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Act 53

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LAWS OF MALAYSIA

Act 53

INCOME TAX ACT 1967

An Act for the imposition of income tax.

[Throughout Malaysia--28 September 1967]

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Income Tax Act 1967. (2) (Omitted).

(3) This Act shall have effect for the year of assessment 1968 and subsequent years of assessment.

Interpretation

2. (1) In this Act, unless the context otherwise requires-- "adjusted income", in relation to a source and a basis period, means the Employees Provident Fund adjusted income ascertained in accordance with this Act;

"adjusted loss", in relation to a source and a basis period, means adjusted loss ascertained in accordance with this Act; "aggregate income", in relation to a person and a year of assessment, means aggregate income ascertained in accordance with this Act;

"approved loan" means--

(a) any loan or credit made to the Government, State Government (including any loan or credit made to a person other than the Government or State

Government where the loan or credit is guaranteed by the Government or State Government), local authority or statutory body; or

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(b) any loan or credit other than a loan or credit of the kind specified in paragraph (a), made to a person pursuant to an application received prior to 25 October 1996 where the amount of such loan or credit exceeds two hundred and fifty million ringgit,

by a person pursuant to an application received prior to 25 October 1996 not resident in Malaysia:

Provided that--

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

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

"approved scheme" means the Employees Provident Fund or any pension or provident fund, scheme or society approved by the Director General under section 150;

"assessment" means any assessment or additional assessment made under this Act;

"authorized officer" means, within the scope of his authority-- (a) an officer authorized by subsections 136(1) to (4) to exercise any function of the Director General; or (b) an officer authorized under subsection 136(5) to exercise or assist in exercising any such function; "basis period", in relation to a person, a source of his and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 21 or 21A;

"basis year" has the meaning assigned by section 20; "body of persons" means an unincorporated body of persons (not being a company), including a Hindu joint family but excluding a partnership;

"building" includes any structure erected on land (not being plant or machinery);

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"business" includes profession, vocation and trade and every manufacture, adventure or concern in the nature of trade, but excludes employment;

"Central Bank" means the Central Bank of Malaysia established under section 3 of the Central Bank of Malaysia Act 1958 [Act 519];

"chargeable income" in relation to a person and a year of assessment, means chargeable income ascertained in accordance with this Act;

"Clerk" means the Clerk to the Special Commissioners; "company" means a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia;

"composite assessment" means a composite assessment made in accordance with section 96A;

"controlled company" means a company having not more than fifty members and controlled, in the manner described by section 139, by not more than five persons;

"co-operative society" means any co-operative society registered under any written law relating to the registration of co-operative societies in Malaysia;

"director", in relation to a company, includes any person occupying the position of director (by whatever name called), any person in accordance with whose directions or instructions the directors are accustomed to act and any person who-- (a) is a manager of the company or otherwise concerned in the management of the company's business;

(b) is remunerated out of the funds of that business; and (c) is, either on his own or with one or more associates within the meaning of subsection 139 (7), the

beneficial owner of (or able directly or through the medium of other companies or by any other indirect means to control) twenty per cent or more of the ordinary share capital of the company ("ordinary share capital" here meaning all the issued share capital of the company, by whatever name called, other than

capital the holders whereof have a right to a dividend 053e .FM Page 15
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at a fixed rate but have no other right to share in the profits of the company);

"Director General" means the Director General of Inland Revenue referred to in section 134;

"employee", in relation to an employment, means-- (a) where the relationship of master and servant subsists, the servant;

(b) where that relationship does not subsist, the holder of the appointment or

office which constitutes the

employment;

"employer", in relation to an employment, means-- (a) where the relationship of master and servant subsists, the master;

(b) where that relationship does not subsist, the person who pays or is responsible for paying any

remuneration to the employee who has the

employment, notwithstanding that that person and the employee may be the same person acting in different capacities;

"employment" means--

(a) employment in which the relationship of master and servant subsists;

(b) any appointment or office, whether public or not and whether or not that relationship subsists, for which remuneration is payable;

"executor" means the executor, administrator or other person administering or managing the estate of a deceased person; "foreign tax" means any tax on income (or any other tax of a substantially similar character) chargeable or imposed by or under the laws of a territory outside Malaysia;

"Hindu joint family" means what in any system of law prevailing in India is known as a Hindu joint family or coparcenary;

"husband who elects" means the husband who is referred to in paragraph 45(2)(b);

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"incapacitated person" means a minor or a person adjudged under any law to be in a state of unsoundness of mind (however described);

"individual" means a natural person;

"Inland Revenue Board of Malaysia" means the Inland Revenue Board of Malaysia established under the Inland Revenue Board of Malaysia Act 1995 [Act 533];

"lease" includes a sublease, a tenancy for three years or less and any

to a form other than the form mentioned in subsection 138(1), prescribed under section 152;

"public entertainer" means a stage, radio or television artiste, a musician, athlete or an individual exercising any profession, vocation or employment of a similar nature;

"rent" includes any sum paid for the use or occupation of any premises or part thereof or for the hire of any thing; "resident" means resident in Malaysia for the basis year for a year of assessment by virtue of section 7 or 8;

"royalty" includes--

(a) any sums paid as consideration for the use of, or the right to use--

(i) copyrights, artistic or scientific works, patents, designs or models, plans, secret processes or

formulae, trademarks or 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;

(ii) know-how or information concerning

technical, industrial, commercial or scientific

knowledge, experience or skill;

(b) income derived from the alienation of any property, know-how or information mentioned in paragraph (a) of this definition;

(c)?(d) (Deleted by Act 293);

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"Securities Commission" means the Securities Commission established under

section 3 of the Securities Commission Act 1993 [Act 498];

"service director", in relation to a company, means a director (not being a person to whom, together with his associates within the meaning of subsection 139(7), if any, there would be distributed, on the distribution of a dividend by the company, more than five per cent of the dividend) who is employed in the service of the company in a managerial or technical capacity, and is not, either on his own or with any associate within that meaning, the beneficial owner of (or able directly or through the medium of other companies or by any other indirect means to control) more than five per cent of the ordinary share capital of the company ("ordinary share capital" here having the same meaning as in the definition of "director" in this subsection);

"share", in relation to a company, includes stock other than debenture stock;

"source" means a source of income;

"Special Commissioners" means the Special Commissioners of Income Tax referred to in section 98;

"statutory authority" means any authority or body established by or under a written law (not being an authority or body established under the Companies Act 1965 [Act 125], or any written law of a corresponding kind in force before the commencement of that Act in any place comprised in Malaysia on 1 January 1968) to discharge any functions of a public nature, including the provision of public utility and similar services; "statutory income", in relation to a person, a source and a year of assessment, means statutory income ascertained in accordance with this Act;

"statutory order" means an order having legislative effect; "stock in trade", in relation to a business, means property of any description, whether movable or immovable, being either-- (a) property such as is sold in the ordinary course of the business or would be so sold if it were mature or if its manufacture, preparation or construction were

complete; or

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(b) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in paragraph (a) of this definition,

and includes any work in progress;

"tax" means the tax imposed by this Act;

"total income", in relation to a person and a year of assessment, means total income ascertained in accordance with this Act; "trust body", in relation to a trust, means the trust body provided for by section 61;

"wife" means a woman who (whether or not she has gone through any religious or other ceremony) is regarded by virtue of any law or custom as the wife of a man or as one of his wives; "wife who elects" means the wife who is referred to in paragraph 45(2)(a);

"year of assessment", subject to subsection (5), means calendar year.

(2) Any reference in this Act to income shall, if the income is not described as being income of a particular kind, be construed as a reference to income generally or to gross, adjusted, statutory, aggregate, total or chargeable income as the context and circumstances may require.

(3) Unless the context otherwise requires, "payable for" and "receivable for", when used in this Act with reference to a period, mean payable or receivable, as the case may be, for that period or any part thereof.

(4) Where--

(a) two or more companies are related within the meaning of section 6 of the Companies Act 1965;

(b) a company is so related to another company which is itself so related to a third company;

(c) the same persons hold more than fifty per cent of the shares in each of two or more companies; or

(d) each of two or more companies is so related to at least one of two or more companies to which paragraph (c) applies,

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all the companies in question are in the same group for the purposes of this Act.

(5) References in this Act to a year or years of assessment shall be construed (except where Schedule 9 provides otherwise) as references to a year or years of assessment in relation to which this Act has effect by virtue of subsection 1(3). (6) For the purposes of this Act--

(a) the reference to tax in paragraph 79(e) shall be deemed to include a reference to any tax imposed by any of the repealed laws ("repealed laws" in this subsection having the same meaning as in Schedule 9);

(b) the reference to this Act in section 81, paragraph 116(c) and section 153 shall be deemed to include references to each of the repealed laws; and

(c) the reference to functions under this Act in paragraph 116(b) shall be deemed to include a reference to

functions under any of the repealed laws exercised by virtue of this Act.

(7) Any reference in this Act to interest shall apply, mutatis mutandis, to gains or profits received and expenses incurred, in lieu of interest, in transactions conducted in accordance with the Syariah.

(8) Subject to subsection (7), any reference in this Act to the disposal of an asset or a lease shall exclude any disposal of an asset or lease by or to a person pursuant to a scheme of financing approved by the Central Bank or the Securities Commission, as a scheme which is in accordance with the principles of Syariah where such disposal is strictly required for the purpose of complying with those principles but which will not be required in any other schemes of financing.

PART II

IMPOSITION AND GENERAL CHARACTERISTICS

OF THE TAX

Charge of income tax

3. Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of assessment upon 053e .FM Page 21 Thursday, April 6, 2006 12:07 PM 22 Laws of Malaysia ACT 53

the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia.

3A. (Deleted by Act 451).

Non-chargeability to tax in respect of offshore business activity

3B. Notwithstanding section 3, tax shall not be charged under this Act on

income in respect of an offshore business activity carried on by an offshore company.

3C. (Deleted by Act 578).

Classes of income on which tax is chargeable

4. Subject to this Act, the income upon which tax is chargeable under this Act is income in respect of--

- (a) gains or profits from a business, for whatever period of time carried on;
- (b) gains or profits from an employment;
- (c) dividends, interest or discounts;
- (d) rents, royalties or premiums;
- (e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;
- (f) gains or profits not falling under any of the foregoing paragraphs.

Special classes of income on which tax is chargeable 4A. Notwithstanding section 4 and subject to this Act, the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of--

(i) amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other

apparatus purchased from, such persons;

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(ii) amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any

scientific, industrial or commercial undertaking, venture, project or scheme; or

(iii) rent or other payments made under any agreement or arrangement for the use of any moveable property, which is derived from Malaysia is chargeable to tax under this Act.

Manner in which chargeable income is to be ascertained

5. (1) Subject to this Act, the chargeable income of a person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner:

(a) first, the basis period for each of his sources for that year shall be ascertained in accordance with Chapter 2 of Part III;

(b) next, his gross income from each source for the basis period for that year shall be ascertained in accordance with Chapter 3 of that Part;

(c) next, his adjusted income from each source (or, in the case of a source consisting of a business, his adjusted income or adjusted loss from that source) for the basis period for that year shall be ascertained in accordance with Chapter 4 of that Part;

(d) next, his statutory income from each source for that year shall be ascertained in accordance with Chapter 5 of that Part;

(e) next, his aggregate income for that year and his total income for that year shall be ascertained in accordance with Chapter 6 of that Part; and

(f) next, his chargeable income for that year shall be ascertained in accordance with Chapter 7 of that Part: Provided that in ascertaining the chargeable income of an individual resident in Malaysia there shall be excluded the income consisting of interest accruing in or derived from 053e

Malaysia and received from a person referred to in subsection 109C(4) in respect of interest paid or credited to that individual. (2) For the purposes of this Act, any income of a person from any source or sources, and any adjusted loss of a person from any source or sources consisting of a business, may be ascertained for any period (including a year of assessment) notwithstanding that--

(a) the person in question may have ceased to possess that source or any of those sources prior to that period; or (b) in that period that source or any of those sources may have ceased to produce gross income or may not have produced any gross income.

(3)?(4) (Deleted by Act 337).

Rates of tax

6. (1) (a) Except where this subsection provides otherwise and subject to section 6A, income tax shall be charged for each year of assessment upon the chargeable income of every person for that year at the appropriate rate as specified in Part I of Schedule 1; (b) subject to section 109 but notwithstanding any other provisions of this Act, where--

(i) the income of a person not resident in Malaysia for the basis year for a year of assessment consists of interest (other than interest on an approved loan or interest of the kind referred to in paragraph 33 of Part 1, Schedule 6) or royalty derived from

Malaysia; or

(ii) the income of a person (other than a company) not resident in Malaysia for the basis year for a year of assessment consists of remuneration or other income in respect of services performed or

rendered in Malaysia by a public entertainer,

income tax thereon shall be charged at the appropriate rate as specified in Part II of Schedule 1;

(c) (Deleted by Act 451);

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(d) income tax shall be charged for each year of assessment upon the chargeable income of every co-operative society for that year at the appropriate rate as specified in Part IV of Schedule 1; (e) subject to section 109B but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a person charged under section 4A at the appropriate rate as specified under Part V of Schedule 1; (f) subject to section 109C but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of an individual resident in Malaysia which consists of interest (other than interest exempt from tax under this Act or any order made thereto) accruing in or derived from Malaysia and received from a person referred to in subsection 109C(4) at the appropriate rate as specified under Part VI of Schedule 1;

(g) (Deleted by Act 624);

(h) income tax shall be charged for each year of assessment upon the chargeable income of a foreign fund management company in relation to the

source consisting of the provision of fund management services to foreign investors for that year at the appropriate rate as specified in Part IX of Schedule 1; (i) subject to section 109D but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a non-resident unit holder which consists of income distributed by the unit trust referred to in section 61A at the appropriate rate as specified under Part X of Schedule 1.

(2) The Minister, where he is satisfied that it is the intention of the Government to promote the introduction into the Dewan Rakyat of a Bill to vary in any particular way the rates of tax, may by statutory order declare those rates to be varied in that way; and, where he does so, then, subject to subsections (3) and (4), this Act shall have effect as if those rates as so varied had come into force at the beginning of the first year of assessment for which the Bill seeks to vary those rates.

(3) Every order made under subsection (2) shall be laid before the Dewan Rakyat as soon as may be after it has been made and shall cease to have effect--

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(a) at the expiration of a period of three months (or such longer period as may be specified by resolution of the Dewan Rakyat) beginning on the date when the order was made; or

(b) on the coming into force (after the date when the order was made) of an Act varying the rates of tax,

whichever first occurs.

(4) Where an order made under subsection (2) ceases to have effect pursuant to subsection (3)--

(a) the amount of any tax which--

(i) has been charged by any assessment by

reference to the order; and

(ii) is payable (whether or not it is due or due and payable) but not paid at the date when the

order ceases to have effect,

shall be taken to be amended to the amount which

would have been payable if the order had not been made; and

(b) so much of any tax paid by any person in consequence of the order as exceeds the tax payable under the law in force immediately after the date when the order ceases to have effect shall be repaid by the Director General if that person--

(i) makes a claim therefor in the prescribed form within one year after that date; and

(ii) furnishes to the Director General such further particulars of the claim as the Director General

may require.

(5) In subsections (2) and (3) any reference to rates of tax includes a reference to the rate of any abatement specified under Schedule 1.

Tax rebate

6A. (1) Subject to this section, income tax charged for each year of assessment upon the chargeable income of every individual resident for the basis year for that year shall be rebated for that 053e .FM Page 26 Thursday, April 6, 2006 12:07 PM Income Tax 27

year of assessment in accordance with subsections (2), (3) and (3A) before any set off is made under section 110 and any credit is allowed under section 132 or 133.

(2) A rebate shall be granted for a year of assessment in the following amounts:

(a) three hundred and fifty ringgit in the case of an individual who has been allowed a deduction under paragraph 46(1) (a) for that year of assessment where his chargeable income for that year of assessment does not exceed thirty-five thousand ringgit;

(b) three hundred and fifty ringgit in the case of an individual who has been allowed a deduction under subsection 47(1) or (2) for that year of assessment where his chargeable income for that year of

assessment does not exceed thirty-five thousand

ringgit;

(c) three hundred and fifty ringgit in the case of a wife who has been allowed a deduction under section 45A for that year of assessment where her chargeable income for that year of assessment does not exceed thirty-five thousand ringgit.

(3) A rebate shall be granted for a year of assessment for any zakat, fitrah or any other Islamic religious dues payment of which is obligatory and which are paid in the basis year for that year of assessment to, and evidenced by a receipt issued by, an appropriate religious authority established under any written law. (3A) A rebate of five hundred ringgit shall be granted to an individual for a year of assessment in respect of the purchase, evidenced by a receipt, of a personal computer in the basis year for that year of assessment:

Provided that no rebate under this subsection shall be granted to that individual--

(a) for the four following years of assessment;

(b) where the personal computer was used for the

purposes of his business; or

(c) where such rebate has been granted to the spouse. 053e .FM Page 27
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(4) Where the total amount of the rebate under subsections (2), (3) and (3A) exceeds the income tax charged (before any such rebate) for any year of assessment, the excess shall not be paid to the individual or available as a credit to set off his tax liability for that year of assessment or any subsequent year.

Tax rebate on loan to a small business

6B. (1) Subject to this section, income tax charged for each year of assessment upon the chargeable income of a person who gives any loan to a small business shall be rebated by an amount equivalent to two per cent prorated per annum, or such other rate as may be prescribed from time to time by the Minister, on the outstanding balance of the loan before any set off is made under section 110 and any credit is allowed under section 132 or 133: Provided that where the rebate exceeds the income tax charged (before any such rebate) for any year of assessment, the excess shall not be paid to that

person and shall not be available as a credit to set off any tax liability for that year of assessment but it shall be available as a credit to set off any income tax chargeable for any subsequent year of assessment.

(2) "Loan to a small business" means a loan that conforms to the guidelines laid down by an appropriate authority designated by the Minister from time to time.

Tax rebate on fees

6C. Income tax charged for each year of assessment upon the chargeable income of an individual shall be rebated in respect of any fee paid to the Government in the basis year for that year of assessment pursuant to any order made under section 3 of the Fees Act 1951 [Act 209], for the issue of an Employment Pass, Visit Pass (Temporary Employment) or Work Pass before any set off is made under section 110 and any credit is allowed under section 132 or 133:

Provided that where the rebate exceeds the income tax charged (before any such rebate) for any year of assessment, the excess shall not be paid to that individual, and shall not be available as a credit to set off his tax liability for any subsequent year of assessment.

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Residence: individuals

7. (1) For the purposes of this Act, an individual is resident in Malaysia for the basis year for a particular year of assessment if-- (a) he is in Malaysia in that basis year for a period or periods amounting in all to one hundred and eighty- two days or more;

(b) he is in Malaysia in that basis year for a period of less than one hundred and eighty-two days and that period is linked by or to another period of one hundred and eighty-two or more consecutive days (hereinafter

referred to in this paragraph as such period)

throughout which he is in Malaysia in the basis year for the year of assessment immediately preceding that particular year of assessment or in that basis year for the year of assessment immediately following that particular year of assessment:

Provided that any temporary absence from

Malaysia--

(i) connected with his service in Malaysia and

owing to service matters or attending conferences or seminars or study abroad;

(ii) owing to ill-health involving himself or a member of his immediate family; and

(iii) in respect of social visits not exceeding fourteen days in the aggregate, shall be taken to form part of such period or that period, as the case may be, if he is in Malaysia

immediately prior to and after that temporary absence; (c) he is in Malaysia in that basis year for a period or periods amounting in all to ninety days or more,

having been with respect to each of any three of the basis years for the four years of assessment

immediately preceding that particular year of assessment either--

(i) resident in Malaysia within the meaning of this Act for the basis year in question; or

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(ii) in Malaysia for a period or periods amounting in all to ninety days or more in the basis year

in question; or

(d) he is resident in Malaysia within the meaning of this Act for the basis year for the year of assessment following that particular year of assessment, having been so resident for each of the basis years for the three years of assessment immediately preceding that particular year of assessment.

(1A) For the purposes of subsection (1), an individual shall be deemed to be in Malaysia for a day if he is present in Malaysia for part of that day and in ascertaining the period for which he is in Malaysia during any year, any day (within paragraphs 1(a) and (c)) for which he is in Malaysia shall be taken into account whether or not that day forms part of a continuous period of days during which he is in Malaysia.

(2) (Deleted by Act A226).

Residence: companies and bodies of persons

8. (1) For the purposes of this Act-- (a) a Hindu joint family is resident in Malaysia for the basis year for a year of assessment if its manager or karta is resident for that basis year;

(b) a company or a body of persons (not being a Hindu joint family) carrying on a business is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia; and (c) any other company or body of persons (not being a Hindu joint family) is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its affairs are exercised in Malaysia by its directors or other controlling authority.

(2) If it is shown that it has been established as between the Director General and a company or body of persons for any tax 053e .FM Page 30 Thursday, April 6, 2006 12:07 PM Income Tax 31

purpose that the company or body was resident in Malaysia for the basis year for any year of assessment, it shall be presumed until the contrary is proved that the company or body was resident in Malaysia for the purposes of this Act for the basis year for every subsequent year of assessment.

9?10. (Deleted by Act A226).

11. (Deleted by Act 624). Derivation of business income in certain cases

12. (1) Where for the purposes of this Act it is necessary to ascertain any gross income of a person derived from Malaysia from a business of his, then--

(a) subject to subsection (2), so much of the gross income from the business as is not attributable to operations of the business carried on outside Malaysia shall be deemed to be derived from Malaysia;

(b) notwithstanding paragraph (a), if the business consists wholly or partly of the manufacturing, growing,

mining, producing or harvesting in Malaysia of any article, product, produce or other thing--

(i) the gross income from any sale of the article, product, produce or other thing taking place

outside Malaysia in the course of carrying on

the business; or

(ii) where the article, product, produce or other thing is exported in the course of carrying on

the business and subparagraph (i) does not

apply, an amount equal to the market value of

the article, produce, product or other thing at

the time of its export,

shall be deemed to be gross income of that person derived from Malaysia from the business.

(2) Where in the case of a business to which paragraph (1) (a) applies--

(a) the business or a part thereof is carried on in Malaysia; 053e .FM Page 31
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(b) any of the gross income of the business (from wherever derived) consists of a dividend or interest to which subsection 24(4) or (5) applies; and

(c) the dividend or interest relates either--

(i) to a share, debenture, mortgage or other source which forms or has formed part of the stock in

trade of the business or, where only part of the

business is carried on in Malaysia, of that part

of the business; or

(ii) to a loan of the kind mentioned in subsection 24(5) granted in the course of carrying on

business or that part of the business, as the case may be,

so much of that gross income as consists of that dividend or interest shall be deemed to be derived from Malaysia. General provisions as to employment income

13. (1) Gross income of an employee in respect of gains or profits from an employment includes--

(a) any wages, salary, remuneration, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (whether in money or otherwise) in respect of having or exercising the employment;

(b) an amount equal to the value of the use or enjoyment by the employee of any benefit or amenity (not being a benefit or amenity convertible into money) provided for the employee by or on behalf of his employer, excluding--

(i) a benefit or amenity consisting of medical or dental treatment or a benefit for child care;

(ii) a benefit or amenity consisting of--

(A) leave passages for travel within

Malaysia not exceeding three times in

any calendar year; or

(B) one leave passage for travel between

Malaysia and any place outside

Malaysia in any calendar year, limited

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to a maximum of three thousand

ringgit:

Provided that the benefit or amenity enjoyed

under this subparagraph is confined only to the

employee and members of his immediate

family;

(iii) a benefit or amenity used by the employee

solely in connection with the performance of

his duties; and

(iv) a benefit or amenity falling under paragraph (c);

(c) an amount in respect of the use or enjoyment by the employee of living accommodation in Malaysia

(including living accommodation in premises

occupied by his employer) provided for the employee by or on behalf of the employer rent free or otherwise; (d) so much of any amount (other than a pension, annuity or periodical payment falling under paragraph 4(e)) received by the employee, whether before or after his employment ceases, from a pension or provident fund, scheme or society not approved for the purpose of this Act as would not have been so received if his

employer had not made contributions in respect of the employee to the fund, scheme or society or its trustees; and

(e) any amount received by the employee, whether before or after his employment ceases, by way of

compensation for loss of the employment, including any amount in respect of--

(i) a covenant entered into by the employee

restricting his right after leaving the

employment to engage in employment of a

similar kind; or

(ii) any agreement or arrangement having the like effect.

(2) Gross income in respect of gains or profits from an employment--

(a) for any period during which the employment is exercised in Malaysia;

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(b) for any period of leave attributable to the exercise of the employment in Malaysia;

(c) for any period during which the employee performs outside Malaysia duties incidental to the exercise of the employment in Malaysia;

(d) for any period during which a person is a director of a company and that company is resident in Malaysia for the basis year for a year of assessment and within that basis year that period or part of that period falls; or (e) for any period during which the employment is exercised aboard a ship or aircraft used in a business operated by a person who is resident in Malaysia for the basis year for a year of assessment and within that basis year that period or part of that period falls, shall be deemed to be derived from Malaysia.

(3) Gross income in respect of gains or profits from an employment in the public services or the service of a statutory authority--

(a) for any period during which the employment is exercised outside Malaysia; or

(b) for any period of leave attributable to the exercise of the employment outside Malaysia,

shall be deemed to be derived from Malaysia if the employee is a citizen.

(4) For the purposes of subsection (1) a benefit, amenity or living accommodation provided for an employee as therein mentioned shall be deemed to be used or enjoyed by the employee if it is used or enjoyed by his spouse, family, servants, dependants or guests.

(5) Any question whether any gross income is gross income for a period mentioned in subsection (2) shall be decided by applying the appropriate provisions of Chapter 3 of Part III as if that period were the basis period for a year of assessment. 13A. (Deleted by Act 293).

General provisions as to dividend income

14. (1) Subject to this section, where a company resident for the basis year for a year of assessment pays, credits or distributes a dividend in the basis period for that year of assessment, the dividend shall be deemed to be derived from Malaysia. (2) Where a company resident for the basis year for a year of assessment was not resident for the basis year for the year of assessment immediately preceding that year of assessment, only dividends paid, credited, or distributed by the company on or after the day on which the management and control of any business of the company (or, in the case of a company which does not carry on a business, the management and control of its affairs by its directors or other controlling authority) were first exercised in Malaysia in that first-mentioned basis year shall be deemed to be derived from Malaysia.

(3) Where--

(a) the management and control of the business of a company (or, if it has more than one business, of all its businesses); or

(b) in the case of a company which does not carry on a business, the management and control of its affairs by its directors or other controlling authority,

cease to be exercised in Malaysia in the basis year for a year of assessment and the company is not resident for the basis year for the year of assessment following that first-mentioned year of assessment, dividends paid, credited or distributed in that first-mentioned basis year after the cessation shall not be deemed to be derived from Malaysia.

(4) Where a dividend consists of property other than money, that dividend shall be taken to consist of an amount equal to the market value of the property at the time of the distribution of the dividend.

Derivation of interest and royalty income in certain cases

15. Gross income in respect of interest or royalty shall be deemed to be derived from Malaysia--

(a) if responsibility for payment of the interest or royalty lies with the Government or a State Government; or (b) (i) if responsibility for payment of the interest or royalty in the basis year for a year of

assessment (the responsibility of any guarantor

being disregarded in the case of interest) lies

with a person who is resident for that basis

year; and

(ii) in the case of interest it is payable in respect of money borrowed by that person and employed

in or laid out on assets used in or held for the

production of any gross income of that person

derived from Malaysia or the debt in respect of

which the interest is paid is secured by any

property or asset situated in Malaysia; or

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

Derivation of special classes of income in certain cases 15A. Gross income in respect of--

(a) amounts paid in consideration of services rendered by a person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;

(b) amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(c) rent or other payments made under any agreement or arrangement for the use of any moveable property, shall be deemed to be derived from Malaysia--

(i) if responsibility for payment of the above or other payments lies with the Government or a

State Government;

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(ii) if responsibility for the payment of the above or other payments lies with a person who is a

resident for that basis year; or

(iii) if the payment of the above or other payments is charged as an outgoing or expense in the

accounts of a business carried on in Malaysia:

Provided that in respect of paragraphs (a) and (b), this section shall apply to the amount attributable to services which are performed in Malaysia.

Voluntary pensions, etc.

16. Where any pension or other periodical payment is paid voluntarily to any person who has permanently ceased to exercise an employment (or to his widow, child, relative or dependant) by his former employer or the successor of his former employer, there shall be deemed to be a source of that person or of his widow, child, relative or dependant, as the case may be, in respect of that pension or payment and that pension or payment shall be deemed to be gross income from that source chargeable to tax. Derivation of pensions, etc.

17. (1) Gross income in respect of a pension from the Government or a State Government shall be deemed to be derived from Malaysia.

(2) Where--

(a) a person has a right to a pension or other like payment--

(i) from a pension fund or a fund of a similar kind;

(ii) under a pension scheme or a scheme of a similar kind; or

(iii) by virtue of his membership of a pension society or a society of a similar kind; and

(b) the forum of the administration of the fund, scheme or society is in Malaysia at any time in the basis year for a year of assessment,

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the gross income for the basis period for that year of assessment in respect of the pension or other like payment shall be deemed to be derived from Malaysia.

(3) The gross income for the basis period for a year of assessment from any source of the kind mentioned in section 16 or in respect of a pension or other periodical payment to which paragraph 4(e) applies shall be deemed to be derived from Malaysia if the person paying that income was resident for the basis year for that year of assessment:

Provided that this subsection shall not apply to a pension or other payment to which subsection (1) or (2) applies. PART III

ASCERTAINMENT OF CHARGEABLE INCOME

Chapter 1--Preliminary

Interpretation of Part III

18. In this Part, unless the context otherwise requires-- "agriculture" means any form of cultivation of crops, animal farming, aquaculture, inland fishing and any other agricultural or pastoral pursuit;

"cargo" includes mail, currency, specie, livestock and all kinds of goods;

"crops" includes any form of vegetable produce;

"defined value", in relation to living accommodation provided for an employee by or on behalf of his employer, means-- (a) where the accommodation is not affected by any written law providing for the restriction or control of rents and the person so providing the accommodation holds the accommodation on lease the rent which is or would have been paid if the accommodation is or had been unfurnished and the lessor and lessee were

independent persons dealing at arm's length;

(b) in any other case, the rateable value or, in the absence of a rateable value, the economic rent;

"disabled person" means any individual certified in writing by the Department of Social Welfare to be a disabled person; "economic rent", in relation to any premises or part of any premises, means the rent at which those premises or that part might reasonably be expected to be let if--

(a) the lessor covenanted to pay the cost of fire insurance, public rates and work of repair and maintenance

(being work which would normally be included in a covenant to repair and maintain if such a covenant were entered into by a lessor dealing at arm's length); and

(b) any written law providing for the restriction or control of rents were disregarded;

"entertainment" includes--

(a) the provision of food, drink, recreation or hospitality of any kind; or

(b) the provision of accommodation or travel in

connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a), by a person or an employee of his in connection with a trade or business carried on by that person;

"farm" means any land used for the purposes of agriculture; "furniture" includes air-conditioning equipment and any fixture which, if it were not a fixture, would be regarded as furniture; "insurance" includes a takaful scheme pursuant to the Takaful Act 1984 [Act 312];

"licensed Malaysian offshore bank" has the meaning assigned to it by the Labuan Offshore Business Activity Tax Act 1990 [Act 445];

"mine" means a source of minerals over which mining operations are, have been or may lawfully be carried on; "minerals" means minerals and mineral substances (other than mineral oils), and includes precious metals, precious stones and non-precious minerals, but does not include common clay (other than kaolin or bentonite), sand, sandstone or any sodium compound or any other similar common mineral substance obtainable without underground mining operations and not 053e .FM Page 39 Thursday, April 6, 2006 12:07 PM 40 Laws of Malaysia ACT 53

containing any precious metal or precious stones in economically workable quantities;

"mining operations" includes every method or process by which minerals are won or obtained;

"payroll tax" means any tax of that name imposed by a written law;

"premiums", in relation to insurance, includes contributions or instalments payable under a takaful scheme pursuant to the Takaful Act 1984;

"rateable value", in relation to premises, means the annual value as determined for rating purposes by the local rating authority, if any;

"replanting" means the replacement of the crop of any product on any area of land by taking such action as is calculated to produce on the same area a crop of the same product and includes reafforestation of timber;

"turnover tax" means any tax of that name imposed by a written law.

Supplementary provisions for the interpretation of Part III

19. (1) A period overlaps another period for the purposes of this Part if--

(a) it begins before and ends in or at the same time as or after that other period; or

(b) it begins at the same time as or during that other period and ends after that other period.

(2) For the purposes of this Part, an individual and a wife of his shall be treated as living together unless--

(a) they are separated under an order of a court or under a deed of separation or a written agreement for

separation; or

(b) they are in fact separated in such circumstances that the separation is likely to be permanent.

(3) Where--

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(a) it is necessary for the purposes of Chapter 4 to ascertain the amount of any interest, rent or any payment of any other kind which is payable for the basis period (or for a part of the basis period) for a year of assessment; and

(b) the period for which the interest, rent or payment is payable (in this subsection referred to as the relevant period) overlaps that basis period,

the interest, rent or payment shall be taken to accrue evenly over the relevant period, and so much of the interest, rent or payment as is thus found to accrue during the period of the overlap shall be taken to be the amount of the interest, rent or payment which is payable for that basis period or that part of that basis period, as the case may be.

(4) In this Part a reference to—

(a) gross income or any other item receivable; or (b) rent or any other sum payable,

is a reference to any gross income, other item, rent or other sum, as the case may be, which is payable to the recipient, whether or not it is due or due and payable.

(5) Any reference to this Part in section 18 or this section includes a reference to Schedules 2, 3, 4 and 4B. (6) For the avoidance of doubt it is declared that, where a person who is a partner in a partnership is not in fact personally engaged in carrying on the business of that partnership, nothing in section 55, 56 or 57 shall cause that partner to be treated as being personally engaged in his proprietorship or continuing proprietorship business in relation to that partnership. Chapter 2—Basis years and basis periods

Basis years

20. For the purposes of this Act, the calendar year coinciding with a year of assessment shall constitute the basis year for that year of assessment.

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Basis period of a person other than a company, trust body or co-operative society

21. The basis year for a year of assessment shall constitute, in relation to a source of a person other than a company, trust body or co-operative society, the basis period for that year of assessment.

Basis period of a company, trust body or co-operative society 21A. (1) Except as provided in this section, the basis year for a year of assessment shall constitute, in relation to a source of a company, trust body or co-operative society, the basis period for that year of assessment.

(2) Subject to subsections (5) and (6), where a company, trust body or co-operative society has made up the accounts of its operations for a period of twelve months ending on a day other than 31 December in the basis year, that period shall constitute the basis period for that year of assessment for any of its sources of income.

(3) Where the company, trust body or co-operative society has made up the accounts of its operations for a period of twelve months ending on a day other than 31 December and there is a failure to make up the accounts of the company, trust body or co-operative society ending on the corresponding day in the following basis year, the Director General may direct that the basis period for the year of assessment in which the failure occurs, or the basis periods for that year and the following year of assessment, shall consist of a period or periods (which may be of any length) as specified in the direction.

(4) Subject to subsections (5) and (6), where a company, trust body or co-operative society commences operations on a day in a basis year and makes up its accounts for a period of twelve months ending on a day other than 31 December, there shall be no basis period in relation to any of its sources of income for the first year.

(5) Where a company, trust body or co-operative society commences operations and--

(a) is required under any law of the place of incorporation to make up its accounts ending on a specified day; or

(b) being a company, trust body or co-operative society within a group of companies makes up its accounts ending on the same day as that of all other companies in that group,

the period which begins from the day the company, trust body or co-operative society commences operations until the end of the accounting period of the company, trust body or co-operative society shall constitute, for those operations of that company, trust body or co-operative society, the basis period for a year of assessment.

(6) Where a company, trust body or co-operative society on the day on which it commences a new operation is already carrying on one or more operations, the

basis period of the existing operation or operations for a year of assessment in which that day falls shall constitute for the new operation the basis period for that year of assessment and there shall be no basis period for the new operation for the year of assessment preceding that year.

(7) In subsections (4) and (6), references to company, trust body or co-operative society commencing to carry on an operation shall be construed only as references to cases where the company, trust body or co-operative society in question commences to carry on--

(a) its own operations; or

(b) the operations of another company, trust body or co-operative society being operations not previously carried on by that other company, trust body or co-operative society or its agents.

(8) For the purposes of this section, "operations" in relation to a company, trust body or co-operative society means-- (a) an activity which consists of the carrying on of a business;

(b) an activity which consists wholly in the making of investments;

(c) an activity which consists of both the carrying on of a business and the making of investments; or

(d) an activity which consists of the making of

investments prior to the commencement of a business or after the cessation of a business.

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Chapter 3--Gross income

Gross income generally

22. (1) Subject to this Act, the gross income of a person from a source of his for the basis period for a year of assessment shall be the gross income from that source for that period ascertained in accordance with the following provisions of this Chapter (that person and that period being referred to in those provisions as the relevant person and the relevant period respectively).

(2) Subject to this Act, the gross income of a person from a source of his for the basis period for a year of assessment shall include any sums receivable or deemed to have been received for that basis period in relation to that source

by way of-- (a) insurance, indemnity, recoupment, recovery, reimbursement or otherwise--

(i) where such sums are in respect of the kind of outgoings and expenses deductible in ascertaining the adjusted income of that person from that source; or

(ii) under a contract of indemnity;

(b) compensation for loss of income from that source; and (c) a rebate under section 6B.

Interpretation of sections 24 to 28

23. For the purposes of sections 24 to 28-- (a) a reference to a debt is a reference to a debt in a liquidated sum (whether or not due or due and payable);

(b) a dividend deemed to be derived from Malaysia by virtue of section 14 shall be treated as paid on the day on which cash or its equivalent (whether in the form of a voucher, cheque or otherwise) in respect of the dividend is posted or delivered by or on behalf of the payer, and as distributed in specie on the day on which it is posted or delivered by or on behalf of the distributor;

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(c) where any tax or foreign tax has been deducted in paying, crediting or distributing any gross income, then, with respect to that gross income, any reference in those sections to gross income paid, credited or received shall be taken to mean the amount of that gross income before the deduction;

(d) where any dividend deemed to be derived from

Malaysia by virtue of section 14 is paid or credited without deduction of tax or is distributed in specie, the amount of the gross income in respect of that dividend shall be taken to be such an amount as, after deduction of tax at the rate deductible at the date of payment, crediting or distribution, would be equal to--

(i) the amount in fact paid;

(ii) the amount in fact credited; or

(iii) the market value of the dividend at the date of distribution,

as the case may be.

Basis period to which gross income from a business is related

24. (1) Where in the relevant period a debt owing to the relevant person arises in respect of--

(a) any stock in trade sold (or parted with on requisition or compulsory acquisition or in a similar manner) in or before the relevant period in the course of carrying on a business;

(b) any services rendered at any time in the course of carrying on a business; or

(c) the use or enjoyment of any property dealt with at any time in the course of carrying on a business,

the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period. (2) Where in the relevant period any stock in trade of a business of the relevant person is--

(a) withdrawn for his own use; or

(b) withdrawn (otherwise than on requisition or compulsory acquisition or in a similar manner)

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without any consideration being received therefor or for a consideration consisting of--

(i) any property not being either a debt owing to the relevant person or a sum in cash or the

equivalent of cash;

(ii) any such property together with a debt owing to the relevant person or any such sum; or

(iii) any such property together with a debt owing to the relevant person and any such sum,

then, subject to subsection (3), an amount equal to the market value of that stock in trade at the time of its withdrawal shall be treated as gross income of the relevant person from the business for the relevant period.

(3) Where in a case to which subsection (2) applies the consideration for the withdrawal of any stock in trade is consideration of the kind described in subparagraph (b) (ii) or (iii) of that subsection, then, for the purposes of that subsection-- (a) the amount of the market value of that stock in trade shall be reduced by the amount of the debt or sum or the amount of the debt and sum, as the case may be, referred to in whichever of those subparagraphs applies to the case;

(b) subsection (1) shall apply to the debt as if it were a debt arising on the sale of that stock in trade; and (c) section 28 shall apply to any such sum.

(4) Subject to section 3, where in the relevant period a dividend is paid, credited or distributed to the relevant person, then, if the stock, share or other source to which the dividend relates forms or has formed in or before the relevant period part of the stock in trade of a business of the relevant person-- (a) the amount of the dividend shall be treated as gross income of the relevant person from the business for the relevant period, if the business is carried on at any time in the relevant period; and

(b) subsection (1) shall not apply to a debt owing to the relevant person in respect of any such dividend:

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Provided that, where this subsection has applied to a dividend which has been credited, it shall not apply to that dividend when paid.

(5) Subject to section 3, where in the relevant period any gross interest first becomes receivable by the relevant person, then, if the debenture, mortgage or other source to which the interest relates forms or has formed in or before the relevant period part of the stock in trade of a business carried on by or on behalf of the relevant person, or if the interest is in respect of a loan granted in or before the relevant period in the course of carrying on the business and the business is one which includes the regular lending of money--

(a) the interest shall be treated as gross income of the relevant person from

the business for the relevant period if the business is carried on at any time in the relevant period; and

(b) subsection (1) shall not apply to a debt owing to the relevant person in respect of any such interest.

(6) Where in the relevant period any article, product, produce or other thing is exported from Malaysia in the course of carrying on a business in such circumstances that subsection 12(1) applies thereto in relation to the business--

(a) subsection (2) shall not apply with respect to that article, product, produce or other thing or to any gross income received in respect thereof; and

(b) the amount equal to the market value of the article, product, produce or other thing deemed under

subsection 12(1) to be gross income derived from the business shall be treated as gross income of the

relevant person from the business for the relevant period.

(7) Where this section applies to any particular item of gross income, nothing in sections 25 to 29 and nothing in section 30 shall apply to that item.

(8) This section shall not apply to income under section 4A. 053e .FM Page 47
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Basis period to which gross income from an employment is related

25. (1) Subject to subsection (1A), where gross income from an employment--

(a) is not receivable in respect of any particular period; and

(b) first becomes receivable in the relevant period, it shall when received be treated as gross income of the relevant person for the relevant period.

(1A) The gross income from an employment in respect of any right to acquire shares in a company of the kind to which paragraph 13(1) (a) applies, shall where the right is exercised, assigned, released or acquired in the relevant period be treated as gross income of the relevant person for that relevant period. (2) Subject to section 3 and subsection (5), where gross income from an employment is receivable in respect of the whole of the relevant period (or, except in a case to which subsection (4) applies, in respect of any part

of the relevant period), it shall when received be treated as gross income of the relevant person for the relevant period.

(3) Subject to section 3 and subsection (5), where gross income falls to be treated under subsection (1) or (2) as gross income for the relevant period, then, if its receipt first becomes known to the Director General on a day more than five years after the end of the relevant period, it shall whenever necessary be treated as gross income of the relevant person for the basis period for the year of assessment which began five years before the beginning of the year of assessment which includes that day. (4) Subject to section 3 and subsection (5), where gross income from an employment is receivable in respect of a period (in this subsection referred to as the overlapping period) which overlaps the relevant period, that gross income when received shall be apportioned between the part of the overlapping period which overlaps the relevant period and the remaining part of the overlapping period (the apportionment, unless the Director General having regard to the facts of any particular case otherwise directs, being made in the proportion that the number of days of the overlapping period that fall into the relevant period

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bears to the total number of days of the overlapping period) and so much of that gross income as is apportioned to the overlapping part of the overlapping period shall be treated as gross income of the relevant person from the employment for the relevant period: Provided that--

(a) where the employment ceases in the basis period for a year of assessment and, at or about the time of the cessation of the employment, gross income from the employment becomes receivable as a lump sum by

way of gratuity, deferred pay or otherwise but

excluding any amount which by virtue of paragraph 13(1) (d) or (e) is included in his gross income from the employment, then, for the purposes of this

subsection--

(i) that sum, notwithstanding subsection (1), shall be treated as accruing evenly over and

receivable in respect of an accrual period

consisting of the period of the employment

(including, where the employment was

employment by a company, any particular period during which the relevant person was employed by another company in the same group, being a group of which that first-mentioned company was a member at the time of the cessation of the employment) or, if the period of employment (including any such particular period) commenced more than five years before the commencement of that basis period, an accrual period consisting of that basis period and the basis periods for the five years of assessment immediately preceding that year;

(ii) so much of that sum as by virtue of subparagraph (i) is treated as accruing evenly over and receivable in respect of any such particular period during which the relevant person was employed by any such other company shall be deemed to be income from the source consisting of his employment by that other company and not from the source consisting of the employment by that first-

mentioned company; and

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(iii) that accrual period shall be treated as the overlapping period;

(b) where the overlapping period in respect of which that gross income is receivable partly elapsed more than five years before the day on which the receipt of that gross income first became known to the Director

General, then, for the purposes of this subsection, that gross income shall whenever necessary be deemed to have been receivable in respect of and to have accrued evenly over that part of the overlapping period which did not so elapse and, if that part falls wholly into the relevant period, shall whenever necessary be deemed to be gross income of the relevant person from the employment for the relevant period;

(c) where the overlapping period in respect of which that gross income is receivable wholly elapsed more than five years before the day on which the receipt of that gross income first became known to the Director

General, that gross income shall whenever necessary be treated as gross income for the basis period for the year of assessment which began five years before the beginning of the year of assessment which includes that day.

(5) Where gross income from an employment first becomes receivable in the relevant period and is in respect of-- (a) a period which commences after the end of the relevant period; or

(b) a period which overlaps the relevant period and which partly elapsed after the end of the relevant period, subsections (2) to (4) shall not apply and that gross income shall when received be treated as gross income of the relevant person for the relevant period:

Provided that, where the relevant period wholly elapsed more than five years before the day on which the receipt of that gross income first became known to the Director General, that gross income shall whenever necessary be treated as gross income of the relevant person for the basis period for the year of assessment which began five years before the beginning of the year of assessment which includes that day.

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(6) Notwithstanding the foregoing subsections, where the Director General is satisfied that--

(a) an employee has left or will be leaving Malaysia in the basis year for the year of assessment to which the relevant period relates (that year of assessment being in this subsection referred to as the relevant year) and will not be resident for the basis year for the following year of assessment;

(b) no pension derived from Malaysia will be receivable by the employee for the basis period for that following year; and

(c) gross income from the employee's employment will cease to be derived from Malaysia on the expiration of a period of leave following the employee's departure from Malaysia,

any gross income from the employment which but for this subsection would by virtue of any of the foregoing subsections be receivable for the basis period for the year of assessment following the relevant year shall be treated as receivable for the relevant period unless the employee in making his return of income for the relevant year (or within such period after the making of that return as the Director General may allow) makes a written request to the Director General that this subsection shall not apply in relation to his gross income from the employment. Basis period to which gross income in respect of dividend is related

26. (1) Subject to subsection (2), where gross income from a source consists of a dividend deemed to be derived from Malaysia by virtue of section 14, all gross income from that source paid, credited or distributed in the relevant period shall be taken to be gross income of the relevant person for the relevant period: Provided that, where this section has applied to a dividend which had been credited, it shall not apply to that dividend when paid.

(2) In relation to gross income to which subsection (1) applies, where the relevant period overlaps the basis period for the immediately preceding year of assessment, the gross income 053e .FM Page 51 Thursday, April 6, 2006 12:07 PM 52 Laws of Malaysia ACT 53

in relation to the part of the relevant period which overlaps that basis period shall not be taken to be the gross income of the relevant person for the relevant period.

Basis period to which gross income in respect of interest, etc., is related

27. (1) Subject to this section where gross income from a source in Malaysia of the relevant person--

(a) consists of any interest, discount, rent or royalty or of any pension, annuity or other periodical payment to which paragraph 4(e) applies; and

(b) first becomes receivable in the relevant period, it shall when it has been received be treated as gross income of the relevant person for the relevant period.

(2) Where gross income from a source of the relevant person is gross income to which subsection (1) applies and is receivable in respect of a period (in this subsection referred to as the overlapping period) which overlaps the relevant period, that gross income when received shall be apportioned between the part of the overlapping period which overlaps the relevant period and the remaining part of the overlapping period (the apportionment, unless the Director General having regard to the facts of any particular case otherwise directs, being made in the proportion that the number of days of the overlapping period that fall into the relevant period bears to the total number of days of the overlapping period) and so much of that gross income as is apportioned to the overlapping part of the overlapping period shall be treated as gross income of the relevant person from that source for the relevant period:

Provided that--

(a) where that gross income is in respect of an amount of interest calculated for two or more periods of accrual which together make up the overlapping period, the gross income in respect of the interest in respect of each period of accrual shall be ascertained and-- (i) if any such period of accrual falls into the

relevant period, subsection (1) shall apply to

the gross income so ascertained in respect of

that period of accrual;

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(ii) if any such period of accrual overlaps the

relevant period, this subsection (without this

paragraph of this proviso) shall apply to the

gross income so ascertained in respect of that

period of accrual as if that period of accrual

were the overlapping period and as if that last-

mentioned gross income were gross income

receivable in respect of the overlapping

period;

(b) where the overlapping period in respect of which that gross income is receivable partly the elapsed more than five years before the day on which the receipt of that gross income first became known to the Director General, then, for the purposes of this subsection, that gross income shall whenever necessary be deemed to have been receivable in respect of and to have accrued evenly over that part of the overlapping period which did not so elapse and, if that part falls wholly into the relevant period, shall whenever necessary be deemed to be gross income of the relevant person from that source for the relevant period;

(c) where the overlapping period in respect of which that gross income is receivable wholly elapsed more than five years before the day on which the receipt of that gross income first became known to the Director

General, that gross income shall whenever necessary be treated as gross income of the relevant person for the basis period for the year of assessment which began five years before the beginning of the year of assessment which includes that day.

(3) Where gross income mentioned in subsection (1) becomes receivable in the relevant period and is in respect of-- (a) a period which commences after the end of the relevant period; or

(b) a period which overlaps the relevant period and which partly elapsed after the end of the relevant period, subsection (2) shall not apply and that gross income shall when received be treated as gross income of the relevant person for the relevant period:

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Provided that, where the relevant period wholly elapsed more than five years before the day on which the receipt of that gross income first becomes known to the Director General, that gross income shall whenever necessary be treated as gross income of the relevant person for the basis period for the year of assessment which began five years before the beginning of the year of

assessment which includes that day.

(4) In subsection (2) "period of accrual" means a period throughout which there is no change in the rate of interest or in the principal sum in respect of which interest is payable. Basis period to which gross income not provided for by sections 24 to 27 is related

28. Subject to this Act, where in the relevant period there is received by the relevant person from a source any gross income to which sections 24 to 27 do not apply, the amount of that income (or, where the income consists of something having a market value, the amount of its market value at the time of its receipt) shall be treated as gross income of the relevant person from that source for the relevant period.

Basis period to which income obtainable on demand is related

29. (1) Notwithstanding anything in sections 23 to 28, where the circumstances are such that the relevant person is entitled to any gross income (other than gross income to which section 24 or 26 applies) accruing in or derived from Malaysia and is able to obtain the receipt thereof on demand, that gross income shall be treated as being received by him at the time those circumstances arise.

(2) The reference in subsection (1) to gross income the receipt of which the relevant person is able to obtain on demand includes a reference to gross income the receipt of which he would be able to obtain on demand but for the fact that it is lawfully receivable by a receiver of any kind.

Special provisions applicable to gross income from a business

30. (1) Where a deduction has been made under subsection 34(2) in ascertaining the adjusted income of the relevant person 053e .FM Page 54 Thursday, April 6, 2006 12:07 PM Income Tax 55

from a business for the basis period for a year of assessment, that basis period being prior to the relevant period, then-- (a) if the deduction has been made in respect of a debt estimated to have become wholly irrecoverable, any sum recovered on account of the debt by that person in the relevant period shall be treated as gross income of the relevant person from the business for the relevant period; and

(b) if the deduction has been made in respect of a debt estimated to have become partly irrecoverable and there has been received by that person in respect of the debt a sum (or an aggregate of sums) in excess of the amount of that part of the debt not estimated to have become irrecoverable, so much of

that excess as is recovered by him in the relevant period shall be

treated as gross income of the relevant person from the business for the relevant period.

(2) Where during the relevant period any sum is refunded to the relevant person--

(a) on account of payroll tax paid by him in respect of remuneration paid by him to any person employed by him in the production of his gross income from a

business for the relevant period or any basis period ending prior to the relevant period; or

(b) on account of turnover tax paid by him in respect of the turnover of the business,

the sum refunded shall be treated as gross income of his from the business derived from Malaysia for the relevant period. (3) Where during the relevant period--

(a) recovered expenditure (within the meaning of

Schedule 2) is recovered by or on behalf of the

relevant person in connection with a business of his which includes the working of a mine; and

(b) the total recovered expenditure so recovered exceeds the aggregate of--

(i) the residual expenditure (within the meaning

of that Schedule) at the date on which that

period begins; and

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(ii) the qualifying mining expenditure (within the meaning of that Schedule) incurred by him

during that period,

the amount of the excess shall be treated as gross income of the relevant

person from the business for the relevant period. (4) Where--

(a) a deduction has been made under subsection 33(1) in computing the adjusted income of the relevant person from a business for the basis period for a year of assessment (that basis period being prior to the

relevant period) in respect of any outgoing or expense (including any sum payable, rent payable or expense incurred of the kind described in paragraph 33(1) (a), (b) or (c)); and

(b) the whole or any part of a debt in respect of any such outgoing, expense, sum, rent or expense is released in the relevant period,

the amount released shall be treated as gross income of the relevant person from that business for the relevant period.

31. (Deleted by Act 624). Special provisions applicable to gross income from an employment

32. (1) Where in the relevant period there has been the use or enjoyment by the relevant person of any benefit or amenity of the kind to which paragraph 13(1) (b) applies, the amount in respect thereof to be included in his gross income from the employment for the relevant period shall be an amount equal to the value of that use or enjoyment as ascertained by whatever method is just and reasonable in the circumstances.

(1A) (a) Where in the relevant period a relevant person acquired any right to acquire shares in a company of the kind to which paragraph 13(1) (a) applies, under his name or in the name of his nominee or agent, the amount in respect thereof to be included in his gross income from the employment shall be-- (i) the market value of the shares where the right shall be exercised, assigned, released or acquired on a

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specified date or where the right shall be exercised, assigned, released or acquired within a specified period, the first day of that period; or

(ii) the market value of the shares on the date of the exercise, assignment, release or acquisition of the right,

whichever is the lower less the amount paid for the shares. (b) In this subsection, "market value" means--

(i) in the case of a company listed on Bursa

Malaysia, the average price of the shares

which is ascertained by averaging the highest and the lowest price of the shares for the day;

or

(ii) in any other case, the net asset value of the shares for the day.

(2) Where in the relevant period there has been the use or enjoyment by the relevant person of living accommodation of the kind to which paragraph 13(1) (c) applies, then, subject to subsection (3), the amount in respect thereof to be included in his gross income from the employment for the relevant period shall be--

(a) an amount equal to the defined value of the living accommodation for the relevant period or an amount equal to thirty per cent of the gross income which by virtue of paragraph 13(1) (a) and section 25 or 28 falls to be included in his gross income from the

employment for the relevant period, whichever is the less; or

(b) where the living accommodation is provided in-- (i) a hotel, hostel or similar premises;

(ii) any premises on a plantation or in a forest; or (iii) any premises which, although in a rateable

area, are not subject to public rates,

an amount equal to three per cent of the gross income which by virtue of paragraph 13(1) (a) and section 25 or 28 falls to be included in his gross income from the employment for the relevant period.

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(3) Notwithstanding subsection (2), where in the relevant period there has been the use and enjoyment by the relevant person of living accommodation of the kind to which paragraph 13(1) (c) applies, then--

(a) where the relevant person's employer is a company and the relevant person at any time during the relevant period is a director of the company (not being

a

service director) while the company is a controlled company, then, whether or not he is a director at the time of the use and enjoyment, the amount to be included in his gross income for the relevant period shall be the defined value of the accommodation for the relevant period or, if the accommodation is wholly or partly shared with other employees, such proportion of the defined value as is just and reasonable;

(b) where the living accommodation is provided for only a part of the relevant period, the amount to be included in his gross income for the relevant period under subsection (2) or this subsection shall be reduced in such a proportion, if any, as is just and reasonable having regard to all the circumstances;

(c) where the living accommodation (except in a case to which paragraph (a) or paragraph (2) (b) applies) is provided in such circumstances that--

(i) it is to be wholly or partly shared with other employees;

(ii) the relevant person is required by the employer to reside therein; or

(iii) the relevant person is required or expected by the employer to use it for the advancement of

the employer's interests by the provision of

hospitality or otherwise and, in order that it

may be so used, it is larger or more valuable

accommodation than the relevant person

would otherwise need,

the amount to be included in his gross income for the relevant period under paragraph (2) (a) shall be so much of the defined value of the accommodation for the relevant period as is just and reasonable or thirty per cent of the gross income which by virtue of

paragraph 13(1) (a) and section 25 or 28 falls to be included in his gross income from the employment for the relevant period, whichever is the less (that amount being reduced in any case to which paragraph (b)

applies in such a proportion, if any, as is just and reasonable having regard to all the circumstances). Chapter 4--Adjusted income and adjusted loss

Adjusted income generally

33. (1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source, including-- (a) subject to subsection (2), any sum payable for that period (or for any part of that period) by way of interest upon any money borrowed by that person

and--

(i) employed in that period in the production of

gross income from that source; or

(ii) laid out on assets used or held in that period for the production of gross income from that

source;

(b) rent payable for that period (or for any part of that period) by that person in respect of any land or

building or part thereof occupied by him in that period for the purpose of producing gross income from that source;

(c) expenses incurred during that period for the repair of premises, plant, machinery or fixtures employed in the production of gross income from that source or for the renewal, repair or alteration of any implement, utensil or article so employed, other than implements,

utensils, articles (the expenditure on which would be qualifying plant expenditure for the purposes of

Schedule 3) or any means of conveyance, excluding the cost of reconstructing

or rebuilding--

(i) any premises, buildings, structures or works of a permanent nature;

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(ii) any plant or machinery; or

(iii) any fixtures; and

(d) such other deductions as may be prescribed.

(2) Where a person, being a person to whom paragraph (1) (a) applies in relation to gross income from a business of his for the basis period for a year of assessment and in relation to borrowed money, has made (otherwise than for the purpose of producing that gross income) any loan of money or any investment in movable or immovable property, and the loan or any part thereof is outstanding at any time in that period or the investment or any part thereof is held by him at any time in that period and it appears to the Director General that the loan or any part thereof or the investment or any part thereof has been financed wholly or partly or directly or indirectly out of the borrowed money-- (a) the total sum payable for that period or any part thereof by way of interest on that borrowed money shall be deemed to accrue evenly over that period or part thereof, and so much of that sum as is thus found to accrue during each calendar month shall be taken to be the monthly figure for the purposes of this

subsection;

(b) if at the end of any calendar month the aggregate of-- (i) the amount of the loan then outstanding if any; and

(ii) the cost of so much of the investment as is held by him at that time if any,

is less than the amount of that borrowed money, the monthly figure for that month shall be reduced by an amount which bears to that monthly figure the same proportion as that aggregate bears to the amount of that borrowed money or by an amount which in the

opinion of the Director General is just and reasonable in all the circumstances;

(c) if at the end of any calendar month the aggregate mentioned in the preceding paragraph is more than the amount of that borrowed money, the

monthly figure for that month shall be reduced to nil or to an amount which in the opinion of the Director General is just and reasonable in all the circumstances; and

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(d) the amount of the deduction to be made for that period in respect of that borrowed money shall be an amount consisting of the aggregate of--

(i) the monthly figures for all calendar months to which paragraph (b) or (c) applies, as reduced

by either of those paragraphs; and

(ii) the monthly figures for the other calendar

months.

(3) In subsection (2) "calendar month", in relation to a basis period or part thereof, means a period which is included in that basis period or part thereof and is either--

(a) one of the twelve months of the Gregorian calendar; or (b) where that basis period or part thereof includes a part, but not the whole, of such a month, that part of that month.

Special provisions applicable to adjusted income from a business

34. (1) In ascertaining the adjusted income of a person from a business for the basis period for a year of assessment, deductions shall be made from the gross income from the business for that period in accordance with the following subsections (the person, business, period and gross income in question being referred to in those subsections as the relevant person, the business, the relevant period and the relevant gross income respectively). (2) There shall be deducted in the case of any debt as defined in subsection (3)--

(a) if at the end of the relevant period the debt is reasonably estimated in all the circumstances of the case to be wholly irrecoverable, an amount equal to the amount of the debt;

(b) if at the end of the relevant period the debt is reasonably estimated in all the circumstances of the case to be partly irrecoverable, an amount equal to so much of the debt as is estimated to be irrecoverable, the deduction being in either case reduced by the amount of any deduction made under this

the basis period for a year of assessment prior to the year of assessment to which the relevant period relates.

(3) In subsection (2) "debt" means--

(a) a debt arising in respect of any matter referred to in subsection 24(1) or in respect of interest of the kind referred to in subsection 24(5), where the amount of any such debt has been included in the relevant gross income or in the gross income of the relevant person from the business for the basis period for a year of assessment prior to the year of assessment to which the relevant period relates; or

(b) a debt arising in respect of a loan of the kind mentioned in subsection 24(5) granted in the course of carrying on the business in the relevant period or in the basis period for any such prior year of assessment. (3A) The reference to the debt which is partly irrecoverable under paragraph (2) (b), shall be deemed, in the case of a bank, to include all interest in respect of a loan or credit facility accrued from the date that such loan or facility is classified as non-performing loan in accordance with the relevant guidelines issued by the Central Bank.

(3B) For the purpose of subsection (3A), "bank" means a bank or a finance company or a banking and finance company licensed or deemed to be licensed under the Banking and Financial Institutions Act 1989 [Act 372] or Islamic Banking Act 1983 [Act 276], or an institution prescribed under the Development Financial Institutions Act 2002 [Act 618].

(4) Where in the relevant period the relevant person has made a contribution to an approved scheme in respect of an employee of his, then--

(a) if the employee's remuneration as determined under the rules, regulations, by-laws or constitution of that scheme for the period for which the contribution is made (that period being a period which coincides with or overlaps the relevant period) is deductible as a whole, or in parts aggregating the whole, in computing the adjusted income from the business for any basis period or periods for a year or years of assessment in relation to the business, there may be deducted from 053e .FM Page 62 Thursday, April 6, 2006 12:07 PM Income Tax 63

the relevant gross income an amount equal to the

contribution or nineteen per cent of the employee's remuneration as so

determined for the period for

which the contribution is made, whichever is the less; (b) if only a part or parts of that remuneration is or are so deductible, there may be deducted from the relevant gross income an amount equal to so much of the

contribution or of that percentage of the remuneration (whichever of those amounts is the less) as bears to the whole of the contribution or to that percentage of the remuneration, as the case may be, the same proportion as that part or the aggregate of those parts, as the case may be, bears to the whole of that remuneration.

(5) Where on the first establishment of a scheme of the kind referred to in subsection (4) a special contribution thereto is made in the relevant period by the relevant person whereby any of his employees engaged in activities relating to the production of the relevant gross income or gross income of the relevant person from the business for the basis period for a year of assessment (that basis period being prior to the relevant period) may qualify for the benefits under that scheme, the Director General may when approving that scheme authorize deductions in respect of that special contribution of such amounts (being amounts which in total are equal to or less than the special contribution) from the gross income of the relevant person from the business for the basis periods for such years of assessment as he thinks fit.

(6) There may be deducted from the relevant gross income-- (a) an amount equal to any payroll tax paid by the relevant person in the relevant period in respect of any

remuneration paid by him to any person employed by him in the production of gross income of his from the business;

(b) an amount equal to any turnover tax in respect of the turnover of the business paid by the relevant person in the relevant period;

(c) where any part of the relevant gross income is derived from the working of a mine, such amounts in respect of capital expenditure as may be allowed for the

relevant period pursuant to Schedule 2;

(d) where any part of the relevant gross income is derived from the working of a farm relating to cultivation of 053e .FM Page 63 Thursday, April 6, 2006 12:07 PM 64 Laws of Malaysia ACT 53

crops, an amount equal to any expense (not being an expense which is

qualifying expenditure or qualifying agriculture expenditure for the purposes of Schedule 3 or incurred in the acquisition of land or anything growing thereon) incurred by the relevant person in the relevant period in replanting the farm for the purposes of cultivation of crops or in effecting any improvement of the farm or any part of the farm in connection with such replanting;

(e) an amount equal to the amount of expenditure incurred by the relevant person in the relevant period on the provision of any equipment necessary to assist any disabled person employed by him in the production of gross income of his from the business;

(f) an amount equal to the expenditure incurred by the relevant person in the relevant period in respect of translation into or publication in the national language of cultural, literary, professional, scientific or technical books approved by the Dewan Bahasa dan

Pustaka;

(g) an amount equal to the expenditure incurred by the relevant person in the relevant period on the provision of library facilities which are accessible to the public and in respect of contributions to public libraries and libraries of schools and institutions of higher

education:

Provided that the amount that may be deducted

shall not exceed one hundred thousand ringgit;

(h) an amount equal to the expenditure incurred by the relevant person in the relevant period on the provision of services, public amenities and contributions to a charity or community project pertaining to education, health, housing, infrastructure and information and communication technology, approved by the Minister: Provided that where a deduction has been made

under this paragraph, no further deduction of the same amount shall be allowed under subsection 44(6);

(i) an amount equal to the expenditure incurred, not being capital expenditure on land, premises, buildings, structures or works of a permanent nature or on

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alterations, additions or extensions thereof or in the acquisition of any

rights in or over any property, by the relevant person in the relevant period on the provision and maintenance of a child care centre for the benefit of persons employed by him in his

business;

(j) an amount equal to the expenditure incurred by the relevant person in the relevant period in establishing and managing a musical or cultural group approved by the Minister;

(k) an amount equal to the expenditure incurred by the relevant person in the relevant period for sponsoring any local or foreign arts or cultural activity approved by the Ministry of Culture, Arts and Tourism:

Provided that the amount deducted in respect of

expenditure incurred for sponsoring those activities shall not in aggregate exceed three hundred thousand ringgit of which the amount deducted in respect of expenditure incurred in sponsoring foreign arts and cultural activities shall not exceed two hundred

thousand ringgit;

(l) an amount equal to the expenditure incurred by the company in the relevant period on the provision of a scholarship to a student for any course of study

leading to an award of a diploma, or degree (including a degree at a Masters or Doctorate level) or the

equivalent of a diploma or degree undertaken at a higher educational institution established or registered under the laws regulating such establishment or

registration in Malaysia or authorized by any order made under section 5A of the Universities and

University Colleges Act 1971 [Act 30]:

Provided that the scholarship--

(a) shall only be given to a student--

(i) who is receiving full-time instruction at

such higher educational institution;

(ii) who has no means of his own; and

(iii) the total monthly income of whose parents or guardian, as the case may be,

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does not exceed five thousand ringgit;

and

(b) shall not include payments other than

payments required by such higher educational

institution relating to the course of study, and

educational aids and reasonable cost of living

expenses during the student's period of study

at such higher educational institution;

(m) an amount equal to the expenditure, not being capital expenditure, incurred by a company in the relevant period for the purpose of obtaining accreditation for a laboratory or a certification body, as evidenced by a certificate issued by the Department of Standards Malaysia:

Provided that the expenditure incurred in the

relevant period shall be deemed to be incurred by that company in the basis period for the year of assessment in which the certificate is issued;

(ma) an amount twice the amount of the expenditure, not being capital expenditure, incurred by a company in the relevant period for the purpose of obtaining

certification for recognized quality systems and

standards, and halal certification, evidence by a certificate issued by a certification body as determined by the Minister:

Provided that the expenditure incurred in the

relevant period shall be deemed to be incurred by that company in the basis period for the year of assessment in which the certificate is issued;

(n) an amount equal to the expenditure incurred by a person in the relevant period on the provision of practical training in Malaysia, in relation to his business, to an individual who is--

(i) resident in the basis year for a year of

assessment; and

(ii) not an employee of that person; and

(o) an amount equal to the expenditure incurred by a company in a relevant period for participating in international standardization activities approved by the Department of Standards Malaysia.

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(7) There may be deducted from the relevant gross income any expenditure, not being capital expenditure incurred on plant, machinery, fixtures, land, premises, buildings, structures or works of a permanent nature or on alterations, additions or extensions thereof or in the acquisition of any rights in or over any property, incurred by the relevant person during the relevant period on scientific research related to the business and directly undertaken by him or on his behalf.

(8) Where any deduction in respect of any matter is capable of being made under this section, no deduction or allowance in respect of that matter shall be made under section 33 or Schedule 3, as the case may be.

Special deduction for research expenditure

34A. (1) Subject to this section, in ascertaining the adjusted income of a person from a business for the basis period for a year of assessment, a deduction shall be made, as specified in subsection (4), from the gross income from the business for that period in respect of expenditure, not being capital expenditure incurred on plant, machinery, fixtures, land, premises, buildings, structures or works of a permanent nature or on alterations, additions or extensions thereof or in the acquisition of any rights in or over any property, incurred by that person during that period on research--

(a) approved by the Minister; or

(b) undertaken by that person where that person is participating in industrial adjustment approved under section 31A of the Promotion of Investments Act 1986 [Act 327].

(2) The Minister in approving the research pursuant to paragraph (1) (a) may impose such conditions as he thinks fit or may specify the period or periods for the purpose of deduction under this section.

(3) A deduction for expenditure on research pursuant to paragraph (1) (b) shall be made in respect of expenditure incurred within ten years from the date of approval of industrial adjustment under section 31A of the Promotion of Investments Act 1986.

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(4) The amount of deduction to be made under subsection (1) shall be twice the amount of expenditure, not being capital expenditure, referred to in that subsection:

Provided that where subsection (4A) applies, the amount of deduction to be made shall be the amount of expenditure incurred.

(4A) A pioneer company may, in a return of income for the year of assessment in which the expenditure referred to in subsection (1) had been incurred, elect that the amount of that expenditure be deducted in the first basis period in respect of its post-pioneer business for a year of assessment.

(5) Where any deduction in respect of expenditure on research is made under this section, no deduction in respect of that expenditure shall be made under section 33 or 34. (6) For the purposes of this section, the words "pioneer company" and "post-pioneer business" have the respective meanings assigned to them under the Promotion of Investments Act 1986.

Special deduction for contribution to an approved research institute or payment for use of services of an approved research institute or company

34B. (1) Subject to this section, in ascertaining the adjusted income of a person from a business for the basis period for a year of assessment, a deduction shall be made, as specified in subsection (2), from the gross income from the business for that period in respect of expenditure, not being capital expenditure, incurred by that person during that period in respect of-- (a) contribution in cash to an approved research institute; (b) payment for the use of the services of an approved research institute or an approved research

company; or (c) payment for the use of the services of a research and development company or a contract research and

development company.

(2) The amount of deduction to be made under subsection (1) shall be twice the amount of expenditure, not being capital expenditure, referred to in that subsection:

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Provided that no deduction in respect of that expenditure shall be made under this section to a person being a related company of a research and development company which has been given approval under subsection 27D(1) of the Promotion of Investments Act 1986 and whose period as prescribed under paragraph 29E(2) (b) of that Act has not ended.

(3) Where any deduction in respect of expenditure referred to in subsection (1) is made under this section, no deduction in respect of that expenditure shall be made under section 33, 34 or 34A.

(4) In this section--

(a) an "approved research institute" means an institute, including a company licensed under section 24 of the Companies Act 1965, approved by the Minister to

mainly carry on research in an industry specified in the approval and to commercially exploit the benefit of such research thereof;

(b) an "approved research company" means a company, other than a company licensed under section 24 of the Companies Act 1965, approved by the Minister to

mainly carry on research in an industry specified in the approval and to commercially exploit the benefit of such research thereof;

(c) a "contract research and development company", a "related company" and a "research and development company" have the meaning assigned thereto in

section 2 of the Promotion of Investments Act 1986. Stock in trade

35. (1) Notwithstanding any other provision of this Part, in ascertaining the adjusted income of a person from a business for the basis period for a year of

assessment, the value of the stock in trade of the business at the beginning and at the end of that period shall be taken into account in accordance with the following subsections (that person, business, period and stock in trade being referred to in those subsections as the relevant person, the business, the relevant period and the stock respectively). (2) Where the value of the stock at the end of the relevant period exceeds the value of the stock at the beginning of the 053e .FM Page 69 Thursday, April 6, 2006 12:07 PM 70 Laws of Malaysia ACT 53

relevant period, the total of all amounts otherwise deductible under sections 33, 34, 34A and 34B in ascertaining the adjusted income of the relevant person from the business for the relevant period shall be reduced by the amount of the excess; and, where the value of the stock at the beginning of the relevant period exceeds the value of the stock at the end of the relevant period, the total of all amounts otherwise so deductible shall be increased by the amount of the excess.

(3) Subject to subsections (4) and (5)--

(a) the value of any particular item of the stock at the end of the relevant period shall be taken to be--

(i) an amount equal to its market value at that

time; or

(ii) if the relevant person so elects and that item is physically tangible, an amount equal to the

total cost to him of acquiring that item (or any

materials used in its manufacture, preparation

or construction) and bringing it to its condition and location at that time:

Provided that in the case of any item of the stock consisting of immovable properties, stocks, shares or marketable securities, the value thereof at the end of the relevant period shall be taken to be an amount equal to its cost price to that relevant person or its market value at that time, whichever is the lower; (b) the value of any particular item of the stock at the beginning of the relevant period (except where the business was commenced by the relevant person in the relevant period) shall be taken to be an amount equal to its value as ascertained under paragraph (a) at the end of the basis period for the year of assessment immediately preceding the year of assessment to

which the relevant period relates.

(4) Where--

(a) by virtue of section 41 this Chapter applies in relation to the business as if an accounting period were the relevant period; and

(b) a previous period for which the accounts of the business were made up ended immediately prior to

that accounting period,

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the reference in paragraph (3) (b) to the basis period for the year of assessment immediately preceding the year of assessment to which the relevant period relates shall be construed as a reference to that previous period.

(5) Where during the relevant period the relevant person permanently ceases to carry on the business, then-- (a) if--

(i) at or about the time he so ceases any of what was the stock in trade of the business is sold or transferred for valuable consideration by that

person to another person and that other person

intends to use that transferred stock in the

business or in another business of his; and

(ii) the cost of that transferred stock to that other person is deductible as an expense in

computing that other person's adjusted income

for the basis period for a year of assessment

from the business or from that other business

of his,

the value of that transferred stock at the time he so ceases shall be taken to be an amount equal to the price paid on the sale or to the value of the consideration, as the case may be, and shall be taken to be the value of that

stock at the end of the relevant period;

(b) the value of any of what was at the time he so ceases the stock in trade of the business to which paragraph (a) does not apply shall be taken to be an amount equal to its market value at the time he so ceases and shall be taken to be the value thereof at the end of the relevant period;

(c) for the purposes of paragraph (a)--

(i) where any of the stock in trade is sold or

transferred for a consideration in cash or its

equivalent with other assets of the business,

the total consideration given for that

transferred stock in trade and those assets shall be apportioned in such manner as is just and

reasonable;

(ii) where any of the stock in trade is transferred (with or without other assets) for a consideration other than cash or its equivalent,

the value of the consideration shall be taken to

be an amount equal to the market value of the

consideration at the date of the transfer and, if that stock in trade is

transferred with other

assets, that amount shall be apportioned in

such manner as is just and reasonable; and

(iii) where any of the stock in trade is transferred (with or without other assets) for a consideration which partly does and partly

does not consist of cash or its equivalent, the

value of the consideration shall be taken to be

an amount equal to that cash or its equivalent together with the market value of the rest of the consideration and, if that stock in trade is transferred with other assets, that amount shall be apportioned in such manner as is just and reasonable; and

(d) where any stock in trade is sold or transferred to another person in a case to which paragraph (a)

applies, the cost to that other person of that stock in trade shall in computing the adjusted income of that person from the business (or from any other business of his in which he uses or intends to use any of that stock in trade) be taken to be an amount equal to its value as ascertained under that paragraph.

Power to direct special treatment in the computation of business income in certain cases

36. (1) Notwithstanding any other provision of this Part, where the Director General is satisfied that there is a need for some treatment in computing--

(a) the gross income from a business with respect to-- (i) a hire-purchase transaction;

(ii) a transaction under which a debt is payable by instalments;

(iii) a lease transaction in respect of moveable property;

(iv) any other transaction involving a debt or stock in trade; or

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(v) such other transaction as may be prescribed;

and

(b) the adjusted income and statutory income from the business,

he may give directions and formulate regulations to be published in the Gazette for special treatment with respect to any such transaction, either in relation to a particular business or in relation to any business having any such transaction:

Provided that no such directions and regulations shall have effect in relation to a business for any year of assessment with respect to which an assessment wholly or partly relating to income from that business has become final and conclusive or is the subject of an appeal which has been sent forward to the Special Commissioners.

(2) Any direction given under subsection (1) with respect to the gross income, adjusted income and statutory income from a business or businesses may--

(a) provide that the gross income to which it relates (or any part thereof) shall be taken to be gross income for such basis period or periods for such year or years of assessment with respect to that business or those businesses as may be specified in the direction;

(b) provide for special treatment with respect to the ascertainment of the adjusted income and statutory income from that business or those businesses for the basis period or periods for any year or years of assessment.

37. (Deleted by Act 624). Special provisions applicable to adjusted income from an employment

38. (1) Subject to this section-- (a) where an employee's gross income from an employment includes for the basis period for a year of assessment any amount ascertained in accordance

with subsection 32(1) in respect of any benefit or amenity consisting of furniture provided by or on 053e .FM Page 73 Thursday, April 6, 2006 12:07 PM 74 Laws of Malaysia ACT 53

behalf of his employer in conjunction with living accommodation, there may be deducted from that

gross income the amount of any rent payable by that employee for that period for that accommodation and furniture, less the amount of any deduction made in

respect of that rent under paragraph (b); and

(b) where an employee's gross income from an

employment includes for the basis period for a year of assessment any amount ascertained in accordance

with subsection 32(2) or (3) in respect of living accommodation provided by or on behalf of his

employer, there may be deducted from that gross

income expenses of the following kind:

(i) the amount of any public rates or insurance

premiums payable by the employee in respect

of that accommodation for that period;

(ii) any expenses incurred for the repair or

maintenance of the premises (excluding

expenses of a capital nature and expenses

incurred in connection with the upkeep of land

attached to the premises for use by way of

amenity as garden or grounds) which the

employee, pursuant to the terms on which that

accommodation is so provided, is legally

bound to meet in respect of that accommodation

during that period;

(iii) where the accommodation is provided

unfurnished, any rent payable by the employee

for that accommodation for that period;

(iv) where the accommodation is provided furnished and is held by or on behalf of the employer on lease at what would be an economic rent if so much of the rent as relates to the furniture were to be disregarded, so much of any rent payable by the employee for that period as bears to the whole of the rent so payable the same proportion as the economic rent of the accommodation bears to the rent payable by or on behalf of the employer for that period; and

(v) where the accommodation is provided furnished and subparagraph (iv) does not apply, so much of any rent payable by the employee for that period as bears to the whole rent so payable the same proportion as the defined value of the accommodation bears to the aggregate of the economic rent for that period and the rent for that period appropriate to the market value of the furniture provided in conjunction with that accommodation.

(2) Where living accommodation is provided for only part of a basis period, the expenses referred to in paragraph (1) (b) shall be restricted to such of those expenses as are payable for that part under that subsection or as are bound to be met during that part under that subsection, as the case may be.

(3) The total amount deducted under this section from an employee's gross income from an employment for the basis period for a year of assessment shall not exceed the total of the amounts included in that gross income--

(a) by virtue of subsection 32(1) in respect of any benefit or amenity consisting of furniture provided by or on behalf of an employer in conjunction with living

accommodation; and

(b) by virtue of subsection 32(2) or (3).

(4) Where an employee's gross income from an employment includes for the basis period for a year of assessment any amount ascertained in accordance with subsection 32(2) or (3) in respect of living accommodation provided by or on behalf of his employer, any expense to which subparagraph (1) (b) (ii) applies in relation to that basis period (or a part of that basis period) shall, if it is payable for a period which overlaps that basis period or that part, be apportioned in the manner provided by subsection (6); and for the purposes of this section regard shall be had only to so much of that expense as is so apportioned to that basis period or that part.

(5) Where any amount is included in gross income-- (a) by virtue of subsection 32(1) in respect of any benefit or amenity consisting of furniture provided by or on behalf of an employer in conjunction with living

accommodation; or

(b) by virtue of subsection 32(2) or (3),

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no deduction shall be made under section 33 in respect of any outgoings and expenses incurred or which might be included as incurred in the production of that part of the gross income consisting of that amount.

(6) In the application of subsection (4) in relation to a person's gross income from his employment where the expenses, to which subparagraph (1) (b) (ii) applies is payable for a period (in this subsection referred to as

the "overlapping period") which overlaps the basis period or part of the basis period, the amount of the expense to be deducted from that gross income shall be determined in accordance with the following formula: $A \div C$

B

where A is the number of days living accommodation is provided in the basis period or part of the basis period that falls in the overlapping period;

B is the total number of days in the overlapping period; and

C is the amount of expenses to which subparagraph (1) (b) (ii) applies.

Limitation on deduction of entertainment expenses 38A. Where an employee's gross income from an employment under subsection 13(1) includes for the basis period for a year of assessment any entertainment allowance, the amount of expenses deductible under subsection 33(1) in respect of entertainment by the employee, shall not exceed the amount of such entertainment allowance included in that gross income.

Deductions not allowed

39. (1) Subject to any express provision of this Act, in ascertaining the adjusted income of any person from any source for the basis period for a year of assessment no deduction from the gross income from that source for that period shall be allowed in respect of--

(a) domestic or private expenses;

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(b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income;

(c) any capital withdrawn or any sum employed or intended to be employed as capital;

(d) any amount in respect of any payment to any pension, provident, savings, widows and orphans or other

similar fund or society which is not an approved

scheme;

(e) any expenditure incurred in relation to a business, being expenditure which is--

(i) qualifying mining expenditure for the purposes of Schedule 2;

(ii) qualifying expenditure, qualifying agriculture expenditure or qualifying forest expenditure

for the purposes of Schedule 3; or

(iii) qualifying prospecting expenditure for the

purposes of Schedule 4,

and which but for this paragraph would be deductible in ascertaining the adjusted income from the business; (f) interest or royalty derived from Malaysia from which tax is deductible under section 109, if tax has not been deducted therefrom and paid to the Director General in accordance with subsection (1) of that section: Provided that this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section;

(g) any sum, by whatever name called, payable (otherwise than to a State Government or with the approval of the Minister, a statutory authority, or other body the capital or fund of which is wholly or substantially owned by a State Government or a statutory authority) for the use of a licence or permit to extract timber from a forest in Malaysia;

(h) (Deleted by Act 619);

(i) any contract payment from which tax is deductible under section 107A, if tax has not been deducted

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therefrom and paid to the Director General in

accordance with subsection (1) of that section:

Provided that this paragraph shall not apply if the payer has paid the amount

referred to in subsection (2) of that section;

(j) any payments from which tax is deductible under section 109B, if tax has not been deducted therefrom and paid to the Director General in accordance with subsection (1) of that section:

Provided that this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section;

(k) any sum paid by way of rentals in respect of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, in excess of fifty thousand

ringgit:

Provided that if the motor vehicle has not been used by any person for any purpose prior to the rental and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit, any sum paid by way of rental in excess of one hundred thousand

ringgit:

Provided further that the maximum amount of

deduction in respect of the rentals of such motor vehicle in the year of assessment and subsequent

years of assessment shall not in the aggregate exceed fifty thousand ringgit or one hundred thousand

ringgit, as the case may be, in respect of that motor vehicle;

(1) a sum equal to fifty percent of any expenses incurred in the provision of entertainment including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

Provided that this paragraph shall not apply to the following expenses:

(i) the provision of entertainment to his employees except where such provision is

incidental to the provision of entertainment for

others;

(ii) the provision of entertainment by a person who carries on a business which consists of or

includes the provision for payment of

entertainment to clients or customers of that

business and that entertainment is provided for

payment by the clients or customers in the

ordinary course of that business;

(iii) the provision of promotional gifts at trade fairs or trade or industrial exhibitions held outside

Malaysia for the promotion of exports from

Malaysia;

(iv) the provision of promotional samples of

products of the business of that person;

(v) the provision of entertainment for cultural or sporting events open to members of the public,

wholly to promote the business of that person;

(vi) the provision of promotional gifts within

Malaysia consisting of articles incorporating a

conspicuous advertisement or logo of the

business; or

(vii) the provision of entertainment which is related wholly to sales arising from the business of

that person; or

(m) notwithstanding subparagraph (1) (i), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia.

(2) It is hereby declared that section 33, except in so far as it relates to expenses of the kind specified in paragraphs (1) (a) to (d) thereof, is not an express provision of this Act within the meaning of this section.

Adjusted loss

40. Subject to this Act, where but for an insufficiency of gross income of a person from a business for the basis period for a year of assessment there would have been an amount of adjusted income of that person from the business for that period, the amount by which the total of all such deductions as would then have been allowed under the foregoing provisions of this Chapter in ascertaining that adjusted income exceeds his gross income from the business for that period shall be taken to be the amount of his adjusted loss from the business for that period. Ascertainment of adjusted income or adjusted loss from a business for an accounting period

amount by which the total of all such deductions as would then have been allowed under the foregoing provisions of this Chapter in ascertaining that adjusted income exceeds his gross income from the business for that period shall be taken to be the amount of his adjusted loss from the business for that period. Ascertainment of adjusted income or adjusted loss from a business for an accounting period

41. (1) Subject to this section, where for the purposes of this Act it is necessary to ascertain the adjusted income or adjusted loss of a person from a business for the basis period for a year of assessment (that basis period being in this section referred to as the relevant period) and accounts of the business have not been made up for the relevant period--

(a) that person's adjusted income or adjusted loss from the business shall be ascertained for any accounting period for which accounts of the business have been made up (being a period which either falls into or overlaps the relevant period) by applying Chapters 3 and 4, whenever and as often as may be necessary, as if that accounting period were the basis period for that year of assessment;

(b) such apportionment of the adjusted income or adjusted loss for any such accounting period, and such

aggregation of the adjusted income or adjusted loss for any such accounting period (or of any apportioned part thereof) with the adjusted income or

adjusted loss (or any apportioned part thereof) for any other such accounting period, shall be made as is necessary to arrive at the adjusted income or the adjusted loss for the relevant period; and

(c) the adjusted income or the adjusted loss so arrived at shall constitute the adjusted income or the adjusted loss, as the case may be, from the business for the relevant period.

(2) The apportionment referred to in paragraph (1) (b) shall be made in relation to any accounting period which overlaps the relevant period, the apportionment being made, unless the Director General having regard to the circumstances of any particular case otherwise directs, in the proportion that the 053e .FM Page 80 Thursday, April 6, 2006 12:07 PM Income Tax 81

number of days of the overlapping period that fall into the relevant period bears to the total number of days of the overlapping period.

(3) This section shall not apply if there is any part of the relevant period for which no accounts of the business have been made up.

Chapter 5--Statutory income

Statutory income

42. (1) Subject to this Act, the statutory income (if any) of a person from a source for a year of assessment (that year of assessment being in this section referred to as the relevant year) shall consist of--

(a) the amount of his adjusted income (if any) from that source for the basis period for the relevant year; and (b) the amount of--

(i) any balancing charge or the aggregate amount

of the balancing charges;

(ii) any agriculture charge or the aggregate amount of the agriculture charges; and

(iii) any forest charge or the aggregate amount of the forest charges,

falling to be made for the relevant year under Schedule 3 in relation to that source,

reduced by the amount of any allowance or the aggregate amount of the

allowances falling to be made for the relevant year under that Schedule in relation to that source.

(2) Where the basis period for the relevant year overlaps the basis period for the immediately preceding year of assessment, the amount of adjusted income for the basis period for the relevant year shall be taken to be reduced by a sum determined in accordance with the formula--

$A \div B$

??

C

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where A is the amount of the adjusted income for the basis period for the relevant year;

B is the length of the period of the overlap; and C is the length of the basis period for the relevant year. Chapter 6--Aggregate income and total income

Aggregate income

43. (1) Subject to this Act, the aggregate income of a person for a year of assessment (that person and year of assessment being in this section referred to as the relevant person and the relevant year respectively) shall consist of--

(a) the aggregate of his statutory income, if any, for the relevant year from each of his sources consisting of a business, reduced by any deduction falling to be made for the relevant year pursuant to subsection (2); (b) the aggregate of his statutory income, if any, for the relevant year from each of his other sources; and (c) any additions falling to be made for the relevant year pursuant to Schedule 4.

(2) Subject to subsections (3) and (5), there shall be deducted under paragraph (1) (a) pursuant to this subsection from the aggregate of the relevant person's statutory income from each of his sources consisting of a business for the relevant year the amount ascertained under subsection 44(4) or (5) for any particular year of assessment preceding the relevant year or, where that amount exceeds that aggregate, so much of that amount as is equal to that aggregate:

Provided that, where a deduction has been made or may be made pursuant to this

subsection from the aggregate of the relevant person's statutory income from each of his sources consisting of a business for a year of assessment following the particular year in question or for more than one year of assessment following that particular year and in either such case ending prior to the relevant year, then, for the purposes of the application of this subsection for the relevant year, there shall be substituted in place of the amount ascertained under subsection 053e .FM Page 82 Thursday, April 6, 2006 12:07 PM Income Tax 83

44(4) or (5) for that particular year so much, if any, of that amount as has not been deducted for the year of assessment following that particular year or, as the case may be, for those years of assessment following that particular year and ending prior to the relevant year.

(3) For the purposes of subsection (2), the reference to the amount ascertained under subsection 44(4) or (5) for a particular year shall, whenever necessary, be taken to be a reference to the aggregate of--

(a) that amount for the particular year; and

(b) so much of any such amount for a year of assessment preceding the particular year as has not been deducted pursuant to subsection (2) from the aggregate of the relevant person's statutory income from each of his sources consisting of a business for the particular year or for a year of assessment preceding the particular year.

(4) For the purposes of subsection (1), a person who for a year of assessment has no statutory income from a source of his or no aggregate statutory income of the kinds referred to in paragraphs (1) (a) and (b) shall be regarded as having for that year a statutory income of zero from that source or, as the case may be, an aggregate statutory income of the kind referred to in paragraph (1) (a) or the kind referred to in paragraph (1) (b), as the case may be, of zero.

(5) (a) Subject to paragraph (b) of this subsection any deduction to be made pursuant to subsection (2) shall be only in respect of the adjusted loss from any source in Malaysia, of the relevant person.

(b) Where the adjusted loss to be deducted pursuant to subsection (2) of this section comprises an amount of adjusted loss from any source of his in Malaysia and an amount of adjusted loss from any source of his outside Malaysia, the adjusted loss referred to in paragraph (a) shall be ascertained on the assumption that any deduction, made pursuant to subsection 44(2) for the year of assessment in the basis period for which such adjusted loss first

arose, or subsection (2) of this section for the year or years of assessment following the year of assessment in the basis period for which such adjusted loss first arose, was made in the same proportion as the amount of the adjusted loss from any source of his in Malaysia bears to the aggregate of the amount of the adjusted loss from any source of his in Malaysia and the amount of the adjusted loss from any source of his outside Malaysia.

(6) A reference in this section to the aggregate of the relevant person's statutory income from each of his sources consisting of a business or from each of his other sources shall where he has only one source consisting of a business or only one other source, be construed as a reference to his statutory income from that one source consisting of a business or from that one other source, as the case may be.

Total income

*44. (1) The total income of a person for a year of assessment (that person and year of assessment being in this section referred to as the relevant person and the relevant year respectively) shall consist of the amount of his aggregate income for the relevant year reduced--

(a) first, by any deduction falling to be made for the relevant year pursuant to subsection (2);

(b) next, by any deduction falling to be so made pursuant to Schedule 4 or 4B;

(c) next, by any deduction falling to be so made pursuant to subsection (6) or (6A);

(d) next, by any deduction falling to be so made pursuant to subsection (8), (9), (10), (11) or (11A); and

(e) thereafter, by any deduction falling to be so made pursuant to section 44A.

(2) Subject to subsections (3) and (5), there shall be deducted pursuant to this subsection from the aggregate income of the relevant person for the relevant year the amount of any adjusted loss from a source of his for the basis period for the relevant year or, where there is an adjusted loss from each of two or more sources of his for the appropriate basis period for each source for the relevant year, the aggregate of the adjusted loss from each of those sources for its appropriate basis period for the relevant year.

*NOTE--See section 10 of Act 644 for explanation. 053e .FM Page 84 Thursday, April 6, 2006 12:07 PM Income Tax 85

(3) For the purposes of subsection (2), where in relation to a source the basis period for the relevant year overlaps the basis period for the immediately preceding year of assessment, the amount of the adjusted loss from that source for the basis period for the relevant year shall be taken to be reduced by a sum which bears the same proportion to that amount as the length of the period of the overlap bears to the length of the basis period for the relevant year and the amount of that loss as so reduced shall be taken to be the amount of the adjusted loss from that source for the basis period for the relevant year.

(4) Where the relevant person has no aggregate income for the relevant year, there shall be ascertained for the purposes of section 43 the amount of any adjusted loss from a source of his for the basis period for the relevant year or the aggregate of any adjusted loss from each of his sources for its appropriate basis period for the relevant year, as the case may be, which would have fallen to have been deducted pursuant to subsection (2) but for the absence of aggregate income.

(5) Where the amount referred to in subsection (4) exceeds the relevant person's aggregate income for the relevant year, so much of that amount as is equal to that aggregate income shall be deducted pursuant to subsection (2) and there shall be ascertained for the purposes of section 43 the amount of that excess. (5A) The amount ascertained under subsection (4) or (5) for any relevant year in respect of a company shall be disregarded for the purposes of section 43 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for that relevant year in which such amount is ascertained were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which such amount would otherwise be deductible under that section and such amount disregarded shall not be allowed as a deduction in subsequent years of assessment.

(5B) For the purpose of subsection (5A)--

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates--

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company

is held by or on behalf of the same persons;

and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary

share in the company is held by or on behalf of

the same persons; and

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the

shareholders of the last mentioned company.

(5C) In subsection (5B), "ordinary share" means any share other than a share which carries only a right to any dividend which is of--

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or

(b) a fixed rate per cent of the profits of the company. (5D) Where there is a substantial change in the shareholders of a company referred to in subsection (5A), the Minister may under special circumstances exempt that company from the provisions of that subsection.

(6) Subject to subsection (12), there shall be deducted pursuant to this subsection from the aggregate income of a person for the relevant year reduced by any deduction falling to be made for that year in accordance with subsection (1) an amount equal to any gift of money made by him in the basis year for that year to the Government, a State Government, a local authority or an institution or organization approved for the purposes of this section by the Director General on the application of the institution or organization concerned:

Provided that the amount to be deducted from the aggregate income of a company for the relevant year in respect of any gift of money made by that company to any institution or organization approved for the purposes of this section by the Director General shall not exceed five per cent of the aggregate income of the company in the relevant year.

(6A) Subject to subsection (12), there shall be deducted pursuant to this

subsection from the aggregate income of a person for the relevant year reduced by any deduction falling to be made for that year in accordance with subsection (1) an amount equal to 053e .FM Page 86 Thursday, April 6, 2006 12:07 PM Income Tax 87

the value, as determined by the Department of Museum and Antiquities or the National Archives of any gift of artefact, manuscript or painting made by him in the basis year for that year to the Government or State Government.

(7) In subsection (6)--

"institution" means an institution in Malaysia which is not operated or conducted primarily for profit and which is-- (a) a hospital;

(b) a public or benevolent institution;

(c) a university or other educational institution; (d) a public authority or society engaged solely in research or other work connected with the causes, prevention or cure of disease in human beings;

(e) a Government-assisted institution engaged in socio-economic research; or

(f) a technical or vocational training institution; "organization" means an organization in Malaysia which is not operated or conducted primarily for profit and which is-- (a) an organization established and maintained

exclusively to administer and augment a public or private fund established or held for the sole purpose of the establishment, enlargement or improvement of an institution or solely for the provision of a scholarship, exhibition or prize for an individual for educational work, research work or other similar work in an

institution or in what would be an institution if it were in Malaysia;

(b) an organization established and maintained

exclusively to administer and augment a public fund established or held solely for the relief of distress among members of the public;

(c) an organization established and maintained

exclusively to administer and augment a fund

established and held solely for the construction, improvement or maintenance

of a building in

Malaysia which--

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(i) is intended to be used (and, when constructed, is used) exclusively for the purposes of

religious worship or the advancement of

religion; and

(ii) is intended to be open (and, when constructed, is open) to any member of the public for those

purposes;

(d) an organization which maintains or assists in maintaining a zoo, museum, art gallery or similar undertaking or is engaged in or in connection with the promotion of culture or the arts;

(e) an organization engaged in or in connection with the conservation or protection of animals;

(f) a Government-assisted organization engaged solely in addressing problems relating to industrial and

commercial development and promoting and

enhancing the relationship between the public sector and the private sector;

(g) a Government-assisted organization established and maintained exclusively to administer and augment a fund established or held solely for promoting national unity;

(h) an organization established exclusively for the conservation or protection of the environment;

(i) an international organization as defined under the International Organization (Privileges and

Immunities) Act 1992 [Act 485] carrying out such

charitable activities as determined by the Minister; (j) an organization

established and maintained

exclusively to administer or augment a fund

established or held for the purpose of carrying out projects towards the acculturation of the community in information and communication technology, approved by the Minister; or

(k) a benevolent fund or trust account established or held for the sole purpose of providing relief or aid to an individual who has no, or insufficient means, or in the case of a dependent individual whose parents or

guardian has no, or insufficient means, to pay for the 053e .FM Page 88
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cost of the medical treatment required by such

individual to treat a serious disease as defined in subsection 46(2).

(7A) An institution or organization referred to in subsection (7)--

(a) may apply not more than twenty-five per cent of its accumulated funds as at the beginning of the basis period for the year of assessment for the carrying on of, or participation in, a business:

Provided that the profits or income derived

therefrom shall be used solely for charitable purposes or for the primary purpose for which the institution or organization was established; or

(b) may carry out charitable activities outside Malaysia with the prior consent of the Minister.

(7B) The reference to the carrying on of, or participation in, a business in paragraph (7A) (a) shall not include the carrying on of a business by an institution or organization where-- (a) the business is carried on in the course of the actual carrying out of the primary purpose of the institution or organization; or

(b) the work in connection with the business is mainly carried on by persons for whose benefit the institution or organization was established.

(8) Subject to subsection (12), there shall be deducted pursuant to this subsection from the aggregate income of a person to whom paragraph 34(6) (g)

does not apply, for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to any gift of money made by him in the basis year for that year, for the provision of library facilities which are accessible to the public, to public libraries and libraries of schools and institutions of higher education, not exceeding twenty thousand ringgit.

(9) There shall be deducted pursuant to this subsection from the aggregate income of a relevant person who is an individual for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to any gift of money or contribution in kind (the value to be determined by the relevant local authority) made by him in the basis year for that year for the provision of facilities in public places for the benefit of disabled persons.

(10) There shall be deducted pursuant to this subsection from the aggregate income of a relevant person who is an individual for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to any gift of money or the cost or value (as certified by the Ministry of Health) of any gift of medical equipment made by him in the basis year for that year to any healthcare facility approved by that Ministry, and that amount shall not exceed twenty thousand ringgit.

(11) Subject to subsection (12), there shall be deducted pursuant to this subsection from the aggregate income of a relevant person for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to the value of any gift of painting (to be determined by the National Art Gallery or any state art gallery) made by him in the basis year for that year to the National Art Gallery or any state art gallery.

(11A) There shall be deducted pursuant to this subsection from the aggregate income of a company for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to the payment of zakat perniagaan which is paid in the basis period for that relevant year to an appropriate religious authority established under any written law or any person authorized by such religious authority:

Provided that--

(a) the amount to be deducted pursuant to this subsection shall not exceed one-fortieth of the aggregate income of the company in the relevant year; and

(b) the company is not an offshore company.

(12) In subsections (6), (6A), (8) and (11), references to basis year in

relation to a company, trust body or co-operative society shall be construed as references to the basis period for the year of assessment of that company, trust body or co-operative society. 053e .FM Page 90 Thursday, April 6, 2006 12:07 PM Income Tax 91

Group relief for companies

44A. (1) Subject to this section, a company (referred to in this section as a "surrendering company") may surrender not more than fifty per cent of its adjusted loss in the basis period of a year of assessment to one or more related companies (referred to in this section as a "claimant company"):

Provided that the surrendering company and the claimant company shall be resident in the basis year for that year of assessment and incorporated in Malaysia.

(2) Subsection (1) shall apply if for any year of assessment-- (a) the surrendering company and the claimant

company--

(i) are related companies throughout the basis

period for that year of assessment and the

twelve months period immediately preceding

that basis period;

(ii) have paid-up capital in respect of ordinary

share of more than two million five hundred

thousand ringgit at the beginning of the basis

period for that year of assessment;

(iii) have twelve months basis period ending on the same day;

(iv) make an irrevocable election to surrender or claim an amount of adjusted loss in the return

furnished for that year of assessment under

section 77A; and

(v) are subject to tax at the appropriate rate as specified in paragraph 2 of Part I of Schedule

1; and

(b) the claimant company has a defined aggregate income for that year of assessment.

(3) For the purpose of this section, a surrendering company and claimant company are related companies if at least-- (a) seventy per cent of the paid-up capital in respect of ordinary shares of the surrendering company is

directly or indirectly (through the medium of other companies resident and incorporated in Malaysia)

owned by the claimant company;

(b) seventy per cent of the paid-up capital in respect of ordinary shares of the claimant company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the surrendering company; or

(c) seventy per cent of the paid-up capital in respect of ordinary shares of the surrendering company and

claimant company are directly or indirectly owned by another company resident and incorporated in

Malaysia.

(4) Subject to subsection (5), any amount of adjusted loss surrendered under this section for any year of assessment-- (a) shall be the amount or aggregate amount of the adjusted loss or the excess of that amount of the surrendering company for that year of assessment as ascertained under subsection 44(4) or (5);

(b) shall be allowed to a claimant company as a deduction in ascertaining the total income of the claimant

company in accordance with subsection 44(1); and

company in accordance with subsection 44(1); and

(c) shall not exceed the defined aggregate income of the claimant company for that year of assessment.

(5) Where the amount of adjusted loss is--

(a) surrendered to more than one claimant company, the adjusted loss shall be fully deducted in accordance with subsection (4) to the first claimant company before any excess of the adjusted loss is surrendered and deducted in accordance with that subsection to the second claimant company and so on; or

(b) claimed by a claimant company from more than one surrendering company, the adjusted loss surrendered from the first surrendering company shall be deducted in accordance with subsection (4) to that claimant company before the adjusted loss is surrendered from the second surrendering company be deducted in

accordance with that subsection to that claimant

company and so on.

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(6) For the purpose of subsection (5), the surrendering company and the claimant company shall ascertain the order of priority in respect of the adjusted loss surrendered or claimed but if that loss cannot be effected in accordance with the order of priority specified by any surrendering company or claimant company the amount of adjusted loss surrendered or claimed shall be dealt with in such manner as the Director General thinks reasonable and proper.

(7) Notwithstanding that a company to which subsection (3) applies, owns at least seventy per cent of the paid-up capital in the other company, it shall not be treated to have satisfied that subsection unless additionally in the year of assessment the first mentioned company is beneficially entitled to at least seventy per cent of--

(a) any residual profits of the other company, available for distribution to that other company's equity

holders; and

(b) any residual assets of the other company, available for distribution to that other company's equity holders on a winding up.

(8) Notwithstanding any other provision of this section, where--

(a) a claimant company has made an election under subsection (2), that company shall not in that year elect to surrender its adjusted loss to any other claimant company; or

(b) a surrendering company has made an election under subsection (2), that company shall not in that year elect to claim any adjusted loss from any other surrendering company.

(9) Where--

(a) in the basis year for a year of assessment the Director General discovers that the adjusted loss as mentioned in subsection (4) ought not to have been deducted in arriving at the total income of the claimant company, the Director General may in that year or within six years after its expiration make an assessment or

additional assessment in respect of that company in order to make good any loss of tax; or

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(b) the surrendering company gives an incorrect information in the return furnished under section 77A in respect of the amount of adjusted loss surrendered, the Director General may require the surrendering company to pay a penalty equal to the amount of tax which had or would have been undercharged by the

claimant company in consequence of the incorrect

information.

(10) The provisions of this section shall not apply to a company for a basis period for a year of assessment where the period during which that company--

(a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of

Investments Act 1986;

(b) is exempt from tax on its income under section 54A, paragraph 127(3)(b) or subsection 127(3A);

(c) has made a claim for a reinvestment allowance under Schedule 7A;

(d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2001;

(e) has made a claim for deduction under the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002;

(f) has been granted a deduction under the Income Tax (Deduction for Cost of

Owned Company) Rules 2003; or

(g) has made a claim for deduction under any rules made under section 154 and those rules provide that this section shall not apply to that company.

(11) For the avoidance of doubt--

(a) the amount of adjusted loss surrendered under this section shall be disregarded for the purpose of

ascertaining the aggregate income of the surrendering company under section 43; and

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(b) the provisions of this Act shall apply to any adjusted loss of the surrendering company which is not

surrendered under this section.

(12) In this section--

"commercial loan" means any borrowing which entitles the creditor to any return which is of only--

(a) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(b) of a fixed rate per cent of the profits of the company; "defined aggregate income", in relation to a year of assessment, means the aggregate income of a claimant company for that year reduced by a deduction made pursuant to

paragraphs 44(1) (a), (b), (c) and (d);

"equity holder" means any holder of ordinary share in the claimant or surrendering company or any creditor of that company in respect of any non-commercial loan;

"non-commercial loan" means any borrowing other than a commercial loan;

"ordinary share" means any share other than a share which carries only a right to any dividend which is of-- (a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or

(b) a fixed rate per cent of the profits of the company; "residual assets" means net assets of the claimant or surrendering company after distribution made to-- (a) creditors of that company in respect of commercial loans; and

(b) holders of shares other than ordinary share,

and where that company has no residual asset, a notional amount of one hundred ringgit is deemed to be the residual assets of the company;

"residual profits" means profits of the claimant or surrendering company after deducting any dividend which is of-- (a) a fixed amount or at a fixed rate per cent of the nominal value of the shares of that company; or

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(b) a fixed rate per cent of the profits of that company, but before deducting any return due to any non-commercial loan creditor which is not of--

(i) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(ii) a fixed rate per cent of the profits of that company, and where that company has no residual profit, a notional amount of one hundred ringgit is deemed to be the residual profits of that company.

Chapter 7--Chargeable income

Chargeable income and aggregation of husband's and wife's income

45. (1) Subject to this section, the chargeable income of a person for a year of assessment shall be his total income for that year less any deductions allowed by this Chapter for that year. (2) Subject to this section, where an individual and his wife were living together in the basis year for a year of

assessment and did not in that basis year cease to live together or to be husband and wife of each other--

(a) the wife may elect in writing (wife who elects) that her total income shall be aggregated with the total income of her husband and assessed in his name for that year of assessment; or

(b) the husband may elect in writing (husband who elects) that his total income shall be aggregated with the total income of his wife and assessed in her name for that year of assessment:

Provided that where the wife who elects or the husband who elects is not resident for the basis year for a year of assessment, such wife or husband, as the case may be, may elect under this subsection only if she or he is a citizen.

(3) For the purposes of paragraph (2) (b)--

(a) for any year of assessment, that paragraph shall only apply if there is no election made by a wife or wives 053e .FM Page 96 Thursday, April 6, 2006 12:07 PM Income Tax 97

under paragraph (2) (a) for that year of assessment; and

(b) the election shall only be made with one wife. (4) Where under subsection (2) the total income of the wife who elects falls to be aggregated with that of her husband or the total income of the husband who elects falls to be aggregated with that of his wife, for a year of assessment, the wife who elects or the husband who elects, as the case may be, shall be treated as having no chargeable income for that year.

(5) The election referred to in subsection (2) shall be made before the first day of April in the following year of assessment or any subsequent date (as may be permitted by the Director General).

Deduction for husband

45A. Where--

(a) the husband has no source of income;

(b) the husband has no total income which can be

aggregated with that of his wife; or

(c) an election has been made by the husband under paragraph 45(2)(b),

there shall be allowed to the wife, for a year of assessment, in addition to the allowances or deduction (if any) to that wife under sections 46, 48 and 49, a deduction of three thousand ringgit for the husband and a further three thousand five hundred ringgit if he is a disabled person:

Provided that this section shall only apply to one wife. Deduction for individual and Hindu joint family

46. (1) In the case of an individual or a Hindu joint family resident for the basis year for a year of assessment, there shall be allowed for that year of assessment personal deductions of-- (a) eight thousand ringgit for that individual in respect of himself and his dependent relatives (if any), or for that Hindu joint family;

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(b) (Deleted by Act 600);

(c) an amount limited to a maximum of five thousand ringgit in respect of medical expenses expended in that basis year by that individual for his parents: Provided that the claim is evidenced by a receipt by a medical practitioner certifying that treatment was provided to the parents;

(d) an amount limited to a maximum of five thousand ringgit expended or deemed expended under

subsection (3) in that basis year by that individual for the purchase of any necessary basic supporting

equipment for his own use, if he is a disabled person or for the use of his wife, child or parent, who is a disabled person, or in the case of a wife, for her own use, if she is a disabled person, or for the use of her husband, child or parent, who is a disabled person; (e) a further six thousand ringgit for that individual if he is a disabled person;

(f) an amount limited to a maximum of five thousand ringgit on fees expended in that basis year by that individual on himself for any course of study up to tertiary level in any institution or professional body in Malaysia recognized by the Government or approved by the Minister, as the case may be, undertaken for the purpose of acquiring law, accounting, technical,

vocational, industrial, scientific or technological skills or qualifications;

(g) an amount limited to a maximum of five thousand ringgit in respect of medical expenses expended or deemed expended under subsection (3) in that basis year by that individual on himself if he is suffering from a serious disease or on his wife or child who is suffering from a serious disease, or in the case of a wife, on herself if she is suffering from a serious disease or on her husband or child who is suffering from a serious disease:

Provided that the claim is evidenced by a receipt and certification issued by a medical practitioner that treatment was provided to the individual, spouse or child for that disease;

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(h) an amount limited to a maximum of five hundred ringgit in respect of complete medical examination expenses expended or deemed expended under subsection (3) in that basis year by that individual on himself or on his wife or on his child, or in the case of a wife, on herself or on her husband or on her child, as evidenced by receipts issued by a hospital or a medical practitioner:

Provided that the deduction under this paragraph

shall be part of the amount limited to a maximum of five thousand ringgit in paragraph (g); and

(i) an amount limited to a maximum of seven hundred ringgit in respect of expenses expended or deemed expended under subsection (3) in that basis year by that individual for the purchase of books, journals, magazines 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, as evidenced by receipts issued in respect of the purchase.

(2) In this section--

"child" shall be construed as referring to a child as defined in subsection 48(9);

"serious disease" includes acquired immunity deficiency syndrome, Parkinson's disease, cancer, renal failure, leukaemia and other similar diseases.

(3) For the purposes of paragraphs (1) (d), (g), (h) and (i), any amount

expended by the wife or the husband in the year of assessment--

(a) where subsection 45(2) applies, shall be deemed to have been expended by the husband of the wife who elects or by the wife of the husband who elects, as the case may be; or

(b) where the wife or the husband has no total income, shall be deemed to have been expended by the

husband of that wife who has no total income or the wife of that husband who has no total income, as the case may be:

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Provided that where paragraph 45(2) (b) applies or the husband has no total income, any amount expended by the husband shall be deemed to have been expended by the wife who has been allowed a deduction under section 45A.

Deduction for individual on interest expended

46A. (1) Subject to this section, in the case of an individual who is a resident for the basis year for the relevant year, there shall be allowed for that relevant year personal deduction in respect of interest expended in that basis year by the individual to finance the purchase of a residential property:

Provided that--

(a) the residential property is the first residential property purchased by the individual to be occupied as his place of residence;

(b) the residential property had been purchased from a housing developer or statutory body or co-operative society;

(c) the purchase price of the residential property is not less than RM100,000.00 and not more than

RM180,000.00; and

(d) the Sale and Purchase Agreement for the purchase has been executed on or after 1 June 2003 but not later than 31 May 2004.

(2) The amount of deduction to be made under subsection (1) shall be a maximum of--

(a) RM5,000 for the year of assessment 2003;

(b) RM3,000 for the year of assessment 2004;

(c) RM2,000 for the year of assessment 2005.

(3) Where--

(a) two or more individuals are each entitled to claim deduction for the relevant year under this section for interest expended in respect of the same residential property; and

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(b) the total amount of interest expended by those individuals in the basis year for that relevant year exceed the amount of deduction allowable for that relevant year under subsection (2),

there shall be allowed to each of those individuals for that relevant year an amount to be determined in accordance with the following formula:

$A \times B$

--

C

where A is the total amount of deduction allowed under subsection (2) for that relevant year;

B is the total interest expended in the basis year for that relevant year by that individual; and

C is the total interest expended in the basis year for that relevant year by all such individuals.

(4) For the purposes of subsection (1), any amount expended by the wife or the husband in the relevant year, where-- (a) subsection 45(2) applies, shall be deemed to have been expended by the husband of the wife who elects or by the wife of the husband who elects, as the case may be; or

(b) the wife or the husband has no total income, shall be deemed to have been expended by the husband of that wife or the wife of that husband, as the case may be: Provided that where paragraph 45(2) (b) applies or the husband has no

total income, any amount expended by the husband shall be deemed to have been expended by the wife who has been allowed a deduction under section 45A.

(5) For the purposes of this section--

"co-operative society" means a co-operative society registered or deemed to be registered under the Co-operative Societies Act 1993 [Act 502];

"first residential property" includes a second residential property purchased by the individual following the disposal of a low cost property by him;

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"housing developer" means a housing developer licensed under the Housing Development (Control and Licensing) Act 1966 [Act 118];

"low cost property" means the only residential property owned by the individual and that property had been held by the individual for not less than five years and purchased by him for not more than RM42,000.00;

"relevant year" means the year of assessment 2003, 2004 or 2005;

"residential property" means a completed house, condominium unit, apartment or flat which had been built as a dwelling house; "statutory body" means a body incorporated by a State or Federal law.

Deduction for wife or former wife

47. (1) In the case of an individual resident for the basis year for a year of assessment who in that basis year had a wife living together with him, there shall, subject to subsections (3) and (4), be allowed for that year of assessment a deduction of-- (a) three thousand ringgit for the wife; and

(b) a further three thousand five hundred ringgit for the wife if she is a disabled person.

(2) In the case of an individual resident for the basis year for a year of assessment who in that basis year--

(a) made payments to a wife of his by way or in the nature of alimony pendente lite;

(b) made payments by way of alimony or maintenance (in pursuance of an order of a court or otherwise) to a former wife whose marriage with him was dissolved or annulled (by a court or otherwise) in accordance with any law or

customs applicable to him; or

(c) made payments in pursuance of an order of a court, a deed or a written agreement to a wife from whom he was separated by an order of a court, a deed of

separation or a written agreement for separation, 053e .FM Page 102 Thursday, April 6, 2006 12:07 PM Income Tax 103

then, subject to subsection (3), there shall be allowed for that year of assessment a deduction of the aggregate amount of those payments.

(3) The total of the deductions allowed for a year of assessment to an individual under paragraph (1) (a) and subsection (2) shall not exceed three thousand ringgit. (4) Where an individual's wife is assessed separately in her name for any year of assessment on her income no allowance or deduction shall be made to him in respect of that wife under subsection (1).

(5) Notwithstanding subsection 45(2) but subject to subsection (4), where an individual's wife has no total income which can be aggregated with that of her husband for a year of assessment, an allowance or deduction shall be made to him in respect of that wife under subsection (1).

Deduction for children

48. (1) Subject to this section, where an individual who is resident for the basis year for a year of assessment-- (a) pays (wholly or in part) in that basis year for the maintenance at any time in that basis year of an

unmarried child who at any time in that basis year is under the age of eighteen years;

(b) pays (wholly or in part) in that basis year-- (i) for the maintenance at any time in that basis year of an unmarried child who at any time in

that basis year is receiving full-time

instruction at any university, college, school or other similar educational establishment; or

(ii) for that instruction;

(c) pays (wholly or in part) in that basis year for the maintenance at any time in that basis year of an

unmarried child (in subparagraphs (i) to (ii) referred to as the child) who at any time in that basis year is serving under articles or indentures with a view to qualifying in a trade or profession or--

(i) pays (wholly or in part) in that basis year for any part-time education which is received by

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the child at any time in that basis year and

relates to that trade or profession;

(ii) pays (wholly or in part) in that basis year on behalf of the child any premium payable under

or in connection with those articles or

indentures; or

(iii) makes in that basis year on behalf of the child any other payment payable under or in

connection with those articles or indentures; or

(d) pays (wholly or in part) in that basis year for the maintenance at any time in that basis year of an

unmarried child if it is proved to the satisfaction of the Director General that the child is physically or

mentally disabled,

there shall be allowed for that year of assessment in respect of that child the appropriate deduction, if any, specified in subsection (2): Provided that where a wife living together with her husband is assessed separately for any year of assessment on her income, she may elect in writing that the appropriate deduction be wholly allowed to her for that year of assessment.

(2) The appropriate deduction referred to in subsection (1) is--

(a) in respect of children falling under paragraphs (1) (a) to (c), one thousand ringgit for each child;

(b) in respect of children falling under paragraph (1) (d), five thousand ringgit for each child.

(3) (a) Where for a year of assessment any individual is entitled under paragraph (1) (b), (c) or (d) to a deduction specified under paragraph (2) (a) or (b), as the case may be, in respect of a child over the age of eighteen years and the child is receiving full-time instruction at a university, college or other establishment (similar to a university or college) of higher education, or is serving under articles or indentures with a view to qualifying in a trade or profession, then there shall be allowed-- (i) in the case where that individual is entitled under paragraph (1) (b) or (c) to a deduction, in substitution for deduction specified under paragraph (2) (a), a deduction of four times of the amount of deduction specified under that paragraph (2) (a); or

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(ii) in the case where that individual is entitled under paragraph (1) (d) to a deduction, in addition to a deduction specified under paragraph (2) (b), a further deduction of four thousand ringgit:

Provided that in the case of a child who is receiving full-time instruction outside Malaysia, it shall be in respect of an award of degree (including a degree at Master or Doctorate level) or the equivalent of a degree.

(b) For the purpose of paragraph (a), the instruction and educational establishment referred to in that paragraph shall be approved by the relevant government authority.

(4) Where two or more individuals are each entitled to claim a deduction for a year of assessment under this section for a payment made in respect of the same child, there shall be allowed to each of those individuals, in place of the whole deduction which would otherwise be allowed under this section, a reduced deduction of fifty per cent of that whole deduction. (5) A deduction shall not be allowed to an individual under this section for a year of assessment in respect of any child whose total income, wherever derived or accruing, for that year exceeds the amount of the deduction that would otherwise be allowed under this section to that individual in respect of that child. (6) (Deleted by Act 644).

(7) (Deleted by Act 531).

(8) (Deleted by Act A226).

(9) In this section "child", in relation to an individual or his wife, means a

legitimate child or step-child of his or his wife, or a child proved to the satisfaction of the Director General to have been adopted by the individual or his wife in accordance with any law.

Deduction for insurance premiums

49. (1) Subject to this section, in the case of an individual resident for the basis year for a year of assessment who in that basis year has--

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(a) paid any premium for any insurance or deferred annuity other than an insurance policy to which

subsection (1C) applies;

(b) as an employee or as a self-employed person within the meaning of the Employees Provident Fund Act

1991 [Act 452] made or suffered the making of a

contribution to an approved scheme or the Employees Provident Fund as the case may be; or

(c) made or suffered the making of any contribution under any written law relating to widows' and orphans'

pensions or under any approved scheme within the

meaning of any such law,

there shall be allowed for that year of assessment a deduction of the aggregate amount of the payments or contributions or both or a deduction of six thousand ringgit whichever is the less. (1A) For the purposes of subsection (1), where subsection 50(2) or 50(3) applies, the total deduction under that subsection shall not exceed six thousand ringgit.

(1B) (a) Subject to this section, in the case of an individual resident for the basis year for a year of assessment who has paid any premium for insurance on education or for medical benefits, there shall be allowed for that year of assessment in addition to the deduction allowed under subsection (1), a deduction of the aggregate amount of the payments or a deduction of three thousand ringgit, whichever is the less;

(b) for the purposes of paragraph (a), where subsection 50(2) applies, the total deduction under the paragraph shall not exceed three thousand ringgit.

(1C) In the case of an individual resident for the basis year for a year of assessment who in that basis year has utilized any amount standing to his credit in the Employees Provident Fund to purchase an insurance policy determined by the Employees Provident Fund Board, there shall be allowed for that year of assessment a deduction of one thousand ringgit and where subsection 50(2) applies, the total deduction under this subsection shall not exceed one thousand ringgit.

(2) For the purposes of subsection (1), no regard shall be had to any contribution to an approved scheme unless the contribution was obligatory by reason of--

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(a) any contract of employment of the individual claiming a deduction in respect of the contribution; or

(b) any provision in the rules, regulations, by-laws or constitution of the scheme,

and, where the contribution was partly obligatory by reason of such a contract or provision and partly not so obligatory, regard shall be had only to the part which was so obligatory. (3) In relation to an individual claiming a deduction under subsection (1), "insurance" and "deferred annuity", mean an insurance or deferred annuity contracted for by the individual-- (a) on the individual's life;

(b) on the life of a wife of the individual or, where the individual is a female, on the life of the individual's husband; or

(c) on the joint lives of the individual and a wife or wives of his or on the joint lives of two or more wives of his or, where the individual is a female, on the joint lives of--

(i) the individual and her husband;

(ii) the individual, her husband and any other wife or wives of his;

(iii) the individual and any other wife or wives of her husband; or

(iv) her husband and any other wife or wives of his, being an insurance or deferred annuity contracted for with an insurance company for securing on

death either a capital sum or a deferred annuity or both (whether in conjunction with any other benefit or not) or an insurance or deferred annuity contracted for with a government, a public body or the controlling authority of any nationalized insurance business.

(4) For the purposes of subsection (1B) reference to an insurance means an insurance contracted for by an individual for himself, his wife or child, or in the case of a wife, for herself, her husband or child.

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Application of section 49 where husband and wife are living together

50. (1) Where an individual who is resident for the basis year for a year of assessment has a wife living together with him at any time in that basis year, and they did not in that basis year-- (a) cease to live together; or

(b) cease to be husband and wife of each other,

the application of section 49 to that individual shall be subject to this section.

(2) Any premium for any insurance or deferred annuity within the meaning of subsection 49(3), or for any insurance on education or medical benefits within the meaning of subsection 49(4), or for any insurance policy determined by the Employees Provident Fund Board referred to in subsection 49(1C), which has been paid by the wife or the husband in the year of assessment--

(a) where subsection 45(2) applies, shall be deemed to have been paid by the husband of the wife who elects or by the wife of the husband who elects, as the case may be; or

(b) where the wife or the husband has no total income, shall be deemed to have been paid by the husband of that wife who has no total income or the wife of that husband who has no total income, as the case may be: Provided that where paragraph 45(2)(b) applies, or the husband has no total income, any amount paid by the husband shall be deemed to have been paid by the wife who has been allowed a deduction under section 45A.

(3) Where subsection 45(2) applies for the year of assessment, and in that year the wife who elects or the husband who elects has made or suffered the making of a contribution as an employee to an approved scheme or as a self-employed person within the meaning of the Employees Provident Fund Act 1991 to the Employees Provident Fund--

(a) the contribution shall be deemed to have been made by the husband or the wife in whose name the assessment was made, as the case may be, in that year; and

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(b) the reference to a contract of employment in

paragraph 49(2)(a) shall be deemed to include a

reference to a contract of employment of the wife who elects or the husband who elects, as the case may be. Deduction must be claimed

51. Notwithstanding sections 47 to 50, no deduction shall be allowed under those sections in ascertaining the chargeable income of an individual for a year of assessment unless a claim has been made for that year for the deduction or for a deduction of a larger or smaller amount in respect of the same subject matter.

Chapter 8--Special cases

Modification of Part III in certain special cases

52. In a case where any provision of this Chapter applies, the foregoing Chapters shall also apply but shall be modified in their application to the extent necessary to conform with that provision; and, if in that case there is any inconsistency between that provision and any provision of the foregoing Chapters, that provision of those Chapters shall be void to the extent of the inconsistency.

Trade associations

53. (1) Where a trade association is resident for the basis year for a year of assessment--

(a) the total of the sums (other than sums forming part of any gross income of the association from any source other than the source created by this subsection) receivable on revenue account by the association for that basis year (including entrance fees and

subscriptions) shall be deemed to be gross income for that basis year from a business of the association deemed to be carried on by the association; and

(b) that basis year shall be deemed to be the basis period for that year of

assessment for that business.

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(2) For the purposes of subsection (1)--

(a) the gross income, adjusted income or adjusted loss and statutory income of a trade association relating to its transactions with its members shall be ascertained on the same principles as those on which its gross

income, adjusted income or adjusted loss and statutory income relating to its transactions with non-members, if any, would be ascertained; and

(b) any outgoings or expenses connected with the sums receivable on revenue account referred to in

subsection (1) shall be deemed to have been incurred in the production of its gross income relating to its transactions with its members if they would have been so incurred if the sums deemed by that subsection to be gross income had in fact been gross income of the association.

(3) In this section "trade association" means any association of persons, of partnerships or of persons and partnerships formed with the main object of safeguarding or promoting the businesses of its members; and, notwithstanding any other provision of this Act, a trade association shall for the purposes of this section be deemed to be a body of persons and not a partnership. Sea and air transport undertakings

54. (1) Where the business of a person consists partly of transporting passengers or cargo by sea or air and partly of other activities--

(a) the transport activities of that kind shall be deemed to constitute one business and source of that person and the other activities shall be deemed to constitute a separate and distinct business and source of that person; and

(b) the gross income and adjusted income or adjusted loss for the basis period for a year of assessment from the business consisting of those other activities, and the statutory income for that year of assessment from the business so consisting shall be ascertained in

accordance with the provisions of the foregoing

Chapters without modification by this section.

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(2) (a) Subject to section 54A, where that person is resident for the basis year for a year of assessment, his gross income and adjusted income or adjusted loss for the basis period for that year of assessment from the business of transporting passengers or cargo by sea or air his statutory income for that year of assessment from that business shall be ascertained by reference to his income therefrom wherever accruing or derived; (b) Where that person is not resident for the basis year for a year of assessment, his gross income derived from Malaysia from the business of transporting passengers or cargo by sea or air for the basis period for that year of assessment and his statutory income from that business for that year of assessment shall be ascertained in accordance with the following subsections (that business, person, basis period and year of assessment being referred to in those subsections as the business, the operator, the relevant period and the relevant year respectively). (3) Subject to subsection (4), the statutory income of the operator from the business for the relevant year shall be deemed to be five per cent of the gross income derived from Malaysia for the relevant period.

(4) Where within three years (or such further period as the Director General may allow) after the commencement of the relevant year the operator produces a certificate which is an acceptable certificate, then--

(a) if there is world income, the operator's statutory income from the business for the relevant year shall be deemed to be a sum bearing the same proportion to the world income as the gross income derived from

Malaysia for the relevant period bears to the gross income shown by the certificate, less the amount of any loss from the business computed in accordance with paragraph (b) for a year of assessment preceding the relevant year (to the extent that the loss has not been allowed as a deduction in computing the

statutory income from the business for any year of assessment following that preceding year of

assessment and ending prior to the relevant year); (b) if there is a world loss, the operator's net statutory loss from the business for the relevant year shall be

deemed to be a sum bearing the same proportion to the world loss as the gross income derived from Malaysia 053e .FM Page 111 Thursday, April 6, 2006 12:07 PM 112 Laws of Malaysia ACT 53

for the relevant period bears to the gross income shown by the certificate;

(c) if by the time the certificate becomes an acceptable certificate no assessment for the relevant year has been made on the operator by reference to subsection (3), that subsection shall cease to have effect in relation to the business for the relevant year; and (d) if by that time an assessment for the relevant year has been made on the operator by reference to subsection (3), the Director General shall make such additional assessment or such repayment of tax as may be

necessary in consequence of the application of this subsection for the relevant year.

(5) In this section, in relation to the business, the operator, the relevant period and the relevant year--

"acceptable certificate" means a certificate produced to the Director General with respect to which he is satisfied that the amounts specified in the certificate have been computed by methods not substantially different from those provided by this Act for the computation of analogous figures for a similar business carried on by a person who is resident;

"certificate" means a certificate which--

(a) is issued by the authority responsible for the administration of the tax laws of any country (other than Malaysia) in which the operator is resident for the purposes of those laws; and

(b) specifies in respect of the business for the relevant period the amount of--

(i) the gross income from wherever derived;

(ii) the income or the loss computed for the

purpose of foreign tax by that authority

w i t h o u t m a k i n g a n y a l l o w a n c e f o r depreciation; and

(iii) the total depreciation allowances given by that authority (excluding any allowance or part

thereof brought forward from a previous

period);

"gross income derived from Malaysia for the relevant period" means the total of all sums first receivable by the operator in the 053e .FM Page 112
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relevant period in respect of transporting by sea or air (whether before, in or after the relevant period) passengers or cargo embarked or loaded in Malaysia into ships or aircraft owned or chartered by the operator, except sums so receivable in respect of passengers or cargo--

(a) brought to Malaysia, whether by the operator or otherwise, solely for transfer--

(i) from one ship or aircraft to another;

(ii) from a ship to an aircraft; or

(iii) from an aircraft to a ship; or

(b) so embarked or loaded into such a ship or aircraft if the call of that ship or aircraft at a port, aerodrome or airport in Malaysia for that embarkation or loading was a casual call within the meaning of subsection (6), less any sums received in the relevant period or prior thereto which are refunded in the relevant period and any sums first receivable in the relevant period or prior thereto which in the relevant period cease, otherwise than on the receipt thereof, to be receivable;

"gross income from wherever derived" means the total of all sums first receivable by the operator in the relevant period in respect of transporting by sea or air (whether before, in or after the relevant period) passengers or cargo in ships or aircraft owned or chartered by the operator;

"world income", in relation to a certificate which is an acceptable certificate, means the amount of any income specified in that certificate in accordance with subparagraph (b) (ii) of the definition of "certificate" in this subsection, as reduced by the amount of the depreciation allowances specified in that certificate, less any sums received in the relevant period or prior thereto which are refunded in the relevant period and any sums first receivable in the relevant period or prior thereto which in the relevant period cease, otherwise than on the receipt thereof, to be receivable;

"world loss", in relation to a certificate which is an acceptable certificate, means--

(a) the amount of any loss specified in that certificate together with the amount of the depreciation

allowances specified in that certificate; or

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(b) where the amount of those allowances exceeds the amount of the income specified in that certificate in accordance with subparagraph (b) (ii) of the definition of "certificate" in this subsection, the amount of the excess.

(6) A call at a port, aerodrome or airport in Malaysia (in this subsection referred to as a Malaysian call) by a ship or aircraft owned or chartered by the operator (in this subsection referred to as a relevant craft) is a casual call for the purposes of subsection (5) only if--

(a) apart from that particular Malaysian call there were no other Malaysian calls by that or any other relevant craft in the period of twenty-four consecutive months immediately prior to that particular Malaysian call; and

(b) the Director General is satisfied that the intention of the operator is that for the period of twenty-four consecutive months immediately following that

particular Malaysian call--

(i) that relevant craft will not be making another Malaysian call (except a call made in the

course of the voyage or flight from the place

where that particular Malaysian call was

made); and

(ii) no other relevant craft will be making a

Malaysian call:

Provided that, if within the period mentioned in paragraph (b) that or any other relevant craft makes another Malaysian call (except, in the case of that relevant craft, a call made in the course of the voyage or flight from the place where that particular Malaysian call was made), that particular Malaysian call shall be treated as never having been a casual call.

Exemption of shipping profits

54A. (1) Subject to the following subsections, where a person who is resident for the basis year for a year of assessment carries on the business of--

(a) transporting passengers or cargo by sea on a Malaysian ship; or

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(b) letting out on charter a Malaysian ship owned by him on a voyage or time charter basis,

the statutory income for that year of assessment from that business shall be exempt from tax.

(2) In determining the income of a person under this section-- (a) the capital allowances claimed in respect of any Malaysian ship shall only be made against the income exempt under the provisions of this section, and the balance of such allowances shall not be available as a deduction against his other income;

(b) an adjusted loss incurred by that person in respect of the operation of a Malaysian ship for any year shall only be deducted against the income exempt under

the provisions of this section, and the balance of such loss shall not be available as a deduction against his other income.

(3) The following provisions shall apply to a person carrying on a business in respect of which his income is exempt under subsection (1)--

(a) he shall maintain a separate account for the income derived or deemed to be derived from each Malaysian ship from that business for the purpose of this section: Provided that where expenses have been incurred

by that person which are not directly attributable to a Malaysian ship, the Director General may allocate as expenses such amounts as might reasonably and properly have been incurred in the normal course of his business in respect of such ship;

(b) as soon as any amount of income of the Malaysian ship is exempted under

this section, such amount shall be credited to an exempt account;

(c) where such exempt account is in credit at the date on which any dividends are paid by that person (out of income which has been exempted), an amount equal to such dividends or to such credit whichever is the lesser, shall be debited to such account;

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(d) any dividend paid, credited or distributed in a basis period out of such exempt account shall be exempt from tax;

(e) where such dividend is received by a shareholder and that shareholder is a company, any dividend paid by that shareholding company to its shareholders shall, to the extent that the Director General is satisfied that the dividend so paid is paid out of such exempt dividend, be exempt from tax in the hands of the shareholders; and

(f) section 108 shall not apply to such dividend. (4) That person shall deliver to the Director General a copy of the accounts referred to in subsection (3) made up to any date specified by him whenever called upon to do so by notice in writing.

(5) Notwithstanding the foregoing provisions of this section, where it appears to the Director General that--

(a) any income of that person which has been exempt; or (b) any dividend (including a dividend paid by a holding company to which paragraph (3) (e) applies) exempted in the hands of any shareholder,

ought not to have been so exempt, the Director General may at any time--

(i) make such assessment or additional assessment upon that person or any shareholder as may appear to be necessary in order to make good any loss of tax; or (ii) direct that person to debit his account kept in accordance with subsection (3) with such amount as the circumstances may require:

Provided that the direction given under this

paragraph shall be deemed to be a notice of

assessment for the purposes of section 99.

(6) For the purposes of this section--

"Malaysian ship" means a sea-going ship registered as such under the Merchant Shipping Ordinance 1952 [Ord. 70 of 1952], 053e .FM Page 116 Thursday, April 6, 2006 12:07 PM Income Tax 117

other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel; "person" includes a partnership.

54B. (Deleted by Act 293).

Partnerships generally

55. (1) Subject to this section and sections 56 to 59, in the case of a business of a partnership (in this section referred to as the relevant partnership) and in relation to a person who is a partner in the relevant partnership throughout the period during which he was such a partner it shall for the purposes of this Act be postulated that--

(a) there has been a transfer to that person (in this section referred to as the sole proprietor) of the business and assets of the relevant partnership together with all rights and liabilities of the partners in relation thereto;

(b) the subject matter of the transfer constitutes a business (in this section and section 56 referred to as the proprietorship business) of the sole proprietor carried on by him in a manner similar to the way in which the relevant partnership business was carried on and in particular that the accounts of the relevant partnership business, made up for any period, are the accounts of the proprietorship business made up for that period. (2) There shall be ascertained in accordance with the foregoing provisions of this section and of this Part what would be, but for any provisions of any of the following subsections, and adjusted income in this section referred to as the provisional adjusted income of the sole proprietor from his proprietorship business for the basis period for a year of assessment. (3) The divisible income of the proprietorship business for the basis period for a year of assessment shall be taken to be an amount found by the deduction from the provisional adjusted income of the sole proprietor from that business for that period of the total amount of--

(a) any remuneration payable by virtue of any partnership arrangement of the relevant partnership to any partner therein for that period or for any part thereof;

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(b) any interest payable to any partner in the relevant partnership for that

period or any part thereof in connection with all capital moneys paid or advanced by him (otherwise than in a fiduciary capacity, unless in that capacity he is a partner in the relevant

partnership) to the relevant partnership; and

(c) any expenses incurred during that period in relation to any partner in the relevant partnership and charged in the relevant partnership accounts (whether or not for that period) which--

(i) would have been private or domestic expenses

if incurred by that partner; or

(ii) are reimbursements of private or domestic

expenses incurred by that partner.

(4) The amount of the divisible income of the proprietorship business for the basis period for a year of assessment ascertained under subsection (3) shall be treated as having accrued evenly over that period and shall be divided between those who were partners of the relevant partnership in that period in accordance with the sharing arrangements (subsisting from time to time during that period) of those partners in like manner as that amount would have been divisible between those partners if that amount had been divisible profits from the business of the relevant partnership accruing evenly over that period; and so much of that divisible income as is thus found to be attributable to the sole proprietor shall be taken to be his share of that divisible income for that period.

(5) The adjusted income of the sole proprietor from the proprietorship business for the basis period for a year of assessment shall be taken to be the aggregate of-- (a) so much of the total amount deducted under

subsection (3) in ascertaining the divisible income of that business for that period as relates to any

remuneration, interest or expenses payable to or

incurred in relation to the sole proprietor; and

(b) his share, ascertained under subsection (4), of the divisible income of that business for that period. (6) For the purposes of subsection (3) of this section, the amount of any remuneration or interest shall be ascertained whenever necessary by applying subsection 19(3) as if references 053e .FM Page

therein to Chapter 4 were references to subsection (3) of this section.

(7) In subsection (4) divisible profits shall not be taken to include any items of the kind referred to in paragraphs (3) (a), (b) and (c).

Successive partnerships

56. (1) Where, apart from this section, the circumstances are such that--

(a) section 55 applies to a business of a partnership (in this section referred to as the old partnership), to a person (in this section referred to as the continuing partner) who is a partner therein and to the period during which he was such a partner;

(b) at some time after the commencement of that

application, section 55 applies to a business of another partnership (in this section referred to as the new partnership) to a partner therein who is the continuing partner and to the period during which he was such a partner;

(c) those periods are successive periods;

(d) those businesses are substantially similar and to all intents and purposes (in so far as the continuing partner is concerned) are carried on successively as if they were one continuing business (apart from the assets of each of those partnerships and the rights and liabilities of the respective partners in relation to each of those businesses, partnerships and assets),

section 55 in its application to the business of the old partnership, to the business of the new partnership and to the continuing partner as the sole proprietor of each of the proprietorship businesses constituted under that section in relation to the old and new partnerships shall be subject to such modifications provided for by this section for such period of time (being a period, in this section referred to as the material period, some part of which will comprise the whole or part of the period during which the continuing partner was a partner in the old partnership and some part of which will comprise the whole or part of the period during which the continuing partner was a partner in the new partnership) 053e .FM Page 119 Thursday, April 6, 2006 12:07 PM 120 Laws of Malaysia ACT 53

as may be requisite in all the circumstances for the purposes of the application of this section, in conjunction with section 55 as so modified, to

the continuing partner in relation to the businesses of the old and new partnerships and to such other matters as are provided for by this section.

(2) Notwithstanding subsection (1)--

(a) this section shall not apply if accounts of the business of the old partnership have been made up for a period of twelve months ending on the day prior to the day on which the new partnership was formed and accounts of the business of the new partnership have been made up for a period of twelve months commencing on the day the new partnership was formed; and

(b) where, prior to the application of this section to the continuing partner, section 55 has been applied to him in relation to the old partnership and any assessment has been made wholly or partly in consequence of that application of section 55, the subsequent application of this section shall not invalidate the assessment. (3) Notwithstanding that, but for this section, upon the formation of the new partnership during the material period the proprietorship business of the continuing partner in relation to the old partnership would have ceased and the proprietorship business of the continuing partner in relation to the new partnership would have commenced, those two proprietorship businesses shall throughout the material period be treated as one continuing proprietorship business (in this section referred to as the continuing proprietorship business) of the continuing partner, carried on by him in a manner similar to the way in which the businesses of the old and new partnerships were carried on and, without prejudice to the generality of the foregoing, the accounts of those businesses made up for any period shall be taken to be the accounts of the continuing proprietorship business made up for that period.

(4) There shall be ascertained in accordance with the foregoing provisions of this section and of this Part what would be, but for any provisions of any of the following subsections, the adjusted income (in this section referred to as the provisional adjusted income) of the continuing partner from his continuing proprietorship business for the basis period for a year of assessment.

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(5) The divisible income of the continuing proprietorship business for the basis period for a year of assessment shall be taken to be an amount found by the deduction from the provisional adjusted income of the continuing partner from that business for that period of the total amount of-- (a) any remuneration payable by virtue of any partnership arrangement of the old or new partnership to any

partner in the old or new partnership for that period or for any part thereof;

(b) any interest payable to any partner in the old or new partnership for that period or any part thereof in connection with all capital moneys paid or advanced by him (otherwise than in a fiduciary capacity, unless in that capacity he is a partner in the old or new partnership) to the old or new partnership; and

(c) any expenses incurred during that period in relation to any partner in the old or new partnership and charged in the accounts of the old or new partnership (whether or not for that period) which--

(i) would have been private or domestic expenses

if incurred by that partner; or

(ii) are reimbursements of private or domestic

expenses incurred by that partner.

(6) The amount of the divisible income of the continuing proprietorship business for the basis period for a year of assessment ascertained under subsection (5)--

(a) if the formation date of the new partnership falls after that period, shall be treated as having accrued evenly over that period and shall be divided between those who were partners of the old partnership in that period in accordance with the sharing arrangements

(subsisting from time to time during that period) of those partners in like manner as that amount would have been divisible between those partners if that amount had been divisible profits from the business of the old partnership accruing evenly over that period; and so much of that divisible income as is thus found to be attributable to the continuing partner shall be taken to be his share of that divisible income for that period;

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(b) if the formation date of the new partnership falls within that period, shall be treated as having accrued evenly over that period and shall be divided in the proportion that the respective lengths of the two parts hereinafter mentioned bear to the length of that period, namely the part (in this subsection referred to as the first part) of that period which falls before that date and the part (in this subsection referred to as the second part) of that period which falls on or after that date and--

(i) a sum being so much of that amount as is thus found to have been apportioned to the first part

shall be treated as having accrued evenly over the length of the first part and divided between

those who were partners of the old partnership

in the first part in accordance with the sharing

arrangements (subsisting from time to time during the first part) of those partners in like

manner as that sum would have been divisible

between those partners if that sum had been

divisible profits from the business of the old

partnership accruing evenly over the first part;

and so much of that sum as is thus found to be

attributable to the continuing partner shall be

taken to be part of his share of that divisible

income;

(ii) a sum being so much of that amount as is thus found to have been apportioned to the second

part shall be treated as having accrued evenly over the length of the second part and shall be

divided between those who were partners of

the new partnership in the second part in

accordance with the sharing arrangements

(subsisting from time to time during the second part) of those partners in like manner as that sum would have been divisible between those partners if that sum had been divisible profits from the business of the new partnership accruing evenly over the second part; and so much of that sum as is thus found to be attributable to the continuing partner shall be taken to be part of his share of that divisible income; and

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(iii) the amount of the part of the continuing partner's share ascertained under subparagraph (i) and the amount of the part of his share ascertained under subparagraph (ii) shall be aggregated; and the amount of the aggregate shall be taken to be his share of that divisible income for that period; and

(c) if the formation date of the new partnership falls before that period, shall be treated as having accrued evenly over that period and shall be divided between those who were partners of the new partnership in that period in accordance with the sharing arrangements (subsisting from time to time during that period) of those partners in like manner as that amount would have been divisible between those partners if that amount had been divisible profits from the business of the new partnership accruing evenly over that period; and so much of that divisible income as is thus found to be attributable to the continuing partner shall be taken to be his share of that

divisible income for that period.

(7) For the purposes of subsection (5) of this section, the amount of any remuneration or interest shall be ascertained whenever necessary by applying subsection 19(3) as if references therein to Chapter 4 were references to subsection (5) of this section.

(8) The adjusted income of the continuing partner from the continuing proprietorship business for the basis period for a year of assessment shall be taken to be the aggregate of-- (a) so much of the total amount deducted under subsection (5) in ascertaining the divisible income of that business for that period as relates to any remuneration, interest or expenses payable to or incurred in relation to the continuing partner; and (b) his share, ascertained under paragraph (6) (a), (b) or (c), as the case may be, of the divisible income of that business for that period.

(9) In subsection (6) "divisible profits" does not include any items of the kind referred to in paragraphs (5) (a), (b) and (c). 053e .FM Page 123
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Provisions applicable where partnership is a partner in another partnership

57. Where a partnership (in this section referred to as the subsidiary partnership) is a partner in another partnership (in this section referred to as the main partnership), then, in relation to a business of the main partnership--

(a) throughout any period that a person is a partner in the subsidiary partnership and the subsidiary partnership is a partner in the main partnership it shall be

postulated that the person in question was a partner in the main partnership in place of the subsidiary

partnership, and the adjusted income under subsection 55(5) or 56(8) (in this section referred to as the computed adjusted income) of that person for the basis period for a year of assessment as the sole proprietor from his proprietorship business or as continuing partner from his continuing proprietorship business, as the case may be, in relation to the main partnership shall be ascertained under section 55 or under section 55 in

conjunction with section 56, as the case may be; and

(b) the computed adjusted income for that basis period shall be divided between the partners of the subsidiary partnership in like manner as divisible income is divided under subsection 55(4) or 56(6), as the case may be, and the amount of the share thereof so

ascertained of any such partner as the sole proprietor or as the continuing partner as mentioned in

subsection 55(4) or 56(6), as the case may be, shall be taken to be his adjusted income for the basis period for that year of assessment from the proprietorship

business or continuing proprietorship business, as the case may be, which he is treated as having in relation to the main partnership by virtue of paragraph (a). Income receivable by partnership otherwise than from partnership business

58. (1) Where a partnership carries on or shares in the profits of a business and income is receivable by the partnership (not being income forming part of the gross income for the basis period for any year of assessment from any proprietorship business or 053e .FM Page 124 Thursday, April 6, 2006 12:07 PM Income Tax 125

continuing proprietorship business in relation to any partner in the partnership) from a source, then, whether or not the income has been distributed to the partners, sections 55, 56 and 57 shall apply (with any necessary modifications) for ascertaining the gross income and adjusted income for the basis period for a year of assessment from that source of each partner who is a partner in the partnership as they apply for ascertaining his gross income and adjusted income for the basis period for that year from the business.

(2) For the purposes of subsection (1), in the application of section 55 or section 55 in conjunction with section 56, as the case may be, the provisional adjusted income shall be taken to be the divisible income.

Partnership losses

59. (1) In the case of a sole proprietor of a proprietorship business or of a continuing partner of a continuing proprietorship business referred to in sections 55 and 56 respectively-- (a) the adjusted loss (in this section referred to as the provisional adjusted loss) of that proprietor or partner from that proprietorship or continuing proprietorship business for the basis

period for a year of assessment shall be ascertained on the same principles as those on which his provisional adjusted income from the

respective business would, but for that loss, have been ascertained under section 55 or under section 55 in conjunction with section 56, as the case may be;

(b) the divisible loss of that proprietorship or continuing proprietorship business, for the basis period for a year of assessment shall be found by the additional to the provisional adjusted loss of that sole proprietor or of that continuing partner, as the case may be, from that proprietorship business or continuing proprietorship business of his for that period of the total amount as mentioned in and as ascertained under subsections 55(3) and (5) or subsections 56(5) and (7), as the case may be;

(c) the divisible loss so found with respect to that proprietorship business or continuing proprietorship business shall be divided in like manner as divisible income from that business would have been divided if 053e .FM Page 125 Thursday, April 6, 2006 12:07 PM 126 Laws of Malaysia ACT 53

there had been divisible income for that period, and so much of that divisible loss as is thus found to be attributable to that sole proprietor or continuing partner shall be taken to be his share of that divisible loss for that period; and

(d) the adjusted loss of that sole proprietor or continuing partner from that proprietorship business or

continuing proprietorship business for that basis period shall be taken to be the difference between-- (i) his share, ascertained pursuant to paragraph

(c), of the divisible loss of that proprietorship business or continuing proprietorship business

for that period; and

(ii) so much of the total amount added pursuant to paragraph (b) as relates to any remuneration,

interest or expenses payable to or incurred in

relation to him as a partner in the partnership

in relation to which he is taken to be a sole

proprietor or a continuing partner, as the case

may be:

Provided that, if in relation to any person the sum found under subparagraph (d) (ii) exceeds the share referred to in subparagraph (d) (i), the difference between that sum and that share shall be treated as the amount of that person's adjusted income for that period from that proprietorship business or from that continuing proprietorship business, as the case may be.

(2) For the purposes of section 55 or section 55 in conjunction with section 56, where the total amount as mentioned in and ascertained under subsections 55(3) and (5) or subsections 56(5) and (7), as the case may be, exceeds the provisional adjusted income of the sole proprietor from his proprietorship business or the continuing partner from his continuing proprietorship business, as the case may be, for the basis period for a year of assessment, the excess shall be taken to be the divisible loss for that period from that proprietorship business or continuing proprietorship business, as the case may be, and paragraphs (1) (c) and (d) shall apply accordingly.

(3) In a case where section 57 would apply but for the absence of any adjusted income, the foregoing subsections shall apply with the following additional provisions:

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(a) the adjusted loss (in this subsection referred to as the computed adjusted loss) of the sole proprietor from his proprietorship business or of the continuing partner from his continuing proprietorship business, as the case may be, in relation to the main partnership for the basis period for a year of assessment shall be

ascertained under subsection (1); and

(b) the computed adjusted loss for that basis period shall be divided between the partners of the subsidiary partnership in like manner as it would have been

divided under paragraph 57(b) if the computed

adjusted loss had been computed adjusted income

within the meaning of that section; and the amount of the share thereof so ascertained of any such partner as the sole proprietor or as the continuing

partner, as the case may be, shall be taken to be his adjusted loss for the basis period for that year of assessment from the proprietorship business or continuing proprietorship business, as the case may be, which he is treated as having in relation to the main partnership by virtue of paragraph 57(a).

Insurance business

60. (1) This section shall apply for ascertaining the adjusted income for the basis period for a year of assessment from the insurance business of an insurer.

(2) For the purposes of this section--

(a) subject to paragraph (b), where an insurer carries on life business in conjunction with general business, the life business and the general business shall be treated as separate insurance businesses;

(b) (i) where an insurer carries on inward re-insurance business, the inward re-insurance business and

the general business (excluding the inward

reinsurance business and offshore insurance

business) shall be treated as separate general

businesses;

(ii) where an insurer carries on offshore insurance business, the offshore insurance business and

the general business (excluding the offshore

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insurance business and inward re-insurance

business) shall be treated as separate general

businesses;

(c) where an insurer carries on life business, the income of the life fund shall be treated as a separate source of income from the income of the shareholders' fund in respect of the life business:

Provided that--

(i) where the insurer also carries on life re-insurance business, the life re-insurance business shall be a separate source from life business and shall be treated as a general business; or

(ii) where the insurer also carries on inward life re-insurance business, the inward life re-insurance business shall be a separate source from life business and shall be treated as a general business;

(d) where an insurer carries on only life re-insurance business, the life re-insurance business shall be treated as a general business.

(3) The adjusted income of the life fund, other than income arising from life re-insurance business, for the basis period for a year of assessment of an insurer resident for the basis year for that year of assessment shall be ascertained by-- (a) taking the aggregate of--

(i) the amount of gross income for that period from the investments made out of any of the insurer's life funds; and

(ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realization of those

investments or any rights arising from them;

and

(b) deducting from that aggregate where subparagraph (a) (ii) is applicable for that period to gross proceeds 053e .FM Page 128 Thursday, April 6, 2006 12:07 PM Income Tax 129

receivable in connection with any investments or

rights, the cost of acquiring and realizing those investments or rights.

(3A) The adjusted income of the shareholders' fund for the basis period for a year of assessment of an insurer resident for the basis year for that year of assessment shall be ascertained by-- (a) taking the aggregate of--

(i) the amount of gross income for that period

from the investments made out of any of the

shareholders' funds;

(ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross

income to which subparagraph (i) applies and

which are first receivable in that period in

connection with the realization of those

investments or any rights arising from them;

and

(iii) the amount of the actuarial surplus from the life fund that is transferred to the shareholders' fund; and

(b) deducting from that aggregate--

(i) where subparagraph (a) (ii) is applicable for

that period to gross proceeds receivable in

connection with any investments or rights, the

cost of acquiring and realizing those

investments or rights; and

(ii) so much of the amount transferred from the

shareholders' fund as is equal to the actuarial

deficit for that period arising from the life

fund, other than the deficit from life re-

insurance business.

(4) The adjusted income of the life fund, other than income arising from life re-insurance business, of an insurer not resident for the basis year for that year of assessment shall where that business is wholly or partly carried on in Malaysia as ascertained by--

(a) taking the aggregate of--

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(i) the amount of gross income for that period

from investments made (in Malaysia or

elsewhere) out of the insurer's Malaysian life

fund; and

(ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross

income to which subparagraph (i) applies and

which are first receivable in that period in

connection with the realization of those

investments or any rights arising from them;

and

(b) deducting from that aggregate where subparagraph (a) (ii) is applicable for that period to gross proceeds receivable in connection with any investments or rights, the cost of acquiring and realizing those investments or rights.

(4A) The adjusted income of the shareholders' fund for the basis period for a year of assessment of an insurer not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia, be ascertained by--

(a) taking the aggregate of--

(i) the amount of gross income for that period from the investments made out of any of the shareholders' funds;

(ii) the amount of any gross proceeds (whether or not of an income nature) which are not gross

income to which subparagraph (i) applies and

which are first receivable in that period in

connection with the realization of those

investments or any rights arising from them;

and

(iii) the amount of the actuarial surplus from the life fund that is transferred to the shareholders' fund; and

(b) deducting from that aggregate--

(i) where subparagraph (a) (ii) is applicable for that period to gross proceeds receivable in

connection with any investments or rights, the

cost of acquiring and realizing those investments or rights; and

(ii) so much of the amount transferred from the shareholders' fund as is equal to the actuarial deficit for that period arising from the life fund, other than the deficit from life re-insurance business.

(4B) The adjusted income as ascertained under subsections (3A) and (4A) shall be deemed to be the statutory income from that source.

(5) The adjusted income for the basis period for a year of assessment from the general business of an insurer resident for the basis year for that year of assessment shall consist of an amount arrived at by--

(a) taking the aggregate of--

(i) the amount of the gross premiums first receivable in that period in respect of general policies issued by him (less the amount of any premiums received at any time in respect of any such general policies and returned by him during that period);

(ii) the amount of any other gross income for that period from the general business of the insurer

(including any commissions and any interest or other income from investments held in connection with that business);

(iii) the amount of any gross proceeds (whether or not of an income nature) which are not gross

income to which subparagraph (ii) applies and

which are first receivable in that period in

connection with the realization of those

investments or any rights arising from them;

(iv) any amounts recovered or recoverable by him

in that period under re-insurance contracts

made in connection with that business; and

(v) the amount of his reserve fund for unexpired

risks at the end of the immediately preceding

basis period; and

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(b) subject to subsection (7), deducting from that aggregate the amount of--

(i) claims incurred in that period in connection

with his general policies;

(ii) re-insurance premiums payable by him in that period in connection with that business;

(iii) commissions payable and discounts allowed

by him in that period in connection with that

business;

(iv) management expenses incurred by him in that

period in connection with that business;

(v) his reserve fund for unexpired risks at the end of that period; and

(vi) where subparagraph (a) (iii) is applicable for that period to gross

proceeds receivable in connection with any investments or rights, the cost of acquiring and realizing those investments or rights.

(5A) The adjusted income for the basis period for a year of assessment from the inward re-insurance business of an insurer resident for the basis year for that year of assessment shall consist of an amount arrived at by applying subsection (5) as if references therein to "general business" and "general policies" were references to "inward re-insurance business" and "inward re-insurance contracts" respectively.

(5B) The adjusted income for the basis period for a year of assessment from the offshore insurance business of an insurer resident for that basis year for that year of assessment shall consist of an amount arrived at by applying subsection (5) as if references therein to "general business" and "general policies" were references to "offshore insurance business" and "offshore insurance policies" respectively.

(5C) The adjusted income for the basis period for a year of assessment from the life re-insurance business of a life insurer resident for that basis year for that year of assessment shall consist of an amount arrived at by applying subsection (5) as if references therein to--

(a) "general business of an insurer" were references to "life re-insurance business of a life insurer";

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(b) "general policies" were references to "life re-insurance policies"; and

(c) "reserve fund for unexpired risks" were references to "actuarial valuation reserve".

(6) The adjusted income for the basis period for a year of assessment from the general business of an insurer not resident for the basis year for that year of assessment shall where that business is wholly or partly carried on in Malaysia consist of an amount arrived at by--

(a) taking the aggregate of--

(i) the amount of the gross premiums first

receivable in that period in respect of

Malaysian general policies issued by him (less

any premiums received at any time on account

of any such Malaysian general policies

returned by him in that period);

(ii) the amount of any other gross income for that period derived from Malaysia from that

business (including gross income consisting of

commissions and gross income from

investments, wherever made, held in

connection with that business);

(iii) the amount of any gross proceeds (whether or not of an income nature) which are not gross

income to which subparagraph (ii) applies and

which are first receivable in that period in

connection with the realization of those

investments or any rights arising from them;

(iv) any amounts recovered or recoverable by him

in that period under re-insurance contracts

made in connection with Malaysian general

policies of that business; and

(v) the amount of his reserve fund for unexpired

risks relating to any such Malaysian general

policies at the end of the immediately

preceding basis period; and

(b) subject to subsection (7), deducting from that aggregate the amount of--

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(i) claims incurred in that period in connection

with his Malaysian general policies;

(ii) re-insurance premiums payable by him in that period in connection with any such Malaysian

general policies;

(iii) commissions payable and discounts given by

him in that period in connection with any such

Malaysian general policies;

(iv) management expenses incurred by him in

Malaysia in that period in connection with that

business;

(v) his reserve fund for unexpired risks relating to any such Malaysian general policies at the end

of that period;

(vi) a portion of the insurer's head office expenses incurred by him in that period which is fair and

reasonable if, in relation to that period, regard is had to the gross premiums receivable by him

in respect of Malaysian general policies issued

by him in that period as compared with the

total gross premiums receivable by him in

respect of all general policies issued by him in

that period; and

(vii) where subparagraph (a) (iii) is applicable for that period to gross proceeds receivable in

connection with any investments or rights, the

cost of acquiring and realizing those

investments or rights.

(6A) The adjusted income for the basis period for a year of assessment from the inward re-insurance business of an insurer not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia, consist of an amount arrived at by applying subsection (6) as if references therein to "general business" and "Malaysian general policies" were references to "inward re-insurance business" and "inward re-insurance contracts" respectively.

(6B) The adjusted income for the basis period for a year of assessment from the offshore insurance business of an insurer not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia, consist of an amount arrived at by applying subsection (6) as if references therein to "general business" and "Malaysian general policies" were references to "offshore insurance business" and "offshore insurance policies" respectively.

(6C) The adjusted income for the basis period for a year of assessment from the life re-insurance business of a life insurer not resident for the basis year for that year of assessment shall, where that business is wholly or partly carried on in Malaysia, consist of an amount arrived at by applying subsection (6) as if references therein to--

(a) "general business of an insurer" were references to "life re-insurance business of a life insurer";

(b) "Malaysian general policies" were references to "Malaysian life re-insurance policies"; and

(c) "reserve fund for unexpired risks" were references to "actuarial valuation reserve".

(7) Where an insurer carrying on general business has re-insured the risk or part of the risk with a re-insurer who either does not carry on the business of insuring risks of that kind in Malaysia or does not re-insure the risk through a branch in Malaysia, there may be deducted under subparagraph (5) (b) (ii) or (6) (b) (ii) in respect of such risks which are re-insured only ninety-five per cent of the amount which would otherwise be deductible:

Provided that in a case to which subsection (6), (6A) or (6B) applies--

(a) the insurer may elect that no deductions shall be made under subparagraph (6) (b) (ii); and

(b) where he does so--

(i) the election shall be irrevocable and shall

apply in relation to the basis period for the

year of assessment for which it is made and for

the basis periods for all subsequent years of assessment; and

(ii) amounts recoverable under re-insurance

contracts shall be disregarded for the purposes

of subparagraph (6) (a) (iv).

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(8) Where an insurer in connection with his life business or his general business receives any incidental gross income (not being a premium on a policy issued in the course of carrying on that life or general business) for which subsections (3) to (7) do not provide, that income shall be treated as income of the insurer falling under paragraph 4(f) and he shall be deemed to have a separate source in respect of it.

(9) For the purposes of this section an insurer's reserve fund for unexpired

risks at the end of a basis period shall consist of-- (a) twenty-five per cent of the difference between the gross premiums first receivable by him in that period in respect of marine, aviation or transit policies issued by him and the amount deducted under subparagraph (5) (b) (ii) or (6) (b) (ii); and

(b) an amount calculated based on the method of

computation as determined by the relevant authority regulating the insurance industry and which is

consistently applied to premiums first receivable by him in that period in respect of other general policies issued by him (less the amount deducted under

subparagraph (5) (b) (ii) or 6 (b) (ii)).

(10) Where under this section all such deductions as would be made in computing what would have been the adjusted income for the basis period for a year of assessment from the insurance business of an insurer if any such adjustment income had been ascertainable exceed the aggregate of the amounts from which those deductions would otherwise have been made, the amount of the excess shall be taken to be the amount of his adjusted loss from that business for that period.

(10A) Notwithstanding subsections 43(2) and 60(10), any unabsorbed losses of the life business shall only be available for deduction against the statutory income for the basis period for a year of assessment and subsequent years of assessment in respect of the life fund of the insurer.

(10B) Notwithstanding paragraph 75 of Schedule 3, any unabsorbed allowances of the life business shall only be available for deduction against the adjusted income for the basis period for a year of assessment and subsequent years of assessment in respect of the life fund of the insurer.

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(10C) Allowances under Schedule 3 shall only be available for deduction against the adjusted income of the life fund and the balance of such allowances shall not be available as a deduction against the adjusted income of the shareholders' fund. (11) In this section, sections 60A and 60B--

"general business" means all insurance business which is not life business;

"general policy" means a policy other than a life policy; "insurer" means a person who carries on insurance business and includes a professional re-

insurer;

"investments" includes any accretions thereto;

"inward re-insurance" means any re-insurance of a risk under a policy where the risk is outside Malaysia and the original insurance policy--

(a) is issued by an insurer not resident in Malaysia but not issued by a branch in Malaysia of such insurer; or (b) is issued by a branch outside Malaysia of an insurer resident in Malaysia,

and where any risk is in transit in Malaysia it shall be deemed to be outside Malaysia;

"inward re-insurance contract" means a Malaysian policy in respect of inward re-insurance;

"life business" has the same meaning assigned thereto under section 2 of the Insurance Act 1996 [Act 553];

"life policy" has the same meaning assigned thereto under section 2 of the Insurance Act 1996;

"Malaysian life fund" means the fund established pursuant to section 38 of the Insurance Act 1996;

"Malaysian policy" has the same meaning assigned thereto under section 2 of the Insurance Act 1996;

"offshore insurance" means insurance of a risk under a general policy where the risk is outside Malaysia and the insurance policy is issued by an insurer resident in Malaysia or by a branch in Malaysia of an insurer not resident in Malaysia, and where any risk is in transit in Malaysia it shall be deemed to be outside Malaysia.

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"offshore insurance policies" means policies issued in respect of offshore insurance.

"policy" has the same meaning assigned thereto under section 2 of the Insurance Act 1996.

"premium" has the same meaning assigned thereto under section 2 of the

Insurance Act 1996.

"re-insurance" has the same meaning assigned thereto under section 2 of the Insurance Act 1996.

"revenue account" means the revenue account lodged in respect of life business under section 87 of the Insurance Act 1996. Inward re-insurance: chargeable income, reduced rate and exempt dividend

60A. (1) (a) Where an insurer carries on inward re-insurance business in conjunction with other insurance businesses, the part of the chargeable income for a year of assessment which is attributable to that inward re-insurance business shall consist of an amount which bears the same proportion to the chargeable income for that year of assessment of the insurer as the part of the aggregate income which relates to the inward re-insurance business bears to the whole of the aggregate income for that year of assessment from all sources of the insurer; and (b) the amount arrived at under paragraph (a) shall be treated as his chargeable income for a year of assessment of an insurer from inward re-insurance business for the purposes of paragraph 3 of Part I of Schedule 1.

(2) As soon as any amount of chargeable income from the inward re-insurance business of an insurer (being a company) resident for the basis year for a year of assessment has been subject to income tax at the rate of 5 per cent-- (a) the net amount of that income (after deduction of such tax) shall be credited to an account (that account and company being referred to as the exempt account and the relevant company respectively); and

(b) paragraph 5 (except subparagraph (1) thereof) and paragraph 6 of Schedule 7A shall apply as if any

reference in those paragraphs to any income exempted 053e .FM Page 138
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or which has become exempt under paragraph 3 were a reference to income credited to the exempt account. Application of sections 60 and 60A to a takaful business 60AA. (1) The provisions of sections 60 and 60A shall apply, mutatis mutandis, to a takaful business carried on pursuant to the Takaful Act 1984.

(2) In relation to management expenses incurred by any person in connection with a takaful business, that expense shall, in the application of sections 60 and 60A to that business, be deemed to have been incurred by him in respect of the life or general business referred to in those sections.

Chargeable income of life fund subject to tax

60AB. The chargeable income in respect of the life fund as determined under subsections 60(3) and 60(4) is subject to tax as specified under Part VIII of Schedule 1.

Offshore insurance: chargeable income, reduced rate and exempt dividend

60B. (1) (a) Where an insurer carries on offshore insurance business in conjunction with other insurance businesses, the part of the chargeable income for a year of assessment which is attributable to that offshore insurance business shall consist of an amount which bears the same proportion to the chargeable income for that year of assessment of the insurer as the part of the aggregate income which relates to the offshore insurance business bears to the whole of the aggregate income for that year of assessment from all sources of the insurer; and

(b) the amount arrived at under paragraph (a) shall be treated as the chargeable income for a year of assessment of an insurer from offshore insurance business for the purposes of paragraph 3 of Part I of Schedule 1.

(2) As soon as any amount of chargeable income from the offshore insurance business of an insurer (being a company) 053e .FM Page 139 Thursday, April 6, 2006 12:07 PM 140 Laws of Malaysia ACT 53

resident for the basis year for a year of assessment has been subject to income tax at the rate of five per cent-- (a) the net amount of that income (after deduction of such tax) shall be credited to an account (that account and company being referred to as the exempt account and the relevant company respectively); and

(b) paragraph 5 (except subparagraph (1) thereof) and paragraph 6 of Schedule 7A shall apply as if any

reference in those paragraphs to any income exempted or which has become exempt under paragraph 3 were a reference to income credited to the exempt account. Banking business

60C. Where a person who is resident for the basis year for a year of assessment carries on a business of banking in Malaysia and elsewhere, his gross income and adjusted income or adjusted loss for the basis period for that year of assessment from that business and his statutory income for that year of assessment from that business shall be ascertained by reference to his income therefrom wherever accruing or derived excluding the gross income,

adjusted income or adjusted loss and statutory income attributable to an offshore business activity of a licensed Malaysian offshore bank.

60D. (Deleted by Act 600).

60E. (Deleted by Act 624).

Investment holding company

60F. (1) Where an investment holding company is resident for the basis year for a year of assessment there shall be deducted in arriving at the total income before any deduction falling to be made under paragraph 44(1) (c) an amount in respect of expenses incurred by that company in the basis period for that year of assessment, which amount shall be determined in accordance with the formula--

$A \div B$

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4C

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where A is the total of the permitted expenses incurred for that basis period reduced by any receipt of a similar kind;

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

Provided that--

(a) the amount of deduction to be made shall not exceed five per cent of the gross income consisting of

dividend, interest and rent for that basis period; and (b) where, by reason of an absence or insufficiency of aggregate income for that year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made to the investment holding company under this section for that year, that

deduction which has not been so made shall not be made to the investment holding company for any

subsequent year of assessment.

(1A) Notwithstanding any other provision of this Act, where in any year of assessment income of an investment holding company consists of--

(a) income from the holding of investment, it shall not be treated as income from a source consisting of a

business; or

(b) income other than income from the holding of investment, it shall be treated as gains or profits under paragraph 4(f).

(1B) If it is shown that it has been established as between the Director General and the company for any tax purposes that the company is an investment holding company for the basis period for any year of assessment it shall be presumed until the contrary is proved that the company is an investment holding company for the purpose of this Act for the basis period for every subsequent year of assessment.

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(1C) This section shall not apply to an investment holding company referred to in section 60FA.

(2) In this section--

"investment holding company" means a company whose activities consist mainly in the holding of investments and not less than eighty per cent of its gross income (whether exempt or not) is derived therefrom;

"permitted expenses" means expenses incurred by an investment holding company in respect of--

(a) directors' fees;

(b) wages, salaries and allowances;

(c) management fees;

(d) secretarial, audit and accounting fees, telephone charges, printing and stationary costs and postage; and (e) rent and other expenses incidental to

the maintenance of an office,

which are not deductible under subsection 33(1).

Investment holding company listed on Bursa Malaysia *60FA. (1) The provisions of this section shall apply notwithstanding any other provisions of this Act.

(2) Where an investment holding company is a company resident for the basis year for a year of assessment and listed on the Bursa Malaysia in the basis period for that year of assessment, income of that investment holding company from the holding of investment in that basis period shall be treated as gross income of that investment holding company from a source consisting of a business for that year of assessment.

(3) For the purpose of subsection (2)--

(a) in ascertaining for a year of assessment the adjusted income of an investment holding company from a

source referred to in that subsection, any amount of deduction to be made under this Act in arriving at that *NOTE--See section 18 of Act 644 for explanation. 053e .FM Page 142 Thursday, April 6, 2006 12:07 PM Income Tax 143

income shall only be allowed against the gross income from that source but--

(i) where in that year of assessment that source

does not produce any income, any deduction in

respect of that source shall be disregarded for

the purposes of this Act; or

(ii) where that amount of deduction exceeds the

gross income from that source for that year of

assessment, the excess shall be disregarded for

the purposes of this Act; and

(b) in ascertaining for a year of assessment the statutory income of an investment holding company from a

source referred to in that subsection, any allowance for that year of assessment falling to be made to that company under Schedule 3 in respect of

that source shall only be available against the adjusted income of that person from that source and if by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or be given in full to any allowance for that year of assessment in relation to that source, that allowance which has not been so made shall not be made to that company for

subsequent years of assessment.

(4) If it is shown that it has been established between the Director General and the company for any tax purposes that the company is an investment holding company for the basis period for any year of assessment it shall be presumed until the contrary is proved that the company is an investment holding company for the purpose of this Act for the basis period for every subsequent year of assessment.

(5) In this section, "investment holding company" has the same meaning assigned to it under section 60F.

Foreign fund management company

60G. (1) Where a foreign fund management company carries on business in Malaysia of providing fund management services to foreign and local investors, the income derived from the provision of fund management services to foreign investors shall be treated as a separate and distinct business source from that source of 053e .FM Page 143 Thursday, April 6, 2006 12:07 PM 144 Laws of Malaysia ACT 53

income derived from the provision of fund management services to local investors.

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

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

Provided that in so making the deductions under subsections 43(2) and 44(1), no regard shall be had to the adjusted loss, if any, from the source consisting of the provision of fund management services to foreign investors.

(4) The chargeable income of a foreign fund management company, resident in Malaysia for the basis year for a year of assessment in relation to the source consisting of the provision of fund management services to foreign investors, after deduction of the tax thereon, shall be credited to an account to be kept by that company (that account and that company being referred to as the "exempt account" and the "relevant company" respectively). (5) Paragraphs 5 and 6 of Schedule 7A shall apply as if any reference in those paragraphs to any income exempted or which has become exempt under paragraph 3 of that Schedule were a reference to income credited to the exempt account of the relevant company under subsection (4).

(6) For the purposes of this section--

"foreign fund management company" means a company incorporated in Malaysia and licensed under the Securities Industry Act 1983 [Act 280];

"foreign investors"--

(a) in relation to an individual means individuals who are not resident and not citizens of Malaysia;

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(b) in relation to a company means companies where the entire issued share capital is beneficially owned, directly or indirectly by persons who are not resident and not citizens of Malaysia; and

(c) in relation to a trust fund means trust funds where the entire interest in the fund is beneficially held, directly or indirectly by foreign investors, where--

(i) the fund is created outside Malaysia; and

(ii) the trustees of the fund are not resident and not citizens of Malaysia;

"local investors" are individuals, companies or trust funds that are not foreign investors.

Closed-end fund company

60H. (1) This section shall apply to a closed-end fund company resident in

Malaysia for the basis year for a year of assessment. (2) Where a closed-end fund company receives an amount in respect of gains from the realization of investments in the basis period for a year of assessment such amount shall be exempt from tax for that year of assessment.

(3) Paragraphs 5 and 6 of Schedule 7A shall apply, mutatis mutandis, to the amount exempted under subsection (2) and paragraph 35 of Schedule 6 (where applicable).

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

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4C

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

B is the gross income consisting of dividend and

interest chargeable to tax for that basis period; and 053e .FM Page 145
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C is the aggregate of the gross income consisting of dividend and interest (whether exempt or not) and gains made from the realization of investments (whether chargeable to tax or not) for that basis period:

Provided that--

(a) the amount of deduction to be made shall not be less than ten per cent of the total permitted expenses incurred for that basis period; and

(b) where, by reason of an absence or insufficiency of aggregate income for that year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made to the closed-end fund company under this section for that year, that

deduction which has not been so made shall not be made to the closed-end fund company for any

subsequent year of assessment.

(5) For the purposes of this section --

"closed-end fund company" means a public limited company incorporated in Malaysia and approved by the Securities Commission to engage wholly in the investment of funds in securities;

"permitted expenses" means expenses incurred by a closed-end fund company in respect of --

(a) manager's remuneration;

(b) maintenance of register of shareholders;

(c) share registration expenses;

(d) secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage; "securities" means debentures, stocks and shares in a public company or corporation, or bonds of any government or any body corporate or unincorporate and includes any right or option in respect thereof and any interest in unit trust schemes. (6) Sections 33 and 34 shall not apply to a closed-end fund company.

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Trusts generally

61. (1) So long as a trust subsists-- (a) the trustees for the time being shall be known as the trust body and the trust body shall be treated as a person for the purposes of all the provisions of this Act except Part VIII (other than section 122);

(b) for the purposes of this Act--

(i) any source forming part of the property of the trust;

(ii) any source of a trustee of the trust, being a source of his by virtue of sections 55 to 58; and (iii) any income from any such source, shall be

treated as the source and income of the trust

body of the trust:

Provided that in the case of a unit trust, gains

arising from the realization of investments shall not be treated as income of the trust body of the trust; (c) subject to subsections (4) and (5), the entitlement of a beneficiary at any time and from time to time to any income from the trust shall be deemed to be a source (in this section and section 62 referred to as his ordinary source) of his in relation to the trust, and the amount, ascertained under this section, of any share of his of any total income of the trust body of the trust for a year of assessment shall be deemed to be his

statutory income from his ordinary source for that year; and

(d) a beneficiary of the trust shall be assessed and charged to tax in respect of any income of his from his ordinary source or from his further source within the meaning of subsection (5) in relation to the trust:

Provided that paragraphs (c) and (d) and subsection (5) shall not apply to a person in respect of any amount which by virtue of paragraph 13(1) (d) falls to be included in the gross income of that person in respect of gains or profits from an employment. (1A) Notwithstanding paragraphs (1) (c) and (d), a unit holder of a unit trust shall be assessed and charged to tax in respect of 053e .FM Page 147 Thursday, April 6, 2006 12:07 PM 148 Laws of Malaysia ACT 53

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

Provided that the unit holder shall not be assessed and charged to tax in respect of any amount distributed by the unit trust out of income exempt from tax, other than income exempt under section 61A, or the gains referred to in the proviso to paragraph 61(1) (b). (1B) Any income which is distributed by a unit trust to a unit holder under subsection (1A) shall be deemed to be derived from Malaysia.

(2) The income of the trust body of a trust shall be assessed and charged to tax separately from the income of a beneficiary from any source of his in relation to the trust, whether or not that beneficiary is also a trustee member of that body, and in so assessing and charging that body by reference to its chargeable income for a year of assessment regard shall be had to the whole of its total income for that year, notwithstanding that the amount of a share thereof may be deemed under this section or section 62 to be statutory income of a beneficiary:

Provided that, where--

(a) the trust body of a trust is resident for the basis year for a year of assessment; and

(b) a beneficiary who has a share of the total income of the trust body for that year of assessment is resident for the basis year for that year of assessment,

the Director General may, in ascertaining the chargeable income of the trust body for that year of assessment, deduct from that total income that share of that beneficiary.

(3) Notwithstanding any other provision of this Act, a trust body shall be regarded as resident for the basis year for a year of assessment if, but only if, any trustee member of that body is resident for that basis year:

Provided that where--

(a) the trust was created outside Malaysia by a person or persons who were not citizens;

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(b) the income of that trust body for that basis year is wholly derived from outside Malaysia;

(c) the trust is administered for the whole of that basis year outside Malaysia; and

(d) at least one-half of the number of the member trustees are not resident in Malaysia for that basis year, that trust body shall not be regarded as resident in Malaysia for that basis year.

(4) Subject to sections 62 and 63, and whether or not the trust body of a trust is resident for the basis year for a year of assessment--

(a) where throughout the basis year a beneficiary of the trust was entitled to the whole of the distributable income from the trust for that basis year, the amount of the total income of the trust body for that year of assessment shall be deemed to be the amount of the beneficiary's share of that total income;

(b) where throughout that basis year a beneficiary of the trust was entitled to a particular fraction of that distributable income, an amount found by applying that fraction to that total income shall be deemed to be the amount of his share of that total income;

(c) where the trust subsists throughout that basis year and during that basis year a beneficiary of the trust is entitled to the whole or a fraction of the distributable income from the trust for any part or parts of that basis year--

(i) that total income, treated as if it had accrued evenly from day to day over that basis year,

shall with respect to any such part be divided

in the proportion which the length of that part

bears to the length of that basis year and so

much of the amount of that total income as is

thus found to be apportioned to that part is

referred to in this paragraph in relation to that part as the apportioned sum;

(ii) if the beneficiary was entitled to the whole of the distributable income from the trust for such

a part, the apportioned sum, in relation to that

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part, shall be deemed to be the amount of his

share (or the amount of part of his share, as the case may require) of that total income;

(iii) if the beneficiary was entitled to a particular fraction of the distributable income from the

trust for such a part, an amount found by

applying that fraction to the apportioned sum,

in relation to that part, shall be deemed to be

the amount of his share (or the amount of part

of his share, as the case may require) of that

total income; and

(iv) where two or more parts of his share of that total income have been so ascertained, the

aggregate of the amounts of those parts shall

be deemed to be the amount of his share of that

total income;

(d) where the trust was not subsisting throughout that basis year, paragraphs (a), (b) and (c) (and subsection (7)) shall have effect as if references therein to that basis year were references to a period consisting of the whole of the time during which the trust was

subsisting in that basis year; and

(e) any amount deemed by virtue of this subsection to be a beneficiary's share of that total income shall be deemed to be derived from Malaysia.

(5) Subject to sections 62 and 63, if the total of-- (a) all sums received in Malaysia from the trust body of a trust by a beneficiary (being sums of an income nature in his hands) in the basis year for a year of assessment; and

(b) all sums received by him outside Malaysia from the trust body of the trust in any year (being sums of an income nature in his hands) and remitted to Malaysia in the basis year for a year of assessment,

exceeds the amount of his statutory income from his ordinary source in relation to the trust for that year of assessment--

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(i) he shall, in respect of that excess, be deemed to have a source (in this subsection referred to as his further source) in relation to the trust; and

(ii) the amount of that excess shall be deemed to be his statutory income from his further source for that particular year of assessment:

Provided that, if the Director General is satisfied that a sum equal to any part of that excess may, to the best of his judgment be regarded as an ingredient of the beneficiary's statutory income from his ordinary source in relation to the trust for any preceding year of assessment, the beneficiary's statutory income from his further source for that particular year of assessment shall be reduced by the amount of that sum.

(6) (Deleted by Act A226).

(7) Where any part of the income from a trust for the basis year for a year of assessment is subject to a trust for accumulation, any reference in this section to the total income of the trust body of that trust for that year of assessment (being a reference made in connection with a reference to the distributable income from the trust for that basis year) shall be construed as a reference to a sum which bears the same proportion to that total income as that distributable income bears to the aggregate of-- (a) that distributable income; and

(b) that part of the income from the trust which is subject to the trust for accumulation.

(8) Paragraph (1) (a) and subsection (3) shall apply where there is only one trustee as they apply where there are two or more trustees, and references to a trust body in this Act shall be construed accordingly.

(9) In this Act--

(a) a reference to income from a source of a trust includes a reference to any income subject to the trust; and (b) a reference to sums received or to income received by a beneficiary of a trust includes a reference to sums or income disbursed by the trust body of the trust on his behalf or for his benefit.

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Exemption of Real Estate Investment Trust or Property Trust Fund

61A. (1) The total income of a unit trust for a year of assessment which is equivalent to the amount of income distributed to the unit holder in the basis period for that year of assessment which is ascertained by reference to the unit holder's share of that income shall be exempt from tax.

(2) In this section, "unit trust" means a unit trust which is approved by the Securities Commission as Real Estate Investment Trust or Property Trust Fund.

Discretionary trusts

62. (1) Where there is a discretionary trust, section 61 shall apply to the trust but shall be modified in its application by the following subsections.

(2) Subject to the following subsections, whether or not the trust body of

discretionary trust is resident for the basis year for a year of assessment:

(a) subject to paragraph (b), the total of all sums received in Malaysia by a particular beneficiary of the trust (being sums of an income nature in his hands) in that basis year from the trust body of the trust or the total income of that body for that year of assessment,

whichever is the less, shall be deemed to be the

amount of that particular beneficiary's share of that total income; and

(b) where--

(i) that particular beneficiary is one of a class of beneficiaries of the trust;

(ii) that particular beneficiary has received in

Malaysia and any other beneficiary or

beneficiaries of that class has or have received

in Malaysia any sum or sums of that nature in

that basis year from the trust body of the trust; and

(iii) the aggregate of all sums so received exceeds the total income of that body for that year of

assessment,

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paragraph (a) shall not apply to that particular

beneficiary in relation to that discretionary trust for that year of assessment and a sum bearing the same proportion to that total income as the total of all sums so received by that particular beneficiary bears to that aggregate shall be deemed to be the amount of that particular beneficiary's share of that total income. (3) Where a trust is such that with respect to some of the distributable income from the trust for the basis year for a year of assessment (in this subsection referred to as the discretionary portion) a discretionary power of the trustees applies and with respect to some of the distributable income from that trust for that basis year (in this subsection referred to as the non-discretionary portion) either a beneficiary is entitled

to the whole thereof or there are beneficiaries entitled to particular fractions thereof-- (a) the total income of the trust body of the trust for that year of assessment shall be divided into a

discretionary part and a non-discretionary part, the amount of the discretionary part being a sum which bears the same proportion to that total income as the discretionary portion bears to the distributable income from the trust for that basis year and the amount of the non-discretionary part being a sum which bears the same proportion to that total income as the non-

discretionary portion bears to the distributable income from the trust for that basis year;

(b) subject to paragraph (c)--

(i) subsection (2) shall apply in relation to the trust body and that part of the trust relating to the discretionary portion as if the amount of

the discretionary part were the total income of

the trust body for that year of assessment;

(ii) in the application of subsection 61(5) in

relation to the trust body and that part of the

trust relating to the discretionary portion, the

amount of the discretionary part shall be

treated as the total income of the trust body for that year of assessment; and

(iii) in the application of subsection 61(4) and (5) in relation to the trust body and that part of the trust relating to the non-discretionary portion,

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the amount of the non-discretionary part shall

be treated as the total income of the trust body

for that year of assessment;

(c) where in consequence of the application of paragraph (b) a beneficiary of

the trust has a share of the discretionary part and a share of the non-discretionary part, the aggregate of the amounts of those shares shall be deemed to be the amount of his statutory income from his ordinary source in relation to the trust for that year of assessment, and if the total of--

(i) all sums received in Malaysia from the trust

body of the trust by him (being sums of an income nature in his hands) in the basis year for a year of assessment; and

(ii) all sums received by him outside Malaysia

from the trust body of the trust in any year

(being sums of an income nature in his hands)

and remitted to Malaysia in the basis year for a year of assessment,

exceeds that aggregate, that excess shall be deemed to be his further source within the meaning of subsection 61(5).

(4) Where subsection (2) or (3) applies in relation to a trust (in this subsection referred to as the principal trust) and a year of assessment, then, if any part of the income from the principal trust for the basis year for that year of assessment is subject to a trust for accumulation, the reference in subsection (2) or paragraph (3) (a) to total income shall be construed as a reference to a sum which bears the same proportion to that total income as the part of the income from the principal trust not so subject to that trust for accumulation bears to the income from the principal trust.

(5) (Deleted by Act A226).

Trust annuities

63. (1) This section shall apply where a person is entitled to an annuity payable under the terms of a trust (that annuity, that trust and the trust body of that trust being in this section referred to as the annuity, the trust and the trust body respectively). 053e .FM Page 154 Thursday, April 6, 2006 12:07 PM Income Tax 155

(2) The amount of the annuity payable for the basis year (or for a part of the basis year) for a year of assessment shall be ascertained whenever necessary by applying subsection 19(3) as if references therein to Chapter 4 were references to this section and references to the basis period (or to a part thereof) for a year of assessment were references to the basis year (or to a part thereof) for a year of assessment; and, where two or more amounts are payable in respect of the annuity for the basis year (or for a part of the basis year) for a year of assessment, then, in the application of this section to that annuity, any reference to an amount payable in respect of that annuity shall be construed as a reference to the aggregate of those amounts.

(3) Where the whole of the gross income of the trust body from each of its sources for the basis period for a year of assessment is derived from Malaysia or the trust body is resident for the basis year for that year of assessment--

(a) the amount payable in respect of the annuity for that basis year shall be deemed to be derived from

Malaysia whether or not the trust body has any total income for that year of assessment; and

(b) in ascertaining the total income (if any) of the trust body for that year of assessment that amount shall be deducted after any deduction falling to be made under paragraph 44(1) (a) or (b) and before any deduction falling to be made under paragraph 44(1) (c).

(4) Where--

(a) the trust body is not resident for the basis year for a year of assessment; and

(b) either--

(i) in ascertaining the trust body's total income for that year of assessment regard is to be had

only to one source, and the gross income for

the basis period for that year of assessment

from that source is derived partly from

Malaysia and partly from outside Malaysia; or

(ii) the trust body's gross income for the basis period for that year of assessment is derived as to one of its sources wholly or partly from Malaysia and as to another of its sources wholly or partly from outside Malaysia,

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subsection (5) shall apply for ascertaining the total income (if any) of the trust body for that year of assessment. (5) Where this subsection applies in relation to a year of assessment, the amount payable in respect of the annuity for the basis year for that year of assessment shall be deducted after any deduction falling to be made under paragraph 44(1) (a) or (b) and before any deduction falling to be made under paragraph 44(1) (c) and--

(a) if the whole of that amount is so deducted, that amount shall be deemed to be derived from Malaysia;

(b) if that amount exceeds what would be the total income (if any) of the trust body for that year of assessment ascertained without any deduction being made in

respect of that amount, so much of that amount as equals what would be that total income as so

ascertained shall be deemed to be derived from Malaysia.

(6) Where any amount is payable in respect of a joint annuity under the terms of the trust, there shall for the purposes of this section be deemed to be payable to each of the joint annuitants with respect to that amount a sum arrived at by dividing that amount by the number of joint annuitants.

(7) Where two or more annuities are payable under the terms of the trust and there is insufficient income to allow, in ascertaining the total income (if any) of the trust body of the trust, a full deduction of all amounts payable in respect of all those annuities, the Director General shall give such directions as are necessary for ascertaining how much of the amount payable in respect of each of those annuities shall be deemed to be derived from Malaysia for the purposes of paragraph 5(b). (8) In this section "annuity" includes any

pension or other periodical payment to which paragraph 4(e) applies. Special deduction for qualifying capital expenditure 63A. (1) In ascertaining the statutory income of a unit trust from a source consisting of the derivation of rent from the letting of real property for a year of assessment, there shall be deducted from the adjusted income from that source for that year of assessment an allowance equal to one tenth of that expenditure: Provided that where, by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or cannot be given in full to any allowance falling to be made for that year in relation to that source, that allowance which has not been so made shall not be made to the unit trust for any subsequent year of assessment. (3) Where at the end of the basis period for any year of assessment the residual expenditure in relation to an asset in respect of which qualifying capital expenditure has been incurred is zero, or the asset is no longer owned or in use by the unit trust, no allowance shall be made to the unit trust for that year of assessment and subsequent years of assessment.

allowance made under subsection (2) in respect of qualifying capital expenditure.

(2) Where a unit trust has, for the purposes of deriving rent from the letting of real property, incurred qualifying capital expenditure in relation to an asset and at the end of the basis period for a year of assessment the unit trust was the owner of the asset and the asset was in use for that purpose, there shall be made to the unit trust in relation to that source for that year an allowance equal to one tenth of that expenditure: Provided that where, by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or cannot be given in full to any allowance falling to be made for that year in relation to that source, that allowance which has not been so made shall not be made to the unit trust for any subsequent year of assessment. (3) Where at the end of the basis period for any year of assessment the residual expenditure in relation to an asset in respect of which qualifying capital expenditure has been incurred is zero, or the asset is no longer owned or in use by the unit trust, no allowance shall be made to the unit trust for that year of assessment and subsequent years of assessment.

(4) For the purposes of subsection (2), qualifying capital expenditure shall be deemed to have been incurred on the day on which the machinery or plant is capable of being used for the purposes of deriving rent from the letting of real property. (5) For the purposes of this section--

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

(a) expenditure incurred on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof provided that such expenditure does not exceed seventy-five per cent of the aggregate of itself and any other expenditure (being qualifying capital expenditure); and

(b) expenditure incurred on preparing or levelling land in order to prepare a

machinery or plant provided that such expenditure does not exceed ten per cent of the aggregate of itself and any other expenditure (being qualifying capital expenditure);

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

(6) This section shall not apply to a unit trust referred to in subsection 61A(2).

Special deduction for expenses

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

$A \div B$

-- ,

4C

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

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

Provided that--

(a) the amount of deduction to be made shall not be less than ten per cent of the total permitted expenses incurred for that basis period; and

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

(2) For the purposes of this section--

"permitted expenses" means expenses incurred by the unit trust in respect of--

(a) manager's remuneration;

(b) maintenance of register of unit holders;

(c) share registration expenses;

(d) secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage, which are not deductible under subsection 33(1).

(3) This section shall not apply to a unit trust referred to in subsection 61A(2).

Special treatment on rent from the letting of real property of a Real Estate Investment Trust or Property Trust Fund *63C. (1) This section shall apply notwithstanding any other provisions of this Act.

(2) Where in the year of assessment, income of a unit trust consists of a rent from the letting of real property, the amount of the rent shall be treated as gross income of a unit trust from a source consisting of a business for that year of assessment. (3) In ascertaining, for a year of assessment, the adjusted income of a unit trust from a source referred to in subsection (2), any deductions to be made under this Act in arriving to that income, in respect of that source for the basis period for that year of assessment shall only be allowed against the gross income from that source but--

*NOTE--See section 18 of Act 639 for explanation. 053e .FM Page 159 Thursday, April 6, 2006 12:07 PM 160 Laws of Malaysia ACT 53

(a) where the amount of the deduction exceeds the gross income from that source for that year of assessment, the excess shall be disregarded for the purposes of this Act; and

(b) where that source does not produce any income, the deduction from the gross income of that unit trust from that source of income shall not be

allowed.

(4) In ascertaining, for a year of assessment, the statutory income of a unit trust from a source referred to in subsection (2), any allowances for that year of assessment under Schedule 3 in respect of that source shall only be available against the adjusted income of that source and if by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or be given in full to any allowance for that year of assessment in relation to that source, that allowance which has not been so made shall not be made to the unit trust for any subsequent years of assessment.

(5) For the purposes of this section, "unit trust" has the same meaning assigned to it under subsection 61A(2).

Income of a unit trust from the letting of real property is not income from a business

63D. Subject to section 63C but notwithstanding any other provisions of this Act, income of a unit trust which consists of rent from the letting of real property shall not be treated as income from a source consisting of a business.

Estates under administration

64. (1) For the purposes of this Act, any source forming part of the estate of a deceased individual and any income from that source arising after the day of the death of that individual shall be treated as the source and income of the executor of that individual. (2) The chargeable income of the executor of the estate of a deceased individual for a year of assessment shall be ascertained by reference to the gross income from those sources for the appropriate basis period determined in accordance with the provisions of sections 3 and 4.

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(3) Where an annuity is payable for the basis year for a year of assessment by an executor of a deceased individual, then-- (a) in ascertaining the total income of the executor for that year of assessment the amount of the annuity so

payable shall be deducted after any deduction falling to be made under paragraph 44(1) (a) or (b) and before any deduction falling to be made under paragraph

44(1) (c);

(b) the annuity so payable shall be regarded as income within the meaning of paragraph 4(e) in the hands of the annuitant; and

(c) the annuity shall be deemed to be derived from Malaysia.

(4) In the case of an estate of an individual who was domiciled in Malaysia at the time of his death, the deduction allowed for any year of assessment by section 46 (but no other deduction under Chapter 7) shall be made from the total income of the executor for that year whether or not the executor is an individual and whether or not the executor is resident for the basis year for that year. (5) Subject to subsection (3), payments made by the executor of a deceased individual to a beneficiary of the estate of that individual and received by him as a beneficiary shall not be regarded in his hands as income for the purposes of this Act. (6) For the purposes of subsection (3), subsection 63(2) shall apply to annuities affected by this section as it applies to annuities affected by the said section 63.

Settlements

65. (1) Subject to this section, where-- (a) by virtue or in consequence (whether directly or indirectly) of any settlement and during the life of the settlor, any income from a source or assets

representing income from a source will or may

become payable or applicable in the basis period for a year of assessment to or for the benefit of any relative of the settlor; and

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(b) at the commencement of that year of assessment that relative is unmarried and has not attained the age of twenty-one years,

the income or assets shall be deemed to be income of the settlor and not income of any other person.

(2) Subject to this section, if and so long as the terms of any settlement are such that--

(a) any person has or may have power, whether

immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision

thereof; and

(b) in the event of the exercise of the power, the settlor or a wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement, or of the income arising from the whole or any part of the property so comprised,

all income arising under the settlement from the property comprised in the settlement shall be deemed to be income of the settlor and, subject to subsection 45(2), not income of any other person:

Provided that this subsection shall not apply by reason only of the fact that the settlor or a wife or husband of the settlor will or may become beneficially entitled to any income or property relating to the interest of any beneficiary under the settlement in the event of that beneficiary predeceasing him or her, as the case may be.

(3) Subject to this section, where in the basis year for any year of assessment the settlor in relation to a settlement or any relative of the settlor or any company with respect to which the settlor or any of his relatives has control makes use for his or its own purposes, whether by borrowing or otherwise, of any income arising or of any accumulated income which has arisen under the settlement (being income to which he or it is not entitled thereunder), the amount of that income or accumulated income so made use of shall be deemed to be income of the settlor for that basis year and not the income of any other person; and, where any other person is or was beneficially entitled to that income, there shall be made to that other person such repayments of any tax 053e .FM Page 162 Thursday, April 6, 2006 12:07 PM Income Tax 163

paid by him in respect of that income as are made necessary by the operation of this subsection.

(4) Where, in relation to any settlement to which this section applies, in consequence of any provision of this section (and, where applicable, any other provision of this Act) any tax is charged on or paid by the settlor, he shall be entitled to recover from any trustee of the settlement in receipt of income arising whether directly or indirectly by virtue or in consequence of the settlement (or from any person in receipt of any such income which is deemed to be income of the settlor under this section) the amount of the tax so paid by him, and for that purpose to require the Director General to furnish a certificate specifying the amount of tax so paid; and any certificate so furnished shall be conclusive evidence of the facts appearing therein. (5)

Where any income or assets representing income are deemed to be income of the settlor and not income of any other person under the foregoing subsections, then, subject to subsection (6)--

(a) in a case where the terms of the settlement are such that there is a trust so that the income or assets in question are income or assets of a person having a beneficial interest in that trust, the amount of the income so deemed to be income of the settlor shall be taken to be--

(i) the amount of what would have been, but for

this section, the statutory income of that other person from any property comprised in the

settlement or, where that other person is not

resident, what would have been his statutory

income from any such property if he had been

resident for all relevant basis years; or

(ii) where subsection (3) is applicable, such an

amount as the Director General having regard

to all the circumstances may direct;

(b) in any other case, the amount of the income so deemed to be income of the settlor shall be taken to be-- (i) the amount of what would have been, but for

this section, the statutory income of that other

person from any property comprised in the

settlement or, where that other person is not

resident, what would have been his statutory

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income from any such property if he had been

resident for all relevant basis years; or

(ii) where subsection (3) is applicable, such an

amount as the Director General having regard

to all the circumstances may direct,

and in any case, the income so deemed to be that of the settlor shall be deemed to be derived from such place and source as the Director General having regard to all the circumstances may direct and to be statutory income of the settlor. (6) Notwithstanding subsection (5), in any case to which subsection (2) applies in relation to a settlement, the statutory income from each source of the trust body of the trust the subject of the settlement shall be deemed to be statutory income of the settlor and to be derived from such place and source of the settlor as the Director General having regard to all the circumstances may direct.

(7) If any question arises as to the amount of any payment of income or as to any apportionment of income or of statutory income under this section, that question shall be determined by the Director General and no appeal shall lie from his decision. (8) This section shall apply to every settlement wherever it was made or entered into and whether it was made or entered into before or after the commencement of this Act.

(9) In the case of any settlement where there are two or more settlors, this section shall have effect in relation to each settlor as if he were the only settlor and in any such case-- (a) references in this section to the property comprised in the settlement include, in relation to any settlor, only property originating from that settlor, and references in this section to income in relation to any settlement or arising under the settlement include, in relation to any settlor, only income originating from that settlor; (b) references in this subsection to property originating from a settlor are references to--

(i) property which that settlor has provided

directly or indirectly for the purposes of the

settlement;

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(ii) property representing property so provided;

and

(iii) so much of any property representing both property so provided and other property as on

a just apportionment represents the property so

provided; and

(c) references in this subsection to income originating from a settlor are references to--

(i) income from property originating from that

settlor; and

(ii) income provided directly or indirectly by that settlor.

(10) In this section any reference to property comprised in a settlement includes a reference to property representing property so comprised and any reference to property representing other property includes a reference to property representing accumulated income from that other property.

(11) In this section--

"relative" means a child of the settlor (including a stepchild of the settlor and a child of whom the settlor has the custody or whom he maintains wholly or partly at his own expense), a child adopted by the settlor or the husband or wife of the settlor in accordance with any law, and any person who is a wife, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin of the settlor; "settlement" includes any disposition, trust, covenant, arrangement or agreement and any transfer of assets or income, but does not include--

(a) a settlement which in the opinion of the Director General is made for valuable and adequate

consideration;

(b) a settlement resulting from an order of a court; or (c) any agreement made by an employer to pay to an employee or to the widow or any relative or dependant of an employee after his death such remuneration, pension or lump sum as in the opinion of the Director General is fair and reasonable;

"settlor", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who was provided or undertaken to provide funds or credit directly or indirectly for the purpose of the settlement or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

Co-operative Societies

65A. In arriving at the chargeable income of a co-operative society for a year of assessment, there shall be deducted from the total income for that year--

(a) such sum as has been transferred or paid during the basis period for that year to a statutory reserve fund or to any educational institution or co-operative

organization established for the furtherance of co-operative principles, or to both, or to a Co-operative Education Trust Fund, as may be required under the provisions of any written law relating to the

registration of co-operative societies in Malaysia: Provided that the maximum sum to be deducted

shall not exceed one-fourth of the audited net profits for that basis period of such co-operative society; and (b) an amount equal to eight per cent (or such percentage as may be prescribed) of the members' funds (as

defined in subparagraph 12(2) of Part I of Schedule 6) as at the first day of the basis period for the year of assessment.

(2) (Deleted by Act 451).

PART IV

PERSONS CHARGEABLE

Personal chargeability: general principle

66. Where under this Act the income of any person is assessable and chargeable to tax, that person shall, subject to this Part, be the person assessable and chargeable to tax in respect of that income. 053e .FM Page 166 Thursday, April 6, 2006 12:07 PM Income Tax 167

Vicarious responsibility and chargeability

67. (1) Subject to this Part, the following subsections shall apply where by or under any of the following sections of this Part a person (in this section referred to as the representative)-- (a) is appointed to be the agent of any other person; (b) is assessable and chargeable to tax on behalf of any other person; or

(c) is a person in whose name another person is assessable and chargeable to tax,

any such other person being in this section referred to as the principal.

(2) The representative may require any person (including the principal, in so far as he is capable of complying with the requisition) who is in receipt or control of any income of the principal, and any person by whom any income is paid or payable to the principal, to supply to the representative full particulars of the income and any expenses connected therewith.

(3) Where the representative is assessable and chargeable to tax on behalf of the principal, the representative shall be assessable and chargeable to tax in like manner and to the like amount as the principal would be assessed and charged to tax; and, where the principal is assessable and chargeable in the name of the representative, the principal shall be so assessable and chargeable in like manner and to the like amount as he would be assessed and charged to tax if he were assessable and chargeable in his own name.

(4) The representative shall be responsible for doing all such acts and things as are required by or by virtue of this Act to be done by him as representative or by the principal for the purposes of this Act, and in particular for the payment of any tax due from him as representative or from the principal and for the payment of any debt so due to the Government under section 107A, 108, 109, 109A or 109B; and, in default of payment, any such tax or debt (together with any penalty to which he as representative or the principal is or would be liable in respect of the default) shall be recoverable from the representative either as such or as if he were the principal, as the case may be:

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Provided that the representative shall not be required to pay any such tax, debt or penalty (or any other penalty incurred by the principal) otherwise than from the accessible moneys. (5) Where by or by virtue of this Act anything is to be made or served on or given or done to the principal for the

purposes of this Act, in lieu thereof the same may be made or served on or given or done to the representative:

Provided that nothing in this subsection shall make the representative liable to be convicted of an offence committed by the principal in which the representative had no part. (6) The representative--

(a) may retain out of the accessible moneys so much as is necessary to pay any tax or penalty, or any debt of the kind referred to in subsection (4) due from him as representative or from the principal; and

(b) shall be and is hereby indemnified against all persons whatsoever for any payments made by him as

representative in pursuance of this Act.

(7) In this section "the accessible moneys", in relation to the representative and the principal, means any moneys (including any pension and any salary, wages or other remuneration) which--

(a) from time to time are due from the representative to the principal or are held by the representative in his custody and control on behalf of the principal; or (b) being then moneys of or due to the principal, are obtainable on demand by the representative.

Power to appoint agent

68. (1) The Director General may, if he thinks fit, by notice in writing appoint any person to be the agent of any other person for all or any of the purposes of this Act; and, where any person is so appointed for all those purposes, he shall be assessable and chargeable to tax on behalf of that other person. (2) An appointment made under subsection (1) may be revoked by the Director General at any time.

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(3) Where a person appointed under subsection (1) to be the agent of another person is aggrieved by the appointment, he may within thirty days after the service on him of the notice of appointment appeal under section 99 as if the notice of appointment served upon him were a notice of assessment and the provisions of this Act relating to appeals shall apply accordingly with any necessary modifications.

(4) Where any income on which tax is chargeable (or the source of any such income) is under the direction and control of a court in Malaysia and the

court appoints a receiver therefor-- (a) the receiver so long as his appointment subsists shall be deemed to have been appointed under subsection (1) (without the right of appeal conferred by

subsection (3)) to be the agent of the court as regards that income or source for all the purposes of this Act; and

(b) if the source of that income is vested in the court, the registrar or other appropriate officer of the court shall be treated for the purposes of this Act as the person entitled to that income.

(5) The following sections of this Part shall be without prejudice to the generality of subsection (1).

Incapacitated persons

69. (1) Where a person lawfully having the direction, control or management of any property or concern on behalf of an incapacitated person receives the gross income of that incapacitated person from all sources for the appropriate basis periods for a year of assessment, that first-mentioned person shall be assessable and chargeable to tax in respect of that income on behalf of that incapacitated person.

(2) Where there is no person assessable and chargeable to tax by virtue of subsection (1) in respect of the income of an incapacitated person, the Director General may appoint any person under subsection 68(1) to be the agent of that incapacitated person for all the purposes of this Act. (3) Without prejudice to subsection (1) or (2), if an incapacitated person assessable and chargeable to tax is a minor, 053e .FM Page 169 Thursday, April 6, 2006 12:07 PM 170 Laws of Malaysia ACT 53

the minor's parent or guardian (or any person standing as regards the minor in a relationship corresponding to that of parent or guardian) shall be assessable and chargeable to tax on behalf of the minor.

(4) Nothing in this section shall prevent a minor being directly assessable and chargeable to tax.

(5) Paragraph 23(c) shall apply whenever appropriate in relation to the reference to gross income in this section. Non-residents

70. (1) A person who is not resident for the basis year for a year of assessment shall be assessable and chargeable to tax for that year of assessment either directly or in the name of any attorney, factor, agent,

receiver or manager of his (whether or not the attorney, factor, agent, receiver or manager has the receipt of any income of that non-resident person):

Provided that nothing in this subsection shall render any person assessable or chargeable in the name of a broker, a general commission agent or any other agent where the broker or agent is not either--

(a) carrying on with the authority of that person the regular agency of that person; or

(b) a person assessable and chargeable as if he were an agent by virtue of section 141 on income in respect of gains or profits arising from sales or transactions carried out thought himself as broker or agent.

(2) Where a partner in a partnership is not resident for the basis year for a year of assessment, his income ascertained under the appropriate provisions of sections 55 to 59 in relation to the partnership shall be assessable and chargeable to tax for that year of assessment in the name of--

(a) the partnership (which shall be regarded as a person to the extent necessary to give effect to this subsection); (b) any partner who is resident for that basis year; or (c) any agent of the partnership in Malaysia,

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and the tax charged thereon shall be recoverable by all the means provided by this Act out of the assets of the partnership. Masters of ships and captains of aircraft

71. The master of any ship and the captain of any aircraft owned or chartered by a person who is assessable and chargeable to tax in consequence of the application of section 54 shall (though not to the exclusion of any other agent) be deemed to be the agent of that person and shall be assessable and chargeable to tax on behalf of that person.

Hindu joint families

72. The income of a Hindu joint family (and any income of the family's manager or karta in his capacity as such, being income by virtue of sections 55 to 59) shall be assessable and chargeable on the family's manager or karta, who shall accordingly be assessable and chargeable to tax on behalf of the family.

Trustees

73. (1) The income of the trust body of a trust shall be assessable and

chargeable to tax on the trust body (which may be given by the Director General a suitable designation for the purpose) and, so long as the trustees for the time being remain members of the trust body they shall (whether or not, in the case of each trustee, he was a member of the trust body when any particular responsibility or obligation under this Act first arose) jointly and severally be subject to all the liabilities to which they would be subject under section 67 if the trust body were the principal within the meaning of that section and each trustee were the representative within that meaning.

(2) A trustee who vacates his office shall cease to have responsibility under subsection (1):

Provided that nothing in this subsection shall relieve any person from responsibility for a criminal or negligent act, whenever committed.

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Executors

74. (1) Where an individual dies in the basis year for a year of assessment, his executors shall be assessable and chargeable to tax for that year of assessment, for the following year of assessment and, whenever necessary, for any previous year of assessment in respect of the chargeable income of that individual for any such year of assessment; and, where they are so assessable and chargeable, they shall be assessable and chargeable to tax in like manner and to the like amount as the individual would be assessed and charged to tax if he had not died.

(2) For the purposes of subsection (1)--

(a) the reference therein to the chargeable income of any individual for any year of assessment shall be taken to be such chargeable income for that year as he would have had if he had not died in respect of any income of his arising before his death and in respect of any income received by his executors which if he had not died and if it had been received by him (at the time it was received by his executors) would have been taken into account in arriving at that last-mentioned

chargeable income; and

(b) all rights and duties which would have attached to him with respect to that last-mentioned chargeable income as he would have so had shall pass to his executors. (3) Any assessment or additional assessment to be made in consequence of the foregoing subsections shall be made not later than the end

of the third year of assessment following the year of assessment in the basis year for which--

- (a) the individual died;
- (b) the estate duty affidavit (if any) was filed in Malaysia with respect to any part of the estate of that individual; or
- (c) where such an estate duty affidavit has been filed, the last of any corrective affidavits relating to that estate duty affidavit was filed,

being the basis year in which the last of those events took place. 053e .FM
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(4) The amount of any tax payable by the executors of a deceased individual by virtue of this section (together with any penalty which may be incurred under subsection 103(3), (4), (5), (6), (7) or (8)) shall be debt due from and payable out of the estate of that deceased individual.

(5) The executors of a deceased individual shall not distribute any of the assets of his estate unless they have made provision (in so far as they are able to do so out of those assets) for the payment in full of any tax which they know or might reasonably expect to be payable by them under this section.

(6) Any executors who fail to comply with subsection (5) shall be jointly and severally liable to pay a penalty equal to the amount of the tax to which the failure relates.

(7) Subsection 125(2) shall apply to a penalty imposed by subsection (6) of this section as it applies to a penalty imposed by subsection 112(3) or 113(2).

Companies and bodies of persons

75. (1) The responsibility for doing all acts and things required to be done by or on behalf of a company or body of persons for the purposes of this Act shall lie jointly and severally-- (a) in the case of a company, with--

(i) the manager or other principal officer in Malaysia; (ii) the directors;

(iii) the secretary; and

(iv) any person (however styled) exercising the

functions of any of the persons mentioned in

the foregoing subparagraphs; and

(b) in the case of a body of persons, with--

(i) the manager;

(ii) the treasurer;

(iii) the secretary; and

(iv) the members of its controlling authority.

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(2) The liquidator of a company which is being wound up shall not distribute any of the assets of the company to its shareholders unless he has made provision (in so far as he is able to do so out of the assets of the company) for the payment in full of any tax which he knows or might reasonably expect to be payable by the company under this Act or to be deductible by the company under section 107.

(3) Any liquidator who fails to comply with subsection (2) shall be liable to pay a penalty equal to the amount of the tax to which the failure relates.

(4) Subsection 125(2) shall apply to a penalty imposed by subsection (3) of this section as it applies to a penalty imposed by subsection 112(3) or 113(2).

Director's liability

75A. (1) Notwithstanding anything contrary to this Act or any other written law--

(a) where any tax is due and payable under this Act by a company, any person who is a director of that

company during the period in which that tax is liable to be paid by that company; or

(b) where any debt is due and payable from an employer under any rules made pursuant to section 107 and the employer is a company, any person who is a director of that company during the period in which the debt is liable to be paid by that company,

shall be jointly and severally liable for such tax or debt, as the case may be, that is due and payable and shall be recoverable under section 106 from that person.

(2) In this section, "director" means any person who-- (a) is occupying the position of director (by whatever name called), including any person who is concerned in the management of the company's business; and

(b) is, either on his own or with one or more associates within the meaning of subsection 139(7), the owner of, or able directly or through the medium of other companies or by any other indirect means to control, 053e .FM Page 174 Thursday, April 6, 2006 12:07 PM Income Tax 175

more than fifty per cent of the ordinary share capital of the company ("ordinary share capital" here having the same meaning as in the definition of "director" in section 2).

Rulers and Ruling Chiefs

76. (1) The income of a Ruler or Ruling Chief shall be assessable and chargeable to tax in the name of the person nominated by the Ruler or Ruling Chief for the purposes of this Act as the person executing the function of administrator of the private property of the Ruler or Ruling Chief:

Provided that where no such nomination has been made by a Ruler or Ruling Chief, section 66 shall apply to such Ruler or Ruling Chief.

(2) Where a person is responsible for the payment of tax on behalf of a Ruler or Ruling Chief--

(a) that person may pay the tax out of any private property in his hands or under his control belonging to the Ruler or Ruling Chief and may, to the extent that he pays any such tax out of his own property, indemnify himself out of any such private property;

(b) that person shall not be personally liable in respect of the tax except to the extent that he--

(i) has in his possession, custody or control any private property belonging to the Ruler or

Ruling Chief; or

(ii) had any such private property in his

possession, custody or control at any time after

receiving notice of the tax having become due;

(c) unless the sanction of the Attorney General is first obtained, no prosecution, suit or other legal

proceedings shall be instituted against that person in respect of any act or thing or which he is responsible under this section; and

(d) the provisions of section 67 shall be modified accordingly when applicable with this section.

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(3) In this section "Ruler or Ruling Chief" means-- (a) the Yang di-Pertuan Agong;

(b) the Raja Permaisuri Agong;

(c) the Timbalan Yang di-Pertuan Agong or other Ruler exercising the functions of the Yang di-Pertuan

Agong;

(d) a State Authority or any person exercising the functions of a State Authority; or

(e) the Undang of Sungei Ujong, the Undang of Jelebu, the Undang of Johol, the Undang of Rembau or the

Tunku Besar of Tampin.

PART V

RETURNS

Return of income by a person other than a company, trust body or co-operative society

77. (1) Every person, other than a company, trust body or co-operative society to which section 77A applies, shall for each year of assessment furnish to the Director General a return in the prescribed form--

(a) in the case of that person who is carrying on a business, not later than 30 June in the year following that year of assessment; or

(b) in any other case than the case in paragraph (a), not later than 30 April in the year following the year of assessment:

Provided that that person has--

(a) chargeable income for that year of assessment; or (b) no chargeable income for that year of assessment, but has chargeable income or has furnished a return or has been required under this Act to furnish a return, for the year of assessment immediately preceding that year of assessment.

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(1A) Where subsection 45(2) applies, a reference to a person under paragraph 1(a) includes a reference to an individual where his wife or her husband who elects, as the case may be, is carrying on a business.

(2) Where a person is required to furnish a return under paragraph (b) of the proviso to subsection (1), the Director General may by way of notification waive that requirement for any year of assessment.

(3) An individual who arrives in Malaysia during a particular year of assessment and--

(a) is chargeable to tax for that particular year; or (b) is not chargeable to tax for that particular year but is chargeable to tax for the year of assessment following that particular year,

shall, within two months of his arrival give notice to the Director General that he will be so chargeable.

(4) For the purposes of this section, a return for a year of assessment shall--

(a) specify the chargeable income and the amount of tax payable (if any) on that chargeable income for that year; and

(b) contain such particulars as may be required by the Director General.

Return of income by every company, trust body or co-operative society

77A. (1) Every company, trust body or co-operative society shall for each year of assessment furnish to the Director General a return in the prescribed form

within seven months from the date following the close of the accounting period which constitutes the basis period for the year of assessment.

(2) Notwithstanding subsection (1), where there is a change in the accounting period of a company, trust body or co-operative society such that the accounts are not closed on any date in a year, that company, trust body or co-operative society shall furnish to the Director General a return in the prescribed form for that year 053e .FM Page 177 Thursday, April 6, 2006 12:07 PM 178 Laws of Malaysia ACT 53

and the year of assessment in which the accounts are closed within seven months from the date following the close of the accounting period.

(3) For the purposes of this section, a return for a year of assessment shall—

- (a) specify the chargeable income and the amount of tax payable (if any) on that chargeable income for that year; and
- (b) contain such particulars as may be required by the Director General.

Power to call for specific returns and production of books

78. For the purpose of obtaining full information for ascertaining whether or not a person is chargeable to tax or for determining his liability the Director General may by notice under his hand require that or any other person—

- (a) to complete and deliver to the Director General within a time specified in the notice (not being less than thirty days from the date of service of the notice) any return specified in the notice;
- (b) to attend personally before the Director General and produce for examination all books, accounts, returns and other documents which the Director General deems necessary;
- (c) to make a return in accordance with paragraph (a) and also to attend in accordance with paragraph (b); or (d) to provide in writing such information or particulars which the Director General deems necessary.

Power to call for statement of bank accounts, etc.

79. The Director General may by notice under his hand require any person to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a statement containing particulars of—

(a) all banking accounts—

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(i) in his own name or in the name of a wife or

dependent child of his or jointly in any such

names;

(ii) in which he is or has been interested jointly or solely; or

(iii) on which he has or has had power to operate jointly or solely,

being accounts which are in existence or have been in existence at any time during a period to be specified in the notice;

(b) all savings and loan accounts, deposits, building society accounts and co-operative society accounts in regard to which he has or has had any interest or power to operate solely or jointly during that period;

(c) all assets which he and any wife or dependent child of his possess or have possessed during that period; (d) all sources of his and the gross income from those sources; and

(e) all facts bearing upon his present or past chargeability to tax.

Power of access to buildings and documents, etc.

80. (1) For the purposes of this Act the Director General shall at all times have full and free access to all lands, buildings and places and to all books and other documents and may search such lands, buildings and places and may inspect, copy or make extracts from any such books or documents without making any payment by way of fee or reward.

(1A) Where the Director General exercises his powers under subsection (1), the occupiers of such lands, buildings and places shall provide the Director General or an authorized officer with all reasonable facilities and assistance for the exercise of his powers under this section.

(2) The Director General may take possession of any books or documents to which he has access under subsection (1) where in his opinion--

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(a) the inspection of them, the copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them;

(b) they may be interfered with or destroyed unless he takes possession of them; or

(c) they may be needed as evidence in any legal proceedings instituted under or in connection with this Act.

(3) Where in the opinion of the Director General it is necessary for the purpose of ascertaining income in respect of the gains or profits from a business for any period to examine any books, accounts or records kept otherwise than in the national language, he may by notice under his hand require any person carrying on the business during that period to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a translation in the national language of the books, accounts or records in question: Provided that in East Malaysia this subsection shall have effect as if the words "or English" were inserted after the words "national language" wherever they occur.

Power to call for information

81. The Director General may require any person to give orally or may by notice under his hand require any person to give in writing within a time specified in the notice all such information or particulars as may be demanded of him by the Director General for the purposes of this Act and which may be in the possession of that person:

Provided that, where that person is a public officer or an officer in the employment of a local authority or statutory authority, he shall not by virtue of this section be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

Duty to keep records and give receipts

82. (1) Notwithstanding section 82A and subject to this section, every person carrying on a business--

(a) shall keep and retain in safe custody sufficient records for a period of seven years from the end of the year to which any income from that business relates to enable that income from that business for each year of

assessment or the adjusted loss from that business for the basis period for any year of assessment to be readily ascertained by the Director General or an authorized officer; and

(b) if the gross takings from the business for the basis year for any year of assessment exceeded one hundred and fifty thousand ringgit from the sale of goods or one hundred thousand ringgit from the performance of

services, shall issue a printed receipt serially

numbered for every sum received in that year of

assessment in respect of goods sold or services

performed in the course of or in connection with the business and shall retain a duplicate of every receipt so issued.

(1A) Where a person carrying on a business has not furnished a return under subsection 77(1), 77A(1) or (2) for a year of assessment, that person shall keep and retain the records referred to in subsection (1) that relate to that year of assessment for a period of seven years after the end of the year in which the return is furnished.

(2) Where in the carrying on of a business a machine is used for recording sales, the issue of receipts pursuant to paragraph (1) (b) may be dispensed with except where the Director General is not satisfied--

(a) that the machine automatically records all sales made; or

(b) that the total of all sales made in a day is transferred at the end of the day to a record of sales.

(3) The Director General may specify by statutory order in respect of any class or description of business (or by notice under his hand in respect of the business of any particular person)-- (a) the form of records to be kept under paragraph (1) (a) and the manner in which they shall be kept and

retained; and

(b) the form of receipts to be issued and duplicate receipts to be retained under paragraph (1) (b) and the manner in which they shall be issued or retained.

(4) The Director General may waive all or any of the provisions of subsection (1) in respect of any business or records or any class or description of business or records. (5) The Director General, if he is of the opinion that any accounts or records produced by any person to the Director General for the purpose of ascertaining the income of a person are insufficient or inadequate for that purpose, may by notice under his hand require that person to produce, in respect of any period or periods specified in the notice and within a time so specified (that time not being less than thirty days from the service of the notice), accounts audited by a professional accountant, together with a report made by that accountant which shall contain, in so far as they are relevant, the matters set out in subsections 174(1) and (2) of the Companies Act 1965.

(6) Any person who under subsection (1) is required to keep records shall cause appropriate entries to be made in those records in respect of transactions within sixty days of each transaction.

(7) Any person who is required by this section to keep records and--

(a) does so electronically shall retain them in an electronically readable form and shall keep the

records in such a manner as to enable the records to be readily accessible and convertible into writing; or (b) has originally kept records in a manual form and subsequently converts those records into an electronic form shall retain those records prior to the conversion in their original form.

(8) All records that relate to any business in Malaysia shall be kept and retained in Malaysia.

(9) For the purposes of this section, "records" include-- (a) books of account recording receipts and payments or income and expenditure;

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(b) invoices, vouchers, receipts and such other documents as in the opinion of the Director General are necessary to verify the entries in any books of account; and (c) any other records as may be specified by the Director General

under subsection (3).

Duty to keep documents for ascertaining chargeable income and tax payable

82A. (1) Subject to this section, every person who is required to furnish a return of his income for a year of assessment under this Act shall keep and retain in safe custody sufficient documents for a period of seven years from the end of that year of assessment for the purposes of ascertaining his chargeable income and tax payable.

(2) Where a person referred to in subsection (1) has not furnished a return as required under this Act for a year of assessment, that person shall keep and retain the documents referred to in subsection (1) that relate to that year of assessment for a period of seven years after the end of the year in which the return is furnished.

(3) The Director General may waive all or any of the provisions of subsection (1) in respect of any income or deductions.

(4) Any person who is required by this section to keep documents and--

(a) does so electronically shall retain them in an electronically readable form and shall keep the

documents in such a manner as to enable the

documents to be readily accessible and convertible into writing; or

(b) has originally kept documents in a manual form and subsequently converts those documents into an

electronic form shall retain those documents prior to the conversion in their original form.

(5) All documents that relate to any income in Malaysia shall be kept and retained in Malaysia.

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(6) For the purposes of this section, "documents" means-- (a) statement of income and expenditure; and

(b) invoices, vouchers, receipts and such other documents as are necessary to verify the particulars in a return. Return by employer

83. (1) The Director General may by statutory order require every employer to prepare and deliver for any year specified in the order and within a time so specified a return in the prescribed form containing--

(a) the names and places of residence of such classes of persons employed by the employer as may be

indicated in the order; and

(b) the full amount of the gross income falling within section 13 paid, payable or provided by or on behalf of the employer to those persons in respect of their employment.

(2) Where an employer commences to employ an individual who is or is likely to be chargeable to tax in respect of income in respect of gains or profits from the employment, the employer shall not later than one month thereafter give written notice to the Director General stating the full name and address of the individual and the terms and date of commencement of the employment.

(3) Where an employer is about to cease to employ an individual who is or is likely to be chargeable to tax in respect of income in respect of gains or profits from the employment, the employer shall not less than one month before the cessation give written notice thereof to the Director General stating the full name and address of the individual and the expected date of cessation:

Provided that, where he is satisfied that it is reasonable to do so in the circumstances, the Director General may accept for the purposes of this subsection a notice given less than one month before the cessation or a notice given on or after the cessation: 053e .FM Page 184 Thursday, April 6, 2006 12:07 PM Income Tax 185

Provided further that an employer shall not be required to give the written notice under this subsection in respect of an individual--

(a) where the income from the employment of that individual is subject to deduction under any rules made pursuant to paragraph 154(1) (a); or

(b) where the total monthly remuneration from the employment of that individual is below the minimum amount of income that is subject to deduction under any rules made pursuant to paragraph 154(1) (a),

and where it is known to him that the individual is not retiring from any

employment.

(4) Where an individual chargeable to tax in respect of income in respect of gains or profits from an employment is to the knowledge of his employer about to leave or intending to leave Malaysia for a period exceeding three months, the employer shall not less than one month before the expected date of departure give written notice of the individual's departure to the Director General:

Provided that--

(a) where he is satisfied that it is reasonable to do so in the circumstances, the Director General may accept for the purposes of this subsection a notice given less than one month before the departure or a notice given on or after the departure; and

(b) where he is satisfied that an individual is required to leave Malaysia at frequent intervals in the course of his employment, the Director General may waive the application of this subsection as regards that

individual.

(5) Notwithstanding the provisions of any written law to the contrary, where an employer has in his possession any moneys whatsoever which are or may be payable to or for the benefit of an employee who has ceased or is about to cease to be employed by him or who is about to leave Malaysia for a period of more than three months with no intention of returning, he shall not, without the permission of the Director General, pay any part of those moneys to or for the benefit of the employee until ninety days after the receipt by the Director General of the notice 053e .FM Page 185 Thursday, April 6, 2006 12:07 PM 186 Laws of Malaysia ACT 53

required to be given under subsection (3) or (4), as the case may be, and if at any time the Director General directs him to pay the full amount or a portion of those moneys towards payment of the tax payable by the employee, he shall pay as directed. (6) For the purposes of this section and subsection 107(4), any person to whom or for whose benefit a service is rendered or performed by another person shall be deemed to be an employer whether or not he employs that other person or is responsible for paying remuneration to that other person.

Return concerning persons other than the maker of the return

84. (1) Every person who in whatever capacity is in receipt or has control of any money or property (being income of the kind mentioned in section 4) of or

belonging to any other person who is chargeable to tax in respect thereof shall, if required to do so by a notice under the hand of the Director General, deliver to the Director General within a period to be specified in the notice (not being less than thirty days from the date of service of the notice) a return in the prescribed form containing particulars of the income and a statement of the name and address of the person to whom it belongs.

(2) Every person who sells any goods in Malaysia on behalf of a person who is not resident for the basis year for a year of assessment shall, if those goods are sold in the course of carrying on a business of that second mentioned person, deliver to the Director General within thirty days after the end of each quarter of that year of assessment a return showing the gross proceeds from any such sales made during that quarter.

(3) In subsection (2) "quarter", in relation to a year of assessment, means any period of three months ending on the last day of March, June, September or December.

Return by occupiers

85. The Director General may by notice under his hand require the occupier of any land or premises situated in Malaysia to furnish within a time to be specified in the notice (not being less than thirty days from the date of service of the notice) a return containing--

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(a) the name and address of the person registered (under any law relating to the registration of title to land) as the proprietor of the land or premises, or the name and address of the person to whom he pays rent therefor; and

(b) a statement of any rent or other consideration payable in respect of the occupation or in respect of furniture enjoyed in connection with the occupation.

Return by partnership

86. (1) Where a business is carried on by a partnership-- (a) the precedent partner, that is to say, the partner who, being an acting partner present in Malaysia--

(i) is first named in the partnership agreement; or (ii) if there is no partnership agreement, is

specified by name or initial singly or with

precedence to the other partners in the usual

name of the firm; or

(b) if no acting partner is present in Malaysia, any attorney, agent, manager or factor of the partnership in Malaysia,

shall for each year of assessment furnish to the Director General a return in the prescribed form not later than 30 June in the year following that year of assessment.

(2) For the purposes of subsection (1), a return for a year of assessment shall--

(a) specify the divisible income or the divisible loss as ascertained under the appropriate provisions of

sections 55, 56, 57, 58 and 59 in relation to the partnership for that year;

(b) contain such information as is necessary to determine the statutory income from all sources of the partners of the partnership; and

(c) contain such other information as may be required by the Director General.

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(3) If a partnership has been dissolved as to all its partners, this section shall continue to apply in relation to the dissolved partnership, and those persons who were partners of the partnership immediately before the dissolution shall be deemed to continue to be partners for the purposes of this section. Power to call for further return

87. The Director General may give notice in writing to any person whenever he thinks fit requiring that person to furnish within a reasonable time (to be specified in the notice) fuller or further returns respecting any matter as to which a return is required by or under this Act.

Returns deemed to be made with due authority

88. A return purporting to be made pursuant to this Act by or on behalf of any person shall be presumed to have been made by that person or on his authority, as the case may be, until contrary is proved; and any person signing such a return shall be deemed to be cognisant of its contents.

Change of address

89. Every person chargeable to tax who changes his address in Malaysia (being an address furnished by him to the Director General) for another address in Malaysia shall within three months inform the Director General of the change by notice in writing.

PART VI

ASSESSMENTS AND APPEALS

Chapter 1--Assessments

Assessments generally

90. (1) Where a person has furnished a return in accordance with section 77 or 77A to the Director General for a year of assessment, the Director General shall be deemed to have made, on the day on which the return is furnished, an assessment in respect of that person in the amount of tax on the chargeable
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income, the tax and the chargeable income being the respective amounts as specified in the return.

(2) For the purposes of this Act, where the Director General is deemed to have made an assessment under subsection (1)-- (a) the return referred to in that subsection shall be deemed to be a notice of assessment; and

(b) the deemed notice of assessment shall be deemed to have been served on the person on the day on which the Director General is deemed to have made the assessment.

(3) Where a person for a year of assessment has not furnished a return in accordance with section 77 or 77A, the Director General may according to the best of his judgment determine the amount of the chargeable income of that person for that year and make an assessment accordingly:

Provided that the making of an assessment in respect of a person under this subsection shall not affect any liability otherwise incurred by that person by reason of his failure to deliver the return.

Assessments and additional assessments in certain cases

91. (1) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax, may in that year or within six years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year.

(2) Where the Director General discovers that the whole or part of any tax repaid to a person (otherwise than in consequence of an agreement come to with respect to an assessment pursuant to subsection 101(2) or in consequence of an assessment having been determined on appeal) has been repaid by mistake whether of fact or law, the Director General may make an assessment in respect of that person in the amount of that tax or that part of that tax, as the case may be:

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Provided that no such assessment shall be made--

(a) if the repayment was in fact made on the basis of, or in accordance with, the practice of the Director

General generally prevailing at the time when the repayment was made; or

(b) in respect of any tax, more than six years after the tax has been repaid.

(3) The Director General where it appears to him that-- (a) any form of fraud or wilful default has been

committed by or on behalf of any person; or

(b) any person has been negligent,

in connection with or in relation to tax, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

(4) Where in a year of assessment--

(a) any assessment made in respect of a person for any year of assessment has been determined by the court on appeal or review; or

(b) any exemption, relief, remission or allowance granted to a person for any year of assessment pursuant to any provision of this Act or any other written law in respect of income of that person which is subject to tax under this Act has been withdrawn, revoked or

cancelled for failing to comply with any condition imposed in granting such exemption, relief, remission or allowance,

the Director General may in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that person for any year of assessment for the purpose of giving effect to the determination, revocation, withdrawal or cancellation, as the case may be.

Advance assessments

92. (1) Subject to this section-- (a) where in a year of assessment a person ceases to possess a source consisting of a business the Director 053e .FM Page 190 Thursday, April 6, 2006 12:07 PM Income Tax 191

General may in that year make an assessment in

respect of that person and income from that source for that year of assessment and the following year of assessment;

(b) where in a year of assessment a person commences to receive income in respect of income from an

employment or in respect of any pension, annuity, or other periodical payments falling under paragraph 4(e), the Director General may in that year make an assessment in respect of that person and income from that source for that year of assessment and each of the subsequent years of assessment;

(c) where in a year of assessment the Director General is satisfied that a person who possesses a source is about to leave Malaysia and--

(i) that person is likely to cease to possess that source in that year of assessment or the

following year of assessment; or

(ii) it is desirable for other reasons that an

assessment be made in respect of that person,

he may in that year make an assessment in respect of that person and income from that source or from any source for that year of assessment and the following year of assessment;

(d) where a person who has ceased to possess a source in a year of assessment receives income from that source after the end of that year (being income which has not been or does not fall to be included in the gross income of that person from that source for any preceding basis period) the Director General may in the year of

assessment in which that income is received make an assessment in respect of that person and that income for that year of assessment;

(e) where in a year of assessment a person is chargeable to tax in consequence of the application of subsection 54(2) to a business, the Director General may at any time in that year make an assessment in respect of that person and any income from that business for that year of assessment; and

(f) where the basis period for a year of assessment in respect of a source or sources of a person is a period 053e .FM Page 191 Thursday, April 6, 2006 12:07 PM 192 Laws of Malaysia ACT 53

of twelve months ending on a day other than 31

December in a basis year the Director General, if he thinks fit, may in that year make an assessment in respect of that person and income from that source or those sources, as case may be, for that year of assessment.

(2) Where an assessment is made under subsection (1) in respect of a person, it shall be made on the assumption that-- (a) all the provisions of this Act in force for the year of assessment in which the assessment is made will

continue in force for the year of assessment for which the assessment is made; and

(b) if that person is an individual, the personal circumstances of that person will be the same in the basis year for the year of assessment for which the assessment is made as they were in the basis year for the year of assessment in which the assessment is made,

and, if in the year of assessment for which the assessment is made it appears to the Director General that by reason of that assumption the assessment is more favourable or less favourable to that person than it would have been if

it had been made under section 90, he may take such action under section 91 or make such repayments of tax as the justice of the case appears to him to require.

(3) Where--

- (a) this section confers power to make an assessment in respect of a person;
- (b) an assessment has been made in respect of that person in a particular year of assessment; and

(c) the Director General is of the opinion that an additional assessment ought to be made under

subsection 91(1) in respect of that person in that particular year,

subsection 91(1) shall apply as if the year of assessment referred to therein were that particular year.

(4) For the avoidance of doubt it is hereby declared that-- 053e .FM Page 192
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(a) the fact that an assessment has been made by virtue of subsection (1) in respect of a person and a source of his shall not prevent the Director General from

making an assessment under this Act in respect of that person and any other source of his; and

(b) the fact that an assessment which would otherwise have been made by virtue of subsection (1) in respect of a person for a year of assessment has not been made because of an insufficiency of total income to produce chargeable income for that year shall not prevent the Director General from making an assessment under

any other provision of this Act in respect of that person for that year of assessment or from taking an amount equal to that total income into account when doing so.

Form and making of assessments

93. An assessment, other than an assessment under subsection 90(1), in respect of a person shall--

(a) be made in the appropriate prescribed form;

(b) indicate, in addition to any other material included therein, the appropriate year of assessment and the amount or additional amount of chargeable income

and the tax charged thereon or the amount of tax or additional tax, as the case may be; and

(c) specify in the appropriate space in that form the date on which that form was duly completed,

and, where that form appears to have been duly completed the assessment shall, until the contrary is proved, be presumed to have been made on the date so specified.

Record of assessments

94. The Director General shall cause to be maintained in such manner as he thinks fit a record of all assessments made for each year of assessment.

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Discharge of double assessments

95. Where two or more assessments have been made with respect to a person on the same income for the same year of assessment, the Director General may discharge such of those assessments as need to be discharged in order to ensure that the income is charged to tax only once for that year.

Notice of assessment

96. (1) As soon as may be after an assessment, other than an assessment under subsection 90(1), has been made, the Director General shall cause a notice of assessment to be served on the person in respect of whom the assessment was made. (2) Where the tax charged under an assessment is increased on appeal to the Special Commissioners or a court, then, so soon as may be after the appeal has been decided there shall be served on the person in respect of whom the assessment was made a notice of increased assessment.

(3) Where subsection 99(2) applies as regards an agent and another person, any notice to be served under subsection (1) or (2) shall be served both on the agent and on the other person. (4) A notice served under subsection (1) or (2) shall be in the prescribed form and shall indicate, in addition to any other material included therein--

(a) in the case of a notice served under subsection (1), the year of assessment, the amount or additional amount of chargeable income and the tax charged thereon or the amount of the tax or additional tax, as the case may be;

(b) in the case of a notice served under subsection (2), the year of assessment and the amount of the increase in the tax charged; and

(c) in either case--

(i) the place at which payment is to be made;

(ii) the increase for late payment imposed by subsection 103(5), (6), (7) or (8); and

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(iii) any right of appeal which may exist under this Act.

Composite assessment

96A. (1) Without prejudice to section 91, where a person-- (a) makes default in furnishing a return in accordance with subsection 77(1) or 77A(1);

(b) fails to give notice of chargeability in accordance with subsection 77(3);

(c) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or (d) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

for any year or years of assessment (that year or those years being referred to in this section as the relevant year or relevant years), the Director General and that person may come to an agreement in writing as to the payment by that person of a sum of money (in this section referred to as the total amount) being--

(i) the amount of tax which has been undercharged or not charged for that relevant year or those relevant years in consequence of such default in furnishing a return or failure to give notice of chargeability or making an incorrect return or giving any incorrect information; and

(ii) the amount of any penalty or penalties which that person may be required to pay for that relevant year or those relevant years pursuant to subsection 112(3) or 113(2) or both (or where such penalty is abated or remitted under subsection 124(3) so much, if any, of the penalty which has not been abated or remitted). (2) Where the Director General and a person have come to an agreement pursuant to subsection (1), the Director General may make a composite assessment in respect of that person in the total amount.

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(3) As soon as may be after a composite assessment has been made, the Director General shall cause a notice of composite assessment to be served on the person in respect of whom the composite assessment was made.

(4) A notice served under subsection (3) shall be in the prescribed form and shall indicate in addition to any other material included therein--

(a) the relevant year or relevant years;

(b) the amount or aggregate amount of tax undercharged or not charged in the relevant year or relevant years; (c) the amount or aggregate amount of any penalty imposed by virtue of subsection 112(3) or 113(2) or both (or where such penalty is abated or remitted under subsection 124(3) so much, if any, of the

penalty which has not been abated or remitted); and (d) the place at which payment of the total amount is to be made.

(5) The total amount shall be collected as if it were part of the tax payable by the person in respect of whom the composite assessment has been made but shall not be treated as tax so payable for the purposes of the provisions of this Act other than sections 103 to 106.

(6) Notwithstanding any other provision of this Act-- (a) a composite assessment made under this section shall be final and conclusive for the purposes of this Act; and

(b) no appeal shall lie against a composite assessment. (7) For the purposes of this section, references to sections of this Act in subsections (1), (4) and (5) shall be deemed to include references to the corresponding sections of the repealed laws, and references to year of assessment in subsection (1) shall be deemed to include a reference to pre-year of assessment; the repealed laws and pre-year of assessment having the same meaning as in subparagraph 1(1) of Part I of Schedule 9. 053e .FM Page 196 Thursday, April 6, 2006 12:07

Finality of assessment

97. (1) Where-- (a) no valid notice of appeal against an assessment has been given under section 99 within the time specified by that section (or any extension thereof);

(b) an agreement has been come to with respect to an assessment pursuant to subsection 101(2);

(c) an assessment has been determined on appeal and there is no right of further appeal; or

(d) a valid notice of appeal against an assessment has been given but the appellant dies before the hearing of the appeal by the Special Commissioners is commenced

or completed and no personal representatives of the estate of the deceased appellant applies to the Special Commissioners within two years after his death to proceed with or complete the hearing,

the assessment as made, agreed to or determined shall be final and conclusive for the purposes of this Act.

(2) Nothing in subsection (1) shall prejudice the exercise of any power conferred on the Director General by section 91, 95 or subsection 143(3).

Chapter 2--Appeals

The Special Commissioners and the Clerk

98. (1) For the purposes of this Act there shall be three or more Special Commissioners of Income Tax and a Clerk to the Special Commissioners.

(2) The Special Commissioners shall be appointed by the Yang di-Pertuan Agong.

(3) The Special Commissioners shall include such number of persons with judicial or other legal experience (that is to say, experience as an advocate, as a member of the judicial and legal service or as the holder of an office to which the Judges Remuneration Act 1971 [Act 45], applies) as may be necessary

for the purposes of paragraph 1 of Schedule 5; and, if the Yang di-Pertuan Agong considers it expedient to do so, he may appoint one of those persons to

be the Chairman of the Special Commissioners.

(4) Each Special Commissioner--

(a) shall hold office for such period and on such terms (including terms as to remuneration and allowances) as may be specified by the Minister; and

(b) shall be deemed to be a public servant within the meaning of section 21 of the Penal Code [Act 574]. (5) The office of the Clerk shall be a federal public office. Right of appeal

99. (1) A person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of assessment or, in the case of an appeal against an assessment made under section 92, within the first three months of the year of assessment following the year of assessment for which the assessment was made (or within such extended period as regards those days or months as may be allowed under section 100) a written notice of appeal in the prescribed form stating the grounds of appeal and containing such other particulars as may be required by that form. (2) Where an assessment has been made in respect of a person appointed under section 68 to be the agent of another person, the agent and that other person shall for the purposes of this section and the other provisions of this Act relating to appeals each be treated as the person in respect of whom the assessment was made and, if they both appeal against the assessment, their appeals shall if possible be dealt with together:

Provided that, in the case of a receiver deemed by subsection 68(4) to have been appointed under subsection 68(1) to be the agent of a court, this subsection shall not apply. (3) Where in a case to which section 67 applies the principal has appealed against an assessment, the representative, whether or not he himself has appealed or is entitled to appeal against the assessment and without prejudice to any power conferred on him 053e .FM Page 198
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by subparagraph 14(c) of Schedule 5, may represent and act generally on behalf of the principal for the purposes of the provisions of this Act relating to appeals ("the principal" and "the representative" here having the same meaning as in section 67). Extension of time for appeal

100. (1) A person seeking to appeal against an assessment may at any time make to the Director General a written application in the prescribed form for an extension of the period within which notice of appeal against the assessment may be given under subsection 99(1).

(2) On receipt of an application under subsection (1), the Director General--

(a) if he is satisfied that for any reasonable cause the applicant was prevented from giving notice of appeal within the appropriate period provided by subsection 99(1), shall extend that period as he thinks proper in the circumstances and give written notice of the

extension to the applicant; and

(b) if he is not so satisfied, shall forward the application to the Clerk, together with a statement of the reasons for his dissatisfaction and his address for the purposes of the application.

(3) Where the Director General forwards an application and statement pursuant to paragraph (2) (b), he shall inform the applicant in writing that he has done so and shall furnish the applicant with a copy of the statement; and the applicant may, within twenty-one days of receiving the information and the copy, forward to the Clerk written representations as to the application and the statement.

(4) Any application and statement forwarded pursuant to paragraph (2) (b) and any representations forwarded pursuant to subsection (3) shall be brought by the clerk to the attention of one of the Special Commissioners, who shall decide whether or not to extend as he thinks proper in the circumstances the period within which the notice of appeal may be given.

(5) The decision of one of the Special Commissioners refusing an application or granting an extension under subsection (4) shall

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be notified in writing by the Clerk to the applicant and the Director General and shall be final.

Review by Director General

101. (1) On receipt of a notice of appeal under subsection 99(1), the Director General shall, within twelve months from the date of receipt of the notice of appeal, review the assessment against which the appeal is made and for that purpose may-- (a) require the appellant to furnish such particulars as the Director General may think necessary with respect to the income to which the assessment relates and any other matter relevant to the assessment in the Director General's opinion;

(b) require the appellant to produce all books or other documents in the

appellant's custody or under the appellant's control relating to any source to which the assessment relates or any other matter relevant to the assessment in the Director General's opinion;

(c) summon any person who in the Director General's opinion is able to give evidence respecting the

assessment to attend before the Director General; and (d) examine any person so attending on oath or otherwise. (1A) Where the Director General requires a period longer than twelve months to carry out the review under subsection (1), the Director General may apply to the Minister for an extension of that period not later than thirty days before the expiry of the twelve-month period.

(1B) On receipt of an application under subsection (1A), the Minister may grant such extension as he thinks proper and reasonable in the circumstances provided that such extension shall not exceed a period of six months from the date of expiry of the twelve-month period.

(1C) The decision of the Minister under subsection (1B) shall be notified in writing to the Director General and shall be final. (2) Where as the result of a review under subsection (1) the Director General and the appellant come to an agreement in writing either--

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(a) as to the amount of the chargeable income and the tax chargeable thereon or the amount of tax or additional tax; or

(b) that there is no chargeable income or tax,

the assessment against which the appeal is made shall be treated as having been confirmed, reduced, increased or discharged in accordance with the agreement.

(3) Subject to subsection (5), where as the result of a review under subsection (1) the Director General and the appellant come to an oral agreement as to the matters mentioned in paragraph (2) (a) or (b) and the Director General serves a written confirmation of the agreement on the appellant, then, unless the appellant within a period of twenty-one days of being so served gives notice in writing to the Director General repudiating the agreement, the oral agreement as confirmed by the Director General shall be deemed to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period between the Director General and the appellant. (4) Subject to subsection (5), where as the result of a review under subsection (1) the Director General makes to the appellant proposals in

writing that the assessment should be confirmed, reduced, increased or discharged and the appellant neither accepts nor rejects the proposals, unless the appellant within a period of thirty days of being served with such proposals (or within such further period as the Director General on the appellant's application may allow) gives notice in writing to the Director General rejecting the proposals, the proposals shall be deemed to have been accepted and to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period or further period, as the case may be, between the Director General and the appellant.

(5) Where by the operation of subsection (3) or (4) there is deemed to be an agreement within the meaning of subsection (2) between the Director General and the appellant, one of the Special Commissioners on the application of the appellant made to the Special Commissioners within a period of thirty days after the agreement is deemed to be come to may, after giving the Director General an opportunity to make oral or written representations, set the agreement aside if he thinks it just and equitable to do so in the circumstances.

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(6) The decision of one of the Special Commissioners on an application under subsection (5) shall be notified by the Clerk in writing to the applicant and the Director General and shall be final.

(7) References in this section to agreements come to between the Director General and the appellant and to confirmations and requests being served on the appellant include references to agreements come to between the Director General and a duly authorized person conducting correspondence or otherwise acting on behalf of the appellant in relation to the appeal and to confirmations and requests served on such a person. (8) Where on an appeal against an assessment the tax chargeable under the assessment is increased by an agreement come to under subsection (2) or by an agreement deemed to be come to under subsection (3) or (4) and not set aside under subsection (5), the Director General shall serve on the appellant a notice in the prescribed form which shall--

(a) indicate, in addition to any other material included therein, the amount of the increase in the tax charged and the place of payment; and

(b) have the same effect for the purposes of Part VII as a notice of increased assessment.

(9) The notice mentioned in subsection (8) shall be served-- (a) where an

agreement is come to under subsection (2), as soon as may be; and

(b) where an agreement is come to under subsection (3) or (4) and is not set aside under subsection (5), as soon as may be after the expiry of the period mentioned in subsection (5) or, if there is an unsuccessful

application to the Special Commissioners under

subsection (5), as soon as may be after the application has been refused.

Disposal of appeals

102. (1) Subject to subsection (3), the Director General may send an appeal forward to the Special Commissioners at any time within the twelve-month period from the date of receipt of the notice of appeal or, if an extension under subsection 101(1B) has been granted, within the extended period if he is of the opinion 053e .FM Page 202 Thursday, April 6, 2006 12:07 PM Income Tax 203

that there is no reasonable prospect of coming to an agreement with the appellant in accordance with subsection 101(2) in respect of the appeal and if subsections 101(3) and (4) are not applicable; and, where he sends an appeal forward under this subsection, he shall give the appellant written notice that he has done so. (2) (Deleted by Act 600).

(3) No appeal shall be sent forward to the Special Commissioners if the Director General and the appellant have or are deemed to have come to an agreement in respect of it in accordance with subsection 101(2), (3) or (4).

(4) Where an appeal is sent forward to the Special Commissioners pursuant to this section, the appeal shall be sent forward in the manner provided by Schedule 5 and that Schedule shall have effect for regulating the hearing and determination of the appeal and otherwise as provided therein.

(5) Where an appeal has been sent forward to the Special Commissioners pursuant to this section--

(a) the Director General and the appellant at any time before the hearing of the appeal by the Special

Commissioners is completed may come to an

agreement of the kind mentioned in subsection 101(2) with regard to the assessment to which the appeal relates; or

(b) the appellant may at any time withdraw the appeal. (6) Where the Director General and the appellant come to an agreement under paragraph (5) (a), the Director General shall and the appellant may, send a true copy of the agreement to the Special Commissioners.

(7) Where the Special Commissioners are satisfied that the Director General and the appellant have come to an agreement under paragraph (5) (a) with regard to the assessment to which an appeal relates--

(a) the proceedings before the Special Commissioners relating to the appeal shall abate;

(b) the agreement shall have effect as if it had been come to under subsection 101(2); and

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(c) subsections 101(8) and (9) shall apply accordingly. (8) Where the Special Commissioners are satisfied that the appellant has withdrawn his appeal under paragraph (5) (b)-- (a) the proceedings before the Special Commissioners relating to the appeal shall abate; and

(b) the assessment to which the appeal relates shall be final and conclusive for the purposes of this Act, the Income Tax Ordinance 1956 of Sabah [Sabah Ord. 29 of 1956], the Inland Revenue Ordinance 1960 of

Sarawak [Sawarak Ord. 13 of 1960] or the Income Tax Ordinance 1947 of West Malaysia [Ord. 48 of 1947], as the case may be.

(9) In this section "appeal" means an appeal against an assessment.

PART VII

COLLECTION AND RECOVERY OF TAX

Payment of tax

103. (1) Except as provided in subsection (2), tax payable under an assessment for a year of assessment shall be due and payable on the due date whether or not that person appeals against the assessment.

(2) Where an assessment is made under section 90(3), 91, 92 or 96A, or where an assessment is increased under section 101(2), the tax payable under the assessment or increased assessment shall, on the service of the notice of

assessment or composite assessment or increased assessment, as the case may be, be due and payable on the person assessed at the place specified in that notice whether or not that person appeals against the assessment or increased assessment.

(3) Where any tax due and payable under subsection (1) has not been paid by the due date, so much of the tax as is unpaid upon the expiration of that date shall without any further notice being served be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.

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(4) Where the tax due and payable has been increased under subsection (3), any balance remaining unpaid upon the expiration of sixty days from the due date shall without any further notice being served be further increased by a sum equal to five per cent of the balance unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.

(5) Subject to subsection (7), where any tax due and payable under subsection (2) has not been paid within thirty days after the service of the notice, so much of the tax as is unpaid upon the expiration of that period shall without any further notice being served be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act.

(6) Where the tax due and payable has been increased under subsection (5), any balance remaining unpaid upon the expiration of sixty days from the date of such increase shall without any further notice being served be further increased by a sum equal to five per cent of the balance unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act. (7)

Where any tax is payable in accordance with subsection (2), the Director General may allow the tax to be paid by instalments in such amounts and on such dates as he may determine and in the event of default in payment of any one instalment on the date specified for payment the balance of the tax then outstanding shall be due and payable on that date and shall without any further notice being served be increased by a sum equal to ten per cent of that balance, and that sum shall be recoverable as if it were tax due and payable under this Act. (8) Where the tax due and payable has been increased under subsection (7), any balance remaining unpaid upon the expiration of sixty days from the date of such increase shall without any further notice being served be further increased by a sum equal to five per cent of the balance unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act. (9) Notwithstanding the foregoing subsections, where tax due and payable is increased by a sum under subsection (3), (4), (5), (6),

(7) or (8), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay that amount.

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(10) Where section 45(2) applies for a year of assessment, the portion of the tax charged for that year upon the husband or the wife in whose name the assessment was made which is attributable to the total income for that year of the wife who elects or the husband who elects, as the case may be, may, if necessary, be collected from the wife who elects or the husband who elects; and this Part shall apply (with any necessary modifications) as if, on the day on which a notice of assessment or a notice of increased assessment for that year is served on the husband or the wife that notice of assessment or notice of increased assessment had been served on the wife who elects or the husband who elects, as the case may be:

Provided that nothing in this subsection shall be construed as conferring on the wife who elects or the husband who elects, as the case may be, any right of appeal under section 99. (11) For the purposes of subsection (10), the part of the tax charged for a year of assessment upon the husband or the wife which is attributable to the total income for that year of the wife who elects or the husband who elects, as the case may be, shall be determined in accordance with the formula--

A ? C

B

where--

(a) in the case of the wife who elects--

A is that wife's total income for a year of assessment;

B is the aggregate of the husband's and that wife's or wives' total income; and

C is the tax charged for the year of assessment

where paragraph 45(2)(a) applies; or

(b) in the case of the husband who elects--

A is that husband's total income for a year of assessment;

B is the aggregate of the wife's and that husband's total income; and

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C is the tax charged for the year of assessment

where paragraph 45(2)(b) applies.

(12) For the purposes of this section, "due date" means-- (a) in the case of a company, trust body or co-operative society the last day of the seventh month from the date following the close of the accounting period;

(b) in the case of a person referred to under paragraph 77(1)(a), 30 June in the year following the year of assessment; and

(c) in any other case other than the cases referred to in paragraphs (a) and (b), 30 April in the year following the year of assessment.

103A. (Deleted by Act A1151).

Recovery from persons leaving Malaysia

104. (1) The Director General, where he is of the opinion that any person is about or likely to leave Malaysia without paying-- (a) all tax payable by him (whether or not due or due and payable);

(b) all sums payable by him under subsection 103(3), (4), (5), (6), (7) or (8); and

(c) all debts payable by him under subsection 107A(2) or 109(2) or 109B(2),

may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the tax, sums and debts so payable with a request for that person to be prevented from leaving Malaysia unless and

until he pays all the tax, sums and debts so payable or furnishes security to the satisfaction of the Director General for their payment.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, any Commissioner of Police or Director of Immigration who receives a request under subsection (1) in respect of any person shall take or cause to be taken all such measures (including the use of reasonable force and the seizure, removal or retention of any certificate of identity 053e .FM Page 207 Thursday, April 6, 2006 12:07 PM 208 Laws of Malaysia ACT 53

and any passport, exit permit or other travel document relating to that person) as may be necessary to give effect to it. (3) The Director General shall cause notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates: Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.

(4) Where a person in respect of whom a certificate has been issued under subsection (1)--

(a) produces a written statement signed on or after the date of the certificate by the Director General or an authorized officer to the effect that all the tax, sums and debts specified in the certificate have been paid or that security has been furnished for their payment; or (b) pays all the tax, sums and debts specified in the certificate to the officer in charge of a police station or to an immigration officer,

the statement or the payment, as the case may be, shall be sufficient authority for allowing that person to leave Malaysia. (5) No legal proceedings shall be instituted or maintained against the Government, a State Government, a police officer or any other public officer in respect of anything lawfully done under this section or subsection 115(2).

(6) In this section--

"Commissioner of Police" includes a Chief Police Officer; "Director of Immigration" means the Director of Immigration in Sabah, Sarawak or West Malaysia;

"immigration officer" means a public officer having official duties in connection with the control of immigration into Malaysia or any part of Malaysia.

Refusal of customs clearance in certain cases

105. (1) Where tax payable by a person who carries on the business of transporting passengers or cargo by air or sea (or tax 053e .FM Page 208 Thursday, April 6, 2006 12:07 PM Income Tax 209

payable by an agent of that person) has remained unpaid for more than three months (whether that person has been assessed directly or the agent has been assessed on his behalf) the Director General may with the approval of the Minister issue to the customs authority a certificate containing the name of that person or the agent, as the case may be, and particulars of the tax in default; and the customs authority shall thereupon refuse clearance from any port, aerodrome or airport in Malaysia to any ship or aircraft wholly or partly owned or chartered by that person until the tax is paid.

(2) No legal proceedings shall be instituted or maintained against the Government, the customs authority or any public officer in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to pay harbour or other dues and charges for the period of detention. (3) In this section "customs authority" means the Director General of Customs and Excise, and includes the Regional Directors of Customs in Sabah, Sarawak and West Malaysia and any other authority by whom customs clearance may be granted. Recovery by suit

106. (1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government. (2) The Director General and all authorized officers shall be deemed to be public officers authorized by the Minister under subsection 25(1) of the Government Proceedings Act 1956 [Act 359], in respect of all proceedings under this section. (3) In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under subsection 103(3), (4), (5), (6), (7) or (8). Deduction of tax from emoluments and pensions

107. (1) Where any income in respect of gains or profits from an employment or in respect of any pension, annuity or periodical 053e .FM Page 209 Thursday, April 6, 2006 12:07 PM 210 Laws of Malaysia ACT 53

payment falling under paragraph 4(e) is payable to an individual, then, if the Director General so directs, the person by whom the income is payable shall make deductions out of the income on account of tax which is or may be payable by that individual for any year of assessment.

(2) Subject to any rules made under section 154, deductions under this section

on account of tax shall be made at such times and in such amounts as the Director General may direct, whether or not the tax has been assessed.

(3) In relation to any case, nothing in this section shall prevent the collection of any tax (not being tax deducted in accordance with this section) in accordance with section 103 or the payment of that tax being enforced in accordance with section 106: Provided that in any such case for the purposes of section 103 the Director General shall determine the period within which that tax shall be payable.

(4) An employer who fails to comply with subsection 83(2), (3), (4) or (5) or this section with respect to an employee of his shall be liable, in the case of a failure to comply with subsection 83(2), (3), (4) or (5), to pay the full amount of tax due from the employee and, in the case of a failure to comply with this section, to pay the amount of tax which he has failed to deduct: Provided that--

(a) the Director General shall apply any amount paid to or recovered by him in pursuance of this subsection

towards payment of the tax payable by the employee; and

(b) the employer may recover from the employee as a debt due to the employer any amount which has been paid to the Director General by the employer or recovered by the Director General from the employer in

pursuance of this subsection.

(5) Where a person by whom any income of the kind mentioned in paragraph 4(e) is payable fails to comply with this section with respect to a recipient of that income, that person shall be liable to pay the amount of tax which he has failed to deduct:

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Provided that--

(a) the Director General shall apply any amount paid to or recovered by him in pursuance of this subsection

towards payment of the tax payable by the recipient; and

(b) the person may recover from the recipient as a debt due to that person any amount which has been paid to the Director General by that person or recovered by the Director General from that person in pursuance of this subsection.

Deduction of tax from contract payment

107A. (1) Where any person (in this section referred to as "the payer") is liable to make contract payment to a non-resident contractor in respect of services under a contract, he shall upon paying or crediting such contract payment deduct therefrom tax at the rate of--

(a) ten per cent of the contract payment on account of tax which is or may be payable by that non-resident

contractor for any year of assessment; and

(b) three per cent of the contract payment on account of tax which is or may be payable by employees of that non-resident contractor for any year of assessment, and (whether or not that tax is so deducted) shall within one month after paying or crediting such contract payment render an account and pay the amount of that tax to the Director General: Provided that the Director General may--

(i) give notice in writing to the payer requiring him to deduct and pay tax at some other rates or to pay or credit the contract payment without deduction of tax; or

(ii) under special circumstances, allow extension of time for tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1), that amount which he fails to pay shall be increased by an amount equal to ten per cent of the contract payment liable to deduction of tax under subsection (1) and the 053e .FM Page 211 Thursday, April 6, 2006 12:07 PM 212 Laws of Malaysia ACT 53

total sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General. (3) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer--

(a) the Director General shall apply the amount paid or recovered under paragraph (1) (a) towards payment of the tax payable for any year of assessment by the non-resident contractor to whom the payer was liable to pay the contract payment to which that amount relates; (b) the Director General shall refund the amount paid or recovered under paragraph (1) (b) to the non-resident contractor to whom the payer was liable to pay the contract payment to which

that amount relates as and when the Director General deems appropriate; and

(c) if the payer has not deducted any amount in paying the contract payment with respect to which the amount relates, he may recover the amount from the non-

resident contractor as a debt due to the payer.

(4) In relation to any case, nothing in paragraph (1) (b) shall prevent the deduction of any tax (not being tax deducted in accordance with this subsection) in accordance with section 107. (5) In this section--

"contract payment" means any payment made for services under a contract to the non-resident contractor or his agent or any other person acting on his behalf;

"contract project", in relation to any non-resident contractor, includes any undertaking, project or scheme, being an undertaking, project or scheme carried on, carried out or performed in Malaysia;

"non-resident contractor" means any person who is not resident in Malaysia within the meaning of section 7 or 8 and who, under a contract or a subsidiary contract (not being a contract of service or apprenticeship) or an agreement or arrangement undertakes (otherwise than as an employee) any services under a contract; "person" includes a partnership;

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"professional service", in relation to any non-resident contractor, includes any advisory, consultancy, technical, industrial, commercial or scientific service;

"services under a contract", in relation to any non-resident contractor, means the performing or rendering of any work or professional service in Malaysia, being work or professional service in connection with, or in relation to, any contract project. Payment by instalments

107B. (1) Subject to this section, every person chargeable to tax for a year of assessment, other than a company, trust body or co-operative society to which section 107C applies shall make payment by instalments on account of tax, excluding tax in respect of gains or profits from an employment, which is or may be payable by that person for that year of assessment, at such times and in such amounts as the Director General may direct, whether or not the tax has been assessed.

(2) In determining the amount to be paid under subsection (1), the Director

General may take into consideration the tax assessed, if any, in respect of the person for the year of assessment preceding that year of assessment:

Provided that the Director General may, upon an application made by the person not later than the thirtieth day of June in that year of assessment, vary the amount to be paid by instalments on account of tax and the number of instalments.

(3) Where any instalment amount due and payable on the date specified by the Director General pursuant to subsection (1) or (2) has not been paid within thirty days of the due date, the amount unpaid shall, without any further notice being served, be increased by a sum equal to ten per cent of the amount unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act:

Provided that, where the amount unpaid is subsequently paid, the Director General may treat it as having been paid on its due date.

(4) In any case to which the proviso to subsection (2) applies, where the tax payable under an assessment for that year of assessment exceeds the total of the instalments payable and the 053e .FM Page 213 Thursday, April 6, 2006 12:07 PM 214 Laws of Malaysia ACT 53

difference is more than thirty per cent of the tax payable under the assessment, then, without any further notice being served, the amount of the difference which exceeds thirty per cent of the tax payable under the assessment shall be increased by a sum equal to ten per cent of that amount of the difference, and that sum shall be recoverable as if it were tax due and payable under this Act: Provided that in the case of an individual whose income includes gains or profits from an employment, the tax payable under an assessment for that year of assessment shall be reduced by the amount of tax which is attributable to those gains or profits.

(4A) For the purposes of subsection (4), the amount of tax which is attributable to the income in respect of gains or profits from an employment of an individual shall be determined in accordance with the formula--

A ? C

B

where A is his statutory income in respect of gains or profits from employment

for a year of assessment;

B is his total income for that year of assessment; and C is his tax payable for that year of assessment. (5) Nothing in this section shall prevent the collection of any tax from a person to whom this section applies in accordance with section 103 or the payment of that tax being enforced in accordance with section 106:

Provided that in any such case for the purposes of section 103 the Director General shall determine the period within which that tax shall be payable.

Estimate of tax payable and payment by instalments for companies

107C. (1) Every company, trust body or co-operative society shall for each year of assessment furnish to the Director General an estimate of its tax payable.

(2) Except as provided in paragraph (4) (a), the estimate of tax payable for a year of assessment shall be made in the prescribed form and furnished to the Director General not later than thirty days before the beginning of the basis period for that year of assessment.

(3) The estimate of tax payable for a year of assessment shall not be less than eighty-five per cent of the revised estimate of tax payable for the immediately preceding year of assessment or if no revised estimate is furnished, shall not be less than eighty-five per cent of the estimate of tax payable for the immediately preceding year of assessment.

(4) Where a company, trust body or co-operative society first commences operation in a year of assessment--

(a) the estimate of its tax payable for that year of assessment shall be made in the prescribed form and furnished to the Director General within three months from the date of commencement of operations; and

(b) subsections (2) and (3) shall apply to the company, trust body or co-operative society beginning from the second year of assessment.

(5) Where an estimate of tax payable for a year of assessment has been furnished in accordance with subsection (2), that amount shall be paid to the Director General in equal monthly instalments determined according to the number of months in the basis period and each instalment shall be paid by the due date beginning from the second month of the basis period for the year of

assessment in respect of which that estimate has been furnished. (6) Where an estimate of tax payable for a year of assessment has been furnished in accordance with paragraph (4) (a), that amount shall be paid to the Director General in equal monthly instalments determined according to the number of months in the basis period and each instalment shall be paid by the due date beginning from the sixth month of the basis period for the year of assessment in respect of which that estimate has been furnished. (7) A company, trust body or co-operative society may in the sixth month or the ninth month, or in both months of the basis period for a year of assessment furnish to the Director General a revised estimate of its tax payable for that year in the prescribed form and--

(a) where the revised estimate exceeds the amount of instalments which is payable in that year prior to that revised estimate, the difference shall be payable in the remaining instalments in equal proportion; or

(b) where the amount of instalments which is payable in that year prior to that revised estimate exceeds the revised estimate, the remaining instalments shall cease immediately.

(8) Notwithstanding subsections (1), (3), (5), (6) and (7), the Director General may direct any company, trust body or co-operative society to make payment by instalments on account of tax which is or may be payable by that company, trust body or co-operative society for a year of assessment at such times and in such amounts as the Director General may direct.

(9) Where any instalment amount due and payable has not been paid by the due date or on the date specified by the Director General, the amount unpaid shall, without any further notice being served, be increased by a sum equal to ten per cent of the amount unpaid, and the amount unpaid and the increase on the amount unpaid shall be recoverable as if it were tax due and payable under this Act.

(10) Where the tax payable under an assessment for a year of assessment exceeds the revised estimate of tax payable for that year of assessment or if no revised estimate is furnished, the estimate of tax payable for that year of assessment, by an amount of more than thirty per cent of the tax payable under the assessment, then, without any further notice being served, the difference between that amount and thirty per cent of the tax payable under the assessment shall be increased by a sum equal to ten per cent of the amount of that difference, and that sum shall be recoverable as if it were tax due and

payable under this Act. (11) Notwithstanding the foregoing subsections, where the estimate of tax payable for a year of assessment is increased by a sum under subsection (9) or (10), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

(11A) Nothing in this section shall prevent the collection of any tax from a person to whom this section applies in accordance with section 103 or the payment of that tax being enforced in accordance with section 106.

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(12) For the purposes of this section--

"due date" means the tenth day of a calendar month; "revised estimate" means a revised estimate made in the ninth month of the basis period or if there is no revised estimate made in the ninth month of the basis period, the revised estimate made in the sixth month of the basis period.

Deduction of tax from dividends

108. (1) Where a dividend is paid or credited by a company to any of its shareholders in the basis period for a year of assessment, then, if the dividend is deemed by virtue of section 14 to be derived from Malaysia, the company shall be entitled to deduct tax therefrom at the rate applicable to the company on the chargeable income for that year of assessment or, where there is no chargeable income of the company for that year at the rate which would be so applicable if there were such chargeable income. (1A) For the purposes of subsection (1), where a company to which paragraph 2A of Schedule 1 applies, the rate applicable to that company shall be the higher of the two rates specified in that paragraph.

(2) Where a company pays, credits or distributes without deduction of tax a dividend from which it is entitled to deduct tax (or a dividend from which it would have been entitled to deduct tax if the dividend had been wholly paid in cash), the dividend shall be deemed to be a dividend of such a gross amount as determined in accordance with the formula--

1 ?

(1?A)

where A is the rate of tax applicable to the company for a year of assessment

at the time of the payment,

crediting or distribution of the dividend; and

B is the amount in fact paid or credited or where the dividend consists or property other than money, the amount of the market value of that property at the time of the distribution of the dividend,

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and a sum equal to the difference between that gross amount and the amount in B in the above formula shall be deemed to have been deducted from the dividend as tax.

(3) Notwithstanding any other provision of this Act, where a dividend is paid, credited or distributed with or without deduction of tax in the basis period for a year of assessment, and there is a revision in the rate of tax for companies for that year of assessment (in this subsection referred to as the revised rate), the amount of the dividend received by the shareholder shall be deemed to be a dividend of such a gross amount as determined in accordance with the formula--

1 ?

(1?A)

where A is the revised rate of tax applicable to the company for that year of assessment at the time of the

payment, crediting or distribution of the dividend; and

B is the amount in fact paid or credited or where the dividend consists or property other than money, the amount of the market value of that property at the time of the distribution of the dividend,

and a sum equal to the difference between that gross amount and the amount in B in the above formula shall be deemed to have been deducted from the dividend as tax.

(4) Every company shall upon paying, crediting or distributing to a shareholder a dividend of the kind to which subsection (1) or (2) applies (whether tax is deducted therefrom or not) furnish the shareholder with a

certificate setting forth in respect of the dividend--

(a) the gross amount;

(b) the amount of tax--

(i) which the company is entitled to deduct under subsection (1); or

(ii) which is deemed to have been deducted under

subsection (2); and

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(c) the amount in fact paid or credited or where the dividend consists of property other than money, the amount of the market value of that property at the time of the distribution of the dividend.

(5) Within seven months following the close of the accounting period, every resident company shall render to the Director General a statement in the prescribed form showing for a year of assessment--

(a) the total amount of tax--

(i) which the company is entitled to deduct under subsection (1); and

(ii) which is deemed to have been deducted under

subsection (2) or (3),

from that dividend paid, credited or distributed to its shareholders in the basis period for that year of assessment (that total amount being in this section referred to as the compared total); and

(b) the aggregate of the amount--

(i) of the tax paid (if any) and an amount of the tax set off under section 110 (if any) (restricted to the amount of the tax on the chargeable

income of the company less any rebate under

section 6B or any relief given for a year of

assessment under section 132 or 133) less any

tax refunded to the company, in the basis

period for that year of assessment; and

(ii) the balance (if any) carried forward for the credit of the company in accordance with

subsection (8),

(that aggregate amount being in this section referred to as the compared aggregate).

(6) Where, in relation to a year of assessment and a company, the compared total exceeds the compared aggregate at the end of the basis period for a year of assessment, a sum equal to the amount of the excess shall be a debt due from the company to the Government and that debt shall be due and payable on the due date.

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(7) Where any excess due and payable by a company under subsection (6) has not been paid by the due date, so much of the excess as is unpaid upon the expiration of that day shall, without any further notice being served, be increased by an amount equal to ten per cent of the excess so unpaid, and the amount unpaid and the increase on the amount unpaid shall be a debt due from the company to the Government and that debt shall be payable forthwith to the Director General.

(8) Where in relation to a company, the compared aggregate exceeds the compared total at the end of the basis period for a year of assessment, a sum equal to the amount of the excess shall be carried forward as a balance for the credit of the company to the following year of assessment.

(9) Where in relation to a year of assessment, a company fails--

(a) to render the statement referred to in subsection (5); or (b) to provide the information required in the statement referred to in subsection (5),

and the Director General is of the opinion that the company has paid, credited or distributed dividends to its shareholders in the basis period for that year of assessment, he may compute the amount of the excess referred to in subsection (6), if any, and shall serve on the company a written requisition in the prescribed form calling upon the company to pay an amount equal to that excess and an amount of an increase not exceeding the amount equal to that

excess, and the amount equal to that excess and the increase on that amount shall be a debt due from the company to the Government and that debt shall be payable forthwith to the Director General upon the service of the requisition.

(10) Where a company--

(a) is not entitled to deduct tax under this section from a dividend paid or credited in a basis period for a year of assessment to any of its shareholders; and

(b) issues to any one of its shareholders a certificate which purports to show that an amount of tax has been deducted or is deemed to have been deducted under this section from a dividend paid, credited or

distributed to that shareholder,

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an amount equal to what would have been the total amount of tax deducted or deemed to have been deducted, if subsection (1) or (2) has been applicable, from the gross amount of the dividend (ascertained in accordance with subsection (2)) paid, credited or distributed to all its shareholders at the time that the dividend was paid, credited or distributed to those shareholders shall be an amount due from the company to the Government and that amount shall be increased by an amount not exceeding the amount due; and the Director General shall serve on the Company a written requisition in the prescribed form calling upon the company to pay the amount due and the increase on the amount due, and that amount shall be a debt due from the company to the Government and shall be payable forthwith to the Director General upon the service of the requisition:

Provided that, where the company satisfies the Director General that such certificates have been issued only to particular shareholders specified by the company, that debt shall be reduced to an amount ascertained by reference to the certificates issued to those particular shareholders.

(11) Where in relation to a year of assessment there has been a payment of tax under section 103 or an instalment payment under section 107C or a refund of tax, the Director General may make-- (a) all such revisions of the compared total, the compared aggregate or the balance mentioned in subsection (8) (if any);

(b) all such repayments of the whole or any part of a debt paid in pursuant to subsection (6), (9) or (10); and (c) all such requisitions under subsection (9) or (10), as appear to him to be appropriate in the circumstances. (12) Paragraph 23(b) as to the day on which a dividend is to be treated as paid or

distributed shall apply for the interpretation of this section and where this section has applied to a dividend which has been credited it shall not apply to that dividend when paid.

(13) Any debt due under this section shall be recoverable as if it were tax due and payable under this Act.

(14) In this section--

"due date" has the same meaning as in subsection 103(12) (a); 053e .FM Page 221
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"tax paid" means any payment of tax made by the company in the basis period for a year of assessment, whether or not paid through instalments under section 107C, less payments (if any) in respect of--

(a) the tax payable for the year of assessment 2000 on current year basis and prior years of assessment; (b) any penalties imposed under subsection 112(3) or 113(2);

(c) any increase in tax under section 103, 107B or 107C; or (d) any excess or any increase on the excess under section

108. (14A) In this section, a reference to "tax refunded" or "a refund of tax" is a reference to--

(a) the amount of instalments that has been paid under section 107C for a year of assessment less the amount of tax payable (excluding any penalty imposed under section 112 or 113) for that year of assessment;

(b) the amount of tax payable (excluding any penalty imposed under section 112 or 113) discharged by

virtue of the assessment that has been reduced or discharged:

Provided that the amount of tax payable (excluding any penalty imposed under section 112 or 113) under that assessment has been paid; or

(c) the amount of tax paid under subsection 129(2). (15) This section shall not apply to--

(a) a co-operative society;

(b) an offshore company in respect of a dividend paid, credited or distributed

out of--

(i) income derived from an offshore business

activity; or

(ii) income exempt from tax;

(c) a life insurer in respect his chargeable income which is subject to tax under Part VIII of Schedule 1; or (d) a company limited by guarantee.

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(16) Notwithstanding the foregoing subsections, where-- (a) the excess is increased by an amount under subsection (7) or (9); or

(b) the amount due is increased by an amount under subsection (10),

the Director General may in his discretion, for any good cause shown, remit the whole or any part of that amount and, where the amount remitted has been paid, the Director General shall repay the same.

Deduction of tax from interest or royalty in certain cases

109. (1) Where any person (in this section referred to as the payer) is liable to pay interest or royalty derived from Malaysia to any other person not known to him to be resident in Malaysia, other than interest or royalty attributable to a business carried on by such other person in Malaysia, he shall upon paying or crediting the interest (other than interest on an approved loan or interest of the kind referred to in paragraph 33 or 35 of Part I, Schedule 6) or royalty deduct therefrom tax at the rate applicable to such interest or royalty, and (whether or not that tax is so deducted) shall within one month after paying or crediting the interest or royalty render an account and pay the amount of that tax to the Director General:

Provided that the Director General may--

(a) give notice in writing to the payer requiring him to deduct and pay tax at some other rates or to pay or credit the interest or royalty without deduction of tax; or

(b) under special circumstances allow extension of time for tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1),

that amount which he fails to pay shall be increased by an amount equal to ten per cent of the interest or royalty liable to deduction of tax under subsection (1) and the total sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General. 053e .FM Page 223 Thursday, April 6, 2006 12:07 PM 224 Laws of Malaysia ACT 53

(3) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer--

(a) the Director General shall, in the manner provided by section 110, apply that amount towards payment of the tax charged on the person to whom the payer was

liable to pay the interest or royalty to which that amount relates; and

(b) if the payer has not deducted that amount in paying the interest or royalty with respect to which that amount relates, he may recover that amount from that person as a debt due to the payer.

(4) In this section "person" includes a partnership. Application of sections 109 and 110 to income derived by a public entertainer

109A. The provisions of sections 109 and 110 shall apply mutatis mutandis to remuneration or other income in respect of services performed or rendered in Malaysia by a public entertainer. Deduction of tax from special classes of income in certain cases derived from Malaysia

109B. (1) Where any person (in this section referred to as "the payer") is liable to make payments to a non-resident-- (a) for services rendered by the non-resident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such non-resident;

(b) for technical advice, assistance or services rendered in connection with technical management or

administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or

(c) for rent or other payments made under any agreement or arrangement for the use of any moveable property, which is deemed to be derived from Malaysia, he shall, upon paying or crediting the payments, deduct therefrom tax at the rate 053e .FM Page 224 Thursday, April 6, 2006 12:07 PM Income Tax 225

applicable to such payments, and (whether or not that tax is so deducted) shall within one month after paying or crediting such payment, render an account and pay the amount of that tax to the Director General:

Provided that the Director General may--

(i) give notice in writing to the payer requiring him to deduct and pay tax at some other rates or to pay or credit the payments without deduction of tax; or

(ii) under special circumstances, allow extension of time for tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1), that amount which he fails to pay shall be increased by an amount equal to ten per cent of the payments liable to deduction of tax under paragraph (1) (a), (b) or (c) and the total sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General. (3) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer--

(a) the Director General shall, in the manner provided by section 110, apply that amount towards payment of the tax charged on the person to whom the payer was liable to pay the payments to which the amount

relates; and

(b) if the payer has not deducted that amount in paying the payment under subsection (1) with respect to which the amount relates, he may recover that amount from that person as a debt due to the payer.

(4) In this section "person" includes a partnership. Deduction of tax from interest paid to a resident 109C. (1) Where any person (in this section referred to as "the payer") is liable to pay interest (other than interest exempt from tax under this Act or any order made thereto) accruing in or derived from Malaysia to an individual resident in Malaysia, he shall upon paying or crediting such interest deduct therefrom tax at the rate applicable to such interest, and (whether or not that tax is so deducted) shall within one month after paying or crediting 053e .FM Page 225 Thursday, April 6, 2006 12:07 PM 226 Laws of Malaysia ACT 53

the interest render an account and pay the amount of that tax to the Director General:

Provided that the Director General may under special circumstances, allow

extension of time for tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(3) Where in pursuance of this section any amount is paid to the Director General by the payer and if the payer has not deducted that amount in paying the payment under subsection (1) with respect to which the amount relates, he may recover that amount from that individual as a debt due to the payer. (4) In this section "person" refers to a bank or finance company licensed under the Banking and Financial Institutions Act 1989 [Act 372] or the Islamic Banking Act 1983 [Act 276], a registered co-operative society, Bank Simpanan Nasional, Bank Pertanian Malaysia, Lembaga Urusan dan Tabung Haji, Malaysia Building Society Berhad, or any other institution that may be approved by the Minister.

Deduction of tax on the distribution of income of a unit trust 109D. (1) This section shall only apply to income of a unit trust which is exempt under section 61A.

(2) Where a unit trust (in this section referred to as the payer) distributes income to a non-resident unit holder which is deemed to be derived from Malaysia, the payer shall upon distributing the income, deduct therefrom tax at the rate applicable to such income and shall within one month after distributing such income, render an account and pay the amount of that tax to the Director General:

Provided that the Director General may--

(a) give notice in writing to the payer requiring him to deduct and pay tax at any other rates or to distribute the income without deduction of tax; or

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(b) under special circumstances, allow extension of time for the amount of tax deducted to be paid over.

(3) Where the payer fails to pay any amount due from him under subsection (2), that amount which he fails to pay shall be increased by an amount equal to ten per cent of the income liable to deduction of tax under that subsection and the total sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(4) Where in pursuance of this section any amount is paid to the Director

General by the payer or recovered by the Director General from the payer--

(a) the Director General shall, in the manner provided by section 110, apply that amount towards payment of the tax charged on the unit holder to whom the pay

distributes income to which that amount relates; and (b) if the payer has not deducted that amount in

distributing the income under subsection (2) with respect to which that amount relates, he may recover that amount from that unit holder as a debt due to the payer.

(5) Section 110 shall apply mutatis mutandis to tax deducted under this section.

Set-off for tax deducted

110. (1) Any tax which is deducted from any dividend under section 108 or from any interest or royalty under section 109 or from any payment for services, technical advice, assistance, or rental or other income under section 109B (including any amount recovered by the Director General pursuant to subsection 109(2) or 109B(2) but excluding any increase thereof) shall, when the dividend, interest, royalty, or payment for services, technical advice, assistance, or rental or other income is gross income of a person from a source of his for the basis period for a year of assessment, be set off against the tax charged on his chargeable income, if any, for that year.

(1A) Notwithstanding subsection (1), where tax on any dividend paid, credited or distributed in the basis period for a year of assessment has been deducted at a rate applicable for that year 053e .FM Page 227 Thursday, April 6, 2006 12:07 PM 228 Laws of Malaysia ACT 53

of assessment and there is a revision in the rate of tax for companies for that year of assessment, the tax to be set off under subsection (1) shall be sum deemed to be the tax deducted from such dividend under subsection 108(3).

(1B)?(1E) (Deleted by Act A1093).

(2) Subject to this section, where in relation to a year of assessment Chapter 3 or Part III has by virtue of section 41 applied to an accounting period as if it were the basis period for that year of assessment and any dividend, interest, royalty, services, technical advice, assistance, rental or other income has been included in the gross income of a person from a business of

his for that accounting period, then--

(a) if that accounting period falls wholly within the basis period for that year of assessment, for the purposes of subsection (1), the dividend, interest, royalty,

services, technical advice, assistance, rental or other income shall be treated as having been included in that person's gross income from that business for that basis period for that year and regard shall be had to the tax deducted from that dividend, interest, royalty,

services, technical advice, assistance, rental or other income;

(b) if that accounting period overlaps the basis period for that year of assessment--

(i) the dividend, interest, royalty, services,

technical advice, assistance, rental or other

income and the tax deducted therefrom shall

be apportioned in the manner provided by

subsection 41(2);

(ii) the part of the dividend, interest, royalty, services, technical advice, assistance, rental or other income so apportioned to the overlapping part of that accounting period

shall be treated for the purposes of subsection

(1) as a dividend, interest, royalty, services,

technical advice, assistance, rental or other

income included in that person's gross income

from that business for the basis period for that

year; and

(iii) in relation to that part of the dividend, interest, royalty, services, technical advice, assistance,

rental or other income so included regard shall be had for the purposes of subsection (1) to the part of that tax so apportioned to the overlapping part of that accounting period.

(3) Notwithstanding subsections (1) and (2), where any interest, royalty, services, technical advice, assistance, rental or other income is included in the gross income of a person from a business for the basis period for a year of assessment or, by virtue of section 41, for an accounting period as if it were the basis period for that year, then, if that interest, royalty, services, technical advice, assistance, rental or other income or a portion thereof is paid to that person after the end of that basis period or accounting period, as the case may be, that tax deducted therefrom shall be set off against any tax charged on his chargeable income for the year of assessment following that in which the interest, royalty, services, technical advice, assistance, rental or other income or the portion thereof was paid or, where there is no tax so payable, the tax so deducted shall be repaid to him.

(4) For the purposes of subsection (1), where by reason of any provisions of sections 55 to 59 any dividend, interest, royalty, services, technical advice, assistance, rental or other income is gross income of a person from a proprietorship or continuing proprietorship business of his for the basis period for a year of assessment, there shall be set off under subsection (1) only so much of the tax so deducted from that dividend, interest, royalty, services, technical advice, assistance, rental or other income as bears the same proportion to the amount of that tax as his share of the divisible income from that business for that period bears to the divisible income from that business for that period. (5) For the purposes of subsections (1) and (2), where by reason of any provisions of sections 55 to 59 any dividend, interest, royalty, services, technical advice, assistance, rental or other income in gross income of a person from a proprietorship or continuing proprietorship business of his for an accounting period, then, with respect to the amount of the tax to which regard would be had under those subsections in relation to that person but for this subsection, regard shall be had only to the same proportion of that amount as his share of the divisible income from that business for that period bears to the divisible income from that business for that period.

(6) In any case to which subsection (4) or (5) applies, subsection (3) if applicable shall be modified accordingly. (7) For the purposes of the foregoing subsections, where only a portion of any dividend, interest royalty, services, technical advice, assistance, rental or other income is gross income of a person from a source of his for the basis period for a year of assessment or for an accounting period treated as if it were the basis period for that year, regard shall be had to that portion and to so much of any tax deducted from that dividend, interest, royalty, services, technical advice, assistance, rental or other income as bears the same proportion to that tax as the amount of that portion of the dividend, interest, royalty, services, technical advice, assistance, rental or other income bears to the whole of the dividend, interest, royalty, services, technical advice, assistance, rental or other income, as the case may be; and accordingly, where this subsection applies--

(a) the reference in subparagraph (2) (b) (i) to the dividend, interest, royalty, services, technical advice, assistance, rental or other income shall be taken to be a reference to that portion thereof;

(b) the reference in subparagraph (2) (b) (i) to the tax shall be taken to be a reference to so much thereof as

aforesaid; and

(c) the reference in subparagraph (2) (b) (ii) to the part of the dividend, interest, royalty, services, technical advice, assistance, rental or other income shall be taken to be to the part of that portion of the dividend, interest, royalty, services, technical advice, assistance, rental or other income.

(8) Any tax which is applicable to the statutory income of a person from his ordinary source in relation to a trust for a year of assessment (not being a share of the total income of the trust body for that year which has been deducted from that total income in ascertaining the chargeable income of the trust body for that year) shall, where the statutory income is included in the aggregate income of a person for a year of assessment, be set off against the tax charged on the chargeable income, if any, of that person for that year of assessment.

(9) For the purposes of subsection (8), the tax applicable to the statutory income for a year of assessment of a person from his

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ordinary source in relation to a trust shall be taken for that year to be a

sum which bears the same proportion to the amount of tax chargeable on the chargeable income of the trust body of the trust for that year (or, where the trust body is entitled to any relief under section 132 or 133 for that year, to that amount less the amount of that relief) as that person's statutory income from his ordinary source for that year bears to the total income of the trust body for that year.

(9A) Notwithstanding subsections (8) and (9), where income distributed by a unit trust is included in the aggregate income of a person for a year of assessment, the tax chargeable on the unit trust and attributable to the income included in the aggregate income of that person (or, where the trust is entitled to any relief under section 132 or 133, that tax less the amount of that relief) shall be set off against the tax charged on the chargeable income, if any, of that person for that year of assessment. (10) Where in any case to which subsection 68(4) applies any income received by a receiver is distributed to any person entitled thereto, and that income is gross income of that person from a source of his for the basis period for a year of assessment, any tax paid by the receiver and attributable to that gross income shall be set off against the tax charged on that person's chargeable income for that year (the amount of any such tax which is so attributable being determined by the Director General).

(11) Where tax is set off under this section against the tax charged for any year of assessment or would have been so set off if there had been tax so charged, the tax so set off or which would have been so set off shall not be set off against the tax charged for any other year of assessment.

(12) Where paragraph 45(2)(a) applies to an individual and to a wife of his for a year of assessment, any reference in the foregoing subsections to a person shall, in the application of those subsections for that year to that individual and that wife, be taken to be a reference to that individual including that wife as if she were that individual and where paragraph 45(2)(b) applies, this subsection shall be applied accordingly.

(13) Where tax had been set off or is due to be set off under subsection (1) in relation to a dividend and the Director General discovers that the company which had paid, credited or distributed that dividend in respect of which tax has been deducted under subsection 108(1) or deemed to have been 053e .FM Page 231 Thursday, April 6, 2006 12:07 PM 232 Laws of Malaysia ACT 53

deducted under subsection 108(2) had made no payment or had made insufficient payment of tax under section 103, or instalment payments under section 107C or of the excess referred to in subsection 108(6) or (9), the Director General having regard to all the circumstances may if it appears to him to be necessary— (a) assess that dividend on the basis of the net amount and no tax

shall be set off under subsection (1) upon making an assessment on the shareholder; or

(b) make such assessment in accordance with section 91 on the shareholder where tax had been set off under subsection (1) in order to counteract any benefit obtained from the tax that had been set off and where such assessment is made, the shareholder shall be chargeable to tax on that dividend on the basis of the net amount and no tax shall be set off under subsection (1).

Non-entitlement of an offshore company for set-off 110A. Notwithstanding subsection 110(1), where an offshore company receives any dividend from which tax has been deducted under section 108, the tax so deducted shall not be set off against the tax charged on the chargeable income of the offshore company.

Refund of over-payments

111. (1) Subject to this section, where it is proved to the satisfaction of the Director General that any person has paid tax for any year of assessment (by deduction or otherwise) in excess of the amount payable under this Act, that person shall be entitled to have the excess refunded by the Government and, where that person is dissatisfied with the amount to be refunded to him, he may within thirty days of being notified of that amount appeal to the Special Commissioners as if the notification were a notice of assessment, the provisions of this Act relating to appeals applying accordingly within any necessary modifications.

(1A) Where a company has furnished a return in accordance with subsection 77(1A) to the Director General for a year of assessment and that company has paid tax in excess of the amount payable--

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(a) that return shall be deemed to be a notification under subsection (1); and

(b) that company is deemed to have been notified of the excess amount on the day that return is furnished. (1B) Where subsection (1A) applies--

(a) the reference to tax shall be taken to be a reference to an amount of tax set-off under section 110; and

(b) the reference to amount payable shall be taken to be a reference to the amount of tax payable before taking into account the tax set-off under section 110.

(2) No claim for repayment under this section shall be valid unless it is made within six years after the end of the year of assessment to which the claim relates or, where the claim relates to repayment of tax charged by an assessment, within six years after the end of the year of assessment within which that assessment was made.

(3) Nothing in this section shall operate--

(a) to extend any time limit for appeal, validate any appeal which is otherwise invalid or authorize the revision of any assessment or other matter which has become final and conclusive; or

(b) to compel the Government to refund the excess amount of tax paid (by deduction or otherwise) in respect of an assessment unless the assessment has been finally determined.

(4) The representative of a disabled or deceased person shall be entitled to a refund under subsection (1) for the benefit of that person or his estate of any excess within the meaning of that subsection, and for the purposes of this subsection a payment of tax by the representative of such a person shall be deemed to have been made by that person.

(5) Without prejudice to subsection 108(11), a payment made in discharge or partial discharge of a debt of the kind mentioned in subsection 108(6), (9) or (10) shall be regarded as a payment of tax for the purposes of this section.

(6) In this section--

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"disabled person" means a person who through incapacity, bankruptcy or liquidation or for any other reason is unable to manage his own affairs;

"representative" means in the case of a deceased person, his executor, and, in the case of a disabled person, the guardian, committee, assignee in bankruptcy, liquidator or other person who manages or controls his estate, property, assets or affairs. Non-entitlement of an offshore company to refund

111A. Notwithstanding section 111, where tax has been deducted under section 108 from any dividend received by an offshore company, that offshore company shall not be entitled to have the tax so deducted refunded by the Government.

PART VIIA

FUND FOR TAX REFUND

Establishment of Fund for Tax Refund

111B. (1) There is hereby established a fund, to be known as the Fund for Tax Refund (in this section referred to as "the Fund") which shall be specified in and incorporated into the Second Schedule to the Financial Procedure Code Act 1957 [Act 61]. (2) There shall be paid from time to time into the Fund such amount of tax collected under this Act as may be authorized by the Minister.

(3) The moneys of the Fund shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 111 of this Act or any other refund or payment required to be paid out of the Fund as provided by any other written law.

(4) The Fund shall be administered by the Accountant General of Malaysia.

(5) Notwithstanding subsection (2) and the Financial Procedure Code Act 1957, the Minister may from time to time authorize the payment into the Consolidated Revenue Account in the Federal Consolidated Fund of all or any part of the moneys of the Fund. 053e .FM Page 234 Thursday, April 6, 2006 12:07 PM Income Tax 235

Non applicability of section 14A of the Financial Procedure Act 1957

111C. Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 111.

PART VIII

OFFENCES AND PENALTIES

Failure to furnish return or give notice of chargeability

112. (1) Any person who makes default in furnishing a return in accordance with subsection 77(1) or 77A(1) or in giving a notice in accordance with subsection 77(3) shall, if he does so without reasonable excuse, be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than two 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 return has been made or a notice given shall be upon the accused person.

(2A) Where a person has been convicted of an offence under subsection (1), the

court may make a further order that the person shall comply with the relevant provision of this Act under which the offence has been committed within thirty days, or such other period as the court deems fit, from the date the order is made. (3) Where in relation to a year of assessment a person makes default in furnishing a return in accordance with subsection 77(1) or 77A(1) or in giving a notice in accordance with subsection 77(3) and no prosecution under subsection (1) has been instituted in relation to that default--

(a) the Director General may require that person to pay a penalty equal to treble the amount of that tax which, before any set-off, repayment or relief under this Act, is payable for that year; and

(b) if that person pays that penalty (or, where the penalty is abated or remitted under subsection 124(3), so much, if any, of the penalty as has not been abated or 053e .FM Page 235 Thursday, April 6, 2006 12:07 PM 236 Laws of Malaysia ACT 53

remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

Incorrect returns

113. (1) Any person who-- (a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or (b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

shall, unless he satisfies the court that the incorrect return 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 one thousand ringgit and not more than ten thousand ringgit and shall pay a special penalty of double the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct. (2) Where a person--

(a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or (b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

then, if no prosecution under subsection (1) has been instituted in respect of the incorrect return or incorrect information, the Director General may

require that person to pay a penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct; and, if that person pays that penalty (or, where the penalty is abated or remitted under subsection 124(3), so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

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Wilful evasion

114. (1) Any person who wilfully and with intent to evade or assist any other person to evade tax--

- (a) omits from a return made under this Act any income which should be included;
- (b) makes a false statement or entry in a return made under this Act;
- (c) gives a false answer (orally or in writing) to a question asked or request for information made in pursuance of this Act;
- (d) prepares or maintains or authorizes the preparation or maintenance of false books of account or other false records;
- (e) falsifies or authorizes the falsification of books of account or other records; or
- (f) makes use or authorizes the use of any fraud, art or contrivance,

shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than one thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and shall pay a special penalty of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected. (1A) Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for tax of another person shall, unless he satisfies the court that the assistance or advice was given with reasonable care, be guilty of an offence and shall, on conviction, be liable to a fine of not less than two thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both. (2) Where in any proceedings under this section it is proved that a false statement or

false entry (whether by omission or otherwise) has been made in a return furnished under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed until the contrary is proved to have made that false statement or entry with intent to evade tax. Leaving Malaysia without payment of tax

115. (1) Any person who, knowing that a certificate has been issued in respect of him under section 104, voluntarily leaves or attempts to leave Malaysia without paying all the tax, sums and debts specified in the certificate or furnishing security to the satisfaction of the Director General for the payment thereof shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) A police officer or immigration officer may arrest without warrant any person whom he reasonably suspects to be committing or about to commit an offence under this section. (3) In this section "immigration officer" has the same meaning as in section 104.

Obstruction of officers

116. Any person who-- (a) obstructs or refuses to permit the entry of the Director General or an authorized officer into any land,

building or place in pursuance of section 80;

(b) obstructs the Director General or an authorized officer in the exercise of his functions under this Act;

(c) refuses to produce any book or other document in his custody or under his control on being required to do so by the Director General or an authorized officer for the purposes of this Act;

(d) fails to provide reasonable facilities or assistance or both to the Director General or an authorized officer in the exercise of his powers under this Act; or

(e) refuses to answer any question relating to any of those purposes lawfully asked of him by the Director

General or an authorized officer,

shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than one thousand ringgit and not more than ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Breach of confidence

117. (1) Any classified person who in contravention of section 138--

(a) communicates classified material to another person; or

(b) allows another person to have access to classified material,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) In this section "classified material" and "classified person" have the same meaning as in section 138.

Offences by officials

118. Any person having an official function under this Act who-- (a) otherwise than in good faith, demands from any person an amount in excess of the tax or penalties due under this Act;

(b) withholds for his own use or otherwise any portion of any such tax or penalty collected or received by him; (c) otherwise than in good faith, makes a false report or return (orally or in writing) of the amount of any such tax or penalty collected or received by him;

(d) defrauds any person, embezzles any money or

otherwise uses his position to deal wrongfully with the Director General or any other person,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Unauthorized collection

119. Any person who, not being authorized under this Act to do so, collects or attempts to collect tax or a penalty under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Failure to keep records

119A. Any person who, without reasonable excuse -- (a) fails to comply with an order or a notice given under subsection 82(3) or (5); or

(b) contravenes subsection 82(1), (1A), (6), (7) or (8), shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than three hundred ringgit and not more than ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Other offences

120. (1) Any person who without reasonable excuse-- (a) fails to comply with a notice given under section 78, 79, subsection 80(3), section 81, subsection 84(1), section 85 or 87;

(b) fails to comply with an order made under subsection 83(1);

(c) fails to give the notice required by subsection 83(2), (3) or (4);

(d) contravenes subsection 84(2), 86(1), section 89 or subsection 153(1);

(e) fails to comply with a direction given under

subsection 83(5) or section 107;

(f) fails to furnish an estimate in accordance with subsection 107C(2), 107C(3) or paragraph 107C(4) (a); or

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(g) fails to render statement or provide information required in the statement referred to in subsection 108(5),

shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Where a person has been convicted of an offence under subsection (1), the court may make a further order that the person shall comply with the relevant provision of this Act under which the offence has been committed within thirty days, or such other period as the court deems fit, from the date the order is made. Additional provisions as to offences under sections 113, 115, 116, 118 and 120

121. (1) No proceedings for an offence under section 113, 115, 116, 118 or 120 shall be instituted more than twelve years after the offence was committed.

(2) Any person who aids, abets or incites another person to commit an offence under section 113, 115, 116 or 118 shall be deemed to have committed the same offence and shall be liable to the same penalty.

Tax, etc., payable notwithstanding institution of proceedings

122. The institution of proceedings or the imposition of a penalty, special penalty, fine or term of imprisonment under this Part shall not relieve any person from liability for the payment of any tax (or any penalty deemed under any other Part to be tax payable under this Act) or any debt or other sum for which he is or may be liable or from liability to make any return which he is required by this Act to make.

123. (Deleted by Act A1028). Power to compound offences and abate or remit penalties

124. (1) Where any person has committed any offence under this Act, the Director General may at any time before conviction 053e .FM Page 241 Thursday, April 6, 2006 12:07 PM 242 Laws of Malaysia ACT 53

compound the offence and order that person to pay such sum of money, not exceeding the amount of the maximum fine and any special penalty to which that person would have been liable if he had been convicted of the offence, as he thinks fit: Provided that the Director General shall not exercise his powers under this section unless that person in writing admits that he has committed the offence and requests the Director General to deal with the offence under this section.

(2) Where under this section the Director General compounds an offence committed by any person and makes an order accordingly--

(a) the order shall be made in writing under the hand of the Director General and there shall be attached to it the written admission and request referred

to in

subsection (1);

(b) the order shall specify--

(i) the offence committed;

(ii) the sum of money ordered to be paid; and

(iii) the date on which payment is to be made or the dates on which instalments of that sum are to

be paid, as the case may be,

and, where the order provides for payment by

instalments and there is default in payment of any instalments, the whole of the balance then outstanding shall become due and payable forthwith;

(c) a copy of the order shall be given, if he so requests, to the person who committed the offence;

(d) that person shall not be liable to any prosecution or, as the case may be, any further prosecution in respect of the offence and, if any such prosecution or further prosecution is brought, it shall be a good defence for that person to prove that the offence has been

compounded under this section;

(e) the order shall be final and shall not be subject to any appeal;

(f) the order may be enforced in the same way as the judgment of a subordinate court (as defined in

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Schedule 5) for the payment of the amount stated in the order or the amount outstanding, as the case may be; and

(g) the order shall, on production to any court, be treated as proof of the commission of the offence by that person and of the other matters set out therein.

(3) The Director General may abate or remit any penalty imposed under this Act

except a penalty imposed on conviction. Recovery of penalties imposed under Part VIII

125. (1) Special penalties imposed under subsection 113(1) or 114(1) shall be recoverable in the same way as fines imposed on conviction.

(2) Any penalty imposed on any person under subsection 44A(9), 112(3) or 113(2) shall be collected as if it were part of the tax payable by that person, but shall not be treated as tax so payable for the purposes of any provision of this Act other than sections 103 to 106.

Jurisdiction of subordinate court

126. Notwithstanding any other written law, a subordinate court (as defined in Schedule 5) shall have power to try any offence under this Act and on conviction to impose the full penalty therefor.

PART IX

EXEMPTIONS, REMISSION AND OTHER RELIEF

Exemptions from tax: general

127. (1) Notwithstanding any other provision of this Act but subject to section 127A, any income specified in Part I of Schedule 6 shall, subject to this section, be exempt from tax. (2) The Dewan Rakyat may by resolution delete any paragraph or item in Schedule 6 or add further paragraphs or items thereto.

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(3) The Minister may by statutory order--

(a) provide that the interest payable on any loan charged on the Consolidated Fund or on a State Consolidated Fund shall be exempt from tax, either generally or in respect of interest payable to persons of a particular class;

(b) exempt any class of persons from all or any of the provisions of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind;

(c) declare any part of the armed forces to be a reserve force for the purposes of paragraph 9 of Part I of Schedule 6 in addition to the forces mentioned in that paragraph; or

(d) vary paragraph 18 of Part I of Schedule 6 by adding other commodities to those mentioned in that

paragraph or deleting any of the commodities so

mentioned.

(3A) The Minister may, in any particular case exempt any person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.

(4) Any orders made under subsection (3) shall be laid before the Dewan Rakyat.

(5) Any income which is exempt from tax by virtue of this section shall be disregarded for the purposes of this Act: Provided that--

(a) this subsection shall not apply as respects section 107A, 108, 109 or 109B; and

(b) any tax deducted under section 107A, 108, 109 or 109B, from any such income shall be refunded under section 111.

(6) Nothing in this section shall be so construed as to exempt in the hands of a recipient any income in respect of dividend, interest, bonus, salary or wages paid wholly or in part out of income exempt from tax by virtue of this section, unless that first-mentioned income is itself so exempt.

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Cessation of exemption

127A. (1) Notwithstanding any other provision of this Act or any other written law, where any income of a person is exempt by virtue of a repealed law, and the exemption is deemed to have been made by an order under section 127, that exemption shall cease. (2) In this section, "repealed law" has the same meaning assigned to it under Schedule 9.

128. (Deleted by Act 624). Remission of tax

129. (1) The tax paid or payable by any person may be remitted wholly or in part--

(a) on grounds of poverty, by the Director General; or (b) on grounds of

justice and equity, by the Minister, and any tax so remitted shall not be regarded as tax payable for the purposes of any other provision of this Act.

(2) Where a person granted remission under subsection (1) has paid any of the tax to which the remission relates, he shall be entitled to have the amount which he has paid refunded to him as if it were an overpayment to which section 111 applies. Other relief

129A. Notwithstanding any other provision of this Act, the Minister may for the purposes of section 127 provide any relief, in relation to the treatment of expenses, losses and capital allowances in arriving at the chargeable income of a person, as he thinks fit, which is not otherwise provided for in this Act. Non-resident citizen relief

130. (1) There shall be allowed a relief to an individual who is a citizen but not resident for the basis year for a year of assessment by reason of his employment which is exercised outside Malaysia in the public services or the service of a statutory authority. 053e .FM Page 245 Thursday, April 6, 2006 12:07 PM 246 Laws of Malaysia ACT 53

(2) The relief shall be such relief as will reduce the amount of tax chargeable on him in respect of his chargeable income for that year of assessment to an amount which bears the same proportion to the amount of tax which would be so chargeable if he were resident for that basis year and the tax were charged on his aggregate income as the amount of his total income bears to the amount of his aggregate income.

(3) An individual claiming relief under this section shall make his claim in the prescribed form and shall furnish such further particulars as the Director General may require.

(4) In this section, "aggregate income", in relation to an individual claiming relief under this section for a year of assessment, means his total income, accruing in or derived from Malaysia or elsewhere, computed in accordance with the provisions of this Act:

Provided that where subsection 45(2) applies in arriving at the aggregate income the reference to total income shall include the total income of the wife who elects or the husband who elects, as the case may be.

Relief in respect of error or mistake

131. (1) If any person who has paid tax for any year of assessment alleges that an assessment relating to that year is excessive by reason of some error or mistake in a return or statement made by him for the purposes of this Act

and furnished by him to the Director General prior to the assessment becoming final and conclusive, he may within six years after the end of the year of assessment within which the assessment was made make an application in writing to the Director General for relief. (2) On receiving an application under subsection (1) the Director General shall inquire into the matter and, subject to this section, shall give by way of repayment of tax such relief in respect of the alleged error or mistake as appears to him to be just and reasonable.

(3) In determining any application under this section the Director General shall have regard to all the relevant circumstances of the case and in particular--

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(a) shall consider whether the granting of relief would result in the exclusion from charge to tax of income of the applicant; and

(b) for that purpose may take into consideration the chargeability of the applicant for years of assessment other than the year to which the application relates and assessment made upon him for those years.

(4) No relief shall be given under this section in respect of an error or mistake as to the basis on which the 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 practice of the Director General generally prevailing at the time when the return or statement was made.

(5) An application under subsection (1) shall be as nearly as may be in the same form as a notice of appeal under section 99; and, where the applicant is aggrieved by the Director General's decision on the application--

(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.

Double taxation arrangements

132. (1) If the Minister by statutory order declares that-- (a) arrangements specified in the order have been made by the Government with the government of any

territory outside Malaysia with a view of affording relief from double taxation in relation to tax under this Act and any foreign tax of that territory; and

(b) it is expedient that those arrangements should have effect,

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then, so long as the order remains in force, those arrangements shall have effect in relation to tax under this Act notwithstanding anything in any written law.

(2) Where any arrangements have effect by virtue of this section, section 138 shall not prevent the disclosure to a duly authorized servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements.

(3) The appropriate provisions of Schedule 7 shall apply where, under any arrangements having effect under this section in relation to a territory outside Malaysia, foreign tax payable under the laws of that territory is to be allowed as a credit against tax payable under this Act.

(4) Any arrangements to which effect is given under this section may include--

(a) provision for relief from tax with respect to any person of any particular class;

(b) provision as to income which is not itself subject to double taxation;

(c) provision for exempting from tax any person or any person of any particular class or for exempting from tax (wholly or in part) the income of any person or any person of any particular class; and

(d) in addition to provisions for relief from double taxation, other provisions relating to tax under this Act or to foreign tax of the territory to which the arrangements relate,

and any such arrangements containing any such provision may with respect to

that provision be made to have effect for periods before the passing of this Act or before the making of the arrangements, and the foregoing subsections shall be construed accordingly. (5) Where--

(a) any bilateral relief (within the meaning of Schedule 7) falls to be given to a person for a year of assessment in consequence of an order made under this section; and

(b) that year terminated prior to the date of that order, 053e .FM Page 248
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any unilateral relief (within the meaning of that Schedule) falling to be given to that person for that year by virtue of section 133 shall not be given after that date; and, if any such unilateral relief has been given to him for that year, the amount of any such bilateral relief shall be reduced by the amount of that unilateral relief which has been so given.

(6) Any order made under this section shall be laid before the Dewan Rakyat.

Unilateral relief from double taxation

133. Relief from double taxation in relation to tax under this Act and any foreign tax of any territory shall, where there is no order under section 132 in force in respect of that territory, be given in accordance with the appropriate provisions of Schedule 7: Provided that no relief shall be given under this section in relation to tax payable under the laws of a province or other component part of that territory or tax levied by or on behalf of a municipality or other local body.

PART IXA

SPECIAL INCENTIVE RELIEF

Special incentive relief

133A. Notwithstanding any other provisions of this Act, special incentive relief shall be given in accordance with Schedule 7A and Schedule 7B.

PART X

SUPPLEMENTAL

Chapter 1--Administration

The Director General and his staff

134. (1) There shall be a Director General of Inland Revenue, who shall have the care and management of the tax. 053e .FM Page 249 Thursday, April 6, 2006 12:07 PM 250 Laws of Malaysia ACT 53

(1A) The chief executive officer of the Inland Revenue Board of Malaysia appointed under section 6A of the Inland Revenue Board of Malaysia Act 1995 shall be the Director General of Inland Revenue.

(2) The Minister shall, after consulting the Director General of Inland Revenue, appoint, by notification in the Gazette -- (a) two or more Deputy Directors General of Inland Revenue;

(b) State Directors, Directors, Deputy Directors, Principal Assistant Directors and Assistant Directors of Inland Revenue;

(c) Head of Revenue Solicitor, Deputy Revenue Solicitors, Senior Revenue Counsels and Revenue Counsels; and (d) such other officers as may be necessary and expedient for the due administration of this Act,

from amongst the employees of the Inland Revenue Board of Malaysia.

Power of Minister to give directions to Director General

135. The Minister may give to the Director General directions of a general character (not inconsistent with this Act) as to the exercise of the functions of the Director General under this Act; and the Director General shall give effect to any directions so given.

Delegation of Director General's functions

136. (1) Any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under section 152) may be exercised by a Deputy Director General.

(2) Any officer appointed under paragraphs 134(2) (b) and (c), may exercise any function of the Director General under this Act (not being a function exercisable by statutory order or a function 053e .FM Page 250 Thursday, April 6, 2006 12:07 PM Income Tax 251

exercisable under section 152) except his function under section 44, subsection 137(1) and section 150.

(3) (Deleted by Act 644).

(4) (Deleted by Act 644).

(5) The Director General may by writing under his hand authorize any public officer or any employee of the Inland Revenue Board of Malaysia (subject to any exceptions or limitations contained in the authorization) to exercise or assist in exercising any function of the Director General under this Act which is exercisable under subsection (2) by the appointed officers.

(6) Where a public officer or any employee of the Inland Revenue Board of Malaysia exercises any of the Director General's functions by virtue of any provision of subsections (1) to (5), he shall do so subject to the general supervision and control of the Director General.

(7) The delegation by or under any provision of subsections (1) to (5) of the exercise of any function of the Director General shall not prevent the exercise of that function by the Director General himself.

(8) References in this Act to the Director General shall be construed, in relation to any case where a public officer or an employee of the Inland Revenue Board of Malaysia is authorized by any provision of subsections (1) to (5) to exercise the functions of the Director General, as including references to that officer or employee.

Identification of officials

137. (1) Any person exercising the right of access or the right to take possession conferred by section 80 shall carry a warrant in the prescribed form issued by the Director General (or, in the case of a warrant issued to the Director General, by a Deputy Director General) which shall identify the holder and his office and shall be produced by the holder on demand to any person having reasonable grounds to make the demand.

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(2) Where a person purporting to be a public officer or an employee of the Inland Revenue Board of Malaysia exercising functions under this Act produces a warrant in the form prescribed under subsection (1) or any written identification or authority, then, until the contrary is proved, the warrant, identification or authority shall be presumed to be genuine and he shall be presumed to be the person referred to therein. Certain material to be treated as confidential

138. (1) Subject to this section, every classified person shall regard and deal with classified material as confidential; and, if he is an official, he

shall make and subscribe before the prescribed authority a declaration in the prescribed form that he will do so.

(2) No classified material shall be produced or used in court or otherwise except--

(a) for the purposes of this Act or another tax law; (b) in order to institute or assist in the course of a prosecution for any offence committed in relation to tax or in relation to any tax or duty imposed by another tax law; or

(c) with the written authority of the Minister or of the person or partnership to whose affairs it relates. (3) No official shall be required by any court--

(a) to produce or disclose classified material which has been supplied to him or another official otherwise than by or on behalf of the person or partnership to whose affairs it relates; or

(b) to identify the person who supplied that material. (4) Nothing in this section shall prevent--

(a) the production or disclosure of classified material to the Auditor-General (or to public officers under his direction and control) or the use of classified material by the Auditor-General, to such an extent as is

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necessary or expedient for the proper exercise of the functions of his office;

(b) the Director General from publicizing, from time to time in any manner as he may deem fit, the following particulars in respect of a person who has been found guilty or convicted of any offence under this Act or dealt with under subsection 113(2) or section 124-- (i) the name, address and occupation or other

description of the person;

(ii) such particulars of the offence or evasion as the Director General may think fit;

(iii) the year or years of assessment to which the offence or evasion relates;

(iv) the amount of the income not disclosed;

(v) the aggregate of the amount of the tax evaded and penalty (if any) charged or imposed;

(vi) the sentence imposed or other order made:

Provided that the Director General may refrain from publicizing any particulars of any person to whom this paragraph applies if the Director General is satisfied that, before any investigation or inquiry has been commenced in respect of any offence or evasion

falling under section 113 or 114, that person has voluntarily disclosed to the Director General or to any authorized officer complete information and full particulars relating to such offence or evasion.

(5) In this section--

"another tax law" means any Ordinance wholly repealed by this Act, any written law relating to estate duty, film hire duty, payroll tax or turnover tax and any other written law declared by the Minister by statutory order to be another tax law for the purposes of this section;

"classified material" means any return or other document made for the purposes of this Act and relating to the income of any person or partnership and any information or other matter or thing which comes to the notice of a classified person in his capacity as such;

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"classified person" means--

(a) an official;

(b) the Auditor-General and public officers under his direction and control;

(c) any person advising or acting for a person who is or may be chargeable to tax, and any employee of a

person so acting or advising if he is an employee who in his capacity as such has access to classified

material; or

(d) any employee of the Inland Revenue Board of

Malaysia;

"official" means a person having an official duty under or employed in carrying out the provisions of this Act. Chapter 2--Controlled companies and powers to protect the revenue in case of certain transactions

Controlled companies

139. (1) For the purposes of this Act, a person shall be taken to have control of a company--

(a) if he exercises or is able to exercise or is entitled to acquire control (whether direct or indirect) over the company's affairs and in particular, without prejudice to the generality of the preceding words, if he

possesses or is entitled to acquire the greater part of the share capital or voting power in the company; (b) if he possesses or is entitled to acquire either-- (i) the greater part of the issued share capital of the company;

(ii) such part of that capital as would, if the whole of the income of the company were in fact

distributed to the members, entitle him to

receive the greater part of the amount so

distributed; or

(iii) such redeemable share capital as would entitle him to receive on its redemption the greater

part of the assets which, in the event of a

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winding up, would be available for distribution

among members; or

(c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.

(2) Where two or more persons together satisfy in respect of a company any of the conditions in subsection (1), they shall be taken to have control of the company.

(3) For the purposes of subsections (1) and (2) there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(4) Where the trustees of a trust are members of a controlled company, only one of those trustees shall be deemed to be a member thereof; and, where each of those trustees as such is a person of the kind mentioned in subsection (1) or (2), only one of those trustees shall be taken to be a person of that kind.

(5) For the purposes of subparagraph (1) (b) (iii) and paragraph (c), any person who is a loan creditor of a company (otherwise than in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of a business of banking carried on by him) may be treated as a member, and the references to share capital may be treated as including loan capital.

(6) For the purposes of subsection (1) there may be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or any two or more associates of his, including those attributed to a company or associate under subsection (3) but not those attributed to an associate under this subsection; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer persons, if it can be so treated.

(7) In this section--

"associate" means, in relation to a person--

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(a) a person in any of the following relationships to that person, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner;

(b) the trustee or trustees of a settlement in relation to which that person is, or any such relative of his (living or dead) as is mentioned in paragraph (a) of this definition is or was, a settlor ("settlement" and "settlor" here having the same meaning as in section 65);

(c) where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein;

"member" includes, in relation to a company, any person having a share or

interest in the capital or income of the company, and for the purposes of subsection (1) a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire.

Power to disregard certain transactions

140. (1) The Director General, where he has reason to believe that any transaction has the direct or indirect effect of-- (a) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any person;

(b) relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;

(c) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on

any person by this Act; or

(d) hindering or preventing the operation of this Act in any respect,

may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such adjustments as he thinks fit with a view to counter-acting the whole or any part of any such direct or indirect effect of the transaction.

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(2) In exercising his powers under this section, the Director General may--

(a) treat any gross income from any source of any person either as the gross income and source of any other person or, where the gross income is that of a controlled company, as having been distributed to any member (within the meaning of subsection 139(7)) of that company;

(b) make such computation or recomputation of any gross income, adjusted income or adjusted loss, statutory income, aggregate income, total income or chargeable income of any person or persons as may be necessary to revise any person's liability to tax or impose any liability to tax on any person in accordance with his exercise of those powers; and

(c) make such assessment or additional assessment in respect of any person as may be necessary in

consequence of his exercise of those powers, nullify a right to repayment of tax or require the return of a repayment of tax already made.

(3) Without prejudice to the generality of the foregoing subsections, the powers of the Director General conferred by this section shall extend--

(a) to the charging with tax of any person or persons who but for any adjustment made by virtue of this section would not be chargeable with tax or would not be

chargeable with tax to the same extent; and

(b) to the charging of a greater amount of tax than would be chargeable but for any such adjustment.

(4) Where in accordance with this section the Director General requires from a person the return of the amount of a repayment of tax already made--

(a) the Director General shall give to that person a notice of that requirement and the notice shall be treated as a notice of assessment for the purposes of any appeal therefrom, Chapter 2 of Part VI applying with any necessary modifications; and

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(b) that amount shall be deemed to be tax payable under an assessment and section 103 and the other

provisions of Part VII shall apply accordingly.

(5) Where in consequence of any adjustment made under this section an assessment is made, a right to repayment is refused or a return of a repayment of tax is required, particulars of the adjustment shall be given with the notice of assessment, with the notice refusing the repayment or with the notice requiring the return of a repayment, as the case may be.

(6) Transactions--

(a) between persons one of whom has control over the other;

(b) between individuals who are relatives of each other; or (c) between persons both of whom are controlled by some other person,

shall be deemed to be transactions of the kind to which subsection (1) applies if in the opinion of the Director General those transactions have not been made on terms which might fairly be expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length.

(7) Notwithstanding any other provision of this section, where a transaction to which this section relates consists of a settlement on a relative or on a relative and other persons, nothing in this section and no powers exercised thereunder shall affect the interests of the relative under the settlement.

(8) In this section--

"relative" means a parent, a child (including a stepchild and a child adopted in accordance with any law), a brother, a sister, an uncle, an aunt, a nephew, a niece, a cousin, an ancestor or a lineal descendant;

"transaction" means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or entered into orally or in writing (whether before or after the commencement of this Act), and includes a transaction entered into by two or more persons with another person or persons. 053e .FM Page 258 Thursday, April 6, 2006 12:07 PM Income Tax 259

Powers regarding certain transactions by non-residents

141. (1) Where-- (a) a person who is not resident for the basis year for a year of assessment carries on a business with another person who is resident for that basis year (that person, that other person and that year of assessment being in this section referred to as the non-resident, the resident and the relevant year respectively); and (b) it appears to the Director General that, owing to the close connection between the resident and the non-resident and to the substantial control exercised by the non-resident over the resident, the course of business between them can be and is so arranged that the

business done by the resident in pursuance of his connection with the non-resident produces to the

resident in relation to the basis period for the relevant year either no income or a smaller income than that which might be expected to arise from that business, the non-resident shall as regards the relevant year be taken to have a chargeable income and to be assessable and chargeable to tax thereon in the name of the resident by reference to the income which might be expected to

arise from the business of the resident as if the resident were an agent of the non-resident. (2) Where the true amount of the income from a business of the non-resident cannot be readily ascertained for the purposes of subsection (1)--

(a) the Director General may, if he thinks fit, assess and charge the non-resident for the relevant year on a fair and reasonable percentage of the turnover of the

business done by the non-resident through or with the resident (the percentage being determined in each case with regard to the nature of the business); and

(b) the provisions of this Act relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or

particulars of the business done by the non-resident through or with the resident to be furnished by the resident in the same manner as returns or particulars of income are to be delivered by persons acting for

persons who are not resident.

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Chapter 3--Miscellaneous

Evidential provisions

142. (1) In a suit under section 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

(2) In criminal or civil proceedings under this Act any statement purporting to be signed by the Director General or an authorized officer which forms part of or is annexed to the information, complaint or statement of claim, shall, until the contrary is proved, be evidence of any fact stated therein: Provided that this subsection shall not apply to-- (a) a statement of the intent of the accused person or other defendant; or

(b) proceedings for an offence punishable by imprisonment. (3) A transcript of any particulars contained in a return or other document relating to tax, if it is certified under the hand of the Director General or an authorized officer to be a true copy of the particulars, shall be admissible in evidence as proof of those particulars.

(4) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against that person in any proceedings against him for an offence under section 112, 113 or 114, or for the recovery of any sum due by way of tax or penalty, by reason only of the fact that he was or may have been induced to make the statement or produce the document by any lawful inducement or promise proceeding from the Director General or an authorized officer.

(5) (a) Save as provided in paragraph (b) nothing in this Act shall--

(i) affect the operation of Chapter IX of Part III of the Evidence Act 1950 [Act 56]; or

(ii) be construed as requiring or permitting any person to produce or give to a court, the Special Commissioners, the Director General or any other

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person any document, thing or information on which by that Chapter or those provisions he would not be required or permitted to produce or give to a court. (b) Notwithstanding any other written law, where any document, thing, matter, information, communication or advice consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions or dealings of any person (whether an advocate and solicitor, his client, or any other person), it shall not be privileged from disclosure to a court, the Special Commissioners, the Director General or any authorized officer if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by any practitioner or firm of practitioners in connection with any client or clients of the practitioner or firm of practitioners or any other person.

(c) Paragraph (b) shall also apply with respect to any document, thing, matter, information, communication or advice made or brought into existence before the commencement of that paragraph.

Errors and defects in assessments, notices and other documents

143. (1) No assessment, notice or other document purporting to be made or issued for the purposes of this Act shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Act or in accordance with the intent and meaning of this Act and--

(a) in the case of an assessment, the person assessed or intended to be assessed or affected thereby is

designated according to common intent and understanding; and

(b) in any other case, the person to whom it is addressed and any other person referred to therein are so

designated.

(2) An assessment purporting to be made or issued for the purposes of this Act shall not be impeached or affected by reason of a mistake therein as to—

(a) the name of a person charged to tax;

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(b) the description of any income; or

(c) the amount of chargeable income assessed or tax charged,

and a notice of assessment purporting to be so made or issued shall not be impeached or affected by any such mistake if it is served on the person in respect of whom the assessment was made or intended to be made (or served in accordance with subsection 67(5)) and contains in substance and effect the particulars contained in the assessment.

(3) Notwithstanding subsection (2), if the amount of tax charged by an assessment has been incorrectly calculated by reference to the amount of the chargeable income and the appropriate rate of tax applicable thereto, the amount of tax charged as shown in the assessment and the notice of assessment may, if the Director General so directs, be taken to be the amount of tax which ought to have been charged if it had been correctly calculated.

(4) A notice of tax payable purporting to be issued for the purposes of this Act shall not be impeached by reason of a mistake therein as to the name of the person liable to pay the tax if the notice is served on that person.

Power to direct where returns, etc., are to be sent

144. The Director General may by statutory order direct that any information, return or document required to be supplied, sent or delivered to the Director

General for the purposes of this Act shall, subject to any conditions contained in the order, be supplied, sent or delivered to such public officer or employee of the Inland Revenue Board of Malaysia or to such address as may be specified in the order.

Service of notices

145. (1) Subject to any express provision of this Act, for the purposes of this Act notices may be served personally or by ordinary or registered post.

(2) A notice relating to tax which is sent by ordinary or registered post shall be deemed to have been served on the person (including a partnership) to whom it is addressed on the day 053e .FM Page 262 Thursday, April 6, 2006 12:07 PM Income Tax 263

succeeding the day on which the notice would have been received in the ordinary course of post if it is addressed-- (a) in the case of a company, partnership or body of persons having a registered office in Malaysia--

(i) to that registered office;

(ii) to its last known address; or

(iii) to any person authorized by it to accept service of process;

(b) in the case of a company, partnership or body of persons not having a registered office in Malaysia-- (i) to any registered office of the company, partnership or body (wherever that office may be situated);

(ii) to the principal place of business or other activity of the company, partnership or body

(wherever that place may be situated); or

(iii) to any individual authorized (by or under the law of any place where the company,

partnership or body is incorporated, registered

or established) to accept service of process;

and

(c) in the case of an individual, to his last known address. (3) Where a person to whom there has been addressed a registered letter containing a notice under this Act-- (a) is informed that there is a registered letter awaiting him at a post office but refuses or neglects to take delivery of the letter; or

(b) refuses to accept delivery of that registered letter when tendered,

the notice shall be deemed to have been served upon him on the date on which he was informed that the letter was awaiting him or on which the letter was tendered to him, as the case may be. (4) For the purposes of subsection (3) an affidavit by the officer in charge of a post office stating that to the best of his knowledge and belief--

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(a) there has been delivered to the address appearing on a registered letter a post office notification informing the addressee that there is a registered letter awaiting him; or

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

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

Authentication of notices and other documents

146. (1) Subject to subsection (2), every notice or other document issued, served or given for the purposes of this Act by the Director General or an authorized officer shall be sufficiently authenticated if the name and office of the Director General is printed, stamped or otherwise written thereon.

(2) Where this Act provides for a notice, certificate or other document to be under the hand of any officer, the notice, certificate or document shall be signed in manuscript by that officer.

(3) A notice, certificate or other document issued, made, served or given for the purposes of this Act and purporting to be signed in manuscript by the Director General or an authorized officer shall be presumed, until the contrary is proved, to have been so signed.

Free postage

147. All returns made under this Act and all remittances of tax (and any correspondence resulting from or connected with any such return or remittance) may, if posted in Malaysia in envelopes marked "Income Tax", be sent free of postage to the Director General or to an officer or address specified in an order made under section 144:

Provided that the Director General may in certain cases by notice in writing require any person to send any return, document or correspondence by registered post.

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Provisions as to approvals and directions given by Minister or Director General

148. Where by or under this Act there is conferred on the Minister or the Director General power to give an approval or direction of any kind (not being a power exercisable by statutory order)-- (a) an approval or direction given in the exercise of that power shall not be regarded as subsidiary legislation; (b) that power shall be deemed to include--

(i) power to give any such approval or direction

with retrospective effect;

(ii) power to vary or revoke any such approval or direction retrospectively or otherwise; and

(iii) power to give any such approval or direction subject to such conditions as the Minister or

the Director General, as the case may be, may

think fit to impose; and

(c) any such approval or direction shall take effect when it is given or, where the Minister or Director General, as the case may be, specifies a date on which it is to take effect, on that date.

Annulment of rules and orders laid before the Dewan Rakyat

149. Where this Act provides for any rule or order to be laid before the Dewan Rakyat, the rule or order shall be laid before the Dewan as soon as may be

after it has been made and, if the Dewan at or before the second meeting begun after the rule or order is laid before it resolves that the rule or order or any provision of it be annulled, the rule or order or that provision of it shall cease to have effect, without prejudice to anything previously done thereunder or the making of a new rule or order:

Provided that this section shall not apply to an order made under subsection 6(2).

Power to approve pension or provident fund, scheme or society

150. The Director General may, subject to such conditions as he may think fit to impose, approve any pension or provident fund, scheme or society for the purposes of this Act.

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Procedure for making refunds and repayments

151. Where the Director General is authorized or required by this Act to make any refund or repayment, he shall certify the amount of the sum to be refunded or repaid and cause the refund or repayment to be made forthwith.

Forms

152. (1) The Director General may, either by statutory order or in such other way as seems to him to be appropriate, prescribe such forms as are required by this Act to be prescribed and such other forms as he considers ought to be prescribed in connection with the operation of this Act, and may authorize the use of a suitable substitute for any form so prescribed:

Provided that this subsection shall not apply to the form of declaration to be prescribed for the purposes of subsection 138(1).

(2) Where in order to comply with any provision of this Act a person is required to use a prescribed form, he shall not be regarded as complying with that provision unless he uses all reasonable diligence to procure and use--

(a) a printed copy of the form as prescribed under subsection (1); or

(b) a copy of any substitute for the form authorized under subsection (1), being a printed copy unless the

authorization provides otherwise.

Electronic medium

152A. (1) The Director General may allow any form prescribed under this Act to be furnished by any person or by any class of persons on an electronic medium or by way of an electronic transmission.

(2) For the purposes of subsection (1), the conditions and specifications under which any prescribed form is to be furnished shall be as determined by the Director General.

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Restriction on persons holding themselves out as tax agents, tax consultants, etc.

*153. (1) No person holding himself out as a tax agent, a tax consultant or a tax adviser (or under any other like description) shall be permitted to act in Malaysia on behalf of any person for any of the purposes of this Act unless he is a tax agent as defined in this section:

Provided that--

(a) where a company, body of persons or partnership so holds itself out in any calendar year, then, if at the time of the holding out any employee of the company, member of the body or partner in the partnership

(whether or not that employee, member or partner is in Malaysia) is a tax agent as so defined--

(i) it shall be sufficient for the purposes of this subsection if there is present in Malaysia for a

period or periods in that year amounting in all

to more than one hundred and eighty two days

an employee, member or partner, as the case

may be (not being necessarily the same

employee, member or partner throughout that

period or those periods) who is such a tax

agent; and

(ii) the company, body or partnership in question shall not be guilty of a contravention of this

section unless after the end of that year it is

shown to have failed to comply with

subparagraph (i);

(b) nothing in this subsection shall be construed as restricting an advocate in the lawful practice of his profession.

(2) In this section (and in section 120 in so far as it relates to this section) "person" includes partnership.

(3) For the purposes of this Act--

*NOTE--See section 31 of Act 644 for explanation. 053e .FM Page 267 Thursday, April 6, 2006 12:07 PM 268 Laws of Malaysia ACT 53

"tax agent" means--

(a) (Deleted by Act 644);

(b) any professional accountant approved by the Minister; or

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

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

(5) A fee as may be prescribed by the Minister by an order published in the Gazette shall be paid on the application for an approval or renewal of an approval under subsection (4). (6) An approval or renewal of an approval under this section shall be valid for a period of twenty-four months beginning from the date of such approval or renewal.

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

154. (1) The Minister may make rules-- (a) providing for the deduction and

payment of tax at the source in respect of income from any employment and income of the kind mentioned in paragraph 4(e) and for the recovery of tax which has or should have been so deducted;

(b) prescribing, except where subsection 152(1) applies, anything required by this Act to be prescribed;

(c) implementing or facilitating the operation of an arrangement having effect under section 132;

(d) regulating the practice and procedure in appeals to the Special Commissioners and the Special

Commissioners' own procedure;

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(e) requiring any person chargeable to tax who intends to leave Malaysia to produce a certificate that he has paid all tax and other sums due from him under this Act or that the Director General does not object to his

departure, and preventing any such person from

leaving Malaysia if he fails to produce such a

certificate;

(ea) prescribing penalties for any contravention or failure to comply with any of the provisions of any rules made under this section:

Provided that no such penalty shall exceed the

penalty prescribed under section 120;

(f) for facilitating generally the operation of this Act. (2) Any rules made under subsection (1) shall be laid before the Dewan Rakyat.

Power to enter into an agreement with regard to tax liability 154A. (1) Notwithstanding any other provisions of this Act, the Government may enter into an agreement with any person with regard to ascertainment of his adjusted income or adjusted loss or tax chargeable on him where such agreement is, in the opinion of the Minister, just and equitable or in the interest of the Government or any State Government.

(2) Any such agreement may include--

(a) provision for disallowing (wholly or in part) outgoings or expenses which but for the agreement would have been allowed as a deduction; or

(b) provision for forgoing (wholly or in part) by any person of his entitlement to any relief or credit due to him under the Act.

Repeals

155. (1) The Acts and Ordinances specified in Schedule 8 are hereby repealed, to the extent therein specified, with effect from 1 January 1968.

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(2) All subsidiary legislation made under any Ordinance wholly repealed by subsection (1) is hereby revoked with effect from 1 January 1968.

Transitional and saving provisions

156. Subject to section 127A, the transitional and saving provisions in Schedule 9 shall have effect notwithstanding section 155 or any other provision of this Act.

SCHEDULE 1

[Section 6]

Rates of Tax

PART I

1. Except where paragraphs 1A, 2 and 3 provide otherwise, income tax shall be charged for a year of assessment upon the chargeable income of every person at the following rates:

1A. Except where paragraph 2 provides otherwise, income tax shall be charged for a year of assessment on the chargeable income of a person (other than a company) not Chargeable Income RM Rate of Income Tax

For every ringgit of the first 2,500 0 per cent

For every ringgit of the next 2,500 1 per cent

For every ringgit of the next 15,000 3 per cent

For every ringgit of the next 15,000 7 per cent

For every ringgit of the next 15,000 13 per cent

For every ringgit of the next 20,000 19 per cent

For every ringgit of the next 30,000 24 per cent

For every ringgit of the next 150,000 27 per cent For every ringgit exceeding 250,000 28 per cent

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resident for the basis year for that year of assessment at the rate of 28 per cent on every ringgit of the chargeable income.

2. Subject to paragraph 3, income tax shall be charged for a year of assessment on the chargeable income of--

(a) a company other than a company to which paragraph 2A applies; (b) (Deleted by Act 578);

(c) a trust body;

(d) an executor of an estate of a deceased individual who was domiciled outside Malaysia at the time of his death;

(e) a receiver with respect to whom subsection 68(4) applies, at the rate of 28 per cent on every ringgit of the chargeable income. 2A. Subject to paragraph 3, income tax shall be charged for a year of assessment on the chargeable income of a company resident in Malaysia which has a paid-up capital in respect of ordinary shares of two million five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment at the following rates:

3. Income tax shall be charged for a year of assessment on the chargeable income of an insurer from inward re-insurance business or off-shore insurance business at the rate of 5 per cent on every ringgit of the chargeable income.

PART II

Notwithstanding Part I, income tax shall be charged on the following income at the following rates--

Chargeable income RM Rate of income tax

For every ringgit of the first 500,000 20 per cent For every ringgit exceeding 500,000 28 per cent

Type of income Rate of income tax

1. Income of a non-resident person consisting of interest (other than interest on an approved loan or interest of the kind referred to in paragraph 33 of Part I, Schedule 6) derived from Malaysia... .. 15% of gross
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PART III

(Deleted by Act 451)

PART IV

Notwithstanding Part I, income tax shall be charged for a year of assessment upon the chargeable income of every co-operative society at the following rates-- PART V

Notwithstanding Part I and Part II, income tax shall be charged on the income of a non-resident person consisting of--

(i) amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;

2. Income of a non-resident person consisting of royalty derived from Malaysia... .. 10% of gross

3. Income of a non-resident person (other than a company) consisting of remuneration or other income in respect of services performed or rendered in Malaysia by a public entertainer 15% of gross
Chargeable Income RM Rate of income tax

For every ringgit of the first 20,000 0 per cent

For every ringgit of the next 10,000 3 per cent

For every ringgit of the next 10,000 6 per cent

For every ringgit of the next 10,000 9 per cent

For every ringgit of the next 25,000 12 per cent

For every ringgit of the next 25,000 16 per cent

For every ringgit of the next 50,000 20 per cent

For every ringgit of the next 100,000 23 per cent For every ringgit of the next 250,000 26 per cent For every ringgit of the next 500,000 28 per cent
Type of income Rate of income tax

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(ii) amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or

(iii) rent or other payments made under any agreement or arrangement for the use of any moveable property,

which is derived from Malaysia at the rate of 10% of gross. PART VI

Notwithstanding Part I, income tax shall be charged on the income of an individual resident in Malaysia consisting of interest (other than interest exempt under this Act or any order made thereto) accruing in or derived from Malaysia and received from a person referred to in section 109C at the rate of
... .. 5% of gross. PART VII

(Deleted by Act 624)

PART VIII

Notwithstanding Part I and Part II, income tax shall be charged on the chargeable income of a life fund, other than income arising from life re-insurance business and inward life re-insurance business, of a resident or non-resident insurer at the rate of 8 per cent.

PART IX

Notwithstanding Part I, income tax shall be charged on the chargeable income of a foreign fund management company in relation to the source consisting of the provision of fund management services to foreign investors as referred to in section 60G at the rate of 10 per cent.

PART X

Notwithstanding Part I, income tax shall be charged on the income of a non-resident unit holder consisting of income distributed to that unit holder referred to in section 109D which is derived from Malaysia at the rate of 28% of gross. 053e .FM Page 273 Thursday, April 6, 2006 12:07 PM 274 Laws of Malaysia ACT 53

SCHEDULE 2

[Section 34]

Deductions for Capital Expenditure on Mines

Qualifying mining expenditure

1. Subject to paragraph 2, qualifying mining expenditure for the purposes of this Schedule is expenditure which is incurred in connection with the working of a mine or in preparation for the working of a mine--

(a) on the acquisition of the mine or rights in or over the mine; (b) on searching for, on discovering and testing or on winning access to deposits of minerals;

(c) on the construction of any works or buildings which, when the mine ceases to be worked, are likely to be of little or no value to any person except in connection with the working of another mine; or

(d) on development, general administration or management before the production of minerals begins or during any period when minerals are not being produced.

2. Where a deduction has been made under section 44 pursuant to Schedule 4 (or under any corresponding provision of any of the repealed laws as defined in Schedule 9) in respect of any expenditure, and that expenditure has not been added to any aggregate income under paragraph 43(1)(c) pursuant to subparagraph 5(a) of Schedule 4, that expenditure shall be deemed not to be qualifying mining expenditure for the purposes of this Schedule.

Deductions for qualifying mining expenditure

3. Subject to this Schedule, where the business of a person consists or mainly consists of the working of a mine with or without other mines (that business and that person being in this Schedule referred to as the relevant business and the operator respectively) and the operator has incurred qualifying mining

expenditure in relation to that mine, then, in the ascertainment of the adjusted income of the operator for the basis period for a year of assessment from the relevant business there shall be allowed pursuant to this Schedule as a deduction under section 34 from the gross income for that period from the relevant business an amount arrived at by dividing the residual expenditure at the end of that period by the residual life at the beginning of that period.

4. (1) The operator shall, when he commences working a mine which forms part of the relevant business and thereafter from time to time as may be necessary, furnish to the Director General a written statement containing an estimate of the life of the mine by reference to the number of years during which the winning and obtaining of minerals from the mine may be expected to continue and setting out the calculations 053e .FM Page 274 Thursday, April 6, 2006 12:07 PM Income Tax 275

on which that estimate is based; and the Director General, by reference to that estimate or, where no or no proper or sufficient statement has been furnished under this paragraph, by reference to a similar estimate made by him to the best of his judgment shall from time to time as he thinks appropriate fix a figure of the number of years of the life of the mine, and that number shall constitute the estimated life of the mine for the purposes of this Schedule:

Provided that, if the commencement of working was before 1 January 1968, this subparagraph shall not apply as regards that commencement but shall otherwise apply from time to time as may be necessary.

(2) Except where any provision of paragraph 15 applies, a change in the estimated life of a mine shall not affect a deduction which has been or could have been made under section 34 pursuant to this Schedule in ascertaining adjusted income from the relevant business for the basis period for a year of assessment if that basis period ended before the change.

5. Where in a case to which section 41 applies it is necessary as regards a mine to ascertain a deduction under section 34 pursuant to this Schedule in relation to an accounting period of more or less than twelve months-- (a) the residual expenditure at the end of that period shall be divided by the residual life at the beginning of that period; and (b) the resulting figure shall be increased or decreased in the same proportion as the length of that accounting period bears to a period of twelve months and shall then constitute the amount of the deduction. Transfer of mine, etc.

6. Paragraphs 7 to 14 shall apply in relation to any particular mine forming part of the relevant business with respect to which the operator has incurred qualifying mining expenditure, and in those paragraphs--

"consideration" means consideration (not being in the nature of or representing income) which is monetary or non-monetary or both; "the mine" means the particular mine in question; "mining asset" means either the mine or an asset on or for which the operator has incurred qualifying mining expenditure in connection with or in preparation for the working of the mine;

"other property" means property which is not a mining asset; "value" means--

- (a) in relation to monetary consideration, the amount of the consideration;
- (b) in relation to non-monetary consideration, the market value of the consideration at the time of the transaction to which the consideration relates.

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7. Subject to paragraph 8-- (a) where the operator transfers a mining asset for a consideration, the value of the consideration shall be deemed to be recovered expenditure in relation to the mine and to be received by the operator at the date of the transfer;

(b) where the operator receives any consideration for the granting of any right in or over the mine or any part thereof, the value of the consideration shall be deemed to be recovered expenditure in relation to the mine and the operator; and

(c) where the operator receives any amount or property by way of compensation, recoupment or otherwise for any qualifying mining expenditure (being expenditure of a kind which does not produce a mining asset) incurred by him in connection with or in preparation for the working of the mine, that amount or the market value of that property at the time of its receipt shall be deemed to be recovered expenditure in relation to the mine and the operator.

8. Where the operator transfers a mining asset together with any other property, then--

(a) if the transfer is made for an undivided consideration and the operator and the transferee are able to agree how much of the value of the consideration should be treated as given for the mining asset and for the other property respectively, they shall within three months of the transfer jointly furnish the Director General with a written statement showing the apportionment of the consideration as so agreed and, subject to subparagraph (c), the part of that value apportioned to the mining asset shall be deemed to be recovered expenditure in relation to the mine and to be received by the

operator at the date of the transfer;

(b) if the transfer is made for separate considerations, the operator shall within three months of the transfer furnish the Director General with a written statement showing the value of each consideration and, subject to subparagraph (c), the value of the consideration shown in that statement for the mining asset shall be deemed to be recovered expenditure in relation to the mine and to be received by the relevant person at the date of the transfer; and

(c) if the Director General is not satisfied with the apportionment mentioned in subparagraph (a) or with any value shown in the statement mentioned in subparagraph (b), or if there is a failure to furnish a statement in accordance with either of those subparagraphs, the Director General shall determine to the best of his judgment the value of the consideration for the mining asset, and the value so determined shall be deemed to be recovered expenditure in relation to the mine and to be received by the operator at the date of the transfer.

9. Where there is a transfer by the operator of a mining asset (with or without any other property) together with a grant by the operator of a right of the kind mentioned in subparagraph 7(b), then, for the purposes of paragraph 8-- 053e .FM Page 276 Thursday, April 6, 2006 12:07 PM Income Tax 277

(a) the grant shall be treated as forming part of the transfer of that asset; and (b) the right shall be treated as forming part of that asset, and that paragraph shall apply accordingly with any necessary modifications.

10. Where the operator transfers a mining asset (with or without other property) either--

(a) for an undivided consideration (as regards that asset and that other property, if any) together with an amount or property of the kind mentioned in subparagraph 7(c); or

(b) for separate considerations (as regards that asset and that other property, if any) together with an amount or property of that kind, paragraph 8 shall apply with any necessary modifications.

11. For the purposes of paragraphs 7 to 10-- (a) if any consideration consists partly of money and partly of non-monetary property, the value of the monetary part of the consideration and the value of the non-monetary part thereof shall, whenever necessary, be aggregated or aggregated and apportioned, as the case may require; (b) if the subject matter of a transfer consists of two or

more mines or of a right in or over two or more mines, any amount apportioned under those paragraphs to those mines shall be divided and apportioned to each of those mines in the proportion that the residual expenditure in relation to each of those mines at the date of the transfer bears to the total of the residual expenditure in relation to those mines.

12. Where the operator transfers the mine and at the date of the transfer the residual expenditure ascertained immediately before that date exceeds the difference between--

(a) the total amount of all the operator's recovered expenditure received on or before that date; and

(b) the total amount of all his recovered expenditure received prior to that date, the amount of the excess shall be allowed pursuant to this Schedule under section 34 as a deduction from his gross income from the relevant business for the basis period (being the basis period appropriate to the relevant business for a year of assessment) in which the transfer was made.

13. (1) Where the operator has incurred expenditure in relation to the transfer to him of the mine and any other matter or thing appertaining to the mine, that expenditure shall be treated as qualifying mining expenditure incurred by the operator in respect of the mine.

(2) (Deleted by Act A226).

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14. Where in relation to the mine there takes place a transaction as a result of which an amount would (but for this paragraph) fall to be treated under any provision of paragraphs 6 to 13 as recovered expenditure of the operator in relation to the mine and--

(a) the operator is a person over whom the other party to the transaction has control;

(b) that other party is a person over whom the operator has control; (c) some other person has control over both the operator and that other party; (d) the transaction takes place pursuant to a scheme of reconstruction or amalgamation of companies; or

(e) the Director General is of the opinion that the transaction is or forms part of a transaction to which section 140 applies,

the residual expenditure referable to the mine or any other mining asset immediately before the date of that first-mentioned transaction shall be deemed in the hands of the operator to be recovered expenditure received at that date and in the hands of that other party to be qualifying mining expenditure incurred at that date; and paragraphs 6 to 13 shall not apply in relation to that first-mentioned transaction. Cessation of Working

15. Where in the basis period for a year of assessment the operator permanently ceases to work a mine (otherwise than upon his death or the transfer of the mine by him to any other person), recovered expenditure received by him after the date of the cessation of working shall (notwithstanding any provision of paragraphs 7 to 10) be treated as if it had been received on that date and-- (a) if he so elects, the deductions to be made under section 34 in respect of amounts allowed pursuant to this Schedule in computing his adjusted income from the relevant business for that basis period and for the basis period for each of the five immediately preceding years of assessment (or, if he commenced to work the mine in the basis period for one of those five years other than the earliest thereof, for that first-mentioned basis period and for the basis period being a basis period in which the mine was worked by him for each of the preceding years of assessment) shall be computed as regards each such basis period as if the reference in paragraph 3 to the residual life at the beginning of the basis period were a reference to what the residual life would be if the estimated life were taken to be equal to the number of complete years from the beginning of the first such basis period to the date of cessation of working; and

(b) such repayments of tax and assessments shall be made as are necessary to give effect to this paragraph.

Supplemental provisions

16. Where two or more separate and distinct sets of mining operations are carried on over a source of minerals and none of those sets of operations is carried on 053e .FM Page 278 Thursday, April 6, 2006 12:07 PM Income Tax 279

contiguously to another of those sets of operations, each of those sets of operations shall be treated for the purposes of this Schedule as being carried on in the working of a separate mine:

Provided that, where a deduction has been given under section 34 in respect of any amount allowed pursuant to this Schedule for qualifying mining expenditure in respect of any such separate mine, no amount shall be allowed pursuant to this Schedule for that expenditure in respect of any other such separate mine and that expenditure shall not be treated as qualifying mining expenditure incurred in respect of that other mine.

17. (1) A person shall not be treated as working a mine for the purposes of this Schedule unless he is actively engaged in working the mine and his gross income from a business of his includes the proceeds of sale of minerals won or obtained by working the mine.

(2) A person is not actively engaged in working a mine within the meaning of subparagraph (1) if he has sublet the mine or authorized any other person to work the mine on payment of a premium, rent or tribute (by whatever name called).

18. Where-- (a) the relevant business consists of or includes the working of a mine; and (b) the working of that mine begins at any time in the basis period appropriate to the relevant business for a year of assessment, the number of years of the life of the mine at the time when the working of that mine began shall, in ascertaining the residual life for the purposes of paragraph 3, be deemed to be the number of years of the life of the mine at the beginning of that period.

19?21. (Deleted by Act A226)).

22. In this Schedule-- "estimated life", in relation to a mine, means the figure of the number of years of the life of the mine fixed from time to time by the Director General under subparagraph 4(1) as the estimated life of the mine; "recovered expenditure" means any amount ascertained in accordance with paragraphs 6 to 11 or paragraph 14 to be recovered expenditure in relation to any particular mine forming part of the relevant business; "residual expenditure", in relation to any particular mine forming part of the relevant business and to any particular date, means the total qualifying mining expenditure incurred in respect of that mine before the date by the operator, reduced by the amount of--

(a) any deductions made under section 34 pursuant to this Schedule in respect of that expenditure from the gross income of the operator from the relevant
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business for the basis period for any year of assessment, being a basis period ending before that date; and

(b) any recovered expenditure in relation to that mine received by the operator on or before that date;

"residual life", in relation to any particular mine forming part of the relevant business and to any particular date, means the number of years of the

estimated life of the mine remaining at that date.

SCHEDULE 3

[Section 42]

Capital Allowances and Charges

Qualifying expenditure

1. Subject to this Schedule, qualifying expenditure for the purposes of this Schedule is qualifying plant expenditure or qualifying building expenditure within the meaning of paragraphs 2 to 6.

2. (1) Subject to subparagraph (2) and paragraph 67, qualifying plant expenditure is capital expenditure incurred on the provision of machinery or plant used for the purposes of a business, including--

(a) expenditure incurred on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof; and (b) expenditure incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of that machinery or plant but if the expenditure exceeds ten per cent of the aggregate of itself and any other expenditure (being qualifying plant expenditure) incurred for the purposes of the business this subparagraph shall not apply; (c) expenditure incurred on fish ponds, animal pens, chicken houses, cages, buildings (other than those used wholly or partly for the living accommodation of a director, an individual having control of that business or an individual who is a member of the management, administrative or clerical staff engaged in the business), and other structural improvements on land which are used for the purposes of poultry farms, animal farms, inland fishing industry or other agricultural or pastoral pursuits. (2) In the case of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, the qualifying plant expenditure incurred on or after the first day of the basis period for the year of assessment 1991 shall be limited to a maximum of fifty thousand ringgit:

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Provided that where the qualifying plant expenditure is incurred on a motor vehicle purchased on or after 28 October 2000, the maximum amount shall be increased to not more than one hundred thousand ringgit if the motor vehicle has not been used prior to purchase and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit:

Provided further that where the qualifying plant expenditure incurred between the period from 28 October 2000 to 31 December 2000, and that period forms part of the basis period of a person for the year of assessment prior to the year of assessment 2001, that expenditure shall be deemed for the purposes of this Schedule to be incurred in the basis period for the year of assessment 2001. 2A. Subject to this Schedule, where any person had in use machinery or plant for a non-business purpose, and that machinery or plant is subsequently brought into use for the purposes of a business of his, he is deemed to have incurred qualifying plant expenditure in relation to that machinery or plant and the amount of the qualifying plant expenditure shall be taken to be the market value of the machinery or plant on the day the machinery or plant was so brought into use. 2B. (Deleted by Act 644).

2C. Subject to this Schedule, where machinery or plant is brought into use for the purposes of a business in Malaysia by any person and prior thereto the machinery or plant had been used for the purposes of a business outside Malaysia, the person shall be deemed to have incurred qualifying plant expenditure and the amount of the qualifying plant expenditure in respect thereof shall be taken to be the market value or the net book value of the machinery or plant, whichever is the lower, on the day the machinery or plant was so brought into use in Malaysia.

3. (1) Subject to paragraph 6, qualifying building expenditure is capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the amount of the purchase price of that building.

3A?5. (Deleted by Act A639).

6. Qualifying building expenditure does not include-- (a) subject to paragraph 67, expenditure which is qualifying plant expenditure for the purposes of this Schedule;

(b) subject to paragraph 42, expenditure which is qualifying agriculture expenditure for the purposes of this Schedule; or (c) expenditure which is qualifying mining expenditure for the purposes of Schedule 2.

Qualifying agriculture expenditure

7. (1) Subject to this Schedule, qualifying agriculture expenditure for the purposes of this Schedule is capital expenditure incurred by a person on-- (a) the clearing and preparation of land for the purposes of agriculture; (b) the planting (but not replanting) of crops on land cleared for planting; (c) the construction on a farm of a road or bridge; (d) the construction on a farm of a building used for the purposes of a business of that person which consists wholly or partly of the working of the farm, or the construction on that farm of a building which is provided by that person for the welfare of persons, or as living accommodation for a person, employed in or in connection with the working of that farm and which, if the farm ceases to be worked, is likely to be of little or no value to any person except in connection with the working of another farm. (2) For the purposes of this paragraph, "agriculture" includes the reforestation of timber.

Qualifying forest expenditure

8. (1) Subject to this Schedule, qualifying forest expenditure for the purposes of this Schedule is capital expenditure incurred by a person on the construction in a forest of--

(a) a road or building used for the purposes of a business of his which consists wholly or partly of the extraction of timber from the forest; or (b) a building provided by him for the welfare of persons, or as living accommodation for a person, employed in or in connection with such extraction, and which, if the forest ceases to be used for such extraction, would be likely to be of little or no value to any person except in connection with the extraction of timber from another forest or with a business which consists wholly or partly of the working of a farm.

(2) For the purposes of this paragraph, "forest", in relation to a person, means a forest in respect of which he has a concession or a licence to extract timber therefrom, being a forest in use by him for the extraction of timber therefrom for the purposes of a business of his which consists wholly or partly of that extraction. Qualifying expenditure: initial allowances

9. An allowance made under paragraphs 10 and 12 shall be known as an initial allowance.

10. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purpose of a business of his incurred qualifying plant expenditure, there shall be made to him in relation to the source consisting of that business for that 053e .FM Page 282 Thursday, April

year an allowance equal to one-fifth of the expenditure or such other fraction as may be prescribed.

11-11A. (Deleted by Act A1028).

12. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying building expenditure on the construction or purchase of a building, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to one tenth of that expenditure.

13. Notwithstanding paragraphs 10 and 12-- (a) no allowance shall be made to a person under paragraph 10 for a year of assessment in relation to an asset and a business of his if at the end of the basis period for that year he was not the owner of the asset or it was not in use for the purposes of the business or, where the asset was disposed of by him in that period, he was not the owner of the asset or it was not in use, prior to its disposal, for the purposes of the business at some time in that period;

(b) (Deleted by Act A1028);

(c) no allowance shall be made to a person under paragraph 12 for a year of assessment in relation to an asset and a business of his if at the end of the basis period for that year he was not the owner of the asset or it was not in use or was not about to be used as an industrial building or, where the asset was disposed of by him in that period, it was not in use, prior to its disposal, for the purposes of a business of his as an industrial building at some time in that period;

(d) where an allowance has been made to a person under paragraph 12 for a year of assessment in relation to a building and a business of his and that building was not in use or was not about to be used as an industrial building for the purposes of that business of his at some time in the basis period for the next following year of assessment, a balancing charge equal to the amount of the allowance shall be made on him in relation to that business for that year of assessment for which the allowance was given. 13A. Notwithstanding paragraph 10 no initial allowance shall be made to a person for a year of assessment in relation to an asset and a business of his referred to in paragraph 2A, 2B or 2C, as the case may be.

Qualifying expenditure: annual allowances

14. An allowance made under paragraphs 15 to 16A shall be known as an annual allowance.

15. Subject to this Schedule, where a person has for the purposes of a business of his, incurred qualifying plant expenditure in relation to an asset and at the end of the basis period for a year of assessment he was the owner of the asset and it was in use for the purposes of the business, there shall be made to him in relation to the source 053e .FM Page 283 Thursday, April 6, 2006 12:07 PM 284 Laws of Malaysia ACT 53

consisting of that business for that year an allowance equal to such proportion of that expenditure as may be prescribed.

15A. (Deleted by Act 619).

16. Subject to this Schedule, where a person has for the purposes of a business of his incurred qualifying building expenditure on the construction or purchase of a building and at the end of the basis period for a year of assessment he was the owner of the building and it was in use as an industrial building for the purposes of the business, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to three hundredth or such other fraction as may be prescribed of that expenditure.

16A. Subject to this Schedule, where a person has incurred qualifying building expenditure on the construction of a building to which paragraph 67B applies and at the end of the basis period for a year of assessment the building was on lease to the Government, there shall be made to him in relation to the income from that lease for that year an allowance equal to three-fiftieths or such other fraction as may be prescribed of that expenditure.

17. (1) (Deleted by Act 619). (2) In this paragraph "permitted fraction", in relation to qualifying building expenditure on the purchase of a building, means a fraction the numerator of which is one and the denominator of which is the number of years comprised in a period which begins with the year of assessment in the basis year for which the building was purchased and ends with the fiftieth year of assessment after the year of assessment in the basis year for which the building was constructed.

18. An allowance made to a person in relation to a business of his under paragraph 15 or 16 for a year of assessment in respect of any expenditure in relation to an asset shall not exceed the amount of the residual expenditure at the end of the basis period for that year.

19. Where in relation to any particular asset the Director General is of the

opinion that the proportion prescribed under paragraph 15 is too high or too low having regard to the use of which the asset is put, he may give a direction for such other proportion as he considers appropriate to be adopted in relation to the qualifying plant expenditure.

Special allowances for small value assets

19A. (1) Where in the basis period for a year of assessment a person for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset or assets, the value of each asset being not more than one thousand ringgit, and at the end of the basis period he was the owner of the asset and it was in use for the purposes of the business, there shall be made in lieu of the amount of the allowance which would otherwise fall to be made to him under paragraph 10 or 15, an allowance equal to the amount of that expenditure for that year of assessment: 053e .FM Page 284 Thursday, April 6, 2006 12:07 PM Income Tax 285

Provided that where the total qualifying plant expenditure in respect of such asset for each year of assessment exceeds the amount of ten thousand ringgit, the total allowance that shall be made in respect of that expenditure under this paragraph shall be equal to such amount.

(2) Allowance under paragraph 10 or 15 in respect of the qualifying plant expenditure referred to in subparagraph (1) --

(a) shall be made a person if that person has not made a claim in respect of that expenditure under that subparagraph; or

(b) shall not be made to that person in respect of that expenditure which has been given allowance under that subparagraph.

Agriculture allowances

20. An allowance made under paragraph 22 or 23 shall be known as an agriculture allowance.

21. A person entitled to an agriculture allowance in respect of any expenditure shall not be entitled to an allowance under any other paragraph in respect of the same expenditure.

22. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying agriculture expenditure on the construction of --

(a) a building for the welfare of persons or as living accommodation for a person referred to in subparagraph 7(1)(d) there shall be made to him in relation to the source consisting of that business for that year and for each of the four following years of assessment an allowance equal to one-fifth of that expenditure; and

(b) any other building referred to in subparagraph 7(1)(d) there shall be made to him in relation to the source consisting of that business for that year and for each of the nine following years of assessment an allowance equal to one-tenth of that expenditure.

22A. (Deleted by Act A643).

23. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying agriculture expenditure to which paragraph 22 does not apply, there shall be made to him in relation to the source consisting of that business for that year and for the following year of assessment an allowance equal to one-half of that expenditure.

24. Subject to this Schedule, where a person (in this paragraph referred to as the transmitter) would but for this paragraph be entitled to an agriculture allowance for a year of assessment in respect of qualifying agriculture expenditure incurred by him in relation to an asset for the purposes of a business of his and in the basis period for that year that asset is transferred or transmitted by operation of law or otherwise to some other person (in this paragraph referred to as the recipient)-- 053e .FM Page 285
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(a) the transmitter shall for that year be entitled to only a part of that allowance, being a part which bears the same proportion to the whole of that allowance as the number of days comprised in the period which begins at the beginning of that basis period and ends on the day of transfer or transmission bears to the number three hundred and sixty-five; and (b) where the asset is--

(i) a farm used by the recipient for the purposes of a business of his which consists wholly or partly of the working of the farm; or (ii) a building which is used by the recipient for the purposes of that business and is adjacent to or closely in the vicinity of that farm or another farm of his forming part of that business, the recipient shall be entitled for the year of assessment in the basis period for which the transfer or transmission took place to the other part of that allowance, and for subsequent years of assessment to any agriculture allowance which would have been made to the transmitter if the asset had not been transferred or transmitted and had continued to be owned and used by the transmitter for the purposes of his business at all material

times.

25. Notwithstanding paragraphs 22 to 24, no agriculture allowance shall be made to a person for a year of assessment in relation to an asset and a business of his-- (a) where the asset is transferred or transmitted in the basis period for that year, if it was not in use for the purposes of the business within one month (or such further period as the Director General may allow) before that transfer or transmission took place: or

(b) in any other case, if at the end of the basis period for that year he was not the owner of the asset or it was not in use for the purposes of the business. Agriculture charges

26. Where the business of a person consists wholly or partly of the working of a farm and in a basis period for a year of assessment any sum first becomes payable to him in that period, being a sum in respect of a grant or other payment by the Government, a State Government or a statutory authority which is intended directly or indirectly to relieve him of the burden of any capital expenditure incurred by him on that farm, an agriculture charge equal to that sum shall be made on him in relation to the source consisting of that business for that year:

Provided that, where that person ceased to possess that farm in the basis period for a year of assessment (being a basis period which elapsed before the time when the grant or other payment first became payable), the grant or other payment shall be deemed to have first become payable in that elapsed period.

27. Where in the basis period for a year of assessment a person disposes of an asset and in relation to that asset and a business of his an agriculture allowance has been made to him for a year of assessment, and the qualifying agriculture expenditure incurred in relation to that asset was incurred over a period ending on a particular day 053e .FM Page 286 Thursday, April 6, 2006 12:07 PM Income Tax 287

and the disposal of the asset took place less than six years after that day, there shall be made on him in relation to the source consisting of that business for that first-mentioned year of assessment an agriculture charge equal to the amount of-- (a) that agriculture allowance; or

(b) where an agriculture allowance in relation to that asset has been made to him for more than one year of assessment, the aggregate of all those allowances for all those years,

and where that asset is disposed of by that person after the end of the basis

period (for a year of assessment) in which that business has permanently ceased to be carried on by him, the disposal shall be deemed to have been made in that basis period: Provided that within three months (or such further period as the Director General may allow) of the beginning of the year of assessment following that first-mentioned year of assessment or, where that asset was disposed of by that person after the end of that last-mentioned basis period, the year of assessment following that in which he disposed of that asset, he may by notice in writing delivered to the Director General elect that the amount of any agriculture charge falling to be made on him in respect of the amount of that aggregate for that first-mentioned year be divided by the number of years of assessment for which those allowances were made; and an agriculture charge equal to the amount resulting from that division shall be made on him in relation to the source consisting of that business for each of those years of assessment.

Forest allowances and forest charges

28. An allowance made under paragraph 30, 30A or 31 shall be known as a forest allowance and a charge made under paragraph 32 shall be known as a forest charge.

29. A person entitled to a forest allowance in respect of any expenditure shall not be entitled to an allowance under any other paragraph in respect of the same expenditure.

30. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying forest expenditure on the construction of--

(a) a building of the kind referred to in subparagraph 8(1) (b) there shall be allowed to him in relation to the source consisting of that business for that year and for each of the four following years of assessment an allowance equal to one-fifth of that expenditure; and

(b) a road or buildings of the kind referred to in subparagraph 8(1) (a) there shall be made to him in relation to the source consisting of that business for that year and each of the nine following years of assessment an allowance equal to one-tenth of that expenditure. 30A. Subject to this Schedule, where in the basis period for a year of assessment prior to the year of assessment 1970 a person has for the purposes of a business of his 053e .FM Page 287
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incurred qualifying forest expenditure on the construction of a building of the kind referred to in subparagraph 8(1) (b) and a forest allowance was made to him in relation to the source consisting of that business for a year of

assessment prior to the year of assessment 1970 in respect of that expenditure there shall be allowed to him for the year of assessment 1970 and for each of the four following years of assessment an allowance equal to one-fifth of the difference between that qualifying forest expenditure and the forest allowances made to him in respect of that qualifying expenditure for years of assessment prior to the year of assessment 1970.

31. Where a person in relation to a business of his in the basis period for a year of assessment permanently ceases to extract timber from a forest in relation to which he has incurred qualifying forest expenditure, there shall be made to him in relation to the source consisting of that business for that year an allowance in an amount equal to the excess, if any, of that expenditure over the total of any allowances made to him under paragraph 30 or 30A in relation to that expenditure; and he shall not be entitled to an allowance under paragraph 30 or 30A in relation to that expenditure for any year of assessment subsequent to that first-mentioned year of assessment.

32. (1) Where a person who in relation to a business of his and a forest has incurred qualifying forest expenditure disposes of that forest, there shall be made on him in relation to the source consisting of that business for the year of assessment in the basis period for which the disposal took place a forest charge equal to the amount of any allowance or to the aggregate amount of any allowances made to him in relation to that expenditure under paragraph 30, 30A or 31; and where a forest is disposed of by that person after the end of the basis period (for a year of assessment) in which that business has permanently ceased to be carried on by him, the disposal shall be deemed to have been made in that basis period:

Provided that within three months (or such further period as the Director General may allow) of the beginning of the year of assessment following that year in which he disposed of the forest he may by notice in writing delivered to the Director General elect that the amount of that forest charge be divided by the number of years of assessment for which those allowances were made, and in lieu of that charge a forest charge equal to the amount resulting from that division shall be made on him in relation to the source consisting of that business for each of those years of assessment. (2) For the purposes of this paragraph, a person shall be taken to have disposed of a forest if, having a concession or licence to extract timber therefrom, he transfers or assigns that concession or licence or surrenders that concession or licence for valuable consideration.

Qualifying expenditure: balancing allowances and balancing charges

33. Allowances made under paragraph 34 and charges made under paragraph 35

shall be known as balancing allowances and balancing charges respectively.

34. Subject to this Schedule, where in the basis period for a year of assessment a person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of a business of his and the residual expenditure at the 053e .FM Page 288 Thursday, April 6, 2006 12:07 PM Income Tax 289

date of its disposal exceeds its disposal value, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to the amount of the excess.

35. Subject to this Schedule, where in the basis period for a year of assessment a person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of a business of his and its disposal value exceeds the residual expenditure at the date of its disposal, there shall be made on him in relation to that business source for that year a charge equal to the amount of the excess.

36. No allowance shall be made for a year of assessment under paragraph 34 to a person in relation to an asset which has been disposed of unless an initial or annual allowance in relation to that asset has been made or would have been made, if claimed, to him.

37. A charge made on a person under paragraph 35 in relation to an asset shall not exceed the total of all allowances made to him under this Schedule in relation to that asset.

Qualifying expenditure: Licensed private hospital, maternity home and nursing home

37A. The provisions of this Schedule relating to industrial building shall apply, mutatis mutandis, to a private hospital, maternity home and nursing home licensed under the provisions of any written law for the time being in force relating to registration of private hospital, maternity home and nursing home, or where no such law is in force, approved by the Director General after consultation with the Director General of Health; and in such application the reference to capital expenditure incurred on the construction of a building shall include any capital expenditure incurred on the alteration or renovation of rented premises for the purpose of carrying on therein a private hospital, maternity home or nursing home. Qualifying expenditure: Building used for research or training 37B. The provisions of this Schedule relating to industrial building shall apply, mutatis mutandis, to a building or part thereof being in use for the purpose of-- (a) research approved by the Minister within the meaning of paragraph 34A(1) (a) and subsection 34B(4);

(b) research undertaken by a company which is participating in industrial adjustment approved under section 31A of the Promotion of Investments Act 1986;

(c) (Deleted by Act 544);

(d) training undertaken by a company mentioned in subparagraph (b) in respect of its employees ; or

(e) research undertaken by a research and development company or a contract research and development company as defined in section 2 of the Promotion of Investments Act 1986,

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and in such application, the reference to capital expenditure incurred on the construction of a building or part thereof, shall include any capital expenditure incurred on the alteration or renovation of rented premises for the purpose of carrying on therein such research, industrial training or training and the building or part thereof shall be deemed to be in use for the purposes of the business referred to in section 34A, notwithstanding that in the case of research referred to in subparagraph (a), such research is not related to that business: Provided that the provisions of this Schedule relating to industrial building shall not apply to capital expenditure incurred on a building or part thereof for the purpose mentioned in subparagraph (b) or (d) where such expenditure is incurred after ten years from the date of approval of industrial adjustment under section 31A of the Promotion of Investments Act 1986.

Qualifying expenditure: Building used for warehouse 37C. The provisions of this Schedule relating to industrial building shall apply mutatis mutandis, to a building or part thereof used by a person solely for the purpose of storage of goods for export or for the storage of imported goods which are to be processed and distributed or re-exported and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12 or 16 an allowance of an amount equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment. Qualifying expenditure: Machinery or plant used for research 37D. The provisions of this Schedule relating to qualifying plant expenditure shall apply, mutatis mutandis, to capital expenditure incurred on the provision of machinery or plant used for the purposes of research approved by the Minister within the meaning of section 34A; and in such application the machinery or plant shall be deemed to be in use for the purposes of the

business referred to in section 34A, notwithstanding that such research is not related to that business. Qualifying expenditure: Building used for approved service project

37E. The provisions of this Schedule relating to industrial buildings shall apply, mutatis mutandis, to a building or part thereof used by a person solely for the purpose of the provision of services and modernization of operations in relation to an approved service project as defined under Schedule 7B.

Qualifying expenditure: Building used for hotel

37F. The provisions of this Schedule relating to industrial buildings shall apply, mutatis mutandis, to a building or part thereof used by a person solely for the purpose of an hotel and that hotel is registered with the Ministry of Culture, Arts and Tourism.

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Qualifying expenditure: Airport

37G. The provisions of this Schedule relating to industrial buildings shall apply, mutatis mutandis, to an airport and the reference to capital expenditure incurred in relation to that airport shall include the capital expenditure on the construction, reconstruction, extension, improvement or purchase of any building, runway or ancillary structures.

Qualifying expenditure: Motor racing circuit

37H. The provisions of this Schedule relating to industrial buildings shall apply, mutatis mutandis, to a motor racing circuit approved by the Minister and the reference to capital expenditure incurred in relation to that motor racing circuit shall include the capital expenditure on the construction, reconstruction, extension or improvement of that motor racing circuit or ancillary structures. Disposal subject to control, etc.

38. (1) Paragraphs 39 and 40 shall apply where a person disposes of an asset in relation to which an initial or annual allowance or an agriculture allowance or forest allowance has been made or would have been made, if claimed, to him and at the time of the disposal--

(a) the disposer of the asset is a person over whom the acquirer of the asset has control;

(b) the acquirer of the asset is a person over whom the disposer of the asset has control;

- (c) some other person has control over the disposer and acquirer of the asset;
- (d) the disposal is effected in consequence of a scheme of reconstruction or amalgamation of companies; or
- (e) the disposal is effected by way of a settlement or gift or by devolution of the property in the asset on death,

the disposer of the asset, the asset in question and the acquirer of the asset being in those paragraphs referred to as the disposer, the asset and the acquirer respectively. (2) In this paragraph "control", in relation to a company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets of the partnership, or to more than one-half of the divisible profits of the partnership.

39. (1) Subject to any rules made under paragraph 40, the disposal of the asset shall be deemed to have taken place on the first day of the disposer's final period for a sum equal to the disposer's residual expenditure on that day. 053e .FM Page 291 Thursday, April 6, 2006 12:07 PM 292 Laws of Malaysia ACT 53

(2) In this paragraph "the disposer's final period" means, in relation to the disposal and acquisition of the asset, the basis period (appropriate to the disposer's business for the purposes of which qualifying expenditure has been incurred in relation to the asset) for the year of assessment which coincides with the first year of assessment for which an initial or annual allowance may be made to the acquirer in relation to the asset if it is used for the purposes of a business carried on by the acquirer or as an industrial building.

40. Any qualifying expenditure incurred by the acquirer in relation to the asset to which regard would be had but for this paragraph shall be disregarded for the purposes of this Schedule and the acquirer shall be deemed to have incurred qualifying expenditure in relation to the asset of an amount equal to the sum ascertained under paragraph 39 in relation to the asset; and in relation to the asset-- (a) the date on which the acquirer shall be treated as having incurred the expenditure so deemed to have been incurred by him; (b) the withdrawal of any allowance which would but for paragraph 39 and this paragraph fall to be made to the disposer;

(c) the amount of any allowance or charge to be made to or on the acquirer; and

(d) such other matters as may be considered necessary by the Minister, shall be determined in such manner as may be prescribed by rules to be made for the purposes of paragraphs 38, 39 and this paragraph. Asset used in more than one business

41. In any case where a person has incurred qualifying expenditure in relation to an asset and any one or more of the following circumstances are found— (a) that expenditure was incurred for and that asset is used for the purposes of two or more businesses of his;

(b) that expenditure was incurred and the asset was used for the purposes of one business of his and thereafter the asset is used in that business and in another business, or two or more other businesses, of his; (c) that expenditure was incurred and the asset was used for the purposes of one business of his and thereafter the asset ceases to be used in that business and is used in another business, or two or more other businesses, of his; or

(d) after any of the circumstances referred to in the preceding subparagraphs, the asset is disposed of or, where it was used in two or more businesses of his, it was disposed of in relation to one or more of those businesses, the amount of any initial or annual allowances to be made to that person from time to time in any of those circumstances and any balancing allowance or balancing charge to be made on him on the disposal of the asset, and such other matters as may be considered necessary by the Minister, shall be determined in such manner as may be prescribed by rules made for the purposes of this paragraph.

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Certain buildings treated as industrial buildings

42. (1) Where an industrial building is in use in the basis period for a year of assessment for the purposes of a business of a person and a building is constructed by him and provided by him as living accommodation for an individual employed by him in that business, that last-mentioned building shall be treated as an industrial building in use as an industrial building for the purposes of that business at any time that it is occupied by an individual so employed, and there shall be substituted for the amount of the initial allowance which would otherwise fall to be made to him under paragraph 12 an initial allowance equal to two-fifths of the qualifying expenditure incurred by that person on that last-mentioned building: Provided that, where the expenditure incurred by that person on the construction of that last-mentioned building is expenditure of a kind to which paragraph 7 or 8 is applicable, that person may within three months (or within such further period

as the Director General may allow) of the beginning of the year of assessment in the basis period for which that expenditure was incurred by notice in writing delivered to the Director General elect that, in lieu of having allowances made to him under paragraph 22 or 30 in relation to that expenditure, allowances be made to him under this paragraph.

(2) For the purposes of this paragraph, in relation to a business of a person, "employee" does not include a director, an individual having control of that business or an individual who is a member of the management, administrative or clerical staff engaged in that business.

42A. (1) Where a person carrying on a manufacturing, hotel or tourism business or an approved service project under Schedule 7B has incurred in the basis period for a year of assessment expenditure on the construction or purchase of a building for the purposes of that business for the provision of living accommodation for individuals employed by him in that business, that building shall be treated as an industrial building for the purposes of that business at any time that it is occupied by individuals so employed, and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.

(2) Where a person has for the purposes of a business of his incurred in the basis period for a year of assessment expenditure on the construction or purchase of a building for the purposes of that business for the provision of child care facilities for individuals employed by him in that business, that building shall be treated as an industrial building for the purposes of that business at any time that it is used by individuals so employed, and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.

(3) Notwithstanding any other provision of this Schedule, for the purposes of this paragraph the qualifying expenditure in the case of a purchased building shall be the purchase price of that building.

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(4) For the purposes of subparagraph (1), "individuals employed by him" does not include a director, an individual having control of that business or an individual who is a member of the management, administrative or clerical staff engaged in that business.

42B. Where in the basis period for a year of assessment a person has for the purposes of a business of his incurred capital expenditure on the construction or purchase of a building for a school or an educational institution approved by the Minister of Education or any relevant authority, that building shall be treated as an industrial building for the purposes of that business and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment. 42C. Where in the basis period for a year of assessment a person has for the purposes of a business of his incurred capital expenditure on the construction or purchase of a building for the purposes of industrial, technical or vocational training approved by the Minister, that building shall be treated as an industrial building for the purposes of that business and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.

Interpretation

43. In this Schedule "asset", except where the context otherwise requires, means an asset in relation to which qualifying expenditure, qualifying agriculture expenditure or qualifying forest expenditure, as the case may be, has been incurred.

44. Any reference in this Schedule to any asset or to any relevant interest therein shall be construed whenever necessary as including a reference to a part of any asset or of any relevant interest therein (or, in the case of an asset or any relevant interest therein held in undivided shares, the undivided share in the asset or in the relevant interest therein); and, when it is so construed, the Director General shall make such necessary apportionments as may be just and reasonable to give proper effect to this Schedule.

45. For the purposes of this Schedule, capital expenditure incurred on-- (a) the provision of machinery or plant, includes capital expenditure incurred on the reconstruction of that machinery or plant; (b) the construction of a building, includes capital expenditure incurred on the reconstruction or rebuilding of that building.

46. Where a person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of a business of his, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be

taken to be the capital portion of any instalment payment (or, where there is more than one such payment, of the aggregate of those payments) made by him under the agreement in that period. 053e .FM Page 294 Thursday, April 6, 2006 12:07 PM Income Tax 295

47. For the purposes of this Schedule, where an asset consists of a building the owner thereof shall be taken to be the owner of the relevant interest in the building.

48. A building in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule on the occurrence of any of the following events:

(a) the sale, transfer or assignment of the relevant interest in the building;
(b) where that interest depends on the duration of a concession, the coming to an end of the concession;

(c) where that interest is a leasehold interest, the determination of that relevant interest otherwise than on the person entitled thereto acquiring the reversion;

(d) the demolition or destruction of the building, or on the building ceasing to be used as an industrial building.

49. In this Schedule "relevant interest", in relation to a building on which qualifying building expenditure has been incurred, means (subject to paragraphs 50 and 51) the interest in the building to which the person who incurred that expenditure was entitled when he incurred it.

50. Where-- (a) a person is entitled to two or more interests in a building when he incurs qualifying expenditure on it; and

(b) one of those interests is an interest which is reversionary on all the others, that reversionary interest shall be the relevant interest for the purposes of this Schedule.

51. An interest shall not cease to be the relevant interest for the purposes of this Schedule by reason of the creation of any lease or other interest to which that first-mentioned interest is subject; and, where the relevant interest is a leasehold interest and is extinguished by the surrender thereof or on the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

52. (1) An asset in relation to which qualifying agriculture expenditure has

been incurred by a person is disposed of within the meaning of this Schedule on the occurrence of any of the following events:

(a) on the sale of the relevant interest in that asset; (b) where the relevant interest is a leasehold interest and the lease comes to an end, if an incoming lessee or the owner of the interest in immediate reversion makes any payment to that first-mentioned person; (c) on the transfer or transmission of the asset for valuable consideration; or (d) on the asset ceasing to be used by him for the purposes of a business of his which consists wholly or partly of the working of a farm.

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(2) For the purposes of this paragraph, "relevant interest" shall have the meaning which it would have if in paragraphs 49 and 50 the reference to-- (a) a building, were to land or a building;

(b) qualifying building expenditure, were to qualifying agriculture expenditure;

(c) the building, were to land or a building; and (d) qualifying expenditure, were to qualifying agriculture expenditure.

53. (1) Any reference in this Schedule to the disposal, purchase, transfer or transmission of any asset includes a reference to the disposal, purchase, transfer or transmission, as the case may be, of that asset together with any other asset, whether or not qualifying expenditure, qualifying agriculture expenditure or qualifying forest expenditure, as the case may be, has been incurred on that last-mentioned asset, and in any such case so much of the disposal value or the purchase price, as the case may be, of those assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the disposal value or the purchase price, as the case may be, of that first-mentioned asset. (2) For the purposes of this paragraph, all the assets which are disposed of, purchased, transferred or transmitted in pursuance of one bargain shall be deemed to be disposed of, purchased, transferred, or transmitted, as the case may be, together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate disposals, purchases, transfers or transmissions, as the case may be, of those assets. (3) Subparagraphs (1) and (2) of this paragraph shall apply, with any necessary modifications, to the disposal, purchase, transfer or transmission of any asset or the relevant interest in any asset together with any other asset or relevant interest in any other asset.

54. Where any person has incurred expenditure in relation to an asset which is

allowed to be deducted under Chapter 4 of Part III in computing the adjusted income or adjusted loss of that person for the basis period for a year of assessment from a business of his, that expenditure shall not be treated as qualifying expenditure or qualifying agriculture expenditure or qualifying forest expenditure in relation to that asset.

55. For the purposes of this Schedule-- (a) in the case of any expenditure incurred on the construction of a building, the day on which that expenditure is incurred is the day on which the construction of the building is completed and in the case of any expenditure incurred on the provision of machinery or plant for the purposes of a business the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the business; and

(b) in any other case, the day on which the amount of any expenditure becomes payable is the day on which that amount of expenditure is incurred:

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Provided that, where a person incurs expenditure for the purposes of a business of his which he is about to carry on, that expenditure shall be deemed to be incurred when he commences to carry on the business.

56. For the purposes of this Schedule, an asset which is temporarily disused in relation to a business of a person shall be deemed to be in use for the purposes of the business if it was in use for the purposes of the business immediately before becoming disused and if during the period of disuse it is constantly maintained in readiness to be brought back into use for those purposes.

57. If an asset which is temporarily disused in relation to a business of a person ceases to be ready for use for the purposes of the business or if its disuse can no longer reasonably be regarded as temporary, it shall be deemed to have ceased at the beginning of the period of disuse to be used for the purposes of the business, and all such assessments shall be made as may be necessary to counteract the benefit of any allowances made to him for any year of assessment by reason of the application of paragraph 56 in relation to the asset.

58. For the purposes of this Schedule, a building is purchased by a person on the sale, transfer or assignment to him of a relevant interest in the building.

59. Any reference in this Schedule to the date of any sale, purchase, transfer or transmission shall be construed as a reference to the date of completion of

the sale, purchase, transfer or transmission, as the case may be, or the date when possession of the asset the subject matter of the sale, purchase, transfer or transmission, as the case may be (or of the asset in which there is a relevant interest which is the subject matter of the sale, purchase, transfer or transmission, as the case may be) is given, whichever is the earlier.

60. Where a person who owns a building grants a lease thereof and that building is in use as an industrial building, then, in the application of this Schedule to that person in relation to that building any reference to a business of his shall be taken to be a reference to the source in respect of any income to which that person is entitled under that lease, and any reference to a basis period (in relation to any such reference to a business) shall be taken to be a reference to the basis period in relation to that source.

61. Any plant or machinery which is used for the purposes of a business and in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule if it is sold, discarded or destroyed or if it ceases to be used for the purposes of that business.

62. (1) Subject to subparagraph (2), for the purposes of this Schedule, where an asset is disposed of by a person, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or, in the case of its disposal by way of sale, transfer or assignment--

(a) an amount equal to its market value at the date of the sale, transfer or assignment, as the case may be; or

(b) the net proceeds of the sale, transfer or assignment as the case may be, whichever is the greater:

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Provided that, where the asset is disposed of in such circumstances that insurance or compensation moneys are received by that person in respect of the asset, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater.

(2) Where an asset of the kind to which subparagraph 2(2) applies is disposed of, the disposal value shall be deemed to be an amount which bears the same proportion to the disposal value ascertained under subparagraph (1) as the qualifying plant expenditure ascertained under subparagraph 2(2) bears to the qualifying plant expenditure ascertained under subparagraph 2(1).

(3) Where pursuant to an agreement with the Government, State Government or a local authority in respect of a privatization project an asset used in the privatization project is disposed of to the Government, State Government or local authority as the case may be, its disposal value shall be taken to be an amount equal to the net proceeds of the disposal.

(4) Notwithstanding subparagraph 62(1) where an asset in relation to which the person has incurred qualifying plant expenditure for the purposes of a business of his is disposed of by way of gift, its disposal value shall be deemed to be zero if the gift is made to--

(a) a technical or vocational training institute established and maintained by the government or a statutory body;

(b) a technical or vocational training institute as approved by the Minister; or (c) an approved research institute as defined in section 34B.

63. Subject to paragraphs 64 to 66, a building is an industrial building within the meaning of this Schedule if it is used for the purposes of a business and-- (a) it is used as a factory;

(b) it is used as a dock, wharf, jetty or other similar building; (c) it is used as a warehouse and the business consists or mainly consists of the hire of storage space to the public;

(d) the business is that of a water or electricity undertaking supplying water or electricity for consumption by the public or is that of a telecommunication undertaking providing telecommunication services to the public; (e) it is used in connection with the working of a farm and the business consists or mainly consists of the working of the farm, with or without other farms; or

(f) it is used in connection with the working of a mine and the business consists or mainly consists of the working of a mine, with or without other mines.

64. In subparagraph 63(a) "factory" includes-- (a) a building consisting of a mill, workshop (other than a workshop used for the repair or servicing of goods, if the repair or servicing is carried out in 053e .FM Page 298
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conjunction with or incidentally to the business of selling those goods) or other building for the housing of machinery or plant of any description for the manufacture of any product or the subjection of goods or materials to any process or the generating of power used for the purposes of that manufacture or process; and

(b) a building (within the same curtilage as a building which is used as a factory) used for the storage of any raw material, fuel or stores necessary for the manufacture of that product or the processing of those goods or materials, or for the storage of that product or those goods or materials when processed prior to the sale thereof.

65. (1) Where a building is an industrial building, any building provided as a canteen, rest-room, recreation room, lavatory, bathhouse, bathroom, or wash-room for persons employed in the business for the purposes of which that industrial building is used shall be treated as an industrial building. (2) In the case of a farm, where a building is provided for the welfare of persons, or as living accommodation for a person, employed in connection with the working of a farm, then, if the building is likely to be of little or no value to any person except in connection with the working of that farm or of another farm, that building shall be treated as an industrial building.

(3) Subject to paragraph 67B, a building used as a dwelling house (not being for accommodation of the kind mentioned in subparagraph (2)) or a retail shop, showroom or office is not and shall not be treated as an industrial building.

66. Where part of a building or of an extension of a building is used as an industrial building and the other part of the building or extension, as the case may be, is not so used, then, if the capital expenditure incurred on the construction of the part which is not so used is not more than one-tenth of the capital expenditure incurred on the construction of the whole building or extension, as the case may be, the building or extension, as the case may be, shall be treated as an industrial building for the purposes of this Schedule; and, where the whole or some of the capital expenditure incurred on the construction of the part not so used is not identifiable as the capital expenditure incurred on the whole building or extension as the case may be, that last-mentioned expenditure or the part thereof not identifiable as incurred on the respective parts of the building or extension, as the case may be, shall be apportioned by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.

67. Where capital expenditure is incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of machinery or plant to be used for the purposes of a business, then, if that expenditure amounts to more than seventy-five per cent of the aggregate of that expenditure and the capital expenditure incurred on that machinery or plant, the machinery or plant shall as regards that aggregate expenditure be treated for the purposes of this Schedule as a building so long as that machinery or plant is used for the purposes of that business; and that aggregate

expenditure shall be treated as the amount of the qualifying expenditure incurred on that building, which shall be treated as disposed of if that plant or machinery is disposed of.

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67A. Where pursuant to an agreement with the Government a person incurs capital expenditure on the construction, reconstruction, extension or improvement of any public road and ancillary structures which expenditure is recoverable through toll collection, the road and ancillary structures as regards such expenditure shall, for the purposes of this Schedule, be treated as a building and the provisions of this Schedule relating to industrial building shall apply, mutatis mutandis, to such building: Provided that--

(a) the balance of residual expenditure under paragraph 68 of this Schedule shall be reduced by the amount of any compensation received; and (b) the disposal value of the asset shall be taken to be zero when the agreement expires or is terminated.

67B. (1) A building constructed by a person pursuant to an agreement entered into between that person and the Government on a build-lease-transfer basis shall, subject to the approval of the Minister, be treated as an industrial building for the purposes of this Schedule.

(2) Where subparagraph (1) applies--

(a) the balance of residual expenditure under paragraph 68 of this Schedule shall be reduced by the amount of any compensation received; and (b) the disposal value of the asset shall be taken to be zero when the agreement expires or is terminated.

68. A reference in this Schedule to residual expenditure at any date in relation to an asset in respect of which qualifying expenditure has been incurred by a person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase of the asset before that date, reduced by-- (a) the amount of any initial allowance made to that person in relation to that asset for any year of assessment;

(b) any annual allowance made to that person in relation to that asset for any year of assessment before that date;

(c) any annual allowance which, if it had been claimed (or could have been claimed, if the expenditure in respect of the asset had been qualifying expenditure and if the asset had been in use for the purposes of a business of his) by that person in relation to that asset, would have been made to him for

a year of assessment before that date.

69. Any reference in that Schedule to an allowance made to a person for a year of assessment or to an allowance to which a person is entitled under this Schedule for a year of assessment is a reference to--

(a) an allowance which is claimed for a year of assessment and is made or is due to be made for that year (any such allowance being treated as having been made at the end of the basis period for the appropriate source consisting of a business for that year); and

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(b) an allowance which would have been made or to which that person would have been entitled in relation to a source consisting of a business of his for a year of assessment but for an insufficiency or absence of adjusted income or the existence of an adjusted loss for the basis period for that year.

70. In this Schedule "purchase price", in relation to the purchase of an industrial building, includes any legal fee, stamp duty or other incidental expenditure incurred by the purchaser in connection with the purchase, but does not include so much of the purchase price of the building and of any land or an interest therein purchased with the building as is attributable to the land or that interest; and, for the purposes of paragraph 53, the building and that land or the interest therein, as the case may be, shall be treated as being separate assets.

Supplemental provisions

71. Where a person has incurred qualifying expenditure in relation to an asset which is owned by that person for a period of less than two years (except by reason of the death of that person), the Director General may direct that any allowance which but for this paragraph would fall to be made to him in relation to that asset shall not be made; and, where any such allowance has been made, a balancing charge in an amount equal to any such allowance shall be made on him for the year of assessment in the basis period for which the asset was disposed of by him (being the basis period appropriate to the source consisting of the business for the purposes of which the expenditure was incurred).

72. (Deleted by Act A226).

73. Where qualifying expenditure has been incurred by a person in relation to an asset used for the purposes of a business of his, then, if the asset is

used only partly for the purposes of the business, any allowance to be made to that person under this Schedule for a year of assessment in relation to the asset shall consist of so much of what would have been the amount of the allowance claimed and due for that year if the asset had been used in the basis period for that year wholly for the purposes of the business, as shall be determined by the Director General having regard to all the circumstances of the case:

Provided that in ascertaining the residual expenditure at any date in relation to the asset regard shall be had, with respect to any allowance claimed in relation to that asset for any year of assessment, to the full amount of that allowance which but for this paragraph would then have been made to him for that year in relation to that asset.

74. Where a person has a source within the meaning of sections 55 to 58, any allowance or charge to be made to or on him for a year of assessment in relation to a source and to an asset for a year of assessment shall be determined in such manner as may be prescribed by rules made for the purposes of this paragraph.

75. Subject to paragraph 75A, where, by reason of an insufficiency or absence of adjusted income of a person from a business of his for the basis period for a year of assessment or by reason of the existence of an adjusted loss from the business for that period, effect cannot be given or cannot be given in full to any allowance or to the 053e .FM Page 301 Thursday, April 6, 2006 12:07 PM 302 Laws of Malaysia ACT 53

aggregate amount of any allowances falling to be made to him for that year in relation to the source consisting of that business, that allowance or that aggregate amount, as the case may be, which has not been so made (or so much thereof as has not been so made to him for that year) shall be deemed to be an allowance to be made to him for the first subsequent year of assessment for the basis period for which there is adjusted income from that business, and so on for subsequent years of assessment until the whole amount of the allowance or that aggregate amount to be made to him has been made to him.

*75A. Any allowance or aggregate amount of allowances for a year of assessment which has not been so made to a company as ascertained under paragraph 75 shall not be made to that company for the purposes of this Schedule and section 42 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment in which that allowance or that aggregate amount has not been so made were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under this Schedule

and available for the purposes of that section and that allowance or that aggregate amount which but for this paragraph would have been made to the company in a year of assessment shall be disregarded for subsequent years of assessment.

75B. (1) For the purpose of paragraph 75A----

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates-- (i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same person;

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company; and (c) any allowance or aggregate amount of allowances which has not been so made for any year of assessment referred to in that paragraph shall consist of an allowance falling to be made under this Schedule for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75. (2) In this paragraph, "ordinary share" has the same meaning assigned to it under subsection 44(5C).

75C. Where there is a substantial change in the shareholders of a company referred to in paragraph 75A, the Minister may under special circumstances exempt that company from the provisions of paragraph 75A.

*NOTE ? See section 33 of Act 644 for explanation. 053e .FM Page 302 Thursday, April 6, 2006 12:07 PM Income Tax 303

76. A person shall not be entitled to an allowance under this Schedule for a year of assessment unless he makes a claim for the allowance for that year in accordance with paragraph 77.

77. (1) Any claim by a person for an allowance under this Schedule for a year of assessment shall be made in a written statement containing such particulars as may be requisite to show that the claimant is entitled to the allowance and a certificate signed by the claimant verifying those particulars. (2) Any claim to be made by a person for a year of assessment in accordance with this paragraph shall be furnished with a return of his income made under section 77 or 77A for that year.

78. Where in the case of a business of a person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods.

79. Where as regards a business of a person the Director General has exercised the power conferred upon him by subsection 21A(3) to direct that the basis period for a year of assessment shall consist of a specified period, any allowance or charge to be made on or to that person under this Schedule in relation to the source consisting of that business for that year shall be ascertained by reference to such a period as shall be determined by the Director General, and that last-mentioned period shall be taken to be the basis period for that year in the application of this paragraph with this Schedule.

80. The Minister may prescribe a building which is constructed or purchased by any person and used by him for the purposes of his business as an industrial building and the amount of the allowance or allowances which would otherwise fall to be made to him under paragraph 12, 16 or 42.

81. The Minister may prescribe any capital expenditure incurred by a person in his business as qualifying agriculture expenditure under paragraph 7 and the amount of the allowance or allowances in respect of that qualifying agriculture expenditure which would otherwise fall to be made to him under paragraphs 22 and 23. SCHEDULE 4

[Sections 43 and 44]

Expenditure on Prospecting Operations

1. Qualifying prospecting expenditure for the purposes of this Schedule is expenditure wholly and exclusively incurred in searching for, discovering or winning access to deposits of minerals in an eligible area or in testing any such deposits, but excludes expenditure on the acquisition of--

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(a) the site of the source of the deposits;

(b) the site of any works which are likely to be of little or no value when the source is no longer worked;

(c) rights in or over any such site; or

(d) rights in or over the deposits.

2. (a) A person who has incurred qualifying prospecting expenditure in the basis period for a year of assessment may elect to claim in a return of his income for that year of assessment a deduction to be made under subparagraph 5(a) (in this Schedule that person and that year of assessment being referred to as "the prospector" and "the relevant year" respectively).

(b) Where no election has been made under subparagraph (a), a person who has incurred qualifying prospecting expenditure may claim for the relevant year a deduction under subparagraph 5(b).

3. A claim under paragraph 2 shall-- (a) if an election is made, be made in writing and shall be irrevocable; (b) specify the eligible area to which the claim relates and the amount of the qualifying prospecting expenditure claimed to be deductible; (c) contain a declaration described in paragraph 4 if a claim is made for a deduction under subparagraph 5(b); and

in the case of subparagraph (b) or (c), shall contain such other information as may be necessary to enable the Director General to dispose of the claim in accordance with this Schedule.

4. The declaration referred to in subparagraph 3(c) is a declaration by the prospector that--

(a) on a date before the end of the basis year for the relevant year he permanently ceased to search for deposits of minerals in the area to which the claim relates, to win access to any such deposits discovered by him in that area and to test any such deposits; and

(b) he has not carried on and has formed the permanent intention not to carry on any business consisting of or including the working of a mine in that area.

5. Subject to this Schedule, there shall be deducted for the relevant year under subsection 44(1)--

(a) an amount equal to so much of the qualifying prospecting expenditure as was incurred in the basis period for the relevant year: Provided that where the area specified in subparagraph 3(b) ceased to be an eligible area by reason of a lease, licence or certificate (other than a prospecting licence or certificate) granted or issued under any written law regulating mining being granted, issued or assigned to the prospector in 053e .FM Page 304 Thursday, April 6, 2006 12:07 PM Income Tax 305

any year of assessment subsequent to the relevant year, there shall be added

under paragraph 43(1) (c) in ascertaining the prospector's aggregate income for that year of assessment subsequent to that relevant year an amount equal to that prospecting expenditure or where a prospecting expenditure has been made to him for more than one relevant year the aggregate of all those expenditure for all those years; or (b) an amount equal to so much of the qualifying prospecting expenditure as was incurred before, but not more than ten years before, the end of the basis year for the relevant year.

6. Where-- (a) a claim under this Schedule is not allowable because the area specified under subparagraph 3(b) is not an eligible area or is misdescribed or because the amount of expenditure so specified is excessive; and (b) the Director General is of the opinion that the claim would be wholly or partly allowable, if amendments were made affecting the area or amount so specified,

he may make those amendments and allow the claim (in whole or in part) as amended.

7. Subject to paragraph 8, where a claim under this Schedule in respect of any area and expenditure has been allowed or disallowed, no other claim may be made for any year of assessment in respect of that area or expenditure.

8. Where a claim under this Schedule in respect of any area and expenditure is disallowed because the Director General is not satisfied as to any matter to which the declaration described in paragraph 4 relates, a further claim in respect of that area and expenditure may be made for a subsequent year of assessment.

9. Where a claim is made under this Schedule in respect of any area and expenditure, the amount of any deduction which would otherwise be made under subsection 44(1) pursuant to this Schedule for any or all relevant years shall be reduced to the extent provided by paragraphs 10 to 13 (that amount being referred to in those paragraphs as the provisional deduction).

10. (1) Where machinery or plant has been purchased by the prospector and used in any operation connected with any qualifying prospecting expenditure to which the provisional deduction relates (whether or not it was first used in that way), the provisional deduction under subparagraph 5(a) shall be reduced--
- (a) if the machinery or plant has been sold in the basis period for the relevant year by the amount of any consideration for the sale (ascertained in accordance with paragraph 11);

(b) by an amount equal to any sum received or receivable by the prospector in the basis period for the relevant year for the use of the machinery or plant otherwise than in any such operation; and

(c) if the machinery or plant has not been sold in the basis period for the relevant year in which he permanently ceased to search for deposits of minerals in the area to which the claim relates, to win access to any such deposits discovered by him in that area and to test any such deposits, by an amount equal to its market value at the date he permanently ceased to prospect in that area.

(2) Where machinery or plant has been purchased by the prospector and used in any operation connected with any qualifying prospecting expenditure to which the provisional deduction relates (whether or not it was first used in that way), the provisional deduction under subparagraph 5(b) shall be reduced-- (a) if the machinery or plant has been sold before the date referred to in subparagraph 4(a), by the amount of any consideration for the sale (ascertained in accordance with paragraph 11);

(b) if the machinery or plant has not been sold before that date, by an amount equal to its market value at that date; and

(c) by an amount equal to any sum received or receivable by the prospector before that date (and, in the case of machinery or plant to which paragraph 14 applies, after the date on which the machinery or plant was first used in any such operation) for the use of the machinery or plant otherwise than in any such operation.

11. For the purposes of paragraph 10, the consideration for a sale of machinery or plant shall be ascertained by taking the amount of any monetary consideration and the amount of the market value of any non-monetary consideration or, where there is only non-monetary consideration, by taking the amount of the market value of either--

(a) the non-monetary consideration; or

(b) the machinery or plant at the date of the sale, whichever is the greater:

Provided that the consideration shall be taken to be the amount of the market value of the plant or machinery at the time of the sale in any case where the monetary consideration is less than the market value and the Director General is satisfied that the sale is a transaction to which section 140 applies.

12. The provisional deduction shall be reduced-- (a) by an amount equal to any sum received or receivable by the prospector at any time before the end of the basis year for the relevant year or in the basis period for the relevant year,

as the case may be, from the sale of any rights or other benefits arising from or connected with the area to which the provisional deduction relates, and by an amount equal to the market value at the time of the sale of any non-monetary consideration so received or receivable; and

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(b) by an amount equal to any sum received or receivable by the prospector at any time before the end of the basis year for the relevant year or in the basis period for the relevant year, as the case may be, as a grant or other payment by the Government, a State Government or a statutory authority intended directly or indirectly to reduce the burden of the qualifying prospecting expenditure to which the provisional deduction relates.

13. Where, by reason of the fact that as regards the prospector there is for the relevant year no or no sufficient defined aggregate, a deduction which would otherwise be made under subsection 44(1) pursuant to this Schedule cannot be made or can be made only in part, the deduction (or, where the deduction can be made only in part, so much of the deduction as cannot be made) shall be made for the first year of assessment (being a year of assessment subsequent to the relevant year) for which in computing the total income of the prospector there is a defined aggregate, and so on for the years of assessment subsequent to that first year until the whole amount of the deduction has been made.

14. Where the operator uses in operations connected with qualifying prospecting expenditure any machinery or plant acquired by him otherwise than for such a use, the market value of the machinery or plant when first used in any of those operations (and not its price or market value when it was first acquired by him) shall be deemed to be included in that expenditure.

15. Where-- (a) there has been made under paragraphs 10 to 13 a reduction consisting of an amount equal to a sum receivable (but not received) by the prospector; and

(b) within the six years following the relevant year the prospector satisfies the Director General that the sum in question or a part of that sum is irrecoverable,

such adjustments in the ascertainment of the prospector's total income for any year of assessment shall be made as are necessary to compute the tax paid by him which would not have been paid if there had been allowed to him the deduction which would have been allowed if that sum or that part of that sum, as the case may be, had not been taken into account as receivable; and a sum equal to any tax so computed shall be repaid to the prospector by the Director

General: Provided that, where this paragraph has been applied to a part of that sum, that part shall be left out of account in any subsequent application of this paragraph.

16. Where the prospector receives in the basis year for a year of assessment subsequent to the relevant year which coincides with the year in which he permanently ceased to search for, win access or test deposits of minerals in that area--

(a) an amount to which, if it had been received or receivable by him in the basis year for the relevant year, paragraph 12 would have applied; or 053e .FM Page 307 Thursday, April 6, 2006 12:07 PM 308 Laws of Malaysia ACT 53

(b) an amount on account or in respect of an amount treated as irrecoverable with regard to which an adjustment has been made under paragraph 15, the amount so received shall be added under paragraph 43(1) (c) in ascertaining the prospector's aggregate income for that subsequent year: Provided that the amount (if any) so added in ascertaining the prospector's aggregate income for a year of assessment by virtue of this paragraph, together with any amount so added in ascertaining his aggregate income for any previous year of assessment in relation to the same claim, shall not exceed the total deductions allowed in pursuance of the claim under any of the foregoing paragraphs for the relevant year and any subsequent year of assessment.

17. In this Schedule-- "defined aggregate", in relation to the prospector and a year of assessment, means his aggregate income for that year reduced by any deduction falling to be made for that year pursuant to subsection 44(2);

"eligible area" means any particular area in Malaysia which does not consist of or include an area with respect to which there is or has been in force at any time before the end of the basis year for the relevant year any lease, licence or certificate (other than a prospecting licence or certificate) granted or issued under any written law regulating mining and granted, issued or assigned to the prospector before the end of that basis year.

SCHEDULE 4A

[Sections 43 and 44]

(Deleted by Act 644)

SCHEDULE 4B

[Sections 43 and 44]

Qualifying Pre-Operational Business

Expenditure

1. Qualifying pre-operational business expenditure for purposes of this Schedule is expenditure within the meaning of paragraph 2, incurred by a company resident in Malaysia in connection with a proposal by that company to undertake investment in a business venture as approved by the Minister in a country outside Malaysia. 053e .FM Page 308 Thursday, April 6, 2006 12:07 PM Income Tax 309
2. Subject to paragraph 1, qualifying pre-operational business expenditure for the purposes of this Schedule is--
 - (a) expenses directly attributable to the conduct of feasibility studies; (b) expenses directly attributable to the conduct of market research or the obtaining of marketing information, or
 - (c) expenses by way of fares in respect of travel to a country outside Malaysia by a representative of the company, being travel necessarily undertaken for the purposes of conducting feasibility study or market survey, and actual expenses, subject to a maximum of four hundred ringgit per day, for accommodation and sustenance for the whole period commencing with the representative's departure from Malaysia and ending with his return to Malaysia.
3. Subject to this Schedule, there shall be deducted for a year of assessment under subsection 44(1) an amount equal to so much of the qualifying pre-operational business expenditure as was incurred in the basis period for the year of assessment (in this Schedule that year of assessment being referred to as "the relevant year").
4. Where by reason of the fact that there is for the relevant year no or no sufficient defined aggregate, a deduction which would otherwise be made under subsection 44(1) pursuant to this Schedule cannot be made or can be made only in part, the deduction (or, where the deduction can be made only in part, so much of the deduction as cannot be made) shall be made for the first year of assessment (being a year of assessment subsequent to the relevant year) for which in computing the total income there is a defined aggregate, and so on for the years of assessment subsequent to that first year until the whole amount of the deduction has been made.
5. In this Schedule, "defined aggregate", in relation to a year of assessment, means the aggregate income for that year reduced by a deduction made pursuant

to subsection 44(2) or Schedule 4 or 4A.

SCHEDULE 4C

[Section 44]

(Deleted by Act 644)

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SCHEDULE 5

[Section 102]

Appeals

Hearing of appeals

1. (1) Every appeal shall be heard by three Special Commissioners, at least one of whom shall be a person with judicial or other legal experience within the meaning of subsection 98(3).

(2) If a Chairman of the Special Commissioners has been appointed and is present at the hearing of an appeal, he shall preside at the hearing. (3) If, when an appeal is heard, no Chairman of the Special Commissioners has been appointed or the Chairman is absent, the Special Commissioners present shall choose one of their number (who shall be a person with experience of the kind mentioned in subparagraph (1)) to preside at the hearing. Place of sitting

2. The Special Commissioners shall sit for the hearing of appeals in-- (a) Ipoh;

(b) Kota Kinabalu;

(c) Kuala Lumpur;

(d) Kuching;

(e) Malacca;

(f) Penang; and

(g) such other places (if any) as they think appropriate.

3. The Special Commissioners shall draw up in advance a programme for each

half-year of the places at which and the dates on which they intend to sit and shall conform with their programme so far as is reasonably practicable, without prejudice to their right to make such variations in the programme as circumstances appear to them to require.

4. The Clerk shall inform the Director General of the programme drawn up under paragraph 3 as soon as possible after it has been drawn up and shall, so far as may be, keep him informed of any variations therein.

Sending forward of appeals, etc.

5. Where the Director General sends an appeal forward in pursuance of section 102, he shall do so by forwarding to the Clerk a copy of the notice of appeal given under 053e .FM Page 310 Thursday, April 6, 2006 12:07 PM Income Tax 311

section 99, together with an address for service and a request for the appeal to be set down for hearing.

6. The notice forwarded under paragraph 5 shall constitute the petition of appeal and the appellant's address contained therein shall constitute the appellant's address for service.

7. Either party to an appeal may change his address for service by giving written notice of the change to the Clerk and the other party. Place and date of hearing

8. On receipt of a request under paragraph 5 for an appeal to be set down for hearing, the Clerk shall fix a place and date of hearing which he considers suitable and shall give the appellant and the Director General at least twenty-eight days notice of the date and place so fixed:

Provided that, before sending an appeal forward, the Director General may make an agreement in writing with the appellant fixing one of the places included in any programme drawn up under paragraph 3 as the place of hearing of the appeal, and, where he does so--

(a) he shall forward a copy of the agreement to the Clerk when he sends the appeal forward; and

(b) the Clerk shall fix as the place of hearing the place so agreed.

9. One of the Special Commissioners on the application of a party to an appeal may, after giving the other party an opportunity to be heard, vary any date or place fixed under paragraph 8 and may do so, in the case of a place so fixed,

notwithstanding that the appeal has been partly heard in that place.

Appeals may be heard together

10. One of the Special Commissioners may order-- (a) two or more appeals by the same person; or

(b) two or more appeals by different persons, if they agree, to be heard together.

11. One of the Special Commissioners may make an order under subparagraph 10(a) either of his own motion or on the application of a party to one of the appeals in question, but no such order shall be made until the parties to those appeals have been given an opportunity to be heard.

Scope of argument

12. At the hearing of an appeal the appellant may rely on grounds of appeal other than those stated in the petition of appeal and may vary any ground of appeal so stated:

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Provided that, where he does so without giving reasonable notice to the Director General, the Special Commissioners shall adjourn the hearing for a reasonable period if requested to do so by the Director General.

Onus of proof

13. The onus of proving that an assessment against which an appeal is made is excessive or erroneous shall be on the appellant. Representation and attendance

14. For the purposes of an appeal-- (a) the Director General may be represented by an authorized officer, a legal officer or an advocate;

(b) the appellant may be represented by an advocate or a tax agent or by both an advocate and a tax agent; and

(c) if the appellant is the principal within the meaning of section 67, he may be represented by the representative within the meaning of that section.

15. In paragraph 14-- "legal officer" means a legally qualified public officer entitled under the law in force in any part of Malaysia to represent the Government in civil proceedings by or against the Government.

16. The Director General and the appellant may-- (a) attend at the time and place fixed for the hearing of the appeal; and (b) do any other thing or take any other action in connection with the appeal, either personally or by a representative of the kind referred to in paragraph 14. 16A. Where both parties to an appeal attend, either personally or by a representative of the kind referred to in paragraph 14, at the time and place fixed for the hearing of the appeal, the Special Commissioners may on the application of either or both of the parties grant a postponement of the hearing on such terms as they consider reasonable, including terms as to the costs of the postponement to the Special Commissioners and to the party not applying for postponement, against the party or parties (as the case may be) applying for the postponement.

17. (1) Where a party to an appeal fails to attend, either personally or by a representative of the kind referred to in paragraph 14, at the time and place fixed for the hearing of the appeal, the Special Commissioners-- (a) if they are then and there satisfied that the defaulting party is prevented from attending by sickness or other reasonable cause, shall postpone the hearing for what appears to them to be an appropriate time, or they may hear and decide the appeal in the absence of the defaulting party if he requests them to do so;

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(b) if they are not so satisfied, may hear and decide the appeal in the absence of the defaulting party, or may postpone the hearing for what appears to them to be an appropriate time.

(2) Where both parties to an appeal fail to attend, either personally or by a representative of the kind referred to in paragraph 14, at the time and place fixed for the hearing of the appeal--

(a) if each of the parties fails to satisfy the Special Commissioners that he is prevented from attending by sickness or other reasonable cause, they may either decide the appeal in the absence of both parties or postpone the hearing for what appears to them to be an appropriate time, and where they postpone the hearing they may order either or both parties to pay to them such costs as they consider reasonable;

(b) if the Special Commissioners are then and there satisfied that one of the parties is prevented from attending by sickness or other reasonable cause and are not satisfied that the other party is so prevented, they shall postpone the hearing for what appears to them to be an appropriate time, or they may

decide the appeal in the absence of the parties if the party so prevented requests them to do so;

(c) if the Special Commissioners are satisfied that both parties are prevented from attending by sickness or other reasonable cause, they shall postpone the hearing for what appears to them to be an appropriate time, or they may decide the appeal in the absence of the parties if the parties request them to do so.

18. Where, after a deciding order has been made under paragraph 17 as the result of a party's failure to attend at the time and place fixed for the hearing of an appeal, the Special Commissioners are satisfied on an application made within a period of thirty days after the making of the order that the defaulting party was prevented from attending by sickness or other reasonable cause, they may set aside the order and fix a time and place for a fresh hearing of the appeal. Powers of Special Commissioners

19. The Special Commissioners shall have-- (a) power to summon to attend at the hearing of an appeal any person who in their opinion is or might be able to give evidence respecting the appeal; (b) power, where a person is so summoned, to examine him as a witness on oath or otherwise;

(c) power, where a person is so summoned, to require him to produce any books, papers or documents which are in his custody or under his control and which the Special Commissioners may consider necessary for the purposes of the appeal;

(d) power, where a person is so summoned, to allow him any reasonable expenses incurred by him in connection with his attendance; 053e .FM Page 313 Thursday, April 6, 2006 12:07 PM 314 Laws of Malaysia ACT 53

(e) all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;

(f) subject to subsection 142(5), power to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence; and (g) power to postpone or adjourn the hearing of an appeal from time to time (including power to adjourn to consider their decision). Witnesses bound to tell truth, etc.

20. Every person examined as a witness by or before the Special Commissioners, whether on oath or otherwise, shall be legally bound to state the truth and if summoned under subparagraph 19(a) to produce such books, papers or documents in his custody or under his control as the Special Commissioners may require under subparagraph 19(c).

Witnesses' expenses

21. (1) Expenses allowed under subparagraph 19(d) shall be assessed by the Clerk on the scale used in civil proceedings in a subordinate court and shall be paid by the appellant or the Government as the Special Commissioners may direct. (2) In a case where section 67 applies, the Special Commissioners may direct that expenses assessed under subparagraph (1) shall be paid by the representative (within the meaning of that section); and, where they so direct, subsections (4) to (7) of that section shall apply as if those expenses were tax due from the representative. Procedure

22. Subject to this Act and any rules made under paragraph 154(1)(d), the Special Commissioners may regulate the procedure at the hearing of an appeal and their own procedure.

Deciding orders

23. As soon as may be after completing the hearing of an appeal, the Special Commissioners shall give their decision on the appeal in the form of an order which shall be known as a deciding order and which, subject to this Schedule, shall be final.

24. A deciding order may, if the Special Commissioners think fit, be read or summarized in the presence of the parties by one of the Special Commissioners or the Clerk; but the fact that any deciding order is not so read or summarized shall not affect its validity and the fact that any deciding order is so read or summarized shall not relieve the Clerk of his obligation under paragraph 44 to cause a copy of the order to be served on the parties.

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25. If the Special Commissioners differ among themselves as to the decision to be given on an appeal--

(a) the opinion of the majority shall prevail; and (b) the Special Commissioner who dissents from the majority view shall sign the deciding order as required by paragraph 44 (unless he is incapacitated from doing so as mentioned in that paragraph), but in doing so shall indicate the fact of his dissent and may, if he thinks fit, add a statement of his reasons therefor.

26. Subject to paragraphs 25 and 31, a deciding order shall either confirm or discharge the assessment to which the appeal relates or shall direct the Director General to amend the assessment; and, where it directs amendment, the

order shall-- (a) specify the appropriate amendments;

(b) require the appropriate amendments to be determined by agreement between the parties or, failing agreement, by the Special Commissioners; or

(c) specify some of the appropriate amendments and require the others to be so determined.

27. Where a deciding order is made pursuant to subparagraph 26(b) or (c) in respect of an appeal, section 101 shall apply as if references to the order were substituted for references to the notice of appeal under subsection 99(1) (any agreement come to pursuant to the order being deemed to be and to have the same effect as an agreement of the kind mentioned in subsection 101(2)) and section 102 shall apply as it applies on a failure to come to an agreement of that kind: Provided that--

(a) if the Special Commissioners are required under paragraph 34 to state a case in respect of the order, section 102 shall not come into operation until all proceedings respecting the case have been completed; and (b) if the Director General has cause to send the appeal forward to the Special Commissioners pursuant to section 102, he shall do so by sending to the Clerk and the appellant a written statement that a further hearing has become necessary by reason of the parties' failure to agree.

28. Where an appeal is set down for further hearing pursuant to paragraph 27, it shall not be necessary for the further hearing to take place before the same Special Commissioners as those who heard the earlier proceedings.

Vexatious and frivolous appeals

29. (1) Where on an appeal the Special Commissioners do not discharge or amend an assessment, they may, if in their opinion the appeal was vexatious or frivolous, order the appellant to pay as costs to the Special Commissioners a sum not exceeding five thousand ringgit.

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(2) In a case where section 67 applies, the Special Commissioners may order the representative (within the meaning of that section) to pay costs under subparagraph (1); and, where they do so, subsections (4) to (7) of that section shall apply as if those costs were tax due from the representative.

30. Subject to any representation made under paragraph 31 a sum ordered to be paid under paragraph 29 shall become due and payable on the expiration of a period of seven days starting on the date when the order for payment was served on the appellant or the representative (within the meaning of section

67), as the case may be, and shall be recoverable as a debt due to the Government.

31. (1) The Special Commissioners may make an order as to costs under paragraph 29 notwithstanding that the appellant was not present at the hearing of the appeal. (2) Where the Special Commissioners make an order as to costs under paragraph 29--

(a) it shall be included in the deciding order made under paragraph 26; and
(b) the appellant or the representative (within the meaning of section 67) may within twenty-one days of the service on him of the deciding order make representation orally or in writing to the Special Commissioners showing cause why the order as to costs ought not to have been made or why the costs ordered ought to be reduced, and the Special Commissioners if satisfied with the representation may remit the costs ordered either wholly or partly.

Costs and fees

32. Except as expressly provided in this Schedule, the Special Commissioners shall not make any order as to the payment of the costs of an appeal. 32A. (1) Except as provided in paragraph 30, any sum ordered to be paid by the Special Commissioners as costs shall become due and payable on the order for payment being made and shall be recoverable--

(a) in the case of costs ordered to be paid to the appellant, as a debt due to him; and

(b) in the case of costs ordered to be paid to the Special Commissioners or the Director General, as a debt due to the Government. (2) In any proceedings for the recovery of costs ordered by the Special Commissioners the production of a certificate signed by one of the Special Commissioners giving the names and addresses of the persons to whom and by whom such costs are to be paid and the amount of the costs due shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

33. (Deleted by Act A108). 053e .FM Page 316 Thursday, April 6, 2006 12:07 PM
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Further appeals

34. Either party to proceedings before the Special Commissioners may appeal on a question of law against a deciding order made in those proceedings (including a deciding order made pursuant to subparagraph 26(b) or (c)) by requiring the Special Commissioners to state a case for the opinion of the

High Court and by paying to the Clerk at the time of making the requisition such fee as may be prescribed from time to time by the Minister in respect of each deciding order against which he seeks to appeal.

35. A requisition under paragraph 34 shall be in writing and shall be sent or delivered to the Clerk within twenty-one days after the service on the intending appellant of the order against which he seeks to appeal.

36. The High Court on the application of an intending appellant made by summons in chambers may extend the period of twenty-one days mentioned in paragraph 35.

37. A case stated under paragraph 34-- (a) shall set forth the facts as found by the Special Commissioners, the deciding order and the grounds of their decision; and (b) shall be signed by the Special Commissioners who heard the appeal (or, if any of them are incapacitated from signing by reason of death, illness, absence or any other cause, by such of them as are able to do so).

37A. (1) The appellant shall pay to the Clerk the cost of preparing the case stated at such rate as may be prescribed from time to time by the Minister.

(2) The Special Commissioners may at any time before a case stated is transmitted to the High Court require the appellant to deposit with the Clerk a sum which in their opinion will cover the cost of preparing copies of the case stated for the High Court and the parties, and where they do so they may refrain from stating the case or prevent the case stated from being transmitted to the High Court unless the required deposit is made.

(3) Any party to an appeal may obtain from the Clerk extra copies of the case stated on payment of such fee as may be prescribed from time to time by the Minister.

38. When a case has been stated and signed in accordance with paragraph 37, the Clerk shall transmit it to the High Court and serve a copy of it on the parties to the proceedings in respect of which it is stated.

39. The High Court shall hear and determine any question of law arising on a case stated under paragraph 34 and may in accordance with its determination thereof-- (a) order the assessment to which the case relates to be confirmed, discharged or amended;

(b) remit the case to the Special Commissioners with the opinion of the court thereon; or

(c) make such other order as it thinks just and appropriate. 053e .FM Page 317
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40. At any time before it determines the questions of law arising on a case stated under paragraph 34, the High Court may--

(a) cause the case to be sent back to the Special Commissioners for amendment; or

(b) require the Special Commissioners to find further facts and state a supplementary case,

and may postpone or adjourn the proceedings before it until the amendment has been made or the requisition complied with.

41. There shall be such rights of appeal from decisions of the High Court on cases stated under paragraph 34 as exist in respect of decisions of the High Court on questions of law in its appellate civil jurisdiction.

42. Unless it is otherwise provided by rules of court, the rules of court for the time being in force in relation to appeals in civil matters from a subordinate court to the High Court and from the High Court in its appellate jurisdiction to the Court of Appeal and the Federal Court shall, subject to this Schedule, apply with the necessary modifications to appeals under this Schedule to the High Court, the Court of Appeal and the Federal Court respectively.

Supplemental provisions

42A. Where any matter of procedure or practice is not provided for in this Schedule, the procedure and practice for the time being in force or in use in the subordinate court or in the High Court, as the case may be, shall be adopted and followed with the necessary modifications.

43. (1) Proceedings under this Schedule before the Special Commissioners or the court shall take place in camera:

Provided that where the Director General applies to the Special Commissioners or the court, as the case may be, that the proceedings, or such part thereof as he may deem necessary, be heard by way of a hearing open to the public, the Special Commissioners or the court, as the case may be, shall direct that the proceedings or the part thereof, as the case may be, shall be so heard, notwithstanding any objection from any other party to the proceedings:

Provided further that, where in the opinion of the Special Commissioners or the court any proceedings or part thereof heard in camera ought to be reported, the Special Commissioners or the court, as the case may be, may

publish or authorize publication of the facts of the case, the arguments and the decision relating to the proceedings or the part thereof heard in camera, but without identifying the parties (other than the Director General) where the whole proceedings were heard in camera. (2) Any publication authorized under subparagraph (1) may be obtained from the Special Commissioners or the court on payment of such fee as may be prescribed from time to time by the Minister.

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44. Where a deciding order or any other order is made by the Special Commissioners or one of the Special Commissioners in or in connection with proceedings under this Schedule--

(a) the order shall be dated and signed by the Special Commissioners or Special Commissioner making it; and

(b) a copy of the order shall be served by the Clerk on the parties to the proceedings:

Provided that, if any of the Special Commissioners who have made a deciding order are incapacitated from signing by reason of death, illness, absence or any other cause, the order shall be signed by such of them as are able to do so.

45. Directions for the settlement or disposal of any matter of a procedural nature arising in connection with proceedings before the Special Commissioners, the High Court, the Court of Appeal or the Federal Court under this Schedule may, if no other provision is made by or under this Act or rules of court for the settlement or disposal of the matter, be given--

(a) in relation to proceedings before the Special Commissioners, by one of the Special Commissioners on an application made in whatever manner he considers appropriate; and

(b) in relation to proceedings before the High Court, the Court of Appeal or the Federal Court, by the High Court on an application made by summons in chambers.

46. The Special Commissioners in the exercise of their functions shall enjoy the same judicial immunity as is enjoyed by the person presiding in a subordinate court.

47. In sections 193 and 228 of the Penal Code the words "judicial proceeding" shall be deemed to include an appeal.

48. In this Schedule-- "appeal", except in paragraphs 34 to 42, means an appeal to the Special Commissioners under section 99;

"deciding order" means a deciding order made under paragraph 23; "subordinate court" means a sessions court or the court of a magistrate of the first class;

"High Court", in relation to an appeal heard by the Special Commissioners, means (unless the parties to the appeal agree otherwise in writing) the High Court having jurisdiction in the place where the appeal begins to be heard by the Special Commissioners.

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SCHEDULES 6

[Section 127]

Exemptions from tax

PART I

INCOME WHICH IS EXEMPT

1. The official emoluments of a Ruler or Ruling Chief as defined in section 76. 1A. The official emoluments of the Consort of a Ruler of a State having the title of Raja Perempuan, Sultanah, Tengku Ampuan, Raja Permaisuri, Tengku Permaisuri, or Permaisuri:

Provided that where there are two or more consorts of a Ruler of a State having the above titles, the exemption shall be given only to the one recognized to be the official Consort.

1B. The official income of a former Ruler or Ruling Chief as defined in section 76 (excluding a former Governor or Yang di-Pertua Negara of a State) or a Consort of a former Ruler of a State previously having the title of Raja Perempuan, Sultanah, Tengku Ampuan, Raja Permaisuri, Tengku Permaisuri, or Permaisuri. Provided that where a person is paid more than one pension, this paragraph shall apply to the higher or the highest pension paid, as the case may be.

2. The official emoluments received by any person in respect of the exercise by him of the functions of a State Authority in a temporary or acting capacity.

3. Any income which is exempt by virtue of the Diplomatic Privileges (Vienna Convention) Act 1966 [Act 24 of 1966], or by virtue of an order made under Part III of the *Diplomatic and Consular Privileges Ordinance 1957 [Ord. 53 of 1957] or under the Foreign Representatives (Privileges and Immunities) Act 1967 [Act 541].

4. The official emoluments of consular officers and consular employees (as defined in the Diplomatic and Consular Privileges Ordinance 1957) in the service of a country to which Part IV of that Ordinance applies, to the extent provided by any consular convention between Malaysia and that country or, in the absence of a consular convention, to the extent that reciprocal treatment is accorded by that country to persons exercising corresponding functions in the service of Malaysia.

5. The income of the Government or a State Government.

6. The income of a local authority. *NOTE--This Ordinance has been repealed by Act A1064 w.e.f. 3-9-1999. 053e .FM Page 320 Thursday, April 6, 2006 12:07 PM
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7. Wound and disability pensions granted to persons in respect of-- (a) service in the armed forces of Malaysia or a Commonwealth country; (b) service on and after Merdeka Day in the armed forces; (c) service before Merdeka Day in the Malay Regiment, the Federation Regiment, the Johore Military Forces, any volunteer force or local defence corps within the meaning of the Volunteer Forces and Local Defence Corps (Demobilization) Ordinance 1946 [Ord. 16 of 1946], or any force raised or established by or under the Malayan Auxiliary Air Force Ordinance 1950 [Ord. 1 of 1950], the Volunteer Force Ordinance 1951 [Ord. 5 of 1951], the Malayan Royal Naval Volunteer Reserve Ordinance 1952 [Ord. 3 of 1952], or the Military Forces Ordinance 1952 [Ord. 47 of 1952]; or

(d) service in the Sarawak Volunteer Force or the Sarawak Rangers, and pensions granted to wives or dependant relatives of members of any of those forces or local defence corps killed on war service.

8. Disability pensions granted in respect of war service injuries to members of civil defence organizations in any territory comprised in Malaysia on 1 January 1968.

9. Sums payable out of moneys provided by Parliament by way of bounty to members of any of the following reserve forces, that is to say-- (a) Royal Malaysian Naval Volunteer Reserve;

(b) Malaysian Territorial Army;

(c) Royal Malaysian Air Force Volunteer Reserve.

10. The emoluments of any person who is a member of the armed forces of a Commonwealth country or in the service of the government of a Commonwealth country, if--

(a) he is in Malaysia for the purpose of performing his duties as a member of those forces or as a person in that service, as the case may be; and (b) those emoluments are payable from the public funds of that country and subject to foreign tax of that country.

11. (Deleted by Act 328).

12. (1) The income of any co-operative society-- (a) in respect of a period of five years commencing from the date of registration of such co-operative society; and

(b) thereafter where the members' funds of such co-operative society as at the first day of the basis period for the year of assessment is less than seven hundred and fifty thousand ringgit.

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(2) For the purposes of this paragraph "members' funds" means the aggregate of the paid up capital (in respect of shares and subscriptions and not including any amount in respect of bonus shares to the extent they were issued out of capital reserve created by revaluation of fixed assets) statutory reserve fund, reserves (other than any capital reserve which was created by revaluation of fixed assets and provisions for depreciation, renewals or replacements and diminution in value of assets), balance of share premium account (not including any amount credited therein at the instance of issuing bonus shares at premium out of capital reserve created by revaluation of fixed assets), and balance of profit and loss appropriation account. 12A. Any dividend paid, credited or distributed to any member by a co-operative society.

13. (1) The income, other than dividend income, of-- (a) an institution or organization approved for the purposes of subsection 44(6) so long as the approval remains in force; or (b) a religious institution or organization which is not operated or conducted primarily for profit and which is established in Malaysia exclusively for the purposes of religious worship or the advancement of religion.

14. Sums received by way of death gratuities or as consolidated compensation

for death or injuries.

15. (1) A payment (other than a payment by a controlled company to a director of the company who is not a whole-time service director) made by an employer to an employee of his as compensation for loss of employment or in consideration of any covenant entered into by the employee restricting his right to take up other employment of the same or a similar kind--

(a) if the Director General is satisfied that the payment is made on account of loss of employment due to ill-health; or

(b) in the case of a payment made in connection with a period of employment with the same employer or with companies in the same group, in respect of so much of the payments as does not exceed an amount ascertained by multiplying the sum of six thousand ringgit by the number of completed years of service with that employer or those companies. (2) For the purposes of this paragraph the Director General may direct that a period of employment in a business with different employers where the control and management of that business substantially remains with the same person or persons or where the employment is with different employers whose businesses are conducted by or through a central agency shall be treated as a period of employment with the same employer.

16. Pensions granted to any person under any written law relating to widows' and orphans' pensions (or under any approved scheme within the meaning of any such law) and pensions paid under an approved scheme to or for the benefit of the widow, child or children of a deceased contributor to the scheme. 053e .FM Page 322 Thursday, April 6, 2006 12:07 PM Income Tax 323

17. The income of a trade union registered under any written law relating to trade unions, in so far as the income does not consist of the gains or profits from a business carried on by the union:

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

18. Any income for the basis period for a year of assessment derived by a person who was not resident for the basis year for that year of assessment from trading in Malaysia through consignees in any commodity of the following kind, that is to say, rubber, copra, pepper, tin, tin ore, gambier, sago flour or cloves being a commodity produced outside Malaysia.

19. Interest paid or credited to any person in respect of any savings certificates issued by the Government.

20. The income of any approved scheme.

21. Subject to paragraph 22, the income of an individual from an employment exercised by him in Malaysia--

(a) for a period or periods which together do not exceed sixty days in the basis year for a year of assessment; or

(b) for a continuous period (not exceeding sixty days) which overlaps the basis years for two successive years of assessment); or (c) for a continuous period (not exceeding sixty days) which overlaps the basis years for two successive years of assessment and for a period or periods which together with that continuous period do not exceed sixty days,

if he is not resident for that basis year or for each of those basis years, as the case may be.

22. Paragraph 21 shall not apply to the income of an individual from an employment--

(a) if that individual has income derived from Malaysia from that employment for a period or periods amounting in all to more than sixty days in the basis year referred to in that paragraph or in the period consisting of the basis years so referred to; or

(b) if the income is income from an employment exercised by a public entertainer (that is to say, any professional entertainer, artiste, athlete or other individual who entertains whether in public or private for profit on stage, radio or television, at a stadium or sports ground, or otherwise) and no part of that income is paid out of the public funds of the government of a country outside Malaysia.

23. Education allowances paid to designated officers under the Overseas Service (North Borneo) Agreement 1961, or the Overseas Service (Sarawak) Agreement

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24. Any sums paid by way or in the nature of a scholarship or other similar grant or allowance to an individual, whether or not in connection with an employment of that individual.

25. (1) Sums received by way of gratuity on retirement from an employment--

(a) if the Director General is satisfied that the retirement was due to ill-health; (b) if the retirement takes place on or after reaching the age of 55, or on reaching the compulsory age of retirement from employment specified under any written law and in either case from an employment which has lasted ten years with the same employer or with companies in the same group; or

(c) if the retirement takes place on reaching the compulsory age of retirement pursuant to a contract of employment or collective agreement at the age of 50 but before 55 and that employment has lasted for ten years with the same employer or with companies in the same group: Provided that the sum shall not exceed an amount ascertained by multiplying the sum of six thousand ringgit by the number of completed years of service in that employment.

(2) For the purposes of this paragraph the Director General may direct that a period of employment in a business with different employers where the control and management of that business substantially remains with the same person or persons or where the employment is with different employers whose businesses are conducted by or through a central agency shall be treated as a period of employment with the same employer.

25A. Sum received by way of gratuity or by way of payment in lieu of leave paid out of public funds on retirement from an employment under any written law. 25B. Sums received by way of gratuity paid out of public funds on termination of a contract of employment (less the employer's contribution to the Employees Provident Fund, if any, and interest thereon).

26. The income of-- (a) any national amateur sports organization certified by the President and Secretary of the Olympic Council of Malaysia to be affiliated to that Council during the basis year for any year of assessment; and (b) any State amateur sports organization certified by the President (or corresponding officer) and Secretary of an organization to which paragraph (a) applies to be affiliated to that organization during the basis year for any year of assessment,

being in each case income for that year of assessment: Provided that the exemption under this paragraph shall not apply to income consisting of a dividend.

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27. Income of any person not resident in Malaysia for the basis year for a year of assessment in respect of interest derived from Malaysia on an approved loan.

28. (1) Without prejudice to the provisions of section 130, income of any

person, other than a resident company carrying on the business of banking, insurance or sea or air transport, for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia.

(2) Paragraphs 5 and 6 of Schedule 7A shall apply mutatis mutandis to the amount of income derived and received by a resident company exempted under subparagraph (1).

29. Notwithstanding the provisions of subsection 44(6), the aggregate income of any person remaining after the reductions made pursuant to paragraphs 44(1) (a), (b) and (c) to the extent of the amount of any contribution made by him during the basis period for a year of assessment to the National Monument Restoration Fund established for the purpose of restoring the National Monument in Kuala Lumpur.

30. Pensions derived from Malaysia and paid to a person on reaching the age of 55, or on reaching the compulsory age of retirement from employment specified under any written law or if the Director General is satisfied that the retirement was due to ill-health--

(a) in respect of services rendered in exercising a former employment in Malaysia; and

(b) where the pension is paid other than under any written law, from a pension or provident fund, scheme or society which is an approved scheme. Provided that where a person is paid more than one pension, this paragraph shall apply to the higher or the highest pension paid, as the case may be. 30A. Gratuity or pension derived from Malaysia and paid to a person resident for the basis year for a year of assessment under any written law applicable to the President or Deputy President of the Senate, Speaker or Deputy Speaker of the House of Representatives, Speaker of the State Legislative Assembly, member of the Senate, member of the House of Representatives or member of the State Legislative Assembly:

Provided that--

(a) the exemption in respect of pension shall apply only when the person has attained the age of fifty-five or if the Director General is satisfied that such person ceased to be President, Deputy President, Speaker, Deputy Speaker or member due to ill-health; and

(b) where such person is eligible for exemption in respect of pension under this paragraph and also under paragraph 30 of this Schedule, exemption shall be applicable only to the higher or the highest pension payable, as the case

may be.

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32. Income of ten thousand ringgit for the basis year for a year of assessment derived by an individual resident in Malaysia for that basis year from royalty or payment in respect of the publication of, or the use of or the right to use, any artistic work (other than any original painting), and from royalty in respect of recording discs or tapes. 32A. Income of twelve thousand ringgit for the basis year for a year of assessment, derived by an individual resident in Malaysia, being payment received in that year in respect of any translation of books or literary work at the specific request of any agency of the Ministry of Education or the Attorney General's Chambers: Provided that the exemption shall not apply where the payment arises to the individual as part of his emoluments in the exercise of his official duties. 32B. Income of twenty thousand ringgit for the basis year for a year of assessment derived by an individual resident in Malaysia for that basis year from royalty (other than royalty in respect of recording discs or tapes) or payment in respect of the publication of, or the use of or the right to use, any literary work or any original painting.

32C. Income of an individual resident in Malaysia in that basis year in respect of his performances in cultural performances approved by the Minister: Provided that the exemption shall not apply where the payment arises to the individual as part of his emoluments in the exercise of his official duties.

32D. Income of twenty thousand ringgit for the basis year for a year of assessment, derived by an individual resident in Malaysia, being payment in respect of any musical composition:

Provided that the exemption shall not apply where the payment arises to the individual as part of his emoluments in the exercise of his official duties.

32E. Income of an individual for the basis year for a year of assessment being payment by way of fee or honorarium in respect of services provided for purposes of validation, moderation or accreditation of franchised educational programmes in higher educational institutions and the services are verified by the Lembaga Akreditasi Negara:

Provided that the exemption shall not apply where the payment arises to the individual as part of his emoluments in the exercise of his official duties.

33. Income of any person not resident in Malaysia for the basis year for a year of assessment, in respect of interest derived from Malaysia (other than such interest accruing to a place of business in Malaysia of such person) and paid or credited by any person (whether the same person or not) carrying on

the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989:

Provided that the exemption under this paragraph shall not apply to interest paid or credited on funds required for the purposes of maintaining net working funds as prescribed by the Central Bank of Malaysia in pursuance of section 37 of the Banking and Financial Institutions Act 1989.

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33A. Interest paid or credited to any company not resident in Malaysia, other than such interest accruing to a place of business in Malaysia of such company-- (a) in respect of securities issued by the Government; or (b) in respect of Islamic securities or debenture issued in Ringgit Malaysia, other than convertible loan stock, approved by the Securities Commission.

34. (1) Income of an individual derived from exercising an employment on board a Malaysian ship.

(2) For the purposes of subparagraph (1), "Malaysian ship" has the same meaning as in subsection 54A(6).

34A. Interest paid or credited to any individual in respect of Merdeka Bonds issued by the Central Bank of Malaysia.

35. Interest or discount paid or credited to any individual, unit trust and listed closed-end fund--

(a) in respect of securities or bonds issued or guaranteed by the Government; or

(b) in respect of debentures, other than convertible loan stock, approved by the Securities Commission; or

(c) (Deleted by Act 624);

(d) in respect of Bon Simpanan Malaysia issued by the Central Bank of Malaysia.

35A. Income of a unit trust in respect of interest derived from Malaysia and paid or credited by any bank or financial institution licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983.

36. Sums received by way of annuities granted under annuity contracts issued

by Malaysian life insurers.

For the purposes of this paragraph "Malaysian life insurers" means life insurers and takaful operators whose ownership or membership are held in majority by Malaysian citizens.

Part II

(Deleted by Act 328)

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SCHEDULE 7

[Sections 132 and 133]

Double Taxation Relief

Bilateral credit

1. Subject to this Schedule, the amount of Malaysian tax payable for a year of assessment shall be reduced by the amount of any bilateral credit.
2. Bilateral credit shall not be allowed against Malaysian tax for any year of assessment unless the person chargeable to the Malaysian tax is resident for the basis year for that year of assessment.
3. Where foreign income charged to foreign tax is income for a period which overlaps the basis period for a year of assessment, that income shall be apportioned in the manner provided by subsection 25(4) and for that year of assessment bilateral credit may be given only in respect of so much of that income as is apportioned to the part of the overlapping period which overlaps the basis period.
4. Where foreign income (being income for a particular period) is charged to Malaysian tax for more than one year of assessment or is charged to foreign tax more than once, bilateral credit may be allowed for a year of assessment for the total amount of foreign tax charged on that foreign income: Provided that--
 - (a) the credit so allowed should not exceed the total amount of Malaysian tax charged on that foreign income; and
 - (b) where credit has been allowed for a year of assessment for any foreign tax, no credit shall be given for the same tax for any other year of

assessment.

5. The bilateral credit to be allowed to a person in respect of any foreign income for a year of assessment shall not exceed a sum equal to so much of the Malaysian tax payable by him for that year (before the allowance of any credit under this Schedule) as bears to the whole of that Malaysian tax the same proportion as that foreign income bears to his total income for that year.

6. Notwithstanding paragraph 5, the total bilateral credit to be allowed to a person for a year of assessment shall not exceed the total Malaysian tax payable by him on his chargeable income for that year before the allowance of any credit under this Schedule.

7. Bilateral credit shall not be allowed against Malaysian tax payable by a person for a year of assessment if he elects that credit shall not be allowed for that year.

8. (Deleted by Act 591). 053e .FM Page 328 Thursday, April 6, 2006 12:07 PM
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9. Any claim for bilateral credit for a year of assessment shall be made in writing to the Director General not more than two years after the end of that year; and, where the claimant is aggrieved by the Director General's decision on the claim, subsection 131(5) shall apply (with any necessary modifications) as it applies where an applicant is aggrieved by the Director General's decision on an application under subsection 131(1).

10. Where the amount of any bilateral credit given is rendered excessive or insufficient by reason of any adjustment of the amount of any Malaysian tax or foreign tax, nothing in this Act limiting the time for making assessments, for making applications for relief or for giving notice of appeal shall apply to any assessment, application for relief or notice of appeal to which the adjustment gives rise, being an assessment, application or notice made or given not more than two years after the time when all such assessments, adjustments and other determinations have been made (in Malaysia or elsewhere) as are material in determining whether any and if so what bilateral credit falls to be given.

Special provisions for trusts

11. Where the trust body of a trust is resident for the basis year for a year of assessment and the total income of the trust body includes foreign income which has suffered foreign tax, every beneficiary of the trust who is resident for that basis year shall be deemed for the purposes of this Schedule-- (a) to

have a part of that foreign income proportionately equal to the share of the total income of the trust body to which he is entitled; and (b) to have paid on that part of that foreign income a part of that foreign tax proportionately equal to that share of the total income of the trust body.

12. Where a trust is not resident for the basis year of a year of assessment, any beneficiary of the trust (including an annuitant) who is resident for that basis year shall, if he satisfies the Director General that-- (a) he has paid or suffered foreign tax on his income from his further source (within the meaning of subsection 61(5)) in relation to the trust body or on so much of the annuity as is derived from outside Malaysia; or (b) any income from such further source or any annuity so derived was paid by the trust body from income which had suffered foreign tax, be allowed bilateral credit in respect of that foreign tax in accordance with this Schedule.

Unilateral credit

13. Subject to paragraphs 14 and 15, unilateral credit shall be allowed in the same way as bilateral credit, and paragraphs 1 to 12 shall apply accordingly.

14. The unilateral credit allowed in respect of any foreign income for a year of assessment shall not exceed half the foreign tax payable on that income for that year.

15. Where an employee pays Malaysian tax and foreign tax in respect of income from an employment exercised outside Malaysia, then, whether or not he was resident for the basis year for the year of assessment for which the Malaysian tax was paid, unilateral credit may be allowed for foreign tax. Interpretation

16. In this Schedule-- "bilateral credit" means credit in respect of foreign tax which, by virtue of any arrangements having effect under section 132, is to be allowed as a credit against Malaysian tax;

"foreign income" means income derived from outside Malaysia; "Malaysian tax" means tax imposed by this Act;

"unilateral credit" means credit in respect of foreign tax payable under the laws of a territory outside Malaysia with respect to which no arrangements under section 132 are in force.

SCHEDULE 7A

[Section 133A]

Reinvestment Allowance

1. Subject to this Schedule, where a company which is resident in Malaysia-- (a) has been in operation for not less than twelve months; and (b) has incurred in the basis period for a year of assessment capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project referred to under subparagraph 8(a) or (b); (c) (Deleted by Act 591),

there shall be given to the company for that year of assessment a reinvestment allowance of an amount equal to sixty per cent of that expenditure: Provided that such expenditure shall not include capital expenditure incurred on plant or machinery which is provided wholly or partly for the use of a director, or an individual who is a member of the management, or administrative or clerical staff. 053e .FM Page 330 Thursday, April 6, 2006 12:07 PM Income Tax 331

1A. Subject to this Schedule, where a company which has been in operation for not less than twelve months and is resident in Malaysia for the basis year for a year of assessment has incurred in the basis period for that year of assessment, capital expenditure in relation to an agricultural project in Malaysia for the purposes of any qualifying project referred to under subparagraph 8(c) there shall be given to the company for that year of assessment a reinvestment allowance of sixty per cent of that expenditure.

1B. (1) Subject to subparagraph (2), where a company (in this paragraph referred to as "the acquirer") has incurred capital expenditure in respect of an asset for the purposes of a qualifying project and that asset is acquired from another company (in this paragraph referred to as "the disposer") and at the time of the acquisition-- (a) the acquirer of the asset is a person over whom the disposer of the asset has control;

(b) the disposer of the asset is a person over whom the acquirer of the asset has control;

(c) some other person has control over the acquirer and disposer of the asset; or

(d) the acquisition is effected in consequence of a scheme of reconstruction or amalgamation of companies,

the acquirer shall be deemed to have incurred that capital expenditure on the asset on the first day of the disposer's final period, of an amount equal to the amount of residual expenditure ascertained under sub-paragraph (3). (2) Where the disposer incurred capital expenditure in relation to the asset referred to in subparagraph (1) on or after the first day of the disposer's

final period, the acquirer shall be deemed to have incurred capital expenditure on the asset on the day that disposer incurred capital expenditure, of an amount equal to the amount of capital expenditure incurred by that disposer.

(3) For the purposes of subparagraph (1), residual expenditure in relation to an asset shall be the capital expenditure incurred by the disposer reduced by the amount of allowances on that asset under Schedule 3 that has been made or would have been made to the disposer in the basis period or periods before the first day of the disposer's final period.

(4) In this paragraph--

"asset" means a factory, plant or machinery referred to in paragraph 1, or plant, machinery or building referred to in the definition of "capital expenditure" in paragraph 9;

"control", in relation to a company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person;

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"the disposer's final period", in relation to the disposal and acquisition of an asset, means the basis period (appropriate to the disposer's business for the purposes of which expenditure has been incurred in relation to the asset) for the year of assessment which coincides with the first year of assessment for which an allowance under Schedule 3 may be made to the acquirer in relation to the asset if it is used for the purposes of a business carried on by the acquirer or as an industrial building. 1C. Where a person who carries on a business and that business has been in operation for not less than twelve months and that person is a resident in Malaysia for the basis year for a year of assessment has incurred in the basis period for that year of assessment, capital expenditure in relation to an agriculture project in Malaysia for the purpose of any qualifying project referred to under subparagraph 8(d), there shall be given to that person for that year of assessment a reinvestment allowance of sixty per cent of that expenditure:

Provided that where this paragraph applies to an individual, that individual must be a citizen in the basis year for that year of assessment.

2. An allowance under paragraph 1, 1A or 1C shall be given in respect of

capital expenditure incurred in the basis periods for fifteen consecutive years of assessment beginning from the year of assessment for the basis period in which a claim for that allowance was first made in the return of his income in respect of that capital expenditure.

2A. Where an asset is disposed of at any time within two years from the date of acquisition of that asset, an allowance given under paragraph 1, 1A or 1C in respect of that asset shall be deemed to have not been given to the person to which it would otherwise be entitled.

3. Where an allowance is given to a person under paragraph 1, 1A or 1C for a year of assessment, so much of the statutory income of that business of that person for that year of assessment as is equal to the amount of the allowance (or to the aggregate amount of any such allowances as the case may be) but not exceeding seventy per cent of the statutory income shall be exempt from tax for that year of assessment: Provided that where the qualifying project is located within the States of Sabah, Sarawak, the Federal Territory of Labuan, the Eastern Corridor of Peninsular Malaysia and such other areas which the Minister may from time to time determine or where the qualifying project has achieved the level of productivity as prescribed by the Minister, the amount to be exempt shall be equal to the allowance (or to the aggregate amount of any such allowances as the case may be) but not exceeding the statutory income for that year of assessment.

4. Where, by reason of the restriction of the allowance to seventy per cent of the statutory income or of an insufficiency or absence of statutory income from a business of the person for the basis period for a year of assessment, effect cannot be given or cannot be given in full to any allowance or allowances to which the person is entitled under this Schedule for that year of assessment in relation to the source consisting of that business, so much of the allowance or allowances as cannot be given for that year shall be given for that year shall be given to the person under this Schedule for the first subsequent year of assessment for the basis period for which there is statutory income from that business, and for subsequent years of assessment until the person has received the whole of the allowance or allowances to which it is so entitled.

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5. (1) In the case of a company as soon as any amount of income has become exempted under paragraph 3, that amount shall be credited to an account to be kept by that company for the purposes of this paragraph (that account and company being in this paragraph and paragraph 6 referred to as the exempt account and the relevant company respectively).

(2) Where the exempt account is in credit at the date on which any dividends are paid by the relevant company out of income which has been exempted under paragraph 3, an amount equal to those dividends or that credit, whichever is the less, shall be debited to the exempt account.

(3) So much of the amount of any dividends debited to the exempt account under subparagraph (2) as is received by a shareholder in the relevant company shall, if the Director General is satisfied with the entries in the exempt account, be exempt from tax in the hands of that shareholder.

(4) Any dividends debited to the exempt account under subparagraph (2) shall be treated as having been distributed to the shareholders (or any particular class of shareholders) of the relevant company in the same proportions as those in which the shareholders in question were entitled to payment of the dividends giving rise to the debit.

(5) Until the Director General is satisfied that there is no further need to maintain the exempt account, the relevant company shall deliver to the Director General a copy of the exempt account made up to a date specified by him whenever it is called upon to do so by notice in writing sent by the Director General to the company's registered office.

(6) Where--

(a) an amount is received by way of dividend from the relevant company by a shareholder;

(b) that amount is exempt from tax under subparagraph (3); and (c) that shareholder is a company,

any dividends paid by that shareholding company to its shareholders shall, to the extent that the Director General is satisfied that the dividends so paid are paid out of that amount, be exempt from tax in the hands of those shareholders. (7) Section 108 shall not apply in respect of any dividend or part thereof which is debited to the exempt account or in respect of any dividend or part thereof which is exempt under subparagraph (6).

6. Notwithstanding any other provisions of this Schedule, where paragraph 2A applies or where it appears to the Director General that any income of the relevant 053e .FM Page 333 Thursday, April 6, 2006 12:07 PM 334 Laws of Malaysia ACT 53

company exempted under paragraph 3 or any dividend exempted in the hands of a shareholder under paragraph 5 ought not to have been exempted, he may at any

time within six years after the expiration of the year of assessment for which the exemption was given make such assessment or additional assessment upon any person as appears to him to be necessary in order to counteract any benefit obtained from the exemption, or direct the relevant company to debit the exempt account with such amount as the circumstances require.

6A. Where in the case of a business of a person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods.

7. This Schedule shall not apply to a company-- (a) for the period during which the company--

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

(ii) has been granted pioneer certificate under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and whose tax relief period has not ended or ceased; (b) for the period prescribed under subsection 29(2), 29A(3), 29B(2), 29C(2) or 29G(2) of the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product for which the company has been granted approval under section 27, 27A, 27B, or 27F of that Act; (c) (Deleted by Act 578);

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

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

(ii) has been given approval under section 26 of that Act and incurs capital expenditure which qualifies for investment tax credit; (e) for the period prescribed under paragraph 31E(2)(b) of the Promotion of Investments Act 1986 in respect of a manufacturing activity or manufactured product for which the company has been granted approval under section 31C of that Act; or

(f) in respect of qualifying expenditure on an approved agricultural project which has been given a deduction under Schedule 4A.

8. In this Schedule, "qualifying project" means-- (a) a project undertaken by a company, in expanding, modernizing or automating its existing business in respect of manufacturing or processing

of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry;

(b) a project undertaken by a company which is participating in industrial adjustment approved under section 31A of the Promotion of Investments Act 1986, in expanding its existing business or modernizing its production techniques or processes;

(c) an agricultural project undertaken by a company in expanding, modernizing or diversifying its cultivation and farming business excluding the business of rearing chicken and ducks; or

(d) a project undertaken by a person in transforming his business of rearing chicken and ducks from an opened house to a closed house system as verified by the Minister of Agriculture and Agro-Based Industry.

9. In this Schedule-- "capital expenditure", in relation to an agricultural project referred to in paragraphs 1A and 1C, means capital expenditure incurred in respect of-- (a) the clearing and preparation of land;

(b) the planting of crops;

(c) the provision of irrigation or drainage systems; (d) the provision of plant and machinery;

(e) the construction of access roads including bridges; (f) the construction or purchase of buildings (including those provided for the welfare of persons or as living accommodation for persons) and structural improvements on land or other structures; or

(g) the construction of chicken and duck houses,

for the purposes of any of the following activities: (aa) cultivation of rice and maize;

(bb) cultivation of vegetables, tuber and roots;

(cc) cultivation of fruits;

(dd) livestock farming;

(ee) spawning, breeding or culturing of aquatic products; (ff) any other

activities approved by the Minister; and (gg) rearing of chicken and ducks;

"disposed of" means sold, conveyed, transferred, assigned, or alienated with or without consideration;

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"Eastern Corridor of Peninsular Malaysia" means the States of Kelantan, Terengganu and Pahang, and the District of Mersing in the State of Johor;

"incurred" has the same meaning assigned thereto in paragraphs 46 and 55 of Schedule 3;

"operation" means an activity which consists of the carrying on of a business referred to in paragraph 8.

10. Except for paragraphs 1 and 5, this Schedule shall also apply to an agro-based co-operative society (within the meaning assigned to it under the Farmers' Organization Act 1973 [Act 109]), an Area Farmers' Association, a National Farmers' Association, a State Farmers' Association (within the meanings assigned to them under the Farmers' Organization Act 1973), an Area Fishermen's Association, a National Fishermen's Association and a State Fishermen's Association (within the meanings assigned to them under the Fishermen's Association Act 1971 [Act 44]).

11. For the purpose of paragraph 1C, where-- (a) a company or a partnership (hereinafter referred to in this subparagraph as "new partnership") commences to carry on a business of rearing chicken and ducks; and

(b) that business is a continuation of a business carried out by a sole proprietor or a partnership (hereinafter referred to in this subparagraph as "old partnership") for a period of not less than twelve months prior to that commencement,

that period, in relation to that company and the new partnership, shall be taken into account in ascertaining the period of not less than twelve months referred to in that paragraph:

Provided that the sole proprietor or any of the partners in the old partnership holds any share in that company or is the partner of the new partnership, as the case may be.

12. Where a person has a source within the meaning of sections 55 to 58, the rules prescribed under paragraph 74 of Schedule 3 shall apply, mutatis mutandis, in ascertaining the allowance to be made to that person for a year of assessment under this Schedule.

SCHEDULE 7B

[Section 133A]

Investment Allowance for Service Sector

1. Where a company which is resident in Malaysia for the basis year for a year of assessment has incurred in the basis period for that year of assessment capital expenditure for the purpose of an approved service project, there shall be given to the company for that year of assessment an investment allowance of an amount approved by the Minister, such allowance being not less than sixty per cent of that expenditure.
2. The Minister may grant approval in respect of an application made in writing for an investment allowance under this Schedule on such terms and conditions as he deems fit.
3. An allowance for expenditure given under paragraph 1 shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect.
4. Where an allowance is given to a company under paragraph 1 for a year of assessment, so much of the statutory income of the business of the company in respect of an approved service project for that year of assessment as is equal to the amount of the allowance (or to the aggregate amount of any such allowance, as the case may be) shall be exempt from tax and the amount so exempt shall not exceed seventy per cent (or any other rate as the Minister may determine) of the statutory income of that business of the company for that year of assessment.
5. Where, by reason of an absence or insufficiency of statutory income of a company from a business for the basis period for a year of assessment, effect cannot be given or cannot be given in full to any allowance or allowances to which the company is entitled to under this Schedule for that year in relation to the source consisting of that business, then, notwithstanding the foregoing paragraphs, so much of the allowance or allowances in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this Schedule for the first subsequent year of assessment for the basis period for which there is statutory income from that business, and so on for subsequent years of assessment until the company has received the whole of the allowance or allowances to which it is so entitled.

6. Paragraphs 5 and 6 of Schedule 7A shall apply as if any reference in those paragraphs to any income exempted or which has become exempted under paragraph 3 of that Schedule were a reference to income credited to the exempt account under paragraph 4.

7. This Schedule shall not apply to a company for the period during which the company has been granted exemption under section 127. 053e .FM Page 337
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8. For the purposes of this Schedule any expenditure incurred in relation to an approved service project prior to the commencement of the business, shall be deemed to be incurred on the day when the business commences.

9. For the purposes of this Schedule-- "approved service project" means a project in the service sector in relation to transportation, communications, utilities or any other sub-sector as approved by the Minister;

"capital expenditure", in relation to approved service project, means capital expenditure incurred on plant, machinery, fixtures, premises, buildings, structures or works of a permanent nature and shall not include capital expenditure incurred on buildings, plant or machinery which are provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff.

SCHEDULE 8

[Section 155]

Repeals

No. and year	Short title	Extent of repeal
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29 of 1956	Income Tax Ordinance	1956
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of Sabah

The whole

13 of 1960	Inland Revenue Ordinance	
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1960 of Sarawak

The whole

1950

The words "and income tax" and "or income tax"

in subsection 35(1) and

the words "Income Tax"

in the marginal note to

section 35

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SCHEDULE 9

[Section 156]

Transitional and Saving Provisions

PART I

General

Interpretation

1. (1) In this Schedule-- "pre-basis period", in relation to a pre-year of assessment, means the period which would have been the basis period for that year if that year had been a year of assessment in relation to which this Act has effect by virtue of subsection 1(3); F.M. 36 of 1954 Petaling Jaya Ordinance 1954 The words "and income tax" and "or income tax"

in section 29 and the

words "and income tax"

in the marginal note to

that section

F.M. 20 of 1956 Land Development Ordinance

1956

The words "and income tax" and "or income tax"

in subsection 63(1)

F.M. 61 of 1958 Central Bank of Malaysia

Ordinance 1958

The words "from the provisions of any law relating to income taxation

or company taxation, and"

in section 50 and the

words "taxation and" in the marginal note to

that section

F.M. 10 of 1961 Racing (Totalizator Board)

Act 1961

Subsection 19(2)

F.M. 25 of 1962 Sarawak Electricity Supply

Corporation 1962

Section 32

No. and year Short title Extent of repeal

"pre-basis year", in relation to a pre-year of assessment, means the calendar year immediately preceding that pre-year of assessment; "previous tax" means any tax imposed by a repealed law; "pre-year of assessment" means a calendar year preceding the year of assessment 1968;

"repealed laws" means the Sabah Ordinance, the Sarawak Ordinance and the West Malaysian Ordinance, and "repealed law" means any of those Ordinances; "Sabah Ordinance" means the Income Tax Ordinance 1956, of Sabah; "Sarawak Ordinance" means the Inland Revenue Ordinance 1960, of Sarawak; "West Malaysian Ordinance" means the Income Tax Ordinance 1947, of West Malaysia.

(2) In the marginal note to any paragraph of this Schedule-- (a) a reference to any specific Part, section or Schedule is a reference to the Part or section of this Act, or Schedule to this Act, to which that paragraph relates; and

(b) a reference to a specific Schedule followed by a colon and a number or numbers is a reference to the paragraph or paragraphs of that Schedule bearing that number or those numbers.

(3) This Part of this Schedule shall be subject in its operation to Parts II, III and IV thereof.

Power to make further transitional or saving provisions

2. (1) The Minister at any time may by statutory order make such further transitional or saving provisions as he considers necessary or expedient (including provisions amending any of the paragraphs of this Schedule except this paragraph). (2) Any order made under subparagraph (1) shall be laid before the Dewan Rakyat.

Repealed laws saved for certain purposes

3. (1) Subject to subparagraph (2) and the other provisions of this Schedule, each of the repealed laws shall remain in force for all purposes in relation to the year of assessment 1967 under the law in question and to previous years of assessment under that law.

(2) Any function of a public officer under a repealed law may for the purposes of subparagraph (1) be exercised by any public officer referred to in section 134 whose office substantially corresponds to that of an officer by whom the function was exercisable under that law or by any public officer so referred to who is designated in that behalf by the Director General.

(3) Subsections 136(2) to (5) shall not apply to the exercise of the Director General's functions under subparagraph (2).

References to repealed law

4. Unless the context otherwise requires, a reference in a written law to any provision of a repealed law shall be construed in relation to the year of assessment 1968 and subsequent years of assessment as a reference to the corresponding provision (if any) of this Act.

References to Malaysia before 1968

5. Subject to any express provision of this Act, references in this Act to Malaysia shall be construed, in relation to any time before 1 January 1968, as references to the territories comprised in Malaysia on that date or any one or more of those territories. Section 7

6. References in section 7 to years of assessment preceding a particular year of assessment and to the basis years for those preceding years include references to pre-years of assessment and pre-basis years respectively. Section 8

7. Where a company or body of person falls to be treated as resident in Sabah, Sarawak or Peninsular Malaysia under the appropriate repealed law for a year of assessment under that law coinciding with the calendar year 1966 or 1967, then, for the purposes of subsection 8(2)--

(a) if the calendar year in question is 1966, it shall be presumed until the contrary is proved that the company or body was resident in Malaysia for the purposes of this Act for the basis years for the year of assessment 1968 and every subsequent year of assessment;

(b) if the calendar year in question is 1967, it shall be taken to have been established as between the Director General and the company or body that the company or body was resident in Malaysia for the basis year for the year of assessment 1968.

Section 10

8. References in section 10 to years of assessment preceding a particular year of assessment and to the basis years for those preceding years including

references to pre-years of assessment and pre-basis years respectively.

Section 13

9. In subsections 13(2) and (3) "period" includes a period which elapsed or began before 1 January 1968.

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Section 21

10. (1) In subsections 21(2) and (3) "financial year" and "accounting period" include, in relation to the year of assessment 1968, a financial year or accounting period, as the case may be, beginning before 1 January 1967. (2) Where under subsection 28(2) of the Sabah Ordinance, subsection 25(2) of the Sarawak Ordinance or subsection 31(2) of the West Malaysian Ordinance a direction has been given (or purports to have been given) with respect to the years of assessment 1967 and 1968 under the Ordinance in question, the period which the direction indicates (or purports to indicate) with respect to the year of assessment 1968 under that Ordinance shall be taken to be the basis period for the year of assessment 1968 under this Act unless the Director General having regard to the circumstances of any particular case directs that some other period shall be taken to be the basis period for that year of assessment under this Act. (3) Where the accounts for the financial year of a company or the accounts of a business were made up for a period of twelve months to some day in the calendar year 1966 other than 31 December and accounts were not made up to the corresponding day in the calendar year 1967, the Director General may act under subsection 21(3) in relation to the years of assessment 1968 and 1969 under this Act and, where appropriate, may act under any of the provisions of the repealed laws mentioned in subparagraph (2) in relation to the year of assessment 1967 under any repealed law. Section 23

11. (1) In paragraph 23(c) "any tax" includes previous tax deducted in paying, crediting or distributing any gross income--

(a) if that previous tax was deducted in the calendar year 1967; or (b) if part of the basis period for the year of assessment 1968 elapsed before 1 January 1967, and that previous tax was deducted in that part of that basis period from gross income which is gross income for that basis period. (2) In paragraph 23(d) "tax", in relation to a dividend, includes previous tax-- (a) if the dividend was paid or credited in the calendar year 1967; or (b) if part of the basis period for the year of assessment 1968 elapsed before 1 January 1967, and the dividend, being gross income for that basis period, was paid or credited in that part of that basis period. (3) Where a dividend was paid or credited or distributed in specie in the year of assessment 1966 or 1967 under the Sarawak Ordinance by a company resident in Sarawak by virtue of that

Ordinance for the year of assessment in which the dividend was paid, credited or distributed, section 23 shall operate in relation to the dividend so that, for the purposes of sections 24 to 28, it shall be deemed to have been paid, credited or distributed after deduction of tax at the rate in force for corporation profits tax in Sarawak for the year of assessment in question and to be of such a gross amount as after deduction of tax at that rate would be equal to-- 053e .FM Page 342 Thursday, April 6, 2006 12:07 PM Income Tax 343

(a) the amount of the dividend so paid or credited; or (b) where the dividend consists of property other than money, the amount of the market value of that property at the time of the dividend's distribution. Section 24

12. (1) An amount treated under any repealed law as income from a source other than a source consisting of a business shall not be treated as gross income under this Act if it is a debt arising in the manner described in paragraph 24(1)(c). (2) In subsection 24(4) "dividend" does not include any dividend which is treated under any repealed law as income from a source other than a source consisting of a business, and in subsection 24(5) "interest" does not include any interest which is so treated under any repealed law.

PART III

13. Where, in the application of Chapters 3 and 4 of Part III to a person and a source of his, regard is to be had to any particular period commencing prior to the basis period for a year of assessment, regard may be had to that particular period notwithstanding that it commenced prior to the basis period for the year of assessment

1968. Sections 30 and 34

14. Where-- (a) a person is chargeable to previous tax in respect of the income or assessable profits from a business of his or would have been so chargeable but for an insufficiency of any such income or profits; and (b) this Act is applicable to him in respect of gross income from that business for the basis period for the year of assessment 1968 or any subsequent year of assessment,

any provision of this Act which is necessary for the proper application of subsections 30(1) and (4) and 34(2) to him, to that business and to any such year of assessment may be deemed to have been applicable to him and that business for the pre-basis period, in relation to that business, for any pre-year of assessment. Section 33

15. Where any particular part of the subject matter of any particular

deduction which but for this paragraph would fall to be made under subsection 33(1) in computing the adjusted income of a person from a source for the basis period for a year of assessment has formed the whole or part of the subject matter of a deduction under any corresponding provision of a repealed law, that particular deduction, if the amount from which it was deducted is not gross income for the basis period for that year of assessment, shall be reduced in the application of subsection 33(1) to that year of assessment by so much thereof as relates to that particular part. 053e .FM Page 343
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Section 34

16. Where any particular part of the subject matter of any particular deduction which but for this paragraph would fall to be made under subsection 34(1) in accordance with subsection (4), (6) or (7) of that section in computing the adjusted income of a person from a business for the basis period for a year of assessment has formed the whole or part of the subject matter of a deduction under any corresponding provision of a repealed law, that particular deduction, if the amount from which it was deducted is not gross income for the basis period for that year of assessment, shall be reduced in the application of subsection 34(1) and those subsections to that year of assessment by so much thereof as relates to that particular part. Section 35

17. Where the relevant period for the purposes of section 35 is a basis period for the year of assessment 1968, paragraph (3) (b) of that section shall be so modified that the value of any particular item of the stock at the beginning of the relevant period (except where the business was commenced by the relevant person in the relevant period) shall be taken--

(a) to be an amount equal to the value which would be arrived at if paragraph (3) (a) were applied at the beginning and not at the end of the relevant period; or

(b) if a value in respect of that item was had regard to for the purposes of any repealed law at the end of an accounting period ending immediately before the relevant period, to be an amount equal to that value: Provided that, where the value of an item to which subparagraph (b) applies was had regard to as mentioned in that subparagraph for the purposes of two or more repealed laws, regard shall be had for the purposes of that subparagraph to such one of those laws as the relevant person may elect by notice in writing given to the Director General within three months after the beginning of the year of assessment 1968 (or within such further period as the Director General may allow) or, if the relevant person fails so to elect, as the Director General may direct. Section 43

18. (1) Where a person has incurred, in relation to a source of his, a loss of a kind deductible under any repealed law, there shall be ascertained the amount thereof, if any, unallowed after the application of that law to all years of assessment under that law for which that law was in force:

Provided that, if in the application of this subparagraph to a person and a loss in relation to a source an amount is so ascertained under the Sabah Ordinance and if under that Ordinance that loss is one incurred anywhere, this subparagraph shall not apply to any part of that loss in relation to any repealed law other than that Ordinance. (2) Where an amount has been ascertained under subparagraph (1) in its application to a person and a source, then, in the application of section 43 to that person, that amount (in subparagraph (3) referred to as the specified amount) shall be 053e .FM Page 344 Thursday, April 6, 2006 12:07 PM Income Tax 345

treated as the amount ascertained under subsection 44(4) for the pre-year of assessment 1967, which shall be treated as the particular year of assessment preceding the relevant year for the purposes of subsection 43(2). (3) Where the proviso to subparagraph (1) is applicable to a person and that person is not ordinarily resident for the basis year for the relevant year to which regard is had in the application of section 43, subsection 43(5) shall apply in order to ascertain how much of the specified amount is to be taken to be the amount of the Malaysian loss for the purposes of paragraph 43(5) (a) and the proportion thereof to be substituted for the purposes of paragraph 43(5) (b). Section 44

19. (1) Where a loss has been deducted in calculating the assessable income or the assessable profits (as the case may be) for the year of assessment 1967 under a repealed law no part of that loss shall be taken into account for the purposes of section

44. (2) Where approval has been given for the purposes of any of the repealed laws to an institution of a public character, the approval, if it was still effective on 31 December 1967, shall be deemed to have been given (subject to any conditions effective on that date) under section 44.

Section 54

20. (1) Where a person has incurred, in relation to a source of his consisting of a business of a kind to which subsection 54(2) applies, a loss of a kind deductible under any repealed law, there shall be ascertained the amount thereof, if any, unallowed after the application of that law to all years of assessment under that law for which that law was in force.

(2) Subparagraph (1) shall apply to a depreciation allowance to which regard is had under a repealed law as it applies to a loss. (3) Where an amount has been ascertained under subparagraph (1) or (2) or both in respect of a person and a source, then, in the application of paragraph 54(4) (a) to that person, that amount (or, where an amount has been ascertained under either or both of those subparagraph in relation to more than one repealed law, the aggregate of the amounts so ascertained) shall be treated as the amount ascertained under paragraph 54(4) (b) for the pre-year of assessment 1967, which shall be treated as a year of assessment preceding the relevant year for the purposes of paragraph 54(4) (a).

(4) Paragraph 18 shall not apply to a loss to which this paragraph applies.
Section 60

21. In the application of subparagraphs 60(5) (a) (v) and (6) (a) (v) to the general business of an insurer for the basis period for the year of assessment 1968, subsection 60(9) shall not apply and for the amount of his reserve fund for unexpired risks regard shall be had to the amount taken by him to be the reserve for unexpired risks at the 053e .FM Page 345 Thursday, April 6, 2006 12:07 PM 346 Laws of Malaysia ACT 53

end of the basis period for the year of assessment 1967 under a repealed law or, where two or more repealed laws apply, the aggregate of the amounts taken by him to be the reserves for unexpired risks at the end of the basis period for the year of assessment 1967 under each of those laws.

Section 68

22. Where an appointment has been made under any repealed law of any person to be the agent of any other person for any of the purposes of that law, the appointment, if it was still effective on 31 December 1967, shall be deemed to have been made under section 68 for any purposes of this Act similar to those first-mentioned purposes.

Section 74

23. In subsections 74(5) and (6) "tax" includes previous tax. Section 75

24. In subsection 75(2) the references to tax, this Act and section 107 include references to previous tax, any repealed law and any provision of a repealed law corresponding to section 107; and subsection 75(3) shall be construed accordingly. PART VII

25. Part VII (except sections 108, 109 and 110) shall apply, with any necessary modifications, for the recovery of and otherwise in relation to any

previous tax which is the subject of an assessment made under a repealed law on or after 1 January 1968, and any sum due in connection with any such previous tax. Section 104

26. In section 104 the references to tax, sums and debts include references to previous tax and to sums and debts of a corresponding kind under the repealed laws. Section 107

27. Where a direction has been given for the year of assessment 1968 under the Deduction of Income Tax (Employments) Rules 1948 of West Malaysia [G.N. 3305/1948], the direction shall be deemed to have been given under the Income Tax (Deduction from Emoluments: West Malaysia) Rules 1967 [P.U. 636/1967]. Section 108

28. (1) Where subsection 108(4) applies to a company for the year of assessment 1968--

(a) any tax which the company is entitled to deduct (or which is deemed to be deducted by the company) under the Sabah Ordinance or the West Malaysian Ordinance from a dividend paid or distributed in the calendar year 1967, and any tax deemed to be deducted by the company under paragraph 29 from a dividend paid, credited or distributed in that calendar year; and

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year, shall be disregarded in arriving at the compared total for the purposes of subsection 108(4); and

(b) the reference in subsection 108(4) to "the balance (if any)" shall be construed--

(i) as a reference to the balance (if any) which would have been carried forward under subsection 40(5) of the West Malaysian Ordinance or subsection 37(5) of the Sabah Ordinance if the said section 40 or the said section 37, as the case may be, was applicable to the company for the year of assessment 1967 under the West Malaysian Ordinance or the Sabah Ordinance and would have been so applicable for the year of assessment 1968 under the West Malaysian Ordinance or the Sabah Ordinance but for the repeal of the Ordinance in question; or

(ii) if the company was resident in Sarawak for the year of assessment 1967 under the Sarawak Ordinance, as a reference to such a balance (if any) as is ascertained under paragraph 29. (2) In the application of subsection 108(8) to any case to which subparagraph (1) applies, the references in the said subsection 108(8) to a year of assessment, any assessment and any repayment of

tax shall be deemed to include references to a year of assessment, any assessment and any repayment of tax under any repealed law. (3) For the avoidance of doubt it is declared that-- (a) any reference in section 108 to a company entitled to deduct tax from dividends includes a company entitled to declare itself a resident of Malaysia under paragraph 3 of Article VII of the Double Taxation Relief (Singapore) Order 1968 [P.U. (A) 518/68]; and

(b) any reference in subsection 108(8) to repayment of tax includes payment of the Sabah credit, Sarawak credit or West Malaysian credit, as the case may be, which payment shall be deemed to have been made in the year of assessment in which the company became entitled to the credit. (4) Where--

(a) a company, which is entitled to a Sabah credit, Sarawak credit or West Malaysian credit, is a non-resident company the payment of the Sabah credit, Sarawak credit or West Malaysian credit, as the case may be, to the company; or

(b) any of the provisos to subparagraphs 69(1), 85(1) and 109(1) applies to a non-resident company, the payment to a transferee company of the Sabah credit, Sarawak credit or West Malaysian credit, as the case may be, to which the non-resident company would have been entitled but for that proviso,

shall not be deemed to be a repayment of tax under subsection 108(8). 053e .FM
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(5) For the purposes of subparagraph (4), a non-resident company refers to a company which is not resident in the basis year for the year of assessment 1967 but does not include a company which is entitled to declare itself a resident of Malaysia under paragraph 3 of Article VII of the Double Taxation Relief (Singapore) Order

1968. Section 108

29. (1) Where subsubparagraph 28(1) (b) (ii) applies to a company-- (a) any dividend paid, credited or distributed by the company in any of the years of assessment 1964 to 1967 inclusive for which the company was resident in Sarawak under the Sarawak Ordinance (any such years for which the company was so resident being in this paragraph referred to as the residential years) shall be deemed to have been paid, credited or distributed after deduction of Sarawak tax at the rate in force for the year in question and to be of such a gross amount as after deduction of Sarawak tax at that rate would be equal to--

(i) the amount of the dividend so paid or credited; or (ii) where the dividend consists of property other than money, the amount of the market value of that

property at the time of the dividend's distribution,

and a sum equal to the difference between that gross amount and the amount of the dividend so paid, credited or distributed shall be deemed to be the amount of the Sarawak tax deducted from that dividend; (b) for the first of the residential years there shall be ascertained the excess, if any, of the amount of the federal tax payable by the company for that first year (that amount being computed after giving any relief due to the company for that first year by virtue of section 59 or 61 of the Sarawak Ordinance or the corresponding provisions of the Sabah Ordinance or the West Malaysian Ordinance) over the total of all amounts so deemed to have been deducted from dividends paid, credited or distributed by the company in that first year;

(c) for each of the residential years subsequent to that first year there shall be ascertained the excess, if any, of the aggregate of the federal tax payable by the company for that subsequent year, and the excess, if any, for the latest of the residential years preceding that subsequent year (as ascertained under this subparagraph or, where this subparagraph does not apply to that preceding year, under subparagraph (b)) over the total of all amounts so deemed to have been deducted from dividends paid by the company in that subsequent year; and

(d) the excess ascertained under subparagraph (c) (or, where subparagraph (c) does not apply, under subparagraph (b)) for the year of assessment 1967 in relation to the company shall be deemed to be the balance. (2) Where this paragraph has applied to a dividend which has been credited, it shall not apply to that dividend when paid.

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Section 108

30. In paragraph 29-- "federal tax" means any one or more of the following, that is to say, the income tax imposed by the Sabah Ordinance, the corporation profits tax imposed by the Sarawak Ordinance and the income tax imposed by the West Malaysian Ordinance, but does not include tin profits tax or development tax imposed under any repealed law;

"Sarawak tax" means the corporation profits tax imposed by the Sarawak Ordinance, but does not include development tax imposed by that Ordinance; "year of assessment", in relation to Sarawak tax, means a year of assessment for the purposes of the Sarawak Ordinance, and in relation to federal tax means a year of assessment for the purposes of any one or more of the repealed laws. Section 110

31. (1) Subject to subparagraph (2), in the application of section 110, other than subsections (8), (9), (10) and (12) thereof, any reference to tax shall include a reference--

(a) to any previous tax deducted from any dividend or interest paid in the calendar year 1967; or

(b) where part of the basis period for the year of assessment 1968 elapsed before 1 January 1967, to any previous tax deducted in that part of that basis period from any dividend or interest which is gross income for that basis period.

(2) Subparagraph (1) shall not apply to any tax imposed under the West Malaysian Ordinance or the Sabah Ordinance and deducted from any dividend or interest if by virtue of subparagraph 12(2) that dividend or interest is not to be included as gross income for the basis period for a year of assessment.

(3) Where an amount of previous tax is deemed by virtue of subparagraph 11(3) to have been deducted from a dividend and the dividend is included in the gross income of a person from a source for the basis period for a year of assessment, that amount shall be deemed for the purposes of section 110 to be tax deducted under section 108.

Section 115

32. In subsection 115(1) the references to tax, sums and debts include references to previous tax and sums and debts of a corresponding kind under the repealed laws. Section 127

33. Any exemption from any previous tax or from any provision of a repealed law shall, if it was made under a repealed law and was effective on 31 December 1967, be deemed to have been made by an order under section 127 in relation to tax imposed by this Act or in relation to the corresponding provision of this Act, as the case may be:

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Provided that this paragraph shall not apply in relation to-- (a) any such exemption for which provision is made, with or without modification, in this Act; or

(b) subsection 44(3) of the Sarawak Ordinance.

Section 131

34. In subsection 131(3) the references to tax, years of assessment and assessments include references to previous tax and to years of assessment and assessments under any repealed law.

Section 134

35. (1) With effect from 1 January 1968-- (a) the person holding on 31 December 1967, the office of Director General of Inland Revenue shall become Director General of Inland Revenue within the meaning of subsection 134(1);

(b) all other persons holding on 31 December 1967, federal public offices in the Inland Revenue Department shall become federal public officers for the purposes of subsection 134(2); and

(c) the Director General may with the concurrence of the Director General of Establishments make such changes (if any) in the designation of the offices held by those other persons as he considers necessary and appropriate in order to implement and conform with subsection 134(2): Provided that nothing in this paragraph shall be construed as altering any officer's terms of service.

(2) Subsection 136(2) to (5) shall not apply to the exercise of the Director General's functions under subparagraph (1) (c). (3) To such extent as may be necessary for the proper application of this Act in relation to the year of assessment 1968, subparagraph (1) shall have effect as if any references therein to 1 January 1968, and 31 December 1967, were references to 28 September 1967, and 27 September 1967, respectively. Section 138

36. Where for the purposes of any repealed law a person has made a declaration of a kind corresponding to a declaration required by subsection 138(1), the declaration so made shall be treated as a declaration that he will regard and deal with classified material as confidential and as a declaration made and subscribed by him for the purposes of section 138.

Section 142

37. Where by virtue of paragraph 25 civil proceedings are taken under section 106 for the recovery of previous tax or any other sum due under a repealed law, section 053e .FM Page 350 Thursday, April 6, 2006 12:07 PM Income Tax 351

142 shall apply in relation to those proceedings and that tax or sum as it applies in relation to proceedings for the recovery of tax due under this Act. Section 149

38. Section 149 shall not apply to an order deemed to have been made under paragraph 33.

Section 150

39. Where approval has been given for the purposes of any of the repealed laws to a retirement scheme or to a pension or provident fund or society, the approval, if it was still effective on 31 December 1967, shall be deemed to have been given (subject to any conditions effective on that date) under section 150. Section 154

40. (1) In paragraph 154(1) (e) the references to tax include a reference to previous tax and the reference to sums due includes a reference to sums of a corresponding kind due under the repealed laws.

(2) Rules made under section 154 may include such transitional and saving provisions as may be expedient in the circumstances. Schedule 2:6

41. For the purposes of Schedule 2, where the operator owned an asset at the beginning of the basis period for the year of assessment 1968 and has incurred capital expenditure as defined in the Income Tax (Mining Operations) Rules 1949, of West Malaysia [F.L.N. 534/49] on or for the asset in connection with the working of the mine--

(a) the asset shall be deemed to be included in the definition of "mining asset" in paragraph 6 of that Schedule; and

(b) that capital expenditure to the extent allowed or determined to rank as capital expenditure under the Income Tax (Mining Operations) Rules 1949, of West Malaysia shall be treated as qualifying mining expenditure. Schedule 2:15

42. Paragraph 15 of Schedule 2 shall not apply where the operator (within the meaning of that Schedule) permanently ceases to work a mine in the basis period for the year of assessment 1968; and, where he permanently ceases to work a mine in the basis period for any of the years of assessment 1969 to 1972 inclusive-- (a) the reference to preceding years of assessment in subparagraph (a) of that paragraph shall include a reference to years of assessment under the West Malaysian Ordinance; and

(b) the references to repayments of tax and assessments in subparagraph (b) of that paragraph shall include references to repayments of previous tax and assessments under the West Malaysian Ordinance.

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Schedule 2:22

43. Where any capital expenditure is included by virtue of paragraph 41 in the total qualifying mining expenditure mentioned in the definition of "residual expenditure" in paragraph 22 of Schedule 2, that total, apart from any other deductions made for the purposes of that definition, shall be reduced by the amount-- (a) by which capital expenditure incurred prior to the commencement of the basis period for the year of assessment 1948 exceeds the residue of capital expenditure for that year of assessment as computed in accordance with rule 2(vii) (a) of the Income Tax (Mining Operations) Rules 1949; (b) of any deductions made under paragraph 14(1) (h) of the West Malaysian Ordinance in respect of that capital expenditure in computing the income of the operator in question from the business in question for any period in ascertaining the statutory income from the business for any year of assessment under that Ordinance ending before 1 January 1968; and (c) of any recoupment of that capital expenditure in relation to the mine in question received by the operator before that date and taken into account in computing any allowance under that Ordinance.

Schedule 3: 5

44. For the purposes of paragraph 5 of Schedule 3 in its relation to a building, in any case where the expenditure on the construction of the building in question was incurred prior to 1 January 1968, references in that paragraph to "year of assessment" and "basis period" shall be deemed to include references to any pre-year of assessment and to any pre-basis period respectively. Schedule 3:10, 11 and 22

45. (1) Where in a case to which paragraph 10 or 11 of Schedule 3 or subparagraph (2) of this paragraph applies the basis period for the year of assessment 1967 under a repealed law overlaps the basis period for the year of assessment 1968, then, for the purposes of paragraph 10, 11 or 22, as the case may be, of Schedule 3, expenditure incurred in the period common to those two basis periods shall not be treated as incurred in the basis period for the year of assessment 1968. (2) Where a person has for the purposes of a business of his incurred prior to the basis period for the year of assessment 1968 qualifying plantation expenditure on the construction of a building, then, if but for the repeal of the repealed laws he would have been entitled to an allowance in respect of that expenditure for a particular year of assessment under any of the repealed laws commencing after 31 December 1967, there shall be made to him under paragraph 22 of Schedule 3 in relation to the source consisting of that business for the year of assessment under this Act which coincides with that particular year an allowance equal to the amount of any allowance or allowances to which he would have been so entitled for that particular year. 053e .FM Page 352 Thursday, April 6, 2006 12:07 PM Income Tax 353

Schedule 3: 23

46. (1) For the purposes of paragraph 23 of Schedule 3, where in the basis period for the year of assessment 1967 under any repealed law a person has for the purposes of a business of his incurred qualifying plantation expenditure other than expenditure on the construction of a building, there shall be made to him in relation to the source consisting of that business for the year of assessment 1968 an allowance equal to one-half of that expenditure:

Provided that this subparagraph shall not apply in relation to any expenditure incurred in Sarawak.

(2) Where a person has for the purposes of a business of his incurred (prior to 31 December 1964) capital expenditure within the meaning of section 14 of the Sabah Ordinance upon a plantation or (prior to 31 December 1961) capital expenditure within the meaning of section 18A of the West Malaysian Ordinance, then, if but for the repeal of those Ordinances he would have been entitled to an allowance in respect of that expenditure for a particular year of assessment (under the appropriate one of those Ordinances) commencing after 31 December 1967, there shall be made to him under paragraph 23 of Schedule 3 in relation to the source consisting of that business for the year of assessment which coincides with that particular year an allowance equal to the amount of the allowance to which he would have been so entitled for that particular year.

(3) Where in a case to which subparagraph (1) or (2) applies the basis period for the year of assessment 1967 under a repealed law overlaps the basis period for the year of assessment 1968, then, for the purposes of paragraph 23 of Schedule 3, expenditure incurred in the period common to those two basis periods shall not be treated as incurred in the basis period for the year of assessment 1968. Schedule 3: 26

47. For the purposes of paragraph 26 of Schedule 3, if any sum as therein mentioned falls into charge to tax imposed under the West Malaysian Ordinance or the Sabah Ordinance for the year of assessment 1967, that paragraph shall not apply to that sum. Schedule 3: 27

48. (1) Paragraph 27 of Schedule 3 shall not apply in relation to a person, an asset or a business of his where, under subsection 18A(3) of the West Malaysian Ordinance or subsection 14(3) of the Sabah Ordinance, any sum of money or consideration is deemed to be that person's income for the year of assessment 1967 under the Ordinance in question, and the whole or any part of the sum or consideration relates directly or indirectly to that asset.

(2) In relation to a person, an asset and a business of his, the reference in paragraph 27 of Schedule 3 to qualifying agriculture expenditure shall when appropriate include capital expenditure (as defined in section 18A of the West Malaysian Ordinance and in section 14 of the Sabah Ordinance) incurred on that asset; and, when there is such an inclusion, then, if the preliminary conditions of that paragraph are satisfied, the references in subparagraph (b) of that paragraph to 053e .FM Page 353 Thursday, April 6, 2006 12:07 PM 354 Laws of Malaysia ACT 53

"agriculture allowance", "year of assessment" and "allowances" shall include respectively--

(a) any allowance made to that person under the said section 18A or 14 which relates directly or indirectly to any such capital expenditure incurred on that asset;

(b) any year of assessment under either of those Ordinances; and (c) any such allowances,

and the reference in the proviso to that paragraph to "year of assessment" shall include any year of assessment under either of those Ordinances.

Schedule 3: 35

49. Paragraph 35 of Schedule 3 shall not apply to an asset disposed of by a person if a balancing charge in relation to that asset has been made on him under any repealed law.

Schedule 3: 36

50. In the application of paragraph 36 of Schedule 3 to a person and an asset, if the asset is disposed of by him in the basis period for the year of assessment 1968, the reference in that paragraph to an initial or annual allowance shall be taken to be a reference to an initial or annual allowance of a kind allowed under any repealed law. Schedule 3: 37

51. In the application of paragraph 37 of Schedule 3 to a person and an asset, there shall be included in the total therein mentioned all allowances of a kind similar to allowances under that Schedule made to him under any repealed law in relation to that asset.

Schedule 3: 39 and 40

52. Paragraphs 39 and 40 of Schedule 3 shall not apply to an asset disposed of if a balancing allowance or charge in relation to that asset has been made on a person (being the disposer in relation to that asset for the purposes of

paragraphs 38 and 39 of that Schedule) under any repealed law.

Schedule 3: 40 and 41

53. Rules made under paragraph 40 or 41 of Schedule 3 may be made applicable for transitional purposes to any repealed law and to any matter to which that law has been applicable.

Schedule 3: 42

54. Paragraph 42 of Schedule 3 shall not apply to a building constructed prior to the basis period for the year of assessment 1968.

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Schedule 3: 57

55. Where in relation to an asset and a business of a person the period of any disuse for the purposes of paragraph 57 of Schedule 3 is a period which commenced prior to the basis period for the year of assessment 1968, all such assessments shall be made under any repealed law as may be necessary to counteract the benefit of any allowance made to that person for any year of assessment under that law in relation to that asset.

Schedule 3: 68

56. (1) Subject to this paragraph, in the application of paragraph 68 of Schedule 3 in relation to an asset and a person as therein mentioned, any capital expenditure incurred by him on the asset shall be treated as qualifying expenditure incurred by him for the purposes of that paragraph and, where the total qualifying expenditure has been ascertained under that paragraph as construed with this subparagraph, that total shall be reduced in the manner provided by that paragraph (if applicable) and by any allowance made to him in relation to that asset.

(2) Subject to subparagraph (3), in subparagraph (1)— "allowance" means any allowance made under any provision of any repealed law corresponding to any provision of Schedule 3 or any amount written off under any repealed law for any year of assessment for which no initial or annual allowance falls to be made in relation to an industrial building or any amount which was deducted from the capital expenditure under the provisions of any repealed law in connection with the computation of the value of an asset acquired before the basis period for the first year of assessment under any repealed law;

"capital expenditure" means capital expenditure as defined in any repealed law for the purposes of any provisions thereof corresponding to any provisions of Schedule 3. (3) In the application of subparagraphs (1) and (2) in relation to a person and an asset if, but for this subparagraph, regard would be had to the same amount in respect of any capital expenditure or allowance by reference to more than one repealed law, regard shall be had to that amount only by reference to the appropriate repealed law, that is to say--

(a) the repealed law by virtue of which he is resident in the territory to which the law applies; or

(b) if there are two or more such laws, one of those laws elected by him when he first makes a claim for an allowance under Schedule 3 in respect of the asset or, in default of such an election, specified by the Director General. Schedule 3: 69

57. Where for the purpose of this Schedule and Schedule 3 it is necessary to have regard to an allowance made under any repealed law, paragraph 69 of Schedule 3 shall apply (with such modifications as may be necessary) by reference to the repealed law relating to any such allowance.

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Schedule 3: 75

58. (1) In relation to a person, an asset and a business of his, if effect cannot be given or cannot be given in full to any allowance or allowances of the kind defined in subparagraph 56(2) to which paragraph 57 applies, that allowance or those allowances (or, as the case may be, the amount thereof to which effect has not been so given) shall be deemed to be an allowance to be made to him for the purposes of paragraph 75 of Schedule 3, the reference therein to the first subsequent year of assessment being treated as a reference to the year of assessment 1968 if there is adjusted income from that business for the basis period for that year or, in the absence of any such adjusted income, as a reference to the first year of assessment subsequent to the year of assessment 1968 for the basis period for which there is any such adjusted income:

Provided that, where this paragraph has been applied to any allowance or allowances or to any part thereof in relation to a business, this paragraph shall not apply to that allowance, those allowances or that part in relation to any other business of his.

(2) Subparagraph 56(3) shall apply to allowances affected by this paragraph as it applies to allowances within the meaning of subparagraph 56(1). Schedule 3:

general

59. Unless the context otherwise requires and subject to this Schedule, any reference in Schedule 3 to expenditure includes a reference to expenditure incurred before the basis period for the year of assessment 1968 and any reference in that Schedule to anything done or to any event includes a reference to a thing or event of the kind in question done or occurring before that basis period. Schedule 4

60. (1) Subject to this paragraph, where in any case a person makes a claim under Schedule 4 for a deduction for a year of assessment in respect of qualifying prospecting expenditure, then, for the purposes of applying that Schedule to that case regard may be had to any such expenditure incurred (and any event which took place) not more than ten years before the end of the basis year for that year of assessment notwithstanding that the whole or part of that period of ten years elapsed before the commencement of this Act; and, whenever necessary, the reference in the proviso to paragraph 11 of that Schedule to a transaction to which section 140 applies shall be construed to include a transaction to which that section would have applied if it had been in force at the date of that transaction.

(2) Subparagraph (1) shall not apply to any expenditure incurred in Sabah or Sarawak, prior to the basis year for the year of assessment 1968 or to any expenditure with respect to which any deduction has been made under section 14 of the West Malaysian Ordinance.

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Schedule 5

61. Where a notice of appeal against an assessment is given under the Sabah Ordinance or the West Malaysian Ordinance or a notice of objection to an assessment is given under the Sarawak Ordinance, then--

(a) if the notice was given before 1 January 1968, and the hearing of the appeal has not commenced before that date, the person to whom the notice was given shall forward it to the Clerk to the Special Commissioners as soon as may be after that date;

(b) if the notice is given after that date, it shall, notwithstanding any other provision of this Schedule, be given to the Clerk to the Special Commissioners and not to the person who would otherwise have received it,

and, where a notice relating to an assessment is forwarded or given to the

Clerk to the Special Commissioners in pursuance of this paragraph, an appeal against the assessment shall be deemed to have been forwarded to the Special Commissioners and shall be disposed of as nearly as may be in accordance with Schedule 5. Application of this Act to assessment made under repealed law 61A.

(1) Where an assessment under a repealed law is made on a person on or after 1 January 1972, the provisions of section 97 and Chapter 2 of Part VI of this Act shall apply to such assessment as if the assessment was made under section 90 or 91, as the case may be, of this Act.

(2) Where subparagraph (1) applies, the provisions to the contrary relating to appeal or objection against an assessment contained in a repealed law shall not apply. Income related back

62. Where-- (a) by the operation of this Act any income of a person from a source of his is to be regarded as income receivable in respect of a period before the basis period for the year of assessment 1968; and

(b) that income would have been gross income for the pre-basis period for a pre-year of assessment if this Act had been in operation at the material time,

that income, if not otherwise subject to previous tax, shall be treated as income for the year of assessment under the appropriate repealed law which corresponds to that pre-year of assessment or, if there is no such corresponding year of assessment, as income for the year of assessment under that law which includes the 1 July of that pre-year of assessment.

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PART II

SPECIAL PROVISIONS FOR SABAH

Application and power of remission

63. (1) This Part shall apply only to Sabah. (2) Any tax paid or payable by virtue of this Part may be remitted by the Director General on grounds of undue hardship; and section 129 shall apply in relation to any tax so remitted as it applies in relation to tax remitted under that section.

Interpretation

64. In this Part-- "appropriate date", in relation to a person, means the date on which the appropriate event mentioned in paragraphs 71 to 74 which gives him entitlement to payment of the Sabah credit of a company apportioned to him occurs; "old tax" means income tax (excluding any tax deemed to be income tax

under the Sabah Ordinance) imposed under the Sabah Ordinance; "relevant date", in relation to a company, means the date on which the appropriate event mentioned in paragraph 69 which gives it entitlement to payment of the Sabah credit occurs;

"Sabah credit" means the amount ascertained under paragraph 68; "statutory income", in relation to a person, a source and a year of assessment under the Sabah Ordinance, means the amount of his income from that source for the basis period under that Ordinance for that year of assessment increased by any balancing charge falling to be made in relation to that source for that year of assessment and reduced by any allowance falling to be made for that year under sections 14 to 21 of that Ordinance in relation to that source;

"year of assessment 1966/67" means the year of assessment commencing on 1 July 1966, under the Sabah Ordinance;

"year of assessment 1967" means the year of assessment 1967 under the Sabah Ordinance;

"year of assessment 1967/68" means the year of assessment commencing on 1 July 1967, under the Sabah Ordinance.

No chargeable income in certain cases

65. In the application of subparagraph 3(1) of this Schedule, a person shall be deemed not to have any chargeable income under the Sabah Ordinance for the year of assessment 1967/68.

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Provisions as to statutory income for certain years of assessment

66. (1) In the case of a person other than a company, the aggregate of-- (a) so much of his statutory income for the year of assessment 1967/68 from each source of his other than a source consisting of a business (or, where paragraph (b) applies, from each source of his) as bears the same proportion to that statutory income as the number of days of the interval period bears to the number of days in the basis period in relation to that source under the Sabah Ordinance for that year of assessment; and (b) where the accounts of a business of that person were made up for a period of twelve months ending on a day in the second half of the calendar year 1965 and the Commissioner has made a direction under subsection 28(2) of the Sabah Ordinance to treat that period as the basis period under that Ordinance for the year of assessment 1966/67, so much of what would have been the statutory income from each source of his

other than a source consisting of a business for the year of assessment commencing on 1 July 1968, under the Sabah Ordinance, but for its repeal, as bears the same proportion to that statutory income as the number of days of the interval period bears to the number of days in the basis period in relation to that source under that Ordinance for the year of assessment commencing on 1 July 1968, under that Ordinance,

shall be deemed to be statutory income of his for the year of assessment 1966/67 from a source of his.

(2) The amount of the statutory income of a person for the year of assessment 1966/67 from a source of his as ascertained under subparagraph (1) shall be charged to old tax for that year at the effective rate of tax; and Parts XI to XIII of the Sabah Ordinance shall apply to that amount as if that amount had been additional chargeable income of that person for that year.

(3) Where subparagraph (1) applies to a person and in his case there is no effective rate of tax, then, if none of the sources of income of that person was possessed by him for the whole of the basis period, in relation to each source, under the Sabah Ordinance for the year of assessment 1966/67, and the amount of his statutory income ascertained under subparagraph (1) exceeds the aggregate of the statutory income from each source of that person for that year— (a) the effective rate of tax shall be ascertained by substituting that amount for that aggregate; and

(b) the total of that amount and the assessable income for the year of assessment 1966/67 (or, where there is no assessable income for that year, the total of that amount and the aggregate of the statutory income, if any, from each source of that person for that year reduced by the amount of any loss falling to be deducted under section 32 of the Sabah Ordinance in ascertaining the assessable income of that person for that year) shall be charged to old tax for that year at the effective rate of tax so ascertained; and Parts XI to XIII of the Sabah Ordinance shall apply as if that total (or, as the case may be, that total as so reduced) had been the chargeable income of that person for that year and that effective rate of tax had been 053e .FM Page 359
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the rate set forth in Part I of the Third Schedule to that Ordinance in relation to that person for that year.

(4) Where subparagraph (1) applies to a person and in his case the amount of any loss or the aggregate of the amount of any losses falling to be deducted under section 32 of the Sabah Ordinance in ascertaining the assessable income of that person for the year of assessment 1966/67 exceeds the aggregate of the statutory income from each source of that person for that year, the excess

shall be deducted from the amount of his statutory income ascertained under subparagraph (1); and in the application of paragraph 18 in relation to that person, regard shall be had only to the balance (if any) of any such loss or losses after the application of this subparagraph.

(5) Where by the operation of paragraph 62 any income of a person from a source falls to be treated as income for the year of assessment 1967/68, that income-- (a) shall be added to his statutory income from that source for the year of assessment 1967/68; or

(b) where he has no statutory income from that source for that year-- (i) if there is an amount of loss in relation to that source (being a loss which would fall to be deducted under section 32 of the Sabah Ordinance, but for its repeal, in ascertaining the assessable income for that year) the amount of that loss shall be reduced by the amount of that income or where that income exceeds that loss the excess shall be deemed to be statutory income from that source for that year;

(ii) if there is no such loss, the amount of that income shall be taken to be his statutory income from that source for that year, and this paragraph shall apply to that loss as so reduced or, as the case may be, that statutory income.

(6) For the purposes of this paragraph, except where the context in subparagraphs (3) and (4) otherwise requires--

"basis period", in a case where a person other than a company possesses a source for a part or parts, but not for the whole, of a basis period, is to be construed as meaning that part or those parts of the basis period in question; "effective rate of tax" in relation to a person, means the rate determined by dividing the amount of old tax chargeable on the chargeable income (excluding any additional chargeable income created under subparagraph (2)) of that person for the year of assessment 1966/67 by the amount of the assessable income of that person for that year;

"interval period", in relation to the year of assessment 1967/68 or the year of assessment commencing on 1 July 1968, under the Sabah Ordinance means that part of the basis period for that year which elapsed before 1 January 1967.

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Ascertainment of old tax payable by company

67. For the purposes of this Part, in the case of a company the accounts of a business of whom were made up for a period of twelve months ending on a day in

the calendar year 1966 other than 31 December (being a company with respect to which the Commissioner has not made a direction under subsection 28(2) of the Sabah Ordinance to treat that period as the basis period under that Ordinance for the year of assessment 1967) there shall be ascertained--

(a) the total amount of all old tax payable by that company, whether assessed under one or more assessments for that year of assessment, that total being computed after giving any relief due to that company for that year on or before the relevant date by virtue of section 41 or 43 of the Sabah Ordinance; and

(b) the amount of that total paid by the company on or before the relevant date and not refunded or repaid to it on or before the relevant date.

Ascertainment of Sabah credit

68. (1) There shall be ascertained with respect to the old tax paid by a company as ascertained under paragraph 67 the Sabah credit in accordance with the following subparagraphs.

(2) In the case of a company to which paragraph 67 applies, the Sabah credit shall be so much of the old tax paid for the year of assessment 1967 as bears the same proportion to that old tax as the total of the statutory income from each source for the overlapping period bears to the assessable income of the company for that year. (3) In this paragraph--

"overlapping period" means that part of the basis period under the Sabah Ordinance in relation to a source for a year of assessment under that Ordinance which overlaps the basis period in relation to that source for a year of assessment under this Act;

"total of the statutory income from each source for the overlapping period", in relation to a company, means so much of the aggregate of the statutory income from each source of that company for a year of assessment under the Sabah Ordinance, reduced by any amount falling to be deducted under section 32 of that Ordinance in ascertaining the assessable income of the company under that Ordinance for that year, as bears the same proportion to that aggregate as so reduced as the aggregate of the number of days of the overlapping period in relation to each source bears to the aggregate of the number of days in the basis period in relation to each source under that Ordinance for that year.

Events in which Sabah credit is payable to company

69. (1) Subject to paragraph 76, the Sabah credit of a company shall be payable upon the date of the occurrence of such one of the following events as first occurs in relation to the company, that is to say, on the dissolution of

dissolution before 1 January 1988, or, in the case of a company which ceases to have income (other than dividends) derived from Malaysia in the basis year for a year of assessment, on its satisfying the Director General that it was not resident for that basis year or for a year subsequent thereto and that it is not likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year or, as the case may be, that subsequent year: Provided that this paragraph shall not apply on the dissolution of a particular company after 31 December 1967, if at or about the time of the dissolution any of the assets of that particular company available for distribution to its members are transferred--

(a) to a company which together with that particular company is a member of the same group;

(b) to a company more than fifty per cent of the shares of which are held by members of that particular company; or

(c) to the members of that particular company or to a person or persons having control of that particular company within the meaning of section 139. (2) Where the proviso to subparagraph (1) applies on the transfer of a company's assets, the Sabah credit to which, but for that proviso, the company would have been entitled shall be paid in accordance with the following subparagraphs. (3) Subject to subparagraph (4)--

(a) where all the assets of a company are transferred to the members of the company or to persons having control of the company within the meaning of section 139, the Sabah credit of the company shall be apportioned among them in the proportion in which they held as beneficial owners the ordinary share capital of the company at the date of its dissolution ("ordinary share capital" here having the same meaning as in the definition of "director" in subsection 2(1)), or, in the case of persons having such control, in the proportion in which they held their controlling interest, and shall be paid to each of them on the appropriate date; (b) where all the assets of a company are transferred to a single person having such control, the Sabah credit of the company shall be regarded as his and shall be paid to him on the appropriate date.

(4) Where a member or person to whom a Sabah credit (or any portion thereof) is to be paid under subparagraph (3) is a company, the amount to be paid shall be treated as a Sabah credit of the company and subparagraph (1) shall apply

with respect to the payment of that credit.

(5) Where subparagraph (3) does not apply, the Sabah credit of a company shall be treated as a Sabah credit of the transferee and subparagraph (1) shall apply with respect to the payment of that credit.

(6) In a case where there are two or more transfers (other than transfers to members of the company or to a person or persons having control of the company within the meaning of section 139) to which the proviso to subparagraph (1) applies, 053e .FM Page 362 Thursday, April 6, 2006 12:07 PM Income Tax 363

subparagraph (5) shall be applied by making such apportionment of the Sabah credit among the transferees as the Director General considers to be reasonably necessary in order to give proper effect to subparagraph (5) in the circumstances. Credit payable to company before dissolution in certain cases

70. Where the Director General is satisfied that the dissolution of a company is imminent and that the company will be entitled on its dissolution to the Sabah credit, he may make the amount of the Sabah credit available to the liquidator of the company; and, if the company is not dissolved within three months (or such longer period as the Director General may consider reasonable in the circumstances) after the making available of that amount to the liquidator, it shall be the duty of the liquidator to return that amount to the Director General upon being called upon to do so.

Events in which company's credit apportioned to individual is payable

71. Subject to paragraph 76, so much of the Sabah credit of a company as is apportioned under subparagraph 69(3) to an individual who was a member of that company at the time of its dissolution shall be payable on the date of the occurrence of such one of the following events as first occurs in relation to him: (a) on his satisfying the Director General that he attained the age of fifty-five years before 1 January 1968;

(b) on his death at any time after 31 December 1967; (c) on his attaining at any time after 31 December 1967, the age of fifty-five years;

(d) on his departure from Malaysia, if he is not a citizen and if he satisfies the Director General as to the matters set out in paragraph 72; (e) if he was not resident for the basis year (being the year in which the company was dissolved or a year subsequent thereto) for a year of assessment and is not a citizen, on his satisfying the Director General that in that basis year or prior thereto he ceased to have any income (other than dividends) derived from Malaysia and that he is not likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year;

(f) on his satisfying the Director General that he was not entitled before 1 January 1988, to payment of the amount of the Sabah credit apportioned to him;

(g) on his satisfying the Director General that he was prevented by serious disability from being gainfully employed for a period of not less than twelve months and during that period he did not have any source of income; or

(h) on his satisfying the Director General that he is in receipt of a pension derived from Malaysia and that he does not have and is not likely to have any other source of income:

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Provided that subparagraph (d) shall not apply to the individual if at the time of his departure from Malaysia he has any source (being a source the income from which is wholly or partly derived from Malaysia) other than-- (i) a source from which dividends arise;

(ii) a source from which interest arises;

(iii) a source consisting of a pension derived from Malaysia; or (iv) a source consisting of an employment which will cease upon the expiration of a period of leave which commences on his departure or at the end of a period of travel which commences on his departure.

Matters as to which Director General is to be satisfied for the purposes of paragraph 71

72. For the purposes of subparagraph 71(d), an individual is required to satisfy the Director General that the individual--

(a) has not at the date of his departure from Malaysia obtained a Malaysian entry or re-entry permit or other like document;

(b) has not at the date under any written law any right of entry or re-entry into Malaysia; and

(c) is not likely to be resident in any of the basis years for the five years of assessment commencing with the year of assessment which follows the year of assessment in the basis year for which the departure took place. Trustees and executors

73. Subject to paragraph 76, so much of the Sabah credit of a company as is

apportioned under subparagraph 69(3) to the trustees of a trust or the executors of a deceased person (the trustees or the executors, as the case may be, being members of the company at the time of its dissolution) shall be payable-- (a) on the termination of the trust or on the ascertainment of the residue of the estate of the deceased person, as the case may be; (b) on their satisfying the Director General that the trust has not been terminated (or, as the case may be, the residue ascertained) before 1 January 1988; or

(c) where the trust body ceases, or the executors cease, to have income (other than dividends) derived from Malaysia in the basis year (being the year in which the company was dissolved or a year subsequent thereto) for a year of assessment, on their satisfying the Director General that the trust body was not, or the executors were not, resident for that basis year, and that the trust body is not, or the executors are not, likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year.

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Provisions applicable when paragraphs 71 to 73 do not apply

74. Subject to paragraph 76, so much of the Sabah credit of a company as is apportioned under subparagraph 69(3) to a person (being a member of the company at the time of its dissolution) to whom none of paragraphs 71 to 73 applies shall be payable--

(a) on application to the Director General in the year of assessment 1988; or
(b) on application to the Director General before that year if the Director General is satisfied that there are circumstances similar to those in which a company would be entitled to payment of a Sabah credit before that year.

Married women

75. Where the Sabah credit of a company is apportioned under subparagraph 69(3) to a woman who was a member of the company at the time of its dissolution, so much of that credit as is so apportioned to her shall be paid if she is married, whether at that time or subsequently thereto, and before the date on which she would otherwise have been entitled to payment thereof to her husband on the appropriate date in relation to him as if that credit had been apportioned to him: Provided that--

(a) where the husband becomes entitled to payment of the credit so apportioned by virtue of subsubparagraph 71(d), that paragraph shall be so modified as to require the husband to satisfy the Director General as to the matters set out in paragraph 72 not only in respect of himself but also in respect of his wife, or, if paragraph 72 is not applicable to her, as to the matters set out

in subparagraph 71(e) in respect of his wife; (b) where the husband becomes so entitled by virtue of subparagraph 71(e), that paragraph shall be so modified as to require the husband to satisfy the Director General as to the matters set out therein not only in respect of himself but also in respect of his wife, or, where subparagraph 71(e) is not applicable to her as to the matters set out in paragraph 72 in respect of his wife.

Power to set off credit against tax payable

76. Notwithstanding the foregoing paragraphs of this Part, where in any calendar year any company becomes entitled to payment of a Sabah credit or a person becomes entitled to payment of the Sabah credit of a company apportioned to him, the Director General may withhold payment thereof for the purposes of setting off the amount thereof against any tax or previous tax payable by that company or, as the case may be, by that person.

Construction of references to certain years of assessment

77. Where in any case regard is to be had by virtue of this Schedule to the year of assessment 1966 or 1967 under the Sabah Ordinance or to a year of assessment under the Sabah Ordinance coinciding with the calendar year 1966 or 1967, and in that case the appropriate year of assessment under that Ordinance is the year of assessment 053e .FM Page 365 Thursday, April 6, 2006 12:07 PM 366 Laws of Malaysia ACT 53

commencing on 1 July 1965, or the year of assessment 1966/67, regard shall be had to the year of assessment commencing on 1 July 1965, or the year of assessment 1966/67, as the case may be, and the basis period therefor in relation to a source, and not to the year of assessment 1966 or 1967 or the year of assessment coinciding with the calendar year 1966 or 1967, or the basis period therefor. PART III

SPECIAL PROVISIONS FOR SARAWAK

Application and power of remission

78. (1) This Part shall apply only to Sarawak. (2) Any tax paid or payable by virtue of this Part may be remitted by the Director General on grounds of undue hardship; and section 129 shall apply in relation to any tax so remitted as it applies in relation to tax remitted under that section.

Interpretation

79. In this part-- "old tax" means the profits tax (excluding any tax deemed

to be profits tax under the Sarawak Ordinance) imposed under the Sarawak Ordinance; "relevant date", in relation to any person means the date on which the appropriate event mentioned in paragraphs 83 to 88 which gives him entitlement to payment of the Sarawak credit occurs;

"Sarawak credit" means the amount ascertained under paragraph 82; "year of assessment 1967" means the year of assessment 1967 under the Sarawak Ordinance.

No chargeable income in certain cases

80. Subject to paragraph 93, in the application of subparagraph 3(1) of this Schedule a person chargeable to salaries tax under the Sarawak Ordinance shall be deemed not to have any chargeable income under that Ordinance for the year of assessment 1967. Ascertainment of old tax payable by a person

81. In the case of a person the accounts of a business of whom were made up to a date in the calendar year 1966 other than 31 December that business being a business with respect to which the Commissioner has not made a direction under subsection 25(1) of the Sarawak Ordinance to treat that period as the period by reference to which the assessable profits or loss from the business was to be computed there shall be ascertained for the purposes of this Part--

(a) the total amount of all profits tax payable by that person whether assessed under one or more assessments for the year of assessment 1967, that total 053e .FM Page 366 Thursday, April 6, 2006 12:07 PM Income Tax 367

being computed after giving any relief due to him for that year on or before the relevant date by virtue of section 59 or 61 of the Sarawak Ordinance; and

(b) the amount of that total paid by him on or before the relevant date and not refunded or repaid to him on or before the relevant date. Ascertainment of Sarawak credit

82. (1) There shall be ascertained with respect to the total amount of the old tax paid by a person as ascertained under paragraph 81 the Sarawak credit in accordance with the following subparagraphs.

(2) In any case to which paragraph 81 applies, the Sarawak credit of a person shall be so much of the profits tax paid by him for the year of assessment 1967 as bears the same proportion to that profits tax as the assessable profits for the overlapping period bears to the aggregate of the assessable profits from each source of his for that year reduced by the amount of any loss incurred by him which would be set off against those assessable profits under section 28 of the Sarawak Ordinance for the year of assessment 1967.

(3) In the application of subparagraph (2) to the trustees of a trust, the reference therein to profits tax paid for the year of assessment 1967 shall be taken to be a reference to so much of that profits tax paid by the trustees for that year as bears the same proportion to that profits tax as the aggregate of the assessable profits from each source of the trustees for that year, reduced first by the amount of any loss incurred by the trustees which would be set-off against those assessable profits under section 28 of the Sarawak Ordinance for the year of assessment 1967 and thereafter by so much thereof as falls to be treated as assessable profits for that year of a beneficiary or beneficiaries of the trust, bears to that aggregate reduced by the amount of any such loss for that year.

(4) In this paragraph--

"assessable profits for the overlapping period", in relation to a person, means so much of the aggregate of the assessable profits from each source of that person under the Sarawak Ordinance for a year of assessment under that Ordinance, reduced by the amount of any loss incurred by him which would be set-off against those assessable profits under section 28 of the Sarawak Ordinance, as bears the same proportion to that aggregate as so reduced as the aggregate number of days of the overlapping period in relation to each source bears to the aggregate of the number of days of the basis period in relation to each source under that Ordinance for that year of assessment;

"overlapping period" means that part of the basis period under the Sarawak Ordinance in relation to a source for the year of assessment 1967 which overlaps the basis period in relation to that source for a year of assessment under this Act. Events in which Sarawak credit is payable to an individual

83. Subject to paragraph 92, the Sarawak credit of an individual shall be payable 053e .FM Page 367 Thursday, April 6, 2006 12:07 PM 368 Laws of Malaysia ACT 53

upon the date of the occurrence of such one of the following events as first occurs in relation to him:

(a) on his satisfying the Director General that he had attained the age of fifty-five years prior to 1 January 1968;

(b) on his death at any time after 31 December 1967; (c) on his attaining the age of fifty-five years after 31 December 1967; (d) on his departure from Malaysia, if he is not a citizen and if he satisfies the Director General as to the matters set out in paragraph 84; (e) if he was not resident in the

basis year (being the year in which he ceases to have income, other than dividends, derived from Malaysia or a year subsequent thereto) for a year of assessment and is not a citizen, on his satisfying the Director General that he is not likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year;

(f) on his satisfying the Director General that he was not entitled to payment of the Sarawak credit prior to 1 January 1988;

(g) on his satisfying the Director General that he was prevented by serious disability from being gainfully employed for a period of not less than twelve months and during that period he did not have any source of income; or

(h) on his satisfying the Director General that he is in receipt of a pension derived from Malaysia and that he does not have and is not likely to have any other source of income:

Provided that subparagraph (d) shall not apply to the individual if at the time of his departure from Malaysia he has any source (being a source the income from which is wholly or partly derived from Malaysia) other than-- (i) a source from which dividends arise;

(ii) a source from which interest arises;

(iii) a source consisting of a pension derived from Malaysia; or (iv) a source consisting of an employment which will cease upon the expiration of a period of leave which commences on his departure or at the end of a period of travel which commences on his departure. Matters as to which the Director General is to be satisfied for the purposes of paragraph 83

84. For the purposes of subparagraph 83(d), an individual is required to satisfy the Director General that the individual--

(a) has not at the date of his departure from Malaysia obtained a Malaysian entry or re-entry permit or other like document;

(b) has not at that date under any written law any right of entry or re-entry into Malaysia; and

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(c) is not likely to be resident in any of the basis years for the five years of assessment commencing with the year of assessment which follows the year of assessment in the basis year for which the departure took place. Events in which Sarawak credit is payable to a company

85. (1) Subject to paragraph 92, the Sarawak credit of a company shall be payable upon the date of the occurrence of such one of the following events as first occurs in relation to the company, that is to say, on the dissolution of the company after 31 December 1967, or on its satisfying the Director General that it has not gone into dissolution before 1 January 1988, or, in the case of a company which ceases to have income (other than dividends) derived from Malaysia in the basis year for a year of assessment, on its satisfying the Director General that it was not resident for that basis year or for a year subsequent thereto and that it is not likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year or, as the case may be, that subsequent year: Provided that this paragraph shall not apply on the dissolution of a particular company after 31 December 1967, if at or about the time of the dissolution any of the assets of that particular company available for distribution to its members are transferred--

(a) to a company which together with that particular company is in the same group;

(b) to a company more than fifty per cent of the shares of which are held by members of that particular company; or

(c) to the members of that particular company or to a person or persons having control of that particular company within the meaning of section 139. (2) Where the proviso to subparagraph (1) applies on the transfer of a company's assets, the Sarawak credit to which, but for that proviso, the company would have been entitled shall be paid in accordance with the following subparagraphs.

(3) Subject to subparagraph (4)--

(a) where all the assets of a company are transferred to the members of the company or to persons having control of the company within the meaning of section 139, the Sarawak credit of the company shall be apportioned among them in the proportion in which they held as beneficial owners the ordinary share capital of the company at the date of its dissolution ("ordinary share capital" here having the same meaning as in the definition of "director" in subsection 2(1)), or, in the case of persons having such control, in the proportion in which they held their controlling interest, and shall be paid to each of them on the relevant date as if the amount apportioned to each were a Sarawak credit of his: and (b) where all the assets of a company are transferred to a single person having such control, the Sarawak credit of the company shall be regarded as his and shall be paid to him on the relevant

date.

(4) Where a member or person to whom a Sarawak credit (or any portion thereof) is to be paid under subparagraph (3) is a company, the amount to be paid shall be treated as a Sarawak credit of the company and subparagraph (1) shall apply with respect to the payment of that credit.

(5) Where subparagraph (3) does not apply, the Sarawak credit of a company shall be treated as a Sarawak credit of the transferee and subparagraph (1) shall apply with respect to the payment of that credit.

(6) In a case where there are two or more transfers (other than transfers to members of the company or to a person or persons having control of the company within the meaning of section 139) to which the proviso to subparagraph (1) applies, subparagraph (5) shall be applied by making such apportionment of the Sarawak credit among the transferees as the Director General considers to be reasonably necessary in order to give proper effect to subparagraph (5) in the circumstances. Sarawak credit payable to company before dissolution in certain cases

86. Where the Director General is satisfied that the dissolution of a company is imminent and that the company will be entitled on its dissolution to the Sarawak credit, he may make the amount of the Sarawak credit available to the liquidator of the company; and, if the company is not dissolved within three months (or such longer period as the Director General may consider reasonable in the circumstances) after the making available of that amount to the liquidator, it shall be the duty of the liquidator to return that amount to the Director General upon being called upon to do so.

Trustees and executors

87. Subject to paragraph 92, the Sarawak credit of the trustees of a trust or the executors of the estate of a deceased person shall be payable-- (a) on the termination of the trust or on the ascertainment of the residue of the estate of the deceased person, as the case may be; (b) on their satisfying the Director General that the trust has not been terminated (or, as the case may be, the residue ascertained) before 1 January 1988; or

(c) where the trust body ceases, or the executors cease, to have income (other than dividends) derived from Malaysia in the basis year for a year of assessment, on their satisfying the Director General that the trust body was not, or the executors were not, resident for that basis year or a year subsequent thereto, and that the trust body is not, or the executors are not,

likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year or, as the case may be, that subsequent year.

Provisions applicable where paragraphs 83 to 87 do not apply

88. Subject to paragraph 92, the Sarawak credit of a person to whom none of paragraphs 83 to 87 applies shall be payable--

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(a) on application to the Director General in the year of assessment 1988; or
(b) on application to the Director General before that year, if the Director General is satisfied that there are circumstances similar to those in which a company would be entitled to payment of the Sarawak credit before that year.

Married persons: general

89. Where section 47A of the Sarawak Ordinance applies to a married woman and her husband for the year of assessment 1967, then, in the application of the foregoing paragraphs of this Part to the husband--

(a) a source of hers shall be taken to be a source of his; (b) any reference to assessable profits or loss in relation to him shall be taken to include a reference to any assessable profits or loss of hers from a source so taken to be his source;

(c) any old tax paid by her for the year of assessment 1967 shall be treated as paid by him.

Married persons: disposal of wife's credit

90. Where-- (a) a marriage took place before 31 December 1967, but section 47A of the Sarawak Ordinance did not apply to the wife of that marriage and her husband for any year of assessment under the Sarawak Ordinance; or (b) a marriage takes place after 31 December 1967, the wife of that marriage shall not be entitled to any Sarawak credit to which she would otherwise have been entitled, and any such credit shall be payable to the husband of that marriage as if it were a credit ascertained as regards him under paragraphs 81 and 82 or under paragraph 85.

Married persons: modification of paragraphs 89 and 90

91. In any case where paragraph 89 or 90 applies to the husband and wife of a

marriage--

(a) subsubparagraph 83(d) shall be so modified as to require the husband to satisfy the Director General as to the matters set out in paragraph 84 not only in respect of himself but also in respect of that wife, or, if paragraph 84 is not applicable to her, as to the matters set out in subsubparagraph 83(e) in respect of that wife;

(b) subsubparagraph 83(e) shall be so modified as to require the husband to satisfy the Director General as to the matters set out therein not only in respect of himself but also in respect of that wife, or, where subsubparagraph 83(e) is not applicable to her, as to the matters set out in paragraph 84 in respect of that wife.

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Power to set off Sarawak credit against tax payable

92. Notwithstanding the foregoing paragraphs of this Part, where any person becomes entitled to a Sarawak credit in any calendar year, the Director General may withhold payment thereof for the purposes of setting off the amount thereof against any tax or previous tax payable by that person.

Certain income to be disregarded

93. (1) Where in the calendar year 1967 a person ceased to possess a source the income from which is chargeable to profits tax under the Sarawak Ordinance, then, if by reference to income from that source up to the date of cessation an assessment has been made under the Sarawak Ordinance for the year of assessment 1968 under that Ordinance, the income from that source included in that assessment shall be disregarded for the purposes of this Act unless that assessment falls to be amended for any reason on or after 1 January 1968.

(2) Where in the calendar year 1967 a person ceased to possess a source the income from which is chargeable to salaries tax under the Sarawak Ordinance for that year of assessment, then, if--

(a) that person does not have income from any other source for the basis period in relation to any such other source for the year of assessment 1968; and

(b) subparagraph (1) does not apply to him,

paragraph 80 shall not apply to that person and to the income from that source; and where this subparagraph applies to a person his income from that

source which is chargeable to salaries tax under that Ordinance for the year of assessment 1967 shall be disregarded for the purposes of this Act.

(3) Where paragraph 80 applies to a person and by the operation of paragraph 62 any income of a person from a source chargeable to salaries tax under the Sarawak Ordinance falls to be treated as gross income for the pre-basis period for a pre-year of assessment, paragraph 62 shall be so modified in its application to that person and that income to treat that income as being income for the year of assessment under the Sarawak Ordinance which coincides with that pre-basis period. Allowance for industrial building under Sarawak Ordinance to continue

94. In the case of a building which is an industrial building under the Sarawak Ordinance, the rate at which annual allowances were given in respect of that industrial building under the Sarawak Ordinance shall continue to apply to that building, and the allowances to which a person is entitled by virtue of paragraph 6 of the Fifth Schedule to the Sarawak Ordinance shall be given for the remainder of the years for which that allowance would have been given but for the repeal of that Ordinance instead of any allowance to which that person might otherwise be entitled under this Act.

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PART IV

SPECIAL PROVISIONS FOR PENINSULAR MALAYSIA

Application and power of remission

95. (1) This Part shall apply only to Peninsular Malaysia. (2) Any tax paid or payable by virtue of this Part may be remitted by the Director General on grounds of undue hardship; and section 129 shall apply in relation to any tax so remitted as it applies in relation to tax remitted under that section.

Interpretation

96. In this Part-- "old tax" means income tax (excluding any tax deemed to be income tax under the West Malaysian Ordinance) imposed under the West Malaysian Ordinance; "relevant date", in relation to any person, means the date on which the appropriate event mentioned in paragraphs 107 to 113 which gives him entitlement to payment of the West Malaysian credit occurs;

"statutory income", in relation to a source and a year of assessment under the West Malaysian Ordinance, means the amount of the income from that source for

the basis period under the West Malaysian Ordinance in relation to that source for a year of assessment under that Ordinance increased by any balancing charge falling to be made in relation to that source for that year and reduced by any allowance falling to be made for that year under sections 16 to 22A of that Ordinance in relation to that source;

"West Malaysian credit" means the amount ascertained under paragraph 102; "year of assessment 1967" means the year of assessment 1967 under the West Malaysian Ordinance.

No statutory income in certain cases

97. Where a person in the calendar year 1967 commenced to carry on a business or commenced to exercise an employment or commenced to derive income from a source other than a business or an employment (being a source of a kind to which subsection 31(6) of the West Malaysian Ordinance would, but for this paragraph, have applied for the year of assessment 1967), he shall be deemed not to have any statutory income from that source for the year of assessment 1967. Provisions for certain cases where subsection 31(5) or (7) of West Malaysian Ordinance would have been applicable

98. (1) Subject to paragraph 99, where a person in the calendar year 1965 or 1966 commenced to carry on a business or commenced to exercise an employment or 053e .FM Page 373 Thursday, April 6, 2006 12:07 PM 374 Laws of Malaysia ACT 53

commenced to derive income from a source of the kind referred to in paragraph 97, the following subparagraphs shall apply if subsection 31(5) or (7) of the West Malaysian Ordinance would, but for its repeal, have applied in relation to any such source for the year of assessment 1968 under that Ordinance and the year of assessment 1967.

(2) With respect to the year of assessment 1967, the calendar year 1967 shall be taken to be the basis period in relation to any such source for that year of assessment, if the income for that basis period is greater than what would, but for this paragraph, have been the basis period under the West Malaysian Ordinance for that year of assessment, in relation to that source.

(3) With respect to the year of assessment 1968, the calendar year 1968 shall be taken to be the basis period for that year of assessment, in relation to any such source.

(4) With respect to the year of assessment 1969, the person in question shall be deemed not to have statutory income from any source of the kind in question. Paragraph 98 not to apply in certain cases

99. Paragraph 98 shall not apply in relation to a person and a source if-- (a) there is an acquisition (as defined in paragraph 105) of that source; or (b) that source being a source the income from which falls within a particular paragraph of section 4, there is an acquisition by him of a new source (the income from which falls under that paragraph of section 4) prior to 1 January 1970, and the Director General does not, having regard to all the circumstances of the case, direct that this paragraph shall not apply, and all such assessments or additional assessments or repayments of tax shall be made as may be necessary in consequence of this paragraph. Tax chargeable for year of assessment 1969

100. (1) Notwithstanding subparagraph 98(4), for the purposes of this paragraph the statutory income of a person from a source for the year of assessment 1968 (being a source in relation to which the calendar year 1968 is to be taken to be the basis period for that year of assessment) shall be taken into account in ascertaining the chargeable income of that person for the year of assessment 1969 as if that statutory income were statutory income of his from that source for the year of assessment 1969 and there shall be ascertained the tax chargeable on the chargeable income so ascertained for the year of assessment 1969.

(2) In the case of a person to whom subparagraph (1) applies, the tax chargeable for the year of assessment 1969 on the chargeable income (ascertained without having regard to subparagraph (1)) for that year shall be taken to be so much of the tax chargeable as ascertained under subparagraph (1) as bears to the tax so ascertained the same proportion as the total income of that person for that year ascertained without having regard to subparagraph (1) bears to the total income of that person for that year ascertained by having regard to that subparagraph. 053e .FM Page 374 Thursday, April 6, 2006 12:07 PM Income Tax 375

Ascertainment of old tax payable by a person

101. (1) For the purposes of this Part, there shall be ascertained-- (a) the total amount of all old tax payable by a person, whether assessed under one or more assessments, for the year of assessment 1967, that total being computed after giving any relief due to him for that year, on or before the relevant date, by virtue of section 44 or 46 of the West Malaysian Ordinance; and

(b) the amount of that total paid by him on or before the relevant date and not refunded or repaid to him on or before the relevant date. (2) In ascertaining under subparagraph (1) the total amount of all old tax payable by a person for the year of assessment 1967 and the amount of that total paid by

him, any old tax payable by reason of subparagraph 98(2) for that year and the amount of old tax paid in respect thereof shall be disregarded. Ascertainment of West Malaysian credit

102. (1) Subject to paragraphs 103 and 104 with respect to the amount of the old tax paid by a person as ascertained under paragraph 101, there shall be ascertained an amount (in this Part referred to as the West Malaysian credit) which bears the same proportion to the amount so paid as the total amount of his statutory income bears to the assessable income of that person for the year of assessment 1967. (2) In the application of subparagraph (1) to the trustees of a trust, the reference therein to old tax paid for the year of assessment 1967 shall be taken to be a reference to so much of that old tax as the aggregate of the statutory income of the trust body from all sources for that year reduced first by any amount falling to be deducted under subsection 33(2) of the West Malaysian Ordinance in ascertaining the assessable income of the trust body for that year and thereafter by so much of that aggregate (as so reduced) as falls to be treated as statutory income for that year of a beneficiary or beneficiaries of the trust, bears to the assessable income of the trust body for that year. (3) In this paragraph "total amount of his statutory income" means the aggregate of his statutory income for the year of assessment 1967 from each source of income of a kind to which subsection 31(5) or (7) of the West Malaysian Ordinance would have applied (but for its repeal) at some time subsequent to that year, less any amount falling to be deducted under subsection 33(2) of that Ordinance in ascertaining the assessable income for that year. Exclusion and inclusion of certain income for purposes of paragraph 102

103. For the purposes of paragraph 102, in ascertaining in relation to a person the total amount of his statutory income as therein mentioned-- (a) there shall be excluded--

(i) statutory income of that person from a source to which paragraph 97 or 98 applies;

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(ii) income of his received in West Malaysia from outside West Malaysia in respect of which there is any statutory income of his for the year of assessment 1967, if he is not ordinarily resident for the basis year for the year of assessment 1968; and (b) there shall be included, if paragraph 104 is applicable to him, the amount of his statutory income from any source therein referred to for the year of assessment 1967.

Provisions consequent upon acquisition of source

104. Where the circumstances are such that a person has an amount of statutory income from a source (in this paragraph referred to as the old source) of a kind to which subsection 31(5) or (7) of the West Malaysian Ordinance has applied (or, but for this paragraph, would have applied) for both the year of assessment 1967 and the preceding year of assessment under the West Malaysian Ordinance, then, if-- (a) there is an acquisition of the old source on or after 15 June 1967; or (b) the old source being a source the income from which falls within any paragraph of subsection 10(1) of the West Malaysian Ordinance, there is an acquisition by him of a new source (the income from which falls or would have fallen under that paragraph of the West Malaysian Ordinance but for its repeal) prior to 1 January 1969, and the Director General does not, having regard to all the circumstances of the case, direct that this paragraph shall not apply,

subsection 31(1) or (2), as the case may be, of the West Malaysian Ordinance shall apply to him in relation to the old source for both those years, and all such assessments or additional assessments or repayments of old tax under that Ordinance (or, if subsection 31(5) or (7) has been applied to him in relation to the old source, all such assessments or additional assessments or repayments of old tax under that Ordinance) shall be made as may be necessary in consequence of this subparagraph. Meaning of "acquisition"

105. In subparagraph 99(a) and in subparagraph 104(a) "acquisition" means acquisition of a source--

(a) in the case of a particular company--

(i) by a company in the same group;

(ii) by a company the shareholders of which hold or have held more than fifty per cent of the shares of that particular company; or (iii) by a person having control of that particular company; (b) in the case of an individual--

(i) by a relative of his ("relative" here and in subparagraph (c) (iii) having the same meaning as in section 65); 053e .FM Page 376 Thursday, April 6, 2006 12:07 PM Income Tax 377

(ii) by a partnership of which he has, or he and associates of his have, control ("associates" and "control" here having the same meaning as in section 139 and paragraph 38 of Schedule 3 respectively);

(iii) by a company of which he has control; or

(iv) by a partner of his in any other business, otherwise than for valuable

and adequate consideration;

(c) in the case of a source of a partnership--

(i) by a partner of the partnership;

(ii) by another partnership of which some or all of the partners of the first partnership are partners; or

(iii) by a partnership the partners of which are relatives of the partners of the first-mentioned partnership, otherwise than for valuable and adequate consideration; and

(d) in any other case, where the circumstances are similar to those in which, if the person effecting the acquisition was a company, there would be an acquisition.

Additional provisions where subparagraph 104(a) applies

106. Where subparagraph 104(a) applies to a person and an old source, then, if that source is the only source of his in 1967 or if all sources of his ceased in 1967, the West Malaysian credit to the payment of which he would otherwise be entitled under this Part shall be payable to the person who acquired that old source at the relevant date in relation to that last-mentioned person and, where an old source was acquired by more than one person or two or more old sources were acquired by different persons, that credit shall be apportioned between the acquirers in such proportion as the Director General having regard to the circumstances considers just and reasonable and shall be payable to each of them on the relevant date as if the amount apportioned to each were a West Malaysian credit ascertained as regards him. Events in which West Malaysian credit is payable to individual

107. Subject to paragraph 117, the West Malaysian credit of an individual shall be payable upon the date of the occurrence of such one of the following events as first occurs in relation to him:

(a) on his satisfying the Director General that he had attained the age of fifty-five years prior to 1 January 1968;

(b) on his death at any time after 31 December 1967; (c) on his attaining the age of fifty-five years after 31 December 1967; (d) on his departure from Malaysia, if he is not a citizen and if he satisfies the Director General as to the matters set out in paragraph 108; 053e .FM Page 377 Thursday, April 6, 2006 12:07 PM 378 Laws of Malaysia ACT 53

(e) if he was not resident in the basis year (being a year in which he ceases to have income, other than dividends, derived from Malaysia or a year subsequent thereto) for a year of assessment and is not a citizen, on his satisfying the Director General that he is not likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year;

(f) on his satisfying the Director General that he was not entitled to payment of the West Malaysian credit prior to 1 January 1988; (g) on his satisfying the Director General that he was prevented by serious disability from being gainfully employed for a period of not less than twelve months and during that period he did not have any source of income; or

(h) on his satisfying the Director General that he is in receipt of a pension derived from Malaysia and that he does not have and is not likely to have any other source of income:

Provided that subparagraph (d) shall not apply to the individual if at the time of his departure from Malaysia he has any source (being a source the income from which is wholly or partly derived from Malaysia) other than-- (i) a source from which dividends arise;

(ii) a source from which interest arises;

(iii) a source consisting of a pension derived from Malaysia; or (iv) a source consisting of an employment which will cease upon the expiration of a period of leave which commences on his departure or at the end of a period of travel which commences on his departure.

Matters as to which the Director General is to be satisfied for the purposes of subsubparagraph 107(d)

108. For the purposes of subsubparagraph 107(d), an individual is required to satisfy the Director General that the individual--

(a) has not at the date of his departure from Malaysia obtained a Malaysian entry or re-entry permit or other like document;

(b) has not at that date under any written law any right of entry or re-entry into Malaysia; and.

(c) is not likely to be resident for any of the basis years for the five years of assessment commencing with the year of assessment which follows the year of assessment in the basis year for which the departure took place. Events in

which West Malaysian credit is payable to company

109. (1) Subject to paragraph 117, the West Malaysian credit of a company shall be payable upon the date of the occurrence of such one of the following events as first 053e .FM Page 378 Thursday, April 6, 2006 12:07 PM Income Tax 379

occurs in relation to the company, that is to say, on the dissolution of the company after 31 December 1967 or on its satisfying the Director General that it has not gone into dissolution before 1 January 1988 or in the case of a company which ceases to have income (other than dividends) derived from Malaysia in the basis year for a year of assessment, on its satisfying the Director General that it was not resident for that basis year or for a year subsequent thereto and that it is not likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year or, as the case may be, that subsequent year: Provided that this paragraph shall not apply on the dissolution of a particular company after 31 December 1967, if at or about the time of the dissolution any of the assets of that particular company available for distribution to its members are transferred--

- (a) to a company which together with that particular company is a member of the same group;
- (b) to a company more than fifty per cent of the shares of which are held by members of that particular company; or
- (c) to the members of that particular company or to a person or persons having control of that particular company within the meaning of section

139. (2) Where the proviso to subparagraph (1) applies on the transfer of a company's assets, the West Malaysian credit to which, but for that proviso, the company would have been entitled shall be paid in accordance with the following subparagraphs.

(3) Subject to subparagraph (4)--

- (a) where all the assets of a company are transferred to the members of the company or to persons having control of the company within the meaning of section 139, the West Malaysian credit of the company shall be apportioned among them in the proportion in which they held as beneficial owners the ordinary share capital of the company at the date of its dissolution ("ordinary share capital" here having the same meaning as in the definition of "director" in subsection 2(1)) or, in the case of persons having such control, in the proportion in which they held their controlling interest, and shall be

paid to each of them on the relevant date as if the amount apportioned to each were a West Malaysian credit of his; (b) where all the assets of a company are transferred to a single person having such control, the West Malaysian credit of the company shall be regarded as his and shall be paid to him on the relevant date. (4) Where a member or person to whom a West Malaysian credit (or any portion thereof) is to be paid under subparagraph (3) is a company, the amount to be paid shall be treated as a West Malaysian credit of the company and subparagraph (1) shall apply with respect to the payment of that credit. 053e .FM Page 379 Thursday, April 6, 2006 12:07 PM 380 Laws of Malaysia ACT 53

(5) Where subparagraph (3) does not apply, the West Malaysian credit of the company shall be treated as a West Malaysian credit of the transferee and subparagraph (1) shall apply with respect to the payment of that credit. (6) In a case where there are two or more transfers (other than transfers to members of the company or to a person or persons having control of the company within the meaning of section 139) to which to proviso to subparagraph (1) applies, subparagraph (5) shall be applied by making such apportionment of the West Malaysian credit among the transferees as the Director General considers to be reasonably necessary in order to give proper effect to subparagraph (5) in the circumstances.

West Malaysian credit payable to company before dissolution in certain cases

110. Subject to paragraph 117, where the Director General is satisfied that the dissolution of a company is imminent and that the company will be entitled on its dissolution to the West Malaysian credit, he may make the amount of the West Malaysian credit available to the liquidator of the company; and, if the company is not dissolved within three months (or such longer period as the Director General may consider reasonable in the circumstances) after the making available of that amount to the liquidator, it shall be the duty of the liquidator to return that amount to the Director General upon being called upon to do so. Trustees and executors

111. Subject to paragraph 117, the West Malaysian credit of the trustee of a trust or the executors of the estate of a deceased person shall be payable-- (a) on the termination of the trust or on the ascertainment of the residue of the estate of the deceased person, as the case may be; (b) on their satisfying the Director General that the trust has not been terminated (or, as the case may be, the residue ascertained) before 1 January 1988; or

(c) where the trust body ceases, or the executors cease, to have income (other than dividends) derived from Malaysia in the basis year for a year of assessment, on their satisfying the Director General that the trust body was

not, or the executors were not, resident for that basis year or a year subsequent thereto and that the trust body is not, or the executors are not, likely to have any income (other than dividends) derived from Malaysia in any of the two years following that basis year or, as the case may be, that subsequent year.

Hindu joint families

112. Subsubparagraphs 107(a), (b), (c), (e) and (f) shall apply in relation to a Hindu joint family as if those subparagraphs referred to the family's manager or karta. 053e .FM Page 380 Thursday, April 6, 2006 12:07 PM Income Tax 381

Provisions applicable where paragraphs 107 to 112 do not apply

113. Subject to paragraph 117, the West Malaysian credit of a person to whom none of paragraphs 107 to 112 applies shall be payable-- (a) on application to the Director General in the year of assessment 1988; or (b) on application to the Director General before that year if the Director General is satisfied that there are circumstances similar to those in which a company would be entitled to the payment of the West Malaysian credit before that year.

Married persons: general

114. Where section 47 of the West Malaysian Ordinance applies to a married woman and her husband for the year of assessment 1967, then, in the application of the foregoing paragraphs of this Part to the husband-- (a) any reference to a source shall be taken to include a reference to a source of hers as if it were a source of his;

(b) any reference to statutory income in relation to him shall be taken to include a reference to any statutory income of hers from a source so included as his source;

(c) any reference to an acquisition by him shall be taken to include an acquisition by her; and

(d) any old tax paid by her for the year of assessment 1967 shall be treated as paid by him.

Married persons: disposals of wife's credit

115. Where a marriage takes place after 31 December 1967, the wife of that marriage shall not be entitled to any West Malaysian credit to which she would otherwise have been entitled, and any such credit shall be payable to the

husband of that marriage as if it were a credit ascertained as regards him under paragraphs 101 to 105 or under paragraph 109.

Married persons: modification of paragraphs 107 and 108

116. In any case where paragraph 107 or 108 applies to the husband and wife of a marriage--

(a) subsubparagraph 107(d) shall be so modified as to require the husband to satisfy the Director General as to the matters set out in paragraph 108 not only in respect of himself but also in respect of that wife, or, if paragraph 108 is not applicable to her, as to the matters set out in subsubparagraph 107(e) in respect of that wife;

(b) subsubparagraph 107(e) shall be so modified as to require the husband to satisfy the Director General as to the matters set out therein not only in

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respect of himself but also in respect of that wife, or, where subsubparagraph 107(e) is not applicable to her, as to the matters set out in paragraph 108 in respect of that wife.

Power to set off West Malaysian credit against tax payable

117. Notwithstanding the foregoing paragraphs of this Part, where any person becomes entitled to a West Malaysian credit in any calendar year, the Director General may withhold payment thereof for the purposes of setting off the amount thereof against any tax or previous tax payable by that person. Certain income to be disregarded

118. Subject to paragraph 104, where any person ceases to possess a source in the calendar year 1967 (being a source to which subsection 31(5) or (7) of the West Malaysian Ordinance is applicable for both the year of assessment 1967 and the preceding year of assessment under that Ordinance), any income of that person from that source shall be disregarded for the purposes of this Act.

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Act 53

INCOME TAX ACT 1967

LIST OF AMENDMENTS

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Act 77/1967 Income Tax (Amendment) Act 1967 14-12-1967 P.U. 144/1968 Income Tax (Transitional Provisions) Order 1968

14-12-1967

Act A13 Income Tax (Amendment) Act 1969 1. Assessment year 1968 and subsequent years

2. Sections 8-- Assessment

year 1969 and

subsequent years

P.U. (B) 146/1969 Resolution under s. 127(2) 04-07-1969 P.U. (A) 510/1969 Income Tax (Amendment to Schedule 6) Order 1969

12-12-1969

P.U. (A) 256/1970 Emergency (Essential Powers)

Ordinance No. 38, 1970

(Various dates

as per Schedule

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Act A32 Income Tax (Amendment) Act 1971 Assessment year 1971 and

subsequent years

Act A60 Income Tax (Amendment) (No. 2) Act

1971

(Various date as

per Schedule to

the Act)

Act A98 Income Tax (Amendment) Act 1972 01-01-1972 Act A108 Income Tax (Amendment) (No. 2) Act

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Act A158 Income Tax (Amendment) Act 1973 Assessment year 1973 and

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P. U. (A) 266/1974 Amendment to Part II of Schedule 6 Assessment year 1973 and subsequent years

P. U. (A) 267/1974 Amendment to Part II of Schedule 6 Assessment year 1968 and subsequent years

P. U. (A) 328/1974 Amendment to Part II of Schedule 6 Assessment year 1963 and subsequent years

Act A225 Income Tax (Amendment) Act 1974 1. Sections 2 and 3--

01-01-1974

2. Remaining provisions--

29-02-1974

Act A226 Income Tax (Amendment) (No. 2) Act

1974

Assessment year

1974 and

subsequent years

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Act A227 Income Tax (Amendment) (No. 3) Act

1974

Assessment year

1974 and

subsequent years

Act A273 Income Tax (Amendment) Act 1975 Assessment year 1975 and

subsequent

years except

section 6 which

shall have effect

for the year of

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Act 160 Malaysian Currency (Ringgit) Act

1975

29-08-1975

Act A344 Income Tax (Amendment) Act 1976 Assessment year 1976 and

subsequent years

P.U. (B) 50/1976 Amendment to Part I of Schedule 6 Assessment year 1976 and subsequent years

P.U. (B) 303/1976 Amendment to Part II of Schedule 6 Assessment year 1976 and subsequent years

P.U. (B) 186/1977 Amendment to Part II of Schedule 6 Assessment year 1973 and subsequent years

P.U. (B) 18719/77 Amendment to Part II of Schedule 6 Assessment year 1968 and subsequent years

P.U. (B) 363/1977 Amendment to Part II of Schedule 6 01-12-1974 P.U. (B) 364/1977 Amendment to Part II of Schedule 6 Assessment year 1973

P.U. (B) 365/1977 Amendment to Part II of Schedule 6 Assessment year 1977

Act A380 Income Tax (Amendment) Act 1977 1. Paragraph 2(b) and section 8--

01-01-1977

2. Remaining provisions--

Assessment year

1977 and

subsequent years

Act A429 Income Tax (Amendment) Act 1978 1. Assessment year 1978 and subsequent years

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2. Section 2-- 01-01-1977

3. Paragraph 12 (b) --

Assessment year

1977 and

subsequent years

Act A434 Subordinate Courts Amendment Act

1978

01-07-1978

Act A451 Income Tax (Amendment) Act 1979 1. Assessment year 1979 and

subsequent years

2. Sections 2 and 4--Assessment

year 1973 and

subsequent years

3. Sections 10, 11, 12 and 14--

01-01-1979

4. Sections 15 and

18--

Assessment year

1980 and

subsequent years

P. U. (B) 421/1979 Amendment to Part I of Schedule 6 Assessment year 1977 and

subsequent years

P. U. (B) 422/1979 Amendment to Part II of Schedule 6 Assessment year 1977 and subsequent years

P. U. (B) 423/1979 Amendment to Part II of Schedule 6 Assessment year 1980

Act A471 Income Tax (Amendment) Act 1980 1. Section 3-- Assessment year 1978 and

subsequent years

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2. Section 16-- Assessment year

1968 and

subsequent years

3. Section 14-- Assessment year

1980 and

subsequent years

4. Remaining provisions--

Assessment year

1980 and

subsequent years

Act 241 Finance Act 1981 1. Section 8,

paragraph 10(b),

sections 11, 12,

16 and

paragraph 18(a)?

Assessment year

1980 and

subsequent years

2. Remaining provisions--

Assessment year

1981 and

subsequent years

P. U. (A) 161/1981 Revision of Laws (Income Tax Act 1967) Order 1981

05-06-1981

Act 264 Finance Act 1982 1. Section 10--

01-01-1982

2. Remaining provisions--

Assessment year

1982 and

subsequent years

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Act 274 Finance (No. 2) Act 1982 1. Sections 4, 5, 6 and 14--

Assessment year

1984 and

subsequent years

2. Sections 7, 8, 9, 10, 11 and

12--

01-01-1983

3. Paragraph 15(a)--

22-10-1982

4. Remaining provisions--

Assessment year

1983 and

subsequent years

Act 293 Finance Act 1983 1. Sections 4, 5,

6, 9, 10, 11, 15,

16, 17, 18, 19, 20,

21, and 22--

21-10-1983

2. Section 7-- 01-01-1984

3. Sections 12, 13 and 14--

Assessment year

1984 and

subsequent years

4. Remaining provisions--

Assessment year

1984 and

subsequent years

Act 309 Finance Act 1984 1. Sections 16

and 18--

19-10-1984

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2. Sections 5, 8 and 14--

21-10-1983

3. Paragraph 4(b), section 13,

paragraphs 15(b)

and 19(g)--

Assessment year

1984 and

subsequent years

4. Section 7-- 19-10-1984

5. Remaining provisions--

Assessment year

1985 and

subsequent years

Act 315 Finance Act 1985 Assessment year

1985 and

subsequent years

Act 323 Finance (No. 2) Act 1985 1. Paragraph

4(d)--

Assessment year

1984 and

subsequent years

2. Section 23-- Assessment year

1985 and

subsequent years

3. Paragraphs 6 (a), 6 (b), 7 (c)

and section 22--

Assessment year

1987 and

subsequent years

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4. Paragraphs 4 (a), 4 (b),

sections 8, 17

and 19--

25-10-1985

5. Paragraph 24 (b) --

25-10-1986

6. Remaining provisions--

Assessment year

1986 and

subsequent years

Act A643 Income Tax (Amendment) Act 1986 1. Section 7-- 01-01-1986

2. Remaining provisions--

Assessment year

1987 and

subsequent years

Act 328 Finance Act 1986 1. Sections 5, 7

and 12--

21-10-1983

2. Sections 4, 6, 10, 11, 13, 15 and

18--

24-10-1986

3. Section 8-- 01-01-1986

4. Section 16-- Assessment year

1984

5. Paragraph 19 (h) --

Assessment year

1988 and

subsequent years

Amending law Short title In force from

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6. Remaining provisions--

Assessment year

1987 and

subsequent years:

Provided that

paragraphs 9(c)

and (e) shall

cease to have

effect from--

(i) year of

assessment 1988

where the gross

premiums

receivable by the

insurer during

the basis period

for year of

assessment 1986

on account of all

Malaysian life

policies in force

at the end of that

period, amount

to fifty million

ringgit or more;

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(ii) year of

assessment 1990

where the gross

premiums

receivable by the

insurer during

the basis period

for year of

assessment 1986

on account of all

Malaysian life

policies in force

at the end of that

period, amount

to ten million

ringgit or more

but less than fifty

million ringgit;

and

(iii) year of
assessment 1992
where the gross
premiums
receivable by the
insurer during the
period for year
of assessment
1986 on account
of all Malaysian
life policies in
force at the end
of that period, is
less than ten
million ringgit

Act 337 Finance Act 1987 1. Section 10--

24-10-1986

2. Section 13-- 01-01-1989

Amending law Short title In force from

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3. Remaining provisions--

Assessment year

1988 and

subsequent years

Act 364 Finance Act 1988 1. Paragraphs

14(b) and (e)--

Assessment year

1990 and

subsequent years

2. Remaining provisions--

Assessment year

1989 and

subsequent years

P.U. (A) 212/1989 Income Tax (Transitional Provisions) Order 1989

Assessment year

1968

Act 420 Finance Act 1990 1. Sections 7, 8

and 15--

Assessment year

1989 and

subsequent years

2. Section 13-- 01-01-1989

3. Section 16-- Assessment year

1991 and

subsequent years

4. Remaining provisions--

Assessment year

1990 and

subsequent years

P.U. (A) 266/1990 Income Tax (Transitional Provisions) Order 1990

Assessment year

1968

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Act 421 Finance (No.2) Act 1990 1. Sections 5

and 6--

Assessment year

1990 and

subsequent years

2. Sections 4, 7 and 8--

Assessment year

1991 and

subsequent years

Act A774 Income Tax (Amendment) Act 1990 Assessment year 1991 and

subsequent years

Act 451 Finance Act 1991 1. Chapter II

except for

sections 7, 8, 10,

paragraphs

11 (a), 11 (b),

section 19,

paragraph 20 (b),

sections 21, 23,

26, 27,

parapgrahs

28 (d) and (e) --

Assessment year

1991 and

subsequent years

2. Section 19, paragraph 20 (b),

sections 23 and

27 --

14-12-1990

3. Sections 7, 8, 10, paragraphs

11 (a), 11 (b) and

section 26 --

Assessment year

1992 and

subsequent years

Amending law Short title In force from

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4. Section 21, paragraphs 28 (d)

and 28 (e) --

01-10-1989

P. U. (A) 406/1991 Revision of Laws (Rectification) Order 1991

01-11-1971

Act 476 Finance Act 1992 1. Chapter II

except for

sections 6, 7, 11,

12 and

paragraphs

18 (a) --

Assessment year

1992 and

subsequent years

2. Sections 6, 11, 12, and

paragraphs

18 (a) --

Assessment year

1991 and

subsequent years

3. Section 7 -- 01-01-1990

Act 497 Finance Act 1993 1. Chapter II

except for section

4, paragraphs

6(b) and section

7--Assessment

year 1993 and

subsequent years

2. Section 4-- Assessment year

1994 and

subsequent years

3. Paragraph 6(b)--

Assessment year

1989

Amending law Short title In force from

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4. Section 7-- 30-10-1992

Act 513 Finance Act 1994 1. Chapter II

except for

sections 4, 7,

paragraphs 8(d),

10(a), sections

11, 12, 13, 14,

17, 18, 19, 20,

21, 22, 23, 24,

25, paragraph

28(d) and

section 29--

Assessment year

1994 and

subsequent years

2. Sections 4, paragraph 10(a)

and section 11--

01-06-1991

3. Section 7, paragraph 8(d),

sections 12, 14

and 29--

01-01-1994

4. Section 13-- 01-01-1993

5. Paragraph 28(d)--

16-02-1993

6. Sections 17, 18, 19, 20, 21,

22, 23, 24 and

25--

25-02-1994

Amending law Short title In force from

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Act 531 Finance Act 1995 1. Chapter II

except for

section 6,

paragraphs 19 (c)

and 19 (e) --

Assessment year

1995 and

subsequent years

2. Section 6 (except for

subparagraph

6 (a) (i) --

Assessment year

1994 and

subsequent years

3. Subparagraph 6 (a) (i) --

Assessment year

1991

4. Paragraphs 19 (c) and

19 (e) --

28-10-1994

Act 544 Finance Act 1996 1. Chapter II

except for

paragraphs

10 (a), 10 (b),

11 (a), 16 (c) and

section 17--

Assessment year

1996 and

subsequent years

2. Paragraphs 10 (a), 10 (b),

11 (a), 11 (b) and

16 (c) --

Assessment year

1995 and

subsequent years

Amending law Short title In force from

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3. Section 17-- Assessment year

1997 and

subsequent years

Act A955 Income Tax (Amendment) Act 1996 02-08-1996 Act 557 Finance Act 1997

1. Chapter II

except for

paragraphs 4(a),

4(b), 19(a),

19(b), sections
5, 7, 15, 16, 17,

18, 20 and 21--

Assessment year

1997 and

subsequent years

2. Paragraphs 4(a) 19(b),

sections 16, 17

and 18--

25-10-1996

3. Paragraphs 4(b) and 19(a),

sections 5, 7, 15

and 21--

01-01-1997

4. Section 20-- 02-08-1996.

Act A998 Income Tax (Amendment) Act 1997 01-08-1997 Act 578 Finance Act 1998

1. Chapter II

except for

sections 7, 8, 10,

14, 15, 18,

paragraphs 21(d)

and 21 (g) --

Assessment year

1998 and
subsequent years

Amending law Short title In force from

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2. Sections 7, 8, 14, 15 and
paragraph

21 (g) --

01-01-1999

3. Section 10 -- 17-10-1997

4. Section 18 -- 20-03-1998

5. Paragraph 21 (d) --

Assessment year

1999 and

subsequent years

Act A1028 Tax Laws (Amendment) Act 1998 1. Chapter I except section 6?

02-07-1998

2. Section 6 -- Assessment year

1998 and

subsequent years

Act 591 Finance (No. 2) Act 1998 1. Chapter II

except sections

4, 6, 10 and 13?

Assessment year

1999 and

subsequent years

of assessment

2. Section 4-- 24-10-1998

3. Sections 6 and 10--

Assessment year

2000 and

subsequent years

of assessment

Amending law Short title In force from

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4. Section 13 -- Assessment year

1998 and

subsequent years

of assessment

Act A1055 Income Tax (Amendment) Act 1999 1. Sections 2, 3, 5 and 6--

01-01-2000

2. Sections 20, 21, 77 and 92--

Assessment year

2000 in respect

of the basis

period ending in
the year 2000 and
subsequent years

of assessment

3. Section 4 -- Assessment year

1999 and

subsequent years

of assessment

4. Sections 7 to 16--

Assessment year

2000 in respect of

the basis period
ending in the year

1999

5. Section 17 -- 01-01-2000

Act A1069 Income Tax (Amendment) (No. 2) Act

1999

01-01-2000

1. Subsection 107C(3) of

section 12 --

Assessment year

2002 and

subsequent years

of assessment

Amending law Short title In force from

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2. Sections 13, 14, 15 and 16--

01-01-2000

3. Section 17 -- Assessment year

2001

4. Remaining provisions--

Assessment year

2001 and

subsequent years

of assessment

Act 600 Finance Act 2000 1. Sections 5, 6,

7, 8, 11, 12 &

15--

Assessment year

2000 in respect

of the basis

period ending in

the year 2000

(current year

basis) and

subsequent years

of assessment

2. Sections 4, 9, 10 & 14--

16-06-2000

3. Section 13-- Assessment year

2000 in respect

of the basis

period ending in

the year 1999

(preceding year

basis) and

subsequent years

of assessment

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Act A1093 Income Tax (Amendment) Act 2000 1. Sections 2? 11, 13?18 & 21?

Assessment year

2001 and

subsequent years

of assessment

2. Section 12-- Assessment year

2000 in respect

of the basis

period ending in

the year 2000 and

subsequent years

of assessment

3. Section 16-- Only for

assessment year

2000 in respect

of the basis

period ending in

the year 2000

4. Sections 19, 20 & 22?28--

01-01-2001

Act 608 Finance (No. 2) Act 2000 1. Sections 4?14 & 16?27--

Assessment year

2001 and

subsequent years

of assessment

2. Section 15-- Assessment year

1986 and

subsequent years

of assessment

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Act 619 Finance Act 2002 1. Sections 4, 5,

7, paragraphs

8 (a), 8 (b), 8 (d),

8 (e), 8 (f), 8 (g),

8 (h), 8 (i), 8 (j),

8 (l) and 8 (m),

section 9 and

paragraphs 10 (a),

10 (b) and 10 (c)?

Assessment year

2002 and

subsequent years

of assessment

2. Paragraph 8 (c) --

01-01-2000 --

Assessment year

2000 and

subsequent year

of assessment

3. Paragraph 37F of Schedule 3 as

inserted by

paragraph 8(k) --

Assessment year

2002 and

subsequent years

of assessment

4. Paragraphs 37G and 37H of

Schedule 3 as

Inserted by

paragraph 8(k) --

Assessment year

2001 and

subsequent years

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5. Paragraph 10(d) --

Assessment year

1998 and

subsequent years

of assessment

Act A1151 Income Tax (Amendment) Act 2002 1. Sections 2, 3 4, 5, 6, 7, 8, 9,

10, 11, 12, 13,

14, 15, 16, 17,

18, 19, paragraph

20 (a),

subparagraph

21 (b) (i),

subparagraphs

21 (c) (i) and (ii),

sections 22 and

23, paragraphs

24 (b) and 25 (a)

and subparagraph

25 (b) (ii) --

Assessment year

2004 and

subsequent years

of assessment

2. Paragraphs 20 (b) and (c),

paragraph 21 (a),

subparagraph

21 (b) (ii) and

paragraph 21 (d)?

Assessment year

2001 and

subsequent years

of assessment

Amending law Short title In force from

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3. Paragraph 24(a) and

subparagraph

25(b) (i) --

Assessment year

2002 and

subsequent years

of assessment

4. Section 26 -- Assessment year

2004

5. Section 27 -- Assessment year

2002

6. Sections 28, 29, 30 and 31 --

Assessment year

2003

PU(A) 338/2002 Revision of Laws (Rectification of Income Tax Act 1967) Order
2002

23-08-2002

Act 624 Finance (No. 2) Act 2002 1. Sections 4, 6, 8, 9, 10, 11, 12,

13, 16, 17,

paragraph 19(a),

sections 20, 21,

22, 23, 28 and

29--

Assessment year

2003 and

subsequent years

of assessment

2. Section 5 -- Assessment year

2002 and

subsequent years

of assessment

3. Sections 7, 18 and 24 --

21-09-2002

Amending law Short title In force from

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4. Sections 14, 15 and 27 shall

have effect on

the coming into

operation of Act

624 [27-12-2002]

5. Paragraph 19 (b) --

Assessment year

2001 and

subsequent years

of assessment

6. Sections 25 and 26 --

Assessment year

2000 (current

year) and

subsequent years

of assessment

Act 631 Finance Act 2003 1. Sections 4, 6,

8 and 16 and

paragraph 19 (b) ?

Assessment year

2003 and

subsequent years

of assessment

2. Sections 12 and 15 --

Assessment year

2003

3. Sections 5, 7, 9, 11, 13, 14, 18

and 20 --

Assessment year

2003 and

subsequent years

of assessment

Amending law Short title In force from

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4. Section 10-- Assessment years

2003, 2004 and

2005

5. Paragraph 17 (b) --

01-01-2001

6. Subparagraph 19 (a) (i) --

13-09-2003

7. Subparagraph 19 (a) (ii) --

Assessment year

2000 (current

year) and

subsequent years

of assessment

Act 639 Finance Act 2004 1. Sections 4, 5,

6, and

subparagraph

7 (b) (ii) and

sections 8, 9, 10,

11, 12, 13, 14,

15, 16, 17, 18,

19, 23, 27, 28,

29, 30, 31 and

32--

Assessment year

2005 and

subsequent years

of assessment

2. Paragraph 7 (a)--

Assessment year

2001 and

subsequent years

of assessment

Amending law Short title In force from

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3. Subparagraph 7 (b) (i) and

sections 20 and

22--

Assessment year

2001 and

subsequent years

of assessment

4. Sections 24, 25 and 26--

01-01-2005

5. Paragraph 33(a)--

Assessment year

2003 and

subsequent years

of assessment

6. Paragraph 33(b)--

11-09-2004

Act 644 Finance Act 2005 1. Sections 4, 5,

6, 7, 8, 9, 10, 11,

12, 13, 14, 15,

16, 17, 18, 21,

22, 24, 32, 33,

34, 35, 36 and

37 have effect

for the year of

assessment 2006

and subsequent

years of

assessment

2. Sections 23 and 30 come into

operation on 1

January 2006

Amending law Short title In force from

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3. Section 25 is deemed to have

come into

operation on 1

October 2005

Amending law Short title In force from

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LAWS OF MALAYSIA

Act 53

INCOME TAX ACT 1967

LIST OF SECTIONS AMENDED

Section Amending authority In force from

2 Act 77/1967 14-12-1967

P. U. (A) 256/1970 01-01-1970

Act A60 01-01-1970

Act A98 01-01-1972

Act A108 Year of assessment 1968 and

subsequent years of assessment

Act A158 Year of assessment 1973 and
subsequent years of assessment

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A273 Year of assessment 1975 and
subsequent years of assessment

Act A380 Year of assessment 1977 and
subsequent years of assessment;

para. 2(b) ? 01-01-1977

Act A429 01-01-1977

Act A451 Year of assessment 1973 and
subsequent years of assessment

Act 293 21-10-1983

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Act 323 para. 4(a), (b) ? 25-10-1985;

para. 4(c) ? Year of assessment

1986 and subsequent years of
assessment;

para. 4(d) ? Year of assessment

1984 and subsequent years of
assessment

Act 328 24-10-1986

Act 337 Year of assessment 1988 and
subsequent years of assessment

Act 420 Year of assessment 1990 and
subsequent years of assessment

Act A774 Year of assessment 1991 and
subsequent years of assessment

Act 513 01-06-1991

Act A955 02-08-1996

Act 557 para. 4(a) ? 25-10-1996;

para. 4(b) ? 01-01-1997

Act 600 16-06-2000

Act A1093 Year of assessment 2001 and
subsequent years of assessment

Act 608 Year of assessment 2001 and
subsequent years of assessment

Act 631 Year of assessment 2003 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

3 Act A226 Year of assessment 1974 and
subsequent years of assessment

3A Act A273 Year of assessment 1975 and

subsequent years of assessment

Section Amending authority In force from

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Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 309 para. 4(a) ? Year of assessment

1985and subsequent years of

assessment;

para. 4(b) ? Year of assessment

1984 and subsequent years of

assessment

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 337 Year of assessment 1988 and

subsequent years of assessment

Act 420 Year of assessment 1990 and

subsequent years of assessment

Act 451 Year of assessment 1991and

subsequent years of assessment

3B Act A774 Year of assessment 1991 and

subsequent years of assessment

3C Act 531 Year of assessment 1995 and

subsequent years of assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

4A Act 293 21-10-1983

Act 309 21-10-1983

Act 328 21-10-1983

Act 557 01-01-1987

5 Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A471 Year of assessment 1978 and

subsequent years of assessment

Section Amending authority In force from

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Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 323 para. 6(a), (b) ? Year of assessment

1987 and subsequent years of

assessment;

para. 6(c) ? Year of assessment

1986 and subsequent years of

assessment

Act 337 Year of assessment 1988 and

subsequent years of assessment

6 Act 77/1967 14-12-1967

Act A98 01-01-1972

Act A158 Year of assessment 1973 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A380 Year of assessment 1977 and

subsequent years of assessment

Act A451 Year of assessment 1979 and

subsequent years of assessment

Act 293 21-10-1983

Act 323 para. 7(a) ? Year of assessment

1986 and subsequent years of

assessment;

para. 7(a), (b)? Year of assessment

1987 and subsequent years of

assessment

Act 420 Year of assessment 1990 and

subsequent years of assessment

Act 451 Year of assessment 1991 and

subsequent years of assessment

Section Amending authority In force from

Act 544 Year of assessment 1996 and
subsequent years of assessment

Act 624 Year of assessment 2003 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

6A Act A380 Year of assessment 1977 and
subsequent years of assessment

Act A429 Year of assessment 1978 and
subsequent years of assessment

Act 309 Year of assessment 1985 and
subsequent years of assessment

Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 513 Year of assessment 1994 and
subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 578 Year of assessment 1998 and
subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

6B Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 264 Year of assessment 1982 and

subsequent years of assessment

6C Act 578 Year of assessment 1998 and

subsequent years of assessment

7 Act 77/1967 14-12-1967

Section Amending authority In force from

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Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 337 Year of assessment 1988 and

subsequent years of assessment

Act 624 Year of assessment 2002 and

subsequent years of assessment

9 Act A226 Year of assessment 1974 and
subsequent years of assessment

10 Act 77/1967 14-12-1967

Act A226 Year of assessment 1974 and
subsequent years of assessment

11 Act 624 Year of assessment 2003 and
subsequent years of assessment

13 P. U. (A) 256/1970 Year of assessment 1968 and
subsequent years of assessment

Act A60 Year of assessment 1968 and
subsequent years of assessment

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act 293 01-01-1984

Act 309 For a passage commencing on or
after 19-10-1984

Act 323 25-10-1985

Act 557 Year of assessment 1997 and
subsequent years of assessment

Act 591 24-10-1998

Section Amending authority In force from

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13A Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 293 Year of assessment 1984 and

subsequent years of assessment

14 Act A1093 Year of assessment 2001 and

subsequent years of assessment

15 Act A158 Year of assessment 1973 and

subsequent years of assessment

Act A451 Year of assessment 1973 and

subsequent years of assessment

Act 328 24-10-1986

15A Act 293 21-10-1983

Act 309 21-10-1983

Act 328 21-10-1983

Act 557 01-01-1997

Act 624 21-09-2002

17 Act A226 Year of assessment 1974 and

subsequent years of assessment

18 Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 241 Year of assessment 1980 and

subsequent years of assessment

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act A643 Year of assessment 1987 and

subsequent years of assessment

Section Amending authority In force from

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Act 364 Year of assessment 1989 and

subsequent years of assessment

Act 476 Year of assessment 1992 and

subsequent years of assessment

Act 624 Year of assessment 2003 and

subsequent years of assessment

19 Act 77/1967 14-12-1967

Act 420 Year of assessment 1989 and

subsequent years of assessment

Act 451 Year of assessment 1992 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

20 Act A1055 01-01-2000

21 Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A1055 01-01-2000

Act A1093 Year of assessment 2001 and
subsequent years of assessment

Act A1151 Year of assessment 2004 and
subsequent years of assessment

21A Act A1093 Year of assessment 2001 and
subsequent years of assessment

Act A1151 Year of assessment 2004 and
subsequent years of assessment

22 Act A13 Year of assessment 1968 and
subsequent years of assessment

Act 241 Year of assessment 1981 and
subsequent years of assessment

Section Amending authority In force from

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23 Act A226 Year of assessment 1974 and
subsequent years of assessment

24 Act A226 Year of assessment 1974 and
subsequent years of assessment

Act 293 21-10-1983

25 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A273 Year of assessment 1975 and
subsequent years of assessment

Act A380 Year of assessment 1977 and
subsequent years of assessment

Act 578 01-01-1999

Act 644 Year of assessment 2006 and
subsequent years of assessment

26 Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A1093 Year of assessment 2001 and
subsequent years of assessment

27 Act 77/1967 14-12-1967

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act 578 01-01-1999

29 Act A226 Year of assessment 1974 and
subsequent years of assessment

30 Act 77/1967 14-12-1967

Section Amending authority In force from

Act A226 Year of assessment 1974 and
subsequent years of assessment

31 Act 77/1967 14-12-1967

Act 624 Year of assessment 2003 and
subsequent years of assessment

32 Act 77/1967 14-12-1967

Act A273 Year of assessment 1975 and
subsequent years of assessment

Act 644 Year of assessment 2006 and
subsequent years of assessment

33 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and
subsequent years of assessment

P. U. (A) 256/1970 Year of assessment 1968 and
subsequent years of assessment

Act A60 Year of assessment 1968 and
subsequent years of assessment

34 Act A226 Year of assessment 1974 and
subsequent years of assessment

Act 274 Year of assessment 1984 and
subsequent years of assessment

Act A643 Year of assessment 1987 and

subsequent years of assessment

Act 476 Year of assessment 1992 and

subsequent years of assessment

Act 497 Year of assessment 1994 and

subsequent years of assessment

Act 513 Year of assessment 1994 and

subsequent years of assessment

Section Amending authority In force from

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Act 544 Year of assessment 1996 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

Act 591 Year of assessment 1999 and

subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act 619 Year of assessment 2002 and

subsequent years of assessment

Act 631 Year of assessment 2004 and

subsequent years of assessment

Act 639 para. 7(a) ? Year of assessment

2001 and subsequent years of
assessment;

spara. 7(b) (i)? Year of assessment

2004 and subsequent years of
assessment

34A Act 274 Year of assessment 1984 and
subsequent years of assessment

Act A643 Year of assessment 1987and
subsequent years of assessment

Act 421 Year of assessment 1991and
subsequent years of assessment

Act 631 Year of assessment 2003 and
subsequent years of assessment

34B Act 451 Year of assessment 1992 and
subsequent years of assessment

Act 513 01-01-1994

Section Amending authority In force from

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Act 531 Year of assessment 1994 and
subsequent years of assessment;

para. 6(a) (i) ? for year of

assessment 1991

35 Act 77/1967 14-12-1967

Act A108 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act 274 Year of assessment 1984 and

subsequent years of assessment

Act 631 Year of assessment 2004 and

subsequent years of assessment

36 Act 309 Year of assessment 1985 and

subsequent years of assessment

Act 631 Year of assessment 2003 and

subsequent years of assessment

37 Act 77/1967 14-12-1967

Act 624 Year of assessment 2003 and

subsequent years of assessment

38 Act 77/1967 14-12-1967

Act 624 Year of assessment 2003 and

subsequent years of assessment

38A Act 364 Year of assessment 1989 and

subsequent years of assessment

39 Act A13 Year of assessment 1969 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A344 Year of assessment 1976 and

subsequent years of assessment

Section Amending authority In force from

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Act A451 Year of assessment 1979 and

subsequent years of assessment

Act 241 Year of assessment 1981 and

subsequent years of assessment;

para. 10(b) ? Year of assessment

1980 and subsequent years of

assessment

Act 274 01-01-1983

Act 293 21-10-1983

Act 309 Year of assessment 1985 and

subsequent years of assessment

Act A643 Year of assessment 1987 and

subsequent years of assessment

Act 364 Year of assessment 1989 and

subsequent years of assessment

Act 421 Year of assessment 1990 and
subsequent years of assessment

Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 557 Year of assessment 1997 and
subsequent years of assessment

Act 578 17-10-1997

Act 608 Year of assessment 2001 and
subsequent years of assessment

Act 619 Year of assessment 2002 and
subsequent years of assessment

Act 631 Year of assessment 2004 and
subsequent years of assessment

Section Amending authority In force from

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Act 644 Year of assessment 2006 and
subsequent years of assessment

42 Act A643 Year of assessment 1987 and
subsequent years of assessment

Act A1055 Year of assessment 1999 and

subsequent years of assessment

43 Act A226 Year of assessment 1974 and

subsequent years of assessment

Act 364 Year of assessment 1989 and

subsequent years of assessment

Act 451 Year of assessment 1992 and

subsequent years of assessment

Act 476 Year of assessment 1991 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

44 Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Act 309 Year of assessment 1985 and

subsequent years of assessment

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 328 01-01-1986

Act 364 Year of assessment 1989 and

subsequent years of assessment

Act 420 Year of assessment 1989 and

subsequent years of assessment

Act 421 Year of assessment 1990 and

subsequent years of assessment

Section Amending authority In force from

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Act 451 Year of assessment 1991 and

subsequent years of assessment;

para. 11(a), (b)? Year of

assessment 1992 and subsequent

years of assessment

Act 476 01-01-1990

Act 513 Year of assessment 1994 and

subsequent years of assessment;

para. 8(d) ? 01-01-1994

Act 531 Year of assessment 1995 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

Act 591 Year of assessment 2000 and

subsequent years of assessment

Act A1093 Year of assessment 2001 and
subsequent years of assessment

Act 608 Year of assessment 2001 and
subsequent years of assessment

Act A1151 Year of assessment 2004 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

Act 644 Year of assessment 2006 and
subsequent years of assessment

44A Act 644 Year of assessment 2006 and
subsequent years of assessment

45 Act 77/1967 14-12-1967

P. U. (A) 256/1970 Year of assessment 1970 and
subsequent years of assessment

Section Amending authority In force from

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Act A60 Year of assessment 1970 and
subsequent years of assessment

Act A273 Year of assessment 1975 and
subsequent years of assessment

Act A429 Year of assessment 1978 and
subsequent years of assessment

Act A471 Year of assessment 1980 and
subsequent years of assessment

Act 315 Year of assessment 1985 and
subsequent years of assessment

Act 323 Year of assessment 1986 and
subsequent years of assessment

Act 337 Year of assessment 1988 and
subsequent years of assessment

Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 608 Year of assessment 2001 and
subsequent years of assessment

45A Act 608 Year of assessment 2001 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

Act 644 Year of assessment 2006 and
subsequent years of assessment

46 Act A273 Year of assessment 1975 and
subsequent years of assessment

Act A429 Year of assessment 1978 and
subsequent years of assessment

Act A471 Year of assessment 1980 and
subsequent years of assessment

Section Amending authority In force from

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Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 544 Year of assessment 1996 and
subsequent years of assessment

Act 557 Year of assessment 1997 and
subsequent years of assessment

Act 600 Year of assessment 2000 in respect
of the basis period ending in the
year 2000 and subsequent years of
assessment

Act 608 Year of assessment 2001 and
subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

46A Act 631 Years of assessment 2003, 2004

and 2005

47 P.U. (A) 256/1970 Year of assessment 1970 and

subsequent years of assessment

Act A60 Year of assessment 1970 and

subsequent years of assessment

Act A227 Year of assessment 1974 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Section Amending authority In force from

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Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 241 Year of assessment 1980 and

subsequent years of assessment

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

48 Act 77/1967 14-12-1967

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A227 Year of assessment 1974 and
subsequent years of assessment

Act A273 Year of assessment 1975 and
subsequent years of assessment

Act A429 Year of assessment 1978 and
subsequent years of assessment

Act A451 Year of assessment 1979 and
subsequent years of assessment

Act A471 Year of assessment 1980 and
subsequent years of assessment

Act 309 Year of assessment 1985 and
subsequent years of assessment

Act 323 Year of assessment 1986 and
subsequent years of assessment

Section Amending authority In force from

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Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 513 Year of assessment 1994 and
subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 544 Year of assessment 1996 and
subsequent years of assessment

Act 578 Year of assessment 1998 and
subsequent years of assessment

Act A1151 Year of assessment 2004 and
subsequent years of assessment

Act 631 Year of assessment 2004 and
subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

49 Act 77/1967 14-12-1967

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Act A451 Year of assessment 1979 and

subsequent years of assessment

Act 241 Year of assessment 1980 and

subsequent years of assessment;

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 451 Year of assessment 1991 and

subsequent years of assessment

Section Amending authority In force from

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Act 476 Year of assessment 1991 and

subsequent years of assessment

Act 513 Year of assessment 1994 and

subsequent years of assessment;

para. 10(a) ? 01-06-1991

Act 544 Year of assessment 1996 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

Act 600 Year of assessment 2000 in respect

of the basis period ending in the

year 2000 and subsequent years of

assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

50 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A108 Year of assessment 1970 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 476 Year of assessment 1991 and
subsequent years of assessment

Section Amending authority In force from

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Act 513 01-06-1991

Act 544 Year of assessment 1996 and
subsequent years of assessment

Act 600 Year of assessment 2000 in respect

of the basis period ending in the

year 2000 and subsequent years of

assessment

Act 608 Year of assessment 2001 and
subsequent years of assessment

51 Act A471 Year of assessment 1980 and

subsequent years of assessment

54 Act 77/1967 14-12-1967

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A451 Year of assessment 1979 and
subsequent years of assessment

Act 264 Year of assessment 1982 and

subsequent years of assessment

Act 293 Year of assessment 1984 and

subsequent years of assessment

54A Act A451 Year of assessment 1979 and

subsequent years of assessment

Act 264 Year of assessment 1982 and

subsequent years of assessment

Act 293 Year of assessment 1984 and

subsequent years of assessment

Act 309 Year of assessment 1984 and

subsequent years of assessment

Act 591 Year of assessment 1999 and

subsequent years of assessment

Section Amending authority In force from

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54B Act 264 Year of assessment 1982 and

subsequent years of assessment

Act 293 Year of assessment 1984 and

subsequent years of assessment

55 Act 77/1967 14-12-1967

56 Act 77/1967 14-12-1967

59 Act 77/1967 14-12-1967

60 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and
subsequent years of assessment

Act A471 Year of assessment 1980 and
subsequent years of assessment

Act 264 Year of assessment 1982 and
subsequent years of assessment

Act 328 Year of assessment 1987 and
subsequent years of assessment

Act 337 Year of assessment 1988 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 544 para. 10(a), (b) ? Year of
assessment 1995 and subsequent

years of assessment;

para.10(c) ? Year of assessment
1996 and subsequent years of

assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

Section Amending authority In force from

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Act 591 Year of assessment 1999 and

subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

60A Act A227 Year of assessment 1974 and

subsequent years of assessment

Act A471 Year of assessment 1980 and

subsequent years of assessment

60AA Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 608 Year of assessment 1986 and

subsequent years of assessment

60AB Act 531 Year of assessment 1995 and

subsequent years of assessment

60B Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 264 Year of assessment 1982 and

subsequent years of assessment

60C Act 264 Year of assessment 1982 and
subsequent years of assessment

Act 624 Year of assessment 2003 and
subsequent years of assessment

60D Act 420 Year of assessment 1990 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 513 01-01-1994

Section Amending authority In force from

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Act 600 Year of assessment 2000 in respect
of the basis period ending in the
year 2000 and subsequent years of
assessment

60E Act 420 Year of assessment 1990 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 513 01-01-1993

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 544 Year of assessment 1995 and

subsequent years of assessment

Act 578 01-01-1999

Act 624 Year of assessment 2003 and

subsequent years of assessment

60F Act 497 Year of assessment 1993 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

60FA Act 644 Year of assessment 2006 and

subsequent years of assessment

60G Act 544 Year of assessment 1996 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

60H Act 557 Year of assessment 1995 and

subsequent years of assessment

61 Act 77/1967 14-12-1967

P. U. (A) 256/1970 Year of assessment 1968 and

subsequent years of assessment

Section Amending authority In force from

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Act A60 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act 420 Year of assessment 1990 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

61A Act 639 Year of assessment 2005 and

subsequent years of assessment

62 Act A226 Year of assessment 1974 and

subsequent years of assessment

63A Act 420 Year of assessment 1990 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

63B Act 420 Year of assessment 1990 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

63C Act 639 Year of assessment 2005 and

subsequent years of assessment

63D Act 639 Year of assessment 2005 and

subsequent years of assessment

64 Act 77/1967 14-12-1967

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A471 Year of assessment 1980 and

subsequent years of assessment

65 Act A226 Year of assessment 1974 and

subsequent years of assessment

Section Amending authority In force from

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65A Act A380 Year of assessment 1977 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Act 451 Year of assessment 1991 and

subsequent years of assessment

Act 531 Year of assessment 1995 and

subsequent years of assessment

67 Act A226 Year of assessment 1974 and

subsequent years of assessment

Act 274 01-01-1983

Act 293 21-10-1983

68 Act 77/1967 14-12-1967

69 Act 77/1967 14-12-1967

70 Act 77/1967 14-12-1967

72 Act 77/1967 14-12-1967

74 Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A1151 Year of assessment 2004 and
subsequent years of assessment

75 Act 619 Year of assessment 2002 and
subsequent years of assessment

Act 624 27-12-2002

75A Act 624 27-12-2002

Act 644 01-01-2006

76 Act 513 Year of assessment 1994 and
subsequent years of assessment

77 Act A1055 01-01-2000

Section Amending authority In force from

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Act A1069 01-01-2000

Act A1093 Year of assessment 2001 and
subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 631 Year of assessment 2003 and

subsequent years of assessment

Act 639 Year of assessment 2004 and

subsequent years of assessment

77A Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 631 Year of assessment 2004 and

subsequent years of assessment

78 Act 451 14-12-1990

80 Act 77/1967 14-12-1967

P. U. (A) 256/1970 01-01-1968

Act A60 01-01-1968

Act A1069 01-01-2000

81 Act A13 Year of assessment 1968 and

subsequent years of assessment

P. U. (A) 256/1970 Year of assessment 1968 and

subsequent years of assessment

Act A60 Year of assessment 1968 and

subsequent years of assessment

82 Act 337 24-10-1986

Act 451 14-12-1990

Act A1093 Year of assessment 2001 and

subsequent years of assessment

Section Amending authority In force from

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Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 624 Year of assessment 2003 and

subsequent years of assessment

82A Act 624 Year of assessment 2003 and

subsequent years of assessment

83 Act A158 Year of assessment 1973 and

subsequent years of assessment

Act 337 Year of assessment 1988 and

subsequent years of assessment

Act 557 01-01-1997

84 Act 77/1967 14-12-1967

86 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 639 Year of assessment 2004 and

subsequent years of assessment

89 Act 77/1967 14-12-1967

90 Act A1069 01-01-2000

Act A1093 Year of assessment 2001 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

91 Act 578 01-01-1999

Act 644 01-01-2006

Section Amending authority In force from

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92 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A108 Year of assessment 1972 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A1055 01-01-2000

Act A1093 Year of assessment 2001 and

subsequent years of assessment

93 Act A1069 01-01-2000

Act A1151 Year of assessment 2004 and
subsequent years of assessment

95 Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 644 Year of assessment 2006 and
subsequent years of assessment

96 Act A1069 01-01-2000

Act A1151 Year of assessment 2004 and
subsequent years of assessment

96A P.U. (A) 256/1970 01-01-1970

Act A60 01-01-1970

Act A1069 01-01-2000

Act A1151 Year of assessment 2004 and
subsequent years of assessment

97 Act A108 In respect of an appeal made on or
after 01-01-1972

98 Act 77/1967 14-12-1967

Section Amending authority In force from

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99 Act 77/1967 14-12-1967

Act A1093 For year of assessment 2000

100 Act A108 01-01-1972

101 Act 77/1967 14-12-1967

P. U. (A) 256/1970 01-01-1970

Act A60 01-01-1970

102 Act A108 01-01-1972

Act 600 16-06-2000

103 Act 77/1967 14-12-1967

P. U. (A) 256/1970 01-01-1970

Act A60 01-01-1970

Act A451 01-01-1979

Act 264 01-01-1982

Act 274 01-01-1983

Act 293 21-10-1983

Act 557 25-10-1996

Act A1069 01-01-2000

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 631 Year of assessment 2004 and

subsequent years of assessment

Act 639 Year of assessment 2004 and

subsequent years of assessment

103A Act A1069 01-01-2000

Section Amending authority In force from

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Act A1093 Year of assessment 2001 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 631 Year of assessment 2003 and

subsequent years of assessment

104 Act A451 01-01-1979

Act 274 01-01-1983

Act 293 21-10-1983

Act A1151 Year of assessment 2004 and

subsequent years of assessment

106 Act A451 01-01-1979

Act A1069 01-01-2000

Act A1151 Year of assessment 2004 and

subsequent years of assessment

107 Act 77/1967 14-12-1967

Act A158 Year of assessment 1973 and

subsequent years of assessment

Act A451 Year of assessment 1979 and

subsequent years of assessment

Act 337 Year of assessment 1988 and

subsequent years of assessment

107A Act 274 01-01-1983

Act 293 21-10-1983

Act 328 24-10-1986

Act 557 25-10-1996

Act 624 21-09-2000

107B Act 337 01-01-1989

Section Amending authority In force from

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Act A1069 01-01-2000

Act 600 For the year of assessment 2000 in

respect of the basis period ending

in the year 2000 and subsequent

years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

107C Act A1069 Year of assessment 2000 and

subsequent years of assessment

Act A1093 Year of assessment 2001 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 631 Year of assessment 2003 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

108 Act 77/1967 14-12-1967

P.U. (A) 256/1970 Year of assessment 1968 and

subsequent years of assessment

Act A60 Year of assessment 1968 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A380 Year of assessment 1977 and

subsequent years of assessment

Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 337 Year of assessment 1988 and

subsequent years of assessment

Section Amending authority In force from

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Act 364 Year of assessment 1989 and

subsequent years of assessment

Act A774 Year of assessment 1991 and

subsequent years of assessment

Act 497 Year of assessment 1993 and

subsequent years of assessment;

para 6 (b) ? for the year of

assessment 1989

Act 513 Year of assessment 1994 and

subsequent years of assessment

Act 531 Year of assessment 1995 and

subsequent years of assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

Act A1093 Year of assessment 2001 and

subsequent years of assessment

Act A1151 Year of assessment 2001 and

subsequent years of assessment

Act 631 para. 17(a) ? Year of assessment

2003 and subsequent years of

assessment;

para. 17 (b) ? 01-01-2001

109 Act 77/1967 14-12-1967

Act A98 01-01-1972

Act A158 Year of assessment 1973 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A380 01-01-1977

Act A451 01-01-1979

Section Amending authority In force from

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Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 323 25-10-1985

Act 328 24-10-1986

Act 497 30-10-1992

Act 557 25-10-1996

109A Act A158 Year of assessment 1973 and

subsequent years of assessment

109B Act 293 21-10-1983

Act 309 21-10-1983

Act 328 21-10-1983

Act 557 para. 19 (a) ? 01-01-1997;

para 19 (b) ? 25-10-1996

109C Act 323 01-01-1986

Act A643 01-01-1986

109D Act 639 Year of assessment 2005 and

subsequent years of assessment

110 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A158 Year of assessment 1973 and

subsequent years of assessment

Act 293 21-10-1983

Act 364 Year of assessment 1989 and

subsequent years of assessment

Act 420 Year of assessment 1990 and

subsequent years of assessment

Section Amending authority In force from

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Act 497 Year of assessment 1993 and

subsequent years of assessment

Act 513 Year of assessment 1994 and

subsequent years of assessment

Act 531 Year of assessment 1995 and

subsequent years of assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

Act A1093 Year of assessment 2001 and

subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

110A Act A774 Year of assessment 1991 and

subsequent years of assessment

111 Act 77/1967 14-12-1967

Act A158 01-01-1973

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A1093 Year of assessment 2001 and

subsequent years of assessment

111A Act A774 Year of assessment 1991 and

subsequent years of assessment

111B Act 639 01-01-2005

Act 644 01-01-2006

111C Act 639 01-01-2005

112 Act 77/1967 14-12-1967

Act 513 25-02-1994

Section Amending authority In force from

Act A1069 01-01-2000

Act A1151 Year of assessment 2004 and
subsequent years of assessment

113 Act 77/1967 14-12-1967

Act 513 25-02-1994

114 Act 513 25-02-1994

Act A1069 01-01-2000

115 Act 513 25-02-1994

116 Act 77/1967 14-12-1967

Act 513 25-02-1994

Act A1069 01-01-2000

117 Act 513 25-02-1994

118 Act 513 25-02-1994

119 Act 513 25-02-1994

119A Act A1093 01-01-2000

120 P. U. (A) 256/1970 01-05-1970

Act A60 01-05-1970

Act A158 Year of assessment 1973 and
subsequent years of assessment

Act 328 24-10-1986

Act 513 25-02-1994

Act 578 01-01-2000

Act A1069 01-01-2000

Act A1093 01-01-2001

123 Act A1028 02-07-1998

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124 Act 77/1967 14-12-1967

125 Act 77/1967 14-12-1967

Act 644 Year of assessment 2006 and

subsequent years of assessment

127 Act 77/1967 14-12-1967

Act 274 01-01-1983

Act 293 21-10-1983

Act 337 Year of assessment 1988 and

subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act 644 01-10-2005

127A Act 608 Year of assessment 2001 and

subsequent years of assessment

128 Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 274 Year of assessment 1983 and

subsequent years of assessment

Act 328 Year of assessment 1987 and

subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

129A Act 608 Year of assessment 2001 and

subsequent years of assessment

130 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Section Amending authority In force from

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Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A380 Year of assessment 1977 and

subsequent years of assessment

Act 451 Year of assessment 1991 and

subsequent years of assessment

Act 591 Year of assessment 1999 and

subsequent years of assessment

Act 608 Year of assessment 2001 and

subsequent years of assessment

133A Act A451 Year of assessment 1980 and

subsequent years of assessment

Act 544 Year of assessment 1996 and

subsequent years of assessment

134 Act 77/1967 14-12-1967

Act A998 01-08-1997

Act 644 01-01-2006

136 Act 323 25-10-1985

Act A955 02-08-1996

Act 557 02-08-1996

Act A1028 02-07-1998

Act 644 01-01-2006

137 Act A955 02-08-1996

138 Act 77/1967 14-12-1967

Act A225 01-01-1974

Act A955 02-08-1996

140 Act A1151 Year of assessment 2004 and

subsequent years of assessment

Section Amending authority In force from

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141 Act 77/1967 14-12-1967

142 Act A225 01-01-1974

143 Act 77/1967 14-12-1967

144 Act A955 02-08-1996

145 Act 293 21-10-1983

Act 420 01-01-1989

146 Act 644 01-01-2006

147 Act A158 01-01-1973

Act 644 01-01-2006

148 Act 77/1967 14-12-1967

151 Act 639 01-01-2005

152A Act A1093 Year of assessment 2001 and

subsequent years of assessment

153 Act 77/1967 14-12-1967

Act 328 24-10-1986

Act 451 14-12-1990

Act 644 01-01-2006

154 Act 77/1967 14-12-1967

Act 531 Year of assessment 1995 and

subsequent years of assessment

154A Act A158 Year of assessment 1968 and

subsequent years of assessment

156 Act 608 Year of assessment 2001 and

subsequent years of assessment

Schedule 1 Act A32 Year of assessment 1971 and

subsequent years of assessment

Section Amending authority In force from

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Act A158 Year of assessment 1973 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A344 Year of assessment 1976 and

subsequent years of assessment

Act A380 Year of assessment 1977 and

subsequent years of assessment

Act A451 Year of assessment 1979 and

subsequent years of assessment

Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 241 Year of assessment 1981 and

subsequent years of assessment

Act 264 Year of assessment 1982 and

subsequent years of assessment

Act 293 Year of assessment 1984 and
subsequent years of assessment

Act 309 Year of assessment 1984 and
subsequent years of assessment

Act 323 Year of assessment 1986 and
subsequent years of assessment

Act 328 From year of assessment 1984

Act 337 Year of assessment 1988 and
subsequent years of assessment

Act 364 Year of assessment 1989 and
subsequent years of assessment

Act 420 Year of assessment 1990 and
subsequent years of assessment

Section Amending authority In force from

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Act 451 Year of assessment 1991 and
subsequent years of assessment

Act 476 Year of assessment 1992 and
subsequent years of assessment

Act 497 Year of assessment 1993 and
subsequent years of assessment

Act 513 Year of assessment 1994 and

subsequent years of assessment

Act 531 Year of assessment 1995 and
subsequent years of assessment

Act 544 Year of assessment 1996 and
subsequent years of assessment

Act 557 Year of assessment 1997 and
subsequent years of assessment

Act 578 Year of assessment 1998 and
subsequent years of assessment

Act 600 For the year of assessment 2000 in
respect of the basis period ending

in the year 2000 and subsequent
years of assessment

Act A619 Year of assessment 2002 and
subsequent years of assessment

Act 631 Year of assessment 2004 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

Schedule 2 Act 77/1967 14-12-1967

Act A226 Year of assessment 1974 and
subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Section Amending authority In force from

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Act 309 19-10-1984

Schedule 3 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

P. U. (A) 256/1970 Year of assessment 1970 and

subsequent years of assessment

Act A60 Year of assessment 1970 and

subsequent years of assessment

Act A108 Year of assessment 1968 and

subsequent years of assessment

Act A158 Year of assessment 1968 and

subsequent years of assessment

Act A226 Year of assessment 1974 and

subsequent years of assessment

Act A273 Year of assessment 1975 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Act 241 Year of assessment 1981 and
subsequent years of assessment

Act 274 Year of assessment 1984 and
subsequent years of assessment

Act 293 Year of assessment 1984 and
subsequent years of assessment

Act 309 Year of assessment 1985 and
subsequent years of assessment

Act 323 Year of assessment 1985 and
subsequent years of assessment

Act A643 Year of assessment 1987 and
subsequent years of assessment

Section Amending authority In force from

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Act 328 Year of assessment 1987 and
subsequent years of assessment

Act 421 Year of assessment 1991 and
subsequent years of assessment

Act 451 Year of assessment 1991 and
subsequent years of assessment

Act A1028 Year of assessment 1991 and
subsequent years of assessment

Act 476 Year of assessment 1992 and

subsequent years of assessment

Act 513 Year of assessment 1994 and

subsequent years of assessment

Act 531 Year of assessment 1995 and

subsequent years of assessment

Act 544 Year of assessment 1996 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

Act 578 Year of assessment 1998 and

subsequent years of assessment

Act 600 For year of assessment 2000

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act A619 Year of assessment 2002 and

subsequent years of assessment

Act A1151 Year of assessment 2004 and

subsequent years of assessment

Act 631 Year of assessment 2004 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

Section Amending authority In force from

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Act 644 Year of assessment 2006 and
subsequent years of assessment

Schedule 4 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and
subsequent years of assessment

Act A471 Year of assessment 1980 and
subsequent years of assessment

Act 309 Year of assessment 1985 and
subsequent years of assessment

Schedule 4A Act 364 Year of assessment 1989 and
subsequent years of assessment

Act 420 Year of assessment 1989 and
subsequent years of assessment

Act 639 Year of assessment 2005 and
subsequent years of assessment

Act 644 Year of assessment 2006 and
subsequent years of assessment

Schedule 4B Act 451 Year of assessment 1992 and
subsequent years of assessment

Schedule 4C Act 591 Year of assessment 2000 and

subsequent years of assessment

Act 608 Year of assessment 2001 and
subsequent years of assessment

Act 644 Year of assessment 2006 and
subsequent years of assessment

Schedule 5 Act 77/1967 14-12-1967

Act A108 01-01-1972

Act A225 01-03-1974

Act A434 01-07-1978

Section Amending authority In force from

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Act 328 24-10-1986

Act 451 14-12-1990

Act 600 16-06-2000

Schedule 6 Act 77/1967 14-12-1967

Act A13 Year of assessment 1968 and
subsequent years of assessment

P. U. (B) 146/1969 10-12-1969

P. U. (A) 510/1969 Year of assessment 1971 and
subsequent years of assessment

Act A158 Year of assessment 1973 and
subsequent years of assessment

P. U. (A) 266/1974 Year of assessment 1973 and

subsequent years of assessment

P. U. (A) 267/1974 Year of assessment 1968 and
subsequent years of assessment

P. U. (A) 328/1974 Year of assessment 1963 and
subsequent years of assessment

Act A226 Year of assessment 1974 and
subsequent years of assessment

P. U. (B) 50/1976 Year of assessment 1976 and
subsequent years of assessment

P. U. (B) 303/1976 Year of assessment 1976 and
subsequent years of assessment

P. U. (B) 186/1977 From year of assessment 1973

P. U. (B) 187/1977 Year of assessment 1968 and
subsequent years of assessment

P. U. (B) 363/1977 01-12-1974

P. U. (B) 364/1977 From year of assessment 1973

Section Amending authority In force from

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P. U. (B) 365/1977 From year of assessment 1977

Act A380 Year of assessment 1977 and
subsequent years of assessment

P. U. (B) 421/1979 Year of assessment 1977 and

subsequent years of assessment

P. U. (B) 422/1979 Year of assessment 1977 and

subsequent years of assessment

Act A429 Year of assessment 1978 and

subsequent years of assessment

Act A451 Year of assessment 1979 and

subsequent years of assessment

P. U. (B) 423/1979 Year of assessment 1980 and

subsequent years of assessment

Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 241 para. 18(a) ? Year of assessment

1980 and subsequent years of

assessment;

para. 18(a) ? Year of assessment

1981 and subsequent years of

assessment;

Act 264 Year of assessment 1982 and

subsequent years of assessment

Act 274 Year of assessment 1983 and

subsequent years of assessment

Act 293 Year of assessment 1984 and

subsequent years of assessment

Act 309 Year of assessment 1985 and

subsequent years of assessment;

para. 19(h) ? Year of assessment

1984 and subsequent years of

assessment

Section Amending authority In force from

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Act 323 Year of assessment 1986 and

subsequent years of assessment

Act 328 Year of assessment 1987 and

subsequent years of assessment;

para. 19(h) ? Year of assessment

1988 and subsequent years of

assessment

Act 364 Year of assessment 1989 and

subsequent years of assessment

Act 451 01-10-1989

Act 476 Year of assessment 1992 and

subsequent years of assessment

Act 497 Year of assessment 1993 and

subsequent years of assessment

Act 513 Year of assessment 1994 and

subsequent years of assessment;

para 23(d) ? 16-02-1993

Act 544 Year of assessment 1995 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

Act 591 Year of assessment 1999 and

subsequent years of assessment

Act 600 For year of assessment 2000

Act 608 Year of assessment 2001 and

subsequent years of assessment

Act 631 Year of assessment 2004 and

subsequent years of assessment

Act 639 Year of assessment 2005 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

Section Amending authority In force from

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Schedule 7 Act A226 Year of assessment 1974 and

subsequent years of assessment

Act 591 Year of assessment 1999 and

subsequent years of assessment

Schedule 7A Act A451 Year of assessment 1980 and

subsequent years of assessment

Act A471 Year of assessment 1980 and

subsequent years of assessment

Act 274 Year of assessment 1983 and

subsequent years of assessment

Act 323 Year of assessment 1986 and

subsequent years of assessment

Act A643 Year of assessment 1987 and

subsequent years of assessment

Act 328 Year of assessment 1987 and

subsequent years of assessment

Act 364 Year of assessment 1989 and

subsequent years of assessment;

para. 14(b), (e) ? Year of

assessment 1990 and subsequent

years of assessment

Act 420 Year of assessment 1991 and

subsequent years of assessment

Act 421 Year of assessment 1991 and

subsequent years of assessment

Act 451 Year of assessment 1991 and

subsequent years of assessment

Act 513 01-01-1994

Act 544 Year of assessment 1997 and

subsequent years of assessment

Act 557 Year of assessment 1997 and

subsequent years of assessment

Section Amending authority In force from

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Act 578 Year of assessment 1998 and

subsequent years of assessment

Act 591 Year of assessment 1998 and

subsequent years of assessment

Act 619 Year of assessment 2002 and

subsequent years of assessment

Act 644 Year of assessment 2006 and

subsequent years of assessment

Schedule 7B Act 544 Year of assessment 1996 and

subsequent years of assessment

Schedule 9 Act 77/1967 14-12-1967

P. U. 144/1968 14-12-1967

Act A13 Year of assessment 1968 and

subsequent years of assessment

P.U. (A) 256/1970 Year of assessment 1968 and

subsequent years of assessment

Act A60 Year of assessment 1968 and

subsequent years of assessment

Act A108 01-01-1972

Act A158 Year of assessment 1968 and

subsequent years of assessment

Act A471 Year of assessment 1968 and

subsequent years of assessment

P.U. (A) 212/1989 From year of assessment 1968

P.U. (A) 266/1990 From year of assessment 1968

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