



# LAWS OF MALAYSIA

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**Act 169**

## **REAL PROPERTY GAINS TAX ACT 1976**

*As at 1 October 2015*

## REAL PROPERTY GAINS TAX ACT 1976

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**LAWS OF MALAYSIA****Act 169****REAL PROPERTY GAINS TAX ACT 1976**

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**LAWS OF MALAYSIA****Act 169****REAL PROPERTY GAINS TAX ACT 1976**

An Act to provide for the imposition, assessment and collection of a tax on gains derived from the disposal of real property and matters incidental thereto.

[7 November 1975]

**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 and commencement**

**1.** This Act may be cited as the Real Property Gains Tax Act 1976, and shall be deemed to have come into force on 7 November 1975.

**Interpretation**

**2.** (1) In this Act, unless the context otherwise requires—

“accountant” means an accountant as defined in subsection 153(3) of the Income Tax Act 1967 [Act 53];

“acquire” includes, subject to subsection (4), acquire by way of purchase, grant, exchange, gift, settlement or otherwise;

“allowable loss” has the meaning assigned by section 7;

“assessment” means any assessment or additional assessment made under this Act;

“asset” includes an interest or right in or over an asset;

“authorized officer” means an officer appointed or authorized under section 45 to exercise any function of the Director General or to exercise or assist in exercising any such function;

“body of persons” means an unincorporated body of persons (not being a company) including a Hindu joint family but excluding a partnership;

“business” includes profession, vocation and trade and any manufacture, adventure or concern in the nature of trade;

“chargeable gain” has the meaning assigned by section 7;

“chargeable person” means a person chargeable with the tax;

“company” means a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia;

“consideration” means consideration in money or money’s worth;

“control”, in relation to a company, means control of the kind described in section 139 of the Income Tax Act 1967;

“co-proprietor” and “co-proprietorship” have the meaning respectively assigned to them by the National Land Code [*Act 56 of 1965*];

“Director General” means the Director General of Inland Revenue or any authorized officer;

“dispose” means, subject to subsection (4), sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law;

“executor” means the executor, administrator or other person administering the estate of a deceased person;



“gain” means—

- (a) gain other than gain or profit chargeable with or exempted from income tax under the income tax law; or
- (b) in the case of a unit trust, gain not treated as income under the income tax law;

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

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

“income tax” includes any tax of a substantially similar character (by whatever name called) imposed in Malaysia;

“income tax law” means the law in force in Malaysia regulating income tax;

“Inland Revenue Board of Malaysia” means the Inland Revenue Board of Malaysia established under the Inland Revenue Board of Malaysia Act 1995 [*Act 533*];

“land” includes—

- (a) the surface of the earth and all substances forming that surface;
- (b) the earth below the surface and substances therein;
- (c) buildings on land and anything attached to land or permanently fastened to anything attached to land (whether on or below the surface);
- (d) standing timber, trees, crops and other vegetation growing on land; and
- (e) land covered by water;

“limited liability partnership” means a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [*Act 743*];

“option” includes an option in a case where—

- (a) the grantor binds himself to sell what he does not own and, because the option is abandoned, never has occasion to own; and
- (b) the grantor binds himself to buy what, because the option is abandoned, he does not acquire;

“partnership” means an association of any kind (including joint adventures, syndicates and cases where a party to the association is itself a partnership) between parties who have agreed to combine any of their rights, powers, property, labour or skill for the purpose of carrying on a business and sharing the profits therefrom, but excludes a Hindu joint family although such a family may be a partner in a partnership;

“permanent resident” means a person treated as such under any written law relating to immigration;

“person” includes a company, a partnership, a body of persons, limited liability partnership and a corporation sole;

“prescribed” means prescribed by rules made under section 58 or, in relation to a form, prescribed under section 57;

“precedent partner” has the meaning assigned by paragraph 86(1)(a) of the Income Tax Act 1967;

“real property” means any land situated in Malaysia and any interest, option or other right in or over such land;

“resident” means resident in Malaysia for the purposes of the Income Tax Act 1967, except that references to basis year or basis year for a year of assessment in that Act shall be read as references to a year of assessment under this Act;

“shares” means all or any of the following:

- (a) stock and shares in a company;

(b) loan stock and debentures issued by a company or any other corporate body, wherever incorporated;

(c) a member's interest in a company not limited by shares whether or not it has a share capital;

(d) any option or other right in, over or relating to shares as defined in paragraphs (a) to (c);

“Special Commissioners” means the Special Commissioners of Income Tax appointed under section 98 of the Income Tax Act 1967;

“tax” means the tax imposed by this Act;

“valuer” means any person lawfully carrying on the business of valuing or appraising the value of real property;

“wife” means a woman who (whether or not she has gone through any religious or other ceremony) is regarded by virtue of any law or custom as the wife of a man or as one of his wives;

“year of assessment” has the meaning assigned by section 10.

(2) References in this Act to this Act or to any other written law includes references to any subsidiary legislation made thereunder.

(3) Unless the context otherwise requires, a reference in this Act to the acquisition or disposal of a building includes a reference to the acquisition or disposal of the land on which the building stands.

(4) Where any land which is held by two or more persons as co-proprietors is partitioned so as to vest in each of them, under a separate title, a portion of the land of an area proportionate as nearly as may be to his undivided share in the whole, the partition of the land shall not be regarded for the purposes of this Act as involving the acquisition or disposal of any part of or interest in the land by any such person.

## PART II

## IMPOSITION OF THE TAX

**Taxation of chargeable gains**

**3.** (1) A tax, to be called real property gains tax, shall be charged in accordance with this Act in respect of chargeable gain accruing on the disposal of any real property (hereinafter referred to as “chargeable asset”).

(2) Subject to this Act, the tax shall be charged on every ringgit of the total amount of chargeable gains accruing to a chargeable person in a year of assessment in respect of each category of disposal of chargeable assets specified in Schedule 5.

**Rate of tax**

**4.** (1) The tax shall be charged at the appropriate rate specified in Schedule 5 in respect of each category of disposal stated therein.

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

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

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

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

whichever is the earlier.

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

(a) the amount of any tax which—

- (i) has been charged by any assessment by reference to the order; and
- (ii) is payable (whether or not it is due or due and payable) but not paid at the date when the order ceases to have effect,

shall be taken to be amended to the amount which would have been payable if the order had not been made; and

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

- (i) makes a claim therefor in the prescribed form within one year after that date; and
- (ii) furnishes to the Director General such further particulars of the claim as the Director General may require.

**Situation of interests, options, etc.**

5. (1) The situation of interests, options and other rights in or over land is that of the land.

(2) The term “rights in or over” includes rights to purchase.

**Chargeable persons**

6. (1) Subject to this Act, every person whether or not resident in Malaysia for a year of assessment shall be chargeable with the tax in

respect of a chargeable gain accruing to him in that year on the disposal of any chargeable asset.

(2) The supplementary provisions in Schedule 1 shall have effect with respect to persons chargeable with the tax.

### **Chargeable gains and allowable losses**

7. (1) Where a chargeable asset is disposed of, then—

- (a) if the disposal price exceeds the acquisition price, there is a chargeable gain;
- (b) if the disposal price is less than the acquisition price, there is an allowable loss; and
- (c) if the disposal price is equal to the acquisition price, there is neither a chargeable gain nor an allowable loss.

(2) In this section, an allowable loss means a loss suffered on the disposal of a chargeable asset which, if it had been a gain, would have been chargeable with the tax.

(3) Subsection (1) shall be subject in its operation to Schedule 2, which shall have effect for computing acquisition and disposal prices and otherwise as provided therein.

(4) Where—

- (a) there is an allowable loss in respect of a disposal, such allowable loss shall be allowed as a deduction to reduce the total chargeable gain of a person for a year of assessment in which the disposal was made; and
- (b) by reason of an insufficiency or absence of total chargeable gain for the year of assessment in which the allowable loss arose, effect cannot be given or cannot be given in full to paragraph (a), the allowable loss which has not been so allowed (or so much thereof as has not been so allowed for that year) shall be allowed as a

deduction to reduce the total chargeable gain of a person for the first subsequent year of assessment for which there is total chargeable gain and so on for subsequent years of assessment until the whole amount of the allowable loss to be allowed has been allowed.

(5) For the purposes of subsection (4), in the case of an individual, the chargeable gain referred to in that subsection shall exclude any amount exempt under Schedule 4.

### **Private residence**

**8.** Subject to Schedule 3, a gain shall be exempt from the tax if it accrues to an individual who is a citizen or an individual who is not a citizen but is a permanent resident in respect of the disposal by him of his private residence.

### **Exemptions**

**9.** (1) Notwithstanding any other provision of this Act, the gains specified in Schedule 4 shall be exempt from the tax.

(2) The Dewan Rakyat may by resolution delete any item in Schedule 4 or add any further item or items thereto.

(3) The Minister may by statutory order exempt any class of persons from all or any of the provisions of this Act.

(3A) The Minister may in any particular case exempt any person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.

(4) Any order made under subsection (3) shall be laid before the Dewan Rakyat.

## PART III

## ASSESSMENT AND COLLECTION

**Year of assessment**

**10.** The first year of assessment shall be a period beginning on 7 November 1975 and ending on 31 December 1976 and thereafter the year of assessment shall be the calendar year starting with the calendar year 1977.

**Chargeable person to be assessed on chargeable gains**

**11.** A chargeable person shall be assessed for any year of assessment in respect of the total amount of his chargeable gains as ascertained under subsection 3(2) in that year.

**12.** (*Deleted by Act 323*).

**Returns**

**13.** (1) Every chargeable person who disposes of a chargeable asset and every person who acquires the asset so disposed of shall, within sixty days (or such further period as the Director General may allow on a written request being made to him) of the date of disposal of that asset, make a return—

- (a) specifying in respect of the asset disposed of the acquisition price, the disposal price and the gain or loss on the disposal;
- (b) furnishing all information necessary to determine the acquisition price and disposal price of the asset disposed of; and
- (c) where the market value of the asset is to be taken for the purposes of this Act, submit a written valuation of the asset by a valuer.



(2) Every nominee shall, within sixty days (or such further period as the Director General may allow on a written request being made to him) of the date of disposal by him of a chargeable asset on behalf of any person, make a return specifying—

(a) the name and address of the person on whose behalf the disposal was made;

(b) the asset disposed of; and

(c) the date on which he first began to hold that asset as nominee for that person.

(3) Where any assets acquired—

(a) from any person by a company controlled by that person, by his wife or by him jointly with his wife or a connected person; or

(b) with the approval of the Director General under paragraph 17 of Schedule 2, by a company from another company in the same group,

are transferred by the acquiring company to its stock in trade, the acquiring company shall within sixty days after the transfer make a return giving particulars of the assets transferred.

(4) Where a person makes a return under this Act, the return shall be in the prescribed form:

Provided that, where the person making the return is a nominee, the return shall be made to the income tax office nearest to the nominee's principal place of business or abode in Malaysia or if he has no place of business or abode in Malaysia, to the office of the Director General in Kuala Lumpur.

(5) Where a person is required to make a return for the purposes of the income tax law, he shall make a declaration in that return whether or not he has made a disposal of chargeable assets in the year of assessment for which that return is made.

(6) A person who disposes of a chargeable asset and is required to make a return under this section may furnish to the Director General

together with the return a notification in the prescribed form that such disposal is not subject to tax or exempt from the payment of tax under this Act.

(7) For the purpose of section 21B, the notification referred to in subsection (6) shall be served to the acquirer within sixty days from the date of the disposal.

### **Assessments**

**14.** (1) Where a person makes a return under subsection 13(1), the Director General may—

- (a) accept the return and make an assessment accordingly;
- (b) make an assessment after making such adjustments as he considers necessary; or
- (c) reduce an assessment made for the year of assessment for which the return was made, in giving effect to paragraph 7(4)(a).

(2) Where a person does not make a return under subsection 13(1), the Director General, if he is of the opinion that that person is chargeable with the tax, may make an assessment accordingly:

Provided that the making of an assessment in respect of a person under this subsection shall not affect any liability otherwise incurred by that person by reason of his failure to make the return.

(3) The Director General, where it appears to him desirable, either because a chargeable person is about to leave Malaysia or for any other reason, that an assessment should be made forthwith, may at any time make whatever assessment he considers appropriate; and any assessment so made shall, when the year of assessment to which it relates and the time allowed under subsection 13(1) for making a return of disposals have expired, be adopted with such revision (if any) as the Director General thinks necessary as the assessment for that year.

(4) The death of a chargeable person shall not prevent the making of an assessment in respect of disposals by him before his death, and where any such assessment is made—

(a) the notice of assessment under section 17 may be served on the executor of the deceased person; and

(b) the assessment shall have the same effect as regards imposing a liability on the estate of the deceased person as it would have had if it had been made during his life time:

Provided that no such assessment shall be made more than three years after the end of the year of assessment in which the Director General is informed in writing by the executor of the death of that chargeable person in a form prescribed under this Act.

(5) Where pursuant to section 21B, an acquirer fails to retain and remit the amount required under that section, and the failure is by reason of an incorrect or wrong notification furnished to him under section 13, there shall be included in the assessment made in respect of the person who furnished such notification, a sum equal to ten per cent of the tax payable by that person.

(6) For the purpose of subsection (5), “tax payable” means the amount of tax charged on the chargeable gain excluding any allowable loss referred to under subsection 7(4).

### **Additional assessments**

**15.** (1) The Director General, where in respect of any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable with the tax, may within five years after the end of that year of assessment make on that person whatever assessment or additional assessment he considers to be appropriate.

(2) The Director General, where it appears to him that a person chargeable with the tax has been guilty of any form of fraud or wilful default in connection with or in relation to the tax, may at any time make an assessment in respect of that person for the purpose of making good any loss of the tax attributable to the fraud or wilful default.

(3) Where in a year of assessment—

- (a) any assessment made under this Act or the Income Tax Act 1967 in respect of a person for any year of assessment has been determined by the court on appeal or review; or
- (b) any exemption granted to any person under this Act has been withdrawn for failing to comply with any condition imposed in granting such exemption,

the Director General may, in the first mentioned year of assessment or within five years after its expiration make an assessment in respect of that person for any year of assessment for the purpose of giving effect to the determination or withdrawal, as the case may be.

(4) Where pursuant to section 21B and subject to subsection 14(5), an acquirer fails to retain and remit the amount required under that section, and the failure is by reason of an incorrect or wrong notification furnished to him under section 13, there shall be included in the assessment made in respect of the person who furnished such notification, a sum equal to ten per cent of the tax payable by that person.

(5) For the purpose of subsection (4), “tax payable” means the amount of tax charged on the chargeable gain excluding any allowable loss referred to under subsection 7(4).

### **Cases where acquirer may be assessed**

**16.** (1) Where in a case to which section 13 applies—

- (a) the consideration on the disposal of a chargeable asset consists of another asset (whether chargeable or not);
- (b) there is a failure by both the disposer and the acquirer to submit a return to the Director General in the prescribed form as required under section 13; or
- (c) the consideration on the disposal of a chargeable asset is for the purposes of the Act the market value of the asset,

the Director General may make on the acquirer an assessment of an amount equal to the amount of the tax payable by the disposer.

(1A) Where the Director General makes an assessment on the acquirer under paragraph (1)(b) there shall be included in that assessment a sum equal to ten per cent of the tax payable by the disposer, which shall be deemed to be an increase of the kind mentioned in subsection 21(4).

(2) An assessment made under this section shall for all the purposes of this Act have effect and be treated as though it were an assessment made on a person disposing of a chargeable asset:

Provided that—

(a) the acquirer assessed under this section shall not be entitled to any deduction from the chargeable gain for any allowable losses suffered by the disposer; and

(b) in relation to the notice of assessment, paragraph 17(b) shall have effect as if it did not contain a reference to allowable losses.

(3) An acquirer of a chargeable asset who is assessed under this section shall be entitled—

(a) to recover as a debt due to him from the disposer the amount of any payment made in pursuance of the assessment; and

(b) for that purpose to require the Director General to furnish a certificate specifying the amount paid,

and any certificate so furnished shall be conclusive evidence of the facts stated therein.

### **Notice of assessment**

**17.** The Director General shall cause to be served on every person assessed a notice of assessment indicating—

(a) the year of assessment to which the assessment relates;

- (b) the chargeable gains and allowable losses taken into account in making the assessment;
- (c) (i) the amount of the chargeable gains on which the tax has been assessed;
  - (ii) the amount of the tax assessed;
  - (iii) the amount of allowable losses allowed;
  - (iv) the amount of the tax payable; and
  - (v) the place at which and the time within which payment is to be made; and
- (d) the existence of the right of appeal conferred by section 18.

### **Right of appeal**

**18.** (1) A person aggrieved by an assessment made on him may appeal to the Special Commissioners against the assessment in the same manner as an appeal against an assessment of income tax made under the Income Tax Act 1967, and sections 99, 100, 101, 101(1A), 101(1B), 101(1C) and 102 of that Act, as far as they are applicable and with the necessary modifications, shall apply to an appeal against an assessment made under this Act as if—

- (a) every reference in those sections to income tax or to tax were a reference to real property gains tax; and
- (b) every reference in those sections to income were a reference to chargeable gains.

(2) Schedule 5 to the Income Tax Act 1967, shall apply with necessary modifications to the hearing of appeals to the Special Commissioners and to the hearing of further appeals.

(3) Where a person appeals under this Act, he shall not be entitled in the appeal to re-open any issue which has been finally and

conclusively settled by virtue of subsection 20(1) unless it is an issue already re-opened by the Director General.

### **Error or mistake**

**19.** (1) A person upon whom a notice of assessment is served may within five years after the end of the year of assessment in which the assessment was made apply in writing to the Director General for a revision of the assessment on the ground that the assessment is excessive by reason of an error or mistake in a return or other statement made by that person for the purposes of the assessment.

(2) No relief shall be given under subsection (1) in respect of an error or mistake as to the basis on which the liability of the person concerned ought to have been computed where the return containing the error or mistake was in fact made on the basis of or in accordance with the practice of the Director General generally prevailing at the time when the return was made.

(3) An application under subsection (1) shall be, as nearly as may be, in the same form as a notice of appeal under section 18 (indicating as the grounds of appeal the error or mistake relied on), and shall be deemed to be, and shall be disposed of as if it were, an appeal under that section, the application itself being taken as the notice of appeal.

### **Finality of assessment**

**20.** (1) Subject to this section, an assessment shall become final and conclusive for all the purposes of this Act as regards the amount of the tax assessed under it or the allowable losses indicated in it, as the case may be—

(a) on the expiry of the time for appeal against the assessment; or

(b) where an appeal is made, on the appeal being finally disposed of.

(2) Subsection (1)—

(a) shall not apply to an assessment made under subsection 14(3) until it is adopted as the assessment for the year of assessment to which it relates;

(b) shall not prevent the Director General from making in respect of any year of assessment—

(i) an assessment under subsection 15(1) or (2); or

(ii) a revision under subsection 19(1).

### **Payment of the tax**

**21.** (1) Subject to this section, the tax payable under an assessment shall, on the service of the notice of assessment on the person assessed, be due and payable at the place specified in that notice whether or not that person appeals against the assessment.

(2) Where the tax payable under an assessment is increased on appeal, the additional tax payable by virtue of the increased assessment shall, on the service of the notice of the increased assessment on the person assessed, be due and payable at the place specified in that notice.

(3) Where any tax is payable in accordance with subsection (1) or (2) the Director General may allow the tax to be paid by instalments in such amounts and on such dates as he may determine.

(4) Subject to subsection (3), where any tax due and payable on the service of a notice in accordance with subsection (1) or (2) has not been paid within thirty days after the service of that notice (or within such longer period as may be allowed by the Director General), so much of the tax as is unpaid upon the expiration of those days or that period, as the case may be, shall without any further notice being served on him be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax due and payable under this Act:



Provided that—

- (a) if the tax payable is reduced on appeal or otherwise, the sum paid or payable by way of increase shall be reduced proportionately; and
- (b) the Director General may in his discretion for any good cause shown remit the whole or any part of any increase in the tax payable under this subsection.

### **Certificate of non-chargeability**

**21A.** The Director General shall send a certificate of non-chargeability to the disposer in the prescribed form where he is satisfied that no chargeable gain has arisen.

### **Duty of acquirer to retain and pay part of the consideration**

**21B.** (1) Where on a disposal to which section 13 applies, the consideration consists wholly or partly of money, the acquirer shall retain the whole of that money or a sum not exceeding three per cent of the total value of the consideration whichever is the less, and (whether or not that amount is so retained) he shall within sixty days after the date of such disposal pay that amount to the Director General:

Provided that the Director General may under special circumstances allow extension of time for that amount to be paid over.

(2) Where the acquirer fails to pay any amount due under subsection (1), that amount which he fails to pay shall be increased by a sum equal to ten per cent of that amount and that amount and the increased sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

(3) Where in pursuance of this section, any amount referred to in subsection (1) is paid to the Director General by the acquirer or recovered by the Director General from the acquirer—

- (a) the Director General shall apply that amount towards payment of the tax charged on the disposer to whom the

acquirer was liable to pay the payments to which the amount relates; or

- (b) if the acquirer has not retained that amount in paying the payment under subsection (1) with respect to which the amount relates, the acquirer may recover that amount from that disposer as a debt due to him.

(4) Notwithstanding subsection (1), where the amount due from the acquirer under subsection (1) is increased by a sum under subsection (2), the Director General may, in his discretion for any good cause shown, remit the whole or any part of that sum and, where the sum remitted has been paid, the Director General shall repay the same.

(5) This section shall not apply if a notice of non-chargeability under section 13 is served to the acquirer within sixty days after the date of the disposal.

### **Recovery from persons leaving Malaysia**

**22.** (1) The Director General, where he is of the opinion that any person is about or likely to leave Malaysia without paying—

- (a) all the tax payable by him (whether or not due or due and payable);
- (b) all sums payable by him under subsection 21(4); and
- (c) the debt payable by him under subsection 21B(2),

may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the tax, sums so payable and debt so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the tax, sums so payable and debt so payable or furnishes security to the satisfaction of the Director General for their payment.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, any Commissioner of Police or Director of Immigration who receives a request under subsection (1) in respect of any person shall take or cause to be taken

all such measures (including the use of reasonable force and the seizure, removal or retention of any certificate of identity and any passport, exit permit or other travel document relating to that person) as may be necessary to give effect to it.

(3) The Director General shall cause notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates:

Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.

(4) Where a person in respect of whom a certificate has been issued under subsection (1)—

(a) produces a written statement signed on or after the date of the certificate by the Director General or an authorized officer to the effect that all the tax, sums and debt specified in the certificate have been paid or that security has been furnished for their payment; or

(b) pays all the tax, sums and debt specified in the certificate to the officer in charge of a police station or to an immigration officer,

the statement or the payment, as the case may be, shall be sufficient authority for allowing that person to leave Malaysia.

(5) No legal proceedings shall be instituted or maintained against the Government, a State Government, a police officer or any other public officer in respect of anything lawfully done under this section or subsection 32(2).

(6) In this section—

“Commissioner of Police” includes a Chief Police Officer;

“Director of Immigration” means the Director of Immigration in any part of Malaysia;

“immigration officer” means a public officer having official duties in connection with the control of immigration into Malaysia or any part of Malaysia.

**Recovery by suit**

**23.** (1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government.

(2) The Director General and all authorized officers shall be deemed to be public officers authorized by the Minister under subsection 25(1) of the Government Proceedings Act 1956 [*Act 359*], in respect of all proceedings under this section.

(3) In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under subsection 21(4).

**Refund of overpayments**

**24.** (1) Subject to this section, where it is proved to the satisfaction of the Director General that any person has paid tax for any year of assessment in excess of the amount payable under this Act, that person shall be entitled to have the excess refunded by the Government.

(2) Where in a case of the kind mentioned in subsection (1) the excess has been paid by the acquirer of a chargeable asset in pursuance of an assessment made on him under subsection 16(1), the excess—

- (a) shall not be refunded to the acquirer unless he satisfies the Director General that he has not under subsection 16(3) recovered it from the disposer;
- (b) shall be refunded to the disposer if he satisfies the Director General that the acquirer has under subsection 16(3) recovered it from him;
- (c) shall be retained by the Government if the Director General is not so satisfied.

(3) No claim for repayment under this section shall be valid unless it is made within five years after the end of the year of assessment to which the claim relates.

- (4) Nothing in this section shall operate—
- (a) to extend any time limit for appeal, validate any appeal which is otherwise invalid or authorise the revision of any assessment or other matter which has become final and conclusive;
  - (b) to compel the Government to refund the excess amount of tax paid in respect of an assessment unless the assessment has been finally determined.
- (5) The representative of a disabled or deceased person shall be entitled to a refund under subsection (1) for the benefit of that person or his estate of any excess payment within the meaning of that subsection.
- (6) The Director General shall—
- (a) certify the amount of any sum repayable under this section; and
  - (b) cause repayment to be made forthwith.
- (7) For the purposes of this section—
- (a) references to payment of the tax includes references to payment of the amount payable in pursuance of section 21B; and
  - (b) a payment of the tax by the representative of a disabled or deceased person shall be deemed to have been made by that person.
- (7A) Any amount of excess in respect of tax payable for a year of assessment which is to be refunded to a person under subsection (1) may be utilised by the Director General for the payment of any other amount of tax which is due and payable (including any amount of instalments which are due and payable) by that person under this Act, or under the Income Tax Act 1967 or the Petroleum (Income Tax) Act 1967 [*Act 543*].
- (7B) Where amount of excess in respect of a person is ascertained in accordance with subsection 111(4A) of the Income Tax Act 1967

or subsection 50(4) of the Petroleum (Income Tax) Act 1967 such excess shall be applied for the payment of tax which is due and payable (including any amount of instalments which are due and payable) by that person under this Act.

(8) In this section—

“disabled person” means a person who through incapacity, bankruptcy or liquidation, or for any other reason is unable to manage his own affairs;

“representative” means, in the case of a deceased person, his executor, and, in the case of a disabled person, the trustee, guardian, committee or other person who manages his affairs.

### **Fund for Tax Refund**

**24A.** (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 24.

(3) Section 14A of the Financial Procedure Act 1957 [*Act 61*] shall not apply to any refund in excess of the amount payable as ascertained in section 24.

### **Anti-avoidance provisions**

**25.** (1) Where a chargeable asset which is disposed of was previously acquired by the disposer for a consideration wholly or substantially provided by a connected person within the meaning of Schedule 2 (otherwise than as a *bona fide* loan made in the course of carrying on business as a moneylender), the asset shall be deemed to have been disposed of by that person and not by the disposer:

Provided that, where the asset disposed of was acquired by the disposer from that person, that person shall, for the purpose of

computing any gain accruing to or loss suffered by him by the operation of this subsection, be deemed to have acquired the asset at an acquisition price equal to the consideration which, by virtue of paragraph 9 and subparagraph 23(1) of Schedule 2, he is deemed to have received when the asset was acquired by the disposer.

(2) The Director General, where he has reason to believe that any transaction has the direct or indirect effect of—

- (a) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any person;
- (b) relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;
- (c) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by this Act; or
- (c) hindering or preventing the operation of this Act in any respect,

may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such assessments as he considers just and proper in the circumstances.

(3) In this section “transaction” means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or entered into (whether before or after the commencement of this Act), and includes a transaction entered into by two or more persons with another person.

### **Remission**

**26.** (1) The tax paid or payable by any person may be remitted, wholly or in part—

- (a) on grounds of poverty, by the Director General;

(b) on grounds of undue hardship or justice and equity, by the Minister.

(2) Where a person granted remission under subsection (1) has paid any of the tax to which the remission relates, he shall be entitled to have the amount which he has paid refunded to him as if it were an overpayment to which section 24 applies.

#### PART IV

#### INVESTIGATORY AND PENAL

##### **Power to call for information, etc.**

**27.** (1) The Director General may by notice in writing require any person to furnish within fourteen days or such further period as may be specified in the notice any information respecting any matter as to which a return under this Act has been made or is required to be made:

Provided that, where that person is a public officer or an officer in the employment of a local authority or other public body, he shall not be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

(2) For the purpose of obtaining full information as to any person's liability to the tax, the Director General may require that or any other person by notice in writing—

(a) to complete and deliver to the Director General within a time specified in the notice (not being less than fourteen days from the date of service of the notice) any return specified in the notice; or

(b) to attend personally before the Director General and produce for examination all books, accounts, returns and other documents which the Director General considers necessary.

(3) Director General may by notice in writing require any person to furnish within a time specified in the notice (not being less than



thirty days from the date of service of the notice) a statement containing particulars of—

(a) all banking accounts (whether current or deposit, business or private or in his own name, the name of his wife or any other name)—

(i) in which he is or has been interested jointly or solely; or

(ii) on which he has or has had power to operate jointly or solely,

being accounts which are in existence or have been in existence at any time during a period specified in the notice;

(b) all savings and loan accounts, deposits, building society accounts and co-operative society accounts in regard to which he has or has had any interest or power to operate jointly or solely during that period;

(c) all assets other than those referred to in paragraphs (a) and (b) which he has possessed during that period;

(d) all moneys receivable by him during that period otherwise than from the sources mentioned in paragraphs (a) to (c); and

(e) all facts bearing upon his present or past liability to the tax.

**Power of access to buildings and documents, etc.**

**28.** (1) For the purposes of this Act the Director General shall at all times have full and free access to all lands, buildings and other places and to all books and other documents and may search such lands, buildings and places and may inspect, copy or make extracts from any such books or documents without making any payment by way of fee or reward.

(2) The Director General may take possession of any books or documents to which he has access under subsection (1) where in his opinion—

- (a) the inspection of them, the copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them; or
- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings instituted under or in connection with this Act.

(3) Where in the opinion of the Director General it is necessary for the purpose of this Act to examine any book, account, record or other document which is—

- (a) made or kept by, or in the possession or under the control of, a person liable to the tax; and
- (b) made or kept in a language other than the national language,

he may by notice in writing require that person to furnish a translation in the national language:

Provided that in Sarawak this subsection shall have effect as if the words “or English” were inserted after the words “national language” wherever they occur.

### **Failure to notify or make return of disposal**

**29.** (1) Any person who, without reasonable excuse, fails to make a return required by subsection 13(1) or fails to make a declaration under subsection 13(5), shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

(2) In any prosecution under subsection (1) the burden of proving that a return has been made or a notification given or a declaration made shall be upon the accused person.

(3) Where in relation to a year of assessment a person fails to make a return required by subsection 13(1) or fails to make a

declaration under subsection 13(5) and no prosecution under subsection (1) has been instituted in relation to that failure—

- (a) the Director General may require that person to pay a penalty equal to treble the amount of the tax which is payable for that year; and
- (b) if that person pays that penalty (or, where the penalty is abated or remitted under subsection 40(3) so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

(4) For the purpose of subsection (3), “tax which is payable” means the amount of tax charged on the chargeable gain excluding any allowable loss referred to under subsection 7(4).

**Incorrect returns, etc.**

**30.** (1) Any person who—

- (a) makes an incorrect return on behalf of himself or another person by omitting any particulars required by this Act relating to any disposal of chargeable assets, understating any chargeable gains or overstating any allowable loss; or
- (c) gives any other incorrect information in relation to any other matter affecting his own or any other person’s liability to the tax,

shall, unless he satisfies the court that the incorrect return or other incorrect information was made or given in good faith, be guilty of an offence and on conviction shall be liable to a fine not exceeding five thousand ringgit, and shall pay a special penalty of double the amount of the tax which has been undercharged in consequence of the incorrect return or other information or which would have been undercharged if the return or information had been accepted as correct.

(2) Where a person makes an incorrect return or gives other incorrect information in the manner described in paragraph (1)(a) or (b), the Director General may, if no prosecution under subsection (1)

has been instituted in relation to the incorrect return or incorrect information, require that person to pay a penalty equal to the amount of the tax which has been undercharged in consequence of the incorrect return or information or which would have been undercharged if the return or information had been accepted as correct, and if that person pays that penalty (or, where the penalty is abated or remitted under subsection 40(3), so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

### **Wilful evasion**

**31.** (1) Any person who wilfully and with intent to evade or assist any other person to evade the tax—

- (a) omits from a return under this Act any particulars required under this Act relating to any disposal of a chargeable asset;
- (b) makes a false statement or entry in a return made under this Act;
- (c) gives a false answer (orally or in writing) to a question asked or request for information made under this Act;
- (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other false records;
- (e) falsifies or authorises the falsification of any books of account or other records;
- (f) produces or allows or authorises the production of, books of accounts which he knows to be false;
- (g) makes use or authorises the use of any fraud, art or contrivance; or
- (h) makes in respect of the tax a fraudulent claim for repayment,

shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both, and shall pay a special penalty of treble the amount of the tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected.

(2) Where in any proceedings under this section it is proved that a false statement or false entry (whether by omission or otherwise) has been made in a return made under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed until the contrary is proved to have made that false statement or entry with intent to evade the tax.

### **Leaving Malaysia without payment of tax**

**32.** (1) Any person who, knowing that a certificate has been issued in respect of him under section 22, voluntarily leaves or attempts to leave Malaysia without paying all the tax payable by him or furnishing security to the satisfaction of the Director General for its payment shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both.

(2) A police officer or immigration officer may arrest without warrant any person whom he reasonably suspects to be committing or about to commit an offence under this section.

### **Obstruction of officers**

**33.** Any person who—

(a) obstructs or refuses to permit the entry of the Director General or an authorized officer into any land, building or place in pursuance of section 28;

(b) obstructs the Director General or an authorized officer in the exercise of his functions under this Act;

- (c) refuses to produce any books or other documents in his custody or under his control on being required to do so by the Director General or an authorized officer for the purposes of this Act;
- (d) fails to give reasonable assistance to the Director General or an authorized officer for any of those purposes; or
- (e) refuses to answer any question relating to any of those purposes lawfully asked of him by the Director General or an authorized officer,

shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Breach of secrecy**

**34.** Any person having any official function under this Act who—

- (a) having possession of or control over any information or any return or other document relating to the chargeable gains or allowable losses of any person, at any time, otherwise than for the purposes of this Act or another tax law within the meaning of section 47 or otherwise than with the express authority of the Minister—
  - (i) communicates or attempts to communicate the information or anything contained in the return or other document to any other person;
  - (ii) suffers or permits any other person to have access to the information or to anything contained in the return or other document; or
- (b) aids, abets or incites any other person to contravene paragraph (a),

shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand ringgit or to both.

**Offences by officials and unauthorized collection**

**35.** Any person who—

(a) being a person having any official function under this Act—

- (i) otherwise than in good faith, demands from any person an amount in excess of the tax or penalties due under this Act;
- (ii) withholds for his own use or otherwise any portion of the amount of the tax collected;
- (iii) defrauds any person, embezzles any money or otherwise uses his position so as to deal wrongfully with the Director General or any other person; or

(b) not being authorized under this Act to do so, collects or attempts to collect the tax,

shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both.

**Other offences**

**36.** Any person who, without reasonable excuse, fails to comply with—

(a) the requirements of subsection 13(2) or (3); or

(b) the requirements of a notice given under section 27 or subsection 28(3),

shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand ringgit or to both.

**Additional provisions as to offences under section 30, 32, 33 or 36**

**37.** (1) No criminal proceedings for an offence under section 30, 32, 33 or 36 shall be instituted more than twelve years after the offence was committed.

(2) Any person who aids, abets or incites another person to commit an offence under section 30, 32, 33 or 36 shall be deemed to have committed the same offence and shall be liable to the same penalty.

**Tax payable notwithstanding proceedings**

**38.** The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Part shall not relieve any person from liability for the payment of any amount of the tax for which he is or may be liable or from liability to make any return which he is required by this Act to make.

**39.** (*Deleted by Act A1028*).

**Compounding of offences and abatement of penalties**

**40.** (1) Where any person has committed any offence under this Act, the Director General may at any time before conviction compound the offence and order that person to pay such sum of money, not exceeding the amount of the maximum fine and any special penalty to which that person would have been liable if he had been convicted of the offence, as he thinks fit:

Provided that the Director General shall not exercise his powers under this section unless that person in writing admits that he has committed the offence and requests the Director General to deal with the offence under this section.

(2) Where under this section the Director General compounds an offence committed by any person and makes an order accordingly—

(a) the order shall be made in writing under the hand of the Director General and there shall be attached to it



the written admission and request referred to in subsection (1);

(b) the order shall specify—

(i) the offence committed;

(ii) the sum of money ordered to be paid; and

(iii) the date on which the payment is to be made or the dates on which instalments of that sum are to be paid, as the case may be, and, where the order provides for payment by instalments and there is default in payment of any instalment, the whole of the balance then outstanding shall become due and payable forthwith;

(c) a copy of the order shall be given, if he so requests, to the person who committed the offence;

(d) that person shall not be liable to any prosecution or, as the case may be, any further prosecution in respect of the offence and, if any such prosecution or further prosecution is brought, it shall be a good defence for that person to prove that the offence has been compounded under this section;

(e) the order shall be final and shall not be subject to any appeal;

(f) the order may be enforced in the same way as the judgment of a subordinate court (as defined in Schedule 5 to the Income Tax Act 1967) for the payment of the amount stated in the order or the amount outstanding, as the case may be; and

(g) the order shall, on production to any court, be treated as proof of the commission of the offence by that person and of the other matters set out therein.

(3) The Director General may abate or remit any penalty imposed under this Act except a penalty imposed on conviction.

**Recovery of penalties**

**41.** (1) The special penalties imposed by subsections 30(1) and 31(1) shall be recoverable in the same way as fines imposed on conviction.

(2) Any penalty imposed on any person by subsection 29(3), 30(2) or subparagraph 5(3) of Schedule 1 shall be collected as if it were part of the tax payable by that person.

**Jurisdiction of subordinate court**

**42.** Notwithstanding any other written law, a subordinate court (as defined in Schedule 5 to the Income Tax Act 1976) shall have power to try any offence under this Act and on conviction to impose the full penalty therefor.

**PART V****ADMINISTRATIVE AND SUPPLEMENTAL****The Director General**

**43.** The Director General of Inland Revenue appointed under the law in force relating to income tax shall have the care and management of the tax.

**Power of Minister to give directions to Director General**

**44.** The Minister may give to the Director General directions of a general character (not inconsistent with this Act) as to the exercise of the functions of the Director General under this Act; and the Director General shall give effect to any directions so given.

**Delegation of Director General's functions**

**45.** (1) Any function of the Director General under this Act (not being a function exercisable by statutory order or a function

exercisable under section 57) may be exercised by a Deputy Director General appointed under the law relating to income tax.

(2) Any officer appointed under the law relating to income tax may exercise any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under sections 46 and 57).

(3) *(Deleted by Act 644).*

(4) *(Deleted by Act 644).*

(5) Any public officer or an employee of the Inland Revenue Board of Malaysia who is authorized under subsection 136(5) of the Income Tax Act 1967, to exercise or assist in exercising any function of the Director General under that Act shall be deemed to be an officer authorized to exercise or assist in exercising any function of the Director General under this Act which is exercisable under subsection (2) by the appointed officers.

(6) Where a public officer or an employee of the Inland Revenue Board of Malaysia exercises under this Act any of the Director General's functions by virtue of any provision of subsections (1) to (5), he shall do so subject to the general supervision, direction and control of the Director General.

(7) The delegation by or under any provision of subsections (1) to (5) of the exercise of any function of the Director General shall not prevent the exercise of that function by the Director General himself.

(8) References in this Act to the Director General shall be construed, in relation to any case where a public officer or an employee of the Inland Revenue Board of Malaysia is authorized or deemed to have been authorized by any provision of subsections (1) to (5) to exercise the functions of the Director General, as including references to that officer or employee.

### **Identification of officials**

**46.** (1) Any person exercising the right of access or the right to take possession conferred by section 28 shall carry a warrant in the prescribed form issued by the Director General which shall identify

the holder and his office and shall be produced by the holder on demand to any person having reasonable grounds to make the demand.

(2) Where a person purporting to be a public officer or an employee of the Inland Revenue Board of Malaysia exercising functions under this Act produces a warrant in the form prescribed under subsection (1) or any written identification or authority, then, until the contrary is proved, the warrant, identification or authority shall be presumed to be genuine and he shall be presumed to be the person referred to therein.

(3) A warrant issued to any person by the Director General under section 137 of the Income Tax Act 1967, shall be deemed to be a warrant issued for the purposes of this section.

### **Certain materials to be treated as confidential**

**47.** (1) Subject to this section, every classified person shall regard and deal with classified material as confidential; and, if he is an official, he shall make and subscribe before the prescribed authority a declaration in the prescribed form that he will do so:

Provided that a person who has made and subscribed a corresponding declaration or oath under the income tax law shall be deemed to have made and subscribed the declaration required by this subsection.

(2) No classified material shall be produced or used in court or otherwise except—

- (a) for the purposes of this Act or another tax law;
- (b) in order to institute or assist in the course of a prosecution for any offence committed in relation to the tax or in relation to any tax or duty imposed by another tax law; or
- (c) with the written authority of the Minister or of the person to whose affairs it relates.

- (3) No official shall be required by any court—
- (a) to produce or disclose classified material which has been supplied to him or another official otherwise than by or on behalf of the person to whose affairs it relates; or
  - (b) to identify the person who supplied that material.
- (4) Nothing in this section shall prevent—
- (a) the production or disclosure of classified material to the Auditor General (or to public officers under his direction and control) or the use of classified material by the Auditor General, to such an extent as is necessary or expedient for the proper exercise of the functions of his office;
  - (b) the Director General from publicising, from time to time in any manner as he may deem fit, the following particulars in respect of a person who has been found guilty or convicted of any offence under this Act or dealt with under subsection 30(2) or section 40—
    - (i) the name, address and occupation or other description of the person;
    - (ii) such particulars of the offence or evasion as the Director General may think fit;
    - (iii) the year of assessment to which the offence or evasion relates;
    - (iv) the disposal of any chargeable asset or the amount of the chargeable gain not disclosed;
    - (v) the aggregate of the amount of the tax evaded and penalty (if any) charged or imposed;
    - (vi) the sentence imposed or other order made:

Provided that the Director General may refrain from publicising any particulars of any person to whom this paragraph applies if the Director General is satisfied that, before any investigation or inquiry

has been commenced in respect of any offence or evasion falling under section 30 or 31, that person has voluntarily disclosed to the Director General or to any authorized officer complete information and full particulars relating to such offence or evasion.

(5) In this section—

“another tax law” means the Income Tax Act 1967 and any written law repealed by that Act, the Petroleum (Income Tax) Act 1967, the Land Speculation Tax Act 1974 [*Act 126*] and any written law relating to stamp duty, estate duty and film hire duty and any written law declared by the Minister by statutory order to be another tax law for the purposes of this section;

“classified material” means any return or other document made for the purposes of this Act and relating to the gains of any person and any information or other matter or thing which comes to the notice of a classified person in his capacity as such;

“classified person” means—

- (a) an official;
- (b) the Auditor General and public officers under his direction and control;
- (c) any person advising or acting for a person who is or may be chargeable to the tax and any employee of a person so acting or advising if he is an employee who in his capacity as such has access to classified material;
- (d) the Director General of Valuation and public officers under his direction and control; or
- (d) any employee of the Inland Revenue Board of Malaysia;

“official” means a person having an official duty under or employed in carrying out the provisions of this Act;

“prescribed authority” means the persons specified in the Second Schedule to the Income Tax (Official Declaration) Rules 1970 [*P.U.(A) 38/70*].

**Evidential provisions**

**48.** (1) In a suit under section 23 a certificate signed by the Director General giving the name and address of the defendant and the amount of the tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

(2) A transcript of any particulars contained in a return or other document relating to the tax, if it is certified by or on behalf of the Director General or an authorized officer to be a true copy of the particulars, shall be admissible in evidence as proof of those particulars.

(3) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against that person in any proceedings against him for an offence under section 29, 30 or 31 or for the recovery of any sum due by way of tax or penalty, by reason only of the fact that he was or may have been induced to make the statement or produce the document by any lawful inducement or promise proceeding from the Director General or an authorized officer.

(4) (a) Save as provided in paragraph (b) nothing in this Act shall—

- (i) affect the operation of Chapter IX of Part III of the Evidence Act 1950 [*Act 56*]; or
- (ii) be construed as requiring or permitting any person to produce or give to a court, the Special Commissioners, the Director General or any other person any document, thing or information which by that Chapter or those provisions he would not be required or permitted to produce or give to a court.

(b) Notwithstanding the provisions of any other written law, where any document, thing, matter, information, communication or advice consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions or dealings of any person (whether an advocate and solicitor, his client, or any other person), it shall not be privileged from disclosure to a court, the Special Commissioners, the Director General or any

authorized officer if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by any practitioner or firm of practitioners in connection with any client of the practitioner or firm of practitioners or any other person.

(c) Paragraph (b) shall also apply with respect to any document, thing, matter, information, communication or advice made or brought into existence before the commencement of that paragraph.

### **Admissibility of electronic record**

**48A.** (1) Notwithstanding any other written law, where in any proceedings under this Act an electronic record of—

(a) any prescribed form is furnished by way of electronic transmission under section 57A; or

(b) any other document is stored or received by or communicated to the Director General in an electronic medium or by way of electronic transmission,

the electronic record or the copy or print-out of that electronic record shall be admissible as evidence of the fact stated or contained therein:

Provided that the record or the copy or print-out is—

(A) certified by the Director General to contain all or any information furnished, stored, communicated or received in an electronic medium or by way of electronic transmission under this section; or

(B) otherwise authenticated in the manner provided in the Evidence Act 1950 for authentication of documents produced by computer.

(2) Where the electronic record of any form prescribed under this Act or any other document, or a copy or print-out of that record is admissible under subsection (1), it shall be presumed, until the contrary is proved, that the record or the copy or print-out accurately reproduces the content of that form or document.



(3) For the purposes of this Act, “electronic medium” includes a data, text, image or any other information stored, received or communicated by means of electronic, magnetic, optical, imaging or any other data processing device.

**Returns, etc., presumed to be made with due authority**

**49.** A return, statement or other similar document purporting to be made for the purposes of this Act by or on behalf of any person shall be presumed to have been made by that person or on his authority, as the case may be, until the contrary is proved; and any person signing such a return, statement or document shall be deemed to be cognizant of its contents.

**Persons by whom returns to be made**

**50.** Unless otherwise provided in Schedule 1, returns under this Act on behalf of a person shall be made by the person responsible under the income tax law for making a return of the income of that person, or, if that person is not resident in Malaysia, by the trustee, guardian, committee, attorney, factor, agent, receiver, branch or manager of that person in Malaysia.

**Power to appoint agent**

**51.** (1) The Director General may by notice in writing, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared the agent shall be the agent of that other person for the purposes of this Act and may be required to pay any tax due from any money (including pensions, salary, wages or any other remuneration) which may be held by him for, or due by him to, the person whose agent he has been declared to be; and in default of payment the tax shall be recoverable from him in the manner provided in section 23.

(2) For the purposes of this section the Director General may require any person to give him information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any other person.

(3) Where a person declared under subsection (1) to be the agent of another person is aggrieved by the declaration, he may appeal under section 18 as if the declaration were an assessment.

### **Errors and defects in assessments, etc.**

**52.** (1) No assessment, notice or other document purporting to be made or issued for the purposes of this Act shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if—

(a) it is in substance and effect in conformity with or according to the intent and meaning of this Act; and

(b) the person to whom it is addressed and any other person referred to therein are designated according to common intent and understanding.

(2) A notice of assessment shall not be impeached or affected by reason of a mistake therein as to—

(a) the name of the person liable; or

(b) the description of any chargeable gain or allowable loss,

so long as the notice of assessment is duly served on the person on whom it was intended to be served and contains in substance and effect the particulars on which the assessment is founded.

### **Service of notices**

**53.** (1) Subject to any express provision of this Act, notices may be served for the purposes of this Act either personally or by ordinary or registered post.

(2) A notice relating to the tax which is sent by ordinary or registered post shall be deemed to have been served on the person to whom it is addressed on the day succeeding the day on which the notice would have been received in the ordinary course of post if it is addressed—

(a) in the case of a company, partnership or body of persons having a registered office in Malaysia—

- (i) to that registered office;
- (ii) to its last known address; or
- (iii) to any person authorized by it to accept service of process;

(b) in the case of a company, partnership or body of persons not having a registered office in Malaysia—

- (i) to any registered office of the company, partnership or body of persons (wherever that office may be situated);
- (ii) to the principal place of business or other activity of the company, partnership or body (wherever that place may be situated); or
- (iii) to any individual authorized (by or under the law of any place where the company, partnership or body is incorporated, registered or established) to accept service of process; and

(c) in the case of an individual, to his last known address.

(3) Where a person to whom there has been addressed a registered letter containing a notice under this Act—

(a) is informed that there is a registered letter awaiting him at a post office; and

(b) refuses or neglects to take delivery of the letter,

the notice shall be deemed to have been served upon him on the date on which he was informed that the letter was awaiting him.

(4) For the purposes of subsection (3), an affidavit by the officer in charge of a post office stating that to the best of his knowledge and belief there has been delivered to the address appearing on the registered letter a post office notification informing the addressee that

there is a registered letter awaiting him shall, until the contrary is proved, be evidence that the addressee has been so informed.

### **Power to direct where returns, *etc.*, are to be sent**

**54.** The Director General may by statutory order direct that any information, return, notification or document required to be supplied, sent or delivered to the Director General for the purposes of this Act shall, subject to any conditions contained in the order, be supplied, sent or delivered to such public officer or employee of the Inland Revenue Board of Malaysia or to such address as may be specified in the order.

### **Authentication of notices and other documents**

**55.** (1) Subject to subsection (2), every notice or other document issued, served or given for the purposes of this Act by the Director General or an authorized officer shall be sufficiently authenticated if the name and office of the Director General is printed, stamped or otherwise written thereon.

(2) Where this Act provides for a notice, certificate or other document to be under the hand of any officer, the notice, certificate or document shall be signed in manuscript by that officer.

(3) A notice, certificate or other document issued, made, served or given for the purposes of this Act and purporting to be signed in manuscript by the Director General or an authorized officer shall be presumed, until the contrary is proved, to have been so signed.

### **Free postage**

**56.** All returns made under this Act and all remittances of the tax (and any correspondence resulting from or connected with any such return or remittance) may, if posted in Malaysia in envelopes marked "Real Property Gains Tax", be sent free of postage to the Director General or to an officer or address specified in an order made under section 54:

Provided that the Director General may in certain cases by notice in writing require any person to send any return, remittance or correspondence by registered post.

### **Forms**

**57.** (1) The Director General may prescribe forms to be used for the purposes of this Act and may authorise the use of a suitable substitute for any form so prescribed.

(2) Where in order to comply with any provision of this Act a person is required to use a prescribed form, he shall not be regarded as complying with that provision unless he uses all reasonable diligence to procure and use—

(a) a printed copy of the form so prescribed under subsection (1); or

(b) a copy of any substitute for the form authorized under subsection (1), being a printed copy unless the authorization provides otherwise.

### **Electronic medium**

**57A.** (1) The Director General may allow any form prescribed under this Act to be furnished by any person or by any class of persons in an electronic medium or by way of an electronic transmission.

(2) For the purposes of subsection (1), the conditions and specifications under which any prescribed form is to be furnished shall be determined by the Director General.

### **Power to make rules**

**58.** (1) The Minister may make rules for facilitating the operation of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make rules—

- (a) providing for returns to be made in cases other than those referred to in section 13 and specifying the persons by whom the returns are to be made and the information to be contained therein;
- (b) prescribing, except where subsection 57(1) applies, any other thing required by this Act to be prescribed.

(3) Any rules made under subsection (1) shall be laid before the Dewan Rakyat.

### **Repeal of Act 126**

**59.** (1) The Land Speculation Tax Act 1974 is hereby repealed with effect from 7 November 1975, but without prejudice to the right of the Director General to take any action which he was empowered to take under that Act so repealed to assess and enforce payment of land speculation tax for the years of assessment 1974 and 1975 which at the date of the said repeal remains to be assessed or collected for those years.

(2) For the purpose of that Act so repealed, the year of assessment 1975 shall be the period commencing on 1 January 1975 and ending on 6 November 1975.

(3) The Minister, at any time, may by statutory order make such transitional or saving provisions as he considers necessary or expedient.

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SCHEDULE 1

[Section 6]

CHARGEABLE PERSONS

**Body of persons, partnership and co-proprietorship**

1. (1) A partnership or a body of persons and not the persons constituting it shall, subject to paragraph 9, be assessable and chargeable with the tax in respect of any chargeable gains accruing on the disposal of any chargeable asset of the partnership or the body of persons.

(2) Any person who at the time of disposal of a chargeable asset of a partnership or a body of persons is the precedent partner or the manager, the secretary or the treasurer, as the case may be, shall be assessable and chargeable with the tax payable by the partnership or the body of persons under this Act.

(3) In the case of a co-proprietorship a disposal by one of the co-proprietors of his share of the chargeable asset shall be deemed to be part disposal of an asset by him alone and he shall be assessable and chargeable to tax on the chargeable gain resulting from such disposal.

**Incapacitated persons**

2. A receiver appointed by the court and a trustee, guardian, curator or committee having the direction, control or management of any property on behalf of an incapacitated person shall be assessable and chargeable with the tax to the same extent as the incapacitated person would be assessable and chargeable if he were not incapacitated.

**Non-residents**

3. A person who is absent from Malaysia shall be assessable and chargeable with the tax either directly or in the name of his attorney, factor, agent, receiver or manager in Malaysia.

**Rulers and Ruling Chiefs**

4. (1) Subject to this paragraph any person nominated by a Ruler or Ruling Chief for the purposes of this Act as the person executing the functions of administrator of the private property of the Ruler or Ruling Chief shall be assessable and chargeable with the tax on behalf of the Ruler or Ruling Chief.

(2) The administrator may pay the tax out of any private property in his hands or under his control belonging to the Ruler or Ruling Chief and may, to the extent

that he pays any such tax out of his own property, recover it from any such private property.

(3) The administrator shall not be personally liable in respect of the tax except to the extent that he—

- (a) has in his possession, custody or control any private property belonging to the Ruler or Ruling Chief; or
- (b) had any such private property in his possession, custody or control at any time after receiving notice of the tax having become due.

(4) Unless the sanction of the Attorney General is first obtained, no prosecution, suit or other legal proceedings shall be instituted against the administrator on the ground of any offence or default by him in respect of any act, matter or thing for which he was responsible under this paragraph.

(5) In this paragraph “Ruler or Ruling Chief” means—

- (a) the Yang di-Pertuan Agong;
- (b) the Raja Permaisuri Agong;
- (c) the Timbalan Yang di-Pertuan Agong or other Ruler exercising the functions of the Yang di-Pertuan Agong;
- (d) a State Authority or any person exercising the functions of a State Authority;
- (e) the Undang of Sungai Ujong, the Undang of Jelebu, the Undang of Johol, the Undang of Rembau or the Tunku Besar of Tampin.

### **Companies**

5. (1) The manager or other principal officer in Malaysia, the directors or the secretary, of a company shall be jointly and severally assessable and chargeable with the tax payable by the company under this Act.

(1A) Notwithstanding anything contrary to this Act or any other written law, any person who is a director of a company during the period in which tax or debt is liable to be paid by that company shall be jointly and severally liable for such tax or debt that is due and payable and shall be recoverable under section 23 from that director.

(2) The liquidator of a company which is being wound up shall be responsible for the payment of any tax which he knows or might reasonably be expected to be payable by the company under this Act; and shall not distribute any of the assets of the company to its shareholders unless he has made provision for the payment of such tax.



(3) Any liquidator who fails to comply with this paragraph shall be liable to pay a penalty equal to the amount of the tax to which the failure relates.

(4) For the purposes of subparagraph (1A), “director” means any person who—

(a) is occupying the position of director (by whatever name called), including any person who is concerned in the management of the company’s business; and

(b) is, either on his own or with one or more associates, the owner of, or able directly or through the medium of other companies or by any other indirect means to control, not less than twenty per cent of the ordinary share capital of the company.

(5) For the purposes of subparagraph (4)(b), “associate” means, in relation to a person—

(a) a person in any of the following relationships to that person, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother, sister and partner;

(b) the trustee or trustees of a settlement in relation to which that person is, or any such relative of his (living or dead) as is mentioned in paragraph (a) of this definition is or was, a settlor;

(c) where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein.

**5A.** (1) The compliance officer who is appointed amongst the partners of the limited liability partnership or if no compliance officer is appointed as such, by any partners thereof, shall be jointly and severally assessable and chargeable with the tax payable by the limited liability partnership under this Act.

(2) Subparagraphs 5(2) and (3) shall apply with such modifications and adaptations as may be necessary under this paragraph.

(3) In this paragraph, “compliance officer” shall have the same meaning assigned to it by section 27 of the Limited Liability Partnerships Act 2012.

**Hindu joint family**

**6.** The manager or karta of a Hindu joint family shall be assessable and chargeable with the tax in respect of any chargeable gains accruing to the family.

**Executor**

7. The executor of the estate of a deceased person shall be assessable and chargeable with the tax in respect of any chargeable gains accruing on the disposal by the executor of any chargeable asset of the estate.

**Trustees**

8. A trustee (other than the trustee of an incapacitated person) shall be assessable and chargeable with the tax in respect of any chargeable gains accruing on the disposal of any chargeable asset of the trust.

**Joint and several liability of trustees and executors**

9. Where two or more persons act in the capacity of trustees of a trust or executors of the estate of a deceased person, they shall be jointly and severally liable for the payment of the tax payable on any chargeable gains accruing to the trust or estate, as the case may be.

**Responsibility of specified persons**

10. Where this Act specifies a person to be chargeable or assessable and chargeable with the tax under this Act, the person so specified shall, subject to this Act, be responsible for paying the tax payable by the chargeable person or body of persons in question and for all matters required to be done by virtue of this Act for or in connection with making the return or assessing the tax so payable.

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SCHEDULE 2

[Section 7]

CHARGEABLE GAINS AND ALLOWABLE LOSSES

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ARRANGEMENT OF PARAGRAPHS

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Paragraph

1. Interpretation
2. Acquisition and disposal generally
3. Transactions in which disposal price is deemed equal to acquisition price
4. Acquisition price
5. Disposal price
6. Incidental costs
7. Excluded expenditure
8. Effect of acquisition of capital sum in certain cases
9. Certain transactions deemed to be at market value
10. Subsequent disposal of asset deemed to be acquired at market value
11. Definition of market value
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- 15A. Date of disposal in particular cases
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16. Conditional contracts
17. Transfer of assets between companies in same group
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20. Incumbrances
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22. Distribution of assets of partnership, *etc.*

## Paragraph

24. Certain acquisitions before coming into force of Act
25. Leases
26. Contingent liabilities
27. Options
28. Dealings by nominees and certain trustees
29. Dealings for enforcement of security
30. Exclusion of reimbursed expenditure
31. Prohibition of deduction for allowable losses from chargeable gains for earlier years
32. Deductions allowable only once
33. Certain losses not to be allowable
34. Transfer of assets to controlled companies
- 34A. Acquisition and disposal of shares in real property companies
35. Trustees and partners
36. Conclusiveness of income tax decisions

## CHARGEABLE GAINS AND ALLOWABLE LOSSES

**Interpretation**

1. (1) In this Schedule, unless the context otherwise requires—

“asset” means a chargeable asset;

“child” means a legitimate child, a step-child or a child adopted by an individual or the husband or wife of the individual in accordance with any law;

“connected person” has the meaning assigned by paragraph 23;

“Islamic bank” has the meaning assigned to it under the Islamic Banking Act 1983 [Act 276] and includes a person carrying on banking or financing activities in accordance with the Syariah;

“lease” means a lease over land, and includes a sub-lease, tenancy or licence, an agreement for a lease, sub-lease, tenancy or licence;

“legatee” includes any person entitled under a testamentary disposition or on an intestacy or partial intestacy;

“permitted expenses” means the expenditure specified in subsubparagraphs 5(1)(a) and (b);

“relative” means child, brother, sister, ancestor or lineal descendant.

(2) For the purposes of this Schedule, a principal company and all its subsidiaries form a group and, where a principal company is a member of another group as being itself a subsidiary, both groups shall be treated as one group for those purposes.

(3) References to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset.

(4) For the purposes of this Schedule, “a consideration consisting substantially of shares” means a consideration consisting of not less than seventy-five per cent of shares.

(5) Any reference in this Schedule to interest shall apply, *mutatis mutandis*, to expenses incurred in lieu of interest, in transactions conducted in accordance with the Syariah.

### **Acquisition and disposal generally**

2. Subject to this Schedule, every method, scheme or arrangement by which the ownership of an asset is transferred from one person to another shall constitute an acquisition of the asset by the transferee and a disposal of the asset by the transferor.

### **Transactions in which disposal price is deemed equal to acquisition price**

3. In the following cases the disposal price shall be deemed to be equal to the acquisition price, that is to say—

- (a) the devolution of the assets of a deceased person on his executor or legatee under a will or intestacy or on the trustees of a trust created under his will;
- (b) the transfer of assets between spouses or the transfer of assets owned by an individual, by his wife or by an individual jointly with his wife or with a connected person to a company (whether or not resident in Malaysia) controlled by the individual, by his wife or by the individual jointly with his wife or with a connected person for a consideration consisting of shares in the company, or for a consideration consisting substantially of shares in the company and the balance of a money payment;
- (c) acquisitions from or disposals to a nominee or trustee resident in Malaysia by an individual or his wife or by both being absolutely entitled as against the nominee or trustee;

- (d) the conveyance or transfer of an asset by way of security, or the transfer of a subsisting interest or right by way of security in or over an asset (including re-transfer on the redemption of the security);
- (e) gifts made to the Government, a State Government, a local authority or a charity exempt from income tax under the income tax law;
- (f) the disposal of an asset as a result of a compulsory acquisition under any law;
- (g) the disposal of any chargeable asset pursuant to a scheme of financing approved by the Central Bank, the Labuan Financial Services Authority, the Malaysia Co-operative Societies Commission or the Securities Commission as a scheme which is in accordance with the principles of Syariah, where such disposal is strictly required for the purpose of compliance with those principles but which will not be required for any other schemes of financing.

#### **Acquisition price**

4. (1) Subject to subparagraphs (2), (3) and (4) and the other provisions of this Schedule, the acquisition price of an asset is the amount or value of the consideration in money or money's worth given by or on behalf of the owner wholly and exclusively for the acquisition of the asset (together with the incidental costs to him of the acquisition) less—

- (a) any sum received by him by way of compensation for any kind of damage or injury to the asset or for the destruction or dissipation of the asset or for any depreciation or risk of depreciation of the asset;
- (b) any sum received by him under a policy of insurance for any kind of damage or injury to or the loss, destruction or depreciation of the asset; and
- (c) any sum forfeited to him as a deposit made in connection with an intended transfer of the asset.

(2) Subject to subparagraph (3), where any sum of the kind mentioned in subparagraph (1)(a), (b) or (c) which is received by the owner of an asset exceeds the consideration and incidental costs referred to in that subparagraph, the amount of the excess shall constitute a chargeable gain accruing to the owner at the time when he receives the sum.

(3) Where an asset, which is disposed of, was acquired by the disposer prior to 1 January 1970, the market value of the asset as at 1 January 1970 shall be substituted for—

- (a) the consideration and incidental costs of the kind mentioned in subparagraph (1);

- (b) the market value of the asset as at the date of transfer of ownership of the asset mentioned in subparagraphs 19(1) and (3A);
- (c) the amount of the legacy or the market value of the asset as at the date of transfer of ownership of the asset, whichever is the lower, mentioned in subparagraph 19(2); or
- (d) the market value of the asset as at the date of the death of the deceased person referred to in subparagraph 19(3),

as the case may be, and the sum of the kind referred to in subsubparagraph (1)(a), (b) or (c) which relates to the period prior to 1 January 1970 shall be disregarded.

(4) Where—

- (a) on the transfer of an asset the acquisition price paid for the asset by the transferor plus the permitted expenses incurred by him or, if the asset was acquired by that transferor prior to 1 January 1970, the market value of that asset as at 1 January 1970 plus the permitted expenses incurred by that transferor as from 1 January 1970 less the sum of the kind referred to in subsubparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to that transferor as from 1 January 1970 are to be taken for the purposes of this Schedule as the acquisition price paid by the transferee; and
- (b) subsequently to the transfer, the transferee receives any sum of the kind mentioned in subsubparagraph (1)(a), (b) or (c),

that sum shall be deducted from the acquisition price taken to have been paid by the transferee to the same extent as it would have been deducted from that transferor's acquisition price if it had been received by that transferor before the transfer:

Provided that where that sum exceeds the acquisition price taken to have been paid by the transferee, the amount of the excess shall constitute a chargeable gain accruing to the transferee at the time when he receives that sum.

(5) Where by virtue of subparagraph (2) or the proviso to subparagraph (4) any sum constitutes a chargeable gain accruing to a person in respect of an asset, his acquisition price for that asset shall, in relation to any subsequent disposal of that asset by him, be taken as nil.

### **Disposal price**

5. (1) Subject to subparagraph (2), the disposal price of an asset is the amount or value of the consideration in money or money's worth for the disposal of the asset less—

- (a) the amount of any expenditure wholly and exclusively incurred on the asset at any time after its acquisition by or on behalf of the disposer for the purpose of enhancing or preserving the value of the asset,

being expenditure reflected in the state or nature of the asset at the time of the disposal;

- (b) the amount of any expenditure wholly and exclusively incurred at any time after his acquisition of the asset by the disposer in establishing, preserving or defending his title to, or to a right over, the asset; and
- (c) the incidental costs to the disposer of making the disposal.

(2) Where an asset which is disposed of was acquired by the disposer prior to 1 January 1970, the amount of the expenditure of the kind mentioned in subsubparagraphs (1)(a) and (b) which relates to the period prior to 1 January 1970 shall be disregarded.

### **Incidental costs**

6. (1) For the purposes of paragraphs 4 and 5 the incidental costs of the acquisition or disposal of an asset shall consist of expenditure wholly and exclusively incurred by the disposer for the purposes of the acquisition or (as the case may be) the disposal, being—

- (a) fees, commission or remuneration paid for the professional services of any surveyor, valuer, accountant, agent or legal adviser;
- (b) costs or transfer (including stamp duty);
- (c) in the case of an acquisition, the cost of advertising to find a seller; and
- (d) in the case of a disposal, the cost of advertising to find a buyer and costs reasonably incurred for the purposes of this Act in making any valuation or in ascertaining market value.

(2) (*Deleted by Act 702*).

### **Excluded expenditure**

7. There shall not to be taken into account in computing the acquisition price or disposal price of an asset—

- (a) any outgoings and expenses allowable as a deduction in computing any adjusted income or adjusted loss for income tax purposes;
- (b) any outgoings and expenses which would have been allowable for income tax purposes, but for an exemption or insufficiency of gross income; and
- (c) without prejudice to the preceding provisions of this subsubparagraph, any outgoings and expenses which, if the asset on or in respect of



which they were incurred was and had at all times been held or used as part of the fixed capital of a business the profits or gains of which were chargeable with income tax, would be allowable as a deduction in computing the adjusted income or adjusted loss of the business for income tax purposes.

**Effect of acquisition of capital sum in certain cases**

**8.** (1) There shall be deemed to be a disposal of assets by their owner where any capital sum not being a sum of the kind mentioned in subsubparagraph 4(1)(a), (b) or (c) is derived in respect of assets notwithstanding that no asset is acquired by the person paying the capital sum, and this paragraph applies in particular to—

- (a) capital sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights; and
- (b) capital sums received as consideration for use or exploitation of assets.

(2) In the case of a disposal within the meaning of subparagraph (1) the time of the disposal shall be the time when the capital sum is received and the sum received shall constitute a chargeable gain accruing at that time.

**Certain transactions deemed to be at market value**

**9.** The acquisition or disposal of an asset by a person shall be deemed to be for a consideration equal to the market value of the asset—

- (a) where he acquires or disposes of the asset otherwise than by way of a bargain made at arm's length and, in particular, where he acquires or disposes of it by way of gift;
- (b) where he acquires or disposes of the asset wholly or partly—
  - (i) for a consideration that cannot be valued;
  - (ii) in connection with his own or another's loss of office or employment or diminution of emoluments; or
  - (iii) in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another;
- (c) where he acquires an asset as trustee for the creditors of any person in full or part satisfaction of any debt due from that person or where he transfers an asset as trustee for the creditors of any person to the creditors in full or part satisfaction of any debt due to the creditors;

- (d) where he acquires or disposes of an asset in a transaction for the transfer of a business for a lump sum consideration; or
- (e) where subsection 25(2) applies.

### **Subsequent disposal of asset deemed to be acquired at market value**

**10.** Where a person—

- (a) is deemed for the purposes of this Act to acquire an asset at its market value; and
- (b) subsequently disposes of the asset, the market value at which he is deemed to have acquired the asset shall be adopted as the acquisition price for the purpose of computing any gain accruing to or loss suffered by him on the disposal.

### **Definition of market value**

**11.** (1) Subject to this paragraph, the market value of an asset, which is acquired or disposed of is the price which it would fetch if it were sold in a transaction between independent persons dealing at arm's length at the time of the acquisition or disposal.

(2) If—

- (a) the parties to the disposal of an asset are unable to agree on its market value;
- (b) there is only one party to the disposal of an asset; or
- (c) the Director General is of the opinion that the market value of an asset as agreed on by the parties to its disposal is incorrect,

the market value in question shall be determined by the Director General.

### **Gifts**

**12.** (1) Subject to subparagraph (2), where a donor disposes an asset by way of a gift to a recipient, the disposal shall be deemed to be a disposal at the market value of the asset.

(2) Where the donor and recipient referred to in subparagraph (1) are husband and wife, parent and child, or grandparent and grandchild—

- (a) the donor shall be deemed to have received no gain and suffered no loss on the disposal;

- (b) in the case of a donor who is not a citizen or permanent resident, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor; and
- (c) in the case of a donor who is a citizen or permanent resident and the gift is made within five years after the date of acquisition by the donor, the recipient shall be deemed to acquire the asset at an acquisition price equal to the acquisition price paid by the donor plus the permitted expenses incurred by the donor.

### **Exchanges**

**13.** Where an asset is disposed of by being exchanged for another asset (whether chargeable or not) the market value of the asset received by the disposer shall be taken as the consideration for the disposal:

Provided that, if the asset received by the disposer has no market value, the Director General may take the market value of the asset disposed of as the consideration for the disposal.

### **Time of accrual of chargeable gains**

**14.** Subject to this Schedule, where an asset is disposed of, the chargeable gain or allowable loss is deemed to accrue to or suffered by the disposer at the time of the disposal whether the consideration is payable by instalments or not.

### **Date of disposal and acquisition generally**

**15.** (1) Except where this Schedule provides otherwise, a disposal of an asset shall be deemed to take place—

- (a) where there is a written agreement for the disposal of the asset, on the date of such agreement; or
- (b) where there is no written agreement, on the date of completion of the disposal of the asset.

(2) Except where this Schedule provides otherwise, where there is a disposal of an asset, the date of acquisition of the asset by the acquirer shall be deemed to coincide with the date of disposal of that asset by the disposer to that acquirer.

(3) For the purposes of this Schedule—

(a) the date of completion of a disposal means—

- (i) the date on which the ownership of the asset disposed of is transferred by the disposer; or

- (ii) the date on which the whole of the amount or value of the consideration (in money or money's worth) for the transfer has been received by the disposer,

whichever is the earlier;

- (b) a transfer of ownership of an asset is deemed to take place on the date when the last of all such things shall have been done under any written law as are necessary for the transfer of ownership of the asset.

### **Date of disposal in particular cases**

**15A.** A disposal of an asset shall be deemed to take place—

- (a) in the case of a gift of an asset on death, on the date of transfer of ownership of the asset to the recipient;
- (b) in the case where a legatee accepts an asset in place of a money legacy, on the date of transfer of ownership of the asset to the legatee;
- (c) in the case where an asset of a deceased person is transferred to a legatee by his executor (irrespective of whether he himself is the legatee or not) or by the trustee of a trust created under his will, on the date of transfer of ownership of the asset to the legatee.

### **Date of acquisition in specific cases**

**15B.** (1) Where an asset of a deceased person is disposed of (otherwise than to a legatee) by his executor or by the trustee of a trust created under his will such executor or trustee shall be deemed to have acquired it on the date of death of the deceased person.

(2) Where an asset is acquired with a financing facility provided by an Islamic Bank in accordance with the Syariah, the acquirer shall be deemed to have acquired the asset on the date of the agreement for the acquisition of the asset entered into between the acquirer and a person other than such Islamic bank or, in the case where the asset is owned by such bank, on the date of the agreement for the acquisition of the asset entered into with the bank.

(3) Where land vested in a person as a result of a partition mentioned in subsection 2(4) is disposed of, the disposer shall be deemed to have acquired it on the date of acquisition of his undivided share in the land as a co-proprietor.

### **Conditional contracts**

**16.** Where a contract for the disposal of an asset is conditional and the condition is satisfied (by the exercise of a right under an option or otherwise), the acquisition

and disposal of the asset shall be regarded as taking place at the time the contract was made, unless—

- (a) the acquisition or disposal requires the approval by the Government or a State Government or an authority or committee appointed by the Government or a State Government, the date of disposal shall be the date of such approval; or
- (b) the approval referred to in subparagraph (a) is conditional, the date of disposal shall be the date when the last of all such conditions is satisfied.

**Transfer of assets between companies in same group**

**17.** (1) Subject to this paragraph, where with the prior approval of the Director General—

- (a) an asset is transferred between companies in the same group to bring about greater efficiency in operation for a consideration consisting of shares in the company or substantially of shares in the company and the balance of a money payment;
- (b) an asset is transferred for any consideration between companies in any scheme of reorganization, reconstruction or amalgamation; or
- (c) an asset is distributed by a liquidator of a company and the liquidation of the company was made under a scheme of reorganisation, reconstruction or amalgamation;

and the transferee company is resident in Malaysia, the transfer shall be treated as a disposal on which the transferor company or the liquidator receives no gain and suffers no loss:

Provided that no approval shall be given for any transfer or distribution of asset in any scheme under subparagraph (1)(b) or (1)(c) unless the Director General is satisfied that such an asset is transferred to implement any such scheme directly connected with any transfer or distribution of ownership of an asset in Malaysia to a company resident in Malaysia which is being restructured under such scheme in compliance with Government policy on capital participation in industry.

(2) Where in a transfer of the kind mentioned in subparagraph (1)—

- (a) the asset is taken into the trading stock of the transferee company on or after the coming into force of this Act; and
- (b) the value at which the asset is so taken in exceeds the acquisition price paid by the transferor company plus the permitted expenses incurred by the transferor company or, if the asset was acquired by that transferor company prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by

that transferor company as from 1 January 1970 less the sum of the kind referred to in subsubparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to that transferor company as from 1 January 1970,

the taking in shall be deemed to be a disposal of the asset by the transferee company and the excess shall constitute a chargeable gain accruing to the transferee company at the date when the asset or part thereof was taken into stock.

(3) The Director General may withdraw any approval for a transfer given under subparagraph (1) within three years after giving it if—

- (a) it appears to him that the transfer was made wholly or partly for some purpose other than the purpose mentioned in that subparagraph;
- (b) in the case of approval under subsubparagraph (1)(a), the transferee company ceases to be in the same group of companies as the transferor company; or
- (c) the transferee company ceases to be resident in Malaysia.

(4) Where approval of a transfer is withdrawn under subparagraph (3)—

- (a) the provisions of subparagraph (1) as to the acquisition and disposal prices shall cease to have effect; and
- (b) the Director General shall make such assessment on the transferor or transferee company as he considers proper in the circumstances.

(5) Notwithstanding the provisions of other paragraphs in this Act and for the purposes of this paragraph, where an asset is transferred for the purposes of restructuring in compliance with Government policy on capital participation in industry which has been approved by the Director General, the date of acquisition by the transferee company is deemed to be the date when the transferor company first acquired that asset.

### **Transfer of assets into stocks**

**17A.** Notwithstanding any other provisions of this Act—

- (a) if an asset acquired or held by a person is taken into the trading stock of the person, there shall be deemed to be a disposal of chargeable asset; and
- (b) the disposal price of the chargeable asset shall be equal to the market value at the date the asset is taken into stock.

**Acquirer's default in payment**

**18.** Where the disposer of an asset satisfies the Director General that by reason of the acquirer's default the consideration for the disposal (or part thereof) has not been received by the disposer, the chargeable gain accruing in respect of the disposal shall be reduced by an amount equal to the value of so much of the consideration as has not been received, and the Director General shall make such adjustment by way of repayment of the tax or otherwise as the circumstances require:

Provided that any subsequent receipts of any kind relating to the disposal by the disposer shall be brought into account as part of the chargeable gain and may be assessed by the Director General accordingly.

**Acquisition price in particular cases**

**19.** (1) Subject to subparagraph 4(3), in the case of a gift of an asset on death, there shall be deemed to be an acquisition of the asset by the recipient at an acquisition price equal to the market value of the asset as at the date of transfer of ownership of the asset to the recipient less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to that recipient.

(2) Subject to subparagraph 4(3), where a legatee accepts an asset in place of a money legacy, there shall be deemed to be acquisition of the asset by the legatee at an acquisition price equal to the amount of the legacy or the market value of the asset as at the date of transfer of ownership of the asset to the legatee, whichever is the lower less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to that legatee.

(3) Subject to subparagraph 4(3), where an asset of a deceased person is disposed of (otherwise than to a legatee) by his executors or by the trustees of a trust created under his will, such executors or trustees shall be deemed to have acquired it at an acquisition price equal to the market value of the asset as at the date of the death of that deceased person less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to such executors or trustees.

(3A) Subject to subparagraph 4(3), where an asset of a deceased person is transferred to a legatee by his executor (irrespective of whether he himself is the legatee or not) or by the trustee of a trust created under his will, there shall be deemed to be an acquisition of the asset by the legatee at an acquisition price equal to the market value of the asset as at the date of transfer of ownership of the asset to the legatee less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited, as the case may be, to that legatee.

(4) Where an asset which with the prior approval of the Director General under paragraph 17 has been transferred from one company to another is subsequently disposed of, the disposer shall be deemed to have acquired the asset at an acquisition price equal to the acquisition price paid for the asset by the transferor

plus the permitted expenses incurred by the transferor or, if the asset was acquired by the transferor prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the transferor as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to the transferor as from 1 January 1970.

(5) Where an asset which has been transferred under subparagraph 3(b) is subsequently disposed of by the spouse or the company, the disposer shall be deemed to have acquired the asset at an acquisition price equal to the acquisition price paid by the transferor plus the permitted expenses incurred by the transferor or, if the asset was acquired by the transferor prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the transferor as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to the transferor as from 1 January 1970.

(6) Where an asset on being transferred to a company in the circumstances mentioned in subparagraph (5) is taken into the trading stock of the company at a value which exceeds the acquisition price paid by the transferor plus the permitted expenses incurred by him or, if the asset was acquired by the transferor prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the transferor as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1) (a), (b) or (c) received by or forfeited as the case may be to the transferor as from 1 January 1970, the taking in shall be deemed to be a disposal of the asset by the company and the excess shall constitute a chargeable gain accruing to the company at the time when the asset or part thereof is taken into stock.

(7) Where an asset is acquired by a person (hereinafter referred to as “the acquirer”) with a financing facility provided by an Islamic bank in accordance with the Syariah, the acquisition price of the asset shall be the amount or value of the consideration given by or on behalf of the acquirer to the person disposing that asset other than such Islamic bank or in the case where the asset is owned by such bank, the amount or value of the consideration given to the bank, for the acquisition of the asset (together with the incidental costs to him of the acquisition) less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited, as the case may be, to that acquirer.

(8) Where land vested in a person as a result of a partition mentioned in subsection 2(4) is disposed of, the disposer shall be deemed to have acquired it at the acquisition price paid by him for the acquisition of his undivided share in the land as a co-proprietor or, if his undivided share in the land was acquired by him prior to 1 January 1970, at the market value thereof as at 1 January 1970 plus the permitted expenses incurred by him as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1) (a), (b) or (c) received by or forfeited as the case may be to him as from 1 January 1970.



**Incumbrances**

**20.** (1) Where an asset is acquired subject to a subsisting charge or incumbrance, any payment made by the acquirer on account of the charge or incumbrance shall be deemed to form part of the acquisition price.

(2) Where an asset is disposed of subject to a subsisting charge or incumbrance, the full amount of the liability assumed by the acquirer shall be deemed to form part of the disposal price.

**Part disposals**

**21.** (1) There is a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.

(2) Subject to subparagraph (3) and the other provisions of this Act, where at any time the owner of an asset disposes of a part of that asset, whenever necessary, the acquisition price of the asset and the amounts of all such additions and deductions as would have fallen to be made under paragraph 4 and subparagraphs 5(1)(a) and (b) if the asset had been disposed of at that time shall each be apportioned between that part of the asset and the remainder thereof on whatever basis is most appropriate, and so much of that price and of those amounts as are so apportioned to the part of the asset disposed of shall be taken in applying paragraph 4 and subparagraphs 5(1)(a) and (b) to the acquisition and disposal of that part.

(3) Where an asset consists of a lease and part of the asset becomes subject to a sublease for which a premium is paid, a fraction of the acquisition price of the asset bearing the same proportion to the whole price as the multiple of the duration of the sublease and the area subleased bears to the multiple of the duration and area of the lease shall be taken as the acquisition price paid by the disposer for the part subleased.

**Distribution of assets of partnership, etc.**

**22.** Where an investment club, an investment trust, a unit trust or (notwithstanding subparagraphs 23(1) and (4)) a partnership makes a distribution of any of its assets among all its members who are entitled to share in its profits, each member shall be deemed to acquire the assets received by him at an acquisition price equal to the acquisition price paid for those assets (plus the permitted expenses incurred) by the investment club, investment trust, unit trust or partnership or, if the asset was acquired by the investment club, investment trust, unit trust or partnership prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the investment club, investment trust, unit trust or partnership as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to the investment club, investment trust, unit trust or partnership as from 1 January 1970.

**Connected persons**

**23.** (1) An asset acquired as the result of a transaction between connected persons is acquired otherwise than by way of a bargain made at arm's length.

(2) A person is connected with an individual if that person is the individual's husband or wife or is a relative (or the husband or wife of a relative) of the individual or of the individual's husband or wife.

(3) A person in his capacity of trustee is connected with any individual who in relation to the trust is a settlor and with any person who is connected with such an individual.

(4) A person is connected with any person with whom he is in partnership, and with the husband, wife or relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

(a) if the same person has control of both, or a person has control of one and persons connected with him (or he and persons connected with him) have control over the other; or

(b) if two or more groups of persons have control of each company and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) Any reference in subparagraphs (2) to (7) to a person being connected with another shall be taken as meaning that they are connected persons.

**Certain acquisitions before coming into force of Act**

**24.** (1) Where in the case of an asset consisting of land—

(a) the land was acquired before the date of coming into force of this Act; and

(b) the construction of a building on the land was either—

(i) begun on or after the date of coming into force of this Act;

- (ii) begun before that date but left unfinished; or
- (iii) begun before that date but finished on or after that date,

then, without prejudice to any right the owner may have under subparagraph 5(1)(a) or (b) to deduct the cost of construction or any other permitted expenses from the disposal price on any subsequent disposal, the asset shall be deemed to have been acquired on the date the construction was begun in a case where item (1) (b)(i) or (ii) applies or on the date the construction was finished in a case where item (1)(b)(iii) applies at a price equal to the acquisition price of the land:

Provided that this item shall not apply where the Director General is satisfied that the building in question has been constructed for the purpose of working an estate, plantation, farm, mine or forest or for the provision of accommodation to employees in an estate, plantation, farm, mine or forest and in all such cases the cost of construction of the building is not substantially reflected in the state or nature of the asset at the time of disposal by the owner.

(2) Where, under an agreement made before the date of coming into force of this Act for the disposal of an asset, payment for the asset is to be in instalments, the date of disposal and acquisition shall be the date on which the ownership of the asset is transferred to the purchaser, unless—

- (a) all the instalments were paid before the date of coming into force of this Act, in which case the disposal and the acquisition shall be treated as having taken place before the date of coming into force of this Act;
- (b) all the instalments were paid after the date of coming into force of this Act, in which case the disposal and acquisition shall be treated as having been made after that date.

(3) For the purposes of this paragraph the term “instalments” refers to two or more payments of the acquisition price (other than any deposit or advance payment) as stipulated in the agreement as agreed to by the parties.

### **Leases**

25. (1) The grant of a lease is the disposal of an asset, namely, the lease.

(2) Where a lessee transfers a lease for which he has paid a premium, a fraction of the premium paid by him, arrived at by dividing the number of years of the unexpired term by the number of years of the full term, shall replace the full premium in the computation of the acquisition price of the lease.

(3) Where a lease for which a premium has been paid is transferred without consideration or for a consideration which is of only nominal value, the premium (or, in the case to which subparagraph (2) applies, the fraction mentioned in that subparagraph) shall be disregarded in computing the acquisition price of the lease on the subsequent disposal of the lease by the transferee.

(4) The question whether a consideration is of only nominal value for the purposes of subparagraph (3) shall be decided by the Director General, whose decision shall be final and not subject to appeal.

(5) A person who disposes of land which is or has been leased to a lessee shall not be entitled to deduct from the disposal price under paragraph 5 any expenditure incurred by the lessee in erecting buildings on or otherwise improving the land.

### **Contingent liabilities**

**26.** (1) Subject to subparagraph (2), no allowance shall be made in the computation of a disposal price—

- (a) in the case of a disposal by way of transferring a lease, for any liability remaining with or assumed by the disposer which is contingent on a default in respect of liabilities assumed by the acquirer under the terms and conditions of the lease;
- (b) for any contingent liability of the disposer in respect of any covenant for quiet enjoyment or other obligation assumed by the transferor of the asset; or
- (c) for any contingent liability in respect of a warranty or representation made on a disposal of the asset.

(2) If after a disposal of the kind mentioned in subparagraph (1) it is shown to the satisfaction of the Director General that a liability of the kind mentioned in that subparagraph has become enforceable and is being or has been enforced, he shall make such adjustment by way of repayment of the tax or otherwise as the circumstances require.

### **Options**

**27.** (1) The grant of an option over a chargeable asset is the disposal of a chargeable asset, namely, the option.

(2) Where a right under an option is exercised so that the asset to which the option relates is disposed of to the person exercising the right, the grant of the option and the disposal shall be regarded as one transaction and the amount paid for the option shall be deemed to be part of the consideration for the disposal of the asset.

(3) Where a right under an option is disposed of at a loss by the person entitled to exercise the right, the loss shall not be taken as an allowable loss suffered by that person unless the right is subsequently exercised by the person acquiring the right or his successors.

**Dealings by nominees and certain trustees**

28. In relation to assets held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee (or for two or more persons jointly so entitled), this Act shall apply as if the assets were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of the person for whom he is the nominee or trustee (acquisitions from or disposals to the nominee or trustee by that person being disregarded accordingly).

**Dealings for enforcement of security**

29. Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated as if they were done through him as nominee by the person entitled to the asset subject to the security, charge or incumbrance; and this paragraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager as it applies to the dealings of the person so entitled.

**Exclusion of reimbursed expenditure**

30. Expenditure in respect of which a disposer has been or is to be directly or indirectly reimbursed by any other person or by any government or other authority shall not be taken into account as expenditure for the purposes of subsubparagraph 5(1)(a) or (b) and where the expenditure is reimbursed after the disposer has been assessed the Director General may vary the assessment so as to take account of the reimbursement:

Provided that the receipt of a sum of the kind described in subsubparagraph 4(1)(a) or (b) shall not be regarded as a reimbursement for the purposes of this paragraph.

**Prohibition of deduction for allowable losses from chargeable gains for earlier years**

31. Any allowable loss suffered in a year of assessment shall not be allowed as a deduction from the chargeable gains accruing in any earlier year of assessment.

**Deductions allowable only once**

32. No amount given by way of a deduction shall be allowable on the disposal of an asset by any person in a computation under this Schedule more than once.

**Certain losses not to be allowable**

**33.** A loss suffered in respect of a disposal shall not be allowable if—

- (a) the date of the disposal was before the date of coming into force of this Act;
- (b) any gain accruing in respect of the disposal would have been exempt from the tax under this Act;
- (c) the disposal is not included in a return made under subsection 13(1) or (2);
- (d) the disposal is a disposal of a chargeable asset under paragraph 34A.

**Transfer of assets to controlled companies**

**34.** (1) Where an asset is transferred to a company under subparagraph 3(b) for a consideration consisting of shares in the company, or for a consideration consisting substantially of shares in the company and the balance of a money payment, the acquisition price paid for the asset by the transferor, plus the permitted expenses incurred by him and minus the amount of any money payment or, if the asset was acquired by the transferor prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the transferor as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1) (a), (b) or (c) received by or forfeited as the case may be to the transferor as from 1 January 1970 and minus the amount of any money payment, shall be taken as the acquisition price of the shares:

Provided that, where the money payment exceeds the acquisition price paid for the asset by the transferor plus the permitted expenses incurred by him or, if the asset was acquired by the transferor prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the transferor as from 1 January 1970 less the sum of the kind referred to in subparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to the transferor as from 1 January 1970, the acquisition price of the shares shall be deemed to be nil and, if the payment was made on or after the date of coming into force of this Act, the excess shall constitute a chargeable gain accruing to the transferor.

(2) A disposal of any of the shares acquired by the transferor under subparagraph (1) shall be deemed to be a disposal of a chargeable asset by the transferor.

**Acquisition and disposal of shares in real property companies**

**34A.** (1) An acquisition of shares in a real property company (hereinafter referred to in this paragraph as “the relevant company”) shall be deemed to be an acquisition of a chargeable asset, and where such shares are disposed of, such a

disposal shall be deemed to be a disposal of a chargeable asset notwithstanding that at the time of disposal of such shares the relevant company is not regarded as a real property company.

(2) The chargeable asset in this paragraph shall be deemed to be acquired—

(a) on the date the relevant company becomes a real property company;  
or

(b) on the date of acquisition of the chargeable asset.

(3) For the purposes of this paragraph, the acquisition price of a chargeable asset shall—

(a) where subparagraph (2)(a) applies, be deemed to be equal to a sum determined in accordance with the formula—

$$\frac{A \times C}{B}$$

where A is the number of shares deemed to be a chargeable asset;

B is the total number of issued shares in the relevant company at the date of acquisition of the chargeable asset; and

C is the defined value of the real property or shares or both owned by the relevant company at the date of acquisition of the chargeable asset;

(b) where subparagraph (2)(b) applies, be determined in accordance with paragraph 4 or 9.

(4) Notwithstanding paragraph 5, the disposal price of the chargeable asset in this paragraph is the amount or value of the consideration in money or money's worth for the disposal of the chargeable asset.

(5) This paragraph shall not apply to an acquisition or a disposal of any shares under paragraph 34.

(6) For the purposes of this paragraph—

“controlled company” means a controlled company as defined under the Income Tax Act 1967;

“defined value” means the market value of real property or the acquisition price of shares as determined under subparagraph (3);

“real property company” means—

- (a) a controlled company which, as at 21 October 1988, owns real property or shares or both, the defined value of which is not less than seventy-five per cent of the value of its total tangible assets; or
- (b) a controlled company to which subsubparagraph (a) is not applicable, but which, at any date after 21 October 1988, acquires real property or shares or both whereby the defined value of real property or shares or both owned at that date is not less than seventy-five per cent of the value of its total tangible assets:

Provided that where at any date the company disposes of real property or shares or both whereby the defined value of real property or shares or both owned at that date and thereafter is less than seventy-five per cent of the value of its total tangible assets, that company shall not be regarded as a real property company as from that date;

“shares” refers to shares owned in a real property company;

“value of its total tangible assets” means the aggregate of the defined value of real property or shares or both and the value of other tangible assets.

### **Trustees and partners**

**35.** (1) Where an asset is an asset of a trust or partnership, then in whatever persons the ownership of the asset is vested, any acquisition or disposal of the asset shall be treated as an acquisition or disposal by the trustee or the partnership, as the case may be, at the price at which the asset was in fact acquired or disposed of, and any gain or loss in respect of a disposal shall be assessed on or attributed to the trustee or the partnership.

(2) Where a person who is the owner of an asset—

- (a) is a member of a partnership; or
- (b) becomes a member of a partnership on its formation or in any other way,

and transfers the asset to the partnership, the partnership shall be deemed to have acquired the asset at an acquisition price equal to the acquisition price paid by that person plus the permitted expenses incurred by that person before he so transferred it or, if the asset was acquired by that person prior to 1 January 1970, the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by that person as from 1 January 1970 less the sum of the kind referred to in subsubparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to that person as from 1 January 1970.

(3) Where one partnership is succeeded by another and at least one person who was a member of the succeeded partnership is a member of the succeeding partnership, both partnerships shall be treated for the purposes of this Act as one continuing partnership.



(4) Where on the dissolution of a partnership a person who was a member of the partnership immediately before its dissolution carries on the business formerly carried on by the dissolved partnership and acquires any assets which were formerly assets of the dissolved partnership, he shall be deemed to have acquired those assets at the price at which the partnership acquired or is deemed to have acquired them or, if the asset was acquired by the partnership prior to 1 January 1970, at the market value of the asset as at 1 January 1970 plus the permitted expenses incurred by the partnership as from 1 January 1970 less the sum of the kind referred to in subsubparagraph 4(1)(a), (b) or (c) received by or forfeited as the case may be to the partnership as from 1 January 1970.

(5) Where after the death of a member of a partnership, his executor or legatee withdraws from the partnership and thereby causes any asset of the partnership (or any interest in such an asset) to cease to be an asset or interest of the partnership, there shall be deemed to be a disposal of the asset or interest by the partnership at a price equal to its acquisition price.

### **Conclusiveness of income tax decisions**

**36.** Any decision of the Special Commissioners or the court on any matter for income tax purposes shall be conclusive so far as under this Act liability to the tax or any other matter relating to the tax depends on the provisions of the income tax law.

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### SCHEDULE 3

#### [Section 8]

### PRIVATE RESIDENCES

1. In this Schedule “the exemption” means the exemption provided by section 8.
2. Subject to paragraph 3, a building or a part of a building is not owned by any person for the purposes of this Schedule unless he is registered under the law relating to the registration of title to land as proprietor of the land on which it stands or as the holder of a lease of that land or he was the purchaser of that land under an agreement for the purchase and sale of that land.
3. *(Deleted by Act 644).*
4. Subject to this Schedule, a private residence is a building or part of a building in Malaysia owned by an individual and occupied or certified fit for occupation as a place of residence.
5. *(Deleted by Act A431).*
6. *(Deleted by Act A431).*

7. *(Deleted by Act A431).*

8. *(Deleted by Act A431).*

9. (1) Subject to this paragraph, an individual is entitled to the exemption under section 8 in respect of the disposal of one private residence only:

Provided that—

- (a) he elects that such exemption shall apply to that private residence;
- (b) on such election being made, there shall be no further exemption in respect of the disposal of any of his other private residences; and
- (c) the election so made shall be in writing addressed to the Director General and shall be irrevocable.

(2) No election under subparagraph (1) shall be made where an exemption has been granted to an individual under any repealed provisions of this Act or the repealed Land Speculation Tax Act 1974 [*Act 126*] in respect of the disposal of his private residence.

10. *(Deleted by Act A431).*

11. *(Deleted by Act A431).*

12. Where a gain accrues or a loss is suffered in respect of the disposal of a building which is only partly occupied as a private residence, the portion of the gain which is not chargeable or, as the case may be, the portion of the loss which is not allowable shall be arrived at as follows—

- (a) where the building is divided into parcels each of which is capable of being occupied as a self-contained dwelling or self-contained business premises, the gain or loss shall be divided by the total number of parcels and the resulting sum shall be deemed to be the gain or loss attributable to each parcel, including the parcel so occupied;
- (b) where the building is not so divided then, unless the disposer can satisfy the Director General that some other method of computation is more equitable, the portion of the gain or loss attributable to the part so occupied shall be a portion having the same relation to the whole gain or loss as the floor area of the part so occupied has to the total floor area of the building.

13. (1) Subject to subparagraph (2), where a part of the land attaching to a private residence as its gardens or grounds is disposed of without the residence, then—

- (a) if the land on which the residence stands was acquired by the disposer without the residence, the acquisition price of the part disposed of shall be deemed to be a sum bearing the same proportion to the

acquisition price of the total area of the land as the area of the part disposed of bears to that total area, and any gain or loss accruing or suffered in respect of the disposal shall be chargeable or allowable, as the case may be;

- (b) if the land on which the residence stands was acquired by the disposer with the residence and the total area of that land exceeds one acre—
  - (i) the acquisition price of the land without the residence shall be deemed to be one-third of the acquisition price of the land with the residence;
  - (ii) the acquisition price of the part disposed of shall be deemed to be a sum bearing the same proportion to the acquisition price of the land without the residence as the area of the part disposed of bears to that total area; and
  - (iii) any gain or loss accruing or suffered in respect of the disposal shall be chargeable or allowable, as the case may be;
- (c) if the land on which the residence stands was acquired by the disposer with the residence and the total area of that land is one acre or less, there shall be deemed to accrue to the disposer a chargeable gain consisting of a sum bearing the same proportion to the disposal price as the area of the part disposed of bears to that total area.

(2) Where the acquisition by the disposer referred to in subsubparagraphs (1)(a) and (b) was made prior to 1 January 1970, in applying the formula specified in subsubparagraphs (1)(a) and (b) there shall be substituted for the acquisition price of the total area of the land referred to in subsubparagraph (1)(a) and the acquisition price of the land with the residence referred in subsubparagraph (1)(b) the market value of the land as at 1 January 1970.

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SCHEDULE 4

[Section 9]

EXEMPTIONS

1. A gain accruing in respect of the disposal of a chargeable asset before the date of coming into force of this Act.
2. An amount of ten thousand ringgit or ten per cent of the chargeable gain, whichever is greater, in respect of a chargeable gain accruing to an individual on the disposal of a chargeable asset or where the chargeable asset is partly disposed,

the amount to be allowed in respect of such disposal shall be ascertained in accordance with the following formula:

$$\frac{A \times C}{B}$$

- where
- A is part of the area of the chargeable asset disposed;
  - B is the total area of the chargeable asset;
  - C is ten thousand or ten percent of the chargeable gain whichever is greater.

3. A gain accruing to the Government, a State Government or a local authority.
4. A gain equal to the amount of estate duty payable under any law relating to estate duty applicable in Malaysia on an estate of a deceased person accruing in respect of a disposal of a chargeable asset from that estate where the Director General is satisfied that the disposer is compelled to dispose the property in order to pay the estate duty.

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SCHEDULE 5

[Section 4 and Subsection 7(4)]

RATES OF TAX

PART I

Except where Part II or Part III is applicable, the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within three years after the date of acquisition of the chargeable asset	30 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	20 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	Nil

## PART II

In the case where the disposer is a company, the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within three years after the date of acquisition of the chargeable asset	30 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	20 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	5 per cent

## PART III

In the case of an individual who is not a citizen and not a permanent resident, the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within five years after the date of acquisition of the chargeable asset	30 per cent
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	5 per cent

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## LAWS OF MALAYSIA

### Act 169

## REAL PROPERTY GAINS TAX ACT 1976

### LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A431	Real Property Gains Tax (Amendment) Act 1978	s. 2, ss. 3(2), 3(3), 3(4), para 3(5)(a), ss. 3(6), 3(7) and 4(5): 07-11-1975; ss. 3(1), para 3(5)(b), ss. 4(1), 4(2), 4(3), 4(4), 4(6), s. 5 and 6: 29-10-1977
Act 241	Finance Act 1981	18-10-1980 except s. 24, 25 and 26: 07-11-1975
Act 264	Finance Act 1982	23-10-1981 except para 14(i): 07-11-1975
Act 293	Finance Act 1983	The year of assessment 1984 and subsequent years of assessment
Act 309	Finance Act 1984	19-10-1984
Act 323	Finance (No. 2) Act 1985	01-01-1986 except para 39(a), 39(c), 39(d), 39(e), 39(g) and 39(l): 01-07-1983; para 39(g):

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Amending law	Short title	In force from
		01-01-1986 except subpara 15B(2): 01-07-1983
Act 328	Finance Act 1986	24-10-1986
Act 337	Finance Act 1987	para 18(a): 24-10-1986; para 18(b) and (c) and s. 19: 23-10-1987
Act 364	Finance Act 1988	21-10-1988
Act 420	Finance Act 1990	01-01-1989
Act 476	Finance Act 1992	01-11-1991
Act 544	Finance Act 1996	27-10-1995
Act 557	Finance Act 1997	25-10-1996 except ss. 33, 34, 35, 36 and 37: 02-08-1996
Act 578	Finance Act 1998	20-03-1998 except s. 30: 01-01-1999; s. 31 and s. 32: 17-10-1998
Act A1028	Tax Laws (Amendment) Act 1998	02-07-1998
Act 591	Finance (No. 2) Act 1998	01-01-1999
Act 608	Finance (No. 2) Act 2000	01-01-2001
Act 639	Finance Act 2004	11-09-2004
Act 644	Finance Act 2005	01-01-2006: except sections 40, 48 and 49: 01-10-2005; sections 42 and 43: 01-01-2006;

Amending law	Short title	In force from
Act 661	Finance Act 2006	01-01-2007 except section 36: 01-10-2005; section 38: 02-09-2006
Act 702	Finance Act 2010	section 39 until section 57: 01-01-2010
Act 719	Finance Act 2011	Section 34 & 35: 28-01-2011 s. 36: The year of assessment 2011 and subsequent years of assessment
Act 742	Finance Act 2012	The year of assessment 2012
Act 755	Finance Act 2013	See section 55 of Finance Act 2013
Act 761	Finance Act 2014	See section 44 of Finance Act 2014
Act 764	Finance (No.2) Act 2014	01-01-2015

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## LAWS OF MALAYSIA

### Act 169

## REAL PROPERTY GAINS TAX ACT 1976

### LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act 241	18-10-1980
	Act 323	01-01-1986
	Act 337	01-01-1988
	Act 420	01-01-1989
	Act 557	25-10-1996
	Act 755	26-12-2012
7	Act 702	01-01-2010
8	Act 241	18-10-1980
9	Act 644	01-10-2005
12	Act A431	07-11-1975
	Act 323	01-01-1986
13	Act 323	01-01-1986
	Act 702	01-01-2010
	Act 755	See section 55 of Finance Act 2013
14	Act 323	01-01-1986
	Act 719	28-01-2011
	Act 755	See section 55 of Finance Act 2013
	Act 761	24-01-2014
15	Act 578	01-01-1999
	Act 644	01-01-2006
	Act 661	01-01-2007
	Act 755	See section 55 of Finance Act 2013
	Act 761	24-01-2014

Section	Amending authority	In force from
16	Act 323	01-01-1986
	Act 476	01-11-1991
	Act 702	01-01-2010
17	Act 323	01-01-1986
	Act 476	01-11-1976
	Act 702	01-01-2010
18	Act 608	01-01-2001
19	Act 755	See section 55 of Finance Act 2013
20	Act 702	01-01-2010
21A	Act 323	01-01-1986
	Act 702	01-01-2010
21B	Act 323	01-01-1986
	Act 476	01-11-1991
	Act 702	01-01-2010
	Act 755	See section 55 of Finance Act 2013
	Act 764	01-01-2015
22	Act 702	01-01-2010
24	Act 323	01-01-1986
	Act 644	01-01-2006
	Act 702	01-01-2010
	Act 719	28-01-2011
	Act 755	See section 55 of Finance Act 2013
24A	Act 644	01-01-2006
27	Act 323	01-01-1986
29	Act 323	01-01-1986
	Act 761	24-01-2014
39	AA 1028	02-07-1998

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Section	Amending authority	In force from
45	Act 328	24-10-1986
	Act 557	25-10-1996
	Act 644	01-01-2006
46	Act 557	25-10-1996
47	Act 241	07-11-1975
	Act 557	25-10-1996
48A	Act 702	01-01-2010
52	Act 702	01-01-2010
53	Act 591	01-11-1999
	Act 702	01-01-2010
54	Act 557	25-10-1996
55	Act 644	01-01-2006
	Act 702	01-01-2010
56	Act 644	01-01-2006
57A	Act 702	01-01-2010
Schedule 1	Act 241	07-11-1975
	Act 755	See section 55 of Finance Act 2013
	Act 761	24-01-2014
Schedule 2	Act A431	29-10-1977
	Act 241	07-11-1975
	Act 264	23-10-1981
	Act 293	1984 and subsequent years of assessment
	Act 323	01-07-1983
	Act 328	24-10-1986
	Act 337	01-01-1988
	Act 364	21-10-1988
	Act 476	01-11-1991
	Act 557	25-10-1996
	Act 578	17-10-1999
	Act 639	11-09-2004
	Act 661	02-09-2006
Act 702	01-01-2010	

Section	Amending authority	In force from
	Act 719	Year of assessment 2011 and subsequent years of assessment
	Act 742	Year of assessment 2012
	Act 764	01-01-2015
Schedule 3	Act A431	29-10-1977
	Act 323	01-01-1986
	Act 644	01-10-2005
Schedule 4	Act A431	29-10-1977
	Act 241	18-10-1980
	Act 293	1984 and subsequent years of assessment
	Act 323	01-01-1986
	Act 328	24-10-1986
	Act 702	01-01-2010
	Act 755	See section 55 of Finance Act 2013
Schedule 5	Act A431	29-10-1977
	Act 241	18-10-1980
	Act 264	23-10-1981
	Act 309	19-10-1984
	Act 328	24-10-1986
	Act 578	17-10-1999
	Act 702	01-01-2010
	Act 761	01-01-2014

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