

# FINANCE BILL 2016

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## ARRANGEMENT OF CLAUSES

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*Clause*

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2. Amendment of Acts

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A BILL

*i n t i t u l e d*

An Act to amend the Income Tax Act 1967, the Petroleum (Income Tax) Act 1967, the Real Property Gains Tax Act 1976, the Labuan Business Activity Tax Act 1990 and the Goods and Services Tax Act 2014.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

**Short title**

1. This Act may be cited as the Finance Act 2016.

**Amendment of Acts**

2. The Income Tax Act 1967 [*Act 53*], the Petroleum (Income Tax) Act 1967 [*Act 543*], the Real Property Gains Tax Act 1976 [*Act 169*], the Labuan Business Activity Tax Act 1990 [*Act 445*] and the Goods and Services Tax Act 2014 [*Act 762*] 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, 6, 22, 23, 24 and 26, and paragraph 28(b) come into operation on the coming into operation of this Act.

(2) Section 5 and subparagraph 10(a)(i) are deemed to have effect from the year of assessment 2015.

(3) Sections 12, 13, 20 and 21, and paragraphs 27(b) and 29(e) are deemed to have come into operation on 30 June 2013.

(4) Paragraph 7(a) is deemed to have effect from 1 January 2010.

(5) Paragraph 7(b), sections 8 and 9, subparagraphs 10(a)(ii), (iii), (iv), (v), (vi), (vii) and (viii), paragraph 10(b), sections 11, 14, 15, 16 and 17, and paragraphs 27(a) and 29(a), (b), (c), (d), (f), (g) and (h) have effect for the year of assessment 2017 and subsequent years of assessment.

(6) Sections 18 and 25 come into operation on 1 January 2017.

(7) Section 19 has effect for the year of assessment 2019 and subsequent years of assessment.

(8) Paragraph 28(a) is deemed to have effect from the year of assessment 2016.

**Amendment of section 2**

4. Subsection 2(1) of the Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended—

(a) in the definition of “Malaysia”—

(i) by inserting after the words “subsoil of the territorial waters,” the words “and the airspace above such areas,”; and

(ii) by inserting after the words “sovereign rights” the words “or jurisdiction”;

(b) by substituting for the definition of “public entertainer” the following definition:

‘ “public entertainer” includes—

(a) a compere, model, circus performer, lecturer, speaker, sportsperson, an artiste or individual exercising any profession, vocation or employment of a similar nature; or

(b) an individual who uses his intellectual, artistic, musical, personal or physical skill or character in,

carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast, as the case may be’;

(c) by substituting for the definition of “royalty” the following definition:

‘ “royalty” includes any sums paid as consideration for, or derived from—

(a) the use of, or the right to use in respect of any copyrights, software, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights;

(b) the use of, or the right to use tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights;

(c) the use of, or the right to use know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

- (d) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by—
  - (i) satellite; or
  - (ii) cable, fibre optic or similar technology;
- (e) the use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by—
  - (i) satellite; or
  - (ii) cable, fibre optic or similar technology;
- (f) the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence;
- (g) a total or partial forbearance in respect of—
  - (i) the use of, or the granting of the right to use, any such property or right as is mentioned in paragraph (a) or (b) or any such knowledge, experience or skill as is mentioned in paragraph (c);
  - (ii) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (d);
  - (iii) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (e); or
  - (iv) the use of, or the granting of the right to use, some or all such part of the spectrum specified in a spectrum licence as is mentioned in paragraph (f); or
- (h) the alienation of any property, know-how or information mentioned in paragraph (a), (b) or (c) of this definition;”.

**Amendment of section 13**

5. Section 13 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The total amount of gross income referred to in subsection (1), where applicable, shall include any amount of output tax paid under the Goods and Services Tax Act 2014 in connection with the gross income which is borne by the employer.”.

**Amendment of section 15A**

6. Section 15A of the principal Act is amended—

(a) by substituting for the colon at the end of subparagraph 15A(iii) a full stop; and

(b) by deleting the proviso.

**Amendment of section 34**

7. Section 34 of the principal Act is amended—

(a) by deleting subsections (3A) and (3B); and

(b) in paragraph (6)(k)—

(i) by substituting for the words “Ministry of Information, Communication and Culture” the words “Minister charged with the responsibility for arts, culture or heritage”; and

(ii) in the proviso—

(A) by substituting for the word “five” the word “seven”; and

(B) by substituting for the word “two” the word “three”.

**Amendment of section 44****8.** Section 44 of the principal Act is amended—

(a) in subsection (6)—

(i) by inserting after the words “local authority or an institution or organization” the words “or a fund”; and

(ii) in the proviso, by substituting for the words “or organization” the words “, organization or fund”;

(b) in subsection (7), by inserting before the definition of “institution” the following definition:

‘ “fund” means a fund administered and augmented by an institution or organization in Malaysia for the sole purpose of carrying out the objectives for which the fund is established or held and that fund is not established or held primarily for profit;’;

(c) in paragraph (7A)(a)—

(i) by inserting after the word “funds” the words “or that of the fund approved under subsection (6)”; and

(ii) in the proviso, by substituting for the words “or organization” the words “, organization or fund”;

(d) in paragraph (7B)(a), by substituting for the words “or organization” the words “, organization or fund”;

(e) in paragraph (7B)(b), by substituting for the words “or organization” the words “, organization or fund”; and

(f) in subsection (11B), by substituting for the words “or cost of contribution in kind made by the relevant person in the basis period for that year for any sports activity approved by the Minister or to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997 [Act 576]” the words “made by the relevant person in the basis period for that year for any sports activity approved by the Minister”.

**Amendment of section 45A**

9. Section 45A of the principal Act is amended—

(a) by renumbering the existing section 45A as subsection 45A(1);  
and

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

“(2) This section shall not apply, where in relation to paragraph (1)(b), the husband, other than a husband who is a disabled person, has an income which is derived from sources outside Malaysia and his gross income from those sources for a year of assessment is more than the amount of deduction allowed for a husband.”.

**Amendment of section 46**

10. Section 46 of the principal Act is amended—

(a) in subsection (1)—

- (i) in the proviso to paragraph (h), by substituting for the word “five” the word “six”;
- (ii) by deleting paragraph (i);
- (iii) by deleting paragraph (j);
- (iv) by deleting paragraph (l);
- (v) by deleting paragraph (m);
- (vi) in paragraph (n), by deleting the word “and” at the end of the paragraph;
- (vii) in paragraph (o), by substituting for the full stop at the end of the paragraph a semicolon; and

(viii) by inserting after paragraph (o) the following paragraphs:

“(p) an amount expended or deemed expended under subsection (3) in that basis year by that individual—

- (i) for the purchase of books, journals, magazines, printed newspaper and other similar publications for the purpose of enhancing knowledge for his own use or for the use of his wife or child, or in the case of a wife, for her own use or for the use of her husband or child;
- (ii) for the purchase of a personal computer, smartphone or tablet (not being used for the purpose of his own business) for his own use or for the use of his wife or child, or in the case of a wife, for her own use or for the use of her husband or child;
- (iii) for the purchase of sports equipment for any sports activity as defined under the Sports Development Act 1997 (excluding motorized two-wheel bicycles) and gym memberships for his own use or for the use of his wife or child, or in the case of a wife, for her own use or for the use of her husband or child; and
- (iv) for the payment of monthly bill for internet subscription under that individual’s name for his own use or for the use of his wife or child, or in the case of a wife, for her own use or for the use of her husband or child,

as evidenced by receipts issued in respect of the purchase or payment, as the case may be, and the total deduction under this paragraph is subject to a maximum amount of two thousand five hundred ringgit; and

- (q) an amount limited to a maximum of one thousand ringgit expended in that basis year for that year of assessment by that individual for the purchase of breastfeeding equipment for that individual's own use for a child of that individual aged two years old and below, as evidenced by receipts issued in respect of the purchase:

Provided that—

- (a) for the purpose of this paragraph, breastfeeding equipment refers to a breast pump kit and an ice pack, a breast milk collection and storage equipment, and a cooler set or bag; and
- (b) the deduction under this paragraph shall not be allowed for a year of assessment immediately following that year of assessment; and
- (r) an amount limited to a maximum of one thousand ringgit expended or deemed expended under subsection (3) in respect of the payment of child care fees to a child care centre registered with the Director General of Social Welfare under the Child Care Centre Act 1984 [Act 308] or a kindergarten registered under the Education Act 1996 [Act 550]

in that basis year by that individual for a child of that individual aged six years and below as evidenced by receipts issued by such child care centre or kindergarten:

Provided that where a wife living together with her husband is assessed separately for that year, the deduction under this paragraph shall only be allowed either to the husband or to the wife.”; and

(b) in subsection (3), by substituting for the words “(i), (j), (k), (l) and (m)” the words “(k), (p) and (r)”.

#### **Amendment of section 47**

**11.** Section 47 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) Subsection (5) shall not apply if the wife, other than a wife who is a disabled person, has an income which is derived from sources outside Malaysia and her gross income from those sources for a year of assessment is more than the amount of deduction allowed for a wife.”.

#### **Amendment of section 60**

**12.** Subsection 60(11) of the principal Act is amended by deleting the definition of “revenue account”.

#### **Amendment of section 60AA**

**13.** Section 60AA of the principal Act is amended—

(a) by substituting, wherever appearing, except in subsection (23)—

(i) for the words “family solidarity operator” the words “family takaful operator”;

- (ii) for the words “family solidarity re-takaful business” the words “family retakaful business”;
  - (iii) for the words “family solidarity re-takaful certificate” the words “takaful certificate in relation to its family retakaful business”;
  - (iv) for the words “general business” the words “general takaful business”;
  - (v) for the words “general certificate” the words “general takaful certificate”;
  - (vi) for the words “an operator” and “the operator” the words “a takaful operator” and “the takaful operator” respectively; and
  - (vii) for the word “participant” the words “takaful participant”;
- (b) in paragraph (2)(a), by substituting for the words “family solidarity business” the words “family takaful business”;
- (c) in subsection (5)—
- (i) in subparagraph (a)(i), by substituting for the words “contributions” and “contribution” the words “takaful contributions” and “takaful contribution” respectively; and
  - (ii) by substituting for subparagraph (b)(ii) the following subparagraph:
    - “(ii) takaful contributions payable by him in that period under retakaful contracts in connection with that business;”;
- (d) in paragraph (6)(c), by substituting for the words ‘and “operator” shall’ the words ‘and “takaful operator” shall’;

(e) in subsection (7)—

- (i) in subparagraph (a)(i), by substituting for the word “contribution” wherever appearing the words “takaful contribution”; and
- (ii) by substituting for subparagraph (b)(ii) the following subparagraph:

“(ii) takaful contributions payable by him in that period under retakaful contracts in connection with any such Malaysian general takaful certificate;”;

(f) in paragraph (8)(c), by substituting for the words ‘and “operator” shall’ the words ‘and “takaful operator” shall’;

(g) in subsection (13), by substituting for the word “contribution” the words “takaful contribution”;

(h) in subsection (23)—

- (i) by deleting the definition of “contribution”;
- (ii) by deleting the definition of “family solidarity”;
- (iii) by deleting the definition of “general business”;
- (iv) by deleting the definition of “general certificate”;
- (v) by inserting before the definition of “investment” the following definitions:

‘ “family takaful business” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013;

“general takaful business” means all takaful business which is not family takaful business;

“general takaful certificate” means a certificate other than a family takaful certificate;’;

- (vi) in the definition of “inward re-takaful”—
  - (A) by substituting for the words “an operator” wherever appearing the words “a takaful operator”; and
  - (B) by substituting for the words “such operator” the words “such takaful operator”;
- (vii) in the definition of “inward re-takaful contract”, by substituting for the words “Malaysian certificate” the words “Malaysian takaful certificate”;
- (viii) by deleting the definition of “Malaysian certificate”;
- (ix) by deleting the definition of “Malaysian family solidarity fund”;
- (x) by inserting before the definition of “offshore takaful” the following definitions:
  - ‘ “Malaysian family takaful fund” means the takaful fund in respect of Malaysian family takaful certificate;
  - “Malaysian takaful certificate” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013;’;
- (xi) by deleting the definition of “operator”;
- (xii) by deleting the definition of “participant”;
- (xiii) by substituting for the definition of “qard” the following definition:
  - ‘ “qard” means a benevolent loan or other forms of financial support to the takaful fund from the shareholders’ fund made pursuant to section 95 of the Islamic Financial Services Act 2013;’;

- (xiv) by deleting the definition of “re-takaful”;
- (xv) by inserting before the definition of “takaful” the following definition:

“retakaful” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013;’;

- (xvi) by substituting for the definition of “takaful certificate” the following definition:

“takaful certificate” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013;’; and

- (xvii) by inserting before the definition of “wakalah fee” the following definitions:

“takaful contribution” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013;

“takaful operator” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013;

“takaful participant” has the same meaning assigned to it under subsection 2(1) of the Islamic Financial Services Act 2013; and

- (i) in subsection (24), by substituting for the word “contributions wherever appearing the words “takaful contributions”.

#### **Amendment of section 61A**

**14.** Subsection 61A(2) of the principal Act is amended by inserting after the words “Property Trust Fund” the words “, and listed on Bursa Malaysia”.

#### **Amendment of section 63A**

**15.** Subsection 63A(6) of the principal Act is amended by substituting for the words “61A(2)” the words “63C(5)”.

**Amendment of section 63B**

16. Subsection 63B(3) of the principal Act is amended by substituting for the words “61A(2)” the words “63C(5)”.

**Amendment of section 63C**

17. Subsection 63C(5) of the principal Act is amended by substituting for the words “has the same meaning assigned to it under subsection 61A(2)” the words “means a unit trust which is approved by the Securities Commission Malaysia as Real Estate Investment Trust or Property Trust Fund”.

**Amendment of section 97A**

18. Section 97A of the principal Act is amended—

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

“(1A) Where a person has furnished to the Director General a return for a year of assessment in accordance with subsection 77(1) or 77A(1) and there is no chargeable income for that year of assessment, then if the person in respect of such return is aggrieved by the public ruling made under section 138A or any practice of the Director General generally prevailing at the time when the return is made—

(a) the return shall be deemed to be a notification made by the Director General under subsection (1) on the day the return is furnished; and

(b) the notification deemed to have been made under paragraph (a) shall be deemed to have been notified to the person on the day on which the Director General is deemed to have made the notification.”;

(b) in subsection (2), by inserting after the words “subsection (1)” the words “or the return which is deemed under subsection (1A) to be a notification made by the Director General”;

- (c) in subsection (3), by inserting after the words “subsection (1)” the words “or the return which is deemed under subsection (1A) to be a notification made by the Director General”; and
- (d) by inserting after subsection (4) the following subsections:

“(5) Where a person has furnished to the Director General a return for a year of assessment in accordance with subsection 77(1) or 77A(1) and there is no chargeable income for that year of assessment, then if the person in respect of such return alleges that—

- (a) there is an error or a mistake made by him in that return, the person may make an application in writing to the Director General for an amendment to be made in respect of such return; or
- (b) the amount that have been computed in the return is inaccurate by reason of—
- (i) any exemption, relief, remission, allowance or deduction granted for that year of assessment under this Act or any other written law published in the *Gazette* after the year of assessment in which the return is furnished;
  - (ii) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
  - (iii) a deduction not allowed in respect of payment not due to be paid under subsection 107A(2) or 109(2), section 109A, or subsection 109B(2) or 109F(2) on the day a return is furnished,

the person may make an application in writing to the Director General for relief.

(6) The application under subsection (5) shall be made—

- (a) in respect of paragraph (5)(a), within six months from the date the return is furnished;
- (b) in respect of subparagraphs (5)(b)(i) and (ii), within five years after the end of the year the exemption, relief, remission, allowance or deduction is published in the *Gazette* or the approval is granted, whichever is the later; or
- (c) in respect of subparagraph (5)(b)(iii), within one year after the end of the year the payment is made.

(7) On receiving an application under subsection (5), the Director General shall inquire into the matter and may make amendment in respect of the amount that have been computed as appears to him to be just and reasonable.

(8) No amendment shall be allowed under subsection (7) in respect of an error or a mistake as to the basis on which the non-chargeability of the applicant ought to have been computed if the return or statement containing the error or mistake was in fact made on the basis of or in accordance with the public ruling made under section 138A or any practice of the Director General generally prevailing at the time when the return is made.

(9) An application under subsection (5) shall be as nearly as may be in the same form as a notice of appeal under section 99.

(10) Where the applicant is aggrieved by the Director General's decision on the application under subsection (5) the following provisions shall apply:

- (a) the applicant may within six months after being informed of the decision request the Director General in writing to send the application forward to the Special Commissioners;

- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 102; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.”.

#### **Amendment of section 107c**

19. Subsection 107c(7A) of the principal Act is amended by inserting after the word “company” the words “, limited liability partnership, trust body or co-operative society”.

#### **Amendment of section 109c**

20. Subsection 109c(4) of the principal Act is amended by substituting for the words “finance company licensed under the Banking and Financial Institutions Act 1989 [Act 372] or the Islamic Banking Act 1983 [Act 276]” the words “Islamic bank licensed under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, as the case may be”.

#### **Amendment of section 110c**

21. Subsection 110c(1) of the principal Act is amended by substituting for the words “an operator” the words “a takaful operator”.

#### **New section 112A**

22. The principal Act is amended by inserting after section 112 the following section:

##### **“Failure to furnish country-by-country report**

**112A.** (1) Any person who makes default in furnishing a country-by-country report in accordance with the relevant rules made under paragraph 154(1)(c) to implement or facilitate

the operation of an arrangement having effect under section 132B shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) In any prosecution under subsection (1) the burden of proving that a country-by-country report has been furnished shall be upon the accused person.

(3) 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 the rules 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.”.

### **New section 113A**

**23.** The principal Act is amended by inserting after section 113 the following section:

#### **“Incorrect returns, information returns or reports**

**113A.** (1) Any person who—

- (a) makes an incorrect return, information return or report by omitting the information required to be provided in accordance with any rules made under paragraph 154(1)(c) to implement or facilitate the operation of an arrangement having effect under section 132B, on behalf of himself or another person; or
- (b) gives any incorrect information in relation to any information required to be provided in accordance with any rules made under paragraph 154(1)(c) to implement or facilitate the operation of an arrangement having effect under section 132B, on behalf of himself or another person,

shall, unless he satisfies the court that the incorrect return, information return or report or incorrect information was made or given in good faith, be guilty of an offence and shall, on conviction be liable to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.”.

### **New section 119B**

**24.** The principal Act is amended by inserting after section 119A the following section:

**“Failure to comply with rules made under paragraph 154(1)(c) on mutual administrative assistance**

**119B.** (1) Except as provided in section 112A, any person who fails to comply with any rules made under paragraph 154(1)(c) to implement or facilitate the operation of an arrangement having effect under section 132B shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) In any prosecution under subsection (1) the burden of proving that any rules made under paragraph 154(1)(c) to implement or facilitate the operation of an arrangement having effect under section 132B has been complied with shall be upon the accused person.

(3) 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 the rules 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.”.

**New section 131A**

**25.** The principal Act is amended by inserting after section 131 the following section:

**“Relief other than in respect of error or mistake**

**131A.** (1) Where any person who has furnished to the Director General a return for a year of assessment in accordance with subsection 77(1) or 77A(1) and has paid tax for that year of assessment alleges that the assessment relating to that year of assessment is excessive by reason of—

- (a) any exemption, relief, remission, allowance or deduction granted for that year of assessment under this Act or any other written law is published in the *Gazette* after the year of assessment in which the return is furnished;
- (b) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or
- (c) a deduction not allowed in respect of payment not due to be paid under subsection 107A(2) or 109(2), section 109A, or subsection 109B(2) or 109F(2) on the day the return is furnished,

the person may make an application in writing to the Director General for relief.

(2) The application under subsection (1) shall be made—

- (a) in respect of paragraphs (1)(a) and (b), within five years after the end of the year the exemption, relief, remission, allowance or deduction is published in the *Gazette* or the approval is granted, whichever is the later; or
- (b) in respect of paragraph (1)(c), within one year after the end of the year the payment is made.

(3) On receiving an application under subsection (1), the Director General shall inquire into the matter and may give by way of repayment of tax such relief as appears to him to be just and reasonable.

(4) An application under subsection (1) shall be as nearly as may be in the same form as a notice of appeal under section 99.

(5) Where the applicant is aggrieved by the Director General's decision on the application under subsection (1), the following provisions shall apply:

- (a) the applicant may within six months after being informed of the decision request, in writing, the Director General to send the application forward to the Special Commissioners;
- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 102; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly."

#### **Amendment of section 154**

26. Paragraph 154(1)(*ec*) of the principal Act is amended by inserting after the words "section 138B" the words "or to any arrangement made under section 138C".

#### **Amendment of Schedule 1**

27. Schedule 1 to the principal Act is amended—

(a) in Part I—

- (i) in paragraph 2A, in column "Rate of income tax", by substituting for the words "20 per cent for the year of assessment 2015 and 19 per cent for the subsequent years of assessment" the words "18 per cent";

- (ii) in paragraph 2D, in column “Rate of income tax”, by substituting for the words “20 per cent for the year of assessment 2015 and 19 per cent for the subsequent years of assessment” the words “18 per cent”; and
  - (iii) in paragraph 4, by substituting for the words “an operator from inward re-takaful” the words “a takaful operator from inward retakaful”; and
- (b) in Part XII, by substituting for the words “family solidarity re-takaful business and inward family solidarity re-takaful business” the words “family retakaful business and inward family retakaful business”.

### **Amendment of Schedule 3**

**28.** Schedule 3 to the principal Act is amended—

(a) in paragraph 16B—

- (i) by renumbering the existing paragraph 16B as subparagraph 16B(1);
- (ii) in subparagraph 16B(1) as renumbered, by substituting for the words “42A and 42B” the words “42A, 42B and 42C”;
- (iii) by inserting after subparagraph 16B(1) the following subparagraphs:

“(2) Where part of the building used by that person referred to in paragraphs 37A, 37B, 37C, 37E, 37F, 37G, 37H, 42A, 42B and 42C for the purpose of letting of property is not more than one-tenth of the floor area of the whole building, the whole building qualifies as industrial building under those paragraphs.

(3) Where part of the building used by that person referred to in subparagraph (2) is more than one-tenth of the floor area of the whole building, such part of the building shall not be treated as industrial building

for the purpose of those paragraphs and any allowance to be made to that person under those paragraphs shall consist of so much of what would have been the amount of allowance claimed on the expenditure incurred on the floor area on the part of the building which is not used by that person for the purpose of letting of property.”; and

- (b) in subparagraph 37B(a), by substituting for the words “paragraph 34A(1)(a)” the words “subsection 34A(1)”.

### **Amendment of Schedule 6**

**29.** Schedule 6 to the principal Act is amended—

(a) in paragraph 12B—

- (i) by substituting for the words “expenses incurred” the words “deductions”; and
- (ii) by substituting for the words “adjusted income” the words “chargeable income”;

(b) in subparagraph 13(1)—

- (i) in subparagraph (a), by substituting for the words “or organization” the words “, organization or fund”; and
- (ii) by substituting for subparagraph (b) the following subparagraph:

“(b) a religious institution or organization in respect of any contribution received for charitable purposes in the basis year for a year of assessment provided such institution or organization is not operated or conducted primarily for profit and is established in Malaysia exclusively for the purpose of religious worship or the advancement of religion.”;

(c) by deleting paragraph 18;

(d) by deleting paragraph 27;

(e) in paragraph 33—

(i) by substituting for the words “the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983” the words “banking business or Islamic banking business in Malaysia and licensed under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, as the case may be”; and

(ii) by substituting for the words “Central Bank of Malaysia pursuant to section 37 of the Banking and Financial Institutions Act 1989 and subsection 5(2) of the Islamic Banking Act 1983” the words “Minister pursuant to section 12 of the Financial Services Act 2013 and section 12 of the Islamic Financial Services Act 2013”;

(f) in paragraph 33A—

(i) by renumbering the existing paragraph 33A as subparagraph 33A(1); and

(ii) by inserting after subparagraph 33A(1) as renumbered the following subparagraph:

“(2) The exemption under subparagraph (1) shall not apply to interest paid or credited to a company in the same group.”;

(g) in paragraph 33B—

(i) by renumbering the existing paragraph 33B as subparagraph 33B(1); and

(ii) by inserting after subparagraph 33B(1) as renumbered the following subparagraph:

“(2) The exemption under subparagraph (1) shall not apply to—

- (a) interest paid or credited to a company in the same group;
- (b) interest paid or credited to—
  - (i) a bank licensed under the Financial Services Act 2013;
  - (ii) an Islamic bank licensed under the Islamic Financial Services Act 2013; or
  - (iii) a development financial institution prescribed under the Development Financial Institutions Act 2002.”; and

(h) by substituting for paragraph 35A the following paragraph:

“**35A.** Income of a unit trust in respect of interest derived from Malaysia and paid or credited by—

- (a) a bank licensed under the Financial Services Act 2013;
- (b) an Islamic bank licensed under the Islamic Financial Services Act 2013; or
- (c) a development financial institution prescribed under the Development Financial Institutions Act 2002:

Provided that in the case of a unit trust which is a money market fund, the exemption shall only apply to a wholesale fund which complies with the relevant guidelines of the Securities Commission Malaysia.”.

### CHAPTER III

#### AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

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

**30.** (1) Paragraph 31(a) comes into operation on the coming into operation of this Act.

(2) Paragraph 31(b) has effect for the year of assessment 2017 and subsequent years of assessment.

(3) Sections 32 and 33 come into operation on 1 January 2017.

### **Amendment of section 2**

**31.** Subsection 2(1) of the Petroleum (Income Tax) Act 1967, which is referred to as the “principal Act” in this Chapter, is amended—

(a) in the definition of “Malaysia”—

(i) by inserting after the words “subsoil of the territorial waters” the words “and the airspace above such areas”; and

(ii) by inserting after the words “sovereign rights” the words “or jurisdiction”; and

(b) in the definition of “secondary recovery”, by substituting for the words “and/or accelerated recovery of those hydrocarbons” the words “and accelerated recovery of those hydrocarbons which is carried out subsequent to the earlier recovery process”.

### **Amendment of section 41A**

**32.** Section 41A of the principal Act is amended—

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

“(1) Where in ascertaining the chargeable income of a chargeable person, it appears to the Director General that—

(a) no assessment shall be made in respect of the chargeable person for any year of assessment by reason of—

(i) absence of adjusted income, statutory income, assessable income or chargeable income of a chargeable person from any of his sources of income; or

- (ii) exemption granted to that person under this Act,

the Director General may notify the chargeable person in writing that no assessment shall be made for that year of assessment and provide a computation with regard to it; or

- (b) assessment has been made in respect of the chargeable person, but the chargeable person has no statutory income from a source consisting of a business, the Director General may notify the chargeable person in writing of an adjustment, if any, made in respect of that source consisting of a business and provide a computation with regard to it.”;

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

“(1A) Where a chargeable person has furnished to the Director General a return for a year of assessment in accordance with subsection 30(1) and there is no chargeable income for that year of assessment, then if the chargeable person in respect of such return is aggrieved by any practice of the Director General generally prevailing at the time when the return is made—

- (a) the return shall be deemed to be a notification made by the Director General under subsection (1) on the day the return is furnished; and
- (b) the notification deemed to have been made under paragraph (a) shall be deemed to have been notified to the person on the day on which the Director General is deemed to have made the notification.”;

- (c) in subsection (2), by inserting after the words “subsection (1)” the words “or the return which is deemed under paragraph (1A)(a) to be a notification made by the Director General”;

(d) in subsection (3), by inserting after the words “subsection (1)” the words “or the return which is deemed under paragraph (1A)(a) to be a notification made by the Director General”; and

(e) by inserting after subsection (4) the following subsections:

“(5) Where a chargeable person has furnished to the Director General a return for a year of assessment in accordance with subsection 30(1) and there is no chargeable income for that year of assessment, then if the person in respect of such return alleges that—

(a) there is an error or a mistake made by him in that return, the chargeable person may make an application in writing to the Director General for an amendment to be made in respect of such return; or

(b) the amount that have been computed in the return is inaccurate by reason of—

(i) any exemption, relief, remission, allowance or deduction granted for that year of assessment under this Act or any other written law published in the *Gazette* after the year of assessment in which the return is furnished;

(ii) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or

(iii) a deduction not allowed in respect of payment of interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of movable property derived from

Malaysia or contract payment to a non-resident contractor which is not due to be paid under the provisions of the law for the time being in force in Malaysia relating to income tax on the day the return is furnished,

the chargeable person may make an application in writing to the Director General for relief.

(6) The application under subsection (5) shall be made—

- (a) in respect of paragraph (5)(a), within six months from the date the return is furnished;
- (b) in respect of subparagraph (5)(b)(i) or (ii), within five years after the end of the year the exemption, relief, remission, allowance or deduction is published in the *Gazette* or the approval is granted, whichever is the later; or
- (c) in respect of subparagraph (5)(b)(iii), within one year after the end of the year the payment is made.

(7) On receiving an application under subsection (5), the Director General shall inquire into the matter and may make amendment in respect of the amount that have been computed in the return as appears to him to be just and reasonable.

(8) No amendment shall be allowed under subsection (7) in respect of an error or a mistake as to the basis on which the non-chargeability of the applicant ought to have been computed if the return or statement containing the error or mistake was in fact made on the basis of or in accordance with any practice of the Director General generally prevailing at the time when the return was made.

(9) An application under subsection (5) shall be as nearly as may be in the same form as a notice of appeal under section 43.

(10) Where the applicant is aggrieved by the Director General's decision on the application under subsection (5), the following provisions shall apply:

- (a) the applicant may within six months after being informed of the decision request, in writing, the Director General to send the application forward to the Special Commissioners;
- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 46; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.”.

#### **New section 66A**

**33.** The principal Act is amended by inserting after section 66 the following section:

#### **“Relief other than in respect of error or mistake**

**66A.** (1) Where any chargeable person has furnished to the Director General a return for a year of assessment in accordance with subsection 30(1) and has paid tax for that year of assessment alleges that the assessment relating to that year of assessment is excessive by reason of—

- (a) any exemption, relief, remission, allowance or deduction granted for that year of assessment under this Act or any other written law is published in the *Gazette* after the year of assessment in which the return is furnished;
- (b) the approval for any exemption, relief, remission, allowance or deduction is granted after the year of assessment in which the return is furnished; or

- (c) a deduction not allowed in respect of payment of interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of movable property derived from Malaysia or contract payment to a non-resident contractor which is not due to be paid under the provisions of the law for the time being in force in Malaysia relating to income tax on the day the return is furnished,

the chargeable person may make an application in writing to the Director General for relief.

(2) The application under subsection (1) shall be made—

- (a) in respect of paragraph 1(a) or (b), within five years after the end of the year the exemption, relief, remission, allowance or deduction is published in the *Gazette* or the approval is granted, whichever is the later; or
- (b) in respect of paragraph (1)(c), within one year after the end of the year the payment is made.

(3) On receiving an application under subsection (1), the Director General shall inquire into the matter and may give by way of repayment of tax such relief as appears to him to be just and reasonable.

(4) An application under subsection (1) shall be as nearly as may be in the same form as a notice of appeal under section 43.

(5) Where the applicant is aggrieved by the Director General's decision on the application under subsection (1), the following provisions shall apply:

- (a) the applicant may within six months after being informed of the decision request, in writing, the Director General to send the application forward to the Special Commissioners;

- (b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 46; and
- (c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.”.

## CHAPTER IV

### AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

#### **Commencement of amendments to the Real Property Gains Tax Act 1976**

**34.** (1) Section 35 comes into operation on the coming into operation of this Act.

(2) Paragraph 36(a) is deemed to have come into operation on 30 June 2013.

(3) Paragraphs 36(b) and (c) are deemed to have effect from the year of assessment 2015.

(4) Paragraph 36(d) comes into operation on 1 January 2017.

#### **Amendment of section 13**

**35.** The Real Property Gains Tax Act 1976, which is referred to as the “principal Act” in this Chapter, is amended in the proviso to subsection 13(4) by deleting the words “in Kuala Lumpur”.

#### **Amendment of Schedule 2**

**36.** Schedule 2 to the principal Act is amended—

- (a) in subparagraph 1(1), in the definition of “Islamic bank”, by substituting for the words “has the meaning assigned to it under the Islamic Banking Act 1983 [Act 276]” the words “means a licensed Islamic bank under the Islamic Financial Services Act 2013 [Act 759]”;

(b) in paragraph 6, by inserting after subparagraph (1) as renumbered the following subparagraph:

“(1A) For the purposes of subparagraph (1)(e)—

- (a) if for a year of assessment a disposer has incurred expenditure for the purposes of the acquisition or the disposal of an asset and the input tax on the asset is subject to any adjustment made under the Goods and Services Tax Act 2014, the amount of such expenditure in relation to that asset shall include the amount of input tax as determined by the adjustment made in the year of assessment in which the disposal is made or the year of assessment in which the period of adjustment relating to the asset as provided under the Goods and Services Tax Act 2014 ends, whichever is the earlier; and
- (b) in the event that the adjustment of the amount of the input tax results in—
  - (i) an additional amount, such amount shall be deemed to be part of the amount of the expenditure incurred; or
  - (ii) a reduced amount, the expenditure incurred shall be reduced by such an amount.”;

(c) in paragraph 7—

- (i) by renumbering the existing paragraph 7 as subparagraph 7(1);
- (ii) by inserting after subparagraph 7(1) as renumbered the following subparagraph:

“(2) For the purposes of subparagraph (1)(d)—

- (a) if for a year of assessment a disposer has incurred expenditure for the purposes of the acquisition or the disposal of an asset and the input tax on the asset is subject to any adjustment made under the Goods and Services Tax Act 2014, the amount of such expenditure in relation to that asset shall include the amount of input tax as determined by the adjustment made in the year of assessment in which the disposal is made or the year of assessment in which the period of adjustment relating to the asset as provided under the Goods and Services Tax Act 2014 ends, whichever is the earlier; and

(b) in the event that the adjustment of the amount of the input tax results in—

(i) an additional amount, such amount shall be deemed to be part of the amount of the expenditure incurred; or

(ii) a reduced amount, the expenditure incurred shall be reduced by such an amount.”; and

(d) in subparagraph 12(2)—

(i) in subparagraph (a), by substituting for the words “the disposal;” the words “the disposal if the donor is a citizen; and”;

(ii) by deleting subparagraph (b); and

(iii) in subparagraph (c), by substituting for the words “in the case of a donor who is a citizen or a permanent resident and” the word “where”.

## CHAPTER V

### AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY TAX ACT 1990

#### **Commencement of amendments to the Labuan Business Activity Tax Act 1990**

**37.** (1) Section 38 comes into operation on the coming into operation of this Act.

(2) Section 39 comes into operation on 22 October 2016.

#### **Amendment of section 2**

**38.** Section 2 of the Labuan Business Activity Tax Act 1990, which is referred to as the “principal Act” in this Chapter, is amended—

(a) in the definition of “Labuan non-trading activity”, by inserting after the words “any other properties” the words “situated in Labuan”; and

- (b) in the definition of “Labuan business activity”, in proviso (b), by substituting for the word “investments” the word “shares”.

### **Amendment of section 21**

**39.** The principal Act is amended by substituting for section 21 the following section:

#### **“Power of Minister to make regulations**

**21.** The Minister may make regulations—

- (a) generally for the purpose of carrying out, or giving effect to, the provisions of this Act;
- (b) for the purpose of implementing or facilitating the operation of an arrangement having effect under section 132B of the Income Tax Act 1967 and prescribing penalties for any contravention or failure to comply with any of the provisions of any regulations made under this paragraph.”.

## CHAPTER VI

### AMENDMENTS TO THE GOODS AND SERVICES TAX ACT 2014

#### **Commencement of amendments to the Goods and Services Tax Act 2014**

**40.** This Chapter comes into operation on 1 January 2017.

#### **Amendment of section 2**

**41.** The Goods and Services Tax Act 2014, which is referred to as the “principal Act” in this Chapter, is amended in section 2—

- (a) in the definition of “money”, by substituting for the full stop a semicolon; and

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

‘ “free zone” has the meaning assigned to it in subsection 2(1) of the Free Zones Act 1990 [Act 438].’.

### **Amendment of section 13**

**42.** Paragraph 13(4)(b) of the principal Act is amended by substituting for the words “issued by” the words “received from”.

### **Amendment of section 20**

**43.** Subsection 20(6) of the principal Act is amended—

(a) in paragraph (a), by inserting after the words “to be supplied” the words “due to cessation of business”;

(b) in paragraph (d), by deleting the word “or” at the end of the paragraph;

(c) in paragraph (e), by substituting for the full stop at the end of the paragraph the words “; or”; and

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

“(f) supplies made within or between the free zone under section 162 except where such supply is subject to an order under subsection 163(1).”.

### **Amendment of section 33**

**44.** Section 33 of the principal Act is amended—

(a) by substituting for subsection (10) the following subsection:

“(10) No invoice showing an amount which purports to be a tax shall be issued by any registered person—

(a) on any supply of goods or services which is not a taxable supply; or

(b) on any zero-rated supply.”;

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

“(10A) Any person who is not a registered person, except the persons mentioned in subsections 65(4) and (5), shall not issue—

(a) an invoice showing an amount which purports to be a tax or an amount inclusive of tax; or

(b) an invoice which purports to be a tax invoice with or without tax.”; and

(c) in subsection (11), by inserting after the words “subsection (10)” the words “or (10A)”.

#### **New sections 34A and 34B**

**45.** The principal Act is amended by inserting after section 34 the following sections:

#### **“Prescribed registered person to provide information on supply made and payment received**

**34A.** (1) Any registered person as prescribed by the Minister shall provide information on all supply made and payment received by him to the Director General using a device and in the manner as prescribed by the Minister.

(2) The Director General may for the purpose of this section approve any person—

(a) to install, configure and integrate the prescribed device;

(b) to provide the services for the support and maintenance of the prescribed device as scheduled or upon being notified of the failure of the prescribed device to function or operate in normal condition; or

(c) to carry out an inspection in the case of any sign of interference, destruction, damage, manipulation of data stored or obstruction of the lawful use of the prescribed device.

(3) The person approved under subsection (2) shall, when entering the premises of the registered person prescribed under subsection (1) to perform his duties under this section, produce, on demand by the registered person, proof of approval.

(4) The registered person prescribed under subsection (1) shall—

(a) at any time allow any officer of goods and services tax or any person approved by the Director General to install the device and to configure, integrate or inspect the device installed at his business premises;

(b) make all effort to ensure—

(i) that the device, after being supplied and installed, is not moved, manipulated, tampered or interfered with; and

(ii) that the use of the device is not obstructed by any person or any other device; and

(c) notify immediately the Director General of any failure of functionality and operation of the prescribed device in normal condition.

(5) Any person who fails to comply with, hinder or prevent the operation of this section in any respect commits an offence.

### **Duty not to give, publish or disclose information of the prescribed device**

**34B.** (1) Any person who, for any reason, has by any means access to any information on the device prescribed under subsection 34A(1) shall not give, publish or otherwise disclose to any other person such information unless the disclosure is required or authorized—

(a) under this Act;

(b) by any court; or

(c) for the performance of his duties or the exercise of his powers under this Act.

(2) Any person who contravenes subsection (1) commits an offence.”.

### **Amendment of section 41**

**46.** Subsection 41(8) of the principal Act is amended—

(a) by inserting after the words “not paid” the words “wholly or partly”;

(b) in paragraph (a)—

(i) by inserting after the words “not paid” the words “wholly or partly”;

(ii) by substituting for the word “five” the word “ten”; and

(iii) by substituting for the words “due and payable” the words “remain unpaid”;

(c) in paragraph (b)—

(i) by inserting after the words “not paid” the words “wholly or partly”;

(ii) by substituting for the word “ten” the word “fifteen”; and

(iii) by substituting for the words “due and payable” the words “remain unpaid”; and

(d) in paragraph (c)—

(i) by inserting after the words “not paid” the words “wholly or partly”;

(ii) by substituting for the word “ten” the word “fifteen”;

- (iii) by substituting for the words “due and payable” the words “remain unpaid”; and
- (iv) by deleting the words “, subject to a maximum penalty of twenty-five per cent of the amount of tax due and payable”.

### **Amendment of section 42**

**47.** Section 42 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “section 58” the words “subsection 56(5)”; and

(b) by inserting after subsection (3) the following subsections:

“(4) Where any tax due and payable is not paid wholly or partly by any person other than a taxable person after the last day on which it is due and payable under subsection (1) and no prosecution is instituted, the person shall pay—

(a) for the first thirty-day period that the tax is not paid wholly or partly after the expiry of the period specified in subsection (1), a penalty of ten per cent of the amount of tax remain unpaid;

(b) for the second thirty-day period that the tax is not paid wholly or partly after the expiry of the period specified in subsection (1), an additional penalty of fifteen per cent of the amount of tax remain unpaid; and

(c) for the third thirty-day period that the tax is not paid wholly or partly after the expiry of the period specified in subsection (1), an additional penalty of fifteen per cent of the amount of tax remain unpaid.

(5) Subject to subsection (7), prosecution for the offence under subsection (3) may be instituted after the expiry of the period specified in paragraph (4)(c).

(6) The court may order that any person other than a taxable person who is convicted for the offence under subsection (3) shall pay the penalty as specified in subsection (4).

(7) No prosecution for the offence under subsection (3) shall be instituted against any person other than a taxable person who has paid the amount of tax due and payable and the penalty specified under subsection (4) within the period specified in subsection (4).”.

#### **Amendment of section 49**

**48.** Paragraph 49(1)(b) of the principal Act is amended by substituting for the words “section 21” the words “sections 21, 41 and 42”.

#### **Amendment of section 51**

**49.** Subsection 51(1A) of the principal Act is amended by inserting after the words “subsection 41(8)” the words “or 42(4)”.

#### **Amendment of section 56**

**50.** Section 56 of the principal Act is amended—

(a) in subsection (5), by inserting after the words “was granted” and “fulfilled” the words “, or where the relief granted is revoked”; and

(b) by inserting after subsection (6) the following subsection:

“(7) Where a person who has been granted relief under subsections (1) and (3) has paid any of the tax to which the relief relates and has been granted approval by the Minister to a refund of the amount of tax which has been paid, the person shall be entitled to such refund.”.

#### **Amendment of section 57**

**51.** Section 57 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**overpaid or erroneously paid**” the words “**overpaid, erroneously paid, remitted or being the subject of relief**”;

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

“(1) Any person who—

(a) has overpaid or erroneously paid any tax, surcharge, penalty, fee or other money; or

(b) is entitled to a refund of tax under subsection 56(7) or refund of tax, penalty or surcharge under subsection 62(3),

may make a claim thereof in the prescribed form.”;

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

“(1A) A claim under subsection (1) shall be made to the Director General within six years from the time—

(a) such overpayment or erroneous payment occurred; or

(b) such entitlement of the refund under subsection 56(7) or 62(3) occurred.

(1B) The Director General may make such refund of tax, surcharge, penalty, fee or any other money, as the case may be, after being satisfied that the person has properly established the claim.”.

## **Amendment of section 70**

**52.** Section 70 of the principal Act is amended—

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

“(1) In relation to goods that have been approved by the proper officer of customs to be deposited in the warehouse, there shall be a scheme to be known as the “Warehousing Scheme” which allows—

(a) tax due and payable on the goods that have been imported to be suspended when such goods are deposited in the warehouse; and

(b) tax chargeable on any supply of taxable goods made within or between the warehouse to be disregarded.”;

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

“(1A) The Warehousing Scheme under subsection (1) shall not be applicable to goods as may be prescribed.”;

(c) by substituting for subsection (2) the following subsection:

“(2) Tax shall be due and payable upon all goods removed from a warehouse to all intents as if the removal were importation into Malaysia unless the goods are removed for export, for deposit to another warehouse, to a free zone or to a designated area with the approval of the proper officer of customs.”;

(d) by deleting subsection (3);

(e) in subsection (4)—

(i) by deleting the words “from a Warehousing Scheme”;

(ii) by substituting for the words “and duty” the words “from a warehouse”;

(iii) in paragraph (b)—

(A) by deleting the words “customs warehouse or licensed” wherever appearing; and

(B) in the national language text, by substituting for the word “disimpan” the word “dideposit”; and

(iv) in paragraph (c), by inserting after the word “Malaysia” the words “for removal to a designated area or to a free zone”;

(f) by deleting subsection (5); and

(g) in subsection (7), by deleting paragraph (d).

**Amendment of section 72**

**53.** Subsection 72(3) of the principal Act is amended by inserting after the words “taking place at” the words “whichever is”.

**Amendment of section 73**

**54.** Subsection 73(3) of the principal Act is amended by inserting after the words “taking place at” the words “whichever is”.

**Amendment of section 103**

**55.** Subsection 103(5) of the principal Act is amended by substituting the words “For the purposes of section 83, where” the words “Where”.

**Amendment of section 156**

**56.** Section 156 of the principal Act is amended—

(a) in paragraph (a)—

- (i) by substituting for the word “supplied” the word “removed”;
- (ii) by inserting after the words “designated area” the words “to another designated area through Malaysia or from a designated area”; and
- (iii) by substituting for the word “supply” the word “removal”; and

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

“(aa) the payment of tax under paragraph (a) shall be suspended on any goods removed from a designated area through Malaysia to another designated area, to a free zone or to a warehouse under section 70, unless the Minister otherwise directs in an order under section 160.”.

**Amendment of section 160**

**57.** Section 160 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The Minister may, by order published in the *Gazette*, prescribe—

- (a) any supply of goods or services within or between the designated areas to be chargeable to tax;
- (b) any goods imported into a designated area, or removed from a designated area through Malaysia to another designated area, to a free zone or to a warehouse under section 70, to be chargeable to tax; or
- (c) any services imported into a designated area to be chargeable to tax.”.

**Amendment of Part XV**

**58.** Part XV of the principal Act is amended in the title, by substituting for the words “FREE COMMERCIAL ZONE” the words “FREE ZONE”.

**Amendment of section 161**

**59.** Section 161 of the principal Act is amended—

- (a) in the definition of “Malaysia”, by deleting the word “commercial”;
- (b) by inserting after the definition of “Malaysia” the following definition:

‘ “manufacture” has the meaning assigned to it in section 2 of the Free Zones Act 1990.’; and

- (c) by deleting the definition of “free commercial zone”.

**Amendment of section 162**

**60.** Section 162 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**from free commercial zone**” the words “**within or between free zone**”;
- (b) by inserting after the words “this Act” the words “and unless the Minister otherwise directs in an order under section 163”;
- (c) in paragraph (a)—
  - (i) by substituting for the words “free commercial zone” wherever appearing the words “free zone”;
  - (ii) by substituting for the words “except for goods used” the words “except for goods imported to be used or consumed”; and
  - (iii) by inserting after the words “purpose of commercial” the word “, manufacturing”; and
  - (iv) by inserting at the end of the paragraph the word “and”;
- (d) by substituting for paragraph (b) the following paragraph:
  - “(b) no tax shall be charged on any supply of taxable goods made within or between a free zone.”;
  - and
- (e) by deleting paragraph (c).

**New sections 162A and 162B**

**61.** The principal Act is amended by inserting after section 162 the following sections:

**“Goods removed from a free zone including goods under lease agreement**

**162A.** (1) Tax shall be due and payable upon all goods removed from a free zone to another free zone through Malaysia or from a free zone to Malaysia including any goods under lease agreement as if the removal were importation into Malaysia.

(2) Unless the Minister otherwise directs in an order under section 163, the payment of tax under subsection (1) shall be suspended on any goods removed from a free zone through Malaysia—

- (a) to another free zone;
- (b) to a designated area; or
- (c) to a warehouse under section 70.

**Supply of goods or services by taxable person whose principal place of business located in a free zone**

**162b.** Tax shall be charged by a taxable person whose principal place of business is located in a free zone on any taxable supply of goods or services made within Malaysia.”.

**Amendment of section 163**

**62.** Section 163 of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

**“Power of Minister to impose tax”;** and

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

“(1) The Minister may, by order published in the *Gazette*, prescribe—

- (a) any goods imported into, supplied within or between free zone to be chargeable to tax; or
- (b) any goods removed from a free zone through Malaysia to another free zone, to a designated area or to a warehouse under section 70 to be subject to payment of tax.”.

## Amendment of Second Schedule

**63.** The Second Schedule to the principal Act is amended by inserting after paragraph 7 the following paragraph:

**“Supply of land in compliance with requirement of written law, Government or local authority**

**8.** (1) Any supply of land by a developer or an owner of the land to the Federal Government, a State Government, a local authority or any other person in compliance with the requirement of any written law, the Federal Government, State Government or local authority for the purposes of providing public amenities and public utilities whether for no consideration or at nominal value shall be treated as neither a supply of goods nor supply of services.

(2) For the purposes of subparagraph (1), public amenities and public utilities means the amenities and utilities provided in the layout plan for a project which has been approved by the relevant local authority.”.

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### EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 (“Act 53”), the Petroleum (Income) Tax Act 1967 (“Act 543”), the Real Property Gains Tax Act 1976 (“Act 169”), the Labuan Business Activity Tax Act 1990 (“Act 445”) and the Goods and Services Tax Act 2014 (“Act 762”).

#### AMENDMENTS TO THE INCOME TAX ACT 1967

Chapter II of this Bill seeks to amend the Income Tax Act 1967.

1. *Clause 4* seeks to amend section 2 of Act 53.

*Subclause 4(a)* seeks to amend subsection 2(1) of Act 53 in the definition of “Malaysia” to be in accordance with the definition provided in the Double Taxation Agreement entered between the Government of Malaysia and the government of any territories outside Malaysia.

*Subclause 4(b)* further seeks to amend subsection 2(1) of Act 53 in the definition of “public entertainer” to provide clarity on the taxability of a public entertainer under section 109A of Act 53.

*Subclause 4(c)* further seeks to amend subsection 2(1) of Act 53 to clarify the definition of “royalty”.

These amendments come into operation on the coming into operation of this Act.

2. *Clause 5* seeks to introduce a new subsection 13(1A) into Act 53 to provide that the amount of output tax which is liable to be paid by an employee under the Goods and Services Tax Act 2014 but borne by his employer shall be included as gross income of the employee in respect of gains or profits from an employment.

This amendment is deemed to have effect from the year of assessment 2015.

3. *Clause 6* seeks to delete the proviso to section 15A of Act 53 to clarify that the special classes of income under subsections 4A(i) and (ii) of Act 53 shall be deemed to be derived from Malaysia irrespective of whether the services were performed in Malaysia or outside Malaysia.

This amendment comes into operation on the coming into operation of this Act.

4. *Clause 7* seeks to amend section 34 of Act 53.

*Subclause 7(a)* seeks to delete subsections 34(3A) and (3B) of Act 53 as a consequence of the cancellation of guidelines on non-performing loans by the Central Bank of Malaysia.

This amendment is deemed to have come into operation on 1 January 2010.

*Subclause 7(b)* seeks to amend the proviso to paragraph 34(6)(k) of Act 53 to increase the amount of deduction allowed from five hundred thousand ringgit to seven hundred thousand ringgit for sponsoring any arts, cultural or heritage activity approved by the Minister charged with the responsibility for arts, culture or heritage which also includes an amount of three hundred thousand ringgit for sponsoring foreign arts, cultural or heritage activity.

This amendment has effect for the year of assessment 2017 and subsequent years of assessment.

5. *Clause 8* seeks to amend section 44 of Act 53.

*Subclauses 8(a), (b), (c), (d) and (e)* seek to amend subsections 44(6) and 44(7), and paragraphs 44(7A)(a), 44(7B)(a) and 44(7B)(b) of Act 53 to clarify that a deduction is also allowed to a person who makes contribution in money to a fund held by an institution or organization. The fund shall have been approved by the Director General of Inland Revenue.

*Subclause 8(f)* further seeks to amend subsection 44(11B) of Act 53 to clarify that a deduction is allowed on a gift of money made to any sports activity approved by the Minister of Finance.

These amendments have effect for the year of assessment 2017 and subsequent years of assessment.

6. *Clause 9* seeks to amend section 45A of Act 53 to provide that where a husband has no total income to be aggregated with his wife, a wife is not entitled to husband's relief for an amount of four thousand ringgit if the amount of income of the husband (who is not a disabled person) which is derived from sources outside Malaysia exceeds the said amount.

This amendment has effect for the year of assessment 2017 and subsequent years of assessment.

7. *Clause 10* seeks to amend section 46 of Act 53.

*Subclause 10(a)(i)* seeks to amend the proviso to paragraph 46(1)(h) of Act 53 to increase the amount of deduction from five thousand ringgit to six thousand ringgit.

This amendment is deemed to have effect from the year of assessment 2015.

*Subclauses 10(a)(ii), (iii), (iv) and (v)* further seeks to delete paragraphs 46(1)(i), (j), (l) and (m) of Act 53 as a consequence of the introduction of a new paragraph 46(1)(p) into Act 53.

*Subclause 10(a)(viii)* seeks to introduce a new paragraph 46(1)(p) into Act 53 to provide for a deduction to a maximum of two thousand five hundred ringgit to an individual for an amount expended or deemed expended on the purchase or payment of items in that paragraph subject to conditions as specified in that paragraph.

*Subclause 10(a)(viii)* further seeks to introduce a new paragraph 46(1)(q) into Act 53 to provide for a deduction to a maximum of one thousand ringgit to an individual for an amount expended or deemed expended for the purchase of breastfeeding equipment for the individual's own use for her child aged two years old and below as specified in that paragraph.

*Subclause 10(a)(viii)* further seeks to introduce a new paragraph 46(1)(r) into Act 53 to provide for a deduction to a maximum of one thousand ringgit to an individual for an amount expended or deemed expended in respect of the payment of child care fees to a child care centre for an individual's own child aged six years and below.

These amendments have effect for the year of assessment 2017 and subsequent years of assessment.

8. *Clause 11* seeks to amend subsection 47(5) of Act 53 to provide that where a wife has no total income to be aggregated with her husband, a husband is not entitled to wife's relief for an amount of four thousand ringgit if the amount of income of the wife (who is not a disabled person) which is derived from sources outside Malaysia exceeds the said amount.

This amendment has effect for the year of assessment 2017 and subsequent years of assessment.

9. *Clauses 12 and 13* seek to amend subsection 60(11) and section 60AA of Act 53 as a consequence to the repeal of the Insurance Act 1996 and the enactment of the Financial Services Act 2013 and the Islamic Financial Services Act 2013.

These amendments are deemed to have come into operation on 30 June 2013.

10. *Clause 14* seeks to amend subsection 61A(2) of Act 53 to provide that the total income of a unit trust which is listed on Bursa Malaysia is exempt from tax if ninety per cent or more of the amount of the total income of the unit trust is distributed to the unit holder.

This amendment has effect for the year of assessment 2017 and subsequent years of assessment.

11. *Clause 18* seeks to amend section 97A of Act 53.

*Subclause 18(a)* seeks to introduce a new subsection 97A(1A) into Act 53 to provide that if a person is aggrieved by the public ruling or any practice of the Director General of Inland Revenue as specified under that subsection pursuant to a return furnished by the person in accordance with section 77 or subsection 77A(1) of Act 53 and has no chargeable income, then the return is deemed to be a notification. The person is deemed to have been notified on the day the return is furnished.

*Subclauses 18(b) and (c)* further seek to amend subsections (2) and (3) of Act 53 to provide that the aggrieved person may appeal against the notification within a time or such other extended period as specified in the subsections and the provisions relating to appeal under Act 53 shall apply accordingly with necessary modifications.

*Subclause 18(d)* seeks to introduce new subsections 97A(5), (6), (7) and (8) into Act 53 to provide for a person to appeal against a return furnished in accordance with section 77 or subsection 77A(1) of Act 53 that has no chargeable income within a specified period and subject to requirements under the subsection if the person alleges that there is an error or a mistake in the amount computed in the return.

*Subclause 18(d)* further seeks to provide that a person may apply for relief when a person alleges that the amount computed in the return is inaccurate where the reason is that the person is not being eligible to claim any exemption, relief, remission, allowance or deduction at the time such return is furnished as the law relating to such relief has not been published in the *Gazette* or the claim for that relief has not been approved by the Director General of Inland Revenue.

*Subclause 18(d)* also seeks to provide that the person may appeal against the amount computed in the return which he alleges to be excessive for not being eligible to claim a deduction for withholding tax incurred under subsections 107A(2), or 109(2), section 109A, subsection 109B(2) or 109F(2) on the day the return is furnished by such person.

*Subclause 18(d)* further seeks to provide that the appeal must be made within a specified period and subject to requirements under the subsection.

These amendments come into operation on 1 January 2017.

12. *Clause 19* seeks to amend subsection 107C(7A) of Act 53 to require that a limited liability partnership, trust body or co-operative society to furnish its estimate or revised estimate of its tax payable on an electronic medium or by way of electronic transmission.

This amendment has effect for the year of assessment 2019 and subsequent years of assessment.

13. *Clause 20* seeks to amend subsection 109C(4) of Act 53 as a consequence of the repeal of the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983 and the enactment of the Financial Services Act 2013 and Islamic Financial Services Act 2013.

This amendment is deemed to have come into operation on 30 June 2013.

14. *Clause 21* seeks to replace the words “an operator” with the words “a takaful operator in subsection 110C(1) consequential to the amendment of section 60AA of Act 53.

This amendment is deemed to have come into operation on 30 June 2013.

15. *Clause 22* seeks to introduce a new section 112A into Act 53 to provide where a person fails to furnish a country-by-country report as required under rules specified in paragraph 154(1)(c) of Act 53 the person commits an offence and on conviction be liable to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or imprisonment for a term not exceeding six months or both. The amendment also provides that the court may make a further order that the convicted person complies with the requirement of the section within a specified period as ordered by the court.

This amendment comes into operation on the coming into operation of this Act.

16. *Clause 23* seeks to introduce a new section 113A into Act 53 to provide that where a person makes an incorrect return, information return or report or give any incorrect information as required under rules specified in paragraph 154(1)(c) of Act 53 the person commits an offence and on conviction be liable to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or imprisonment for a term not exceeding six months or both. This amendment also provides that the court may make a further order that the convicted person complies with the requirement of the section within a specified period as ordered by the court.

This amendment comes into operation on the coming into operation of this Act.

17. *Clause 24* seeks to introduce a new section 119B into Act 53 to provide where a person fails to comply with rules on mutual administrative assistance as required under that section the person commits an offence and on conviction be liable to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or imprisonment for a term not exceeding six months or both. This amendment also provides that the court may make a further order that the convicted person complies with the requirement of the section within a specified period as ordered by the court.

This amendment comes into operation on the coming into operation of this Act.

18. *Clause 25* seeks to introduce a new section 131A into Act 53 to provide that a person can apply for a relief if he has paid tax on an assessment and he alleges that the amount in a return furnished is excessive by reason of the person not being eligible to claim any exemption, relief, remission, allowance or deduction at the time such return is furnished as the law relating to such relief has not been gazetted or the claim for that relief has not been approved by the Director General of Inland Revenue.

*Clause 25* also seeks to provide that the person may apply for relief relating to the assessment which he alleges to be excessive for not being eligible to claim a deduction on amount of withholding tax incurred under subsection 107A(2) or 109(2), section 109A, subsection 109B(2) or 109F(2) on the day the return is furnished by such person.

*Clause 25* further seeks to provide that the person may appeal against the assessment within a time specified in subsection (5) and subject to the requirements under the section.

This amendment comes into operation on 1 January 2017.

19. *Clause 26* seeks to amend paragraph 154(1)(ec) of Act 53 to provide that the Minister may make rules to prescribe fees pertaining to an application for advance pricing arrangement made under section 138c of Act 53.

This amendment comes into operation on the coming into operation of this Act.

20. *Clause 27* seeks to amend Schedule 1 to Act 53.

*Subclause 27(a)(i)* seeks to amend paragraph 2A of Part I of Schedule 1 to Act 53 to impose tax on the chargeable income of a company resident and incorporated in Malaysia and which has a paid up capital in respect of ordinary shares of two million five hundred thousand ringgit and less at the beginning of a basis period for a year of assessment at the rate of eighteen per cent for every ringgit of the first five hundred thousand ringgit.

*Subclause 27(a)(ii)* seeks to amend paragraph 2b of Part I of Schedule 1 to Act 53 to impose tax on the chargeable income of a limited liability partnership resident in Malaysia which has a total contribution of capital (whether in cash or in kind) of two million five hundred thousand ringgit and less at the beginning of a basis period for a year of assessment at the rate of eighteen per cent for every ringgit of the first five hundred thousand ringgit.

These amendments have effect for the year of assessment 2017 and subsequent years of assessment.

21. *Clause 28* seeks to amend Schedule 3 to Act 53.

*Subclause 28(a)(i)* seeks to extend the application of paragraph 16b of Schedule 3 to Act 53 to a person who owns a building under paragraph 42c of Schedule 3 to Act 53 and uses it for the purposes of his business as an industrial building.

*Subclause 28(a)(iii)* seeks to introduce a new proviso to paragraph 16b of Schedule 3 to Act 53 to clarify that if an allowance is claimed on the capital expenditure incurred on the part of the building specified in paragraph 16b of Schedule 3 to Act 53 which is used for letting of property and such usage is more than one-tenth of the total area of the building, the allowance will not be allowed in respect of the excess area.

These amendments are deemed to have effect from the year of assessment 2016.

22. *Clause 29* seeks to amend Schedule 6 to Act 53.

*Subclause 29(a)* seeks to amend paragraph 12b of Schedule 6 to Act 53 to provide that any deductions in relation to a dividend income exempted under that paragraph will be disregarded for the purpose of ascertaining the chargeable income of the person.

*Subclause 29(b)(i)* seeks to amend subparagraph 13(1) of Schedule 6 to Act 53 to provide that income received by an institution or organization from any contribution in money made by a person to a fund which has been approved by the Director General of Inland Revenue under subsection 44(6) of Act 53 is exempt from tax.

*Subclause 29(b)(ii)* seeks to provide that income received by a religious institution or organization under subparagraph 13(1)(b) of the Schedule 6 to Act 53 solely for charitable purposes in the basis period for a year of assessment is exempt from tax.

These amendments have effect for the year of assessment 2017 and subsequent years of assessment.

*Subclause 29(e)* seeks to amend paragraph 33 of Schedule 6 to Act 53 as a consequence of the repeal of the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983 and the enactment of the Financial Services Act 2013 and Islamic Financial Services Act 2013.

This amendment is deemed to have come into operation on 30 June 2013.

*Subclause 29(f)(ii)* seeks to introduce a new subparagraph to paragraph 33A of Schedule 6 to Act 53 to provide that the interest income specified under that paragraph received by a non-resident company from another company in the same group is not exempt from tax.

*Subclause 29(g)(ii)* seeks to amend paragraph 33B of Schedule 6 to Act 53 to provide that the interest income received by a company from another company in the same group under that paragraph is not exempt from tax. The amendment further seeks to provide that the interest income received by a bank or Islamic bank licensed under the Financial Services Act 2013 or Islamic Financial Services Act 2013 or a development financial institution prescribed under the Development Financial Institutions Act 2002 under that paragraph is not exempt from tax.

*Subclause 29(h)* seeks to amend paragraph 35A of Schedule 6 to Act 53 to provide that the interest income received by a company from a bank licensed under the Financial Services Act 2013, an Islamic bank licensed under the Islamic Financial Services Act 2013 or any development financial institution prescribed under the Development Financial Institutions Act 2002 under that paragraph is not exempt from tax if the receipt of the interest income is through a wholesale money market fund as determined by the Securities Commission of Malaysia.

These amendments have effect for the year of assessment 2017 and subsequent years of assessment.

#### AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Chapter III of this Bill seeks to amend the Petroleum (Income Tax) Act 1967.

23. *Clause 31* seeks to amend subsection 2(1) of Act 543.

*Subclause 31(a)* seeks to amend the definition of “Malaysia” to be in accordance with the definition provided in the Double Taxation Agreement entered between the Government of Malaysia and the government of any territories outside Malaysia.

This amendment comes into operation on the coming into operation of this Act.

*Subclause 31(b)* seeks to amend the definition of “secondary recovery” to clarify that a project which is carried out for purposes specified in the definition is subsequent to an earlier recovery process.

This amendment has effect for the year of assessment 2017 and subsequent years of assessment.

24. *Clause 32* seeks to amend section 41A of Act 543.

*Subclause 32(b)* seeks to introduce a new section 41A into Act 543 to provide that if a chargeable person is aggrieved by any practice of the Director General of Inland Revenue as specified under that section pursuant to a return furnished by the chargeable person in accordance with subsection 30(1) of Act 543 and has no chargeable income, then the return is deemed to be a notification. The chargeable person is deemed to have been notified on the day the return is furnished.

*Subclauses 32(c) and (d)* seek to amend subsections (2) and (3) of Act 543 to provide that the aggrieved person may appeal against the notification within a time or such other extended period as specified in the subsections and the provisions relating to appeal under Act 543 shall apply accordingly with necessary modifications.

*Subclause 32(e)* seeks to introduce new subsections 41A(5), (6), (7), (8) and (9) into Act 543 to provide for a chargeable person to appeal against a return furnished in accordance with subsection 30(1) of Act 543 that has no chargeable income within a specified period and subject to requirements under the subsection if the chargeable person alleges that there is an error or mistake in the amount computed in the return.

*Subclause 32(e)* further seeks to provide that a chargeable person may apply for relief if the chargeable person alleges that the amount computed in the return is inaccurate by reason of the chargeable person not being eligible to claim any exemption, relief, remission, allowance or deduction at the time such return is furnished as the law relating to such relief has not been published in the *Gazette* or the claim for that relief has not been approved by the Director General of Inland Revenue.

*Subclause 32(e)* also seeks to provide that the chargeable person may apply for relief if the person alleges that the amount computed in the return is inaccurate by reason the person is not allowed to claim a deduction in respect of payment of interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangements for the use of movable property derived from Malaysia or contract payments to a non-resident contractor which is not due to be paid under the law relating to income tax on the day the return is furnished by such person.

*Subclause 32(e)* further seeks to provide that the appeal must be made within a specified period and subject to requirements under the subsection.

These amendments come into operation on 1 January 2017.

25. *Clause 33* seeks to introduce a new section 66A into Act 543 to provide that a chargeable person can apply for relief if he has paid tax on an assessment and he alleges that the amount in a return furnished is excessive by reason of the person not being eligible to claim any exemption, relief, remission, allowance or deduction at the time such return is furnished as the law relating to such relief has not been published in the *Gazette* or the claim for that relief has not been approved by the Director General of Inland Revenue.

*Clause 33* seeks to provide that the chargeable person may apply for relief if that person alleges that the amount computed in the return is inaccurate by reason the person is not allowed to claim a deduction in respect of payment of interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangements for the use of movable property derived from Malaysia or contract payments to a non-resident contractor which is not due to be paid under the law relating to income tax on the day the return is furnished by such person.

*Clause 33* also seeks to provide that the chargeable person may appeal against the assessment within a time or such other extended period as specified in the subsections and subject to the requirements under the subsections.

These amendments come into operation on 1 January 2017.

#### AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Chapter IV of this Bill seeks to amend the Real Property Gains Tax Act 1976.

26. *Clause 35* seeks to amend subsection 13(4) of Act 169 to clarify that a nominee shall make a return to any of the offices of the Director General of Inland Revenue in Malaysia.

This amendment comes into operation on the coming into operation of the Act.

27. *Clause 36* seeks to amend Schedule 2 to Act 169.

*Subclause 36(a)* seeks to amend subparagraph 1(1) of Schedule 2 to Act 169 in the definition of “Islamic bank” as a consequence of the repeal of the Islamic Banking Act 1983 and the enactment of the Islamic Financial Services Act 2013.

This amendment is deemed to have come into operation on 30 June 2013.

*Subclauses 36(b)* and *(c)* seek to introduce new subparagraphs 6(1A) and 7(2) to Schedule 2 to Act 169 to provide that the incidental cost for the acquisition or disposal of an asset which is subject to any adjustment required to be made on the total input tax under the Goods and Services Tax Act 2014 shall be determined in accordance with the amount of adjustment made to such input tax in the year of assessment the disposal is made or at the end of the adjustment period as allowed under that Act, whichever is the earlier.

These amendments are deemed to have effect from the year of assessment 2015.

*Subclause 36(d)* seeks to amend subparagraph 12(2) of Schedule 2 to Act 169 to provide that the disposal by way of gift between donor and recipient is restricted to a citizen who are husband and wife, parent and child or grandparent and grandchild and the donor shall be deemed to have received no gain and suffered no loss on the disposal.

This amendment comes into operation on 1 January 2017.

## AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY TAX ACT 1990

Chapter V of this Bill seeks to amend the Labuan Business Activity Tax Act 1990.

28. *Clause 38* seeks to amend Section 2 of Act 445.

*Subclause 38(a)* seeks to amend the definition of “Labuan non-trading activity” to provide that the holding of investments in properties by a Labuan entity must be in properties situated in Labuan.

*Subclause 38(b)* seeks to amend the proviso (*b*) in the definition of “Labuan business activity” to provide that a Labuan entity may only hold shares in a domestic company which may be with residents and in ringgit Malaysia.

These amendments come into operation on the coming into operation of this Act.

29. *Clause 39* seeks to amend section 21 of Act 445 to provide that the Minister of Finance may make regulations to implement or facilitate any arrangement under section 132B of Act 53 and to prescribe any penalties for failure to comply with the regulations.

This amendment comes into operation on 22 October 2016.

## AMENDMENTS TO THE GOODS AND SERVICES TAX ACT 2014

Chapter VI of this Bill seeks to amend the Goods and Services Tax Act 2014.

30. *Clause 41* seeks to amend section 2 of Act 762 to introduce the definition of free zone.

31. *Clause 42* seeks to amend paragraph 13(4)(*b*) of Act 762 to determine the time of supply of imported services at payment made or invoice is received by the recipient, whichever is the earlier.

32. *Clause 43* seeks to amend section 20 of Act 762.

*Subclause 43(a)* seeks to amend paragraph 20(6)(*a*) of Act 762 to ensure that any supply of capital asset made in the course of cessation of business is not included in determining the value of supply for the purposes of liability to be registered.

*Subclause 43(b)* further seeks to introduce a new subparagraph 20(6)(*f*) into Act 762 to prescribe any supply made within or between free zones are not included in calculating the value of the supply for the purposes of determining liability to be registered.

33. *Clause 44* seeks to amend section 33 of Act 762.

*Subclause 44(a)(i)* seeks to amend subsection 33(10) of Act 762 to prescribe any person registered shall not issue any invoice which purports to be tax invoice or contain element of tax for a supply which is not taxable or zero-rated supply.

*Subclause 44(a)(ii)* further seeks to introduce a new subsection 33(10A) into Act 762 to prescribe any person who is not registered, except the persons mentioned under subsections 65(4) and (5) to not issue any invoice which purports to be tax invoice, containing element of tax or tax invoice.

*Subclause 44(a)(iii)* furthers seeks to amend subsection 33(11) of Act 762 to provide that any person who contravenes subsection 33(10A) commits an offence, which on conviction shall be liable to a fine or penalty as prescribed.

34. *Clause 45* seeks to introduce new section 34A and 34B into Act 762 to prescribe any registered person who has been determined to provide information of supplies made by means of a prescribed device. It is further provided that the Director General has the power to approve any person to install the prescribed device. The registered person is wholly liable to ensure that the device installed works properly and any contravention to the prescribed condition is an offence. This amendment further seeks to provide that any person who has the access to the prescribed device shall not give, publish or disclose any information obtained from the device and any contravention to the conditions is an offence.

35. *Clause 46* seeks to amend subsection 41(8) of Act 762 to impose a minimum of ten per cent penalty and maximum penalty is forty per cent of tax due and payable based on the numbers of days late. This amendment further seeks to provide clarity that the penalty is imposed on the remaining unpaid tax due and payable.

36. *Clause 47* seeks to amend section 42 of Act 762.

*Subclause 47(a)* seeks to amend subsection 42(1) of Act 762 to limit the furnishing of return and payment of tax under this section to person other than taxable person including any person who is not registered and granted relief under subsection 56(5).

*Subclause 47(b)* further seeks to introduce new subsections 42(4), (5), (6) and (7) to Act 762 to impose a minimum of ten per cent penalty on the failure to make whole or part payment of tax due and payable.

37. *Clause 48* seeks to amend section 49 of Act 762 to expand the application of paragraph 49(1)(b) to the penalty imposed under sections 41 and 42.

38. *Clause 49* seeks to amend subsection 51(1A) to allow persons under subsection 42(4) to pay penalty by instalment.

39. *Clause 50* seeks to amend section 56 of Act 762.

*Subclause 50(a)* seeks to amend subsection 56(5) of Act 762 to ensure any person who has been granted relief to account for tax when the relief is revoked.

*Subclause 50(b)* seeks to introduce a new subsection 56(7) into Act 762 to entitle any person who has been granted relief and approved by the Minister to claim for refund of tax which has been paid.

40. *Clause 51* seeks to amend subsection 57(1) of Act 762 to determine the mechanism and period for any person who has made payment of tax due and payable and subsequently been granted relief, the person may apply for refund of such tax. This amendment further seeks to determine the mechanism and period for any person who has been approved for remission under section 62 of the Act, to claim any tax, surcharge, penalty, fee or any other moneys which has been paid.

41. *Clause 52* seeks to amend section 70 of Act 762 to clarify that tax on any goods approved by the proper officer of customs to be deposited in a warehouse shall be suspended. Tax due and payable if the goods is removed from warehouse for the purposes of importation into Malaysia other than for the purposes of export, removal between warehouse, free zone or designated areas. Removal is allowed after payment of duty or tax is made. This amendment further determines that this scheme does not apply to the goods as prescribed by the Director General.

42. *Clause 53* seeks to amend subsection 72(3) of Act 762 to determine the time of supply of treated goods at payment made or invoice received by the recipient, whichever is the earlier.

43. *Clause 54* seeks to amend subsection 73(3) of Act 762 to determine the time of supply of goods at payment made or invoice received by the recipient, whichever is the earlier.

44. *Clause 55* seeks to amend subsection 103(5) of Act 762 to expand the application of the subsection to any relevant provisions under the Act.

45. *Clause 56* seeks to amend section 156 of Act 762.

*Subclause 56(a)* seeks to amend paragraph 156(a) of Act 762 to prescribe any transfer of goods including goods under a lease agreement from a designated area through Malaysia to another designated area or to Malaysia is deemed as an import.

*Subclause 56(b)* further seeks to introduce a new paragraph 156(aa) into Act 762 to provide that the Minister may determine any tax to be suspended on goods from a designated area to an area designated as a free zone or a warehouse under section 70 of Act 762.

46. *Clause 57* seeks to amend subsection 160(1) of Act 762 to enable the Minister to impose taxes on any supply of goods within or between designated areas or goods imported into the designated area through Malaysia to a designated area, free zone or a warehouse under section 70 of Act 762.

47. *Clause 58* seeks to amend Part XV of Act 762 to expand the application of the provisions under this Part to a free zone.

48. *Clause 59* seeks to amend section 161 Act 762 to provide clarity that a free zone is inclusive of a free industrial zone and a free commercial zone.

49. *Clause 60* seeks to amend section 162 of Act 762 to determine that no tax shall be charged on importation of goods into free zone for the purposes of commercial, manufacturing or retail trade activities unless the goods are used or consumed in the zone and as prescribed by the Minister. This amendment also prescribes that no tax is imposed on the supply of goods within or between free zones.

50. *Clause 61* seeks to introduce new sections 162A and 162B into Act 762 to explain that tax on any supply of goods from free zone to Malaysia under a lease agreement is suspended and deemed as imported unless the Minister otherwise directs. This amendment further seeks to impose tax on supplies made in Malaysia by taxable person who is located in free zone.

51. *Clause 62* seeks to amend section 163 of Act 762 to provide a provision for the power of the Minister to impose tax on any goods imported, supplied or removed from or to free zone.

52. *Clause 63* seeks to introduce a new paragraph 8 into the Second Schedule of Act 762 to provide any supply of land to the government, local authority or any person for the purposes of providing public amenities is treated as neither a supply of goods nor supply of services.

#### GENERAL

53. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

#### FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3043]