



LAWS OF MALAYSIA

REPRINT

Act 702

FINANCE ACT 2010

As at 1 September 2019

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
2019

FINANCE ACT 2010

Date of Royal Assent 6 January 2010

Date of publication in the *Gazette* 14 January 2010

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LAWS OF MALAYSIA

Act 702

FINANCE ACT 2010

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 and the Labuan Offshore Business Activity Tax Act 1990.

[As provided in this Act]

ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance Act 2010.

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*] and the Labuan Offshore Business Activity Tax Act 1990 [*Act 445*] are amended in the manner specified in Chapters II, III, IV, V and VI respectively.

CHAPTER II**AMENDMENTS TO THE INCOME TAX ACT 1967****Commencement of amendments to the Income Tax Act 1967**

3. (1) Sections 4 and 4A, subparagraph 5(a)(i), sections 6, 7, 14, 15 and 16 have effect for the year of assessment 2010 and subsequent years of assessment.

(2) Subparagraphs 5(a)(ii), (iii), (iv) and paragraph 5(b) have effect for the years of assessment 2010, 2011 and 2012.

(3) Section 8 has effect for the year ending 31 December 2009 and subsequent years.

(4) Sections 9, 11, 12 and 13 come into operation on the coming into operation of this Act.

(5) Section 10 has effect for the year of assessment 2011 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 by inserting after subsection (8) the following subsection:

“(9) Any reference in subsection 107C(4A), paragraph 2A of Schedule 1 and paragraph 19A of Schedule 3 to a company which has a paid-up capital in respect of ordinary shares of two million five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment shall exclude a company which is established for the issuance of asset-backed securities in a securitization transaction approved by the Securities Commission.”.

Amendment of section 6A

4A. Subsection 6A(2) of the principal Act is amended—

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

- (b) by inserting after paragraph (c) the following proviso to that subsection:

“Provided that where Part XIV of Schedule 1 applies, thirty-five thousand ringgit shall consist of chargeable income of that individual from all sources.”.

Amendment of section 46

5. Section 46 of the principal Act is amended—

- (a) in subsection (1)—

- (i) in paragraph (a), by substituting for the word “eight” the word “nine”;
- (ii) in paragraph (k), by deleting the word “and” at the end of the paragraph;
- (iii) in paragraph (l), by substituting for the full stop at the end of the paragraph the words “; and”; and
- (iv) by inserting after paragraph (l) the following paragraph:

“(m) an amount limited to a maximum of five hundred ringgit in respect of expenses expended or deemed expended under subsection (3) in that basis year by that individual for the payment of monthly bill for broadband subscription under that individual’s name as evidenced by receipts issued in respect of such bill.”; and

- (b) in subsection (3), by substituting for the words “and (l)” the words “, (l) and (m)”.

Amendment of section 49

6. Section 49 of the principal Act is amended by substituting for subsection (1A) the following subsection:

“(1A) For the purposes of subsection (1)—

- (a) where the aggregate amount of deduction allowed under that subsection in respect of payments, other than payment of premium for any deferred annuity contracted by an individual on or after 1 January 2010, or contributions or both, is six thousand ringgit or less, there shall be allowed a further deduction on any payment of premium for such deferred annuity:

Provided that the total of that aggregate amount of deduction and that further deduction shall not exceed seven thousand ringgit; and

- (b) where subsection 50(2) or 50(3) applies, the total deduction under that subsection shall not exceed six thousand ringgit or where paragraph (a) applies, shall not exceed seven thousand ringgit.”.

Amendment of section 60i

7. Subsection 60i(4) of the principal Act is amended—

- (a) in the definition of “Islamic securities”, by inserting after the words “Securities Commission” the words “or Labuan Offshore Financial Services Authority”; and

(b) in the definition of “special purpose vehicle”—

- (i) by inserting after the words “Companies Act 1965” the words “or a company incorporated under the Offshore Companies Act 1990 which has made an election under section 3A of the Labuan Offshore Business Activity Tax Act 1990”; and
- (ii) by inserting after the words “Securities Commission” the words “or Labuan Offshore Financial Services Authority”.

Amendment of section 83**8. Section 83 of the principal Act is amended—**

(a) by substituting for subsection (1) the following subsection:

“(1) Every employer shall, for each year, furnish to the Director General a return in the prescribed form not later than 31 March in the year immediately following the first-mentioned year containing—

- (a) the number of employees employed in the first-mentioned year;
- (b) the number of employees subject to deductions under the Income Tax (Deduction From Remuneration) Rules 1994 [*P.U. (A) 507/1994*] for the first-mentioned year;
- (c) the number of new employees employed in the first-mentioned year;
- (d) the number of employees who have resigned in the first-mentioned year;
- (e) the number of employees who have resigned and left Malaysia in the first-mentioned year; and
- (f) such other particulars as may be required by the Director General.”; and

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

“(1A) For the purpose of subsection (1), every employer shall, for each year, prepare and render to his employee a statement of remuneration of that employee on or before the last day of February in the year immediately following the first-mentioned year containing the following information:

- (a) the relevant particulars of the employee;

- (b) the full amount of the gross income falling within section 13 paid, payable or provided by or on behalf of the employer to that employee in respect of the employment;
- (c) pension, annuity or periodical payment falling under paragraph (4)(e);
- (d) total deductions under the Income Tax (Deduction From Remuneration) Rules 1994 paid to the Director General in the first-mentioned year;
- (e) the compulsory contributions made by the employees to the Pension Fund or Employees' Provident Fund, or any approved fund pursuant to section 150;
- (f) details relating to the payment of arrears and others for the years prior to the first-mentioned year;
- (g) tax exempt allowances, perquisites, gifts and benefits for the first-mentioned year; and
- (h) such other particulars as may be required by the Director General.”.

Amendment of section 107

9. Subsection 107(4) of the principal Act is amended by inserting after the words “failed to deduct” the words “, and such amount of tax shall be a debt due from that employer to the Government and shall be payable forthwith to the Director General”.

Amendment of section 107c

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

- (a) in subsection (4), by inserting after the words “in a year of assessment” the words “and the basis period for that year is not less than six months”;

(b) in subsection (8), by inserting after the words “(3),” the words “(4),”;

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

“(10A) Where for a year of assessment—

(a) no estimate is furnished by a company, trust body or co-operative society and no direction is given by the Director General to make payment by instalment under subsection (8);

(b) no prosecution under section 120 has been instituted in relation to failure to furnish such estimate; and

(c) tax is payable by that company, trust body or co-operative society pursuant to 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 company, trust body or co-operative society pays that sum or, where the sum is remitted under subsection (11), that company, trust body or cooperative society shall not be liable to be charged on the same facts with an offence under section 120.”; and

(d) in subsection (11), by substituting for the words “or (10)” the words “, (10) or (10A)”.

Amendment of section 112

11. Section 112 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) The Director General may require any 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.”.

Amendment of section 120

12. Subsection 120(1) of the principal Act is amended by substituting for paragraph (b) the following paragraph:

“(b) fails to furnish a return in accordance with subsection 83(1) or to prepare and render a statement in accordance with subsection 83(1A);”.

Amendment of section 152A

13. Section 152A of the principal Act is amended—

- (a) in subsection (3), by substituting for the words “return in the prescribed form” the words “form prescribed under this Act”;
- (b) in subsection (4), by substituting for the word “return” the words “form prescribed under this Act”; and
- (c) in subsection (5)—
 - (i) by substituting for the words “a return” the words “the form”;
 - (ii) by substituting for the words “the return” the words “the form”; and
 - (iii) by substituting for the words “such return” the words “the form”.

Amendment of Schedule 1

14. Schedule 1 to the principal Act is amended—

- (a) in Part I—
 - (i) in paragraph 1, by substituting for the words “27 per cent” appearing in the column “Rate of Income Tax” the words “26 per cent”; and
 - (ii) in paragraph 1A, by substituting for the words “27 per cent” the words “26 per cent”;

(b) in Part IV—

- (i) by deleting the words “For every ringgit of the next” appearing in line no. 10 of the column “Chargeable Income”;
- (ii) by deleting the words “500,000” appearing in line no. 10 of the column “RM”; and
- (iii) by deleting the words “27 per cent” appearing in the column “Rate of income tax”; and

(c) by inserting after Part XIII the following Part:

“PART XIV

1. Notwithstanding Part I, income tax shall be charged for a year of assessment on the chargeable income of an individual who is a knowledge worker and residing in a specified region in respect of having or exercising employment with a person who is carrying on a qualified activity in a specified region at the rate of 15 per cent on every ringgit of that chargeable income.

2. In this Part—

- (a) the knowledge worker, qualified activity and specified region referred to in paragraph 1; and
- (b) where the individual has income from a source other than the employment referred to in paragraph 1 or where subsection 45(2) applies, the chargeable income of the individual referred to in that paragraph,

shall be as determined by the Minister by rules made under this Act.”.

Amendment of Schedule 6

15. Schedule 6 to the principal Act is amended—

- (a) in subparagraph 33B(b), by inserting after the words “Securities Commission” the words “or the Labuan Offshore Financial Services Authority”; and
- (b) in subparagraph 35(b), by inserting after the word “debentures” the words “or Islamic Securities”.

Amendment of Schedule 7B

16. Paragraph 9 of Schedule 7B to the principal Act is amended—

- (a) in the definition of “capital expenditure”, by substituting for the full stop at the end of the definition a semicolon; and
- (b) by inserting after the definition of “capital expenditure” the following definition:

‘ “incurred” has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3.’.

CHAPTER III**AMENDMENTS TO THE STAMP ACT 1949****Commencement of amendments to the Stamp Act 1949**

17. This Chapter comes into operation on 1 January 2010.

New section 72A

18. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended by inserting after section 72 the following section:

“Penalty relating to stamp certificates

72A. Any person who—

- (a) sells or offers for sale a stamp certificate;
- (b) fraudulently attaches a stamp certificate to an instrument other than the instrument for which the stamp certificate was issued;
- (c) fraudulently detaches a stamp certificate or fraudulently causes a stamp certificate to be detached from the instrument;

- (d) counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp certificate issued by the Collector;
- (e) sells or offers for sale any certificate which he knows or ought reasonably to know to be a counterfeit of any stamp certificate issued by the Collector;
- (f) has in his possession any certificate which he knows to be a counterfeit of any stamp certificate, intending to use or dispose of it as a genuine stamp certificate in order that it may be used as a genuine stamp certificate; or
- (g) uses as a genuine stamp certificate knowing it to be a counterfeit of any stamp certificate,

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

Amendment of First Schedule

19. Paragraph 6 under “*GENERAL EXEMPTIONS*” in the First Schedule to the principal Act is amended by inserting after the words “Central Bank” the words “, the Labuan Offshore Financial Services Authority”.

Amendment of Second Schedule

21. The Second Schedule to the principal Act is amended by inserting after item 21 the following item:

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|-----|--|---------------------------------|
| “22 | ARTICLES OF ASSOCIATION AND
MEMORANDUM OF ASSOCIATION
OF A COMPANY | The Registrar of
Companies”. |
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CHAPTER IV

PART I

AMENDMENTS TO THE PETROLEUM (INCOME TAX)
ACT 1967**Commencement of amendments to the Petroleum (Income Tax) Act 1967**

22. (1) Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 come into force on 1 January 2010 and sections 5, 30, 30A, 30B, 34A, 38, 39A, 40, 40A, 48, 49A, 51, 58 and 82A as amended by those sections shall have effect for the year of assessment 2010 in respect of the basis period ending in the year 2010 and subsequent years of assessment.

(2) Sections 35, 36 and 38 come into operation on 1 January 2010.

(3) Section 37 has effect for the year of assessment 2010 in respect of the basis period ending in the year 2010 and the year of assessment 2011.

Amendment of section 5

23. The Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 5—

(a) by substituting for subsection (1) the following subsection:

“(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.”; and

(b) by substituting for subsection (3) the following subsection:

“(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.”.

Amendment of section 30

23. The principal Act is amended by substituting for section 30 the following section:

“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.

(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.”.

New sections 30A and 30B

24. The principal Act is amended by inserting after section 30 the following sections:

“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.

(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 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.

(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.”.

New section 34A

25. The principal Act is amended by inserting after section 34 the following section:

“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
- (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.”.

Amendment of section 38

26. The principal Act is amended by substituting for section 38 the following section:

“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.”.

New section 39A

27. The principal Act is amended by inserting after section 39 the following section:

“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)—

- (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.”.

Amendment of section 40

28. Section 40 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “An assessment” the words “, other than an assessment under subsections 38(1) and 39A(1),”; and
- (b) in subsection (2), by inserting after the words “an assessment” the words “, other than an assessment under subsections 38(1) and 39A(1),”.

New section 40A

29. The principal Act is amended by inserting after section 40 the following section:

“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.”.

Amendment of section 48

30. The principal Act is amended by substituting for section 48 the following section:

“**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.”.

New section 49A

31. The principal Act is amended by inserting after section 49 the following section:

“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 tenth 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.”.

Amendment of section 51

32. The principal Act is amended by substituting for section 51 the following section:

“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.”.

Amendment of section 58

33. Section 58 of the principal Act is amended—

- (a) in paragraph (a), by deleting the word “or” at the end of the paragraph;
- (b) in paragraph (b), by substituting for the comma at the end of the paragraph the words “, or”; and

(c) by inserting after paragraph (b) the following paragraph:

“(c) fails to furnish an estimate in accordance with subsection 49A(2) or (3), or paragraph 49A(4)(a),”.

New section 82A

34. The principal Act is amended by inserting after section 82 the following section:

“Electronic medium

82A. (1) The Director General may allow any form prescribed under this Act (in this section referred to as the “prescribed form”) to be furnished by a chargeable person in 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).

(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.”.

PART II

MISCELLANEOUS

Application of this Part

35. Where there is any inconsistency between any provision of this Part and any provision of the principal Act, the provision of the principal Act shall be void to the extent of the inconsistency.

Year of assessment 2010

36. (1) For the avoidance of doubt, it is declared that in the year 2010, there shall be two years of assessment, namely—

- (a) the year of assessment 2010 in respect of the basis period ending in the year 2009 (preceding year basis); and
- (b) the year of assessment 2010 in respect of the basis period ending in the year 2010 (current year basis).

(2) The year of assessment 2010 on current year basis shall be a separate year of assessment which follows the year of assessment 2010 on preceding year basis.

Estimates and instalments for the year of assessment 2010 in respect of current year basis and year of assessment 2011

37. (1) A chargeable person is not required to furnish any estimate under section 49A of the principal Act for the year of assessment 2010 in respect of current year basis.

(2) The Director General may in accordance with subsection 49A(8) of the principal Act, direct any chargeable person to make payment by instalments on account of tax which is or may be payable by that chargeable person for the year of assessment 2010 in respect of current year basis at such times and in such amounts as the Director General may direct.

(3) For the year of assessment 2011, the estimate of tax payable in respect of a chargeable person furnished to the Director General under subsection 49A(2) of the principal Act shall not be less than eighty-five per cent of the amount of tax payable for the year of assessment 2010 in respect of preceding year basis or, where that tax payable has not been determined, of the amount of tax payable for the year of assessment 2009.

Savings and transitional provision

38. If any chargeable person is liable to tax on a preceding year basis under section 5 of the principal Act prior to the commencement of the amendments to that section in this Act, then such chargeable person shall continue to be so liable.

CHAPTER V

AMENDMENTS TO THE REAL PROPERTY GAINS TAX
ACT 1976**Commencement of amendments to the Real Property Gains
Tax Act 1976**

39. This Chapter comes into operation on 1 January 2010.

Amendment of section 7

40. The Real Property Gains Tax Act 1976, which is referred to as the “principal Act” in this Chapter, is amended in section 7—

(a) in the shoulder note, by substituting for the words
“, allowable losses and tax relief for allowable losses”
the words “and allowable losses”;

(b) by substituting for subsection (4) the following subsection:

“(4) Where —

(a) there is an allowable loss in respect of a disposal,
such allowable loss shall be allowed as a
deduction to reduce the total chargeable gain
of a person for a year of assessment in which
the disposal was made; and

(b) by reason of an insufficiency or absence of total
chargeable gain for the year of assessment in
which the allowable loss arose, effect cannot be
given or cannot be given in full to paragraph
(a), the allowable loss which has not been so
allowed (or so much thereof as has not been
so allowed for that year) shall be allowed as
a deduction to reduce the total chargeable gain
of a person for the first subsequent year of
assessment for which there is total chargeable
gain and so on for subsequent years of assessment
until the whole amount of the allowable loss
to be allowed has been allowed.”; and

(c) by inserting after subsection (4) the following subsection:

“(5) For the purposes of subsection (4), in the case of an individual, the chargeable gain referred to in that subsection shall exclude any amount exempt under Schedule 4.”.

Amendment of section 13

41. Section 13 of the principal Act is amended—

- (a) in subsections (1) and (2), by substituting for the words “one month” the words “sixty days”;
- (b) in subsection (3), by substituting for the word “thirty” the word “sixty”; and
- (c) in subsection (5), by deleting the words “year immediately preceding the”.

Amendment of section 16

42. Subsection 16(2) of the principal Act is amended in paragraph (a) of the proviso by substituting for the words “tax assessed for any tax relief for” the words “chargeable gain for any”.

Amendment of section 17

43. Paragraph 17(c) of the principal Act is amended by substituting for subparagraph (iii) the following subparagraph:

“(iii) the amount of allowable losses allowed;”.

Amendment of section 20

44. Subsection 20(1) of the principal Act is amended by deleting the words “tax relief for”.

Amendment of section 21A

45. The principal Act is amended by substituting for section 21A the following section:

“Certificate of non-chargeability

21A. The Director General shall send a certificate of non-chargeability to the disposer in the prescribed form where he is satisfied that no chargeable gain has arisen.”.

Amendment of section 21B

46. The principal Act is amended by substituting for section 21B the following section:

“Duty of acquirer to retain and pay part of the consideration

21B. (1) Where on a disposal to which section 13 applies, the consideration consists wholly or partly of money, the acquirer shall retain the whole of that money or a sum not exceeding two per cent of the total value of the consideration whichever is the less, and (whether or not that amount is so retained) he shall within sixty days after the date of such disposal pay that amount to the Director General:

Provided that the Director General may under special circumstances allow extension of time for that amount to be paid over.

(2) Where the acquirer fails to pay any amount due under subsection (1), that amount which he fails to pay shall be increased by a sum equal to ten per cent of that amount and that amount and the increased sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(3) Where in pursuance of this section, any amount referred to in subsection (1) is paid to the Director General by the acquirer or recovered by the Director General from the acquirer—

- (a) the Director General shall apply that amount towards payment of the tax charged on the disposer to whom the acquirer was liable to pay the payments to which the amount relates; or
- (b) if the acquirer has not retained that amount in paying the payment under subsection (1) with respect to which the amount relates, the acquirer may recover that amount from that disposer as a debt due to him.

(4) Notwithstanding subsection (1), where the amount due from the acquirer under subsection (1) is increased by a sum under subsection (2), the Director General may, in his discretion for any good cause shown, remit the whole or any part of that sum and, where the sum remitted has been paid, the Director General shall repay the same.”.

Amendment of section 22

47. Section 22 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a), by deleting the word “and” at the end of the paragraph;
- (ii) in paragraph (b), by substituting for the comma the words “; and”;
- (iii) by inserting after paragraph (b) the following paragraph:

“(c) the debt payable by him under subsection 21B(2),”; and

- (iv) by substituting for the words “and sums so payable” wherever appearing the words “, sums so payable and debt so payable”; and
- (b) in subsection (4), by substituting for the words “tax and sums” wherever appearing the words “tax, sums and debt”.

Amendment of section 24

48. Subsection 24(2) of the principal Act is amended by deleting the words “(or is deemed under subsection 21B(3) to have been paid)”.

New section 48A

49. The principal Act is amended by inserting after section 48 the following section:

“Admissibility of electronic record

48A. (1) Notwithstanding any other written law, where in any proceedings under this Act an electronic record of—

- (a) any prescribed form is furnished by way of electronic transmission under section 57A; or
- (b) any other document is stored or received by or communicated to the Director General in an electronic medium or by way of electronic transmission,

the electronic record or the copy or print-out of that electronic record shall be admissible as evidence of the fact stated or contained therein:

Provided that the record or the copy or print-out is—

- (A) certified by the Director General to contain all or any information furnished, stored, communicated or received in an electronic medium or by way of electronic transmission under this section; or

- (B) otherwise authenticated in the manner provided in the Evidence Act 1950 for authentication of documents produced by computer.

(2) Where the electronic record of any form prescribed under this Act or any other document, or a copy or print-out of that record is admissible under subsection (1), it shall be presumed, until the contrary is proved, that the record or the copy or print-out accurately reproduces the content of that form or document.

(3) For the purposes of this Act, “electronic medium” includes a data, text, image or any other information stored, received or communicated by means of electronic, magnetic, optical, imaging or any other data processing device.”.

Amendment of section 52

50. Section 52 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “requisition,”;
and
- (b) in subsection (2), by deleting the words “requisition or”
wherever appearing.

Amendment of section 53

51. Section 53 of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “and requisitions”;
and
- (b) by deleting the words “or requisitions” and “or requisition”
wherever appearing.

Amendment of section 55

52. Section 55 of the principal Act is amended by deleting the words “, requisition” wherever appearing.

New section 57A

53. The principal Act is amended by inserting after section 57 the following section:

“Electronic medium

57A. (1) The Director General may allow any form prescribed under this Act to be furnished by any person or by any class of persons in 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.”.

Amendment of Schedule 2

54. Schedule 2 to the principal Act is amended—

(a) in paragraph 6—

(i) in sub-subparagraph (1)(c), by deleting the words “and, subject to subparagraph (2), any interest paid on capital employed to acquire the asset”; and

(ii) by deleting subparagraph (2);

(b) in the proviso to paragraph 12, by deleting the words “and the gift is made within five years after the date of acquisition of the asset by the donor,”; and

(c) by substituting for paragraph 31 the following paragraph:

“Prohibition of deduction for allowable losses from chargeable gains for earlier years

31. Any allowable loss suffered in a year of assessment shall not be allowed as a deduction from the chargeable gains accruing in any earlier year of assessment.”.

Amendment of Schedule 4

55. Paragraph 2 of Schedule 4 to the principal Act is amended by substituting for the word “five” the word “ten”.

Amendment of Schedule 5

56. Part I of Schedule 5 to the principal Act is amended—

(a) in the column “Category of disposal”—

(i) in item no. 4, by inserting after the words “chargeable asset” the words “or thereafter”; and

(ii) by deleting item no. 5; and

(b) in the column “Rate of tax”, by deleting the word “Nil” appearing against item no. 5.

Savings and transitional provisions

57. (1) Where—

(a) a person is entitled to a tax relief pursuant to subsection 7(4) of the principal Act prior to the amendment to that subsection under section 40 of this Act; and

(b) such relief has not been allowed as a deduction from the total tax assessed (if any) of that person for the year of assessment 2007,

such relief shall be allowed as a deduction from the total tax assessed, in the first year of assessment subsequent to the year of assessment 2009 where there is total tax assessed, and so on for subsequent years of assessment until the whole amount of such relief is fully allowed as a deduction.

(2) For the purposes of paragraph (1)(b), the year of assessment 2007 shall refer to a period ending 31 March 2007.

CHAPTER VI

AMENDMENT TO THE LABUAN OFFSHORE BUSINESS
ACTIVITY TAX ACT 1990

**Commencement of amendment to the Labuan Offshore Business
Activity Tax Act 1990**

58. This Chapter comes into operation on 1 January 2010.

New section 12A

59. The Labuan Offshore Business Activity Tax Act 1990 is amended by inserting after section 12 the following section:

“Fund for Tax Refund

12A. (1) There shall be paid from time to time into the Fund for Tax Refund 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 moneys of the Fund referred to in subsection (1) shall be applied for the making of a refund under section 12.

(3) Section 14A of the Financial Procedure Act 1957 [*Act 61*] shall not apply to any refund made under section 12.”.

LAWS OF MALAYSIA

Act 702

FINANCE ACT 2010

LIST OF AMENDMENTS

Amending law	Short title	In force from
	-NIL-	

LAWS OF MALAYSIA**Act 702****FINANCE ACT 2010****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
	-NIL-	
