

Promotion of Investments Act 1986

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REPRINT

Act 327

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ACT 1986

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Act 327

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PROMOTION OF INVESTMENTS ACT 1986

An act to make provision for promoting by way of relief from income tax the establishment and development in Malaysia of industrial, agricultural and other commercial enterprises, for the promotions of exports and for incidental and related purposes. [1 January 1986]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and

by the authority of the same, as follows:

## PART I

### PRELIMINARY

#### Short title, construction and commencement

1. (1) This Act may be cited as the Promotion of Investments Act

1986. (2) Subject to section 2, this Act shall be read and construed as one with the Income Tax Act 1967 [Act 53] (hereinafter referred to as the "principal Act").

(3) This Act shall be deemed to have come into force on the 1 January 1986 and shall have effect for the year of assessment 1987 and subsequent years of assessment:

Provided that where approval in respect of any application, whether made before or after the commencement of this Act, is granted under this Act retrospectively from a date prior to the 1 January 1986, this Act shall have effect from such date. (4) Notwithstanding subsection (3), sections 36 and 39 shall have effect only in respect of manufactured products and agricultural produce exported on or after the 1 January 1986.

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#### Interpretation

2. (1) In this Act, unless the context otherwise requires-- "accounting period" means a period for which accounts have been made in accordance with paragraph 15(1)(c);

"agro-based co-operative society" shall have the meaning assigned to it under the Farmers' Organisation Act 1973 [Act 109];

"approved standard", in relation to an hotel, means the standard as determined by the defined authority;

"Area Farmers' Association", "Federal Farmers' Association" and "State Farmers' Association" shall have the meanings assigned to them under the \*Farmers' Association Act 1967 [Act 22 of 1967];

"Area Fishermen's Association", "Federal Fishermen's Association" and "State Fishermen's Association" shall have the meanings assigned to them under the



Fishermen's Association Act 1971 [Act 44];

"contract research and development company" means a company which provides research and development services in Malaysia only to a company other than its related company; "defined authority" means the Minister with the concurrence in writing of the Minister of Finance;

"high technology company" means a company engaged in a promoted activity or in the production of a promoted product in areas of new and emerging technologies;

"hotel" means any accommodation, which includes a hotel, a motel, chalet or hostel, of the approved standard registered with the Ministry of Culture, Arts and Tourism;

"hotel business" means the carrying on of a business in an hotel where such business provides sleeping accommodation and may include providing of food, drinks and other services or facilities and the granting of concessions of any part of such hotel for purposes connected with and incidental to the promotion of tourism;

"in-house research" means research and development carried on in Malaysia within a company for the purposes of its own business;

\*NOTE--The Farmers' Association Act [Act 22 of 1967] has since been repealed by the Farmers' Organization Act 1973 [Act 109].

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"industrial linkage programme" means an integrated programme undertaken by a Ministry or government agency in which a small company or medium company which is a manufacturer and supplier is linked to a larger company or to another small company or medium company through the manufacture and supply of parts and components or through technology or research and development;

"integrated agricultural activity" means an activity which comprises the production of agricultural produce and the

manufacturing of such produce and includes any activity which is related and incidental to such activity;

"Minister", except where there is a specific reference to the Minister of Finance, means the Minister of International Trade and Industry;

"pioneer business" means the business of a pioneer company relating to a promoted activity or promoted product of the company which is carried on by it in its tax relief period; "pioneer certificate" means a pioneer certificate given under section 7 or any such certificate as amended;

"pioneer company" means a company certified by a pioneer certificate to be a pioneer company in relation to a promoted activity or promoted product in respect of which the tax relief period has not ended or has not ceased;

"pioneer factory" means a factory certified by a pioneer certificate to be a pioneer factory;

"post-pioneer business" means the business of a pioneer company deemed under section 15 to have been set up and commenced on the day following the end of its tax relief period; "pre-pioneer business" means the business of a pioneer company relating to the promoted activity or promoted product of the company which is carried on by it before the beginning of the tax relief period;

"production day" means the day specified as such in the pioneer certificate in accordance with section 7;

"promoted activity" means a manufacturing, agricultural, integrated agricultural, hotel, tourist or other industrial or commercial activity determined by the Minister in accordance with section 4 and includes the activity referred to in section 4A, 4B or subsection 5(1A);

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"promoted area" means any area determined by the Minister in accordance with section 4C;

"promoted product" means any product determined by the Minister in accordance with section 4 and includes the product referred to in sections 4A, 4B or subsection 5(1A);

"related company", in relation to a company, means a company--

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

(c) the operations of which are or can be controlled, either directly or indirectly, by a person who control or can control, either directly or indirectly, the

operations of the first-mentioned company:

Provided that a company shall be deemed to be a related company of another company if--

(aa) at least twenty per cent of its issued share capital is beneficially owned, either directly or indirectly, by that other company; or

(bb) at least twenty per cent of its issued share capital of that other company is beneficially owned, either directly or indirectly, by the first mentioned company;

"research and development" means any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes, but does not include--

(a) quality control or routine testing of materials, devices, products or produce;

(b) research in the social sciences or the humanities; (c) routine data collections;

(d) efficiency surveys or management studies; and (e) market research or sales promotion;

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"research and development company" means a company which provides research and development services in Malaysia to its related company or to any other company;

"shareholders' funds" means the aggregate amount of a company's paid up capital (in respect of preference shares and ordinary shares 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), 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;

"small company" or "medium company", unless expressly provided otherwise, means a company--

(a) incorporated in Malaysia pursuant to the Companies Act 1965 [Akta 125]; and

(b) resident in Malaysia in the basis year for a year of assessment,

whose shareholders' funds as at the date of grant of pioneer status and issue of pioneer certificate do not exceed an amount as may be declared, from time to time, by the Minister in a statutory order published in the Gazette.

"tax relief period", in relation to a pioneer company, means the period ascertained in accordance with section 14 and any extension of that period under section 14A;

"technical or vocational training company" means a company which provides technical or vocational training in Malaysia; "tourist project" means a project, other than a hotel business, exclusively carried out for purposes connected with the promotion of tourism and registered with the Ministry of Culture, Arts and Tourism.

(2) Notwithstanding subsection (1), in the case of an industry other than a manufacturing industry, this Act shall apply with such modifications as may be necessary; and, in relation to any such industry, without prejudice to the generality of the foregoing-- (a) references to construction may be disregarded where they are not appropriate;

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(b) references to a product may be construed as references to the activity or activities appropriate to the industry in question;

(c) references to producing a product may be construed as references to carrying on that activity or those activities (references to producing the relevant promoted product may be construed accordingly);

(d) references to production day may be construed as references to the day on which a pioneer company commences to produce its relevant promoted product in marketable quantities or to carry on that activity or those activities on a commercial scale; and

(e) references to a factory may be construed as references to the premises at which a promoted activity is carried on or, where such a construction is inappropriate, may be disregarded.

(3) Section 136 of the principal Act shall apply to the Director General's functions under this Act as it applies to his functions under the principal Act.

(4) Where this Act provides for any income to be exempt from tax under the principal Act, the income in question shall be disregarded for the purposes of the principal Act.

(5) Subject to subsections (1) to (4), where a word or expression used in this Act has its meaning defined (or has a meaning assigned to it) by any provision of the principal Act, either for the purposes of that Act as a whole or for the purposes of any particular provision thereof, then, unless the context otherwise requires, that word or expression shall have in this Act the meaning so defined or assigned. Application of incentives only to companies

3. Subject to sections 5 and 6, the provisions of this Act shall only apply to a company.

Determination of promoted activities or promoted products

4. (1) The Minister shall from time to time determine such activities or products as he may deem fit to be promoted activities or promoted products.

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(2) A list of the promoted activities and promoted products determined under subsection (1) shall be published by statutory order in the Gazette.

(3) In exercising his powers under subsection (1), the Minister may take into consideration the following:

(a) whether or not any activity is being carried out or any product is being produced in Malaysia on a commercial scale suitable to the economic requirements or development of Malaysia or at all; or

(b) whether there are--

(i) favourable prospects for further development of the activity or product; or

(ii) insufficient facilities in Malaysia to enable the activity to be carried out or a product to be produced on a commercial scale suitable to the economic



requirements.

(c) (Deleted by Act A862).

(4) The Minister may consult any person or organization as he may deem fit in the exercise of his powers under subsection (1). (5) The Minister may from time to time review the list of promoted activities or promoted products determined under subsection (1) and may make additions, variations or amendments to or deletions from the list of the promoted activities or promoted products.

Activity or product deemed to be promoted activity or promoted product

4A. Notwithstanding section 4, the Minister, with the concurrence in writing of the Minister of Finance, may on a case to case basis deem any activity or product which is of national and strategic importance to Malaysia to be a promoted activity or promoted product.

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Activity or product deemed to be promoted activity or promoted product for purposes of subsection 5(1C), sections 26C, 26D and 26E

4B. Notwithstanding section 4, the Minister, with the concurrence in writing of the Minister of Finance, may deem any activity or product to be a promoted activity or promoted product for the purposes of subsection 5(1C), sections 26C, 26D and 26E. Determination of promoted areas

4C. (1) The Minister may from time to time determine such areas as he may deem fit to be promoted areas.

(2) A list of the promoted areas determined under subsection (1) shall be published by statutory order in the Gazette. (3) The Minister may from time to time review the list of promoted areas determined under subsection (1) and may make additions, variations or amendments to or deletions from the list of promoted areas.

## PART II

### RELIEF FROM INCOME TAX

#### Chapter 1--Pioneer Status

##### Application for pioneer status



5. (1) Any company or person proposing to register a company, being desirous of establishing or participating in a promoted activity or of producing a promoted product and intending that a factory be constructed, or where the factory is already in existence, be occupied in Malaysia for that purpose, may make an application in writing to the Minister for pioneer status, or for pioneer status to be given when the proposed company has been registered, in relation to that activity or product and that factory: Provided that where an application is made by a company desirous of establishing or participating in a promoted activity or of producing

a promoted product and that company is controlled directly or indirectly by--

(a) a pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27 participating in the same promoted activity or promoted product as that company;

(b) a company granted pioneer status in relation to the same promoted activity or promoted product as that company; or

(c) a post-pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27 and the period as prescribed under paragraph 29(2) (b) or 29(2) (c) has ended,

the application shall be considered if it fulfills such conditions as may be prescribed by the Minister in a statutory order to be published in the Gazette.

(1A) Any company or person proposing to register a company, being desirous of establishing or participating in an activity or of participating in producing a product which is of national and strategic importance to Malaysia and intending that a factory be constructed, or where the factory is already in existence, be occupied in Malaysia for that purpose, may make an application in writing to the Minister for pioneer status, or for pioneer status to be given when the proposed company has been registered, in relation to that activity or product and that factory:

Provided that a company which is already operating in Malaysia may, if it fulfills such conditions as may be determined by the Minister, make an application in writing to the Minister for pioneer status.

(1B) (a) Any company or person proposing to register a company, being desirous of establishing or participating in a promoted activity or of producing a promoted product in a promoted area and intending that a factory be constructed, or where the factory is already in existence, be occupied in

Malaysia for that purpose, may make an application in writing to the Minister for pioneer status, or for pioneer status to be given when the proposed company has been registered, in relation to that activity or product and that factory: Provided that where an application is made by a company desirous of establishing or participating in a promoted activity or of producing Laws of Malaysia<sup>18</sup> ACT 327

a promoted product in a promoted area and that company is controlled directly or indirectly by--

(i) a pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27B participating in the same promoted activity or promoted product as that company;

(ii) a company granted pioneer status in relation to the same promoted activity or promoted product as that company; or

(iii) a post-pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27B and the period as prescribed under paragraph 29C(2) (b) or 29C(2) (c) has ended, the application shall be considered if it fulfills such conditions as may be prescribed by the Minister in a statutory order to be published in the Gazette.

(b) Where a company has been granted pioneer status in relation to a promoted activity or promoted product pursuant to an application received on or after the 1 November 1991 but on or before the 29 October 1993, it may be eligible to apply for pioneer status under paragraph (1B) (a) upon the surrender of the grant of pioneer status in relation to that promoted activity or promoted product: Provided that the notice of the surrender is given not later than the 31 March 1995 and that the Minister is satisfied with the reasons for the surrender of the pioneer status in relation to that promoted activity or promoted product.

(1C) Any company or person proposing to register a contract research and development company, being desirous of establishing or participating in an activity relating to research and development and intending that a factory be constructed, or where the factory is already in existence, be occupied in Malaysia for that purpose, may make an application in writing to the Minister for pioneer status, or for pioneer status to be given when the proposed company has been registered, in relation to that activity and that factory.

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(1D) (a) Any company or person proposing to register a high technology company, being desirous of establishing or participating in a promoted

activity or of producing a promoted product in areas of new and emerging technologies, or any company participating in a promoted activity or producing a promoted product in an industrial linkage programme, and intending that a factory be constructed, or where the factory is already in existence, be occupied in Malaysia for that purpose, may make an application in writing to the Minister for pioneer status, or for pioneer status to be given when the proposed company has been registered, in relation to that activity or product and that factory.

(b) A pioneer company or a company which has been granted pioneer status under subsection 6(1) in respect of an application under subsection 5(1) or 5(1B) or an approval under subsection 27(1) or 27B(1) shall be eligible to apply for pioneer status under paragraph (1D) (a) in respect of the same promoted activity or promoted product:

Provided that the tax relief period for the pioneer company or the period as prescribe under paragraph 29(2) (b), 29(2) (c), 29C(2) (b) or 29C(2) (c) has ended.

(1E) A company granted approval for the purposes of an investment tax allowance under subsection 27(1), 27B(1), 27C(1) or 27F(1) in relation to a promoted activity or promoted product may be eligible to apply for pioneer status under subsections (1), (1B) (1C) and (1D) upon giving notice in writing to the Minister to surrender that approval in relation to that promoted activity or promoted product:

Provided that as at the date of the notice of the surrender the company has not incurred capital expenditure for the purposes of subsection 27(1), 27B(1), 27C(1) or 27F(1) and that the Minister is satisfied with the reasons for the surrender of that approval in relation to that promoted activity or promoted product. (2) Every application under subsection (1) or (1A) shall be in accordance with the regulations made under this Act. Laws of Malaysia20 ACT 327

## Grant of pioneer status

6. (1) On receipt of an application under subsection 5(1), 5(1B) or 5(1D) the Minister may, subject to subsections (2) to (6), grant pioneer status if he is satisfied that it is expedient in the public interest to do so, having regard in particular--

(a) to the number of pioneer companies already established or about to be established in relation to the promoted activity or the promoted product mentioned in the application;

(b) to the production or anticipated production of those companies mentioned in paragraph (a);

(c) to the favourable prospects of further development of the promoted activity or promoted product;

(d) where the application is by a company, to the persons who are directors of the company and the description of persons who are members of the company; and

(e) where the application is by persons proposing to register a company in connection with that application, to the persons who are proposed to be directors of the company and to the description of persons to whom the share capital or any part thereof is proposed to be offered for subscription.

(1A) On receipt of an application under subsection 5(1) the Minister may, subject to subsections (2) to (6), grant pioneer status to a small company or make a decision to grant pioneer status following the registration of a small company, if he is satisfied that the applicant has fulfilled or will fulfill such criteria as may be prescribed in a statutory order to be published in the Gazette. (1AB) On receipt of an application under subsection 5(1A) the Minister may, subject to subsections (2) to (6), grant pioneer status if he is satisfied that the activity or product qualifies to be deemed as a promoted activity or promoted product under section 4A. (1AC) On receipt of an application under subsection 5(1C) the Minister may, subject to subsections (2) to (6), grant pioneer status to a contract research and development company.

(1B) The Minister may, from time to time, review the list of criteria prescribed under subsection (1A) and may make additions, variations or amendments to or deletions from the list as he may deem fit.

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(2) Pioneer status may be granted in the terms of the application or may be granted subject to such variation of those terms, and subject to such conditions as the Minister thinks fit. (3) Where an application for pioneer status is made by persons proposing to register a company in connection with that application, the Minister may decide to grant pioneer status under this section following the registration of the company, and where he so decides-- (a) his decision, in respect of a grant of pioneer status under subsection (1), may be expressed to be subject to such conditions relating to any of the matters mentioned in paragraph (1) (e), as he may specify, or in respect of a grant of pioneer status under subsection (1A) , (1AB) or (1AC) , may be expressed to be subject to any conditions as he may specify;



(b) he shall give notice in writing of that decision and of any such conditions to those persons; and

(c) if the company is registered within three months of the date of the notice or such further period as the Minister may allow, and the Minister is satisfied that those conditions, if any, have been or will be complied with, pioneer status may be granted accordingly.

(4) Where a company is not registered within the time or such further period as prescribed in paragraph (3) (c), the Minister shall revoke the notice referred to in paragraph (3) (b). (5) No pioneer status shall be granted by the Minister, and no decision to grant such pioneer status shall be taken by him, unless the decision to grant and the terms and conditions have had the concurrence in writing of the Minister of Finance. (6) The Minister may vary any condition imposed under subsection (2) or (3) but shall not do so without the concurrence in writing of the Minister of Finance.

#### Pioneer certificate

7. (1) Any company which has been granted pioneer status under section 6 shall within six months from the date of such grant or such extended period as the Minister may allow, request for a pioneer certificate.

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(2) A company requesting for a pioneer certificate shall state--

(a) the marketable quantities of the relevant promoted product produced by its factory prior to the request for the pioneer certificate;

(b) the date on which the factory commenced the production of the promoted product in marketable quantities and the rate of production thereof;

(c) that the conditions imposed under subsection 6(2) have been complied with, or where any of the conditions have not been complied with, the reasons therefor.

(3) The Minister may call for such further particulars or proof of the date specified in paragraph (2) (b) and subject thereto and if satisfied that the conditions have been complied with or with the reasons given under paragraph (2) (c), he may issue a pioneer certificate certifying--

(a) the company to be a pioneer company;

(b) the factory at which the promoted activity is carried on or the promoted product is produced to be a pioneer factory; and

(c) the production day of the pioneer company.

(4) The Minister, with the concurrence in writing of the Minister of Finance, may impose such conditions as he deems fit when issuing a pioneer certificate.

(5) The Minister, with the concurrence in writing of the Minister of Finance, may vary the conditions in the pioneer certificate. (6) The Minister may where necessary amend the pioneer certificate issued under subsection (3).

#### Withdrawal of pioneer status

8. (1) Where a company, which has been granted pioneer status under section 6, fails to comply with the requirements of subsections 7(1) to (3), the Minister shall by notice in writing require the company within thirty days from the date of service of the notice, 23Promotion of Investments

to remedy the failure or to establish to his satisfaction that the failure was due to some cause beyond the control of the company. (2) The Minister may withdraw the pioneer status granted to a company--

(a) where the company has failed to comply with a notice served on it under subsection (1); or

(b) where he is satisfied that the company has contravened any provision of this Act or any condition imposed under subsection 6(2) or (3) and that in all the circumstances it is expedient to do so.

#### Cancellation of pioneer certificate

9. (1) Where a pioneer company fails to comply with any of the conditions imposed under section 7 or with any other provisions of this Act, the Minister shall by notice in writing require the company within thirty days from the date of service of the notice to show cause why the pioneer certificate should not be cancelled. (2) The Minister may cancel the pioneer certificate of a pioneer company--

(a) where the company has failed to comply with a notice served on it under subsection (1); or

(b) where he is not satisfied with the reasons for the non-compliance with the conditions imposed under section 7 or with any other provisions of this Act.



(3) Where the pioneer certificate of a pioneer company is cancelled under this section, the cancellation shall be declared to be effective-- (a) from the date when the pioneer certificate first became operative; or

(b) if the Minister thinks fit, from such date after the date when the pioneer certificate first became operative as the Minister may appoint.

(4) Where paragraph (3) (a) applies in relation to the cancellation of the pioneer certificate of a pioneer company-- (a) subsection 11(2) and sections 14 to 25 shall be deemed never to have had effect in relation to the company;  
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(b) any tax repaid to the company by virtue of subsection 11(2) shall be due and payable by the company on the date of cancellation and the principal Act relating to recovery of tax shall apply; and

(c) where subsection 11(2) had effect before the date of cancellation, any time running under the principal Act at the date when subsection 11(2) first had effect in relation to the company shall be deemed to have commenced to run from the date of cancellation.

(5) Where paragraph (3) (b) applies in relation to the cancellation of the pioneer certificate of a pioneer company-- (a) the tax relief period of the company shall be treated for the purposes of sections 14 to 25 as having ended on the date from which the cancellation is declared to be effective; and

(b) where no accounts of the company's pioneer business have been made up to that date, the figures in the first accounts of the company made up after that date, being accounts--

(i) made up for the purpose of preparing the last accounts of the pioneer business and the first

accounts of the post-pioneer business of the company; and

(ii) relating to an accounting period which includes the date of cancellation, shall for the purposes of sections 14 to 25 be apportioned by reference to the number of days of that period which fall before that date.

(6) Where the pioneer certificate of a company is cancelled under this section

the pioneer status granted to that company shall be deemed to have been revoked.

(7) This section shall apply notwithstanding any other provision of this Act.

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### Application for additional promoted activity or promoted product

10. A pioneer company or a company which for has been granted pioneer status in respect of a promoted activity or promoted product may make an application for pioneer status in respect of any additional promoted activity or promoted product in accordance with section 5.

### Retrospective operations

11. (1) The determination of any promoted activity or promoted product under section 4 or the grant of pioneer status under section 6 or the issue of a pioneer certificate under section 7 may be made to operate retrospectively from a date not earlier than the 1 January

1986. (2) Where by virtue of this section a pioneer certificate is to be operative retrospectively from a date before it was given-- (a) any act or thing which has been done or which has happened for the purposes of the principal Act since that date and which would not have been done or happened if that certificate had been in force at that date shall whenever necessary for the purposes of this Act and the principal Act be treated as not having been done or not having happened; and

(b) if the act consists of the payment of any tax by a pioneer company, that tax shall be repaid in the manner provided in the principal Act as soon as may be after the

expiration of ninety days from the production day of that company.

### Restriction on publication of pioneer certificate, etc.

12. The contents of any application made or of any certificate given under this Part with respect to a pioneer company shall not, except at the instance of the company, be published in the Gazette or in any other manner:

Provided that the Minister shall cause to be published by notification in the Gazette the name of any company-- (a) to whom a pioneer certificate has been given; or (b) whose pioneer certificate has been cancelled. Laws of Malaysia 26  
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## Meaning of company in relation to agriculture

13. For the purposes of this Chapter, in the case of an application for pioneer status in respect of a promoted activity or promoted product in relation to agriculture, "company" includes an agrobased co-operative society, an Area Farmers' Association, a Federal Farmers' Association, a State Farmers' Association, an Area Fishermen's Association, a Federal Fishermen's Association, a State Fishermen's Association and a sole proprietorship, partnership or association solely engaged in agriculture:

Provided that section 23 shall only apply to a company incorporated under any written law.

## Tax relief period

14. The tax relief period of a pioneer company shall begin on its production day and continue for a period of five years. Extension of tax relief period

14A. (1) Subject to section 14B, the Minister may, with the concurrence in writing of the Minister of Finance, extend the tax relief period under section 14 of a pioneer company carrying on a manufacturing activity or an activity relating to the treatment of water where he is satisfied that the company has, by the end of the tax relief period under that section, met the requirements under subsection (2).

(2) The Minister with the concurrence in writing of the Minister of Finance shall prescribe in a statutory order published in the Gazette the promoted activity or promoted product and any other requirements for the purposes of obtaining the extension of the tax relief period.

(3) The extended tax relief period granted under this section shall begin from the date following the end of the tax relief period under section 14 and continue for a period of five years. 27Promotion of Investments

(4) A pioneer company shall make an application in writing to the Minister for an extension of its tax relief period within thirty days or such further period as the Minister may allow after the end of its tax relief period under section 14.

(5) On receipt of an application under subsection (4), the Minister may call for further particulars or any proof of the information given in the application which he considers necessary and— (a) if he is satisfied that the company has complied with the requirements of this section, then, with the

concurrence in writing of the Minister of Finance, grant the extension of the tax relief period; or

(b) if he is not so satisfied, shall cause a notice of his refusal to grant the extension to be sent to the company. (6) The extension of a tax relief period shall be granted subject to the terms and conditions imposed in the pioneer certificate or the variation of those terms and conditions in the certificate. (7) The Minister with the concurrence in writing of the Minister of Finance may vary the terms and conditions imposed under subsections 7(4) and (5) in the pioneer certificate issued under that section.

No extension of tax relief period for application for pioneer status received on or after 1 November 1991

14B. Section 14A shall not apply to a pioneer company where the application for pioneer status is received on or after the 1 November

1991. Extension of tax relief period for pioneer status granted under subsection 6(1AB)

14C. (1) Notwithstanding section 14B, a company which has been granted pioneer status under subsection 6(1AB) may apply in writing for an extension of the tax relief period which has been granted under section 14.

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(2) The Minister with the concurrence in writing of the Minister of Finance may extend the tax relief period granted under section 14.

(3) Subsections 14A(3) to (7) relating to an extension of the tax relief period shall apply, mutatis mutandis, to an application made under subsection (1).

Pioneer and post-pioneer business

15. (1) If the business of a pioneer company is carried on by it before and after the end of its tax relief period, then, for the purposes of the principal Act and this Act--

(a) that business shall be deemed to have permanently ceased at the end of the tax relief period of the pioneer company; (b) in respect of that business, the pioneer company shall be deemed to have set up and commenced a new business (hereinafter referred to as "post-pioneer business") on the day following the end of its tax relief period; (c) the pioneer company shall make up accounts of its pioneer business--



(i) for a period not exceeding one year commencing at the date when that pioneer business of the company commenced;

(ii) for successive periods of one year thereafter; and (iii) for the period not exceeding one year ending at the date when its tax relief period ends; and

(d) in making up the first accounts of its post-pioneer business the pioneer company shall take as the opening figures for those accounts the closing figures in respect of its assets and liabilities as shown in its last accounts in respect of its tax relief period; and its next accounts of its post-pioneer business shall be made up by reference to the closing figures in those first accounts, and any subsequent accounts shall be similarly made up by reference to the closing figures of the preceding accounts of its

post-pioneer business.

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(2) Where a pioneer company has been deemed to have set up and commenced a post-pioneer business and the accounts of the post-pioneer business are made up to a day corresponding to the day on which the annual accounts of the pioneer business were made up--

(a) the basis period (for the year of assessment of the pioneer business) in which the day of commencement of the post-pioneer business falls shall constitute for the post-pioneer business the basis period for that year of assessment; and (b) there shall be no basis period for the post-pioneer business for any year of assessment preceding that first-mentioned year.

16. (Deleted by Act A656). Power to direct in certain events

17. For the purposes of the principal Act and this Act, the Director General may direct that--

(a) any sums payable to a pioneer company in any accounting period which, but for this Act, might reasonably and properly have been expected to have been payable in the normal course of business after the end of that period shall be treated--

(i) as not having been payable in that period but as having been payable on such date after that period as the Director General thinks fit; and

(ii) where that date is after the end of the tax relief period of the pioneer company, as having been so

payable on that date as a sum payable in respect

of its post-pioneer business; and

(b) any expense incurred by a pioneer company within one year after the end of its tax relief period which, but for this Act, might reasonably and properly have been expected to have been incurred in the normal course of business during its tax relief period shall be treated as not having been incurred within that year but as having been incurred-- (i) for the purposes of its pioneer business; and (ii) on such a date during its tax relief period as the Director General thinks fit.

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Capital allowances

18. (1) The income of a pioneer company in respect of its pioneer business falling to be ascertained in accordance with this Act for any accounting period shall be so ascertained (after making any necessary adjustments in consequence of a direction under section 17) after deducting allowances which fall to be made under Schedule 3 to the principal Act notwithstanding that no claim for such allowances have been made:

Provided that where plant or machinery is used directly or indirectly for the purposes of storage, treatment or disposal of scheduled wastes as defined in the Environmental Quality (Scheduled Wastes) Regulations 1989 by a pioneer company for the purposes of its pioneer business, any capital expenditure incurred during the tax relief period by the pioneer company in respect of that plant or machinery shall for the purposes of Schedule 3 of the principal Act be deemed to have been incurred on the day following the end of the tax relief period.

(2) (Deleted by Act A751).

(3) Subject to paragraph (6) (b) --

(a) where an asset is used for the purposes of the pre-pioneer business of a pioneer company and continues to be used for the purposes of the pioneer business of that pioneer company --

(i) the residual expenditure as at the end of the basis period for the year of



assessment immediately prior to the year of assessment in the basis period in which the day of commencement of the pioneer

business falls shall, in respect of that pioneer business and for the purposes of Schedule 3 to the principal Act, be deemed to be the residual expenditure of

that asset on the day of commencement of that

pioneer business; and

(ii) any capital expenditure incurred by that pioneer company in respect of that asset during the basis period in which the date of cessation of that pre-pioneer business falls shall, for the purposes of Schedule 3 to the principal Act, be deemed to have been incurred on the day of commencement of that

pioneer business;

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(b) where an asset is used for the purposes of the pioneer business of a pioneer company and continues to be used for the purposes of the post-pioneer business of that pioneer company--

(i) the residual expenditure as at the end of the basis period for the year of assessment immediately prior to the year of assessment in the basis period in which the day of commencement of the post-pioneer business falls shall, in respect of that post-pioneer business and for the purposes of Schedule 3 to the principal Act, be deemed to be the residual

expenditure of that asset on the day of commencement of that post-pioneer business; and

(ii) any capital expenditure incurred by that pioneer company in respect of that asset during the basis period in which the date of cessation of that pioneer business falls shall, for the purposes of Schedule 3 to the principal Act, be deemed to have been

incurred on the day of commencement of that post-pioneer business.

(4) (Deleted by Act A751).

(5) Notwithstanding paragraph 75 of Schedule 3 to the principal Act, where an

asset is used for the purposes of the pre-pioneer business of a pioneer company and by reason of an insufficiency or absence of adjusted income from that pre-pioneer business for the year of assessment immediately prior to the year of assessment in the basis period in which the day of commencement of the pioneer business falls, effect cannot be given or cannot be given in full to any allowance or to the aggregate amount of any allowances in respect of the asset falling to be made to the company for that year in relation to that pre-pioneer business, that allowance or that aggregate amount, as the case may be, shall be deemed to be an allowance to be made to the company in relation to its pioneer business for the year of assessment in the basis period in which the day of commencement of the pioneer business falls. (6) Where in a case to which subsections (1) and (3) apply, an asset used for the purposes of a promoted activity or producing a promoted product is also used for the purposes of an activity or producing a product which activity or product is not a promoted activity or promoted product or which activity or product is a

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promoted activity or promoted product in respect of which the company has been granted pioneer status and whose tax relief period has expired--

(a) there shall be made under Schedule 3 to the principal Act in respect of any capital expenditure on the asset such a deduction as is reasonable having regard to the extent to which the asset is used for the purposes of that second- mentioned activity or product; and

(b) the residual expenditure arrived at under paragraph (3) (a) or (3) (b) shall be reduced by the amount of any deduction made under paragraph (a).

(7) For the avoidance of doubt it is hereby declared that where an asset is used for the purposes of the pioneer business of a pioneer company and by reason of an insufficiency or absence of adjusted income from that pioneer business for the year of assessment immediately prior to the year of assessment in the basis period in which the day of commencement of the post-pioneer business falls, effect cannot be given or cannot be given in full to any allowance or to the aggregate amount of any allowances in respect of the asset falling to be made to the company for that year in relation to that pioneer business, that allowance or that aggregate amount, as the case may be, shall not be deemed to be an allowance to be made to the company in relation to its post-pioneer business for the year of assessment in the basis period in which the day of commencement of the post-pioneer business falls or any subsequent year of assessment.

Hotel building deemed to be industrial building

19. (1) Where a company has incurred capital expenditure on a hotel building of the approved standard in Malaysia or incurred capital expenditure in extending or modernizing an existing hotel building to the approved standard in Malaysia, and a hotel business is carried on in that building by a pioneer company, such hotel building or such extended or modernized part thereof, as the case may be shall notwithstanding subparagraph 65(3) of Schedule 3 to the principal Act be deemed to be an industrial building for the purpose of that Schedule:

Provided that where the defined authority is not satisfied that the hotel building, including any extended or modernized part thereof, is maintained to the approved standard in a basis period 33Promotion of Investments

for a year of assessment, that building or the extended or modernized part thereof shall cease to be an industrial building for that year of assessment and subsequent years of assessment. (2) Where subsection (1) applies, in ascertaining the residual expenditure under paragraph 68 of that Schedule in relation to any asset at any date after the commencement of the basis period for the year of assessment 1987 regard shall be had to any annual allowance in relation to that asset for any year of assessment as if that asset had been an industrial building.

#### Returns of income

20. So much of Part V of the principal Act as is applicable in the case of a company shall apply in all respects as if the income of a pioneer company in respect of its pioneer business was chargeable to tax.

#### Computation of income during tax relief period

21. (1) The income of a pioneer company for each accounting period of its pioneer business shall be computed in accordance with the principal Act by--

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question; and

(b) ascertaining the income in question as if it were the statutory income from the pioneer business for that year of assessment.

(2) The amount of the income of a company ascertained under subsection (1) shall be subject to--

(a) any condition which may be specified in the pioneer certificate of the company issued under section 7; (b) any restriction under section 21A.

(3) Where an amount is found under subsection (1) or under subsections (1) and (2), or where such amount is reduced by an adjusted loss from a pioneer business of that company pursuant to subsection 25(2), the Director General shall cause to be served on the company a statement showing that amount or that reduced amount, in question.

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(4) For the purposes of sections 97 and 99 of the principal Act, a statement served under subsection (3) shall be deemed to be a notice of assessment served under the principal Act (not being a notice relating to an assessment made under section 92 of the principal Act).

(5) This section shall apply to--

(a) a company which has been granted pioneer status prior to 1 November 1991 pursuant to an application for pioneer status received prior to 1 November 1991; and

(b) a company which has been granted pioneer status on or after 1 November 1991 but whose application for pioneer status was received prior to 1 November 1991.

Restriction of income computed during tax relief period 21A. (1) Where a pioneer company is ascertained to have an adjusted loss for the basis period for a year of assessment in respect of a business relating to--

(a) an activity or the manufacture of a product which is not a promoted activity or promoted product;

(b) an activity or the manufacture of a product which is a promoted activity or promoted product for which it has not been granted approval for pioneer status or an approval under section 27,

so much of the statutory income of the pioneer company in respect of its pioneer business as ascertained under section 21 for that year of assessment shall be reduced by such loss.

(2) Where a pioneer company is ascertained to have an adjusted loss for the basis period for a year of assessment in respect of a business relating to an activity or the manufacture of a product which is a promoted activity or promoted product which has been granted pioneer status or an approval under section 27 but whose tax relief period or period prescribed under paragraph



29(2) (b), (c) or (d) has expired, so much of the statutory income of the pioneer company in respect of its other pioneer business, as ascertained under section 21 for that year of assessment shall be reduced by such loss.

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(3) So much of the loss that was utilised to reduce the statutory income of the pioneer company in respect of its pioneer business, for that year of assessment shall be disregarded for purposes of subsections 43(2) and 44(2) of the principal Act. (4) Notwithstanding any other provisions of this Chapter, where there is an adjustment to the loss referred to in subsections (1) and (2) for any year of assessment resulting in a decrease or increase of that loss, the Director General may, at any time within twelve years after the expiration of that year of assessment make-- (a) an adjustment to the statutory income of the pioneer company ascertained under section 21 for that year of assessment; or

(b) an assessment for that year of assessment as appears to him to be necessary in order to counteract any benefit of exemption obtained before the adjustment of that loss. Computation of income during tax relief period in respect of application received on or after 1 November 1991

21B. (1) This section shall apply to a company which has been granted pioneer status pursuant to an application for pioneer status received on or after 1 November 1991 other than to a company which has been granted pioneer status under subsection 6(1AB). (2) Subject to any condition which may be specified in the pioneer certificate of a company issued under section 7, the income of a pioneer company for each accounting period of its pioneer business shall be computed in accordance with the principal Act by--

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question; and

(b) ascertaining the income in question as if it were the statutory income from the pioneer business for that year of assessment.

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(3) Seventy per cent of the amount of income found under subsection (2) shall be subject to--

(a) any restriction under section 21A; and

(b) any reduction by an adjusted loss from the pioneer business of that



company pursuant to subsection 25(2).

(4) For the purposes of the principal Act, thirty per cent of the amount of income found under subsection (2) shall be deemed to be the total income or part of the total income, of the pioneer company for the relevant year of assessment.

(5) The Director General shall cause to be served on the company a statement showing the amount found under subsection (3). (6) For the purposes of sections 97 and 99 of the principal Act, a statement served under subsection (5) shall be deemed to be a notice of assessment served under the principal Act (not being the notice relating to an assessment made under section 92 of the principal Act).

Computation of income during tax relief period in respect of pioneer status granted under subsection 6(1AB)

21C. (1) This section shall apply to a company which has been granted pioneer status under subsection 6(1AB).

(2) Subject to any condition which may be specified in the pioneer certificate of a company issued under section 7, the income of a pioneer company for each accounting period of its pioneer business shall be computed in accordance with the principal Act by--

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question; and

(b) ascertaining the income in question as if it were the statutory income from the pioneer business for that year of assessment:

Provided that in the case of a company that is already operating in Malaysia, the income of the company for each accounting period of its pioneer business shall be the value-added income of the company.

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(2A) For the purpose of this section--

(a) "value added income" means the statutory income for the basis period for the year of assessment less the

inflation adjusted base income; and

(b) "inflation adjusted base income" shall be determined in accordance with the formula--

(i) for the first year, from the production day:

$A (1 + B)$

where:

A is the average statutory income for up to three years prior to the production day; and

B is the rate of inflation for the basis year;

(ii) for the second year, from the production day onwards:  $C (1 + B)$

where:

C is the inflation adjusted income for the preceding year; and

B is the rate of inflation for the basis year.

(3) The amount of income of the company found under subsection (2) shall be subject to--

(a) any restriction under section 21A; and

(b) any reduction by an adjusted loss from the pioneer business of that company pursuant to subsection 25(2).

(4) The Director General shall cause to be served on the company a statement showing the amount found under subsection (2) or (3). (5) For the purposes of sections 97 and 99 of the principal Act, a statement served under subsection (4) shall be deemed to be a notice of assessment served under the principal Act (not being the notice relating to an assessment made under section 92 of the principal Act).

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Computation of income during tax relief period in respect of pioneer status granted to company in promoted area 21D. (1) This section shall apply to a company which has been granted pioneer status in a promoted area.

(2) Subject to any condition which may be specified in the pioneer certificate

of a company issued under section 7, the income of a pioneer company for each accounting period of its pioneer business shall be computed in accordance with the principal Act by--

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question; and

(b) ascertaining the income in question as if it were the statutory income from the pioneer business for that year of assessment.

(3) Eighty-five per cent of the amount of the income of the company found under subsection (2) shall be subject to-- (a) any restriction under section 21A; and

(b) any reduction by an adjusted loss from the pioneer business of that company pursuant to subsection 25(2).

(4) For the purposes of the principal Act, fifteen per cent of the amount of income found under subsection (2) shall be deemed to be the total income or part of the total income, as the case may be, of the pioneer company for the relevant year of assessment. (5) The Director General shall cause to be served on the company a statement showing the amount found under subsection (3). (6) For the purposes of sections 97 and 99 of the principal Act, a statement served under subsection (5) shall be deemed to be a notice of assessment served under the principal Act (not being the notice relating to an assessment made under section 92 of the principal Act).

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Computation of income during tax relief period in respect of pioneer status granted under subsection 6(1AC)

21E. (1) This section shall apply to a company which has been granted pioneer status under subsection 6(1AC).

(2) Subject to any condition which may be specified in the pioneer certificate of a company issued under section 7, the income of a pioneer company for each accounting period of its pioneer business shall be computed in accordance with the principal Act by--

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question; and

(b) ascertaining the income in question as if it were the statutory income from the pioneer business for that year of assessment.

(3) The amount of the income of the company found under subsection (2) shall be subject to--

(a) any restriction under section 21A; and

(b) any reduction by an adjusted loss from the pioneer business of that company pursuant to subsection 25(2).

(4) The Director General shall cause to be served on the company a statement showing the amount found under subsection (2) or (3). (5) For the purposes of sections 97 and 99 of the principal Act, a statement served under subsection (4) shall be deemed to be a notice of assessment served under the principal Act (not being the notice relating to an assessment made under section 92 of the principal Act).

Computation of income during tax relief period in respect of pioneer status granted to high technology company or company participating in industrial linkage programme

21F. (1) This section shall apply to a high technology company or a company participating in a promoted activity or producing a promoted product in an industrial linkage programme which has been granted pioneer status under subsection 6(1). Laws of Malaysia 40 ACT 327

(2) Subject to any condition which may be specified in the pioneer certificate of a company issued under section 7, the income of a pioneer company for each accounting period of its pioneer business shall be computed in accordance with the principal Act by--

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question; and

(b) ascertaining the income in question as if it were the statutory income from the pioneer business for that year of assessment.

(3) The amount of the income of the company found under subsection (2) shall be subject to--

(a) any restriction under section 21A; and

(b) any reduction by an adjusted loss from the pioneer business of that company pursuant to subsection 25(2).

(4) The Director General shall cause to be served on the company a statement showing the amount found under subsection (2) or (3). (5) For the purposes of sections 97 and 99 of the principal Act, a statement served under subsection (4) shall be deemed to be a notice of assessment served under the principal Act (not being the notice relating to an assessment made under section 92 of the principal Act).

#### Exemption from income tax

22. (1) Where a statement issued under section 21, 21B, 21C, 21D, 21E or 21F has become final and conclusive under section 97 of the principal Act, the amount shown in the statement shall be exempt from tax under the principal Act.

(2) Before a statement issued under section 21, 21B, 21C, 21D, 21E or 21F has become final and conclusive, the Director General may, if he thinks fit, declare that the whole or a specified part of the amount shown in the statement is not in dispute; and where he does so, so much of that amount as is affected by the declaration shall be exempt from tax under the principal Act.

#### Certain dividends exempted from income tax

23. (1) As soon as any amount of income of a pioneer company has become exempted under section 22, that amount shall be credited to an account to be kept by the pioneer company for the purposes of this section (that account and company being in this section and section 24 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 section 22, an amount equal to those dividends or that credit, whichever is the lesser, shall be debited to the exempt account.

(3) So much of the amount of any dividends debited to the exempt account under subsection (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 under the principal Act in the hands of that shareholder.

(4) Any dividends debited to the exempt account under subsection (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 the foregoing subsections; 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.

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(7) Section 108 of the principal Act 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 subsection (6).

Income wrongly exempted, etc.

24. (1) Notwithstanding any other provision of this Act, where it appears to the Director General that any income of the relevant company exempted under section 22 or any dividend exempted in the hands of a shareholder under section 23 ought not to have been exempted by reason of--

(a) a direction under section 17 having been given with respect to a pioneer company after any income of the company has been exempted under section 22;

(b) the cancellation of a pioneer certificate,

he may, at any time within twelve years after the date of the direction or cancellation, make such additional assessments upon any person as appear 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.

(2) A direction given under subsection (1) shall, for the purposes of section 99 of the principal Act, be deemed to be a notice of assessment not relating to an assessment made under section 92 of that Act.

#### Loss incurred in tax relief period

25. (1) The amount of any loss incurred in any accounting period of the pioneer business of a pioneer company shall be computed in like manner as any income falling to be computed under subsection 21(1), 21B(2), 21C(2), 21D(2), 21E(2) or 21F(2). (2) Where--

(a) the amount of any loss of a pioneer company has been computed for an accounting period; and

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(b) in accordance with subsection 21(1), 21B(2), 21C(2), 21D(2), 21E(2) or 21F(2) the accounting period has been treated for the purposes of the computation as the basis period for a year of assessment,

the amount of the loss shall be deducted in the manner provided by subsections 43(2) and 44(1) of the principal Act from any statutory income from the pioneer business or the aggregate of the statutory income from the pioneer businesses, of the company after any restriction under section 21A, for that year of assessment. (3) Where by reason of an insufficiency or absence of statutory income from the pioneer business of a pioneer company other than a contract research and development company for a year of assessment effect cannot be given or cannot be given in full to any deduction falling to be made for that year pursuant to subsection (2), that deduction which has not been so made (or so much thereof as has not been so made) for that year shall not be made in computing the total income of the company for the year of assessment in the basis period in which the day of commencement of the post-pioneer business falls or any subsequent year of assessment. (4) Where by reason of an insufficiency or absence of statutory income from the pioneer business of a contract research and development company for a year of assessment, effect cannot be given or cannot be given in full to any deduction falling to be made for that year pursuant to subsection (2), that deduction which has not been so made (or so much thereof as has not been so made) for that year shall be made in computing the total income of the company for the year of assessment in the basis period in which the day of commencement of the post-pioneer business falls or any subsequent year of assessment.

#### Chapter 2--Investment Tax Allowance

## Application for approval for investment tax allowance

26. (1) Subject to subsections (2) and (3), any company participating or intending to participate in Malaysia in a promoted activity or in the production of a promoted product may make an application in writing to the Minister for approval for purposes of an investment tax allowance:

Provided that where an application is made by a company participating or intending to participate in Malaysia in a promoted activity or in the production of a promoted product and that company is controlled directly or indirectly by--

activity or in the production of a promoted product and that company is controlled directly or indirectly by--

(a) a pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27 participating in the same promoted activity or promoted product as that company;

(b) a company granted pioneer status in relation to the same promoted activity or promoted product as that company; or

(c) a post-pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27 and the period as prescribed under paragraph 29(2) (b) or 29(2) (c) has ended,

the application shall be considered if it fulfills such conditions as may be prescribed by the Minister in a statutory order to be published in the Gazette.

(2) A pioneer company or a company which has been granted pioneer status or an approval under section 27, shall only be eligible to apply for investment tax allowance under subsection (1) in respect of a promoted activity or promoted product other than the promoted activity or promoted product for which a pioneer certificate has been issued or pioneer status or investment tax allowance has been granted.

(3) Where a company has been granted pioneer status in respect of a promoted activity or promoted product, it may be eligible to apply for approval for purposes of an investment tax allowance under subsection (1) upon the surrender of the grant of pioneer status in respect of that promoted activity or promoted product: Provided that this subsection shall only apply where the Minister is satisfied with the reasons for the surrender of the pioneer status in respect of that promoted activity or promoted product. (4) An application made under subsection (1) shall be in accordance with such regulations as may

be made under this Act. 45Promotion of Investments

Application for approval for investment tax allowance in respect of an activity or a product which is deemed under section 4A to be a promoted activity or promoted product

26A. (1) Any company intending to establish or participate in an activity or to participate in producing a product in Malaysia which is deemed under section 4A to be a promoted activity or promoted product may make an application in writing to the Minister for approval for purposes of an investment tax allowance: Provided that a company which is already operating in Malaysia may, if it fulfills such conditions as may be determined by the Minister, make an application in writing to the Minister for approval for purposes of an investment tax allowance.

(2) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Application of approval for investment tax allowance in promoted area

26B. (1) Subject to subsections (2), (3) and (4), any company participating or intending to participate in Malaysia in a promoted activity or in the production of a promoted product in a promoted area may make an application in writing to the Minister for approval for purposes of an investment tax allowance:

Provided that where an application is made by a company participating or intending to participate in Malaysia in a promoted activity or in the production of a promoted product in a promoted area and that company is controlled directly or indirectly by-- (a) a pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27B participating in the same promoted activity or promoted product as that company;

(b) a company granted pioneer status in relation to the same promoted activity or promoted product as that

company; or

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(c) a post-pioneer company or a company which has been granted approval for the purposes of an investment tax allowance under section 27B and the period as prescribed under paragraph 29C(2) (b) or 29C(2) (c) has ended, the application shall be considered if it fulfills such conditions as may be prescribed by the Minister in a statutory order to be published in the



Gazette.

(2) A pioneer company or a company which has been granted pioneer status or an approval under section 27B shall only be eligible to apply for investment tax allowance under subsection (1) in respect of a promoted activity or promoted product other than the promoted activity or promoted product for which a pioneer certificate has been issued or pioneer status or investment tax allowance has been granted.

(3) Where a company has been granted pioneer status in respect of a promoted activity or promoted product, it may be eligible to apply for approval for purposes of an investment tax allowance under subsection (1) upon the surrender of the grant of pioneer status in respect of that promoted activity or promoted product: Provided that this subsection shall only apply where the Minister is satisfied with the reasons for the surrender of the pioneer status in respect of that promoted activity or promoted product. (4) Where a company has been granted approval for the purposes of an investment tax allowance under section 27 in respect of a promoted activity or promoted product pursuant to an application received on or after the 1 November 1991 but on or before the 29 October 1993 and has not incurred any capital expenditure in respect of that promoted activity or promoted product, it may be eligible to apply for approval for the purposes of an investment tax allowance under subsection 27B(1) upon the surrender of that approval in respect of that promoted activity or promoted product: Provided that the notice of the surrender is given not later than 31 March 1995 and that the Minister is satisfied with the reasons for the surrender of that approval in respect of that promoted activity or promoted product.

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(5) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Application for approval for investment tax allowance to contract research and development company

26C. (1) Subject to subsection (2), any contract research and development company participating or intending to participate in Malaysia in an activity relating to research and development may make an application in writing to the Minister for approval for purposes of an investment tax allowance.

(2) Where a company has been granted pioneer status in respect of an activity relating to research and development, it may be eligible to apply for approval for purposes of an investment tax allowance under subsection (1) upon the surrender of the grant of pioneer status in respect of that activity:



Provided that this subsection shall only apply where the Minister is satisfied with the reasons for the surrender of the pioneer status in respect of that activity.

(3) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Application for approval for investment tax allowance to research and development company

26D. (1) Any research and development company participating or intending to participate in Malaysia in an activity relating to research and development may make an application in writing to the Minister for approval for purposes of an investment tax allowance. (2) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Application for approval for investment tax allowance to company carrying on in-house research

26E. (1) Any company participating or intending to participate in Malaysia in an activity relating to in-house research may make an application in writing to the Minister for approval for purposes of an investment tax allowance.

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(2) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Application for approval for investment tax allowance to high technology company or company participating in industrial linkage programme

26F. (1) Subject to subsections (2) and (3), any company participating or intending to participate in Malaysia in a promoted activity or in the production of a promoted product in areas of new and emerging technologies or any company participating in a promoted activity or producing a promoted product in an industrial linkage programme may make an application in writing to the Minister for approval for purposes of an investment tax allowance. (2) A pioneer company or a company which has been granted pioneer status under subsection 6(1) in respect of an application under subsection 5(1) or 5(1B) or an approval under subsection 27(1) or 27B(1) shall only be eligible to apply for investment tax allowance under subsection (1) in respect of a promoted activity or promoted product other than the promoted activity or promoted product for which a pioneer certificate has been issued or pioneer status or investment tax allowance has been granted.

(3) Where a company has been granted pioneer status in respect of a promoted activity or promoted product, it may be eligible to apply for approval for purposes of an investment tax allowance under subsection (1) upon the surrender of the grant of pioneer status in respect of that promoted activity

or promoted product: Provided that this subsection shall only apply where the Minister is satisfied with the reasons for the surrender of the pioneer status in respect of that promoted activity or promoted product. (4) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Application for approval for investment tax allowance to a technical or vocational training company

26G. (1) Any technical or vocational training company participating or intending to participate in Malaysia may make an application in writing to the Minister for approval for purposes of an investment tax allowance.

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(2) An application made under subsection (1) shall be in accordance with such regulations as may be made under this Act. Grant of approval for purpose of investment tax allowance

27. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26(1) subject to such terms and conditions as he deems fit, and such approval may be granted retrospectively from a date not earlier than the date from which the activity or the product has been determined to be a promoted activity or a promoted product under section 4:

Provided that--

(i) where the Minister is satisfied that the company was engaged in a promoted activity or in the production of a promoted product, or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity or product was determined as a promoted activity or promoted product under section 4, the approval may be granted retrospectively from a date not earlier than the date from which the company has been engaged in the promoted activity or in the production of the promoted product, or the capital expenditure had been incurred in relation thereto; and (ii) no approval shall be granted retrospectively under subsection (1) or under the foregoing proviso from a date which is earlier than three years from the date the application under subsection 26(1) is received by the Minister. (2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.

(4) A company granted approval under this section may, at any time during the period specified in paragraph 29(2)(b) or (c), surrender the approval by

giving notice in writing to the Minister and where the Minister is satisfied with the reasons for the surrender of such approval or that the company has complied with the terms and conditions imposed under subsection (1) or (2) or with any Laws of Malaysia<sup>50</sup> ACT 327

other provisions of this Act, the surrender shall have effect from a date specified by the Minister in the notice approving such surrender and such date shall not be earlier than the date the notice is received by the Minister:

Provided that in respect of a notice of surrender received by the Minister on or after the 1 January 1986 and on or before the 31 March 1987 and upon the Minister being satisfied as provided in this subsection, the Minister, when approving such surrender, may specify a date which is not earlier than 1 January 1986 as the date the surrender shall have effect.

Grant of approval of application for investment tax allowance made under subsection 26A(1)

27A. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26A(1) subject to such terms and conditions as he deems fit: Provided that--

(i) where the Minister is satisfied that the company was engaged in an activity or in producing a product, or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity or product was deemed as a promoted activity or promoted product, as the case may be, under section 4A, the approval may be granted retrospectively from a date not earlier than the date from which the company has been engaged in the activity or in producing the product, or the capital expenditure had been incurred in relation thereto; and (ii) no approval shall be granted retrospectively under subsection (1) or under the foregoing proviso from a date which is earlier than three years from the date the application under subsection 26A(1) is received by the Minister.

(2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.

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Grant of approval of application for investment tax allowance made under subsection 26B(1)

27B. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26B(1) subject to such terms and conditions as he deems fit, and such approval may be granted retrospectively from a date not earlier than the date from which the activity or the product has been determined to be a promoted activity or a promoted product under section 4:

Provided that--

(a) where the Minister is satisfied that the company was engaged in a promoted activity or in the production of a promoted product, or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity or product was determined as a promoted activity or promoted product under section 4, the approval may be granted retrospectively from a date not earlier than the date from which the company has been engaged in the promoted activity or in the production of the promoted product, or the capital expenditure had been incurred in relation thereto; and (b) no approval shall be granted retrospectively under subsection (1) or under the foregoing proviso from a date which is earlier than three years from the date the application under subsection 26B(1) is received by the Minister. (2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.

Grant of approval of application for investment tax allowance made under subsection 26C(1)

27C. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26C(1) subject to such terms and conditions as he deems fit: Provided that where the Minister is satisfied that the company was engaged in an activity or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from 52 Laws of Malaysia ACT 327

which the activity was deemed as a promoted activity under section 4B, the approval may be granted retrospectively from a date not earlier than the 29 October 1993.

(2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.



Grant of approval of application for investment tax allowance made under subsection 26D(1)

27D. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26D(1) subject to such terms and conditions as he deems fit, and such approval may be granted retrospectively from a date not earlier than the date from which the activity has been deemed to be a promoted activity under section 4B:

Provided that--

(a) where the Minister is satisfied that the company was engaged in an activity or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity was deemed as a promoted activity under section 4B, the approval may be granted retrospectively from a date not earlier than the date from which the company has been engaged in that activity or the capital expenditure had been incurred in relation thereto; and

(b) no approval shall be granted retrospectively under subsection (1) or under the foregoing proviso from a date which is earlier than three years from the date the application under subsection 26D(1) is received by the Minister. (2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.

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Grant of approval of application for investment tax allowance made under subsection 26E(1)

27E. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26E(1) subject to such terms and conditions as he deems fit: Provided that where the Minister is satisfied that the company was engaged in an activity or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity was deemed as a promoted activity under section 4B, the approval may be granted retrospectively from a date not earlier than the 29 October 1993.

(2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.



Grant of approval of application for investment tax allowance made under subsection 26F(1)

27F. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26F(1) subject to such terms and conditions as he deems fit: Provided that where the Minister is satisfied that the company was engaged in a promoted activity or in the production of a promoted product, or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity or product was determined as a promoted activity or promoted product under section 4, the approval may be granted retrospectively from a date not earlier than the 29 October 1993. (2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.

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Grant of approval of application for investment tax allowance made under subsection 26G(1)

27G. (1) The Minister may grant approval in respect of an application for an investment tax allowance made under subsection 26G(1) subject to such terms and conditions as he deems fit: Provided that where the Minister is satisfied that the company was engaged in an activity or had otherwise incurred capital expenditure in relation thereto, from a date prior to the date from which the activity was deemed as a promoted activity under section 4B, the approval may be granted retrospectively from a date not earlier than 28 October 1994.

(2) The Minister may vary the terms and conditions imposed under subsection (1).

(3) In exercising his powers under subsections (1) and (2), the Minister shall act with the concurrence in writing of the Minister of Finance.

Withdrawal of approval of investment tax allowance

28. (1) Where a company which has been granted an approval under section 27, 27A, 27B, 27C, 27D, 27E, 27F or 27G fails to comply with any of the terms or conditions imposed under subsection 27(1), 27(2), 27A(1), 27A(2), 27B(1), 27B(2), 27C(1), 27C(2), 27D(1), 27D(2), 27E(1), 27E(2), 27F(1), 27F(2), 27G(1), 27G(2) or with any other provisions of this Act, the Minister shall by notice in writing require the company within thirty days from the date of

service of the notice to show cause why the approval should not be withdrawn.

(2) The Minister may withdraw the approval granted under subsection 27(1), 27A(1), 27B(1), 27C(1), 27D(1), 27E(1), 27F(1) or 27G(1)--

(a) where the company has failed to comply with a notice served on it under subsection (1);

(b) where he is not satisfied with the reasons for the non-compliance with the terms and conditions imposed under subsection 27(1), 27(2), 27A(1), 27A(2), 27B(1), 27B(2), 27C(1), 27C(2), 27D(1), 27D(2), 27E(1), 27E(2), 27F(1), 27F(2), 27G(1), 27G(2) or with any other provisions of this Act.

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### Investment tax allowance

29. (1) Where a company which has been granted approval under section 27 has incurred in the basis period for a year of assessment in respect of the promoted activity or promoted product capital expenditure for the purposes of that promoted activity or promoted product, there shall be given to the company for that year of assessment an investment tax allowance of an amount approved by the Minister of Finance, such allowance not being more than one hundred per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (5), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect;

(c) subject to subsection (3), shall be given in respect of the manufacturing activity in an integrated agricultural activity for any expenditure incurred within another period of five years from a date to be determined by the Minister, being a date within or after the period mentioned in paragraph (2) (b); and

(d) shall, in the case of a surrender of approval under subsection 27(4), be given in respect of expenditure incurred from the date from which the approval is to take effect up to the date of surrender:

Provided that--

(i) where a company incurs capital expenditure from the date from which the

approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry on in respect of a promoted activity or promoted product, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business; and

(ii) where a company incurs capital expenditure prior to its application under section 27 and where the approval under section 27 is granted retrospectively from a date earlier than the date on which the application is made, the 56 Laws of Malaysia ACT 327

allowance under this section in respect of that expenditure shall be given, subject to subsection (5), only for the year of assessment in the basis period in which the company is notified of the approval of the application.

(3) Where a company has been granted approval under section 27 in respect of an integrated agricultural activity, such company shall within six years from the date of such approval, provide the Minister with such particulars as may be prescribed for the purposes of determination of the date under paragraph (2) (c). (4) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the adjusted income of the company from the business of that company in respect of a promoted activity or a promoted product for the basis period for that year 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 under the principal Act for that year of assessment.

(5) Where, by reason of an insufficiency or absence of adjusted income of a company from a business of the company in respect of a promoted activity or a promoted product for the basis period for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (4), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section 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 company has received the whole of the allowance to which it is so entitled:

Provided that the allowance arising under this subsection shall be given only after the abatement of adjusted income, if any, to which the company is entitled to under section 32, 33, 33A, 34 or 36.

(6) Where any income is exempted from tax by virtue of subsection (4), section

23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

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(7) For the purposes of this section, and subject to subsection (8), "capital expenditure"--

(i) in relation to manufacturing, means capital expenditure incurred on a factory or on any plant and machinery used in Malaysia in connection with and for the purposes of the promoted activity or promoted product;

(ii) in relation to agriculture, 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 used in Malaysia for the purposes of crop cultivation, animal farming, aquaculture, inland or deep-sea fishing and other agricultural or pastoral pursuits;

(e) the construction of access roads including bridges; and

(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 which

are used for the purposes of crop cultivation, animal farming, aquaculture, inland fishing and other

agricultural or pastoral pursuits:

Provided that for the purposes of subparagraphs (e) and (f) such roads, bridges, buildings, structural improvements on land and other structures are on land forming part of the land used for the purposes of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits; (iii) in relation to hotel business, means capital expenditure incurred on the construction of an hotel building of the approved standard in Malaysia, including any alteration, extension and



renovation or on the provision of plant and machinery or other facilities used in connection with the hotel business;

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(iv) in relation to a tourist project, means capital expenditure incurred in respect of a tourist project in Malaysia and includes capital expenditure on--

(a) clearing of land for purposes of a tourist project; (b) planting of trees and plants;

(c) construction of road and other infrastructure facilities provided they are on land forming part of the land used for the purposes of a tourist project;

(d) the provision of birds, animals and other exhibits; (e) the provision of plant and machinery;

(f) the provision of buildings (including those provided for the welfare of persons or as living accommodation for persons), structural improvements on land and other structures on land forming part of the land used for purposes of a tourist project.

(8) For the purposes of this section, capital expenditure shall not include capital expenditure incurred on buildings used as living accommodation, plant and machinery where such buildings, plant or machinery 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.

(9) This section shall apply to--

(a) a company which has been granted approval under section 27 prior to the 1 November 1991; and

(b) a company which has been granted approval under section 27 on or after 1 November 1991 but whose application under section 26 was received prior to 1 November 1991. Investment tax allowance in respect of application received on or after 1 November 1991

29A. (1) This section shall apply to a company which has been granted approval for the purposes of investment tax allowance pursuant to an application received on or after 1 November 1991 other than to a company which has been granted approval for the purposes of an investment tax allowance under section 27A. Promotion of Investments 59



(2) Where a company which has been granted approval under section 27 has incurred in the basis period for a year of assessment in respect of a promoted activity or promoted product capital expenditure for the purposes of that promoted activity or promoted product, there shall be given to the company for that year of assessment an investment tax allowance of sixty per cent of that expenditure.

(3) An allowance for expenditure given under subsection (2)-- (a) subject to subsection (6), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect;

(c) subject to subsection (4), shall be given in respect of the manufacturing activity in an integrated agricultural activity for any expenditure incurred within another period of five years from a date to be determined by the Minister, being a date within or after the period mentioned in paragraph (3) (b); and

(d) shall, in the case of a surrender of approval under subsection 27(4), be given in respect of expenditure incurred from the date from which the approval is to take effect up to the date of surrender:

Provided that--

(i) where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (3) (b) in relation to a business which it is about to carry on in respect of a promoted activity or promoted product, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business; and

(ii) where a company incurs capital expenditure prior to its application under subsection 26(1) and where the approval under section 27 is granted retrospectively from a date earlier than the date on which the application is made, the allowance under this section in respect of that expenditure shall be given, subject to subsection (6), only for the year of assessment in the basis period in which the company is notified of the approval of the application.

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(4) Where a company has been granted approval under section 27 in respect of an integrated agricultural activity, such company shall, within six years from the date of such approval, provide the Minister with such particulars as may be prescribed for the purposes of determination of the date under paragraph

(3) (c).

(5) Where an allowance is given to a company under subsection (2) for a year of assessment, so much of the statutory income of the business of the company in respect of a promoted activity or promoted product 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 under the principal Act:

Provided that the amount so exempt shall not exceed seventy per cent of the statutory income of that business of the company for that year of assessment.

(6) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of a promoted activity or promoted product for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (2), (3) and (5), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled:

Provided that the allowance arising under this subsection shall be given only after the abatement of statutory income, if any, to which the company is entitled to under section 36. (7) Where any income is exempt from tax by virtue of subsection (5), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

(8) For the purposes of this section and subject to subsection (9), the term "capital expenditure" has the meaning assigned to it under subsection 29(7) and shall include capital Promotion of Investments 61

expenditure incurred in respect of assets to be determined by the Minister with the concurrence in writing of the Minister of Finance by statutory order published in the Gazette.

(9) Notwithstanding subsection (8), "capital expenditure" shall not include capital expenditure incurred on buildings (which are used as living accommodation for persons), plant and machinery where such buildings, plant or machinery 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. Investment tax allowance for application under section 26A which has

been approved under section 27A

29B. (1) Where a company which has been granted approval under section 27A has incurred in the basis period for a year of assessment in respect of an activity or of producing a product which is deemed under section 4A to be a promoted activity or promoted product capital expenditure for the purposes of that activity or the production of that product, there shall be given to the company for that year of assessment an investment tax allowance of one hundred per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsections (4) and (5), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect:

Provided that--

(i) where a company incurs capital expenditure from the date from which the approval is to take effect in relation to a business which it is about to carry on in respect of the activity or of producing the product, that expenditure shall be deemed to be

incurred in the basis period in which it commences to carry on the business;  
and

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(ii) where a company incurs capital expenditure prior to its application under section 26A and where the approval under section 27A is granted retrospectively from a date earlier than the date on which the

application is made, the allowance under this section in respect of that expenditure shall be given, subject to subsection (4), only for the year of assessment in the basis period in which the company is notified of the approval of the application.

(2A) Notwithstanding subsection (2), the expenditure incurred prior to the grant of approval on the basis of an application made under the proviso to subsection 26A(1) shall not be deemed as having been incurred in the basis period the approval is to take effect whether or not the assets acquired by that expenditure are subsequently owned by the same company or a new entity.

(3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company

in respect of the activity or of producing the product which is deemed under section 4A to be a promoted activity or promoted product 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 under the principal Act for that year of assessment.

(4) Subject to subsection (5) where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of the activity or of producing the product which is deemed under section 4A to be a promoted activity or promoted product for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled. (5) Where a company fails to comply with any of the terms or conditions under section 27A at the end of the five years from the date from which the approval is to take effect, subsection (4) shall Promotion of Investments 63

not apply to the allowance to which effect has not been given under this section for the year of assessment for which its basis period includes the last day of the period under paragraph (2) (b). (6) Where any income is exempt from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

(7) For the purposes of this section and subject to subsection (8) the term "capital expenditure" has the meaning assigned to it under subsection 29(7) and shall include capital expenditure incurred in respect of assets to be determined by the Minister with the concurrence in writing of the Minister of Finance by statutory order published in the Gazette.

(8) Notwithstanding subsection (7), "capital expenditure" shall not include capital expenditure incurred on buildings (which are used as living accommodation for persons), plant and machinery where such buildings, plant or machinery 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. Investment tax allowance for application under section 26B which has been approved under section 27B

29C. (1) Where a company which has been granted approval under section 27B has



incurred in the basis period for a year of assessment in respect of a promoted activity or promoted product in a promoted area capital expenditure for the purposes of that promoted activity or promoted product, there shall be given to the company for that year of assessment an investment tax allowance of eighty per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (5), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect;

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(c) subject to subsection (3), shall be given in respect of the manufacturing activity in an integrated agricultural activity for any expenditure incurred within another period of five years from a date to be determined by the Minister, being a date within or after the period mentioned in paragraph

(2) (b):

Provided that--

(i) where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry on in respect of a promoted activity or promoted product in a promoted area, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business; and

(ii) where a company incurs capital expenditure prior to its application under section 26B and where the approval under section 27B is granted retrospectively from a date earlier than the date on which the application is made, the allowance under this section in respect of that expenditure shall be given, subject to subsection (5), only for the year of assessment in the basis period in which the company is notified of the approval of the application.

(3) Where a company has been granted approval under section 27B in respect of an integrated agricultural activity, such company shall, within six years from the date of such approval, provide the Minister with such particulars as may be prescribed for the purposes of determination of the date under paragraph (2) (c).

(4) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company

in respect of a promoted activity or promoted product 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 under the principal Act:

Provided that the amount so exempt shall not exceed eighty-five per cent of the statutory income of that business of the company for that year of assessment.

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(5) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of a promoted activity or promoted product for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (4), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled.

(6) Where any income is exempt from tax by virtue of subsection (4), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22. (7) Subsections 29(7) and (8) relating to capital expenditure shall apply, mutatis mutandis, for the purposes of this section. Investment tax allowance for application under section 26C which has been approved under section 27C

29D. (1) Where a contract research and development company which has been granted approval under section 27C has incurred in the basis period for a year of assessment in respect of an activity relating to research and development capital expenditure for the purposes of that activity, there shall be given to the company for that year of assessment an investment tax allowance of one hundred per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (4), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within ten years from the date from which the approval is to take effect:

Provided that where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry 66 Laws of Malaysia ACT 327

on in respect of an activity relating to research and development, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business.

(3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company in respect of an activity relating to research and development 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 under the principal Act:

Provided that the amount so exempt shall not exceed seventy per cent of the statutory income of that business of the company for that year of assessment.

(4) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of an activity relating to research and development for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled.

(5) Where any income is exempt from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

(6) For the purposes of this section and subject to subsection (7), "capital expenditure"--

(a) in relation to manufacturing based research, means capital expenditure incurred on a factory or on any plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to research and development; and

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(b) in relation to agriculture based research, means capital expenditure

incurred in respect of--

- (i) the clearing and preparation of land;
- (ii) the planting of trial crops;
- (iii) the provision of irrigation or drainage systems; (iv) the provision of plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to research and development;
- (v) the construction of access roads including bridges; and
- (vi) the construction or purchase of buildings (excluding those provided for the welfare of persons or as living accommodation for persons) and structural improvements on land for the purposes of an activity relating to research and development.

(7) Notwithstanding subsection (6), "capital expenditure" shall not include capital expenditure incurred on buildings (which are used as living accommodation for persons), plant and machinery where such buildings, plant or machinery 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. Investment tax allowance for application under section 26D which has been approved under section 27D

29E. (1) Where a research and development company which has been granted approval under section 27D has incurred in the basis period for a year of assessment in respect of an activity relating to research and development capital expenditure for the purposes of that activity, there shall be given to the company for that year of assessment an investment tax allowance of one hundred per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (4), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

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(b) shall be given in respect of expenditure incurred within ten years from the date from which the approval is to take effect:



Provided that--

(i) where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry on in respect of an activity relating to research and development, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business; and

(ii) where a company incurs capital expenditure prior to its application under section 26D and where the approval under section 27D is granted retrospectively from a date earlier than the date on which the application is made, the allowance under this section in respect of that expenditure shall be given, subject to subsection (4), only for the year of assessment in the basis period in which the company is notified of the approval of the application.

(3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company in respect of an activity relating to research and development 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 under the principal Act:

Provided that the amount so exempt shall not exceed seventy per cent of the statutory income of that business of the company for that year of assessment.

(4) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of an activity relating to research and development for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much of the allowance in question as cannot be given for that year shall be deemed to be Promotion of Investments 69

an allowance to be given to the company under this section for the first subsequent year of assessment 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.

(5) Where any income is exempt from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

(6) For the purposes of this section and subject to subsection (7), "capital expenditure"--

(a) in relation to manufacturing based research, means capital expenditure incurred on a factory or on any plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to research and development; and

(b) in relation to agriculture based research, means capital expenditure incurred in respect of--

(i) the clearing and preparation of land;

(ii) the planting of trial crops;

(iii) the provision of irrigation or drainage systems; (iv) the provision of plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to research and development; (v) the construction of access roads including bridges; and

(vi) the construction or purchase of buildings (excluding those provided for the welfare of persons or as

living accommodation for persons) and structural

improvements on land for the purposes of an activity relating to research and development.

(7) Notwithstanding subsection (6), "capital expenditure" shall not include capital expenditure incurred on buildings (which are used as living accommodation for persons), plant and machinery where such buildings, plant or machinery 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. 70 Laws of Malaysia ACT 327

Investment tax allowance for application under section 26E which has been approved under section 27E

29F. (1) Where a company which has been granted approval under section 27E has incurred in the basis period for a year of assessment in respect of an activity relating to in-house research capital expenditure for the purposes of that activity, there shall be given to the company for that year of assessment an investment tax allowance of fifty per cent of that expenditure:

Provided that for the purposes of this subsection "capital expenditure" shall

not include--

(a) capital expenditure as defined under subsection 29(7), 29A(8), 29B(7), 29C(7), 29D(6), 29E(6), 29G(6) or 31E(6);

(b) capital expenditure for the purposes of Schedule 7A of the principal Act: and

(c) capital expenditure incurred on plant or machinery used directly or indirectly for the purposes of storage, treatment or disposal of scheduled wastes as defined in the Environmental Quality (Scheduled Wastes) Regulations 1989 [P.U. (A) 139/1989].

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (4), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within ten years from the date from which the approval is to take effect:

Provided that where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry on in respect of an activity relating to in-house research, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business.

(3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company in respect of an activity Promotion of Investments 71

relating to in-house research 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 under the principal Act:

Provided that the amount so exempt shall not exceed seventy per cent of the statutory income of that business of the company for that year of assessment.

(4) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of an activity relating to in-house research for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of

assessment 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 to which it is so entitled.

(5) Where any income is exempt from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

(6) For the purposes of this section and subject to subsection (7), "capital expenditure"--

(a) in relation to manufacturing based research, means capital expenditure incurred on a factory or on any plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to in-house research; and

(b) in relation to agriculture based research, means capital expenditure incurred in respect of--

(i) the clearing and preparation of land;

(ii) the planting of trial crops;

(iii) the provision of irrigation or drainage systems; (iv) the provision of plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to in-house research;

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(v) the construction of access roads including bridges; and

(vi) the construction or purchase of buildings (excluding those provided for the welfare of persons or as

living accommodation for persons) and structural

improvements on land for the purposes of an activity relating to in-house research.

(7) Notwithstanding subsection (6), "capital expenditure" shall not include capital expenditure incurred on buildings (which are used as living accommodation for persons), plant and machinery where such buildings, plant or machinery 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. Investment tax allowance for application under section 26F which has been approved under section 27F

29G. (1) Where a company which has been granted approval under section 27F has incurred in the basis period for a year of assessment in respect of a promoted activity or promoted product in areas of new and emerging technologies or in respect of a promoted activity or a promoted product in an industrial linkage programme capital expenditure for the purposes of that promoted activity or promoted product, there shall be given to the company for that year of assessment an investment tax allowance of sixty per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (4), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

(b) shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect:

Provided that where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry on in respect of a promoted activity or promoted product in areas of new and emerging technologies or in respect of a promoted activity or a promoted product in an industrial linkage programme, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business.

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(3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company in respect of a promoted activity or promoted product 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 under the principal Act.

(4) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of a promoted activity or promoted product for a year of assessment, effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled.

(5) Where any income is exempt from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22. (6) Subsections 29(7) and (8) relating to capital expenditure shall apply, mutatis mutandis, for the purposes of this section. Investment tax allowance for application under section 26G which has been approved under section 27G

29H. (1) Where a technical or vocational training company which has been granted approval under section 27G has incurred in the basis period for a year of assessment in respect of an activity relating to technical or vocational training capital expenditure for the purposes of that activity, there shall be given to the company for that year of assessment an investment tax allowance of one hundred per cent of that expenditure.

(2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (4), shall be given only for the year of assessment in the basis period for which that expenditure was incurred;

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(b) shall be given in respect of expenditure incurred within ten years from the date from which the approval is to take effect:

Provided that where a company incurs capital expenditure from the date from which the approval is to take effect referred to in paragraph (2) (b) in relation to a business which it is about to carry on in respect of an activity relating to technical or vocational training, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business. (3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company in respect of an activity relating to technical or vocational training 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 under the principal Act:

Provided that the amount so exempt shall not exceed seventy per cent of the statutory income of that business of the company for that year of assessment.

(4) Where, by reason of an insufficiency or absence of statutory income of the business of the company in respect of an activity relating to technical or vocational training for a year of assessment, effect cannot be given or cannot

be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled.

(5) Where any income is exempt from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

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(6) For the purposes of this section and subject to subsection (7), "capital expenditure", in relation to technical or vocational training, means capital expenditure incurred on a building or on any plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to training. (7) Notwithstanding subsection (6), "capital expenditure" shall not include capital expenditure incurred on buildings (which are used as living accommodation for persons), plant and machinery where such buildings, plant or machinery 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. Application of section 19

30. Where an hotel business is carried on in Malaysia by a company granted an approval under section 27 in an hotel building of the approved standard or in the extended or modernized part of an existing hotel building where such extension or modernization is of an approved standard, section 19 shall apply, mutatis mutandis, to that hotel building or such extended or modernized part thereof. Meaning of company in relation to agriculture

31. For the purposes of this Chapter, in the case of an application for approval for an investment tax allowance in respect of a promoted activity or promoted product in relation to agriculture, "company" includes an agro-based co-operative society, an Area Farmers' Association, a Federal Farmers' Association, a State Farmers' Association, an Area Fisherman's Association, a Federal Fisherman's Association, a State Fisherman's Association and a sole proprietorship, partnership or association solely engaged in agriculture:

Provided that section 23 shall only apply to a company incorporated under any written law.

#### Chapter 2A--Industrial Adjustment Allowance

## Definition of industrial adjustment

31A. (1) For the purposes of this Chapter, "industrial adjustment" means any activity proposed to be undertaken by a particular sector in the manufacturing industry to restructure by way of reorganization, reconstruction or amalgamation within that particular sector with a view to strengthening the basis for industrial 76 Laws of Malaysia ACT 327

self-sufficiency, improving industrial technology, increasing productivity, enhancing the efficient use of natural resources and the efficient management of manpower.

(2) Such activity shall be approved by the Minister with the concurrence in writing of the Minister of Finance. Application for industrial adjustment allowance

31B. (1) Any company participating in industrial adjustment may make an application in writing to the Minister for approval for purposes of an industrial adjustment allowance.

(2) A pioneer company or a company which has been granted pioneer status or an approval under section 27 shall only be eligible to apply for industrial adjustment allowance under subsection (1)-- (a) in respect of a manufacturing activity or manufactured product other than the promoted activity or promoted product for which a pioneer certificate has been issued or pioneer status has been granted; or

(b) in respect of capital expenditure other than capital expenditure on which investment tax allowance has been granted:

Provided that where a pioneer company or a company granted an approval under section 27 carries on the same activity or manufactures the same product after its tax relief period or the period specified under section 29 has ended or ceased, the company may apply for an industrial adjustment allowance under subsection (1) only in respect of capital expenditure in relation to such activity or product incurred by the company after the end of its tax relief period or the period specified under section 29. Grant of approval in respect of industrial adjustment allowance 31C. (1) The Minister may grant approval in respect of an application made under section 31B subject to such terms and conditions as he deems fit.

(2) The Minister may grant an approval under subsection (1) retrospectively from a date not earlier than the date the application is received by the



Minister.

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(3) The Minister may vary the terms and conditions imposed under subsection (1).

(4) In exercising his powers under this section, the Minister shall act with the concurrence in writing of the Minister of Finance. Withdrawal of approval of industrial adjustment allowance 31D. (1) Where a company which has been granted an approval under section 31C fails to comply with any of the terms and conditions imposed thereunder, the Minister shall, by notice in writing, require the company, within thirty days from the date of receipt of the notice, to show cause why the approval should not be withdrawn. (2) The Minister may withdraw the approval granted under section 31C--

(a) where the company has failed to comply with a notice served on it under subsection (1); or

(b) where he is not satisfied with the reasons for non-compliance with the terms and conditions imposed under section 31C.

## Industrial adjustment allowance

31E. (1) Where a company which has been granted an approval under section 31C has incurred in the basis period for a year of assessment in respect of the manufacturing activity or manufactured product capital expenditure for the purposes of that manufacturing activity or manufactured product, there shall be given to the company for that year of assessment an industrial adjustment allowance of an amount approved by the Minister of Finance, such allowance not being more than one hundred per cent of that expenditure. (2) An allowance for expenditure given under subsection (1)-- (a) subject to subsection (4), shall be given only for the year of assessment in the basis period for which the expenditure was incurred; and

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(b) shall be given in respect of expenditure incurred within five years from the date from which the approval is to take effect:

Provided that where a company incurs capital expenditure from the date the approval is to take effect in relation to a business which it is about to carry on in respect of a manufacturing activity or manufactured product, that expenditure shall be deemed to be incurred in the basis period in which it commences to carry on the business.

(3) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the adjusted income of the company from the business of that company for the basis period for that year 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 under the principal Act for that year of assessment.

(4) Where by reason of an insufficiency or absence of adjusted income of a company from a business of the company for the basis period for a year of assessment effect cannot be given or cannot be given in full to any allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1), (2) and (3), so much the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section 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 company has received the whole of the allowance to which it is so entitled:

Provided that the allowance arising under this subsection shall be given only after the abatement of adjusted income, if any, to which the company is entitled to under section 32, 33, 33A, 34, or 36.

(5) Where any income is exempted from tax by virtue of subsection (3), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

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(6) For the purposes of this Chapter, "capital expenditure" in relation to manufacturing activity means capital expenditure incurred on a factory or on any plant and machinery used in Malaysia in connection with and for the purposes of the manufactured product but shall not include capital expenditure incurred on buildings used as living accommodation, plant and machinery where such buildings, plant or machinery 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.

## Chapter 3--Abatement of Adjusted Income

### Abatement for location in a promoted industrial area

32. (1) Subject to subsections (2) to (5), where the income of a company for a

basis period for a year of assessment is derived from a business of the manufacture of products and in that basis period the company for the purposes of that business has a factory in operation in a promoted industrial area declared under subsection (4), there shall be given to the company for that year of assessment an abatement of five per cent of the adjusted income in respect of that business:

Provided that this subsection shall not apply to a company-- (a) for the period during which that company--

(i) has been granted pioneer status in respect of any 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 a pioneer certificate in respect of any promoted activity or promoted product and

whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph 29(2)(b), (c) or (d), 29C(2)(b) or (c), 29D(2)(b), 29E(2)(b), 29F(2)(b) or 29G(2)(b) of section in respect of any promoted activity or promoted product for which the company has been granted approval under section 27, 27B, 27C, 27D, 27E or 27F.

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(2) Where the adjusted income of the company for that business for the year of assessment consists of activities other than the operations of the factory in the promoted industrial area, the amount of that adjusted income for a year of assessment to be abated under subsection (1) shall be such portion of the adjusted income of that company from that business for the basis period for a year of assessment as is attributable only to amounts included in the gross income of that company from that business for that period which are derived from the operations of the factory in the promoted industrial area:

Provided that in ascertaining that portion of the adjusted income a deduction under Chapter 4 of Part III of the principal Act from the gross income of the company from that source for that period shall be made--

(a) only if it is patently attributable to the operations of the factory in the promoted industrial area; or

(b) if it is only partly so attributable in an amount which bears the same proportion to that deduction as the amounts included in the gross income of

that company from that business for that period which are derived from operations of the factory in the promoted industrial area bear to the gross income of that company from that business for that period.

(3) The abatement of adjusted income under subsection (1) shall be given for each year of assessment in the basis period in which the factory is in operation in the promoted industrial area: Provided that the abatement shall be given for a period of not less than five consecutive years of assessment notwithstanding that the declaration of the promoted industrial area is revoked by the Minister.

(4) For the purposes of this section, the Minister with the concurrence in writing of the Minister of Finance may from time to time by statutory order in the Gazette--

(a) declare for a specified period any area in Malaysia to be a promoted industrial area;

(b) add to, delete from, vary or amend any order made under this subsection.

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(5) This section shall not apply--

(a) to a company which is not resident in Malaysia for the basis year for a year of assessment; or

(b) to a company where the income of the company is derived from the operation of a factory in a promoted industrial area and such factory has commenced operations on or after the 1 January 1992.

#### Abatement of adjusted income for small scale companies

33. (1) Subject to subsections (2), (3) and (4) where a company which is resident in Malaysia in the basis year for a year of assessment and is a small scale company in the basis period for that year of assessment carries on a business of the manufacture of products in Malaysia which commences on or after the 1 January 1986, the company shall be granted an abatement of five per cent of the adjusted income in respect of that business for that year of assessment:

Provided that this subsection shall not apply to a company-- (a) for the period during which that company--



(i) has been granted pioneer status in respect of any 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 a pioneer certificate in respect of any promoted activity or promoted product and

whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph 29(2) (b), (c) or (d) in respect of any promoted activity or promoted product for which the company has been granted approval under section 27.

(2) The abatement referred to in subsection (1) shall be given for a period of five consecutive years of assessment commencing from the year of assessment in the basis period in which the business commences.

(3) Notwithstanding subsections (1) and (2), the abatement shall cease to be given from the year of assessment in the basis year in which the company is not resident in Malaysia or in the basis period in which the company ceases to be a small-scale company. 82 Laws of Malaysia ACT 327

(4) For the purposes of this section--

"small scale company" means a company whose shareholders' funds as at the first day of the basis period for a year of assessment do not exceed an amount as may be declared, from time to time, by the Minister in a statutory order published in the Gazette. (5) This section shall not apply to a small scale company which commences a business of the manufacture of products in Malaysia on or after the 1 January 1992.

33A. (Deleted by Act A862).

Abatement of adjusted income for compliance with Government policy on capital participation or employment in industry

34. (1) Where the Minister is satisfied that a company which is resident in Malaysia in the basis year for a year of assessment and is engaged in a manufacturing activity in Malaysia has in the basis period for that year of assessment complied with Government policy on capital participation or employment in industry, it shall be given an abatement of adjusted income in respect of its business relating to such activity for that year of assessment at a rate as may be determined by the Minister of Finance:

Provided that this subsection shall not apply to a company-- (a) for the period during which that company--

(i) has been granted pioneer status in respect of any 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 a pioneer certificate in respect of any promoted activity or promoted product and

whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph 29(2) (b), (c) or (d) of section in respect of any promoted activity or promoted product for which the company has been granted approval under section 27.

(2) The abatement referred to in subsection (1) shall be given for a period of five consecutive years of assessment, commencing from the year of assessment in the basis period in which the company is first given the abatement.

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(3) Notwithstanding subsections (1) and (2), the abatement shall not be given for the year of assessment in the basis period in which the company fails to comply, to the satisfaction of the Minister, with Government policy on capital participation or employment in industry.

(4) This section shall apply--

(a) to a company which has complied with the Government policy on capital participation or employment in industry from the 1 January 1986 to the 31 December 1991; and (b) to a company which has been given an abatement of adjusted income under subsection (1) prior to the 1 January

1992. (5) For the purposes of this section, the Minister with the concurrence in writing of the Minister of Finance shall in a statutory order published in the Gazette specify the rate of abatement. Exemption from income tax

35. (1) Where an abatement is given to a company under sections 32, 33 and 34 for a year of assessment, so much of the adjusted income of the company for the basis period for that year of assessment as is equal to the amount of the abatement (or to the aggregate amount of any such abatements, as the case may be) shall be exempt from tax under the principal Act for that year of

assessment.

(2) Where any income is exempt from tax by virtue of subsection (1), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

#### Chapter 4--Abatement of Statutory Income

##### for Exports

##### Abatement of statutory income for exports

36. (1) Subject to subsection (4), where in the basis period for a year of assessment, a company exports directly or through agents any product manufactured by such company in Malaysia, the adjusted 84 Laws of Malaysia ACT 327

income of the company for that year of assessment shall be abated by an amount ascertained in accordance with subsection (2): Provided that this subsection shall not apply to a company-- (a) for the period during which that company--

(i) has been granted pioneer status in respect of any 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 a pioneer certificate in respect of any promoted activity or promoted product and

whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph 29(2) (b), (c) or (d) or 29A(3) in respect of any promoted activity or promoted product for which the company has been granted approval under section 27;

(c) for the period prescribed under paragraph 29B(2) (b), 29C(2) (b) or (c), 29D(2) (b), 29E(2) (b), 29F(2) (b) or 29G(2) (b) in respect of an activity or of producing a product for which the company has been granted approval under section 27A, 27B, 27C, 27D, 27E or 27F.

(2) The amount of statutory income to be abated under subsection (1) shall be an amount ascertained by applying to the statutory income a rate which is equivalent to twenty-five per cent of export sales as bears to the total sales:

Provided that where the basis period of a company for the year of assessment 1994 includes a period prior to 1 January 1993, the amount to be abated shall be the total of--

(a) an amount ascertained by applying to the statutory income a rate which is equivalent to fifty per cent of export sales in the period prior to 1 January 1993 as bears to the total sales for the whole of the basis period; and

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(b) an amount ascertained by applying to the statutory income a rate which is equivalent to twenty-five per cent of export sales in the period after 31 December 1992 as bears to the total sales for the whole of the basis period: Provided further that where the basis period for the year of assessment 1995 of a company includes a period prior to 1 January 1994, the company shall be given an abatement of its statutory income under subsection (1) and the amount to be abated under subsection (2) shall be an amount ascertained by applying to the statutory income a rate which is equivalent to twenty-five per cent of export sales in the period prior to 1 January 1994 as bears to the total sales for the whole of the basis period.

(3) (Deleted by Act A656).

(4) The Minister with the concurrence in writing of the Minister of Finance may by statutory order in the Gazette-- (a) (Deleted by Act A862);

(b) declare any product to which this section shall not apply; and

(c) add to, delete from, vary and amend any order made under this subsection.

(5) For the purposes of this section--

"export" includes the sale of locally manufactured products from companies located in areas other than the Free Industrial Zones and licensed manufacturing warehouses and the sale of films and videos outside Malaysia;

"export sales" means the free-on-board value of products exported. Relanding of products exported

36A. (1) No abatement of adjusted income shall be given to a company in respect of products which have been exported and subsequently relanded in Malaysia.

(2) Where a company has been granted an abatement of statutory income in



respect of any product which has been exported and subsequently relanded in Malaysia, the abatement of statutory income so granted shall be withdrawn and the abatement so given shall be treated as part of the statutory income in the basis period for the year of assessment in which the claim was made. 86 Laws of Malaysia ACT 327

(3) For the purposes of this section, "relanded in Malaysia" means locally manufactured products which were exported by a company and brought back into Malaysia and includes the return to the company, making a claim for abatement of statutory income under subsection 36(1), of locally manufactured products sold to companies in the Free Industrial Zones or to licensed manufacturing warehouses.

#### Exemption from income tax

37. (1) Where an abatement is given to a company under section 36 for a year of assessment, so much of the statutory income of the company from the business of that company as is equal to the amount of the abatement shall be exempt from tax under the principal Act for that year of assessment.

(2) Where, by reason of an insufficiency or absence of statutory income of a company from a business of the company for the basis period for a year of assessment, effect cannot be given or cannot be given in full to the abatement to which the company is entitled under section 36 for that year in relation to the source consisting of that business, then, notwithstanding subsection (1) and subsection 36(1), so much of the abatement under paragraph 36(2) (b) as cannot be given for that year shall be deemed to be an abatement to be given to the company under this section 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 abatement to which it is so entitled. (3) Where any income is exempt from tax by virtue of subsection (1), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

#### Non availability of abatement

38. This Chapter shall not apply to-- (a) a company which is not resident in Malaysia for the basis year for a year of assessment; or

(b) a trading company as defined under section 40; and (c) a company in respect of exports made on or after 1 January 1994.

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## Chapter 5--Export Allowance

### Export allowance

39. (1) In ascertaining the adjusted income of a company for the basis period for a year of assessment, there shall be deducted from the gross income of the business of the company for that period an amount which shall be arrived at by applying subsection (2): Provided that this subsection shall not apply to a company-- (a) for the period during which that company--

(i) has been granted pioneer status in respect of any 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 a pioneer certificate in respect of any promoted activity or promoted product and

whose tax relief period has not ended or ceased;

(b) for the period prescribed under paragraph 29(2) (b), (c) or (d) or subsection 29A(3) in respect of any promoted activity or promoted product for which the company has been granted approval under section 27;

(c) for the period prescribed under paragraph 29B(2) (b), 29C(2) (b) or (c), 29D(2) (b), 29E(2) (b), 29F(2) (b) or 29G(2) (b) in respect of an activity or of producing a product for which the company has been granted approval under section 27A, 27B, 27C, 27D, 27E or 27F.

(2) For the purposes of this section--

(a) there shall be ascertained the amount, if any, of the gross income derived from--

(i) the export of any agricultural produce declared in accordance with subsection (3); or

(ii) the export by any trading company of any product manufactured in Malaysia;

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(b) the amount of deduction to be made under subsection (1) shall be an amount equal to three per cent of the gross income as ascertained under paragraph (a)

which is derived from--

(i) the export of agricultural produce in the basis period for a year of assessment; or

(ii) the export by a trading company of products manufactured in Malaysia in the basis period for

a year of assessment:

Provided that where the basis period of a company for the year of assessment 1994 includes a period prior to 1 January 1993, the amount of deduction to be made under subsection (1) shall be the total of--

(A) an amount equal to five per cent of the gross income as ascertained under paragraph (2) (a) which is derived from the export of agricultural produce or the export by a trading company of products manufactured in Malaysia in the period prior to 1 January 1993; and

(B) an amount equal to three per cent of the gross income as ascertained under paragraph (2) (a) which is derived from the export of agricultural produce or the export by a trading company of products manufactured in Malaysia in the period after 31 December 1992.

(3) The Minister with the concurrence in writing of the Minister of Finance may by statutory order in the Gazette-- (a) declare any agricultural produce or products manufactured in Malaysia for the purposes of paragraph (2) (a); (b) add to, delete from, vary or amend any order made under this subsection.

(4) This section shall apply to a company which-- (a) is resident in Malaysia for the basis year for a year of assessment; and

(b) is engaged in the export of agricultural produce and which has not been given an abatement under Chapter 4 of this Act in respect of the same product; or

(c) is a trading company as defined under section 40. Promotion of Investments 89

Section 36A to apply

39A. Section 36A shall apply mutatis mutandis in relation to the export of agricultural produce or to the export by a trading company of products manufactured in Malaysia under section 39. Interpretation

40. For the purposes of this Chapter-- "agricultural produce" means products of agriculture, fisheries or marine products grown, cultured, reared, captured or extracted in Malaysia which are in their raw form, fresh, alive or dead and includes extractions thereof;

"company" includes an agro-based co-operative society, an Area Farmers' Association, a Federal Farmers' Association, a State Farmers' Association, an Area Fishermen's Association, a Federal Fishermen's Association, a State Fishermen's Association and a sole proprietorship, partnership or association solely engaged in agriculture;

"gross income" means gross income calculated at free-on-board value of the agricultural produce or products manufactured exported in Malaysia that are exported;

"trading company" means a company whose primary activity is the trade in and exporting of agricultural produce or manufactured products which are purchased from farm producers or manufacturers in Malaysia.

Non availability of export allowance

40A. This Chapter shall not apply to a company in respect of exports made on or after 1 January 1994.

Chapter 6--Deductions for Promotion of Exports

Deductions for promotion of exports

41. (1) The Minister of Finance may make rules prescribing deductions in respect of outgoings and expenses incurred for the promotion of exports from Malaysia.

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(2) Rules of the kind referred to in subsection (1) may include provisions prescribing--

- (a) the kinds of outgoings and expenses to which the rules relate;
- (b) conditions allowing the deductions to which the rules relate; and
- (c) the ratio to be applied, for the purpose of ascertaining any such deduction, to the amount of any such outgoings and expenses.



(3) The rules contained in the Schedule shall be deemed to have been made under this section and may be amended or revoked accordingly.

(4) Except for the rules contained in the Schedule, section 149 and subsection 154(2) of the principal Act shall apply to any rules made under this section.

## Chapter 7--Infrastructure Allowance

### Definition of infrastructure

41A. For the purposes of this Chapter, "infrastructure" means any construction, reconstruction, extension or improvement of any permanent structure including a bridge, jetty, port or road in respect of a business in operation in a promoted area.

### Infrastructure allowance

41B. (1) Where a company which is resident in Malaysia for the basis period for a year of assessment has incurred capital expenditure on infrastructure in respect of a business in operation in a promoted area, there shall be given to the company for that year of assessment

an infrastructure allowance of one hundred percent of that expenditure:

Provided that for the purposes of this subsection "capital expenditure" shall not include--

(a) (Deleted by Act A993);

(b) capital expenditure as defined under subsection 29(7), 29A(8), 29B(7), 29C(7), 29D(6), 29E(6), 29F(6), 29G(6) or 31E(6);

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(c) qualifying capital expenditure under Schedule 3 of the principal Act;

(d) capital expenditure for the purposes of Schedule 7A of the principal Act;

(e) capital expenditure incurred on plant or machinery used directly or indirectly for the purposes of storage, treatment or disposal of scheduled wastes as defined in the Environmental Quality (Scheduled Wastes) Regulations 1989 [P. U. (A) 139/1989]; and

(f) capital expenditure incurred on buildings used as living accommodation, plant and machinery where such buildings, plant or machinery 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.

(2) Where an allowance is given to a company under subsection (1) for a year of assessment, so much of the statutory income of the business of the company 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 under the principal Act:

Provided that the amount so exempt shall not exceed eighty-five per cent of the statutory income of that business of the company for that year of assessment.

(3) Where, by reason of an insufficiency or absence of statutory income of the business of the company for a year of assessment, effect cannot be given or cannot be given in full to any, allowance to which the company is entitled under this section for that year in relation to the source consisting of that business, then, notwithstanding subsections (1) and (2), so much of the allowance in question as cannot be given for that year shall be deemed to be an allowance to be given to the company under this section for the first subsequent year of assessment 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 to which it is so entitled.

(4) Where a pioneer company has for the purposes of its pioneer business incurred capital expenditure on infrastructure during the tax relief period, the capital expenditure shall be deemed to have been incurred on the day following the end of the tax relief period. 92 Laws of Malaysia ACT 327

(5) Where any income is exempt from tax by virtue of subsection (2), section 23 shall apply to that income (with any necessary modifications) as it applies to income exempt under section 22.

### PART III

#### SUPPLEMENTAL

Power of entry, etc.

42. (1) Any public officer authorized in writing by the Minister or the Minister of Finance may at all reasonable times-- (a) have access to--

(i) any premises occupied by a company or used for the storage of the company's goods or products; and

(ii) any records or accounts of the company,

for the purposes of checking the production, composition, storage or packing of any such goods or products and generally for the purpose of ensuring the implementation of this Act; and

(b) take samples of any such goods or products for any such purpose.

(2) Any person who obstructs a public officer in the exercise of any power conferred by subsection (1) shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Power to make rules and regulations

43. The Minister may make rules and regulations-- (a) without prejudice to the generality of subsection 2(2), specifying any necessary modifications in the application of this Act to any particular industry which is not a manufacturing industry;

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(b) prescribing anything required by this Act to be prescribed; and

(c) generally for facilitating the operation of this Act. Separate accounts

43A. (1) Where a company has been granted a pioneer certificate under section 7 or an approval under section 27, 27A, 27B, 27C, 27D, 27E or 27F it shall not, before the end of its tax relief period, or the period specified in paragraph 29(2)(b), (c) or (d), subsection 29A(3), paragraph 29B(2)(b), 29C(2)(b) or (c), 29D(2)(b), 29E(2)(b), 29F(2)(b) or 29G(2)(b) carry on any business other than a business where the whole of the gross income is derived from its promoted activity or promoted product without informing the Minister.

(2) Where a company referred to under subsection (1) carries on a business other than the business where the whole of the gross income is derived from its promoted activity or promoted product, it shall keep separate accounts in respect of that business. (3) Any company which has been granted pioneer certificate under section 7 or an approval under section 27, 27A, 27B, 27C, 27D, 27E or 27F in respect of a promoted activity or promoted product or an additional promoted activity or promoted product shall keep separate accounts in respect of the business relating to that activity or product or that additional activity or additional product. Repeal

44. Subject to the following provisions, the Investment Incentives Act 1968

[Act 199] its hereby repealed.

## Savings

45. Notwithstanding its repeal, the Investment Incentives Act 1968 (hereinafter in this Act referred to as the "repealed law") shall remain in full force and effect and continue to apply to any company for all purposes and in all respects in relation to any certificate issued or approval granted to a company under the repealed law before the commencement of this Act for so long as the same remains valid and in force, and accordingly--

(a) the repealed law shall, in relation thereto, apply to the company for any year of assessment whether before or subsequent to the commencement of this Act; and

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(b) where in order to give effect to any such certificate or approval, it is necessary to make any subsidiary legislation under the repealed law, the authority having the power thereunder to make the same may make the necessary subsidiary legislation.

46. (Deleted by Act A656).

47. (Deleted by Act A656). Application of this Act to tax relief period

48. (1) Notwithstanding section 45, where the tax relief period of a company which has been issued with a pioneer certificate or granted an approval under section 12A of the repealed law has not ended as at the 1 January 1986, the company may apply to the Minister for approval for this Act to apply in respect of its tax relief period.

(2) Where the Minister grants an approval in respect of an application made under subsection (1), the repealed law relating to the tax relief period of that company shall cease to apply and this Act shall apply in respect of the tax relief period of the company: Provided that the total tax relief period of the company shall not exceed five years from its production day which has been determined under the repealed law but the company shall, at the end of that tax relief period and subject to section 14A, be eligible to apply for an extension of that tax relief period under section 14A. Capital expenditure incurred on plant and machinery in hotel business

49. (1) Where a company has been granted an approval under section 30KA of the repealed law and has incurred capital expenditure on or after the 1 January



1986 on plant and machinery or other facilities used in connection with the hotel business, the company may apply to the Minister for approval for paragraph 29(7)(iii) of this Act to apply to such capital expenditure in relation to an hotel business:

Provided that such capital expenditure is incurred within five years from the date of approval granted under section 30KA of the repealed law.

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(2) Where the Minister grants an approval in respect of an application under subsection (1), paragraph 29(7)(iii) of this Act shall apply to such expenditure.

#### Application for an incentive of a similar character

50. (1) Where a company has been granted an approval in respect of an incentive under section 5, 12A, 12B, 26, 30KA or 30Q of the repealed law but as at the 1 January 1986 or at any time thereafter, its tax relief period has not commenced or the company has not incurred capital expenditure for purposes of section 26, 30KA or 30Q of the repealed law the company may apply for an incentive under this Act where the incentive applied for is substantially of a similar character to that for which an approval was granted under the repealed law.

(2) Where the Minister grants an approval in respect of an application made under subsection (1), the approval granted under the repealed law shall be deemed to have been withdrawn. Application for investment tax allowance by a company granted an incentive under the repealed law

50A. A company which has been granted an incentive under the repealed law shall only be eligible to apply for investment tax allowance under section 26 in respect of a promoted activity or promoted product other than the activity or product for which an incentive was granted under the repealed law.

#### Eligibility of companies under repealed law for industrial adjustment allowance

50AA. A company which has been granted an incentive or investment tax credit under the repealed law shall only be eligible to apply for industrial adjustment allowance in respect of a manufacturing activity or manufactured product other than the activity or product for which an incentive was granted under the repealed law or in respect of capital expenditure other than the capital expenditure on which investment tax credit has been granted under the repealed law: Provided that where a company which has been granted an incentive or

investment tax credit under the repealed law carries on the same activity or manufactures the same product after the end of 96 Laws of Malaysia ACT 327

the period for which the incentive or investment tax credit was granted, the company may apply for an industrial adjustment allowance only in respect of capital expenditure in relation to such activity or product incurred by the company after the end of the period for which the incentive or investment tax credit was granted. Eligibility of company under repealed law for abatement of adjusted income or export allowance

50B. (1) Where a company has been granted an incentive under section 5, 12A or 12B of the repealed law, that company shall be eligible for abatement of adjusted income or statutory income, as the case may be under section 32, 33, 34 or 36 or for export allowance under section 39 at the end of its tax relief period under the repealed law.

(2) Subject to subsections (3) and (4), where a company has been granted an approval under section 26 or 30P of the repealed law, that company shall be eligible for abatement of adjusted income or statutory income, as the case may be under section 32, 33, 34 or 36 or for export allowance under section 39 at the end of the period of five years specified in paragraph 26(3)(b) or 30Q(2)(b) of the repealed law.

(3) A company which has been granted an approval under section 26 or 30P of the repealed law may, at any time during the period specified in paragraph 26(3)(b) or 30Q(2)(b) of that law, surrender the approval by giving a notice in writing to the Minister, and where the Minister is satisfied with the reasons for the surrender of such approval, or that the company has complied with the terms and conditions imposed under subsection 26(7) or section 30P with any other provisions of the repealed law, the surrender shall have effect from a date specified by the Minister in the notice approving such surrender and such date shall not be earlier than the date the notice is received by the Minister:

Provided that in respect of a notice of surrender received by the Minister on or after the 1 January 1986 and on or before the 31 March 1987 and upon the Minister being satisfied as provided in this subsection, the Minister, when approving such surrender, may specify a date which is not earlier than the 1 January 1986 as the date the surrender shall have effect.

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(4) Where a company--

(a) surrenders an approval granted to it under section 26 or 30P of the repealed law; and

(b) the surrender becomes effective and is in accordance with subsection (3), that company shall, with effect from the day following the date of such surrender, be eligible for abatement of adjusted income or statutory income, as the case may be, under section 32, 33, 34 or 36 or for export allowance under section 39.

#### Application under repealed law

51. (1) Where an application is made under the repealed law and it is pending on the date of coming into force of this Act, (a) the defined authority shall consider such application in accordance with the provisions of this Act if there are corresponding provisions in this Act--

(i) for such an application; or

(ii) for an application which, in the opinion of the defined authority, is of substantially similar character or is in respect of a substantially similar matter; or (b) if there are no corresponding provisions in this Act, or where the defined authority is satisfied that it is for any reason not practicable to consider such application in accordance with this Act, such applications shall be considered by the defined authority in accordance with the provisions of the repealed law.

(2) Where an approval has been granted to a company under paragraph (1) (a), this Act shall apply to the company for all purposes and in all respects in relation to such grant:

Provided that where an approval which has been granted to a company is to take effect from a date prior to the commencement of this Act, this Act shall be deemed to apply to such grant from the date specified in the grant notwithstanding that such date is earlier than the date of the coming into force of this Act.

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(3) Where an approval has been granted to a company under paragraph (1) (b), the repealed law shall continue to apply to the company for all purposes and in all respects in relation to such grant until its expiration or until it ceases to have effect. Concurrence of the Minister of Finance

52. The Minister in exercising his powers under sections 48, 49 and 50 shall

act in concurrence with the Minister of Finance. Application of sections 27 and 29 of the repealed law

53. (1) Where a company has incurred any approved outgoings or expenses prior to 1 January 1986 in connection with the promotion of exports from Malaysia, section 27 of the repealed law shall, notwithstanding the repeal, apply to such approved outgoings and expenses.

(2) Where a company exports products manufactured in Malaysia prior to 1 January 1986, section 29 of the repealed law shall, notwithstanding the repeal, apply in respect of such products. Functions of a public officer

54. For the purposes of sections 45 to 50 and 53, any function of a public officer under the repealed law may be exercised by any public officer referred to in section 42 of this Act or section 134 of the principal Act whose office substantially corresponds to that of an officer by whom the function was exercisable under that law. References to repealed law

55. Unless the context otherwise requires, a reference in a written law to any provision of the repealed law shall be construed in relation to the year of assessment 1987 and subsequent years of assessment as a reference to the corresponding provision (if any) of this Act.

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SCHEDULE

[Subsection 41(3)]

INCOME TAX (PROMOTION OF EXPORT) RULES 1986

Citation and commencement

1. (1) These Rules may be cited as the Income Tax (Promotion of Exports) Rules 1986. (2) These Rules shall have effect with respect to approved outgoings and expenses incurred on or after 1 January 1986.

Interpretation

2. In these Rules, unless the context otherwise requires-- "approved outgoings and expenses" means outgoings and expenses allowable as a deduction under rule 4.



Company resident in Malaysia eligible for deduction

3. Every company resident in Malaysia for the basis year for a year of assessment shall be eligible for the deduction under these Rules for that year. Deduction of certain outgoing and expenses

4. (1) Subject to these Rules, for the purpose of ascertaining under the principal Act the adjusted income of a company from its business for the basis period for a year of assessment, there shall be allowed as a deduction any outgoings and expenses of the kind described in paragraph (2) which-- (a) were incurred by that company during that basis period with respect to that business; and

(b) were incurred primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand, for the export of goods or agricultural produce manufactured, produced, assembled, processed, packed, graded or sorted in Malaysia.

(2) The outgoings and expenses referred to in paragraph (1) are-- (a) expenses incurred in respect of publicity and advertisements in any media outside Malaysia;

(b) expenses directly attributable to the provision of samples without charge to prospective customers outside Malaysia, including the cost of delivery of the samples;

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(c) expenses directly attributable to carrying out export market research or the obtaining of export marketing information; (d) expenses directly attributable to the preparation of tenders for the supply of goods or agricultural produce (not being goods or agricultural produce of the same kind and specifications as those regularly manufactured, produced or supplied by the company) to prospective customers outside Malaysia;

(e) 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 purpose of negotiating or concluding contracts for sales of goods or agricultural produce on behalf of the company or for the purpose of participating in trade fairs or trade or industrial exhibitions approved by the Minister, and actual expenses, subject to a maximum of three hundred ringgit per day, for accommodation and a maximum of one hundred and fifty ringgit per day for sustenance for the whole of the period commencing with the representative's departure from Malaysia and ending with his return to Malaysia; (f) expenses for giving technical information to persons outside

Malaysia relating generally to goods or agricultural produce of the company offered for sale, excluding expenses for giving technical information to purchasers after purchase;

(g) expenses directly attributable to the provision of exhibits for trade fairs or trade or industrial exhibitions which are held outside Malaysia and approved by the Minister;

(h) expenses for services rendered for public relations work connected with export;

(i) expenses directly incurred for participating in trade fairs or trade or industrial exhibitions approved by the Minister other than the expenses specified in subparagraphs (e) and (g);

(j) expenses for the cost of maintaining sales offices overseas for the promotion of exports from Malaysia;

(k) professional fees incurred in packaging design on condition that the goods are of export quality and the company employs local professional services.

(3) Deductions allowed under this rule shall be in addition to any deductions allowable under section 33 of the principal Act.

(4) No deduction shall be allowed under this rule in respect of any outgoings, expenses or other payments of the kind mentioned in subsection 39 (1) of the principal Act.

(5) Where the amount of any outgoings and expenses, the whole of which would have been allowable as a deduction under these Rules but for this paragraph, exceeds the amount which in the opinion of the Director General would reasonably be expected to be incurred in the ordinary course of the business with respect to which those outgoings and expenses were incurred, the Director General may to the extent of that excess disallow that amount as a deduction under these Rules.

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(6) For the purpose of paragraph (1) of this rule, where two basis periods overlap, the period common to both shall be deemed to fall in the first basis period only.

Pioneer company

5. Notwithstanding section 21 where a company which has incurred outgoings and expenses allowed under rule 4 is a pioneer company, then-- (a) for the purpose of computing its income for any accounting period in respect of its pioneer business under that section, no deductions shall be made under these Rules;

(b) all deductions under these Rules which but for paragraph (a) of this rule would have fallen to be made for the purpose of computing its income from its pioneer business under that section shall be accumulated, and the aggregate amount thereof shall be allowed as a deduction under these Rules for the purpose of ascertaining its income from its post-pioneer business for the first basis period appropriate to the post-pioneer business for a year of assessment.

#### Non-application of Rules

6. These Rules shall not apply to any of the outgoings and expenses referred to in rule 4 which are incurred in relation to the export of any of the products excluded for the purposes of Chapters 4 and 5.

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#### LAWS OF MALAYSIA

Act 327

PROMOTION OF INVESTMENTS ACT 1986

#### LIST OF AMENDMENTS

Amending law Short title In force from

Act A656 Promotion of Investments 01-01-1986

(Amendment) Act 1986

Act A715 Promotion of Investments 01-01-1989; and (Amendment) Act 1988 year of assessment

1990 and subsequent

years

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