

FINANCE (NO. 2) BILL 2017

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A BILL

i n t i t u l e d

An Act to amend the Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Goods and Services Tax Act 2014 and the Finance Act 2013.

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ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance (No. 2) Act 2017.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Real Property Gains Tax Act 1976 [*Act 169*], the Goods and Services Tax Act 2014 [*Act 762*] and the Finance Act 2013 [*Act 755*] are amended in the manner specified in Chapters II, III, IV and V, respectively.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 4, 7 and 8 have effect for the year of assessment 2019 and subsequent years of assessment.

(2) Sections 5, 9, 10, 13 and 14 come into operation on the coming into operation of this Act.

(3) Sections 6 and 12 have effect for the year of assessment 2018 and subsequent years of assessment.

(4) Section 11 comes into operation on 1 January 2018.

Amendment of section 21A

4. The Income Tax Act 1967, which is referred to as the “principal Act” in this Chapter, is amended in section 21A, by inserting after subsection (3) the following subsection:

“(3A) Where a company, limited liability partnership, trust body or co-operative society has made up the accounts of its operations for a period of twelve months ending on a day in a basis year and has failed to make up its accounts ending on the corresponding day in the following basis year (“hereinafter referred to as “the new accounts”), the company, limited liability partnership, trust body or co-operative society shall notify the Director General of such failure in the prescribed form—

- (a) in the case where the new accounts are made up ending before the corresponding day, thirty days before the end of the new accounts; or
- (b) in the case where the new accounts are made up ending after the corresponding day, thirty days before the corresponding day.”.

Amendment of section 44

5. Subsection 44(12) of the principal Act is amended by inserting after the word “company”, wherever appearing, the words “, limited liability partnership”.

Amendment of section 60AA

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

(a) by substituting for subparagraph (9)(b)(iii) the following subparagraph:

“(iii) the amount of management expenses incurred by him in that period in connection with—

(A) *wakalah* fee receivable in relation to the general fund, inward retakaful fund, offshore fund or family retakaful fund;

(B) any other fee receivable in relation to the general fund, inward retakaful fund, offshore fund or family retakaful fund;
or

(C) any other fee receivable in relation to an investment fund from the family fund;
and”;

(b) by substituting for subparagraph (10)(b)(iii) the following subparagraph:

“(iii) the amount of management expenses incurred by him in that period in connection with—

(A) *wakalah* fee receivable in relation to the general fund, inward retakaful fund, offshore fund or family retakaful;

(B) any other fee receivable in relation to the general fund, inward retakaful fund, offshore fund or family retakaful fund;
or

- (C) any other fee receivable in relation to an investment fund from the family fund; and”;

(c) by inserting after subsection (10A) the following subsection:

“(10B) The management expenses incurred for the basis period for a year of assessment under—

- (a) subsubparagraph (9)(b)(iii)(B) or (C) shall be determined in accordance with the following formula:

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

where A is the total amount of gross income for that period referred to in subparagraph (9)(a)(iii) excluding the amount of gross income in respect of *wakalah* fee;

B is the total amount of gross income for that period referred to in subparagraph (9)(a)(iii) excluding the amount of gross income in respect of *wakalah* fee for commission; and

C is the total management expenses incurred under subparagraph (9)(b)(iii); or

- (b) subsubparagraph (10)(b)(iii)(B) or (C) shall be determined in accordance with the following formula:

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

where A is the total amount of gross income for that period referred to in subparagraph (10)(a)(iii), excluding the amount of gross income in respect of *wakalah* fee;

B is the total amount of gross income for that period referred to in subparagraph (10)(a)(iii), excluding the amount of gross income in respect of *wakalah* fee for commission; and

C is the total management expenses incurred under subparagraph (10)(b)(iii).”.

Amendment of section 107c

7. Section 107C of the principal Act is amended by inserting after subsection (11A) the following subsection:

“(11B) Where there is a failure by a company, limited liability partnership, trust body or co-operative society to make up its accounts ending on the corresponding day in the following basis year pursuant to subsection 21A(3) and the company, limited liability partnership, trust body or co-operative society fails to give a notification in accordance with subsection 21A(3A), any amount of increase or sum that had been imposed under this section based on the accounting period prior to the new accounts as mentioned in subsection 21A(3A) shall continue to be recoverable as if it were tax due and payable from the company, limited liability partnership, trust body or co-operative society to the Government.”.

Amendment of section 112

8. Section 112 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) Where there is a failure by a company, limited liability partnership, trust body or co-operative society to make up its accounts ending on the corresponding day in the following basis year pursuant to subsection 21A(3) and the company, limited liability partnership, trust body or co-operative society fails to give a notification in accordance with subsection 21A(3A), any penalty that had been imposed under subsection (3) based on the accounting period prior to the new accounts as mentioned in subsection 21A(3A) shall continue to be recoverable under this Act.”.

Amendment of section 120

9. Subsection 120(1) of the principal Act is amended—

- (a) in paragraph (f), by deleting the word “or”;
- (b) in paragraph (h), by substituting for the comma at the end of the paragraph the words “; or” ; and
- (c) by inserting after paragraph (h) the following paragraph:

“(i) fails to notify the Director General as required by subsection 21A(3A),”.

Amendment of section 127

10. The proviso to subsection 127(5) of the principal Act is amended by substituting for the words “or 109B”, wherever appearing, the words “, 109B or 109D”.

Amendment of section 140A

11. Section 140A of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “**and disallowance of interest**”;
- (b) in subsection (2), by substituting for the words “subsections (3) and (4)” the words “subsection (3)”;
- (c) by deleting subsection (4); and
- (d) in subsection (5)—
 - (i) by substituting for the words “or the financial assistance referred to in subsection (2) or (4) respectively,” the words “referred to in subsection (2)”;
 - (ii) by deleting the words “or financial assistance”.

Amendment of Schedule 1

12. Paragraph 1 of Part 1 of Schedule 1 to the principal Act is amended in the column “*Rates of Income Tax*” —

- (a) by substituting for the words “5 per cent” the words “3 per cent”;
- (b) by substituting for the words “10 per cent” the words “8 per cent”; and
- (c) by substituting for the words “16 per cent” the words “14 per cent”.

Amendment of Schedule 3

13. Schedule 3 to the principal Act is amended by substituting for subparagraph 61A(5) the following subparagraph:

“(5) Where paragraph (4) applies, in determining the residual expenditure of such asset for that following basis period, the total qualifying expenditure incurred by that person shall be reduced by—

- (a) any initial allowance made to that person in relation to that asset for any year of assessment;
- (b) any annual allowance made to that person in relation to that asset for any year of assessment; and
- (c) an amount of annual allowance which would have been made to that person for the basis period in which the asset was classified as held for sale as if the asset had been in use in that basis period for the purpose of a business of his.”.

Amendment of Schedule 6

14. Schedule 6 to the principal Act is amended in subparagraph 22(b), by deleting the words “(that is to say, any professional entertainer, artiste, athlete or other individual who entertains whether in public or private for profit on stage, radio or television, at a stadium or sports ground, or otherwise)”.

CHAPTER III

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

15. Sections 16, 17 and 18 come into operation on 1 January 2018.

Amendment of section 21B

16. The Real Property Gains Tax Act 1976, which is referred to as the “principal Act” in this Chapter, is amended in section 21B—

- (a) in subsection (1), by substituting for the word “Where” the words “Subject to subsection (1A), where”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) For the purpose of subsection (1), where the disposer in a disposal referred to in that subsection is not a citizen and not a permanent resident, the acquirer shall retain the whole of that money or a sum not exceeding seven 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.”.

Amendment of Schedule 2

17. Schedule 2 to the principal Act is amended—

- (a) in paragraph 3—
 - (i) by renumbering the existing paragraph as subparagraph (1); and
 - (ii) by inserting after subparagraph (1) as renumbered the following subparagraph:

“(2) Any transfer of assets between spouses or to a company referred to in subparagraph (1)(b) shall involve an asset owned by a citizen.”;

- (b) in subparagraph 16(a), by deleting the words “or an authority or committee appointed by the Government or a State Government”; and
- (c) in subparagraphs 19(5) and 34(1), by substituting for the words “subparagraph 3(b)”, wherever appearing, the words “subsubparagraph 3(1)(b)”.

Amendment of Schedule 5

18. Part III of Schedule 5 to the principal Act is amended by substituting for the words “In the case of an individual who is not a citizen and not a permanent resident” the words “In the case of a disposer who is not a citizen and not a permanent resident, or an executor of the estate of a deceased person who is not a citizen and not a permanent resident”.

CHAPTER IV

AMENDMENTS TO THE GOODS AND SERVICES TAX ACT 2014

Commencement of amendment to the Goods and Services Tax Act 2014

19. Sections 20, 21, 22 and 23 come into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 22

20. The Goods and Services Tax Act 2014 [Act 762], which is referred to as the “principal Act” in this Chapter, is amended in paragraph 22(3)(a), by inserting after the words “to be supplied” the words “due to cessation of business,”.

Amendment of section 43

21. Section 43 of the principal Act is amended—

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

“(1A) Where any person other than a taxable person—

(a) fails to furnish a declaration under section 42; or

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

the Director General may assess to the best of his judgment the amount of tax and penalty under subsection 42(4), if any, due and payable from such person and shall forthwith notify such person of the assessment in writing.”;

(b) in subsection (3), by inserting after the words “(1)” the words “, (1A)”;

(c) in subsection (8), by inserting after the words “(1),” the words “(1A),”.

Amendment of section 64

22. Section 64 of the principal Act is amended—

(a) in paragraph (1)(a), by substituting for the words “and State Governments” the words “, State Governments and local authorities”;

(b) in paragraph (1)(b), by deleting the words “local authority and”;

(c) in subsection (2), by deleting the words “local authority or” wherever appearing.

Amendment of Second Schedule

23. The principal Act is amended in paragraph 2 of the Second Schedule—

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

“**Pension fund, etc.**”; and

(b) by inserting after the words “written law” the words “or any levy under the Pembangunan Sumber Manusia Berhad Act 2001 [*Act 612*]”.

CHAPTER V

AMENDMENT TO THE FINANCE ACT 2013

Commencement of amendment to the Finance Act 2013

24. This Chapter has effect from the year of assessment 2018.

Amendment of section 3

25. The Finance Act 2013 is amended in subsection 3(7), by substituting for the words “and 2017” the words “, 2017, 2018, 2019 and 2020”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 (“Act 53”), the Real Property Gains Tax Act 1976 (“Act 169”), the Goods and Services Tax Act 2014 (“Act 762”) and the Finance Act 2013 (“Act 755”).

AMENDMENTS TO THE INCOME TAX ACT 1967

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

1. *Clause 4* seeks to introduce a new subsection 21A(3A) into Act 53.

The new subsection 21A(3A) seeks to provide that a company, limited liability partnership, trust body or co-operative society shall notify the Director General of any change in its accounting period.

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

2. *Clause 5* seeks to amend subsection 44(12) of Act 53 to provide that for the purposes of subsections (6), (6A), (8) and (11) of Act 53, references to basis year in relation to a limited liability partnership shall be construed as references to the basis period for the year of assessment of the limited liability partnership.

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

3. *Clause 6* seeks to amend section 60AA of Act 53.

Subclauses (a) and (b) seeks to amend subparagraphs 60AA(9)(b)(iii) and (10)(b)(iii) of Act 53, respectively, to extend the scope of deduction of management expenses to any other fee receivable for the purpose of ascertaining the adjusted income under subsections 60AA(9) and (10).

Subclause (c) seeks to introduce a new subsection (10B). The new subsection (10B) seeks to provide a formula for the computation of management expenses to be deducted from any other fee receivable.

This amendment has effect for the year of assessment 2018 and subsequent years of assessment.

4. *Clause 7* seeks to amend section 107C of Act 53 to introduce a new subsection (11B). The new subsection (11B) seeks to clarify that due to the failure to notify the Director General under the new subsection 21A(3A) of the change in the accounting period of the company, limited liability partnership, trust body or co-operative society, any increase or sum imposed under section 107C is recoverable as if it were tax due to the Government.

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

5. *Clause 8* seeks to amend section 112 of Act 53 to introduce a new subsection (3A). The new subsection (3A) seeks to clarify that due to the failure to notify the Director General under the new subsection 21A(3A) of the change in the accounting period of the company, limited liability partnership, trust body or co-operative society, any penalty imposed under subsection (3) is recoverable under Act 53.

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

6. *Clause 9* seeks to amend subsection 120(1) of Act 53 to introduce a new paragraph (i) to make the failure to notify regarding a change of accounting period as required under the new subsection 21A(3A) an offence.

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

7. *Clause 10* seeks to amend subsection 127(5) of Act 53 to provide for refund of withholding tax on income distributed by real estate investment trusts to unit holders where the unit holders are exempted from tax.

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

8. *Clause 11* seeks to delete subsection 140A(4) of Act 53. With the proposed deletion, the provision relating to thin capitalisation for financial assistance between associated persons is no longer available.

This amendment comes into operation on 1 January 2018.

9. *Clause 12* seeks to amend paragraph 1 of Part 1 of Schedule 1 to Act 53 to reduce the rates of tax to be charged on the chargeable income of an individual as follows:

- (a) for chargeable income ranging between RM20,001 and RM35,000, from 5% to 3%;
- (b) for chargeable income ranging between RM35,001 and RM50,000, from 10% to 8%; and
- (c) for chargeable income ranging between RM50,001 and RM70,000, from 16% to 14%.

This amendment has effect for the year of assessment 2018 and subsequent years of assessment.

10. *Clause 13* seeks to amend paragraph 61A of Schedule 3 to Act 53 to substitute subparagraph (5). Subparagraph (5) as substituted seeks to provide the computation to be applied in determining the residual expenditure of an asset in the year of assessment after it has been classified as held for sale.

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

11. *Clause 14* seeks to amend subparagraph 22(b) of Schedule 6 to Act 53 to delete the provision relating to the description of a public entertainer. The proposed amendment is consequential to the amendment of section 2 of Act 53, which was made in the Finance Act 2017 [Act 785] providing for a new definition of “public entertainer”.

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

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

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

12. *Clause 16* seeks to amend section 21B of Act 169. *Subclause 16(b)* seeks to introduce a new subsection (1A). Under the new subsection, the retention sum relating to the disposal of a chargeable asset involving a disposer who is not a citizen and not a permanent resident is seven per cent.

This amendment comes into operation on 1 January 2018.

13. *Clause 17* seeks to amend paragraphs 3 and 16 of Schedule 2 to Act 169.

Subclause 17(a)(i) seeks to renumber the existing paragraph 3 as subparagraph 3(1).

Subclause 17(a)(ii) seeks to introduce a new subparagraph (2) into Act 169 to provide that the disposal price shall only be deemed to be equal to the acquisition price under the renumbered subparagraph (1)(b)—

- (a) in the case of a transfer of asset between spouses, where the asset to be disposed of is owned by the husband or the wife, who is a citizen; and
- (b) in the case of a transfer of asset to a company, where the asset to be disposed of is owned by an individual or the individual's wife, who is a citizen, or where the asset is jointly owned by the individual and his wife, both of whom are citizens, or where the asset is jointly owned by the individual and his connected person, both of whom are citizens.

Subclause 17(b) seeks to amend subparagraph 16(a) of Schedule 2 to Act 169 to provide that the approval referred to in that subparagraph is referring to the approval of the Government of Malaysia and a State Government only.

This amendment comes into operation on 1 January 2018.

14. *Clause 18* seeks to amend Part III of Schedule 5 to Act 169 to provide for the application of tax rate under that Part to an estate of a deceased who is not a citizen and not a permanent resident.

This amendment comes into operation on 1 January 2018.

AMENDMENT TO THE GOODS AND SERVICES TAX ACT 2014

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

15. *Clause 20* seeks to amend paragraph 22(3)(a) of Act 762 to clarify that in respect of any goods supplied or to be supplied by any person due to cessation of business, the value of such supply is not included in the value to determine the threshold value.

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

16. *Clause 21* seeks to introduce a new subsection 43(1A) into Act 762 to allow the Director General to assess any person other than a taxable person under section 42 of Act 762.

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

17. *Clause 22* seeks to amend section 64 of Act 762 to expand the non-application of Act 762 to any supply of goods or services made by any local authority and not limited to goods or services in respect of its regulatory and enforcement functions as in the current provision.

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

18. *Clause 23* seeks to amend paragraph 2 of the Second Schedule to Act 762 to include the payment of human resources development levy under the Pembangunan Sumber Manusia Berhad Act 2001 [*Act 612*] by an employer as neither a supply of goods nor a supply of services.

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

AMENDMENT TO THE FINANCE ACT 2013

Chapter V of this Bill seeks to amend the Finance Act 2013.

19. *Clause 24* seeks to amend subsection 3(7) of Act 755 to extend the period in which an individual can claim personal deduction of RM6,000.00 for deposits into the Skim Simpanan Pendidikan Nasional account until the year of assessment 2020.

This amendment has effect from the year of assessment 2018.

GENERAL

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

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3088]