



LAWS OF MALAYSIA

Act 328

FINANCE ACT 1986

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LAWS OF MALAYSIA

Act 328

FINANCE ACT 1986

An Act to amend the Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Share (Land Based Company) Transfer Tax Act 1984, the Cinematograph Film Hire Duty Act 1965, the Stamp Ordinance 1949, the Stamp Ordinance (Sabah), the Sales Tax Act 1972 and the Service Tax Act 1975 and to provide for matters connected therewith.

[]

BE IT ENACTED by the Duli Yang Maha Mulia 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:

CHAPTER I

PRELIMINARY

1. This Act may be cited as the Finance Act 1986 and shall have effect or be deemed to have effect as provided in this Act. Short title and commencement.

2. The Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Share (Land Based Company) Transfer Tax Act 1984, the Cinematograph Film Hire Duty Act 1965, the Stamp Ordinance 1949, the Stamp Ordinance (Sabah), the Sales Tax Act 1972 and the Service Tax Act 1975 are amended respectively in the manner specified in Chapters II, III, IV, V, VI, VII, VIII and IX respectively. Amendments of Acts and Ordinances. Act 53, Act 169, Act 310, 45/65, 59/49, Sabah Cap. 137, Act 64 and Act 151.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commence-
ment of
amend-
ments to
the Income
Tax Act
1967

3. (1) Except for sections 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18 and 19 (*h*) the provisions of this Chapter shall have effect for the year of assessment 1987 and subsequent years of assessment:

Provided that section 9 (*c*) and (*e*) shall cease to have effect from—

- (i) year of assessment 1988 where the gross premiums receivable by the insurer during the basis period for year of assessment 1986 on account of all Malaysian life policies in force at the end of that period, amount to fifty million ringgit or more;
- (ii) year of assessment 1990 where the gross premiums receivable by the insurer during the basis period for year of assessment 1986 on account of all Malaysian life policies in force at the end of that period, amount to ten million ringgit or more but less than fifty million ringgit; and
- (iii) year of assessment 1992 where the gross premiums receivable by the insurer during the basis period for year of assessment 1986 on account of all Malaysian life policies in force at the end of that period, is less than ten million ringgit.

(2) Sections 5, 7 and 12 shall be deemed to have come into force on the 21st October 1983.

(3) Sections 4, 6, 10, 11, 13, 15 and 18 shall be deemed to have come into force on the 24th October 1986.

(4) Section 8 shall be deemed to have come into force on the 1st January 1986.

(5) Section 16 shall be deemed to have effect from the year of assessment 1984.

(6) Section 19 (*h*) shall have effect for the year of assessment 1988 and subsequent years of assessment.

4. Section 2 of the Income Tax Act 1967, which in this Chapter is referred to as “the principal Act”, is amended by substituting for the interpretation of “approved loan” in subsection (1) the following: Amendment of section 2. Act 53.

“approved loan” means—

- (a) any loan or credit made to the Government, State Government (including any loan or credit made to a person other than the Government or State Government where the loan or credit is guaranteed by the Government or State Government), local authority or statutory body; or
- (b) any loan or credit other than a loan or credit of the kind specified in paragraph (a), made to a person where the amount of such loan or credit exceeds two hundred and fifty million ringgit,

by a person not resident in Malaysia :

Provided that—

- (i) the loan or credit has been approved by the Minister of Finance; and
- (ii) the loan or credit agreement was executed in Malaysia or where the loan or credit agreement with the prior approval of the Minister was executed outside Malaysia;’

5. Section 4A of the principal Act is amended by inserting immediately after the words “film rentals” the words “where the duty is leviable under the Cinematograph Film Hire Duty Act 1965” in paragraph (iii). Amendment of section 4A.

6. Section 15 of the principal Act is amended by substituting for paragraph (c) the following: Amendment of section 15.

“(c) if the interest or royalty is charged as an outgoing or expense against any income accruing in or derived from Malaysia.”.

7. Section 15A of the principal Act is amended by inserting immediately after the words “film rentals” the words “where the duty is leviable under the Cinematograph Film Hire Duty Act 1965” in paragraph (c). Amendment of section 15A.

Amendment
of section
44.

8. The interpretation of "institution" in section 44 (7) of the principal Act is amended—

- (a) by deleting the word "or" at the end of paragraph (c);
- (b) by inserting the word "or" at the end of paragraph (d); and
- (c) by inserting after paragraph (d) the following new paragraph (e):
 - "(e) a Government-assisted institution engaged in socio-economic research;"

Amendment
of section
60.

9. Section 60 of the principal Act is amended—

- (a) by deleting the word "and" at the end of subparagraph (i) of subsection (3) (b);
- (b) by substituting for subparagraph (ii) of subsection (3) (b) the following new subparagraph (ii):
 - "(ii) an amount bearing the same proportion to the management expenses incurred during that period in connection with his life business as the aggregate mentioned in paragraph (a) bears to the total of that aggregate and the amount of gross premiums received by him during that period on account of all life policies in force at the end of that period; and";
- (c) by inserting after subparagraph (ii) of subsection (3) (b) the following new subparagraph (iii):
 - "(iii) commissions paid in that period in connection with that business.";
- (d) by substituting for subparagraphs (i) and (ii) of subsection (4) (b) the following new subparagraphs (i) and (ii):
 - "(i) an amount bearing the same proportion to the management expenses incurred

during that period in connection with the insurer's Malaysian life fund or in connection with that part of his life business which is carried on in Malaysia as the aggregate mentioned in paragraph (a) bears to the total of that aggregate and the amount of gross premiums received by him during that period on account of Malaysian life policies in force at the end of that period;

- (ii) an amount bearing the same proportion to the head office expenses of the insurer incurred during that period in connection with his life business as the aggregate mentioned in paragraph (a) bears to the aggregate of the amount of gross income for that period from the investments out of the insurer's life fund, the amount of gross proceeds receivable in that period in connection with the realisation of those investments or any rights arising from them and the amount of gross premiums received by him during that period on account of all life policies in force at the end of that period; and”;

- (e) by inserting after subparagraph (ii) of subsection (4) (b) the following new subparagraph (iii):

“(iii) commissions paid in that period in connection with the insurer's life business which is carried on in Malaysia.”.

10. Section 107A of the principal Act is amended by deleting the words “, not being a payment that is a royalty within the meaning of section 2 (1)” in the interpretation of “contract payment” in subsection (5). Amendment
of section
107A.

11. Section 109 of the principal Act is amended by substituting for the words “or to have a place of business in Malaysia” the words “in Malaysia, other than interest or royalty attributable to a business carried on by such other person in Malaysia” in subsection (1). Amendment
of section
109.

Amendment
of section
109B.

12. Section 109B of the principal Act is amended by inserting immediately after the words "film rentals" the words "where the duty is leviable under the Cinematograph Film Hire Duty Act 1965" in subsection (1) (c).

Amendment
of section
120.

13. Section 120 of the principal Act is amended—

(a) by deleting the word "or" at the end of paragraph (c);

(b) by substituting for the comma the sign and word "; or" at the end of paragraph (d); and

(c) by inserting after paragraph (d) the following new paragraph (e):

"(e) fails to comply with a direction given under section 107,".

Amendment
of section
128.

14. Section 128 of the principal Act is amended by substituting for subsection (1) the following new subsection (1):

"(1) Subject to this section, where an individual who is the owner of a residence occupies the residence as owner throughout the basis period for a year of assessment (that period and that year being referred to in this section as the relevant period and the relevant year respectively) or during any part of the relevant period, his gross income from the occupation for the relevant period or for that part of the relevant period, as the case may be, shall be disregarded for the purposes of this Act."

Amendment
of section
153.

15. Section 153 of the principal Act is amended—

(a) by substituting for the words "in paragraph 15 of Schedule 5" the words "in this section" in subsection (1);

(b) by inserting after subsection (2) the following new subsections (3), (4), (5), (6) and (7):

"(3) For the purposes of this Act—

"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 by the Minister; or

(c) any other person approved by the Minister on the recommendation of the Director General.

(4) An application for an approval under subsection (3) (b) or (c) or for a renewal of such approval shall be made to the Minister.

(5) A fee as may be prescribed by the Minister by an order published in the *Gazette* shall be paid on the application for an approval or renewal of an approval under subsection (4).

(6) An approval or renewal of an approval under this section shall be valid for a period of twenty-four months beginning from the date of such approval or renewal.

(7) An approval granted by the Minister before the 24th October 1986 shall lapse on the 31st December 1987 unless a renewal of such approval is obtained under this section by that date.”.

16. Part V of Schedule 1 to the principal Act is amended by inserting immediately after the words “film rentals” the words “where the duty is leviable under the Cinematograph Film Hire Duty Act 1965” in paragraph (iii). Amendment of Schedule 1.

17. Schedule 3 to the principal Act is amended by substituting for the words “qualifying plantation expenditure” the words “qualifying agriculture expenditure” in paragraph 6 (b). Amendment of Schedule 3.

18. Schedule 5 to the principal Act is amended by deleting the interpretation of “accountant” in paragraph 15. Amendment of Schedule 5.

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

(a) by deleting paragraph 11;

(b) by substituting for the proviso to paragraph 13 the following new proviso :

“Provided that—

(a) where a business is carried on by any such institution, trust body or body of persons, the income from the business shall be exempt from tax only if it is applied solely for charitable purposes and either—

(i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, trust or body of persons; or

(ii) the work in connection with the business is mainly carried on by persons for whose benefit the institution, trust or body of persons was established;

(b) the exemption under this paragraph shall not apply to income consisting of a dividend.”;

(c) by substituting for the word “two” the word “four” in paragraph 15 (1) (b);

(d) by substituting for the full stop a colon at the end of paragraph 17;

(e) by inserting after paragraph 17 the following new proviso :

“Provided that the exemption under this paragraph shall not apply to income consisting of a dividend.”;

(f) by substituting for the full stop a colon at the end of paragraph 26;

(g) by inserting after paragraph 26 the following new proviso :

“Provided that the exemption under this paragraph shall not apply to income consisting of a dividend.”; and

(h) by deleting Part II.

20. Schedule 7A to the principal Act is amended by substituting for paragraph 7 the following new paragraph 7: Amendment
of Schedule
7A.

“7. This Schedule shall not apply to a company—

(a) for the period during which the company—

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(i) has been granted pioneer status under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and which is applying or intends to apply for the grant of a pioneer certificate; or

(ii) has been granted pioneer certificate under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph (b), (c) or (d) of section 29 (2) of the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product for which the company has been granted approval under section 27 of that Act;

(c) for the year of assessment for which the company is given abatement of adjusted income under section 32, 33, 34 or 36 of the Promotion of Investments Act 1986; or

(d) for the period during which that company, notwithstanding the repeal of the Investment Incentives Act 1968—

(i) has been given approval under section 5, 12A or 12B of that Act and whose tax relief period has not ended; or

- (ii) has been given approval under section 26 of that Act and incurs capital expenditure which qualifies for investment tax credit.”.

CHAPTER III

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commence-
ment of
amendments
to the Real
Property
Gains Tax
Act 1976.

21. The provisions of this Chapter shall come into force on the 24th October 1986.

Amendment
of section
45.
Act 169.

22. Section 45 of the Real Property Gains Tax Act 1976, which in this Chapter is referred to as “the principal Act”, is amended—

(a) by substituting for the full stop at the end of subsection (4), a colon; and

(b) by inserting immediately after subsection (4) the following new proviso:

“Provided that the Director General may by writing under his hand authorize any Senior Assistant or Assistant Directors of Inland Revenue (subject to any exceptions or limitations contained in the authorization) to exercise his function under section 39.”.

Amendment
of Schedule
2.

23. Paragraph 1 of Schedule 2 to the principal Act is amended by substituting for the interpretation of “Islamic bank” the following new interpretation of “Islamic bank” in subparagraph (1):

Act 276. “Islamic bank” has the meaning assigned to it under the Islamic Banking Act 1983 and includes a person carrying on banking or financing activities in accordance with the Syariah.’.

24. Schedule 4 to the principal Act is amended by deleting the words “who is a citizen or an individual who is not a citizen but is a permanent resident,” in paragraph 2. Amendment
of Schedule
4.

25. The principal Act is amended by substituting for Schedule 5 the following new Schedule 5: Amendment
of Schedule
5.

“

SCHEDULE 5

(Sections 4 and 7 (4))

RATES OF TAX

PART I

Except where Part II is applicable, the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within two years after the date of acquisition of the chargeable asset	20 per cent
Disposal in the third year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	10 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset	5 per cent
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	Nil

PART II

In the case where the disposer is a company, the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within two years after the date of acquisition of the chargeable asset	20 per cent
Disposal in the third year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	10 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset or thereafter	5 per cent”.

CHAPTER IV

AMENDMENTS TO THE SHARE (LAND BASED
COMPANY) TRANSFER TAX ACT 1984

Commence-
ment of
amendments
to the Share
(Land
Based
Company)
Transfer
Tax Act
1984.

26. The provisions of this Chapter shall come into force on the 24th October 1986.

Amendment
of section 2.
Act 310.

27. Section 2 of the Share (Land Based Company) Transfer Tax Act 1984, which in this Chapter is referred to as “the principal Act”, is amended by substituting for the first proviso to the definition of “land based company” in subsection (1) the following:

“Provided that a company shall not be considered a land based company where land is used wholly and exclusively for—

- (i) its factory, office or business premises where no part of the premises is let out or is available for letting (or if any part is let out or is available for letting the total area let out and available for letting does not exceed ten per cent of the built-up area of the premises within the same curtilage at any time during the period of twelve months immediately prior to the date of disposal); or
- (ii) its hotel building (including land in use as golf course, tennis court, children’s playground) where no part of the hotel building is let out or is available for letting for activities not related to its hotel business (or if so let out or available for letting the total area let out and available for letting does not exceed ten per cent of the built-up area of the hotel building at any time during the period of twelve months immediately prior to the date of disposal),

and the land so used is in the judgment of the Director General not excessive to normal requirements but commensurate with the size of the

factory, office, business premises or hotel building or where the land so used is land in an industrial estate;”.

28. The principal Act is amended by substituting for section 4A the following new section 4A: Amendment
of section
4A.

“Transfer of chargeable assets between companies in same group or in any scheme of reorganisation, etc.

4A.(1) Subject to this section, where with the prior approval of the Director General—

- (a) a chargeable asset is transferred between companies in the same group to bring about greater efficiency in operation and where the ownership of the chargeable asset remains with the group;
- (b) a chargeable asset is transferred for any consideration between persons in any scheme of reorganisation, reconstruction or amalgamation; or
- (c) a chargeable asset is disposed of by a liquidator of a company and the liquidation of the company was made under a scheme of reorganisation, reconstruction or amalgamation,

the transfer shall not be treated as a disposal :

Provided that no approval shall be given for any transfer or disposal of a chargeable asset in any scheme under paragraph (b) or (c) unless the Director General is satisfied that such a chargeable asset is transferred or disposed of to implement any such scheme directly connected with any transfer of ownership of a chargeable asset in compliance with Government policy on capital participation in industry.

(2) For the purposes of this section, a principal company and all its subsidiaries form a group and, where a principal company is a member of another group as being itself a subsidiary, both groups shall be treated as one group for those purposes.”.

Amendment of section 5. **29.** The principal Act is amended by substituting for section 5 the following new section 5:

"Date of disposal. **5.** (1) A disposal of a chargeable asset shall be deemed to take place—

(a) where there is an agreement in writing or otherwise for the disposal of the chargeable asset, on the date of such agreement; or

(b) where there is no agreement, on the date of delivery of the chargeable asset to the acquirer:

Provided that where the disposal of the chargeable asset by value exceeds five million ringgit and the disposal or acquisition of such chargeable asset is approved by a committee appointed by the Government the date of disposal shall be the date of such approval by the committee notwithstanding any conditions attached to the approval.

(2) For purposes of subsection (1), the reference to a committee appointed by the Government means a committee charged with the responsibility to formulate policy guidelines on foreign investment and to regulate the acquisition of assets, mergers and take-overs of companies and businesses."

Amendment of Schedule 1. **30.** The principal Act is amended by substituting for the figure "10" the figure "2" in Schedule 1.

CHAPTER V

AMENDMENTS TO THE CINEMATOGRAPH FILM HIRE DUTY ACT 1965

Commencement of amendments to the Cinematograph Film Hire Duty Act 1965. **31.** The provisions of this Chapter shall come into force on the 24th October 1986.

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32. The Cinematograph Film Hire Duty Act 1965, which in this Chapter is referred to as “the principal Act”, is amended by deleting the interpretation of “charge for admission” in section 2. Amendment of section 2. 45/65.
33. The principal Act is amended by deleting section 13. Amendment of section 13.
34. The principal Act is amended by deleting the sign and figures “. 13 (2)” in section 20. Amendment of section 20.
35. The Schedule to the principal Act is amended by deleting rule 12. Amendment of the Schedule.

CHAPTER VI

AMENDMENTS TO THE STAMP ORDINANCE 1949

36. The provisions of this Chapter shall come into force on the 24th October 1986. Commencement of amendments to the Stamp Ordinance 1949.
37. Section 15 of the Stamp Ordinance 1949 is amended— Amendment of section 15. 59/49.
- (a) by deleting the words “the scheme is in compliance with Government policy on capital participation in industry and” in subsection (1);
 - (b) by deleting the words “or liquidation,” in subsection (5) (b); and
 - (c) by inserting immediately after the words “in consequence of reconstruction, amalgamation” the words “, liquidation or in compliance with Government policy on capital participation in industry” in subsection (5) (b).

CHAPTER VII

AMENDMENTS TO THE STAMP ORDINANCE (SABAH)

38. The provisions of this Chapter shall come into force on the 24th October 1986. Commencement of amendments to the Stamp Ordinance (Sabah).

- Amendment of section 15. *Sabah Cap. 137.* **39.** Section 15 of the Stamp Ordinance (Sabah) is amended—
- (a) by deleting the words “the scheme is in compliance with Government policy on capital participation in industry and” in subsection (1);
 - (b) by deleting the words “or liquidation,” in subsection (5) (b); and
 - (c) by inserting immediately after the words “in consequence of reconstruction, amalgamation” the words “, liquidation or in compliance with Government policy on capital participation in industry” in subsection 5 (b).

CHAPTER VIII

AMENDMENTS TO THE SALES TAX ACT 1972

- Commencement of amendments to the Sales Tax Act 1972. **40.** The provisions of this Chapter shall come into force on the 24th October 1986.
- Amendment of section 7. *Act 64.* **41.** Section 7 of the Sales Tax Act 1972, which in this Chapter is referred to as “the principal Act”, is amended by deleting subsection (3).
- Amendment of section 11. **42.** The principal Act is amended by substituting for the words “as would have been paid if such order had not been made, or such exemption had not been granted, or such refund had not been directed” the words “and any person found in possession of such goods, or the person to whom the exemption was granted, or refund has been directed, shall be jointly and severally liable to pay such sales tax” in section 11.
- Amendment of section 13. **43.** Section 13 of the principal Act is amended—
- (a) by deleting the words “or any person engaged in business” after the words “Any manufacturer” in subsection (2); and
 - (b) by substituting for the words “shall issue a licence” the words “may direct that a licence be issued” after the words “Director General” in subsection (2).

44. The principal Act is amended by inserting after the words "such amount remains unpaid" the words "to a maximum of fifty per cent" in section 24. Amendment of section 24.

45. The principal Act is amended by substituting for section 30 the following new section 30: Amendment of section 30.

"Payment of sales tax short paid or erroneously refunded.

30. (1) Where—

- (a) the whole or any part of sales tax or other moneys payable under this Act has not been paid; or
- (b) the whole or any part of any sales tax or other moneys, after having been paid, has been erroneously refunded,

then, provided a demand is made within three years from the date on which such sales tax or other moneys were payable, or deficient sales tax or other moneys were paid, or the refund was made, as the case may be, the person liable to pay such sales tax or other moneys or the person to whom such refund has erroneously been made, as the case may be, shall pay the deficiency or repay the amount paid to him in excess, and without prejudice to any other remedy for the recovery of the amount due, any goods belonging to such person which may be in Excise or Customs control or at a place or places specified in the licence issued under section 13 may be seized until such sales tax or deficiency be paid or the refund be repaid, as the case may be.

(2) Should the sales tax or other moneys or deficiency, or the refund to be repaid remain unpaid, as the case may be, the Director General may after giving not less than 30 days' notice in writing to the owner or his agent (if the name and address of such owner or agent is known to him) or after due notice in the *Gazette* (if the name and address of such owner or agent is not known to him) sell such goods.

(3) The proceeds of the sale of any such goods shall be applied to the payment of the sales tax and other moneys or recovery of the amount due or other charges which may be due in respect of selling off such goods, and the surplus if any, shall be paid to the owner of such goods and if the owner cannot be found within one month of the sale, such surplus shall be paid to the Consolidated Fund.

(4) If at the sale of any such goods no sufficient bid is forthcoming to defray the sales tax, any other moneys payable or deficient sales tax or other moneys were paid or the refund was made, as the case may be, the goods shall be forfeited to the Government and shall be disposed of in such manner as the Director General may direct.

(5) Every auction sales shall under this section be conducted by or in the presence of a senior officer of sales tax.”.

CHAPTER IX

AMENDMENT TO THE SERVICE TAX ACT 1975

Commence-
ment of
amendment
to the
Service Tax
Act 1975.

46. The provisions of this Chapter shall come into force on the 24th October 1986.

Amendment
of section
16 (b).
Act 151.

47. Section 16 of the Service Tax Act 1975 is amended by inserting after the words “during which such amounts remains unpaid” the words “to a maximum penalty of fifty percent” in paragraph (b).