally or by ordinary or registered post.

(2) A notice relating to tax which is sent by ordinary or registered post shall be deemed to have been served on the person to whom it is addressed on the day succeeding the day on which the notice would have been received in the ordinary course of post if it is addressed—

- (a) in the case of a company, a partnership or other body of persons having a registered office in Malaysia, to that registered office;
- (b) in the case of a company, a partnership or other body of persons not having a registered office in Malaysia—
  - (i) to any registered office of the company, or partnership or other body (wherever that office may be situated);
  - (ii) to the principal place of business or other activity of the company, or partnership or other body (wherever that place may be situated); or
  - (iii) to any individual authorized by or under the law of any place where the company, or partnership or other body is incorporated, registered or established to accept service of process;
- (c) in the case of an individual, to his last known address.

(3) Where a person to whom there has been addressed a registered letter containing a notice under this Act—

- (a) is informed that there is a registered letter awaiting him at a post office; and
- (b) refuses or neglects to take delivery of the letter,

the notice shall be deemed to have been served upon him on the date on which he was informed that the letter was awaiting him.

(4) For the purposes of subsection (3), an affidavit by the officer in charge of a post office stating that to the best of his knowledge and belief there has been delivered to the address appearing on a registered letter a post office notification informing the addressee that there is a registered letter awaiting him shall, until the contrary is proved, be evidence that the addressee has been so informed.

### **Authentication of notices and other documents**

**77.** (1) Subject to subsection (2), every notice or other document issued, served or given for the purposes of this Act by the Director General or an authorized officer shall be sufficiently authenticated if the name and office of the Director General is printed, stamped or otherwise written thereon.

(2) Where this Act provides for a notice or other document to be under the hand of the officer issuing, serving or giving it, the notice or document shall be signed in manuscript by that officer.

(3) A notice or other document issued, served or given for the purposes of this Act and purporting to be signed in manuscript by the Director General or an authorized officer shall be presumed, until the contrary is proved, to have been so signed.

### **Free postage**

**78.** All returns made under this Act and all remittances of tax (and any correspondence resulting from or connected with any such return or remittance) may, if posted in Malaysia in envelopes marked "Income Tax", be sent free of postage to the Director General or to an officer or address specified in an order made under section 75:

Provided that the Director General may in certain cases by notice in writing require any person to send any return, document or correspondence by registered post.

**Provisions as to approvals and directions given by Minister or Director General**

**79.** Where by or under this Act there is conferred on the Minister or the Director General power to give an approval or direction of any kind (not being a power exercisable by statutory order)—

- (a) an approval or direction given in the exercise of that power shall not be regarded as subsidiary legislation;
- (b) that power shall be deemed to include—
  - (i) power to give any such approval or direction with retrospective effect; and
  - (ii) power to vary or revoke any such approval or direction retrospectively or otherwise; and
- (c) any such approval or direction shall take effect when it is given or, where the Minister or Director General as the case may be, specifies a date on which it is to take effect, on that date.

**Annulment of rules and orders laid before House of Representatives**

**80.** Where this Act provides for any rule or order to be laid before the House of Representatives, the rule or order shall be laid before that House as soon as may be after it has been made and, if that House at or before the second meeting begun after the rule or order is laid before it resolves that the rule or order or any provision of it be annulled, the rule or order or that provision of it shall cease to have effect, without prejudice to anything previously done thereunder or the making of a new rule or order.



### **Procedure for making refunds and repayments**

**81.** Where the Director General is authorized or required by this Act to make any refund or repayment he shall certify the amount of the sum to be refunded or repaid and cause the refund or repayment to be made forthwith.

### **Forms**

**82.** (1) The Director General may either by statutory order or in such other way as seems to him to be appropriate, prescribe such forms as are required by this Act to be prescribed and such other forms as he considers ought to be prescribed in connection with the operation of this Act, and may authorize the use of a suitable substitute for any form so prescribed:

Provided that this subsection shall not apply to the form of declaration to be prescribed for the purposes of subsection 71(1).

(2) Where in order to comply with any provision of this Act a person is required to use a prescribed form, he shall not be regarded as complying with that provision unless he uses all reasonable diligence to procure and use—

- (a) a printed copy of the form as prescribed under subsection (1); or
- (b) a copy of any substitute for the form authorized under subsection (1), being a printed copy unless the authorization provides otherwise.

### **Electronic medium**

**82A.** (1) Any chargeable person—

- (a) shall, if so required under this Act; or
- (b) may, if so allowed by the Director General,

furnish any form prescribed under this Act (in this section referred to as the “prescribed form”) on an electronic medium or by way of an electronic transmission.

(2) For the purposes of subsection (1), the conditions and specifications under which any prescribed form is to be furnished shall be determined by the Director General.

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

(3A) For the purposes of subsection (1), a person referred to under subsection 27(2) may authorize in writing an employee to furnish on his behalf any form prescribed under this Act in the manner provided for in subsection (1).

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

(5) Where subsection (3) applies—

- (a) the chargeable person who authorizes the tax agent shall make a declaration in the prescribed form stating that—
  - (i) the tax agent is authorized to furnish the form to the Director General on his behalf; and
  - (ii) the information provided by him to the tax agent for the preparation of the form is true and correct;
- (b) the tax agent shall make a declaration in the prescribed form furnished in accordance with subsection (1) stating that—
  - (i) the form is prepared in accordance with the information given by the chargeable person; and

- (ii) he has received a declaration made by the chargeable person under paragraph (a);
- (c) the chargeable person shall keep and retain in safe custody such prescribed form being the hard copy of the form so furnished and that copy shall be made under the processes and procedures which are designed to ensure that the information contained in the form shall be the only information furnished in accordance with this section;
- (d) the hard copy shall be signed by the chargeable 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 prescribed form is furnished.

(6) A prescribed form referred to in subsection (1) is deemed to have been furnished by a chargeable 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 chargeable person.

### **Power to make rules**

**83.** (1) The Minister may make rules—

- (a) prescribing, except where subsection 82(1) applies, any other thing required by this Act to be prescribed;
- (b) providing for transitional and saving regulations to have effect notwithstanding any provisions of this Act;
- (ba) implementing and facilitating the operation of section 72A;
- (bb) providing for the scope and procedure applied in relation to any arrangement made under section 71A;

(bc) implementing or facilitating the operation of an arrangement having effect under section 65AA;

(c) for facilitating generally the operation of this Act.

(2) Any rules made under subsection (1) shall be laid before the House of Representatives.

**Any other law not applicable**

**84.** Notwithstanding anything contained in any written law, other than this Act, for the time being in force relating to income tax, for the year of assessment 1968 and subsequent years of assessment—

(a) income derived from petroleum operations; and

(b) dividends paid by any company out of its income derived from its petroleum operations,

shall not be chargeable to tax under such other laws.

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FIRST SCHEDULE

DEDUCTIONS FOR CAPITAL EXPENDITURE  
ON EXPLORATION

*Qualifying exploration expenditure*

**1.** Subject to paragraph 2, qualifying exploration expenditure for the purposes of this Schedule is expenditure which is incurred by a chargeable person in connection with his petroleum operations or in preparation for petroleum operations—

- (a) on the acquisition of petroleum deposits or of rights in or over petroleum deposits;
- (b) on searching for, on discovering and testing or on winning access to petroleum deposits;
- (c) on the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on; or
- (d) on development, general administration or management before the date of the first sale or disposal of chargeable petroleum by or on behalf of that chargeable person or during any period when chargeable petroleum is not being produced.

**1A.** For the purposes of paragraph 1, the qualifying exploration expenditure incurred by a chargeable person shall not include any amount paid or to be paid in respect of goods and services tax as input tax by the chargeable person if he is liable to be registered under the \*Goods and Services Tax Act 2014 and has failed to do so, or if he is entitled under that Act to credit that amount as input tax.

**2.** Qualifying exploration expenditure does not include any expenditure which is qualifying expenditure under the Second Schedule or any expenditure deductible under Chapter 3 of Part III excluding subsection 16(5), from gross income in computing the adjusted income or adjusted loss.

**3.** Where prior to the basis period for the first year of assessment for which a chargeable person is chargeable to tax, that chargeable person incurs qualifying exploration expenditure, an amount equal to that expenditure reduced by the amount of all recovered expenditure, if any, received by that chargeable person prior to that basis period, shall be deemed for the purposes of this Schedule to be qualifying exploration expenditure incurred in that basis period.

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\*NOTE—The Goods and Services Tax Act 2014 [Act 762] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [Act 805] which comes into operation on 1 September 2018—see section 3 of Act 805.

**3A.** (1) Where prior to the basis period for the first year of assessment for which a chargeable person under a petroleum agreement is chargeable to tax and that chargeable person incurs qualifying exploration expenditure, there may be deducted from the gross income of another chargeable person in another petroleum agreement in the basis period for a year of assessment of the second-mentioned chargeable person the qualifying exploration expenditure referred to in paragraph 3:

Provided that—

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

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

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

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

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

(3) Subparagraph (1) shall not apply to chargeable persons carrying on petroleum operations—

- (a) in the Joint Development Area; or

- (b) in an area under any agreement or arrangement made by the Government with the government of any territory outside Malaysia for the joint exploration and exploitation of petroleum in overlapping areas referred to in subsection 65B(1).

(4) Any amount deducted under subparagraphs (1) and (2) shall be disregarded for the purpose of ascertaining the adjusted income—

- (a) of the first-mentioned chargeable person; or
- (b) where subparagraph (2) applies, of the second-mentioned chargeable person.

**4.** (1) Where in the basis period for a year of assessment a chargeable person incurs any qualifying exploration expenditure, there shall be made to that chargeable person, for that year, an allowance to be known as “initial allowance”.

(2) The amount of initial allowance to be made under subparagraph (1) shall be an amount equal to—

- (a) where the qualifying exploration expenditure is incurred in secondary recovery, twenty per cent thereof;
- (b) in any other case, ten per cent of the qualifying exploration expenditure.

**5.** (1) Where a chargeable person incurs any qualifying exploration expenditure, there shall be made to that chargeable person for each of the consecutive years of assessment beginning with the year of assessment in the basis period for which that expenditure is incurred, an allowance to be known as “annual allowance”.

(2) The amount of annual allowance for a year of assessment shall be the amount which results from applying to the residual expenditure the fraction of which—

- (a) the numerator represents the output from the petroleum operations for the basis period for that year; and
- (b) the denominator represents the sum of that output and the total potential future output of the petroleum operations, estimated as at the end of that period, notwithstanding that such output is shared with another person under an agreement with such other person to carry out the petroleum operations or the fraction three-twentieths, whichever is the greater.

**6.** Where under this Schedule an initial allowance or an annual allowance falls to be made to a chargeable person for any year of assessment, in the ascertainment of the adjusted income of that chargeable person for that year of assessment under subsection 16(5), an amount equal to that initial allowance or that annual allowance, as the case may be, shall be deducted from the gross income of that chargeable person for the basis period for that year of assessment.

*Transfer of asset, etc.***7.** In paragraphs 8 to 13—

“consideration” means consideration (not being in the nature of or representing income) which is monetary or non-monetary or both;

“exploration asset” means an asset on or for which the chargeable person has incurred qualifying expenditure in connection with or in preparation for the petroleum operations;

“other property” means property which is not an exploration asset;

“value” means—

- (a) in relation to monetary consideration, the amount of the consideration;
- (b) in relation to non-monetary consideration, the market value of the consideration, at the time of the transaction to which the consideration relates.

**8.** Subject to paragraph 9—

- (a) where the chargeable person transfers an exploration asset for a consideration, the value of the consideration shall be deemed to be recovered expenditure and to be received by the chargeable person at the date of the transfer;
- (b) where the chargeable person receives any consideration for the granting of any right in or over petroleum deposits, the value of the consideration shall be deemed to be recovered expenditure in relation to the petroleum operations and the chargeable person; and
- (c) where the chargeable person receives any amount or property by way of compensation, recoupment or otherwise for any qualifying exploration expenditure (being expenditure of a kind which does not produce an exploration asset) incurred by him in connection with or in preparation for petroleum operations, that amount or the market value of that property at the time of its receipt shall be deemed to be recovered expenditure in relation to the chargeable person.

**9.** Where the chargeable person transfers an exploration asset together with any other property, then—

- (a) if the transfer is made for an undivided consideration and the chargeable person and the transferee are able to agree how much of the value of the consideration should be treated as given for the exploration asset and for the other property respectively, they shall within three months of the



transfer jointly furnish the Director General with a written statement showing the apportionment of the consideration as so agreed and, subject to subparagraph (c), the part of that value apportioned to the exploration asset shall be deemed to be recovered expenditure to be received by the chargeable person at the date of the transfer;

- (b) if the transfer is made for separate considerations, the chargeable person shall within three months of the transfer furnish the Director General with a written statement showing the value of each consideration and, subject to subparagraph (c), the value of the consideration shown in that statement for the exploration asset shall be deemed to be recovered expenditure to be received by the chargeable person at the date of the transfer; and
- (c) if the Director General is not satisfied with the apportionment mentioned in subparagraph (a) or with any value shown in the statement mentioned in subparagraph (b), or if there is a failure to furnish a statement in accordance with either of those subparagraphs, the Director General shall determine to the best of his judgment the value of the consideration for the exploration asset, and the value so determined shall be deemed to be recovered expenditure to be received by the chargeable person at the date of the transfer.

**10.** Where there is a transfer by the chargeable person of an exploration asset (with or without any other property) together with a grant by the chargeable person of a right of the kind mentioned in subparagraph 8(b), then, for the purposes of paragraph 9—

- (a) the grant shall be treated as forming part of the transfer of that asset; and
- (b) the right shall be treated as forming part of that asset,

and that paragraph shall apply accordingly with any necessary modifications.

**11.** Where the chargeable person transfers an exploration asset (with or without other property) either—

- (a) for an undivided consideration (as regards that asset and that other property, if any) together with an amount or property of the kind mentioned in subparagraph 8(c); or
- (b) for separate considerations (as regards that asset and that other property, if any) together with an amount or property of that kind,

paragraph 9 shall apply with any necessary modifications.

**12.** For the purposes of paragraphs 8 to 11, if any consideration consists partly of money and partly of non-monetary property, the value of the monetary part of the

consideration and the value of the non-monetary part thereof shall, whenever necessary, be aggregated or aggregated and apportioned, as the case may require.

**13.** Where there takes place a transaction as a result of which an amount would (but for this paragraph) fall to be treated under any provision of paragraphs 7 to 12 as recovered expenditure of the chargeable person in relation to the petroleum operations and—

- (a) the chargeable person is a company over which the other party to the transaction has control;
- (b) that other party is a company over which the chargeable person has control;
- (c) some other company has control over both that chargeable person and that other party;
- (d) the transaction takes place pursuant to a scheme of reconstruction or amalgamation of companies; or
- (e) the Director General is of the opinion that the transaction is or forms part of a transaction to which section 72 applies,

the residual expenditure referable to the exploration asset immediately before the date of that first-mentioned transaction shall be deemed in the hands of that chargeable person to be recovered expenditure received at that date and in the hands of that other party to be qualifying exploration expenditure incurred at that date; and paragraphs 5 to 10 shall not apply in relation to that first-mentioned transaction.

**13A.** (1) Where in the basis period for a year of assessment a chargeable person has incurred qualifying exploration expenditure in relation to an asset and the input tax on the asset is subject to any adjustment made under the \*Goods and Services Tax Act 2014, the amount of such expenditure in relation to that asset shall be adjusted in the basis period for the year of assessment in which the period of adjustment relating to the asset as provided under the \*Goods and Services Tax Act 2014 ends.

(2) In the event the adjustment of the amount of the qualifying exploration expenditure made under subparagraph (1) results in—

- (a) an additional amount, such amount shall be deemed to be part of the qualifying exploration expenditure incurred, and the residual expenditure under paragraph 46 of the Second Schedule in relation to the asset shall include that additional amount; or

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*\*NOTE*—The Goods and Services Tax Act 2014 [*Act 762*] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [*Act 805*] which comes into operation on 1 September 2018—see section 3 of Act 805.

- (b) a reduced amount, the qualifying exploration expenditure incurred and the residual expenditure under paragraph 46 of the Second Schedule shall be reduced by such amount, and if the amount of the allowance made or ought to have been made under this Schedule exceeds the residual expenditure, the excess shall be part of the statutory income of that person from a source consisting of a business in the basis period the adjustment is made.

(3) The excess amount referred to in subsubparagraph (2)(b) shall not exceed the total amount of allowances given under this Schedule.

(4) Notwithstanding subparagraph (1), where a chargeable person has incurred the qualifying exploration expenditure in relation to an asset, and the asset is disposed of at any time during the period of adjustment specified under the \*Goods and Services Tax Act 2014, the adjustment to such expenditure shall be made in the basis period for the year of assessment in which the disposal is made.

(5) Paragraph 13 shall apply for the purpose of the adjustment referred to in subparagraph (4).

*Supplemental provisions*

**14.** In this Schedule, unless the context otherwise requires—

“recovered expenditure” means any amount ascertained in accordance with paragraphs 7 to 13 to be recovered expenditure in relation to the petroleum operations of a chargeable person;

“residual expenditure”, in relation to the petroleum operations of a chargeable person and to any particular date, means the total qualifying exploration expenditure incurred before that date by the chargeable person in respect of those petroleum operations, reduced by the amount of—

- (a) any deductions made under section 16 pursuant to this Schedule in respect of that expenditure from the gross income of that chargeable person for all basis periods ending before that date; and
- (b) any recovered expenditure in relation to those petroleum operations received by that chargeable person on or before that date.

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\*NOTE—The Goods and Services Tax Act 2014 [Act 762] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [Act 805] which comes into operation on 1 September 2018—see section 3 of Act 805.

## SECOND SCHEDULE

## CAPITAL ALLOWANCES AND CHARGES

*Qualifying Expenditure*

1. Subject to this Schedule, qualifying expenditure for the purposes of this Schedule is qualifying plant expenditure or qualifying building expenditure within the meaning of paragraphs 2 to 6.

2. (1) Subject to subparagraph (2) and paragraph 45, qualifying plant expenditure is capital expenditure incurred by a chargeable person on the provision of machinery or plant used for the purposes of petroleum operations, including—

- (a) expenditure incurred by him on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof;
- (b) expenditure incurred by him on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of that machinery or plant, being expenditure which does not exceed ten per cent of the aggregate of itself and any other expenditure (being qualifying plant expenditure) incurred for the purposes of the petroleum operations; and
- (c) expenditure incurred by him on the provision or construction of fixed off-shore platforms for drilling, production or other petroleum operations (but excluding, for the purposes of this subparagraph only, machinery or plant installed on such platforms).

(2) In the case of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, the qualifying plant expenditure incurred on or after the first day of the basis period for the year of assessment 1991 shall be limited to a maximum of fifty thousand ringgit:

Provided that where the qualifying plant expenditure is incurred on a motor vehicle purchased on or after 28 October 2000, the maximum amount shall be increased to not more than one hundred thousand ringgit if the motor vehicle has not been used prior to purchase and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit.

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.

**2B.** For the purposes of paragraph 1, the qualifying expenditure incurred by a chargeable person shall not include any amount paid or to be paid in respect of goods and services tax as input tax by a chargeable person if the chargeable person is liable to be registered under the \*Goods and Services Tax Act 2014 and has failed to do so, or if the chargeable person is entitled under that Act to credit that amount as input tax.

**\*\*3.** (1) Subject to paragraph 6, qualifying building expenditure is capital expenditure incurred by a chargeable person on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the purchase price of that building.

**3A.** (*Deleted by Act 639*).

**4.** (*Deleted by Act 639*).

**5.** (*Deleted by Act 639*).

**6.** Qualifying building expenditure does not include—

- (a) subject to paragraph 45, expenditure which is qualifying plant expenditure for the purposes of this Schedule; or
- (b) expenditure which is qualifying exploration expenditure for the purposes of the First Schedule.

### *Initial allowances*

**7.** An allowance made under paragraphs 8 to 10 shall be known as an initial allowance.

**8.** Subject to this Schedule, where in the basis period for a year of assessment a chargeable person has incurred qualifying plant expenditure other than qualifying plant expenditure of the kind referred to in subsubparagraph 2(1)(c), for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to—

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\*NOTE—The Goods and Services Tax Act 2014 [Act 762] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [Act 805] which comes into operation on 1 September 2018—see section 3 of Act 805.

\*\* NOTE—For the special provision relating to paragraph 3—see section 38 of the Finance Act 2004 [Act 639].

- (a) forty per cent or such other rate as may be prescribed of that first-mentioned expenditure if it has been incurred in secondary recovery; or
- (b) twenty per cent or such other rate as may be prescribed of that first-mentioned expenditure in any other case.

**9.** Subject to this Schedule, where in the basis period for a year of assessment a chargeable person has for the purposes of his petroleum operations incurred qualifying building expenditure on the construction or purchase of a building, there shall be made to him for that year of assessment an allowance equal to—

- (a) twenty per cent of the expenditure if it has been incurred in secondary recovery; or
- (b) ten per cent of the expenditure in any other case.

**10. (1)** Notwithstanding paragraphs 8 and 9 and subject to this paragraph—

- (a) no allowance shall be made to a chargeable person under paragraph 8 for a year of assessment in relation to an asset if at the end of the basis period for that year of assessment he was not the owner of the asset or the asset was not in use for the purposes of his petroleum operations or, where the asset was disposed of by him in that period, he was not the owner of the asset or the asset was not in use, prior to the disposal, for the purposes of his petroleum operations at some time in that period;
- (b) no allowance shall be made to a chargeable person under paragraph 9 for a year of assessment in relation to an asset if at the end of the basis period for that year of assessment he was not the owner of the asset or the asset was not in use as an industrial building or, where the asset was disposed of by him in that period, the asset was not in use, prior to the disposal, for the purposes of his petroleum operations as an industrial building at some time in that period.

**(2)** For the purposes of paragraph 8, where—

- (a) during the exploration or the development period of the petroleum operations of a chargeable person but prior to the basis period for the first year of assessment for which that chargeable person is chargeable to tax, that chargeable person incurs qualifying plant expenditure of a certain amount; and
- (b) that chargeable person has not disposed of the asset prior to the basis period for that year of assessment,

it shall be deemed that that expenditure of that amount is incurred in the basis period for that year of assessment.

(3) For the purposes of paragraph 9, where—

- (a) during the exploration or the development period of the petroleum operations of a chargeable person but prior to the basis period for the first year of assessment for which that chargeable person is chargeable to tax, that chargeable person incurs qualifying building expenditure of a certain amount on the construction of a building; and
- (b) that chargeable person has not disposed of the asset prior to the basis period for that year of assessment,

it shall be deemed that that expenditure of that amount is incurred in the basis period for that year of assessment.

#### *Annual allowances*

**11.** An allowance made under paragraphs 12 and 13 shall be known as an annual allowance.

**12.** (1) Subject to this Schedule, where a chargeable person has for the purposes of his petroleum operations incurred qualifying plant expenditure in relation to an asset other than qualifying plant expenditure of the kind referred to in subsubparagraph 2(1)(c), and at the end of the basis period for a year of assessment he was the owner of the asset and the asset was in use for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to—

- (a) ten per cent or such other rate as may be prescribed of that first-mentioned expenditure if it has been incurred in secondary recovery; or
- (b) eight per cent or such other rate as may be prescribed of that first-mentioned expenditure in any other case.

(2) Subject to this Schedule, where a chargeable person has for the purposes of his petroleum operations incurred qualifying plant expenditure of the kind referred to in subsubparagraph 2(1)(c) in relation to an asset and at the end of the basis period for a year of assessment he was the owner of the asset and the asset was in use for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to ten per cent or such other rate as may be prescribed of that expenditure.

**\*13.** Subject to this Schedule, where a chargeable person has for the purposes of his petroleum operations incurred qualifying building expenditure on the construction or purchase of a building and at the end of the basis period for a year of assessment he was the owner of the building and the building was in use as an industrial building

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\* *NOTE*—For the special provision relating to paragraph 13—see section 15 of the Finance Act 2002 [Act 619].

for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to three per cent or such other rate as may be prescribed of that expenditure.

**14.** *(Deleted by Act 619).*

**15.** An allowance made to a chargeable person under paragraph 13 for a year of assessment in respect of any expenditure in relation to an asset shall not exceed the amount of the residual expenditure at the end of the basis period for that year of assessment.

*Balancing allowances and balancing charges*

**16.** Allowances made under paragraph 17 and charges made under paragraph 18 shall be known as balancing allowances and balancing charges respectively.

**17.** (1) Subject to this Schedule, where in the basis period for a year of assessment a chargeable person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of his petroleum operations and the residual expenditure at the date of the disposal of that asset exceeds the disposal value of that asset, there shall be made to him for that year of assessment an allowance equal to the amount of the excess.

(2) Notwithstanding paragraph 19 but otherwise subject to this Schedule, where—

- (a) during the exploration or the development period of the petroleum operations of a chargeable person but prior to the basis period for the first year of assessment for which that chargeable person is chargeable to tax, that chargeable person incurs qualifying expenditure of a certain amount;
- (b) after incurring that expenditure but before the commencement of the basis period for that year of assessment that chargeable person disposes of the asset; and
- (c) that amount exceeds the disposal value of that asset, there shall be made to that chargeable person for that year of assessment an allowance equal to the amount of that excess.

**\*18.** Subject to this Schedule, where in the basis period for a year of assessment a chargeable person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of his petroleum operations and the disposal value of the asset exceeds the residual expenditure at the date of its disposal, there shall be made on him for that year a charge equal to the amount of the excess.

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\* NOTE—For the special provision relating to paragraph 18—see section 39 of the Finance Act 2004 [Act 639].



**19.** No allowance shall be made for a year of assessment under paragraph 17 to a chargeable person in relation to an asset which has been disposed of unless an initial or annual allowance in relation to that asset has been made or would have been made, if claimed, to him.

**20.** A charge made on a chargeable person under paragraph 18 in relation to an asset shall not exceed the total of all allowances made to him under this Schedule in relation to that asset.

*Disposals subject to control, etc.*

**21.** (1) Paragraphs 22 and 23 shall apply where a chargeable person disposes of an asset in relation to which an initial or annual allowance has been made or would have been made, if claimed, to him and at the time of the disposal—

- (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 over the disposer and the acquirer of the asset; or
- (d) the disposal is effected pursuant to a scheme of reconstruction or amalgamation of companies,

the disposer of the asset, the asset in question and the acquirer of the asset being in those paragraphs referred to as the disposer, the asset and the acquirer respectively.

(2) In this paragraph “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.

**21A.** Paragraphs 22 and 23A shall apply where a chargeable person (in this paragraph referred to as the “disposer”) disposes of an asset in relation to which an initial or annual allowance has been made or would have been made, if claimed, to him (in this paragraph referred to as the “asset”) and that asset continues to be used for petroleum operations by another chargeable person (in this paragraph referred to as the “acquirer”) in another petroleum agreement under which the acquirer has not incurred qualifying expenditure in respect of that asset and at the time of the disposal—

- (a) the disposer of the asset is a company and the acquirer of the asset is a partnership in which the disposer is also a partner;
- (b) the disposer of the asset and the acquirer of the asset are the same partnership but operating under separate petroleum agreements;
- (c) the disposer of the asset and the acquirer of the asset are partnerships and all the partners in the partnership that is disposing of the asset are also partners in the partnership that is acquiring the asset; or
- (d) the disposer of the asset and the acquirer of the asset are the same company but operating under separate petroleum agreements,

the disposer of the asset, the asset in question and the acquirer of the asset being in those paragraphs referred to as the disposer, the asset and the acquirer respectively.

**22.** (1) Subject to any rules made under paragraph 23 or 23A, the disposal of the asset shall be deemed to have taken place on the first day of the disposer's final period for a sum equal to the disposer's residual expenditure on that day.

(2) In this paragraph "the disposer's final period" means, in relation to the disposal and acquisition of the asset, the basis period (appropriate to the disposer's petroleum operations for the purposes of which qualifying expenditure has been incurred in relation to the asset) for the year of assessment which coincides with the first year of assessment for which an initial or annual allowance may be made to the acquirer in relation to the asset if it is used for the purposes of the petroleum operations carried on by the acquirer or as an industrial building.

**23.** Any qualifying expenditure incurred by the acquirer in relation to the asset to which regard would be had but for this paragraph shall be disregarded for the purposes of this Schedule and the acquirer shall be deemed to have incurred qualifying expenditure in relation to the asset of an amount equal to the sum ascertained under paragraph 22 in relation to the asset; and in relation to the asset—

- (a) the date on which the acquirer shall be treated as having incurred the expenditure so deemed to have been incurred by him;
- (b) the withdrawal of any allowance which would but for paragraph 22 and this paragraph fall to be made to the disposer;
- (c) the amount of any allowance or charge to be made to or on the acquirer; and
- (d) such other matters as may be considered necessary by the Minister,

shall be determined in such manner as may be prescribed by rules to be made for the purposes of paragraphs 21, 22 and this paragraph.

**23A.** The acquirer shall be deemed to have incurred qualifying expenditure in relation to the asset of an amount equal to the sum ascertained under paragraph 22 and in relation to the asset—

- (a) the date on which the acquirer shall be deemed to have incurred the expenditure;
- (b) the withdrawal of any allowance which would but for paragraph 22 and this paragraph fall to be made to the disposer;
- (c) the amount of any allowance or charge to be made to or on the acquirer; and
- (d) such other matters as may be considered necessary by the Minister,

shall be determined in such manner as may be prescribed by rules to be made for the purposes of paragraphs 21A and 22 and this paragraph.

*Interpretation*

**24.** In this Schedule “asset”, except where the context otherwise requires, means an asset in relation to which qualifying expenditure has been incurred.

**25.** Any reference in this Schedule to any asset or to any relevant interest therein shall be construed whenever necessary as including a reference to a part of any asset or to any relevant interest therein (or, in the case of an asset or any relevant interest therein held in undivided shares, the undivided share in the asset or in the relevant interest therein); and, when it is so construed, the Director General shall make such necessary apportionments as may be just and reasonable to give proper effect to this Schedule.

**26.** For the purposes of this Schedule, capital expenditure incurred on—

- (a) the provision of machinery or plant, includes capital expenditure incurred on the reconstruction of that machinery or plant;
- (b) the construction of a building, includes capital expenditure incurred on the reconstruction or rebuilding of that building.

**27.** Where a chargeable person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of his petroleum operations, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, of the aggregate of those payments) made by him under that agreement in that period.

**28.** For the purposes of this Schedule, where an asset consists of a building the owner thereof shall be taken to be the owner of the relevant interest in the building.

**29.** Subject to paragraph 48A, a building in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule on the occurrence of any of the following events:

- (a) the sale, transfer or assignment of the relevant interest in the building;
- (b) where that interest depends on the duration of a petroleum agreement, the termination of such petroleum agreement;
- (c) where that interest is a leasehold interest, the determination of that relevant interest otherwise than on the person entitled thereto acquiring the reversion;
- (d) the demolition or destruction of the building,

or on the building ceasing to be used as an industrial building.

**30.** In this Schedule “relevant interest”, in relation to a building on which qualifying building expenditure has been incurred, means (subject to paragraphs 31 and 32) the interest in the building to which the chargeable person who incurred that expenditure was entitled when he incurred it.

**31.** Where—

- (a) a chargeable person is entitled to two or more interests in a building when he incurs qualifying expenditure on it; and
- (b) one of those interests is an interest which is reversionary on all the others,

that reversionary interest shall be the relevant interest for the purposes of this Schedule.

**32.** An interest shall not cease to be the relevant interest for the purposes of this Schedule by reason of the creation of any lease or other interest to which that first-mentioned interest is subject; and, where the relevant interest is a leasehold interest and is extinguished by the surrender thereof or on the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold merges shall thereupon become the relevant interest.

**33.** (1) Any reference in this Schedule to the disposal, purchase or transfer of any asset includes a reference to the disposal, purchase or transfer, as the case may be, of that asset together with any other asset, whether or not qualifying expenditure has been incurred on that last-mentioned asset, and in any such case so much of the disposal value or the purchase price, as the case may be, of those assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the

purposes of this Schedule, be deemed to be the disposal value or the purchase price, as the case may be, of that first-mentioned asset.

(2) For the purposes of this paragraph, all the assets which are disposed of, purchased or transferred in pursuance of one bargain shall be deemed to be disposed of, purchased or transferred, as the case may be, together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate disposals, purchases or transfers, as the case may be, of those assets.

(3) Subparagraphs (1) and (2) shall apply, with any necessary modifications, to the disposal, purchase or transfer of any asset or the relevant interest in any asset together with any other asset or relevant interest in any other asset.

**34.** Where any chargeable person has incurred expenditure in relation to an asset which is allowed to be deducted under Chapter 3 of Part III in computing the adjusted income or adjusted loss of that chargeable person for the basis period for a year of assessment from his petroleum operations, that expenditure shall not be treated as qualifying expenditure in relation to that asset.

**35.** For the purposes of this Schedule—

- (a) in the case of any expenditure incurred on the construction of a building, the day on which that expenditure is incurred is the day on which the construction of the building is completed, and in the case of any expenditure incurred on the provision of machinery or plant for the purposes of petroleum operations the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the petroleum operations;
- (b) in any other case, the day on which the amount of any expenditure becomes payable is the day on which that amount of expenditure is incurred.

**36.** For the purposes of this Schedule, an asset which is temporarily disused in relation to the petroleum operations of a chargeable person shall be deemed to be in use for the purposes of the petroleum operations if it was in use for the purposes of the petroleum operations immediately before becoming disused and if during the period of disuse it is constantly maintained in readiness to be brought back into use for those purposes.

**37.** If an asset which is temporarily disused in relation to the petroleum operations of a chargeable person ceases to be ready for use for the purposes of the petroleum operations or if its disuse can no longer reasonably be regarded as temporary, it shall be deemed to have ceased at the beginning of the period of disuse to be used for the purposes of the petroleum operations, and all such assessments shall be made as may be necessary to counteract the benefit of any allowance made to the chargeable

person for any year of assessment by reason of the application of paragraph 36 in relation to the asset.

**38.** For the purposes of this Schedule, subject to paragraph 48A a building is purchased by a person on the sale, transfer or assignment to him of a relevant interest in the building.

**39.** Any reference in this Schedule to the date of any sale, purchase or transfer shall be construed as a reference to the date of completion of the sale, purchase or transfer, as the case may be, or the date when possession of the asset the subject matter of the sale, purchase or transfer, as the case may be (or of the asset in which there is a relevant interest which is the subject matter of the sale, purchase or transfer, as the case may be) is given, whichever is the earlier.

**40.** Subject to paragraph 48A, any plant or machinery which is used for the purposes of petroleum operations and in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule if it is sold, discarded or destroyed or if it ceases to be used for the purposes of those petroleum operations.

**40A.** (1) Notwithstanding any other provisions of this Schedule, where any part of an asset of a chargeable person from a business ceases to be used for purposes of a business of his in a basis period for a year of assessment due to replacement with a new part and that new part is depreciated separately in accordance with the generally accepted accounting principles, that part of an asset is deemed to have been disposed of in that basis period for that year of assessment.

(2) The qualifying expenditure of the part of the asset disposed shall be taken to be the amount determined for the new part being depreciated separately in accordance with the generally accepted accounting principles.

(3) The residual expenditure under paragraph 46 in respect of the part of the asset disposed shall be the qualifying expenditure of the part of an asset disposed reduced by the amount of allowance that have been made or would have been made under this Schedule to that chargeable person prior to the disposal of that part of the asset.

(4) The provisions of this Schedule shall apply to the new part of an asset referred to under subparagraphs (1) and (2).

**41.** For the purposes of this Schedule—

- (a) subject to subparagraphs (b) and (c), where an asset is disposed of by a person, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or, in the case of its disposal by way of sale, transfer or assignment—
  - (i) an amount equal to its market value at the date of the sale, transfer or assignment, as the case may be; or

- (ii) the net proceeds of the sale, transfer or assignment, as the case may be, whichever is the greater:

Provided that, where the asset is disposed of in such circumstances that insurance or compensation moneys are received by that person in respect of the asset, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater;

- (b) subject to subparagraph 22(1), where an asset has vested in Petroliaam Nasional Berhad under an agreement between Petroliaam Nasional Berhad or the Malaysia-Thailand Joint Authority and the person who incurred qualifying expenditure in respect of such assets, its disposal value shall be taken to be zero;
- (c) subject to subparagraph (b), where an asset of the kind to which subparagraph 2(2) applies is disposed of, the disposal value shall be deemed to be an amount which bears the same proportion to the disposal value ascertained under subparagraph (a) as the qualifying plant expenditure ascertained under subparagraph 2(2) bears to the qualifying plant expenditure ascertained under subparagraph 2(1).

**42.** Subject to paragraphs 43 and 44, a building is an industrial building within the meaning of this Schedule if it is used for the purposes of petroleum operations.

**43.** (1) Where a building is an industrial building, any building provided as a canteen, rest-room, recreation room, lavatory, bath-house, bathroom or washroom for persons employed in the petroleum operations for the purposes of which that industrial building is used shall be treated as an industrial building.

(2) A building used as a dwelling house or a retail shop, show-room, hotel or office is not and shall not be treated as an industrial building.

(3) Any work or building of the kind described in subparagraph 1(c) of the First Schedule is not and shall not be treated as an industrial building.

**44.** Where part of a building or of an extension of a building is used as an industrial building and the other part of the building or extension, as the case may be, is not so used, then, if the capital expenditure incurred on the construction of the part which is not so used is not more than one-tenth of the capital expenditure incurred on the construction of the whole building or extension, as the case may be, the building or extension, as the case may be, shall be treated as an industrial building for the purposes of this Schedule; and, where the whole or some of the capital expenditure incurred on the construction of the part not so used is not identifiable as the capital expenditure incurred on the whole building or extension, as the case may be, that last-mentioned expenditure or the part thereof not identifiable as incurred on the respective parts of the building or extension, as the case may be, shall be apportioned

by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.

**45.** Where capital expenditure is incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of machinery or plant to be used for the purposes of petroleum operations, then, if that expenditure amounts to more than seventy-five per cent of the aggregate of that expenditure and the capital expenditure incurred on that machinery or plant, the machinery or plant shall as regards that aggregate expenditure be treated for the purposes of this Schedule as a building so long as that machinery or plant is used for the purposes of those petroleum operations; and that aggregate expenditure shall be treated as the amount of the qualifying expenditure incurred on that building which shall be treated as disposed of if that plant or machinery is disposed of.

**45A.** (1) Where in the basis period for a year of assessment a chargeable person has incurred qualifying expenditure in relation to an asset and the input tax on the asset is subject to any adjustment made under the \*Goods and Services Tax Act 2014, the amount of such expenditure in relation to that asset shall be adjusted in the basis period for the year of assessment in which the period of adjustment relating to the asset as provided under the \*Goods and Services Tax Act 2014 ends.

(2) In the event the adjustment of the amount of the qualifying expenditure made under subparagraph (1) results in—

- (a) an additional amount, such amount shall be deemed to be part of the qualifying expenditure incurred, and the residual expenditure under paragraph 46 in relation to the asset shall include that additional amount; or
- (b) a reduced amount, the qualifying expenditure incurred and the residual expenditure under paragraph 46 shall be reduced by such amount, and if the amount of the allowance made or ought to have been made under this Schedule exceeds the residual expenditure, the excess shall be part of the statutory income of that chargeable person from a source consisting of a business in the basis period the adjustment is made.

(3) The excess amount referred to in subsubparagraph 2(b) shall not exceed the total amount of allowances given under this Schedule.

(4) Notwithstanding subparagraph (2), where a chargeable person has incurred the qualifying expenditure in relation to an asset, and the asset is disposed of at any time during the period of adjustment specified under the \*Goods and Services Tax Act 2014, the adjustment to such expenditure shall be made in the basis period for the year of assessment in which the disposal is made.

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*\*NOTE*—The Goods and Services Tax Act 2014 [Act 762] has since been repealed by the Goods and Services Tax (Repeal) Act 2018 [Act 805] which comes into operation on 1 September 2018—see section 3 of Act 805.



(5) Paragraphs 22 and 23 shall apply for the purpose of the adjustment referred to in subparagraph (4).

**46.** A reference in this Schedule to residual expenditure at any date in relation to an asset in respect of which qualifying expenditure has been incurred by a chargeable person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase of the asset before that date, reduced by—

- (a) the amount of any initial allowance made to that chargeable person in relation to that asset for any year of assessment;
- (b) any annual allowance made to that chargeable person in relation to that asset for any year of assessment before that date; and
- (c) any annual allowance which, if it had been claimed (or could have been claimed, if the asset had been in use for the purposes of his petroleum operations) by that chargeable person in relation to that asset, would have been made to him for a year of assessment before that date.

**47.** Any reference in this Schedule to an allowance made to a person for a year of assessment or to an allowance to which a chargeable person is entitled under this Schedule for a year of assessment is a reference to—

- (a) an allowance which is claimed for a year of assessment and is made or is due to be made for that year of assessment (any such allowance being treated as having been made at the end of the basis period for that year of assessment); and
- (b) an allowance which would have been made or to which that chargeable person would have been entitled in relation to his petroleum operations for a year of assessment but for an insufficiency or absence of adjusted income or the existence of an adjusted loss for the basis period for that year of assessment.

**48.** In this Schedule “purchase price”, in relation to the purchase of an industrial building, includes any legal fee, stamp duty or other incidental expenditure incurred by the purchaser in connection with the purchase, but does not include so much of the purchase price of the building and of any land or an interest therein purchased with the building as is attributable to the land or that interest; and, for the purposes of paragraph 33, the building and that land or the interest therein, as the case may be, shall be treated as being separate assets.

**48A.** For the purposes of this Schedule, where under an agreement between Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority and another chargeable person who has incurred qualifying expenditure in respect of an asset the asset vests in Petroliam Nasional Berhad or the Malaysia-Thailand Joint Authority,

such vesting alone shall not be treated as cessation of ownership or as disposal of such asset by that other chargeable person.

*Supplemental provisions*

**49.** Where a chargeable person has incurred qualifying expenditure in relation to an asset which is owned by that chargeable person for a period of less than two years, the Director General may direct that any allowance which but for this paragraph would fall to be made to him in relation to that asset shall not be made; and, where any such allowance has been made, a balancing charge in an amount equal to any such allowance shall be made on him for the year of assessment in the basis period for which the asset was disposed of by him.

**50.** In the application of the provisions of this Schedule to a chargeable person regard shall only be had to qualifying expenditure incurred by him in relation to an asset which is in use in Malaysia for the purposes of his petroleum operations.

**51.** Where qualifying expenditure has been incurred by a chargeable person in relation to an asset used for the purposes of his petroleum operations, then, if—

- (a) the asset is used only partly for the purposes of the petroleum operations;
- (b) the asset is not used wholly in Malaysia for the purposes of the petroleum operations;
- (c) the petroleum operations are carried on partly in Malaysia and partly elsewhere, and the asset is not used wholly for the purposes of the petroleum operations carried on in Malaysia;
- (d) the asset is used for the purposes of petroleum operations under more than one petroleum agreement,

any allowance to be made to that chargeable person under this Schedule for a year of assessment in relation to the asset shall consist of so much of what would have been the amount of the allowance claimed and due for that year if the asset had been used in the basis period for that year of assessment wholly for the purposes of the petroleum operations, or wholly in Malaysia for the purposes of the petroleum operations, or wholly for the purposes of the petroleum operations carried on in Malaysia or wholly for the purposes of petroleum operations under one petroleum agreement, as the case may be, as shall be determined by the Director General having regard to all the circumstances of the case:

Provided that in ascertaining the residual expenditure at any date in relation to the asset regard shall be had, with respect to any allowance claimed in relation to that asset for any year of assessment, to the full amount of that allowance which but for this paragraph would then have been made to him for that year in relation to that asset.

**52.** Where, by reason of an insufficiency or absence of adjusted income of a chargeable person from his petroleum operations, for the basis period for a year of assessment, or by reason of the existence of an adjusted loss of that chargeable person for that period from his petroleum operations, effect cannot be given or cannot be given in full to any allowance or to the aggregate amount of any allowances falling to be made to him for that year of assessment, the allowance or that aggregate amount, as the case may be, which has not been so made (or so much thereof as has not been so made to it for that year of assessment) shall be deemed to be an allowance to be made to him for the first subsequent year of assessment for the basis period for which there is adjusted income from its petroleum operations, and so on for subsequent years of assessment until the whole amount of the allowance or that aggregate amount to be made to him has been made to him.

**53.** A chargeable person shall not be entitled to an allowance under this Schedule for a year of assessment unless he makes a claim for the allowance for that year in accordance with paragraph 54.

**54.** (1) Any claim by a chargeable person for an allowance under this Schedule for a year of assessment shall be made in a written statement containing such particulars as may be requisite to show that the claimant is entitled to the allowance and a certificate duly signed on behalf of the claimant verifying those particulars.

(2) Any claim to be made by a chargeable person for a year of assessment in accordance with this paragraph shall be delivered with the copy of the accounts made and delivered under section 30 for that year of assessment.

**55.** Where in the case of the petroleum operations of a chargeable person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods.

**56.** Where as regards the petroleum operations of a chargeable person the Director General has exercised the power conferred upon him by subsection 5(3) to direct that the basis period for a year of assessment shall consist of a specified period, any allowance or charge to be made on or to that chargeable person under this Schedule for that year of assessment shall be ascertained by reference to such a period as shall be determined by the Director General, and that last-mentioned period shall be taken to be the basis period for that year of assessment in the application of this paragraph with this Schedule.

## THIRD SCHEDULE

## APPEALS

*Appeals to be heard by three Special Commissioners*

**1.** (1) Every appeal shall be heard by three Special Commissioners, at least one of whom shall be a person with experience as an advocate, as a member of the judicial and legal service of the Federation or as the holder of an office to which the Judges Remuneration Act 1971 [Act 45] applies.

(2) If a Chairman or Deputy Chairman of the Special Commissioners has been appointed and is present at the hearing of an appeal, he shall preside at the hearing.

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

(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.

**1A.** Notwithstanding subparagraph 1(1), if the Chairman deems it fit in the interest of achieving expeditious and efficient conduct of the appeal, he may decide that the appeal shall be heard by any of the following persons sitting alone—

(a) the Chairman;

(b) the Deputy Chairman; or

(c) any other Special Commissioners as the Chairman may determine.

**1B.** If a Special Commissioner who has commenced a hearing of an appeal is unable to complete the hearing of the appeal due to the expiration of the term of his appointment or other reasons—

(a) in the case where the hearing is before three Special Commissioners, the hearing may be heard afresh or be continued by the remaining Special Commissioners with another Special Commissioner, with the consent of the parties; or

(b) in the case where the hearing is before a Special Commissioner sitting alone, the hearing may be heard afresh or be continued by another Special Commissioner, with the consent of the parties.

*Place of sitting*

2. The Special Commissioners shall sit for the hearing of appeals in such places as they think appropriate.

*Sending forward of appeals, etc.*

3. Where the Director General sends an appeal forward in pursuance of section 46, he shall do so by forwarding to the Secretary a copy of the notice of appeal given under section 43, together with an address for service and a request for the appeal to be set down for hearing.

4. The notice forwarded under paragraph 3 shall constitute the petition of appeal and the appellant's address contained therein shall constitute the appellant's address for service.

5. Either party to an appeal may change his address for service by giving written notice of the change to the Secretary and the other party.

*Place and date of hearing*

6. On receipt of a request under paragraph 3 for an appeal to be set down for hearing, the Secretary shall fix a place and date of hearing which he considers suitable and shall give the appellant and the Director General at least twenty-eight days notice of the date and place so fixed:

Provided that, before sending an appeal forward the Director General may make an agreement in writing with the appellant fixing any place which the Special Commissioners think appropriate as the place of hearing of the appeal and, where he does so—

(a) he shall forward a copy of the agreement to the Secretary when he sends the appeal forward; and

(b) the Secretary shall fix as the place of hearing the place so agreed.

7. One of the Special Commissioners on the application of a party to an appeal may, after giving the other party an opportunity to be heard, vary any date or place fixed under paragraph 6 and may do so, in the case of a place so fixed, notwithstanding that the appeal has been partly heard in that place.

*Appeals may be heard together*

8. One of the Special Commissioners may order—

- (a) two or more appeals by the same appellant; or
- (b) two or more appeals by different appellants, if they agree, to be heard together.

**9.** One of the Special Commissioners may make an order under subparagraph 8(a) either of his own motion or on the application of a party to one of the appeals in question, but no such order shall be made until the parties to those appeals have been given an opportunity to be heard.

*Scope of argument*

**10.** At the hearing of an appeal the appellant may rely on grounds of appeal other than those stated in the petition of appeal and may vary any ground of appeal so stated:

Provided that, where he does so without giving reasonable notice to the Director General, the Special Commissioners shall adjourn the hearing for a reasonable period if requested to do so by the Director General.

*Onus of proof*

**11.** The onus of proving that an assessment against which an appeal is made is excessive or erroneous shall be on the appellant.

*Representation and attendance*

**12.** For the purposes of an appeal—

- (a) the Director General may be represented by an authorized officer, a legal officer, an advocate either alone or by one of them together with the other or others of them;
- (b) the appellant may be represented by an advocate or an accountant or by both an advocate and an accountant; and
- (c) if the appellant is the principal within the meaning of section 29, the appellant may be represented by the representative within the meaning of that section.

**13.** In paragraph 12—

“accountant” means—

- (a) a professional accountant authorized by or under any written law to be an auditor of companies;
- (b) any other professional accountant approved for the purposes of this Act by the Minister; or
- (c) any other person approved for the purposes of this Act by the Minister on the recommendation of the Director General;

“legal officer” means a legally qualified public officer entitled under the law in force in any part of Malaysia to represent the Government in civil proceedings by or against the Government.

**14.** The Director General and the appellant may—

- (a) attend at the time and place fixed for the hearing of the appeal; and
- (b) do any other thing or take any other action in connection with the appeal,

either personally or by a representative of the kind referred to in paragraph 12 or together with such representative or representatives.

**14A.** Where both parties to an appeal attend pursuant to paragraph 14 at the time and place fixed for the hearing of the appeal the Special Commissioners may on the application of either or both of the parties grant a postponement of the hearing on such terms as they consider reasonable, including terms as to the costs of the postponement to the Special Commissioners and to the party not applying for postponement, against the party or parties (as the case may be) applying for the postponement.

**15.** Where a party to an appeal fails to attend, either personally or by a representative of the kind referred to in paragraph 12, at the time and place fixed for the hearing of the appeal, the Special Commissioners—

- (a) if they are then and there satisfied that the defaulting party is prevented from attending by sickness or other reasonable cause, shall postpone the hearing for what appears to them to be an appropriate time;
- (b) if they are not so satisfied, shall hear and decide the appeal in the absence of the defaulting party or may dismiss the appeal if the defaulting party is the appellant.

**16.** Where, after a deciding order has been made under paragraph 15 as the result of a party’s failure to attend at the time and place fixed for the hearing of an appeal, the Special Commissioners are satisfied on an application made within a period of thirty days after the making of the order that the defaulting party was prevented from attending by sickness or other reasonable cause, they may set aside the order and fix a time and place for a fresh hearing of the appeal.

*Powers of Special Commissioners***17.** The Special Commissioners shall have—

- (a) power to summon to attend at the hearing of an appeal any person who in their opinion is or might be able to give evidence respecting the appeal;
- (b) power, where a person is so summoned, to examine him as a witness on oath or otherwise;
- (c) power, where a person is so summoned, to require him to produce any books, papers or documents which are in his custody or under his control and which the Special Commissioners may consider necessary for the purposes of the appeal;
- (d) power, where a person is so summoned, to allow him any reasonable expenses incurred by him in connection with his attendance;
- (e) all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;
- (f) subject to subsection 73(5), power to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (g) power to postpone or adjourn the hearing of an appeal from time to time (including power to adjourn to consider their decision).

*Witnesses bound to tell truth*

**18.** Every person examined as a witness by or before the Special Commissioners, whether on oath or otherwise, shall be legally bound to state the truth.

*Witnesses' expenses*

**19.** (1) Expenses allowed under subparagraph 17(d) shall be assessed by the Secretary on the scale used in civil proceedings in a subordinate court and shall be paid by the appellant or the Government as the Special Commissioners may direct.

(2) In a case where section 29 applies, the Special Commissioners may direct that expenses assessed under subparagraph (1) shall be paid by the representative (within the meaning of that section); and, where they so direct, subsections (4) to (7) of that section shall apply as if those expenses were tax due from the representative.



*Procedure at hearing*

**20.** Subject to this Schedule, the procedure at the hearing of an appeal shall be regulated by the Special Commissioners in whatever manner they consider appropriate.

*Deciding orders*

**21.** As soon as may be after completing the hearing of an appeal the Special Commissioners shall give their decision on the appeal in the form of an order which shall be known as a deciding order and which, subject to this Schedule, shall be final.

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

**22.** A deciding order may, if the Special Commissioners think fit, be read or summarized in the presence of the parties by one of the Special Commissioners or by the Secretary; but the fact that any deciding order is not so read or summarized shall not affect its validity and the fact that any deciding order is so read or summarized shall not relieve the Secretary of his obligation under paragraph 39 to cause a copy of the order to be served on the parties.

**23.** If the Special Commissioners differ among themselves as to the decision to be given on an appeal—

- (a) the opinion of the majority shall prevail; and
- (b) the Special Commissioner who dissents from the majority view shall sign the deciding order as required by paragraph 39 (unless he is incapacitated from doing so as mentioned in that paragraph), but in doing so shall indicate the fact of his dissent and may, if he thinks fit, add a statement of his reasons therefor.

**24.** Subject to paragraph 23, a deciding order shall either confirm or discharge the assessment to which the appeal relates or shall direct the Director General to amend the assessment; and, where it directs amendment, the order shall—

- (a) specify the appropriate amendments;
- (b) require appropriate amendments to be determined by agreement between the parties or, failing agreement, by the Special Commissioners; or
- (c) specify some of the appropriate amendments and require the others to be so determined.

**25.** Where a deciding order is made pursuant to subparagraph 24(b) or (c) in respect of an appeal, section 45 shall apply as if references to the order were substituted for

references to the notice of appeal under subsection 43(1) (any agreement come to pursuant to the order being deemed to be and to have the same effect as an agreement come to under subsection 45(2)) and section 46 shall apply as it applies on a failure to agree under subsection 45(2):

Provided that—

- (a) if a notice of appeal is filed under paragraph 29 in respect of the order, section 46 shall not come into operation until all proceedings respecting the case have been completed; and
- (b) if the Director General has cause to send the appeal forward to the Special Commissioners pursuant to section 46, he shall do so by sending to the Secretary and the appellant a written statement that a further hearing has become necessary by reason of the parties' failure to agree.

**26.** Where an appeal is set down for further hearing pursuant to paragraph 25, it shall not be necessary for the further hearing to take place before the same Special Commissioners as those who heard the earlier proceedings.

#### *Costs and fees*

**27.** Except as expressly provided in this Schedule, the Special Commissioners shall not make any order as to the payment of the costs of an appeal.

**27A.** (1) Any sum ordered to be paid by the Special Commissioners as costs shall become due and payable on the order for payment being made and shall be recoverable—

- (a) in the case of costs ordered to be paid to the appellant, as a debt due to him; and
- (b) in the case of costs ordered to be paid to the Special Commissioners or the Director General, as a debt due to the Government.

(2) In any proceedings for the recovery of costs ordered by the Special Commissioners the production of a certificate signed by one of the Special Commissioners giving the names and addresses of the persons to whom and by whom such costs are to be paid and the amount of the costs due shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgement for the amount.

**28.** (*Deleted by Act A353*).

**29.** (1) Either party to the proceedings before the Special Commissioners may appeal to the High Court on a question of law against a deciding order made in those proceedings.

(2) An appeal under subparagraph (1) shall be by way of a notice in writing filed with the Secretary within twenty-one days from the date of the decision of the Special Commissioners.

(3) A copy of the notice of appeal shall be extended to the Registry of the High Court within the time limited for the filing of an appeal as specified under subparagraph (2).

(4) A duplicate copy of the notice of appeal must be served by the appellant on every other party to the proceedings within the time limited for the filing of an appeal as specified under subparagraph (2).

(5) The appellant shall, within the time limited for the filing of an appeal as specified under subparagraph (2), apply to the Secretary in writing for the notes of proceedings and the grounds of decision.

(6) The appellant shall pay to the Secretary at the time of the filing of the notice of appeal such fee as may be prescribed by the Minister in respect of each deciding order against which he seeks to appeal.

(7) The High Court may, on the application of an intending appellant made by a notice of application, extend the period to file a notice of appeal.

**29A.** (1) The appellant shall, within sixty days from the date of the filing of the notice of appeal, prepare and file to the High Court a record of appeal in a number of copies as may be required by the Court.

(2) The record of appeal shall contain—

- (a) a duplicate copy of the notice of appeal;
- (b) the statement of facts and issues;
- (c) the memorandum of appeal;
- (d) the deciding order of the Special Commissioners;
- (e) the notes of proceedings, when available;
- (f) the grounds of decision, when available;
- (g) a duplicate copy of the notice of cross appeal, if any; and
- (h) all such documentary exhibits and other documents the parties consider relevant for the purposes of the appeal.

(3) The record of appeal under subparagraph (2) shall be filed notwithstanding that the notes of proceedings or grounds of decision are not ready within the sixty days period mentioned in subparagraph (1).

(4) When the notes of proceedings or grounds of decision become available, they shall be filed by way of a supplementary record of appeal without leave of the High Court.

**29B.** (1) The memorandum of appeal shall set forth consecutively, concisely and under distinct heads without any argument or narrative, the grounds of objection to the decision appealed against and the points of law which are alleged to have been wrongly decided.

(2) Where a supplementary record of appeal is filed pursuant to subparagraph 29A(4), the appellant may include in the supplementary record of appeal an amended memorandum of appeal without leave of the High Court.

**29C.** (1) A draft index of the documents to be included in the record of appeal shall be sent by the appellant to the respondent who may, within forty-eight hours, object to the inclusion or exclusion of any documents.

(2) In the event the parties are unable to agree on the documents to be included in the record of appeal, the matter shall be referred to the Registrar of the High Court who may require the parties to attend before a Judge of the High Court.

(3) The Registrar of the High Court and the parties shall endeavour to exclude from the record of appeal all documents that are not necessary or not relevant to the subject matter of the appeal.

(4) Where in the course of the preparation of the record of appeal one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists on it being included, the record as finally printed or typed shall, with a view to the subsequent adjustment of the costs of and incidental to such documents, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(5) The appellant shall serve a copy of the record of appeal to the respondent within the time limited for the filing of a record of appeal within the sixty days period mentioned in subparagraph 29A(1).

**30.** (*Deleted by Act A1610*).

**31.** (*Deleted by Act A1610*).

**32.** (*Deleted by Act A1610*).

**32A.** The appellant shall pay to the Secretary the cost for the notes of proceedings or other documents at such rate as may be prescribed by the Minister.

**33.** *(Deleted by Act A1610).*

**34.** The High Court shall hear and determine any question of law arising on an appeal under paragraph 29 and may in accordance with its determination thereof—

- (a) order the assessment to which the appeal relates to be confirmed, discharged or amended;
- (b) remit the appeal to the Special Commissioners with the opinion of the court thereon; or
- (c) make such other order as it thinks just and appropriate.

**35.** *(Deleted by Act A1610).*

**36.** There shall be such rights of appeal from decisions of the High Court on an appeal under paragraph 29 as exist in respect of decisions of the High Court on questions of law in its appellate civil jurisdiction.

**37.** Unless it is otherwise provided by rules of court, the rules of court for the time being in force in relation to appeals in civil matters from a subordinate court to the High Court and from the High Court in its appellate jurisdiction to the Court of Appeal shall, subject to this Schedule, apply with the necessary modifications to appeals under this Schedule to the High Court and the Court of Appeal respectively.

*Supplemental provisions*

**37A.** Where any matter of procedure or practice is not provided for in this Schedule, the procedure and practice for the time being in force or in use in the subordinate court or in the High Court, as the case may be, shall be adopted and followed with the necessary modifications.

**38.** (1) Proceedings under this Schedule before the Special Commissioners or the court shall take place in camera:

Provided that where the Director General applies to the Special Commissioners or the court, as the case may be, that the proceedings, or such part thereof as he may deem necessary, be heard by way of a hearing open to the public, the Special Commissioners or the court, as the case may be, shall direct that the proceedings or the part thereof, as the case may be, shall be so heard notwithstanding any objection from any other party to the proceedings:

Provided further that where in the opinion of the Special Commissioners or the court any proceedings or part thereof heard in camera ought to be reported, the Special Commissioners or the court, as the case may be, may publish or authorize publication of the facts of the case, the arguments and the decision relating to the

proceedings or the part thereof heard in camera, but without identifying the parties (other than the Director General) where the whole proceedings were heard in camera.

(2) Any publication authorized under subparagraph (1) may be obtained from the Special Commissioners or the court on payment of such fee as may be prescribed from time to time by the Minister.

**39.** Where a deciding order or any other order is made by the Special Commissioners or one of the Special Commissioners in or in connection with proceedings under this Schedule—

- (a) the order shall be dated and signed by the Special Commissioners or Special Commissioner making it; and
- (b) a copy of the order shall be served by the Secretary on the parties to the proceedings:

Provided that, if any of the Special Commissioners who have made a deciding order are incapacitated from signing by death, illness, absence or any other cause, the order shall be signed by such of them as are able to do so.

**40.** Directions for the settlement or disposal of any matter of a procedural nature arising in connection with proceedings before the Special Commissioners, the High Court, the Court of Appeal or the Federal Court under this Schedule may, if no other provision is made by or under this Act or rules of Court for the settlement or disposal of the matter, be given—

- (a) in relation to proceedings before the Special Commissioners, by one of the Special Commissioners on an application made in whatever manner he considers appropriate; and
- (b) in relation to proceedings before the High Court, the Court of Appeal or the Federal Court, by the High Court on an application made by notice of application.

**41.** The Special Commissioners in the exercise of their functions shall enjoy the same judicial immunity as is enjoyed by the person presiding in a subordinate court.

**42.** In sections 193 and 228 of the Penal Code the words “judicial proceeding” shall be deemed to include an appeal.

**43.** In this Schedule—

“appeal”, except in paragraphs 29 to 37, means an appeal to the Special Commissioners under section 43;

“deciding order” means a deciding order made under paragraph 21;

“subordinate court” means a sessions court;

“High Court”, in relation to an appeal heard by the Special Commissioners, means (unless the parties to the appeal agree otherwise in writing) the High Court having jurisdiction in the place where the appeal begins to be heard by the Special Commissioners.

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## LAWS OF MALAYSIA

### Act 543

### PETROLEUM (INCOME TAX) ACT 1967

#### LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 79/1967	Petroleum (Income Tax) (Amendment) Act 1967	14-12-1967
P.U. (A) 322/1970	Emergency (Essential Powers) Ordinance No. 49, 1970	03-09-1970
Act A38	Petroleum (Income Tax) (Amendment) Act 1971	30-04-1971
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A353	Petroleum (Income Tax) (Amendment) Act 1976	01-04-1975
Act A381	Petroleum (Income Tax) (Amendment) Act 1977	01-04-1975; Paragraph 4(b): Year of assessment 1976 and subsequent years of assessment
Act 324	Criminal Procedure Code (Amendment and Extension) Act 1976	10-01-1976
P.U. (A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981



Amending law	Short title	In force from
Act 274	Finance (No. 2) Act 1982	Year of assessment 1981 and Subsequent years of assessment; Paragraph 18(b): 01-01-1983
Act 293	Finance Act 1983	21-10-1983
Act 315	Finance Act 1985	Year of Assessment 1985 and subsequent years of assessment
Act 323	Finance (No. 2) Act 1985	Year of assessment 1985 and subsequent years of assessment; Section 52: 01-01-1980
Act 337	Finance Act 1987	Year of assessment 1988 and subsequent years of assessment
Act 364	Finance Act 1988	Year of assessment 1989 and subsequent years of assessment
Act 421	Finance (No. 2) Act 1990	Year of assessment 1990 and subsequent

Amending law	Short title	In force from years of assessment
Act 451	Finance Act 1991	Year of assessment 1991 and subsequent years of assessment
Act 513	Finance Act 1994	23-01-1991; Paragraph 34(b): Year of assessment 1994 and subsequent years of assessment
Act A885	Constitution (Amendment) Act 1994	24-06-1994
Act 531	Finance Act 1995	Year of assessment 1994 and subsequent years of assessment; Section 23: 01-06-1991
Act 544	Finance Act 1996	Year of assessment 1996 and subsequent years of assessment
Act 557	Finance Act 1997	Year of assessment 1997 and subsequent years of assessment; Sections 26, 29, 30 and 31:

Amending law	Short title	In force from
		02-08-1996
Act 578	Finance Act 1998	Year of assessment 1998 and subsequent years of assessment; Section 24: 17-10-1997; Sections 27 & 28: 01-01-1999
Act A1028	Tax Laws (Amendment) Act 1998	02-07-1998; Section 6: Year of assessment 1998 and subsequent years of assessment
Act 600	Finance Act 2000	Year of assessment 2000 and subsequent years of assessment; Paragraphs 18(a), (b), (c) and (d): Year of assessment 1996 and subsequent years of assessment
Act 608	Finance (No. 2) Act 2000	Subsections 29, 30, 31 and 36: Year of assessment 2001 and subsequent years of assessment;

Amending law

Short title

In force from

Sections 32, 33,  
34, 35  
and 37:  
01-01-2001

Act 619

Finance Act 2002

Sections 12, 13,  
14 & 15:  
Year of  
assessment  
2002 and  
subsequent  
years of  
assessment

Act 631

Finance Act 2003

Section 23:  
Year of  
assessment  
2004 and  
subsequent  
years of  
assessment

Act 639

Finance Act 2004

Section 35:  
Year of  
assessment  
2003 and  
subsequent  
years of  
assessment  
Section 36:  
Year of  
assessment  
2005 and  
subsequent  
years of  
assessment;  
Sections 37,  
38 and 39: Year  
of assessment  
2006 and  
subsequent  
years of  
assessment

Act 644

Finance Act 2005

01-01-2006

Amending law	Short title	In force from
Act 661	Finance Act 2006	Year of assessment 2008 and subsequent years of assessment
Act 683	Finance Act 2007	Section 66: Year of assessment 2009 and subsequent years of assessment Sections 67, 68 and 69: 29-12-2009
Act 693	Finance Act 2009	Year of assessment 2010 and subsequent years of assessment
Act 702	Finance Act 2010	Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34: Year of assessment 2010 and subsequent years of assessment; Sections 35, 36 and 38: 01-01-2010; Section 37: Year of assessment 2010 in respect of the basis period ending in 2010 and the next year of

Amending law	Short title	In force from assessment 2011
P.U (B) 197/2010	Corrigendum	22-04-2010
Act 719	Finance Act 2011	Section 31: 09-04-2009 Section 32: 28-01-2011
Act A1402	Petroleum (Income Tax) (Amendment) 2011	30-11-2010
Act 755	Finance Act 2013	Sections 48, 51, 53 and 54: 11-01-2013; Sections 49, 50 and 52; 01-01-2014
Act 761	Finance Act 2014	Sections 37, 38, 40, 42 and 43: 01-01-2014; Sections 39 and 41: 24-0-2014
Act 764	Finance (No. 2) Act 2014	Section 25: 31-12-2014; Section 26: 01-01-2015
Act 773	Finance Act 2015	Sections 34, para 35(a), sections 36 and 37 and para 38(a) and (c): Year of assessment 2015 and subsequent years of assessment.
Act 785	Finance Act 2017	Para 35(b) and 38(b): Year of

Amending law	Short title	In force from
		assessment 2016 and subsequent years of assessment. Paragraph 31(a): 17-01-2017 paragraph 31(b): Year of assessment 2017 and subsequent years of assessment. Sections 32 and 33: 01-01-2017.
Act A1610	Petroleum (Income Tax) (Amendment) 2019	01-01-2020
Act 823	Finance Act 2019	Section 30: 01-01-2020 Section 31: Year of assessment 2020 and subsequent years of assessment; Sections 32, 33 and 34: 28-12-2018.
Act 831	Finance Act 2020	Sections 52, 53 and 54: 01-01-2021
Act 833	Finance Act 2021	Sections 46, 47, 48, 49, 50 and 51: 01-01-2022
Act 845	Finance Act 2023	01-06-2023

Amending law	Short title	In force from
Act 851	Finance (No. 2) Act 2023	Subparagraph 72(a)(i), Sections 75, 76 and 77: 01-01-2024 Subparagraph 72(a)(ii), paragraph 72(b) and Section 74: Year of assessment 2024 and subsequent years of assessment; Section 73: Financial Year beginning on 1 January 2025 and subsequent Financial Years; Section 78: 30-12-2023.

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# LAWS OF MALAYSIA

## Act 543

### PETROLEUM (INCOME TAX) ACT 1967

#### LIST OF SECTION AMENDED

Section	Amending authority	In force from
2	Act 79/1967	14-12-1967
	Act A353	01-04-1975
	Act A381	01-04-1975
	Act 323	01-01-1980
	Act 337	Year of assessment 1988 and subsequent years of assessment
	Act 364	Year of assessment 1989 and subsequent years of assessment
	Act 513	23-01-1991
	Act 531	01-06-1991
	Act 557	02-08-1996
	Act 639	Year of assessment 2003 and subsequent years of assessment
	Act 644	01-01-2006
	P.U (B) 197/2010	22-04-2010
	Act 761	01-01-2014
	Act 773	Year of assessment 2015 and subsequent years of assessment

Section	Amending authority	In force from
	Act 785	Para 31(a): Year of assessment 2017 and subsequent years of assessment, Para 31(b): 17-01-2017
	Act A1610 Act 851	01-01-2020 Subparagraph 72(a)(i): 01-01-2024; Subparagraph 72(a)(ii), paragraph 72(b): Year of assessment 2024 and subsequent years of assessment
3	Act A353 Act 851	01-04-1975 Financial Year beginning on 1 January 2025 and subsequent Financial Years
4	Act A353 Act 364  Act 513 P.U (B) 197/2010 Act 851	01-04-1975 Year of assessment 1989 and subsequent years of assessment 23-01-1991 21-04-2010 Year of assessment 2024 and subsequent years of assessment
5	Act A353 Act 702	01-04-1975 22-04-2010

Section	Amending authority	In force from
6	Act A353	01-04-1975
7	Act A353	01-04-1975
8	Act A353	01-04-1975
9	Act A353	01-04-1975
10	Act 79/1967 Act A353 Act 364	14-12-1967 01-04-1975 Year of assessment 1989 and subsequent years of assessment
11	Act A353	01-04-1975
12	Act A353	01-04-1975
13	Act A353	01-04-1975
13A	Act A353 Act 513 Act 600	01-04-1975 23-01-1991 Year of assessment 2000 and subsequent years of assessment
14	Act 79/1967 Act A353	14-12-1967 01-04-1975
15	Act 79/1967 Act A353	14-12-1967 01-04-1975
16	Act 79/1967 Act A353 Act 364  Act 531	14-12-1967 01-04-1975 Year of assessment 1989 and subsequent years of assessment Year of assessment 1994 and subsequent

Section	Amending authority	In force from
		years of assessment
	Act 544	Year of assessment 1996 and subsequent years of assessment
	Act 557	Year of assessment 1997 and subsequent years of assessment
	Act 578	Year of assessment 1998 and subsequent years of assessment
	Act 608	Year of assessment 2001 and subsequent years of assessment
	Act 619	Year of assessment 2002 and subsequent years of assessment
	Act 661	Year of assessment 2008 and subsequent years of assessment
	Act 683	Year of assessment 2009 and subsequent years of assessment
	Act 693	Year of assessment 2010 and subsequent years of assessment
	Act 719	09-04-2009
17	Act A353	01-04-1975

Section	Amending authority	In force from
18	Act A353	01-04-1975
	Act A381	01-04-1975
	Act 274	Subsubparagraph 18(1)(a): Year of assessment 1981 and subsequent years of assessment; Subsubparagraph 18(1)(b): 01-01-1983
	Act 293	21-10-1983
	Act 315	Year of assessment 1985 and subsequent years of assessment
	Act 364	Year of assessment 1989 and subsequent years of assessment
	Act 421	Year of assessment 1990 and subsequent years of assessment
	Act 451	Year of assessment 1991 and subsequent years of assessment
	Act 578	17-01-1997
	Act 608	Year of assessment 2001 and subsequent years of assessment
	Act 619	Year of assessment 2002 and subsequent years of assessment
	Act 631	Year of assessment 2004 and subsequent

Section	Amending authority	In force from
		years of assessment Year of assessment 2005 and subsequent years of assessment 11-01-2013 Para 35(a): Year of assessment 2015 and subsequent years of assessment. Para 35(b): Year of assessment 2016 and subsequent years of assessment.
	Act 639	
	Act 755 Act 773	
19	Act A353	01-04-1975
20	Act 79/1967 Act A353	14-12-1967 01-04-1975
21	Act 79/1967 Act A353	14-12-1967 01-04-1975
22	Act A353 Act 323	01-04-1975 Year of assessment 1985 and subsequent years of assessment
	Act 531	Year of assessment 1994 and subsequent years of assessment
	Act 557	Year of assessment 1997 and subsequent years of assessment

Section	Amending authority	In force from
	Act 578	Year of assessment 1998 and subsequent years of assessment
	Act 608	Year of assessment 2001 and subsequent years of assessment
	Act 661	Year of assessment 2008 and subsequent years of assessment
	Act 683	29-12-2007
22A	Act A1402	30-11-2010
Heading of Part IV	Act A353	01-04-1975
23	Act A353 Act A381	01-04-1975 Year of assessment 1976 and subsequent years of assessment
	Act 513	Subsection 23(1): Year of assessment 1994 and subsequent years of assessment;
	Act 578	Subsection 23(2): 23-01-1991 Year of assessment 1998 and subsequent years of assessment
24	Act 79/1967 Act A353	14-12-1967 01-04-1975

Section	Amending authority	In force from
25	Act A353	01-04-1975
26	Act A353	01-04-1975
27	Act A353	01-04-1975
28	Act A353	01-04-1975
29	Act A353	01-04-1975
30	Act A353 Act 702 Act 761 Act 845	01-04-1975 01-01-2010 01-01-2014 Year of assessment 2023 and subsequent years of assessment
30A	Act 702 Act 845	01-01-2010 Year of assessment 2023 and subsequent years of assessment
30B	Act 702 Act 845	01-01-2010 Year of assessment 2023 and subsequent years of assessment
30C	Act 845	Year of assessment 2023 and subsequent years of assessment
31	Act A353	01-04-1975
32	Act A353	01-04-1975
33	Act 79/1967 Act A353 Act 608	14-12-1967 01-04-1975 01-01-2001



Section	Amending authority	In force from
	Act 683	29-12-2007
34	Act A353	01-04-1975
34A	Act 702	01-01-2010
34B	Act 851	01-01-2024
37	Act 79/1967 Act A353 Act 833	14-12-1967 01-04-1975 01-01-2022
38	Act A353 Act 702	01-04-1975 01-01-2010
39	Act A353 Act 578 Act 644 Act 755 Act 764 Act 773	01-04-1975 01-01-1999 01-01-2006 11-01-2013 31-12-2014 Year of assessment 2015 and subsequent years of assessment.
	Act 823	01-01-2020
39A	Act 702	01-01-2010
40	Act A353 Act 702	01-04-1975 01-01-2010
40A	Act 702	01-01-2010
41A	Act 693  Act 785 Act 833	Year of assessment 2010 and subsequent years of assessment 01-01-2017 01-01-2022
42	Act 79/1967 Act A1610	14-12-1967 01-01-2020

Section	Amending authority	In force from
43	Act 79/1967 Act A353 Act 833	14-12-1967 01-04-1975 01-01-2022
44	Act A353 Act A1610 Act 823	01-04-1975 01-01-2020 Year of assessment 2020 and subsequent years of assessment
45	Act 79/1967 Act A353 Act 608 Act A1610	14-12-1967 01-04-1975 01-01-2001 01-01-2020
46	Act A353 Act 608 Act 761	01-04-1975 01-01-2001 24-01-2014
47	Act 79/1967 Act A353	14-12-1967 01-04-1975
48	Act A353 Act 702	01-04-1975 01-01-2010
48A	Act 831	01-01-2021
49	Act 831	01-01-2021
49A	Act 702 Act 764	01-01-2010 01-01-2015
50	Act A353 Act 578 Act 719 Act 755	01-04-1975 01-01-1999 28-01-2011 11-01-2013
50A	Act 644	01-01-2006
51	Act 79/1967 Act A353 Act 702	14-12-1967 01-04-1975 01-01-2010

Section	Amending authority	In force from
52	Act 79/1967 Act A353	14-12-1967 01-04-1975
53	Act A353	01-04-1975
54	Act A353 Act 608	01-04-1975 01-01-2001
57A	Act 755	11-01-2013
57B	Act 851	01-01-2024
58	Act A353 Act 702	01-04-1975 01-01-2010
59	Act A353	01-04-1975
61	Act A1028	02-07-1998
62	Act 79/1967	14-12-1967
64A	Act A353	01-04-1975
65	Act A353	01-04-1975
65A	P.U. (A) 322/1970 Act A38 Act 274  Act 823	03-09-1970 30-04-1971 Year of assessment 1981 and subsequent years of assessment 28-12-2018
65AA	Act 823	28-12-2018
65B	Act 513	23-01-1991
65C	Act A1402 Act 833	30-11-2010 01-01-2022
66	Act A353 Act 755 Act 833	01-04-1975 11-01-2013 01-01-2022

Section	Amending authority	In force from
66A	Act 785 Act 833	01-01-2017 01-01-2022
69	Act A353 Act 557 Act A1028 Act 644	01-04-1975 02-08-1996 02-07-1998 01-01-2006
70	Act A353 Act 557	01-04-1975 02-08-1996
71	Act 79/1967 Act A353 Act 557 Act 851	14-12-1967 01-04-1975 02-08-1996 01-01-2024
71A	Act 761	01-01-2014
71B	Act 831	01-01-2021
72	Act 79/1967 Act A353	14-12-1967 01-04-1975
72A	Act 755 Act 761	11-01-2013 24-01-2014
73	Act A353	01-04-1975
74	Act 79/1967 Act A353	14-12-1967 01-04-1975
76	Act A353	01-04-1975
77	Act 644	01-01-2006
78	Act A353 Act 644	01-04-1975 01-01-2006
81	Act 644	01-01-2006
82A	Act 702 Act 845	01-01-2010 Year of assessment 2023 and subsequent years of assessment

Section	Amending authority	In force from
	Act 851	30-12-2023
83	Act 755 Act 761 Act 823	11-01-2013 01-01-2014 28-12-2018
84	Act A353	01-04-1975
First Schedule	Act 79/1967 Act A353 Act 364  Act A1402 Act 761 Act 773	14-12-1967 01-04-1975 Year of assessment 1989 and subsequent years of assessment 30-11-2010 01-01-2014 Year of assessment 2015 and subsequent years of assessment.
Second Schedule	Act 79/1967 Act A353 Act A381 Act 315  Act 364  Act 451  Act 513 Act 600	14-12-1967 01-04-1975 01-04-1975 Year of assessment 1985 and subsequent years of assessment Year of assessment 1989 and subsequent years of assessment Year of assessment 1991 and subsequent years of assessment 23-01-1991 Paragraphs 8, 12, 13 & 14: Year of assessment 1996 and subsequent

Section	Amending authority	In force from
		years of assessment, Paragraphs 21A, 22, 23A, & 41(b): Year of assessment 2000 and subsequent years of assessment
	Act 608	Year of assessment 2001 and subsequent years of assessment
	Act 619	Year of assessment 2002 and subsequent years of assessment
	Act 639	Year of assessment 2006 and subsequent years of assessment
	Act 693	Year of assessment 2010 and subsequent years of assessment
	P.U (B) 197/2010 Act 773	22-04-2010 Para 38(a) and (c) : Year of assessment 2015 and subsequent years of assessment. Para 38(b): Year of assessment 2016 and subsequent years of assessment.

Section	Amending authority	In force from
Third Schedule	Act 79/1967	14-12-1967
	Act A353	01-04-1975
	Act 608	01-01-2001
	Act 683	29-12-2007
	Act 693	Year of assessment 2010 and subsequent years of assessment
	Act A1610	01-01-2020
Throughout the Act	Act 160	29-08-1975
	Act A885	24-06-1994

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