FINANCE (NO. 2) BILL 2012

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

Clause

CHAPTER II

PART I

AMENDMENTS TO THE INCOME TAX ACT 1967

CHAPTER IV

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

CHAPTER V

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

A BILL

i n t i t u l e d

An Act to amend the Income Tax Act 1967, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967 and the Real Property Gains Tax Act 1976.

[ ]

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 2012.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*] and the Real Property Gains Tax Act 1976 [*Act 169*] are amended in the manner specified in Chapters II, III, IV and V respectively.

Chapter II

Part I

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Subparagraphs 4*(a)*(i) and (iii), paragraphs 4*(b)* and *(c),* sections 7 and 23 and paragraph 35*(c)* in relation to business trust come into operation on the coming into operation of the corresponding provisions of the Capital Markets and Services (Amendment) Act 2012 [*Act A1437*] relating to business trust.

(2) Subparagraph 4*(a)*(ii), sections 20 and 22, and paragraph 35*(a)* come into operation on the coming into operation of this Act.

(3) Subparagraphs 4*(a)*(iv), (v) and (vi), sections 7, 8, 9, 14, 15, 23, 24, 25, 27, 28 and 29, paragraphs 33*(b)* and *(c),* and paragraphs 35*(c)*, 35*(f)* and 37*(a)* in relation to limited liability partnership come into operation on the coming into operation of the Limited Liability Partnerships Act 2012 [*Act 743*].

(4) Subparagraph 4*(a)*(vii), sections 5, 10, 13, 18, paragraphs 33*(a)* and *(d)*, paragraphs 35*(d)* and *(e)*, paragraphs 38*(a), (b), (c), (d), (e), (g), (h)* and *(i)* and sections 39 and 40 have effect for the year of assessment 2013 and subsequent years of assessment.

(5) Sections 6 and 30 and paragraph 33*(e)* come into operation on 1 January 2013.

(6) Sections 11, 12, 16, 26, 31, 32 and 34, paragraph 35*(b),* section 36 and paragraph 38*(f)* come into operation on 1 January 2014.

(7) Section 17 has effect for the years of assessment 2012, 2013, 2014, 2015, 2016 and 2017.

(8) Sections 19, 21 and paragraph 37*(b)* have effect for the year of assessment 2012 and subsequent years of assessment.

Amendment of section 2

4. The Income Tax Act 1967, which is referred to as the "principal Act" in this Chapter, is amended in section 2—

(a) in subsection (1)—

(i) by inserting after the definition of "business" the following definition:

' "business trust" has the same meaning assigned to it in the Capital Markets and Services Act 2007[*Act 671*];';

(ii) in the definition of "Central Bank", by substituting for the words "Central Bank of Malaysia Act 1958 [*Act 519*]" the words "Central Bank of Malaysia Act 2009 [*Act 701*]";

(iii) in the definition of "company", by inserting after the word "Malaysia" the words "and a business trust";

(iv) by inserting after the definition of "lease" the following definition:

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

(v) in the definition of "partnership", by inserting after the words "a partner in a partnership" the words ", a limited liability partnership";

(vi) in the definition of "person", by inserting after the words "body of persons" the words ", a limited liability partnership"; and

(vii) by inserting after the definition of "total income" the following definition:

' "treasury share" means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by such company and not cancelled;';

(b) in subsection (9), by inserting after the words "shall exclude" the words "a business trust and"; and

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

"(11) In relation to business trust, any reference in this Act to shares or ordinary share capital, shareholders and dividend shall be read as including a reference to units or derivatives of units, unit holders and distributions, respectively.".

New section 4B

5. The principal Act is amended by inserting after section 4A the following section:

"**Non-business income**

4B. For the purpose of section 4, gains or profit from a business shall not include any interest that first becomes receivable by a person in the basis period for a year of assessment other than interest where subsection 24(5) applies.".

Amendment of section 6

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

(a) by substituting for the full stop at the end of paragraph *(k)* a semicolon; and

(b) by inserting after paragraph *(k)* the following paragraph:

"*(l)* subject to section 109G but notwithstanding any other provisions of this Act, income tax shall be charged for a year of assessment upon the income of an individual consisting of a withdrawal of his contribution made to a private retirement scheme where the withdrawal is made by that individual before reaching the age of fifty-five (other than by reason of death or permanently leaving Malaysia) at the appropriate rate as specified under Part XVI of Schedule 1.".

Amendment of section 8

7. Section 8 of the principal Act is amended—

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

"(1A) Notwithstanding subsection (1), for the purposes of this Act—

(a) a limited liability partnership carrying on a business is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia;

(b) any other limited liability partnership is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its affairs are exercised in Malaysia by its partners;

(c) a business trust is resident in Malaysia for the basis year for a year of assessment if the trustee manager of that business trust is resident in Malaysia and a trustee manager of a business trust is resident for the basis year for a year of assessment if—

(i) the trustee manager in his capacity as such carries on such business trust in Malaysia; and

(ii) the management and control of the business of such business trust is exercised in Malaysia."; and

(b) in subsection (2), by inserting after the word "company" wherever appearing, the words ", limited liability partnership, business trust".

Amendment of section 21

8. Section 21 of the principal Act is amended—

(a) in the shoulder note, by inserting after the word "company" the words ", limited liability partnership"; and

(b) by inserting after the word "company" the words ", limited liability partnership".

Amendment of section 21A

9. Section 21A of the principal Act is amended—

(a) in the shoulder note, by inserting after the word "company" the words ", limited liability partnership"; and

(b) by inserting after the word "company" wherever appearing the words ", limited liability partnership" except in subsection (5).

Amendment of section 24

10. Section 24 of the principal Act is amended in subsection (5), by substituting for the words "and the business is one which includes the regular lending of money" the words "of lending of money and the business is one which is licensed under any written law".

Amendment of section 25

11. Section 25 of the principal Act is amended—

(a) in subsection (3), by substituting for the word "five" wherever appearing the word "four";

(b) in subparagraph (4)*(a)*(i), by substituting for the word "five" wherever appearing the word "four";

(c) in paragraph (4)*(b)*, by substituting for the word "five" the word "four";

(d) in paragraph (4)*(c)*, by substituting for the word "five" wherever appearing the word "four"; and

(e) in the proviso to subsection (5), by substituting for the word "five" wherever appearing the word "four".

Amendment of section 27

12. Section 27 of the principal Act is amended—

(a) in paragraph (2)*(b)*, by substituting for the word "five" the word "four";

(b) in paragraph (2)*(c)*, by substituting for the word "five" wherever appearing the word "four"; and

(c) in the proviso to subsection (3), by substituting for the word "five" wherever appearing the word "four".

New section 34D

13. The principal Act is amended by inserting after section 34C the following section:

"**Special deduction for expenditure on treasury shares**

34D. (1) Notwithstanding section 33 but subject to this section, in ascertaining the adjusted income of a company from a business for the basis period for a year of assessment, a deduction shall be made from the gross income for that period any expenses incurred by that company in acquiring treasury shares.

(2) The amount of deduction referred to in subsection (1)—

(a) shall be the cost of acquiring the treasury shares which are transferred to its employee less any amount payable by that employee for such treasury shares; and

(b) shall be allowed in the basis period for a year of assessment where the employee exercised his rights to acquire such treasury shares.

(3) For the purpose of subsection (2), the cost of acquiring treasury shares which are transferred to its employee shall be determined on the basis that the treasury shares acquired by the company at an earlier point in time are deemed to be transferred first.

(4) Where any amount payable by an employee for any treasury shares transferred to him exceeds the cost to the company of acquiring the treasury shares transferred as provided under subsection (3), the amount of the excess shall be credited to an account to be kept by the company for the purpose of this section.

(5) Where there is any balance in the account kept by the company under subsection (4) and any treasury shares are subsequently transferred by the company to any employee under subsection (1), the cost to the company of acquiring the treasury shares as determined under subsection (3) shall be reduced—

(a) where the amount of the balance is equal to or exceeds the amount of the cost, to zero; or

(b) where the amount of the balance is less than the amount of the cost, by the amount of the balance,

and the amount of reduction shall be debited to the account.

(6) For the purpose of this section, a company transfers treasury shares held by it to an employee when the employee acquires the legal and beneficial interest in the treasury shares.

(7) Where a holding company transfers treasury shares held by it to any employee employed at any time by a subsidiary company of the holding company who has the right to acquire such shares—

(a) no deduction shall be allowed to the holding company under subsection (1);

(b) if any amount is paid or payable by the subsidiary company to the holding company for the transfer of the treasury shares, there shall be allowed to

the subsidiary company, on the date of the transfer of the shares or of the payment to the holding company for the shares, whichever is the later, a deduction under subsection (1) for the amount, or an amount equal to the cost to the holding company of acquiring the treasury shares transferred to the employee of the subsidiary less any amount payable by that employee for the treasury shares, whichever is less.".

Amendment of section 39

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

(a) by deleting the word "or" at the end of subparagraph *(l)* (vii);

(b) in paragraph *(m)*, by substituting for the full stop at the end of the paragraph the words "; or";

(c) by inserting after paragraph *(m)* the following paragraph:

"*(n)* any remuneration or any similar payment paid to a partner of a limited liability partnership where such remuneration or payment is not specified or provided in the limited liability partnership agreement made in accordance with section 9 of the Limited Liability Partnerships Act 2012.".

Amendment of section 44

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

"(5E) Where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, the amount ascertained under subsection 44(4) or (5) for any relevant year in respect of that partnership or company shall be allowed for the purposes of ascertaining the aggregate income of that limited liability partnership for a year of assessment following the relevant year.".

Amendment of section 44A

16. Paragraph 44A(9)*(a)* of the principal Act is amended by substituting for the word "six" the word "five".

Amendment of section 46

17. Paragraph 46(1)*(k)* of the principal Act is amended by substituting for the word "three" wherever appearing the word "six".

Amendment of section 48

18. Section 48 of the principal Act is amended—

(a) in subparagraph (3)*(a)*(i), by substituting for the word "four" the word "six"; and

(b) in subparagraph (3)*(a)*(ii), by substituting for the words "four thousand ringgit" the words "six thousand ringgit".

Amendment of section 60AA

19. Section 60AA of the principal Act is amended by inserting after subsection (15) the following subsection:

"(15A) In arriving at the total income of an operator for a year of assessment—

(a) the adjusted loss from a source or sources of an operator for that year of assessment other than from a source consisting of a family fund, shall be available as deduction against the aggregate statutory income (excluding the statutory income from a source consisting of a family fund) of an operator; and

(b) any unabsorbed loss ascertained under subsection 44(4) or (5) for that year of assessment shall not be deducted against the statutory income of the family fund of the operator for the subsequent years of assessment.".

Amendment of section 60G

20. The principal Act is amended in subsection 60G(6), in the definition of "foreign fund management company", by substituting for the words "Securities Industry Act 1983 [*Act 280*]" the words "Capital Markets and Services Act 2007 [*Act 671*]".

Amendment of section 60I

21. Subsection 60I(4) of the principal Act is amended by substituting for the words "the principles of *mudharabah*, *musyarakah*, *ijarah or istisna'* " the words "Syariah principles".

Amendment of section 65A

22. Paragraph 65A*(a)* of the principal Act is amended by inserting after the words "Co-operative Education Trust Fund" the words "or to a Co-operative Development Trust Fund".

New section 75B

23. The principal Act is amended by inserting after section 75A the following section:

"**Limited liability partnership and business trust**

75B. (1) The responsibility for doing all acts and things required to be done—

(a) by or on behalf of a limited liability partnership for the purposes of this Act shall lie jointly and severally—

(i) with the compliance officer who is appointed amongst the partners of the limited liability partnership; or

(ii) if no compliance officer is appointed as such, any one or all of the partners thereof; and

(b) by or on behalf of a business trust for the purposes of this Act shall lie jointly and severally with the trustee manager of such business trust.

(2) For the purpose of this section, "compliance officer" has the meaning assigned to it in section 27 of the Limited Liability Partnerships Act 2012.".

Amendment of section 77

24. Section 77 of the principal Act is amended—

(a) in the shoulder note, by inserting after the word "company" the words ", limited liability partnership"; and

(b) by inserting after the word "company" the words ", limited liability partnership".

Amendment of section 77A

25. Section 77A of the principal Act is amended—

(a) in the shoulder note, by inserting after the word "company" the words ", limited liability partnership"; and

(b) by inserting after the word "company" wherever appearing the words ", limited liability partnership".

Amendment of section 91

26. Section 91 of the principal Act is amended—

(a) in subsection (1), by substituting for the word "six" the word "five";

(b) in the proviso to subsection (2), by substituting for the word "six" the word "five"; and

(c) in subsection (4), by substituting for the word "six" the word "five".

Amendment of section 103

27. Section 103 of the principal Act is amended in paragraph (12)*(a),* by substituting for the words "or co-operative society" the words ", co-operative society or limited liability partnership".

Amendment of section 107B

28. Subsection 107B(1) of the principal Act is amended by substituting for the words "or co-operative society" the words ", co-operative society or limited liability partnership".

Amendment of section 107C

29. Section 107C of the principal Act is amended—

(a) in subsection (1), by inserting after the word "company" the words ", limited liability partnership";

(b) in subsection (4), by inserting after the words "4A applies," wherever appearing the words "limited liability partnership,";

(c) in subsection (7), by inserting after the word "company" the words ", limited liability partnership"; and

(d) in subsection (8), by inserting after the word "company" wherever appearing the words ", limited liability partnership".

New sections 109G and 109H

30. The principal Act is amended by inserting after section 109F the following sections:

"**Deduction of tax from income derived from withdrawal of contribution made to a private retirement scheme**

109G. (1) Where a person (in this section referred to as "the payer") makes payment to an individual (in this section referred to as "the recipient") in relation to a withdrawal of contribution before reaching the age of fifty-five (other than by reason of death or permanently leaving Malaysia) from a fund administered by that payer under a private retirement scheme, the payer shall upon paying the amount, deduct from that amount, tax at a rate applicable to such payment, and (whether or not tax is so deducted) shall within one month after paying the amount render an account and pay the amount of that tax to the Director General:

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

(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be increased by a sum equal to ten per cent of the amount which he fails to pay, 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 is paid to the Director General by the payer or recovered by the Director General from the payer and if the payer has not deducted that amount in paying the amount under subsection (1) with respect to which that amount relates, the payer may recover that amount from the recipient as a debt due to the payer.

(4) Notwithstanding the foregoing subsections, where the amount due from the payer 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 amount remitted has been paid, the Director General shall repay the same.

(5) In this section, “payer” refers to a private retirement scheme provider as approved under section 139Q of the Capital Markets and Services Act 2007 to provide and manage a private retirement scheme.

Appeal by the payer

109H. (1) A payer referred to in sections 109, 109B or 109F may, within thirty days (or any period extended by the Director General) from the date an amount is due to be made to the Director General under that section, appeal to the Special Commissioners by reason that such amount is not liable to be paid under this Act and the provision of this Act relating to appeals shall apply accordingly with any necessary modification.

(2) Where an amount is due from the payer to a non-resident person, this section shall not apply or cease to apply if—

(a) an appeal has been filed to the Special Commissioners by the non-resident person to whom the payer was liable to pay the amount of interest or royalty, or payment under section 4A or paragraph 4*(f)*, of which the amount due under subsection (1) relates;

(b) such payment to the non-resident made by the payer is disallowed as deduction under section 39 in arriving at the adjusted income of the payer; or

(c) the amount due under subsection (1) has not been made to the Director General by the payer.".

Amendment of section 111

31. Subsection 111(2) of the principal Act is amended by substituting for the word "six" wherever appearing the word "five".

Amendment of section 131

32. Subsection 131(1) of the principal Act is amended by substituting for the word "six" the word "five".

Amendment of Schedule 1

33. Schedule 1 to the principal Act is amended—

(a) in Part I, by substituting for paragraph 1 the following paragraph:

"**1.** Except where paragraphs 1A, 2, 2A and 3 provide otherwise, income tax shall be charged for a year of assessment upon the chargeable income of every person at the following rates:

Chargeable Income	*RM*	*Rate of Income Tax*
For every ringgit of the first	5,000	0 per cent
For every ringgit of the next	15,000	2 per cent

Chargeable Income	*RM*	*Rate of Income Tax*
For every ringgit of the next	15,000	6 per cent
For every ringgit of the next	15,000	11 per cent
For every ringgit of the next	20,000	19 per cent
For every ringgit of the next	30,000	24 per cent
For every ringgit exceeding	100,000	26 per cent”;

(b) in paragraph 2—

(i) by substituting for the comma at the end of subparagraph *(e)* a semicolon; and

(ii) by inserting after subparagraph *(e)* the following subparagraph:

“*(f)* a limited liability partnership other than a limited liability partnership to which paragraph 2D applies.”;

(c) by inserting after paragraph 2C the following paragraphs:

“**2D.** Subject to paragraphs 2E, 2F and 3, income tax shall be charged for a year of assessment on the chargeable income of a limited liability partnership resident in Malaysia which has a total contribution of capital (whether in cash or in kind) of two million five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment at the following rates:

Chargeable Income	*RM*	*Rate of Income Tax*
For every ringgit of the first	500,000	20 per cent
For every ringgit exceeding	500,000	25 per cent

2E. The provisions of paragraph 2D shall not apply to a limited liability partnership referred to in that paragraph if more than—

(a) fifty per cent of the capital contribution (whether in cash or in kind) of the limited liability partnership is directly or indirectly contributed by a company;

(b) fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by the limited liability partnership; or

(c) fifty per cent of the capital contribution (whether in cash or in kind) of the limited liability partnership and fifty per cent of the paid up capital in respect of ordinary shares of the company is directly or indirectly owned by another company.

2F. The company referred to in paragraph 2E, other than another company referred to in subparagraph 2E*(c)*, shall have a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.";

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

"Part IV

Notwithstanding Part I, income tax shall be charged for a year of assessment upon the chargeable income of every co-operative society at the following rates:

Chargeable Income	*RM*	*Rate of Income Tax*
For every ringgit of the first	30,000	0 per cent
For every ringgit of the next	30,000	5 per cent
For every ringgit of the next	40,000	10 per cent
For every ringgit of the next	50,000	15 per cent
For every ringgit of the next	100,000	20 per cent
For every ringgit of the next	250,000	22 per cent
For every ringgit of the next	250,000	24 per cent
For every ringgit exceeding	750,000	25 per cent

"; and

(e) by inserting after Part XV the following Part:

"Part XVI

Notwithstanding Part I, income tax shall be charged for a year of assessment on any amount of contribution withdrawn by an individual from a private retirement scheme before that individual reaches the age of 55 (other than by reason of death or permanently leaving Malaysia) at the rate of 8 per cent on every ringgit of that contribution withdrawn.".

Amendment of Schedule 2

34. Subparagraph 15*(a)* of Schedule 2 to the principal Act is amended by substituting for the word "five" wherever appearing the word "four".

Amendment of Schedule 3

35. Schedule 3 to the principal Act is amended—

(a) by deleting paragraph 26;

(b) in paragraph 27, by substituting for the word "six" the word "five";

(c) in subparagraph 38(2), by substituting for the words "divisible profits of partnership" the words "divisible profits of partnership, or in relation to a limited liability partnership, means the right to a share of more than one-half of the capital contribution whether in cash or in kind of the limited liability partnership and in relation to business trust, means the right to not less than fifty per cent of residual profits of the business trust available for distribution, or not less than fifty per cent of any residual assets of the business trust available for distribution on a winding up";

(d) in paragraph 38A, by substituting for subparagraph (2), the following subparagraph:

"(2) For the purpose of this paragraph—

(a) "unit trust" has the same meaning assigned to it in section 61A; and

(b) "company" means a company which holds not less than fifty per cent of residual profits of the unit trust available for distribution, or not less than fifty per cent of any residual assets of the unit trust available for distribution on a winding up."; and

(e) by inserting after paragraph 61 the following paragraph:

"**61A.** (1) Notwithstanding paragraphs 48 or 61, as the case may be, but subject to this paragraph, where in the basis period for a year of assessment an asset for which qualifying capital expenditure has been incurred is classified as asset held for sale in accordance with generally accepted accounting principles, such asset shall be deemed to have ceased to be used for the purposes of that paragraph.

(2) Where subparagraph (1) applies and the asset is sold in the basis period the asset is classified as asset held for sale, the disposal value of the asset for the purposes of this Schedule shall be an amount equal to its market value at the date it was classified as asset held for sale or the net proceeds of the sale, whichever is greater.

(3) Where in the basis period for a year of assessment an asset for which qualifying capital expenditure has been incurred is classified as asset held for sale in accordance with generally accepted accounting principles, such asset shall be deemed to have ceased to be used for the purposes of paragraph 48 or 61, as the case maybe, in the following basis period—

(a) where the asset is sold in the following basis period; or

(b) where the asset is not sold after the end of the following basis period.

(4) For the purpose of subsection (3) the disposal value of the asset shall be—

(a) in the case where the asset is sold in the following basis period, an amount equal to its market value at the end of the basis period such asset is held for sale or the net proceeds of the sale, whichever is greater;

(b) in the case where the asset is not sold in the following basis period, the market value of the asset at the end of that following basis period.

(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 an amount of annual allowance which would have been made to him for that following basis period as if the asset had been in use in that following basis period for the purpose of business of his.

(6) Where an asset deemed ceased to be used in accordance with subparagraph (3)*(b)* is brought into use by the person in a business of his in a basis period for any year of assessment after the basis period the asset is deemed ceased to be used—

(a) that person shall be deemed to have incurred qualifying capital expenditure for that asset equal to its market value at the date it is brought into use for the purpose of that business; and

(b) no initial allowance shall be made to that person in relation to an asset under subparagraph *(a)*.

(7) In this paragraph, "market value" in the case of an industrial building, means the market value as determined by a valuation officer employed by the Government."; and

(f) by inserting after paragraph 75A, the following paragraph:

"**75AA.** Where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, any allowance or aggregate amount of allowances for a year of assessment which has not been so made to that partnership or company as ascertained under paragraph 75 shall be made to that limited liability partnership for the purposes of this Schedule and section 42 for the following year of assessment.".

Amendment of Schedule 4

36. Subparagraph 15*(b)* of Schedule 4 to the principal Act is amended by substituting for the word "six" the word "five".

Amendment of Schedule 6

37. Schedule 6 of the principal Act is amended—

(a) by inserting after paragraph 12B the following paragraph:

"**12C.** Any profit paid, credited or distributed to partners by a limited liability partnership."; and

(b) by inserting after paragraph 20 the following paragraph:

"**20A.** Any income of a life insurer or takaful operator from an investment made out of a life fund or family fund in respect of a deferred annuity established in accordance with the Retirement Savings Standards approved by Bank Negara Malaysia.".

Amendment of Schedule 7A

38. Schedule 7A of the principal Act is amended—

(a) in subparagraph 1*(b)*, by deleting after the words "subparagraph 8*(a)*" the words "or *(b)*";

(b) by deleting paragraph 1C;

(c) in paragraph 2, by substituting for the words "1, 1A or 1C" the words "1 or 1A";

(d) in paragraph 2A, by substituting for the words "1, 1A or 1C" the words "1 or 1A";

(e) in paragraph 3, by substituting for the words "1, 1A or 1C" the words "1 or 1A";

(f) in paragraph 6, by substituting for the word "six" the word "five";

(g) by deleting subparagraph 8*(d)*;

(h) by deleting subparagraph 9*(g)*; and

(i) by deleting subparagraph 9*(gg)*.

PART II

SAVINGS AND TRANSITIONAL

Application of this Part

39. Where there is any inconsistency between any provision of this Part and any provision of the principal Act, the provision of the principal Act shall be void to the extent of the inconsistency.

Balance of allowances and adjusted loss of a person in respect of interest income

40. (1) The amount of adjusted loss of a person in respect of interest from a source consisting of a business for year of assessment 2012 as ascertained under subsection 44(4) or (5) prior to the coming into operation of sections 5 and 10 of this Act—

(a) shall for the year of assessment 2013 be deducted in accordance with subsection 43(2) of the principal Act against the aggregate statutory income of that person from a source consisting of a business; or

(b) where there is no aggregate statutory income from that source consisting of a business for the year of assessment 2013, the amount shall be deducted against the adjusted income of that person from a source other than a source consisting of a business for the year of assessment 2013 and subsequent years of assessment until the amount is fully deducted.

(2) The amount of allowance in respect of interest from a source consisting of a business which has not been so made to a person for year of assessment 2012 as ascertained under paragraph 75 of Schedule 3 to the principal Act prior to the coming into operation of sections 5 and 10 of this Act—

(a) shall for the year of assessment 2013 be made to that person for the purposes of the Schedule and section 42 of the principal Act from any source consisting of a business of that person; or

(b) where the person has no source consisting of a business for a year of assessment 2013, the amount of allowance shall be deducted against the adjusted income of that person from a source other than a source from a business for the year of assessment 2013 until the amount is fully deducted.

Chapter III

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

41. This Chapter commences on the coming into operation of this Act.

Amendment of section 8

42. The Stamp Act 1949, which is referred to as the "principal Act" in this Chapter, is amended in section 8, by inserting after subsection (5) the following subsections:

"(6) The Collector or any person authorized by him in writing may, at all reasonable times, inspect any books, records and documents kept by him in connection with the issue of such licence.

(7) For the purpose of subsection (6), the authorized person shall keep and retain the books, records and documents in connection with the issue of such licence for a period of seven years from the year in which such licence is issued.

(8) Any authorized person who fails to comply with the conditions imposed in the licence under subsection (2) shall be liable to a fine of not less than four thousand ringgit and not more than ten thousand ringgit.”.

Amendment of section 9

43. The principal Act is amended by substituting for section 9 the following section:

“**Authorized person to compound instrument**

9. (1) Subject to this section, the Collector may authorize—

(a) any banker, dealer or insurer to compound for the payment of duty on unstamped cheques, contract notes or policies of insurance drawn or drawn up and issued on forms to be supplied or adopted by the said banker, dealer or insurer;

(b) the Registrar of Companies to compound for the payment of duty on unstamped Articles of Association and Memorandum of Association lodged with the said Registrar; and

(c) the principal officer of Tenaga Nasional Berhad to compound for the payment of duty on the unstamped TNB Electricity Supply Form issued and supplied by the Tenaga Nasional Berhad.

(2) The said authorized persons shall levy upon or charge to the person to whom such instruments referred to in subsection (1) are issued the stamp duty mentioned in the First Schedule.

(3) The said authorized person shall pay on the 1st day of each calendar month in each year to the Collector the amount due and collected thereon as duties on such unstamped

instruments and where he fails to pay the amount on each date specified or within fourteen days immediately thereafter, he shall in addition to the amount due pay a further amount of two hundred ringgit or ten per centum of the amount due whichever is the greater and any amount due shall be recoverable as a debt due to the Government.

(4) The said authorized person shall deposit with the Collector, as security for the due payment to the Collector of any moneys payable under subsection (2), such sum, if any, as the Minister of Finance may direct.

(5) Instruments in respect of which payment of duty by way of composition has been made under this section, notwithstanding any other provision of this Act, shall be deemed to be duly stamped.

(6) Where any person has been authorized to compound for the payment of duty on unstamped instrument as mentioned under paragraph 1*(a)*, *(b)* or *(c)*, the Collector or any person authorized by him in writing, may, at all reasonable times, inspect any stocks of unstamped instrument held by such person and any books, records and documents kept by him in connection with the issue of such instrument.

(7) For the purpose of subsection (6), the person mentioned in subsection (1) shall keep and retain the books, records and documents in connection with the issue of such Articles of Association and Memorandum of Association for a period of seven years from the year in which such Articles of Association and Memorandum of Association are issued.".

New section 60A

44. The principal Act is amended by inserting after section 60 the following section:

"**Failure to frank documents**

60A. Any authorized person who, being required by law to frank any instruments, fails to do so within thirty days from the date the instrument is executed shall be liable to a fine of not less than two hundred ringgit and not more than two thousand ringgit.".

Amendment of First Schedule

45. The First Schedule to the principal Act is amended in subitem 22(6) by substituting for the words "principle of *Al Bai Bithamin Ajil*" the word "principles".

Amendment of Second Schedule

46. The Second Schedule to the principal Act is amended by inserting after item 22 the following item:

"23	Memorandum of Sale	Registrar of High Court".

CHAPTER IV

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Commencement of amendments to the Petroleum (Income Tax) Act 1967

47. (1) Sections 48, 51, 53 and 54 come into operation on the coming into operation of this Act.

(2) Sections 49, 50 and 52 come into operation on 1 January 2014.

Amendment of section 18

48. The Petroleum (Income Tax) Act 1967, which is referred to as the "principal Act" in this Chapter, is amended in section 18—

(a) in paragraph (1)*(h)*, by substituting for the proviso to that paragraph the following proviso:

"Provided that—

(i) this paragraph shall not apply if the payer has paid the amount of deduction of tax and the increased amount which is equal to ten per cent of that deduction which are due and payable under the provisions of that law; and

(ii) where such tax is deducted or such amount is paid after the due date for the furnishing of a return for a year of assessment that relates to such payment, the tax or amount so paid shall not prejudice the imposition of penalty under subsection 52(2) if a deduction on such payment is made in such return or is claimed in the information given to the Director General in arriving at the adjusted income of the payer;"; and

(b) by inserting after subsection (2) the following subsection:

"(3) Paragraph (1)*(h)* shall not apply if for a year of assessment a person is exempt under section 65C or the Promotion of Investments Act 1986 [*Act 327*], in respect of all income of that person from all sources not being exemption on income equal to capital expenditure incurred.".

Amendment of section 39

49. Section 39 of the principal Act is amended—

(a) in subsection (1), by substituting for the word "six" the word "five";

(b) in paragraph (2)*(b)*, by substituting for the word "six" the word "five"; and

(c) in subsection (4), by substituting for the word "six" the word "five".

Amendment of section 50

50. Subsection 50(2) of the principal Act is amended by substituting for the word "six" the word "five".

New section 57A

51. The principal Act is amended by inserting after section 57 the following section:

"**Failure to keep records**

57A. Any person who, without reasonable excuse, contravenes subsection 34A(1), (2), (3), (4) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than three hundred ringgit and not more than ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.".

Amendment of section 66

52. Subsection 66(1) of the principal Act is amended by substituting for the word "six" the word "five".

New section 72A

53. The principal Act is amended by inserting after section 72 the following section:

"**Power to substitute the price and disallowance of interest on certain transactions**

72A. (1) This section shall apply notwithstanding section 72 and subject to any rules prescribed under this Act.

(2) Subject to subsection (3) where a chargeable person in the basis period for a year of assessment enters into a transaction with another person for that year for the acquisition or supply of property or services, then, for all purposes of this Act, that chargeable person shall determine and apply the arm's length price for such acquisition or supply.

(3) Where the Director General has reason to believe that any property or services referred to in subsection (2) is acquired or supplied at a price which is either less than or greater

than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length, he may in determination of the gross income, adjusted income or adjusted loss, statutory income, assessable income or chargeable income of the chargeable person, substitute the price in respect of the transaction to reflect an arm's length price for the transaction.

(4) Where the Director General, having regard to the circumstances of the case, is of the opinion that in the basis period for a year of assessment the value or aggregate of all financial assistance granted by a person to a chargeable person who is a resident, is excessive in relation to the fixed capital of such chargeable person, any interest, finance charge, other consideration payable for or losses suffered in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive, be disallowed as a deduction for the purposes of this Act.

(5) The transactions or the financial assistance referred to in subsection (2) or (4) respectively, shall be construed as transactions or financial assistance between—

(a) companies one of which has control over the other; or

(b) companies both of which are controlled by some other person.

(6) In this section, "transaction" has the same meaning assigned to it in subsection 72(7).".

Amendment of section 83

54. Subsection 83(1) of the principal Act is amended by inserting after paragraph *(b)* the following paragraph:

"*(ba)* implementing and facilitating the operation of section 72A;".

Chapter V

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

55. (1) Section 56 and paragraph 63*(c)* come into operation on the coming into operation of the Limited Liability Partnership Act 2012 [*Act 743*].

(2) Sections 57, 58, paragraph 59*(c)*, section 61, paragraphs 63*(a)* and *(b)*, and section 64 come into operation on the coming into operation of this Act.

(3) Paragraphs 59*(a)* and *(b)*, sections 60 and 62 come into operation on 1 January 2014.

Amendment of section 2

56. The Real Property Gains Tax Act 1976, which is referred to as the "principal Act" in this Chapter is amended in subsection 2(1)—

(a) in the definition of "person", by inserting after the words "body of persons" the words ", limited liability partnership"; and

(b) by inserting after the definition of "land" the following definition:

' "limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnership Act 2012 [*Act 743*];'.

Amendment of section 13

57. Section 13 of the principal Act is amended by inserting after subsection (5) the following subsections:

"(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.".

Amendment of section 14

58. Section 14 of the principal Act is amended by inserting after subsection (4) the following subsection:

"(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.".

Amendment of section 15

59. Section 15 of the principal Act is amended—

(a) in subsection (1), by substituting for the word "six" the word "five";

(b) in subsection (3), by substituting for the word "six" the word "five"; and

(c) by inserting after subsection (3) the following subsection:

"(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.".

Amendment of section 19

60. Subsection 19(1) of the principal Act is amended by substituting for the word "six" the word "five".

Amendment of section 21B

61. Section 21B of the principal Act is amended by inserting after subsection (4) the following subsection:

"(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.".

Amendment of section 24

62. Subsection 24(3) of the principal Act is amended by substituting for the word "six" the word "five".

Amendment of Schedule 1

63. Schedule 1 to the principal Act is amended—

(a) by substituting for subparagraph 5(1) the following subparagraph:

"(1) 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.";

(b) by inserting after subparagraph 5(3) the following subparagraph:

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

(a) is occupying the position of director (by whatever named 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, more than fifty per cent of the ordinary share capital of the company.

(5) In this subparagraph, "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."; and

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

"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 subsection 75B(2) of the Income Tax Act 1967.".

Amendment of Schedule 4

64. Schedule 4 to the principal Act is amended in paragraph 2—

(a) by substituting for the words "which is not or was not part of a larger chargeable asset at the time of the disposal:" the words "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:

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

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."; and

(b) by deleting the proviso.

EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act 1967 ("Act 53"), the Stamp Act 1949 ("Act 378"), the Petroleum (Income Tax) Act 1967 ("Act 543") and the Real Property Gains Tax Act 1976 ("Act 169").

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 amend subsection 2(1) of Act 53 to introduce a new definition of "business trust" into Act 53 and to include in the definition of "company" a business trust. With the amendment, the tax treatment of a business trust is similar to a company under the Act.

This amendment comes into operation on the coming into operation of the Capital Markets and Services (Amendment) Act 2012 [*Act A1437*].

Clause 4 further seeks to amend the definition of "Central Bank" as a consequence of the enactment of the Central Bank of Malaysia Act 2009 [*Act 701*].

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

Clause 4 further seeks to introduce a new definition of "limited liability partnership" into Act 53 as a limited liability partnership registered under the Limited Liability Partnerships Act 2012 and to extend the definition of "person" to a "limited liability partnership". With the amendment, a limited liability partnership will be treated as an entity chargeable to tax.

Clause 4 further seeks to amend the definition of "partnership" to provide that a limited liability partnership is not a partnership under this Act.

These amendments come into operation on the coming into operation of the Limited Liability Partnerships Act 2012 [*Act 743*].

Clause 4 further seeks to introduce a new definition of "treasury shares" into Act 53. The amendment is consequential to the amendment in the Act that gives special deduction to a company in the event the treasury shares are offered to its employee.

This amendment has effect for the year of assessment 2013 and subsequent years of assessment.

Clause 4 further seeks to amend subsection 2(9) of Act 53 to exclude a business trust from enjoying benefits of not filing tax estimates and making instalment payments pursuant to subsection 107C(4A), the special tax rate under Schedule 1 and the special allowances for small value assets under Schedule 3 of the Act.

Clause 4 further seeks to introduce a new subsection 2(11) into Act 53 as a consequence of providing a similar tax treatment to a business trust as to a company.

These amendments come into operation on the coming into operation of the Capital Markets and Services (Amendment) Act 2012.

2. *Clause 5* seeks to introduce a new section 4B into Act 53 to clarify that interest income will not be taxable as gains or profits from a business under paragraph 4*(a)* of the Act unless the interest is derived from a source which forms part of the stock in trade of a business of a person or the interest is receivable by a person from the business of lending money and that business is licensed under any written law.

This amendment has effect for the year of assessment 2013 and subsequent years of assessment.

3. *Clause 6* seeks to introduce a new paragraph 6(1)*(l)* into Act 53 to provide for tax to be charged at the rate specified under Part XVI of Schedule 1 to the Act on income of an individual who withdraws his contribution made to a private retirement scheme before the age of fifty-five other than by reason of death or permanently leaving Malaysia.

This amendment comes into operation on 1 January 2013.

4. *Clause 7* seeks to introduce a new subsection 8(1A) into Act 53 to provide that the residence status of a limited liability partnership in Malaysia is determined based on the management and control of its business or affairs which are exercised by its partners in Malaysia.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

Clause 7 further seeks to provide that the resident status of a business trust is determined based on the resident status of a trustee manager. The trustee manager is resident in Malaysia if it carries on the business of the business trust in Malaysia and the management and control of its business are exercised in Malaysia.

This amendment comes into operation on the coming into operation of the Capital Markets and Services (Amendment) Act 2012.

5. *Clause 8* seeks to amend section 21 of Act 53 to provide that that section is also not applicable to a limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

6. *Clause 9* seeks to amend section 21A of Act 53 to provide that the basis period of a limited liability partnership is similar to the basis period of a company.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

7. *Clause 10* seeks to amend subsection 24(5) of Act 53 to clarify that interest in relation to a loan is taxable as income from a business if the loan is granted in the course of carrying on the business of lending of money which is licensed under any written law.

This amendment has effect for the year of assessment 2013 and subsequent years of assessment.

8. *Clause 11* seeks to amend subsection 25(3), subparagraph 25(4)*(a)*(i), paragraphs 25(4)*(b)* and *(c)*, and subsection 25(5) of Act 53 to reduce the period of raising preceding years of assessment from five to four years in the case where the Director General discovers that income of a person relates to a period of more than five preceding years. Such income will be deemed to have accrued evenly over that four year period.

This amendment comes into operation on 1 January 2014.

9. *Clause 12* seeks to amend paragraphs 27(2)*(b)* and *(c)* and subsection 27(3) of Act 53 to reduce the period of raising preceding years of assessment from five to four years in the case where the Director General discovers income from interest, discount, rent or royalty or of any pension, annuity or other periodical payment to which paragraph 4*(e)* of the Act applies, relates to a period of more than five preceding years.

This amendment comes into operation on 1 January 2014.

10. *Clause 13* seeks to introduce a new section 34D into Act 53 to provide for special deduction on cost incurred by a company in acquiring treasury shares which will be offered to its employees. The deduction shall be allowed to the company in the year of assessment in which the employee exercises his right to acquire the treasury shares.

Clause 13 further seeks to provide that the amount allowed for deduction is the cost of acquiring the treasury shares by the company after deducting any amount payable by its employee for the treasury shares which shall be determined on a first-in first-out basis.

Clause 13 further seeks to provide that if the amount payable by the employee exceeds the cost of acquiring the treasury shares by the company, the excess amount shall be credited to an account kept by the company which shall be used to reduce the cost of subsequent treasury shares transferred by the company to its employee.

Clause 13 further seeks to provide that if a holding company transfers treasury shares to an employee of a subsidiary company, a deduction shall be allowed to the subsidiary company and not the holding company.

These amendments have effect for the year of assessment 2013 and subsequent years of assessment.

11. *Clause 14* seeks to insert paragraph 39(1)*(n)* into Act 53 to provide that any remuneration paid to a partner by a limited liability partnership is not eligible for deduction if it is not provided in the limited liability partnership agreement made in accordance with section 9 of the Limited Liability Partnerships Act 2012.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

12. *Clause 15* seeks to introduce a new subsection 44(5E) into Act 53 to provide that a company or a partnership which converts to a limited liability partnership is allowed to carry forward its unabsorbed business losses to be utilized against the future income of a limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

13. *Clause 16* seeks to amend paragraph 44A(9)*(a)* of Act 53 to reduce the time frame to make an assessment or additional assessment from six to five years in the case where the Director General discovers that a person has wrongly claimed losses from its related company.

This amendment comes into operation on 1 January 2014.

14. *Clause 17* seeks to amend paragraph 46(1)*(k)* of Act 53 to increase a personal deduction for an individual from three thousand ringgit to six thousand ringgit in respect of an amount deposited by that individual for his child into the Skim Simpanan Pendidikan Nasional account in a basis year for a year of assessment reduced by any withdrawal made by that individual from that account in the basis year for the year of assessment.

This amendment has effect for the years of assessment 2012, 2013, 2014, 2015, 2016 and 2017.

15. *Clause 18* seeks to amend paragraph 48(3)*(a)* of Act 53. This amendment provides for an increase in deduction from four thousand ringgit to six thousand ringgit to an individual who has an unmarried child above the age of eighteen years and an increase of additional deduction from four thousand ringgit to six thousand ringgit to an individual who has a disabled child. The amendment applies to that individual if that child is pursuing an education at any educational establishment approved by the relevant government authority or serving under articles or indentures with a view to qualifying in a trade or profession.

This amendment has effect for the year of assessment 2013 and subsequent years of assessment.

16. *Clause 19* seeks to introduce a new subsection 60AA(15A) into Act 53. With the proposed amendment, the adjusted loss from the business of a family fund of a takaful operator for a year of assessment is not allowed to be deducted against the aggregate statutory income from other sources other than the family fund for the relevant year of assessment and any unabsorbed business loss from sources other than the business of a family fund for the relevant year of assessment is not allowed to be deducted against the statutory income of the family fund of that operator for the subsequent years of assessment.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

17. *Clause 20* seeks to amend subsection 60G(6) of Act 53 on the definition of "foreign fund management company" as a consequence of the enactment of the Capital Markets and Services Act 2007 [*Act 671*].

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

18. *Clause 21* seeks to amend subsection 60I(4) of Act 53 to widen the definition of "Islamic securities" to any securities which are in compliance with the Syariah principles.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

19. *Clause 22* seeks to amend paragraph 65A*(a)* of Act 53 to provide that any sum transferred or paid during the basis period for a year of assessment to a Co-operative Development Trust Fund by a co-operative society shall be allowed for a deduction for that year of assessment.

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

20. *Clause 23* seeks to introduce a new section 75B into Act 53 to provide that a compliance officer who is appointed amongst the partners of the limited liability partnership shall be responsible for doing all acts and things required under the Act on behalf of a limited liability partnership. If no compliance officer is appointed, then the responsibility shall lie with any partners of the limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

Clause 23 further seeks to provide for the responsibility of a trustee manager to do all acts and things required under the Act on behalf of a business trust.

This amendment comes into operation on the coming into operation of the Capital Markets and Services (Amendment) Act 2012.

21. *Clause 24* seeks to amend section 77 of Act 53 to provide that that section is not applicable to a limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

22. *Clause 25* seeks to amend section 77A of Act 53 to provide that a limited liability partnership is required to furnish a return for a year of assessment within seven months from the date following the close of its accounting period.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

23. *Clause 26* seeks to amend section 91 of Act 53 to provide that the power of the Director General to make an assessment or additional assessment for a year of assessment is reduced from six to five years after the end of that year of assessment unless in the case of fraud, wilful default or negligence.

This amendment comes into operation on 1 January 2014.

24. *Clause 27* seeks to amend paragraph 103(12)*(a)* of Act 53 to provide for the due date for the payment of tax by a limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

25. *Clause 28* seeks to amend subsection 107B(1) of Act 53 to provide that that section is not applicable to a limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

26. *Clause 29* seeks to amend section 107C of Act 53 to provide that a limited liability partnership is required to furnish an estimate of tax payable and make payment of the estimate in instalment for each year of assessment.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

27. *Clause 30* seeks to introduce a new section 109G into Act 53 to require a person to deduct and pay an amount to the Director General within one month after paying such amount to an individual in relation to a withdrawal of contribution by that individual before he reaches the age of fifty-five. Where a person fails to pay to the Director General by the due date, he is required to pay an increased amount equivalent to ten per cent of the amount that he fails to pay.

Clause 30 further seeks to introduce a new section 109H into Act 53 to provide that a payer who is liable to make payment in respect of an amount under section 109, 109B or 109F may appeal to the Special Commissioners within thirty days from the date the amount is due to be made by the payer on the reason that the amount is not liable to be paid under this Act.

These amendments come into operation on 1 January 2013.

28. *Clause 31* seeks to amend subsection 111(2) of Act 53 to reduce the time period for a person to apply for a refund of over payments of tax from six to five years after the end of the year of assessment to which a claim for refund relates.

This amendment comes into operation on 1 January 2014.

29. *Clause 32* seeks to amend subsection 131(1) of Act 53 to reduce the time period for a person to apply for a relief on any error or mistake made in a return or statement for any year of assessment from six to five years after the end of that year of assessment.

This amendment comes into operation on 1 January 2014.

30. *Subclause 33(a)* seeks to amend paragraph 1 of Part 1 of Schedule 1 to Act 53 to provide a new schedule of tax rates which is applicable to individuals.

Subclause 33(b) further seeks to amend subparagraph 2*(e)* of Part 1 of Schedule 1 to Act 53 to provide that the tax rate on the chargeable income of a limited liability partnership is twenty-five per cent except where the total capital contribution (whether in cash or in kind) of the limited liability partnership is not more than two million and five hundred thousand ringgit.

Subclause 33(c) further seeks to introduce new paragraphs 2D, 2E and 2F of Part 1 of Schedule 1 to Act 53 to provide for a preferential tax rate to apply to a limited liability partnership which has a capital contribution (whether in cash or in kind) of not more than two million and five hundred thousand ringgit at the beginning of basis period for a year of assessment. However, the preferential tax rate will not apply to a limited liability partnership which controls or is being controlled by a company that has more than two million and five hundred thousand ringgit paid up capital in respect of ordinary shares.

These amendments come into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

Subclause 33(d) further seeks to amend Part IV of Schedule 1 to Act 53 to provide a new schedule of tax rates which is applicable to a co-operative society.

This amendment has effect for the year of assessment 2013 and subsequent years of assessment.

Subclause 33(e) further seeks to insert a new Part XVI of Schedule 1 into Act 53 to provide for income tax to be charged at the rate of 8 per cent on withdrawal of amount of contribution by an individual from a private retirement scheme before that individual reaches the age of fifty-five.

This amendment comes into operation on 1 January 2013.

31. *Clause 34* seeks to amend subparagraph 15*(a)* of Schedule 2 to Act 53 as a consequence of the amendment to subsection 91(1) of Act 53 on the power of the Director General to make an assessment or additional assessment within a reduced time frame.

This amendment comes into operation on 1 January 2014.

32. *Subclause 35(b)* seeks to amend paragraph 27 of Schedule 3 to Act 53 as a consequence of the amendment to subsection 91(1) of Act 53 on the power of the Director General to make an assessment or additional assessment within a reduced time frame.

This amendment comes into operation on 1 January 2014.

Subclause 35(c) seeks to amend paragraph 38 of Schedule 3 to Act 53 to provide that a disposal of an asset by a limited liability partnership shall be subject to paragraphs 39 and 40 of the Act if a partner has more than fifty per cent of capital contribution whether in cash or in kind in that limited liability partnership.

This amendment comes into operation on the coming into operation of the provision of the Limited Liability Partnerships Act 2012.

Subclause 35(c) further seeks to provide that a disposal of an asset by a business trust shall be subject to paragraphs 39 and 40 of the Act if a person has the right to not less than fifty per cent of residual profits of the business trust available for distribution, or not less than fifty per cent of any residual assets of the business trust available for distribution on a winding up.

This amendment comes into operation on the coming into operation of the Capital Markets and Services (Amendment) Act 2012.

Subclause 35(d) further seeks to amend paragraph 38A of Schedule 3 of Act 53 to clarify that a disposal by a company to a unit trust shall be subject to paragraphs 39 and 40 of the Act if the company holds more than fifty per cent of residual profits or assets of the unit trust that is available for distribution on a winding up.

Subclause 35(e) further seeks to introduce a new paragraph 61A of Schedule 3 into Act 53 to provide that an asset for which capital expenditure has been incurred shall be deemed to have been disposed for the purpose of paragraphs 48 and 61 of Act 53 if the asset is held for sale in accordance with generally accepted accounting principles. The disposal value is determined based on the market value at the time the asset is held for sale or at the end of basis period in which the asset is held for sale or at the end of the following basis period, as the case may be.

These amendments have effect for the year of assessment 2013 and subsequent years of assessment.

Subclause 35(f) seeks to introduce a new paragraph 75AA into Schedule 3 of Act 53 to provide that a company or a partnership which converts to a limited liability partnership is allowed to carry forward its unabsorbed capital allowance to be utilized against the future income of a limited liability partnership.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

33. *Clause 36* seeks to amend subparagraph 15*(b)* of Schedule 4 of Act 53 as a consequence of the amendment to subsection 91(1) of Act 53 on the power of the Director General to make an assessment or additional assessment within a reduced time frame.

This amendment comes into operation on 1 January 2014.

34. *Subclause 37(a)* seeks to introduce a new paragraph 12C into Act 53 to provide that profits paid, credited or distributed to partners of a limited liability partnership is exempt from tax.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

Subclause 37(b) further seeks to introduce a new paragraph 20A into Act 53 to provide that the income of a life insurer or takaful operator in respect of an investment from a life fund or family fund in a deferred annuity scheme approved by Bank Negara Malaysia is exempt from tax.

This amendment has effect for the year of assessment 2012 and subsequent years of assessment.

35. *Subclauses 38(a), (b), (c), (d), (e), (g), (h)* and *(i)* seek to amend Schedule 7A of Act 53 as a consequence to the deletion of subparagraphs 8*(b)* and *(d)* of Act 53 in relation to qualifying project undertaken by a company in participating in industrial adjustment approved under the Promotion of Investments Act 1986 and in transforming a business of rearing chickens and ducks from an opened house to a closed house system.

These amendments have effect for the year of assessment 2013 and subsequent years of assessment.

36. *Subclause 38(f)* seeks to amend paragraph 6 of Schedule 7A of Act 53 as a consequence of the amendment to subsection 91(1) of Act 53 on the power of the Director General to make an assessment or additional assessment within a reduced time frame.

This amendment comes into operation on 1 January 2014.

MISCELLANEOUS

Part II of Chapter II of this Bill seeks to provide savings and transitional provisions in respect of amendments to the Income Tax Act 1967.

37. *Clause 40* seeks to provide that any unabsorbed loss of a person for the year of assessment 2012 in respect of interest from a business source will be carried forward and deducted against the aggregate statutory income of that person from any other business source in the year of assessment 2013. Similarly, any unabsorbed capital allowances in the year of assessment 2012 in respect of interest from a business source, will be given to that person and reduce the statutory income from any business source for the year of assessment 2013. In the case where that person has no business source for the year of assessment 2013, the unabsorbed loss and allowance will be deducted against any other source of income of that person until the amounts is fully deducted.

This amendment has effect for the year of assessment 2013 and subsequent years of assessment.

AMENDMENTS TO THE STAMP ACT 1949

Chapter III of this Bill seeks to amend the Stamp Act 1949. This Chapter commences on the coming into operation of this Act.

38. *Clause 42* seeks to amend section 8 of Act 378 to provide that a person authorized under a licence by the Minister to pay duty on any instrument specified in the Fifth Schedule by means of postal franking machine or digital franking machine must keep records in connection with the issue of such licence for a period of seven years for the purpose of inspection by the Collector.

39. *Clause 43* seeks to amend section 9 of Act 378. With the amendment, the power to compound duty on specific instrument is extended to the Companies Commission of Malaysia and Tenaga Nasional Berhad.

40. *Clause 44* seeks to introduce a new section 60A into Act 378. With the amendment, a penalty may be imposed on any person authorized under section 8 of the Act for failure to frank an instrument within thirty days from the date of the instrument is executed.

41. *Clause 45* seeks to amend subitem 22(6) of the First Schedule of Act 378 to provide that instrument in respect of purchase of goods which is chargeable with the duty of RM10.00 is extended to instruments that adopt any Syariah principles.

42. *Clause 46* seeks to amend the Second Schedule of Act 378 to empower the Registrar of High Court to cancel the Memorandum of Sale to facilitate the process of auction in the High Court.

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Chapter IV of this Bill seeks to amend the Petroleum (Income Tax) Act 1967.

43. *Clause 48* seeks to amend paragraph 18(1)*(h)* of Act 543. With the amendment, in the case where a payer fails to deduct and remit tax in accordance with section 107A, 109, 109B or 109F of the Income Tax Act 1967 but has made a claim for deduction on the payment that is subject to such tax in a return, the Director General may impose a penalty under subsection 52(2) of Act 543 regardless that the withholding tax together with the increase for such failure is subsequently paid to the Director General. However, paragraph 18(1)*(h)* is not applicable to a payer who fails to withhold tax of a non-resident under the provisions of the Income Tax Act in the case where the income of the payer from all his sources is fully exempt under the Promotion of Investments Act 1986 or subsection 65C(1) of Act 543.

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

44. *Clause 49* seeks to amend section 39 of Act 543 to provide that the power of the Director General to make an assessment or additional assessment for a year of assessment is reduced from six to five years after the end of that year of assessment unless in the case of fraud, wilful default or negligence.

This amendment comes into operation on 1 January 2014.

45. *Clause 50* seeks to amend subsection 50(2) of Act 543 to provide that the time frame for a person to make a claim for refund of over-payment of tax for any year of assessment is shortened from six to five years after the end of the year of assessment to which the claim relates.

This amendment comes into operation on 1 January 2014.

46. *Clause 51* seeks to introduce a new section 57A into Act 543. With the proposed amendment, it is an offence under the Act if a chargeable person fails to keep records as required under subsections 34A(1), (2), (3), (4) and (5) of Act 543.

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

47. *Clause 52* seeks to amend subsection 66(1) of Act 543 to reduce the time period for a chargeable person to apply for a relief on any error or mistake made in a return or statement for any year of assessment from six to five years after the end of that year of assessment.

This amendment comes into operation on 1 January 2014.

48. *Clause 53* seeks to introduce a new section 72A into Act 543. The proposed amendment provides for a special provision relating to a transaction between related parties in particular on the matter pertaining to the determination of transfer pricing and thin capitalization. With the proposed amendment, the Director General may substitute the price in a related transaction if the transaction was not made at arm's length. With regard to thin capitalization, portion of the interest that relates to the amount of financial assistance which is excessive will be disallowed as a deduction.

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

49. *Clause 54* seeks to introduce a new paragraph 83(1)*(ba)* of Act 543 to provide that laws regulating a transaction between related parties on the matter pertaining to the determination of transfer pricing and thin capitalization are subject to rules prescribed by the Minister under section 83 of Act 543.

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

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

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

50. *Clause 56* seeks to amend subsection 2(1) of Act 169 to include a limited liability partnership as a person chargeable to tax under the Act and to introduce into the Act the definition of a 'limited liability partnership' as a limited liability partnership registered under the Limited Liability Partnerships Act 2012.

This amendment comes into operation on the coming into operation of the Limited Liability Partnerships Act 2012.

51. *Clause 57* seeks to introduce new subsections 13(6) and (7) into Act 169 to provide that a disposer who disposes a chargeable asset to an acquirer may furnish to the Director General a notification in a prescribed form if such disposal is not subject to tax or is exempt under the provisions of the Act. The disposer must also serve the notification to the acquirer within sixty days from the date of disposal.

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

52. *Clause 58* seeks to introduce a new subsection 14(5) into Act 169 to provide that where an acquirer fails to retain and remit an amount which is required under section 21B of the Act due to incorrect or wrong information provided by the disposer, a sum equal to ten per cent of the tax payable will be imposed on the disposer.

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

53. *Subclauses 59(a)* and *(b)* seek to amend subsections 15(1) and (2) of Act 169 to provide that the power of the Director General to make an assessment or additional assessment for a year of assessment is reduced from six to five years after the end of that year of assessment unless in the case of fraud, wilful default or negligence.

This amendment comes into operation on 1 January 2014.

Subclause 59(c) further seeks to insert a new subsection 15(4) into Act 169 to provide that subject to subsection 14(5) of the Act, where an acquirer fails to retain and remit an amount which is required under section 21B of the Act due to incorrect or wrong information provided by the disposer, a sum equal to ten per cent of the tax payable will be imposed on the disposer.

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

54. *Clause 60* seeks to amend section 19 of Act 169 to reduce the time period for a person to apply for a relief on any error or mistake made in a return or statement for any year of assessment from six to five years after the end of that year of assessment.

This amendment comes into operation on 1 January 2014.

55. *Clause 61* seeks to introduce a new subsection 21B(5) into Act 169 to provide that an acquirer is not required to retain and remit an amount to the Director General if a notice of non-chargeability under section 13 of the Act is served to that acquirer within sixty days after the date of disposal of a chargeable asset.

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

56. *Clause 62* seeks to amend subsection 24(3) of Act 169 to reduce the time period for a person to apply for a refund of over-payments of tax from six to five years after the end of the year of assessment to which a claim for refund relates.

This amendment comes into operation on 1 January 2014.

57. *Clause 63* seeks to amend subparagraph 5(1) of Schedule 1 to Act 169 to provide that a director who has more than fifty per cent control over a company shall be jointly and severally liable for debt or tax due by a company.

Clause 63 further seeks to introduce a new paragraph 5A into Schedule 1 to Act 169 to provide that a compliance officer who is appointed from amongst the partners of a limited liability partnership or if no compliance officer is appointed, any of its partner, shall be jointly and severally assessable and chargeable to tax under the Act.

These amendments come into operation on the coming into operation of this Act.

58. *Clause 64* seeks to amend paragraph 2 of Schedule 4 to Act 169. With the proposed amendment, a person who disposes part of a chargeable asset may claim a portion of the exemption of ten thousand ringgit or ten per cent of the chargeable gain from such disposal, whichever is higher, allowable under that paragraph proportionate to the part of the chargeable asset disposed of, as determined in accordance with the formula provided under that paragraph.

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

FINANCIAL IMPLICATIONS

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

[PN(U^2)2880]