



LAWS OF MALAYSIA

Act 812

FINANCE ACT 2018

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LAWS OF MALAYSIA

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FINANCE ACT 2018

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LAWS OF MALAYSIA

Act 812

FINANCE ACT 2018

An Act to amend the Income Tax Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Real Property Gains Tax Act 1976, Labuan Business Activity Tax Act 1990, Service Tax Act 2018 and Sales Tax Act 2018.

[]

ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance Act 2018.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Promotion of Investments Act 1986 [*Act 327*], the Stamp Act 1949 [*Act 378*], the Real Property Gains Tax Act 1976 [*Act 169*], the Labuan Business Activity Tax Act 1990 [*Act 445*], the Service Tax Act 2018 [*Act 807*] and the Sales Tax Act 2018 [*Act 806*] are amended in the manner specified in Chapters II, III, IV, V, VI, VII and VIII respectively.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 10, 11, 12, 15, 16, 17, 18, 19, 24, 27, 28, 29 and 30 and paragraphs 23(a), (b), (c) and (d) have effect from the year of assessment 2019 and subsequent years of assessment.

(2) Section 13 has effect for the years of assessment 2019, 2020 and 2021.

(3) Section 14 has effect for the years of assessment 2019 and 2020.

(4) Paragraph 4(b) and sections 5, 6, 6A, 7, 8, 19A and paragraph 23(aa) come into operation on the coming into operation of this Act.

(5) Paragraph 4(a) and sections 9, 20, 21, 22 and 26 come into operation on 1 January 2019.

Amendment of section 2

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

(a) by substituting for the definition of “Labuan company” the following definition:

‘ “Labuan company” means a Labuan entity as provided under subsection 2B(1) of the Labuan Business Activity Tax Act 1990;’; and

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

‘ “research and development” means any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring

new knowledge or 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 or products;
- (b) research in the social sciences or the humanities;
- (c) routine data collection;
- (d) efficiency surveys or management studies;
- (e) market research or sales promotion;
- (f) routine modifications or changes to materials, devices, products, processes or production methods; or
- (g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods;’.

Amendment of section 4A

5. Section 4A of the principal Act is amended by substituting for paragraph (ii) the following paragraph:

“(ii) amounts paid in consideration of any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or”.

Amendment of section 12

6. Section 12 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) Notwithstanding subsections (1) and (2), the income of a person from a business that is attributable to a place of business in Malaysia shall be deemed to be the gross income of that person derived from Malaysia from the business.

(4) For the purpose of subsection (3), a place of business includes—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse;
- (g) a building site, or a construction, an installation or an assembly project;
- (h) a farm or plantation; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources,

and without prejudice to the generality of the foregoing, a person shall be deemed to have a place of business in Malaysia if that person—

- (i) carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or
- (ii) has another person acting on his behalf who—
 - (A) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;
 - (B) habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or
 - (C) regularly fills orders on his behalf.”.

Amendment of section 15A

6A. Section 15A of the principal Act is amended by substituting for paragraph (b) the following paragraph:

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

Amendment of section 34

7. Subsection 34(7) of the principal Act is amended by substituting for the words “scientific research” the words “research and development”.

Amendment of section 34A

8. Section 34A of the principal Act is amended—

(a) in the shoulder note, by inserting after the word “research” the words “and development”; and

(b) in subsections (1), (2) and (5), by inserting after the word “research” the words “and development”.

Amendment of section 39

9. Subsection 39(1) of the principal Act is amended—

(a) by deleting the word “or” at the end of paragraph (p);

(b) by substituting for the full stop at the end of paragraph (q) the words “; or”; and

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

“(r) subject to any rules as may be prescribed by the Minister, any amount in respect of a payment made by a person, who is a resident, to any Labuan company.”.

Amendment of section 44

10. Section 44 of the principal Act is amended by inserting after subsection (5E) the following subsection:

“(5F) Notwithstanding subsection (4) or (5), the amount ascertained under either of those subsections for any relevant year shall only be deductible in accordance with subsection 43(2) for a period of seven consecutive years of assessment and that period commences immediately following the relevant year of assessment and any amount or balance of the amount which is not deductible at the end of that period shall be disregarded for the purposes of this Act.”.

Special provision relating to sections 43 and 44

11. Notwithstanding sections 43 and 44 of the principal Act—

- (a) any amount ascertained under subsection 44(4) or (5) of the principal Act for the year of assessment 2017 and the preceding years of assessment which has not been deducted pursuant to subsection 43(2) of the principal Act for the year of assessment 2018; or
- (b) any amount ascertained under subsection 44(4) or (5) of the principal Act for the year of assessment 2018,

may be accounted for the purpose of deduction under subsection 43(2) of the principal Act for the year of assessment 2019 and subsequent years of assessment until the year of assessment 2025 and any amount which has not been deducted pursuant to subsection 43(2) of the principal Act after the end of the year of assessment 2025 shall be disregarded for the purposes of the principal Act.

Amendment of section 44A

12. Section 44A of the principal Act is amended—

- (a) in subsection (1), by inserting after the word “may” the words “, for the basis period for three consecutive years of assessment,”;

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

“(1A) For the purpose of subsection (1), the basis period for three consecutive years of assessment commences—

- (a) immediately following the basis period for a year of assessment the surrendering company first commences operation, provided that the basis period consists of a period of twelve months; or
- (b) immediately following the second basis period the surrendering company first commences operation (in this paragraph referred to as the “second basis period”), if the basis period for a year of assessment the surrendering company first commences operation is less or more than twelve months and the second basis period consists of a period of twelve months.”;

(c) in subsection (10), by inserting after paragraph (a) the following paragraph:

“(aa) has unutilized investment tax allowance or adjusted loss from a pioneer business under the Promotion of Investments Act 1986;”;

(d) in subsection (12)—

- (i) in the definition of “ordinary shares”, by deleting the word “nominal”; and
- (ii) in the definition of “residual profits”, by deleting the word “nominal”.

Special provision relating to section 44A

13. Notwithstanding subsection 44A(1) of the principal Act as amended in this Act, a surrendering company may surrender its adjusted loss for the basis period for a year of assessment in accordance with that subsection for the basis period of—

- (a) the year of assessment 2019, in relation to a surrendering company which first commences its operation in the year of assessment 2015;

- (b) the years of assessment 2019 and 2020, in relation to a surrendering company which first commences its operation in the year of assessment 2016; and
- (c) the years of assessment 2019, 2020 and 2021, in relation to a surrendering company which first commences its operation in the year of assessment 2017.

Amendment of section 46

14. Paragraph 46(1)(k) of the principal Act is amended by substituting for the word “six” wherever appearing the word “eight”.

Amendment of section 49

15. Section 49 of the principal Act is amended—

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

“(1) Subject to this section, in the case of an individual resident for the basis year for a year of assessment, there shall be allowed for that year of assessment a deduction—

- (a) not exceeding three thousand ringgit, in respect of premium paid by that individual for any insurance;
- (b) not exceeding four thousand ringgit, in respect of contribution to approved scheme (other than a private retirement scheme) made or suffered by that individual who is an employee or a self-employed person within the meaning of the Employees Provident Fund Act 1991 [Act 452]; or
- (c) not exceeding four thousand ringgit, in respect of any amount made or suffered by that individual on any contribution under any written law relating to widow, widower and orphan’s pension or under any approved scheme within the meaning of any such law.”; and

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

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

- (a) the total amount of deduction under subsection (1) shall not exceed seven thousand ringgit;
- (b) where subsection 50(2) or 50(3) applies, the amount of deduction to be allowed shall be in accordance with paragraphs (1)(a), (b) and (c) and the total deduction under subsection 50(2) or (3) shall not exceed seven thousand ringgit;
- (c) in the case of an individual who is a pensionable officer within the meaning of section 2 of the Pensions Act 1980 [Act 227] and no deduction is made under paragraph (1)(b) or (c) to that individual, the amount of deduction under paragraph (1)(a) shall not exceed seven thousand ringgit.”.

Amendment of section 60

16. Section 60 of the principal Act is amended—

(a) in subsection (2)—

(i) by substituting for paragraph (b) the following paragraph:

“(b) where an insurer carries on re-insurance business, the re-insurance business and the general business (excluding the re-insurance business) shall be treated as separate general businesses;”;

(ii) in paragraph (c), by substituting for the proviso the following proviso:

“Provided that where the insurer also carries on life re-insurance business, the life re-insurance business shall be a separate source from life business and shall be treated as a general business;”;

- (b) in subsection (5A), by deleting the word “inward” wherever appearing;
- (c) by deleting subsection (5B);
- (d) in subsection (6A), by deleting the word “inward” wherever appearing;
- (e) by deleting subsection (6B);
- (f) in subsection (7), by substituting for the words “, (6A) or (6B)” the words “or (6A)”; and
- (g) in subsection (11)—
 - (i) by substituting for the words “, sections 60A and 60B” the words “and section 60A”; and
 - (ii) by deleting the definitions of “inward re-insurance”, “inward re-insurance contract”, “offshore insurance” and “offshore insurance policies”.

Amendment of section 60A

17. Section 60A of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “Inward re-insurance” the word “Re-insurance”;
- (b) by deleting the word “inward” wherever appearing;
- (c) in subsection (2), by substituting for the words “5 per cent” the words “8 per cent”; and
- (d) by inserting after subsection (2) the following subsection:
 - “(3) This section shall apply to an insurer who has an adequate number of full time employees and has incurred an adequate amount of annual operating expenditure in Malaysia as prescribed by the Minister.”.

Amendment of section 60AA

18. Section 60AA of the principal Act is amended—

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

“(1) This section shall apply—

(a) for ascertaining the adjusted income for the basis period for a year of assessment from the takaful business of a takaful operator; and

(b) to a takaful operator who has an adequate number of full time employees and has incurred an adequate amount of annual operating expenditure in Malaysia as prescribed by the Minister.”;

(b) in subsection (2)—

(i) by substituting for paragraph (b) the following paragraph:

“(b) where the takaful operator carries on a re-takaful business, the re-takaful business and the general takaful business (excluding the re-takaful business) shall be treated as separate general takaful businesses;”;

(ii) in paragraph (c), by substituting for the proviso the following proviso:

“Provided that where the takaful operator also carries on family re-takaful business, the family re-takaful business shall be a separate source from the family business and shall be treated as a general takaful business;”;

(iii) by substituting for paragraph (e) the following paragraph:

“(e) where a takaful operator carries on re-takaful business which includes family re-takaful business and general takaful business (excluding those businesses), the income of the fund

established in respect of each of the businesses (in this section referred to as “re-takaful fund”, “family re-takaful fund” and “general fund” respectively) shall be treated as a separate source of income from the income of the shareholders’ fund in respect of those businesses.”;

(c) by substituting for subsection (6) the following subsection:

“(6) The adjusted income of the re-takaful fund or family re-takaful fund for the basis period for a year of assessment in respect of re-takaful business, or family re-takaful business respectively of a takaful operator resident for the basis year for that year of assessment shall consist of an amount arrived at by applying subsection (5) and references in that subsection to—

- (a) “general takaful certificate” shall be construed as references to “re-takaful contract” or “takaful certificate in relation to its family re-takaful business”, as the case may be;
- (b) “general takaful business” shall be construed as references to “re-takaful business” or “family re-takaful business”, as the case may be; and
- (c) “reserve fund for unexpired risks” and “takaful operator” shall, in the case of family re-takaful business, be construed as references to “actuarial valuation reserve” and “family takaful operator” respectively:

Provided that in the case of re-takaful business, no deduction shall be allowed on any share of profits distributed or credited to the takaful participant or shareholders’ fund for that period out of any of the takaful operator’s fund, as the case may be.”;

(d) by substituting for subsection (8) the following subsection:

“(8) The adjusted income of the re-takaful fund, or family re-takaful fund for the basis period for a year of assessment in respect of re-takaful business or family re-takaful business respectively of a takaful operator not resident for the basis year for that year

of assessment shall, where that business is wholly or partly carried on in Malaysia, consist of an amount arrived at by applying subsection (7) and references in that subsection to—

- (a) “Malaysian general takaful certificate” shall be construed as references to “re-takaful contract” or “Malaysian takaful certificate in relation to its family re-takaful business”, as the case may be;
- (b) “general takaful business” shall be construed as references to “re-takaful business” or “family re-takaful business”, as the case may be; and
- (c) “reserve fund for unexpired risks” and “takaful operator” shall, in the case of family re-takaful business, be construed as references to “actuarial valuation reserve” and “family takaful operator” respectively;

Provided that in the case of re-takaful business, no deduction shall be allowed on any share of profits distributed or credited to the takaful participant or shareholders’ fund for that period out of any of the takaful operator’s re-takaful fund, as the case may be.”;

- (e) in subparagraph (9)(a)(iii), by deleting the words “inward” and “offshore fund”;
- (f) in subparagraph (10)(a)(iii), by deleting the words “inward” and “offshore fund”;
- (g) in subsection (20), by deleting the words “inward” and “or offshore takaful business” wherever appearing;
- (h) in subsection (21), by deleting the words “inward” and “or offshore takaful business”;
- (i) in subsection (22)—
 - (i) by deleting the words “inward” and “or offshore takaful business” wherever appearing; and
 - (ii) by substituting for the word “five” the word “eight”; and

- (j) in subsection (23), by deleting the definitions of “inward re-takaful”, “inward re-takaful contract” and “offshore takaful”.

Deletion of section 60B

- 19.** The principal Act is amended by deleting section 60B.

Amendment of section 109B

- 19A.** Section 109B of the principal Act is amended by substituting for paragraph (b) the following paragraph:

“(b) for any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;”.

Amendment of section 140A

- 20.** Section 140A of the principal Act is amended—

(a) in paragraph (5)(c), by inserting after the word “person” the words “(in this section referred to as “third person”)”; and

(b) by inserting after subsection (5) the following subsection:

“(5A) Without prejudice to the generality of section 139, for the purpose of subsection (5), “control” refers to persons one of whom owns shares of the other person, or a third person who owns shares of both persons, where the percentage of the share capital held in either situation is twenty per cent or more and—

(a) the business operations of that person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks, or copyrights, provided by the other person or a third person;

- (b) the business activities, such as purchases, sales, receipt of services, provision of services, of that person are specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or
- (c) where one or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.”.

New section 140c

21. The principal Act is amended by inserting after section 140B the following section:

“Restriction on deductibility of interest

140c. (1) This section shall apply without prejudice to section 140 or 140A and subject to any rules made under this Act.

(2) In ascertaining the adjusted income of a person from each of his sources consisting of a business for the basis period for a year of assessment, no deduction from the gross income from that source for that period shall be allowed in respect of any interest expense in connection with or on any financial assistance in a controlled transaction granted directly or indirectly to that person which is in excess of the maximum amount of interest as determined under any rules made under this Act.

(3) In this section—

“control” has the meaning assigned to it in subsection 140A(5A);

“controlled transaction” shall be construed as a financial assistance—

- (a) between persons one of whom has control over the other; or
- (b) between persons both of whom are controlled by some other person (in this section referred to as “third person”);

“financial assistance” includes loan, interest bearing trade credit, advances, debt or the provision of any security or guarantee;

“interest expense” means—

- (a) interest on all forms of debt; or
- (b) payments economically equivalent to interest (excluding expenses incurred in connection with the raising of finance).”.

Amendment of section 154

22. Paragraph 154(1)(*ed*) of the principal Act is amended by substituting for the words “section 140A” the words “sections 140A and 140C”.

Amendment of Schedule 1

23. Schedule 1 to the principal Act is amended—

(a) in Part I—

- (i) in paragraph 2A, in the column *Rate of income tax* in item 1, by substituting for the words “18 per cent” the words “17 per cent”;
- (ii) in paragraph 2D, in the column *Rate of income tax* in item 1, by substituting for the words “18 per cent” the words “17 per cent”;
- (iii) by substituting for paragraph 3 the following paragraph:

“3. Income tax shall be charged for a year of assessment on the chargeable income of an insurer from a re-insurance business at the rate of 8 per cent on every ringgit of the chargeable income.”; and
- (iv) by substituting for paragraph 4 the following paragraph:

“4. Income tax shall be charged for a year of assessment on the chargeable income of a takaful operator from a re-takaful business at the rate of 8 per cent on every ringgit of the chargeable income.”;

(aa) in Part V, by substituting for paragraph (ii) the following paragraph:

“(ii) amounts paid in consideration of any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or”;

(b) by substituting for Part VIII the following Part:

“PART VIII

Notwithstanding Part I and Part II, income tax shall be charged on the chargeable income of a life fund, other than income arising from life re-insurance business of a resident or non-resident insurer at the rate of 8 per cent.”;

(c) in Part IX, by inserting after the words “10 per cent” the words “for the years of assessment 2019 and 2020 and 24 per cent for the subsequent years of assessment”; and

(d) by substituting for Part XII the following Part:

“PART XII

Notwithstanding Part I and Part II, income tax shall be charged on the chargeable income of a family fund referred to in section 60AA, other than income arising from a family re-takaful business of a resident or non-resident operator at the rate of8 per cent.”.

Amendment of Schedule 3

24. Schedule 3 to the principal Act is amended—

(a) in paragraph 37B—

(i) in subparagraph (a), by inserting after the word “research” the words “and development”;

- (ii) in subparagraph (e), by inserting before the word “undertaken” the words “and development”;
 - (iii) by inserting after the words “such research” wherever appearing the words “and development”;
and
 - (iv) by inserting after the words “in the case of research” the words “and development”; and
- (b) in paragraph 37D, by inserting after the word “research” the words “and development”.
- (c) *(Deleted)*
- (d) *(Deleted)*

25. *(Deleted)*

Amendment of Schedule 6

- 26.** Paragraph 35A of Schedule 6 to the principal Act is amended by substituting for the proviso the following proviso:

“Provided that the exemption shall not apply to the interest paid or credited to a unit trust that is a wholesale fund which is a money market fund.”.

Amendment of Schedule 7A

- 27.** Schedule 7A to the principal Act is amended—

- (a) in paragraph 4, by deleting the words “until the person has received the whole of the allowance or allowances to which it is so entitled”; and
- (b) by inserting after paragraph 4A the following paragraph:

“**4B.** Notwithstanding paragraph 4, so much of the allowance or allowances as cannot be given as ascertained under that paragraph at the end of the fifteen consecutive years of assessment referred to in paragraph 2 (in this paragraph referred to as “the first mentioned year of assessment”), shall only be given to that person in accordance with paragraph 4 for a period of seven

consecutive years of assessment (in this paragraph referred to as “that period”) and that period commences immediately after the end of the first mentioned year of assessment, and any amount of that allowance or that allowances at the end of that period which cannot be given to that person, by reason of insufficiency or absence of statutory income from a business of his for that period, shall be disregarded for the purpose of this Schedule.”.

Special provision relating to paragraph 4B of Schedule 7A

28. Notwithstanding paragraph 4 of Schedule 7A to the principal Act and paragraph 4B of that Schedule as introduced by section 27 of this Act, so much of that allowance as cannot be given under paragraph 4 of that Schedule before the coming into operation of section 27 of this Act for the year of assessment 2018 and that amount relates to allowance ascertained at the end of the fifteen consecutive years of assessment referred to in paragraph 2 of that Schedule or allowance ascertained for the year of assessment 2018 as provided for under paragraph 2B—

- (a) shall only be given to that person in accordance with paragraph 4 of Schedule 7A to the principal Act, as if the principal Act has not been amended, for a period of seven consecutive years of assessment and that period commences immediately following the year of assessment 2018; and
- (b) any amount of that allowance or that aggregate amount at the end of that period which has not been given to that person, by reason of insufficiency or absence of statutory income from a business of his for that period, shall be disregarded for the purpose of Schedule 7A of the principal Act.

Amendment of Schedule 7B

29. Schedule 7B to the principal Act is amended—

- (a) in paragraph 5, by deleting the words “until the company has received the whole of the allowance or allowances to which it is so entitled”; and

(b) by inserting after paragraph 5 the following paragraph:

“5A. Notwithstanding paragraph 5, so much of the allowance or allowances as cannot be given as ascertained under that paragraph for the year of assessment that relates to the basis period where the five-year period specified in paragraph 3 ends (in this paragraph referred to as “the first mentioned year of assessment”), shall only be given to that person in accordance with paragraph 5 for a period of seven consecutive years of assessment (in this paragraph referred to as “that period”) and that period commences immediately after the end of the first mentioned year of assessment, and any amount of that allowance or those allowances at the end of that period which cannot be given to that person, by reason of insufficiency or absence of statutory income from a business of his for that period, shall be disregarded for the purpose of this Schedule.”.

Special provision relating to paragraph 5A of Schedule 7B

30. Notwithstanding paragraph 5 of Schedule 7B to the principal Act and paragraph 5A of that Schedule as introduced by section 29 of this Act, any allowance or allowances which cannot be given under paragraph 5 of Schedule 7B to the principal Act before the coming into operation of section 29 of this Act for the year of assessment 2018 and that amount relates to the allowance or allowances ascertained under paragraph 5 of Schedule 7B to the principal Act before the coming into operation of section 29 of this Act for the year of assessment that relates to the basis period where the five-year period specified in paragraph 3 ends—

- (a) shall only be given to that person in accordance with paragraph 5 of Schedule 7B to the principal Act, as if the principal Act has not been amended, for a period of seven consecutive years of assessment and that period commences immediately following the year of assessment 2018; and
- (b) any amount of that allowance or that aggregate amount at the end of that period which has not been given to that person, by reason of insufficiency or absence of statutory income from a business of his for those period, shall be disregarded for the purpose of Schedule 7B of the principal Act.

CHAPTER III

AMENDMENTS TO THE PROMOTION OF INVESTMENTS ACT 1986

Commencement of amendments to the Promotion of Investments Act 1986

31. (1) Section 32 comes into operation on the coming into operation of this Act.

(2) Sections 36, 37 and 62 have effect from the year of assessment 2019 and subsequent years of assessment.

(3) Sections 33, 34 and 35 come into operation on 1 January 2019.

Amendment of section 2

32. Section 2 of the Promotion of Investments Act 1986 which is referred to as the “principal Act” in this Chapter, is amended by substituting for the definition of “research and development” the following definition:

‘ “research and development” means any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or 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 or products;
- (b) research in the social sciences or the humanities;
- (c) routine data collections;
- (d) efficiency surveys or management studies;
- (e) market research or sales promotion;
- (f) routine modifications or changes to materials, devices, products, processes or production methods; or
- (g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods.”.

Amendment of section 6

33. Subsection 6(1AC) of the principal Act is amended—

- (a) by substituting for the full stop at end of the subsection a colon; and
- (b) by inserting the following proviso:

“Provided that the contract research and development company at the time of application has an adequate number of full time employees and incurred adequate amount of annual operating expenditure in Malaysia for an activity relating to research and development.”.

Special provision relating to section 6

34. Notwithstanding the proviso of subsection 6(1AC) of the principal Act as introduced by section 33 of this Act—

- (a) where a contract research and development company has been granted a pioneer status on or before 16 October 2017, the proviso to subsection 6(1AC) shall not apply to that company until 30 June 2021; and
- (b) where a contract research and development company has been granted a pioneer status after 16 October 2017, the proviso to subsection 6(1AC) shall not apply to that company until 31 December 2018.

Amendment of section 21E

35. Section 21E of the principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) For the avoidance of doubt, the income of a pioneer company referred to in subsection (2) shall not include any income from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.

(2B) Any income derived from intellectual property right referred to in subsection (2A) is subject to tax under the Income Tax Act 1967.

(2C) For the purpose of this section, “intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.”.

Amendment of section 25

36. Section 25 of the principal Act is amended—

(a) by deleting subsection (3);

(b) in subsection (4), by deleting the proviso; and

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

“(5) Notwithstanding subsection (4), the deduction which has not been so made (or so much thereof as has not been so made) for a year of assessment under that subsection, shall only be made to that company in accordance with that subsection for a period of seven consecutive years of assessment and that period commences immediately following the year of assessment that relates to the basis period in which the day the post pioneer business falls, and any amount of deduction at the end of that period which has not been so made to that company, by reason of insufficiency or absence of statutory income for that period, shall be disregarded for the purpose of this section.”.

Special provision relating to section 25

37. Notwithstanding subsection 25(4) of the principal Act as amended by section 36 of this Act and subsection 25(5) of the principal Act as introduced by section 36 of this Act, any amount

of deduction which cannot be made under subsection 25(4) of the principal Act for the year of assessment 2018 and preceding years of assessment—

- (a) shall only be made to that company in accordance with subsection 25(4) of the principal Act for a period of seven consecutive years of assessment and that period commences immediately following the year of assessment 2018; and
- (b) any amount of deduction at the end of that period which has not been so made to that company, by reason of insufficiency or absence of statutory income from its business for that period, shall be disregarded for the purposes of the principal Act.

38. *(Deleted)*

39. *(Deleted)*

40. *(Deleted)*

41. *(Deleted)*

42. *(Deleted)*

43. *(Deleted)*

44. *(Deleted)*

45. *(Deleted)*

46. *(Deleted)*

47. *(Deleted)*

48. *(Deleted)*

49. *(Deleted)*

50. *(Deleted)*

51. *(Deleted)*

52. *(Deleted)*

53. *(Deleted)*

54. *(Deleted)*

55. *(Deleted)*

56. *(Deleted)*

57. *(Deleted)*

58. *(Deleted)*

59. *(Deleted)*

60. *(Deleted)*

61. *(Deleted)*

Amendment of section 30A

62. Subsection 30A(1) of the principal Act is amended by substituting for the word “two” the word “five”.

CHAPTER IV

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

63. (1) Sections 64, 65, 66, 67 and paragraphs 68(a), (b), (c) and (e) commence on the coming into operation of this Act.

(2) Paragraph 68(d) comes into operation on 1 January 2019.

Amendment of section 2

64. The Stamp Act 1949, which is referred to as the “principal Act” in this Chapter, is amended in section 2—

(a) by substituting for the definition of “banker” the following definition:

‘ “banker” means—

(a) any person licensed under the Financial Services Act 2013 [Act 758] to carry on a banking business in Malaysia;

- (b) any person licensed under the Islamic Financial Services Act 2013 [Act 759] to carry on an Islamic banking business in Malaysia; or
 - (c) a development financial institution prescribed under the Development Financial Institutions Act 2002 [Act 618];’; and
- (b) by substituting for the definition of “small and medium enterprise” the following definition:
- ‘ “small and medium enterprise” means—
- (a) in relation to the manufacturing activities, an enterprise with sales turnover not exceeding fifty million ringgit or full-time employees not exceeding two hundred people; or
 - (b) in relation to the services, and other sectors, an enterprise with sales turnover not exceeding twenty million ringgit or full-time employees not exceeding seventy-five people;’.

Amendment of section 9

65. Section 9 of the principal Act is amended—

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

“(1) The Collector, may by notification in the *Gazette*, authorize any person including any banker, dealer or insurer, to compound for the payment of duty on unstamped instrument subject to the condition that the instrument be drawn or drawn up and issued on a form to be supplied or adopted by the said person.”; and

- (b) in subsection (6), by substituting for the words “as mentioned under paragraph 1(a), (b) or (c)” the words “under subsection (1)”.

Amendment of section 15

66. Section 15 of the principal Act is amended—

(a) by substituting for the words “nominal share capital” wherever appearing the words “issued share capital”;

(b) by deleting subsection (2);

(c) in subsection (5)—

(i) in paragraph (b), by substituting for the words “two years” the words “three years”; and

(ii) in paragraph (c), by substituting for the words “two years” the words “three years”; and

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

“(6A) Where any claim for exemption from duty under this section has been allowed and any of the circumstances specified under subsection (5) occurs, each company which was a party to the instrument shall notify the Collector of the circumstances of the occurrence within thirty days from the date of the occurrence.”.

Amendment of section 15A

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

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

“(2) This section applies to any instrument with respect to which it is shown to the satisfaction of the Collector—

(a) that the effect is to transfer a beneficial interest in property from one company with limited liability to another such company, and that the companies are associated where one is the beneficial owner of not less than ninety per cent of the issued share capital of the other,

or that a third company with limited liability is the beneficial owner of not less than ninety per centum of the issued share capital of each of the aforesaid companies;

(b) that the transfer of the property of the associated companies is to achieve greater efficiency in operation; and

(c) that the company referred to as the transferee company under this section is incorporated in Malaysia.”;

(b) in subsection (4)—

(i) in paragraph (c)—

(A) by inserting after the word “company” the words “within the period of three years from the date of the conveyance or transfer,”; and

(B) by substituting for the comma at the end of paragraph (c) the words “; or”; and

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

“(d) the transferee company disposes of the property that it has acquired within three years from the date of the conveyance or transfer of the property,”; and

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

“(5) Where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim is untrue, the exemption from duty shall be revoked and duty shall be chargeable, together with interest thereon at the rate of six per centum per annum, from the date on which the duty which the conveyance or transfer ought to be stamped with the proper amount of duty.

(6) Where any claim for exemption from duty under this section has been allowed and any of the circumstances specified under subsection (4) occurs, each company which was a party to the instrument shall notify the Collector in writing of the circumstances of the occurrence within thirty days from the date of the occurrence.

(7) Where a claim is made for exemption under this section, the Collector may require the delivery to him of a statutory declaration in such form as he may direct made by an advocate and solicitor, or, in the case of Sabah and Sarawak, an advocate, of the High Court, and of such further evidence, if any, as he deems necessary.”.

Amendment of First Schedule

68. The First Schedule to the principal Act is amended—

(a) by deleting item 10;

(b) in item 22—

(i) by substituting for subitem (1) the following subitem:

“(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack—

(a) for a definite and certain period so that the total amount to be ultimately payable can be ascertained

The same *ad valorem* duty as a charge or mortgage for such total amount.

(b) for the term of life or any other indefinite period—

for every RM100 RM1.00
and also for any fractional part of RM100 of the annuity or sum periodically payable ”; and

(ii) in subitem (6), by inserting after the words “in accordance with the” the words “conventional hire purchase and”;

(c) by inserting after item 29 the following item:

“29A CONSTITUTION OF A COMPANY RM200.00”;

(d) in subitem 32(a), in the column Proper Stamp Duty—

(i) in item (iii), by substituting for the words “RM500,000.” the words “RM500,000 but not exceeding RM1,000,000.”; and

(ii) by inserting after item (iii) the following item:

“(iv) RM4.00 on any amount in excess of RM1,000,000.”; and

(e) by deleting item 53.

CHAPTER V

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

69. This Chapter comes into operation on 1 January 2019.

Amendment of Schedule 2

69A. The Real Property Gains Tax Act 1976 which is referred to as the “principal Act” in this Chapter, is amended in Schedule 2—

(a) by inserting after paragraph 2 the following paragraph:

“**2A** For the purposes of this Schedule, where a disposal is subject to tax under Part I of Schedule 5, references to 1 January 1970 shall be construed as references to 1 January 2000.”; and

(b) in subparagraph 12(2)(c), by deleting the words “where the gift is made within five years after the date of acquisition by the donor,”.

Amendment of Schedule 3

69B. The principal Act is amended in Schedule 3 in subparagraph 13(2) by substituting for the words “1 January 1970” wherever appearing the words “1 January 2000”.

Amendment of Schedule 5

70. The Principal Act is amended in Schedule 5—

(a) in Part I, in the column “Rate of tax” in item 4, by substituting for the word “Nil” the words “5 per cent”;

(b) in Part II, in the column “Rate of tax” in item 4, by substituting for the words “5 per cent” the words “10 per cent”; and

(c) in Part III, in the column “Rate of tax” in item 2, by substituting for the words “5 per cent” dengan “10 per cent”.

CHAPTER VI

AMENDMENTS TO THE LABUAN BUSINESS ACTIVITY
TAX ACT 1990**Commencement of amendments to the Labuan Business Activity
Tax Act 1990**

71. This Chapter comes into operation on 1 January 2019.

Amendment of section 2

72. The Labuan Business Activity Tax Act 1990, which is referred to as the “principal Act” in this Chapter, is amended in subsection 2(1)—

(a) by substituting for the definition of “Labuan business activity” the following definition:

‘ “Labuan business activity” means a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law;’; and

(b) by deleting the definition of “Labuan entity”.

Amendment of section 2A

73. Section 2A of the principal Act is amended by deleting subsection (2).

Amendment of section 2B

74. Section 2B of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The Labuan entities—

(a) shall be as specified in the Schedule; and

(b) shall, for the purpose of the Labuan business activity, have—

- (i) an adequate number of full time employees in Labuan; and
- (ii) an adequate amount of annual operating expenditure in Labuan,

as prescribed by the Minister by regulations made under this Act.”.

Amendment of section 4

75. Section 4 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) For the avoidance of doubt, the net profits referred to in subsection (2) shall not include any income derived from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.

(4) Any income derived from intellectual property right referred to in subsection (3) is subject to tax under the Income Tax Act 1967.

(5) For the purpose of this section, “intellectual property right” means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable.”.

Deletion of section 7

76. The principal Act is amended by deleting section 7.

Substitution of section 8

77. The principal Act is amended by substituting for section 8 the following section:

“Absence of basis period

8. Where a Labuan entity carrying on a Labuan business activity which is a Labuan trading activity does not have a basis period for a year of assessment, the Director General may direct that the basis period for that year of assessment and subsequent years of assessment to include a period or periods (which may be of any period) as specified in the direction.”.

Amendment of section 8A

78. Subsection 8A(1) of the principal Act is amended by deleting the words “, 7 or 8”.

Substitution of section 11

79. The principal Act is amended by substituting for section 11 the following section:

“Payment of tax

11. A Labuan entity shall, at the time of filing of the statutory declaration and return of its profits for a year of assessment under section 5, make full payment on account of—

- (a) tax to be charged for that year of assessment; or
- (b) tax to be charged for that year of assessment after reduction of rebate under section 8A.”.

Amendment of section 12

80. Section 12 of the principal Act is amended by substituting for the words “paragraph 11(a)” the words “section 11”.

Amendment of section 23

81. Paragraph 23(b) of the principal Act is amended by deleting the words “7, 8 or”.

Amendment of section 25

82. Section 25 of the principal Act is amended by deleting the words “, 7, 8”.

CHAPTER VII

AMENDMENTS TO THE SERVICE TAX ACT 2018

Commencement of amendments to the Service Tax Act 2018

83. This Chapter comes into operation on 1 January 2019.

Amendment of section 2

84. The Service Tax Act 2018, which is referred to as the “principal Act” in this Chapter, is amended in section 2, by inserting after the definition of “taxable service” the following definition:

‘ “imported taxable service” means any taxable service acquired by any person in Malaysia from any person who is outside Malaysia;’.

Amendment of section 7

85. The principal Act is amended by substituting for section 7 the following section:

“Imposition and scope of service tax

7. A tax to be known as service tax shall be charged and levied on—

- (a) any taxable service provided in Malaysia by a registered person in carrying on his business; or
- (b) any imported taxable service.”.

Amendment of section 9

86. Subsection 9(1) of the principal Act is amended—

- (a) in paragraph (b), by deleting the word “or” at the end of subparagraph (iii);
- (b) by substituting for the full stop at the end of paragraph (c) the words “; or”; and
- (c) by inserting after paragraph (c) the following paragraph:
 - “(d) in the case of imported taxable service, the value of such imported taxable service shall be as prescribed.”.

Amendment of section 11

87. Section 11 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The service tax chargeable under section 7, shall be due—

- (a) in the case of taxable service, at the time when payment is received for the service provided to the customer by the registered person; or
- (b) in the case of imported taxable service, at the time when the payment is made or invoice is received for the service, whichever is the earlier.”.

Amendment of section 24

88. Section 24 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a), by deleting the word “and” at the end of that paragraph; and

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

“(aa) all records of imported taxable service; and”;

(b) by inserting after subsection (5) the following subsection:

“(5A) This section shall also apply to any person other than a taxable person who, in carrying on his business, acquires any imported taxable service.”; and

(c) in subsection (6), by substituting for the words “or (4)” the words “, (4) or (5A)”.

New section 26A

89. The principal Act is amended by inserting after section 26 the following section:

“Furnishing of declaration and payment of service tax due and payable by person other than taxable person

26A. (1) Any person other than a taxable person who, in carrying on his business, acquires any imported taxable service shall—

(a) account for the service tax due in a declaration as may be prescribed and the declaration shall be furnished to the Director General; and

(b) pay to the Director General the amount of service tax due and payable by him,

not later than the last day of the month following the end of the month in which the payment on the service has been made by him or invoice is received by him.

(2) Any person referred to in subsection (1) who—

(a) contravenes subparagraph (1)(a); or

(b) furnishes an incorrect declaration,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) Any person referred to in subsection (1) who fails to pay to the Director General the amount of service tax due and payable under paragraph (1)(b) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

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

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

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

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

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

(6) The court may order that the person referred to in subsection (1) who is convicted for the offence under subsection (3) to pay the penalty as specified in subsection (4).

(7) No prosecution for the offence under subsection (3) shall be instituted against any person referred to in subsection (1) who has paid the amount of service tax due and payable, and the penalty specified under subsection (4) within the period specified in subsection (4).”.

Amendment of section 27

90. Section 27 of the principal Act is amended—

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

“(1) Where—

(a) any taxable person—

(i) fails to apply for registration under section 13;

(ii) fails to furnish a return under section 26;
or

(iii) furnishes a return which appears to the Director General to be incomplete or incorrect; or

(b) any person other than a taxable person who, in carrying on his business, acquires any imported taxable service—

(i) fails to furnish a declaration under section 26A; or

(ii) furnishes a declaration which appears to the Director General to be incomplete or incorrect,

the Director General may assess to the best of his judgment the amount of service tax due and payable, and the penalty payable under subsection 26(8) or 26A(4), as the case may be, if any, by the taxable person or person who is referred to in paragraph (1)(b) and shall forthwith notify him of the assessment in writing.”;

(b) in the national language text, in subsection (2), by deleting the words “kena cukai”;

(c) in paragraph (4)(a), by substituting for the words “paragraph (1)(a) or (b)” the words “subparagraph (1)(a)(i) or (ii);

(d) in subsection (5)—

(i) by substituting for paragraph (b) the following paragraph:

“(b) in the case of a taxable person, within the taxable period during which the assessment could have been made, or in the case of the person referred to in paragraph (1)(b), within the period under subsection 26A(1),”; and

(ii) by deleting the word “taxable”; and

(e) in subsection (6), by substituting for the words “to any taxable person under subsection (1), (2) or (5), it shall be deemed to be an amount of service tax due and payable, and penalty payable, by him and may be recovered accordingly and the amount of service tax and penalty, if any, shall be paid by the taxable person, whether or not that taxable person” the words “pursuant to subsection (1), (2) or (5), it shall be deemed to be an amount of service tax due and payable, and penalty payable, by the person and may be recovered accordingly and the amount of service tax and penalty, if any, shall be paid by the person, whether or not that person”.

CHAPTER VIII

AMENDMENTS TO THE SALES TAX ACT 2018

Commencement of amendments to the Sales Tax Act 2018

91. This Chapter comes into operation on 1 January 2019.

Amendment of section 9

92. The Sales Tax Act 2018, which is referred to as the “principal Act” in this Chapter, is amended in subsection 9(3) by deleting the word “registered”.

Amendment of section 27

93. Section 27 of the principal Act is amended—

(a) in the national language text, in subsection (2), by deleting the words “kena cukai”;

(b) in subsection (8)—

(i) in paragraph (b), by inserting before the word “within” the words “in the case of taxable person,”; and

(ii) by deleting the word “taxable”; and

(c) in subsection (9), by substituting for the words “to any taxable person under subsection (1), (2), (6) or (8), it shall be deemed to be an amount of sales tax due and payable, and penalty payable, by him and may be recovered accordingly and the amount of sales tax and penalty, if any, shall be paid by the taxable person, whether or not that taxable person” the words “pursuant to subsection (1), (2), (6) or (8), it shall be deemed to be an amount of sales tax due and payable, and penalty payable, by the person and may be recovered accordingly and the amount of sales tax and penalty, if any, shall be paid by the person, whether or not that person”.

Amendment of Part VI

94. Part VI of the principal Act is amended in the title, by substituting for the words “AND REMISSION” the words “, REMISSION AND DEDUCTION”.

New Section 41A

95. The principal Act is amended by inserting after section 41 the following section:

“Deduction of sales tax

41A. (1) Subject to subsection (2), the Minister may make regulations prescribing—

- (a) any amount of sales tax to be deducted in respect of taxable goods purchased by any registered manufacturer;
- (b) any condition for the deduction; and
- (c) the form and manner of such deduction.

(2) The deduction of sales tax under subsection (1) shall be made on taxable goods which are raw materials, components or packaging materials used solely in the manufacturing of taxable goods.

(3) Where any registered manufacturer who has made a deduction under subsection (1) fails to comply with any conditions to which the deduction relates, any sales tax that has been the subject of the deduction shall become due and payable by the registered manufacturer on the date on which any of the conditions failed to be complied with.”.

Amendment of section 82

96. Subsection 82(6) of the principal Act is amended by substituting for the words “(6)” the words “(5)”.

New section 88A

97. The principal Act is amended by inserting after section 88 the following section:

“Improperly obtaining deduction of sales tax

88A. Any person who causes or attempts to cause the deduction of sales tax under section 41A for himself or for any other person of any amount in excess of the amount properly so deductible for him or for that other person commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both; and
- (b) to a penalty of two times the amount deducted in excess of the amount properly so deductible.”.