



LAWS OF MALAYSIA

Act 719

FINANCE ACT 2011

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LAWS OF MALAYSIA

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FINANCE ACT 2011

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LAWS OF MALAYSIA

Act 719

FINANCE ACT 2011

An Act to amend the Income Tax Act 1967, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967, the Real Property Gains Tax Act 1976, the Finance Act 2007 and the Finance Act 2009.

[]

ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance Act 2011.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*], the Real Property Gains Tax Act 1976 [*Act 169*], the Finance Act 2007 [*Act 683*] and the Finance Act 2009 [*Act 693*] are amended in the manner specified in Chapters II, III, IV, V, VI and VII respectively.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Subparagraphs 4(a)(ii), (iii) and (iv) and paragraph 4(b) are deemed to have come into operation on 11 February 2010.

(2) Sections 5, 6, 8, paragraph 9(a), sections 10, 11, 12, 13, 14, 15, 16, 24 and 25 have effect for the year of assessment 2011 and subsequent years of assessment.

(3) Section 7 is deemed to have effect from the year of assessment 2010.

(4) Paragraphs 9(b), (c) and (d) have effect from 1 January 2011 for the year of assessment 2011 and subsequent years of assessment.

(5) Subparagraph 4(a)(i), sections 17, 18, 20, 21, 22 and 23 commence on the coming into operation of this Act.

(6) Section 19 has effect for the year of assessment 2012 and subsequent years of assessment.

Amendment of section 2

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

(a) in subsection (1)—

(i) in the definition of “foreign tax” by inserting after the word “Malaysia” the words “and in relation to paragraph 132(4)(d) or section 132A includes other taxes of every kind imposed by or under the laws of that territory”;

(ii) by inserting after the definition of “Inland Revenue Board of Malaysia” the following definitions:

‘ “Labuan business activity” has the meaning assigned to it in the Labuan Business Activity Tax Act 1990 [Act 445];

“Labuan company” means a Labuan company incorporated under the Labuan Companies Act 1990 [Act 441] and includes a foreign Labuan company registered under that Act, Labuan limited partnership established and registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [Act 707], Labuan trust as defined in the Labuan Trusts Act 1996 [Act 554] and a Malaysian bank as defined in the Labuan Financial Services and Securities Act 2010 [Act 704];’;

(iii) by deleting the definition of “offshore business activity”; and

(iv) by deleting the definition of “offshore company”; and

(b) by inserting after subsection (9) the following subsection:

‘(10) Any reference in this Act to—

(a) “Labuan Offshore Business Activity Tax Act 1990” is construed as reference to “Labuan Business Activity Tax Act 1990”;

(b) “Labuan Offshore Financial Services Authority” is construed as reference to “Labuan Financial Services Authority”;

(c) “offshore business activity” is construed as reference to “Labuan business activity”;

(d) “Offshore Companies Act 1990” is construed as reference to “Labuan Companies Act 1990”; and

(e) “offshore company” is construed as reference to “Labuan company”.’.

Deletion of section 6c

5. The principal Act is amended by deleting section 6c.

Amendment of section 16

6. Section 16 of the principal Act is amended by substituting for the words “his widow” wherever appearing the words “that person’s widow or widower”.

Amendment of section 34

7. Section 34 of the principal Act is amended in paragraph 34(6)(k) by substituting for the words “Ministry of Culture, Arts and Heritage” the words “Ministry of Information, Communication and Culture”.

Amendment of section 34c

8. Section 34c of the principal Act is amended—

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

“(1A) For the purpose of subsection (1), where by reason of an insufficiency or absence of gross income of a company from a source consisting of discount or premium for the basis period for a year of assessment, effect cannot be given or cannot be given in full to any amount of discount falling to be deducted to that company for that basis period in relation to that source, that amount which has not been so deducted shall be allowed as a deduction in arriving at the adjusted income of that company from any source or sources consisting of a business for that basis period:

Provided that the proceeds from the issuance of the bond that relates to that amount are utilized wholly by that company for the production of gross income from any source or sources consisting of that business.

(1B) This section shall not apply if in the basis period for a year of assessment the bond issued or subscribed forms part of the stock in trade of a business of a company.”; and

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

Amendment of section 39

9. Subsection 39(1) of the principal Act is amended—

- (a) in paragraph (d), by inserting after the word “widows” the word “, widowers”;
- (b) in paragraph (f), by substituting for the proviso the following proviso:

“Provided that—

- (i) this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section; 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 113(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;”;

- (c) in paragraph (i), by substituting for the proviso the following proviso:

“Provided that—

- (i) this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section; 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 113(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;”;
and

(d) in paragraph (j), by substituting for the proviso the following proviso:

“Provided that—

- (i) this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section; 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 113(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;”.

Amendment of section 46

10. Section 46 of the principal Act is amended by substituting for paragraph (1)(c) the following paragraph:

“(c) an amount limited to a maximum of five thousand ringgit in respect of medical treatment, special needs or carer expenses expended in that basis year by that individual for his parents and the claim is evidenced by certification of a medical practitioner that the medical conditions of the parents require medical treatment or special needs or carer and—

- (i) in the case of medical treatment or special needs, a receipt on the amount expended; or
- (ii) in the case of carer, a written certification or receipt from, or work permit of, the carer:

Provided that for the purpose of this paragraph—

- (a) “carer” shall not include that individual, his wife or her husband or the child of the individual;

- (b) “parents” shall be individuals resident in Malaysia;
- (c) the medical treatment and care services are provided in Malaysia; and
- (d) the medical practitioner is registered with the Malaysian Medical Council.”.

Amendment of section 49

11. Section 49 of the principal Act is amended—

- (a) in paragraph (1)(a), by deleting the words “other than an insurance policy to which subsection (1c) applies”;
- (b) in paragraph (1)(c), by inserting after the word “widows” the word “, widowers”; and
- (c) by deleting subsection (1c).

Amendment of section 50

12. Subsection 50(2) of the principal Act is amended by deleting the words “or for any insurance policy determined by the Employees Provident Fund Board referred to in subsection 49(1c).”.

Amendment of section 60F

13. Subsection 60F(2) of the principal Act is amended by inserting after the definition of “business of holding of an investment” the following definition:

‘ “dividend” is deemed to include income distributed by a unit trust;’.

Amendment of section 60H

14. Subsection 60H(5) of the principal Act is amended by inserting after the definition of “closed-end fund company” the following definition:

‘ “dividend” is deemed to include income distributed by a unit trust;’.

Amendment of section 63B

15. Subsection 63B(2) of the principal Act is amended by inserting before the definition of “permitted expenses” the following definition:

‘ “dividend” is deemed to include income distributed by a unit trust;’.

Amendment of section 65

16. Paragraph 65(11)(c) of the principal Act is amended by inserting after the words “the widow” the words “or widower”.

Amendment of section 74

17. Subsection 74(3) of the principal Act is amended by substituting for paragraph (a) the following paragraph:

“(a) the Director General is informed of the death of the individual by the executor referred to under subsection (1) in the form prescribed under this Act;”.

Amendment of section 104

18. Subsection 104(1) of the principal Act is amended by substituting for paragraph (b) the following paragraph:

“(b) all sums payable by him under subsection 103(1A), (3), (4), (5), (6), (7) or (8) or subsection 107B(3) or (4) or subsection 107C(9) or (10);”.

Amendment of section 107c

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

(a) by substituting for subsection (8) the following subsection:

“(8) Notwithstanding subsections (1), (3), (4), (5), (6) and (7), the Director General may direct such company, trust body or co-operative society to make payment by instalments on account of tax which is

or may be payable by that company, trust body or co-operative society for a year of assessment at such times and of such amounts as the Director General may direct and such account of tax shall be deemed for the purpose of subsection (10) to be the revised estimate of tax payable by that company, trust body or co-operative society for that year of assessment:

Provided that, where the direction is made before the ninth month of the basis period for that year of assessment, that company, trust body or co-operative society may furnish a revised estimate of its tax payable for that year of assessment in accordance with subsection (7).”;

- (b) by deleting subsections (8A) and (8B); and
- (c) in subsection (10), by substituting for the words “revised estimate of tax payable for that year of assessment or if no revised estimate is furnished” the words “revised estimate under subsection (7) or deemed revised estimate under subsection (8), whichever is later, or if no such revised estimate is furnished or there is no such deemed revised estimate”.

Amendment of section 111

20. Section 111 of the principal Act is amended—

- (a) in subsection (1A), by substituting for the words “subsection 77(1) section 77A” the words “subsection 77(1) or section 77A”; and
- (b) by inserting after subsection (4) the following subsections:

“(4A) 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 Petroleum (Income Tax) Act 1967 or the Real Property Gains Tax Act 1976.

(4B) Where amount of excess in respect of a person is ascertained in accordance with subsection 50(4) of the Petroleum (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.”.

Amendment of section 132

21. Section 132 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “tax under this Act” the words “or other taxes of every kind under any written law”; and
- (b) in paragraph (4)(d), by inserting after the words “tax under this Act” the words “or other taxes of every kind under any written law”.

New section 132A

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

“Tax information exchange arrangements

132A. (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 the exchange of information foreseeably relevant to the administration or assessment or collection or enforcement of the taxes under this Act or other taxes of every kind under any written law and any foreign tax of that territory; 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) No arrangement under this section can be made if the order in respect of an arrangement under section 132 is in force.

(3) Where any arrangements have effect by virtue of this section, section 138 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.

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

Amendment of section 154

23. Section 154 of the principal Act is amended in paragraph (1)(c) by inserting after the words “section 132” the words “or 132A”.

Amendment of Schedule 6

24. Schedule 6 to the principal Act is amended in paragraph 16—

(a) by inserting after the word “widows” the word “, widowers’ ”; and

(b) by inserting after the word “widow,” the word “widower.”.

Amendment of Schedule 7A

25. Schedule 7A to the principal Act is amended in subparagraph 7(a) by substituting for the words “the period” the words “the basis period”.

CHAPTER III

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

26. This Chapter commences on the coming into operation of this Act except section 28 which is deemed to have come into operation on 11 February 2010.

Amendment of section 8

27. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in subsection 8(1) by inserting after the words “postal franking machine” the words “or digital franking machine”.

Amendment of First Schedule

28. Paragraph 6 under “GENERAL EXEMPTIONS” in the First Schedule to the principal Act is amended by substituting for the words “Labuan Offshore Financial Services Authority” the words “Labuan Financial Services Authority”.

Amendment of Fifth Schedule

29. The Fifth Schedule to the principal Act is amended—

(a) in the heading of that Schedule, by inserting after the words “postal franking machine” the words “or digital franking machine”; and

(b) by inserting after item 9 the following items:

- “10. Letter of indemnity.
11. Letter of guarantee.
12. Letter of allotment.
13. Education loan agreement.
14. Articles of Association of a company.
15. Memorandum of Association of a company.
16. Any other agreement approved by the Collector.”.

CHAPTER IV

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

30. (1) Section 31 is deemed to have come into operation on 9 April 2009.

(2) Section 32 commences on the coming into operation of this Act.

Amendment of section 16

31. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in subsection 16(7E) by substituting for the words “Ministry of Tourism” the words “Ministry of Information, Communication and Culture”.

Amendment of section 50

32. Section 50 of the principal Act is amended by inserting after subsection (3) the following subsections:

“(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.”.

CHAPTER V

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

33. (1) Sections 34 and 35 commence on the coming into operation of this Act.

(2) Section 36 has effect for the year of assessment 2011 and subsequent years of assessment.

Amendment of section 14

34. The Real Property Gains Tax Act 1976, which is referred to as the “principal Act” in this Chapter, is amended in subsection 14(4) by substituting for the proviso the following proviso:

“Provided that no such assessment shall be made more than three years after the end of the year of assessment in which the Director General is informed in writing by the executor of the death of that chargeable person in a form prescribed under this Act.”.

Amendment of section 24

35. Section 24 of the principal Act is amended by inserting after subsection (7) the following subsections:

“(7A) 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 Petroleum (Income Tax) Act 1967.

(7B) 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 50(4) of the Petroleum (Income

Tax) Act 1967 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.”.

Amendment of Schedule 2

36. Schedule 2 to the principal Act is amended in subparagraph 16(a) by inserting after the word “Government” wherever appearing the words “or a State Government”.

CHAPTER VI

AMENDMENTS TO THE FINANCE ACT 2007

Commencement of amendments to the Finance Act 2007

37. This Chapter is deemed to have effect from the year of assessment 2008 and have effect for subsequent years of assessment.

Amendment of section 48

38. The Finance Act 2007, which is referred to as the “principal Act” in this Chapter, is amended in section 48 by inserting after subsection (3) the following subsection:

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

Amendment of section 49

39. Section 49 of the principal Act is amended by inserting after subsection (3) the following subsection:

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

CHAPTER VII

AMENDMENTS TO THE FINANCE ACT 2009

Commencement of amendments to the Finance Act 2009

40. This Chapter is deemed to have come into operation on 9 January 2009.

Amendment of section 48

41. The Finance Act 2009, which is referred to as the “principal Act” in this Chapter, is amended in section 48 by inserting after subsection (4) the following subsection:

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

Amendment of section 49

42. Section 49 of the principal Act is amended by inserting after subsection (4) the following subsection:

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

