



UNDANG-UNDANG MALAYSIA

Akta 420

AKTA KEWANGAN 1990

Tarikh Persetujuan Diraja 8hb Februari 1990

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UNDANG-UNDANG MALAYSIA

Akta 420

AKTA KEWANGAN 1990

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UNDANG-UNDANG MALAYSIA

Akta 420

AKTA KEWANGAN 1990

Suatu Akta untuk meminda Akta Cukai Pendapatan 1967, Akta Cukai Keuntungan Harta Tanah 1976 dan Akta Kewangan 1988, dan untuk mengadakan peruntukan bagi perkara-perkara yang berkaitan dengannya.

[*Provided in the Act*]

MAKA INILAH DIPERBUAT UNDANG-UNDANG oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Rakyat yang bersidang dalam Parlimen, dan dengan kuasa daripadanya, seperti berikut:

BAB I

PERMULAAN

1. Akta ini bolehlah dinamakan Akta Kewangan 1990. Tajuk ringkas.
2. Akta Cukai Pendapatan 1967, Akta Cukai Keuntungan Harta Tanah 1976 dan Akta Kewangan 1988 adalah dipinda mengikut cara yang masing-masingnya dinyatakan dalam Bab II, III dan IV. Pindaan Akta-Akta. Akta 53. Akta 169. Akta 364.

BAB II

PINDAAN-PINDAAN KEPADA AKTA CUKAI PENDAPATAN 1967

3. (1) Kecuali seksyen 7, 8, 13, 15 dan 16 Bab ini hendaklah berkuatkuasa bagi tahun taksiran 1990 dan tahun-tahun taksiran yang berikutnya. Mula berkuatkuasanya pindaan-pindaan kepada Akta Cukai Pendapatan 1967.
- (2) Seksyen 7, 8 dan 15 hendaklah disifatkan berkuatkuasa bagi tahun taksiran 1989 dan hendaklah berkuatkuasa bagi tahun-tahun taksiran yang berikutnya.

(3) Seksyen 13 hendaklah disifatkan telah mula berkuatkuasa pada 1hb Januari 1989.

(4) Seksyen 16 hendaklah berkuatkuasa bagi tahun taksiran 1991 dan tahun-tahun taksiran yang berikutnya.

Pindaan
seksyen 2.
Akta 53.

4. Seksyen 2 Akta Cukai Pendapatan 1967, yang disebut "Akta ibu" dalam Bab ini, adalah dipinda dengan memasukkan, selepas takrif "approved loan", takrif yang berikut:

' "approved operational headquarters company" has the meaning assigned thereto by section 60E;';

Pindaan
seksyen 3A.

5. Seksyen 3A Akta ibu adalah dipinda dengan memasukkan, selepas perkataan-perkataan "under section 4A" perkataan-perkataan "and that of a unit trust".

Pindaan
seksyen 6.

6. Seksyen 6 Akta ibu adalah dipinda—

(a) dalam subseksyen (1), dengan menggantikan noktah di hujung perenggan (f) dengan koma bernoktah; dan

(b) dalam subseksyen (1), dengan memasukkan, selepas perenggan (f), perenggan yang berikut:

"(g) (i) subject to subparagraph (ii), income tax shall be charged for each year of assessment upon the chargeable income of an approved operational headquarters company in relation to the source consisting of the provision of qualifying services at the appropriate rate as specified under Part VII of Schedule 1;

(ii) the rate specified under Part VII of Schedule 1 shall apply only for a period of five years of assessment

commencing from the year of assessment in the basis period in which the date of approval of the approved operational headquarters company falls:

Provided that where the Minister is satisfied that the company has by the end of the period met such requirements as may be specified by him at the time of approval, he may extend the period for a further period not exceeding five years of assessment.”.

7. Seksyen 19 Akta ibu adalah dipinda, dalam subseksyen (5), dengan menggantikan perkataan-perkataan “3 and 4” dengan perkataan-perkataan “3, 4 and 4A”. Pindaan seksyen 19.

8. Seksyen 44 Akta ibu adalah dipinda, dalam subseksyen (6) dengan menggantikan perkataan-perkataan “subsection (2) or Schedule 4 or both” dengan perkataan-perkataan “subsection (2), Schedule 4 or Schedule 4A”. Pindaan seksyen 44.

9. Akta ibu adalah dipinda dengan memasukkan, selepas seksyen 60c, seksyen-seksyen yang berikut: Seksyen baru 60D dan 60E.

“Venture capital companies.

60D. (1) Where a venture capital company receives an amount in respect of gains from the disposal of shares in a venture company in the basis period for a year of assessment such amount shall be exempt from tax for that year of assessment:

Provided that where the disposal of shares in a venture company takes place two years after the date on which the shares in the

venture company are listed for quotation in the official list of stock exchange in Malaysia, the gains from such disposal shall not be exempt from tax.

(2) Paragraphs 5 and 6 of Schedule 7A shall apply *mutatis mutandis* to the amount exempt under subsection (1).

(3) Where a venture capital company incurs a loss in respect of a disposal of shares in a venture company in the basis period for a year of assessment, there shall not be made any deduction under section 43 (2) or 44 (2) in respect of such loss in computing the aggregate income or total income of the venture capital company, as the case may be.

(4) In ascertaining the total income of the venture capital company for the basis period for a year of assessment, there shall be deducted before any deduction falling to be made under section 44 (1) (c) an amount in respect of expenses incurred by that company during that period, which amount shall be determined in accordance with the formula

$$A \times \frac{B}{4C},$$

where A is the total of the permitted expenses incurred for that basis period;

B is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period; and

C is the aggregate of the gross income consisting of dividend (whether exempt or not), interest and rent, and gains made from the disposal of

shares in a venture company (whether chargeable to tax or not) for that basis period:

Provided that where, by reason of an absence or insufficiency of aggregate income for that year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made to the venture capital company under this section for that year, that deduction which has not been so made shall not be made to the company for any subsequent year of assessment.

(5) In this section—

“permitted expenses” means expenses incurred by the venture capital company in respect of—

- (a) directors’ fees;
- (b) wages, salary, allowances;
- (c) management and advisory fees paid to fund managers;
- (d) secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage; and
- (e) rent and other expenses incidental to the maintenance of an office,

which are not deductible under section 33 (1);

“venture capital company” means a company, incorporated in Malaysia, which—

- (a) is resident in Malaysia for the basis year for a year of assessment;
- (b) holds shares exclusively in a venture company, the shares in which are not listed for quotation in the official list of a stock exchange in Malaysia at the time of acquisition of such shares by that venture capital company; and

(c) is approved by the Minister for the purposes of this section;

“venture company” means a company incorporated in Malaysia which—

(a) is resident in Malaysia for the basis year for a year of assessment; and

(b) is involved in any high-risk venture or new technology in relation to a product or activity which the Minister is satisfied would promote or enhance the economic or technological development of Malaysia.

Approved
operational
head-
quarters
company.

60E. (1) Where an approved operational headquarters company carries on a business in Malaysia of providing qualifying services, and a business or businesses in Malaysia other than that of providing qualifying services, the business of providing such qualifying services shall be treated as a separate and distinct business and source of that company.

(2) The chargeable income in relation to the source consisting of the provision of qualifying services for a year of assessment shall be the statutory income from that source reduced by any deduction falling to be made pursuant to section 43 (2) relating to that source.

(3) The chargeable income in relation to the source or sources other than the source consisting of the provision of qualifying services for a year of assessment shall be the statutory income from that source or the aggregate of the statutory income from each of those sources, as the case may be, reduced by any deductions falling to be made pursuant to sections 43 (2) and 44 (1):

Provided that in so making the deductions under sections 43 (2) and 44 (1), no regard shall be had to the adjusted loss, if any, from

the source consisting of the provision of qualifying services.

(4) Where it appears to the Director General that the chargeable income of an approved operational headquarters company in relation to a source consisting of the provision of qualifying services ought not to have been charged to tax at the rate specified under Part VII of Schedule 1 by reason of the withdrawal of the approval of the operational headquarters company, he may, at any time within twelve years after the expiration of the year of assessment for which that rate was applied, make such additional assessments upon that company as appear to him to be necessary in order to counteract any benefit obtained under Part VII of Schedule 1.

(5) Dividends received by an approved operational headquarters company in the basis period for a year of assessment from a related company outside Malaysia shall be exempt from tax for that year of assessment:

Provided that the exemption—

- (a) shall apply for a period of ten years of assessment commencing from the year of assessment in the basis period in which the date of approval of the operational headquarters company falls; and
- (b) shall apply only to a company which is incorporated in Malaysia on or after the coming into force of this section.

(6) Paragraphs 5 and 6 of Schedule 7A shall apply *mutatis mutandis* to income exempt under subsection (5).

(7) For the purposes of this section—

“approved operational headquarters company” means a company—

- (a) the entire issued share capital of which is held—
 - (i) by a foreign company or companies; or
 - (ii) by an individual or individuals who are not citizens at any time in the basis year for a year of assessment; or
 - (iii) by a foreign company or companies, and an individual or individuals who are not citizens at any time in the basis year for a year of assessment;
- (b) which carries on a business in Malaysia of providing qualifying services to its offices outside Malaysia or to its related companies outside Malaysia; and
- (c) which is approved by the Minister for the purposes of this section,

but does not include a company which carries on a finance business or which provides professional services;

Act 125. “foreign company” means a foreign company as defined under the Companies Act 1965;

“qualifying services” means—

- (a) services provided by an approved operational headquarters company to its offices outside Malaysia or to its

related companies outside Malaysia in respect of—

- (i) general management and administration;
 - (ii) business planning;
 - (iii) procurement of raw materials and components for use in the business of its offices outside Malaysia or its related companies outside Malaysia;
 - (iv) technical support;
 - (v) marketing control and sales promotion planning;
 - (vi) training and personnel management;
- (b) provision of credit facilities to its offices outside Malaysia or its related companies outside Malaysia where the funds for providing such facilities are obtained from financial institutions in Malaysia; and
- (c) research and development work carried out in Malaysia on behalf of its offices outside Malaysia or its related companies outside Malaysia;

“related company”, in relation to an approved operational headquarters company, means a company—

- (a) the operations of which are or can be controlled, either directly or indirectly, by the approved operational headquarters company;
- (b) which controls or can control, either directly or indirectly, the operations of the approved operational headquarters company; or

- (c) the operations of which are or can be controlled, either directly or indirectly, by a person or persons who control or can control, either directly or indirectly, the operations of the approved operational headquarters company:

Provided that a company shall be deemed to be a related company in relation to an approved operational headquarters company if—

- (i) at least twenty per cent of its issued share capital is beneficially owned, either directly or indirectly, by the approved operational headquarters company; or
- (ii) at least twenty per cent of the issued share capital of the approved operational headquarters company is beneficially owned, either directly or indirectly, by the first-mentioned company.”.

Pindaan
seksyen 61.

10. Seksyen 61 Akta ibu adalah dipinda—

- (a) dalam subseksyen (1), dengan menggantikan koma bernoktah di hujung perenggan (b) dengan noktah bertindih;
- (b) dalam subseksyen (1), dengan memasukkan, di bawah perenggan (b), proviso yang berikut:

“Provided that in the case of a unit trust, gains arising from the realisation of investments shall not be treated as income of the trust body of the trust;”;
- (c) dengan memasukkan, selepas subseksyen (1), subseksyen yang berikut:

“(1A) Notwithstanding subsection (1) (c) and (d), a unit holder of a unit trust shall be assessed and charged to tax in respect of

income equivalent to an amount ascertained by reference to his share of the total income of the unit trust for a year of assessment, distributed to him by the unit trust in the basis year for that year of assessment:

Provided that the unit holder shall not be assessed and charged to tax in respect of any amount distributed by the unit trust out of exempt income or the gains referred to in the proviso to section 61 (1) (b).”.

11. Akta ibu adalah dipinda dengan memasukkan, selepas seksyen 63, seksyen-seksyen yang berikut:

Seksyen baru
63A dan 63B.

“Special
deduction
for
qualifying
capital
expenditure.

63A. (1) In ascertaining the statutory income of a unit trust from a source consisting of the derivation of rent from the letting of real property for a year of assessment, there shall be deducted from the adjusted income from that source for that year of assessment an allowance made under subsection (2) in respect of qualifying capital expenditure.

(2) Where a unit trust has, for the purposes of deriving rent from the letting of real property, incurred qualifying capital expenditure in relation to an asset and at the end of the basis period for a year of assessment the unit trust was the owner of the asset and the asset was in use for that purpose, there shall be made to the unit trust in relation to that source for that year an allowance equal to one tenth of that expenditure:

Provided that where, by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or cannot be given in full to any allowance falling to be made for that year in relation to that

source, that allowance which has not been so made shall not be made to the unit trust for any subsequent year of assessment.

(3) Where at the end of the basis period for any year of assessment the residual expenditure in relation to an asset in respect of which qualifying capital expenditure has been incurred is zero, or the asset is no longer owned or in use by the unit trust, no allowance shall be made to the unit trust for that year of assessment and subsequent years of assessment.

(4) For the purposes of subsection (2), qualifying capital expenditure shall be deemed to have been incurred on the day on which the machinery or plant is capable of being used for the purposes of deriving rent from the letting of real property.

(5) For the purposes of this section—

“qualifying capital expenditure” in relation to an asset is capital expenditure incurred on the provision of machinery or plant used for the purposes of deriving rent from the letting of real property, including—

- (a) expenditure incurred 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 provided that such expenditure does not exceed seventy-five per cent of the aggregate of itself and any other expenditure (being qualifying capital expenditure); and
- (b) expenditure incurred on preparing or levelling land in order to prepare a site for the installation of that machinery or plant provided that such expenditure does not exceed ten per cent of the

aggregate of itself and any other expenditure (being qualifying capital expenditure);

“residual expenditure” at any date in relation to an asset in respect of which qualifying capital expenditure has been incurred by a unit trust shall be the total qualifying capital expenditure incurred on the provision of the asset before that date reduced by the allowance falling to be made in relation to that asset for any year of assessment before that date.

Special
deduction
for
expenses.

63B. (1) In ascertaining the total income of a unit trust for the basis period for a year of assessment, there shall be deducted before any deduction falling to be made under section 44 (1) (c) an amount in respect of expenses incurred by that unit trust during that period, which amount shall be determined in accordance with the formula

$$\frac{A \times B}{4C},$$

where A is the total of the permitted expenses incurred for that basis period;

B is the gross income consisting of dividend, interest and rent chargeable to tax for that basis period; and

C is the aggregate of the gross income consisting of dividend (whether exempt or not), interest and rent, and gains made from the realisation of investments (whether chargeable to tax or not) for that basis period:

Provided that—

(a) the amount of deduction to be made shall not be less than ten per cent of

the total permitted expenses incurred for that basis period; and

- (b) where, by reason of an absence or insufficiency of aggregate income for that year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made to the unit trust under this section for that year that deduction which has not been so made shall not be made to the unit trust for any subsequent year of assessment.

(2) For the purposes of this section—

“permitted expenses” means expenses incurred by the unit trust in respect of—

- (a) manager’s remuneration;
(b) maintenance of register of unit holders;
(c) share registration expenses;
(d) secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage,

which are not deductible under section 33 (1).”.

Pindaan
seksyen 110.

12. Seksyen 110 Akta ibu adalah dipinda dengan memasukkan, selepas subseksyen (9), subseksyen yang berikut:

“(9A) Notwithstanding subsections (8) and (9), where income distributed by a unit trust is included in the aggregate income of a person for a year of assessment, the tax chargeable on the unit trust and attributable to the income included in the aggregate income of that person (or, where the trust is entitled to any relief under section 132 or 133, that tax less the amount of that relief) shall be set off against the tax charged on the chargeable income, if any, of that person for that year of assessment.”.

13. Seksyen 145 Akta ibu adalah dipinda dengan menggantikan subseksyen (3) dan (4) dengan subseksyen-subseksyen yang berikut: Pindaan seksyen 145.

“(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 but refuses or neglects to take delivery of the letter; or
- (b) refuses to accept delivery of that registered letter when tendered,

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 or on which the letter was tendered to him, as the case may be.

(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—

- (a) 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; or
- (b) there has been tendered for delivery to the addressee a registered letter,

shall, until the contrary is proved, be evidence that the addressee has been so informed or that that registered letter has been tendered to him, as the case may be.”.

14. Jadual 1 kepada Akta ibu adalah dipinda dengan memasukkan, selepas Bahagian VI, Bahagian yang berikut: Bahagian baru VII Jadual 1.

“

PART VII

Notwithstanding Part I, income tax shall be charged upon the chargeable income of an approved operational headquarters company in

relation to the source consisting of the provision of qualifying services as defined under section 60E (7) at the rate of 10 per cent.”.

Pindaan
Jadual 4A.

15. Jadual 4A kepada Akta ibu adalah dipinda dengan memasukkan, selepas perenggan 7, perenggan yang berikut:

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

(a) for the period during which the company—

Act 327.
(i) has been granted pioneer status under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and is applying or intends to apply for the grant of a pioneer certificates; 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; or

Act 199.
(c) 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.”.