

A BILL

i n t i t u l e d

An Act to amend the Income Tax Act 1967.

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ENACTED by the Parliament of Malaysia as follows:

Short title

1. This Act may be cited as the Income Tax (Amendment) Act 2019.

General amendment

2. The Income Tax Act 1967 [*Act 53*], which is referred to as the “principal Act” in this Act, is amended by substituting for the word “Clerk”, wherever appearing in section 98 including the shoulder note, sections 100, 101 and Schedule 5 the word “Secretary”.

Amendment of section 2

3. Section 2 of the principal Act is amended—

(a) by deleting the definition of “Clerk”; and

(b) by inserting after the definition of “royalty” the following definition:

‘ “Secretary” means the Secretary to the Special Commissioners;’.

Amendment of Schedule 5

4. Schedule 5 to the principal Act is amended—

(a) by substituting for paragraph 1A the following paragraph:

“**1A.** Notwithstanding subparagraph 1(1), if the Chairman deems it fit in the interest of achieving expeditious and efficient conduct of the appeal, he may decide that the appeal shall be heard by any of the following persons sitting alone—

(a) the Chairman;

(b) the Deputy Chairman; or

(c) any other Special Commissioners as the Chairman may determine.”;

(b) by inserting after paragraph 1A the following paragraph:

“**1B.** If a Special Commissioner who has commenced a hearing of an appeal is unable to complete the hearing of the appeal due to the expiration of the term of his appointment or other reasons—

(a) in the case where the hearing is before three Special Commissioners, the hearing may be heard afresh or be continued by the remaining Special Commissioners with another Special Commissioner, with the consent of the parties; or

(b) in the case where the hearing is before a Special Commissioner sitting alone, the hearing may be heard afresh or be continued by another Special Commissioner, with the consent of the parties.”;

- (c) by deleting paragraph 4;
- (d) in proviso (a) to paragraph 27, by substituting for the words “if the Special Commissioners are required under paragraph 34 to state a case” the words “if a notice of appeal is filed under paragraph 34”;
- (e) by substituting for the heading “*Further appeals*” appearing before paragraph 34 the following heading:

“Appeals to the High Court”;

- (f) by substituting for paragraph 34 the following paragraph:

“34. (1) Either party to the proceedings before the Special Commissioners may appeal to the High Court on a question of law against a deciding order made in those proceedings.

(2) An appeal under subparagraph (1) shall be by way of a notice in writing filed with the Secretary within twenty-one days from the date of the decision of the Special Commissioners.

(3) A copy of the notice of appeal shall be extended to the Registry of the High Court within the time limited for the filing of an appeal as specified under subparagraph (2).

(4) A duplicate copy of the notice of appeal must be served by the appellant on every other party to the proceedings within the time limited for the filing of an appeal as specified under subparagraph (2).

(5) The appellant shall, within the time limited for the filing of an appeal as specified under subparagraph (2), apply to the Secretary in writing for the notes of proceedings and the grounds of decision.

(6) The appellant shall pay to the Secretary at the time of the filing of the notice of appeal such fee as may be prescribed by the Minister in respect of each deciding order against which he seeks to appeal.

(7) The High Court may, on the application of an intending appellant made by a notice of application, extend the period to file a notice of appeal.”;

(g) by inserting after paragraph 34 the following paragraphs:

“**34A.** (1) The appellant shall, within sixty days from the date of the filing of the notice of appeal, prepare and file to the High Court a record of appeal in a number of copies as may be required by the Court.

(2) The record of appeal shall contain—

(a) a duplicate copy of the notice of appeal;

(b) the statement of facts and issues;

(c) the memorandum of appeal;

(d) the deciding order of the Special Commissioners;

(e) the notes of proceedings, when available;

(f) the grounds of decision, when available;

(g) a duplicate copy of the notice of cross appeal, if any; and

(h) all such documentary exhibits and other documents the parties consider relevant for the purposes of the appeal.

(3) The record of appeal under subparagraph (2) shall be filed notwithstanding that the notes of proceedings or grounds of decision are not ready within the sixty days period mentioned in subparagraph (1).

(4) When the notes of proceedings or grounds of decision become available, they shall be filed by way of a supplementary record of appeal without leave of the High Court.

34B. (1) The memorandum of appeal shall set forth consecutively, concisely and under distinct heads without any argument or narrative, the grounds of objection to the decision appealed against and the points of law which are alleged to have been wrongly decided.

(2) Where a supplementary record of appeal is filed pursuant to subparagraph 34A(4), the appellant may include in the supplementary record of appeal an amended memorandum of appeal without leave of the High Court.

34C. (1) A draft index of the documents to be included in the record of appeal shall be sent by the appellant to the respondent who may, within forty-eight hours, object to the inclusion or exclusion of any documents.

(2) In the event the parties are unable to agree on the documents to be included in the record of appeal, the matter shall be referred to the Registrar of the High Court who may require the parties to attend before a Judge of the High Court.

(3) The Registrar of the High Court and the parties shall endeavour to exclude from the record of appeal all documents that are not necessary or not relevant to the subject matter of the appeal.

(4) Where in the course of the preparation of the record of appeal one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists on it being included, the record as finally printed or typed shall, with a view to the subsequent adjustment of the costs of and incidental to such documents, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(5) The appellant shall serve a copy of the record of appeal to the respondent within the time limited for the filing of a record of appeal within the sixty days period mentioned in subparagraph 34A(1).”;

(h) by deleting paragraphs 35, 36 and 37;

(i) by substituting for paragraph 37A the following paragraph:

“**37A.** The appellant shall pay to the Secretary the cost for the notes of proceedings or other documents at such rate as may be prescribed by the Minister.”;

(j) by deleting paragraph 38;

(k) in paragraph 39—

(i) by substituting for the words “a case stated” the words “an appeal”; and

(ii) in subparagraphs (a) and (b), by substituting for the word “case” the word “appeal”;

(l) by deleting paragraph 40;

(m) in paragraph 41, by substituting for the words “cases stated” the words “an appeal”; and

(n) in subparagraph 45(b), by substituting for the words “summons in chambers” the words “notice of application”.

Savings

5. (1) Any appeal pending before the three Special Commissioners before the date of the coming into operation of this Act shall, on the date of coming into operation of this Act, be continued as if the principal Act had not been amended by this Act.

(2) An appeal to the High Court under paragraph 34 of Schedule 5 to the principal Act made before the date of coming into operation of this Act and is pending on such date shall, on the date of the coming into operation of this Act, be continued as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 [Act 53].

2. *Clause 1* contains the short title of the proposed Act.
3. *Clause 2* seeks to substitute for the word “Clerk” the word “Secretary” wherever appearing in section 98 including the shoulder note, sections 100, 101 and Schedule 5 to Act 53.
4. *Clause 3* seeks to amend subsection 2(1) of Act 53 to introduce the definition of “Secretary”.
5. *Clause 4* seeks to amend Schedule 5 to Act 53.

Paragraph 4(a) seeks to substitute for paragraph 1A of Schedule 5 to Act 53 to empower the Chairman to determine the sitting of an appeal to be heard by a Special Commissioner sitting alone if the Chairman deems it fit for the expeditious and efficient conduct of the appeal. Currently, the hearing of the appeal is by three Special Commissioners.

Paragraph 4(b) seeks to introduce a new paragraph 1B into Schedule 5 to Act 53 to allow for appeal proceedings, with the consent of the parties, to be continued or to be heard afresh by the remaining Special Commissioners if any of the three Special Commissioners hearing an appeal is unable to complete the hearing of the appeal due to expiration of his term of appointment or other reasons. The proposed new subparagraph 1B also seeks to allow for appeal proceedings, with the consent of the parties, to be continued or to be heard afresh by another Special Commissioner if the Special Commissioner hearing an appeal is unable to complete the hearing of the appeal due to expiration of his term of appointment or other reasons.

Paragraph 4(c) seeks to delete paragraph 4 of Schedule 5 to Act 53 to remove the requirement for the Secretary of the Special Commissioners to inform the Director General of the programme drawn up under paragraph 3 of Schedule 5 to Act 53.

Paragraph 4(f) seeks to substitute paragraph 34 of Schedule 5 to Act 53 whereas *paragraph 4(g)* seeks to introduce new paragraphs 34A, 34B and 34C into Schedule 5 to Act 53 to provide for the procedures for the filing of an appeal to the High Court by the party aggrieved by a deciding order of the Special Commissioners.

Paragraph 4(i) seeks to substitute paragraph 37A of Schedule 5 to Act 53 to provide that the appellant shall pay for the cost of the notes of proceedings or other documents at such rate as may be prescribed by the Minister.

6. *Clause 5* seeks to provide for savings provision.
7. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3203]